ARTICLES

THE IMMIGRATION AND NATURALIZATION SERVICE, COMMUNITY-BASED ORGANIZATIONS, AND THE LEGALIZATION EXPERIENCE: LESSONS FOR THE SELF-HELP IMMIGRATION PHENOMENON

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I. INTRODUCTION

The tens of thousands of immigrants who negotiate the immigration processes to the United States each year usually do so without extensive help from either private experts or the government. For those immigrants who are successful,[1] the project is one of a do-it-yourself nature.[2] In a typical instance of immigration, a citizen or permanent resident (the petitioner) submits a petition on behalf of a relative (the beneficiary) who is either in the United States or in her native country. After the petition is approved, or sometimes simultaneously, the beneficiary applies for permanent resident status or an immigrant visa. As part of this process, applicants must complete forms, gather supporting

1. Of course, not all who try are successful, and certainly many are discouraged from even trying because of the intimidating process. Many do not attempt to immigrate because they are unaware of their ability to do so, especially those of lower educational or economic background.

2. In a survey of 45 community-based organizations conducted by the Immigrant Legal Resource Center, a support center that I direct in Northern California, during May 1992, the respondents acknowledged that 85 to 90% of the prospective immigrants they counsel go to the Immigration and Naturalization Service (INS or Service) on their own to complete the process.

documents, undergo a medical examination, be fingerprinted and photographed, submit paperwork at the appropriate site, pay a fee, figure out how waiting lists work, and go through at least one interview.[3] Successful immigration thus depends on the ability of individual immigrants to master the considerable bureaucratic and logistical problems in the immigration process.

Some 500,000 new immigrants enter and about 250,000 lawful permanent residents apply for naturalization annually.[4] Although many immigration and naturalization applicants are successful, the process is far from easy. Each day immigration practitioners and community agency workers meet people who do not know how to begin the process, are intimidated and discouraged by it, or are unaware of available immigration benefits. At least those who consult practitioners or community workers get some information. Countless others are kept in the dark about family visas, labor certification, asylum, suspension of deportation, or naturalization rights.

We cannot expect the government to assume the general burden of these tasks. We can, however, hope that the government will take any simple and straightforward steps available to make the process less imposing and difficult for those eligible to immigrate. The purpose of the rules, after all, is not to create an arduous immigration obstacle course, but simply to make sure that statutory requirements are met. Consequently, it must be worthwhile for the Immigration and Naturalization Service (INS or Service) and community service agencies to consider ways to facilitate the self-help nature of immigration.

At one level, the legalization (or "amnesty") program of the Immigration Reform and Control Act of 1986 (IRCA)[5] seems to have been a unique policy with little relevance for typical immigration work. Amnesty, as a program, is unlikely to be repeated in the near future. On a deeper level, however, amnesty represents a set of rather bold experiments concerning ways to make the largely autonomous act of immigration more feasible for the typical immigrant. Legalization was a new — albeit brief — immigration category with its own set of requirements and procedures. Thus, it represented a shift in eligibility rules for immigration, rather than the implementation of ease-of-compliance rules on existing categories. To qualify for the amnesty program, the potential immigrant had to accomplish tasks quite similar to those which immigrants in 1992 and beyond must complete. Legalization can

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3. *See generally* BILL ONG HING, HANDLING IMMIGRATION CASES, 75-152 (1985).

4. IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, 1989 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 16-17, 91 (1990) [hereinafter 1989 Statistical Yearbook].

5. Pub. L. No. 99-603, 100 Stat. 3359 (codified as amended in scattered sections of 8 U.S.C.) [hereinafter IRCA].

therefore be viewed as less of a one-shot anomaly, and more of an interesting experiment from which to draw practical insights about immigration work for the future.

Because so many people applied for amnesty, most applicants had little hope of receiving direct help from the government. As a result of the 1986 amnesty program, three million applications were filed under the two main legalization provisions — low by most estimates and about right by others (see Appendix A). Approximately seventy-one percent of the applicants sought legalization benefits directly from the INS.[6] Twenty-one percent filed through designated community-based organizations, while the remaining eight percent were represented by private counsel.[7]

The number of applicants might seem remarkably high given real problems within the legalization program: severe restrictions and insufficient startup time provided in the law; poor outreach and information by the INS, particularly early on; the demanding one-on-one approach implemented by most community agencies; bilateral criticism or bashing between the INS and certain community-based organizations; excessive fees by many private attorneys; and complicated procedures and requirements faced by applicants.

The proportion of prospective immigrants who proceeded through the legalization process without the assistance of counsel or community workers is consistent with the proportion in immigrant visa cases generally. Officially, over half a million new immigrants arrive in the United States each year.[8] The vast majority work through the immigration maze without assistance from counsel or a community agency worker, in a process that is initiated by a relative who submits a visa petition at a local INS office.

Since most prospective immigrants and/or their relatives go straight to the INS on their own, the INS carries the responsibility of explaining immigration laws, requirements and procedures to those seeking to immigrate or to their petitioning relatives. A visit to just about any INS office during business hours reveals that long lines or crowds of people waiting for their numbers to be called are routine. Community agencies, lawyers, and even immigration consultants — notary publics[9] who often serve rural areas — alleviate the problem to some extent by

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6. Of course a large proportion of these applicants — perhaps half — received assistance from notary publics, community-based organizations or other consultants before filing with the Service. *See infra* notes 167-72 and accompanying text. This has also been true in my experience with everyday immigration cases involving Mexican, Chinese, Filipino, and Salvadoran immigrants.

7. Interview with John Davis, Deputy District Director for Legalization of the INS, in San Francisco, Cal. (Nov. 19, 1990) [hereinafter Davis].

8. IMMIGRATION AND NATURALIZATION SERV., U.S. DEPT. OF JUSTICE (1990), STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE.

9. These non-lawyer, private immigration consultants are generally also notary publics. In Latino communities, they are referred to as "notarios."

providing information and assistance to many immigration clients. The vast majority, however, approach INS directly. Given the crowds, the INS has generally abdicated its responsibility to dispense information on laws and requirements, and simply doles out forms with complicated instructions[10] and provides brusque responses to those who have waited in line. Clearly, then, the INS needs a new model for its routine immigration procedure.

Legalization differed from the typical, non-legalization process. The legalization program evoked special responses — especially from the INS, but also from community agencies in some respects. Yet legalization and the special response it elicited offer a vehicle by which we can re-evaluate the responses of the INS and community agencies to everyday immigration circumstances. This article uses the legalization experience to look for lessons for the INS and community agencies that purport to serve the immigration needs of communities which have largely adopted a self-help approach to immigration. Such lessons are also appropriate for lawyers, and even for immigration consultants/notary publics who provide immigration law services.

My attempt to glean lessons from the legalization experience for application in everyday immigration law implementation is premised on several propositions: (1) The immigration process generally, like the legalization process in particular, is essentially driven by individuals trying to navigate a reasonably complex bureaucracy. (2) It does not appear that the bureaucratic hurdles generally serve to implement Congressional policy aims. (3) The bureaucratic hurdles certainly stopped full implementation of the legalization program, and likely result in the failure to implement everyday immigration provisions. (4) The legalization experience is an excellent case study of efforts to lower bureaucratic hurdles and of the implementation of legislation that requires aid to individuals in complex compliance tasks.

I describe legalization and the procedures that it entailed in Part II. Parts III and IV cover the INS and community agency implementation of legalization. In Part V, I discuss what lessons can be learned from the legalization experience. I have included three appendices as well. The first is a discussion of the various estimates by organizations and individuals of the numbers of immigrants who would apply for the legalization program. The second is an analysis of the legislative history of legalization. The third consists of typical INS instruction sheets that prospective immigrants face each day.

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10. *See* Appendix C.

II. WHAT WAS LEGALIZATION AND WHAT DID IT ENTAIL?

IRCA contained two major amnesty or legalization provisions which had the potential of benefitting millions of undocumented aliens. The first provided permanent residence status to aliens who had resided in the United States since before January 1, 1982. The other afforded permanent residence status to farm workers or Special Agriculture Workers (SAWs) who had performed agricultural work for at least ninety days between May 1, 1985 and May 1, 1986.[11]

Those who would commonly fall under the first program either entered by crossing the border without inspection prior to January 1, 1982, or entered on a visitor or student visa and worked without permission or overstayed the permitted length of stay prior to that date. No one knew exactly what nationalities the applicants would be, but policymakers, INS personnel, and community workers had a sense — grounded on INS apprehension statistics — that most would be Mexican.[12] In fact, about seventy percent who ultimately applied under the pre-1982 program were Mexican; the next largest groups were Salvadoran (8.1%) and Guatemalan (3%).[13] However, the percentages may simply reflect the results of publicity priorities of the INS and community-based organizations (CBOs). Demographers who scrutinized the 1980 census data prior to IRCA concluded that only fifty-five percent of the undocumented population was Mexican in origin.[14]

Those qualifying under the farm worker program were also mostly expected to be Mexican. Indeed, Mexicans did predominate with 81.6% of the SAW applications. Haitians received 3.4%, El Salvadorans 2%, and Guatemalans and Asian Indians 1.4% each.[15]

Ultimately, 1.7 million applicants filed under the pre-1982 program and 1.2 million applied as SAWs. The number for the pre-1982 program was far below most estimates, while the figure for agricultural

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11. INA §§ 210, 245A, 8 U.S.C. §§ 1160, 1255a (1988). IRCA also provided smaller legalization programs for certain Haitians and Cubans.

12. INS apprehension rates were actually deceiving for these purposes. INS enforcement priorities are aimed at Mexican nationals because INS feels that groups of undocumented Mexicans are easier to locate making their apprehension more economical. EDWIN HARWOOD, IN LIBERTY'S SHADOW 77-87 (1986). Thus in 1989, of the 954,243 deportable aliens apprehended by the Service, 865,292 (90.7%) were Mexican. 1989 Statistical Yearbook 112, Table 62 (1990). The fact that 70% of the pre-1982 applicants were Mexican does not validate the basis of the projections because outreach and publicity for legalization was concentrated in Mexican American communities. But based on experience with a variety of undocumented groups and the pre-1982 requirement, I agree that it was reasonable to conclude that at least many legalization applicants would be Mexican.

13. *See* Interview with Bernadette Lyles, INS Statistics Division, Washington, D.C. (Sept. 4, 1992) [hereinafter Lyles].

14. Jeffrey S. Passel & Karen A. Woodrow, *Geographic Distribution of Undocumented Immigrants: Estimates of Undocumented Aliens Counted in the 1980 Census by State*, 18 INT'L MIGRATION REV. 642, 651 (1984).

15. Lyles *supra* note 13; *see also*. United States Immigration and Naturalization Serv., 36 INS REPORTER 7 (1989).

workers was higher than expected.

The passage of IRCA represented the culmination of years of social, political and congressional debate about the perceived lack of control over our southern border. The belief that something had to be done about the large numbers of undocumented workers who had entered the U.S. from Mexico in the 1970s was reinforced by the flood of Central Americans which began to arrive in the early 1980s. While the political turmoil of civil war in El Salvador, Guatemala, and Nicaragua drove many Central Americans from their homeland, they, along with the Mexicans who continued to arrive, were generally labelled economic migrants by the Reagan Administration, the INS, and the courts.[16] Beginning in 1971, legislative proposals featuring employer sanctions as a centerpiece were touted as resolutions to the undocumented alien problem.[17] By the end of the Carter Administration in 1980, the Select Commission on Immigration and Refugee Policy (Select Commission) portrayed legalization as a necessary balance to sanctions. However, the story of congressional support for IRCA is complicated. While a fair reading of the legislative history of IRCA suggests that legalization was to be implemented generously once enacted, Congress' support for legalization itself was definitely underwhelming.

The procedures that INS established for legalization reflected this ambiguous support for a generous program. Some were complicated, others were straightforward, but none represented a bite-the-bullet, wipe-the-slate-clean amnesty. The simplest procedure for legalization would have merely asked applicants to register with name, birth, bio-

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16. *See, e.g.*, Bob Baker, *Probe of INS' Handling of Guatemalans Asked*, L.A. TIMES, May 21, 1985, pt. 1, at 18; Norman Kempster, *U.S. Shelves Duarte's Plea on Refugees*, L.A. TIMES, May 13, 1987, pt. 1, at 1. The following statement typifies the attitude of courts towards Mexicans who apply for suspension of deportation:

> In this case, there is nothing to distinguish the hardship of these petitioners from that of the thousands of other Mexican nationals who annually enter the United States illegally and who then accumulate seven years of good time in this country. The resulting changes in their standard of living and the resulting widening disparity between their standard of living here and that which remains the lot of their fellow countrymen who continue the struggle for existence in Mexico do not, per se, create extreme hardship. It is the disparity between the standards of living in the two adjoining countries which provides the magnet for the illegal immigration which flows steadily northward. If this court were to grant relief in this case we would be holding that the hardship involved in returning to a former, lower material standard of living automatically requires a remand in every deportation case that fits the residential and character requirements of [suspension of deportation].

De Reynoso v. INS, 627 F.2d 958, 959 (9th Cir. 1980). *See also* Diaz-Salazar v. INS, 700 F.2d 1156 (7th Cir. 1983).

17. SUSAN GONZALEZ BAKER, THE CAUTIOUS WELCOME: THE LEGALIZATION PROGRAMS OF THE IMMIGRATION REFORM AND CONTROL ACT 27-29 (1990) [hereinafter BAKER]. For concise yet thorough descriptions of IRCA's history, *see* H.R. REP. NO. 682, 99th Cong., 2d Sess., pt. 1, at 51-56 (1986) [hereinafter H.R. REP. NO. 682-1] (this report accompanied H.R. 3810, the House version of IRCA); S. REP. NO. 132, 99th Cong., 1st Sess. 18-26 (1985) [hereinafter S. REP. NO. 132] (this report accompanied S. 1200, the Senate version of IRCA). I include a discussion of the legislative history of legalization in Appendix B.

graphical data and perhaps a completed fingerprint chart to check for criminality. Instead, each applicant faced a series of procedural requirements, most representing manifestations of complex eligibility and exclusion grounds.[18]

Gathering documentation. Each applicant had to provide evidence to support her claim of eligibility. Revealing either the INS' strict philosophy or its naivete about what typical applicants could be expected to produce, regulations proposed by the INS initially implied that every pre-1982 applicant had to submit a document for each month of residence. After a good deal of outcry from CBOs over the difficulties that applicants would have in coming up with the required documents, however, the INS adopted the following philosophy in its instructions to field offices:

> [S]ubmission of voluminous documents is not necessary. Each day in the life of the applicant need not be documented. . . . Gaps in documentation for a certain period of time may be acceptable. However, if the entire family shows the same gap . . . the applicant may be requested to submit additional documentation to cover that period. The inference to be drawn from the documentation provided shall depend not on quantity alone, but also on its credibility and amenability to verification.[19]

Even under the new instructions, the demands of INS offices varied. As one staff member at a CBO saw it, "the documentation requirements varied greatly depending on the office and the adjudicator. The adjudicators varied too greatly, some asking applicants for a document for every quarterly period of residence, while others for only one document for every year. All of this was very frustrating . . . and many people were discouraged from applying."[20]

Pre-1982 applicants had to provide proof of identity, residence, and financial responsibility. Proof of Selective Service registration was required for males from the age of eighteen through twenty-six under the pre-1982 program. Otherwise, the applicant had to complete the registration form at the time of the interview. Agricultural program applicants had to provide proof of identity, financial responsibility, and evi-

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18. Certainly, Congress could have made the Service's job much simpler had it used a more recent cutoff date for the pre-1982 legalization as it did for the extension of temporary protected status for Salvadorans in November 1990 (residence since September 1990). Immigration Act of 1990, Pub. L. No. 101-649, § 303, 104 Stat. 4979 (1990) (codified as amended in scattered sections of 8 U.S.C.). Yet, regulatory requirements imposed by INS for legalization could have been more generous, for example by accepting sworn affidavits to prove residence or employment rather than requiring original documents.

19. IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEP'T OF JUSTICE, LEGALIZATION TRAINING MANUAL 17 (1987).

20. Interview with Shari Cruhlac, Staff Attorney, San Francisco International Institute, in San Francisco, Cal. (Dec. 11, 1990) [hereinafter Cruhlac].

dence of qualifying agricultural employment.

To prove identity, the regulations suggested the following types of documents: Passport, birth certificate, any national identity document bearing a photograph and fingerprint, driver's license, baptismal record/marriage certificate, or affidavit of a knowledgeable individual.[21] If an assumed name had been used, additional evidence had to be submitted to prove the applicant's true identity.[22]

To prove residence, the following types of documents were suggested: Pay stubs, W-2 forms, letters from employers, utility bills, school records, hospital and medical records, letters from church, union or other organization officials, money order receipts, bankbooks, automobile license receipts, tax receipts, deeds, insurance policies, and affidavits.

As proof of financial responsibility, the applicant needed evidence of a history of employment (e.g., an employment letter, W-2 forms or income tax returns), evidence of self-support (e.g., bank statements, stocks or other assets), or an affidavit of support, completed by a responsible person in the United States, which guaranteed complete or partial financial support of the applicant.

Agricultural program applicants could establish proof of the requisite number of days of agricultural employment by submitting government employment records or any records maintained by agricultural producers, farm labor contractors, collective bargaining organizations or other groups or organizations. If such primary sources of information were not available, applicants had to submit other evidence corroborating performance of qualifying employment. Such evidence might consist of worker identification issued by employers or collective bargaining organizations, or union membership cards or other union records such as dues receipts, or work records (e.g., pay stubs, piece work receipts, W-2 forms, or copies of income tax returns certified by the IRS). It also might include affidavits by agricultural producers, foremen, farm labor contractors, fellow employees or other persons with specific knowledge of the applicant's employment. All documents had to be submitted in the original, and any document in a language other than English had to be accompanied by a certified translation.

The documentation requirement was generally the most onerous for eligible applicants. For example, migrant farmworkers often could not obtain documentation for their work experiences. Pay records were often not matched to names; many of those that were only named a family or the head of a family. Payment often went to contractors who paid workers in cash without further records. Even when farmworkers

21. 8 C.F.R. §§ 210.3(c)(1), 245a.1(d)(1) (1992).
22. 8 C.F.R. §§ 210.3(c)(2), 245a.2(d)(2) (1992).

received pay stubs, they often lost them in the process of migratory living. Even in non-farmworker cases, immigrants who had documents or letters from former employers, receipts and other records often lost or destroyed them over the years. After all, keeping records — especially those relating to identity — was antithetical to life as an undocumented person. The use of false identities was also common among eligible applicants, exacerbating the nightmarish problem of collecting and straightening out records.

In order to meet the documentation requirement, prospective applicants typically had to pore over old documents, receipts and records (if they were fortunate enough to have retained them over the years); contact friends and neighbors for possible letters; request documentation from past and former employers; visit schools and doctors offices for verification of records; and seek old records from social service and governmental agencies.

Completion of the application and filing fee. Each applicant had to complete a multi-page application form and provide supporting documents. The forms for applicants who arrived before 1982 were four pages in length, while those for agrucultural applicants were three pages long. The application forms were printed in English, and the only translation made available by the INS was a Spanish translation for the agricultural worker application.[23]

Each application sought detailed information on a variety of topics. In addition to conventional biographical data, applicants were asked for other names and social security numbers they might have used; previous records or applications filed with the INS; absences from the United States; dates, places, and manner of previous entries to the United States; passport and visa history; dates and places of employment and residences in the United States; membership or affiliation with any clubs, churches, unions, and organizations; history of mental disorder, drug addiction, and alcoholism; arrests, convictions, pardons, and incarcerations; and receipt of public assistance.

The application could be filed in person or sent by mail to an INS legalization office, or it could be filed in person at a particular community agency known as a Qualified Designated Entity (QDE). If filing at a QDE, the applicant had an additional sixty days to submit the necessary documentary attachments. Each application had to be submitted with a filing fee of $185 per adult and $50 per child, up to a maximum of $420 per family. Every application required a completed fingerprint chart and two color photographs. Those applicants who did not have

23. Unfortunately, the Spanish language SAW application was not made widely available. The form was produced in Spanish only because applicants were permitted to apply for the agricultural amnesty outside the United States, for example, in Mexico.

social security numbers had to submit a separate application for them. In addition, each applicant had to undergo a medical examination by an authorized physician, and submit a completed medical examination form.

Thus, applicants had to deal with a fairly lengthy application process which included finding a place to get fingerprinted and photographed, locating an authorized physician for a medical examination, coming up with a filing fee, and standing in line to file the application(s). The process was particularly difficult in cases where several family members applied, or where an applicant was not fully literate in English.

Interview. An interview was required of each applicant. Depending on the particular office, some interviews were scheduled at the time the application was filed, while other applicants waited to receive notice of the interview through the mail. Those who waited faced an additional problem when they moved. In spite of an appointment procedure at most offices, applicants commonly waited an hour or more in legalization office waiting rooms. Once the interview started, however, it usually lasted only a few minutes and consisted mostly of a review of the information in the application form and supporting documents. Stories of INS abuse and intimidation surfaced, especially in cases where the INS suspected fraud on the part of the applicants. For most applicants across the country, the interview was not a difficult experience.[24]

Employment authorization. Legalization applicants were granted permission to work. Upon filing the application at INS, an applicant was generally given employment authorization if the interview could not be scheduled within thirty days. On the day of the interview, the applicant was issued temporary employment authorization for a period of six months. Once the final decision was made by INS to grant the applicant lawful temporary resident status, the applicant was required to return within one month to the legalization office to be issued a more permanent card.

Permanent residency application. Within eighteen months of being approved for lawful temporary residency status, every pre-1982 applicant had to submit another application for permanent status and be prepared to show proficiency in English and knowledge of U.S. history and government or enrollment in an approved course of study. Most agricultural program applicants automatically became lawful permanent residents on December 1, 1990 and none had to meet the English and civics requirements for the permanent card. The form for agricultural workers at this stage was not complicated.[25]

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24. Cruhlac, *supra* note 20; Interview with Lina Avidan, staff member, Coalition for Immigrant and Refugee Rights and Services, in San Francisco, Cal. (Dec. 11, 1990) [hereinafter Avidan].

25. Procedures for the permanent residency phase for the pre-1982 category were simplified as

III. WHAT INS DID DURING LEGALIZATION

Congress left implementation of legalization in the hands of two key "players" — the INS and CBOs. While many in the immigrant rights community were skeptical about the Service's ability to carry out the program, Congress felt it had little choice. After all, only the INS had the necessary combination of experience in immigration and the bureaucratic capacity to expand to meet the task. Congress was aware, however, that the Service's old enforcement attitudes might be difficult to reverse, and was concerned that the program would be severely crippled without the trust of a potentially suspicious immigrant community. Congress therefore authorized a deputization-like procedure for community-based organizations, enabling them to accept applications directly. This extension was novel and sensible. For many potential applicants, voluntary agencies were familiar, accessibly located, and known for their solid track record in other immigrant and refugee-related programs. As a result, voluntary agencies were perfectly positioned — both physically and culturally — to ease the experience for fearful clients. The bulk of the applications eventually were filed directly through the INS and community-oriented non-profit programs, although many applicants benefitted from the resources of other programs first. In addition, many applicants sought assistance from immigration consultant/notary publics, from a number of businesses created to capitalize on legalization, and from private attorneys.

Aspects of the INS response to legalization have been severely criticized, and the INS has responded with equal venom aimed at the actions of immigrant rights groups during legalization. However, close examination reveals that both sides deserve credit for positive achievements during the program. Those achievements can teach us a good deal about the possibility of providing better services to the immigrant community in general.

Congress handed the INS an enormous challenge. On the face of IRCA, the Service was given little time to prepare for legalization.[26] Within six months of enactment, the agency had to erect a bureaucracy and open the doors for a program that was expected to serve millions. This work included everything from adding offices around the country and hiring more personnel to creating the proper forms and training both old and new employees on the new law and its procedures.

The INS did not fully anticipate the immediate challenge that IRCA posed. Although IRCA had been winding its way through Congress

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well. For example, no documentation was required to show continued residency and the application was relatively easy to complete. The big issue at this stage was not so much the ability to handle the application forms, but rather the civics and English literacy requirements.

26. *See generally* IRCA § 274A(b), 100 Stat 3361 (codified as amended at 8 U.S.C. § 1255a (a)(1)(A) (1988)).

during 1986, several other, similar proposals had failed in the wake of the Select Commission report in the early 1980's. The IRCA bill had itself been declared dead that Fall. The legalization program that seemed so unlikely in October 1986 sprang to life suddenly, and Congress expected it to be in full operation by May of 1987.

A. *INS Planning*

The INS was not, however, caught completely off guard by IRCA. Early signs of Congressional support for legalization stimulated some INS planning well before the act was passed. Legalization was a central proposal in the final report of the Select Commission in March 1981, as well as in the initial Simpson-Mazzoli legislative package in 1982.[27] The INS assembled a task force of INS staff to discuss implementation during congressional debates on immigration reform in 1982 and 1984, and convened a meeting of representatives from CBOs from across the country in 1983 for suggestions and input. By the end of 1984 the INS had completed an implementation plan. When IRCA was passed in 1986, then, "many elements of the final implementation . . . had been worked out. . . ."[28]

Within a month of IRCA's passage in November 1986, the INS introduced its preliminary plan to other government agencies, employers, unions, and immigrant service and advocacy organizations, and sought additional input. A December 1986 roundtable discussion on implementation sponsored by the Carnegie Endowment for International Peace gave the INS another opportunity to consider its options. The Service listened to the views of other immigrant service agencies, and of officials from other countries which had tried legalization programs of their own.[29]

Even with a plan in hand, however, the INS faced an immense implementation effort, that included the hiring and training of new staff, the location of office space, and the development of procedures for staff and applicants. The final substantive content of the law had to be learned and interpreted, and regulations had to be issued.

With a lead time of only six months, the INS encountered problems with the timing of its regulations. The Service began drafting regulations soon after the passage of IRCA, and distributed an informal draft to elicit comments from Congress and other interested parties in late

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27. *See infra* notes 316-19 and accompanying text; BAKER, *supra* note 17 at 35.

28. United States Immigration and Naturalization Serv., *Preparing for Immigration Reform*, 35 INS Reporter 4 (1988) [hereinafter *Preparing for Immigration Reform*].

