U.S. COMMISSION ON CIVIL RIGHTS

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

RHODE ISLAND ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS

This summary report of the Rhode Island 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 will continue to monitor the issues discussed in this report and advise the Commission as appropriate. Meanwhile, 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 MAY 1989

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, first 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 1983 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; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and 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 COMMITTEES

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 105(c) of the Civil Rights Act of 1957 and 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.

U.S. COMMISSION ON CIVIL RIGHTS

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

RHODE ISLAND ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS

This summary report of the Rhode Island 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 will continue to monitor the issues discussed in this report and advise the Commission as appropriate. Meanwhile, 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 MAY 1989

LETTER OF TRANSMITTAL

Rhode Island Advisory Committee
to the U.S. Commission on Civil Rights

MEMBERS OF THE COMMISSION

William B. Allen, Chairman
Murray Friedman, Vice Chairman
Mary Frances Berry
Esther Gonzalez-Arroyo Buckley
Sherwin T.S. Chan
Robert A. Destro
Francis S. Guess
Blandina Cardenas Ramirez

Melvin L. Jenkins, Acting Staff Director

Dear Commissioners:

The Rhode Island Advisory Committee submits this summary report as part of its responsibility to advise the Commission about civil rights issues in the State of Rhode Island.

The Advisory Committee was concerned that the new immigration law of 1986 contained potential for abuse in its implementation. In order to gain an overview of the civil rights issues involved in implementing the law, the Advisory Committee on July 16, 1987, held a community forum in Providence focusing in particular on the legalization and employer-sanctions provisions of the law. The Committee approved this report by a unanimous vote of 10-0.

The Committee hopes this report, which conveys opinions presented at the forum and is not an exhaustive analysis, will be of interest and value to the Commission.

Respectfully,

DAVID H. SHOLES, Chairperson
Rhode Island Advisory Committee

Members of the Rhode Island Advisory Committee

David H. Sholes, Chair
Warwick

Malvene J. Brice
Providence

Barbara Lewis Dubois
East Providence

Olga M. Escobar
Providence

Lester E. Hilton
Cumberland

Rhett S. Jones
Cranston

Sarah A. Murphy
Providence

John A. Thompson
Cranston

Norman D. Tilles
Providence

Dorothy Davis Zimmering
Barrington

Acknowledgment

The Committee is indebted to staff of the Commission's Eastern Regional Division for planning and organizing the community forum and for drafting the report. A complete transcript of the forum is available in the Eastern Regional Division office of the Commission.

Table of Contents

Introduction

In late 1986 Congress passed, and President Reagan signed the Immigration Reform and Control Act of 1986 (IRCA). 1/ This law is designed to address such issues as the plight of undocumented aliens, the exploitation of undocumented workers by unscrupulous employers, and the uncontrolled influx of undocumented aliens into the country. The most significant revision in our country's immigration policy since 1952, the act grants amnesty to, and allows legalization of, certain undocumented aliens residing in the United States, 2/ thereby eliminating their vulnerability to exploitation by unscrupulous employers. It also prohibits employers from hiring aliens, 3/ who enter the country without proper authorization.

1/ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

2/ 8 U.S.C. §1255a (Supp. 1988). Legalization provisions of the act are attached in appendix 1.

3/ 8 U.S.C. §1324b (Supp. 1988). Employer-sanctions provisions of the act are attached in appendix 1.

Because of the availability of severe sanctions 4/ against employers who knowingly hire illegal aliens, coupled with ambiguities contained in the act, some of which are discussed herein, there has been widespread concern that some employers may decide to "play safe," and simply refuse to hire those who do not speak English or who speak with a foreign accent, or fire current employees who may appear "foreign" or speak with a foreign accent. To prevent such potential abuses in the workplace, the act contains antidiscrimination measures prohibiting discrimination in hiring, discharge, recruiting, or referral for a fee on the basis of national origin or citizenship status, 5/ and provides for the establishment of a Special Counsel for Immigration Related Unfair Employment

---

4/ 8 U.S.C. §1324a(c)(4)-(5) (Supp. 1988). Sanctions include the civil penalties of $200 to $2,500 per unauthorized alien for the first offense, $2,000 to $5,000 for the second offense, and $3,000 to $10,000 for subsequent offenses. Upon determination that an employer has engaged in a "pattern or practice" of employing unauthorized workers, criminal penalties of $3,000 per unauthorized alien and up to 6 months in jail may be imposed. In addition, employers who violate the paperwork verification requirement can be penalized with civil fines of $100 to $1,000 per violation.

5/ "Conferees wish to emphasize that the anti-discrimination provision has been included in order to respond to the fears and concerns expressed by many that sanctions will result in employment discrimination based on national origins or citizenship status." U.S. House of Representatives, Immigration Reform and Control Act of 1986, 99th Cong., 2d Sess., 1986, C. Report 99-100, pp. 87-88.

Practices (OSC) in the Department of Justice to enforce those provisions. 6/

In view of the potential abuses, the Rhode Island Advisory Committee hoped to identify the actual problems that affected groups (i.e., Hispanics, Asian Americans, and Southeast Asian refugees) have encountered to date in the implementation, administration, and enforcement of this far-reaching act. Approximately 13,000 Southeast Asian refugees have settled in Rhode Island. The State has one of the highest concentrations of refugees and Hispanics in the United States (77 Rhode Islanders for every Southeast Asian refugee and 50 Rhode Islanders for every Hispanic person). 7/

For these reasons, the Committee held a community forum in Providence, Rhode Island, on July 16, 1987. Panelists 8/ were chosen to reflect diverse viewpoints representing community

---

6/ 8 U.S.C. §1324b(c) (Supp. 1988).

7/ Linda Gordon, Office of Refugee Resettlement, U.S. Dept. of Health and Human Services, telephone interview, Oct. 28, 1988.

8/ In June 1987, when the forum was being planned, the Office of Special Counsel for Immigration Related Unfair Employment Practices in the Department of Justice was in the process of being established, and it was not possible to invite a representative of this office to the forum.

organizations, practicing attorneys, employers, 9/ the Immigration and Naturalization Service (INS), and processing organizations (termed Qualified Designated Entities or QDEs by INS) (Panelists and their organizational affiliations are listed in appendix 2). The Committee wished to obtain the views of these panelists on the civil rights issues posed by the IRCA and forward that information to the Commissioners.

Six major issues were presented and discussed at the forum. They included:

1) the operational status of the Office of Special Counsel for Immigration Related Unfair Employment Practices;
2) the "intent" vs "effect" standard for proving discrimination;
3) low turnout of applicants for the legalization program;
4) whether civil rights were being denied by the residency requirement;
5) monitoring reports of discrimination and harassment; and
6) recovery of attorneys' fees.

