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Immigrant Workers' Rights: Beyond the Scope of Traditional Labor & Employment Law

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PANEL

IMMIGRANT WORKERS’ RIGHTS: BEYOND THE SCOPE OF TRADITIONAL LABOR & EMPLOYMENT LAW

This Article is an annotated transcript of a panel that took place on October 25, 2010 at the American University Washington College of Law. The podcast of the event can be found on the AMERICAN UNIVERSITY LABOR & EMPLOYMENT LAW FORUM’S website at <http://aualaborlawforum.org/events/immigrant-workers-rights/>. The event was co-sponsored by the Immigrants’ Rights Coalition Labor & Trafficking Committee as part of Immigrants’ Rights Week.

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PANELIST BIOGRAPHIES

Sebastian Amar is an Attorney at the U.S. Department of Education, Office for Civil Rights. At the time of the panel, he was a staff attorney for CASA de Maryland. He is an American University Washington College of Law alumnus.

Seok H. “Daniel” Choi is an attorney with the Immigrant Advocacy Program of the Legal Aid Justice Center in Virginia. He is fluent in both Korean and Spanish, which is a critical component of his work with the Latino day laborer population, as the liaison between Spanish-speaking workers and the Korean business community in the Northern Virginia area. He is a graduate of SUNY Binghamton, has his J.D. from New York Law School, and is the recipient of an Equal Justice Works fellowship.

Joseph Geevarghese is the Deputy Director of Strategic Organizing for Change to Win. He discusses national strategies in organizing farm workers with UFW (United Farm Workers). He received his J.D. from Georgetown University Law Center.

Elizabeth Keyes is Practitioner-in-Residence with the WCL Immigrant Justice Clinic. Prior to joining the faculty, she was a supervising attorney at WEAVE (Women Empowered Against Violence), where she provided legal services to immigrant survivors of domestic violence and assisted dozens of immigrant domestic violence survivors with their protection order, divorce, custody, and child support cases. Before WEAVE, Liz spent three years as a Skadden fellow and staff attorney at CASA de Maryland, working on the civil and immigration aspects of labor exploitation cases, and litigating in state, federal, and immigration courts. She focused particularly on trafficked domestic workers, and their exploitation by diplomats. Before law school, she spent several years working on African policy and development issues with Catholic Relief Services, the World Bank and the United Nations Development Program throughout Africa. She received her law degree *magna cum laude* from Georgetown University Law Center, a Masters in Public Affairs from Princeton University, and a B.A. in African Development Studies from Carleton College. She served as the moderator of the panel.

IMMIGRANT WORKERS' RIGHTS: BEYOND THE SCOPE OF TRADITIONAL LABOR & EMPLOYMENT LAW

ANNOTATED TRANSCRIPT

ELIZABETH KEYES: This is a wonderful panel of folks representing different aspects of very challenging issues; namely, the set of issues facing immigrant workers in 2010 And, I'm just going to throw a few questions at them. Knowing them, that will be more than enough to get something lively started, but I would like you all to feel free to ask a question as we go. So, I'm going to start with Dan and Sebastian, who both work locally on this issue: Dan in Virginia [and] Sebastian in Maryland. And, I'd like it if each of you . . . could talk a little bit about the people that you're working with at your team organization, the characteristics of the immigrant workers that you are representing, and what it is that you do with them. If you could describe, for the folks here, the work that you're doing and services [that accompany your work].

DANIEL CHOI: [S]o I work at the Legal Aid Justice Center,¹ which [provides] . . . non-traditional legal aid [to individuals in Virginia]. Most of my clients are people [who are] not citizen[s] or legal permanent residents, [but are] undocumented people on various asylum, refugee, or temporary protective status.

So, [these are] folks who normally can't get help. And, the reason that we [provide them with assistance] is because we're the only non-LSC funded

1. LEGAL AID JUSTICE CENTER, *About Us*, http://www.justice4all.org/about_us (last visited July 26, 2011) ("The Legal Aid Justice Center provides legal representation for low-income individuals in Virginia. Our mission is to serve those in our communities who have the least access to legal resources. The Legal Aid Justice Center is committed to providing a full range of services to our clients, including services our federal and state governments choose not to fund.").

organization in Northern Virginia that handles civil litigation. [T]he federal government has a funding procedure called Legal Services Corporation,² [which stipulates that] if you [take] federal money, you will have a nicer office, but it also comes with restrictions like you can't help people with certain statuses, you can't ask for attorney's fees—although that's recently changed—you can't do class actions and other restrictions. My organization, a while ago, said, 'screw that!' And we started representing people of different statuses, and that includes mostly, for me, restaurant workers, day laborers, people in cleaning services—low-wage working folks. A large percent[age] of our clients are mostly Latino and monolingual Spanish speaking, but that's changing as we increase our outreach into different sectors like Asian and Middle Eastern, etc.

