TESTIMONY OF JEANNE A. BUTTERFIELD

on

How To Fix The Late Amnesty Problem

Before
The House Judiciary Subcommittee on Immigration & Claims
Ranking Members and Minority Members

Thursday, October 21, 1999

Ms. Jackson-Lee and distinguished Members of the Subcommittee, I am honored to be here today representing the American Immigration Lawyers Association (AILA). AILA strongly supports H.R.2125, introduced by Representative Jackson-Lee. H.R. 2125 represents an important start at resolving the status of more than 350,000 long-term immigrant residents who have been in legal limbo for nearly 18 years as the result of agency missteps, subsequent litigation, and the 1996 intervention of Congress which unwisely, in our opinion, stripped the courts of jurisdiction to finally settle this long-standing injustice.

By way of introduction, AILA is the national voluntary bar association of immigration attorneys in the United States, with over 6,000 attorney members. AILA is an affiliated organization of the American Bar Association. AILA takes a comprehensive view of immigration law and policy. AILA members provide representation in virtually all types of immigration cases: individuals and families who have applicated for permanent resident status; thousands of U.S. businesses that sponsor both temporary and permanent workers; and foreign students, entertainers, athletes and asylum seekers, often on a pro bono basis. AILA appreciates this opportunity to express its views on the issue of so-called "late amnesty" seekers and Section 377 of the 1996 Illegal Immigration Reform and Immigration Responsibility Act.

History of the Late Amnesty Cases

Congress in 1986 enacted a law that was intended to legalize the status of some 3 million long-term resident immigrants who were living in the United States in undocumented status. The Immigration Reform and Control Act of 1986, IRCA, was based on sound policy decisions that recognized that it was not in the national interest to maintain in undocumented status a class of workers who had established long-standing ties and roots in the U.S.. Such persons, due to their lack of status, were easily exploited by unscrupulous employers, and vulnerable to crime, and health and education problems due to fears of coming forward and exposing their undocumented status. A generous amnesty, coupled with new employer sanctions, was believed to be necessary to level the playing field, prevent exploitation, and bring a community out from underground shadows into the light of labor law protections and immigration enforcement.

As service providers, community activists, and lawyers well know, the implementation of such an amnesty law is challenging. Intended to benefit communities who by nature are fearful of government authorities and who have spent their lives avoiding contact with government agencies, the law must somehow reach out to these communities. Government agencies and service providers much provide accurate information and encourage people to come forward on the promise of a benefit that is newly available. The window of opportunity is finite, and the need for confidence-building measures and encouragement is great.

It is clear, looking backwards, that the INS failed to meet the challenge in significant ways. While many people did benefit from the 1986 amnesty, others were the victim not of their own fears, but of mistaken and misleading information released by the INS itself that discouraged and prevented legitimate applicants from benefiting from the new law.

During the 12-month application period (May 1987-May 1988), the INS adopted regulations which were flatly wrong. These regulations, later withdrawn, ruled that people who had briefly traveled abroad between 1982 and 1988, or whose U.S. citizen children had lawfully received public assistance, were "ineligible to apply for legalization". Such people were not only discouraged from coming forward upon hearing about the regulations, but those who tried to apply were physically turned away at INS offices around the country.

Applicants Turn to Courts for Relief

As is often the case when a federal government agency errs, people turn to the courts for justice. In this instance, service providers, community members and lawyers worked together to ask the courts to order the INS to reverse its unlawful regulations and to allow those who would have qualified for amnesty to seek relief. The so-called "late amnesty" class numbered nearly 350,000—people who filed applications after the formal application period ended in May 1988, under protection of a court order.

The courts made no determination about which applications were worthy and which were not. The courts merely ordered the INS to accept and evaluation the applications on the merits. If there was fraud, as some allege, the INS would be fully equipped and authorized to deny the application for amnesty or legalization. If the applicant proved eligibility, they would finally be granted the legal status they were entitled to under the 1986 law. They could come out from under the shadow of illegality and be fully participating members of civil society.

Rather than implement the court orders, the INS appealed each remedy. While the appeals were pending, some late applications were accepted by the INS and work authorization was granted to about 100,000 class members. People subject to the lawsuit were allowed to remain in the U.S. and work legally, pending the final outcome of the litigation.

Court-Stripping by Congress

In 1996, Congress intervened in the long-standing "late amnesty" cases. By stroke of the pen, in a short cryptic sentence labeled "Section 377" of IRAIRA, Congress swept the rug out from under hundreds of thousands of potentially deserving applicants who had been denied justice for a decade: Amending Section 245a of the 1986 law itself, Congress provided that "Notwithstanding any other provision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that officer."

While innocuous on its face, this provision swept away years of court orders and remedies that the INS had been partially implementing and partially challenging.

Why did Congress intervene in a court-ordered process that had been pending for years? Why did Congress attempt to undermine a remedy that the courts believed was just? Why did Congress apparently believe that it knew better than the courts what to do to correct an injustice that was full of complexities and nuances? How did Congress think that classes of applicants could prove that they actually attempted to file an application but were turned away, when in fact INS kept no records of such attempts and applicants were often discouraged by radio announcements, community agencies that had been misinformed, and lawyers themselves that they had no basis for applying for amnesty because they had been out of the country briefly or had obtained food stamps for their U.S. citizen children?

Remedies and Recommendations

AILA attorneys were some of those in 1987 and 1988 who obtained the faulty INS regulations and provided faulty guidance to deserving applicants. AILA attorneys were also some of those who challenged the faulty INS regulations and who subsequently assisted class members in seeking relief through the courts. AILA attorneys are those who had to convey the very bad news to thousands of deserving applicants that Congress had swept away the court orders protecting them and that they would lose their work authorization after the 1996 law went into effect.

We are advocates who staunchly believe that a cornerstone of the U.S. system of government is the system of checks and balances enshrined in our constitution. Where a federal government agency errs, an adjudicatory body can and must step in to provide justice. This is what happened in the late amnesty cases. We believe that the courts will eventually prevail and that justice long denied will ultimately be delivered.

We also believe, however, that Congress should step up to the plate and correct the injustice it committed in 1996 thru its enacting Section 377 of IRAIRA. Rep. Jackson-Lee's bill would do just that—it would repeal Section 377, and restore the courts' jurisdiction over this complicated matter.

Congress and the Administration could go further, however. We believe that many worthy proposals about remedies and relief have been put on the table and have been further elaborated in testimony here today.

Among those, we would highlight for support those that offer a way out of further interminable court proceedings and that provide a basis for full and fair adjudication of applications that should have been accepted and adjudicated more than a decade ago.

There is no reason to argue further about which applicant made it to the front door of the INS building, which made it to the front desk, and which went away discouraged after waiting a day in an INS waiting room.. Any person who but for the wrong information put out to the public by the INS would have been able to file a prima facie application for amnesty should be encouraged and assisted to come forward and do so, even, and especially, at this very late date.

Congress could certainly take further decisive action. It could update the long-standing statute of limitations contained in our immigration law for decades. It could declare relief for the entire named classes of plaintiffs included in several of the late amnesty court cases. Our colleagues here today will argue for some if not all of these remedies. Any are worthy of your support.

AILA strongly urges Congress to undo the wrong it did in 1996, and to consider with the affected class such remedies as may be proposed that will bring a just result to people for whom justice has been denied for far too long.

TESTIMONY OF

ADRIANA FERNANDEZ

BEFORE THE

CONGRESSIONAL DEMOCRATIC CAUCUS

ON

THE REFUSAL OF THE IMMIGRATION & NATURALIZATION SERVICE TO ADJUDICATE LEGALIZATION APPLICATIONS OF PERSONS WHOSE APPLICATIONS THE AGENCY REFUSED TO ACCEPT DURING THE 1987-88 APPLICATION PERIOD.

October 21, 1999
Washington, DC

SUMMARY

Good afternoon. My name is Adriana Fernandez. I thank the members of Congress present here today for inviting me to testify.

I am a native of Uruguay. In 1981, my parents brought me to live in Houston. I was then 12 years old.

In 1985, my grandmother became very sick, and we decided to visit her in Uruguay. After a short visit, my parents and I returned to the United States using a tourist visa.

In 1987, my parents and I learned about the amnesty program. We filled out application forms and bought money orders to pay the filing fee. We took our applications to Refugee Service Alliance in Houston. Refugee Service Alliance was a Qualified Designated Entity: an organization that the Immigration Service had authorized to accept amnesty applications on its behalf. The person at Refugee Service Alliance told us that they would not accept our amnesty applications because we had left the country to visit my ailing grandmother. She returned our applications, money orders and documents to us. We were very disappointed, but Refugee Service Alliance spoke on behalf of the INS, so we accepted their word that we were ineligible for amnesty.

Then, in 1989, I learned that the INS had been wrong, persons were not necessarily ineligible for amnesty simply because they had left and come back to the United States using visas. I learned that a federal judge in the LULAC case had ordered the INS to issue persons like me work permits while the government sorted out what to do about us. Since then, I have lived and worked in the United States legally, but with a very uncertain status.

My dream is to become a teacher to handicapped children. I have been blocked in my efforts toward this goal by my immigration status: Public colleges and universities consider me a non-resident even though I have lived and worked in the United States legally now for over a decade. Although I am still protected by the courts from deportation, I live every day with the thought that the Administration might suddenly reduce me to the status of an illegal immigrant, just like it did to the CSS class members.

