Fax

Name: David N

Organization:
Fax:
Phone:
From: Stacy Dean
Date: September 21, 1998
Subject: Reporting is an Issue in Other States
Pages: 3
Comments:

Many of the Administration officials that I have spoken with on the San Diego issue have expressed a belief that reporting is not happening and will not happen in other contexts. I wanted to pass along three additional examples of where immigrant reporting is (under Section 434 and 411) or potentially could be a problem. *In particular, please note that we now view this as a serious problem for elementary education.*

1. Michigan. Michigan's budget for FY99 has an entire section on issues relating to immigrants, such as funding for citizenship classes, etc. In this section, the state directs the Department to notify the INS if an undocumented alien applies for cash or medical assistance. *This includes people who apply for emergency medicaid* — a benefit for which undocumented aliens are eligible and entitled. Clearly, if undocumented immigrants fear seeking medical assistance for themselves or their children it will have serious health consequences. In addition, it is possible that Michigan will interpret this statute much the same way that San Diego has — it will not limit reporting to applicants, but will also report non-applicant family members – see attached copy of the legislation.

2. Wyoming. Wyoming's income assistance manual notes that the state "must" report undocumented aliens to the INS quarterly. There is no discussion in the manual of parcing applicants from non-applicant family members – see attached copy of the manual guidance.

3. Virginia. As many of you know, the Louden County school district is asking undocumented immigrant parents to signed notarized affidavits regarding their childrens' immigration status as a school registration requirement. While the school district does not intend to report these families to the INS at this time, there is nothing preventing them from doing so.

4. Maryland and Illinois. I have spoken with state attorney general staff in each of these states. The AG's office were researching under what circumstances they were "required" to report. They were insistent that they needed guidance that summarized their ability to opt out of

reporting (even though they don't have to opt-in) and said that they had trouble finding staff at the INS who would answer their questions.

These examples only strengthen our concern about inappropriate use of the reporting authority and our belief that the Administration must step forward and provide interpretive guidance on the reporting authority.

Michigan Statute

(3) The department shall submit the report to the legislature on the feasibility study conducted under this section on or before March 31, 1999.

Sec. 645. (1) From the funds appropriated in part 1, $700,000.00 is appropriated for the department to establish citizenship assistance programs to assist refugees, asylees, and legal immigrants residing in Michigan to become citizens of the United States. The program shall be administered by community-based organizations to the maximum extent possible as determined by the department.

(2) Citizenship assistance programs shall do all of the following:

(a) Provide assistance to persons to become citizens of the United States if they are within 2 years of citizenship eligibility.

(b) Provide assistance to persons described in subdivision (a) who are determined to be ineligible for federally funded benefits solely because of their status as refugees, asylees, or legal immigrants.

(3) The program under this section may be funded through state appropriations and through matching financial or in-kind contributions by private organizations and local governmental agencies.

(4) In order to participate in the citizenship assistance program, community-based organizations shall meet all of the following criteria:

(a) Be approved by the department as an approved social service provider eligible to provide a citizenship assistance program before the agency begins a citizenship assistance program.

(b) Be exempt from taxation under section 501(c)(3) of the internal revenue code of 1986.

(c) Demonstrate experience in providing citizenship services or the ability to service clients with diverse ethnic and cultural backgrounds.

(d) Be registered with the United States department of justice board of immigration appeals.

(5) A community organization approved to provide a citizenship assistance program shall offer all of the following services:

(a) Citizenship preparatory classes in United States history and government using an English language immersion approach.

(b) Native language civics instruction and citizenship preparatory classes for persons who qualify for age or residency exceptions.

(c) Citizenship application assistance.

(d) Information and referral.

(e) INS disability waiver application assistance.

Sec. 646. The department shall conduct a study in conjunction with the Michigan jobs commission and the Michigan department of transportation of the accessibility of transportation for work first clients to get them to work assignments and child care. The study shall address the concept of mobility managers for each zone in the state. The results of the study shall be reported to the house and senate appropriations subcommittees on the family independence agency by March 1, 1999.

Sec. 647. The department shall calculate the food stamp allotment for applicants who are United States citizens and who live in a household with legal immigrants in a manner that maximizes the food stamps available to these United States citizens under federal law.

Sec. 651. The department shall notify the United States immigration and naturalization service if an undocumented alien applies for cash or medical assistance under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, including a person who applies for emergency medical services and who refuses or is unable to provide satisfactory verification of his or her status as an alien.

not ~~[illegible]~~ clear this is even legal

Sec. 655. Funds appropriated under this act shall not be used to pay for the purchase, installation, repair, or maintenance of any air-conditioning unit or equipment unless either of the following conditions is met:

(a) The recipient requesting the payment provides to the department a certificate from a physician stating that the air-conditioning is medically required.

(b) The recipient is 55 years of age or older.

B. EPICS Coding

1. Assure the coding on HERC is correct for *illegal aliens* as DFS must report them to the *INS* quarterly. **(HERC - IA)** no distinction between applicant; family members

2. Code unsponsored *aliens* meeting the criteria in 2.-5. above as "LA" under the citizenship field on HERC, enter the alien number and realize the individual could be eligible for Medicaid and food stamps.

3. Code sponsored *aliens* meeting the criteria in 2.-5. above as "SA" on HERC, enter the alien number and realize the individual could be eligible for Medicaid and food stamps.

4. Code unsponsored *lawful permanent resident aliens* as "NQ" on HERC and realize the individual is <u>not</u> eligible for Medicaid and/or food stamps.

5. Code sponsored aliens not meeting the criteria in 2.-5. above as "SN" on HERC and realize the individual is <u>not</u> eligible for Medicaid and/or food stamps and the sponsor's income and resources must be deemed 100% for POWER. **(see 5007.08)**

C. Systematic Alien Verification for Entitlements (SAVE)

1. Require all *alien applicants* to present original *documentation* of *alien* registration or another form of *documentation* the issuing agency determines is reasonable *evidence* of the *alien*'s immigration status or an Alien Registration Number (A-Number).

2. Primary Verification Procedures
See SAVE Manual, Section 2, for procedures for Primary Touch-Tone SAVE access.

3. Immediate Secondary Verification
See SAVE Manual 2-12 for a listing of *documents* for which immediate secondary verification is required.

4. Secondary Verification Procedures
See SAVE Manual, Section 3, for procedures for Secondary Verification for SAVE. Instructions on use of Form G-845 are on pages 3-5 through 3-8. Form G-845 is to be mailed to:

   Immigration and Naturalization Service
   1787 Federal Building, 1961 Stout Street
   Denver, CO 80202

D. Failure to Comply
Find the *family unit ineligible* when any *household* member indicates a unwillingness to provide *documentation* of *alien* status.

E. Documentation
The case file shall show documentation of the Alien Status Verificatior (ASVI) Query Verification Number and/or contain a copy of the INS F G-845 when secondary verification is initiated.

5005.08 Relationship

Determine if the *applicant* or *recipient* meets the relationship *eligibility fact* requiring the *caretaker* to be a *relative* to the *child*(ren).

5005.09 Parent In/Out of Home - W.S. 42-2-104

A. Two Parent Family/Married Couple
1. Find the *two parent family/married couple* criteria met if:
   a. Both *parents* are living in the *home*; and
   b. There is a *child* in common; and
   c. The *Pay-After-Performance* requirements are met.
2. Determine eligibility for a *two parent family/married couple* prior t determining eligibility for a *single parent family/caretaker relative*
3. Find the *family unit* ineligible for the *single parent family/caretake relative* unit when *noncompliance* with the *Pay-After-Performance* requirements are not met.

B. Single Parent Family/Caretaker Relative
1. Determine eligibility for a *single parent family/caretaker relative* w is verified the *absent parent*(s) is not living in the home and cannot counted on to function in the planning for the *physical care, guidar* and *maintenance* of the *child*(ren).
2. Find the *case* eligible when the *caretaker relative* of a *child*(ren):
   a. Gives the reason for the *absence* of the *absent parent* and retur not expected within 30 days;
   b. Names the *absent parent;* and
   c. The *preponderance of evidence* indicates the *absent parent* is the *home*; or

To: Irene Bueno@ASL
From: "DAVID NIELSEN" <dnielsen@OSASPE.DHHS.GOV>
Cc:
Bcc:
Subject: San Diego
Attachment: Headers.822
Date: 8/7/98 1:42 PM

Irene, this is probably the only way I can get you these days!! I just wanted to mention to you that even though we may be able to slow down San Diego with a letter from Agriculture on Food Stamps, I think we should proactively be considering possible "legislative" strategies. I spoke with Stacy, and she indicated that 3 Calif. House members are active on this issue: Berman, Farr, and Filner. I'm just worried that if the
Agriculture letter doesn't slow them down enough (assuming it even goes out), and DoJ/INS isn't prepared to do anything more on 434, then there are increasingly few options left. I'm not sure what Members can or should do, but I think we should start thinking about it. Thanks!! See you Sept. 1; call Colleen for any help. And sorry to hear about your husband!!

San Diego. David — Pat

Berman. ~~Bo~~ Farr, ~~[illegible]~~ Filner.

~~Bo~~ House ways + means brief.

~~8/27~~ Sept.

are we doing this to monitor.

AG submitted a draft letter —

~~[illegible]~~ CHC

CA Delegation.

What they are

Stark + Matsui — ~~Bo~~ Briefing.

