Minutes of the Meeting of
The Commission to Study the Impact of Immigrants in Maryland
Monday January 10, 2011
Maryland House of Delegates Office Building
Annapolis, Maryland 21401

The meeting was called to order at 9:32 a.m. Attendance:

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<tr>
<th>Members</th>
<th>Affiliation</th>
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<tr>
<td><strong>Commission Chair</strong></td>
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<tr>
<td>Larry Shinagawa Ph.D.</td>
<td>Professor, University of Maryland</td>
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<tr>
<td><strong>Appointed by Speaker of the House</strong></td>
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<tr>
<td>James E. Malone</td>
<td>House of Delegates Member</td>
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<td>Susan L.M. Aumann</td>
<td>House of Delegates Member</td>
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<td><strong>Ex Officio</strong></td>
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<tr>
<td>Martin Ford</td>
<td>Associate Director, Department of Human Resources</td>
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<tr>
<td>Mark Goldstein</td>
<td>Planner, Maryland Department of Planning</td>
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<td>Nancy McCrea</td>
<td>Department of Business &amp; Economic Development</td>
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<td><strong>Appointed by the Governor</strong></td>
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<tr>
<td>Mark Shmueli</td>
<td>Attorney, Maryland Bar Association</td>
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<td>J. Henry Montes</td>
<td>Consultant, JHM Consultation</td>
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<td>Kien S. Lee</td>
<td>Community Psychologist, Community Science</td>
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<td>Michael C.Lin, Ph.D.</td>
<td>Volunteer, Organization of Chinese Americans</td>
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<tr>
<td>Naima Said, Esq.</td>
<td>Attorney, Naima Said &amp; Associates, PC</td>
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<tr>
<td>Sylvia Ontaneda-Bernales</td>
<td>Attorney, Law Office of Ontaneda-Bernales</td>
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<tr>
<td>Margaret Lebherz</td>
<td>Owner, Lebherz Oil &amp; Vinegar Emporium</td>
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<td><strong>Staff</strong></td>
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<td>Hiram Burch</td>
<td>Manager, Department of Legislative Services</td>
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<td>Adam Fogel</td>
<td>Sen. Richard Madaleno's Office</td>
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<td>Angela Lagdameo</td>
<td>Director, Office of Community Initiatives</td>
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<td>David Lee</td>
<td>Director, Office of Community Initiatives</td>
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<td>Jim Palma</td>
<td>Maryland Department of Planning</td>
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<td>Jeffrey Werling</td>
<td>Executive Director, Inforum / UMCP</td>
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<td>Xinqian Qiu</td>
<td>Research Assistant, Asian American Studies/UMCP</td>
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<td><strong>Guests</strong></td>
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<td>Mr. Donald Moorers</td>
<td>Founder &amp; Managing Partner, Mooers Immigration</td>
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<td>Jayesh Rathod</td>
<td>Director, Immigrant Justice Clinic, American University</td>
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<td>Jack Brooks</td>
<td>President, Chesapeake Bay Seafood Industries Assn</td>
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<td>Jamie Contreras</td>
<td>Capital Area Director, SEIU</td>
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<td>Fred Ganjon</td>
<td>President, IIC Technologies</td>
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<td>Michael L. Kabik</td>
<td>Attorney, Shulman Rogers, Gandal, Pordy &amp; Ecker</td>
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1. Introduction
Commission Chair Larry Shinagawa welcomed attendees to the Commission meeting. He reviewed the meeting agenda with members and staff. The following points were discussed:

a. The commission will continue another year in order to create a more in depth and comprehensive look at immigration in Maryland.

b. This meeting will consist of 6 “broad testimonies from constituents” on how immigration affects the state.

c. The meeting will have a moment of silence at 11:00 am to reflect on the victim of the recent shooting in Tucson.

2. Testimony by Donald Mooers
Mr. Mooers is a recognized expert in immigration and nationality law. He advises and represents clients on immigration matters before the Departments of Labor, Homeland Security, and State. He provides advice on immigration law and policy for Congress, media outlets and national organizations. His testimony is attached as Appendix A.

Mr. Malone asked Mr. Mooers was asked about the E-Verify system. He described the E-Verify system and stated that the system has problems and that employers have many false negative hits, though he didn’t know the rates of false negatives. Mr. Ford asked about what policies would help Maryland in attracting immigrants. He replied that passing a Dream Act and reducing the impression that they would be pulled over for “having a taillight out.”

Other points discussed include: Immigrants frequently take jobs that most Americans are unwilling to do, including fast food jobs that traditionally were held by American teenagers.

Immigrant teachers helped Prince George’s and Baltimore county public schools add teachers and meet requirements in the No Child Left Behind Act. Many of these teachers introduced into the classroom were of Asian/Filipino descent.

Policy should work to attract smarter immigrants to Maryland we could fill high tech research positions that will improve our intellectual database.

3. Testimony by Jamie Contreras
Jamie Contreras is the 32BJ SEIU Capital Area Director and SEIU Maryland-DC State Council President. He has been appointed to the Subcommittee on Public Safety for Prince George’s County Executive-elect Rusher Baker Transition Team. Contreras helps county officials work with largely immigrant communities to ensure the rights of all people are respected. During his time before the Commission Contreras gave information related to his close contact with immigrants in the union. His testimony is attached as Appendix B. Highlights include:
a. Maryland’s success depends on the immigrant workforce. One third of grounds workers in Maryland are immigrants. Immigrants make up 8 percent of Baltimore’s population and are responsible for 9% of Baltimore’s economic output.

b. These immigrant workers are threatened with immigration control and deportation if they join a worker’s union, which creates lower wages and less protection in the work place.

c. The Commission should encourage immigrant participation in Maryland’s economy by recommending wage standards and protection for foreign-born workers.

d. E-Verify is a system with many flaws and this system can unnecessarily keep an honest immigrant from getting a job.