For the past two years, I have worked very hard to bring the plight of late amnesty class members to the attention of the American public. Hundreds of amnesty-seekers like myself have formed an organization, the Association for Residency and Citizenship of America, or ARCA, to bring attention to our situation. Currently, I serve as president of the Houston chapter of ARCA. In that capacity, I have occasion to hear the stories of many late amnesty applicants.

I would like to briefly describe the human consequences of the Administration's decision to perpetuate the plight of these late amnesty applicants.

More than a year has passed since the federal court dismissed CSS, and at the present more than 350,000 families, most of them with United States children are in a migratory limbo. Their work permits have been lost. They are unable to visit sick or dying relatives in their native lands. Many of these people fill jobs that are critical to their communities. They have obtained mortgages, started families, and have deep roots in their communities.

But let me tell you the story of Maria, one of our members. Maria came to the United States 18 years ago. She lost her job because she was not able to renew her CSS employment authorization card. Her son, who was born here, is two years old. He suffers a rare illness that makes his bones so weak that they are unable to support his weight. He is confined to a wheelchair. Maria's father recently fell ill and passed away, but because of her immigration status she was not able leave the country to be with him, to kiss him goodbye. Now, all Maria wants is to legalize her status, to be able to work legally, to be able to pay for the medical treatment her son needs. He is all she has left.

Stories like Maria's point out the need to act now. It is wrong that immigrants who were affected by the INS's incorrect regulations do not have access to the courts. It is unfair that thousand of productive individuals are reduced to a state of legal limbo. On behalf of myself and the ARCA membership, I urge the Administration and Congress to restore late amnesty class members' work permits immediately and to process these unfortunate individuals for the legalization benefit the INS unjustly denied them.

TESTIMONY OF ADRIANA FERNANDEZ

Good afternoon. My name is Adriana Fernandez. I thank the members of Congress present here today for inviting me to testify.

I was born in Uruguay. My family and I have lived in the United States since 1981. I was 12 years old when we came here. For the past 18 years, we have made our home in Houston, Texas. In 1985, my grandmother became very sick; we decide to visit her in Uruguay. I re-entered the United States after a short visit through Miami, Florida, using a tourist visa.

I graduated from Robert E. Lee High School in 1987. I very much wanted to continue my education— to become a teacher. I have always loved to spend hours and hours with children, reading, playing and impressing upon them the importance of a good education. Because of my uncertain immigration status, however, I was not able to attend college.

In 1987, we learned about the amnesty program. Since we had lived here since before January 1, 1982, we believed that we qualified for amnesty, and we decide to complete an application. It was a great opportunity, especially for me: If I could legalize my status, I would be able to attend college.

A few weeks after the amnesty application period began, we filled out applications, bought money orders for $185.00. My family and I took our applications, the money orders, and documents proving that we had lived here since 1981 to Refugee Service Alliance in downtown Houston, on Caroline St.. At the time, Refugee Service Alliance was a Qualified Designated Entity: an organization that the Immigration Service had authorized to accept amnesty applications.

At Refugee Service Alliance, a Hispanic lady (I believe her name was Sandy) checked my application. She noticed from my amnesty application that I had come back to the United States in 1986 with a visitor's visa. When she saw this, she explained that people who had traveled outside the United States and returned with visas were not eligible for amnesty, that they lacked continuous unlawful status. She returned the application, money order and my documents to me.

I went back home and cried for many days. My dreams of becoming a teacher had once again vanished. Nevertheless, I decided I would attend a private college, to learn something that could be useful in my future.

I got my first job when I was 16 years old. Even then, I wanted to save money for college, and at the same time help my parents. I attended high school during the day and worked a night doing maintenance at one of the Galleria buildings. In 1987, I enrolled in a two year course in computer programming. I kept working work at night and did housekeeping in the mornings because school was so expensive. Between my two jobs, I managed to earn about $300 per month.

I graduated from school in 1989. I received a job offer from Guatemalan Airlines at Houston Intercontinental Airport. About this time I learned that I might qualify for a work permit under the LULAC case. I applied for a work permit and accepted the job with Guatemalan Airlines on the condition that I obtain a work permit.

An INS officer interviewed me in 1990 and I was granted employment authorization. The next day I obtained my airport identification with authorization to enter the INS and customs area. My first position was as a reservation agent, but because of my computer skills, I was promoted to flight dispatcher. I traveled to Guatemala City to obtain my certificate as flight dispatcher for Boeing 737/200 and 300 aircraft. The INS issued me advance parole so I could make this trip.

I worked as a flight dispatcher for 2 years, and then I was promoted to the position of operations supervisor. My new position required that I travel around the world many times. The INS always authorized this travel. By this time, I had had my work permit for so long I considered myself a legal resident. After all, I was authorized to work, reside and travel.

I still felt I had not completed my education. I attempted to enroll at Houston Community College, but I was unable to continue there because they considered me a foreign student. I tried one more time in 1994: I completed an application to the ITT Technical Institute. I passed all the entrance tests, I was not allowed any financial help. The monthly tuition was $950, which I simply could not afford, not even working full time.

Since I could not go back to school, I took a job with a law firm. I was assigned to help with immigration cases. During the five years I worked with this firm, I had the opportunity to work closely with the INS and immigrants. My responsibilities included advising clients and attorneys as to the current status of their cases helping prepare applications for various immigration benefits. I also assisted with court filings, contacting INS officers at several detention centers, and as an interpreter at asylum interviews. I was very happy with my work: I not only had the opportunity to learn, but to share feelings with different people.

Present I work as an administrative assistant with a small oil company. I earn a salary between $27,000 and $30,000 annually.

In July 1999 I learned that Judge Keller had issued an order requiring the INS to process the legalization applications of LULAC class members who had tried to file an application with the INS or QDE during the amnesty application period. My family and I were so happy that we all got together and cried. Memories of sad days trying to go back to school came to my mind. I gave thanks to God for giving me the opportunity to make my dreams come true.

Now it seems it was all too good to be true. I learned that the INS has once again appealed Judge Keller order. Now I do not know what to do or where to go. After so many years, the INS attorneys want to block my only opportunity to legalize my status because I was front-desked by a Qualified Designated Entity, but we would not have gone to file our applications with a Qualified Designated Entity had the INS itself not said it was alright to do so. I think this is very unfair.

I have now worked in this country for 16 years, always paying taxes. I have already accumulated enough credits for retirement and Social Security. Other than two traffic tickets, I have never had the slightest problem with the police. I have never depended on welfare, and if God gives me the strength, I will work to support my family and myself until the last day of my life.

I believe that I have been an asset to the United States: that I have contributed much more to America that I ever will to the country of my birth. Going back is unthinkable. My family here depends on me.

Finally, let me say that I love America. I believe in its government, and I would like to remain a part of this country. I have a beautiful family, wonderful friends, and a stable job here. All this could disappear were the INS to have its way. But forcing people like me underground will not solve any problem; it will only destroy our dreams.

I would also like to briefly describe the human consequences of the Administration's decision to perpetuate the plight of late amnesty applicants. More than a year has passed since the federal court dismissed CSS, and at the present more than 350,000 families, most of them with United States children are in a migratory limbo. Their work permits have been lost. They are unable to visit sick or dying relatives in their native lands. Many of these people fill jobs that are critical to their communities. They have obtained mortgages, started families, and have deep roots in their communities.

The most common situation: The head of the household has now lost his job because he was not able to provide his employer an extension of his employment authorization. Trying to find another job is not easy without legal permission to work. Though this worker has contributed for many years to the unemployment insurance fund, he does not have the right to obtain unemployment benefits. Can you imagine the consequences? Families with United States citizen children are being forced onto welfare, not because they cannot support their families, but because the Government is forcing them to do it.

Then there is the desperation of knowing that your mother, grandfather, or sister is sick, perhaps even dying, but not being able to go their bedsides. Mothers, fathers, daughters and sons are not able to hold hands at their last minute. Late amnesty class members are not allowed to travel, not even for compelling humanitarian reasons. Can you imagine for a minute how much it must hurt when your mother is begging to see you at the last minute of her life? There is no word that can describe the feeling of frustration, anguish and pain.

And what happens when you've lost your job, and with it your health insurance? You need medical attention, but unless you are almost dead, you are ineligible for assistance. In one recent case, a class member suffered total renal failure. She needs dialysis to survive, yet she is in danger of dying because she has no legal status.

Then there are our elderly members: Men and women who have worked and contributed to this country, paying their Social Security and Medicare taxes month after month, year after year. They reach 65, and when they try to apply for the benefits that they earned the answers is No, you do not qualify. How many options does a 65-year-old person have today to survive without a work permit, without retirement support, without medical insurance?

Among the saddest stories we have concerns Mrs. Blanca Ramon. Blanca, a 42 year old mother of two boys, came to the United States more than eighteen years ago. She worked very hard to support her children. Unfortunately, Blanca suffered from heart and blood pressure problems. When she learned about the dismissal of the CSS case she joined our organization and worked very hard. Unfortunately her heart was not as strong as her desire. Under the weight of constant uncertainty and the terrible depression she suffered, she suffered a stroke and died just a few months ago.

