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

These edited proceedings of a community forum held by the Texas Advisory Committee to the U.S. Commission on Civil Rights were prepared for the information and consideration of the Commission. Statements and viewpoints in this 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 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 manner in which it is enforced may be measured.

TEXAS ADVISORY COMMITTEE

TO THE UNITED STATES

COMMISSION ON CIVIL RIGHTS

A SUMMARY REPORT

SEPTEMBER 1989

Most

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.

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LETTER OF TRANSMITTAL

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Murray Friedman, Vice Chairman
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Melvin L. Jenkins, Acting Staff Director

Attached is an edited transcript of a forum held by the Texas Advisory Committee on August 14, 1987 in Houston. The purpose of the forum was to gather information on the implementation in Texas 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 participants from a broad cross-section of the community. These included immigration attorneys, employer and union representatives, social service and minority group organizations, as well as Federal enforcement officials. By a vote of 9-0, the Advisory Committee approved submission of the report to the Commissioners. The Committee hopes this document will be of value to the Commission in its monitoring of the civil rights aspects of the 1986 immigration law.

Respectfully,

Adolfo P. Canales, Chairperson
Texas Advisory Committee

Texas Advisory Committee

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Acknowledgements

The Advisory Committee wishes to acknowledge the efforts expended on this project by Adolfo Canales, Chairperson and Luis A. Velarde, Jr., Immigration Subcommittee Chair of the Texas Advisory Committee. The Committee also wishes to thank the staff of the Commission's Western Regional Division, Los Angeles, California, for its help in the preparation of this report. The project was the chief assignment of John Dulles. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director, Western Regional Division.

* No longer a member of the Advisory Committee
** Did not serve on Advisory Committee at time of forum

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SUMMARY

After more than 5 years of debate, the Congress, in 1986, enacted a major revision of the Nation's immigration laws. The Immigration Reform and Control Act of 1986 (IRCA)[1] was signed into law by President Reagan on November 6, 1986. It is the most comprehensive reform of United States immigration law since 1952.

The IRCA has two provisions of particular relevance with respect 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 agricuture 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 act, it is unlawful knowingly to 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 in assuring compliance with the new law is the employment verification procedure and

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[1] Pub. L. No. 99-603, 100 Stat. 3359 A summary of the legislation is attached to this edited transcript as an appendix.
[2] 8 U.S.C.A. § 1324a(a)(1) (West Supp. 1988).
[3] 8 U.S.C.A. § 1324a(a)(2) (West Supp. 1988).

recordkeeping requirements. Employers are now required to examine certain types of documents to verify that the job applicant is 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 also must sign the form, stating that it 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]

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[4] 8 U.S.C.A. § 1324a(b)(1) (West Supp. 1988).
[5] 8 U.S.C.A. § 1324a(b)(2) (West Supp. 1988).
[6] 8 U.S.C.A. § 1324a(e)(4) (West Supp. 1988).
[7] 8 U.S.C.A. § 1255a(a)(2)(A) (West Supp. 1988).
[8] 8 U.S.C.A. § 1255a(a)(i)(A) (West Supp. 1988).

Agricultural workers who can establish that they 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 attorney's fees.[11]

Congress, in adopting the new immigration law, was concerned that some employers might overreact and refuse to hire persons who appeared or sounded "foreign."[12] The nondiscrimination provisions were therefore written into the act. Additionally, Title VII of the Civil Rights Act of 1964,[13]

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[9] 8 U.S.C.A. § 1160(a)(1) (West Supp. 1988); (the so-called "Schumer Amendment").
[10] 8 U.S.C.A. § 1324b(a)(3) (West Supp. 1988); (the so-called "Frank Amendment").
[11] New INA § 274B 8 U.S.C.A. § 1324b(g)(h) (West Supp. 1988).
[12] Ron Tasoff, "Immigration Reform Act, What Every Lawyer Should Know," Los Angeles Lawyer, Feb. 1987.
[13] 42 U.S.C. §§ 2000e-2000e 17 (1982).

administered by the Equal Employment Opportunity Commission (EEOC), also covers such potential discrimination. The IRCA leaves in full force and effect the provisions of Title VII which ban discrimination in employment on account of national origin.[14] The EEOC covers employers with a workforce of fifteen or more workers, while the nondiscrimination protections in the immigration reform law prohibit discrimination based on national origin or citizenship status for employers with four to fourteen employees.

On August 14, 1987, the Texas Advisory Committee to the United States Commission on Civil Rights convened a public forum in Houston to obtain information on the employer sanctions provisions of the IRCA. Specifically, the committee was interested in determining how these provisions were being implemented in the Houston area and the extent to which problems of discrimination might have arisen.

The Advisory Committee heard from a diverse cross section of individuals and institutions directly affected by the new law. Participants included employer group and union representatives, social service and minority group organizations, and officials of the U.S. Immigration and Naturalization Service (INS) and the EEOC. A former INS Commissioner was among the presenters at the Houston forum.

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[14]EEOC, Policy Statement, "Relationship of Title VII of the Civil Rights Act to the Immigration Reform and Control Act of 1986" (adopted Feb. 26, 1987).

During the course of the full-day meeting, the Advisory Committee heard from a broad spectrum of the Houston community concerning the projected civil rights impacts of the IRCA. Especially prevelant were concerns that there was insufficient information available regarding the law and how it would affect both employers and their workers. Most presenters were critical of INS delays in promulgating regulations and distributing necessary forms to employers. Many expressed fears that the employer sanctions provisions might lead to discrimination against Hispanics and other national origin minority groups. There were concerns expressed that unscrupulous employers might exploit persons ineligible for permanent status and thereby create a new subclass of undocumented workers, with no legal protections. Several presenters told the Advisory Committee that persons eligible for legalization were experiencing difficulty in obtaining needed employer verification documentation and that an emerging new business in fraudulant documents was being created as a result of IRCA.

Employers expressed dissatisfaction with the additional paperwork and increased regulation imposed by employer sanctions. They felt that the new law placed additional costs

and burdens on businesses and that smaller companies would find it especially difficult to comply.

Several employers maintained that they should not be asked to serve as "policemen" or law enforcement agents for purposes of implementing U.S. immigration policy. They believed that the employer sanctions provisions placed such an obligation on them.

Some participants were concerned that the antidiscrimination provisions in the IRCA had not been finalized and that enforcement machinery had not been established. Community representatives voiced fears that the victims of discrimination would be unaware of existing remedies or how to obtain them.

Finally, most presenters called for increased outreach and educational efforts to inform the community about the law and its effects on the city of Houston.

This report consists of an edited version of the transcript of the August 14, 1987, forum. The Texas Advisory Committee hopes that this document will be of assistance to the Commission in its monitoring of the civil rights implications of the new immigration law.

Lionel Castillo, Former Commissioner, Immigration and Naturalization Service

I have two essential points to make at the outset. The first point is that the employer sanctions aspect of the Immigration Reform and Control Act, the so-called "amnesty package," has been erratic. The second major point I want to make is that there has been inadequate public information about the employer sanctions provisions.

What has happened is that Congress developed a plan, the President signed it, and now we have the law. Basically, after the program was announced on November 6, 1986, very little happened.

The Congress told the Government to begin drafting regulations, the Government moved quickly to do so and developed them actually in only 8 months, which by Government standards is quite fast. The Government found that even though there were some general regulations, there was very little knowledge about how to do this.

The Immigration Service found it could not hire the people that Congress had authorized it to hire, and is still short over 1000 staff members that were authorized under

the bill for the enforcement provisions because it simply can't hire, train, and prepare these people fast enough.

As a result, staff did not come on board to enforce the employer sanctions and other provisions. For reasons that only the administration could detail, the administration moved very slowly to hire the individuals who would oversee the employment discrimination aspects of employer sanctions.

Although the legislation called for a special counsel, such special counsel was not even identified by name until very recently. The enforcement mechanisms and the procedures for implementing and monitoring employment discrimination still are not in place.

Although there was great concern in the debate over the last decade about possible employer discrimination as a result of these new proposed employer sanctions, in fact, when employer sanctions passed, everybody seemed to forget about it. The staffs of the monitoring agencies, such as the Commission on Civil Rights, were actually cut and their budgets reduced.

Thus, there is very little monitoring taking place at any level: State, Federal, or local. In addition to

these problems of staffing, and no mechanism and so on, this program has had the same problems of other programs like it. Because there was no adequate public information, employers and aliens did not know what to do. I do not believe it is necessarily evil intentions on the part of employers, but it is very clear that they did not know what to do.

Employer sanctions conferences sprouted up over the country. In this city we have had one almost every week, sometimes four or five a week. We have had employer sanctions conferences for every imaginable group of employers. We have a whole new industry that provides nothing but employer sanctions conferences.

A whole industry was developed that provided forms, even though the forms are free and may be duplicated. There were people selling the forms and making a very good business out of that. So a whole new thing has developed, but it is not clear, because there has not been public information as to what it meant.

The basic form to be used in hiring an employee, called the I-9, was not even ready until recently. Even now, people call persons like myself because they cannot get anyone at

Immigration to answer the phone to give them the form or order the form.

The Houston Chronicle and some other publications have run copies of the form and have announced that employers may reproduce copies of it, but even then a lot of folks have simply not seen it.

So there has been relatively little compliance with employer sanctions because of this shakey start up. My guess is that within another couple of years people will begin treating it as a routine aspect for hiring someone, the way you do a W-4.

The other side of this is that because the immigrants knew they now needed to show some form of evidence that they were here [continuously since 1982], they then began looking for other ways to get social security cards. You can go to a number of files markets here in Houston and find four or five operations that laminate or do certain things with your social security card or social security number, and that is generally public. Just as you can buy rifles here at the flea market, you can also buy cards.

So we have this really shakey start up with all sorts of problems, and nowhere to call for information.

We then have some abuses, but we have not monitored them very well, so we do not know exactly how many, how deep it goes. I do not think anyone really knows. We are sort of like a patient who sees that he is ill but has not seen a doctor yet to assess the nature and seriousness of the illness. We know there are problems, because everyday there is another meeting, another conference, another discussion of another group.

At the moment, the discussion has to do with whether persons who qualified under the first aspect of amnesty are eligible for training under the Job Training Partnership Act,[15] son of CETA, the Comprehensive Employment Training Act.[16] There is a question whether these individuals are qualified for job training services, because the authorization card says that this individual is now entitled to work in the United States but is not entitled to receive Federal program benefits.

Understandably, some city administrators do not know if that means you can enroll them or not. So some programs enroll and some do not. They are waiting for guidelines and interpretations from the State Department of Human Resources.