29. *See generally* DORIS M. MEISSNER, ET AL., LEGALIZATION OF UNDOCUMENTED ALIENS: LESSONS FROM OTHER COUNTRIES (Carnegie Endowment for International Peace 1986); DORIS M. MEISSNER & DEMETRIOUS G. PAPADEMETRIOU, THE LEGALIZATION COUNTDOWN: A THIRD QUARTER ASSESSMENT 4-5 (Carnegie Endowment for International Peace 1988) [hereinafter MEISSNER & PAPADEMETRIOU].

January 1987. The INS published regulations for formal comment in mid-March,[30] and promulgated final regulations on May 1, 1987 — only four days before the doors to legalization opened.[31] This process left little time for INS and community agency staff to learn exactly what would be required on opening day, especially since many of the proposed regulations changed significantly after the comment period. The hurried process left several important issues unresolved until late in the program, including the INS' precise philosophy on documentation, procedures on employment authorization, the local INS' relationship with Regional Processing Facilities (RPFs), and the structure of community outreach efforts by local INS offices. Several such issues were never resolved.

These sometimes serious problems aside, the INS' willingness to seek input and its positive response to many of the comments was noteworthy. Recognizing that widespread cooperation was necessary for successful implementation, the INS felt it made "the maximum" effort to refine IRCA implementation plans and regulations in "the most open manner."[32] To its credit, the INS continued to seek and receive input from immigrant service organizations on many issues throughout the life of the program.

B. *INS Structure*

A multi-level INS bureaucracy implemented legalization. An assistant commissioner was appointed at the Central Office in Washington, D.C. to head up the legalization program. Each local district office set up one or more "Legalization Offices" (LOs) where applications were reviewed, applicants were interviewed, and adjudication recommendations were made.[33] Four RPFs reviewed LOs recommendations, granted and denied applications, and in some cases conducted investigations. The INS public information campaign was similarly divided, with large sums of centralized funds spent on a national scale, while regional and local offices devoted time to public awareness.[34]

After considerable haggling, the regional and district offices retained a good deal of control over how legalization was implemented in their areas.[35] After all, while the central office established regulations and a

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30. 35 INS REPORTER, *supra* note 28, at 5.

31. MEISSNER & PAPADEMETRIOU, *supra* note 29 at 22; MOLESKY ET AL., Northern Cal. Grantmakers' Task Force on Legalization of Immigrants, White Paper on the Legalization Program of the Immigration Reform and Control Act of 1986: Recommendations for Effective Implementation 6 (Oct. 1987) [hereinafter MOLESKY].

32. Davis, *supra* note 7.

33. *Id.*; MEISSNER & PAPADEMETRIOU, *supra* note 29, at 40-42; BAKER, *supra* note 17, at 64-65.

34. Davis, *supra* note 7.

35. The INS had considered having field staff report directly to the central office, but the

system-wide computer system,[36] the bulk of the day to day work of implementing legalization was to be handled by the LOs and the RPFs. They hired and trained staff, managed and set standards for initial application processing, and generally attempted to maintain communication between offices.[37]

Legalization Offices. The historical immigrant distrust of the INS meant that LOs had to be different if potential applicants were to participate. The INS' decision to deputize community agencies as QDEs was intended to address immigrant apprehensiveness, but the LOs had to perform adeptly as well. In order to lessen applicants' anxiety about approaching the INS, LOs were located away from regular INS offices, which were known to combine its prominent enforcement efforts with visa and naturalization functions.[38] Trainers reminded staff that Congress intended IRCA to be generously applied,[39] and emphasized that employees were to help immigrants determine how they could qualify. Applicant interviews were to begin with the explanation, "I'm here to help you with your application today."[40]

Because the LOs, like most of the legalization apparatus, were completely new, it took significant efforts by INS — nationally, regionally and locally — to organize and train the staff in only six months. Two thousand new workers had to be hired and trained, sites for 107 new offices located, acquired, designed, furnished and equipped, and sixty million forms produced.[41]

The task of hiring and maintaining two thousand new workers was immense. Some LO supervisors were recruited from the ranks of INS retirees, but many workers were new to INS. Recruiting and hiring was difficult.[42] Legalization jobs were temporary, salaries for new examiners were at low-range government levels, and applicants had to wait three or four months to pass FBI and other security checks.[43] As

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western region and the Los Angeles district advocated for, and retained more local control. ROLPH & ROBYN. A WINDOW ON IMMIGRATION REFORM: IMPLEMENTING THE IMMIGRATION REFORM AND CONTROL ACT IN LOS ANGELES 67 (Rand Corp. & Urban Inst., 1990).

36. The INS calls the program — the Legalization Application Processing Systems (LAPS) — the keystone of Legalization Office operations. *Preparing for Immigration Reform, supra* note 28, at 9.

37. Davis, *supra* note 7; Interview with Cheryl Souza, Chief Legalization Officer, San Jose Legalization Office, in San Jose, Cal. (Nov. 9, 1990) [hereinafter Souza].

38. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 40-43; *Preparing for Immigration Reform, supra* note 28, at 5; BAKER, *supra* note 17, at 4, 64-65. The separation probably made the legalization operation more efficient as well.

39. "My job is to help them qualify, if at all possible. We were taught in training that Congress didn't want us to be rigid." MEISSNER & PAPADEMETRIOU, *supra* note 29, at 42 (quoting LO employee).

40. *Id.* INS Commissioner Alan Nelson noted that staff work involved "intense cooperative efforts, long hours, and remarkable stamina." *Preparing for Immigration Reform, supra* note 28, at 3.

41. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 40-41; DAVIS, *supra* note 27.

42. ROLPH & ROBYN, *supra* note 35, at 72-73; Souza, *supra* note 37.

43. ROLPH & ROBYN, *supra* note 35, at 72-73; Souza, *supra* note 37.

of the May 5, 1987 start-up date, staffing was still not complete, and some regions suffered from high vacancy rates throughout legalization.[44]

Thus, LO staff ended up being a mixed bag. Managers were described by some as "happy" to be in their position,[45] as well as somewhat unlike other INS bureaucrats.[46] Generally, INS staffers who were transferred to the LOs retained an enforcement mentality.[47] On the other hand, INS retirees who returned to work in the LOs were described as "sympatico,"[48] more friendly and sympathetic towards the applicants. Even some former border patrol officers were purportedly pro-amnesty.[49] So in any given office, the staff likely included hardline INS staffers, and more beneficent new hires and retirees.[50] Whatever their attitude, LO understaffing meant that employees worked very hard.[51]

Training of the LO staff was also complex. The idea was to provide the staff with two weeks of training under the coordination of the Regional Offices at the outset, and then to provide ongoing training as standards and procedures were modified.[52] Indeed, training sessions were held across the country and, before the LOs opened, staff members were provided with agency operations instructions and field manuals.[53] However, the law and the procedures were new, even for experienced INS personnel. Final regulations were not distributed until four days before the program began.[54] Despite the training therefore, the early days of legalization were plagued by inexperience and confusion[55] and LO staff was bogged down in procedural, logistic and even financial problems.[56] The later, ongoing training during legalization was also

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44. ROLPH & ROBYN, *supra* note 35, at 73. The Los Angeles district had a vacancy rate of about 30%.

45. D.S. NORTH & A.M. PORTZ, TRANSCENTURY DEVELOPMENT ASSOCIATES, THROUGH THE MAZE: AN INTERIM REPORT ON THE ALIEN LEGALIZATION PROGRAM 13 (1988).

46. Davis, *supra* note 7.

47. Avidan, *supra* note 24; interview with Susan Lydon, Assistant Director, Immigrant Legal Resource Center, in San Francisco, Cal. (Dec. 12, 1990) [hereinafter Lydon].

48. ROLPH & ROBYN, *supra* note 35, at 73. Of course, "sympatico" is just one attitude such retirees might have. They might also have enormous hostility toward undocumented people.

49. Interview with Harold Ezell, former Western Regional Commissioner of the INS, in Los Angeles, Cal. (Jan. 3, 1991) [hereinafter Ezell].

50. Cruhlac, *supra* note 20; Lydon, *supra* note 47.

51. ROLPH & ROBYN, *supra* note 35, at 73; Avidan, *supra* note 24.

52. Souza, *supra* note 37; OFFICE OF MIGRATION AND REFUGEE SERVICES, U.S. CATH. CONFERENCE, THE LEGALIZATION PROGRAM: THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE 21 n.32 (1990) [hereinafter THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE].

53. Unfortunately, while there was a rush to train and provide materials for LO staff, community groups were not given the same type of priority. See MEISSNER & PAPADEMETRIOU, *supra* note 29, at 9 (inability of immigrant-assistant community to build professional working relationship).

54. MOLESKY, *supra* note 31, at 6.

55. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 43.

56. MOLESKY, *supra* note 31, at 6.

spotty and weak.[57] In addition, productive, informational intra-regional conference calls were discontinued after the first several months.[58]

In spite of these problems, LOs were credited with directly processing seventy-one percent of all applications, compared to twenty-one percent for qualified CBOs and eight percent for private attorneys. This LO figure may be significantly inflated and misleading because many applicants received most of their assistance from community-based organizations (including deputized "qualified designated entities" or QDEs) and immigration consultant/notary publics, and then filed with the LO instead of a QDE. However, most applicants went directly to the LO for information and filing.[59]

Thus, many applicants overcame their initial apprehension or fear, and first inquired about legalization at the INS. The majority of applicants found this system to be helpful. Certainly, during legalization, incidents of INS abuse and inhospitable treatment of applicants by INS personnel have been verified.[60] However, for those who went directly to the INS, it was not uncommon to find a helpful LO staff. Furthermore, as word of successful legalizations spread, anxiety over approaching LOs was eased in many quarters.

While much of their success in attracting applicants can be attributed to positive staff attitudes, several other factors gave LOs an edge over QDEs, voluntary agencies and attorneys. First and foremost, most prospective applicants who heard about legalization rightfully associated it with the INS, so that the INS is where they turned to inquire and apply. Second, because QDEs needed more than the $15 that the INS returned to them per application,[61] they generally charged a processing fee over and above the application fee charged at LOs.[62] Third, when the publicity campaign finally became effective, the INS decided to encourage applicants to file directly with LOs. Fourth, applicants interested in immediately obtaining work authorization preferred to file with LOs after being told at QDE offices that filing with them might delay authorization for several weeks. Finally, and perhaps surprisingly, documentary requirements were often more rigorous at QDEs. In order to avoid having those application bounced back by the

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57. ROLPH & ROBYN, *supra* note 35, at 73.

58. Souza, *supra* note 37.

59. Interview with Mark Silverman & Kathy Brady, Staff Attorneys, Immigrant Legal Resource Center, in San Francisco, Cal. (July 24, 1991) [hereinafter Silverman & Brady]; THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 37.

60. In San Francisco, one officer was transferred after a series of complaints by applicants and community agencies concerning sexual harassment as well as brow beating.

61. The Service's contracts with QDEs specified that the government would pay the QDE $15 for each application submitted through the QDE. This money was obtained from applicant filing fees. THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 10-11.

62. *See infra* notes 178-190 and accompanying text.

INS, the QDE strategy required applicants to over-document.[63] This probably made sense on the whole, but it created another reason for applicants to apply directly to LOs as the LO accepting the applications also determined exactly how much documentation was needed.

Problematic inconsistencies surfaced between regions, districts, LOs, and even individual officers as exemplified by documentation requirements. In the early stages of legalization, some QDEs felt compelled to over-document because some LOs and officers were initially quite demanding. Furthermore, immigrants and QDEs were notified of different criteria for the same types of cases. Such inconsistencies plagued QDE assistance efforts. The resulting confusion, and reports of exacting requirements from some officers, probably dissuaded eligible immigrants from applying with any of the services.

Additionally, the LO funding scheme skewed resource distribution, which affected service availability in certain districts and regions. Since legalization was to be self-funding, LOs generally received resources according to the number of applications processed. LOs in areas which, for whatever reasons, originally had low application rates could afford fewer extended hours and less local outreach. Funding allocations had the effect of perpetuating and even reducing already low application rates. For example, Massachusetts Legalization Offices in Boston and Springfield were cut back severely in spite of their staff's commitment to the program. Such cutbacks further frustrated immigration advocates who worried that LO staff would not have the resources to accommodate the expected surge of applications in the final days of the program.[64]

In spite of these problems, LOs generally established a public image that was quite good, relative to the prior image of the Service and its top leaders. Catholic Social Service agencies noted that the INS was following a course that varied considerably from the "public posturing of some of its top officials."[65] Many LO staff were courteous and helpful. LOs were located in immigrant communities, with access to public transportation and many were open during the evenings or on weekends. Finally, some staff members were completely committed to the legalization mission, and were creative and energetic in effectuating the process through their LOs.[66]

Regional Processing Facilities. The large numbers of applications

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63. *See infra* notes 193-97 and accompanying text.

64. There was not, however, a perfect correlation between the numbers of applications filed by a district, and the resources allotted to it. The Los Angeles district, which has been traditionally understaffed, was understaffed during the legalization program as well, even though the district's ratio of applications to staff members was twice that of Miami. ROLPH & ROBYN, *supra* note 35, at 68.

65. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 73.

66. *See infra* notes 82-104 and accompanying text.

that were processed through the LOs were not handled as quickly at the RPFs. After an LO interview and recommendation, applications were sent to data input centers for security and records checks, and then forwarded to an RPF where those verifications were matched against INS records and a final decision was made. Although this type of examination was not new to the INS, the volume was unprecedented. The 1.76 million pre-1982 applications received during the twelve-month window amounted to nearly four times the normal volume for the INS and an RPF logjam followed.[67]

Initially, RPFs planned to complete each case within six months, but monumental numbers of applications slowed the process and many cases remained untouched after six months. After eight months, less than thirty-eight percent of all filed applications had been adjudicated.[68] Since RPFs shared similar recruitment and hiring problems to those of the LOs, chronic understaffing exacerbated these problems. Early difficulties with automated records systems slowed work as well. In addition, while RPFs had initially planned to review only LO application denials and applicants with previous INS files, the early inconsistencies of LO decisions led them to review all applications. Furthermore, more applicants than expected had prior INS or FBI files, of which each required a laborious verification process.

In addition to affecting the lives of applicants, slow RPF processing caused other problems. LOs and QDEs saw RPF decisions as a form of feedback on the adequacy of the applications filed. The cautious strategy employed by QDEs and other community agencies of requiring extensive documentation from applicants (which was time-consuming and discouraging to applicants) was in large part a response to the delay in feedback from the RPFs. The belief was that an extensively documented applicant would not be criticized for having "too much" documentation, particularly as a sampling of decisions on cases with "thinner" documentation was slow in developing. Furthermore, the timing of decisions was unpredictable, and when denials finally were issued, they appeared in waves. Legal assistance groups and QDEs facing strict thirty-day appeal periods for clients were hampered by these waves of decisions. When the RPF failed to complete a case within six months, the applicant had to apply for renewal of the six-month work authorization that was issued at the LO interview, thereby creating more work for the applicant and for the LO.

The RPF failure to act within six months, as originally contemplated, represented a missed opportunity to cultivate more community

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67. Silverman & Brady, *supra* note 59; *see also* BAKER, *supra* note 17, at 109-12; ROLPH & ROBYN, *supra* note 35, at 75-76.

68. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 51. At the halfway point, only 15% had received final decisions. *Id.*

confidence in the program and to encourage more applicants. Although applications were being handled slowly, fraudulent applications were rare. After the application period passed, the RPF approval rate was about ninety-five percent.[69] With such a high approval rate, had RPFs completed cases as planned, more immigrants would have received temporary resident status sooner, and word of the effective program would have spread more quickly to friends and relatives throughout immigrant communities.

C. *INS Image*

At the outset, even INS officials conceded that INS had an image problem with the targeted undocumented immigrant population. Immigrants' rights advocates argued that LOs would be seen as no different from the INS border patrol, and preferred that a completely different governmental entity administer legalization.[70] The INS argued that the "fear factor" was overblown by CBOs and immigrant rights groups, whose strongly negative feelings about the INS were not shared by the communities themselves.[71]

A variety of sources confirm that fear was indeed a factor. In Massachusetts, one agency said many aliens thought the legalization program was a hoax or a trap.[72] In the Southwest:

> [A]liens were understandably apprehensive about the Service, which they have long perceived only as the group that was out to deport them. 'We knew there would be a certain amount of the "fear factor,' " says [an INS officer]. 'The Border Patrol, they're the cops,' and legalization was suspected by many of really being a sting operation.[73]

Northern California INS officials also reported immigrant suspicion,[74] and community workers found that mistrust prevented many filings by eligible aliens.[75]

The image problem was exemplified by Harold Ezell, the controversial INS Regional Commissioner for the Western Region, home of

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69. BAKER, *supra* note 17, at 157-59.
70. Silverman & Brady, *supra* note 59.
71. Interview with Fernando Oaxaca, President of the Justice Group, in Los Angeles, Cal. (Dec. 21, 1990) [hereinafter Oaxaca]; Ezell, *supra* note 49.
72. M. HEIBERGER, MASSACHUSETTS IMMIGRANT & REFUGEE ADVOCACY COALITION, KEEPING THE PROMISE? A REPORT ON THE LEGALIZATION PROGRAM OF THE IMMIGRATION CONTROL ACT OF 1986: MASSACHUSETTS AT THE HALFWAY MARK 12 (Nov. 5, 1987) [hereinafter HEIBERGER].
73. Joseph Cosco, *Bringing Illegal Aliens Out of the Shadows*, 10 PUB. REL. J., Oct. 1988, at 16, 18 (1988) [hereinafter *Cosco*]. (quoting Sam Sinclair, who was hired by the INS to coordinate the public information campaign).
74. Davis, *supra* note 7.
75. Avidan, *supra* note 24.

most anticipated applicants. Prior to the passage of IRCA, Ezell was an outspoken opponent of "illegal" immigrants. He often invited television crews to the scene of INS workplace raids that he himself attended, and frequently charged that undocumented workers took jobs from Americans while exploiting our welfare system. While Ezell was apparently never personally involved in the physical mistreatment of aliens, he epitomized INS enforcement and symbolized the worst type of INS abuse of undocumented workers. Even his friends and church got into the act, helping to establish a vigilante-type border watch group called Americans for Border Control.[76] Ezell's verbal attacks on Mexican migrants particularly ignited the ire of the Latino community, and stirred several spokespersons to call for his firing.[77] Paradoxically, Ezell is "credited" by some in the INS with the passage of IRCA. They believe that had it not been for Ezell's media-grabbing enforcement antics, immigration issues would not have received the type of media attention and the level of importance necessary for the passage of major congressional legislation.[78]

Nevertheless, information from Los Angeles indicated that "early predictions that the immigrant community could never trust the INS enough to apply directly in legalization offices were grossly exaggerated."[79] The chief contractor for the INS public awareness effort went further, claiming that "fear factor" stories were just that — stories. After conducting "thousands of interviews with immigrants," he found that aliens actually trusted and respected the INS. Among those immigrants who thought themselves eligible for the program, "the INS received very high honesty levels [and the immigrants trusted] information from the INS more than they trusted information from the Church to tell them about the law."[80] Perhaps because of the complexity of the process, however, "families would send out one person as a scout to test the water."[81]

Since the INS discounted a serious "fear factor," early in its program, it took few steps to increase its accessibility to the immigrant community or to spruce up its image, other than using QDEs as a buffer (which was mandated by Congress). Its major structural response was to establish LOs away from the main INS offices, in locations more accessible to most Latino communities. This was certainly

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76. Rob Schwartz, *INS Official-Private War on Illegal Aliens*, L.A. TIMES, Apr. 28, 1986, pt. 2, at 1.

77. Hager and Beckland, *Ezell's Ouster Urged Over Statements Called Racist*, L.A. TIMES, Sept. 24, 1987, pt. 1, at 3; *Immigrant Rights Coalition Joins Campaign to Oust INS Official Ezell*, L.A. TIMES, Oct. 21, 1987, pt. 1, at 17.

78. Interview with Bill King, Director for Legalization of the Western Region of the Immigration and Naturalization Service, in Los Angeles, Cal. (Jan. 3, 1991) [hereinafter King].

79. ROLPH & ROBYN, *supra* note 35, at 82.

80. Oaxaca, *supra* note 71.

81. *Id.*

not insignificant, but other INS "strategies" for increasing accessibility were quite passive. For example, in order to show that the program worked and to encourage the participation of others, one initial INS "strategy" was to let the alien community learn of early applicant "successes." This seemed sensible since "those with simpler cases, clearly eligible for legalization" were coming forward first, while others with more complicated cases were "hanging back, waiting to see how their families and friends fare[d] with the INS."[82] This approach succeeded to a degree. "As word of individual successes spread, the INS was able to dissipate the "fear factor" and erase some of the early horror stories surrounding the program. However, the key to building trust occurred when people immediately got their temporary work authorizations."[83] Even so, these strategies relied on the undependable word of mouth, and were slowed by the extended turnover time in final approvals at the RPFs.

The INS also passively relied on the initial public awareness campaign to bolster its image. Officials believed that the simple process of providing legalization information to the alien communities in a straight-forward manner (putting the word on the street, so to speak) would show a different side of the INS, and over time, fear would subside.[84]

While these early "strategies" had some positive effect on the INS' image, initial regulations had a strong negative impact. Community organizations perceived that instead of welcoming aliens with open arms, the INS made its regulations difficult and restrictive, and generally showed a hostile attitude toward applicants.[85]

Perhaps the INS found it difficult to transcend its traditional enforcement-centered ethic, or maybe it was simply not sensitive to the difficulties that bona fide applicants might have in meeting proposed requirements.[86] The many reports that the Asian immigrant community was practically left out of the program[87] support the notion that the INS was too nonchalant in its efforts to attract targeted communities, and may have been clueless about how to do so. These INS actions and inactions evoked tremendous criticism (and lawsuits) by immigrant rights organizations and members of Congress.

As a result, the INS eased aspects of the regulations and began a

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82. HEIBERGER, *supra* note 72, at 12.
83. Davis, *supra* note 7.
84. COSCO, *supra* note 73, at 18.
85. HEIBERGER, *supra* note 72, at 6-9; CECILIA MUÑOZ, NATIONAL COUNCIL OF LA RAZA, UNFINISHED BUSINESS: THE IMMIGRATION AND CONTROL ACT OF 1986 5-7 (Dec. 1990) [hereinafter MUÑOZ]; THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 39-40; Cruhlac, *supra* note 20.
86. Avidan, *supra* note 24; Lydon, *supra* note 47.
87. MOLESKY, *supra* note 31, at 9; *see generally* ASIAN PACIFIC AM. LEGAL CTR., ASIAN PACIFICS AND U.S. IMMIGRATION POLICY: IRCA LEGALIZATION, PHASE I (1988).

new, more successful campaign to overcome immigrant fears. One new and effective INS marketing approach incorporated the personal stories of successful applicants in the INS' paid advertisements. In Los Angeles, for example, local families appeared in Spanish-language television ads to describe their grant of amnesty.[88] More important was a personal INS campaign to reach alien communities. This "effort saved the day, because the national contract did not cut it from a day-to-day operating level."[89] Outreach by LO managers and district/regional staff members included extensive "briefings, information seminars, talk-show appearances and events to spread the word,"[90] and in some areas LOs opened regularly one night a week and advertised the openings as "Thursday Night Live." Ironically, Western Regional Commissioner Ezell was one of the most visible participants in this more personal INS outreach effort, and earned plaudits from many quarters. The U.S. Catholic Conference observed:

> Senior INS officials have been accessible and have earned respect that helped break down what some have called the 'circle of fear' surrounding INS. The fear factor will never entirely disappear, but the personal effort and commitment given by many INS officials is reshaping INS' image in the public eye. . . . In the absence of an effective national publicity campaign, the places where the program has been more successful are the places where INS staff have aggressively, publicly sold legalization.[91]

As time passed, regulations were loosened, and RPF decisions on pre-1982 cases became more liberal.[92] Skeptics charged that changes were due to lawsuits filed by community groups, rather than shifting INS attitudes.[93] After all, the newly liberal INS positions on such matters as the reasons for lengthy absences abroad, reentries subsequent to 1982 with nonimmigrant visas, and the amount of documentation required were actually ideas and policies proposed by community groups at the start of legalization but rejected by the INS.[94]

Yet INS defenders could point to an institutional desire to reach eligible aliens. INS Commissioner Nelson asked LOs to be helpful to alien applicants, and training reflected these wishes.[95] Of course, treating actual applicants well does not indicate a desire to maximize the

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88. George Ramos, *Critics Label 11th-Hour Amnesty Publicity Push as Too Little, Too Late*, L.A. TIMES, Feb. 16, 1988, pt. 2, at 1.
89. Davis, *supra* note 7; King, *supra* note 78.
90. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 18.
91. *Id.* at 20.
92. NORTH & PORTZ, *supra* note 45, at 14-15; MUÑOZ, *supra* note 85, at 5-7; Cruhlac, *supra* note 20.
93. Avidan, *supra* note 24; Cruhlac, *supra* note 20; Lydon, *supra* note 47.
94. THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 45.
95. ROLPH & ROBYN, *supra* note 35, at 73.

number of applicants. Even in this cynical view, however, INS would have known that its policies would have such an effect to some extent. The INS public awareness program contractor verified that officials were in fact very interested in increasing the number of applications.[96] After all, legalization was supposed to be self-funding and a low number of applications would result in a funding shortfall.[97] INS wanted public information to ensure that all aliens at least *knew* of the program, regardless of whether or not they would apply.[98]

Gradually, the immigrant's view of LOs, and to an extent the entire INS, improved. The negative connection that immigrants initially made between the INS and its LOs proved beneficial to the entire INS in the long run. Over time, LOs were challenged to change applicants' minds about the INS by setting a "positive tone."[99] Fear could not be entirely put to rest, "but the personal effort and commitment given by many INS officials [helped to reshape] the agency's image [not just that of LOs] in the public eye."[100]

Eventually, a confluence of events changed the amnesty applicants' image of the INS. The legalization program represented a completely "new ballgame," and the INS could claim to be the friend of illegal immigrants.[101] Neighborhood LOs worked. There were no uniformed Border Patrol officers at LOs,[102] and the offices were described by many as open, clean, friendly, and accessible places.[103] The "new look" image of the INS — amicable and service-oriented — made a big difference. Local outreach by LOs and district personnel was unprecedented. The LOs' attempt to reach out into the immigrant community was massive and inventive; "[f]or a period of time, 25 to 30 percent of all district staff were allocated to public relations appearances. . . ."[104] As regional and LO staffs became personally involved and interested in the program, they took it upon themselves to perform the outreach that the Washington headquarters was unwilling to do. An eventual loosening up of regulatory requirements, whether voluntary or a result of litigation, also attracted some applicants.

