

IMPLEMENTATION IN COLORADO OF THE IMMIGRATION REFORM AND CONTROL ACT: A PRELIMINARY REVIEW

COLORADO ADVISORY
COMMITTEE TO
THE U.S. COMMISSION
ON CIVIL RIGHTS

A summary report of the Colorado Advisory Committee to the U.S. Commission on Civil Rights prepared for the information of the Commission. Statements and viewpoints in the report should not be attributed to the Commission or to the Advisory Committee. Any delay in individual parties' participation in the community forums where the information was gathered. The Committee recognizes that since it had its forum, there may have been developments that affect the timeliness of some of the points made by forum participants. The Committee will continue to monitor the issues discussed in this report and advise the Commission as appropriate. Documents for the Committee include the Commission and the public will find this report of interest and value in terms of its identification of civil rights concerns surrounding the early stages of implementation of the Immigration Reform and Control Act and of the role of state concerns as benchmarks against which subsequent changes in the law or its manner in which it is enforced may be measured.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, first created by the Civil Rights Act of 1957, and reestablished by the United States Commission on Civil Rights Act of 1983, is an independent, bipartisan agency of the Federal Government. By the terms of the 1983 act, the Commission is charged with the following duties pertaining to discrimination or denials of the equal protection of the laws based on race, color, religion, sex, age, handicap, or national origin, or in the administration of justice; investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to discrimination or denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to discrimination or denials of equal protection of the law; maintenance of a national clearinghouse for information respecting discrimination or denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 and section 6(c) of the United States Commission on Civil Rights Act of 1983. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

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LETTER OF TRANSMITTAL

Colorado Advisory Committee
U.S. Commission on Civil Rights
January 1989

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Attached is a summary report of a series of forums held by the Colorado Advisory Committee September 8-11, 1987, in the State. The purpose of the forums was to gather information on the implementation in Colorado of the Immigration Reform and Control Act of 1986 (IRCA).

The Advisory Committee sought a balanced perspective on this vital law by inviting participation from community representatives; County, State and Federal officials; growers and other employers; and professionals involved in assisting with the legalization/amnesty process.

The report summarizes the presentations made to the Advisory Committee and adds supplemental material gathered after the forums. While not an exhaustive review or analysis, the Advisory Committee hopes the report will be helpful to the Commission in its monitoring of civil rights issues related to the Immigration Reform and Control Act.

The Advisory Committee unanimously approved submission of the report (9-0, 2 vacancies) to the Commissioners and believes it will add to the body of research being collected by the Commission on the Immigration Reform and Control Act.

Respectfully,

MAXINE KURTZ, Chairperson
Colorado Advisory Committee

COLORADO ADVISORY COMMITTEE

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* No longer a member of the Committee.

** Was not a member at the time of this study.

Acknowledgments

The Advisory Committee wishes to acknowledge the effort expended on this project by Ms. Maxine Kurtz, Chairperson, and to thank the staff of the Commission's Western Regional Division in Los Angeles, California, for its help in the preparation of this report. The project was the chief assignment of Thomas V. Pilla, with assistance at the forums from Arthur Palacios. Support services were provided by Grace Hernandez and Priscilla Herring. Overall supervision was the responsibility of Philip Montez, Director of the Western Regional Division.

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INTRODUCTION

On November 6, 1986, President Reagan signed the Immigration Reform and Control Act of 1986 (IRCA),¹ the most comprehensive reform of the Nation's immigration laws since 1952. The act is based on two cornerstones: employer sanctions for hiring aliens not authorized to work in the United States,² and legalization of aliens who have lived in the United States illegally prior to January 1, 1982,³ or who have worked in agriculture for the requisite period.⁴ Senator Alan K. Simpson of Wyoming and Congressman Peter Rodino of New Jersey, chief sponsors of the legislation, hoped the act would put an end to the often bitter debate on the size and economic impact of the undocumented population. The act went into effect May 1, 1987.

¹ Also known as the Simpson-Rodino Immigration Act, S. 1200, 99th. Cong., 2d Sess., 132 Cong. Rec. H10, 068-95, Oct. 14, 1986. Pub. L. 99-603, 100 Stat. 3359. Amends the Immigration and Nationality Act (INA), 8 U.S.C. sections 1101 et seq.

² S. 1200, supra n. 1, Section 101. New INA 224A(a)(1), 8 U.S.C. 1324A(a)(1).

