

San Diego call

10/21/98

Posting notice in San Diego

→ still has food stamps listed on the poster.

Can we recommend that posters be amended.

USDA can engage these guys in this (?)

Concern re: posters - phase out

Plans not to send out notice re: any programs (for now) and not to do more than hang up the posters.

No plans to do this in the future.

New Chair @ Co. Board of Superintendents after the election.

Options (?)

best legal argument

is re: "fair service" in Food stamps

Some in advocacy community
are urging us to issue guidance
on § 434 of PWRA.

But only if we can restrict it.

Renewed discussion re: trying to issue
guidance under § 404 (quarterly)

Narrow definition (result in
very little repatriation)

affects SSI/TANF
and housing
programs.

~~Guidance with no~~

Sau Diego asked them for some info re:
health impact on families if they want
to go forward. Letter outlines "fair service" ap.
OLC: only affects those 3 programs.

to § 404 Food Stamps has had a requirement
since 1980 (narrowly construed)

Timeline for § 404 (?) (from INS)

Next Steps (?)

USDA put down "fair service" app.
in an earlier draft of the letter.

⊕

§ 404 guidance

have started
working on
draft rep.

USDA to get letter over to

US, HHS, DOJ (Barbara Straele ⊕)
(DPC) OMB James Castello

Faxed us a copy of Sau Diego notice

They are
also seeking info
re: Medicaid
(something from outside
source)

or
Allison Stolbenworth



STEPHANIE KLOPFLEISCH
Director

**COMMUNITY AND SENIOR SERVICES
OF LOS ANGELES COUNTY**

BOARD OF SUPERVISORS

GLORIA MOLINA
YVONNE BRATHWAITE BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICH

Date: 8/26/99

To: Irene Bueno

From: MARK TAJIMA, Director

INTERGOVERNMENTAL RELATIONS

Phone #: 213-738-2273

Fax #: 213-427-6104

E-mail: mtajima@co.la.ca.us

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NUMBER OF PAGES (INCLUDING THIS COVER SHEET) 5

COMMENTS:

FYI, attached are updates on recent State actions re:
State-only programs for legal immigrants. IF you call APALL,
they probably would love to have you on their fax list.

Asian Pacific American Legal Center • Immigrant Welfare Project

IMMIGRANT
WELFARE UPDATE # 2.6

Vol. 2, No. 6

August 19, 1999

NEWS

**GREAT NEWS: CALIFORNIA EXTENDS & EXPANDS
IMMIGRANT ELIGIBILITY FOR WELFARE & HEALTH PROGRAMS!****● SACRAMENTO WATCH: State Extends CAPI & Food Stamps Beyond July 2000; State Also Expands CAPI, Food Stamps & Healthy Families to Recent Immigrants**

As a result of *your* calls, faxes & demonstrations, this year's final state budget includes several expansions & extensions for immigrants. Earlier this summer, Governor Gray Davis threatened to end the Cash Assistance Program for Immigrants (CAPI) and the future of many welfare & health programs for immigrants seemed uncertain. The Governor's threats, however, galvanized the community and your advocacy caused the Governor to back off on his threats.

Following is a summary of the changes signed by Governor Davis on July 22, 1999 (detailed explanation of program changes will be faxed next week):

✓ **CASH ASSISTANCE PROGRAM FOR IMMIGRANTS (CAPI)**

- ◆ **CAPI Extended Indefinitely.** The CAPI program will not end in July 2000, as originally scheduled.
- ◆ **CAPI Expanded to Recent Immigrants.** Elderly or disabled immigrants who arrive on or after August 22, 1996 ("recent" immigrants) may now be eligible for CAPI, although certain sponsor deeming rules may apply. This expansion is authorized for only one year and is scheduled to end September 30, 2000.
- ◆ **Implementation.** Counties should begin accepting CAPI applications for recent immigrants on September 1, 1999 and benefits will begin October 1, 1999. *Questions: call Karin Wang (APALC), 213/748-2022 x20.*

✓ **CALIFORNIA FOOD ASSISTANCE PROGRAM (CFAP)**

- ◆ **CFAP Extended Indefinitely.** The CFAP program will not end in July 2000, as originally scheduled.
- ◆ **CFAP Expanded to Recent Immigrants.** Immigrants who arrive on or after August 22, 1996 may now be eligible for food stamps. This expansion is authorized for only one year and is scheduled to end September 30, 2000.
- ◆ **CFAP Expanded to Cover Certain Immigrant Groups.** Additional categories of immigrants may now qualify for state-funded food stamps, including certain battered immigrants & Cuban/Haitian entrants.
- ◆ **CFAP Work Requirements Equalized.** CFAP recipients now will be required to meet the same work requirements as those receiving federal food stamps.
- ◆ **Implementation.** Counties should begin accepting CFAP applications for recent immigrants on September 1, 1999 and benefits will begin October 1, 1999. *Questions: call Dennis Kao (APALC), 213/748-2022 x15.*

✓ **HEALTHY FAMILIES**

- ◆ **Healthy Families Expanded to Recent Immigrants.** Immigrant children who arrive in the US on or after August 22, 1996 may now be eligible for Healthy Families. Thus, date of physical entry to the US is no longer a barrier to accessing Healthy Families.
- ◆ **Healthy Families Income Level Rises.** Children in families with incomes up to 250% of federal poverty level are now eligible for Healthy Families (up from 200%). For a family of four, this equals \$41,750.
- ◆ **Implementation.** Eligibility for recent immigrant children is effective immediately. *Questions: call Karin Wang (APALC), 213/748-2022 x20.*

Date: 8/20/1999 Time: 6:24:38 PM

From: Immigrant Welfare Project To: Mark Tajima

Asian Pacific American Legal Center • Immigrant Welfare Project

- ✓ **LONG-TERM CARE** – The long-term care program did not fare as well in this year's budget negotiations. Immigrants, regardless of immigration status, continue to be eligible for long-term care, but Governor Davis limited growth of this program to no more than 110% of its current population.

● PRENATAL CARE: Pregnancy-Related Care Restored for All Immigrant Women

Governor Davis also has signed AB 1107, a state bill which provides Medi-Cal prenatal care to all poor women, regardless of immigration status. The signing of AB 1107 is a major policy victory for immigrants, although the practical effect for clients is limited since lawsuits have maintained prenatal care for all women.

Under former Governor Pete Wilson, the state tried to end prenatal care for undocumented immigrants. Advocates filed lawsuits against the state, and a court issued a temporary injunction, which required the state to continue prenatal care services for all women regardless of immigration status. Governor Davis' action is expected to resolve the lawsuits and permanently continue the prenatal care program. *Questions: call Karin Wang (APALC), 213/748-2022 x20.*

● UNDOCUMENTED IMMIGRANTS: Welfare Applications Will Stop Asking About Undocumented Family Members

The state Department of Social Services (DSS) has announced that the application form for county-administered welfare programs, including CalWORKs, food stamps and Medi-Cal, will no longer ask if the applicant or anyone in the applicant's household is undocumented. The old form has scared many immigrant families from applying for welfare or health benefits, for fear of having to identify an undocumented family member, even though that family member was not seeking benefits. The new application forms will be available in September or October 1999 and will be translated by the state in Spanish, Chinese, Cambodian, Russian & Vietnamese. On the new form, applicants will be asked if they are citizens or non-citizens and non-citizens will be asked if they have sponsors. Note: To be eligible for benefits, applicants may still have to show proof of their immigration status. *Questions: call Braden Cancilla (National Immigration Law Center), 213/639-3900 x114.*

POLICY UPDATE**ASHINGTON WATCH: "Fix '96" Campaign Kicks Off**

Three years after the passage of federal welfare and immigration reform, a national campaign to remedy the wrongs of 1996 picks up speed in the next month. Nicknamed "Fix '96," the campaign focuses on passing legislation to repeal harsh provisions of immigration reform and to restore immigrant eligibility for safety net programs. Local advocacy efforts will culminate with a national lobby day in Washington, D.C., on September 17, 1999.

A primary goal of "Fix '96" is passage of the Fairness to Legal Immigrants Act of 1999, introduced in Congress in April 1999. The Act proposes to restore a number of safety net benefits to qualified immigrants that were terminated in 1996. Among the impacted programs are the Children's Health Insurance Program (Healthy Families in California), Supplemental Security Income (SSI), and food stamps. [See Welfare Updates 2.4 & 2.5.]

WE NEED YOU & YOUR CLIENTS TO HELP PASS THE FAIRNESS TO LEGAL IMMIGRANTS ACT OF 1999!
To convince members of Congress to support the Act, APALC is collecting personal messages from immigrants urging Congress to pass the Fairness to Legal Immigrants Act. Like last year's successful "paper plate" campaign, advocates have developed a visual tool to remind Congress of the need to pass the Act – immigrants are being asked to write messages to Congress on tax forms, to emphasize that "immigrants deserve equal treatment because immigrants pay taxes too." *Questions or for a copy of the tax form (translated into Spanish, Chinese & Vietnamese): call Dennis Kao (APALC), 213/748-2022 x15.*

Date: 8/20/1999 Time: 8:24:38 PM

From: Immigrant Welfare Project To: Mark Tajima

Asian Pacific American Legal Center • Immigrant Welfare Project

COMMUNITY EDUCATION**• CONSUMER RIGHTS: Translated Materials Available on Electronic Funds Transfer (EFT) for Government Benefits**

A new federal law provides recipients of federal government benefits with an alternative to paper checks – electronic direct deposit. The federal government has developed educational materials in several languages: (1) consumer-oriented pamphlet, available in English, Spanish, Chinese & Vietnamese; (2) poster & video available in English & Spanish; and (3) comprehensive substantive guide available in English & Spanish. To order materials, call the Department of the Treasury in Washington, D.C., 202/874-6540. Question: call Consumer Action (a consumer rights organization), 800/320-4071 (toll-free).

• PUBLIC CHARGE: Miscellaneous Education & Training Resources**✓ COMMUNITY EDUCATION RESOURCES on the new public charge guidance:**

- Consumer flyer – The California Immigrant Welfare Collaborative (CIWC) has developed a 2-page flyer targeted at consumers. The flyer has been translated into: Spanish, Russian, Armenian, Farsi, Chinese, Korean, Tagalog, Vietnamese, Cambodian, Thai, Hindi, Bengali, Samoan & Tongan. Copies: call Mike Munoz (National Immigration Law Center), 213/639-3900 x110.
- Service provider/advocate piece – CIWC has also developed a 6-page question & answer handout, intended for service providers & advocates. The question & answer handout is available in English. Copies: call Mike Munoz (NILC), 213/639-3900 x110 or check the web at <http://www.nilc.org/ciwc/pubchgce.htm>.
- INS question & answer piece – The Immigration & Naturalization Service (INS) has translated its 15-page question & answer piece into Spanish, Chinese, Korean, Vietnamese & Thai. English & Spanish versions: check the web at <http://www.ins.usdoj.gov/graphics/publicaffairs/presinfo4.htm#PublicCharge>. Asian language versions: call Marijo Grisson (INS LA District office), 213/894-7283.

