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ARIZONA ADVISORY COMMITTEE
UNITED STATES COMMISSION ON CIVIL RIGHTS

TRANSCRIPT OF PROCEEDINGS

FORUM ON IMMIGRATION REFORM

November 3, 1988

Tucson, Arizona

Volume I

PADILLA & ASSOCIATES
16213 Ocotillo Drive
Fountain Hills, Arizona 85268
(602) 953-1307

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2 STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

3 before the Arizona Advisory Committee, United States
4 Commission on Civil Rights, Forum on Immigration Reform,
5 on Thursday, the 3rd day of November, 1988, commencing at
6 10:30 o'clock in the forenoon, at the Holiday Inn, 181
7 West Broadway, Tucson, Arizona.
8

9
10 MEMBERS OF THE COMMITTEE:

11 Dr. John P. White, Chairman

12 Senator Manuel Pena

13 Mrs. Shirley Whitlock

14 Mr. Richard Zazueta

15 Mrs. Deana Faust
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18
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20 * * *21
22
23 Reported by Josie Padilla Cademartori, of the
24 reporting firm of Padilla and Associates, Phoenix,
25 Arizona.

PROCEEDINGS

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4 DR. WHITE: I do have to state some of the ground
5 rules about the meeting today.

6 The purpose of the meeting is to gather information
7 on the Immigration Reform and Control Act of 1986 and its
8 implementation.

9 My name is John White, I am the Chairperson of the
10 Arizona Advisory Committee.

11 In addition, I am a professor of Emeritus of
12 Political Science at the -- if you'll excuse the
13 expression -- Arizona State University.

14 And I would like to introduce the other members of
15 the committee who are here present.

16 Now, we'll start to my right, and we have first
17 Mr. Manual Pena, who is a State Senator, and a State
18 Legislator of Arizona, and is from Phoenix.

19 And then next to Senator Pena, we have Deana Faust,
20 who is an elementary school teacher in Tolleson, Arizona,
21 and from Litchfield Park, Arizona.

22 And then next to me on the right, is Mr. Richard
23 Zazueta, who is affiliated works for Maricopa County. And
24 also is Vice-Chairperson of this Committee.

25 And then to my left is Mrs. Shirley Whitlock, who

1 is from Mesa. And by the way, Mr. Zazueta is from
2 Phoenix. I'm sorry, Richard. Shirley is from Mesa and is
3 a pro-family activist and is President of the Arizona
4 Eagle Forum.

5 Now, these are the members of the committee.

6 And we have some other members who are not present.

7 But, also, I would mention that we have two staff
8 members of the commission, Mr. Phillip Montez. Phil,
9 where are you? Oh, there he is. Who is Regional Director
10 with his headquarters in Los Angeles.

11 And Mr. John F. Dallas, II, standing here, who also
12 works with Mr. Montez in the Los Angeles Regional Office.

13 We would like to invite all of you, first of all,
14 to record your attendance.

15 We have a sign-up sheet out in the foyer, we'd
16 appreciate it if those in attendance would so record
17 themselves.

18 Also, we do have some refreshments in the rear,
19 and you are invited to partake of those whenever you like.

20 Now, this meeting is being held pursuant to federal
21 rules applicable to State Advisory Committee and
22 regulations promulgated by the United States Commission on
23 Civil Rights.

24 For those of you who are not familiar with the
25 Commission, it is an independent agency of the United

1 States Government was established by Congress in 1957 and
2 reauthorized by Congress in 1983, and directed to do a
3 number of things.

4 First to investigate complaints alleging that
5 citizens are being deprived of their right to vote by
6 reason of race, color, religion, sex, age, handicap or
7 national origin, or by reason of fraudulent practices.

8 Secondly, to study and collect information
9 concerning legal developments, constituting discrimination
10 or a denial of the equal protection of the laws under the
11 United States Constitution, because of race, color,
12 religion, sex, age, handicap or national origin or in the
13 administration of justice.

14 Thirdly, to appraise federal laws and policies with
15 respect to discrimination or denial of equal protection of
16 the laws.

17 Forth, to serve as a national clearing house for
18 information about discrimination.

19 And, finally, fifth, to submit reports, findings,
20 and recommendations to the President and the Congress of
21 the United States.

22 We wish to emphasize that this meeting is a public
23 forum and it is not an adversary proceeding.

24 The people who will testify here have been invited
25 to come and share with the committee whatever information

1 they have regarding the subject of our inquiry. And every
2 person who will participate has voluntarily agreed to meet
3 with the committee.

4 The Commission itself does have subpoenas powers,
5 the Advisory Committees do not. No one has been compelled
6 to attend this meeting or to testify. Anyone who does so
7 does so voluntarily.

8 Now, this is a public meeting, therefore, the
9 press, the radio and television stations as well as
10 individuals are welcomed.

11 However, we would like to specify that the persons
12 appearing before the committee may specifically request
13 that they not be televised, if they so desire. In that
14 case we will comply with their wishes.

15 We are concerned that no defamatory material be
16 presented at this meeting.

17 Now, that would be contrary to the rules of the
18 commission and if that event should arise, as Chair, it
19 would be necessary for me to call the attention of the
20 persons so doing and to request that they desist from this
21 action.

22 Any information of defamatory nature that might be
23 said, stated, will be stricken from the record, if
24 necessary.

25 The persons appearing before the Committee make

1 comments that are sufficient importance and are
2 nondefamatory, the committee will, of course, be delighted
3 to hear their information.

4 But, in the event that allegations are made the
5 persons against whom allegations are made will be given
6 ample opportunity to respond by making statements before
7 the committee or submitting written statements if they
8 desire.

2
9 On that point, I would like also to mention that
10 any of the witnesses who may have testimony in a written
11 form that they would like to submit for the record, we
12 would be happy to receive that.

13 We are limited in time, and if you have a statement
14 that is beyond the available time we would be very happy
15 to receive that so that it can appear in the record.

16 So, if you will give us a written copy, either give
17 it to me, or to Mr. Montez, we will see that it is
18 included in the record.

19 Now, we have made an effort to invite persons who
20 are knowledgeable in the area that we are dealing with.
21 We are trying to get a well-balanced picture about the
22 impact in Arizona of the Immigration Reform and Control
23 Act of 1986.

24 And, in addition to those people who have been
25 formally invited by letter, we have allocated a time this

1 afternoon to hear from anyone, any member of the public,
2 who wishes to speak and share information with the
3 committee.

4 And we will give five minutes to any such person
5 who chooses to appear and testify.

6 But, we would like to -- if there is anyone who is
7 here present and is not scheduled wishes to appear we
8 would appreciate being informed of that as soon as
9 possible, so that we can know what the schedule is going
10 to be.

11 Now, we have scheduled people according to areas of
12 concern, interest, and expertise. And we are going to
13 begin the meeting by hearing from the Honorable, George
14 Miller, who is Vice-Mayor of the City of Tucson.

15 Now, Mr. Mayor, we are pleased to welcome you to
16 the meeting here, and the floor is yours, sir.

17 MR. MILLER: Thank you very much, Chairman, White.

18 I want to greet you and your committee here from
19 the Mayor and City Council here of Tucson, a formal
20 greeting of, we're glad you are here.

21 From looking at your agenda from looking at what
22 you have outlined to do today, in other words, I can't say
23 welcome to our golf courses or our beautiful climate, it
24 looks like you are going to be sitting here all day
25 worrying about the very important affairs of this

1 community as well as the country.

2 As a matter of fact, it's very good to see you
3 here, I feel it's a very positive thing. We've been
4 living in this country for the past few years where it
5 seems that the rights of minorities, as far as many of us
6 are concerned, have been, if not ignored, at least have
7 not been addressed properly over the past, as I say,
8 number of years from the federal level on down.

9 And for you to come here to check out some of the
10 problems that we have, obviously we've got some, in
11 attempt to work with them is certainly positive.

12 So, all I can say is good luck to you on a long day
13 of work, from your agenda it looks like a long day, and
14 maybe you will get a chance to see some of Tucson after.

15 Thank you very much for coming, sir.

16 DR. WHITE: Thank you very much, sir.

17 Now, we will proceed to the scheduled witnesses.
18 I suppose I'll just take them in the order in which they
19 appear.

20 But, before starting, I would like to speak about
21 the available time.

22 I think witnesses were told that they would be
23 asked to speak for approximately six to eight minutes.
24 And since we do have a very tight schedule, we would like
25 to ask that you try to comply with that request. And if

1 you do go over that, significantly, as Chair, I will have
2 to ask you to conclude your testimony, so that we can
3 continue on.

4 But, again, you are more than welcome, you are
5 invited to submit any extended written statement for the
6 record, and that will be greatfully received.

