

# IMPLEMENTATION IN ARIZONA OF THE IMMIGRATION REFORM AND CONTROL ACT

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## ARIZONA ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

*This summary report of the Arizona Advisory Committee to the United States Commission on Civil Rights was prepared for the information and consideration of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or the Advisory Committee, but only to individual participants in the community forums where the information was gathered.*

A SUMMARY REPORT

DECEMBER 1990

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### **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 protections of the law; maintenance of a nation clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices or 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 time as the Commission, the Congress, or the President shall deem desirable.

### **THE STATE ADVISORY COMMITTEE**

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights 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.

## LETTER OF TRANSMITTAL

Arizona Advisory Committee to the  
U.S. Commission on Civil Rights

### **Members of the Commission**

Arthur A. Fletcher, *Chairman*  
Charles Pei Wang, *Vice Chairman*  
William B. Allen  
Carl A. Anderson  
Mary Frances Berry  
Esther G. Buckley  
Blandina C. Ramirez  
Russell G. Redenbaugh

Wilfredo J. Gonzalez, *Staff Director*

Attached for your information is a summary report of two community forums held by the Arizona Advisory Committee on September 15, 1988, in Phoenix and on November 3, 1988, in Tucson. The purpose of the forums was to gather information on the implementation in the State of the Immigration Reform and Control Act of 1986 (IRCA).

At the forums, the Advisory Committee heard from community representatives, business owners, State and Federal officials, and professionals involved in assisting undocumented aliens with the amnesty/legalization process. The summary report is not an exhaustive review or analysis, but should be helpful to the Commission in its monitoring of IRCA's implementation.

The Advisory Committee approved (11-0) the submission of this summary report and believes it serves to fulfill its mandate to advise the Commission of issues that have civil rights implications in Arizona and the Nation.

Respectively,



Manuel Peña, Jr., *Chairperson*  
Arizona Advisory Committee

## **Arizona Advisory Committee**

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Manuel Peña, Jr., *Chairperson*  
Phoenix

Teresa Benavidez  
Clifton

Macario Saldate+  
Tucson

Isabel Garcia Gallegos+  
Tucson

Dr. Morrison F. Warren  
Tempe

Dr. Heinz R. Hink  
Scottsdale

Deborah Ann Watson+  
Tucson

Angela B. Julien+  
Tucson

Peterson Zah  
Window Rock

Ramon M. Paz+  
Nogales

Richard Zazueta  
Scottsdale

+Was not a member at the time of these forums.

### **Acknowledgments**

The Arizona Advisory Committee wishes to thank staff of the Commission's Western Regional Division for their help in the preparation of this summary report. The project was the principal assignment of Philip Montez with assistance from John F. Dulles. Support was provided by Grace Hernandez and Priscilla Lee Herring. An initial draft of the report was provided by Lallie Dawson of the Commission's Congressional and Public Affairs Unit with final edit by Thomas V. Pilla of the Western Regional Division. The project was carried out under the overall supervision of Philip Montez, Director, Western Regional Division.

The Advisory Committee wishes to also thank former members of the Committee, Dr. John P. White, Tempe; Deanna M. Faust, Litchfield Park; Lupe Flores and Shirley Whitlock, both of Mesa; and, John P. Schroeder, Scottsdale, for their input on this project.

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## INTRODUCTION

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)<sup>1</sup> 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 agriculture for a requisite period of time. The law also contains an amendment outlawing discrimination in hiring, firing, or referrals 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,<sup>2</sup> or to continue to employ a person hired after November 6, 1986, knowing the person is not authorized to work in the United States.<sup>3</sup> A key element in assuring compliance with the new law is the employment verification procedure and 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.<sup>4</sup> 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 he or she is either a U.S. citizen, permanent resident, or otherwise authorized to work.<sup>5</sup> Employer sanctions for unlawful employment of unauthorized aliens may result in fines ranging from \$250 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.<sup>6</sup>

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 have resided continuously in the U.S. in an unlawful status since that date.<sup>7</sup> Eligible applicants had to apply no later than May 4, 1988.<sup>8</sup>

Agricultural workers who established 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,<sup>9</sup> and had to apply for amnesty no later than November 30, 1988.

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<sup>1</sup> Pub. L. No. 99-603, 100 Stat. 3359.

<sup>2</sup> 8 U.S.C. §1324a(a)(1)(1988).

<sup>3</sup> 8 U.S.C. §1324a(a)(2)(1988).

<sup>4</sup> 8 U.S.C. §1324a(b)(1)(1988).

<sup>5</sup> 8 U.S.C. §1324a(b)(1)(1988).

<sup>6</sup> 8 U.S.C. §1324a(e)(4)(1988).

<sup>7</sup> 8 U.S.C. §1255a(a)(2)(A)(1988).

<sup>8</sup> 8 U.S.C. §1255a(a)(1)(A)(1988). See also 45 C.F.R. §245a.2(a)(1).

<sup>9</sup> 8 U.S.C. §1160(a)(1)(B)(1988); (the so-called "Schumer Amendment").