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[15]Pub. L. No. 97-300, 96 Stat. 1322 (1982), as amended.
[16]29 U.S.C. Chap. 17 (repealed 1982).

We have this sort of thing happening almost daily where people just do not know. You can make a call to some authority in Washington, or you can call Al Velarde of the Texas SAC, you can call somebody, and try to get some latest interpretation.

In brief, the program of employer sanctions which was expected, if you read all the testimony over the last 10 years of debate, to result in some erosion of civil liberties for U.S. citizens and residents and employers, may or may not have actually caused this erosion.

We literally do not know because we do not have the monitoring mechanisms in place. We know that there has been some serious dislocation and a serious lack of information. But I could not say directly, except in a few instances that I know of, that there has been a tremendous erosion of civil liberties. Hopefully, other persons who testify can speak to specific cases or to patterns that they have already identified. I have not seen that. I have seen mostly inadequate information, a lot of confusion, and late starts as we push the start date back and forth, or as Congress did.

Since last November, a group of which I am a member,

called the Consejo Hispano De Assoserias Sobre La Nueva Ley De Migracion, Hispanic Council on New Immigration Law, has conducted a radio show every Monday night, like a "Dear Abby," on immigration.

A lot of the questions have to do with, "Can I work now that I have my temporary card," or "My employer is going to fire me if I do not have permission to work by--," it was first July 1, then it was August 1, and now it is September 1. Some people said it was June 1 or we have had some who said it was going to be January 1 of 1987.

Every month it has been someone calling saying, "We are going to be fired if we do not have permission to work within a certain number of days, how do we get that permission to work?" If the radio show is an indication, there is still a lot of confusion as to when and how the new law will be enforced.

I hope that if nothing else comes of the discussions you have here today, that you make a big effort to educate the general public as to the provisions of this new employer sanctions law. Even that will help remove a lot of the uneasiness that people have about it.

Jerry Scanlan, Regional Attorney, Equal Employment Opportunity Commission

The EEOC is an agency that has been around since 1965. We enforce employment discrimination laws, one of which is Title VII of the 1964 Civil Rights Act. Part of what that statute prohibits is national origin discrimination. Our major concern with the new immigration statutes is to make sure that in complying with it, employers do not commit violations of Title VII that they would not otherwise commit.

Our statute [Title VII of the Civil Rights Act of 1964] remains entirely enforced and it is even mentioned in the immigration statute that it has no effect on enforcement of Title VII. There is a slight exception to that, with regard to the nondiscrimination provision. But for the most part, our statute remains as is and it prohibits the same things regarding national origin discrimination as it has always prohibited.

There are no real inconsistencies between the two laws, there is no real reason why, in complying with the immigration statute and amendment, Title VII should be violated. But I

can think of a number of situations in which it might happen.

For example, because employers can be penalized for hiring people who are not either citizens or aliens who are eligible to work, they might try to avoid these problems entirely by just not hiring foreign-looking people. And, of course, that is a clear violation of Title VII.

You have to treat all applicants for employment the same regardless of race, religion, sex, national origin, or age.

A second problem that might arise is imposing more stringent documentation requirements on foreign-looking people. The immigration statute and the regulations are very clear that there is certain documentation that is required, but the same documentation must be required of everyone.

There are three categories [of required documentation]: A, B, and C. If you have something under "A," that is all you need. If you do not, you need something under "B" and "C"; there is a list of documents that are sufficient to meet those categories. You cannot require one "B" and "C" from one person and two "B's" and one "C" from another. You cannot require a different document under "B" or "C" from one individual than from another.

The problem might be that employers, worried about the sanctions and penalties that someone they suspect might not be eligible to work, will impose more documentation requirements on the individual than another. That violates Title VII. That's going to constitute national origin discrimination.

A third is with the grandfathered employees; employer sanctions do not apply to people hired prior to November 7, 1986. If those people are required to produce immigration documentation, it does not necessarily violate the immigration law, but I think it is almost always going to violate Title VII. You can do it in two ways:

One way is if only foreign-looking people are picked out to document. The second, even if everyone is documented, it is going to have what is known in Title VII law as a disparate impact on people of various national origins.

Let's take, in this area, Hispanics. If you impose documentation requirements on all pre-November 7, 1986, hirees, it is more likely that a larger percentage of the Hispanics are going to be less likely to meet those documentation requirements than the non-Hispanics. That will

happen, even though it is applied neutrally, it has a disparate impact on that group, and it violates the law.

The reason it is going to be a problem, is you have no Immigration Act defense in that situation. People hired since November 7, have to be documented. And if that has a disparate effect on Hispanics, well, it just does. It is required under the immigration law, and that is going to be the defense. But the people hired prior to that date do not have to be documented, and if they are documented, I think it is going to cause problems for employers.

The immigration law has a sole nondiscrimination provision enforced by the Department of Justice.

The Justice Department provision applies to national origin discrimination and citizenship discrimination, and that is all. The only persons protected under these nondiscrimination provisions are those who are American citizens or intend to become American citizens. That is a narrow protection, but it also prohibits national origin discrimination in hiring and referrals. That is a more narrow prohibition than under Title VII, which applies to all the

terms and conditions of employment.

The national origin or discrimination provisions under Title VII are much broader in regard to the types of things they prohibit than those under the immigration statute. The immigration statute only prohibits discrimination in hiring and referrals on the basis of national origin. Under Title VII, [coverage includes] hiring, promotion, discharge, anything in terms of conditions of employment; harassment and things of that sort.

In addition, the immigration statute, as far as national origin discrimination goes, applies only to employers with from 3 to 14 employees. Title VII applies to all employers with 15 or more employees. So, if there's jurisdiction under the immigration statute, there won't be under Title VII and vice versa with regard to national origin discrimination.

A mechanism is being set up for referring people from one agency to the other when somebody files a charge with the wrong agency. The one possible conflict is in the citizenship requirement. There is a provision in the immigration statute that says an employer may prefer a citizen over an equally qualified noncitizen.[17]

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[17]8 U.S.C.A. § 1324b(a)(4) (West Supp. 1988).

Now, Title VII does not expressly prohibit discrimination on the basis of citizenship, but it almost always does in practice. There was a Supreme Court decision in 1973 called Espinoza v. Farah Manufacturing Company, 414 U.S. 86 (1973), that had a clear holding that citizenship discrimination in itself does not constitute national origin discrimination. The Court determined that citizenship discrimination which has a legitimate purpose or neutral effect, such as in requiring U.S. citizenship for Federal employees, is not national origin discrimination. However, citizenship discrimination which has a purpose or effect of national origin discrimination is going to violate the law.

Ron Parra, District Director, U.S. Immigration and Naturalization Service

I would like to clarify, as the INS District Director for Houston--that there are 36 districts throughout the world, Houston being one of the leading ones, ranking behind Los Angeles, Chicago, Miami, and New York. We service the major Texas districts by virtue of the size of the actual Houston metropolitan area.

We are extremely diverse in Houston. We certainly have the immigration issue before us. As evidenced by the speakers

who have preceded me and certainly who are to follow on the agenda, we take a very active role in the issues evolving and revolving around immigration.

Employer sanctions in the Houston area have proceeded very rapidly and aggressively in the sense of a public educational program. With the passage of the law in November, we embarked on pretty much an entrepreneur road as far as media relations with the entire community.

Among our accomplishments are over 200 seminars to date and speaking engagements and public appearances on the new legislation. These forums and engagements have addressed both the legalization and the employer sanctions provisions of the new law.

We think we have been very successful in our efforts to calm the anxiety of the general public and to get out the necessary information during the interim when the regulations were being prepared and reviewed, as well as when we were receiving additional positions.

We have been very fortunate in Houston that the program has taken on aspects of a partnership with the community. It is not immigration and the community; it is immigration with the community.

The focus of our attention in my brief tenure here in Houston as a director, just over a year now, has been to bring Houston immigration from being part of the problems and concerns of the community, to being part of the solutions to other concerns in the community. We felt that we have been very successful, thanks to the overall leadership in the community.

These 200 seminars were addressed primarily in a dual role; they were conducted in both English and Spanish. There was a seminar for the employers during the afternoon when there seemed to be a lull in their business activity, and then followup with a similar forum designed for the employee or the potential applicant, primarily in the Houston area, in Spanish.

This format seemed to be very daring and, of course, very risky, in that no one with the new legislation knew exactly where we should go, what our focus should be, but we felt that that was our responsibility to the community.

We started and joined in the first endeavor with the Houston Community College system. We felt that we wanted to maintain the new immigration legislation on a fairly neutral

level as well as an educational level. We felt that the Houston Community College system was best suited with over 37 locations throughout the metropolitan area. We felt that for the potential legalization applicants, and certainly if Immigration were to be sincere in its efforts to provide an educational forum for the community, that we had to go to the community. The placement of the 37 locations throughout the community gave us the ideal conduit to get the word out.

Our baptism was in the neighborhood where, ironically and coincidentally, we ended up locating our legalization center. Part of that seminar was in the evening and it was the very first one to be addressed to the undocumented population in the area.

We asked that they provide us either with a cafeteria or a gymnasium. They looked at us with rather a jaundiced eye thinking that maybe our expectations were a little great.

We requested a cafeteria because we felt that the media, as active and investigative as it is in Houston, must be incorporated into what we were doing to help lift the veil that has existed around immigration in the past.

The scheduled time was 6 o'clock, and at 6 o'clock we may have had 30 people in there. And as the time grew on, and the media's concern began to develop, interest also began to peak. We were noticing that even though there was much apprehension in the community, the potential participants at our seminar, the need to know and the desire to be informed brought these individuals into the cafeteria.

Utilizing the media as an ally instead of as an enemy as in the past, and also in joining the community in this project, gave everyone a very meaningful role in the implementation. I feel that in Houston the educational program was a success. It certainly was epitomized in Houston by virtue of the fact that on May 5, and continuing since that point, we have had virtually the largest number of applications for legalization.

In our seminars we included the aspects involving employers. We felt that there was much concern in the employer community as to what their liability would be in complying with the new law. So at that time we asked the employers that if they felt they had someone who qualified for legalization, they should send them forward and assist them in

every way possible. Simultaneously, at the seminars for the employees prospective legalization applicants, we told them that if they had any problems with their employers that they could call us.

However, the telephone number for Immigration was nearly impossible to reach. It was virtually ineffective. So we gave the phone number of our administrative office or the office of the district director and the deputy director. Our phone calls since November went from approximately 50 a day to over 300 a day.

