IMPLEMENTATION IN CALIFORNIA OF THE IMMIGRATION REFORM AND CONTROL ACT: A PRELIMINARY REVIEW

CALIFORNIA ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

This summary report of the California Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or to the Advisory Committee, but only to individual participants in the community forum where the information was gathered. The Committee recognizes that since it held its forum, there may have been developments that affect the timeliness of some of the points made by forum participants. The Committee hopes the Commission and the public will find this report of interest and value in terms of its identification of civil rights concerns surrounding the early stages of implementation of the Immigration Reform and Control Act and of the role of these concerns as benchmarks against which subsequent changes in the law or the manner in which it is enforced may be measured.

A SUMMARY REPORT DECEMBER 1989

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the Act, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice, the investigation of discriminatory denials of the right to vote; the study of legal developments with respect to discrimination or denials of equal protection; the appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection; and the investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEE

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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LETTER OF TRANSMITTAL

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Attached is an edited transcript of a community forum held by the California Advisory Committee on September 11, 1987, in Los Angeles. The purpose of the forum was to gather information concerning implementation in California of the Immigration Reform and Control Act of 1986. The specific focus was on the employer sanctions provisions of the new law.

The Advisory Committee sought a balanced perspective on this vital legislation by inviting participation by a cross-section of the community. This included immigration attorneys, employer representatives, social service and minority group organizations, as well as Federal enforcement officials.

The Advisory Committee voted (9-0, 2 absent) to submit this report to the Commission and hopes it will add useful information to the body of material on the implementation of this law.

Respectfully,

Deborah M. Hesse, Chairperson
California Advisory Committee

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Acknowledgments

The Advisory Committee wishes to acknowledge the efforts expended by its immigration subcommittee. The Committee also thanks the staff of the Commission's Western Regional Division, Los Angeles, California, for its help in the preparation of these proceedings. The project was the chief assignment of Philip Montez with assistance from John Dulles. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director, Western Regional Division.

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Introduction

Following 5 years of debate, the Congress, in 1986, enacted the most comprehensive reform of United States immigration law since 1952. The Immigration Reform and Control Act of 1986 (IRCA)[1] was signed into law by President Ronald Reagan on November 6, 1986.

The IRCA has two provisions relevant to civil rights; employer sanctions for hiring aliens not authorized to work in the United States and amnesty for undocumented aliens who have resided in the United States continuously since January 1, 1982, or who have worked in agriculture for a requisite period of time. The law also contains an amendment outlawing employment discrimination on the basis of national origin or citizenship status.

Under the IRCA, it is unlawful to knowingly hire, recruit, or refer for a fee an "unauthorized alien,"[2] or to continue to employ a person hired after November 6, 1986, knowing the person is not authorized to work in the United States.[3] A key element of assuring compliance with the new law is the employment verification procedure and recordkeeping requirements. Employers are required to examine certain types of documents to verify that the job applicant is

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[1] Also known as the Simpson-Rodino Immigration Act, Pub. L. No. 99-603, 100 Stat. 3359.
[2] 8 U.S.C. § 1324a(a)(1).
[3] 8 U.S.C. § 1324a(a)(2).

eligible to work in the United States.[4] The employer then is required to complete a one-page form (I-9) which attests that it has examined the necessary documents. The applicant must also sign the form, stating that he is either a U.S. citizen, permanent resident, or otherwise authorized to work.[5] Employer sanctions for unlawful employment of unauthorized aliens may result in fines ranging from $240 to $2,000 for each unauthorized alien; for the second violation, from 2,000 to $5,000 for each illegal employee; and for the third and subsequent violations, from $3,000 to $10,000 for each unauthorized alien.[6]

Two classes of undocumented aliens are entitled to the benefits of legalization (amnesty): aliens who resided unlawfully in the U.S. prior to January 1, 1982, and special agricultural workers. Under the first category, an alien must establish that he entered the U.S. prior to January 1, 1982, and has resided continuously in the U.S. in an unlawful status since that date.[7] Eligible applicants must apply no later than May 4, 1988.[8]

Agricultural workers who can establish that they

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[4] 8 U.S.C. § 1324a(b)(1).
[5] 8 U.S.C. § 1324a(b)(2).
[6] 8 U.S.C. § 1324a(e)(4).
[7] 8 U.S.C. § 1255a(a)(2)(A).
[8] 8 U.S.C. § 1255a(a)(1)(A).

performed seasonal agricultural services in the U.S. for at least 90 days during the 12-month period ending on May 1, 1986, are also eligible for legalization.[9] They must apply for amnesty no later than November 30, 1988.

