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Burden of Proof

Linda Chavez Nomination: Alien Houseguest Could Derail Bush Cabinet Officer

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GRETA VAN SUSTEREN, CO-HOST: Today on BURDEN OF PROOF: An alien houseguest could derail a Bush Cabinet officer. Did Linda Chavez hire an illegal immigrant, or was she helping someone in need?

(BEGIN VIDEO CLIP)

SEN. BARBARA BOXER (D), CALIFORNIA: We had two people brought down on the Clinton administration who had problems with illegal immigrants working for them. We need to know the facts here. This is quite relevant, and then Ms. Chavez will have to make up her mind, as will President-elect Bush, as to whether she is the best person for the job.

SEN. DON NICKLES (R), OKLAHOMA: That is part of the confirmation process. My guess is that she will be confirmed.

GEBE MARTINEZ, "DETROIT NEWS": Labor is going to have very serious problems. They're going to mobilize against her. They've already started contacting members in the Senate. They're going to be mounting a very big campaign to defeat this nomination.

(END VIDEO CLIP)

ANNOUNCER: This is BURDEN OF PROOF with Roger Cossack and Greta Van Susteren.

VAN SUSTEREN: Hello, and welcome to BURDEN OF PROOF.

Today in Washington, George W. Bush's nominee for labor secretary is under fire for something that happened nearly a decade ago. In the early 1990s, Linda Chavez provided a room and money to an illegal Guatemalan woman. According to Bush officials, Chavez did not know about the woman's illegal status until after her time at the Chavez home.

ROGER COSSACK, CO-HOST: As reporters dig into the details of this relationship, some complicated legal questions float to the surface. Since the houseguest performed various chores in the home, does that make her an illegal employee, or was Linda Chavez just helping someone in need?

VAN SUSTEREN: Joining us today are immigration law attorney Michael Maggio, employment law attorney Deborah Kelly, and Tom Edsall of the

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In our back row: Sean Harris (ph), Rebecca Grau (ph), and constitutional law scholar Bruce Fein.

Tom, first to you. How was it that this woman -- how did it happen that this woman was living in the Chavez home?

TOM EDSALL, "WASHINGTON POST": Well, we don't really fully know. What we've been told is that a friend of Linda Chavez's approached her, believing that she would be the kind of person who would help someone out in trouble, asked her to take in this woman, she took in Marta Mercado, gave her a room in the cellar, where the kids all stay, and she stayed there for at least a year, probably a little more, doing some household chores, exactly how many is not clear. And she received spending money of somewhere in the hundreds or thousands of dollars in the meantime.

VAN SUSTEREN: Did Linda Chavez do this with other people, is this something she did routinely, have people move into her home?

EDSALL: There were two other cases that they cite, one is two brothers from Vietnam, refugees coming over here, where she took them in for a few weeks before they were able to find relatives of their own, and she still is in contact with them. She also with two Puerto Rican kids from New York, who are American citizens, but she helped them out by bringing them down here for summers. Then she has helped them -- she has paid for their schooling in a Catholic school up in New York city.

So she has some history of being a beneficiary of people.

VAN SUSTEREN: Earlier today, President-elect Bush had this to say about his nominee for the Department of Labor. Let's listen.

(BEGIN VIDEO CLIP)

QUESTION: Can you talk about Linda Chavez for me, do you remain confident in her?

PRESIDENT-ELECT GEORGE W. BUSH: I did remain confident in Linda. Good person. She will make a fine Cabinet secretary.

QUESTION: Did she do anything wrong in that situation?

BUSH: As far as I can tell, from what I read, I think she is certainly qualified to be president -- I mean to be cabinet secretary.

QUESTION: Is this inconsistent with your campaign comment about enforcing immigration laws strictly?

BUSH: I said, from what I can tell from what I have read in the press accounts, she is perfectly qualified to be the labor secretary.

