



June 11, 2018

Chairman Charles Grassley
135 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Grassley:

I write as one member of the U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole, to address a news report about business interests pushing for amnesty for at least one million illegal aliens.¹ I am writing to oppose that effort.

Business interests argue that amnesty and no cuts to legal immigration are necessary because there are currently more job openings than there are job applicants.² The current unemployment rate is something to celebrate, but that is not the whole picture. The labor force participation rate remains stubbornly low. In May 1998, the labor force participation rate was 67.0 percent.³ It reached as high as 67.3 percent in April 2000. It has been falling ever since. In May 2018, the labor force participation rate was an abysmal 62.7 percent. Any celebration of record low unemployment is muted by a labor force participation rate that is almost five points lower than it was 18 years ago.

The decline in labor force participation has been largely driven by a dramatic decline in male labor force participation. In May 1998, the labor force participation rate of men 20 years of age and older was 76.9 percent. In May 2018, it was 71.8 percent.⁴ The labor force participation rate of women has suffered a smaller decline, from 60.3 percent to 58.1 percent.⁵ The black labor force participation rate is similarly grim, declining from 64.7 percent in May 1998 to 62.1 percent in May 2018.⁶ Teenagers are barely working at all. In May 1998, 52.8 percent of 16-19 year olds were employed.⁷ Today it is only 34.7 percent.

You are by now no doubt familiar with the Commission's 2008 hearing that determined that illegal immigration depresses the wages and employment opportunities of black men. I will simply reiterate what I have written many times before: economic analysis strongly suggests that the post-1965 influx of low-skilled immigrants into the United States, legal and illegal, is

¹ Stephen Dinan, "U.S. Chamber of Commerce demands amnesty for 1 million migrants," Wash. Times, June 7, 2018, <https://www.washingtontimes.com/news/2018/jun/7/us-chamber-commerce-demands-amnesty-1-million-migr/>.

² Id.

³ Bureau of Labor Statistics, "Civilian labor force participation rate," <https://www.bls.gov/charts/employment-situation/civilian-labor-force-participation-rate.htm>.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.



responsible for a large percentage of the decline in black labor force participation.⁸ Granting amnesty to illegal aliens will only perpetuate the damage that has been done and extend it into the future by acting as a magnet for illegal immigration.

We have plenty of workers; they simply aren't working – yet. People who dropped out of the workforce in discouragement after being turned down for jobs over and over need to see that applying for a job is not a humiliating and futile endeavor.⁹ Even though the economy has finally recovered from the 2008 crash, hiring was painfully slow to recover – which business interests know very well. This is the first time in over a decade that there are plenty of jobs available, and the *first* time there has been a strong economy with strong employment since millennials entered the workforce. There are people who entered the working world in 2008 when they turned 18 or graduated from college who have never known an economy other than one where there are few job openings, little wage growth, and everyone hangs on by their fingernails.

A tight labor market encourages businesses to seek out pools of people they might otherwise pass by. Businesses can invest in training programs so workers can learn the skills the business needs. I have a long record of opposing the EEOC's criminal background check policy on both legal and policy grounds.¹⁰ However, I strongly favor businesses voluntarily giving ex-felons jobs, even if that involves some extra training or supervision. A tight labor market incentivizes businesses to seek out teenagers, retirees, stay-at-home parents, former prisoners, and others, and offer them training, accommodations, higher pay, and so on to entice them into the workforce. At least some of the goals of initiatives undertaken by the government to encourage businesses to

⁸ See generally Letter from Commissioner Kirsanow to President Trump re DACA, available at <http://www.newamericancivilrightsproject.org/wp-content/uploads/2014/03/Letter-to-President-Trump-re-Immigration-9.19.2017.pdf>.

⁹ Petula Dvorak, "In D.C., hundreds of Wal-Mart job seekers are desperate for work. Any work.", Wash. Post, Sept. 23, 2013, https://www.washingtonpost.com/local/in-dc-hundreds-of-wal-mart-job-seekers-are-desperate-for-work-any-work/2013/09/23/f222fcfa-248a-11e3-ad0d-b7c8d2a594b9_story.html?utm_term=.fbd64cfc3956.

They were there just after daybreak Monday, a line snaking down the sidewalk in Northeast Washington. And they kept coming, by the hundreds.

"Is this the line for the Wal-Mart jobs?" asked Stephon Holly, 18, who arrived interview-ready. His wingtips were polished, his cardigan buttoned. He had a black portfolio packed with copies of his resume and talking points written on the legal pad to help him through a face-to-face.

But it never happened. . . .

"If they pay \$8.25, 8.75, whatever. A job is a job and I need a job," said Ronald Knight, 52, who has been unemployed since he left a job at a deli counter to take care of his dying mother. "All I want is to work, and I'll take anything." . . .

[Debbie Thomas] came to the hiring center with a folder full of her resumes, recommendation letters, work history. She worked in home health care for two decades until the group home she helped run lost its grant funding. That was two years ago. Two years of interviews, applications and resumes. Her unemployment checks would be almost identical to the current salary that Wal-Mart is offering.