Then there is the story of Maria. Maria came to the United States 18 years ago. She lost her job because she was not able to renew her CSS employment authorization card. Her son, who was born here, is only two years old. He suffers of a rare ill that makes his bones so weak that they are unable to support his weight. He is confined to a wheelchair.

Maria's father recently fell ill and passed away in El Salvador, but because of her immigration status Maria was not able to leave the country to be with him, to kiss him goodbye. All Maria wants is to legalize her status, to be able to work legally, to pay for the medical treatment her son needs. He is all she has left.

Stories like Maria's point out the need to act now. It is wrong that immigrants who were affected by the INS's incorrect regulations do not have access to the courts. It is unfair that thousand of productive individuals are reduced to a state of limbo. On behalf of myself and the many members of ARCA, I urge the Administration and Congress to restore late amnesty class members' work permits immediately and to process these unfortunate individuals for the legalization benefit the INS unjustly denied them.

UNITED STATES CATHOLIC CONFERENCE

Migration and Refugee Services National Office
3211 4th Street N.E. Washington, DC 20017-1194 (202)541-3220 FAX (202)541-3322 TELEX 7400424

Statement of Migration and Refugee Services
National Conference of Catholic Bishops/ U.S. Catholic Conference
on
Justice for Late Legalization Applicants

October 21, 1999

I am Father Anthony McGuire, Director of the Office of the Pastoral Care of Migrants and Refugees of the United States Catholic Conference. I would like to thank Representative Jackson Lee for holding this hearing today and for her leadership on behalf of thousands of individuals who were denied the opportunity to legalize under the 1986 Immigration Reform and Control Act (IRCA). These individuals have waited well over a decade for the Immigration and Naturalization Service (INS), Department of Justice, and the court system to right a wrong. Now they return to Congress for help which should have been granted long ago.

The Catholic Bishops of the United States are deeply concerned about the plight of these long-term residents who with the passage of IRCA sought to obtain their green cards but whose applications were erroneously rejected by the INS. All of these persons have been in the United States since 1982, known to the government since at least 1986, and have built lives here. Many have married, raised children, bought homes, started businesses, and contributed greatly to the communities in which they live.

Many of those affected have called upon the help of their Bishops in addressing their situations. One gentleman in Los Angeles told us of his embarrassment in leaving his house because he felt he was "illegal now." He spoke not only of his shame but of the shame of his sons, of whom he was so proud. He did not want to embarras them in their work serving the community, one being a LA police officer and the other completing his medical training to be a doctor. Another parishioner in Houston told us of his successful construction company where he employed numerous U.S. citizens. He spoke of his struggle to retain his thriving business now that he too found himself "illegal". These cases represent human tragedies resulting from the failure of the INS to follow a congressional mandate in 1986, over a decade ago. They also represent tragedies for local communities, which have benefitted from the numerous contributions by these individuals.

We also are concerned because the failure to remedy this situation could result in the destitution and/or indefinite separation of many American families in our communities. Parents who have waited for years to have their applications to be processed are now unable to provide for their U.S. citizen children because they have lost their work authorization and they cannot reassure themselves or their children that they will remain together. This unbearable situation for families will not change so long as we struggle for a solution.

Advocates and others in the immigrant community have suggested possible solutions for this population, including everything from expeditious administrative processing of certain subgroups to changing the law. While the U.S. Catholic Bishops are disappointed by the past actions of the INS, we now call on the Administration to work with Congress to correct this injustice in the most expeditious manner possible. We call on Congressional leaders and the White House to rectify this problem in their upcoming budget deliberations.

Some who might oppose helping this population might characterize any appropriate solution as another "give away" or "amnesty", which is not the case with these individuals. Rather, Congress and the Administration would simply be correcting an injustice. Congress has already indicated its intent, through the 1986 IRCA law, that this population deserves legal permanent residency status. Court cases and subsequent interpretations of the law, including one by the Supreme Court, have confirmed this intent. We are only asking that our elected officials honor the law which was passed thirteen years ago.

To the U.S. Catholic Bishops, this issue represents a matter of basic fairness and justice which should be resolved now. We congratulate Representative Jackson Lee for her leadership on this issue and for inviting us to speak today.

MEDIA INFORMATION

Congresswoman
Sheila Jackson Lee
18th District — Texas

FOR IMMEDIATE RELEASE
OCTOBER 21, 1999

CONTACT: LEON BUCK
202-225-2329

Congresswoman Sheila Jackson Lee Holds Hearing on How to Fix the Late Amnesty Problem

Washington, DC – Today, Congresswoman Sheila Jackson Lee (TX-D), Ranking Member of the Immigration and Claims Subcommittee, will chair a bipartisan hearing to discuss a solution to the late amnesty problem plaguing individuals and families throughout America. This hearing will bring together advocacy groups and class members to discuss this continuing problem.

"The effects of the current provisions have been devastating", said Congresswoman Jackson Lee. "Late Amnesty individuals are losing their work permits and this is causing hardships for families and communities around the United States."

In 1986, the Immigration Reform and Control Act allowed illegal immigrants to apply to remain in the United States legally through amnesty programs. The provision specifically allowed all undocumented persons who could prove that they had been residing in the United States since January 1, 1982, to adjust their status to that of lawful permanent resident beginning on May 5, 1987. In response to this law, INS took a contrary position and promulgated a rule that restricted anyone who had briefly left the country from applying for legal resident residence. Therefore, many of the applicants were turned away by the INS through its erroneous interpretation of the statute.

In 1996, Section 377 was introduced into Congress retroactively removing the federal courts' jurisdiction over the applicants' cases. Thus, the INS has the jurisdiction to decide these cases and process the applications, but it has delayed taking action on them for several years.

One of the solutions today was the "Legal Amnesty Restoration Act of 1999" which will restore authority to Federal Courts to decide these cases and to encourage settlement of many of these cases with the INS.

In essence hard working, tax-paying individuals, who have worked legitimately and built strong communities in the course of nearly twenty years, have been forced to go underground and face the imminent danger of deportation. In addition, thousands of families are living in fear of being separated.

"It is unfair that so many productive individuals must wait for a solution and that thousands of families suffer because of it. The Administration must act to allow these individuals to work legally and process these applicants," concluded Congresswoman Jackson Lee. "The children of these immigrants who are caught up in these 'late amnesty' cases are innocent victims, and if we are a nation that is committed to equal justice, then let's give justice to these people who so desperately need and deserve it," concluded Congresswoman Jackson Lee.

\# # #

Senator Reid

- Personal stories - work authorization revoked
- Wants due process/hearing to determine if they should be deported.

(1st Panel discussed the registry date).

Rep. Jackson-Lee - 50K work authorizations revoked.

Panel II

- Felicity Newman - Class II - has lived in US for 18 yrs, traveled outside the U.S. INS would not give II the form. All the classes should be treated the same.
- Adriana Fernandez - ARCA - been in US for over 12 yrs old. works as a teacher of disabled children, Uruguay. Filed w/ QDE but returned. left country b/c ill grandmother. Restore W.A. exp. Went to QDE so application denied + not processed. Don't want to apply for a new proposal. children 6th - twelfth grade.
- Dr. Aguel - physician for NY. Worked with medical in the middle of nowhere.
- Mr. Ibrahim - Formerly from VA - could not see father before his death - applied for Advance Parole but denied.

Panel III

- Isaias Torres - LULAC - Resolution
  1. DOJ settlement offer in 1984 - Group 1 + 2 = renew negotiations
  2. Legislative Remedy.
     - a. Repeal §377
     - b. Update the registry date.
- Father McGuire - Parishioners example.
  - a. Work w/ Congress to correct injustice in upcoming budget negotiation.
- Jeanne Butterfield - HR 2125 - support + companion bills that seek to address late amnesty class.
  (AILA) §377.
  1. Registry Date
  2. Asylum relief

  All worthy of consideration + support
- Joel Najar - NCLR -
  NCLR conference - town hall mtg w/ Meissner.
  INS does not admit that something wrong occurred. INS appeals every case in favor of
  IIS - O Immig. Legal Affairs/DOJ
  §377 - Simpson provision - but DOJ/INS requested (INS detail in Simpson office).
  100,000 undoc. status. are losing work permit by Ct order.
  Solution - 2 prong approach:
  - Resolve through Administrative action
  - Settlement is warranted
  - Legislative is necessary - SJL + Sen Reid - 1st step.

  #s - 350 K ?.

  Central Am = Late Amnesty Class.

Rep. Becerra: high level Lobby efforts. Can you can get your membership.

- OILA - appealing the 9th Circuit case - President should not appeal.

Rep. Jackson-Lee

Bad staffing b/c not correct info.