We are very fortunate in Houston, and I attribute it tremendously to the media and to the community.

Without the community's support and without the media's support, we would not have been able to do it. What I think is especially important, that the community, even though they were not very supportive, was very investigative and inquiring in their response to us. There were many television stations, major networks, locally produced programs, directly addressing the Immigration Reform and Control Act. As recently as May there was a call-in, both in English and Spanish for both employees and employers.

We were very fortunate with the Government agencies as well. This was not just an immigration bill, but it was a national piece of legislation. We were able to utilize the efforts of the Federal Executive Board to conduct the only such seminar where we had the directors of the Internal Revenue Service, the Equal Employment Opportunity Commission, the Department of Labor, the Social Security Administration, and the Texas Employment Commission.

Those are some of our efforts concerning the employer sanctions provision. We have also engaged the Hispanic organizations who are interested in the discriminatory provisions of the new legislation. In fact, I had spoken at the American G.I. Forum meeting with a representative from MALDEF, who is very concerned about the potential for discrimination, as to what provisions were being handled by us as far as an interim method to address any potential discrimination complaints of the new law.

We had no formal complaint form. The Mexican American Legal Defense and Education Fund, MALDEF, had such a form and we asked that MALDEF provide us with that form. We have also met with the Equal Employment Opportunity Commission. They

immediately encouraged their national headquarters to come out with a statement to see exactly how the law meshed with the existing Title VII requirements.

The one slight stigma on the entire program was an incident out of Pasadena, a small suburb of Houston, where there was the dismissal of four employees, who then filed discrimination charges. Fortunately, one of the immigration attorneys that we have in the area, and some of the other agencies, took up the case and addressed it, and it was found in favor of the employees.

But I think as with any effort, when you are dealing with a city the size of Houston, geographically and politically, to have one case come forward with so much potential for misinterpretation, it is a great commendation to the Houston area.

Marcos Salinas, Regional Attorney, Equal Employment Opportunity Commission

The EEOC has been actively involved in investigating complaints that relate to the Immigration Reform and Control Act. We have met several times with Mr. Parra's group, and we

have attended several conferences and seminars with employers.

We have gone out, speaking both in English and Spanish to make sure that the individuals, both the employer and those persons seeking to become citizens, know that the EEOC will investigate complaints of discrimination based on one's national origin, race, color, religion, or age.

We have received a number of complaints that are related to the immigration act, and we have made them a priority assignment. So far, we have had 17 complaints that we think may have been related to immigration or, perhaps, overreaction by employers.

We have met with the San Antonio District Office and also the Dallas District Office of the EEOC. We did this because Texas is one of the largest States and with a concentration of Spanish-speaking and other nationalities. We wanted to make sure that if one of the cases that relate to the immigration act ever goes to court that all three offices are coordinated in their efforts.

Jerry Scanlan and I, and the other directors and regional attorneys, met and we discussed all those issues to make sure that we were handling those cases in a coordinated way.

The Commission has also issued copies of the EEOC policy statement, which was adopted February 26, 1987, by all the Commissioners. It emphasizes that EEOC will investigate and process those complaints dealing with national origin.

There are many employers that perhaps are not aware of this immigration issue because most of the complaints that we receive are against smaller companies. And, it is hard for all of those employers to become aware of what the new act is and what our laws are.

Most of them pertain to terminations. One individual indicates, "The employer told me the reason for my discharge wa because of my excessive absenteeism. He also asked me if I had citizenship papers on the date of my discharge. I firmly believe my national origin was a factor in the employer's decision to discharge me. To the best of my knowledge, no non-Hispanic employees were asked if they had citizenship papers."

This is something that we consider to be somewhat related to the immigration question, otherwise the employer would not be asking those types of questions.

I plan to have two of my supervisors visit the qualified

designated entities. Those are the ones that will process those individual applications. We plan to do this to advise and inform those organizations that if they know of any applicants or persons who felt that they were discharged for not having the documentations or required papers to tell us. We will leave our name and telephone number where they can reach us.

Arturo Sanchez, Mexican American Chamber of Commerce

I am the representative of the Mexican American Chamber of Commerce. Our function with the new immigration law is to educate our members to the extent of the law. And we have many meetings dedicated to the discussion of the law; we are very much concerned with it. And KLAT radio--this week we are conducting our third immigration week.

We are trying to give the public a medium to talk to La Migra, which is the immigration officers. They do not fear, they can ask anything in Spanish. Education is the problem here.

One of the problems that I see is the lack of information about the procedure and the function of the Equal

Employment Opportunity Commission. Hispanics who come here do not understand the bureaucratic problems. They are not used to all these investigations, and at the end, there is nothing. This explains why some of the people do not complain, even though they have been the victims, because they do not understand it.

Harry Gee, Jr., Houston Chamber of Commerce

For many years, the Houston chamber has been observing and participating in the development of regulations and legislation which affect area businesses. We have monitored closely the implementation of the Immigration Reform and Control Act of 1986 and have submitted comments to the Immigration and Naturalization Service on the proposed rules. We have conducted an educational campaign for our members on the employer sanctions portions of the act.

Historically, the Houston chamber has supported employer sanctions since 1982, when testimony was presented to the Senate Subcommittee on Immigration and Refugee Policy and the House Subcommittee on Immigration, Refugee and International Law.

The chamber went on record as recognizing the need for employer sanctions as a realistic means of discouraging employment of illegal aliens; however, the chamber urged Congress to note that sanctions are acceptable, only if the employer is not forced to become part of the law enforcement system. Sanctions and verification systems should not provoke undue hardships or delays for either employers or employees.

So while the chamber has supported employer sanctions in the past, we are now concerned that the current law and regulations have imposed on the employer more burdens and responsibilities than necessary.

Although the chamber does not agree with all provisions of the new Immigration and Reform Control Act, because it is now the law of the land, the chamber has sought to inform and to educate the general public and especially our members on the provisions of the act and the regulations to implement it. In March 1987, the chamber, in conjunction with the INS, conducted a seminar to educate the employers on their responsibilities under the new law.

With respect to the assessments of the Government's role in the implementation of the act, we have noted a vast

difference in the Government's handling between the INS's local involvement and also the national efforts; and the legalization program and the employer sanctions provisions of the act.

We have observed that the national efforts to disseminate information to employers and employees about the change in the law has been woefully inadequate. The Government's delay in publishing and distributing forms is a major illustration of the failure to provide employers in a timely manner with instruction and information, which they need to comply with the new law. Because of this delay, Congress wisely revised the initial enforcement date to September 1, 1987. Clarification is now necessary to determine whether the 1-year warning period is likewise extended.

We have observed that local INS officials deserve commendation for their extraordinary effort in the educational campaign which they conducted to inform the general public and the employee pool of the act's provisions dealing with legalization and employer sanctions.

A substantial number of seminars were held by local INS

officials in the evenings, on weekends, and beyond normal working hours; but importantly, at a time when concerned employers and aliens were able to get the opportunity for one-on-one meetings with officials following those meetings.

While the Federal Government's handling of the employer's responsibilities appears wanting, the administration of the INS, at both the local and the national level, deserve praise for the exemplary manner in which they have implemented the timely opening of some several hundred new offices necessary to accommodate the flow of people seeking legalization.

We noted that local and some regional offices have demonstrated the correct attitude in showing compassion for those seeking amnesty or legalization. Local INS officials have successfully addressed numerous problems arising during these early stages.

Following discussions with our various members representing different sectors of the Houston employers, we can only conclude that it is premature at this time to fully assess the impact of the employer sanction provisions of the new law.

The Government's mediocre attempts to properly educate employers and employees, particularly U.S. citizens, as to their responsibilities, as well as the Government's need to delay certain deadlines have led to general confusion among the business community. Corporate lawyers are able to steer management and personnel administrators through the procedure, but the smaller businesses have not been provided adequate guidance in determining whether their procedures of securing verification of work permits or citizenship comply with the law while they do not violate provisions of the Equal Employment Opportunity Commission statutes.

Distrust of the Government is noted among some of our members. We have found that there exists a high degree of suspicion as to the purpose and intent of the law. There is a feeling that the amnesty program is a big scam.
Many feel that INS is merely seeking to locate and ultimately to initiate proceedings against those workers seeking amnesty. In our efforts to gather data to prepare for today's assessment, we found that several of our members were prohibited by their corporate counsel from contributing to our fact-gathering efforts.

The agricultural sector was likewise reluctant to discuss their experiences. Only with the assistance of the staff of a U.S. Congressman were we able to get information from this sector, with a guarantee to them of anonymity.

Since it is commonly believed that most area laborers would not qualify under the agricultural sections for seasonal workers, there is a fear by the employers that if their workers apply and subsequently do not qualify, INS would have a record as to where they are located and subsequently could initiate proceedings to deport them and to penalize the employers. Further, it was learned that the farmers and ranchers were encountering problems in securing information from INS on the procedure for applying for H-2A seasonal workers visas.

In discussion with our members, we learned that businesses have experienced a greater administration cost in complying with the law. Employers have found that applicants, ironically, particularly U.S. citizens, seeking employment do not have the proper documentation indicating identity and employment authorization. We suggest that INS direct efforts

toward the greater need of educating the employers and prospective employees, including among that group U.S. citizens, about requirements of the law.

The Houston chapter of the Associated General Contractors, which is composed of some 900 members within the commercial building construction industry, informed us that, to date, their member firms have had extremely limited experience with the act. Because of the present economic situation in Houston, we do not have sufficient data or information to discern additional problems to illustrate trends at this time. The market volume for commercial buildings has been way down. As a result, very few firms have been involved in hiring.

In addition, the economic situation and the resulting low demand in employment do not allow us to project what impact, if any, this law will have on the availability of workers, at this time. The agricultural sector, however, has experienced loss of employees as those who have been found eligible for amnesty have left the farm to find more lucrative employment.

One observation of local employers has been the sense of

ambiguity created by INS' failure to provide for families when a family member qualifies for amnesty. These aliens feel that their family members who do not qualify will be deported because of their amnesty application. Something must be done to prevent splitting up of families. We believe that INS, protestations to the contrary, can address this issue administratively, but has failed to do so.

In conclusion, the Houston Chamber of Commerce commends the Immigration and Naturalization Service for its successful and compassionate implementation of the legalization portion of the act, but urges the Government to be aware of the need to educate the nation's employers and prospective employees, U.S. citizens included, on their responsibility under the new law.

We urge a more aggressive information campaign to assist employees and employers alike in these efforts.