Tell Pat

7/28
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CC

[DRAFT]

Clarification of the Immigrant Reporting and Confidentiality Provisions Under PRWORA is Needed

Some states and localities now appear to be considering implementation of the immigration reporting provisions contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193 (PRWORA).

Apparently, San Diego County has gone the farthest towards implementation. It is our understanding that the San Diego County Health and Human Services Agency plans to send notices shortly to all TANF (CalWORKs), Food Stamps, and General Assistance recipients with family members who are non-aided due to immigration status. The San Diego draft notice informs recipients that the Agency will provide the INS with the name, address, telephone number, date of birth and social security number of "all undocumented adults living in [the] home .... The only exception will be unaided caretaker relatives (non-parents who have parental control of the children) in the CalWORKs Program."

This is an extreme position that would result in the denial of services to eligible children, and would increase fear in immigrant communities, likely to spread well beyond the targeted group. The widespread climate of fear in immigrant communities is already affecting minority enrollment in health care and nutrition programs.

The threatening notices that San Diego is contemplating would cause many parents, including parents who are lawfully present, to remove their children from assistance and avoid needed help for their children in the future. Moreover, it is likely that other immigrants who are eligible for aid will be reluctant to seek it for fear of causing trouble with the INS.

Nationally, as many as 300,000 U.S. citizen children could be blocked from obtaining assistance that they need, and for which they are eligible under TANF, if other localities follow San Diego's example. The number of citizen children who would lose food stamps is about 428,000. When Congress was changing the eligibility rules for immigrants under welfare reform, it considered and rejected proposals to deny assistance to U.S. citizen children of parents who are not lawfully present.

Clarification of the relevant provisions of PRWORA is necessary to prevent state and local agencies from effectively denying U.S. citizen children the benefits to which they are entitled by law.

This memorandum discusses our reasons for believing that San Diego's proposed actions are illegal. In addition to these legal arguments, there are a number of compelling policy concerns that should be considered.

- It is appalling to use the basic needs of U.S. citizen and qualified alien children as a mechanism to punish or entrap their parents.
- The fundamental purpose of basic safety net programs is compromised when major segments of communities who are eligible for these services are too frightened to apply for them. Scarce resources for social services, intended to help families in need, should not be diverted to unrelated purposes, such as immigration enforcement.

- The presumption that immigrants whose immigration status is not determined are therefore "guilty" of being unlawfully present (as San Diego may be contemplating) is contrary to the basic principles of due process and fair play that protect us all.

- States should not attempt to arrogate to themselves a more expansive role of immigration enforcement than was granted to them by Congress. The more involvement states have in setting immigration policy, the greater the likelihood that they will use their power as a pretext to discriminate against unpopular groups.

Accordingly, federal agencies should provide the following guidance to help states understand PRWORA:

(1) The circumstances and conditions under which agencies may report benefits recipients to the INS are governed by federal law: states are preempted from setting up their own, separate, reporting schemes, and should await federal guidance before attempting to implement federal law.

(2) Mandatory reporting of benefits recipients under section 404 of PRWORA is the only mechanism that states may use to report immigrants to the INS, and reporting permitted under section 404 is limited:

  - Only persons who apply for or receive assistance for themselves may be verified, and states may not require more information about immigration status than they need to determine eligibility.

  - Among HHS programs, section 404 only requires or permits reporting of persons seeking TANF

  - Under section 404, state agencies may report to the INS only persons the agency "knows" are not lawfully present in the U.S. Many persons who are ineligible for TANF due to immigration status are lawfully present in the U.S. Therefore, an immigrant's ineligibility for TANF, in and of itself, is not sufficient to trigger the reporting requirement.

(3) The welfare law and immigration laws permit agencies to exchange information about immigration status with the INS. But they do not authorize reporting of immigrants to the INS (other than under PRWORA section 404) or release of information that is not about immigration status, such as social security numbers, addresses, phone numbers, or benefits history, that is otherwise protected by federal, state, or local privacy or confidentiality rules.

I. Reporting of Immigration Status is Federally Regulated

A. Summary

The federal government has plenary power over immigration, and has exercised that authority by enacting a comprehensive regulatory framework governing immigrant benefits use and immigration enforcement. Because of this, the United States Supreme Court has held that states and local governments may not establish their own separate immigration enforcement schemes, even if the state scheme does not conflict with federal law.

Mass reporting of immigrants to the INS for immigration enforcement purposes constitutes the kind of immigration enforcement that is preempted by federal law. Therefore states may only act ministerially in this area, pursuant to federal law. They do not have discretion to create their own

INS reporting rules. That is the basis upon which the federal courts have struck down California's Proposition 187's reporting provisions which were similar to those San Diego is contemplating.

> Note: HHS's ability to regulate state implementation of TANF is strictly limited, but there are several reasons why federal regulations are proper and permitted in the area of immigrant verification, confidentiality, and reporting. First, section 432 of the Balanced Budget Act requires the Attorney General to promulgate regulations regarding the verification of public benefits, and the Attorney General has partially delegated this authority to the agencies administering federal programs. *See* Interim Verification Guidance under PRWORA, 62 Fed. Reg. 61344 (referring benefits providers to the agency or department overseeing their program in several places). Second, civil rights laws are explicitly exempted from the general prohibition on TANF regulations, and the issues of immigration verification, confidentiality, and reporting have profound implications for these laws. Finally, because of the federal government's plenary power over immigration, states are not permitted to establish their own regulatory schemes to implement section 404. Therefore, federal regulations are needed to allow states to implement the reporting provisions of PRWORA.

B. Analysis

The Supreme court has developed a three part test to determine the validity of a state regulation that deals with aliens. See *De Canas v. Bica*, 424 U.S. 351.

> (1) Regulation of immigration The first threshold question is whether the state provision is a regulation of immigration, "which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain." *Id.*, at 355. If a state provision would regulate immigration, then it is invalid because such regulation is the exclusive province of the federal government. *De Canas v. Bica*, 424 U.S. 351, 354 (1976).
>
> (2) Occupies the field Even if a state provision dealing with immigrants is not a regulation of immigration, it still may be preempted by federal law if Congress has passed laws intending to occupy the field which the state is seeking to regulate. *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 768 (C.D. Cal. 1995) (LULAC I). Where Congress has occupied the field, state provisions are preempted even if they do not conflict with federal law. 424 U.S. at 356.
>
> (3) Conflicts with federal law Finally, state provisions dealing with immigrants that conflict with or obstruct the "full purposes and objectives of Congress" are also unconstitutional. *Id.* at 363.

In late 1995, a federal court applied the *De Canas* framework to strike down the reporting provisions of California's Proposition 187, which required public agencies to report to the INS anyone whom the agency "reasonably suspect[ed]" to be in the United States in violation of federal law. *League of United Latin American Citizens v. Wilson*, No. CV 94-7569 (C.D. Cal. Mar. 13, 1998) (LULAC II). Under the court's analysis, this provision failed the first *De Canas* test because reporting of immigrants to the INS "has a direct and substantial impact on immigration." *LULAC I* at 769. After the passage of PRWORA, the court revisited this earlier analysis in response to the state's argument that PRWORA permitted agencies to share information with the INS, but the Court confirmed its previous ruling. *See LULAC II*, slip. op.

at 12 ("The federal government's exclusive control over immigration is derived from the Constitution and unaffected by [PRWORA].).[1]

Moreover, after the passage of PRWORA, Proposition 187 also was invalid under the second *De Canas* test. The provisions of PRWORA "both demarcate a field of comprehensive federal regulation within which states may not legislate, and define federal objectives with which states may not interfere." *Id.*, at 13. Because of this, "[t]he states have no power to effectuate a scheme parallel to that specified in [PRWORA], even if the parallel scheme does not conflict with [PRWORA]." *Id.*, at 16. Proposition 187's reporting requirement was "clearly preempted," *Id.*, at 24, both because it attempted to create a state classification scheme requiring independent determinations about immigration status, and because the categories established by the provision conflicted with federal laws governing procedures for the deportation of aliens. *Id.*, at 22.

Under the Constitution, and under PRWORA, a state or local agency's role in this area is therefore extremely limited. It may only make ministerial determinations of immigration status, pursuant to federal law. *See LULAC I*, at 770. It may not set up a regulatory scheme that creates categories or requires decisions that are not fixed by federal law. *Id.*

What state or local agencies may do is implement federal laws, relying solely on federal categories, determinations, and standards. The categories, determinations, and standards for immigration reporting are set forth in section 404 of PRWORA. The court's reasoning in LULAC I and II therefore applies to invalidate any state or local INS reporting regulation that goes beyond section 404 of PRWORA, including the policy that is being contemplated in San Diego.

II. Mandatory Reporting Under PRWORA Section 404 is Limited:

A. Summary

PRWORA section 404 requires agencies administering certain programs to make a quarterly report to the INS of the name and other identifying information of persons the agency knows are not lawfully present in the United States.

Section 404 is carefully drawn. It specifies three federal programs for which INS reporting is mandatory.[2] It provides the standard which must be met before reporting is triggered, which is knowledge of unlawful status. And it lists the information to be reported, which includes "the name and address of, and other identifying information on," the individual who is known to be unlawfully present.

