

Testimony of  
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**EDUCATION**

B.A. History, Phi Beta Kappa from the University of Virginia  
M.A. & Doctorate U.S. History from the University of Delaware (1978)  
J.D., University of Houston (1984) Summa Cum Laude.

He has practiced immigration and nationality law in Houston in private practice (1985-1995) and as the in-house immigration counsel for BP America Inc. handling all US immigration law for the BP Group of Companies throughout the world (March 1995 - present).

Gary Endelman is Board Certified in Immigration and Nationality Law. He served on the certification exam committee in immigration and nationality law for the State Bar of Texas for several years and chaired this body for three years. He is a frequent speaker and writer on immigration related topics including a column on immigration law at [www.ilw.com](http://www.ilw.com). He has written extensively in Interpreter Releases, Bender's Immigration Bulletin, Immigration Briefings, Immigration Business News & Comment to mention but a few national publications. He has spoken at national and regional immigration conferences throughout the United States. He served as a senior editor of the national conference handbook published by the American Immigration Lawyers Association for a decade.

Dr. Endelman is the author of "Solidarity Forever: Rose Schneiderman and the Women's Trade Union Movement" published in 1978 by Arno Press.

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A NATION AT RISK: IMMIGRATION AND THE NATIONAL INTEREST  
By GARY ENDELMAN

The purpose of immigration should be to strengthen the nation, not aid the immigrant. Chain migration does not do that. Most family categories are an unregulated jobs program. All numerical limits on the family second preference should be lifted but all other family preferences should be abolished. It is impossible to protect US workers through restrictions on employment immigration alone when the vast majority of immigrants who come to work arrive as family preference cases. America needs to shift most family visas over to the employment categories, give the aliens themselves much greater control over their own visas, extend the concept of portability and allow the economic needs of the nation, as well as those of states and localities, to shape our immigration policy. No longer should the specific needs of individual employers play a decisive role. No longer should all occupations or all countries be given equal weight or treatment when it comes to visa validity or allocation. Flexibility, transparency and enlightened national self-interests should be the hallmarks of a new system that is nation-centered, not alien-centered.

## WHY WE SHOULD CARE

Is America ready and able to compete in the global economy? That question remains very much unanswered. In its most recent July 25th issue, Fortune Magazine worried aloud:

No one is saying that Americans can't adapt and win once more. But look at our preparedness today for the emerging global economy and the conclusion seems unavoidable. We're not ready

What will it take to reverse this trend and make America able to seize and occupy the high ground? We learn from Columbia University's Jeffrey Sachs that "there is no other fundamental mover of economic development than science and technology." Immigration can be a vital tool to win the battle for economic supremacy. How can we make that happen? The answer to that should shape our national policy for the future.

## THE VIRTUE OF DEREGULATION

One place to start is to eliminate micromanagement by the government. Mass migration and micromanagement cannot co-exist. Either micro-management or mass migration will have to go. Deregulate the system. Mass migration can only exist if regulated with a light touch. Congress should decide how many immigrant visas to issue and then charge employers a registration fee. In effect, employers would buy the right to hire foreign-born workers on a permanent basis. Let Congress set the going rate, put willing employers together with willing workers, to use President Bush's felicitous phrase, and then get out of the way so that the concerned parties can sit down and negotiate a deal.

## STRATEGIC IMMIGRATION

We need a paradigm shift in the way that the US Government thinks of immigration. With the exception of the rarely used investor visa, we have always had a passive approach to immigration that is driven the specific needs of individual employers. Whatever comes in over the transom, that is what the INS/CIS decides. Our economy needs a more activist approach. Just as we use tax policy to encourage business activity and shape investment decisions, so immigration policy

can and must be deployed in a targeted and highly disciplined fashion to promote those with certain knowledge or talent to come while discouraging others. Immigration must become a tool that we can use to fashion the kind of society we want to create. Granting immigration credits to an employer for some sponsorship, for example, while withholding them in others, or making some cases subject to a numerical cap while exempting others, or even allowing employers to trade or sell immigration credits between or amongst themselves, is neither a new nor particularly shocking idea. Governments on all levels already do the same things in many other areas of American life, such as environmental remediation, urban renewal and corporate relocation. Immigration is now so inextricably intertwined in all areas of our national, regional and local economic life, and in all sections of the nation, as opposed to traditional areas of immigrant concentration, that incentives based on immigration can be just as powerful a magnet in fostering the kind of economic activity we want to underwrite as government encouragement, tax abatements or relaxation of building code restrictions. A market driven system would be simple, honest and transparent. It would protect American workers far better than the false promises of the current regime by giving immigrants what they need and want the most- true occupational mobility that is not tied to the need for employer sponsorship. For the first time, foreign workers could vote with their feet as they seek to realize in full measure the promise of American life for themselves and their families. No longer would government red tape subsidize an inefficient system that serves mostly to perpetuate itself and protect the vested interests of those elites who take false refuge in its complexity. Deregulation, not more of the same, is the cure for our immigration ills.

