# A Midstream Evaluation of the Immigration Reform and Control Act of 1986

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May 5, 1987, Congress launched the legalization of the Immigration Reform and Control Act (IRCA), the nation's first major amnesty program for undocumented migrants. IRCA allows undocumented workers, illegally residing in the United States since 1982 to become U.S. residents, if they can meet certain criteria. This legislation also establishes the processes whereby eligible immigrants can apply for legalized status. Congress intended that the amnesty program should be implemented in a liberal and generous fashion as has been the historical pattern with other such forms of administrative relief.

Initially, the Immigration and Naturalization Service (INS) estimated at least 3.9 million eligible persons would come forward nationally. It later scaled that goal down to two million. However, the amnesty program will fall short of its goal of legalizing the status of two million people. Three reports, the Carnegie Endowment for International Peace report, the Northern California Grantmakers' report and the report by a Boston immigration-activist consortium each concluded that significant numbers of eligible undocumented would not file. These individuals and families who will not apply will likely remain underground and illegal because of fear and lack of information. The likelihood they will return home after more than five years in the U.S. is small.

## *THE INTENT AND GOALS OF CONGRESS FOR THE IMMIGRATION REFORM AND CONTROL ACT OF 1986*

Recent bipartisan Congressional efforts to impose additional controls on cross-border immigration date back to the 92nd Congress in 1971. With Executive support from the Nixon, Ford, Carter, and Reagan Administrations, the key components of immigration reform were employer sanctions, increased enforcement, and legalization of long-term undocumented residents. The Immigration Reform and Control Act, signed into law by President Reagan on November 6, 1986, wrought the most sweeping change in U.S. immigration law for the last 30 years.

The goals of IRCA were succinctly expressed by Senator Joseph R. Biden, Jr., in the Senate debate on the day of the bill's final passage.

> First, liberal amnesty for those individuals who have established a place for themselves in this land of refuge and opportunity; second, the imposition of employer sanctions for knowingly hiring illegal aliens; and third, adequate civil rights protection to guard against discrimination based on alienage.

The statutory structure of IRCA itself demonstrates that Congress intended to maximize the legalization of settled undocumented immigrants.

- Using INS estimates known to the 99th Congress, approximately 3.9 million undocumented immigrants are expected to be eligible for 1-1-82 and SAW amnesty. Congress understood that millions, not hundreds of thousands, of immigrants were to be legalized.
- To maximize the number of legalization applicants, Congress mandated that the Attorney General and INS implement a broad, grass-roots dissemination program of information on legalization.
- No numerical limits are placed on the total number who may become legalized.
- Of the 33 ordinary grounds for exclusion in the Immigration and Naturalization Act of 1952, several grounds are waived. The Attorney General is expected to waive most other grounds of exclusion, such as the "likelihood of becoming a public charge" and lengthy emergency absences from the United States, on the basis of family unity, humanitarian purpose, or public interest.

## *NUMBER OF APPLICANTS*

The intention of Congress is clear: to maximize the number of eligible persons. Those who, in fact, get legal status will fall short. The Carnegie Endowment for International Peace report, whose principal investigator is Doris Meissner, the nation's acting immigration commissioner in 1981-82, estimates that the amnesty program will legalize only about 1.4 million, even though 1.8 to 2.6 million are eligible. In the greater San Francisco Bay Area which has a large number of undocumented immigrants, the Northern California Grantmakers' report estimates that only 52.2% of those eligible in the area will apply.

There has been a great deal of controversy surrounding the causes. Most critics point to the administrative start-up procedures, the public education and outreach program, and to the regulations that are too restrictive. The family issue is the biggest threat to the success of the legalization program, threatening to divide families by amnesty.

## *ADMINISTRATIVE PROCEDURES*

The low number of applicants, particularly during the first two months can be attributed to administrative start-up procedures which delayed the processing of applications. The INS Legalization Offices as well as voluntary agencies were bogged down in procedural, logistic and financial problems. 1) Legalization regulations were distributed by the INS on May 1, only four days before the program commenced; to apply them, legalization providers needed additional training. 2) Virtually no public education or outreach was done prior to May 4. 3) No clear documentation guidelines had been provided by the INS so agency service providers were careful to prepare very well-documented cases for their clients. 4) INS staff within the local legalization offices were inconsistent in decision-making. Regional offices issued different criteria for dealing with different types of cases.