This summary report highlights the presentations of these issues. It should be noted that since the legalization program expired

---

9/ It should be noted that the Advisory Committee invited employers who employ a large number of minority workers (e.g., jewelry manufacturers) to participate in the forum, but the Committee's invitations were declined. Only the Personnel Executives Club of the Providence Chamber of Commerce agreed to participate in the forum.

on May 4, 1988, the third topic of this report, "Low turnout of applicants for the legalization program," is now moot. The Committee nevertheless decided to retain it in this report for its possible informational value. Further, the Committee received comments from the Office of Special Counsel for Immigration Related Unfair Employment Practices in the Department of Justice regarding the section of this report which deals with that office, "The operational status of the Office of Special Counsel." Their reply, attached as appendix 3, provides a useful update on the activities of that office.

I. Office of Special Counsel

The employer sanctions provision of the act imposes penalties on employers who knowingly hire aliens not authorized to work in the U.S. or who fail to document properly the legal status of their eligibility for employment. Because of the employer sanctions provision, "There is some concern that some employers may decide not to hire 'foreign' appearing individuals to avoid sanctions." 10/ To counteract such conceivable overreaction by employers, the act protects citizens and authorized aliens

---

10/ U.S. House of Representatives, Immigration Reform and Control Act of 1986, 99th Cong., 2d Sess., 1986, C. Report 99-100, p. 87.

from becoming the victims of employment discrimination. (Section 1324b of the IRCA protects citizens and intending citizens from discrimination in employment on the basis of national origin or citizenship status. See appendix 1.)

The antidiscrimination provisions of the act took effect immediately upon its signature by the President and, since November 6, 1986, it has been illegal in the workplace for employers of three or more employees to discriminate on the basis of national origin or citizenship status. The employer sanctions provisions, however, instead of taking effect immediately, provided for an education period during which employers were to learn specifically what was required of them.

Mr. Steve Brown, representing the American Civil Liberties Union (NCLU), asserted that as of early July 1987 the Department of Justice had taken little action to implement the antidiscrimination provisions of the law. As noted earlier, the OSC was mandated by law to investigate and prosecute complaints from any individuals claiming to have been discriminated against on the basis of national origin or citizenship status. Yet, according to Mr. Brown, it did not have any formal process or

mechanism in place for complaint investigation, nor had it taken any significant steps toward implementing the provisions. It did not have a formal complaint form (now Form CRT-37) for use in filing complaints.

Furthermore, an illegal alien is not eligible for the protection of the antidiscrimination law without first declaring an intent to become a citizen. Yet, the critical form needed for this purpose (now Form I-772), the panelist continued, had not been prepared, let alone publicized to potential users.

Following the forum, the Committee learned of new developments concerning the OSC. These were as follows:

1) In April 1987 an acting special counsel was appointed, who, with the assistance of one staff attorney, established the Office of Special Counsel, recruited staff members, and developed proposed regulations.

2) In October 1987 a permanent special counsel was appointed, and final regulations 11/ were issued. The OSC also carried out a mass mailing of pertinent

---

11/ Unfair Immigration-Related Employment Practices; Final Rule, 28 CFR Part 44 (1987).

documents to INS district offices and community organizations that process such documents. The documents included Charge Form for Unfair Immigration-Related Employment Practices, 12/ final regulations, 13/ and Declaration of Intending Citizen. 14/

3) As of December 1987 the OSC had a staff of 23 attorneys and administrative support personnel and had responded to over 800 telephoned and 200 written requests for information. The office had implemented complaint filing procedures and had a toll-free telephone line (1-800-255-7688). The office was charged to investigate charges filed with it and initiate independent investigations. The office had received 56 charges, of which 36 were under investigation and 13 were in the process of supplementary information collection. It had about 200 employers on a suspect list, and was about to begin investigation of each of them. 15/

12/ Form CRT-37.

13/ 28 CFR Part 44 (1987).

14/ Form I-772, OMB #1115-0138.

15/ A response by the Office of Special Counsel commenting on this section is attached as appendix 3.

II. The "Intent" vs "Effect" Standard for Proving Discrimination

According to Mr. Brown, the ACLU representative, Congress intended that the "effect" standard, not the "intent" standard, be used in proving discrimination based on national origin or citizenship status. 16/ He believed that the law was meant to cover not only intentional discrimination, but also practices that have a disproportionate, adverse impact on minority employees. It is more difficult to prove that somebody intended to discriminate on the basis of national origin, he mentioned, than to show the employer has certain practices that have the effect of discrimination on the basis of national origin. It is easier, he said, to meet the "effect" than the "intent" standard, and he thought it important to the administration of the new law to clarify which standard was to be used.

III. Low Turnout of Applicants for the Legalization Program

A. Fear and Mistrust of INS

According to Mr. William R. Granger, the INS representative, and Mr. Gerard Noel and Ms. Renee Tucker, representing the prescreening community organizations and QDEs (Qualified

---

16/ See Lucas Gutentag, Immigration and Alien's Right Task Force, ACLU, memorandum, "Immigration-Related Employment Discrimination: Prohibitions and Remedies under the Immigration Reform and Control Act of 1986," 1987, pp. 10-11.

Designated Entities), the number of illegal aliens applying for amnesty was much lower than expected. As a result, legalization staff at the Boston INS office (which covers Rhode Island) is likely to be reduced in size since it is supported by the processing fees collected from applicants.

Every panelist at the forum was convinced there are many more illegal aliens eligible for legalization in Rhode Island than the low turnout has indicated. All panelists thought that qualified aliens are not coming forward for several probable reasons. First is the fear and mistrust illegal aliens have of the INS. In the minds of illegal aliens, the INS, as the agency enforcing immigration laws, is usually an object of fear; it is an adversarial, hostile agency to be avoided. In addition, illegal aliens have lived in fear and hiding, and may have pretended to coworkers and neighbors that they are legal citizens.

Ms. Renee Tucker of the Joslin Community Development Center and Mr. Gerard Noel, Jr., of the Catholic Social Services noted that, after years of pretense, it is not easy to step forward and declare "I have misled you and lied to you; I have been an illegal all these years." Further, the two attorney-panelists, David Borts and Roberto Gonzales, both recounted their surprise at how uninformed the potential beneficiaries were. While discussing immigration-related matters with clients, they frequently discovered that their clients were unaware of their

eligibility for amnesty. The fact of their eligibility was often a surprise to their clients, indicating that necessary information has not reached the affected group in any meaningful way.