³ S. 1200, supra n. 1, Section 201. New INA 245A(a)(2)(A), 8 U.S.C. 1255A(a)(2)(A).

⁴ S. 1200, supra n. 1, Sections 301, 302. New INA 210, 8 U.S.C. 1160.

IRCA provided an initial amnesty period of one year (May 5, 1987 through May 4, 1988) to allow undocumented aliens the opportunity to prove their continued residence in the United States since January 1, 1982. The Immigration and Naturalization Service (INS) extended this period an additional 90 days for those aliens needing documentation if they had filed their initial request within the year. IRCA also provides for employer sanctions for employment of unauthorized aliens and for failure to comply with employment verification and record-keeping requirements. Sanctions include fines for a first violation, which range from \$250 to \$2,000 for each unauthorized alien employed, and increase from \$2,000 to \$10,000 for second and third violations. For violations of the employment verification and paperwork procedures, civil penalties can be imposed in the amount of \$100 to \$1,000 for each individual violation.

According to 1980 census figures, Colorado had a total population of 2,889,964 of which 657,519, or 28 percent, were minority. The Hispanic population constituted the

State's largest minority group, accounting for 339,300 persons or 11.7 percent; blacks constituted 3.5 percent, and Asian Americans represented one percent.

Because of the potential for employment discrimination posed by the act's implementation, the Colorado Advisory Committee decided in June 1987 to monitor developments associated with IRCA in Colorado. A series of open community forums were proposed as a method to obtain data on the implementation of the act and its impact throughout the State.

Forums were held September 8, 1987, in Grand Junction and Pueblo; September 9, 1987, in Ignacio, Cortez and Greeley; and September 10-11, 1987, in Denver. The Advisory Committee received information from community representatives; county, State, and Federal officials; employers; and professionals involved in assisting with the amnesty process. The subjects addressed at these forums were: discrimination, amnesty and legalization, employment, and jurisdiction over Indian reservations.⁵

⁵Participants included: Benjamin Eastman, rancher, Grand Junction; Gus Gallegos, Pueblo County Job Training; Linda Knight, Southern Ute Tribe; Arnold Santistin, Southern Ute Tribe; Jeffrey Jefferson, Southern Ute Tribe; Lillie Frost,

From the information collected at these forums and additional data gathered by Advisory Committee members, the Committee prepared this summary report of what it heard from participants and learned concerning this issue.

 Southern Ute Tribe; Annabelle Fagle, Southern Ute Tribe; Isabel Kent, Southern Ute Tribe; Douglas Remington, KSUT Radio, Ignacio; Reese Malles, Colorado Cattleman's Association, Cortez; Virginia Corbert, San Juan Basin Farm Bureau; Norman Lopez, Ute Mountain Ute Tribe; Judy Lemming, attorney, Cortez; Remeglio Candelaria, State Judge Advocate of Colorado Sons of the American Legion; Michael Preston, County Commissioners' Office, Montezuma County; Jim Newby, community activist; Reverend Peter Urban, St. Peters Church, Greeley; Anna Alvada, Rocky Mountain office of Service, Employment and Rehabilitation (SER); Annette Guiterrez, Employment Services, Greeley; Kelly Watson, Catholic Immigration Services, Greeley; Linda Cardenas, Support Services, Hospitality Center of Fort Collins; Aurora Rodriquez, Weld County; John Ripleo, director, Client Data Base, Weld County; Juliana Guzman, Monford Corporation, Greeley; Stella Mira, Employment Services, Weld County; Sharon McCabe, Personnel Department, City of Greeley; Alvin Perrera, St. Peters Church, Greeley; Francisco J. Flores, Denver district director, Equal Employment Opportunity Commission; Jack Lang y Marquez, State of Colorado, Division of Civil Rights, Denver; Darlene Ortega, Servicios de La Raza, Denver; Pat Chavez, Colorado Refugee and Immigrant Services Program, Denver; Marvin Chiles, director, licensing division, Colorado Department of Motor Vehicles; James W. Knight, District Legalization Officer, INS, Denver; Michael Martin Bush, migrant issue lobbyist, Denver; David Graham, Catholic Immigration Services, Denver; Charles McClure, Employer-Labor Relations Specialist, INS, Denver; Leslie Berry, staff member for Senator Tim Wirth; and Matt R. Zubradt, community representative.

Discrimination

Section 274B of IRCA prohibits discrimination in employment on the basis of national origin or citizenship status. Forum participants discussed the existing confusion regarding who was required to document citizenship as a prelude to employment.