7 Now, the first witness that we have scheduled is
8 Nadine K. Wettstein.

9 Is this Nadine Wettstein?

10 MR. SILVERMAN: No.

11 DR. WHITE: Silverman and Sanchez. All right,
12 Okay, I stand corrected.

13 Now, Mr. Silverman.

14 MR. SILVERMAN: Yes.

15 DR. WHITE: Professor Silverman, right?

16 MR. SILVERMAN: Yes.

17 DR. WHITE: Okay. Of the College of Law of the
18 University of Arizona.

19 And then next to him we have Ms. Anita Sanchez, who
20 is an attorney from Douglas, correct?

21 MS. SANCHEZ: Yes.

22 DR. WHITE: Who would like to go first?

23 MR. SILVERMAN: I will go.

24 DR. WHITE: Okay, we'll hear from Professor,
25 Silverman, first.

1 MR. SILVERMAN: Thank you.

2 I'm Andy Silverman, I'm a professor at the College
3 of Law at the University of Arizona. There I teach
4 Immigration and International law.

5 I've been involved with legalization in advising
6 aliens, QDE, personnel of QDEs, and attorneys concerning
7 the legalization law.

8 I have submitted to Mr. Montez, written comments,
9 but, I would like to take a few minutes and summarize
10 those for you.

11 My testimony today deals with the implementation of
12 the Immigration Reform and Control Act by the Immigration
13 Naturalization Service.

14 And the implementation not only on a nation-wide
15 basis, but, here in southern Arizona. Implementation
16 resulted, in my view, in eligible aliens being unaware,
17 misinformed or confused about the process.

18 The goal of Congress, in enacting IRCA was to
19 eliminate the undocumented alien subclass.

20 However, the way in which the INS both nationally
21 and here has interpreted and applied IRCA has been
22 contrary to the Congressional intent of effectively and
23 fairly dealing with the undocumented alien population.

24 The result has been that eligible aliens have been
25 denied their amnesty rights created by Congress.

1 In other words, my thesis is that eligible aliens
2 have a right to legalization pursuant to IRCA. And that
3 INS, in placing undue requirements upon these aliens, has
4 denied them their statutory rights.

5 In numbers how many are we talking about? That is
6 how many eligible aliens have not applied?

7 Of course, we do not have exact figures. On pages
8 two and three of my written comments, I have set out
9 various estimates and statistics that deal with this
10 issue. Let me just review a couple with you:

11 In November 1986, INS estimated there were 3.9
12 million eligible aliens. However, only 2.2 million
13 people applied.

14 Therefore, the actual number of applicants was only
15 slightly more than half the number of eligible aliens
16 estimated by the INS.

17 There also has been two studies that were done
18 right before the May 4, 1988 deadline.

19 One study concluded that there would be 500,000 to
20 1.3 million eligible aliens not applying.

21 The second study estimated 600,000 to 800,000
22 eligible aliens not applying.

23 What are some of the causes of this?

24 I believe one of the major causes is the way that
25 the INS has implemented the law and the deficiencies in

1 their implementation. These range from ineffective
2 community outreach program to continual mixed signals and
3 interpretations by the INS.

4 Let me discuss two of the most blatant deficiencies
5 that both occurred nationally and here in southern
6 Arizona.

7 One dealt with restrictive regulations by the INS,
8 and the second one excessive documentation requirements
9 put forth by the Immigration Service.

10 First, regulations were much more restrictive than
11 Congress intended and served as a major barrier to
12 participation.

13 The intent of Congress was that IRCA was to be
14 implemented in "a liberal and generous fashion."

15 In my written comments to the committee, I
16 discussed four of what I feel are the most restrictive
17 regulations.

18 Let me in my oral comments just briefly, discuss
19 two of them.

20 Under IRCA, in order for an alien to be eligible he
21 or she must have a continuous residence in the United
22 States since January 1, 1982.

23 The concept of continuous residence has been part of
24 our Immigration Law for a long time. As a result, there
25 has been a great deal of administrative and judicial

1 decisions concerning the term "continuous residence".

2 Generally, when the Immigration Service is
3 determining continuous residence, they look at the time in
4 which the person has been outside the country to see if
5 the residence has been broken, but, in addition, looks to
6 factors of where the person's home is, where their job is,
7 where their families are, where their assets are, in
8 determining whether they have maintained in the United
9 States a continuous residence.

10 The INS in interpreting in their regulations this
11 term, for purposes of legalization, just set forth a time
12 factor. That is, if an alien was absent from the country
13 in a single absence of 45 days or in an aggregate of 180
14 days then under the "continuous residence" requirement the
15 alien would not be eligible for legalization.

16 This is clearly not in compliance with the general
17 immigration laws dealing with continuous residences, and
18 an example of a very restrictive interpretation.

19 And, the second one I'd like to discuss is the
20 "known to government" phrase. Under IRCA, if an alien
21 entered the United States legally, but on a temporary
22 status before January 1, 1982, and they violated their
23 status and this violation was known to the government
24 prior to January 1, 1982, he or she would be eligible for
25 legalization.

1 The INS in interpreting the phrase "known to
2 government" interpreted it in a very restrictive way
3 saying "known to the government" meant known to the INS.

4 When the Immigration Service was approached about
5 this, they refused to relent and forced aliens to litigate
6 this issue. And eventually, of course, won this issue
7 where courts have now held that "known to the government"
8 does not just mean known to the INS, but known to any
9 federal agency.

10 These are just some examples of the restrictive
11 nature of the INS regulations.

12 It should be further noted that in many instances
13 when attempts were made to negotiate changes with the
14 INS they were unwilling to make the appropriate changes
15 and instead forced aliens and their lawyers to use
16 valuable time and resources to litigate these issues. The
17 vast majority of these lawsuits were ultimately lost by
18 INS after it vigorously defended them.

19 The second area where the INS was not in compliance
20 with Congressional intent and was overly restrictive was
21 requirements of aliens concerning documentation.

22 Congress recognized that this group of aliens would
23 have difficulty in producing documentation. And as a
24 result, recognized that affidavits in many cases should be
25 accepted.

1 However, the INS has been very inconsistent in
2 accepting them. In some cases they have, in others they
3 have required documents which the aliens have been unable
4 to produce, and as a result, these aliens have been denied
5 legalization.

6 In a national survey conducted by the Dallas Times
7 Herald, 47 percent of QDE directors and 45 percent of
8 immigration lawyers said, that the most common reason
9 eligible aliens were not applying for legalization was the
10 lack of documents.

11 In conclusion, since the regular legalization
12 program has expired, I realize many of the problems I am
13 identifying today may be beyond rectifying at least for
14 the current amnesty program.

15 However, it is important that the commission go on
16 record by finding that many of the shortcomings of the
17 program are directly attributable to the conduct of
18 the INS in administering it.

19 In addition, the commission should take the
20 position that because of the many problems with the
21 program it would be proper and fair to have another period
22 of legalization.

23 Earlier this year there was a bill introduced in
24 Congress to extend the period. It passed the House and
25 failed in the Senate on a procedural point.

1 I would hope that if enough groups like the
2 commission conclude that many eligible aliens were
3 deprived of their amnesty rights, Congress would consider
4 another legalization period.

5 Even though it was the Congressional intent that
6 the legalization program would be a "one-time-only
7 program", it conditioned that conclusion on its mandate
8 that the program be "implemented in a liberal and generous
9 fashion." That has not been the case.

10 Thank you very much.

11 DR. WHITE: Thank you, sir.

12 Now, I'd like to invite any members of the
13 committee to ask questions of this witness, if any members
14 so desire.

15 Any questions?

16 SENATOR PENA: Mr. Chairman.

17 DR. WHITE: Yes, Senator Pena.

18 SENATOR PENA: In your statement about undue
19 requirements by INS, what is your opinion of that
20 requirement that under phase II they must learn to read
21 and write English before they can complete their amnesty
22 program? And is it your understanding that it is part of
23 the law or is it just a rule made by INS? I'm
24 stating that because under the quota system that is not
25 required.

1 People from any part of world can come into this
2 country and not know anything about this country. Here
3 we have a program where they are going to be required
4 to do that.

5 MR. SILVERMAN: Senator Pena, I agree. This is the
6 first Immigration Law where people who are immigrating to
7 this country have any kind of English language
8 requirement. And in that way I do disagree.

9 Even though within the legislation, within IRCA,
10 there was a requirement set out. Of course, then it
11 depends how the INS implements it and I think they again
12 could implement it in a liberal way requiring, you know,
13 some English proficiency in order to comply with the law.

14 But I have a feeling just from little that I've
15 heard so far concerning Phase II that that probably is not
16 the case. Either the requirement of substantial studies
17 in English or passing some kind of English proficiency
18 test. Which I think really goes beyond the Congressional
19 intent, and clearly is not in compliance with other
20 requirements or historically dealing with immigration of
21 people into this country.

22 DR. WHITE: Any other questions?

23 MR. ZAZUETA: Yes.

24 DR. WHITE: Mr. Zazueta.

25 MR. ZAZUETA: Professor, Silverman, what type of

1 oversight responsibilities are there in this law?

