

Statement of Peter Kirsanow to the Senate Subcommittee on Immigration
March 16, 2016

Chairman Sessions, Members of the subcommittee, I am Peter Kirsanow, a member of the U.S. Commission on Civil Rights, a former member of the National Labor Relations Board, and a partner in the labor and employment practice group of Benesch, Friedlander. I am testifying in my personal capacity.

The U.S. Commission on Civil Rights was established by the Civil Rights Act of 1957 to, among other things, examine matters related to discrimination and denials of equal protection. Because immigration often implicates issues of national origin and sometimes race discrimination, the Commission has conducted several hearings on various aspects of immigration, particularly illegal immigration. The most recent hearings occurred in January 2015, August 2012 in Birmingham, Alabama and in 2008—the latter specifically related to the effect of illegal immigration on the wages and employment opportunities of black Americans.¹ The evidence adduced at the latter hearing showed that illegal immigration has a disproportionately negative effect on the wages and employment levels of blacks, particularly black males.²

The briefing witnesses, well-regarded scholars from leading universities and independent groups, were ideologically diverse. All the witnesses acknowledged that illegal immigration has a *negative* impact on black employment, both in terms of employment opportunities and wages. The witnesses differed on the extent of that impact, but every witness agreed that illegal immigration has a discernible negative effect on black employment. For example, Professor Gordon Hanson's research showed that "Immigration . . . accounts for about 40 percent of the 18 percentage point decline [from 1960-2000] in black employment rates."³ Professor Vernon Briggs wrote that illegal immigrants and blacks (who are disproportionately likely to be low-skilled) often find themselves in competition for the same jobs, and the huge number of illegal immigrants ensures that there is a continual surplus of low-skilled labor, thus preventing wages from rising.⁴ Professor Gerald Jaynes's research found that illegal immigrants had displaced U.S. citizens in industries that had traditionally employed large numbers of African-Americans, such as meatpacking.⁵

Illegal immigration has a disparate impact on African-American men because these men are disproportionately represented in the low-skilled labor force. The Census Bureau released an

¹ U.S. COMMISSION ON CIVIL RIGHTS, THE IMPACT OF ILLEGAL IMMIGRATION ON THE WAGES AND EMPLOYMENT OPPORTUNITIES OF BLACK WORKERS [HEREINAFTER THE IMPACT OF ILLEGAL IMMIGRATION], *available at* http://www.usccr.gov/pubs/IllegImmig_10-14-10_430pm.pdf.

² *Id.* at 3, Finding 5:

Illegal immigration to the United States in recent decades has tended to depress both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are black men. Expert economic opinions concerning the negative effects range from modest to significant. Those panelists that found modest effects overall nonetheless found significant effects in industry sectors such as meatpacking and construction.

³ *Id.* at 26.

⁴ *Id.* at 37, 38-39

⁵ *Id.* at 31.

important report on educational attainment after the Commission issued its 2008 report. This report, released in February 2012, found that 50.9 percent of native-born blacks had not continued their education beyond high school.⁶ The same report found that 75.5 percent of foreign-born Hispanics had not been educated beyond high school, although it does not disaggregate foreign-born Hispanics who are legal immigrants from those who are illegal immigrants.⁷ However, Professor Briggs estimated that illegal immigrants or former illegal immigrants who received amnesty constitute a third to over a half of the total foreign-born population.⁸ Foreign-born Hispanics who are in the United States illegally are disproportionately male.⁹ African-Americans who have not pursued education beyond high school are also disproportionately male.¹⁰ These poor educational attainment levels usually relegate both African-American men and illegal immigrant men to the same low-skilled labor market, where they must compete against each other for work.¹¹

The obvious question is whether there are sufficient jobs in the low-skilled labor market for both African-Americans and illegal immigrants. The answer is no. As Professor Briggs noted in his testimony to the Commission, “In February 2008 . . . the national unemployment rate was 4.8 percent, but the unemployment rate for adults (over 25 years old) without a high school diploma was 7.3 percent.”¹² During 2007, “Black American adult workers without a high school diploma had an unemployment rate of 12.0 percent, and those with only a high school diploma had an unemployment rate of 7.3 percent.”¹³ These statistics suggest both that there is an overall surplus of workers in the low-skilled labor market, and that African-Americans are particularly disfavored by employers.¹⁴

⁶ CAMILLE L. RYAN & JULIE SIEBENS, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2009 (Feb. 2012), at 7, available at <http://www.census.gov/prod/2012pubs/p20-566.pdf>.

⁷ *Id.*

⁸ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 35-36.

⁹ Peter Skerry, *Splitting the Difference on Illegal Immigration*, NATIONAL AFFAIRS (Winter 2013), at 5 (“Of the undocumented immigrants over the age of 18 currently residing in the U.S., there are approximately 5.8 million males, compared to 4.2 million females.”), available at http://www.nationalaffairs.com/doclib/20130102_Skerry.pdf.

