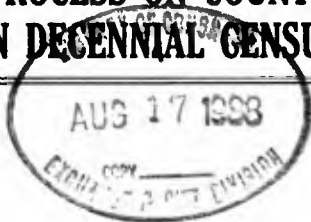


*United States*  
cc

**IMPACT OF LEGALIZATION PROCESS ON COUNTING  
UNDOCUMENTED ALIENS IN DECENTIAL CENSUS** *C275  
212*

---

---



**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
CENSUS AND POPULATION  
OF THE  
COMMITTEE ON  
POST OFFICE AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES  
ONE HUNDREDTH CONGRESS

FIRST SESSION

---

JUNE 1, 1987

---

**Serial No. 100-18**

---

Printed for the use of the Committee on Post Office and Civil Service



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1987

77-631

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

WILLIAM D. FORD, Michigan, *Chairman*

WILLIAM (BILL) CLAY, Missouri  
PATRICIA SCHROEDER, Colorado  
STEPHEN J. SOLARZ, New York  
ROBERT GARCIA, New York  
MICKEY LELAND, Texas  
GUS YATRON, Pennsylvania  
MARY ROSE OAKAR, Ohio  
GERRY SIKORSKI, Minnesota  
FRANK McCLOSKEY, Indiana  
GARY L. ACKERMAN, New York  
MERVYN M. DYMALLY, California  
MORRIS K. UDALL, Arizona  
RON DE LUGO, Virgin Islands

GENE TAYLOR, Missouri  
BENJAMIN A. GILMAN, New York  
CHARLES PASHAYAN, Jr., California  
FRANK HORTON, New York  
JOHN T. MYERS, Indiana  
DON YOUNG, Alaska  
DAN BURTON, Indiana  
CONSTANCE A. MORELLA, Maryland

TOM DEYULIA, *Staff Director*

ROBERT E. LOCKHART, *General Counsel*

PATRICIA F. RISSLER, *Deputy Staff Director and Chief Clerk*

JOSEPH A. FISHER, *Minority Staff Director*

---

SUBCOMMITTEE ON CENSUS AND POPULATION

MERVYN M. DYMALLY, California, *Chairman*

ROBERT GARCIA, New York  
GERRY SIKORSKI, Minnesota

CONSTANCE A. MORELLA, Maryland  
DAN BURTON, Indiana

TERRIANN LOWENTHAL, *Subcommittee Staff Director*

(11)

KF 27  
P 632  
1987 f

## CONTENTS

Statements of:	Page
Hon. Edward Koch, mayor, city of New York .....	5
Hon. Angelo del Toro, assemblyman, New York State Legislature, co-chairman, New York State Legislative Task Force on Demographic Research and Reapportionment .....	20
Frederick A.O. Schwarz, Esq., Cravath, Swaine & Moore Law Offices, and board member, NAACP Legal Defense Fund .....	27
Chris Petersen, Assistant District Director, Examinations Branch, New York District, Immigration and Naturalization Service.....	34
Peter A. Bounpane, Assistant Director, Bureau of the Census .....	36
Arthur C. Helton, Esq., Lawyers' Committee for Human Rights .....	58
James Haggerty, regional legalization director, U.S. Catholic Conference, Migration and Refugee Services .....	78
Muzaffar Chishti, director, International Ladies Garment Workers Union [ILGWU] immigration project.....	85
Joseph Etienne, Haitian Centers Council.....	92
Roy Bryce-La Porte, professor, College of Staten Island .....	95
Statement submitted by: Stanley Mark, Asian American Legal Defense and Education Fund .....	118

(iii)

21-50-88



# IMPACT OF LEGALIZATION PROCESS ON COUNTING OF UNDOCUMENTED ALIENS IN DECENNIAL CENSUS

MONDAY, JUNE 1, 1987

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON CENSUS AND POPULATION,  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 9:30 a.m., at 26 Federal Plaza, New York, New York, in room 305, Hon. Mervyn M. Dymally (chairman of the subcommittee) presiding.

Mr. DYMALLY. The meeting of the Subcommittee on Census and Population of the Post Office and Civil Service Committee is hereby called to order. I want to extend a special welcome and sense of deep thanks to the Mayor, for coming today to testify. I would like to welcome, of course, all our witnesses.

Today's hearing is a continuation of formal congressional review of the Census Bureau's plans for the 1990 decennial census, and is in response to important concerns raised by Congressman Robert Garcia.

I want to commend Congressman Garcia, who is the immediate past Chairman of this Subcommittee, for identifying the need for this hearing and for his continuing dedication to census issues, as the Ranking Majority Member.

Today the subcommittee will review the potential problems with counting undocumented aliens during the Constitutionally-mandated 1990 decennial census.

The enormity of this task can be seen clearly when one looks at the figures given by the Immigration and Naturalization Service. The INS estimates that there are approximately 6 million illegal aliens in the United States, with about a million residing in New York State. Of these figures, it is further estimated that about 4 million are eligible for amnesty under the new immigration law.

Among the issues we will address is the fear of a breach of confidentiality, which is at the heart of the reluctance of many undocumented people to be counted in the census.

While almost 4 million persons may be eligible for permanent resident status under the amnesty program, there will still be millions who do not qualify and who will not be in the amnesty program, which we face this year and the coming years.

These people must be assured that the information they supply on census forms will be kept strictly confidential.

In addition, they must be alerted to the importance of participating in the census. Undocumented persons are eligible for certain federal benefits, such as free public schooling for their children, and these benefits cannot be fairly allocated without accurate figures from the census.

We have divided today's witnesses into panels, to address these and other issues from the perspective of government officials, community organizations, and human rights groups.

Because of the large number of witnesses who have asked to testify today, we ask that oral statements be kept to a maximum of approximately five minutes. You may summarize your written statement, and the entire statement will be entered into the record.

And now, it is my great pleasure to relinquish the Chair to the former Chairman of the Subcommittee. But before doing so, I want to recognize my friend and colleague, Mr. Schumer, for an opening statement.

Mr. SCHUMER. I thank you very much, Mr. Chairman. And thank you, my friend and colleague, Bobby Garcia, for inviting me to participate as a member of the New York Congressional delegation.

Let me say that those of us in the Congressional delegation have something very real at stake in the census count. It's estimated that New York could lose as many as five and most likely three Congressional seats after the 1990 census, if present demographic trends continue.

That, of course, means a loss in clout, of our delegation in Washington. Our delegation was once 39. If we lose five seats it will go down to 29, a loss of ten seats in only 20 years. It also means less federal funding for so many of the kinds of programs that we depend upon in New York. The kind of program mix that most helps us is quite different than in many other parts of the country and depends not on the number of people we have in our state, but rather the number of people the census counts in our state.

There are a number of concerns that the entire Congressional delegation has. I'm the whip of the New York City delegation, and we'd like to make these clear with the Chairman and former Chairman's permission.

One is that homeless people should be counted at a time when they can be located, in shelters and other locations. If the count is in the Spring, as the Census Bureau intends, many of the homeless are in no particular place. And I don't know how the heck they get counted.

The Census Bureau has said that it will make undercount adjustments after the census numbers are sent to the President, and not before. In New York, we have suffered from the undercount. The estimate was that we were under-counted between 500,000 and 860,000 persons in 1980. That would have been enough to retain maybe one, maybe two of the five congressional seats we lost. Unless the Census Bureau adopts an undercount policy, the Task Force will have to use numbers without an undercount included in dividing up the Congressional seats.

State and local governments have only ten days to complain after the count is made. That's absolutely, in words of someone I've

heard speak many times, ridiculous. His head picked up at that word.

How one can analyze the data and make complaints within ten days when the census process is a ten-year process makes no sense.

Another concern of ours is how the 1980 census collected data about race. Not until three questions after the race question was there an inquiry about hispanic origin. That confused a lot of people, with good reason.

Finally, on the alien legalization process, which has already begun, we are, as a delegation, trying to put pressure on INS to do more for us. New York is estimated to have the third highest number of illegal residents, and most of them are in an urban setting, undocumented residents.

We only have five offices. California has 28. The State of Washington has five. In my home borough and in that of my colleague, Congressman Towns, there's not an INS office, a Legalization Office. Nor is there one in the Bronx. That is something that we hope to rectify.

So I hope that the Census Bureau works with this Committee, and I pledge to work with them. I know we had a delegation meeting where we discussed these issues. The entire New York delegation pledges to work with you and our leader on these issues, Bobby Garcia, to rectify the situation.

I thank the Chairman.

Mr. DYMALLY. Congressman Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

I want to thank you for allowing me to participate in today's hearing on the counting of undocumented aliens in the 1990 Census.

We are fortunate, Mr. Chairman, to have a city government which is more supportive of the undocumented than most jurisdictions. With the large numbers of undocumented aliens in New York City, our progressive attitude has been instrumental in ensuring that services like health and education are provided to this population.

No one, of course, is saying that everything is perfect. But I think that local officials have tried to be responsive to the undocumented and they should be commended for their efforts.

New immigration laws, Mr. Chairman, may finally open the door for the undocumented to join mainstream America. The legalization program established by the Immigration Act of 1986 offers some real hope to many in the undocumented community.

Yet, we must also remember that this new program is not an "amnesty." The burden is squarely on the shoulders of the alien to prove that he or she can meet the requirements for legalization.

And after three community forums on this issue, proving that you have resided in the United States continuously prior to January 1, 1982, is no easy matter. Moreover, since Congress did not grant any legalization benefits to the immediate family members of legalized aliens, many people may choose not to come forward and apply for legalization, and/or they may be reluctant to cooperate with the census takers.

Despite these difficulties, we must still encourage the undocumented community to participate in the census. Many federal pro-

grams' allocations to states and localities are based on population data. Without an accurate count, New York will be shortchanged in terms of goods and services from the Federal Government.

Consequently, Mr. Chairman, I look forward to hearing from our panelists today on how we can facilitate the participation of the undocumented aliens in the 1990 Census. I'm sure that their insights will be extremely useful.

Thank you for holding this hearing in New York City, a place where we feel that it's definitely needed. Thank you very much.

Mr. GARCIA. Thank you very much, Mr. Towns.

I'll be very brief, Mr. Mayor, because I know you've had to sit through a good deal of dialogue here.

I've always been very supportive of the legalization program as it pertains to this legislation. I've had some problems with other sections of the bill, but as far as legislation is concerned, I've been supportive.

But just let me say to all of you who are here, I think that ten years goes by fairly quickly, because just ten short years ago we started working on the Census in this Subcommittee. We went through the Census Count of 1980, and here we are coming up to the Census Count of 1990. So that life goes by pretty fast.

There are several people who are going to be testifying today. I'm anxious to see and hear from them as to what procedures are being taken to ensure that those persons who come and apply for citizenship are given every courtesy and made sure that their presence here at 26 Federal Plaza, or wherever the Immigration Legislation office may be, are treated with respect and given the type of support that they need to make certain that they can stay here in the United States.

There are several other parts of the bill. There's one part I would like to make very clear. I think the Mayor may or may not be able to confirm this. But in the City of New York, we really have not lost that much population over the last ten years. As a matter of fact, we may have gained ever so slightly.

The problem is that as you look at the whole situation of the 1990 Census as it pertains to reapportionment, we will be going from 515,000 approximately per Congressional District to over 550,000, which essentially means that while New York City may have gained a little bit and everybody will assume that because of that we're going to be okay and we're going to be able to maintain what we have, but that's not true.

I anticipate that we'll lose anywhere from four to five seats again in 1992. So in the question of those persons who ought to come forward and who are looking to stay here, it is essential that we get an accurate count. I know that the Mayor has worked very hard after the completion of the 1980 Census to get the undercount adjusted. And to this day, with his counsel, Mr. Schwartz, who's here, it was like hitting our heads against the wall. It was close to impossible.

And when you get into the rush of the Census of 1990 and all that takes place within a year or two after that, with the compiling of figures and statistics in the very short period of time that they give a municipality, given the time that they need to document that, it becomes virtually impossible.



So I say that to you so that we're all aware that the task ahead of us is not going to be easy and that the task as it relates to the City of New York and the State of New York is going to be difficult as well.

My opening statement will be placed in the record at this time.

OPENING STATEMENT OF HON. ROBERT GARCIA

Mr. Chairman, I would like to commend you for holding this timely and important hearing on the impact of the legalization process on the 1990 Census. Despite my vigorous opposition to what is now the immigration law, I was always very supportive of the legalization provision of the bill. This historic program began on May 5 of this year. By all accounts, New York City has the second largest population of undocumented aliens and I'm eager to hear from the officials and groups represented here today on how things are going.

For example, how many persons have applied for legalization in New York? Does this number reflect previous estimates? If so, are the facilities capable of handling the number of persons applying? If not, what is being done to encourage persons who are eligible to apply for legalization? If persons are concerned over the confidentiality of applications, what steps are being taken by the INS to ensure that this bill will not affect the 1990 Census?

Of great interest to me as well as the impact the newly documented aliens will have on the 1990 Census. I have worked hard for many years to correct the serious undercount of minorities in the Census. The consequences of undercounts, as we know, will be severe for the City of New York and New York State in terms of services, federal monies and reapportionment. I look forward to working with the Census Bureau and this Subcommittee to ensure an accurate count in 1990. Thank you.

Mr. GARCIA. Mayor Koch, we would like you to proceed with your statement.

STATEMENT OF HON. EDWARD KOCH, MAYOR, CITY OF NEW YORK

Mr. KOCH. Thank you, Mr. Chairman, and the members of the committee, and Mr. Dymally, who is the new chairman of the committee.

What I'd like to do is to file my formal remarks, and at the outset to introduce the two gentlemen who are sitting with me. Peter Zimroth is the Corporation Counsel of the City of New York, and Fritz Schwartz was his immediate predecessor.

Fritz is going to be testifying in a panel that follows. But I thought it would look very impressive if I came with two lawyers.

These two Corporation Counsels consider the Census issue to be one of our highest priorities. So to have their counsel is extremely important.

Now, the first point I want to make is that the amnesty law, so-called, which I supported, has great flaws in it as it relates to getting the benefits. I'm not going to take the time of this committee, which doesn't have jurisdiction over that, to point out the flaws, other than to say that there should be amendments and corrections so as to allow those people who were to be covered by it to, in fact, get the benefits of it. We see lots of people being excluded who should be covered.

Now, it is because of those exclusionary areas that we are going to have another undercount, because people are going to be afraid to come in who are legitimately to be covered but can't produce the necessary papers, and a whole host of other things that we think ought to be changed in the law. But there is a second group which

is quite large and which, likewise, will be undercounted and those are people who are doubled up in apartments.

We estimate 100,000 families in the City of New York are living in publicly funded apartments with other families. It's a violation of the law to do that. It's a violation of the law, and if we were to enforce the law, we would, and particularly in our low income housing projects, federal and city, we would have to throw people out. Obviously, we're not going to do that. But people are not going to come in and tell the federal census taker "yes, we're living here; we're not on the rent rolls; but we're living here." They're not going to do that. And those people will be the ones who will be undercounted.

And therefore, the heart of this is, that there will be a physical undercount—we know that, because there was one before. I mean, here we have the Census Bureau saying that the 1980 undercount in New York City, estimated by the Census Bureau itself, was 524,000 people. Do you know that 524,000 people is roughly the population of the City of San Francisco?

And that's the number that was undercounted. It is more than one Congressional seat. Why should we have that situation? Now, what do you do, recognizing that an undercount will eliminate our right to Members of Congress, will eliminate the possibility of our getting, and here the count is somewhere between 26 million and 52 million dollars in Federal aid a year. In a ten-year period that could be half a billion dollars in federal funds that we lose as a result of per capita formulas that we are already harmed by, and now we don't even get the benefit of the per capita aspect.

There is another area in which we suffer losses, and that is that the state legislature bases its allocation of seats in the Assembly and the State Senate on the Federal Census. So, we will lose in the area of Members of Congress; we will lose in the area of Members of the State Legislature; we will lose in the area of actual dollar allocations.

Now, how, then, can you handle this? It's not hard. The Census Bureau itself has said that it can do the job with a statistical formula, to take care of the undercount. But they don't want to commit themselves to actually doing it.

They have said it works. Let me just read about a paraphrase from my formal statement.

We know, already, that adjustment is feasible. The Bureau has itself said so in the past. Indeed, the Bureau has used adjustment in the 1970 census and in post-census studies since then. And among the outside experts who have supported its use are the Census Advisory Committee of the American Statistical Association, the American Economic Association, the American Marketing Association, as well as a panel of the Committee on National Statistics of the National Academy of Sciences.

So what we are really asking, bottom line, is that the Congress mandate the Census Bureau to use a statistical adjustment formula.

That's the end of my speech.

Peter?

Mr. ZIMROTH. I have really nothing to add.

Mr. KOCH. Fritz? You get two cracks.

Mr. SCHWARTZ. I'll do it later.

Mr. KOCH. Okay.

Mr. SCHWARTZ. Everything he said is true.

Mr. GARCIA. Mayor, from what I read in the New York Times, I'm shocked at your brevity.

Mr. KOCH. No, that's not true, Mr. Chairman. Matter of fact, some people complain that I'm too brief.

[Mr. Koch's prepared statement follows.]

TESTIMONY OF  
EDWARD I. KOCH  
MAYOR OF THE CITY OF NEW YORK

BEFORE THE  
SUBCOMMITTEE ON CENSUS AND POPULATION  
OF THE  
HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

NEW YORK, NEW YORK  
JUNE 1, 1987

Mr. Chairman, members of the Subcommittee, thank you for the opportunity to speak today about the effect on the 1980 census of the amnesty program under the new immigration law.

This is another of those matters in which there is both good news and bad news. The good news is that, at last, we have a comprehensive amnesty program that will enable many New York City residents to attain legal status and, ultimately, to become United States citizens. I think it is fair to assume that, once these individuals do attain legal status, they will participate more freely in the census process, no longer afraid that their participation will result in deportation. The result should be a better census in 1980.

The bad news is that, although the census may be improved somewhat, it will not yet be satisfactory. Many undocumented aliens in New York will be ineligible for amnesty, and they will continue to live in fear and thus continue to avoid the census. Moreover, there will remain classes of individuals other than undocumented aliens who have their own reasons for not cooperating with the census effort. I will talk about them later. The general point I

want to make is that, however encouraged we may be that the amnesty program will bring some aliens out of the shadows, we cannot use this to become complacent about the 1980 census. The deeper problems with the traditional census methods persist, and large cities like New York will continue to be disproportionately undercounted unless the Census Bureau supplements these methods with statistical adjustment.

The City of New York is playing a very active role in the amnesty program. We have organized an Immigration Policy Task Force to help with the implementation of the program here. We have assisted the Immigration and Naturalization Service in setting up its amnesty offices. We have begun a large public information campaign, and helped to coordinate the efforts of private, community-based organizations to provide further assistance to amnesty applicants. We have also alerted the various City agencies -- in particular, our public hospitals and board of education -- to gear up to provide applicants with the documents they need in order to establish that they have lived here for the requisite period of time.

Despite these efforts, however, there are provisions in both the immigration statute and its implementing regulations that will severely limit the number of undocumented aliens who qualify for amnesty. The statute, for example, denies amnesty to those persons who came to this country after January 1, 1982, or who came here legally on a nonimmigrant visa that expired after January 1, 1982. It is impossible to determine how many of our undocumented aliens are

thereby disqualified, but we estimate that a great many are. They will remain in the shadows.

The implementing regulations impose further obstacles. First, with only a few exceptions, aliens who have left the United States for any trip of more than forty-five days are ineligible for amnesty. Again, we do not know how many people will thereby be disqualified, but we suspect that the number is large -- people who returned to their old homes to visit family members, or perhaps to take care of members who were ill. Second, aliens whose children have received public assistance (the children are eligible if they are United States citizens) may be ineligible, since the aliens may be said to be likely "public charges."

There will also be documentation problems; individuals who have lived here continuously for five years may still have trouble proving this. Proof will be particularly difficult for those who have actively sought to avoid public exposure, as many have, or who have lived in other states. Moreover, many applicants will find it necessary to procure their documentation from their employers. If, however, the employers have not paid taxes for these employees, the employers may be reluctant to provide any evidence that will reveal the tax evasion. These documentation problems will be compounded by the short one-year time period in which individuals must complete their amnesty applications.

Finally, many individuals eligible for amnesty may be discouraged from applying out of purely irrational fear. They may, for

example, come from totalitarian countries, in which promises of amnesty are only political ruses. Although the Immigration and Naturalization Service has assured these individuals that, absent fraud, any information they provide will not be used for the purpose of deporting them, many will remain skeptical and will not come forward to register. We know that bona fide amnesty programs in other countries have been hobbled by such fears.

The fact is that this amnesty program, however well-intentioned, is going to miss a great many of the undocumented aliens in the City. At the same time, we can expect most of the people missed to remain here, despite the new employer sanctions. Many will have family members who are given amnesty, and they will want to stay with them. Others will have other social ties to this country. Still others will find that life in New York, even without the benefits of amnesty, is preferable to life in an economically depressed or politically repressive country. They will thus stay on in the City, and may again avoid the census takers.

But even if every undocumented alien in this City were, by some miracle, eligible for amnesty and then able to prove his or her eligibility, there would still be a dramatic undercount in the 1990 census. As I said before, there are significant groups other than undocumented aliens who will continue to have an interest in not cooperating with the census effort. There are, for example, more than 100,000 families in New York who are forced by economic circumstances to share single housing units with other families, related or

unrelated. Such doubling-up is illegal, and the families, fearing eviction, may refuse to tell the census takers the number of people who in fact reside in their apartments. There is also the City's growing homeless population, many of whom are afraid that information they provide to the census takers may jeopardize their public assistance payments. Although the City is developing methods to improve the headcount of the homeless, it is likely that they will continue to pose problems. Like undocumented aliens, the doubled-up and the homeless are people with specific fears about revealing information about themselves.

There are other problems confronting census takers in cities like New York -- the fear of crime, the difficulty of identifying individual units in many apartment buildings, the difficulty of gathering responses from residents, whether citizens or aliens, who are not proficient in English. The General Accounting Office has itself acknowledged that these are intractable problems, and that refinements of traditional headcount methods will not substantially reduce the disproportionate undercount.

Despite these problems, the Census Bureau has not yet made a commitment to the one methodology that can redress the undercount -- statistical adjustment. The Bureau explains that it cannot decide whether to adjust until it knows that adjustment is "feasible," and until "outside experts support it."

We already know, however, that adjustment is feasible; the Bureau has itself said so in the past. Indeed, the Bureau has used



adjustment in the 1970 census and in post-censal studies since then. Among the "outside experts" who have supported its use are the Census Advisory Committee of the American Statistical Association, the American Economic Association, and the American Marketing Association, as well as a panel of the Committee on National Statistics of the National Academy of Sciences. It is odd that the Bureau continues to suggest that there are doubts as to feasibility.

I have spoken to you before about the significance of the undercount in this City, an undercount which the Census Bureau has itself estimated to be about 524,000 people. One crucial effect of the undercount is to deprive the City of its full share of representation in Congress and in the New York State Assembly. What that means is that we have not been fully represented in political decisions that fundamentally affect us. This is not only unfair; it is unconstitutional.

A second effect is that the City has lost between \$28 million and \$52 million annually in federal funds under certain programs with formulas tied to population. Over a period of ten years, this translates into a loss of up to half a billion dollars in services to New York. We have also lost state funds under programs similarly tied to population.

A third effect of the undercount is that our own ability to develop programs and policies to improve the City has been reduced. Without accurate census data, the City's efforts to distribute fairly

its basic services -- housing, education, sanitation, health care, and police and fire protection -- are necessarily undercut.

I do not want to end on too critical a note. I do believe that the amnesty program is an important and valuable project, to which the City has contributed and will continue to contribute. But I urge you not to look on the program as a solution to the undercount problem. The amnesty program will no doubt enable some undocumented aliens to become legal residents, and this should encourage them to participate in the census process. But many undocumented aliens will not become legal residents, and their wariness of the census will continue. Moreover, the other groups who have refused in the past to participate fully in the census -- doubled-up families, for example -- will continue to avoid participation. Unless Congress passes legislation that requires the Census Bureau to use statistical adjustment, our census will continue to be deeply flawed. This is a matter of great legal, political, and economic importance, and I urge you to move forward with such legislation.

Thank you, Mr. Chairman, for organizing this hearing and permitting the City to speak on this matter.

Mr. GARCIA. I would like to give our colleague from Brooklyn, Congressman Owens, an opportunity, if there's anything he would like to open up with, before we start questioning the Mayor.

Mr. OWENS. No, I have no opening statement, Mr. Chairman.

Mr. GARCIA. Okay. Mr. Mayor, I have one question.

As far as you know, what steps has the city taken to assist with the implementation of the legalization program?

Mr. KOCH. We have a panel, a city-wide committee, that I appointed, working very closely with the Immigration and Naturalization Service, the Census Bureau. We are engaging in efforts through advertising to encourage people to come forward. We have a special office at our City Planning Department that relates to those who are in this status of aliens and undocumented.

Mr. GARCIA. Have any reports been filtered back to you yet as to how that's going?

Mr. KOCH. Well, it's difficult. There is no question but that there is resistance on the part of those who we are seeking to help to come forward and be identified because of the fear that they may be entrapped.

One of the entrapments is that you, yourself, may have fit everything, but your kids, American citizens, were entitled and you received welfare benefits for them. This, then, makes you subject to the charge that you may become a public charge in the future, which is one of the prohibitions under the amnesty legislation. And that might cause people not to come forward, who are otherwise covered.

