

INS AND THE BUDGETARY IMPACT OF
IMPLEMENTING THE IMMIGRATION
REFORM AND CONTROL ACT OF 1986

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BEFORE THE
COMMITTEE ON THE BUDGET
HOUSE OF REPRESENTATIVES

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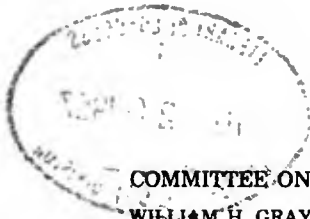
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INS AND THE BUDGETARY IMPACT OF IMPLEMENTING THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

THURSDAY, APRIL 30, 1987

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE BUDGET,
Washington, DC.

The Committee met, pursuant to notice, at 9:45 a.m., in room 210, Cannon House Office Building (Hon. William H. Gray III, Chairman), Hon. Martin Frost presiding.

Mr. FROST. We are going to begin the hearing at this point. I am pleased that the House Budget Committee has been convened today to explore the budgetary implications of the legalization program authorized under the Immigration Reform and Control Act of 1986.

As you know, next Tuesday marks the beginning of the single largest amnesty program for illegal aliens that has ever been conducted by any one nation. May 5 is a landmark date in our Nation's history for on this day every man, woman and child, estimated by the Immigration and Naturalization Service to be 3.9 million individuals, who can provide documented evidence that they have been residing within our borders since January 1, 1982, is eligible to make application for temporary legal status which can lead eventually to full U.S. citizenship.

But the legalization program set to begin next Tuesday is only one part of this landmark immigration reform enacted by the Congress last year. Beginning June 1, the Immigration and Naturalization Service will initiate an employer sanctions program to enforce the provisions of IRCA which expressly prohibit the hiring and employment of an alien who is unauthorized to work in the United States.

Employer sanctions in combination with increased enforcement capabilities of the U.S. Border Patrol on our Nation's borders are designed to restore integrity to the immigration process in the United States and to stem the ever-growing tide of illegal immigrants into this country.

The Congress struggled for 6 long years to craft legislation designed to control immigration into our country. The debate was fierce and emotions ran high. But the Congress did finally achieve a consensus and sent the Immigration Reform and Control Act to the President in the fall of 1986.

And to insure that the program would work, the Congress included in the legislation supplemental authorizations of \$422 million

for fiscal year 1987 and \$419 million for fiscal year 1988 for INS enforcement and other services.

The conference agreement specifically states that the conferees were aware that at least \$184 million was to be expended on enhanced enforcement efforts and that the conferees agreed to the need for sufficient funding to ensure a 50-percent increase in Border Patrol personnel.

The conference agreement also provided the authority to the INS to collect fees from legalization applicants that were to be set at a level sufficient to cover the costs of processing the applications.

But some questions remain if the fees collected were to be included as part of the \$422 million authorization or if they were to be used to supplement the dollar amount authorized in this landmark legislation.

Congress understood that to make this law work that an efficient legalization program and an effective enforcement program had to be adequately funded.

Two weeks ago, during the Easter district work period, I sponsored a seminar in my congressional district in Dallas to provide information about both legalization and employer sanctions. During that seminar, I came to realize that while the INS has been working diligently to prepare the way for both the legalization program and the employer sanctions program, it was clear that INS was simply not ready to deal with the enormous task at hand.

For example, for an area that stretches from southern Oklahoma on the north, to Waco on the south, to Texarkana on the east, and Abilene on the west, there is one office established to take applications and conduct initial applicant interviews.

Considering the number of individuals who live in the north Texas area, as well as the enormity of the size of this area, I found it difficult to understand how INS could reasonably believe that applications could be taken and processed in an orderly fashion when only one office with limited personnel was available to do the job.

So when I returned to Washington, I began looking at the dollars available to make this program work. What I found was alarming. While Congress had authorized a total of \$422 million for this fiscal year's activities, the Administration had requested only \$137.8 million in this fiscal year 1987 supplemental request. Of that amount, \$122.8 million was to be used for improved enforcement.

In addition, the Administration has taken the position that funds for the legalization program were to come solely from the fees charged to legalization applicants for an estimated total of \$125 million. Total spending authority requested by the Administration was \$263 million or slightly more than half of the total authorized by Congress.

In addition, I determined that the INS has made a budget request for 354 additional Border Patrol positions for this fiscal year which OMB cut to 135. Witnesses today will testify that INS wanted 350 additional investigators just to work on amnesty fraud, in addition to 340 employer sanctions investigators, but no fraud investigators are included in the Administration's budget request.

Quite frankly, INS recognized the enormity of the task when formulating their budget request, but it is obvious that OMB does not take the scope of this undertaking seriously. If OMB had, I find it

inconceivable that budget requests of this importance would have been so cavalierly slashed.

The Administration's request was included in the fiscal year 1987 supplemental which we voted on last week, but it should be remembered that an amendment was agreed to which reduced appropriations 21 percent across the board which roughly reduced the \$137 million appropriation to \$108 million.

An important point to remember is that the \$108 million that now remains in the House passed supplemental is the money intended to be used for enforcement. Included in that amount is the money to be used to investigate instances of fraud.

I am truly concerned that with such a small appropriation, INS will be unable to devote the manpower and time necessary to thoroughly review each and every application and its supporting documentation, and may as a result inadvertently let otherwise non-qualified applicants pass what should be a rigorous test. In fact, the level of budget commitment could lead to wholesale rubber stamping of applications.

The Administration's request for fiscal year 1988 appears somewhat improved, but the numbers still raise serious questions regarding the level of commitment of an effective legalization and enforcement program on the part of OMB.

The Act authorized \$419 million for the next fiscal year, and the Administration has requested \$338 million. But for Border Patrol and other investigations, the Administration has recommended \$78 million less than what has been authorized. And while the Administration has allocated \$144 million to the legalization program, they assume that this entire amount will be derived from the fees charged to applicants.

Both the Office of Management and Budget and the Immigration and Naturalization Service were invited here today to present their views of the budgetary needs of the INS in the coming months. Regrettably, both agencies declined to appear to present the Administration's position. Therefore, we will be unable to hear all sides of the story today.

But I feel confident that our witnesses can give us a better understanding of the enormity of the problem we will be facing beginning next Tuesday, and will underscore my belief that much of the problem comes directly from the fact that insufficient funds are available to ensure that the processing of legalization applications proceeds smoothly, that adequate personnel are available to investigate these applications for evidence of fraud, and to ensure that employer sanctions are forcefully enforced.

I am deeply concerned that INS despite their heroic efforts to begin implementing this law next Tuesday is in fact ill-prepared, and that the potential for chaos is very real.

With that, I would like to recognize the other Members of the panel who are here today. And also then our first witness will be a member of this Committee as well as a member of the Judiciary Committee that worked very long and hard on this legislation, Charles Schumer. Other Members of the Budget Committee are here today. Congressman Vic Fazio from California.

Mr. FAZIO. Thank you, Mr. Chairman. I just want to briefly express appreciation to you for having called this hearing. This Com-

mittee is familiar with a number of budget driven decisions by OMB that fly directly in the face of congressional intent.

This is probably the most egregious decision that we have seen this year. It certainly ranks with the reluctance on the part of the Administration to fully implement our drug enforcement programs which were recently upgraded at the end of the last Congress.

California has over 50 percent of the undocumented workers in the country. Certainly you in Texas and those of us on the Pacific Coast understand this problem in very personal terms. I also appreciate the fact that we have a number of people here today as witnesses who can help us.

It is tragic, however, at least as I last understood it, that the people here today do not represent the Administration's point of view. The Administration is unwilling at this point to resolve some of the internal differences that have caused them to be in such disarray, and unwilling to come to Congress and admit the fiasco that is about to occur under their watch. Thank you very much.

Mr. FROST. Congressman Chet Atkins from Massachusetts.

Mr. ATKINS. Thank you, Mr. Chairman. And I want to echo the previous speaker's respect and appreciation for you in holding this hearing. I know that in Massachusetts, which is not a State which is normally viewed as having a large problem with illegal aliens, as people begin to confront the law and the impact of it, they are realizing that it is going to have a huge effect on the State's economy. There is mass confusion among a much larger illegal population than anybody had ever anticipated in the State.

And right at this point, there is not any clear signal coming out of anyplace in the Administration, and it is clear that people are not willing to provide the resources to implement the law as it was intended. And from what I see, on a very small scale in Massachusetts, it looks like enormous chaos is about to descend on a lot of people who are going to have a great deal of difficulty in coping with that situation.

Again, I have tremendous regrets that the Administration is not even sending anybody here to represent their position or to explain how they plan to deal with this problem. Thank you.

Mr. FROST. Nancy Johnson from Connecticut, do you wish to make a statement at this point?

Mrs. JOHNSON. No, Mr. Chairman.

Mr. FROST. Butler Derrick from South Carolina.

Mr. DERRICK. No, Mr. Chairman.

Mr. FROST. At this point, our first witness is a member of our own Committee, Charles Schumer from New York. Mr. Schumer, I would ask that you go down to the witness table.

Mr. DERRICK. Mr. Chairman.

Mr. FROST. Yes.

Mr. DERRICK. I first would like to thank you for holding these hearings, and say that I look forward to hearing from our first witness, who I hear is an expert on immigration reform.

Mr. FROST. We will call our first witness who is shy and retiring at this time. Our first witness today is Hon. Charles Schumer from the State of New York, a member of the Budget Committee and a member of the Judiciary Committee who played a central role in the fashioning of this legislation during the last Congress.

STATEMENT OF HON. CHARLES E. SCHUMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. SCHUMER. I thank the Chairman, and I thank my distinguished colleagues on the Committee. And I particularly thank you, Mr. Frost, for holding these hearings. I think that this, how we are going to fund the immigration law that we passed last year is a very, very important issue. And it is as timely as could be. Because as you know, in a few days, May 5, the amnesty provisions start taking effect.

A few weeks later, June 1, the employer sanctions provisions will start taking effect. And we have, as has been stated a real mess on our hands in the sense that the Administration wants to have its cake and eat it too.

On the one hand, they took a lot of credit, and deservedly so, for passing an immigration reform law. It was a law long overdue, and it was a law that was a long time in coming, and certain members of the Administration worked very hard to pass it.

And then a few short months after it passed, we found the very same Administration choking the law by not giving it the funding that the law needed, just rudimentary funding to make it work. And that seems to me to be a bit two-faced. You cannot take the credit for passing a law, and fail to live up to the responsibilities of funding the law.

The Administration ought to say once and for all whether they want this law and whether they are willing to pay for it, or if they want to undo it, because that in effect is what they are doing.

In my view, Mr. Chairman, because of the severe underfunding of the immigration bill, Congress' efforts to enact this law are in grave danger of being undone.

I have obtained figures from a source in the Justice Department which show how OMB has sabotaged INS' attempts to secure adequate funding for all of the bill's major components. And I have a sheet here, Mr. Chairman, that with your and the Committee's permission I would like to insert into the record.

Mr. FROST. Without objection, it will be inserted into the record.

[The document referred to may be found at the end of the hearing.]

Mr. SCHUMER. The sheet shows that INS requests to the Administration for implementing the law have been smashed or have been slashed. I guess smashed might be an appropriate word. The primary purpose of the law, to control illegal immigration, is in jeopardy because the Administration has severely underfunded both the Border Patrol and investigative positions to enforce sanctions.

Congress mandated a 50-percent increase in Border Control by the end of fiscal year 1988. But the Administration's budget may result in no net increase in Border Patrol agents. While 630 positions are supposed to be added by fiscal year 1988, this will barely keep pace with normal attrition.

So again we may have no net increase in Border Patrol. Our first line of defense against illegal immigration will continue to be riddled with holes.

Employer sanctions. The new weapon against illegal immigration is also underfunded significantly. This means that the magnet that now draws literally millions of poor people, a magnet that would draw anyone searching for a better life, across our border, will be as strong as ever.

There are only 340 new investigators added after OMB's cuts. That means each will be responsible for investigating about 9,000 employers. Now how one individual can investigate 9,000 employers is beyond me.

If there are 200 work days in the year, which I guess is approximately right, a little math shows they have a lot of employers to investigate every day. This means that they will not check up on any of them in the course of the year.

And these very same investigators must also ferret out the fraud in the legalization applications. With the INS planning for 3.9 million applications, we can be certain that these cuts will allow many fraudulent applications to slip through.

The legalization program, something very near and dear to my heart, was intended as a generous act to those who put down roots in the United States. And it is also in danger, because of the way that the Administration is funding it.

There have been, as the Chairman stated in this opening statement, no up front appropriation for it. What INS has been doing is borrowing money from its fourth quarter appropriation, a system that can only yield inadequate funding. And if the fee money sufficient to repay this does not come in, the INS will have to get an emergency supplemental or shut down some operations.

The Chairman mentioned the problems in Texas. I represent the Borough of Brooklyn. I know that you may not be aware of that, but I do. And we have estimated 700,000 illegal aliens in Brooklyn.

We do not have an office in Brooklyn. And that is going to greatly get in the way. 700,000 estimated illegal aliens in Brooklyn. Not all of them would qualify for legalization, but a good portion would, and no office. In Chicago, INS did not put a legalization center in the Hispanic community.

The reimbursement to voluntary agencies which will assist applicants for legalization, and they are as important, if not more important, than the INS offices, is only \$15 per application. And as a result, many agencies that would be best suited to do the legalization program are not participating.

For instance, the National Council of La Raza has said that half of their affiliates who wanted to participate could not because of inadequate reimbursement. And the fewer of these agencies participating, the less likely legalization will work as expected, and the greater number of those who will continue to live in limbo in America, to their detriment and to the detriment of our society.

Other problems related to underfunding. Outreach efforts aimed at informing people about the new law are budgeted at only \$11 million, not adequate to do the job.

INS had originally planned in February to start with a \$25 million outreach. And the lack of outreach has resulted in misinformation and adverse action by employers. New York State has documented 63 cases of people who would have been eligible for legal-

ization being terminated by employers who did not understand the law.

Although the legalization program begins in less than 1 week, there are still no final regulations. Voluntary agencies which will assist applicants still have questions about the requirements for legalization. In fact, these voluntary agencies were only designated a couple of weeks ago, and this means that they have had almost no time to gear up.

In summary, Mr. Chairman, the law that we have worked for 6 years to achieve is in danger of being rendered null and void by an Administration funding plan that is clearly inadequate. The Administration that claimed credit for the birth of this child is now in a sense, a very real sense, starving it to death.

I thank the Chairman, and I thank the Committee.

Mr. FROST. At this point, I would like to recognize our colleague, Hon. Dan Lungren from California, also a Member who was actively involved in the creation of this law, and worked very hard on some of its key provisions. Mr. Lungren, if you would proceed, and then we would ask questions to both.

STATEMENT OF HON. DAN LUNGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LUNGREN. Thank you, Mr. Chairman.

Mr. Chairman, I may have a slightly different perspective than that presented by my colleague from New York. One of the things that disturbs me is that throughout our consideration of immigration reform in the 9 years that I have been in Congress, 8 years serving on the immigration panel, and 4 years being the ranking Republican on that panel, and two times being the Republican manager of the bill on the panel, and all times trying to drag the Congress toward implementation of the law, that hyperbole and excessive rhetoric have marred our journey.

I think that one of the things that we ought to keep clearly in mind is that this is a comprehensive reform of the immigration law which really does not have a precedent, and that there are to be expected difficulties when you start it up.

I would suggest that if you compare this law with other radical reforms of the law of a comprehensive nature in other areas that this probably has less problems than we have experienced in the past. And that in sum, it is a guessing game as to how many people are going to come forward to apply, how much it is going to cost us to do these things, and exactly how well we are going to implement it.

Having said all of that, I find that much of the criticism levied at the Administration and the INS in this regard to be misguided. In the first instance, some have suggested that the Administration is somehow out on a lark by saying that they are not going to ask Congress for certain sums of money for the implementation of the legalization program, but are rather going to try to pay for that program through the receipt of fees paid on behalf of those people who are to be the beneficiaries of that program.

And some have suggested that this is outside the law, that they are flaunting the law, and they are not doing what they are sup-

posed to. Well, I would just suggest that this Committee and the entire Congress look at page 92 of the conference report which actually produced the legislation.

Page 92 says this:

The conference substitute requires the Attorney General to prescribe a fee schedule for the filing of applications under the legalization program. It is the understanding of the conferees that the fee level should be sufficient to cover the costs of processing applications, and should be comparable to those charged for aliens seeking entry into the United States as immigrants.

If you would look at the final decision made by the Administration in that regard, the fees are not only comparable to those charged to those who are seeking entry into the United States as immigrants, that is those who have followed the regular procedure and have not broken the law, but in fact they get a break compared to those people. So the Administration is right on line with respect to that.

As I understand it at the present time, the Administration has come forward with a plan for legalization of \$125 million in 1987 and \$140 million in 1988. I can give you the details if you wish, but I assume that you have that.

That has to do with offices that have been rented, leased space, equipment, salaries and benefits, FBI fingerprints, administrative costs, computer center, detention costs, adjudication, training, electronic data, records people, intelligence for fraud documentation, construction, for the lease of office space, field people, attorneys, administrative expense, et cetera.

Instead of coming to the Congress and asking for that money up front, that money which is to be paid by the fees, they have an arrangement with the OMB to have a line of credit for that money to be reimbursed to OMB during the course of the year as they receive those funds.

And it seems to me that a Budget Committee concerned about a budget in which we are looking at areas to cut everywhere we can ought to applaud the Administration rather than criticize the Administration for this.

I am privileged this year to serve on the Select Permanent Committee on Intelligence. It is a very interesting Committee. We do a lot of work, and we read a lot. The only drawback for a politician is that you cannot talk about it.

I can say, however, that we have spent about 2 months going line by line and item by item in the entire intelligence community. And we have cut, and cut, and cut, and cut in the intelligence community which goes to the very question of the survival of the United States.

Mr. FROST. If I may interrupt you at this point. There is a vote pending, and it is the intention of the Chair to continue the hearings. Any Members who feel that they need to go and cast their vote, please be excused at this time. But I will continue the hearing straight through.

Mr. LUNGREN. I might say that those who are somewhat wondering why the Administration's numbers, that is in terms of their 1987 request and their 1988 request, are different than the authorization that we established in the bill, I might say that we tried to come up with some figures.

If you were to ask me how exactly we came up with those figures to place them in our conference report for authorization, I will have to tell you quite frankly that they were guesstimates at that time. And so I cannot tell you that the numbers that we were talking about in our bill are more effective, or more current, or more advisable than what the Administration has come up with at the present time.

The suggestion that has been made that somehow we are so late in coming up with the regulations, I do not think is an appropriate one for this reason. The Administration came forward with promulgation of initial regulations with the expectation in the announcement that they were going to publish them, and that they were going to actually consider the comments as made.

And I think that some people know that the way that things happen in Washington is that often initial regulations are put out for comment, but the comment is not seriously taken. I can tell you that the INS has taken seriously these comments, because I have been involved in some of the give and take concerning that.

They have made changes with respect to the fee structure, for instance. They have made changes with respect to the type of evidence that will be taken in the legalization and so forth.

So I would just say that with respect to the request for funding that the Administration has made, since it is somewhat of a guesstimate on everybody's part, perhaps what we ought to do is go with their recommendations, see if in fact they are working, try and work them as best they can.

And if at some point we find out that we have more people coming forward than we had anticipated, if we see at that point in time that we need a supplemental, the Administration has given every indication in the past that they would feel compelled to come forward with the recommendation for supplemental funding.

I just find it very difficult to believe that the Administration somehow is attempting not to make this law work. I do not see that with respect to the people that I have worked with over the last 8 years, and I do not see that with respect to the folks on the line. And I have been there talking with the people on the line in the area of Los Angeles, which is if not the most impacted area, it will be one of the most impacted areas.

It is not perfect, Mr. Chairman. There are difficulties, Mr. Chairman. There are some groups who will not work with it for one reason or another. But by and large, I think that they have done a fairly good job in a very difficult circumstance. And I think that we ought to be assisting, rather than tossing hand grenades at this particular time.