¹⁰ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 52; see also Anne McDaniel, Thomas A. DiPrete, Claudia Buchmann & Uri Shwed, *The Black Gender Gap in Educational Attainment: Historical Trends and Racial Comparisons*, 48 DEMOGRAPHY 889, 890 (2011) (“It is well known that black males trail black females on a range of key educational outcomes, including high school graduation, college enrollment, and college completion.”), available at <http://jrnetserver.shorensteincen.netdna-cdn.com/wp-content/uploads/2011/10/fulltext.pdf>.

¹¹ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, *Statement of Vernon M. Briggs, Jr.*, at 37.

[I]t is not everywhere that there is likely to be significant competition between low skilled black workers and illegal immigrant workers, but there are ample circumstances where there is – such as the large metropolitan labor markets of Los Angeles, New York, San Francisco, Chicago, Miami and Washington-Baltimore. Moreover, some of the fastest growing immigrant concentrations are now taking place in the urban and rural labor markets of the states of the Southeast – such as Georgia, North Carolina and Virginia, which never before were significant immigrant receiving states in previous eras of mass immigration. Indeed, about 26 percent of the nation’s foreign-born population are now found in the states of the South – the highest percentage ever for this region. There is mounting evidence that many of these new immigrants in this region are illegal immigrants.

¹² THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, *Statement of Vernon M. Briggs, Jr.*, at 36.

¹³ *Id.*

¹⁴ *Id.*, *Statement of Harry J. Holzer*, at 41.

Statistics from the Bureau of Labor Statistics indicate that workers who lack a high school diploma continue to struggle. The labor force participation rate for workers over 25 with less than a high school diploma was 46 percent in January 2016.¹⁵ The unemployment rate for those individuals was 8.6 percent. When only 46 percent of people with less than a high school diploma are even participating in the labor market, we do not have a shortage of low-skilled labor.

People often say, “Well, illegal immigrants are taking jobs that Americans do not want to do. No one wants to be a hewer of wood or a drawer of water.” The problem is that there are thousands of Americans, and always will be thousands of Americans, who find that those jobs are the only ones for which they are qualified. How can you better yourself if you cannot even get on the first rung of the employment ladder and find yourself essentially shut out of certain industries? Georgetown professor Harry Holzer testified at the Commission’s briefing:

Other evidence, including that by ethnographers, indicates that employers filling low-wage jobs requiring little reading/writing or communication clearly prefer immigrants to native-born blacks, and encourage informal networks through which immigrants gain better access to these jobs. The native-born black workers likely would be interested in some, but not all of these jobs, depending on their wages.¹⁶

The country’s economic stagnation has disproportionately harmed African-Americans, especially those with little education. In 2011, 24.6 percent of African-Americans without a high school diploma were unemployed, as were 15.5 percent of African-Americans with only a high school diploma.¹⁷ Six years into the economic recovery, African-Americans still face particular difficulty obtaining employment. According to the Bureau of Labor Statistics, the January 2016 unemployment rate for black Americans was 9.1 percent, almost double the white rate of 4.7 percent.¹⁸

Not only do illegal immigrants compete for jobs with African-Americans, but that competition drives down wages for the jobs that are available. Professor Borjas has written:

Illegal immigration reduces the wages of native workers by an estimated \$99 to \$118 billion a year A theory-based framework predicts that the immigrants who entered the country from 1990 to 2010 reduced the average annual earnings of American workers by \$1,396 in the short run. Because immigration (legal and

¹⁵ BUREAU OF LABOR STATISTICS, *Employment status of the civilian population 25 years and over by educational attainment* (Feb. 5, 2016), <http://www.bls.gov/news.release/empstat.t04.htm>.

¹⁶ *Id.*, *Statement of Harry J. Holzer*, at 41.

¹⁷ U.S. DEPT. OF LABOR, *The African-American Labor Force in the Recovery* (Feb. 29, 2012), at Chart 3, available at http://www.dol.gov/_sec/media/reports/BlackLaborForce/BlackLaborForce.pdf.

