NLWJC - Kagan
DPC - Box 064 - Folder-008

Welfare-San Diego Issue

WP-food stamps - San Diego problem

Cynthia A. Rice 10/14/98 05:34:25 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc: Andrea Kane/OPD/EOP
Subject: For Daily Report

Update on San Diego/Benefits for Immigrants: At their meeting in San Diego, USDA officials were told the county has no current plans to send notices to families that they plan to inform the INS of possible undocumented household members. However, the San Diego food stamp offices do have posters up that warn applicants that information from their application form may be shared with INS if they are undocumented. This may already have a chilling effect on food stamp applications by households with undocumented member.

WR - San Diego issue

San Diego Immigrant Issue

San Diego Action

- San Diego County plans to send a letter to all welfare and Food Stamp recipients stating that the county will report to the INS undocumented adults living in the home.

- States are required to report to the INS any individual a State "knows" is unlawfully in the U.S., but are not required to ask about immigration status on benefit applications. In addition, the welfare law states that "Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

Effect of San Diego Policy

- Undocumented parents may be deterred from applying for or receiving Food Stamps for their U.S. citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego's policy.

- During welfare reform, the Administration supported maintaining U.S. citizen children's eligibility for benefits (even as legal immigrants were made ineligible) and the Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children irregardless of their parents' immigration status.

Possible Administration Action

- USDA could send a letter to the state of California asking that action be delayed so that concerns can be resolved and stating "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children."

- The letter would further state that "Based on our current understanding of the County's plans, we believe that the fair service requirement of the law would be violated." The Food Stamp law requires states to "establish procedures governing the operation of Food Stamp offices that...provide timely, accurate, and fair service to applicants for, and participants in, the Food Stamp program [and] develop an application containing the information necessary to comply with this Act."

- Subsequent to sending a letter, USDA could begin a fornal rulemaking process to define this issue in regulations.

- Because states have complete discretion to set TANF and General Relief eligibility criteria, there is little action the Administration could take in this area. However, because San Diego uses one application form for all programs, changes to the form taken for Food Stamp purposes could affect other programs.

WR - San Diego issue

Cynthia A. Rice 08/14/98 07:18:33 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP
cc: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP
bcc:
Subject: Re: San Diego Food Stamps

We decided that USDA should designate a team to engage in low key conversations with the county, asking questions and pointing out possible pitfalls of their planned action, i.e., the potential budget costs to the county of proceeding (more children relying on county-funded nutrition and foster care programs, especially if their parents are deported) and the possibility that the county may need to use more than one application form (for Food Stamps vs. other programs). The hope is that these conversations will head off the potential action (there was concern that a letter might set up a public confrontation and prompt the county to dig in its heels). USDA has appointed a three person team that will contact San Diego next week and travel out there to discuss the issues with them in person. If this does not work, then a letter to be followed by a regulation could still be the next step.

Regarding paper, I had prepared a summary for myself (drawing on the Ag materials you've seen, and some of the paper we'd gotten from the advocates), which you are welcome to:

sd0813.wp

Maria Echaveste

Maria Echaveste 08/14/98 05:44:01 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP
Subject: San Diego Food Stamps

Folks--my apologies for having to walk out of this meeting for another commitment (you know with respect to this subject I'd only leave if I had to go down to the Oval). What did you all conclude? By the way, was there any additional paper? The only paper I have is a draft of the letter ag had proposed to send to San Diego county, and the draft of the ag legal memo looking at the issue of "fair service"--so what is the thinking here. Thanks.

WR - San Diego issue

San Diego Immigrant Issue

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- USDA could send a letter to the state of California asking that action be delayed so that concerns can be resolved and stating "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children."

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WR - San Diego issue

DRAFT

Commissioner
Department of Social Services
State of California

We are writing to express our concerns about the plans of San Diego County to send information concerning the parents of children participating in the Food Stamp Program to the Immigration and Naturalization Service (INS).

Our understanding is that the County plans to send information about alien parents who applied for benefits on behalf of their children to the INS if the parents did not evidence their official alien status at the time of application and were coded as "undocumented".

The Food Stamp Act requires agencies that administer the program to provide "fair service" to applicants and recipients. The Act clearly envisions that all eligible persons will be served - no conditions of eligibility beyond those described in the Act may be imposed. We are concerned about the access of eligible children to the program. Children cannot apply on their own for benefits; application must be made by a parent or another adult exercising parental control. If the parent cannot establish food stamp eligibility because of their immigration status, any citizen children and certain alien children are still entitled to benefits. However, if the parents do not apply, there is no way that their children can receive this entitlement.

Our concern is that by requiring ineligible parents to go beyond the requirements of the Food Stamp Program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children. The Food Stamp Program requires verification of the status of eligible aliens. However, if a person is not claiming to be eligible, there is no reason to go any further and further identify alien status. The identification of undocumented parents combined with the County's plan to forward their names and addresses to the INS is likely to have such a chilling impact on applications that eligible children will not be able to access the benefits for which Congress has made them eligible.

Based on our current understanding of the County's plans, we believe that the fair service requirement of the law would be violated. We are asking you to direct the County to delay any plans for the disclosure of undocumented family members until this concern can be resolved.

Susan Carr Gossman
Deputy Administrator for Food Stamps
Food and Nutrition Service

WR - San Diego issue

San Diego Immigrant Issue

San Diego Action: San Diego County plans to send a letter to all CalWORKS (TANF), Food Stamps, and General Relief (but not Medicaid) recipients stating that the county plans to provide immigration status information to the INS for all undocumented adults living in the home except in certain very limited circumstances (in cases of domestic violence or children are being cared for by a non-parent relative). San Diego uses an application form which requires parents to specify their immigration status (with one box labeled "undocumented") even if they are not applying for assistance for themselves.

Effect of San Diego Policy: Undocumented parents may be deterred from applying for or receiving Food Stamps for their citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego's policy.