- ✓ **TRAININGS on the new public charge guidance** – Staff from CIWC agencies are available for in-service trainings on the new public charge guidance. To schedule a training, call Sheila Neville (NILC), 213/639-3900 x116 or Sissy Trinh (APALC), 213/748-2022 x41.

OTHER RESOURCES**• HEALTH: Health Consumer Centers Provide Education & Individual Advocacy in Los Angeles, Orange & San Diego Counties**

Is your client being asked to repay Medi-Cal benefits even though she has no income? Are you confused about what health care services are available for an adult who is not disabled? For questions like these, you can turn to health consumer centers serving six of California's most populous counties. In Southern California, health consumer centers currently serve residents of Los Angeles, Orange & San Diego counties. The centers focus on: (1) education of providers & consumers on health care programs & rights; and (2) advocacy for clients with health access issues. Both clients & service providers can call these health consumer centers for assistance. However, the bilingual capacity of the centers vary (especially for non-Spanish languages), so service providers should call ahead for monolingual clients. For more information or assistance for clients, call:

- Los Angeles County – 800/869-3203
- Orange County – 800/834-5001 or 714/571-5200
- San Diego County – 619/262-0896

Date: 8/25/1999 Time: 11:03:32 PM

From: Immigrant Welfare Project To: Mark Tajima

Asian Pacific American Legal Center ♦ Immigrant Welfare Project

IMMIGRANT
WELFARE UPDATE # 2.6A

Vol. 2, No. 6A

August 24, 1999

NEWS

HEALTHY FAMILIES: State Expands Program to Cover More Children & Immigrants**REVISED – UPDATED INFORMATION ON EFFECTIVE DATES!**

Recently, the state expanded the Healthy Families program as well as the CAPI & state food stamps programs [see *Welfare Update 2.6 (August 19, 1999)*]. Healthy Families is a low-cost health insurance program for low-income children. The following highlights the recent changes to Healthy Families (watch your fax for more information on the changes to the other programs):

♦ **Expanded to Recent Immigrants.**

- ♦ **Date of entry into the US no longer a barrier.** Before this year, "qualified immigrant" children were eligible for Healthy Families only if they were already in the US by August 22, 1996. Now, "qualified immigrant" children who arrived in the US on or after August 22, 1996, are eligible for Healthy Families too.
- ♦ **Limited eligibility.** Recent immigrant children are eligible for only 12 months of Healthy Families. The law may change to extend eligibility beyond 12 months – APALC will update you regarding any changes.
- ♦ **Must apply by June 30, 2000.**
- ♦ **EFFECTIVE IMMEDIATELY!**

♦ **Eligible Income Level Rises.**

- ♦ **Up to 250% FPL.** Children in families with incomes up to 250% of the federal poverty level (FPL) are now eligible for Healthy Families (up from 200%). As a result of this expansion, an estimated additional 172,000 children will be eligible for Healthy Families. See chart below for new income levels:

	1 person	2 persons	3 persons	4 persons	5 persons	6 persons
Monthly	\$1,718	\$2,305	\$2,893	\$3,480	\$4,068	\$4,655
Yearly	\$20,600	\$27,650	\$34,700	\$41,750	\$48,800	\$55,850

- ♦ **Beyond 250% FPL.** Some families with income above 250% FPL may also be eligible for Healthy Families, because Healthy Families will now allow certain income to be deducted (such as child care expenses).
- ♦ **EFFECTIVE DATE – PROBABLY IN NOVEMBER 1999.** Although we believe the state should have implemented the expansions upon passage of the state budget in July, families that apply now will be denied by the state. APALC will update you when the effective date becomes clear.
- ♦ **Expanded to Newborns.**
 - ♦ Before this year, only kids ages 1 through 18 were eligible for Healthy Families. Now, children 12 months old or younger will be eligible for Healthy Families.
 - ♦ **EFFECTIVE DATE** – unclear at this time but probably in October or November 1999.
- ♦ **Minors Can Apply.**
 - ♦ Minors (18 years old or younger) can now apply for Healthy Families for their own children or for themselves, if the minor is not living with parents or a guardian.
 - ♦ **EFFECTIVE DATE** – unclear at this time but probably in October or November 1999.

Questions: call Karin Wang (APALC), 213/748-2022 x20.

Thanks to National Immigration Law Center, Western Center on Law & Poverty & 100% Campaign for information used above.

APALC ♦ 1010 S. Flower St., Suite 302 ♦ Los Angeles CA 90015 ♦ 213.748.2022



Edwin Lau

10/14/98 02:10:05 PM

Record Type: Record

To: Barbara Chow/OMB/EOP, Barry White/OMB/EOP, Jack A. Smalligan/OMB/EOP
cc: See the distribution list at the bottom of this message
Subject: San Diego Immigrant Issue Appears to be Resolved

As you recall, Julie Paradis and FNS staff met with the San Diego Co. Dept of Health & Human Services last Friday. They have reported back that San Diego does not intend to take any action in the near future with regards to Food Stamps households with undocumented members.

Dennis Hiyashi's analysis of the California political climate was right on the mark. It seems that the California State Assembly has expressed displeasure with San Diego's plan. While the San Diego Board of Supervisors is still concerned over costs associated with undocumented aliens, they do not want to risk losing funding on other projects by pressing this particular issue.

FNS staff laid out the Administration's concerns, but there was no real discussion as the county had already made up its mind. San Diego HHS staff were sympathetic to the Administration position, but warned that the issue could come up again if there is a shift in the State Assembly.

Of note: San Diego food stamp offices have posters up that warn applicants that information from their application form may be shared with INS if they are undocumented. This may already have a chilling effect on food stamp applications by households with undocumented members. Staff were concerned, however, that requiring offices to remove the posters might exacerbate the situation.

Message Copied To:

Cynthia A. Rice/OPD/EOP
Emil E. Parker/OPD/EOP
Anil Kakani/OMB/EOP
Julie A. Fernandes/OPD/EOP
Jeffrey A. Farkas/OMB/EOP

 Emil E. Parker
08/12/98 11:26:54 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: Jack A. Smalligan/OMB/EOP, Robert N. Weiner/WHO/EOP, Edwin Lau/OMB/EOP, Julie A. Fernandes/OPD/EOP
bcc:
Subject: Re: Pls look at this re: San Diego 

I believe it would be quite unusual to have a legal immigrant child and an undocumented parent. The chilling effect of the San Diego letter, however, would almost certainly affect legal immigrant as well as undocumented parents. The Urban Institute study of LA County found a bigger drop in newly approved TANF/Medicaid cases for legal immigrants than for undocumented immigrants applying on behalf of their children. This drop among legal immigrants is probably attributable primarily to confusion/misinformation about public charge and Proposition 187 (e.g., that being deemed a public charge could prevent a legal immigrant from naturalizing).

A letter from San Diego (and similar letters from other jurisdictions) would likely generate the same sort of misinformation in the legal immigrant community, with similar results.

Cynthia A. Rice

 Cynthia A. Rice 08/11/98 12:31:20 PM

Record Type: Record

To: Jack A. Smalligan/OMB/EOP, Emil E. Parker/OPD/EOP, Robert N. Weiner/WHO/EOP, Edwin Lau/OMB/EOP
cc: Julie A. Fernandes/OPD/EOP
Subject: Pls look at this re: San Diego



sd0811.wp Rob tells me that DOJ and USDA lawyers are conversing further this morning and DOJ plans to provide us with additional feedback by week's end. Rob, would it be helpful if I organized a conference call with us and DOJ?

I've written up the attached summary of the issues (just for internal use). Please provide me with any corrections or suggestions by COB today if possible.

A few questions --

(1) Can you tell me more about what USDA's administrative options would be if San Diego does not respond positively to the letter? Rob characterized it as a "nuclear bomb" type of threat. What

does that mean? Would USDA say the state plan was out of compliance and withhold all federal funds? All federal administrative funds?

(2) USDA's paper noted that sending a letter re: San Diego would protect the Administration's recent legislative victory in the Ag Research bill which made immigrant children eligible for Food Stamps regardless of their parents status. Isn't it pretty unlikely that a child would be a legal immigrant (vs a U.S. citizen) and their parent(s) undocumented?

San Diego Immigrant Issue

San Diego Action

- San Diego County plans to send a letter to all welfare and Food Stamp recipients stating that the county will report to the INS undocumented adults living in the home.
- States are required to report to the INS any individual a State “knows” is unlawfully in the U.S., but are not required to ask about immigration status on benefit applications.

Effect of San Diego Policy

- Undocumented parents may be deterred from applying for or receiving Food Stamps for their U.S. citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego’s policy.
- During welfare reform, the Administration supported maintaining U.S. citizen children’s eligibility for benefits (even as legal immigrants were made ineligible) and the Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children irregardless of their parents’ immigration status.

Possible Administration Action

- USDA could send a letter to the state of California asking that action be delayed concerns can be resolved and stating “Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children.”
- The letter would further state that “Based on our current understanding of the County’s plans, we believe that the fair service requirement of the law would be violated.” The Food Stamp 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.”
- Subsequent to sending a letter, USDA could begin a formal rulemaking process to define this issue in regulations.



Cynthia A. Rice

08/12/98 07:04:33 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Pls look at this re: San Diego 



sd0813.wp I've done a more principals-friendly version. What do you think?

Cynthia A. Rice



Cynthia A. Rice

08/11/98 12:31:20 PM

Record Type: Record

To: Jack A. Smalligan/OMB/EOP, Emil E. Parker/OPD/EOP, Robert N. Weiner/WHO/EOP, Edwin Lau/OMB/EOP
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Message Copied To:

Jack A. Smalligan/OMB/EOP
Emil E. Parker/OPD/EOP
Robert N. Weiner/WHO/EOP
Edwin Lau/OMB/EOP
Julie A. Fernandes/OPD/EOP

~~San Diego~~ San Diego

9/16/98

^{USDA}
Raised objections w/ San Diego re: food stamp reporting.
USDA ~~to~~ was to go out to San Diego to raise issues.

Q: Should USDA go out there (?)

F&S Costs to San Diego for doing this (separate forms, etc.)