¹⁸ BUREAU OF LABOR STATISTICS, *Employment status of the civilian population by race, sex, and age* (Feb. 5, 2016), <http://www.bls.gov/news.release/empstat.t02.htm>.

illegal) increased the supply of workers unevenly, the impact varies across skill groups, with high school dropouts being the most negatively affected group.¹⁹

Immigration, both legal and illegal, resulted in a disproportionately large increase in the number of high school dropouts in the labor pool. This caused a drop in wages among the poorest and least-educated members of the workforce.²⁰ As discussed above, these people are disproportionately likely to be African-American men. Furthermore, there is evidence that wages for these men have not just failed to increase as much as they would have in the absence of illegal immigration. Their real wages, the number of dollars they take home at the end of the week, have actually diminished. Julie Hotchkiss, a research economist and policy advisor at the Federal Reserve Bank of Atlanta, estimated that “as a result of this growth in the share of undocumented workers, the annual earnings of the average documented worker in Georgia in 2007 were 2.9 percent (\$960) lower than they were in 2000. . . . [A]nnual earnings for the average documented worker in the leisure and hospitality sector in 2007 were 9.1 percent (\$1,520) lower than they were in 2000.”²¹

The consequences of illegal immigration for black men and the black community in general are not limited to wages. In another study, Professor Borjas found that lower wages and fewer jobs also correlate with an increase in the black incarceration rate.

Our study suggests that a 10% immigrant-induced increase in the supply of a particular skill group is associated with a reduction in the black wage of 2.5%, a reduction in the black employment rate of 5.9 percentage points, and an increase in the black institutionalization rate of 1.3%. Among white men, the same 10% increase in supply reduces the wage by 3.2%, but has much weaker employment and incarceration effects: a 2.1 percentage-point reduction in the employment rate and a 0.2 percentage-point increase in the incarceration rate. It seems, therefore, that black employment and incarceration rates are more sensitive to immigration rates than those of whites.²²

¹⁹ George Borjas, *Immigration and the American Worker: A Review of the Academic Literature*, Center for Immigration Studies (April 2013), available at http://cis.org/immigration-and-the-american-worker-review-academic-literature?utm_source=E-mail+Updates&utm_campaign=344e45830d-Borjas_Study4_8_2013&utm_medium=email.

²⁰ *Id.*:

[The simulation] shows that immigration particularly increased supply at the bottom and top of the education distribution. Immigration increased the effective number of hours supplied by high school dropouts to 25.9 percent, and those of workers with more than a college degree by 15.0 percent. In contrast, immigration increased the number of hours supplied by workers with 12 to 15 years of school by only 6 to 8 percent. Overall, immigration increased effective supply by 10.6 percent during the two-decade period.

Because of the skewed nature of the supply shift, the simulation shows that immigration particularly affected the wage of native workers at the two ends of the education distribution. The large supply increase experienced by high school dropouts decreased the wage of this group by 6.2 percent in the short run and 3.1 percent in the long run. Similarly, the wage declines for the most highly skilled workers (those with more than a college degree) were 4.1 percent in the short run and 0.9 percent in the long term.

²¹ THE IMPACT OF ILLEGAL IMMIGRATION, *supra* note 1, at 46.

²² George J. Borjas, Jeffrey Grogger, and Gordon Hanson, *Immigration and the Economic Status of African-American Men*, 77 *ECONOMICA* 255, 256 (2010).

There is another way in which low-skilled immigration likely affects black employment prospects. In 2013, the Commission on Civil Rights held a briefing regarding the EEOC's guidance on the effect of criminal background checks on black and Hispanic job applicants.²³ The EEOC, and the Obama administration generally, is concerned that the use of criminal background checks disadvantages black job applicants, because black men are disproportionately likely to have criminal records. To that end, the EEOC tries to intimidate employers into hiring men with criminal records, or not conducting background checks at all. Many of these men would be clustered in the low-skill end of the labor pool. Employers are often understandably reluctant to hire men with criminal records, particularly if they can hire men who do not have a criminal record, at least in this country. If the labor market were tighter, employers would be more likely to give men with criminal records a chance. But instead, the administration pursues policies that will continue to flood the lower-skilled part of the workforce with workers. The administration's criminal background checks policy and its immigration policy are at cross-purposes.

Both lower wages and incarceration likely contribute to one of the most serious problems facing the African-American community today: the dearth of intact nuclear families. The late senator Daniel Patrick Moynihan famously sounded the alarm about the disintegration of the black family during his tenure at the Department of Labor in the 1960s.²⁴ It is one of the great tragedies of modern America that the disintegration of the African-American family has not abated.²⁵ 72 percent of African-American children are born out of wedlock.²⁶ It is now a truism that children born out of wedlock are far more likely to experience a host of negative outcomes than are children raised by their own biological, married parents.²⁷

²³ U.S. COMMISSION ON CIVIL RIGHTS, *ASSESSING THE IMPACT OF CRIMINAL BACKGROUND CHECKS AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S CONVICTION RECORDS POLICY* (2013), http://www.eusccr.com/EEOC_final_2013.pdf.

²⁴ United States Department of Labor, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (March 1965), available at <http://www.dol.gov/oasam/programs/history/webid-meynihan.htm>.

²⁵ Kay Hymowitz, *The Black Family: 40 Years of Lies*, *CITY JOURNAL* (Summer 2005), available at http://www.city-journal.org/html/15_3_black_family.html.

