



The Agenda for Shared Prosperity

Edited transcript for the “Immigration Reform: Getting It Right” forum

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Economic Policy Institute, 1333 H St., NW,
Suite 300, East Tower, Washington, DC

Speakers and Presenters:

Ross Eisenbrey, Vice-President and Policy Director of EPI

Ray Marshall, Former U.S. Secretary of Labor and Bernard Rapoport Centennial Chair in Economics and Public Affairs, LBJ School of Public Affairs at the University of Texas

Mary Bauer, Director of the Immigrant Justice Project at the Southern Poverty Law Center

Ron Hira, Assistant Professor of Public Policy, Rochester Institute of Technology

Q&A Discussants:

Karina Gonzalez, *Chattanooga Times Free Press*

Mark Krikorian, Center for Immigration Studies

Karina Fortuny, Urban Institute

Jeff Faux, EPI

Steve Baldwin, private consultant

John Hyatt, AFL-CIO

David Cohen, AFL-CIO

David Miskolczi, The Machinists Union (IAMAW)

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ROSS EISENBREY: Good morning, everybody. It's a pleasure to have you all here this morning. This is the third event in a series of events EPI has had for our Agenda for Shared Prosperity, which is a key part of EPI's mission of providing information and policies that can empower people to improve their living standards and their opportunities in life.

One of the most controversial topics in American political life today is immigration. Many tough questions are being debated, not just in Congress, but in state governments and town councils, at the workplace, and in people's homes. Questions like, do we have too much immigration or not enough of the right kind of immigration? How do we deal fairly with the millions of people who are living within our borders without government's permission? Many of them are here, at least in part, because of NAFTA and U.S. policies in Central America. How do we respond to demand from business for a greater supply of workers? Are there labor shortages in the U.S.? How do we control our borders in a dangerous world without trampling on human rights and civil rights?

At EPI, these issues are all viewed in a civil context of concern about what is happening to the average American worker's ability to earn a decent wage, provide for a family, obtain health care, and secure decent retirement while young enough to enjoy it. We're seeking policies to arrest a rising inequality and erosion of compensation that's documented very well in the state of working America. Today's speakers bring enormous experience to the question of how to design an immigration policy that will raise living standards in the United States while dealing fairly with those who want to come from abroad to live and work here.

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The first speaker will be Ray Marshall, who was Secretary of Labor in the Carter administration from 1977 to 1980, and now is Professor Emeritus at the LBJ School of Public Affairs at the University of Texas. His very distinguished career includes helping to found the Economic Policy Institute in 1986, and he continues to serve on our board of directors. His paper "Getting Immigration Reform Right" is in your package. Ray is also the author of at least two books that I know of.

Mary Bauer will speak next. I consider her a courageous attorney who heads the Southern Poverty Law Center's Immigrant Justice Project. She is the author of a report we've handed out today, "Close to Slavery: Guestworker Programs in the United States." She is the former legal director of the Virginia Justice Center for Farm and Immigrant Workers and the former legal director of the ACLU. She's a graduate of the University of Virginia School of Law.

Ron Hira is Assistant Professor of Public Policy at the Rochester Institute of Technology. He's a recognized expert on offshore outsourcing and author of a recent book, "Outsourcing America: What's Behind Our National Crisis and How We Can Reclaim American Jobs." Ron worked as a control systems engineer and program manager for 10 years in the private sector and in government and has been a consultant for groups like the Rand Corporation and the National Research Council.

We have on the line with us today reporters from around the country by way of a conference call. After all three speakers have spoken, we'll open to questions from the audience and from the press who are on the line. So without further ado, Ray Marshall.

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RAY MARSHALL: Thank you, Ross. Let me thank all of you for being here. I think immigration obviously is extremely important to the country. It is probably the most complicated political issue that I have ever dealt with. And I've dealt with a lot of very complicated political issues. One of the reasons for that is you don't get that clear political division. Your friends on many issues would be your enemies on this one. And your enemies unfortunately, from my perspective, become your friends on this one. So it's very hard to work out a political position that will do the right thing.

And part of my paper is about getting immigration reform right this time. I had responsibility for immigration in the Carter administration, particularly the worker part of it. So we produced a lot of information about immigration and suggestions about what to do with it. And I thought we all understood pretty well what you need to do if you want to get an effective and humane solution to the immigration problem.

But unfortunately, they wouldn't do much of that. And that's the reason we're back here now trying to figure out what to do is because the 1986 [Immigration Reform and Control] Act actually invited fraud by not having effective identifiers. And particularly fraud in what we then were not afraid to call amnesty provision of the law and in the employment provisions of the law.

Therefore, it seems to me if we don't get it right this time, then we'll be back. We might decide not to even come back in 20 years. We might decide that there's really not much you can do about it anyway, so just kind of let the market run things. I don't think that's

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what we like to do. But I think it would be much harder 20 years from now doing it if we don't do it right.

In addition to my responsibility for administration in the Carter Administration, I've also done a fair amount of research on the subject and have done a fair amount of demonstration work to show that you could impose the management of low-wage industries and make those industries more attractive to workers.

One of the myths that you'll see in my paper is that we shouldn't worry about illegal immigration because they only take jobs that American workers won't take anyway. And that's simply not the case. But it causes people not to be willing to do things. And what we have demonstrated in our work is that if you can improve the management of many of these low-wage industries, you can improve the quality of work and make them more attractive to people. So having unauthorized workers is not the only way to deal with the important problems in many of these industries.

Now having said that, let me emphasize that I do not believe that immigration is the problem. We have and always will be a nation of immigrants who have contributed greatly to American life. Over half of the growth of civilian workforce during the 1990s was immigrants; 86 percent of the growth in employed people since the year 2000 has been through immigration. If we continue to have economic growth, it will be necessary for the United States to rely on immigrants. Why? Well, the retiring of the babyboom generation means that there will be no net increase in prime, working-age native Americans for the next 20 or 30 years.

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And therefore, if we're to grow the workforce and the economy, it will be necessary to rely on immigration. Unauthorized immigration, however, is a problem. It exposes these workers to exploitation, and endangers those who come into this country. It depresses the wages and working conditions of people who are already here. It affects low-wage workers, which is fairly well documented, and our agenda of broadly shared prosperity. If we perpetuate a lot of marginal low-wage dependents on this flow of workers, that's not good for the country in my judgment. The better strategy would be more broadly shared prosperity and to try to compete by improving productivity, quality, and wages, rather than trying to have a low-wage development strategy. A low-wage development strategy is a loser because what it implies is more and more unequal wages.

Therefore, it seems to me that how we control immigration is an important indication for the country. It's important for the economy. It has important implications for politics, as we saw during this last election. In fact, it's a basic part of Karl Rove's and George Bush's strategy to be elected President of the United States. And it was when George Bush was governor of Texas. The main reason for that is the immigrant population, particularly the Hispanic population, is heavily concentrated in those areas where the Democrats and the Republicans contend for control. And therefore, they would have a very important political impact.

What is frequently ignored is how important immigration will be for foreign policy. This is extremely important for Mexico. It is not in our interest to have a destabilized

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neighbor on our southern border. It's in our interest for Mexico to have broadly shared prosperity and to have the right kind of development strategy. It's not in our interest for them to have a low-wage development strategy and for us to have a low-wage development strategy, which is what we did with NAFTA. We were told at the time that we passed NAFTA that it was halt the flow of illegal immigrants in the United States and would cause their wages to increase, ours to increase, and all the rest. Well, you don't get many chances as an economist to rush into print predictions. But that was a safe one. I rushed into print in order to say that none of that would happen. And just the opposite was likely to happen. Because it was fairly clear that it would.

In part of our immigration strategy, therefore, we have to be cognizant of the impact of what we do in Mexico because it's an important source of foreign exchange, second only to oil. It provides a safety valve for the increase in their working-age population that cannot find adequate employment. By adequate employment, I don't mean just jobs. If you're not worried about the quality of work, employment is not a problem. But 90 percent of the unauthorized immigrants that come to the United States from Mexico will have jobs when they leave. So it's not the job. It's having a job that will make it possible for you to maintain and improve your income.

Therefore, we ought to consider those things when we think about politics. As I've mentioned, the main defect was the identification question. We in the Immigration Department had worked out a system that I thought would have been much better than what appears to be in the works now.

