
*Testimony of*

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*Before the*

# U.S. Senate Subcommittee on Immigration and the National Interest of the Judiciary Committee

"The Impact of High-Skilled Immigration on U.S. Workers"

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# Congressional Testimony

## The Impact of High-Skilled Immigration on U.S. Workers

BY **RON HIRA**

*Testimony of EPI Research Associate and Associate Professor of Public Policy at Howard University Ron Hira before the U.S. Senate Subcommittee on Immigration and the National Interest of the Judiciary Committee hearing on "The Impact of High-Skilled Immigration on U.S. Workers," Dirksen Senate Office Building, February 25, 2016.*

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

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

I also would like to note that I am the son of immigrants. My parents, both of whom were professionals, left India in the 1950s in search of a better life. After leaving India, they first lived in France for six years but decided to leave primarily because my late mother, who was a physician, could not practice medicine there. Subsequently, they received the opportunity to immigrate to America, immediately receiving greencards, and later became naturalized citizens. They had long and productive careers, my late father as an engineer and my late mother as an anesthesiologist. My wife's family has a similar immigrant story. My wife was born in India. Her father left India in 1970 to do graduate work in geology, first in the U.S. and later in Canada. He began working at Howard University as a professor of geology on an H-1 visa, a predecessor to the H-1B, before becoming a permanent resident and subsequently a citizen. High-skilled immigration has directly benefited my family enormously. The opportunity to testify is a professional honor but it is also very meaningful to me personally.

Last March, the full Committee held a hearing that spurred much-needed attention to changes to better protect American workers. It was held in the wake of news reports of the Southern California Edison scandal. More than 300 American workers were not only replaced by cheaper H-1B workers, the American workers had to train their replacements. The reason Southern California Edison chose to replace their American workers with H-1Bs was simple: the H-1B workers were cheaper. The wages for the H-1B workers were at least $40,000 lower, a 40-50% discount, per worker.[1]

The full story couldn't be told at that hearing because the displaced American workers were under a gag order from Southern California Edison, so were not allowed to speak publicly to this committee.

Following the hearing, ten Senators, many of whom are on this committee, sent a letter requesting that the Departments of Labor and Homeland Security investigate whether Southern California Edison's use of cheaper H-1Bs to replace American workers is a violation of H-1B law and regulations.

Over the past year, in addition to Southern California Edison, a number of cases – including Disney, Northeast Utilities (now Eversource), The Fossil Group, Catalina Marketing, New York Life, Hertz, and Toys R Us – were highlighted by the press. But this is only the proverbial tip of the iceberg. There are many more. I have been contacted by numerous American workers at many companies who are currently training their replacements.

In response to the Senators' letter, the Labor Department refused to investigate the Edison case until a complaint was formally filed by an aggrieved worker. In the face of the intimidation of gag orders and the threat of being blackballed from the industry, some brave workers filed complaints with Labor and the Department began investigating.

## *The Labor Department recently concluded that no H-1B violations occurred in the Edison case.*

Many key facts of this case are very clear and I think there are some important conclusions to draw here.

In its findings, the U.S. Department of Labor has affirmed the following are legal:

1. H-1B workers can legally be paid much less than American workers – in the case of Southern California Edison it was 40-50% less.[2]
2. American workers can legally be replaced by an H-1B worker.

The Labor Department has found these H-1B employment practices to be legal despite the following attestations *all* employers must make on the Labor Condition Application for an H-1B [US DOL: ETA FORM 9035]:

*(1) Wages: Pay nonimmigrants at least the local prevailing wage or the employer's actual wage, whichever is higher, and pay for non-productive time. Offer nonimmigrants benefits on the same basis as offered to U.S. workers.*

*(2) Working Conditions: Provide working conditions for nonimmigrants which will not adversely affect the working conditions of workers similarly employed*

In the rest of my testimony, I will address the following issues:

- Why H-1B workers are preferred over American workers,

- The scope and scale of H-1B abuse, and,
- How to fix the program.

## *It is extraordinarily easy to pay an H-1B worker much less than an American worker.*

The H-1B wage floor (known as the prevailing wage) for each position is set by three (3) variables:

1) occupation (e.g., 15-1121 – Computer System Analyst)

2) geographic location of the worksite (e.g., Orlando, FL)

3) skill level – there are four skill levels

The employer has the option to define the position, and as a result it has enormous flexibility in defining the occupation and skill level.

Employers routinely select the lowest skill levels and pad their profits by hiring H-1Bs at the lowest possible "prevailing wage" levels. In Fiscal Year 2015, 41% of the workers *approved* by the government were at wage Level 1. In its guidance to employers, the US DOL describes a wage Level 1 job as,

*job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. … Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.*

Level I wages are typically 40% below the average wage.

Almost another forty percent of approved H-1B applications were at second lowest wage level, Level II, which is typically 20% below the average wage for Americans in those occupations.

So, nearly 4-in-5 H-1B applications were *approved* by the U.S. Department of Labor for the lowest two wage levels, providing large discounts to employers.

## *It is extraordinarily profitable to replace, and substitute for, American workers with H-1B and L-1 workers.*

Firms that rely mostly on H-1Bs are able to generate net profit margins of 20-25% in a sector, Information Technology (IT) Services, where we would expect profit margins of 6-8%. Exploitation of the H-1B and L-1 visa programs has completely disrupted the IT Services sector. Employers that hire American workers are put at a competitive disadvantage solely because of the loopholes in the H-1B and L-1 programs allowing employers to pay guestworkers less.