Legal Basis of San Diego Policy: Section 404 of the Personal Responsibility Act says that each state that receives a TANF grant "shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States." Advocates note that if San Diego did not have an application form requiring parents to check "undocumented" then they would not "know." In addition, section 434 of the welfare law says "Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

Legislative History on Eligibility for Citizen Children: Early versions of Congressional welfare reform proposals which had made citizen children ineligible for benefits were amended before final passage to maintain their eligibility. The Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children irregardless of their parents' immigration status.

Possible Administration Action: USDA could send a letter to the state of California saying "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children" and asking that action be delayed until this concern can be resolved. The letter would focus on the effect of collecting information on the Food Stamp application on the service received by eligible, U.S. citizen children (and not on the reporting of information to the INS).

Legal Basis of Possible Administration Action: The Food Stamp Act, as amended by the welfare reform law, requires states to "establish procedures governing the operation of food stamp offices that...provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program [and] develop an application containing the information necessary to comply with this Act." This requirement has not been defined in regulations. In addition, the Food Stamp Act prohibits states from imposing additional conditions of eligibility for food stamps not authorized by federal law.

Possible Additional Administration Action: If the San Diego refuses to changes its policy, then USDA could bring administrative action against the state. In addition, USDA could begin a rulemaking to define "timely, accurate, and fair service."

Sanctic - withhold federal admin funds

WR - San Diego issue

National Immigration Law Center
1101 14th Street, NW Suite 410
Washington, DC 20005
(202) 216-0261 • Fax: (202) 216-0266
E-mail: joshe@pipeline.com

FACSIMILE COVER LETTER

Monday, July 27, 1998

Please Deliver The Following Pages To:

Name: Elena Kagan
Firm: Domestic Policy Council (DPC)
Fax: (202) 456-2878

From: Josh Bernstein

No. of Pages:
(Including Cover Page)

Remarks:

Karen Narasaki, of the National Asian Pacific American Legal Consortium asked me to pass along the attached memorandum, which discusses some of the legal issues raised by San Diego's plan to report the parents of certain U.S. citizen children government benefits recipients to the INS.

Please feel free to call or e-mail me if you have any questions, or if I may be of service in any other way.

[~~CONFIDENTIAL~~ - PLEASE DO NOT DISTRIBUTE]

Clarification of the Immigrant Reporting and Confidentiality Provisions Under PRWORA is Needed

Some states and localities now appear to be considering implementation of the immigration reporting provisions contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA).

Apparently, San Diego County has gone the farthest towards implementation. It is our understanding that the San Diego County Health and Human Services Agency plans to send notices shortly to all TANF (CalWORKs), Food Stamps, and General Assistance recipients with family members who are non-aided due to immigration status. The San Diego draft notice informs recipients that the Agency will provide the INS with the name, address, telephone number, date of birth and social security number of "all undocumented adults living in [the] home . . . . The only exception will be unaided caretaker relatives (non-parents who have parental control of the children) in the CalWORKs Program."

This is an extreme position that would result in the denial of services to eligible children, and would increase fear in immigrant communities, likely to spread well beyond the targeted group. The widespread climate of fear in immigrant communities is already affecting minority enrollment in health care and nutrition programs.

The threatening notices that San Diego is contemplating would cause many parents, including parents who are lawfully present, to remove their children from assistance and avoid needed help for their children in the future. Moreover, it is likely that other immigrants who are eligible for aid will be reluctant to seek it for fear of causing trouble with the INS.

Nationally, as many as 300,000 U.S. citizen children could be blocked from obtaining assistance that they need, and for which they are eligible under TANF, if other localities follow San Diego's example. The number of citizen children who would lose food stamps is about 428,000. When Congress was changing the eligibility rules for immigrants under welfare reform, it considered and rejected proposals to deny assistance to U.S. citizen children of parents who are not lawfully present.

Clarification of the relevant provisions of PRWORA is necessary to prevent state and local agencies from effectively denying U.S. citizen children the benefits to which they are entitled by law.

This memorandum discusses our reasons for believing that San Diego's proposed actions are illegal. In addition to these legal arguments, there are a number of compelling policy concerns that should be considered.

- It is appalling to use the basic needs of U.S. citizen and qualified alien children as a mechanism to punish or entrap their parents.
- The fundamental purpose of basic safety net programs is compromised when major segments of communities who are eligible for these services are too frightened to apply for them. Scarce resources for social services, intended to help families in need, should not be diverted to unrelated purposes, such as immigration enforcement.

- The presumption that immigrants whose immigration status is not determined are therefore "guilty" of being unlawfully present (as San Diego may be contemplating) is contrary to the basic principles of due process and fair play that protect us all.

- States should not attempt to arrogate to themselves a more expansive role of immigration enforcement than was granted to them by Congress. The more involvement states have in setting immigration policy, the greater the likelihood that they will use their power as a pretext to discriminate against unpopular groups.

Accordingly, federal agencies should provide the following guidance to help states understand PRWORA:

(1) The circumstances and conditions under which agencies may report benefits recipients to the INS are governed by federal law: states are preempted from setting up their own, separate, reporting schemes, and should await federal guidance before attempting to implement federal law.

(2) Mandatory reporting of benefits recipients under section 404 of PRWORA is the only mechanism that states may use to report immigrants to the INS, and reporting permitted under section 404 is limited:

- Only persons who apply for or receive assistance for themselves may be verified, and states may not require more information about immigration status than they need to determine eligibility.

- Among HHS programs, section 404 only requires or permits reporting of persons seeking TANF

- Under section 404, state agencies may report to the INS only persons the agency "knows" are not lawfully present in the U.S. Many persons who are ineligible for TANF due to immigration status are lawfully present in the U.S. Therefore, an immigrant's ineligibility for TANF, in and of itself, is not sufficient to trigger the reporting requirement.

