

Senator Jeff Sessions
Questions for the Record
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1. If S. 744 were to become law, do you believe that the Department of Homeland Security would deport those who enter the country illegally or overstay their visas after the bill's enactment?

My area of expertise and my testimony pertain to fixing the legal immigration system so it works for the future, providing U.S. business owners with lawful foreign workers to fill jobs when there are not enough willing and able Americans.

2. If S. 744 were to become law, how many total new immigrants, including those currently here illegally who would be granted some form of legal status and those who would be admitted to the country under all categories of chain migration, would be added to the United States over a ten-year period following the date of enactment and over a fifteen-year period following the date of enactment?

My testimony concerned the new W Visa program created by S. 744 to allow less-skilled foreign workers to enter the United States to fill jobs when there are not enough willing and able Americans. What I can try to shed some light on: the number of immigrants – technically nonimmigrants – likely to be admitted under that new program.

In truth, even this is extremely difficult to estimate. Among the many unpredictable variables:

1/ How rapidly the W Visa program will grow in size beyond the minimal quotas mandated by the bill.

S.744 envisions that the number of employer permits issued annually will start in the program's first year at 20,000 and could eventually rise as high as 200,000. But after Year 4, when the program will be capped at 75,000 permits, we have no idea how quickly it will grow.

2/ How many W visa holders will choose to bring spouses to the United States.

The bill allows for this, but it is highly unlikely that all program participants will choose to do so – after all, many are not married and others will have no intention of relocating permanently. They will be coming to the U.S. for temporary work stints – and maintaining a family in the U.S. is much more expensive than maintaining one at home.

3/ How many W visa holders will take advantage of the opportunity to switch from a short-term visa to a green card track, exiting the W Visa program and applying for legal permanent residence under the bill's new merit-based green card preference.

It's highly unlikely that all program participants will choose to switch tracks and, if the past is any guide, it may be less than half. In previous decades, most unauthorized migrants have come to the U.S. for short work stints. Some stayed longer than they initially intended because they were afraid that intensified border enforcement would prevent them from reentering the U.S. again at a later date for another work stint. But most of the unauthorized migrants entering the country in recent years were young people looking to work in the U.S. for a brief period, accumulating skills and capital to take back to their home countries.

4/ How many employers who qualify to participate in the program will reapply to renew their hiring permits, and how many who do so will retain the same workers they hired initially under the program.

This variable is highly relevant because some reapplying employers (those who do not retain the same workers) will count against the annual cap when they renew and some (those who do retain workers) will not count against the cap.

Of these three variables, arguably the most important is the last one – because no matter what the breakdown, as long as some reapplying employers count against the cap, this provision will eventually halt the growth of the W visa program. Over time, renewals will take up all the available W visas.

In my view, far from being a good thing, this is a significant problem – limiting the number of new workers available to fill jobs for which there are no willing and able Americans. But here's how it would work:

Pretend for simplicity's sake that the program is capped at 100 hiring permits. Permits last for three years, after which employers can renew. (That part is true – not a hypothetical assumption.) If all 100 employers who get permits the first year renew in Year 4 and none have retained their original W visa workers, then all will count against the cap and NO new employers will be able to enter the program that year – and as a consequence no additional workers will be authorized to enter the country under the W Visa program. This despite the fact that the nominal quota for that year is actually 100 permits.

Similarly, if all employers who get permits the first year decide to renew in Year 4 and 75 percent of them have experienced a turnover of W Visa workers and therefore count against the cap, only 25 new employers – and 25 new workers – will be able to participate in the program that year. And so on every year after Year 4. (After all, there will be a cohort renewing every year from Year 4 on.)

Where this really begins to bite: in Year 7 and again even more intensely in Year 10. The number of employers participating in the program will inevitably grow in the early years. Every time permits must be renewed – every three years – there will be more employers who want to renew. And because some percentage of these businesses will inevitably count against the cap, as their numbers grow, they will increasingly cannibalize the quota. Eventually – just when depends on variables #1 and #4 – there will simply be no new permits available and no increase in the

number of visas issued. (No new workers will be permitted to enter the country unless they are replacing departing workers.)

On net, how many foreigners will accumulate in the U.S. as a result of the W Visa program?

As difficult as it is to estimate, we can speculate about two scenarios – one relatively low-growth, one relatively high-growth.

Plausible conditions that would produce low growth:

- The formula designed to regulate the growth and shrinkage of the W Visa program produces an annual quota of 100,000 permits in Year 5, but then no further increase in the quota.
- All of the employers who enroll continue to need workers after three years, so all seek to renew, but none are still employing the workers they started with three years before, so 100 percent of them count against the cap in Year 4 and thereafter.
- Under this scenario, the number of new workers admitted to the U.S. under the W Visa program would reach zero in Year 8 and would not grow thereafter. (In subsequent years, new workers could enter only to replace departing workers.)

Plausible conditions that would produce higher growth:

- The formula designed to regulate the growth and shrinkage of the program produces a steadily rising quota that reaches 200,000 permits in Year 9.
- All of the employers who enroll continue to need workers after three years, so all seek to renew, but only half are still employing the workers they started with three years before, so 50 percent of them count against the cap in Year 4 and thereafter.
- Under this scenario, the number of new workers admitted to the U.S. under the program would begin declining in Year 9, trending gradually toward zero in the years thereafter.

On net, in my estimation, over 10 years, the low-growth scenario would allow a total of 300,000 W visa holders to enter the United States. Under the high-growth scenario, by Year 10, there could be as many as 800,000 less-skilled W visa workers present in the country.

As for Year 15, under the low-growth scenario, the only new workers entering the country after Year 8 would be replacing departing workers, so there would be no net growth in the stock of workers present in the U.S. between Year 10 and Year 15. Under the high-growth scenario, by Year 15, the stock present in the U.S. would reach 1.075 million.