Further, we suggest that this Commission seek additional information after the enforcement of employer sanctions and discrimination claims have begun. Then, the implications of the new law can be more accurately measured and evaluated.

Antonietta Hernandez, Project Coordinator for the Texas Union Immigrant Assistance Project

The Texas Union Immigration Assistance Project is one of two AFL-CIO immigrant assistance projects in the country; we have a sister organization in Los Angeles.

Our project, which is a QDE (qualified designated entity), provided the following services: orientation to the Immigration Reform and Control Act of 1986, document counseling by trained qualified counselors, application assembly and completion, legal review of all applications, INS interview preparation, and we accompany applicants to INS. We also provide fingerprint and photo services, and other miscellaneous services. The quality and the extent of our services, as well as the low fees we request, reflect the commitment that organized labor has to assist all working men and women in this country. The labor movement has a long and rich history of advocating and initiating programs that will directly affect working people. And we continue to do so as in this immigration project that we have.

The national AFL-CIO supported employer sanctions

because we felt that in this manner the exploitation and abuse of undocumented workers will be alleviated or at least brought to a minimum. If you remedy that aspect of a worker, which is his or her illegal status, that which makes them vulnerable to abuse and exploitation by an employer, you in turn force the employer to treat them as a full and equal employee.

The raids which penalized undocumented workers would then take a turn where employers who hired them in the first place would be the party that would be penalized, and not the employee.

INS has taken some steps to educate employees about employer sanctions, i.e. the Employer Handbook, which is good. But I suggest that more education is needed, so that employers will not panic and terminate or dismiss any worker unfairly.

The Texas Union Immigrant Assistance Project has received numerous calls from employers asking what they are supposed to do; they really do not know. Once we talk to them, the majority of the employers will be cooperative and quite appreciative of the information and also will comply with the law.

I am seriously concerned with the numerous other employers that do not call to get information and proceed to act in an uninformed manner, and quite possibly, in an unlawful and discriminating fashion.

This brings us to the antidiscrimination pieces of the legalization. The national AFL-CIO supported employer sanctions, and we strongly supported the antidiscrimination provision of the law, so as to safeguard and protect the rights of any worker. We understand there is an acting special counsel to deal with this matter and that a permanent special counsel candidate has been nominated. We urge that a permanent special counsel be appointed as soon as possible.

We also strongly suggest that field offices be set up throughout the country, be it an office at EEOC, or at INS or the Justice Department, to handle public education and to assist persons who have questions regarding discrimination in regards to IRCA.

Final antidiscrimination specific regulations are not in place and, needless to say, this is long overdue and needs to be expedited.

Regarding the language as interpreted by the Justice

Department, "It is an unlawful immigration related employment practice for a person or other entity to knowingly and intentionally discriminate or engage in a pattern or practice of knowing and intentional discrimination against any individual," etc.

Proving intent, as the language states, is extremely difficult, if not impossible, and we strongly suggest that the language be modified as well as the interpretation of the Justice Department. Otherwise, the law really will be very difficult to prove and will be useless, as far as we see it.

In our experience, the impact of the legislation has been twofold. On the one hand, we see cases of an increase in wages because employers are aware of undocumented workers taking steps to legalize their immigration status in this country. This is one effect that we were hoping would happen. We do not see it as often as we would like to see it, but it is just beginning at this point.

The flip side of that situation is that those undocumented persons who have not yet taken steps to legalize or that the employers do not know that they have, or that those persons that are ineligible for amnesty, are being

exploited more than ever with employers abusing the situation and lowering their wages.

The legalization program will affect fewer numbers than were predicted; I think a lot of us will agree to that. Although a significant number will enjoy legalization, a still greater number of those not eligible will go to an even lower class of worker, where they will be more vulnerable than ever to abuse and exploitation.

These are some of the effects that we have seen, although we feel it is a little too early to really gauge the full impact of this legislation on workers, on employment, and on this country.

Robert McCain, Director of Recruitment, Houston Independent School District

The school district is so regulated already that one more regulation is perhaps not as important to us as it is to some. In terms of the impact of the new immigration law and the I-9 form in particular, well over half of our employees have to have some other kind of check and pass certain other types of regulations regarding certification. So, outside of

getting the instruments themselves, the impact on the employees has not been too great.

For example, to get a full-time certificate in the State of Texas, you have to be a citizen of the United States. To get even a permit, for all practical purposes, you have to have at least your alien registration. We have tried very hard to recruit people on H-visas from outside the country who can serve needs such as for bilinguals, but we have not been able to do that because of those requirements. So, when someone comes in to us with a certificate, most of what we need to see is already there.

Our big problem with the particular situation we are in now is logistics. We have over 20,000 employees spread out over a 15-mile-wide district and over 250 locations. The people that we employed since November 7 and before the forms became available are a pretty big problem for us.

The new people that we employ--we have the forms and we process their I-9 forms as we employ them. But we have over half of our people coming in from outside the State of Texas, our professionals. And we include in that, secretaries, clerks and aides, because they are also covered by certification.

We recruit and interview in February, March, and April. We send out contracts by mail in May, June, and July, and they report in August. Invariably, when they come in, they have left their birth certificates with their mothers or everything else is packed up, and it is very difficult for all of them. We hire anywhere from 1,600 to 2,200 new teachers alone. That is not counting the other employees every year. And the big problem we have is that 3-day limit, where we fully anticipate to have some classrooms vacant for several days, while they're rounding up all of those materials. We have sent them letters and told them what they need to do, but dealing with that many people, that is going to happen.

As far as our other types of employees, I have told all of the interviewers and asked them specifically, "Have you changed your interviewing or your screening in any way since the immigration regulations have come along?"

Everyone of them told me that there has been no change in screening, interviewing, and in the hiring practices, other than the fact that we have to go through one more process.

So we do not feel in terms of the impact on any particular group that [the law] is having an impact on anybody getting employed. It may delay them for several days, but it

does not affect who is employed and what kind of employment they receive.

Henry Broesche, Past President, Greater Houston Builders Association

I am here representing the Greater Houston Builders Association, and I would imagine we were asked to speak regarding employer sanctions because of the tremendous amount of subcontractors that we hire in the area that could possibly hire illegal aliens.

I am not saying that is the case. However, there are a lot of subcontractors in concrete or brickwork, and this type of thing, that have Mexican Americans that work there. We have some problems with this act, and I am going to list them in what I think are the biggest problem areas:

1) The overall philosophy of this act makes us the police force. We should not be the police force.

2) The definition of "independent contractor" in this act, does that include our subcontractors as an independent contractor?

We have been through this situation before regarding withholding taxes, and it is our opinion that these are independent contractors. When I say an "independent contractor," we as the builder or general contractor hire a bricklayer or a contract finisher, and we pay them a fee to do this work.

It has been our national position, the National Association of Home Builders, that these people are independent contractors. Actually we do not have to worry about him because he is an independent or a subcontractor. That needs to be clarified.

As a builder of our size--we have 20 employees--we might have 100 independent contractors with employees that total maybe 200 or 300. There could be seven or eight people that work on a crew, whether it be carpentry, bricklaying, concrete, or what have you. So, there is a major problem as far as we are concerned.

We have taken the position, and our National Association has taken the position that these are independent contractors. But the sanctions are great. What if 2 years

from now there is a ruling that comes down and says we should have gone in and found out everyone that worked for this subcontractor, that we needed an I-9 form for them.

That needs to be cleared up. There could be a young man that is 17 years old, that is hauling cement or sand for the contractor or carpenter or anything. It could be a helper, it could be anybody, just a cleanup person.

We have no control over the people that hire him to frame or raise the framing on the house. [The contractor] is given a set of plans. He is asked to do this and he obviously gives us references to make sure that we know that he can do this work. Based on that, he is an independent contractor. He is not paid by the hour; he is [not] paid by the week, or semimonthly; he is paid for the completion of the job.

So, the independent contractor situation is one of our major problems. And we need to make sure that that is clarified, where down the road some years that this is not considered to be an employee as far as the law is concerned.

Enforcement--we are concerned if it will be equally and fairly applied to all in how it will work. I do not need to

expound much on that. That is basically what we are concerned about.

We think that this creates a great market for forged documents which would place the employer in an extremely tense situation. Now, I have read the act and I understand that we are not in a position to have to decide whether they are forged or not. However, I am sure we are all aware that if you have a situation where things can be very neatly forged, things can be not neatly forged, or things can be in the middle.

We are in a police situation, and our people are not trained for that. We have a personnel manager, or in a lot of builders' situation, you have a one-man office with a secretary or two. And these people -- and this is predominately the case in the United States -- are not trained to look for this type of thing. Their time is spent in doing things that are profitable for the organization and corporation, and it shouldn't be spent on policing an act that we have to live with.

Recordkeeping is arduous and time-consuming. It is not a major factor. However, it is there.

We feel that labor cost will go up. Anytime you put more paperwork on our superintendents or people that hire--most of the builders in the United States are five or six or fewer employees--and you do not have a specialist in personnel, like say a builder that is doing 2 or 3 or 4,000 houses a year, to add this to their job description is rather difficult from a standpoint of the recordkeeping that is involved.

The "Mom and Pop Builder" is what you see with most builders today.

We as a builder are a little bit larger than that. Hopefully, we are a little more sophisticated. That does not mean we are any better than anybody else. However, with 20 employees, we do not have what we would call a personnel department to do this. And the department head, whether it be a superintendent hiring in the field, a new superintendent, a person hiring in the office that runs accounting, another staff accountant or something of this nature, they have to perform those duties of this I-9 form.

You do not go in and say to one person, "This is the law, this is what you do, this is how you do it." You have

got five, six, seven or eight people to train.

This is a time-consuming problem. If you roll all of this together, ultimately, what we are talking about is increasing the cost of housing, which is a major problem in Houston, Texas and in the United States. What we are trying to build is affordable housing.

There are people who will work for a certain wage; there are people who if you pay that same certain wage won't work. And all it is doing is cutting down the labor force. We feel it will drive up the cost of housing.

In conclusion, on policing our borders, I guess Texas falls in the midst of this, and I would imagine that is why the hearings are held here. We are very close to Mexico. We do not feel that we should be put in a position to have to enforce and police this particular law.

And I will conclude that I think this will ultimately affect every American, not just employers.

Salvador Esparza, President, Houston Hispanic Chamber of Commerce

I represent the Hispanic community of Houston both as president of the Houston Hispanic Chamber of Commerce and as an owner of a commercial landscape ground maintenance firm. I

am a lifetime resident of Houston. I have been active in Hispanic business community affairs for the past 30 years.