(3) The welfare law and immigration laws permit agencies to exchange information about immigration status with the INS. But they do not authorize reporting of immigrants to the INS (other than under PRWORA section 404) or release of information that is not about immigration status, such as social security numbers, addresses, phone numbers, or benefits history, that is otherwise protected by federal, state, or local privacy or confidentiality rules.

I. Reporting of Immigration Status is Federally Regulated

A. SUMMARY

The federal government has plenary power over immigration, and has exercised that authority by enacting a comprehensive regulatory framework governing immigrant benefits use and immigration enforcement. Because of this, the United States Supreme Court has held that states and local governments may not establish their own separate immigration enforcement schemes, even if the state scheme does not conflict with federal law.

Mass reporting of immigrants to the INS for immigration enforcement purposes constitutes the kind of immigration enforcement that is preempted by federal law. Therefore states may only act ministerially in this area, pursuant to federal law. They do not have discretion to create their own INS reporting rules. That is the basis upon which the federal courts have struck down California's Proposition 187's reporting provisions which were similar to those San Diego is contemplating.

> Note: HHS's ability to regulate state implementation of TANF is strictly limited, but there are several reasons why federal regulations are proper and permitted in the area of immigrant verification, confidentiality, and reporting. First, section 432 of the Balanced Budget Act requires the Attorney General to promulgate regulations regarding the verification of public benefits, and the Attorney General has partially delegated this authority to the agencies administering federal programs. *See* Interim Verification Guidance under PRWORA, 62 Fed. Reg. 61344 (referring benefits providers to the agency or department overseeing their program in several places). Second, civil rights laws are explicitly exempted from the general prohibition on TANF regulations, and the issues of immigration verification, confidentiality, and reporting have profound implications for these laws. Finally, because of the federal government's plenary power over immigration, states are not permitted to establish their own regulatory schemes to implement section 404. Therefore, federal regulations are needed to allow states to implement the reporting provisions of PRWORA.

B. ANALYSIS

The Supreme court has developed a three part test to determine the validity of a state regulation that deals with aliens. See *De Canas v. Bica*, 424 U.S. 351.

> (1) Regulation of immigration The first threshold question is whether the state provision is a regulation of immigration, "which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id.*, at 355. If a state provision would regulate immigration, then it is invalid because such regulation is the exclusive province of the federal government. *De Canas v. Bica*, 424 U.S. 351, 354 (1976).
>
> (2) Occupies the field Even if a state provision dealing with immigrants is not a regulation of immigration, it still may be preempted by federal law if Congress has passed laws intending to occupy the field which the state is seeking to regulate. *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 768 (C.D. Cal. 1995) (LULAC I). Where Congress has occupied the field, state provisions are preempted even if they do not conflict with federal law. 424 U.S. at 356.
>
> (3) Conflicts with federal law Finally, state provisions dealing with immigrants that conflict with or obstruct the "full purposes and objectives of Congress" are also unconstitutional. *Id.* at 363.

In late 1995, a federal court applied the *De Canas* framework to strike down the reporting provisions of California's Proposition 187, which required public agencies to report to the INS anyone whom the agency "reasonably suspect[ed]" to be in the United States in violation of federal law. *League of United Latin American Citizens v. Wilson*, No. CV 94-7569 (C.D. Cal. Mar. 13, 1998)

reporting of immigrants to the INS "has a direct and substantial impact on immigration." *LULAC I* at 769. After the passage of PRWORA, the court revisited this earlier analysis in response to the state's argument that PRWORA permitted agencies to share information with the INS, but the Court confirmed its previous ruling. *See LULAC II*, slip. op. at 12 ("The federal government's exclusive control over immigration is derived from the Constitution and unaffected by [PRWORA].).[1]

Moreover, after the passage of PRWORA, the LULAC court found that Proposition 187 also was invalid under the second *De Canas* test. The provisions of PRWORA "both demarcate a field of comprehensive federal regulation within which states may not legislate, and define federal objectives with which states may not interfere." *Id.*, at 13. Because of this, "[t]he states have no power to effectuate a scheme parallel to that specified in [PRWORA], even if the parallel scheme does not conflict with [PRWORA]." *Id.*, at 16. Proposition 187's reporting requirement was "clearly preempted," *Id.*, at 24, both because it attempted to create a state classification scheme requiring independent determinations about immigration status, and because the categories established by the provision conflicted with federal laws governing procedures for the deportation of aliens. *Id.*, at 22.

Under the Constitution, and under PRWORA, a state or local agency's role in this area is therefore extremely limited. It may only make ministerial determinations of immigration status, pursuant to federal law. *See LULAC I*, at 770. It may not set up a regulatory scheme that creates categories or requires decisions that are not fixed by federal law. *Id.*

What state or local agencies may do is implement federal laws, relying solely on federal categories, determinations, and standards. The categories, determinations, and standards for immigration reporting are set forth in section 404 of PRWORA. The court's reasoning in LULAC I and II therefore applies to invalidate any state or local INS reporting regulation that goes beyond section 404 of PRWORA, including the policy that is being contemplated in San Diego.

II. Mandatory Reporting Under PRWORA Section 404 is Limited:

A. SUMMARY

PRWORA section 404 requires agencies administering certain programs to make a quarterly report to the INS of the name and other identifying information of persons the agency knows are not lawfully present in the United States.

Section 404 is carefully drawn. It specifies three federal programs for which INS reporting is mandatory.[2] It provides the standard which must be met before reporting is triggered, which is knowledge of unlawful status. And it lists the information to be reported, which includes "the name and address of, and other identifying information on," the individual who is known to be unlawfully present.