I would be happy to answer any particulars that you have with respect to the budget as is presented, if that is your wish.

Mr. Frost. Mr. Lungren, of course, you realize this Committee takes its job seriously and that in the event that an additional supplemental comes forward, the Budget Committee will be asked by the Appropriations Committee to waive the Budget Act to accommodate that additional supplemental, because in fact it will be over the budget figure from last year.

And we are very concerned about how the law is being implemented, and what the likely consequences are and what we may be facing in the next few months.

Also, of course, this Committee did include language in our report that accompanied the budget resolution passed by the House suggesting full funding for the act. This Committee is going to monitor that. That budget resolution has yet to be finally approved. It has to be voted on by the Senate. There will be a conference committee. A number of us on this Committee will be members of the conference committee, and we intend to speak vigorously in favor of full funding for the act, because of our concerns not just for our own States, but for the entire program on a national basis.

Let me ask you a couple questions if I may.

Mr. Schumer testified, and I mentioned in my opening statement that less than the full amount of investigators necessary has been requested by the Administration. That in fact you have a number, perhaps half of what many people feel is necessary to investigate fraud; that you have basically the same people who will be investigating amnesty fraud as well as employer sanctions fraud.

Does that concern you that we do not have enough people who are going to be monitoring this?

Mr. LUNGREN. Well, Mr. Chairman, if I might say with respect to employers sanctions. The employer sanction program is being phased in over a period of time as opposed to the legalization program—

Mr. FROST. Starts on June 1.

Mr. LUNGREN [continuing]. Coming on line immediately. And I am of the belief that in terms—how can I say this. I think there will be a period of time in which we will be less than fully able to come down as hard as ultimately we will on the employers sanctions, because there will be a period of time during which we have to complete the education process.

I believe that that will be a natural thing, whether it is planned or not. But I think in fact it is appropriate. Even though we planned a phased implementation of the employers' sanction program and even though we believe that the education would begin from the day the President signed the bill, and I think we have done a lot in that regard, I do think it is going to be—there is going to be some time before employers are going to fully understand how that is to be implemented, and I think that will be reflected in some ways in the approach by the INS.

On the other hand, we have a short time frame with respect to the legalization program. I mean, we have a definite life span that has been given to it. And if I were to be asked by the INS, and with respect to any influence I have with them, I would concentrate on making sure that works because if we do not have it work within that period of time, it is going to be gone.

Mr. FROST. But do we have enough, are we going to have enough fraud investigators to make sure that the legalization program is conducted properly? That is really the issue.

Mr. LUNGREN. I have to give you an honest answer. I think the INS would have to give you the honest answer. We do not know. And I will tell you this; because we do not know how many people

we have got out there. We do not know how many people are going to apply.

If we have misjudged the number of people who are going to apply by a factor of three, the answer to your question would be absolutely no, we do not have enough. But we do not know that. And I think what the administration is doing is acting on the conservative side with respect to funding requests because we do not know.

I guess the other side would be to act liberally in a sense on the funding side, to have more than enough to take care of whatever the need is. I guess that goes to your philosophy and goes to whether you can get that kind of funding in the budget process.

Mr. FROST. Well, you can suggest that the conservative point of view would be to make sure that there is not fraud.

Mr. LUNGREN. Absolutely.

Mr. FROST. That there is not fraud in the amnesty applications.

Mr. LUNGREN. Absolutely.

Mr. FROST. It is a concern of many of us that the INS will not be properly staffed to ensure that fraud does not occur.

Mr. LUNGREN. Mr. Chairman, this is a continuing difficulty we have had with the INS over a long period of time. That is, that Congress has not seen fit to give them the respect in terms of funding that is necessary; that is, the requests that they have made over the years. That has changed in the last couple of years such that the budget request from the INS has grown I believe since 1982, from \$440 million to over \$1 billion in 1988, about a 140-percent increase.

This is being superimposed over a tremendous growth by the INS, the largest single growth they have had in their lifetime. We increased by 1,000 positions the INS personnel fiscal year—1 year previous. And, of course, it took more than 1 year for us to full come on board with that 1,000.

I also have a concern about throwing more money and more manpower than they can adequately use as well. And I know the Chairman understands this in the area of defense and everything else.

And so it is a guesstimate and your Committee is going to have to work as well as our Committee has in trying to come up with the best guesstimate under the circumstances.

I would just say that I have not found any suggestion that the INS has underplayed their responsibility or has attempted to come up with a plan that is not going to work. And believe me, I have been on them for the last 8 years.

In California, for instance, Los Angeles, we have had a problem with respect to people being able to legalize themselves through the regular process; that is, actual citizenship. And when I started, I think the wait was something like 42 or 48 months from the time you qualified for citizenship in the United States to be able to actually get the date by which you could become a citizen. And that has come down to somewhere less than 4 months now.

So they could be wrong, Mr. Chairman, if that is what your question is.

Mr. FROST. The question is really not that INS is not wrong; that OMB refused to go along with INS request for the amount of

money they needed for investigators. And the problem is not Congress, and it is not the INS, because Congress has been willing to go along with exactly what INS requested this year.

Mr. LUNGREN. Mr. Chairman.

Mr. FROST. But OMB prevented INS from requesting the full amount that they felt they needed to implement the——

Mr. LUNGREN. Mr. Chairman, if there would be one area I would depart from what the INS has requested and allow more flexibility it would be the area of fraud investigators. If you have information which would lead you to believe that they need more in that, I would not fight you on that. I would probably support you on that because I think that is extremely important.

The whole system will collapse in terms of a lack of credibility if it is seen by the American public as riddled with fraud. I have no doubts about that. That is one area where if flexibility is needed, I certainly would support flexibility.

Mr. FROST. Let me ask you one other question and then I want to direct some questions to our colleague, Mr. Schumer.

If we should find that the offices that have been set up, and there are approximately 100 of these storefront offices around the country.

Mr. LUNGREN. 107, right.

Mr. FROST. 107 offices, and everyone who applies must appear there in person at some point in the process. Even if they go to a nonprofit organization first to help complete their application, ultimately they have got to appear in person at one of these 107 offices.

If we find in the next few months, or even sooner than that, that these 107 offices simply cannot handle the volume of work and the ones in Texas are set up to handle approximately 200 people a day. If we find that these offices cannot handle the volume, would you suggest that the fees be increased or that Congress make up the difference to staff these offices with additional direct appropriation?

Mr. LUNGREN. Well, Mr. Chairman, I would say to you that if we are overwhelmed by them, I would suggest we have got more people coming forward than we planned for, and I assume that each of them paying the fee will increase the funds that are available to the system.

So, I am not sure you would need to have a direct appropriation visited upon the Congress at that time.

Mr. FROST. We may find ourselves with an emergency situation and the collection of that fee may be uneven, and also——

Mr. LUNGREN. Well, I think we have to make it work.

Mr. FROST [continuing]. INS right now is borrowing against other funds. I mean we may find ourselves with a real emergency situation.

Mr. LUNGREN. We obviously have to make it work. But, Mr. Chairman, I would fight as strongly as I possibly could on the floor and everywhere if that were used as a means by which we disconnected the idea of the fee paid by the beneficiary of this generous gift by the American public, most generous gift they can give, the right to citizenship, and paying for the system itself.

If what you are saying is as a short-gap measure we would have an emergency appropriation to take care of that, certainly I would support that. But I would not say that that ought to be done in lieu of the idea that ultimately the system is to be paid for by the fees. Because, Mr. Chairman, I fought for legalization. I got a large number of people to support legalization who otherwise would not. And I made representations to them with respect to the program, and one of the representations I made was that fees would pay for the program.

And I think for us to go back on that is to say to Members who voted in good faith for this bill we didn't mean what we said, we got you, I am not willing to do that.

Mr. FROST. Mr. Schumer, would you care to comment on the fee question, and also the question of the shortage of investigator for fraud; the fact that INS made a request that OMB turned down and we now find ourselves in a situation where we are not going to have adequate personnel to prevent fraud under this new law?

Mr. SCHUMER. On the fees, my views are similar to Mr. Lungren's in this sense. I think that, first of all, he is certainly correct, the conferees believed the fees would pay for the cost of legalization. There is no doubt about that.

And, second, I think some of the groups who criticized the high level are really mistaken. \$185 per person, or even if it were a little higher, and I hope it would not be, is not much of a price to pay for the gold card of American citizenship. And almost all of these families are working families. They are not people who do not have the means. If they were, they would not even be eligible for legalization because of the public charge provision.

The difficulty in the fees is not ultimately where the money comes from, but rather, is there enough money up front to get the program as full blown as possible. Then if you have to raise it a little later, so be it.

But I think the greater danger is not how much the fee is, but rather, is it available. The fact that there are no offices open in so many important places, the fact that there has not been enough outreach to potential applicants and the QDEs is the real danger on the legalization side.

And I would say that INS has been pretty good. I do not agree with them 100 percent, but they have certainly taken several steps, many significant steps, in the direction of those of us who want legalization to work. They have tried to have as few bureaucratic roadblocks and other problems in the way as possible. They still have a few steps to take, but they have been very good on that.

The real problem is the money. And somehow or other OMB gets to dictate this issue. This clearly affects the fraud issue. I believe I mentioned in my testimony how few new enforcement agents there would be on that end of it. My colleague from California admitted or stated that in the conference report, the idea was that legalization would be paid for by the fees. Similarly, on the enforcement and fraud sides we fought very long and hard for the dollar amount in the bill. There were Administration people in on the negotiations, in on the number. That number was in the bill, and that was the number that INS requested of DOJ, and it got slashed.

So, just as the same kind of dereliction of congressional mandate might be visited upon those who did not want the fees to pay for legalization, it is now being visited upon us, those of us, all of us who voted for the bill under the understanding there would be so much money available.

So I think the fraud area is one of the key areas where there are not enough people to do the job. And just as you said and as Mr. Lungren said, if this program starts being suspect as riddled with holes, that it does not work, a fundamentally good program could go down the drain simply because it would not be carried out.

And I would submit that the costs of hiring the extra investigators and the extra people is minimal compared to the savings of a program that works.

Mr. FROST. The Chair recognizes Mr. Fazio.

Mr. FAZIO. Well, thank you, Mr. Chairman. I was going to be asking the question Mr. Schumer just responded to.

Do you believe that the inadequate number of personnel and the current level of funding to conduct these investigations in regard to potential fraud will underline public confidence in the program and will lead to perhaps further punitive legislative action?

Mr. SCHUMER. Well, I am very worried about that, Mr. Fazio. And I would also say this. In their own statements, INS has said they are going to focus on the—I think they said either the Fortune 500 companies or the largest 5,000 companies in the country. I do not recall.

It is my guess that a large, large percentage of those undocumented workers who are working illegally are in the much smaller industries. INS needs more personnel to inspect these companies and they do not have it. And you are going to start seeing newspaper articles 6 months after this thing goes into effect, that will say, here we are at a little clothing factory in New York, or a farm in California, or whatever, and we still have the same number of illegals as before. And then those of us who supported legalization are going to really get it, because it wasn't an evenhanded approach.

Mr. FAZIO. I could not agree with you more. The problem is not going to be a major corporation putting its reputation in jeopardy or its stockholders in jeopardy. It is going to be someone who is looking to cut corners around the margins.

Mr. Lungren, would you want to comment?

Mr. LUNGREN. Well, I think we have to differentiate between the two parts of the program. The one is the legalization, the one is the employers sanctions. As I said in the absence of some of you, I believe that we are making a guesstimate with respect to the question of the number of people that are going to come forward with legalization. Maybe the INS has guessed wrong, and maybe we will need more people that are in the area of fraud in that program, because that's a 1-year program. I do not know, and I would certainly support requests for supplemental if that is necessary.

If what you are talking about is enforcement of the employer sanctions, we have to take a little bit of history which is that we added 1,000 Border Patrol agents, that is the enforcement side of the INS, 1 year ago, in fiscal year. It took about 2 years to bring all those people on board, but it was the largest single increase in the history of the Border Patrol in the INS on the enforcement side.

Second, there is no expectation, and there never was any expectation that the INS will have sufficient personnel to check every single employer. It is just like any other type thing. Any more than the IRS checks every single person for fraud who brings in a tax return.

I do not think we have evidence to suggest at this point in time that we have insufficient people to enforce the employer sanction part of it.

And, frankly, if I were on an oversight committee right now, I would concentrate more on whether we have sufficient people on the legalization program side, because that is the short term one. That is the 1-year program. That is the one that is either going to make it or not going to make it.

The employer sanction program is going to be with us probably forever. We are slowly phasing it in. And even though as of June of this year there will be a requirement that the employer sanctions are actually in effect, I would suggest that under normal circumstances you are still going to have a phase in a sense there because you are still going to have employers understanding what it is, and making sure that the documentation, that is, the form that they get from the INS is filled out properly and so forth.

And so I think you will see more flexibility in the early years of the employers sanctions than you will see later.

I wish I could give you a definitive answer. It is just we do not know how many people are out there on the legalization side. And the INS' guess is as good as my guess or as good as the gentleman from New York's guess. We do not know.

The suggestion that we are not doing anything flies in the face of—in my area in Los Angeles, it is my understanding we have already got 300,000 people that have preregistered applications. Something has to be in place for that to have taken place already.

Mr. SCHUMER. If I just might make one other point to the gentleman from California's question.

I understand that we do not know, and I have would have faith in INS' guess as to how many people they needed. The fact of the matter is, on investigations, INS requested that there be 1,003 positions, and they were cut by, as I understand it, 27 percent. And I think INS was being pretty tough on it.

So, it is not INS. I think INS, as I have mentioned, has approached this whole thing in good faith. It is what OMB is allowed to do to it after there was a three-cornered agreement, House, Senate and President, as to how much would be spent on this.

Mr. FROST. If I could at this point recognize a few Members if they have any brief opening comments who have come in since the hearing began.

Mr. Armev from Texas.

Mr. ARMEV. Thank you, Mr. Chairman.

First, I would like to apologize for my schedule being so full of conflicts that I will not be able to spend as much time here as I would like. I will be reading the transcripts closely, though.

I also want to thank Mr. Frost for organizing this hearing. His district is next to mine. We know and share many of the same problems. I think it is quite timely to have hearings at this time. We have just passed major immigration reform legislation. The

time has come now for implementation, something equally important as the legislation itself. And I must say, given the magnitude of the task that faces the INS, at least in our district, we have been very impressed with the extent to which the agency has been able to respond, make reassignments, increase their productivity, and actually respond to the problem.

At the same time I make that observation and commend the agency for its response, I do see that it is quite clear the time is now to make an assessment of the problem and our ability to handle it, and see what needs to be done.

So I commend the Chairman and Mr. Frost for holding this hearing. I will be looking at the transcripts. My district staff will continue to work closely with the INS, and we intend to do everything we can to see that the law is fulfilled and that we do so with as little difficulty as possible.

Thank you.

Mr. FROST. Mr. MacKay, who came in after we started, did you have any opening comments? Mr. Fazio.

Mr. FAZIO. I will just wrap up because we have a lot of people we want to hear. I simply wanted to say that my feedback from grassroots California is that farmworkers who want to stay in farm work are paying \$500 to \$700 to attorneys, and those ripoffs are occurring because there is so much confusion out there. People do not understand what their responsibilities are and what they are supposed to do, and they place themselves in the hands of people who claim they can help them.

The farmers in my district, in most cases, do not have attorneys and accountants immediately available to them, and are also concerned. We see far more people held up at the border who would like to come back where they have been going 15 to 20 years to work, because of confusion on the part of the INS as to who should or should not be let in to comply.

I think you are both aware of the confusion we have had between the SAW Program and the H2 Program. There is a good deal of chaos in California right now. We have cropping and are ready to go. Many crops will soon be harvested.

I would ask just briefly if both of you feel there should be some delay in implementation of the law if we cannot work out some of the problems that the regulations, which have been so late in coming down, are presenting?

Thank you, Mr. Chairman.

Mr. SCHUMER. Yes, my general view is you have to look at it from both sides. On amnesty, where there has not been very much—legalization, we are supposed to call it.

On legalization, where there has not been enough start up time, rather than delay the program it might be a good idea as it wends its way through, to extend the deadline a little further along.

On sanctions, as you know, the first 6 months are a warning period. And I think, again, we would have to make a judgment. June 1 sanctions start. Six months after that is December 1. Around October, whether there should be some modest delay in implementation. But I do not think right now would be the time, although it is something we should seriously consider when the time comes on the two respective areas.

Mr. LUNGREN. I would not suggest that we delay. It is a very fragile bill that got through the Congress—well, I could use some words—barely got through the Congress. I think some of the votes there belie the truth in terms of the support that was there. And I think any legislation to require a delay would run into real trouble, and I would not want to subject the legalization program more the—well, the legalization program. I am confident the employer sanction program would continue, and I think there is a symmetry there that we do not want to disturb.

If we find that there is a need to extend it, we can always extend it, although I do take exception to the statements not that much has been done. I have been part of the programs and I have seen what they have done, and I have seen the organization involved.

One thing you pointed out is absolutely clear and we ought to continue to make it clear in the public record. There are some rip off artists out there who are taking advantage of people. These are the worst type of people we can have. They are not better, in fact in some case they are worse than the coyotes who have been dealing in human cargo and making themselves rich on it. Unfortunately, some of them have professional degrees after their name, and they are fooling a lot of people out there.

And the one thing we have tried to say and I said it, and I know the director of INS out in our area said it, is that people should not be going to anybody who guarantees them that they are going to get citizenship, who charge them \$500 or \$1,000. The designated outside organizations are the ones they probably ought to go to first and foremost. And in most case, those are available in California.

Mr. FAZIO. Well, let me just say, and I will conclude, Mr. Chairman, I think the agricultural organizations have been doing a better job of informing the public, both farmworkers and farmers, than the INS. I still feel there is a lack of information available at the grassroots to the average person involved in the implementation of this law. And I think that comes back to a budgetary issue.

Mr. FROST. Mr. Derrick. Oh, I am sorry, Mrs. Johnson.

Mrs. JOHNSON. Thank you. Mr. Chairman, I also have a conflict and so will not be able to stay the entire length of the hearing. I do commend you for calling this hearing because this was an enormously controversial bill as we all know, and very, very important.

But I would like to point out as a preface to my question that the problems that INS is facing are specifically the problems that we created by legislating from the heart. Now I voted for it. I thought we ought to have an amnesty program. But we certainly knew, and one of the reasons it was so controversial was because we did know that it is difficult to require illegal immigrants whose lives have been governed by the necessity to obscure their presence in our society, and particularly to obscure any employment they might be involved in in our society, to require those same people whose lives have been governed by the necessity for secretness, to now come forward with proof and evidence of not only their residence, but their employment.

So we knew that we were setting up a very difficult law. And in fact, the process of writing regulations has revealed the contradictions within the legislation and the complexities of the mandate.

We knew it would be messy. It is messy, and I think our job is to support INS, both financially, but also with the resources of our offices. And I am very pleased to say that in my district, within their existing capabilities, my INS office is doing a conference with me for our local Chamber of Commerce on the issue of employer sanctions. They have had some very indepth workshops for their own people that they have allowed my staff members to go to, because we have a very big caseload in my particular district of immigration problems.

And so they are out there doing some very fine work and I commend them for it.

Second, the funding history of this bill ought to be on the record. We passed the original Immigration Reform Act only 1 day before or 1 day after the continuing resolution. I think it was 1 day before the continuing resolution. But we were unable to provide adequate funding in that, and consequently, knew we would be dependent on the supplemental to fund this program.

And as we discuss funding, I think it is terribly important that we be straight with the American public and not blame the funding problems on INS, OMB and the President as much as we might like to say they have asked us for too little money. Because not only did the supplemental come in with only their request and no increase, and if we had felt strongly about an increase, we should have done it then, but we cut it on the floor, and we cut it as a result of an amendment by a Democratic colleague on the Budget Committee. And in my estimation, it was a responsible amendment, and I voted for the amendment.