Let's assume further that half of these nonimmigrants bring spouses with them to the United States. In my view, that's unlikely – I think the percentage will be lower than half – but for argument's sake, let's use the median figure. If this is the case,

under the low-growth scenario, the total number of foreigners admitted under the W Visa program and still in the country after 10 years would be 450,000. The number produced by the high-growth scenario would be 1.2 million.

After 15 years, the stock produced by the low-growth scenario will not change. The high-growth scenario would produce a stock 1.6 million.

These numbers may seem high, but not in comparison to the number of unauthorized immigrants who would likely enter the country in this 15-year period if S.744 fails to pass and there is no W Visa program.

Every year from 2003 to 2009, more than 300,000 unauthorized Mexicans entered the U.S. to fill jobs for which there were no willing or able Americans. At the height of the housing boom, in 2006 and 2007, the figure was more than 600,000. Even in 2011, with the nation just coming out of recession, more than 160,000 unauthorized Mexicans came to find work. And according to the respected Migration Policy Institute, in years ahead even a tepid economy will likely require upward of 320,000 Mexican workers a year to fill jobs that will not be filled by U.S. workers.

What do these MPI projections tell us about the total number of unauthorized workers likely to enter the U.S. over the next decade absent a worker visa program like the W Visa? At 320,000 a year, at the end of 10 years, 3.2 million additional unauthorized Mexican workers will have entered the United States. If half of them bring spouses – the same percentage we assumed would bring spouses in the scenarios above – the total number of new unauthorized Mexicans present in the U.S. will grow to 4.8 million.

At the end of 15 years, there will be 4.8 million unauthorized workers, and the total stock – with spouses – will add up to 7.2 million.

Which outcome would be better for the U.S. – the W visa scenario or continued illegal immigration? As I see the options, in Year 15 we could have 7.2 million *new* unauthorized immigrants living among us but beyond the rule of law – many of them people whose real names we don't know, who have never undergone a background check and who we have little or no power to force to return to their home countries. Or we could be benefiting from the labor of 1.6 million guest workers and spouses here lawfully on permits and scheduled to return home on a date certain.

In my view, it's an easy choice – not really a choice at all.

The best answer to illegal immigration is a legal immigration system that works.

The W Visa program is a thoughtful, well-crafted blueprint. In my estimate, if anything, it may be too small to meet the labor needs of a vibrant, growing U.S. economy. But it certainly strikes me as preferable to a new generation – much larger in number – of unauthorized immigrants living beyond the rule of law.

Questions for the Record
Comprehensive Immigration Reform
Senator Mike Lee
April 22, 2013

Tamar Jacoby

The new W-visa has a cap of 200,000 per year after the phase-in. The Pew Hispanic Center shows that in March 2000, the annual flow of illegal immigrants was 500,000.

- As our economy improves, will there be enough visas to fill the jobs that are available?

I fear not. As the economy improves, I fear there will not be enough W visa holders under the quotas proposed in S.744 to fill jobs for which there are no willing or able Americans.

Unauthorized immigrants come to the U.S. to work, drawn across the border by a powerful demand for less-skilled labor. The reason for this demand: the U.S. workforce is changing. American families are having fewer children, with birthrates well below replacement level. Baby boomers are retiring: 10,000 older workers are leaving the workforce every day. And the younger workers coming up behind them are much more educated than their parents. In 1950, 64 percent of U.S. workers were high school dropouts. Today, the figure is less than 10 percent.

Together, these trends are creating a perfect storm, and it is what drew the annual inflow of 500,000 unauthorized immigrants measured by the Pew Hispanic Center in 2000. In subsequent years, Pew Hispanic Center founder Roberto Suro left Pew for the University of Southern California where he created the Mexico Migration Monitor, which continues to count the annual inflow of unauthorized Mexicans. According to his estimates, every year from 2003 and 2009, more than 350,000 unauthorized Mexicans alone entered the U.S. to work. At the height of the housing boom, in 2006 and 2007, more than 600,000 entered every year. And even in 2011, with the economy just coming out of recession, more than 150,000 came to the U.S. to fill jobs for which there were no available Americans.

The most recent numbers available from the Mexico Migration Monitor, for the first half of 2012, show a slow but continued upturn – just as one would expect with economic recovery.

Bottom line: the W Visa program is not likely to be large enough to accommodate the number of workers who entered the country illegally during the boom years of the early 2000s – or the number likely to enter in the future when the nation's economy has fully recovered.

- If there not enough visas, will we see more illegal entries?

I fear we will.

Effective immigration control requires three essential elements: border security, workplace enforcement and legal channels that can accommodate the flow of foreign workers drawn to the U.S. to fill jobs for which there are no willing and able Americans.

Border security and workplace enforcement together will restrict the flow somewhat. But unless enforcement measures are accompanied by a worker visa program, they are unlikely to stop the immigrant influx. As long as jobs beckon to poor workers on the other side of the border, nature is likely to find a way.

Some people argue that the solution to this problem is eliminating the “jobs magnet.” But surely in the long run, that would be counterproductive. We can mechanize some of the jobs that draw immigrant workers. Over time, effective enforcement might create worker shortages that force employers to pay somewhat higher wages for this work. But there are limits to how high wages can go before consumers stop buying products and services. And even with higher wages, it remains unclear how many relatively educated Americans will want to work, say, washing dishes in the back of a restaurant. (And even if they did, it would hardly be an economically productive use of their educations.) The only other way to “eliminate the jobs magnet” is to restrict economic growth so as to reduce the growth of low-skilled jobs – but that hardly seems like the right answer.

Surely a better solution is to create a visa program big enough to meet U.S. labor needs with a lawful foreign labor force.