Delegate Aumann asked if the Union checked immigration status of members in any circumstances. Contreras responded that it did not. Dr. Werling asked if immigration affects negatively the numbers of union members. Contreras replied that unions did miss many important opportunities to recruit union members among immigrants.

4. **Testimony by Jayesh Rathod**

   Jayesh Rathod is an Assistant Professor of Law at the American University Washington College of Law. His area of expertise and scholarly interests include immigrants’ right, labor and employment, occupational safety and health, and the intersection of law and organizing. Over the course of his career he has worked with numerous non-governmental organizations to advance civil and human rights of communities in the United States and abroad. His testimony included:

   a. Foreign-born workers are experiencing more fatal injuries on the job. Mr. Rathod encouraged the commission to recommend higher enforcement and training and have a dialogue with industries of violent occurrences. (Coordinate with Maryland Health and human Services).

   b. Low wage, seasonal and temporary workers that are very short term are exploited and result in wage theft by employers (total of $100 billion nationwide). This creates a competitive disadvantage for the honest companies.

   c. Temporary guest workers (H2B Visas) in Maryland are isolated and companies exploit them by not providing adequate housing or healthcare, especially by the crabbing industry.

   d. Immigrant Entrepreneurs who want to start a business must fill out paperwork with language boundaries. Mr. Rathod encouraged the commission to recommend bilingual paperwork for businesses.

Commission members enquired about the mechanisms of H2B visas and what responsibilities the State government had in the enforcement of wages and living standards. Rathod noted that while many regulations existed they were only irregularly enforced.
5. **Testimony of Jack Brooks**

Jack Brooks is a representative of the Chesapeake Bay Seafood Association (CBSIA), which is a nonprofit association formed 50 years ago to represent the seafood processing industry in Maryland. Mr. Brooks went before the Commission to respond to the report on the Maryland migrant workers in the Crab Picking industry by the American University and talk about the real treatment of temporary workers (H2B) in the state. (A summary of this statement is attached.) His comments were:

a. There were inaccuracies in the report:
   i.) Under H2B employees can always move to another licensed employer
   ii.) Travel and document fees are paid by the employer
   iii.) Healthcare is provided for the employees and the Chesapeake has great treatment centers
   iv.) H2B has a definite hours number of 35 per week
   v.) The crabbing industry in the region gets inspected frequently by the Maryland Department of Health and other organizations

b. The employment in the crabbing industry decreased in the late 70s and the industry went to temporary workers to H2B to make up the difference.

c. Many workers love the place and the work and the commission is invited to come to Hooper’s Island to see what the area is like.

Commission members asked several specific questions concerning working conditions and the H2B program. He stated that the U.S. Department of Labor is pretty thorough in certifying that there are no citizen-workers who are available to take the crab-picking jobs.

6. **Testimony of Fred Ganjon**

Mr. Ganjon was a UMCP graduate and after a career with the Federal government he founded Intelligent Information Conversion (“IIC”) Technologies in 1992. IIC is a global leader in land mapping and GIS services, marine charting, software design, and CAD services. In his testimony (attached) Mr. Ganjon described his use of intelligent immigrants in the starting of the company:

He could not have started this new technology without hiring H1B workers from India. These workers were the select few people in the world who knew how to work this technology (training new people would cost money and time).

7. **Testimony of Michael Kabik**

Mr. Kabik is a widely recognized leader in the Immigration Bar and legal community. A mentor to young practitioners in the field, Mr. Kabik regularly directs and teaches Immigration Law Continuing Legal Education courses to other Lawyers. His statement is attached. The highlights of this testimony include:
a. Immigrants are the key to the engine driving our economy. They make up only 12.5% of U.S. population (in 2008) but they accounted for 40% of people that founded a technology company. Within Maryland, the foreign-born make up 27 percent of all scientists, 21 percent of healthcare practitioners, and 19 percent of math/computer specialists.

b. The H1B Cap should be increased to a realistic number to reflect market demand. Instead of resorting to a lottery that turns away qualified professionals and restrict U.S. companies.

c. H1B Spouses should be permitted to work without the necessity of being sponsored for their own H1B visas.

d. Alleviate long wait times by increasing the per-category and per-country limits on employment-based visas.

e. Provide incentives for businesses that hire immigrant professionals, especially in the technology sector. We need to encourage the innovation and entrepreneurship that immigrants have historically contributed.

f. Support Maryland’s universities who bring on foreign talent as educators and researchers, as well as foreign students who we want to stay after graduation and contribute back to society based on investment.

g. Immigration Law is federal, so our state cannot make or change these laws. However, we can talk to Maryland’s federal Congressional delegation about the necessary fixes to our immigration law.

Subsequent discussions considered the employment restrictions on foreign students after graduation, the requirement for federal contractors to use E-Verify, and the possibility of auctioning H1B visas.

8. Closing Statements
Commission Chair Larry Shinagawa updated the commission on reports that are being worked on by Jeffrey Werling and Hiram Burch. He also informed everyone that the next meeting will be on February 14, 2011 and the proposed topic is “Law Enforcement, Demographic and Economic Experts”.