## *PUBLIC OUTREACH AND EDUCATION*

Former INS Director Doris Meissner, now at the Carnegie Endowment for International Peace, observed that the key to the success of the legalization component of IRCA is "publicity, publicity and publicity". This simply has not happened. One month before the program was to begin, the INS awarded a single source contract of $10.7 million to the Justice Group, a joint venture composed of a communications firm, an ad agency, and Hill and Knowlton, Inc., the public affairs division of J. Walter Thompson, Inc., the world's largest advertising firm. The agreement was that the group would use advertising, media spots, and community outreach to carry out the 18-month, nationwide publicity campaign. The original proposal also contained a grassroots outreach effort through community agencies, which was later scrubbed by the INS.

To date the publicity program has focused on employer sanctions and short spots on Spanish-language television and radio. These spots have been very limited in context, commented Emilio Nicholas, Jr., General Manager of KDTV in San Francisco. According to people in Asian service organization, no significant efforts have been directed at the large number of eligible people in the Filipino and Chinese communities.

When the project manager for Coronado Communications was asked what was planned for reaching the base communities, he responded, "There are concerned, altruistic individuals, QDEs and directors of the legalization projects who are very knowledgeable. We've been counting on them for community outreach".

In an attempt to fill the gap, various community agencies have initiated their own education and outreach projects, investing thousands of dollars and hundreds of personnel to reach the immigrant community. World Relief, a member of the National Association of Evangelicals has invested thousands of dollars and provides brochures and counseling. The U.S. Catholic Conference provides legalization seminars in parishes and legalization counseling. Other religious, labor and humanitarian groups have printed brochures, developed and sponsored media spots and provide counseling.

In examining the public education aspect, the fundamental question of who is being reached and with what information is only partially answered. INS got off to a late start, outreach was limited and specific and substantive information was elusive.

***"A non-eligible mother is subject to be deported even though the father is legalized and the children are U.S. citizens."***

## Arrested Visitors

Arrests of Illegal Aliens by the INS in This Decade

| | |
|---|---|
| 1980 | 910,361 |
| 1981 | 975,780 |
| 1982 | 970,246 |
| 1983 | 1,251,357 |
| 1984 | 1,246,981 |
| 1985 | 1,348,749 |
| 1986 (est.) | 1,800,000 |

USN & WR - Basic data: Immigration and Naturalization Service.

## *FAMILY UNIFICATION*

Family unification is a long established fundamental principle of United States Immigration Law. Both the McCarren-Walter Immigration and Naturalization Act of 1952 and the Immigration Law of 1965 give special preference categories to family members of U.S. citizens, permanent residents and highly skilled immigrants whose services are needed within the United States.

However, in considering the Simpson-Rodino Bill of 1986, Congress did not specifically address the status of family members who do not themselves meet the requirements for amnesty. Further, IRCA does not address the issues of granting extended voluntary departure status or deferred action to ineligible family members who are apprehended, of granting work authorization to the ineligible family members or of making special consideration for immigrant parents whose children are U.S. citizens. These people must wait until they become eligible to apply for permanent resident status through the normal preference category. This problem most affects families where one spouse arrived in the United States before the January 1, 1982 cutoff date, but the other spouse and children entered after that date. Many eligible immigrants are not applying for fear that the result will be a break up of families in which some members are eligible for amnesty and others are not.

A national administrative policy regarding family division was not announced until October 21, 1987, and only in very limited hardship situations allows non-qualifying family members to remain legally in the country. Under this national policy a non-eligible child is subject to be deported unless both parents are legalized. A non-eligible mother is subject to be deported even though the father is legalized and the children are U.S. citizens.