The leading H-1B employers, shown in Table 1, pay their H-1B workers far below the average wages in information technology. Cognizant and HCL brought in H-1B workers to replace the American workers at Disney. Cognizant pays its H-1B workers a median salary of $61,131 and HCL pays its H-1B workers a median salary of $67,300. The Disney workers were being paid about $100,000 per year plus generous benefits. Those H-1B workers are being paid 33-39% less than the Disney workers.

The discounts accruing to employers hiring H-1B workers go far beyond the salary. The employer holds the visa and if the worker complains the employer can easily terminate that worker. If terminated, the foreign worker is out-of-status and must leave the country immediately. That threat alone is enough to scare away many potential whistle blowers. But there are other tactics used to intimidate and bully H-1B workers into indentured servitude including employment bonds (literal indenture) and the threats of liquidated damages lawsuits. See the groundbreaking investigative stories, "Techsploitation," by the Center for Investigative Reporting (CIR) that chronicles many of these abuses.[3] The "ecosystem of fear" is pervasive according CIR. Here is how one H-1B worker described his dilemma:[4]

> "You can pretty much see a leash on my neck with my employer," said Saravanan Ranganathan, a Washington-area computer security expert here on an H-1B visa. "It's kind of like a hidden chain … and you'd better shut up, or you'll lose everything."

One of the more egregious abuses is the use of employment bonds – requiring H-1B workers to pay a king's ransom to be allowed to quit their job with an employer. CIR profiles a series of employment bonds used by Tata, the top H-1B recipient in FY14, and the contractor that replaced American workers at Eversource and Southern California Edison:[5]

> Former Tata workers say the company tried to collect fees from them after they quit. Many immigrant tech workers say they are bound to their jobs this way, despite a federal law banning companies from penalizing H-1B visa holders for quitting. … Indian workers hired for U.S. jobs received an employee manual explaining that they would be sued for up to $30,000 if they left before the end of their contracts. The company also threatened to withhold retirement benefits.

The business model is so lucrative that it shouldn't be any surprise that these firms are growing rapidly and their appetite for more H-1B workers continues to grow.

As Table 1 shows, 11 of the top 20 H-1B firms are so-called *H-1B Dependent*. These are firms where more than 15% of their workforce in the U.S. are H-1Bs. Congress created the H-1B Dependent category of employers because it was concerned that those firms are most likely to abuse the H-1B program. Congress wanted tighter recruiting and non-displacement standards for H-1B Dependent firms to ensure that those firms only used the H-1B program sparingly, as a last resort, after they had sought for American workers. Yet, the H-1B Dependent firms in Table 1 demonstrate that it is extraordinarily easy to get H-1Bs while avoiding hiring American workers.

Many, if not all, of those firms have been reported in the press of being engaged in directly replacing American workers with cheaper H-1Bs. All of them use similar business models of preferring H-1B workers over Americans because they are cheaper.

But it would be folly to assume that H-1B Dependent firms are the only ones using the program for cheaper labor and to substitute for Americans. IBM is most likely doing the same thing with its contract with Hertz right now. Every firm that aims to maximize profits, and that's every firm, will avail itself of cheaper H-1Bs. Accenture, Deloitte, IBM, and Computer Sciences Corporation, all top H-1B employers but not H-1B Dependent, employ the same business models as Tata and Infosys.

TABLE 1

## Top 20 H-1B Employers

*2013 Wage Distribution of New H-1B Workers Typical Wages Are Low 11 of 20 Employers Are H-1B Dependent*

| 2013 H-1B Rank | Employer | H-1B Dependent | Total New H-1Bs 2013 | Median Wage |
|---|---|---|---|---|
| *1* | Tata | Y | 6,822 | $ 65,600 |
| *2* | Infosys | Y | 6,269 | $ 65,631 |
| *3* | Cognizant | Y | 4,155 | $ 61,131 |
| *4* | Accenture | | 3,187 | $ 67,100 |
| *5* | Wipro | Y | 2,318 | $ 64,522 |
| *6* | Deloitte | | 1,514 | $ 68,500 |
| *7* | IBM | | 1,488 | $ 71,510 |
| *8* | Larsen & Toubro | Y | 1,454 | $ 57,300 |
| *9* | Tech Mahindra | Y | 1,362 | $ 65,437 |
| *10* | Syntel | Y | 1,031 | $ 60,000 |
| *11* | HCL America | Y | 1,024 | $ 67,350 |
| *12* | Microsoft | | 1,017 | $ 105,000 |
| *13* | iGate | Y | 980 | $ 64,000 |
| *14* | Amazon | | 829 | $ 95,000 |
| *15* | Intel Corp | | 762 | $ 94,223 |
| *16* | Google | | 743 | $ 118,000 |
| *17* | CapGemini | Y | 474 | $ 71,573 |
| *18* | Mindtree | Y | 263 | $ 69,893 |
| *19* | Apple | | 262 | $ 115,000 |
| *20* | Computer Sciences Corp | | 227 | $ 75,000 |

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And it's important to keep in mind that the technology industry is very focused on keeping labor costs down. The wage-fixing scandal reached the highest levels of Silicon Valley. The non-poaching emails between Apple's CEO Steve Jobs with Google's Eric Schmidt demonstrates the alarming lengths that the two most profitable technology firms will go to keep workers' wages low.