The meeting was adjourned at 1:15 p.m.
As a life-long resident of Maryland, I am amazed that we are here today discussing whether immigration is a positive or negative for our State. It is difficult for me to understand why this Commission is in existence to decide whether Maryland is better off or worse because of immigration. A cursory look across our great State – and especially at my locale, Montgomery County, also known nationally as the Economic Engine of Maryland – is all one needs in order to understand that Maryland would be far poorer, and more economically desperate, without our vibrant and diverse immigrant communities.

We see our State as a global leader. My small town of Bethesda serves as the global headquarters of both the world’s lodging leader – Marriott – and one of the world’s largest technology and defense companies – Lockheed Martin. Bethesda’s National Institutes of Health is the center of the world’s fight against AIDS, cancer, heart disease, malaria, obesity, diabetes and dozens of other diseases. And we are just the tip of the iceberg. I-270 from Bethesda to Fredrick is home to DNA Alley, with additional biotechnology centers in Baltimore and other regions of our State. Baltimore is a global center of finance, trading and manufacture. Indeed, every corner of Maryland has a business or organization that is engaged in global commerce.

In our Montgomery College, we see diversity and excellence perfectly balanced. Montgomery College is not only America’s most diverse institution of higher learning; it is also ranked as our country’s most academically successful community college as well. In the college ranks, Johns Hopkins does well on the global stage, as does the University of Maryland – a fact that is sometimes very hard for me, as a Duke grad, to admit.
We are global actors, and lucky for Maryland, we are sitting on the globe right here in our State. Unfortunately, emotion – centered on breeding fear of the outsider – has all-too-often replaced reason with emotion. The events this past weekend in Arizona, where a Member of Congress and Federal Judge were shot at point blank in part because of the poisoned immigration debate in America, show the importance of this Committee's work.

Tongues of fire – and words of rebellion – shoot from hate radio, especially on the topic of immigration. To those elected leaders who support immigration reform, the rights of immigrant workers, or even the need of American employers to hire foreign workers, phrases such as “criminal”, “traitor”, and “not worthy of living” are used.

And yet, here in Maryland, reason has largely ruled. Indeed, how could it not? We understand that immigration makes our communities, and our state, stronger. Immigrants in Maryland create jobs -- they don't take them.

Due to ongoing shifts in Maryland’s workforce, it has become increasingly difficult for employers to find Americans to fill positions on the two opposite ends of the workforce spectrum: Lowest-Skilled and Highest-Skilled jobs. The reason for this gap is that we have become a nation essentially in the Middle-Skilled area. We don’t have enough Americans who have dedicated their lives to basic research, science and technology to fill the positions in Maryland’s research labs. Neither do we have enough Americans whose ambitions include working in the lowest-skilled blue collar positions of construction laborer, assisted-living nursing aide, crab picker or chambermaid. Thus we are left with a labor shortage at both ends of the labor spectrum. This shortage has been filled, luckily for our State, by dedicated and hard-working foreign nationals.

To bring home the great benefits that foreign nationals have provided our State, I want to focus on just three areas: Unskilled jobs, the Education sector, and the High Tech and Research sector.
Unskilled jobs

Maryland is home to a multitude of businesses, including construction companies, hotels, restaurants, landscape companies, recreational managers, racing concerns, farms and food processors whose success depends on the availability of unskilled workers. Unfortunately, under current US immigration law, Maryland’s annual allocation of unskilled workers to fill all the unfilled permanent positions throughout our State comes to only eight (8) individuals. That means that only one worker per year is available for every three Maryland counties.

In the course of my practice, I have advised many of the companies in desperate need of unskilled workers, and know firsthand the struggles they have faced in recruiting enough US workers who are ready, willing and able to dedicate themselves to these positions on a permanent basis. I, like all of you, have not raised my children to look forward to a life of unskilled work. Even in a period of economic downturn, there are not nearly enough Marylanders who have come forward to work in the lowest-rung jobs.

Low-skilled jobs, which rank among the highest demanded occupations in Maryland, are disproportionately filled by immigrants (20% according to a 2005 study by the Urban Institute). The need for workers to fill these positions is further documented in the GWIB’s Maryland Hospitality & Tourism Industry Monograph, which stated that “foreign workers for temporary nonagricultural work . . . are especially important in lodging and restaurant businesses for landscaping, food processing and preparation, cooks and dishwashing positions, but today the number of . . . visas granted annually does not meet the hospitality and tourism need.” Given the current statistics and growth of the immigrant population, the lack of visas to fill vacant low-skilled positions is an impediment to business success and growth.

Without the vast number of immigrants working in these sectors, we would be lost as a State. Our economy depends on these workers – from busboys in restaurants to crab
pickers on the Eastern Shore. Make no mistake – these immigrant workers are at the very core of Maryland’s economic infrastructure.

**Education Sector**

In today’s challenging economic environment, Maryland’s colleges and universities are forced to compete not only to draw top students with the means to pay hefty tuitions, but also to attract world-class faculty to enhance and distinguish their academic offerings and reputation. This has led to a growing number of foreign nationals serving as professors, researchers and other academic staff, especially in the hard sciences, mathematics and engineering. Montgomery College, and community colleges throughout the State, face similar pressures, and have had to turn to foreign national professors and staff in math and science.

