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UNITED STATES COMMISSION ON CIVIL RIGHTS

TRANSCRIPT OF PROCEEDINGS

FORUM ON IMMIGRATION REFORM

November 3, 1988

Tucson, Arizona

Volume III

PADILLA & ASSOCIATES

16213 Ocotillo Drive

Fountain Hills, Arizona 85268

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1
2 DR. WHITE: Okay. We have the machine is in order
3 again, so we'll resume our session with the business
4 panel.

5 And, we have two members, Mr. John Thacker.

6 Which one is Mr. Thacker?

7 Mr. John Thacker from the Southern Arizona
8 Innkeepers.

9 And Mr. Dan Gebhart, with the Arizona Restaurant
10 Association.

11 So we will be calling on Mr. Thacker, first.

12 And welcome you to the meeting, sir.

13 And you may proceed.

14 MR. THACKER: Thank you.

15 When this whole law went into effect, you look at
16 it with a certain bit of trepidation, realizing that you
17 are not fully going to understand, at least from the
18 inception.

19 In my business that could dig in the information
20 and find out what is going on.

21 We began applying on November 6, in our particular
22 business and I called the board of the Southern Arizona
23 Innkeepers Association this morning and basically so
24 nobody had any problems. The members of the association
25 such as ours, perhaps had some type of trance.

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22 business and I called the board of the Southern Arizona
23 Innkeepers Association this morning and basically so
24 nobody had any problems. The members of the association
25 such as ours, perhaps had some type of trance.

1 We had some speaker come in and speak with the
2 people as to what was required. The information was
3 available in our newsletter as to what was required.

4 I find that as I read the newspaper, for example,
5 today that the people that have been having difficulties
6 are not members of our organization. They are people who,
7 basically, have not taken the trouble to find out what is
8 going on.

9 Obviously, the thing is a pain in the butt. You
10 have to require or keep records that we didn't have to
11 keep in the past.

12 It cost me xeroxing money, but, we basically did
13 for the same information in our hotel environment as we
14 are asking now.

15 It's just a question in the past we used to verify
16 and now we have to keep copies and have documents that we
17 keep in records, that's basically the difference from our
18 standpoint.

19 A few things are troublesome, and perhaps, I'm
20 clear from my standpoint dealing with independent
21 contractors is a little bit difficult when they are
22 working on their own or have a license they are employers
23 themselves. And what our responsibilities from that
24 standpoint hiring an individual person such as a
25 contractor, for example, to a layman in your establishment

1 for one, it's our responsibility to get the documentation
2 for that worker who is doing the job for that independent
3 contractor, even though, we are paying him as another
4 worker, which is a little bit independent and doesn't make
5 a lot of sense.

6 I can see the point for having the law, it's
7 unfortunate, that businesses are in a position of having
8 to basically be the watchdog in order to implement this.

9 And it's a burden, but, I think once you get the
10 system down you start doing -- it's certainly not any
11 worse than the rest of the bureaucracy we have to deal
12 with the government.

13 DR. WHITE: Any questions?

14 SENATOR PENA: Yes.

15 DR. WHITE: Senator Pena.

16 SENATOR PENA: The application for employment, I
17 guess you have a standard application for all your
18 members?

19 MR. THACKER: Yes, sir.

20 SENATOR PENA: How do you determine who may or may
21 not be an illegal alien?

22 MR. THACKER: You ask for the same documentation
23 from everyone across the board.

24 Anybody who applies for the job you ask for
25 the same documentation before we let them go through

1 orientation, they have to provide the documentation and
2 that's the standard documentation that's set forth by the
3 law.

4 SENATOR PENA: Someone who may have been born in
5 Tucson, what kind of documentation would you require from
6 that person?

7 MR. THACKER: Well, I haven't dealt with this since
8 November the 6th of last year.

9 SENATOR PENA: What does the application say on it?

10 MR. THACKER: Well, the application says on it that
11 you need to have proof of citizenship and proof of
12 identity.

13 And, then there is specific criteria that are set
14 out as subsections of that. And that's what we require.

15 And then we have to keep copies of that we actually
16 make xerox copies of driver's licenses and things like
17 that passports, whatever.

18 The documentation is that we are receiving from the
19 employee, Social Security card, we take xerox copies of
20 that. There is cost inherent in that.

21 But anybody who comes on board, we require that
22 before they set foot on the property.

23 We used to actually, you know, before the November
24 the 6th last year, we would hire people and get the
25 documentation a week a day after they were hired and

1 complete their file.

2 Now, they don't step foot on the property until
3 they have the information and we've xeroxed it.

4 As far as knowing whether or not that is
5 counterfeit information or if that's information that is
6 not them, we use our best judgement possible. That's why
7 we use the xerox copies.

8 DR. WHITE: Anything further?

9 If not, thank you, Mr. Thacker.

10 Now, I'd like to call Mr. Dan Gebhart of the
11 Arizona Restaurant Association.

12 MR. GEBHART: Thank you for inviting us to be here
13 this afternoon.

14 I'm the owner of Hardy's Restaurants here in
15 Tucson.

16 President of the Tucson Chapter of the State of
17 Arizona Restaurant Association.

18 And I pretty much go along with what John is saying
19 there, but, I'd like to get maybe just a little more
20 specific on a few instances.

21 Initially, when the law came out there was that
22 feeling of here we go again, more government, once they
23 get their foot in the door more bureaucracy, more
24 paperwork, more storage, more cost associated with it, et
25 cetera.

1 We understand the intent and the purpose of the law
2 and are certainly willing to comply with that.

3 I think, what I would like to propose would be you
4 to look at it through the eyes of a businessman.

5 And look at the cost that is really associated with
6 that. Because, needless to say, it impacts us, who in
7 turn, is going to impact our customers, you, and everybody
8 else out there.

9 So, those cost, needless to say, have to be passed
10 on and they will be born eventually by the customer.

11 Businesses cannot continue to finance the
12 government by incurring all of those costs.

13 Some of the situations that are probably pretty
14 unique to the fast food industry, and particularly to
15 the restaurant industry, but, I say fast foods, because
16 that's where I deal with.

17 The restaurant industry is not a 9:00 to 5:00 job,
18 it's an ongoing situation. Particularly people that are
19 involved in the fast food industry, the assistant managers
20 that come in at the change of shifts at 5:00 o'clock at
21 night, in most restaurants, are young individuals.

22 And, as we know, I don't think there is anybody in
23 this room here that is totally knowledgeable and at
24 sometime or other has not forgot certain things.

25 And we do the best job we certainly can within our

1 industry to train our people so that they're
2 knowledgeable, and that they get all the paperwork filled
3 out, et cetera.

4 I, as an owner, have to go into my restaurants from
5 time to time and check and make sure that the managers and
6 the assistant managers are following up on their work.

7 Again, we are talking -- some of these people that
8 are in the capacity age wise maybe 17, 18, 19 years old
9 that are in charge from time to time.

10 I see as a hindrance to the business, the ability
11 for government to come in and fine me personally or
12 civally if we in fact, don't have those forms totally
13 complied with.

14 Now, we're doing everything we possibly can and we
15 have not ever been cited nor have we ever been audited.

16 But, I'm sure there is going to come a time when
17 some businessman out there, in fact, is going to be
18 audited.

19 And again, he's going to do the best job he
20 possibly can, and again the chains are really great about
21 this, the chains are really informed about the whole
22 process, the restaurant chains, about how the whole
23 process was going to work when it was going to be
24 implemented, et cetera.

25 But, realistically, if you got an individual in

1 there that's young, and let's assume that the manager is
2 on vacation and the assistant manager is doing the
3 paperwork and he forgets, he forgets one form. Well,
4 there is a possibility there that I can be fined, I can be
5 assessed through really not negligence on my behalf, okay,
6 but, on the negligence of somebody that we've trained,
7 but, because of pure human err, pure human err, not trying
8 to falsify that, I could be cited. And I think there are
9 some inequities in that system.

10 It has, in fact, created more paperwork for us,
11 which in turn causes more storage problems that are
12 associated with the job.

13 It also, as John said, cost of business, the cost
14 of going out there and getting xerox copies of all these
15 forms.

16 In the restaurant industry there is a high
17 turnover, particularly, fast foods. And those cost can
18 and do mount up, and they mount up rather significantly.

19 That cost again is got to be born by whom? We all
20 know the answer to that question.

21 What it also entails is that the manager, manager,
22 supposed to manage is in fact spending more and more time
23 doing paperwork and administrative work instead of doing
24 the job out there managing, managing his people.

25 So that we can get better products out for our

1 customers, we can get faster service, we can have better
2 cleanliness.

3 More and more time is being spent with the
4 administration of paperwork. And I'm afraid that's
5 unfortunate. Because our customers really aren't
6 concerned about that piece of paper that's in a file.
7 They are concerned about fast food, quality service,
8 cleanliness, atmosphere, hospitality, and all the things
9 that are associated with it.

10 I have heard from some of the restaurant tourist
11 within the industry that there may be, and again, maybe
12 it's just because our proximity to Mexico, but, there's a
13 feeling among some restaurant tourist that this is really
14 designed, basically, to go after the Hispanic. And I'm
15 not saying that that is the case. Maybe, if we were up
16 in Canada maybe the people that border Minnosota felt that
17 maybe it's specifically for the Canadians, I don't know.
18 But, there is some resentment out there that this law is
19 pretty much targeted at Hispanics.

20 And that is something that I'm sure if you haven't
21 heard you will be hearing, and it's a fact of life out
22 there.

23 And there is some bad feeling about that. And,
24 again, with our proximity to Mexico being only 60 miles
25 away, we employ a lot of people of Hispanic, Mexicans,

1 Spanish, whatever.

2 But there is that feeling, that there is some
3 discrimination going on towards that particular cultural
4 group.

5 As far as the audits are concerned. I talked to
6 one businessman here in Tucson that went through an audit.
7 It was a situation that he -- needless to say, no one
8 likes to take the time to go through audits -- he was not
9 cited at all, he owns a number of restaurants. He was
10 asked to bring in all the material into one local place
11 for his different businesses, although, they were all
12 under one umbrella roof of a title. The audit took place
13 over a two-day period. Everything was fine, he had no
14 negative comments at all about the way he was treated. It
15 was a very very good and smooth operation. So there's
16 been no problems from that aspect of it at all.