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[1] The Court did not hold the provisions of PRWORA permitting agencies to cooperate with the INS to be invalid, it merely held that requiring agency personnel to report to the INS persons suspected of being in the U.S. in violation of immigration laws was preempted, despite PRWORA. *Id.* at 9 n.9

[2] Section 404 requires the appropriate agencies to report to the INS persons known to be unlawfully present who apply for or receive TANF, Supplemental Security Income (SSI), and housing assistance under sections 6 and 8 of the Housing Act of 1937.

Nothing in section 404 requires or authorizes states to investigate or verify any individual's immigration status to discover whether that individual is lawfully present. Therefore, any such investigation must be otherwise authorized by federal and/or state law.[3] Because of privacy and discrimination concerns, the Justice Department has advised states that they may only verify the immigration status of individuals who seek to obtain assistance for themselves. This federal guidance means that state agencies may not verify the immigration status of parents who are applying on behalf of their U.S. citizen children.

The Congressional authors of section 404 modeled their provision on a conceptually similar INS reporting requirement that has applied to the Food Stamp Program for nearly two decades. For this reason, HHS should base its interpretation of section 404 on the regulations and caselaw that has governed the food stamps provision. Specifically, the food stamps provision has been held to apply only to persons applying for assistance for themselves, not to those who apply on behalf of family members or others.

In addition, the food stamps INS reporting requirement has consistently been held not to apply to an individual who is merely unable to produce documentation of an immigration status that qualifies for food stamps. The reason for this interpretation of the food stamps provision is that many persons are lawfully in the U.S., yet not in an immigration status that would make them eligible for food stamps. Others are in lawful status, but unable to prove that this is the case.

The same logic applies to eligibility for TANF. Section 404 is actually even clearer than the food stamps provision on this point, and should be interpreted to apply only where a state TANF agency knows that an individual is under final order of deportation/removal.

B. ANALYSIS

PRWORA section 404 provides that state TANF agencies "shall, at least 4 times annually and upon request of the [INS] furnish the [INS] with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States."

This requirement closely parallels the Food Stamp Program reporting requirement, contained in 7 U.S.C. § 2020(e)(16), which requires states to report to the INS whenever agency personnel make "a determination" that "any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act."

This provision, which has been in the Food Stamp Act since 1980, was intended to encourage "reporting of clear violations of the law." H.R. Report No. 788, 96th Cong., 1st Sess.. 137 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 970. Although there is little legislative history regarding PRWORA section 404, it is noteworthy that Congress left the food stamps provision untouched, amending an earlier draft that would have included food stamps within the ambit of section 404. This suggests that Congress intended section 404 to be interpreted in a manner similar to the interpretation that has been given to the food stamps provision over the past two decades.[4]

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[3] As discussed above, federal preemption of immigration regulation severely limits the ability of states to authorize such investigation and verification.

[4] Section 404 of PRWORA was included in an amendment by Senator Rick Santorum that was adopted without debate and by unanimous consent. Senator Santorum's amendment was adapted from a bill he had sponsored, S. 599. Differences between S. 599 and PRWORA § 404 are instructive. S. 599 would have required reporting in five programs: the three programs that were eventually included in PRWORA, plus the Food Stamps Program and the Medicaid program. It is reasonable to speculate that the latter two programs were eliminated from the final

(1) Persons Applying On Behalf of Their U.S. Citizen or Qualified Alien Children

Courts have held that the food stamp reporting provision only applies to persons who apply for or receive assistance for themselves. *See* Doe v. Miller, 573 F. Supp. 461, 467 (N.D.Ill., E.D., 1983) ("[T]he parents in this case should not be forced either to withdraw their children's applications for food stamps or risk being reported to the INS as 'illegal aliens,' contrary to standards established by federal law."). Agencies are not required to, and indeed may not, report to the INS parents or other family members who are not themselves receiving assistance. *Id.*

Against this background, Congress easily could have provided that section 404, unlike the food stamps provision, was intended to include caretaker relatives. Not only did it fail to do so, but its actions with respect to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) went in the opposite direction. In that bill, Congress expressly rejected a proposal to discourage aid to citizen children of undocumented parents, suggesting that it wanted the flow of such aid to continue uninhibited.[5]

(2) Persons Who Are Ineligible Because of Immigration Status

The food stamps regulations (and the Federal Register preamble to the implementation of the food stamps provision) are very clear about the treatment of individuals who are ineligible for assistance because of immigration status, or because their immigration status cannot be determined. They recognize that there are several categories of immigrants who are in compliance with the immigration laws but who are nevertheless ineligible for food stamps because of their immigration status. Therefore, in the food stamps program, a mere finding that a person is ineligible for assistance because of immigration status does not trigger the reporting requirement. 7 C.F.R. 273.4(e)(2) ("When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency shall not continue efforts to obtain that documentation.").[6]

Nothing in the legislative history or the wording of section 404 suggests a different intent. In fact, if anything, section 404 is clearer than the food stamps provision in directing agencies not to report

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version for different reasons. In the case of Medicaid, Congress apparently did not want to impose an INS reporting requirement on a program that is so necessary for the protection of public health. In the case of food stamps, Congress must have felt that the similar reporting provisions already in place, as described above, were sufficient to protect the program from abuse by unlawfully present immigrants.

[5] Congress considered and ultimately rejected a proposal that would have prohibited persons who are ineligible for means-tested assistance because of their citizenship status from collecting such assistance on behalf of their eligible children. See, H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 240 (1996). In so doing, the Conference Committee noted that unlawfully present immigrants retained their ability to obtain benefits on behalf of their U.S. citizen children. *Id.*

[6] The legislative history on this point is instructive. Congress took note of a determination by the Administration that an individual is not considered "known" to be in the U.S. unlawfully unless it is known that a final order of deportation is outstanding against him or her. But Congress declined to explicitly codify the knowledge standard, opting, instead, to give the USDA discretion whether to incorporate this restriction in its regulations. H.R. Report No. 788, 96th Cong., 1st Sess.. 135-37 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 968-70. The Department ultimately opted not to exercise this option, but did caution states against reporting an immigrant to the INS merely because he or she is not in one of the food stamps eligible categories. 47 Fed. Reg. 17,756 (1982).