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First, we should not leave it up to employers to verify it for the workers in the country, legal or not. The main reason is that they don't have the capacity to do it and they don't have the will to do it. Therefore, you immediately create a situation that is designed for failure, especially if you have an invitation for fraudulent documents of all kinds to just say you're here. In Austin, Texas, where I live, I can get you any kind of document you want in 10 minutes. And it takes me five minutes to get there, you know. There's a flea market out on 290 where you can get a birth certificate, Social Security card, passport, whatever you want to get. Now, that being the case, we create a cottage industry. Therefore, these kinds of industries, if the employer is interested in hiring the foreign worker, are not likely to be the ones that you want to put in charge of that.

Our recommendation was that a federal agency with the employment service would determine who's authorized to be in the country. And that worker would get an authorization number. And we'd do it for people who change jobs or new workers in order to phase it in. The only thing the employer would have to do when the worker came to work is to get that number. The worker wouldn't even have to carry a card. And the employer then calls an 800 number to verify it just like you would your credit card. In fact, we had our people look at the credit card industry. And the credit card people told us that the challenge we faced coming up with a work authorization system was small relative to the one they faced in figuring out airline rates and regulation assignments all the time.

So even in that time, that was not a very serious problem. And that would have given the employer a complete defense. All they've got to do is write the confirmation number

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down. But we didn't do that. One of the most important parts about immigration is to understand that magnetic relationship between employers and the unauthorized workers.

And that relationship on the employer's side is very strong. Employers preferred the unauthorized workers for many jobs. Why? Well, they can pay lower wages, for one thing. But that's not the only reason. Secondly, they can get a dependable supply of labor by tapping that source if they can tap into the network. And third, it's labor that's easily controlled.

But when you talk about the guest worker program, the unauthorized workers have more control of their work situation than many of our other guest workers, because they can leave that employer and they're not restricted to a particular employer. And therefore, the employer prefers it. Now, on the worker's side, of course, it's desperation. And wherever they come from, as bad as conditions are in the United States, they're usually better than where they came from. The problem with that, of course, is that those workers will accept that out of desperation. But the longer they stay here and have children here, they will not accept it. They don't make the comparison with the old country. They make the comparison with other people.

A lot of the social unrest in Western Europe now is because of the children of the guest workers who are not Kurds. They're not Yugoslavs. And they're not Germans. So you have to plan to make this a permanent situation. Now, the power of that connection between employers and workers does a number of things. First, it freezes out a lot of

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domestic workers who might be willing to take those jobs. And secondly, you reduce the quality of the jobs that they have to start with.

This process gets perpetuated by a number of myths which I go through in my paper. The first one of these is they only fill jobs that Americans won't take. And, of course, there are no such jobs that Americans won't take. Of course, as with all myths, there's a kernel of truth – they are jobs many American workers shun because they're not very desirable. But I've demonstrated that you can make those jobs more attractive jobs. And it's not the only thing you can do.

When I was Secretary of Labor, they told me that Americans couldn't pick apples. Well, we recruited apple picking farms. They didn't like it. But we did it. One of the famous senators in Utah told me that the fact that the border patrols surrounded Utah made it hard to pick the cherries. So we got the cherries picked. They didn't like that. They had to pay the minimum wage and had to observe certain conditions. So, part of what we need to do is to try to recognize the power of that myth.

The second one is unauthorized immigration is really not so bad, and there are two reasons for that. One is it doesn't really have too much effect on American workers. You can do some calculations to show it really doesn't have much effect on the whole economy. But what it does have is a serious effect on low-wage workers.

It's not the only thing that worsens than the conditions of low-wage workers in the country. That's the answer you usually get when you start talking about something having an effect on low-wage workers: well, that's not the only thing. Well, that's true.

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You've got a lot of other things that contributes to the low wage for these workers.

What I think is most questionable is to say it's not so bad because it improves the competitiveness of the American economy. Now, what they mean by that is they improve low-wage competition. And my view is that that's not the kind of competition you want to get.

You have a big debate among the economists about whether or not it's had an impact. But one part of the economic theory – I think we all agree with this – is if immigrant workers compete with American workers, then they're likely to reduce the wages and conditions. If they're complementary to American workers, they can improve conditions of the American worker. And therefore, policy ought to be try to see to it that you have an adverse effect wage rate or labor market test as part of your system to see to it they're more complementary that competitive and that they don't reduce the wages.

Now, the system is broken. I don't have to say much about that because others are talking about it. The best thing we need to do is to try to develop a system that will be complementary and promote broadly shared prosperity. Now, in my paper, I outlined a combination of things I think you need to do.

One is you need to have a secure identifier. Two, you need to have border controls. You need to recognize that border controls alone will not solve the problem. A larger proportion of people will simply overstay visas if you have strong border controls. Third, you need to adjust the status of the people who are already here. Why? The

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argument people usually give is that you shouldn't reward illegal behavior. And my view is that it's hard to criticize people just for disobeying a law that's hard to understand and not really enforced.

And they've got a lot of co-conspirators who help them disobey that law. In fact, if we met the conditions of good law – transference, fair and enforceable – we would be justified in saying that we shouldn't reward illegal behavior. Now, also I think the other main reason is that we ought not to have another Operation Wetback. I've witnessed that during the 1960s. And it was not a pretty sight. And it would be worse this time if you started having a roundup and deportation of people and families and the like.

And fourth, I think we need not leave the determination of how many workers we need and what kind up to the market and the political process. We should have foreign workers adjustment boards. Make it as independent as you could. And then let that determination be made by that board.

Fifth, I think we need to improve temporary worker programs. And then the final thing is we need to enforce our labor laws. And that too will not by itself do it. I think we also need to work with Mexico and other countries to encourage them to have a strategy to promote broadly shared prosperity. And we can do that through creative investment. My big choice would be that they have the intention to improve the education system in those areas where most of the unauthorized workers have come from and other countries where they've come from. Thank you.

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MARY BAUER: I'm going to talk to you about guest worker programs, what they look like, and their impact. We at the Southern Poverty Law Center have been somewhat discouraged by the range of debate about immigration reform in the United States. And what we keep hearing about is, well, we could have the status quo or we can have a big guest worker program.

We issued a report based on our experiences because we felt that it was important to say that maybe that's not the full range of options that are available. We issued our report a couple of weeks ago and we entitled it "Close to Slavery." As I say, we've gotten a lot of criticism for that title because obviously slavery was an abominable system and one doesn't want to devalue that in any way. And, of course, we will acknowledge that the guest worker system in the United States is not a system of slavery. People aren't captured and forced to come here. And it's not a permanent system.

But in practice, I think what we see, as we work with guest workers day in and day out, is that the system is a lot closer to slavery than any of us would be comfortable with. And the title of this report is not hyperbole. In fact, what we see is that these systems are perilously close to a system where people have no choice but to continue to work for a particular employer. And as a nation we suggest that before we significantly expand this system, we should look closely at how our current systems operate in practice, not on a piece of paper, but how they operate in the real world. And what we see there should give us pause.

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Our report is based upon years of experience in working with guest workers and representing them. I'm not an economist. I'm not generally a policy person. I am a lawyer who represents immigrants in cases. I have represented guest workers in lawsuits since 1990. And our report is based on talking to literally thousands of these workers. And I just want to say this is not about pointing a finger and saying there are a few bad-apple employers using this system and we really need to figure out who they are. I have no doubt that there are nice people who use the guest worker system.

The real question is what is the structure of this system? We suggest that the structure of the system itself is calculated to create, and it does create, systemic exploitation of workers. The power disparity between a worker and an employer in a guest program is skewed so dramatically in favor of the employer that the worker is in a kind of indentured servitude from which they cannot easily escape.

Fundamentally, these workers lack the ability to walk away if they're abused or underpaid. Our report talks about H-2 workers not because we don't think there are problems in other guest worker programs, but because that's what we know about intimately. And it seems to us that the discussion about creation of large-scale guest worker programs be most modeled on the H-2 program and particularly, the H-2B program, which is a program that we know a lot about and have represented a lot of workers who come in under that system.