## *Hiring H-1B workers because they are cheaper than Americans is a routine and mainstream practice.*

Well-known firms throughout the country are exploiting the H-1B and L-1 programs to bring in cheaper workers. Southern California Edison and Northeast Utilities are well-known, regulated utilities, and Disney and Toys R Us are household names. The contractors which hired the H-1Bs are Tata, Infosys, HCL, and Cognizant. While they may not be known to the average American, they are the leading H-1B employers. Over the past ten years those four firms alone brought in nearly 95,000 new H-1B workers.

## *Leading H-1B employers like Cognizant and HCL specialize in offshore outsourcing. When they get work from customers like Disney, the goal is to ship as much of the work offshore to India and other locations as possible. Those jobs that are shipped offshore are lost forever.*

The government is speeding up the offshoring of high-wage jobs by allowing the H-1B and L-1 programs to be exploited for cheaper labor.

The top H-1B employers in 2014 are shown in table below. *All* of the top 10, and 15 of the top 20, H-1B employers in 2014 used the H-1B program principally to facilitate offshoring. Those fifteen employers brought in more than 190,000 new H-1B workers over the ten-year period FY05-14. That means that hundreds of thousands of American jobs were lost and many were offshored. Many more had their wages depressed, all because of abuse of the H-1B loopholes.

## *The Reshoring of IT Services Is Being Crushed by H-1B & L-1 Policies*

Domestic sourcing companies, such as Ameritas Technologies, Nexient, and Rural Sourcing hire American workers, and invest in educating and training those workers. Neeraj Gupta, founder of Nexient, testified before this Committee during the hearing on S.744 in 2013. These firms have a real chance to create high paying middle class jobs but they are at a disadvantage because their competitors can freely hire lower-paid H-1B and L-1 workers.

If we want to "insource" or "re-shore" then the best way to do so is to increase protections for American workers in the H-1B, L-1, and OPT programs.

## *News stories play an important role but they are no substitute for statutory and regulatory changes.*

Most H-1B, L-1, and OPT abuses are never reported. American companies exploit fear amongst, and use intimidation against, American workers to gag them. And reporters don't want to tell the same story over and over. Further, news stories and public shaming do nothing to alter business models and counteract the lure of cheap H-1B workers.

The Disney story received much attention but the workers still lost their jobs and Disney defends replacing them as good for the company and even good for American workers. It was certainly good for Disney, which earned record profits, its stock price was at record highs, and its CEO, Bob Iger, earned $40 million.

The Southern California Edison story also received much public attention from the media, and even from this committee. Yet the workers still lost their jobs and had to train their replacements and are still unable to speak publicly. The

TABLE 2

## Top 20 H-1B Employers in 2014 & Ten Year H-1B Totals 15 of 20 Offshoring Firms

| 2014 Rank | H-1B Employer | HQ Location | Offshoring | New H-1B Workers 2014 | New H-1B Workers 2005–2014 |
|---|---|---|---|---|---|
| *1* | Tata Consultancy | India | X | 5,650 | 27,193 |
| *2* | Cognizant Tech | US | X | 4,293 | 29,676 |
| *3* | Infosys Limited | India | X | 3,454 | 31,861 |
| *4* | Wipro Limited | India | X | 3,048 | 26,540 |
| *5* | Accenture LLP | Ireland | X | 2,275 | 13,653 |
| *6* | Tech Mahindra | India | X | 1,781 | 12,372 |
| *7* | IBM Corporation | US | X | 1,462 | 9,524 |
| *8* | Larsen & Toubro | India | X | 1,298 | 8,489 |
| *9* | Syntel Consulting | US | X | 1,080 | 4,915 |
| *10* | Igate Tech | US | X | 886 | 6,312 |
| *11* | Aamazon Corporate LLC | US | | 877 | 3,669 |
| *12* | Computer Sciences Corp. | US | X | 873 | 2,166 |
| *13* | HCL Americs Inc. | India | X | 855 | 5,897 |
| *14* | Microsoft Corp. | US | | 850 | 12,335 |
| *15* | Google Inc. | US | | 728 | 3,929 |
| *16* | Intel Corp. | US | | 700 | 5,953 |
| *17* | Deloitte & Touche LLP | US | X | 559 | 7,927 |
| *18* | Capgemini | France | X | 536 | 2,035 |
| *19* | Mindtree Limited | India | X | 487 | 1,446 |
| *20* | Apple Inc. | US | | 443 | 1,873 |

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government has concluded that Southern California Edison acted legally, sending a big signal to every employer that they can legally replace American workers with cheaper H-1Bs and face no consequences.

Every CEO in every company sees the business opportunity: Will I earn higher profits by replacing my American staff with cheaper H-1B workers? The answer is an obvious yes.

So we shouldn't be surprised when CEOs everywhere are replacing their American staff with cheaper H-1B workers. The CEOs are not villains. They are simply acting rationally to the opportunities that government is handing them.