Nothing in section 404 requires or authorizes states to investigate or verify any individual's immigration status to discover whether that individual is lawfully present. Therefore, any such investigation must be otherwise authorized by federal and/or state law.[3] Because of privacy and discrimination concerns, the Justice Department has advised states that they may only verify the immigration status of individuals who seek to obtain assistance for themselves. This federal

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1 The Court did not hold the provisions of PRWORA permitting agencies to cooperate with the INS to be invalid, it merely held that requiring agency personnel to report to the INS persons suspected of being in the U.S. in violation of immigration laws was preempted, despite PRWORA. *Id.* at 9 n.9

2 Section 404 requires the appropriate agencies to report to the INS persons known to be unlawfully present who apply for or receive TANF, Supplemental Security Income (SSI), and housing assistance under sections 6 and 8 of the Housing Act of 1937.

3 As discussed above, federal preemption of immigration regulation severely limits the ability of states to authorize such investigation and verification.

guidance means that state agencies may not verify the immigration status of parents who are applying on behalf of their U.S. citizen children.

The Congressional authors of section 404 modeled their provision on a conceptually similar INS reporting requirement that has applied to the Food Stamp Program for nearly two decades. For this reason, HHS should base its interpretation of section 404 on the regulations and caselaw that has governed the food stamps provision. Specifically, the food stamps provision has been held to apply only to persons applying for assistance for themselves, not to those who apply on behalf of family members or others.

In addition, the food stamps INS reporting requirement has consistently been held not to apply to an individual who is merely unable to produce documentation of an immigration status that qualifies for food stamps. The reason for this interpretation of the food stamps provision is that many persons are lawfully in the U.S., yet not in an immigration status that would make them eligible for food stamps. Others are in lawful status, but unable to prove that this is the case.

The same logic applies to eligibility for TANF. Section 404 is actually even clearer than the food stamps provision on this point, and should be interpreted to apply only where a state TANF agency knows that an individual is under final order of deportation/removal.

B. Analysis

PRWORA section 404 provides that state TANF agencies "shall, at least 4 times annually and upon request of the [INS] furnish the [INS] with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States."

This requirement closely parallels the Food Stamp Program reporting requirement, contained in 7 U.S.C. § 2020(e)(16), which requires states to report to the INS whenever agency personnel make "a determination" that "any member of a household is ineligible to receive food stamps because that member is present in the United States in violation of the Immigration and Nationality Act."

This provision, which has been in the Food Stamp Act since 1980, was intended to encourage "reporting of clear violations of the law." H.R. Report No. 788, 96th Cong., 1st Sess.. 137 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 970. Although there is little legislative history regarding PRWORA section 404, it is noteworthy that Congress left the food stamps provision untouched, amending an earlier draft that would have included food stamps within the ambit of section 404. This suggests that Congress intended section 404 to be interpreted in a manner similar to the interpretation that has been given to the food stamps provision over the past two decades.[4].

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4 Section 404 of PRWORA was included in an amendment by Senator Rick Santorum that was adopted without debate and by unanimous consent. Senator Santorum's amendment was adapted from a bill he had sponsored, S. 599. Differences between S. 599 and PRWORA § 404 are instructive. S. 599 would have required reporting in five programs: the three programs that were eventually included in PRWORA, plus the Food Stamps Program and the Medicaid program. It is reasonable to speculate that the latter two programs were eliminated from the final version for different reasons. In the case of Medicaid, Congress apparently did not want to impose an INS reporting requirement on a program that is so necessary for the protection of public health. In the case of food stamps, Congress must have felt that the similar reporting provisions already in place, as described above, were sufficient to protect the program from abuse by unlawfully present immigrants.

(1) Persons applying on behalf of their U.S. citizen or qualified alien children.

Courts have held that the food stamp reporting provision only applies to persons who apply for or receive assistance for themselves. *See* Doe v. Miller, 573 F. Supp. 461, 467 (N.D.Ill., E.D., 1983) ("[T]he parents in this case should not be forced either to withdraw their children's applications for food stamps or risk being reported to the INS as 'illegal aliens,' contrary to standards established by federal law."). Agencies are not required to, and indeed may not, report to the INS parents or other family members who are not themselves receiving assistance. *Id.*

Against this background, Congress easily could have provided that section 404, unlike the food stamps provision, was intended to include caretaker relatives. Not only did it fail to do so, but its actions with respect to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) went in the opposite direction. In that bill, Congress expressly rejected a proposal to discourage aid to citizen children of undocumented parents, suggesting that it wanted the flow of such aid to continue uninhibited.[5]

(2) Persons who are ineligible because of immigration status.

The food stamps regulations (and the Federal Register preamble to the implementation of the food stamps provision) are very clear about the treatment of individuals who are ineligible for assistance because of immigration status, or because their immigration status cannot be determined. They recognize that there are several categories of immigrants who are in compliance with the immigration laws but who are nevertheless ineligible for food stamps because of their immigration status. Therefore, in the food stamps program, a mere finding that a person is ineligible for assistance because of immigration status does not trigger the reporting requirement. 7 C.F.R. 273.4(e)(2) ("When a person indicates inability or unwillingness to provide documentation of alien status, that person should be classified as an ineligible alien. In such cases the State agency shall not continue efforts to obtain that documentation.").[6]

Nothing in the legislative history or the wording of section 404 suggests a different intent. In fact, if anything, section 404 is clearer than the food stamps provision in directing agencies not to report individuals whom an agency may suspect of being unlawfully present because of failure to provide documentation of eligible status. Section 404, unlike the food stamps provision, explicitly requires a TANF agency to "know" that an individual is not lawfully present before the reporting requirement is triggered. In contrast, the food stamps provision merely requires a "determination" by the food stamps agency.[7]

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5 Congress considered and ultimately rejected a proposal that would have prohibited persons who are ineligible for means-tested assistance because of their citizenship status from collecting such assistance on behalf of their eligible children. See, H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 240 (1996). In so doing, the Conference Committee noted that unlawfully present immigrants retained their ability to obtain benefits on behalf of their U.S. citizen children. *Id.*

6 The legislative history on this point is instructive. Congress took note of a determination by the Administration that an individual is not considered "known" to be in the U.S. unlawfully unless it is known that a final order of deportation is outstanding against him or her. But Congress declined to explicitly codify the knowledge standard, opting, instead, to give the USDA discretion whether to incorporate this restriction in its regulations. H.R. Report No. 788, 96th Cong., 1st Sess., 135-37 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 968-70. The Department ultimately opted not to exercise this option, but did caution states against reporting an immigrant to the INS merely because he or she is not in one of the food stamps eligible categories. 47 Fed. Reg. 17,756 (1982).

Some states have used their discretion to adopt the final order of deportation standard. See, e.g., California Dep't of Social Services Manual-FS Section 63-405.4; Ohio Dep't of Public Welfare Food Stamp Certification Handbook (Oct. 1, 1996), section 3360 "Reporting Illegal Aliens"

7 The significance of this difference is underscored by the legislative history of the food stamps provision, discussed in footnote 3, which made clear Congress' understanding that "knowledge" of unlawful immigration

III. The INS Cooperation Provisions of PRWORA and IIRIRA Are Limited

A. Summary

San Diego County does not cite PRWORA section 404 to justify its reporting plans, which may be an admission, on the County's part, that the reporting provision does not authorize its proposed actions. Instead, the County cites PRWORA section 434. Section 434 of PRWORA, and the very similar section 642 of IIRIRA, address "communication" between government agencies about "information regarding the immigration status, lawful or unlawful, of any individual."

Under these provisions, "information regarding the immigration status" of any individual may be shared by any government entity or official with the INS or any other governmental entity. San Diego County apparently interprets this provision to permit reporting to the INS of names, addresses, phone numbers, social security numbers, and other personal information about persons who meet standards specified by the County, notwithstanding any federal, state, or local privacy or discrimination provisions that protect against release of such data.

Such an interpretation can only stand if names, addresses, social security numbers, etc., are "information regarding immigration status" under IIRIRA and PRWORA. An alternative interpretation, would limit "information regarding immigration status" to something like the following:

(1) the citizenship or immigration status an individual claims;

(2) the existence of any documents that indicate immigration or citizenship status; or

(3) any other records in the possession of an agency that state the citizenship or immigration status of the individual.

There are several reasons to conclude that this stricter interpretation is the one Congress intended.

First, the stricter reading is more consistent with the overall statutory framework set up by PRWORA and IIRIRA.

Second, if the additional data that San Diego plans to release is "information regarding immigration status" then IIRIRA section 642 and PRWORA section 434 potentially open up a Pandora's box of applications far beyond the immigration context. All kinds of information in the possession of government agencies would be compromised. No agency at any level of government would be permitted to assure the confidentiality of information about any individual, whether citizen or immigrant, calling into question dozens of federal, state, and local privacy, confidentiality, secrecy, and anti-discrimination provisions.

Finally, IIRIRA section 642 and PRWORA section 434 must be limited to their strict terms to assure their constitutionality. As discussed above, under the U.S. Constitution, states and local governments may not set up their own standards for immigration reporting. Limiting the scope of "information regarding immigration status" would avoid this problem.

B. Analysis

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status would require an agency to have evidence that the individual is under final order of deportation. See, H.R. Report No. 788, 96th Cong., 1st Sess., 135-37 (1980), *reprinted in* 1980 U.S.C.C.A.N. 843, 968-70.

Neither the plain language of PRWORA and IIRIRA, nor the congressional intent in enacting PRWORA section 434 and IIRIRA section 642, justifies San Diego County's planned actions.