Mr. GARCIA. One further question along that line. One of the things I have noticed, and especially in the City of New York where we have such a large number of people who are coming from the Carribean and who are coming from Central and South America, that the Catholic Church plays a very important role.

Mr. KOCH. Most important.

Mr. GARCIA. And we have, we are going to have a witness here, Mr. James Hagerty, who works with the United States Catholic Conference, who will be testifying. One of the thoughts that I had, and I had called the Archdiocese in New York; and a suggestion to you, Mr. Mayor, is that if there is some way possible, will you, the Cardinal and the other people who are responsible, the religious leaders of the city, see if you can get together and hold a major press conference?

I have found historically, in my many years as the Chairman of this Sub-Committee trying to get people to come forward and participate in the Census, is that if you can do that, I think that it would help a great deal because those folks are not afraid of the Church. They may be afraid of City Hall, they may be afraid of Albany, they may be afraid of Washington, but they're not afraid of the Church, and they go there for refuge. So it's a suggestion. I know that the Catholic Church has been doing something on it.

Mr. KOCH. It's a very good suggestion. I will tell you that because we recognize how important the Catholic Church is, the Chairman of our city-wide committee appointed by me is the Auxiliary Bishop of Brooklyn. And we have had a press conference with him. But I think I will ask the Cardinal, who is going to be on my television show this Wednesday night at 8 o'clock, if he wouldn't consi . . . at-

tending—Channel 5—if he would not consider attending a press conference to do exactly that.

Mr. DYMALLY. You made reference to the families who are crowded in the apartments. What is your estimate, off the top of your head, for the undocumented population in the city?

Mr. KOCH. Well, we heretofore have used a figure of 750,000 in the last census. That was the figure that we used. I would find it difficult to tell you how many of the 750,000 are in fact undocumented—that was the undercount figure that we used—or how many of them would fit into this group of people who are legally here but doubled up and for other reasons don't want to make known their presence.

But my own judgment is that it must exceed the 524,000 figure that the Census Bureau has used, as those who were undercounted. That's their figure, not my figure. So it's got to be higher.

Mr. DYMALLY. You have a close working relationship between the New York and California delegations. It troubled me in 1980 when we lost some seats here, and it's troubling again to hear my friend, Mr. Garcia, predict a possible loss.

What suggestions ought we take to the Congress to get some assurance that this undercount will be correct?

Mr. KOCH. There's only one. There's only one thing that will deal with this undercount. And the Congress can mandate it. And that is to mandate a statistical adjustment that the Census Bureau has said is possible but has said it will not necessarily do. You should mandate it. If you did that, you will have accomplished all that this Committee can and should do on that subject.

Mr. DYMALLY. One final question, sort of a human interest policy question. Do you think these hearings—as a veteran of these hearings—are important in terms of influencing public policy?

Mr. KOCH. There's no question that hearings of this kind have impact on the Congress itself, undoubtedly. The public is interested in this. But it also impacts on the Census Department.

I believe that if you brought them in or maybe they're going to be here, and you pound them in a rational way, as the Committee would, and demand of them that they agree to use the statistical adjustment, you might then not need to go to a legislative route.

Mr. DYMALLY. Thank you, Mr. Chairman.

Mr. GARCIA. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman. I just want to follow up on that question. Being a veteran of Congress. I'm sure you know, Mr. Mayor, that people would ask whether they benefit from including the undercount. That would probably determine the way they voted on such an issue. My guess is that the number of states that would benefit wouldn't have a majority of votes in the House or the Senate, certainly in the Senate.

They admitted that we were shortchanged 524,000 people, an enormous number. Is there any way, any legal recourse that the city might take in advance to help move us along?

I think we should try it congressionally, and of course you know, there are many ways to "skin a cat," possibly through appropriations bills.

Mr. KOCH. I turn to the Corporation Counsel on that.

Mr. ZIMROTH. I'm sure you are aware, or if you're not you should be, that we have a lawsuit still pending on the basis of the 1980 census, and we have—and that case is still pending here in the United States District Court in the Southern District and we're awaiting a decision.

Mr. SCHUMER. I understand that. I'm just concerned that at the rate that case has moved along and will go through the appeal, perhaps in a separate suit aimed at the 1990 census, the courts might, because of the deadline, move it along more quickly.

Mr. ZIMROTH. I can tell you that I have asked my staff to look into the possibility of bringing a lawsuit in advance.

One of the difficulties, however, is that the Census Department has not committed itself to using statistical adjustment or to not using it. It's pretty hard to go to court and say that—maybe that's the reason they're not committing themselves; I don't know—but to go to court and say that, to force the court to tell them to do something when they could come back and say well, we haven't decided not to do it yet. But we are definitely looking into that.

Mr. SCHUMER. Keeping in mind the 1980 experience, a lengthy suit, and their lack of support for this in 1980, I think that court might find that plea a little hollow.

Mr. ZIMROTH. I agree with you and as I said, we are looking into that. I should also say, just on a related subject, that we're also looking into the possibility of lawsuits concerning some of the regulations that the INS has put out that we think may or may not follow the Congressional mandate.

Mr. SCHUMER. I have one other question on the legal ramifications. The method that the Census uses seems to engender an undercount. The fact that they rely on a mail survey and then follow it up door to door will inevitably result in an undercount in the apartments and with the undocumented aliens. Because of the 1982 data, even if every person eligible for amnesty receives it, we would still have hundreds of thousands of undocumented persons in the city.

We will try in the Congress to do what we can to change their methodology. But they're pretty stuck in the mud. Right now it's a Republican Administration that I don't think is sympathetic to Democratic-oriented urban areas. Is it possible to file any kind of suit over methodology, given the experience in 1980?

Mr. ZIMROTH. I don't know the answer to that but I will tell you that we will look into that.

I would say that the issue in a way, it's more serious than simply—well, it's not simply undercounting. It's the fact that urban areas, like New York and other urban areas, are disproportionately undercounted. And that's really the problem. If everybody were undercounted the same proportion, it wouldn't make any difference.

Mr. SCHUMER. But as I understand it, New York's undercount was by far the most disproportionate, even given our large population.

Mr. KOCH. And another problem is that some of the programs that I understand are going to be used, the outreach programs, which on the surface of it may look like they're a good idea, may in fact increase the disproportionality of the undercount.

Mr. ZIMROTH. But it is a fact that L.A. suffered the same discrimination that we suffered, proportionately.

Mr. SCHUMER. In conclusion I urge that every legal avenue aimed at 1990-92 be explored.

Thank you.

Mr. GARCIA. Congressman Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Just in case there's not statistical adjustment and the legal route fails, have you thought about what we might be able to do to increase the possibility that they count the homeless?

Mr. KOCH. Well, we have a reasonably good count on the homeless. There are two homeless populations.

One population would be the singles, and the other would be the families. There are no families out on the street. We know where every family is. They are in our shelters, our hotels. There are 4,800 of them, roughly 18,000 people, making up family units. They are counted. There's no problem about that. We know where they are.

As it relates to the single homeless, there will be some dispute as to how many are on the streets and how many are in our shelters. If counting is done during the summer, there will be many, many more out on the streets than in our shelters. But at the height of winter, when we require, under an order that I issued, that any homeless person who is seen on the street, where a cop thinks that that individual is homeless and the temperature is 32 degrees, which is freezing, there's an instruction. The cop must stop the person and ask them where they're going to sleep that night. If the cop is satisfied that they have a warm place, that's okay. Or if the cop is satisfied that they can make a mental judgment that is acceptable as an adult, that's okay, too. But if the cop believes that person cannot make such an informed judgment, then he must call the Sergeant at the precinct; the Sergeant comes; if the two of them agree that this person is mentally incompetent, they take the person against his will, if he doesn't want to go to a shelter. If he wants to go, we take him, in our own vans, to a shelter, voluntarily. If he doesn't want to go, he's taken to an emergency room at a hospital where he's examined by a doctor. And the doctor decides whether he's incompetent. So you see, these are all the civil liberty protections to make sure we're not dragging people off the street, who even though it's foolish for them to be there, have a right under our law to kill themselves if they want to. That's the law.

Now, at the high, this is my recollection now—14 people were taken in off the streets in any one night, involuntarily. I think 70 were taken voluntarily. They stopped them and they brought them in. So that, whether it's hundreds or a couple of thousand who are not in our shelters, it's a very confined figure. We know who those people are.

Mr. TOWNS. Thank you very much, Mr. Mayor.

Let me ask you one other question, along those lines. If at the same time the Census Bureau is operating and of course we have, as you point out, in terms of the amount of undocumented aliens, and thinking in terms of now the new immigration bill—if all these things are moving at the same time, and when somebody knocks on somebody's door, there's no way they're going to open it.

They're not going to answer it. I think that these are problems that I'm very concerned about, especially here in New York City. Knowing that you served in that body down in Washington for a number of years, do you have any ideas or suggestions that I could take back to that group? Maybe I might even get angry enough to tell them you told me to say it.

Mr. KOCH. On the way that they should approach people in knocking on doors?

Mr. TOWNS. Yes.

Mr. KOCH. Well, they have to train people. They have to use local community people. They should provide—and I don't know that they're not already—but if they're not, they should provide in many areas of this town where they're going into areas that they are uncomfortable in terms of physical safety, they should send two people to do the job. And that's the only way it can be done. And it cannot be done on a phone survey, because lots of people don't have phones.

Mr. TOWNS. Okay. Thank you, Mr. Mayor.

Mr. GARCIA. Mr. Owens.

Mr. OWENS. Mr. Mayor, continuing in the same vein that Mr. Towns was, I think you're to be congratulated for the city having made it clear that where vital city services are concerned, they would be made available to undocumented aliens without those aliens having to worry about them being turned in to INS. Hospitals, et cetera, would be made available.

What data do we have; has any data been generated, without infringing upon the privacy of individuals, or keeping a record of individuals, do we have any indication of what percentage of the people are served at city hospitals, or of the homeless—

Mr. KOCH. Who are undocumented aliens?

Mr. OWENS. Yes. Any data?

Mr. KOCH. I don't know. I'll have to get that for you. But I would suspect that that material is not available, because we go out of our way not to take, not to generate information that would adversely impact the confidentiality of these individuals. So we have said to people, we have posted in our subways and elsewhere that say, send your kid to school. Whether you got here legally or illegally, we're not interested, in our schools, as to how you got here. If you need medical care, come to our municipal hospitals if you can't afford a private doctor and we are not interested in how you got into the city; we're only interested in providing care.

So while there may be such information available, I think it's hardly likely it would be more than a guess because we go out of our way not to secure that kind of information.

Mr. OWENS. Well, we go out of our way to protect the privacy of those individuals and not to indicate who they are individually. But certain people turn up in the school system and don't have addresses in the U.S. in terms of where they were born, et cetera. No records are kept?

Mr. KOCH. I don't know. I will find out. But my gut reaction is that we go out of our way not to accumulate information that—the problem with accumulating information, no matter what you tell people, that it's going to be private, is A, they don't believe you; and B, generally speaking, in some cases, they're right, that there

is no way of guaranteeing absolute privacy in a whole host of areas, try as you might, unless you set up super-secret, confidential banks which obviously you do in many cases, and even there, somebody is able on occasion to leak it. So people are very suspicious.

And therefore, the rule I think probably is, and I'm going to look and see if we have that information, is that if you don't need this information, why do you ask for it?

Mr. OWENS. No, I certainly don't want to——

Mr. KOCH. I don't mean you're asking for it.

Mr. OWENS [continuing]. Encourage a system that might be punitive in any way. I just thought maybe they had—inevitably they say things you pick up which might be useful——

Mr. KOCH. Fritz has the——

Mr. SCHWARZ. We won a case against the Federal Government on our entitlement to be reimbursed under Medicaid for the care of undocumented aliens in the city hospitals and in connection with that case, did develop some data on a sort of gross basis.

Mr. KOCH. We'll get it for you. Whatever we have.

Mr. SCHWARZ. You could get it from Peter's office.

Mr. KOCH. We will get that for you.

Mr. OWENS. I would think it would be very useful in your court case.

No further questions.

Mr. GARCIA. Mr. Mayor, thank you very much.

Mr. KOCH. Thank you.

Mr. GARCIA. Assemblyman Angelo Del Toro, Chairman of the Reapportionment Committee in the New York State Legislature, New York State Assembly, Mr. Cesar Perales, Commissioner of the New York State Department of Social Services and Mr. F.A.O. Schwarz from the law firm of Cravath, Swaine & Moore.

Very few people know what F.A.O. stands for, except me. Frederick August Otto Schwarz. That was once the \$64 question.

Mr. SCHWARZ. I hope you won the \$64.

Assemblyman Del Toro, why don't you start first? You heard the Chairman when he opened up stating the five-minute rule, so that we can have an opportunity to ask you questions.

**TESTIMONY OF HON. ANGELO DEL TORO, ASSEMBLYMAN, NEW YORK STATE LEGISLATURE, CO-CHAIRMAN, NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT**

Mr. DEL TORO. I want to thank the Committee. I did file a written statement with the Committee that I'm sure you have a copy of.

Mr. GARCIA. What we'll do, Angelo, is submit your entire statement for the record.

Mr. DEL TORO. Sure. Just on this question about adjustments, by the Census Bureau. We've taken the position at the Task Force and recommended to the Assembly to take a position that if the Census Bureau is going to do an adjustment, that it should be done prior to certification of the Census. Any certification, any adjustments after would really cause a lot of havoc in the reapportionment process, because it would mean that lines would have to be redone



again. And I think that's a very important point to remember. We try to institutionalize it prior to that certification going to the President on January 1, 1991.

Another point I want to bring up that's not in the written statement is that I think it would behoove the Congress and the State Legislatures both here in New York and nationally to set up a liaison both on reapportionment and undercount, some sort of advisory committee structure.

I know this weekend the National Conference of State Legislators in Denver is having a weekend conference on reapportionment, and really, reapportionment is based so much on the Census that I think it just behooves both bodies to work together, both groups of people, somehow to do that.

New York State's interest in this census was very well stated by the Mayor. Besides the loss of political representation, we feel that millions of dollars were lost in this state based on formulas that came down.

And I'd like to highlight two problems in the written statement that I think are very important. We do now have the Simpson-Rodino bill. It is our hope that a lot of people will take the benefits of that bill and start the process of legalizing both their status and hopefully even becoming American citizens, and sharing in this great democracy and becoming full partners.

But by 1990, the amnesty period will be over. And because of the severe penalties in that bill—deportation, employer sanctions—I think that that bill is going to have a chilling effect, a very serious chilling effect, on the Census, because any undocumented person who still remains in this country and wasn't able to take advantage of the Simpson-Rodino bill, will be even less likely now to want to participate with the government, in any form, whether it be Customs or state government or city government. Because they really will go underground in my opinion, just to avoid a possible deportation order, and certainly employers are going to be very leery of hiring these people.

So I think that the Simpson-Rodino bill will hurt the Census count very much in 1991, after the amnesty period is over. I think that we really have to redress this and try to get this core group of people who will even have a greater incentive to remain underground, so to speak, instead of coming forth.

The Census Bureau does a good job in publicizing that the Census is going on and asking people to cooperate.

I think it's important that another Federal agency not do any highly publicized raids on undocumented aliens during that period.

In 1980 it's my understanding that the Immigration and Naturalization Service in San Antonio, very public, very outlandishly, went in and did raids in certain barrios of San Antonio. I think that had to have a chilling effect. No matter how much the Census tells people that the census data is confidential, if INS is going to be very aggressive during this period, I think it's just going to kill any chance of getting people to cooperate with the census. And I think it's something that really has to be redressed. I think that we should have a moratorium on INS activities from 1989 until after the census is completed in January 1, 1991, because they can really do a lot of harm and destroy the publicity campaign. You're not

going to believe that the data that's being collected is confidential if the same people who wear a federal uniform, or who look like the census people, in some cases, and wear a federal uniform, are out there locking people up and trying to deport you. I just don't see how you get people to cooperate with the census under those circumstances.

So I think it's very important that something be done to sort of chill out the Immigration and Naturalization Service during this period.

I also think that one way I think of helping to count the undocumented would be to hire undocumented people. People who are familiar with that community I think would have a better chance to go in there and get people to cooperate.

Of course, identifying such people might be difficult. But I think if you start working now, you could come up with a program, and try to get their input, and contact other organizations that are dealing with the undocumented now, and working with them.

There are a few groups. In New York City we have a few groups already, both voluntary, CVO-type groups, and the Catholic Church is very active. I understand the Archdiocese of New York has set up a committee in each church to work with the undocumented, where the priests and whatever personnel they have in each parish help. There's sort of a committee to try to get people to apply for benefits under Simpson-Rodino.

So that would be a good source to go after.

And Bob's suggestion of a press conference with the Mayor and the Cardinal is a very good idea, and other religious leaders.

You have my statement. If there are any questions, I'll be glad to answer.

[Assemblyman Del Toro's written statement follows:]

STATEMENT OF

HON. ANGELO DEL TORO

CO-CHAIRMAN  
NEW YORK STATE LEGISLATIVE TASK FORCE  
ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT

ON

THE IMPACT OF THE LEGALIZATION PROCESS ON THE COUNTING OF  
UNDOCUMENTED ALIENS IN THE 1990 CENSUS

BEFORE THE

HOUSE SUBCOMMITTEE ON CENSUS AND POPULATION

AND

THE SENATE SUBCOMMITTEE ON  
FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE

JUNE 1, 1987

Chairman Pryor, Chairman Dymally, members of the Senate Subcommittee on Federal Services, Post Office and Civil Service and the House Subcommittee on Census and Population, I would like to thank you for this opportunity to express the views of the New York State Legislative Task Force on Demographic Research and Reapportionment on the impact of the legalization process on the counting of undocumented aliens in the 1990 census.

The New York State Legislature takes great interest in both the 1990 census and the implementation of the Simpson-Rodino Bill. During the 1980 census, New York, as one of the states with the largest number of hard-to-enumerate inhabitants, was particularly hard-hit by the census undercount. The resultant loss of federal dollars and diminished voice in Congress is something we do not wish to repeat in the next decade.

New York also has a large share of the nation's undocumented aliens; the Legislature would like to see all those individuals who are eligible to apply for citizenship under the Simpson-Rodino Bill to do so. To this end, the Speaker of the New York Assembly, Mel Miller, has formed a fourteen-member "Task Force on New Americans" chaired by Assemblyman Jose Rivera. This Task Force's prime objective is to assist and encourage the maximum number of eligible immigrants to become American citizens.

The number of undocumented aliens residing in this country on April 1, 1990--the day that all inhabitants of our nation will complete and return the 1990 census questionnaire--is difficult to determine, especially if the Simpson-Rodino Bill has been fully implemented:

1) Many of those individuals who were undocumented aliens during the last census, and who have remained in this country until 1990, will hopefully have begun the legalization process and will no longer be undocumented. Although the Census Bureau has made estimates of the number of these inhabitants--based on the count of aliens in the 1980 census--there are no hard figures, and we have no way of knowing how many will actually come forward. The financial burden in applying for permanent residence status and lingering fears of deportation may deter many. The Census Bureau should create educational materials to be distributed to both those who take advantage of Simpson-Rodino and those who don't.

2) If sanctions against employers who hire aliens ineligible to work take full force and are effective, many of these aliens will be forced to leave this country. Again, there are no reliable data to estimate how many will be affected. The effectiveness of fines against employers will be the prime determinant of how many undocumented remain by 1990.

Those who have begun legalization by census day should be more likely to complete the census questionnaire. The major factors inhibiting non-citizens from doing so--fear of government, language barriers, and lack of knowledge about the benefits of the census should have been allayed by this time. However, counting aliens who remain undocumented by 1990 will be even more difficult; the factors mentioned above will combine with sanctions against employers to produce an even lower response rate.

To avoid this, we encourage the Census Bureau to target this group in order to assure them that the information collected in the census is confidential and that it is not shared with government agencies, such as the Immigration and Naturalization Service. We also urge the INS to refrain from any actions during the time of the pre-tests, dress rehearsal, and 1990 census itself. Even the most effective census publicity will be made useless if this kind of coincidence occurs.

Assuming that many aliens do participate in the census, another issue related to data tabulation will probably be raised. The increased numbers of non-citizens may bring calls for them not to be included in census counts. As you well know, the census's Constitutional mandate calls for the count of "the whole number of free persons." New York State's Constitution has a provision for the State to conduct an enumeration if the federal census excludes aliens. We urge Congress and the Census Bureau to withstand calls to eliminate non-citizens from the count.

Thank you again for this opportunity to express the Task Force's views.

Mr. GARCIA. If you would just hold on, now, I'd like Mr. Schwarz to make his five-minute presentation.

**TESTIMONY OF FREDERICK A.O. SCHWARTZ, ESQUIRE, CRAVATH, SWAINE & MOORE LAW OFFICES, AND BOARD MEMBER, NAACP LEGAL DEFENSE FUND**

Mr. SCHWARZ. I'm here in two capacities. One, as counsel for the city, former Corporation Counsel, I brought the case. Now, my firm is still handling the case.

Secondly, as a Board Member of the N.A.A.C.P. Legal Defense Fund, which expresses its interest in this issue.

Let me briefly state the problem. Because it's not simply a problem of New York City and Los Angeles. It's a national problem which has to be dealt with nationally.

The disproportionate undercount affects lots of people—blacks, hispanics, aliens—both regular aliens and undocumented aliens—poor people in general, residents of high-crime urban areas, persons with unconventional living arrangements, like people who are doubled up, and persons whose English skills, whose literacy skills, are weak or nonexistent.

Every one of those classes of persons tends to be disproportionately undercounted. And they tend to live, disproportionately, in areas like New York and Los Angeles.

The disproportionate undercount in our cities will, without question, occur again in 1990. No matter what is done, with respect to coverage improvement. And the people here from the Census Bureau are very sincere. They're hard working, they will spend money, they will try, but no matter what is done, the disproportionate element of the undercount will not decrease, and if anything perhaps will increase. Because whatever is done in terms of saying get out and come in and let yourself be counted, is naturally going to reach the people whose literacy skills, for example, are stronger rather than weaker.

So even if they cut the numbers a little bit, they're not going to reduce the disproportionality.

And we were undercounted here in New York City by equal to the population of Denver and other huge cities.

I'd like to place it, briefly, in a constitutional context, and put this argument about the Census undercount in terms of the great sweep of American constitutional history which has been moving toward democracy, from the original Constitution, which for all its high ideals, gave the vote only to propertied white males, to today, where everybody theoretically has the vote. But those who are weakest among us are still undercounted, so their representation is not equal to their actual population.

As you know, under the original Constitution, blacks were counted as three-fifths of a person, officially in the Constitution they were counted as three-fifths of a person.

Today, unofficially, because of the Census undercount, blacks in our central cities are counted as about four-fifths of a person, and the hispanics, it's the same degree of undercount.

Until we have a statistical adjustment, we will not have democratic equality. So for the same reasons as we fought the Revolu-

tion to overcome taxation without representation, for the same reasons as we fought the Civil War to give blacks the right to vote and the theoretical right to be counted as one person, for the same reasons as we passed the Constitutional Amendment to give women the right to vote, for the same reasons as in the 1960s the Supreme Court addressed the issue of one person, one vote and held that malapportionment was unconstitutional, the undercount, the systemic undercount must be addressed.

My prediction is, it will not be addressed by the Census Bureau. They keep saying maybe yes, maybe no, we think we're inching up to it. Let's hope they do. They have the capacity to do it.

But it will take a press from the Congress. And in response to Congressman Schumer's observation, yes, of course, some people win and some people lose. But if you phrase the issue in terms of realization of our democratic ideals and if you approach the problem as the Assemblyman said, before the actual count is announced, so you can't know quite as precisely who will win and who will lose. And having in mind the ideal of full democracy, I believe that you people in the Congress can take steps that will move this along.

We're going to continue with our lawsuit. Peter Zimisth the "new corporation council, will try and be as innovative as he can with some new lawsuits. And of course the courts are important.

But Congress has the power, and I would urge at least your committee to start and report out a bill. I had breakfast with the Chairman, and we're available to work with you on any form of legislation and to do anything else we can.

Thank you.

Mr. GARCIA. Just let me say two or three things. We're not as concerned with the State Legislature, in terms of the loss of seats, because constitutionally it's locked into 150 seats in the assembly, and the Senate can fluctuate any way they want, so there'd be no loss of seats. There may be a shifting of seats.

Mr. SCHWARZ. The census undercount causes a shifting from urban to non-urban.

Mr. GARCIA. But I don't think that that's a problem for New York, in view of the fact that we have indeed gained, slightly, in population, and the shift has been more upstate that it has been in the urban center.

The second part is that let's say for example, Peter, who is our good friend, who is on the next panel, decides with the hierarchy at the Bureau of the Census, okay, New York, you got 550,000 undercount. You know what? You're entitled to the 550. Where do we put it? Where do those 550,000 people actually reside?

Mr. SCHWARZ. They have the capacity to adjust, perhaps not down to the block level, but down to the, to districts that are quite small.

One has to admit that any adjustment by definition is imperfect. The question, Congressman, is whether the adjustment would be better than the unadjusted head count. And I think the answer is clearly yes.

The second question is, are the American people, are the American people willing to accept the use of statistics to affect basic political rights?



Well, of course, today, we're so used to statistics. Every one of you makes decisions, makes vital decisions right in your business, depending upon samples. I mean, you decide whether or not to run and where to run or what to emphasize based on statistical samples. So the American public would not have the same sort of problem with the use of science that they might have had even 30 years ago.