And it shouldn't be any surprise that the CEOs profiting by replacing their American staff with H-1B guestworkers are lobbying Congress to expand the H-1B cap. After all, it advances their company's interests by increasing profits. CEOs like Disney's Bob Iger are applying their vast resources and influence to lobby for more H-1Bs. Mr. Iger is co-chair of the influential group the Partnership for a New American Economy (PNAE), which actively lobbies this committee for more H-1Bs.[6] In fact, the founder of PNAE, Mayor Michael Bloomberg has been pushing for an unlimited number of H-1Bs.[7]

## *We know that H-1B workers are not being used to bring in the "best and brightest."*

In dozens of cases – Disney, The Fossil Group, Toys R Us, New York Life, Northeast Utilities, etc. – American workers trained their replacements. The American workers were obviously more skilled. The American worker was the trainer, possessing more knowledge and skills, and the H-1B worker was the trainee.

We typically measure skill levels in two primary ways: wages and educational achievement. We know that H-1Bs are frequently hired at lower wages. And most H-1B workers have no more than ordinary educational achievements.

There is also a widespread myth that the typical H-1B worker is an advanced degree holder from a U.S. University. But as the Table 3 shows, most of the top H-1B employers are using the program to import workers with no more than a Bachelors degree. About 80% of the H-1B workers that the top three employers – Tata, Cognizant, and Infosys – bring into the U.S. hold no more than a Bachelors degree.

For the vast majority of the top twenty employers, more than half of their H-1Bs hold no more than a Bachelors degree. The exceptions are Intel, Google, and Amazon. Further, the Ph.D. degree is very uncommon. For Microsoft, one of the most vocal companies about needing H-1Bs, more than half, 56%, of its H-1B hires hold no more than a Bachelors degree, and only 5% hold a doctorate.

Contrary to the complaints, from President Obama and technology industry magnates, that the cap on H-1Bs forces the country to "kick out graduates of U.S. universities," the reality is far different. According to their H-1B hiring patterns, the top H-1B employers are simply not interested in hiring these students. Table 4 shows that the vast majority of H-1B hires do not hold an advanced degree from a U.S. university. Intel is the only firm where more than half of its H-1B hires hold advanced degree from a U.S. university. For firms like Microsoft and Google, only 1-in-5 of their H-1Bs have advanced degrees from US universities.

## *The H-1B program is a guestworker program – not immigration. Most H-1Bs are not sponsored for permanent residence, and the leading H-1B employers sponsor virtually none of their H-1Bs for greencards.*

H-1B advocates often conflate the H-1B with a legal permanent residence (a greencard). The H-1B program is a temporary non-immigrant work permit. An H-1B is not legal permanent residence (a greencard). The employer holds the visa, not the worker, and if the H-1B worker is laid off he must leave the U.S. This provides enormous leverage over the H-1B worker.

The employer, not the worker, has the discretion of applying for a greencard for an H-1B worker. And most of the top H-1B employers don't sponsor their H-1B workers for greencards. By my estimates less than half of H-1Bs are being

TABLE 3

## Education Level of H-1B Workers FY05-12 for 2014 Top H-1B Employers Most Hold No More Than Bachelors Degree

| 2014 H-1B Rank | Employer | Bachelors Degree | Masters Degree (MA, MS, Meng, MEd, MSW, MBA) | Doctorate Degree (Ph.D. or Ed.D) |
|---|---|---|---|---|
| *1* | Tata | 79% | 21% | 0% |
| *2* | Cognizant | 79% | 21% | 0% |
| *3* | Infosys | 85% | 15% | 0% |
| *4* | Wipro | 63% | 35% | 0% |
| *5* | Accenture | 70% | 30% | 0% |
| *6* | Tech Mahindra | 65% | 34% | 0% |
| *7* | IBM | 58% | 35% | 7% |
| *8* | Larsen & Toubro | 81% | 19% | 0% |
| *9* | Syntel | 76% | 24% | 0% |
| *10* | iGate Patni | 73% | 27% | 0% |
| *11* | Amazon | 48% | 46% | 5% |
| *12* | Computer Sciences | 55% | 44% | 0% |
| *13* | HCL | 57% | 41% | 0% |
| *14* | Microsoft | 56% | 39% | 5% |
| *15* | Google | 40% | 47% | 12% |
| *16* | Intel Corp | 8% | 59% | 33% |
| *17* | Deloitte | 60% | 39% | 0% |
| *18* | CapGemini | 55% | 45% | 0% |
| *19* | Mindtree | 72% | 28% | 0% |
| *20* | Apple | 53% | 38% | 7% |

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sponsored for greencards. As the table 3 below shows, most of the top H-1B employers are using the program for temporary labor – as a vehicle to outsource jobs overseas rather than as a bridge to permanent immigration.

To use one example – U.S. based offshore outsourcing behemoth Cognizant received 4,293 H-1Bs yet applied for a mere 57 greencards for its H-1B workers in FY14. That is a 1% rate, or 1 greencard application for every 75 H-1B workers. India based offshore outsourcing giant Wipro received more than three-thousand H-1B workers and applied for exactly ZERO greencards for its H-1B workers in FY14.