I am pleased to present a few remarks to this committee regarding the Immigration Reform and Control Act of 1986, especially relating to the implementation and its impact on the civil rights of the Hispanic community.

We consider this act to be an embarrassment to all the citizens of the nation that professes to endorse human rights. This act seemed to us to have become a law contrary to the expectations of all who have served and observed the political scene in the United States for the past few years.

Therefore, it seemed to us, that this is more an act of political legalization than of concerned policymaking, and in having the effect of discrimination against Hispanics.

At this point I will direct my remarks as the owner of the landscape and grounds maintenance firm, an industry that relies largely on Hispanics for its work force.

When the act passed in November 1986, employers were informed that there would be a requirement to fill out a form INS I-9, which was to appear on May 5, 1987. Information regarding this I-9 was also supposed to have been available at this time. It was not.

Our community took the initiative to find out what the procedures and regulations were to be for the implementation of this act. We were told that no information was available regarding either the form or the procedure of filling out the form, let alone any of the other procedures and implementation of the act as it concerned employers.

The lack of information notwithstanding, we set up seminars to discuss the role of this act, and used the resources that were available, such as legal advisors, INS representatives, and so on, to attempt to speculate what would be the requirement.

The result of this lengthy delay and the absence of any office and agency who would take responsibility and decisive action regarding the message led evidently into chaos and confusion. Employers laid off Hispanic employees in the fear of threats of fines for noncompliance. We also saw a lot of contractors losing contracts because of employers' fear of noncompliance.

When the I-9 form and some information finally did arrive, it was confusing, time-consuming, and costly to prepare, and did not guarantee safety to the employer or to

the employee. This has added significant hardship to the business and especially to small disadvantaged business concerns.

First, paperwork. The paperwork required for a business to operate is already substantial. The I-9 form, not only adds to this burden of actual paperwork, but increased the anxiety about the paperwork.

Small businesses do not have the luxury of personnel managers, inspectors, and various departments to ensure that compliance regulations are met. Therefore, it has added substantially to the already difficult framework of minority enterprises.

Second, the upgrade of employees. It is common knowledge that it has cost a great deal for businesses to train employees and requires effort to keep one's working force in top shape. This involves training, education, promotion, and morale. The Immigration Reform and Control Act has and will affect all the time, energy and resources that business has invested in the upgrade of their work force.

Third, the finding of the employees. Contrary to the belief of those who are far from this situation, Hispanics are

not taking jobs away from the general American work force. Rather, they are filling a place that was a vacuum in the existing work force.

Speaking for the industry of landscaping and grounds maintenance, it is very difficult to find non-Hispanic workers who are willing to do grounds work maintenance, because it involves long hours, and hard work outdoors, let alone do it for industrial-competitive wages.

At this point, I would like to broaden my perspective, and speak as president of the Hispanic Chamber of Commerce regarding the implementation and impact that the act has on the Hispanic business under my purview.

The difficulty of implementation is similar to all business, but the impact is far reaching for the landscaping and grounds maintenance industry alone.

The Immigration Reform and Control Act of 1986 is causing sufficient damage to the economic, social, and political well-being of the Hispanic people.

The basis of the act is economic. Collectively, we have spent the past 50 years or more trying to establish ourselves as contributing members of the mainstream society in terms of

our education and standard of diversity in our business community in the face of tremendous setbacks in education and capital.

It seemed that just as we are beginning to make real headway and establish the foundation for a strong and virile business community, in one act we were set back to square one. Only worse, because this act gives legal justification to not hiring Hispanics. And if Hispanics cannot get jobs, then they cannot develop individually as a group into citizens of the mainstream of America. This is a sizeable obstacle to the concept and development of Hispanic entrepreneurs in a community that is a fast-growing sector in Texas.

Some have said immigration reform and control was intended to apply to all persons not United States citizens. In reality, the only group that it significantly affects is the Hispanics, particularly from Mexico, El Salvador, and Guatemala. They are the people who are making up the work force that the act seeks to disqualify.

The social effect has been and will be staggering. The social growth of the Hispanic community has matched its economic growth, and the act has disrupted both. It has taken

50 years for us to overcome the stigma of the "wetback" and culturally hold ourselves as American. Now, a group of legal American citizens will suffer with those who are not yet citizens.

As the fastest-growing minority in the United States and a potential voting force, if Hispanics are: (1) recognized in the census as part of the native population, and (2) not allowed to participate in the political mainstream, then the potential Federal aid that should come to Texas by virtue of the population will be lost. And the group that comprises a great segment of the population will go without representation because they cannot vote. Those Hispanics who are and who might potentially serve as elected officials will be penalized by the social effects of this act.

In conclusion, as a small business concern and as a representative of the community, I would like to say that the Hispanic community considers this act to discriminate directly against us as a group and to paralyze our economy, socially and politically.

If we were not living in the United States, we might tend to say that someone somewhere observed our growth in the

community, and our numbers, and our increasing education, our power in voting block and our marketplace, and felt threatened by these accomplishments and contributions that we have made. In fear, this entity said, "I will put a stop to the growth of the Hispanic people," and considered the Immigration Reform and Control Act of 1986. In doing so, he could not have more effectively hurt us.

Glen Rex, Executive Director of the Houston Restaurant Association

The Houston Restaurant Association is a chapter opposite the Texas Restaurant Association. We are the representing body of the restaurant and food service industry in the State of Texas. We work very closely with the National Restaurant Association on issues at the Federal level.

Our interest in the immigration bill is one of increased regulations and employer requirements to the Federal Government. Basically, we represent family-owned, single unit operations, small businesses, people who go into business with a good idea and are able to accommodate that good idea in terms of presenting a good product to its general public. As

such, their primary concern in their business is to spend time in the kitchen, on the floor, and dealing with their customers. That is where they make their living.

We are very interested in all forms of legislation, whether it be city, State, or Federal, what we feel impinges on the right of that operator to take care of his business. We would like to have more freedom to operate our businesses as we see fit. The problem that we have always run into is that we've always felt that the marketplace is the ultimate regulator.

The marketplace tells us what we are doing right and what we are doing wrong. And if we do not accommodate that, then we do not stay in business. Our basic interest in this bill is that it is an additional requirement and additional burden on our members, on the restaurants who operate in the community, to accommodate this bill.

To this point, our activities as an association have been to educate the membership and try and initially clear up confusion and apprehension that was first generated when the bill was signed back in November. We conducted a series of seminars with specialists, immigration attorneys, and labor

relations consultants to address our members on the broad terms of the immigration bill, what the bill itself was trying to achieve and then try to address as many specific questions as we could.

We further addressed our members through our monthly correspondence and newsletters and other legislative bulletins. We have also retained the services of an immigration attorney to speak directly to our members when needed.

Generally our position has been one of education. We want to make sure that our people know what's going on with the bill, and they know how to accommodate it. Our biggest concerns with the bill I think [involve] the potential for discrimination. A large number of the jobs that you find in a restaurant are menial-labor-type jobs. And as such, they pay the very basic minimum wage.

Labor turnover is the major problem in a restaurant, not because of this or any other legalization but simply because the job does not require a lot of background skills to accomplish washing dishes or mopping floors.

Labor in those situations has always turned over at a

rapid rate. We feel by the impact of this new legislation, that the turnover rate will increase. That gives us some concerns about labor costs. Does it mean we have to pay that laborer higher wages in order to keep him in a little more stable position?

The amnesty provisions were an initial concern and also an apprehension to us. Those concerns have abated somewhat. Now the [employer sanctions] provisions of the bill have not been made clear. People know the steps that they need to take in order to make the amnesty provision work for those employees on their payroll prior to January 1982.

Rafael Acosta, Regional Vice President, League of United Latin American Citizens (LULAC)

I come before you today as the National Vice President for the Southwest Region for the LULAC organization.

The Immigration Reform and Control Act of 1986 was passed by the 99th Congress in mid-October 1986 with it's primary purpose to control illegal immigration into the United States. This new law will have a profound impact on every employer, regardless of size as well as all undocumented workers in this country.

The LULAC organization recognizes that the implementation of this act will be the starting point of a product of a repeated and sometimes hurried compromise, which will raise questions that over time will be answered both by the regulations of the INS and by litigation.

The legalization process of the immigration act has been underway for 3 months, and its dismal showing so far is evidence of the disinformation given to the public and the hardnose attitude taken by the Immigration and Naturalization Service.

This attitude can clearly be demonstrated by the remarks made by the INS Commissioner, Mr. Alan Nelson. And I quote, "Illegal aliens should be afraid of INS; if not, we haven't been doing our job."

In addition to this, the process which an undocumented worker goes through is designed to minimize his chances rather than to aid him in gaining legal status. It is not surprising to the LULAC organization that a mere 300,000 have applied for amnesty out of 4 million [eligible] estimated by the INS.

The only excuse given so far by the INS is that they have not received the expected cooperation from church and

volunteer groups. However, the INS should recognize its own failure to provide these organizations with start up funding, and timely and accurate training.

The immigration reform act also places new and unjust obligations on employers and, therefore, tends to utilize them as tools for the Immigration Service. Every employer now has to verify that each new employee hired after November 6, 1986, is authorized to work by examining a variety of documents.

The LULAC organization has endorsed a national campaign to repeal the employer sanctions provision of the Immigration Reform and Control Act. Given the stigma already present, every Hispanic in this country will be thought guilty until proven legal by jittery employers who would be subject to fines for hiring undocumented workers.

An Anglo or black American seeking employment would not be subjected to this new employment test. It will be interesting to see how employers react to the proposed sanctions once they are in effect come September of this year.

However, even though they are not in effect yet, a series of events have vindicated LULAC's concern about the

discriminatory and selective impact employer sanctions would have upon the Hispanic community.

In certain school districts, Hispanic children have been asked to raise their hands "if you're an illegal" in order for them not to receive applications for social security numbers. In recent times in the Pasadena School District, Hispanic workers who were eligible for legalization and therefore employment authorization were fired for failing to produce a social security card. Only after a court order were these employees able to regain their employment.

Another example is that of a part-time instructor at El Paso Community College, who was denied his paycheck for failing to produce a current driver's license in spite of presenting a valid U.S. birth certificate.

In conclusion, the LULAC organization is forcefully against any employer sanctions because of the discriminatory effects it will have on the Hispanic work force in this country.

In addition, Hispanic businesses which are in predominately Hispanic areas would be severely affected and would become targets of the Immigration Service to impose the penalities and fines.