Mr. Francisco J. Flores, Jr., district director, Equal Employment Opportunity Commission (EEOC), Denver, reported that he had received one discrimination complaint since May 1, 1987, related to implementation of IRCA.⁶ Mr. Jack Lang y Marquez, compliance director, Colorado Civil Rights Commission, had not received any formal complaints of discrimination. Both Mr. Flores and Mr. Lang y Marquez noted that

⁶This comment is taken from the transcript of the Denver forum; unless otherwise noted, forum quotations are taken from this transcript. Application of the Immigration Control and Reform Act of 1986, Community Forum of the Colorado Advisory Committee to the United States Commission on Civil Rights, Sept. 10-11, 1987, Denver, Colorado. Tapes were made of the forums held in Grand Junction, Pueblo, Ignacio, Cortez and Greeley. Individuals cited from the tapes will be identified along with the city of their presentation. The transcript and the tapes are on file in the Commission's Western Regional Division, Los Angeles, California.

since enforcement of the act's employer sanctions provision did not begin until September 1, 1987, it was premature to gauge compliance problems with any accuracy.⁷

The Committee was told that some employers appear to believe that certain provisions of the act apply only to Mexican nationals. For example, Mr. Remeglio Candelaria, State Judge Advocate for the Sons of the American Legion, said at the forum in Cortez that in the opinion of local businessmen in the southwestern part of the State, the act only applied to persons crossing the United States-Mexico border. Candelaria considered requiring citizenship documentation for employment a big imposition on the civil and constitutional rights of American citizens.

⁷Technically, employer sanctions went into effect November 6, 1986, the day the bill was signed. However, the first six months were designated by the INS as a public education period, and no employer was penalized for violating the provision during that time. On June 1, 1987, the sanctions went into full effect. For the first three months (until September 1, 1987), however, an employee claiming eligibility for legalization was authorized to work without documentation. "Immigration Reform Act, Employer Sanctions and Discrimination Prohibitions: A Guide for Workers, Employers and Their Advocates," Immigration and Aliens' Rights Task Force, American Civil Liberties Union, New York, 1987.

Ms. Virginia Corbert of the San Juan Farm Bureau Federation believed that the program was intended for Mexicans and not for U.S. citizens, including Native Americans, whom she had known all of their lives.

Mr. Charlie McClure, employer labor relations coordinator, Immigration and Naturalization Service, Denver District, recounted a conversation he had with an employer who said, "Well, we do not fill out I-9s.⁸ I do not have any Mexicans working for me."

Ms. Annette Guiterrez, county employment service, Greeley, added that she had not received any protests against the I-9 requirement from most American citizens who were seeking employment, but that she had to tell people of minority backgrounds and aliens that no one was picking on them, and that everyone has to fill out the forms.

⁸The I-9 is an Immigration and Naturalization form required from each employee hired after November 6, 1986, which certifies the employee is a citizen of the United States and lists those documents utilized by the employee to verify his or her status. Enforcement of employer sanctions did not begin until June 1, 1988.

Mr. Gus Gallegos of the Pueblo County Job Training Center contended that employers used IRCA to intimidate employees. He said that in the past when workers asked employers for the pay rate, the employer would reply, "Do you want to go back to Mexico?" The workers would be too intimidated to pursue the matter. In Mr. Gallegos' opinion, under IRCA the intimidation still exists because employers are not cooperating with employee requests for letters stating when their employment began and other documentation which would help with legalization.

Ms. Linda Cardenas, support services, Hospitality Center of Fort Collins, indicated that some employers in northeastern Colorado (to avoid problems with the INS) will no longer hire Hispanics.

Ms. Linda Knight, a member of the Southern Ute Indian tribe, commented at the Ignacio forum that tribal members do not understand why they must comply, since they have resided on or near the reservation all of their lives. She added that

documentation for Indians, such as birth certificates required to complete I-9 forms, is, in some instances inaccurate or lacking entirely.

Amnesty and Legalization

IRCA permits undocumented or illegal aliens to establish special status which allows them to remain and work in the United States under certain conditions. Under section 201 of the act, undocumented aliens may qualify if they have been in the United States illegally and continuously since 1982, except for short visits to other countries (45 days per visit; 180 days total). If they are agricultural workers, they must have worked in agriculture for at least 90 days and resided in the United States for at least six months in each of the years 1984, 1985, and 1986. In order to qualify, they cannot have more than three misdemeanors and no felonies, and have not and will not receive any form of welfare assistance.