USDA - happy to go out there

* But result will be to only exclude foodstamp-only cases.

USDA: had an understanding that San Diego was more interested in criminal aliens.

HHS met w/ San Diego folks in August. (after INS did)
Zhao/Ross (on program side) - They think that the Board & the Co. are interested in.

INS conv. w/ San Diego — if you pursue this reporting, this is what we would do with this information.

USDA was surprised that San Diego would be ~~so~~ easy to separate.

Email: we may want them to create different forms.

Can only send letter to TANF families.

collection of info re: foodstamps @ chilling

→ 80% of food stamp households receive TANF.



HHS wants: prevent sending out letters ~~to~~ to the caseload.

→ Do we have an option where Fed. govt. sends

RW: Leave to INS to work w/ the Co. in whatever way it wants re: enforcement.

(BUT - ~~We~~ don't want letter sent out to caseload ~~to enforcement~~ ^{to enhance immigration} for enforcement)

(+ ~~We~~ don't think letters can go out to food stamp recipients @ all.)

~~Send letters starting~~

w/ existing info →

If ~~San~~ San Diego Co. sends letter to families that they already have info on, we could argue that that notice would cause parents to withdraw from food stamp program.

Raise a large # of Qs:

USDA

needs to have this conversation w/ San Diego

(based on fair service chilling effect on food stamp households)

Get back to us.

[Conversations re: a bit of a process lots of bureaucracy]

Justice needs to
regulate under §434

San Diego first run - fed to set up mechanism to report

Didn't want reporting to happen

INS wants to help states when they are ready to report

No INS regs (might promote reporting)

Barbara & Bob went out to talk to Co. @ INS dist of

Made clear that by intention @ experience

The use of info off welfare rolls not a
good enforcement lead for INS.

Not productive (waste of \$)

⊕

given INS priorities, only thing INS would
likely do is run against criminal files.

Co. heard that: pleased about funds, unhappy
but disappointed not doing
else.

Educating San Diego Co.

How to report (electronically)

clear expectations

worry about confidentiality/privacy

INS made contact w/ community folks.

(through them to Co. Supervisors)

Intensify
and expand
this effort

that if San Diego really wanted to do something
to reduce their costs, better way to do it
is through Co. Jail project — INS identifies people in
jail who can be deported

Later,

~~But~~ HHS went out to San Diego

Co. people said if INS does jail projects
they will not report.

INS said: This is not a negotiation to
prevent people from reporting.

INS understood that INS was supposed to come
up w/ a deal.

INS not in a position to make a deal

Bob talked to Castello yesterday. Dennis
He agreed that Bob should talk to Hyashi.

Polhi change

Talked to Virtue

Draft of policy options paper in the building

~~Notes for~~

Will have an options paper next Friday

not a legal opinion

Policy options paper — to be discussed
w/in INS

NACARA

Sept. 11 - end period for motion to re-open

People are pleased w/ the process

Concern that problems in the field

(Bob is looking into making sure most generous NACARA implementation)

Bob talking to Nat. Immig. Forum

Immigrant benefits update

August 21, 1998

We had a conference call on Wednesday, August 19 to discuss recent INS and HHS contacts with San Diego County Health and Human Services staff regarding the INS reporting contemplated by the County.

The big news came from Andy Hyman of HHS, who reported that neither Robert Ross, head of San Diego County Health and Human Services, nor Joan Zinzer, head of SD County Human Services (an agency within SD County HHS) wants to "indiscriminately" report all undocumented adults in benefit-receiving households to INS and sent notice of said reporting to these households.

A majority of the Board of Supervisors, however, does not share Ross and Zinzer's view. Apparently, three members of the Board are eager to implement the reporting policy, while the remaining two are on the fence.

When Andy mentioned that the reporting contemplated could be a problem with regard to food stamps, Zinzer and Ross apparently said that the County would then simply remove the mention of food stamps from the letter (and presumably not send it to the 25 percent of the caseload which is food stamps only cases). The County officials probably did not realize that since we are concerned about collection and reporting of the information as well as sending of the notice, addressing our objections would very likely require creation of a separate form for the food stamp program.

According to Andy, both Zinzer and Ross asked if the Federal government could come up with a compromise reporting proposal (e.g., INS sends SD County lists of criminal aliens, SD County tells INS if any is in a benefit-receiving household) that would allow the Board of Supervisors to gracefully retreat from the current reporting plan.

Barbara Strack, however, said that when she visited somewhat earlier Zinzer did not express any discomfort about the proposed reporting and notice policy. The INS representatives did make it clear that the Service, if it received names, would generally follow up only in cases of criminal aliens (and possibly aliens subject to a final order of deportation or those who have returned after deportation). The INS staff wanted to make certain that the County did not have unrealistic expectations regarding the likely INS response to the reporting.

Barbara spoke with Bob Bock, who is apparently very uncomfortable with the idea of devising a compromise proposal to share with SD County as an alternative to reporting. His view is that even the appearance of a *quid pro quo* would be

problematic, and that this issue is likely to recur in other jurisdictions and INS does not want to be in the position of developing targeted alternatives in each case. I tend to agree with him on this point. Bock does think, and I concur, that it may be time to communicate with the Board of Supervisors more directly in an attempt to dissuade them from proceeding along their current misguided path; the question is how best to do this. Perhaps Lynn Cutler from IGA and local advocates could help us develop a strategy.

There was also discussion during the call of whether, if the County does proceed with reporting, it should also send the notice to households. The County claimed that such notification was required under Section 404 (Barbara Strack attempted to correct them on this point) and in any event is standard procedure in the County whenever a change is made in a benefits program. Legal services attorneys active on this issue are, understandably, apparently of two minds about the notice.

Andy said there was no way to tell when SD County might move to implement the reporting and notice policy, but he added that he expects we would receive advance warning from Zinzer and/or Ross if the County decides to proceed.

Public charge

Regarding public charge, we did not meet or do much of anything else, since according to Barbara the INS lawyers have not yet completed their analysis of Medicaid public charge issues (there is some dispute within their Counsel's office). In Seattle she apparently plans to just discuss the "totality of the circumstances" business, but she will also confirm that receipt of Medicaid by a citizen child should not play any role in the public charge determination for the parent(s) -- clarifying that point should be helpful.

Andy Hyman said that he and other visitors to California are finding that public charge-related fear is rampant out there; we need to get some guidance out to INS field offices on this ASAP. As I mentioned to Julie earlier, it may be time to elevate this matter. Elena seems perfect for the job of prodding INS with regard to public charge; Sally Katzen would probably be happy to co-host a deputies meeting with her on this topic.

I will be out next week. I told Barbara Strack that one or both of you will be calling her next week; Bob Bock is out until August 31.

P.S. Usually I don't take very good notes during meetings/conference calls, much less write them up -- I'm making an exception for you two.

San Diego Immigrant Issue

San Diego Action: San Diego County plans to send a letter to all CalWORKS (TANF), Food Stamps, and General Relief (but not Medicaid) recipients stating that the county plans to provide immigration status information to the INS for all undocumented adults living in the home except in certain very limited circumstances (in cases of domestic violence or children are being cared for by a non-parent relative). San Diego uses an application form which requires parents to specify their immigration status (with one box labeled "undocumented") even if they are not applying for assistance for themselves.

Effect of San Diego Policy: Undocumented parents may be deterred from applying for or receiving Food Stamps for their citizen children. Children cannot apply for their own benefits; application must be made by a parent or another adult exercising parental control. According to advocates, as many as 428,000 citizen children nationwide could be blocked from obtaining Food Stamps if other jurisdictions follow San Diego's policy.

Legal Basis of San Diego Policy: Section 404 of the Personal Responsibility Act says that each state that receives a TANF grant "shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is unlawfully in the United States." Advocates note that if San Diego did not have an application form requiring parents to check "undocumented" then they would not "know." In addition, section 434 of the welfare law says "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."

Legislative History on Eligibility for Citizen Children: Early versions of Congressional welfare reform proposals which had made citizen children ineligible for benefits were amended before final passage to maintain their eligibility. The Agriculture Research bill enacted in June restored Food Stamps to legal immigrant children regardless of their parents' immigration status.

Possible Action: USDA could send a letter to the state of California saying "Our concern is that requiring ineligible parents to go beyond the requirements of the Food Stamp program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children" and asking that action be delayed until this concern can be resolved. The letter would focus on the effect of collecting information on the Food Stamp application on the service received by eligible, U.S. citizen children (and not on the

reporting of information to the INS).

Legal Basis of Possible Action: The Food Stamp Act, as amended by the welfare reform 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." This requirement has not been defined in regulations.

Possible Additional Action: If the San Diego refuses to changes its policy, then USDA could bring administrative action against the state. In addition, USDA could begin a rulemaking to define "timely, accurate, and fair service."

Executive Office of the President
Office of Management and Budget
Associate Director for Education, Income Maintenance and Labor
260 Old Executive Office Building
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FACSIMILE COVER SHEET

Date: 8/3/98

To: Attn: Leslie Bernstein
Maria Echaveste

cc: Cynthia Rice, Julie Fernandez, Rob Weiner

62883 65581 61647
Emil Parker x62223, Jack Smalligan, Barry White

Fax number:

62883

From: Barbara Chow

Number of pages (including cover sheet): 4

Comments:

We have tentatively scheduled a meeting for Thurs,
Aug 4 at 11:00 AM to discuss the San Diego County
issue. Attached is a draft FNS letter that was
sent to Emil Parker. We hope to discuss this at
the Thurs. meeting. Thank
Sandra 59153

DRAFT

**Commissioner
Department of Social Services
State of California**

We are writing to express our concerns about the plans of San Diego County to send information concerning the parents of children participating in the Food Stamp Program to the Immigration and Naturalization Service (INS).

Our understanding is that the County plans to send information about alien parents who applied for benefits on behalf of their children to the INS if the parents did not evidence their official alien status at the time of application and were coded as "undocumented".

The Food Stamp Act requires agencies that administer the program to provide "fair service" to applicants and recipients. The Act clearly envisions that all eligible persons will be served - no conditions of eligibility beyond those described in the Act may be imposed. We are concerned about the access of eligible children to the program. Children cannot apply on their own for benefits; application must be made by a parent or another adult exercising parental control. If the parent cannot establish food stamp eligibility because of their immigration status, any citizen children and certain alien children are still entitled to benefits. However, if the parents do not apply, there is no way that their children can receive this entitlement.