2 MR. SILVERMAN: The GAO has some oversight -- and
3 has done -- there is an oversight responsibility by
4 Congress, and I know that they have -- there have been
5 some oversight hearings held.

6 I've read some conclusions, I don't have them with
7 me, but some conclusions concerning the oversight hearing
8 as far as the numbers of people that have applied under
9 the law and some of statistics, and some of the things
10 that have happened. So there is an oversight
11 responsibility by the federal government, both, I think
12 concerning the legalization program and the employer
13 sanction program.

14 DR. WHITE: Professor, Mr. Silverman, I wasn't
15 quite clear whether it is your opinion or not that the INS
16 is acting illegally.

17 If they are acting illegally, or if you feel that
18 they are, then I would presume that there would be a legal
19 remedy for that. But, I'm not clear. What is your
20 position on that?

21 MR. SILVERMAN: Well, I think they are clearly
22 acting improperly and much too restrictively. I think many
23 of their decisions concerning legalization have now been
24 held by courts to be an improper interpretation of the law.
25 And I guess in that sense you could say they have been

1 acting illegally.

2 DR. WHITE: Okay, thank you.

3 Well if there are no other questions then,

4 Professor, we thank you for your testimony.

5 MR. SILVERMAN: Thank you very much.

6 DR. WHITE: You have submitted your written

7 statement?

8 MR. SILVERMAN: Yes, I have.

9 DR. WHITE: Thank you very much.

10 Then, we'll proceed to the next witness, who is

11 Anita Sanchez from Douglas. As previously stated, an

12 attorney.

13 MS. SANCHEZ: Yes, thank you.

14 My name is Anita Sanchez, I'm an attorney at

15 Southern Arizona Legal Aid in the office in Douglas,

16 Arizona, which is southeast Arizona along the Mexican

17 border.

18 Professor Silverman, had some general comments

19 about IRCA, and some of the problems that people have been

20 having in applying across the country.

21 And I believe I was invited here today to talk to

22 you about some real specific problems, and how this is

23 impacting on the individuals and their families who are

24 applying.

25 My work in Douglas brings me in close contact with

1 many, well, hundreds of applicants. And because Legal
2 Services is prohibited by law from assisting in this
3 program. Even though our programs specialize in
4 Immigration Law and in poverty law issues, it required
5 that we do this on our own time volunteering through
6 Catholic Community Services. And that's my own bone to
7 pick with this program because the programs of Legal
8 Services were in place in the communities where these
9 applicants were, we were trained in this field, we were
10 experts in Immigration Law, and we were prohibited from
11 assisting clarifying and working with applicants in this
12 program.

13 Part of the problem, I think, in trying to unravel
14 and identify problems is the fact that there isn't enough
15 knowledge in the community to even understand what some of
16 the legal issues are here.

17 I want to talk about three specific areas. And the
18 first one is applicants who, once the program was in
19 place, wanted to apply and the problems that they had
20 because, of course, there were still in an illegal status
21 in this country.

22 And the Immigration Service, or more specifically
23 the border patrol's role -- in continuing -- and what
24 their words to me their business as usual in identifying
25 undocumented aliens in this country and moving to

1 voluntarily deport them to their country of origin.

2 They refused from the beginnings of the program to
3 identify these people and allow them to stay in the
4 country while they had the time to get their applications
5 and all the necessary documentation together.

6 The border patrol in no way cooperated with the INS
7 in administering this program.

8 Quite the contrary, when they identified an
9 undocumented alien they interviewed them, they asked them
10 their own series of questions on whether they were
11 eligible even though they weren't trained in the program,
12 even though to a large extent later on, there wasn't a lot
13 of information available as to what the requirements were
14 for the program or how the interpretation would be.

15 They took it upon themselves in the field to
16 interview, ask questions of eligibility, determine the
17 veracity of the people they were talking to, decided that
18 they either weren't eligible, in their own interpretations
19 of the law, or determined that they were not telling them
20 the truth about their work history or their residence, and
21 moved to voluntarily return them to Mexico.

22 We were astonished when this began. We had an
23 ongoing dialogue with the border patrol along the border
24 regarding these issues.

25 Initially, they were nonresponsive and then they

1 just became uncooperative and finally they became not
2 communicative with us at all on these issues.

3 I have individuals who had one of two choices, they
4 could go to jail, or they could voluntarily return to
5 Mexico.

6 The key to that was at the earlier stages of this
7 program it was determined that if you voluntarily returned
8 to Mexico you would no longer be eligible to apply. It
9 was a real incentive to get people to voluntarily return.

10 There were also agriculture workers who did have
11 the right to process an application from abroad were told
12 because they had entered the country after a certain date
13 that they were no longer eligible.

14 This was incorrect information, border patrol was
15 confused, there were more than one program, there were
16 lots of interpretations, there were lots of cut-off dates,
17 the dates changed, and continued to change for almost a
18 year, and yet, they continued to give information that was
19 incorrect, and not only giving that information, but
20 acting on it. Acting on it by if people refused to sign
21 a voluntary return they were placed in jail.

22 We have applicants who spent one week, two weeks,
23 three weeks, four weeks in jail until they were released
24 by an immigration judge and allowed to apply for
25 immigration status under the program.

1 I have an applicant who was working in the Douglas
2 area in the fields -- his eligibility work was in the Yuma
3 area -- he tried to get his documents from Yuma through
4 his employment, he was unable to, he finally got into his
5 truck and drove to Yuma because his current employer was
6 pressuring him to get his papers because he didn't want to
7 keep him on without papers because of fear of employment
8 sanctions.

9 He drove to Yuma, outside of Yuma he stopped at the
10 gas station to get gas, the border patrol stopped him,
11 picked him up at the gas station, he explained what he was
12 doing, he explained he was applying to the program.

13 He had been told by Catholic Community Services not
14 to sign anything, not to voluntarily return to Mexico. He
15 refused to sign, they interrogated him for six hours.

16 Finally, they left his car his truck at the gas
17 station -- he had to just leave it there. He understood
18 that he would go to jail if he didn't sign a waiver to
19 return to Mexico. Fearing that his car would not be there
20 when he got back to it -- he finally -- even though he was
21 told it might jeopardize his application -- signed to
22 voluntarily return to Mexico. He was returned across the
23 border at San Luis.

24 He got himself back to the United States, went to
25 the gas station, this took two days, and his truck was

1 gone.

2 He came back to the Douglas area with his papers
3 from his employers, and then, subsequently, he filed for
4 amnesty.

5 Applicants have been placed in jail -- because --
6 I've been through some of interrogations with the border
7 patrol -- applicants who had their documents on them, work
8 receipts of payment of wages during the statutory
9 eligibility period, they were still interrogated by the
10 border patrol.

11 What was the name of the person you worked for?
12 They didn't know the name. The border patrol agent
13 decided they weren't telling the truth. So they were
14 incarcerated until they could be released on bond.

15 No matter what the problem was, the border patrol
16 found some way to find these people ineligible in their
17 own minds, even though they are not administering this
18 program and they are not trained to even understand all of
19 the different eligibility statuses.

20 They were confused about who needed to be a
21 resident in order to apply, and who needed to work, but
22 not be maintaining a residence here.

23 Of course, they were confused because they weren't
24 trained to administer this program.

25 I was told repeatedly by the border patrol that

1 their rules of departure or deportation of undocumented
2 aliens had not changed. They would continue with business
3 as usual through this entire program.

4 INS, if you will evaluate the chain of command
5 between the border patrol and the INS who was
6 administering this program, there was a problem of line of
7 command and authority and they didn't believe that they
8 were under any obligation to do anything, but what they
9 had been doing in the past.

10 They continued to give incorrect information. They
11 continued to tell people they weren't eligible. And
12 people left the country. Some people were forced to leave
13 the country.

14 They disregarded the law, they disregarded the
15 rights of applicants, they discouraged applicants, and
16 they continue to do so.

17 They always operate under the assumption that
18 undocumented aliens are lying. They always operate under
19 the assumption that they are cheating, they are committing
20 fraud. And it's up to the alien to somehow prove to them
21 that they are telling the truth.

22 It's kind of a flip flop of what we normally, in
23 most cases, how we function in this country.

24 Another area, Mr. Silverman, addressed to us is
25 the lack of information on the process. I don't believe

1 that was an accident. I do understand that the program
2 came into implementation very quickly. The INS had to do
3 some fancy foot work to put the procedures in place in six
4 months.

5 I think their priorities show what their intent
6 was. Their prime objective was to find fraud.

7 The time spent when they implemented the program to
8 develop mechanisms to find fraud was overshadowed by any
9 other objectives, mainly to help applicants through the
10 procedure, help them understand how they go about it, and
11 help them with the difficult problem of documenting an
12 existence that you are trying to not leave footsteps not
13 leave tracks for all those years.