B. Family Unity

Some panelists at the forum said the fear of breaking up one's family is another significant reason why people have not sought to take advantage of the amnesty program. The legalization program requires that an applicant list one's spouse, children, and other immediate family members living together even though they may be ineligible for legalization. The unqualified family members residing in the States illegally are subject to deportation if detected by INS. Because of this vulnerability, applicants frequently decide not to proceed with the legalization process. Whether ineligible family members will be allowed to stay in the States with the amnesty applicant is at the discretion of INS regional directors. 17/ Several

---

17/ Alan C. Nelson, Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, memorandum to Regional Commissioners, "Family Fairness: Guidelines for Voluntary Departures under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens," Nov. 13, 1987.

panelists 18/ urged that to overcome the understandable fear of family separation, explicit policy and unequivocal criteria be established regarding the conditions under which family unity will be maintained.

C. Employer's Fear of Exposure

Ms. Tucker of the Joslin Community Development Corporation and Mr. Noel of the Catholic Social Services told the Advisory Committee that another source of difficulty in applying for amnesty is obtaining residency documentation from previous or current employers. Employers would be reluctant to issue employment records revealing that they have in the past hired illegal aliens, paid subminimum wages, or paid no taxes. The two panelist said employers may fear possible penalties or investigation into their past business practices even though the law guarantees the confidentiality of documents submitted by an amnesty applicant. 19/ Since the only exception to the confidentiality rule occurs when fraud is discovered in an

---

18/ Panelists making this point were: Renee Tucker of the Joslin Community Development Corporation; Gerard Noel, Jr., of the Catholic Social Services; Robert Gonzales, a practicing attorney; and William R. Granger of the INS.

19/ 8 U.S.C. §1255a(c)(4) (Supp. 1988).

amnesty application, 20/ the employer or former employer needs to be assured that the INS will not share information with Federal and State labor departments, with Federal and State taxing authorities, or with the State health department. Nor will the affidavits and attached documents by the employer be admitted into evidence in any civil, administrative, or criminal proceeding brought against the employer for violation of Federal or State laws relating to safety, health, labor, and taxation.

As Ms. Patricia Smith of the Personnel Executives Club pointed out, however, small employers are usually without even a part-time personnel officer who could keep the employers informed of the evolving regulatory developments and their ramifications. Both Mr. Noel and Mr. Borts also noted that inadequate understanding of the situation is in part accountable for some employers' reluctance to issue employment records. These three panelists all believe that there is a need for a public information campaign specifically directed to small employers, and various Federal agencies should participate in disseminating this information.

20/ 8 U.S.C. §1255a(c)(5)-(6) (Supp. 1988).

D. Use of Substitute Documents

The Advisory Committee heard from Mr. Noel and Ms. Tucker, who represented amnesty applicant processing organizations, that documentation of residency can sometimes be satisfied by alternate documents. For example, the residency requirement may be met by any of the following: W-2 form, income tax return, an employer affidavit, an affidavit from a church pastor, or even a personal affidavit from people who worked with the applicant. Since this fact is not well known (the INS literature does not spell it out clearly), some applicants screen themselves out, thinking they could not establish or meet residency requirements. According to these panelists, an informational handbook that explicitly lists and describes the various documents which may be used is badly needed. Such a handbook would not only help potential applicants determine whether they can provide needed documents, but also reduce the risk of harassment and abuse by processing officials who may insist on a particular document when an alternate document might suffice.

IV. **Civil Rights Denied by Residency Requirement**

Under the IRCA, an illegal alien who applies for legalization and is found eligible must wait for 2 years before becoming a permanent resident. A permanent resident then must wait for another 5 years to become a citizen. Mr. Roberto Gonzales, a

practicing immigration attorney, pointed out that this 2-year temporary residency requirement delays the ultimate exercise of citizen rights by 2 years, which is tantamount to denying for 2 years such basic rights as the right to vote and the right to jobs which require citizenship. He objected strongly to such a delay that he claimed results in the denial of basic rights and is a civil rights violation.

V. Monitoring Reports of Discrimination and Harassment

The Advisory Committee heard from Ms. Tucker several reports of alleged discrimination and harassment in the workplace. In one case, an employer demanded that a brother and sister produce proof of citizenship. They were told that unless they provided proof of citizenship, they would be fired by Friday of the same week. There were no prior companywide announcements regarding the need for proof of citizenship, and the brother and sister did not know anyone else at the workplace who was asked to produce proof of citizenship. They felt intimidated and harassed, although both were U.S. citizens born in Puerto Rico. Ms. Tucker speculated that because of their appearance their employer must have assumed that they were undocumented workers.

In another case Ms. Tucker reported, six Hispanic workers at a factory were laid off although they had been hired before November 6, 1986, the grandfathering cutoff date. No one else

was laid off. Since employers are exempt from the employer-sanctions provision for employees hired before November 6, 1986, Ms. Tucker thought this employer did not want to risk hiring potential illegals or was misinformed about the law's employer-sanctions provisions. Perhaps the employer wanted to rid himself of any source of possible future legal complications. The fired employees reportedly kept calling the employer to find when there would be work again but never got a definite answer from this employer. These allegations were not confirmed, 21/ but suggested to Ms. Tucker that civil rights violations may occur because of misunderstanding of the employer-sanctions provisions of the law.

The State Advisory Committee learned at the forum from Mr. Brown that a committee has been formed of approximately 30 civic and civil rights groups in the State. Called the Immigration Reform Steering Committee, it will monitor all reports of alleged discrimination and harassment concerning the legalization and employer-sanctions programs in Rhode Island. The Advisory

---

21/ Ms. Patricia Smith, representing the Personnel Executives Club of the Providence Chamber of Commerce, neither challenged nor commented on these allegations.

Committee looks forward to the release of the data which the Steering Committee will collect, and also to the results of the nationwide effort launched by the Mexican American Legal Defense and Education Fund (MALDEF). The ACLU and MALDEF have developed a form to report incidents of discrimination related to the legalization and employer-sanctions programs. This form has been distributed nationally, and data collection is in progress.

VI. Recovering Attorneys Fees

The Advisory Committee heard from Mr. Brown that although suit can be brought against an employer for employment discrimination under the provisions of the IRCA, the recovery of attorneys' fees is very difficult. Under the Civil Rights Attorney's Fees Award Act, 22/ a plaintiff's attorney in a civil suit can recover fees if successful in one or more of the claims brought in the suit. Under the IRCA, however, the prevailing party in a lawsuit recovers fees only if the court finds that "the losing party's argument is without reasonable foundation in law and fact." 23/ That is to say, if there is reason to believe

---

22/ Civil Rights Attorney's Fees Award Act of 1976, Pub. L. 94-559, Oct. 19, 1976, 90 Stat. 2641.