Some states have used their discretion to adopt the final order of deportation standard. See, e.g., California Dep't of Social Services Manual-FS Section 63-405.4; Ohio Dep't of Public Welfare Food Stamp Certification Handbook (Oct. 1, 1996), section 3360 "Reporting Illegal Aliens"

individuals whom an agency may suspect of being unlawfully present because of failure to provide documentation of eligible status. Section 404, unlike the food stamps provision, explicitly requires a TANF agency to "know" that an individual is not lawfully present before the reporting requirement is triggered. In contrast, the food stamps provision merely requires a "determination" by the food stamps agency.[7]

III. The INS Cooperation Provisions of PRWORA and IIRIRA Are Limited

A. SUMMARY

San Diego County does not cite PRWORA section 404 to justify its reporting plans, which may be an admission, on the County's part, that the reporting provision does not authorize its proposed actions. Instead, the County cites PRWORA section 434. Section 434 of PRWORA, and the very similar section 642 of IIRIRA, address "communication" between government agencies about "information regarding the immigration status, lawful or unlawful, of any individual."

Under these provisions, "information regarding the immigration status" of any individual may be shared by any government entity or official, with the INS or any other governmental entity. San Diego County apparently interprets these provisions to permit reporting to the INS of names, addresses, phone numbers, social security numbers, and other personal information about persons who meet standards specified by the County, notwithstanding any federal, state, or local privacy or discrimination provisions that protect against release of such data.

Such an interpretation can only stand if names, addresses, social security numbers, etc., are "information regarding immigration status" under IIRIRA and PRWORA. An alternative interpretation, would limit "information regarding immigration status" to something like the following:

(1) the citizenship or immigration status an individual claims;

(2) the existence of any documents that indicate immigration or citizenship status; or

(3) any other records in the possession of an agency that state the citizenship or immigration status of the individual.

There are several reasons to conclude that this stricter interpretation is the one Congress intended.

First, the stricter reading is more consistent with the overall statutory framework set up by PRWORA and IIRIRA.

Second, if the additional data that San Diego plans to release is "information regarding immigration status" then IIRIRA section 642 and PRWORA section 434 potentially open up a Pandora's box of applications far beyond the immigration context. All kinds of information in the possession of government agencies would be compromised. No agency at any level of government would be permitted to assure the confidentiality of information about any individual, whether citizen or

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[7] The significance of this difference is underscored by the legislative history of the food stamps provision, discussed in footnote 3, which made clear Congress' understanding that "knowledge" of unlawful immigration status would require an agency to have evidence that the individual is under final order of deportation. See, H.R. Report No. 788, 96th Cong., 1st Sess.. 135-37 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 968-70.

immigrant, calling into question dozens of federal, state, and local privacy, confidentiality, secrecy, and anti-discrimination provisions.

Finally, IIRIRA section 642 and PRWORA section 434 must be limited to their strict terms to assure their constitutionality. As discussed above, under the U.S. Constitution, states and local governments may not set up their own standards for immigration reporting. Limiting the scope of "information regarding immigration status" would avoid a conflict with the Constitution.

B. ANALYSIS

Neither the plain language of PRWORA and IIRIRA, nor the congressional intent in enacting PRWORA section 434 and IIRIRA section 642, justifies San Diego County's planned actions.

(1) Plain Meaning

Interpretation of the cooperation provisions of PRWORA and IIRIRA must begin with an analysis of their plain language. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, __ U.S. __, 117 S.Ct. 843, 846 (1997).

PRWORA section 434, entitled "Communication between state and local government agencies and the [INS]" provides:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the [INS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.

IIRIRA section 642, "Communication between government agencies and the [INS]" provides:

> (a) IN GENERAL.--Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [INS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
>
> (b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.--Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
>
> (1) Sending such information to, or requesting or receiving such information from, the [INS].
>
> (2) Maintaining such information.
>
> (3) Exchanging such information with any other Federal, State, or local government entity.
>
> (c) OBLIGATION TO RESPOND TO INQUIRIES.--The [INS] shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

Sorting through the triple negatives, each of these provisions requires any government entity to permit any other government entity to send "information regarding immigration status" to the INS and to receive such information in return. IIRIRA section 642 is broader than PRWORA section 434 in a number of respects: (1) it permits release of information about any individual, whether undocumented, legal immigrant, or U.S. citizen; (2) it permits release of information by officials, not just entities; and (3) it permits sharing of information with any federal, state, or local entity, not just the INS.

The plain language of section 642 thus provides an extremely broad ranging permission to share information among officials and government entities, notwithstanding any other provision of law. Those who may share information include all government entities and officials, without distinction or exception. Those whose information may be shared include all individuals, again without exception. Those who are permitted to receive the information include all government entities.

(a) Limitations

Given the extraordinary scope of these provisions, close attention must be paid to their limitations. One important limitation is that neither PRWORA section 434 nor IIRIRA section 642 contains any language either requiring or authorizing anybody to investigate or verify information about immigration status. As discussed above, any such investigation or verification must therefore be authorized by some other provision of law.[8]

The other limitation is even more significant. It concerns the nature of the information subject to release under the cooperation provisions. Only "information regarding citizenship or immigration status" falls within the broad sweep of disclosure under either PRWORA section 434 or IIRIRA section 642. Information that is not about immigration status is not affected by these cooperation provisions.

It follows that there is no conflict between PRWORA section 434 or IIRIRA section 642 and any laws or regulations that protect the confidentiality of information other than immigration status. Where sharing of such information, other than immigration status, is otherwise restricted by law, communication of immigration status under the immigration or welfare cooperation provisions must be accomplished in such a manner as to protect against release of the restricted information.