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.<sup>10</sup> Penalties may include orders to hire, backpay, civil penalties up to \$2,000, and attorney's fees.<sup>11</sup>

Congress, in adopting the new immigration law, was concerned that some employers might overreact and refuse to hire persons who appeared or sounded "foreign."<sup>12</sup> The nondiscrimination provisions were therefore written into the act. Additionally, Title VII of the Civil Rights Act of 1964,<sup>13</sup> 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.<sup>14</sup> The EEOC covers employers with a work force of 15 or more workers, while the nondiscrimination protections in the immigration reform law prohibit discrimination based on national origin or citizenship status for employers with 4 to 14 employees.

## STATE ADVISORY COMMITTEE

In keeping with its responsibility to monitor civil rights developments in the State, the Arizona Advisory Committee to the U.S. Commission on Civil Rights conducted community forums in Phoenix on September 15, 1988, and in Tucson on November 3, 1988.<sup>15</sup> Educators, government officials, and representatives from immigration assistance agencies were invited to participate. In addition, open sessions at the two forums provided members of the general public the opportunity to participate.<sup>16</sup> Efforts were made to

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<sup>10</sup> 8 U.S.C. §1324b(a)(2) & (3)(1988); (the so-called "Frank Amendment").

<sup>11</sup> 8 U.S.C. §1324b(g) & (h)(1988).

<sup>12</sup> Ron Tasoff, "Immigration Reform Act, What Every Lawyer Should Know," *Los Angeles Lawyer*, February 1987.

<sup>13</sup> 42 U.S.C. §§2000e et.seq. (1982).

<sup>14</sup> 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).

<sup>15</sup> Unless otherwise noted, all quotes and statements in this summary report are from the transcript of the Advisory Committee's proceedings Sept. 15, 1988 in Phoenix and Nov. 3, 1988 in Tucson. Both transcripts are on file in the Commission's Western Regional Division, Los Angeles, California.

<sup>16</sup> Persons who addressed the Advisory Committee at the Phoenix forum included Mary Rose Wilcox, Vice Mayor of Phoenix; Dr. Ernest Feigenbaum, public health director; Robert I Donofrio, superintendent of Murphy School District; Nancy-Jo Merritt, an attorney in private practice; Jose Bracamonte, an attorney in private practice; Rafaela Valenzuela, Volunteer Lawyers Program; Gloria Elizondo, PFEP Organization; Enrique Medina Ochoa, SER-Jobs for Progress; Frank Siciliano, assistant chief legalization officer with INS; Hermilo Gloria, District Director, EEOC; Wendy Hammon, Arizona Department of Administration; Father Tony Sotelo, Iglesia Del Inmaculado Corazon de Maria; Francisca Cavazos, Maricopa County Organizing Project; Paul Arter, Wesley Community Center; Frank Messana, Steve's Mexican Food; Javier Saucedo, Farm Workers Union; Enrique Ochoa, LULAC officer; Matt  
(continued...)



include in the forums persons with varying perspectives on immigration. This report summarizes the information and opinions presented at the forums.

## **PHOENIX FORUM**

### **IRCA's Impact On Public Education**

Robert I. Donofrio, superintendent of Murphy Elementary Schools in District No. 21, explained that parents pulled children from schools because they were afraid that IRCA was an attempt by INS to deport them. He said the parents were uncertain about their chances for qualifying for permanent residency. According to Mr. Donofrio, the parents were afraid that their families would be broken apart, especially in cases where some members of the family might be eligible and others not.

Mr. Donofrio also told the Advisory Committee that many immigrant students left school on their own to find jobs to earn the \$400 needed to apply for amnesty. He also explained that in some cases, employer sanctions caused family members to lose jobs, forcing families to return to Mexico or to be evicted because they could not pay rent.

Mr. Donofrio pointed out that, while IRCA may have contributed to the loss of student enrollment and subsequent revenue to the schools, those repercussions are "a distant second to the psychological, social, and emotional scars that the children and parents have and will continue to suffer under this act."

"The fear of deportation, family separation, frustrations, and the struggle for survival among these families will be evident long after the bureaucrats have washed their hands of the whole matter," Mr. Donofrio stated.

### **Limited Funding for Educational Services**

Enrique Ochoa, chairman of the board of directors for SER-Jobs for Progress, stated that his organization felt that the monies and resources provided for educating eligible legalized aliens (ELAs) through the IRCA program are insufficient. He expressed concern that funding at the national level were reported to be "in the millions of dollars and perhaps in the billions of dollars. But for some reason or another they are not coming down."

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<sup>16</sup>(...continued)

Wilsh, Social Services; Dr. Edward Valenzuela, Deputy Director EEOC; and Piedad Huerta, representing a Qualified Designated Entity (QDE).

Those who addressed the Advisory Committee at the Tucson forum were George Miller, Vice Mayor, Tucson; Andy Silverman, professor, University of Arizona College of Law; Anita Sanchez, attorney; Nadine K. Wettstein, attorney; Isabel Gallegos, attorney; Alva V. Torres, Catholic Community Services; Helen Mautner, American Civil Liberties Union; Rita Kruse, legal assistant, Tucson Ecumenical Council; Teresa Rodriguez, office manager; Greg Hart, director; and Agnes Daemen, Tucson Unified School District; John Thacker, Southern Arizona Innkeepers; Dan Gebhart, Arizona Restaurant Association; Thomas Michael O'Leary, sector counsel; Clarence Dupnik, sheriff, Pima County; Peter Ronstadt, chief of police, city of Tucson; Bill Johnston, Immigration and Naturalization Service; Benny Barron, assistant chief patrol agent; Enrique Gomez, El Proyecto Arizona-Sonora; Juan Carlos Cordova, Salvadoran refugee; and Rene Franco, Guatemalan refugee.