SEBASTIAN AMAR: [W]e do a lot of what they do at the Legal Aid Justice Center at CASA [de Maryland],³ [but] just for Maryland residents. So, a lot of what Dan mentioned [is true for CASA too]. [M]ost of my work focuses on the representation of day laborers and domestic workers. As for our day laborers, we have maybe twenty percent [that] are in the . . . cleaning industry. A lot of hotels have gone up, especially in National Harbor and in Prince George's County [Maryland], so you've got a lot of casinos and hotels there looking for cleaning staff. But, beyond that, it's mostly general construction-based labor. So, [we're talking about] folks that go out to do anything from sheetrock and drywall to [the] more sophisticated laying of fiber optic cables for Verizon . . . and things like that.

One of the big misconceptions about CASA, in particular, is that folks come to us under the impression that we represent folks in immigration cases. Obviously, because we work with 100 percent immigrants, [people think] we must do asylum and other types of deportation defense. The answer is that we do not, and the reason for that is because CASA, twenty-five years ago, realized that there are some areas of law that the private bar and other non-profits have specialized in— asylum and deportation defense being two of those [specializations]. Asylum cases are very sexy for law firms to put on their annual prospectus and so a lot of their pro bono hours go towards those types of cases. The not so sexy case is that of the undocumented worker who

2. *About LSC*, LEGAL SERVS. CORP., <http://www.lsc.gov/about/lsc.php> (last visited July 16, 2011).

3. *About*, CASA DE MARYLAND, <http://www.casademaryland.org/about-mainmenu-26> (last visited July 16, 2011) ("CASA's primary mission is to work with the community to improve the quality of life and fight for equal treatment and full access to resources and opportunities for low-income Latinos and their families. CASA also works with other low-income immigrant communities and organizations, makes its programs and activities available to them, and advocates for social, political, and economic justice for all low-income communities.").

is owed \$150.00. It's not a huge amount and doesn't really mean a lot to a lot of people, but it means a great deal to the person who needs [it] to make rent. So, that's why we focus on the employment side, on issues that are just tangentially related to immigration issues that these folks may face.

ELIZABETH KEYES: Joseph, could you take us now to the national level, and talk about how Change to Win⁴ is working?

JOSEPH GEEVARGHESE: Sure. Just by way of a little bit of history: I think people probably [have] heard about the [American Federation of Labor and the Congress of International Organizations (“AFL-CIO”)],⁵ which is a coalition of unions that was . . . formed in the 1920's and [19]30's at the moment [when] the industrial revolution really kicked into gear [and] our economy moved into [a] factory-based economy. [W]hen you think about steel workers and auto workers, you think about high-paid workers. [At least] that's what you hear [about] in the news. At the turn of the century and into the [19]20's and [19]30's, those were pretty desperate jobs. Those would be akin to Wal-Mart jobs today. And a lot of those jobs were filled by Eastern European immigrants, and what happened was workers rose up and organized—to make sure that they had a fair share of the profits they were generating for the steel barons and the auto barons, like Henry Ford.

Change to Win unions are actually . . . a set of service employee unions—[Service Employees International Union (“SEIU”)],⁶ [United] Farm Workers,⁷ United Food and Commercial Workers,⁸ [and the] [International Brotherhood of] Teamsters⁹—who broke off from the AFL about five years ago¹⁰ . . . because

4. *About Us*, CHANGE TO WIN, <http://www.changetowin.org/about> (last visited July 16, 2011).

5. *About Us*, AFL-CIO, <http://www.aflcio.org/aboutus/> (last visited July 16, 2011).

6. *About SEIU*, SEIU, <http://www.seiu.org/our-union/> (last visited July 16, 2011) (“We are the Service Employees International Union, an organization of 2.1 million members united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.”).

7. *About Us*, UNITED FARM WORKERS, http://www.ufw.org/_page.php?menu=about&inc=about_vision.html (last visited July 16, 2011) (“Founded in 1962 by Cesar Chavez, the United Farm Workers of America is the nation's first successful and largest farm workers union currently active in 10 states.”)

8. *About UFCW*, UNITED FOOD AND COMMERCIAL WORKERS, http://www.ufcw.org/about_ufcw/ (last visited July 16, 2011).