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96. Oaxaca, *supra* note 71.

97. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 56-57.

98. Davis, *supra* note 7.

99. Souza, *supra* note 37.

100. Cosco, *supra* note 73, at 47; *see also* Davis, *supra* note 7. However, Davis sourly added that after a while only the LOs received good press while the rest of the INS was treated as before. *Id.*

101. NORTH & PORTZ, *supra* note 45, at 29.

102. One set of researchers reported that the INS made "vigorous" efforts to keep uniformed Border Patrol officers out of its LOs. NORTH & PORTZ, *supra* note 45, at 12.

103. NORTH & PORTZ, *supra* note 45, at 13; ROLPH & ROBYN, *supra* note 35, at 74; Davis, *supra* note 7; *see also* Cosco, *supra* note 73, at 19.

104. ROLPH & ROBYN, *supra* note 35, at 80.

D. *INS Outreach*

Public awareness was critical to the success of the legalization. From the instant IRCA passed, CBOs and immigrant rights activists moved to inform the community of eligible aliens. For CBOs and community activists, it was a chance to help undocumented aliens regularize their status and come out from the shadows of second-class citizenship where they had been subjected to exploitation and intimidation. While some members of Congress had the same motives,[105] the INS was less enthusiastic. Most pro-legalization members of Congress, as well as the CBOs, activists and community members, had to exhort the agency charged with the responsibility of carrying out the law to show that INS personnel were sincere about legalization.

Realizing the importance of an effective public awareness program, Congress made outreach suggestions to the INS. Legalization campaigns in other countries had been severely undermined by poor public education, so congressional sponsors called for a publicity campaign that would be both broad and deep. In order to reach into communities which distrusted government authorities and did not interact regularly with mainstream culture, legalization efforts needed the expertise and commitment of groups that had historically worked with immigrant communities. For example, the House Judiciary Committee stated that:

> The Committee hopes that by working through the voluntary agencies, the Attorney General might be able to encourage participation among undocumented aliens who fear coming forward. To assist in this endeavor, the bill authorizes the Attorney General to fund outreach service and provides for an extensive education and outreach program prior to the application period.[106]

CBOs and community activists also called for a public awareness program that reached into the heart of the community. To them, outreach involved finding people who had not heard about or did not understand the legalization program, helping them to determine if they qualified, and encouraging those who were eligible to apply. It required developing expertise about a variety of communities, learning of diverse elements and needs of specific communities, and seeking assistance and input of institutions from within them. Immigrant support organizations therefore recommended that outreach be conducted through alternative networks such as churches, schools, civic and ethnic groups, unions, immigrant service agencies, and ethnic media.[107]

But with less than half the money it thought was needed to conduct

105. *See generally* Appendix B.
106. H.R. REP. NO. 682-1, *supra* note 17, at 73.
107. MUÑOZ, *supra* note 85, at 9.

outreach, the Service looked outside the government and the affected communities for outreach responsibilities. The INS had sought $25 million for a mass media campaign and outreach program to be conducted by advertisers, immigrant service organizations and INS officials. But Congress allotted $10.7 million, and designated half for legalization and half for employer sanctions.[108] In April 1987, the INS hired the Justice Group — a consortium comprised of a Latino-owned communications firm, an ad agency and a branch of the world's largest advertising firm to coordinate its entire funded publicity campaign. Direct funding for outreach was withheld from all immigrant service organizations at this stage.

The plan initially proposed by the Justice Group responded to congressional hopes and community group suggestions. It asserted that a mass media, Madison Avenue strategy would be insufficient to publicize legalization. In addition to media work, the Justice Group proposed that the publicity campaign include advertising and support for outreach by a broad range of organizations.[109] The expertise of the INS field staff and participating organizations were to be used in creating the campaign.

Three Phases of Justice Group Campaign. The actual course of action embarked upon by the Justice Group bore little resemblance to its original contract proposal. The consortium neither subcontracted outreach work with organizations, nor participated in outreach efforts conducted by community and immigrant service groups.[110] It did not provide materials, guidance, or advice to those ad hoc efforts. The Justice Group apparently neither solicited nor received input from INS field staff or community organizations for its own efforts.[111] Instead, the consortium simply created a broad mass media campaign of its own design to announce the existence of the program.

This first phase began in very limited form in April 1987, less than a month before the legalization window opened.[112] However, in many major metropolitan areas, including San Francisco, virtually no public education or outreach occurred before the program's start-up date.[113] The full campaign eventually began in June and lasted through October.[114] The message — conveyed through Public Service Announcements (PSAs) and paid advertisements — was simple: A new law providing legalization had passed, and people participating in the pre-1982

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108. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 10.
109. *See* MOLESKY, *supra* note 31, app. D at 25.
110. *See id.* at 26.
111. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 14.
112. *Preparing for Immigration Reform*, *supra* note 28, at 6.
113. MOLESKY, *supra* note 31, at 8-9, app. D at 26.
114. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 10; *Preparing for Immigration Reform*, *supra* note 28, at 7.

program had until May 1988 to apply. Simultaneously, a toll-free number played recorded information about legalization and employer sanctions.[115]

When the number of applicants proved to be disappointing, the Justice Group shifted into a second phase. Recognizing that applications were low because people were afraid to come forward to provide information to the INS, creators of the new strategy publicized that thousands of people had already received temporary legal status through the program, highlighted the confidentiality protections of the law, and directly encouraged people to apply.[116] But publicity regarding the possibility of applying through QDEs — which would have calmed fears among many potential applicants — was conspicuously absent from the new announcements. Nor was mention made of available assistance from CBOs.[117]

In an apparent effort to get feedback on its outreach efforts, the Justice Group conducted interviews with 700 potentially eligible undocumented people during the summer and fall of 1987.[118] It found that the vast majority of those interviewed were aware of the legalization program and viewed the INS as trustworthy and helpful. Those who had not yet applied had either not heard about it, did not know how to apply, did not have the money for application fees, thought that they were not eligible, feared the INS, or were concerned about family separation. Those unaware of their eligibility thought that either the program was only for Latinos or working people, that their use of food stamps would disqualify them, or that their ineligible family members might be deported. Half of those interviewed said that they would apply if the deadline were impending.[119]

Officially, the INS was encouraged by the results of the first two phases of public awareness efforts. Based on the results of the Justice Group's survey, the INS claimed that, during its first two phases, the publicity campaign had reached virtually every key U.S. market.[120] Justice Group legalization messages, often featuring well-known actors, were placed in sixty-seven percent of the country's major media regions.[121] The INS toll-free number received 17,000 calls in its first five days of operation,[122] and a million by the end of December 1987.[123] The campaign spent five million dollars on paid advertisements and ar-

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115. *Preparing for Immigration Reform, supra* note 28, at 6.
116. MOLESKY, *supra* note 31, at 25-26.
117. *Id.*
118. *Preparing for Immigration Reform, supra* note 28, at 7; Oaxaca, *supra* note 71.
119. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 11-12.
120. Oaxaca, *supra* note 71; *Preparing for Immigration Reform, supra* note 28, at 7.
121. Oaxaca, *supra* note 71.
122. Apparently from English speakers, because Spanish speaking messages were not available until June 22, and none were available in other languages.
123. *Preparing for Immigration Reform, supra* note 28, at 6.

ranged for another two million dollars worth of PSAs. About forty-eight percent of media dollars were spent on print, the remainder on TV and radio.[124]

However, the Justice Group's publicity campaign served some communities better than others. The campaign initially provided messages in English and Spanish,[125] and within a few months added messages in thirty-six different languages.[126] However, advocacy groups and the INS reported that while publicity made Spanish-speakers aware of the program, it failed for non-Spanish-speakers. For example, Massachusetts programs found no evidence of efforts to meet the language requirements of the state's French-speaking Haitian immigrant population.[127] Asian service organizations in the San Francisco Bay Area reported no significant efforts directed at Filipinos or Chinese.[128] Indeed, toward the end of the program, the Justice Group itself concluded that it didn't know enough about Asian immigrant communities and that it should have hired an expert.[129]

In spite of survey results and other statistics, therefore, immigrant service groups, independent commentators, and operations-level INS officials continued to report that immigrants did not know, or did not know enough about legalization. Critics acknowledged that the concentration on media in the first two phases created an awareness of the program, although some were far from satisfied because it seemed to them that most of the outreach was on employer sanctions. The same critics noted that, absent a broad-based localized outreach effort that could penetrate undocumented communities, the media campaign would not effectively get the word out or overcome fear.[130] In other words, simply knowing of a legalization program was not enough. Most applicants needed to have a conversation with someone about the program and its requirements to determine what it all meant. Simple announcement-type outreach was of limited value. Even INS field staff believed they had themselves generated the most effective publicity, "with no assistance from the media contract."[131] Justice Group public-

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124. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 11, 13.
125. *Preparing for Immigration Reform*, *supra* note 28, at 6.
126. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 11.
127. HEIBERGER, *supra* note 72, at 4, 11.
128. MOLESKY, *supra* note 31, at 9.
129. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 14; Oaxaca, *supra* note 71.
130. Silverman and Brady, *supra* note 59; MEISSNER & PAPADEMETRIOU, *supra* note 29, at 16. While the Justice Group maintains that the first phase of its media campaign focused on the existence of, and the basic requirements for, the legalization program, and the second phase told immigrants to apply, some advocacy groups reported that the publicity that appeared in their regions focused primarily on employer sanctions. MOLESKY, *supra* note 31, at 9; MUÑOZ, *supra* note 85, at 9. Others contend that this "general perception" was incorrect, but that sanctions publicity did receive half of the allotted funding. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 10, 14.
131. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 13.

ity in Los Angeles was limited to advertisements in the *Los Angeles Times*, and according to an INS regional official, "[a]dvertising in the *Los Angeles Times* for amnesty applicants was like advertising for a $100,000 a year executive in the *Free Press*."[132]

According to community agencies and independent commentators, what was *omitted* was of greater concern than what was actually printed and aired. For example, the campaign offered little or no assurance that information on legalization applications would be kept confidential.[133] This was particularly important to eligible immigrants with ineligible family members, since such family members might face deportation if the INS found them. QDEs pointed out the importance of publicizing the fact that information provided by employers was confidential. Without that assurance, some employers refused to provide the documentation that their workers needed to apply.[134] Also omitted or underemphasized in the campaign were thorough explanations of the requirements and their frequent changes. Commentators disagree about how well the INS responded to pleas for changes in requirements and regulations, but they agree that unless the changes made were publicized, they would essentially be worthless. The complex nature of much of the information required more extensive outreach than could be accomplished through the mass media.[135] Finally, the campaign did little to inform immigrants that they could get help from, and actually apply through, QDEs, which were still regarded by many as less threatening than INS LOs.[136]

Furthermore, the $2 million spent on producing PSAs may not have provided the hoped-for publicity. After two months, the *Dallas Times Herald* reported that local television stations were not enthusiastic about immigration PSAs because they were responsible for PSAs on several important topics, not just immigration. Therefore, the thirty-second legalization messages ran only once a day, and not necessarily during prime time.[137] The message of legalization was simply not a consistently high priority to local television.

Results of more research through interviews and suggestions from INS district and field office staff and immigrant service organizations formed the basis of the third phase of the Justice Group's outreach efforts.[138] Beginning in January 1988, this phase (1) emphasized the

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132. ROLPH & ROBYN, *supra* note 35, at 79-80.

133. MUÑOZ, *supra* note 85, at 9; HEIBERGER, *supra* note 72, at 14.

134. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 49.

135. MUÑOZ, *supra* note 85, at 9; ROLPH & ROBYN, *supra* note 35, at 79-80; MEISSNER & PAPADEMETRIOU, *supra* note 29, at 38-39.

136. MUÑOZ, *supra* note 85, at 8-10; MOLESKY, *supra* note 31, app. D at 26.

137. MOLESKY, *supra* note 31, app. D at 25.

138. The National Council of La Raza notes that the shift was also motivated by declining application rates and growing criticism of the earlier campaign. MUÑOZ, *supra* note 85, at 9.

impending deadline and explained misunderstood or changed application requirements, (2) developed community outreach and directly funded immigrant assistance group outreach efforts,[139] and (3) encouraged people to apply through QDEs and community agencies. At last, the Justice Group developed outreach materials and distribution ideas for community groups. Leaflets providing information about who was eligible and where they could get help were provided. Other material addressed particular concerns, such as the confidentiality of information regarding ineligible family members and the eligibility of people who had received food stamps.[140]

Although this phase was finally "on the right track," the Justice Group came under heavy criticism for not initiating concentrated and coordinated outreach much sooner as it and community agencies and had proposed at the outset.[141] Precious time and opportunities had been lost. Clearly, the combination of media and localized outreach created a much more effective publicity campaign, but to many, it had been "implemented far too late to achieve its needed impact."[142]

Outreach by INS staff. Because the Justice Group did not fund or coordinate outreach with local LOs or community groups until very late in the program, such efforts were often ad hoc, had far too few resources, and therefore failed to reach many people.[143] However, the fact that immigrant rights organizations, community groups, and some INS offices took it upon themselves to create meaningful public awareness programs contributed significantly to whatever success the legalization program ultimately enjoyed.[144] Even during the early stages of legalization, the INS central office instructed regional and district INS staff to supplement the media campaign by publicizing legalization in their areas.[145] Over time, local INS outreach, while ad hoc and inconsistent, included many clever and effective features. Throughout the country, INS staff conducted press conferences, gave interviews, met with community leaders and business people, issued press releases, distributed leaflets at ethnic community parades and events (e.g., soccer matches, kite-flying contests, legalization fairs), helped arrange special television programming with cooperating Spanish language stations, gave educational cassettes to community groups, designed subway and bus placards, conducted briefings and information seminars for community groups, spoke at community events, and appeared on radio talk

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139. *See infra* notes 210-13 and accompanying text.
140. Davis, *supra* note 7; ROLPH & ROBYN, *supra* note 35, at 79-80; MUÑOZ, *supra* note 85, at 8-9.
141. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 10-16.
142. MUÑOZ, *supra* note 85, at 9.
143. Silverman & Brady, *supra* note 59.
144. MUÑOZ, *supra* note 85, at 9-10; Lydon, *supra* note 47.
145. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 18.

shows.[146] The INS also got media attention by celebrating the opening of its LOs.[147] Many district offices used "legalization vans," which staffers drove to outlying areas or neighborhoods when giving out information, distributing and receiving applications, and answering questions.[148]

In the Western Region, where the bulk of the applications were expected and in fact received, localized outreach was often innovative. In addition to conducting "Thursday Night Live" meetings, LOs in the region published and distributed over 70,000 copies of a comicbook-like informational "novella" and disseminated more than one million general information pamphlets in several different languages. Several district offices in the region added festivals on Friday nights with refreshments and live media to publicize and encourage immigrants to apply for legalization.[149] "Tonga" nights were held at some offices to attract Pacific Islanders, and INS officials dressed in polynesian clothing.[150] Legalization reminders were placed in retail tortilla packaging and fortune cookies.[151]

The efforts of Los Angeles district officials, considered exemplary by some,[152] concentrated on ethnic media. The staff attended informational meetings and conferences with community groups, and the district distributed informational pamphlets and mailers in nine languages. At one point, up to thirty percent of the staff was making public relations appearances at church programs and community events. Western Regional Commissioner Ezell, the Los Angeles District Director, and a well-known radio personality appeared at community functions as "the Trio Amnestia" to publicize legalization. The Los Angeles District Director spoke frequently on Spanish language radio programs, and the Regional Commissioner appeared at more than 150 events and ran day-long training sessions each Saturday for four months.[153]

The Texas INS was active as well. The Houston District opened a drive-up window for work authorizations and held a celebration for its fifty thousandth applicant. And the San Antonio office used a local

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146. *Preparing for Immigration Reform, supra* note 28, at 7; ROLPH & ROBYN, *supra* note 35, at 80; MEISSNER & PAPADEMETRIOU, *supra* note 29, at 18.

147. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 19.

148. *Id.*

149. *Id.* at 18-19; King, *supra* note 78.

150. L. Hiniker, The Immigration Reform and Control Act of 1986: One Year Later, 17 (May 13, 1988) (student research paper, Stanford Law School).

151. *Id.*; Cruhlac, *supra* note 20.

152. In the opinion of two researchers for the Rand Corporation and the Urban Institute, the Los Angeles District's outreach effort was "unparalleled in reach or appeal." ROLPH & ROBYN, *supra* note 35, at 79.

153. Ezell, *supra* note 49; King, *supra* note 78; MEISSNER & PAPADEMETRIOU, *supra* note 29 at 17.

public relations firm to help with its outreach campaign.[154]

In addition to giving out information, some INS officials also listened. Complaints and recommendations by immigrants and advocacy groups led to changes at some local Legalization Offices.[155] For example, faced with contrary central office guidelines, the Western Region officials fought to schedule applicants for interviews rather than make them wait in the office. In San Francisco, a worker from a community-based organization was provided a desk and working space at the LO to counsel applicants who could not get help from INS personnel or who were afraid to ask questions of INS officials.[156] Each legalization office provided special "problem windows." One district launched a change-of-address card campaign because much of the applicant population was migratory, and if address changes were not forwarded, temporary resident cards, work authorizations, or other notices from the INS would be lost. The Los Angeles district director urged both the Central Office and its district LOs to generously interpret the eligibility of immigrants with absences from the United States.[157]

Publicity was perhaps the most critical element of legalization. Yet the campaign, contracted out to an advertising group, was flawed in content and distribution, and was especially poor in its outreach into immigrant communities. Officially, the INS contends that it transformed the program in time to salvage its effectiveness. Others are less sanguine. Advocacy groups, independent commentators and even some INS officials give little credit to the INS recovery and attribute much of the later, increased public awareness to herculean information efforts by community groups. Even this was insufficient, according to some advocacy groups who believe many people were never informed about, and therefore never applied for, legalization. In spite of the questionable effectiveness of the Service's national publicity campaign, its aggressive local outreach in concert with local community organizations went a long way towards selling legalization.[158]

IV. WHAT COMMUNITY AGENCIES DID DURING LEGALIZATION

A. *Background on Community Groups*

CBOs actively participated in the implementation of legalization.

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154. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 19-20.

155. Not all of the suggestions from community agencies were accepted, of course. This remained a source of frustration for many immigrant rights organizations. For example, in San Francisco, much of the outreach materials provided by the INS was straight out of the regulations — dull and not "user friendly." Yet INS resisted handing out materials prepared by local groups even when the contents were accurate and more clear. Avidan, *supra* note 24.

156. *Id.*

157. ROLPH & ROBYN, *supra* note 35, at 74, 75, 77.

158. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 20; MUÑOZ, *supra* note 85, at 9.

This participation emerged principally out of a sense of commitment to immigrant and refugee communities established long before the passage of IRCA. With its novel demand that the INS include CBOs in IRCA implementation, Congress formally institutionalized CBO participation in the program. Under the statute, CBOs could enter into a contractual arrangement with the INS under which applicants could file their cases directly with the CBO. The CBO would receive a fee for that service.[159] Such CBOs were also known as QDEs.[160]

Congress' decision to specifically provide for and encourage the participation of CBOs seems wise. CBOs are relatively accessible, and the QDE device sensibly addressed fears that immigrants might have of the INS. It is important to note that CBOs generally have not been the primary representatives for prospective immigrants. Private immigration lawyers far outnumber CBOs, and have historically represented or assisted more immigrants than CBO workers. In fact, the vast majority of immigrants proceed without the help of either CBOs or private lawyers. CBOs, however, are more in touch with the target communities. They are usually located in immigrant and ethnic communities, and are often staffed by people of the same ethnic and racial background of the prospective immigrants. CBO clients are also principally working class and low income, the very people who were expected to make up the bulk of legalization applicants. In hindsight, since many applicants navigated most of the procedure themselves, it was smart to strive to provide assistance and make information accessible in immigrant communities.

In general it was assumed that community agencies were more accessible than the INS and better trusted, although perhaps less authoritative. Most observers, including many within the INS, agreed that many immigrants were apprehensive about the INS. If the program were left to the INS, they concluded it would not work.[161] Congressional sponsors and others assumed that if immigrant service organizations processed the bulk of legalization applications, they would act as "buffers" between applicants and the INS.[162]

Perhaps with less confidence, the INS and Congress also hoped that the QDE program would create a new, more trusting relationship between the Service and immigrant advocacy groups.[163] By including these community organizations as fundamental actors in the legalization program, Congress acknowledged their long-standing commitment

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159. INA §§ 210(b)(2), 245A(c)(2), 8 U.S.C. §§ 1160(b)(2), 1255a(c)(2) (1988).
160. *See supra* text accompanying note 59.
161. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 21, 61; MUÑOZ, *supra* note 85, at 3; ROLPH & ROBYN, *supra* note 35, at 70.
162. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 61; MUÑOZ, *supra* note 85, at 3, 11; ROLPH & ROBYN, *supra* note 35, at 70.
163. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 62.

to, and respect within, the immigrant community.[164] By having QDEs to assist in serving as a communications vehicle, QDE's lent credibility to the program and to the INS.[165]

Many different entities became involved in the legalization assistance process. Some community agencies and programs had originally been established for immigrant and refugee assistance, such as newcomer program, Catholic Charities, and some legal services programs. Other CBOs, such as employment training programs, had little if any prior experience in assisting clients in the immigration process but still volunteered to help. Profit-making ventures also surfaced. Some entities were provided by notary publics who were already in the business of assisting people with immigration forms. Other new entities which had no immigration experience aimed to turn a profit on the millions of potential applicants. Some of the latter groups even sought and qualified for QDE status.[166]

Immigration consultant/notary publics and other profit-making, form-filing assistance ventures played a key role in urban barrios and rural areas. Many even became QDEs since nonprofit status was not a requirement. The INS lauded the efficiency of many of these new businesses. And while visions of unscrupulous or incompetent notary publics are troubling,[167] the bare truth is that in many areas — especially rural ones — notary publics are the only source of assistance for many prospective immigrants.[168] The roles of immigration consultant/notary publics and profit-making ventures were so significant that it is apparent that of the seventy-one percent of legalization applicants who self-filed with INS, a huge portion probably obtained assistance from those entities before filing.[169] Their services were pervasive, and their

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164. Community-based organizations have historically provided important services to immigrants and refugees. In 1876, the first "legal aid society" was set up in New York City to help German immigrants. BRYANT GARTH, NEIGHBORHOOD LAW FIRMS FOR THE POOR 17 (1980). CBOs, often inspired by family, cultural or ethnic links, have aided newcomers in their efforts to adjust to the new land. By the 1850's, organizations like the San Francisco-based Chinese Consolidated Benevolent Association (popularly known as the Chinese Six Companies) had begun to appear in increasing numbers to help immigrants as vehicles for self-governance and mutual aid, and for battling discriminatory laws. ROSE H. LEE, THE CHINESE IN THE UNITED STATES OF AMERICA 147-52 (1960); STANFORD LYMAN, THE ASIAN IN NORTH AMERICA 87 (1977). In my practice as a legal aid lawyer in the 1970's, and as a consultant today, I work with community agencies that provide a variety of services to immigrants, prospective immigrants and citizens who want to petition for alien relatives. This includes information and counseling on immigration rights and procedures, assistance in the immigration process, deportation defense, citizenship classes, job and language training, translation services, and the like. For many years, voluntary agencies have played a key role in resettling refugees as well.

165. Davis, *supra* note 7; MEISSNER & PAPADEMETRIOU, *supra* note 29, at 17.

166. Davis, *supra* note 7; Cruhlac, *supra* note 20; Silverman and Brady, *supra* note 59.

167. As a staff attorney for a long-established CBO put it, "The many new organizations and agencies practicing immigration law did not know what they were doing. They provided lots of misinformation." Cruhlac, *supra* note 20.

168. *Id. See* Silverman and Brady, *supra* note 59.

169. Silverman and Brady, *supra* note 59; Cruhlac, *supra* note 20; Davis, *supra* note 7.

storefronts, billboards, bus placards and other commercial advertising surely augmented official and CBO outreach.

CBOs remained the key community entities to whom the target communities — consisting, in urban areas, of low-income, working-class people — could turn as an alternative to the INS, especially in urban areas. This role of assisting prospective immigrants was a familiar one to CBOs.

B. *Explanations for the Seeming Shortfall in CBO Cases*

After IRCA passed, CBOs and profit-making ventures shared one major goal: To help get as many people legalized as possible. The patchwork of CBOs could help to achieve this goal in a variety of ways: engaging in community outreach and education, pressing the INS to be more responsive to the target communities, pushing the INS to be more liberal in its requirements and procedures, and suing the INS when its requirements and procedures violated the statute. A key way for CBOs to reach their goal was to provide direct services and to facilitate filings by serving as QDEs.

While twenty-one percent of the applications filed were with QDEs, the figure fell far short of the fifty to eighty percent that the INS and Congress expected from QDEs and other community agencies.[170] During the first five months, only fifteen percent of the total applications filed came through QDEs. As QDEs became more experienced with the process and their working relationship with the INS was hammered out, QDEs became more proficient and efficient at processing applications, and the proportion filed with QDEs slowly increased.[171] Still, the twenty-one percent figure was surprisingly low to most observers, including staff members of CBOs.

In fairness, the twenty-one percent QDE filing figure is a misleading barometer of the assistance that CBOs provided to applicants because many CBOs did not become QDEs. Not every CBO looked upon QDE status as the best means of maximizing legalization. The bad reputation of the INS, which had led Congress to create QDEs to begin with, made some CBOs reluctant to associate with the agency. In Northern California, for example, most groups resisted entering into this partnership with the INS for fear that their image in the community would get tarnished. Furthermore, the money offered in return ($15 per application) and restrictions on the amount that QDEs could charge applicants discouraged many programs from originally entering into or later continuing cooperative agreements. CBOs were nonprofit organizations

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170. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 62; MUÑOZ, *supra* note 85, at 12; ROLPH & ROBYN, *supra* note 35, at 81.