Janet Pena, Administrator of the Immigration Ministry, Catholic Diocese of Galveston and Houston Catholic Charities

The remarks that I would like to make are on behalf of the 76 Catholic churches that are participating in legalization within the dioceses of Galveston and Houston. They are operating out of 52 different sites. Some are working as coalitions, and we have trained over 12,000 volunteers who are participating in one way or another through this system. We have processed over 3,200 applications to date.

Our parishes provide education, screening, assisting to complete the application, gathering the necessary documents, medical exams for marginal income families, and also preparing the packet that will go to our Catholic charities legalization center, which is the qualified designated entity.

Because of the experience our volunteers have, they are seen as information centers by the community. When we provide training to our volunteers, we are assuming that they also could be employers or could educate their employers. So we provide the employer sanction information to our volunteers, as well.

What we are seeing most is that employees have already been fired or their employers are threatening to fire them before the September 1 deadline, because they don't have work authorization. And, [although] other kinds of documents might be acceptable for the I-9, all the employer wants is the employment card, the I-688A from the Immigration Service.

The employees themselves, or applicants, are very desperate. They are coming to the parishes wanting us to process their applications immediately. And as [an earlier presenter] mentioned, sometimes they do not yet have very important documentation that is necessary for their approval. But they want their applications submitted to the Immigration Service.

This is a concern, and when we do come across these situations, our volunteers take the opportunity to call the employer. On the whole, employers have been very positive. When somebody outside of the Immigration Service calls them, they are very responsive and in many cases, very accommodating to what the applicant needs.

However, the problem with this September 1 deadline, and showing the documentation needed, really is in opposition to the application period, which extends until May 4 of next year.

By asking that the employer have work authorization by September 1, [INS] is essentially shortening the application period. So our agency's attorney and other organizations working to get people legalized have essentially been overloaded in this 4-month period trying to prepare these applications. That is a direct inconsistency in the law.

The other overwhelming situation we have seen is that employers are refusing to give documentation on work verification to employees. We have seen this take many different forms. They are unwilling to fill out the employment letter, and we use a form letter that requires all the information as stated in the regulations.

The regulations state that if an employer does not have public records or employment records, they can state why they do not and have their employer letter notarized. This is essentially a legal document that is saying this employer has paid cash, probably has not paid Federal withholding or social security. And despite the fact that there is confidentiality under this law, an employer is not willing to believe that from the Catholic Church. They have to hear it from the enforcement organization themselves. We are also concerned

about discrimination. We have already seen that those people covered under the grandfather clause, but who do not have the documentation to apply, or who for one reason or another are not eligible [for legalization], are already being taking advantage of by their employers. Employers are cutting back wages, extending their hours and giving them the undesirable kind of work in the corporation, because the employers know that there is no way that [the grandfathered employees] have flexibility now to change jobs.

We also are seeing employers selling employment verification information. The price ranges from $45 to $1,500. We have seen this in at least 12 of our parishes. This is another concern that the law is providing more opportunity to take advantage of these individuals.

And we also are seeing that employers are calling the Texas Employment Commission, our state employment commission, to get the I-9 form and to get information on the employer sanctions and on work verification. Because this is seen as an objective organization, employment is already their function; we would like to suggest that the employment commission participate more actively in education, dispersing information, and providing booklets and pamphlets. I think

that it would just be a more acceptable source of information to the employers in the community.

Laura Sanchez, Proyecto Hospitalidad

I am Laura Sanchez, from San Antonio, Texas, and I direct Proyecto Hospitalidad, a refugee aid project.

We assist, principally, refugees from El Salvador and Guatemala, some from Nicaragua, Honduras, Costa Rica, and even some from further on down south: Peru, Argentina, Equador, Chile.

I worked with the Canadian Government, under the Geneva Convention, sponsoring refugees to Canada. I have been doing this for almost 6 years. Because our Government does not abide by the Geneva Convention, and because we do not uphold the National Act of 1980 for the refugees, we deport Central American refugees back to their respective countries.

I have been very involved in working in the immigration issue for many years. My parents used to house people in our home when I was a child. And sometimes Immigration would come to our home, take people with them, along with my parents. So, I am not at all unfamiliar with immigration policy and immigration tactics.

This new law, which is called the Reform and Control Act, is not at all a reform law, it is a control act. Some of the undocumented, will never be able to become legal in this country, because they will never meet the requirements. Others will eventually be able to go through all of the agony of getting together all of their documents, and maybe in 7 to 8 years, become citizens of this country.

Non U.S. citizens with permanent residency status in this country are affected by this law and now have to show that they intend to become citizens of this country. Those of us who are citizens of this country, who apply for jobs now, have to show proof of that citizenship. We have lost tremendous liberties, and a lot of us are not aware of it. I do want to state here that those of us who did not like to lose this freedom so easily, are very much opposed to it and want to see the repeal of this law.

We want to see a more liberal policy in terms of the requirements for the legalization process, and we want to see the National Act of 1980 and the Geneva Convention become national law to which we should adhere.

"Okay, I can only fit five of you in my car, well, let me see which ones I'm going to pick." He would pick five of them and put them in the back of the patrol car, and we went to the downtown jail where they were booked for felony arrests, illegal entry. I said, "wow" this is what it meant to become a police officer.

It is not what I had thought. Of course, there was not much I could do at that time, because I was a rookie. And it is best that as a rookie you just look and you listen, and you learn.

I learned that I could do something about it later on. Good things have come from our administration, such as Chief Caldwell, who came out with a policy that said we would not ask someone for their papers, unless we had probable cause to detain them for an incident.

These people were not only victimized by the justice system, they were victimized by the hoodlums out there, they were rolled. And then when you arrest these hoodlums, it's, "Why are you doing this? These people have no business here anyway. It is not their money, it's our money." If I am an employer, and I have to fill out whatever forms, and the

easiest one is the one that says, "Is a citizen," that's the application that I am going to accept. And every other one is going to go down the trash. Because I am going to say, "Hey, I cannot afford to hire someone to do all this paperwork and keep all these files." That is realistic. Budget, money, that's realistic.

IMMIGRATION REFORM AND CONTROL ACT OF 1986

"SIMPSON-RODINO IMMIGRATION BILL"

Title I-CONTROL OF ILLEGAL IMMIGRATION

PART A-Employment

EMPLOYER SANCTIONS:

Sec. 101 CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS. [new INA Sec 274A]

Prohibition of Hiring "Unauthorized Aliens"
It is unlawful to "knowingly" hire, recruit or refer for hire any unauthorized alien.

"Grandfather for Current Employees"
Employer sanctions do not apply to employment which has occurred before enactment of this statue.

The employer shall be presumed to be in compliance with the paperwork and verification requirements for the first 24 hours after the worker has been hired. This can be rebutted by a showing that the employer has attempted to evade liability through employment of day hires.

Verification of Identity and Work Authorization/Requirements
Employers must verify for all individuals hired, recruited or referred for employment, the individual's work authorization and identity by examining appropriate documents. It is an affirmative defense if the employer reviews the appropriate documents in good faith. An employer must provide an attestation on a form established by the Attorney General that he has verified that the individual is not an unauthorized alien by examining the appropriate documents.

Documents Required to Establish Work Authorization and Identity
An individual may provide certain enumerated documents which: (1) both identify the individual and verify legal status or, (2) certain enumerated documents which verify right to work but do not identify the individual and a document which verifies identity. Such documents that can be used to establish (1) are as follows: United States passport, unexpired foreign passport with work authorization stamp, certificate of U.S. citizenship or naturalization, or alien resident or registration card found acceptable to the Attorney General.

Such documents that can be used to establish (2) are as follows: one documents that proves employment authorization such as: a social security card, U.S. birth certificate, or another designated document determined to be acceptable by the Attorney General and one document establishing identity such as: a driver's license or other state issued identification determined to be acceptable by the Attorney General.
If an individual is referred by a State Employment Agency, the

employer must retain the appropriate documentation from such a referral including a certification that the agency complied with the sanctions screening procedure.

Employers must retain the appropriate documentation for three years from the date of hire and/or year from the date of termination of an employee. Employers must retain the attestation form and make it available for inspection by INS and DOL.

Provisions for Notice and Hearing for Violations

The Attorney General must provide an employer with notice and a hearing with respect to a violation. The hearing shall be before an ALJ and shall be performed in accordance with the Administrative Procedure Act at the nearest practicable place to the location of the employment or residence of the employer. If the employer does not request a hearing on the violation, the order shall be final and unappealable.

If the ALJ determines that a violation has occurred, he must issue findings of fact and serve an order to cease and desist.

An appeal of the ALJ's decision may be make to the U.S. Circuit Court of Appeals.

Penalties for Employers

The order shall include the following civil penalties: $250 - $2,000 per alien for a first offense; $2,000 - $5,000 per alien for the second offense; $3,000 - $10,000 per alien for the third offense.

Criminal penalties for pattern and practice violations are; $3,000 per alien and/or six months imprisonment per violation. The conference report notes that Congress intends that the criminal sanctions are to be used for serious or repeat offenders who have clearly violated the law. INS is expected to target repeat offenders. Also, the employer's size is to be a factor in determining the sanctions.

There is a one year notice and citation period for a first offender following a six month education period where no penalties apply. Following the receipt of a citation, an employer is subject to civil penalties even though the citation period has not expired.

There are also civil penalties for employers who fail to maintain the paperwork required for the employer verification system, the attestation, etc. Penalties range from $100 - $1,000 for each individual. In determining the penalty amount, consideration should be given to: the size of business; the employer's good or bad faith; the seriousness of the violation; whether the employee was an unauthorized alien; and the employer's history of violations.

Criminal Penalties and Injunctions for Pattern and Practice

A request for preliminary injunctive relief against pattern or practice violators may be filed in U.S. District Court.

State Sanctions Law Preempted
The bill specifically preempts all state sanctions laws.

Definition of Unauthorized Alien
An unauthorized alien is any alien who is not lawfully admitted for permanent residence or not authorized for employment by the Attorney General or other provisions of this Act.

Employers of Seasonal Agricultural Farmworkers
The Act prohibits the Attorney General from initiating enforcement proceedings or imposing penalties under this section against employers of seasonal agricultural workers until the end of their legalization period.

Termination of Sanctions for Pattern of Widespread Discrimination
Employer sanctions may be terminated after a three year period if it is determined that they cause widespread discrimination. However, the sanctions will not automatically expire after three years.

ANTI-DISCRIMINATION PROVISIONS:

Sec. 102. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.
[new INA Sec. 274B]

This section provides that it is an "unfair immigration-related employment practice" to discriminate against any individual because of national origin or citizenship status of any citizen or intending citizen.