9. *About Us*, INT'L BROTHERHOOD OF TEAMSTERS, <http://www.teamster.org/content> (last visited July 16, 2011).

10. See Thomas E. Edsall, *Two Top Unions Split from AFL-CIO*, WASHINGTON POST (July 25, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/25/AR2005072500251.html> (reporting on the resignation of the Service Employees International Union and International Brotherhood of the Teamsters from the AFL-CIO on July 25, 2005).

we're now in a service economy. [W]here the factory workers of seventy or eighty years ago are the hotel workers, the restaurant workers, the janitors, and the security guards [of today]. By and large, a lot of those workers are immigrants, and these are workers who are struggling to make it into the middle class. And right now, because large groups of these workers are all unorganized, there isn't a path for these folks. And what our unions are trying to do is create a pathway, [to] give these workers, whether it's farm workers or truck drivers, a right to have a voice in the workplace, so they can bargain over their working conditions.

And that's really . . . the primary goal of [Change to Win]. And, in a larger context, [the reason] why . . . it's significant right now is [because] . . . the labor movement has been in decline for about thirty to forty years . . . [and] [a] smaller and smaller percentage of workers are organized. Why is that important? It's important for . . . one fundamental reason, which is we're in danger of not having a middle class. We're in danger of [losing] the American dream. [W]e're in the moment of [one of the] greatest economic inequality[ies] [in] our nation's history—[where the] greatest concentration of wealth is squeezed from the top and there's less for everybody else . . . and that has wide-ranging consequences. It has consequences right now for education, for crime, for healthcare outcomes, [and] for kids making it to college. And, fundamentally, that's what we're trying to figure out: how do we organize workers, the least of these, the poorest of the poor in this new economic moment?

ELIZABETH KEYES: Dan, I'm wondering if you could give us a picture of a typical case that you [get]. A restaurant worker comes to you, what [harm] has been done? Give us a picture of . . . [what has] been done and what you're able to do about it.

DAN CHOI: Oh, Sebastian and I probably have the same answer to this. We work on the same thing. But what usually happens is [that] it comes to us [at the] second stage— [where a] worker [hasn't been] paid. It could be a restaurant worker [or] someone in construction, but they don't get paid, and they'll try [futilely] for maybe weeks, sometimes even months, trying to get their wages. Basically, calling their employer, visiting their worksite, doing everything [they can] to get a couple hundred or a couple thousand dollars back. When they come to us [their efforts didn't] work out, and they somehow were fortunate enough to learn that there could be additional things that could be done. [W]e actually don't take most of the cases that come to our office, because . . . [the] need for unpaid wage services is actually much greater than the number of lawyers that are available. Just to put it into perspective . . . after our other attorney left, I could safely say that if you want free legal help after you didn't get paid, I'm the only lawyer in northern Virginia who will take your case . . . for free.

ELIZABETH KEYES: [Sebastian,] I was thinking about how both you and Mr. Choi said you represent a lot of people that work in the restaurant industry and then construction. In these industries, many people are . . . being paid in cash. How is there a way that you can verify how much cash they're actually owed?

SEBASTIAN AMAR: Sure, so this is one of my favorite types of cases for the reason that it's the employer's responsibility under the law to keep records of all the workers and how many hours they've worked. And so, in cases—especially with big construction [companies], and a restaurant that has more than one employee—you've got witnesses that can attest to the fact that somebody has come to work, and he's worked "x" number of days and weeks and months, and if you paid this guy under the table, your defense in court is, 'Your Honor, I'm in violation of my responsibilities under the law as an employer because I'm not reporting this guy on my taxes. I'm not withholding anything, but I don't have any receipts for that, either, but I promise that I paid.'

DAN CHOI: [W]hat it actually comes down to is [that] places like Virginia don't really have good labor laws. But the Fair Labor Standards Act [FLSA],¹¹ which is a federal law that deals with wage[s] and hour[s], [has] a recordkeeping requirement—so if you actually bring a lawsuit and if it survives . . . [in] the initial stages the burden shifts, so that the employer actually has to show that [it] kept records . . . so it's not as difficult [of a case].

ELIZABETH KEYES: You both have talked about the need [for representation] far outstripping the supply. So, Sebastian, could you talk a little bit about something that makes CASA fairly special, which is the organizing component. [Can you speak about some] of the wage and hour work and how that amplifies what you individually do?

