

**HEARING OF THE IMMIGRATION POLICY AND ENFORCEMENT
SUBCOMMITTEE OF THE HOUSE JUDICIARY COMMITTEE; SUBJECT: H-1B
VISAS: DESIGNING A PROGRAM TO MEET THE NEEDS OF THE U.S.
WORKERS; CHAIRED BY: REPRESENTATIVE ELTON GALLEGLY (R-CA);
WITNESSES: DON NEUFELD, ASSOCIATE DIRECTOR OF OPERATIONS OF
THE U.S. CITIZENSHIP AND IMMIGRATION SERVICES CENTER; BO
COOPER, PARTNER AT BERRY APPLEMAN & LEIDEN LLP; RON HIRA,
ASSOCIATE PROFESSOR OF PUBLIC POLICY AT THE ROCHESTER
INSTITUTE OF TECHNOLOGY; BRUCE MORRISON, CHAIRMAN OF
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Body

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REP. GALLEGLY: Good morning.

The subcommittee last held a hearing on the H-1B program almost exactly five years ago today. Much has changed since 2006. Demand for H-1B visas plummeted along with the great recession, especially in Silicon Valley, and is only now slowly recovering.

The number of H-1B workers approved for initial employment in the computer systems design industry fell by 46 percent, from about 44,000 Fiscal Year 2005 to 24,000 Fiscal Year 2009. On the other hand, the Bureau of Labor Statistics projects that some of the fastest growing occupations over the next decade will be computer and mathematical occupations, with these jobs up 22 percent overall.

It is encouraging news that the median salary of H-1B workers approved for initial employment has increased by healthy amounts, going from 50,000 (dollars), 2005, to 59,000 (dollars) in 2009; and to 60,000 (dollars) for immigrants in computer-related occupations. Additionally, the number of visas issued to foreign students keep on growing, going from about 238,000, 2005 to approximately 331,000 in 2009.

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In fact the single biggest selling point for H-1B visas is that they allow foreign students educated in the U.S. to work for American companies rather than our competitors. As Compete America argues, in many critical disciplines, particularly in science, math, engineering and technology, 50 percent or more of the postgraduate degrees at U.S. universities are awarded to foreign nationals.

The H-1B visas allow these graduates to apply their knowledge toward the growth of new jobs and industries in the United States, yet we still hear the same disturbing stories we heard years ago about American computer scientists being unable to find work, especially when they hit 35 years of age, and we still hear the dispiriting stories of Americans being laid off and replaced by H-1B workers, sometimes even being forced to train their replacements if they want to receive severance packages.

The debate persists over foreign companies being some of the biggest users of the H-1B program in utilizing a business model whereby they contract out their H-1B workers to their employers. GAO reports that a large number of H-1B complaints have been filed against such companies.

The issue certainly reached the boiling point last year. Congress approved a special \$2,000 H-1B visa fee for these companies. One of our witnesses today, Don Neufeld, associate director of service center operations at U.S. Citizenship and Immigration Services, has waded into this controversy. He issued a memo determining that in many cases the business model is not an authorized use of the H-1B program. I'm sure we'll hear more from Mr. Neufeld as the hearing moves on.

Finally, there is an ongoing matter of enforcement of the H-1B program. Because employers need to bring in H-1B workers onboard in the shortest possible time, the H-1B program's mechanism for protecting American workers is not a pre-arrival review of the need for foreign workers and the unavailability of American candidates. Instead the employer had to file a labor condition application making certain basic promises such as the promise to pay at least the prevailing wage.

The Labor Department is entrusted with investigating complaints alleging noncompliance. The level of enforcement has always been problematic. The GAO has recommended that Congress grant the department several additional enforcement tools. We should give careful consideration to these recommendations.

All this being said, I look forward to today's hearing, and at this point I would move over to my good friend and the ranking member, Ms. Lofgren.

REPRESENTATIVE ZOE LOFGREN (D-CA): Thank you, Mr. Chairman.

In 2005 the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine published at Congress' request a seminal and very sobering report on the state of our science and technology industries and our eroding economic leadership in these areas. The report, entitled, "Rising Above the Gathering Storm," shows how the nation's economic strength and vitality are largely derived from the productivity of well-trained people and the steady stream of scientific and technical innovations they produce.

But after reviewing trends across the globe, the authors of the report were deeply concerned that due in part to restrictive immigration policies, the scientific technological building blocks critical to our economic leadership are eroding at a time when many other nations are gathering strength. According to the report, and I quote, "Although many people assume the United States will always be a world leader in science and technology, this may not continue to be the case in as much as great minds and ideas exist throughout the world. We fear the abruptness with which a lead in science and technology can be lost and the difficulty of recovering a lead once lost, if indeed it can be regained at all."

Fortunately, Congress passed the America Competes Act in 2007, which was authorized again last year, to address many of the educational and research challenges raised by the National Academies, but on our broken immigration system, Congress has done nothing at all. Let me just share a few quick statistics.

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Immigrants in the United States were named as inventors or co-inventors in one-quarter of international patent applications filed from the United States in 2006. Of U.S. engineering and technology companies started between 1995 and 2005, more than one-quarter have at least one foreign-born founder.

In my district in Silicon Valley, over half of its new companies and startups were started by immigrants. Nationwide immigrant-founded companies produced \$52 billion in sales and employed 450,000 workers alone in 2005. Due partly to immigration, our country, which is 5 percent of the world's population, employs nearly one-third of the world's scientific and engineering researchers, accounts for 40 percent of all R&D spending, and publishes 35 percent of all science and engineering articles.

This leadership in science and technology, according to the academies, has translated into rising standards of living for all Americans with technology improvements accounting for up to half of GDP growth and at least two-thirds of productivity growth since 1946. This is because, according to the Academies, while only 4 percent of the nation's workforce is composed of scientists and engineers, this group disproportionately creates job for the other 96 percent.

Based on these statistics, one would think we would be jumping all over ourselves to keep bright, innovative minds in the United States, but by failing to reform our employment-based immigration laws, which have not been substantially updated in more than twenty years, we've been doing exactly the opposite. In 1977 only 25 percent of Masters and Ph.D's in science and engineering were foreign nationals. By the year 2006 the majority of U.S. graduate students in these fields were immigrants.

In some fields such as engineering and computer sciences, immigrants now comprise more than two-thirds of all Ph.D. graduates, but rather than keep the best and brightest of these U.S. trained graduates that innovate and create new jobs here at home, our laws force them to leave and compete against us overseas. To remain the greatest source of innovation in the world, we need to educate more U.S. students in same fields. That's why I champion the America Competes Act, but we also must retain more of those who actually graduate from our universities, unquestionably the best in the world.

Sending these graduates home is a reverse brain drain that threatens our competitive advantage in the global marketplace. Countries around the world are increasingly scrambling to lure these talents to their shores in the global race to create new and better technologies as well as the new jobs that come with them.

I'm glad that we're having this hearing to discuss the H-1B program and how it can help us retain the talent this country needs to stay ahead. We will hear witnesses today discuss limitations inherent in the H-1B program as well as recent problems with the program's administration that create road blocks and uncertainty for employers and H-1B workers alike, and we will hear witnesses talk about a lack of safeguards that leave the H-1B program subject to abuse and manipulations by bad apple employers.

We need to address these issues so that the H-1B program better serves the employers that use it while better protecting U.S. and H-1B workers alike, and there are ways to achieve this.

But I would be remiss if I did not say that the H-1B program is not the solution to America's most pressing problems. We have years-long backlogs right now that are preventing H-1B workers from getting the Green Card that would actually allow them to lay down roots, start businesses, and invest in America.

Increasing H-1B numbers can't fix it. Indeed every day we learn of stellar scientists and engineers who pass up the H-1B's and return home because of the uncertainty that H-1B status represents -- years in limbo, a limited ability to take promotions or other jobs, thousands unable to work, their destiny not their own.

Meanwhile, Europe, Australia, Canada, and even China and India are changing their laws and rolling out the welcome mats, providing permanent visas and citizenship to same advance degree holders. We must do the same or risk being left behind.

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And I yield back, Mr. Chairman.

REP. GALLEGLY: I thank the gentlelady.

At this time I would recognize the chairman of the full committee, Mr. Smith.

REPRESENTATIVE LAMAR SMITH (R-TX): Thank you, Mr. Chairman.

And let me comment on the audience today. It's nice to see so many people who are interested in this particular subject and the interest is well deserved.

The H-1B visa program plays a vital role in our economy. It allows American employers to hire talented foreign students graduating from U.S. universities with degrees in science, technology, engineering and math fields. It gives these students a try-out period so that American employers can determine which are talented enough to deserve permanent residence.

These foreign scholars are part of America's present and future competitiveness. These students have the potential to come up with an invention that can save thousands of lives or jump-start a whole new industry. They also have the ability to found a company that can provide jobs to tens of thousands of American workers.

It appears that Doctorates lead to much more invention than Bachelor's or Master's degrees. Sixteen percent of those with Doctorates were named as inventors on a patent application, while only 2 percent of those were with Bachelor's degrees and 5 percent of those with Master's degrees were so named.

Not all H-1B visas go to workers in scientific fields. In 2009, only 35 percent of all initial H-1B approvals went to workers in computer-related fields.

Foreign workers are receiving H-1B visas to work as fashion models, dancers, chefs, photographers and social workers. There is nothing wrong with those occupations, but I'm not sure that foreign fashion models and pastry chefs are as crucial to our success in the global economy as are computer scientists.

The 65,000 base annual quota of H-1B visas is going to come under more and more pressure as the economy improves. If Congress doesn't act to increase the H-1B cap, then we may need to examine what sort of workers qualify for H-1B visas.

Congress also will have to ensure that the L and B visa programs are not abused by employers seeking ways around the H-1B cap. No matter how generous our legal immigration system is, there will always be individuals who seek to game the process.