23/ 8 U.S.C. §1324b(h) (Supp. 1988).

there was some basis for a defense on the part of the defendant, the attorney representing the person who was discriminated against will not be eligible to recover fees.

Thus, according to Mr. Brown, the Immigration Reform and Control Act of 1986 imposes conditions on the recovery of attorneys fees which are more demanding than those common to civil rights cases. Mr. Brown and Mr. Borts, an attorney in private practice, thought that this in turn would reduce the number of cases attorneys may take on a contingency basis without a retainer. According to these panelists, the diminished prospect of recovering attorneys' fees and the high cost of legal fees together are bound to discourage those who otherwise may bring valid discrimination charges. They also expressed a concern that those who are discriminated against will be discouraged from pursuing legal recourse.

Summary

Several themes were prominent in the panelists' presentations. One was that the implementation of the IRCA initially was flawed by the lack of an effective public information campaign. According to the panelists, for example, potential applicants for the legalization program were not convinced of the confidentiality of the information they were required to supply in application forms, nor were they aware of the alternate documents that could be used to prove residency. These factors

were said to be partially responsible for a low turnout of applicants.

Another theme discussed by the panelists pertains to the IRCA provisions which discourage the victims of employment discrimination from seeking legal relief. The Advisory Committee learned that the IRCA imposes vigorous conditions for recovering attorneys fees in that the court needs to find that the defendant's position was not reasonable in law and in fact. In addition, the proof of discrimination based on national origin or citizenship status is likely to be contingent upon the "intent" standard instead of the "effect" standard. These factors may discourage those who might otherwise seek relief under the IRCA provisions.

The Advisory Committee heard at the forum several allegations of discriminatory employment practices, indicating that the employer sanctions provisions might result in discriminatory practices against "foreign-appearing" employees and applicants.

The committee believes such allegations underscore the importance of the information which the Immigration Reform Steering Committee plans to collect on cases of employment discrimination and harassment in Rhode Island. The Advisory

Committee awaits the release of monitoring data by the Immigration Reform Steering Committee which should provide further insight into this area and its problems. These data may suggest areas of future SAC activities.

Public Law 99-603
99th Congress

An Act

To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

Nov. 6, 1986
[S. 1200]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Immigration Reform and Control Act of 1986.
8 USC 1101 note.

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Reform and Control Act of 1986".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to, or repeal of, a provision, the reference shall be deemed to be made to the Immigration and Nationality Act.

TABLE OF CONTENTS

SEC. 102. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.

(a) IN GENERAL.—Chapter 8 of title II is further amended by inserting after section 274A, as inserted by section 101(a), the following new section:

"UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

8 USC 1324b.

"SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

"(A) because of such individual's national origin, or

"(B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs three or fewer employees,

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

42 USC 2000e-2.

State and local governments.

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) DEFINITION OF CITIZEN OR INTENDING CITIZEN.—As used in paragraph (1), the term 'citizen or intending citizen' means an individual who—

"(A) is a citizen or national of the United States, or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and

8 USC 1255.
8 USC 1157.
8 USC 1158.

"(ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen;

but does not include (I) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (II) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

"(4) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

"(b) CHARGES OF VIOLATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

"(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

42 USC 2000e.

"(c) SPECIAL COUNSEL.—

"(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for

President of U.S.

Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the 'Special Counsel') within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

"(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

"(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.

"(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

"(d) INVESTIGATION OF CHARGES.—

"(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

"(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge.

"(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

"(e) HEARINGS.—

"(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear

in person or otherwise and give testimony at the place and time fixed in the complaint.

"(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination and, to the extent practicable, before such judges who only consider cases under this section.

"(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the said proceeding and to present testimony.

"(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

"(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

"(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

"(g) DETERMINATIONS.—

"(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

"(2) ORDERS FINDING VIOLATIONS.—

"(A) IN GENERAL.—If, upon the preponderance of the evidence, an administrative law judge determines that that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

"(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

"(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years; *Ante*, p. 3360.

8 USC 1324.

"(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an existing position, or for recruiting or referring for a fee, for employment in the United States;

"(iii) to hire individuals directly and adversely affected, with or without back pay; and

"(iv)(I) except as provided in subclause (II), to pay a civil penalty of not more than $1,000 for each individual discriminated against, and

"(II) in the case of a person or entity previously subject to such an order, to pay a civil penalty of not more than $2,000 for each individual discriminated against.

"(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with an administrative law judge. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

"(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physicially separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

"(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged or is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

"(h) AWARDING OF ATTORNEYS' FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

"(i) REVIEW OF FINAL ORDERS.—

"(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

"(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its

judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

"(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

"(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

"(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

"(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

"(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

"(k) TERMINATION DATES.—

"(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring after the date of any termination of the provisions of section 274A, under subsection (l) of that section. *Ante*, p. 3360.

"(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if—

"(A) the Comptroller General determines, and so reports in such report that—

"(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

"(ii) such section has created an unreasonable burden on employers hiring such workers; and

"(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (l) of such section.".

(b) NO EFFECT ON EEOC AUTHORITY.—Except as may be specifically provided in this section, nothing in this section shall be construed to restrict the authority of the Equal Employment Opportunity Commission to investigate allegations, in writing and under oath or affirmation, of unlawful employment practices, as provided in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), or any other authority provided therein. 8 USC 1324b note.

(c) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 274A (as added by section 101(c)) the following new item:

"Sec. 274B. Unfair immigration-related employment practices.".

TITLE II—LEGALIZATION

SEC. 201. LEGALIZATION OF STATUS.

(a) PROVIDING FOR LEGALIZATION PROGRAM.—(1) Chapter 5 of title II is amended by inserting after section 245 (8 U.S.C. 1255) the following new section:

"ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS BEFORE JANUARY 1, 1982, TO THAT OF PERSON ADMITTED FOR LAWFUL RESIDENCE

8 USC 1255a.

"SEC. 245A. (a) TEMPORARY RESIDENT STATUS.—The Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the alien meets the following requirements:

"(1) TIMELY APPLICATION.—

"(A) DURING APPLICATION PERIOD.—Except as provided in subparagraph (B), the alien must apply for such adjustment during the 12-month period beginning on a date (not later than 180 days after the date of enactment of this section) designated by the Attorney General.

"(B) APPLICATION WITHIN 30 DAYS OF SHOW-CAUSE ORDER.—An alien who, at any time during the first 11 months of the 12-month period described in subparagraph (A), is the subject of an order to show cause issued under section 242, must make application under this section not later than the end of the 30-day period beginning either on the first day of such 18-month period or on the date of the issuance of such order, whichever day is later.