But let us give INS credit for being required to implement an extremely difficult law at a time when our budget is under enormous pressure and not only INS but every other agency in this Government is trying to do a decent job with very little money.

But the funding problems are not INS' and OMB's. They are this Congress' and we just did it to them last week. So I want to be certain that there is a recognition of the joint responsibility that we carry as Members of Congress and that this is not just the Administration underfunding something that we think is important. It is all of us struggling to do what we believe is right for the Nation under very constrained resources.

I am pleased to report that in terms of the investigation issue, I have already seen, frankly, the closure of a couple of small shops in my district that I did not realize until this time were completely dependent on illegal immigrant labor, and the employers, seeing the handwriting on the wall, decided to go into some other business.

So I would not short sell the impact of the self-enforcement effort that is going to take place in the business community. We regulate the business community in so many areas, environmentally and so on. They are well aware the Government does finally come around. And while I think investigation is important and we should be having this hearing to see the precise nature of the situation, I very much regret that INS is not here today, and that OMB is not here today. And as the details of the problems merge in the next 6 months, I think it will be necessary to come back to this issue as a Budget Committee to evaluate where we are.

Thank you, Mr. Chairman.

Mr. FROST. Thank you. And let me reiterate that INS and OMB were invited and declined to appear at this point, and I assume that they will be invited again at a later date.

Mrs. JOHNSON. Thank you. I do think that the reason that they declined was because of the implications that all of the problems were INS and OMB driven. And they are clearly not driven by OMB's decisions any more than they are by ours. In fact, at this point, they are more driven by ours than theirs. I hope that next time they will feel that they can come in a forthright manner.

Mr. FROST. I agree with you. I hope that they will appear and that they will answer all of our questions. Mr. Derrick.

Mr. DERRICK. Thank you, Mr. Chairman. I, too, think that it is regrettable that INS and OMB did not feel that they should be here this morning, and I hope that they will reconsider.

Mr. Lungren and Mr. Schumer, I thank you both for your participation being here this morning. Being a member of the Rules Committee, I had an opportunity to observe the very fragile negotiations that went on on this bill.

And I think that it would be safe to say that we would not have an immigration bill had it not been for Mr. Schumer's active participation in those negotiations.

I do not really have a question other than I am just amazed if I heard you right that you estimated that there were as many as 700,000 illegal aliens or immigrants in your district?

Mr. SCHUMER. Brooklyn is 4½ districts.

Mr. DERRICK. I did not realize that it was quite that high.

Mr. SCHUMER. It is not primarily Hispanics. It is people from the Caribbean, Barbados, Trinidad.

Mr. DERRICK. That still means that probably maybe—

Mr. SCHUMER. Are you saying that that explains my election to the House of Representatives?

Mr. LUNGREN. No, it explains one out of four congressional districts in the census.

Mr. DERRICK. That explains a lot about you, but I just will not go into it right now. But you know, that means that one out of every four or five persons in your district almost are in this category.

Mr. SCHUMER. In one of the districts which has the greatest concentration, I think one out of two. And most of them are uncounted. You know, they were not counted in the census. The Census Bureau counts by mailing as opposed to going door to door. And of course, almost none of these people send it back. Then the Census Bureau does estimates by knocking on a few doors.

There is a huge undercount. You see neighborhoods filled with people. And then you look at the census tract, and it says that the population went down by one-half from 1970 to 1980.

Mr. DERRICK. And there has been no preparation there that you are aware?

Mr. SCHUMER. There has been some. Again the churches are doing their best, the Catholic Church; parts of the community, Haitians are Catholic, so they are much better off than a lot of the people from some of the other islands that are not Catholic. Because the Protestant churches, of course, are not hierarchically or-

ganized. A few are, but most are not. They are store front churches, and they are not plugged in yet.

And what I have been urging INS to do is open up an office in Brooklyn. You see, INS claims that they could all take the subway to Manhattan, but that is not the point. This office should be visiting these storefront churches letting the pastors know about the program.

Because frankly, if you have, as Mrs. Johnson said, been living in the shadows for a long time, the last person that you are going to go to to ask if you are going to be legalized is the INS. Because if you are right, you are legalized; and if you are wrong, you are out of here. But if go to your pastor or someone that you trust, it is much better. So that is what I have been urging them to do, and so far they have not been able to do it.

Mr. DERRICK. Thank you very much.

Mr. FROST. I thank you both for your excellent testimony. We will proceed to the next panel at this point. I would ask that the next group of witnesses, Gilbert Carrasco, Warren Leiden, and Joseph Murray come up to the table.

I would request the witnesses who are here to summarize their statements, and their full statements will be made part of the record.

And at this point, I would recognize Gilbert Carrasco, Migration and Refugee Services, U.S. Catholic Conference.

STATEMENT OF GILBERT PAUL CARRASCO, DIRECTOR, IMMIGRATION SERVICES, U.S. CATHOLIC CONFERENCE

Mr. CARRASCO. Thank you, Mr. Chairman. On behalf of the U.S. Catholic Conference, I would like to commend and thank you and the Members of the Committee for calling this hearing and inviting our participation.

We have several concerns. And to summarize my testimony, I will address five major ones: First, the inadequacy of the Administration's funding request; second, prioritization of expenditures; third, the burden of application fees on applicants; fourth, the impact of the lack of funding on the voluntary agencies. And lastly, public education.

Referring to the funding request, as you pointed out, the funding request of \$137.8 million, Mr. Chairman, is inadequate to the task and far short of what the authorization of \$422 million for the 1987 year provided.

The appropriations are not only inadequate to the task at hand and less than Congress anticipated would be provided for the implementation of the Reform Act as a whole, but they are far different from the balanced approach that the INS has said would be taken to implement the Immigration Reform Act of 1986.

Second, the prioritization of the INS clearly is on the side of enforcement. Their 1987 revised budget provides for enforcement in a total amount of \$452,823,000 or 62 percent of the overall requirement of \$731,969,000.

In comparison, the figure for citizenship and benefits on this critical personnel line item is only 8 percent of the overall requirement or \$59,678,000.

The impact of this has been experienced for many years by people who want to go through normal legal channels. On any given day, you can go into San Jose and Los Angeles CA and Miami, FL and see long lines of people queuing up to wait at the Immigration Service offices early in the morning and even the night before.

The import of this is that if we make it very difficult and provide minimal resources for people to immigrate legally to this country, I think that it is going to continue to be the case that people are going simply to avoid the process and try to come into the country illegally.

The funding of the legal immigration channels will become even more critical after legalization when the lawful temporary residents who apply for status under the current program have to adjust to lawful permanent resident status.

And it is imperative, in our view, that the prioritization of the Immigration Service with respect to funding requests be substantially realigned.

Perhaps the most telling impact of the funding request in terms of priorities is that there is a zero funding request for legalization itself.

The gentleman from California, Mr. Lungren, points out that there is conference language that states that there was an intention of the conferees to have some of the legalization costs covered by the application fees.

However, there are many items in the budget with respect to legalization that form the basis for the legalization fee that are clearly outside the scope of the processing of applications.

For example, the legalization budget includes the line item of construction and engineering. And for fiscal year 1987, that line item amounts to \$27,300,000, and for 1988 it is \$20,019,000.

Under section 201(c)(1) of the Immigration Reform and Control Act, there is a provision that states and I quote:

The Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of the legalization program.

In other words, that line item could clearly have been addressed through the regular appropriation for the immigration reform initiative, and not through the legalization budget. And so that should not have formed the basis or part of the basis for the legalization application fee.

Another line item that forms the basis for the application fee is the detention and deportation costs that are included in the legalization budget. As the law provides, the application for legalization should not result in enforcement against the denied legalization applicant.

The application is confidential, and the Attorney General is proscribed and, indeed, is subject to criminal liability if that information is divulged and used for enforcement purposes, with the one exception being fraud.

These items are \$556,000 for 1987 and \$1,981,000 for 1988. It seems to us that the detention and deportation costs associated with the application process are not part of the costs of processing

applications as the conference report provides, and should not therefore be included in the legalization budget.

I think that it is important to explain the practical impact of the legalization fee on the applicants themselves. I would like just to explore with you for a moment a typical family. Let us call it a hypothetical family. Let us say that this typical family is comprised of five persons: Two parents, two children, and one elderly grandparent.

The basic family unit application fee proposed by the INS would be \$420 plus an additional \$185 for the elderly grandparent. Beyond this, all five members of the family would have to obtain a medical examination, and that must be obtained in the proposed regulations through a selected civil surgeon designated by the INS, even though the statute does not provide that it must be obtained from such a physician.

This is going to cost somewhere between \$60 and \$75 per family member in all likelihood. Beyond that, if there are any waivers that must be obtained by any members of the family, there is an additional fee imposed by the INS of \$35 per waiver.

Let us assume for purposes of this hypothetical that we have one waiver for one family member in the context of this hypothetical, which is not an unlikely eventuality.

Even before you factor in the costs of legal assistance, time off work, notarization, copying, telephone, postage, and other costs associated with the application process, this family would have spent over \$1,000 to apply for legalization.

Now consider further, if you will that the median family income of Hispanic families in the United States in 1984 was \$11,650. Assuming that our hypothetical family's annual income is \$13,900, this would mean that nearly 10 percent of their annual income would have to be devoted to application for legalization.

This practical impact does not seem to be consistent with the program's implementation in a liberal and generous fashion, as was the intent of Congress as stated in the House Report 99-682, part 1, at page 72.

It seems to me that the practical impact should countervail the approach of the INS and the Administration that the entire program's cost must be borne by the applicants themselves.

Further, it is appropriate to compare these application fees to other fees for comparable procedures that are closely akin to the legalization process.

The Immigration Service points to the entry of immigrants from abroad as the comparable procedure. They say that an application for filing an I-130 petition from abroad costs \$35, an application for an immigrant visa costs \$125, and issuance of an immigrant visa is assessed a \$25 charge, all adding up to \$185.

However, application for legal status from abroad involves two agencies, the Immigration and Naturalization Service and the Department of State. A fair comparison rather would be an approach that would consider the registry fee, which applies to a process that is very similar to a legalization application.

Registry merely requires that one establish continuous residence since 1972 in this country. The fee for that procedure is \$50. Com-

parable also is the adjustment of status petition for a person applying from within this country. The fee for that process is \$85.

Further, the legislative history, I think, undermines the position of the Immigration Service in terms of having the entire program funded through application fees.

The Senate bill provided a minimum fee of \$100 per applicant, and the House bill established a maximum fee of \$75 for individuals and \$175 per family.

Furthermore, the Immigration Service argues that the value of the benefit received, that is this generous gift of citizenship, as Mr. Lungren put it, is the applicable criterion for assessing the fee.

If that is the correct rationale, we should pay a fortune for a driver's license, in my view. It seems to me that the impact on the person applying is not the relevant criterion for assessing a fee.

Equally inappropriate is the reference to the payment of coyotes, or smugglers, for entry into this country as a consideration in assessing the amount of the fee. The fact that an undocumented person invested his life savings to cross the border and into the country is not really what should be the criterion for the U.S. Government to determine what to assess as an application fee.

The impact on the voluntary agencies of the lack of funding for legalization has been substantial. Indeed the Immigration and Naturalization Service has not compensated voluntary agencies at all for substantial efforts that we have undertaken on their behalf.

For example, over the previous 2 weeks and during this week, our staff, 14 of our best lawyers and so forth, are out in the field training both INS personnel and qualified designated entities.

We are also providing facilities for this training. The compensation that INS has given us for those efforts has been zero. The American Council for Nationalities Service, another voluntary agency, reports that they have invested \$75,000 to \$80,000 for their participation in that effort, and they have also contributed substantial personnel and resources for those training sessions.

The per capita level of compensation, as you know, is \$15 for direct service providers and \$16 for affiliates with National coordinating agencies. This certainly is not going to cover the cost of the program.

The per capita reimbursement is broken down by the \$15 for channeling to the affiliates of the National coordinating agencies, and the \$1 additional is for the Administration of the program at the national level.

The \$1 of the \$16 provided to the National coordinating agencies comes to about 6.25 percent for administration. Your typical administration costs in any program such as this runs in the neighborhood of 20 percent. If that were the case, we would be channeling \$15 of the total amount to the affiliates in the field, and we would be receiving \$3 for the administration of the program.

We have received some criticism for arguing, on the one hand, that the INS application fee should be lower but on the other, that we should be able to charge a reasonable fee for provision of the services, given the minimal per capita reimbursement that we are receiving from the Immigration Service.

I think that it is important to note, however, that the application fee of the INS is not a waivable fee. On the other hand, the legal

fees that are being assessed by us and other voluntary agencies, which are limited to \$75—or \$100 if photographs and fingerprints are also provided—are waivable. Indeed we have a sliding scale that has a zero to \$75 recommended fee, and that is based on the assets and income of the individuals involved.

Turning to the public education aspects of the program, misinformation is virtually everywhere. Indeed, in today's Washington Post on page 1, we see an inaccurate statement with regard to employers who are covered based on the number of employees that they have on staff and the applicability of the employer sanction provisions.

The article states that only employers with four or more employees are covered by the employer sanctions provisions when, in fact, the actual number is any number of employees.

That is typical and that is rampant throughout the country. We have a real problem with public education. According to the law, the past 5 months should have been the public education period that prefaced the effective date of the employer sanctions provisions. And, heretofore, we have had virtually no public education other than the few INS meetings in the field.

Only this month did we see an award of the public education contract and that award is far less in our view than what is required to implement the public education effort successfully. The amount of that grant was \$10,750,000, about one-third of what we would consider to be appropriate for the public education effort.

The impact of the lack of public education is very real. We see a stark example insofar as some people as of May 5 are going to lose substantial rights because there has been no public education.

I am referring now to the requirement that one must apply for naturalization within 6 months of eligibility if they are to protect their rights under the discrimination provisions of the law, regardless of whether they have a present claim of discrimination.

Now what that means is if a person who was eligible for naturalization, that is, to apply for citizenship, as of the date of the enactment of this law, November 6, 1986, does not apply for naturalization by May 5, next Tuesday, he or she will be forever barred from filing a claim of discrimination under the new Immigration Reform and Control Act as long as such person remains in lawful permanent resident status.

That is a fact that I have discussed with several people, and very few have been aware of that, including Immigration and Naturalization Service officials at the highest levels.

Furthermore, there has been very little public education with respect to employer sanctions, as I pointed out earlier, and with respect to the legalization program.

The lack of public education, of course, results in people going to unscrupulous individuals, as has been pointed out earlier today. Certainly, the lack of funding and the lack of offices of voluntary agencies and INS offices has an impact on the provision of services and assistance to potential legalization applicants.

So, I think that we have a real problem that is inadequately addressed at this point. And I would not suggest that we delay the commencement of the application period, but I would strongly endorse the suggestion of Congressman Lungren with respect to his

suggestion that it may be important to extend the end of the application period.

And certainly, the ability to do that would be consistent with the functioning of the special agricultural workers program, which extends to November 30, 1988. So that would facilitate the extension of the legalization application period.

With respect to that issue, just one note of substance on this implementation effort. We have a real problem in that the regulations as proposed only provide that the self-certification process for employer sanctions will be applicable through September 1, 1987.

That is, if a person is given an I-9 by an employer and is asked to produce documents, the person can simply state under penalty of perjury that he or she is going to be applying for legalization and considers himself eligible. That is sufficient for the employer and protects the employer from liability through September 1.

In effect, however, what this does is move the end of the application period back from May 4, 1988, to September 1, 1987, and establishes an unnecessary crunch for both the voluntary agencies and the Immigration Service, because of the many people who are being asked presently and certainly will be asked at that time for documents immediately.

Last, just a couple of issues related to implementation and funding. We have recently been requested by the Social Security Administration to participate in the facilitation of obtaining Social Security cards through the legalization process.

Of course, this is yet another form. It is yet another process that we would be asked to undertake in the context of an extremely limited budget and a time frame that requires us to process a tremendous volume of applications in a very short period.

We have suggested to the Social Security Administration that it would be helpful to our clients to provide such a service. But unless there was some vehicle for funding that effort, we simply would not be in a position to undertake that additional responsibility.

The final budgetary consideration that I might mention is the problem with the Office of Special Counsel for unfair immigration-related employment practices. It is our understanding that there is no intention on behalf of the Department of Justice to fund regional offices that would accept complaints for allegations of employment discrimination prohibited by the Immigration Reform and Control Act.

It is our position that if there is going to be a real commitment to that law, it is going to be essential to establish such regional offices as is provided in the statute.

If any of the Members of the Committee have any questions, I would be happy to answer them at this time.

[The prepared statement of Mr. Carrasco may be found at the end of the hearing.]

Mr. FAZIO [presiding]. Thank you, Mr. Carrasco, for your very thoughtful testimony. We'll now let the other witnesses give their testimony and then ask questions to all three of you.

At this point I would like to call on Warren Leiden, who is the executive director of the American Immigration Lawyers Association who I, by the way, mean in no way to slander in terms of comments I made earlier. I know you have been doing some pro bono

work in order to avoid this kind of problem that does periodically pop up.

**STATEMENT OF WARREN R. LEIDEN, EXECUTIVE DIRECTOR,
AMERICAN IMMIGRATION LAWYERS ASSOCIATION**

Mr. LEIDEN. Thank you, Mr. Chairman, and I appreciate the opportunity both to testify and I want to commend the Committee for holding these implementation oversight hearings on the very eve of the commencement of the legalization program.

I think many of us who have been active in the formation and the birth of this bill feel somewhat like the parents of the bride or the groom just before the wedding day. I hope most of the invitations got out. We hope the caterer is on time and the anxiety is understood.

Of course, this is a much more serious subject than a wedding between merely two people because it involves virtually the entire population of the United States and very important issues of national policy.

I want to commend the House for its support for full funding as requested on both in this fiscal year supplemental as well as the 1988 fiscal year budget. We regret with many that more money was not requested by the Administration and in large part because additional money I think, as we all know, allows things to happen more quickly. Time is money as I think the Federal Express Corp., has adequately proved in the last decade, and the ability to spend more money would have allowed some of the weaknesses that may occur next week or for the next couple of weeks to have been avoided.

In addition to that, and I must commend the Immigration Service and many others in Government service for their hard work over the last period. I think that it is important to note that in addition to working very hard, it is critical that the folks both in the private sector as well as in Government service work smart. And I think that the money that has been appropriated and that will be appropriated in the supplemental must not only be an adequate amount, but must be used in a sufficient and smart, if you will, fashion.

On the subject of public education, the Immigration Service has been very cooperative with our organization and many others, including Members of Congress in seminars. Our organization has conducted, with cooperation of the Immigration Service, dozens of seminars. In fact at this very moment we are having a 2-day seminar in Houston, TX, and it involves members of the bar, representatives of the qualified designated entities, as well as from the Immigration Service.

The critical reason for public education is, as was pointed out earlier, that it is not going to be possible for an investigator of the Immigration Service to be present every time an individual is hired, or to investigate the employment records of every single employer in the United States. But rather education and knowledge is a very important aspect of preventing fraud and encouraging compliance with both the employer sanctions as well as the related aspects of the legalization program.

It is important that the undocumented come out of the shadows and take advantage of this opportunity and those who are not eligible for legalization find the means by which to either leave the United States or, through some other lawful remedy, to become full participating members of our society.

Public education would encourage employers to cooperate not only with the employer sanctions program, but also with helping to adequately document legalization claims; thereby alleviating the temptation to engage in fraud in trying to prove ones legalization case.

The Immigration Bar is very familiar with aliens who come from a different culture where fraud, bribes and other illegal acts are part of the society, thinking that they are helping themselves by engaging in fraud—unnecessary fraud that really would not have any effect on their eligibility—only to then be barred forever from admission to the United States.

In addition to deterring fraud, a smart public education program, beginning right now, would deter the scams and the rip offs that have been mentioned before, the visa consultants, the immigration consultants, the so-called notarios, and even some lawyers who would prey on the vulnerability of these applicants by promising this or guaranteeing that.