SEBASTIAN AMAR: [S]o, I think one of the good things about working at CASA is that every CASA attorney is outnumbered now . . . [approximately] forty to one by organizers. And so, you've got this army of people whose entire job it is to go out into the community, to educate folks about what their rights are, to get a feel for what the cost to the community is, what the issues that they're facing are, and then bring them back to us, and say, 'Hey, listen, this is a problem, what can we do from a legal perspective, as far as trying to address it and provide some relief?' And I think that that helps us, because we are outnumbered greatly, as far as the need—it gives you an added tool—another weapon as an attorney. [This is] because the reality is [that] if you are an employer and you care about your license to work, if you care about the

11. Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201–219 (2006).

reputation of your company—which, in a lot of these industries your reputation is everything—what you don't want is for me to call a bunch of organizers, and say, 'Hey, listen, we need to rally the troops. Get 500 people over to your headquarters. I'll call every news ally that I have and we'll have cameras and 500 people in front of your office talking about how you're cheating workers out of their wages.'

[S]o, in certain instances, that's prove[n] to be infinitely more useful than any litigation that we could have undertaken in those cases, especially for folks who don't have the luxury of waiting six, eight, ten months, two years, three years on appeal for something to go through. And then the collections process. And so . . . the ability to lean on organizers is what makes the job as fulfilling as it is, because—without the organizer component to it—[we] would just be running into a brick wall over and over again.

ELIZABETH KEYES: [This segues] nicely to Joseph. I wonder if you could talk about . . . how [organizing] has helped, in particular, industries where immigrants are dominant and what some of the challenges have been [in] organizing those groups?

JOSEPH GEEVARGHESE: Well, to talk specifically about the farm work . . . United Farm Workers is a union in California. Some of you may be familiar with Cesar Chavez, who marched in the fields in the [19]60's, organized tens of thousands of farm workers,¹² [and] gave them a path to self-organize. The fundamental challenge, for example, with this group of workers, is that they are excluded from federal labor law, and what that means is, you've got an entire group that's excluded from having the right to organize under federal law. [S]o, in 1935, when Congress passed the Wagner Act, or the National Labor Relations Act,¹³ it excluded domestic workers, farm workers, [and] a few other categories. Does anyone want to venture a guess why?

AUDIENCE MEMBER: Because everybody is an immigrant in those industries.

JOSEPH GEEVARGHESE: Okay, immigrant. Other guesses? Who were the work[ers] . . . what was the work force in 1935?

12. See Mara Elena Durazo, *Making Movement: Communities of Color and New Models of Organizing Labor*, 27 BERKELEY J. EMP. & LAB. L. 235, 242 (2006) (discussing the role that Cesar Chavez, among others, has played in the labor movement).

13. National Labor Relations (Wagner) Act, Pub. L. No. 198, 49 Stat. 449, 453 (1935) (codified at 29 U.S.C. §§ 151-53, 157, 159-61, 163, 165-67 (2006)).

AUDIENCE MEMBER: Well, they didn't want to apply federal laws to family farms.

JOSEPH GEEVARGHESE: So, when Congress considered the law, there was incredible opposition, but when President Roosevelt moved it through Congress, in order to get the southern senators to vote for the law, he had to remove all of the protections for farm workers, or domestics, who were largely African-Americans.¹⁴ And so, they wrote them out of the law, and for seventy years we've been laboring under that set of restrictions. And so what we're trying to figure out is . . . how do you lift [up] this group of workers? Stephen Colbert testified in front of Congress¹⁵ a month ago, some of you may have seen the testimony. He was there with Arty Rodriguez, the President of the United Farm Workers, and Colbert, he said it better than anyone else. [Colbert was asked] 'Why are you interested in this group of workers? Why are you interested in not only the immigration issue, but the organizing issue? Why are you sitting here with Arty Rodriguez?' And Colbert said, 'Well, it's about power. This is a group of people who are the least of these, they come here and do our work, and they have no rights whatsoever.'

So, the challenge we've got in this moment is . . . what do you do if federal law doesn't give folks the right to organize? [W]hat do you do? So, seventy years ago . . . Congress said, 'Farm workers are not protected under federal law to organize.' And you're an activist, you've got a law degree, you're an organizer, [y]ou're going to get creative. Come hell or high water, you're going to figure out how to lift farm workers out of poverty. What do you do? Think big.

AUDIENCE MEMBER: Organize anyway.

JOSEPH GEEVARGHESE: You organize anyway. Absolutely. What else?

AUDIENCE MEMBER: You lobby to change the law.

JOSEPH GEEVARGHESE: Okay, you do. And at which level?