(1) **Plain meaning.**

Interpretation of the cooperation provisions of PRWORA and IIRIRA must begin with an analysis of their plain language. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, __ U.S. __, 117 S.Ct. 843, 846 (1997).

PRWORA section 434, entitled "Communication between state and local government agencies and the [INS]" provides:

> Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the [INS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.

IIRIRA section 642, "Communication between government agencies and the [INS]" provides:

> (a) IN GENERAL.--Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [INS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
> (b) ADDITIONAL AUTHORITY OF GOVERNMENT ENTITIES.--Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
> (1) Sending such information to, or requesting or receiving such information from, the [INS].
> (2) Maintaining such information.
> (3) Exchanging such information with any other Federal, State, or local government entity.
> (c) OBLIGATION TO RESPOND TO INQUIRIES.--The [INS] shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

Sorting through the triple negatives, each of these provisions requires any government entity to permit any other government entity to send "information regarding immigration status" to the INS and to receive such information in return. IIRIRA section 642 is broader than PRWORA section 434 in a number of respects: (1) it permits release of information about any individual, whether undocumented, legal immigrant, or U.S. citizen; (2) it permits release of information by officials, not just entities; and (3) it permits sharing of information with any federal, state, or local entity, not just the INS.

The plain language of section 642 thus provides an extremely broad ranging permission to share information among officials and government entities, notwithstanding any other provision of law. Those who may share information include all government entities and officials, without distinction or exception. Those whose information may be shared include all individuals, again without exception. Those who are permitted to receive the information include all government entities.

Limitations: Given the extraordinary scope of these provisions, close attention must be paid to their limitations. One important limitation is that neither PRWORA section 434 nor IIRIRA section 642 contains any language either requiring or authorizing anybody to investigate or verify information about immigration status. As discussed above, any such investigation or verification must therefore be authorized by some other provision of law.[8]

The other limitation is even more significant. It concerns the nature of the information subject to release under the cooperation provisions. Only "information regarding citizenship or immigration status" falls within the broad sweep of disclosure under either PRWORA section 434 or IIRIRA section 642. Information that is not about immigration status is not affected by these cooperation provisions.

It follows that there is no conflict between PRWORA section 434 or IIRIRA section 642 and any laws or regulations that protect the confidentiality of information other than immigration status. Where sharing of such information, other than immigration status, is otherwise restricted by law, communication of immigration status under the immigration or welfare cooperation provisions must be accomplished in such a manner as to protect against release of the restricted information.

Meaning of "information regarding citizenship or immigration status": What constitutes "information regarding citizenship or immigration status?" A strict reading of this phrase would only include information that directly addresses the issue of an individual's immigration or citizenship status, such as: (1) the citizenship or immigration status an individual claims; (2) the existence of any documents that indicate immigration or citizenship status; or (3) any other records in the possession of an agency that state the citizenship or immigration status of the individual.

Other data about an individual, such as name, age, address, telephone number, social security number, whether the individual is receiving government assistance, or other personal information, may be useful for many purposes, but would not, in normal speech, be considered information regarding immigration status.[9]

Inclusion of such information is far from necessary to give meaning, even dramatic meaning, to the provisions in question.

First, under PRWORA section 434 and IIRIRA section 642, any government entity has the right, previously not guaranteed, to obtain information from the INS about the immigration status of any individual.

Second, the cooperation provisions eliminate any federal, state, or local restrictions on government officials', or law enforcement agents', cooperation with the INS, or with each other, regarding immigration status information. In particular, no federal, state, or local law or policy may now prevent an agency from responding to an INS request for information in their files about

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[8] Such verification is limited by federal anti-discrimination and privacy concerns. *See* Interim Guidance on Verification of Eligibility, 62 Fed. Reg. 61,344, 61347 (Dep't of Justice November 17, 1997) ("If an alien is applying for benefits on behalf of another person . . . [an agency] may, under federal law, only verify the status of the person who will actually be receiving the benefits.")

[9] No social services agency would accept an individual's name, address, and social security number in the space on an application form asking about immigration status. If given a documented and asked to redact all "information regarding immigration status," few attorneys would feel obligated to redact addresses, names, social security numbers, etc.

the immigration status of a given individual. For example, an INS or another agency may ask another whether the former has information on a Jose Gonzalez, who was born on January 1, 1950, social security number 555-55-5555. Under PRWORA section 434 and IIRIRA section 642, the agency receiving such a request now may always provide the immigration information about the individual, so long as any other personal information protected by confidentiality provisions is redacted. Previously, privacy laws or specific noncooperation ordinances sometimes frustrated any such response.

Finally, agencies may now release unprotected information along with immigration status information, at agency option. Frequently, in the law enforcement context and elsewhere, identifying information such as name, date of birth, and address, is public, or subject to release under certain conditions. Where that is the case, PRWORA section 434 and IIRIRA section 642 now preempts state or local ordinances that are intended to keep individual immigration status confidential. Such ordinances were not preempted under previous law.

Context of the provisions: A strict interpretation of "information regarding immigration status" makes sense in the context of the immigration legislation in which they were included. Section 434 of PRWORA was placed in the section of the welfare bill dealing with immigrant access to benefits. Section 642 of IIRIRA was enacted as part of a bill that dealt entirely with immigrants and immigration. This suggests that Congress did not intend these cooperation provisions to apply broadly outside of the immigration context.

However, if "information regarding immigration status" in these provisions were interpreted broadly, to include additional information such as name, address, Social Security number, etc., the provisions would have a profound impact on privacy rights in areas that have no bearing on immigration whatsoever.

By their plain meaning, they would authorize release of such personal information held by government agencies about anyone, regardless of immigration status, and regardless of any other provision of law, to any government agency. Agencies and programs such as the IRS, CIA, National Security Council, federal witness protection, programs to assist domestic violence victims, and all others are required to comply with the cooperation provisions. For example, the FBI, or any other agency, would be unable to condition the sharing of crime-fighting information with local law enforcement agencies on the confidentiality of "information regarding immigration status" contained in their files. The confidentiality of personnel files would also be called into question. Obviously, these implications of a broader interpretation of "information regarding immigration status" are inconsistent with their placement in sections dealing with immigration law.

Also instructive is a comparison between the text of PRWORA section 404 and the cooperation provisions. Section 404 refers, in its title to "reporting," whereas there is no mention of reporting in the text of PRWORA section 434 or IIRIRA section 642. These latter provisions refer, instead, to "communication" between agencies, and their structure suggests a reciprocal cooperation or sharing of information, rather than unilateral reporting by one agency to another. This is more consistent with a strict interpretation of "information regarding immigration status" because such an interpretation limits unilateral reporting where release of information other than immigration status is subject to confidentiality restrictions.

Moreover, section 404 explicitly requires the release by certain agencies, not only of immigration status, but also of the name, address, and other identifying information of individuals known to be unlawfully present in the U.S. The fact that Congress enumerated release of such information in one section strongly suggest that it would have done so again elsewhere in the same bill had that been its intent.

(2) Other Evidence of Congress' Intent

Purpose is cooperation in immigration enforcement, not privacy evisceration: Congress' purpose in enacting the verification, reporting, and confidentiality provisions of PRWORA and IIRIRA was both to deter use of benefits by ineligible immigrants and to assist in the capture and prosecution of unlawfully present immigrants. *See, e.g.* PRWORA section 400. At the same time, the verification, reporting, and confidentiality provisions evince Congress' awareness of the complexities of this area of law, and the need to maintain some balance competing values. Evidence of balancing can be found in every section. For example, PRWORA section 404's reporting requirements are limited to only three programs, and only those "known" to be unlawfully present are subject to being reported. Similarly, the PRWORA's verification provisions provide for federal regulations in the complex area of immigration verification, and provide for a relatively a long period, of up to 36 months after passage, for states to begin implementation. Even restrictions on illegal immigrant access to public benefits are subject to important exceptions. It would be inconsistent with such balancing of interests for Congress to have enacted a provision with no exceptions that would permit reporting of personal information without any concern for the context of such reporting or of society's sometimes compelling need to preserve confidentiality under certain circumstances.

Nor does the legislative history of these provisions suggest otherwise. There is no discussion in committee reports or congressional debates about the implications of PRWORA section 434 or IIRIRA section 642 on confidentiality or privacy outside of the immigration context. Rather, the conference committee that reported PRWORA section 434 explained that it was adopted to facilitate cooperation between agencies and the INS, and specifically to preempt "sanctuary ordinances" that had been adopted by the State of New Mexico and nearly 20 other governmental entities, including the cities of San Francisco, New York, Chicago and Washington, D.C. *See* H.R. Conf. Rep. No. 725, 105th Cong., 2d Sess. 391 (1996) (PRWORA Conf Rept.).[10] Such sanctuary ordinances typically prohibited employee cooperation with immigration enforcement efforts initiated by the INS unless such cooperation was affirmatively required by federal or state law.[11]

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[10] The PRWORA Conf Rept explanatory provision for section 434 provides, in full, as follows:
"COMMUNICATION BETWEEN STATE AND LOCAL GOVERNMENT AGENCIES AND THE IMMIGRATION AND NATURALIZATION SERVICE

Present law

The confidentiality provisions of various State statutes may prohibit disclosure of immigration status obtained under them. Some Federal laws, including the Family Education Rights and Protection Act, may deny funds to certain State and local agencies that disclose a protected individual's immigration status. Various localities have enacted laws preventing local officials from disclosing the immigration status of individuals to INS.