H-2 workers can work only for the employer who filed the petition for them. The employer thus decides if the worker can come to the United States. The employer

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decides how long he can stay. And the employer holds all of the power over the most important aspects of the worker's life. The H-2A system for agricultural workers and the H-2B system for non-agricultural workers permit employers to import people on a temporary basis from other nations, when the employer certifies that qualified persons from the United States are not available and that the terms and conditions of employment will not adversely effect the wages and working conditions of similarly situated U.S. workers.

But in practice, both of these programs are rife with abuses. These abuses typically start long before the worker ever gets to the United States and continues through and even after his employment in the United States. And I use "his" deliberately, as the vast majority of workers that we see are men. That too is part of the system I'll talk about a little bit, though certainly we've represented many women as well.

Some of the abuses I'll talk about could be avoided with a better guest worker program. But frankly, many are the foreseeable result of a system that makes people guests rather than full members of the political and economic community.

One issue that I want to highlight following up on Mr. Marshall's comments is that I think transparency is an issue that we should think about a lot in this process. One of the kind of ongoing scenes of our work is that we're unable to even get basic information about who guest workers are, where they are, and what kind of work they're doing. And that's because the open record system of the United States government and many state governments has basically broken down. And we are routinely denied

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access to that basic information.

So that's an issue that I don't talk about in our report. But I think that that's something we certainly want to think about. Why is it that this information is regarded by many in government as confidential? That when the stamp or approval of the United States government is given to the implication of human beings, that somehow that should be a secret? And people shouldn't be able to go out and talk to those workers and find out about those workers?

What we have said is we call upon all policymakers to just find out what their lives are like. We don't have a kind of unique access to these workers in our office. And we talk to these workers everyday. When workers are recruited in their home countries, they are often forced to pay enormous sums of money to obtain the right to be employed at a short-term, low-wage job in the United States. It's not unusual for our Guatemalan clients, for example, to report paying anywhere from \$2,500 to \$5,000 for a job at which they're promised a fairly low wage for a short period of time, somewhere from three, six, or as long as nine months.

Oftentimes, we see that the job will in fact, even on paper, pay less than the money that is expended. We have talked to workers who have paid as much as \$16,000 to \$20,000 for a short-term H-2 job, particularly workers who are recruited from Asia who pay enormous sums of money. Why would someone do that? The math just doesn't work out. And what we see in practice is that there's widespread fraud. Many of the Asian clients we talk to say they were promised permanent residency. They were promised

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three years work. They were promised something very different from what they ended up with.

As a practical matter, what we see also is that only indigent people are willing to gather the sum of money, pay it for something that's relatively speculative, and have this kind of fraud. And so what we see is that none of the workers that we talked to had that kind of money. And what they're all doing is going to loan sharks and borrowing the money at extremely high interest rates. Our Guatemalan clientele have to pay 20 percent interest per month on their loan. And they have to pay that the entire time they're working in the United States.

Another disturbingly common report that we hear from workers is that they are required to leave collateral in their home country. And that collateral usually consists of the deeds to their homes. They're required to leave with somebody. Our Guatemalan clients say that they are required to leave it with a lawyer in Guatemala City as a condition of getting the employment, basically to ensure that they will comply with the terms of the contract.

We had in one of our cases a fairly amazing affidavit from a client who described having to wait in a line for eight hours to leave the deed to his home because there were 1,000 people in the line, all lined up to get these jobs. And it wasn't a question of one bad recruiter. It was a system where people waited to leave their deeds and sign that over as a process to guarantee that they will not violate the contract.

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The fundamental problem once workers get to the United States is they're only allowed to work with the employer who petitioned for them. When they get here and the employment situation is less than ideal, the worker's only resource is to go back home. And as I said, almost every worker we've ever talked to has taken out enormous loans in order to get this job. As a practical matter, they cannot go back home. They will lose their home. They fear for their lives. They cannot go back home, and so workers stay and they put up.

What we see then is that guest workers routinely receive less than the law requires. In some industries that rely upon guest workers for the bulk of their workforce, like paper processing and forestry, we see that wage and hour violations are the norm and not an exception. The guest worker's position makes him unlikely to complain about these violations. And the public wage and hour enforcement has frankly minimal effects. Even when workers are paid the minimum wage in overtime, they're subject to other kinds of violations that can put them in an equally bad situation.

One common problem we see is that workers are brought in too large numbers and too early when there's very little work. And that's because employers aren't bearing the cost of bringing in the workers. The person sells them is bearing the cost. Frankly, what does an employer care if he brings in 100 workers and he only ends up with work for 50? It doesn't cost him anymore in a significant way. So workers will sit around for weeks, sometimes months, with no work. But they're paying for the housing and they're paying on this debt. And they're paying for food, so that that often leaves them in a fairly desperate situation.

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Similarly, when they're simply paid less than they're promised or they're legally entitled to, or they're not paid the actual prevailing wage, their recourse is fairly limited. We see in practice that workers who are injured on the job face enormous obstacles in receiving worker compensation benefits and even reasonable medical treatment. And this is part of the kind of ad hoc, state-by-state system that is workers compensation. It really hasn't been created in a way to deal with what is a trans-national workforce. And so what that means in practice is that workers are disposable in a guest worker system. Workers are injured. They're sent back. They're gotten rid of.

And that's the system. It is a rare case we see where workers really receive in practice the benefits that they need and deserve when they're injured. Although, these abuses are frankly routine, the government has not committed substantial resources in recent years to address any of these problems. In general, wage and hour enforcement by DOL [Department of Labor] has decreased relative to the number of workers. There are not sufficient government resources for the relatively small programs that we have now. What we're talking about now is somewhere in the neighborhood of 150,000 guest workers under these two programs.

Imagine a system in which there are literally millions of guest workers. In addition, the Department of Labor currently contends that it has no legal authority to even enforce many of the protections that workers theoretically have. For example, it contends that it doesn't have the legal right to enforce the prevailing wage for H-2B workers. There's a requirement that H-2B workers pay the prevailing wage. But as a practical matter, if they're not paid, they have virtually no way to make that happen.

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We should also ask, as part of this discussion, why the Department of Labor has failed to promulgate regulations to protect H-2B workers. The department contends it doesn't have the authority to enforce those rights. But as a practical matter, that's largely because they haven't promulgated regulations that would allow them to do that.

So in practice, and on paper, none of the significant protections that exist even on paper for H-2A workers apply to H-2B workers so that they don't have a right to free housing. They don't have a right to the adverse-effect wage rate. They're not eligible for federally funded legal services. They don't have a three-quarters guarantee. A lot of the sort of minimal protections that exist for H-2A workers don't exist in the context of the H-2B program which is a larger program at this time.

Our report also describes another common abuse we see which we believe is likely to continue under any kind of guest worker program, and that is that employers and supervisors routinely seize the identity document of workers on the job, even take their papers so they can't leave. This is one of the most common complaints we receive in our office. Literally every week, we receive calls from workers who simply want to leave, often just to go home. And they can't do that because the employer has taken their identity documents. There's little recourse under the law now for workers whose documents are seized. No real mechanism exists to allow workers to recover those documents. And we've had precious little interest, frankly, from the government in assisting workers under those situations.

A recurring theme then of our report and our experiences is that workers are exploited.

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And there is virtually no recourse to combat that exploitation. That's true in the context of workers who reside in squalid housing conditions which we see, for example, in the H-2B program. There aren't even minimal protections for that housing. None of the legislative proposals we see talk about housing for workers at all.

Another issue I think is that guest workers programs permit a really systematic discrimination that we would regard as both illegal and unacceptable in other areas of employment. And I think this is related to the kind of commodity approach you see to ordering human beings. You look at the website – www.mexicanworkers.com – and it is describing workers as happy, agreeable people that we like a lot and touting the various attributes. What we see is that workers are reduced to categories and ordered by categories, like males between the age of 25 and 40.

And that kind of discrimination is entrenched in the program and has even been given the stamp of approval by at least one United States Court of Appeals that said, well, that discrimination that's happening outside the United States is not illegal. We think that's a wrong legal decision. But there's nothing in any of the discussions about guest worker programs to make that clearly illegal.

I would just conclude by saying that because of these abuses, we fundamentally oppose guest worker programs as a model for immigration reform. We do recognize that there are ways to make guest worker programs less abusive. We offer some of those recommendations. But I think on balance, we would not suggest that those recommendations would make guest worker programs fundamentally good, only that

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they might make them somewhat better. Thank you.