²⁶ Jesse Washington, *Blacks struggle with 72 percent unwed mothers rate*, *ASSOCIATED PRESS*, Nov. 7, 2010, available at http://www.nbcnews.com/id/39993685/ns/health-womens_health/t/blacks-struggle-percent-unwed-mothers-rate/#.UWR6fZPvvn4.

²⁷ See Charles Murray, *COMING APART*, 139–41 (2012):

Trends in marriage are important not just with regard to the organization of communities, but because they are associated with large effects on the socialization of the next generation. No matter what the outcome being examined—the quality of the mother-infant relationship, externalizing behavior in childhood (aggression, delinquency, and hyperactivity), delinquency in adolescence, criminality as adults, illness and injury in childhood, early mortality, sexual decision making in adolescence, school problems and dropping out, emotional health, or any other measure of how well or poorly children do in life—the family structure that produces the best outcomes for children, on average, are two biological parents who remain married. Divorced parents produce the next-best outcomes. Whether the parents remarry or remain single while the children are growing up makes little difference. Never-married women produce the worst outcomes. All of these statements apply after controlling for the family's socioeconomic status. I know of no other set of important findings that are as broadly accepted by social scientists who follow the technical literature, liberal as well as conservative, and yet are so resolutely ignored by network news

Married men are more likely to be employed and to have higher earnings than unmarried men, although the relationship between marriage and economic success is complex.²⁸ However, it is obvious that men who are unemployed or are incarcerated are far less appealing prospective spouses than men who hold down a steady job.²⁹ Yet there are fewer and fewer jobs available—and at lower wages—for men in traditionally masculine industries.³⁰ Giving amnesty to illegal immigrants would only exacerbate this problem facing low-skilled men, who are disproportionately African-American. The dearth of job opportunities gives these men less confidence in their ability to support a family, and gives women reason to fear that these prospective husbands will be only another mouth to feed.

Continuing to have high levels of low-skilled immigration, legal or illegal, will only further harm African-American workers. Granting legal status to illegal immigrants will be particularly harmful. Not only will the low-skilled labor market continue to experience a surplus of workers, making it difficult for African-Americans to find job opportunities, but African-Americans will be deprived of one of their few advantages in this market. Some states require private employers to use E-Verify to establish that their workers are in the country legally. This levels the playing field a bit for African-Americans. If illegal immigrants are granted legal status, this small advantage disappears.

programs, editorial writers for the major newspapers, and politicians of both major political parties [citations omitted].

See also W. Bradford Wilcox and Jeffrey Dew, *Protectors or Perpetrators: Fathers, Mothers, and Child Abuse and Neglect*, Center for Marriage and Families (Feb. 2008), available at <http://www.wbradfordwilcox.com/Dad.abuse.pdf>:

[A] 1996 federal study found that the overall rate of child maltreatment among single-parent households was nearly double that of two-parent families: 27.3 children per 1,000 were maltreated in single-parent families, whereas 15.5 children per 1,000 were maltreated in two-parent families. Another study found that 7 percent of children who had lived with a single parent had been sexually abused, compared to 4 percent of children who lived in an intact, biological family. Still another study found that children were half as likely to suffer physical abuse involving a traumatic brain injury when they lived in a household with their father, compared to children living in a fatherless family.

Research also indicates that children living in stepfamilies are more likely to suffer from abuse. One study by David Finkelhofer of the University of New Hampshire and his colleagues found that “children currently living in single parent and stepfamilies had significantly greater lifetime exposure than those living with two biological or adoptive parents” to five different forms of victimization—sexual assault, child maltreatment, assault by peers or siblings, being a victim of a crime, or witnessing violence. Other studies have found that children are markedly more likely to be killed or sexually abused by stepfathers, compared to children living in an intact, married household.

²⁸ See Murray, *supra* note 27, at 156–157 (2012) (discussing the “marriage premium”).

²⁹ *Id.* at 157 (“In the 2000s Fishtown had a lot fewer men who were indicating that they would be good providers if the woman took a chance and married one of them than it had in 1960.”); see also Hannah Rosin, *THE END OF MEN* (2012) 8–10 (a single mother’s description of her daughter’s underemployed father as “one less granola bar for the two of us”).

³⁰ See Rosin, *supra* note 29, 71–97 (2012).

Furthermore, recent history shows that granting amnesty to illegal immigrants will encourage more people to come to the United States illegally. The 1986 amnesty did not solve the illegal immigration problem. To the contrary, that amnesty established the precedent that if you come to America illegally, eventually you will obtain legal status. Thus, it is likely that if illegal immigrants are granted legal status, more people will come to America illegally and will further crowd African-American men and other low-skilled men and women out of the workforce.

Thank you again for inviting me to testify, and I look forward to your questions.