Foreign teachers at the K to 12 level have helped two of Maryland’s most important public school systems, Prince George’s and Baltimore City, to meet the challenge created by No Child Left Behind. Due to shortages of highly-qualified teachers in hard-to-serve areas, these school systems had no choice but to turn to US-certified teachers from foreign countries, primarily from the Philippines but also from Jamaica and other nations, to fill critical positions, especially in math, science and special education. Had these systems not brought in hundreds of certified teachers, they would never have been able to have placed highly-qualified teachers in every classroom in Baltimore and Prince George’s. Indeed, as I learned from conversations with education experts, in some cases these foreign teachers were the very first certified instructors these children ever had. Without these Filipino teachers, Maryland’s most precious resource – our children – would have been denied access to a quality public education.
High Tech and Research Sector

Maryland is known around the world as the center of global medical research. A significant part of our economy is fueled by the Biotech and Medical Research sectors, which are centered at the NIH, University of Maryland, Johns Hopkins, Fort Detrick, the Food & Drug Administration, Howard Hughes Medical Institute, Bethesda Naval Hospital, and the myriad private companies and organizations that support biomedical and medical research in our State. With the continuing shortage of American science and technology students in university graduate programs, Maryland employers in this sector have no choice but to turn to foreign scientists to fill research positions.

The crisis created by the absence of American graduate students in math, science and engineering has also impacted our State’s defense and related technology companies, as well as the IT industry. Again, without these very smart and talented foreign workers in Maryland companies, we would not be able to compete in the global marketplace.

A 2006 report by the Immigration Policy Institute reveals the profound impact of immigration on science, medical and technological fields. Using 2000 Census data, the study stated that “one in every five doctors, one in five computer specialists, and one in six persons in engineering or science occupations is foreign born.” Preliminary reports from the 2010 Census show that a shift over the past decade has made dependence on foreign researchers and medical professionals ever more acute.

In Montgomery County alone we have witnessed great changes in our demographic profile over the past two decades. We owe much of our current prosperity to the marvelous population mosaic residing in our community. We have residents from over 170 countries, with five percent (5%) coming from just one country – El Salvador. Most Montgomery County residents embrace this rich diversity. Diversity is not something we “deal with” or even “manage”. We welcome it, and in welcoming diversity we serve as an example to the rest of the State and to the Nation as a whole.
Our foreign citizens comprise a high percentage of our most successful entrepreneurs. They work hard, often laboring at two or more jobs just to make ends meet. They value education, and they work to ensure that their children take advantage of opportunities that they never had. They go to church more than US-born citizens, and they have lower divorce rates. Crime rates by immigrants are lower than the US-born population. Our foreign-born community wants most of all to learn English – but we don’t have enough teachers and tutors to meet the demand for adult English literacy. It is no accident that Montgomery County Public Schools and Montgomery College – with their respective high percentage of international students – are known nationwide for their academic excellence.

In concluding my remarks, I want to share with you an experience I had last week as I thought ahead to this morning’s presentation. I asked myself how many foreign-born individuals would come into my life – either directly or indirectly – during a given day. I was amazed at what I found.

- The checkout clerk when I had to buy milk at the Giant was from Bulgaria.
- Over breakfast I caught up with news about my favorite local Maryland sports teams. There were mentions of baseball players from the Dominican Republic, soccer players from Latin America and Europe, hockey players from Russia, Sweden and Canada, and basketball players – including Greivis Vasquez and his heroic play in leading Maryland over Duke last season – from various corners of the world.
- I dropped off shirts and a sport coat at the dry cleaners, where I was helped by a Salvadoran clerk.
- At lunch with a client I went to a local Italian restaurant. My server there was Honduran; the busboy was Guatemalan. On my walk to the restaurant I passed a landscape crew comprised of Central Americans who were beautifying grounds at a nearby office complex.
• A UPS deliveryman from Cameroon left packages to my office. Later I had to go to the local FedEx/Kinko’s office to ship packages, and there I was greeted by the Ethiopian manager and helped by a clerk from the Philippines.

• Near the end of the day I made a deposit at my local bank. Two bank clerks were on duty – one from Haiti, the other from Eritrea. The assistant manager was from Iran.

• I worked that night until late, and at just before 6 PM the cleaning crews arrived to vacuum, empty trash, and generally make my office building inhabitable for the coming day. The crew hailed from El Salvador and Nicaragua.

• When I finally returned home that evening, my wife and I had delicious crab cakes made from Maryland crabmeat picked largely by Mexican workers.

I am certain that I encountered many more foreign nationals than those listed here. Each of the individuals I ran into over the course of this particular work day are helping to make my community better, working in service-related positions that keep our County and State operational.

From my vantage as a life-long Maryland resident, I thank goodness every day for the fact that so many people from around the world have chosen my State as their home. As we have in Montgomery County, I hope that every corner of Maryland will find ways to embrace and welcome international diversity. For our State to continue to move forward as a global leader in key economic sectors, Montgomery’s wonderful mosaic must become Maryland’s mosaic.

I welcome your questions and comments. It has been an honor to appear before you today.
Good afternoon members of the commission. My name is Jaime Contreras. I am the 32BJ Capital Area Director and SEIU Maryland-DC State Council President. 32BJ members come from 64 different countries, speak 28 different languages, and represent a microcosm of immigrants across the country. The Service Employees International Union has over 25,000 members that live or work in Maryland. SEIU local32 BJ’s 5,000 members living and working in Maryland, 50 percent of whom are immigrants, are the janitors and security officers who work hard every day to keep commercial office buildings in the state running. It is on behalf of our members, and in recognition of the important contributions they make to Maryland’s economy and communities, that I am here to testify today.