RON HIRA:

Let me start out by observing that there were two recent editorials about the H-1B program, one in the *Washington Post* a couple of weeks ago and one in the *Economist*. And, of course, they caught my attention because it's an area that I'm interested in. But they also caught my attention because of the colorful language they used. The *Washington Post* editorial board said anyone who would argue against the increase in the H-1B program is practicing lunacy. And the *Economist* actually titled their editorial "American Idiocracy," implying that anybody would argue against the increase in H-1B is an idiot.

So I stand before you here as the resident lunatic and the village idiot, at least according to the *Washington Post* and the *Economist*. Congress is going to consider again this year high scale immigration reform. And there's really one consensus and that is that the system is broken.

Of all of the major groups that are interested in this particular issue, everybody agrees that it's broken. And not surprisingly the diagnosis of what's wrong varies across these different interest groups. And, of course, the solutions are quite different and sometimes in conflict with one another. So let me briefly talk about the different interest groups that are interested here.

The first and the loudest voice really comes from industry. And industry, particularly the high-tech industry, lobbyists have been arguing that America is turning away the

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best and brightest workers. And that in fact some of these folks are foreign students, who are getting graduate degrees in science and engineering in the U.S. at American taxpayer's expense. And why are we turning away the best and brightest?

Of course, the industry's interest goes beyond simply immigration. What they're really interested in is a vastly extended guest worker program. And it's not only for the best and brightest and not only for the foreign graduate students. And I'll talk a little bit more about that. For example, they ask for basically a blanket exemption for anybody with a graduate degree from a U.S. university. But in addition to that, they want a vast expansion of the guest worker program. So what they're really talking about is more than just immigration. And they're equating immigration with this guest worker program.

The second interest group has been universities. And everybody in Washington knows that universities are quite powerful at lobbying. And their interest has primarily been in having a path for foreign graduates to get U.S. jobs. And so they've been pretty much aligned with industry there.

The third interest group is U.S. workers. And U.S. workers, particularly technology workers, are really concerned about these guest worker programs undercutting their wages and their opportunities. And if you follow what's going on in the IT world and you talk to IT workers, they really view these guest worker programs frankly as a scam, and as a way for corporations to take advantage and really undercut their labor market.

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And finally, the fourth interest group, which has been kind of interesting to follow, is the guest workers themselves – the foreign workers who are here on H-1B and L-1 visas. And their primary concern is trying to get immigration, at least the ones who are here and want to stay. They are concerned that the green card process and the green card quota aren't sufficient. They're waiting, six, eight, sometimes 10 years to get their green cards. And there are a number of problems with that.

Let me digress now before I get into what I think are the problems with these guest worker programs. As Ross mentioned in the intro, I'm actually trained as a control systems engineer. So my thought process and framework are really shaped around systems. And I think about systems in terms of connections, causation, causal effects, cause and effect, and feedback loops. And then as an engineer, I think about what we design and testing the gap between our design goal and what happens in practice. And I'll borrow what Mary talked about in terms of what's out there on paper, the intent, and what folks talk about versus what actually happens on the ground.

And I think this is really the serious gap in the policy discussion that we've had on this high-skill immigration is that there is a big gap between what's discussed, both by politicians as well as by the press, and what's actually happening on the ground. Now, I'm going to really analyze in this paper as well as in my talk really two important pieces of this high-skill immigration system. And I acknowledge it is a system. And the two pieces are the H-1B and L-1 non-immigrant guest worker visas.

There are other very important fixes that need to be made to the green card process and

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even in the student visas. What I'm going to point out is that there are serious design flaws in these H-1B and L-1 visas. Before I get into those, let me turn to some of the goals that have been laid out by many of the industry and university lobbyists.

You know, the first claim that they make is that if they don't have access to these H-1B workers, they're going to be forced to outsource jobs. So they're going to hire those foreign workers wherever they may be. And if we don't bring them here, they're going to hire them in their home country.

And the second claim they make is that the H-1B program is basically a gateway to immigration. And so they make that very strong connection between this guest worker program and permanent immigration, and the argument that increasing high-skill immigration is contingent upon increasing the H-1B program.

What I would argue is that in fact the evidence supports neither claim. In fact, the first claim is that if we don't increase H-1B program, we're going to outsource more jobs. That's not supported by the evidence. When you look at the top H-1B users, they're actually offshore outsourcing firms. They are firms whose whole reason for being is to outsource jobs. So if we increase that, you would expect actually more jobs to be outsourced. And the second one doesn't make much sense because many of these companies do not use this as a bridge to immigration. In fact, the leading users of the H-1B program do not sponsor a lot of green cards.

But I'll give you one example. Wipro Technologies, which is one of the large offshore

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outsourcing firms, applied for 19,000 H-1Bs last year. They applied for 69 green cards. It doesn't sound like a very strong link to immigration. And this is one of the leading users of the H-1B program. So that connection is increasingly tenuous.

Let me just highlight three of the design flaws I think that are in the H-1B program. The first is that there's no labor market test. And I think this is the most significant one. Basically, I think the Department of Labor put it very succinctly. They said, "H-1B workers can be hired even when a qualified U.S. worker wants the job. And a U.S. worker can be displaced from the job in favor of the foreign worker."

So there is no labor market test. That means that a company can prefer a foreign worker over a U.S. worker. They don't have to look for a U.S. worker first. And in fact can displace a U.S. worker with a foreigner worker on an H-1B. What's really remarkable about this fact is how many journalists, as well as politicians, actually get this wrong. They actually promulgate a fallacy. The *Los Angeles Times*, *San Diego Union Tribune*, and even the *Wall Street Journal*, in a front page story about this program at the height of the immigration debate, got it wrong. They all assumed that there is a labor market test. In fact, there isn't one.

And in fact, many of these politicians that are involved in the discussion have promulgated this fallacy, including Sens. McCain and Kennedy, in an article in the *San Francisco Chronicle* last year. They claim that the H-1B program did have the labor market test when it didn't. And you see this with other politicians writing to constituents saying that an H-1B worker should be hired as a last resource and that folks should look

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for American workers first, when in fact the program doesn't do that.

Now, the second design flaw is the perception or the claim that the prevailing wage is the market wage. Prevailing wage is a term of art that's used. And it certainly sounds like a market wage. But in fact, in practice, it isn't. Let me give you a couple of examples for why we know that it's not.

Employers tell us that it's not. In fact, the GAO [Government Accounting Office] surveyed a number of employers and these employers told the GAO that in fact they do hire H-1B workers because they're willing to take lower wages than a similarly qualified U.S. worker. But they're still meeting the prevailing wage requirement. So employers admit that this is true.

And let me give you a couple of examples straight out of the Department of Labor application database from the H-1B application database. Last year, Infosys, which is another large offshore outsourcing firm, was certified by the Department of Labor as meeting prevailing wage. And they were certified to hire 100 programmers at \$9.15 an hour. Does anybody in this room think that \$9.15 an hour is a market wage for a computer programmer? Well, the Department of Labor does and certified these programmers.

And here's a quote from an H-1B programmer who works for a large software company whose client is the IMF [International Monetary Fund] down the street. She says, "I get an annual salary of \$47,000 despite being in the software industry for more than five

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years. An American with similar experience gets around \$80,000 a year." So this person's getting \$47,000 a year with five years of experience, versus the market wage of about \$80,000. So I think it's pretty clear that this prevailing wage is not really a market wage. And it is the terminology that is used quite frequently.

Now, Bill Gates was here in Washington a couple of weeks ago testifying, and one of the areas that he talked about was the H-1B program. And during his testimony, as well as in comments to David Broder published in a column last year in the *Washington Post*, he implied the H-1B workers were being paid about \$100,000 a year.

And, in fact, the way the column ran as well as the testimony, the implication was that the policy debate was about keeping out people that earn \$100,000 or more a year. In fact, if you look at the actual data for H-1B workers in computer programming, the medium wage for H-1B workers is \$50,000. It's not \$100,000.

And even when you get to the 75th percentile, it's only \$60,000, a far cry from that. My guess just looking at the data and my knowledge of the area is that the \$100,000 is probably the 95th percentile or even higher. So the discussion's really not about those folks who are at that upper level.