(END VIDEO CLIP)

VAN SUSTEREN: Tom, how did this come to light? EDSALL. In fairness to a competitor, ABC broke the story. I think a next-door neighbor, or a nearby neighbor, who was probably a Democrat, probably called up and alerted them to the fact that this woman had been living in the Chavez household in Bethesda.

There is more to this story -- she worked there. She didn't work there -- we

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don't know whether she worked there, but she did chores. But Chavez did know after three months, according...

COSSACK: That's what I want to get to. What did she know, and when did she know it, and how much did she know?

EDSALL: We believe that at least three months into this woman's stay, this woman did not speak English when she arrived and Chavez did not speak Spanish. But after that they began slowly to learn to communicate with each other. After three months, the woman says she told Chavez that she was an illegal immigrant who came here with illegal papers from Guatemala.

In addition, Chavez helped her get a job doing housekeeping for a neighbor, and the neighbor paid Mercado in cash, there was no deduction for taxes and no reporting, as far as we can tell.

VAN SUSTEREN: But that wouldn't be Chavez's problem, that would be the neighbor's problem.

EDSALL: Yes, but Chavez helped arrange the job. I don't know what -- you guys are the lawyers, not me.

VAN SUSTEREN: Let me ask you about the immigration issue. Is there something wrong, going back I realize there's been some changes in the law over the last six, seven, eight years in immigration. But, back in 1992, if you knew someone was in this country illegally, would it be a violation of the law to provide a home?

MICHAEL MAGGIO, IMMIGRATION LAW ATTORNEY: It would be a violation of the law to employ them, and employment is defined as rendering services for compensation.

VAN SUSTEREN: But what about just living in her house?

MAGGIO: No, you can somebody living in your house, but frankly, from an immigration lawyer's perspective, from a perspective of someone who has worked with homeowners, and trying to regularize the help of household employees, it just doesn't seem credible that you would have someone living in your home who is an undocumented worker and their immigration status and sponsorship for permanent resident status does not come up because the first thing that someone without a green card is going to want to talk an employer about is getting a green card.

VAN SUSTEREN: But they couldn't even communicate, though, Michael. Linda Chavez couldn't speak Spanish, and this woman couldn't speak English.

MAGGIO: We see people who can't speak Spanish and who can't speak English communicate about this issue every day, they find friends who help them translate. And I assume that Ms. Chavez, being of Hispanic background, must know some people that speak Spanish who could have helped facilitate such a conversation. It just doesn't seem credible that this would not come up.

Also, I think the Immigration Service would view this as unlawful employment because of the live-in situation. If she was providing services to Miss Chavez sporadically, the regulations of the agency would say that that is not necessarily employment. But when you have somebody living under your roof, and who is, we assume, regularly doing work around the house, and getting compensation for that, getting money, the INS would say that, in my opinion, they would say that that is unauthorized employment.

DEBORAH KELLY, EMPLOYMENT LAW ATTORNEY: Right now, nobody knows if she was doing the dishes, making her bed, just being a polite

guest, or whether she was on her hands and knees scrubbing floors, so nobody knows.

VAN SUSTEREN: Even if she were on her hands and knees scrubbing floors, she might be a very polite guest at that.

KELLY: She can stay at my house.

VAN SUSTEREN: She can stay at mine, too.

KELLY: But I think that the big picture that would provoke the outrage, which is properly subject that the government is interested in, is that people who live in foreign countries who are treated miserably come here and someone says: Come live with me, I will take care of you, and you will be safe, and you use the word cellar, which is ever so much more creepy sounding than the basement where my children should live. But the thought is that you take these people, and you put them like in the cellar, and they really work horrible conditions, again and again, and you say, thanks, you have been terrific, here is \$10. So you are exploiting their fear, you are exploiting the fact that they can't go back to the country. And the government should come down like a house of fire on people like that, but we don't know that yet. We have no idea. I'm no Linda Chavez lover, but we have no idea whether those facts exist.