I must take some exception with those who would set a certain amount and say if you charge less than this, you are a honest person; if you charge more, that you are unscrupulous. The Federal Trade Commission watches very closely discussions about legal fees, and I am not unaccustomed to discussing them. The important thing is that people who seek assistance with legalization be told to avoid the ripoffs and the scams, who are going to encourage fraud and encourage people to engage in the use of fraudulent documents and rather, to seek assistance only at a voluntary agency that is accredited by the Immigration Service, a qualified designated entity, or a licensed attorney.

With regard to preparedness for next week, first impressions in any program are very important, and I fear that, to the degree that we in the private sector and our colleagues in the Government service are not prepared to begin the legalization program, we will create some bad first impressions this could engender delay in the actual success of the legalization program, in overcoming the skepticism that some will naturally have. To the degree the Immigration Service is viewed as not being up to the job, as someone said, incompetent to complete the job, it is going to undermine people's confidence, or fear, or whatever they feel that will encourage compliance with the law and the assuaging of fraud.

Just to give you some indication of what we see now in the field, regrettably, a number of the 107 legalization offices will not be prepared because of a lack of office equipment, personnel, telephone service, et cetera. Those who have moved or have had to change location in the last year or two, I am sure are very sympathetic to what the Immigration Service is going through. Everything is always delayed, things always come late. But the first impression is a critical one.

I think the Service can cure this by providing accurate information in each locality as to when things will get started. And if there

needs to be a 2-week delay at an office, then let us get that word out that they will start in 2 weeks.

This is particularly critical for those who are subject to the 30-day rule, those who have been apprehended since November 6 and will be automatically ineligible for legalization if they are unable to apply in the first 30 days.

Another problem, and this is a question of whether money has been well spent, is the availability of forms for legalization. It was only a week and a half ago that the forms were made available at one site that we could locate. That's a GPO warehouse in Laurel, MD. We have been sending couriers out every day bringing back packs and packs of forms, and then expressing them all around the country to practicing lawyers. We have sent out over 30,000 forms in the last week, and have pending requests for 30,000 more that we can't fulfill because the GPO warehouse has now run out. These are simply the basic application forms.

Medical examination forms, that will be required of all applicants at the time they apply, are not yet available anywhere, and we regret this greatly. We are prepared to start up our send out service again tomorrow if the forms are then available, but we regret this delay, and we fear this will undermine confidence in the program both among the applicant class, as well as among the general public.

I want to just mention in closing the impact of the new law on ongoing immigration functions, both the adjudication of immigration benefits as well as the enforcement of our immigration laws. Beyond the obvious first steps of legalization and employer sanctions, there are many other new responsibilities the Immigration Service will have to fulfill. The hundreds of thousands, perhaps millions of aliens who qualify for legalization will now, when they want to leave the country and visit family and their homeland need to seek permission from the Immigration Service.

It is a bad habit that many of these people have in leaving the country—avoiding detection as they cross the border and then come back. These folks will now all need advance parole—will all need to get permission to return and leave, and if the Immigration Service cannot properly provide that permission to leave and return, it is going to be tempting for them to fall back into the old habit of going across the border illegally.

In addition, many parts of the country's economic life and businesses depend on aliens, specialized persons, corporate executives, high tech engineers and others to come into the United States to work on projects on which many production jobs depend. If these folks are delayed in their arrival into the United States to work on projects because of the impact of the new legislation, or the inability to use the money that is provided, it would indeed be unfortunate.

Finally, on the question of investigations and enforcement, there is the issue not only the adequacy of the number of investigators, but also the adequacy of training and supervision of ongoing operations. It would be a sad thing indeed if the Immigration Service or any Government agency was forced to choose between an adequate number of investigators or the proper conduct of enforcement. And I hope that, when looking at the fiscal year 1988 budget and how it

is in fact spent, this Committee will ensure that there is adequate training and supervision, precisely because many of the enforcement and investigation activities will be in a new area. It will be in a new arena, and the officers will be working with new subjects of their enforcement actions.

I might add that the program developed for legalization, which depends on all final adjudications of legalization applications being adjudged at one of four regional processing centers, will lend itself to detection of document fraud, particularly where there are third parties providing masses of fraudulent documents. Under the regional adjudication program that currently exists in the Immigration Service, those kinds of patterns come up and are identified very quickly, in a fashion that single adjudications at this office might not have been caught.

Finally, while the investigators and the examiners of the Immigration Service will detect fraud, much of the final making of the case, if you will, and the prosecution, will be done by the Federal Bureau of Investigation and the U.S. attorney's offices around the country. So that in looking at the adequacy of the investigations, you have to look both to INS investigators and examiners, who are the front line to detect and to suspect fraud in these types of cases, and, for prosecution and building these cases, the U.S. attorney's office.

Thank you again for this opportunity to testify.

[The prepared statement of Mr. Leiden may be found at the end of the hearing.]

Mr. FROST. At this point I would like to call on Joseph B. Murray, chairman of the North Texas Coalition on Immigration. Mr. Murray, if you would summarize your remarks.

STATEMENT OF JOSEPH B. MURRAY, CHAIRMAN, NORTH TEXAS COALITION ON IMMIGRATION

Mr. MURRAY. First of all, Mr. Chairman, I would like to thank you for the invitation to appear before you today to express some of our concerns, and to also say that I am in full agreement with the previous two speakers' statements.

I think to start off we have to address the issue of the actual legislation itself and its intent. I think there was not as much concern at the grassroots level when we read the legislation and we saw the appropriations that were made in that bill. We, up until about 3 weeks ago, felt confident that the INS was working under those guidelines.

We only found out 3 weeks ago by an INS representative that indeed the appropriations that were recommended by the Congress were not being followed through.

As you know, Texas has an estimated 750,000 to 1 million possible applicants, and that's a conservative estimate. Out of the 200 QDEs that were just released nationwide, Texas has only received 35 of those QDEs. There has been absolutely no public education done in the Dallas/Fort Worth area or in the north Texas area, that I know of.

I understand that as of 2 weeks ago there was a contract made with a company to provide educational activity in this area, and I

think \$10 million is far too short for the magnitude of this problem. I think if we are going to reach the people that we genuinely intend to help, we have to reach the minority communities that are being most impacted by this legislation, and the only way to do that is to include in the media minority electronic media and minority press. I do not think that has been done.

I think, indeed, the disinformation that has been going on throughout the country about this program could be a lesson for the Russians to follow. I do not say that was a conscious effort or unconscious effort. I just raise that as a concern here. It seems to me in order to help these people we have to let them know this program exists.

The other concern that we have is the \$15 or \$16 reimbursement fee that the INS has with social service organizations and church groups for processing these applications. I think that that is totally inadequate given the responsibilities of the processing that these organizations and groups are going to be asked to do. In other words, they are doing the INS's job for them and I think \$50 would be more in keeping with those responsibilities.

The issue again of the QDEs in Texas, we in the Dallas/Fort Worth area, I believe we have somewhere in the neighborhood of 12 to 13 QDEs. The southern part of Texas where the major Hispanic population is located at has no QDEs with the exception of the diocese of Brownsville who had originally intended not to be a QDE but because there was no movement on the INS' part decided to become registered as a QDE just recently.

I would encourage the INS to initiate a second cycle of applications for qualified designated entities. I think that 200 Nationwide out of the originally intended 400 are far short of the goal that we need to reach to get this job accomplished. I think I have summarized my points and I bring this from a grassroots level. There is a lot of confusion out there. We have people—I have interviewed people that are coming in. They do not know what base documents are going to be required in their file. Do they provide birth certificates, marriage certificates, passports? Is it their responsibility to get these forms translated?

I think the fee of \$185 that the INS has recommended is also out of the ball park. I think considering the fees that these people are going to have to pay at every step of the process is going to possibly be in the range, total fees in the range of \$1,200 to \$1,500.

I think the only individuals that will benefit from this confusion out in our communities are indeed going to be the unscrupulous elements.

Thank you for your attention.

[The prepared statement of Mr. Murray may be found at the end of the hearing.]

Mr. FROST. We do have two other witnesses that need to be heard. I do want to ask one or two questions.

Mr. Carrasco, what is your—if you could briefly state, do you feel that the QDEs are prepared to implement this program? I know that the Catholic Conference has been very much involved in this. As we approach May 5, where do you feel that the agencies—the organizations that you are dealing with, how adequately prepared are they come May 5?

Mr. CARRASCO. Well, in our system, I think that we are generally as prepared as we could be, given the circumstances. Surely the fact that 4 business days before the program commences we do not have final regulations impacts on our ability to train properly. But I think that I can safely state that we are probably more prepared than anyone else out there.

Mr. FROST. Mr. Leiden, I believe you gave a figure in terms of the number of offices that can be opened. What was that number, 107 offices?

Mr. LEIDEN. Well, I am sorry, Mr. Chairman, I did not have an actual number of how many. I just know that, regrettably, a significant portion will not be fully opened on Tuesday. And my seat-of-the-pants guess, based on recent reports from our members over the last couple of days, would be dozens of offices would not be fully open or prepared to receive applications and provide interviews on Tuesday.

Mr. FROST. All right. Mr. Leiden, you were talking about the availability of forms from the Government Printing Office. You said that there were initially 30,000. Did I hear you correctly, and that they have now run out?

Mr. LEIDEN. Well, I am not sure how many they actually had at the GPO warehouse. We managed to get our hands on over 30,000 of them, if you will, and I am sure other folks got them as well. I now have pending requests for another 30,000 forms that I cannot fill because the GPO is out of forms. And when we ask, When will you have new forms? They say well, call back next week. There is really not a definite date on which we'll receive the medical exam forms, which are also required of every applicant, none are available yet.

Mr. FROST. Mr. Carrasco, have you encountered a similar situation, difficulty in getting the forms?

Mr. CARRASCO. Well, we have not been as concerned with forms, Mr. Chairman, because we have computerized our system and we are going to be generating our own forms through the system. So I have not gotten any reports from the field that there is a shortage of forms.

But I expect for those affiliates who have not computerized, we may very well get some requests, but thus far none, to my knowledge.

Mr. FROST. Do any of you have any specific recommendations in terms of the extension of the period of time if we find that the 1 year is adequate to process all the applications for legalization?

Mr. LEIDEN. I think we may have a good sense of that, Mr. Chairman, come December. About 6 months into the program we should have a good sense of how many applications have been made at that point. By then, most places will be able to really track how many interviews are scheduled and how many individuals are to come forward.

I would think before the end of this first session Congress will have some good sense of whether 2 extra months or 4 extra months might be necessary, if any at all.

Mr. CARRASCO. I would concur with that, as I mentioned earlier. One of the aspects related to the crunch is, perhaps, the number of immigration legalization offices themselves. In some areas I think

that there is a problem in that regard. For example, in the entire State of Maryland there is one INS legalization office, in Baltimore. And, of course, the people in Silver Spring have to travel all the way up to Baltimore to apply. In the entire State of Michigan there is one legalization office, in the city of Detroit. And in the second largest city in Michigan, Grand Rapids, on the western side of the State, there is going to be a tremendous number of special agricultural workers who are going to be applying. So that is a problem.

A third example is Wisconsin. There is one office in the entire State. I think the impact of this dearth of offices for areas such as Texas, as you mentioned, is that people are going to have to travel hundreds of miles to submit their applications for legalization.

From our standpoint, to the extent that our affiliates have opted out of the qualified designated entity process and are not going to participate in the program as a result of lack of funding, that also translates into hundreds of miles that applicants may have to travel to obtain legal assistance.

As I understand it, there is nothing between Brownsville and El Paso along the border at this time. So it is going to be very difficult for some people to apply, just as a matter of logistics.

Mr. FROST. If we find that the existing offices, 107 offices when they are fully opened are not able to handle the flow, not able to handle the volume, do you all have any recommendations as what we ought to be considering?

Mr. MURRAY. Yes, Mr. Chairman. I think you should be considering getting the city governments involved in this in some way. I mean you have the funding, if you can get access to it, to reimburse the cities, and I think that that would be a logical step.

Mr. LEIDEN. In addition, the cities could be employed to provide facilities for details of immigration officers coming into a city. I was in a seminar in Charleston, SC, on Friday and I learned that there are no legalization offices in the State of South Carolina. Individuals in that State must either go to Charlotte, NC, or Atlanta, GA.

There will be some traveling recreational vehicles with legalization officers or the special agricultural worker adjudicators, on board. But a cooperation of the State and local governments in providing facilities, so that INS officers can come in for 1 week here and a week there, need not greatly increase the cost of the program but will provide much better coverage and availability for individuals.

Mr. FROST. All right. I want to thank all of you for testifying. We will now have our final panel, and if the final two witnesses could come forward.

Appearing on behalf of the Federation for American Immigration Reform will be Simin Yazdgerdi I think.

Ms. YAZDGERDI. Yazdgerdi.

Mr. FROST. Yazdgerdi. I'm close; right?

And Daniel Stein of the Immigration Reform Law Institute. Simin Yazdgerdi, if you would begin.

Ms. YAZDGERDI. OK. Thank you.

Mr. FROST. And if you would, summarize your testimony.

STATEMENT OF SIMIN YAZDGERDI, DIRECTOR OF GOVERNMENT RELATIONS, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Ms. YAZDGERDI. Yes. Mr. Chairman, Members of the Budget Committee, thank you for the opportunity to appear before you today to testify about the Immigration Service and its responsibilities under the Immigration Reform and Control Act.

My name is Simin Yazdgerdi, and I am director of Government Relations for FAIR, the Federation for American Immigration Reform.

And as a little background, FAIR is a national nonprofit organization working to educate the American public about the need to reform U.S. immigration policy to reflect the realities of the 1980's. And we believe that every immigrant should be a legal immigrant, that the United States should set a comprehensive ceiling on legal immigration in accordance with the demographic, natural resource and economic needs of the United States. We also believe that immigration to the United States should not harm America's poor and disadvantaged and that U.S. immigration policy should not favor or discriminate on the basis of race, religion or national origin.

We have been a leading proponent of immigration reform legislation since 1978 when we were founded, and despite our opposition to the enormous amnesty program, we supported the new immigration law that passed the 99th Congress last fall.

After years of study and debate, Congress decided that the best way to control illegal immigration was to make it illegal for employers to hire illegal aliens, thereby turning off the job magnet drawing them to the United States. This concept called employer sanctions is the cornerstone of immigration reform and the essential enforcement element of the Immigration Reform and Control Act of 1986.

The immigration bill also created a massive new amnesty program for illegal aliens who can prove that they have continuously resided in the United States since January 1, 1982. The amnesty program, as you know, is scheduled to begin next Tuesday, May 5.

FAIR is deeply concerned about how the amnesty program will function, and we want to make certain that only those individuals who are truly eligible will be legalized. In order to maintain the integrity of the amnesty program, the INS will need adequate resources to carefully screen all amnesty applications for fraud. And that is the main thrust of my testimony this morning. FAIR believes that there is not enough funding in the INS budget or investigators to weed out amnesty fraud. And that is a very important point of this whole program.

Before I discuss FAIR's concerns about the amnesty program, I would like to just describe briefly the tremendous responsibilities that face the INS at this time. With passage of the Immigration Act the INS' work load has been vastly expanded to include enforcing employer sanctions, increasing border enforcement, administering the legalization program for a potential 3.9 million applicants and administering the special agricultural worker program. These

new responsibilities are in addition to an already staggering INS work load.

With a staff smaller than the New York City Police Department, the INS must patrol 2,000 miles of land border with Mexico, over 3,750 miles of land border with Canada, admit or deny 328 million persons at our ports of entry each year, keep naturalization records and records on permanent resident aliens, extend visas held by foreign visitors, develop secure documents for alien identification, control and deport criminal aliens and investigate thousands of violations of the Immigration and Nationality Act. Not a small task.

The funding levels Congress provided the INS in the past have not kept pace with the skyrocketing work load. And as a result, the INS has slipped further and further behind in its efforts to protect our borders. These unprotected borders were the major reason that Congress passed the immigration law last year.

Unfortunately the funding situation is getting bleaker. The Administration has not asked Congress for enough funds for the INS for either the current or the next fiscal years, nor has Congress in its supplemental appropriations for this fiscal year made up the budget shortfalls.

Congress last year overwhelmingly passed the Morehead Amendment requiring a 50-percent increase in the Border Patrol. And the budget that is currently in the supplemental would not even give the INS enough to keep up with personnel attrition. Moreover, if INS gets all the supplemental funds for new investigators that they have requested, they will still have only as many investigators on line as they had in 1975. So, clearly by no means—there has been no increase.

Mr. Chairman, the problems facing the INS can be stated quite simply. They do not have the money to properly carry out the enormous task Congress has mandated. For 1987, \$422 million in supplemental funds for the INS was authorized under the act. The INS asked the Administration for that amount. However, the OMB cut that request to \$137 million, and last week the House of Representatives cut the INS budget again by 21 percent, lowering it to \$108 million; \$108 million is only one-quarter of the original authorized funding levels.

And returning to your specific concern about the amnesty program, it was designed to provide legal status to those individuals who have long established roots in the United States. And a grant of amnesty that will lead to eventual citizenship is not to be taken lightly.

Unfortunately, it seems that the Administration is taking this program lightly. If you look at the budget figures, Mr. Chairman, you will see that there is no funding at all requested for investigations into amnesty fraud. These investigations are needed for ferreting out fraudulent applications. And unfortunately, the only investigators assigned to amnesty fraud will be the same 340 investigators assigned to employer sanctions investigations. These investigators, these 340, will be spread very thin.

If 3.9 million aliens apply for amnesty, even a 10-percent fraud rate would mean 390,000 fraudulent applications. I recently spoke to the INS regional office in San Pedro, and was informed that the San Diego INS district office arrested someone last month trying to

sell false rent receipts to use on amnesty applications. The regional office also told me there are reports of vendors selling entire packets of fraudulent documents containing false employment records, rent receipts, utility bills, et cetera; in short, all the documentary proof needed to establish a solid claim to amnesty. And the word on the street is that such packets promising a fast track to amnesty are selling for a few hundred dollars.

The INS wanted an additional 350 investigators just to work on amnesty fraud in addition to the new investigators for employer sanctions. That is the number which INS believed necessary to root out amnesty fraud. But those 350 additional men never made it into the budget requests. As I just mentioned, no new amnesty fraud investigators will be funded under this budget.

The INS has structured the amnesty program to be self-funding, paid for entirely through fees charged to amnesty applicants. However, the fee structure does not include funds for investigating amnesty fraud. FAIR believes that the cost of providing amnesty should be borne by the applicants receiving the benefits, and not the American taxpayer. The problem, however, is that the fee of \$185 covers only processing costs but does not include the costs of new investigators to investigate fraud on the amnesty applications. And Congress believed that deterring fraud on these applications was an integral part of the amnesty process. And they are not—investigators are not funded from the \$185. And if you are going to look at it that way, the \$185 per applicant fee is probably not enough then.

The question of fees and resources is not an idle concern. If the INS is not given the resources to thoroughly investigate and weed out fraudulent amnesty claims, the service will soon find itself inundated with questionable amnesty applications.

Another danger is that with the INS relying on its fourth quarter budget, it is now spending from its fourth quarter enforcement funds in order to start the program of immigration reform now, if they do not recover this money through those fees, the INS will be forced to cut enforcement this summer just as employer sanctions is beginning. And FAIR does not want to see this happen. And I'm sure the Committee does not want to see this happen, to see enforcement activities shut down just as employer sanctions are supposed to be coming effective. But that is what will happen if the supplemental appropriations are neither sufficient nor timely enough to reimburse the INS advance spending before the fourth quarter.

Many observers note that the crucial period for employer sanctions is at the very beginning. And we must impress upon employers and illegal aliens that employer sanctions will be vigorously enforced. If on the other hand, we lose that psychological deterrent in the beginning, and illegal aliens believe that they can still easily get jobs in the United States, we will have to spend far more in the future for employer sanctions enforcement. The investment in early enforcement will reduce future expenditures many times over. And I know this is a tough budget year, and we must all consider the impact of additional spending on the deficit. But carrying out the provisions of the Immigration Reform and Control Act is a costly proposition. But failing to implement the new law by provid-

ing enough funds for enforcement will be even more expensive in the future. If we allow possibly hundreds of thousands of ineligible aliens to fraudulently receive amnesty, we will also spend millions of dollars to provide social benefits to those aliens and their relatives later.

