

Testimony of

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Chairwoman Lofgren, Ranking Member King, thank you for allowing me to testify at this important hearing on the impact of immigration policy on business. I will be testifying on behalf of the National Restaurant Association and the Essential Worker Immigration Coalition, which I co-chair.

Founded in 1919, the National Restaurant Association is the leading business association for the restaurant industry. The Association's mission is to represent, educate and promote a rapidly growing industry that is comprised of 935,000 restaurant and foodservice outlets employing 12.8 million people.

Created in 1999, the Essential Worker Immigration Coalition (EWIC.org) is a coalition of more than 50 trade associations, businesses and other organizations from across the industry spectrum concerned with the shortage of lesser-skilled and unskilled ("essential worker") labor.

I'll cut to the chase: We have a serious demographic problem in the United States. Without an overhaul to our dysfunctional immigration system, we are in danger of not having the workers we need to grow our economy.

Roughly speaking, the native born U.S. population is virtually at replacement level -- we are having enough babies only to replace ourselves. But the demand for workers grows.

The restaurant industry, for example, is the nation's second-largest private sector employer, and we have been a job creation machine. The U.S. economy added 8 million net new jobs in the last 45 months. More than one in eight of those jobs were in the restaurant and foodservice sector. And our industry supports an estimated 7 million other jobs in industries such as manufacturing, agriculture and construction. We estimate that every dollar spent by consumers in restaurants generates an additional \$2.34 spent in our nation's economy.

Our industry is proud to give almost one third of Americans their first job. In many ways, we are America's job training program, teaching those born here and those from abroad skills necessary to succeed. And our industry provides those with drive and ability a path to higher success – management

or ownership. Four in five salaried restaurant managers began their careers as hourly employees.

That job-creation machine needs to keep going. At the National Restaurant Association, we estimate that our sector will add 2 million jobs over the next decade, a 15 percent increase in our workforce. Over the same period, the Bureau of Labor Statistics estimates that the U.S. labor force will grow only 10 percent. And the number of 16- to 24-year-olds - a group that makes up about half of the restaurant industry's workforce today -- will not grow at all.

The restaurant industry is not alone. The BLS estimates that employment of janitors and cleaners, for example, will grow by 440,000 jobs over the next decade. Employment for home health aides will grow by 350,000.

Industries that traditionally provide large numbers of jobs to younger, lesser-skilled workers will have more and more trouble finding employees. These are essential jobs for our economy and essential in moving people up the job ladder. These industries are also creating significant job growth.

The Bureau of Labor Statistics lists the 30 fastest-growing occupations between 2004 and 2014. Twenty-two of those 30 occupations require just on-the-job training. Half of the 30 require only short-term on-the-job training. Just six require a bachelor's degree or higher education. The nation needs an immigration policy that reflects the growing demand in these jobs.

Long-term economic forecasts may be a topic for debate, but our nation's demographic picture and challenges are very clear. If we know how many eight-year-olds are in the country today, we have a very good idea how many 18-year-olds will be entering the workforce in a decade. It is said that demographics are destiny. We ignore these facts at our economic peril.

Some say, "Just pay more and you'll get workers." It is not that simple. We face a shortage of workers that is being felt not just at the low end of the wage scale. Construction jobs, for example, average over \$21 an hour and are going unfilled.

If America is not producing enough workers to sustain our growth, where are we getting people to fill the jobs? From abroad. The problem is that the legal channels available to employers are grossly insufficient. The number of

green cards available for lesser-skilled workers is 5,000 per year. There is not even a non-immigrant visa program to bring in such workers for longer than one year. Is it any wonder that there are an estimated 400,000 to 500,000 undocumented immigrants coming into the United States, and staying here, each year?

Another major problem is a worker verification system that satisfies no one - not employers, not workers, not the government.

Against their will, employers were drafted into the nation's immigration police force in 1986. And for the last 20 years, we have been dealing with an employee verification system that makes the employer walk a fine line between potentially forged documents on one side and risk of discrimination action on the other.