8 USC 1252.

"(C) INFORMATION INCLUDED IN APPLICATION.—Each application under this subsection shall contain such information as the Attorney General may require, including information on living relatives of the applicant with respect to whom a petition for preference or other status may be filed by the applicant at any later date under section 204(a).

8 USC 1154.

"(2) CONTINUOUS UNLAWFUL RESIDENCE SINCE 1982.—

"(A) IN GENERAL.—The alien must establish that he entered the United States before January 1, 1982, and that he has resided continuously in the United States in an unlawful status since such date and through the date the application is filed under this subsection.

"(B) NONIMMIGRANTS.—In the case of an alien who entered the United States as a nonimmigrant before January 1, 1982, the alien must establish that the alien's period of authorized stay as a nonimmigrant expired before such

date through the passage of time or the alien's unlawful status was known to the Government as of such date.

"(C) EXCHANGE VISITORS.—If the alien was at any time a nonimmigrant exchange alien (as defined in section 101(a)(15)(J)), the alien must establish that the alien was not subject to the two-year foreign residence requirement of section 212(e) or has fulfilled that requirement or received a waiver thereof. 8 USC 1101. 8 USC 1182.

"(3) CONTINUOUS PHYSICAL PRESENCE SINCE ENACTMENT.—

"(A) IN GENERAL.—The alien must establish that the alien has been continuously physically present in the United States since the date of the enactment of this section.

"(B) TREATMENT OF BRIEF, CASUAL, AND INNOCENT ABSENCES.—An alien shall not be considered to have failed to maintain continuous physical presence in the United States for purposes of subparagraph (A) by virtue of brief, casual, and innocent absences from the United States.

"(C) ADMISSIONS.—Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for adjustment of status under this subsection.

"(4) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(A) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2),

"(B) has not been convicted of any felony or of three or more misdemeanors committed in the United States,

"(C) has not assisted in the persecution of any person or persons on account of race, religion, nationality, membership in a particular social group, or political opinion, and

"(D) is registered or registering under the Military Selective Service Act, if the alien is required to be so registered under that Act. 50 USC app. 451.

For purposes of this subsection, an alien in the status of a Cuban and Haitian entrant described in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422 shall be considered to have entered the United States and to be in an unlawful status in the United States. 8 USC 1522 note.

"(b) SUBSEQUENT ADJUSTMENT TO PERMANENT RESIDENCE AND NATURE OF TEMPORARY RESIDENT STATUS.—

"(1) ADJUSTMENT TO PERMANENT RESIDENCE.—The Attorney General shall adjust the status of any alien provided lawful temporary resident status under subsection (a) to that of an alien lawfully admitted for permanent residence if the alien meets the following requirements:

"(A) TIMELY APPLICATION AFTER ONE YEAR'S RESIDENCE.—The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status.

"(B) CONTINUOUS RESIDENCE.—

"(i) IN GENERAL.—The alien must establish that he has continuously resided in the United States since the date the alien was granted such temporary resident status.

"(ii) TREATMENT OF CERTAIN ABSENCES.—An alien shall not be considered to have lost the continuous residence referred to in clause (i) by reason of an absence from the United States permitted under paragraph (3)(A).

"(C) ADMISSIBLE AS IMMIGRANT.—The alien must establish that he—

"(i) is admissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), and

"(ii) has not been convicted of any felony or three or more misdemeanors committed in the United States.

"(D) BASIC CITIZENSHIP SKILLS.—

"(i) IN GENERAL.—The alien must demonstrate that he either—

8 USC 1423.

"(I) meets the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States), or

"(II) is satisfactorily pursuing a course of study (recognized by the Attorney General) to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

"(ii) EXCEPTION FOR ELDERLY INDIVIDUALS.—The Attorney General may, in his discretion, waive all or part of the requirements of clause (i) in the case of an alien who is 65 years of age or older.

"(iii) RELATION TO NATURALIZATION EXAMINATION.—In accordance with regulations of the Attorney General, an alien who has demonstrated under clause (i)(I) that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

8 USC 1401.

"(2) TERMINATION OF TEMPORARY RESIDENCE.—The Attorney General shall provide for termination of temporary resident status granted an alien under subsection (a)—

"(A) if it appears to the Attorney General that the alien was in fact not eligible for such status;

"(B) if the alien commits an act that (i) makes the alien inadmissible to the United States as an immigrant, except as otherwise provided under subsection (d)(2), or (ii) is convicted of any felony or three or more misdemeanors committed in the United States; or

"(C) at the end of the thirty-first month beginning after the date the alien is granted such status, unless the alien has filed an application for adjustment of such status pursuant to paragraph (1) and such application has not been denied.

"(3) AUTHORIZED TRAVEL AND EMPLOYMENT DURING TEMPORARY RESIDENCE.—During the period an alien is in lawful temporary resident status granted under subsection (a)—

"(A) AUTHORIZATION OF TRAVEL ABROAD.—The Attorney General shall, in accordance with regulations, permit the alien to return to the United States after such brief and casual trips abroad as reflect an intention on the part of the

alien to adjust to lawful permanent resident status under paragraph (1) and after brief temporary trips abroad occasioned by a family obligation involving an occurrence such as the illness or death of a close relative or other family need.

"(B) AUTHORIZATION OF EMPLOYMENT.—The Attorney General shall grant the alien authorization to engage in employment in the United States and provide to that alien an 'employment authorized' endorsement or other appropriate work permit.

"(c) APPLICATIONS FOR ADJUSTMENT OF STATUS.—

"(1) TO WHOM MAY BE MADE.—The Attorney General shall provide that applications for adjustment of status under subsection (a) may be filed—

"(A) with the Attorney General, or

"(B) with a qualified designated entity, but only if the applicant consents to the forwarding of the application to the Attorney General.

As used in this section, the term "qualified designated entity" means an organization or person designated under paragraph (2).

"(2) DESIGNATION OF QUALIFIED ENTITIES TO RECEIVE APPLICATIONS.—For purposes of assisting in the program of legalization provided under this section, the Attorney General—

"(A) shall designate qualified voluntary organizations and other qualified State, local, and community organizations, and

"(B) may designate such other persons as the Attorney General determines are qualified and have substantial experience, demonstrated competence, and traditional long-term involvement in the preparation and submittal of applications for adjustment of status under section 209 or 245, Public Law 89-732, or Public Law 95-145.