14 They interpreted the regulations that way. Made it
15 extremely difficult, they were trying to limit the
16 numbers. Put this program in place, and process as few as
17 they could.

18 One of the examples of the problems that they had
19 with no knowledge in the community as I have now
20 identified just in the last -- just in Douglas -- in the
21 last four months, five children who are eligible for
22 legalization, who should have become legalized, who lived
23 here almost all their lives. They are not living with
24 their parents, they are living with extended family
25 members. Those family members were lawful permanent

1 residents. They did not think they had any right to apply
2 on behalf of a child that wasn't their own.

3 Now, I have five of those children, and I've just
4 discovered in the last four months in Douglas, there are
5 thousands of them in this country.

6 You know, the INS made no attempts to clarify the
7 fact that children could apply on their own behalf or that
8 any adult with some kind of relationship to that child
9 could apply on their behalf.

10 Those children will remain in illegal status here
11 and as they grow up will have the incredible difficult
12 task of working without legal papers to do that.

13 DR. WHITE: Now, Ms. Sanchez, will you conclude as
14 quickly as you reasonably can.

15 MS. SANCHEZ: I'd just like to make one comment
16 about what was clear to the INS. What they did do a good
17 job of clarifying to the public and to other agencies.

18 One was the fear of fraud. And the other was
19 issues of public charge. They managed to get information
20 out to state agencies, limit -- to scare them and to make
21 them interpret their regulations narrowly, to allow
22 applicants who are eligible for certain kinds of programs,
23 even with the five-year prohibition are being denied some
24 of those programs.

25 I got a call from the school in Douglas because the

1 school was afraid to put undocumented children on the
2 school lunch program.

3 Now, some of this information is coming crystal
4 clear. Now, even though there is confusion about so many
5 aspects of applying for the program, prohibitions, the
6 restrictions, the public charge issue, the fraud, it's
7 coming in loud and clear.

8 The service itself has saturated their offices
9 through telex, through messages, through newspaper
10 accounts of fraud. That's all the local offices get in
11 terms of feedback on what's happening with this program.

12 It has created a distrust in the community and
13 that's sad. A distrust of the program, a distrust of
14 applicants. Employers are fearful of the program.
15 Employers are fearful of applicants in these documents,
16 and the public image that it's created.

17 I believe a second class status of the lawful
18 permanent residence status in this country. There are
19 lawful permanent residence and there are lawful permanent
20 residence who got their cards through the amnesty program,
21 and they are not the same folks.

22 These are something less than lawful permanent
23 residence status in this country.

24 And, Mr. Silverman, told you about INS's own
25 estimates of 3.9 million people who would be eligible.

1 Just recently, the INS inundated their local
2 offices with information saying that almost a whopping
3 900,000 SAW applicants have applied.

4 Gee, we only expected a half a million. We
5 anticipate that there is 50 percent fraud in that program,
6 therefor.

7 That's the kind of dialogue that the INS is having
8 internally about the program.

9 And it just shows you their priority.

10 Just one more comment.

11 The INS's priority in this program was to limit the
12 numbers through fraud through confusion.

13 Their interest in this program is employer
14 sanctions. They've always believed that the flow of
15 undocumented would somehow miraculously stop if they
16 could get to employers.

17 That's their interest, that's their priority,
18 that's their focus.

19 They've never been willing to acknowledge the
20 complexities or the reasons for the flow of undocumented
21 aliens into this country.

22 And they have always had a preconceived notion that
23 undocumented aliens lie, they cheat, they can't be
24 trusted.

25 And they believe that this program -- and I've been

1 told by enough INS officials, border patrol officials --
2 that this program was not fair in its concept, it's
3 rewarding the wrong people.

4 It's rewarding people who lived here illegally,
5 while people who are waiting under the quota system in
6 Mexico to immigrate lawfully can't apply.

7 This program sticks in their throat. It's not
8 something that they are making a good faith effort to
9 administer.

10 DR. WHITE: Thank you.

11 Are there any questions from members?

12 SENATOR PENA: Mr. Chairman.

13 DR. WHITE: Senator Pena.

14 SENATOR PENA: Ms. Sanchez, I believe you said that
15 these eligibles can not be provided services through Legal
16 Aid?

17 MS. SANCHEZ: That's right.

18 SENATOR PENA: What happens to these people once
19 they are arrested?

20 And are all these cases, that you've told us about,
21 are the courts providing attorneys?

22 MS. SANCHEZ: That's one of my comments that I
23 didn't get to.

24 There are not enough immigration lawyers in this
25 country to unravel these problems.

1 No, there are no resources except for volunteer
2 organizations. It's always a problem when you have to
3 tell someone you need a lawyer, when you know they can't
4 afford a lawyer.

5 And it's even more complicated than that, because
6 they need a lawyer who not only specializes in immigration
7 and it's a complex program of immigration laws in this
8 country. It is one of the most complex federal programs
9 we have.

10 They not only need an immigration lawyer, but they
11 need an immigration lawyer that specializes in the kinds
12 of problems that people can't pay for.

13 So many many immigration lawyers who specialize in
14 helping lawfully immigrate immediate relatives or
15 employers to legalize through employer permits, their
16 workers don't have any specialty or understanding of this
17 program or the problems of the exclusions, the
18 ramifications, once you have this card, the revolving door
19 of when and how it is going to be taken away. So it is a
20 special practice. I think it's a special practice having
21 to do with immigration and poverty law.

22 It's very difficult to find lawyers who do it, but
23 they would be -- we can -- Legal Services can still do
24 some of this work through alternate funding.

25 We have some funds through the State Bar

1 Foundation. Some funds through the United Way. But, as a
2 whole, across the country, Legal Services is prohibited
3 from assisting in this program and assisting undocumented
4 aliens.

5 SENATOR PENA: In my opinion, there are going to
6 be several who are not going to be able to complete
7 Phase II, and these are going to be readily identified by
8 INS and they are going to be shipped out of the country.

9 They've gone through Phase I, they have become
10 eligible, at that point, can Legal Aid step in and use
11 their services to help these people out?

12 MS. SANCHEZ: No. Not the federally funded Legal
13 Services Program.

14 DR. WHITE: Mr Zazueta, I believe you had a
15 question.

16 MR. ZAZUETA: Yes, Ms. Sanchez, my question was,
17 it's a two part question.

18 Did you formalize these complaints of incompetency,
19 misinformation, disregard for the law of the border patrol
20 and INS?

21 And second part is, did you get anywhere with those
22 complaints?

23 MS. SANCHEZ: Lawsuits have been filed on some of
24 these issues.

25 The problem with lawsuits is that communication

1 totally breaks down. And we can't wait for legal
2 solutions, that's two or three years down the road. And
3 the subject, the applicants are long since gone, they're
4 unidentifiable. So, it's not to this program, it's not an
5 effective solution.

6 Although lawsuits have been filed, and it's not
7 something that has been ignored. We have a dialogue, I
8 mean, we're trying. It is the problem of them feeling
9 very strongly that they have the right to voluntarily
10 return undocumented aliens.

11 And if they have -- what they think these reasons
12 for them -- their own determination -- that they are
13 ineligible, they have every right to voluntarily return
14 them.

15 Their other position is that they are voluntarily
16 signing to return to Mexico.

17 And that's always our problem when dealing with
18 immigration. They tell us, of course, that they didn't
19 have to sign. They didn't have to agree to return to
20 Mexico.

21 It's very hard to get the information to an
22 applicant to understand their rights. All they
23 understand, at that point of interrogation, is that they
24 are either going to jail or they can sign and they will
25 just bring them back across the border.

1 So, it's not been easy.

2 Unfortunately, a lot of applicants have been lost,
3 have fallen through the cracks in all of this.

4 And that's our problem, because the ones that we
5 identify, the ones that we have been able to get out of
6 jail, the ones that we have been able to unravel their
7 problems are the tip of iceberg.

8 And we can't -- as defense attorneys or as
9 advocates on behalf of these applicants -- we can't begin
10 to deal with the numbers.

11 If we don't have a policy administered by the
12 service that is fair, the communication is there, and that
13 they are really assisting in every way they can to
14 administer this program, thousands of people will fall
15 through by the wayside.

16 It's not something that we can pick up on a case by
17 case basis, the numbers are way beyond anything that
18 could be handled that way.

19 DR. WHITE: We also have a question from
20 Mrs. Whitlock.

21 MRS. WHITLOCK: You made a number of charges as did
22 Professor Silverman.

23 Suppose we follow on his advice and did issue a new
24 program to extend this again. Have you formulated some
25 specific ideas to implement the program in a more fair

1 fashion?

2 In other words, you made complaints. Have you
3 formulated a specific plan that you feel that this is the
4 way it should be done, not the way it has been done.

5 In other words, there has to be a program, there
6 has to be a way of legally doing this.

7 Have you formulated something so that it could be
8 done more fairly in your estimation, not necessarily you,
9 personally, but those of you who are concerned and are
10 working through the legal process?