Mr. GARCIA. See, I understand the 550 as it relates to the Mayor of the City. We had a problem with the different classifications for the City of Memphis. By a thousand or two, they went into a different classification, so they came under a different funding pattern.

So we understand that. We understand that municipally. There's no problem with that.

The problem I have is, to give you an example, the towns directional seat. There was a big schism between Puerto Ricans and blacks in terms of where did the numbers fall and who got what. And in order to avoid that schism, when the people in the state legislatures start to reapportion, everybody needs to be treated fairly, to assure all the numbers fall where they should.

We need to say not just here are the numbers, but where are the numbers and what do the numbers look like, ethnically and racially, so that we have some idea.

Because the one thing you don't want to create is a situation where there is schism. What you want to do is try and create a situation where in fact there is harmony and you can work out the figures and statistics in Albany.

Mr. SCHWARZ. Right. I mean, certainly the expertise in implementing adjustment should be the Bureau of the Census' expertise. They are very, very good people in that office, one of whom is here. They're very good people.

And I think the American public has confidence in them.

But the issue of schism cannot now be avoided any longer. Because once the undercount has become a public issue, as it now has, the issue of schism already exists. Blacks know, and increasingly will know, that because they are undercounted they lose representation.

Hispanics know, and increasingly will know, that because they are undercounted, they lose representation.

So we have this national problem. I think their concerns are right on target. But they can't, they no longer can just be wished away. They're here. We have to deal with it and we have to try and see, can we make it a little better than it now is.

Mr. HOPPY. I am Louis Hoppy, Co-Executive Director of Angelo's Task Force.

I was asking what happens on your question, Bob. And unless the adjustment is brought down to the block level, we cannot use that adjustment to reapportion. That's the answer.

But there's another problem, that there's certain groups that are probably getting set to challenge the Census Bureau, in the counting of non-citizens. The Constitution says that there shall be a census every ten years to count the whole number of free persons residing within a state. And I think there will be groups who will challenge the Census Bureau. The Census Bureau until this date has always counted non-resident—non-citizens in its numbers. And

there will be a challenge, legal challenges to that, and saying that they only should be counting citizens.

The New York State Constitution provides in the state, if that happens, the federal government only decides to count citizens within a state, that we will count non-citizens.

But I think Congress, the committee, should back up the Census Bureau in its efforts to ensure that everyone who is residing in this country is counted.

Mr. GARCIA. The Constitution states every person. It doesn't say whether the person is a citizen or a non-citizen. And so when you talk about that you just talk about people who are here.

Mr. HOPPY. But there are court cases.

Mr. SCHWARZ. I think that's how I got into this business in 1980, and we won the argument based from what Congressman Garcia said before a three-judge district court in Washington, D.C.

Mr. DYMALLY. The Assemblyman is correct. There is legislation in the Senate, U.S. Senate, to do exactly what he says. And they testified before the subcommittee that they feel very strongly about it.

Question, Mr. Schwartz. You talk about the urban undercount, its effect on minorities. Is there a rural undercount?

Mr. SCHWARZ. Yes, there is. I'm glad that you mentioned that, because it's so easy, coming from the city and I guess all of you come from this city or another one. There is a rural undercount also. Poor people. Poor people tend to be undercounted, for obvious reasons. It comes in the mail. They may not have a mailing address. They may not read well.

They can't find you when they come and check up on you. You may live in an unconventional place. There may be, on a farm, instead of what looks like one house, there may be another little, small shack somewhere.

Mr. DYMALLY. I was about to say to my friend, Mr. Schumer, that perhaps we could develop a coalition with our friends in the South and say yes, you're affected, too, and some of our conservative friends in the Northwest and the Midwest, you're affected, too. This is going to help you. This is not just a Democratic issue.

Mr. SCHWARTZ. And maybe one or two people would actually be moved by the principle of the thing. Might tip it over.

Mr. DYMALLY. I have a question for the Assemblyman. I think it's safe to say that New York and California have some progressive legislatures. But even at that, I don't know that in the California legislature we took an active part in the Census. And it seems to me, after having breakfast with Mr. Schwartz this morning, that we need to get the legislatures involved in this process of public relations, or putting pressure on their delegations to see that the Census Bureau does some of the things we advocate here this morning.

And so I just sent another note to the staff to arrange a meeting with the Conference of State Legislators, to discuss this with them and maybe have a seminar on it.

Mr. DEL TORO. First of all, the Speaker of the New York State Assembly, Mel Miller, has appointed a task force on New Americans, first of all, to try to get and encourage people to participate in the Simpson-Rodino bill, those that have, and use our network of

district offices—New York State has 150 district offices—to try to service people.

The Speaker has also directed me to develop a program to use state resources to augment both in publicity and using state agencies, to participate with the Census Bureau in developing as complete a list as possible with addresses and in whatever way possible.

We are also having conversations with the Census Bureau about doing a conference for the state legislature in Albany for the members of the legislature and their staffs, so that we get out as much information as possible.

We're committed in the New York State Assembly. Our Speaker had my job prior to this and he understands the importance of an accurate census count in developing the reapportionment plan, both for the State legislature and for the Congressmen. And we're going to have some state resources in New York State to do that.

Mr. GARCIA. Congressman Schumer.

Mr. SCHUMER. I think the suggestions made by Assemblyman Del Toro and Mr. Schwarz are excellent. I think we should try to implement some of those at the INS and other levels.

I just have a question I'd like to ask both of you, who know more about the census than I. I find it amazing that we're in a situation where the Census Bureau has admitted there's been a 524,000 undercount in New York and yet our population figures have not been adjusted to that figure. Let's forget the Congressional reapportionment. It hasn't been adjusted in any way. Is that accurate?

Mr. SCHWARZ. It is accurate that it has not been adjusted.

Mr. SCHUMER. How does one live with that anomaly?

Mr. SCHWARZ. Some of their mid-censal figures do provide a measure of adjustment. And Peter Bounpane could give you more on that.

But it affects everything. It affects—business people have to make judgments about what the population is. Not for profit organizations. At breakfast this morning, David Jones was saying, he estimates of the Brooklyn population that is below the poverty line, and he has to rely on the Census figures. And yet he knows they're wrong.

Mr. SCHUMER. I have one question that should go to the Census representative: but as I told the Chairman I probably will have to leave before he gets here—are they going to count the undercount done in 1980 somehow? Is the Census Bureau going to implement the 1980 undercount into their methods? Not the 1990 undercount but somehow when they do counting are they going to recognize that maybe we did suffer a big undercount and change their methodology?

Ms. SCHWARZ. It's been the same every decennial census. The measure which has been most consistent for the longest period of time because apparently it's easiest to develop is the difference between blacks and whites.

And you've had that same disproportion for as long as they've been measuring it and I think it goes back to 1930.

Mr. SCHUMER. And they don't adjust it?

Mr. SCHWARZ. No. That's the problem.

Mr. SCHUMER. Do they accept that racial distinction is what most measures the undercount?

Mr. SCHWARZ. It happens that is statistically easier to get your hands around. They also adjudge that Hispanics are about the same.

Yes, they do accept that.

Mr. DEL TORO. As a Hispanic, I'm very concerned about the way they phrase the Hispanic ethnic question. It's question number 7, it comes three questions after the question on race and it says something to the effect is your background Spanish or Hispanic.

Now, Spanish to me means you come from Spain. And I don't come from Spain. My family comes from Puerto Rico, which is different. I don't identify as being a Spanish person. I identify as being Puerto Rican. And I'm sure people from Mexico identify as being Mexican or Santo Domingo or all the other countries. The link back to Spain is very tenuous at best.

And by the way, the other thing that's really capricious in that anomaly you're talking about is that you're punishing the poor, because the poor get undercounted the most and therefore they lose funding for services they need the most such as housing, educational services, health services. So they're getting double hit here.

Mr. SCHUMER. Yes. I look at the Question Number 4 on the Census questionnaire and they list Chinese, Phillipino, Korean, Vietnamese, Hawaiian, Guamanian—are those any more racial distinctions than Hispanic? Is there a distinction between Korean and Chinese?

I don't understand. I'm just making this observation.

Mr. DEL TORO. In my assembly district, they have a great little computer that I'll show you that can pull out by ZIP code the ethnic and the racial data. I did this at one of their conferences. And ZIP Code 10029, which is a black and Puerto Rican ZIP code, the three racial categories that they had were black, white and other. Other has more people, because Puerto Ricans just couldn't fit in.

And then you look down in the Hispanic under the Hispanics and it's very clear the Puerto Ricans were looking for a place to fit under the racial definitions, because the "other" and the Puerto Rican almost match up number for number. So people are having a lot of trouble fitting in to those categories.

Mr. GARCIA. Ed Towns.

Mr. TOWNS. Just one question, Mr. Chairman, to Assemblyman Del Toro.

What is the time period between the completion of the Census and the certification?

Mr. DEL TORO. The Census official date is April 1, 1990. Certification takes place on January 1, 1991.

Mr. TOWNS. That's when it goes to the President.

Mr. DEL TORO. Now, I don't know when they actually complete counting the forms. Census Bureau people could tell you that. I don't know the precise date of that. Sometime during 1990. January 1, 1991 is when the tapes are sent to the President of the official count.

Mr. TOWNS. I'm just thinking in terms of the fact that if some legal action is not taken before, you don't have much time to do that. That's what I'm really saying.

Once it's certified, then that's it, you're locked in again.

Mr. DEL TORO. Well, also from the point of view, I think you know New York State is on the voting rights jurisdiction. And any other case that may arise in New York State as a result of one man, one vote, it means that as soon as a reapportionment plan is announced by the state legislature, you know there's going to be a court case. And the federal courts will use the certified numbers as of January 1, 1991.

Mr. TOWNS. Not the adjustment figures.

Mr. DEL TORO. First of all, we don't know there's going to be an adjustment. But unless that adjustment was done prior to January 1, 1991, it could really cause a very difficult situation.

Mr. SCHWARZ. January 1, 1991 is not a constitutional date. The Constitution requires that there be a census every ten years. That January 1 date could be changed by 90 days, for example, if that were going to give them the adequate time to do the adjustment, which the Assemblyman is definitely correct, should be done before the figures are laid out.

That is something the Congress could do to help the census Bureau. Now, that means the states in their reapportionment, get a little less time but they'd be working with better figures. So it is something that you might want to explore, changing that date by 60 days, let's say.

Mr. DEL TORO. Mr. Towns certainly is correct in pointing out there's not much time to do this in because there are three states, one of which is our sister state just on the other side of the Hudson, New Jersey, which by their own state constitution gives them only nine months from the date of certification to have the reapportionment law passed. And that is certainly not very much time.

Mr. Chairman, so that you understand what's happened in New York State, since the 1970 Census, going back 20 years, New York State has lost eight Congressmen. That is equivalent to what Connecticut has as its total representation. So in essence, we've lost the State of Connecticut from our midst.

Mr. GARCIA. Mr. Owens.

Mr. OWENS. I have no question. I just was very interested in the formulations of Mr. Schwarz about the counting of the slaves as three-fifths of a person, and the implications of that. I'd like to explore that further. And I don't have a copy of your testimony.

Mr. SCHWARZ. Well, actually you don't because I haven't submitted it. But I plan to submit something. I was reading from an article I'd written.

Mr. GARCIA. Chris Petersen, Immigration and Naturalization Service, who will be speaking on behalf of Mr. Charles C. Sava, the District Director, and Mr. Peter A. Bounpane, Assistant Director, Demographic Census, Bureau of the Census.

So that we understand what we have done, what we're trying to do, Ms. Petersen, is that if you would take five minutes and summarize your statement, and the same thing with you, Peter, we'd

appreciate it. And we'll take your entire statement into the record, and submit it for the record.

So we would appreciate if you would be kind enough to do that. I would appreciate if you'd also give me your official title with the Immigration and Naturalization Service.

**TESTIMONY OF CHRIS PETERSEN, ASSISTANT DISTRICT DIRECTOR, EXAMINATIONS BRANCH, NEW YORK DISTRICT, IMMIGRATION AND NATURALIZATION SERVICE**

Ms. PETERSEN. I'm the Assistant District Director of the Examinations Branch in the New York District.

Mr. GARCIA. Fine.

Ms. PETERSEN. With your permission, I would like to read the whole statement and only take five minutes.

Mr. GARCIA. Fine.

Ms. PETERSEN. Good morning, Mr. Chairman and members of the Subcommittee, and thank you for the opportunity to comment on the impact of the legalization process on the 1990 Census.

The Immigration Reform and Control Act of 1986 can be expected to affect the taking of the 1990 Census in two principal ways.

First, assuming that no change is made in the Census Bureau policy attempting to count, including for portionment purposes, all resident aliens regardless of legal status—and we take no position on that issue today—the legalization process will substantially reduce the number of undocumented residents to be counted, and therefore increase the overall coverage of the resident alien population in the 1990 Census.

Second, the employer sanctions provisions of the bill, in addition to reducing the number of illegal residents present in 1990, will tend to focus INS efforts more on employers and less on individual aliens.

Before the bill was passed, INS enforcement strategy had already shifted substantially away from apprehension of individuals toward prevention of smuggling and other violations of immigration law.

To summarize the situation in 1990, both the number of illegal residents and the visibility of the INS in the community should be substantially reduced as a result of the 1986 legislation and the shift in INS enforcement priorities throughout the 1980s.

INS has supported immigration reform for a number of years. And we believe that the Immigration Reform Act of 1986 will provide strong support for our efforts to regulate the flow of immigration to the United States.

The Reform Act will also have an impact on a number of other federal programs and activities, as illustrated by these hearings on the impact of the legalization process on the census.

In my testimony, I will briefly describe some areas of cooperation between INS and Census that came about during this period when legislation was being considered, and I will present possible impacts of the legalization program on coverage in the 1990 Census.

In general, the process leading to the passage of the Reform Act has worked to increase the coordination of the statistical activities of the INS and the Census Bureau. INS was represented on the Census Bureau's Interagency Task Force on Race and Ethnic

Origin which considered which questions to ask in these areas in the 1990 Census.

More recently, the Commissioner of INS and the Director of the Census Bureau met to consider ways in which the two agencies can cooperate during the 1990 Census. In addition, INS resources have been made available to support the Census Bureau's research program to estimate the size and growth of the undocumented population during the 1980s.

The estimated number of undocumented immigrants counted in the 1980 Census and the estimates of growth for the period 1980 to 1983 provided valuable empirical information that improved the chances that the reform legislation would pass.

The INS will continue to work with the Census Bureau to evaluate the demographic, social and economic impacts of the legislation.

Although the specific impacts of the legalization program on the 1990 Census are difficult to determine at this point, we are confident that the overall effect of legalization will be to increase the coverage of the foreign-born population in the 1990 Census.

That is, coverage will be better than it would have been if the legislation had not been enacted.

Those who moved to the U.S. permanently prior to 1982 will hopefully be in a legal status and are likely to be relatively well counted in the Census. In addition, most farm workers in perishable crops will be in a legal status and therefore more likely to be counted than if they had not been legalized.

As a result of the employer sanctions component of the bill, we expect that the undocumented population entering the U.S. between the legalization date and the Census, will be relatively smaller than it otherwise would have been.

In addition to considerably reducing the undocumented population to be counted in the 1990 Census, the legalization program is expected to produce detailed statistics for the formerly undocumented population who entered the U.S. just eight years prior to the Census.

The statistics to be collected during the next year should prove to be valuable to the Census Bureau, especially for planning programs to improve coverage in specific geographic areas. Relative to 1980, when little was known about the undocumented population, in 1990 we will have information on area of residence, nationality, and other demographic characteristics of legalized aliens.

Other ways in which the legalization program might affect that coverage in the 1990 census are even more difficult to determine, although the effects could be favorable.

For example, legalized aliens as well as other foreign-born persons might be more willing to cooperate with census takers as a result of what we believe will be a favorable experience with the U.S. Government during the legalization period.

I would like to conclude by reiterating that INS will continue to work with Census officials to improve coordination in statistical matters. In our view, the legalization component of the 1986 Act will lead to increased coverage of the resident alien population in the 1990 Census.

Thank you.

Mr. GARCIA. Mr. Bounpane is next.

**TESTIMONY OF PETER A. BOUNPANE, ASSISTANT DIRECTOR,  
BUREAU OF THE CENSUS**

Mr. BOUNPANE. Good morning. Thank you, Mr. Chairman.

After I make a few remarks about our plans for counting undocumented immigrants in the 1990 census, I'll be glad to try and answer some of the questions that were raised here this morning.

In 1990, we will attempt to count all residents of the United States at Census time. The only exception would be foreign citizens living on Embassy, Consulate or Legation grounds. And this is consistent with our practice in all censuses beginning with the first one in 1790.

Thus, we do plan to include undocumented immigrants in the 1990 census and to include them in the apportionment counts submitted to the President.

While we plan to include them in the count, I want to emphasize that we will make no attempt to identify undocumented immigrants individually as such in the census. Why is that?

First of all, the census is really not a good method to determine the legal status of an individual resident. And we believe that any attempt on our part to identify undocumented immigrants could have a detrimental impact on the public's perception of the census and thus, could undermine the public's willingness to participate in the census.

As you know, the law protects the confidentiality of individual census information, and we have an excellent record in maintaining that confidentiality. Any attempt to identify undocumented immigrants in the census could lead to confusion of our role as an enforcement agency.

However, as in previous censuses, we will include questions on the long form questionnaire on place of birth, citizenship and year of entry into the United States. And remember that the long form is only asked of a sample of the population.

None of these questions will attempt to distinguish between documented and undocumented immigrants.

Now, let me just say a few words about what we think will be the impact of the legalization process on the 1990 census.

We really can't say with certainty what the effect of this legislation will be on our attempts to count undocumented immigrants next time. But we are assuming that the enumeration of this group will be at least as difficult as it was in 1980.

As we have already heard this morning, undocumented immigrants are a very, very difficult group to enumerate. And I won't go over the reasons why. People have stated them quite well.

In the 1980 census, we took special efforts to convince this group that the census was confidential and that no harm could come to anyone by answering the census. We counted a substantial number of undocumented immigrants in 1980. But we suspect that the undercount rate for this group was still quite high.

Remembering that we did not identify individuals as undocumented immigrants in the census, but by using aggregate data, in-



cluding some data from the INS, we estimate that we counted about 2 million undocumented immigrants in the 1980 census.

And we also estimated that there were about 2.5-3 million undocumented immigrants in the United States on April 1, 1980. So that suggests that we counted between 60 and 80 percent of that population.

In the 1990 census, those undocumented immigrants who qualify for amnesty under the new law may be more likely to cooperate with the census. Even with this group, however, we are going to make special efforts to emphasize the importance of the census and the confidentiality of it.

However, we don't believe legalization will eliminate all fears, and certainly will not eliminate language barriers.

Further, many undocumented immigrants here may not qualify for amnesty and other undocumented immigrants may enter between now and 1990.

The long and short of all of this is that we are still going to need an extensive outreach program for the 1990 census to convince people to cooperate in the census. And we plan to do that.

I won't go over the details of our promotion plan today, Mr. Chairman. If you wish to discuss any of them, I'll be glad to talk about them. I will mention just one thing, and that is, we will have extensive foreign language assistance with the next census, primarily in Spanish but also in 30 other languages.

Let me conclude just by saying that it is going to be a hard task, and we're going to have to work together on that. But we feel that by doing that, we will do a good job of counting the entire population come 1990.

So those are our comments on what we think the effect of the law will be. I tried to shorten those as much as I could, and I'll be glad to answer questions now.

[Mr. Bounpane's full statement follows:]

STATEMENT OF  
PETER A. BOUNPANE  
ASSISTANT DIRECTOR, BUREAU OF THE CENSUS  
BEFORE THE SUBCOMMITTEE ON CENSUS AND POPULATION  
POST OFFICE AND CIVIL SERVICE COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
NEW YORK, NEW YORK  
JUNE 1, 1987

Thank you, Mr. Chairman, for this opportunity to brief the Subcommittee on the impact of the legalization process on the counting of undocumented immigrants in the 1990 census.

First, I will discuss our plans to include undocumented immigrants in the 1990 census count. Second, I will address the issue of the impact of the legalization process on the enumeration.

Plans to Count Undocumented Immigrants

We will attempt to count all residents of the United States at census time, except foreign citizens living on embassy, consulate or legation grounds, which are not legally American soil. This is consistent with our practice in all censuses beginning with the first one in 1790. Thus, we plan to include undocumented immigrants in the 1990 census and to include them in the apportionment counts.

While we plan to include undocumented immigrants in the count, I want to emphasize that we will make no attempt to identify undocumented immigrants as such in the census. We do not have the expertise to determine the legal status of individual residents. And we believe that attempts on

our part to identify undocumented immigrants could have a detrimental impact on the public's perception of the census and, thus, could undermine the public's willingness to participate in the census.

The law protects the confidentiality of individual census information and we have an excellent record in maintaining that confidentiality. We do not share identifiable individual census information with any other government agency or with any person who is not a Census Bureau employee. Despite these assurances it would be unrealistic to expect undocumented immigrants to admit to the Census Bureau they were in violation of the law. Furthermore, any attempt to identify undocumented immigrants in the census could lead to confusion of our role with that of an enforcement agency.

As in previous censuses, we will include questions on the long-form questionnaire on place of birth, citizenship, and year of entry into the United States. The long form is asked only of a sample of the population. None of these questions will attempt to distinguish between documented and undocumented immigrants.

#### Impact of the Legalization Process

Now, Mr. Chairman, I will address the impact of the legalization process on the 1990 census enumeration.

The 1986 Immigration Reform and Control Act provides amnesty for undocumented immigrants who can prove that they have lived continuously in the United States since January 1, 1982. The law also provides for penalties against employers who knowingly hire undocumented immigrants. Although

the Census Bureau has responsibilities under the special agricultural workers provisions of the law, we have no role in the legalization process.

We cannot say with certainty what the effect of this legislation will be on our attempts to count undocumented immigrants in the 1990 census. But we are assuming that the enumeration of this group will be at least as difficult as in 1980 and we are designing procedures to deal with this challenge.

Undocumented immigrants are a very difficult group to enumerate. They fear apprehension by the Immigration and Naturalization Service (INS), they do not trust "the Government," many have literacy problems, and they come from many different parts of the world and speak many different languages. In 1980, we took special steps to convince this group that the census is confidential and that no harm could come to anyone by answering the census. We obtained testimonials and support from community leaders and celebrities who encouraged undocumented immigrants to answer the census. Some clergy encouraged their parishioners, many of whom may have been undocumented immigrants, to answer the census. We also provided census materials in languages other than English in the 1980 census to assist or encourage their participation.

We successfully convinced the INS to curtail its law enforcement activities around Census Day in 1980 in most areas where there were large numbers of undocumented immigrants. This was necessary because INS arrests around census time could have been perceived as a cooperative effort between INS and the Census Bureau. We have been informed that the INS is now operating with a different enforcement policy; that is, that the INS is not conducting

residential sweeps now and does not expect to in 1990. Therefore, we do not plan at this time to seek a curtailment of INS activities. If current INS policy changes, we will reexamine this issue.

We counted a substantial number of undocumented immigrants in 1980, but we suspect the undercount rate for this group was still quite high. We did not identify individuals as undocumented immigrants in the census. But, using aggregate data, we have estimated that we counted about 2 million undocumented immigrants. We also estimate that there were about 2.5 million to 3.5 million undocumented immigrants in this country on April 1, 1980; thus these estimates suggest that we counted between 60 and 80 percent of this population.

Those undocumented immigrants who qualify for amnesty under the new law may be more likely to cooperate with the census in 1990 because they will be legal residents. (We cannot estimate how many undocumented immigrants will qualify for amnesty.) Even with this group, however, we must make special efforts to emphasize the importance of the census and the confidentiality of census data. Legalization itself will not eliminate language barriers, so we are building into the census special procedures to deal with language needs.

Although we have no way to establish the numbers, many undocumented immigrants here now may not qualify for amnesty and other undocumented immigrants may enter the country between now and 1990. So there will be an unknown number of undocumented immigrants living in the United States in 1990 and we again will face the challenge of counting this population.

The strict employer sanctions provisions of the new law may drive undocumented immigrants even further underground. They may be even less likely to be aware of the census and its importance and might be even more difficult to count in 1990.

Thus, even with the amnesty and legalization program for undocumented immigrants, we plan to intensify our outreach efforts to those who will remain undocumented. (The outreach efforts described below are designed to reach other populations, as well, such as documented immigrants, naturalized citizens, and so on.) We are working with a broad spectrum of groups to get advice on our plans for enumerating undocumented immigrants. We have discussed these and other efforts with our minority census advisory committees; at meetings of the Mexican American Legal Defense and Education Fund, the League of United Latin American Citizens, and the National Association of Latino Elected and Appointed Officials; and with Hispanic and Asian elected officials at meetings of the National League of Cities.

We will build into our promotion campaign the messages that census information is confidential and that the census does not ask a question to determine the legal status of immigrants. We will air these messages in various languages on television and radio. We will also work with national, state, and local organizations, community groups, religious organizations, the schools, and any other sources through which we can reach undocumented or newly documented immigrants.

We will set up toll free numbers for telephone assistance, will include these numbers on the questionnaires, and will publicize them widely. In areas with a high concentration of non-English speaking individuals,

bilingual personnel will be used to staff the telephone assistance lines. We will also establish walk-in assistance centers in strategic locations throughout the country and these will be staffed with persons indigenous to the neighborhoods in which the assistance centers are located.