Let me turn now to the third flaw. And this is the deficient oversight that's involved here. Regulations are only meaningful if there's a proper oversight to ensure that there's some form of accountability. But deficient oversight permeates nearly all categories of the H-1B program. And so you end up with basically a program with pages of

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regulations that really are pretty meaningless. They don't work. They don't do anything of value because there's no enforcement. There's no oversight and whatnot.

So what are the results of these three design flaws? Well, what's kind of interesting is that the results are that the H-1B visas have actually become the outsourcing visas – in direct contradiction to what the industry lobbyists have been claiming that these are programs that seek jobs here to prevent outsourcing.

In fact, the leading users of the H-1B program are outsourcing firms themselves. And you see this from the data right there. So it's actually working against that impact, goal or claim. The top 11 H-1B requesters are firms that specialize in offshore outsourcing. And there isn't a single leading offshore outsourcing firm that isn't in the top 20 of H-1B requests.

A recent *Business Week* story talked about how Wipro, the third largest of the Indian IT outsourcing firms, uses the H-1B program. What they do basically is bring in a fresh crop of H-1Bs every year, have them train here, take over functions and tasks, stay here a year or two years, and rotate back out. And we know that those folks are very valuable back there. Because they are able then to move more functions overseas and they've had the training here in the U.S., the customer interface, and so on and so forth. And their wages are higher back there.

So I've talked about the H-1B program. So let me talk very briefly about the L-1 visas. If you thought the H-1Bs were bad, the L-1s actually have even fewer controls. While

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the H-1B program has these pages of regulations that give the facade that they're attaching, the L-1 doesn't have any of those kinds of things. It doesn't have a labor market test. It doesn't have a prevailing wage requirement. It doesn't even have a cap. And in fact, the L-1s are being used in the same way by these offshore outsourcing firms. DHS [Department of Homeland Security]' Inspector General did a report last year. They said that nine of the top 10 L-1Bs of petitioning firms specialize in offshore outsourcing of IT to India. So again, these are firms that are using this visa to send more work overseas.

So what should we do in response to this? Well, let me give you two quotes from people with a lot of interest in the process. The first quote comes from Senator Kennedy. And this was at Gates' testimony in his opening remarks. He said, talking about high-scale immigration, he said, "We all agree Americans must be hired first." And that seems like a pretty straight forward principle. The problem is in practice, that's not what goes on. And, in fact, the regulations don't even require it, even if they had oversight.

And the second quote comes from Microsoft's Bill Gates in an op-ed he did in the *Washington Post* last month. And he said that the H-1B has strong wage protections for U.S. workers. Of course, we know that's not true, right? Nine bucks and 15 cents an hour for computer programmers is not strong wage protections for U.S. workers.

But it seems to me that if these are the principles that the folks that are promoting an expansion of H-1B program are trying to adhere to that we should make the program in

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practice meet those principles. I think the programs are broken, but they can be fixed. And, you know, there are some basic things that we can do.

We can rewrite the law to establish a market test. We can ensure that U.S. workers are not displaced by guest workers. We can ask employers to demonstrate that they have looked for and could not find qualified U.S. workers. We can insist that guest workers are paid market wages. And we can also ensure that there's some oversight by having some random audits of these programs.

Unfortunately, the immigration bill passed last year by the Senate as well as the new Gutierrez-Flake bill just introduced last week to expand these H-1B programs don't fix any of the problems even though these problems are well documented, not just by me but by government report after government report. People are aware of these problems.

If these H-1B provisions were enacted, these ones that were proposed by both of those bills, we would know for sure that it would lead directly to the more offshore outsourcing of American jobs and displacement of American technology workers. And importantly, it would discourage young workers from entering science and engineering fields.

I'm a professor and I talk to lots of young people. When they think about a career, what they do is talk to people who are in the field. And the people in the field are telling them that this isn't the best place to be because there's outsourcing going on and you could be replaced by folks that are coming in as guest workers. And we need to change

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that attitude within the profession, within those workers. If they perceive that there are problems in the government that are actually working against them, they're not going to encourage their nephews and nieces to go into those fields.

Let me also say I think the green card process needs to be fixed. And we need a long deliberate discussion about that. And let me close by saying that I think that the lobbyists who have been promoting this have really given Congress and the American public really a false choice. What they've argued is that unless you expand the H-1B program, we're going to lose the best and the brightest.

Of course, there are lots of ways that we can capture or encourage the best and brightest to stay here without expanding a program that has serious design flaws that are actually working against the American interests in outsourcing jobs. So thanks very much.

-- Question and Answer --

KARINA GONZALEZ: I was just wondering, the workers that your group worked with, are they in one particular part of the country? Or are they all over?

BAUER: Our office does focus on nine states in the south. But I guess I would suggest that there's no reason to conclude or to believe that conditions are different in other regions of the country. I mean, I'm certainly part of many groups of advocates throughout the country who work on these issues. And we talk all the time. And basically, everyone

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reports the same kinds of issues and problems.

GONZALEZ: And then are these all workers who work in a farm, and farm work type of employers?

BAUER: We have talked to workers who work in agriculture, forestry, paper processing, construction, landscaping, and more industries than I could quickly name. We see different issues in some industries. And in some industries, wage and hour issues are the major focus of those problems that people report. But I think what we have observed is that these kinds of abuses are the product of this system and occur at some level in all of the industries in which we're talking to workers.

MARK KRIKORIAN: A quick observation and then a question. My observation was I'm glad to have heard an entire presentation from the SPLC. And I agree with every syllable that Ms. Bauer said. Guest work programs are in fact immoral. And that's why the labor movement led the effort to abolish it in the 1880s. It was called contract labor at the time. But it's the same issue.

My question though is isn't the real problem, whether we're talking about the effect of American workers at the low end or at the higher end, simply the numbers of people that we're admitting from overseas? There are different ways that we can admit people as indentured servants, as regular immigrants, or simply allowing them to come in as illegal aliens. But in the final analysis, don't the different means of admitting people really sort of have marginal effects? The real effect is flooding the labor market with extra people who are simply going to bring down the market wage and working

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conditions and everything else, regardless of the method of their admission.

MARSHALL:

My view is yes, the way we're doing things now. There's not much doubt about that in my mind. The reason I recommend that we create some independent process to determine how many people are needed and what kinds of categories in order to promote broadly shared prosperity and avoid people being displaced and wages being reduced is because we simply don't know. We know something about the magnitude, but not a lot.

Our data still are not very good about this. We don't even know what an immigrant is. You know there are different definitions that people give about the number of people who are in the country. It's the number of people who intend to stay in the country. And therefore, if that's your definition, you've got a much larger universe than counted so that you can get vast numbers. Now, that's the reason I believe we ought to make that judgment, you know. We ought to have a mechanism to make it possible for us to make that judgment about how many can absorb. If you don't do that, then the logical outcome is what we've got. That is a market process will work. And that's the reason I stress that nexus between workers who are desperate for work and employers who prefer them to other workers who are already here.

And as long as that process works, it will perpetuate itself as long as it exists. But I don't think it needs to exist. And we do need to be concerned about the impact. What's wrong with the market? It implies more and more unequal wages for American workers. Why?

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Well, if you let the world be the market all of a sudden, one thing you can predict is there will tend to be conversions. And the real question is how do you want the conversion to take place? It can be by our wages going down. Or it can be by everybody's wages going up. I think that's the desired outcome. And my own view is it will probably be hard to do.

I think we can develop a regulatory process and economic and social policies to cause that to happen. If we don't do that, then we'll get inequality. We'll get declining real wages in the United States. But beginning in 2000, people didn't worry so much about it so long as it was low-wage workers who were being hit by everything else going on in the country. Beginning in 2000, according to the numbers we've got, the real incomes of college educated workers have started to decline.

One of my son-in-laws is an engineer, and he's required to train his replacement who will be an Indian at his company. Well, that's the kind of the system that is going on out there. Well, that need not be the case. My view is if you really have temporary work, then there can be a sensible temporary work program with all the guarantees that we've got. Otherwise, my preference would be immigrants with full legal rights once we decided that they could come in.

Why? Well, they can protect themselves. And they don't have to work for a particular employer. They don't get caught in this merry-go-round that leads to the training of workers and the exporting of those jobs there. But you're right. So long as we believe

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that the market will work, then we'll get what we've got. But it's not a very pretty picture in my mind.