The H-1B program has safeguards built into it to protect the interests of American workers. It is a subject of great dispute as to whether those safeguards are sufficient. The Government Accounting Office (sic) recently found that H-1B employers categorizde over half of their H-1B workers as entry level, which is defined as, quote, "Performing routine tasks that require limited, if any exercise of judgment," end quote, and only 6 percent as fully competent.

Are all these entry-level workers really the best and brightest? The dollar differences are not trivial. In New York City the prevailing wage for a computer systems engineer in systems software is \$68,000 for an entry-level worker and \$120,000 for a fully-competent worker. Are American workers losing out to entry-level foreign workers?

We also need to safeguard national security. The Government Accounting Office (sic) recently found that the U.S. government approved thousands of H-1B visas to foreign nationals from 13 countries of concern, the names of the countries withheld for security reasons.

I'm also concerned about the legacy of fraud in the H-1B program. At a hearing over a decade ago, we heard about petitioning companies that were nothing more than a Post Office box, an abandoned building or a fictitious address,

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and a single telephone number. We heard about H-1B workers slated for employment as janitors or nurse's aides or store clerks.

Apparently such fraud is not a thing of the past despite a \$500 anti-fraud fee that was instituted in 2004. In 2008, Office of Fraud Detection and National Security issued an assessment that found outright fraud in at least 13 percent of randomly selected cases.

Still, the H-1B program usually does operate to the benefit of America, American employers, especially high tech employers, and American workers. It is the job of Congress to ensure that it always does.

Thank you, Mr. Chairman, and yield back.

REP. GALLEGLY: I thank the gentleman.

At this time I recognize the ranking member of the full committee, Mr. Conyers, for an opening statement.

REPRESENTATIVE JOHN CONYERS (D-MI): Thank you, Chairman Gallegly.

Long ago when Zoe Lofgren was a commissioner in California, Morrison and I were working on the same problem. We were waiting for her to come along and give us the legislation that solved the problems then and solves it now: Create more Green Cards. And so here we are today with a lot of great witnesses trying to figure out how we do it.

The second thing is to raise the compensation for the kind of engineers that we need. A computer analyst could make 70,000 (dollars) instead of 50,000 (dollars) and there would be a great movement toward that area. In addition we need the concept of portability in terms of being able to carry these rights from one employer to the next.

Now, this is a vast secret never before revealed in a Judiciary Committee hearing: Employees that have H-1B visas are at the mercy of their employers. This is shocking, I know, and may require another hearing in and of itself. They work frequently at lower pay. They can't -- there's no question they can't change jobs or they'll be sent back.

Chairman Gallegly said that 50 percent of the engineers are nationals that are graduating. We think it's even more than that, and so the most simplistic answer that we can arrive at is fine, Chairman Emeritus, just add more H-1B's. That's all we need to do and you'll be okay; right?

Wrong. What we need are more Green Cards and the bill that Morrison and I got Lofgren prepared for was to do just that, staple a Green Card to a national's graduating certificate when he graduates from an engineering school. You will then relieve the problem of most of them ending up going back home to become our competitors when most of them didn't want to go but really wanted to stay.

So I thank you for the hearing, and I look forward to the witnesses' comments.

REP. GALLEGLY: I thank the gentleman from Detroit, and with this we'll move on with our witnesses.

We have a very distinguished panel of witnesses today. Each of the witnesses' written statements will be entered into the record in its entirety. I ask that the witnesses summarize this testimony in five minutes if possible or as close to it to help stay within the time constraints that we have. We've provided lights down there, and while I'm not going to be real hard on it, I just ask your cooperation so we can get through this hearing and give everyone an opportunity to ask the questions that they would like to ask.

Our witnesses -- or sorry -- or Mr. Donald Neufeld. Mr. Neufeld serves as associate director of service center operations at the U.S. Citizenship and Immigration Services. He oversees all planning, management, and execution of functions of service center operations. He began his career with the Immigration Naturalization

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Service (sic) in 1983 and joined the management team in 1991. In this capacity Mr. Neufeld has held various management positions.

Mr. Bo Cooper serves as partner at Berry Appleman & Leiden in Washington, D.C. He provides strategic business immigration advice to companies, hospitals, research institutions, schools, and universities. Mr. Cooper served as general counsel of Immigration Naturalization Service (sic) from 1999 until February 2003 when he became responsible for the transition of immigration services to the Department of Homeland Security. Mr. Cooper earned his JD at Tulane University Law School and holds a Bachelor's of Arts from Tulane University.

Dr. Ron Hira is associate professor of public policy at Rochester Institute of Technology where he specializes in policy issues on off shoring, high-skilled immigration, technological innovation, and the American engineering workforce. Ron is also a research associate with the Economic Policy Institute. Dr. Hira holds a Ph.D. in public policy from George Mason University and an MS in electrical engineering from GMU, and a BS in electrical engineering from the Carnegie Mellon University.

And our fourth witness is Dr. -- or Mr. Bruce Morrison. I don't know whether I'm promoting you or demoting you, you know. (Chuckles.)

Bruce serves as chairman of the Morrison Public Affairs Group. He's a former member of the House here, and I had the honor of serving with him for several years, from 1983 to 1991. During this time he was a member of the Judiciary Committee and served as chairman of this subcommittee. Additionally, he served from 1992 to 1997 on the U.S. Commission on Immigration Reform. Mr. Morrison holds a Bachelor's degree in chemistry from MIT, a Master's degree in organic chemistry from the University of Illinois, and earned his JD from Yale Law School.

Welcome to all of you, and we will start now with Mr. Donald Neufeld.

Mr. Neufeld.

MR. NEUFELD: Chairman Gallegly, Ranking Member Lofgren, and Chairman Smith, and Ranking Member Conyers, I'm -- is that better? Great.

I'm Donald Neufeld, the associate director of the service center operations director at U.S. Citizenship and Immigration Services. I appreciate the opportunity to appear today to discuss the H-1B program in our efforts to combat fraud and misuse of this visa classification.

USCIS is responsible for evaluating an alien's qualifications for the H-1B classification and for adjudicating petitions for a change to H-1B status for aliens who are already in the United States. A majority of H-1B petitions offer specialty occupations which require both the alien and the position to meet specific criteria related to education and licensing.

USCIS approval of an H-1B petition does not guarantee issuance of a visa or admission to the United States. When an alien seeking H-1B status outside the United States, the Department of State will determine whether he or she is eligible for a visa. Finally U.S. Customs and Border Protection is ultimately responsible for making admissibility determinations at a port of entry.

In general, the number of aliens issued H-1B visas or otherwise accorded H-1B status may not exceed the statutory cap of 65,000 (dollars) per fiscal year. In administering the H-1B program USCIS is mindful of broad concerns and has implemented a robust anti-fraud program.

In May 2004 USCIS created the Office of Fraud Detection and National Security, FDNS, as the organization responsible for fraud detection and prevention. In 2010 FDNS was elevated to a directorate, raising the profile of this work within USCIS increasing the integration of the FDNS's mission into all facets of the agency's work.

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In February 2005, FDNS developed and implemented what is now known as the Benefit Fraud and Compliance Assessment in an effort to quantify the nature and extent of fraud in selective benefits programs. USCIS conducted a study of the H-1B program involving a review of 246 randomly selected petitions filed between October 1st, 2005, and March 31st, 2006.

After reviewing the findings of this report, USCIS issued guidance to adjudicators in October 2008 that provided them with fraud indicators, instructions on the issuance of requests for evidence and other notices, and instructions on the referral of petitions to FDNS when further investigation is warranted.

On January 8th, 2010, USCIS issued a memorandum to provide further clarification to adjudicators in what constitutes a valid employer-employee relationship in the H-1B context. In March 2010 USCIS headquarters personnel provided training to adjudicators on the update guidance. This guidance and training provides USCIS officers with tools that help define and identify eligibility requirements and provides clear instructions on how to handle petitions when fraud is suspected. USCIS has also developed other tools for verification.

In July 2009, USCIS implemented an administrative site visit and verification program. Currently, FDNS conducts unannounced, post-adjudication site visits to verify information contained in randomly selected H-1B visa petitions. In fiscal year 2010, USCIS conducted 14,433 H-1B site inspections. USCIS continues to analyze results from these site inspections and to resolve those cases that have not been reaffirmed or revoked.

Finally, this year USCIS provided adjudicators with a new tool for adjudicating H-1B and other employment-based petitions. The validation instrument for business enterprises, otherwise known as VIBE, uses commercially available data to validate basic information about companies or organizations petitioning to employ alien workers.

USCIS adjudicators review all information received through VIBE, along with the evidence submitted by the petitioner, in order to verify the petitioner's qualifications. VIBE creates a standardized means of validating whether a petitioning company or organization is legitimate and financially viable.

In conclusion, USCIS has taken a number of steps to guarantee the integrity of the H-1B program while ensuring U.S. employers have access to the specialized temporary workforce needed to compete in the global market.

On behalf of USCIS Director Alejandro Mayorkas and all of our colleagues at USCIS, thank you for your continued support of the H-1B program and for giving us the tools to combat H-1B fraud.

Mr. Chairman and members of the committee, thank you again for the opportunity to provide information on the status of our program, and I look forward to answering your questions.

REP. GALLEGLY: Thank you very much, Mr. Neufeld.

Mr. Cooper?

MR. COOPER: (Off mic.)

REP. GALLEGLY: Mr. Cooper, could you pull that in a little closer? I'm having a little harder time hearing Mr. Neufeld, so -- OK. That's fine. Thank you.

MR. COOPER: (Off mic) -- on? So sorry.

Mr. Chairman, Ranking Member Lofgren, Ranking Member Conyers and distinguished members of the subcommittee, I'm grateful to you for the opportunity to join you today.