House bill

No State of local government entity may be prohibited, or in any way restricted from sending to or receiving from the [INS] information regarding the immigration status, lawful or unlawful, of an alien in the United States.

Senate amendment

Similar to House bill

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

[11] The legislative history of this provision is confused by the existence of an additional fragment of legislative history in the PRWORA conference report. At first glance, this fragment appears to discuss a provision that sounds similar to section 434. But it does not appear in the discussion of section 434, and is instead appended without explanation to the discussion of a completely unrelated provision of PRWORA. (Whereas section 434 is contained in Subtitle D ("General Provisions"), the fragment is appended to an explanation of Subtitle B ("Eligibility for State and Local Public Benefits Programs")).

Impact of broad vs. strict interpretation of "information regarding immigration status": PRWORA section 434 and IIRIRA section 642 nicely accomplish these stated intentions without recourse to including name, Social Security Number, etc., within the phrase "information regarding immigration status." As discussed above, these provisions frustrate sanctuary or noncooperation ordinances that seek to impede sharing of information of immigration status. They also assist agencies seeking to cooperate in the enforcement of immigration law and to prevent fraud and abuse by unqualified immigrants, by allowing them to compare claims and other information about immigration status.

On the other hand, there is little utility gained towards the stated goals of these provisions by interpreting "information regarding immigration status" more broadly, to include the additional information that would allow actions such as San Diego County is contemplating. Such an interpretation would likely result in wholesale dumping on the INS, by jurisdictions such as San Diego County, of information that would not be very useful for immigration enforcement, because the information would not be carefully screened using federal standards or targeted according to the agency's needs or priorities. Many of those reported will eventually be found to be legally present, or will fall outside of the enforcement priorities of the agency.

Nor does the kind of reporting contemplated by San Diego assist in preventing fraud or abuse of government benefits by immigrants. Those being reported to the INS are not, themselves, receiving benefits, and they are not fraudulently claiming any particular status. The only possible "benefit" of a scheme such as San Diego County contemplates is to terrorize the parents into taking their eligible U.S. citizen children off of assistance, thus effectively making assistance unavailable these U.S. citizen children.

Nowhere does the legislative history of PRWORA or IIRIRA mention this as a goal. In fact, as discussed above, Congress considered and ultimately rejected a proposal that would have prohibited persons who are ineligible for means-tested assistance because of their citizenship status from collecting such assistance on behalf of their eligible children. See, H.R. Conf. Rep. No. 828, 104th Cong., 2d Sess. 240 (1996). In so doing, the Conference Committee noted that unlawfully present immigrants retained their ability to obtain benefits on behalf of their U.S. citizen children. *Id.*

To the extent that San Diego County's plan is a back door way of limiting the eligibility of these children, it is preempted. Congress has plenary power over immigrant eligibility for benefits. Congress has determined that the immigration status of parents does not affect the eligibility of their children for benefits. San Diego may not overrule that determination.

Provisions should be interpreted in such a manner as to make them constitutional: Courts and regulators are required to interpret statutes, where possible, as being consistent with the constitutions.

If "information regarding immigration status" were to be interpreted broadly as is contemplated by San Diego, PRWORA section 434 and IIRIRA section 642 would essentially provide authorization for states or localities to set up their own reporting regulatory policies that are in addition to, or parallel to, the provisions in PRWORA section 404. The constitutionality plans was expressly addressed by the court in the Proposition 187 case, in which, as discussed above, the State of California had argued that PRWORA's cooperation provisions authorized the state to

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Besides being misplaced, the fragment describes a provision that is significantly different from section 434 in several particulars. The most likely explanation is that the out-of-place fragment is a word processing error that survived from an earlier draft. The actual committee explanation, quoted in the previous footnote, accurately and fully describes the provision as passed.

report to the INS persons "reasonably suspected" to be in the U.S. in violation of federal law. Addressing the argument that PRWORA authorized such reporting, the Court noted that the provisions of Prop 187 did not merely permit cooperation between state officials and the INS, as allowed by PRWORA, but rather set up a regulatory scheme requiring social services providers "to report to the INS information about alien status that such individuals are not permitted to determine." *LULAC II*, slip. op. at 9 n.9.

The same, precisely, can be said of San Diego County's plan. The County's plan, like that in Proposition 187, uses locally defined criteria to determine who is to be reported to the INS, and sets up a structure that goes beyond PRWORA section 404 to govern who will be reported and under what circumstances. For example, the San Diego scheme requires the reporting of "undocumented" aliens. This term is not found or defined anywhere in PRWORA, IIRIRA, the Immigration and Nationality Act, or elsewhere in federal law. It is solely a County-defined term.

In point of fact, any regulation that requires reporting to the INS of information that goes beyond PRWORA section 404, and, that, in the absence of federal regulation, fails to limit the information communicated to a strict definition of "information regarding immigration status" would be subject to the same flaw. It would require the state or local jurisdiction to set up standards and make determinations about who would be reported and under what circumstances, determinations that are reserved to the federal government by the constitution. For this reason, then, in addition to all of the others, "information regarding immigration status" must be strictly interpreted.

* * *

FAX TRANSMISSION

CENTER ON BUDGET AND POLICY PRIORITIES

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To:	David Neilson	**Date:**	July 27, 1998
Fax #:	690-6562	**Pages:**	13, including this cover sheet.
From:	David A. Super/Stacy Dean		
Subject:	Immigrant Reporting and San Diego County		

COMMENTS: Earlier this month, we and immigrants' rights advocates met with staff from the Office of Public Liaison and the Domestic Policy Council on San Diego County's plans to report the immigrant parents of citizen children to the INS. At the meeting, we expressed our concerns that in addition to the direct impact on the U.S. citizen children involved, San Diego's practice would discourage many other immigrant families from seeking nutrition and health care benefits for which their children are eligible, as word about what San Diego was doing spread throughout the immigrant community in California and, eventually, nationwide. In response, concerns were raised about whether the Administration had legal authority to intervene in this matter.

This memo sets out the legal authority we believe would permit the Administration to act. It addresses legal issues concerning three separate parts of San Diego's plan: (1) the county's requirement that parents applying only for their U.S. citizen children specify their own immigration status in order to obtain benefits for their children; (2) the county's plan to send a letter to immigrant parents who are not receiving food stamps for themselves (and whose legal status the county considers questionable) threatening to report the parents to the INS unless their citizen children cease to receive benefits; and (3) the county's plan actually to report parents to the INS. The memo focuses on food stamps because of our particular expertise with this program; the civil rights issues it raises generally are equally applicable to TANF.

The memo concludes that: (1) the Administration can prohibit San Diego from requiring immigrant parents to describe their specific immigration status in order to obtain food stamps for their children; (2) the Administration can prohibit the county from sending letters to immigrant households threatening to report them to the INS; and (3) although section 434 of the 1996 welfare law allows counties to communicate with the INS about immigrants, the Administration can require the county to follow appropriate civil rights and Food Stamp Act protections in the manner in which it makes such communication.

We hope this is helpful to you.

CENTER ON BUDGET AND POLICY PRIORITIES

July 27, 1998

THE LEGALITY OF SAN DIEGO COUNTY'S POLICIES ON IMMIGRANT PARENTS OF CITIZEN CHILDREN RECEIVING FOOD STAMPS

I. Introduction

San Diego County is threatening action that would effectively prevent the U.S. citizen children of many undocumented immigrant parents (as well as some citizen and legal immigrant children of legal immigrants) from receiving food stamps and other benefits even though those children are eligible and entitled under federal law.

The California application form that San Diego uses for TANF, food stamps and Medicaid requires immigrant parents to specify their immigration status even when they are applying only for their children and not for themselves. Where immigrant parents about whose legal status San Diego is uncertain are receiving TANF or food stamps only for their children, the county intends to send the parents a letter saying that their names will be given to INS unless they remove their citizen children from TANF and food stamps by the end of the month or prove to the county's satisfaction that they are legally in the United States. San Diego had intended to send this letter on July 10; its plans now have been delayed, perhaps until early September.

If San Diego sends out these letters, word is likely to spread through the immigrant community in California, and probably nationwide, that immigrant parents cannot apply for food stamps even for their citizen children without risking being reported to the INS. Undocumented parents will fear deportation, causing them to withdraw their eligible citizen children. The chilling effect is likely to extend to legal immigrant parents as well, since many of them likely will not be convinced that San Diego will limit its reporting to undocumented parents. Many legal immigrant parents may fear that being reported to the INS for their children's receipt of benefits may lead INS to treat them as "public charges" and deny them either re-entry into the United States after visiting relatives abroad or adjustment of their immigration status. If the parents of large numbers of legal immigrant children remove the children from the food stamp program (or fail to apply), the Administration's hard-fought victory to restore food stamp eligibility for these children will be jeopardized.[1]

It appears the INS lacks the administrative capacity to act on the information that San Diego plans to provide. Nonetheless, the effect of San Diego's actions will be to

[1] Although the restoration of federal food stamp eligibility to legal immigrant children does not become effective until November 1, California currently issues food stamps to legal immigrant children and reimburses USDA for the cost. *See* Food Stamp Act § 7(j); 7 U.S.C. § 2016(j).