Another provision in the new law provides protection for certain U.S. citizens and intending citizens who have been discriminated against based on their national origin or citizenship status. This section applies to employers of four or more persons and prohibits discrimination in both hiring and firing.[10] Penalties may include orders to hire, backpay, civil penalties up to $2,000 and attorneys' fees.[11]

According to 1980 census figures, California had a total population of 23,667,902. Estimates for 1986 place the population at 26,981,000.[12] The 1980 figure includes: 18,031,000 white; 4,544,129 Hispanic; 1,819,000 black; 1,192,900 Asian; 201,400 American Indian; and, 2,423,400 other.

On September 11, 1987, the California Advisory Committee to the United States Commission on Civil Rights convened a public forum in Los Angeles to obtain information on the

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[9] 8 U.S.C. § 1160(a)(1).
[10] 8 U.S.C. § 1324b(a).
[11] 8 U.S.C. § 1324b(g)(h).
[12] Edith R. Horner, editor, Almanac of the Fifty States: Basic Data Profiles with Comparative Tables. Information Publications, 1988, p. 35. The figures do not reflect the total due to double counting of Hispanics and confusion in self-identification.

employer sanctions provisions of the IRCA. Specifically, the Committee was interested in determining how these provisions were being implemented in the southern California area and the extent to which problems of discrimination were occurring.

Highlights of this forum provided information to the Committee suggesting the following:

--Surname discrimination - Spanish or Asian surnames may be discriminated against because of the confusion of the law and fear of employers that they may be fined.

--Disruption of family life - employees fear separation may occur within families because certain family members can become documented and not others. The INS forms require the names and addresses of all family members, whether they are documented or not. Many people are forgoing legalization in order to protect other members of their family not eligible for amnesty.

--English-only forms - all INS forms are in English and most people who apply for amnesty are literate only in Spanish or various Asian languages such as Korean or Chinese. Forum participants suggested the forms should have been translated into other languages in order to assist employers and employees in filling them out.

--Proof of residency - the law provides that those who have lived illegally in the United States since 1982 are eligible for amnesty, providing they can prove they have been here

continuously. According to presenters, most individuals who qualify have always paid in cash. They have returned to previous landlords for letters stating that they have resided in the United States and landlords are charging exorbitant prices for these letters causing hardships to many amnesty applicants.

A summary of the presentations follows:

Mr. Bernard Brown, Vice President of Koret of California

I am chairman of the political action committee for the Coalition of Apparel Industries in California (CAIC).[13]

In the State of California, the apparel industry does over $3.5 billion a year in business and hires 125,000 employees. We are vital to the State's economy in that we are about seventh in the State as far as dollars produced here, and we are also the second largest producing apparel in the country.

The new immigration law has caused a great deal of upheaval in the apparel industry. As a direct result of this law, some of our people are telling us they have lost as much as 40 percent of their work force and they have not been able to replace them. It has created confusion, fear, and even panic among industry workers. Most of them happen to be foreign born and are unclear on whether they are legal because

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[13]CAIC is a statewide organization of 600 manufacturers, contractors, and suppliers within the apparel industry.

of the way the law is written.

We believe that the law is discriminatory to both the industry employees and employers. In our opinion, the law has created more problems than it was intended to solve.

Linda Wong - Attorney, MALDEF

I am Linda Wong, associate counsel for the Los Angeles Regional Office of the Mexican American Legal Defense and Education Fund (MALDEF) and also national director for its immigration civil rights program.

What I would like to do is focus my remarks specifically on the employer sanctions and antidiscrimination provisions of the new immigration law, and give you an overview of the effects that this new law has had on job opportunities for minorities, particularly noncitizen workers.

I feel it is important to focus on that particular issue because most of the public attention for the last 6 months has been on amnesty and the numbers of people who are now coming forward to apply for legalization, whereas very little has been done with regard to employer sanctions and the consequences that have flowed from the implementation of the enforcement provisions of the new law.

For the last 6 1/2 months, MALDEF in California has operated a statewide, toll-free hot line. From January 20 through July 31, 1987, we have responded to over 7,000 inquiries through that hot line on a wide range of issues. They range from amnesty to employer sanctions to other issues that have arisen in the implementation of the Immigration Reform and Control Act.

Although the bulk of the questions that we received dealt with the amnesty program, a good percentage of other calls were questions and concerns surrounding employer sanctions and employer discrimination.

We found a great deal of confusion over the provisions of the new law. The confusion extended from the immigrant community into the business community.

Employers had no idea what sanctions entailed. They knew nothing more than what they read in the newspaper or heard on television and radio news reports.

As a consequence, there was a great deal of misunderstanding and misapplication of the law to the detriment of working people. A great many of these workers lost their jobs over the last 6 months and have been refused employment, even though they are qualified for the work for which they applied.