The regular questionnaire will have a statement in Spanish on the front describing how to obtain a Spanish language questionnaire. Persons requiring a Spanish language questionnaire may call the toll-free number listed on the regular questionnaire to request one. We are designing the questionnaire label so that the telephone assistance number will be more prominent than in 1980. We will have questionnaire guides available in about 30 languages for use by the census enumerators, who will also be indigenous to the areas in which they work.

We plan to mail a pre-census multi-language message in selected areas that will announce that the census questionnaire is coming and that there will be assistance available for those who need it to complete the questionnaire. The announcement will be in English, Spanish, and possibly other languages not yet determined.

All of these efforts I have described above will help us count the entire population that needs assistance or special language materials, not just undocumented immigrants. Through these efforts we hope to conduct as complete a count as possible of the entire population, including undocumented immigrants, in the 1990 census.

Mr. Chairman, that concludes my testimony.

Mr. GARCIA. Just let me start off by asking a question of Ms. Petersen.

There are three questions I'd like to ask.

How many persons have applied for legalization in the New York City area?

Ms. PETERSEN. I don't have the exact number. I believe it's between five and ten thousand. I could probably get you that number this morning before you disperse, if you would like.

Mr. GARCIA. Are you shocked by that number? Did you think it would be more, did you think it would be less?

Ms. PETERSEN. We had hoped that it would be more than that, and we're doing everything we can. Since November, when the bill first passed, the District has made a very strong effort to get the word out to the public. And we began by trying to do that through various means.

We sponsored two programs in January which consisted of both Congressional workers as well as voluntary agencies, a number of organizations, private organizations. Anybody who wanted to could attend it. We tried to invite a cross section. We did two of those.

In addition, we have had, I believe it's something over 200 speaking engagements just out of the New York District. We're trying to encourage people to set up seminars that we can attend and provide as much information as possible.

So we would have liked it to be a higher number, but we're doing everything we can to increase the number.

Mr. GARCIA. Well, the figures that they talk about for the City of New York, between what we have in Brooklyn, and other areas, and hearings that we ourselves have held over the last five or six years, five to ten thousand people is a very, very small number. It seems to me that the legalization program would be bursting at the seams.

It seems, based on some information that I have here, only 27,000 aliens have applied for the legalization nationwide. And I just can't understand it, why it's so few.

Ms. PETERSEN. I think there are a number of reasons. A number of concerns have been expressed about the confidentiality, for example, of whether the INS will maintain confidentiality on the applications.

There is some concern about whether or not people will actually be eligible. In addition, they are still gathering documentation. Partially because of the short time period, from November until implementation in May, and the Commissioner's very strong concern that we involve the public in the implementation period, getting their opinion, their feedback, their recommendations and so forth, it was very close to May 5 before the applications themselves were out.

We also were training the voluntary agencies and the qualified designated entities fairly close to the end of that six-month period, probably in the fourth or the fifth month.

So the agencies themselves are gearing up now, but weren't ready to begin filing in that first week, for example, or the first month.



Mr. GARCIA. Ms. Petersen, as I was coming up, there were a number of people waiting to get into your office downstairs. It's very noticeable.

What are those people applying for? What are they looking for?

Ms. PETERSEN. Well, first, they're not looking for legalization, because we're not handling that in this building. But the Immigration Reform and Control Act had a number of provisions in addition to the legalization provision. It extended the registry date to 1972 and we've had a number of applications under that method.

Mr. GARCIA. By registry date, you mean that those persons who were here prior to 1972 have no problem, they can come in and as long as they can prove that they were here prior to 1972, and be granted the amnesty. Is that a fair assumption on my part?

Ms. PETERSEN. That's a bit of an over simplification. If they were here prior to 1972, there are still a few categories of excludability that will apply to them. And they must demonstrate, just as a legalization applicant has to demonstrate, that they have in fact been here.

Mr. GARCIA. So it's not just clear-cut, then?

Ms. PETERSEN. No. They can't just walk in and say I got here in 1970. They must be able to demonstrate that through some evidence showing that they've been here. And just as in legalization, there are a number of different ways they can do that. School records, work records, rent receipts and so forth.

Mr. GARCIA. Would you be kind enough to have your office submit to this subcommittee the requirements for those people who arrived prior to 1972, so that they can be included as part of this record today that we're establishing?

Ms. PETERSEN. Yes, sir.

Mr. GARCIA. In other words, what I'm looking for are those areas which people must respond to, those persons who were here prior to 1972.

Ms. PETERSEN. Certainly. Just for your information, that is Section 249 of the Immigration Act. And Section 249 as it stood was changed only insofar as the date. Prior to the Immigration Reform and Control Act of 1986, the date was 1948. I think it was June 1, I'm not sure, that if people could demonstrate they'd been here prior to then. Now, the date has been changed. All the other regulations remain the same, and it's somewhat different from a normal adjustment of status application. They don't need to do a medical exam, they don't need to show they were inspected when they entered the United States, and so forth.

So quite a few people are eligible under this.

In addition, there was section 202 of the Immigration Reform Act which affected Cubans and Haitians and we've been running a special project at the moment, this is the fourth week of it now. We have gotten a lot of information from people in the community, from Mr. Helton's group, from lawyers, that there were a large number of Haitians who would be affected by this. The Cubans not so much because there has been other provisions in the law previously.

But they were concerned that the Haitians not be ignored in the rush to implement legalization. So we instituted a project on the eighth floor of this office to accept their applications and schedule

them for a specific time period in August. There's nothing to prevent them or preclude them from continuing to file after this special program is over. We were trying to accommodate the public and give them a little bit of extra assistance in the beginning of this period.

But just these two, registry and the Cuban-Haitian provision, are some of the reasons why we have so many people outside on that line.

Another example is with the employer sanctions provisions of the bill. People who may have lost alien cards, specifically lost it or had it stolen, previously might not have been so concerned. But now because they must demonstrate that they are legally permitted to work they're more concerned about getting their applications approved, to have a new card.

Mr. GARCIA. How long does that process take, to get that new card?

Ms. PETERSEN. Right now I'd say probably about 60 days.

Mr. GARCIA. 60 days?

Ms. PETERSEN. Because we don't issue the card in New York. It's only issued in Texas. That's the only place, nationwide.

Mr. GARCIA. Any reason for that?

Ms. PETERSEN. It had to do with security. Yes. Trying to prevent counterfeiting of the card, which has been a major problem in the past.

I don't know whether they're contemplating extending the number of places or simply moving it. I know that there's some change contemplated. I'm not exactly sure what that is.

Mr. GARCIA. Are you satisfied with the number of people who are working downstairs, for the INS, in the region?

Ms. PETERSEN. In this district office?

Mr. GARCIA. No. The region, yes. That bureau which you're responsible for. Are you satisfied that you have enough personnel?

Ms. PETERSEN. Yes. In the branch that I work in. In the district? Yes, I think so. I think we were somewhat harder hit than we had hoped to be.

One of the Commissioner's priorities was to have implementation of the Immigration Reform Act impact as little as possible on the actual district operations, the continuing flow of all the other applications that we administer.

To that end, when we were hiring for the legalization offices and so forth, we tried to do outside hiring first, so that we would not limit the number of people working in our normal operations.

We did that as much as we could. In the New York District itself, out of approximately 120 employees, working on legalization, roughly half came from the district. So about 60 came out of a district of between 800 and 1,000 employees.

It was, unfortunately, it had a bit more impact than we would have liked on the downstairs, on the information function. But they're working very hard now to fill behind those and get people in so that there won't be a continuing impact.

Mr. GARCIA. When the immigration bill passed, what did you anticipate would be taking place in this region in terms of numbers of people coming forward?

Was it higher, or lower?

Ms. PETERSEN. To be honest, I'm not sure. I can find that out for you and get it to you.

Mr. GARCIA. I mean, you've been with the office a while now, have you not?

Ms. PETERSEN. Yes, sir.

Mr. GARCIA. Did you expect an avalanche of people coming forward?

Ms. PETERSEN. We're prepared to handle in three legalization offices 1,150 applicants per day, for the whole year, but we haven't had that kind of turnout. So in the meantime we've been using the time as productively as possible to try to get the offices established as thoroughly as possible so that when the turnout does increase to our expected level and perhaps even past that, we'll be able to handle the flow.

Mr. GARCIA. If a person comes in with an application, I come in, and I submit my application, with all the details. I've been here since 1979 and I've got documentation, I've got my working papers, I've got the rent receipts, I've got my card, I have everything, and I give you that application.

How long will it take before I'm given a card?

Ms. PETERSEN. If we interview you today and at the present time in the three New York offices, we are interviewing whether you walk in or it's scheduled, if we interview you today and it appears to be a prima facie eligible application, you'll be given a card that says that you can work. It's a small plastic card. That will be good for a period of 60 days.

The decision will not be made in the local offices. There are four regional centers nationwide who will be making the actual decision on the application. And the expectation is that you'll know within 60 days.

If you are approved, you'll be notified by mail. You'll go back to the office at which you applied. You'll return the card that said you had permission to work only, and you'll get a temporary resident alien card.

Mr. GARCIA. Where are the four regional offices?

Ms. PETERSEN. The one in this region is very, it's in Burlington, very near the regional office that we have.

Mr. GARCIA. Burlington, Vermont?

Ms. PETERSEN. Yes. That's where our regional office is, for the Eastern Region.

Mr. GARCIA. We must have thousands upon thousands of undocumented people in Vermont.

Ms. PETERSEN. Well, they won't be going to that office.

Mr. GARCIA. Why Burlington, Vermont? I'm just curious. Why not a place like New York City, where it can be expedited?

Ms. PETERSEN. I can't answer why they put the regional office itself, but we have a service center, a regional service center up there as well. That's separate and apart from this regional processing facility for legalization. I think one of the reasons that they set it up there was that the people would have the opportunity to work up there, undisturbed by meeting the public. And it has worked out—well, I know, it sounds funny, but it's worked out extremely effectively. We've had it in place for about five years now.

And the number of applications that have been adjudicated up there has been tremendous.

Mr. GARCIA. You know, but the problem is, Ms. Petersen—you're a New Yorker, I assume you are.

Ms. PETERSEN. I am.

Mr. GARCIA. And so working in your capacity as you do, you're much more sensitive to what's happening in a major metropolitan area like New York, as it relates to immigration.

You take a person in Burlington, Vermont. The human factors and the human equations don't necessarily correspond to those that you have, in terms of your formulation in making up your mind.

It just seems to me sort of distancing an office away from those areas where they should be much more sensitive to what's going on there.

I would have a problem. I didn't realize Burlington, Vermont is where they processed these applications.

Ms. PETERSEN. But keep in mind that the interviews themselves are conducted in the local area where the person is applying. And a recommendation is made here.

Mr. GARCIA. I see.

Ms. PETERSEN. Oh, yes. The recommendation will be made by the person conducting the interview in New York or wherever. And that application will go up, for a number of reasons, and in terms of efficiency of processing, by having only four centers nationwide where the actual decision is made, the Service is more easily able to keep the decisions uniform.

But still having that personal factor that you're talking about by having interviews conducted locally and the recommendation made locally.

Mr. GARCIA. It may be too early to ask the following question. But how many of those people who have been recommended for it have received their card within 60 days?

Ms. PETERSEN. It is too early. They only started on May 5. I don't know if anybody has gotten it back yet.

Mr. GARCIA. May 5, we're talking about—

Ms. PETERSEN. It will be four weeks tomorrow.

Mr. GARCIA. Yes. Okay.

Mr. DYMALLY. No questions, Mr. Chairman.

Mr. GARCIA. Mr. Schumer.

Mr. SCHUMER. Thank you, Mr. Chairman. I would just like to follow up on two areas. One with Ms. Petersen.

Is the number of applicants in the New York area considerably lower than what was expected, in the same percentage as California, Texas, Florida, or is ours much lower than other areas?

Ms. PETERSEN. I believe that it's comparable. I got a figure on Friday from Washington. But as of close of business Wednesday, which would have been three weeks after the beginning, we had received 36 thousand and some odd applications nationwide, and of those, more than 30,000 had been interviewed.

But I think considering the proportion around the country, we're probably about the same.

Mr. SCHUMER. And how many in New York as of that time?

Ms. PETERSEN. I can find that out for you. I believe it's between five and ten thousand.

Mr. SCHUMER. So it would be anywhere between 15 and 25 percent of the national total, which overall is terribly low but at least it shows that they're not doing something wrong in New York that they're doing right somewhere else.

The other question I had on that is QDEs. That does not include the work of the qualified designated entities?

Ms. PETERSEN. Yes, sir, it does.

Mr. SCHUMER. It does?

Ms. PETERSEN. Yes.

Mr. SCHUMER. In other words, if somebody has gone to his church and they filled out the application—

Ms. PETERSEN. Oh, I see what you mean. No. If the qualified designated entity has not yet submitted it to Immigration, then I don't believe that's been—

Mr. SCHUMER. And have the QDEs started submitting them?

Ms. PETERSEN. They have, yes.

Mr. SCHUMER. The Catholic Church, particularly?

Ms. PETERSEN. I think so. I don't know particularly about the Catholic Church, but I believe they have.

Mr. SCHUMER. Okay.

Then my questions of Mr. Bounpane is the same question I had asked Assemblyman Del Toro and Mr. Schwarz. First, how is it that we can acknowledge that we have 500 and what was it, 25, 500 and some odd thousand undercounted in New York in 1980 and yet not have those numbers credited to us; and second, not have the Census Bureau realize that their process didn't work very well, at least in this area, for counting undocumented? Two questions. I don't want to put you on the firing line. Everyone says you're a terrific and conscientious fellow. But you're the only one here.

Mr. BOUNPANE. Thank you. I'll be glad to try and answer them.

The first one, the problem is that no one knows exactly that it's 525,000 people. Let me tell you what we have said.

We agreed there is an undercount. We agree the undercount is differential by black and non-black. We agree that the undercount is differential by Hispanic and non-Hispanic. And we agree that the problem is more severe in some cities like New York than in the country as a whole.

We have no argument with those statements. And we're not happy about that and we want to improve that in the Census for the reasons that have been stated.

The problem comes when you try and estimate the exact number of people missing in the Census. It's very difficult to do. It is only an estimate.

That 525,000 number, whatever it is, could be 400,000, could be 600,000. Higher or lower.

Mr. SCHUMER. Could it be 50,000?

Mr. BOUNPANE. I doubt it could be 50,000.

That's because we take a survey after the Census and you have to match it to the Census to figure out how many people were missed in the Census.

Any error in that matching process during that second survey is reflected in our estimate. And what we have said is that we are not

sure that using that estimate makes the numbers better on average everywhere.

Fritz even said that. He said that the deciding factor would be whether the adjustment makes the numbers better. And in his opinion, they did.

We feel exactly the same way, that if it made it better, we think it should be done.

We are not sure that it does. In fact we have some serious doubts that it does, and it's that that is the difference of opinion.

Mr. SCHUMER. Yes. Okay. Let me go to another, and then I'll get back.

Mr. BOUNPANE. Okay.

Mr. SCHUMER. One of the things the Mayor mentioned is people doubling up in public housing. You'll send a form to them.

Mr. BOUNPANE. Right.

Mr. SCHUMER. The one family that officially lives there, if all things go well, fills it out. They don't mention that the other people are with them.

Mr. BOUNPANE. Right.

Mr. SCHUMER. You knock on the door, someone answers, you ask "Who's living here?" They mention, "it's my son, my daughter, my husband." And they don't mention the other family.

How the heck do you catch people like that?

Mr. BOUNPANE. You raised a good point. Our problem is convincing people to cooperate.

Mr. SCHUMER. See, that's where I fundamentally disagree. To these folks out there, it's a different philosophy than you would have or I would have. The government is the enemy. And they're not going to make a distinction and say this Census group is a friend and the INS or the IRS or whoever else is not. Even my constituents, who are here legally and have a higher educational level, don't make the distinction. It's the government.

Now, you go into the heart of the ghettos and barrios of New York, and I don't care if you put an ad on every day. They're not going to believe you.

If I were doubled up in an apartment, if I were here illegally, I wouldn't give my name no matter how many commercials you make.

So what we need is something other than the method you've been using. That's my problem with the whole deal. It's based on a middle class view, much like the way the United States does foreign policy in certain Third World countries.

The reason we get clobbered is we have no understanding of what's going on there and we impose our own mindset on them.

Skip the ads, and similar methods. There's no benefit for this person who's been basically hurt by government throughout his or her life, rather than helped by government, that an ad is going to change. We need a numerical change. We need you to rely on the housing authority, for example. They can tell you. Because they have the janitors, the carpenters, and the supervisors and the people who run the housing. They know, because they see.

The man who runs the housing projects in my district knows people are doubled up and can point it out. That's what we need. That's the problem. The problem that I am so anguished about

right now is that all this talk that we had here is not going to solve the problem, despite, and I admit, the good intentions, non-malevolence, of the Census Bureau.

Then to say well, Congress should change this method, and Fritz Schwartz makes an excellent and cogent argument, but I've been in Congress only seven years, enough to know that the gentleman from Kansas who is going to lose a seat if these people are counted or even thinks he's going to lose a seat and he's happy with the status quo, is not likely to vote for it. You don't have profiles in courage, particularly when it relates to something as near and dear as survival every day. Not on an issue as arcane as this one.

So, that's a fusillade against Mr. Bounpane. Can you try to answer some—

Mr. BOUNPANE. Your concern is legitimate. We have the same concerns.

Let me just say a few things. First of all, census coverage has improved over time. The undercount rate for blacks in the 1970 census was on the order of 9 percent. Best estimates are that the undercount rate for blacks in the 1980 census was on the order of 5 percent.

Now, I'm not sitting here bragging that that's good. I'm saying it has made an improvement.

Mr. SCHUMER. I just have a question. How do you know what it is if you've never reached all these people?

Mr. BOUNPANE. I'm saying, the way we do it is go back at a second point in time, reinterview, and match to the census. That is one method.

The second method is to estimate the total population by an independent method, using birth and death records, et cetera, and compare that to the census.

The numbers I just gave you came from that second method— independently estimating the population and comparing that to the census.

Fortunately, birth and death records for blacks are relatively good in the United States. For Hispanics that's not the case. And that's why we only have estimates of undercount for Hispanics in very recent censuses.

However, your point about not addressing the problem with standard techniques is a good one. We will have a publicity campaign in 1990, like the one in 1980, but it is aimed at getting the majority of the people aware of the census and encouraging them to return their questionnaires by mail.

We will have something supplemental to that to get at the difficult to enumerate. We call this the Census Community Awareness Program. It is a grassroots effort of pulling people out in the cities where we have difficulty to try and find the right persons that we can talk to and convince of the importance of the census. We want to separate it from the rest of the government, as hard as that may be. That is exactly the impression we're trying to give.

And hopefully, if we find the right people there, they can talk to the people who live in the communities and get them to do that.

Mr. SCHUMER. There's no thought of using some kind of statistical method as opposed to this mailing and then following up with individual interviews in the initial count?

Mr. BOUNPANE. A couple of things about that.

You made a point earlier about perhaps the mail is not the best method in some areas. I thought that was reasonable. Except Congressman Towns also made a very important point that some people don't like to answer their door. And so you have this conflict.

Mr. SCHUMER. Neither is good.

Mr. BOUNPANE. Neither is good. I understand.

We are contemplating using non-mail methods in certain areas of hard-to-enumerate cities to try to address the problem that you raise. So we're looking at different ways to try to do it procedurally.

Mr. SCHUMER. I mean, 100,000, or so—I don't remember what the Mayor said, families doubled up in public housing, which is a real anomaly. If I'm sharing my own private apartment with somebody, I still might be afraid if the lease says I can only have five people in the apartment. But in public housing—it's an enormous task. I don't deny that. But I just think that going through it by rote and saying, here's a house and here's this and here's that, is not going to work, and hasn't worked, as the 500,000, maybe it's 400,000, maybe it's 600,000 have done.

And I for one would like to cooperate with the Chairman, today's Chairman as well as the present Chairman and try to do something a little different. We've got to break through.

Mr. BOUNPANE. I understand. And we will use your help to the maximum extent you can give it to us, because we need that.

If I could just tell you a few thoughts we have about public housing projects.

What we perhaps should do is pick someone who lives in the housing project, who knows the people there, and make them the census enumerator for the housing project.

Mr. SCHUMER. I'm sorry to keep interrupting you. It can be my uncle, but my uncle is sending the information to someone far away and I'm living there illegally. Now, if you told a person, if you went to a person in a housing project and you said look, you don't have to get everyone to sign the sheet. But you tell us how many people are really living in Apartment 307. You might get an accurate description.

But once you tell them "now get so and so to sign up," it's gone.

Mr. BOUNPANE. Congressman, that is something that is acceptable. We can do that.

Mr. SCHUMER. You could ask someone who lives in which apartment house, how many people live here?

Mr. BOUNPANE. Where we are not able to collect all the information directly, we are able to get the total number of people and allocate the rest of the information. We try to keep that to a minimum, but that is something we can do. And do do.

Mr. SCHUMER. I would suggest that in areas of Brooklyn, and you have three quarters of the Congressional delegation from Brooklyn here, that you're going to find that 25 percent of all of Brooklyn, which is 2.2 million people plus, however much the undercount would give us, needs that kind of thing. And my guess is it probably happened in 1 percent or 2 percent. So you really have to expand it, expand it enormously.



Anyway, I don't want to take the Committee's time, but I thought it was important. Thank you.

Mr. GARCIA. Congressman Towns.

Mr. TOWNS. Thank you very much, Mr. Chairman.

Ms. Petersen, you used the phrase "New York Region" and "New York District." What is that?

Ms. PETERSEN. Actually, it's the New York District, which encompasses Long Island, the Five Boroughs, and parts of Westchester. But the Eastern Region is approximately one quarter of the United States, including the Northeastern United States down to Washington, D.C., I believe down to Virginia. So that the New York District is part of the Eastern Region.

Within the New York District, we have three Legalization Offices.

Mr. TOWNS. There seems to be some information floating around that some of the legalization operations might be closed.

Have you heard that?

Ms. PETERSEN. I heard that months ago, that we would monitor very carefully all around the country, the Legalization Offices and their intake, and that if some offices were doing more business than others, that we might have to shift resources for a while until the counts became more proportional to the number of people.

Certainly, the Service doesn't want to have staff sitting idle, in any place around the country.

Mr. TOWNS. Well, in terms of the Mayor's office here and all the information that we receive, is that the undocumented population, biggest undocumented population, is in brooklyn.

So it seems to me that being there's not a lot of activity, that you should think very seriously about opening a Legalization Center in Brooklyn. Because I will assure you that if you do that, you will find that these numbers will probably go up drastically.

Ms. PETERSEN. The Service looked at the possibility of Brooklyn and Queens equally when they were trying to decide, the same as in Nassau and Suffolk. The District was trying to find the best location, in terms of a number of different factors, some place that people could get to easily by public transportation, that they could drive to and park at, that the voluntary agencies were near, and so forth.

They did look at a number of sites in Brooklyn. But there just didn't seem to be a viable site. I think the one place that they looked at was still under construction and it was in an area that they had netting to catch bricks and things falling off the building. And I know that was one particular area.

I was not directly involved in picking the site. But I believe that, I don't remember who, but I believe one or two Congressmen did go around and see one or two of the sites that had been selected or considered as possibilities. And we just, Queens, the particular site in Queens seemed to be the best area. I believe there are seven subway lines that come into it, there's parking available, it was a large space that could be made available in time. So I think that's how they chose Queens.

Mr. TOWNS. I would still like to offer my services if you're still interested, and if you're still going to close some of those centers

that we keep hearing, that we would like to invite you to Brooklyn and I would like to assist you in finding a place in Brooklyn.

Ms. PETERSEN. Well, I appreciate that. What I might ask you if you would, is to encourage your people for the time being, though, since we have an office set up, and it was quite a bit of work to do so, if there are people who are ready to apply, I'd certainly encourage them to go to either Queens or Manhattan, wherever it's easier for them, at the present time, since those offices are already existing.

Mr. TOWNS. Let me just be quite candid. When I hear of the processing, the documentation, and the cards being sent from Vermont, and then I look at the fact that the undocumented, there's no question about it, are in Brooklyn and that for some reason or other we can't get a center in Brooklyn, you know, you have to expect it to be a little funny. And I want to just share that with you. And I was trying not to say that. But I think that, I'm certain that if you talk to people around, many of them probably feel the same way I do about that. So I would like to just sort of convey that message, that Brooklyn is a place where undocumented live and that that's where they are, and a center should definitely be established there.

Ms. PETERSEN. I'll mention that back at the office.

Mr. TOWNS. Thank you very much.

Let me just ask you, have you had any discussions with INS in reference to actually following up on something in the statement that was made I think by Assemblyman Del Toro in reference to INS raids or INS sort of having a moratorium during the period that they're doing the Census.

Have you had any discussions with them about that?

Mr. BOUNPANE. Yes, we have. Let me go back first of all to 1980 and then I'll tell you about 1990.

We did discuss with the INS in 1980 reducing the raids during the period of the Census. They did agree to do that, and we were happy they did because we think it helped.

When we approached them again concerning 1990, it was not clear that there will be residential raids, based on the new law. The sanctions might be on the order of employer sanctions rather than residential raids.

And so we don't know what we're going to do about 1990 because it will depend on what the INS does. The door's open and we plan to talk to them as necessary after we see what's going to happen.