Our state’s success depends on its workforce – and immigrants play a critical role in our economy. Every day I see firsthand how the foreign-born members of the union have filled critical service sector jobs in the state; in fact economic research has indicated that blue-collar jobs in general are being occupied by the immigrant workforce. Over one third of grounds and maintenance workers in the state are immigrants, and this number grows to 50% in Montgomery County. These workers are filling in gaps left by a declining native born population, approximately 80,000 Marylanders who are working age and have attained less than a high-school education.

The income earned by immigrant workers in these jobs, which might not otherwise be filled, allows them to both support their families and to cycle their profits back into their communities through consumption of goods and services in the state. The consensus among economists is that immigrants’ presence as consumers grows local economies and creates jobs. A 2009 report by the Fiscal Policy Institute, which analyzes 25 metropolitan areas, demonstrates the economic contributions of immigrant workers. Included in the study is the city of Baltimore, where immigrants compose 8% of the population but contribute 9%
of the economic output. Moreover, a 2006 study by the Urban Institute found that in 1999-2000, immigrant households in suburban Maryland paid a significant portion of the state taxes collected in the entire state.

While immigrants contribute significantly to the Maryland economy, they continue to face economic challenges themselves. The Fiscal Policy Institute also looked at union participation among immigrants in Baltimore. The unionization rate among immigrant workers in Baltimore was 8% while the U.S. born unionization rate was closer to 15%. This disparity has a significant impact on workplace conditions. The Economic Policy Institute (EPI) has reported that unionization increases wages by approximately 20% and compensation through wages and benefits by approximately 28%. Unionized workers are more likely than non-unionized workers to have paid sick leave, vacation time, employer-provided health insurance and pension plans. Moreover, union density in an industry has a positive impact on condition for non-unionized workers as well. The EPI reported that 25% union density in an industry raises wages across the board by 5%.

Immigration status does not impact workers’ legal right to organize, join a union or otherwise enforce their workplace rights. In fact, 32BJ has run successful organizing campaigns involving immigrant and non immigrant workers standing shoulder to shoulder to improve their workplace conditions here in Maryland. However, bad-actor employers often use threats of immigration enforcement or the need to re-verify workers’ status as tools of intimidation to chill worker’s from organizing or enforcing their rights.

The increase in emphasis on immigration enforcement by the federal government, through worksite raids, I-9 audits and the expansion of the E-verify program as well as the increase in local immigration enforcement through 287(g) agreements and the Secure Communities program bolsters employers’ claims that workers who speak up or organize could face arrest, deportation or job loss. This fear does not just harm undocumented immigrants; the experience of a workplace raid or employment verification based on information from faulty databases negatively impacts all workers.
Because of this, it comes as little surprise to us that in spite of immigrants’ contributions to the Maryland economy, they face increasing threats to their economic livelihood. For example, income for foreign-born guards, cleaners and building service workers in Baltimore averages around $26,000, whereas the average for native born workers is closer to $28,000. Both averages fall far below the U.S. median annual earnings for full-time workers of $38,000. 32BJ has a longstanding position on immigration reform and has been actively opposed to policies that jeopardize the economic security and overall well-being of our members and the entire immigrant community.

We continue to oppose increased immigration enforcement initiatives that erode worker rights, such as local enforcement of immigration law through the 287(g) or Secure Communities Programs, or expansion of E-verify. Proposed state legislation that would condition tax incentives, public benefits, and the awarding of public contracts on utilization of the E-verify program to confirm the work authorization status of new hires would create tremendous barriers to economic participation among all immigrants- regardless of their work authorization status. In a comprehensive evaluation of the E-Verify program submitted to the U.S. Department of Homeland Security, researchers found the program to be riddled with errors and rife with opportunities for abuse. The database errors are so extreme, that foreign-born workers (including those who have become U.S. citizens) are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not work-authorized. Furthermore, there are no safeguards in place that would ensure that the private information contained in the E-verify database is not accessed or misused for reasons other than for employment authorization verification.

In the case of state procurement, Maryland’s policy should be to award contractors that offer the best value for the state. Given the inconsistency in E-Verify findings and the potential for abuse, the use of E-verify would likely influence the awarding of state contracts in a way that would undermine bids from legitimate employers, create unnecessary delays where TNCs are inaccurately issued, and would go against the state goals awarding more contracts to Minority Business Enterprises.

Rather than adopting counter-productive immigration enforcement measures, the commission should promote community supports that would improve the participation of immigrants in
Maryland’s economy. For example, implementing and enforcing local hiring agreements is necessary to ensure that projects built with public dollars enrich the communities in which they are located. Local hiring agreements should cover workers involved in the project in both the construction, and post-construction phases. Publically supported projects in the state should also include training requirements, wage standards and protections, and worker displacement regulations. Strengthening protections and standards for all workers in Maryland creates the necessary conditions for a prosperous immigrant workforce.

The commission should also support the allocation of additional state resources to protecting the wages of workers from exploitative employers. Many workers fear that reporting wage violations will draw attention to their immigration status, even though the Department of Labor’s policy is not to share immigration status with immigration enforcement entities. Although the state has strengthened its wage payment and collection law, oversight of unscrupulous employers must continue to be heightened to prevent the continued victimization of immigrant workers. Eliminating barriers to educational attainment is another important strategy to for enabling immigrants to thrive to continue their contributions to Maryland’s economy.