Mr. Ochoa's organization has attempted to supplement the public school efforts to address this need. "But we feel," he explained, "that at this time, at least, in the State of Arizona, and from what we can tell in the Southwest, these monies and these resources will not be enough."

Because of the low priority given to funding for educational services, Mr. Ochoa explained, many of the ELAs will not qualify for permanent residence. He expressed suspicion that "perhaps the intent of the law might have been or might be to have a mass deportation of those people who will not qualify."

### **Discourteous Treatment of Applicants By INS Staff**

Father Tony Sotelo, of Iglesia Del Inmaculado, Corazon de Maria, stated that people who came to the parish said that they were treated without courtesy and were ridiculed, especially when their English was not very good. He also noted that applicants were afraid to make complaints about their mistreatment because they did not want anything to happen to their papers.

Francisca Cavazos, of the Maricopa County Organizing Project, said that farm workers came to her office to say that they had been told by immigration officials that their documentation or their employment letters did not seem to be appropriate. According to Ms. Cavazos, they were told: "Come on, why don't you tell us that you bought this letter?"

### **Voluntary Departure Offered By Border Patrol**

According to some of the forum participants, applicants reported instances where Immigration and Naturalization Service (INS) staff/border patrol offered voluntary departure. Applicants were told that processing through a hearing would require months of waiting with possible incarceration throughout.

Javier Saucedo described his experiences following his arrest in September 1987. He said that he was able to overhear many of the interviews that INS carried out with other people who had been detained. During the interviews, Mr. Saucedo recalled, the officials offered those arrested the option of voluntary departure if the people had their proof of work. "That is," Mr. Saucedo explained, "if they agreed to depart voluntarily, they would have to turn over the proof of having worked to the INS."

Mr. Saucedo said that the officials added that if those arrested wanted to appeal their case they would have to wait up to 6 months before a judge would be able to hear their case. Obviously, the people preferred to accept voluntary departure.

Enrique Moreno, a farm worker, also described his experiences after he was detained by the INS in March 1988. He said he was questioned for some time, and as he was about to end his testimony, the official offered to release him if he agreed to voluntary departure. But, of course, he didn't want to sign because, even though he didn't have his papers, they were in process and had not arrived by mail. Mr. Moreno showed the INS officials the stub for the money order to prove that he had applied and completed the proper paper work. He was eventually released.

## **Document Discrimination**

Mr. Saucedo recalled that, at first, the INS did not accept check stubs or written statements as proof of residence. This caused many problems for the farm workers since they often could not gather all of the required documentation, or Mr. Saucedo noted, they did not have jobs or they had no way of getting the necessary documents.

Mr. Saucedo provided another criticism: "[W]e don't understand how the INS has not come up with the I-700 and the I-705 in Spanish and in English.... Why couldn't the government have simply translated those eight pages if they are asking each of the applicants to pay \$185?"

Mr. Saucedo recalled that officials spent much of their time handing out or correcting papers. That meant that the workers had to turn to other organizations and to pay money to find out what to do with the papers.

"It seems that the INS had no interest in people becoming legalized," Mr. Saucedo stated, "or it was a door that was only opened just slightly."

Mr. Moreno recalled his arrest by the INS. They asked for his papers and he told them that they were being processed. Mr. Moreno presented the money order check stub that he had used to pay the INS, but they told him that they were going to take him away anyway. They handcuffed Mr. Moreno and took his social security card, saying that he could no longer use it.

At the INS offices, the authorities asked Mr. Moreno how he planned to qualify. Mr. Moreno listed where he'd worked and the types of work he had performed. The INS employees questioning Mr. Moreno told him that those places did not exist. He was later released.

Mr. Moreno also overheard the INS interrogating other suspects, some of whom did not have proof of having submitted the application or the other paperwork. Mr. Moreno explained that for many it was difficult, if not impossible, to carry a large volume of paperwork while performing their jobs.

## **Nonpayment of Wages to Undocumented Workers**

Enrique Ochoa, public officer for the League of United Latin American Citizens (LULAC) in Phoenix, said that seven people asked for LULAC's help when they weren't paid for several weeks' work with a construction company. Further, the employees told LULAC that they were threatened by their employer with notification to the INS and possible deportation if they continued to complain. Mr. Ochoa felt that IRCA, as written, caused confusion to employers and possible discrimination of employees who were undocumented.

Paul Arter, of the Wesley Community Center's office of legalization assistance in Phoenix, said his office had received complaints about employers, especially in construction, who hired an entire crew, "anybody that walks in," without necessarily reviewing each person's immigration documents until payday. As they issued checks on payday, Mr. Arter explained, the employers requested to see everybody's immigration documents, paying only those who presented proper documents.

Mr. Arter emphasized the unfairness of this situation, saying, "if the point of employer sanctions is that ... people in this country illegally not be

employed and not be paid, we should also see to it that their labors are not used."