According to INS officials, when undocumented persons apply for legalization, they are issued form I-688A, which allows them to work for six months while their applications are being processed. In April 1988, INS announced that this deadline was being extended 90 days because of the backlog in processing applications.

When the application has been accepted, the applicant receives form I-688, which is an 18-month work permit. Only after receiving an I-688 can an undocumented alien apply for permanent residence. INS officials noted that the alien must still comply with naturalization requirements. Ms. Kelly Watson, Catholic Immigration Services, Greeley, told the Advisory Committee that November 5, 1988, is the earliest date to apply for permanent residence, and the application must have been filed within one year of the date that filings are opened.

According to Ms. Watson, most applicants for legalization in northeastern Colorado range in age from the thirties to the fifties. The typical family has four or five children, and half of the family members are already U.S. citizens. More

than half are nonagricultural workers, she said. In contrast, Father Peter Urban of St. Peter's Church in Greeley has a younger clientele, whose ages range from the twenties to the forties.

Anticipating the need for assistance with the amnesty process for undocumented aliens, the INS created a network of qualified designated entities (QDEs) to provide support in preparing legalization applications. As of November 30, 1987, the QDEs in Colorado were: First Baptist Church of Craig; Catholic Community Services, Justice Information Center, Lutheran Social Service of Colorado, and SER-Jobs for Progress (two offices), all of Denver; and Catholic Immigration Service of Pueblo.⁹

Craig is located in the northwest corner of Colorado, and Pueblo is located in the southeastern part. According to community representatives assisting the undocumented, a considerable number of undocumented workers exists in the agricultural areas of the southcentral and southwestern parts of the State, but there is no QDE in those areas.

⁹52 Fed. Reg. 44,821 (1987).

They added that neither is there a QDE in the northeastern part of the State, which has large numbers of migrant workers.

Ms. Juliana Guzman of the Monford Corporation in Greeley told the Advisory Committee that her company is partially filling the gap in northeastern Colorado. She noted that the Immigration bar, composed of attorneys who specialize in immigration matters, has been supplementing the work of the QDEs. Ms. Watson and Ms. Guzman agreed that despite these efforts, many undocumented aliens are not being assisted with amnesty requirements. Mr. James W. Knight, district legalization officer, INS, Denver District, observed that the INS keeps the QDEs up to date on the latest legalization developments and pays a QDE \$15.00 for each bona fide application submitted.

Representatives of several QDEs made presentations at the forums. They said problems encountered by their clients included fear of deportation, separation of families, the cost of amnesty and concerns over their ability to provide required documentation.

Ms. Anna Alvada, Rocky Mountain SER, Greeley, said that undocumented aliens fear deportation by the INS if they do not qualify. This sentiment also was expressed by Darlene Ortega, Servicios de LARASA, Denver. INS official Knight noted that all legalization materials are kept in separate files from the general INS filing system and that the Service is keeping all legalization and amnesty data separate.

Costs were said to be a major hurdle for many undocumented families. Father Urban said that when one adds the charges for medical examinations, fingerprinting, photographs, QDE or an immigration attorney, INS fees, travel expenses, and miscellaneous fees, the costs are high. Mr. Jose Ortega, director, La Clinica del Valle, Rocky Ford, was quoted as stating that the minimum cost for a medical exam is \$42.50 plus two days away from work.¹⁰ Fingerprinting and photograph costs could be kept under \$20.00 if the person compared prices. Father Urban also said that Catholic Immigration Services charged \$35.00 per person for assisting

¹⁰"Costly Paperwork, Regulations Taxing Alien Farm Workers," Rocky Mountain News, Aug. 2, 1987, p. 22.

in the process, but community members alleged that the fee could range from \$75.00 to \$200.00 per person at other services.

Charges being imposed by QDEs varied. For example, Catholic Immigration Services charged \$75.00 per adult and \$50.00 per child; Rocky Mountain SER charged \$75.00 per head of household and \$25.00 per other family member up to a maximum of \$200.00 per family; and Justice Information Center charged \$75.00 per adult and \$25.00 per child up to a maximum of \$200.00 per family.¹¹ Darlene Ortega of Servicios de LARASA was advised by one client that an attorney had charged \$500.00 as a downpayment for his services to assist one undocumented alien. She presented case studies illustrating how the legalization process is priced outside the reach of large, poor families.