17 Again, we know what the intent of the law is, we
18 certainly intend to comply with the law. I just want to
19 point out to you some of the handicaps and restrictions
20 that you are placing upon the businessman to some extend.

21 Thank you.

22 DR. WHITE: Any questions from the committee?

23 Senator Pena.

24 SENATOR PENA: Is there any recourse when a human
25 err occurs, an automatic fine or --

1 MR. GEBHART: Again, I don't know the
2 interpretation of the law. I don't know how they are
3 going -- if that in fact does happen, I can't tell you.

4 Because, as far as I know, I have not heard of any
5 interpretation coming down that that in fact could occur.

6 Needless to say, because of a human err, that's
7 going to occur. Someplace, sometime, someone is going to
8 get cited, it's going to happen.

9 And I think, you know, if we can make a provision
10 in there, as long as it's not somebody out there
11 deliberately trying to accept falsified records or try to
12 deliberately hire people that are not legal, as long as
13 they do the job of instructing their people.

14 In my case, for example, we have manager's meetings
15 once a week. We bring everybody in we convey what the
16 policies are the procedures, the rewards, the goals, et
17 cetera, so everybody is instructed.

18 But, I know there will come a time -- and hopefully
19 not in our business, and hopefully not within our
20 industry, but, somebody is going to go on vacation and
21 some young person is going to be left in charge -- and
22 maybe it's only for a week -- but there is probably going
23 to be one or two applicants that that person thought, gee,
24 I forgot to get that, and then all of sudden he comes
25 along and gets audited. And we can be in a bunch of

1 problems, in a bunch of trouble.

2 I hope there is a provision. I don't know the
3 answer to your question.

4 DR. WHITE: Mrs. Whitlock.

5 MRS. WHITLOCK: Mr. Gebhart, with these
6 restrictions and problems, could you see down the road, if
7 not now, a possibility of discrimination against Hispanics
8 in hiring based on the fact that it's such a pain in the
9 neck, and based on the fact that there are all of these
10 requirements, do you suppose -- could you see your company
11 not wanting to hire Hispanics, documented workers?

12 MR. GEBHART: You specifically, said my company,
13 the answer to that is, no.

14 MRS. WHITLOCK: Well, other companies, say other
15 companies?

16 In other words, could this be -- cause another form
17 of discrimination, employment discrimination, because
18 people don't want to bother with all of what you are
19 describing?

20 MR. GEBHART: I think that's a real possibility.

21 MRS. WHITLOCK: We've heard horror stories --

22 MR. GEBHART: I'm sure you have.

23 MRS. WHITLOCK: -- today -- here about other types
24 of employers exploiting these kind of people, not paying
25 them, hiring them under conditions that are less, way

1 less, than desirable. And then feeling that they had a
2 right not to pay them, and that sort of thing.

3 But, at the same time, I'm wondering if companies
4 will just say, I'd rather not have the hassle, or I just
5 won't hire Hispanics.

6 MR. GEBHART: You know, obviously, I would like to
7 tell you that that does not exist but, probably in the
8 real world out there that probably does.

9 We know that there are some people that are just
10 prejudice and no matter what the color of their skin is
11 whether it's black white or brown, whatever, there will be
12 people out there in this country, that will just not hire
13 them because of that. So, to some degree, yes.

14 MRS. WHITLOCK: Well, I'm not saying because they
15 are Hispanics for that reason, but, because of this law
16 being as restrictive as it is requiring all this
17 paperwork, if they will try to stay clear of those people?

18 MR. GEBHART: There will be some that will
19 probably do that.

20 DR. WHITE: It made me think of the recent hearing
21 that this committee had in Phoenix. Where we did have a
22 witness who was an owner and operator of a restaurant,
23 it's a small business. And he told a horror story about
24 how his record keeping was simplified or had been in the
25 past by simply throwing away papers on people who were no

1 longer employed by him, that's how he kept his files up to
2 date.

3 So, the day came, when they came down on him and
4 apparently it's going to cost him quite a bit of money,
5 because he was supposed to keep that.

6 Now, the point of this is that I wonder if you
7 gentlemen perceive that there is a difference in the
8 problem whereas between fairly large enterprises such as
9 some people have personnel directors, and others --
10 restaurants have -- you have an owner operator who is the
11 personnel manager the chief cook and bottle washer and
12 everything, and on top of all that, now, he has to be the
13 record keeper for the Federal Government.

14 It would seem like that would be a more severe
15 problem for these small businesses than it would be for
16 the larger?

17 MR. GEBHART: No question about it and I think
18 probably realistically the chains are, I think, in good
19 shape.

20 But, I'm sure that there are small operators out
21 there, some basically mom and pop operators out there that
22 maybe are not even aware of this particular law.

23 If they just went into business, they didn't get
24 any information, they just said, well, I'm just going to
25 change vocations -- there's probably people -- I mean

1 that's a reality of life.

2 DR. WHITE: They are in danger of some fairly heavy
3 penalties?

4 MR.GEBHART: Exactly.

5 MR. THACKER: As I mentioned, if you are not a
6 member of our association, of Dan's or of mine, if you are
7 not a member of a chain or something like that, it's very
8 possible that you know nothing about this, if you don't
9 read the newspaper, and if you are just a mom or pop
10 operation.

11 And I think that's where you are running into
12 problems, and you are running into problems not because
13 people are willfully violating the law, they just don't
14 understand what their requirements are and it's and
15 educational process.

16 If you read the newspaper today you have some small
17 hotels and some small restaurants that have been fined
18 \$500 to \$600, today, for improper record keeping.

19 And \$500 or \$600 to a small restaurant can
20 mean a lot of money.

21 I mean, that can be a question of survival in
22 some of these smaller operations.

23 And, unfortunately, the newspaper article, and I
24 have no direct knowledge, doesn't really detail to what
25 extend or whether there was some willful wrong doing

1 there, or if these people just made innocent mistakes and
2 we could have just said, listen, this is the way that you
3 do it, we are going to come back and check you in
4 another six months and hopefully you will be doing it
5 correctly if you haven't been doing it correctly at
6 that point in time, we are going to fine you. Which
7 would seem to me to be a more compassionate way to do
8 things.

9 As far as not hiring Hispanics based on this, I
10 think, again, it's a question of education, in my case,
11 that would be, I think, the last thing that would
12 happen. Because it's no more difficult to get the
13 documentation from a Hispanic than it is from a WASP
14 and we require the same thing no matter what the
15 nationality or perceived nationality of that person
16 might be or ethnic background.

17 If you walked in we would ask for the same
18 documentation from you that we ask from Dan or from
19 anybody else who we hire.

20 So, it's not any more difficult to hire a Hispanic
21 than it is to hire anyone.

22 MRS. FAUST: Mr. Chairman.

23 DR. WHITE: Yes.

24 MRS. FAUST: Mr. Gebhart.

25 MR. GEBHART: Yes, ma'am.

1 MRS. FAUST: Have you ever estimated the number of
2 hours or the cost for all employees, and if that's the
3 case, do you think it's easier to hold on to an
4 employees rather than to -- you know.

5 MR. GEBHART: I called each one of our managers
6 this afternoon, and I said, give me an approximate cost
7 as to what it's taking. Because, needless to say, it's
8 taking time out of his schedule.

9 MRS. FAUST: Aren't you glad I asked?

10 MR. GEBHART: I'm glad you asked. It takes -- to
11 do the job properly, to verify the ID, to take the time
12 to xerox it out, to go ahead and screen the people
13 properly, what we are estimating, it's taking the manager
14 an average of 10 to 15 minutes per employee to do the job
15 properly. That 10 to 15 minutes for the managers will
16 be in a salary anywhere from a range from 24 to \$36,000
17 a year.

18 So, as you can see we employ an average in the
19 restaurants right now of about, the average fast food
20 chain, probably 50 to 65 employees is on that payroll.

21 So you can see that that can add up to quite a bit
22 of the managers time being spent.

23 In terms of actual dollars, no, I did not break it
24 down, specifically in terms of dollars, but, I
25 certainly planned to do that, but, I just ran out of

1 time.

2 DR. WHITE: Thank you.

3 MR. GEBHART: You're welcome.

4 DR. WHITE: Any other questions?

5 If not, Mr. Thacker, Mr. Gebhart, we thank you very
6 much for your testimony.

7 MR. GEBHART: Thank you.

8 DR. WHITE: Our final panel is on enforcement.

9 We have a number of people scheduled.

10 We'll find out who is here.

11 Is Mr. Bill Johnston, here?

12 Would you take a seat here, sir.

13 Mr. O'Leary. Mr. Barron. Mr. Ronstadt. And
14 finally, we have Mr. Dupnik.

15 Of course, we'll proceed as we have, and that is to
16 take the names as they appear on the agenda.

17 So, first, Mr. Bill Johnston of the Immigration
18 Service.

19 MR. JOHNSTON: Excuse me, Mr. Chairman, our counsel
20 is here and I prefer that Mr. O'Leary go first. And I'll
21 follow him if that's okay with you.

22 DR. WHITE: That's quite all right.

23 Mr. O'Leary.

24 MR. O'LEARY: Thank you members of the panel.

25 My name is Thomas Michael O'Leary, I'm the sector

1 counsel for the Tucson Sector of the United States Border
2 Patrol.

3 I'm not exactly sure as to what direction you wish
4 us to go into, but in terms of enforcement, obviously, an
5 article appeared in the paper today that said that the
6 Tucson sector had since the inception of the Immigration
7 Reform and Control Act fined 15 employers, that's in the
8 Tucson area and the Phoenix area, as well, our sector
9 covers both those areas.