Exceptions
Exceptions to this provision are as follows: an employer of three or less; national origin if the individual is covered under Section 703 of the Civil Rights Act; discrimination because of citizenship status if it is required to comply with law; regulation or governmental contract; and a citizen or national of the U.S. can be preferred over an alien if their qualifications are equal.

Filing Charges Under Section 102
Immigration officers or persons affected by an "unfair immigration-related employment practice" may file a charge with a special counsel. Charges must be in writing, under oath or affirmation and contain the information required by the Attorney General.

The special counsel shall investigate each charge received and within 120 days determine whether or not there is reasonable cause to prosecute.

No complaint may be filed for incidents that occur more than 180 days preceding the date of the filing of the charge.

Hearings on the charges brought against an employer are before an ALJ. Decisions may be appealed to the U.S. Court of Appeals and must be brought not later than 60 days after the ALJ's order.

Sec. 103. FRAUD AND MISUSE OF CERTAIN IMMIGRATION-RELATED DOCUMENTS.

This section amends 18 U.S.C. 1546 to include civil and criminal penalties for fraud and misuse of immigration and employment authorization documents pursuant to the Comprehensive Crime Control Act.

INS FUNDING FOR ENFORCEMENT AND SERVICES:

Sec. 111. AUTHORIZATION OF APPROPRIATIONS FOR ENFORCEMENT AND SERVICE ACTIVITIES OF THE IMMIGRATION AND NATURALIZATION SERVICE.

This Section provides Congress' sense that while almost all INS sectors merit additional personnel, Border Patrol, Enforcement, Inspections and Examinations are targeted to handle the anticipated receipt of the large volume of applications and petitions.

In addition to any other amounts, the DOJ appropriation shall be increased as follows: for FY 1987, $422,000,000; for FY 1988, $419,000,000. For EIOR: in FY 1987, $12,000,000; in FY 1988, $15,000,000. Also, sufficient funds shall be made available to increase the Border Patrol at least 50% in each of FY 1987 and 1988 over FY 1986. There is also a supplemental appropriation for Wage and Hour Enforcement.

Sec. 112. UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED STATES.

The maximum penalty for transporting or harboring an alien not authorized to enter the U.S. will be increased to $10,000. The law is amended to cover situations such as the Mariel boatlift under the criminal provisions of 8 U.S.C. 1324.

Sec. 113. IMMIGRATION EMERGENCY FUND.

This provision authorizes an appropriation of $35,000,000 for INS Border Patrol and enforcement activities, and for reimbursing States and localities in meeting immigration emergencies, as determined by President and certified by House and Senate Judiciary Committees.

Sec. 114. LIABILITY OF OWNERS AND OPERATORS OF INTERNATIONAL BRIDGES AND TOLL ROADS TO PREVENT THE UNAUTHORIZED LANDING OF ALIENS.

Owners or operators of an international toll road or bridge who act diligently and reasonably to fulfill their duty to prevent unauthorized landing of aliens will not be liable for penalties. The Attorney General may inspect such facilities at the request of the owner or operator of such facility.

Sec. 115. ENFORCEMENT OF THE IMMIGRATION LAWS OF THE UNITED STATES.

It is the sense of Congress that immigration laws should be vigorously and uniformly enforced without disregard for constitutional rights, personal safety and human dignity of U.S. citizens and aliens.

Sec. 116. RESTRICTING WARRANTLESS ENTRY IN THE CASE OF OUTDOOR AGRICULTURAL OPERATIONS.

An officer or other INS employee may not enter farms or other outdoor agricultural operations without owner's consent or a properly executed search warrant for the purposes of interrogating a person as to his right to be or remain in the United States.

Sec. 117. Section 245 is amended to require the applicant to have been continuously in status prior to the date of filing the application. This provision does not apply to immediate relatives of U.S. citizens.

PART C-Verification of Status Under Certain Programs

Sec. 121. [SAVE PROGRAM:
[VERIFICATION OF IMMIGRATION STATUS OF ALIENS APPLYING FOR BENEFITS UNDER CERTAIN PROGRAMS.

States are required to verify, through computer records, the legal status of aliens applying for certain public assistance programs, except upon recommendation by the appropriate Secretary that a particular verification program would not be cost-effective or is redundant.

TITLE II-LEGALIZATION

LEGALIZATION OF UNDOCUMENTED AND OUT-OF-STATUS ALIEN RESIDENTS:
Sec. 201 LEGALIZATION OF STATUS.

Legalization to Temporary Resident Status
The Attorney General shall adjust the status of an alien to lawfully admitted for temporary residence if the alien meets the following requirements: the alien files an application within the 12 month period designated by the Attorney General (this period must begin no later than 180 days from the date of this enactment) if the alien is subject to an order to show cause, then he must file an application within the first 30 days of the application period or within 30 days of the issuance of the OSC, whichever is later; the alien must have resided continuously in the U.S. in an unlawful status since 1982; nonimmigrants are eligible if they establish that their period of authorized admission expired before 1/1/82, or that their illegal status was known to the government as of that date; the alien must be continuously physically present in the U.S. from the date of enactment of this section. Brief, casual and innocent absences from the U.S. shall not be considered breaks in continuous physical presence; the alien must be admissible as an immigrant (with certain waivers based upon humanitarian circumstances.

family situation, or public interest available) the alien cannot have been convicted of a felony or three or more misdemeanors committed in the U.S.; the alien must not have assisted in persecution of others; and the alien must register for the SSS. Cuban-Haitian entrants are eligible for benefits under this section.

Adjustment to Permanent Resident Status

An alien must apply within the one-year period beginning with the nineteenth month after the date the alien was granted temporary resident status. The alien must have resided continuously in the U.S. from the date he was granted temporary resident status. Brief, casual and innocent departures shall not break the continuity of residence. The alien must establish that he is admissible as an immigrant (with certain waivers as mentioned above) and has not been convicted of a felony or three or more misdemeanors committed in the U.S. The alien must demonstrate basic citizenship skills entailing a minimal understanding of ordinary English and knowledge of U.S. history and government or be pursuing a course to obtain such a skill.

Termination of Temporary Resident Status

Temporary resident status will terminate: if the Attorney General determines that the alien was not in fact eligible for such status; if the alien commits an act that makes him inadmissible as an immigrant except as may be waived; if the alien is convicted of any felony or three or more misdemeanors committed in the U.S.; or at the end of 31 months after the alien is granted temporary resident status, unless the alien has filed for adjustment of status and such application has not been denied.

Employment Authorization

The Attorney General shall grant the temporary resident alien work authorization and provide him with the appropriate documentation.

Voluntary Agency Assistance

VOLAGS will be authorized to assist with legalization. They cannot forward applications to the Attorney General unless the applicant consents. The Attorney General must make the determinations required by this Section. Other VOLAG material will not be available to the Attorney General.

Fees

The Attorney General will set a fee schedule and use the fees to cover administrative and other expenses incurred in connection with review of applications filed under this Section. These fees shall be comparable to those charged for aliens seeking entry into the U.S. as immigrants.

Confidentiality of Information

Applications under this section are confidential and may not be used for any other purpose than to make a determination of legalization eligibility or in a criminal prosecution for having made fraudulent or fictitious statements in connection with the

application.

Waiver of Exclusion Grounds
Grounds for exclusion of immigrants found in Section 212 (a)(14), (20), (21), (25) and (32) shall not apply to this section.

The Attorney General can waive any other grounds in 212(a) for humanitarian purposes, to assure family unity or when it is otherwise in the public interest to do so, except: 212(a)(9), (10), (23), (27), (28), (29), (33) and (15) - except as (15) relates to application for adjustment of status other than an alien eligible for benefits under Title XVI of the SSA or Section 212 of Public Law 93-66. An alien is not barred by 212(a)(15) if he has demonstrated a history of employment in the U.S. evidencing self-support without receipt of cash public assistance.

An alien shall be required to undergo a medical examination at his own expense.

Temporary Stay of Deportation and Work Authorization for Certain Applicants
An alien who is apprehended before the beginning of the application period who can establish a prima facie case of eligibility to have his status adjusted, until the alien has had the opportunity during the first 30 days of the application period, may not be deported and shall be granted work authorization.

An alien who presents a prima facie application for adjustment of status during the application period, and until a final determination has been made on it, may not be deported and shall be granted work authorization.

Administrative and Judicial Review
There shall be no administrative or judicial review respecting an application for adjustment of status and no review of late filings.

Single Level of Administrative Appellate Review
The Attorney General shall establish a single level of administrative review based solely on the record at the time of the determination on the application and upon additional or newly discovered evidence that was not available at the time of the determination.

Judicial Review
Judicial review of a denial shall be given only in the judicial review of a final order of deportation. Review shall be based solely upon the record before the agency. The determination shall be conclusive unless the applicant can establish an abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

Continuous Residence

The Attorney General shall establish regulations to define the term "resided continuously," the evidence needed to establish such residence and other such regulations that may be required to carry out this section.

An alien outside the U.S. as a result of deportation cannot be considered to have resided continuously. Absence on advance parole does not break the continuity.

The bill provides that employment related documents, if available, should be used to show continuous residence. The documents need not be provided by the employer and can be independently corroborated by affidavits. This is to satisfy the requirement that the Attorney General shall require that residence and physical presence be established by documentary evidence with independent corroboration.

Temporary Disqualification of Newly Legalized Aliens from Receiving Certain Public Welfare Assistance
Legalized aliens are barred from receiving most federally funded public assistance for five years.

Miscellaneous Provisions
Special authority is provided for expedited leasing or acquisition of property in fulfillment of this Section.

Notwithstanding any other provision of the law, the Attorney General can hire former military and federal civilian employees who retired on or before 1/1/86, and their retirement annuity will not be reduced while the individual is employed for a period not to exceed 18 months. (Note: there is a limitation on the number of these employees.) This period of service shall not increase their annuity.

Dissemination of Information on Legalization
The Attorney General shall cooperate with groups and organizations to broadly disseminate information with respect to legalization.

CUBAN/HAITIAN ENTRANTS:

Sec. 202. CUBAN-HAITIAN ADJUSTMENT.

Cuban and Haitian adjustment of status is authorized in the discretion of the Attorney General if the alien: applies within 2 years of this enactment; is eligible for an immigrant visa, except that certain exclusionary grounds are inapplicable; is not barred by Section 243(h)(2) of the Act; is physically present on the date of such application; and has resided continuously in the U.S. since 1/1/82.