VOICE. You said residential raids. Are you implying there will be factory raids?

Mr. BOUNPANE. I don't know if there will be factory raids. All I know is that there are employer sanctions.

Mr. TOWNS. I encourage you to have those kind of discussions with them because I think that it really could bring about a chilling effect if that occurs, even if it's just one situation where it's highly publicized, and I think that would be a problem.

Mr. BOUNPANE. I agree with you fully, Congressman, and, as Chris has just mentioned, our Director has already met with the INS. We will continue to have discussions.

Ms. PETERSEN. Just one comment on that. For approximately five years, we've had a case management system in effect in the Investigations Branch, where from a purely practical point of view we've

tried to look at how to best use the resources that have been available to us. And the Service has determined on a number of different levels that it is more effective to go after, for example, alien smugglers and so forth than to try to pick up the individual illegal alien.

That's not to say we wouldn't pick up an illegal alien that came to our attention. But we do try to go rather, to factories, whatever, for the large numbers. With employer sanctions, we'll try to be targeting the employers rather than the illegal aliens.

If we come across illegal aliens, naturally, you know, we would be obliged to enforce the law, to administer the law and arrest them. But that's not the thrust. It is not to go after individual illegal aliens.

Mr. TOWNS. Thank you. I have no further questions, Mr. Chairman. Thank you.

Mr. GARCIA. Congressman Owens.

Mr. OWENS. One question, Mr. Bounpane. In your dialogue with Congressman Schumer, several things came out in terms of the range of possibilities you have in the approaching of the problem of seeking out people, information about people who don't come forward.

Is there any way we can be assured that there will be some kind of consultation apparatus set up as we approach the Census so that those range of possibilities will be followed, we can have some way to guarantee that the particular people who are assigned to do our area are aware of that range of possibilities, and motivated to use them all to the extent possible, to get as accurate a count as possible?

Is there some way we can have a consultation apparatus involving the Congressmen, elected officials and local leaders so that we can have an ongoing dialogue and make sure that within the constraints of what you have to do, every possible device is used?

Mr. BOUNPANE. Yes, Congressman; I think that's a good idea and I think we can do that.

In New York, we're fortunate that the Regional Office happens to be in New York. So the census will be run out of the regional office which is in this building.

Some very good things have come out of the constant contact between the people who run the census here and the local elected officials and the key community leaders. Together we can make sure that we are doing the right things.

We have some programs in place to accomplish that. I won't go into all of those—such as the Complete Count Committees, and so on. We can do more of that, and I will speak to our Regional Office here. I'm sure they would want to do the same thing to make sure that happens.

Mr. OWENS. Are you the person I can see to hold that commitment in place?

Mr. BOUNPANE. For New York City itself, I think it would be better to talk to the Regional Director here. If I can point her out, she's here. Sheila Goehringer, our Regional Director of New York City.

Mr. DYMALLY. Mr. Chairman, a Congressman made the observation that he sees no evidence of an INS public relations or commu-

nity program informing people about the amnesty program, as the Census Bureau will do in 1989 and 1990. Do you have any public affairs program that you're pursuing to give somebody assurance, sign up and do not be afraid to be a citizen?

Ms. PETERSEN. We have tried very hard, as I said, to get the word out through a number of different means, one of which is granting television interviews and speaking at seminars and so forth.

I recently saw something, we're starting a poster campaign as well just to alert people to the fact that this benefit is there for them, and try to encourage them to take advantage of it.

As I said earlier, we're trying to make ourselves as available as possible to speak on these issues of confidentiality, of not being concerned. One of the big concerns mentioned has been family members who are not eligible.

At the present time, I'm not sure what's going to happen with those family members, but certainly one thing that they should keep in mind, we, the Service will not be taking any action against those members simply based on the fact that they're on that application because the branch that would take action won't know that they're on that application.

So we're doing our best to get the word out. And I would certainly be happy to provide speakers. I know we've done that with Mr. Towns. I'm not sure about the others of you. I know you've sponsored a couple of programs, and we've been very happy to attend.

Mr. DYMALLY. Do you think you have an image problem, "The Friendly INS"?

Ms. PETERSEN. Do you mean you think we're not? We're trying very hard all the time to maintain a friendly image.

Mr. GARCIA. I have a serious problem with that. Let me state what the problem is.

You've got 11 months left. This runs for one year. You're dealing with people who really for the most part are poor, and people who for the most part have serious problems as it relates to your agency.

Historically, it has not been an agency where people have been treated fairly.

The problem I have, and it's long before you ever arrived on the scene. It's the nature of your agency. The problem I have, you have 11 months left to go. As far as I'm concerned, and I take nothing away from any of the other witnesses, you're really the key witness, to this hearing. Because that's what this is all about. How are we coping with legalization?

If there's anything positive that came out of the Simpson-Rodino Bill, was legalization. I have serious problems with many other aspects of the bill. I voted against it. But I really have a problem that we're not moving as fast as we can because nothing is really being done.

I think Congressman Rangel's conversation with my colleague yesterday was right on target. I have not seen anything. I know I cut a couple of tapes in Spanish in Washington. I haven't seen them. I don't know of anybody else who has seen them.

And you know, we're working with 11 months left. And we started off, where a program where everybody had given high hopes

that millions of people were going to come forth. 36,000 by your estimate. I have 27,000 by my staff's estimate.

So we're really talking about a miniscule number of people coming forward. And if there's anything that's going to come out of this Simpson-Rizzoli Bill, it's got to be that the amnesty works and functions.

The only thing that I am hopeful for, that I can hope for, is that we extend the period beyond a year. Because a year is not going to be enough, based on where we are. The startup time is probably not enough. And we are just coming, we're still coming down with regulations.

I mean, as recently as last week, I think the Senate moved on the employer sanctions portion of it. But we really have a problem, a major, major problem. And INS is not meeting it.

And in fairness to you and in fairness to everybody else, I think that's the crux of what we here in this city are concerned about. And I would hope that if you take any message back you take the message back that not enough is being done, and that INS really has to start moving a lot more aggressively to really send that message out and to bring people in.

And I just don't, I don't know what the answer is. All I know is that the little bit we can do here in terms of establishing a record so that as the years progress we can always say that at this particular moment, by INS, this is what they stated.

I would hope and I would sincerely wish that yourself and Mr. Nelson in Washington and all the people who are responsible—you know, it's interesting enough, you and I at the end of each day can go home. There are a lot of other people who are concerned about going home in the sense that, you know, they're afraid, they're constantly looking over their shoulders.

Let's get something out of Simpson-Mazzoli, and let me hope that INS is doing everything humanly possible. Because the figures are absolutely disgraceful and I have to tell you, I see, based upon what we're doing here, I don't see any improvement. I really don't.

MS. PETERSEN. Well, I think just to answer that for a little bit, I think the Service is also very concerned about the low numbers. And I believe they are taking measures in Washington to do more as a nationwide effort to promote this. But I do know that locally, we've had people speaking on radio shows as well as on some of the television, Hispanic, for example, television stations just last week, they had somebody do an interview in Spanish.

MS. GARCIA. You're talking about a viewing area of New York of about 14 million people, in total, and the show is on at 2 o'clock in the afternoon. How many people are watching; 10,000, 5,000? It's just not enough. It's got to be a constant pounding, a constant bombardment of the air waves, at prime time. You have to meet your FCC requirements. But at prime time, so that—let the station meet their FCC requirements. But this is what we really need. Because I hate to tell you, I'm shocked. I am really shocked. When the other part of this bill, the negative part of this bill starts, the sanctions, it's going to be chaotic.

And I would hope you will get that message back.

MS. PETERSEN. One last comment, I could like to say that we certainly, we agree with you wholeheartedly. The Service wants to see

legalization succeed. And we'll do whatever we can to help make it succeed and to implement it properly so that it does.

Mr. GARCIA. Thank you very much.

Ms. Marla Kamiya, Center for Immigrant Rights; Mr. Arthur Helton, Lawyers' Committee for Human Rights; Mr. James Haggerty, Regional Legalization Director, United States Catholic Conference, Migration and Refugee Services; and Mr. Muzaffar Chishti, Director of the ILGWU Immigration Project.

If you folks would be kind enough to take your seats.

Okay, gentlemen. You've been patient. You sat and you listened to most of it. I would suggest that you take your written statements, we'll enter all of them without objection into the record, and why don't you take five minutes; why don't you start from my right.

#### **TESTIMONY OF ARTHUR C. HELTON, ESQUIRE, LAWYERS COMMITTEE FOR HUMAN RIGHTS**

Mr. HELTON. Thank you, Mr. Chairman, Members of the Subcommittee. My name is Arthur Helton. In addition to directing the Political Asylum Project, which is playing a role principally on training questions under the new law, in terms of the implementation of the legalization provisions of the new immigration law, I also chair a 20-member advisory committee to the New York State Inter-Agency Task Force on Immigration Affairs.

I understand Cesar Perales, who is listed to testify, is doing the state's business today in Washington. But I did want to report to you briefly that the Inter-Agency Task Force which he chairs is responsible for issuing a report in March which identified 64 cases of unnecessary and abusive firings under the new law over the first two months of its implementation. It also held a public hearing on April 2 in New York City at which 30 witnesses testified. And as a result of that public hearing, the advisory committee offered and submitted comments to the immigration authorities on the implementation of the new law in April, prior to the issuance of the final regulations under the legalization provisions.

We are at this point assembling information respecting the implementation of the legalization provisions and are considering the issuance of a report this summer on where the legalization process stands in New York State.

Obviously, one way to overcome the well-established and traditionally disproportionate undercount of undocumented aliens in the United States, and in New York in particular, is to implement the legalization provisions in a flexible, efficient and fair manner, and to offer amnesty to that portion of the estimated 850,000 to 1.5 million undocumented, most of whom live in New York City, as the population estimated to live in New York State.

Now, the legal framework for this is somewhat complicated. There are four routes to status, three of which have actually been mentioned at these hearings, including a registry provision for those who were here prior to 1972, a special Cuban-Haitian adjustment provision for those who had contact with the immigration authorities prior to 1982, the special agricultural worker provision for those who worked at least 90 days in the year period from May of

1985 to May of 1986 and, the focus of most of our attention, general legalization for those who entered prior to January 1, 1982 and resided in a continuously unlawful status.

The institutional framework in New York for realizing status under the terms of these provisions is composed of five satellite offices, three of which are in New York City, and 39 Qualified Designated Entities which have experienced severe implementation problems.

The implementation questions are those that I think you need to begin addressing in some more systematic fashion.

Preparation has been uneven on the part of the Qualified Designated Entities. The larger ones have done better, have had forms, have had people with experience; the smaller ones sometimes have not had forms, are unprepared, do not yet have people with experience.

People who have been referred to them have returned to the referring agencies and said there are operations that are not yet open and that are not currently operational.

The principal problem, however, is what I would characterize as the legalistic form of the regulations that were finally issued, what some might call the nit-picking approach that would require exquisite documentation on the part of those who present claims for status under the provisions of the new law. Those in the Qualified Designated Entities who we talk to have said that many times aliens have to be interviewed four times, and that it takes from five to ten hours per individual to assemble the documentation required.

If I can just share a specific example with you, we had two Haitians who we presented for adjustment last week under the special program in the New York District who were turned away largely because they had not presented documentation that they had received letters, or had transactions in the United States in 1981.

However, it was the case that they had actually been in the custody of the Immigration and Naturalization Service throughout most of 1981, a fact which we pointed out in the application itself, and which the authorities could have discovered by simply looking at their administrative records, as we invited them to in the application.

But nonetheless, they were turned away because they hadn't shown sufficient documentary evidence that they'd been in the United States in 1981, or had contact with the immigration authorities, even though they were then in detention.

Mr. DYMALLY. They had no paperwork after they were released from detention?

Mr. HELTON. They had plenty of paperwork, and that wasn't the issue. The question was whether they had anything to show that they were here prior to 1982, during which period they were in INS custody.

So the documentation required is excessive. What we plan to do is try again this week on these cases, copying and submitting a lot of the documents that the INS already has in their administrative records.

I only cite that as an example to show you the tough-minded enforcement nit-picking character of the approach taken, in terms of these cases.

People have to jump a series of hurdles and even then it doesn't seem to work.

I think we will prevail, but with unrepresented people or people who are less persistent, I think there would be problems.

Now, there are other problems in this area. There are only 41 designated civil surgeons. There's a bottleneck in terms of people who need to obtain medical examination results in order to finalize their applications for legalization status. The forms, as it stands now, are only in English, with the exception of the medical examination form. Experience and training are uneven. Many of the staff of Qualified Designated Entities do not know which route to status is best for the individuals involved.

Some routes are far superior. Registry leads quickly to permanent residence. Cuban-Haitian adjustment leads not only to permanent residence, but citizenship almost immediately. Special agricultural worker status leads quickly to permanent residence.

General legalization, the focus of all the attention, is actually the least desirable of the routes to status because people are not able to give status to their family, to bring families in, and they are rendered ineligible for five years from certain kinds of public assistance.

The information campaign that has been alluded to in the proceedings before you has not been forthcoming. It is a federal responsibility. The plan was to saturate the media of all kinds with information, including information concerning confidentiality.

It hasn't happened. In New York, the needs are particularly unusual in terms of the multi-lingual character of the undocumented population in New York. And I would certainly emphasize the importance of bearing this in mind. Not even adequate information disseminated in the Hispanic media will suffice in New York, where there are large numbers of Haitians who speak Creole or Orientals who speak other languages.

In sum, I would simply say that INS estimates that almost 4 million people will benefit from status under the new law. The best estimate we've heard is that there are 36,000 applications that have been filed.

Tomorrow we will be one month into the legalization process. There are many applicants, I think that's clear. There's a lot of activity at many of the Qualified Designated Entities and other sites where people are rendering legal assistance.

However, there are very few applications filed. To us, that means that there are important implementation problems that are preventing the completion of the applications. Specifically, highly technical documentation requirements.

People are having to go back and try to reconstruct lives that they led in a largely undocumented way without producing a paper trail.

Training, public education, coordination, quality control—these are all important aspects that have yet to be finally established. But the real problem is the technical and implementation issues relating to documentation at this time.



If these issues are not resolved, then the generous promise of amnesty under the new immigration law will be undercut and heed will have to be paid to those who are already calling for an extension of the application period.

Thank you.

[Mr. Helton's full statement follows:]

STATEMENT OF ARTHUR C. HELTON, ESQ.

#### INTRODUCTION

Chairman Dymally, thank you for inviting me to testify at today's hearing. My name is Arthur Helton. I am the Director of the Political Asylum Project of the New York-based Lawyers Committee for Human Rights. I also am Chair of the Advisory Committee to New York State's Inter-Agency Task Force on Immigration Affairs. Since enacted, I have been monitoring the implementation of the Immigration Reform and Control Act of 1986 (IRCA).

With the exemption of California, New York State has the largest number of undocumented persons in this country. Governor Mario M. Cuomo has expressed his deep concern for their future under this law, and it is a basic purpose of the Task Force to see that the residents of New York receive the full benefits of IRCA, and to promote the just and effective implementation of the laws.

My testimony today concerns the legalization of undocumented aliens in the State of New York. In particular, I wish to comment upon the need to make this process a smoother and more efficient one in order for the law to include all the people who might benefit from it.

#### THE LAW

The Immigration Reform and Control Act of 1986 provides that all aliens who entered the United States before

January 1, 1982, and who have resided continuously in an unlawful status in the United States, are eligible immediately to become temporary residents, a first step toward eventual permanent status. The Immigration and Naturalization Service (INS) has established 107 Legalization Offices around the country to process the applications of aliens seeking to regularize their immigration status. In addition, the INS has named numerous "Qualified Designated Entities" (QDEs) around the country to help with the legalization process. The QDEs serve as buffers between undocumented persons wishing to benefit from the IRCA and the INS. All of the information compiled by the QDEs is confidential and cannot be used by the INS or any other federal agency in any case against an undocumented alien. These protections recognize the traditional fear that the undocumented have of immigration officials.

There are other routes to status aside from general legalization. Specifically, the IRCA has four categories of status possibilities: (1) Registry, (2) Cuban-Haitian Adjustment, (3) Special Agricultural Worker adjustment, and (4) General Legalization. Eligibility requirements and application procedures vary, and following is a brief summary of the substantive criteria that must be satisfied to gain status under the four categories.

### Registry

To avail themselves of the registry provision, aliens must present documentary evidence of continuous residence in the United States since January 1, 1982. The applicant's primary dwelling, without regard to intent, must have been in the United States. Temporary absences which do not abandon residence do not break continuous residence, as actual physical presence is not required. Departure due to an enforced order of deportation or exclusion breaches continuous residence. However, voluntary departure, whether or not proceedings were instituted, does not terminate continuous residence. Unlike general legalization, residence need not be in an unlawful immigration status. Affidavits from credible sources are acceptable to show residence for the requisite period.

Registry is the most desirable general route to status because eligible aliens are immediately adjusted to permanent residence. This means that they are immediately eligible for all federal need-based financial assistance programs and will be able to petition for family members to attain lawful status. No numerical limitations apply to the registry provision.

### Cuban-Haitian Adjustment

Under the Cuban-Haitian adjustment provision, all nationals of Cuba or Haiti assigned the immigration

designation "Cuban-Haitian entrant (status-pending)" as of November 6, 1986, or who entered the United States and had a record established with the INS before January 1, 1982 or who, even if admitted in valid non-immigrant status, applied for political asylum before January 1, 1982, are eligible for immediate adjustment to permanent residence.

The alien must have "continuously resided" in the United States since January 1, 1982. This definition, the same as for general legalization, means that (1) no single absence can be greater than 45 days, (2) all absences from January 1, 1982 and the date the application for adjustment was filed must not exceed 180 days, (3) the alien had a residence in the United States, and (4) no absence was due to an order of exclusion and deportation.

Several exclusion provisions under the general immigration law do not apply, including being a public charge (receipt of public assistance), deported or excluded within the past year, aliens without valid passports or visas, and illiterates. However, aliens convicted of or admitting to a crime of moral turpitude will be denied legal status. The statute and regulations are silent on the waiver of exclusion provisions under the general immigration law. This has created some concern that such exclusion provisions may be used against Cubans or Haitians. Also, the confidentiality provisions under general legalization do not apply to this adjustment provision.

The adjustment provision provides a superior approach for eligible Cubans and Haitians. The date of adjustment to permanent residence is retroactive to January 1, 1982. This means that successful applicants may apply for citizenship once they attain permanent residence. In addition, aliens who obtain status under the Cuban-Haitian adjustment provision are immediately eligible for financial assistance and able to bring family members to the United States.

#### Special Agricultural Workers

There are two classes of aliens who qualify for legalization as agricultural workers (Group I), those who worked 90 "man-days" and resided in the United States for six months during each 12 month period ending on May 1, 1984, 1985 and 1986, and (Group II) those who performed 90 such days of qualifying work during the 12 month period ending on May 1, 1986.

A "man-day" is any day in which one hour of qualifying work or any piecework was performed. Agricultural employment refers to any "seasonal fieldwork relating to planting, cultural practices, cultivating, growing and harvesting of fruits, vegetables and other perishable commodities." In addition, the Department of Agriculture is considering an extensive definition of "other perishable

commodities" beyond produce that can spoil if not picked when ripe. Those who qualify under Group I will be adjusted to lawful permanent residence as of December 1, 1989; those in Group II will be adjusted as of December 1, 1990. The difference is that a numerical limit of 350,000 exists for Group I and everyone eligible beyond this point will be shifted to Group II, which has no limit.

In addition to being able to file applications in the INS legalization offices or QDEs around the country, eligible agricultural workers may also file them overseas at processing offices with consular officers, who are authorized to render decisions on applications.

Proof questions are similar to those involved in general legalization, infra, except for proof of the requisite period of employment. Proof of employment is best established by primary evidence, including government employment records or records maintained by agricultural producers, farm labor contractors, collective bargaining organizations or other groups. If primary evidence is not available, then secondary evidence, defined as worker identification, union membership cards, pay stubs and piecework receipts, certified copies of tax returns, and affidavits submitted under oath may be used to meet the standard of proof.

General Legalization

Aliens eligible for adjustment to lawful "Temporary Resident Status" must have (1) "entered" the United States before January 1, 1982, (2) resided continuously in the United States since January 1, 1982, and (3) been physically present in the United States from November 6, 1986 until the application to acquire status is filed.

Entry. Aliens must have either entered illegally, have their period of authorized stay expired before January 1, 1982, or have their unlawful status known to the federal government as of January 1, 1982.

Residence. The alien's stay in the United States must have been unlawful through the requisite period. Regulations list categories of aliens eligible for legalization because they were in an unlawful status as of January 1, 1982. This list includes illegal entry, non-immigrant visa overstays, non-immigrant exchange visitors not subject to the two-year foreign residence requirement, and those "granted voluntary departure, voluntary return, extended voluntary departure or placed in a deferred action category" before January 1, 1982.

The alien must demonstrate proof of continuous residence, continuous physical presence, and identity. Continuous physical presence since November 6, 1986 is not lost by "brief, casual and innocent absences," which INS has



defined as those it authorized under its advance parole procedure, or which occurred prior to May 1, 1987, for 30 days or less. District directors retain discretion to authorize further periods of departure.

Documentary Evidence. An applicant must prove, by a preponderance of the evidence, that he or she is eligible for legalization. This includes proof of (1) identity, (2) continuous residence, and (3) financial responsibility. The regulations require that all documentation be submitted in the original, but certified copies may be offered in lieu of originals. The alien may be required to verify, if there are gaps in his/her employment, that he/she and his/her family, has not received certain forms of public cash assistance.

Acceptable documents for proof of identity include, in descending order of preference, (1) passport, (2) birth certificate, (3) national identity documents, (4) drivers' licenses with photo, (5) baptismal or marriage records, and (6) affidavits. Residence may be documented by (1) past employment records, (2) utility bills and receipts, (3) school records, (4) medical records, (5) letters from churches, unions, or other organizations, and (6) other documents like passport entries, social security cards, selective service cards, and tax receipts. Past employment records in the form of letters from employers must include (1) the alien's address while employed, (2) the periods of

employment or layoffs, (3) job description, (4) whether the information was taken from company records, and (5) where the records are and whether INS can have access to them. If the records are unavailable, a letter signed under penalty of perjury stating why the records are unavailable and the employer's willingness to testify under oath to the accuracy of the letter must be included.

General legislation is the least desirable method of attaining legal status. Successful applicants are denied eligibility for need-based financial assistance for five years and are unable to petition for family members to receive legal status until becoming permanent residents. Family members may not even be allowed to stay in the United States until the legalizing alien becomes a permanent resident.

#### INSTITUTIONAL FRAMEWORK

The State of New York has a total of five INS legalization offices located in: (1) Manhattan, (2) Queens, (3) Nassau/Suffolk Counties, (4) Syracuse, and (5) Buffalo. Of New York's 17.5 million residents, 2.5 million are foreign-born. Estimates of the State's undocumented population range from 850,000 to more than 1.5 million persons. At least 75 percent of this group is believed to live in the New York City metropolitan area, including New York City, Long Island, and Westchester and Rockland counties.

There are currently a total of 39 Qualified Designated Entities in the metropolitan region. Since the general legalization application period began on May 5, 1987, the QDEs have handled an uneven number of applicants, from 1 person a day to several dozen. There are also 41 designated civil surgeons authorized to perform the medical examinations required of aliens who are applicants for temporary residence. They range from medical groups with more than one physician on staff to a practice with only one physician. This number also includes laboratories which perform tests necessary to complete a medical examination. Laboratory work may be performed by any laboratory licensed by the State to perform x-ray and serology tests. However, the results of these tests and the final medical examination must be authorized by a U.S. Public Health Service doctor or one of the designated civil surgeons. In addition to the QDEs, there are approximately 30 non-designated agencies in the metropolitan area, including the Lawyers Committee, that are performing a variety of tasks, from helping aliens with applications to training and referring applicants for appropriate legal assistance.

#### IMPLEMENTATION

The implementation of the legalization provisions of the Immigration Reform and Control Act of 1986 depends in

great part on the capacity and ability of the QDEs to process undocumented aliens. Private lawyers are also being retained to file applications on behalf of undocumented persons. Given the relatively short six-month period for preparation upon the enactment of the IRCA on November 6, 1986, the QDEs and the INS Legalization Offices in New York State have done an impressive job in simply opening for business on May 5, 1987.

From the outset, there have been inconsistent degrees of preparedness on the part of the QDEs. However, the lack of readiness on the part of the QDEs has allowed the legalization offices in New York to take advantage of the low level of activity to finish up last-minute preparatory details at their sites. The largest QDEs have generally had better training and the necessary forms. Still, some of the largest QDEs started servicing the alien population up to 10 days after the law went into effect. The smaller QDEs have fewer forms, and did not have all the forms required, particularly medical forms. At the beginning of the second week of the legalization program, some QDEs were still getting notices of their designation by INS. Some advocates and community groups do not know which QDEs are currently open for business and where referrals can be made. Aliens that they have referred to listed QDEs have sometimes returned, reporting that the office was either closed or not operational.

The burden of proof is on the undocumented alien, and the process of filling out an application under the highly legalistic regulations that have been promulgated is, in the words of one QDE worker, like "preparing for a major lawsuit." Rather than having to assemble one or two pieces of supporting documentary evidence, many QDEs feel that it is necessary to investigate and prepare an exquisitely documented application. Documentation furnished by aliens is often fragmentary and it frequently takes several days or longer to assemble supporting evidence regarding an alien's identity, residence or employment. This difficult task is delaying the process of transmitting completed applications to the INS legalization sites. Some QDEs have questions regarding the level of documentation required and would like the INS to make it clear that there is no need for so much supporting evidence. Others mentioned the need for an extension of the application period (currently to end May 4, 1988 for general legalization) if the process continues to be slowed by technical documentation requirements.

