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RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

Statement of
Representative Jim Jordan, Ranking Member
Subcommittee on Domestic Policy

Hearing on
“The H-2B Guestworker Program and Improving the Department of Labor’s
Enforcement of the Rights of Guestworkers”
April 23, 2009

Thank you, Mr. Chairman.

This hearing provides an excellent opportunity to discuss and debate the existing H-2B guestworker program and the newly delegated enforcement of H-2B violations to the Department of Labor. This is an important matter and I look forward to having a productive discussion on the many issues surrounding the present H-2B visa program and their economic implications.

We can surely agree that enforcement of the law and protection of guest workers is critical. Many organizations and individuals, including some that we will hear from later on this morning, have advocated for substantial reforms to the H-2B guestworker program. Indeed, some of these proposed reforms might be helpful, but, let’s also keep in mind today that implementing many of the suggested policy changes may require Congress to entirely overhaul the guest worker program.

As a result, our discussion needs to also examine how reforming the current H-2B program will affect the economy and U.S. workers. Being a representative from Ohio, a state struggling with economic hardship and the housing crisis, this is an issue that hits close to home.

In 1986, Congress passed the Immigration Reform and Control Act. The Act contained major revisions of the temporary worker H-2 program. Specifically, it divided the H-2 program into two separate visa categories. The H-2A program was for temporary agricultural workers and the new H-2B was created for temporary non-agricultural workers.

Today’s hearing will focus on the existing H-2B program.

On January 18, 2009, the Department of Homeland Security delegated its enforcement authority of H-2B violations to the Labor Department. I would like to emphasize that prior to this delegation, H-2B violations went largely unenforced by DHS. Without a doubt, the failure to enforce existing laws is unacceptable.

Prior to January 18, 2009, DOL's enforcement of H-2B wages was limited to laws specifically delegated to DOL, such as the Fair Labor Standards Act. However, following the delegation of enforcement by DHS, DOL immediately promulgated regulations that would enforce the H-2B program.

As it now stands, an H-2B employer will have to make certain guarantees to the Department of Labor regarding their hiring of H-2B workers. Most relevant to today's hearing, it is important for this subcommittee to take into consideration that an H-2B employer must attest and demonstrate that "qualified persons in the United States are not available and that the terms of employment will not adversely affect the wages and working conditions of workers in the United States similarly employed."¹

These employer attestation requirements for the H-2B application provide a foundation to prevent employer violations, while at the same time encourages employers to use U.S. workers.

Now that DHS has delegated to DOL enforcement authority for H-2B violations, the DOL has supplemented U.S. worker protection with new mechanisms to ensure compliance with H-2B filing and attestation requirements, including penalties, debarment, supervised pre-filing recruitment, and post adjudication audits.

In short, the Department of Labor now has the authority and capability to enforce H-2B violations.

Unfortunately, the change in Administration and the slow appointment process has left the Department of Labor with a limited management staff and no one who is capable of testifying on the implementation of the H-2B program is present today. No accurate assessment of the new H-2B regulations can be made without a DOL representative, but it appears that DOL has failed to implement any of the new H-2B regulations laid out above. I hope to eventually hear the Administration's perspective on the H-2B program before this subcommittee.

The Department of Labor should be given a chance to enforce the regulations promulgated on January 18, 2009. To be sure, once the existing regulations are enforced, Congress and the DOL will be in a better position to assess the H-2B visa program. However, before Congress and the Department of Labor can seriously consider future changes to the H-2B program, the broader economic implications of the guestworker program must be thoroughly examined and discussed.

Thank you, Mr. Chairman for holding this very important hearing today. These issues not only affect my home state of Ohio, but also the entire United States. I look forward to hearing from our witnesses.

¹ 20 C.F.R. § 655.3(a) (2006).