Sec. 203. UPDATING REGISTRY DATE TO JANUARY 1, 1972.

The registry is updated from 6/30/48 to 1/1/72.

REIMBURSEMENT TO STATES:

Sec. 204. STATE LEGALIZATION IMPACT-ASSISTANCE GRANTS.

This provision appropriates $1,000,000,000 per year for four years (beginning in FY 1988) to reimburse (using a designated formula) State and local governments for the cost of providing public assistance and medical benefits to newly legalized aliens. Funds that are not used may be utilized through FY 1994. Thirty percent of the appropriated funds must be allocated equally among education, health and public assistance programs.

TITLE III-REFORM OF LEGAL IMMIGRATION

PART A-Temporary Agricultural Workers

TEMPORARY AGRICULTURAL WORKERS:

Sec. 301. H-2A AGRICULTURAL WORKERS.

The present H-2 nonimmigrant worker program is modified to create a new H-2A program for seasonal agricultural workers. These provisions are similar to the present process and require a Department of Labor certification that admission of these workers will not adversely affect local wages and working conditions. The new H-2 process creates an expedited process and outlines the rights and responsibilities of the various parties.

"SCHUMER SEASONAL AGRICULTURAL WORKERS"

Sec. 302. PERMANENT RESIDENCE FOR CERTAIN SPECIAL AGRICULTURAL WORKERS. [new INA Sec. 210]

The Attorney General shall grant temporary resident status to seasonal agricultural workers who apply for adjustment within the 18 month period commencing on the first day of the seventh month after this enactment.

In order to qualify for this status the alien must establish that he: has resided in the U.S.; has performed seasonal agricultural services in the U.S. for at least 90 man-days during the 12 month period ending on 5/1/86; is admissible as an immigrant, except as otherwise provided.

Adjustment to Permanent Residence

Adjustment is provided for Group I (where the alien has provided seasonal agricultural services of at least 90 days in each of the 12 month periods from 5/1/83 to 5/1/86), subject to the numerical limitation of 350,000, one year from the date the alien was granted temporary resident status.

Adjustment is provided for Group II (where the agricultural service has been 90 days between 5/1/85 and 5/1/86 only) two years from the date the alien was granted temporary residency status.

Travel Abroad and Work Authorization
During the period of temporary residence, the alien may travel abroad and shall be granted employment authorization.

Filing of Applications
Applications for temporary residence can be made within the U.S. or outside the U.S. at appropriate consular offices. If the alien qualifies for such status, the Attorney General shall provide the alien authorization to enter the U.S.

Voluntary Agency Assistance
VOLAGS or other qualified organizations can be designated to assist with these applications.

Proof of Eligibility
An alien may establish eligibility through government employment records, records of employers and other reliable records including those which credit work performed under assumed name. The alien has the burden of proving that he worked the requisite man-days by a preponderance of the evidence.

Confidentiality
As with the other legalization program, these records are confidential and have limited access to DOJ officials.

Waiver of Numerical Limitations and Certain Grounds for Exclusion
Numerical limitations and certain grounds for exclusion do not apply. The exclusion Sections that do not apply are 212(a)(14), (20), (21), (25), and (32). Waivers are available for humanitarian purposes, to assure family unity, or as otherwise in the public interest. Sections 212(a)(9), (10), (15), (23), (27), (28), (29) and (33) may not be waived. Section 212(a)(15), however, shall not apply where the alien has a history of employment in the U.S. evidencing self-support without reliance on cash public assistance.

Temporary Stay of Exclusion or Deportation and Work Authorization for Certain Applicants
Farmworkers who can establish a nonfrivolous case of eligibility to have their status adjusted (but for the fact that they they may not apply for such adjustment until the beginning of such period), until they have had the opportunity to file an application during the first 30 days of the application period, shall not be deported or excluded and shall be granted work authorization.

Aliens who present a nonfrivolous application for adjustment during the application period, and until a final determination, may not be excluded or deported and shall be granted authorization.

The Conference Report notes that this temporary stay of deportation and exclusion is intended to ensure that these aliens come forward to seek legalization without fear of deportation. To achieve this purpose, the Conferees intended that INS allow

these aliens to make a declaration under penalty of perjury: attesting that they have worked the requisite number of man-days; identifying the type or nature of the documentation that they intend to provide; acknowledging their awareness that false statements may make them subject to criminal prosecution; and identifying their current and immediate past employer(s). INS will not go beyond this criteria in seeking to determine whether the alien has made a nonfrivolous case for eligibility.

Appeal Process
The appeal process, including both administrative and judicial review, is similar to that of the other legalization program.

AFDC Benefits
Aliens admitted as temporary residents under this section are temporarily disqualified from receiving Aid to Families with Dependent Children (AFDC).

Seasonal Agricultural Workers Defined
Seasonal agricultural workers are defined as those persons performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities.

Criminal Convictions
Persons convicted of a felony or three or more misdemeanors are barred from temporary status.

REPLENISHMENT WORKERS:

Sec. 303. DETERMINATIONS OF AGRICULTURAL LABOR SHORTAGES AND ADMISSION OF ADDITIONAL SPECIAL AGRICULTURAL WORKERS. [new INA Sec. 210A]

During the years 1990 - 1993, replenishment agricultural workers can be admitted if there is a shortage of farm workers. These workers would be admitted as temporary residents on a formula linked to the 350,000 original legalized farmworkers, minus those still in agriculture. These replenishment workers would be required to remain in agriculture and can be adjusted to permanent residents after three years. They can be deported if they do not work in agriculture at least 90 days during this three year period. They may travel abroad and be readmitted. They are disqualified from public assistance and must have worked in agriculture for 90 days during five separate years to be eligible for naturalization. The exclusion grounds and waivers for replenishment workers are similar to regular seasonal temporary residents.

Sec. 304. COMMISSION ON AGRICULTURAL WORKERS.

This provision establishes a Commission on Agricultural Workers composed of 12 members appointed by the President and Congress to review the special agricultural provisions and to report to Congress within five years of enactment.

Sec. 305. ELIGIBILITY OF H-2A AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE.

H-2A agricultural workers are made eligible for federal supported legal assistance relative to their wages and working conditions, etc.

PART B- Other Changes in the Immigration Law

Sec. 311. CHANGE IN COLONIAL QUOTA.

The colonial quota is increased from 600 to 5,000 immigrant visas annually.

Sec. 312. G-IV SPECIAL IMMIGRANTS.

Special immigrant status is provided for certain officers of international organizations and their families who have lived in the U.S. for a lengthy period.

Sec. 313. VISA WAIVER PILOT PROGRAM FOR CERTAIN VISITORS.

A pilot visa waiver program shall be permitted. This program will waive tourist visas for nationals from designated countries who visit the U.S. for not more than 90 days.

Sec. 314. MAKING VISAS AVAILABLE FOR NON-PREFERENCE IMMIGRANTS.

For FY 1987 and FY 1988, 5,000 additional non-preference immigrant visas will be available without regard to labor certification, with first access to natives of countries adversely affected by the 1965 INA amendments.

Sec. 315. MISCELLANEOUS PROVISIONS.

Equal Treatment of Fathers
Natural fathers will be entitled to petition for benefits if the father has or had a bona fide parent-child relationship.

Suspension of Deportation
Suspension of deportation is amended to repeal the Supreme Court decision in Phinphathya v. INS, so that the continuity of physical presence required under Section 244 is not interrupted if the absence was brief, casual, and innocent and did not meaningfully interrupt the continuous presence.

TITLE IV - REPORTS TO CONGRESS

Sec. 401. TRIENNIAL COMPREHENSIVE REPORT ON IMMIGRATION.

The President must report and provide to Congress by 1/1/89, and every third year thereafter, an immigration impact report.

Sec. 402. REPORTS OF UNAUTHORIZED ALIEN EMPLOYMENT.

The President shall annually report to Congress on the implementation of the employer sanction program. Such report shall include information regarding: the employment certification system, violations and enforcement.

Sec. 403. REPORTS ON H-2A PROGRAM.

The President shall report to Congress two years after enactment, and every two years thereafter on the implementation of the temporary agricultural worker program.

Sec. 404. REPORTS ON LEGALIZATION PROGRAM.

The President shall make two reports to Congress on the legalization program, the first report shall be within 18 months after the end of the application period for adjustment to temporary resident status. The second report shall be within three years after the first report.

Sec. 405. REPORT ON VISA WAIVER PILOT PROGRAM.

The Attorney General and the Secretary of State shall together monitor the pilot visa waiver program and report to Congress within two years after its beginning.

Sec. 406. REPORT ON THE IMMIGRATION AND NATURALIZATION SERVICE.

The Attorney General shall provide Congress within 90 days of enactment a report detailing the resources required to improve the capabilities of INS so it can adequately carry out the services and enforcement activities required by this Act.

Sec. 407. SENSE OF THE CONGRESS.

It is Congress' sense that the President should consult with the President of Mexico on the implementation of this Act, and then report to Congress on the outcome of such consultation.

TITLE V-STATE ASSISTANCE FOR INCARCERATION COSTS OF ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS

Sec. 501. REIMBURSEMENT OF STATES FOR COSTS OF INCARCERATING ILLEGAL ALIENS AND CERTAIN CUBAN NATIONALS.

States are to be reimbursed for their costs of incarcerating certain illegal aliens and Marielito Cubans.

TITLE VI-COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT

Sec. 601. COMMISSION FOR THE STUDY OF INTERNATIONAL MIGRATION AND COOPERATIVE ECONOMIC DEVELOPMENT.

This section establishes a Commission for the Study of International Migration and Cooperative Economic Development. The 12 members of the Commission will be appointed by Congress to Consult with other countries concerning conditions contributing to unauthorized migration to the U.S. from the Western Hemisphere; investment programs to alleviate conditions that lead to unauthorized migration to the U.S.

Sec. 701. EXPEDITIOUS DEPORTATION OF CONVICTED ALIENS.

The Attorney General is to begin deportation proceedings against any alien convicted of an offense as expeditiously as possible after conviction.

TITLE VII-FEDERAL RESPONSIBILITY FOR DEPORTABLE AND EXCLUDABLE ALIENS CONVICTED OF CRIMES

Sec. 702. IDENTIFICATION OF FACILITIES TO INCARCERATE DEPORTABLE OR EXCLUDABLE ALIENS.

The Secretary of Defense is to provide within 60 days after enactment a list of facilities which can be made available to the Bureau of Prisons for the purpose of incarcerating aliens subject to exclusion or deportation.