I think it's dead on for this debate over the role of high skilled immigration policy in our country's economy to focus on jobs. And where Congress comes out on this issue will have a great deal to do with who we are as a country in the decades to come, and with whether America will continue to lead the world in innovation and growth.

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This debate's been clouded over the last years by a fundamental misconception that the job supply in the U.S. is a zero-sum game, and that a job occupied by a foreign professional is a job lost to a U.S. worker. This is a misconception that's got to be shed.

Our country's always operated on the principle that the more brainpower we can attract from around the world, then the more -- the more creativity, invention and growth we can achieve here at home. Fortunately, there appears to be a reemerging consensus to stick to this principle.

The comments that many of you made in your opening statements are in harmony with the comments of the president in his State of the Union Address this year and comments from Majority Leader Cantor just last week noting the importance of attracting bright professionals into our economy and decrying an immigration policy that would lose them to foreign competitors.

The H-1B is an indispensable part of the high skilled immigration ecosystem. It's often the only way to get a highly skilled foreign professional on the job quickly when the economy needs them. It's often the only way to bring in a person with pinpointed skills to provide a crucial temporary service, and it's overwhelmingly the only way to bring a bright foreign talent into a permanent role as a contributor to the U.S. economy.

Our approach to the H-1B program should be governed fundamentally by the physician's oath: First, do no harm. Those of us who practice immigration law see in our offices every day the power of the H-1B program to fuel the U.S. economy. Let me offer just one small example.

Sonu Aggerwal is the CEO of Unify Square, a company in Redmond, Washington. He came here as a student at Dartmouth and MIT and entered the workforce with an H-1B. He's the author of the original patent on enterprising - - an author of the original patent on enterprise instant messaging technology, the seed of his current company. His product is used, for example, by health care providers to monitor patient conditions in real time through the cell phone.

Now a U.S. citizen, he runs a company with 34 employees around world, 24 of which are in the United States. Of these 24, 22 are U.S. workers. H-1Bs are used in obviously -- (word inaudible) -- numbers when they're needed to fill an extremely hard-to-find skill set. They've got a monthly growth today of 10 percent per month: one H-1B, 22 jobs for U.S. workers, and counting. That's the main story of what the H-1B program does for the U.S. economy.

H-1B employers also pour massive sums of money into programs to train U.S. workers and educate U.S. students and to fund their own enforcement. Since FY 2000, employers have paid the federal government over \$3 billion in training and scholarship fees and anti-fraud fees. That's 58,000 college scholarships for U.S. students through the National Science Foundation and training for over -- for over 100,000 U.S. workers.

The debate over the H-1B often focuses, as it ought to, on whether the program is simply a source of cheap labor to replace U.S. workers. And I think the starkest evidence against that is the pattern that Mr. Gallegly identified in his opening remarks: when the economy is strong, demand is high. When the economy drops, it plunges. If the H-1B were a source of cheap labor, the exact opposite would happen. This is not a new point, but you can't have an honest discussion about the H-1B program without keeping that point front and center.

I certainly acknowledge that there is fraud and abuse within the H-1B program, to some degree. I have spent many, many years in government and there's no such thing as a government benefits program that doesn't have people coming to hoodwink at times. Yet responsible employers would welcome improved enforcement, and rather than -- rather than an extravagant rewrite of the program in ways that might harm the program's ability to serve the U.S. economy and to create new U.S. jobs, the government's already mapped out the key ways in which these abuses tend to place.

As was noted in the USCIS fraud report that Mr. Neufeld talked about, they've identified the key patterns of misuse. It's employers who bring an H-1B here and fail to pay the required wage, an employer who cheats the system by

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calculating the required wage in an inexpensive market and then employing the person in a more expensive market where the wage would be higher, or shell employers that don't even exist.

These are serious violations, but they're violations that can be enforced under today's rules. And before Congress embarks on a major revision of the program's contours that might have counterproductive effects on its job-growth capabilities, it ought to use its oversight authority to examine whether the government's enforcement resources are being used to maximum effect.

To conclude, it's clear that making the H-1B program the best it can be cannot by itself provide a high skilled immigration policy that will enable us to, in the president's words, out-innovate the rest of the world. Employers of highly skilled professionals tend to want to bring, they typically want to bring their employees permanently into the U.S. economy, and observers across the board, I think, view that as a net positive for the United States, and efforts to shorten that bridge or to eliminate it are critical parts of the reform puzzle.

But if we're to attract the bright minds from around the world that will help U.S. employers keep jobs in this country, grow more jobs for U.S. workers and remain the world's innovation leaders, a robust and effective H-1B program is essential.

Thanks very much.

REP. GALLEGLY: Thank you, Mr. Cooper.

Dr. Hira?

MR. HIRA: (Off mic.) I should have learned a lesson, right? (Laughter.)

Thank you, Chairman Gallegly, Ranking Member Lofgren, Chairman Smith and the members of the subcommittee for inviting me to testify here today. I've been studying the H-1B program and its effects on the American engineering labor force for more than a decade now, so this is a great opportunity for me.

I've concluded in that study that the H-1B program as it's currently designed and administered does more harm than good. And to meet the needs of both the U.S. economy and American workers, the title of this particular hearing, the H-1B program needs immediate and substantial overhaul.

The goal of the program is to bring in foreign workers who complement the American workforce. Instead, loopholes in the program have made it too easy to bring in cheaper foreign workers with ordinary skills to directly substitute for, rather than complement, American workers. So the program is clearly displacing American workers and denying opportunities to them.

The program has serious design flaws and legislation is needed to fix them. Administrative changes or -- alone or stepped-up enforcement, while necessary, are simply not sufficient to correct the problem.

First, the program allows employers to legally bring in foreign workers at below-market wages. That's not a question of fraud; this is legally they're able to bring in workers at below-market wages. How do we know this? (Inaudible) -- of evidence, the most obvious one is that employers have said so. They told the GAO that they in fact bring in workers at below-market wages.

Second, the program allows employers to bypass qualified American workers and even outright replace American workers with H-1Bs. This is not a theoretical or hypothetical possibility; in fact, there have been news reports about Americans training foreign replacements at companies like Wachovia, A.C. Nielsen, and Pfizer.

Third, because the employer holds the visa, an H-1B worker's bargaining power is severely limited and they can easily be exploited by employers.

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One of the consequences of the loopholes has been that in fact what the government is doing with this policy is giving a competitive advantage to certain kinds of businesses, certain types of business models, and that is offshore outsourcing firms. So in fact, what the government is doing with this -- with the current policy is subsidizing the offshoring of American jobs.

For the past five years the top H-1B employers, most of the top H-1B employers, are using the program to offshore tens of thousands of high-wage, high-skilled American jobs. Using the H-1B to offshore is so common that in fact the former commerce minister of India dubbed the H-1B program the outsourcing visa.

Even more disturbing, though, than all of this, is the fact that the H-1B program has lost legitimacy amongst the American high-tech workforce. And those are critical workers, not only because, as you all pointed out, science and technology and engineering is critical to not only the tech sector and national security, but economic growth in general, but these are incumbent workers who are the ambassadors for their profession. And what they're telling students is to shy away from these careers, because they feel like the -- you know, the cards are stacked against them.

In conclusion, let me say that I believe that the United States benefits enormously from high-skilled permanent immigration. We can and should encourage the best and brightest to come to the United States and settle here permanently. But the H-1B program is failing on both accounts.

First, it's clear that many H-1B workers are not the best and brightest. Instead, they possess ordinary skills and are filling jobs that could and should be filled by American workers. And just to give you some examples, you mentioned earlier that the GAO found that 54 percent of H-1B applications were at the lowest wage level. That's the 17th percentile, so they aren't bringing in the best and brightest through this. And to give you another example, Mphasis had a labor certification application approved for 100 computer programmers, to bring in 100 H-1B computer programmers at \$12.25 an hour. That's hardly the best and brightest.

Another big misconception is -- and this has been pointed out also today already -- is that the H-1B is often equated with permanent residence. One of my recent studies found that in fact many of the largest H-1B employers sponsor very few of their H-1Bs for permanent residence, and let me give you one example of this.

Between 2007 and 2009, Accenture hired nearly 1,400 H-1Bs; that's how many petitions they actually received. Yet during that same time frame, during that same three years, they only sponsored 28 -- 28 H-1Bs for permanent residence. That's a 2 percent yield. I don't think anybody would argue that 2 percent is a very good success rate.

Our future will be enhanced by high skill immigration, but its foundation critically depends on our homegrown talent. And I look forward to your questions during the discussion.

REP. GALLEGLY: Thank you very much, Dr. Hira.

Bruce, welcome back to this chamber. I'm sure you're familiar with it, and we welcome your testimony.

MR. MORRISON: Thank you, Mr. Chairman and Ranking Member Lofgren, Ranking Full Committee Member Conyers and other members of the committee. It's a pleasure to be here, and thank you for having me.

I am appearing today on behalf of IEEE USA, which is an organization of over 210,000 engineers and technical -- technically trained people who work in the computer industry and students who are training to fill those jobs in the future. And their role is critical in the future of our country.

I think that the point of consensus that there ought to be on both sides of the aisle -- and I think there is at this table -- is that the future of American jobs and American prosperity is what we should be focused on. And I would hope that the product of this hearing is to look at that question.

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And I would say that the future to American jobs is to retain in this country those graduates who are foreign-born and in our universities who have the critical science and technology skills that our country needs in order to grow in the future. Doing that successfully will make a huge difference for American workers already here and Americans in the future. If we fail to do that, we will pay the price in important ways, and we should avoid that.

Now, I think that the focus to do that needs to be on fixing the green card program. And why do I say that? I know a little bit of the history.

The H-1B program was created in 1990. It is a successor to an earlier program, the H-1 program. And the changes that this committee and the Congress made at that time really echoes a lot of the debate that's going on right now -- trying to target the program better, narrow it, raise the skill levels that are required, and encourage the use of green cards instead to bring highly skilled workers here on a permanent basis.