(b) Meaning of "information regarding citizenship or immigration status"

What constitutes "information regarding citizenship or immigration status?" A strict reading of this phrase would only include information that directly addresses the issue of an individual's immigration or citizenship status, such as: (1) the citizenship or immigration status an individual claims; (2) the existence of any documents that indicate immigration or citizenship status; or (3) any other records in the possession of an agency that state the citizenship or immigration status of the individual.

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[8] Such verification is limited by federal anti-discrimination and privacy concerns. *See* Interim Guidance on Verification of Eligibility, 62 Fed. Reg. 61,344, 61347 (Dep't of Justice November 17, 1997) ("if an alien is applying for benefits on behalf of another person . . . [an agency] may, under federal law, only verify the status of the person who will actually be receiving the benefits.")

Other data about an individual, such as name, age, address, telephone number, social security number, whether the individual is receiving government assistance, or other personal information, may be useful for many purposes, but would not, in normal speech, be considered information regarding immigration status.[9]

Inclusion of such information is far from necessary to give meaning, even dramatic meaning, to the provisions in question. If "information regarding immigration status" is interpreted strictly, the provisions would effect the following changes:

(i) Agencies may obtain information about immigration status from the INS

First, under PRWORA section 434 and IIRIRA section 642, any government entity has the right, previously not guaranteed, to obtain information from the INS about the immigration status of any individual.

(ii) Agencies may share information about immigration status

Second, the cooperation provisions eliminate any federal, state, or local restrictions on government officials', or law enforcement agents', cooperation with the INS, or with each other, regarding immigration status information. In particular, no federal, state, or local law or policy may now prevent an agency from responding to an INS request for information in their files about the immigration status of a given individual. For example, any agency, including the INS, may ask another whether the former has information on a Jose Gonzalez, who was born on January 1, 1950, social security number 555-55-5555. Under PRWORA section 434 and IIRIRA section 642, the agency receiving such a request now may always provide the immigration information about the individual, so long as any other personal information protected by confidentiality provisions is redacted. Previously, privacy laws or specific noncooperation ordinances sometimes frustrated any such response.

(iii) Agencies may release information about immigration status along with other unprotected information

Finally, agencies may now release unprotected information along with immigration status information, at agency option. Frequently, in the law enforcement context and elsewhere, identifying information such as name, date of birth, and address, is public, or subject to release under certain conditions. Where that is the case, PRWORA section 434 and IIRIRA section 642 now preempt state or local ordinances, such as New York City's Executive Order No. 124, that are intended to keep individual immigration status confidential. Such ordinances were not preempted under previous law.

(c) Context of the provisions

A strict interpretation of "information regarding immigration status" makes sense in the context of the immigration legislation in which they were included.

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[9] No social services agency would accept an individual's name, address, and social security number in the space on an application form asking about immigration status. Or, to give another example, given a document and asked to redact all "information regarding immigration status," few attorneys would feel obligated to redact addresses, names, social security numbers, etc.

(i) Not intended to apply beyond immigration context:

Section 434 of PRWORA was placed in the section of the welfare bill dealing with immigrant access to benefits. Section 642 of IIRIRA was enacted as part of a bill that dealt entirely with immigrants and immigration. This suggests that Congress did not intend these cooperation provisions to apply broadly outside of the immigration context.

However, if "information regarding immigration status" in these provisions were interpreted broadly, to include additional information such as name, address, Social Security number, etc., the provisions would have a profound impact on privacy rights in areas that have no bearing on immigration whatsoever.

By their plain meaning, they would authorize release of such personal information held by government agencies about anyone, regardless of immigration status, and regardless of any other provision of law, to any government agency. Agencies and programs such as the IRS, CIA, National Security Council, federal witness protection, programs to assist domestic violence victims, and all others are required to comply with the cooperation provisions. For example, the FBI, or any other agency, would be unable to condition the sharing of crime-fighting information with local law enforcement agencies on the confidentiality of "information regarding immigration status" contained in their files. The confidentiality of personnel files would also be called into question. Obviously, these implications of a broader interpretation of "information regarding immigration status" are inconsistent with their placement in sections dealing with immigration law.

(ii) Comparison with PRWORA section 404

Also instructive is a comparison between the text of PRWORA section 404 and the cooperation provisions. Section 404 refers, in its title to "reporting," whereas there is no mention of reporting in the text of PRWORA section 434 or IIRIRA section 642. These latter provisions refer, instead, to "communication" between agencies, and their structure suggests a reciprocal cooperation or sharing of information, rather than unilateral reporting by one agency to another. This is more consistent with a strict interpretation of "information regarding immigration status" because such an interpretation limits unilateral reporting where release of information other than immigration status is subject to confidentiality restrictions.

Moreover, section 404 explicitly requires the release by certain agencies, not only of immigration status, but also of the name, address, and other identifying information of individuals known to be unlawfully present in the U.S. The fact that Congress enumerated release of such information in one section strongly suggest that it would have done so again elsewhere in the same bill had that been its intent.

(2) Other Evidence of Congress' Intent

(a) Purpose is cooperation in immigration enforcement, not privacy evisceration

Congress' purpose in enacting the verification, reporting, and confidentiality provisions of PRWORA and IIRIRA was both to deter use of benefits by ineligible immigrants and to assist in the capture and prosecution of unlawfully present immigrants. *See, e.g.* PRWORA section 400. At the same time, the verification, reporting, and confidentiality provisions evince Congress' awareness of

the complexities of this area of law, and the need to maintain some balance among competing values. Evidence of balancing can be found in every section. For example, PRWORA section 404's reporting requirements are limited to only three programs, and only those "known" to be unlawfully present are subject to being reported. Similarly, the PRWORA's verification provisions provide for federal regulations in the complex area of immigration verification, and provide for a relatively a long period, of up to 36 months after passage, for states to begin implementation. Even restrictions on illegal immigrant access to public benefits are subject to important exceptions. It would be inconsistent with such balancing of interests, for Congress to have enacted a provision, with no exceptions, that would permit reporting of personal information without any concern for the context of such reporting or of society's sometimes compelling need to preserve confidentiality under certain circumstances.