When an employee is hired, the employer must verify that person's authorization to work in the United States by filling out an I-9 form. The rules are complicated and, at times, contradictory.

New employees are asked to produce documentation verifying identity and work authorization. They have 25 documents to choose from. The dizzying array includes school identification cards, U.S. Coast Guard Merchant Mariner cards, and Native American tribal documents. These are divided into three columns. An employee can produce one from Column A – which lists the documents that prove both identity and work authorization. Or, the employee can produce one each from Column B – which proves identity and one from Column C – which proves work authorization. If the document looks facially valid, the employer must accept it.

Suppose you are an employer that wants to go the extra mile to make sure the employee is work authorized? Should you ask for a specific document from the list, one you are more familiar with than, say, a U.S. Coast Guard Merchant Mariner card? That's against the rules. Should you ask for an extra document, just to be sure? That's against the rules too.

An immigration system this dysfunctional requires a comprehensive overhaul.

There are few subjects as far-reaching as immigration. From national security to humanitarian concerns to economics: there are many issues, many voices, many stakeholders.

From the perspective of the Essential Worker Immigration Coalition, we seek comprehensive immigration reform that encompasses several key elements. Each of these elements must be workable. I urge you to keep that key concept -- workability -- in mind as this legislation moves through the political process. Compromise is the lifeblood of policymaking, but it must produce a new immigration system that is workable --for those who must implement it, for those who must enforce it, for employers, for U.S. workers and for foreign workers.

We seek workable reform that addresses the following key elements:

### **The Undocumented**

An estimated 5 percent of the U.S. workforce is undocumented. That economic fact of life should dictate that reform include a path for a great many to earn legal status -- after paying a penalty and after meeting significant requirements such as learning English and going through security screening.

We believe that fair reform requires the undocumented to start at the back of the line for permanent residency. That process will take years. We believe workable reform should allow them to stay on the job and with their families while waiting for the process to move forward.

The program also must provide sufficient certainty to the undocumented worker that it is in his or her interest to come out of the shadows. It is in everyone's interest to maximize the number of undocumented individuals who participate in this process. The best way to do that is with the carrot, not the stick.

There has been quite a battle over the definition of the word amnesty. The American Heritage Dictionary defines amnesty as "a general pardon granted by a government, especially for political offenses."

Levying a fine, requiring background checks, requiring back payment of taxes, requiring continued work, requiring people to learn English, and requiring them to meet these obligations over a number of years in order to

earn a green card doesn't sound like a "general pardon." It sounds a lot more like a tough plea agreement followed by lengthy parole.

The immigration reform bill President Reagan signed in 1986 was amnesty. The current proposal is different: It includes penalties and a series of substantive obligations before people have a shot at applying for legal status. This is very different than what happened in 1986.

### **Sufficient Legal Channels for New Workers**

As I mentioned earlier, the net flow of undocumented individuals into the United States has been estimated at somewhere between 400,000 and 500,000 per year. This flow has been readily absorbed by a U.S. economy with low unemployment, presently around 4.5 per cent. This gives us an idea of the illegal flow that should be replaced by a safe, orderly, legal flow though workable, comprehensive immigration reform.

New workers should come into the United States only after American workers are given first chance at any job opening. These workers should come in with the same pay and protections as U.S. workers, including the same ability to organize in unions. Workable immigration reform should come as a complement to the U.S. workforce, not at the expense of the U.S. workforce.

Workable immigration reform should also provide a sufficient channel for seasonal and temporary workers to meet ongoing shortages. The current H-2B program has proven inadequate to address the need.

### **Employment Verification System/Enforcement**

We need a workable system for employment verification that functions for both small and large businesses. We need bright lines so businesses know the rules. We need safe harbors for employers who do the right thing, and we need penalties that deter without being unreasonable.

At a more basic level, the verification system itself must work. The Basic Pilot system is not an encouraging model. With approximately 15,000 employers participating, the error rate remains a concern despite significant efforts by the Department of Homeland Security to bring it down.