Well, 20 years have gone by. We really haven't quite got the job done. The debates are the same. We need to redouble our efforts. We need to focus our attention on the STEM students that we currently have and make sure that we compete for them, but that we compete for them in a way that does not disadvantage American workers and that we compete for them in a way that is effective in beating out our competitors in who we keep. And that's where green cards provide such a -- an advantage.

The discussion about what to do in the regulatory realm to try to level the playing field for H-1 workers ought to teach everybody about the limits of regulation.

I would think there ought to be a consensus on both sides of the aisle that the market is a better way to preserve good terms and conditions than endless regulations and the attempts to have government enforce them.

We are not enforcing the H-1B regulations now as a country. We never really have, and despite the best efforts of the USCIS and the Department of Labor, I doubt that we ever will. Yet green card workers don't need all those protections because they have the power of the marketplace, and employers don't have any special advantage over green card workers because they're just like American citizens. They can pick up and leave anytime they want and the way you keep them as an employer is not by coercion, but by good terms and conditions of employment. That's the way our labor market works. It's not perfect, but it sure is better than a regulatory regime. H-1B is a surrender to regulations when the market will solve the problem.

Green cards can be abused also. Green cards can be given to workers who don't need to be here, but let's focus on the people we know we want to keep -- people who are getting advanced degrees today in STEM fields from American universities. They clearly are a valuable resource and they will go somewhere else if we don't keep them. Let's focus on them; let's make sure that they are selected in a quality fashion and that when they are added to our workforce we will all be benefited because there will be greater productivity and greater jobs.

Green card workers can start their own businesses; H-1B workers can't. Green card workers are on a path to become American citizens; H-1B workers are not. Our competitors use guest worker permits to recruit against us. We have always done better because we ask people to become Americans. We don't ask them if we could please borrow their labor for a while and then we'll see.

That is a much more powerful recruiting tool. It's always worked for this country. It's why we are the great immigration country of the world. And for this critical competition, for the job creation we need today, with 9 percent unemployment, let's focus immediately not on what could divide people and the controversies over H-1B, but what could unite us all. Let's get these new graduates who are going to be coming out on a green card path to become Americans and create American jobs.

REP. GALLEGLY: Thank you. I appreciate your testimony.

At this time we'll begin with questions, and the ranking member, Ms. Lofgren, will begin.

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REPRESENTATIVE ZOE LOFGREN (D-CA): Well, thank you very much, Mr. Chairman, and thanks to all of the witnesses. The testimony is excellent, and I think having a hearing of this nature is very important, because what I am hearing from the policy witnesses is that there is value in retaining top talent, but the H-1B program needs work, to understate it.

You know, I come from Silicon Valley and I hear sometimes from my constituents concern about some of the H-1B visa holders. And I asked the Department of Labor to run prevailing wage numbers for various occupational classifications in Silicon Valley, and one of the things that shocked me, actually, was when they came back with the average wage for a computer systems analyst in my district. They said -- well, it didn't surprise me it was 92,000 (dollars), except that the level one for H-1B was 52,000 (dollars). I mean, that's \$40,000 less than what people are paid.

So small wonder that there's a problem here. That needs to be fixed if we're going to keep this program. We can't have people coming in and undercutting the American-educated workforce. That's just a problem. And I don't blame, really, even -- you know, I've got a number of wonderful companies in my district that do excellent work, but, I mean, this is the system they're in as well.

And then you've got H-1B visa holders who get frozen in place because they can't -- they can't move, really, because they've got to petition or -- if you've got a legit employer. And as time goes on, their skill set -- I mean, inevitably they're going to do more sophisticated work, just as their co-workers are doing, but they're still frozen at the wage. And so this creates problems, and I think it's something that we need to fix and that we can fix.

But the real issue hasn't been discussed. It's how can we capture with permanent visas the individuals who we want to keep to create companies, to (seed ?) start-ups, to create jobs for American workers.

And I'm interested, Mr. Morrison -- you're here representing the IEEE. But traditionally, IEEE was -- I think is the largest organization of computer scientists in the world -- and the Semiconductor Industry Association didn't always see eye-to-eye on immigration issues. And yet they came together on a proposal for immigration for --

Can you explain how that happened and what the bottom line recommendation is?

MR. MORRISON: Yes. First of all, I think that, Congressman Lofgren, you and the chairman and others have received a letter today from those two organizations, and I would hope that it would be made part of the record of this hearing.

These organizations don't agree about everything, but they have a focus on the high-skilled technical workforce that they represent in two ways -- IEEE as the representative of workers and students in that area and the -- and SIA as representing companies who employ those people. And both of them together agree that the priority is to keep these skills here in the United States to build employment and production and research and development here in the United States. I think that's -- that's shared.

And they've decided to put aside differences and focus on what they -- what they have in common, which we hope this subcommittee might do as well. And that -- to do that, they see the long-term benefits of permanent residence as key to getting rid of the contention that exists, the potential exploitation, the unfair competition that goes on using H-1B.

So that's why they came together, because they will both prosper if they keep this talent here.

REP. LOFGREN: I appreciate that and, hopefully, we in the Congress can use SIA and IEEE as a role model for our own behavior, doing what's right for the economy of our country instead of fighting over -- which we often do, unfortunately. I think we can gain consensus.

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You know, I have a question, if I could, for Mr. Cooper. You talked about when the H-1B program works, and it does. I mean, I've met some fabulously talented people. The fact that there are abuses sometimes doesn't mean that there aren't also successes.

But if we had a choice to make enough green cards available to keep our best and brightest, or to increase the H-1B program, if you had to choose between those two, which would you choose?

MR. COOPER: They're obviously both very important. You know, as I mentioned before, the H -- often is -- you know, there is such a thing as important temporary use, and you've got to have a way to get people in for that. You've also got to have a way to get people on the job quickly, which the green card just, at least today, is not set up to do. So they're both critical.

REP. LOFGREN: Right.

MR. COOPER: Between the two, if I had to pick one, you know, frankly, I think green cards are the ultimate goal in the end, because employers typically wish to bring their H-1Bs -- I think it's fair to say that employers typically wish to bring their H-1Bs permanently into the U.S. workforce. Again, I think that's something that all of us agree is a good thing for the U.S. economy.

You know, what often happens, a very common pattern, is that an H-1B employer will hire a professional worker in the H-1B process, start the green card process right off the bat, and concurrently the person will be trying to push through the green card process at the same time the person goes through their H-1B status. And often when the six years of H-1B status is over, they're still not all the way through the green card process.

REP. LOFGREN: I understand.

Yes. I've met many people in that --

I'd ask unanimous consent for the --

REP. GALLEGLY: Without -- without objection.

REP. LOFGREN: -- so I can ask one question from our government witness.

I have the frustration that I'll disclose that we have consensus that a need for green cards for highly talented graduates with Ph.D.s from American universities, and yet from '92 to 2007 we failed to issue the 140,000 employment-based green cards, nine out of 16 years. Can you explain why we're not actually utilizing the visas that we've provided for in the law?

And I have a second question on enforcement. You know, the USCIS as well as the GAO analysis of the H-1B program identified the same problem, which is that the abuses of the H-1B program tend to be localized in a particular kind of firm -- staffing companies, small companies, smaller firms, firms with income less than \$10 million a year. And yet the enforcement has been random, and I even hear -- I mean, whether or not the petition is valid, you know, I don't think anybody should ask to see a floor plan of Cisco to see if the company exists. I mean, that's absurd, and yet that's happened.

So I'm just not understanding what the enforcement strategy here is when we know the targeted problem, and yet the enforcement seems to be scattered.

MR. NEUFELD: Can you hear me?

REP. LOFGREN: Yes.

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MR. NEUFELD: I'll take your first question first. I can't really speak to why, in years past, these numbers were not all utilized in the employment-based categories. I can say that for the last (few ?) years we have been using up all of the visa numbers in the categories.

And as you know, the unused visa numbers in the employment-based roll over to the family-based, and the family-based visa numbers that are unused roll over to the employment.

REP. LOFGREN: And sometimes neither one gets used because they're rolling back and forth, and then they're lost.

MR. NEUFELD: And that's -- that's correct.

We currently have about 145,000 pending employment-based adjustment-of-status applications for which there are not visa numbers available, and so they're -- those applications for adjustment of status are just held in abeyance. The fact that they're held in abeyance, and if they have been pre-adjudicated, actually enables us, working with the Department of State, to better manage the use of all visa numbers. Because now they are -- as we do as much in the way of adjudication as we can without actually putting an approval stamp and issuing the green card, we go -- when we determine that one of these cases is approvable but for a visa number, we request the visa number of the Department of State and in their IVAM systems -- and they have visibility into the number of pending requests. And so that actually helps them in terms of establishing the priority dates; in the visa bulletin they can see with the priority data -- a certain amount, what the demand will be.

And so we've been quite successful in that regard in terms of using up the visa numbers with the Department of State's help in managing the visa bulletin.

The other question was with respect to enforcement. And I want to be clear, even though I am not responsible for the -- for the fraud detection and national security director, but I can speak to the fact that our enforcement efforts are not solely focused on random site visits.

We also have provided to our adjudicators the information that resulted from that benefit fraud assessment, in terms of fraud indicators, and adjudicators can refer cases to the FDNS because of those fraud indicators or because of information that is contained in a specific filing, and then the office of FDNS can determine whether to pursue that, perhaps do an inspection -- a targeted inspection of that employment location, or to even refer the matter to --

REP. LOFGREN: Well, let -- I know -- I don't want to abuse the chairman's time, but I -- you should and the department should make a decision on a case-by-case basis. I'm not suggesting just because the company is big that a petition should be approved. But it's absurd to ask a company that's publicly traded and has \$300 million worth of real estate and is the largest employer in a county, whether they exist or not. I mean, that's a waste of time.