14. See Michael H. LeRoy & Wallace Hendricks, *Should "Agricultural Laborers" Continue to Be Excluded from the National Labor Relations Act?*, 48 EMORY L.J. 489, 506 (1999) (explaining that the exclusion of domestic workers and farmworkers was the result of harsh criticisms of the original drafting of the bill, which broadly covered all private-sector employees).

15. See *Protecting America's Harvest: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Sec., & Int'l Law, of the House Comm. on the Judiciary*, 111th Cong. 32 (2010) (statement of Stephen Colbert, Host, *The Colbert Report*, Comedy Central Studios), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:58410.pdf (text); *Stephen Colbert Testifies in Front of Congress* (NECN broadcast Sept. 24, 2010), http://www.necn.com/09/24/10/Stephen-Colbert-testifies-in-front-of-co/landing_arts.html?BlockID=317523&feedID=4214 (video).

AUDIENCE MEMBER: At the state level.

JOSEPH GEEVARGHESE: [S]o . . . there's a couple of different things . . . that have been out there. [F]or the last seventy years, farm worker advocates [and] civil rights advocates have been trying to get Congress to write farm workers [into the NLRA and] it hasn't worked.¹⁶

And then there's been a concerted effort in several states, and really, after seventy years, it's really California, that one state, [that has] enshrined the right to organize. Let me tell you a little bit about what we're doing just very briefly. So, recognizing the difficulty of moving legislation either at the federal level or the state level—before the election of Barack Obama, we decided what are the things that President Obama can do to help this group of workers. [W]e realized [that] the federal government purchases over a billion dollars worth of fruits and vegetables . . . that feed our troops [and] that are on school lunch plates. And the federal government, specifically the President—had the procurement authority right to say, 'Well, the federal government is going to only do business with those vendors who say no to child labor, say no to slavery, provide overtime, provide rest breaks, provide minimum wage protections, and the right to organize.'

Actually, the same day that Stephen Colbert testified [before] Congress and really elevated the issue of migrant farm workers, Arty and I met with the Secretary of Agriculture, and told him that 'We think you should use your federal procurement power to extend the law, to give workers the rights they've been denied for almost seventy years.' We fundamentally believe there's no better way to organize or no better thing that you can do for workers than to give them a path to self-organize, to self-police their own workplaces. And so, that's some of the creative type stuff that we're trying to figure out how to do.

ELIZABETH KEYES: It's creative. Can you talk about the special challenges of organizing immigrant women? What industries they're found in and how they make their . . . what kinds of cases make their way to your attention.

SEBASTIAN AMAR: Sure, like I mentioned before, we do a significant amount of representation of domestic workers, so that can mean pretty much anything, but, most specifically, it means folks hired to do cleaning of homes, preparing dinners, child care, elder care, and things like that. And actually, I'd say that our women's group at CASA is, without a doubt, the best organized and most effective of all the groups of workers that we organize. I'm not exactly sure why that is except that they seem to be the most upset. They do a

16. See, e.g., *Hearing Before the S. Comm. On Labor and Public Welfare*, 91st Cong. (1969) (statement of Cesar E. Chavez) (lobbying for the removal of the agricultural labor exclusion from § 2(3) of the NLRA).

tremendous job of not only supporting each other, but a lot of the work on the ground to get people out of really dangerous situations. A lot of the domestic workers that we are present[ed with] . . . because of our proximity to the District, come over to us through diplomats. Somebody brings them through some country in Africa, they don't speak the language, they don't have family, they have no phone, no Internet. They have no idea what to do once [their situation] turns sour, and somehow, they get word out to CASA and we'll . . . send folks out to the site to confront the employer and to extract the worker. And so the women organize . . . for whatever period of time is necessary, to provide housing and help the worker(s) get back on their feet, contact family or friends back home and do whatever we can do to recover wages. And so, the majority of the women that we organize are domestic workers. I'm not sure, beyond our proximity to the District, why that is.