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chill immigrant parents from applying for TANF and food stamp benefits for their citizen children (or eligible legal immigrant children) and to induce immigrant parents whose children already receive benefits to withdraw their children from these programs.

Other states and counties may follow San Diego's example, thereby aggravating the problem. The chilling effect is likely to extend beyond TANF and food stamps, also discouraging immigrant parents from enrolling their children in other health and nutrition programs for which the children are eligible. Although San Diego's actions target general assistance, TANF and food stamp recipients, undocumented immigrant families are likely to fear that their citizen children's receipt of Medicaid, coverage under the new CHIP block grant, or receipt of other benefits could lead to reporting to INS. Some may believe they will be deported or detained. Like all parents, immigrant parents will seek to avoid splitting up their families and being separated from their children at virtually all costs. Therefore, the practical effect of this policy will essentially be the same as if these children, most of whom are U.S. citizens, were made formally ineligible for these benefits.

In 1996, the House passed an immigration bill that would deny certain classes of immigrant parents the right to apply for benefits on behalf of their citizen children. In the face of strong Administration pressure, this provision was dropped from the final immigration law. If San Diego carries out its plan, it will effectively accomplish through the back door what the Administration prevented Congress from doing by statute in 1996.

This paper analyzes the legal issues that San Diego's proposed actions raise. Although these actions are part of a common design, San Diego County is, in fact, engaged in or proposing three different sets of activities:

- Requiring parents who are not applying for benefits for themselves to describe specifically their immigration status on the application form, with one option being "undocumented";[2]

- Sending letters to non-recipient immigrant parents of citizen children recipients who have identified themselves as undocumented, or whose immigration status is unclear to the county, threatening to turn over the parents' names to the INS unless they immediately remove the children

[2]The form omits several legal statuses from the options it presents to parents. Some *legal* immigrant parents may check "undocumented" because their status does not match any of those listed. In addition, it does not provide an opportunity for undocumented victims of domestic violence who are protected under the Violence Against Women Act to indicate that status. Although these women and children are not eligible for food stamps, they do qualify for TANF.

from TANF and food stamps or prove to the county's satisfaction that they have legal status; and

- Actually submitting these non-recipient parents' names to INS.

This paper analyzes separately each of the three steps San Diego is taking or proposing to take. Its primary focus is on the implications of these actions for families of food stamp recipients, although most of the civil rights issues raised here also would apply to TANF.[3] This paper concludes that:

- Although San Diego needs some information on non-applicant parents to determine their children's eligibility for food stamps, it does not need to require non-applicant parents to identify themselves as undocumented. The 1996 welfare law gives USDA specific authority to require California to make changes in the application form and procedures in order to ensure the fairness of the application process.

- The threatening letters San Diego proposes to send raise serious legal concerns. The section of the welfare law allowing state and local governments to make certain reports to INS does not cover these letters sent to recipients. The 1996 welfare law and longstanding provisions of the Food Stamp Act allow USDA to prohibit the sending of such letters.

- Although the welfare law allows some information to be shared with the INS, the Administration still may intervene to ensure that the manner in which the information is shared does not violate the civil rights of U.S. citizen children. Although San Diego may be permitted to share information regarding immigrants of whom it becomes aware through the immigrants' efforts to obtain benefits for *themselves*, the county's policy singles out and explicitly targets immigrant parents who live with and care for their citizen children. In so doing, it discriminates on the basis of the exercise of the fundamental right to family association and privacy.[4]

This paper concludes with some illustrative examples of actions the Administration could take to protect the rights of citizen children in San Diego.

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[3]The TANF statute specifically requires states to observe civil right protections. Social Security Act § 408(c); 42 U.S.C. § 608(c).

[4]The National Immigration Law Center (NILC) is preparing a separate analysis on section 434 of the 1996 welfare law, which deals with the sharing of information on an immigrants' status with the INS. Pub. L. 104-193, § 434; 8 U.S.C. § 1644. Accordingly, this paper does not analyze that provision.

II. Application Forms

San Diego uses a California application form that requires parents who are applying only for their children to specify the parents' immigration status. Parents are given several alternative boxes to check, one of which is labeled "undocumented."

The Food Stamp Act, as amended by the 1996 welfare law, requires states to "establish procedures governing the operation of food stamp offices that...provide timely, accurate, and fair service to applicants for, and participants in, the food stamp program [and] develop an application containing the information necessary to comply with this Act... ."[5] Where a state or county practice denies applicant or recipient households "fair service," the Administration has the authority to require corrective action. This action could include both prospective cessation of problematic practices and steps to ameliorate the harm caused by practices that have already taken place. USDA certainly could determine that it is unfair to require parents to give irrelevant and potentially self-incriminating information as a condition of their citizen children's ability to receive the food stamps to which they are entitled as low-income U.S. citizens.

Two arguments have been raised in defense of this form. First, it has been noted that the circumstances of parents living with these citizen children are relevant to determining the children's eligibility and benefit levels even if the parents are not seeking food stamps for themselves. Second, it is argued that the questions at issue, even if not needed for food stamps, are within the state's discretion under TANF and can be included in the food stamp application on that basis where the state is using the same application form for food stamps and TANF. Upon closer examination, neither of these arguments support the specific approach San Diego has taken.

Parents of minor children that live with those children generally must be included in the same food stamp household with the children.[6] With some exceptions, most ineligible household members' income and resources are considered at least in part in determining the remaining household members' eligibility and benefit levels.[7] States have options to count different amounts of the ineligible immigrants' income depending on whether the immigrant is in a category that was disqualified under pre-1996 food stamp rules or one that was made ineligible by the welfare law. But California has chosen to treat the income of all ineligible immigrants in the same manner, regardless of the immigration category in which they fall. California treats the income of ineligible immigrants the same as it treats the income of individuals who do not supply

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[5] Food Stamp Act §§ 11(e)(2)(A) and (B)(i) and (ii); 7 U.S.C. §§ 2020(e)(2)(A) and (B)(i) and (ii).

[6] Food Stamp Act § 3(i); 7 U.S.C. § 2012(i); 7 C.F.R. 273.1(a)(2)(i)(B).

[7] 7 C.F.R. § 273.11(c) and (d).

their Social Security numbers.[8] Because California follows this approach, San Diego will have all of the information it needs to determine citizen children's eligibility and benefit levels if it either knows that the parents are immigrants not applying for food stamps or that the parents have not supplied their Social Security numbers. Whether the parents are undocumented or fall within some legal category is not relevant. In short, San Diego's requirement that the parents of eligible citizen children identify their specific legal or illegal status is not necessary for the food stamp program.[9]

Nor can these questions be justified as part of a TANF/food stamp common application form. Prior to the 1996 welfare law, states were required to use common applications and combined interview and verification procedures for AFDC and food stamps.[10] States were required to submit application forms to USDA for approval.[11] Since states were required to combine their AFDC and food stamp application procedures, USDA could not reject an application form for requesting information unnecessary to food stamp eligibility determinations if the state needed that information for AFDC purposes.

In the course of replacing the AFDC program with the TANF block grant, the 1996 welfare law repealed all requirements concerning common application forms and joint processing procedures for food stamps and cash assistance.[12] Recognizing that many states' TANF-funded programs might operate on principles so different from the food stamp program that joint application procedures might be inappropriate, Congress eliminated the joint application and joint processing requirements. Congress also eliminated the requirement for USDA to approve food stamp application forms in advance. In their place, as noted above, the welfare law directed states to develop appli-

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[8] *See* 7 C.F.R. § 273.11(c)(2).

[9] It may be noted that HHS is working actively with states to help them design Medicaid and CHIP applications that collect the information needed to provide benefits to eligible citizen children without requiring undocumented non-applicant parents to incriminate themselves.

[10] The statute required that, "[n]otwithstanding any other provision of law, the Secretary [of Agriculture] and the Secretary of Health and Human Services shall develop a system by which (1) a single interview shall be conducted to determine eligibility for the food stamp program and the aid to families with dependent children program ... (3) households in which all members are included in a federally aided public assistance ... grant ... shall have their application for participation in the food stamp program contained in the public assistance ... application form ... and (4) new applicants, as well as households which have recently lost or been denied eligibility for public assistance ..., shall be certified for participation in the food stamp program based on information in the public assistance ... case file to the extent that reasonably verified information is available in such case file." Food Stamp Act § 11(i) (1996); 7 U.S.C. § 2020(i) (1996).

[11] Food Stamp Act § 11(e)(2) (1996); 7 U.S.C. § 2020(e)(2) (1996).

[12] Pub. L. 104-193, §§ 835(1)(A) and (2).

cation forms with information "necessary" for food stamp eligibility determinations and authorized USDA to intervene where a state or political subdivision[13] is following procedures that deny an applicant or recipient "timely, accurate [or] fair service."[14]

Therefore, the 1996 law replaced a system under which USDA had an absolute right of prior approval over everything in the food stamp application form, but as a practical matter had to approve any questions needed for AFDC purposes, with one in which states write their own forms without federal oversight but USDA has authority to intervene where it finds that specific aspects of the form would deny applicants "timely, accurate, and fair service." Presumably, this authority will be exercised only in unusual and very serious cases. In so doing, USDA is not required to accept a practice that is unfair to food stamp households merely because the state wishes to apply that practice to its cash assistance program; as noted, states are no longer required to operate common application systems for food stamps and cash assistance. The statute authorizes states to prepare forms asking questions "necessary" for food stamp purposes, and in general USDA should not object to the inclusion of additional material relevant to other programs that the state finds useful to include. But the Administration does have the authority to step in to prevent manifest injustices.