10 Perhaps, I should address some of the problems that
11 were recently addressed that the employers had that may be
12 of help to you in making your decisions.

13 One, and I think the key thing that we should
14 address first is discrimination.

15 There was an implication or a possibility raised
16 that discrimination could occur especially against
17 Hispanics and especially in this area.

18 I think that's kind of what Congress had in mind to
19 prevent when they included the anti-discrimination
20 provisions of the Immigration Reform and Control Act,
21 which basically tells employers that you got to comply
22 with the law, but, if you comply with it by
23 discriminating against anybody because of their
24 citizenship which is a new category of discrimination,
25 if you do that you are going to be subject to civil

1 penalties and civil suits.

2 And they broadened the jurisdiction, if you will,
3 for lowering the number of employees that an employer
4 needs to employ to three or more.

5 So, I think Congress had this in mind and put in
6 provisions to prevent this by ensuring that the Justice
7 Department would have an enforcement agency. And that's
8 the office of the special counsel located in
9 Washington to enforce that provision, if that would
10 occur.

11 That was expected to be raised, I think, when IRCA
12 was contemplated and I think that's what Congress
13 intended to put in there to prevent that.

14 Some of the less perhaps serious problems,
15 obviously, that's the most serious. But, less serious
16 problems. Small businessmen, as opposed to large
17 national corporations with personnel directors.

18 True, that they are probably more of a
19 disadvantage to that employer but they are disadvantage
20 and competing against that employer at any respect.
21 But that's part of the effort that the Immigration
22 Naturalization Service has undertaken since June 1,
23 1987.

24 And coupled that with the idea of minor infraction
25 the young manager or the young assistant manager 17 years

1 old who in his haste to accomplish his mission
2 processes an employee without filling out an I-9 and
3 later on down the line that I-9 is missing at an
4 audit, let say. Well, Commissioner, Nelson of the
5 Immigration Services does have a policy regarding
6 enforcement.

7 One is: Education. No employer, no employer in
8 the United States will be fined unless that employer
9 received an educational visit, and has been educated
10 in the law.

11 And every employer that has been fined in the
12 United States today. Well, let me just lower that and say
13 that every employer that has been fined by the Tucson
14 sector has had an educational visit. In many cases,
15 more than one.

16 Forty-seven citations, during the citation period,
17 the warning period, were issued. Several employers
18 received fines because they had already received the
19 citation.

20 So that's the commission's policy there of
21 education is designed to help the small businessmen, well,
22 it's the large businessman.

23 And the second thing to that is enforcement. We
24 are not looking for minor infractions, we are not
25 looking, you did not date your form, boy, you put that

1 on the wrong line or something like that.

2 What we are looking for is the employment of
3 unauthorized workers, not necessarily illegal aliens.

4 You see illegal aliens can be employed.

5 First of all, any illegal alien employed prior to
6 November 6th, is what we call grandfathered. And they
7 can remain employed by that employer without any
8 sanctions whatsoever occurring, possibly occurring.

9 Second, illegal aliens who may be facing a
10 deportation hearing or in the process of resolving
11 their difficulties with the Immigration Service may
12 have work authorization has been granted to them if
13 they are asylum applicants or something, and that
14 enables them to work in the United States.

15 So, it's the unauthorized worker, the illegal alien
16 who is not known perhaps to the Immigration Service and
17 has not received any type of work authorization and has
18 no authority to work in the United States by the order
19 of Congress. And that's the individuals we are looking
20 for.

21 And, it's only when an employer has employed an
22 unauthorized worker that a fine will ensue. Whether
23 that fine may be for a paperwork violation -- but
24 there is the predicate the absolute prerequisite of
25 employing an unauthorized worker before it will trigger

1 a fine.

2 The only exception to that is when the paperwork is
3 absolutely a greivous. And we can define a greivous by
4 looking in Webster and it's serious, it's absolute
5 disregard for IRCA.

6 But, again, coupled with the educational
7 provision the citation period and the commission's policy
8 on enforcement, I think that you can see that those
9 fears may be allay to the businessmen that nobody is
10 going to hit you over the head if you didn't dot an "I"
11 and cross a "T".

12 It's only if you are engaging in the employment
13 of unauthorized workers, knowingly, that this will
14 occur.

15 So, some of that fear we hope will be dissipated
16 if it exist.

17 Most employers who have had contact with the
18 Immigration Service know that.

19 And we've had contact with the Chambers of
20 Commerce and the various Innkeepers Association and
21 they've learned that, and I think that's a guiding
22 principal.

23 If you don't employ an unauthorized worker, if
24 you are just careful enough to ensure that you don't
25 have an unauthorized worker.

1 And the last thing on that. Fraud was mentioned,
2 counterfeit documents. The employer is not the enforcer
3 of IRCA.

4 If the documents are what we call reasonable on
5 their face and nobody expects an employer to run
6 checks with Social Security or the Immigration Service
7 for numbers or anything like that.

8 If the documents are reasonable on their face,
9 but, they turn out to be counterfeit fraudulent and
10 that person is actually an unauthorized worker, the
11 employer, will not be the recipient of the fine, rather
12 the individual will probably be the recipient of a
13 trip to court for prosecution.

14 And, again, that's part of IRCA. Which allows
15 that type of prosecution.

16 So I think, sometimes, I don't give as much
17 credit to Congress as perhaps they deserve. But, in
18 this case they did look at the complete picture here
19 and try to cover all aspects of it, to try to cover
20 any kind of retrenching to discrimination by the anti-
21 discrimination provision and try to ensure that minor
22 infractions, the undot "I" the uncrossed "T" will not
23 be punishable to stand the tie of illegal immigration
24 by preventing the attraction, the magnet, the
25 employment.

1 That's about all I have, right now. I've taken a
2 lot of time. I apologize for that, but, I'll turn it
3 over to Bill.

4 DR. WHITE: Well, let's see if any member of the
5 committee has any questions before we move on.

6 SENATOR PENA: Mr. Chairman.

7 DR. WHITE: Yes, Senator Pena.

8 SENATOR PENA: Do I understand that the Immigration
9 Services is the only agency that is authorized to enforce
10 the Act, is that correct?

11 MR. O'LEARY: The employer sanctions provisions,
12 that's correct.

13 The Justice Department through the Immigration
14 Service. The Immigration Service includes both the
15 Immigration Naturalization Service and the United States
16 Border Patrol.

17 SENATOR PENA: You stated that you folks are not
18 looking for minor violations.

19 We had testimony today, as a matter of fact, many
20 of the folks that testified today stated that the local
21 police are stopping and questioning Hispanic-looking
22 individuals, and after they are satisfied that they have
23 not broken a local law they are referred to you folks
24 for prosecution and deportation.

25 Is there any truth to that?

1 MR. O'LEARY: Is there any truth to the fact
2 that sometimes we get calls from other law enforcement
3 agencies that there might be a possible undocumented
4 alien. Yes, there is truth to that.

5 SENATOR PENA: Are you authorized to do that under
6 the Immigration Act?

7 MR. O'LEARY: They would not necessarily stop
8 an aliens because he's an alien. They may stop him for
9 another reason and, I think, these gentlemen may be
10 better able to address that.

11 There may be various reasons why an individual is
12 stopped. But, if during the course of that stop they
13 become aware or suspicious that he is an undocumented
14 alien they would turn them over to us, they would
15 call us in to do questioning.

16 And we may question them and find out that they
17 have a hearing scheduled in Phoenix, and they are
18 released.

19 Or if they are actually undocumented or unlawfully
20 in this country, they may be apprehended.

21 So, there seems to be an implication that the
22 initial stop is somehow or other improper. I don't
23 know if that's the case. I trust that it's not.

24 The law enforcement agents that we normally deal
25 with have integrity and they don't engage in that.

1 But, once they are turned over to us to question about
2 their immigration status.

3 SENATOR PENA: In one case and there was several.
4 The one about an individual Hispanic-looking -- that
5 met some kind of profile -- was standing at a Circle K
6 and local officer questioned him, standing there, and
7 determined that there -- I guess standing there was not
8 a violation of the local ordinances, but, referred him
9 to the Immigration Services and they came and picked
10 him.

11 MR. JOHNSTON: Excuse me, Senator.

12 Is this question -- is this in the context of the
13 Immigration Reform and Control Act, or just overall
14 policy?

15 There is nothing in the -- the Reform and Control
16 Act -- was a multifaceted piece of legislation. It
17 attacked, you know, many issues regarding illegal
18 immigration, but, it didn't address what we are talking
19 about.

20 SENATOR PENA: What I'm trying to determine is --

21 MR. JOHNSTON: There is no police power granted in
22 the employer sanctions, in section 274 of IRCA.

23 In other words, the police and the Sheriff were
24 not given powers to enforce I-9 requirements or employees
25 at a worksite.

1 DR. WHITE: Well, Senator, I wonder if this
2 question might properly addressed to -- we do have two
3 local law enforcement people with us, perhaps either
4 or both of them would like to address what the
5 relationship is between local law enforcement and the
6 federal enforcement of the Immigration statutes.

7 Would either of you gentlemen like to do that?

8 MR. DUPNIK: I'm Clarence Dupnik, Pima County
9 Sheriff.

10 As Mr. Johnston was saying the 1986 Act really has
11 no impact on local law enforcement, it doesn't change
12 anything.

13 We don't have any authority, we don't have any
14 responsibility.

15 If you're question is: What is our general policy
16 reference to the issue of illegal aliens, generally, I
17 could response to that.

18 SENATOR PENA: Would you, please.

19 MR. DUPNIK: Sure.

20 Our policy is not to deliberately get involved
21 in instances of enforcing the Immigration Act.

22 There are circumstances where police officers
23 routinely in the course of their duties come across
24 people who are considered to be suspicious for one
25 reason or another.