171. *Preparing for Immigration Reform*, *supra* note 28, at 10.

but most needed to charge applicants more than what the INS was allowing QDEs to charge simply to break even. Protesting San Francisco CBOs were able to get the benefit of the $15 INS compensation for QDEs by setting up a separate QDE through which applications were funneled. More often, when CBOs resisted QDE status, the CBO-assisted applicants filed with the INS rather than with a QDE. Many non-QDE CBOs provided assistance to applicants who then filed with LOs. The twenty-one percent figure does not include such advice and assistance.[172] Instead, CBO-assisted applicants were counted officially among the self-filers in the Service's seventy-one percent tally.

Also, more of the later applicants were likely to have complicated cases, involving documentation problems, lengthy absences, public charge issues, the need for expungement of misdemeanors, and the like, which required the careful attention that QDEs — particularly those with immigrant service backgrounds — could give.[173] That phenomenon at once increased the caseload of many QDEs while also limiting caseload growth, since the more difficult cases demanded greater staff time. Many QDEs had hoped to use an assembly-line approach toward applications similar to the approach used by some profit-making ventures, but the more complex cases thwarted these plans. Even CBOs with immigration experience found that tougher cases slowed them considerably. In Northern California, for example, extensive conversations took place among the members of a coalition of service providers concerning the problem of which agencies should handle complicated cases. In an important related issue, CBOs pondered how to approach local funders to explain the dilemma that handling complicated cases meant that the program could handle fewer cases, which in turn meant less reimbursement from the INS application fees. Everyone understood that whoever handled these more complex cases stood to lose money because of the extra time involved.

Other factors also directly affected the ability of QDEs to attract applicants. Some relate to their own mistakes, others to the actions and inactions of the INS. IRCA provisions were partly at fault, as were onerous rules set by the INS, the inadequate INS media campaign, and the historically strained relationship between the INS and immigrant support organizations.

Short Start-Up Time. The six-month lead time between IRCA's passage and the start of the program hurt CBOs in a number of ways. First, as in the case of the INS set up of LOs, the logistics of setting up an office structure and procedure to handle a large number of anticipated clients was difficult. Second, new and old personnel had to be

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172. INS officials agree with this assessment. Davis, *supra* note 7.
173. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 77; MUÑOZ, *supra* note 85, at 12.

trained on the legalization requirements and procedures. Third, CBOs had to wait for the INS to come up with interpretive regulations and new forms, a process which was not completed until just days before the legalization window opened on May 5, 1987. Fourth, for CBOs seeking QDE status from the INS, the application procedure and requirements were not immediately clear. Conditions for QDE status were still being hammered out during the application process. Indeed, the INS evaluated, selected and certified 550 QDEs for 977 locations in the two weeks before May 5, 1987.[174]

The impact of this delay on staff training is fairly obvious. While the training of its own LO staff was completed by the May 5 start-up date, INS training of QDE staff took place between April and December 1987, with additional training sessions scheduled as procedures and regulations or QDE staffing changed.[175] Certainly, QDEs and other CBOs were able to get some training without the assistance of INS, but it had to be self-generated, sometimes with the assistance of support center CBOs such as the Immigrant Legal Resource Center in Northern California or pro bono attorneys from the private immigration bar. One problem with the non-INS training was that, since the trainers were a step or two behind the INS in the information chain, they had to guess at what the INS might or might not require.

As a result of the training and information gap, many immigrant and service groups which had become QDEs were not ready to help enough immigrants early in the program. Their track record of dependable service and support attracted many prospective applicants to their doors.[176] But waiting lists quickly became so long as with Catholic Charities in San Francisco and Los Angeles, for example, that appointments were sometimes set for months later.[177] Not surprisingly, many applicants on the QDE waiting list got discouraged and went directly to the INS, notary publics or other profit-making ventures.

Self-Funding Requirement for the Legalization Program. Interestingly, the IRCA requirement that the pre-1982 legalization program be funded by applicants' fees caused set up problems for QDEs but not for the INS. While other problems impeded the INS during its initial set-up, the self-funding requirement did not. The INS was permitted to use general funds at the outset, and later to reimburse the funds from legalization receipts.[178] For QDEs, it was a different story. First, unless

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174. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 61-65; 35 INS REPORTER, *supra* note 28, at 9; THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at i-iii.

175. Preparing for Immigration Reform *supra* note 28, at 8-10. The INS Outreach Office helped to set up much of this training, contracting with the Immigrant Legal Resource Center which I direct to conduct much of the training nationwide.

176. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 66.

177. MOLESKY, *supra* note 31, at 8.

178. ROLPH & ROBYN, *supra* note 35, at 61, 67.

QDEs could get advance funding from the INS, their own parent organizations or private foundations, they were unable to begin extensive preparations until they had begun to file applications. While INS provided advance funding for national QDEs, there was nothing for the more numerous purely local QDEs. In addition, even the available advance funding proved insufficient for adequate preparations.[179]

Limited Resources and the Group Processing Experience. Even after startup, CBOs were always short of funds. The INS awarded QDEs $15 per completed application out of the $185 per person application fee, and permitted QDEs to charge an additional $110 per client. This contrasted sharply with the experience of those CBOs which had received $500 per person in government grants for processing applicants under refugee resettlement programs.[180] The maximum $125 potential income per person for legalization made it difficult for programs to survive.[181] Many, such as Catholic Charities, had invested in equipment, software programs and other overhead costs, anticipating that the $15 share of INS fees and assistance income from masses of applicants would make them profitable. In fact, they handled too few applicants to cover their expenses.[182]

QDEs with immigrant service backgrounds undertook significantly more work than these reimbursement and permissible charges could cover.[183] Complicated cases were money-losers. They required staffs to spend more hours per case, which meant that the staff would be handling fewer cases, and reduced QDE fee receipts and INS refunds. With less income, staff had to be laid off, exacerbating the inability to handle more cases. Ironically, the programs that spent staff time on local outreach and community education during the initial stages of the public awareness program — when the INS outreach was most ineffectual — were now inadequately funded.[184]

The fee issue was complicated for CBOs, not only because QDEs were limited by contract on the fees that could be charged, but also because they wanted their programs to be fair to needy clients while providing good services. Because of the strain placed on their resources, within a few months about twenty percent of immigrant service organizations had withdrawn as QDEs, and others had scaled back their ser-

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179. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 65.

180. ROLPH & ROBYN, *supra* note 35, at 70; THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 10-13.

181. ROLPH & ROBYN, *supra* note 35, at 70. Many QDEs felt that the $185 per application fee was too high already, and were troubled by the prospect of charging poor people additional fees. MUÑOZ, *supra* note 85, at 11.

182. King, *supra* note 78; THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 12.

183. MUÑOZ, *supra* note 85, at 11-12; Cruhlac, *supra* note 20.

184. *See infra* notes 210-13 and accompanying text.

vices.[185] Some of the dropouts continued to help immigrants, sometimes charging from $200-$300 per application.[186] This was still cheaper than the fees ($500-$3,000) charged by many private attorneys, immigration consultants/notaries public, and new profit-making ventures.[187] Most of the QDEs which had immigrant service experience and which maintained their QDE status received subsidies from their parent organizations or from private funding sources.[188] But because of their past immigration experience and commitment to serving the neediest clients, community-based QDEs generally processed the most complicated cases, and the decision to charge per application rather than according to the difficulty of the case, or per hour, worked against them.[189] On the other hand, some applicants were likely dissuaded from using the services of CBOs who were charging fees, because they could file directly with INS and pay only a filing fee. Finally, and perhaps not surprisingly, many CBOs waived assistance fees for needy clients and did not aggressively seek clients in order to establish a fee base.[190]

The manner in which most CBOs handled cases may not have been the most efficient. Staffs were extremely hard-working and dedicated, but most of their work was performed on a one-on-one, case-by-case approach—the conventional caseworker or legal worker style used by most agencies for years. This style could not respond to the high volume which many agencies attracted, and many people, impatient with appointment lists, gave up and went directly to the LO. Some programs developed assembly-line approaches where individuals in the office specialized in certain parts of the application, and the client would move from one unit of the office to another as the case progressed. The Immigrant Legal Resource Center developed models and materials for service groups to work more actively with applicants on a group processing basis, thus making the process more efficient and enabling immigrants to help themselves.[191] An effective AFL-CIO program in Los Angeles used a similar approach.[192] But most programs did not use

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185. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 65, 67.

186. *Id.* at 65.

187. Silverman & Brady, *supra* note 59; MOLESKY, *supra* note 31, at 7. Of course, in the case of immigration consultant/notaries public, the bag is a mixed one. Some charged small fees (e.g., $80) for simply filling out forms and were committed to helping out community residents; others charged hefty fees ($1,000) for similarly simple cases. Irrespective of the motivation, they were usually effective in terms of helping the client put together an approvable application.

188. ROLPH & ROBYN, *supra* note 35, at 82; MOLESKY, *supra* note 31, at 29-32.

189. Cruhlac, *supra* note 20; Silverman & Brady, *supra* note 59; MOLESKY, *supra* note 31, at 7.

190. Cruhlac, *supra* note 20.

191. Silverman & Brady, *supra* note 59.

192. Interview with Eric Cohen, former Staff Attorney, Labor Immigrant Assistance Project, AFL-CIO, in Los Angeles, Cal. (May 3, 1992) [hereinafter Cohen]. *See generally* R. Lazo, Latinos and the AFL-CIO: The California Immigrant Workers Association as an Important New Development, (1990) (unpublished student research paper, Stanford Law School) [hereinafter Lazo]; *see infra* note 248 and accompanying text.

group self-help methods even for their most straightforward cases.

Private foundations helped in some cases by subsidizing some direct service providers. Much of their money went to fund local outreach efforts and support services, however, a few foundations except those in Northern California looked closely at the efficiency of service programs when making grant decisions.

A Strategy of Over-Preparation. In order to avoid having applications bounced back by the INS, QDEs established a strategy requiring applicants to over-document their cases.[193] The strategy was understandable given the logistics of the QDE relationship with INS. However, lack of clear guidelines or feedback from the INS on what constituted a clearly qualified application, and inconsistencies among interviewing officers and LOs, forced QDEs and their clients to prepare and document airtight cases.[194] Service and advocacy-based QDEs spent an average of eight to ten hours per application, and six weeks often elapsed while supporting documents were gathered.[195]

After some months, the INS came to recognize this dilemma, and told QDEs that they did not need to prepare perfect cases. At the same time, however, the INS warned QDEs that if unprepared cases were submitted, they could lose their QDE status. QDEs therefore continued to err on the side of caution.[196] The increase in complicated cases handled by QDEs as legalization progressed fostered the instinct to require substantial documentation from clients.[197]

Competition from New "For Profit" QDEs and Businesses. Traditional CBOs faced stiff competition for applicants from profit-making ventures formed in specific response to legalization.[198] An astounding ninety percent of the QDEs in the Los Angeles area were newly-established businesses.[199] Those organizations saw their task as a business proposition, concentrated on volume and productivity, and in the end, processed more applications per staff hour than groups long committed to immigrant service.[200] They honed in on straightforward cases and generally rejected problem cases such as those involving criminal issues or public charge problems, referring them instead to nonprofit programs.[201] Many engaged in marketing research, consulted with practi-

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193. *See, e.g.*, THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 41-43.

194. *Id.* at iii-iv, 42-44; MOLESKY, *supra* note 31, at 6.

195. MOLESKY, *supra* note 31, at 8.

196. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 45-46.

197. MOLESKY, *supra* note 31, at 8; MUÑOZ, *supra* note 85, at 11; ROLPH & ROBYN, *supra* note 35, at 82.

198. Silverman & Brady, *supra* note 59.

199. ROLPH & ROBYN, *supra* note 35, at 81.

200. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 67-68; ROLPH & ROBYN, *supra* note 35, at 69-70.

201. Cruhlac, *supra* note 20; Silverman & Brady, *supra* note 59.

tioners for suggestions, hired professionals with experience in office efficiency, and sought out employees with bilingual capacities. Once underway, they focused on dispensing and completing applications rather than on providing in-depth counseling and other assistance.[202] Traditional immigrant rights groups found it difficult to compete with the many for-profit businesses in terms of efficiency and business acumen. The profit-making ventures had shorter waiting times for clients, completed their applications more quickly and initially took a more lenient position on documentation that turned out to be sufficient for eligibility.

In San Francisco, one such business was Express Lane, which opened up next door to the INS LO. It made a profit during legalization by filing 2,500 pre-1982 and 1,500 SAW applications and charging $190 per application. With a staff of six persons, Express Lane used checklists for staff and clients, sample letters, and a self-designed computer program for completing documents such as translations of birth and marriage certificates, and set a goal of completing every application within a week of a client's first visit. At the initial visit, each client was given a large envelope with a documentation checklist attached and instructed applicants to follow the checklist. Apparently this worked for Express Lane clients. According to the owner, none of their pre-1982 cases were rejected.[203]

Of course, not all customers at for-profit businesses had pleasant experiences. In fact, some notary public offices became notorious in certain communities for charging outrageous fees, misleading clients, and not providing the promised service.[204]

Confidentiality. The promise of confidentiality attracted many legalization applicants directly to the INS. Under IRCA, the INS could only use information from the application to determine legalization eligibility.[205] Thus, unless someone committed fraud in the application, an applicant who was found ineligible could not be deported. Although early publicity by INS senselessly neglected to publicize this feature, outreach by community groups highlighted confidentiality protections from the outset. Over time, as immigrants learned that they could trust the Service's commitment to confidentiality, they began to apply at the LOs rather than at QDEs.[206] At the same time, the INS felt it could process more applications through LOs than through the slower QDEs. This was significant since the INS was to pay for the legalization pro-

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202. *See* MEISSNER & PAPADEMETRIOU, *supra* note 29, at 67-68.

203. Interview with Sammy Baaghil, Owner of Express Lane, in San Francisco, Cal. (Mar. 31, 1992).

204. Silverman & Brady, *supra* note 59.

205. INA § 210A(b)(6), 8 U.S.C. § 1161(b)(6) (1988); INA § 245A(c)(5), 8 U.S.C. § 1255a(c)(5) (1988).

206. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 78.

gram out of filing fees, and needed applications and fees to come in quickly to help reimburse its general budget for costs advanced at startup.[207] As a result, the INS finally caught on to the benefits of stressing confidentiality, and had little incentive to mention QDEs in its publicity campaign.[208]

Competition from Legalization Offices. Thus, it comes as no surprise that INS LOs posed the greatest competition for applicants to the QDEs and that the LOs won. In general LOs were in operation by the program startup date of May 5, 1987, while many QDEs were still getting organized. The INS public awareness program rarely mentioned QDEs; many applicants were simply not aware of the fact that they could file with QDEs. In addition, the INS' efforts to train LO staff to be open and helpful, while not perfect, convinced many applicants to trust the INS.[209] Aside from the filing fees ($185 per adult, $50 per child, or $420 per family), service at the LOs was free, while QDEs could charge up to an additional $110. Filing at the LOs was also more practical since they determined what constituted a sufficient application, while many QDEs tended to over-prepare and demand more of clients than necessary to avoid having the case sent back by the LO. For many applicants, community agencies were viewed as less authoritative, less capable of ultimately resolving a situation. Finally, only LOs could distribute work authorization permits immediately upon the filing of an application. In contrast, applicants who filed with QDEs had to wait until their applications were forwarded to LOs before employment authorization was issued. It was when an applicant needed a waiver of excludability or had some other complicated problem (e.g., lengthy absence, criminal conviction, public assistance receipt), that the applicant would leave the LO in search of assistance from a QDE with immigration experience or perhaps from an immigration lawyer.

Media and Outreach. The Justice Group's nation-wide publicity campaign, roundly criticized by both the INS and immigrant advocacy groups, reduced the number of filings with QDEs in two ways. First, by the time the publicity campaign reached most immigrant communities, the INS and the Justice Group decided to delete mention of QDEs. Second, QDEs with immigrant service backgrounds, who were committed to seeing everyone eligible for legalization apply, found it necessary to take on time-consuming, non-application, legalization responsibili-

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207. Of course the profit motive for ignoring QDEs is not altogether sensible. Except for early timing of receipts, eventually, once QDEs received application fees, they were forwarded to INS and most work on the application would be completed. So it might have been more cost-effective to wait for QDEs to process applications.

208. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 58.

209. *Id.*

ties. The Justice Group's outreach was simply too little and too late.[210] For many who ultimately applied, the type of outreach performed by INS was not enough. Before they could become confident enough to apply, they needed to talk with someone — often at length — about procedures, requirements, confidentiality, and the like. A mere announcement of legalization availability provided insufficient information for applicants to determine whether or not to apply.

As a result, QDEs and other CBOs spent considerable time and resources on outreach by providing extensive educational, public relations and counseling services. Throughout the country (albeit principally in urban areas), agencies regularly conducted public forums where people could ask questions, pick up information, and look at the requisite forms. Informational tables were set up at churches and other public meeting places; brochures, bus placards, and media packets were developed and distributed. One coalition in New York organized an immigrant neighborhood canvassing campaign,[211] and a San Francisco group created and distributed comic-book style information booklets and hand-out cards about legalization.[212] The Catholic Conference Migration and Refugee Services network alone provided information to nearly 475,000 potential applicants.[213]

Relationship between INS and QDEs with Advocacy Missions. During the course of legalization, the INS and immigrant service organizations were engaged in a constant, complicated love-hate relationship. Given the immigrant service focus of legalization, it was natural to expect the work of CBOs and the INS to overlap. In addition, their coexistence was institutionalized by the QDE concept in the statute. Congress may have hoped that the nature of the work and inter-reliance would forge a partnership between the INS and CBOs.[214] The two groups did in fact work together to help immigrants apply for legalization, but over the course of the program, the two sides often distrusted each other.[215] Agencies maintained that the Service's heart remained in enforcement. The INS claimed that agencies would not accept, and would fight, any limits on legalization.[216] To say that every CBO and every INS official was part of these battles would certainly be an exaggeration, but friction between many INS officials and CBOs was

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210. MUÑOZ, *supra* note 85, at 12.
211. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 15.
212. MOLESKY, *supra* note 31, at 32.
213. THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 37.
214. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 59, 62.
215. Some immigrant-service QDEs maintained good relationships at the local level. The U.S. Catholic Conference Migration and Refugee Service encouraged its member agencies to develop good relations with legalization offices. Catholic Charities of Los Angeles had "an excellent working relationship at all levels of the Western Regional Office of the INS." THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 41.
216. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 62.

evident.

The statements of INS officials about immigrant advocacy groups reveal much about their sentiment towards those groups. From the INS perspective, the main problem was that groups "could not let go of their old battles" with INS, step out of their advocacy roles, and join the team. According to Bill King, the assistant Regional Commissioner for the Western Region, advocates totally abandoned cooperation. The groups tried to help "their" people, but really had an independent agenda. They always wanted more, such as amnesty without employer sanctions. King felt that his attempts to gain cooperation from immigrant rights groups consistently turned up empty.[217] According to Regional Commissioner Ezell, the INS could not get any "bullshit" Latino politicians to support the INS until after a year of effort when a small LULAC chapter in Bellflower, California agreed to help.[218] Ezell had little respect for advocate groups who, in his opinion, really did not care about their people. Ezell found "wearing that stupid Mexican sombrero [for the Trio Amnestia]" unpleasant, and insists that advocacy groups tried to protect their interests by advising potential applicants to stay away from the INS and allow them to take care of their needs.[219] Still, he feels that INS embarrassed the groups by outperforming them in attracting applicants.[220]

INS officials also chided immigrant service groups for alleged "inefficiency and ineffectiveness," comparing them unfavorably to the more entrepreneurial organizations.[221] INS claimed that the latter groups did a better job because they were clear about what they wanted to do — make a profit — and were staffed by paid professionals. Unlike conventional community service groups whose focus was blurred because of "old agendas" and axes to grind, the for-profit ventures could focus on efficiency and volume.[222]

Immigrant advocacy groups submit that they had a job to do — to get as many people legalized as possible — and that the job included putting pressure on the INS to implement the law fairly and efficiently.[223] Before IRCA, many groups that became QDEs consistently and effectively battled the INS on behalf of documented and undocumented immigrants. After IRCA's passage, many criticized the Service's draft IRCA regulations, and continued to publicly oppose the

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217. King, *supra* note 78.
218. Ezell, *supra* note 49.
219. *Id.*
220. *Id.*
221. King, *supra* note 78.
222. MEISSNER & PAPADEMETRIOU, *supra* note 29, at 76; MUÑOZ, *supra* note 85, at 12; Davis, *supra* note 7.
223. The entrepreneurial organizations had some of the same interests in this narrow way, yet they did not generally participate in this type of lobbying. Instead, they rode on the coattails of the successes of the immigrant advocacy groups.

other half of IRCA-employer sanctions.[224] During the legalization process, these groups kept pressure on the INS central, regional, district, and LOs.[225] They pointed out problems to the INS, and fought for changes. Frequently, the INS Central Office or Regional Office did not communicate policy and regulatory changes to its LOs.[226] CBOs learned of a change, usually because they had originally promoted it, and alerted local INS adjudicators.[227] Local INS officials viewed this as meddling on the part of CBOs. In extreme cases, advocacy groups brought lawsuits challenging unreasonable regulations and INS interpretations, and not surprisingly, those actions irritated INS officials the most.

Many immigrant advocacy groups worked closely together. Clearly, IRCA served as a catalyst for the formation of immigrant rights coalitions which gave service agencies and the immigrant community a stronger, more unified voice.[228] Some of the new coalitions included the Coalition for Humane Immigrant Rights of Los Angeles,[229] the Massachusetts Immigrant and Refugee Advocacy Coalition,[230] and the Coalition for Immigrant and Refugee Rights and Services in San Francisco.[231] The San Francisco group provided monitoring and oversight of legalization implementation, and resources for questions about IRCA. Other groups, like the Mexican American Legal Defense and Education Fund, the Asian Pacific American Legal Center, the Immigrant Legal Resource Center, the U.S. Catholic Conference, and the International Institute worked independently as well as in coalitions, shifting much of their established advocacy and assistance efforts to the legalization program.[232]

Aside from the goal of maximizing legalization, many immigrant advocates were motivated to work tirelessly and cooperatively by a shared longstanding mistrust of the INS that came from years of working on behalf of immigrants. Because the legalization program started with some unreasonable regulations and policies, immigrant service groups were compelled immediately to advocate changes on behalf of immigrants. That advocacy often became adversarial rather than cooperative. Perhaps the perceived need to eye the INS carefully, maintain

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224. The U.S. Catholic Conference noted that it was never comfortable with the employer sanctions provisions, but still chose to participate in the legalization program. THE PERSPECTIVE OF THE U.S. CATHOLIC CONFERENCE, *supra* note 52, at 47.

225. MUÑOZ, *supra* note 85, at 3-4, 12.

226. *Id.* at 13. QDEs called outreach on rule changes "abominable." ROLPH & ROBYN, *supra* note 35, at 80.

227. MUÑOZ, *supra* note 85, at 13; ROLPH & ROBYN, *supra* note 35, at 80.

228. ROLPH & ROBYN, *supra* note 35, at 93; Lydon, *supra* note 36.

229. ROLPH & ROBYN, *supra* note 35, at 71.

230. HEIBERGER, *supra* note 72, at 17.

231. Silverman & Brady, *supra* note 59; MOLESKY, *supra* note 31, at 9.

232. Lydon, *supra* note 47.

pressure, and raise and publicize important issues was unnecessarily contentious in some instances.[233] But the various roles that advocates assumed were necessary.

In spite of resource problems, most immigrant service groups now defend their legalization work as productive. As advocates, they pushed for liberalization of the Service's family unity policy to prevent the separation of legalization applicants and their ineligible spouses or children, and its policies on absences, reentries with visas, and documentation requirements. They pressured INS to conduct better publicity and outreach, including funding community agency outreach, and came close to winning an extension of the application period.[234] They lobbied the INS and Congress on many matters, filed lawsuits, and alerted the media to unfair or badly considered INS policies.[235] At the urging of immigrant advocacy groups, the Los Angeles district opened "problem windows" at each LO, and on the advice of Asian American activists opened an LO in a downtown neighborhood within the vicinity of many immigrants and service organizations.[236] Immigrant service groups felt that because of their efforts, in the end the INS liberalized several policies to make more immigrants eligible for legalization and to enable those eligible to apply more easily.

To the immigrant advocacy groups, the INS dismay over their demands and aggressive representation was misplaced. They felt that any group taking its assistance role seriously was going to end up at odds with an INS decision or approach from time to time, and INS officials should not have had such a difficult time accepting this role of CBOs — to advocate for applicants, point out errors, and to press the agency. And INS should not have expected a QDE contract to transform CBOs into INS rubber stamps.[237] Indeed, CBOs had a constant uphill battle with the INS — over things such as accessing information on procedures and requirements, getting the word out, and hiring more staff.[238]

Certainly, the problem should not be overstated. Many CBOs and QDEs rejected the pressure tactics and lawsuit strategy — some because they lacked the resources to litigate — finding it possible to maintain a good working relationship with INS throughout legaliza-

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233. ROLPH & ROBYN, *supra* note 28, at 83.

234. 65 INTERPRETER RELEASES 459 (1988); Lee May, *Later Deadline for Aliens Opposed; Immigration Chief Against Extending Law to Admit Them*, L.A. TIMES, Jan. 14, 1988, at 19.

235. The Immigrant Legal Resource Center informed media in the San Francisco Bay Area when family members of legalized immigrants were put into deportation proceedings. Similarly, in Massachusetts, Cardinal Bernard Law was quoted in *The Boston Globe* denouncing INS family policy as "an absolute travesty" and expressed outrage that "a mother and father would get amnesty and a spouse and children would not." HEIBERGER, *supra* note 72, at 6.

236. ROLPH & ROBYN, *supra* note 35, at 74.

237. Lydon, *supra* note 47.

238. Cruhlac, *supra* note 20.

tion.[239] In San Francisco, for example, CBO representatives generally described the relationship between the INS and community agencies as cooperative and good.[240] Monthly liaison meetings were held between CBO staff and the heads of the LO. The LO was very accommodating to CBOs — their staff needs and those of their clients were given special priority — and the door was always open to the chief legalization officer. The LO also provided space for an agency information desk. The successful cooperation between the community agencies and the LO was due in large part to the personalities of people at INS — especially the chief of legalization for Northern California — who recognized the benefits of a joint working relationship.[241]

Irrespective of the accuracy of INS or CBO perceptions of their relationship, the fact that tension and lack of cooperation existed between them raises the question of whether these problems hindered the overall implementation of legalization. Although one can only speculate, it would seem that a better relationship might have enabled CBOs to be more persuasive with INS on changing restrictive procedures, and the Service could have better utilized CBO credibility. On the other hand, one could insist that without the pressure and litigation brought to bear on the INS through CBOs and immigrant rights advocates, fewer immigrants would have been served.