As an illustration, if you just take one illegal alien who fraudulently receives amnesty, not only will that alien's State and local governments receive funding from the Federal Government based on the alien's legalization of status, but the alien can petition for his relatives. Those relatives through a process known as Chain Migration may later petition for their relatives, and so on. We know of a story where one immigrant brought 69 relatives into the United States in 10 years.

In closing I would like to quote from article that appeared yesterday, April 29, in the Christian Science Monitor. A ranking immigration official who asked that his name be withheld in the story stated about the amnesty program: "We may just have to rubber stamp thousands of applications." Another immigration official, an intelligence officer with the INS, said: "I don't have enough time right now to check what is already coming into this office. I'm supposed to examine passports for forgeries and photo substitutions, alterations. And I don't have time. I'm rubber stamping them out of this office." And rubber stamping is just what we would like to avoid in this amnesty program.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Yazdgerdi may be found at the end of the hearing.]

Mr. FROST. The next witness is Daniel Stein, Immigration Reform Law Institute. Mr. Stein.

STATEMENT OF DANIEL STEIN, DIRECTOR, IMMIGRATION REFORM LAW INSTITUTE

Mr. STEIN. Mr. Chairman, I will be brief and summarize my testimony. Thank you for the opportunity to appear before the Committee today to address INS budgetary resources and the implementation of the Immigration Reform and Control Act.

I am the director of the Immigration Reform Law Institute, a nonprofit law firm, public interest law firm, working on behalf of improved immigration law enforcement.

Mr. Chairman, the professionalism and competence of the Immigration Service is above question. It has remained diligent in all of its duties as Congress over the last 10 years has steadily increased its responsibilities without substantially increasing its funding. The simple truth of the matter is that their funding has not kept pace with their increased responsibilities.

The consequence is that the immigration adjudications' function has deteriorated substantially to the extent now that many observers, including the GAO, estimate that as many as 30 to 40 percent of all petitions filed on behalf of relatives for immigration benefits are fraudulent. Last year Congress passed the Marriage Fraud Amendment's Act of 1986 to try to counter this tremendous amount of marriage fraud. And that requires all aliens obtaining

immigration benefits through a marriage to prove two years later that the marriage is still viable.

By requiring the INS to do followup investigations on all of these marriages, you are going to substantially increase the work load of INS investigators substantially. Yet, there are no authorizations in that particular bill for additional investigators.

To add to the burden, Congress has now asked the Immigration Service to embark on perhaps its most ambitious undertaking to date. At a time when our national legislature has asked the Immigration Service to embark on an aggressive program to penalize employers of illegal aliens, Congress now expects that same agency to process millions of amnesty applications. My understanding is that the Immigration Service operates on the working assumption that it will process 3.9 million applications over a 12-month period, plus an additional 250,000 tier one SAW or Schumer agricultural workers over an 18-month period.

Congress has asked the INS to process nearly 5 million adjustment of status applications over an 18-month period. That is a program in magnitude that is unprecedented in scope in the history of immigration to this country exceeding substantially any year ever in the history of this country, including the Ellis Island period. Yet a similar fraud rate could also pervade this process as the Immigration Service tries to cope with it.

The problem, of course, is that Congress must appropriate the money necessary to implement these ambitious projects. Modest budgetary supplement for fiscal year 1987 of \$137.8 million to implement the ERCA, which has now been further reduced in the House I understand, is really inadequate for the task at hand were it now even available.

My requests were for some 340 new investigators, which would be added to cover both the marriage fraud bill, the employer sanctions bills provisions and the amnesty provisions. And undoubtedly, the adjudications function will further deteriorate in view of the fact that these processes have not occurred.

In discussing with people that I know in the Immigration Service, I understand that they are not getting their ADP equipment until tomorrow, 5 days before the program begins. They say they are going to get their legalization centers open if that's the last thing they have to do. If they have to use a pencil to take these things down, they are going get started.

Yet, at the same time they want to set a positive tone for this program. Surely we want every alien, who is eligible for the program and is entitled, to get amnesty benefits, at the same time we do not want to set a bad precedent by further undermining the system.

Consider, if you will, the local legalization center is going to be processing some 25 to 30 applications a day. In an 8-hour day each processor may spend up to 15 minutes per applicant. He or she must examine the documents for completeness, swear in the applicant, conduct and interview and issue work authorization. But at this stage of the adjudication, the office is only going to be sure that an alien has alleged predicate facts sufficient to constitute prima facie eligibility.

At the regional processing facility, 36 or so examiners must handle an expected 4,000 applications a day. Current estimates are that some 3,600 will simply be entered directly into the ADP system. Unless they computerize cross-check, enforcement agency records triggers a further investigation, the application will be approved. Only about 400 to 600 a day will be spot-checked for fraud at each center.

Further, I can find no additional evidence in the INS authorizations or requests for appropriations for any additional enforcement manpower to followup on fraud investigations directly related to the amnesty application process.

In concluding, Mr. Chairman, the major purpose of this bill, as I see it, is to foster respect for the immigration law of today and in the future. It is not a foregone conclusion that amnesty applications must be rushed through summarily. According to the INS' own internal procedures, aliens who are statutorily eligible, based on the documents submitted with their applications, will be given conditional approval and authorization to work during the pendency of the application. There is no reason, therefore, why the adjudications process necessarily must be rushed.

The amnesty program characterized by massive fraud will not accomplish the overriding congressional purposes of this bill, which is to try to avoid this problem in the future years, which is a massive large underclass of illegal aliens in our population. What we want to do is try to clean the slate and establish a positive tone for immigration enforcement in the future.

Thank you, Mr. Chairman, for this opportunity to appear today.

[The prepared statement of Mr. Stein may be found at the end of the hearing.]

Mr. FROST. I would like to ask both of you. In your judgment, how much more money should Congress be appropriating for the program at this point? What is really needed?

Ms. YAZDGERDI. Well, as I stated in my testimony, the INS had wanted 350 additional investigators for fraud. And I also know that they wanted between 75 and 80 investigators for the search warrant requirement to be investigators that obtain the search warrants and go into open fields after they get the warrant. And neither the 350 investigators nor the 75 or 80 investigators made it into the budget at all. So, if you totaled up—that would come out to about 430 investigators. And each investigator I believe costs the INS about \$50,000 to train and put on line. You just have to do the arithmetic there. So, we are talking like \$25 million maybe for more investigators.

Mr. FROST. What else do we need to do? What else do we need to be looking?

Ms. YAZDGERDI. Well, they also—as I mentioned briefly in my testimony, they are supposed to have a 50-percent increase in the Border Patrol. And we have studied very carefully the budget charts. And let me just say that they are not going to—they might not even have an increase in the Border Patrol because they are running 9 border classes this year and 14 next year. And that will probably keep the Border Patrol static. That will just probably make up for attrition. In 1985 they were able to run 24 classes in a

single year. And now they are only saying that they can run 9 this year and 14, less than what they ran in 1 year combined.

So, the costs—what we believe is that the Congress should appropriate as near to the authorized levels that the INS requested. I mean, Congressman Schumer recently released at an oversight hearing a chart showing what the INS had requested and how the Department of Justice cut that request further, and then how OMB even slashed it much further. So, you can get pretty much an approximation of how much the INS would need based on what they submitted originally. So, that would be near the \$422 million authorized level.

Mr. STEIN. Mr. Chairman, I agree wholeheartedly with what Simon has said. I can only say though I believe the original authorized levels were determined on the basis of the nearest best guess of what kind of manpower would be required without cannibalizing the existing functions within the agency.

For whatever internal political reasons now within the Administration that the requests have been substantially lower since then, I can only say that all evidence suggests to me from talking to people within the agency who are candid enough to discuss it, that other adjudications and examination and service and inspection functions in particular are suffering substantially now to move all these people into the amnesty program. I would say the authorized level would be optimal.

Mr. FROST. What is your opinion, either one of you, as to whether the fees being charged for processing the amnesty applications—the income from that should have been added on top of the authorized figure or should have been included in the authorized figure.

Of course, the Immigration Service has taken the position citing conference committee language, and Mr. Lungren did before this Committee, that the fees generated should be a part of that authorized figure rather than being an add-on to it.

Ms. YAZDGERDI. Well, the problem is that the OMB is forcing the INS to borrow from their fourth quarter enforcement budget. They are not allowing them to borrow against the fees to be received. And that prevents—there is no safety net there for under the INS. If they are unable to recover those fees, enforcement programs are going to have to be stopped because they will not have—they will have already used up their enforcement money from having spent it on the fourth quarter.

So, I also mentioned in my testimony that the \$185, while we think that the amnesty applicants should pay for the cost of processing the applications, our arithmetic shows that really the processing of the applications would add up to more than \$185 per applicant if you factored in the need for additional fraud investigators.

Mr. FROST. Well, my question really though is the authorized figure was \$422 million for fiscal year 1987. Should we be adding the income from the fees on top of that, or is it proper to do as the Administration is, to say that that \$422 million authorized includes the income from the fees?

Mr. STEIN. I would say looking at the conference language and the original language in the bill and the authorization that the intent was for the user fees, in terms of paying for the program,

was simply to cover the direct hands-on administrative costs of processing, not to cover the overall infrastructure required to investigate applications, certain kinds of clerical work in the central office—

Mr. FROST. Furniture, computers.

Mr. STEIN. Furniture, moving records back and forth between agencies, any more than my utility bill covers the entire pro rata infrastructure cost of setting up a utility.

So, I believe that the user fees go on top of the \$422 million to the extent that the direct clerical and examiners are involved, as well as the examiners in the regional adjudications center costs. But below that, no. The authorized level would cover that.

Mr. FROST. What is going to be the practical effect if we have a flood of applicants in the next several months and yet the fees generated from that flood of applicants is not sufficient to really run the program adequately?

For example, if the offices in my State are set up to handle 200 people a day—from what my conversations with the Immigration Service, that appears to be their objective is to handle 200 people a day at each of these nine offices throughout the State of Texas. What happens if we find that those offices are incapable of handling the number of people, if 500 people a day show up, or 1,000 people a day show up. Is the answer just to increase the fees? Are you going to have money then, or will you have enough fee income generated from all these people showing up that you can then open new offices or you can add additional people at those offices? What is the solution going to be?

Ms. YAZDGERDI. Well, I would just reiterate again what I quoted from the Christian Science Monitor. When you have such a massive amount of people coming forward, the INS is just going to under tremendous pressure to just process these people through and just rubber stamp. And that is what is going to happen. And that is what we are concerned about because then that just opens the flood gates for fraud. I mean, if word gets out that it's so easy to just get through because they are just rubber stamping applications, that's just going to be an incentive for more people to come forward with fraudulent claims.

Mr. STEIN. I can only say to the, Mr. Chairman, that I believe that it would depend on where the backlog and problems are created. If the problem happens right up front, and the initial interviewers and the amnesty process get backlogged with their interviews such that applicants have to wait an extended period of time before they receive their conditional approval and work authorization, I think there will be tremendous public pressure and media attention to the fact that these individuals are just waiting in legal limbo.

If the problem occurs farther up the line in the regional adjudication center, and there is a lag time in the final adjudication of the adjustment to temporary resident status, then most of the applicants are not going to be especially concerned, I would think because they have already got their conditional work authorization and are arguably residing under color of law such that the lag time may stretch out, but there isn't going to be that great public pressure to move them through.

But of course, there is the down side—and this is very logical—that if they find themselves simply backlogged in the adjudication center, they are just going to cease the spot-checks and just be entering the applications into the computer and just streamline the process to the detriment of the inspections or adjudications function.

Mr. FROST. So, you are saying that it depends on, if I understand you correctly, where the problem occurs. And if, for example, the centers suddenly started handling 500 a day rather than 200 as projected, the problem is not there. The problem is when the verifications are made.

Should we be concerned if, in fact, the volume increases very substantially at these centers? What should we be doing?

Mr. STEIN. It depends on how the INS responds to the overload. If they decide to simply waive the interview at the initial period, and just so long as the documents represent or allege the predicate facts necessary to make a claim, go ahead and conditionally approve it, that would be the logical response to being overwhelmed because the pressure comes right up front where they want to get their conditional work authorization and a form that says that they are work-authorized for some period of time. And the INS, of course, claims the discretion to authorize work authorization. If they get backlogged, they could authorize amnesty applicants to work longer than what the regulations say they could.

Mr. FROST. Do they have the authority to waive that initial interview?

Mr. STEIN. Right off-hand I can't give you a direct answer to that question, but they can probably—they probably could shuffle the interview to a later point in the process if they wanted to. I don't think there is anything in the statute that would preclude that.

Mr. FROST. If I understand the way the procedure works, that the applicants could appear before a QDE. The QDE then submits the form to the storefront processing office. And they then schedule them for an interview at that point. And you are saying that what we may have happen is they go to the QDE, complete all the paperwork. That is mailed in to one of these processing centers, and then the person is never seen face to face by the Immigration Service?

Mr. STEIN. Or it could be in name simply postponed for some extraordinary period of time. It is hard to know where the additional processors are going to come from, for example, if they have underestimated their prospective work load by 50 percent, which is certainly possible. There is simply no way to know. The process is going to evolve and develop as the designated entities get familiar with the system, they are going to start refining their requirements in terms of how they fashion the applications to accommodate what they perceive as the INS' work load and demands. It is really too early to give any kind of definitive answer about that frankly.

Mr. FROST. Well, it will be interesting to see how this entire process operates.

I appreciate and thank you for your testimony.

Mr. Schumer, a member of the Committee who testified earlier, has informed me that the 700,000 number that he referred to earlier is the estimate for the illegal aliens in New York City, not just

in Brooklyn. Brooklyn is estimated to be the home of approximately 225,000 illegal aliens. And as he stated, not all of these individuals will be eligible for legalization.

I do thank you, and thank all the witnesses. This is a matter of ongoing concern for the Budget Committee. We are going to be following the situation very closely. We wanted to have the hearings today because the legalization process formally opens next Tuesday; the employer sanctions warning period formally opens June 1. We will be monitoring this as it develops, and we expect that we will hearing from the Immigration Service, from the Administration, regarding the amount of funding within the next few months.

Thank you very much.

[Additional material for the record follows:]

INS BUDGET REQUEST SUBSTANTIALLY REDUCED BY OMB

(Presented by Hon. Charles E. Schumer)

The Immigration Control and Reform Act (IRCA) passed by the last Congress included a substantial additional authorization for the INS: \$422 million in fiscal year 1987 and \$419 million in fiscal year 1988. This money was intended to assist INS in carrying out existing programs and to help pay for its new responsibilities under IRCA. Although the INS requested the Department of Justice (DOJ) to seek the full amount in its budget submission to OMB, DOJ failed to do so. Subsequently, OMB further reduced the INS request. Thus, the budget the Administration ultimately presented to Congress represents a substantial reduction in funding from what the INS determined it would need to fulfill its mandate.

The following table illustrates the cuts from the original INS request. "Positions" refer to actually funded positions not authorized positions.

	<u>Border Patrol</u>		<u>Investigations</u>		<u>Anti-Smuggling</u>		<u>Detention and Deportation</u>		<u>Intelligence</u>		<u>Other</u>		<u>Total</u>	
	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1987</u>	<u>FY 1988</u>
<u>INS to DOJ</u>														
Positions	354	1,299	381	1,003	30	78	179	557	31	47	643	1,530	1,618	4,514
Dollars..	78.2	90.9	46.2	41.1	2.5	4.0	18.4	52.6	2.3	3.1	274.4	227.2	422.0	419.0
<u>DOJ TO OMB</u>														
Positions	185	1,194	100	903	17	72	64	529	17	46	306	1,400	689	4,144
Dollars..	44.8	72.9	27.4	43.3	1.9	3.8	15.8	48.9	1.3	3.0	214.9	239.8	306.1	411.8
<u>OMB</u>														
Positions	135	630	95	737	15	62	58	434	17	46	285	1,087	605	2,996
Dollars..	25.6	41.2	26.1	37.4	1.6	3.2	13.4	40.0	1.3	3.0	195.1	213.6	263.1	338.5
<u>Percent OMB cut from INS Request</u>														
Positions	62	52	75	27	50	21	68	22	45	2	56	29	63	33
Dollars..	67	55	44	9	36	20	27	24	43	3	29	6	38	19

PREPARED STATEMENT OF GILBERT PAUL CARRASCO

Mr. Chairman and Members of the Committee:

On behalf of the National Office of Migration and Refugee Services of the United States Catholic Conference, I want to express my appreciation to you for holding this hearing and for inviting our participation. Throughout the process of implementation since the Immigration Reform and Control Act was enacted on November 6, 1986, the U.S. Catholic Conference has been deeply involved in planning to meet the demands associated with legalization and in providing the Immigration and Naturalization Service with our thoughts on how to effectuate the intent of Congress in this historic, monumental, and humanitarian effort.

Because the lives of so many industrious and hard-working people hinge on the success of this program, we feel compelled to share with you our concerns. Although we recognize the magnitude of the task with which the Immigration Service is faced, we, nonetheless, offer criticism of a constructive nature to facilitate improvement that indubitably could benefit the Service, those whom the law intends that it serve, and the American people.

I. Inadequacy of Administration Funding Request

Section 111 of the Immigration Reform and Control Act of 1986 provides for an increased authorization for INS of \$422 million for fiscal year 1987 and of \$419 million for fiscal year 1988, respectively, over the \$593 million appropriated under the Continuing Resolution for fiscal year 1987. It would seem

apparent that Congress designated such funding levels because they were deemed necessary to implement this legislation.

We perceive, however, a seeming lack of commitment to the ends of this new law in the Administration's request for far less than Congress contemplated would be necessary. For fiscal year 1987 INS submitted a supplemental request of only \$138 million for immigration reform initiatives, and the 1988 budget request totals \$838,828,000.

These funding levels have dubious justification. The request for less than the amount authorized for fiscal year 1987 is justified with the post hoc rationale that the funds do not now have to cover a full year. Yet the obligations of the new law have existed since the beginning of this year and, indeed, INS has borrowed funds from fourth quarter salaries and expenses accounts pending action on the supplemental request.

Moreover, much less has been done over the past five months than the law mandates. The position of the INS is that the requested funds are as much as the agency can absorb and spend prudently in two years. If the timetables set by Congress are to be met, however, swift and effective implementation is essential. In our view, the funding levels proposed by INS are inadequate to implement the Immigration Reform and Control Act, and substantial revision of priorities is necessary to effectuate the balance in the law that Congress sought to achieve with its enactment.

II. Prioritization of Expenditures

As has historically been the case, the INS continues to

earmark the great majority of its resources for enforcement purposes, at the expense of those functions that assist those who wish to obtain legal status through normal channels. For example, after including the 1987 supplemental appropriation for salaries and expenses proposed by INS, their 1987 revised budget estimate for enforcement totals \$452,823,000, or 62% of their overall requirement of \$731,969,000. In comparison, the figure for citizenship and benefits in this critical personnel line item is only \$59,678,000, or 8% of the overall requirement.

For the INS to continue along this path of such minimal funding and staffing legal immigration channels is counter-productive. Not only does such prioritization result in the endless lines of people in front of INS offices who, in many cities such as San Jose and Los Angeles, California and Miami, Florida, arrive on the previous night to get a place in line, it also indirectly serves to encourage illegal immigration.

Substantially more funding must be designated for citizenship and benefits in future years as those who become lawful temporary residents through the legalization program undertake to adjust to lawful permanent residence 18 months later. Such prioritization would be even more necessary if INS were to request qualified designated entities to assist in this second stage of adjustment.

One of the most troublesome aspects of the INS 1987 revised budget estimate is the \$12 million designated for detention of Mariel Cubans. If this request is intended to fund construction of yet another immigration prison, we would strongly oppose such

funding.