1 Ethnicity is not an issue. People of all races,
2 national origins, get involved in circumstances which
3 are either reported to us by citizens, merchants, or
4 merely observed by officers on patrol to be in
5 circumstances that are suspicious.

6 And in those situations they routinely stop and
7 interview people. Ask for identification and so forth.
8 And I would imagine that in most instances if it turns
9 out during the course of that interview the the
10 person is determined to be an illegal alien, in some
11 instances, and I would think most the border patrol is
12 notified.

13 In the jail, when prisoners are brought in who are
14 determined to be illegal aliens, the border patrol is
15 routinely notified.

16 But, the 1986 Act to us is a non-issue.

17 MR. ZAZUETA: May I follow up on that?

18 DR. WHITE: Yes.

19 MR. ZAZUETA: Is there problems with the
20 jurisdiction of the federal and local Sheriff's
21 Office?

22 MR. DUPNIK: No. There is no problems at all
23 because we don't have any jurisdiction. We have
24 neither any jurisdiction nor any responsibility.

25 To us the issue of illegal aliens is a non-issue in

1 local law enforcement, in my opinion.

2 I can understand -- and we do get complaints not
3 only from Hispanics, but we get complaints from
4 people of all ethnic backgrounds, that they were
5 stopped and interviewed under circumstances that they
6 didn't feel warranted.

7 DR. WHITE: Sheriff, would this be like the
8 classic case of the motorist who is stopped because
9 his tail light is off and then they find a body in
10 the trunk.

11 In other words, the question, because an officer
12 felt there might be a certain violation, and then he
13 finds that there is no such violation, but, there is
14 another one.

15 Some of the witnesses that we have heard seem to
16 feel that local law enforcement officers when they are
17 unable to make a case for violation of any local laws.

18 But they say, well, this guy looks like an illegal
19 alien, so, we'll turn them in. And their feeling is
20 that this is somehow improper. So, that's I suppose the
21 issue we are dealing with?

22 MR. DUPNIK: As I said, when it is determined that
23 the person is an illegal alien, I would think that in
24 most of the cases the border patrol is notified.

25 MRS. FAUST: Mr. Chairman.

1 DR. WHITE: Yes.

2 MRS. FAUST: Sheriff Dupnik, and also Chief
3 Ronstadt, do you have specific guidelines or
4 criterias by which you quote, unquote, pick up and
5 arrest these suspicious Mexicans?

6 MR. DUPNIK: We do not pick up and arrest
7 suspicious people, period. It's against the law. We
8 don't do that.

9 MRS. FAUST: Well, you just stated that there are
10 certain circumstances?

11 MR. DUPNIK: Under in which we interview people.
12 It might be during the course of that interview
13 that a person admits that they are in the country
14 illegally.

15 MRS. FAUST: Today we seem to find contradictions
16 to what you are saying about picking up, unless it is
17 hearsay.

18 And it was mentioned earlier we asked if you had
19 guidelines and criterias. That's why I bring it up now.

20 MR. DUPNIK: We do.

21 MRS. FAUST: Would it be to much to ask --

22 MS. DUPNIK: No, I'd be happy to furnish the
23 commission with whatever we have on the subject.

24 DR. WHITE: We'd appreciate any documents that you
25 may have.

1 MR. DUPNIK: But, I'm only speaking for the Pima
2 County Sheriff's Department.

3 Leonard Deech who is the Deputy Chief from the
4 Tucson Police Department is here to speak for his own
5 agency.

6 And I certainly don't presume to speak for him.

7 MRS. FAUST: Oh, that's why I addressed it to both
8 of you gentlemen. I didn't realize -- I'm sorry.

9 MR. RONSTADT: In response to your question.

10 I think there is a bit of confusion when an
11 officer contacts a citizen. By our definition an
12 officer can contact a citizen at any time. We can
13 walk up to anybody and say, "Hi, good afternoon, how's
14 it going?"

15 That individual can, if they so desire, can say,
16 "Get lost," and tries to walk away from us. So be it.
17 They say it and then they walk away from us and that's
18 the end of it.

19 If, on the other hand, we walk up to an individual
20 and we say, "Hi, good morning or good afternoon, how are
21 you." but we have probable cause to believe that that
22 individual either has or is committing a crime and
23 the individual says, "Get lost" and tries to walk away.
24 That individual will be allowed to walk away.

25 Now, that is an arrest. The distinction being you

1 must have some PC probable cause to hold an
2 individual. But, as far as making contact with an
3 individual, we strongly believe that we like anybody
4 else can contact anyone. We can walk up to the door and
5 knock on the door and if they say, "I don't want to
6 talk to you and if we do not have any PC, we turn around
7 and walk away.

8 So there is a distinction there between a contact
9 and a situation where we are going to have an arrest.

10 And the key there again, is the probable cause.

11 In the Tucson Police Department our policy is
12 almost identical to what Sheriff Dupnik indicated.

13 Our policy states that if in the course of normal
14 police business we come across someone who cannot
15 identify themselves and we believe to be an undocumented
16 alien, we will contact the border patrol and turn the
17 individual over to the border patrol.

18 Our rule and reg goes on to state that if the
19 border patrol can respond in a reasonable length of
20 time we will hold the individual for the border patrol.

21 We specifically identify that reasonable length of
22 time as twenty minutes. If in contacting the border
23 patrol they indicate that they cannot arrive within
24 twenty minutes, we then gather the information from the
25 individual, it's called an FI card, field interview card,

1 and put the information on the card and forward it to the
2 border patrol.

3 We use these information cards not just for this
4 purpose but for any field interview. And we try to get
5 the individual's name, address, place of business, et
6 cetera. If the individual has no identification they
7 can give us any name that they desire to. We have no way
8 of cross-checking at that point.

9 We put on the card whatever they give us.

10 What I'm saying in essence is I'm sure in many
11 contacts when we do an FI card the individual does not
12 tell us their name their correct address, their business
13 address, et cetera.

14 And, therefore, the card cannot be followed up on
15 by the border patrol nor can it be followed-up by our
16 detectives later if they believe that individual was in a
17 location where a crime had occurred and may possibly be a
18 suspect relative to that crime.

19 DR. WHITE: I believe Mrs. Whitlock has a question.

20 MRS. WHITLOCK: Chief Ronstadt, looking at my notes
21 from an earlier person who was testifying before us. An
22 attorney with ACLU mentioned specifically a raid by the
23 local police of a trailer court where they picked up
24 and turned over to the INS about 15 individuals and
25 according this ACLU attorney she said that there is a

1 police memo saying that they would be starting to
2 pick up undocumented workers when they stop people to
3 check to see if they were here illegally.

4 MR. RONSTADT: No. We do not stop people to find
5 out whether they are here illegially. That's not our
6 job.

7 I've never heard of such a memo. I'd like to
8 know what the raid is about because -- I would take a
9 wild guess on what went on there.

10 We had information about a dope situation. We
11 probably -- because that's about the only time we have
12 quote, unquote, raids. We probably hit the trailer park
13 relative to the dope situation. And I don't know
14 whether we arrested anybody because they had dope
15 there or because they were trying to sale dope to us,
16 et cetera et cetera et cetera.

17 But, it would not surprise me that in the course of
18 that investigation we may have come across some
19 people who did not have any identification, and may have
20 called the border patrol.

21 Again, that's a situation that I just described
22 that is in the normal course of police business.

23 But, simply because somebody appears to be of
24 Hispanic origin, our officers do not stop them on the
25 street. And say show me your green card show me some

1 ID, if you can't show me some ID, I'm going to call the
2 border patrol.

3 That's not our job. That's not our function.

4 DR. WHITE: Mr. Johnston, we haven't heard from you
5 yet. Do you wish to speak?

6 MR. JOHNSTON: Yes, I'd like to return to the topic
7 we were invited for today, the IRCA.

8 I'm going to be very brief, and if you have any
9 questions.

10 I'm with the Immigration Service in Tucson.

11 That does not belong to border patrol. We have the
12 investigations, examinations, inspections, and deportation
13 unit.

14 But, we do much of the same work, as a matter of
15 fact, in some cases duplicate the same work at a much
16 smaller scale. We are a small office.

17 When IRCA was passed in November of 1986. I was
18 one of the sceptics, I was probably the only one in the
19 Immigration Service that didn't like sanctions and
20 thought they wouldn't work and thought they'd be
21 difficult, and I have since become a convert with the
22 emphasis on education with a staff of between two and
23 three in my investigations unit.

24 We managed to contact 6,713 people since November
25 of 1986. And my observations in dealing with the

1 employers and employer groups was that they did not
2 have find it burdensome which is one of the
3 predictions, it would be a burdensome test. We had a
4 very good booklet presented to the employer with a
5 personal presentation.

6 Most employers seemed to feel that it was an
7 extremely easy form to fill out, because as luck
8 would have it we followed very close behind the
9 W-4, and I guess by comparison it was easy.

10 We have found only one case in all the 6,000 that
11 we did. Somebody said get out we don't want to talk
12 to you get out of my door. We just don't want anything to
13 do with it. All the rest were receptive they gave us
14 time, some came down to our office. Many requested
15 extra booklets and many requested us to go back and talk
16 with various groups that were in a similar business.

17 So, the first thing I was surprised at is that the
18 fact that most employers said, if it's the law, we'll do
19 it, maybe we're not crazy about it, but we're glad to
20 do it and it isn't as bad as we thought.

21 The second thing I noticed was that -- and I was
22 concerned about discrimination, I'm sure we all are.
23 -- once we emphasized -- the policy was to emphasize
24 that this law applied to everybody, you know, with the
25 exception of contract and casual labor. That it didn't

1 matter whether you were Anglo, Hispanic, Oriental or Black
2 or anything else. It did apply to whatever employee came
3 into your employment. And once that was understood and
4 the employer realized that he was not an immigration
5 enforcement officer, I think that did a lot to ease the
6 way.