It is up to district and regional INS directors to determine whether or not to pursue actively deportation of undocumented family members who are apprehended. INS has stated to date that each INS District Director may grant, on a case-by-case basis, "deferred action" or extended voluntary departure (in effect, a decision not to deport, with discretionary work permits, but not formal legal status) to ineligible family members. The INS office in Los Angeles views the family unity issue restrictively; by contrast, the INS District Director A.D. Moyer in Chicago told the *Los Angeles Times* that he expects to grant voluntary departure status to non-qualifying immediate family members and to extend that status if necessary to allow them to stay in the country. The lack of a national policy and subsequent differences between INS offices is one of the reasons for the low number of legalization applications thus far.

The effects of the family division issue will be felt hard in areas where large numbers of immigrants live in intact family units. This is true in the San Francisco Bay Area where according to David Ilchert, District Director for the Immigration and Naturalization Service in San Francisco, the "derivative" undocumented population – family members do not qualify under IRCA – is "much more than the principal population".

While precise quantitative information has been difficult to come by, all service providers recognize the seriousness of the family division issues. Predictions range from 20-50% of the nation's eligible immigrant population are not applying out of fear of exposing ineligible family members. Legalization service providers say that widespread fears that the INS will split up families have kept thousands of undocumented from applying. On the application form for I-1-82 legalization, the INS requires a listing of names and addresses of all immediate family members, whether they qualify or not. Applicants are questioned routinely at their INS interview about this section of the application.

Service providers recount how applicants are concerned that if they file and list the names of their immediate family, they will be exposing them to INS arrest and deportation. One service provider pointed out that many "split" families are fearful that disclosures during the process may result in action taken against the ineligible member.

While technically the confidentiality provisions of IRCA are meant to assure applicants that the information provide during the legalization process will not be used for enforcement action, they cannot overcome the inherent fear and mistrust that undocumented people have in the INS. Many of these people, familiar only with Border Patrol agents, have little faith in these assurances.

The family division issue is important for several reasons. It discourages eligible people from applying. In not implementing a uniform national administrative policy for family division, various geographical regions of the country will have a substantial sub-class living shadowed, hidden lives, creating potentially serious social and economic problems. Finally, if the derivative family members do not receive extended voluntary departure (a decision not to deport, with discretionary work permits, but not formal legal status), they will be unable to work. A large segment of this population already lives below the poverty level; the further reduction in family income caused by this INS policy is unconscionable. The family policy announced by Commissioner Nelson on October 21, 1987 is completely contrary to the Congressional intent of IRCA.

# LEGAL REPORT

## Judge Tells U.S. to Stop Coercion of Salvadorans Seeking Asylum: Orantes-Hernandez v. Meese

In a resounding rejection of Reagan Adminstration policy, the Federal District Court Judge David Kenyon in Los Angeles ruled on April 29, 1988, that the Government had coerced Salvadorans seeking asylum into leaving the country, and must stop the practice.

The judge also issued a manifesto of rights for Salvadorans detained by the Immigration and Naturalization Service, including the right to claim political asylum and the right to have legal representation.

The ruling followed a yearlong non-jury trial of a lawsuit filed in 1980 on behalf of all Salvadorans detained for deportation. The case has been followed by immigration rights lawyers around the nation as the lead civil rights case for Salvadorans.

The judge barred the Administration from deporting Salvadorans in violation of their rights under the Refugee Act of 1980, and he granted almost every request in the suit for protecting Salvadorans.

The Administration has long insisted that Salvadorans who come to this country are economic immigrants fleeing poverty, not politcal refugees, defined by the refugee act as those fleeing the home country because of persecution or a "well-founded fear of persecution". People applying for asylum are not subject to the restrictions that apply to other immigrants, such as quotas, family ties or job qualifications.

Judge Kenyon said the immigration authorities had treated Salvadorans differently from other immigrants. He said, for example, that Salvadoran detainees were singled out for transfers that sometimes took them thousands of miles away from their lawyers, making representation difficult or impossible.

Judge Kenyon said in his opinion, "The impression of the I.N.S. agents and officials that Salvadorans come to the United States solely for economic gain reflect a lack of sensitivity and understanding, and derive from ignorance on the part of I.N.S. agents as to the complex motivations and situations of those who have fled El Salvador".

The judge ordered the immigration service to stop using any form of coercion against the Salvadorans, including "threats, intimidation, deceit and misrepresentation to pressure detained Central Americans to return to their countries".