Because of the precision required in completing legalization applications, some QDEs have reported that it is difficult to complete an initial interview in one day, and that it may take up to four interviews and five to ten hours per alien to complete an application.

Completing the required medical examination has also slowed the application process and many QDEs have complained

either that there are not enough civil surgeons, or that the process is unduly cumbersome. In many cases the laboratories and the civil surgeons are in different locations, delaying the application process even further. Some QDEs have said that if there were more and better medical facilities, they would by now have had many more applicants ready to be transmitted to the INS legalization offices. As the new law continues to be implemented, however, it is expected that the number of designated civil surgeons will be increased.

In instances where questions come up during the application process, the QDEs have access to an INS outreach coordinator. Also, QDEs have access to an INS counselor in Washington. Few, however, have any form of systematic access to independent legal counsel.

Once the applications are ready, they are brought or mailed in to the appropriate legalization office. In the first two weeks of the legalization program, lawyers and QDEs in New York estimated that a reply to a request for an appointment was taking 10 days to two weeks. If an application is not complete or accurate, the fee accompanying is returned and no appointment is given.

While there have been high levels of inquiries and activity at some QDEs and other service-providing groups, the INS legalization offices have been operating at a minimum capacity. An information booth at the entrance of the

Manhattan site distributes applications to those who walk in directly from the street. None of the information in the applications is in a language other than English, with the exception of the list of references for civil surgeons which is in Spanish and English. Of course, the availability of multilingual information is of vital concern in New York which has a large variety of nationalities who speak different languages.

The training of staff members and volunteers working in the QDEs has been uneven. Some QDEs and their staff members have extensive immigration backgrounds and have participated in various training programs, including courses taught by the INS. These experienced persons are generally the most prepared to deal with specific questions relating to the IRCA. For many staff members and volunteers working with the designated entities, their involvement with the IRCA is their first significant exposure to immigration practice. Some are unable to advise aliens which of the four routes to status it is best to pursue in their individual cases. Both experienced and less experienced QDEs rely on a number of new and insufficiently trained staff and volunteers, many of whom remain to be trained. For the most part, however, many QDEs reported receiving the cooperation of the INS in the training of their staff.

Although some of the large QDEs have extensive outreach and educational programs, others are still

familiarizing themselves with the law. One QDE printed 10,000 bilingual information cards which include information about the law as well as information about the rights of undocumented aliens; another QDE which will service one of New York's ethnic communities mailed its first press release a week after the IRCA went into effect, and has not completed anyone's application yet.

Equally important to the success of the IRCA is the public information campaign planned by the INS. In New York, a multilingual approach will be needed. At this time, however, there is no evidence of a publicity effort on the part of the federal government. Given the customary suspicion among the undocumented community towards the INS, many QDEs and others have emphasized that the authorities widely and effectively publicize the legalization provisions of the new law.

#### CONCLUSION

The INS estimates that almost 4 million people will benefit from the immigration reform law. But according to INS last week only about 36,000 applications nationwide have been filed with INS since the onset of the legalization period on May 5, including 3532 in the New York district, and the vast majority of those applications have been filed directly with INS. While both QDEs and private lawyers are



devoting substantial amounts of time on cases, the legalization offices are practically empty. This suggests that there is a wide gap between the number of undocumented aliens seeking to take advantage of the law and the number of those who have been able to make completed filings. Many of the eligible undocumented may simply be waiting to see the bona fides of the process demonstrated. Some may be deterred by the level of the application fees (\$185 per individual with a \$420 cap per family).

The questions raised by the QDEs regarding technical documentation requirements and facilitation of medical and other services must be addressed. Otherwise, the process of legalization runs the risk of being severely backlogged, the generous promise of amnesty in the new law may be undercut, and heed may have to be paid to those who are calling already for an extension of the application period.

At the national level there is an informal system of information sharing among QDEs. But coordination and quality control should be encouraged at all levels. Training and public education are paramount needs.

We are at the beginning of a vast enterprise which has the potential to take several millions of persons out of the shadow world in which they had existed previously and to add them to our political community. Care must be taken immediately in order to have a reasonable chance for success.

**TESTIMONY OF JAMES HAGGERTY, REGIONAL LEGALIZATION DIRECTOR, U.S. CATHOLIC CONFERENCE, MIGRATION AND REFUGEE SERVICES**

**Mr. HAGGERTY.** I want to thank the members of the committee for inviting me today, and giving me the opportunity on behalf of our agency to express our concerns on the implementation of the legalization process.

My name is James Haggerty. I am the Regional Director for the United States Catholic Conference, one of the Qualified Designated Entities.

We are a qualified designated entity, and in addition, all of the major dioceses around the country, principally where many or most undocumented reside or even where small numbers reside, have also applied for and been designated as "Qualified Designated Entities."

We are trying to work very closely in several ways with INS to make this a successful program so people who are eligible for legalization can apply. But it is not such a simple process.

The legalization program should be a remedial program and those people who are eligible should get the benefit. That's what we're trying to do. We're working very hard to do that.

Why isn't it happening? Well, we're concerned about some of the final regulations. And we're also concerned about how the program is being implemented.

We're basically saying that the message right now is not getting back to the community, that this is not a program to entrap people but is a program to help people get a benefit.

Specifically let me, among many issues, just highlight three issues which I think are important:

First is the question of the interview process. We talked about that a little bit, heard testimony today at the Legalization Center. What's happening there? Second is the question about documentation. Again, we've heard a lot of information about that today, and finally is the question about family unity.

I think, taking all these together, we're seeing that the interview process is not really fair and there's a lot of problems with it. The requirements for documentation are very restrictive, and there's a lot of problems for Qualified Designated Entities trying to implement and obtain the kind of documentation necessary. And the whole question of family unity and the question of confidentiality is a large issue.

Specifically on the interview process. There's no message getting back to the community of what's happening. We've heard testimony from Ms. Peterson today explaining that the decision won't even be known for people for a couple of months.

Now, when someone goes to an interview, and they present—we have this very cloudy issue of how much documentation is enough. You know, how much is enough? No one really knows. INS will not say specifically what you need. Do you need proof for every day, every week, every month?

And obviously, as a Qualified Designated Entity, we're trying to prepare the best case we can based on the knowledge we have of what's required.

But we can't get that information. Why?

When you go into the interview process, normal INS practice is, in any other kind of application, if you don't have enough documents, you're missing something, they give you what's called a 972 Form. It says you're missing this, come back in 30 days, and bring it.

Specifically in New York, we have definitely been told that this process will not be followed. What will happen if you just don't happen to have enough documentation? It will be recommended for denial.

We're told, well, on appeal you can clarify that. Can you imagine what we would have to go through as a Qualified Designated Entity to appeal all these kinds of cases?

So, in addition, we would like to see that people know, and we've raised this issue on many occasions. We are even concerned now that this will become the national policy.

Many INS District Directors are not following that. This is specifically in New York. We have raised this on a national policy level, and we're told that maybe they're going to implement the New York procedure nationwide, not to tell people what they need.

Second of all, we were told that you would be told at the interview what the recommendation was going to be. That's not happening in New York.

Our cases, I've discussed at the Bar Association meeting, I asked attorneys who would file applications—they're not being told what's the recommendation. So you don't know what's happening. So how can the community know what's happening? There's no word. With all the suspicion, and the history of INS with these people, undocumented people, they're going to be suspicious.

It seems to me that what we'd want to do is to get the word out that this is a benefit program that really is working, and it's something that people can take advantage of.

In addition, there's the documentation requirements that you've heard about today.

We are concerned about, for example, the employment letter. The regulations have indicated that this employment letter has to indicate that INS can have access to the employer's records and if not, he has to sign, under perjury, to state that this is true.

An employer has no obligation to give this letter. And yet under the law, this is like the most important proof you have to have. If you don't have it and you go down to INS, they're going to say, this is no good, it's not good enough. At least that's what we feel right now.

So, how are we going to deal with that? The INS information campaign hasn't begun. Employers don't know, under confidentiality, if what they say is going to be used against them, for example, for tax purposes. There's no real assurance going out to employers, as I said, that this is confidential.

In addition, if INS were to accept a regular employment letter—I mean, there are penalties for providing false information—just a regular employment letter, under the present regulations saying that any other relevant document would be helpful—if they took that with the totality of the case, I think it should be given a lot of

weight. And right now we don't think it would be given any weight at all.

The concerns here that I think Mr. Helton has mentioned about the documentation are our very concerns. We have many people applying, coming to the Qualified Designated Entities, many people starting the process. But we don't want to file cases unless they are like super good at this point, because we are very concerned.

Some people are afraid to come forward. Those people who are there, we're not counseling them to rush in right now, because their case may be denied, unless it's prepared much better. These are expensive applications. If they have to go back and file an appeal, people don't have that money.

Just a couple of comments about family unity. A question has been raised today about the spouses and children. There's no national policy on what's going to happen to the spouse and children of a person who is eligible. There is a confidentiality point that Ms. Petersen brought out that this information can't be used against another family member. But that's not being brought out in any information campaign, for which there was a lot of money appropriated, I understand.

Also, under the family unity, I think Congress should look very carefully at how INS defined family unity. When you go back and look at the same language, you know, there's a very generous waiver provision that Congress implemented. Same thing from the refugee bill. It was looked to be a very generous waiver for mistakes that people had made prior, because they know that many people who are undocumented use fraud or whatever, not criminal matters, but other types of violations of immigration laws.

Well, that's why they enacted this. But the family unity is so narrow. It's more narrow than most other waivers under other aspects of present immigration law. All this is getting a message out. We're hearing one thing, but we're thinking maybe that the implementation is going to be something else.

INS personnel, we're giving them the benefit of the doubt, but remember, all INS personnel have been, on these legalization programs, the working people are, many people are newly hired. They don't have the experience, the flexibility that can deal with this kind of documentation.

And they're dealing with perhaps unrealistic expectations for these people. How can these people be trained to give a realistic expectation of what these people can come up with on documentation?

Congressman, you mentioned about the registry, and saying, you're here before 1972, you should be eligible, if you get it. Same problem with legalization. You're here before 1972, and you've been here illegally, if you can more or less show it, INS has certain tests for fraud, they can look into it, fine.

It's not being implemented that way. We're seeing, we're having to document months, each month. And it's not going to work that way because we have to spend hours and hours doing that. We don't have the resources.

So that's part of the problem.

Mr. GARCIA. Mr. Muzaffar Chishti.

[Mr. Haggerty's full statement follows.]



NORTHEAST AREA OFFICE  
MIGRATION AND REFUGEE SERVICES  
1250 BROADWAY • NEW YORK, N. Y. 10001 • 212/563-4300  
CABLE ADDRESS: NYCATHWELL

TESTIMONY OF JAMES J. HAGGERTY, ESQ., BEFORE THE  
U.S. HOUSE OF REPRESENTATIVES; SUBCOMMITTEE ON CENSUS  
AND POPULATION CONCERNING THE IMPACT OF LEGALIZATION  
PROCESS ON THE COUNTING UNDOCUMENTED ALIENS.

6/1/87

First, I want to thank the committee members for this opportunity to present the concerns of our voluntary agency, the United States Catholic Conference, in reference to the implementation and impact of the Immigration, Reform and Control Act of 1986. In particular, today I would like to focus on the implementation of the legalization provisions of this act.

The various Catholic Church dioceses in the United States have appointed legalization directors and in conjunction with the United States Catholic Conference have set up legalization programs throughout the country. Many of our dioceses under the umbrella of the Catholic Conference have been designated as Qualified Designated Entities. We hope that our combined efforts will contribute in a significant way to carrying out the purpose of the legalization provisions and we hope many other qualified groups will join in meeting this massive challenge. We look forward to working together with both public and private groups to assure the success of this program.

The legalization provisions of this immigration bill are clearly remedial in nature. Remedial statutes should be liberally interpreted, are inclusive by nature and should be implemented in the same spirit. Congress clearly intended that those who are eligible for this benefit should have a fair opportunity to apply.

Our review of the final regulations and our conversations with INS policy makers up to this time have raised concerns about whether INS will implement these remedial provisions of the statute in the way intended by Congress. If INS does not implement the statute in the manner intended by Congress, many undocumented aliens eligible for the program will never obtain the legalization benefit. We are urging that INS reconsider some of their

regulations and implementing policies so that those who are clearly eligible for the benefits of legalization have a fair opportunity to apply.

Under the regulations and the implementing procedures as explained to us so far, many individuals who are clearly eligible for legalization will be prevented from benefiting from the statute.

Specifically, INS, we believe, will severely limit an applicant's opportunity to have a fair interview for legalization and, in addition, INS has made the requirements for documentation excessively burdensome and restrictive. Finally, INS's narrow definition of "family unity" will severely limit the number of applicants who would otherwise be eligible for waivers where applicable. The effect of these policies and regulations will be a large denial rate and a clear message to the undocumented community discouraging them from applying. The small numbers of individuals who are so far applying for legalization at the INS offices may in part be a direct result of these policies. Today I will focus on the fair interview issue, the burdensome documentary requirements and the unjustifiable limitation on waivers.

We have been informed that an applicant who appears at an INS interview in New York for legalization and who does not sufficiently prove by his documentary evidence continuous residence in the United States, at least in the opinion of the interviewing officer, will not be given an opportunity to return and supplement his case.

No matter how much training is shared by INS personnel and QDE personnel, there will be borderline cases and differences of opinion on the issue of how much documentation is enough. At a minimum, an applicant should be given an opportunity to return and supplement his/her case. It is regular INS policy in other cases to give an applicant form I-72 which details exactly what documentation is missing. INS should follow this same procedure in its legalization interview. INS's own manual suggests this procedure but there is no national policy on this point. Not only should an applicant be given an opportunity to return and supplement his or her case but the applicant should be specifically instructed on where the documentation in the case is deficient. Specificity is required here so that if a case is denied there will be an opportunity on appeal to review the reasonableness of the INS officer's request and whether or not the applicant made a sufficient showing. The INS program is computerized and the Service rightfully wants to run an efficient program. Its concern for efficiency, however, should not result in the denial of an applicant's opportunity to a fair interview.

At the end of the interview the applicant should be

told what recommendation is being given on his or her case. In this way, word will reach the community that this is a valid program, not simply a trap for unwary aliens.

In addition, INS has made the requirement for employment proof excessively burdensome and restrictive.

We are worried that this requirement will prove a significant impediment to the smooth functioning of the legalization process.

The form employment letter which must be submitted in the event that W-2 forms, pay stubs, etc. are not available is very burdensome. This form letter requires the employer to certify a) whether the information was taken from official company records and b) whether the INS can have access to them. Moreover, if the records are unavailable an affidavit must be submitted by the employer stating the reasons for such unavailability.

This constitutes an extremely onerous burden to bear for anyone who has been working in this country while in unlawful status. Employers who have engaged undocumented aliens will be extremely reluctant to expose their records to the INS or for that matter to any other governmental agency. The party punished by this reluctance will not be the unwilling employer; it will be the otherwise eligible alien who is deprived of a reasonable method of proving that he was working in the United States during the statutory period and is therefore entitled as a matter of right to relief under the Act. If INS's information campaign would begin and strongly assure employers that such information provided to them will be confidential and cannot be used for any other purpose, this may assuage the fears of many employers. If INS will accept employment letters which do not meet this stringent standard under the "any other relevant document" and give it serious consideration, this would also be very beneficial.

This requirement is hopelessly incompatible with the language and legislative history of the Immigration Reform and Control Act of 1986. The statute is clearly remedial in nature; where relief is at all possible the method of documenting continuous residency and financial responsibility should be facilitated. This outlook is clearly spelled out in the legislative history of the statute which provides in material part as follows:

"Unnecessarily rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility, permitting the use of affidavits of credible witnesses and taking into consideration the special

circumstances relating to persons previously living clandestinely in this country."

Finally, many excludable applicants who would be eligible for a waiver under the broad and generous waiver provisions of legalization may be barred from such relief because of INS's unjustifiable narrow definition of the term "family unity". The legalization provisions of this statute are clearly remedial in nature and, with this in mind, Congress incorporated broad language in the waiver sections of the bill. INS, however, is trying to narrow the opportunity for applicants to apply for waivers by incorporating in the regulations a very restrictive definition of the term "family unity". Under the final regulations "family unity" means "maintaining the family group without deviation or change. The family group shall include the spouse, unmarried minor children who are not members of some other household, and parents who reside regularly in the household of the family group." This definition is contrary to the plain meaning of the statutory language. By constructing such a limited definition of a family group, INS will be able to significantly limit the number of applicants eligible for waivers.

In addition INS has no policy of what will happen to spouses and children of applicants who do not qualify in their own right for the benefit of legalization. Many applicants may be afraid to apply for this reason.

I hope that Congress will urge INS to reconsider these policies and regulations so that this legislation will be implemented in manner Congress intended.

Respectfully submitted,

James J. Haggerty, Esq.  
Legalization Director  
North East Region  
United States Catholic  
Conference



**TESTIMONY OF MUZAFFAR CHISHTI, DIRECTOR, INTERNATIONAL LADIES GARMENT WORKERS UNION [ILGWU] IMMIGRATION PROJECT**

Mr. CHISHTI. Thank you very much, Mr. Chairman. My name is Muzaffar Chishti. I direct the Immigration Project at the International Ladies Garment Workers Union which is also a national Qualified Designated Entity which is serving members of the union and their immediate family all across the country. A large project of ours is in California, in the district of the present Chairman of this Committee.

I really had thought about talking only about the issues of legalization as they concern the 1990 Census. But since we heard a good part of the testimony here from the Immigration Service relating to how this legalization program was being implemented, I can't resist making two or three observations about that.

Especially, as you know, the Immigration Service called a large number of national Qualified Designated Entities last week and essentially told us—it was half reprimand and half suggestion—that the private sector is not living up to its expectations in implementing this program.

They're unfortunately sending the message that there is something wrong in our public education effort and that we in the private sector are not living up to our expectations. It's an irony that the Immigration Service which so far has tried to round these people up and deport them, is now busy saying that they are very eager to legalize them and all we have to do is get them to their offices.

The misfortune of this policy is that the Immigration's attitude towards collecting people into their offices right now is a managerial decision. It's been seen as a cash flow problem.

The Assistant Commissioner for Legalization has already threatened certain legalization offices will be closed, because as you know, the Immigration Service refused to seek any supplemental appropriation from Congress for legalization, claiming that this should be a self-financed program, with the result that they have borrowed \$125 million against future appropriations, and for that they have to have a projected 3.9 million people who are legalized, which figures up to 16,000 people a day.

That's the projection on which they have opened their offices, have the furniture there, staffed those offices.

Unfortunately, they are not living up to that expectation. About 27,000 people have come forth in the first three weeks. But they see it as a purely cash flow problem.

Our answer to that is that if the Immigration Service made those projections, they were entirely theirs. We haven't subscribed to those projections, and we never subscribed to their projections as to how long it takes to do a case.

It's taking an incredibly long period of time from the point a person walks into your office to actually the time he can submit an application for legalization. And the National Qualified Designated Entities are right in being cautious about it and submitting as much information as one has to submit to the Service so that these people are not denied applications later on.

Most of the concerns as to why people are not coming forward you've heard from my colleagues here. A couple of them which haven't been mentioned.

A lot has to do with the employers' cooperation. If we know anything from the legalization programs of other countries of the world, the Canadians and the French and the Argentinians and the Venezuelans will tell you that those programs failed because of lack of cooperation from employers.

My fear is that is precisely why this program may also fail. And that has a lot to do with our imposing employer sanctions at the same time that we offer legalization.

How would you expect an employer whose only connection with Jose Torres in 1976 is one of exploitation—the only thing he knows about this person is that he exploited him for six months and paid him under the table. And now we expect that he will go back and get an affidavit from that employer that he worked for him, and at the bottom of that affidavit testify that he is willing to come to the Immigration Officer and testify to the accuracy of those statements?

I mean, that's kind of an Alice in Wonderland logic that we operate in the regulations, and that's unfortunately operating most in the employer documentation.

Most of these people, in the absence of W-2s, pay stubs, have to depend on an employer affidavit, and employer affidavits are just not coming forward.

The last point on the employer affidavit is that we have had no indication so far from the Internal Revenue Service there will be no repercussions on employers. Most employers that I have talked to are very concerned about this. There is no tax amnesty as we know, and employers are very concerned that when they give an affidavit of this kind, it's going to filter on somehow to the Immigration Service and they're going to be hit with past tax liability.

Of course there's a confidentiality provision in the Act. We can hammer them on their heads, but that's not what the employers believe. What we have tried to tell the INS is if we could get a joint statement issued by the IRS and the INS with certain kind of guarantees that people—that employers may have, we might be able to get a little more cooperation.

Just a couple of things on 1990 Census and legalization.

I think we should compare it with what happened in 1980. I mean, it's ironic that we had this meeting in 1980 exactly in this room when we were trying to convince the Immigration Service not to raid the workplaces at that time, to get cooperation.

We had a problem in 1980. I think in 1980 we at least managed to get some undocumented population to come forward. I think what we will have in 1990 is that those people who are not going to be legalized are going to be much less enthusiastic to come forward, because we have already drawn a curtain, by passing the legalization program of 1986.

We have now said clearly that there are two kinds of undocumented people. One we would really like to stay here. And the other, who really, we would like to depart.

As Ms. Petersen said in her own testimony, the expectation of the Service is that these people, because of the employer sanction mechanism, will voluntarily leave.

If we know anything about the population, they're not going to voluntarily leave.

But the emphasis is that these people should be kept away from the United States, which includes keeping them away from the Census, which must inevitably mean that this bunch of people are going to be undercounted.

So we obviously are going to have a silencing effect on a sizable population in New York. We're going to have the same problem because of the family unity problem, especially in this population.

Then on the issue of raids. I mean, I find it really odd, especially for the Census Bureau people to believe that just because the INS says that they have changed their policies of not raiding residential facilities, that that is going to have an effect on the population.

This population does not go by what the press releases of the Immigration Service or the Census Bureau say. They go by perceptions. And perceptions are incredibly bad. I have to defend people who are raided at work places all the time. That is their fear. Work place raids are continuing. And if they continue at the time of the Census, we are not going to have a decent Census count.

On a positive note, I think we should at least gain something from what we learned in the 1980 Census. I think it will be good if we can, through some Qualified Entities, and we at the ILGWU are willing to perform some bit of service in that regard, through some good data collection, we get some social characteristics of the people that we have legalized, if we overcome obviously the confidentiality concerns and to the extent that they are in our office and feel a little safe, we can collect a little more data on the people who are legalized. And if we compare that with the characteristics that the Census Bureau projected for people who were legalized in 1980 and learn something from that, we may be able to make a little more educated projections for the 1990 Census.

I think some sort of retroactive determination of the accuracy of the 1980 Census may be done by doing a better collection on the people that we legalize. And if we can offer any help, we'll be glad to do that.

Thank you.

Mr. GARCIA. Thank you. And I thank the three of you. The three of you were sitting here during the period of time that Ms. Peterson from Immigration was seated, was testifying. Would you be kind enough to tell us what questions we failed to ask her?

Mr. HELTON. Congressman, first I would mention some of the issues that I raised about the legalization process. All those nitty-gritty issues which I think are very important in getting the message out. We felt that once people started getting approved, the message would get out that this program is working, it's a real program and it's going to offer a benefit. Some of those problems weren't brought out. That's one point.

Mr. HAGGERTY. I'm not sure if it's your specific question, but it seems to me the question of plans in New York for a multi-lingual campaign for publicity purposes, it seems to me also the time line

for forms in other than English will be available for those who are picking up information at these sites.

Whether any arrangements are being made to designate additional civil surgeons to perform medical examinations. Whether additional Qualified Designated Entities will be designated by the Service, and when. I think these are just close implementation questions that the local authorities should be in a position to answer.

Mr. CHISHTI. Let me, briefly. I do spend some part of my time in the Legalization Offices, A, to file, also to determine how the process is going.

I think we must say to the credit of INS that at least the atmosphere at the legalization office is the best we have seen in any Immigration Offices. They are really much better than any Immigration Office I have ever seen. They're doing their best to put the best smile forward. I think they really want to get a lot of people legalized. I think if nothing else, because of the money problem, they really believe they have to get \$185 an application. I mean, it's a very cynical way of looking at public policy, but it happens to be true.

The problem is that we in the private sector have to be sure that after we pay them \$185, our people who we represent are not going to be denied, not only because that's bad for them, but it doesn't reflect too well on people who represented them.

There's one bottleneck which can easily be cleared, which I think would help get a lot of people into the legalization offices. And we have tried to tell them formally and informally in the last two weeks. And Mr. Haggerty referred to it at some length, and I'll repeat it to the extent I have talked with him last week.

You bring in your application to the Legalization Office, it all goes to Vermont, as you heard. People in New York do not adjudicate these things. They don't deny or approve an application. They just recommend denial and approval. The application is granted at the regional processing facility in Vermont.

All they will do is they will tell you whether an application is denied or approved. And then you will have an administrative appeal process.

What we have said is that it would help tremendously if we imposed an intermediate stage in this that instead of the regional processing facility just telling you whether the application is denied or approved, they would just send a notice to tell you at least an intent to deny on the basis of certain lack of documentation.