As recently as last year INS opened its largest detention facility, which is located in Oakdale, Louisiana. This facility has been vacated by all those non-Cubans who were previously incarcerated there. Because INS itself has concluded that the number of Mariel Cubans now in custody - i.e., approximately 1000 - will not rise through the end of 1987, we know of no reason why they could not all be housed in the Oakdale Facility.

Detention spending by INS has increased by 400% over the past six years. More immigration prisons are unnecessary, particularly given the expectation of the INS that employer sanctions and other provisions of this new law will result in a lesser incidence of illegal immigration and, thereby, of detention.

Perhaps the most telling imbalance in the budget proposals of the INS is the zero funding of legalization. We share the concern that has been expressed by many Members of Congress that it is inappropriate to place the entire financial burden of this program squarely on the backs of the eligible population.

Moreover, even if one assumes that the INS is correct in setting an application fee sufficient to cover the costs of processing applications, inclusion of some items in the budget that formed the basis for the fee appear inappropriate. For example, the INS states that the construction and engineering line item in the legalization budgets for fiscal years 1987 (\$27,300,000) and 1988 (\$20,019,000) largely supports the leasing and furnishing of legalization offices and for increased space

requirements in other than legalization offices. However, Section 201(c)(1) of the new statute provides that "the Attorney General is authorized to expend from the appropriation provided for the administration and enforcement of the Immigration and Nationality Act, such amounts as may be necessary for the leasing or acquisition of property in the fulfillment of...the legalization program". Thus, not only is there a specific statutory provision enabling funds to be used for these costly items that are not obtained from application fees, such expenses should not be construed as costs of processing applications. On this basis alone, the amount of the application fee should be reduced.

Furthermore, detention and deportation costs are included in the legalization budgets - \$556,000 for fiscal year 1987 and \$1,981,000 for fiscal year 1988. Legalization applications, however, are confidential, and the Attorney General is subject to criminal liability for using any information contained in such applications for any purpose other than adjudication, with one exception - fraud in the application itself. Even in the context of fraud, however, detention and deportation would not appear to be within the meaning of the "costs of processing applications" even if it were assumed that such reference by the conferees established the basis for the amount of an application fee.

Any appropriation should include funds for the legalization program. Funding the program entirely through application fees places a disproportionate and undue burden on those whom Congress intended to benefit by the law.

III. Burden of Application Fees on Applicants

I think it would be helpful to the Committee if we put the application fee proposed by INS in the context of a realistic hypothetical situation. Let's assume that all members of a family of five apply for legalization. Let's assume further that such family is comprised of the parents of two children and an elderly grandparent - not an uncommon situation among immigrant populations.

The proposed fee schedule would require the parents and children to pay the family rate of \$420, plus an additional \$185 for the grandparent. Medical examinations would have to be obtained for all five persons, and such examinations, according to the regulations, must be obtained from a "selected civil surgeon" designated by INS, at a likely cost of between \$60 and \$75 per family member.

If it is assumed that at least one family member will need to file for a waiver of excludability, a procedure that will not be uncommon in the legalization application process, INS would charge an additional fee for this of \$35. So, even before the factors of costs of legal assistance, time off work, notarizations, copying, telephone, postage, and other costs associated with the legalization application process are considered, this family would have already spent over \$1000 to apply.

Consider further that the median annual income of Hispanic families in the United States, both documented and undocumented, in 1984 was \$11,650. Assuming that our hypothetical family's

income is \$13,900 and that their monthly income after taxes is \$1,000, they would have to come up with close to 10% of their annual income to obtain the statutory entitlement of legalization. I ask the Members of this Committee whether this scenario is consistent with this program's implementation in "a liberal and generous fashion" as referenced in the 1986 Report of the House Committee on the Judiciary, No. 99-682, Part 1, at page 72.

The Immigration Service argues that this fee is comparable to those charged persons seeking entry into the United States as immigrants. I submit, however, that fees charged to applicants for permanent residence who are abroad is an inappropriate measure by which to establish legalization fees. Such application includes the filing of an I-130 petition, which costs \$35, an application for an immigrant visa, which is \$125, and issuance of an immigrant visa, which is assessed a \$25 charge. This figure of \$185, therefore, involves a two-stage process and involves not one, but two, agencies -- the INS and the State Department.

A fair comparison would be one that views comparable procedures and then assesses a fee at a level comparable to those for such procedures. The registry fee of \$50 or the fee for an adjustment of status petition in this country, which is \$85, are apposite comparisons.

Furthermore, such figures are comparable to those referenced in the respective bills that led to enactment of this law. The Senate bill provided a minimum fee of \$100 per applicant and the

House bill established a maximum fee of \$75 for individuals and \$175 for families.

Finally, the INS rationale that the fee should reflect the value of the benefit received is, indeed, a spurious one. We do not pay a fortune for a driver's license simply because it has tremendous impact on the degree of mobility in our lives.

Equally inappropriate is INS' reference to the amount of money someone may have had to pay to obtain assistance in entering the country. The fact that an undocumented person may have turned over his life's savings to someone for such assistance is entirely irrelevant to the issue of the level at which the application fee should be set.

We do not believe that this program should be entirely funded out of application fees but, rather, that appropriations should earmark substantial monies to fund it adequately. We would hope that this principle is considered for the subsequent stage of adjustment to lawful permanent resident status as well.

IV. Impact of Lack of Funding on Voluntary Agencies

Private, non-profit agencies are being required, because of inadequate funding, to carry a heavy financial burden in implementing the legalization program. The present level of per capita compensation, \$15 for direct service providers and \$16 for national coordinating agencies with local affiliates, is clearly insufficient to cover the costs of the program, particularly for agencies whose capacity must be developed or expanded to serve clients adequately.

In many parts of the country, there simply is not present

capacity. Effectuating such capacity involves staffing, training, systems development, and management.

Most voluntary agencies have serious cash flow problems that are hindering sufficient preparation. Today, four business days prior to commencement of the application period, a cooperative agreement has not been entered with INS and, to my knowledge, no advance funds have been distributed to any of the putative qualified designated entities.

The Cooperative Agreement provides that qualified designated entities may charge counseling fees limited to a maximum of \$75 (or \$100 if photographs and fingerprints are included). There are those who have voiced criticism ~~of~~^{of} our request to establish this maximum at a reasonable level while we, at the same time, advocate for a lowering of the INS application fee.

It should be borne in mind, however, that the INS fee may not be waived. The voluntary agencies, on the other hand, show due regard for the financial circumstances of their clients. The U.S. Catholic Conference, for example, has recommended to its affiliates that they adopt a model sliding scale based on income and assets. The fee is zero to \$75 and includes provisions for additional family members.

Moreover, in assessing fees, the qualified designated entities are passing along yet another cost to the applicant, a cost that we believe Congress intended the INS to bear. Our concern with funding is directly related to our concern for quality control and the provision of competent service to our clients. What we anticipated was going to be a relatively simple

procedure has turned out to be a very complex one full of legal obstacles and technicalities, many of which are reflected in regulations that we believe are clearly extra-statutory. The extent and quality of the services the voluntary agencies are able to provide are correlative to the adequacy of resources.

We and other voluntary agencies have provided INS with countless hours of staff time to train INS and qualified designated entity personnel. The U.S. Catholic Conference alone has contributed literally months of person-hours of our best lawyers to this nation-wide effort. Our affiliates have also arranged for facilities and dissemination of notices for this training. Another national voluntary agency, the American Council for Nationalities Service, reports that the cost of their contribution to this effort totals \$75 - 80,000. Without this assistance, INS training would not exist or would, at least, be seriously curtailed. Yet the contributing agencies have not been compensated at all for this valuable expertise and assistance.

The per capita reimbursement amounts, \$15 for local voluntary agencies unless they are coordinated by a national agency, in which case the reimbursement is augmented by a dollar for national administration, are far less than what is needed to implement this program. From the perspective of the national coordinating agencies, the dollar that goes to them, which is 6.25% of the total reimbursement, is ^{is} consistent with general principles of administration. If INS were to follow such principles, such amount would much more closely approximate our actual costs. This would equate to 20% for national

administration in addition to the base per capita reimbursement, that is, \$15 would go to the local affiliates with three additional dollars being designated for the national agency to administer the program.

As a result of the lack of adequate INS funding for this program, many voluntary agencies, and even some of our affiliates, have decided not to participate as qualified designated entities. The practical impact of non-participation in the legalization program, at least in our system, is that there is no available assistance in that diocese. Consequently, if an applicant who lives in such a diocese wishes to apply, it means traveling to the nearest diocese with a program. In many cases, this translates to hundreds of miles.

Because of insufficient funding one of the dioceses has ceased intake after pre-registering 10,000 applicants. It is, therefore, necessary for the remainder of the 100,000 potentially eligible applicants in that area of California to attempt to find service elsewhere.

In such circumstances, these people become vulnerable to the exploitation of fly-by-night immigration consultants, of whom we are hearing more as May 5 approaches. In other cases, the only alternative is to seek the assistance of the private bar, some members of which are charging in the thousands for legal assistance.

Due to the considerable complexity of the eligibility and documentation requirements, one would be ill-advised to attempt to file application without qualified assistance. These factors

have also driven up the budgets of voluntary agencies, many of which are cognizant of the need to hire lawyers and accredited representatives to maintain quality control and obviate liability for negligent acts, occurrences, or omissions. We have also felt compelled to advise our affiliates to ascertain the sufficiency of their insurance coverage for such liability, another expense of considerable magnitude in the context of operations that are sometimes run on a shoestring budget.

V. Public Education

The Immigration Reform and Control Act of 1986 specifically refers to public education, and its authors recognized that dissemination of information is not only critical to the success of employer sanctions and legalization, it is essential to protect rights that are in jeopardy due to prevalent confusion regarding its provisions. Heretofore, other than some local INS public meetings, there has been virtually no public education conducted by the government.

Indeed, it was not until earlier this month, some five months after enactment, that a contract for public education was finally entered. Four business days prior to the beginning of the legalization period and a month before the effective date of employer sanctions, misinformation is everywhere. Indeed, even in a recent editorial of the Washington Post, the applicable date relating to employer sanctions was incorrectly stated. This only serves to underscore the point that the six month public education period provided in the employer sanctions provision of the statute has not yet effectively begun.

This shortfall in public education is a classic case of too little too late. The contract for this purpose is limited to \$10,750,000 in funds, about one-third of what we consider to be necessary to educate virtually every person in the United States regarding this new law, whether they be English-speaking or otherwise.

Contrary to what some would have you believe, the impact of this shortcoming is real. Indeed, it is the rare exception that I speak with someone about some provisions of this law, provisions that are absolutely essential to the protection of rights, who knows the implications of failing to act within a certain time frame. I have at times been appalled when the people with whom I am speaking about such provisions are not only ignorant of their requirements but who are INS officials, including those at the highest levels of the agency.

One example of the total absence of public education is the total unawareness of people who are currently lawful permanent residents and eligible to apply for naturalization, that they must do so within six months of becoming so eligible to preserve their right to pursue a claim of discrimination under the unfair immigration-related employment provisions of the statute, even if such claim has not yet arisen. For those hundreds of thousands of such persons who were so situated when this law was enacted on November 6, 1986, they have until next week to file their application for naturalization or they lose these valuable protections forever. We, as voluntary agencies, have done our best to facilitate the educational process but, clearly, the

magnitude of the effort is tremendous and well beyond the resources available for that important purpose.

VI. Other Issues Related to Implementation:

Earlier this week I and representatives of several other non-profit organizations met at INS with the Deputy Commissioner of the Social Security Administration and several other of its officials. Qualified designated entities have been requested to assist SSA in its effort to facilitate application for social security cards through the legalization application process.

We, of course, recognize the benefit to our clients if this could be achieved expeditiously, particularly with the advent of employer sanctions, but our system, as I have previously described, is already pressed to its maximum capability. Yet another form, another explanation, in short, another responsibility would threaten to overload the system beyond the point of return unless additional resources were available to perform such a function.

Lastly, we would simply note that it does not appear that the Department of Justice intends to establish regional offices of the Special Counsel for Unfair Immigration-Related Employment Practices. We view more localized access for such purposes to be an important subject for budgetary consideration.

I would like to thank you again for this opportunity to express our views and concerns to the Committee, Mr. Chairman, and I would be happy to respond to any questions that any of the Members of the Committee may have.



AMERICAN IMMIGRATION LAWYERS ASSOCIATION
AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

STATEMENT OF

WARREN R. LEIDEN, EXECUTIVE DIRECTOR

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

before the

COMMITTEE ON THE BUDGET
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

THE BUDGET REQUIREMENTS NECESSARY

FOR IMPLEMENTATION OF

THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

(PUBLIC LAW 99-603)

April 30, 1987

STATEMENT OF

WARREN R. LEIDEN, EXECUTIVE DIRECTOR,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. Chairman, members of the committee, I wish to thank you on behalf of the American Immigration Lawyers Association for the opportunity to appear before you today to provide testimony on the budget requirements necessary for implementation of the Immigration Reform and Control Act of 1986 (Pub.L. 99-603).

The American Immigration Lawyers Association is the national bar association of attorneys practicing in the field of immigration law. AILA's 2400 members are organized into 29 local chapters across the country. Founded in 1946, AILA is an Affiliated Organization of the American Bar Association and is represented in the ABA House of Delegates and its Coordinating Committee on Immigration Law.

My name is Warren R. Leiden, and I have had the privilege of serving AILA as its Executive Director since 1982. AILA National Office is located here in Washington, DC.

As the committee is well aware, the closing days of the 99th Congress saw the enactment of the Immigration Reform and Control Act of 1986, the most comprehensive reform of our nation's immigration laws in decades. The main principles of this law were: that unlawful immigration could be better controlled by the imposition of sanctions on employers of undocumented aliens; that a streamlined legalization program was the most effective, pragmatic solution to the practical problem of the growing subclass of undocumented aliens who have come to reside in a number of urban and rural areas; and that special arrangements were necessary for those portions of the agricultural industry that had come to rely on undocumented workers for their main source of labor.

Recognizing the monumental changes this law would bring about, Congress established a six month period for public education and preparation for the implementation of these new laws. It is fitting that this committee should meet now in its oversight capacity to review the adequacy of funding and preparedness of this the eve of implementation.

In our opinion, this next year will be a critical one in laying the foundation for the long-term success of its legislation. The success of these measures depends in large part on subjective and human factors, such as the willingness of the undocumented population to come forward and seek legalization, the willingness of United States employers to

voluntarily comply with the requirements of employer sanctions, and the acceptance and support of the general public for these new opportunities and obligations. Most significantly, the initial preparedness and approach of the government agencies, as well as the private sector, in carrying out the requirements of the law will create attitudes and perceptions with which we must all live for some time to come.

It is a well known fact that the Immigration Service was, in the past, inadequately funded to accomplish its dual mission of enforcement of violations and adjudication of benefits of the U.S. immigration law. Representatives of our Association have testified on numerous occasions in support of additional funding for both missions of the Immigration Service. It may be, in fact, that many of the problems that led to the need for the Immigration Reform and Control Act were the result of the inadequate funding or attention to INS in earlier years.

We commend the House of Representatives for its support for funding the full amount authorized for the INS in fiscal year 1988. And, while we were disappointed that the Administration's request for supplemental funds in fiscal year 1987 fell far short of the amount authorized and necessary, we believe the members of the House have shown their commitment to providing adequate supplemental funds in this year. As the committee is well aware, the Immigration Service has been obliged to borrow against its third and fourth quarter funding in order to prepare for implementation of this legislation -- a situation that could cause a grinding halt this summer unless supplemental funds are duly appropriated.

I am sure it is also well known to the members of this committee that it is rarely sufficient to throw money at a national problem in order to provide its solution. While we commend both our colleagues in government service and in the private sector for their hard work and efforts above and beyond the call of duty over the last six months, we note the old adage that it is more important to "work smart" than it is to "work hard."

It is precisely on the subject of whether the agencies charged with the administration of the immigration laws have "worked smart" and have used their public funds to their most beneficial effect that we wish to shed some light on with the committee today.

Public Education

I think it is fair to say that many in Congress and in the public and private sector now realize that the six month education period of the Immigration Reform and Control Act

was indeed a short time in which to accomplish so many objectives of information sharing and education. The goals of this prelude were that employers and employees would be adequately educated as to the requirements of the new verification program and that undocumented aliens would be advised of their eligibility for legalization (and to eschew fraud or other illegalities).

While officers of the Immigration Service have worked overtime to participate in and conduct public forums and conferences, we now realize that there is no substitution for the massive public education campaign that is only now getting underway under the special contract provided for in the Immigration Reform and Control Act.

The American Immigration Lawyers Association greatly appreciates the cooperation of the Immigration Service in participating in our seven national continuing legal education seminars in January and February and in our upcoming seminars in May and June. Through these conferences, government officers and immigration law experts were able to examine and discuss the requirements of the new laws in great detail, and I am confident that the benefit of these seminars will reach hundreds of thousands of employers and employees. Regrettably, the impact of these efforts, while important in establishing a core of experts on the new law, necessarily falls far short of the need to get adequate information to the literally millions of employers and workers, U.S. citizens and aliens alike, who will be affected by the new law. As with many other social and legal initiatives, adequate understanding of both the reasoning and the requirements of the new changes would go a long way toward alleviating the average person's fear and skepticism.

Not only does the new law depend on employers' voluntary cooperation with the verification requirements, but many applicants for legalization or Seasonal Agricultural Workers (SAW) status will need assistance from their employers in establishing eligibility, in order to escape from the shadowy subclass of the undocumented. This is especially true for the so-called SAW workers, whose main factor of eligibility is that they worked in certain agricultural occupations for at least 90 days. We must regretfully acknowledge that many such workers were employed on a sub-legal basis, in which wage and hour laws may have been violated and required tax payments were neither withheld nor paid to the appropriate authorities. One can easily imagine the reluctance of such unscrupulous employers to now admit the employment of these aliens so that they may qualify for the intended benefits. Congress recognized this problem in by establishing strict confidentiality rules with regard to the information contained in or supporting such applications.

While many believe that the criminal penalties for violations of these confidentiality protections are the best possible means to reassure such employers, it is perhaps a healthy aspect of our national character that we have a healthy skepticism for the promises of government. Only an adequately funded, effectively run public education campaign will ensure that the undocumented subclass is legalized to the full extent intended by Congress and that valuable, credible evidence, which in many cases can only be provided by an alien's employer, will be made available without hesitation or reluctance.

Moreover, it is even more important that the class of aliens eligible for legalization break the bad habits that were previously necessary to avoid detection and apprehension by law enforcement authorities. The private sector has a substantial responsibility to join government agencies in counseling and warning such aliens against the use of fraudulent documents or other false means to qualify for legalization or otherwise remain in the U.S.

The immigration bar is all too familiar with the sad cases of aliens who commit entirely unnecessary fraud, out of a mistaken belief that it will improve their eligibility for benefits, only to be forever barred from admission to the United States. Never, in our opinion, has it been so important to counsel a large group of individuals against the use of fraud or falsehoods to gain a benefit that is admittedly of the highest value.

Public education funds must also be wisely spent to ensure that aliens are not deluded by the false claims of the rip-offs and scam artists who will prey on their vulnerability to separate them from their money and encourage them to commit fraud. We have urged the Immigration and Naturalization Service to include in its public education campaigns the clear message that only a licensed attorney, a Qualified Designated Entity, or an accredited voluntary agency may properly receive fees to advise and represent an alien before the Immigration Service or the Executive Office for Immigration Review. Offers of assistance, or worse, promises or guarantees by visa consultants, immigration consultants, or "notarios," will only lead in unsuspecting aliens down the wrong path, and these self-appointed experts should be shunned by all quarters.

Preparations for Operations

If the legislative goal of bringing out from the shadows the fear-fulled subclass of undocumented aliens in the United States is to be achieved, it will be necessary to overcome the doubt and skepticism that many aliens will have for the legalization program.

Because of its limited one-year duration, it is important, in our view, that the INS legalization offices be as prepared as possible to prevent the perception of chaos and incompetence that may discourage many eligible aliens from applying.

As this committee is well aware, the attitudes of many toward the legalization program, as well as employer sanctions, will be formed in the first months of their implementation. We now understand that a number of INS offices will not be in a position to receive applications for legalization or interview applicants until some time later in the month of May. We hope that every effort will be made in these states and localities to get the word out and provide adequate information as to the rescheduled opening date.

Those who have, for example, waited in ignorance for information regarding a delayed or cancelled air flight know well that a little bit of accurate information goes a long way toward inspiring confidence in the operating entity. While it is understandable that all of the logistics could not be accomplished in the short period permitted, the Immigration Service now has the opportunity to avoid further problems by making every effort to get the word out as to when the facilities will be up and running in each of the 107 locations.

We also note, with similar regret, that the final regulations which will decide who is eligible for legalization and who is not, as well as how that eligibility must be established, are not scheduled to be published until May 1, only two business days prior to the start of the legalization application period.

While we are confident of the ability of the experienced immigration bar to make final adjustments in each of its cases to reflect the final regulations published on that date, we must acknowledge the tremendous strain these late regulations will impose on the Qualified Designated Entities and others who will rely greatly on newly trained counselors to provide assistance and advice. I am proud to report to the committee that our association has established a national pro bono project through which the experienced immigration bar will provide training and mentor assistance to Qualified Designated Entity and voluntary agency counselors, but it is a great disappointment that we have not had final rules and regulations with which to work for a longer time than will now be possible. We fear this will result in the private sector having to use the next month or so to adequately educate many of the counselors and advisors who will be providing assistance to legalization applicants through the Qualified Designated Entities.

There will, of course, be differences of opinion over the final policy judgments reflected in the regulations as they are published. I expect that some of these differences will be resolved through litigation and need not be addressed by this committee today. Beyond these policy disagreements, however, is the issue of how the final regulations will be interpreted and applied by Immigration Service officers at the local and regional levels.

We have urged the Immigration Service to emphasize to its field officers, through its Central Office and senior management, the statute's purpose that the greatest number of undocumented aliens be granted legalization within the requirements of adequate protections against fraud. As is common in the adjudication of any sort of benefits, there can be an attitude that the benefit should be granted only if there is no basis on which it may be denied. We hope that through its leadership and internal policy memoranda that the message be relayed that legalization applications should be denied only if the applicant is clearly ineligible or has committed fraud in making the application.

Overzealous scrutiny or the desire to deny at the local and regional levels will not only require much more sophisticated representation for legalization applicants from the private sector but could also result in a bogging down of the adjudications process, such that the ability to provide temporary residence and work authorization, as well as the capacity to detect fraud, may be undermined.

On a final point regarding preparedness for the beginning of these programs, we must report an unfortunate circumstance regarding the availability of application forms for the legalization program. As the committee may know, the Immigration Service is greatly discouraging the use of copies of the official application forms, medical examination forms, waiver request forms, and fingerprint forms, by applicants for legalization. Although an exception has been made in the case of the largest national Qualified Designated Entity, other Qualified Designated Entities, voluntary agencies, and licensed attorneys will be relying on the government's supply of official legalization forms. To our knowledge, copies of the basic application form were first made available through the General Printing Office warehouse in Laurel, Maryland, on Friday, April 17. Because these forms have not been available in quantity at federal bookstores or through any other source up until today, our Association has undertaken to send packages of forms to practitioners around the country by express delivery. As of April 28, we had sent out an estimated 30,000 forms to immigration lawyers around the country, and only because the GPO warehouse ran out of its supply of forms were we unable to fulfill pending requests for some 25,000 additional forms.

Although at least this limited supply of basic application forms was available, we have been unable to secure any medical examination forms, which will be required of all applicants at the time of filing. We have been advised that these forms may be made available on May 1, and we will plan to conduct a similar special delivery program beginning on that date. I think we must all agree, however, that this lack of availability of forms will not only impede the commencement of the legalization program but will also engender a negative impression of the preparedness and competence of the Immigration Service to conduct this program.

While we do not agree with those who point to these logistical and administrative weaknesses as evidence of the Immigration Service's insincerity in implementing the legalization program, these adverse opinions can only be countered by the INS' ability to overcome these problems.

Impact on Ongoing Immigration Adjudications

Reflecting a similar problem in the private sector, the Immigration Service employs only a finite number of immigration law experts who might now implement not only the legalization program but also the employer sanctions, seasonal agricultural worker, and new H-2A program, as well as the other new immigration law provisions adopted at the end of the 99th Congress. Even though the legislation provided for the temporary recalling of former Service officers, there is necessarily a shortage of competent, experienced officers.

It is therefore a new mission of the agency that it must recruit and train additional personnel, not only to implement the new legislation, but to fill (and "back-fill") those positions made vacant by personnel transfers to the new programs, as well as through normal attrition. For some time, we must expect some personnel vacancies in both new and ongoing enforcement and adjudications positions.

We hope that in areas, such as the Southern Region, which has experienced in the past some problems in accomplishing its ongoing workload, special attention will have to be given to both promptly filling and providing training to the new officers.

The ability of the Immigration Service to accomplish this substantial expansion of its workforce will have a significant impact not only on enforcement at the border and in the interior of the United States, but also on inspections at international airports and on adjudications of immigration benefits for both nonimmigrants and fully qualifying lawful permanent residents under current law. The new burdens on the Immigration Service will be manifold

and greatly exceed the easily anticipated requirements of legalization, employer sanctions and the new farmworker provisions. For instance, heretofore undocumented aliens will now need INS permission in order to leave the country for brief visits and the demand for "advance parole" by newly legalized temporary residents will be substantial. If delays become too great, the temptation to just duck across the border may become irresistible.

In the past, lawful nonimmigrants whose initial one or two year stay was nearing expiration did not need to worry when their timely-filed extension application could not be adjudicated by the Immigration Service for months after the fact. With the imposition of employer sanctions, however, the necessity of accurate and timely work authorization cannot be questioned. In these cases, it is not enough to merely keep up with past practice; the Service must be able to provide either continued work authorization in very short order or an alternative remedy, such as a "bridge" work authorization, to cover the gap from its receipt of a timely filed extension request to the time an affirmative adjudication can be provided to the alien. In parts of the country where new technologies, entrepreneurial industries, and foreign investment have produced significant business demand for nonimmigration experts and special personnel, the INS' ability to permit such employers to conform with the law will be critical.

While there may be a temptation to simply overlook or officially excuse such technical violations due to the Service's inability to more promptly adjudicate these applications, I think we must all agree that this would not be a positive way to begin the employer sanctions program.

In conclusion on this subject, we hope that Congress will give its adequate attention to the agency's ability to continue its ongoing missions and to resume normal processing standards as soon as possible after the May 5 and June 1 starts legalization, employer sanctions and the agricultural programs. Citizens and aliens alike must be able to expect that they will receive the due process guaranteed by the Fifth Amendment, and, while some rough spots are to be anticipated, the Service should be encouraged employ its new financial resources wisely in order to come back up to speed as soon as possible.

Investigations and Law Enforcement

Before closing, I would like to present some brief observations in regard to the use of appropriated funds for investigations and immigration law enforcement. In particular, we urge this committee and the Justice Department to insure that adequate attention is given to initial training

and ongoing guidance and monitoring of the many new enforcement officer positions to be filled over the next few years.

Immigration Service investigators, many newly hired, will soon be called on the conduct investigations and enforcement operations in circumstances with which they may not be entirely familiar. Given the concern of United States businesses and employers over the burdens and obligations of the employer sanctions provisions, it is particularly important that these enforcement officers, particularly those new to the job or to the immigration field, receive adequate training both as to the substance of the law as well as to appropriate technique. It is equally important that mechanisms be in place for ongoing supervision and monitoring of investigations and enforcement activities by the senior levels of the Immigration Service and Department of Justice.

We note in particular the special problems of those undocumented aliens seeking to qualify as special agricultural workers. While many such applicants can expect assistance from their labor organization or employer, there will undoubtedly be some employers whose fear of prosecution for past labor law or tax violations will cause them to deny any knowledge or employment of former workers who could now be eligible for SAW status. Because of the overall numbers involved, it can be expected there will be numerous cases in which SAW applicants, who must establish agricultural employment as a basic eligibility criteria, will find their statements challenged or denied by their former employers.

Due to the need to deter and prosecute fraud, as well as the authority to pierce the confidentiality protections in the case of fraud, special sensitivity and skill will be needed by government officers in investigating such cases. This may be even more problematic for workers whose SAW eligibility is based on employment by an economic rival of their new prospective employer. There is, in our opinion, no simple answer to this complicated issue, other than the need for continuing recognition of the importance of training and ongoing guidance and supervision.

Concerns have been raised over the use of fraudulent documents to prove eligibility for legalization by unscrupulous applicants. While this is indeed an area for appropriate attention, it can be noted that the centralized regional processing facilities, at which all final decisions regarding legalization applications will be made, will be well suited to discovering patterns of document and other third-party-provided fraud in connection with the legalization program.

Conclusion

In conclusion, we must express some regret that more could not have been accomplished by both the government agencies and the private sector during the past six months in order to prepare for the commencement of the legalization and employer sanctions program of the Immigration Reform and Control Act.

Now that the start-dates are upon us, our renewed attention to how to best utilize and manage the financial resources provided for the implementation of this program is highly warranted. I hope that the experiences and concerns of the immigration bar are of some value to this committee in its oversight of the implementation of these new laws, and I thank you again for this opportunity to provide testimony.

The American Immigration Lawyers Association and the immigration bar would welcome any inquiries the committee may have, now or in the future.

SR121

PREPARED STATEMENT OF JOSEPH B. MURRAY

Good morning Mr. Chairman,

I would like to thank you for this opportunity to address your committee. My name is Joe Murray. Presently I am Chairman of the North Texas Immigration Coalition. The Coalition is a voluntary federation of social service agencies, church groups, attorneys and individuals whose purpose is to uphold, defend, and advocate for the rights of immigrants in the North Texas vicinity.

Presently it is estimated that between 2 to 3.9 million applicants will be applying nationwide. Texas will have between 750,000 to 1 million applicants.

One key to the amnesty process is a network of church groups and other agencies. They will advise aliens on the law and how to document residencies, and help them prepare applications. These organizations include churches and counseling groups operating independently; and designated groups called Qualified Designated Entities, or Q.D.E.'s selected by the I.N.S. to help in the legalization process. Many of the Q.D.E.'s were only selected this past week. Many groups have been counseling aliens for months, and will continue to aid them regardless of whether they receive qualifying status. The delay in designation, which adds more processing responsibilities and only brings a government reimbursement fee of \$15.00 or \$16.00 per application. Considering the processing re-
This fee
sponsibilities put on the shoulders of the Q.D.E.'s is
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inadequate, a fee of \$50.00 per applicant would be more in line with these responsibilities.

Some of the questions social service organizations and church groups face are: Do we hire staff? Do we print Forms? Do we start training programs for personnel? No one seems to know.

There have been logistical problems such as, The Dallas/Ft worth I.N.S. Regional Office is not scheduled to open until May 4. The location of this office did not include mass transit considerations, this now becomes a major hinderance for applicants.

We understand that a contract for a national advertising campaign to inform aliens about the amnesty program was only awarded two weeks ago. As of yet, this campaign has not reached the Dallas/Ft Wort area. In order for this campaign to be successful it must include the electronic and printed media of the minority communities that will be most affected by this legislation.

In the Dallas/Ft Wort area the I.N.S. has not sponsored any community education forums for either aliens or employers

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If the Amnesty Program is going to be successful, advance notice and education will be key factors in the number of aliens who apply for legalization. Based on my community experience, the I.N.S. has defaulted in its responsibility to educate the public about the legalization program. I can only wonder about the sincerity of the I.N.S. when I see that in South Texas with the exception of the Brownsville Diocese no Q.D.E.'s were selected. South Texas has the largest population of Hispanics. If the I.N.S. has not reached out to select Q.D.E.'s in South Texas how can we believe that their public education campaign will reach people who are eligible to apply under this program.

The uncertainties and poor communication so close to the start of the program have intensified uncertainties about legal representation which have been present since the law was passed. These uncertainties can only intensify the personal anguish of the people we are trying to help, and make the unscrupulous elements of our communities richer.

Finally, if the Legalization legislation as it left the Congress had been acted on and this includes the appropriations portion of the bill we would not be in our present state of disorganization and confusion. If the I.N.S. is going to implement all the steps necessary for a successful

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program they are in need of what congress appropriated. I believe it was the intent of congress that this bill represent the National interests of the United States and also it's humane values.

STATEMENT OF
SIMIN YAZDGERDI
FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)

MR. CHAIRMAN, MEMBERS OF THE BUDGET COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO TESTIFY ABOUT THE IMMIGRATION SERVICE AND ITS RESPONSIBILITIES UNDER THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

MY NAME IS SIMIN YAZDGERDI. I AM DIRECTOR OF GOVERNMENT RELATIONS FOR FAIR, THE FEDERATION FOR AMERICAN IMMIGRATION REFORM. FAIR IS A NATIONAL NON-PROFIT ORGANIZATION WORKING TO EDUCATE THE AMERICAN PUBLIC ABOUT THE NEED TO REFORM U.S. IMMIGRATION POLICY TO REFLECT THE REALITIES OF THE 1980'S. FAIR BELIEVES:

THAT EVERY IMMIGRANT SHOULD BE A LEGAL IMMIGRANT;

THAT THE U.S. SHOULD SET A COMPREHENSIVE CEILING ON LEGAL IMMIGRATION IN ACCORDANCE WITH THE DEMOGRAPHIC, NATURAL RESOURCE AND ECONOMIC NEEDS OF THE UNITED STATES;

THAT IMMIGRATION TO THE UNITED STATES SHOULD NOT HARM AMERICA'S POOR AND DISADVANTAGED; AND,

THAT U.S. IMMIGRATION POLICY SHOULD NOT FAVOR OR DISCRIMINATE ON THE BASIS OF RACE, RELIGION, OR NATIONAL ORIGIN.

FAIR HAS BEEN A LEADING PROPONENT OF IMMIGRATION REFORM LEGISLATION SINCE 1978. DESPITE OUR OPPOSITION TO THE ENORMOUS AMNESTY PROGRAM, WE SUPPORTED THE NEW IMMIGRATION LAW THAT PASSED THE 99TH CONGRESS LAST FALL. THE PRINCIPAL PURPOSE OF THIS LEGISLATION IS TO CONTROL THE FLOW OF ILLEGAL ALIENS ENTERING THE UNITED STATES. IT IS ESSENTIAL THAT OUR NATION REGAIN CONTROL OF ITS BORDERS.

WE BELIEVE THAT CONGRESS MUST CONTINUE TO LEAD THE WAY TOWARD IMMIGRATION REFORM AND CONTROL BY PROVIDING SUFFICIENT FUNDS TO IMPLEMENT THE NEW ENFORCEMENT MECHANISMS IT CREATED LAST YEAR.

AFTER YEARS OF STUDY AND DEBATE, CONGRESS DECIDED THAT THE BEST WAY TO CONTROL ILLEGAL IMMIGRATION WAS TO MAKE IT ILLEGAL FOR EMPLOYERS TO HIRE ILLEGAL ALIENS, THEREBY TURNING OFF THE JOB MAGNET DRAWING THEM TO THE UNITED STATES. THIS CONCEPT, CALLED EMPLOYER SANCTIONS, IS THE CORNERSTONE OF IMMIGRATION REFORM AND THE ESSENTIAL ENFORCEMENT ELEMENT OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986.

THE IMMIGRATION BILL ALSO CREATED A MASSIVE NEW AMNESTY PROGRAM FOR ILLEGAL ALIENS WHO CAN PROVE THAT THEY HAVE CONTINUOUSLY RESIDED IN THE UNITED STATES SINCE JANUARY 1, 1982. THE AMNESTY PROGRAM IS SCHEDULED TO BEGIN ON MAY 5, 1987, NEXT TUESDAY.

FAIR IS DEEPLY CONCERNED ABOUT HOW THE AMNESTY PROGRAM WILL FUNCTION AND WANTS TO MAKE CERTAIN THAT ONLY THOSE INDIVIDUALS WHO ARE TRULY ELIGIBLE WILL BE LEGALIZED. IN ORDER TO MAINTAIN THE INTEGRITY OF THE AMNESTY PROGRAM, THE INS WILL NEED ADEQUATE RESOURCES TO CAREFULLY SCREEN ALL AMNESTY APPLICATIONS FOR FRAUD. THE MAIN THRUST OF MY TESTIMONY, THEREFORE, IS THE CRUCIAL NEED FOR ADDITIONAL FUNDING TO PREVENT AMNESTY FRAUD.

BEFORE I DISCUSS FAIR'S CONCERNS ABOUT THE AMNESTY PROGRAM, I WOULD LIKE TO DESCRIBE THE TREMENDOUS RESPONSIBILITIES THAT FACE THE INS AT THIS TIME. WITH PASSAGE OF THE IMMIGRATION REFORM AND CONTROL ACT, THE INS' WORKLOAD HAS BEEN VASTLY EXPANDED TO INCLUDE:

ENFORCING EMPLOYER SANCTIONS,
INCREASING BORDER ENFORCEMENT.

ADMINISTERING THE LEGALIZATION PROGRAM FOR A POTENTIAL 3.9
MILLION APPLICANTS, AND
ADMINISTERING THE SPECIAL AGRICULTURAL WORKER PROGRAM.

THESE NEW RESPONSIBILITIES ARE IN ADDITION TO AN ALREADY STAGGERING
INS WORKLOAD. WITH A STAFF SMALLER THAN THE NEW YORK CITY POLICE
DEPARTMENT, THE INS MUST PATROL 2,000 MILES OF LAND BORDER WITH MEXICO,
OVER 3,750 MILES OF LAND BORDER WITH CANADA, ADMIT OR DENY 328 MILLION
PERSONS AT OUR PORTS OF ENTRY EACH YEAR, KEEP NATURALIZATION RECORDS AND
RECORDS ON PERMANENT RESIDENT ALIENS, EXTEND VISAS HELD BY FOREIGN
VISITORS, DEVELOP SECURE DOCUMENTS FOR ALIEN IDENTIFICATION, CONTROL AND
DEPORT CRIMINAL ALIENS, AND INVESTIGATE THOUSANDS OF VIOLATIONS OF THE
IMMIGRATION AND NATIONALITY ACT.

THE FUNDING LEVELS CONGRESS PROVIDED THE INS IN THE PAST HAVE NOT
KEPT PACE WITH THE SKYROCKETING WORKLOAD. AS A RESULT, THE INS HAS
SLIPPED FURTHER AND FURTHER BEHIND IN ITS EFFORTS TO PROTECT OUR
BORDERS. THESE UNPROTECTED BORDERS WERE THE MAJOR REASON THAT
CONGRESS PASSED THE IMMIGRATION LAW LAST YEAR.

UNFORTUNATELY, THE FUNDING SITUATION IS GETTING BLEAKER. THE
ADMINISTRATION HAS NOT ASKED CONGRESS FOR ENOUGH FUNDS FOR THE INS FOR
EITHER THE CURRENT OR THE NEXT FISCAL YEARS. NOR HAS CONGRESS, IN ITS
SUPPLEMENTAL APPROPRIATIONS FOR THIS FISCAL YEAR, MADE UP THE
BUDGET SHORTFALLS.

CONGRESS, WHICH LAST YEAR OVERWHELMINGLY PASSED THE MOORHEAD
AMENDMENT TO THE IMMIGRATION ACT REQUIRING A FIFTY PERCENT INCREASE IN
THE BORDER PATROL, HAS NOT EVEN GIVEN THE INS IN THIS YEAR'S
SUPPLEMENTAL APPROPRIATIONS ENOUGH MONEY TO KEEP UP WITH NORMAL

PERSONNEL ATTRITION. MOREOVER, EVEN IF THE INS GETS ALL THE SUPPLEMENTAL FUNDS REQUESTED FOR NEW INVESTIGATORS, THE INS WILL STILL HAVE ONLY AS MANY INVESTIGATORS ON THE JOB AS IT HAD IN 1975.

MR. CHAIRMAN, THE PROBLEMS FACING THE INS CAN BE STATED QUITE SIMPLY: THEY DO NOT HAVE THE MONEY TO PROPERLY CARRY OUT THE ENORMOUS TASKS CONGRESS HAS MANDATED. FOR 1987, \$422 MILLION IN SUPPLEMENTAL FUNDS FOR THE INS WAS AUTHORIZED UNDER THE ACT. THE INS ASKED THE ADMINISTRATION FOR THAT AMOUNT. HOWEVER, THE OMB CUT THAT REQUEST TO \$137 MILLION. AND LAST WEEK THE HOUSE OF REPRESENTATIVES CUT THE INS BUDGET AGAIN BY 21 PERCENT, LOWERING IT TO \$108 MILLION. \$108 MILLION IS ONLY ONE-QUARTER OF THE ORIGINAL AUTHORIZED FUNDING LEVELS.

RETURNING TO YOUR SPECIFIC CONCERN, MR. CHAIRMAN, THE AMNESTY PROGRAM WAS DESIGNED TO PROVIDE LEGAL STATUS TO THOSE INDIVIDUALS WHO HAVE LONG, ESTABLISHED ROOTS IN THE UNITED STATES. A GRANT OF AMNESTY THAT WILL LEAD TO EVENTUAL CITIZENSHIP IS NOT TO BE TAKEN LIGHTLY.

UNFORTUNATELY, IT SEEMS THAT THE ADMINISTRATION IS TAKING THIS PROGRAM LIGHTLY. IF YOU LOOK AT THE BUDGET FIGURES, MR. CHAIRMAN, YOU WILL SEE THAT THERE IS NO FUNDING AT ALL REQUESTED FOR INVESTIGATIONS INTO AMNESTY FRAUD. THESE INVESTIGATIONS ARE NEEDED FOR FERRETING OUT FRAUDULENT APPLICATIONS. UNFORTUNATELY, THE ONLY INVESTIGATORS ASSIGNED TO AMNESTY FRAUD WILL BE THE SAME 340 INVESTIGATORS ASSIGNED TO EMPLOYER SANCTIONS INVESTIGATIONS.

IF 3.9 MILLION ALIENS APPLY FOR AMNESTY, EVEN A TEN PERCENT FRAUD RATE WOULD MEAN 390,000 FRAUDULENT APPLICATIONS. I RECENTLY SPOKE TO THE INS REGIONAL OFFICE IN SAN PEDRO, AND WAS INFORMED THAT THE SAN DIEGO INS DISTRICT OFFICE ARRESTED SOMEONE LAST MONTH TRYING TO SELL FALSE RENT RECEIPTS TO USE ON AMNESTY APPLICATIONS. THE REGIONAL

OFFICE ALSO TOLD ME THERE ARE REPORTS OF VENDORS SELLING ENTIRE PACKETS OF FRAUDULENT DOCUMENTS CONTAINING FALSE EMPLOYMENT RECORDS, RENT RECEIPTS, UTILITY BILLS, ETC. -- IN SHORT, ALL THE DOCUMENTARY PROOF NEEDED TO ESTABLISH A SOLID CLAIM TO AMNESTY. THE "WORD ON THE STREET" IS THAT SUCK PACKETS PROMISING A FAST TRACK TO AMNESTY ARE SELLING FOR A FEW HUNDRED DOLLARS.

THE INS WANTED AN ADDITIONAL 350 INVESTIGATORS JUST TO WORK ON AMNESTY FRAUD (IN ADDITION TO THE NEW INVESTIGATORS FOR EMPLOYER SANCTIONS). THAT'S THE NUMBER WHICH INS BELIEVED NECESSARY TO ROOT OUT AMNESTY FRAUD. BUT THOSE ADDITIONAL 350 INVESTIGATORS NEVER MADE IT INTO THE BUDGET REQUEST. AS I JUST MENTIONED, NO NEW AMNESTY FRAUD INVESTIGATORS WILL BE FUNDED UNDER THIS BUDGET.

THE INS HAS STRUCTURED THE AMNESTY PROGRAM TO BE SELF FUNDING -- PAID FOR ENTIRELY THROUGH FEES CHARGED TO AMNESTY APPLICANTS. HOWEVER, THE FEE STRUCTURE DOES NOT INCLUDE FUNDS FOR INVESTIGATING AMNESTY FRAUD.

MAKING THE PROGRAM SELF-FUNDING IS CONSISTENT WITH WHAT CONGRESS INTENDED WHEN IT PASSED THE AMNESTY LAW. LET ME QUOTE FROM THE CONFERENCE REPORT ON THE BILL:

"IT IS THE UNDERSTANDING OF THE CONFEREES THAT THE FEE LEVEL SHOULD BE SUFFICIENT TO COVER THE COSTS OF PROCESSING APPLICATIONS AND SHOULD BE COMPARABLE TO THOSE CHARGED FOR ALIENS SEEKING ENTRY TO THE UNITED STATES AS IMMIGRANTS."

H.R. REPT. 99-1000, P. 92.

FAIR BELIEVES THAT THE COST OF PROVIDING AMNESTY SHOULD BE

BORNE BY THE APPLICANTS RECEIVING THE BENEFIT AND NOT THE AMERICAN TAXPAYER. THE PROBLEM, HOWEVER, IS THAT THE FEE OF \$185 COVERS ONLY "PROCESSING COSTS" WHICH DO NOT INCLUDE INVESTIGATORS OF AMNESTY FRAUD OR ABUSE. THIS DEFINITION OF "COSTS OF PROCESSING APPLICATIONS" IS TOO RESTRICTIVE, SINCE AN INTEGRAL PART OF THE AMNESTY PROCESS IS THE VERIFICATION OF APPLICANTS' STATEMENTS AND THE INVESTIGATION OF FRAUD. SINCE NO FUNDING HAS BEEN REQUESTED FOR AMNESTY FRAUD, \$185 PER APPLICANT IS NOT ENOUGH.

THIS QUESTION OF FEES AND RESOURCES IS NOT AN IDLE CONCERN. IF THE INS IS NOT GIVEN THE RESOURCES TO THOROUGHLY INVESTIGATE AND WEED OUT FRAUDULENT AMNESTY CLAIMS FROM THE OUTSET, THE SERVICE WILL SOON FIND ITSELF INUNDATED WITH QUESTIONABLE AMNESTY APPLICATIONS.

IN ADDITION, BY RELYING ON ITS ABILITY TO RAISE NECESSARY FUNDS FROM FEE RECEIPTS, THE INS HAS SPENT MUCH OF ITS FOURTH QUARTER 1987 ENFORCEMENT MONEY. INS HOPES THAT CONGRESS WILL GIVE IT ENOUGH IN THE SUPPLEMENTAL TO REPAY THAT MONEY. IF CONGRESS DOES NOT GIVE THE INS ENOUGH MONEY TO REPAY THE AMOUNTS IT HAS DRAWN ON, THE INS WILL BE FORCED TO CUT ENFORCEMENT THIS SUMMER, JUST AS EMPLOYER SANCTIONS IS STARTING.

FAIR DOES NOT WANT, AND I AM SURE THAT THIS COMMITTEE AGREES, THE INS TO STOP ENFORCEMENT ACTIVITIES JUST AS EMPLOYER SANCTIONS ARE BECOMING EFFECTIVE. BUT THAT IS WHAT WILL HAPPEN IF THE SUPPLEMENTAL APPROPRIATIONS ARE NEITHER SUFFICIENT NOR TIMELY ENOUGH TO REIMBURSE INS ADVANCED SPENDING BEFORE THE FOURTH QUARTER.

THIS WOULD BE A BUDGETARY DISASTER, MR. CHAIRMAN. MANY OBSERVERS NOTE THAT THE CRUCIAL PERIOD FOR EMPLOYER SANCTIONS IS AT THE VERY BEGINNING. WE MUST IMPRESS UPON EMPLOYERS AND ILLEGAL ALIENS THAT

EMPLOYER SANCTIONS WILL BE VIGOROUSLY ENFORCED. IF, ON THE OTHER HAND, WE LOSE THAT PSYCHOLOGICAL DETERRENT IN THE BEGINNING, AND ILLEGAL ALIENS BELIEVE THAT THEY CAN STILL EASILY GET JOBS IN THE UNITED STATES, WE WILL HAVE TO SPEND FAR MORE IN THE FUTURE FOR EMPLOYER SANCTIONS ENFORCEMENT. THE INVESTMENT IN EARLY ENFORCEMENT WILL REDUCE FUTURE EXPENDITURES MANY TIMES OVER.

IN THIS FISCAL ENVIRONMENT, WE MUST ALL CONSIDER THE IMPACT OF ADDITIONAL SPENDING ON THE DEFICIT. CARRYING OUT THE PROVISIONS OF THE IMMIGRATION REFORM AND CONTROL ACT IS A COSTLY PROPOSITION. HOWEVER, FAILING TO IMPLEMENT THE NEW LAW BY PROVIDING ENOUGH FUNDS FOR ENFORCEMENT WILL BE EVEN MORE EXPENSIVE IN THE FUTURE. IF WE ALLOW HUNDREDS OF THOUSANDS OF INELIGIBLE ALIENS TO FRAUDULENTLY RECEIVE AMNESTY, WE WILL ALSO SPEND MILLIONS OF DOLLARS TO PROVIDE SOCIAL BENEFITS TO THOSE ALIENS AND THEIR RELATIVES LATER.

AS AN ILLUSTRATION, LET'S TAKE ONE ILLEGAL ALIEN WHO FRAUDULENTLY RECEIVES AMNESTY. NOT ONLY WILL THAT ALIEN'S STATE AND LOCAL GOVERNMENTS RECEIVE FUNDING FROM THE FEDERAL GOVERNMENT BASED ON THE ALIEN'S LEGALIZATION OF STATUS, BUT THE ALIEN CAN PETITION FOR HIS RELATIVES. THOSE RELATIVES, THROUGH A PROCESS KNOWN AS "CHAIN MIGRATION", MAY LATER PETITION FOR THEIR RELATIVES, AND SO ON. ONE RECENT IMMIGRANT BROUGHT 69 RELATIVES INTO THE UNITED STATES IN TEN YEARS. THOSE NEW IMMIGRANTS WILL ALL BE ELIGIBLE FOR SOCIAL SERVICES.

IN CLOSING, I'D LIKE TO QUOTE FROM AN ARTICLE THAT APPEARED YESTERDAY (APRIL 29, 1987) IN THE CHRISTIAN SCIENCE MONITOR. A RANKING IMMIGRATION OFFICIAL WHO ASKED THAT HIS NAME BE WITHHELD IN THE STORY STATED ABOUT THE AMNESTY PROGRAM: "WE MAY JUST HAVE TO RUBBER-STAMP THOUSANDS OF APPLICATIONS." ANOTHER INS INTELLIGENCE

OFFICER IN THE SAME ARTICLE STATED: "I DON'T HAVE ENOUGH TIME RIGHT NOW TO CHECK WHAT IS ALREADY COMING INTO THIS OFFICE. I'M SUPPOSED TO EXAMINE PASSPORTS FOR FORGERIES AND PHOTO SUBSTITUTIONS, ALTERATIONS, AND I DON'T HAVE TIME. I'M RUBBER-STAMPING THEM OUT OF THIS OFFICE."

MR. CHAIRMAN, NO ONE WANTS AN AMNESTY PROGRAM THAT WILL BE RIDDLED WITH FRAUD. IT IS UP TO CONGRESS TO MAKE SURE THAT THE INS HAS ENOUGH RESOURCES TO ADMINISTER A SOUND AMNESTY PROGRAM, WITH FRAUD KEPT TO A MINIMUM.

THANK YOU AGAIN FOR THIS OPPORTUNITY TO TESTIFY.

PREPARED STATEMENT OF DANIEL STEIN

Mr. Chairman, Members of the Committee:

I am pleased to have this opportunity to address the Committee concerning INS budgetary resources and implementation of the Immigration Reform and Control Act of 1986. My name is Daniel Stein, and I am Director of the Immigration Reform Law Institute (IRLI), a non-profit, public interest law firm, working on behalf of improved immigration law enforcement.

The Immigration Reform and Control Act of 1986 is perhaps one of the most far-reaching immigration reform measures yet passed by a Congress. As everyone knows, the bill for the first time makes it illegal for employers to hire aliens unauthorized to work, and grants an "amnesty" for potentially several million aliens residing unlawfully in the United States.

At the time the Act was signed into law, it had been well established that the Immigration Service was indeed overworked and undermanned. The professionalism and competence of most of the Immigration and Naturalization Service is above question. It has remained diligent in its duties as Congress has steadily increased its responsibilities without substantially increasing funding. The simple truth of the matter is that the Immigration Service's funding has not maintained pace with its responsibilities. The consequence? The integrity of the benefits adjudication system has suffered. Studies by the Immigration Service suggest that perhaps 30% to 40% of all applications submitted on behalf of relatives are fraudulent. The problem of marriage fraud to obtain immigration benefits is so great that last year Congress also passed the Immigration

Marriage Fraud Amendments of 1986, which require all aliens obtaining benefits through marriage to prove after two years that the marriage is still viable (with certain exceptions).

Importantly however, by requiring the INS to do follow-up investigations two years later, the Immigration Marriage Fraud Amendments of 1986 will increase the work-load of INS investigators substantially. And yet there are no authorizations in that bill for additional investigators.

To add to the burden, Congress has now asked the Immigration Service to embark on perhaps its most ambitious undertaking to date. At a time when the National Legislature has asked the Immigration Service to embark on an aggressive program to penalize employers who hire illegal aliens, Congress also expects that same agency to process untold millions of amnesty applications. My understanding is that the Immigration Service operates on the working assumption that it expects to process some 3.9 million applications over a twelve month period, and an additional 850,000 tier I SAW workers over an eighteen month period. Congress has asked the INS to process nearly 5 million adjustment applications over an eighteen month period. The program is unprecedented in scope -- exceeding even the ambitions Ellis Island period. But a similar fraud rate could mean as many as a million fraudulent applications submitted and, perhaps, proved.

Please note also that each alien who receives the amnesty may in turn petition relatives, the number delimited only by family size. The family preference petitions will in turn generate enormous backlogs in years to come, which will further

pressure the system in unmanageable ways. In the meantime, the Immigration Service is already under pressure to approve as many applications as possible. Litigation brought on the west coast has sought to enjoin a substantial amount of the Immigration Service's enforcement activities, premised solely on the potential eligibility for amnesty. See Catholic Social Services v. Meese, CIV-S-86-1343-LKK (April 3, 1987). This case, like many others sure to be brought in the future, is calculated to pressure the Immigration Service to approve as many applications as possible. In the face of this pressure, it is not surprising, therefore, that the Immigration Service will resolve questionable cases in favor of the applicant. [Discussed more below.]

The problem, of course, is that Congress must appropriate the money necessary to implement its projects. The modest budgetary supplement for FY-87 of \$137.8 million to implement the Immigration Reform and Control Act of 1986, which has been further reduced in the House, is inadequate for the task at hand, were it now available. My understanding is that this was further in the House on Thursday. Earlier statements from the Immigration Service suggested that some 340 new investigators would be added to cover both the marriage fraud bill, employer sanctions, and the amnesty. Undoubtedly this minimal increase will now be further reduced substantially below those originally estimated for the originally-authorized levels. As a result, the integrity of the investigations and adjudication function surely will deteriorate.

Immigration specialist, Edwin Harwood, of the Hoover Institution, noted in a recent book, In Liberty's Shadow, that the

investigator function in the Immigration Service is a difficult one:

Although the complexity of the provisions and guidelines relating the certain [Immigration and Nationality Act] benefits (relative petitions, temporary worker visas, and the like) explains the intricacy of some fraud investigations, easily the investigator's main problem is simply finding sufficient evidence at a reasonable cost in terms of time and effort to establish the basis for denial. In theory the proof of burden falls on the alien and petitioner, but examiners cannot arbitrarily decide that a benefit claim is fraudulent. And in all but the most blatant cases, the bona fides of eligibility have to be checked out. The difficulty and cost of doing so must be balanced against the return anticipated from the investigation. (At 146.)

After analyzing each of the problems associated with immigration investigations, all of the evidentiary problems associated with immigration investigations, Harwood concludes as follows:

Although adequate guarantee of fair and impartial administrative hearings is an important part of our Constitutional heritage, these add to the burdens of law enforcement. They also create equity problems to the extent that aliens who play by the rules are penalized by those who manage to get to the United States, build immigration equities, and capture visas for themselves and their relatives. If we as a society want expeditious and equitable enforcement, we must either provide the resources required, or trim back alien due process rights. We cannot have it both ways. (At 158.)

Mr. Chairman, I am not for diminishing the due process rights of aliens at administrative hearings, nor am I for diminishing the due process rights of aliens seeking to receive a fair and impartial adjudication of their application. I am however, interested in ensuring that the amnesty does not serve to completely undermine the integrity of the Immigration

Service's adjudications function. The investigator staff of the Immigration Service was completely overburdened when last year's laws were passed. Now it is being asked to accomplish a Herculean task with a modest increase in resources. Something has to give. As a result, I fear that the amnesty program will lack integrity in that only those cases where there is manifest fraud or some other glaring deficiency on the face of the application will there be a conditional denial, and follow-up investigation.

Consider, if you will, that at the local Legalization Center, each processor will handle some 25-30 applications per day. In an eight hour day, the processor may spend up to 15 minutes with each applicant. He or she must examine the documents for completeness, swear in the applicant, conduct an interview and issue work authorization. At this stage of the adjudication, the officer will only be able to insure that the alien has alleged predicate facts sufficient to constitute a prima facie case of eligibility. At the Regional Processing Facility, the 36 examiners must handle an expected 4,000 applications per day; current estimates are that some 3,600 will simply be entered into the ADP system, and unless a computerized cross check with enforcement agency records triggers an investigation, the application will be approved. Only about 400 to 600 a day will be examined for fraud at each center. Further, I can find no evidence that the INS has the additional enforcement manpower to follow up on fraud in the applications process.

Mr. Chairman, the major purpose of the Immigration Reform

and Control Act of 1986 was, as the Ninth Circuit Court of Appeals recently reaffirmed, a law "to control our borders and enable the INS to target its enforcement resources." And yet the net effect of the Act thus far appears to be an Immigration Service rushing to meet an avalanche of applications, cannibalizing its existing service functions in borrowing from future appropriations.

It is not a foregone conclusion that amnesty applications must be rushed through. According to the Immigration Service's own internal procedures, aliens who are statutory eligible based on the documents submitted with the application will be granted conditional approval and the authorization to work during the pendency of the application. As a result, there is no reason why the adjudications function should be rushed. In the past when under pressure, the natural institutional response of the Immigration Service has been to "streamline" the adjudications process (i.e., scrutinize the facts underlying the application less carefully). It is not surprising, therefore, that in the context of this amnesty program the Immigration Service is sending out signals to the effect that it is "particularly eager to comply with the spirit of approval encouraged by Congress in enacting the legalization provisions." There is no reason why this need be the case this time. The Immigration Service needs to maintain the integrity of the amnesty adjudications process. And this means more investigators.

The Immigration Reform and Control Act of 1986 will be a success only if it succeeds in fostering respect for the immigration law today and in the future. An amnesty program

characterized by massive fraud will not accomplish that objective. Proponents for the illegal alien population want more resources for the Immigration Service so that their amnesty applications will be processed quickly. We are interested in more resources in order that amnesty applications be scrutinized to ensure eligibility. In either case, the cure is the same: the Immigration and Naturalization Service needs the adequate manpower to do the job.

Thank you, Mr. Chairman, for this opportunity to appear before the committee.

[Whereupon, at 12:05 p.m., the Committee was adjourned.]