Moreover, although USDA approved California's joint AFDC-food stamp application under pre-1996 law, that approval ceased to be pertinent once the 1996 legislation repealed the approval requirement and limited the federal role to preventing egregious unfair practices. (In addition, when USDA originally approved the California form, it could not know that San Diego would subsequently issue guidance to its staff urging them to press non-applicant immigrant parents to incriminate themselves unnecessarily.[15]) To be sure, USDA should not now impose burdensome requirements on the state concerning an application form to which the Department has not previously objected. But since states are no longer required to submit application forms or procedures to USDA for advance approval,[16] USDA's actions to implement and enforce the

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[13]In states such as California, where counties administer the food stamp program, both they and the state are considered a "State agency." *See* Food Stamp Act § 3(n)(1); 7 U.S.C. § 2012(n)(1). Although USDA customarily works with state officials when seeking compliance from a particular county, it does have the legal authority to intervene directly with county officials.

[14]Food Stamp Act § 11(e)(2)(B); 7 U.S.C. § 2020(e)(2)(B).

[15]A memo the county distributed on June 25 repeatedly advises eligibility workers to press immigrant parents to identify their specific immigration status: "ETs are reminded of the requirement to correctly identify each immigrant applicant's or household member's immigration status. ... During the month of July 1998, Intake supervisors must verify the accurate C/A [Citizenship/Alienage] coding of all cases in the CalWORKS, Food Stamp and General Relief programs. ... The case record must be updated through additions and deletions to accurately reflect undocumented immigrant household members... ."

[16]*See also* Food Stamp Act § 11(d); 7 U.S.C. § 2020(d).

requirement of "timely, accurate, and fair service" will necessarily take place in most cases after an objectionable practice has begun. That does not deny the Administration the capacity to require a state or county to take steps to minimize the impact of any unfair procedures that have been implemented.

Finally, sections 5(b) and 11(e)(5) of the Food Stamp Act[17] prohibit states from imposing additional conditions of eligibility for food stamps not authorized by federal law. A requirement that non-applicant parents provide more information about their immigration status than is required to determine their children's eligibility and benefit levels (especially potentially self-incriminatory information) is such a condition. Yet not only has San Diego failed to notify these parents that their children may receive food stamps without this information being supplied, the county has directed its eligibility staff to press immigrant parents to specify their immigration status.[18]

By using the food stamp application process to collect unnecessary information about non-applicant parents to use in pursuit of its immigration policy agenda, San Diego County is exceeding the scope of its authority under the Food Stamp Act.[19] Whatever it may choose to do when operating independently as a county government, when administering the food stamp program it is not free to pursue ends, or to impose barriers on applicant and recipient households, that are not authorized by federal law.

III. Letters to Non-recipient Parents

Because INS apparently lacks the administrative resources to act on the information San Diego wishes to provide, in many ways the most harmful part of the county's plan is the letter it intends to send to immigrant parents threatening to report them to INS unless they remove their citizen children from the TANF and food stamp programs. Once this letter has been sent, a severe chilling effect will set in whether or not the county actually reports particular immigrants. *Preventing this letter from going out is crucial to preserving citizen children's access to food stamps and other public benefits.*

The requirement that states and their political subdivisions assure "fair service" to households extends to recipients as well as applicants. This letter, by creating a broad chilling effect, is manifestly unfair. It specifically encourages immigrant parents to terminate their children from food stamp benefits for which the children are eligible. (It does not inform parents that their children remain eligible for food stamps, much less explain how they may retain food stamps for their children without fear of reprisal

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[17] 7 U.S.C. §§ 2014(b) and 2020(e)(5).

[18] *See* footnote 15 above.

[19] *See generally* Food Stamp Act §§ 2, 3(n), 4(a) and (c), 5(a) and (b), 11(a), (c), (d) and (e), and 16(a); 7 U.S.C. §§ 2011, 2012(n), 2013(a) and (c), 2014(a) and (b), 2020(a), (c), (d), and (e), and 2025(a).

from the INS.) It serves no constructive purpose in the food stamp program: as described above, the precise immigration status of ineligible immigrant parents is irrelevant to the calculation of their citizen children's benefits. Its purpose is to force the removal of eligible citizen children from the food stamp program. Federal regulations permit states to request verification only of information necessary for food stamp determinations.[20] The regulations specifically prohibit food stamp offices from discouraging eligible people from participating.[21] The sole practical function of these letters is to chill legitimate program participation by citizen children.

It also should be noted that although section 434 of the welfare law permits state and local agencies to communicate certain information to INS, it does not authorize letters to immigrant households.[22] The county has no legal need to send such letters. If the Administration determines that such letters are unfair to citizen children, it may direct the county not to transmit them.[23]

IV. Reporting Names to INS

Whatever the precise interpretation adopted of section 434 of the welfare law,[24] states and counties clearly may share some kinds of information on immigrants with the INS. Equally clear, however, is that section 434 does not immunize otherwise un-

[20] 7 C.F.R. § 273.2(f)(1)-(3).

[21] 7 C.F.R. § 273.2(c)(2)(i).

[22] San Diego also might argue that these letters help immigrant families by allowing the county to weed out those immigrant parents that have legal status in this country before it contacts the INS. This benefit would be dubious at best. The INS will be far better able than county eligibility workers to determine who is and is not lawfully present in the United States. Some parents may have checked "undocumented" because they have lost their immigration papers; the INS's computer records could show that these immigrants have lawful status. Some may be undocumented victims of domestic violence who qualify for TANF (though not food stamps) pursuant to the Violence Against Women Act (VAWA).

Moreover, the INS will understand that there is nothing illegitimate about immigrant parents applying for food stamps on behalf of their citizen children. As noted above, many legal immigrant parents in this position may incorrectly believe getting food stamps for their children could endanger the parents' immigration status and withdraw their children from the program accordingly.

[23] The questions of whether the application form violates the Food Stamp Act's "fair service" requirement and whether the proposed letter to immigrant households violates this requirement are separate questions. The Administration could find that either, both, or neither are unlawful under the statute.

[24] Section 434 provides "Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States." Pub. L. 104-193, § 434; 8 U.S.C. § 1644.

lawful activity merely because that activity is carried out with the purpose of sharing information with the INS.

Limits apply to many legal activities. Indeed, even our most cherished constitutional rights have limits. Free speech and association activity protected by the first amendment can be subjected to reasonable restrictions as to the time, place and manner it takes place.[25] Nor does the first amendment provide an absolute shield where an action violates civil rights laws. Activity sanctioned under section 434 is no less subject to reasonable limits.

In many areas of law, communication that is protected or even required in general may be prohibited if done in an improper manner. Police officers generally are required to report evidence of crimes but may be prohibited from testifying to information they seized in an illegal search or obtained through an unlawfully coercive interrogation. Doctors, lawyers, and priests may be compelled to report crimes they witness walking to or from work while at the same time being prohibited from reporting information that came into their possession in a confidential communication. In cases where disclosure is permitted, or even required, as a general matter, disclosing information obtained in an improper way may be prohibited.

In addition, even if information came into one's possession legitimately, an unlawful manner of reporting may be proscribed. Police officers who report only those crimes committed by members of a particular racial or ethnic group can be prosecuted for civil rights violations even if all of the information they report is accurate and lawfully obtained. By the same token, a policy of prosecuting only offenders that have exercised lawful first amendment rights in a particular manner (and not prosecuting other offenders) would raise serious civil rights issues even if there is no doubt that the alleged crimes had been committed.

In another example, although section 434 may allow an official to communicate with the INS about an immigrant, extortion and public integrity laws still prohibit such officials from threatening to undertake such communication unless payments are made. Similarly, an official who becomes aware of classified information that the CIA has brought a foreign national into the country may not reveal that information to an INS agent and cite section 434 as a defense to a prosecution for revealing classified material.[26]

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[25] *Cox v. New Hampshire*, 312 U.S. 569, 574 (1941) (upholding prohibition on demonstrations without parade permits); *see also, e.g., Grayned v. Rockford*, 408 U.S. 104 (1972) (upholding ban on loud demonstrations near schools while classes are in session); *Kovacs v. Cooper*, 336 U.S. 77 (1949) (upholding limits on use of sound trucks on public streets).

[26] Section 434 covers communications concerning legal aliens as well as those unlawfully in the country.

Thus, even if the Administration concludes that the type of communication San Diego proposes to make is within the ambit of section 434, the question remains whether the particular manner in which the county plans to act violates other laws.[27] If it does, the Administration may indicate that it finds communication acceptable under section 434 but insists it be done in a manner consistent with law.

It appears that the manner in which San Diego proposes to communicate is inappropriate for three reasons. First, as discussed above, it obtained this information by imposing requirements and asking questions the Administration may determine violate the Food Stamp Act's "fair service" requirement.