MR. NEUFELD: No. And I agree with you entirely. And the implementation of VIBE is one of the efforts that we have undertaken to provide adjudicators with information that they can rely on in terms -- they're not solely basing their decisions on --

REP. LOFGREN: Well, maybe I should get with you afterwards because this is not -- it's not working the way you're describing, and it's a waste of resources when there's an enforcement issue that really needs to be done.

Mr. Chairman, I would like to ask unanimous consent to enter into the record statements that were prepared for today's hearing from our colleague Congresswoman Judy Chu on the committee, from the Institute of Electrical and Electronics Engineers -- the IEEE -- and from the Semiconductor Industry Association, the Partnership for a New American Economy, the Asian-American Center for Advancing Justice, and the American Jewish Committee.

REP. GALLEGLY: Without objection.

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REP. LOFGREN: Thank you. I yield back.

REP. GALLEGLY: Seeing that my time is expired -- (laughter) -- we do have a very good bipartisan relationship on this committee, and I respect the gentlelady's right to be wrong periodically, so -- (laughter).

REP. LOFGREN: (Inaudible.)

REP. GALLEGLY: Mr. Neufeld, what happens when the Office of Fraud Detection and National Security discovers fraud or technical violations in a petition? Are such cases denied or revoked by ISCIS or are such cases referred to USCIS or ICE for further investigation?

MR. NEUFELD: Just checking to make sure my mike was still on.

Yes, they -- actually the Office of Fraud Detection and National Security can do either, whichever makes sense in that particular case. They can either refer it to an adjudicator with their finding, and then the adjudicator can issue a notice of intent to revoke. It gives a petitioner a chance to respond to the information that we have. But then if there is in fact fraud, then the adjudicator can revoke the previously approved petition.

Also, the Fraud Detection and National Security officers can refer the matter to ICE for either further investigation or prosecution.

REP. GALLEGLY: Are you satisfied that the system is working?

MR. NEUFELD: Yes.

REP. GALLEGLY: Dr. Hira, in your testimony, could you explain what you mean when you say that some companies use their H-1Bs to engage in knowledge transfer?

MR. HIRA: Let me turn my microphone on.

Sure. Knowledge transfer is a term of art. It's actually a euphemism for forcing American workers to train their foreign replacement. Basically what they're doing is transferring their knowledge and capabilities to either an H-1B worker or in many cases an L-1 intercompany transfer worker, and that worker may stay -- that guest worker may stay right there on site and/or may take that knowledge and take it back to their home country and offshore the work and do it from offshore. And this is -- it's common enough to have its own term, right? Knowledge transfer.

REP. GALLEGLY: Mr. Morrison, you were recently quoted as saying that, "If I knew in 1990 what I know today about the use of H-1B visas for outsourcing, I would have drafted it so that staffing companies of that sort could have used it." Do you want to elaborate a little bit on that?

MR. MORRISON: Sure. Let me say that in another life I represent a staffing company in the health care field, so I don't think staffing as a way of participating in providing goods and services in the American market is a bad thing. The bad thing is when there's a model that does not participate in the American workforce by hiring Americans and sometimes foreign-born, just like American employers do, and providing services in a staffing model as opposed to in a direct employment model. Those are choices that employers can legitimately make, and there are reasons to use both.

But the model that seems to have developed is a model of companies that exclusively use H-1B visas and sometimes L-1s -- and I don't know how they do that legally -- and bring a particular nationality to the United States and provide services, and then often transfer those workers back, with the knowledge that Dr. Hira was just describing, going back and becoming intellectual property for somebody else. That kind of activity I think is very troubling. It's not really legitimate staffing in the U.S. labor market. It's something else, and I think the H-1B program shouldn't countenance that kind of structure.

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REP. GALLEGLY: Thank you.

Mr. Cooper, can you expand a little bit on your point that many employers of H-1B workers pay more than the prevailing wage?

MR. COOPER: Yes, Mr. Chairman. The way that the --

REP. GALLEGLY: Hit the button.

MR. NEUFELD: The way that the rules work is that it's not actually the prevailing wage that's required of an employer. It's either the prevailing wage, which is set by the Department of Labor, or what that employer actually pays to workers doing the same job in the same place, whichever is the higher of those two. And what actually happens in the marketplace, especially when the economy is strong, is -- you know, we've got to remember that with this group of people that typically are the subject of H-1Bs, there's a massive competition for them between employers in the U.S. and employers in competitor countries and among employers in the United States. And so that competition can heat up, and often the actual wage is much higher than the prevailing wage. It's the prevailing wage that's reflected in these LPAs that are filed with the Department of Labor, and that's unfortunately what gets reflected in a lot of the statistical debates. But in the marketplace it's actually a much higher wage that's being paid to the H-1B workers.

REP. GALLEGLY: Thank you, Mr. Cooper.

Mr. Conyers.

REP. CONYERS: I yield to Jackson Lee.

REP. GALLEGLY: Ms. Lee.

REPRESENTATIVE SHEILA JACKSON LEE (D-TX): I thank the ranking member of the full committee for his courtesies. I thank the chairman of this committee and the ranking member for an astute assessment of a very important issue.

I've had the privilege of serving on the immigration subcommittee I believe for almost a decade, serving as a ranking member, and remember discussing this issue of H-1B visas, Mr. Hira, particularly on the question of where are the talented Americans who could do the same job. In one instance we were carefully looking at the question of African American engineers who had raised a concern about their ability to be employed.

At the same time, I have to be a practical legislator and realize that there were periods in our history, which were not 50 years ago but recent, when our friends in Silicon Valley and elsewhere made some eloquent arguments in the earlier stages of their development. I'm very glad to report, however, that every youngster coming out of college is either a venture capitalist or they want to be involved in IT. We have the talent. It doesn't mean that H-1B visas cannot find a place, but I join with the ranking member on raising the question about the validity and the better structure of green cards.

As I do that, I think it's important -- I would be remiss if I did not put on the record -- and I know my -- collegiality of the chairman and the ranking member leads me to be inspired that we'll have an opportunity to look at comprehensive immigration reform and really fix this system that doesn't suggest amnesty and doesn't violate the virtues of my friends on the other side of the aisle, but it will keep youngsters who are here called DREAM kids able to become citizens and contribute well to the United States. I hope the administration will be actively engaged in this, Mr. Neufeld.

So let me try to pinpoint one of the -- (inaudible) -- that I think can be fixed immediately. Our lawyers tell us -- and those of us who are lawyers know not to lawyer our cases here -- that the statute that deals with wages for these workers is very broad -- the one about prevailing wages, and I think Mr. Cooper acknowledged that the highest rate

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is kind of confusing. The government has all kinds of authority. We're already sort of baffled why we're not fulfilling our obligation on the 140,000 that my colleague asked about. We're confused about that. But I would like to know really the details of these low wages. I appreciate Mr. Cooper, but I believe you're on the hot seat because we are in -- able to do a lot of things by making a raising question. And I want to know whether you've reached out to Department of Labor to use the power you already have to really not have a nebulous prevailing wage but to have -- actually have a requirement of what it is that has to be paid if we're using these visas in order for us to be competitive and not to harm American workers.

My second question is the idea of having this 90-day period when an American worker is retained, Mr. Neufeld, and we hear the rumor that they are training the H-1B visa person who then boots out the well-trained American worker -- the low-wage, the multiple use of H-1B visas for talents that are already here. That may not be your jurisdiction, but certainly it's your jurisdiction to make sure that we're not dumbing down the wages of Americans and really unfairly treating these individuals, because I'm going to get to my next question quickly. But let me just get that as quickly as you can, please. I will -- I want you to go to Department of Labor and work this out. I want to have a wage that we can all understand.

MR. NEUFELD: Fortunately or unfortunately, I can only enforce the statutes and the regulations as they are written, and that doesn't provide USCIS with the authority to look any further than the labor condition application that was filed with the Department of Labor and to make sure that they -- that employers are in fact paying either the prevailing wage or the --

REP. JACKSON LEE: I think you can make an inquiry. That is not an unacceptable act. I can call the Department of Labor; you are not prohibited from calling the Department of Labor. If you are intimidated use your lege affairs and have lege affairs from each department just try to get a sense of your moving forward on this issue.

Go ahead. You can finish your answer.

MR. NEUFELD: I can -- I'm happy to engage our Office of Legislative Affairs to work with theirs in that vein.

REP. JACKSON LEE: Chairman, I ask for an additional one minute.

REP. GALLEGLY: Without objection, one minute.

REP. JACKSON LEE: I thank you very much.

Let me also ask the question about the idea of do you have anything that you hold as a standard of American workers being replaced, or do you do that only -- you think that's only a Labor Department issue?

MR. NEUFELD: Well, it's mostly a Labor Department issue, but we do -- there -- a requirement that changed depending on what percentage of the workforce of a particular employer is made up of H-1B employees.

And for those employers who exceed -- I believe it's 15 percent of their workforce that are comprised of H-1B employees, then the labor condition application that is filed with the Department of Labor contains some additional attestations that are required in terms of the not bringing folks in to replace current workers. And I also believe that it is a -- (inaudible) -- requirement only.

REP. JACKSON LEE: All right. I just want to get quickly to Mr. Morrison.

Mr. Morrison, give me again your most forceful argument for the value of green cards in the spirit of "we must create more jobs, we must be able to respect the American worker, and we also understand we need a fair immigration policy."

MR. MORRISON: I don't promise it will be the most forceful. I'll try my best. I think that permanent resident is our competitive advantage, number one, as a country, and putting people on the road to becoming Americans is a key

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part of having this work well for the whole country. When people have permanent residence, they are free to move around the workforce and they have market power to enforce terms and conditions of employment, which H-1B workers don't really have. You have to have a complicated regulatory scheme to get at it.