The INS also charges amnesty and legalization fees. According to QDE workers, INS fees are \$185.00 per person with a cap of \$470.00 per family. According to Anna Alvada, Rocky Mountain SER, Greeley, the fee is forfeited if the applicant

¹¹ See also "Immigration Service Doubles Fees for Aliens," Rocky Mountain News, Oct. 10, 1987.

fails to appear for a scheduled interview in Denver, and the applicant must start over again. James Knight of INS pointed out that the legalization service was intended to be paid for by the user. He thought that citizenship was a "give-away" even if the costs were to total a \$1,000.00.

Both Father Urban and Anna Alvada stated that costs became prohibitive when one added charges to obtain birth certificates, translations of documents, notary fees, travel to obtain services and file documents, and obtaining verification that the individual or family had not been on public assistance for the 18-month period required under IRCA. The individual also requires certification that no criminal record exists, and there is a fee for this. Alverna Perrora, a volunteer with St. Peter's Church, Greeley, noted that many applicants do not have birth certificates, have to send away for them, and do not have the money to pay for them. She claimed this created a burden on those applicants.

John and Susan Mauldin, residents of Pueblo, in a letter dated September 10, 1987, to Maxine Kurtz, Chairperson of the Colorado Advisory Committee, wrote, "we do believe that illegal immigrants applying for citizenship should not pay a fee any different from any other immigrants."

Father Urban claimed that the amnesty process had already broken up some families, suggesting that the potential for further separation of families was high due to the eligibility of some family members and not others. Darlene Ortega also suggested that IRCA could divide families. James Knight of INS noted that most of the district offices of the Service would look at this issue on a case-by-case basis. Mr. Knight observed that, in the opinion of INS officials, Congress did not intend derivative benefits.¹²

¹² Derivative benefits are those which "flow" from an individual who applies for naturalization to other members of the individual's family. The INS initially determined that individual members of a family were to file for amnesty separately because there were no derivative benefits. In the Federal Register of February 5, 1988, a new category of nonimmigrant was added to the regulations to "minimize any family separations caused by ineligibility for special immigrant status on behalf of certain parents and children of persons accorded section 101(a)(27)(1) status." 53 Fed. Reg. 3331 (1988).

Juliana Guzman, Monford Corporation of Greeley, cited another concern she said had arisen in her efforts to assist the undocumented to obtain amnesty. Her clients were having difficulty securing documentation of their residency, since their previous lifestyle had been oriented toward avoiding detection. Now these same individuals were required to document their presence in the country for some six years. Women were finding it even more difficult because usually the only paycheck was that of the husband or male head of the household. For agricultural workers, the head of the household is sometimes paid for work provided by a whole family, and as a consequence the female members have no pay stubs.

Initially, proof of continued residence was to be demonstrated with monthly rent or mortgage receipts. According to Anna Alvada, Rocky Mountain SER, when the INS realized how much paper was involved, it changed the documentation to quarterly. Officials of the INS indicated that the Service was being flexible with this requirement. David Graham, Catholic Immigration Service, Denver, said that uncertainty existed among QDE staff as to what documentation is

acceptable to the INS. INS officials indicated that they had provided guidelines to QDEs, and reasonable documentation would be accepted. According to INS officials, the burden of proof for legalization is on the applicant.

In September 1987, Juliana Guzman had 15 amnesty applications, including families. She expected to have many more applications by that time, but she believed many other people were afraid to apply. Kelly Watson, Catholic Immigration Services, said her office in early May held a general information session attended by about 300 people. The next week over 50 attended a similar session, and in September attendance was down to about 20. Individual counseling at Catholic Immigration Services of Greeley started the second week.

Anna Alvada, Rocky Mountain SER, Greeley, noted that applications to her office were increasing. During the first month of service, the office was open from 8:00 a.m. to 5:00 p.m. and had only 2 applicants. In September 1987, 10 applications were on hold because applicants could not get documents, and her total applicants were about 100 at that

time. Of the total, 2 families and 29 individuals applied for amnesty and were given the 6 month right to work; another 30 applications were in process. Ms. Alvada did not provide the status of the remaining applications. Aurora Castillo, office manager, INS, Pueblo Field Office, indicated that at the end of July 1987, approximately 2,000 inquiries had been received, but only 105 had applied under the special farm worker program.¹³

The INS Colorado district, which covers Colorado, Wyoming and Utah, had expected to receive 25,000 amnesty applications, but the regular amnesty program had only 8,749 applications between May and December 1987, and the special amnesty program for agricultural workers had only 4,312 applications between June and December, 1987.¹⁴ As a consequence of these numbers, on January 8, 1988, the INS cut its Colorado District staff by more than half. According to the Rocky Mountain News of February 18, 1988, the filings had reached 9,266 applications for legalization and 4,864 applications for agricultural amnesty by the end of January 1988.