He noted that Salvadorans in the immigration service's custody were "outwardly humble and passive in the face of authority and vulnerable to pressure". He added, "This is particularly true because these detainees are aware that the United States supports the Salvadoran government, which tolerates and participates in acts of terror".

The judge required the immigration service to provide Salvadorans who cannot read with an oral notice of their rights, including the right to seek asylum, and that the notice be given in both English and Spanish.

Judge Kenyon ordered that Salvadorans have access to lawyers, telephones and accurate and up-to-date lists of free legal services. He said the lists the immigration service had been distributing contained "inaccurate, incomplete or non-serviceable telephone numbers, no telephone numbers at all and inaccurate addresses for legal services". He said the service listed "agencies that accept no immigration cases at all, do not offer free legal services, do not have Spanish speakers available, and do not represent persons in the geographical area in which the list is distributed". He said it also listed agencies that no longer existed.

Judge Kenyon ruled during the trial that political conditions in El Salvador were relevant to refute the Government's argument that most Salvadorans come to the United States for purely economic reasons.

Judge Kenyon's decision includes six pages detailing a list of rights. It establishes a framework of civil rights for the Salvadorans where there had been almost none.

The groups suing on behalf of Salvadorans included the American Civil Liberties Union, Legal Aid Foundation of Los Angeles, the National Center for Immigrants Rights, and the Central American Refugee Center.

(Adapted from *The N.Y. Times*, 5/11/88.)

## Visas Extended to Help Keep Foreign Nurses

Bowing to appeals for help amid a critical nationwide nursing shortage, the Federal immigration agency on May 26, 1988, granted a one-year extension to foreign nurses facing deportation at the end of their temporary work visas.

The impending loss of foreign nurses would have hit New York City especially hard. Hospitals in the city, with record patient overcrowding and severe staff shortages, have about 4,000 nurses who could have been forced out over the next few years. The first group that faced expulsion this year included at least 800 nurses.

About 10,000 foreign nurses are working in the United States under the temporary H-1 visas. Many of them expressed alarm when the immigration service, as part of a general tightening of time limits on temporary visas, recently announced it would not allow such workers to stay beyond five years.

Citing estimates of 300,000 nursing vacancies nationally, hospitals and nursing homes appealed to the immigration agency to reconsider that decision.

Under the revised Federal policy, extensions will be given automatically to any nurse whose H-1 visa expires during the next 12 months, except for those few who have already been granted a sixth year.

Adapted from B. Lambert, *The N.Y. Times*, 5/27/88).

## Federal Judge Orders INS to Extend Amnesty for Some Illegal Aliens

A federal judge in Sacramento ordered the Immigration and Naturalization Service to extend the deadline for amnesty to those illegal aliens ruled ineligible because they left the United States for brief periods of time.

Aliens eligible to apply for citizenship had to prove continuoous residency since Jan. 1, 1982, but INS ruled as ineligible those aliens who had made short trips abroad.

During a yearlong amnesty period, which ended May 4, more than 2.1 million illegal aliens filed for legalization.

Under the 1986 Immigration Reform and Control Act, aliens whose amnesty petitions are approved are given temporary resident status that allows them to live and work here legally. They have one year, starting 18 months after the date they filed for legalization, to apply for permanent resident status.

U.S. District Judge Lawrence Karlton ruled June 10 that the application period for the amnesty program be extended to Nov. 30 for those who left the country briefly.

He ordered INS to rescind the denials of amnesty for an estimated 25,000 aliens who made such trips but who otherwise qualified.

The extension also applies to aliens who can prove they were discouraged from applying for amnesty because of the rule. That figure is estimated at 125,000 by the National Center for Immigrants' Rights in Los Angeles, which served as legal counsel for the suit.

Karlton's order enforced a ruling he made May 3 that INS had imposed an overly strict interpretation of the law when it required that illegal aliens applying for amnesty obtain permission before leaving the country while waiting for approval of their amnesty applications.

The suit was brought by several groups, including Catholic Social Services of the Diocese of Sacaramento and the United Farm Workers, which said aliens were being unfairly punished for visiting relatives back home.