In addition to that, those people who are here permanently can start their own businesses and create additional jobs that way, and there have been many who have done that when they finally got green cards.

But by holding this process back for years at a time by a combination of lack of visa numbers, bureaucratic delays and the attractiveness of the H-1B status to employers, we miss out on those benefits and we lose many of the talent.

REP. JACKSON LEE: Well, I thank the chairman. I want to be able to protect American workers and balance this whole idea of immigration reform and generate jobs so that American workers stand equal to anyone who seeks to come to this country and gain great opportunity, which is the American way.

I yield back. Thank you.

REP. GALLEGLY: The time of the gentlelady has expired.

Mr. Gohmert.

REPRESENTATIVE LOUIE GOHMERT (R-TX): Thank you, Chairman. And appreciate each of the witnesses being here today.

Mr. Neufeld, the Government Accountability Office raised concerns over the large numbers of H-1B aliens being nationals of countries of concern who may be gaining unauthorized access to dual-use technology with military applications. How does USCIS coordinate with the Commerce Department to ensure H-1B employers obtain deemed export licenses before employing such aliens?

MR. NEUFELD: Thank you. We recently -- USCIS recently revised the I-129 petition, which is the form that employers use to bring in nonimmigrant employees, to include an attestation section -- that's part 6 -- that requires employers to both acknowledge and attest that they have read and become familiar with the export control requirements and to indicate whether the employee will have access to controlled technologies, and if so to attest that they will obtain the appropriate licenses from either Department of State or Department of Commerce before allowing them access.

REP. GOHMERT: Is there any follow-up or checking on that, or is just a statement required?

MR. NEUFELD: For our adjudication, it is just -- we do require the attestation. If that section is left blank then we will request it be completed, and if they refuse then we would deny the petition. Other than that, it -- the legacy systems that we have right now don't allow us to capture that -- the responses electronically and then share that with the Department of Commerce. We are working with them to make the best use of our systems that we can, and in response to request from them, we can identify all of the filings by a particular employer that may be of interest to them and then allow the access to the physical files to review the answers to those questions.

REP. GOHMERT: Is that always done?

MR. NEUFELD: Well, this is new. This question was just recently added and became effective in February.

REP. GOHMERT: OK. All right. OK. Just recently, huh? Sometimes it takes government a while to -- in fact, many years. People can be encouraged with government taking over health care. If you got a problem, many years late we'll be able to get around to it.

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But with regard to health care, obviously that's a hot issue here on the Hill. This country is projected to spend \$3.75 billion, and we're only bringing in 2.1 billion (dollars) this year. We can't afford to keep bringing in people and paying for their health care. I was curious, on the H-1B petition, is there any requirement for a statement as to whether or not any hospitalization or medical care is anticipated by the petitioner coming in?

MR. NEUFELD: I have to say that I don't know the answer to that question, but I'd be happy to look into it and --

REP. GOHMERT: OK. Could you provide us a written answer to that question as to whether -- and not just H-1B; on any petition or application for visa, is there a requirement that the applicant or petitioner state whether or not any type of medical or hospitalization care is anticipated?

MR. NEUFELD: I will certainly do that.

REP. GOHMERT: All right. Thank you.

Mr. Morrison, you'd stated in your testimony that we should create an unlimited green card category for advanced degree, STEM graduates from quality American universities -- and of course it may be an interesting question how we determine which ones are quality. But when Australia tried something similar, they found what happened was that the -- quote, "The reformers did not anticipate the alacrity with which Australia's universities would set up courses designed to attract international students looking for the cheapest and easiest ways to obtain qualifications in occupations that could lead to permanent residence." We know in Texas, for example, Texas Tech is a -- I would consider it a quality school, yet we just had one of their persons here on a visa arrested for plots to kill people and destroy things. I'm curious, how could we prevent an outcome where universities -- maybe are quality; maybe they're not quality -- rushing to provide courses that people could come in and take so we end up taking people that probably we shouldn't?

MR. MORRISON: Well, obviously any provision needs to be tailored carefully. But the National Science Foundation does identify programs in the country in a tiered system as to the level of quality based on the kinds of grants that they're able to achieve. So the government already makes judgments about levels of quality of our universities, especially in this area of science and technology, which is what we're talking about. So I would suggest we use that expertise, which is -- already exists in the government in judgment about where the quality programs are. And those quality programs depend on competitive grant programs from the NSF and the NIH and others in order to survive. They can't just add people to their programs and be successful. They have to have high quality students to do that work and high quality professors. So while -- you know, if we're talking about --

REP. GOHMERT: Of course you understand that's not what Australia said their experience was.

MR. NEUFELD: Well, I'm not an expert on Australia.

REP. GOHMERT: Yeah.

MR. NEUFELD: Australia relied a lot on points and other things that weren't nearly as tailored as the U.S. system is. So I would say you -- this subcommittee could write a rule based on what we already know about where the quality is that could avoid the abuse and still take advantage of that talent.

REP. GOHMERT: OK.

MR. NEUFELD: And I think that's -- you know, that's the job that I would hope that you're --

REP. GOHMERT: And you're willing to put your entire credibility on the line by swearing here that somebody in government has expertise. (Laughter.)

REP. GALLEGLY: All right, the time of the gentleman has expired. (Laughter.)

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REP. GOHMERT: (Laughs.) Thank you, Mr. Chairman.

REP. GALLEGLY: Mr. Conyers?

REP. CONYERS: Thank you very much, Mr. Chairman.

Morrison, you were a workers guy and now you're a free-market type talking guy. What happened to you? (Laughter.) Is there any reasonable explanation for your change of philosophy?

MR. MORRISON: I'm not sure I made a change of philosophy, but I what would say is this: If we want to protect workers, we need to give them choices. And what green cards do is give them choices. Sometimes government can do things, but government's ability to do things is limited. You're all familiar with the reports that show the Department of Labor doesn't even really enforce our wages and hours laws right now. I mean, we have a whole lot of laws on the books that don't get enforced. So if that's the case, let's at least use the power of the market when it helps to create a level playing field. And I think compared to the H-1B, the green card playing field is a lot more level.

REP. CONYERS: That's a reasonable explanation. (Laughter.) But I remember when you used to think the free market wasn't very free.

MR. MORRISON: It's quite expensive actually, but -- (laughter). Well, maybe I'm guilty; maybe I'm not. Either I've learned something or there was a misunderstanding.

REP. CONYERS: (Laughs.) Mr. Hira, I want to compliment you for bringing up a subject that is important to almost everybody with an industrial sector in their state. When you start -- would you explain a little more about the government subsidizing offshore American jobs through immigration policy?

MR. HIRA: Sure. If you just look at the top employers -- the top 10, for example, employers, recipients of H-1Bs, it's essentially a who's who of the major offshore outsourcing firms. They're mostly based in India, but many of them are even based here in the U.S. They're the major beneficiaries, and what -- so what we're doing with this H-1B program because there are so many loopholes is we're actually giving advantages to those particular firms.

And let me give you examples of two firms that are competing directly with these offshore outsourcing firms, trying to hire Americans. One is a company that has a facility in Ann Arbor, Michigan, called Systems in Motion, and in fact they are trying to hire Americans. And they're a very interesting company because the CEO and some of the executives are actually veterans of the offshore outsourcing industry so they know the exploitation of the H-1Bs and the program. And what they're finding is that they're put at a competitive disadvantage because the firms that are exploiting the loopholes can bring in workers at lower wages, train them and ship them overseas.

I think that if we close these loopholes that we would create and/or retain tens of thousands of jobs and that this would not cost anything. It would not have a major impact on the budget. And you could just look at it in terms of the numbers of visas that these firms are getting. And it's pretty clear they are not bringing them for permanent residence. I've done some analysis of that. I've talked to a consultancy, brought in 2,400 workers on H-1Bs -- they applied for exactly zero green cards for their H-1B workers. What are they using those H-1B workers for? To do offshoring. They're the largest Indian IT offshore outsourcing firm.

So I think these loopholes could be closed, and I don't see that -- at least the folks that Mr. Cooper represents would object to those kinds of closing the loopholes. If they really want to bring in the best and brightest and keep them here permanently --

REP. CONYERS: Well, Chairman Gallegly, I think this is probably within our jurisdiction, too. This is something that I think we can examine within the Judiciary Committee.

REP. GALLEGLY: (Inaudible.)

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MR. MORRISON: Can I also -- could I just add --

REP. GALLEGLY: Sure.

MR. MORRISON: I mean, the companies themselves have said that this is part of what they do and their business model, so executives from Wipro, for example, have been quoted in Business Week saying they bring in workers for the express purpose of knowledge transfer and to take that knowledge and capability offshore.

REP. CONYERS: Well, that makes it kind of convenient for us to take care of the business here.

Mr. Cooper, I appreciated you beginning our discussion that this isn't immigrants versus -- we're not taking jobs from Americans when we move folks with this kind of skill into citizenship. I think that's a very important comment.

And finally, I think that you, Mr. Neufeld -- can't we do something about this prevailing wage business without -- don't you have it within your power -- your department's power to do something about this?

MR. NEUFELD: What USCIS --

REP. CONYERS: Make them permanent? Well, you'll have to get together with our good friend the secretary of Labor and -- can't something be done here?

MR. NEUFELD: Again, what we can do is make sure that it is addressed in the filing of the petition, that they have the labor condition application from the Department of Labor that says that they will be paying the prevailing wage or the higher -- the actual wage, whichever is higher, and that's our role, to make sure that that attestation has -- is in there. Beyond that it's up to the Department of Labor to determine what the prevailing wage is and what is the higher --

REP. CONYERS: Well, the four-tier system ensures that you'll always hire somebody at the cheapest wage you can. I mean, that's not hard to figure out.

MR. COOPER: May I address that point briefly?