11 MS. SANCHEZ: I don't think --

12 MRS. WHITLOCK: In other words, what would you like
13 to see?

14 MS. SANCHEZ: I think the program should have been
15 administered by someone other than the INS.

16 MRS. WHITLOCK: Okay. That's fine.

17 MS. SANCHEZ: When you are historically in the
18 business of deporting aliens, and you have a police force,
19 national police force to do that, and that's what you are
20 in business of doing, it's really very very hard to turn
21 around and administer this program with all those other
22 mechanisms still churning away around you, to administer
23 it in any kind of reasonable way.

24 MRS. WHITLOCK: Thank you.

25 DR. WHITE: Who would the someone else be, a new

1 agency or did you have some existing agencies?

2 MS. SANCHEZ: No. I don't have an answer to that
3 question.

4 But, I think there is a -- the INS relied on a lot
5 of volunteer organizations to assist in the program. They
6 didn't have any power in terms of reviewing or making the
7 final decisions on the applications. But they certainly
8 turned to -- and that's a normal procedure.

9 The INS has done that in the past when they are
10 processing refugees, the Cuban refugees or Vietnamese
11 refugees, they relied on volunteer agencies throughout the
12 country to assist in that process.

13 So it may be that that mechanism could have been
14 done in this case as well. In a way there was more
15 opportunity for those agencies to have input into the
16 process.

17 DR. WHITE: Any other questions?

18 MRS. FAUST: If Legal Services are prohibited, how
19 is it that you got involved?

20 MS. SANCHEZ: I have spent -- I don't know how
21 many hundreds of hours -- Saturdays and Monday nights at
22 the church volunteering for Catholic Community Services
23 over the last year to help with the program.

24 We had to do it on our own time. Also, we do have
25 alternate funding, the United Way and State Bar

1 Foundation. And so it's a certain number of these issues
2 that we can address at the office.

3 But, we only have a certain amount of funding like
4 that -- so, we can't -- so, it's very limited. But, it
5 was done by -- I think this room is full of several of
6 them, but, thousands of people who volunteered, thousands
7 and thousands of hours to assist, who are committed to
8 helping these people and to make this program work,
9 committed thousands of hours of their time in the last
10 year and year and a half.

11 MRS. FAUST: So you donated your time, but it's
12 still -- the requirement says that legal assistance is
13 prohibited.

14 MS. SANCHEZ: Right.

15 MRS. FAUST: So you are really breaking the law.

16 MS. SANCHEZ: No. I can volunteer with Catholic
17 Community Services on my own time to assist in this
18 program.

19 It wouldn't matter if I was working for the INS, I
20 still would be able to do that on my own time.

21 DR. WHITE: Thank you very much.

22 I believe our next speaker is Nadine Wettstein.

23 MS. WETTSTEIN: Thank you.

24 DR. WHITE: Welcome, Nadine Wettstein.

25 MS. WETTSTEIN: Thank you very much.

1 I'm grateful to the Commission for holding this
2 hearing. I think it's a very important issue and
3 certainly deserves this public hearing.

4 My name is Nadine Wettstein, I'm a lawyer for
5 Southern Arizona Legal Aid. I'm the director of the
6 legalization project. And let me just answer that
7 question that you obviously have in your minds right away.

8 As, Ms. Sanchez, said we have other funding. My
9 program is completely funded one hundred percent by a
10 grant from the State Bar Foundation, IOLTA Program. There
11 are no alien restrictions on that program, on the use of
12 those funds.

13 We have to be very careful to allocate the use of
14 the office. My office, for example, pays rent to
15 basically the Legal Services account out of our IOLTA
16 account for my office space.

17 Myself and my staff work on that program solely
18 with those funds, and no other funds from the office are
19 used for the legalization project.

20 Our project was started in July of 1987, and we
21 have continued to this date, and we are now requesting
22 additional funds for the following year.

23 As the question Senator Pena pointed out, there are
24 very few legal resources for these people and there is
25 really a crying need for it.

1 So, as Ms. Sanchez, said many of these people
2 simply fall through the cracks. And it's very
3 unfortunate. There is a lot more we could do with more
4 funding, but it's very limited. So we do what we can.

5 My project is designed to and has basically acted
6 as resource people and contact people for the voluntary
7 agencies, the qualified designated entities, the QDEs that
8 you are probably aware of and you will hear about today.

9 We operate a toll-free phone line. We have
10 published a newspaper, we have also litigated some
11 lawsuits on these issues, and I'll discuss those.

12 We still receive calls everyday. I'll mention a
13 few calls we got just yesterday and this morning reporting
14 problems, and we try to help, we try to advocate to the
15 extend we can, by contacting the INS by sending letters,
16 telephone contact, by trying to help the clients and that
17 includes the QDE the agencies. This goes on everyday.

18 And unfortunately, will continue to go on and it
19 will become worse, because the INS figures, I think, were
20 approximately 85 percent. I think that's quite a bit
21 high, but, 85 percent they said of the applicants went on
22 their own into the INS and applied. And many of those
23 people went through notary publics, who did not do a very
24 good job on their applications and did not understand the
25 law.

1 And now we are seeing many of those people come
2 back with denials from the regional center in California
3 or with serious problems.

4 These people do qualify, but, because someone did a
5 poor job on their application, they are being denied or
6 asked for more information, and there is nobody to help
7 these people, just nobody.

8 A lot of the agencies are closing or laying off
9 staff or have already closed, and the notaries, of course,
10 are nowhere to be found now that the help is needed.

11 So we have that whole category of people.

12 Last week one of my staff called the regional
13 center in California for some statistics -- and I can
14 certainly make those available to the Commission -- one
15 statistic in particular which is very important.

16 So far, as of October 17, 1988, the INS still had
17 pending over 20,000 applications that had been recommended
18 for denial at the local level. And only five percent of
19 the denials at the local level have been adjudicated by
20 the regional center.

21 That means that 95 percent of the tough cases
22 remain to be decided. So 95 percent of the people of
23 20,000 applications, you can see how many that is, that's
24 just to date. And those people are going to need legal
25 representation, because chances are, they are going to be

1 denied and there really is nobody out there to represent
2 them.

3 Some of the reasons that those people have
4 been denied, I think mentioned by Mr. Silverman, INS
5 took a very narrow interpretation of regulations and that
6 has had its effects, long term effects.

7 The theme, really throughout all of this
8 implementation is that the damage is already done. Many
9 people have just determined not to apply because of
10 misunderstandings that they have received in many cases
11 from the INS.

12 There was a question earlier about lawsuits and
13 whether -- how we had addressed these issues.

14 We have filed two class-action lawsuits and both of
15 them are still pending. One of them was a class-action
16 lawsuit in the Phoenix District of the INS, that includes
17 the State of Arizona and Nevada. That lawsuit dealt with
18 cut-off dates that, Ms. Sanchez, briefly mentioned.

19 INS established, simply by regulation, without any
20 basis in the statutes, without any basis in the law, at
21 the beginning of the program, a cut-off date, saying that
22 for the agriculture workers, the SAWS, and for the people
23 who were applying because of their residence here since
24 1982, if these people were not here on the date that this
25 law passed, November 6, 1986, they could not apply. It

1 was basically a bright line that said, if you're not in
2 the country, you're out. Even if they had gone -- without
3 knowing the President was going to sign the bill in
4 November 6, 1986 -- to Mexico or to their home country for
5 a week. If you're not in the country, you're out. That
6 was obviously a very harsh regulation, and there was no
7 basis in the law for it.

8 Ms. Sanchez, mentioned that this cut-off date was
9 changed several times. The first time by INS in
10 regulations, moved from November 6, of 1986 to May 1, of
11 '87, again without any basis in the law.

12 We filed a suit, as I mentioned, a class-action
13 suit here in Arizona challenging that cut-off date for
14 SAWS.

15 There was also a national class-action suit filed
16 challenging both the cut-off dates for SAWS and for the --
17 what we call the non-SAWs, or the 245-A people, the
18 people who qualified because they lived here since 1982.

19 INS, subsequently, because of pressure from Western
20 Growers, changed the SAW cut-off date from May 1, 1987
21 to June 26, 1987. Again, without any basis in the law.

22 And that was challenged in our suit and also in the
23 suit in California.

24 Eventually, the courts threw out the cut-off dates
25 and Congress changed them in December 1987, for the SAW

1 cut-off dates that this no longer exist.

2 But, what happened in the meantime was that
3 thousands of people were arrested, thousands of people.

4 Just in Arizona alone we estimate based on INS
5 figures and records, we saw that 7,000 people were
6 arrested during this period, per month. And we reviewed
7 records, we probably reviewed 3,000 records as part of
8 this law suit from one month and found numerous cases.

9 We filed 50 cases with the court of people who
10 appeared to be, just from the INS records, eligible for
11 legalization.

12 But, however, the INS, the border patrol agents
13 ignored that eligibility and simply forced them to take
14 what is euphemistically called voluntary departure.