The commission should support policies that would allow Maryland’s high performing immigrant students to attend college. Eleven other states have passed similar legislation, including New York, Texas, and Utah. Furthermore, the positive indicators for economic attainment among immigrant workers in Maryland masks the reality that workers with limited English proficiency (LEP) earn significantly less than their English proficient counterparts. 32BJ knows firsthand the value of education and training programs. Since 2006 over 1,600 our members in the Capital Area District have registered for ESOL classes administered by 32BJ. CASA de Maryland estimates that 60% of Legal Permanent Residents (LPRs) who were eligible to naturalize in 2003 but failed to do so because they were LEP. Where ESOL classes are available they may be too costly for workers. Increased state and local funding for accessible ESOL classes would improve the naturalization rate and enhance the professional opportunities available to immigrant workers.
CONCLUSION

In states like Maryland, where economic activity and immigration are highly concentrated, a diverse workforce creates significant economic advantages that will diminished if the state adopts unnecessarily restrictive and punitive immigration policies. This activity will also decline if immigrants don’t have access to good jobs, labor rights and community supports like ESOL to enable real mobility in the state. I commend the commission for examining the role of immigrants in the Maryland economy and hope to see it advance recommendations that further erode barriers to immigrant participation in the state workforce.
Background

I was raised in Baltimore County and graduated from Milford Mill High School in 1960. I attended the University of Maryland, College Park, and graduated in 1964 with Bachelor of Science in Physics. I began my work career with the Coast and Geodetic Survey in the U.S. Department of Commerce. While working, I attended night school and earned an MBA at the University of Maryland, College Park, in 1973, and a JD at the University of Maryland, Baltimore, in 1984. When I retired from the Department of Commerce in 1997, I was serving as the Executive Director, Office of Coast Survey, which was then part of the National Oceanic and Atmospheric Administration (NOAA). During my last 10 years with Coast Survey, I served on various international committees to develop standards for electronic nautical charts. Following my departure from NOAA, I was recruited by a company in Vancouver, British Columbia, to help them start a subsidiary business unit to produce electronic nautical chart data. Following the death of the CEO of the company, that effort failed in 1999.

Opportunity

So here I am in 1999. I knew electronic chart technology and I knew the market opportunities so I started a company here in Maryland. When I started to recruit staff I discovered that a friend in India was in the process of starting a similar company in Pennsylvania. We negotiated an agreement to combine our efforts and in Jan. 2001 we set up our office in Ellicott City. My first employee was a guy (H1B) that had worked for me in Vancouver. He was shortly followed by several US citizens and a couple of guys (H1B) from India. At present we have 8 people in our Maryland office. We have expended internationally by opening offices in Canada (9 people), Europe (7 people) and Australia (1 person).

Today it is easier to find new employees with the necessary education and/or experience. But I could not have started the company without the three H1B guys from Canada and India. Eventually the guy from Canada went back to Vancouver (because his girlfriend did not like Maryland). Today, he manages our Canadian office. The two India guys are still with us and have received their “Green Cards”.
Good morning. My name is Michael L. Kabik. I am a partner in the law firm of Shulman, Rogers, Gandal, Pordy & Ecker, P.A. where I am Chair of the Immigration, Nationality & Consular Practice Group.

Shulman Rogers, based in Potomac, Maryland, is the largest independent law firm in Maryland outside of Baltimore City. Shulman Rogers is a full-service general practice law firm with about 100 attorneys practicing in most every area of law including Immigration.

I have been admitted to practice law since 1990 and started off my career in Immigration Law at the U.S. Immigration Court in Baltimore, Maryland where I served as a Judicial Law Clerk. After the conclusion of my clerkship in 1992, I entered the private practice of Immigration Law.

I have assumed a number of leadership roles in the Immigration Bar including serving four years as Chair of the Immigration Section of the Bar Association of Montgomery County. I have also established and chaired the “Nuts and Bolts of Immigration Practice Series” continuing legal education courses for MICPEL- the Maryland Institute for Continuing Professional Education of Lawyers in which I taught other lawyers — both in Immigration and in other cross-over fields — the core elements and nuances of Immigration Law. I regularly present to both legal and non-legal audiences on a wide variety of Immigration legal matters.

My law practice now consists of employment-based Immigration, family-based Immigration, citizenship, consular, and other Immigration compliance matters. A large part of my clients are in the High Tech and Life Sciences sectors. My practice includes advising companies and individuals on the intricacies of Immigration Law in order to obtain highly
skilled essential personnel.

I work with companies to help them hire workers on temporary work visas and also sponsor these workers for permanent residence. I also counsel employers on a wide array of Immigration compliance issues including workforce I-9 employment eligibility verification.

In today’s world, the word “Immigration” tends to bring up images of undocumented immigrants crossing the border and widespread enforcement issues. While these are real problems that must be dealt with effectively, the reality is that Immigration is much more than an enforcement issue. Immigration benefits society and in many ways Immigration is the key to the engine that drives our economy. Immigrants contribute to our society at all levels. While those who work in Maryland’s construction, landscaping, hospitality, restaurant, seafood, and poultry industries are all essential – albeit lesser skilled workers – we must also recognize that immigrants contribute to Maryland’s economy at the highest levels and are leaders in the domains of High Tech, Life Sciences, Business, Finance, Medicine, and Education to name a few. Immigrants are innovators and entrepreneurs. While immigrants made up only 12.5% of the U.S. population in 2008, they accounted for almost 40% of those founding technology companies. Within Maryland, about 27% of all scientists were foreign-born in 2006, as were 21% of healthcare practitioners and 19% of mathematicians and computer specialists.