Senator Reid

Rep. Sheila Jackson-Lee
Rep. Berman - majority data (Hyde staff)
Rep. Schakowsky
Rep. Buckley
Rep. Becerra -

WITNESS LIST

DATE: OCTOBER 21, 1999
TIME: 9:30 a.m.
ROOM: 2226 Rayburn House Office Building
RE: "How to Fix The Late Amnesty Problem"

WITNESSES

PANEL 1- Class Counsel for Late Amnesty Applicants

Christina Chavez-Cooke, Attorney
Mexican American Legal Defense Fund (MALDEF)

Carlos Holguin, General Counsel
Center for Human Rights and Constitutional Law

Peter Schey, President
Center for Human Rights and Constitutional Law

PANEL 2- Late Amnesty Applicants

Felicity Newman
Lead Plaintiff in Newman Case

Adriana Fernandez-
President of Association for Residency and Citizenship
of America (ARCA), Houston, Texas

Nooralian Aqeel
Physician from Pakistan
[illegible] Trabonee (sp?) - member of Newman case

PANEL 3- Advocacy Groups

Isaias Torres, Director Of Immigration Issues
League of United Latin American Citizens (LULAC)

Fr. Anthony McGuire, Director, Office Of Pastoral Care of Migrants & Refugees
United States Catholic Conference

Jeanne Butterfield, Executive Director,
American Immigration Lawyers Association

Joel Najar, Legislative Assistant & Late Amnesty Expert
National Council de la Raza

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Lead Plaintiff in Newman Case

Adriana Fernandez-
President of Association for Residency and Citizenship of America (ARCA), Houston, Texas

Nooralian Aqeel
Physician from Pakistan

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National Council de la Raza

STATEMENT OF PETER A. SCHEY
COUNSEL FOR AMNESTY APPLICANT FAMILIES IN
CATHOLIC SOCIAL SERVICES V. RENO, NEWMAN V. INS, AND
IMMIGRANT ASSISTANCE PROJECT OF THE AFL-CIO V. INS

Hearing before the

UNITED STATES HOUSE OF REPRESENTATIVES
Hearing Chaired by Representative Sheila Jackson Lee

on

SOLUTIONS TO THE AMNESTY LITIGATION CASES

October 21, 1999

STATEMENT OF PETER A. SCHEY

I wish to thank Representative Sheila Jackson Lee and the members of the United States Congress attending this hearing to consider solutions to the amnesty class action cases which have been pending in the federal courts for over 12 years and which involve the fate of 350,000 applicants for legalization of status under the historic one-time 1986 legalization law.

Due to recent action by the INS, several hundred thousand immigrants who have continuously resided in this country for over 18 years, and who all have long-pending legalization applications, now face arrest and deportation. During the past year alone, the INS has revoked the work permits of about 50,000 legalization applicants, without regard to their eligibility for adjust of status, forcing them to go cold, hungry and homeless, or work in exploitable jobs, for exploitative employers, in violation of federal law.

The Catholic Social Services v. Reno case involves about 250,000 applicants who were turned away by the INS, or discouraged from attempting to apply for legalization, because they briefly traveled abroad for innocent reasons during the 12-month application period during 1987 and 1988.

Long after the courts ordered a remedy for these class members, the INS supported and Congress approved Section 377 of the 1996 amendments to the Immigration Act, *wiping out the court's jurisdiction to enforce a remedy for thousands of class members who were turned away by the INS before they could obtain the blank application form to complete.* Of course, under INS' unlawful and since withdrawn "front-desking" policy in effect during the application period, had these applicants obtained the blank forms and completed them, they would have simply been rejected by the INS.

Immediately following enactment of Section 377, the INS moved swiftly to end the federal courts' protection of thousands of class members, and revoked their work permits and protection from arrest and deportation. This mass revocation of protection class members had had for ten years was done without regard to their eligibility for legalization.

INS' refusal to resolve these cases has, by its own admission, now cost the taxpayers over $40 million, and countless hours of INS employees' time. INS' refusal to resolve these cases has significantly added to backlogs in other INS programs, including naturalization.

The solution to the Catholic Social Services, Newman and related amnesty cases is relatively simple and could be promptly achieved if the INS decided to finally deal fairly with this large population of long-term residents.

First, the INS clearly has the authority to process the applications of all class members who during the 1987-88 application period visited an office statutorily authorized to accept applications in order to apply, but were turned away because they were erroneously deemed "ineligible to apply" under INS' since withdrawn regulations. These applicants, who make up about 3/4 of the 350,000 class members, may be considered to have timely applied. The statute leaves it to the Attorney General to define an application. The Attorney General agreed in writing in 1994 and 1995 that the INS may treat these applicants as having timely applied.

The national interest would clearly be served if the Department of Justice promptly met with the plaintiffs and their representatives to resume discussions ended in 1995 to resolve these cases. The plaintiffs are prepared to bring these cases to conclusion within the framework proposed by the Department of Justice in 1994-95.

Second, legislation should immediately be considered by Congress repealing Section 377 of the 1996 amendments to the Immigration Act, which has simply spawned a series of new legal challenges over the power of Congress to limit the federal courts' ability to conclude these case, and in its place include language directing the Attorney General to adjudicate the pending applications of all class members who timely visited an office authorized to accept applications but were turned away because they were erroneously deemed ineligible to apply, whether or not at the time they visited such offices to apply they happened to have the completed application form in hand.

Third, legislation updating the registry date would offer a solution for about 1/4 of all class members who never visited an office authorized to accept applications.

Thank you for your attention and interest in helping us resolve these long-pending cases which impact on the lives of 350,000 families, and the communities in which they live and work.

UNITED STATES
HOUSE OF REPRESENTATIVES

HEARING ON SOLUTIONS FOR THE 350,000 UNADJUDICATED LEGALIZATION APPLICATIONS FILED BY APPLICANTS ERRONEOUSLY TURNED AWAY BY THE IMMIGRATION AND NATURALIZATION SERVICE

(CHAIRED BY CONGRESSWOMAN SHEILA JACKSON LEE)

STATEMENT OF PLAINTIFF FELICITY NEWMAN

(PLAINTIFF IN NEWMAN V. INS)

OCTOBER 21, 1999

STATEMENT OF PLAINTIFF FELICITY NEWMAN

Congresswoman Sheila Jackson Lee, and Honorable members of the United States Congress attending this hearing, I wish to thank you for the opportunity to make this statement on behalf of thousands of class members in the case entitled Newman v. INS, now pending in the Ninth Circuit Court of Appeals. My name is Felicity Newman, and I am the lead plaintiff in the Newman class action case. This statement is offered on behalf of myself and my approximately 100,000 class members.

I am a citizen of the United Kingdom of Great Britain. I have been residing continuously in the United States for over 18 years. I briefly traveled outside of the United States in June 1985, and returned to my residence here a few weeks later improperly using a visitor's visa. In 1987, through publicity generated by the INS, I learned of the one-time amnesty program, and believed I qualified as I had resided continuously and unlawfully in the United States since prior to January 1982. I desperately wished to apply for this historic program in order to legalize my status.

In May 1987 I visited an INS office in order to apply for amnesty. I brought with me background documents showing that I had resided in the United States since before January 1982. I was prepared to pay a filing fee. All I needed was a blank INS application form to complete and sign. Had the blank application forms been available on a rack or counter, I would have taken a form, completed it, and offered it for filing. However, no forms were available to the public without speaking to one of the several INS officers behind a counter.

I was directed to an officer to whom I explained that I wanted to apply for amnesty, and needed a blank form. The INS employee asked me about my most recent entry into the United States. I explained that I had briefly traveled abroad in 1985 and returned with a visitor's visa. *The INS employee immediately advised me* *that I was ineligible to apply for legalization because I had briefly left the United States in 1985 without INS permission, and returned with a visitor's visa.* The INS agent did not provide me with a blank application form. The agent advised me that even if I completed and attempted to file an application, it would not be accepted.

The Newman class action case, formerly known as LULAC v. INS, was timely filed in the federal court in Los Angeles challenging INS' policy of turning away applicants for legalization because they had briefly traveled abroad during the required period of residence. The federal court initially ruled that INS' travel rule was unlawful. The fact that I unlawfully returned to the United States using a visitor's visa did not break my unlawful residence, as the INS claimed. Nevertheless, the INS did not appeal the federal court's decision that the travel rule was unlawful.

However, when the federal court ruled that the INS was required to accept our applications for a few months after the close of the application period, the INS appealed. While its appeal was pending, the INS agreed to tentatively accept our applications and grant those eligible for legalization work permits and protection from arrest and deportation. About 100,000 class members then filed their applications. About 40,000 were granted work permits and protection from arrest.

To this day the INS refuses to process my application and the applications filed by thousands of class members because when we visited INS offices during the application period we did not have completed application forms in hand. Since INS has no idea which applicants had and which did not have completed applications in hand when they sought to apply over 12 years ago, the agency now requires applicants to state, under oath, whether they had a completed application in hand when they were turned away. Since the INS has no way of verifying these sworn statements, many class members and I are obviously tempted to swear that we did have completed applications in hand. We have resisted that temptation as we wish to be forthright in the information we provide to the Government.

There is virtually no difference between myself and an applicant who had a complete application in hand which was rejected. Had I visited an INS office where the blank forms were available for the taking, I of course would have filled out the form, only to have the dubious honor of having it rejected. I am caught in a catch-22 of INS' making. Only because I had to speak to an INS agent to obtain the blank form, and was told that I was ineligible to apply and turned away, I never had the honor of completing a form only to have it rejected.

I wanted to apply just as much as those applicants who presented completed forms which were rejected. I am equally qualified. I have no better or worse proof of my application experience than applicants who presented and had rejected complete application forms.