BAUER:

I'd like to follow up on that just briefly. I don't know what the appropriate level is in terms of the numbers. But I guess I think your suggestion is not exactly accurate in a look at the H-2 programs. Those are tiny programs in terms of the actual numbers. And what we see are people who are not just getting the prevailing wages, they're not getting minimum wage. We see workers in forestry who are earning \$2 and \$3 an hour. And when they leave the guest worker program and go work as undocumented workers, they have a huge increase in their pay.

And I'm not saying that life is fabulous for undocumented workers and we shouldn't have comprehensive immigration reform. Because we believe there should be. But it's fundamentally troubling that every guest worker we've talked to says life is a lot better when you're an undocumented worker, because you can choose where you can work and you can walk away. And you can negotiate your wages. And all of those things are missing from the guest worker program. I think it's not fundamentally about the numbers. It's fundamentally about the system. And this system is bad.

KARINA FORTUNY: I have a question for Mr. Marshall. Can you please deliberate on the worker adjustment board that you think should be in place to determine employment immigration? Thank you.

MARSHALL: I know that we need to do something to get an independent process. I'm not sure how

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you would organize to get it done. The basic idea behind it is that you cannot leave it up to employers to decide, which is what we do now, about the workers who will be admitted to the United States. Because I've never seen an employer who thought they had a labor surplus in all my experience. I never saw any of them who thought wages were too high.

They always want to have a labor surplus. So you can't let that happen. You can't leave it up to the political process because that comes out in my experience to be the same thing. Employers will dominate the political process. That's what I found. I had a lot of bitter experience trying to enforce our labor laws and a lot of bitter experience trying to enforce our foreign worker programs. And that's how I learned so much about the employer's preferences.

I had huge trouble with a lot of members of [Congress] and the majority leader of the United States Senate because we recruited apple pickers. They preferred the British West Indies. We recruited people from the United States. And they were very bitter about that. And I was told by my political people that if I did anything to reduce peonage in the western sheep and goat area of the country that they would see to it that I didn't get much else done in the United States Congress.

They had that kind of political power partly because they're invisible. They had a lot of bosses out there and they were out in nowhere. And that gets to the transparency issue. So we can't leave it up to the Congress or to the business community to make this determination if you want to have sensible policies.

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I also believe from experience it's a highly technical matter to even get good data about how many people we have now and what the qualifications are. But to have some independent way to say, yes, we need more of a particular category. It's amazing in absence of accurate information and analysis how pervasive the myths are, like the ones in the *Economist* and the *Washington Post*. Well, every idiot knows that we ought to have more highly skilled workers in the United States. But if you're bringing in highly skilled workers and paying them \$9.50 an hour, how skilled can they be?

What I'm told by people who know is that most of these workers being brought in are not as well trained and well educated as many of the people they're displacing. But they're cheaper than the people they're displacing. So the basic idea behind the foreign worker adjustment board is to try to have some independent determination of this and make it independent like say the Federal Reserve Board.

I believe the labor supply is at least as important as the money supply. There are serious problems involved in both of them. But it doesn't mean that you can't have an independent way to try to work it out. Now, if I we're trying to get it established, what I'd do first is do some bench marketing.

I would look and see what they're doing in places like Australia and Canada, which have mechanisms to deal with these problems, or what they're doing in Europe to see how they would handle it and then adapt a system that would fit realities. And any system you have has to be based on the idea of good rules. That is it has to be transparent. It

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has to be fair. It has to be enforceable. Otherwise, the market will take over. And that means employers will take over.

JEFF FAUX:

I have a question for Ron. My understanding is that there was supposed to be some sort of self-regulating mechanism in these programs that bring in higher skilled workers. That is, fees were charged. And those fees were supposed to be going to training for those areas where it was identified that they had so-called labor shortages. Can you comment on that experience and elaborate on that?

HIRA:

The argument was that there was a shortage of particularly IT workers with at least a master's degree or more. And so the idea was that the visa fees and the application fees would actually be funneled to train U.S. students and workers and retrain and so forth.

I think the results of those training programs have been mixed. I think GAO did a study and found that the beneficiaries of that kind of training were not at the level of H-1Bs. So H-1Bs have to have at least a bachelor's degree. Most of what was going on was at the technician level, and the results were somewhat mixed.

But let me get to the issue of this labor shortage idea. As I said earlier, there's really no labor market test with an H-1B program. And the prevailing wage requirement can be easily gained. So an increase in H-1B applications and petitions could be uncorrelated completely to what the labor market looks like for those particular occupations. There are many reasons why a company could prefer a foreign worker over a U.S. worker. Wages may be one of them. Transferring the work overseas may be another. So I think

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we have to be careful about looking at how these systems work in practice too.

FAUX: Putting that aside, are the funds sufficient for a labor market strategy that will train U.S. workers? Even if the program is working, are there enough resources in that to make a difference?

HIRA: I don't believe that the resources were sufficient for the numbers that we're talking about. It's very expensive. I teach at a university. But I teach in the College of Liberal Arts at an engineering university. It's much more expensive to train an engineer or a computer scientist than it is to train a public policy major. And we should keep that in mind when we think about what these training programs are like, particularly some of the retraining programs that are out there. So, the scale is nowhere near what we would need if we wanted to increase the numbers.

Now, I don't think we should be focused on increasing the number of engineering graduates or computer science graduates. I think we should be focused on how we can improve and differentiate U.S. university education in those fields vis-a-vis what goes on in other countries. And that's where we should be focused.

We've misdirected some of the attention towards how we increase these numbers. Computer science enrollment has dropped by 60 to 70 percent over the last four years. It hasn't dropped because our K-12 education system has suddenly dropped off the map. It's dropped because students are voting with their feet. They see the labor market that's out there and it's changed pretty remarkably.

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MARSHALL: None of us argued that if you had this program, then you would use the incentive of employers to be part of the system that would help you recruit people. And so they agreed to that in order to continue the program just like the trade adjustment assistance. There's a bribe to keep workers quiet.

STEVE BALDWIN: Over the last 10 or so years as a consultant, I've worked on a number of projects related to immigration issues. One of which was a first look at some of these H-1B training programs about six years ago. One comment is that there is another occupational group that was involved in those programs: About roughly one-third of them were in health care occupations where there isn't an outsourcing issue there. But it's bringing in Philippine nurses and so forth to take the jobs that were available.

The second is that I think your point was quite right that the technician level was really what was being aimed at in part because the target group of trainees was typically people who had been displaced from semi-skilled work. And they didn't have, for instance, the math backgrounds to be able to get to the higher level without at least going through a preliminary, intermediate level training program.

My other question is that all of you had commented on the fact that for various reasons and in various ways, the market test for the H1-Bs is inadequate. Do you think that this is a matter primarily of political will or opposition from important power centers that Professor Marshall talked about? Or would anything be gained by increasing the resources and making the Labor Department go out and do the job that it's supposed to

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be doing? Thanks.

MARSHALL:

Yeah, I can respond to the regulatory part of that because I've thought a lot about it. The first point that I would make is that unless you fix the definition or the standards of whatever occupation you're talking about, and the qualifications that are to be enforced as part of the labor market test, it's not likely to be very effective.

As Mary pointed out, what they [employers] do – the recruiting, the discrimination – would be illegal if they did it within the United States, you know. So the employers can game the system by simply establishing the standards and say, well, we couldn't find anybody who could meet that standard.

Now, if you let them both fix the standard and decide whether there's anybody there in the domestic labor market to meet it, you can be sure that you won't find anybody or many to meet that standard. So what should we do? I would have an independent board or some independent agency. I thought the Labor Department ought to do that and we tried to determine what the minimum qualification ought to be for people to do that kind of work and did it to some degree. Then we would admit the foreign workers only if we couldn't find adequate domestic workers who could meet that minimum standard, not people who are forced to work scared and hard because of the control the employer had over them.

And then secondly, we need to have a check on their recruitment process. And that's fraught with all kinds of abuse that Mary and her group have documented. And it's an

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old story. It's the story of the farm labor contractors, and the story of the labor recruiters in the 19th century going out, making all kinds of promises to people that they can, and making people believe work is going to be different.