Contrary to what the Immigration and Naturalization Service has indicated, there has been a great deal of employment discrimination. In the 7 months of the hot line operation, we received 286 inquiries from both citizen and noncitizen workers dealing with some aspect of employer sanctions. Of those 286 incoming calls, roughly 174 dealt with employment discrimination complaints. Over 112 calls came from employers who did not know what was going on with regard to employer sanctions.

We received complaints from people who were eligible for amnesty who were refused employment because employers were afraid of hiring them under the belief that they might not be granted amnesty. Obviously that was an issue that was outside their control. Only the Immigration and Naturalization Service can determine whether or not these people are going to be granted temporary legal status, but even though they made a good faith effort to apply for amnesty, employers were still reluctant to hire them.

One of the difficulties that we have encountered over the several months is the lack of public information for employers and working people about their rights under Federal and State civil rights laws.

In those States that do not have local offices of the Equal Employment Opportunity Commission, there is no immediate

avenue available to people if they are denied employment qr fired illegally because of employer misunderstanding, misapplication of the law, or intentional efforts on the part of the employers to avoid hiring minorities because of the fear of liability under the employer sanctions provisions.

Initially, the Immigration and Naturalization Service estimated that anywhere from 3 to 4 million undocumented people across the country would be eligible for amnesty. Since that original estimate was provided, the INS has scaled back the numbers from 4 to roughly 2 million.[14] Of those 2 million estimated undocumented individuals who are eligible for amnesty, roughly half reside in the State of California,[15] and the vast majority are going to be applying for amnesty here in the county of Los Angeles.[16]

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[14]According to the Statistical Analysis Branch, Immigration and Naturalization Service, 3,054,800 pre-1982 and SAW individuals applied for amnesty nationally.

[15]The INS received 1,665,900 pre-1982 and SAW applications in the State of California.

[16]The Los Angeles District of the INS covers 7 southern California counties, including Los Angeles, Orange, Riverside, San Bernandino, San Luis Obispo, Santa Barbara and Ventura. The District received 1,050,000 amnesty applicants.

The State of California estimates that at least 800,000 people living in L.A. County will be coming forward to apply for amnesty in the course of the year until May 4, 1988. Statistics coming from the Immigration Service so far have indicated that approximately 550,000 have applied across the country, about half of those in California, so the actual numbers are falling below the initial and scaled down estimates suggested by the INS.

Dr. Robert Valdez - Research Analyst - Rand Corporation

I am Robert Valdez, professor of public health at UCLA and a resident consultant for the economic and statistics department of the Rand Corporation, a private, nonprofit research organization in Santa Monica.

I would like to briefly describe the results of the Rand study on the current and future effects of Mexican immigration on the State of California and then to raise some issues about the future. Most of us have been very concerned about the Immigration Reform and Control Act and the problems of today. What we should not forget is that IRCA was passed and implemented under the assumption that it would remedy some problems for the future. The research which led to the Rand report came about as a result of an inquiry by the California Round Table, a group of business executives in the State of

California. These executives represent the Fortune 500 companies of California and they are influential businessmen.

In 1983 the Round Table began a discussion on immigration. There was a great deal of confusion among that body regarding the current situation in California. They did not know whether to believe news reports on the national level that there was an immigration crisis because many of them saw no crisis in California. Many of them obviously saw large scale immigration in California but had a perception different from the national view. Others believed the situation had gotten out of control, was a detriment to society, and to California's economic development. The California Round Table tried to get some answers to these problems.

My colleague, Kevin McCarthy, and I tried to give them some answers to some very fundamental questions. First of all, there was a very strange perception about who the Mexican immigrants were. East of the Mississippi in particular, the notion of Mexican immigrants is that they are young males who come across the border to work in the fields, put a little bankroll together, and then run back across to Mexico or else they get caught by the INS at the border.

We tried to show that Mexican immigrants were not a homogeneous group. There were, in fact, at least three distinct groups of immigrants or migrants from Mexico coming

to California. They included the short termers, young males who were coming across and who gave this perception because they are largely the people who are captured by the border patrol.

There was a second group, a more cyclical group that tended to work in the industrial base of California who tended to be here for longer periods of time, 1 to 3 years, maybe even longer, and who eventually did return. Those in this group who decided to make a very different kind of move became a third type of migrant, permanent resident migrant, who has the intention of staying permanently and either seeking to correct their immigration status or to continue living undocumented in the States.

The real question that was posed by the Round Table businessmen and by others in the community was whether or not immigration was an economic detriment. My comments are restricted at this point to Mexican immigration because I did not study other groups. Our study suggested that Mexican immigration has probably been an economic asset to the State of California, particularly during the 1970s. It appears to have stimulated economic growth through stimulating employment growth and by keeping the industrial base of California competitive in a global economic environment.