8 USC 1159, 1255.
8 USC 1255 note.

"(3) TREATMENT OF APPLICATIONS BY DESIGNATED ENTITIES.—Each qualified designated entity must agree to forward to the Attorney General applications filed with it in accordance with paragraph (1)(B) but not to forward to the Attorney General applications filed with it unless the applicant has consented to such forwarding. No such entity may make a determination required by this section to be made by the Attorney General.

"(4) LIMITATION ON ACCESS TO INFORMATION.—Files and records of qualified designated entities relating to an alien's seeking assistance or information with respect to filing an application under this section are confidential and the Attorney General and the Service shall not have access to such files or records relating to an alien without the consent of the alien.

"(5) CONFIDENTIALITY OF INFORMATION.—Neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may—

"(A) use the information furnished pursuant to an application filed under this section for any purpose other than to make a determination on the application or for enforcement of paragraph (6),

"(B) make any publication whereby the information furnished by any particular individual can be identified, or

"(C) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with

respect to applications filed with a designated entity, that designated entity, to examine individual applications.

Law enforcement and crime.

Anyone who uses, publishes, or permits information to be examined in violation of this paragraph shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(6) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Whoever files an application for adjustment of status under this section and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

"(7) APPLICATION FEES.—

"(A) FEE SCHEDULE.—The Attorney General shall provide for a schedule of fees to be charged for the filing of applications for adjustment under subsection (a) or (b)(1).

"(B) USE OF FEES.— The Attorney General shall deposit payments received under this paragraph in a separate account and amounts in such account shall be available, without fiscal year limitation, to cover administrative and other expenses incurred in connection with the review of applications filed under this section.

"(d) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR EXCLUSION.—

"(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

8 USC 1151, 1152.

"(2) WAIVER OF GROUNDS FOR EXCLUSION.—In the determination of an alien's admissibility under subsections (a)(4)(A), (b)(1)(C)(i), and (b)(2)(B)—

"(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (14), (20), (21), (25), and (32) of section 212(a) shall not apply.

8 USC 1182.

"(B) WAIVER OF OTHER GROUNDS.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Attorney General may waive any other provision of section 212(a) in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(ii) GROUNDS THAT MAY NOT BE WAIVED.—The following provisions of section 212(a) may not be waived by the Attorney General under clause (i):

"(I) Paragraphs (9) and (10) (relating to criminals).

"(II) Paragraph (15) (relating to aliens likely to become public charges) insofar as it relates to an application for adjustment to permanent residence by an alien other than an alien who is eligible for benefits under title XVI of the Social Security Act or section 212 of Public Law 93-66 for the month in which such alien is granted lawful temporary residence status under subsection (a).

42 USC 1381.
42 USC 1382 note.

"(III) Paragraph (23) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marihuana.

"(IV) Paragraphs (27), (28), and (29) (relating to national security and members of certain organizations).

"(V) Paragraph (33) (relating to those who assisted in the Nazi persecutions).

"(iii) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 212(a)(15) if the alien demonstrates a history of employment in the United States evidencing self-support without receipt of public cash assistance. 8 USC 1182.

"(C) MEDICAL EXAMINATION.—The alien shall be required, at the alien's expense, to undergo such a medical examination (including a determination of immunization status) as is appropriate and conforms to generally accepted professional standards of medical practice.

"(e) TEMPORARY STAY OF DEPORTATION AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

"(1) BEFORE APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who is apprehended before the beginning of the application period described in subsection (a)(1)(A) and who can establish a prima facie case of eligibility to have his status adjusted under subsection (a) (but for the fact that he may not apply for such adjustment until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for adjustment, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(2) DURING APPLICATION PERIOD.—The Attorney General shall provide that in the case of an alien who presents a prima facie application for adjustment of status under subsection (a) during the application period, and until a final determination on the application has been made in accordance with this section, the alien—

"(A) may not be deported, and

"(B) shall be granted authorization to engage in employment in the United States and be provided an 'employment authorized' endorsement or other appropriate work permit.

"(f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review of a determination respecting an application for adjustment of status under this section except in accordance with this subsection.

"(2) NO REVIEW FOR LATE FILINGS.—No denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

"(3) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Attorney General shall establish an appellate authority to provide for a single level of administrative appellate review of a determination described in paragraph (1).

"(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

"(4) JUDICIAL REVIEW.—

"(A) LIMITATION TO REVIEW OF DEPORTATION.—There shall be judicial review of such a denial only in the judicial review of an order of deportation under section 106.

8 USC 1105a.

"(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

"(g) IMPLEMENTATION OF SECTION.—

"(1) REGULATIONS.—The Attorney General, after consultation with the Committees on the Judiciary of the House of Representatives and of the Senate, shall prescribe—

"(A) regulations establishing a definition of the term 'resided continuously', as used in this section, and the evidence needed to establish that an alien has resided continuously in the United States for purposes of this section, and

"(B) such other regulations as may be necessary to carry out this section.

"(2) CONSIDERATIONS.—In prescribing regulations described in paragraph (1)(A)—

"(A) PERIODS OF CONTINUOUS RESIDENCE.—The Attorney General shall specify individual periods, and aggregate periods, of absence from the United States which will be considered to break a period of continuous residence in the United States and shall take into account absences due merely to brief and casual trips abroad.

"(B) ABSENCES CAUSED BY DEPORTATION OR ADVANCED PAROLE.—The Attorney General shall provide that—

"(i) an alien shall not be considered to have resided continuously in the United States, if, during any period for which continuous residence is required, the alien was outside the United States as a result of a departure under an order of deportation, and

"(ii) any period of time during which an alien is outside the United States pursuant to the advance parole procedures of the Service shall not be considered as part of the period of time during which an alien is outside the United States for purposes of this section.

"(C) WAIVERS OF CERTAIN ABSENCES.—The Attorney General may provide for a waiver, in the discretion of the Attorney General, of the periods specified under subpara-

graph (A) in the case of an absence from the United States due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

"(D) USE OF CERTAIN DOCUMENTATION.—The Attorney General shall require that—

"(i) continuous residence and physical presence in the United States must be established through documents, together with independent corroboration of the information contained in such documents, and

"(ii) the documents provided under clause (i) be employment-related if employment-related documents with respect to the alien are available to the applicant.

"(3) INTERIM FINAL REGULATIONS.—Regulations prescribed under this section may be prescribed to take effect on an interim final basis if the Attorney General determines that this is necessary in order to implement this section in a timely manner.

