Statement for the Record
June 8, 2016

United States Senate
Judiciary Subcommittee on Immigration and the National Interest
"The H-2B Temporary Foreign Worker Program: Examining the Effects on Americans' Job Opportunities and Wages"

Submitted by:

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The following statement is submitted on behalf of North America's Building Trades Union (NABTU), which is composed of fourteen national and international unions, and 386 State, local, and provisional building and construction trades councils representing 3 million workers throughout the United States and Canada. Most of the workers represented by NABTU and its affiliates in the United States are engaged in or seeking employment in the building and construction industry, which is generally short-term and intermittent, hence they are directly impacted by the administration and enforcement of the H-2B guest worker program.

Today's job market is tight. A recent economic analysis reveals that six unemployed Americans are competing for every single job opening in construction. Incredibly, as the job market recovers, we have recently seen very troubling changes to the implementation of the H-2B program, both in terms of the actual numbers of workers invited to labor in the country, and the lack of reliable enforcement mechanisms to ensure that the domestic workforce is not harmed by their participation in the labor market.

Language included in the Fiscal year 2016 Consolidated Appropriations Act exempts returning H-2B guest workers from the statutorily set cap and massively grows the ability of employers to import foreign workers. In addition to the massive expansion of this program, which has been rife with abuse, Congress also defunded many critical protections to wages and U.S. worker recruitment efforts, including most importantly, the elimination of funding for conducting employer audits.

Congress's expansion of the H-2B visa program and the defunding of these critical protections is only the latest example of what appears to be an insistence on creating barriers to the economic success of American blue-collar workers. A decision to facilitate the flooding of

the labor market with foreign-born H-2B workers represents another swift blow to the economic interests of blue-collar American families, and must be stopped.

Once they arrive in the United States, H2-B guest workers concentrate in the landscaping, conservation, recreation, housekeeping, and construction industries.[1] Their increased availability in these industries has served to facilitate the suppression of wages enjoyed by their American counterparts. Two dynamics are feeding the ability of this wage suppression; first, an insufficient calculation of prevailing wages by industry, and secondly, non-existent enforcement of essential labor protections. The obvious vulnerability of these imported workers often results in workers not being paid, or being paid below the already manipulated, and approved, "prevailing wage" rates. For instance, one employer in Texas recently put in a request for a foreign roofer at a rate of $8 an hour, in order to avoid paying a union American roofer $22.84 an hour. Even non-union roofers command nearly twice as much as H-2B workers.

According to the Department of Labor, Texas issued nearly 16,000 H-2B visas during fiscal year 2015 -- more than any other state by a landslide. The state boasting the second highest number, Florida, issued less than half as many.[2] The recently enacted expansion of the H-2B visa program is certain to accelerate a painful race to the bottom on wages and benefits for U.S. workers, including the skilled craft professionals that I represent. This, in turn, will only fuel the nationwide growth in income inequality -- and further eviscerate the American middle class.

Let us not forget that one of the fundamental policies embedded in U.S. immigration law for more than one hundred years is the principle that U.S. workers must be protected from unfair competition by foreign workers for both temporary and permanent jobs in the United States. An examination of the legislative history of U.S. immigration laws confirms that Congress' principal and longstanding statutory purpose was to protect U.S. workers against foreign competition by carefully delineating the circumstances under which nonimmigrant alien workers would be permitted to enter the country for the purpose of performing skilled or unskilled labor.

Consequently, any discussion relating to modification to, or administration of, the H-2B visa program in particular, or the general reforming of the Nation's immigration system as a whole, must be conducted with the understanding that such action be taken with the central intent to protect against unfair competition from foreign labor.

The H-2B visa program allows prospective U.S. employers to arrange for the admission of foreign workers to perform temporary unskilled non-agricultural work. The program balances an employer's temporary need for these workers against the need to protect similarly employed or skilled American workers' employment, wages, and working conditions.