Second, the method by which San Diego obtained this information discriminates against nuclear family members who are living together, violating the constitutional privacy and freedom of association rights of the citizen children in these families. The Supreme Court has repeatedly held that forming a family is a "fundamental right" and that courts must subject rules or practices that restrict or punish persons exercising basic family rights to "strict scrutiny."[28] The Court has extended the right of families to live together even to extended families, striking down a municipal zoning ordinance that prevented a woman from living with her two grandchildren.[29] If the citizen children affected by San Diego's policy lived with more distant relatives or strangers — apparently undocumented relatives or strangers — they would not face the loss of their caregivers as a result of applying for food stamps.[30] Similarly, if San Diego only proposed to report immigrants who seek food stamps for themselves, it would have no differential effect based on living arrangement. But San Diego's policy explicitly tar-

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[27] A cardinal canon of statutory construction is that a court should seek to give effect to all applicable statutes, favoring a construction that avoids conflicts between them. Repeal by implication is not favored and will not be presumed unless no other reasonable construction is available.

[28] *E.g., Zablocki v. Redhail*, 434 U.S. 374 (1978) (unconstitutional to restrict remarriage by persons in arrears on child support); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (failure to waive filing fee for low-income persons seeking divorce has the unconstitutional effect of denying them the right to form a new family); *see also Loving v. Virginia*, 388 U.S. 1 (1967) (unconstitutional to restrict formation of inter-racial families).

[29] *Moore v. City of East Cleveland*, 431 U.S. 494 (1977); *see also U.S. Department of Agriculture v. Moreno*, 413 U.S. 528 (1973) (unconstitutional to deny food stamps to group of unrelated persons living together). In *Lyng v. Castillo*, 477 U.S. 635 (1986), the Court upheld food stamp rules requiring parents and children who lived together to apply for food stamps as a single unit in many circumstances, finding it improbable that this rule would burden families' choices about living arrangements. The modest reduction in food stamps to reflect economies of scale that *Castillo* upheld contrasts sharply with the threat of deportation that San Diego would impose as a penalty on citizen children living with their immigrant parents.

[30] San Diego's June 25 memo states that "[t]he following exceptions will not be reported to INS ... Unaided roommates [and] Undocumented non-needy caretaker relatives of children receiving CalWORKs." Its draft letter to immigrant households defines "caretaker relatives" as "non-parents."

gets immigrant parents living with and caring for their citizen children. In so doing, it discriminates on the basis of the exercise of the fundamental right to family association and privacy. States may not deny public benefits to persons on the basis of their exercising protected constitutional rights.[31]

Finally, San Diego relies on information obtained through coerced self-incrimination by immigrant parents. The Supreme Court has held in numerous contexts that the fifth and fourteenth amendments prohibit the state from requiring self-incrimination on pain of being denied an important privilege, such as employment,[32] permission to bid on public contracts,[33] professional licensure,[34] eligibility to hold public office,[35] or the right to defend a civil proceeding.[36] San Diego requires immigrant parents to incriminate themselves on pain of their citizen children being denied their federal entitlement to food stamps. Here again, if San Diego limited its communication to persons who voluntarily disclosed their unlawful status in the course of seeking food stamps *for themselves*, the situation would be very different.

In closing, it should be noted that even if San Diego could argue that it might have provided food stamps to the children even if their parents had declined to answer the self-incriminating questions on their children's applications, the children's parents could not reasonably have known that. Indeed, the county distributed a memo to its eligibility workers last month giving precisely the opposite message: that its staff is expected to determine non-recipient parents' precise immigration status.[37] A basic requirement of due process is that the government communicate in a manner reasonably

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[31]*E.g.*, *Shapiro v. Thompson*, 394 U.S. 618 (1969) (state may not deny welfare to persons exercising right to interstate travel); *Speiser v. Randall*, 357 U.S. 398 (1958) (state may not deny tax exemption to person refusing to make loyalty oath).

[32]*Gardner v. Broderick*, 392 U.S. 273 (1968); *Uniformed Sanitation Men Association v. Commissioner of Sanitation of New York*, 392 U.S. 280 (1968); *Garrity v. New Jersey*, 385 U.S. 493 (1967).

[33]*Lefkowitz v. Turley*, 414 U.S. 70 (1973).

[34]*Spevack v. Klein*, 385 U.S. 511 (1967).

[35]*Lefkowitz v. Cunningham*, 431 U.S. 801 (1977).

[36]*Boyd v. United States*, 116 U.S. 616 (1886).

[37]*See* footnote 15 above. San Diego's memo of June 25 is in marked contrast to California's new Medicaid application form, which takes pains to advise undocumented parents of the proper procedures to follow in seeking coverage for their citizen children. Clearly California can devise a form to address these problems appropriately.

calculated to apprise affected persons of their rights.[38] San Diego clearly did not endeavor to help immigrant parents understand that they were not required to specify their status to obtain food stamps for their children.

V. Options for the Administration

The legal situation described above gives the Administration several options to intervene on behalf of the citizen children threatened by San Diego's actions:

- The Administration could advise San Diego that it is opening a civil rights investigation into the county's plans in light of the apparent discrimination against U.S. citizen children living with their undocumented parents and the compulsory self-incrimination that results from the application form and the county's directive that its eligibility technicians press non-applicant parents to clarify their immigration status. Such an investigation could be opened at the Department of Justice, at USDA's Office of Civil Rights, or both.

- The Administration could inform San Diego that its actions and plans raise serious civil rights questions and direct the county not to proceed until these legal issues can be resolved. The Administration could ask the county to provide copies of training manuals, operations memoranda to its eligibility staff, and other documents that would help determine the legality of the county's actions.

- The Administration could direct San Diego to submit a detailed plan for how it intends to proceed and to defer implementation of further steps until the Administration can determine that this plan meets the standards established in the Food Stamp Act and civil rights laws.

- The Administration could prohibit San Diego from sending threatening letters to immigrant households as a violation of the Food Stamp Act's requirement of "fair service" to applicants and recipients.

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[38] *Greene v. Lindsay*, 456 U.S. 444 (1982); *Mullane v. Central Hanover Bank & Trust* 339 U.S. 306 (1950); *Lopez v. Espy*, 83 F. 3d 1095 (9th Cir. 1996).

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From: Andrew Hyman@IOS.IGA
Cc:
Bcc:
Subject: San Diego
Attachment: zinser.wpd
Date: 7/1/98 4:28 PM

Please see attached my note regarding my conversation today with Joan Zinser, the Director of San Diego County's Social Services Department.

July 1, 1998

NOTE TO INTERESTED PERSONS

SUBJECT: LATEST SAN DIEGO/IMMIGRANT DEVELOPMENTS

I spoke with Joan Zinser, the Director of the County's Social Services Department, this morning to get the latest information about the County's plan to issue the notice. The timing is still not determined. Due to some recent developments (e.g., the interest of the Federal government), they are considering the possibility of delaying the issuance of the notice -- perhaps for a couple of months. **In any case, the notices did not go out today**. Incidentally, she did not mention to me that the State had raised concerns.

Joan said she was open to hearing our suggestions. Although she agreed that the County would not report the names of MediCal recipients (who are applying or have applied for MediCal only), I pressed our concern that it was critical that the notice make this point explicitly. At this time, the notice is silent with respect to MediCal, and she asked that I fax our suggested addendum to the notice addressing this concern. I also suggested that the word "all" in line 4 of the second paragraph be changed to "certain". Finally, I added that she should not assume that these comments constitute all of HHS' concerns.

Joan understands that we may contact her to raise additional points, and she said she would make sure that we are kept informed of the status of the notice, including any changes and timing.

Andrew D. Hyman

JESUIT CONFERENCE

THE SOCIETY OF JESUS IN THE UNITED STATES

NATIONAL OFFICE OF SOCIAL MINISTRIES

Mr. Dennis Hayashi
Deputy Counselor to the Deputy Secretary
Department of Health and Human Services
200 Independence Avenue, SW Room 636G
Washington D.C. 20201

July 27, 1998

Dear Mr. Hayashi:

I am writing you on behalf of the Jesuit Conference Board of the Society of Jesus in the United States. We have been alerted to circumstances in San Diego County which jeopardize the stability and well-being of immigrant communities in the San Diego region and throughout the United States. It is our understanding that the County intends to send notices to its entire caseload of food stamps, general assistance and TANF recipients. These notices indicate that specific information regarding potentially undocumented immigrants will be reported to the Immigration and Naturalization Services.

The National Office of Jesuit Social Ministries, the Jesuit Refugee Service, Jesuit parishes and Jesuit schools have been engaged for many years in the service of migrants, refugees and other immigrants within the United States. We have numerous colleagues – lay persons, Jesuits and other religious – who provide services to immigrants and their communities. Our collective experience suggests that the fear, both real and perceived, incited by the reporting notices would be devastating and highly destructive to immigrants, their family members and ultimately to their surrounding communities. We believe that these fears will produce an immediate and longstanding panic causing immigrant parents to stop applying for life-sustaining benefits for their children.

We therefore ask for your continued support for national and local policies which respect the human dignity of all those in our midst. We urge you to use every means at your disposal to prevent San Diego County from proceeding with its plans.

Thank you for your consideration.

In faith,

British Robinson

Ms. British Robinson
National Director of Jesuit Social Ministries
Jesuit Conference

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From: "DAVID NIELSEN" <dnielsen@OSASPE.DHHS.GOV>
Cc:
Bcc:
Subject: More San Diego
Attachment: Headers.822
Date: 7/2/98 9:57 AM

Andy spoke last night with Joan Zinser again after he had already sent the note out to us. He wanted me to update everyone that as a result of that conversation, we now anticipate at least a limited delay in the issuance of the notice for 2-3 weeks.

ask Dennis for update