Now, what I tried to do in the Labor Department is have an independent check on that. I wouldn't even just leave it up to the employment service because it is highly dependent on employers. And therefore, we have to have some independent way of making accommodations whether we could recruit those people and test it. But as I mentioned, when I tried to do that, I had a lot of backlash. But I think we need to do it. I think one of the best social inventions of the 1960s was the outreach programs that we used to breakdown discrimination.

I think we could use outreach programs to take the test. I had a group of people who worked with me. If you told me you had a labor shortage, we'd see if we could find them. And unless you were talking about astronauts, we could usually find them. You didn't have to work too hard at it but you had to work at it. You had to have a mechanism to test to see if you really had independence of the employer.

I think on the regulatory enforcement process, you have to have a strategy to enforce any law. You're never going to have enough inspectors or people. OSHA [Occupational Safety and Health Administration], for example, had 5.5 million firms and 1,000 inspectors when I became Secretary of Labor. And I told them they must be awful fast if you're going to cover 5.5 million firms with 1,000 inspectors.

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But the problem was that even if they had enough inspectors, they couldn't solve the problem with the strategy they had. The strategy was regulations and inspections. You had to create a situation where people on the job had the power, the knowledge, and the ability. You've certainly got the incentive to protect themselves.

And I think the same thing is true here. It's a little harder because we've got people who don't have a lot of power. That's the reason I don't like the guest worker system. But I would let the guest worker system form organizations, join unions, and form an independent mechanism to protect itself. And I'd have a hotline. A lot of them would be false charges, but a lot of them would be true. It does people being regulated a lot of good to know that somebody's watching, by definition of conscience. Conscience is that small voice within you that says somebody's probably watching.

And if they believe you're watching, then you'll get more compliance with the law. And then use your few regulatory people that you have to really go after the strategic cases. You know, go after the most incorrigible people that have trouble.

The difficulty with the natural process that they use is you go after the easy cases. You go after people you know are going to be responsive, not the ones who are going to fight you. And that way, you don't really have a strategy that will change the process. What is very important is to try to come up with a strategy that would see to it that we close the gap between what we say we want to get and what we actually get.

HIRA:

Let me just make one quick comment and say I don't see it as an issue of enforcement.

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And let me give you an example that I gave earlier about computer programmers at that \$9.15 wage rate. That's entirely legal, even if you had additional enforcement that was certified by the Department of Labor as being the prevailing wage. So it's not a matter of just enforcement. It's enforcement, oversight, and changing the rules so that you get the outcome that you want.

MARSHALL: And having the appropriate standards.

JOHN HYATT: I want to ask Mary if she could elaborate a little bit on the remarks at the conclusion of your comments where you said that obviously if you're going to have a guest worker program, there are a lot of things that can be done to improve it. But it still would be worse than having an alternative system of allowing people to come in based on need on a permanent basis.

If you could assume that you could work into a guest worker program the kinds of protections that Secretary Marshall and yourself mentioned – whistleblower, prevailing wage, portability of dealing with the recruitment issues – why is that still not sufficient?

BAUER: It's really hard to imagine a system that can address in practice the kind of abuses that workers suffer. I mean, how, for example, do you legislate against the selling of these in other countries? You can do that. Some other proposed legislation regulates the recruiters in other countries. That seems to me, you know, laughably ineffective as a practical matter. Our Guatemalan workers were all told, when you go to the Embassy, tell them you paid \$50. And everybody writes that down. I paid \$50. Well, they all

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paid \$3,000 or \$5,000. What the guest worker programs have done in Mexico and Guatemala is create these kinds of vast armies of what I would call quasi-criminal recruiters. And the level of debt, the leading collateral, and the people signing promissory notes fundamentally change people's employment experiences in the United States.

When you come here owing \$20,000, you're not going to complain on the job. You are not going to join a union. You are not going to advocate for better conditions. You are not going to call an 800 number because your wife is going to get kicked out of her home and your children are going to be homeless. And who knows what else will happen?

Shortly after one of our clients filed a lawsuit, seven thugs showed up at his home in Guatemala and threatened to kill him if he didn't withdraw the lawsuit. And that's fairly dramatic. But that is what workers think will happen if they complain in the United States. I also have not seen what I would regard as a truly portable visa. I mean, all of them require people to continue to be employed. What we see in practice is that employers in programs like this tend to form associations and tend to rely upon one another as references. We don't have this kind of portable visa. I mean, sure we have portable visas better than what we have. But if all the employers agree, I'm not going to hire somebody who you fired because I know that guy's a complainer,

well, then really, you're in the exact same situation that you're in right now. And I think the experiences with, for example, the North Carolina Growers Association – which is a

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large grower association obviously in North Carolina – shows that that is very likely to happen in the real world. And so I think the problem is that having people's right to be here be dependent on the employer, is just a fundamentally bad system on an ongoing basis.

MARSHALL: Yes, I guess there are ways you could do it. I think that's what we need to think about. The one thought I have is why not just have outreach? We've got labor attaches in your embassy. Why not assign them an outreach function? They'd be the people who gave the workers the right if we've got a system that says what kind of workers we need. And then cut out the brokers. The other way to do it would be to make the employer have a unified employment rule. That is, the employer is responsible for those people wherever they violate the law. And therefore, you proceed against the employer.

BAUER: I think that's right. I think there are ways to make it better. And our report tried to do that pretty specifically in terms of saying here are ways that would empower workers somewhat to advocate for better conditions. I want to be clear that that doesn't mean that we as an organization are putting our kind of stamp of approval on it and saying, well, that will make guest worker programs okay. Because I think that it won't. It will make them better, but it won't make them okay. And it's not a good way as a system to bring in good workers.

MARSHALL: Yeah, I think a good guiding principle, at least in my mind, is if you need people, bring them in with full legal rights, not somebody with subsidiary conditions.

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DAVID COHEN: Secretary Marshall, at the start of your comments, you described this as the most complicated political issue you've ever dealt with. And later, you talked about the magnetism between employers and immigrant workers. Professor Hira, you mentioned the Bill Gates testimony, and Gates was the only witness before the committee who got large coverage. Executive Vice President of the AFL/CIO, Linda Chavez Thompson, and my boss – President of the Department for Professional Employees, Paula Almeida – both sent letters protesting the absence of any worker voice in the hearing. It's pretty exceptional to have a hearing with only one witness and full attendance.

So I would like to turn back to the members of the panel. This goes a little beyond your jurisdiction and policy descriptions. But in terms of the political analysis, do you see a way to mobilize political will widely when there's this magnetism between employer and worker? And one might argue a lack of concern from consumers who benefit from that magnetism. So the question is, how do you mobilize the political will for the very rational solutions you're advocating?

MARSHALL: Well, I'm kind of a pathological optimist. So I believe you can do these things if you work at it. And part of what you have to do if you're going to try to get things done is to have a strategy. You have to say something is more important to try to get things done than others. When you're trying to do something like this, there are people who are satisfied with the status quo. There are the skeptics who believe you can't do anything. And then there are a few people doing things, and a few places in the world doing things.

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I think the more we can publicize the problems involved and puncture some of the myths that are pervasive about what is happening and the more we can organize political support for a rational outcome of these things, and add some transparency to see to it that they're not dominated, the better.

Of course, my other view is that you're never going to have effective policy in this country unless all of the major players are at the table making the policy. I wrote a whole book about that, which I recommend to your attention. It's called *Unheard Voices: Labor and Economic Policy for a Competitive World*. If the people who have to live with it and make it work aren't involved in the formulation across the board, then you haven't made good policy. What happened on our free trade stuff now is that they're absolutely astounded at the backlash they're getting around the world, even though only a few people were at the table when they made it.

We cannot just have a few people at the table making immigration policy. That's the reason I like to take a comprehensive look at it – the foreign policy and the political and other implications of it. The other thing I think is happening though is that there's a great deal of interest and concern in the country. Some of it's scary, you know, if you look at it. And we have to worry about that. We could very well get another “Operation Wetback” or something like that. We could damage our relationship with Mexico more than we already have. We could cause a great deal of unrest and instability by promising more than we can do, which is what I think they did at the beginning of the Bush Administration. And that's the reason EPI is such a valuable institution. They try to do practical work on these matters, have debates about it, get

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public support for things that you think are right, and have examples you can point to for the skeptics to say that we can do it.