C. *Conclusion*

Legalization was difficult for QDEs with immigrant service backgrounds. They failed to file as many applications as expected, faced financial hardship, and constantly struggled with the INS. However, their high quality assistance made it possible for people with complicated cases to apply. They insisted upon regulatory changes which made more people eligible for legalization, and removed bureaucratic barriers for many who were eligible to apply. In addition, their outreach was broader and more helpful than that of the Service. In these and other ways, QDEs were responsible for making legalization available to hundreds of thousands of people who would otherwise have been denied the security and opportunities it provided.

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239. I think INS and CBOs have to recognize that CBOs as a whole have a dual role, namely of working things out cooperatively with the INS as much as possible, but taking an adversarial position — even to the extent of litigation — when necessary. For example, during legalization, groups were disappointed over the Western Region's strict approach on documenting residency. A suit was contemplated, but at the same time meetings and discussions with INS officials continued. Finally, INS backed off and the situation ceased to be intolerable and a suit was not filed. The changes were credited with increasing the percentage of approved cases.

240. Cruhlac, *supra* note 20; Souza, *supra* note 37; Avidan, *supra* note 24.

241. Avidan, *supra* note 24; Silverman & Brady, *supra* note 59.

V. LESSONS TO BE DRAWN FOR OTHER AREAS OF IMMIGRATION BENEFITS

In spite of INS and CBO efforts — whether one assigns to them a negative or positive gloss — everyone agrees that many eligible aliens did not apply for legalization. Among the many reasons which have emerged from conversations with undocumented immigrants today, the following stand out.

- Potential applicants were misinformed about the requirements. At the outset, some inaccurately thought they did not qualify. Others inquired and were told that they were ineligible, and never learned that certain interpretations (e.g., on absences, public charge, reentry with visas) were more liberally construed later.
- Applicants were discouraged or confused by requirements and procedures themselves. Many did not understand the INS outreach and written materials; others who had not worked had a hard time obtaining supporting documents.
- Applicants withdrew when intimidated by the INS interviewer. The prospect of a hostile interviewer and reports of exacting requirements from some officers dissuaded others from applying.
- Applicants simply feared or distrusted the INS.
- Slow investigation and approval by the regional processing facilities deterred applicants.
- Many worried their application would expose ineligible family members who would then be deported.
- Many applicants found the process too expensive. Fees for medical exams, fingerprinting, photographs, notary publics and counseling, coupled with the basic filing fee could be overwhelming.
- Many applicants could not find help.
- Some parents incorrectly believed that their children were automatically included in the adults' applications because the application asked for names and biographic information about children.
- In spite of the outreach efforts described above, some potential applicants were unaware of the program until it was too late to apply.

The purpose of this article is not to decide if legalization, on the whole, was a success or a failure. Certainly, the 1.7 million who applied under the pre-1982 program were fewer than the typical low-range estimates articulated before the program began. But legalization succeeded for those who applied and who were approved, and failed for those who did not hear about legalization or who failed to apply.

In ways that were at times innovative, the INS and CBOs tried to address most of the reasons non-filing eligible aliens gave for not completing or commencing the process. Out of this experience, lessons can

be culled for the largely self-help immigration process that continues today.

INS implementation of legalization, while far from perfect, included innovations that boosted the number of applicants. While initiated late in the game, community information programs — particularly those at local levels — showed a seriousness about attracting applicants. LOs, their separation from INS enforcement sections, attempts to work with community agencies, sensitive INS staff training, an effort to hire non-enforcement minded LO workers, legalization vans, extended hours, and even "Tonga" nights all revealed an INS desire to be accessible, friendly and helpful, and to change its image. From a militant immigrant rights perspective, all of these strides could have been taken much further. But the truth is that the positive aspects of these steps surprised many of us.

Its uniqueness does not render the legalization experience irrelevant to the procedures necessary for implementing the general immigration laws. Without doubt, legalization was special. But legalization was a temporary shift in eligibility rules, not a lowering of standards for immigration categories. The responsibility for implementing IRCA was assigned to INS. Under the Immigration and Nationality Act, the Attorney General is responsible for administering all laws "relating to the immigration and naturalization of aliens;" this includes establishing regulations, developing forms, providing instructions, and anything else "necessary for carrying out [this] authority."[242] The Attorney General discharges this responsibility through the INS. As in legalization, everyday INS duties include providing substantive and procedural information on immigration categories, naturalization rights and eligibility rules. While the short filing period of legalization does not apply to all immigrant visa and naturalization cases,[243] the statutory responsibility is no less special in everyday immigration matters.

The legalization goal of eliminating the underclass of undocumented immigrants can also be addressed by better INS efforts in everyday cases. Addressing the class of exploitable aliens was an aim of many legalization supporters in Congress,[244] yet large numbers in the class remain in the United States. Another legalization program is unlikely in the near future. Thus, by facilitating applications of the undocumented who are presently eligible for immigration benefits under standard immigration law provisions, the Service can help to eliminate the

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242. INA § 103(a), 8 U.S.C. § 1103(a) (1988).

243. There are indeed situations where prospective immigrants must act expeditiously or risk losing the opportunity to obtain benefits. For example, a child who is close to turning 21 years old may lose out on immediate relative status. HING, *supra* note 3, at 80. And when priority dates for people on preference category waiting lists are reached, they must act quickly, because a retrogression in the priority date can take place in subsequent months. *Id.* at 109-10.

244. *See* Appendix B.

undocumented underclass.

Another question remains, one which was important in legalization as well: Is INS the best organization for the task of outreach, information, and assistance for general immigration benefits? Perhaps. The very best entity might resemble the small number of CBOs that employ efficient community education and group counseling and assistance. But given its resources, the INS remains the institution with the potential to do the most good, even though the training of staff and revisions to procedures that were employed during legalization would be necessary. During legalization, the historically adversarial and enforcement-minded nature of INS was a considerable hurdle for the more generous LOs to overcome. Convincing mainstream INS offices to undergo a similar transformation would be an even taller order.

There is a legitimate reason to be skeptical about the prospects for a change in INS attitudes. Leonel Castillo, the INS Commissioner during the Carter Administration encountered internal INS resistance when he attempted to encourage more INS responsiveness to the needs of prospective immigrants by implementing same-day filing/interviews and information hotlines. In addition, the INS Outreach Program is under-funded, and can only send announcements and internal memoranda to CBOs without any assurance that the information will reach the public. However, the INS experience and philosophy during legalization must surely have some residual impact on the agency. Given the current players, there may be little choice but to rely on the INS and hope that the positive signals observed during legalization might be embraced by its core.

At the center of a new INS approach to providing information and assistance should be an ongoing community education program on immigration visa categories, naturalization rules, requirements and procedures. Television, radio, brochures, information hotlines, mobile trucks, and evening hours were effective in the legalization campaign and could have a tremendous educational effect under normal circumstances.

There is still more that the INS can do. The most frequently used forms should be made available in common non-English languages. Currently, only the Order to Show Cause, the application for Temporary Protected Status (which allows persons from specified countries in the midst of armed conflict to seek limited safe haven protection), and asylum applications in some holding facilities (e.g., Harlingen, Texas, and El Centro, California) are in Spanish. The SAW application was also available in Spanish during legalization, as was the form for the second phase (permanent residency) for SAWs.

The INS should expand its work with CBOs in a manner similar to the QDE arrangement. The INS could help train CBO staff, alert them

to rule changes, and assist them in becoming certified to represent low-income clients before the agency. In the same vein, the INS should provide space for CBO staff who could meet with clients who prefer to talk with someone other than INS personnel and should consider processing some applications in locations that are more accessible and less intimidating than the regular INS office.[245]

In order to encourage applicants, INS should also guarantee confidentiality for those applying for permanent visas and special programs, such as Temporary Protected Status and Family Unity. The legalization program provided confidentiality to encourage participation, and the need for similar protections in other areas is just as great.

CBOs must share in the effort to be more effective in providing services and information to the immigrant client community. Unfortunately, during legalization CBOs were not as efficient or effective as they could have been. Often, clients were assisted on a slow, one-on-one basis, causing many on the waiting lists at CBOs to become impatient and go straight to INS. Of course the one-on-one service model has long been employed by CBOs.[246]

Given the large numbers of immigration clients and inadequate numbers of pro bono counsel and CBO staff to represent such clients on a one-to-one basis, it makes much more sense to approach the practice of public interest immigration law and immigrant rights work with large-scale community education, group processing, and self-help efforts in mind.[247] We know from legalization that, given the right information on rules, requirements, and procedures, most applicants are capable of proceeding on their own. The innovations implemented by INS during legalization are good starting points for changes in the realm of general immigration benefits. But what examples or models exist for CBOs?

Two good examples exist. During legalization, the Los Angeles County Federation of Labor (a branch of the AFL-CIO), through its Immigrant Assistance Project, launched a successful group processing

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245. Space for a CBO person is in fact provided in the San Francisco INS office. Avidan, *supra* note 24. Also, the San Francisco district has recently agreed to accept applications for replacement alien registration cards at community agency sites. Interview with Yvonne Lee, Executive Director, Chinese American Citizens Alliance, in San Francisco, Cal. (Sept. 14, 1992).

246. I observed the same pattern long before legalization when I visited local INS offices on a daily basis as an immigration attorney for San Francisco Neighborhood Legal Assistance Foundation in the 1970s. In spite of the masses at the INS and in my office waiting room, I confess to handling most visa cases one-on-one, and recruiting paralegal help (even high school students) to help me assist visa clients. There was little that was innovative in my approach. Even the computer programs which arrived on the scene a few years later to aid in the completion of immigration forms offered little innovation, save for slightly speeding up the one-on-one process.

247. My suggestions here are directed at efforts to help with the bulk of self-help immigration cases which are usually straightforward visa matters. For more complicated cases, in which strictly individualized representation is needed, working in partnership with the client still should be used. CBOs who take on these more complex cases need help with funders who have to be educated as to the need for such time-consuming representation and the reason why such agencies have to handle fewer cases.

program. After clients learned of it through union newsletters and outreach efforts, interested individuals were invited to a group meeting. The client service model had four stages. First, a welcome and orientation video was shown, eligibility and preliminary forms were explained, documentary requirements were reviewed, and people signed up for the next stage in groups of eight to ten. Clients proceeded to stage two only after they completed preliminary forms and collected documents. Stage two was a documentation workshop where clients were instructed on how to sort and assemble documents, and documents and preliminary forms were reviewed and discussed by project workers. Stage three was an individual or family appointment with a project documentation counselor, where documents and forms were reviewed. Individuals were allotted thirty minutes; families sixty minutes. The data from the rough forms were then typed onto the actual form by the project clerical staff or volunteer. At the final stage, clients returned to sign actual papers and attend a group advice session on what to expect at the INS interview. Clients then proceeded to the INS on their own. Through this process, the project advised over 12,000 people and actually filed 4,500 applications on behalf of clients.[248]

The second example is one implemented by the Immigrant Legal Resource Center (ILRC) in East Palo Alto, California in the post-IRCA period. The ILRC's Family Visa Workshops Project responded to an increased demand for family preference visas after legalization. Newly lawful residents are able to submit family preference petitions for their spouses and unmarried children. Citizens also benefit from the project, since there is no waiting list for their spouses and minor children.

The project begins with leafletting, posters, and community announcements (e.g., at churches and PTA meetings) and the dissemination to interested parties of news about upcoming immigration information sessions ("juntas informativas"). These sessions are held every other week on Wednesday evenings at a community center or the public library. Ten to thirty people generally show up. Although participants bring a variety of questions to these sessions, about half of those attending are legalization recipients who want to find out how to help their spouses and children obtain legal status. Those interested in family visas procedures are invited to return to a Family Visa Workshop which is held the following week. The ILRC also has developed a packet of information about family visas and a Spanish language version of the visa petition. Participants receive the packet at the information session, prepare the paperwork at home, and bring the documents

248. Interview with Michael Calabrese, Esq., Strategic Analyst, Dept. of Organization and Field Services, AFL-CIO National Office, in Washington, D.C. (Apr. 28, 1992); Cohen *supra* note 192; Lazo, *supra* note 192.

to the Family Visa Workshop.

The workshop is a working session. The Spanish language version visa petition is reviewed with the entire group, and individuals then prepare the actual English INS form using their completed Spanish language forms as a guide. Often, individual attendees help others who have literacy problems. Attendees generally enjoy doing the work themselves and feel good about the process. The workshop format promotes discussion within the group, an exchange of ideas, and a real learning experience. Those attending are encouraged to share their circumstances with the group, so that those participating can work through problems together using the lawyer, other volunteers, and each other as resources. Interestingly, many participants have said that completing their own applications and joining in the process helped them develop skills which they use in other areas of their lives.

At every workshop, volunteers are solicited to help with future workshops. The response has been quite good. The ILRC now works regularly with a group of trained volunteers who are critical to the success of new workshops. They take on responsibility for certain parts of each workshop, assist at the information sessions, and coordinate much of the outreach. One volunteer organized a workshop in his own home, inviting six families to participate. Other volunteers participated in planning a "Community Immigration Project" with a newly revived local organization called Centro Bilingue.

The self-help component can also be incorporated by the CBOs even when they are not using the group processing method. For example, the legal worker can give the client the Spanish language worksheets and ask her to fill them out at home or in another room the same day. This greatly increases the efficiency of the process by reducing the time spent by the legal worker in filling out the form. In fact, many CBOs may want to combine group processing in the evenings and weekends with the self-help approach on an individual basis during work hours.

Another important lesson to be learned from these approaches is that it is a great deal more efficient for the CBOs to provide legal assistance without creating a file. This is not the conventional approach for either lawyers or many non-attorney legal workers who learned their work methods from lawyers. There are many types of cases like amnesty, in particular visa and naturalization petitions, in which effective assistance can be provided without opening a case file. This approach builds on the reality that immigrants largely use a self-help approach. It recognizes that they need more assistance, but often without the time-consuming procedures associated with formal representation.

CBOs used other innovative methods which can be utilized in other types of immigration processing. For example, programs such as the Center for Employment Training (CET) in San Jose, California did as

much processing as possible of the legalization applications during the initial interview (including photos and fingerprints). This facilitated CET's ability to file the applications with a quick turn-around, which made the clients happy, and also reduced time spent searching for files of pending cases. CET continues to use some of the same methods in their immigrant visa processing cases today.[249]

In short, models of a more efficient way of delivering services to the immigrant community are available for CBOs as well. At the developmental stages, these examples have not only proven to be efficient, but the participants seem to get more out of the experience by working on their own cases and by learning the requirements and procedures. Demystification of the process itself contributes to a more positive client attitude. Established CBOs have unique opportunities with these models. Their experience includes a wealth of institutional knowledge about the ins and outs of INS procedures, which, if passed on in a larger group basis, has the potential for vast impact.

The INS and CBOs are positioned to facilitate the self-help immigration phenomenon among prospective immigrants. The Service is charged with the responsibility of implementing visa as well as deportation functions under the law and has the experience of legalization to be creative in fulfilling those duties. Community agencies are trusted by and accessible to affected communities and thereby have a foothold in helping to educate the community about immigration rights and procedures.

At the outset, I noted that my attempt to glean lessons from the legalization experience for application in everyday immigration law implementation was premised on four propositions. Although there is room for more empirical support, based on my experience I am fairly confident in all of them. Based on my work as a legal services immigration attorney in the 1970's and my continuing work with immigrant groups, community education programs, CBOs, and other immigration attorneys, for example, I know that most prospective immigrants and their relatives go about the process on their own. As to the role of bureaucratic hurdles in the implementation of congressional goals, I cannot believe that the resistance prospective immigrants and their relatives encounter at local INS offices or at U.S. Consulates serve any sensible policy. And while it may be a relatively minor point in the larger discussion of how immigration policy should be organized, even the legislative history of legalization suggests that Congress did not in-

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249. CET had 21 offices in four states providing amnesty services. CET recently received a letter with the results of an INS audit indicating that CET as a whole submitted 19,436 applications (17,561 in California in ten centers). This work was coordinated by the San Francisco office. Interview with Irma Martinez, Director of Center for Employment Training, in San Jose, Cal. (Mar. 11, 1992).

tend to create such difficult bureaucratic impediments.

The possibility that bureaucratic obstacles stopped full implementation of the nominal legalization norms and continue to interfere with everyday immigration norms raises empirical and normative questions. Do would-be immigrants give up when they can't go through the hoops? Should Congress be concerned, as it apparently was during legalization, that some who are eligible to immigrate cannot do so? On the basis of anecdotal evidence we know that many prospective immigrants become discouraged, just as many prospective legalization applicants did. But the extent of this experience is ripe for serious study. To answer the first, normative question, one needs to know whether there were weightier policies for the implementation of legalization — such as the idea that long-time residents deserve legal status — beyond the more general right to immigrate. The difficulty in resolving the normative question in this manner is that the legislative policies behind legalization were cloudy. Moreover, it is simply not clear to me that a short-lived law with remedies ought to receive higher implementation support than one which is permanent.

Finally, legalization is obviously a useful case study of the implementation of legislation that required aid to individuals who faced complex compliance tasks. Of all the possible lessons for everyday implementation that come from legalization, I have mentioned only a few. Given the self-help nature of immigration, the relative performance of the INS versus traditional immigration advocates is only one dimension. Not only should the approaches of traditional immigration consultant/notary publics and immigration lawyers be reviewed, but the approach of the new profit-making, market intermediaries should be compared more directly. We can study the relative performance of these actors along a number of dimensions: publicity; assuring people that they could run through the process without other adverse consequences befalling them; efficiency of service; cost of service; client satisfaction; client education; and capacity to reform the system. In the last, we would ask how successfully LOs and INS offices generally reformed themselves internally, how useful it was/is to have outside checks, and whether CBOs or private attorneys pressure them, formally or informally, to change administrative practice. At the same time, we can further study the degree to which implicit or explicit contracting-out of government services influences CBO approaches. For example, we can ask to what degree the capping of service charges on QDEs swayed their response. Finally, we can look to the people themselves — especially those who attempt to negotiate the maze without assistance — to see where they are encouraged, where they are spurned, and where they can use some help.

APPENDIX A

APPLICANT ESTIMATES

The anticipated number of applicants to IRCA's legalization program is relevant not only to understanding the opposition to and support for legalization, but possibly for measuring whether the program was implemented generously or not.[250] For example, the concern that large numbers of applicants would apply probably created some political opposition to legalization. But those same large numbers, if not reached, might indicate that legalization was not implemented liberally. One expects that smaller expected numbers would have resulted in less resistance to legalization, and also an easier target for INS to meet. Perhaps counter-intuitively, support for legalization could have ensued from anticipated larger numbers if supporters saw the larger numbers as evidence that something had to be done.

Generally speaking, the total number of legalization applicants (almost 3 million pre-1982's and SAWs) was smaller than expected, although the number of agricultural applicants (1.2 million) was larger than many expected.

The principal group of expected applicants for both the pre-1982 and agricultural worker programs were Mexican nationals. Demographers who scrutinized the 1980 census data concluded that forty-eight percent of the undocumented population was Mexican in origin. Farmworkers in particular, especially those in the Southwest, were overwhelmingly Mexican. Among the other groups who were expected to come forward, Salvadorans, Guatemalans, Filipinos, Chinese, and Polish nationals ranked highly. In addition to Mexican farmworkers, the typical applicants included Mexicans or Central Americans who had entered the United States without inspection prior to January 1, 1982, and nationals from Asia, Europe, and Africa who had overstayed or violated visitor or student visas prior to January 1, 1982.

Congress never offered a definite guess as to the number of aliens who might be eligible for legalization. Taking the pre-1982 program as an example, all estimates ran in the millions, not the hundreds of thousands, but from there the estimates diverged wildly. Legalization supporters predicted between 1.5 million to 9 million potential applicants, while the opponents, assuming a chain migration of relatives, warned of 100 million new citizens within a decade. Given this range, some legislators suggested that there could be no congressional intent with respect to raw numbers because no reliable estimates existed,

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250. I realize that the anticipated number of applicants is relevant to measuring whether the program was implemented generously only if the estimates were accurate. I also recognize that lack of generosity may not have discouraged some applicants.

plain and simple.

A. *Pre-1982 Program; The Low-Range Estimates: Low Millions*

Undoubtedly, Congress expected that at least a million aliens would be eligible for the pre-1982 legalization program. That, however, was only a starting point. From there, for many legislators, it was anybody's guess. Senator Gordon Humphrey explained:

> I have been unable to find consistent estimates on the numbers of aliens who might be legalized . . . the number of relatives they might bring with them, and just as importantly, the number of aliens who would be encouraged to enter once these provisions are passed. *All estimates range in the millions.*[251]

As a result, several legislators spoke only of unspecified "millions" as potential beneficiaries of the plan.[252]

Estimates. In spite of the obvious difficulties, some estimates were made, and they fell into two distinct categories. Some estimates predicted the number of *applicants*, while others attempted to count the number of *eligible aliens*. These categories were different, of course. After all, not all eligible aliens would apply, and ineligible aliens might apply. Indeed, the number of aliens actually *legalized* represents a third prediction, because not every application would lead to legalization.

Let us begin with the more modest estimates. The Congressional Budget Office (Budget Office), as part of its cost estimates of IRCA, derived a figure of 1.4 million likely applicants.[253] The Budget Office estimate included 200,000 schoolchildren alone.[254] As low as the overall number seems, the Budget Office received some criticism for being too liberal with its numbers.[255] The next lowest estimate came from the

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251. 132 CONG. REC. 33,235 (1986) (emphasis added).

252. *Id.* at 33,239 (statement of Sen. Robert J. Dole) (law would apply to "hundreds of thousands perhaps, even millions"); 132 CONG. REC. 31,572 (1986) (statement of Rep. Gene Taylor) (would apply to "several million aliens"); *Review of the Early Implementation of the Immigration Reform and Control Act of 1986: Hearings on Pub. L. No. 603 by the Subcommittee on Immigration and Refugee Affairs of the Senate Committee on the Judiciary*, 100th Cong., 1st Sess. 1 (Apr. 10, 1987) [hereinafter *Senate Hearing* 221] (statement of Sen. Edward M. Kennedy) (legalization "could involve millions of people"); *see also id.* at 48 (statement of Wade Henderson, ACLU) (would apply to "several million" aliens).

253. *See, e.g.*, H.R. REP. NO. 682-1, *supra* note 17, at 132. A copy of the CBO report as attached to Part I of the House Report is also attached to Parts II through V. For derivation of this estimate, *see infra* notes 267-73 and accompanying text.

254. H.R. REP. NO. 682-1, *supra* note 17, at 77.

255. *Immigration Control and Legalization Amendments: Hearings on H.R. 3810 Before the Subcomm. on Immigration, Refugees, and International Law of the House Committee on the Judiciary*, 99th Cong. 1st Sess. 128 (1985) [hereinafter *House Hearing* 28] (statement of Richard Fajardo, MALDEF) ("there is every reason to believe that the percentage of persons actually seeking and obtaining legal status will be far lower than the CBO estimate," citing legalization figures from Canadian, French, and Great British programs); *id.* at 265 (statement of Thomas

Carnegie Endowment for International Peace, which predicted between 1.8 and 2.6 million eligible aliens.[256] The Department of Health and Human Services used basically the same method as the Budget Office but came up with a range of 2.5 to 3.3 million aliens eligible for amnesty.[257] The INS predicted even more — between 2 and 3.9 million aliens would be eligible.[258] Finally, a group of religious leaders predicted between 3 and 6 million eligible aliens.[259]

During congressional debates, the few legislators who offered numerical estimates raised their sights even higher. Senator Phil Gramm guessed 4 to 7 million amnesty recipients,[260] and while Senator Alan Simpson said studies guessed only 2 to 4 million, he essentially agreed with Gramm.[261] Puzzled at this exchange, Senator James A. McClure guessed that the 4 to 7 million estimate seemed best, "so far as anyone knows."[262] Senator Joseph Biden split the middle by guessing 5 million.[263] On the House floor, Representative Bill Richardson predicted a range of 5 to 8 million recipients,[264] but later broadened his guess to 3 to 9 million.[265] Representative Jack Fields predicted 1 million people in his home state of Texas alone.[266]

Muller, Urban Institute) (CBO estimate assumes 60% of eligible aliens would apply, which "appears high," so CBO estimate "should be considered a very liberal estimate unlikely to be reached.").

256. *Implementation of Immigration Reform: Hearings on the Implementation of Pub. L. No. 603 Before the Subcomm. on Immigration and Refugee Affairs of the Senate Committee on the Judiciary*, 100th Cong., 2d sess. 116 (1988) [hereinafter *Senate Hearing* 1060] (statement of Doris Meissner, Carnegie Endowment for International Peace). Note this is a prediction of *eligibility*, not *applications*, and the witness did not offer any predictions on the latter.

257. *See House Hearing* 28, *supra* note 255, at 272 (statement of Rep. Romano Mazzoli, referring to calculations by a Dr. Hawkes of the HHS).

258. *See Senate Hearing* 1060, *supra* note 256, at 169 (statement of Arnold Jones, GAO, referring to calculations by unnamed INS officials). Again, this is an estimate of eligible aliens, not applications. INS Commissioner Nelson thought up to 3 million aliens would receive amnesty. *House Hearing* 28, *supra* note 255, at 208 ("INS believes it unlikely that legalization applications would exceed 3,000,000.").

259. *House Hearing* 28, *supra* note 255, at 96 (statement of Religious Leaders on Immigration Reform).

260. 132 CONG. REC. 33,214 (1986) ("I am concerned that the amnesty provisions are so generous that we will immediately legalize somewhere between 4 million and 7 million people.").

261. *Id.* at 33,215 (1986) ("No figures, I have ever heard, either from the Select Commission or in our studies, show that it is 4 million to 7 million. Indeed, the studies show that there may be no more than 2 million to 4 million here. *I think there are more.*" (emphasis added)).

262. *Id.* at 33,221.

263. *Id.* at 33,244 ("No one knows precisely how many people this will affect, but perhaps as many as 5 million individuals.").

264. *Id.* at 29,979.

265. *Id.* at 30,064 (stating that legalization "will allow five, seven, nine, three million people to come out of bondage.").