What would happen if millions of American employers were required to run 140 million workers through a government system that was not ready? We

believe that any verification system should be brought on line in stages, bringing one group of employers at a time into the system and allowing for tests of accuracy and efficiency before the next group of employers follows.

### **Border Security**

We must control our borders. The public demands this and they are right. Creating a legal way for workers to come into the United States will do more than any other single step to take the pressure off the border, but it is not enough. More steps will need to be taken.

However, we must be careful in structuring a system that requires certain border-security measures to be in place before worker or legalization programs get started. Any such “triggers” must be reasonable, attainable and not subject to legislative mischief.

### **Small Business**

Small business deserves careful consideration in crafting workable immigration reform. The nation’s small businesses are the engine of our economy. We must be wary of complex paperwork or document- retention requirements, high fees and fines, and intricate rules. A new immigration system will be hard enough for employers with full-time human-resources staff. Please keep in mind employers whose HR director also is the cook and dishwasher, and whose “office” may be an empty restaurant table.

### **The Alternative to Reform**

For business, the stakes are high. If Congress and the Administration fail to enact comprehensive immigration reform, the alternative for business is not the status quo. Employers face an escalating array of enforcement actions against them at the federal, state and local levels.

Understandably frustrated by the lack of action at the federal level, states and localities have stepped in. At the National Restaurant Association, we count more than 1,150 immigration bills introduced in state legislatures this year, twice as many as last year. There are almost 100 additional proposals at the city and county level. Several states and localities have already enacted laws or ordinances directed at businesses, the undocumented, or both. Legislation signed into law in Oklahoma last month is the most recent example.

The federal government also has escalated its enforcement activities and expanded their scope. The raid on Swift that made headlines recently was not an immigration-law action, but a raid targeting identity theft.

The federal government also is considering stricter regulations on businesses. The U.S. Citizenship and Immigration Services of the Department of Homeland Security has drafted regulations regarding the legal obligations of employers upon receiving so-called “no match” letters from the Social Security Administration. This proposal will lead to the dismissal of many workers. Additional proposals are sure to come.

Finally, we are concerned about Congress taking a piecemeal approach to reform if they cannot pass comprehensive reform. For example, during its recent minimum wage debate, the Senate passed an amendment that would have barred companies from federal contracts even for a single paperwork violation of immigration law. That amendment passed 94-0 with very little discussion. Thankfully, the provision was stripped out before final enactment, but it illustrates the danger.

Employers should not have to deal with a patchwork of confusing and sometimes conflicting state and local immigration laws, overlaid with more enforcement and more rules at the federal level. None of these get to the underlying problem -- a dysfunctional U.S. immigration system that does not match economic need.

### **Conclusion**

What is needed, and the challenge you face as legislators, is an immigration system that reflects the needs of the economy.

Picking an arbitrary number of immigrants to be allowed into the United States sets up a choice that is not in the U.S. national interest: allowing some industries the workers needed at the expense of other industries. It also sets up a conflict between family-based immigration and work-based immigration.

Approximately 1 million people become permanent residents of the United States each year. That’s about one-third of 1 percent of the U.S.’s population of 301 million. If legal immigration rose to 1.5 million per year – a number that more accurately reflects the economic need – that would still be less than one-half of 1 percent of our total population.

If we want the economy to grow, we will need workers. We urge policymakers to start there. Decide how much economic growth is desired, figure out how many workers of all kinds it will take to produce that growth, and set the immigration policy accordingly.

Immigration is a complex, complicated problem. It deserves more than piecemeal solutions, more than a patchwork of regulation at various levels of government. It deserves a comprehensive solution from the people who have true responsibility for immigration law: Congress and the President.

Thank you.