Maryland is one of just a few states with strong High Tech and Life Sciences sectors. This is due in large part of the aggressive initiatives to recruit these companies as well as special tax incentives. We also benefit from being home to the federal National Institutes of Health and National Institute of Standards and Technology which attract foreign researchers and scholars from around the world. The same is true for the world-class University of Maryland and The Johns Hopkins University. These renowned institutions sponsor scientists, professors, educators, inventors, and innovators on temporary work visas. Many of these highly educated and highly skilled professionals seek to stay on after their initial tenure is complete and move their talent into the private sector. But will they be able to do so?

Immigrants also come as foreign students at both the undergraduate and graduate level. After graduating, many seek to stay in the U.S. They can receive a one-year work permit known as “Optional Practical Training.” Those with degrees in the STEM fields – Science, Technology, Engineering, and Mathematics – can get an additional 17-month extension if they have an employer willing to sponsor them and that employer agrees to participate in the government’s E-Verify employment eligibility verification program for their entire workforce including U.S. workers. But by the end of that time, these graduates must transfer to a work visa if their employers want to keep them on board. However, quotas on the most used professional work visa – the H-1B – mean that not all of these talented professionals will be able to remain in the U.S.
Over half of all STEM graduates of U.S. universities are foreign-born. Does it really make sense to expend the resources to educate these foreign students for years in our universities only to tell them "go home" once their training is done? Who wins in this scenario? The companies who hire this talent abroad. And who pays the price? The American companies who lose out.

In order to compete on a regional, national, and global level, \textit{Maryland businesses must seek the best and brightest}. However, the limitations of federal Immigration Law and policy frequently constrain the ability of U.S. employers to hire and retain the highly-skilled talent they require in order to succeed. Not being able to do so continues to place these companies at a strategic and competitive disadvantage. Not only does this affect the companies who seek out these highly-skilled workers by impeding the ability of these companies to grow and prosper, it affects the economy as a whole: business and consumer spending decreases, the corporate and individual tax base shrinks, jobs that should be filled in the U.S. flow overseas, and innovation is stifled. The reality is that federal Immigration Law and policy handicaps business on a competitive level.

Here are some examples:

- \textbf{H-1B CAP:} The H-1B visa a temporary professional visa requiring at least a bachelor's degree. There is a quota – known as a "cap" – each fiscal year of 65,000 plus an exemption of 20,000 for workers with U.S. master’s or higher degrees. In years where demand has exceeded the cap, the U.S. Citizenship and Immigration Services has implemented a random lottery in order to allocate available visas. When the economy was strong as recently Spring 2008, approximately 163,000 H-1B cap petitions were filed in the first week of April. The cap for October 1\textsuperscript{st} start dates at the beginning of fiscal year 2009 was exhausted as soon as the filing window opened -- six months before the actual employment start dates -- and a lottery was used to allocate available H-1B visas by chance. Today, even in a down economy, we are on the verge of exhausting the H-1B cap within the next few weeks for the remainder of this fiscal year. This means that companies that need to hire new workers in H-1B status will not be able to do so. Unless they can find another visa status other than H-1B, these companies will have to wait until the next fiscal year begins on October 1\textsuperscript{st} to hire these highly skilled employees. The H-1B quota and lottery system are anticompetitive and hurt U.S. businesses.

- \textbf{RECOMMENDATION:} The H-1B cap should be increased to a realistic number to reflect market demand. We should not have to resort to a lottery that turns away qualified professionals and restricts U.S. companies. Up until fiscal year 2003, the H-1B cap was 195,000 per fiscal year. We need to return to that number. Additionally, the 20,000 cap exemption for those with U.S. master’s degrees should be expanded to exempt all foreign students who obtain a
bachelor's or higher degree from the H-1B cap.

- **H-1B SPOUSES CANNOT WORK:** Unlike spouses of L-1 visa workers (Intracompany Transferees) and E visa workers (Treaty Traders, Treaty Investors, and Australian Free Trade workers) whose spouses are able to obtain work authorization, spouses of H-1B workers do not get equal treatment. These spouses require their own work visa in order to work. This requires the spouses to locate an employer willing to sponsor them for their own H-1B visas. This further depletes the limited H-1B cap. Many professionals – whose spouses are likewise employed in professional positions in their home countries – will not relocate to nor remain in the U.S. if their spouses do not have the authorization to work here. Expecting one’s professional spouse to give up a job abroad without being able to work in the U.S. is not realistic. Moreover, the inequitable treatment allowing L visa and E visa spouses to work while not allowing the same for H-1B spouses does not make sense.

  - **RECOMMENDATION:** Spouses of H-1B workers should be permitted to work without the necessity of being sponsored for their own H-1B visas.

- **LONG UNPREDICTABLE WAITS FOR PERMANENT RESIDENCE (GREEN CARDS):** Employers may sponsor workers for Permanent Residence in a variety of categories. The most common process involves three stages:
  - (1) The PERM Application, filed before the Department of Labor by the employer;
  - (2) The Immigrant Petition for Alien Worker, filed before the U.S. Citizenship and Immigration Services by the employer; and
  - (3) The Application to Adjust Status, filed before the U.S. Citizenship and Immigration Services by the sponsored employee.