Mr. Arter explained that the recommended course to correct such a situation involves the Department of Labor, Wage and Hour Division. "But, unfortunately," Mr. Arter said, "... they estimate about a 90-day delay for adjudication or the resolving of these problems."

Mr. Arter pointed out that people get frustrated with that and, since they were already in an illegal status or perhaps in a newly legalized status, they felt that they were placing too much at risk by pursuing legal assistance and oftentimes decided to go somewhere else to work. Thus, this practice was allowed to continue.

### **Conflicts With Title VII**

Hermilo Gloria, district director of the Equal Employment Opportunity Commission, said that although IRCA prohibited discrimination based on citizenship status, the act also stated that it was not an unfair immigration-related employment practice to prefer to hire an individual who was a citizen or national of the United States over an alien, if two individuals were equally qualified.

According to Mr. Gloria, the EEOC's guidelines on discrimination based on national origin provided very clearly that where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they were prohibited by Title VII. While an employer could, under IRCA, prefer an equally qualified citizen over an alien, that employer's actions might violate Title VII and a complaint could be filed against the employer.

Mr. Gloria suggested that the general public did not realize that Title VII had much broader coverage, because not only was there a difference in approach, but the scope of coverage for national origin discrimination in employment was very broad. The EEOC covered all terms and conditions of employment, Mr. Gloria pointed out, while IRCA essentially covered hiring and, to a degree, discharge.

### **Insufficient Notification Efforts**

Mary Rose Wilcox, vice mayor of Phoenix and chairperson of the steering committee on immigration of Maricopa County, said there was still a "pool of people out there" who, although qualified, did not apply for amnesty because they never heard about it or did not hear enough about IRCA to overcome their fears of the INS.<sup>17</sup> Ms. Wilcox also expressed disappointment that in spite of ample funding the extension period was not well-publicized.

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<sup>17</sup> According to Mary Rose Wilcox, of Phoenix, when IRCA was enacted by Congress, 150,000 people within the State of Arizona were estimated by INS to "essentially qualify for legalization." Only 50,000 came in, applied, and qualified. Therefore, there could still be a pool of about 100,000 people who qualify.

Dr. Earnest Feigenbaum said that in Maricopa County about 25,000-30,000 people were undergoing legalization through IRCA's amnesty program at the time of the forum.

Ms. Wilcox explained that the current emphasis was to get the word out to those who qualified for amnesty and who awaited Phase II. She expressed concern that many of those individuals might not realize that their initial paperwork would not provide amnesty past 18 months of when they filed, unless they enrolled in the citizenship and English-speaking classes that were required by IRCA's Phase II.

Francisca Cavazos, of the Maricopa County Organizing Project in Phoenix, also criticized the poor efforts to publicize IRCA's amnesty program. She specifically denounced the fact that much of the advertising campaign was conducted in English, "which I think was an insult to the Spanish-speaking community in the State of Arizona," she stated. According to Ms. Cavazos, very little was done before March 1988. She said that the limited efforts to educate the public resulted in confusion about the law for the immigrant community, as well as Qualified Designated Entities (QDEs)<sup>18</sup> and the other organizations who assisted in the legal process.

### **Need for Clarification of Medical Entitlements Under IRCA**

Dr. Ernest Feigenbaum, director of public health for the Maricopa County Health Department in Phoenix, stated that many people undergoing amnesty were confused as to whether and under what circumstances they were entitled to medical assistance, and whether that assistance should be offered by county, State, or Federal services.

According to Dr. Feigenbaum, a voluntary organization had been the primary source for information. This information, Dr. Feigenbaum said, included cross-references to program entitlements available to people undergoing amnesty and showed which program entitlements might severely compromise a person's amnesty status and perhaps require exclusion during the preliminary phase or during the entire 5-year period.

Dr. Feigenbaum stated that health and social service should provide more information to define the regulations and circumstances under which people can get needed health services. He said that many people stayed away from needed services such as prenatal care because of fear of entanglements in a system that might threaten their amnesty status. Also, Dr. Feigenbaum explained that people were confused about whether they should be required to pay a second time if they were not tested for AIDS initially. Those who applied later had the AIDS test included under their physical examination; performed separately, the AIDS test could cost more than \$100 under certain circumstances.

### **Difficulty in Interpreting IRCA**

Rafaela Valenzuela, of the Volunteer Lawyers Program in Phoenix, said that case workers were not properly educated on the three-misdemeanor, one-felony issue for those applying for amnesty. According to Mr. Valenzuela, the

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<sup>18</sup> Qualified Designated Entity (QDE) are individuals or organizations assigned by the INS to help individuals prepare applications required by IRCA. Under IRCA, only those waiting for the issuance of a visa to enter the United States legally were entitled to be assisted by QDE.

case workers informed many applicants that they qualified although they were not eligible because of an arrest record. Mr. Valenzuela noted that the case workers often did not carefully check details, such as arrest records.

Mr. Valenzuela also said that confusion about prior deportation had and could cause problems for amnesty applicants. Many case workers, Mr. Valenzuela stated, were not aware that if an individual had been deported, which interrupted their continuous residence, that they would not be eligible. Mr. Valenzuela expressed concern that applicants did not know that relief was available for them.