Our concern is that by requiring ineligible parents to go beyond the requirements of the Food Stamp Program and provide more detailed information as to why they are ineligible, many parents will be deterred from making application for eligible children. The Food Stamp Program requires verification of the status of eligible aliens. However, if a person is not claiming to be eligible, there is no reason to go any further and further identify alien status. The identification of undocumented parents combined with the County's plan to forward their names and addresses to the INS is likely to have such a chilling impact on applications that eligible children will not be able to access the benefits for which Congress has made them eligible.

Based on our current understanding of the County's plans, we believe that the fair service requirement of the law would be violated. We are asking you to direct the County to delay any plans for the disclosure of undocumented family members until this concern can be resolved.

**Susan Carr Gossman
Deputy Administrator for Food Stamps
Food and Nutrition Service**

DRAFT**PROPOSED RESPONSE TO SAN DIEGO COUNTY**

Background: San Diego County (County) administers the Food Stamp Program (Program) under the direction of the State agency. Prior to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or welfare reform), the County required parents of eligible citizen-children to identify their alien status by checking one of several boxes on an application form. The parents were required to identify their alien status even if they asserted ineligibility based on their status. One of the boxes on the County's application was marked "undocumented." The County intends to continue this collection and, relying on new information-sharing authority in welfare reform, also to provide the Immigration and Naturalization Service (INS) with "immigration status information for all undocumented adults" living in a home that receives or applies for Program benefits. The County also intends to send notices to all currently participating households containing self-identified "undocumented" alien members informing them that this information will be given to the INS.

In a hypothetically possible (though exceedingly rare) number of cases, the alien status of the parent asserting ineligibility may affect the eligibility of the remaining members of the household. The Food and Nutrition Service (FNS) believes the County's planned course of action will cause undocumented parents to forego Program benefits for their citizen-children out of fear of being reported to INS.

Issues: Does the Food Stamp Act of 1977 (Act) or regulations prohibit (1) the collection of this alien status information; and (2) the mailing of notices based on information the County has already collected?

Analysis: Neither the Act nor regulations expressly prohibit either the ongoing collection of this information or the mailing of the proposed notices. However, the Act provides that the State agency, "shall provide timely, accurate, and *fair service* to applicants for, and participants in, the ... [P]rogram." (Emphasis added.) 7 U.S.C. 2020(e)(2)(B)(i). This fair service requirement appears in a paragraph specifying that a State agency shall establish procedures governing the operation of Program offices that the State agency "determines best serve households in the State." 7 U.S.C. 2020(e)(2)(A).

Fair service is not defined in the Act or regulations. Neither does the conference report illuminate the concept. The requirement was inserted into the Act by welfare reform. The provision has not been construed by FNS or the courts. Fair service could be interpreted by FNS to incorporate a balancing test. This would entail FNS examining a questioned State agency procedure by weighing the anticipated benefit of the procedure to Program administration and participation against the anticipated detriment of the procedure to Program administration and participation. Any procedure whose detriment substantially outweighed its benefit would be viewed as providing unfair service. Unfair service would be violative of the section 11(e)(2)(B)(i) of the Act and, consequently, prohibited. 7 U.S.C. §2020(e)(2)(B)(i).

Unfortunately, this interpretation would be at odds with the State agency's express authority to verify the size of an applicant household and "such other eligibility factors as the State agency

determines are necessary." 7 U.S.C. §2020(e)(3). By interpreting fair service as set forth in the preceding paragraph, FNS would effectively prevent the State agency from collecting some information (in this case, the alien status of a parent who asserts ineligibility) that may directly affect household size and eligibility and that the State agency has determined is "necessary" (which, however, FNS believes is unnecessary). Additionally "fair service" appears in a paragraph defining how the State agency, not FNS, should establish procedures governing the operation of Program offices.

Given these concerns, the proposed interpretation of fair service should be buttressed by a rulemaking explicitly including this balancing test in Program regulations. A final rule would greatly increase the deference given by a court to FNS's interpretation. This rulemaking should be expedited in an attempt to avoid a possible adverse court ruling the legal effect of which might preclude the proposed interpretation.

Proposed actions: Inform the State and County of our legal interpretation of the fair service requirement and that using the balancing test we have determined its information collection and proposed notices violate the Act because they result in the provision of unfair service to both Program applicants and participants. Invite the County to provide documentation and analysis refuting this determination.

Pros: (1) Casts in legal terms an important policy concern;

(2) Provides an avenue to communicate these concerns to the State and County and, therefore, possibly prevent or delay the implementation of its information collection and notifications;

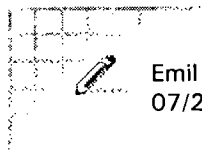
(3) Potentially prevents the County from driving citizen-children off the Program (As originally proposed, welfare reform made citizen-children ineligible for the Program; based on strong Administration pressure this provision was removed);

(4) Protects the Administration's recent legislative victory (in Agriculture Research, Extension, and Education Reform Act of 1998) making immigrant children eligible for the Program regardless of their parent's alien status.

Cons: (1) Although based on a plausible legal argument, the Department of Agriculture views the proposed interpretation of fair service as weak;

(2) The proposed actions could be portrayed as attempts to protect illegal aliens by frustrating the County's effort to exercise its new information-sharing authority provided for in welfare reform;

(3) Should the County seek legal redress against FNS, it is unlikely that Program regulations would be amended in time;



Emil E. Parker
07/20/98 04:53:41 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP, Robert N. Weiner/WHO/EOP, Jack A. Smalligan/OMB/EOP, Julie A. Fernandes/OPD/EOP

cc:

Subject: San Diego

Below are the best arguments (in my judgement) found in the Josh Bernstein memo regarding the proposed San Diego County reporting policy.

NOTE: He handed out the memo at a meeting with advocates last Thursday on the San Diego issue.

Rob: Have you had a chance to review the Bernstein memo? If so, do you think it suggests new avenues/angles for us to pursue?

Diana: Have you heard back from DOJ (Allison Stollenwerk and/or OLC) on the Bernstein memo? Have you received the promised paper on the food stamps aspect of the issue from Center on Budget?

Should we set up a conference call, with DOJ at least and possibly DOJ, USDA and HHS, for Tuesday or Wednesday?

Bernstein memo arguments

1. The San Diego County policy is an attempt to control immigration -- the goal (albeit unstated) is to have undocumented immigrant parents depart the country, taking their U.S. citizen children with them. As such, the approach is not constitutional, since regulation of immigration is reserved to the Federal government.

Problem: How to interpret Section 434 (of PRWORA) in this context. Are there any circumstances under which a State or local governmental entity can send information, other than that required by Section 404, to INS on immigration status? If so, what are they? If not, is Section 434 unconstitutional? What is the qualitative difference between Section 434 and, e.g., Section 402(b), which allows States to determine legal immigrant eligibility for TANF, SSBG and Medicaid? Does 402(b) not constitute regulation of the "conditions under which a legal entrant may remain"?

2. The San Diego approach represents *de facto* discrimination on the basis of national origin -- the goal is to deny TANF, food stamp and/or Medicaid benefits to citizen children of

undocumented immigrants. In San Diego, these children are virtually all of Latino or Asian origin.

Perhaps this was addressed in one of the conference calls, but I can't recall the resolution.

3. San Diego County proposes to report individuals who are unable to present documentation verifying citizenship/immigrant status. Would this practice constitute verification of status? If so, does Section 434 or Section 642 of IIRIRA authorize government entities to verify the status of an individual who is not applying for benefits on his/her own behalf?

According to the memo, the DOJ verification guidance does not *authorize* such verification under Section 404. Is this correct, or does the DOJ guidance simply not *require* verification of status for an individual applying on behalf of another? Is explicit authorization required (see number 1 above)?

4. Section 434 allows State or local government entities to send or receive information "regarding the immigration status" of an alien. While the argument in the memo that the definition of such information does not necessarily include the names of the aliens concerned seems unsupportable, it is not entirely clear whether addresses and especially social security numbers fall within the scope of allowable reporting under Section 434.

Does INS plan to regulate under Section 434 (or Section 642 of IIRIRA)? I forget the answer to this question.

[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

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

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

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

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

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

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 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.

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

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.

* * *

Rm 122

San Diego

They have a joint application for food stamps & TANF

They want - 2 steps

Is that O.K.

- ① DOJ says to San Diego
that immigr. is a fed. issue, so you can't
set up your own categories and decide
who to report.

Feds have to regulate immigration

(This came
up in the
Prop. 187
context)

- ② This does not override privacy restrictions
(§434)

"Known to be unlawfully present"

In §434: "info re: immigr. status"

isn't that a federally determined
standard (?)

Why is San Diego doing this?

- ① ~~regulating~~ regulating immigration (can't)
② deter eligible kids from participation
in programs for which they are eligible.

Us to determine that fed. statute does not
preempt state privacy law.

Peter

Full committee mark-up on nats bill (Smith)
next Thursday.

They are briefing
Dems. on Monday

Ct decision in Seattle

de-nats process - injunctive against

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office
1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 776-1792

FAX COVER MEMO

DATE: July 2, 1998

TIME: _____

COST CENTER # _____

TO

NAME: Julia Fernandez

COMPANY: _____

CITY: _____

FAX#:

(202) 456 17431

FROM

NAME: *Cecilia Muñoz, Vice President**Office of Research, Advocacy & Legislation*

Direct Line: (202) 776-1791

Policy's Fax: (202) 776-1792

Concepcion E. Romero, Administrative Assistant: 202-776-1782

of pages in transmission, including cover 21

MESSAGE:



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LA RAZA: The Hispanic People of the New World

NCLR

NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office

1111 19th Street, N.W., Suite 1000
Washington, DC 20036
Phone: (202) 785-1670
Fax: (202) 776-1792

MEMORANDUM

TO: Maria Echavaeste
Julie Fernandez
FROM: Cecilia Muñoz
RE: San Diego Problem
DATE: 7/1/98

As we discussed by telephone, we have a potentially severe problem developing in San Diego County, as a result of the County's intention to send notices to their entire caseload of food stamp, general assistance, and TANF (CalWORKS) recipients. These notices indicate that the County intends to report to the INS any family members whom it believes to be undocumented.

As the attached materials will show, we believe the intention of San Diego's policy is to remove eligible people – especially children – from social programs by creating a climate of fear. These tactics, which parallel Proposition 187, will result in many legal immigrants also being reported to the INS, and are likely to dramatically reduce Latino participation in basic safety net programs for which they are eligible.

NCLR believes that the strategy being developed in San Diego will create two classes of U.S. citizens, one which is eligible for services, and another which is eligible in theory but not in practice, by virtue of the actual or perceived immigration status of their family members.