But I'd say the other side of that coin is that we have a significant number of women who work in the cleaning industry. [I believe] that the reason that they organize so well is because when there's a violation, there seems to be a wholesale violation of everybody that's working on that particular site—and when you and all of your colleagues that are similarly [situated and] suffer the same harm, it's a lot easier to find your voice—it's not just you. It's not just you having to convince an attorney at CASA de Maryland, or an organizer who[m] you've never met. You're coming with, literally, ten, fifteen, twenty people who have suffered the same harm, to seek help. And so, I think that that's empowering. And I think that they're just very much outspoken. They're a very effective group before the media. They're not afraid to tell their story, which is a common problem that we find among immigrant workers, [who usually say] "It's fine if you want to file my case, but I don't want to talk to the press, I don't want my picture in the newspaper, I don't want anybody to know who I am." These ladies are the exact opposite. You almost have to fight off their demands that we go to the press immediately every time there's an issue. It's great to have to tell someone, "Listen, just take a second, step back for a minute," and, "we'll call you as soon as we have a plan of action." But they're always there and they're always ready. That's been a very effective tool for us, particularly with the folks who work for diplomats because of the issue of diplomatic immunity that, in many cases, keeps us out of court, and so you got to find another way. And I'll tell you, they really don't like people showing up [at an embassy] to [tell them] that [they are] violating human rights.

DAN CHOI: We actually also organize, but we don't have a women's group, so I'll talk about the challenge side of things. [First,] I think immigrant women still fulfill traditional roles. So, I mean, if you think of traditional roles, men go to work, and women stay at home. When they come to the United States, man goes to work, woman goes to work, but she still takes care of the children, so a lot of times after work, women are taking care of children, which puts less time for them to actually come out and be organized. Second[,] is that

they tend to work in a lot of sectors that are much more hidden, like domestic work. If you are at a house serving a family or if you're in a dry cleaners . . . it's harder for someone to go out there and do outreach as opposed to, at [a construction site where] there are 500 guys [at] any time. So that's been our challenge—working with immigrant women, or organizing them.

ELIZABETH KEYES: Dan, can you talk about how Virginia has its [own] special challenges? [Y]ou mentioned the absence of a good labor law, but politically it's an even trickier environment than most to work with immigrant clients. [C]an you talk about how you connect to advocacy or coalition work to try to handle some of the state problems that are making your job of litigating difficult?

DAN CHOI: So, northern Virginia is a separate creature from the rest of Virginia. The rest of Virginia is still very conservative, and when you think Tea Party, you think [of] Virginia. [It was the] capitol of the Confedera[cy], and a lot of things that go on are not very pro-immigrant, so we are always on a defensive posture. Our General Assembly is usually in January and February, and [two years ago] we had 150 or so . . . what we would consider anti-immigrant measures presented. It went down slightly last year when they found out the economy was bad and all that immigrant stuff [wasn't] going to work. [B]ut we expect it to rise again because of all the successes [in other states]—and I use that term success in a cynical manner. For example, [in] Arizona, where politicians have now found out that you can profit by making life harder for immigrants.

Some of the things that have recently gone on [in the] General Assembly are simply that you can't have anything [except] in English. You can't have any government literature [except] in English. Imagine if you're a tourist from Finland or Argentina, coming through Virginia, and trying to look at a tourist brochure, and you can't print that in some of the other language, because it's required that it will only be in English.

You have things like arrest[ing] folks . . . the big thing is [that] you can't get your driver's license or renew your driver's license using your employment card. So basically, a lot of people in the D.C. metro area, especially Salvadorans, came here on what was previously mentioned, temporary protected status. That means that you're here legally, but you don't have a green card. To get a driver's license in Virginia, you practically need a green card or a U.S. passport. This immigration—employment verification card—the IEP, you can't use it to do [it].

Basically . . . you're here legally, and the federal government said, "You can work here legally, but you can't drive to get to your work or pick up your children." So that's the situation that we have right now and that was spurred on by one immigrant—one immigrant on that kind of status—who got drunk and killed a nun somewhere else. So the government made this a big

deal, and even though the monastery said, “We don’t want this to become a political issue,” it became a political issue and now you have literally hundreds of people [in this situation]. We’ve been getting hundreds of phone calls of people saying, “I’ve been here for years. I haven’t committed any crime. I just want to get to my work, but they won’t let me renew my driver’s license.”

ELIZABETH KEYES: Our time is winding down . . . but I’d like to leave time for questions.

AUDIENCE MEMBER: With the acknowledgement that there tens of millions of immigrant workers in this country, why do you think the laws are so slow to change, to be modernized. You talk about the issue being like this for seventy years. So, what’s the hold-up, basically?

JOSEPH GEEVARGHESE: I think, in my experience, at least the last two years, working at the federal [level]—even with the Administration, even when you have a President of goodwill, who in his heart of hearts wants to do the right thing—there’s an incredible amount of inertia and opposition. And, just as an example, when we met with the Secretary of Agriculture, and we said, “Well, farm workers should have a bill of rights. They’ve been excluded from legal protections for seventy years.” I can’t think of a more sympathetic group of workers to be a champion for. We had done polling that said, “This will make you look good with Latino voters, etc.” He’s open to it, but he said, “Well, I’m concerned about, Republican opposition. I am concerned that the existing bureaucracy in the Department of Agriculture isn’t going to adapt quickly enough.” So, it’s frustrating for folks like us who want change to come very quickly.