TABLE 4

## Top H-1B Employers

*Share of H-1B Workers Holding Masters or Higher From U.S. University*

| 2013 Rank | Employer | # H-1Bs with Masters or Higher from US University in 2013 | Total New H-1Bs 2013 | % with MS or > from US Univ |
|---|---|---|---|---|
| *1* | Tata | 16 | 6,822 | 0% |
| *2* | Infosys | 33 | 6,269 | 1% |
| *3* | Cognizant | 71 | 4,155 | 2% |
| *4* | Accenture | 11 | 3,187 | 0% |
| *5* | Wipro | 31 | 2,318 | 1% |
| *6* | Deloitte | 211 | 1,514 | 14% |
| *7* | IBM | 149 | 1,488 | 10% |
| *8* | Larsen & Toubro | 11 | 1,454 | 1% |
| *9* | Tech Mahindra | 14 | 1,362 | 1% |
| *10* | Syntel | 27 | 1,031 | 3% |
| *11* | HCL America | 10 | 1,024 | 1% |
| *12* | Microsoft | 212 | 1,017 | 21% |
| *13* | iGate | 8 | 980 | 1% |
| *14* | Amazon | 323 | 829 | 39% |
| *15* | Intel Corp | 553 | 762 | 73% |
| *16* | Google | 164 | 743 | 22% |
| *17* | CapGemini | 12 | 474 | 3% |
| *18* | Mindtree | 4 | 263 | 2% |
| *19* | Apple | 67 | 262 | 26% |
| *20* | Computer Sciences Corp | 5 | 227 | 2% |

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Guestworker programs should be used only sparingly and only when American workers are hard to find. They have a particularly distorting impact on the normal functioning of the labor market. The government is directly intervening in the labor market by creating guestworker programs. These types of program are more distorting than permanent immigration because, like the H-1B and L-1 programs, the employer, not the worker, holds the work permit. The H-1B guestworker has limited employer mobility and the L-1 worker has no employer mobility. This shifts the bargaining power between employer-employee from its normal equilibrium to one where nearly all of the power is in the hands

TABLE 5

## Top 20 H-1B Employers

*Greencard Applications for H-1B Workers & Immigration Yield Most Employers Do Not Sponsor H-1Bs for Permanent Immigration*

| 2014 Rank | H-1B Employer | Offshoring | 2014 Applications for Legal Permanent Residence (EB Greencards | New H-1B Workers 2014 | Immigration Yield = Greencards/ New H-1B Workers |
|---|---|---|---|---|---|
| *1* | Tata Consultancy | X | 2 | 5,650 | 0% |
| *2* | Cognizant Tech | X | 57 | 4,293 | 1% |
| *3* | Infosys | X | 552 | 3,454 | 16% |
| *4* | Wipro | X | 0 | 3,048 | 0% |
| *5* | Accenture | X | 13 | 2,275 | 1% |
| *6* | Tech Mahindra | X | 48 | 1,781 | 3% |
| *7* | IBM | X | 161 | 1,462 | 11% |
| *8* | Larsen & Toubro | X | 35 | 1,298 | 3% |
| *9* | Syntel | X | 23 | 1,080 | 2% |
| *10* | iGate | X | 127 | 886 | 14% |
| *11* | Amazon | | 522 | 877 | 60% |
| *12* | Computer Sciences Corp. | X | 100 | 873 | 11% |
| *13* | HCL America | X | 108 | 855 | 13% |
| *14* | Microsoft | | 1,869 | 850 | 220% |
| *15* | Google | | 750 | 728 | 103% |
| *16* | Intel | | 1,018 | 700 | 145% |
| *17* | Deloitte | X | 406 | 559 | 73% |
| *18* | CapGemini | X | 193 | 536 | 36% |
| *19* | Mindtree | X | 11 | 487 | 2% |
| *20* | Apple Inc. | | 538 | 443 | 121% |

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of the employer. Guestworker programs need to be designed very carefully to ensure they are not distorting the labor market and are not harming American and foreign workers alike.

TABLE 6

## Top H-1B Employers

*Country of Origin for H-1B Workers FY05-12 Virtually All H-1Bs From India*

| FY14 Rank | Employer | Top Country | Share | 2nd Country | Share |
|---|---|---|---|---|---|
| *1* | Tata Consultancy | India | 99.7% | UAE | 0.0% |
| *2* | Cognizant | India | 99.6% | China | 0.1% |
| *3* | Infosys | India | 98.1% | China | 1.3% |
| *4* | Wipro | India | 99.6% | China | 0.0% |
| *5* | Accenture | India | 95.4% | Phillipines | 3.7% |
| *6* | Tech Mahindra | India | 99.4% | Kuwait | 0.0% |
| *7* | IBM | India | 87.3% | China | 3.9% |
| *8* | Larsen & Toubro | India | 99.7% | UAE | 0.1% |
| *9* | Syntel | India | 99.7% | Malaysia | 0.1% |
| *10* | IGate | India | 98.9% | Canada | 0.1% |

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### *H-1B hiring patterns indicate preferential hiring and that a bona fide recruitment process is not being followed.*

The H-1B program is being used for preferential hiring from particular countries. Virtually, all of the tens of thousands of H-1Bs being hired by the top employers come from a single country, India.

Table 6 shows the top two countries of origin for the top H-1B employers. Ireland-based Accenture drew 95.4% of the 8,191 H-1B workers it imported from FY05-12 from India. While India is a large source of STEM talent, it isn't the only source. For example, China was the largest source country for Google's H-1Bs over the same time frame (not shown in the table). And, USCIS reported that 64% of H-1B beneficiaries in FY12 were from India.[8] The business model of the top H-1B employers shows a strong preference of H-1Bs from India.