There has, however, been some negative effects of

Mexican immigration. They have been minor from our estimates. The worry that Mexican immigrants were displacing American workers, in our estimate, was very often [the perception of] first or second generation Americans.

The second major issue that these individuals were interested in was whether or not immigrants were a real public charge. Were they draining the coffers of public resources beyond the level of any entitlement? Our results showed that immigrants, in fact, were using an increasing number of services but their contributions to public revenues exceeded the cost of the services that they used, with one exception, perhaps, education. On the other hand, a lot of the education costs were for their native-born children. Certainly, from the societal point of view, it is something that all of us would want to encourage.

The third major issue was the belief that immigrants, particularly Mexican immigrants, were resisting becoming Americans. In a sense, the notion was they were creating a separate society outside of the mainstream. Our analysis and other reports show that Mexican immigrants have continued to follow the historical pattern of integration into U.S. mainstream society, the same sort of pattern that European immigrants followed throughout this century that is largely tied to occupational mobility across generations.

This occupational mobility, of course, is also tied to educational advancement and achievement. It is in this area that there are discrepancies for the Mexican immigrant. Although there has been considerable educational advancement and occupational advancement today, much more so than 30 years ago, the amount of programs by native-born Mexican Americans may not be fast enough. Given changes in California's industrial structure, the kinds of jobs that have historically enabled mobility appear to be growing at a much slower rate than one would expect or need for the process to continue in a very orderly fashion.

As a result, although the Latino community and others recognized education as an important component for social and economic advancement, not only for the immigrant stock population, the immigrant and his native-born child, but also of the second and third generation Mexican American, the educational advancement has not been as great as one would hope.

Certainly given the changes that are going on in California today, it causes some distress. If educational advancement is not achieved, then what we create or continue to create is competition among native-born, low-skilled, low-educated workers and future immigrant workers.

This brings me to some issues that the current Immigration Reform and Control Act has not addressed and which people have forgotten. The act was touted as a remedy for the perceived immigration ills of the United States, that is most represented by the phrase "We have lost control of our borders." This act really did not change the fundamental immigration laws of the United States. It merely added a couple of twists.

The two major twists are those that you have been discussing, amnesty for immigrants who have been here since before 1982 and employer sanctions, an attempt to control future employment of undocumented immigrants. The law, however, does not deal with the fact that these will continue to be issues in the future. We are going to continue to see undocumented immigration in the United States.

The act does not address the fundamental problems that have been the source of large scale undocumented immigration to the United States. As a result, the chance for and the possibilities in the future for increased and higher risk of abuse of undocumented status. For the native-born workers, it arises largely because of the misunderstanding, and at this point it is difficult to predict whether or not the act will

be followed to the letter of the law, meaning that every new job applicant, whether native-born or not, must present documentation that they are, in fact, eligible to work in the United States. I believe this is an intrusion into civil liberties that most Americans do not see in the act and is a future civil liberties issue that remains to be resolved.

The third and fourth major issues that the act raises for local communities is one about the provision of medical and social services to those individuals who did not receive amnesty, or in the future are not eligible for any kind of amnesty because the program will no longer exist. This is a problem not only for the immigrant, but also for the native born, particularly the first generation.

Since we are talking about a generational period of about 20 to 30 years, children of immigrants, whether they be eligible for amnesty or not, are certainly citizens. Yet there are major issues for the future about whether or not these individuals will be able to receive needed public services for a variety of reasons. It is unclear what kind of documentation will be needed or required and what kinds of changes local county governments will make as a result of the act.

The last major issue I raise involves the future, 10 to 15 years from now. The question is whether or not local communities will continue to provide educational services regardless of documentation or nationality. Education has now become one of the most costly public services. Most schools now receive the vast majority of their funds from State organizations and that is particularly true in California. The issue becomes one of local communities being able to control how much education go throughout the community to all kinds of citizens, regardless of their immigrant status whether they are native born, or what generation they are.

I raise these five issues as items that need to be kept in the forefront of the Commission's deliberations.

William J. Carroll, Assistant District Director of Investigations, Immigration and Naturalization Service

There are two parts to the act and each part is subdivided into various sections. The first major part is legalization. Within legalization, we have those who are eligible for legalization or amnesty, as they call it, who have been here prior to 1-1-82 in an illegal status. In the

second group are agricultural workers. Agricultural workers are divided into two groups, the first group working 90 days before May 1, 1986, and the second group are those who have worked 90 days within each year of a 3-year period. The difference is that those who have worked in the 90-day period for 3 years will be eligible to have their permanent residency expedited or a year earlier than those who have only worked 90 days before May 1st, 1986.