266. *Id.* at 30,004. The only other state-specific prediction came from Sen. Levin, who guessed 50,000 recipients for Michigan. *Id.* at 33,238.

Basis of estimates. The Budget Office derived its figure of 1.4 million using three principal figures:[267]

Number of undocumented aliens in U.S. in 1986 (time of legalization program)	5,600,000
Percent of those who came to U.S. before 1/1/82	x .40
Percent of those who would actually apply for legalization	x .60
Plus a fudge factor of aliens "with a history of employment who would be accepted"	+ 25,000
TOTAL	= 1,370,000

But the Budget Office's starting point for each figure was disputable. The first figure — the total number of illegal aliens in the United States — was and continues to be, a subject open to a great deal of speculation and debate.[268] The Budget Office put the second figure, the percent of all aliens who would have been eligible for legalization, at forty percent.[269] But at the same time, Department of Health and Human Services guessed fifty-three percent.[270] In 1981 the Select Commission concluded that a two-year cutoff period would have made sixty percent of all aliens eligible for amnesty, and a three-year period would have reduced that percentage to forty-five.[271] In fact, IRCA's cutoff period was actually more than five years.

The Budget Office's third prediction, the percentage of eligible aliens who actually would apply, was supported (or at least repeated) by Representative Daub.[272] The sixty percent figure, however, referred to applications by *families* of eligible aliens, not to single young adults for whom legalization might not be as attractive. As a result, the overall number would be lower.[273]

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267. *House Hearing* 28, *supra* note 255, at 260 (statement of Janice Peskin, Congressional Budget Office).

268. The Congressional Budget Office arrived at its estimate of 5.6 million this way: first, 4.5 million (the average of 3 to 6 million) undocumented aliens estimated in the U.S. in the late 1970s; second, growth of 150,000 additional aliens each year since 1980. *Id.* Compare this to the Administration estimate of 6.5 million and a Census study of only 2 million in 1980. *Id.*

269. *See also* H.R. REP. NO. 682-1, *supra* note 17, at 132.

270. *See House Hearing* 28, *supra* note 255, at 273 (exchange between Rep. Romano Mazzoli and Janice Peskin) (differences might be due to HHS looking at 1985 and Congressional Budget Office at 1986).

271. SELECT COMM. ON IMMIGRATION AND REFUGEE POLICY, 97TH CONG., 1ST SESS., U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST XI, 77-78 (Joint Comm. Print 1981) [hereinafter SELECT COMM.]. Of course, IRCA used a five-year cutoff figure, and 45% eligibility for a three year cutoff means 40% for five years seems unlikely. The Commission, however, was dealing with data from 1979 through 1981 and not through the mid-1980s.

272. 132 CONG. REC. 29,979 (1986) (stating that 65% will apply, and referring to an unspecified article by Michael Teitelbaum).

273. *See House Hearing* 28, *supra* note 255, at 264, 274 (statement of Thomas Muller, Urban Institute). The 60% figure seemed reasonable for families to the witness, given the experience of social workers. However, he continued, the benefits of legalization were not as attractive to

Given the wide range of predictions, from just over one million to upwards of six million or more, a single congressional "intent" with respect to the number of participants in the legalization program is impossible to identify. The most accurate assessment would be that Congress knew that millions of aliens would receive benefits, but not how many millions.

B. *The High-Range Estimates by Opponents: Upwards of 100 Million*

High-range estimates of legalization recipients were bandied about by opponents of the concept. Of course, this was not unusual. As the Supreme Court has noted, opponents of bills often make less-than-realistic claims while trying to defeat passage.[274]

The lowest estimate proposed by any opponent of the legalization program was 6 to 12 million recipients.[275] From there, figures climbed without ceiling and certainly without reason. Senator Orrin G. Hatch guessed 6 to 16 million,[276] and Senator Jesse A. Helms forecast anywhere from 6 to 10 to 15 million.[277] Representative Hal Daub said that "everyone is in agreement that you are going to have between 10 to 20 million people legalized if only half of those people come forward and take advantage of general amnesty,"[278] Representative G. Taylor guessed 12 to 20 million applicants,[279] and Representatives Henry Hyde and F. Sensenbrenner opined that a third of the population of Mexico would use IRCA to legalize themselves in the United States.[280] To make matters worse, argued the doomsayers, each legalization ap-

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young adults, especially those from Latin America. The figures are also based on experiences of legalization programs in other countries, particularly Canada. *Id.* at 274-75. However, as INS Commissioner Nelson and Reps. Sensenbrenner and Lungren noted, the INS received criticism for predicting a turnout of 90,000 applications from the Cuban Refugee Adjustment Act, when in fact 100,000 applied. *Id.* at 214, 275.

274. Edward J. DeBartolo Corp. v. Florida Gulf Coast Trade Council, 485 U.S. 568, 585 (1988) (quoting NLRB v. Fruit & Vegetable Packers and Warehousemen, 377 U.S. 58, 66 (1964)) (quoting Schwegmann Bros. v. Calvert Corp., 341 U.S. 384, 394-95 (1951) (Jackson, J., concurring)); *see also* Selective Serv. Sys. v. Minnesota Pub. Interest Research Group, 468 U.S. 841, 856 (1984) ("These statements [of opposition congressmen] are entitled to little, if any, weight, since they were made by opponents of the legislation."); Sedina v. Imrex, 741 F.2d 482, 490 n.22 (2d Cir. 1984), *rev'd* 473 U.S. 479 (1985) ("We decline to infer from Rep. Mikva's comments that Congress intended to promulgate a statute as broad as the one he feared it was passing. Deriving legislative intent from a dissenting congressman's 'parade of horrors' speeches in opposition is a notoriously dubious practice.").

275. *See House Hearing* 28, *supra* note 255, at 198 (statement of American Legion).

276. 132 CONG. REC. 33,241 (1986).

277. *Id.* at 33,228 ("Let me say to senators that senators will rue the day that they allowed this bill to go through with amnesty for 6 million aliens, or is it 10 million, or 15? We do not even know.").

278. *Id.* at 30,003.

279. *Id.* at 31,573.

280. *Id.* at 30,065 (statement of Rep. H. Hyde) (24 million will come from Mexico through legalization); *Id.* at 31,639 (statement of Rep. F. Sensenbrenner).

plicant would eventually petition for family members, thus creating a calamitous "chain migration" effect. Some estimated that within a decade, IRCA would add *70, 90, or 100 million* new citizens to the U.S.[281] Representative Bill McCollum assumed a sixty-four percent response rate (compared to the Budget Office's sixty percent rate), estimated that 2 million aliens a year would receive amnesty, and assumed that each alien would petition for an average of seven family members. He therefore concluded that over a decade, 100 million citizens would be added.[282]

One wonders whether these lawmakers actually believed *themselves*.

C. *The No-Range Estimates: Impossible To Know*

Finally, several legislators simply said there was no way of knowing the ramifications of legalization. "[N]o one really knows how many aliens would be eligible for legalization,"[283] said one lawmaker during the debates. "[W]e never could get any figures from anybody, and that was the frustrating part," observed Senator Alan Simpson after passage.[284] Uncertainty existed about the total number of illegal aliens in the U.S.,[285] the number of aliens entering and leaving the U.S. every year,[286] and the percentage of aliens who would be eligible for legalization.[287] Indeed, the estimates of the Budget Office and the other organizations were all inherently unreliable and uncertain.[288]

D. *SAW Estimates*

The trouble legislators had figuring out the number of applicants for the general legalization also infected debates on the agricultural worker

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281. *Id.* at 30,065 (statement of Rep. H. Daub) (30 to 70 million new citizens); *id.* at 30,063 (statement of Rep. B. McCollum) (90 million new citizens, with a "low side" of 45 million); *id.* at 30,065 (statement of Rep. H. Daub) (50 to 100 million); 132 CONG. REC. 30,068 (statement of Rep. H. Daub) (70 to 100 million); *id.* at 30,065 (statement of Rep. B. McCollum) (90 million).

282. *Id.* at 30,063. Rep. B. McCollum's world assumed rather large immigrant families (because *each* recipient would have seven relatives — so a family with four IRCA applicants would need an additional 28 immediate family members!) and assumed that every family member for whom there was a petition would receive a visa (certainly not true)).

283. *Id.* at 31,644 (1986) (statement of Rep. Albert G. Bustamante); *see also id.* at 31,636 (statement of Rep. Henry B. Gonzalez) ("sizeable" but "yet to be determined number" of aliens would receive amnesty).

284. *Senate Hearing* 1060, *supra* note 256, at 171 (statement of Sen. Alan Simpson).

285. *See, e.g., Immigration Reform and Control Act of 1985: Hearings on S.1200 Before the Subcomm. on Immigration and Refugee Affairs of the Senate Committee on the Judiciary*, 99th Cong., 1st Sess. 4 (1985) [hereinafter *Senate Hearing* 99-273] (statement of Sen. Paul Simon) ("large but unknown number" of illegal aliens in U.S.).

286. *House Hearing* 28, *supra* note 255, at 180 (statement of Rep. J. Scheuer).

287. 132 CONG. REC. 30,004 (1986) (statement of Rep. J. Fields).

288. *House Hearing* 28, *supra* note 255, at 180 (statement of Rep. J. Scheuer) (Congressional Budget Office estimates "highlight the problem — we can't make accurate projections of the effects of amnesty . . . ."); *id.* at 264 (statement of Thomas Muller) (Congressional Budget Office and HHS admitted their numbers were "crude projections subject to substantial error"); *Senate Hearing* 1060, *supra* note 256 at 170 (statement of Arnold Jones, GAO).

program. Estimating that a quarter of all farmworkers were undocumented and that sixty percent would apply for legalization, the Budget Office projected that the SAW program would produce 250,000 legalized workers.[289] Congressional estimates ranged from 200,000 to 1 million;[290] Senator Simpson said the number would be "small"[291] but agreed with a colleague that no one knew how many eligible workers existed.[292]

289. H.R. REP. NO. 682-1, *supra* note 17, at 135.

290. H.R. REP. NO. 682, 99th Cong., 2d Sess. 48 (1986) [hereinafter H.R. REP. NO. 682-2] (Minority Report) (200,000 to 1 million); 132 CONG. REC. 33,215 (1986) (statement of Sen. P. Gramm) (SAW will get up to 1 million workers).

291. 132 CONG. REC. 33,212 (1986).

292. *Id.* at 16,887; H.R. REP. NO. 682-1, *supra* note 17, at 219-20 (stating that he had no idea how many people SAW will take).

APPENDIX B

LEGALIZATION'S LEGISLATIVE HISTORY

A popular conception holds that the employer sanctions and legalization provisions like those found in IRCA somehow balance one another.[293] In fact, over the last decade, the most visible legislative proposals pair the two concepts. If the country was going to be generous enough to legalize undocumented residents, then it would also close the door to future undocumented migrants by cutting off employment opportunities. The Select Commission on Immigration and Refugee Policy popularized the idea of "legalization" as a part of the solution to the undocumented alien "problem," and recommended both employer sanctions and amnesty in its final report in 1981.[294] The Simpson-Mazzoli proposal of 1982, which followed this final report and ultimately led to IRCA, employed the same prescription.[295]

While strong congressional sentiment to respond to the perceived problem of undocumented aliens drove Congress to pass IRCA, congressional endorsement of the idea of "balancing" employer sanctions and legalization does not mean that there was strong support for legalization per se.[296] Congress essentially concluded that with a flood of aliens crossing illegally and unchecked, the southern border was out of control.[297] It was widely believed that the nation shared this fear.[298]

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293. *See, e.g., Amnesty: Do It Right*, L.A. TIMES, May 3, 1987, pt. 5 at 4.

> [IRCA] is a well-intentioned effort to deal with a phenomenon that many Americans consider a serious problem—the presence of illegal immigrants in the United States. In the name of stemming the flow of people here from abroad, the law prohibits employers from giving them jobs, except under special circumstances. . . . These employer sanctions will go into effect June 1. The bill's restrictive intent is balanced by the amnesty program, which aims to help the illegals who have been in this country for at least five years.

Id.

294. *See infra* notes 317-19 and accompanying text.

295. BAKER, *supra* note 17, at 35.

296. Those who would seek either to expand or to contract the intent of the legalization bill by pointing to legalization or to employer sanctions as the heart of IRCA, and therefore controlling IRCA's goals, mistakenly decouple legalization and employer sanctions. Rather, the two were twin mechanisms to combat illegal immigration — one by depriving jobs from undocumented aliens, the other by legalizing those aliens who already had jobs and stable lives. Neither could survive without the other and, hence, attempts to promote one or the other as the "centerpiece" of IRCA are misinformed.

297. The number of times legislators made comments to this effect cannot be counted. For a "representative" sample, *see* 132 CONG. REC. 29,980-81 (1986) (statements of Reps. Daniel E. Lungren and Peter W. Rodino); *id.* at 29,984-85 (statement of Rep. Rodino); *id.* at 29,985-86 (statement of Rep. Lungren); *id.* at 29,987 (statement of Rep. Hamilton Fish); *id.* at 29,988 (statement of Rep. Romano L. Mazzoli); *id.* at 29,990 (statement of Rep. Bill McCollum); *id.* at 29,991-92 (statement of Rep. Robert E. Badham); *id.* at 29,995 (statement of Rep. Robert K. Dornan); *id.* at 30,000 (statement of Rep. Schumer); *id.* at 30,001 (statement of Rep. James M. Jeffords); *id.* at 30,005 (statement of Rep. William E. Dannemeyer); *id.* at 30,007-08 (statements of Reps. Ed Zschau & Larry Combest); *id.* at 30,008 (statement of Rep. Ron Packard); *id.* at 30,052 (statement of Rep. Carlos J. Moorhead); *id.* at 30,053-54 (statements of Reps. James J. Scheuer and Joe Barton); *id.* at 31,634 (statement of Rep. H. Fish); *id.* at 33,224-25 (statement

Accordingly, the House committee sponsoring the bill,[299] the Administration,[300] and the INS agreed that IRCA was needed to stop the flow of aliens.[301] "The major purpose of the Immigration Reform and Control Act [was] the control of illegal immigration to the United States. The major provisions of the Act all relate[d] to this purpose."[302]

Congress plainly acted out of a sense of urgency. Something — anything — had to be done to stem the tide of illegal immigration, and IRCA seemed to be the only alternative. Said one representative, "[T]o say that immigration reform is 'must' legislation does not begin to capture the compelling need for enactment of [this] bill before. . . Congress adjourns in a matter of days."[303] A doomsayer on the house floor predicted, "[i]llegal immigration into this country is a national crisis, and if we don't act now to regain control of our borders we may forever lose the chance."[304] Passage of IRCA was necessary because the public was "demanding action now."[305]

Given this last-minute time pressure to get *anything* passed, many in Congress admitted IRCA's imperfections, but thought it the "least imperfect" bill possible.[306] IRCA, after all, was an assemblage of compromises.[307] A few said the choice was between IRCA and no bill at all,[308] or that it was "now or never" with the bill.[309] Later bills might

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of Sen. Pete Wilson).

298. *Id.* at 31,634 (statement of Rep. Hamilton Fish).

299. H.R. REP. NO. 682-1, *supra* note 17, at 46.

300. *Id.* at 104 (statement of U.S. Attorney General Edwin Meese) (asserting that the true goal of IRCA was to "regain control of borders").

301. *Senate Hearing* 1060, *supra* note 256, at 61 (statement of Alan Nelson, Commissioner, INS).

302. HOUSE COMM. ON THE JUDICIARY, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: A SUMMARY AND EXPLANATION, H.R. Doc. No. 603, 99th Cong., 2d Sess. 6 (1986).

303. 132 CONG. REC. 30,005 (1986) (statement of Rep. William E. Dannemeyer); *see also id.* at 31,643 (statement of Rep. Dan Lungren) (asserting that "[t]he alternatives [to IRCA] are basically do nothing, continue with the problem that we have now, or look into the unknown and hope that we are going to do something in the next Congress or the Congress beyond that."). Senator Pete Wilson echoed these thoughts when he said, "the time to act is now." *Id.* at 33,225 (statement of Sen. Pete Wilson).

304. *Id.* at 31,644 (statement of Rep. Silvio O. Conte).

305. *Id.* at 29,985 (statement of Rep. Peter Rodino).

306. *See, e.g., id.* at 33,209 (statement of Sen. Alan K. Simpson) (maintaining that the bill was not perfect); *id.* at 33,212 (statement of Sen. Paul Simon) (IRCA was as good as it was going to get); *id.* at 33,219 (statement of Sen. Lloyd Bentsen) (stating that IRCA was the best bill Congress was going to get); *id.* at 33,223 (statement of Sen. J. Bingaman) (time was of the essence, and that the question was not whether there might be a better bill than IRCA); *id.* at 29,989, 31,633 (statements of Rep. R. Mazzoli) (IRCA was not perfect but was the "least imperfect" bill, and because there was no other bill on the horizon Congress ought to settle for IRCA); *id.* at 31,639 (statement of Rep. E. Clay Shaw) (IRCA was not perfect, but that it made the best of a bad situation).

307. *Id.* at 31,573 (statement of Rep. Dan Lungren) (stating that "[w]hen you have to compromise, each side or all sides have to give up something."); *id.* at 33,225 (statement of Sen. Pete Wilson) (asserting that "[i]t is probably the best bill that this frustrating process of compromise can achieve, and certainly the best that we can reach at this time. And we dare not delay, Mr. President.").

308. *Id.* at 33,223 (statement of Sen. J. Bingaman) (arguing for IRCA or no bill at all); *id.* at 33,225 (statement of Sen. Pete Wilson) (stating that there was no alternative to IRCA).

be narrower and more restrictive, since the problem of illegal immigration would worsen in the meantime.[310] "[C]onsider carefully," argued co-sponsor Representative Romano Mazzoli, "not whether there may theoretically exist a better bill, but whether the status quo — which is clearly unacceptable and intolerable — is preferable to the legislation before us."[311] Pleaded Representative Leon Panetta:

> I do not know that this bill is going to work. We know that it is imperfect. Nobody can say it is going to work. But one thing is clear: the present situation is intolerable, and it must be responded to. Nobody can justify the situation as it exists today.[312]

So great was the need to pass immigration legislation that quite a few congressional supporters admitted they had great trouble with the bill, and others may not have even known the bill's specific contents.[313] Said one representative,

> This bill is seriously flawed. . . . Amnesty is a provision that insults all the law-abiding people around the world waiting patiently, and legally, for their numbers to come up.
>
> . . . .
>
> However, the need for control of illegals is growing. The problem is worsening daily. The need is great enough that I will vote for the bill in spite of its egregious faults. . . .
>
> . . . .
>
> This bill, flawed as it is, gives some promise of helping us to control our borders. On that basis, it deserves a try.[314]

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309. *Id.* at 31,633 (statement of Rep. Romano Mazzoli) (stating that "[t]hey say a cat has nine lives. If this bill were a cat, this is its ninth life. It has no more lives. It cannot pop up out of any more graves. It cannot have breath breathed back into its corpse again. It is now or never, ladies and gentlemen of the House; it is now or never."). Mazzoli's words echo those of Rep. Lungren, who stated that "[i]t has been a rocky road to get here; some people have wondered whether the bill was really a corpse. I guess I described it to somebody as a corpse going to the morgue and on the way to the morgue the toe began to twitch and we started CPR again." *Id.* at 29,980.

310. *Id.* at 29,987 (statement of Rep. H. Fish).

311. *Id.* at 31,634; *see also id.* at 30,005 (statement of Rep. William Dannemeyer) (asserting that "[s]ince I believe [IRCA] is an improvement [over the current immigration control system], I intend to support the legislation."). However, IRCA may have not been *that* much of an improvement. *Id.* at 31,645 (statement of Rep. Donnelly) (stating that "I support the conference report on the immigration reform bill with great reluctance. It is better than no change from current law, but not much.").

312. *Id.* at 31,639.

313. *Id.* at 31,637 (statement of Rep. E. Roybal). "I do not think that every Member of this House knows what is in this bill. In just little conferences I had here and there, I came to the conclusion that they do not." *Id.*

314. *Id.* at 31,645 (statement of Rep. Bill Frenzel); *see also id.* at 31,638 (statement of Rep. C. Moorhead) ("While there are features of the bill . . . which trouble me and I am sure trouble other Members in this House, I believe we should vote to approve this conference report and get a bill to the President."); *see id.* at 30,009 (statement of Rep. Bill Lowery).

Similarly, Representative Edward Roybal spoke of the need for many to "hold their nose" from the stink of IRCA — for him the smelly part was employer sanctions — in order to vote for it.[315]

If Representative Roybal was correct that many members voted for IRCA solely on the basis of political necessity, any attempt to identify a single congressional "intent" is surely a senseless enterprise. Therefore, the argument that Congress mandated that the INS give the legalization aspects of the bill high priority and that it assume the most generous attitude possible must take into account the complex set of reasons — some having little to do with generosity — swirling in the minds of those who voted for IRCA.

Let's examine the range of much of the reasoning behind legalization, focusing principally on the pre-1982 program.

A. *Intent of the Authors, Proponents and Opponents of Legalization*

A logical starting point for determining legislative intent is the views of the original authors or the language of floor debates. Even though the version of legalization that was finally enacted differed from the original conception, the early goals and scope inform our search for legislative purpose. Of course, we must remain mindful that during the debates on IRCA, both supporters and opponents of the legalization program may have made exaggerations and misstatements which are not particularly helpful in our search.

1. *Intent of the Select Commission*

An important early explication of a legalization program came from the Select Commission.[316] In 1981 the Commission submitted its final report — *U.S. Immigration Policy and the National Interest*. Among its recommendations was a legalization program giving amnesty to every undocumented alien who had entered the United States before January 1, 1980.[317] The Commission gave four reasons for legalization:

- "Qualified aliens would be able to contribute more to U.S. society once they came into the open. Most undocumented/illegal aliens are hardworking, productive individuals who already pay taxes

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315. *Id.* at 31,637 ("[E]very one made some excuse for voting for [this bill], including having to hold their nose as they voted."); *see also id.* (statement of Rep. Edward R. Roybal):

> [W]e can conclude that those who are in favor of this legalization, almost everyone, did, in fact, apologize for their position, but justified it because they believe that it is immigration reform. Many have said that they would vote for the bill, but with mixed emotions. Others said that they would hold their nose to vote for this piece of legislation. Others just would vote for the bill simply because there was nothing else.

316. Act of Oct. 5, 1978, Pub. L. No. 95-412, 92 Stat. 907 (1978); for quick summary of the Commission's mandate, *see* SELECT COMM., *supra* note 271, at xi (1981).

317. *See* SELECT COMM., *supra* note 271, at 72-85.

and contribute their labor to this country" [arguably expressing an intent to legalize only this majority group];
- Legalizing aliens would extend the protection of U.S. labor law and thus the new residents "would no longer contribute to the depression of U.S. labor standards and wages;"
- Legalization "is an essential component" of immigration reform and would allow the INS "to target its enforcement resources on new flows of" aliens; and
- Legalization would provide statistical data about undocumented immigrants.[318]

A minority of commissioners supported two other reasons:
- Legalization "would acknowledge that the United States has at least some responsibility for the presence of undocumented/illegal aliens in this country since U.S. law has explicitly exempted employers from any penalty for hiring them"; and
- Given this responsibility, alternatives to legalization — mainly deportation — would be unfair to the aliens.[319]

Fully adopting the Select Commission's reasoning for legalization is problematic. Some of its reasons appeared during the congressional debates; others, such as the desire for statistical data, dropped from the discussion. And the Commission's legalization proposal was more generous than the program enacted, in that it included only a two-year cutoff period. Certainly, then, the intentions of the Commission cannot adequately settle the question of congressional intent.

2. *Strategic Reasons for Legalization*

Several arguments used by legalization's supporters were strategic, and did not place much emphasis on the substantive importance of legalization. They help us to realize, however, that at least some support for legalization had more to do with procedural necessity than with substantive support for the concept.

The argument that Congress supported amnesty overwhelmingly is undermined by the presentation of legalization with employer sanctions as a unified, all-or-nothing choice. Some legalization supporters threatened that efforts to change or kill the provision would result in the death of the entire bill[320] — a politically unacceptable possibility for members desiring to address the undocumented alien "problem." Proponents of legalization would not vote for an employer sanctions-

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318. *Id.* at 74.
319. *Id.*
320. *See, e.g.*, 132 CONG. REC. 30,065 (1986) (statement of Rep. Albert G. Bustamante) (asserting that "the McCollum amendment . . . would strip immigration reform of one of its integral elements. Without the legalization provision, the effort to get control of our borders will certainly fail.").

only bill. As Representative Mazzoli, one of the legislation's main proponents, put it, "[Without legalization], I think we will have a very difficult time moving the rest of the bill."[321] Representative Dan Lungren added: "I seriously believe that if [the legalization provisions are deleted], the bill will die."[322] The same argument was made in the Senate.[323] Given this atmosphere — of a perceived desperate border situation leaving Congress with no choice but to pass legislation — it is hard to attribute to Congress a "generous intent" in its approval of legalization.[324]

3. *Comments by those Opposing Legalization*

While the comments of those opposing any legislation hardly provide a strong basis for determining congressional intent of a law enacted over such objections, they nonetheless are useful to keep in mind.

Opposition to legalization was so intense that the program narrowly survived in the House of Representatives. In the eleventh hour, on October 10, 1986, Representative Bill McCollum introduced an amendment to completely delete legalization from IRCA.[325] The House defeated the amendment — thereby saving the legalization program — though only by a vote of 199 to save it, 192 to kill it, with 41 absent.[326] A swing vote of only four members would have reversed the result.[327]

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321. *Id.*

322. *Id.*

323. *Id.* at 33,236 (statement of Sen. Gordon J. Humphrey) ("[I]t seems to me the primary argument in behalf of legalization is not one of principle. . . . Rather, in my view, the argument for amnesty and legalization provisions is one based on expedience. Supporters of these provisions, it seems, prefer to argue that without amnesty, we will not pass any immigration reform."). *See also id.* at 33,240-41 (statement of Sen. Paula Hawkins) (stating that "it is important to note that it is a fact that without a legalization there will be no immigration reform. The need for comprehensive immigration reform is so great that we must move forward.").