Look, you know, you presented a pay stub only for 1983, not for 1982, and give us something like 60 days to correct the documentation problem. I really don't know what the big deal with that is. That happens in immigration procedures here in this building all the time, in nonlegalization cases, as they find some documentation is lacking, they give you an opportunity to correct the documentation process.

That's what I think emboldens a lot of Qualified Designated Agencies which are now being very cautious in sort of collecting a lot of documentation that if they go with minimal documentation and then remain assured that they will have an opportunity to cor-

rect the documentation issue later on, that would I think start bringing in more people into this thing.

And that's a very simple suggestion and very easy to implement.

Mr. GARCIA. Thank you very much.

Because we're dealing with a new program, as it relates to the three of you who are interested in getting as many people legalized as possible, as we are.

If you were sitting here and we were sitting there, what would you tell us and what suggestions would you give us as it relates to what we should be doing to assure that we get as many people as possible legalized?

Mr. HELTON. I think the obvious problem at this point would be the documentation question.

The regulations to some extent limit the flexibility of the authorities on that question, but not always. There is certainly room for generous interpretation.

It seems to me that close oversight over the onerous character of the documentation being required to present applications and have status granted would be the best that could be done at this point.

I would say the second best approach would be what was suggested by Mr. Chishti. If legalistic approaches are to prevail, then at least tell people earlier in the process that they're in trouble and let them have a chance to supplement their documentation or to look to other sources of documentation.

But I still think that the most important point in the process at this point is the documentation bottleneck. People are inherently incapable of providing the kind of documentation in many cases that will be required if the current atmosphere and approach obtains.

So I would see that as the key to liberalizing the process. Looking at legalization as more of a simple registry procedure.

Mr. HAGGERTY. I don't think that the message is getting back, first of all not to the QDEs, and then certainly not to the community, that this is a benefit program.

And I think the two issues that we brought out today, the documentation issue plus getting a way to notify someone what's going to happen with his application when he applies. Does he need more documents, is he just going to be denied?

That would be, I think that would really clear up a lot and move things along a lot faster.

And I think even under the present regulations, they can interpret. I'd add one thing to that. I'd say it's understandable as Mr. Chisti has said that you know, the atmosphere in the Legalization Offices. These are new people. They really I think do want to legalize people.

The problem may be in the training. These are a lot of new people, I believe, hired for this program, and they don't want to have the idea they just let somebody in, I want to really make sure it's a good application. I think there has to be a little reality training, too. You know, what actually is possible.

And I think the only way to do that is to sit down with the QDEs and talk about what are people really able to come up with.

And if there's a problem, they need more documentation, sit down with us and talk about it. Don't just say we're going to recommend denial of your case.

We are very flexible, and seeing what we can try to do realistically. We're concerned also with fraud problems. And that's INS' major consideration. But I think they're over-emphasizing that and they're making our job extremely difficult.

Mr. CHISHTI. Mr. Chairman, I really would look for two very practical pieces of assistance from Congress.

First, I think we have to not let INS get scared about the number of people who are coming in, or the lack of number of people who are coming in in the first three weeks. I think there's a certain amount of hysteria generating in INS that not enough people are coming, and they are threatening to close down offices.

I think any program which is judged, a program which is inherently suspect, to judge that on the first three weeks, and make decisions about closing down offices or cutting down staff, is going to be disastrous for this program.

I think it is just absolutely too early to make any judgment about the failure or success of this program. And they should not tell us on the basis of those projections that they will close down offices. That monitoring by Congress I think would tremendously help.

Second, I also really think that we should convey the message as clearly as we can to the INS that Congress never intended this to be a self-financing program. Congress intended this to be a generous program and part of that was that some money would have to be expended to make it successful.

They have denied our request that we would help them in lobbying on certain issues because they are absolutely, the Commissioner is absolutely determined to say that this program should pay for itself.

If he sticks to that rule, then we will have some Legalization Offices closing down. And that will happen unfortunately in remote areas where there is not representation available on any other issue.

The third is I think it would help if you could provide some brokerage function between the INS and the IRS. I really don't want to overemphasize that. If we can get the two agencies to issue joint statements on the issue of confidentiality and employer's liability for taxes, that would help a lot in terms of alleviating some fears.

Mr. GARCIA. Of the number of people so far that you know of that have applied for citizenship, how many are white, how many are Hispanic and how many are black?

Any number; any ballpark figure?

Is the overwhelming majority white; the overwhelming majority people of color?

Mr. CHISHTI. I can only tell you that when I go to the legalization office, I look at the lists, the case assignment list of each legalization officer. And I was quite fascinated on Friday afternoon that they ranged from all parts of the world. I was really quite surprised.

There were Egyptians there, there were Israelis there, there were Irish there. I think in this city people are stunned as to how

many Israelis are going to be legalized, how many Irish are going to be legalized. I think that's the population that we never thought of, because the stereotype continues, that it's Mexican, Dominican.

On that chart I saw on Friday with three Legalization Officers, there was not a single Mexican.

Mr. TOWNS. I just wanted, for the record, you said flexible and efficient manner. Would you sort of explain what you mean by flexible and efficient?

Mr. HELTON. Well, by flexible, I mean taking into account some of the comments that I made previously and that Mr. Haggerty has made. Making sure that those responsible for reviewing the cases interpret the law and apply it in a flexible and realistic way, and not require of people documentation or evidence that is unrealistic and unreasonable to expect from people in terms of prior employment or employers' letters or things of that character.

At some point, people will just not reasonably be able to present more than they can in terms of the needed evidence.

In terms of efficiency, I look to things like the problem with the low number of civil surgeons. The whole process could be made more efficient by pressing to expand the pool of civil surgeons from whom examinations can be taken. Or again, providing forms in the native language. That certainly would facilitate the application process.

It's clear from what oversight that we've done at this point that there is a lot of activity occurring at the sites of these Qualified Designated Entities, at least many of them, and certainly the largest ones. But not much activity at the Legalization Offices.

So people are preparing their cases. They're handling their cases, in the words of one worker at a Qualified Designated Entity, like a lawsuit. They're looking at preparing the case and documenting it like a major piece of litigation.

And that, obviously, is not going to be available to very many people. That approach will stymie a lot of people in the process.

And I think it's completely inconsistent with the notion that Congress had in considering this amnesty program.

Mr. DYMALLY. That wasn't the intent of the law at all.

Mr. HELTON. That's right.

Mr. HAGGERTY. If I could just comment on that, there was a definition in the House for what flexibility would be. It's from the legislative history. It said unnecessary rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. And therefore, the committee expects the INS to incorporate flexibility into the standards for legalization eligibility, permitting use of affidavits of credible witnesses and taking into consideration the special circumstances relating to persons previously living clandestinely in this country.

Mr. TOWNS. Thank you very much. And let me just comment, Mr. Chairman, on the fact that I think you gave superb testimony, all three of you. Mr. Chairman, I just wanted to reflect that. Thank you very much.

Mr. DYMALLY. I was about to say, Mr. Towns, that Mr. Garcia was also saying the same thing to me on the left that you were saying on the right about the quality of the testimony given by the three of them. And thank you very much.

We want to have the option of sending you some questions in the mail, for your further response. Thank you very much.

Mr. GARCIA. Mr. Joseph Etienne is with the Haitian Centers Council; Mr. Stan Mark, Director of the Asian-American Legal Defense Fund; Dr. Charles W. Ephraim; and Dr. Roy Bryce-LaPorte, Professor, College of Staten Island.

#### TESTIMONY OF JOSEPH ETIENNE, HAITIAN CENTERS COUNCIL

Mr. ETIENNE. Thank you, Mr. Chairman. We from the Caribbean community appreciate very much the opportunity that you give to our group to express our views on the legislation.

We feel we have to thank you for that opportunity. My name is Joseph Etienne. I'm the Executive Director of the Haitian Centers Council, which is an umbrella group of eight community-based centers located in Brooklyn, Manhattan, Queens, Spring Valley and Stamford, Connecticut.

Our objective is to have Haitians adjusting to the new milieu.

I am also a member of the Governor's Advisory Committee for Black Affairs and Co-Chairman of the Caribbean and African Subcommittee.

From the outset, let me say that although we are making every effort to assist undocumented Haitians who are qualified under the new Immigration Reform and Control Act, I must say that the legislation has not lived up to expectations. And therefore, the impact will be negative on the 1990 Census.

A few examples.

That new immigration bill was supposed to to be a solution to the trials and tribulations of many undocumented immigrants—a vast, invisible section of the working people in this country.

We have a few problems with the INS. First of all, we have the outreach program. There is a lack of adequate information by INS. For example, the INS staff is not fully familiar with the application form. We have people who stand on line for two hours, and then they are told to go outside and the form will be there. Once they get there, after one hour, they say well, go inside, we don't have the form.

Once they went back inside, they wait for an hour and then they had only a few forms. And we even send people to request the other forms, which we could fill, to request forms from different offices of the Immigration.

The first week of that program, when someone spent two hours in that line for that "order form", we were told at the end, we don't have the order form, and therefore you have to send a letter to Washington requesting to buy those forms by package, they have 100 forms for \$27, or \$15 dollars, based on quantity.

The second is that INS has very few, if any, bilingual staff to answer inquiries from undocumented aliens. And many times when you get the form they give you the wrong form.

We have people who go for legalization when they should have received the I-687, they were handed the I-485 for adjustment.

And when they go back to fill that form, we find out that's not the right form, and they have to go back the next day to hopefully get the right application.



We are quite concerned about no INS Legalization Office in Brooklyn where we have the largest Carribean community in the city, in the state.

And another aspect we have is the documentation. As you mentioned before, we have people, for example, from the Carribean community who came with what we call "decollage." That means in Port-au-Prince you pay \$1,000 and they give you a passport, they put your picture on that passport. When you land at Kennedy Airport, someone walks in there, you pay them \$1,000 and they remove the passport from you, remove your pictures, send the passport back to Haiti, and maybe 10 or 20 people would come on the same passport.

Now, these people have been living here for five, ten years, and they have no documentation to substantiate their stay here.

For example, Saturday I went to a church where about 200 people were there and one lady came to me, she said, I have someone working in my house for eight years, and she came in under that process, and all she has—she went to the doctor two or three times. And she has no passport. How can she document her status, her residency here? And we know that is going to be very difficult.

In addition to that, we have realized that we have a problem with the appeal process.

In that regulation, it is stated that incomplete application will be returned, or denied. It is not clear what do they mean by that.

Does that mean if you don't have enough documentation to substantiate your staying here or does that mean you failed to answer one of the questions? It's not clear what is meant by that.

And many people cannot take that chance, because once your application is in, your chance to appeal is very limited and that also is why we have a large segment of the population that refuses to apply.

We even have people who came to withdraw their application, because for example they told us that nationwide not too many people have applied, we Haitians therefore should wait longer to see what's going to happen. And we are very concerned in the Haitian community and the Carribean community about that situation.

Furthermore, we realize there are not enough medical doctors at the community level that can provide the medical examination. People have no place to go, and the few clinics they can attend, they don't have bilingual staff to go through the medical process.

Lastly, in terms of the QDEs, we have seen people that qualify as QDEs who have no credibility in the community, and they just apply and INS is too happy to provide them with that status. But yet, the community people, the undocumented people who have been there for years, will not go to some of the QDEs because they see them as almost like the tax people's process where you go there and once the tax season is over, you have no way to find out where your documentation is.

In addition to that I think many of them must pay a fee, not the filing fee, which costs \$185; they also have to pay maybe between \$75 and \$100 to fill the application. Furthermore, they have to pay for translation of documentation, like baptismal certificate, birth certificate, and so on.

And another concern is the people who have been working off the books, people who work for eight or ten years and many times they do not pay any taxes and yet when they ask for an affidavit, the employer won't give it to them. These people have no way to document their stay here.

Another point we have on that, we have a lot of people saying, if you go on the Parkway, on Northside Avenue, Flatbush, you see a lot of those stores saying, we fill immigration forms.

Mr. TOWNS. We know a lot about that.

Mr. ETIENNE. We'll have to take him for a tour.

So those issues we have. In addition to that, we said there is not enough centers in Brooklyn.

Vis-a-vis the Census, we feel that those taking the Census will continue to contend with the fact of a large undercounted population, underground population.

The failure to count those people results in the denial of federal funds in social, medical and educational services to neighborhoods and cities in which undocumented immigrants reside.

Reapportionment may occur because Census figures indicate that a district has less population when in fact the population of these areas has grown. Both public policy and planning will be undermined by undercount of the population.

Also, we should mention that those who came after January, 1982, you can be sure they are not going to stand up and be counted.

Undocumented people become a vast reservoir of unreported physical and medical problems, many are symptoms brought on by their invisible status. They become a body within the body politic who are taxed without representation. We estimate that about 200,000 Haitians and many other thousands of immigrants will not be counted and the statutes will not reflect their numbers or be responsive to their needs.

Since so many of the immigrants are black and brown, the result is that racial minorities are not counted or represented.

I must emphasize that the only realistic way to locate and count illegal immigrants is to develop new legislation which grants blanket amnesty to all those who by their very presence are proving that they have made a place for themselves in this society. Such a blanket amnesty has proven successful in Canada. Nothing short of this will lead to an accurate Census in 1990. The assurances that that Census will not be turned over to INS are necessary but will be insufficient to reassure people whose future rests on what happens with information they give out.

The new immigration bill, Mr. Chairman, must be linked to an acknowledgement of the power of such factors as poverty and the lack of economic opportunity in other countries. Only by responding with appropriate foreign aid and development assistance will this legislature begin to put an end to continued immigration and underground population. Otherwise, we'll have to agree with Congressman Leo Panetta that we have created a subculture in our society, one that has no rights and no protection. And I will add, no place in the Federal Census.

The time has come, Mr. Chairman, to create the conditions by which all undocumented immigrants are free to stand up and be counted.

Thank you.

**TESTIMONY OF DR. ROY BRYCE-LAPORTE, PROFESSOR,  
COLLEGE OF STATEN ISLAND**

Mr. LAPORTE. I'm Roy Bryce-Laporte and I am presently at the College of Staten Island. I thank you for having given me an opportunity to speak, and remind you that this is not my first opportunity to have spoken to this Subcommittee.

It was then headed by Representative Garcia, who I'm sure in addition to his own expertise and responsibility also has the sensitivity derived from a background with parent from abroad, who even though not in a legal sense immigrants, are from Puerto Rico, part of an overseas extension to the United States.

And I think it's fitting that its present Chairman is one who has had the immigrant experience and has since then sought to make his contributions as an immigrant and a citizen to the improvement of this country and to some of the solutions that immigration requires.

Prior to this, my concerns with immigration have largely related to my work at the the Smithsonian where I was trying to interest my colleagues in the social sciences to return to the study of immigration as a subject matter, really with the intention that sometime in the future they would have been able to make the kinds of contributions to agencies such as the Census, faced with the vexing problem of undercounting and to the politicians and policy makers in terms of better ways to identify their populations and to identify the programs that are presented by those populations.

I am at present with the City University where another attempt is being made to do the same, this time through an institute which hopefully will try to complement some of the kinds of research that are likely to be either restricted or deemphasized in government research agencies.

I want to speak briefly about my—the change of views or at least my viewpoint on the subject after five years.

Five years ago, when I stood before this Committee, my concern was to advise against the passing of a bill prematurely, without having given it sufficient time to be deliberated.

At this point, I would at least concede that the bill was much more deliberated than before, and to that extent, it is an improvement over what had been stated before. That does not mean in any way that I consider the Control and Reform Act of 1986 a perfect bill, one without reasons to be criticized and to be improved.

There are some points that I made then that I think I'd like to make again. Because I think they still hold.

One is that illegal immigration, which seems to be the primary objective of the reforms and controls of the 1986 law, is closely tied to other forms of immigration. And, therefore, any new immigration reform must not only incorporate and relate illegal immigration to general immigration, but it must address the general immi-

gration picture facing the country as well as anticipate the problems that the Act itself will bring about.

Two, immigration, whether legal or illegal, is a complex phenomenon in terms of what it represents, as well as the levels on which it expresses itself. It is both individual and collective; it is subjective, it is objective, and in the long run, the complexity of the immigration process must be reflected in any set of policies that one proposes to use for its solution. And that means to say that one has to deal with a multiplicity of levels of jurisdiction, of social organization and implementation.

And finally, immigration is not always an issue. It is always, however, an ongoing phenomenon in the United States. And quite often we get confused between issues that we have created sometimes justifiably, sometimes in panic, and immigration itself.

Then we respond to those issues, creating problems that we did not anticipate.

In many cases what we do therefore is to come out with solutions that are off-balance, that are counter-productive, that are conflicting, that miss the point.

I would suggest that any truly democratic effort—and to be democratic does not necessarily mean to be ineffective or to be slow, particularly if we want to concede that there are issues related to it, must deal with all the parties that are involved, or to be affected in an equal and just way.

And that means that in addition to the various levels of government and to the standard members of society that you have to deal with the minorities, you have to deal with the immigrants themselves, including the illegals and you have to deal with representatives of various levels of the source countries.

As my colleague has just mentioned, much of immigration is to be understood as internationally initiated and in many cases it reflects the failure in terms of aids and investments and cooperation between this country and source countries, and therefore, to deal with the end without dealing with the source is to likely overlook the possibility that immigration will continue and if it is discontinued in an abrupt way, that other forms of interventions may be necessarily resorted to that we would prefer not to have to engage in again.

Just a few more points on the recent legislation itself, and also its implications for the problems faced by the Census.

The framers of the 1986 law spoke, when they sought to be benevolent, about eliminating the possibilities of a subclass of aliens being developed in the country. But in fact, by having introduced a cutoff point of 1982, they did in fact set the basis for the development of the subclass.

It would seem to me that, radical as it may seem, that in addition to the advice that we want to give to Census and to INS, that I would like to suggest that you as members of Congress should again return to your colleagues and consider whether or not an amendment advancing that amnesty cutoff date to a much later time would not be possible, insofar as many of the problems that we are dealing with today would be resolved simply by adding what my colleague speaks about as a blanket amnesty. I'm not sure if those are the proper terms. But having introduced that, many of

the problems of the subclass, the fraudulence, the apportioning, labor shortage and all of these will go away. In fact, one of the serious problems you have is that in order to get legalization legislation passed, we assumed that there were illegal immigrants in extremely large numbers, from particular countries and particular groups. And it is quite likely that it is only after the process of legalization that we'll have any inclination of how many illegal immigrants there are, where they are located, what groups they represent and what countries they come from.

And even then, given the fact that we never knew the universe, we will never know whether we are right or wrong. So that in many ways, that problem could be resolved by a more ambitious form of amnesty, of course combined with the strengthening of the borders, which of course this bill has already conceded, and by the implementation of whatever—depending upon the recommendations made by the commissions suggested by this bill, the implementation of adequate aid, assistance, and improvement of international economic relationships, so that people will not continue to feel forced or find so many reasons to leave their own countries in the direction the United States, whether legally or illegally.

There are also some other considerations. The bill recognized to some extent the multiplicity of levels to be involved and it has sought to encourage participation of other levels, such as local levels of government by reimbursements, by study commissions and so on.

However, I would suggest that the bill itself in terms of its language is so complex and so wordy that it confuses the situation and in some cases may be producing its own problems of conflict of laws and conflict of interest in the process.

I think that we have already started to see some difficulties because they have not considered this well, with the questions of transfers of status, and the conversion of people here as students who broke those status limitations and would now like to become considered for legalization.

And we see problems having to do with questions of revenue sharing, of apportioning, and definitions that may be moving in the other direction.

I think that there is obviously a need for an extension in education period. The period that had been established by INS obviously was not enough. It needs to continue the educational program, training program, and monitoring; and it also needs to encourage some sort of feedback process so that it has some sense of how effective that educational program is going.

In that regard, let me suggest that I think the responsibility is not only that of INS. To some extent, the benefit of more people participating in the legalization extends not only to those people themselves and the INS, the Census or whatever, it also benefits the politicians as elected officials. And so some of the questions as to the innovative measures that you are asking of INS, I think ought to be turned to yourselves as well. Inasmuch as it certainly benefits you in terms of voting strength, in terms of size of constituency, in terms of defining the services that are involved, it is incumbent then on you to start to consider what types of new approaches should be used.

And I here propose therefore a new level of cooperation between executive and legislative groups and also a new role and direction for some institutes such as those that I am involved in in terms of training people who would be useful in this process.

I think that the framers, at least some members among the framers of this bill, especially those on the very extreme, took a very sort of narrow Americanist view of this bill, and the debate over it.

Their idea to discourage the entry or the further entry of people who are entering, not only illegally, but people whose entry converted the normal vision and image of the American population—people who would not be white; people who would not be speaking English; people who would be coming from countries of lower prestige and lower economic value, lower industrial development and so on.

And in the process, I think that they failed to have seen the greater Americanization that took place by way of the prolonging of the debate. I'm sure that a number of people were penalized in one way or the other for having participated in the prolonging of that debate. But in the long run what we have seen that one consequence of the prolongation of the debate is the broadening of the debate and participation in it.

We have seen a number of people who may have felt outside of the system, now participating in the system. You have seen that many of the people who were assumed not to be able to speak English, do speak English sufficiently well, in fact, better, in some cases, than some of our native students.

We have seen them enter, illegal as they are, enter into the Armed Forces to participate in defense of this country. And so on.

And it strikes me therefore that we ought to recognize this bill as an opportunity, and as an index of the possibility of greater Americanization of the democratic system or process and also as an opportunity to resolve some of the problems which follow us because of our tendency to separate people and to disenfranchise particular people who do not fit certain types of stereotypes and statuses.

The request of this subcommittee was to speak to the question of legalization, as it will have implications for the Census.

And I want to say first of all that I have had some opportunity to work with the people in the Census on a national level in terms of trying to identify ethnic groups and ancestry and matters of that kind.

And I would like to say that they have done much of this work in great earnestness, but perhaps not enough and perhaps not with enough time, some will say.

The point is that legalization in a sense will resolve some of those problems, because as I said the legalization will yield and clarify further some of the information that we did not know then.

Legalization, on the other hand, if it is not done well or if it is done as if it were a continuation of the control and police system of the INS, may actually distort reality, discourage participation, because there may be people who would not come forward insofar as they continue to deal with the psychology that they have developed relative to the INS.

But what is important is that in the process of approaching or trying to resolve this problem, that the Census at least will take into account some of the problems encountered by INS and will attempt to engage in the kind of public relation activity that would encourage rather than discourage people from participating.

It means other things engaging much more on the local level than perhaps had been done before. It means engaging in innovative things more than they have before. It means using local persons and local agencies more than they have been before.

I have heard questions asked relative to the Catholic Church. And I know, from my own personal experiences, and associations with various groups in that Church who are concerned with the study and the service of immigrants that they represent a formidable source.

But I'd like to advise, of course, that there are other groups and in some cases other church groups that also ought to be considered, particularly when you are speaking of the non-Hispanic population and the non-Southern European population, who are not congregated mainly in that particular organization.

I would want to suggest among other things that when we start to think about the undercount that we also start to think about the groups that are being deprived entry because of their having come into the country later than 1982 and to realize what these groups are likely to be is people coming out of Central America, people coming out of the Caribbean area, people coming out of areas where you have had recent political types of destabilization of one kind or the other.

And therefore, some sort of sensitivity, either in terms of formula, approach, or interpretation, must be made.

The fact that the politicians, elected officials, and service agencies know that there is an undercount, and even if this undercount persists, does not provide them with sufficient reason to underserve their neighborhoods and constituencies.

Rather it should mean that compensation should be made to serve and represent these locales and constituencies better given the fact that we assume that there is an undercount.

I would like to end by suggesting that much should be done to encourage that development of research agencies and research personnel who are more committed to independent study of immigration, who are prepared to deal with it as a phenomenon, not only as an issue, and therefore are likely to represent for you major technical sources of information, technique and manpower for helping to resolve some of these problems, not merely of tomorrow, but of the days after, the future, as well.

[Mr. Bryce-Laporte's full statement follows:]

STATEMENT OF  
ROY S. BRYCE-LAPORTE

Mr. Chairman:

This is my second appearance in five years before this particular Sub-committee. And I hope that it portends no more of the disappointments and disillusionment that I have been experiencing in the interim but rather a better fate for me and the things I have been fighting for in the realm of immigration studies.

There are some obvious changes in the circumstances surrounding my appearances before this body. The venue is different; then it was Washington, D.C. now it is New York City. The chair is occupied by different persons; then it was the Honorable (Puerto Rican-parented) Robert Garcia of this City; now it is you--the Honorable (Trinidadian-born) Mervyn Dymally of Los Angeles, California. By way of your ancestries and experiences, both of you are most likely to be sensitive to the motivations and causes behind immigration and the desires and dreams which propel immigrant peoples to want to excel in their achievements, progress and contributions in this, their adopted country.

Myself of Panamanian birth, I share an earlier Caribbean ancestry with both of you; and I have lived in all three U.S. cities mentioned above as well as several other places in this country during my own migratory trek. Seeking improvement for myself and family, pursuing economic stability, professional advancement and career success, and searching for and creating the opportunities to make my contributions to my country of adoption--these activities identify me with the streams of other



legal and illegal, "voluntary" and "involuntary", immigrants who have given strength, wealth and shape to the United States of America and to its place today in the world.

