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Of the House Committee on Small Business

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Thank you Chairman Rice for this opportunity to appear before your subcommittee. And thanks also to Ranking member Congresswoman Chu for this chance to explain the plight of the millions of unemployed Americans looking for a chance at any work.

Today we stand over five years into the wrath of the Great Recession. The number of payroll positions in America remains over 2.4 million less than in January 2008. At the rate of job creation last month, it would take more than thirteen months to get back to that pre-recession level of employment—meaning a net job growth of zero jobs over an almost six and a half year period. In the interim, America's labor force has grown over 1.5 million, and will grow larger over the next year. The result is we have a backlog of Americans looking for jobs—officially 11.7 million. The brunt of the difficulty in the labor market has fallen on young workers who are suffering from the lowest levels of employment on record; fewer than 38 percent of 18 and 19 year olds have jobs, and among those 20 to 24 the share with jobs is below 61 percent, well below full employment levels when the figure should be thirteen percentage points higher. And, for those with jobs, wages have been essentially flat, rising only three percent over this period when adjusted for inflation.

So, to put it bluntly, we are still in the midst of an American job crisis; especially for entry level jobs for young Americans. It has never been more crucial for America's policy makers—in Congress and in the Administration—to pull together to insure job opportunities for the almost 12 million Americans looking for work, and to protect the wages of those at work, many of whom are working part-time but would like to work full-time.

An important policy would be for Congress to join with the Administration to insure that job opportunities being created are fully available to the millions of Americans looking for work, while protecting the wages of working people. Straddled with court cases and appropriation blocks from Congress, the Administration has already delayed several times the implementation of new rules over the use of temporary, non-immigrant workers in entry level jobs like young Americans desperately need. Over the course of the recovery, Congress has worked with the Administration to pass various tax cuts aimed at helping small businesses, in particular, add workers—ranging from the Small Business Jobs Act to the HIRE Act. These tax cuts have given small business extra tax incentives to add workers to their payrolls. But, these efforts will be undermined if the jobs are given to non-immigrant temporary workers, or if workers are brought in with wages to undercut the competitiveness of small businesses struggling to take advantage of the tax cuts and boost their local economy.

The loser when wages are set low by a few firms are not just Americans denied job opportunities, but the hard working businesses and their employees fighting to restore an economy that works for everyone. The economic analysis done by the Department of Labor to study its interim final wage rule for the H-2B non-agricultural temporary, non-immigrant work visa program showed the Department on average certified employers for 79,305 H-2B positions in FY 2011 and FY 2012. So, the bulk of businesses need protection from this program being abused to gain competitive advantage.

Unfortunately, the regulations for the H2B program have been caught in a struggle between courts and Congress. This has hurt businesses that may have need for the program, and delayed policy makers from coalescing around a sound set of policies that protect the over 11 million unemployed Americans seeking jobs in having access to jobs created, in part, by numerous recent tax changes to benefit small business in creating those jobs.

The courts have not accepted the premise that the Department of Labor should adopt multiple wage levels for the type of job typical of the H-2B program.[1] The findings of the court appear consistent with the Bureau of Labor Statistics characterization of these jobs as having relatively lower skill levels compared to many jobs, and therefore have a wage structure that does not reflect skill differences.

The source of the Department of Labor's wage rule data is the Occupational Employment Statistics report of the Bureau of Labor Statistics. The OES is a huge data base that collects information on occupations and wages for about 800 different occupational categories. The sample size of the survey is large enough to generate estimates at the national, state and sub-state level, including for every metropolitan and non-metropolitan area in a state. The sample is from establishments of every size, so that small establishments are included, and across all industries—except agriculture, fishing, forestry and private households. The sample averages data over a three year period to insure that it is representative for detailed occupations in small geographic areas. These steps yield a data set of over 1.2 million different U.S. establishments and captures about 62 percent of employment. Given the size of the samples, and the technical issues involved in designing a proper probability-based sample similar to the Bureau of Labor Statistics, the use of employer wage surveys should be strongly discouraged. The need for fair, accurate, reliable and replicable results in policy making means it would not be efficient or optimal to use inaccurate surveys and the cost of such an accurate survey is prohibitive for employers.

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[1] *CATA* v. *Solis*,_ F.Supp. _, 2013 WL 1163426, *13 (E.D. Pa. 2013) (*CATA II)*

If an employer pays below the average for an occupation in their area, they lower the average for the occupation in that area. So, the Department of Labor is correct in setting the wage for certification of an H-2B visa at the average for the occupation in an area. Further, the setting of low wages feeds into a self-fulfilling prophecy. It is possible to model the behavior of someone searching for a job, acquiring knowledge of job openings and wages in their area. When the workers do their job search, they will, in-a-way mimic the survey of the Bureau of Labor Statistics; though they are unlikely to look at as many firms, or replicate the probability sampling that the Bureau conducts. In the end, the worker searching for a job will arrive at a good estimate of the average wage in their occupation in their area. If their search is rational, they will try for the jobs with the highest wages. So, the worker, in doing their search, will turn down wages that are below average, knowing what the distribution of wages looks like; when they encounter wages that are below average, that time spent in that search will slow their search for a job, and they will spend more time unemployed. It will also be frustrating for the employer who offers low wages, because they will have to review applicants who are, in the end, uninterested in the job offer. Over time, the workers who will settle on the lower wages are likely to have been unemployed longer, and are likely to appear less skilled to employers than the workers who matched with the employers paying closer to the average wage or higher. So, employers who set the wage too low will either think there are no available workers, or do not wish to hire the workers who are left available at the low wage.

More could be done to protect the wages of American workers and the competitiveness of the businesses that work hard to hire Americans. The OES is an excellent source for getting estimates of wages. But, if wages are offered to foreign workers that are below the wages set between employers and employees in a collective bargaining agreement, then the competitive position of those firms is at risk from an employer trying to undercut the profitability of the unionized establishment by paying a lower wage to foreign workers. And, those businesses that contract with the federal government and

are paying prevailing wages, either under the Davis Bacon Act or the Service Contract Act, are similarly being undercut by firms paying lower wages to foreign workers.

Unfortunately, many H-2B workers gain access to the program through foreign labor recruiters who illegally charge the workers fees. Many H-2B workers, then, arrive in America already in debt. The result is that much of what those foreign workers earn has to be repatriated to repay the foreign labor recruiter in their home country. That means that rather than circulate their wage money in the local American economy, much of their pay has to be sent back home. This in turn depresses the local economy, because tourism—which can be a great net exporter for our country—is being offset by "importing" the labor value added of the industry. Organizations like the Southern Law Poverty Center have uncovered too many cases of abuse of the program under its existing rules.[2] Efforts by the Administration to monitor and fight against this type of misuse of the workers and of the H-2B program are unfortunately not being implemented because of battles in the courts and with Congress.

Tourism is an important industry for the United States. That means we should be sure that our policies are giving Americans the best opportunities to acquire the jobs, experience and skills to excel in industries we want to promote through public policy. To maximize the potential for gathering the full value-added of the industry, it is essential that we turn first to the millions of unemployed Americans for these jobs. Yes, the demand for these jobs has seasonal variation, but to young people looking for entry level positions, these are good steps. And, to the many companies hiring Americans in the tourism industry it is very important to keep them protected from low-wage competition that undercuts their efforts to protect and promote middle class American values.

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[2] Southern Poverty Law Center, *Close to Slavery, Guest Worker Programs in the United States*, 2013 edition, accessed on the internet (June 10, 2013): http://www.splcenter.org/sites/default/files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf .