

**FAMILY UNIFICATION, EMPLOYER SANCTIONS AND
ANTI-DISCRIMINATION UNDER IRCA**

United State



HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND
INTERNATIONAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

FAMILY UNIFICATION, EMPLOYER SANCTIONS AND
ANTI-DISCRIMINATION UNDER IRCA

AUGUST 23, 1988

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FAMILY UNIFICATION, EMPLOYER SANCTIONS AND ANTI-DISCRIMINATION UNDER IRCA

TUESDAY, AUGUST 23, 1988

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND
INTERNATIONAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to call, at 1:30 p.m. in the Fresla Room, Coates University Center, Trinity University, 715 Stadium Drive, San Antonio, Texas, Hon. Romano Mazzoli (chairman) presiding.

Members present: Representatives Mazzoli and Bryant.

Staff present: Ed Kelly.

Mr. MAZZOLI. The subcommittee will come to order. Would the people in the back please take seats? We are about to get started.

Let me welcome all of you to the hearing. I appreciate very much your taking time out of your busy days to attend, some of you coming from other cities in Texas. And I appreciate your putting yourself out to join us.

I also very much appreciate having a chance to join with my friend and colleague, John Bryant, in this hearing. John is a young man who has brought great distinction to himself and to Texas in his committee assignments, and they range across the board from Energy and Commerce, which is one of the very major committees, to the other major committee assignment, which is Judiciary. And he serves on our subcommittee, and I appreciate John taking the time out to join us.

I have just a very brief statement, just to the general effect that the Subcommittee on Immigration, Refugees, and International Law does meet today here in San Antonio at Trinity College for a field hearing to continue its oversight on the implementation of the 1986 Immigration Reform and Control Act.

IRCA, as it is given the acronym, is a balanced piece of legislation. It is designed to bring about greater control over our border entry and exit. At the same time, it is meant to do humanity and justice and compassion to the people who are in this country, in some cases illegally.

As we know, in an effort to provide this balance, we have employer sanctions, which is again designed to eliminate the lure that would induce people to cross the borders and enter the country.

We provide anti-discrimination protection so that the people who need jobs and want jobs and are qualified for jobs can get them,

and not be discriminated against. And then we have the question of the various labor programs, the H2A program, the program for agricultural labor.

Our field hearing today will primarily concentrate on the three areas in which we have had some indication that some attention should be given. One is the anti-discrimination part of employer sanctions; the other is the employer sanctions section itself; and then we will also hear about family unification, which stems from legalization and the questions that might have arisen from that.

So with that, the committee is underway, and I would recognize my friend John Bryant for any statement he would wish to make.

Mr. BRYANT. Thank you, Mr. Chairman. On behalf of all of us here, I would like to express our very profound appreciation to you for traveling all the way from Louisville, Kentucky down to Texas, and to our most beautiful city, San Antonio, to take up the first hearing that we have had, I believe, on the operation of the new immigration law which was enacted by the Congress.

I would like to say that this is an enormously difficult matter. It was extremely difficult for this subcommittee; it is perhaps the most difficult legislative task that I have been involved in in nearly 15 years of being a legislator at the State and national level.

The bill was passed after initially being believed to have been defeated, principally because of the fact that this committee assumed, and we still work on the assumption, that we had addressed the major concern of critics of this approach, which was the possibility that there would be discrimination by employers against Americans, particularly Americans of Hispanic descent, on the part of employers who, in an over-abundance of caution about avoiding any sanctions, would avoid hiring people who they thought might not be American citizens.

That was the principal concern in the enactment of this bill from the very beginning, and it was only after we adopted revisions to it, including the Frank amendment, to construct what we felt was an airtight bill that would absolutely prevent discrimination, that this bill had a realistic chance of passing and received my support, the support of Congressman Mazzoli, and others.

It is particularly important that we be here for this hearing today because of the fact that there are reports emerging from the General Accounting Office that have not yet been confirmed or examined, and are certainly incomplete, that suggest the possibility that there is a measurable or significant amount of discrimination taking place in the workplace against Americans who may be of Hispanic origin.

If that is the case, the underpinnings of this law are in doubt, and we need to look at it and find a way to fix that problem immediately, and we are anxious to hear today the information and opinions and facts brought forth by the witnesses with regard to the possibility of employment discrimination.

Second, an enormous concern to all of us has been the issue of family unification. Legislation was introduced earlier this year to deal with the family unification problem. Our subcommittee—I think I am stating it correctly, and correct me, Mr. Chairman, if I am in error—has hesitated to deal with it because we were assured

by the Immigration and Naturalization Service that by administrative ruling, they are adequately dealing with the problem.

There is a significant body of opinion that differs with that, and I think we need to hear that and know exactly where we stand with regard to family unification, and whether or not the assurances given us are reliable.

And third, I think it is very much in order for us to examine the whole issue of employer sanctions and how well they are working or not working. Preliminary indications, based upon data regarding apprehensions at the border of people trying to cross illegally, indicate the possibility that employer sanctions are working.

On the other hand, that information, that data, is not yet complete. It would be of benefit to the committee for us to have the facts and opinions of the witnesses in that regard.

In summary, I want to again profoundly thank the Chairman, not only for myself but for all of us in Texas, and I hope I can presume to speak for those in the audience today, for bringing this subcommittee and the record of this subcommittee to San Antonio to hear from those that work on a daily basis with the implementation of this law. I thank you very much, Mr. Chairman.

Mr. MAZZOLI. John, thank you very much. You have made a very fine statement, and that is what we are trying to get, is to the truth, and exactly how the law is being implemented.

Let me call forth our first panel and ask them to step forward and to join us. Ms. Vanna Slaughter, the Project Director of the Catholic Charities Immigration Service; Mr. Adan Vega of the Hispanic Advisory Council; and Mr. Jose DeLara, president of LULAC.

I guess Mr. DeLara is not here, so we will proceed with the two witnesses we have. And you will understand that because we have a number of witnesses in a fairly short working day, that I would like, if we could, to limit the statements, the direct statements, to something around five minutes, if we could do it.

And then there will be several questions, and that usually is the part of the hearing that elicits the information for us that is most useful. So let me at this point, then, recognize Ms. Vanna Slaughter.

TESTIMONY OF VANNA K. SLAUGHTER, NORTH TEXAS IMMIGRATION COALITION

Ms. SLAUGHTER. Thank you, Congressman. My name is Vanna K. Slaughter, and I am wearing sort of two hats here today, representing the North Texas Immigration Coalition of the Dallas/Fort Worth Metroplex area, as well as Catholic Charities, Immigration Counseling Services, which is a BIA-accredited immigration service agency which I direct.

My comments will be based on my experience directing the Immigration Counseling Services over the last three years, and being very intimately involved with the legalization program since its enactment.

On behalf of the Coalition, I would like to commend the subcommittee for its continued interest in hearing testimony on the issue of family unity, which my comments will be directed at today.

We feel that the issue of family unity remains an unresolved problem product of IRCA's design. Although we have all, I am sure, in this room, participated in discussions and debates on this issue in months past, I feel like it is only recently that we in the trenches have started to see the true effect of the IRCA split families, as I would like to call them, in our communities of recent date.

The INS Family Fairness Guidelines issued in November of 1987, we feel, fall short in their contemplation of a viable remedy to the painful yet common scenario of family units which are tragically separated by IRCA's provisions.

My own experience at Catholic Charities, in reviewing some five thousand cases since January of 1987, has revealed that approximately one-third of our case load that we processed for legalization involved non-qualifying family members.

And, of course, many of these families involve family members, spouses or children, that have arrived since the 1982 cutoff date; but, likewise, several others, hundreds of others, involve U.S. citizen children, which I think should have a special concern to us that perhaps we haven't given the depth of attention that they deserve in our discussions past. These children will remain our nation's own; they will ultimately come back here, as we have seen in other deportation scenarios as well.

However, what we are finding in our community is that these children are going to be forced to live in the same underclass lifestyle as their parents when they lack the legal status to remain here and move and work freely in our communities.

Already, at Catholic Charities, I have received numerous phone calls from mothers inquiring as to my advice whether they appear at the public school systems to enroll their children in school for the fall semester, especially in areas such as Congressman Bryant's own district, where the INS has decided it is their favorite area for apprehending aliens. These mothers are calling, asking whether it is safe for them to go out on the streets.

And especially at a time when our educators are urging parent participation in students' education as the key factor in improving student involvement in schools, I think it is critical that we look at this as to what effect it is having on parental participation in their students' educations. None of us here today, I don't think, should forget that these kids had nothing to do with their parents' decisions to illegally come to the United States.

In my written testimony, I have provided several case examples, and they are true case examples, only with the names changed. And for the economy of time, I won't go into each of them.

But I would ask you all to please read them; they do represent real case examples, and contrary to Mr. Duke Austin, INS spokesman's statement earlier, I believe in December of last year that the family unity issue really was a red herring, I offer you three case examples right there to show you that these are just a few of several hundred that our agency has that are true mixed-family situations.

The INS Family Fairness Guidelines published in November of 1987 have caused tremendous confusion in the community as their interpretation through the media and word of mouth communication channels has left the mistaken impression with some individ-

uals that the policy is far more generous than even the INS says it is.

It concerns us that individuals are approaching INS district offices on their own, thinking that they can obtain "permisos," or work authorizations, for their non-qualifying spouses and children, unaware of the narrowly defined group of individuals eligible for the "blanket" provision the guidelines set forth.

At Catholic Charities, we have had a few of these examples already come. The Maria Lopez family is one of them, constituting a mother who qualified, a child who qualified, two U.S. citizen children, and a father who did not qualify.

The father came to Dallas the other day and, on his own, approached the INS district office, asking for Family Fairness family unity work permission, and he was immediately placed in deportation proceedings. He was very quickly given a hearing before an immigration judge, much faster than any case I have ever seen, and, of course, the immigration judge had no remedy to offer him. His fate is now in the hands of the INS district director.

I have discussed this case with our INS district director, and he claimed to not be aware of it, and feels like it was some front-line individuals working in his district office who placed this person in deportation proceedings.

It is of concern to us that the door is wide open to the inconsistent application of the guidelines, given the discretionary nature with which the non-blanket cases, such as the *Maria Lopez* case, are to be considered by INS district directors—and their staffs, I should add.

The family unity issue becomes even more critical now than before with the INS's voracious post-IRCA enforcement efforts. With the routine workplace raids, neighborhood, and apartment operations we hear about daily in our community, it is highly likely that non-qualifying family members of temporary residents will continue to be apprehended, thus placing the INS in the very difficult and untenable position of having to physically remove non-eligible individuals from their qualifying family members. I am confident that not even the INS relishes this probable scenario.

In closing, I would like to strongly urge that the subcommittee revisit the issue of family unity, and address the tragic fallout of family separation caused by IRCA. We urge you to reflect on the social consequences being caused these IRCA-split families, a few of which I have highlighted in my written testimony.

We ask for your intervention in the formation of a humane national policy, immune to regional and local interpretation and application, that will enable the immediate relatives of legalized aliens to remain with their families and to move freely among us. Thank you.

[The prepared statement of Ms. Slaughter follows:]

TESTIMONY OF

VANNA K. SLAUGHTER

ON BEHALF OF

THE NORTH TEXAS IMMIGRATION COALITION

IN RE: PUBLIC HEARING ON THE IMPLEMENTATION OF THE
IMMIGRATION REFORM ACT OF 1986

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

SAN ANTONIO, TEXAS
AUGUST 23, 1988

My name is Vanna K. Slaughter. I am here today from Dallas, Texas representing the North Texas Immigration Coalition, a voluntary group functioning in the Dallas/Fort Worth Metroplex area, whose membership includes numerous social agencies and private citizens who came together in late 1986 out of a common concern about the implementation of the Immigration Reform and Control Act of 1986 (IRCA). Our coalition is a member of the National Immigration, Refugee and Citizenship Forum. As an additional point of identification, however, I would like to mention that I am also Program Director of Catholic Charities, Immigration Counseling Services, an accredited non-profit immigration service agency that has been actively involved in assisting legalization applicants.

On behalf of the Coalition, I would like to thank the Subcommittee for holding this hearing and for taking the time to be present here in San Antonio for it. My comments to you today will briefly concern one of the IRCA related areas that we feel cries out the loudest for attention at this stage...that of family unity. We commend the Subcommittee for its continued interest in this issue of compelling human reality.

Despite the fact that the legalization application period is now behind us (except for the remaining scheduled interviews), and despite the fact that it will soon be two years since IRCA was signed into law by President Reagan, the issue of family unity remains an unresolved problem-product of IRCA'S

design. Although we have all, I am sure, heard or participated in the many discussions on this issue in months past, it is only very recently that those of us in the "trenches" have begun to witness in our communities the real effects caused in split family situations. I will be describing some of these effects in a moment. The INS' Family Fairness Guidelines issued in November 1987 fall short in their contemplation of a viable remedy to the painful, yet common scenario, of family units which are tragically separated by IRCA's very provisions.

My own experience in reviewing some five thousand legalization cases prepared by Catholic Charities since January of 1987, has revealed that approximately one-third of them have involved non-qualifying immediate family members. A large number of these families, in addition to involving spouses and children who arrived after 1982, and thus do not qualify, likewise have U.S. citizen children born to them here since 1982. I think often in our past discussions of family unity these U.S. citizen children have not received the depth of attention they deserve. After all, these children will always be our nation's own, and our responsibility toward them should reflect a priority, irregardless of the legal status of their parents, for seeing that they are fully integrated citizens in our community.

As we all know, however, these children will but become victims to the same underclass lifestyle their parents are forced to live when they lack the legal status that is essential for moving, living and working freely in our

communities. Already I have received telephone calls from women whose husbands qualified, but they did not, asking my advice whether it is safe for them to appear in person to register their children for the fall school term. At a time when our educators have identified parental participation in students' education as an essential element to curb the soaring Hispanic school dropout rate, what can we expect of the children of IRCA split families (many of them U.S. citizens, remember) when their parents fear stepping out of their homes to go and talk to their children's teachers? The children in the thousands of cases of which most of us are aware, whether both or only one of their parents were able to legalize, are but innocent players in a drama that now singles them out as victims. None of us here today should forget that the kids had nothing to do with their parents' decisions to illegally come to the United States.

If I may, I would at this time like to share with you some real examples of family separation through some case profiles of actual legalization applicants I have personally assisted. I have, of course, used fictitious names with each example, however, the facts in each are the actual facts in the case:

The Edmundo Castillo family: Edmundo, is a 37 year old male from La Union, El Salvador, who has resided in the United States continuously since 1981, having left El Salvador when the conflict in the eastern part of his country was seriously intensifying. In October 1985 he was joined by his wife, Elvira, and their four Salvadoran born children, now ages 14, 13, 10, and 6. Since 1985 Edmundo and Elvira have had two U.S. citizen children born to them in Dallas, now ages 3 and 2. Edmundo is a legalization applicant, working as a bricklayer, earning eight dollars an hour. According

to the INS Family Fairness Guidelines this family would not fall under the "blanket" Family Fairness provision because both parents do not qualify for legalization. Eivira is just one of those women I mentioned a moment ago who fears leaving her home. She daily comes to live a more cloistered existence as her fear heightens that the Border Patrol will apprehend her if she steps on to the East Dallas street where she lives.

The Jose Mendoza family: Jose Mendoza is a 51 year old Mexican citizen who has been approved as a Temporary Resident under the Special Agriculture Worker provisions of IRCA. He, his wife, Lucia, and their three Mexican born children, ages 11, 9, and 8 have all continuously resided in the U.S. since their arrival in July 1983. The children have all been attending Dallas public schools and are in the fifth, third, and second grades respectively. Since Lucia and her children did not work in agriculture they, of course, did not legalize under Section 210 as did Jose. Neither Lucia nor her children qualify for the blanket provisions of the Family Fairness Guidelines. Lucia also fears circulating freely outside her home because the Mendoza's also live in an area where the Border Patrol frequently conducts its neighborhood raids.

The Raul Garcia family: Raul Garcia has lived in the United States since March 1981. He applied for legalization in 1987 and has already received his Legal Temporary Residency. Raul makes his living as a specialty cook at two different French restaurants in Dallas. His wife, Maria has resided in the United States continuously since her arrival in 1984. Since her arrival Raul and Maria have had three U.S. citizen children born to them, now ages 4, 2 and 9 months. Maria, also, does not qualify for the blanket provisions of the INS Family Fairness Guidelines, despite the fact that her husband is now legal and she has three United States citizen children.

The Family Fairness Guidelines have caused tremendous confusion in the community as their interpretation through the media and word of mouth communication channels has left the mistaken impression with some individuals that the policy is far more generous than it even the INS says it is. It concerns us that individuals are approaching INS District Offices on their own, thinking they can obtain "permisos" as non-qualifying

spouses and children, unaware of the narrowly defined group of individuals eligible for the "blanket" benefit the guidelines set forth. At Catholic Charities we already have encountered such examples, one being the following:

The Maria Lopez family: Maria Lopez is now a Legal Temporary Resident, along with her minor son, both of whom have resided continuously in the United States since before 1982. Maria also has a 6 year old U.S. citizen child born to her by a previous union. Maria is now married to Jose Lopez with whom she has an 8 month old U.S. citizen child. Jose entered the United States in 1984 and thus did not qualify for legalization. Upon hearing rumor that non qualifying spouses of legalized aliens could apply for "permisos", Jose approached an INS District Office asking for a family unity work authorization. On that very day the INS District Office denied him work authorization, issued Jose an Order to Show Cause and placed him in deportation proceedings. Jose has already appeared before an immigration judge at a deportation hearing at which there was no real relief he could request. Jose's fate now rests with the INS District Director as a non-blanket case under the Family Fairness Guidelines.

It is of concern to us that the door is wide open to an inconsistent application of the guidelines, given the discretionary nature with which the non-blanket cases, such as that of Jose Lopez are to be considered. Already in Texas we are aware of discrepancies in the different INS Districts with the manner in which the few cases thus far presented have been handled.

The family unity issue becomes even more critical now than before with the INS' voracious post-IRCA enforcement efforts. With the routine work place, neighborhood, and apartment "operations" we hear about in our community (many of them occurring in the heart of Congressman Bryant's district, which happens to also be my neighborhood), it is highly likely that

non-qualifying family members of Temporary Residents will continue to be apprehended; thus placing the INS in the very difficult and untenable position of having to physically remove non-eligible individuals from their qualifying family members. I am confident that not even the INS relishes this potential and probable unpleasant scenario.

In the interest of fundamental fairness and in the spirit of the current administration's policy priority of preserving the well-being of the family, articulated not only in the President's Executive Order of September 2, 1987, but also in his State of the Union address this year, we strongly urge the Subcommittee to revisit the issue of family unity and address the tragic fallout of family separation caused by IRCA. We encourage you to reflect on the social consequences being caused these IRCA-split families, a few of which I have highlighted for you today. We ask your intervention in the formation of a humane national policy, immune to regional interpretation and application, that will enable immediate relatives of legalized aliens to remain with their families and to move freely among us.

Mr. MAZZOLI. Ms. Slaughter, thank you very much. Mr. Vega?

**TESTIMONY OF ADAN G. VEGA, ESQ., CONSEJO HISPANO ASESOR
(HISPANIC ADVISORY COUNCIL)**

Mr. VEGA. Good afternoon. I am here to testify this afternoon in behalf of the Consejo Hispano Asesor, which is based in Houston. And I want to thank you for the opportunity for being able to present testimony this afternoon.

Mr. MAZZOLI. Thank you very much for coming.

Mr. VEGA. The main concern that we have in this organization is a situation concerning family unity, and we feel that the issue of family unity has never been resolved in the context of the existing statutory and regulatory law. As it exists right now, there is no viable solution that will resolve that particular problem.

And what I have provided here this afternoon for the committee is a case example of how the situation can actually occur where a child can be deported and be separated from a family where the parent has received temporary resident status. And I have submitted that this afternoon as part of the exhibits to the material that we have provided.

Mr. MAZZOLI. All right. Without objection, it will be made part of the record.

Mr. VEGA. Now, the Immigration and Naturalization Service has recognized the problem and attempted to provide a solution by granting administrative Voluntary Departure Status to minor children of parents who qualify for legalization. And that policy was set forth in the INS central office memorandum which was dated November 13, 1987. In that situation, parents could actually take the children forward to the Immigration Service and actually attempt to seek voluntary departure status for these children.

Now, this position taken by the Immigration and Naturalization Service, as I said, has not been the proper solution to the problem. In the manner that this program is being administered, some minor children will be granted voluntary departure status by the Service.

On the other hand, there will be other minor children of parents who qualified for legalization who will actually be placed in deportation proceedings. And this is done on a purely discretionary basis, and will be done on a case-by-case basis, if the case involves only one parent who has received temporary resident status.

As a result, some of these children will be issued an order to show cause to appear before the immigration judge. If placed in deportation proceedings, these children may be granted voluntary departure status by the immigration judge, or may, in the alternative, be deported and separated from their family.

If granted voluntary departure within the deportation proceeding context, the voluntary departure status of the minor child may be extended only as a discretionary measure by the Service, and not as a guaranteed right.

As a result, the minor child is at the discretionary mercy of the Service at this juncture. Should the voluntary departure status not be extended, either by the discretion of the Service or by neglect on

the part of the minor, then a deportation order will become outstanding, and then the minor would be subject to deportation.

So under these circumstances, there is a strong potential to segregate minor family members from a temporary resident parent. And the case cited here within the testimony clearly shows that the policy being followed by the Service is not a flexible one. If the Service continues to exercise discretionary power to decide which families remain united, then we will continue to see families separated by the negative exercise of the discretion.

One other point that I would like to make is that the voluntary departure status that is being granted at the actual Immigration Service is different from the voluntary departure status being granted in the deportation context.

Once the child is issued an order to show cause and appears before an immigration judge and is granted voluntary departure, that voluntary departure status can actually convert itself into a deportation order if the voluntary departure date is allowed to expire, or the Immigration decides, in their discretion, never to extend the voluntary departure status.

So in conclusion, what I would like to say is that the solution does not lie right now in the statutory regulatory law as it exists at this very moment. There is a need for a change in the law, and there is a need for new legislation.

[The prepared statement of Mr. Vega follows:]

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IMMIGRATION AND NATIONALITY LAW -
BY THE BOARD OF LEGAL SPECIALIZATION

OUR FILE NUMBER

ADAN G. VEGA
(Biographic Sketch)

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2. Board Certified in Immigration and Nationality Law--by the Texas Board of Legal Specialization, Texas State Board of Legal Specialization, Texas State Bar--(December 1985),
3. Licensed to practice law in the State of Texas by the Texas State Bar--(November 1979),
4. Graduate of the University of Texas School of Law-- J.D. Degree--(May 1979),
5. Graduate of Rice University--B.A. Degree--(May 1976),
6. Place of Birth: Santa Maria, Texas,
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OUR FILE NUMBER

August 16, 1988

Congressman Mazzoli
 2137 D
 Rayburn House Office Building
 Washington, D.C. 20515

Dear Sir:

As a practitioner in the field of Immigration and Nationality Law and as Chairman of the Consejo Hispano Asesor Sobre La Nueva Ley de Inmigracion, I respectfully request to testify before the Congressional Committee chaired by you. I wish to make the following comments on the implementation by the Immigration and Naturalization Service of the Immigration and Reform Act of 1986.

The family unity issue in the context of Legalization cases has been addressed but has not been resolved by existing statutory and regulatory law (See Exhibit 1). The Immigration and Naturalization Service has recognized the problem and attempted to provide a solution by granting voluntary departure status to minor children of parents who qualified for legalization. This policy is set forth in an INS central office memorandum dated November 13, 1987 (See Exhibit 2).

This position taken by the Immigration and Naturalization Service has not been the proper solution. In the manner that this program is being administered, some minor children will be granted Voluntary Departure Status by the Immigration and Naturalization Service. On the other hand, other minor alien children of parents who qualified for legalization will be placed in deportation proceedings (See the attached case Exhibit 3) by the Immigration and Naturalization Service. This is done on a purely discretionary basis and is done on a case by case basis if the case involves only one parent who has been approved. As a result, some of these alien minor children will be issued an Order to Show Cause to appear before an Immigration Judge.

If placed in deportation proceedings, these children may be granted "Voluntary Departure" status by the Immigration Judge or may, in the alternative, be deported and separated from their family.

Page 2
Congressman Mazzoli letter

If granted Voluntary Departure within the deportation proceeding context, the "Voluntary Departure" status of the minor child may be extended only as a discretionary measure by the Immigration and Naturalization Service and not as a guaranteed right. Thus, the minor child is at the discretionary mercy of the Immigration and Naturalization Service at this juncture. Should the voluntary departure status not be extended, either by discretion on the part of the Immigration and Naturalization Service or by neglect on the part of the minor, then a deportation order becomes outstanding immediately upon expiration of the Voluntary Departure status. The minor is then subject to deportation.

Under these circumstances, there is a strong potential to segregate minor family members from a Temporary Resident parent. The case cited above clearly shows that the policy followed by Immigration and Naturalization Service is not a flexible one. If Immigration and Naturalization Service is allowed to continue to exercise discretionary power to decide which families remain united, then we will continue to see families separated by a negative exercise of their discretion.

In regards to the Anti-discrimination provisions of IRCA, I wish to make the following comments:

First, the Form I-772 Declaration of Intending Citizen, was created to provide for the preservation of the right to pursue a discrimination claim under Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), §274 B of the Immigration and Nationality Act (See Exhibit A).

This form was to be distributed to Immigration and Naturalization Service offices and made available to persons meeting the definition of intending citizen at section 274 B(a)(3)(B)(1) of the Act. To date, this form has yet to be distributed to Temporary Residents or Permanent Residents. It is only within the month of August, 1988, that the Immigration and Naturalization Service has made the Form available to individuals receiving Permanent Resident Status.

The Form I-772 has not been made readily available to the affected segment of the general public.

Page 3
Congressman Mazzoli letter

Further, the segment of the population affected by the change in law as it relates to the anti-discrimination clause of the Immigration Reform Control Act does not even know about the filing requirements to preserve their right to pursue a discrimination clause.

Thus, this phase of the change of the Immigration law has been neglected by the Immigration and Naturalization Service, and has not been given the sufficient publicity to properly educate the alien ~~application~~ *population*,

Sincerely,

Adan G. Vega

AGV:tm
Encl.

the financial status of the population that IRCA was intended to serve.

Further, numerous commenters raised concern that INA may deny legalization benefits if public cash assistance was received by United States citizen children of legalization applicants. The position of INS is that the statute is clear regarding this subject and applicants may in fact be ineligible for legalization if such cash assistance was received by their U.S. citizen child. Neither Medicaid nor Medicare will be considered public cash assistance.

After review and careful consideration of all comments, INS has modified the language found in the proposed rule to reflect that the provisions of section 212(a)(15), of the INA, relating to the likelihood of becoming a public charge may be waived at the time of application for temporary resident status.

(5) *Administrative appellate review.* This final rule establishes a single level of administrative appellate review to adjudicate appeals from legalization decisions. The appellate authority is the Associate Commissioner for Examinations.

In response to the proposed rule, 78 comments were received concerning this issue. The commenters aired concerns regarding the inclusion of legalization appeals into the existing Administrative Appeals Unit (AAU). Although the authority for legalization appeals lies with the AAU, a separate unit within AAU is being established to adjudicate these appeals. After review and careful consideration of all comments, no deviation from the language found in the proposed rule is warranted.

(6) *Termination of temporary resident status.* Consistent with section 245A(b)(2) of IRCA, this final rule sets forth the procedural and substantive grounds for terminating the status of a temporary resident alien. The rule sets forth that a decision to terminate status may be appealed to the Associate Commissioner for Examinations.

(7) *Adjustment of temporary resident status to permanent resident status.* This rule sets forth the procedural and substantive requirements with which a temporary resident alien must comply in order to change his or her status to that of an alien lawfully admitted for permanent residence.

(8) *Documentation requirements.* In the preliminary working draft, INS outlined the documentation requirements to establish residence, identity, and financial responsibility, also required that all such documentation presented must be original documents.

In response to the proposed rule, 223 comments were received concerning the documentation requirements. A vast majority of the commenters stated both a reluctance and unfairness to requiring the submission of original documents to INS.

Upon review and careful consideration of all comments, INS has modified its position with regard to the submission of original documentation. This final rule allows for the filing of an application for legalization supported by copies of documents certified pursuant to § 204.2(j). Whenever possible, the originals of the supporting evidence must be presented at the time of the interview.

(9) *Temporary disqualification of newly legalized aliens from receiving certain public welfare assistance.* The Attorney General will publish a separate list of programs identified as programs of financial assistance furnished under federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need which newly legalized aliens (with limited exceptions) may not receive for five (5) years.

(10) *Family unity.* Although not specifically addressed in the proposed rule, 134 comments were received concerning how INS will treat ineligible family members of legalized aliens that continue to reside illegally in the United States.

Aliens who apply for legalization and are found to be ineligible are protected by the confidentiality provisions of IRCA, as is information in that application. Such information includes that pertaining to family members. With such provisions existing, the information will not be used for the enforcement of other provisions of the INA (except in situations where fraud or willful misrepresentations are found to exist in the application process).

In contrast, the Service cannot see the regulatory process to substitute its judgment for that of the Congress and grant the equivalent of derivative status through any existing mechanisms such as voluntary departure (See 8 CFR 242.5). However, this is not a blanket prohibition against voluntary departure. Instead, district directors will continue to apply the provisions of 8 CFR 242.5 in those cases wherein it is determined that an ineligible family member has a humanitarian need to remain in the United States.

In accordance with § U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The Immigration and Naturalization Service has decided to invoke the "good cause" exception to the 30 day effective date requirement of 5 U.S.C. 553(d) making the final regulations effective upon publication. The justification for waiving the 30 day effective date is as follows: Persons eligible for benefits under 245A of the Immigration and Nationality Act would be adversely affected if the Service were forced to wait 30 days before implementing the regulations. The statute provides a one year application period for legalization which is to begin no later than May 8, 1987. A 30 day effective date would reduce the application period by almost one month.

Congress provided the Immigration and Naturalization Service with a limited amount of time in which to promulgate regulations and implement this new provision of the law. In six months time the Service has had to acquire, furnish, and staff over 100 new INS offices. The staffing of these offices alone has entailed the hiring of over 2,000 employees who require training and instructions on the processing of legalization applications. These are the preparations which were necessary to implement only 245A. The three major sections of the Immigration Reform and Control Act of 1986 have affected millions of aliens as well as every employer in the United States.

Furthermore, the Service has made unprecedented efforts to provide the public the opportunity to comment and provide input in formulating the regulations. The Service provided the public with two opportunities to comment on the regulations. On January 23, 1987 a notice was published in the Federal Register notifying the public that preliminary draft regulations were available for public comment. More than 8,800 copies of the preliminary draft regulations were requested and over 194 comments were received from the public. Based on these comments the draft regulations were revised and published as proposed regulations in the Federal Register on March 19, 1987.

The Service acknowledges that modifications made in this final rule (Documentation and Physical Presence) affect the instructions on Form I-487. Revision of Form I-487 is underway. Where the instructions on Form I-487 are inconsistent with the provisions of this rule, the rule governs. The Service will provide to Service Legalization Offices, Qualified Designated Entities, and other interest groups with an addendum to be attached to Form I-487 already in circulation.

EXHIBIT 1

b. CFR Plus (1-1-88)

Memorandum, 11-13-87

OF STATUS AND IS OTHERWISE ELIGIBLE TO APPLY I.E., A VISA NUMBER IS AVAILABLE AND THE ALIEN IS NOT SUBJECT TO SECTION 245(C). THE DISTRICT DIRECTOR MAY ENTERTAIN AN APPLICATION FOR ADJUSTMENT OF STATUS IN ACCORDANCE WITH NORMAL PROCEDURES.

- (P) IF AN ALIEN WORKED WITHOUT AUTHORIZATION AFTER 01/01/77 OR EVER REMAINED IN THE UNITED STATES WITHOUT AUTHORIZATION, HE IS INELIGIBLE TO APPLY FOR ADJUSTMENT DUE TO THE PROVISIONS OF SECTION 245(C). THESE PROVISIONS APPLY EVEN IF THE ALIEN'S UNAUTHORIZED EMPLOYMENT OR FAILURE TO MAINTAIN STATUS RESULTED FROM HIS INABILITY TO FILE AN I-485 PRIOR TO THE EXPIRATION OF HIS AUTHORIZED STAY BECAUSE A PRIORITY DATE WAS LOST UNDER THE 90 DAY RULE.

CENTRAL OFFICE MEMORANDUM, NOVEMBER 13, 1987

(Sent to all NS field offices by Commissioner Alan C. Nelson)

Subject: Family Fairness: Guidelines for Voluntary Departures under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens

The following guidelines are provided to implement the family fairness policy set forth on page (5) of the enclosed legalization and family fairness analysis dated October 21, 1987.

A request for voluntary departure by an ineligible spouse or child of a legalized alien is to be made in writing to the district director in whose jurisdiction the ineligible spouse or child resides. The request must include the name, address, and AQOM number of the principal alien; the relationship to the legalized alien (proof required); the names, addresses, and immigration status of ineligible spouse's minor children, if any; and the grounds for requesting voluntary departure. Form I-213, "Record of Deportable Alien," shall be prepared for each ineligible spouse or child making such a request.

In order to ensure the consistency of decisions throughout the Service in the adjudication of requests for voluntary departure for these family members, the following instructions are to be followed:

Upon submission of a request the applicant will be given the I-94 portion of the I-213 (which in and of itself will not convey employment authorization), and which will be clearly marked "Application Pending - Valid to (fill in date) - not to exceed 120 days from date

Memorandum, 11-13-87 8 CFR P. (1-1-88)

of action).

District directors will forward all requests received during the first forty-five (45) days after implementation to their regional commissioner. The submission will be accompanied by an opinion from the district director setting out the reasons for granting or denying the request. The narrative is to include the AGO file number and relationship of the legalized alien.

The regions will establish a panel to review all requests submitted during the initial 45-day period. All documentation submitted by the district director will be reviewed. The panel will advise the district director as to whether the opinion does or does not meet with Central Office guidelines. The case will then be returned to the district director for appropriate action.

COLEG will send a staff representative to be a member of the regional panel in order to assist in the implementation of the Commissioner's guidelines.

These guidelines shall not preclude the granting of voluntary departure under any other provision of 8 CFR 242.5 to the ineligible family members of legalized aliens who are statutorily entitled to such discretionary relief.

Once a determination has been made to grant or deny voluntary departure to ineligible family members of legalized aliens, they should be placed under docket control. Detention and Deportation shall thereafter be responsible for controlling the case. For those cases placed under docket control, the criteria utilized under 8 CFR 274a.12 shall be employed in considering requests for employment authorization.

This guidance/analysis package should be promptly reviewed with field office managers. The legalization and family fairness analysis should also be utilized in briefing local government officials, the local media and special interest groups on the position the Service has taken in this matter.

CENTRAL OFFICE CABLE, NOVEMBER 17, 1987

(Sent to all INS field offices by Richard E. Norion, Associate Commissioner for Examinations)

FORM I-772 DECLARATION OF INTENDING CITIZEN, WAS CREATED TO SATISFY A NEED FOR DOCUMENTATION OF A DISCRIMINATION CLAIM UNDER SECTION 102 OF THE IMMIGRATION REFORM AND CONTROL

EXHIBIT 2

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

File No. A28 582 521

In the Matter of AMARO-Flores, Jaime

Respondent.

216 2ND STREET, ROSENBERG, TEXAS 77471

Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO
and a citizen of MEXICO;
3. You entered the United States at LAREDO, TEXAS on
or about JULY 10, 1982;
(date)
4. At that time you were admitted as a nonimmigrant visitor for pleasure and were thereafter authorized to remain in the United States for seventy-two (72) hours;
5. You have remained in the United States beyond seventy-two (72) hours without authorization of the United States Immigration and Naturalization Service.

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

SECTION 241(a)(2) of the Immigration and Nationality Act, in that after admission as a nonimmigrant under Section 101(a)(15) of said Act, you have remained in the United States for a longer time than permitted.

WHEREFORE, YOU ARE ORDERED to appear for hearing before an Immigration Judge of the Immigration and Naturalization Service of the United States Department of Justice at
DATE, TIME AND PLACE TO BE SET

on _____ at _____ m, and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: May 9, 1988


(Signature and title of issuing officer)
CAREY D. MURPHY, ASST. DISTRICT DIRECTOR
FOR INVESTIGATIONS, HOUSTON, TEXAS
(City and State)

FORM I-618 ACCREDITED
 REPRESENTATIVES LIST ATTACHED

EXHIBIT 2 . . .

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Immigration Court
Houston, Texas

File No.: A 28-582-521)

In the Matter of:)
AMARU-Flores, Jaime) IN DEPORTATION PROCEEDINGS
Respondent)

DECISION AND ORDER OF THE IMMIGRATION COURT

Upon the ~~joint~~ motion of ~~counsel for the Immigration and Naturalization Service and~~ counsel for the respondent, it is hereby ORDERED that these proceedings be ADMINISTRATIVELY CLOSED and are considered no longer pending before this court. No further action will be taken in this matter unless and until such time as the case is presented for recalendarng and further proceedings. This action is taken in contemplation of the respondent's ^{eligibility} for legalization pursuant to the provisions of the Immigration Reform and Control Act of

1986. Respondent is a minor whose mother and father have received employment authorization.

Date: June 9, 1988

Susan L. Yarbrough
SUSAN L. YARBROUGH
Immigration Judge

cc Respondent
Respondent's Attorney
INS Attorney

DNS reserves right to appeal.

EXHIBIT 3(b)



[Handwritten mark]



EXHIBIT 3(c)

JUN 21 1988

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

FILED AT	6/21/88
COMPUTER NO	512

In the Matter of: AMPARO-FLORES, JAIME

File No. A28 582 521

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated June 9, 1988, in the above entitled case.

2. Briefly, state reasons for this appeal. a. This appeal is made on the interlocutory order of the immigration judge since it addresses an important jurisdictional question regarding the administration of immigration laws or to correct recurring problems in the handling of the case by an immigration judge. See Matter of Amico, Interim Decision (BIA 1988); Matter of Rosales-Raymundo, Interim Decision (BIA 1988).

b. The immigration judge erred in administratively closing the case based on the fact that the respondent's parents had received work authorization under their "legalization (amnesty)" applications for what she should have done would have been to proceed with the hearing on the case. The respondent is not entitled to legalization.

c. The immigration judge erred by creating a non-statutory relief not envisioned in deportation proceedings as a means of terminating a case.

Other reasons are found in attached sheet.

3. I do (do) desire oral argument before the Board of Immigration Appeals in Washington, D. C. (do not)

4. I am (am) filing a separate written brief or statement. (am not)

Appeal permission processed.

I hereby certify that a copy of this appeal has been sent to Adan Vega, Esq., 2918 Bagby Street, Ste. 200, Houston, TX. 77006

June 20, 1988

Date

Benjamin D. Somera
Signature of Applicant (or attorney or representative)
 BENJAMIN D. SOMERA
(Print or type name)
 TRIAL ATTORNEY
 509 NORTH BELT
Address (Number, Street, City, State, Zip Code)
 HOUSTON, TX 77060

IMPORTANT: SEE INSTRUCTIONS ON REVERSE SIDE OF THIS NOTICE

Form I-290A
 (Rev. 10-31-79)N

EXHIBIT 3(a)

- d. Since the Immigration and Naturalization Service sought to prosecute these proceedings to a conclusion, the immigration judge was obligated to order the deportation of the respondent if the evidence supports a finding of deportability on the ground charge. The regulations emphatically require the prompt completion of the deportation proceedings if no action to terminate is taken by the District Director. See Matter of Roussis, 18 I&N Dec. 256 at 258 (BIA 1982).
- e. The immigration judge erred in brushing aside the rulings in Matter of Amico, supra and Matter of Rosales, supra as being only applicable in in absentia hearings.
- f. The immigration judge erred in not entering an order which could be executed upon the next contact with the respondent. Failing to issue this order would allow the respondent, simply by failing to appear, to avoid an order regarding his deportability, and the consequences an order of deportation could bring. Matter of Amico, supra.
- g. The immigration judge erred in not taking into account that the administrative closing of a case does not result in a final order, but that it is an administrative convenience which allows the removal of cases from the calendar in appropriate situations. This is not such a case.

BDS

EXHIBIT 3(d)

LAW OFFICES OF
ADAN G. VEGA, P.C.
 A PROFESSIONAL CORPORATION
 2916 BAGBY, SUITE 300
 HOUSTON, TEXAS 77006
 (713) 827-8808

BOARD CERTIFIED IN
 IMMIGRATION AND NATIONALITY LAW -
 TEXAS BOARD OF LEGAL SPECIALIZATION

OUR FILE NUMBER
 88-134

July 5, 1988

Mr. Ronald G. Parra
 District Director
 United States Department of Justice
 Immigration and Naturalization Service
 509 North Belt
 Houston, Texas 77060

Re: File No.: A28-582-521
 Amaro-Flores, Jaime

Dear Ron:

I am writing this letter as a courtesy to you and to advise you of the potential ramifications of the above referenced case.

Jaime Amaro-Flores was born in Mexico on January 7, 1973, and has resided in the United States since July, 1982. He is the son of Agapito Amaro-Montes, a Temporary Resident Alien, and Marla Flores de Amaro, a Seasonal Agricultural Worker whose legalized status is pending.

On February, 1988, Jaime and his mother attended the Legalization Center office at 2974 Fulton to obtain an extension of his mother's employment authorization. At that time, the mother Maria Flores de Amaro, inquired as to the eligibility for legalization of Jaime.

Mrs. Amaro was handed a map describing the route to the Houston District office at 509 North Belt and, in addition, was handed a note requesting that the child be taken to the 3rd floor Investigations Section of Immigration and Naturalization Service (see attached). Mrs. Amaro and her son complied with the request and appeared at the third level of the Immigration and Naturalization Service building at 509 North Belt on May 9, 1988. The son was taken into custody and was issued an ORDER TO SHOW CAUSE.

On June 8, 1988, I inquired of Mr. Michael McMahon as to the procedure involved in requesting voluntary departure for a minor child of a parent who had attained legal status. Mr. McMahon stated that Orders to Show Cause in these situations would not be issued.

EXHIBIT 3(e)

Page 2
Mr. Parra letter

On the same day, June 8, 1988, I informed Mr. Benjamin Somera, Immigration and Naturalization Service Trial Attorney, of the procedure involved in processing these minor children of legalized adults. Furthermore, I advised Mr. Somera of the Immigration and Naturalization cable of November 17, 1987 outlining these procedures (see attached). Mr. Somera refused to file a Motion to Terminate in that the child did not have any legal grounds to remain in the United States.

On June 9, 1988, a deportation hearing was held and we alleged 1) a violation of the procedures outlined in the Immigration and Naturalization Service cable dated November 17, 1987, and 2) a violation of the confidentiality clause of IRCA. We requested to file a Motion to Suppress evidence and to terminate the deportation proceedings.

Judge Yarbrough was sensitive to the issues at hand and terminated the proceedings (see attached). However, the Immigration and Naturalization Service has reserved the right to appeal.

In fact, the Immigration and Naturalization Service has filed an Appeal as indicated by the copy of the Notice of Appeal to the Board of Immigration Appeals (Form I-290A) submitted to the Board of Immigration Appeals by Mr. Benjamin D. Somera. This action by Mr. Somera indicates that the Immigration and Naturalization Service is adamant in pursuing the deportation of Jaime Amparo-Flores, the minor child of a Temporary Resident.

Mr. Somera indicates in his Appeal that the regulations require that deportation proceedings be completed if no action to terminate is taken by the District Director. This is a peculiar stance that the Immigration and Naturalization Service has chosen to take in regards to minor children of Temporary Residents. This local position opposes the position of the Central Office outlined in the cable of November, 1987. (See attached).

If the Immigration and Naturalization Service proceeds to further prosecute this case, it will set a dangerous precedent for the establishment of a policy affecting these minor children. It is a pro deportation stance and it moves us further away from resolving the issue of "family unity". Subjecting these minor children of legalized parents to deportation proceedings is a harsh resolution of the matter.

EXHIBIT 3(e)

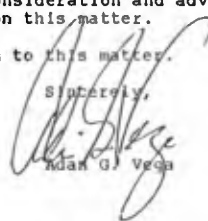
Page 3
Ron Parra letter

We therefore, ask that you please reconsider this position and we further request that you exercise your discretionary powers to terminate the deportation proceedings concerning the minor child, Jaime Amparo-Flores.

Please take this information into consideration and advise me at your convenience of your thoughts on this matter.

We thank you for your kind attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adan G. Vega', is written over the typed name. The signature is fluid and cursive.

Adan G. Vega

AGV:tm
Encl.

EXHIBIT 3(e)



U.S. DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

509 North Belt
Houston, Texas 77060

August 2, 1988

Adan G. Vega, Esquire
2918 Bagby, Suite 200
Houston, Texas 77006

Re: File No. A28 582 521
Amaro-Flores, Jaime

Dear Mr. Vega:

Your letter of July 5, 1988 expressing concern about ineligible family members of persons who have qualified under the Immigration Reform and Control Act (IRCA) is much appreciated. By it we have the opportunity to respond and clearly show the stand of the Immigration and Naturalization Service in this regard.

At the outset, it is best to set forth the pertinent part of the Memorandum of the Regional Commissioner dated June 28, 1988, since it affirms and stresses the policies and practices of the Immigration and Naturalization Service in regard to the subject matter you have brought up. As a background, it should be noted that on October 21, 1987, Commissioner Nelson approved the family fairness policy. Implementing guidelines were provided on November 13, 1987. The highlights on the information found on page 5 of the six page family fairness analysis dated October 21, 1987 are as follows:

"Unmarried children under the age of 18 who were in the United States in an unlawful status prior to November 6, 1986 and whose parents (or sole parent in the case of divorce or death of spouse) have qualified for lawful temporary residence status under IRCA, will be granted voluntary departure on a "blanket basis"."

Continued

EXHIBIT 3(f)

Adan G. Vega, Esquire
2918 Bagby, Suite 200
Houston, Texas 77006

August 2, 1988

"Ineligible spouses and those children not covered by the blanket grant of voluntary departure will be considered on a case-by-case basis and may be granted voluntary departure if compelling or humane factors are present".

It appears that the facts in the case you presented fall within the ambit of the second quoted paragraph. Thus your case must be considered on the "case-by-case" premise and appraised for the existence of any compelling or humane factor.

I understand that the Trial Attorney fully explained that under the facts of your case which show respondent's ineligibility and the existence of one qualified parent, the relief available may be voluntary departure. The Trial Attorney repeated this during the hearing of the case and added his non-objection to a period of voluntary departure longer than usual. He also explained to you and the Court that the grant of extensions to such period of voluntary departure is within the discretion of the District Director. He also made you aware that the District Director would not be inclined to enforce an order of deportation under the facts. Yet, you insisted on asking for the termination of the case. The Immigration Court so terminated the case despite the Trial Attorney's explanation. You base your action on your inquiry to the Deputy District Director on June 8, 1988 at which time the Deputy District Director stated that "Orders to Show Cause in these situations would not be issued". Clearly, the statement is correct for the situation wherein no Order to Show Cause has at yet been issued. But where an Order to Show Cause has already been issued and the proceedings are before the Immigration Court, such should be prosecuted to a conclusion. This is more true where the respondent is clearly and admittedly ineligible under the Immigration Reform and Control Act. Your client should have proceeded to the relief stage and sought voluntary departure. Jurisdiction would then transfer to the District Director who could then act in accordance with the guidelines and policies of the Service.

You mention about violations of procedures of the Service and violation of the confidentiality clause of IRCA. These are but two examples of a confusion created by intermingling jurisdictions of different forums, i.e. the EOIR and that of the District Director. I cannot see how the items you mention have any bearing on the proceedings before the Immigration Court. Neither can I see how and wherein the confidentiality clause applies; nor what evidence was there to suppress.

-2-

EXHIBIT 3(f)

Adan G. Vega, Esquire
2918 Bagby, Suite 200
Houston, Texas 77006

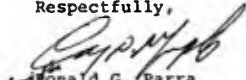
August 2, 1988

We admire Judge Yarbrough for being "sensitive to the issues at hand". This would make two forums which are sensitive to the pertinent issues. However, the act of the Immigration Judge terminating the case is incorrect and clearly in error. It is basic that the Immigration Judge has no authority and jurisdiction to terminate the proceedings under the facts. The Judge's action impinges upon the District Director's exclusive authority to control the prosecution of deportable aliens. Where the Service has initiated proceedings and seek to prosecute this proceedings to a conclusion, the Immigration Judge is obligated to order deportation if the evidence supports a finding of deportability on the ground charged. Clearly, the Judge's action is a clear derogation of the carefully defined jurisdictional scheme set out in the regulations.

Since the question presented is jurisdictional, the Trial Attorney correctly reserved and filed an appeal. One cannot read into this act of appealing a Service posture of "adamantly" pursuing the deportation of your client.

In consideration of all the foregoing, we hope that you will be guided in all your cases with a similar posture.

Respectfully,



Ronald G. Parra
District Director

EXHIBIT 3(f)



EXHIBIT 210

Mr. MAZZOLI. Mr. Vega, thank you very much, and thank you both for acknowledging these severe time constraints, and I appreciate that very much.

Let me yield myself five minutes to ask a few questions.

Ms. Slaughter, as I read your testimony and listened to Mr. Vega's, and have read other testimony prepared for today, certainly a person would have to be very hard of heart not to have a lot of sympathy for the cases that you have both described, and for the general generic situation of families that might be separated.

But before Congress can ever do anything, we have to show facts. We have to tell our colleagues, most of whom are not from Texas, most of whom don't live on the border, most of whom have a kind of peripheral relationship with these matters, though serious but not intimate to their districts—we have to make a proof of numbers: how many, what is the real existence of the problem.

And let me ask you, of the five thousand cases you have reviewed—and you say one-third involve family matters—how many of that one-third have ever actually been separated?

Ms. SLAUGHTER. I don't know that I could answer that. But those are all individuals that are currently in the United States, and have been in the United States, with the exception that the non-qualifying members came after the qualifying members.

Mr. MAZZOLI. Yes. But no families have been separated, that you are aware of?

Ms. SLAUGHTER. No. The closest example I have is the one that I did mention, where the individual—

Mr. MAZZOLI. That you mentioned in your statement, OK.

Ms. SLAUGHTER. And we have a couple of others of those cases in our office right now.

Mr. MAZZOLI. Then is it fair to say that, at least for the moment, between the INS's blanket family guidelines and the exercise of discretion—for example, the particular case that is now before the district director, who said that a front-line person may have acted a little bit too aggressively or whatever—is it fair to say that at this point the combination of those two activities has yielded a satisfactory handling, as far as the family unification or family unity is concerned?

Ms. SLAUGHTER. I don't know that we can say that, Congressman, because we have been very fearful to take in these families affirmatively and test this policy, the non-blanket cases, not knowing what the standard is going to be to prove the compelling and humanitarian factors in each case.

The only ones that have come our way have been accidentally. They have come to us after they have approached the INS on their own, as the Maria Lopez example. So I don't know that we have a track record to refer to that, but we are all very trepidatious about going in and testing that non-blanket policy.

I would like to add also that of the cases that I have monitored, of the one-third of the five thousand, very few of those cases would benefit from the blanket policy.

Mr. MAZZOLI. Well, of course, as I mentioned, the blanket policy, plus the exercise of discretion, the inherent authority that the INS people have to decide which people stay and which people go. Let

me ask you one other thing. And I would probably ask the very same questions of Mr. Vega.

We also have to get a Congress of 535 people, and a majority in both bodies, to agree to something before it can be made law. And many of these people, like I said, don't live in border States, don't represent border States. I think all States are involved—my own of Kentucky, certainly.

But many of my colleagues come up to me on the floor and say, how am I going to argue your case? How am I going to justify supporting this kind of a proposition of family unity? How am I going to tell those families that are waiting now to be unified through the regular Immigration Act, the regular preference system, where there sometimes are waits for many, many months and years in the second preference, where you have actually spouses involved—tell me, how can I justify to them to say that we are going to give these people a preference, first of all, by being allowed to stay in the country, in the first place, from the first legalization; and then, despite the fact that Congress didn't order derivative legalization, that we would allow them to stay on in a kind of second effort on their behalf.

How would you handle that? How would you justify that?

Ms. SLAUGHTER. Well, it has just always been incongruent to me from the very beginning that the legalization program, or amnesty, as it is commonly called—and it truly, I don't feel, is an amnesty, simply because it doesn't include a family, legitimate family—

Mr. MAZZOLI. It was not meant to be an amnesty. Again, you know, I call it legalization. It was never meant to be an amnesty. It was really mislabeled.

Ms. SLAUGHTER. Very commonly called amnesty, though. But it seems incongruent, with the spirit of what legalization was intended to do, that there isn't a provision to allow families to stay together, and, on the contrary—

Mr. MAZZOLI. But as I mentioned, how do you tell that to the people who are waiting for their number to come up in the regular system? How do you justify to them a separate category for these people?

Ms. SLAUGHTER. I don't know that I am advocating an outright derivative status, but a status that will allow them to remain here and not succumb to an underclass lifestyle.

Mr. MAZZOLI. OK. Mr. Vega, my time has really expired. But let me ask you, just kind of essentially, do you have data that you can give me beyond the one case that is in your file there?

Mr. VEGA. This is the closest that we have got where a child almost got deported.

Mr. MAZZOLI. See, what we are doing, we are dealing prospectively. We are sort of anticipating the problem, more than having the problem on our doorstep. Is that a fair statement, basically?

Mr. VEGA. That is correct.

Mr. MAZZOLI. And there is nothing wrong with anticipating a problem; don't get me wrong. But, apparently, at this point it is very hard to say that the INS has just slavered at—you know, just lusting for the opportunity to break families up. That is not the way it has happened at this point.

Mr. VEGA. Well, there is a strong potential that it—

Mr. MAZZOLI. I am saying, I don't argue that we sometimes look ahead before the problem becomes a crisis. But at this point, you would have to say also that it is fair to say that the families have not now been capriciously or arbitrarily broken up, and that mostly the factors seem to play in the hands of keeping the family together.

And let me ask you, how would you talk to a group of people who are waiting to come in from India, or the Philippines, where the numbers are backed up to the horizon? How would you justify this?

Mr. VEGA. The same way you justified the legalization program.

Mr. MAZZOLI. And how did we?

Mr. VEGA. Well, it passed through Congress; it became the law; and there is a segment of the population that never followed the law, and here they are receiving legal status. And the same analogy can be made to the children.

Mr. MAZZOLI. I thank you. My time is up. The gentleman from Texas is recognized for five minutes.

Mr. BRYANT. Thank you. Ms. Slaughter, I wonder if you would explain the blanket policy of the INS as it has been explained to you, as you understand it.

Ms. SLAUGHTER. The blanket policy, to my understanding, allows for minor children of two qualifying parents to remain in the United States. That is the blanket policy. The non-blanket would be any other mixed family situation that is not a minor child of two parents who do qualify.

Mr. BRYANT. Well, you have given three good examples, and your testimony was a subcommittee chairman's dream, it was so succinct. For that I thank you. But you skipped your three examples here, to save time, which I thought were very compelling. I read them.

What is the future for Jose Mendoza, or Raul Garcia, or Edmundo Castillo? Under the current system, what is in store for them?

Ms. SLAUGHTER. I think the Jose Lopez family will probably be shelved in the INS until some further guidance comes down to them allowing them to do something with Jose Lopez. He has gone as far as he can. He has already been before an immigration judge. The immigration judge could do nothing for him. He is back with the INS district director, who I am sure feels his hands are tied as well.

I don't know if the INS district director—the first 45 days, I believe, of the Family Fairness Guidelines, all cases were to be referred to the regional offices for the commissioner's review. I don't think that is being done any longer. The fairness guidelines only said the first 45 days, I believe.

This case will have to be decided by the district director; as we have seen many cases before, they don't get decided. However, if he is pushed to decide, I don't know what he will decide.

Mr. BRYANT. Is your impression that most of the people in this circumstance understand that because of either the blanket policy or the unstated enforcement policy of the INS, that they are not going to be deported?

Ms. SLAUGHTER. No. I don't think the community knows that. By the time they are hearing anything about the family fairness policy, what they hear is oftentimes what they want to hear.

And, of course, they want to hear that there is some kind of permiso they can go down to the district offices and pick up, and they go down to the district offices. And I am sure there are hundreds more who haven't come our way and crossed our paths, at the agencies, anyway, that are doing the same thing. What is happening to them, I don't know.

Mr. BRYANT. I have been a supporter of family unification legislation. I am struck, however, by the question that the Chairman asked of you with regard to whether or not you know of instances where people are actually being deported. I had been under the impression that that was widely taking place.

I wonder if you had any further observations about either the meaning of your answer, or maybe there is something going on you are not aware of.

Ms. SLAUGHTER. I don't know of any deportations that have taken place in the family unity situation, no.

Mr. BRYANT. Mr. Vega, do you have any—

Mr. VEGA. I have no cases that I can say that a child has actually been deported. This is the closest that we have come. But there is no example that I can provide at this time.

Mr. BRYANT. I think it is fair to observe that what is feasible and what can be passed through the Congress, and what our ideals would lead us to want, is not always the same thing at any given time.

I feel that the family unification matter should be resolved through statute, using the same logic that was used to justify the legalization in the first place. If you are trying to bring people out of the shadows, then you must bring the family out of the shadows, not only the individual.

I think, however, it is interesting to note that, at least as of now, apparently you have not heard reports of deportations yet.

OK. I have no further questions.

Mr. MAZZOLI. Thank you. Using just a couple of seconds left to the gentleman from Texas, Mr. Vega, in your statement—maybe not the one that you read, but the one that you sent our staff—you talk about a couple of things that are very interesting to me, of enforcement of the I-9 forms, the vans, and six people to perhaps check a few records, and so forth.

I would appreciate your giving me details, if you are comfortable in doing that, because a lot of our problem is we sometimes have the apocryphal stories, or these things that can't be documented, because if that is documentable, it does seem to me that it is unnecessary and could be intimidating, even though typically these examinations occur on three days' notice.

But I would love to have any information you could get me on that.

Mr. VEGA. Yes. I have a situation that took place in Houston, in which I was involved as the attorney of record. This concerned a restaurant where the Immigration Service had sent out two vans, and this was for the purposes of examining the I-9 forms.

And upon arrival, they expressed that they were really not there for the review of the I-9 forms, and subsequent to that they issued a subpoena. And it was a very broad subpoena, where they requested various records—tax records, personnel records, I-9s, et cetera.

And, in effect, what took place was the subpoena being used as the three-day notice. And it was a three-day period in which they had to respond to that subpoena. And there was a confusion as to what is actually the notice. Should the subpoena be the notice, or should it be an oral notice?

Mr. MAZZOLI. Well, one of the subsequent witnesses—and if you stay today, you will probably hear him testify concerning that very fact, whether or not the INS does have authority to issue a subpoena without having that subpoena argued for and justified by the ALJ. So it is an interesting point.

Mr. BRYANT. May I ask one question?

Mr. MAZZOLI. Certainly.

Mr. BRYANT. You didn't come prepared to testify about this, but you are in such constant contact with people that have come here from other countries, with immigrants, legal and otherwise, that I wanted to ask you, what has been the net effect of the passage of this law with regard to the amount of people coming to the United States, in your opinion, just based upon your observation or anecdotal references?

Ms. SLAUGHTER. I am sorry. Is the question directed to me or Mr. Vega?

Mr. BRYANT. Yes—well, to each of you. But what has been the effect of the enactment of this law on the number of people immigrating illegally into the United States?

Ms. SLAUGHTER. I don't know that I can scientifically answer that.

Mr. BRYANT. I am not asking for a factually-based answer, but you are surely in a position to observe—

Ms. SLAUGHTER. I frequent many little Mexican grocery stores that are in your district in my neighborhood, and I am constantly asking, do you see new people coming. And the overwhelming answer I get is, absolutely. There are brand-new people arriving here every day.

We see a lot of people that did not qualify for legalization that come to our office who are recent arrivals, as well. Again, that is not a scientific answer, but—

Mr. BRYANT. Are there as many, do you think?

Ms. SLAUGHTER. Perhaps not as many, but they are still coming.

Mr. BRYANT. And what are they doing for a living when they arrive here?

Ms. SLAUGHTER. A lot, I suppose, are doing yard work, casual labor.

Mr. BRYANT. OK. Mr. Vega?

Mr. VEGA. I would have to say the same thing. I don't think it has really stopped the flow or the influx of illegal immigration into this country, and there are still individuals coming into this country. As to what they are doing for a living, I have no idea, but they are still coming.

Mr. BRYANT. Ms. Slaughter indicated that it appeared to her there were fewer people coming. Would you agree with that?

Mr. VEGA. I would have to agree with that. Judging also from the number of people that visit us at the office, there is a lot less now than there was, let's say, two years ago. And these are recent people that arrived in this country. There is a lot less.

Mr. BRYANT. Thank you.

Mr. MAZZOLI. Mr. Vega, may I ask you a couple of questions on another subject that you brought up, the I-772 form and the fact that it is virtually unavailable, and perhaps people are not aware of the need to file that form in order to protect them.

Let me ask you two questions. Have you brought that up with the district director, or any people in authority, that these forms are not in abundant supply and ought to be made available; and have you seen any reaction, if you have said anything like that?

Mr. VEGA. Yes, sir. I did bring it to the attention of the district director in Houston, and we requested that these forms be handed out at the legalization center.

Mr. MAZZOLI. Right.

Mr. VEGA. And that has not taken place.

Mr. MAZZOLI. That has not taken place? Can you tell me when you may have brought that up with the district director?

Mr. VEGA. The early part of this year.

Mr. MAZZOLI. The early part of 1988?

Mr. VEGA. The early part of 1988.

Mr. MAZZOLI. Not the early part of this month, but the early part of this year?

Mr. VEGA. Spring of 1988. And to this date, the applications have not been distributed at the legalization center. One thing that I have seen them do is distribute the forms in the letters that are advising people to show up for the interviews on their applications for the immigrant visas. Now, that is actually taking place as of this month.

Mr. MAZZOLI. If I understand the thing correctly, in addition to being one of those four categories, either an asylee, a refugee, a temporary green card holder, or a permanent green card holder, the people have got to file the I-772, essentially in order to justify a claim for discrimination.

Now, I think that they have now changed so that if you file the form before you file the cause of action, even if the cause of action arose before you filled out the form, you can still justify your case.

But essentially speaking, the form ought to be filed before you are protected. Is that correct, as you understand it?

Mr. VEGA. That is correct.

Mr. MAZZOLI. And so that is why having those available is a very important part, right at the start either when they get their work authorization or certainly when they get their temporary residency ticket, or the temporary green card—that is, at least at that point, they should be told, the only way you can protect yourself is by filing this form?

Mr. VEGA. Exactly. And not only having that form readily available, but also explaining that this form has to be filed.

Mr. MAZZOLI. Counseling them, explaining what it means.

Mr. VEGA. Exactly.

Mr. MAZZOLI. Right. Well, I think that is a valid point. I appreciate your having brought that up, too, because those last two, about

perhaps a kind of show of force, and then this thing about the I-772, are very important.

Thank you all very much, and you have helped us already to figure out how this thing is working. Thank you so much. And if Mr. DeLara files a statement, without objection, his statement will be made a part of the record.

Mr. MAZZOLI. Let me call forth our second panel, please: Ms. Nancy Shivers—wasn't there a Governor Shivers at one time? I thought so. Nancy Shivers, Board of Governors of the American Immigration Lawyers' Association; Mr. Charles Foster, Former Chairman of the Governor's Task Force on Immigration, and a distinguished member of the AILA; Mr. Isaias Torres, attorney from San Antonio; and Mr. Ruben Montemayor, attorney of San Antonio.

Mr. FOSTER. Mr. Chairman, I was with Mr. Torres this morning, and I don't see him here. But he said he might be running a few minutes late. He was flying over to Austin for another meeting.

Mr. MAZZOLI. Is he? If he comes in a little bit later, Charlie, we will certainly welcome him. And if not, his statement will be made a part of the record and we will be able to work with that.

And Ms. Shivers, you are recognized, and we appreciate all of you taking the time to join us today.

TESTIMONY OF NANCY SHIVERS, ESQ., DIRECTOR, BOARD OF GOVERNORS, AMERICAN IMMIGRATION LAWYERS' ASSOCIATION

Ms. SHIVERS. I would like to say that everything that has already been said about family unification, I would agree with, with one exception. Rather than reiterating what has already been said, I would just like to emphasize that in my written remarks, I indicated that I think the ultimate solution for Congress is going to be looking overall at the immigration laws and the immigration quotas themselves.

I also, even though I am in Texas, frequently have people in my office, including many people from Mexico, who do not fully appreciate the benefits that the legalization program has bestowed upon some members of their family, while they have been waiting patiently across in Mexico, or perhaps waiting impatiently here and having not qualified.

I realize that Congress over the next year or so probably will be considering various changes in the quota system itself, and I think that is very appropriate. Again, in my remarks, I tried to touch on that.

I think until the United States ends a system where people have to wait ten or fifteen years for visas, we are always going to have illegal immigration; we are always going to have a lot of problems that no amount of employer sanctions or other remedies are going to solve.

That is a tricky, tricky issue—how do you solve that problem, but I know there are many very creative legislative solutions that have been offered to Congress, both by the Immigration Service and by a number of your own members. So I would urge, I guess, that that be considered.

In terms of whether or not people are being deported as a result of the family unity or lack thereof, I am not really aware personally of anything other than one case within the San Antonio district where I practice. And that did involve a case where one member of the family, the wife, had received her temporary resident card, and the husband was ordered deported.

I didn't represent the people involved in that. I am on the board of a project, an immigration project, for the Bexar County Legal Aid Association, and that is the only reason I am aware of that. I didn't have time to get the particulars of that case to bring today.

If it is any consolation to you from Kentucky and you from Texas, I received by Federal Express this morning in my office a very voluminous file, which I will forward to you, from an AILA chapter chairperson in Oregon. And I will tell you that maybe it is just the perimeter of the United States, but the problem definitely exists in areas other than Texas or California. And so that might give you—

Mr. MAZZOLI. What problem is that?

Ms. SHIVERS. The family unity problem.

Mr. MAZZOLI. Oh, this is what that deals with?

Ms. SHIVERS. Yes, right. Apparently, in the Oregon district, which includes the whole State, the Portland district office, the district director there had taken a less humane approach in dealing with the whole family unification situation than the district director in Dallas is seeming to take.

After what I would only characterize as a great deal of heat and many Congressional inquiries, both to the House members involved and to both Senators, there seems to have been a softening, shall we say, of policy where the district director has indicated that they are going to look at these cases again a bit more carefully.

I really do think that perhaps we are having these hearings early, and I think that is wonderful. I love for Congress to be looking forward, and not having to react to a terrible problem.

I think the problem is looming, though, in the family unification situation, and I sympathize fully with you as Congressmen. I don't know how you answer the people, as you say, from India, or from Mexico, who say, this isn't fair, other than I have to agree with Mr. Vega. The legalization law wasn't fair. The seasonal agricultural worker provisions weren't fair. Life is not fair. But that is—

Mr. MAZZOLI. That was Jimmy Carter. Just to be sure we have the right president.

Ms. SHIVERS. Yes. I was going to add that in just a moment.

Mr. MAZZOLI. That was Carter's contribution to all-time quotable phrases.

Ms. SHIVERS. Anyway, having resolved the fact that this is not terribly fair, I would just urge that, over the next year when the opportunity comes to look at serious amendments to the quota system, that you try to work out solutions that are going to resolve the problem.

Because even if no actions are taken now, as far as family unification or legislating a deferred action status, and things stay in the status quo, the numbers are going to become so out of proportion that the employer sanctions law, I believe—if it is going to work, and I am not sure that it will—but it is going to be seriously weak-

ened because of all these people who just really lose patience after a while.

There are a couple of comments I would like to make about employer sanctions and discrimination. I included just a couple of pages of remarks about employer sanctions, because I knew that Charles was preparing very detailed ones which are probably far more thorough than any that I could do.

I would comment that within the San Antonio district and in my experience as an AILA board member talking with people around the country, that far and away the Immigration Service should be given very high marks for the educational efforts that they have made in the employer sanctions program. I think they did a much better job there than they did on the legalization program.

The problem with employer sanctions is it is not quite as easy a law as everybody would like to keep saying it is. Last year, I was a member of a central office liaison committee for the American Immigration Lawyers' Association. We presented a list of about 30 questions to the central office in March and asked for answers, and some of them were pretty simple, and I have touched on a couple of those in my written remarks. And we were informed that they all required legal answers, and they couldn't tell us what the answers were; indeed, we still don't have answers to those questions.

That is a little bit troublesome, because——

Mr. MAZZOLI. May I ask you, when again, Ms. Shivers, were those questions propounded to the central office?

Ms. SHIVERS. They were delivered to them in March, and our meeting was in April, on April 12. And I recognize that yes, some questions do involve legal answers, and certainly if I were Immigration dealing with AILA, I would always probably try to get a legal answer when possible; though one would think, after this many months, that answers would be available.

And for the benefit of those who have not read my remarks, one of the questions was whether or not, if you have a babysitter that comes every Saturday to your house, whether or not you need to fill out an I-9 for a person in that situation.

I would advise both of you, if you don't know, that probably 99 percent of Americans in that situation are not filling out I-9s. But I really think they are probably arguably violating the law. So that is an issue—that is just an example, I guess, of some of the issues out there.

In our district, and indeed in a number of other districts around the country—and Charles and I were both at a Board of Governors meeting of AILA the first weekend in August, and I attended a chapter chairs meeting where people from all over the country spoke about the problems that they had or had not had with employer sanctions.

The comment was that investigators are coming on full force. Large numbers of them have been hired. And naturally, whenever you hire a lot of people, they have to do something to justify their existence.

And they are going out and giving a lot of paperwork violations right now. Many of the paperwork violations, I believe, are being issued simply because people still don't understand what they are supposed to do.

I am a small employer, and I frankly hope the Immigration Service doesn't come visit me. I think mine are in order, but, I have a terrible time remembering what I am supposed to do when I hire somebody. I have only hired three or four people since November of 1986.

I think particularly for small employers who do not have a personnel office, it is very difficult to understand exactly what you are supposed to be doing on this. I have found many employers who are filling out I-9s, but didn't realize they are supposed to sign them, for instance, small things like that.

Those people are being fined, at least in our district. They are getting small fines of \$250, but it doesn't make people very happy about the system, and they are still not certain what they are really supposed to do.

Mr. MAZZOLI. May I ask you a question, Ms. Shivers? And I apologize; I keep bouncing in here. But are those paperwork violations exclusive of hiring violations?

Ms. SHIVERS. Well, that is a rather gray area, I would say.

Mr. MAZZOLI. No, because I understand—

Ms. SHIVERS. Yes. These are—

Mr. MAZZOLI. Only paperwork; I mean, they are not being fined for having illegally hired, but they are being hit for the paperwork, strictly alone?

Ms. SHIVERS. For failing to have the I-9s—

Mr. MAZZOLI. I would like to have documentation of that.*

Ms. SHIVERS. Well, yes. I will be happy to provide that.

Mr. MAZZOLI. And I also want those questions that you would like to have answers to.

Ms. SHIVERS. Good. Maybe you can get us answers.

Mr. MAZZOLI. Really, sincerely, I would like to find out—I think you are entitled to have answers. Even if the answer is no answer, you know. I mean, you ought to be given some kind of response. So if you could file those with our counsel later, not necessarily today.

Ms. SHIVERS. Certainly. Yes. I don't have those with me.

Mr. MAZZOLI. I would like to have those questions.

Ms. SHIVERS. OK. The last issue I touch on in employer sanctions is that I think that the Immigration Service often creates its own regulations, which is a problem that I am sure the subcommittee is very well aware of. I will give you an example, and I can provide the committee with written documentation of this.

In the early months prior to enactment of—or after enactment of the law, but prior to June of 1987, I had a number of occasions where employers were visited, for one reason or another, by the Immigration Service, and an employee who was not authorized to be employed, but who was a grandfathered employee, if you will, was issued an order to show cause, and placed in deportation proceedings.

The employers were advised that if they continued to employ that person after the issuance of the OSC, they would be in violation of the employer sanctions law, which is totally false.

Mr. MAZZOLI. This is a grandfathered employee?

* This documentation was not received by the Subcommittee.

Ms. SHIVERS. These are all grandfathered employees. As I say, I will provide the committee with written documentation of these.

I thought that this was a problem that had gone away, and that this was something that was new; they didn't know what they were doing; we were all learning at that time. As recently as a month ago in San Antonio, an employer in exactly this situation, with a grandfathered employee who was arrested, was advised that if he continued to employ that employee, that he was violating the employer sanctions law.

I am giving this as an example, not to put a black finger on the San Antonio district office, because I think they have done a very outstanding job. But I hear stories like this around the country. And I think those are things that are documentable, if the committee wants to document them.

The problem is it conveys a very mixed message to employers of, well, are we supposed to follow what the law says it is, or is the law what the INS says it is? That is a problem.

[The prepared statement of Ms. Shivers follows:]

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Statement re Family Unification relating to divided families
resulting from legalization

By Nancy Taylor Shivers

Key Points Discussed in Statement

1. Reality of the divided family
2. Inability of Immigration Service to fashion remedy
for problem without legislation
3. Continuing problem of divided families because of
existing immigrant visa quotas and resulting backlogs
4. Description of typical divided family situations
5. Need for revision of existing quota system to take into
account legalization and to be revised at regular
intervals to take into account other changes in future
years
6. Likelihood of deportations of family members
7. Need for adequate funding to increase staff of
Immigration Service handling adjudications; streamlining
legal immigration will reduce illegal immigration

FAMILY UNITY/DIVIDED FAMILIES

The aftermath of the legalization program is the reality of divided families, occurring because only some members of many families (all of whom are in the United States) have qualified for legalization. Under the existing quota system that governs the issuance of immigrant visas, divided families have long been a reality. Given the 10 plus year backlog in the second preference immigrant visa category for persons born in Mexico, spouses and children often are forced either to live in the United States illegally or to maintain a family unit through occasional "international" visits. Now however, the United States will face a much clearer realization of the divided family problem simply because so many individuals will face the problem within a relatively short time frame. AND these individuals are much more obvious to the American public than other groups have been in the past. due to the widespread media coverage of the happy and the sad aspects of the legalization program.

The Immigration & Naturalization Service's Commissioner Alan Nelson deserves praise for attempting to fashion an essentially extralegal solution to the divided family problem. Ultimately a legislative solution must be provided. There is no certainty that each District Director of each district office of the Immigration Service will feel inclined to feel compassion for family members who did not qualify for legalization. It is certain that under existing law there is not any way that such "illegal" family members can be granted employment authorization unless they are placed in a deferred status category by a District Director. The logistics of placing tens of thousands

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of persons in deferred status would overburden the offices of the Immigration Service responsible for issuing benefits at a time when their staffing and support seems to be dwindling while their responsibilities keep growing.

While the interim phase of the legalization program--going from the time when temporary residence is granted forward to the time when permanent residence is granted--may present problems for the divided family, there is no immediate solution awaiting at that stage unless Congress alters the present immigrant quota system. As noted earlier, if a Mexican citizen married woman becomes a permanent resident in May of 1989, she can file a second preference petition for her Mexican citizen husband and children. Under existing quotas, in 1999 they would possibly be reached in the quota. Even if the woman applied to become a U.S. citizen five years from the date that she became a permanent resident (in 1994), she likely will not become a citizen for 6 to 18 months (allowing for Immigration Service processing times and court time). At the time that she becomes a citizen, her husband and children can immigrate as immediate relatives BUT still some considerable number of years will have elapsed. For citizens of countries less affected by quota backlogs such as El Salvador or Canada, the waiting time under the second preference drops to about 2 years. Still the time that the family remains "in the shadows" is in the four year range.

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Is the divided family problem an isolated one? I think not based solely on my own experiences representing individuals applying for legalization and assisting in an amnesty aid project in San Antonio, Texas. I reviewed all of the cases that our office handled and determined that at this time at least 10% of the cases involve what I deem the most serious family unity problems. These cases involve families where all members of the family have managed to make their way to the United States over the past 10 years, in a stream with father coming first, followed by mother and older children or very young children, followed finally by all of the children. They are the 1979, then 1982, then 1984 arrivals. If they are lucky, they fit the profile of the father coming first and qualifying. Lucky because these families have a breadwinner who can support them over the long wait for visas. The less fortunate ones often are the teenagers whose families reunited in the United States in 1983 or 1984. These children have just now graduated from high school and are learning that they cannot continue their educations and cannot work. The least fortunate ones are the wife and young children who did qualify but whose husband/father did not qualify because he was picked up at a job site in 1984 and deported instead of being voluntarily returned. Since there were no waivers provided for in the 1986 law, these persons are here in the shadows.

Another 15-20% of the cases that I have handled involve truly split families, ones that have made the hard economic decision that most family members will remain behind in Mexico while the father/husband/older son earns money in America to send

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to the family in Mexico. Weekly I talk with these people who leave sadly when I explain that there is nothing in the law that will help them bring their family members here to join them.

Are there solutions to this problem? There are always solutions, both short-term and long-term. Congress has been considering legislation that will impact on the way that legal immigration to this country occurs. Unfortunately, very little of the legislation deals with any resolution of the problem. In the spring of 1988 the Immigration Service unveiled its own proposals for changes in the existing quota system. That proposal had much merit because it recognized that ever longer backlogs in the wait for immigrant visa do nothing to reduce the spectre of illegal immigration. Indeed, in the case of family members that are separated, a ten-year wait seems far too long. Congress may well need to consider a revision of the quota system that takes into account the effects of the legalization program for families and for employers. The Immigration Service's proposals did so by allowing for increases in legal immigration over the early years of the decade of the 1990s that were tied directly to the numbers of persons becoming permanent residents in 1989 through 1991. Such an approach coupled with a mandatory five year review of the quota system would allow, indeed would force, for reassessment of the patterns of immigration into the United States. Legislation that governs the quota system with a realistic view of the impact of legalization would be a short term solution to the overall problem of legal immigration and a long term solution to the divided family problem brought

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about by legalization. Hopefully, Congress will seize this opportunity to set in place a quota system that (1) more accurately reflects the needs of the United States and (2) is sensitive to changes in those needs that likely will occur in predictable cycles. Unless Congress mandates specific time intervals for review of the system of immigrant visa issuance, then legal immigration to the United States will never have the potential to be orderly and a sound base for discouraging illegal immigration.

Is an even more short-term solution to the problem of the divided family resulting from legalization needed for those families that are here--half in the shadows and half out of the shadows? YES, such a solution is needed. The Immigration Service correctly observes that it did not create this problem and that it cannot solve the problem under the existing law. Without a specific legislative mandate requiring that immediate relatives of family members granted legalization NOT be placed in deportation (save for the conviction of crimes of moral turpitude or comparable grounds of exclusion), it is all too likely that these husbands, wives, sons and daughters will be picked up and will be encouraged to leave the country "voluntarily" or be deported. This is not an exaggeration: notwithstanding the mandate of Congress and the specific orders of the Commissioner of the Immigration Service that all aliens apprehended after the passage of the Immigration Reform & Control Act be questioned about legalization eligibility and be released with employment authorization if prima facie eligible, numerous aliens were summarily returned to Mexico with no questioning or threatened with jail if they insisted on their eligibility.

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If there is only a general recommendation from the Commissioner that the "illegal" members of the divided families be considered on a case by case basis for possible deferred action status, many persons will fall outside of the careful consideration. Enactment of legislation alone will not resolve this problem unless the Immigration Service is given adequate funding to staff its offices to ensure that what Congress legislates can be provided.

If the ultimate conclusion of Congress is that this divided family problem will go away gradually, then the members of Congress must recognize the very mixed message that is being sent to aliens around the world.

Finally, whatever solution Congress may develop for the short term problems of divided families, it is critical that Congress recognize the increasing frustrations of many varied groups with the way that legal immigration is being handled. Indeed even within the Service itself, those persons involved in the legalization program and in adjudications are demoralized. They are asked to assume an ever greater workload with very little increase in staffing at the adjudications or support level. Meanwhile, more and more funds and personnel are being poured into the investigations and deportation branches of the Service. As delays mount in adjudications, the frustration of businesses, relatives, interested citizens and of the Service's staff increases. Over the next two years the Service is to handle thousands of interviews of persons seeking to have their conditional resident status removed and hundreds of thousands of interviews of temporary residents seeking to become permanent residents, all in addition to the usual workload.

You may question how this relates to the family unity or divided family issue. Quite simply the projections I set out for the time that it will take one person from Mexico to immigrate his or her spouse may be quite optimistic if the Service lacks the staff to handle this enormous volume of interviews. Congress has authorized the expenditure of enormous sums of taxpayer dollars for extraordinary increases in the Immigration Service's investigations or enforcement operations in an effort to stem the tide of illegal immigration. I urge Congress not to overlook the expenditure of funds to ensure that legal immigration can proceed at something more than a snail's pace--such an expenditure to facilitate the legal entrance of aliens into the United States coupled with a meaningful overhaul of the immigrant visa system (including regular reviews of the system) might well do as much if not more than ever increasing sums of money for enforcement.

EMPLOYER SANCTIONS

The reality of employer sanctions is that a large number of small businesspersons in the United States still have no idea what is supposed to be done by them in terms of hiring. The I-9 remains a confusing document if you only fill out one every two or three months or if you fill out several for one 3 day job. Recent decisions from employer sanctions cases have confused employers even more and cause them to believe that they must be detectives able to ascertain the authenticity of documents. The impact of the last crazy days of legalization is now emerging as a number of employers are being fined for not completing I-9s properly even though the INS instruction booklet is remarkably not helpful in trying to figure out how to insert the legalization piece of paper receipts into the I-9 format. Since the Immigration Service itself as recently as March of 1988 could not advise the American Immigration Lawyers Association of the answers to basic questions about whether an I-9 was needed for a babysitter who came every Saturday night, it seems ironic that the Service is now issuing paperwork citations with great zeal.

The other reality of employer sanctions is that the existing immigration laws simply do NOT allow an employer to employ legally anyone but a member of the profession--on a temporary basis. The H-2 visa category has been dramatically narrowed in its scope by the Department of Labor. There is no other possible nonimmigrant visa category that allows an employer to bring a skilled or semiskilled worker into the United States on a temporary basis; to bring such a worker on a

permanent basis requires at least a 2 year wait under the existing quota system notwithstanding serious skilled and semi-skilled labor shortages in the United States. Two years ago the then Secretary of Labor spoke here at Trinity University and the headlines the following day read "Shortage of Skilled Labor Projected for the Next Decade."

Employers are now caught in a true bind: to comply with the law, they cannot hire anyone without authorization to work; if they cannot find an American qualified to do the work they must wait two or more years to bring in legally the skilled worker.

The Immigration Service's adjudications or examinations branch was not ready for the impact of employer sanctions. The law is about documents and having the documents NOW. It is interesting to note that the Service regulations require that an employee produce an unavailable document such as a drivers license or birth record within 21 days (which is nigh unto impossible) BUT allows itself 60+ days to provide aliens with work authorization documents. Increased staffing on the adjudications/examinations side of the Service is as critical to the success of employer sanctions as the hiring of massive numbers of investigators to issue citations.

Other hearing participants are providing more detailed analysis of employer sanctions than I. Without reading those statements, I would urge the committee to recognize that small businesspeople are being papered to death by one new federal program after another. The I-9 may not be the straw that breaks the camel's back but it may come close.

Mr. MAZZOLI. Yes. I am sorry, Ms. Shivers. Your time has expired. I appreciate it, and we will come back to some questions on that. Mr. Foster?

**TESTIMONY OF CHARLES FOSTER, ESQ., COORDINATING
COMMITTEE ON IMMIGRATION, AMERICAN BAR ASSOCIATION**

Mr. FOSTER. I also want to thank the Chairman and the committee for deciding wisely to hold, I understand, your first review hearing out in the field on IRCA here in—

Mr. MAZZOLI. It is possibly the first field hearing. We have had hearings in Washington. I think John is correct; this, I believe, as I search in my memory bank, is the first time we have been away from DC.

Mr. FOSTER. Well, I want to congratulate you for having the wisdom to come down to Texas and have it here.

Like Nancy, I want to touch briefly and expand upon my prepared remarks in the area of employer sanctions. I think to the extent that employers are aware of the law, they are doing a very good job. I have been impressed by their willingness to comply with the law.

I spend most of my time representing employers just in the area of immigration law, and I have yet to encounter any resistance at all. Employers are eager to comply with the law.

There is some confusion still, as Nancy indicated, over what is technically required; with large institutions, the policy may be understood at the top, but by the time it is translated down to the bottom the way it is carried out, it is somewhat confusing.

I have had employers or people contact me saying that you can only show, for example, the Social Security card and a driver's license to comply with employer sanctions, and that they cannot accept a U.S. passport as evidence of citizenship, which, of course, turns logic on its head. But in any event, by and large, employers who are aware of the law are doing a very good job in attempting to comply with it.

I think, as Nancy said, the lack of knowledge about this law is widespread. I speak to lots of different groups, including our fellow lawyers who are not practitioners in immigration law, and inevitably, when they learn that this law applies to their law office, there is a look of shock.

And the reason is, with the very title of the law, Immigration Reform and Control Act of 1986, there is an implicit understanding that this law only applies to employers of aliens. And so even though the Service did a very good job of getting out its handbook for employers, I think many employers just looked at it, saw that it came from the Immigration Service, and tossed it, on the assumption that they were not involved, as they were not hiring illegal aliens, and did not realize the breadth of this law.

One more point that Nancy touched on about the confusion about what to do. There has been at least one reported case by an administrative law judge which to me is somewhat disturbing, that is, when you have a possible charge of continuing to hire someone knowingly that they are in unauthorized status in the United States, is it sufficient for any immigration officer simply to walk in

and say, this guy is illegal and therefore you have got to terminate?

Even immigration law practitioners and even people within the top bureaus of the Immigration Service, often will disagree over the issues as to whether someone is authorized to work. And I find that the immigration investigator is often the least sophisticated. He may be very good in law enforcement techniques, but he himself, or she herself, may not have that in-depth knowledge of who is permitted to work in the United States under a very complex scheme, where you can have work authorization under a number of different authorities.

In the case at hand, before the administrative law judge, an immigration officer walked in, said it looked like to him that the "green cards" were not good cards, and the officer indicated he would "get back" to the employer.

Subsequently, the employer was issued a notice of intent to fine, and the administrative law judge held that there was no particular notice required, and that the mere casual statement by the immigration investigator was sufficient to put the employer on notice, and the employer therefore should have terminated.

Of course, that is easy to say. But employers are often faced with conflicting laws. If they terminate an employee wrongfully, they may be subject to other charges, or at least monetary fines.

Another case that has come recently to my attention comes out of Houston, where an employer has been issued a notice of intent to fine on the basis that the employment authorization was insufficient. The employer relied upon the fact that the employees in question had letters from QDEs, indicating that the QDEs had accepted their applications for filing purposes.

Now, in fact, there were periods of time, particularly in Houston, where the legalization office was very busy; you simply could not get into the door. There were almost public health, serious congestion and safety problems. And the INS, both nationally and locally, was encouraging aliens to go to the QDEs.

One of the disadvantages of that was that the individual was not going in and getting a specific grant of work authorization. Instead, they were going to the QDE and getting a letter.

In this particular case, the INS issued a notice of intent to fine. It will be before an administrative law judge, as to whether or not that was sufficient employment authorization. But it appears to be somewhat contradictory for the Service on one hand to be encouraging aliens to go to QDEs, and on the other, giving notices of intent to live on the grounds that the QDE letter did not constitute sufficient authority to work.

As I indicated in my prepared remarks, I don't know whether any of these problems are widespread. I am just bringing out the fact that these are possible areas of abuse.

Another one is the possibility of the INS charging of criminal harboring. I will not state before the subcommittee what the intent of Congress was, since you gentlemen wrote the law. But I do know that the INS Assistant General Counsel Paul Schmidt indicated in his testimony before this committee—and the INS in their preamble to their regulations also stated, that it was their understanding

that the harboring was not to be a charge in the case of unauthorized employment.

To do so would render meaningless the Congressional enactment of a tiered series of fines before you could get to a "pattern of practice." And yet there have been some reported instances of harboring charges having been brought, or at least threatened, and there is some concern—and, again, it may be premature to say it is a serious problem, but there is concern—that this area could be criminalized, and that the Service could be tempted to bring or threaten harboring charges rather than going through the regular series of graduated fines.

Another issue that I want to touch on briefly is the genuine problem that employers often face. We live, it is a cliché to say, in a shrinking world, and employees, we know, are not interchangeable individuals. You cannot just say one employee is the same as the other.

There are many instances where it is essential to an employer that he have a particular kind of employee, and the particular services of an individual may not be found. I am representing companies in Houston right now that have large construction contracts. They need key people, and because of the way the state of the art has developed, some of the key people are overseas. These are not only professionals, who may or may not qualify for H-1 non-immigrant visas, but in some cases technicians.

And they need these people to come in, and if they can do that, they will get contracts that will result in employment of literally thousands of people in the United States.

Part of their bid process requires them to show the resumes and the quality of the people that they have. At the same time, they are sending American workers overseas, because these particular American workers fill needs that they cannot fill with overseas contracts. So we have a complex economy.

Yet in many instances now, and, of course, employers are more sensitive to the legal status of prospective employees because employer sanctions, basically, is working, at least at the large corporation level, there may not be a viable alternative where these individuals can be hired. There may not be a non-immigrant visa classification where these individuals could be hired.

Mr. MAZZOLI. Like an H-2 or something?

Mr. FOSTER. For an example, the H-2. The H-2 essentially is not a workable vehicle. It may be in agriculture, but not in industry because of the second requirement that the position be temporary.

The Labor Department as well as the INS essentially do not assume that any position is temporary, as opposed to the intent of the individuals to work temporarily. That is clearly required. But for an H-2, you must also show that the position is going to disappear.

Mr. MAZZOLI. That is agriculture, yes. It is H-1 that has some possibility, maybe.

Mr. FOSTER. And one final note. I realize my time is up. I think I would just like to discuss another problem; clearly, this was unintended, but there is a possibility that grandfathered employees who are essentially frozen into their jobs, are subject to abuse; these in-

dividuals, because of the way the law is written, are not being forced to leave the country; most of them are staying on the job.

And yet, because the employers know that they cannot switch jobs, in some instances—and I don't think this is, again, widespread—they take advantage of them and in effect say, "I am the only person who can legally hire you. If you leave me, you are not going to be able to find a job under the new law."

I am a movie buff, and I believe that movies reflect the conventional wisdom of our society—and I have seen three movies in a row, "Married to the Mob," "Diehard," and "No Way Out" and in each of those movies, interestingly enough, Hollywood showed an alien who was being exploited, with an official or an employer, saying do this or I am going to turn you over to the Immigration Service.

And while such actions may not be representative of our society, the mere fact that that is being commonly shown in moves says something about the problem of exploitation of aliens.

[The prepared statement of Mr. Foster follows:]

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STATEMENT OF

CHARLES C. FOSTER

before the

**SUBCOMMITTEE ON IMMIGRATION, REFUGEES & INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

THE IMMIGRATION REFORM & CONTROL ACT OF 1986

**AUGUST 23, 1988
TRINITY UNIVERSITY
SAN ANTONIO, TEXAS**

INTRODUCTION

Mr. Chairman and distinguished Members of the Subcommittee:

I am pleased to have the opportunity today to testify before you. Although I am currently the Chairman of the Coordinating Committee on Immigration of the American Bar Association and past President of the American Immigration Lawyers Association, I am testifying before you today as a private attorney who represents a number of corporations and other employers who have been impacted by the employer sanction provisions of the Immigration Reform and Control Act of 1986.

Before I get to my concerns, I wish to first commend the Chairman and the Committee for the many important reforms contained in the Immigration Reform and Control Act of 1986 and to recognize the difficulty in enacting any legislation to deal with the issues of unauthorized employment in the United States and finding any solution that would satisfy the various groups and individuals in the United States involved in immigration issues. I recognize that the Committee and its staff have spent many hours not only in enacting the legislation initially, but also now in considering its impact on the United States and on our employers and workers. Also, I particularly want to commend the Committee for holding hearings in the Southwest, an area which is particularly impacted by the legislation.

I will address two primary areas of possible abuse involving misuse of harboring charges and the subpoena power. I emphasize the word "possible" since I am not here to say that there has been widespread abuse in these areas. As of June 1, 1988, employers were, for the first time, subject to civil and even possibly criminal proceedings for a "pattern or practice" violation without first receiving a warning citation under the employer sanction provisions of the Immigration Reform and Control Act of 1986. Therefore, it is important that problems in enforcement vis-a-vis employers be highlighted at this time in order to avoid the possibility that the Service itself develops a pattern of enforcement that is not provided for in the Act and that is possibly abusive to employers.

In addition to the two primary issues, I also wish to address several other items, including the following: Based upon my contacts with large numbers of employers as well as practitioners, I have been impressed by the overwhelming spirit of cooperation on the part of all employers. In fact, I have not encountered any employer aware of the law who has not been prepared to fully comply with the law. For the most part, these employers have been able to institute compliance programs without too much difficulty.

Nevertheless, there are still a large number of employers who are not fully aware of the fact that this law applies to all employers rather than those employers who hire aliens.

Therefore, although the Service has indicated that it is not interested in paperwork violations, it appears that the Immigration Service is prepared to issue a Notice of Intent to Fine to employers prior to any educational visit to employers who have simply overlooked the new legal requirement that all of their employees since November 6, 1986, be verified. A minimum fine of \$100 to a maximum fine of \$1,000 per failure to verify can represent a substantial monetary penalty for employers. It is not too unusual for even small employers with a large turnover of employees to face substantial civil penalties simply for failure to verify, without having had any prior notice as to the change of the law other than the possible receipt of the Handbook for Employers (Form M-274). While, obviously, the Handbook for Employers published by the INS, clearly states their obligation to verify the status of all employees, I submit that many employers, noting that it was a publication of the Immigration Service, may have simply discarded same out of habit. I have even spoken to a number of legal groups, involving non-immigration law practitioners where a number of lawyers present expressed surprise when they learned that the law applied even to their own law offices.

Another issue of concern for employers is where there is a proven shortage of U.S. workers. Often the employer faces a "Catch 22" since there may not be a viable way in which the employer can obtain work authorization for an employee even where the employer has proven that he is unable to find a single qualified individual. I recall that, in prior testimony, if my recollection is correct, the Chairman of the Subcommittee voiced an opinion that, if the employer had received labor certification, i.e., the Department of Labor had certified that for a particular position there was a proven shortage of U.S. workers and that a particular alien was qualified, there should be some method by which the employer could obtain interim work authorization for the alien or be able to satisfy the verification requirements by some alternative method. There are many situations where employers have proven the shortages of U.S. workers and have obtained labor certification for non-grandfathered employees and, yet, are subject to being fined if they keep them in their employ. An example would be nurses or key technical employees.

Now, I wish to turn my attention to the two major issues referred to above.

THREATS OF CRIMINAL INDICTMENT

Harboring an alien has loomed as a more likely prosecution since the Immigration Reform and Control Act of 1986 (IRCA) repealed the "Texas proviso." Under pre-IRCA law, this section provided that "employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring" as that term was used in 8 U.S.C.

Sec. 1324. The amendments contained in Section 112 of IRCA which eliminate the "Texas proviso" appear not to benefit from any grandfather clause. Although, the proposed Senate version of the IRCA would have simply tightened the language of the then existing statute, adding the words "by itself" to qualify the "Texas proviso," the final language of the IRCA eliminates the "Texas proviso" altogether. This amendment could overshadow the sanction provisions of IRCA. Rather than pursue the civil penalties available under Section 274A, the Service could arguably elect to pursue a "harboring charge" under the expanded provisions of 8 U.S.C. Sec. 1324.

The pursuit of such a harboring charge is inconsistent with the implicit intent of the IRCA that criminal prosecutions under the Act would only be available in cases displaying a "pattern or practice" violation pursuant to new INA Sec. 274A(f). The legislative history suggests that substantially more than mere employment, perhaps conduct showing an intent to avoid apprehension or to frustrate detection of an illegally employed alien, should be a requirement of a harboring violation. In fact, a former acting General Counsel of the INS, Paul Schmidt, also testified before this Committee that it was the Service's understanding that it was not the intent of Congress for the INS to charge employers for harboring when the employer had only hired an unauthorized alien. Furthermore, in its comments to both the proposed and final employer sanction regulations, the Service itself concluded that "employment of illegal aliens in and of itself does not constitute harboring under section 274(a) of the Act as amended." For some reason, however, the INS did not specifically provide for same in the body of the regulations.

Despite the fact that employment, by itself, of an illegal alien should not constitute the felony of harboring, a few recent events give cause for concern. While these unfortunate incidents may not be numerous, they do suggest the possibility of future abuse. For example, this past May, acting on an anonymous "tip," three INS agents, without the benefit of a search warrant, went to a fast-food restaurant in northern Virginia. Approaching the manager at the counter, the agents informed him that they wanted to interrogate employees working in the private areas of the restaurant regarding their immigration status. In keeping with company policy, the manager asked to be shown the search warrant. During this interchange, one employee at the counter asked two other employees who were also present if they had proper papers. One of the special agents spoke Spanish and immediately demanded the right to interrogate these three employees. The agent commenced to ask several questions in Spanish, while the manager, who did not speak the language, was concerned that this incident was disrupting business. In order to restore a semblance of order, the manager took the two employees involved behind a machine used to make french fries for customers. The aim, obviously, was to halt the interrogation rather than to harbor the employees or prevent their detection.

The special agents left the fast-food restaurant but established a surveillance around it for the next six hours. During this time, they obtained a criminal search warrant from a United States magistrate, relying, in part, on a harboring charge. Wanting to avoid a raid, the employer offered to have individual employees, one at a time, made available for interviews in the public area of the restaurant. Having committed themselves to obtaining a criminal search warrant, the special agents categorically rejected this offer and would not even discuss the matter with the company's attorney. When the agents returned with the criminal search warrant which failed to identify any undocumented workers by name, they refused to permit the attorney to read or examine it on the grounds that no entry of Notice of Appearance of Attorney on Form G-28 was on file at the INS District Office in Arlington, Virginia. INS agents rushed into the private areas of the store and leaped over the counter in order to arrest employees who appeared to be Hispanic. Certain employees, who did not resist arrest, were slightly injured when they were thrown to the floor. The company attorney was pushed and shoved by INS agents who threatened him with arrest merely because he insisted on examining the warrant.

One week after the raid, the local United States Attorney informed the fast-food restaurant, through counsel, that it was the target of a criminal investigation based, in part, on the harboring statute. While the U.S. Attorney has not yet attempted to have a grand jury return a Bill of Indictment, this remains a possibility. The proposed Indictment, which has been shown to the fast-food restaurant, does not, rather surprisingly, contain any harboring counts. Rather, it seems that the allegations of harboring were primarily a device to persuade the United States magistrate to issue the criminal search warrant.

UTILIZATION OF CRIMINAL PROCESS FOR DEPOSITIONS

In addition to this most disturbing incident, at a recent speech in San Diego, Walter Cadman, formerly Associate Commissioner for Investigations and soon to be the INS District Director in Baltimore, expressed the view that, under Rule 15 of the Federal Rules of Criminal Procedure, the Service could depose aliens in custody so that this could be used in criminal trials under the IRCA after the government had moved to deport the deponents. Of course, Rule 15 only allows such depositions to be used where the witness is unavailable and where "exceptional circumstances" exist.

In those cases where it is has gone ahead, the deposition is either taken at a detention facility or at the INS District Office by the same agents who arrested the alien. These videotaped depositions have, on occasion, been taken without the benefit of the employer's counsel being present. Moreover, since the special agents who arrested the aliens are the same persons who controlled the videotaping, the accuracy and reliability of

such videotaping is clearly open to question. In United States v. Guadian-Salazar, 824 F.2d 344 (5th Cir. 1987), the government's presentation of its case against the employer was found to violate the defendant's constitutional right to confront adverse witnesses, guaranteed by the Sixth Amendment, thereby depriving him of due process of law under the Fifth Amendment to the United States Constitution. In addition, the Fifth Circuit found that the government had failed to establish the unavailability of the witnesses and, in fact, had virtually assured their absence by releasing them at the Mexican border, providing them with ambiguous instructions, and failing to provide them with the financial resources to return to the United States to testify. In addition, the taking of the videotaped depositions also violated Rule 15 because no "exceptional circumstances" were demonstrated to justify this process. In fact, at trial, the government agreed that the depositions weren't admissible and noted the absence of "exceptional circumstances" deficient under Rule 15 to justify deposing the witnesses.

Recently, the United States Attorney for the Northern District of Virginia conducted Rule 15 depositions in an atmosphere, and for a purpose, that can only charitably be described as "irregular." Armed with a criminal search warrant, Special INS Agents showed up at the Arlington, Virginia corporate offices of a landscaping company at 7:00 A.M. whereupon they seized only those employees with Hispanic appearances. Some of the employees seized had attorney-certified copies of SAW applications that had already been filed. In addition to seizing virtually all company financial records, thus making it impossible for the company to meet its next payroll with any degree of accuracy, the INS also seized files from the company's attorney which had been placed there in anticipation of a meeting that afternoon that was designed to review SAW applications that would soon be filed on behalf of company employees. While the attorney was able to go into Federal District Court on the following Monday and successfully secure the return of her files, which were clearly within the work-product privilege, the U.S. Attorney asked the court to reconsider its Order and alleged a criminal conspiracy by both the employer and its counsel to defraud the U.S. Government by the filing of bogus SAW applications. This was denied. Undaunted, two days later, the office of the U.S. Attorney served Rule 15 Notices of Deposition for that Friday on both the employer and its attorney. The deponents were all nationals of Mexico and El Salvador who were given the choice of either spending several months in jail or, if they agreed to the deposition, being let out on their own recognizance and given 30 days employment authorization. The Notice of Deposition alleged three possible areas of inquiry: (1) SAW fraud; (2) a pattern and practice of IRCA violations despite the fact that there had been no Notice of Intent to Fine nor any violation ever found; and (3) harboring. The aliens did not realize they had the right to go before an immigration judge and, for at least some of them, believed that the deposition was

their deportation hearing. The Assistant U.S. Attorney who wanted to videotape the depositions attempted to have the same special agent who conducted the raid also operate the videotape machine. Twelve hours of deposition testimony produced absolutely no evidence of harboring nor was their any explanation why the government had entirely neglected to serve a Notice of Intent to Fine.

RELATED PROBLEMS WITH SEIZURE OF VEHICLES

Another possible area of abuse is the seizure and forfeiture of employers' vehicles used merely in normal transportation of an employee as an incident of employment. Section 274(b) of the INA gives the Service the authority to seize any vessel, vehicle or aircraft used in furtherance of an unlawful entry. Once the illegal alien has already entered, the law does not sanction the confiscation of such vehicles, which are often basic to an employer's livelihood. Yet, it is not at all uncommon in Texas, particularly in the Rio Grande Valley and the greater San Antonio area, for small and medium-sized landscaping, lawn maintenance and construction companies to have their trucks seized when the employer has done nothing more than transport workers to the job site.

PROBLEMS WITH USE OF SUBPOENA POWER

The Immigration Reform and Control Act prohibits unlawful employment of aliens in the United States and imposes record keeping requirements on employers, recruiters and referrers for a fee. The Act also provides the Immigration and Naturalization Service with investigation authority to ensure compliance with these prohibitions and requirements.

As part of its enforcement activities, INS investigators issue administrative subpoenas pursuant to the general investigation authority granted to the INS. Such subpoenas are issued to compel the attendance and testimony of witnesses and the production of employment documents prior to issuing a charge or complaint. Evidence obtained is used to bring charges against employers not in compliance with the law.

Congress has given the INS a specific statutory mandate to investigate complaints of IRCA employment-related violations. However, the INS authority to conduct investigations under the pertinent subsection of the Immigration and Nationality Act does not include subpoena authority. Only an Administrative Law Judge is empowered to issue a subpoena to compel the attendance and testimony of witnesses and the production of documents in furtherance of an investigation under the subsection of the Act dealing with employer prohibitions and requirements compliance.

The assertion of authority by the INS to issue subpoenas in an investigation of this nature is a violation of the express statutory language and has the effect of exposing the employers to burdensome requests for information prior to the issuance of a charge or a complaint. While agencies generally may have authority to issue a subpoena in connection with an investigation prior to the issuance of a complaint, such authority derives from and is limited by specific statutory language.

By ignoring the statutory limitations on the subpoena authority granted by Congress when conducting IRCA employer compliance investigations, the INS is frustrating the protections built into the investigation provisions. Congress did not leave the INS without investigation and enforcement tools by not granting it authority to issue subpoenas on its own initiative. The INS must simply apply to an Administrative Law Judge to obtain a subpoena.

This administrative-judicial review of the subpoena request does not reduce the ability of the INS to conduct thorough investigations. Furthermore, review of a request for a subpoena by an Administrative Law Judge will ensure that there are grounds to justify use of this investigation tool and that a subpoena is not issued merely to conduct a fishing expedition. Finally, the review of the subpoena request by INS enforcement personnel will generate a more favorable reception from those businesses requested to comply with a subpoena.

CONCLUSION

Again, while I have emphasized possible technical problems in the area of employer sanctions, I want to reiterate my belief that overall the legislation is having the intended effect. Employers are refraining from hiring individuals without proper immigration status, and aliens in the United States, who have either come illegally or have overstayed, by and large are encountering greater difficulty in obtaining employment. It appears that the utilization of false documentation, at least to my knowledge, is not significant, although as time goes on the utilization of false Social Security cards would appear to be an obvious area of abuse.

Thank you again for providing me this opportunity to share my views with you. I am prepared to answer any questions you may have regarding the foregoing.

Thank you.

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 GARY E. ENDELMAN

CHARLES C. FOSTER

PERSONAL DATA

Charles C. Foster is a partner in the Houston law firm of Tindall & Foster, specializing in U. S. immigration law. He is Board Certified in Immigration and Nationality Law by the Supreme Court of Texas and he is a graduate of the University of Texas School of Law, where he served as President of the International Law Society. He was a recipient of a Rotary International Fellowship, under which he studied International Law at the Universidad de Concepcion in Chile.

Active in Bar activities, Mr. Foster has served as National President of the American Immigration Lawyers Association and currently serves as Chairman of the Coordinating Committee on Immigration Law for the American Bar Association. He currently serves on the Houston Bar Association Immigration Amnesty Task Force Committee and has served as Chairman of the Committee on Immigration Law. He is Chairman of the State Bar Advisory Committee on Immigration and Nationality Law to the Board of Legal Specialization.

In addition to the foregoing, Mr. Foster is Adjunct Professor of Immigration Law at the University of Houston Law School, and served as Chairman of Governor White's Task Force on Immigration Reform. He presently serves on the Immigration Ministry Advisory Board of the Galveston-Houston Diocese, and lectures and writes frequently on the topic of U. S. immigration law reform.

Mr. MAZZOLI. Yes. About where we are. Charlie, thank you very much. Mr. Montemayor?

**TESTIMONY OF RUBEN MONTEMAYOR, ESQ., SAN ANTONIO,
TEXAS**

Mr. MONTEMAYOR. Chairman Mazzoli, it is an honor to have you in Texas, especially in San Antonio, still trying to get some fair immigration laws in the books. Congressman John Bryant, thank God we have got a Texan in the committee.

The big problem facing the alien in this part of the United States, especially Texas, California, New Mexico, and Arizona, as a result of IRCA is extreme hardship and disruption of family unity.

The law itself, legalization, is good. It was a wonderful thing for some people. However, the new law has made it a complete bar to legalization if a person has been formally deported from the United States, irrespective of family unity, humanitarian reasons, or extreme hardship, if he was deported after 1982.

And in most of these cases, he was deported because he was told to leave, and he didn't leave, and they deported him. It is not because of any criminal activity behind the deportation order.

Every day, legalization applications are being denied because an alien has had a formal deportation and been deported. I do not believe that Congress intended for these families to suffer this extreme hardship and division of family unity.

Under the Immigration and Nationality Act, which I will refer to as the old law, there is a pardon of permit to reapply after deportation called the I-212. This I-212 waiver pardons the alien who has previously been deported. It still does that prior to 1982. It forgives excludibility, and also forgives criminal activity.

And I urge the committee and the Congress that it should also obviate legal consequences of such departure for purposes of meeting the continuous legal residence requirement for legalization. How the Immigration Service knocked that through the Congress, I will never know.

The Attorney General has wide discretion and wide powers to grant the I-212 waivers, and it applies to almost everything under IRCA. However, if you were deported officially, then you break the continuity of your continuous residence, and you are gone. This is exactly what has happened in this case.

Many aliens and their families will suffer extreme hardship if the deportation requirement is allowed to stand. In most cases, the husband is the alien who receives the formal deportation; the wife and the children qualify for legalization and temporary residence.

They will suffer extreme hardship if the head of the household's legalization application is denied because of the deportation. This is a real big and serious problem. I do not believe that the intention of Congress was to create extreme hardship to these families because of an order of deportation. I do not believe that Congress was given the correct information.

If the Unification Act passes—and I understand that it is still not dead yet—what is going to happen to the husband that was denied legalization because of an order of deportation, and his wife and children all qualify for legal residence? Is the Attorney Gener-

al going to look at that and grant the waiver, or is he going to be allowed to file a waiver? What is going to happen to this family?

My recommendation is that the Immigration Reform and Control Act be amended to delete that section that bars legalization because of an order of deportation, and allow those aliens that have been officially deported to qualify for legalization if they meet all other requirements.

I also recommend and urge that the Unification Act—and I don't know what the status is right now—and if it is passed, that family unity—extreme hardship, and for humanitarian reasons, or if only for the reason that the family members have received their temporary residence visas, I believe that the husband that has been denied should be granted.

A deportation order lacking due process of law pursuant to an order of deportation should not be a bar to legalization under the Immigration Reform and Control Act of 1986. In other words, if a person gets voluntary departure, does not depart; six months later, the Immigration picks him up, without a hearing, officially deports him to Mexico, there is the lack of due process, in my opinion.

A deportation of an alien pursuant to an order of deportation should not be a bar to legalization under the Unification Act, if it passes. An alien can be pardoned by a grant of an I-212 waiver if he was deported before 1982, but an alien who was deported after 1982 cannot be pardoned. If this is not flagrant discrimination by the Immigration Service, I don't know what it is. I really can't comprehend the difference there.

I do not believe that Congress, in its infinite wisdom, intended this to be the case. I do not believe that Congress intended a voluntary departure order to become a deportation without a fully protected due process hearing after the grant of voluntary departure.

I realize that the task of solving the problems at hand concerning deportation and family unity are difficult. I am convinced that all of the members of the committee can exhibit the same courage and intestinal fortitude as Congressman Bryant did when he jumped on two Federal judges on national television for taking a position foreign to reason and constitutional law.

And Congressman Bryant, you and your committee could do a tremendous service to thousands of aliens and their families who are experiencing extreme hardship as a result of the present Immigration Reform and Control Act. Remove the bar. I know that the Hispanic Caucus will share my view in this respect.

And Chairman Mazzoli, if you would only know how much admiration people have for you, you would be surprised all over this part of the United States. In my personal opinion, you are the author of the Simpson-Mazzoli bill that gave rise to the Immigration Reform and Control Act of 1986.

For the treacherous months that you labored in preparing and passing this law, you have helped thousands of people, are we are forever grateful. You have left your mark in history. And you are still here trying to get a fair immigration law, and I admire you for that.

And I will direct this to you, Congressman Mazzoli. I keep telling my clients and my colleagues and trying to correct them on your name. And I keep correcting them, and I know you are known by

Ron Mazzoli, and they don't believe me. They think your name is Simpson Mazzoli.

[The prepared statement of Mr. Montemayor follows:]

TO: CHAIRMAN, CONGRESSMAN JOHN BRYANT

TO: CONGRESSMAN RON MAZZOLI

AND

MEMBERS OF THE SUBCOMMITTEE

TESTIMONY BEFORE THE
UNITED STATES IMMIGRATION SUBCOMMITTEE HEARING ON
IMMIGRATION REFORM AND CONTROL ACT OF 1986

BY

RUBEN MONTEMAYOR

AUGUST 23, 1988

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EDUCATION: Graduate of San Diego High School -1947
 University of Texas at Austin -1953-1955
 Graduate of St. Mary's University -1955-1956
 Graduate of St. Mary's School of Law -1956-1960
 Licensed to practice law -1960
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EMPLOYMENT:
 1950-1952 United States Army
 1958-1960 District Attorney of Bexar County,
 Texas (Investigator)
 1960-1961 Assistant Criminal District Attorney
 Bexar County, Texas
 1961-1968 General Attorney, U.S. Department of
 Justice
 1969-present General Practice of Law

AWARDS, APPOINTMENTS:

Appointed to Texas Board of Corrections by Governor
 Dolph Briscoe
 Appointed as Small Business Administrator by Vernon
 Weaver
 Member, National Advisory Council of Small Business
 Administration
 President of Mexican-American Business and
 Professional Association
 Former Chairman, Ethics Committee for City of San
 Antonio

SUMMARY OF TESTIMONY BEFORE THE UNITED STATES
IMMIGRATION SUBCOMMITTEE HEARING ON IRCA OF 1986
AS PRESENTED BY RUBEN MONTEMAYOR

The primary problem facing Aliens as a result of IRCA is extreme hardship and disruption of family unity. The provision making it a complete bar to legalization if a person has been formally deported has cast extreme hardship and has divided family unity. Hence, an alien who meets all the requirements for legalization but for the fact that he was deported should be allowed to file a waiver I-212 or a "Waiver" of excludability to avoid the adverse consequences mentioned herein. This, of course, is what the law allowed under the Immigration and Nationality Act.

If the Unification Act passes, further problems will surface--for example, what will happen to a husband who was denied Legalization because of an order of Deportation, whereas the wife and family all qualify for temporary residence? I do not believe that Congress intended such harsh results.

I recommend that IRCA be amended by deleting the section barring legalization due to prior deportation, and rather allow such aliens to qualify for legalization if they meet all other requirements. Further, I urge that the Unification Act be passed. Also, that the I-212 waiver be available to those aliens deported after January 1, 1982, so as to avoid flagrant discrimination. Finally, that Congress require that a voluntary departure order not connote to a "deportation" without a fully protected due process hearing after such grant of voluntary departure.

Mr. Chairman, Congressman John Bryant, Congressman Mazzoli, Members of Congress, Members of the Committee. Thank you for inviting me to testify before this Committee. My name is Ruben Montemayor. I am an attorney, Board Certified Immigration Law Specialist. I have been involved in Immigration work since 1961 when I went to work for the Immigration and Naturalization Service in San Antonio as a General Attorney, known as Naturalization Examiner - this has been over 25 years. I have been practicing since 1969.

I.

The Big Problem facing the alien in this part of the United States especially Texas, California, New Mexico and Arizona, as a result of the Immigration Reform and Control Act of 1986 is Extreme Hardship and Disruption of family unity.

II.

The New Law has made it a complete Bar to Legalization if a person has been formally deported from the United States irrespective of Family Unity, humanitarian reasons or extreme hardship. Every day Legalization applications are being denied because an alien has had a formal order of deportation and has been deported. I do not believe that Congress intended for these families to suffer this extreme hardship and division of family unity.

III.

Under the Immigration and Nationality Act the (old law) there is a Pardon or Permit to reapply after deportation I-212. The I-212 waiver pardons the alien who has previously

been deported. It forgives excludability under Sec. 212 a (17) and forgives criminal activity under Sec. 276.

IV.

It should also obviate legal consequences of such departure for purposes of meeting the continuous residence requirement for Legalization.

V.

The retroactive grant of an I-212 "Waiver" of a prior deportation has long been available on a *nun pro tunc* basis in situations such as an adjustment of status application under INA sec. 245, where the grant of a waiver would completely dispose all bars to admissability. An alien who meets all of the requirements for legalization—but for the fact that he or she departed under an order of deportation, should be allowed to file a waiver I-212 or a "Waiver" of excludability because such denial of his legalization application would result in extreme hardship?

The deportation provision itself should be eliminated.

.VI.

The Attorney General exercises broad power in approving an I-212 waiver; an alien can escape prosecution for a felony under INA sec. 276 by obtaining a *nun pro tunc* waiver applicable retroactively to the felonous conduct. This broad authority should arguably be extended to the much less significant civil consequences of deportability resulting in

ineligibility for Legalization.

VII.

As it stands now the deported aliens' only alternative is to collectively attack the deportation order - End up in Federal Court.

VIII.

Now the consequences of a deportation which occurred before January 1, 1982, may be overcome by one form of amelioration available to negate actual or potential inadmissibility under INA 212 (a) (17). An alien can apply for "Permission to Reapply for Admission to the United States after deportation, removal or departure at government expense" pursuant to 8 CFR 212.2.

IX.

Sec. 212 of the INA sets forth 33 grounds of excludability which defines various classes of aliens ineligible to receive visas to enter the United States. Most, but not all, of this ground of excludability apply to applicants for temporary residence status or after 1982 entrants (amnesty), many of the grounds of excludability can be waived for humanitarian purposes, to assure family unity or when it is otherwise in the public interest. The standard governing this waiver differs favorably in comparison to the standard generally applied in adjudicating requests for waiver of same grounds of excludability under other provisions applicable to applicants for immigrant or non immigrant status.

X.

Now under Sec. 211 of the INA requires the following inadmissibility normally applicable to aliens seeking entry either as immigrants or non immigrants are automatically waived in Legalization cases under INA sec. 245 A (d) (2) (A).

XI.

Inadmissibility can be overcome by a waiver applicable to qualifying under INA Sec. 245 (d) (2) (B) which provides The Attorney General may waive any other provision of Section 212 (A) in the case of individual aliens for humanitarian purposes to assure family unity, or when it is otherwise in the public interest.

XII.

INA Sec. 212 (a) (16) and (17) precludes the admission of those aliens who have been excluded within the prior year, have been deported within the 5 previous years, if such alien have not obtained the permission of the Attorney General to re-enter the United States.

XIII.

Any alien excluded or deported can obtain the permission of the Attorney General pursuant to 8 CFR 212.2. However, this is no longer necessary in the case of (pre 1982 Amnesty applicants) as the grounds may be overcome by the more generous humanitarian waiver of INA sec. 245 (d) (c) (b). In the case of the Legalization applicant, the main adverse

impact of prior actual or self deportation will be that as to those deportations which occurred after January 1, 1982; he or she will be unable to establish continuous residence, in some situations, the deported alien may not even realize that his or her departure was subject to a final order of deportation and that re-entry may not only have broken continuous residence, but was itself a violation of law amounting to a felony.

XIV.

Many aliens and their families will suffer extreme hardship if the deportation requirement is allowed to stand. In most cases the husband is the alien who receives an actual deportation and the family who has resided in the United States prior to 1982 all qualify for Legalization and have more than likely received their Temporary residence card - Will suffer extreme hardship if the head of the household Legalization application is denied because he was deported - This is the Big Problem.

XV.

The only alternative to the Denial of Legalization is to attack the deportation. Collateral attack is the only remedy available to this alien.

XVI.

Enclosed please find an Immigration Court order granting voluntary departure to an alien "John Doe". If he failed to depart voluntarily then, a certified letter called a

"bag and baggage," is mailed to him advising him of his deportation. This letter is sent subsequent to the date he fails to appear or depart. He is picked up by the Immigration and Naturalization Service officers at his home and deported without further hearing in violation of due process of law - They call this an official deportation. Enclosed also find a denial of the Legalization application because the alien was deported from the United States in this manner.

XVII.

This is what is happening to every alien that was deported pursuant to an order of deportation.

XVIII.

The Attorney General under the New Law waives any provision of section 212 (a) except a few narcotics, etc..., for humanitarian purposes to assure family unity, or when it is otherwise in the public interest.

XIX.

In every case, that has come before the Legalization Centers, the aliens application for temporary residence is denied because he was deported - and the continuance residence after January 1, 1982, has been interrupted because of the deportation. This has created extreme hardships and is dividing the family.

XX.

In this part of the country, orders of deportation are issued like confetti on any New Year's Eve. I'm not

talking about Texas alone, but California, New Mexico and Arizona.

XXI.

I do not believe that the intention of Congress was to create extreme hardship to these families because of an order of deportation - I do not believe that Congress was given the correct information - If the Unification Act passes what is going to happen to the husband that was denied Legalization because of an order of deportation, and his wife and family all qualified for Temporary Residence. Will the Congress allow him to stay because of family unity; will the husband be granted a Waiver by the Attorney General - what about the whole family that was issued an order of deportation and denied Legalization, are they going to be able to ask for a Waiver because of humanitarian reasons?

XXII.

My recommendation is that the Immigration Reform and Control Act be amended and delete that section that bars legalization because of an order of deportation and allow those aliens that have been officially deported to qualify for Legalization if they meet all other requirements.

XXIII.

I also recommend and urge that the Unification Act be passed because of Family Unity, Extreme Hardship and for humanitarian reasons or if other family members have received temporary residence.

XXIV.

A deportation order lacking due process of an alien pursuant to an order of deportation should not be a bar to Legalization under the Immigration Reform and Control Act of 1986.

XXV.

That a deportation of an alien, pursuant to an order of deportation should not be a bar to Legalization under the Unification Act that is before the Congress.

XXVI.

An alien can be pardoned by a grant of an I-212 waiver if he was deported before January 1, 1982,. . . But an alien who was deported after January 1, 1982, cannot be pardoned .

If this is not flagrant discrimination by the Immigration Service, I do not know what is. I do not believe that Congress in its infinite wisdom intended this to be the case.

XXVII.

I do not believe that Congress intended a voluntary departure order to become a "deportation" without a fully protected due process hearing after the grant of voluntary departure.

XXVIII.

I realize that the task of solving the problems at hand concerning deportation and family unity are difficult. I

am convinced that all of the members of the Committee can exhibit the same courage and intestinal fortitude as Congressman Bryant did when he jumped on two Federal Judges on national television for taking a position foreign to reason and constitutional law.

Congressman Bryant:

You could do a tremendous service to thousands of aliens and their families who are experiencing extreme hardship as a result of the present Immigration Reform and Control Act. Remove the BAR. I know that the Hispanic Caucus will share my view in this respect - and if they don't, call me.

Congressman Mazzoli:

In my personal opinion you are the author of the Simpson-Mazzoli Bill - that gave rise to the Immigration Reform and Control Act of 1986.

For the treacherous months that you labored in preparing and passing this law, you have helped thousands of people and we are forever grateful. You have left your mark in history.

Mr. MAZZOLI. Simpson Mazzoli? You know, I tell you what, that is what other people say. The truth is, you know, through those six years when we fought that fight, that there really were letters that came in to Congressman Simpson Mazzoli, as if my first name were Simpson. But I appreciate that, Mr. Montemayor. You are a good man for saying those nice things.

Let me yield myself five minutes to start out. These are very, very interesting statements. And this is exactly what we were driving at, trying to get some statements from the people on the ground, you know, who deal with this day to day, to help us.

Charlie, or both Nancy and Charlie, I would like to ask you, about these I-9 forms. I can understand that a lot of employers, including some of our brethren of the bar, think that it doesn't apply to them, are confused by the wording, and, in effect, wind up without having the proper kind of verification documents.

Is it your understanding that people, companies, individual employers, have in fact had notices of intent to fine issued to them strictly for failure of what we would call paperwork, or the failure of verification, exclusive of any additional problems with hiring? Can you help me there?

Mr. FOSTER. When you use paperwork violation, just simply failure to realize that they were required to complete a verification, the verification—yes.

Mr. MAZZOLI. That is right. In other words, separate and apart from who is out in the back shop; just whether or not, in the front shop in the desk, they have kept what they should keep.

Mr. FOSTER. Yes. I know of several instances. Again, I cannot say that it is widespread, but at least in one instance that was of particular concern to me, the employer had procrastinated in completing the I-9s. And it was what we would call a small employer, with about 20 employees, but it had not yet assigned the task of completing the verifications.

And yet, even though they were a small employer, they had had a substantial turnover of employees. So when we looked at their records were, to see what the possible exposure was, they had approximately 60 individuals that had come through their operation. So they were—

Mr. MAZZOLI. Since June of 1987?

Mr. FOSTER. Exactly. And so they were faced, or are faced, with a possible \$60,000 fine. Now, in that particular case, INS has simply said they are going to issue a notice of intent to fine. The INS investigation has not stated what the level of fine would be. And the fine that would be simply for failure to verify.

Mr. MAZZOLI. OK. Ms. Shivers, would you have—we have a very famous family at home called Stivers in Kentucky, and I apologize—but Ms. Shivers, would you have any help on that, anything you can document?

Ms. SHIVERS. Well, I have specific examples that I could bring. I know of two where the Immigration Service went out looking for someone who they thought worked there illegally, and they were not there, and since they were there, they decided they might as well ask for I-9s, and there were no I-9s, and those people have received notices of intent to fine, and admittedly like a \$250 level or something, a slap on the wrist.

Mr. MAZZOLI. But I think we have some confusion here. I understand that the Immigration Service has some kind of a policy, or a general guideline, which says that they are going to couple violations of the hiring part with the violations of I-9. So, in effect, if you haven't illegally hired somebody, they are not going to worry about whether or not you have kept paperwork.

Now, of course, the law says that everybody should verify every employee, even if that employee is your father, your wife, your son, your daughter, despite the fact that you have lived with that individual the entire length of their years; and you still have to verify if they are an American citizen, or if they are qualified to work, and who they are.

And yet the Immigration Service seems to be looking away from that to try to couple these things. And then at the other time, there apparently are some evidences that they are not coupling after all.

So I think that there is a clear confusion here—either they are going to verify everybody, or they are going to couple, if that is permissible. I am not sure it is permissible legally for them to make that judgment—but one way or the other, that is the message that goes out through the lawyers who advise their clients. But when you don't know what the Immigration Service is looking for, it is hard for you to give advice to your clients.

One thing, Mr. Foster, if would help me, you said one of the cases had something to do with what looked to be like fraudulent or hoked-up paperwork. Now, was that the cards or the material that was on the person of the employees, or was it something that the employer had retained in the file or photocopied for the file?

Mr. FOSTER. OK. In my previous testimony? Yes. That was a "green card" on the employee. The employer had relied upon that, and—

Mr. MAZZOLI. Because the immigration officer felt that this looked like it was not valid material, then they went back to the employer and suggested, we are going to file a notice of intent to fine because you should have seen that to be invalid?

Mr. FOSTER. No. While, arguably, the INS could have said, it does not appear reasonably genuine on the face, but they did not do that. They simply came in, they looked, and they said, these employees do not have good "green cards," and we are going to get back in touch with you, and, in effect, left the employer with the impression that they were going to give a more formal type of notice to the employer.

The employer did not terminate, and later the INS issued a notice of intent to fine on the grounds that they continued to knowingly hire an individual that was illegally in the United States.

And the issue that I simply raised is the possibility of confusion. Should the employer rely on a casual statement from the INS? What if that is wrong, and they wrongfully terminate?

Mr. MAZZOLI. In effect, your client felt that it was unclear at that point whether or not these people were here without valid documents, and that somebody was going to check it out more thoroughly and let them know, and then they could dismiss these people?

Mr. FOSTER. Yes.

Mr. MAZZOLI. In the meantime, the INS just came back at them by saying, as if they were—

Mr. FOSTER. The INS simply came back and issued subsequently a notice of intent to fine.

Ms. SHIVERS. Because the document they had, whether it was a permanent resident card, you know. So—

Mr. MAZZOLI. Well, it doesn't make any difference, because, of course, the way we fashioned the law was intentionally not to make an employer a documents expert. I mean, if it looked anywhere near reasonable on its face, you are supposed to be able, as an employer, to accept that—you don't have to photocopy it, if you don't want to, but to accept it—and then whatever the Immigration finds out with the individual employee is a separate matter.

That employee may be here illegally, and the Immigration Service may very well be able to bust that person. But it should not be imputed back to the employer, where, in a sense here, it seemed to have been.

Well, my time is expired. I will come back for a second round. The gentleman from Texas is recognized.

Mr. BRYANT. Thank you, Mr. Chairman. I would like to thank all three witnesses for what they brought to us today. It is exactly what we asked for.

Mr. Montemayor, you pointed out the problem with the deportation orders that presumably are not based upon wrongdoing, but just based upon the fact that they were here and they were deported, being utilized as a bar to legalization, and perhaps to other benefits.

That is interesting—I am sorry to admit I have not considered that problem before. It has not come to my attention. I thought you might want to elaborate a little bit on that.

Mr. MONTEMAYOR. Yes, sir. The Congress, in IRCA, gave several possibilities of an alien being denied legalization if he had one felony, three misdemeanors, things like that.

And the problem is that they are equating a deportation order with a felony conviction. Actually, that is what they are doing. And I think that is a little harsh, to deny legalization to a person that received an order of deportation just because he didn't leave the country. He could have had some U.S. citizen children in school, or for various reasons.

And I don't believe that this harsh treatment should be left—in other words, I believe that the Congress should do something about this.

The other thing that I would like to point out is that whenever an immigration judge issues an order—a voluntary departure and gives them, let's say, six months to remain in this country, and then they refuse to leave after the voluntary departure expires, then the Immigration Service sends a bag-and-baggage letter telling these people that they are subject to official deportation, to present themselves or leave the country.

And they come and present themselves, and that is an official deportation, and I do not believe that that should be—it is not harsh enough to deny these people legalization. It is creating a big, big problem.

Here in this part of the country, they issue orders of deportation like confetti on New Year's Eve, you see. And this is the reason that—now, I am not talking about orders of deportation based on some criminal activity. No, no. If they otherwise qualify in any other way, I believe that the Congress should delete the denial of the legalization based on an order of deportation.

Now, they didn't list the deportation, as they do all the excludable offenses. But they injected it in the continuous residence, and that breaks the continuous residence, and then there is not very much you can do, because the Attorney General would not consider waiving that.

And now, prior to 1982, you can file an I-212 and you are pardoned for whatever you did, except narcotic cases, and you can get your legal residence. After 1982, you cannot file a waiver for an order of deportation, because it breaks the continuity. And this is creating a big, big serious problem.

Mr. BRYANT. Thank you for bringing that forward. It is not something I had given thought to before.

Mr. MONTEMAYOR. In this part of the country, Congressman Bryant, since you are from Texas, you will find that there are thousands of people that have run into that problem.

The other big problem is that what the people are doing, the legalization people are doing, they are denying the legalization applications and giving these people 30 days to file an appeal, or, if they don't file an appeal within 30 days, they will pull their authorization of employment. And this is creating a tremendous hardship.

I think—and I urge you and Chairman Mazzoli to please try and put a stop to all this until you all can really iron all these things out concerning the new law, because it is creating a big problem.

Mr. BRYANT. OK. Thank you.

Mr. Foster, would you rearticulate this harboring problem, where there is the possibility of interpreting employing someone as criminally harboring someone?

Mr. FOSTER. Well, the problem, it seems to me, was inherent in the enactment of IRCA, that the harboring provision specifically said—it was even known as the Texas proviso—that harboring did not include normal employment, in effect.

IRCA eliminated that without any benefit of a grandfather clause. And yet, at the same time, IRCA established, for knowingly to employ an unauthorized alien, a series of civil fines, and then the possibility of a six-month criminal penalty for a pattern or practice.

And yet there was the old harboring provision, no longer with the so-called Texas proviso. And so after that—many individuals felt that the intent of Congress would not have been to have enacted a complex scheme of civil fines if simply the INS could bypass that and go straight to harboring.

It was the testimony of the Acting General Counsel, Paul Schmidt, before your committee, who stated that he understood that, and that was stated in the preamble to the regulations.

And yet there have been some instances—and I tried, actually, in preparing for this testimony, to find out the number of instances, and I could only find one actual case; although I heard a lot of

people talk about cases, it turned out they were all talking about the same few cases.

There have been a few instances where the INS has threatened harboring, rather than a notice of intent to fine; INS simply says that we can go straight to a harboring charge. And this was at the investigator level.

And there have also been reported instances where cars have been seized under a similar argument, that the employer was transporting, although it seems clear that to seize a vehicle, it should be in the furtherance of the illegal entry rather than a normal incident of employment.

Mr. BRYANT. Thank you.

Mr. MAZZOLI. The gentleman's time has expired. I yield myself five more minutes, and then come back to the gentleman for further questions.

In your statement, Mr. Foster, dealing with that northern Virginia restaurant case, and the fact that the agents basically leaped over the counter and laid hands on the people who looked to be Hispanic, is that verifiable? I mean, is that the way things were?

Because everything we have tried to suggest in our bill here, from the very start, including the universal verification, was that nobody, because of skin color, visage, accent, anything, is to be singled out. Everybody is the same, you know, the blond-haired guy, the dark-haired guy, whatever.

And in two cases in your statement, you mentioned that the agents went after people, the landscape case and the northern Virginia restaurant case, where they went after Hispanic-looking people.

Now, is that pretty much on the record?

Mr. FOSTER. Neither one of those were my cases; as I said, I heard about those cases, and I will be glad to send more information. But I had a number of—

Mr. MAZZOLI. I would appreciate that, because, you know, if there is one thing that we were devoted to from the very start, Senator Simpson and myself, and then later Mr. Rodino and others, and John, is that this law was not to be discriminatory. I mean, that was the whole basic foundation.

We even went to the point of trying to justify this to the small employers, mom and pops, ladies who may need babysitters, that you have got to verify it in order that we don't discriminate. It was a hard case, believe me, a hard case to make to a lot of these people.

They say, look, don't look at me. We don't even know what an illegal alien is. And the only babysitter we have is people who—you know, children of people I went to school with. Well, I said, sorry. Unless you do this, then there is going to be given some opportunity for some employers to discriminate.

So, to make a long story short, that has been the driving influence of this entire bill. And where the Immigration Service itself may be unmindful of that, and tend to ignore it, then I would like to have some of the details, to the extent you can.

Also, as far as harboring, I remember that hearing with Paul Schmidt, and we did some slight checking, and apparently the

stated position of the INS remains that employment-related matters are, in and of themselves, not harboring.

The case you mentioned, where maybe the people went behind the french fry booth there or something, might be a little bit different. But the fact remains that it shouldn't be that way, and I would like to have any evidence or any documents that you can produce, possibly, on the harboring thing, because we want to be sure that—even though they may not have put those specific statements in the regs, in the preamble but not the regulations, there may be some way that we can make that a—

Mr. FOSTER. Mr. Chairman, I just want to point out that regularly the INS central office will establish a policy, and that somehow it doesn't get down to the field, and even people with the central office will express frustration about the difficulty of maintaining control over the field. And that goes within the district directors, of their own people, at times.

Mr. MAZZOLI. I don't want to draw too many conclusions today, but, you know, the truth of the matter is there has been quite a long period of time for regulations to be understood and discussed and disseminated and deliberated upon, and I am not quite sure that that is—the subpoena authority you were talking about, one of the earlier witnesses brought that matter up.

Could you talk a little bit about that, Mr. Foster and Mr. Montemayor and Ms. Shivers, anybody who has any experience with it, the fact that whether or not, in your judgment, and as practitioners, the INS does have the authority to issue subpoenas to produce people and produce documents upon which later charges can be founded; or, in the other side of it, would the INS have to go to the administrative law judge, make the case for the subpoena, and then have the subpoena issued by the ALJ for the production of people or for the production of documents?

Mr. Montemayor?

Mr. MONTEMAYOR. I haven't had an experience like that, but I don't believe that the Immigration Service should have that right on their own to issue subpoenas, or as an investigative body to issue subpoenas, and then later on make the person a target of the investigation.

I believe that that person has a perfect right to refuse to answer anything under the Fifth Amendment. However, I believe that if he goes through the process of the administrative law court, it is just like the grand jury; it is just like the district courts. I believe that they should have that subpoena right, but not before.

Mr. MAZZOLI. Mr. Foster?

Mr. FOSTER. All right. I think there is an argument that the INS does not have the right of subpoena. I will first say, Mr. Mazzoli, that it seems to me that the instances—and there aren't a lot of them right now—where the INS is concerned about I-9s, the INS is routinely issuing the subpoena on an administrative basis without going to the ALJ, the administrative law judge.

The concern again is whether that will be overused; that is, having gone through an investigation with at least one or two employers, it is quite disruptive of their business. To get all of their payroll records, often going back for a number of years, is much more burdensome than simply giving the INS their I-9 file.

Now, as far as the INS legal authority, what is of interest is, as you know, under IRCA, the provision that relates to the issuance of subpoena give only the administrative law judge the right to issue a subpoena.

And by omission, it would appear that the immigration investigator would have to make some sort of a reasonable showing before the ALJ. Now, the INS is relying upon a general grant of authority to issue administrative subpoenas that was contained in the Immigration Act before the enactment of IRCA.

I think an argument could be made—and again, I don't want to be stating what Congress intended, since you are the man—that IRCA changed the rules of the game so profoundly and affected every employer in America, so that there should be a higher standard required, or more of a showing required, before an investigator could issue a subpoena.

Mr. MAZZOLI. Ms. Shivers?

Ms. SHIVERS. Well, I was just going to say that in this district, the Immigration Service is using—they are using subpoenas very frequently. And it is very disruptive for employers, and I questioned, and indeed commented when the regulations first came out—that was one of the few areas that I commented on in suggested revisions, as it were, of the regulations—that I thought their authority that they were deriving was overbroad.

Mr. MAZZOLI. Can I ask, now, in your experience, either personally or from sources that you would rely upon with conviction, do they issue the subpoena sort of to say hello, or have they got some basic reason for doing it?

Basically, could they walk in and receive—after the three-day notice that they would give—to take a look at the I-9 forms and just sort of check things out, or do they find that issuing the subpoena is, in effect, their calling card? I would like to—

Ms. SHIVERS. Well, in my experience in the ones that our office has been most recently involved in, those are the only ones really that I would comment on, because I don't—I have talked with other attorneys who have gone through this.

But in our experience, they are not issued as—they are definitely not a calling card. They are usually asking for far more than if they just sent the letter and said, I would like your I-9s.

Mr. MAZZOLI. Are these for employers, in your knowledge, who have resisted voluntary discussions, or who have shown some antipathy toward the Immigration Service, or in any way have shown some reluctance so that the Immigration feels like they have to be a little heavy-handed?

Ms. SHIVERS. Well, I can answer that. In the cases that we are handling, no, that was not the case. There was a rather—in Austin, Texas there were pretty widespread—I call them raids; they call them visits, in the month of June, and again in July, where many, many employers were raided, or visited, depending upon your point of view.

I don't know what the source of information was for those raids, but many of those employers then—they had not gotten requests for I-9s in advance, and in many cases had not been visited previously.

Mr. MAZZOLI. They had not gotten a request in advance? I thought that they were giving three days' notice before they would inspect.

Ms. SHIVERS. Not true.

Mr. FOSTER. Where the INS is relying upon their subpoena authority—that is the first notice the employer gets. There is no three days' notice; they simply give you—the first thing the employer gets is a subpoena.

And this is clearly not routine. I think where it is being done is where the INS has some reason to believe that the employer has hired an unauthorized alien.

Mr. MAZZOLI. Well, this is good. We are going to have to move on, unfortunately. But this is very important, because obviously we want the law enforced. And as other witnesses will come up—and perhaps even figure that the law is not being enforced with as much vigor as it should.

But the end of it is, we want the law not to be ignored. We want it enforced. But on the other hand, we obviously want it enforced with the kind of surgical skill that I think INS is capable of utilizing, instead of just coming on in a kind of undifferentiated way.

And I think it is interesting what you were saying earlier about whether it is a raid or a visit, the euphemism. But as one of the earlier witnesses said, if that is verified, that to make an I-9 call you come in with two vans and six people, it is pretty hard to tell whether it is a visit or raid.

I mean, there may be some indicia there that does confuse even the objective and even somewhat sympathetic observer. So I think this is, you know, something they will have to get into as to the nature of a visit for the I-9s, and anything else, and exactly how that would come to pass.

Mr. MONTEMAYOR. Mr. Chairman, I believe that the Immigration subpoena power should be no less, or should be as strong, as a criminal subpoena power by a district judge or a Federal district judge. I don't see why there should be a second requirement.

I think it should be enforced and required that—

Mr. MAZZOLI. So it is your consensus, is that right—a consensus here would be three days' notice; the investigator comes in, takes a look at the I-9, doesn't like what he or she sees, or walks in the back, maybe, and doesn't like what it looks like.

And then they say, you have got some problems, and unless you rectify them—do you think that there ought to be notice given, unless you rectify them we are going to get a subpoena, or if it is bad enough they just go out and get a subpoena and they come back and—

Mr. MONTEMAYOR. No. Not only should there be notice, but there should be an affidavit spelling out exactly what the crime is or what the action is that they are looking at to the administrative judge and let him decide, like U.S. magistrates. I don't believe that they should be any different.

Ms. SHIVERS. And that has been done in our district. The first big case in San Antonio, the *Taco Cabana* case, which was done last summer—excuse me, last fall—they did go to a Federal magistrate and did get a—

Mr. MAZZOLI. A detailed subpoena? Well, I thank you all very much. It was excellent testimony, very helpful. And anything further you would ever want to send us would be useful to have. We appreciate it, and you are excused.

We will call our next panel: Mr. Fernando Dubove, Assistant Director, Texas Project, National Immigration, Refugee, and Citizenship Forum; Mr. Joe Vail, Community Task Force on Immigration Affairs; and Mr. Mike Lehr, Federation for American Immigration Reform.

Mr. Dubove? Am I not pronouncing—

Mr. DUBOVE. Dubove, a long E.

Mr. MAZZOLI. Thank you. Dubove. You are welcome, and incidentally, let me take this moment to convey an apology I should have conveyed at the beginning of the day, because many of you were planning to come to San Antonio for a hearing that we had scheduled tentatively. I guess it was last month or something.

And I had to cancel, I wasn't able to get down. And many of you were willing to come back, and I appreciate that very much. Sorry that we had to go through that first confusion.

Mr. Dubove, you are recognized, and thank you again for coming.

TESTIMONY OF FERNANDO DUBOVE, ESQ., ASSISTANT DIRECTOR, TEXAS PROJECT, NATIONAL IMMIGRATION, REFUGEE, AND CITIZENSHIP FORUM

Mr. DUBOVE. Mr. Chairman, Congressman Bryant, thank you for the opportunity to testify today. And I hope we have the opportunity to testify at a later time if this committee will take the initiative in the next two months to hold similar hearings on the SAW program and its implementation in Texas.

I would like to focus my testimony on INS procedures during employer-sanctioned raids, and I would like to base it on a case study of a recent raid that Ms. Shivers discussed briefly. It occurred in Austin on June 15, where approximately 48 people were apprehended during the raid, at least six of which were known to be amnesty applicants, or applying for legalization.

Out of those six, three of those people took voluntary departure and returned to Mexico; two of those people were detained for the duration of the day and eventually released; and a third one is still under detention here in San Antonio.

The raid raised several questions over INS procedures during these raids. First is the authority of the INS enforcement to detain known amnesty applicants and to adjudicate those peoples' applications. In the case of the two people that were detained for the duration of the day and eventually released, the INS questioned their ability to apply under legalization because they had left briefly after June 1, 1987, despite the case, *Catholic Social Service v. Meese*, which authorized brief, casual departure. Those people were detained for the duration of the day and eventually released.

In the second case, of the person who is still being detained by the INS as a result of the raid, the INS enforcement are contending he doesn't qualify for amnesty because he has one felony conviction, a first-time felony conviction, though the conviction itself is

being handled through a deferred adjudication, which is waivable from the felony conviction.

The point is, in both those cases, there are procedures established within IRCA on how peoples' applications are decided. Their applications are sent to the legalization office, which has the full record. Those records are then sent to the regional processing facility, and if there is a denial there, the applicant still has the right to appeal through legalization appeals unit.

All those people from all levels to the appeals unit are trained in the full law of IRCA, and have the full record in front of them. We don't feel that it was the intent of IRCA to allow the enforcement people to begin adjudicating these peoples' applications, or to detain them, as has happened with the one case of the person who is still being detained right now.

The second incident, the second question that arose, is over denial of access to counsel of these people. All of these people identified themselves as amnesty applicants, and all of them had gone through qualified designated entities.

Q.D.E.s, by the nature of their contract with the INS, are recognized as these peoples' legal representatives with the INS. Yet at no point was the QDE ever contacted that their clients were being detained and were being held by the INS. At no point were these people allowed to contact the QDE or an attorney to ask for counsel.

At the same time that these people were being detained without access to their QDE or counsel, they were being pressured—and we have this in affidavit—into trying to sign voluntary departures to return to Mexico.

As I said, three of those people, at least, that we know of, did so. Two of those people refused to do so, and they were eventually released; the third person also refused to sign a voluntary departure. INS began deportation process against him, and he is still under custody and being detained here.

The second kind of problem over access to counsel is the way the INS has been moving these detainees from one location to another. In the case of the person that is still being detained by INS, he was originally apprehended at Austin. He was moved to San Antonio, then to Seguin, to New Braunfels, back to Seguin, and he is currently in San Antonio.

This goes against the recent court ruling in *Orantes Hernandez v. INS*, where the judge ruled against these kind of procedures because it did, in fact, harm the person's access to counsel, because they couldn't establish a rapport with the counsel. Counsel didn't know where the person was being held that day. Yet this is happening; it is going on now.

Our third concern raised from the raid was over INS abuses toward individuals. We had reports of physical harassment, or verbal abuse, not only to the detainee but to the employer, to the QDE who went to the location after he found out that he had two of his clients being detained. In fact, at one point the QDE testified that he felt physically endangered.

The result was that a complaint was filed with the Office of Professional Responsibility, and because of the nature of the charges,

they are now being investigated by the criminal section of the civil rights division of the Justice Department in Washington.

All of these questions arose out of the raid, and while this is just one incident, we feel these type of problems are happening again, where INS border enforcement people are picking up amnesty applicants and determining, after a series of questions beyond what is purely a prima facie case, in deciding whether these people qualify or not for asylum or legalization.

I am going to touch on a second point on the issue of family unity briefly, and then I will close my comments. I would like to point out one of the procedures that was being followed by the INS in the Austin legalization office.

On May 10, the Austin legalization office started distributing these memos, handwritten, in Spanish and English, for people who had applied for amnesty, defining the procedure and how their immediate family members who were ineligible could apply for voluntary departure.

We were surprised at the fact that they would do this, for three reasons. First, applying for voluntary departure, there was no guarantee that the ineligible family members would receive it. Second, there was no guarantee on any kind of a work authorization. And third, and the most serious at all, is that there are no confidentiality safeguards for people who apply under this. And that is exactly what happened.

Two weeks ago, a person who read this and filed for voluntary departure for his family—his spouse was denied the voluntary departure, and an order to show cause was issued against the spouse. He is now beginning the deportation proceedings.

Whether the INS acted in good faith in sending out these memos—we like to think they did. But our real concern, beyond the fact that they are misguiding people on what their options are, is that in the long run, if Congress does pass some kind of legislation on family unity, it is going to undermine that Congressional effort, because people's confidence in returning to the INS to deal with family unity will be undermined.

Two other comments on the issue of family unity questions that were brought up by you, Mr. Chairman. One is on the exact number of people that might be affected by family unity.

We have to keep in mind that, as INS likes to point out, well over half the people that applied for legalization did so on their own, so they had no representative to turn to. They had no QDE; they had no attorney to fall back and ask them about the other numbers.

So whatever kind of case studies we might hear from Ms. Slaughter or from any other of the people who have worked with these people, it is more than likely going to be the tip of the iceberg.

Secondly, on the issue of justification—and I will close here—it really doesn't seem fair, sometimes, that people who came here legally might be denied and had to separate from their families.

But those who came here made the conscious decision. They knew that for some period of time they were going to be separated from their spouse, and that they would just have to wait for their number to come up.

Similarly, those who immigrated here illegally to the United States and brought their families with them made that same conscious decision, that they would stay together with their family and live together until that point at which they might be apprehended, at which point the entire family together would go back to their native country.

It seems such a terrible irony—it is almost Shakespearean—that now that parts of the family have this once in a lifetime opportunity to be legalized, that they are suddenly put in the position where if a family member is caught and deportation is begun against them, that they have to decide whether to go back with that family, as they would have done originally, and give up their legalization, or to choose to be separated for a time being, something that they weren't willing to do when they first made the decision to come to this country, but with the thought that in two or three years he might be able to bring her back through legalization methods.

It is such a terrible dilemma for Congress. Thank you very much.
[The prepared statement of Mr. Dubove follows:]

IMMIGRATION HEARING
Subcommittee on Immigration, Refugees and International Law
San Antonio, Texas
August 23, 1988

Testimony Presented

By

Fernando Dubove

Assistant Director, Texas Project
National Immigration, Refugee & Citizenship Forum

SUMMARY OF TESTIMONY

- I. Concerns With INS Procedures During Employer Sanction Raids
 - A. Apprehension, detention and adjudication of amnesty applicants by enforcement officials.
 - B. Denial of access to counsel and due process for detainees.
 - C. Abusive conduct by INS enforcement officers during raids.
- II. Family Unity

INS Legalization office policy encouraging ineligible immediate family members to apply for voluntary departure, then placing applicants into deportation proceedings.

Immigration, Refugees and International Law Subcommittee Hearing
Summary of Statement by
Fernando Dubove
Assistant Director, Texas Project
National Immigration, Refugee & Citizenship Forum

Mr. Chairman, committee members:

Thank you for inviting our organization to testify before this subcommittee. My name is Fernando Dubove, I am the Assistant Director for the Texas Project of the National Immigration, Refugee and Citizenship Forum. Since March, 1987, we have monitored the impact of the Immigration Reform and Control Act of 1986, by establishing regular contact with diverse groups including:

- legal groups like the State Bar of Texas, AILA, ACLU, and MALDEF;
- state and local government agencies including the Governor's office, and elected state and federal officials;
- state and local chamber of commerce and employers and labor networks;
- the local, district and regional office of the INS.

My comments today reflect the experience of these groups and our joint efforts to address local issues. As such, my comments are not the views of our national organization or its Board of Directors. Our office in Washington D.C. is a clearinghouse for information on developments related to IRCA nationwide.

My comments will focus on concerns with INS procedure during

employer sanctions enforcement raids.

The passage of IRCA greatly increased the level of INS enforcement activities in Texas. Since passage of IRCA, 750 Border Patrol agents have been added and another 600 will be hired, most of whom will be assigned to the Texas border. The Border Patrol is also being assisted by the National Guard and local law enforcement officers. (see attached article)

With this stepped up activity, it is imperative that the state and general public be informed of INS responsibilities and procedures. Already we have had reports that amnesty applicants have been apprehended and/or deported, that U.S. citizens have had their vehicles confiscated, and legal representatives harassed by the INS

I will cite as an example, a recent case that was brought to the attention of INS officials, Congressional staff, and the Office of Professional Responsibility.

On July 15, the INS Enforcement Division conducted a series of employer sanction raids in Austin. About nine amnesty applicants were picked up by the INS. After extensive questioning by the INS, six signed voluntary returns and were sent to Mexico, two were released, and a third is still in detention. The raid raised several questions.

ADJUDICATION OF AMNESTY APPLICATIONS BY ENFORCEMENT OFFICIALS

First, is the question of whether the INS Enforcement Division has the right to apprehend, detain, or deport amnesty applicants, and at what point enforcement officers are prohibited from adjudicating an application. Two applicants were detained all day, refused to sign voluntary departures, and later released. The INS was concerned that they had returned to Mexico after May 1, 1987 for a brief visit, despite a court ruling, Catholic Social Service v. Meese, allowing such. Another applicant, who did sign a voluntary return, has since returned to the U.S., gone back to the QDE, and is gathering documentation for his SAW application.

The worst case, however, is Rodrigo Montollo, an amnesty applicant picked up at the June 15 raid and who has been in detention ever since. Enforcement officers tried to coerce him to sign a voluntary return. He wouldn't, and the INS began deportation proceedings against him because they didn't feel he qualified for amnesty. Their reasoning is that he has a felony conviction. However, the conviction is a deferred adjudication, which makes the felony exemption waivable by the Regional Processing Facility or Legalization Appeals Unit. The point is, there is a procedure established, within IRCA, for determining that type of application. The process involves decisions made by the R.P.F. and Legalization Appeals Unit, people with access to the complete record. The process doesn't involve beginning

deportation proceedings by local enforcement officers. Yet it is happening.

DENIAL OF ACCESS TO COUNSEL AND DUE PROCESS

We are also concerned with the denial of access to counsel or their legal representatives for people who are picked up during raids. During the Austin raid, several persons, despite identifying themselves as QDE represented amnesty applicants, were denied access to their legal representatives. Nor were the QDEs ever notified by the INS of their client's apprehension. These people were interrogated, and offered the chance to sign voluntary returns. Many did so, without access to counsel. This is a serious constitutional question that must be addressed.

The INS is also continuing its policy of moving detainees from one facility to another, infringing on the person's access to counsel. Since Mr. Montolla was apprehended, he has been moved from Austin to San Antonio to New Braunfels to Seguin, and back to San Antonio. This goes totally against the spirit of Orantes Hernandez v. Meese, a case decided on April 29 that set the framework for voluntary deportation cases for Central Americans.

There are other examples of detainees being shuffled from facility to facility. In March, I traveled with an attorney to Belton, Texas to interview about 11 undocumented women being held. They had been picked up in San Diego, bused to Pecos, and

the Bell County facility in Balton. They eventually wound up in San Antonio. One woman was in need of medical attention . Our office was contacted by the Mexican Consulate, who felt their rights were being violated . Beyond the humanitarian questions, there arises the issue of legal liability for the county and state facilities contracting with the INS.

HARRASSMENT AND PROFESSIONAL MISCONDUCT

We are also concerned with the conduct of INS officers during enforcement raids. We've received reports of abusive language and intimidating behavior that left people fearful of physical harm. This was reported, not only by those detained, but also by QDE representatives trying to secure the release of clients, and by employers and other U.S. citizens who were at the raid site. The conduct resulted in complaints filed with the Office of Professional Responsibility, who forwarded the complaints to the Criminal Section of the Civil Rights Division of the Justice Department.

On learning of this case, our office, consistent with IRCA Section III(c), attempted, along with attorneys and Congressional staff, to meet with the INS to review the case and clarify procedures. To date no meeting has occurred, increasing the chances of a similar event repeating itself.

I would like to shift gears for a moment and talk about family

unity. Inconsistent INS interpretations on family unity make it imperative that Congress act immediately on a policy that will assure security to immediate family members of newly legalized residents. Current INS procedures are hurting everyone, and can only result in future litigation. Let me give you an example.

In June, the Austin Legalization Office began distributing a memo to successful amnesty applicants describing how their ineligible immediate family members could apply for voluntary departure. Yet applying for voluntary departure offered no advantage to the unqualified family members. First, there is no guarantee of receiving voluntary departure. Second, it was not clear if the voluntary departure would come with work authorization, and third, unlike amnesty applications, voluntary departure applications are not safeguarded by confidentiality provisions. In fact, voluntary departure applicants are in a worse position because they are exposed to deportation proceedings, which is exactly what happened. An amnesty applicant followed the directions on the memo and filed for his wife. She was denied and the INS filed an order to show cause, the first step for a deportation hearing.

Did the INS act in good faith distributing the memo? I hope so, but these type of inconsistencies hurt INS credibility and will undermine confidence in the amnesty program. This kind of action will also hurt any family unity proposal Congress may pass in the year ahead. Congress and the INS must act together, and

quickly, on a coherent, consistent family unity policy.

Let me conclude by saying that I am not trying to harp on the INS or complain about IRCA. It was a tough law for Congress to pass. There were long heated debates, and many members were not comfortable with their vote. But now it is the law. That means an increase in raids and deportation of undocumented people living in the U.S. But IRCA also provided assurances that we feel are being violated. And unless Congress makes sure the law is implemented fairly, it is a vote Congress will face again in a few years.

Recd 5-16-88

APLICAR PARA EXTENDER SALIDA VOLUNTARIAHECHO POR:

EXTRANJEROS DOCUMENTADO

(QUIEN HA RECIBIDO TARJETA PARA RESIDENCIA TEMPORAL)

EN PARTE DE:

ESPOSA O NIÑO QUIEN ES INELIGIBLE PARA LEGALIZACION.

ESCRIBA A:

DISTRICT DIRECTOR

U.S. INS

727 E. DURANGO, SUITE A301

SAN ANTONIO, TX. 78206

CARTA DEBE DE INCLUIR:

- NOMBRE, DIRECCION, Y A-NUMERO DE EXTRANJERO DOCUMENTADO Y EXTRANJERO(S) INELIGIBLE.
- RELACION DE EXTRANJERO(S) INELIGIBLE DE AL EXTRANJEROS DOCUMENTADO Y PRUEBA DE RELACION. (ACTA DE MATRIMONIO/ACTA DE NACIMIENTOS)
- NOMBRES, DIRECCIONES, Y DOCUMENTACION DE CUALQUIER NIÑOS MENORES DE EDAD DE ESPOSA INELIGIBLE.
- RAZON POR APLICAR PARA SALIDA VOLUNTARIA

INFORMACION PROVEERDA POR:

U.S. IMMIGRATION & NATURALIZATION SERVICE
 LEGALIZATION CENTER
 2800 IH 35 SOUTH, SUITE 115
 AUSTIN, TEXAS 78704

Request for Extended Voluntary Departure

Made by:

LEGALIZED ALIEN

(who has received Temporary Residence Card)

On behalf of:

Spouse or child who is ineligible
for legalization.

Send to:

District Director

USINS

727 E. Durango, Suite A301

San Antonio, TX 78206

Letter must include:

- Name, address, and A-number of legalized alien and ineligible alien(s)
- Relationship of ineligible alien(s) to legalized alien and proof of the relationship (marriage, birth certificates)
- Names, addresses, and immigration status of any minor children of ineligible spouse
- Reason for requesting voluntary departure.

Information provided by:

IMMIGRATION & NATURALIZATION SERVICE
ALLEN CENTER
SOUTH, SUITE 115
D-AS 78704

Fernando Dubove

EDUCATIONThe University of Texas Law School

- J.J.D. May 1986

- Seminar and Independent Studies:

Refugee Law Seminar - Prof. Soto

Thesis: "The Application of Extended Voluntary Departure to Central American Refugees."

Individual Research - Prof. Filvaroff

Thesis: "Argentina & the Dirty War."

The University of Texas at Austin

- B.A., with honors, in Government, † May 1982

PROFESSIONAL EXPERIENCE

National Immigration, Refugee & Citizenship Forum, Assistant Director, September 1987 - current. Organized local and state coalitions for immigrant and refugee rights advocacy group. Prepared U.S. Immigration policy briefings.

House Judiciary Committee - State of Texas - Counsel, 70th Session (January - July 1987). Analyzed the legal effect and drafted amendment to proposed legislation.

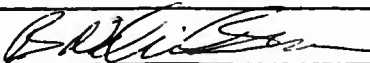
Mount and Seal
Mojo and Clave

Approved OMB #1116-0105
Exp. 4-30-84

U.S. Department of Justice

COMPLAINT FORM
FORMA PARA QUEJAS (DEMANDAS)

Immigration and Naturalization Service

Print Your Name Escriba su nombre en letras de molde Burton William Bescom, III		Date of Complaint Fecha de la queja (demanda) July 1, 1988	
Print Your Home Address Escriba su domicilio en letras de molde P.O. BOX 801 Burnet, TX 78611		Your Telephone Number (including Area Code) Teléfono de su residencia (incluyendo el código de área) (512) 756-2828 City Telephone Number Número de su ciudad (512) 478-9100	
Name of Immigration Employee(s) complained of: Nombre del empleado de la inmigración al que se acusa: Johnny Tellis Scott Robertson, et al			
Place of Occurrence: Lugar del acontecimiento: South 2nd, Austin, Texas		Date: Fecha: June 15, 1988	Time: Hora: 8:00 a.m. to 7:00 p.m.
Full Name of Witness(es) Nombre completo de testigo(s)		Address of Witness(es) Domicilio de testigo(s)	
1) <u>see attached</u>		<u>see attached</u>	
2) _____		_____	
Reasoning Razonación		<u>see attached</u>	
Details: Particulares: <p style="text-align: center;">SEE ATTACHED NARRATIVE AND AFFIDAVITS</p>			
Signature of Complainant: Firma del demandante: 			

DETAILS:

Please see attached affidavits for narrative descriptions of the events on the above referenced date. My concerns - complaint - focuses on five (5) areas involving violations of human rights and due process:

1. Denial of access to counsel: several actions taken by the INS enforcement team fall into this category.

(a) Mr. Tellis denied me access to our clients by denying that they were our clients and refusing to even consider the documents which I had brought with me.

(b) Mr. Robertson denied me access to our clients even after I filed G-28s by lying as to the whereabouts of our clients and denying that they were in custody when they were not released until at least an hour and one-half later.

(c) By denying us access to the clients we knew had been arrested, they prevented us from finding out that several other clients of ours had also been arrested on that date until after they had been returned to Mexico.

(d) None of our clients we have been able to contact who were arrested on this date were ever advised that they could contact their GDE or an attorney.

(e) None of them was given access to a telephone.

(f) All of them had their personal papers and our business cards removed and never returned; thus even if they were later given access to a telephone (at a detention center, for example) they could not have contacted us. Most of our clients cannot remember the name of our organization nor are they able to get information from an operator.

(g) Even when Mr. Tellis called our office at the insistence of one of our clients, he did not give the client a chance to speak with us, nor did he inform us that the clients he asked about were under arrest.

2. Adjudication of Legalization Applications by enforcement officers - without even seeing the evidence:

IRCA-1986 defines the manner by which an application will be reviewed and adjudicated - including the processes and the personnel who will determine if the applicant is eligible, if there is fraud in the application, approve or deny, and consider appeals. All of these processes and rights given to the applicant under IRCA were flagrantly violated and denied by the arresting officers who had not (and by law could not) review the application itself, thus preempting the legal process and disenfranchizing those to whom congress had specifically granted

the right to apply for Legalization, and violating the procedures to be followed by arresting officers as specified in IRCA, the regulations, and INS internal directives to its officers (see Legalization Wire #1 and June 1, 1988 cable CO-1588-C).

Furthermore, the grounds stated for deciding that these aliens were not eligible to apply for Legalization - and the grounds on which these officers issued OSCs - that they had an entry date after May 1, 1987, is in direct violation of Federal Court injunction (U.S. Catholic Services vs. Meese) to stop enforcing that regulation: something all the officers surely knew (see regs., Leg. Wire #1, and cable CO-1588-C).

3. Impounding of vehicles based on the determination that the Legalization applicants riding in the vehicles were "illegals".

First, as noted above, these applicants had legal status in the U.S. given to them by congress under IRCA and the process by which those rights are to be adjudicated had not been exhausted. They were not illegally in the U.S. at the time of their arrest.

Second, even if these applicants are later judged to be ineligible due to statutory ineligibility or because of fraud, the driver of the vehicles could not be held responsible for knowing this would happen. In effect, the INS is forcing contractors to adjudicate Legalization applications a priori and to discriminate against Legalization applicants because having them in one of their vehicles will result in the vehicle being impounded.

4. Coercing applicants who are arrested to make false statements against themselves or to sign "Voluntary Departure" forms.

Mr. Tellis repeatedly told the aliens what they were to say - defining the "truth" and labeling any variation from his version as a "lie"; threatened the aliens with lengthy jail terms or other unspecified "very bad" consequences if they did not say what he told them to; and when an alien signed a form requesting a court hearing, Mr. Tellis told the alien that he did not have that right.

5. Abusive conduct by INS officers: Mr. Tellis' gratuitous abuse and invective were totally unprovoked and had no purpose other than to terrorize Mrs. Guzman and me - both U.S. citizens.

I hereby formally request an immediate investigation into these incidents and practices and that I be notified of the results of this investigation.

cc.

U.S. Senator Lloyd Bentsen

U.S. Senator Phil Gramm

Congressman J.J. "Jake" Pickle

Congressman John Bryant

Fernando Dubove,
National Immigration, Refugee and Citizenship Forum

Maria Jiminez,
American Friends Service Committee

Norma Cantu,
Mexican American Legal Defense and Education Fund

Jeff Larsen,
Texas Legal Services Center

Jim Harrington,
American Civil Liberties Union

AFFIDAVIT

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned authority, on this day personally appeared the undersigned affiant who being by me duly sworn, upon oath stated;

My name is Burton William Bascom III and I reside in Sunset Hills subdivision. My mailing address is P.O. Box 801, Burnet, Texas 78611.

On Wednesday, June 15, 1988, I was working at Refugee Rights Inc., a non-profit corporation offering a variety of services to immigrants and refugees. I was informed by Mrs. Aurelio Guzman, the sister-in-law of two of our Legalization clients (under IRCA-1986) that our clients, Jose Asuncion Guzman-De la Cruz and German Guzman-De la Cruz, had been arrested by INS and that she had been told that they were going to be shipped to a detention center at 3:00 p.m. I was further informed by a member of our staff that INS had called earlier in the day and that we had confirmed their status as Legalization applicants. I proceeded to the INS office on South 2nd in Austin with two goals in mind: first, to ascertain the INS's reasons and intentions with regards to our clients, and second, to talk to our clients and assure them of our concern and representation.

When Mrs. Guzman and I entered the INS offices we were met by a man who asked if he could help us. I asked if this was the INS office and he answered that it was and ushered us into an office. The man (he never identified himself, but I later asked a co-worker of his for his name and was told that the man was Johnny Tellis) asked us what we wanted. I identified myself and explained my purposes in coming. When I got to where I was saying that I wanted to find out how to go about getting to see our clients, Mr. Tellis interrupted with an emphatic "No you're not!" I paused, expecting some explanation for the outburst. When none was forthcoming, I pulled out our clients' Legalization files and explained that the men in question were Legalization applicants. Mr. Tellis again interrupted to state very emphatically, "No they're not!" Again I paused, and when Mr. Tellis did not continue, I proceeded with my explanation of our understanding that since they had filed their applications with a ODE prior to May 4, 1988, we had until July 5th to file their completed applications with the LD. Mr. Tellis stated very curtly, "Not anymore!" I tried to restate the case and got the same response.

At this point I was thoroughly confused and considerably frightened by this man's unwillingness to explain his curt

statements and by his extreme hostility (expressed not only by his tone and manner, but also by the fact that though we were seated he remained standing with his arms alternately crossed over his chest or with his hands placed on his hips). At this point I asked Mr. Tellis why he felt the men in question were not Legalization applicants. Mr. Tellis' response was "Just shut up and listen." This was entirely unnecessary since no one had attempted to interrupt him at any time and I was so completely disconcerted that I was in no way rushing the conversation. Mr. Tellis' explanation was a verbal battering, the gist of which was that the men had made statements indicating that they had an entry date in 1988 and that they were therefore inelligible for Legalization. At some point during this explanation Mr. Tellis sat down. When he stopped talking Mrs. Guzman attempted to say something. I was not even aware that she had begun speaking when Mr. Tellis leapt to his feet and fairly shouted "You just shut up and listen." I was very much afraid for our physical safety so I encouraged Mrs. Guzman to let me do the talking. This was apparently not sufficient because Mr. Tellis ordered me to "Shut up and listen!" as well. When Mr. Tellis stopped talking again, Mrs. Guzman made another attempt to speak. Again, Mr. Tellis interrupted her before the first few words were out of her mouth and ordered her to "Shut up and just listen." Mrs. Guzman became emotional and stood up to leave the room. Mr. Tellis interrupted a verbal barrage aimed at me to lean across the desk and shout "You sit down in that chair and stay there!" I once again became concerned for our well-being and attempted to end the conversation by asking what would happen to the men. Mr. Tellis indicated that they would be released with an DSC. I attempted to ask "Can we expect them to come home today?" but Mr. Tellis interrupted after the word "expect" to scream at me "You can expect absolutely nothing!" I attempted to rephrase my question in what I felt would be as non-threatening a form as possible by couching it in terms of whether or not we would need to be in court when the men were brought before an immigration judge. Mr. Tellis repeatedly insisted that we could not represent them in court. I finally was able to get him to understand that Refugee Rights has Accredited Representatives on staff who are certified to represent clients in immigration court. He then suggested that we file a G-28. I agreed and, after a question about the truck that was impounded, we got ready to leave. As we were at the door, Mrs. Guzman made one last attempt to ask a question - with the same result: Mr. Tellis made a point of interrupting her and ordering her to "Shut up and listen!" I quickly ushered Mrs. Guzman out of the room and the building.

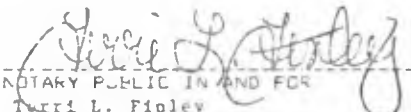
I returned to the INS office alone at 4:45 p.m. with G-28 forms in hand to see if I could speak with our clients or at least find out where they were. I entered and my presence was noted by eye-contact by several people in the room but no one spoke for a few minutes. Finally Ralph Garcia, whom I knew from when he worked at the Austin LO, came through the room and asked why I was there. I showed him the G-28s and asked who I should talk to about the disposition of the two men. After another few minutes a man came out with a binder in hand and introduced himself. I failed to catch his name but was later told that it was probably

Scott Robertson. I expressed my relief at being with someone who seemed willing to at least enter into a civilized discussion, and took out the G-28s. I told him my first question concerned the whereabouts of the two men. He opened his binder, pointed to some notations, and said, "They've been released." I asked when they had been released and he indicated that it had been a while earlier and that they should be home shortly. (According to the men, they were not released until after 6:00 p.m.) I then noted my concern over the arrest of men in the process of Legalization. Mr. Robertson explained that many aliens had filed with GDEs at the last moment "just to see if they might get Legalization", but that when interviewed by INS enforcement agents a large number "about half of all we've interviewed" were found to have some flaw in their case, or some "bar" to Legalization. I responded that in some cases these issues could be handled by waivers and mentioned specifically that we were continuing to file applications for those who had entry dates after May 1, 1987, that we had been in contact with INS officials about this and had been told that the RPC would accept such applications with a decision about the necessity of waivers to be made at a later date. He indicated that his orders were to deport such persons and that he would check with Leo (understood to refer to Mr. Soto) about the "different signals" we were getting. He then apologized for "the problem" (understood to refer to my earlier encounter with Mr. Tellis) and I left.



 Burton William Bascom III, Affiant

SUBSCRIBED AND SWORN TO before me this 21 day of June,
 1988.



 NOTARY PUBLIC IN AND FOR
 Terri L. Fioley
 _____ Travis COUNTY

STATE OF TEXAS

My commission expires 3-26-90

Washington Post

30 Workers in Fairfax Seized as Illegal Aliens

By Patricia Davis
Washington Post Staff Writer

Fifteen special agents with the Immigration and Naturalization Service descended on a Fairfax City landscaping business early yesterday and arrested as illegal aliens 30 Hispanic workers, many of whom were in the process of seeking amnesty, officials said.

The raid, described as the largest in the Washington area this year, was immediately decried by an owner of the landscaping business, an immigration lawyer retained several months ago to help the workers achieve amnesty and a representative of an immigrants rights group.

Vibiana Andrade of the National Center for Immigrants Rights in Los Angeles said, "If these people applied for amnesty, they have an automatic stay of deportation."

John Wright, assistant director for investigations at INS, disagreed: "All 30 people are illegally in the United States; some of them, as we're finding out now, have applied for amnesty benefits as special agricultural workers.

"That has no effect on our arrests," he said.

Margaret Pijor, the immigration lawyer hired several months ago by landscaper Green Thumb Enterprises Inc., said that a program under the 1986 Immigration Reform and Control Act allows special agricultural workers until November to apply for amnesty.

Pijor said between seven and 10 of the 30 aliens arrested had already received authorization to work in this country and others were applying for that right.

See INS, C4, Col. 5

INS, From C1

In addition, Pijor said, INS agents seized her files, which contained documents relating to the workers' applications for amnesty. She maintained that, in addition to attorney-client privilege, the files are protected under federal immigration laws.

Pijor said she had an appointment at 8 a.m. yesterday at Green Thumb to review the workers' applications, but by the time she arrived at the business, at 3825 and 3809 Pickett Rd. in Fairfax City, the raid had concluded.

Fifteen agents, armed with guns and a federal search warrant, arrived at the landscaping business about 7 a.m. and arrested the workers, officials said. The workers were handcuffed, placed in vans and taken to the INS detention and deportation center in Arlington, they said.

According to an affidavit filed in support of the search warrant, federal authorities had placed Green Thumb under surveillance.

The affidavit said in part that workers at the business, "appeared by their actions and demeanor to be illegal aliens from Latin American countries."

Victor M. Glasberg, an Alexandria lawyer who will seek the return of lawyer Pijor's files, said he was "astounded" at the reason given by federal authorities for arresting the workers.

"I think it's basically detaining people because they look Hispanic, and that's not right," he said.

Michael Daniels, an owner of Green Thumb, said that when federal agents arrived, there were about 70 workers standing around, but only those who "looked Hispanic" were arrested.

Green Thumb, a commercial landscaping design, installation and maintenance company, employs about 150 to 200 workers, depending on the season, he said.

Daniels said the men who were arrested range in age from 20 to 40 and some were not in their work clothes because they were scheduled to apply for amnesty. Many had already received their physicals and completed much of the paperwork, he said.

"Eleven were going down [to apply] today," said Daniels.

"So all of a sudden these guys get thrown in the paddy wagon," he said.

Wright of INS said some of those who were detained yesterday would be released pending deportation hearings.

He would not comment on the seizure of the documents, and said the investigation is continuing.

The 1986 Immigration and Reform Act provided a year-long offer of amnesty to undocumented immigrants who have been in this country since Jan. 1, 1982. That year ended May 4.

The act also imposed stiff fines on employers who knowingly hire illegal aliens.

Staff writers John Bohn and Virginia Mansfield contributed to this report.

*Austin American
Statesman 8/19/88*

Border Patrol to beef up enforcement in Texas

By Kelley Shannon

Associated Press

DALLAS — In a push to step up enforcement of immigration laws, the U.S. Border Patrol is hiring 600 new agents in the South by the end of the year, mostly for assignment in Texas.

"We're hoping to do it in one big swoop," said Perry Crozin, deputy chief border patrol agent for the Southern Region. "I'll give us a better control of the Southern border."

The Border Patrol has about 1,600 agents in the Southern Region, which spans from New Mexico to North Carolina and includes

Texas with its 1,200-mile border with Mexico.

Since passage of the U.S. Immigration Reform and Control Act of 1986, about 750 agents have been added in the region, Crozin said.

Almost all of the new agents are scheduled to be assigned to five targeted sectors along the Texas border from El Paso to McAllen. About 60 of the 600 new agents will be in New Mexico, Crozin said.

Their primary responsibility will be enforcing the employer sanctions provision of the immigration law, he said. The agents will visit places of employment and investigate

complaints about illegal hiring of undocumented workers.

"We get a lot of information about employers of illegal aliens," Crozin said.

The immigration act requires employers to check and maintain proof that employees hired after Nov. 6, 1986, the date the bill was signed, is a legal resident of the United States.

After focusing mainly on education programs for employers, the Border Patrol started getting tougher on enforcing the employer sanctions provision of the immigration law beginning June 1.

for initial violations, agents started issuing fines, said John Armstrong, director for the Immigration and Naturalization Service, which oversees the Border Patrol.

Employers who knowingly hire undocumented aliens face fines of \$250 to \$2,000 for each illegal employee for a first offense; \$2,000 to \$3,000 per employee for a second offense; and \$3,000 to \$10,000 per employee for a third offense. An employer who fails to check a worker's status can be fined up to \$1,000.

Employers transporting illegal workers may have their vehicles confiscated.

Mr. MAZZOLI. Thank you very much. Very eloquently stated, and certainly it does illustrate the difficult straits we all find ourselves in.

Mr. Vail?

TESTIMONY OF JOSEPH A. VAIL, COMMUNITY TASK FORCE ON IMMIGRATION AFFAIRS

Mr. VAIL. Congressman, first of all, thanks for the permission to testify here today. I am going to focus my comments on a couple issues, family unity, a little bit on employer sanctions, and employment discrimination. And I am basically going to use a couple statistics and a couple examples.

First of all, we submitted some new information, an updated report today, which contained some things that weren't in our original report. On the issue of family unity, we had asked one of our groups in the Community Task Force to do a study on what portion of their clients might have family members separated as a result of family unity provisions.

And out of 224 applications from families that they handled, what they found was 43 with families able to legalize all family members, 46 where only one parent was applying because the other parent didn't qualify and resided here in the United States, and 91 with children who would remain undocumented and residing in the United States where the parents would qualify, out of 224 applications.

An example of one of those cases is a case that I dealt with, regarding the issue of whether INS is actually deporting people and actually separating family members. My example, which isn't in my materials—it is a fairly recent example—is an individual that came to me with a final order of deportation.

He had applied for political asylum and been denied, and came to my office with what they call a bag-and-baggage letter, which is the death sentence in immigration law, to report July 9.

I contacted the Immigration office and informed them that his wife and three children had all applied for legalization, and that they had been granted work authorization and their applications were pending. They said he still had to report for the deportation, and they would make a decision at that point what they would do on him.

We reported, as requested. In addition, he had one child that has an infection of the nervous system, which is very serious, and we have some documentation on that. At that point, what they did was, they didn't deport him. What they did was they stayed his deportation, which is not a grant of voluntary departure. They just stayed it.

They told him—and I will just read part of the letter—"You have been granted a temporary stay of deportation to await the formulation of policy regarding derivative eligibility for benefits under the Immigration Reform and Control Act of 1986. The stay is being conditionally granted until June 9, 1989."

Then it goes down and says, "Unless this office directs you otherwise, you must report to this office on June 12, 1989 at 8:00 a.m., ready for deportation. Should you decide to have your family ac-

company you, please advise this office so that proper travel reservations can be made.”

The point I am trying to make is that the Service, while they are not actually deporting, they are making moves to, and they are getting deportation orders against people which will be used some time down the road.

We saw that in the example with the Silva cases back in the early 1980s, that while they were granted a long permission of time to stay here, later on many of those people were actually deported, even though they had been here in some kind of a limbo status for a year.

The second example is an example of where the parent qualified, and the children came later on and would not qualify. In this instance, it is a single mother who came to the United States in 1981, fled her country in Central America because she was having problems there, and came to the United States, and in 1982 went down and brought her children back with her.

She has applied; she has been granted amnesty. She has a 14-year-old daughter and a 10-year-old daughter who do not qualify, cannot apply, do not have work authorization, and therefore they cannot get Social Security cards.

As a result, she has been informed that even though she is the sole support for these children on a \$14,000 a year salary, that she cannot claim them on her income tax returns, because they do not have valid Social Security numbers. And she has been informed by—I am not sure if it is the IRS or who has informed her of that, but she cannot claim those people. And she is the sole support of those two children.

In addition, we do know of and I have talked with school districts that have told parents of students that don't have Social Security numbers, that their children will not be permitted to attend school in that school district if they don't come through with valid Social Security numbers. This is in spite of the fact there is a Supreme Court case that says that that can't be done; all children must be permitted to attend public school.

Those are just some of the sample cases, and are a couple that I have dealt with, that I know are facts.

The next thing I wanted to talk briefly about is employer sanctions, and a related problem of employment authorization. And in this area, we are talking about people that mainly don't qualify for legalization, but, as you know, the regulations give people that are applying for other benefits under the Immigration Act, whether it is suspension of deportation or political asylum or an immigrant visa—the regulations give these individuals the ability to apply for employment authorization. And it says the Immigration Service has to adjudicate these applications within 60 days.

What we have found is that the Immigration Service has been very restrictive in granting these, and in many of the cases, some of the examples which are cited in our materials, the Service has gone far over the 60 days in adjudicating this.

And this is real serious, because you can choke off any kind of a benefit just by denying employment authorization, or by being slow about it. You can effectively put a choke hold on someone's ability

to get a benefit under the Immigration Act, whether it is amnesty or other provisions of the Act to which they may be entitled.

And one example, one of the groups in our task force has, right now, 34 applications that have been—that are overdue, that have passed the 60 days. And these people need to work. Most of them are asylum applicants; they have fled Central America, and they have valid claims for political asylum.

Mr. MAZZOLI. Can you tell me what is the gist of the investigation? What is INS supposed to be investigating during this 60-day period?

Mr. VAIL. Well, on political asylum applications, what they are supposed to be investigating is whether the claim is frivolous or not.

Mr. MAZZOLI. No, no. I am talking about why would they take that long to issue the work permit? Are they adjudicating the question of asylum, or the question of whether or not the person should have a work permit?

Mr. VAIL. I think that a lot of that—they claim that a lot of it is whether the person should have asylum or not.

Mr. MAZZOLI. OK. So, in other words, they are going to the major question, and they are holding up the issuance of the work permit to give them time to decide, basically, whether or not a person should be granted asylum?

Mr. VAIL. Right.

Mr. MAZZOLI. And if they can't make that decision in 60 days, then they have got to give the work permit to the individual even if they are continuing to deliberate on whether or not their asylum status will be granted. Is that correct?

Mr. VAIL. Exactly.

Mr. MAZZOLI. OK. And you say your experience has been that they have held up—and you did document that in your statement—several beyond the 60. Once you threatened mandamus, then they all came through, or basically came through?

Mr. VAIL. Well, no. Some of them came through; not all of them came through.

Mr. MAZZOLI. You still have some over the 60.

Mr. VAIL. Still some that are pending, and, in addition, some of the decisions that came back were these form letters that, in many cases, did not relate to the claims at all. There is a form letter that came out that—

Mr. MAZZOLI. OK. Can you document that information? Can you give names and addresses?

Mr. VAIL. Yes, we can. One point on that issue, Congressman, is that the interesting thing about those 34 cases that I mentioned is that it is the immigration judge and the immigration court who actually decides those asylum applications, while it is the district director, in adjudicating the work authorization requests, who makes the decision on whether the claim is frivolous.

And it is really kind of a contradiction in terms, when you have one form that is supposed to adjudicate whether it is a well-founded plea of asylum, and you have a district director who is saying that this may be a frivolous claim. And you have two conflicting forums for adjudicating whether or not this is a valid claim.

Mr. MAZZOLI. Are you saying that your understanding of the law is that the INS is supposed to grant the work authority if they can't decide the question of asylum in the 60-day period? Is that your understanding of the law?

Mr. VAIL. Exactly. My understanding of the regulations under—

Mr. MAZZOLI. Well, we understand it might be something different than that, but maybe some of the lawyers might help us. But there may be some further discretion on the part of INS.

Mr. VAIL. 274(a)(13).

Mr. MAZZOLI. Yes. We will have to find out.

Mr. VAIL. Could I just—one more point?

Mr. MAZZOLI. OK. One more.

Mr. VAIL. One more point, I am sorry.

Mr. MAZZOLI. I took some of your time.

Mr. VAIL. I am sorry. Finally, just on the issue of employment discrimination, there has been in the last two weeks television and newspaper reports that out of the ten employers that have been cited in the Houston district, nine of them have been minority-owned businesses, Asian or Latino businesses that have been cited. And there is a question there as to where the focus is on the enforcement of the employer sanctions.

In addition, in a study that is cited in our report, Telesurveys of Houston, which is a corporation that does surveys and does research, found that before this was even enforced, that at least 17 percent of businesses in Houston felt that there would be a hesitancy or some discrimination on the part of employers to hire foreign-appearing applicants for jobs.

I can provide the documentation and the basis for that study. It is cited in our report. But this is before the law was even enforced. Well, 19 percent weren't too sure whether this would happen, and the other percentage thought that there wouldn't be any discrimination.

[The prepared statement of Mr. Vail follows:]

COMMUNITY TASK FORCE TESTIMONY TRANSCRIPT

The passage of the Immigration Reform and Control Act (IRCA) in November of 1986 marks a dramatic departure in US immigration policy. Historically, the federal government has been charged with the enforcement of the regulations determining who can cross the border. Under the Employer Sanctions provision of IRCA, in contrast, the employer now shoulders the burden of enforcement and control. Moreover, a second provision of IRCA, the "legalization program", allows for legal residence for those immigrants who were residing and working in the US prior to January 1, 1982. Other provisions of IRCA include a discrimination clause, financial assistance to local service agencies and the creation of various agricultural workers programs.

Given that the passage of IRCA was not based on a national consensus regarding the number of undocumented immigrants and their impact on US society, the implementation of IRCA's provisions bears monitoring and evaluation.

A Community Task Force on Immigration Affairs (CTF), comprised of organizations and individuals involved with immigrant and refugee rights in Houston, was formed under a provision of IRCA (Sec. 111(c)) to monitor Immigration and Naturalization Service (INS) activities and focus on issues relating to those persons who did not qualify for "legalization", and for protecting the rights of those who did. The CTF is comprised of:

- *Mexican Consulate
- *Greater Houston Ministerial Alliance
- *Council of Houston Hispanic Organizations
- *Mexican American Bar Association
- *Central American Refugee Center (CARECEN)
- *Central American Refugee Committee (CRECEN)
- *Central American Refugee Network (CARNET)
- *Americas Friends Service Committee
- *Justice and Peace Action Forum
- *Priests of the Sacred Heart, Office of Justice and Peace
- *Texas Center for Immigrant Legal Assistance
- *Dominican Sisters, Congregation of the Sacred Heart
- *Guadalupe Area Social Services
- *Lutheran Social Services of Texas
- *Guatemala Refugee Committee
- *Christian Community Bill Woods
- *Women for Guatemala
- *LULAC 609

-2-

- *LULAC 4438
- *Catholic Charities
- *Sisters of Charity of the Incarnate Word
- *Anti-Discrimination Hotline
- *Private Immigration Attorneys

All of the aforementioned organizations and individuals are in daily contact with immigrants, local government agencies and INS. Some of the long range projects of the C.T.F. include an evaluation of how IRCA's provisions are implemented and a study of the law's social and economic effects on Houston's immigrant community. Initial systematic observations recorded by personnel within these organizations, however, have exposed a pattern of problems resulting from implementation of the "legalization" and Employer Sanctions provisions of IRCA.

The following pages underscore two of the major provisions of the law, namely, family unity and employer sanctions. These preliminary observations are based on systematic documentation of problems reported by clients, as well as information gathered from interviews with key personnel in local government and service agencies.

It is imperative that these problems be addressed while the law is still in the implementation stages to ensure the legislative initiative carries out its stated purposes: civil rights protection for immigrants and the mechanics for becoming a legal resident.

The problem of illegal entrants addressed by the law grounds the legalization program. We can divide these persons directly touched by the law into those who "made it in" and those left out. In the prior category, those who qualify, we will examine some of the bureaucratic and administrative problems which confront them. In repeated cases, applicants have been given conflicting information from INS representatives regarding their eligibility or lack of it in matters of continuous residence, financial responsibility, the need for waivers and illegality of status. Many individuals have been discouraged from applying when they might have qualified.

The cause of the confusion among INS representatives are several. Inefficient training on the issues involved in adjudicating legalization applications left the INS counselors at a loss. Then INS officials not trained in legalization nor familiar with the program were called from the district office. Some of the more complex problems such as the definition of a misdemeanor conviction or the meaning of "public charge" required training which many of the counselors had not received.

The more basic cause of the confusion among the INS counselors, however, was the conflicting regulations and memoranda issued by the regional and central offices. During the course of the legalization period, these offices issued several and at times

conflicting instructions on several important issues. For example, 8 C.F.R. 245 a.2 (k)(4) states that an applicant should be able to maintain himself and his family without recourse to public cash assistance. Many applicants have handicapped US citizen children who have received Supplemental Security Income (S.S.I.) payments for the maintenance of the child. Under the regulation, these individuals could be denied legalization because of the payments for the child even if the applicant never received any benefit for his own use. Applicants were told as much, and it was not until the final months of the legalization period that INS clarified this issue, stating that parents should not be disqualified because of the S.S.I. payments for a handicapped child. Many families at that point had already given up hope of applying.

Additional similar problems of interpretation arose in the meaning of "known to the government" as used in 8 C.F.R. 245 a.1(d); of "brief casual and innocent departure" (8 C.F.R. 245 a.1 (g)). These areas where INS changed the interpretation of the regulations or was ordered to do so by the courts so that the regulations would not conflict with the meaning of the statute (IRCA) nonetheless led to the disqualification of applicants who would have qualified under the law.

In the final months of the legalization period INS changed the interpretation of these provisions and made them less restrictive. However, individual applicants did not learn of the subsequent lessening of restrictions or did not have time to apply.

In this confusion of the meaning of provisions, family unity is in danger of being a casualty. Social agencies that are sponsoring ESL classes are hearing the questions and concerns for a spouse, a parent, and/or a child who for any number of reasons is yet an undocumented resident. A consequence of their mixed status is that not all able-bodied family members are able to work. The havoc caused in families can be seen in the following instances taken from one social service agency in Houston:

- the main breadwinner of the family undocumented
- the mother as the only eligible person for employment when there are small children or babies in the home;
- a 35 year old Yemen male, arrived in the US in December, 1977, with US citizen children born 11/84 and 1/88, married in December, 1982, his wife without authorization to work, who loses his job;
- a 41 year old Iranian man, married in 8/78 in Iran, arriving in the US in September of 1978. His wife, who does not qualify, is presently in Beauty School but without hope of attaining work upon completion of her course.

There are also several instances of family division that comes about because of the illegal status of children of "legalized" parents, sometimes both of them with work authorization. Among such instances are the following:

- a child soon to turn eighteen and risking treatment as an independent adult;

- the child of a Mexican family with an immigration wait of possibly years, with need to work and desire to attend college;

In relation to the question of child's status is that of social security card issuance. According to a recent ruling, a parent will not be able to claim a child as dependent without a social security card. Some school districts, moreover, are requiring social security cards as part of children's entrance requirements in school. The latter policy seems in conflict with the 1982 Supreme Court decision permitting all children, regardless of their legal status, to attend public schools. In the face of this insistence, parents are intimidated and do not send their children to school.

A second problem with the legalization procedure has been the delay in processing applications already filed. Applications have been pending a year or more with no decisions rendered by the legalization office. The inordinate delay in approving prima facie eligible cases has caused hardship to many families. Some of those cases which have been pending the longest are cases with the strongest documentation while other weaker cases have been approved quickly. There appears to be little rhyme or reason to the process. Families have not been able to plan for the future while being kept in a state of uncertainty which appears to be unnecessary.

The second principal question to be addressed is that of employer sanctions. The consequences of employer sanctions are multiple. The complication of two separate categories of persons affected by work authorization requirements needs to be addressed. On the one hand are those in process of applying for amnesty who generally receive work authorization as due course. The exception to this are those who filed for amnesty in the final days. An INS employee was reported as saying: "We know most of the amnesty applications during the final days of filing are fraudulent, and we are not going to issue work authorization cards to those people." While the Deputy Director of INS in Houston has stated that there are forty investigators enforcing the law, more than one part time employee could be appointed to adjudicate work authorization requests.

On the other are those applying for political asylum who face major obstacles. In May of the present year, the Central American Refugee Center in Houston (CARECEN) had 34 clients whose application for work authorization under 8 C.F.R. 274 e.12 had gone beyond 60 days without either an issuance or a denial. Two of those 34 had been pending for more than a year, despite monthly certified letters to INS urging action by CARECEN's attorney Frances Tobin. Other local attorneys and organizations handling refugee legal cases reported anywhere from one to twenty work authorization applications which had gone beyond the 60 day limit permitted by 8 C.F.R. 274 e.13 without INS action. If INS has not denied an application within 60 days, the individual is entitled by law to receive a work authorization card. It appears that INS

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has averaged about one-half an employee to handle this matter of work authorization applications. This is simply not sufficient.

In July, INS picked up rumors of an Imminent Writ of Mandamus being seriously considered by CARECEN and other local organizations and private attorneys. Consequently, many work authorization cards were issued within a period of one week. Yet, as of the beginning of August, CARECEN still has seven individuals whose work authorization applications have gone beyond 60 days. One of these was filed in January, 1988, three in February and three in March. An August 3, 1988, certified letter to the Houston INS District Office has brought no response. As of August 13, there are five additional such applications beyond the 60 day limit.

The issue of denial of work authorization is troublesome. The same form letter is used for all denials so that the reason for the denial remains obscure. At CARECEN denials have been received by individuals with such differing situations such as: a political asylum case on appeal; and previously granted work authorization merely requesting extension. In sum, the appeal for political asylum becomes practically impossible if, while the matter is pending, the petitioner cannot work.

The denials of work authorization requests also appear to be inconsistent and arbitrary. In July, CARECEN had an applicant who was granted political asylum, yet his work authorization request was denied. Two individuals whose cases were on appeal and who had previously been granted work authorization were denied an extension of that work authorization. By oversight, an application for the same person was submitted twice. One was denied and two days later the identical application was approved. CARECEN also received final deportation orders for two clients who had already received legalization.

Whether individuals have applied for amnesty or for political asylum, a class of workers is being created from among them, who, being treated as unauthorized, are subject to abuse in the work place. Individuals have brought complaints to various social service agencies of countless hours of overtime with no compensation and of wages being reduced. An instance is that of a person working for a landscaping firm whose pay was reduced from \$5 per hour to \$3.50 and then required to work for ten additional hours for no pay. Another client received a payroll check which was impossible to cash. It seems that the company, immediately after the deadline for filing for legalization, closed its bank account and reorganized under another name, firing its workers under the guise of going out of business, reopening the following day with a different name doing the same business as usual. The final paychecks were not honored by the bank. As recently as August 17, the District Attorney's office of Harris County was consulted concerning the case of four men defrauded of wages. The Assistant District Attorney Jim McLaar said that theft of service cases have been handled through a special unit set up in the D.A.'s office. He said that undocumented victims have accounted for from

30 to 50% of the cases the office has received since 1980. "Unfortunately," he added, "the laws favor the employer who rips off the workers."

Under the question of employer sanctions, one has to grapple with the problem of which comes first, the work authorization card or the social security card. Employers are requiring social security cards while the work authorization cards are still to be received. The Social Security Administration will not consider an application for a social security card until the individual has obtained his first employment authorization card from INS. The minimum two-week wait often extends to several months. Just as there was confusion among those who were applying for amnesty, there is major confusion among employers over provisions of the law. For instance, a woman who has worked for the same company since before November, 1986, and who has filed for legalization and was waiting for her work authorization was in danger of being discharged. It took nearly an entire day to clarify to the employer the rights of the woman. CARECEN learns of at least two such incidents each week.

The social consequences of lack of work authorization for refugees are bringing about subhuman conditions within our city. One of the organizations which is a member of the Community Task Force has a house in the southwest area of Houston in an area of heavy concentration of Central American refugees, according to a school of public health survey, 14,000 refugees within a mile and a half squared. In the last six months, there has been a considerable increase in the number of men coming for both breakfast and supper. Many express the impossibility of renting apartments for lack of documented status. This wide-ranging homelessness in turn leads to related social problems. Violence has perceptively increased. In the past week, there were two stabbings in the neighborhood, and in the last month, two deaths resulting from stabbings. More persons have come to the community center in need of first aid because of beatings.

Solicitation of both male and female prostitutes goes on even in daylight. Two years ago, the heavily Central American area was relatively free of prostitution. Women have been hired by a "club" in the area and are required to drink a minimum of twelve beers a night as they promote and accompany the drinking of the clients.

There have been incidences among the men who come to the community house of TB, bronchitis, gastro-intestinal infections, throat infections, and depression. These men are drinking from outside faucets, relieving themselves outdoors, and sleeping on the ground in open fields. The population of street dwellers grows.

CONCLUSION

It is clear from the preceding pages that the spirit and intent of the law are not being met because of confusing and changing INS policies and inadequate and often inappropriate response to work authorization applications. INS personnel in Houston have repeatedly boasted about the city's large number of

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"legalization" applicants, often taking credit for the overwhelming participation. The so-called "success" of IRCA's two provisions, the "legalization" program and Employer Sanctions, now rests on the ability of INS to remedy its contradictory policies at the local level and insure civil rights and legal residence to those immigrants as promised under IRCA.

Mr. MAZZOLI. Thank you very much, Mr. Vail. Mr. Lehr?

TESTIMONY OF MIKE LEHR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. LEHR. Chairman Mazzoli, Representative Bryant, thank you for the opportunity to present testimony on behalf of the Federation for American Immigration Reform and the Austin Citizens Committee for Fair Immigration. A full and complete statement has been submitted for record. I will only summarize the statement. We applaud the committee's interest regarding IRCA's effects on our region.

FAIR has iRemployers who knowingly hire illegal aliens is the key to controlling illegal immigration. While employer sanctions have not yet been in operation long enough to determine the extent to which employers are changing their hiring practice, FAIR believes that strong enforcement of the law in its critical early stages will ensure that employers change their hiring practices. Simply put, once employers obey the law, the job magnet drawing illegal aliens to the United States will begin to turn off.

At present, we believe there are inadequate INS investigators to enforce employer sanctions. Without enough investigators to do the job, the message will quickly go out to employers that it is business as usual.

Mr. Chairman, one of the principal safeguards included in IRCA to prevent discrimination against foreign-looking employees is the requirement that there be universal verification of every employee.

In other words, employers must ask every single employee for work authorization documents, by completing an I-9 verification form, and cannot single out only those employees they suspect of being unauthorized to work. The concept of universal verification was well-debated during consideration of IRCA, and FAIR endorsed it as an aid to the enforcement of sanctions.

We urge the committee to demand that INS uphold the principles of universal verification by fully prosecuting all paperwork violations. If there is to be no discrimination at the workplace, employers must learn that every employee must be screened for work authorization. Mr. Chairman, we want employer sanctions to work.

Congress properly recognized that if employer sanctions are to work effectively, a secure verification system to determine work eligibility must be developed. Without a fraud-proof work authorization system, illegal aliens will continue to circumvent the new law by using a wide variety of fraudulent documents.

The General Accounting Office released a report in March 1988 entitled, "A New Role for the Social Security Card," that recommends use of the Social Security card as the only authorized work eligibility document. GAO also suggests technological methods for enhancing the security of the card.

The report offers ways to make the Social Security number application process less vulnerable to fraud. FAIR supports GAO's recommendations, and urges the committee to hold hearings to examine GAO's findings and look into the establishment of a secure verification system.

Mr. Chairman, the time has come for the United States to put serious controls along its border. As a Texan, I am concerned about the high number of illegal aliens apprehended on the border. Before IRCA's passage, well over a million aliens were apprehended every year on the border, and, alarmingly, the number continues to reach the million mark even after IRCA's passage.

Although Congress mandated a 50 percent increase in the U.S. Border Patrol, it has given INS only enough funding for a 20 percent increase in personnel.

In summary, Mr. Chairman, the promise of IRCA has yet to be realized. We see inadequate enforcement of sanctions and repeated calls to provide millions of visas for relatives of amnesty applicants.

F.A.I.R. opposes attempts to expand the amnesty provisions to include relatives of legalized aliens who themselves do not qualify for amnesty. An expansion of the amnesty in this fashion would undermine the hard-fought compromise IRCA represents, a one time only amnesty in exchange for employer sanctions and border enforcement.

Rewriting the terms of this compromise before the enforcement side of the bargain has been met would be a serious breach of faith to the American people, the majority of whom want illegal immigration stopped.

Thank you for the opportunity to present the views of FAIR and the Austin Citizens Committee for Fair Immigration, and thank you for conducting your hearings.

[The prepared statement of Mr. Lehr follows:]

STATEMENT OF THE FEDERATION FOR AMERICAN IMMIGRATION REFORM
BEFORE THE HOUSE IMMIGRATION SUBCOMMITTEE
FIELD HEARING, SAN ANTONIO, TEXAS
AUGUST 23, 1988

THANK YOU FOR THE OPPORTUNITY TO PRESENT TESTIMONY ON BEHALF OF FAIR, THE FEDERATION FOR AMERICAN IMMIGRATION REFORM. FAIR IS THE LARGEST NATIONAL NON-PROFIT ORGANIZATION WORKING TO STOP ILLEGAL IMMIGRATION AND SET REASONABLE LEVELS OF LEGAL IMMIGRATION. WE BELIEVE ILLEGAL IMMIGRATION RUNS CONTRARY TO THE BEST INTERESTS OF THIS COUNTRY PRIMARILY BECAUSE IT HARMS THE WAGES AND WORKING CONDITIONS OF AMERICAN WORKERS.

I UNDERSTAND THE PURPOSE OF TODAY'S HEARING IS TO EXAMINE THE PROGRESS OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA), WHICH WAS SIGNED INTO LAW NEARLY 2 YEARS AGO. SINCE OUR FOUNDING IN 1979, FAIR HAS WORKED HARD TO PROMOTE POLICIES THAT WILL ENABLE THIS COUNTRY TO REGAIN CONTROL OF ITS BORDERS THROUGH PASSAGE OF A FAIR, HUMANE, AND ENFORCEABLE IMMIGRATION LAW. ALTHOUGH WE HAVE SERIOUS RESERVATIONS ABOUT THE AMNESTY PROVISIONS, WE SUPPORTED PASSAGE OF IRCA IN THE SPIRIT OF COMPROMISE.

IRCA WAS SOLD TO THE AMERICAN PEOPLE AS A PROMISE THAT ILLEGAL IMMIGRATION WILL BE CURBED THROUGH INCREASED BORDER ENFORCEMENT AND A SYSTEM OF PENALTIES AGAINST EMPLOYERS WHO KNOWINGLY HIRE ILLEGAL ALIENS. THE QUESTION IS: HAS THIS

PROMISE BEEN KEPT?

AS A TEXAN, I WOULD LIKE TO POINT OUT A FEW FACTS ABOUT TEXAS AND IMMIGRATION:

- O ACCORDING TO A MARCH 1987 DALLAS TIMES-HERALD POLL, 77.1 PERCENT OF TEXAS RESIDENTS BELIEVE EMPLOYERS SHOULD BE FINED FOR HIRING ILLEGAL ALIENS.
- O ACCORDING TO A JANUARY 1988 SOUTHERN PRIMARY POLL CONDUCTED BY THE ATLANTA JOURNAL AND CONSTITUTION, 54 PERCENT OF ALL TEXAS RESIDENTS BELIEVE IT IS TOO EASY TO IMMIGRATE TO THE U.S.; ONLY 7 PERCENT SAID CURRENT LAW IS TOO RESTRICTIVE.
- O AN APRIL 1984 SPANISH INTERNATIONAL NETWORK EXIT POLL FOUND THAT 60 PERCENT OF DEMOCRATIC HISPANIC VOTERS IN TEXAS FAVOR FINES FOR EMPLOYERS WHO KNOWINGLY HIRE ILLEGAL ALIENS.
- O ACCORDING TO A 1984 STUDY BY THE UNIVERSITY OF TEXAS LBJ SCHOOL OF PUBLIC AFFAIRS, THE CITIES OF SAN ANTONIO, DALLAS, AUSTIN, EL PASO, HOUSTON, AND MCALLEN SPEND MORE ON SOCIAL SERVICES THAN THEY COLLECT IN TAXES FROM ILLEGAL ALIENS.
- O IN 1986, 58 PERCENT OF INDIGENT BIRTHS PAID FOR BY HIDALGO COUNTY TAXPAYERS WERE TO ILLEGAL ALIEN MOTHERS.
- O THE SAN ANTONIO DISTRICT OFFICE OF THE U.S. IMMIGRATION SERVICE REPORTS THAT 85 PERCENT OF THE COMPLAINTS IT RECEIVES COME FROM HISPANIC AMERICANS AND LEGAL IMMIGRANTS WHO HAVE LOST THEIR JOBS TO ILLEGAL ALIENS.
- O LAST YEAR, IN EL PASO ALONE, THE U.S. BORDER PATROL MADE OVER 230,000 ILLEGAL ALIEN APPREHENSIONS.

CLEARLY, ILLEGAL IMMIGRATION HAS A MAJOR IMPACT ON TEXAS, AND WE APPLAUD THE COMMITTEE'S INTEREST IN ITS EFFECTS ON OUR

REGION.

ARE EMPLOYER SANCTIONS WORKING?

FAIR HAS ALWAYS BELIEVED THAT PENALIZING EMPLOYERS WHO KNOWINGLY HIRE ILLEGAL ALIENS IS THE KEY TO CONTROLLING ILLEGAL IMMIGRATION. WHILE EMPLOYER SANCTIONS HAVE NOT YET BEEN IN OPERATION LONG ENOUGH TO DETERMINE THE EXTENT TO WHICH EMPLOYERS ARE CHANGING THEIR HIRING PRACTICES, FAIR BELIEVES THAT STRONG ENFORCEMENT OF THE LAW IN ITS CRITICAL EARLY STAGES WILL ENSURE THAT EMPLOYERS CHANGE THEIR HIRING PRACTICES. SIMPLY PUT, ONCE EMPLOYERS OBEY THE LAW, THE JOB MAGNET DRAWING ILLEGAL ALIENS TO THE UNITED STATES WILL BEGIN TO TURN OFF.

BUT IF THIS LAW IS TO MAKE A DIFFERENCE, CONGRESS MUST PROVIDE ENOUGH FUNDS FOR THE IMMIGRATION SERVICE TO ENFORCE THE LAW. TO DATE, CONGRESS HAS NOT DONE SO. AND THE BUDGET FIGURES FOR FISCAL 1989 ARE NOT PROMISING: THEY ARE FAR BELOW WHAT THE INS ASKED FOR AND NEEDS. THE IMMIGRATION SERVICE REQUESTED \$859 MILLION TO DO ITS JOB IN FY89, BUT THE HOUSE OF REPRESENTATIVES PROPOSES ONLY \$741 MILLION WHILE THE SENATE PROPOSES \$804 MILLION. ALTHOUGH THE FINAL AMOUNT WILL BE DECIDED BY THE APPROPRIATIONS CONFEREES IN SEPTEMBER, IT IS UNLIKELY THE INS REQUEST WILL BE MET. WE URGE THIS COMMITTEE TO USE ITS GOOD OFFICES TO TRY TO ENSURE THAT THE INS RECEIVES THE FULL IRCA-AUTHORIZED LEVELS.

AT PRESENT, WE BELIEVE THERE ARE INADEQUATE INS INVESTIGATORS TO ENFORCE EMPLOYER SANCTIONS. SINCE 1976, THE NUMBER OF INS INVESTIGATORS HAD DROPPED BY 38 PERCENT. WITH

PASSAGE OF IRCA IN 1986, THE NUMBER OF NEW INVESTIGATORS ADDED (SOME 400 AGENTS) IS JUST NOW RETURNING TO THE LEVEL IT WAS TEN YEARS AGO! WITH ALL OF THE NEW RESPONSIBILITIES REQUIRED OF THE INS UNDER IRCA, HOW IS THE INS SUPPOSED TO PROPERLY ENFORCE THE LAW WITHOUT A SUBSTANTIAL INCREASE IN AGENTS OVER 1976 LEVELS?

TO MAKE MATTERS WORSE, THE INS IS CONTINUING TO DEVOTE 25 PERCENT OF ITS INVESTIGATIVE FORCE TO EDUCATING EMPLOYERS ABOUT THE REQUIREMENTS UNDER IRCA, RATHER THAN USING THESE INVESTIGATORS TO ENFORCE EMPLOYER SANCTIONS. MR. CHAIRMAN, THE ONE-YEAR EDUCATION PERIOD FOR EMPLOYERS TO LEARN ABOUT THE SANCTIONS PROVISIONS EXPIRED ON JUNE 1, 1988. THE INS DID A REMARKABLE JOB DURING THAT PERIOD TO PUBLICIZE THE LAW AND INFORM EMPLOYERS ABOUT THE PROHIBITION ON HIRING PERSONS UNAUTHORIZED TO WORK IN THE UNITED STATES. INFORMATION ABOUT THE LAW WAS ALSO WIDELY DISSEMINATED BY EMPLOYER ORGANIZATIONS AND NEWSPAPERS ACROSS THE COUNTRY. BUT THE EDUCATION PERIOD IS OVER, AND THE INS SHOULD NOW USE ITS FULL CONTINGENT OF INVESTIGATORS TO ENFORCE THE LAW. WITH SO FEW INVESTIGATORS AVAILABLE AS IT IS, THE INS CAN ILL AFFORD TO SQUANDER 25 PERCENT OF ITS TOP AGENTS ON COURTESY CALLS TO EMPLOYERS--NOT IF THIS LAW IS TO WORK AS CONGRESS INTENDED, AND THE AMERICAN PEOPLE OVERWHELMINGLY HOPE.

WITHOUT ENOUGH INVESTIGATORS TO DO THE JOB, THE MESSAGE WILL QUICKLY GO OUT TO EMPLOYERS THAT IT'S "BUSINESS AS USUAL."

ANTI-DISCRIMINATION PROVISIONS

MR. CHAIRMAN, ONE OF THE PRINCIPLE SAFEGUARDS INCLUDED IN IRCA TO PREVENT DISCRIMINATION AGAINST FOREIGN-LOOKING EMPLOYEES IS THE REQUIREMENT THAT THERE BE UNIVERSAL VERIFICATION OF EVERY

EMPLOYEE. IN OTHER WORDS, EMPLOYERS MUST ASK EVERY SINGLE EMPLOYEE FOR WORK AUTHORIZATION DOCUMENTS (BY COMPLETING AN I-9 VERIFICATION FORM), AND CANNOT SINGLE OUT ONLY THOSE EMPLOYEES THEY SUSPECT OF BEING UNAUTHORIZED TO WORK. THE CONCEPT OF UNIVERSAL VERIFICATION WAS WELL-DEBATED DURING CONSIDERATION OF IRCA, AND FAIR ENDORSED IT AS AN AID IN THE ENFORCEMENT OF SANCTIONS.

RECENTLY, HOWEVER, THE INS INDICATED THAT THEY WILL NOT PROSECUTE EMPLOYERS FOR A PAPERWORK VIOLATION ALONE (I.E., FOR FAILING TO KEEP I-9 FORMS ON EVERY EMPLOYEE), BUT WILL DO SO ONLY IF THERE IS AN ACCOMPANYING HIRING VIOLATION. I QUOTE FROM THE JULY 28, 1988 ISSUE OF THE IMMIGRATION POLICY & LAW JOURNAL, WHICH REPORTED THE FOLLOWING:

"CRAIG DEBERNARDIS, AN ATTORNEY IN THE BALTIMORE GENERAL COUNSEL'S OFFICE [OF INS], SAID THE INS WOULD ONLY FINE AN EMPLOYER FOR FAILING TO FILL OUT THE I-9 EMPLOYMENT VERIFICATION FORMS IF THE EMPLOYER ALSO WAS KNOWINGLY EMPLOYING ILLEGAL ALIENS. THIS "COUPLING" PROCEDURE IS NATIONAL POLICY AND COMES "DIRECTLY FROM THE DESK OF INS COMMISSIONER ALAN NELSON," HE SAID."

MR. CHAIRMAN, FAIR OPPOSES THE INS' REFUSAL TO PROSECUTE PAPERWORK VIOLATIONS ALONE. ONCE EMPLOYERS BECOME AWARE THAT PAPERWORK VIOLATIONS ARE NOT ENFORCED SO LONG AS NO ILLEGAL ALIENS ARE HIRED, THEY WILL QUICKLY LEARN TO AVOID HIRING ANYONE WHO THEY SURMISE IS ILLEGAL JUST TO AVOID FILLING OUT I-9'S. AS SENATOR ALAN SIMPSON IN HIS CHARACTERISTIC HUMOR OFTEN STATED, "EVEN BALD-HEADED, WHITE GUYS LIKE ME" WILL HAVE TO BE ASKED FOR PROOF OF WORK AUTHORIZATION.

WE URGE THE COMMITTEE TO DEMAND THAT INS UPHOLD THE PRINCIPLES OF UNIVERSAL VERIFICATION BY FULLY PROSECUTING ALL

PAPERWORK VIOLATIONS. IF THERE IS TO BE NO DISCRIMINATION AT THE WORKPLACE, EMPLOYERS MUST LEARN THAT EVERY EMPLOYEE MUST BE SCREENED FOR WORK AUTHORIZATION.

THERE ARE THOSE WHO WILL MAKE THE CLAIM THAT EMPLOYER SANCTIONS HAVE ALREADY CAUSED EMPLOYERS TO DISCRIMINATE AGAINST FOREIGN-LOOKING JOB APPLICANTS. BASED ON THE EVIDENCE THUS FAR, THERE HAVE BEEN RELATIVELY FEW DISCRIMINATION COMPLAINTS FILED WITH THE SPECIAL COUNSEL AT THE DEPARTMENT OF JUSTICE. FURTHERMORE, THE U.S. GENERAL ACCOUNTING OFFICE WHICH IS STUDYING THE ISSUE OF DISCRIMINATION FOUND NO EVIDENCE OF DISCRIMINATION IN THEIR FIRST REPORT PUBLISHED LAST NOVEMBER.

FAIR URGES THE COMMITTEE TO BE SKEPTICAL OF GENERALIZED ASSERTIONS OF DISCRIMINATION WHICH COME FROM GROUPS WHO WERE OPPOSED TO EMPLOYER SANCTIONS TO BEGIN WITH. EMPLOYER SANCTIONS WERE NOT DESIGNED TO ERADICATE DISCRIMINATION IN THE LABOR MARKET; SUCH DISCRIMINATION OCCURED PRIOR TO EMPLOYER SANCTIONS AND IS LIKELY TO OCCUR AFTERWARD. IT IS FAIR'S ASSERTION, HOWEVER, THAT EMPLOYER SANCTIONS HAS NOT EXACERBATED LABOR MARKET DISCRIMINATION IN THE UNITED STATES, AND IN FACT HAS ALLEVIATED DISCRIMINATION AGAINST AMERICAN WORKERS WHO IN THE PAST HAVE BEEN DISCRIMINATED AGAINST BY EMPLOYERS WHO ACTIVELY SOUGHT OUT ILLEGAL ALIEN WORKERS.

MR. CHAIRMAN, WE WANT EMPLOYER SANCTIONS TO WORK.

NEED FOR A SECURE I.D. SYSTEM

CONGRESS PROPERLY RECOGNIZED THAT IF EMPLOYER SANCTIONS ARE TO WORK EFFECTIVELY, A SECURE VERIFICATION SYSTEM TO DETERMINE WORK ELIGIBILITY MUST BE DEVELOPED. WITHOUT A FRAUD-PROOF WORK

AUTHORIZATION SYSTEM, ILLEGAL ALIENS WILL CONTINUE TO CIRCUMVENT THE NEW LAW BY USING A WIDE VARIETY OF FRAUDULENT DOCUMENTS.

AS IT STANDS NOW, EMPLOYERS ARE MERELY ASKED TO CHECK THAT AN EMPLOYEE'S WORK DOCUMENTS "APPEAR GENUINE" -- A VERY LOOSE STANDARD, SINCE EMPLOYERS CANNOT BE EXPECTED TO DISTINGUISH BETWEEN REAL AND COUNTERFEIT DOCUMENTS. CURRENTLY, AN INDIVIDUAL MAY SUBMIT ANY OF 21 DOCUMENTS TO AN EMPLOYER TO PROVE IDENTITY, AND ANY OF 17 DOCUMENTS TO PROVE EMPLOYMENT ELIGIBILITY. SUCH A WIDE ARRAY OF ACCEPTABLE DOCUMENTS VIRTUALLY ENSURES A HIGH RATE OF DOCUMENT FRAUD.

THE GENERAL ACCOUNTING OFFICE (GAO) RELEASED A REPORT IN MARCH 1988 ENTITLED "A NEW ROLE FOR THE SOCIAL SECURITY CARD" THAT RECOMMENDS USE OF THE SOCIAL SECURITY CARD AS THE ONLY AUTHORIZED WORK ELIGIBILITY DOCUMENT. GAO ALSO SUGGESTS TECHNOLOGICAL METHODS FOR ENHANCING THE SECURITY OF THE CARD. THE REPORT OFFERS WAYS TO MAKE THE SOCIAL SECURITY NUMBER APPLICATION PROCESS LESS VULNERABLE TO FRAUD. FOR EXAMPLE, GAO RECOMMENDS THAT SSA'S PROCESS OF ISSUING SOCIAL SECURITY CARDS TO ALIENS WITH TEMPORARY WORK AUTHORIZATION BE REVISED TO INCLUDE AN EXPIRATION DATE ON THE CARD ISSUED TO THOSE ALIENS. GAO ALSO SUGGESTS THAT SSA HAVE THE INS COMPLETE AN ALIEN'S APPLICATION FOR A SOCIAL SECURITY CARD AND CERTIFY THE ALIENS ELIGIBILITY TO WORK. CURRENTLY, AN ALIEN CAN OBTAIN A SOCIAL SECURITY NUMBER FROM SSA SIMPLY BY PRESENTING EASILY COUNTERFEITED INS DOCUMENTS.

FAIR SUPPORTS GAO'S RECOMMENDATIONS AND URGES THE COMMITTEE TO HOLD HEARINGS TO EXAMINE GAO'S FINDINGS AND LOOK INTO THE ESTABLISHMENT OF A SECURE VERIFICATION SYSTEM. FAIR BELIEVES

CONGRESS SHOULD NOT DELAY IN PASSING LEGISLATION TO REQUIRE EMPLOYERS TO MAKE A TELEPHONE CHECK OF A NEW HIRE'S SOCIAL SECURITY NUMBER, IN MUCH THE SAME WAY STORES NOW VALIDATE CREDIT CARD PURCHASES.

INCREASES TO THE BORDER PATROL

MR. CHAIRMAN, THE TIME HAS COME FOR THE UNITED STATES TO PUT SERIOUS CONTROLS ALONG THE SOUTHERN BORDER. AS A TEXAN, I AM CONCERNED ABOUT THE HIGH NUMBER OF ILLEGAL ALIENS APPREHENDED ON THE BORDER. BEFORE IRCA'S PASSAGE, WELL OVER A MILLION ALIENS WERE APPREHENDED EVERY YEAR ON THE BORDER, AND ALARMINGLY THE NUMBER CONTINUES TO REACH THE MILLION MARK EVEN AFTER IRCA'S PASSAGE.

ALTHOUGH CONGRESS MANDATED A 50 PERCENT INCREASE IN THE U.S. BORDER PATROL, IT HAS GIVEN INS ONLY ENOUGH FUNDING FOR A 20 PERCENT INCREASE IN PERSONNEL. BUT EVEN THAT SLIGHT INCREASE IS DECEPTIVE. BECAUSE THE 1989 INS BUDGET HAS BEEN FROZEN AT 1988 LEVELS, INS WILL LOSE MOST OF THIS YEAR'S "INCREASE" THROUGH NORMAL AGENT ATTRITION NEXT YEAR. THE END RESULT: INSTEAD OF A 50 PERCENT INCREASE, THERE WILL BE LITTLE OR NO INCREASE IN BORDER PATROL ENFORCEMENT. THIS IS SIMPLY UNACCEPTABLE. IT'S TIME TO PUT A CREDIBLE DETERRENT ALONG OUR SOUTHERN BORDER.

FRAUD IN THE SAW PROGRAM

THE SEASONAL AGRICULTURAL WORKER PROGRAM, ADOPTED IN THE CLOSING HOURS OF LEGISLATIVE DEBATE AND THE PRODUCT OF BACK ROOM COMPROMISE, HAS LIVED UP TO ALL OF OUR WORST FEARS. FRAUD IN THE SEASONAL AGRICULTURAL WORKER (SAW) AMNESTY PROGRAM HAS REACHED ENORMOUSLY HIGH LEVELS -- APPROACHING 50 PERCENT IN SOME REGIONS.

IN ORDER TO QUALIFY FOR THE AMNESTY, AN APPLICANT NEED ONLY PROVE HAVING WORKED JUST 90 DAYS A YEAR FOR 3 YEARS IN SEASONAL AGRICULTURE. THE NEW YORK TIMES REPORTED IN AN ARTICLE OF JUNE 20, 1988: "AMERICAN OFFICIALS TELL OF APPLICANTS WHO IN THEIR QUALIFYING INTERVIEWS SAY THEY CLIMBED LADDERS TO PICK WATERMELONS OR STRAWBERRIES. OTHER SUPPOSEDLY VETERAN FARM WORKERS CANNOT RECALL THE PLANTING OR HARVESTING SCHEDULE FOR ONIONS OR ASPARAGUS." LABOR EXPERTS PREDICT THAT THE TOTAL NUMBER OF SAW APPLICANTS, NOW ESTIMATED AT OVER ONE MILLION, WILL EXCEED THE MIGRANT AGRICULTURAL WORKER POPULATION BY 100 PERCENT, REVEALING THE HUGE NUMBER OF NON-AGRICULTURAL WORKERS WHO ARE FALSELY APPLYING FOR AN AMNESTY INTENDED ONLY FOR AGRICULTURAL WORKERS.

THE PROGRAM IS ALSO A DISASTER FOR THE AMERICAN FARM WORKER. ACCORDING TO THE SAN JOSE MERCURY-NEWS (JULY 10, 1988):

"WE HAVE AN EXCESS OF WORKERS EVERYWHERE," SAID MARY LOPEZ, NATIONAL DIRECTOR OF IMMIGRATION FOR THE MARTIN LUTHER KING, JR. FARMWORKERS FUND, AN ARM OF THE UNITED FARM WORKERS UNION. "AND IT'S SLAVE LABOR THEY'RE PICKED OVER LIKE CATTLE."
 "THERE'S 10 PEOPLE FOR ONE JOB," AGREED MICHAEL MUNIZ, AN ATTORNEY WITH THE CALIFORNIA RURAL LEGAL ASSISTANCE IN GILROY. "GO TO THE MIGRANT CAMPS AND HALF OF THE PEOPLE AREN'T WORKING."
 WAGES, MEANWHILE, ARE FALLING FROM PREVIOUS YEARS. IN THE SALINAS VALLEY, FOR EXAMPLE, TOP WAGES FOR A LETTUCE PICKER IN GOOD YEARS COULD RUN MORE THAN \$1 A CARTON. THIS YEAR, HOWEVER, MANY GROWERS ARE PAYING FROM 55 TO 65 CENTS. . .

THE SAW PROGRAM HAS TURNED INTO A FARCE. MOST APPLICATIONS ARE PROCESSED EVEN THOUGH THE MAJORITY ARE SUSPECTED TO BE FRAUDULENT BECAUSE THE INS SIMPLY DOES NOT HAVE ENOUGH INVESTIGATORS TO WEED OUT FRAUD.

WITH SUCH A HIGH RATE OF FRAUD IN EVIDENCE, FAIR CALLS ON

THE CONGRESS TO REPEAL THE SECOND-PHASE "REPLENISHMENT AGRICULTURAL WORKER" (RAW) PROGRAM, BEFORE IT BECOMES A ROLLING AMNESTY IN WHICH NEARLY ANYONE WHO APPLIES WILL BE ABLE TO EVENTUALLY QUALIFY FOR CITIZENSHIP.

CONCLUSION

IN SUM, MR. CHAIRMAN, THE PROMISE OF IRCA HAS YET TO BE REALIZED. WE SEE INADEQUATE ENFORCEMENT OF SANCTIONS AND REPEATED CALLS TO PROVIDE MILLIONS OF VISAS FOR RELATIVES OF AMNESTY APPLICANTS. FAIR OPPOSES ATTEMPTS TO EXPAND THE AMNESTY PROVISIONS TO INCLUDE RELATIVES OF LEGALIZED ALIENS WHO THEMSELVES DO NOT QUALIFY FOR AMNESTY. AN EXPANSION OF THE AMNESTY IN THIS FASHION WOULD UNDERMINE THE HARD-FOUGHT COMPROMISE IRCA REPRESENTS: A ONE-TIME ONLY AMNESTY IN EXCHANGE FOR EMPLOYER SANCTIONS AND BORDER ENFORCEMENT. REWRITING THE TERMS OF THIS COMPROMISE BEFORE THE ENFORCEMENT SIDE OF THE BARGAIN HAS BEEN MET WOULD BE A SERIOUS BREACH OF FAITH TO THE AMERICAN PEOPLE, THE MAJORITY OF WHOM WANT ILLEGAL IMMIGRATION STOPPED.

THANK YOU FOR THIS OPPORTUNITY TO PRESENT THE VIEWS OF FAIR.

Mr. MAZZOLI. Mr. Lehr, thank you very much, and thank all of you for good testimony and for honoring the time problems that we have today. And I will yield myself five minutes to start the questioning.

Let me—I believe it was Mr. Vail, you brought up an interesting kind of problem, and that is that some school districts in Texas are asking that all school age children have a Social Security card before that child is admitted. Is that correct?

Mr. VAIL. Not just Texas. I worked up in Washington in the past year as well, and I am familiar with—

Mr. MAZZOLI. Washington, DC?

Mr. VAIL. Washington, DC. And I am familiar—in Washington, as well—not in Washington but in Virginia—that there are school districts in Virginia that have also told children they would not be accepted.

Mr. MAZZOLI. You have to move that microphone. But you say that there are districts—are you aware of any child not permitted to enter school because that child does not have a Social Security card?

Mr. VAIL. In the cases that I have become aware of, I have immediately contacted the school district and advised them of *Pylor* [phonetic] v. *Doe*, which is the case that ensures that they be permitted. And in those—

Mr. MAZZOLI. Have you found any school districts ignoring that court case and still rejecting the students? They permit the students—

Mr. VAIL. They permit the students, but—

Mr. MAZZOLI. —because you understand the problem we have. That Social Security card requirement is under the 1986 Tax Act, and it is meant to be a protection against multiply listing children on income tax returns for deduction purposes. So it is meant as another one of these efforts to make sure that people pay what they should pay in income tax.

But I would like to have any information any of you all could give me, and anyone in the room, where possibly this situation of a requirement that a child have a Social Security card is being used to keep the child out of school or deny the child some other kind of benefits, maybe inoculations, or just anything where that could come up, because—that is not our bailiwick, but it is certainly something we would convey to the Ways and Means Committee.

Mr. Dubove?

Mr. DUBOVE. Congressman Mazzoli, my director, Norma Plascencia Almanza, who is here, worked extensively with the Texas Education Agency, with the school districts throughout the State, on that issue. That question came up repeatedly, and it began as early as last September.

And we were promised then that a letter would be sent out to the school districts assuring them that no Social Security number was required. That didn't happen, and, in fact, at one point earlier this year, when someone was enrolling in a school, they required the Social Security number for their child.

When the person asked why, they said, it is the new immigration law that requires it. They were under the impression the new immigration law required Social Security numbers.

But if you would like me to yield the floor—or I don't know how you want to address it, but she could address it extensively.

Mr. MAZZOLI. Well, I would certainly take anything in writing. But is it your understanding that any child has been denied entry into school at this time?

Ms. PLASCENCIA. Yes, sir.

Mr. MAZZOLI. If they didn't—the school year hasn't begun yet.

Ms. PLASCENCIA. This was last year, this last year, during the whole year. In each of those cases—

Mr. MAZZOLI. Would you identify yourself for the record? If you would identify your name.

Ms. PLASCENCIA. Sure. My name is Norma Plascencia Almanza, and I am director of the southwest office of the National Forum. And it was happening throughout the past year.

Mr. MAZZOLI. Now, are these citizen children or non-citizen children?

Ms. PLASCENCIA. I would say that in most cases they were probably non-citizen children.

Mr. MAZZOLI. Who still have a right to be educated; I understand that. But, I mean, these are non-citizen children?

Ms. PLASCENCIA. Exactly.

Mr. MAZZOLI. So what did they do during the year? For one thing, let me ask you, did you get to the school superintendents and bring it to their attention?

Ms. PLASCENCIA. It was brought to the attention first locally, and—

Mr. MAZZOLI. Yes. And what happened eventually? The kids still were not permitted to enter?

Ms. PLASCENCIA. They were permitted to enter.

Mr. MAZZOLI. I think that question I said was, were school children not permitted to enter the school for not having the Social Security card.

Ms. PLASCENCIA. In those cases where we learned of children—and I was in El Paso on August 5—

Mr. MAZZOLI. Now, the question that I asked was, are you aware of any child who didn't have a Social Security card and was denied entry to school.

Ms. PLASCENCIA. In El Paso, on August 3-4, we heard from the audience there that there was such a case.

Mr. MAZZOLI. Well, that is—OK.

Ms. PLASCENCIA. In each of those cases, what happens is, as we learn of it, it can be rectified.

Mr. MAZZOLI. All right. They let them into school, though? Yes, I understand. Well, that is the way it ought to be. And it would seem impossible that a school superintendent, or even a local district director of a school, would be—but I appreciate very much you—would you spell your last name for the record, please?

Ms. PLASCENCIA. Sure. It is P-L-A-S-C-E-N-C-I-A.

Mr. MAZZOLI. Thank you very much. We appreciate it. May I ask you, Mr. Vail, another thing—and that is one of the other points that you didn't mention in your statement, I think, but in your prepared remarks—the delay in processing legalization applications, and what problems that produces, in the fact that these people can't work in some cases.

Have you, and maybe Mr. Dubove and Mr. Lehr, anyone—are you satisfied with the speed at which the papers are now being processed and applications are being processed, or have you thoughts on that?

Mr. VAIL. Legalization?

Mr. MAZZOLI. Yes.

Mr. VAIL. I have cases that are over a year old that haven't been processed yet, and in a number of cases—

Mr. MAZZOLI. Has a work permit been extended in each of these cases?

Mr. VAIL. The work I have; yes. At the local level in the Houston district, I have to say that they have been fairly easy to deal with.

Mr. MAZZOLI. All right. But when they go above—is that the idea?

Mr. VAIL. The problem at the regional level is what I see, because the Houston district—

Mr. MAZZOLI. —because the 18 months doesn't start until the people are approved and get their temporary green cards. So, I mean, the delays in the processing of the application are, of course, difficult if you are trying to unite your family if they are somewhere else.

Mr. Dubove?

Mr. DUBOVE. The problem—I had a phone call on this last week with a similar situation, someone over a year was still waiting to find out what the status of his amnesty application was. And his real concern—

Mr. MAZZOLI. I wish you wouldn't use amnesty.

Mr. DUBOVE. I am sorry. I am trying to—

Mr. MAZZOLI. Legalization, please.

Mr. DUBOVE. Legalization. I will try to make that a conscious effort.

Mr. MAZZOLI. Please, legalization.

Mr. DUBOVE. On his legalization application. And the problem he was having with us now—he was wanting me to call his employer, and I told him we can't do it—is that his employer was starting to get real suspicious about his work permit, because he had had to—this was his third extension on the work permit, and he was—well, when are you going to get your real papers, your documents that are good?

And, of course, this concern is multiplied because of the raids we have had in Austin recently, and the fines coming down. And so he was concerned about losing his job. And this was just one phone call.

I spoke with Congressman Pickle's office, with his staff there, who get these type of phone calls every week, of people wanting to know the status of their application; because they are over a year old, they have had to get renewed work authorizations.

Mr. MAZZOLI. Well, that is something that we are going to get into back when we get to Washington, because it is true that everybody started off from, you know, ground zero here, and it is very difficult, but now things should be pretty well clicking along, and they probably should produce quicker.

My time is expired. The gentleman is recognized.

Mr. BRYANT. I would like to inquire about the delays, in terms of what you have seen. Your explanations for why there is confusion, Mr. Vail, seem to be rational. Do you have any theories for why these delays exist?

Mr. VAIL. Delays in processing the legalization applications?

Mr. BRYANT. Right.

Mr. VAIL. I am not certain, because there doesn't seem to be any rhyme or reason to it. The applications that were submitted four or five months ago—no, six or seven months ago now approved, applications that are submitted in May of 1987, June of 1987, not approved. And I am not just talking about one; I am talking 20, 30, just in my office, that were submitted during—that are not approved.

And all I know is that I don't put the blame at the local office. It is somewhere higher up, at the regional level. There seems to be some kind of problem there. And it—

Mr. BRYANT. What is the typical explanation when you have inquired about the reason for the delay? What do they tell you?

Mr. VAIL. You will get a letter—if you inquire at the region, you will get a form letter back from the region stating that your application is pending. If you go to the local office, they will call up the region, and they will get the verbal response, the application is pending.

And so you don't get an explanation, just that it is pending. And I have no idea why that is. And I don't get an explanation.

Mr. BRYANT. Mr. Dubove?

Mr. DUBOVE. We don't get one, either. All we can do is just keep calling up to the regional and find out where the application is.

Mr. BRYANT. In the course of dealing with these matters where there are contentions with the INS, do they display an adversarial attitude that implies that their job is to keep people out, and your job is to get people in; or do they not display that kind of an attitude? Do they have more of an even-handed attitude?

Mr. VAIL. I would say that in my experience dealing with the legalization office, my experience in Houston has been that it is not really adversarial that much. At the district office, when trying to get other kinds of benefits, whether it is employment authorization for somebody that has an asylum claim pending, or even going to an asylum interview, which shouldn't be adversarial at all, it is extremely adversarial.

And so, to me, there is a completely different attitude in both places. And I am not certain why that is.

Mr. DUBOVE. If I could expand on that, the legalization office that we have worked with in Austin has been wonderful. We have had a great chief legalization officer.

On the flip side, what I discussed in my testimony about that raid that occurred in Austin, subsequent to that raid, consistent with Section 3(c) of IRCA that allows for a community task force to investigate these sort of things, we set up a meeting between Congressman Pickle's office, Congressman Bustamante's office, and Senator Bentsen's office, as well as the two QDEs involved with their clients being picked up, as well as with two attorneys, and the INS district office here in San Antonio who was responsible for the raid.

They agreed to participate in the meeting, and we could ask what the INS procedures were going to be during employer-sanctioned enforcement raids. That way we would all understand; we would be playing by the same rules and have a level playing field.

I.N.S. agreed to that meeting. They would send their district counsel and someone from enforcement; they are the people in charge of enforcement. The afternoon before the meeting was to take place, the INS district office called back, said they would not attend the meeting, and then listed a set of conditions before they would meet with us to discuss this information.

Mr. BRYANT. What came of that?

Mr. DUBOVE. I am sorry?

Mr. BRYANT. They gave you conditions. Then what happened next?

Mr. DUBOVE. The two conditions were, one, that they wanted all questions in writing in advance; and two, that the meeting would have to take place in San Antonio rather than Austin, though all the parties that had been affected were in Austin.

Subsequent to that, we have put together in writing a list of questions, submitted them to Senator Bentsen's staff, who was handling that, and we are still waiting. But, of course, it has been months now.

What we tried initially is to find out within days—our big concern at that raid, in addition to what the status of the people were that had been picked up is, who else might have been—since the people hadn't been given the chance to call their QDEs and no one had been notified, to find out a list of the people who had been picked up to find out if any other amnesty applicants handled through a QDE might have been picked up, and just to find out what their procedure was going to be with people who were picked up that were amnesty applicants and had a prima facie case.

Mr. BRYANT. This sounds like it might have some connection to the reason for confusion on the part of some of the people that are giving advice to the legalization applicants. I mean, a pattern of confusion seems to be emerging.

And I am curious about what you have seen there—and we are going to have to ask the INS these questions, of course, directly—but what you have seen there that might give you a hint about why there is confusion, why they can't give you these answers directly.

Do you think they don't know, or do you think that they are avoiding answering these questions because they believe it gives them a strategic advantage over you in their later dealings?

Mr. DUBOVE. Well, over us. But, you know, this meeting was called in conjunction with Congressional staff people—Senator Bentsen's office, Congressman Bustamante and Pickle's offices. These aren't just grass roots advocates trying to find out more information; these are people who have direct constituent concerns, who want to find out what the program is going to be.

In addition, we were talking about employers who had been directly affected, who had had property confiscated as a result of that raid, who wanted to know what was going to happen to their pickup and their trucks that had been confiscated. To be real honest, I think INS was stonewalling us.

Mr. BRYANT. OK. I have no more questions.

Mr. MAZZOLI. Thank you very much. Let me—I want to come back to that point. But just for a second, Mr. Lehr, you brought up an interesting thing in your statement. And I read it on the airplane, and I had a chance to do a little bit of work on it separately, and that is with respect to what you call coupling, coupling the violations of I-9 with—or the verification with the presence of illegal workers on the premises; and, in effect, saying that INS was no longer going to fine people for verification violations unless there is, coupled with that, some violation of the hiring thing.

And I just happened to have with me on the plane some information which I would like to read into the record, because it does seem that if that is the INS policy—and I am aware of the statements that were issued, the guidelines, which suggest that fines will be issued for paperwork-only violations only in certain circumstances; there is kind of a conditional look at that, by virtue of a regulation or guideline issued earlier this year by the Immigration Service.

But in the I-9 handbook, which is what is handed out to all the employers—and this is supposed to be their bible, you know, to answer questions and to give them some guidance in this—in there, on page 9, is a question and answer setting.

And the question is, "How can I avoid discrimination while complying with the new immigration law?"

"Answer: Employers can avoid discrimination by applying the verification procedures of the act to all"—and "all" is in italics—"to all newly hired employees." And then skipping a sentence, it goes on, "Seeking identity and employment eligibility documents only from individuals of a particular national origin or from those who appear or sound foreign violates the new immigration law, and may also be a violation of Title 7 of the Civil Rights Act of 1964."

So if the INS—and I am going to ask each one of you what experience you may have had on this paperwork violations, as we call it loosely, but the employment verification—if the INS has changed its pattern so that it does not intend to fine or cite for paperwork violations unless there has been also a violation of employment standards, then it seems to me it goes dead 180 degrees against the statement in its own I-9 handbook.

So may I ask you, since you brought it up, Mr. Lehr, how did you and FAIR arrive at that position? Was it based on reading some of the documentation that INS got out, or—

Mr. LEHR. Craig DeBernardis, an attorney in the Baltimore general counsel's office, said that the INS would only fine an employer for failing to fill out the I-9 employment verification form if the employer also was knowingly employing illegal aliens.

This coupling procedure is a national policy, and comes directly from the desk of the commissioner, Alan Nelson, he said.

Mr. MAZZOLI. Do you know where that statement from DeBernardis came from, or could you trace it down for me?

Mr. LEHR. I could trace that and get it to you.

Mr. MAZZOLI. Could you? All right. I would very much like to have that. I don't know who this DeBernardis fellow is. I would very much like to have that.

But what I have before me is what is produced by the Immigration Service. I guess it is called the Employer Sanctions Newsletter. And there is one section describing a May 26, 1988 policy for employer sanctions, dealing with five principal guidelines. And the fifth deals with something like that.

They didn't quite say it as DeBernardis said it, but they are in the same ballpark. And I would very much like to have that for my record, because——

Mr. LEHR. I will follow up on that.

Mr. MAZZOLI. I think there is one thing else that Mr. Lehr said that is very important, and it is true. He cites in different parts of his testimony the fact that the INS is going to need additional funds if it is going to carry out the work of employer sanctions or legalization, because part of the problem of the delays in processing the paperwork—I mean, processing legalization applications—is the fact that INS doesn't always have the same number of people that it wishes to have.

And that is true for the Border Patrol. It is true for the inspectors who enforce employer sanctions—and I think you said there that there is not going to be a net increase, but basically just keeping up with what they had in 1976. So I think that, obviously, as we get into a lot of these things, we have to also be aware that it takes money to provide the men and women who can handle the law.

I would take some general exception with how you characterize what the GAO report concluded on the use of the Social Security card. I don't think they quite concluded as strongly as you have set forth in your statement about the use of the Social Security card.

But they did say that it could become that kind of a single document that could be used for work authorization, instead of having all of this multiplicity, including, as one—I think it was Mr. Foster who said that the employer wouldn't even take a U.S. passport, which, of course, is the one thing that establishes not only your identity but your work authorization. But because it wasn't a Social Security card and wasn't the driver's license, they got confused.

So it is true that we probably are thinking in terms of maybe one kind of an approved document. But it is interesting to look at that, and I intend to do so.

Mr. Dubove, let me ask you this. I am a little bit concerned about what you said. Basically, at one point in your statement, you were saying the QDEs—which, for the people who are here and don't know, is qualified designated entity, which is a mouthful for storefront groups that sort of represented people in trying to get their applications for legalization prepared, but you more or less equated QDEs with legal counsel, and felt that the INS should inform QDEs where the legalization or the amnesty applicant has indicated that they were represented. And failure to do so, conversely, was some kind of a serious oversight, or maybe even a mischievous action.

Would you kind of get into that? I don't quite see the QDEs as quite being in that category.

Mr. DUBOVE. My understanding of the contract between the QDE and INS is that, while it doesn't make them the equivalent of an

attorney, it does make them a legal representative before the INS in their legalization applications.

Now, when these people were picked up, if there were questions about these peoples' legalization applications, rather than denying it, they should have gone back to the source, the person who is handling that application, and addressed the questions to them.

And that is our concern. It is the same sort of thing as an access to counsel sort of question, in my eyes. These people—the applicants don't have—just have a very fundamental knowledge of the language; certainly, no real understanding of the legal process involved through this.

And if they are being asked questions about their application, their legalization status, and, more importantly, being waved voluntary departure forms in front of them—

Mr. MAZZOLI. I was going to ask you about that. Can I interrupt you at this point by saying, when you all had that meeting this other day, did the question come up of how the INS field people should treat a legalization applicant who says—not the magic word of a lawyer or something, but says a QDE's name?

Did that come up at all? Did you ask the INS to—

Mr. DUBOVE. Well, the meeting hasn't taken place, sir. We have the questions put together, and I have a copy of the questions. I would be happy to give them to you.

Mr. MAZZOLI. Oh, I am sorry. I apologize. In other words, the—

Mr. DUBOVE. The questions are basically how far they can go in determining—we understand the INS has the right to determine if a person has a prima facie application; how far they can push that prima facie question beyond, have you been here since January 1, 1982, beyond that, because there are so many exceptions. For example, the—

Mr. MAZZOLI. But the question, I guess, I was getting at, you haven't had that meeting, then, the one with Pickle and the others?

Mr. DUBOVE. No, sir. We haven't. We are waiting.

Mr. MAZZOLI. OK. Do you have it scheduled, or are you having any kind of problem?

Mr. DUBOVE. No, sir. Senator Bentsen's office is working on that. As a matter of fact, they are having a meeting today. The regional—

Mr. MAZZOLI. All right. Well, why not add to the agenda for that meeting the question of responsibility or what duty the INS would have with respect to individuals not represented by counsel, but represented by QDEs, who have filed an application for legalization, because it does seem to me that maybe some contact with the QDE is warranted, but it may not be required. But it could be the kind of thing that could be done by way of an informal guideline, so that then the individual applicant is somewhat protected, because that QDE is going to be advised when that individual has been identified or apprehended in some fashion by the Immigration Service.

Now, let's talk a little bit, if you would, about those voluntary departure forms that you say were in English and Spanish, and so forth. And you mentioned, if I understood you correctly, that you have only knowledge of one person—of all of the hundreds that

might have been given out, or maybe thousands, only one person who might have been identified, because they are not confidential, and maybe to his or her peril because they now might be under some order of deportation.

Is that correct? You only had one individual?

Mr. DUBOVE. Well, I am not exactly sure I understand. One person, one legalization applicant, followed what the form said and—

Mr. MAZZOLI. I understand. Looking for voluntary departure when they didn't qualify.

Mr. DUBOVE. Not for them, but for their ineligible immediate family members, right.

Mr. MAZZOLI. OK. Fine. Right.

Mr. DUBOVE. Went through the process and filed it on behalf of their spouse.

Mr. MAZZOLI. And then they were given an order for deportation?

Mr. DUBOVE. For the spouse.

Mr. MAZZOLI. That is what I asked. But you only know of one? Because there must have been hundreds or thousands of those given out at that same office.

Mr. DUBOVE. Well, our response to that, our office in Austin—our immediate response when we found out that this was happening is we sent a notice to all the QDEs advising them not to do so, because the person—anyone who applied for voluntary departure wouldn't have any kind of privacy, wouldn't come under the confidentiality provisions like IRCA.

And not only would they not be any better off, because they wouldn't necessarily have a work authorization; but, in fact, they would be worse off.

Mr. MAZZOLI. Would they not be worse off if they didn't fill it out? I mean, in a sense, if only one person wound up tangled up in this thing, where maybe hundreds of other ones were given voluntary departure or are now before the INS—

Mr. DUBOVE. I am reminded of what Ms. Slaughter said in her earlier testimony, that they are holding back cases for the same reason, because we don't know what the INS is going to do with these people that don't qualify. And I think it is a good defensive response.

Mr. MAZZOLI. Don't you think that this is one case where no news is good news? I mean, we do hassle them; we are troubled by what is down the road and what might be the possibility, and someone you were talking about, the Silva letters and all that.

I mean, obviously, we should be troubled. We shouldn't be totally at ease. But isn't it kind of comforting to some extent, or a little bit assuring, the fact that nothing has happened, the fact that basically the district directors are waiting—and I understand, to the INS's credit, they have a bill before our committee, John, that does provide up to 200,000 visa numbers separate and apart for the purpose of family unification.

So it is one provision of a larger bill. But the INS has advanced that concept, which probably is what is yielding this idea that they ought not to move too swiftly right now.

Mr. DUBOVE. Two immediate responses. One is, I would be hesitant to have them rock the boat if they have a job and they are OK, and they are pretty much still under the shadows.

My second response is, most of these people don't have a lot of money. That is a given. They certainly don't have money to now take on the legal fees involved in an order to show cause, that they will need an attorney.

And the pro bono networks are so inundated right now taking care of appeals for legalization applications that you can't turn to those people, to those pro bono programs, to help now litigate orders to show cause because this person stepped forward to apply for that.

Mr. MAZZOLI. Mr. Vail?

Mr. VAIL. Yes. There are just two troubling points. I alluded to them in my statement. Number one is that while I am glad to hear that the Service has this bill pending, it troubles me that they are moving to get deportation orders against people.

It would be very possible to leave people in a voluntary departure status. The example that Mr. Vega mentioned earlier in his materials—

Mr. MAZZOLI. Well, they are not applying for it, because the QDEs say don't.

Mr. VAIL. But in many cases, the Immigration Service is taking that and moving to get deportation orders against people, and then saying, OK, now we will give you voluntary departure, or now we will stay your deportation, which is a big difference, because then you have got the guillotine over your head, and any time they say go, you are finished.

And what troubles me is, why go to this much trouble to get an INS trial attorney, an investigator, an immigration judge, all involved in this to get a deportation order? What is the reason behind it, when you could alleviate all that work and just give people voluntary departure orders, keep them out of deportation proceedings, keep deportation orders off their record.

But in many cases—and my case included, and I think the case that Mr. Vega mentioned, which I am familiar with—that is not what happened. At least in Houston, they are actually seeking deportation orders, which they may not enforce, but which—

Mr. MAZZOLI. We, if you get back to what I said earlier, one of the problems we are going to have, unless there is some evidence that people are being deported, unless there is some evidence that families are being disrupted, families are being fragmented, it is going to be very difficult for us to pass a separate piece of legislation or some kind of a bill that changes the situation or deals with it, because it is anticipatory.

As I said to an earlier panel, I think it is very useful that we not wait till the crisis hits us, until the wall breaks down and we try to push it back up. There is something to be said for looking in advance and trying to calculate a problem down the road and dealing with it.

But in Congress, especially here with this kind of a setting, in which Congress clearly said no derivative legalization—we had an opportunity to say it, and we intentionally did not make every

member of the family automatically part of the one successful application.

So short of that, everything else is kind of moving around and trying to do justice and humanity, and trying to exercise a certain amount of magnanimity toward the people; but, in fact, not with a sort of an across-the-board handling.

So what I would love to have people do is keep us posted, because Congressman Bryant and I will have hearings in Washington with the INS, and bring up many of these things. We have a wealth of testimony, which is very helpful for us.

But with respect to family unity, it seems clear to me that there has to be some documentation—not just some, a lot of it—where the INS has moved ahead to actually separate families before, I think, Congress is going to be particularly disposed to taking up the cudgels here.

I think we don't want families to be broken up, and when I had that conversation with Mr. Roybal, the colloquy, as we call them on the floor of the House, on Mr. Roybal's proposal, it was very clear that the Congress, this committee, does not want—we do not want families to be broken up, except in the most clearcut of circumstances, I mean, the most unavoidable sort of circumstance.

And basically, I think, going back to what Mr. Montemayor said—unless the person is a bad person; you know, if you have got a criminal or something like that. Otherwise, basically we want the families to stay together. That is in the American scheme of things.

But unless there is some evidence that they are not being kept together, it is going to be a little bit tough to deal with that part of it, except to try to clear up the administrative thing, try to put some guidelines down, try to encourage an overall uniform national policy, and try to get away from the helter-skelter patchwork quilt application of these regulations.

So to that extent, this hearing today was extremely helpful, because we do that. John?

Mr. BRYANT. Well, I would just like to observe, because I think it might be helpful to the understanding of those assembled here, that even if we are able to reach a consensus among the members of the subcommittee or the full committee, or even the House, about making changes, some or all of the changes suggested here today—and there clearly are the makings of an omnibus, sort of technical corrections bill in what we have heard here—we still face a strategic decision that the chairman of this subcommittee would have to make about whether we could afford to go forward with a bill which accomplished some of these things, in view of the fact that that bill would be subject to amendment on the floor of the House in ways that would attack the basic underpinnings of the entire Immigration Reform Act, coming from those who didn't like the act in the first place and would like to change some of the basic parts of it. That is a problem that we face, even when we do reach a consensus about what we would like to see changed.

And second, with regard to an issue like family unity—my opinion of which I have already stated—concerns me and others what the meaning and consequences would be if we brought a bill forward and suffered a clear-cut defeat? What would that say to the INS with regard to its current practices and its current policy?

So this is not an easy matter with regard to what strategy to follow, even if we can reach a consensus among the members about what ought to be done.

Nevertheless, I would like to say thank you to all of you who came forward, and in behalf of all of you and myself would like to once again thank Chairman Mazzoli for leaving the bluegrass of Kentucky and coming down here to the dry, drought-ridden grass of Texas. We needed a little diversion, and you provided it.

Mr. MAZZOLI. I thank you, John. Let me tell you, I have worked with John now for four years, and he is a fine young man and an outstanding representative. And he has been very helpful on this committee, and, of course, as I mentioned earlier, his other committee assignment, which is a quite remarkable assignment on the Energy and Commerce Committee. So he has done dual duty on two major committees, one of the few Members of Congress that is permitted to serve on two major committees.

But I want to thank John for the invitation, and encourage him to come up to the bluegrass of Kentucky some time. And gentlemen and ladies, thank you all very much, and the subcommittee stands adjourned.

[Whereupon, at 4:08 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL



The Senate of
The State of Texas

GONZALO BARRIENTOS
STATE SENATOR

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August 22, 1988

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IMMIGRATION

Subcommittee on Immigration, Refugees and International Law
2137 Rayburn House Office Building
Washington, D.C. 20515-6217

Dear Committee Members:

I am writing regarding the implementation of the Immigration Reform and Control Act of 1986. I would like to make you aware of a situation which has caused me some concern.

On June 15th in Austin, Texas, the INS conducted a raid on a construction site and forty-eight people were taken into custody. Six of the forty-eight had applied for amnesty under the provisions of IRCA. Of those six, two were released and four were deported. The INS decided the four who were deported were ineligible for citizenship. This was not an isolated incident.

The issue of how much authority the enforcement agency is going to have in determining eligibility for citizenship needs to be examined. It is my understanding that an appeals process is to be followed through the Legal Appeals Unit in these circumstances. To deny these appeals seems to be an extremely discriminatory practice of the INS.

While I understand the reasons for inclusion of employer sanctions in IRCA, I want to make certain that the rights of my constituents are protected. I feel the Immigration and Naturalization Service should not be allowed to conduct random raids of businesses simply because those businesses employ Hispanics. It appears that this has been the case on more than one occasion. Such raids should be conducted only when there is probable cause, with the proper warrants, and appeals should be granted through the appropriate agency.

I appreciate the opportunity to present you with this testimony and would like to thank you for your time and effort in monitoring the implementation of this legislation.

Sincerely,

Gonzalo Barrientos
Texas State Senator

GB/jj

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