My legal counsel advises me that the INS does have the authority to process my application, and the INS agreed it had such authority in settlement proposals the agency made to us in 1994 and 1995. My application for legalization has now been pending for almost ten years. *I respectfully implore members of Congress to urge the Department of Justice and the INS to process the pending legalization applications of all persons who establish that they visited an INS office during the application period to apply, but were turned away, whether or not they had a completed application form in their hand.* An administrative decision to process our long-pending applications would end our collective nightmare. On the other hand, forcing us back into the underground will recreate the very problems Congress sought to resolve when, in a bipartisan vote, it passed the historic amnesty law in 1986.

On behalf of all class member families, I thank you for your consideration.

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STATEMENT OF ISAIAS TORRES
DIRECTOR OF IMMIGRATION ISSUES
LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Hearing before the

UNITED STATES HOUSE OF REPRESENTATIVES
Hearing Chaired by Representative Sheila Jackson Lee

on

SOLUTIONS TO THE AMNESTY LITIGATION CASES

October 21, 1999

STATEMENT OF ISAIAS D. TORRES

My name is Iaias D. Torres from Houston, Texas. I am Director of Immigration Issues for the League of United Latin American Citizens and a practicing attorney. LULAC is the largest and oldest Hispanic organization in the United States with thousands of members throughout the country. We seek to advance the economic condition, educational attainment, political influence, health and civil rights of Hispanic Americans.

LULAC has long been a supporter of fair and humane immigration policies which is why we were one of the original plaintiffs in the amnesty litigation. We support a fair and just solution to the amnesty cases because as long-term law-abiding members of the American community, the class members have same inalienable rights to "life, liberty, and the pursuit of happiness" as all other Americans. In addition, we believe that the class members deserve an immediate remedy, because, were it not for the INS's unlawful amnesty policies of 1986, most of the class would now already be U.S. citizens.

Furthermore, the benefits of adjudicating this class for both the class members and the United States as a whole far outweigh any perceived disadvantages. We feel that it is cruel and inhumane to take long-term U.S. residents who have been working legally, paying taxes, and raising their families for over ten years and suddenly revert them to undocumented status. It also would reduce tax revenue for the United States, split apart families, create more dependency on public benefits, and lead to more social problems associated with an increase in the undocumented population.

We believe that Congress should pursue two strategies to resolve the amnesty litigation quickly: 1). Administrative 2). Legislative.

First and foremost, we request that you support our efforts to negotiate an administrative remedy for the class. We urge you to encourage the attorneys for the Department of Justice to meet with the plaintiffs and their attorneys to negotiate a settlement agreement along the lines of the one proposed by the Department of Justice on April 25, 1994. This is an acceptable framework for processing all front-desked applicants (Both Group I and II).

To process Group I without processing Group II would lead to three problems: (1) It would lead to erroneous decisions by the INS because very little evidence is available that would allow the INS to distinguish between the two groups. (2) It would invite fraud by the applicants who would be tempted to claim Group I status. 3). It would require an enormous and costly effort by the INS to separate the two groups.

At the same time, we request that you seek a legislative remedy for Group I and Group II by supporting legislation repealing Section 377 and directing the Attorney General to adjudicate the legalization applications of Group I and Group II class members. In addition, updating the Section 249 registry date would provide a remedy for the remaining class members.

LULAC appreciates the support we have received from Congresswoman Shiela Jackson Lee and Senator Harry Reid along with the members of the Congressional Hispanic Caucus. We look forward to working with you to find a fair solution for these long term law abiding residents of the United States and to reaffirming our country's long standing commitment to justice and the inalienable rights of life liberty, and the pursuit of happiness.

TESTIMONY OF

CARLOS HOLGUIN
GENERAL COUNSEL, CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

BEFORE THE

CONGRESSIONAL DEMOCRATIC CAUCUS

ON

THE REFUSAL OF THE IMMIGRATION & NATURALIZATION SERVICE TO ADJUDICATE LEGALIZATION APPLICATIONS OF PERSONS WHOSE APPLICATIONS THE AGENCY BLOCKED DURING THE 1987-88 APPLICATION PERIOD.

October 21, 1999
Washington, DC

Good afternoon. My name is Carlos Holguín, and I am one of the attorneys representing the plaintiffs in *LULAC/Newman v. INS*. On behalf of the 45,000 LULAC class members, I thank you for the opportunity to testify here today.

LULAC is one of several actions before the federal courts involving the future of thousands of long-term U.S. residents whom the Immigration and Naturalization Service unlawfully blocked from filing applications to legalize their status pursuant to the historic legalization or "amnesty" program established by the Immigration Reform and Control Act of 1986, 8 U.S.C. §§ 1255a, *et seq.* ("IRCA"); Immigration and Nationality Act, §§ 245A, *et seq.* ("INA").

By definition *LULAC* class members have resided continuously in the United States since at least January 1, 1982. Many of them own homes and businesses and have children who are United States citizens. These class members would long ago have become lawful permanent residents of the United States and, by now, naturalized United States citizens but for the INS's admitted misconduct in blocking their access to the legalization application procedure.

Under the legalization program, aliens who had resided in the United States continuously and in an unlawful status since prior to January 1, 1982, could become lawful permanent residents.

Clarifying the general requirement of "continuous" unlawful presence, Congress provided that certain "brief" departures from the United States between January 1, 1982, and the date a legalization application is filed, would *not* "break a period of continuous residence in the United States ..." INA § 245A(g)(2)(A), 8 U.S.C. 1255a(g)(2)(A). Immigrants could therefore eligible for legalization despite brief absences from the United States.

The INS, however, opposed this allowance. It urged Congress to disqualify anyone who had traveled outside the United States from the legalization program. Although Congress rejected the INS's position, the agency nevertheless adopted a number of "rules" disqualifying persons who had traveled.

The LULAC case challenges one of these rules: the INS's "facially valid visa" rule, which provided that persons who briefly departed the United States after January 1, 1982, and returned improperly using "facially valid" non-immigrant visas (INS I-94 forms), or similar entry documents, were ineligible for legalization and, indeed, ineligible even to apply for legalization. *See Reno v. Catholic Social Service*, 509 U.S. 43, 49-50 (1993) ("*Reno*"), *citing* 8 C.F.R. § 245a.2(b)(8) (1987).

On July 18, 1988, the United States District Court for the Central District of California entered summary judgment striking down the INS's facially valid visa rule. The INS never disputed the substance of this judgment. Indeed, the INS itself later announced that it was abandoning the facially valid visa rule.

Despite this concession, the INS steadfastly refused to adjudicate the legalization applications of LULAC class members. In effect, the INS's position is that class members will have to pay for its mistake, that class members are simply out of luck. The INS pressed that position all the way to the United States Supreme Court, which in 1993 held that persons who did not go down to an INS or QDE office to file a legalization application lacked standing to sue in federal court. The Court did not say that these persons were undeserving of a remedy, only that the federal courts lacked the constitutional authority to grant them one. We refer to this group of individuals as "Group 3" class members.

The Court held, however, that the federal courts could help persons who went to the INS with a legalization application in hand and, perhaps, those who went to apply but didn't happen to have an application form filled out. The Court did this because the INS—in addition to adopting its illegal travel rule—had implemented a "front-desking" policy.

Under this policy, persons who appeared to file legalization applications were pre-screened: that is, INS and QDE employees would look over would-be applicants' applications or ask them whether they had ever traveled outside the United States. If they had, their applications would be refused for filing. Their applications were turned away at the "front-desk."

The INS's front-desking policy was particularly devastating given the legalization program's limited review provisions and one-year application period. Persons who were turned away at the front-desk could not ask the INS's Legalization Appeals Unit to correct the INS's erroneous application of the facially valid visa rule because they had never been formally denied legalization: they had no actual "denial" to appeal. Of course, once the one-year application period was over, the INS would refuse to accept legalization applications from those whom it had erroneously declared ineligible for legalization.

But the Supreme Court's stripping away Group 3 member's chances for a judicial remedy did not satisfy the INS. In many cases, when the INS learned that would-be applicants had traveled, it would even refuse to give them application forms. When the district court held that these class members were entitled to a judicial remedy, the INS persuaded former Senator Alan Simpson to include a provision in the 1996 immigration bill—§ 377—that would strip the federal courts of jurisdiction over those who went in to apply for legalization, but did not have an application form in their hands. The LULAC class was now fragmented into three groups: (1) those who went into the INS or a QDE with an application form and fee; (2) those who went into the INS or a QDE withOUT an application form ~~and~~ OR fee; and (3) those who didn't go into an INS or QDE office at all. Under § 377, only Group 1 would remain eligible for a judicial remedy.

Section 377 was one small provision buried in a massive immigration reform bill, which was itself nearly buried in the 1996 omnibus budget bill. This provision was not good public policy when it adopted, and it is not good public policy now.

INS officials have admitted under oath that whether a would-be applicant happened to have an application when he or she attempted to apply was completely fortuitous: In some INS offices, application forms were available in racks to all who wanted one; in others, intending applicants would have to ask for an application form. If they'd traveled they'd be denied a form.

Repealing § 377 would remove an arbitrary barrier to a judicial remedy for Group 2 class members. That is why it is important to support H.R. 2125, Representative Jackson-Lee's bill to repeal § 377. Senator Reid's bill, S. 1552, would do the same on the Senate side.