Piedad Huerta, a QDE employee, corrected some information presented by another participant about farm workers and the English language requirement. She pointed out that agricultural workers were exempt from the English language requirement.<sup>19</sup> Ms. Huerta admitted that this was an understandable mistake, given all the confusion that existed about IRCA's requirements for both Phase I and Phase II.

From her own experience, Ms. Huerta stated that it was often necessary to frequently review IRCA when helping an applicant complete and process paperwork to qualify for amnesty. She noted that the local INS office did not provide clarification for the immigrants' doubts and questions.

### **INS' Dual Role**

According to several presenters, the dual role of the INS as enforcer and as supporter/helper for IRCA has caused contradictions, confusions, and fear. Nancy-Jo Merritt, an attorney and immigration specialist in Phoenix, stated that historically, INS has always been a very enforcement-minded agency, even though some of the laws that it administered were not enforcement-type laws. Ms. Merritt noted that the INS had "an enforcement mentality," and its publicity with respect to the law had been in an "enforcement mode."

According to Ms. Merritt, the INS' efforts to relay the seriousness of the law resulted in "a real atmosphere of fear" that, combined with a lack of knowledge, led to some inappropriate responses by employers. Added to the technical difficulties of complying with the law, Ms. Merritt believed that resulted in discrimination.

Ms. Merritt stated that applications for work authorization should not be subject to the "whim and the discretion" of the INS. She wondered if there might not be some other agency that could process applications and make determinations or work authorizations. Ms. Merritt believed that the authorizations should be "generously granted, and in fact, should be almost automatic." Otherwise, Ms. Merritt noted, a different standard of due process for citizens and noncitizens resulted, which was clearly unconstitutional.

Ms. Cavazos said that agencies such as hers believed that Congress erred in giving legalization authority to the INS, because INS "historically has had

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<sup>19</sup> Also known as special agricultural worker (SAW). Individuals qualifying for this program did not have to meet the English language or American history requirements of ELAs who fell under Phase II of IRCA. Also, SAWs did not have to maintain residence in the United States.

the job of detaining, arresting, harassing, and deporting undocumented workers for some years."

"And then suddenly," Ms. Cavazos explained, "as a result of a new piece of legislation, [INS] has to act as a friend of those individuals. I think that is a very difficult task to do in such a short period of time."

### **Difficulties of Small Business Owners**

Small business employers had difficulties with the paperwork required by IRCA, according to several of the presenters. Misunderstandings and fear of punishment prevented them from hiring someone who did not have papers.

Ms. Merritt noted that employers were still somewhat confused about how to properly comply with the paperwork aspects of the law, and they frequently did not understand when they could hire someone.

"Employers live in total fear," Ms. Merritt explained, "because the antidiscrimination provisions are so very strong, and the antidiscrimination provisions themselves are difficult to understand."

According to Ms. Merritt, the paperwork violations can be quite expensive if there were many employees and errors in the paperwork. In order to properly enforce employer sanctions, Ms. Merritt noted, there must be some "methodology" by which employers can determine that the people they hire were authorized to work.

Before employees get work authorization, Ms. Merritt explained, they have to apply to the INS, "the very agency that is charged with deporting or excluding or keeping them out and which is charged with enforcement of employer sanctions."

According to Ms. Merritt, larger employers had fewer problems with violations because they either had in-house counsel, labor law counsel, or access to an immigration lawyer. Ms. Merritt also noted that many large companies had the resources necessary to set up programs to handle both employer sanctions, independent contractors, and other aspects of IRCA.

Even so, Ms. Merritt said there were some large employers who struggled with IRCA without programs and, of course, all the smaller employers who relied upon the newspaper, "word of mouth, or a package they get in the mail." Ms. Merritt believed that problems existed "across the board," and that no one industry was having more trouble than any other one.

Ms. Cavazos said that many former and current employers feared because of unpaid taxes, that they may somehow be prosecuted and, "therefore, were reluctant to give this documentation to those current or former employees who were in the process of legalizing their status in this country."

Frank Messana, of Steve's Mexican Food in Phoenix, recalled that he was raided about 2 weeks after his "educational visit" by INS staff. He stated he was unaware that he was required to keep the I-9 forms in his files for 3 years after the employee left employment.

Prior to the raid, Mr. Messana explained, he eliminated files as employees left. Since he did not have I-9 forms to give INS, he was fined. Mr. Messana remarked that "small mistakes can really get you in trouble, and small businessmen like myself cannot afford this kind of thing." He revealed that

his business had \$1,500 worth of fines outstanding, and he was concerned that his business not retain an undeserved reputation.

Mr. Messina was concerned that there was not an easier way to implement IRCA's requirements without creating a burden for small business people, especially all the paperwork, the filing systems, and other requirements.

### **The Positive Aspects of IRCA**

Frank Siciliano, assistant chief legalization officer for the Immigration and Naturalization Service in Phoenix, noted that "in excess of 90 percent of all the applications" had been approved. He also explained that, in most cases, a reason for denial would be that the applicant was "statutorily ineligible."

For instance, Mr. Siciliano said, the law stated that a person had to be in the United States prior to January 2, 1982. According to Mr. Siciliano, if someone entered the country after January 2, 1982, that person would be statutorily ineligible. If the person committed a felony, Mr. Siciliano said, he or she would become statutorily ineligible. Mr. Siciliano also noted that a person lacking adequate time in the United States would also be statutorily ineligible.