The second major part of the act is the employer sanctions portion, which now makes it illegal to knowingly hire unauthorized workers in the United States. There are civil penalties which are fines and criminal penalties for blatant violators.

That in a nutshell is the Immigration Reform and Control Act of 1986. Interpretation of the law is very strict. It is going to be uniform and there is going to be continuity in the administration of law.

In Los Angeles district, we have what we call a district mail system. The applications that go to the 15 offices here in the district will be fed into a major location and those applications go to the various legalization offices. The reason we have this in the L.A. District is to prevent lines

and long waiting periods for people outside of those offices. We have opened suboffices for legalization within the district.

In Los Angeles there are a number of private, nonprofit organizations that have been contracted by the INS which we call Qualified Designated Entities (QDEs), to assist with amnesty. We have from the onset stated that you do not have to go to the QDEs but can come directly to INS. We set up the QDEs so that the people wouldn't fear an agency that has been enforcing a law for their arrest and deportation.

Within 1 week of applying for legalization, the INS will send you a receipt in the mail with authorization for employment up to the date of your interview. The authorization can be used for an employer.

We are recommending that if someone has gone to a QDE, and they are having problems, to get their documents and come directly to INS. Within 5 to 7 working days they will receive employment authorization and be set up for an interview.

[Let me address] employment discrimination where people have been hired or have been fired because the employer fears that he might be found out by INS.

On our own initiative we have established what we call the fair employment officer within the western regional

office. This officer will answer or mediate problems between an employee and an employer with a belief they have been fired because of discrimination. We have had some cases where we have mediated and it has been just a misunderstanding.

We have a unit of 10 to 20 special agents going out to various employers, speaking to them, knocking on the doors, and asking if they know about IRCA and the western region.

Susan Drake, Attorney, National Center for Immigrant Rights

I am an attorney at the National Center for Immigrant Rights, a national support center for the legal problems faced by low-income immigrants around the country. We receive funding from the Legal Services Corporation and also some private money. We do a lot of work with church, nonprofit and legal services groups around the country who are getting low-income immigrants coming into their offices and seeking help.

IRCA purportedly extends a welcome to these people and says that if you have been here for more than 5 1/2 years we will allow you to legalize. However, once they have achieved legalization, the Congress is trying to not let them fully participate in U.S. society to the same extent as other people

who are legal, permanent residents, much less to the same extent as U.S. citizens.

As the Commission eloquently pointed out in its 1980 analysis of civil rights issues in immigration, The Tarnished Golden Door, America historically has had a perversely schizophrenic attitude toward immigrants. On the one hand, we have extolled our country's history as a nation of immigrants and glorified the Statue of Liberty as a national symbol. At the same time we have responded to economic downturns and social changes with nativist, anti-immigrant legislation at both the Federal and State levels, and the denial of government benefit programs to the newly legalized that is inherent to the IRCA statute, and which suffers from the same kind of negative dualism with which historically America has treated its immigrants.

We are barring these legalized aliens from participating in programs in which other legalized aliens participate. they are barred from participating in Federal financial assistance programs based on financial need for 5 years after they achieve their temporary residency. We believe that this discrimination raises serious problems of both due process and equal protection under the 5th and 14th amendments to the

Constitution and the problems come both in the statute itself and in the regulations that the government is issuing to implement the statute.

The second thing that the statute says is that the State and local governments can bar these people from participating in local programs of financial assistance or the State funded portion of Medicaid for 5 years. Now these provisions in the statute are clearly discriminatory. There is no question that they discriminate against this group of people.

Several years ago Congress tried to bar legal, permanent residents from Medicare, which is the Federal medical program for aged people, for 5 years after they become legal, permanent residents. In Mathews v. Diaz (426 U.S. 67 (1976), the Supreme Court upheld Congress' power to do this. It said that you can discriminate against legal, permanent residents. Basically, what the Court said is we are going to give deference to Congress because their power to regulate immigration derives from the plenary power, foreign policy power, so the Court really is not going to look into it too closely.

An increasing number of constitutional law scholars are questioning the rationale of the Diaz case and are pointing

out that the foreign policy power obviously gives Congress authority to regulate immigration because it relates to our foreign policy. That doesn't necessarily mean that the broad-based power to regulate immigration should extend [to the period after] people have been allowed to immigrate legally.

After all, they are persons protected under the 14th amendment. They have been allowed to be here legally, and Congress should not be able to get from underneath the Constitution once these people have met the criteria for legal residency.

We are also concerned about the potentiality for State and local discrimination. I mentioned that the statute attempts to give the States permission to discriminate against aliens for public assistance programs. This is just as serious as the Federal restrictions and, in fact, is going to be even more difficult to monitor.