My job situation has changed somewhat from being the founding director of The Research Institute on Immigration and Ethnic Studies of the Smithsonian Institution in Washington, D.C. to the organizing director of an institute (or center) on immigrant and population studies of the City University of New York at the College of Staten Island. From my perspective, the shift represents a progression, albeit inadvertent and subtle. In the first capacity I was trying to rekindle an abandoned interest and re-create the independent and legitimate role for my fellow scholars in (1) researching what was then the latest phase of the process of American immigration and (2) disseminating its complex implications to the people and policy makers of the country. In this present situation, my efforts are to try to create an organization which would facilitate the on-going research interests of these now rekindled colleagues as well as the newer students of the people involved; namely, America's latest immigrants and their American-born offspring. If successful, it would represent a much needed structure for carrying out organized research on the concepts, cultures and changes these newest of Americans bring to their new locations of settlement and employment and the challenges they present for their new local governments, either by choice or due to circumstance.

Even more significant are the changes in the purpose for my appearance before this Sub-committee, then and now. Five years ago it was to offer caution about the premature passing into law of an early, and in my opinion, insufficiently deliberated or developed version of the immigration reform and control bill. Today, it is to share my concerns, perhaps too early, about the implications of a recently passed, more fully deliberated and, in my opinion, somewhat improved version of the bill. But the Immigration Reform and Control Act of 1986 is by no way a perfect bill. It has a number of inconsistencies, contradictions and questionable implications which require prompt attention, constructive adjustments, and perhaps even some deserved amendments.

A. Among the points made in my presentation five years ago, which I would like to summarize for the record of this session and which I think continue to be relevant here are the following:

1. "Illegal" immigration, the alleged primary objective of the "reforms" and "controls" of the 1986 law, is closely tied to other forms of immigration. It is in part a legalistic construct which can becloud the larger and very intricate relationship it shares with other forms of immigration even from the same (or similar) countries or regions. Hence illegal immigration, whatever the basic problems and violations it may represent in the first instance, cannot be resolved isolatedly from the larger movements and conditions of which it is a part. To try to do so is to risk the emergence of unanticipated secondary problems of

similar or different order and magnitude, in and outside of the United States. Therefore, any new immigration reform must not only incorporate and relate illegal immigration to general/legal immigration but as it addresses the general immigration picture facing the country it must anticipate some of the problems it may introduce by its own enactment.

2. Immigration, whether legal or illegal, is a complex phenomenon in terms of what it represents as well as the levels on which it expresses itself. On one hand it is an individual or collective subjective perception, desire or will. On another hand it is an expression of objective inequality (and sometimes injustice) in human conditions, on various levels of sustained contact and relationships, i.e. global, regional, bi-national, national, local and even interpersonal. This complexity must have correspondence in the realms of legislation, policy-making and implementation. Therefore, it must be reflected on each level. The interconnections which need to be coordinated among the various levels of decision making, governance, service responsibilities, and protection of rights must also be reflected. Clearly some details and implementations will have to be formulated in the field of actual confrontation with the general public. But given the complex nature of the immigration process, any legislative or policy reform of significant magnitude or importance will have to encompass and transcend various levels of jurisdiction, social organization and implementation.

3. In American historical reality, immigration is not always an issue but it has always been an on-going phenomenon. To the extent that it is an issue it deserves not only to be fully understood but also to be fully deliberated by, or at least from the objective and subjective positions of, all the interested parties. This, I was taught, is democratic, just and intelligent policy-making--the American way. To be democratic need not mean to be ineffective nor slow; it should mean, however, the guarantee of equal, full and free representation, participation and justice for the governed. In such a context the failure to develop policy from a broad, realistic and sensitive orientation which transcends stated or specific issues may lead to unfair, unbalanced, counter productive, wasteful and deceptive consequences in both short and long-run terms. Therefore, not only immigration legislation and policy decisions themselves but the process of their formulation should be open and broad enough to create a sense of confidence and identification for all those sectors which will be affected by the law, its requirement and restrictions. This should include then the immigrants, in this case illegal/undocumented ones too, and representation from their source countries.

I am pleased to see that some of these considerations which I had put forward (See full text in Hearings of December 9, 1982, Serial No. 97-55; Washington, D.C.; U.S. Government Printing Office, 1983 p. 29-34) were reflected in the version of the bill that was eventually passed into law in 1986.

B. With respect to that Act of 1986, the subject of our scrutiny and suggestions today, I wish to make the following observations:

1. The framers of the bill established as one of its objectives the removal of a growing underclass of exploited foreign workers within the borders of the United States. Yet, the bill by the establishment of the 1982 cut-off date has created the pre-condition and given shape to the beginning of precisely that kind of subclass in terms of those undocumented or fraudulently documented immigrants who came to this country after 1982. It is believed that about four million persons will be in a state of limbo as a result of the bill and, therefore, mercilessly susceptible to labor exploitation, racial discrimination by police and public services, employers or agencies, family disruption, victimization by fraudulent identification schemes, and massive involuntary exodus -- all the things which presumably were hoped to be avoided.

Something must be done quite immediately. The most logical and in this case the only right thing to do falls upon neither INS nor the Census but rather the U.S. Congress here represented, that is to advance the cut-off date to the date of enactment of the bill (perhaps making of it a broader "blanket" amnesty with due legal limitations). Not without its own complications to be sure, such an amendment would remove most of the procedural and implementation problems we are encountering, the negative images and self-defeating possibilities with which we are being

threatened and, not least of all, the persisting ignorance about the exact or realistic number of illegal immigrants existing in the United States today.

This is a particular cogent consideration, in light of the provisions in the present Act for increased effectiveness in strengthening the border patrol and reception process from further massive illegal entries and expected recommendations for improved aid, investment and quality of international cooperation which should be coming from the study commission authorized by the law.

In the long run--and I have been making the point futilely for quite a "long run" now--the matter of undesirably massive immigration, whether legal or illegal, into the United States will be largely resolved neither by police action nor amnesty alone. Rather it requires a significant reduction in qualitative as well as quantitative discrepancies of living standards, and the opportunities and means of sustaining them, within the region or countries of origin of these immigrants and also between such places and the United States or other industrial/post-industrial or metropolitan core countries with which they have had long, close, asymmetrical relationships in a world undergoing serious technological and political economic restructuring.

2. Several measures have been included in the text of the legislation and its more detailed policy implications on the

commitment by the Federal government to reimburse local entities and to engage private or voluntary (non-commercial) agencies in rendering services to new immigrants. But the provisions of the bill are quite numerous, tedious and complex; its language is too cloudy. Hence, it has triggered various possible levels of misunderstanding, conflict, paralysis and non-compliance among the principal players -- government, immigrants and employers -- while giving impetus to the growth of a mediating and service sector (in which there are already being experienced numerous cases of inefficiency, insensitivity, dishonesty, and delay).

Also becoming quite evident are emerging cases of conflict of law or jurisdiction such as the particular problems of foreign student violators or the reprisals of Internal Revenue Service on legalization applicants or employers. Also emerging are cases of intersectoral conflicts of interests as between the stricter bureaucrats seeking to dramatically reduce the presence of illegal immigrants and the more lenient interpretations of elected officials and local governments interested in the expansion of their vote and revenue-sharing bases by retaining large numbers of immigrants within their districts.

3. By admission of the principal proponents of the bill as well as the press, the battle for and against the new immigration legislation was more intense, prolonged, and perplexing than had been expected. In fact, not only were there splits among usual coalitions and conflict within usually consolidated groups but there are few advocates on either side that can claim complete

victory without compromise---as perhaps should be in U.S. politics.

The extremists among the proponents of the bill seemed committed in large measure to a narrow "Americanizationist" position--a self righteous insistence on "protecting" the borders and immigration laws of this country against the illegal "invasion" by largely non-white, non-English speaking "alien" persons, whose numbers they feared could tilt its population, culture, linkage and image away from traditional European stereotypes. They did not take lightly efforts by their opponents to delay or contest the bill or to modify and defeat their proposals. There are those scholars who were quite misjudged and mistreated in the process because of their independence or differences. Time will continue to prove many of their views crucial, perceptive and correct.

In their blindness these extremists failed to see a broader Americanization process which has been taking place among the illegal immigrants, refugees and their legal peers. Many of these latter have demonstrated commitment to hard work, general compliance with the law, acquisition of English proficiency, enrollment in the Armed Forces, high scholastic achievement, family stability, and savings toward purchasing homes and real estate, and even opening businesses --- all things usually attributed to "the American way of life". They have been contributing culturally, economically and in some cases diplomatically to the advancement and advantages of the United



States as a whole or local places within it. But most telling of all is the fact that the prolongation of the debate also meant its widening in terms of issues and range of participation to include minorities and immigrants in discussions with serious international dimensions as well as domestic implications. This is an unusual development but encouraging message about new levels of experiences in Americanization at work and democracy in progress in the United States today.

C. The explicit purpose of the Sub-committees' call for today's session was to hear implications of the legalization section of the Immigration Act of 1986 as it bears upon undercounting of illegal immigrants in the 1990 census.

Before proceeding I must say that I have been serving on one of the national advisory committees of the U.S. Census Bureau having to do with matters of race, ethnicity, ancestry and minority statistics for several years. In the past, the Bureau has been very diligent in seeking out a wide spectrum of experts of differing disciplines, regions, ethnic affiliations and interests. I am proud to be among those called to render such service. Perhaps some people may feel that the Bureau has not been doing so long or often enough but I believe its record and practices are commendable and that they merit the encouragement and empathy of this the Sub-committee as well as the emulation of the Immigration and Naturalization Service.

The matter of adequately estimating or accurately counting illegal immigrants is a vexing problem. It is an important issue because of the many political (and personal) consequences which depend upon it; it is a problematic index to arrive at whether scientifically or politically. In the first case, there is the fundamental elusiveness or invisibility of the phenomenon of illegal immigration itself. In the second case, there is the decisive role it plays in electoral and allocative politics in certain areas of the country; and, therefore, the difficulties of arriving at a consensus between political opponents or competing entities for the resources which are allocated on the basis of such estimates or counts.

Indeed the recent case of the estimating of illegal immigrants has followed a strange career. In the first instance, baseless exaggerated estimates were used by proponents of the restrictive bill, the bureaucracies that expected to benefit from it, and also some politicians and elected officials with a different set of self-interests in mind. They did this in order to create an atmosphere of urgency, present illegal immigration as an issue, and, therefore, gain public support for their proposition. But in fact no firm number of such immigrants was ever established and no reliable means of arriving at it had been accepted. While most parties tended to regard the figures provided by U.S. Census as undercounts, the general consensus began to change in favor of lower estimates as the period of enactment of the bill approached.

In fact, to date the small turn-outs reported among applicants for the legalization program do not discount the possibility that a much smaller number (and different composition) of illegal immigrants indeed exist than we were led to believe by the sensationalist campaigns of the recent past. What an irony it would be if the mystified excesses which resulted in legislating legalization are in turn demystified and invalidated by the very legalization they brought about!

Notwithstanding, among the implications the legalization program holds for the counting of illegal immigrants in the forthcoming 1990 census are the following:

1. It may not be easy to execute the present legalization program to the point of getting illegal immigrants to register fully or in providing a reliable index of the size and composition of their sub-population. The present formula for legalization is not designed to do either. But, inasmuch as the total number of (post-1982) illegals may not be as large as formerly believed, the proposals for advancing the cut-off date for eligibility for legalization to the month and year of the passing of the bill or of boldly implementing a so-called a "blanket" amnesty, to be followed by stricter efforts to discourage later post-1986 illegal entries or status violations by aliens, their employers or agents, are worthy strategy options or amendments to consider.

2. Short of such measures, more energetic campaigns, innovative cross utilization of research methods and statistical data, and truly coordinated interagency strategies must be practiced by INS, and the Census Bureau. In fairness to the Bureau of Census, it has not only admitted to its undercounts but has spent much time in the past decade attempting to improve its field and analytical methods to reduce undercounts of certain categories of people. The Bureau will gain much for its own preparation, however, by observing and heeding the experiences and errors of the INS legalization efforts, related reports and analyses, and by giving attention to the deliberations taking place in this and other Sub-committee sessions on the topic.

3. Both INS and the Census Bureau must cooperate with other related public and voluntary agencies in order to encourage (rather than discourage) full participation of the "undocumented" segments of the immigrant population in the present legalization and later census counts. But before going any further, it is important to appreciate that the benefit of obtaining more accurate counting or realistic estimates of illegal immigrants extend beyond the reporting agencies or national/federal policy making spheres of government. Its benefits accrue also to local government, elected officials and aspiring politicians, neighborhood agencies and immigrant or minority group themselves. It brings the question back to the Sub-committee as it is represented here today.

As elected officials, especially those of you representing the urban centers which are believed to house the largest concentrations of illegal immigrants, e.g., New York City, Los Angeles, Miami, Houston, etc., it behooves you to get involved in campaigns of legalization, naturalization and census-taking among the legal and illegal foreign born. Such campaigns require much the same enthusiasm and energy as those held for primary elections or special registrations where the issue is "getting out the people." Politically speaking, the undercount is in part a reflection of the failure of the local elected officials, political machinery and governments to educate the local people and to motivate them to come out, confide in the process, and feel convinced that it works beneficially for them as well as for you, individually and collectively. Therefore, your active cooperation in these operations go beyond legislation and oversight. It must include educating your constituents and mobilizing your local agencies and party organizations to get the people out. It must also involve creating or conserving the kind of process and system which is fair, sensitive, beneficial and efficient in their and their (new) nation's behalf.

4. In order for such joint efforts to have long lasting results they require, in addition, an awareness and acknowledgement on all our parts of the lag which exist between research and policy in the field of immigrant and population studies and our resolve to do something about it. Part of the problem we are confronted with is the lag between independent academic research, knowledge,

expertise and training in the study of new immigration/or new immigrants and related public policy. I have often spoken and written about this lag; and it has led me to engage in the institutional-building efforts at the Smithsonian and now with The City University of New York, at the price of furthering my personal intellectual fulfillment. Had such a lag not existed, had such lacunae not been permitted to develop the Bureau of the Census, the INS, and the Government may have had the methodology or statistical device to provide such information as we seek today. Some of the blame for the situation, of course, falls on the academy itself and also on the questionable priorities of government and foundations in terms of scholarly studies of social phenomena vis-a-vis policy oriented studies of political issues, and the relationships between them.

There is a place for independent and legitimate scholarship in public service. However, its specific effectiveness and credibility come in part from its learned awareness of the issues and situations balanced by its purposeful focus on the more basic and inherent questions posed by the larger social reality or phenomenon, rather than the anxiety provoked by partisans and images painted by publicists about situations revolving around it. Its contribution to public action - whether change or conservation - is governed by profound, high-level, independent thought and professional interventions reflective of the highest standards of knowledge, method and ethics in the disciplines.

Hence, rather than waiting to react to another Sputnik shock or be jolted into anxiety by the surprising gains of Japanese education and management techniques, let us now use just a bit of imagination to appreciate what organized academic research and training institutes (or projects) could do in preparing future migration experts and in staffing population/policy agencies for the challenges of tomorrow. Your support is needed in our effort to prepare ourselves and our students to serve this country and City well in the fields of immigrant, population and related studies.

In conclusion, I hope my participation today indicates to you my sense of duty and sincerity of commitment to be useful and constructive --as citizen, immigrant and scholar--in the solution of problems of national concern.

Thank you for this opportunity.

Mr. GARCIA. Professor, thank you very much. Your last suggestion obviously is one that I agree with. I think that while I just spoke with the Catholic Church, I would broaden that and encourage other organizations as well. There are a lot of organizations in the New York Metropolitan area which are non-sectarian but nevertheless very much part of their community and very much respected by that community, so you can be assured that we will do everything humanly possible.

Mr. DYMALLY. Mr. Etienne, there was a special provision, was there not, for Haitians and Cubans? How does that impact on the amnesty program?

Mr. ETIENNE. This is the most liberal section of the new Immigration law. But we know that the Haitian Entrants are only 50,000 nationwide. So when you look at the Haitian population here, of the 400,000 in New York City, you find out that there are 200,000 who are illegal aliens. Therefore the 50,000, Entrants who are eligible for adjustment or 25,000 in New York City, one can realize that provision of the law will cover only a small portion of the Haitian population.

But even those people have difficulty to provide the type of documentation that is required by INS for adjustment, as I alluded to that earlier.

Mr. DYMALLY. Bryce, I was very pleased to learn that you were coming here because of your past experience with this issue. Do you have any estimate of what the Caribbean population is in the United States; and where do you get your figures from if you do have them?

Mr. LAPORTE. I would be prepared to look for them.

Mr. DYMALLY. I want to further continue this with you on a more private level to see if we can, in the course of the census, get the Bureau to have an appropriate question for us to get this count.

I talked to the academic community and they are guessing and the Census people don't know, the politicians have an estimate.

It would be nice for a number of reasons—marketing, statistical data, academic research—to have that figure.

Mr. LAPORTE. Well, let me just tell you, for the people in the Caribbean itself it's also important. Many times they end up utilizing U.S. data to try to explain their own population movement.

And it implies that there is a need for some cooperation between the U.S. Census Bureau and the census bureaus of several of these places.

Mr. DYMALLY. Let me interrupt you. Ms. Lowenthal went to Trinidad, so they're beginning to do that with the Census Bureaus there.

Mr. LAPORTE. Right. Because one of the figures that is internationally not taken is emigration so that nobody knows who leaves, or how many people leave. And then foreign experts tend to use and assume from data produced in the reception countries to get some clue. Well, if I add these together, then I may get some clue of who or how many left.

And to the extent that one is going to start engaging in cooperative studies of immigration in—I think it's important to engage in cooperative development, trade and so on, to balance off against immigration—it's important to know this kind of information.



Mr. DYMALLY. I understand there are more Grenadians in Brooklyn than there are in Grenada.

Mr. LAPORTE. And this is true for several other countries.

Mr. GARCIA. I would just like to take this opportunity to thank both of you.

Thank you very much. The meeting is adjourned.

[Whereupon, the subcommittee was adjourned.]

[The statement which follows was received for the record:]

TESTIMONY

submitted by

STANLEY MARK

On Behalf Of The

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

Before the

SUBCOMMITTEE ON CENSUS AND POPULATION  
COMMITTEE ON POST OFFICE AND CIVIL SERVICE  
U.S. HOUSE OF REPRESENTATIVES

June 1, 1987

Asian American Legal Defense and Education Fund

99 Hudson Street, 12th Floor

New York, NY 10013

212-966-5932

## INTRODUCTION

Before the passage of the Immigration Reform and Control Act of 1986 (IRCA), concerns about the census undercount of Asian Americans had been voiced by community organizations that deliver social services to immigrant families. Although half of all legal immigration to the United States is now from Asia and while one out of every four persons in New York City is an immigrant or refugee, the undercount detrimentally limits the amount of public funds available to immigrant communities for the delivery of social and government services. The restrictive legalization provisions of IRCA will not dramatically alter this undercount. Only more education campaigns in the Asian American press and media supplemented with community education by local and national advocacy organizations will improve the census participation among Asian immigrants.

## BACKGROUND

As the gateway for generations of immigrants, New York's Statute of Liberty continues to welcome large numbers of Asian immigrants who settle mainly in the New York City metropolitan area where the largest state-wide concentration of Asian Americans now resides. According to the 1980 census, over 328,000 Asian Americans live in New York State, while approximately 253,000 are in New York City. These figures do not factor in the substantial undercount of both documented and undocumented Asian immigrants who did not participate in the census due in part to the language barrier.

For the Asian American communities, the growing numbers have not always meant acceptance. The "model minority myth" has rejuvenated an historical anti-alien and anti-Asian resentment and mistrust towards Asian

immigrants and refugees who are viewed as competitors on the job, in business, and in the schools. This myth has grown to overshadow the truly serious needs of Asian Americans, the fastest growing immigrant group in the United States. Instead of acceptance and tolerance, Asian Americans have too often become the scapegoat for the loss of jobs, the economic ills of society, and the problems of those not doing so well and of those who feel threatened by the large influx of immigrants from Asia. These nativists' attitudes are largely responsible for the current wave of anti-alien and anti-Asian sentiment around the country and have given rise to a disturbing trend of anti-Asian violence recognized as a national problem by the U.S. Civil Rights Commission in its 1986 report, *Recent Activities Against Citizens and Residents of Asian Descent*.

It is in this context that federal, state, and local immigrant and refugee policies will be shaped and that such a policies must take into account the concerns of the growing numbers of Asian American immigrants and refugees. The enactment of IRCA and with its programs of legalization, employer sanctions, and the SAVE project will further emphasize the need for comprehensive policies and will also exacerbate the existing problem of gaining access to local and state services faced by immigrants who are unable to speak English and unfamiliar with government agencies and institutions.

#### AMNESTY OR LEGALIZATION ?

Although it is still too early to determine accurately the number of undocumented aliens who will eventually apply and obtain lawful permanent residency under IRCA's legalization provisions, the restrictive interpretation of IRCA as set forth by the implementing regulations will

narrow the scope of eligibility to smaller numbers of the undocumented and deny legal status to the larger numbers of undocumented seeking "amnesty". Furthermore, the number of undocumented who eventually become legalized through the two step process of "amnesty" will even be smaller than the number who are eligible to apply. In effect, the undocumented will continue to be the exploited underclass most vulnerable to unscrupulous employers who subject immigrants to the worst working conditions and a pay scale far below the minimum wage (despite employer sanctions and labor laws).

As a result, a larger number of undocumented immigrant workers, ineligible for legalization, will not participate in the next census due to a lack of legal status. Moreover, Asian immigrants, regardless of their immigration status, who are unable to speak English and distrustful of government agencies will ignore or avoid the census process. Such decisions become the safer course to take even though the fear and risk due to their status may be totally unfounded. For example, it will be highly unlikely that an immigrant family living together in the same household will cooperate fully with the census process after several members of the family had failed to qualify for legalization while other members were able to legalize their status. Unfortunately, IRCA's legalization program has no provision to assist family unification but may result ironically in the separation of families. This is contrary to the policy of reunification of families which has been an integral part of the Immigration and Naturalization Act for decades. Furthermore, many of IRCA's restrictive regulations were challenged during the rule making process as being contrary to the Congressional intent that lead to the enactment of IRCA and will therefore result in litigation. ( A close examination of the thousands of comments submitted to the Immigration

and Naturalization Service will demonstrate the controversy surrounding the restrictive nature of the regulations and the broader intent contemplated by Congress.) In any event, IRCA's so called "amnesty" with its limited eligibility will not legalize the anticipated number of undocumented aliens. This program will not substantially improve the undercounting problems faced by immigrant communities seeking affordable housing, decent paying jobs, quality schools, health care, and access to government services and benefits.

#### RECOMMENDATIONS

The anticipated impact of IRCA's major provisions will require a comprehensive and coordinated pro-immigrant policy that addresses complex issues and questions faced at all levels of government. The main ingredients of this policy must include:

- 1) recognizing the contributions made by present as well as past immigrant groups;
- 2) encouraging respect for the histories, cultural heritages, and the languages of diverse immigrant groups;
- 3) promoting access to government agencies and services for immigrants and refugees;
- 4) increasing the recruitment and placement of bilingual personnel within government agencies that provide services and entitlements to immigrants and refugees; and
- 5) establishing more education programs to promote literacy as well as English language proficiency among all U.S. residents regardless of their immigration status.

A more specific response to IRCA's impact upon census-taking must include political support and government funding for the above-mentioned recommendations and especially for community education that will promote the confidentiality of the census process during the 1990 census. The Asian American newspapers and media must be more effectively utilized by the Census Bureau to foster a better understanding of the political and economic significance of the census for the immigrant communities as well as of the process itself.

The legalization program does not affect the larger number of Asian American immigrant workers in the undocumented underclass who are ineligible for legalization and who are unlikely to participate in the 1990 census due to their status and the language barrier. Although undocumented workers and their families work, pay taxes without collecting government benefits, and are otherwise law-abiding, they ignore the census in order to avoid government scrutiny that may jeopardize their staying in the United States. Therefore, outreach efforts must continue to solicit cooperation and support for the census from community organizations working in the immigrant communities. Such input and cooperation is necessary to overcome the mistrust of government agencies and increase access to the census process for non-English speaking immigrants unfamiliar with government institutions and procedures. Funding for outreach and publicity must be increased to improve access for both the census-takers and immigrants and refugees who are counted.

## CONCLUSION

As more Asians arrive, settle, naturalize, and vote, the census grows in its importance to the franchisement of Asian Americans seeking to gain fair

representation in local political institutions and at all levels of government. Redistricting, an issue already facing Asian American communities, will depend heavily on an accurate 1990 census (which will also determine the demographic data for the Standard Metropolitan Statistical Areas, essential to the enforcement of equal opportunity in employment). Undercounting of Asian immigrants in states like New York may result in continued losses of Congressional representatives which would translate into underrepresentation and a smaller proportionate share of federal funds for New York. The dilution of voting strength and the smaller share of federal revenues allocated for Asian American communities will seriously affect these communities. In particular, their infrastructures are already overloaded by the demands for decent paying jobs, affordable housing, health care, social services, and access to government agencies that lack bilingual personnel.

What constitutes just and fair policy responses to the underclass of undocumented immigrants who live in the shadow of society while contributing their labor and services to expand the economy, educating their children, and paying their fair share of taxes remains a debatable controversy. Unfortunately, the 1990 census will not wait for the end of this debate and the next census will not have accurate figures that count and tally both the documented and undocumented aliens, regardless of the numbers legalized under IRCA, unless the suggested policy recommendations are properly funded and implemented.