This is born out by the legislative history of these provisions. There is no discussion in committee reports or congressional debates about the implications of PRWORA section 434 or IIRIRA section 642 on confidentiality or privacy outside of the immigration context. Rather, the conference committee that reported PRWORA section 434 explained that it was adopted to facilitate cooperation between agencies and the INS, and specifically to preempt "sanctuary ordinances" that had been adopted by the State of New Mexico and nearly 20 other governmental entities, including the cities of San Francisco, New York, Chicago and Washington, D.C. *See* H.R. Conf. Rep. No. 725, 105th Cong., 2d Sess. 391 (1996) (PRWORA Conf Rept.).[10] Such sanctuary ordinances typically prohibited employee cooperation with immigration enforcement efforts initiated by the INS unless such cooperation was affirmatively required by federal or state law.[11]

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[10] The PRWORA Conf Rept explanatory provision for section 434 provides, in full, as follows:
"COMMUNICATION BETWEEN STATE AND LOCAL GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE
Present law
The confidentiality provisions of various State statutes may prohibit disclosure of immigration status obtained under them. Some Federal laws, including the Family Education Rights and Protection Act, may deny funds to certain State and local agencies that disclose a protected individual's immigration status. Various localities have enacted laws preventing local officials from disclosing the immigration status of individuals to INS.
House bill
No State of local government entity may be prohibited, or in any way restricted from sending to or receiving from the [INS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.
Senate amendment
Similar to House bill
Conference agreement
The conference agreement follows the House bill and the Senate amendment.

[11] The legislative history of this provision is confused by the existence of an additional fragment of legislative history in the PRWORA conference report. At first glance, this fragment appears to discuss a provision that sounds similar to section 434. But it does not appear in the discussion of section 434, and is instead appended without explanation to the discussion of a completely unrelated provision of PRWORA. (Whereas section 434 is contained in Subtitle D ("General Provisions"), the fragment is appended to an explanation of Subtitle B ("Eligibility for State and Local Public Benefits Programs")).
Besides being misplaced, the fragment describes a provision that is significantly different from section 434 in several particulars. The most likely explanation is that the out-of-place fragment is a word processing error that survived from an earlier draft. The actual committee explanation, quoted in the previous footnote, accurately and fully describes the provision as passed.

(b) This purpose is better served by a strict interpretation of "information regarding immigration status"

PRWORA section 434 and IIRIRA section 642 nicely accomplish the intentions discussed in the Conference Report without recourse to including name, Social Security Number, etc., within the phrase "information regarding immigration status." As discussed above, the provisions at issue limit sanctuary or noncooperation ordinances that seek to impede sharing of information of immigration status. They also assist agencies seeking to cooperate in the enforcement of immigration law and to prevent fraud and abuse by unqualified immigrants, by allowing them to compare claims and other information about immigration status.

On the other hand, there is little utility gained towards the stated goals of these provisions by interpreting "information regarding immigration status" more broadly, to include the additional information that would allow actions such as San Diego County is contemplating. Such an interpretation would likely result in wholesale dumping on the INS, by jurisdictions such as San Diego County, of information that would not be very useful for immigration enforcement, because the information would not be carefully screened using federal standards or targeted according to the agency's needs or priorities. Many of those reported will eventually be found to be legally present, or will fall outside of the enforcement priorities of the agency.

Nor does the kind of reporting contemplated by San Diego assist in preventing fraud or abuse of government benefits by immigrants. Those being reported to the INS are not, themselves, receiving benefits, and they are not fraudulently claiming any particular status. The only possible "benefit" of a scheme such as San Diego County contemplates is to terrorize the parents into taking their eligible U.S. citizen children off of assistance, thus effectively making assistance unavailable to these U.S. citizen children.

Nowhere does the legislative history of PRWORA or IIRIRA mention this as a goal. In fact, as discussed above, Congress considered and ultimately rejected a proposal that would have prohibited persons who are ineligible for means-tested assistance because of their citizenship status from collecting such assistance on behalf of their eligible children. See, H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 240 (1996). In so doing, the Conference Committee noted that unlawfully present immigrants retained their ability to obtain benefits on behalf of their U.S. citizen children. *Id.*

To the extent that San Diego County's plan is a back door way of limiting the eligibility of these children, it is preempted. Congress has plenary power over immigrant eligibility for benefits. Congress has determined that the immigration status of parents does not affect the eligibility of their children for benefits. San Diego may not overrule that determination.

(c) The provisions are unconstitutional unless the strict interpretation is adopted

Courts and regulators are required to interpret statutes, where possible, as being consistent with the Constitution.

If "information regarding immigration status" were to be interpreted broadly, as contemplated by San Diego, PRWORA section 434 and IIRIRA section 642 essentially would provide authorization for states or localities to set up their own reporting regulatory policies that are in addition to, or parallel to, the provisions in PRWORA section 404. The constitutionality of such a plan was expressly addressed by the court in the Proposition 187 case, in which, as discussed above, the State of California had argued that PRWORA's cooperation provisions authorized the state to report to the

INS persons "reasonably suspected" to be in the U.S. in violation of federal law. Responding to the argument that PRWORA authorized such reporting, the Court noted that the provisions of Prop 187 did not merely permit cooperation between state officials and the INS, as allowed by PRWORA, but rather set up a regulatory scheme requiring social services providers "to report to the INS information about alien status that such individuals are not permitted to determine." *LULAC II*, slip. op. at 9 n.9.