"But you know, I don't care. I would much rather work. Earn that money."

¹⁰ See generally Kirsanow Statement in Assessing the Impact of Criminal Background Checks and the Equal Employment Opportunity Commission's Conviction Records Policy, U.S. Commission on Civil Rights, Dec. 2013, http://www.eusccr.com/EEOC_final_2013.pdf.



hire employees that employers view as less desirable can be attained simply by making workers more valuable due to increased scarcity of labor. For example, a company may be more willing to offer paid maternity leave to an employee if they know that replacing her will be difficult, instead of knowing they will be deluged with dozens of highly-qualified candidates as soon as the job is posted. I fully understand that businesses would rather hire people who do not require training, do not have what they consider a problematic criminal record, who do not need time off or flexible schedules and who are willing to accept low pay. Too bad. Businesses have responsibilities to their fellow Americans that they do not have to citizens of other countries. When there are good times in the economy, all Americans should get the chance to share in them.

I must also note that when unemployment was high, some business interests still pushed for amnesty and for expanded immigration. In May 2013, the overall unemployment rate was 7.6 percent, essentially unchanged from a year earlier, the black unemployment rate was a staggering 13.5 percent, and the Hispanic unemployment rate was 9.1 percent.¹¹ In other words, we were firmly in Year Five of the Great Stagnation. Yet on May 13, 2013, the Chamber of Commerce wrote to the Senate Judiciary Committee supporting the “Gang of 8” bill, asking for amnesty for illegal immigrants, for new categories of visas to bring in more *low-skilled* workers and for higher numbers of H-1B visas.¹² The Chamber also expressed its opposition to effective oversight to ensure that American workers would have the first opportunity to get or retain a job.

There has also been much concern over recent news that the U.S. fertility rate has fallen to a 30-year low of 60.2 births per 1,000 women. This year’s decline was largely driven by a decline in births among women in their 30s. Oddly enough, women in their 30s would have just been hitting the working world and starting to form families when the economy crashed in 2008. The supposed “recovery” wasn’t much of one, and as sociologist Hans-Peter Kohler stated, “There’s been a rapid increase in delay [of childbearing] since 2009, which is apparently due to the recession. . . . When the economic picture is uncertain, people hold off all sorts of commitments, and having children is one of them.”¹³ Economist Lyman Stone writes that the primary driver of the falling fertility rate is not that women want fewer children, but that far fewer people are married.¹⁴ Financial considerations appear to be a substantial contributor to people delaying marriage.¹⁵ Demographer Neil Howe writes:

¹¹ Bureau of Labor Statistics, “Unemployment in May 2013,” June 11, 2013, https://www.bls.gov/opub/ted/2013/ted_20130611.htm?view_full.

¹² Letter from R. Bruce Josten, U.S. Chamber of Commerce, to U.S. Senate Committee on the Judiciary, May 13, 2013, http://immigration.uschamber.com/uploads/sites/400/s744_letter_judiciary_committee.pdf.

¹³ Melissa Matthews, U.S. Birth Rates are Dropping as People Delay Marriage and Sperm Quality Declines,” Newsweek, Nov. 30, 2017, <http://www.newsweek.com/fertility-problem-us-rate-declines-sperm-issues-and-delays-marriage-727429>.

¹⁴ Lyman Stone, “No Ring, No Baby: How Marriage Trends Impact Fertility,” Institute for Family Studies, Mar. 19, 2018, <https://ifstudies.org/blog/no-ring-no-baby>.

¹⁵ Id.



While some demographers are convinced that birthrates will rebound when Millennials grow older, this risk-averse generation may continue to dash fertility expectations. . . . [A] generation’s realized lifetime fertility includes millions who overshoot their goal [of total number of children] and millions who undershoot. And Millennials – here’s where their risk aversion is key - have been especially effective at eliminating overshooting. Witness the outsized recent declines in fertility under age 25, as well as the decline in unintended pregnancies and abortion rates in those age brackets. According to the pessimists, Millennials will widen the gap between lifetime expectations and lifetime results, resulting in a permanently lower fertility rate.¹⁶

Increasing immigration when there is finally a robust job market and wages are finally starting to rise is not going to help people achieve a level of financial stability where they feel ready to marry and have children. Furthermore, immigration is not a fix for our fertility rate troubles, because the fertility rates of immigrants rapidly converge with those of the U.S. population generally – which is unsurprising, since once they arrive in the U.S., they are subject to the same forces that drive down American fertility.¹⁷

In short, I once again urge you reject, on behalf of the interests of American workers, any and all amnesties.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Kirsanow".

Peter Kirsanow
Commissioner

Cc: Republican Members of Senate Committee on the Judiciary

¹⁶ Neil Howe, “U.S. Fertility: Down for the Count,” *Forbes*, Mar. 31, 2017, <https://www.forbes.com/sites/neilhowe/2017/03/31/u-s-fertility-down-for-the-count/#5450c8081d9b>.

¹⁷ *Id.*