7 And, so, I myself am a convert, and I talk to a lot
8 of employers almost daily and when we went back and
9 enforced under a program and did randomly went to
10 employers for no other reason other than a random
11 selection was made, we found almost all in compliance and,
12 we found minor technical violations and we dealt with
13 those minor technical violations the same way we do if
14 someone makes an inquiry. We told them how to correct it
15 and didn't take any enforcement action whatsoever.

16 As far as the new law, the commission did mention
17 in their invitation for us to speak today they did discuss
18 the legalization sections, which, of course, is a vital
19 part of it.

20 And here in Tucson where we don't have a huge
21 illegal population. We did get 7,740 applications from
22 aliens who have lived here in illegal status since 1982.

23 In addition, we received 7,648 applications from
24 the seasonal agricultural workers. Those who worked in
25 the fields for 90 days in any one of the years specified

1 in the act.

2 So we think that the educational effort and the
3 work with the designated agencies that were certified to
4 help out in that effort led to a pretty good turn out.

5 We feel confident that every single person that was
6 eligible to apply knew about the law and could make a
7 choice whether to come and apply for it.

8 Although, I don't work with the legalization office
9 and by law our operation is segregated from that
10 operation. I'm a little bit familiar with it, and I think
11 we made a very good effort in this area towards education
12 in both of those areas. So with that I don't know
13 anything but border patrol.

14 DR. WHITE: Any questions?

15 MR. ZAZUETA: Yes, sir.

16 On the legalization most of the testimony this
17 morning was opposite of your understanding. They said
18 that there was a lot of confusion, misunderstanding, a lot
19 of information did not get out and it was too late and too
20 little from the QDE and from the legal lawyers that
21 talked to us this morning, that testified this morning.

22 Why was that do you know why there was all that
23 confusion and misinformation?

24 MR. JOHNSTON: I don't agree with the premise. Of
25 course, there is always confusion, not only confusion, but

1 there is also development and regulations evolve as a
2 result of the legislation, but, I don't think is was
3 considering the short amount of time that we had to
4 implement that, you know, six months before our first
5 application could be accepted. I think that the
6 efforts through the QDEs, through the communities,
7 through the spot commercials, through the media, and
8 just getting the word out in the communities, I
9 thought it went out rather well. I don't agree with
10 the premise. So, I can't answer why there was
11 confusion.

12 And as I said, here we are in a city where -- this
13 city is not a magnet for the undocumented because
14 of the nature of the employment in this city.

15 We don't have the -- you know, we don't have the
16 big agricultural operations, we don't have the clothing
17 factories, we don't have the turkey farms, and chicken
18 ranches and stuff like that where traditionally there
19 is lots and lots of undocumented working. And to
20 have 15,000 people come forward and apply, doesn't
21 sound like there is very much confusion. I'm sure it
22 could happen, but, it certainly wasn't through any lack of
23 effort to get the word out.

24 DR. WHITE: Mr. Barron, we haven't heard from you
25 yet.

1 MR. BARRON: Well, my name is Benny Barron, and I'm
2 Assistant Chief of the Border Patrol, Tucson Sector.

3 The Tucson sector includes almost all the State of
4 Arizona. And we have some ten border patrol stations
5 under our management with the headquarters being here in
6 Tucson.

7 And I have management responsibility for this area,
8 for IRCA, for the enforcement of the Immigration Reform
9 and Control Act.

10 However, our counsel, Mr. O'Leary, has pretty well
11 stated our case. He has pretty well answered some of the
12 questions and fears that we heard as we walked in to
13 the session here.

14 I don't know what I could add to that. I can
15 certainly answer questions if you like.

16 Mr. Bill Johnston of the Immigration our
17 counterpart here has added a great deal as far as
18 legalization goes.

19 I would like to reiterate if I might.

20 That the border patrol in the past year has
21 educated has made more than 30,000 educational
22 visits to employers in this area of responsibility, in
23 the State of Arizona excluding two counties to the
24 far west that belong to the Yuma sector.

25 And we continue to educate employers on a daily

1 basis now at the rate of about 150 to 200 per week.

2 So, educational visits to employers is done every
3 day. We make contact sheets on those places of
4 employment and they are kept on file.

5 Any time we apprehend an illegal alien who is
6 employed we first check for a contact sheet as to
7 whether that employer has been educated or not. And if
8 he hasn't we do that educational visit at that time and
9 no further action.

10 If he has been educated than we do an
11 inspection of the I-9s and consider whether the violation
12 is grievous enough to warrant an administrative fine.

13 Quite often it results in a warning letter only.
14 It is way down the road and usually after multiple
15 violations before any employers are ever fined
16 administratively.

17 So the commissioner's policy, just to reiterate Mr.
18 O'Leary words, the commissioner's policy to enforce
19 the employer sanctions portion of IRCA in a fair and
20 impartial manner is being done at least in this sector.
21 And I can only speak for this sector.

22 I think unless you have some questions. I think --
23 I just wanted to reiterate that part.

24 One other point I wanted to make and that is:
25 As far as discrimination goes on the employers

1 visit, on the educational visit to the employer, we not
2 only advice them of the anti-discrimination section of
3 the act, but, we also give them posters to post on
4 their bulletin board in their business office or their
5 coffee room or whatever they may have where employees
6 congregate.

7 And the poster very clearly lists the name and
8 address and phone number of our special counsel who
9 prosecutes for that violation, discrimination and the
10 hiring.

11 And apart from that -- and we too will take the
12 complaint for the employee if they feel like they have
13 been refused employment based on discriminatory
14 reasons we will take the complaint and report it to
15 the special counsel.

16 So, that's pretty well covered and I think very
17 fairly.

18 Unless you have questions of the border patrol.

19 DR. WHITE: Any questions?

20 SENATOR PENA: Does the border patrol issue a
21 voluntary departure documents?

22 MR. BARRON: Yes, sir.

23 SENATOR PENA: Now, we heard testimony today that
24 often folks are not given total and complete
25 information and are coerced into signing a voluntary

1 departure document. Would you enlighten us on that?

2 MR. BARRON: That is a common complaint, however,
3 it's not true.

4 At least in this sector the Tucson sector. We
5 have some very strict guidelines on how -- first of
6 all voluntary departure is a two-way street.

7 First of all, the service has to agree to allow
8 an alien to return to his or her home country
9 voluntarily in lieu of deportation.

10 Secondly, the alien has to agree to returning
11 to his or her home country in lieu of deportation.

12 So it requires, that number one, we are an
13 officer of service agree and sign a document that
14 that's being agreed to and the alien has to agree and sign
15 the same document.

16 We have some very strict guidelines as to how that
17 is presented. It's presented in Spanish and in English
18 it's written in Spanish and in English. It's presented
19 verbally, it's presented in written form. It's signed.

20 There are numerous safeguards on any type of
21 coercion or force being used. Not only that we have
22 disciplinary measures in place and an officer subject
23 to disciplinary action.

24 If it can be shown that he or she forced or coerced
25 an alien to accept voluntary departure.

1 Now, after having said that, I'd like to also say
2 that it behooves an alien unless they have long
3 standing residence in the country, unless they have a
4 substantial amount of equity in the country.

5 It behooves them to take the voluntary departure
6 because there is no formal deportation. A formal
7 deportation and entry, an illegal entry, into this country
8 after a formal deportation is a criminal violation.

9 An illegal entry into this country after a
10 voluntary departure is not, it is a misdemeanor as
11 opposed to a felony. Let me put it that way. They are
12 both criminal violations. But, the misdemeanor hardly
13 ever is prosecuted. The felony is almost always
14 prosecuted.

15 So, you know, there are safeguards in place. And
16 there are some very strict guidelines, and there are
17 disciplinary measures for violation of it on the part of
18 the officer.

19 MR. O'LEARY: May I add something to that?

20 DR. WHITE: Go ahead.

21 MR. O'LEARY: Our offices are also instructed and
22 it's part of the requirement of the interview that they
23 question the alien as to whether that alien has a
24 prima facie case for legalization.

25 Well, legalization is over now, but during the

1 period of legalization, for legalization or whether
2 they have a prima facie case for SAW status, the
3 special agriculture worker status. And if they do,
4 that would prevent voluntarily departure.

5 We would basically tell them where to go to
6 file their claim. So, that is also covered in detail
7 by the officer.

8 And I think that's pretty critical because part of
9 complaints may revolve around I was eligible to stay
10 in this country and I got forced to take voluntarily
11 departure.

12 Again, all the safeguards that we can put into
13 place are there, the form is written, the individual has
14 a right to have a deportation hearing or in case if he is
15 eligible for the benefits allowed by IRCA would be
16 shown or told where the legalization office is,
17 where they could apply. So, that's an additional
18 safeguard.

19 SENATOR PENA: That flies in the face of the
20 testimony that we have heard today.

21 MR. O'LEARY: Well, that testimony flies in the
22 face of my testimony.

23 SENATOR PENA: They have a complete packet they
24 have already qualified, but, one of your officers has
25 insisted that they be, in lieu of deportation, that

1 they sign a voluntarily departure document, and
2 they're gone.

3 We've had that testimony here today by several
4 people.

5 DR. WHITE: As in a testimony from one person
6 that an individual was told that if you don't sign for
7 voluntary departure, we are going to throw you in jail and
8 keep you there for a while.

9 And I take it, that you would say, that that is
10 something that, as far as you know, it doesn't happen.

11 Is that true?

12 MR. JOHNSTON: Let's start at the beginning. The
13 first -- sometimes these get embellished with time after
14 encouragement from people that have an agenda they want to
15 get across. I see very few.

16 For instance, I've been here for eight years I've
17 never been sued for a civil rights violation. None of
18 these cases have gone to court because of some greivous
19 action on the part of one of my officers.

20 It might be, you know, somebody might want to make
21 the case that when we've offered somebody their options.

22 When you offer somebody an option and you say look
23 it, okay, these are the facts, you are a native and
24 citizen of such and such a country. The information that
25 we generally go on an Order to Show Cause which begins

1 deportation proceedings.