"(h) TEMPORARY DISQUALIFICATION OF NEWLY LEGALIZED ALIENS FROM RECEIVING CERTAIN PUBLIC WELFARE ASSISTANCE.—

"(1) IN GENERAL.—During the five-year period beginning on the date an alien was granted lawful temporary resident status under subsection (a), and notwithstanding any other provision of law—

"(A) except as provided in paragraphs (2) and (3), the alien is not eligible for—

"(i) any program of financial assistance furnished under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Attorney General in consultation with other appropriate heads of the various departments and agencies of Government (but in any event including the program of aid to families with dependent children under part A of title IV of the Social Security Act), 42 USC 601.

"(ii) medical assistance under a State plan approved under title XIX of the Social Security Act, and 42 USC 1396.

"(iii) assistance under the Food Stamp Act of 1977; 7 USC 2026.
and

"(B) a State or political subdivision therein may, to the extent consistent with subparagraph (A) and paragraphs (2) and (3), provide that the alien is not eligible for the programs of financial assistance or for medical assistance described in subparagraph (A)(ii) furnished under the law of that State or political subdivision.

Unless otherwise specifically provided by this section or other law, an alien in temporary lawful residence status granted under subsection (a) shall not be considered (for purposes of any law of a State or political subdivision providing for a program of financial assistance) to be permanently residing in the United States under color of law.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply—

"(A) to a Cuban and Haitian entrant (as defined in paragraph (1) or (2)(A) of section 501(e) of Public Law 96-422, as in effect on April 1, 1983), or 8 USC 1255 note.

"(B) in the case of assistance (other than aid to families with dependent children) which is furnished to an alien

Aged persons.
Blind persons.
Handicapped persons.

who is an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act).

"(3) RESTRICTED MEDICAID BENEFITS.—

"(A) CLARIFICATION OF ENTITLEMENT.—Subject to the restrictions under subparagraph (B), for the purpose of providing aliens with eligibility to receive medical assistance—

"(i) paragraph (1) shall not apply,

"(ii) aliens who would be eligible for medical assistance but for the provisions of paragraph (1) shall be deemed, for purposes of title XIX of the Social Security Act, to be so eligible, and

42 USC 1396.

"(iii) aliens lawfully admitted for temporary residence under this section, such status not having changed, shall be considered to be permanently residing in the United States under color of law.

"(B) RESTRICTION OF BENEFITS.—

"(i) LIMITATION TO EMERGENCY SERVICES AND SERVICES FOR PREGNANT WOMEN.—Notwithstanding any provision of title XIX of the Social Security Act (including subparagraphs (B) and (C) of section 1902(a)(10) of such Act), aliens who, but for subparagraph (A), would be ineligible for medical assistance under paragraph (1), are only eligible for such assistance with respect to—

Ante, pp. 201, 208.

"(I) emergency services (as defined for purposes of section 1916(a)(2)(D) of the Social Security Act), and

Ante, p. 209.

"(II) services described in section 1916(a)(2)(B) of such Act (relating to service for pregnant women).

"(ii) NO RESTRICTION FOR EXEMPT ALIENS AND CHILDREN.—The restrictions of clause (i) shall not apply to aliens who are described in paragraph (2) or who are under 18 years of age.

"(C) DEFINITION OF MEDICAL ASSISTANCE.—In this paragraph, the term 'medical assistance' refers to medical assistance under a State plan approved under title XIX of the Social Security Act.

42 USC 1396.

"(4) TREATMENT OF CERTAIN PROGRAMS.—Assistance furnished under any of the following provisions of law shall not be construed to be financial assistance described in paragraph (1)(A)(i):

42 USC 1751 note.
42 USC 1771 note.
20 USC 2301 note.
20 USC 3801 *et seq.*
42 USC 2921.
29 USC 1501 note.
20 USC 1070.
42 USC 201 note.
42 USC 701, 1381, 1397, 620, 651, 670.
42 USC 301, 1201, 1351, 1381.
42 USC 1381-1383e.
8 USC 1522 note.

"(A) The National School Lunch Act.

"(B) The Child Nutrition Act of 1966.

"(C) The Vocational Education Act of 1963.

"(D) Chapter 1 of the Education Consolidation and Improvement Act of 1981.

"(E) The Headstart-Follow Through Act.

"(F) The Job Training Partnership Act.

"(G) Title IV of the Higher Education Act of 1965.

"(H) The Public Health Service Act.

"(I) Titles V, XVI, and XX, and parts B, D, and E of title IV, of the Social Security Act (and titles I, X, XIV, and XVI of such Act as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972).

"(5) ADJUSTMENT NOT AFFECTING FASCELL-STONE BENEFITS.—For the purpose of section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96-122), assistance shall be contin-

ued under such section with respect to an alien without regard to the alien's adjustment of status under this section.

"(i) DISSEMINATION OF INFORMATION ON LEGALIZATION PROGRAM.—Beginning not later than the date designated by the Attorney General under subsection (a)(1)(A), the Attorney General, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.".

(2) The table of contents for chapter 5 of title II is amended by inserting after the item relating to section 245 the following new item:

"Sec. 245A. Adjustment of status of certain entrants before January 1, 1982, to that of person admitted for lawful residence.".

(b) CONFORMING AMENDMENTS.—(1) Section 402 of the Social Security Act is amended by adding at the end thereof the following new subsection: Children and youth. 42 USC 602.

"(f)(1) For temporary disqualification of certain newly legalized aliens from receiving aid to families with dependent children, see subsection (h) of section 245A of the Immigration and Nationality Act. *Ante*, p. 3394.

"(2) In any case where an alien disqualified from receiving aid under such subsection (h) is the parent of a child who is not so disqualified and who (without any adjustment of status under such section 245A) is considered a dependent child under subsection (a)(33), or is the brother or sister of such a child, subsection (a)(38) shall not apply, and the needs of such alien shall not be taken into account in making the determination under subsection (a)(7) with respect to such child, but the income of such alien (if he or she is the parent of such child) shall be included in making such determination to the same extent that income of a stepparent is included under subsection (a)(31).".

(2)(A) Section 472(a) of such Act is amended by adding at the end thereof (after and below paragraph (4)) the following new sentence: 42 USC 672.
"In any case where the child is an alien disqualified under section 245A(h) of the Immigration and Nationality Act from receiving aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 473(a)(1)(B)), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.".

(B) Section 473(a)(1) of such Act is amended by adding at the end thereof (after and below subparagraph (C)) the following new sentence: 42 USC 673.
"The last sentence of section 472(a) shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.".

(c) MISCELLANEOUS PROVISIONS.— 8 USC 1255a note.

(1) PROCEDURES FOR PROPERTY ACQUISITION OR LEASING.—Notwithstanding the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of this 8 USC 1101 note.

section. This authority shall end two years after the effective date of the legalization program.