Mr. Siciliano also explained INS's efforts to publicize the programs, from face-to-face encounters, television, and open forums. In explaining the English language requirements of Phase II, Mr. Siciliano said that the INS was not "trying to impose English on anyone." Instead, Mr. Siciliano said, the INS was trying to get people to function more fully in the United States and learn English, the primary language used in the United States.

## **TUCSON FORUM**

### **IRCA's Impact on Public Education**

Nadine Wettstein, an attorney with the Southern Arizona Legal Aid in Tucson and Douglas, supported the allegation made in Phoenix that IRCA was discriminatory and impacted negatively on public education. She had heard stories at her offices of parents whose children had been picked up by the border patrol at school when their parents were arrested. Such stories caused panic, Ms. Wettstein noted, resulting in parents taking children out of school and possibly leaving the area when they thought they had no choice.

When asked about the impact on the school budget when students were withdrawn, Ms. Wettstein noted that the U.S. Supreme Court gave all children, even those who were undocumented, the right to a free public education as long as they and their parents were residents of the school district. Ms. Wettstein explained that a problem arose, however, when undocumented persons feared deportation because they were required to produce a birth certificate when registering those other than their own children. Although the law requiring the birth certificate (which does not have to be a United States birth certificate) was designed to reduce kidnapping, Ms. Wettstein stated that it resulted in many of the children never being registered for school.



## **Inequitable Enforcement of Amnesty Qualifications**

Isabel Garcia Gallegos, an attorney in private practice in Tucson, supported the allegation made in Phoenix that the qualifications for amnesty were enforced inequitably. Representing the Southern Arizona Coalition on Immigration, and the Arizona Coalition for Immigrant and Refugee Rights, Ms. Gallegos presented information gathered and received by those organizations.

Ms. Gallegos noted that authorized workers reported that they were either fired or not hired because (1) either employers refused to accept work documents other than "green cards" or United States birth certificates, or (2) because they lost their immigration papers and had no other available acceptable proof of work eligibility. She pointed out that "[e]conomically and socially disenfranchised minority citizens are particularly affected by this problem because of their lesser access and participation in certain societal institutions that would provide them with acceptable documentation."

According to Ms. Gallegos, a possible explanation for why cases of document discrimination were underreported was the "lack of an extensive campaign to educate the general public" about the kinds of documents that can be used to prove work eligibility and where individuals can report abuses.

## **Limited Funding for Educational Services**

Greg Hart, director of Pima County Adult Education in Tucson, supported the allegation made in Phoenix that the \$500 per person cap on education services placed severe limits on those qualifying for citizenship.

Between September 1988 and the time of this hearing, 1,500 ELAs entered Mr. Hart's program. Mr. Hart said that some of the classes for amnesty applicants in his program featured 120 students with 1 teacher. This was because his program had not yet received the State Legalization Impact Assistance Grants (SLIAG)<sup>20</sup> that would allow him to hire more teachers. He proposed that the INS had not anticipated that such large numbers of people would progress so quickly in Phase II<sup>21</sup> and so were not prepared to disburse the funds as quickly as was needed by the States.

At the time of this hearing, Mr. Hart stated, his program was operating at a deficit of \$100,000 a year to meet the need for adult education. He feared

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<sup>20</sup>The State Legalization Impact Assistance Grant was an acknowledgment by Congress that the legalization process costs money. Congress appropriated \$1 billion a year to be distributed based on an allocation formula to the States who applied for funding assistance. The grants fell into four major categories: public health, public assistance, education, and administrative costs. There was no State matching requirement for this money.

<sup>21</sup>Phase II is the portion of IRCA that allowed those who had been residing in the United States for 18 months as temporary residents to apply for permanent residence. With permanent resident status, an individual was entitled to apply for citizenship after 5 years. During those 5 years, a permanent resident was entitled to submit petitions for family members who did not qualify for permanent residence, such as a spouse and unmarried children. To qualify, an individual was required to learn to read, write, and speak English and have knowledge of American history or government. One year of school in the United States, a high school diploma, or GED certificate satisfied the requirement. Those under 16 or over 65 were exempt from most of the requirements.

that his program might be terminated should the SLIAG money not become available.

Mr. Hart also noted that, while the INS allocated up to \$500 per eligible legal applicant per year for their adult educational needs, the State of Arizona only allocated \$76 per student per year. He recommended that the State consider this discrepancy, especially when considering that, once the Phase II education program was completed, the newly legalized residents would continue to live in Arizona and would require additional education as they assimilated into the community.

### **Voluntary Deportation Offered By Border Patrol**

Ms. Wettstein and Anita Sanchez, an attorney with Southern Arizona Legal Aid in Tucson and Douglas, Arizona, supported the allegation made in Phoenix that applicants had reported instances where INS staff/border patrol offered voluntary departure. That is, applicants were told that processing through a hearing would require months of waiting with possible incarceration throughout.