Our fundamental concerns with the policy are summarized briefly below:

- The County is effectively requiring children to incriminate their parents, by including a question about their parents' immigration status on the application for benefits. This will effectively render a significant number of children, who are eligible under the law, ineligible in practice. In addition, in the case of food stamps, the state is barred from asking questions which are not required to establish eligibility.
- The proposed language of the notices will create a climate of fear in all households where immigrants are present, including those who are here legally. In an environment in which naturalized citizens have received notices from the INS announcing their intention to revoke citizenship, and other long-term legal residents have been penalized retroactively



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for actions which occurred decades earlier, such a notice from the county will have the effect of frightening many eligible immigrant families away from services which they need and which serve the larger public interest, for fear of entanglements with the INS. This is likely to contribute to a widespread climate of fear which already exists in immigrant communities, and is already affecting minority enrollment in health care, nutrition, and other vital programs.

We strongly believe that the Administration has both legal and policy grounds to intervene, and that doing so would be consistent with long-held policy positions on issues such as Proposition 187 and the Gallegly amendment, both of which the Administration opposed on the grounds that it was unacceptable to require children to turn in their parents, or to make safety net service providers agents of immigration enforcement.

Since we spoke yesterday, we have heard that the County is delaying sending the notices out, though they apparently still intend to go forward in the near future. At the very least, this gives us all some time to think through the various policy and legal options which may be available to deal with this problem.

I have attached more detailed materials for your information. Thank you for your consideration; I look forward to talking with you again soon.

Cc: Josh Bernstein
Stacey Dean

COUNTY OF SAN DIEGO
HEALTH AND HUMAN SERVICES AGENCY

IMPORTANT NOTICE

FEDERAL LAW NOW AUTHORIZES THE COUNTY TO GIVE IMMIGRATION STATUS INFORMATION FROM PUBLIC BENEFIT PROGRAMS TO THE IMMIGRATION AND NATURALIZATION SERVICES (INS).

EFFECTIVE AUGUST 1, 1998, IF YOU OR YOUR FAMILY MEMBERS ARE RECEIVING BENEFITS FROM THE CALWORKS, FOOD STAMP OR GENERAL RELIEF PROGRAMS OR APPLY FOR BENEFITS FROM THESE PROGRAMS, IMMIGRATION STATUS INFORMATION FOR ALL UNDOCUMENTED ADULTS LIVING IN YOUR HOME WILL BE GIVEN TO INS. THE ONLY EXCEPTIONS WILL BE:

- UNAGED ROOMMATES. (*Includes relatives with no date of support*)
- UNAGED CARETAKER RELATIVES OF CHILDREN RECEIVING CALWORKS (CARETAKER RELATIVES ARE NON-PARENTS WHO HAVE PARENTAL CONTROL OF THE CHILDREN. FOR EXAMPLE: AUNTS, UNCLES AND GRANDPARENTS).
- PERSONS WHO ARE BATTERED OR SUBJECTED TO EXTREME CRUELTY IN THE UNITED STATES. IF YOU ARE A BATTERED PERSON OR SUBJECTED TO EXTREME CRUELTY, OR HAVE A CHILD WHO IS BATTERED OR SUBJECTED TO EXTREME CRUELTY, BY A SPOUSE, PARENT, OR BY A MEMBER OF THE SPOUSE OR PARENT'S FAMILY RESIDING IN THE SAME HOUSEHOLD. PLEASE CONTACT YOUR ELIGIBILITY TECHNICIAN.

INFORMATION WHICH WILL BE GIVEN TO INS INCLUDES NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH AND ~~SOCIAL SECURITY NUMBER~~ FOR THOSE WHO HAVE ONE.

*Informing notice
will be in Spanish
& English only others
are told when apply*

**CONDADO DE SAN DIEGO
AGENCIA DE SALUD Y SERVICIOS HUMANOS**

NOTICIA IMPORTANTE

LA LEY FEDERAL AHORA AUTORIZA AL CONDADO DE SAN DIEGO A DAR INFORMACIÓN AL DEPARTAMENTO DE INMIGRACIÓN Y NATURALIZACIÓN (INS) SOBRE EL ESTADO MIGRATORIO DE LOS SOLICITANTES/RECIPIENTES DE PROGRAMAS DE ASISTENCIA PÚBLICA.

A PARTIR DEL 1ro. DE AGOSTO DE 1998, SI USTED O MIEMBROS DE SU FAMILIA ESTÁN RECIBIENDO BENEFICIOS DE LOS PROGRAMAS DE CAL-WORK, ESTAMPILLAS PARA COMIDA O ASISTENCIA GENERAL (GR), O SI APLICA PARA DICHOS PROGRAMAS, INFORMACIÓN SOBRE EL ESTADO MIGRATORIO DE TODOS AQUELLOS ADULTOS INDOCUMENTADOS QUE VIVAN EN SU HOGAR SERÁ TRANSMITIDA AL DEPARTAMENTO DE INMIGRACIÓN Y NATURALIZACIÓN. LAS ÚNICAS EXCEPCIONES SERÁN:

- OTRAS PERSONAS AFUERA DE SU FAMILIA QUE VIVEN EN SU HOGAR Y NO RECIBEN ASISTENCIA PÚBLICA.**
- OTRAS PERSONAS AFUERA DE LA FAMILIA QUIEN VIVEN EN SU HOGAR QUE NO RECIBEN ASISTENCIA PÚBLICA.**
- PARIENTES ENCARGADOS QUE NO RECIBEN ASISTENCIA PARA SI MISMOS, PERO CUIDAN DE NIÑOS QUE RECIBEN ASISTENCIA DE CAL-WORK. (PARIENTES ENCARGADOS SON AQUELLOS QUE TIENEN CONTROL PATERNAL SOBRE LOS NIÑOS. POR EJEMPLO: TÍOS, TÍAS Y ABUELOS(AS)).**
- PERSONAS QUE HAYAN SIDO GOLPEADAS O SUJETAS A CRUELDAD EXTREMA EN LOS ESTADOS UNIDOS. SI USTED ES UNA PERSONA GOLPEADA, O HA SIDO SUJETA A CRUELDAD EXTREMA POR SU ESPOSO(A), PADRES, O POR ALGUN MIEMBRO DE LA FAMILIA DE SU ESPOSO(A), O FAMILIAR DE SUS PADRES QUE RESIDEN EN EL MISMO HOGAR, POR FAVOR COMUNIQUESE CON SU TRABAJADOR(A).**

LA INFORMACIÓN QUE SERÁ TRANSMITIDA AL DEPARTAMENTO DE INMIGRACIÓN Y NATURALIZACIÓN INCLUIRÁ NOMBRE, DIRECCIÓN, NÚMERO DE TELÉFONO, FECHA DE NACIMIENTO Y NÚMERO DE SEGURO SOCIAL DE AQUELLAS PERSONAS QUE LO TENGAN.

05/30/1998 17:27

916-448-6762

CA IMMIGRANT WELFARE

PAGE 02/03

REPORTING OF IMMIGRATION STATUS SAN DIEGO COUNTY

WHAT IS HAPPENING IN SAN DIEGO COUNTY?

Beginning August 1, 1998, the Family Resources Bureau of San Diego County will begin reporting information about immigrants they believe to be undocumented to the Immigration and Naturalization Service (INS). San Diego will report the names, addresses, dates of birth, telephone numbers and social security numbers of immigrants who live in households that receive CalWORKs, Food Stamps, or General Relief, whether or not the immigrants applied for benefits on behalf of themselves. San Diego will also report immigrants who cannot prove their claimed immigration status.

on that
they know to
be
§ 404 says "know"

ARE SAN DIEGO'S ACTIONS LEGAL?

San Diego County's actions go beyond the scope of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Section 404 of the federal welfare law permits states to report recipients to the INS only under certain specific circumstances. The law allows: (1) only persons who apply for or receive assistance for themselves may have their immigration status verified, (2) only persons seeking CalWORKs or Food Stamps can be reported, and (3) agencies may only report people they "know" to be not lawfully present in the U.S. San Diego does not "know" whether the people they are planning to report are lawfully present in the U.S.

Section 404 is the only reporting provision under PRWORA. Section 434, cited by San Diego County, does not permit counties to make up their own standards for reporting immigrants to the INS without any guidance from the federal government.

WHY IS THIS HAPPENING?

San Diego County's policy will, in effect, deter many immigrant parents from seeking necessary services for their children. Undocumented parents cannot receive benefits for themselves; it is their citizen and lawful permanent resident children who will not receive benefits they are eligible for. These children are being used to punish and entrap their parents.

WHAT IS THE FEDERAL GOVERNMENT DOING?

Immigration is a complex field regulated solely by the federal government. The United States Supreme Court has held that states and local governments may not establish their own separate immigration enforcement schemes. Federal agencies will be issuing regulations to implement Section 404 of PRWORA. There is no reason for San Diego County to "jump the gun" and take federal immigration matters into their own hands.

WHAT CAN MEMBERS OF THE LEGISLATURE DO TO STOP SAN DIEGO COUNTY'S ACTIONS?

Members of the Legislature can (1) encourage the Department of Justice to clarify that federal guidance is necessary before San Diego County may implement any new reporting of immigrants to the INS; (2) communicate to County officials that their actions are premature and establish unwanted policies for California.

TOTAL P. 10

DETERMINING IMMIGRANT ELIGIBILITY FOR CALWORKS

The federal interim guidance on verification of citizenship and immigration status, as published in the Federal Register on November 17, 1997, outlines a procedure for verifying status:

1. Determine if the applicant is eligible under general program requirements;
2. Verify status as citizen, national, or qualified immigrant, but only of person who is receiving benefits.

Before this verification process begins, applicants should be fully informed about eligibility rules for the program. Such information should include: the categories of immigrants who are eligible, the right of parents to receive benefits on behalf of eligible children without disclosing information about their own immigration status, as well as information specific to battered immigrant spouses and children.

Step 1 – Determine eligibility under general program requirements

This determination should be made without regard to immigration status.

Step 2 – Determine whether applicant is citizen, national, or qualified immigrant

In determining whether an applicant is a "qualified" immigrant, eligibility workers should avoid asking directly what her immigration status is. Rather, a simple form with a list of eligible immigration categories should be presented to the applicant. Eligible immigration categories must include victims of domestic violence who can be considered qualified. The applicant should indicate if she falls within an eligible category.

If the applicant does not fall within a qualified immigrant category, no further inquiry or documentation of her immigration status should be required.

Step 3 – Determine if other family members in the assistance unit are eligible

A similar process should be undertaken to determine if other family members are eligible.

Step 4 – Applying for CalWORKs

Only information related to the immigration status of the person actually receiving benefits should be recorded in a CalWORKs application or any other document.