I would also urge Members of Congress to weigh in with the Administration on behalf of *LULAC* class members. When it reviewed this case, the Supreme Court held that persons who had gone in to apply for legalization had, as a matter of law, "applied" during the one-year application period, even though the INS refused to accept their applications or denied them application forms. Under the interim relief order issued in *LULAC*, approximately ~~45,000~~ class members have 100,000 ~~since~~ filed provisional legalization applications and fees with the INS. Under existing law, there is no barrier to the Administration's simply adjudicating many of those applications now.

Group 3 class members will require help from Congress, and we welcome and support Senator Reid's bill, S. 1552, which, among other things, would adjust the registry date so as to make Group 3 class members eligible for that benefit.

But the Administration's immediate position toward *LULAC* class members must also be addressed in the short term.

On July 2, 1999, Judge Keller issued a permanent injunction requiring the INS to accept and process legalization applications from Group 1 class members, including those front-desked by QDEs. The INS has again appealed. We do not yet know whether the Administration objects to the whole of the *LULAC* permanent injunction, or only to portions of it. At the very least, the Administration has not abandoned attempts to shut out those who were front-desked by QDEs.

We do not expect the INS's appeal to succeed. In fact, the Ninth Circuit panel that ordered *Catholic Social Services* dismissed also stated that persons front-desked by QDEs were sufficiently front-desked to meet all jurisdictional requirements. The Administration's appeal of Judge Keller's order to the same effect illustrates a continuing hostility to the claims of even Group 1 class members, a hostility that cannot be excused as reluctant deference to § 377.

When pressed to exercise its existing authority to help late amnesty applicants, the Administration has argued that doing so would open the floodgates to fraud. It has been reported that former INS General Counsel Paul Virtue testified before the House Subcommittee on Immigration and Claims that "100 percent" of all late amnesty applications are fraudulent.

Shortly after delivering that testimony, however, Mr. Virtue appeared in deposition, and when questioned about the actual level of fraud, he admitted that the level of fraud is likely no higher among late amnesty applicants than it is among applicants for any other type of immigration benefit, such as applicants for relative or employment-based visas, somewhere between five to ten percent.

In sum, I urge Congress to enact H.R. 2125 and S. 1552. Congress should also call upon the Administration to exercise its existing authority to accept and adjudicate the legalization applications of Group 1 and 2 class members. Finally, Congress should urge the Administration to end its efforts to overturn the limited relief ordered by the district court in the LULAC case by withdrawing its appeal of Judge Keller's July 2, 1999, final order.

Thank you.

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TESTIMONY
OF THE
MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND

CONCERNING

"HOW TO FIX THE LATE AMNESTY PROBLEM"

SUBMITTED TO THE

HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
RANKING MEMBER AND MINORITY MEMBERS

OCTOBER 21, 1999

BY
CHRISTINA CHAVEZ COOK
LEGISLATIVE STAFF ATTORNEY

INTRODUCTION

The Mexican American Legal Defense and Educational Fund (MALDEF) appreciates the opportunity to submit testimony regarding resolution of claims of those persons who attempted to apply for legalization under the 1986 Immigration Reform and Control Act ("IRCA"). MALDEF is a national nonprofit organization dedicated to protecting and promoting the rights of Latinos in the areas of education, employment, political access, immigration and public resource equity. MALDEF is counsel in Zambrano v INS, case number S-88-455 EJG/PAN (E.D. Cal.), one of the class actions brought regarding the legalization program.

IRCA was signed into law in 1986. One of its key purposes was to regularize the immigration status of hundreds of longtime undocumented immigrants living and working in the U.S. Congress' intention in passing the legalization provisions of IRCA was to provide a generous and flexible means for all undocumented persons residing in this country since before 1982 to become legal permanent residents. IRCA's legislative history makes it clear that "the legalization program was to be implemented in a liberal and general fashion ...and [Congress] expects the INS to incorporate flexibility into the standards for legalization eligibility..." H.R. Rep. No. 682, 99th Cong. , Sess. , pt.1 , reprinted in 1986 U.S. Code Cong.& Admin. News 5649, 5676-77.

During the one-year legalization period, thousands of eligible immigrant families who had resided continuously in the United States since before 1982 timely visited the Immigration and Naturalization Service (INS) offices or organizations trained by the INS to apply for legalization according to the provisions of IRCA. Under the then-in-force regulations, these applicants were either screened out as ineligible and denied applications for legalization or had their completed applications rejected and erroneously deemed "ineligible to apply."

Several class action lawsuits challenging various aspects of the INS' implementation of the legalization program were filed by those wrongfully-denied applicants. In each of these federal lawsuits, rather than defend their actions on the merits, INS raised the issue of the jurisdiction of the courts. Ultimately the Supreme Court determined that certain plaintiffs in these lawsuits had a right to have their claims heard in the federal courts. Congress then closed this judicial avenue in 1996 when it enacted section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA").

While MALDEF supports an immediate remedy for all "late amnesty" class members, we will focus our discussion on the circumstances and issues specifically involved in the Zambrano case. In addition to presenting some representative case histories of affected Zambrano class members, we briefly address some possible solutions to the legal impasse which has precluded thousands of intending immigrants from establishing legal residency for over 10 years.

DISCUSSION

Zambrano

Zambrano v. INS, Civ. No. S-88-455-EJG 1988 was filed in the U.S. District Court for the Eastern District of California on April 12, 1988. The six named plaintiffs sought to enjoin the defendants from applying now-admittedly illegal regulations. Zambrano plaintiffs were members of a class of persons whose applications for amnesty under the IRCA, were recommended for denial, or who were discouraged from applying for amnesty, based on defendant's promulgation of the illegal public charge regulations in the critical period just days before the beginning of the one-year amnesty program. Throughout the majority of the 12 month application period, the INS widely disseminated erroneous information as to amnesty eligibility related to public charge determinations.

Zambrano plaintiffs challenged INS regulations aimed at the admissibility standards under section 1255a(a)(4). At issue was the test for determining whether an alien was "likely to become a public charge," such finding being grounds for exclusion under the Immigration and Nationality Act (INA). Plaintiffs alleged in their lawsuit that the public charge grounds for admissibility and pre-existing standards employing the "totality of the circumstances" test for making this determination found in section 1182 (a)(15) were incorporated in the legalization provisions of IRCA. IRCA's provisions, in effect, liberalized the public charge test. IRCA's "Special Rule for Determination of Public Charge" reads as follows:

> An alien is not ineligible for adjustment of status under this section due to being inadmissible under section 1182(a)(15) of this Title if the alien demonstrates a history of employment in the United States evidencing self support without receipt of public assistance.

Plaintiffs in Zambrano argued that this language provides for a two-tiered evaluation of public charge admissibility. First, the test under section 1182 (a) (15) is applied. If the alien is found ineligible under the pre-existing test, the "special Rule" is then applied. Under the "Special Rule," the alien is given a chance to overcome the determination of public charge inadmissibility by demonstrating a "history of employment in the United States evidencing self support without receipt of public assistance."

The narrow issue in Zambrano was whether the regulations implemented by defendants to interpret the legalization provisions of IRCA were invalid because they appeared to impose a stricter standard than the statute itself. One of the regulations entitled "Proof of Financial

Responsibility" attempted to replace the two-tier process of the statute with a more restrictive standard. *See* 8 CFR section 245 a.2(d)(4)(1988). Another regulation, 8 CFR 245a.1(i)(1988), defined cash assistance to include money received by the alien *or his family members.* Plaintiffs argued that attributing other family members' income to the alien for purpose of a public charge determination was in violation of IRCA.

Court's Favorable Decision

The District Court found in favor of Plaintiffs on the merits of their challenge to the INS regulations. Citing IRCA's legislative history the Court reasoned that Congress incorporated the Special Rule for Public Charge Determination in order to provide "more flexibility than we have historically had in connection with the application of immigration law." Judge Garcia, a Reagan appointee, further found that Congress "expected" the INS to incorporate flexibility into the standards for legalization eligibility. In so finding, the Court agreed with Plaintiffs' argument that the INS' promulgated regulation "Proof of Financial Responsibility" was in fact in conflict with the statute and thus the INS was not entitled to deference in its interpretation of the statute. The Court held, therefore, that the regulation did indeed seem to "cut short the statutory two-tier process for making the public charge determination." As to the regulation defining public cash assistance received by the alien to include need-based monetary assistance received by the alien's family members, the Court concluded that plaintiffs may have been denied a benefit to which they were entitled due to defendant's conduct. The Court cited inconsistencies in the INS's position, evidenced by INS memoranda "clarifying" the regulation and excluding family members' receipt of assistance from the calculus, while at the same time saying the opposite in its regulation. The Court found, moreover, that despite the fact that INS had issued clarifying memoranda, it never disseminated those clarifications.

Class Membership

Zambrano plaintiffs sought to certify two classes of persons: 1) all persons... whose applications were filed between May 5, 1987 and May 4, 1988 and who have been or will be denied on the basis that they are likely to become a public charge; and 2) all persons...who had not applied for legalization by May 4, 1988 because they were discouraged from applying by the INS or by any Qualified Designated Entity (QDE) because of regulations defining Proof of Financial Responsibility and Public Cash Assistance.