2 You say, yes, and you entered the country by
3 jumping the fence and you have no spouse here or child
4 here or anything that might get you -- now you have the
5 opportunity of a deportation hearing to adjudicate
6 your ability, your right to remain in the United
7 States or because you are a person of good moral
8 character and you meet the statutory requirements you
9 may leave voluntarily.

10 Now, that's not coercion, that's giving someone
11 their option.

12 And, as Mr. Barron said, they are given in writing
13 and in the language the person speaks, not only that, but
14 on the form itself before it's signed they're notified
15 quite specifically. They can change their mind at any
16 time before they leave the United States, that their
17 option to receive voluntary departure can be revoked on
18 their part, you know.

19 But this brings me to the second thing.

20 I can't say that a specific instance that you
21 referred to never happened, but to me the form, there's
22 a form there that if somebody's right to a hearing has
23 been violated there is an appropriate form for that.

24 But, there is no reason why anybody has to be
25 tricked into taking either voluntary departure or a

1 deportation hearing.

2 There is enough business of both types out there,
3 that we have to turn it away. If somebody walks into
4 my office today, and you can ask anybody from the Tucson
5 Ecumenical Council of Southern Arizona Legal Aid, ask
6 them when they testify, how long it takes if they walk in
7 and say I want to be deported, I want to be put under
8 deportation proceedings, please issue an Order to Show
9 Cause. Ask them how many months they have to wait before
10 I'll even respond and set up an appointment for them to
11 come in and be OSCed.

12 If somebody right now asks to be put under an
13 Order to Show Cause, I probably wouldn't even
14 accomodate them in the same day.

15 They would be put on a waiting list and OSCed
16 at some later date. Because there are instances
17 where people want to be under deportation proceedings
18 to grant some form of relief.

19 So this business of having to trick and coerce in
20 order to either get somebody in or out of a deportation
21 hearing, although, nobody can say it doesn't happen or
22 never happened I'm just not understanding the
23 reasoning behind it because there is enough of both
24 type cases to last us the rest of our careers.

25 I don't see the reason why anybody would want

1 to do that.

2 DR. WHITE: Any other questions?

3 MR. ZAZUETA: One of the problems that was brought
4 up this morning, very clearly, INS had a lot of problems
5 changing gears from an enforcement type of agency, to
6 a kind of deportation agency to the amnesty type of
7 agency. Do you agree with that or disagree?

8 MR. JOHNSTON: No, because we've always worn two
9 hats. We've always been an enforcer of the Immigration
10 and Nationality Act.

11 Under that Act benefits such as Immigration or
12 citizenship or whatever the benefits, have always been
13 there and denial of benefits have always been there.

14 And really, for instance, we adjudicate in the
15 western United States, we have one office that
16 adjudicates 50,000 applications for benefits a month.

17 People bring in their parents their mothers, their
18 kids their brothers their sisters, employers bringing
19 in temporary and permanent workers to the United
20 States.

21 We had a form, we've had forms of legalization in
22 the past. One time it was called registry, another time
23 it was called creation of record for people that had
24 been here before specific dates before 1948, before
25 1924, there was a date in the 30s.

1 We've always worn a service hat and we also had an
2 enforcement hat. So, I don't think it took any big
3 switching gears.

4 I think because of the magnitude of the
5 legalization program that we had to get the word out
6 that it was not an enforcement trick.

7 In other words, we are not inviting people in to
8 apply for one thing and they get a deportation as
9 a result. We had to get that message across.

10 And, I'm not so sure that we had to change our
11 gears, we always did it.

12 Most of us individually in the service have worn
13 both those hats. Most of us started in the border
14 patrol and wound up as inspectors, examiners,
15 adjudicators, some of us have gone from border
16 patrolman to immigration judge. And we've always worn
17 those hats. It's just a matter of applying the law,
18 whether it's to get somebody in the country or
19 somebody out, it's still the law.

20 DR. WHITE: Since we've heard so much about this
21 relationship between federal and local enforcement
22 before we leave this, I'd just like to mention one more
23 thing and ask for your opinions.

24 Some of you, probably all of you know, there are
25 certain communities in California -- Berkley, is one,

1 that specifically comes to mind, but I know there are
2 others, where the authorities there have announced
3 publically that their police agency will not collaborate
4 with the Federal government enforcing immigration
5 statutes.

6 Now, why they have done this, I don't know, various
7 reasons might occur.

8 But, my question would be to this effect.

9 To what extent do the federal authorities depend on
10 the collaboration of local law enforcement agencies,
11 and what would be the effect in your jurisdiction, if
12 the same thing happened here, and the Chief of
13 Police, and the Sheriff, said, we are not going to turn
14 anybody over to the border patrol or to INS?

15 MR. JOHNSTON: Okay, first time we start with --
16 we talk about collaboration.

17 Part of IRCA -- and one of the parts you very
18 rarely hear about -- calls for the expeditious removal of
19 criminal aliens from the United States.

20 Most of our dealings -- almost all of our dealings
21 with both the Sheriff's Department and the Police
22 Department -- most of what I consider an excellent
23 relationship, deals with illegal criminals or criminal
24 illegals. And these are people that are either permanent
25 residents of the United States or people that don't have

1 any documents -- how to scrape with the State or local
2 authorities and are either being released from jail or
3 they are in prison.

4 And we depend on that collaboration in order to
5 process these aliens for their well-deserved removal from
6 the United States.

7 And there is -- we depend on them for notices of
8 arrest. And from the courts we get J and Cs, Judgements
9 and Convictions. And then from the institutions
10 themselves, we get notices of release on aliens we put
11 detainers on. So their cooperation is crucial to the
12 removal of people that are a danger to our communities.

13 As a matter of fact, here in Tucson, we are
14 living in a dream world, because of the excellent
15 cooperation we get when it comes to criminal aliens
16 from both those agencies.

17 So, their cooperation for the drug dealers and
18 dangerous criminals breaking and entering aggravated
19 assault are all just crucial to our removal in that
20 program, that is mandated by IRCA.

21 DR. WHITE: What about the non-criminal aliens?

22 I would suppose that most of the people who are
23 objecting about this whole business would say that
24 they don't care about dope dealers or criminals of
25 any sort, that they were simply concerned with people

1 whose only crime was illegal entry into the United
2 States.

3 Is there a difference here?

4 MR. JOHNSTON: I don't know. My office would only
5 deal with the criminals.

6 DR. WHITE: I wonder if either the chief or the
7 sheriff would have any comment on this subject of
8 collaboration.

9 You're feeling about the way some of these
10 communities have said it's none of our business --

11 MR. DUPNIK: Is the question one of establishing a
12 sanctuary, is that it?

13 DR. WHITE: No, I think that would go to far.

14 They are simply saying -- I'm not here to
15 judge that -- it's not our business, we are not here to
16 enforce federal laws, we are here to enforce the laws
17 of the State of California and of our municipality,
18 and, therefore, we are not going to be involved.

19 MR. DUPNIK: Well, I think that's almost our
20 policy now.

21 And I think I can speak for both agencies.

22 I spent 20 years with the Tucson Police
23 Department prior to going to the Sheriff's Department.

24 DR. WHITE: Well, I'm not quite sure.

25 You said that you would turn people over if

1 you apprehended people and you found out that they
2 were illegal aliens, and you would turn them over to
3 the border patrol.

4 MR. DUPNIK: That's right. That's the only
5 exception. But we make no effort to go out and
6 identify illegal aliens.

7 DR. WHITE: But, you said, that they would take no
8 interest in whether a person is an illegal alien and
9 will not turn them over and will not do anything to
10 them unless they have violated a state or federal
11 law. That clearly is not your practice?

12 MR. DUPNIK: That's not. That's correct.

13 DR. WHITE: Does anyone else want to comment on
14 this?

15 MR. BARRON: I'd like to say a couple of things if
16 I might, with your invitation, of course.

17 DR. WHITE: Sure.

18 MR. BARRON: The illegal aliens that are turned to
19 us the border patrol by the Pima County Sheriff's
20 Department or the Tucson Police Department is almost
21 always in direct result of some violation. Either it
22 may be something as simple as a traffic violation.

23 However, it's a violation. It may be something
24 considerably more serious too, and quite often most often
25 is, all right.

1 And the local authorities both the Sheriff
2 Department and Police Department, to my knowledge, when
3 they learn that these individuals are in the country
4 illegally will forego prosecution for the local violation
5 as a rule and turn the individual to us with deportation
6 in mind. For a number of reasons, and the reasons are
7 obvious, you know, the jails are full, the courts are
8 full, et cetera.

9 And almost without exception -- from my experience,
10 and I have been in this sector 5 years, I have 25 years
11 with the border patrol -- almost without exception, we
12 are turned illegals who have for some reason violated some
13 law that caused them to come to the attention of the local
14 authorities, either the Sheriff's Department or the Police
15 Department.

16 And that's the way -- that's why we are called.
17 Either that or in some instances the officer in the field
18 know that border patrol units are also on the street and
19 are patrolling and are available and once in a while the
20 local officer encounters individuals who speak spanish
21 only and they need us for interpretation.

22 But, apart from that, and it turns out that they
23 are illegals and we take custody of them.

24 Apart from that, they've almost all without
25 exception committed some sort of violation.

1 There is no shot-gunning on the street, so to
2 speak, because you or you or you appear to be Hispanic, we
3 don't pick you up and hold you for the border patrol, that
4 does not happen, to my knowledge.

5 DR. WHITE: Any other questions?

6 MR. ZAZUETA: There's been testimony today on the
7 State Legalization Impact Assistant Grant, are you
8 familiar with that?

9 That's where you have education and civic
10 requirements. That there has been some confusion, again,
11 on 30 or 40 hour requirements and that there has been a
12 lot of bureaucracy in getting the funds out.

13 What's been the problem as far as INS is concerned?

14 MR. JOHNSTON: By law the people or the branch of
15 INS that enacted sections 210 and 245-A for the seasonal
16 agriculture workers and for the legalized immigrants is a
17 segregated operation from our operations and, to the best
18 of my knowledge, nobody from that operation was invited to
19 this hearing.