Ms. Sanchez and other employees of Southern Arizona Legal Aid were prohibited by law from assisting with the amnesty program during work hours. They could, however, volunteer to assist during their off-duty time. Ms. Sanchez explained how frustrating it was to have resources and expertise in immigration law and to be restricted in their application. Ms. Wettstein, however, as director of the legalization project for the Southern Arizona Legal Aid in Douglas, was able to assist in the amnesty program during work hours because her office was funded completely by a grant.

Ms. Sanchez, who volunteered with Catholic Community Services, said that the border patrol was uncooperative when confronted about their purported interference with legalization. According to individuals she spoke with, the border patrol "took it upon themselves in the field" to question and judge an individual's eligibility based on the patrolman's interpretation of the law, passed judgment on the detainee's truthfulness, and in, some instances "moved to voluntarily return them to Mexico."

Ms. Wettstein said that her office had continued to litigate against INS for allowing the border patrol to urge voluntary departures to many who were actually eligible for legalization. She pointed out that litigation is not always the answer. "Sometimes you wait months for something to happen and, in the meantime, people's rights continue to be violated," Ms. Wettstein noted.

### **Document Discrimination**

Employers and even INS staff/border patrol have been accused of document discrimination (restricting the kinds of documents accepted as proof of residence). Ms. Gallegos said that citizens and documented immigrants were adversely affected on the basis of documentation in other ways. The situation of authorized workers who were unable to locate their birth certificates, immigration papers, social security cards, or proper identification, and who had no available alternative documentation was especially precarious.

According to Ms. Gallegos, economically and socially disenfranchised minority citizens were particularly affected by this problem because of their lesser access and participation in certain societal institutions that would provide them with acceptable documentation.

Alva V. Torres, of Catholic Community Services, and Andy Silverman, a professor at the college of law at the University of Arizona, supported this allegation.

Ms. Torres said that ELAs left her office with credentials attesting to their application for amnesty, but they were picked up. In some cases the applicants were told by the border patrol that their credentials had no value and that Ms. Torres' agency was attempting to defraud them of their money.

Mr. Silverman noted that, because of the difficulty that immigrants have in producing documentation, Congress permitted ELAs the use of affidavits. The INS, however, was "very inconsistent" in accepting affidavits as proof of eligibility, Mr. Silverman said. According to Mr. Silverman, a national survey conducted by the *Dallas Times-Herald* listed "lack of documentation" as the most common reason given by QDE directors and immigration lawyers to explain why eligible aliens did not apply for legalization.

### **Improprieties By Border Patrol**

Ms. Torres alleged that the border patrol had been accused of improper activities, such as entering private homes. She said that her agency had two cases where border patrol agents entered private homes.

She recalled one of the situations reported to her where some young men were sitting on a car in a private driveway. According to Ms. Torres, the border patrol stopped and two of the boys ran off while one stayed because he lived there. The border patrol asked the young man for his papers, Ms. Torres said, and he took out whatever he had and gave them the wallet. According to Ms. Torres, the young man said the border patrol threw his wallet on the ground. When he stooped over to pick it up, Ms. Torres said, the border patrol started nudging him, and told him to get inside.

The border patrol followed the young man inside the house and they threatened him, Ms. Torres said. According to Ms. Torres, they said that if he didn't leave they would return and arrest the entire family. The other people who lived in the house were legal residents, Ms. Torres said, and they made the complaint.

Ms. Torres pointed out that the young man, a client registered with her agency, had not committed any crime. She also pointed out that in each complaint against the border patrol, the people discriminated against were Hispanic.

### **Difficulty in Interpreting IRCA**

Mr. Silverman supported the allegations made in Phoenix that IRCA was difficult to interpret, even by experts, much less by inexperienced local agencies.

Mr. Silverman felt that the INS' interpretation and application of IRCA, both nationally and locally, was "contrary to the congressional intent of effectively and fairly dealing with the undocumented alien population." Mr.

Silverman cited the terms “continuous residence” and “known to government” as two phrases that caused the most conflict when he assisted eligible aliens with complaints against the INS.

According to Mr. Silverman, the INS was not in compliance with “the general immigration laws” dealing with continuous residence when interpreting IRCA. Consideration for the location of the ELA’s home, job, family, property, and assets—issues generally examined when INS determines continuous residence—was not made by the INS during the amnesty period allowed by IRCA, Mr. Silverman said. The maximum time allowed for single (45 days) and aggregate absences (180 days) was the only factor considered by the INS and ELAs applying for amnesty under IRCA, Mr. Silverman stated.

The INS’ interpretation of “known to government” restricted its meaning to “known to the INS,” Mr. Silverman said. According to Mr. Silverman, the INS lost when the issue was litigated by ELAs; courts held that “known to government” meant “known to any Federal agency.”

Ms. Sanchez cited several instances where the border patrol detained persons illegally because of their confusion or misinterpretation of the law. Ms. Sanchez mentioned that the changes in requirements brought about by IRCA, the different programs incorporated under the act, and the lack of an authoritative interpretation contributed to the problem. This did not, however, relieve the border patrol of their responsibility for incorrectly detaining individuals.

“[T]hey continued to give information that was incorrect, and not only giving that information, but acting on it,” Ms. Sanchez said. She added,

... No matter what the problem was, the border patrol found some way to find these people ineligible in their own minds, even though they are not administering this program and they are not trained to even understand all of the different eligibility statuses.... They continued to give incorrect information. They continued to tell people they weren’t eligible.... Some people were forced to leave the country.