¹³"Costly Paperwork, Regulations Taxing Alien Farm Workers," Rocky Mountain News, Aug. 2, 1987, p. 22.

¹⁴"Declining Amnesty Bids Trigger Job Cutbacks at Regional INS Offices," Rocky Mountain News, Jan. 8, 1988.

Agricultural Workers

Anna Alvada, Rocky Mountain SER, Greeley, observed at a community forum that, at present, Colorado was a workers' market due to its agricultural needs. Mr. Benjamin Eastman, a rancher and fruit grower in Montrose, indicated that orchard growers in western Colorado were unable to recruit pickers from among American residents. At best, he added, employees from this group lasted on the job only a few days because the work was strenuous and required a delicate touch to avoid damaging the ripe fruit. To remain competitive, Eastman said, growers cannot pay much above the minimum wage. Growers believed that IRCA resulted in many of the undocumented aliens leaving the State, rather than trying to be legalized, and they were concerned about a labor shortage when the harvest was ripe.

Mr. Mike Preston, County Commissioners' Office, Cortez, noted that an orchard grower's style of hiring is inconsistent with that contemplated by IRCA. Preston said, "A

grower might require 200 pickers, and hiring is a very personal process. Referrals by the job service are not consistent with hiring patterns in the area."

Mr. Preston noted that agricultural workers are very narrowly defined in the act. The term applies only to pickers of perishable crops, so, in the Cortez area, employers cannot hire undocumented aliens to repair fences and perform similar short-term chores. He added that growers, ranchers, and farmers cannot find American workers to do such work either.

Ms. Linda Cardenas, support services, Hospitality Center of Fort Collins, indicated that dairy farms and similar groups of food processors are not covered by the agricultural worker provisions of the act, and this limits the labor market for employers in that category. Ms. Cardenas added that some employees fear retaliation if employers hear about any type of IRCA application. One grower told her that employers are concerned that if they get involved in assisting an alien with employment, the Internal Revenue Service (IRS) might question their past employment practices, caus-

ing a negative effect on the grower's personal tax liabilities. She reasoned that this may also be the reason for the reluctance of some employers to provide documentation needed by aliens to establish their residency.

Ms. Cardenas contended that she had heard complaints in the past that some employers deduct income and social security taxes, but do not transmit them to the Federal Government. Mr. Preston noted that employees often were paid in cash because they did not want to be identified; now these employees are demanding receipts. The employers are concerned that if they admit to the earlier practice of paying by cash, they will face tax consequences from county, State, and Federal officials. Ms. Watson believed some employers were fearful of being prosecuted for violation of child labor laws.

A community representative stated that many employers, growers in particular, often dealt only with a crew chief and did not necessarily know who was working for that person. Because of the uncertainty in agricultural work and the confusion surrounding IRCA, these crew chiefs may not

have returned and would not be available to certify employment. Ms. Alvada said growers are too busy to look up records or perhaps have not retained the documents. Mr. Reese Malles, president-elect, Colorado Cattlemen's Association, complained that the whole amnesty and documentation process was too complex.

The Advisory Committee also heard that employers feared that if their employees received temporary work permits, they would leave for better paying jobs, since they now knew the INS would no longer be looking for them. In some cases, the employer had advanced the costs of legalization and was worried that the employee would leave and not repay the debt.

Employer Documentation

IRCA prohibits employers from hiring undocumented aliens and requires that they determine the identity and the eligibility to work of all persons hired since November 6, 1986. The statute allows present employees, who have had to order documents such as birth certificates from another State or

country, or a social security card, to remain working for 21 days while they await the requested documentation. For persons hired between November 7, 1986, and May 31, 1987, the employer had to obtain the required documentation by September 1, 1987.

Once the documentation was obtained, the employer and employee were required to fill out official INS Form I-9, attesting, under penalty of perjury, that the appropriate documents have been provided. The attestation form must be kept on file for three years after the date of hire or one year after termination, whichever is later.