### *Guestworker Visas Are Closing Off Pathways to the Middle Class, Exacerbating Racial, Gender, and Age Discrimination*

Professional jobs have been an important rung on the ladder to the middle class. Computer Occupations in particular have been a traditional path from working class to the middle class. Exploitation of the H-1B and other guestworker programs is shutting that pathway down and as we see in the case of Southern California Edison, many are being forcibly sent down from the middle class.

This is especially troubling since the technology industry has a terrible track record on diversity. There are very low rates of hiring of African-Americans and Hispanics as well as women. And age discrimination is an open secret in the

technology industry. The SCE workers are typically in their 40s and 50s and are men and women of all races. While the H-1Bs being imported for IT occupations are almost all Indian men in their 20s and 30s.

## *Universities are aggressively using their special status in ways that are concerning and deserve much more scrutiny.*

A scandal emerged a few months ago at Wright State University in Ohio.[9] The university used the H-1B rules to create a relationship with a for-profit IT firm. The purpose of this relationship appears to have been to allow the for-profit firm to bypass the annual H-1B cap by piggybacking on Wright State. As employers, universities are exempt from the cap. That exemption is extended to firms, normally subject to the cap, that have an "affiliation" with the university. The criteria used to determine what counts as a bona fide affiliation is already loose, but the Obama Administration is trying to make it even looser in a recent proposed rule.[10]

No one knows how many more Wright State's are out there since there is no regular auditing of the nature of these "affiliations." We do know that many other universities are very aggressively and creatively trying to exploit the university-affiliation loopholes to bypass the cap and wage rules. A recent New York Times article described CUNY as "hacking" the H-1B rules to "exploit loopholes" that allow it to bypass the cap. And Massachusetts has a similar program. These programs are clearly outside of Congress' intent when it created the cap exemption for the universities.

There is no justification for having cap-exempt status magically extend to firms that should be subject to the cap. Congress should close this loophole.

## *The L-1 and OPT Guestworker Programs Have No Protections & Are Harming American Workers*

President Obama targeted the OPT and L-1 programs as part of his announcement in November 2014 of executive immigration actions.

The L-1 visa and F-1 visa Optional Practical Training (OPT) programs are in many ways more harmful to American workers than the H-1B program. They have no protections for American workers or foreign workers. There are no recruitment or non-displacement requirements for either program. American workers can and are replaced by these workers. The scandalous case of Siemens, in Lake Mary Florida, forcing its American workers to train foreign L-1 visa replacements hired by Tata has been well documented.[11]

Neither the L-1 nor the OPT have *any wage floor,* a cap, recruitment requirements, or non-displacement. Further, both programs are subject to virtually no federal scrutiny or oversight. We have no idea how many L-1 visa holders are here at any one time, and unlike the H-1B, we don't even know how many are approved for each company because of blanket petitions (for which no publicly available government data exist). A review of L-1 visa issuance, I-129, and admissions data suggest the stock of L-1 workers is likely to be in the neighborhood of 300,000. In addition, employment authorization document data from DHS suggest there are likely to be about 200,000 L-2 spouses working in the labor market, who accompany the principal L-1 beneficiaries.

With no wage floor, the L-1 visa program offers wage arbitrage opportunities even greater than with the H-1B. Workers can be paid home country wages. The wage differentials between America and India, the source country for the largest

TABLE 7

## Top 10 L-1 Employers for Fiscal Years 2002-2011 9 of 10 Use L-1 Visas Principally for Outsourcing

| L-1 Use Rank | Company | L-1s Obtained FY02-11 | Uses L-1 for Outsourcing |
|---|---|---|---|
| *1* | Tata Consultancy Services | 25,908 | Y |
| *2* | Cognizant Technology | 19,719 | Y |
| *3* | IBM India | 5,722 | Y |
| *4* | Wipro | 5,507 | Y |
| *5* | Infosys | 4,015 | Y |
| *6* | Satyam (now Mahindra Satyam) | 3,274 | Y |
| *7* | HCL America | 1,974 | Y |
| *8* | Schlumberger | 1,479 | N |
| *9* | Price Waterhouse Coopers | 1,375 | Y |
| *10* | Hewlett Packard Intel Corp | 1,254 | Y |

**Source:** DHS OIG: http://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-107_Aug13.pdf

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share of L-1s, are staggering. In the case of an information technology worker from India, this could mean a salary of just $8,000 per year. Even including the housing allowances and living expenses often given to these workers, the wages would be far below market.

For an example of just how low L-1 visa wages can be, one needs to look no further than the case of Electronics for Imaging. The San Jose Mercury News reported that a firm, Electronics for Imaging, paid its guestworkers from India $1.21/hour to install computers and mistreating them.[12] Those workers were imported on an L-1 visa, for work that should have been paid at an hourly rate of $19 to $45 per hour. Shockingly enough, the firm was not in any violation of the L-1 program because there is no wage requirement. Instead they were found to have violated California minimum wage laws. Electronics for Imaging isn't some obscure company, it is a Silicon Valley based publicly traded firm with more than a half-billion dollars in revenue.

Would adopting a wage floor harm firms? The industry lobbying coalition, Compete America, heartily endorsed the *IDEA Act of 2011* introduced in the House in the 112th Congress.[13] That bill included a wage floor for L-1 workers, something that doesn't exist now.

Similar to the H-1B, the L-1 program has been extensively used to support the outsourcing of American jobs overseas, as Table 7 shows.