- **PERM Application:** In the most used categories – including those positions requiring at least a bachelor’s or an advanced degree – a test of the U.S. labor market is required. This process is known as “Labor Certification” and results in the filing of the PERM Application. Labor Certification is meant to assure that U.S. workers are considered for any available full-time permanent position and many protections for U.S. workers are built into the process.
  - Employers can only disqualify U.S. workers for lawful job-related reasons and must offer compensation that at least meets the prevailing wage as determined by the U.S. Department of Labor.
  - In order to ensure a level playing field for U.S. workers who may apply, any required qualifying experience for the same or a similar position must be gained at another employer prior to the initiation of the sponsorship process. The sponsored employee cannot use experience he gained at the sponsoring employer as that would constitute an unfair advantage by the employer.
providing on-the-job training to the foreign worker that was not provided to a U.S. applicant.

- If this test of the U.S. labor market locates a qualified U.S. worker for the sponsored position, the employer cannot continue with the sponsorship of the foreign worker unless the U.S. worker is offered and does not accept the job.
- This test of the U.S. labor market generally takes \textbf{3 to 6 months} and for professional positions requires at least four different types of recruitment in addition to posting the job vacancy on the employer’s premises and any in-house media as well as a job order with the local state job service.
- Once the PERM Application is filed with the U.S. Department of Labor, current processing time is \textbf{11 months} if there is no Department of Labor audit. If there is an audit, processing time is presently \textbf{25 months}. Forty percent of all PERM Applications are routinely audited by the Department of Labor. If the Department of Labor denies certification of the PERM Application and an appeal is filed, the current processing time is \textbf{32 months}.

- **Immigrant Petition for Alien Worker:** If the PERM Application is certified by the Department of Labor, the employer may file an Immigrant Petition for Alien Worker with the U.S. Citizenship and Immigration Services.
  - The employer must demonstrate that the sponsored employee met the qualifications for the position – required degree(s), experience, and skill set – by the date the PERM Application was filed.
  - The employer must also demonstrate that it had the ability to pay the sponsored wage since the time of filing the PERM Application and continuing to the present.
  - Current processing times for Immigrant Petitions for positions requiring a bachelor’s degree (EB-3) or an advanced degree (EB-2) is \textbf{4 months}. If an Immigrant Petition for a position requiring at least a bachelor’s degree is denied and an appeal is filed, the current processing time is \textbf{29 months}. If an Immigrant Petition for a position requiring at least a master’s degree is denied and an appeal is filed, the current processing time is \textbf{26 months}.

- **Application to Adjust Status:** The final stage of the Permanent Resident process can often be the longest. This is because the quotas for various categories limit the rate at which Immigrant Visas (Green Cards) can be issued in each fiscal year. In addition to the sponsored immigrants, their spouses and children are also counted against the quota, accounting for over half of the allotted number. Where demand exceeds supply, a backlog results. In addition to per-category limits, there are also per-country limits that impact nationals of the countries with the highest demand. For employment-based Immigrant Petitions, the countries whose nationals have the highest demand are India and China. This means that nationals of these two countries have even longer waits than everyone else in the same category.
The ability to file an Application to Adjust Status is based on the sponsored worker's "priority date." The priority date is the date on which the employer filed the PERM Application.

As of January 2011, the Department of State Visa Bulletin has indicated the following EB-3 bachelor's degree or EB-2 advanced degree priority dates:

- EB-3 Standard Priority Date: 22 March 2005
- EB-3 China Priority Date: 15 December 2003
- EB-3 India Priority Date: 01 February 2002
- EB-2 Standard Priority Date: Current (no backlog)
- EB-2 China Priority Date: 22 June 2006
- EB-2 India Priority Date: 08 May 2006

The priority date must remain current not only in order for the employee to file an Application to Adjust Status, it must also remain current in order to the U.S. Citizenship and Immigration Services to approve the application. Frequently, the priority dates can "retrogress," again based on the per-category and per-country limits as well as the demand at a given point in the fiscal year. Where the Department of State determines that supply is not sufficient, it can retrogress the priority dates. Throughout the fiscal year, the priority dates can move back and forth, ebbing and flowing like the tide. It is a misconception to think that priority dates move forward each month in lockstep with the calendar. Simply stated, it is not possible to precisely judge the prospective waiting time for one's priority date to become available simply by looking at current processing times.

The long and unpredictable wait times for Permanent Residence handicap U.S. businesses trying to recruit the best talent. It also limits the portability of sponsored workers until very late in the permanent residence process. Moreover, given the excessive wait times, it is frequent that the sponsored workers advance in abilities beyond the scope of the sponsored positions. These restrictions are neither in the interests of sponsoring employer nor sponsored employees.

**RECOMMENDATION:** The per-category and per-country limits on employment-based Immigrant Visas should be increased in order to alleviate these excessive backlogs. Spouses and children of sponsored immigrants should not be counted against the employment-based Permanent Resident quotas.

What can be done in Maryland? Here are some suggestions:

- Provide incentives for businesses that hire immigrant professionals, especially in the technology sector. We need to encourage the innovation and entrepreneurship that immigrants have historically contributed.
Support Maryland’s universities who bring on foreign talent as educators and researchers, as well as foreign students who we want to stay on after graduation and contribute back to society based on our investment. The U.S. – not other countries – should be the one to reap the rewards of the years of training that go into each foreign student who graduates from our universities.

Immigration Law is federal, so our state cannot make or change these laws. However, we can talk to Maryland’s federal Congressional delegation about the necessary fixes to our Immigration Law. Our senators and representatives will be the ones who sponsor and vote on new Immigration legislation. Let them know that Immigration – particularly of highly skilled professionals in the High Tech and Life Sciences sectors – is vital to the livelihood of our state, our region, and our country.

Thank you for providing the opportunity to address the Commission today. I will be pleased to take any questions that you may have.