324. Reinforcing this notion was the comment by one member that the Congress did not have much of a chance to change what was presented to them from the Committees:

> Unlike past Congresses, when this issue [immigration reform] was deliberated to death, in this Congress we have brought it to life largely by avoiding deliberation.
>
> I say this not as a criticism, for I sincerely believe this is a necessary bill, and overall a good one. It is merely a statement of fact.

Id. at 31,636 (statement of Rep. James M. Jeffords).

325. *See id.* at 30,062 (debate of McCollum amendment).

326. For the roll call of the vote, *see id.* at 30,066.

327. A possible way to find the support in Congress of legalization and of IRCA is to compare the roll call votes on the McCollum amendment, *id.*, and on H.R. 3810, the House version of IRCA (S.1200) before the Joint Conference. *Id.* at 30,075. The vote on the McCollum amendment, again, was 192-199-41. The vote on H.R. 3810 was 230-166-36. Comparing the roll calls:

	H.R. 3810		
McC. amendment	Aye (230)	Nay (166)	Not Voting (36)
Aye (192)	56	135	1
Nay (199)	168	30	1
Not Voting (41)	6	1	34

This would indicate: 56 House members "held their nose" (did not like legalization but voted for reform anyway, or perhaps wanted employer sanctions more than they disliked legalization); 135

Pro-legalization sentiment in the House was by no means overwhelming. Opponents argued that it was unfair to prospective immigrants in all parts of the world who were on waiting lists and were seeking to immigrate lawfully.[328] Many had been waiting for years. Legalization thus rewarded the "lawbreakers" who made their way into the nation illegally.[329] Furthermore, some argued that a legalization program would have a "magnet" effect of drawing *more* undocumented migrants into the United States hoping to take advantage of the amnesty.[330]

The close vote on the McCollum amendment provided the basis for some legislators to argue that legalization need not be interpreted generously. To Senator Gramm, the House vote on the McCollum amendment showed there was "hardly a great mandate for legalization."[331] In the words of Representative E. Clay Shaw, the House vote "made a strong statement" that "we did not want to reward those who have violated our laws."[332] Even the author of IRCA in the Senate, Senator Alan Simpson, said that legalization "was probably the one thing in the bill — and there were plenty — that was least acceptable to the American people. Legalization only passed the U.S. House of Representatives by 7 votes. I do not think people ought to forget that."[333] Senator Pete Wilson tried to wipe the blood from his chamber's collective hands, saying the legalization provisions (as passed) were written by the House and therefore, assumably, the Senate could not be blamed for their inclusion.[334]

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members either hated IRCA *because* of legalization or just simply hated everything in IRCA; 168 members liked legalization and IRCA, not necessarily for the same reasons; and 30 members wanted legalization but something else about IRCA turned them off (for example, they hated employer sanctions more than they liked legalization).

328. *See, e.g., id.* at 30,063 (statement of Rep. B. McCollum); *id.* at 31,638 (statement of Rep. C. Moorhead) (amnesty penalizes those waiting legally).

329. *E.g., id.* at 30,063 (statement of Rep. B. McCollum); (amnesty is "a slapping in the face" to those waiting legally; the program rewards lawbreakers).

330. *See, e.g., id.* at 30,063 (statement of Rep. Bill McCollum) ("magnet" effect); H.R. REP. NO. 682-1, *supra* note 17 at 221 (minority opinions of Reps. William J. Hughes and E. Clay Shaw) (legalization, a magnet for ineligible aliens, only acceptable with increased INS enforcement).

331. 132 CONG. REC. 32,415 (1986).

332. *Id.* at 31,639.

333. *Senate Hearing* 221, *supra* note 252, at 85 (comments of Sen. Alan Simpson). Just what to make of Sen. Simpson's comments is not clear. He did then say that he "and Senator [Edward M.] Kennedy insisted [legalization] be in the bill." *Id.* Perhaps he recognized that while he and the other drafters of IRCA wanted legalization (or, at worst, recognized the necessity of it), there was no great support for it within the entire Congress. ("I sure do remember the legislative intent of legalization."). *Id.* Again, one might argue that the Congressmen voted for legalization only because they thought it was a necessity — as they were told by the bill's drafters — and would have done without it if they had their own way.

334. 132 CONG. REC. 33,225 (1986) (stating that "[t]hey [the legalization provisions] are not perfect. These do not bear the stamp of the Senator from Wyoming [Alan Simpson]. They bear the stamp of the House of Representatives. They are not perfect."). In Joint Conference, the Senate receded to the House and adopted the latter's version of the legalization program. *See* H.R. REP. NO. 1000, 99th Cong., 2d Sess. 92 (1986). The Senate legalization program included a

Yet one must sort out the distinction between whether there was or wasn't great support for legalization and whether amnesty should be implemented generously once it was enacted.

B. *Reasons Given for Legalization*

Because legalization was enacted the major justifications advanced by legislative supporters of the program are obviously more relevant.

1. *No Alternative to Legalization*

How could Congress deal with the huge number of undocumented aliens living in the United States? Members of Congress only had a handful of alternatives: first, legalize some or all of the aliens; second, find and deport some or all of them; or third, do nothing. The second alternative would have required a huge effort to "round up" aliens, would probably have violated many civil rights and therefore engendered a horde of lawsuits, would have cost a fortune, and simply would never have worked. The third alternative was not possible since Congress was under pressure to do something about the perceived undocumented problem. Legalization was the only alternative.

Many legislators saw legalization as the only solution to the undocumented alien program. The House Committee on the Judiciary said, "the alternative of intensifying interior enforcement or attempting mass deportations would be . . . costly, ineffective, and inconsistent with our immigrant heritage."[335] The bill's sponsors all made statements to the same effect. On the Senate side, Simpson argued that "the alternative to legalization is to go hunt for [aliens]. If you couldn't find them coming in how do you find them to get them out? The alternative to legalization is deportation."[336] The House sponsors concurred. Arguing against the McCollum amendment, Representative Peter Rodino said, "I would be no part of it [the amendment to delete legalization] because, in my judgment, we cannot deport these people. We would not, I am sure, provide the money to conduct the raids. It would mean billions of dollars in order to try to deport them. . . . [T]hat is what the amendment asks us to do."[337]

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legalization "commission" and a delayed implementation, probably making it much more restrictive than the House version. *See* S. REP. NO. 132, *supra* note 17, at 15-17, 44-51 (containing descriptions of Senate legalization program).

335. H.R. REP. NO. 682-1, *supra* note 17, at 49.

336. 132 CONG. REC. 32,410 (1986).

337. *Id.* 30,063. (asserting that "[t]he first option, deportation, is really no option at all." He stated three reasons: the cost would be billions of dollars; the effort would involve "thousands upon thousands" of INS investigators and would trammel the rights of "legal aliens and U.S. citizens" as well; and deportation would be unfair to long-time undocumented alien residents). Another one of the House's major supporters of the bill agreed. *Id.* at 30,065 (statement of Rep. Dan Lungren) (asserting that "I am absolutely convinced, after looking at this for 8 years, that we have to do

Thus, in a real sense, this argument boiled down to a logistically realistic response to the "problem of undocumented aliens." Existing enforcement was failing and massive deportations would certainly never have worked.[338] Thus, one could argue that the program had to be generous if the goal was to rid the country of undocumented aliens. Yet the cutoff date adopted for legalization was not generous, and the "no alternatives" argument was not the only reasoning offered to support legalization.

2. *Spread INS Resources*

One justification for legalizing undocumented residents was that this would allow the INS to stop concentrating its enforcement resources on locating and apprehending longtime residents and concentrate instead on enforcement of the border against newly arriving, undocumented aliens. This justification was first advanced by the Select Commission.[339] Both Simpson[340] and the Congressional Committees[341] cited this rationale as well.

3. *Elimination of the Underclass*

For some, legalization was the mechanism to address the fact that many undocumented aliens lived in what some described as an "underclass" — in poverty without the protection of labor or health laws. The Select Commission had complained of the existence of a "second-class" society.[342] And many members of Congress hoped that legalization would eliminate the underclass.[343] The Senate Report on IRCA noted:

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something with legalization. You are not going to round them all up and send them home."). It's unclear where Rodino's cost estimates came from. And there certainly was nothing empirically to support the conclusion that employer sanctions would work so much more cheaply than a deportation program. Of course, some would argue that employer sanctions were more humane than a massive deportation program.

338. SELECT COMM., *supra* note 271, at 73.

339. *See supra* note 318 and accompanying text.

340. 132 CONG. REC. 33,209 (1986) (stating that "[l]egalization is a necessity if we are going to preserve our scarce INS resources.").

341. H.R. REP. NO. 682-I, *supra* note 17, at 49 (stating that "[t]his step would enable INS to target its enforcement efforts on new flows of undocumented aliens . . . ."); S. REP. NO. 132, *supra* note 17, at 16 (noting that a major goal of legalization "is to avoid wasteful use of the [INS'] limited enforcement resources."). Special note should be made of Senate Report 132, the report accompanying S.1200, since the Senate's version of the legalization program was substantially different from the one that the Congress eventually enacted. For a description, *see id.* at 15-17, 44-51.

342. SELECT COMM., *supra* note 271, at 72 (stating that "the existence of a large undocumented/illegal migrant population should not be tolerated. The costs to society of permitting a large group of persons to live in illegal, second-class status are enormous."); *see also* 132 CONG. REC. 29,984 (1986) (statement of Rep. Peter Rodino) (asserting that "I submit that having within our borders millions of people living under this dark cloud of constant fear is not in the best interests of the United States. . . . [W]e are talking about made-to-order victims . . . .").

343. *See, e.g.*, 132 CONG. REC. 30,064 (1986) (statement of Rep. Bill Richardson) (arguing that legalization "will eliminate the underclass that exists right now."); *id.* at 22,244 (1986)

> [Another goal of legalization] is to eliminate the illegal subclass now present in our society. Not only does their illegal status and resulting weak bargaining position cause these people to depress U.S. wages and working conditions, but it also hinders their full assimilation and, through them, that of legal residents from the same country of origin. Thus they remain a fearful and clearly exploitable group within the U.S. society.[344]

Upon signing the legislation, even President Reagan, who was more interested in the employer sanctions provisions of the law, expressed hope that the legalization program would remove people from "the shadows."[345]

The hope that legalization would eliminate the underclass found its greatest support among witnesses testifying during hearings. A delegation of religious leaders led the charge on this note in urging Congress to adopt legalization.[346] A spokesman for the Mexican American Legal Defense and Education Fund (MALDEF) contended that "[l]egalization is the only realistic and meaningful way to bring the undocumented population 'out of the shadows' and into the mainstream of American life with the minimum of discruption [sic] and expense."[347] Other witnesses simply assumed that Congress intended to eliminate this underclass.[348]

(statement of Sen. Joseph R. Biden) (asserting that "this will move a growing underclass living in the shadows into the daylight of citizenship and opportunity."); *id.* at 33,240 (statement of Sen. P. Hawkins) (arguing that legalization would provide a "clean slate" for INS); *id.* at 31,574 (1986) (statement of Rep. Robert Garcia) (asserting that "moving up to the 1982 [cutoff] date . . . allow[s] many thousands of people to be able to walk the streets of this great country without looking over their shoulders . . . ."); *House Hearing* 28, *supra* note 255, at 22 (statement of Rep. Barney Frank) (asserting that "having illegals rattling around in some city like loose cannons, not feeling part of the society, not cooperating with law enforcement, that is not healthy for any of us.").

344. S. REP. NO. 132, *supra* note 17, at 16.

345. Statement on Signing the Immigration Reform and Control Act of 1986, 1986 PUB. PAPERS 1522 [hereinafter Statement on Signing of IRCA] (stating that "[t]he legalization provisions in this act will go far to improve the lives of a class of individuals who now must hide in the shadows, without access to many of the benefits of a free and open society. Very soon many of these men and women will be able to step into the sunlight and, ultimately, if they choose, they may become Americans.").

346. *See House Hearing* 28, *supra* note 255, at 72-99.

347. *Id.* at 128 (statement of Richard Fajardo, MALDEF); *see also id.* at 76 (statement of Bishop Bevilacqua of Pittsburgh) (stating that "only broad legalization appears to the Church to be realistic, effective, and humane.").

348. *E.g., id.* at 94-95 (statement of Dale DeHaan, Director Church of World Service) (stating that "it is our belief that the intent of the legalization program . . . is to 'wipe the slate clean' of the presence of undocumenteds in the U.S. . . ."); *id.* at 255 (statement of John Gunther, Executive Director, U.S. Conference of Mayors); *Senate Hearing* 1060, *supra* note 256, at 12 (statement of Chicago Committee on Immigration Protection) (arguing that "our experience shows that there are many more [aliens] still in the shadows who have yet to be reached. Surely Congress intended them to receive the benefit of Legalization.").

4. *Equity, Fairness, Dignity, Compassion, and Reality*

Many lawmakers supported the legalization program because of the contributions that undocumented workers had already made to the country, and charged the nation with a responsibility to account for those contributions. This view was used to respond to complaints that legalization was not fair to prospective immigrants waiting in line abroad,[349] or that it might be a "magnet" for further unlawful entrants thinking they could cheat their way into the program.[350] Indeed, the House Report argued that legalization was "equitable" to the undocumented aliens working in the U.S.,[351] and in President Reagan's words, "fair to the countless thousands of people throughout the world who seek legally to come to America."[352]

For others, it demonstrated "compassion" for those now part of American society,[353] giving "dignity" and "honor" to those working illegally in America;[354] in short, it was "necessary," "humanitarian," and the "American way."[355] Even the INS Commissioner touted legalization as a compromise between a "humanitarian recognition of illegals who have significant equities in the U.S." and "fair and reasonable screening requirements that do not reward proven criminals."[356]

Given the close vote on the McCollum amendment and the fact that some members were compelled to vote for IRCA in spite of legalization, the statements of legalization supporters do not represent the majority of Congress. However, their comments probably constitute "the" intent of Congress for several reasons. First, as the supporters and sponsors, their intent is the controlling one.[357] Second, many of their arguments — such as the assertion that we must deal fairly and realistically with those who have established roots here — came in the closing days of debate, which could mean they said things that many members of Congress probably wanted to hear.

But congressional intent, as evidenced by the difference between the earlier, more restrictive cutoff date adopted by IRCA and that proposed by the Select Commission, did not favor "amnesty" for all. By requiring more than five years of residency, IRCA applied to a much smaller number of eligible aliens than the two-year proposal of the Select Commission. "Equity," rather than general amnesty, was the difference — a limiting, not expansive choice. For example, Representa-

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349. *See supra* notes 328-29 and accompanying text.
350. *See supra* note 330 and accompanying text.
351. H.R. REP. NO. 682-1, *supra* note 17, at 71.
352. Statement on Signing of IRCA, *supra* note 345, at 1522.
353. 132 CONG. REC. 30,064 (1986) (statement of Rep. H. Fish).
354. *Id.* at 33,213 (statements of Sen. D. Moynihan).
355. *House Hearing* 28, *supra* note 255, at 181 (comments of Rep. James H. Scheuer).
356. *Id.* at 203 (statement of Alan Nelson, Commissioner, INS).
357. *See supra*, text accompanying note 274.

tive Lungren said during the House debates, "For those of you who say, 'I don't want any amnesty at all,' I ask you, do you want to have to worry about an amnesty that is even more generous next time around with a date that is brought up even further?"[358] Senator Alan Simpson said the date was "quite fair" but also "more restrictive than what we started with."[359] The General Accounting Office noted that the U.S. legalization program was far more restrictive in terms of eligibility than previous programs of five foreign nations.[360] Indeed, the cutoff date was a compromise between legislators who did not want any legalization program and those who wanted a general amnesty for all aliens.[361] The legalization program was called a "case-by-case" as opposed to a blanket program,[362] "carefully drawn,"[363] and "generous," but "carefully defined."[364] Ironically, setting a relatively early cutoff date that did not reflect a bite-the-bullet amnesty gives little credit to arguments that massive deportation was impossible.

C. *"Generous" and "Flexible" Administration*

Whatever the intended scope of legalization, the question of how the INS was to administer the program was addressed independently by many members of Congress. In that regard, the two adjectives used by lawmakers were "generous" and "flexible," most likely indicating that the INS was to err on the side of the applicants when adjudicating cases. The House Judiciary Committee said, "The Committee intends that the legalization program should be implemented in a liberal and generous fashion."[365] Individual lawmakers also described the program as "generous,"[366] although some might have been referring to the gen-

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358. 132 CONG. REC. 31,643 (1986).

359. *Id.* at 32,410.

360. *Senate Hearing* 1060, *supra* note 256, at 167 (statement of Arnold P. Jones, GAO) (noting that Argentina, Australia, Canada, France, and Venezuela required an average of only 9.3 months residence for eligibility).

361. 132 CONG. REC. 30,064 (1986) (statement of Rep. Fish); SELECT COMM., *supra* note 271, at 78 (suggesting that a January 1, 1980 cutoff date, more liberal than the cutoff date in IRCA, would provide a balance between the need for "substantial participation" of aliens and reaching only aliens who have "acquired some equity"). In fact, one legislator who wanted to eliminate completely the underclass of undocumented aliens opposed IRCA's legalization provision because it would not accomplish his goals. 132 CONG. REC. 31,636 (1986) (statement of Rep. Gonzalez) ("It is a cruel joke. It will produce a boom for those who will prey on people who need help to prove their cases; it will produce anguish for those who know they qualify but can't prove it; and it will not end the twilight existence of those who do not want to take the risks that are implicit with applying at all."). Furthermore, one immigrant community organization said IRCA would still leave 65 to 90% of the underclass in the shadows. *House Hearing* 28, *supra* note 255, at 128 (statement of Richard P. Fajardo, Mexican-American Legal & Educational Fund).

362. 132 CONG. REC. 30,065 (1986) (statement of Rep. Romano Mazzoli).

363. *Id.* at 30,005 (statement of Rep. William Dannemeyer).

364. *Id.* at 31,634 (statement of Rep. Romano Mazzoli).

365. H.R. REP. NO. 682-1, *supra* note 17, at 72; *see also id.* at 49 (one-time "generous" program).

366. *See, e.g.*, 132 CONG. REC. 29.984 (1986) (statement of Rep. Peter Rodino); *id.* at 32,377

erosity of this nation in offering amnesty, as opposed to the program itself being generously applied.[367]

To make the program "flexible," the House Judiciary Committee wanted INS to keep the evidentiary requirements of applicants loose, not strict:

> Unnecessarily rigid demands for proof of eligibility for legalization could seriously impede the success of the legalization effort. Therefore, the Committee expects the INS to incorporate flexibility into the standards for legalization eligibility, permitting the use of affidavits of credible witnesses and taking into consideration the special circumstances relating to persons previously living clandestinely in this country.[368]

Senator Edward Kennedy pointedly asked the INS during implementation hearings, "Is the Immigration Service prepared to adjust some of the proposed regulations to assure that the legalization program is implemented in as flexible and generous a fashion as possible?"[369] For its part, the INS agreed that IRCA should be implemented in a "generous and flexible manner."[370] During an exchange in an implementation hearing on IRCA, INS Commissioner, Alan Nelson, admitted that the INS knew of Congress' intent that, as Representative Barney Frank had suggested, the humanitarian grounds for waiving excludability of legalization applicants be used liberally.[371]

(1986) (statement of Sen. Edward Kennedy) ("generous" date of January 1, 1982); *id.* at 33,234 (statement of Sen. Alan Cranston) ("generous and humane" program); S. REP. NO. 132, *supra* note 17, at 103 (additional views of Sen. Edward Kennedy) (Congress has consistently supported a "generous" legalization program); *see also, e.g., Immigration Reform Act: Phase II — Regulations: Hearings on Pub. L. No. 99-603 Before the House Comm. on the Judiciary*, 100th Cong., 1st Sess. 9 (1987) (statement of Joan Clark, Asst. Sec'y of State, Bureau of Consular Affairs) ("generous" legalization program); *House Hearing* 28, *supra* note 255, at 72 (statement of Bishop Bevilacqua) (two motivations of legalization should be "pragmatism" and "generosity").

367. *E.g.*, 132 CONG. REC. 33,231 (1986) (statement of Sen. Alan Simpson) (legalization is from a "generous" nation).

368. H.R. REP. NO. 682-1, *supra* note 17, at 73. Anecdotally, this language has been used by many immigrant community activists to justify their view that IRCA was a broad "amnesty" to clear away the underclass. However, the demand for flexibility applies equally well to a program aimed only at aliens "with equity" as it would to a broad amnesty.

369. *Senate Hearing* 221, *supra* note 252, at 2.

370. *Id.* at 91 (answer of Alan Nelson, INS Commissioner, to written questions by Sen. Kennedy: "We agree that every effort should be, and we believe is being made to implement IRCA in a generous and flexible manner.").

371. *See Implementation of IRCA: Hearings on Pub. L. No. 99-603 Before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 99th Cong., 2d Sess. 122-23 (1986).

> MR. FRANK: People are aware of that, and that when it comes to legalizing people, those categories that are waivable, my recollection was that general view—and I think Mr. Fish concurred in this—was the expectation that those categories that were waivable on humanitarian grounds in most cases they would be waived, that the general assumption was that that is what we meant by that. Does that accurately reflect-
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> MR. NELSON: You are certainly correct in spelling out the legislation, Mr. Frank. We are quite aware of the provisions you have alluded to about waivability that is being

Thus, while the intent of Congress may have been to limit legalization to those "with equity," the INS was still required to be "generous" and "flexible." This philosophy was consistent with the underlying theories of legalization — either to diversify INS resources, clear away the underclass, or be equitable to long-term undocumented aliens — because the program would be more and more successful as more and more aliens applied.[372] Thus, in the view of its chief sponsors, every undocumented alien resident in the United States since January 1, 1982 was to be given a fair chance to apply for legalization.[373]

The need to reach all possible aliens was evident from the outset. When first proposing the legalization program, the Select Commission hoped that everything would be done to encourage "maximum participation" by eligible aliens.[374] The INS held a similar position. Said INS Commissioner Alan Nelson, "I want to stress that the Government wishes to reach all illegal aliens who qualify under the law."[375] He argued that the INS was able and ready to adjust the status of all aliens who qualified.[376] He also believed that the INS regulations were flexible, in keeping with Congress' wishes.[377]

D. *Intent of the Special Agricultural Worker Program*

Evidence of the scope and intent behind the SAW legalization program is sketchy. The program made its way to inclusion in IRCA virtually without congressional debate and without any attempts to change it. Even its authors did not want to touch or discuss the SAW program.

The scant few comments relating to the SAW program during

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processed in our draft regulations.

MR. FRANK: On humanitarian grounds?

MR. NELSON: Yes. I think, again, our whole thrust on this—and like Mr. Schumer's comments and chairman Mazzoli's, we have got to do this down the middle. It has got to be straight, fair, and balanced.

MR. FRANK: We did have the provision in the conference report which said it is the intention that the legalization shall be liberally and openly applied, or whatever the phrase was. I just note that.

Id.

372. *See also Senate Hearing* 1060, *supra* note 256, at 116 (statement of Doris Meissner, Carnegie Endowment for International Peace) (if the two goals of legalization are "altruistic" and "pragmatic" and are to be accomplished, "the maximum number of people eligible must apply.").

373. *Senate Hearing* 221, *supra* note 252, at 108 (sentiment of Sen. Alan Simpson).

374. SELECT COMM., *supra* note 271, at 81.

375. *House Hearing* 28, *supra* note 255, at 204.

376. *Senate Hearing* 221, *supra* note 252, at 91 ("We take strong exception with the allegation that institutional resistance will cause INS officers to deny legalization to those qualified under the law. It is our policy to adjust all persons who qualify for legalization.").

377. *Senate Hearing* 1060, *supra* note 256, at 59 ("We have been flexible in regulations and guidelines. Sometimes we get beaten over the head for being flexible. I wonder if our critics would like us to be rigid.") Sen. Alan Simpson pointed out that the INS had had so many discussions with members of Congress over IRCA that the INS "know[s] what legislative intent is in this bill, there is no question about that." *Senate Hearing* 221, *supra* note 252, at 108.

IRCA's legislative development appear mostly as unhappy criticisms of the legislative process. Representative F. James Sensenbrenner noted that the SAW program "was offered without hearings to determine its impact, and questions which were posed to determine 'how it would operate' were met with, 'That will have to be worked out later.' "[378] The same held true once the SAW program reached the floor: "Our biggest protest," said Representative Edward Roybal, "is the fact that no opportunity was really given to thoroughly debate this issue [of SAW changes in the conference report] . . . ."[379] Indeed, at the start of the House's last day of deliberation over H.R. 381 — the House version of IRCA — the rules under which IRCA was debated provided a sort of "gag order" by preventing changes to the SAW program.[380] Finally, those who wanted to raise questions about SAWs were stonewalled with statements that any attempts to change the program would have "killed" IRCA itself.[381]

Therefore, the record is relatively devoid of comments revealing the "intent" of the SAW program. Naturally, the program had its supporters and detractors. But few made statements revealing the intended scope of the program or the reasoning behind its structure. Several legislators viewed the SAW program as a compromise between growers and workers,[382] probably meaning the program was not a blanket amnesty for agricultural workers.[383] The prospects of sanctions created a need for a program that would provide a pool of legal agricultural workers. In fact, the timing of the implementation of sanctions in agricultural areas coincided with the end of the SAW application period. To placate concerns about the program, some said it was the "best" compromise Congress could get over the issue,[384] that it was the key to

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378. H.R. REP. NO. 682-1, *supra* note 17, at 219 (additional views of Rep. Sensenbrenner).

379. 132 CONG. REC. 31,575 (1986).

380. *See id.* at 29,977 (1986) (statement of Rep. McCollum).

381. H.R. REP. NO. 682-2, *supra* note 290, at 48 (Minority Report) ("The Majority argued that any effort in committee to change these [SAW] rules would kill immigration reform for yet another Congress, regardless of the merit of the rules or changes proposed."); 132 CONG. REC. 33,237 (1986) (statement of Sen. Levin) ("It appears that the bill could not pass without this [SAW] compromise."); *Id.* at 29,989 (statement of Rep. Mazzoli) ("[W]e were urged to accept the [SAW] compromise without so much as the change of a jot or title because to alter the compromise was to destroy it and the bill itself.").

382. H.R. REP. NO. 682-2, *supra* note 290, at 50 (additional views of Reps. Fawell and Roukema) ("compromise" between laborers and producers); 132 CONG. REC. 29,996 (1986) (statement of Rep. Panetta) (stating that SAW protects the legal status of farm workers, meets the needs of industry, and provides employer sanctions; it "is a compromise. It is not a perfect compromise." *id.* at 30,000 (comments of Rep. Schumer) (SAW "very hard-fashioned compromise" to get labor and growers together).