15 Some of these people were arrested as they were
16 working in the fields shown on the INS records. These are
17 farm workers, nevertheless, they were not inquired into
18 about whether they qualified, they simply were convinced
19 to leave the country. We have tried to find these people
20 and cannot.

21 Again, these are people who have fallen through the
22 cracks who very well may be eligible for legalization and
23 are now gone. And have been told that they did not
24 qualify. Some of these people entered before the cut-off
25 date and even under INS's restrictive cut-off dates, they

1 should have been eligible.

2 Some of them entered after the cut-off date, which
3 as I mentioned, has now been changed, and so they are now
4 eligible but operating under the belief that they are not.

5 It's really impossible to find these people. As I
6 said, the damage has been done, unfortunately. We are
7 continuing to litigate that case and now it is focusing on
8 the issue of INS denying people the right to contact
9 counsel when they are in a jail facility.

10 Ms. Sanchez, had told us about a situation in the
11 Douglas jail, we investigated it, we had complaints from
12 many people about the fact that the Douglas jail facility,
13 the INS was holding people there because they had no place
14 else to put them.

15 The facility was completely inadequate, had one
16 telephone coming in or out. The conversation I had with
17 my client was tape recorded without my knowledge. I
18 subsequently found that out because it was explained that
19 every call we get is tape recorded. The calls were rudely
20 cut off. They were not permitted to telephone anyone.
21 They had to call us back later. It took two or three
22 days, all because of the problem with the jail facility.

23 We, obviously, informed the INS by sending detailed
24 letters to people in charge, and they, because as
25 Ms. Sanchez, said there was litigation, refused to answer.

1 We filed that material with the court.

2 The result has been they have moved people out of
3 the Douglas jail apparently are no longer holding people
4 there and are holding them someplace else. And until we
5 get reports from people about abuses, there is nothing
6 really that we can do.

7 A related issue is that these clients are very
8 difficult to keep track of once they have complained or
9 once they've had a problem. They've obviously spent a
10 good deal of time in jail in many cases and don't want to
11 have any problems with the immigration.

12 Speaking of problems with immigration. I'll just
13 relate one specific case.

14 This was a client also in Douglas who had been
15 initially arrested even though he had qualified for
16 legalization, lived in Douglas for eight years had a home
17 established there, had a job established there, was
18 eligible for legalization. We used him as a witness in
19 our class-action. He was deposed, his deposition was
20 taken twice by the INS lawyers. Some months later before
21 he applied for legalization he was again arrested by the
22 border patrol.

23 At that point he had on his person a letter from a
24 lawyer saying, "This is my client, if you arrest him you
25 should call me immediately, he will not answer any of your

1 questions." together with a Notice of Entry of Appearance
2 as the INS official form.

3 This person had this on his body when he was
4 arrested. He handed it to the INS agent, he was not doing
5 anything illegal at all and they have never contended that
6 he was. He handed this to the border patrol agent this
7 was on a Sunday night, not only did they not call the
8 attorney which she had asked him to do, but they did not
9 allow him to call anyone from Sunday night until Wednesday
10 night, he sat in jail there in Douglas. His wife didn't
11 know where he was. Nobody knew where he was.

12 Finally, Wednesday night they allowed him to call.
13 He has told us that he speaks some English and overheard
14 to the agent say, "This is the guy that filed the
15 complaint against us." So they let him sit there for
16 four days.

17 He finally called his wife. She called us the next
18 morning, I contacted the border patrol attorney who,
19 through his language to me, clearly indicated he knew this
20 person had been there. Used his first name, said, "Oh,
21 yeah, we have been talking about this case."

22 I know that they called the attorney earlier in the
23 week, and they let him sit there. We filed that also
24 with the court.

25 As Ms. Sanchez said, litigation is not always the

1 answer. Sometimes you wait months for something to
2 happen. In the meantime people's rights continue to be
3 violated.

4 DR. WHITE: Ms. Wettstein, your time is up.

5 MS. WETTSTEIN: I could easily talk about this for
6 another three hours. I'm sorry.

7 Let me just mention the public benefit question
8 because that is still an issue.

9 DR. WHITE: Make it very brief.

10 MS. WETTSTEIN: That is something that is still
11 going on this morning.

12 In July of 1987, the food stamp office here in
13 southern Arizona got a telephone call from the
14 legalization officer, the chief legalization officer, and
15 he informed them, apparently, that anyone applying for
16 legalization was not eligible for any kind of public
17 benefits.

18 And, in fact, that any family member should
19 disqualify themselves -- would disqualify themselves from
20 amnesty, if anyone else in the family got any kind of
21 public benefits.

22 This is clearly untrue, was untrue at the time and
23 this person should have known it.

24 But, apparently, based on this telephone
25 conversation the food stamp office sent out this memo

1 advicing all of its staff people to withdrawal
2 applications from people whose family members were
3 applying for amnesty. Anybody in the family gets any
4 kind of public benefits they are going to be disqualified
5 they are not eligible for public benefits so just don't
6 let them apply. They are not eligible for food stamps or
7 anything else that they really are eligible for.

8 We found out about this about three weeks ago, a
9 month ago, and sent a very detailed letter to the food
10 stamp people, with a copy, of course, to INS sending them
11 a copy of the statute and the regulations and the policy
12 memos and everything else showing them that INS's
13 position, even at the time, was that people were eligible
14 for food stamps, at least documented or citizen -- family
15 members, were eligible for food stamps.

16 We asked them to take immediate action to change
17 the policy.

18 This morning before I came over here I got a call
19 from a man who said, he is a citizen, his wife is a
20 legalization applicant. He must be a permanent resident,
21 I guess. His wife is a legalization applicant. They have
22 two U. S. citizen children, another child born in Mexico,
23 to the wife.

24 He went to the food stamp office a few days ago and
25 they told him that he could not apply for food stamps,

1 because he was not eligible. His family was not eligible.

2 We are going to follow up on that, but, my point
3 being that the food stamp office is still not taking any
4 action.

5 In addition, we asked the INS we sent them a copy
6 of this memo that had been based on their agents
7 information, we sent them a copy of that memo and in my
8 letter saying we want to know who else you have given this
9 bad information to, this bad advice to.

10 They refused to tell me so far, telling me I'm not
11 entitled to that information.

12 Obviously, I can keep forcing them to give it to
13 me, which I'm going to try to do, or I can sue them,
14 which I don't want to have to do.

15 That is just two -- really -- areas of the problem.

16 I would just emphasize with what Ms. Sanchez said,
17 that, I think, the mistake initially was having the INS
18 run this program. That was a crucial mistake, and I think
19 in their moments of utter candor the INS admits that, and
20 certainly has admitted it to me.

21 If there are any questions, I would be pleased to
22 answer them.

23 DR WHITE: Any more questions?

24 SENATOR PENA: It seems to me that these people are
25 being abused, from the testimony.

1 And I just wonder if you could just tell us what
2 rights do illegal aliens have in this country. Or perhaps
3 it's easier to tell us what rights they do not have.

4 MS. WETTSTEIN: That's a complicated question,
5 Senator.

6 Illegal aliens have many of the same constitutional
7 rights that other people do, that documented people do.

8 For example the First Amendment certainly applies
9 to anyone, persons.

10 The supreme court has made some of the other
11 Amendments less applicable in certain situations.

12 Of course, even Congress can't overrule the
13 Constitution. But, Congress has somewhat circumscribed
14 the rights of undocumented people.

15 They do have rights to due process in a deportation
16 context, even if they are out of the country trying to
17 come in there is some limited due process. But, they
18 certainly are entitled to due process before they are
19 deported from the country and throughout this type of
20 legalization procedure.

21 They are not constitutionally entitled to an
22 attorney to represent them such as at least that is
23 current ruling of the Supreme Court, to the extend that a
24 criminal defendant is entitled to that.

25 So, because the Supreme Court has ruled that

1 deportation is not a criminal proceeding despite it's
2 sometimes very draconian effects.

3 So, consequently, in a deportation context, there
4 is no right to appointed counsel. The statute under which
5 the Immigration Law operates says there is a right to
6 counsel at no expense to the government, unless that
7 statute has changed then most people go unrepresented
8 unless they can afford it in deportation context.

9 And then rights to public benefits are, basically,
10 at this point, rights that are not taken away by Congress.

11 People are entitled to rights, in general, that are
12 not taken away.

13 In this law, for example, Congress said that people
14 legalizing under this program are entitled to certain
15 things and not entitled to other things.

16 For example, they are entitled to -- I'm trying to
17 think of something. No, actually people legalizing under
18 this program are specifically disqualified from --

19 MS. SANCHEZ: School lunches.

20 MS. WETTSTEIN: School lunches, that is a very
21 good example.

22 But, food stamps -- the example I was mentioning
23 about the food stamps -- this is the state agency in the
24 INS disqualifying other family members, people who may be
25 citizens, U.S. citizen children of a mother, say going

1 through the legalization program, the children are
2 eligible. And because it's food stamps and not cash
3 assistance, which is what the statute prohibits, the
4 children should be able to get food stamps without
5 any effect on the parent's legalization application.