(2) USE OF RETIRED FEDERAL EMPLOYEES.—Notwithstanding any other provision of law, the retired or retainer pay of a member or former member of the Armed Forces of the United States or the annuity of a retired employee of the Federal Government who retired on or before January 1, 1986, shall not be reduced while such individual is temporarily employed by the Immigration and Naturalization Service for a period of not to exceed 18 months to perform duties in connection with the adjustment of status of aliens under this section. The Service shall not temporarily employ more than 300 individuals under this paragraph. Notwithstanding any other provision of law, the annuity of a retired employee of the Federal Government shall not be increased or redetermined under chapter 83 or 84 of title 5, United States Code, as a result of a period of temporary employment under this paragraph.

5 USC 8301 *et seq.*; *ante*, p. 516.

Appendix 2

List of participants and their organizational affiliations
(Listed in order of appearance)

Lucas Guttentag, Director
Immigration and Aliens' Rights Task Force
American Civil Liberties Union
(substituted by Steve Brown)

Renee Tucker
Joslin Community Development Corporation
Providence, R.I.

Gerard Noel, Jr.
Catholic Social Services
Providence, R.I.

David Borts
Practicing Attorney
Providence, R.I.

Roberto Gonzales
Practicing Attorney
Providence, R.I.

Stephen Hines
President, the Personnel Executives Club
of the Providence Chamber of Commerce, R.I.
(substituted by Patricia Smith)

Patricia Martinez
Immigration Reform Steering Committee
Providence, R.I.
(substituted by Steve Brown)

William R. Granger
Employer-Labor Relations Officer
Immigration & Naturalization Service - R.I. Office
Providence, R.I.

Appendix 3

U.S. Department of Justice

Special Counsel for Immigration Related
Unfair Employment Practices

Office of Special Counsel
(202) 653-8121

1100 Connecticut Avenue, N.W.
P.O. Box 65490
Washington, D.C. 20035-5490

Senator David Sholes
Chairperson
Rhode Island Advisory Committee
c/o U.S. Commission on Civil Rights
1121 Vermont Avenue, N.W.
Washington, D.C. 20425

JUN 7 1988

Dear Senator Sholes:

I appreciate the opportunity to comment on "The Immigration Reform and Control Act of 1986: Civil Rights Issues in Implementing its Legalization and Employer-Sanctions Programs," a report by the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights. Dr. Ki-Taek Chun of the U.S. Commission on Civil Rights provided me with a copy of this report and asked for my comments. Dr. Chun informed me that my remarks would be attached as an appendix to the report.

Dr. Chun asked for my comments on the section of the report entitled "Office of Special Counsel". I would like to supplement and update the information contained in this section of the report regarding first, the Office of Special Counsel's outreach efforts, and, second, the results we have witnessed so far.

It is important that the Office of Special Counsel engage in public education efforts so that § 102 of the Immigration Reform and Control Act of 1986 ("IRCA") will become widely known. We must inform citizens and authorized aliens that § 102 of IRCA has given them certain rights. We must also reach out to employers so that they will clearly understand the requirements § 102 places upon them.

Therefore, we have given our outreach efforts highest priority. The following is a summary of our more recent efforts:

1) Informational packets have been mailed to all Immigration and Naturalization Service district offices, United States Attorneys offices, Equal Employment Opportunity Commission offices, and Qualified Designated Entities;

2) Mailings of informational packets have been completed to over 1,000 public advocacy groups, community service groups and state fair employment agencies;

3) A Charge Form in Spanish has been published and has been distributed to all Immigration and Naturalization Service district offices, United States Attorneys offices, Equal Employment Opportunity Commission offices and Qualified Designated Entities;

4) Over 60 presentations have been made by Office of Special Counsel attorneys at seminars and conferences throughout the country;

5) Office of Special Counsel attorneys have given numerous interviews to the media; as a result, several prominent publications, including the Wall Street Journal, the New York Times, the Los Angeles Times, and the Washington Post, have published articles about the new law;

6) Office of Special Counsel attorneys have responded to over 1500 written and telephonic requests for information;

7) To ensure that these and future requests are correctly routed, a teletype message concerning basic information about the Office has been broadcast to every Department of Justice office on the Department's telecommunications network and to every U.S. Attorneys office;

8) The Executive Office for U.S. Attorneys has requested that each local U.S. Attorneys office place the Office of Special Counsel's telephone number in the local telephone directory;

9) The Equal Employment Opportunity Commission has transmitted to all of its district offices a new notice containing basic information about the Office of Special Counsel;

10) The Immigration and Naturalization Service has added a taped message to their two principal telephone information systems containing information about the Office of Special Counsel, including our address and telephone numbers; and,

11) We have added a Spanish version of the recorded message used during non-business hours and a local TDD telephone connection for the hearing impaired (202-653-5710).

We are in the process of taking additional steps to ensure that the public is fully informed about our existence. For example, we are working with the Department's Office of Public Affairs to make use of the electronic media. Jimmy Smits, star of the popular television series "LA Law", has taped a set of television and radio public service advertisements which describe the Office of Special Counsel. The Office of Public Affairs is currently distributing these public service announcements to major media markets throughout the country. The Office of Public Affairs is also attempting to place our attorneys on radio and television public affairs discussion programs.

We have seen encouraging signs that our efforts are paying off. As of June 6, 1988, the Office of Special Counsel has received 144 charges of immigration related unfair employment practices. Ninety-seven of these charges are currently under investigation, are awaiting further information or are the basis of Complaints. Eight Complaints have been filed, 5 based on individual charges and 3 based on the employer's pattern and practice of unlawful actions. Our first four trials are scheduled for this summer.

In addition, 11 charges have been settled on the basis of back pay awards and offers of employment. The Office of Special Counsel has negotiated settlements with Pan American World Airways, McDonnell Douglas Corporation, General Mills Restaurants, and several other large companies around the country.

We have also seen encouraging results from our independent investigations into the hiring practices of over 400 large corporations throughout the country. Over 100 corporations, including several Fortune 500 corporations, have already agreed to change their hiring policies because of our intervention.

Again, I appreciate the opportunity to share my views on the Committee's report. The Office of Special Counsel has attempted to publicize and enforce the anti-discrimination provisions of IRCA aggressively. The assistance of groups such as the Rhode Island Advisory Committee is essential if § 102 is to be truly effective. This report, and the Rhode Island Advisory Committee's continuing interest in this area, will significantly enhance our ability to fulfill the mandates of § 102.

I look forward to working with you in the future in enforcing the civil rights protections created by IRCA.

Sincerely,

Lawrence J. Siskind

Lawrence J. Siskind
Special Counsel