MAGGIO: But we do know that the Labor Department...

COSSACK: Michael, let me just interrupt you for a second. I've got to take a break. Up next, has Linda Chavez violated the Law? If so, how has she violated the law? Stay with us.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

BILL ADAIR, "ST PETERSBURG TIMES": I think the Bush folks have been very effective, in the first day at least, at portraying it as a case of compassion. And to the extent they can continue to do that, I think they will at least be able to defend those charges. Now labor is still going to fight very hard against her. (END VIDEO CLIP)

COSSACK: Labor Secretary nominee Linda Chavez is under fire for allegedly taking in an illegal alien in the early 1990s. Chavez says the woman wasn't a housekeeper or a nanny, and that she didn't know the Guatemalan woman didn't have legal resident status.

All right, Bruce, the law, of course, was when she was being visited by this woman, in 1991, that if you knowingly...

VAN SUSTEREN: 1993, post-Zoe Baird, which is I think the issue.

COSSACK: If you, in fact, had someone working for you that knew was an illegal alien, you were breaking the law, and you are subject to a fine.

Yet Tucker Eskew, who is in charge of marshaling through these nominees, says that we should view this from a compassionate standpoint, that we should view what Linda Chavez did from a compassionate point of view, not I suppose a technically legal point of view; does that wash?

BRUCE FEIN, CONSTITUTIONAL LAW SCHOLAR: Well, I think, yes, certainly, when it comes to confirmation, which is different whether or not INS levies a fine because there seems to have been an employment contract

that wasn't proper. Now, remember, according to what we know at present, it is very elusive to know whether or not there was an employment contract at all.

COSSACK: We don't need a contract. I mean, what each party did...

FEIN: I understand, but a contract in fact. It is still in the gray area, so it may well be that even if somebody in retrospect concludes that there was compensation for work and there should have been authority for that without a green card that still she didn't knowingly do that because this issue of contract was so elusive.

Secondly, it seems to me that because of the particular circumstances of this case, if there was a technical violation, it is a little bit like a traffic violation.

VAN SUSTEREN: No, no, no, here is the problem. Let me say, I don't know there is. This is a very early stages of the investigation, but you can't call it a technical violation when it is post Zoe Baird, and you are talking about the upper middle-class sort of looking the other way.

I don't think you can ever call this at this point, quote, a "technical violation." I think this it is a very serious issue. But it may turn out to be nothing.

FEIN: The different between Zoe Baird and Kimba Woods were they were going to be attorney general and the INS is the chief enforcement officer of the immigration laws.

VAN SUSTEREN: No, no, she is going to be in charge of labor...

KELLY: Also, she took a shot at Zoe Baird on national television and said: What was bad about Zoe Baird is that she was having an illegal in her household. And I think that is the bullet for Chavez is that she went out there in the press and said: This is a bad thing. And now she's done the same darn thing before.

COSSACK: You think the violation is hypocrisy.

KELLY: Well, I don't...

VAN SUSTEREN: Who among us?

FEIN: The other mitigating circumstances that, in this case, when undocumented alien returned and is now residing where there's no pressure at all to be reticent about any overreaching by Linda Chavez, there doesn't seem to be any assertion that she thought that she was being exploited or taken advantage of. That doesn't exonerate a violate, but it mitigates the circumstances.

COSSACK: Look, I didn't think that the word exploited is what we are talking about here, but what we are talking about is the question...

VAN SUSTEREN: We don't know what it is.

COSSACK: We don't know whether or not she violated the law in that she didn't pay taxes, and she didn't -- she hired an illegal alien. Isn't that really the gist of it?

MAGGIO: She did far worse than not paying taxes. If somebody is rendering service, they are entitled to at least the minimum wage. So what you are talking about is someone not getting paid for rendering work, perhaps. I think that if that comes out that is far more egregious than the immigration law