Since the last hearing, the President's team has followed through on its November 2014 announcement of immigration action. The DHS issued policy guidance on the L-1 visa program. The guidance's goal is to make it easier, not harder,

for employers to obtain L-1 visas. While there was some convoluted language about consular officers being able to take wages into account when evaluating whether an L-1 worker actually possesses "specialized knowledge," the guidance does not set a wage floor. The upshot is that the guidance will most likely make it easier for employers to exploit the loopholes in the L-1 program to bring in even more cheap labor like those $1.21 per hour specialized knowledge workers that Electronics for Imaging imported.

Congress should ask for a full accounting of how the L-1 program is being used. We need data on which firms use the program, for which types of workers, at what wages, for which locations, so that we can evaluate its impact

The Obama Administration has also recently issued proposed rules on the OPT program. I have grave concerns about the proposed rules. The Department of Homeland Security's proposed STEM OPT extension fails to protect foreign students and American workers.

For decades, the Optional Practical Training (OPT) program has permitted foreign graduates of U.S. universities, who visit the United States to study through the F-1 nonimmigrant visa program, to be employed in the United States for up to 12 months immediately after graduation. In 2008, the George W. Bush administration extended the OPT program period to 29 months for F-1 graduates of a science, technology, engineering, or math (STEM) program—known as the STEM OPT extension—through an Interim Final Rule (IFR) promulgated by the Department of Homeland Security (DHS). On August 12, 2015, the U.S. District Court for the District of Columbia struck down the 2008 IFR, ruling that the regulation was illegally created in violation of the Administrative Procedure Act. Judge Ellen Segal Huvelle vacated the IFR effective February 12, 2016.

On October 19, 2015, President Obama proposed new DHS regulations that would reinstate the STEM OPT extension and increase its duration from 29 months to 36 months per STEM degree for foreign STEM graduates, and allow the extension eligibility to apply to up to two STEM degrees. Effectively, this would allow foreign graduates with STEM degrees to be employed for up to six years while on an F-1 visa. The DHS regulatory notice solicited comments from the public. In my comment, co-authored with Daniel Costa, we argue that the president's STEM OPT extension proposal is problematic for several reasons: [14]

1. The STEM OPT extension program has no authorization in the law and was created entirely via executive fiat by the George W. Bush administration in 2008, which extended the original OPT program period from 12 to 29 months. Except for a three-year pilot program in 1990 (which expired shortly thereafter), Congress has never explicitly authorized the employment of foreign students on F-1 visas for 12, 29, 36, or 72 months.
2. The STEM OPT extension program masquerades as a mentoring and training program for foreign graduates with STEM degrees from U.S. universities; in practice it is a large temporary work-visa program for foreign workers with virtually no rules.
3. There are no enforceable wage standards or protections for the foreign students in the OPT program or for the U.S. workers with whom the OPT workers compete. Employers are permitted to deeply undercut locally prevailing wages for jobs in STEM fields. Employers are not required to first recruit U.S. workers or even publicly advertise jobs to them before hiring OPT workers, meaning that employers do not have to establish the existence of a labor shortage before hiring workers through OPT.

4. The STEM OPT program makes de facto guestworkers significantly cheaper than U.S. workers by waiving the employer's obligation to pay federal payroll taxes. This creates a financial incentive for employers to hire OPT employees instead of U.S. workers in STEM jobs, which is an obvious disadvantage for U.S. workers, most of whom are likely to be recent STEM graduates seeking entry-level jobs.
5. The program will further reduce employment opportunities for U.S. graduates in STEM fields. And because the OPT is a de facto guestworker visa that can last as long as six years and has no annual numerical limit, its existence will encourage more foreign students to study in the United States in hopes of remaining here to work, leaving fewer educational opportunities for U.S. students.
6. There is no justification for extending the OPT work permit from one year to three or six years that is not based on the educational needs of foreign students or on the needs of the U.S. labor market. A 12-month work/training period is more than adequate for any STEM degree program.

## *Granting Instant Greencards To Any Graduate of a U.S. University Is A Bad Idea*

A number of proposals have been made to "staple a green card" to the diploma of every foreign STEM student who graduates from a U.S. university. Such a broad based policy will have significant adverse effects on the domestic workforce and student population?

Any bill that eliminates labor certification for all STEM graduate students and eliminates the cap to their numbers will create perverse incentives in both the labor and educational markets. Employers will be incentivized to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination.

Universities will be placed in a conflict of interest position by becoming the sole gatekeeper for issuing greencards and at the same time making money from issuing those greencards. Universities will be put in the position of selling greencards to foreign students. And it will be a bonanza for those universities. Given that Master's degrees are short in duration (as little as 12 months), and have little oversight from outside bodies (no specialized accreditation process for most), this provision will make it inexpensive for foreigners to purchase greencards from a variety of universities. We will see a flood of foreign student applications, crowding out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields. Foreign students are much less sensitive to wages and working conditions than their American counterparts because they are starting from lower expectations in the home countries and obtaining a greencard is a very valuable commodity. Foreign students will see paying the educational bills as a small price for a greencard.

Congress, not universities, should be deciding who immigrates to the country. The country should not begin selling large numbers of greencards, and certainly not at fire-sale prices.

There is no justification for the "stapling a greencard to the diploma." It is solving a problem that does not exist. All objective studies find that there are no systemic shortages in the STEM labor markets, and there is no justification for such a provision. Further, it is guaranteed to create very negative consequences for American workers, American students, and America's national innovation system.