The Immigration and Naturalization Act (INA) authorizes the issuance of H-2B visas only in cases in which the prospective employers demonstrate that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers. Specifically, the INA bars admission of prospective non-immigrants seeking to enter the U.S unless the Department of Labor (DOL) provides a certification to the Secretary of State and the

[1]https://web.archive.org/web/20160102143441/https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Selected_Statistics_FY_2015_Q4.pdf
[2]https://web.archive.org/web/20160102143441/https://www.foreignlaborcert.doleta.gov/pdf/H-2B_Selected_Statistics_FY_2015_Q4.pdf

Department of Homeland Security (DHS) that there are not sufficient U.S. workers who are able, willing, qualified, and available at the time an employer applies to import workers to fill the vacancy. As a result of several regulatory and legislative actions through the years, this model of labor certification has been compromised and replaced with a labor attestation. This modified labor market test is very limited and has weakened the protections for vulnerable U.S. workers employed or seeking employment in industries such as building and construction. Attestation programs, which essentially allow employers to monitor themselves, do not protect workers. A rigorous labor certification process must be reinstated in the H-2B guest worker program. This process must accurately determine legitimate labor shortages, include adequate wage protections, guard against the displacement of U.S. workers, and provide an adequate system for making job opportunities known to the domestic workforce. It goes without saying that it must also ensure that any qualified U.S. worker be hired before an employer is allowed to import foreign workers.

Unfortunately, the deterioration of these necessary protections has directly impacted our industry. The limited, and constantly deteriorating labor market test combined with a constant employer driven desire to grow the H-2B program beyond the current 66,000 visa cap, has allowed unscrupulous employers to over import H-2B workers, resulting in devastating impacts on the current and future competitiveness of NABTU members who are being forced into an unfair competition for work with this highly exploitable workforce.

Legislative efforts that undermine the already insufficient U.S. worker recruitment process, fundamentally weaken wage protections, and place the livelihoods of American construction workers in jeopardy need to be stopped. For example, until 2005 the process of determining prevailing wages required that applicant-employers apply for wage rates determined by the Davis-Bacon Act or the McNamara-O'Hara Service Act for which such wage determinations existed. In succeeding years, the DOL adopted a series of changes to its H-2B prevailing wage determination process including the elimination of Davis-Bacon and Service Contract use. The perversion of wage rates in Davis-Bacon-impacted classifications, combined with the constant legislative push to grow the base number of workers in the H-2B program, are certainly having serious implications for hard working American construction workers.

I am deeply troubled by the recent actions of Congress to unravel the already insufficient protections in the H-2B program. All of these misguided efforts will certainly induce a deviant incentive for unscrupulous employers to prefer these exploitable workers and, without doubt, displace increasing numbers of American workers.

I am heartened that this subcommittee has dedicated this hearing to examining the effects on Americans' job opportunities and wages. Far too often we have seen the false claims that this debate is simply about a few employers in the seafood or summer tourist industries importing foreign workers to do the jobs Americans won't or are unwilling to do.

In the instance of the construction industry, I can guarantee you that many of the job classifications in which employers are importing H-2B workers are highly skilled and generously compensated. These jobs provide real access to the middle class for American workers. In order to realize this goal, we must put an end to exploitive practices that allow employers to over saturate the labor market and place downward pressure on wages and workplace conditions.

NABTU has a strong tradition of over 100 years of registered apprenticeship education and training, which has led to the creation of a proud, domestically sourced workforce in the construction industry. I must assert that the investment in training of a domestic skilled craft workforce must be a part of this conversation as well if we are to continue to provide economic opportunity to our own citizens.

What happens when guest worker visas are not available en masse? The bargaining power of U.S. workers in impacted industries increases. The opportunity to have shared prosperity as a result of investing in our nation's infrastructure in a way that allows America to remain the greatest country in the world lies in the hands of Congress. Congress will decide to either stand up for its citizens and demand protections for the American workforce that will allow them to succeed and through hard-work achieve family sustaining wages, or it will propose solutions that guarantee that they will fall prey to exploitive business models that rely on the importation of easily exploitable, cheap labor that will not serve our national interests.