### **INS’ Dual Role**

Mses. Sanchez and Wettstein supported the allegations made in Phoenix that the dual role of INS as enforcer and as supporter/helper for IRCA caused contradictions, confusions, and fear.

Ms. Sanchez noted, “When you are historically in the business of deporting aliens, and you have a national police force to do that, and that’s what you are in business of doing, its really very hard to turn around and administer this program with all those other mechanisms still churning away around you, to administer it in any kind of reasonable way.”

Ms. Wettstein agreed, adding, “[T]he mistake initially was having the INS run this program. That was a crucial mistake, and I think in their moments of utter candor the INS admits that, and certainly has admitted it to me.”

### **Difficulties of Small Business Owners**

Isabel Garcia Gallegos and Dan Gebhart, president, Tucson Chapter, Arizona Restaurant Association, and owner of Hardee’s Restaurants, supported allegations made in Phoenix that small business employers have had

difficulties with paperwork required by IRCA. Misunderstandings and fear of punishment may prevent them from hiring someone who doesn't have papers, Ms. Gallegos and Mr. Gebhart explained.

Ms. Gallegos said she believed that small businesses were more likely to be cited by the INS for not fulfilling the sanction requirements of IRCA. "[T]he small businesses are bearing the brunt," she said. Ms. Gallegos believed that the INS had not consistently targeted the larger businesses when enforcing IRCA.

Ms. Gallegos described an incident where a woman employed a man who was becoming legalized and who was working to earn his application fees. The woman employer was cited for knowingly hiring an unauthorized person, she said.

Mr. Gebhart outlined a scenario where, in a large chain fast food restaurant, the young assistant manager was left in charge while the manager vacationed. Should that assistant manager forget to complete one form, Mr. Gebhart explained, the manager was fined.

Mr. Gebhart also noted that the increased paperwork caused storage problems and the cost of photocopying the forms, especially when one considered the high turnover rate for personnel in the restaurant industry was prohibitive. The manager, while bogged down with paperwork and other administrative duties related to complying with IRCA, is unable to fully manage his employees, Mr. Gebhart explained.

In response to a question, Mr. Gebhart agreed that the possibility existed that employers would discriminate against Hispanics when hiring to avoid potential problems with the INS. Mr. Gebhart also noted, in response to another question, that small businesses were more likely to encounter problems with the paperwork than were large chain franchises.

### **The Positive Aspects of IRCA**

Benny Barron, assistant chief of the border patrol, Tucson Sector, was confident that adequate attempts had been made to educate employers about the requirements of IRCA. Mr. Barron said that voluntary departure was a "two-way street," that documents for voluntary deportation were presented in English and Spanish, orally and in writing, and that border patrol officers were subject to disciplinary action if charged with coercing aliens to complete voluntary departure documents.

### **Recommendations to the Commission**

Ms. Gallegos made the following recommendations to the Arizona Advisory Committee to the U.S. Commission on Civil Rights.

1. Study the degree to which IRCA accomplished its goals of deterring illegal immigration, and of permanently forcing unauthorized workers out of the United States labor market.
2. Urge the GAO to broaden its inquiry to study how the implementation of employer sanctions eroded the protections under State and Federal labor laws, to which all workers, authorized or unauthorized, were entitled.
3. Urge the GAO and INS to devote greater resources to conduct an extensive education campaign to inform the general public about the types of em-

ployer behavior that constituted IRCA-related discrimination, and where to lodge complaints.

4. Include in its reports a discussion of the limitations, as mentioned previously, of relying on the number of charges filed with agencies as an accurate indicator of the amount of discrimination caused by IRCA.

5. Supplement the results of its survey of employers regarding discriminatory hiring and firing practices with a survey of employees.

6. Urge Congress to repeal employer sanctions, given that they caused increased workplace discrimination and abuse against citizens and immigrant workers, and that it was not accomplishing its goal of permanently forcing unauthorized workers out of the labor market.

7. Urge for a broadening of the legalization program in order to adequately protect the rights of the overwhelming majority of undocumented immigrants who were ineligible for IRCA's legalization program, and who continued to remain in this country as productive workers.

## **SUMMARY**

This report is a summary of comments and opinions provided at community forums conducted by the Arizona Advisory Committee in Phoenix and Tucson concerning immigration issues in the State. It should not be considered an exhaustive study of immigration concerns in Arizona. Rather, it reports the perspectives of a limited number of persons who participated in the forums about immigration issues that the Advisory Committee may decide merit further investigation and analysis.

There was acknowledgement during the forums that the Immigration Reform and Control Act of 1986 had caused inequities and discriminatory treatment toward many immigrants and that the act had presented difficulties for those attempting to correctly and fully interpret it.

One participant in Tucson made recommendations to the Commission as to how the problems might be solved. The participant asked the Commission to consider seven actions to amend or eliminate discrimination caused by IRCA. Among those were to study how well IRCA had succeeded in deterring illegal immigration, to urge broadening of the legalization program to protect the rights of those immigrants who were ineligible for the original program, and to urge Congress to repeal employer sanctions. The Advisory Committee urges that serious consideration be given to these community recommendations.