Los Angeles County people have said to the State task force, "Well, we think we are going to extend benefits to them but if we do not get enough Federal assistance money, we might rethink it and decide to limit benefits to them after all."

In other words, they are hooking it up to just a quid

pro quo about how much money are we going to get and if we get enough money, maybe we will extend the benefits to them.

Fortunately, the California attorney general has given an opinion to the State health and welfare agency that once they are legalized, these people are lawful residents of California. Therefore, like any other lawful resident, they are entitled to care under the indigent care statute. I anticipate a great deal of litigation on this issue, probably not just in California but in other States around the country.

Judith Keeler, District Director, Equal Employment Opportunity Commission

Our agency has the primary enforcement responsibility of Title VII of the 1964 Civil Rights Act, 42 U.S.C.SS 2000e17. The Immigration Reform and Control Act (IRCA) specifically provides that national origin discrimination complaints will continue to be handled by the EEOC, if the EEOC otherwise has jurisdiction over those complaints. Complaints of citizenship discrimination will be handled by the office of the Special Counsel through the Department of Justice.

One of the most important issues facing our agency at this time is the determination of which agency has

jurisdiction. That is critical to the people who may be affected by this law. The EEOC has jurisdiction over employers with 15 or more employees and we cover discrimination in employment on the basis of national origin. The Department of Justice under IRCA has jurisdiction over those employers with between 4 to 14 employees regarding claims of national origin discrimination, and has jurisdiction over complaints of citizenship discrimination.

Let me give you an example of how this jurisdictional issue may become very hairy. Our agency has issued a policy which says that if a citizenship preference has a disparate impact on the basis of national origin, there is a violation of Title VII. As you know, IRCA contains a provision that says you may give preference to citizens. Our agency has said, not if it violates Title VII.

If an individual comes into our agency and has been subjected to discrimination which looks like preference is being given to citizens, we have to determine whether there is a disparate impact under the law. In Espinoza v. Farah Manufacturing Company, 414 U.S. 46 (1973), the Supreme Court made very clear that alienage discrimination is not covered by Title VII. One of the analyses refereed to by the Court in

that case was whether or not there was the purpose or effect of discriminating on the basis of national origin in some citizenship or documented status requirement. In that case the Court said that there was no such discrimination because the vast majority of the workers at that plant were of Mexican American ancestry. We would be faced with the same task at EEOC. If we receive that kind of claim, one of the first things we would look at is what is the composition of the employer's work force.

If we investigate a claim, because it appears to be national origin discrimination, and subsequently find that it is a citizenship claim, we will forward that claim on to headquarters and again it will be referred to the Department of Justice.

I must emphasize that at this time we have no work sharing agreement. One of the reasons it is necessary to deal with these charges so very early is because there are time limits on filing under IRCA, as well as under Title VII and we need to make sure those complaints get there within the time frame to file.

Peter Reich, Attorney

Mr. Reich is a practicing attorney in downtown Los Angeles with the firm of Parker, Milliken, Clark, O'Hara & Samuelian. He has clients in business and management who need legal advice in handling the implications of the new Act.

Our first concern is with the issue of the warrantless inspection of I-9 forms. The regulations that the INS has issued under IRCA allow some inspection of the I-9 without subpoena or warrant. But, what is interesting is that in the law itself, there is no provision that the I-9 must be retained and made "available for inspection." Drawing up this regulation clearly exceeds the scope of the statute's authority.

Secondly, I would like to talk about the effect of the labor shortage that is being exacerbated by IRCA and how that labor shortage is affecting productive employment relationships. There is a labor shortage in the United States, particularly in certain manufacturing and service sectors. There was an article in Business Week in August about the problems of getting workers in many areas of the country, particularly the Southwest. When this is combined

with the fact that undocumented workers have, in the past, been found to compose 70 to 75 percent of many industries in the Southwest, such as restaurant, garment, hotel industries, the impact of a law which further curtails this labor supply is going to be severe. Already we have heard reports from employers in electronics, hotel, and construction industries about the problems in finding qualified workers.

Thirdly, I would like to talk about an issue which has been very much in the news and that is a lack of derivative amnesty for family members. Legalization under the law applies to individuals, not to families. Many of our clients have lost valued workers because they were afraid to stay in the United States when they thought that a family member was going to be deported.

It is also true that the INS District Director has discretion to stay deportation or to extend deportation proceedings. We have not seen any evidence of this happening.

In conclusion, I would like to say that much of what will happen with IRCA is going to be a question of how it is enforced. As it is written, the law provides a potential for serious abuse with the warrantless inspection provisions, the effective labor shortages and the lack of derivative amnesty.