383. *See* 132 CONG. REC. 29,996 (1986) (statement of Rep. Panetta) (SAW "has been tightened up significantly by the Lungren amendments," by a cap on "SAW-B" workers of 350,000, by the extension of the cutoff period from 60 to 90 days, and by a sunset provision of 7 years); *id.* at 30,000 (statement of Rep. Schumer) (SAW "is not millions of people cascading across the borders" but only 250,000 by latest estimate, and "[i]t is not welfare benefits for those folks immediately.").

384. *Id.* at 31,638 (statement of Rep. Moorhead) ("There has been a compromise in the area

getting compromises on IRCA altogether,[385] and that while "every one on the floor" hated the SAW program, it was "part of the price you have to pay" for immigration reform.[386] As with the pre-1982 program, a legislator had to "hold his nose" over the SAW program to vote for IRCA.[387]

On the other hand, some saw it not as a compromise between agricultural growers and laborers, but rather between the growers and Congress. Representative Hal Daub dubbed the SAW program the "western growers buyout provision"[388] others said it only existed because of pressure from the growers' lobby for a cheap labor source.[389] From this perspective, the SAW program was not at all an aide to farmworkers, but only a gift to growers.[390] The INS explained the reasoning:

> The controversy over foreign agricultural workers was one of the reasons why immigration legislation failed in 1984 and why it almost derailed again in 1986. Growers have contended that many U.S. workers do not want to work in seasonal agriculture or live in rural areas. If employer sanctions were to be instituted, growers wanted some assurance that they could obtain sufficient workers lawfully so that their crops did not rot in the fields. Organized labor and farm worker rights organizations disputed the growers' assertions, pointing to high unemployment rates among domestic farm workers. They charged that growers were seeking to preserve a cheap labor force with few legal rights.[391]

No one seemed to think the SAW program was primarily for the benefit of laborers, although the legislative history makes it apparent that

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of special agricultural workers and while the program outlined in the bill is not an ideal one, it is the best we can do if we intend to get an immigration reform bill out this year.").

385. *Id.* at 30,049, 30,063 (statements of Rep. Rodino). On the other hand, Rep. Mazzoli said SAW was only one small aspect of IRCA (implying that it could be ignored by those who found it distasteful). *Id.* at 29,989.

386. *Id.* at 33,214 (statement of Sen. Gramm).

387. *Id.* at 33,208 (statement of Sen. Chiles).

388. *Id.* at 31,641.

389. *Id.* at 31,640 (statement of Rep. Bryant) (SAW is terrible, growers do not need it, but growers would not let IRCA pass otherwise); *id.* at 31,642 (statement of Rep. Martinez) (SAW is the result of the growers' lobby). Laborers' lobbyists saw things the same way. *House Hearing* 28, *supra* note 255, at 103, 113 (statements of Ruben Bonilla, Texas attorney, and Raul Yzaguirre, National Council of La Raza).

390. 132 CONG. REC. 31,637 (1986) (statement of Rep. Roybal); *Id.* at 32,412 (statement of Sen. Metzenbaum) ("[SAW] is too generous to Western growers. I think we gave away a lot of the whole ballpark. But that was the price of being able to finally have a bill. . . . Political reality is that the growers demanded concessions, and the growers had many spokespersons who were on the conference committee. . . . But I say for one that I think we went too far. Having said that, I think it is the price we have to pay to get this bill.").

391. Preparing for Immigration Reform *supra* note 28, at 10.

Congress was mindful not to reenact elements of the Bracero guestworker program from the 1950s.[392]

392. The SAW provisions were "emphatically not a return to the repugnant bracero program of the past," said Sen. Alan Simpson, and the House Judiciary Committee said they wrote SAW mindful of the Bracero program abuses. Supporters of the SAW provisions spoke quite negatively of the Bracero program, and obviously they would have not supported the SAW program if it was any kind of a return. H.R. REP. NO. 682-1, *supra* note 17, at 51, 53; S. REP. NO. 132, *supra* note 17, at 108; *Senate Hearing* 221, *supra* note 252, at 102.

APPENDIX C

Instruction sheets for commonly-used INS forms:

1. Petition for Alien Relative (Form I-130)
2. Application for Permanent Residence (Form I-485)
3. Application for Naturalization (Form N-400)

U.S. Department of Justice
Immigration and Naturalization Service (INS)

Petition for Alien Relative

Instructions

Read the instructions carefully. If you do not follow the instructions, we may have to return your petition, which may delay final action. If more space is needed to complete an answer continue on separate sheet of paper.

1. **Who can file?**
A citizen or lawful permanent resident of the United States can file this form to establish the relationship of certain alien relatives who may wish to immigrate to the United States. You must file a separate form for each eligible relative.

2. **For whom can you file?**
   A. If you are a citizen, you may file this form for:
      1) your husband, wife, or unmarried child under 21 years old
      2) your unmarried child over 21, or married child of any age
      3) your brother or sister if you are at least 21 years old
      4) your parent if you are at least 21 years old.
   B. If you are a lawful permanent resident you may file this form for:
      1) your husband or wife
      2) your unmarried child

   Note: If your relative qualifies under instruction A(2) or A(3) above, separate petitions are not required for his or her husband or wife or unmarried children under 21 years old. If your relative qualifies under instruction B(2) above, separate petitions are not required for his or her unmarried children under 21 years old. These persons will be able to apply for the same type of immigrant visa as your relative.

3. **For whom can you not file?**
Your cannot file for people in the following categories:
   A. An adoptive parent or adopted child, if the adoption took place after the child became 16 years old, or if the child has not been in the legal custody and living with the parent(s) for at least two years.
   B. A natural parent if the United States citizen son or daughter gained permanent residence through adoption.
   C. A stepparent or stepchild, if the marriage that created this relationship took place after the child became 18 years old.
   D. A husband or wife, if your were not both physically present at the marriage ceremony, and the marriage was not consummated.
   E. A husband or wife if you gained lawful permanent resident status by virtue of a prior marriage to a United States citizen or lawful permanent resident unless:
      1) a period of five years has elapsed since you became a lawful permanent resident; OR
      2) you can establish by clear and convincing evidence that the prior marriage (through which you gained your immigrant status) was not entered into for the purpose of evading any provision of the immigration laws; OR
      3) your prior marriage (through which you gained your immigrant status) was terminated by the death of your former spouse.
   F. A husband or wife if he or she was in exclusion, deportation, rescission, or judicial proceedings regarding his or her right to remain in the United States when the marriage took place, unless such spouse has resided outside the United States for a two-year period after the date of the marriage.
   G. A husband or wife if the Attorney General has determined that such alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.
   H. A grandparent, grandchild, nephew, niece, uncle, aunt, cousin, or in-law.

4. **What documents do your need?**
You must give INS certain documents with this form to prove you are eligible to file. You must also give the INS certain documents to prove the family relationship between you and your relative.
   A. For each document needed, give INS the original and one copy. However, because it is against the law to copy a Certificate of Naturalization, a Certificate of Citizenship or an Alien Registration Receipt Card (Form I-151 or I-551) give INS the original only. **Originals will be returned to you.**
   B. If you do not wish to give INS the original document, you may give INS a copy. The copy must be certified by:
      1) an INS or U.S. consular officer, or
      2) an attorney admitted to practice law in the United States, or
      3) an INS accredited representative (INS may still require originals).
   C. Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

5. **What documents do you need to show you are a United States citizen?**
   A. If you were born in the United States, give INS your birth certificate.
   B. If you were naturalized, give INS your original Certificate of Naturalization.
   C. If you were born outside the United States, and you are a U.S. citizen through your parents, give INS:
      1) your original Certificate of Citizenship, or
      2) your Form FS-240 (Report of Birth Abroad of a United States Citizen).
   D. In place of any of the above, you may give INS your valid unexpired U.S. passport that was initially issued for at least 5 years.
   E. If you do not have any of the above and were born in the United States, see instruction under 8 below. *"What if a document is not available?"*

6. **What documents do you need to show you are a permanent resident?**
You must give INS your alien registration receipt card (Form I-151 or Form I-551). Do not give INS a photocopy of the card.

7. **What documents do you need to prove family relationship?**
You have to prove that there is a family relationship between your relative and yourself.

In any case where a marriage certificate is required, if either the husband or wife was married before, you must give INS documents to show that all previous marriages were legally ended. In cases where the names shown on the supporting documents have changed, give INS legal documents to show how the name change occurred (for example a marriage certificate, adoption decree, court order, etc.)

Find the paragraph in the following list that applies to the relative for whom you are filing.

If you are filing for your:

A. **husband or wife,** give INS
   1) your marriage certificate
   2) a color photo of you and one of your husband or wife, taken within 30 days of the date of this petition. These photos must have a white background. They must be glossy, unretouched, and not mounted. The dimension of the facial image should be about 1 inch from chin to top of hair in 3/4 frontal view, showing the right side of the face with the right ear visible. Using pencil or felt pen, lightly print name (and Alien Registration Number, if known) on the back of each photograph.
   3) a completed and signed G-325A (Biographic Information) for you and one for your husband or wife. Except for name and signature, you do not have to repeat on the G-325A the information given on your I-130 petition.

B. **child** and you are the **mother,** give the child's birth certificate showing your name and the name of your child.

C. **child** and you are the **father or stepparent,** give the child's birth certificate showing both parents' names and your marriage certificate. **Child** born out of wedlock and you are the **father,** give proof that a parent/child relationship exists or existed. For example, the child's birth certificate showing your name and evidence that you have financially supported the child. (A blood test may be necessary).

D. **brother or sister,** your birth certificate and the birth certificate of your brother or sister showing both parents' names. If you do not have the same mother, you must also give the marriage certificates of your father to both mothers.

E. **mother,** give your birth certificate showing your name and the name of your mother.

F. **father,** give your birth certificate showing the names of both parents and your parents' marriage certificate.

G. **stepparent,** give your birth certificate showing the names of both natural parents and the marriage certificate of your parent to your stepparent.

H. **adoptive parent or adopted child,** give a certified copy of the adoption decree, the legal custody decree if you obtained custody of the child before adoption, and a statement showing the dates and places you have lived together with the child.

8. **What if a document is not available?**
If the documents needed above are not available, you can give INS the following instead. (INS may require a statement from the appropriate civil authority certifying that the needed document is not available.)

A. Church record: A certificate under the seal of the church where the baptism, dedication, or comparable rite occurred within two months after birth, showing the date and place of child's birth, date of the religious ceremony, and the names of the child's parents.

B. School record: A letter from the authorities of the school attended (preferably the first school), showing the date of admission to the school, child's date and place of birth, and the names and places of birth parents, if shown in the school records.

C. Census record: State or federal census record showing the names, place of birth, and date of birth or the age of the person listed.

D. Affidavits: Written statements sworn to or affirmed by two persons who were living at the time and who have personal knowledge of the event you are trying to prove; for example, the date and place of birth, marriage, or death. The persons making the affidavits need not be citizens of the United States. Each affidavit should contain the following information regarding the person making the affidavit: his or her full name, address, date and place of birth, and his or her relationship to you, if any; full information concerning the event; and complete details concerning how the person acquired knowledge of the event.

9. **How should you prepare this form?**
A. Type or print legibly in ink.
B. If you need extra space to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.
C. Answer all questions fully and accurately. If any item does not apply, please write "N/A".

10. **Where should you file this form?**
A. If you live in the United States, send or take the form to the INS office that has jurisdiction over where you live.
B. If you live outside the United States, contact the nearest American Consulate to find out where to send or take the completed form.

11. **What is the fee?**
You must pay seventy five dollars ($75.00) to file this form. **The fee will not be refunded, whether the petition is approved or not.** DO NOT MAIL CASH. All checks or money orders, whether U.S. or foreign, must be payable in U.S. currency at a financial institution in the United States. When a check is drawn on the account of a person other than yourself, write your name on the face of the check. If the check is not honored, INS will charge you $5.00.

Pay by check or money order in the exact amount. Make the check or money order payable to "Immigration and Naturalization Service". However,
A. if you live in Guam: Make the check or money order payable to "Treasurer, Guam", or
B. if you live in the U.S. Virgin Islands: Make the check or money order payable to "Commissioner of Finance of the Virgin Islands".

12. **When will a visa become available?**
When a petition is approved for the husband, wife, parent, or unmarried minor child of a United States citizen, these relatives do not have to wait for a visa number, as they are not subject to the immigrant visa limit. However, for a child to qualify for this category, all processing must be completed and the child must enter the United States before his or her 21st birthday.

For all other alien relatives there are only a limited number of immigrant visas each year. The visas are given out in the order in which INS receives properly filed petitions. To be considered properly filed, a petition must be completed accurately and signed, the required documents must be attached, and the fee must be paid.

For a monthly update on the dates for which immigrant visas are available, you may call (202) 647-0508.

13. **What are the penalties for committing marriage fraud or submitting false information or both?**
Title 8, United States Code, Section 1325 states that any individual who knowingly enters into a marriage contract for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than five years, or fined not more than $250,000.00 or both.

Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

14. **What is our authority for collecting this information?**
We request the information on the form to carry out the immigration laws contained in Title 8, United States Code, Section 1154(a). We need this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service. You do not have to give this information. However, if you refuse to give some or all of it, your petition may be denied.

15. **Reporting Burden.**
Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Justice, Immigration and Naturalization Service (Room 5304), Washington, D.C. 20536; and to the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0054, Washington, D.C. 20503.

It is not possible to cover all the conditions for eligibility or to give instructions for every situation. If you have carefully read all the instructions and still have questions, please contact your nearest INS office.

U.S. Department of Justice
Immigration and Naturalization Service (INS)

Application for Permanent Residence

Instructions

Read the instructions carefully. If you do not follow the instructions, we may have to return your application, which may delay final action.

You will be required to appear before an Immigration Officer to answer questions about this application. You must bring your temporary entry permit (Form I-94, Arrival Departure Record) and your passport to your interview.

If you plan to leave the U.S. to any country, including Canada or Mexico, before a decision is made on your application, contact the INS Office processing your Application for Permanent Residence before you depart, since a departure from the U.S. without written authorization will result in the termination of your application.

1. Who can apply?

You are eligible to apply for lawful permanent residence if you are in the U.S. and you:

A. have an immigrant visa number immediately available to you (see below - "When will a visa become available?"), or

B. entered with a fiance(e) visa and have married within ninety days, or

C. have been granted asylum by the INS or an immigration judge one year or more ago, or

D. are a member of a class of "special immigrants" which includes certain ministers of religion, certain former employees of the United States government abroad, certain retired officers or employees of international organizations, certain immediate relatives of officers or employees of international organizations, and certain physicians who were licensed to practice medicine in the United States prior to January 8, 1978, or

E. have resided continuously in the United States since before January 1, 1972, or

F. are filing a motion before an immigration judge, or

G. are a former foreign government official, or a member of the immediate family of that official, or

H. received the designation "Cuban/Haitian Entrant (Status Pending)" or are a national of Cuba or Haiti who arrived before January 1, 1982 who had an INS record established before that date, and who (unless you have filed for asylum prior to January 1, 1982) was not admitted to the U.S. as a nonimmigrant. You must apply prior to November 6, 1988.

2. Who may not apply?

You are not eligible for lawful permanent residence if you entered the United States and you:

A. were not inspected and admitted or paroled by a United States Immigration Officer, or

B. continued in or accepted unauthorized employment, on or before January 1, 1977, unless you are the spouse, parent, or child of a United States citizen, or

C. are not in legal immigration status on the date of filing your application, or have failed (other than through no fault of your own for technical reasons) to maintain continuously a legal status since entry into the United States, unless you are the spouse, parent, or child of a United States citizen, or

D. are an exchange visitor subject to the two-year foreign residence requirement, or

E. were in transit through the United States without a visa, or

F. were admitted as a crewman of either a vessel or an aircraft.

NOTE: If you are included under 2 above but have lived here continuously since before January 1, 1972 or are applying under the Cuban/Haitian provisions, you may still apply.

3. When will a visa become available?

If you are applying for a permanent residence as the relative of a U.S. citizen or lawful permanent resident, or as an immigrant employee, an immigrant visa petition (I-130 or I-140) must have been filed (or must be filed with your application). In addition, an immigrant visa number must be immediately available to you.

If you are the husband, wife, parent or minor unmarried child of a U.S. citizen, a visa is immediately available to you when your U.S. citizen relative's petition, Form I-130, for you is approved.

For all other applicants,, the availability of visa numbers is based on priority dates, which are determined by the filing of immigrant visa applications or labor certifications. When the priority date is reached for your approved petition, a visa number is immediately available to you. For a monthly update of the dates for which visa numbers are available, you may call (202)663-1514.

4. What documents do you need?

A. 1) For each document needed, give INS the original and one copy. **Originals will be returned to you.**

2) If you do not wish to give INS an original document, you may give INS a copy. The copy must be certified by:

a) an INS or U.S. consular officer, or

b) an attorney admitted to practice law in the United States, or

c) an INS accredited representative

(INS still may require originals)

3) Documents in a foreign language must be accompanied by a complete English translation. The translator must certify that the translation is accurate and that he or she is competent to translate.

B. You must also give INS the following documents:

1) Your birth certificate.

2) If you are between 14 and 79 years of age, Form G-325A (Biographic Information).

3) a) If you are employed, a letter from your present employer showing that you have employment of a permanent nature.

FORM I-485 (REV 2-27-87)N

b) If you are not employed in a permanent job, a Form I-134 (Affadavit of Support) from a responsible person in the United States or other evidence to show that you are not likely to become a public charge.

4) If your husband or wife is filing an application for permanent residence with yours, he or she also must give INS your marraige certificate and proof for both of you that all prior marriages have been legally ended.

5) If your child is filing an application for permanent residence with yours, he or she also must give INS your marriage certificate and proof that all prior marriages for you and your husband or wife have been legally ended, unless those documents are being submitted with your husband or wife's application.

C. If you entered the U.S. as a fiance(e), give INS your marriage certificate. If you are the child of a fiance(e), give INS your birth certificate and the marriage certificate for your parent's present marriage.

D. If you have resided in the United States continuously since before January 1, 1972, give INS documentary evidence of that fact. Some examples of records that can be used to prove residence are bank, real estate, census, school, insurance, or business records, affidavits of credible witnesses, or any other document that relates to you and shows evidence of your presence in the United States during this period.

E. If you have resided in the United States continuously since before July 1, 1924, INS may be able to create a record of your lawful admission as of the date of your entry. Therefore, if you have resided continuously in the United States since a date before July 1, 1924, it is very important to give evidence establishing that fact.

F. If you are a foreign government official or a representative to an international organization, a member of the family, or a treaty-trader or treaty investor or the spouse or child of that person, you must give INS Form I-508. Form I-508 waives all rights, privileges, exemptions, and immunities which you would otherwise have because of that status.

5. Photographs

Give INS two color photographs of yourself taken within 30 days of the date of this application. These photos must have a white background. They must be glossy, un-retouched, and not mounted. The dimension of the facial image must be about 1 inch from the chin to the top of the hair; your face should be in ¾ frontal view, showing the right side of the face with the right ear visible. Using pencil or felt pen, lightly print your name on the back of each photograph.

6. Fingerprints

Give INS a completed fingerprint card (Form FD-258) for each applicant between 14 and 79 years of age. Applicants may be fingerprinted by INS employees, other law enforcement officers, outreach centers, charitable and voluntary agencies, or other reputable persons or organizations. The fingerprint card (FD-258), the ink used, and the quality of the prints must meet standards prescribed by the Federal Bureau of Investigation. You must sign the card in the presence of the person taking your fingerprints. That person must then sign his or her name and enter the date in the spaces provided. It is important to give all the information called for on the card.

7. Medical Examination

Unless you are applying as a fiance(e) or dependent, or as an individual who has lived here continuously since before January 1, 1972, you will be required to have a medical examination in conjuction with this application. You may find out more from the INS office that will handle your application.

8. How should you prepare this form?

A. Type or print clearly in ink.

B. If you need extra space to complete any item, attach a continuation sheet, indicate the item number, and date and sign each sheet.

C. Answer all questions fully and accurately. If any item does not apply, please write "N/A".

9. Where must you file?

You must send or take this form and any other required documents to the INS office that has jurisdiction over the place where you live. You will be interviewed. You must bring your temporary entry permit (Form I-94, Arrival Departure Record), and your passport to your interview.

10. What is the fee?

You must pay $50.00 to file this form, unless you are filing under the Cuban/Haitian provisions. **The fee will not be refunded, whether your application is approved or not.** DO NOT MAIL CASH. All checks or money orders, whether U.S. or foreign, must be payable in U.S. currency at a financial institution in the United States. When a check is drawn on the account of a person other than yourself, write your name on the face of the check. If the check is not honored, INS will charge you $5.00.

Pay by check or money order in the exact amount. Make the check or money order payable to "Immigration and Naturalization Service". However,

A. if you live in Guam: Make the check or money order payable to "Treasurer, Guam", or

B. if you live in the U.S. Virgin Islands: Make the check or money order payable to "Commissioner of Finance of the Virgin Islands".

11. What are the penalties for submitting false information?

Title 18, United States Code, Section 1001 states that whoever willfully and knowingly falsifies a material fact, makes a false statement, or makes use of a false document will be fined up to $10,000 or imprisoned up to five years, or both.

12. What is our authority for collecting this information?

We request the information on this form to carry out the immigration laws contained in Title 8, United States Code, Section 1255. We need this information to determine whether a person is eligible for immigration benefits. The information you provide may also be disclosed to other federal, state, local, and foreign law enforcement and regulatory agencies during the course of the investigation required by this Service. You do not have to give this information. However, if you refuse to give some or all of it, your application may be denied.

It is not possible to cover all the conditions for eligibility or to give instructions for every situation. If you have carefully read all the instructions and still have questions, please contact your nearest INS office.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0009
Application for Naturalization

INSTRUCTIONS

Purpose of This Form.
This form is for use to apply to become a naturalized citizen of the United States.

Who May File.
You may apply for naturalization if:

- you have been a lawful permanent resident for five years;
- you have been a lawful permanent resident for three years, have been married to a United States citizen for those three years, and continue to be married to that U.S. citizen;
- you are the lawful permanent resident child of United States citizen parents; or
- you have qualifying military service.

Children under 18 may automatically become citizens when their parents naturalize. You may inquire at your local Service office for further information. If you do not meet the qualifications listed above but believe that you are eligible for naturalization, you may inquire at your local Service office for additional information.

General Instructions.
Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item.

Every application must be properly signed and filed with the correct fee. If you are under 18 years of age, your parent or guardian must sign the application.

If you wish to be called for your examination at the same time as another person who is also applying for naturalization, make your request on a separate cover sheet. Be sure to give the name and alien registration number of that person.

Initial Evidence Requirements.
You must file your application with the following evidence:

A copy of your alien registration card.

Photographs. You must submit two color photographs of yourself taken within 30 days of this application. These photos must be glossy, unretouched and unmounted, and have a white background. Dimension of the face should be about 1 inch from chin to top of hair. Face should be 3/4 frontal view of right side with right ear visible. Using pencil or felt pen, lightly print name and A#, if any, on the back of each photo. This requirement may be waived by the Service if you can establish that you are confined because of age or physical infirmity.

Fingerprints. If you are between the ages of 14 and 75, you must submit your fingerprints on Form FD-258. Fill out the form and write your Alien Registration Number in the space marked "Your No. OCA" or "Miscellaneous No. MNU". Take the chart and these instructions to a police station, sheriff's office or an office of this Service, or other reputable person or organization for fingerprinting. (You should contact the police or sheriff's office before going there since some of these offices do not take fingerprints for other government agencies.) You must sign the chart in the presence of the person taking your fingerprints and have that person sign his/her name, title, and the date in the space provided. Do not bend, fold, or crease the fingerprint chart.

U.S. Military Service. If you have ever served in the Armed Forces of the United States at any time, you must submit a completed Form G-325B. If your application is based on your military service you must also submit Form N-426, "Request for Certification of Military or Naval Service."

Application for Child. If this application is for a permanent resident child of U.S. citizen parents, you must also submit copies of the child's birth certificate, the parents' marriage certificate, and evidence of the parents' U.S. citizenship. If the parents are divorced, you must also submit the divorce decree and evidence that the citizen parent has legal custody of the child.

Where to File.
File this application at the local Service office having jurisdiction over your place of residence.

Fee.
The fee for this application is $90.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Form N-400 (Rev. 07/17/91) N

Processing Information.
Rejection. Any application that is not signed or is not accompanied by the proper fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until it is accepted by the Service.

Requests for more information. We may request more information or evidence. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Interview. After you file your application, you will be notified to appear at a Service office to be examined under oath or affirmation. This interview may not be waived. If you are an adult, you must show that you have a knowledge and understanding of the history, principles, and form of government of the United States. There is no exemption from this requirement.

You will also be examined on your ability to read, write, and speak English. If on the date of your examination you are more than 50 years of age and have been a lawful permanent resident for 20 years or more, or you are 55 years of age and have been a lawful permanent resident for at least 15 years, you will be exempt from the English language requirements of the law. If you are exempt, you may take the examination in any language you wish.

Oath of Allegiance. If your application is approved, you will be required to take the following oath of allegiance to the United States in order to become a citizen:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God."

If you cannot promise to bear arms or perform noncombatant service because of religious training and belief, you may omit those statements when taking the oath. "Religious training and belief" means a person's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or merely a personal moral code.

Oath ceremony. You may choose to have the oath of allegiance administered in a ceremony conducted by the Service or request to be scheduled for an oath ceremony in a court that has jurisdiction over the applicant's place of residence. At the time of your examination you will be asked to elect either form of ceremony. You will become a citizen on the date of the oath ceremony and the Attorney General will issue a Certificate of Naturalization as evidence of United States citizenship.

If you wish to change your name as part of the naturalization process, you will have to take the oath in court.

Penalties.
If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice.
We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1439, 1440, 1443, 1445, 1446, and 1452. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.
We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: (1) learning about the law and form, 20 minutes; (2) completing the form, 25 minutes; and (3) assembling and filing the application (includes statutory required interview and travel time, after filing of application), 3 hours and 35 minutes, for an estimated average of 4 hours and 20 minutes per response. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0009, Washington, D.C. 20503.