One thing that I think it's important to keep focused on is what can we do with today's rules to make the program better and are we losing any opportunities to do so today? And on this point of enforcement, there's a great deal of money that is put into the government treasury for this particular purpose.

With respect to prevailing wages, there are a lot of -- there are a lot of tools out there, and it's important for us not to gain a misconception. I think an overall misconception of the program is one that endorses underpayment. The Department of Labor has very specific authority to go in and investigate and address whether an employer has actually slotted an employee into too low a slot on this prevailing wage scale. No matter how you calibrate the wages, there's always the ability to go find cheap --

REP. CONYERS: Yeah, but they don't do it. Could I get one minute more, Chairman Gallegly?

REP. GALLEGLY: Without objection.

REP. CONYERS: Look, we got a recitation of what we can do and how we review and how we oversight.

An H-1B that gets a job, the first time he squawks, that's the end of it. He's shipped back. You never have a chance to investigate anything, and they know it. So let's get some reality here going about how -- we've got a lot of rules, but they don't mean anything if you can't change jobs and if you can't lodge a legitimate grievance.

MR. COOPER: I think that's a very good point. But one thing for us also to keep in mind about that is that it is possible for -- there are ways for an H-1B worker to squawk if they're getting cheated and for the Department of Labor to respond. And it's possible actually --

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REP. CONYERS: What ways?

MR. COOPER: You can file a complaint with the Department of Labor and they've got the authority to do investigations and --

REP. CONYERS: Please, Cooper. Give me a break. I mean, as soon as that paper hits the employer's desk or goes to Labor, that guy is on a boat back to wherever he came from.

MR. COOPER: Well, there actually are rules that permit pretty freely that employee to go -- there's a market. They can go work for another employer very readily. You can --

REP. CONYERS: H-1B, you can't change jobs.

MR. COOPER: Congress wrote special rules that permit an H-1B to go work for a new H-1B employer.

REP. CONYERS: Oh, come on.

MR. COOPER: It's called portability.

REP. CONYERS: And I gave you so much credit when we started out this morning with the hearing. I mean, look, you -- a person here on an H-1B better keep his trap shut, work under whatever conditions that are given, and better not be thinking about going to get another job, citing Section something -- 1B with a paragraph, et cetera. That won't get it out in the market today.

REP. LOFGREN: Would the gentleman yield? As you were talking, it occurred to me that one of the pieces of information that I've ever seen -- we did write in a portability provision, and the reason why was to prevent kind of this freezing. But I don't know if it's been used. You must have statistics that would tell us how often, if at all.

REP. CONYERS: It's never been used.

REP. LOFGREN: And I would like -- I'm wondering -- if you haven't now, tell us if you don't. Could you tell us later how often, if at all, the portability provision has been used?

MR. NEUFELD: I certainly don't --

REP. LOFGREN: I thank the gentleman for yielding.

MR. NEUFELD: I certainly don't have statistics here with me. I'm not sure that those statistics exist. If they do, I, of course, will be happy to share them.

REP. GALLEGLY: Mr. Neufeld, in the interest of time, we've had 11 minutes on this one inquiry. So perhaps you could get the information to Mr. Conyers and also Ms. Lofgren and to the committee as a whole, to the best of your ability. And then if that's not satisfactory, there will be opportunity for follow-up.

The gentleman from Texas -- I'm sorry. The gentleman from Iowa, the vice chair of the committee, Mr. King.

REP. KING: Thank you, Mr. Chairman. I'm recognized for 11 minutes, I presume. (Laughs.) I will not do that to you. That makes your job too difficult. But I appreciate the witnesses' testimony. I'd like to add, we could bring a certain perspective to this discussion that I don't know that it's been examined.

And let me start with this. Is it a safe presumption that each of the witnesses at the table were supportive of the Bush-McCain- Kennedy immigration reform proposal around 2006? And I guess I'll start on the end, then, with Mr. Neufeld and go down the line. A yes or a no will be helpful, please.

MR. NEUFELD: As a government employee, I don't think it's appropriate for me to comment on that.

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REP. KING: I expected that.

Mr. Cooper.

MR. COOPER: With respect to the high-skill issues that we're addressing --

REP. KING: With respect to the full proposal.

MR. COOPER: I think it was very sound in a lot of ways and it had some problems.

REP. KING: You generally supported it or generally opposed it?

MR. COOPER: I would say generally supported it.

REP. KING: Thank you.

Mr. Hira.

MR. HIRA: My expertise is on the high-skill side. And on that end, I would oppose it. I thought it was very bad.

REP. KING: Thank you.

And Mr. Morrison?

MR. MORRISON: Mr. King, I'm here on behalf of IEEE, and they don't have a position on that specific matter, so I don't think it's appropriate for me to say anything on this record. If you would like to query me on a personal level at another time, I'd be happy to answer that.

REP. KING: And they did not have a position in 2006? Would that be also your testimony?

MR. MORRISON: They didn't have a position on the overall comprehensive reform bill. That's right.

REP. KING: OK, thank you. And that's also an appropriate answer I want to acknowledge. And so now I want to start back down through this list and pose a couple of other questions that we've got a little bit of a parameter to work off of.

You know, first, I'll just make this statement and I'll offer to anybody to seek to rebut it, but I pose this question -- it's more than rhetorical -- but where there are two different categories of illegal -- of immigration we need to deal with before we can get to H-1B, and that's legal and illegal.

And I want to make the statement that -- I would ask this question. How many illegals are too many? And I'm going to say the universal answer needs to be one. And so if anyone would care to rebut that statement, I'd offer the floor to you. Or if we can accept that as a foundation to carry on the discussion, I'll let the record show that no one sought to rebut that statement.

So let's go on to the next one, then. Is there such a thing as too much legal immigration? And as a government, I'll exempt the gentleman. But Mr. Cooper, I'd start with that. Is there such a thing as too many of legal immigration, whatever the category?

MR. COOPER: I think that with respect to the categories we're dealing with today, there's not enough legal immigration.

REP. KING: And Mr. Hira?

MR. HIRA: I think that there can be too much. And I think there needs to be controls in terms of numbers. And the impacts, for example, on jobs and wages can really be significant.

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REP. KING: Thank you. And Mr. Morrison?

MR. MORRISON: Immigration should be driven by the American national interest. And the Congress should determine what that interest is and set numbers that reflect that interest. I agree with Mr. Cooper that in this area of high-skilled, advance-degree -- (inaudible) -- graduates that we've been talking about, we need more numbers. And more importantly than numbers, we need people to be able to quickly --

REP. KING: OK, that would be your --

MR. MORRISON: -- (inaudible).

REP. KING: Thank you. That'd be your editorialization on this. But I think I misheard Mr. Cooper. I thought he said in this era. You mean in this area, not in this era.

MR. COOPER: In this area.

REP. KING: OK, thank you, because it's a big difference in the answer, and that is this. I will just take my position here, and that is that there is such a thing as too much legal immigration. Too much legal immigration also drives down wages and oversupplies in the workforce. And we are in a precarious position here in this country.

And I would agree with Mr. Morrison to this extent. I believe immigration policy should be designed to enhance the economic, the social and the cultural well-being of the United States of America, or whichever nation is drafting its policy; selfish interest, if you will. And developing our economy with that is an important component of it.

I look at this and I think H-1B, as a separate category, has significant merit. But written into the broader picture of this, when we don't take into account the growing numbers of legal immigrants that are taking up the growth in jobs, even when our economy was healthy, we were bringing in between 1 (million) and one and a half million legal immigrants a year, which occupied the growth in new jobs completely over at least a period of a decade. So I think we should look at this thing more broadly than we do, not within the narrow H-1B bounds, but within the broader scope of what's a whole policy here instead of part of a policy.

I know I can go over here and justify about every appropriations that will come up on the floor of the House, and if I vote for every one, we'll bust the budget. Well, we have a budget here of population, too, and skills. And today we have a welfare state that's been created over the last -- well, it hasn't taken a full century.

We know that we've had witnesses before this committee that testified that there are 71, at least 71 means-tested welfare programs. And we have a subsidy of low wages in other categories of immigration that are accommodated because of the means-tested welfare that we've built. So that does tend to subsidize the employers.

I believe we need a stronger -- a tighter labor market. And labor is a commodity like any other commodity, and it sets its value by supply and demand in the marketplace. So I get uneasy when I hear the former chairman, Conyers, talk about prevailing wage. I don't think we should support any kind of prevailing wage. I don't think government can set the wage. I think that the economy sets the wage.

And I think that if we've got some 15 million unemployed in the country, when you add to the broader perspective of that another 6 (million) or 8 million that are underemployed or have dropped out of the workforce and you look at the division of labor, the Department of Labor statistics that show that there are 80 million Americans of working age that are not working, we're in a condition here where we have a lot of people that are riding and not enough that are rowing.

And so I think we need to look at H-1Bs within the broader perspective of what would be the good overall policy for the United States of America. And I think we should look at some of these countries that have a point system where they score all of their immigrants according to their -- the legal immigrants according to their ability to

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assimilate and the skill level they have, the talent that they have. Those things are run very high on my scale. So I just want to tell you, philosophically I agree with upgrading America, but I think we should do it on a broader scale.

Thank you, and I yield back.

REP. GALLEGLY: The gentleman from Florida, Mr. Gowdy. I'm sorry. Mr. Ross.

REP. DENNIS ROSS (R-FL): Thank you.

REP. GALLEGLY: Mr. Gowdy is from South Carolina.

REP. ROSS: That's OK. You just complimented him.

REP. GALLEGLY: Greenberg (sic), Spartanville. That's right. I didn't mean to slander you. (Laughter.)

REP. ROSS: Thank you, Mr. Chairman.