The same, precisely, can be said of San Diego County's plan. The County's plan, like that in Proposition 187, uses locally defined criteria to determine who is to be reported to the INS, and sets up a structure that goes beyond PRWORA section 404 to govern who will be reported and under what circumstances. For example, the San Diego scheme requires the reporting of "undocumented" aliens. This term is not found or defined anywhere in PRWORA, IIRIRA, the Immigration and Nationality Act, or elsewhere in federal law. It is solely a County-defined term.

This Constitutional defect, or a similar one, cannot be avoided by any jurisdiction that attempts to systematically report information about certain immigrants to the INS, in the absence of federal instruction. Any such jurisdiction would be forced to set up its own standards and make determinations about who would be reported and under what circumstances, determinations that are reserved to the federal government by the Constitution.

It follows that, to maintain their constitutionality, PRWORA section 434 and IIRIRA section 642 must not be interpreted to permit such practices. Rather, they must be interpreted in a manner that limits states to actions that are permissible under the U.S. Supreme Court's opinion in *De Canas*. Specifically, state or local action under these provisions must be tailored to protect state and local interests, other than immigration, that are the proper province of state action affecting immigrants under *De Canas*. 424 U.S. at 356-57.

A strict interpretation of "information regarding immigration status" would help accomplish this purpose by limiting local discretion regarding the information to which the provisions apply, and by more closely defining the circumstances under which such information can be released by government agencies. Thus limited, the cooperation activities of an agency acting under the provisions at issue would almost always fall within the proper scope of state action under *De Canas*, i.e., fraud prevention or other permissible state regulatory activities that do not involve the regulation of immigration proper.

WR - San Diego issue

Diana Fortuna 07/24/98 06:50:44 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP
Subject: San Diego issue background

The Board of Supervisors of San Diego County wants to turn over to the INS the names and addresses of thousands of parents whose children are on TANF or food stamps, because they may have reason to believe that the parents are undocumented immigrants. These are so-called "child only" cases. The county obtained this information from TANF and food stamp applications for these children, where parents were asked to indicate why the parents were not part of the household unit. Most likely, the majority of these parents are undocumented immigrants.

The county plans to notify these families of this action in advance. Presumably, this will lead most of these families to "go underground" and withdraw their children from these benefit programs. The county is not taking this action for Medicaid at this time, but it may do so later.

Immigrant advocates contacted us to ask whether HHS, USDA, or DOJ could take any action to stop the county. DPC is working with counsel's office and the agencies to investigate this question (OLC has participated to some extent). But preliminary indications are not promising, for the following reasons:

- The welfare law has an extremely broad clause that appears to permit the county's action: "Nothwithstanding any other provision of Federal, state, or local law, no state or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the INS information regarding the immigration status, lawful or unlawful, of an alien in the United States." DOJ/INS has never interpreted this language, but it is obviously very broad.
- It appears that the county came into possession of this information through a pre-existing and legitimate application form, although we are still evaluating this question, particularly for food stamps.
- We have examined whether privacy law would protect these individuals, or whether civil rights laws would protect the citizen children, but neither argument seems to work legally.

We are also exploring whether we can do something short of directing the county not to take this action. For example, we might be able to do something on a prospective basis to ensure that benefit applications do not collect this incriminating information in the future; or we might ask the county questions about its plan and suggest that they hold off on taking any action until they answer our questions. Either action would have some political implications for us.

For the moment, the county has been stymied in its effort by state legislators who oppose the action and who are threatening to retaliate via the state budget if the county proceeds. However, once the state completes its budget, which is expected in the next few weeks, the county will probably proceed. Immigrant advocates have been trying to rally members of Congress and high-ranking Administration officials to take some action. They argue that other jurisdictions will follow suit if San Diego proceeds.

WR - San Diego

Cynthia A. Rice 08/14/98 10:23:23 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP

cc:

Subject: Answers to your Food Stamp/San Diego questions

(1) **What does the INS think?** The INS participated in earlier conference calls on this issue, and said they would be unlikely to use the information reported to them because of other priorities (such as tracking undocumented criminals) but would not be able to say this publicly. Thus they would be comfortable not receiving this information.

(2) **Do the Medicaid applications ask immigration status?** Yes. I now have a bad fax of the county's application form which is used for Cal-WORKS (TANF), General Relief, Food Stamps, and Medi-Cal (Medicaid).

(3) **Could the form be re-done to make the immigration questions optional for those applying only on behalf of children but still requiring them for other applicants?** USDA staff think yes -- they had been thinking more broadly (about having the question dropped for all) but think on the staff level the more narrow approach would be fine.

(4) **How is a Food Stamp household defined? What happens when some family members are ineligible?** A household is a group of people that "purchase and prepare food together." More than one such household could live under one roof (if a border prepares his own food or two separate families live together but purchase food separately). To determine eligibility, the Food Stamp program obtains income information on the entire household and then excludes a pro-rated amount for ineligible members. For example, if a family had $1,000 monthly income and 5 family members, two of whom were ineligible, then USDA would base Food Stamp eligibility on 3/5 of $1,000 or $600 in monthly income available to the three eligible family members.

(5) **Can an illegal immigrant whose deportation be stayed get benefits?** This was true before the 1996 law, but is no longer.

(6) **How quickly could a regulation be developed?** A very narrow proposed regulation, addressing this particular problem, could be done in a month, if there was high level commitment to move forward.

(7) **Are there other jurisdictions asking for this information?** Not that USDA knows. I will check with advocates if you think appropriate, and with the INS. Advocates have said in the past they've heard rumours that Massachusetts, Minnesota, and the Carolinas may take action akin to San Diego's, but that does not answer the question of which jurisdictions are collecting immigrant status information and which are reporting it to the INS.

(8) **Where is Sect. Glickman?** He supports sending a letter and developing a regulation to prevent the chilling effect that this action may have on citizen children's obtaining of benefits.