INS was expected to appeal the ruling.

Frances Martinez, who heads the legalization program for the Sacramento Diocese, told National Catholic News Service June 14 that her office already was preparing paperwork and applications for people they had thought ineligible because of brief trips.

The plaintiffs also asked the judge to order that those already deported under the rule be readmitted to the United States, but Karlton said, "with great reluctance" he had to deny the request because he lacked the authority on the matter.

Described in the lawsuit were the situations of three individuals, each of who, had gone to Mexico for brief visits. The lawsuit said visits back and forth over the Mexican-American border are common for shopping or to take care of family business.

Maria de Jesus Gonzalez, a resident of Laredo, Texas, since 1980, regularly crossed over the border to Nuevo Laredo in Mexico to buy groceries. The suit said she was caught as she returned, bypassing immigration checks. The suit said she did not know the trips would disqualify her.

The suit also cited Ignacio Andrade, who drove to Tijuana, Mexico, from Los Angeles, his home for 13 years, to visit a friend for about an hour. The lawsuit said he returned through a hole in a fence.

Also cited was Sofia Baez Huerta, from Brownsville, Texas, who last year spent five hours with her mother in Matamoros, Mexico, and was caught on the way home.

## Court Panel Says Illegal Aliens May Sue Over Pay

A Federal appeals court here has ruled that illegal aliens who are not paid minimum wage or fairly compensated for overtime may sue employers under Federal labor laws in spite of recent chanages in immigration law that prohibit employers from hiring aliens who enter this country illegally.

The decision by a three-judge panel of the United States Court of Appeals for the 11th Circuit on June 10, 1988, said that 1986 changes in the immigration law, which went into effect in the last month, were not "a clear and manifest repeal" of Federal protections afforded to all employees.

The court decision noted that it was a "seeming anomaly" to at once discouraage illegal immigration by imposing sanctions on employers while at the same time granting illegal aliens who are employed the protection of Federal labor laws. But the ruling said the two measures "go hand in hand" in that the labor law protections further reduced any "economic advantage" that might remain for the employer who is willing to risk the new sanctions by hiring illegal aliens and then underpaying them.

The decision said that this was Congress's intent in the immigration law debate and pointed to language in the act that called for increased financing to enforce wage and overtime provisions of the labor law.

"This provision would make little sense if Congress had intended the Immigration Reform and Control Act to repeal the Federal Labor Standards Act's coverage of undocumented aliens", the court wrote.

The plaintiff, according to his lawyer, Michael Rubin of San Francisco, came to the United States on a six-week visitors visa in June 1982 but remained to work at a motel from 1983 to 1985. Mr. Patel asserts he was not paid the prevailing wage and was not adequately compensated for overtime as required by Federal law.

(Adapted from R. Smothers, *The N.Y. Times*, 6/12/88).

## New Immigration Regulations for Canada

OTTAWA – The Honourable Barbara McDougall, Minister of Employment and Immigration, announced on May 27, 1988, amendments to the Immigration Regulations that will expand opportunities for relatives seeking admission from overseas to join their families in Canada. The changes mean: 1) Never-married sons and daughters of any age, and their never-married children of any age, may now be admitted under the Family Class; 2) Never-married sons and daughters of any age, and their never-married children of any age, may accompany immigrants in any category, as dependants; 3) An increase from 10 to 15 in the kinship bonus points, which are awarded to married sons and daughters, and sisters and brothers applying under the Assisted Relative category.

These changes englarge on a commitment made by the government last fall in the Annual Report to Parliament on Immigration Levels for 1988 to improve family reunification prospects of applicants for immigration.

Under the orginal regulations, only unmarried children under 21 years of age and their children could be sponsored under the Family Class. As members of the Family Class, never-married sons and daughters and their children will need only to meet basic health and security checks to qualify for admission. However, their sponsors must satisfy Immigration officials that they have the means to help those new members of the family class seeking admission settle in Canada. Other immigrant applicants, including Assisted Relatives, are assessed for settlement prospects through the point selection system.

The regulation changes could help several thousand people a year immigrate to Canada as members of the Family Class or as Assisted Relatives.