## EMPLOYMENT OVER FAMILY

While the US needs to retain a core commitment to asylum, refugee rights, and family unit, immigration is neither social outreach nor international self-help. Properly understood, it is an exercised in enlightened national self-interest. Most Americans would be surprised to learn that the vast majority of legal workers never had a work visa. They came in as family migrants even though they came to work. That is what family migration has become, an unregulated jobs program. While most Americans love their siblings and adult children, they do not live with them. It is unconscionable that the families of permanent residents are divided for years on end. That must stop and all caps on family second preference must go. Once that is done, all other family categories must be abolished with their numbers shifted over to the employment side of the ledger. This should also be done with the diversity visa lottery for which there is no economic rationale. This can be phased in gradually so as not to hurt those who have waited in line for so long. Alternatively, they can immigrate on the basis of these extended family relationships subject to a labor market test. If America does not need the siblings of US citizens, or married children, they should not come. In truth, they would be able to come faster than they do today.

The primary reason for immigration should not be to help the immigrant but to enrich the nation. We need not to protect those jobs that now exist but to use immigration as a way to create new jobs and expand national wealth. When US immigration policies are set without reference to global realities, mature industries lose jobs and emerging industries lose something equally precious but harder to spot, the possibility for jobs. These jobs are lost to the US economy even before they are created.

## SOME MODEST PROPOSALS

Now is not the time to tinker. Now is the time for bold thinking . We have serious problems and we need serious solutions to solve them. Try these on for size:

? We need more green cards and fewer H1Bs. Congress should remove all numerical caps on the H but only allow for three years with no extensions.

? Abolish the labor condition application and give the alien ownership of his or her own work visa. Allow self-petitioning valid for any employer under the H-1B category. Take the concept of H1B portability all the way to its logical conclusion. Allow the alien to file an H petition much as he or she can now file a national interest waiver or extraordinary ability immigrant petition. The H-1B approval would then truly belong to the H-1B worker and not to the employer who loses any leverage that the market would not otherwise provide. Armed with such a weapon to guard against unreasonable employer demands, the H-1B alien would have no need for a labor condition application which can be abolished.

? Adopt the suggestion advanced by John Doerr, legendary Silicon Valley venture capitalist, under which every foreign student who graduates from a US university with a Ph.D. gets a green card.

? There is no reason why real-time data cannot tell us what real-world labor shortages exist. Using the Bureau of Labor Statistics's occupational projections, the DOL should be able to tell us what occupations are in short supply. If BLS numbers indicate that the number of vacancies in any occupational category, when adjusted for regional or even metropolitan differences, will outpace the ability of the domestic labor pool to fill them, then grant the H-1B and allow that alien to apply for the green card without any further need to advertise the job or demonstrate the lack of qualified, willing or available Americans.

? Reward not past achievement but future potential when deciding which aliens have the talent to enrich the American economy. Decisions on extraordinary ability, national interest waivers or outstanding researchers should be governed not by what someone has done before but on what they are likely to do once they get here. We need people who are going to do their best work for us in the years to come, not those whose salad days are long gone, even if their resume looks more impressive right now.

? We need much tougher enforcement and much higher levels of immigration. Opponents of immigration should no longer be able to frustrate what the economy needs but supporters must stop acting as if September 11th never took place.

? Recognize, as noted above, that the real threat to US workers comes not from the distinctly limited number of employment visas but from the much larger number of family visas whose entry is unchecked by any labor market controls.

? It should be harder to come and easier to stay. Impose more restrictions on nonimmigrants and fewer on those who seek green card status.

? The American people must understand the laws and feel they have a stake in its interpretation, enforcement and evolution. It must belong to them, not to lawyers, lobbyists, bureaucrats or think tanks.

? Remove any artificial caps on employment-based categories. When employers no longer need to hire, they will not need big brother to tell them not to. We do not need a law to encourage the hiring of Americans first. At the same time, make it much more expensive for those employers that do bring in immigrants. Both supporters and opponents of immigration must learn to trust the culture of capitalism and believe in its legitimacy.

? Employment-based immigration should care more about the creation of new economic opportunity, rather than the preservation of what exists now. Growth not protection is the goal. Facilitating future growth and not punishing past transgressions is what all who care about America must place first.

? Abolish the practice of allocating immigrant visas by nation states. Why do we continue to insist that Denmark and China get the same number of immigrant visas? We should base our decisions on what the economy needs, not on an accident of geography.