June 25, 1998

CalWORKS PROGRAM GUIDE

Special Notice
98-26

Special Notice
98-13

GENERAL RELIEF PROGRAM GUIDE

Special Notice
98-8

**SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)**

Effective: July 1, 1998

1. Purpose

The purpose of this Special Notice is to inform staff of the requirement to refer immigration status information to the INS regarding undocumented adult immigrants who apply for benefits in the CalWORKs, Food Stamps and General Relief programs or who are known to be present in the United States unlawfully.

2. Background

Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Congress makes the following statements concerning national policy with respect to welfare and immigration:

"Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes...It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

Section 434 of the PRWORA authorizes the County to send to INS information regarding immigration status, lawful or unlawful, of an adult immigrant in the United States. The Board of Supervisors has directed the Family Resource Bureau to develop a system to provide immigration status information to the INS for undocumented adult immigrant applicants, recipients and other unlawful immigrant household members in the CalWORKs, Food Stamp and General Relief programs. The only exceptions will be unaided roommates, undocumented persons who are non-ecody caretaker relatives of children receiving CalWORKs, persons who are battered or subjected to extreme

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crucial in the United States or a child alien who is undocumented. Undocumented immigrants in the Medi-Cal program will not be reported at this time, although they may be reported through their connection to a CalWORKs, Food Stamps or General Relief case.

3. Changes

Starting August 1998, Family Resource Bureau Automation staff will generate, at the beginning of each month, a monthly report which contains the names and other specific information of adult persons who are coded as undocumented immigrants. The report will be produced in diskette format and will be provided to the INS. Since September 8, 1997, Family Resource Bureau has had informing notices posted in district offices which state that federal law permits the County to provide identifying information to INS. In addition, similar information has been included in intake packets.

4. Informing Notice

In early July 1998, a notice (Attachment A and B) will be sent to all existing recipients in the CalWORKs, Food Stamp and General Relief programs to inform them of this INS reporting system. Effective upon receipt of this notice, all CalWORKs, Food Stamps and General Relief intake packets must include this informing notice. Until this attachment is available as a form, photocopy for inclusion with all intake packets as needed. Lobby posters will be revised.

5. Identification of Undocumented Immigrants

An immigrant applicant/recipient is considered undocumented if he/she:

• In CalWORKs Program

- Checks the "undocumented" box on the SAWS 2, question 2, and has a birthplace outside of the U.S.; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in AFDC Program Guide 42-430 and 42-450; or
- Has claimed a satisfactory immigrant status but the Systematic Alien Verification for Entitlements (SAVE) verification (primary and secondary) indicates that such a record is not found.

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In Food Stamp Program

- Checks the "undocumented" box on the SAWS 2, question 2 or the DFA 285-A2, question 3, and has a birthplace outside of the U.S; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in the Food Stamp Program Guide 63-155; or
- Has claimed a satisfactory immigration status but SAVE verification (primary and secondary) indicates that such a record is not found.

In General Relief Program

- Is unable to present acceptable verification of immigrant status; or
- Has claimed a satisfactory immigrant status, but SAVE verification for a companion case (i.e., CalWORKs, Food Stamp or Medi-Cal) indicates that such a record is not found (the General Relief ET receives a copy of the SAVE verification (primary and secondary) of legal or non-legal status from the companion case ET).

6. Required Action

ETs are reminded of the requirement to correctly identify each immigrant applicant's or household member's immigration status. They shall also ensure that the appropriate Citizenship/Alliance (C/A) coding as indicated in Case Data System (CDS) Code & Message Handbook, Generic Section 7 is entered for each undocumented immigrant household member.

A. Intake

During the month of July 1998, Intake supervisors must verify the accurate C/A coding of all cases in the CalWORKs, Food Stamp and General Relief programs.

Intake ETs must ensure that applicants who have not received the revised informing notice (Attachment A and B) are provided a copy at the intake appointment.

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B. Granted

As part of the CA 7 process during the month of July, all cases must be reviewed for C/A coding. ETs will review the appropriate Statement of Facts and the current case document to determine who is/should be coded as undocumented immigrants. An ad hoc will be produced to identify persons already coded as undocumented. The case record must be updated through additions and deletions to accurately reflect undocumented immigrants household members; i.e., if the household member who was previously listed on the case record with an undocumented C/A code has since moved out or is an unaided roommate, the C/A code for this individual has to be removed.

The following exceptions will not be reported to INS. Incorrect use of person numbers may cause these individuals to be included in the report to INS. The only exceptions include:

- ◆ Unaided roommate.
- ◆ Undocumented non-ready caretaker relatives of children receiving CalWORKs. If the payee in a CalWORKs case is a non-ready caretaker, the ET must ensure that the Person Number "88" or "89" is used; or
- ◆ A child alien who is undocumented; or
- ◆ Undocumented persons who claim to have been battered or subjected to extreme cruelty in the United States. This includes persons who are battered or subjected to extreme cruelty, or have a child who is battered or subjected to extreme cruelty, by a spouse, parent, or by a member of the spouse's or parent's family residing in the same household. The ET must ensure that households containing battered persons are referred to appropriate community resources for help. Households including a battered person must be flagged by entering a "B" in Special Characteristic Box D through the HDLM household (HSHD) screen.

When questioned by an immigrant applicant/recipient concerning potential consequences of the INS referral policy to the applicant/recipient, the ET shall respond that the Family Resource Bureau's only authorized action is to report identifying information to INS. Whether or not the INS will take any follow-up actions with respect to the applicant/recipient's unlawful presence is not within the jurisdiction or knowledge of the Family Resource Bureau. Any and all immigration actions are within the jurisdiction of the INS. Therefore, if the immigrant applicant has any questions or concerns, he or she will need to contact the INS for further information.

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With respect to eligibility decision for undocumented immigrant applicants, ETs will continue to make eligibility decisions for each program as required by state and federal law and regulations.

7. Automation Impact

At the beginning of each month, Automation will produce a report which identifies cases containing adults with the "U" C/A code. Data for the report shall be collected from CalWORKs, Food Stamp and General Relief cases through the Case Data System (CDS).

For each adult person identified, the report shall contain the following data elements:

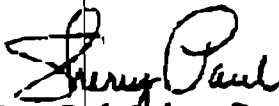
- A. Name.
- B. Address.
- C. Telephone Number.
- D. Date of birth.
- E. Social Security Number if applicable and available.

The initial report provided to INS shall contain a complete listing of all identified undocumented adult applicants/recipients (other than exceptions listed in item 6.) known to the CalWORKs, Food Stamp and General Relief cases. No program identification is linked to information being given to INS.

Each subsequent monthly report shall contain only the names and other required data elements for adult persons who have been added to CDS files during the prior month.

8. Forms Impact

Until Attachments A and B are available as forms, use as noted in items 4 and 6.


Sherry Paul, Assistant Deputy Director
Program Support Division
Family Resource Bureau


Ray Koning, Assistant Deputy Director
CalWORKs Division
Family Resource Bureau

SP:RK:dh

DM/ADM Contact: Fraud & Integrity Section - Donna Hand (848) 338-2725

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[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 (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 this month 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 children who are eligible for them, as well as create fear in immigrant communities that would spread well beyond the targeted group. It would likely contribute to the widespread climate of fear that already exists in immigrant communities, and 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 assistance for their children in the future. Moreover, it is likely that other immigrants who are eligible for assistance 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 likely 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, HHS 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 permissible reporting 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 only report to the INS 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 mass 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, benefits history, etc., 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 governments' 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 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 Justice guidance means that state agencies may not verify the immigration status of parents who are applying on behalf of their U.S. citizen children.

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.

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.

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."

[Handwritten: This is a determination of the INS]
This requirement closely parallels the Food Stamps 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 strongly 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

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

Courts have held that the food stamp reporting provision applies only with respect 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

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.

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 parents or other family members who are not themselves receiving assistance to the INS. *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 its direction 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

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 an 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. [cites (CA & OH)]

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 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.

Diana Fortuna

07/06/98 11:49:14

AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

bcc:

Subject: Re: San Diego 

Thanks. I think I neglected to fill you in on the answers to DOJ questions: Guidance doesn't have force of law; NPRM will not address this; they won't have anything to say about the scope of 434 for quite a while; they don't think there's a privacy hook. Sorry to forget to tell you this stuff.

Julie A. Fernandes



Julie A. Fernandes

07/06/98 11:30:50 AM

.....

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: Re: San Diego 

Diana,

According to Cecilia, some members of the local legislature called the county officials and threatened their money if they started sending out the letters. This has delayed the mailing, but likely not stopped it. Cecilia thinks that there are good legal grounds for preventing the county from collecting this information in the future (under food stamp law). She also believes that the more difficult question is the legal grounds for preventing the county from sending out the letters to INS based on information already collected.

Cecilia also spoke with Maria E. about this today. She is going to ask Maria to pull together a meeting to discuss options. I will let you know as soon as I hear anything about when, etc.

Also, when is DOJ getting back to us re: (1) whether guidance has force of law (+ what NPRM will say); (2) defining scope of sec. 434; (3) whether sec. 434 conflicts with the privacy act? Thanks.

julie

Diana Fortuna

07/06/98 09:23:29

AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: Re: San Diego 

we don't think there are any legal obstacles the agencies can raise to taking this step. DOJ, USDA, and HHS all conferred. There MAY be things we can do prospectively that would affect whether states/locals could collect this type of info in the future -- but not sure about that, so I wouldn't make any representations about it beyond agreeing that we should look at that question. Plus, you can say that if they have some legal arguments that the agencies didn't consider, we would certainly look at them.

8

Cecilia Munoz
San Diego

7/6/98

Reprieve in terms of time

Folks in Leg. have threatened their \$
(Calls from indiv. legislators)

Enough cover for USDA

(*) food stamp law prohibits collection of
info that is not relevant to eligibility

§ 404 → (*) TANF allows them to report to INS
info on individuals info on any individual who the state
"knows" is unlawfully in the U.S.

for info San Diego already has

① immediate crisis

↳ serious legal issues

encourage you to hold off

② 2 sections of the law

should DOJ be interpreting and issuing guidance

(*) → DOJ: § 404 (something floating around INS)
does it suggest @ all ~~all~~ how one
would determine the standard for "Knowing"
that someone is unlawfully in the U.S.

Spoke w/ Maria @ end of last week.

Legal call is Cant intervene

Gallegry Arnaud.

We
Need to
see the
draft § 404
guidance

(*) Is § 434 of PRWRA ~~constitutional~~ (?)
[OK] Consistent w/ privacy act (?)