One of the issues I want to go back to is the intellectual- property protections, because I think it's rather disconcerting, especially in my district, where I have a telecommunications company that is using H-1B visas, and then, once they've expired, then they're not only moving the employees back, but they're moving the whole operation back.

And I know that good employers will have confidentiality agreements to protect patents and proprietary inventions and things of that nature. But Mr. Neufeld, shouldn't there be something that protects our economy, that protects the jobs here in this country from this transfer of knowledge and transfer of jobs going overseas?

It seems to me that some of these companies are using as part of their business plan this particular tactic where they will have them over here for three years or six years and then move the entire operation overseas.

MR. NEUFELD: That may well be. But in my position as head of the operations component with USCIS, my job is to make sure that the adjudicators have the tools and the knowledge to enforce the laws and the regulations as they're written.

REP. ROSS: I understand.

MR. NEUFELD: We can't go beyond that.

REP. ROSS: Mr. Hira, you mentioned about it. You mentioned that we need to close loopholes. Any suggestions as to how we ought to close the loopholes there?

MR. HIRA: Specifically to this issue or --

REP. ROSS: Yes, sir, specifically to that issue.

MR. HIRA: I think this is something where the private companies have to protect their intellectual property. I think it's pretty difficult. Or I can't -- right now I can't imagine a good way for government to sort of control that.

REP. ROSS: But, I mean, even to the extent where companies themselves are actually probably looking at the bottom line and seeing that they can do it better with their labor costs now overseas, even though they've trained them over here. It's essentially H-1B on-the- job training --

MR. HIRA: Yeah. And I think --

REP. ROSS: -- (inaudible).

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MR. HIRA: -- one of the areas that hasn't been looked at is how offshoring is getting into government contracting, so to what extent are U.S. government contracts being offshored. Nobody's really looked into that carefully or how H-1Bs are performing, how many of them are performing, how they're performing on these types of government contracts.

REP. ROSS: Mr. Cooper, you spoke about the prevailing wage, and you indicated there are some -- in most instances, the prevailing wage is here; the market wage is up here. Are there ever any instances where the prevailing wage is the higher wage?

MR. COOPER: Not that I'm aware of. But you couldn't pay lower than the prevailing wage. That's the rock-bottom minimum that an employer must pay.

REP. ROSS: Right. But I'm saying if we didn't -- but in your example, you said that just about everything is paid above the prevailing wage. So I guess what I'm saying is what good is the prevailing wage, then, if the market wage is being paid?

MR. COOPER: The rules are either pay prevailing or what you actually pay to similar workers in similar jobs, whichever is the higher. You cannot go below the prevailing wage, but you can go above if that's what it takes to get the worker that you need. And that commonly happens either when you're trying to recruit somebody from overseas or when you're trying to recruit somebody for another worker. And on this portability issue, I mean, I can tell you that we file portability or change-of-employer petitions for an H-1B moving from one employer to another all the time.

REP. ROSS: I appreciate that. And I was just going to get back to my question. That's OK.

Mr. Hira, you mentioned about prevailing wages, though, and you think that there are some problems with it. And could you expound on that?

MR. HIRA: Sure. It's really well-known in the IT sector especially that H-1B workers are cheaper; not in all cases. There are some very highly skilled workers. But there's a competitive advantage to bringing in H-1B workers. And I'm actually just trying to (find the quote ?). But, you know, there's, you know, industry experts as well as CEOs or executives of some of these firms who have actually admitted this as much, that their wages are below market and that's what gives them the competitive advantage.

In my study of the offshore outsourcing industry, just looking at financials, where they've developed their competitive advantage, it's clear that they get a wage advantage not only of doing the work offshore, but their on-site labor is much cheaper.

REP. ROSS: Do you think they've -- that this H-1B program has facilitated age discrimination?

MR. HIRA: I think there's no doubt that there is age biases within the technology sector. And if you look at the age profile of H-1B workers, they tend to be much younger than the typical worker in those particular sectors in the U.S. So it certainly enables it. Whether it definitively actually is causing that, I don't -- I can't say for sure.

REP. ROSS: Thank you.

Mr. Morrison, real quick question. I know that, according to the statistics we've been given, the quotas for these visas have been taken up really very quickly; in some instances, the first quarter of year one and actually the preceding last quarter of the first year, and then as late as the second quarter of the year where these visas have been given.

And it seems to me that the demand is constantly increasing each year to increase the cap on H-1B visas. What bothers me as a lay person, and looking at this rather simply, we've got 9 percent unemployment. And yet we

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increase the number of petitions. We reach our cap earlier and earlier. Is that indicative of the lack of educational and vocational training standards in this country?

MR. MORRISON: Well, first, the demand for H-1B is somewhat lower right now than it was a few years ago. But the perspective of IEEE and my perspective in my testimony is the solution is not to expand the H-1B program. The solution is to use the green-card program, to expand that where -- in a targeted way for STEM workers, so that we bring people permanently and we bring the right people and we give them a chance to be permanent Americans and make that kind of contribution and compete effectively with other countries that would like to have those skills. So that, I think, is a better answer than raising the H-1B cap.

REP. ROSS: Thank you.

I see my time is up, and I yield back.

REP. GALLEGLY: I thank the gentleman from Florida, Mr. Ross.

And at this point, I would yield to the gentleman from South Carolina, Mr. Gowdy.

REP. GOWDY: Thank you, Mr. Chairman.

I know reapportionment is coming up. I may well find myself in Florida. (Laughter.) I hope not, because I love South Carolina.

Mr. Hira, I want to ask you about perhaps a little smaller niche, which would be areas fraught with fraud or abuse within the H-1B process. Give me your top three areas that are rife or potentially rife with abuse.

MR. HIRA: Well, in terms of the loopholes themselves, there is no what we would call labor-market test. So companies can go out and bypass Americans altogether, and, in fact, can replace Americans with H-1B workers. And this is contrary to sort of conventional wisdom or popular belief.

They can actually replace American workers. They can legally right now pay below-market wages, and it's pretty clear that they've built business models around this. And there's a variety of different business models. Some are domestic, where there are small job shops, but some are very large, like these offshore outsourcing firms, which are publicly traded and so on.

The other area where I think there needs to be a lot more scrutiny where there hasn't been is H-1B-dependent companies. These are companies that have more than 15 percent of their employees in the U.S. on H-1Bs. So if you think about that, some of these companies have 60, 70 percent of their workforce in the U.S. as guest workers, maybe even more than that; 80 percent. And we're not talking about a couple hundred. We're talking about 10,000 workers here as guest workers. They hire almost no Americans. They somehow are able to meet the extra criteria that they have to go through to bypass Americans, but they're able to do that.

And let me just give you a sense of the figures. Infosys, for example, over a three-year period got almost 10,000 H-1B workers. You know, how many Americans did they hire? Probably a couple hundred.

REP. GOWDY: With respect to violations, intended or not, of either the letter or spirit of the process, are there effective investigative tools to determine whether or not the letter or spirit is being violated?

MR. HIRA: Well, I think Mr. Conyers pointed out an important problem with the administration, and that is that it's almost entirely dependent on a whistleblower. The H-1B worker, their legal status in the U.S. depends on their employment and their H-1B visa. So it's very unlikely that they're going to come out and blow the whistle. There have been a small number of cases, but there's very little bit -- little evidence that there's lots of these H-1B workers who are blowing the whistle, even though they're being adversely affected.

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REP. GOWDY: Are there sufficient investigative tools once the whistle has been blown -- for instance, subpoena power?

MR. HIRA: I don't know enough about that.

REP. GOWDY: Mr. Cooper, do you know whether or not the Department of Labor has subpoena power with respect to employers?

MR. COOPER: There's no specific subpoena power in the statute. But they can and they do very often go out and do wage and hour investigations to make sure that people are being paid the wage they're supposed to. And they've got significant enforcement authority.

For example --

REP. GOWDY: When you say significant, I'm a prosecutor, so jail is significant to me.

MR. COOPER: Well --

REP. GOWDY: What are the potential consequences for an investigation that doesn't turn out well for the employer?

MR. COOPER: Here's one that would frighten an employer, short of jail. If an employer is found to have willfully underpaid an H-1B, and if that takes place in the context of a displacement of a U.S. worker, they can be fined in the tens of thousands of dollars. But more important, they can be kicked out of the system; no more H-1Bs for three years.

REP. GOWDY: Is there subpoena power to investigate claims such as that?

MR. COOPER: There's investigative but not subpoena power, if I'm not mistaken.

REP. GOWDY: What power would you say is tantamount to subpoena power?

MR. COOPER: Oh, I'm sorry. Wage and hour investigators can and they do go into employers' -- into employers' workplaces, and they can -- there they can see records and so forth.

REP. GOWDY: So they have full access to all the records, even absent administrative or legal subpoena power.

MR. COOPER: That's my understanding. I mean, I can tell you, our firm does -- you know, they do these wage and hour investigations of employers of the H-1B program.

REP. GOWDY: Your firm does.

MR. COOPER: Our firm has represented employers who have been the subject of these.

REP. GOWDY: Does the investigative agency have the full panoply of investigative tools that the bureau or other federal agencies would have?

MR. COOPER: I don't know about the comparison, but they can certainly see the things that would help them, that they'd need to know to make that evaluation. They can see payroll records. They can see what -- they can find out what the employer's actually doing. They can assess that against what the required wage level should be, and so forth.

REP. GOWDY: What's the definition of willful? You said a willful violation.

MR. COOPER: Basically on purpose, knowing that -- you know, knowing that you should have done otherwise.

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REP. GOWDY: The fact that you did it last week and are doing it again this week, would that be tantamount to willful?

MR. COOPER: I think that would help indicate it.

REP. GOWDY: All right, thanks.

REP. GALLEGLY: I thank the gentleman from South Carolina.

I thank all of our witnesses this morning. Welcome back, Bruce. You're always welcome.

And with that, the subcommittee stands adjourned.

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