6 Long answer to a short question.

7 DR. WHITE: Any other questions?

8 MR. ZAZUETA: On the persons that have been
9 discouraged to go through the process, do you see more of
10 them going back or more of them staying here?

11 MS. WETTSTEIN: Well, I think that there has
12 apparently been no diminution in the flow of people into
13 the country.

14 I think though that many people have left because
15 they were discouraged. It's pretty hard to know, partly
16 because the border patrol is really in control of the
17 statistics.

18 And we don't have any independent way to confirm
19 it. I think there has been some of both. I think more
20 people have perhaps come when they saw that there were not
21 going to be massive deportations. But, I also think that
22 people left.

23 Some of the school officials in the Maricopa County
24 area have been quoted in the news media saying that they
25 saw two hundred, three hundred students taken out of

1 school because their parents were afraid to leave them in
2 school.

3 And we hear anecdotal stories all the time of
4 parents whose children or whose friend's children have
5 been picked up by the border patrol at school when their
6 parents were arrested. We heard this last week. So this
7 woman called us concerned about, are they going to come
8 get my kids too. And, obviously, that kind of parent is
9 more likely to take her kids out of school, and perhaps
10 leave if she thinks she has no alternative.

11 So, I think it's gone both ways, really.

12 Unfortunately, there is really no way for us to
13 contact a lot of these people who have been discouraged.

14 SENATOR PENA: That raises another question in my
15 mind.

16 When you talk about schools and some students being
17 picked up from schools. What impact has the program had
18 on the school budget system, since they are funded
19 according to a student basis, once they leave and get
20 picked up, and they are gone from the school system. Do
21 you have any idea what happens to the budgetary program of
22 this school?

23 MS. WETTSTEIN: Senator, no. But, I think it's
24 gone both ways, as I said, in the border areas at least.

25 It seems that there has been a large increase in

1 the number of students enrolling in school. In other
2 areas, I think there has probably been somewhat of a
3 decrease because of the parent's fear factor.

4 I should mention too, since we are talking about
5 the rights of aliens. The Supreme Court, the U. S.
6 Supreme Court has ruled that children, even if they are
7 undocumented, have a right to a free public education, as
8 long as they and their parents are residence of the school
9 district.

10 So, that has been, I think, a misunderstanding.

11 There was a law passed, oh, a year or so ago,
12 requiring that if a parent or if a person was registering
13 a non -- a child who was not their own child in school
14 that they needed to produce a birth certificate.

15 My understanding is that this was intended to
16 reduce child snatching. But a lot of people got the
17 misunderstanding that they had to produce a U.S. birth
18 certificate, and that that meant that kids who were born
19 in some other country couldn't go to school here.

20 The United States Supreme Court clearly has said
21 that if the child and the parents are residence of that
22 school district they are entitled to a free public
23 education.

24 So, we don't have any statistics, but, I believe, I
25 could be wrong.

1 You are having an educational panel this afternoon.
2 That might be a good question for them.

3 DR. WHITE: Anything else?

4 We have one more speaker on this panel. I believe
5 she is present. And that is Isabel Garcia Gallegos. And
6 she is an attorney.

7 I do not have your place of residence.

8 MS. GALLEGOS: I'm a Tucson attorney. I'm in
9 private practice.

10 DR. WHITE: Welcome and you may proceed.

11 MS. GALLEGOS: Thank you very much.

12 I'm an attorney here in private practice, with the
13 law firm of Fajardo, Garcia, Gallegos & Bracamonte.

14 I'm a member of a variety of organizations dealing
15 with Immigration. The Southern Arizona Coalition on
16 Immigration, the Arizona Coalition for Immigrant Refugee
17 Rights.

18 And I belong to TECLA, which is the Legal
19 Assistance Project for Central Americans, and the National
20 Network for Immigrant and Refugee Rights.

21 I'm going to try to stick to my prepared comments,
22 so that I do not run out of time.

23 My comments today are based on information and data
24 gathered and received during the period of May, 1987 to
25 October, 1988 by myself and other members of the

1 organizations mentioned previously.

2 The Arizona Coalition for Immigrant and Refugee
3 Rights is an organization here in Tucson that provides
4 education on the issues surrounding immigration, on the
5 rights of immigrants and on the abuses inflicted on the
6 immigrant community.

7 The Southern Arizona Coalition on immigration
8 emerged immediately after the passage of IRCA of 1986 to
9 provide education and outreach to potential applicants
10 for the amnesty or legalization program, and to assess and
11 evaluate the impact of the dramatic changes to be caused
12 by the new legislation.

13 Because these two organizations lack financial
14 resources there is no office, there is no staff,
15 therefore, preventing the establishment of any systematic
16 method for accomplishing these goals.

17 Furthermore, most governmental bodies have made
18 virtually little or no effort to educate citizen and
19 immigrant workers about their rights.

20 My comments will briefly focus on two key issues in
21 the immigration law.

22 Very briefly, on legalization, and that has been
23 covered. And more specifically, but, brief again, on
24 employer sanctions.

25 Although, another speaker, I believe, is going to

1 address the issue of border enforcement and abuses, I
2 think it's important for the Commission to note that
3 "control" is the key word in the title of the legislation.

4 In regard to the legalization program.

5 Due to the restrictive requirements, the cuts in
6 the legalization program, and the very high costs, the
7 vast majority of the undocumented population living in
8 this area, as well as in the country, did not benefit from
9 the program.

10 It has penalized, rather than legalized,
11 undocumented immigration. It has aggravated unfair
12 conditions under which undocumented workers live and work.

13 The efforts to provide education, health, housing
14 and to address the law enforcement problems have been
15 dealt a serious blow by this legislation.

16 Of those who were fortunate enough to gain
17 temporary residence, many have seen their relatives,
18 friends and co-workers unfairly left out of the
19 legalization program.

20 It was their opposition to family separation that
21 resulted in a national campaign in defense of a
22 cornerstone of our immigration laws, that is family unity.

23 Although some important victories have been
24 achieved, the reality is that many individuals did not
25 apply for fear of family separations.

1 Left by Congress to draft and interpret the
2 regulations, the INS has chosen the most restrictive
3 routes in almost every issue, and has opposed any
4 expansion of amnesty, regardless of the rationale.

5 In regard to employer sanctions, this provision
6 presents the most dramatic change in the law.

7 For the first time in our history, we criminalize
8 work, making the most basic of rights and necessities
9 illegal. This particular provision has caused the most
10 hardship on the undocumented community. Such a high cost
11 for little or no results -- sanctions do not work.

12 Undocumented immigrants are and have been a
13 structural component of the United States labor market.

14 Sanctions have heightened the vulnerability and
15 intimidation that unauthorized workers have been
16 experiencing in the work place since long before the
17 passage of IRCA.

18 Interviews with unauthorized workers reveal that
19 with IRCA, the only way for them to survive is to allow
20 themselves to be victims of harsher abuse and exploitation
21 or to supply fake documentation when filling out the I-9s,
22 the employment eligibility forms, which carries with it
23 criminal penalties.

24 They also report greater reluctance to protest
25 discriminatory workplace practices.

1 Unauthorized workers without employment feel
2 extremely desperate, and thus succumb to working under
3 harsher conditions.

4 The plight of the grandfathered workers highlights
5 these problems. A company that has employed an
6 unauthorized worker on or before November 6, 1986, may
7 continue to do so without violating IRCA.

8 However, no other company can legally employ that
9 worker. Consequently, grandfathered workers are extremely
10 reluctant to protest violations of the workplace rights.

11 The unjust irony of this dilemma is that although
12 IRCA authorizes their continued employment, they are not
13 granted any protections by IRCA that would enable them to
14 effectively assert their rights at the workplace.

15 Many are in fact fired unjustly, either through
16 ignorance and misunderstanding or malice on the part of
17 the employer.

18 In this way, employer sanctions has the consequence
19 of eroding our labor laws.

20 Calls from unauthorized workers generally indicate
21 that employers are continuing to hire unauthorized
22 workers, and that unauthorized workers are prepared to
23 remain in the United States.

24 Those who are fired due to employer sanctions
25 continue to seek employment; some report back that they

1 are able to obtain new jobs, though sometimes at lower
2 wages or longer hours.

3 As employer sanctions give rise to the periodic
4 unemployment of unauthorized workers and intensifies their
5 poor working conditions, other social problems with
6 far-reaching ramifications are being generated.

7 For example, unauthorized workers and their
8 families worry about their ability to continue to pay
9 rent. They report the threat of evictions, increased
10 overcrowded housing conditions, and possible and actual
11 homelessness.