Briefly, the Court approved the certification of both classes of persons, concluding that it possessed ample power to grant an "equitable tolling" of the May 4, 1988 deadline and furthermore, that equitable tolling "did not undermine the purpose of the one year limitation period when viewed in connection with the underlying statute."

Court Provides Relief

The Court in Zambrano ordered that the defendants be enjoined from applying the challenged regulations and to re-open the applications of class one members for reconsideration based on defendant's memoranda clarifying the challenged regulations. INS did re-adjudicate the those cases, applying the proper public charge standard that the court had adopted. Furthermore, the Court equitably extended the filing period for an additional five months to allow those who had been denied the opportunity because of INS conduct to come forward to apply for legalization.

INS Delays and Appeals and Section 377 of IIRIRA

The INS appealed the District Court's decision, raising the issue of jurisdiction. At no time did the INS attempt to defend its actions. In fact, INS issued **new** regulations adopting the proper public charge standard. The proper regulations were adopted **after** the legalization deadline. The Ninth Circuit affirmed the lower court's decision. The Ninth Circuit ordered the applications of all persons who had filed and which were denied based on illegal regulations, to be promptly adjudicated leaving it to the lower court to determine which of the applicants who claimed that the INS regulations were the "substantial cause" of their failure to file an application had standing. INS sought review in the Supreme Court and the Supreme Court remanded in light of its decision in Catholic Social Services.

The District Court subsequently ruled that "substantial cause" applicants met the ripeness requirements and, additionally, that any visit made by an individual to the INS or a QDE qualified as an attempt to apply. In response, the INS filed yet another appeal in the Ninth Circuit and during the pendency of this appeal, it sought dismissal on the grounds that section 377 of IIRIRA stripped federal courts of jurisdiction to hear the cases of those applicants who were discouraged from applying for legalization.

Section 377 reads in relevant part:

> (C) JURISDICTION OF THE COURTS--Notwithstanding any other prevision of law, no court shall have jurisdiction of any cause of action or claim by or on behalf of any person asserting an interest under this section unless such person in fact filed an application under this section within the period specified by subsection (a)(1), or *attempted to file a complete application and application fee with an authorized legalization officer of the Service but had the application and fee refused by that office* (emphasis added).

This amendment, which was made effective as if included in the original enactment of IRCA, divests the federal courts of the power to hear the claims of the vast majority of class members. Because of section 377, on May 8, 1998 the Ninth Circuit summarily ordered the claims of our Zambrano plaintiffs dismissed, revoking the long standing injunctive orders that allowed class members to remain in this country and work. Families who had lived in the U.S. for 16 years and more were suddenly denied the right to support their families. A summary of a number of our plaintiff class members' stories is attached here as Exhibit 1. All class members have deep roots in the United States; many have lived here for almost 20 years. They have all waited in legal limbo for over a decade. To continue to blame these class members for failing to apply for amnesty when they were following INS directions is fundamentally unfair. It is time for a swift and just solution to this intolerable situation.

Suggested Remedies

Fortunately, section 377, by its plain language, only applies to the jurisdiction of the federal courts. Thus, it does not affect the Administration's ability to provide an administrative remedy otherwise consistent with the statute. IRCA provides that the Attorney General "shall adjust the status of a an alien to that of permanent resident" if that alien has *applied* for such adjustment during the 12 month period beginning on a date designated by the Attorney General. 8 U.S.C § 1255a (a)(1)(A). The statute does not define the term " apply " or in any way require that an applicant tender either a completed application or application fee. Nothing in the statute precludes a definition of "apply" to include persons who appeared at either an INS office or QDE with the intention to begin the legalization application process. The Attorney General may, consistent with IRCA, treat class members who timely appeared at either an INS office or QDE to begin the application process for legalization, with or without a completed application in hand, that is to say, went "to apply" for legalization, as having timely filed.

In view of the Attorney General's clear authority to interpret the statute to include both class numbers one and two, MALDEF requests that the INS refrain from deporting class members and revoking their work authorization, and that they work with plaintiffs' counsel to begin the process of identifying members of classes number one and two, and begin processing the applications of those qualified class members. Alternatively, we suggest a long-overdue change in the registry to a date post 1982, which would in effect provide relief to all affected late amnesty applicants. We believe that this latter solution would equitably resolve the longstanding claims of those members of our community who were discouraged by INS from applying for legal status.

NCLR
NATIONAL COUNCIL OF LA RAZA

Statement Concerning the Ongoing Plight of Immigrants Denied the Opportunity to Apply for the "Legalization" Program of the Immigration Reform and Control Act of 1986

before a

Bipartisan Hearing of Members of the U.S. House of Representatives
convened by the Honorable Sheila Jackson-Lee

Presented by

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October 21, 1999

N C L R
NATIONAL COUNCIL OF LA RAZA

I. INTRODUCTION

Congresswoman Jackson-Lee, on behalf of the National Council of La Raza, thank you for convening this panel, and for the opportunity to speak about our views concerning this extremely pressing issue.

The National Council of La Raza (NCLR) is a private, nonprofit, nonpartisan organization established in 1968 to reduce poverty and discrimination and improve life opportunities for Hispanic Americans. NCLR is the largest constituency-based national Hispanic organization, serving all Hispanic nationality groups in all regions of the country through our network of 230 affiliate community-based groups and regional offices. NCLR has supported fair and effective immigration and farmworker policies for over two decades, and has ensured a fact-based Latino perspective on the issue of immigration. NCLR approaches this issue as a civil rights organization, with an interest in protecting the rights of our constituency and promoting the values and principles of the nation as a whole.

Congresswoman Jackson-Lee, let me take this opportunity to once again express our gratitude to you for hosting our annual convention in Houston this past July, where you so graciously participated in a "Town Meeting" with Immigration and Naturalization Service (INS) Commissioner Doris Meissner. While various topics concerning immigration policy and enforcement were discussed during that meeting, the large majority of the audience was primarily there to hear the Commissioner address the issue before you today. Indeed, during that event, we also heard poignant first-hand testimony from individual members of the class action lawsuits known as *CSS v. Reno*, *Newman v. INS*, and *Zambrano v. INS*.

II. BACKGROUND

These lawsuits had been filed on behalf of individuals who had been eligible to apply for the legalization program enacted in 1986 as part of the Immigration Reform and Control Act, but were wrongfully denied the opportunity to apply. They were turned away by INS employees and other qualified designated entities (QDEs) who had following instructions given to them based on regulations issued by the INS. These regulations were in fact found to be out of compliance with the law as Congress intended it. Unfortunately, by the time the courts ruled that the INS had not complied with the law, the period for applying - May 1987 to May 1988 - had passed. As a remedy, the courts in each of these cases ordered the INS to accommodate the class members by extending the period of application for these individuals. The INS refused to carry out these orders and instead, contested the courts' jurisdiction over these lawsuits and the judges' authority to extend the application period. Over the next decade, while these appeals were being considered, many class members were granted work permits.

It is important to emphasize that the INS did not - and does not, today - contest that it had bungled the implementation of the legalization program, wrongfully turning away eligible applicants. Yet it has spent a decade in the courts fighting against any attempt by the courts to provide these would-be applicants the opportunity to apply. Despite admitting fault with its original implementation of the legalization program, the INS continues, even today, to appeal every hard-fought decision in favor of the class members.

III. SECTION 377

Early in 1996, the Chairman of the Senate Judiciary Subcommittee on Immigration at the time, former Senator Alan Simpson, inserted into his proposed immigration reform bill a provision which ultimately became Section 377 of the Illegal Immigration Reform and Immigrant Responsibility Act. Section 377 gave the INS what it was at the time hoping to gain from a court decision – it stripped the courts of jurisdiction over any cause of action arising from the legalization program, except for cases brought by individuals who had actually attempted to file an application with the INS or a QDE, but had it rejected based on the wrongful regulations – this is a process that the courts had called "front-desking."

Given his authorship of this court-stripping provision, it may be ironic that Senator Alan Simpson – in forming a group called "Citizens for Independent Courts" – has more recently identified himself with a movement to restore the independence of the judiciary and to protect federal judges from political meddling with their decisions. However, this provision was apparently not Senator Simpson's original idea. In fact, it is our understanding that the idea was probably given to him by someone who may have been detailed to work in his office by the Office of Immigration Litigation, which was litigating these cases for the INS in the federal courts.

Through a single paragraph, Section 377 accomplished what the INS could not after a decade of litigation: it snatched the rug from underneath the class action lawsuits.

IV. CLASS MEMBERS REVERT TO UNDOCUMENTED STATUS

After 10 years of being tax-paying residents of the United States while the litigation was being considered in the courts, the members of the *CSS* case have begun to lose their work permits by court order. By definition, these immigrants have resided in the country since before 1982. Whatever expectations the proponents of Section 377 had that these individuals would decide to leave the United States – and their U.S.-born children – is completely unrealistic. Instead, nearly 50,000 individuals are becoming undocumented, being forced to move into the underground economy for the first time in ten years. If INS has its way, hundreds of thousands more will find themselves in the same untenable situation.