Ms. Josie Gonzalez, Attorney[17]

Since the bill passed, I have lectured to over 5,000 employers in various seminars throughout the State, for example, to the California Restaurant Association, the Merchants and Manufacturing Association, and various trade organizations. I have given employers educational information on how to comply with the bill's provisions and I have answered their questions and their concerns about their responsibilities.

I believe that the sentiment being expressed today by the employers in southern California is one of confusion and fear regarding this bill. They are confused because they do not understand the complexities of this immigration bill and they do not understand exactly what their responsibilities are. They are fearful because of this confusion. They are fearful that they are going to violate the law and incur the wrath of the Immigration Service and, consequently, have levied on them some pretty heavy civil penalties and maybe potential criminal imprisonment. What this fear and confusion

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[17]Ms. Gonzalez is a practicing attorney in Los Angeles who works as a management consultant in assisting businesses that employ undocumented workers.

really amounts to is an overreaction on their part in attempting to comply with the law and that overreaction really triggers discrimination.

There is a lot of confusion over which workers you have to screen for work authorization and which workers need an I-9. Many employers are under the impression that you need an I-9 for the entire work force, not just for individuals hired after November 6.

Another area is an insistence on the part of employers that job applicants give them certain preferred documents. The immigration regulations are quite clear that an employer should not insist on preferred documents.

I have seen employers who have discriminated against the Hispanic. Even though you have a Hispanic who claims he is a U.S. citizen and he has something from column B, a driver's license, and he has a social security card from column C, they say they want more.

Another area that is just ripe for abuse has to do with the specific immigration regulations whereby an employer cannot continue to employ someone once that individual no longer has work authorization. What happens is you interview someone and he presents you with a document that has a finite

period of work authorization, -- he has applied for amnesty and he has the first card that is issued where you get a 6-month period of work authorization. An employer is not sure whether that 6 months is going to expire and not be renewed, in which case he will have lost money and valuable time in training this worker.

The September 1 special rule is the most inhumane, nonsensical provision ever adopted by the Immigration Service. Everyone has until May 4, 1988, to file a legalization application but, in effect, you have a different rule for individuals who had the misfortune of seeking employment in the United States after November 6. Individuals have to expedite the processing of their application and they had to file by September 1. That rule never made any sense. I argued for the longest time that there ought to be a change or modification, and none was forthcoming. It did trigger a great many dismissals on the part of employers.

In some instances people were unsure whether they even qualified for amnesty because of the many provisions in the bill for which we still do not have answers, such as individuals who have left the country and reentered with tourist visas. At present the Immigration Service is saying

that these individuals are not qualified so people who found themselves in that predicament naturally did not want to file their application until there was something definitive from the Immigration Service. They found themselves without a job come September 1.

Jay Fong, Attorney, Asian Pacific Legal Center (APLC)[18] in Los Angeles

The passage of the Immigration Reform and Control Act of 1986 created an opportunity for a large number of undocumented aliens to legalize their status in the United States. To meet this need, the APLC combined its legal and linguistic resources with the outreach network of the trust placed in the First United Methodist Church of Los Angeles to form the Downtown Legalization Project. The project provides low-cost legalization counseling and application processing assistance to individuals and community organizations. It is prepared to

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[18]The Asian Pacific Legal Center of Southern California is the only organization which provides legal education, individual case representation, and assistance to communities or groups with an emphasis on the rapidly growing Asian and Pacific Islander (AP) communities of southern California. The agency, a not-for-profit organization, is equipped to provide assistance in several AP languages.

assist clients in Cantonese, Mandarin, Japanese, Korean, Tagalog, Vietnamese, Thai, Spanish, Portugese, French, German, and, of course, English.

We have three points that we would like to raise. First, information about access to legalization. Although the Immigration Reform and Control Act, IRCA, requires the U.S. Immigration and Naturalization Service to do educational outreach regarding legalization, Congress omitted any requirement that outreach be done in languages other than English. Assuming that one is trying to reach an alien population for whom English is likely to be a foreign language, the use of English outreach efforts is of limited utility. Asian Pacific community leaders estimate that there are about 150,000 undocumented Asian Pacifics in the Greater Los Angeles Area. Of that number about 30,000 are believed to be legalization-eligible.

Now the effect of the lack of availability of information can be illustrated by the numbers of interviews conducted the INS western region. The western region, consisting of Arizona, California, Guam, Hawaii, and Nevada in INS' busiest legalization region, accounting for more than 50 percent of the Nation's legalization applications. Unlike the

Hispanic community, which can be reached through the use of one language, Spanish, the Asian Pacific community can only be reached through the use of no fewer than eight languages. As of July 31, 1987, the western region has 187,575 interviews conducted. Of those interviews, 60.8 percent were persons of Hispanic origin and only 3.5 percent were people from Asian Pacific origin.