12 In addition, anyone who out of solidarity and
13 compassion hires them, helps them to get a job, or offers
14 them shelter and refuge is also faced with criminal
15 liability.

16 Not only have the rights to work and live been
17 criminalized, but the civil and moral right to assist poor
18 people and victims of war and persecution has been
19 criminalized as well.

20 This legislation also has serious implications for
21 the civil and labor rights of minority and working people,
22 and for civil liberties in this country.

23 The incidents of discrimination and abuse reported
24 represent only the tip of the iceberg. The vast majority
25 of IRCA related discrimination and abuse remains

1 unreported because people do not know how to identify
2 discrimination, where to seek assistance, or they are too
3 frightened to lodge complaints.

4 Authorized workers have reported that they were
5 either fired or not hired because 1) either employers
6 refused to accept work documents other than "green cards"
7 or United States birth certificates, or 2) because they
8 lost their immigration papers and had no other available
9 acceptable proof of work eligibility.

10 The kinds of authorized workers experiencing these
11 problems ranged from citizens legal permanent residents,
12 refugees, and individuals possessing work authorizations
13 through relative petitions based on marriage.

14 A significant amount of IRCA related discrimination
15 against citizens and documented immigrants may occur
16 through document discrimination, whereby employers are
17 suspicious of any documentation other than green cards or
18 United States birth certificates.

19 This type of employer behavior may reflect
20 discrimination based on national origin or citizenship.

21 The possibility has been raised that employers are
22 refusing work documents other than United States birth
23 certificates or green cards when presented by someone who
24 they believe to be foreign born, but accepting the same
25 kind of documentation when presented by someone who they

1 believe to be native born.

2 The insistence by employers on United States
3 birth certificates or green cards may also reflect a
4 preference to hire citizens or legal permanent residents
5 over other types of authorized workers, such as asylees,
6 refugees and temporary residents.

7 Citizens and documented immigrants are adversely
8 affected on the basis of documentation in other ways. The
9 situation of authorized workers who are unable to locate
10 their birth certificates, immigration papers, social
11 security cards or proper identification, and who have no
12 available alternative documentation is especially
13 precarious.

14 Economically and socially disenfranchized minority
15 citizens are particularly effected by this problem because
16 of their lesser access and participation in certain
17 societal institutions that would provide them with
18 acceptable documentation.

19 Yesterday, a lady, 60 years old who is continuing
20 to work was born in the Douglas area in 1929 through the
21 help of a mid-wife. Her citizenship was never
22 established, now she is out of work as well. This was
23 just an example of yesterday.

24 As with other IRCA related discrimination and
25 abuses, I believe that cases of document discrimination

1 are severely under-reported due to the lack of an
2 extensive campaign to educate the general public about the
3 kinds of documents that can be used to prove work
4 eligibility and where individuals can report abuses.

5 In sum, IRCA is not only an anti-immigrant law,
6 but also anti-labor and anti-worker. To assist in a
7 fuller evaluation of IRCA we recommend that the United
8 States Commission on Civil Rights:

9 1) Study the degree to which IRCA accomplishes its
10 goals of deterring illegal immigration, and of permanently
11 forcing unauthorized workers out the United States labor
12 market.

13 2) Urge the GAO to broaden its inquiry to study how
14 the implementation of employer sanctions has eroded the
15 protections under state and federal labor laws, to which
16 all workers, authorized or unauthorized, are entitled.

17 3) Urge the GAO and INS to devote greater resources
18 to conduct an extensive education campaign to inform the
19 general public about the types of employer behavior that
20 may constitute IRCA-related discrimination, and where to
21 lodge complaints.

22 Successful efforts to collect and evaluate data on
23 IRCA-related discrimination must be linked to a broad
24 public education campaign aimed at citizens and
25 immigrants.

1 4) Include in its reports a discussion of the
2 limitations, as mentioned previously, of relying on the
3 number of charges filed with agencies as an accurate
4 indictator on the amount of discrimination caused by IRCA.

5 5) Supplement the results of its survey of
6 employers regarding discriminatory hiring and firing
7 practices with a survey of employees.

8 6) Urge Congress to repeal employer sanctions,
9 given that they have caused increased workplace
10 discrimination and abuse against citizens and immigrant
11 workers, and that it is not accomplishing its goal of
12 permanently forcing unauthorized workers out of the labor
13 market.

14 7) Urge for a broadening of the legalization
15 program in order to adequately protect the rights of the
16 overwhelming majority of undocumented immigrants who were
17 ineligible for IRCA's legalization program, and who
18 continue to remain in this country as productive workers.

19 It is clear, that the number of undocumented
20 immigrants who remain in the country is still very
21 significant.

22 Our work with immigrants indicate that even with
23 employer sanctions many will continue to reside and work
24 in the United States, although under harsher conditions.

25 As workers and taxpayers, they will make valuable

1 contributions to society. Yet, they are able to
2 effectively assert very few protections under the law.

3 A broader legalization program should be
4 instituted to enable these individuals to fully assert
5 their rights as legal residents.

6 DR. WHITE: Are there any questions?

7 MR. ZAZUETA: My question was on criminalization
8 that you spoke of, Ms. Gallegos. What is the relationship
9 between the local law enforcement and the legal
10 relationship between the local law enforcement people
11 like -- we are going to have a Sheriff and Chief of Police
12 this afternoon on the panel.

13 What is the legal relationship between them and
14 INS?

15 MS. GALLEGOS: Well, because of the passage of
16 IRCA, they have implemented a program which allows even
17 more collaboration between law enforcement.

18 In fact, a contingency plan that the INS had
19 developed regarding intelligence gathering and sharing of
20 information has in fact been implemented into IRCA.

21 Beyond what's on paper as to what they can legally
22 do and not do, because law enforcement cannot legally
23 enforce immigration laws.

24 In effect, however, and I think it is something
25 that should be asked of law enforcement. In effect, what

1 we have seen especially after passage of IRCA is that law
2 enforcement is in fact enforcing immigration law.

3 Also, relating to the question previously asked as
4 to what are the rights. What their rights are on paper
5 and theoretically versus what their rights are in reality
6 are two distinct worlds.

7 Here we run into undocumented people who are
8 stopped because of the color of their skin, period.

9 That's in clear violation of the Fourth Amendment
10 of the United States Constitution in this country.

11 And, yet, we know legally they have the right to be
12 free from unreasonable searches and seizures and yet law
13 enforcement continually stops individuals and asks them
14 for their legal documentation.

15 They may stop them either to enforce immigration
16 laws or they stop them for a traffic infraction, as soon
17 as they know the color of their skin, the fact that they
18 can't speak English properly, immediately they call
19 border patrol agency in.

20 So, I think this is an area of very big concern to
21 all of us, especially since the passage of IRCA, we see an
22 increase in the amount of involvement by other law
23 enforcement agencies in regard to the immigration area.

24 Especially in regard to the continuing drug
25 problems. We see that everybody is giving more authority

1 to cross over, at least not legally, but, in reality, they
2 are given more authority to cross into each others
3 jurisdiction.

4 MR. ZAZUETA: So there are many problems due to
5 their jurisdiction problem.

6 Do they try to enforce immigration law the local
7 law enforcement agencies?

8 MS. GALLEGOS: Absolutely, we have many cases where
9 an individual has been standing outside of a Circle K or
10 something and the police officer will come will
11 determine -- will ask several questions, not determining
12 whether this person has committed a crime. The only crime
13 that could have been committed, and we are not certain, is
14 if the person crossed the border illegally. That's the
15 only criminal offense. Many people don't do that. They
16 utilize the border crossing card, they have a tourist
17 card, whatever, they may overstay their visit. That is
18 not a criminal offense. And, yet, law enforcement
19 officials just ask where is your green card, or where are
20 your papers, they don't produce any and they call border
21 patrol.

22 We have experienced this problem many many times.
23 Again, our problems too, in even coming forth with you
24 today, is that most of our work is a result of volunteer
25 work.

1 There are no agencies that have the monies and the
2 staff to be able to document the way we wish we could
3 document these kind of instances of abuse and
4 discrimination.

5 MRS. WHITLOCK: Do you have a written statement for
6 each of us?

7 MS. GALLEGOS: Yes, I do. Yes, I do. Can you hand
8 that to them, please.

9 Thank you very much.

10 I do want to mention that we have another person
11 who is going to address to you -- we mistakenly put her
12 in the community panel.

13 I don't know if you want it to remain as such.
14 But, there is an attorney here present on behalf of the
15 Legal Assistance Project that helps Central American
16 Refugees.

17 I leave it to the panel to decide --

18 DR. WHITE: Well, it's our desire to hear anyone
19 who wishes to be heard, so we won't stand on that concern.

20 MS. GALLEGOS: Okay.

21 DR. WHITE: All right, any other questions?

22 If not, the Committee will stand in recess until
23 1:15 p.m.

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(Whereupon, the foregoing proceedings were recessed, to reconvene at 1:15 o'clock p.m.)

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