According to INS officials, the first year of the act's implementation is devoted to educating employers about the provisions; the next year warnings will be issued to employers; and thereafter, fines and, in some instances, imprisonment could follow intentional violations of the employee provisions of the statute.

Colorado Governor Roy Romer appointed a task force in early 1987 to monitor IRCA. In June and July 1987, the task force held 20 seminars for nonagricultural employers and 11 for agricultural employers around the State to acquaint them with the IRCA requirements. According to Ms. Pat Chavez, Colorado Refugee and Immigration Services Program, Denver, 86,000 letters and packets of information about IRCA were mailed to employers in the State. Mr. Charles McClure, INS Employer Labor Relations Coordinator, Denver, told the Committee that additional meetings were held by the Service, principally oriented toward industry groups, such as manufacturers.

Despite these efforts, the Advisory Committee found ignorance of the requirements was pervasive among employees and employers in the southwestern part of the State, both on and off the Indian reservations, and knowledge of them appeared nonexistent in the northwestern part of the State.

John and Susan Mauldin, residents of Pueblo, objected to the idea of employers being required to enforce the law. They said that small employers believe the act places an undue

burden on them in terms of recordkeeping. Ms. Virginia Corbert of the San Juan Farm Bureau Federation and an employer in the Cortez area has only two full-time employees, both of whom are family members, and hires field hands seasonally. In Ms. Corbert's opinion, the I-9 certification system was too complex and would require that she invest in file cabinets, an unnecessary expense.

In other cases, Ms. Corbert added, crew chiefs who hire field hands on behalf of the employer may or may not be literate, and probably would not be in a position to maintain files of I-9 forms with supporting documentation. She thought this would be especially true if the work lasted only from one to three days, which sometimes occurs. INS officials noted that employers may keep copies of documentation, but that was neither required nor necessary; only the I-9 was required to be kept on file.

According to Annette Guterrez, Colorado State Job Service, Greeley, in urban settings and in some kinds of agricultural work, the State job service will document applicants and will provide proof of compliance for job applicants referred

to small businesses. Her experience so far has been that a majority of the undocumented workers can produce I-9 forms. Workers placed in temporary jobs must return to the employment service to have their I-9s renewed. Mr. McClure of the INS said employers must retain I-9 forms for three years or for one year after the employee leaves the job. If a seasonal laborer returns during the three-year period, the original I-9 can be used.

Concern exists about the degree to which employers are expected to determine the authenticity of documents. According to INS officials, the Service has issued a handbook for employers which contains photographs of the relevant documents. Mr. Reese Malles of the Colorado Cattlemen's Association questioned what happens if the documents are fake. Ms. Sharon McCabe, Personnel Department, City of Greeley, told the Advisory Committee that all that the INS requires is a good faith effort to review the documents and comply.

Another problem raised at the forums involved the inability of aliens and others to obtain legitimate documents. Ms. Darlene Ortega, Servicios de LARASA, Denver, related a case history of a client who had many documents, but because he was born at home in the State of New Mexico he had nothing that would prove that he was born in the United States. This was creating problems for him.

Mr. Gus Gallegos, Pueblo County Job Training, noted that his training program also requires birth certificates, and he has observed that in Pueblo, at least, applicants have no problems getting false birth certificates. Mr. McClure of the INS told the Advisory Committee:

We [the INS] know that illegal aliens can buy these counterfeit green cards down here on Larimer Street [in Denver] starting at about \$700, going to about \$1500 and for an extra \$25, they can buy a counterfeit Social Security Card. It is very easy. Anybody can do it. There are vendors in every state.

Mr. McClure added that employers now can verify green cards by telephoning the INS office for a computer check of the number. Both Mr. Remglío Candelaria of Cortez and Mr. Reese Malles objected to American citizens being required to prove their citizenship.

Mr. Douglas Remington, KSUT Radio, and Arnold Santistan, Southern Ute Tribe, Ignacio, believed that Indian tribal membership cards pose a particular problem in this regard. According to Cynthia Kent, director, Colorado Commission on Indian Affairs, Denver, no two tribes use the same card, and no one is quite sure that such cards are acceptable because INS regulations for IRCA do not mention them. This concern was also expressed by Norman Lopez of the Ute Mountain Ute Tribe and Judy Leaming-Elmer, an attorney with the tribe, both of Cortez.