Now, the first reaction you'll get to that is, well, maybe they can do that in Australia, but we can't do it here. Anytime you believe you don't have anything to learn from anybody else, you've got a serious learning problem. It's kind of the same feeling I had when Henry Ford II told me the Japanese had those little cars and there was no money in it. And, of course, they weren't after little cars and wanted big cars. That kind of hubris causes us not to be willing to learn about what they were doing.

BAUER:

Just one follow-up. I do think that policy-makers would be uncomfortable replicating the programs we have on a grand scale if they looked at them closely. Maybe some of them wouldn't and would be quite comfortable with it. But I don't think that people know what they look like in practice. I think it's interesting as we were reading and preparing this report on the historical stuff on guest worker programs, I kept reading about the widely discredited *bracero* program. And there's a kind of broad consensus the *bracero* program was a social disaster and terrible.

And I just ask as a group what is different about the current program we have from the *bracero* program. And I think that people aren't looking at that. And I would suggest there aren't very many differences. The *bracero* program on paper, people had pretty good legal protections, they just weren't real. And that's what we have now. I think to keep talking about it and to say you want to do this? You want millions of workers like this? Then go talk to them. Go look at it.

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MARSHALL: But there are those who are using the *bracero* program, and the great successes of it they say, as a way to justify guest worker programs. They don't use all of the Congressional research on it. If you read the whole report, it says it didn't work. It reduced wages, work conditions. And the only way you reduce total immigration is to have Operation Wetback. Is that working? Is that justification and the kind of program we want here? That's the reason it's important to go back and look and see how these programs really work. [In "Operation Wetback,"] they simply rounded up people, many of them citizens, and deported them to Mexico. And it caused a lot of turmoil, particularly in the southwest where I lived. And a great injustice was done to people and there was revulsion against it. And that's the reason that not many people are suggesting that anymore as a way to deal with the problem.

HIRA: Let me make a couple of brief comments on the high-skill immigration politics side of things. One of the problems with getting sort of a rational bargain or compromised outcome is that the one side is represented by Compete America – a coalition of high-tech industry, like Microsoft and Oracle, plus universities and immigration attorneys. And they are very well tightly knit and speak with one voice. Whereas, the folks that are concerned about what is being proposed don't have as much muscle and aren't as strongly tight-knit in terms of coalition.

Let me give you an example. The Electrical Engineering Professional Society, IEEE-USA [Institute of Electrical and Electronics Engineers, Inc.], has been in opposition to the expansion. They represent 220,000 U.S. engineers, but that's a small segment of the

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people that are being affected. And what's interesting about the IT workers who are being most adversely affected is that not only do they not have a voice in Washington, but they also don't even belong to a professional society. And so they have no voice and no way of channeling their concerns. And I'm not sure that they're educated enough in terms of how to communicate their concerns to politicians and the like. So there's an opportunity for educating those folks on how you channel all of this angst that's out there.

So I think that's really part of it. And frankly, we're working from two strikes already, because you've got editorial boards and journalists who aren't even reporting accurately what goes on with the program. So how can you break through the sort of political juggernaut when you can't even get the press to report factually and correctly? So I think it's a tough hill to climb. Hopefully, we'll continue to make progress.

MARSHALL: What happens sometimes is all of a sudden things get ready for movement, and you get something like Harvest of Shame. I don't know how many of you remember that. But that had a huge impact when it was done. Then you get Harrington's Other Americans, the Quiet Spring, and all of those. The world was ready for it. And I think what we have to do is get the world ready and then somebody to come forth and make the case. But I think right now that the myths make it hard to focus on the reality.

DAVID MISKOLCZI: Mr. Marshall, you talked about becoming an immigrant. And you kind of explained those were people who want to stay here as immigrants. But you also talked about doing away possibly with the guest worker program and expanding, I guess, more

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on temporary programs. If we focus more on temporary programs, how then do these people become immigrants? Can you explain that to me?

MARSHALL:

I'm glad you asked the question. I'll start off with the first proposition. We don't need another large guest worker program. I think that's the reality. I think the way that you can move from a guest worker to green card and then to citizenship is that ought to be more readily available to people than the guest worker program.

Now, if we're going to have a temporary guest worker program, which we already have, I wouldn't recommend another one or expanding it. But I would recommend that we ought to fix it and make it so that it does what it says it does. It's really for temporary workers, not for people who want to become immigrants. Now, I think that we ought to have a process for people to get the green card and then get citizenship. And that ought to be more based on the economy and labor market needs than just on family unification. Now, you still need family unification, but more needs to go in that other direction.

Everybody always starts off thinking that a guest worker program is a solution to a lot of problems. We did that in the Carter administration. That was the first idea that a lot of people had with the select commission on immigration refugee policy. They started out thinking that's a good way to grade things. And everybody's concluded it's not a good idea and for all the reasons that have been mentioned. I asked my fellow labor ministers – we had a group called the Copenhagen group – if they had it to do over again, how many of them would do it a guest worker program again? Nobody would. The guest

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worker program in the minds of a lot of people is supposed to have been responsible for the post-war German miracle. But usually you'll find, unless you do it right, the social, political and economic disadvantages far outweigh the advantages you think you're going to get from the program.

MARGE ALLEN: I really appreciate all of the information that you've given me on the guest worker and how difficult it would be to come up with a program that worked, which is what I believe. These proposals that would bring in a million workers in the next few years under the guest worker program – with the claims that it's not tied to an employer, and then you go a little further down the list and the person who's unemployed for 45 days would have to leave the country – are a pretty great incentive for that worker to stay with that employer regardless of all of the other issues that you've mentioned.

One detail I would like your comment on is something that the Hill is now proposing called “touch back.” It's in the Flake-Gutierrez bill as a way, on paper, to satisfy their conservative critics who say that these people have entered the country illegally. And therefore, they shouldn't be given "amnesty" or some kind of path to legalization. So they have had this proposal where you only have to leave the country by going to Canada or Mexico, crossing the border for 24 hours, and coming back in. And therefore, you get stamped as coming into the country legally.

So the 12 million people who are here now in theory could all go touchback across the border, not to their country of origin necessarily, and then come back in and go on this path to legalization after they've satisfied many other requirements and spent many

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years doing so. Do you have a comment on this idea?

MARSHALL:

Well, I think it's nuts. And I understand the argument about it. But I don't accept the basic premise. I don't accept the idea that only these people are responsible for their condition. We're all responsible for their condition. You know, the Congress passed a lousy law.

You've got all kinds of groups now that support and encourage, including the AFL/CIO, which has changed its policy. Now we've got banks that will give a credit card. We've got the Mexican government giving them an ID card. We've got all kinds of groups supporting them. And then all of the people who believe that they really don't do any harm anyway, because they only take jobs that Americans don't want. We're all responsible for the condition. So we ought to acknowledge that and say that, if you were one of these workers and you knew how the system worked, what would you think what the law was?

You'd say if you get past the border, you're home free. But if you try to do anything illegal after that, you're in big trouble. You know, you go register with somebody and you've had it. That's the reason that a lot of these people have been guest workers. A lot of the *braceros* became undocumented workers because it was a better condition for them. Now, if you're in the country and you know you're home free and somebody tells you that you can stay here and get legalized somehow, but when you get ready to come back in you've got to provide something to somebody at the border, they're not going to just say did you just leave, you know? And then come back. Now, how are you going

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to prove that?

So my thinking about the mindset is that if I were here and had already had a job, raised a family, fit in the neighborhood, even though I live under bad conditions and a great deal of fear, I know that if I go across that border I might never get back in here. And I don't want that hassle, the risk. I don't know how it would actually work. But I don't know why you want to do it. That's the reason I say I think what we need to do is try to convince the conservatives, a lot of whom I think are incorrigible and so you're not going to have a lot of impact on them. But I think what you will do is have a lot of impact on the public who believe that's a good idea and the public who believe somehow all these folks are criminals. That's a gut feeling. It's like somebody violating any other law. It's not like any other law that you've had in the country because it doesn't meet the conditions of a good law. You know, what we have permitted to happen is the real law. It's not what we put on the books.

And so why deal with that? Why go through that? Of course, the thing is they're only going through that for people who've been here, what, five or six years? And what are they going to do with the rest of them? You going to round them up or what? And we don't even know how many that is. We say 12 million. Some people say 20. Nobody knows. My farm workers adjustment board finds all that out.

EISENBREY:

Thank you all and thank the speakers.