1 (d) SPECIAL RULE FOR REFUGEE AND ENTRANT ASSIST-
 2 ANCE FOR CUBAN AND HAITIAN ENTRANTS.—The limitation
 3 under subsection (a) shall not apply to refugee and entrant as-
 4 sistance activities, authorized by title IV of the Immigration
 5 and Nationality Act and section 501 of the Refugee Education
 6 Assistance Act of 1980, for Cuban and Haitian entrants as de-
 7 fined in section 501(e)(2) of the Refugee Education Assistance
 8 Act of 1980.

9 SEC. 404. NOTIFICATION AND INFORMATION REPORT-
 10 ING.

11 (a) NOTIFICATION.—Each Federal agency that admin-
 12 isters a program to which section 401, 402, or 403 applies
 13 shall, directly or through the States, post information and pro-
 14 vide general notification to the public and to program recipients
 15 of the changes regarding eligibility for any such program pur-
 16 suant to this subtitle.

17 (b) INFORMATION REPORTING UNDER TITLE IV OF THE
 18 SOCIAL SECURITY ACT.—Part A of title IV of the Social Secu-
 19 rity Act is amended by inserting the following new section after
 20 section 411:

21 "SEC. 411A. STATE REQUIRED TO PROVIDE CERTAIN IN-
 22 FORMATION.

23 "Each State to which a grant is made under section 403
 24 shall, at least 4 times annually and upon request of the Immi-
 25 gration and Naturalization Service, furnish the Immigration
 26 and Naturalization Service with the name and address of, and
 27 other identifying information on, any individual who the State
 28 knows is unlawfully in the United States."

29 (c) SSL.—Section 1631(e) of such Act (42 U.S.C.
 30 1383(e)) is amended—

31 (1) by redesignating the paragraphs (6) and (7) in-
 32 serted by sections 206(d)(2) and 206(f)(1) of the Social Se-
 33 curity Independence and Programs Improvement Act of
 34 1994 (Public Law 103-296; 108 Stat. 1514, 1515) as
 35 paragraphs (7) and (8), respectively; and

36 (2) by adding at the end the following new paragraph:

1 mental program, assistance, or benefits provided to an alien
2 under any program of foreign assistance as determined by the
3 Secretary of State in consultation with the Attorney General.

4 (c) SEVERABILITY.—If any provision of this title or the
5 application of such provision to any person or circumstance is
6 held to be unconstitutional, the remainder of this title and the
7 application of the provisions of such to any person or cir-
8 cumstance shall not be affected thereby.

9 SEC. 434. COMMUNICATION BETWEEN STATE AND
10 LOCAL GOVERNMENT AGENCIES AND THE
11 IMMIGRATION AND NATURALIZATION SERV-
12 ICE.

13 Notwithstanding any other provision of Federal, State, or
14 local law, no State or local government entity may be prohib-
15 ited, or in any way restricted, from sending to or receiving
16 from the Immigration and Naturalization Service information
17 regarding the immigration status, lawful or unlawful, of an
18 alien in the United States.

19 SEC. 435. QUALIFYING QUARTERS.

20 For purposes of this title, in determining the number of
21 qualifying quarters of coverage under title II of the Social Se-
22 curity Act an alien shall be credited with—

23 (1) all of the qualifying quarters of coverage as de-
24 fined under title II of the Social Security Act worked by
25 a parent of such alien while the alien was under age 18,
26 and

27 (2) all of the qualifying quarters worked by a spouse
28 of such alien during their marriage and the alien remains
29 married to such spouse or such spouse is deceased.

30 No such qualifying quarter of coverage that is creditable under
31 title II of the Social Security Act for any period beginning after
32 December 31, 1996, may be credited to an alien under para-
33 graph (1) or (2) if the parent or spouse (as the case may be)
34 of such alien received any Federal means-tested public benefit
35 (as provided under section 403) during the period for which
36 such qualifying quarter of coverage is so credited.



Call w/ San Diego (HHS)

↓ USDA was not on the call

They explained their plan to send notices
(7/1 - 7/10) to give recipients enough "forewarning"
to take action prior to sending notice to INS
8/1.

That indiv. is "undocumented" → in deciding
name; address; telephone # whether a
case will

Consider postponing (?)
They asked about legal basis.

"child only"
The adult of the
tells them that
it is b/c parent is
undocumented.

6. Imminent regulatory guidance from INS re:
§ 404 (of Welfare Law) § 434

authorizes them to give
info to INS re: immigration
status.

Letter will say: ~~undocumented parent~~

Letter presumes that there is an
undocumented parent.

~~Let [redacted] sent~~
~~to those where~~
The parent is ineligible
b/c undocumented.

Is what they are doing legal (?)

Co. shouldn't be able to say that if additional info isn't provided, kids are cut off.

(that would be an additional requirement)

for TANF have to determine why parent isn't eligible for food stamps, don't.

→ USDA does not see any ~~real~~ authority for them to seek this information (food stamp law)

Food Stamp Act does not give authority to collect this information.

~~doesn't apply~~
Could cut off funding for seeking this info (?)

→ DOJ guidelines (?) (interim verification guidance)

~~How does~~ Does guidance have the force of law (?)
USDA thinks that if yes →, then not permissible.

§ 761 of the Privacy Act

if seek SS# must advise individual of several things

- ① why
- ② mandatory?
- ③ what authority?
- ④ voluntary
- ⑤ purpose

and contractors.

RW
thinks this
is
interesting.
Applies to
fed agencies
and contractors.

9:30am
Diana's office

Diana Fortuna

06/25/98 03:54:36

PM

Record Type: Record

To: Robert N. Weiner/WHO/EOP, Jack A. Smalligan/OMB/EOP, Julie A. Fernandes/OPD/EOP, Emil E. Parker/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP, Lesley A. Pate/OPD/EOP, Nicolette Highsmith/OMB/EOP, Andrea Kane/OPD/EOP
Subject: San Diego issue

I'm calling a quick conference call together for tomorrow morning, because the advocates have identified a problem that appears to need quick action, including coordination among agencies:

San Diego County plans to send letters next Wednesday 7/1 to all families where the child is on food stamps or TANF, but the parent is not (so-called "child only" cases) and where the parent has not given welfare authorities a Social Security number. The letter will say that the county has reason to believe that the parent is an illegal alien, so they're turning over the name and address to the INS.

USDA and HHS have preliminarily evaluated this action. USDA thinks it's not legal under food stamp law. HHS isn't sure -- states may have flexibility under TANF to do this kind of thing, so they think the legal question is one that DOJ must answer. The question for DOJ is whether this is permissible under the welfare law's provision that states and locals can give the INS names of people who they believe are illegal. (We probably need to have the language of that part of the statute in front of us.)

Our role is to (1) help HHS get DOJ to look at the TANF question expeditiously; and (2) make sure USDA acts expeditiously if this is illegal (advocates say USDA may not act very forcefully because their relationship is with the state, not the county).

On the call will be USDA, HHS, and someone from the Deputy's office at DOJ -- maybe Allison Stollenwerk. The Deputy's office seems like the right part of DOJ to me. It's more of a legal question than an INS question, but we're not ready to call OLC. Let me know if you disagree, Rob.

Our options might be to notify the county and say we have concerns; that it's clearly not an appropriate action for food stamps, and say DOJ is evaluating whether it's appropriate for TANF and so they should wait for the results of our review. (The advocates would love it if we could direct the country not to do this, but who knows if we can.) The advocates' first priority is to stop the letters from going out on Wednesday, a goal we should share if the action isn't legal.

Presumably many of these parents are in fact illegal aliens, but many may not be as well. And this will have a chilling effect for kids eligible for these benefits, as illegal parents will probably pull their citizen kids out of food stamps or TANF and go underground. This will also add to the confusion around public charge.

Conference call last night ?)

DoJ's view ~~does not~~ is that guidance does not have the force of law.

What about the Reg. (?)

Alien status of other family members

May be relevant for TANF but not for food stamps.

Scope of §434

INS/DOJ

San Diego: if guidance on §404 is imminent, they may hold off

§434 ~~nothing can stop state/local from sending info to the INS~~

if they know, they must provide ~~and send~~ it to INS

(upon request of INS)

Give the INS info on those they know incarcerated in U.S.

TANF: states have general auth. to determine who is in the filing unit.

DOJ Q

(1) Does ~~guidance~~ guidance have the force of law
(@ what NPRM will say)

(2) Defining Scope of §434

(3) more work on §404 (?)

(4) Privacy Act (conflict w/ §434)

(on not verifying status of those not receiving benefit)



FACSIMILE TRANSMISSION

Counselor to the Secretary
200 INDEPENDENCE AVENUE, SW, ROOM 636-G
WASHINGTON, D.C. 20201
(202) 260-9923

DATE: 6/26

Name:

Ariana Fortuna

Telephone:

Fax:

456 - 4431

Number of Pages (including cover): 8

Cc Rob Weiner
Jack Smaligan 508
Julie Fernandez
Emil Parker

FROM:

Dennis Hayashi
Counselor to the Deputy Secretary

Telephone:

(202) 260-9923

Fax:

(202) 260-3053

MESSAGE:

RUSH



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MESSAGE:

RUSH

June 25, 1998

CalWORKs PROGRAM GUIDE
Special Notice
98-26

FOOD STAMP PROGRAM GUIDE
Special Notice
98-13

GENERAL RELIEF PROGRAM GUIDE
Special Notice
98-8

**SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)**

Effective: July 1, 1998

1. Purpose

The purpose of this Special Notice is to inform staff of the requirement to refer immigration status information to the INS regarding undocumented adult immigrants who apply for benefits in the CalWORKs, Food Stamps and General Relief programs or who are known to be present in the United States unlawfully.

2. Background

Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, Congress makes the following statements concerning national policy with respect to welfare and immigration:

"Self-sufficiency has been a basic principle of United States immigration law since this country's earliest immigration statutes...It is a compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits."

Section 434 of the PRWORA authorizes the County to send to INS information regarding immigration status, lawful or unlawful, of an adult immigrant in the United States. The Board of Supervisors has directed the Family Resource Bureau to develop a system to provide immigration status information to the INS for undocumented adult immigrant applicants, recipients and other unlawful immigrant household members in the CalWORKs, Food Stamp and General Relief programs. The only exception will be undocumented persons who are non-needy care taker relatives of children receiving CalWORKs, persons who are battered or subjected to extreme cruelty in the United

**SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)**

States or a child alien who is undocumented. Undocumented immigrants in the Medi-Cal program will not be reported at this time, although they may be reported through their connection to a CalWORKs, Food Stamps or General Relief case.