Mr. Santistan, Mr. Lopez, and Ms. Leaming-Elmer also sought clarification of INS jurisdiction on Indian reservations.

They agreed on the question:

given treaty sovereignty, does the act apply in any or all of these situations: the tribe as government; the tribe as enterprise; a non-Indian licensee of the tribe who conducts an enterprise on the reservation and employs only Indians who reside on the reservations; and, a non-Indian licensee, conducting an enterprise on the reservation who gives preference to Indians who reside on the reservation pursuant to federal statute?

When this question was posed by the Advisory Committee to Mr. McClure of INS, he agreed to seek legal advice about the matter from the Service's headquarters legal staff.¹⁵

Similar concerns and questions may arise as enforcement of these provisions is undertaken. At the Denver forum, Mr. McClure stated that the INS has proposed a four-part en-

¹⁵ As of the date of this report, the INS has not advised the Colorado Advisory Committee of the result of this inquiry. Because of the national policy implications, the Advisory Committee suggests that the Commission have its Office of General Counsel pursue this matter.

forcement program beginning with random checking for the "fan effect," which he described as enforcement by example; i.e., as violators are found and it becomes publicized, the news will "fan out" or spread around to other employers. Other parts of the enforcement program described by Mr. McClure included: action on written complaints about violators received in the mail, leads regarding violators provided by interviewing illegal aliens turned over to the INS by the police, and the investigation of firms with a notorious reputation for violating immigration and naturalization laws. According to Mr. McClure, due to funding problems through September 1987, the INS was not involved in interviewing illegal aliens turned over by the police.

The first inspection for compliance in the Denver District of the INS occurred on September 10, 1987, and coincided with the Advisory Committee's forum in Denver. Mr. Robert Wylie, Supervisory Special Agent, Investigations Branch, INS, was quoted as stating that the first enforcement targets are industries likely to have aliens such as restaurants, laundries, construction companies, and landscaping

firms.¹⁶ Community spokespersons suggested to the Advisory Committee that this action was premature because information about employer sanctions was still scarce.

Several representatives who appeared before the Advisory Committee challenged the extent to which all aspects of the legalization program had been publicized to date. Individuals alleged that while an all-out effort was made to educate employers, no similar INS or State effort was made to reach potential employees, and some of the information was not available in Spanish or Indian languages.

Mr. Remington of KSUT Radio, Ignacio, said that if the program proposed under IRCA is to succeed, much more information about the provisions is needed. Mr. Malles of the Cattlemen's Association echoed that thought, arguing that inadequate information was available about the I-9s. Others who voiced similar concerns were Mr. Mike Preston, County Commissioners' Office, Cortez, and Ms. Judy Leaming-Elmer of the Ute Mountain Ute Tribe, Cortez. Mr. Remington suggested a series of news interviews and public service announcements

¹⁶"Immigration Service Checking Employers," Rocky Mountain News, Sept. 11, 1987, p. 42.

in English, Spanish, and local tribal languages. The challenge, he believed, is to make more people understand the act.

Summary

The Advisory Committee's forums were conducted to obtain initial impressions and concerns about implementation of the Immigration Reform and Control Act of 1986 in Colorado. Several general observations were made at these forums and should be brought to the attention of the U.S. Commission on Civil Rights.

A number of forum participants felt that more information on the act should be disseminated. Although efforts at outreach and public information were made, they appear to have been inadequate. Confusion was evident, for example, among employees and employers regarding who was required to file documentation regarding citizenship status.

Native Americans questioned whether the legislation was appropriate to reservation Indians whose treaty rights include sovereignty. The INS position on this issue is unknown at this time, and, because of the national policy implications, the Commission may need to be involved to ascertain an answer.

Costs of the legalization and amnesty process were said by many forum participants to be a major hurdle for undocumented families and may have contributed to the lower than anticipated participation rate noticed by the INS. Employers, particularly growers, ranchers, and farmers, expressed concerns about the added costs they would incur to comply with the employer sanctions provisions. Their lack of knowledge regarding the sanctions provisions was viewed as a source of potential employment discrimination.

Further, the lack of Qualified Designated Entities in areas accessible to agricultural workers and rural undocumented was viewed by many forum participants as a major hurdle to assisting applicants with amnesty.

The Advisory Committee hopes that this summary report of its forums in Colorado, while not an exhaustive study of these issues, will be of value to the Commission in its own monitoring of civil rights matters involved in implementation of the Immigration Reform and Control Act of 1986.