20 At least I called them and they were not invited
21 and not aware of the hearing.

22 Knowing that there would probably be a question,
23 and they all happen to be in California. This Phase II,
24 my understanding is the regional office that is
25 adjudicating applications for certifications to meet the

1 educational requirements, you know, to the entities that
2 are going to give the English classes and civics classes,
3 what we used to call civic classes, they are being
4 generously awarded.

5 I also called our District Director, Pat Cain, who
6 is the acting director of the Phoenix District which I'm a
7 part, and his opinion was that the State of Arizona is
8 satisfied with their cut of the pie, when it comes to the
9 funding.

10 So, you are just going to have to ask somebody
11 that -- I'm not aware incidental to my operation, as to
12 any dissatisfaction in that area.

13 And, as I said, nobody from that separate and
14 distinct operation was invited here today.

15 DR. WHITE: Anything else from the committee?

16 If not, gentlemen we wish to thank you very much.

17 We have reached the conclusion of the testimony of
18 the enforcement panel.

19 Oh, I'm, sorry.

20 MR. RONSTADT: You asked about our rules and
21 regulations.

22 Before I came I took the time to pull a set of our
23 rules and regs on the pertinent topic, if you are
24 interested.

25 DR. WHITE: Yes, we'll be very happy to have them.

1 Thank you very much.

2

3

For the record, would you state your name.

4

5

MR. GOMEZ: My name is Enrique Gomez, I live in
6 Tucson, Arizona.

7

DR. WHITE: What is your residence?

8

MR. GOMEZ: Tucson, Arizona.

9

10

DR. WHITE: All right. Would you have a seat and
proceed.

11

Mr. Gomez, you may proceed.

12

MR. GOMEZ: My name is Enrique Gomez.

13

I work with a program called El Proyecto, Arizona
14 Sonora.

15

We are an Aids Project that works primarily with
16 Latinos here in southern Arizona and in Sonora, Mexico.

17

The reason why I wanted to take the opportunity to
18 speak today was just regarding the added provision later
19 on after the amnesty program began or the mandatory
20 testing regarding HIV anti-body testing.

21

And mainly along the lines of personally
22 considering mandatory testing to be discriminatory in a
23 sense.

24

And considering the fact that mandatory testing so
25 far has included primarily programs that deal with

1 minorities and over represented by minorities regarding
2 prisons, regarding amnesty, and different programs that
3 require the mandatory testing, just like the Armed Forces.
4 That have an over representation of minorities.

5 So, when amnesty program began, there was nothing
6 that included the mandatory testing for HIV and later on
7 was added on and just seeing that as another -- I guess --
8 another -- regarding the whole amnesty program --
9 something that was entered in, that I thought was
10 discriminatory in a sense -- that all of a sudden this
11 provision was added and people were being asked to submit
12 for anti-body testing.

13 What I found as a result of that, people that were
14 going for the anti-body testing were not educated as far
15 as what it entailed and a lot of people were delivering
16 sealed envelopes regarding their status from the person
17 they went to, straight to the people who are handling
18 their paperwork.

19 So, what I was seeing was people who -- that the
20 Immigration law did not take into consideration or not
21 much thought, as far as educating people or educating the
22 INS themselves, as far as what this program was going to
23 entail.

24 And not being able to give very clear answers
25 regarding what was going to happen to people who were

1 testing positive regarding the anti-body test for Aids.

2 And I went around and finally started getting more
3 answers from calling San Francisco and New York and
4 nothing really coming down from here in Tucson.

5 So, I imagine the people were not very informed
6 here, even working around the issue of immigration,
7 amnesty, and Aids itself. I imagine the people who are
8 going through the testing were less educated.

9 So, there was a very big concern there.

10 And also that there is no clear policy as to what
11 is going to happen to the people that have tested positive
12 as a result of the anti-body testing, because of their
13 application for amnesty. And that was one of the biggest
14 concerns I had.

15 And I think what a bigger concern would be the
16 policy that would be a result of this because of such an
17 afterthought or poor foresight. I would be very concerned
18 about a policy regarding what's going to happen to people
19 who have tested positive as a result of this mandatory
20 testing.

21 DR. WHITE: Any questions.

22 SENATOR PENA: Do I understand that's a new rule a
23 new regulation adopted by INS?

24 MR. GOMEZ: For the mandatory testing, yes. If I
25 understand it correct, it was December.

1 SENATOR PENA: When are they required to do that?

2 MR. GOMEZ: Pardon me. This is for persons
3 applying for amnesty as of December of '87.

4 SENATOR PENA: And it's done at their cost?

5 MR. GOMEZ: Yes. And also there is physicians that
6 they are referred to and that's another question regarding
7 the issue of confidentiality who is the persons who are
8 privy to this information regarding their status, whether
9 it's negative or positive.

10 So these are people who after as of December, all
11 the way through have had to test for the anti-body, for
12 the HIV anti-body.

13 And there is no clear provision as to what is going
14 to happen with these people who have tested positive, of
15 which there have been people who have tested already.

16 SENATOR PENA: How many things are they tested for?

17 MR. GOMEZ: Pardon me.

18 SENATOR PENA: How many things are they tested for?

19 MS. GALLEGOS: There are 33 grounds of exclusion to
20 begin with.

21 DR. WHITE: Medical grounds?

22 MS. GALLEGOS: No.

23 DR. WHITE: How many medical grounds?

24 MS. GALLEGOS: Tuberculosis, HIV, mental illness.

25 MR. GOMEZ: Hepatitis B.

1 DR. WHITE: I'm sure that you know that even during
2 the time when the United States had essentially unlimited
3 immigration in the late '19s early '20s up to 1921 and
4 essentially anybody who wanted to come could.

5 But, there were always some exceptions and one of
6 the major exceptions was that people who were found to
7 have certain diseases were excluded.

8 At that time tuberculosis was a big thing. And,
9 people, immigrants arriving and asylums were routinely
10 examined by physicians, government physicians, and if were
11 found to have certain diseases were excluded.

12 And it's hard to compare, let's say, tuberculosis
13 in 1890, with Aids in 1988, as to the degree of
14 seriousness, but, clearly in both cases you are dealing
15 with very serious public health problems.

16 And one would have to assume that in all likelihood
17 there is going to continue to be an official and public
18 concern about this particular thing.

19 So my question to you would be what do you think
20 should be done about it, other than what is being done,
21 assuming that anything at all is going to be done.

22 MR. GOMEZ: Yes. And that's the part that is very
23 difficult just trying to figure out, I can assume very
24 much regarding what's going to happen for people who have
25 tested positive. I can expect the worse and say that they

1 are not eligible and go farther and say you are not
2 welcome, you are not able to be here. Or, I guess mainly
3 there is nothing said and that's the concern that this
4 came up so much later and as if someone thought up, oh,
5 let's include this also. And very much as an afterthought
6 and never instituting any kind of information that would
7 go to the persons who were the applicants, or actually to
8 the people who were in the programs themselves which
9 includes the INS.

10 My concern would be that yes, there are those
11 serious illnesses and everything and when you couple this
12 with someone who is applying for amnesty, then you are
13 dealing with two major factors in the person's life.
14 Mainly their continuing to live here and continue to live,
15 period.

16 So my concern would be how this information is
17 being used and I would stress finding out what is the
18 policy regarding the confidentiality of this information
19 regarding the person's status.

20 And that would be a very big factor on who is
21 privy to this information and what will happen to it, and
22 what will happen to the persons who are positive for the
23 virus in whatever stages.

24 Personally, I would say for them to continue to be
25 here and for that not to be any part of a strike against

1 them being able to remain here or as far as their filing
2 for amnesty.

3 But, then again, there is nothing clear, so, I
4 can't really say.

5 DR. WHITE: Any other questions?

6 Do you wish to testify?

7 MR. CORDOVA: Yes, sir.

8 DR. WHITE: Now, I'm asking for questions from the
9 committee. Now, if you wish to be heard, we will be
10 pleased to hear from you.

11 Well, if there are no further questions from the
12 committee, we thank you for your testimony.

13 MR. GOMEZ: Thank you.

14 DR. WHITE: All right, sir, if you'll step up.

15 If you would state your name and residence for the
16 record.

17 MR. CORDOVA: My name is Juan Carlos Cordova, and
18 I'm a Salvadoran refugee here.

19 DR. WHITE: You're a what?

20 MR. CORDOVA: A Salvadoran refugee, from
21 El Salvador.

22 I just have about three points to make.

23 Number one, as a refugee I came to this country
24 because I feared for my life in El Salvador.

25 I was persecuted by the government of

1 El Salvador, and I learned to fear the authorities of my
2 country.

3 People who are refugees in this country and are
4 applying for amnesty are being faced with an option like I
5 did.

6 If you are being persecuted you cannot go to the
7 authorities, because, they will persecute you and kill you
8 or torture you.

9 Here INS is the one enforcing the amnesty. People
10 have been traditionally and historically been deported
11 by INS.

12 Therefore, it's an ideological thing to ask from
13 someone who fears INS to go there and say, okay, I'll
14 apply for amnesty.

15 I would not go to the police or to any authorities
16 in my country to seek protection, because they wouldn't.

17 In the same way that here, I could not go to border
18 patrol to ask them to let me stay here because their job
19 is not to let me stay here, their job is to deport me.

20 That is the fear that we as refugees have.

21 It was testified here earlier that less than ten
22 percent of Salvadorans here qualify for amnesty, and less
23 than that applied. And that goes with that fear.

24 The other thing is that for refugees to get work
25 permits they may get them after they apply for asylum, but

1 they may not get them too. That is determined by the INS.
2 In the meantime they would be unemployed.

3 Everybody according to IRCA needs to have a work
4 permit to work.

5 If a refugee is not granted a work permit because
6 he or she has applied for political asylum they might be
7 unemployed for an indefinite period of time.