There are two Spanish language daily newspapers serving the Greater Los Angeles area. In contrast, there are nine Chinese newspapers, two Japanese newspapers, two Filipino newspapers, and 11 Korean periodicals. At present, we are not aware of periodicals published in southern California in Cambodian, Tongan, or Samoan. Unless and until the Immigration and Naturalization Service expands its efforts to reach out to the Asian Pacific communities, many Asian Pacifics will remain ignorant of the immigration benefit that Congress has made available to them or they will stay fearful of the INS' bona fides and refuse to come forward to apply. Some people say that this is not a civil rights issue. However, in the same way that, "Where there is no remedy, there is no right," it is ludicrous to say a benefit is being offered if no one knows about it.

The second point that we would like to raise is that although Asian Pacific leaders have estimated that there may be as many as 150,000 undocumented Asian Pacifics in the Greater Los Angeles area, we believe that 120,000 do not qualify for legalization, for they were in legal status as of the benchmark date of January 1, 1982, or arrived thereafter.

Asian Pacific countries do not share a border with the United States. As a result, 90 percent of all Asian Pacifics arrive with some sort of legitimate visa, making their presence in the United States legal. For reasons that are not entirely clear, Asian Pacifics tend to extend and reextend their visas, thus maintaining legal status.

It is unknown how many Asian Pacifics had legal status on January 1, 1982, but the project encounters a large number of Asian Pacifics who do not qualify for legalization solely because these individuals attempted compliance with U.S. immigration laws. In effect, Congress is rewarding those who broke the law and overstayed their visas by giving these individuals legalization, an immigration benefit. Those who attempted to obey the law and keep their status current find that this benefit is unavailable to them.

This is arguable disparate treatment of similarly

situated persons. If the persons are not similarly situated, it is arguable that the equities for granting the legalization benefit should be with those who attempted to comply with our nation's laws.

The third point we would like to raise is that there is disparate treatment of post-January 1982 reentry. IRCA requires that a legalization applicant must be in illegal status since January 1, 1982. Theoretically, any break in illegal status renders the applicant statutorily ineligible for legalization. However, an alien who was illegal on January 1, 1982, left the country briefly, for example, to Mexico and who returned with a border crossing card is deemed by INS to still be eligible for legalization. The border crossing card permits the Mexican citizen-bearer to be in the United States legally for a number of days. This is regardless of whether they left, they came back and were illegal before. It does not matter. If they come in with that border crossing card for a number of days, they are legal.

Nonetheless, INS has held that those who depart and reenter the United States with border crossing cards, (and incidentally border crossing cards are only available to nationals of Canada and Mexico) are eligible for legalization.

despite the break in illegal status. This is not the case for Asian Pacifics. There is no border crossing card arrangement for countries which do not share a contiguous border with the United States, which happens to be the rest of the world, except for Mexico and Canada.

Asian Pacifics who leave the United States, briefly, and return with a B-2 visitor's visa, which is also called a tourist visa, are ineligible for legalization. We are not aware of any sensible, legal rationale for this distinction and preference for one set of nationals over others.

On its face, this appears to discriminate against all citizens of countries not sharing a border with the United States, in other words, a discrimination based on national origin. INS is aware of this inequity but they have not yet attempted to resolve it. We have asked on numerous occasions for them to clarify the matter. They have not yet done so. They should be encouraged to do so.

Finally, we have three recommendations. First, INS should be encouraged to intensify its efforts to reach out and educate the Asian Pacific community, in the native language of each community. I do want to make a note here that the INS has contacted the Asian Pacific Legal Center, and they have

made some attempts, asking our assistance to reach out to the Asian Pacific community.

INS has recognized that they do not have the resources to do this and are asking those of us in the community to help them. In our view, although it is admirable, it is too little, to late. The program is almost half over now. We recognize that the INS may not have the language capacity to do such outreach. They should seek assistance of community leaders like Asian Pacific Legal Center so that an educational and advertising plan can be drafted.

Further, because of the large number of Asian Pacific languages, INS should increase its advertising funding with respect to the Asian Pacific media.

Our second recommendation is that Congress must be encouraged to rectify the absurd way in which IRCA rewards those who broke the law by being illegally in this country and denies a valuable benefit to those who attempted to comply with our laws. One suggestion for this might be to make legalization-eligible any alien whose presence in the United States would be illegal but for the extensions of stay, of their visa. That is to say, if an alien had a legal visa that would have expired prior to January 1, 1982, but the alien

extended that visa, that alien should qualify for legalization. We do recognize that this would probably require a change in the law and obviously an act of Congress.

Third, and finally, INS should be directed to permit worldwide reentry, not simply reentry from contiguous territories. To do otherwise would discriminate against similarly situated persons on the basis of national origin.