[O]ther examples over the last two years . . . we’re working on a campaign in the Inland Empire in California, where [] the goods come in on ships. They get out at the Port of Long Beach, near Los Angeles, California—this is stuff that goes on the shelves of Wal-Mart or Home Depot. They’re then trucked from the coast, about 100 miles [to] the Inland Empire, which is just a sea of warehouses. It’s a third world country, [in] Riverside County. Walking around, there’s no running water. Streets are unpaved. And, [there] are low-wage Latino workers or temp workers. We’ve done multiple meetings with the Department of Labor to say, “Look, you should do concentrated enforcement. You actually have power of the FLSA to invoke hot cargo.”¹⁷ Which means, that if Wal-Mart is violating

17 See, e.g., DEP’T OF LABOR, *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* 29–30 (David Weil ed., May 2010), available at <http://www.dol.gov/whd/resources/strategicEnforcement.pdf> (explaining that the Wage and Hour Division of the Department of Labor has the power, under section 15(a) of the FLSA, to embargo goods that have been manufactured in violation of any provision of the FLSA—including non-payment of wages).

the law the Department of Labor could say, “alright, we are going to hold these goods, Wal-Mart. We’re not going to let you put them on the shelves, until you clean up your act, until the hundreds of thousands of workers in your supply chain get the rights they deserve.”

But again, it’s two years into it. We’re still negotiating with the Administration, so there’s inertia. And I think people have to rise up and get a little bit angrier for more radical change to happen.

DAN CHOI: It’s definitely politics. It’s polarized. They say the country is getting very polarized, and whenever you make any move ahead, it kind of means working together and when you say “comprehensive immigration,” it encompasses all. And so, for example, pass legalization as well as strengthening the borders. Unfortunately, whenever those words come up, there’s a large faction on both sides [of people] who will not work together. Hearing, pass legalization, you call it “amnesty,” and people don’t want to [allow amnesty] . . . and the same thing on our side, too. But I mean, the reason it doesn’t happen is it’s a very political issue and people really aren’t willing to work together. And it’s just politics. It’s not common sense. It’s just politics, and that’s what we’ve seen over and over.

AUDIENCE MEMBER: How do you feel about strikes and walkouts, specifically, restaurants having walkouts on a Friday night? Do you think those modes of organizing are outdated?

DAN CHOI: Oh, it works. It still works. So, I’m actually on the Advisory Board for the Restaurant Opportunities [Center]¹⁸ . . . I’m on the board, but [on the] D.C. side. [T]hey’ve been around the country and what they’ve done is, whenever there are problems, they’ve organized . . . [they’ve] had people strike, and they brought attention to the fact that workers at these—even [at] the fanciest, and we’re talking about the \$100.00 [a] plate places, are still getting exploited in so many ways. So it still works. It’s not the only answer, but it definitely works.

ELIZABETH KEYES: I agree on that. More questions?

AUDIENCE MEMBER: So, the threats, when someone threatens that they’re going to report someone to Immigration . . . is that [an empty threat]?

18. See generally REST. OPPORTUNITIES CTRS. UNITED, *What We Do*, <http://www.rocunited.org/what-we-do> (last visited July 16, 2011) (explaining that the Restaurant Opportunities Center model builds power for restaurant workers by organizing the workers to “demonstrate public consequences for employers who take the ‘low-road’ to profitability.”).

DAN CHOI: Yes and no. I mean, they could call Immigration and Customs Enforcement [ICE]¹⁹ and, potentially, I don't know what ICE would do with that information. So, they might actually go after somebody. That said, a lot of times, ICE has better things to do than go after workers who didn't get paid and [who are] trying to get their rights. Also, depending on their jurisdiction, there [are] protections. Unfortunately, the circuit courts are somewhat conservative, so it's actually after you file a lawsuit, but it might be considered retaliation, and illegal, if you make any threats after a lawsuit is filed.

ELIZABETH KEYES: Going on that . . . will there often be sanctions for the employer, so it's kind of like if they make that threat, it's more of an empty threat because they could get in trouble? Couldn't they get in trouble, too, if they're hiring undocumented [immigrants]?