## *Immigration Policy Should Be Made By Congress, Not the U.S. Trade Representative*

Given the widespread use of both H-1B and L-1 visas by offshore outsourcing firms, Congress should take affirmative steps to make it clear that both guestworker programs and permanent residence are immigration—and not trade—policy issues. In 2003, the U.S. Trade Representative (USTR) negotiated free trade agreements (FTAs) with Chile and Singapore, which included additional H-1B visas for those two countries, and constrained Congress from changing laws that govern the L-1 visa program. In response, many members of Congress felt it was important to re-assert that Congress, not the USTR, has jurisdiction over immigration laws. But no law was ever passed. Without legislation, the muddying of trade and immigration policy will keep recurring. Most recently, it appears that some L-1 visa provisions were included as a side agreement in the Korea-U.S. Free Trade Agreement. Many countries, including India, have pressed for more liberalized visa regimes through trade agreements including proposing a new GATS work visa. Congress, not the U.S. Trade Representative, should have the authority to change these laws, and Congress should pass a law reaffirming its jurisdiction over immigration.

Recent trade deals such as the Trans-Pacific Partnership and Trade in Services Agreement apparently have "labor mobility" provisions, usurping Congress' ability to set immigration law.[15] Congress should instruct the US Trade Representative to eliminate any Mode 4 provisions from the agreements.

## *Training is More Trojan Horse Than Panacea -There is No Systemic Shortage of American Technology Workers & Training Programs Such as Tech Hire are a Distraction at Best & Misinformation at Worst*

Last year, the White House announced a $100 million initiative to train workers for IT jobs. As an educator I'm always pleased when the government recognizes the importance of training and education, but the simple fact is that this and other training initiatives are a distraction from what needs to be done to fix the IT labor market.

The Tech Hire initiative is based on a false premise: that there is a shortage of American IT workers and jobs are going unfilled. As my fellow panelist, Professor Hal Salzman, has shown, there is no shortage of IT workers. In making its case for Tech Hire, the White House is using proprietary, non-governmental, data on job openings from a private consulting firm to make the case that there is a shortage and to justify the program. No one knows the methodology that the consulting firm uses and how to interpret the numbers. The White House compounded the problem by claiming that these jobs are going "unfilled." As everyone knows, except maybe the White House's Chief Technology Officer, there is enormous churn in the IT labor market, so there are always large numbers of openings. Openings are not a good indicator of demand. Of course, if there were many jobs going unfilled we'd see very rapid increases in wages for IT jobs. That hasn't happened since the late 1990s.

The Tech Hire initiative also has no teeth to create jobs. Firms that are participating have no requirement to even consider the trainees for positions. The White House has not explained why any employer would hire one of these American trainees instead of a cheaper guestworker. So, the White House is making promises it knows it cannot keep.

What is particularly disturbing about the Tech Hire program is that it is funded by fees collected from H-1B applications in order to fill a "skills gap." The irony and absurdity of this program and its rationale is certainly not lost on the SCE workers training their H-1B replacements!

An American SCE IT worker is losing her job to an H-1B replacement, and is training that foreign worker. It's abundantly clear that the American IT workers have the superior skills. They are then told by the White House that the $1,000 paid in fees to the government for the H-1B will be used to "fill the skills gap" because there aren't enough trained IT workers.

The SCE worker loses his $110,000 job so that the government can collect $1,000 in fees to fund training for the phantom skills gap. What a terrible deal for America and its taxpayers.
The technology industry has long offered the Trojan Horse of paying training fees in exchange more H-1Bs. This is fool's gold for American workers. It is a lose-lose situation. American workers lose their jobs to H-1Bs, lose wages and bargaining power to H-1Bs, and the government spends pennies on training for jobs that are cheaper to fill with H-1Bs.

## *The Solutions Are Obvious And Available*

Solving the problems with the H-1B, L-1, and OPT guestworker programs is straightforward. The solution includes:

1. Raising the wage floors substantially. Guestworkers should not be hired because they are cheaper than Americans.
2. Employers should make a bona fide effort to recruit *and hire* qualified American workers prior to hiring a guestworker.
3. American workers should not be displaced by guestworkers.
4. Employer compliance should be ensured through independent government audits.

Three bills that would improve the programs have been introduced in this Congress. They all provide sensible solutions that would result in significant improvements in the programs they target.

- 2266 – H-1B and L-1 Visa Reform Act of 2015
- 2394 – American Jobs First Act of 2015
- 2365 – Protecting American Jobs Act

These bills should be considered and passed as soon as possible.

Congress should urge the President to do more. His Administration can and should do more than it has.

I would note that when asked about the Disney H-1B case, Secretary of Homeland Security Jeh Johnson said at a House hearing that Congress needs to change the law.[16]

"Well that's actually something where I think Congress may be able to help us," Johnson replied. "It's my understanding that we don't have enough tools legally to deal with that kind of situation, assuming it occurs."

With April 1, and the next H-1B lottery season just weeks away, it is urgent that Congress and the Administration act immediately to fix the program. We know exactly what will happen if Congress and the Obama Administration fail to act – tens of thousands more American workers will be training their cheaper guestworker replacements. Thousands of American jobs will be offshored. Tens of thousands of American workers will have their wages depressed. And thousands of American students will be denied opportunities.

That's one lottery American workers and students are guaranteed to lose.

## *Endnotes*


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