? If we keep a nation-centered immigrant visa allocation scheme, institute a flexible cap so that no nation, read India or China, can grab more than 10-15% of the quota. Once this limit was reached, nationals of this nation could still come but preference would be given to under-represented nations and graduates of US universities regardless of their country of origin.

? Double the number of employment-based immigrant visas by only counting principal visa applicants, not family members.

? Allow for flexibility to meet unusual demand in changing times. Congress can set a fixed number of immigrant, or even non-immigrant visas, every few years, say for a three-year projection. Thereafter, a market-based auction can be conducted, perhaps quarterly subject to prevailing wage oversight and subject to random audits, so that additional visas can be released to meet unexpected demand. The Committee for Economic Development suggested something very close to this several years ago when Congress passed the American Competitiveness in the 21st Century Act. The idea is to allow the economy, not federal regulators, to open or close off the visa spigot when demand rises or falls.

? For the first time in American history, immigration is a national, not a regional or local phenomenon. Places that never knew or cared about immigration now realize that it can be used to reverse population decline, replenish fading neighborhoods, restore burned out inner city cores, and promote new business creation. The consequences of immigration going national cannot be overlooked. The paradigm of employment-based immigration must begin to shift away from one based on responding to the specific needs of individual employers towards the larger requirements of local, state and regional economies. It is more important to help Appalachia or bring dead New England mill towns back to life than to assist a particular employer. This does not mean that the current model of employer sponsorship must be cast aside. It does mean that an alternative model should be tried, perhaps on a trial basis. Abolish the Diversity Visa lottery for which there is no sustaining rationale. Give out these same 55,000 visa numbers as credits to the

states much as is now done with carbon credits for emission controls. Allow the states to trade or exchange these credits between themselves since no one knows what the different economies of America need more than the people who live there. Use immigration as a practical incentive to restore and revive those parts of America that have been left behind. Let those who come give hope to those now there who have none.

? Create a blanket H-1B visa that can be applied for directly at a US Consulate, much as it is now possible to apply for a Blanket L visa. Eligibility for this Blanket H should depend on the number of approved H petitions in the past year, the percentage of full-time equivalent H workers in their employ (no eligibility for dependent H employers) and documentation of a demonstrated ability to pay the prevailing wage. No employer who is guilty of a willful or material H wage violation can apply.

? Having or not having a college degree should not be the only criteria for H-1B eligibility. Does the person have special talent? Do they have a demonstrated ability to solve important technical or commercial problems? Can they perform cutting-edge research? Will their employment have a multiplier effect allowing the sponsoring employer to hire more US workers? All of these should go into the mix. If America needs skilled plumbers, electricians or mechanics more than MBAs, or talented systems analysts with only a high school diploma but an expert grasp of cutting-edge technology, then these are the people who deserve an exempt or a cap subject H visa slot.

? Does the economy have the same need for all H-1B occupations? The question literally answers itself. Prepare a list of occupations deserving of H approval. This is precisely what USDOL has long since done with labor certification in the form of its Schedule A. Annual revision of the list will keep it current. For those occupations not on the list, they can still get an H visa but only for shorter duration and with no exemption from the intending immigrant presumption found in Section 214(b) of the Immigration and Nationality Act. This is a one time grant with no extension.

? All visas are not created equal. So, for example, in those places where US workers do not want to go, or for those occupations that are growing, or in those disciplines that Americans will not gravitate towards, such as auto mechanic where there is a yawning vacancy of some 60,000 jobs, make the visa longer and give it a larger share of the quota. This would easily apply in the H visa context but might apply elsewhere as well. Correspondingly, if a region has no need of imported expertise, or if an industry is stagnant and has fallen back into negative growth, then cut back on the number or validity of the visa, or even ban it entirely until growth resumes or rises to whatever level Congress finds acceptable.

? Rather than extending the scope of the labor condition application to the L-1, why not give L-1 workers true protection by enabling them to look for a better job without sacrificing visa eligibility? Extend the concept of portability under the American Competitiveness in the 21st Century Act so that any L-1 who is being cheated, lied to, or taken advantage of can port to any other employer who does business in the USA and at least one other country.

CONCLUSION

The stakes are huge. It is not that much of an exaggeration to predict that the continued erosion of scientific and technical leadership can pull down the American standard of living that is the envy of the world, and cripple our ability to project American influence in preservation of key national goals or strategic objectives. Immigration is hardly the only answer, but it is certainly part of the answer. We must stop thinking of immigration as a problem to be controlled and start thinking of it as an asset to be maximized. It makes no sense to have a system where, as Geoffrey Colvin writes in *Fortune*, if "Albert Einstein wanted to move in today but had no US relatives, he'd have to get in line behind thousands of poorly educated manual laborers who did." America can do better. As Emerson reminded us in his address to the American Scholar, there is still time for discovery: "Come my friends, it is not too late to seek a newer world."