DAN CHOI: Yes, and I remind them that every time they call and say, "That guy is illegal, right?" And then I ask them, "Well, if he is, you hired him." That usually shuts it up.

SEBASTIAN AMAR: [A]nd I'll just add onto that, [that] the Department of Labor is . . . making a push now to revamp their wage theft, wage recovery, and bad employer . . . practices. And so, we've had some meetings with them where they stress, to a very high degree, that "Listen, whoever you send to us, we're absolutely not entering into any memorandum of understanding with ICE or anything like that to pass them over, [or] to give any type of information to folks." And, I think that probably part of your question was spurred because of my comment, saying "I can't really guarantee to anybody that I represent that if we go to court that that's not going to come up," and we can object to it all we want, but if there's somebody in the courtroom that we didn't anticipate being there, and you get on the stand and you've said it anyway . . .

The reason that I say that, although I haven't seen that, personally, [is that] I have heard, particularly in the District of Columbia, folks who have objected [un]til their face turned blue, and the judge still allowed that information—which you can appeal—but throughout that process, folks that have actually caught the attention of [ICE]. So, a lot of those instances haven't been resolved yet, and I'm sure that there [are] significant constitutional and other arguments that folks should be able to make to get that quashed. But it's nonetheless a concern. So, I don't think that we can ever say it's a totally empty threat. Just like Dan said—also—we never know who's going to answer the phone at ICE. And, if it's somebody that just didn't have a lot to do that day, or felt like going to [a] favorite Chinese restaurant, maybe they'll show up. But it is a very

19. *ICE Overview*, U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT, <http://www.ice.gov/about/overview/> (last visited July 26, 2011).

useful response to say, ‘Well, that’s fine—if you call ICE, you’re calling ICE on yourself, too, basically because somebody is going to have to investigate that you’re hiring all these undocumented workers.’ So, at the end of the day, that’s the big problem. There’s just not enough accountability for employers.

ELIZABETH KEYES: I’m going to take moderator’s privilege for the last question. I think it’s striking that all three speakers have talked about lawyering far beyond litigation. There’s nobody up here who said that this case, those cases are in the context, the context and we’ve heard about local advocacy, state advocacy, federal advocacy, legislation, agency work, [and] organization in general. And any of you are welcome to talk about this. I’m going to ask Joseph if he could talk about it. Joseph was an organizer before law school and then obviously, has continued with his motivation to be very heavily involved in organization. Can you talk about what the law adds to organizing . . . ?

JOSEPH GEEVARGHESE: [T]he truth is the law as it is, isn’t [how] the law as it should be. And . . . we organize in a context where there are perimeters set down and I think the worst thing you can do is go through law school and then operate within those perimeters. I went to law school. I was an organizer with the Steelworker’s Union in the South, and a defining experience [was when] I had organized a small steel finishing plant in rural Tennessee, and I was young—I was excited—I was a young organizer, [and I had] one of my first wins. [A]nd after you organize, you then give it to a union negotiator to work on the first contract. I called up the negotiator a month later and I said, ‘How’s the bargaining going?’

And he said, ‘Well, they’ve shut down the place and moved it.’ [A]nd all those men and women that stood up and decided to act in concert . . . it just kind of hit me in the gut, and at that moment, I realized, well, I do need to organize, but I also need to know what the law is more effective[ly], [in order] to try to move both in a more effective direction. So, a lot of the work that I’ve done, especially at Change to Win, has been trying to figure out what is the intersection of existing law and how can you kind of operate in the gray spaces. How can you bring creativity, to try to do things that have never been done, or that get stalled in Congress? But, I think there’s a mixture of both. Being a good lawyer, by itself, isn’t enough. I think you got to be a strategic organizer, if you want to really facilitate social change. And, I passed out . . . the latest issue of *The American Prospect Magazine*.²⁰ This is actually . . . an

²⁰ See generally *About The American Prospect*, AM. PROSPECT, http://www.prospect.org/cs/about_tap/our_mission (“The magazine’s founding purpose was to demonstrate that progressive ideas could animate a majority politics; to restore to intellectual and political respectability the case for social investment; to energize civic democracy and give voice to the disenfranchised; and to counteract the growing influence of conservative media.”) (last visited July 16, 2011).

example of the intersection of law and advocacy. So, there's a lot of projects here where workers are organizing in California, in the fields, in warehouses, and, at the same time, we're trying to use creative [tactics], like to get the biggest bang for the buck at the federal level, whether it's DOL, Agriculture, or the White House.

ELIZABETH KEYES: Great . . . Big round of applause for our panel.

END TRANSCRIPT

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