## **EWIC PRINCIPLES FOR IMMIGRATION REFORM**

- Reform should be comprehensive: addressing both future economic needs for future workers and undocumented workers already in the United States.
- Reform should strengthen national security by providing for the screening of foreign workers and creating a disincentive for illegal immigration.
- Reform should strengthen the rule of law by establishing clear, sensible immigration laws that are efficiently and vigorously enforced.
- Reform should create an immigration system that functions efficiently for employers, workers, and government agencies.
- Reform should create a program that allows hard working, tax paying undocumented workers to earn legal status.
- Reform should ensure that U.S. workers are not displaced by foreign workers.
- Reform should ensure that all workers enjoy the same labor law protections.

## **EWIC IMMIGRATION POLICY OUTLINE**

### **▪ A. New Non-Immigrant Programs Based on Economic Needs**

- A short-term program for industries that have short-term needs for one year or less.
- A long-term program that could be renewed if there are continuing needs.

### **▪ B. New Immigrant Visa (Permanent Residence) Program Based Upon Economic Needs**

- Available to participants in either short-term or long-term non-immigrant programs.
- Based upon petition by either Employer or Employee through a test of the U.S. labor market.
- With sufficient numbers of immigrant visas.

- New employment-based permanent visas should not come at the expense of other immigration categories.

### ▪ **C. Mechanism for Undocumented Workers in the U.S. to Earn Legal Status**

- Establish a mechanism to allow undocumented, taxpaying and otherwise admissible workers in the U.S. to earn a legal status.
- Define clear requirements and obligations for eligible and qualified participants.
- Conversion to lawful status should be based upon employability, although not necessarily a particular employer.

### ▪ **D. Workable Immigration Enforcement System**

- Enforcement of immigration laws is critical for economic, national security and for successful comprehensive immigration reform.
- Pairing enforcement with an updated legal immigration system to reduce undocumented immigration will result in adequate screening of the workforce, more control over undocumented workforce, and a shift in focus to the very small percentage of bad actors who seek to abuse the system.
- Enforcement reform should clearly define requirements and obligations for all parties.
- New enforcement regimes must not penalize employers for their past inability to comply with a broken system.

### ▪ **E. Funding for Immigration programs**

- Dedicate resources to fund continuing program initiatives.
- Provide start-up funding for structuring and implementing new program.

## **EWIC Essential Worker Immigration Coalition**

### **Membership List**

- American Health Care Association
- American Hotel & Lodging Association
- American Immigration Lawyers Association
- American Meat Institute
- American Nursery & Landscape Association
- American Road & Transportation Builders Association
- American Staffing Association
- American Subcontractors Association, Inc.
- Associated Builders and Contractors
- Associated General Contractors
- Building Service Contractors Association International
- California Landscape Contractors Association
- California Professional Association of Specialty Contractors (CALPASC)
- Carlson Hotels Worldwide and Radisson
- Carlson Restaurants Worldwide and TGI Friday's
- Farm Equipment Wholesalers Association
- Federation of Employers & Workers of America
- First Data
- Golf Course Superintendents Association of America
- Harborside Healthcare Corporation
- Ingersoll-Rand
- International Association of Amusement Parks and Attractions
- International Franchise Association
- Marriott International, Inc.
- Nath Companies
- National Association for Home Care
- National Association of Chain Drug Stores
- National Association of Home Builders
- National Association of RV Parks & Campgrounds
- National Chicken Council
- National Club Association
- National Council of Chain Restaurants
- National Restaurant Association

- National Retail Federation
- National Roofing Contractors Association
- National Tooling & Machining Association
- National Wooden Pallet and Container Association
- Outdoor Amusement Business Association
- Pilgrim's Pride Corporation
- Plumbing-Heating-Cooling Contractors - National Association
- Professional Landcare Network
- Retail Industry Leaders Association
- Small Business & Entrepreneurship Council
- Society of American Florists
- The Brickman Group, Ltd.
- Travel Business Roundtable
- Travel Industry Association of America
- Tree Care Industry Association
- Truckload Carriers Association
- Tyson Foods, Inc.
- United Fresh Produce Association
- US Chamber of Commerce