8 Therefore, putting them in a hard situation not for
9 them only, but their children their spouses and their
10 family.

11 The other thing is that I have learned English
12 here. Lots of people are slower in learning English.
13 Most everyone is eager to learn.

14 In order for people to know about IRCA, it was very
15 difficult because there were changes every single month.

16 I work at a law office here and, yet, I had a hard
17 time keeping up with every change in the law.

18 I helped other people like myself fill out
19 applications.

20 It was impossible to do -- because one month you
21 were told you were not eligible, the next month you were
22 told you were.

23 And that is twice as hard for people who don't know
24 the language or don't have a basic understanding of this
25 law, which is a very complicated law. That's all.

1 DR. WHITE: Any questions?

2 MRS. FAUST: How long have you been here?

3 MR. CORDOVA: I came here in 1981.

4 DR. WHITE: Okay. If there are no further
5 questions, we thank you for your testimony.

6 MR. FRANCO: I would like to testify.

7 DR. WHITE: You would like to testify, sir?

8 Come forward.

9 Please state your name and residence for the
10 record.

11 MR. FRANCO: My name is Rene Franco, and I am from
12 Guatemala.

13 DR. WHITE: Would you give me your name again,
14 please.

15 MR. FRANCO: Rene Franco. R-E-N-A. F-R-A-N-C-O.

16 DR. WHITE: Okay, thank you.

17 MR. FRANCO: And I am from Guatemala.

18 As Carlos, also, I came to this country as a
19 refugee.

20 One of the things that people, I think, should
21 understand in this country is when you talk about
22 Guatemalans, about Salvadorans, we are not coming to
23 this country or to Europe or to any other country
24 because we want to leave our homelands.

25 Most of us have been forced to leave. And I'd be

1 happy to be in my homeland.

2 There is no country like Guatemala.

3 And I have been all over this country. And this is
4 a beautiful country too, but there are no mountains like
5 in Guatemala.

6 One of the things that I think people should know
7 in order to get a sense about why we are here, or why
8 we are coming to this country -- one of the things is that
9 when we talk about laws or regulations, those are done
10 follow with the policies of U. S. and Guatemala and El
11 Salvador.

12 And, of course, there is friendship among the
13 Guatemalan and the Salvadoran government. United States
14 is going to refuse to see us as political refugees.

15 So, I think with all those new regulations, laws,
16 that you see, day by day the space is getting -- is
17 close -- you know, for us, and we are always dealing to
18 survive.

19 You know, as was testified in the morning. Of
20 course, we want to work. That's one of the things that I
21 tell the students when I go to places to give
22 presentations is that Guatemalans and Salvadorans, and I
23 think most of people from Latin American, haven't had
24 childhood. Why? Because if you are 7 or 8 years old you
25 have to go with your parents to the mountains to gather

1 firewood or to help in the cornfield. So we are used to
2 working.

3 So, and we see all this new Immigration Law, you
4 know, giving us a hard time, as Carlos was saying, to get
5 a work permit to be able to work and survive, and also
6 feed our families.

7 So, I think, you know, that today that I have this
8 opportunity to talk to you, to tell you my experience, is
9 with the hope that through your understanding some of
10 those laws and regulations can be changed. Or at least a
11 profound study about the impact of that law among Central
12 Americans.

13 Because, you know, we are in a really hard
14 situation, you know, with discrimination in the work
15 places, no work permit. If you look Latino, you can get
16 stopped by the police. And I was surprised when the
17 sheriff and the other sir, was saying, no. That's not
18 true, it happens everyday, not only with us, with Latinos,
19 but, also with Anglo people. I have seen that especially
20 in the parks.

21 So that's my testimony.

22 If you have any questions, I'd be happy to answer
23 them.

24 MRS. FAUST: If you could change one regulation,
25 which one would you change, and how would you change it?

1 MR. FRANCO: Well, that's hard to say, because
2 there is no point on the law about saying, for instance,
3 helping in a humanitarian way.

4 So, I think, what is needed is to listen to the
5 people that have been involved with Central Americans.

6 They are the ones, firsthand, that knows us, and
7 that knows the situation in Central American.

8 DR. WHITE: Ms. Whitlock.

9 MRS. WHITLOCK: Do you mind saying what your status
10 is presently, your legal status?

11 MR. FRANCO: Oh, yes, I'm legal. I'm a permanent
12 resident.

13 MRS. WHITLOCK: So, did you come in under amnesty
14 or was it prior to that?

15 MR. FRANCO: No, I have almost 6 years years living
16 in this country. So I got my papers through marriage.

17 DR. WHITE: Are you going to apply now?

18 MR. FRANCO: No, I was going to apply, but, when I
19 saw the situation with Guatemalans applying for asylum,
20 you know, I decided to wait.

21 But then, you know, love is everywhere. So, I met
22 a woman and we got married and here I am.

23 So, that's why I say love is everywhere and
24 anywhere.

25 DR. WHITE: It's easier than political asylum.

1 MR. FRANCO: Well, not exactly.

2 MR. ZAZUETA: I think that's a good happy ending.

3 DR. WHITE: I want to thank all of you for your
4 attendance.

5 MS. GALLEGOS: I wonder if I could clarify two
6 points for the record.

7 DR. WHITE: Well, briefly. But you have testified
8 previously?

9 MS. GALLEGOS: Yes, I have.

10 DR. WHITE: Your name again?

11 MS. GALLEGOS: Isabel Garcia Gallegos. And I
12 testified this morning.

13 I wanted to clarify two points, because they were
14 addressed both in the business sector and then in the law
15 enforcement sector.

16 Number one. I want to remind the Advisory
17 Committee that when the Legislation was being discussed
18 in particular employer sanctions, INS made much to do with
19 the argument that we needed to protect the undocumented
20 worker against the unscrupulous and exploitive
21 employer.

22 We know Congress who these people are we have a
23 pattern and practice of companies who are violating
24 existing labor laws.

25 But since we don't fund the labor department

1 sufficiently they are not enforced.

2 We know who they are, this is who we are going
3 against.

4 What happens after IRCA of '86, unfortunately, Mr.
5 O'Leary is gone. They have focused on the small
6 businesses, on the tortillerias, on the small bakeries, on
7 the small restaurants. They have not gone against the big
8 business that they initially were going to target.

9 That's why I think some of the reports here were
10 glowing, you know, they have no problems, but the small
11 businesses are bearing the brunt. I have checked with
12 other cities it's been small businesses that have been
13 cited.

14 In representation of a woman -- who is not here --
15 she was going to make it -- of a small tortilleria here in
16 Tucson, she had an employee, she attempted to work, she
17 called the border patrol in to do some educationals --
18 there was some misunderstanding -- she kept in her
19 employer in October of last year a gentlemen who was going
20 through legalization, clear legalization applicant, was
21 waiting to earn the money to pay for the fees he became
22 legalized officially in January of '88.

23 This woman was cited for an unauthorized hiring
24 that she knowingly hired an unauthorized person. Is this
25 what we intended, number one?

1 Then I want to go on to the law enforcement. The
2 testimony has been very very revealing, not only to
3 yourselves, but to me. Because both the Tucson Police
4 Department Assistant Sheriff and the Sheriff of this
5 county stated what we stated previously, and that is that
6 they are not following the law.

7 The Sheriff, said, "Yes, if we believe, they are
8 illegal aliens, we call border patrol."

9 That's clearly illegal. They are to detain and
10 keep in detention only people that they have probable
11 cause. He stated later probable cause to believe that
12 they are committing a felony.

13 To begin with probably the term "illegal alien" is
14 horrible, not only because of the connotations, but,
15 obviously, people are interpreting illegal aliens, that
16 means you are a criminal.

17 People are charged and convicted of murder, rape
18 everything. They're never called illegals. And yet human
19 beings are called illegals. No human being is illegal,
20 number one.

21 And what standard did they give you about their
22 stoppage.

23 You asked, Mr. Johnston, stated this has nothing to
24 do with IRCA.

25 What our point was this morning was that since

1 passage of IRCA this problem has been exacerbated, it has
2 increased, and they know that it has increased. Of
3 course, they disclaim any wrong police procedures all the
4 way around.

5 But, I think it's very important for this
6 Commission to see what we are up against, what we are all
7 up against.

8 If the two top law enforcement officials come in
9 here and say, "Well, we don't enforce immigration laws."
10 But, on the other hand say, "Well, yes, if we believe
11 they're illegal aliens." What do you mean you believe?

12 What does that mean? Because you are brown,
13 because you don't speak well, because you say I was born
14 in Mexico. So what, my father was born in Mexico, he's a
15 U. S. citizen, so it doesn't matter.

16 Again, the crime is only if you are going to look
17 at a crime, and, unfortunately, it is a crime right now to
18 cross the border illegally.

19 That's the only crime that they can investigate,
20 and yet they detain through their own admissions, they
21 detain people that they believe are.

22 DR. WHITE: Are you saying that it should not be a
23 crime under any circumstances for anyone to cross the
24 border?

25 MS. GALLEGOS: I don't believe it should be a

1 criminal penalty. But that's beyond, okay, let's accept
2 it, it's a crime it's on the books. And they're
3 prosecuted.

4 As a federal defender, I've represented many
5 individuals charged with the offenses -- doing two years
6 in federal prison -- at great taxpayer expense --
7 because they were found in the country after having been
8 deported one time, previously, officially by the INS.

9 And, so, they're doing two years in a federal
10 prison at a cost of 20,000 to 30,000 a year to the
11 taxpayers.

12 But, beyond that question is, that's the
13 criminal offense.

14 The Sheriff didn't say, "We believed he crossed the
15 border illegally, and so we detained him to investigate
16 that crime."

17 They said, "Well, if we believe that they are
18 illegal, we detain them." And that's clearly in
19 violation of existing law.

20 DR. WHITE: Thank you.

21 All right, we will declare the meeting adjourned.

22 Thank you for coming.
23
24
25