3. Change

Starting August 1998, Family Resource Bureau Automation staff will generate, at the beginning of each month, a monthly report which contains the names and other specific information of adult persons who are coded as undocumented immigrants. The report will be produced in diskette format and will be provided to the INS. Since September 8, 1997, Family Resource Bureau has had informing notices posted in district offices which state that federal law permits the County to provide identifying information to INS. In addition, similar information has been included in intake packets.

4. Informing Notice

In early July 1998, a notice (Attachment A and B) will be sent to all existing recipients in the CalWORKs, Food Stamp and General Relief programs to inform them of this INS reporting system. Effective upon receipt of this notice, all CalWORKs, Food Stamps and General Relief intake packets must include this informing notice. Until this attachment is available as a form, photocopy for inclusion with all intake packets as needed. Lobby posters will be revised.

5. Identification of Undocumented Immigrants

An immigrant applicant/recipient is considered undocumented if he/she:

◆ In CalWORKs Program

- Checks the "undocumented" box on the SAWS 2, question 2, and has a birthplace outside of the U.S.; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in AFDC Program Guide 42-430 and 42-450; or
- Has claimed a satisfactory immigrant status but the Systematic Alien Verification Entitlements (SAVE) verification (primary and secondary) indicates that such a record is not found.

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

◆ In Food Stamp Program

- Checks the "undocumented" box on the S/WS 2, question 2 or the DFA 285-A2, question 3, and has a birthplace outside of the U.S.; or
- Is unable to present any other valid documents to verify his/her citizenship/immigrant status, as identified in the Food Stamp Program Guide 63-155; or
- Has claimed a satisfactory immigration status but SAVE verification (primary and secondary) indicates that such a record is not found.

◆ In General Relief Program

- Is unable to present acceptable verification of immigrant status; or
- Has claimed a satisfactory immigrant status, but SAVE verification for a companion case (i.e., CalWORKs, Food Stamp or Medi-Cal) indicates that such a record is not found (the General Relief ET receives a copy of the SAVE verification (primary and secondary) of legal or non-legal status from the companion case ET).

6. Required Action

ETs are reminded of the requirement to correctly identify each immigrant applicant's or household member's immigration status. They shall also ensure that the appropriate Citizenship/Alienage (C/A) coding as indicated in Case Data System (CDS) Code & Message Handbook, Generic Section 7 is entered for each undocumented immigrant household member.

A. Intake

During the month of July 1998, Intake supervisors must verify the accurate C/A coding of all cases in the CalWORKs, Food Stamp and General Relief programs.

Intake ETs must ensure that applicants who have not received the revised informing notice (Attachment A and B) are provided a copy at the intake appointment.

SUBJECT: REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)

B. Granted

As part of the CA 7 process during the month of July, all cases must be reviewed for C/A coding. ET will review the appropriate Statement of Facts and the current case document to determine who is/should be coded as undocumented immigrants. An ad hoc will be produced to identify persons already coded as undocumented. The client is to be contacted to ensure that the undocumented person still lives in the home. The case record must be updated through additions and deletions to accurately reflect undocumented immigrant household members; i.e., if the household member who was previously listed on the case record with an undocumented C/A code has since moved out, the C/A code for this individual has to be removed.

The following exceptions will not be reported to INS. Incorrect use of person numbers may cause these individuals to be included in the report to INS. The only exceptions include:

- ◆ Undocumented non-needy caretaker relatives of children receiving CalWORKs. If the payee in a CalWORKs case is a non-needy caretaker, the ET must ensure that the Person Number "88" or "89" is used; or
- ◆ A child alien who is undocumented; or
- ◆ Undocumented persons who claim to have been battered or subjected to extreme cruelty in the United States. This includes persons who are battered or subjected to extreme cruelty, or have a child who is battered or subjected to extreme cruelty, by a spouse, parent, or by a member of the spouse or parent's family residing in the same household. The ET must ensure that households containing battered persons are referred to appropriate community resources for help. Households including a battered person must be flagged by entering a "B" in Special Characteristic Box D through the BDM household (HSHD) screen.

When questioned by an immigrant applicant/recipient concerning potential consequences of the INS referral policy to the applicant/recipient, the ET shall respond that the Family Resource Bureau's only authorized action is to report identifying information to INS. Whether or not the INS will take any follow-up actions with respect to the applicant/recipient's unlawful presence is not within the jurisdiction or knowledge of the Family Resource Bureau. Any and all immigration actions are within the jurisdiction of the INS. Therefore, if the immigrant applicant has any questions or concerns, he or she will need to contact the INS for further information.

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With respect to eligibility decision for undocumented immigrant applicants, ETs will continue to make eligibility decisions for each program as required by state and federal law and regulations.

7. Automation Impact

At the beginning of each month, Automation will produce a report which identifies cases containing adults with the "U" C/A code. Data for the report shall be collected from CalWORKs, Food Stamp and General Relief cases through the Case Data System (CDS).

For each adult person identified, the report shall contain the following data elements:

- A. Name.
- B. Address.
- C. Telephone Number.
- D. Date of birth.
- E. Social Security Number if applicable and available.

The initial report provided to INS shall contain a complete listing of all identified undocumented adult applicants/recipients (other than exceptions listed in item 6.) known to the CalWORKs, Food Stamp and General Relief cases. No program identification is linked to information being given to INS.

Each subsequent monthly report shall contain only the names and other required data elements for adult persons who have been added to CDS files during the prior month.

8. Forms Impact

Until Attachment A and B are available as a form, refer to the information in item 4.

Sherry Paul, Assistant Deputy Director
Program Support Division
Family Resource Bureau

Ray Koenig, Assistant Deputy Director
CalWORKs Division
Family Resource Bureau

SP:RK:dh

DM/ADM Contact: Fraud & Integrity Section
Donna Hand (948) 338-2725

SUBJECT: **REPORTING UNDOCUMENTED IMMIGRANTS INFORMATION
TO IMMIGRATION AND NATURALIZATION SERVICE (INS)**

COUNTY OF SAN DIEGO
HEALTH AND HUMAN SERVICES AGENCY

IMPORTANT NOTICE

FEDERAL LAW NOW AUTHORIZES THE COUNTY TO GIVE IMMIGRATION STATUS INFORMATION FROM PUBLIC BENEFIT PROGRAMS TO THE IMMIGRATION AND NATURALIZATION SERVICES (INS).

EFFECTIVE AUGUST 1, 1998, IF YOU OR YOUR FAMILY MEMBERS ARE RECEIVING BENEFITS FROM THE CALWORKS, FOOD STAMP OR GENERAL RELIEF PROGRAMS OR APPLY FOR BENEFITS FROM THESE PROGRAMS, IMMIGRATION STATUS INFORMATION FOR ALL UNDOCUMENTED ADULTS LIVING IN YOUR HOME WILL BE GIVEN TO INS. THE ONLY EXCEPTION WILL BE:

- UNAIDED CARETAKER RELATIVES OF CHILDREN RECEIVING CALWORKS (CARETAKER RELATIVES ARE NON-PARENTS WHO HAVE PARENTAL CONTROL OF THE CHILDREN. FOR EXAMPLE: AUNTS, UNCLES AND GRANDPARENTS).
- PERSONS WHO ARE BATTERED OR SUBJECTED TO EXTREME CRUELTY IN THE UNITED STATES. IF YOU ARE A BATTERED PERSON OR SUBJECTED TO EXTREME CRUELTY, OR HAVE A CHILD WHO IS BATTERED OR SUBJECTED TO EXTREME CRUELTY, BY A SPOUSE, PARENT, OR BY A MEMBER OF THE SPOUSE, OR PARENT'S FAMILY RESIDING IN THE SAME HOUSEHOLD, PLEASE CONTACT YOUR ELIGIBILITY TECHNICIAN.

INFORMATION WHICH WILL BE GIVEN TO INS INCLUDES NAME, ADDRESS, TELEPHONE NUMBER, DATE OF BIRTH AND SOCIAL SECURITY NUMBER FOR THOSE WHO HAVE ONE.

CONDADO DE SAN DIEGO
AGENCIA DE SALUD Y RECURSOS HUMANOS

NOTICIA IMPORTANTE

LA LEY FEDERAL AHORA AUTORIZA AL CONDADO DE SAN DIEGO A DAR INFORMACIÓN AL DEPARTAMENTO DE INMIGRACIÓN Y NATURALIZACIÓN (INS) SOBRE EL ESTADO MIGRATORIO DE LOS SOLICITANTES/RECIPIENTES DE PROGRAMAS DE ASISTENCIA PÚBLICA.

A PARTIR DEL 1ro. DE AGOSTO DE 1998, SI USTED O MIEMBROS DE SU FAMILIA ESTÁN RECIBIENDO BENEFICIOS DE LOS PROGRAMAS DE CAL-WORKS, ESTAMPILLAS PARA COMIDA O ASISTENCIA GENERAL (GR), O SI APLICA PARA DICHOS PROGRAMAS, INFORMACIÓN SOBRE EL ESTADO MIGRATORIO DE TODOS AQUELLOS ADULTOS INDOCUMENTADOS QUE VIVAN EN SU HOGAR SERÁ TRANSMITIDA AL DEPARTAMENTO DE INS. LAS ÚNICAS EXCEPCIONES SERÁN:

- PARIENTES ENCARGADOS QUE NO RECIBEN ASISTENCIA PARA SI MISMOS, PERO CUIDAN DE NIÑOS QUE RECIBEN ASISTENCIA DE CAL-WORKS (PARIENTES ENCARGADOS SON AQUELLOS QUE TIENEN CONTROL PATERNAL SOBRE LOS NIÑOS. POR EJEMPLO: TÍOS, TÍAS Y ABUELOS(AS).
- PERSONAS QUE HAYAN SIDO GOLPEADAS O SUJETAS A CRUELDAD EXTREMA EN LOS ESTADOS UNIDOS. SI USTED ES UNA PERSONA GOLPEADA O HA SIDO SUJETA A CRUELDAD EXTREMA POR SU ESPOSO(A), PADRES, O POR ALGUN MIEMBRO DE LA FAMILIA DE SU ESPOSO(A), O FAMILIAR DE SUS PADRES QUE RESIDEN EN EL MISMO HOGAR, POR FAVOR COMUNIQUESE CON SU TRABAJADOR(A).

LA INFORMACIÓN QUE SERÁ TRANSMITIDA AL DEPARTAMENTO DE INS INCLUIRA NOMBRE, DIRECCIÓN, NUMERO DE TELÉFONO, FECHA DE NACIMIENTO Y NÚMERO DE SEGURO SOCIAL DE AQUELLAS PERSONAS QUE LO TENGAN.