NCLR, along with a growing number of civil rights organizations, religious groups, and labor unions has been involved in an effort to protect the rights of workers – essential low-wage workers in particular. We have found that one of the greatest difficulties facing these workers in their attempt to avoid exploitative working conditions is their fear of immigration enforcement. Unscrupulous employers take advantage of this fear and are successful in preventing workers from organizing in the workplace, demanding better wages and improved working conditions. The Department of Labor and the INS last year recognized this problem and last year came to an agreement that seeks to protect workers who come forward with complaints about labor standards violations from immigration enforcement consequences. Nevertheless, it seems that one hand does not know what the other hand is doing in this case.

After a decade of intransigence by the Administration to settle these cases, the result is an increase in the number of immigrants who have to fear coming forward to protect themselves from abuse and exploitation in the workplace. Similarly, undocumented immigrants who are fearful of government authorities do not report crimes or cooperate in other ways with the police. An example of how this fear plays out was a rash of crimes committed against migrant workers in North Carolina in 1998, who were told by their victimizers that if they called the police they would be deported. By forcing these individuals underground, the government is jeopardizing public safety.

V. COMPLEX PROBLEM DESERVES A COMPREHENSIVE SOLUTION

A growing grassroots movement is continuing to press the Clinton Administration to resolve as much of this problem through administrative action.

NCLR believes that as this is a dilemma originally created by the wrongful implementation of the legalization program by the INS, then the INS, not Congress, is initially responsible for crafting a solution. As it has been stated multiple times, Section 377 carries no weight against administrative action; it merely ties the hands of the courts, not of the Administration. Therefore, settlement of the litigation in favor of the plaintiffs, and processing of the legalization applications filed by class members is warranted and acceptable under the law.

Administrative action, however, will not provide all of the class members with a positive solution. Legislation is needed to help those who are class members, who have resided in the United States under court protection for many years, but whose applications for legalization may not be approved.

The legislation introduced by Congresswoman Sheila Jackson-Lee (H.R. 2125) to repeal Section 377 is a first step in the right direction. Given the INS' previous positioning in the courts, however, it would not guarantee a quick, comprehensive, nor entirely positive solution for class members. Senator Harry Reid's legislation (S. 1552) is more comprehensive and thus a preferable approach. NCLR supports both bills.

Whatever legislation is enacted, it should take into account the equities involved in every single case, the period of time spent in the United States, whether they have family or other ties to the community and what the results of leaving them in an uncertain status would be.

VI. CONCLUSION

What is most troubling about the Administration's role in this tragic situation is that while the Administration at the highest levels has expressed a desire to find a positive solution to the plight of the class members, INS' attorneys continue today to inflict much pain by appealing every single victory the class members manage to gain in the courts. The latest example of this is the appeal of the federal district court order in the *Newman* case for INS to process the applications of individuals who tendered a completed application and fee but were "front-desked." Even before this ruling, the INS had agreed to adjudicate applications from these individuals, although the process was entirely flawed. Nevertheless, in what to many seems like a gratuitous move, the Office of Immigration Litigation appealed this ruling.

Many in the Latino community see the plight of the "late amnesty" seekers as analogous to that of the class of Central Americans in the *American Baptist Churches* and Nicaraguan Review Program classes, for whom the Administration not only pushed legislation, but also prevented deportations through administrative action. The class members of the legalization litigation have an equally compelling case for immediate action given that they have been in the United States for nearly two decades, have settled down with families and begun business and yet, they continue to live in fear and uncertainty in a "legal limbo." Life could not wait for the bureaucracy to disentangle itself from the mess it created. In this light, the INS' obstinate refusal to settle these cases is not only unjust it is inhumane.

Again, thank you for continuing to champion this cause, and thank you for allowing us to present our views. I look forward to working with you on this issue which is of vital importance to the Latino community nationwide.

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September 23, 1999

Via Facsimile and Overnight Delivery
The Hon. Sheila Jackson Lee
United States Representative
House of Representatives

Re: Resolution of the "Late" Amnesty Cases

Dear Representative Jackson Lee,

On behalf of the 350,000 class member families, their employers, relatives, friends, and communities, I wish to express our heartfelt gratitude for the time you have taken to understand the long history of what INS has come to label the "late" amnesty cases, and your support for class members' quest for a just solution. The Administration's failure to resolve these cases, including its revocation of work permits held by 40,000 families for ten years, has caused untold hardship. Tens of thousands of families have been pushed back into "underground" status, terminated from long-held jobs in which they were contributing to their communities, and returned to "illegal" exploitable underground employment in competition with U.S. workers. While President Clinton extols the virtues of "new" immigrants, of the 350,000 pending legalization applications at the start of this Administration, to the best of my knowledge not one has been adjudicated. This is a sad state of affairs for the applicants, the INS, and the country.

Class members and their families have formed the Association for Residency and Citizenship of America (ARCA), with chapters in several cities, to advocate for a settlement of the legalization suits. Employers, churches, trade unions, community-based service providers, cities such as New York, Los Angeles, Chicago and the District of California, as well as several members of Congress, have expressed their support for a fair and just solution for class members. A partial list of supporters is contained in the enclosed informational packet.

As the representatives of the legalization families, and on their behalf, we propose that the Department of Justice, with your participation and participation of White House staff, recommence discussions, which ended August 30, 1995, to resolve these cases. See Aug. 30, 1995 letter from Gary Grindler, copy enclosed. The framework for such an effort may be the DOJ's last proposal for settlement dated April 25, 1994 (copy enclosed). As indicated in my letter to Mr. Grindler dated August 25, 1995 (copy enclosed), we rejected DOJ's April 25, 1994 settlement proposal and made a counter-proposal in part because of DOJ's refusal to extend any remedy to class members who were discouraged from attempting to apply by the successfully challenged travel rules. *Id.* page 4, ¶ 7 ("Class Definition"). Mr. Grindler replied on August 30, 1995, that "[i]n light of your position on class definition," DOJ believed the exchange of proposals was at an impasse.

FILE COPY

Given that these cases are now no closer to resolution than they were in 1995, and indeed recent court rulings invite additional legal challenges on behalf of class members, we would like to explore a resolution <u>within the framework of DOJ's proposal</u>.

We believe there are four major issues to be addressed by all concerned parties:

1. <u>Whether to adjudicate applications by class members who visited INS or QDE offices to apply but were not provided a blank application form to complete and have rejected</u>

The INS currently refuses to adjudicate the applications of class members who timely visited an authorized office (INS or QDE) to apply but were turned away without having presented a complete I-687 form. However, INS officials have testified that whether or not an applicant had a complete I-687 in hand was completely fortu itous. They have explained under oath that where the blank I-687 forms were available on "racks" in INS waiting rooms, class members easily obtained the forms, filled them out, offered them for filing, and had them rejected. On the other hand, at other INS offices the forms had to be obtained from an INS front-desk employee. In these situations the applicants were "front-desked" -- *i.e.* turned away without being provided the form. The only two federal judges to consider the rationality of this distinction, have both declared it raises serious constitutional questions. In 1984-85, DOJ proposed an administrative remedy for these class members. It understood that the Attorney General, consistent with IRCA, <u>could</u> treat these class members as having timely applied. By its <u>plain language</u> and placement in INA § 245a(f), Section 377 of the IIRAIRA solely addresses the jurisdiction of the courts, and has no impact whatsoever on the Attorney General's authority under IRCA to accept or adjudicate applications. An administrative remedy is clearly available to these class members. The issue is solely whether it should be extended or withheld for policy reasons.

2. <u>Whether to adjudicate applications by class members front-desked by QDEs</u>

The INS continues to oppose processing applications of class members front-desked by Qualified Designated Entities (QDEs) during the application period. The QDEs were authorized under IRCA to accept applications. They operated under written agreements with the INS which required them to follow INS rules regarding who was "eligible to apply." Despite INS's position to the contrary, six out of six federal judges who have reviewed this issue have decided that class members front-desked by QDE's <u>are</u> entitled to a remedy. These judges have ruled that even Section 377 does <u>not</u> exclude people front-desked by QDEs. In any event, as stated above, § 377 only addresses the power of the courts, not the Attorney General. An administrative remedy is obviously available for these class members. The question is whether a remedy should be extended or withheld.

3. <u>The need for a fair process to identify class members entitled to a remedy</u>

The INS has agreed to process front-desked class members <u>if</u> they tendered and had rejected a completed form I-687 and fee during the application period, however the agency's program to identify such class members is fraught with unfairness, delay, and ineffectiveness. Rather than initiate further litigation over INS's recent "Legalization

Questionnaire" program, which has resulted in an 85% denial rate while only detecting about 4% fraud, we believe the parties should explore whether agreement may be reached on how the program may be operated fairly and efficiently (with understandable standards, appropriate documents being reviewed, reasons for decisions recorded, etc.)

4. Whether a legislative solution may be sought for certain class members

Finally, under DOJ's April 1994 proposal for a resolution, a group of class members (those for whom the agency's front-desking policy was not a cause of their inability to file an application) would not receive an administrative remedy. Plaintiffs are prepared to explore a legislative solution for these class members as it may be argued they never "applied" for legalization, and were therefore never blocked from doing so by INS's front-desking policy.

In closing, we again thank you for the dedication and leadership you have shown on this and many other complex and difficult immigration-related issues. You have consistently supported policies that are fair and beneficial to both the country and the immigrant community, efficient, and compassionate.

Very truly yours,

Peter A. Schey
President, CHRCL
Counsel for the Legalization Class Members

enclosures