The Cautious Welcome
The Legalization Programs of the Immigration Reform and Control Act

Susan González Baker

PROGRAM FOR RESEARCH ON IMMIGRATION POLICY

The RAND Corporation and The Urban Institute
The Cautious Welcome

The Legalization Programs of the Immigration Reform and Control Act

Susan González Baker

PROGRAM FOR RESEARCH ON IMMIGRATION POLICY

The RAND Corporation
Santa Monica, CA
JRI-05

The Urban Institute
Washington, D.C.
UIP Report 90-9
The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act

Published jointly by
The RAND Corporation  The Urban Institute Press
1700 Main Street 2100 M Street, NW
Santa Monica, CA 90406 Washington, DC 20037

Copyright © 1990. The RAND Corporation and The Urban Institute. All rights reserved. Except for short quotes, no part of this document may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by information storage or retrieval system, without written permission from one of the copyright holders.

Library of Congress Cataloging in Publication Data

The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act / Susan González Baker


JV6493.B35 1990 90-43203
353.0081 '7'--dc20 CIP

ISSN 0897-7399

Distributed for
The Urban Institute Press by Also available from
University Press of America The RAND Corporation
4720 Boston Way 1700 Main Street
Lanham, MD 20706 Santa Monica, CA 90406
THE CAUTIOUS WELCOME: THE LEGALIZATION PROGRAMS OF THE IMMIGRATION REFORM AND CONTROL ACT

Susan González Baker

Program for Research on Immigration Policy

The RAND Corporation
Santa Monica, CA

The Urban Institute
Washington, D.C.
The RAND Corporation was chartered in 1948 as a nonprofit institution to "further and promote scientific, educational, and charitable purposes, all for the public welfare and security of the United States of America." To meet these objectives, RAND conducts rigorous analyses of significant national problems to provide decisionmakers and the public with a better understanding of the policy issues involved.

RAND's research is analytic, objective, and interdisciplinary. National security programs focus on the planning, development, acquisition, deployment, support, and protection of military forces, and include international matters that may affect U.S. defense policy and strategy. Domestic programs include civil and criminal justice, education and human resources, health sciences, international economic studies, labor and population, and regulatory policies.
BOARD OF TRUSTEES

David O. Maxwell
Chairman
Katharine Graham
Vice Chairman
William Gorham
President
Andrew F. Brimmer
James E. Burke
John J. Byrne
Marcia L. Carsey
Albert V. Casey
Richard B. Fisher
George J.W. Goodman
Fernando A. Guerra, M.D.
Ruth Simms Hamilton
Philip M. Hawley
Irvine O. Hockaday, Jr.
Michael Kaufman
Ann McLaughlin
Robert S. McNamara
Charles L. Mee, Jr.
Eleanor Holmes Norton
Elliot L. Richardson
David A. Stockman
Anne Wexler
Mortimer B. Zuckerman

LIFE TRUSTEES

Warren E. Buffett
Joseph A. Califano, Jr.
William T. Coleman, Jr.
John M. Deutch
Anthony Downs
John H. Filer
Joel L. Fleishman
Eugene G. Fubini
Aileen C. Hernandez
Carla A. Hills
Vernon E. Jordan, Jr.
Edward H. Levi
Bayless A. Manning
Stanley Marcus
Arjay Miller
J. Irwin Miller
Franklin D. Murphy
Lois D. Rice
William D. Ruckelshaus
Herbert E. Scarf
Charles L. Schultz
William W. Scranton
Cyrus R. Vance
James Vorenberg

THE URBAN INSTITUTE

is a nonprofit policy research and educational organization established in Washington, D.C., in 1968. Its staff investigates the social and economic problems confronting the nation and government policies and programs designed to alleviate such problems. The Institute has two goals for work in each of its research areas: to help shape thinking about societal problems and efforts to solve them, and improve government decisions and performance by providing better information and analytic tools.

Through work that ranges from broad conceptual studies to administrative and technical assistance, Institute researchers contribute to the stock of knowledge available to public officials and private individuals and groups concerned with formulating and implementing more efficient and effective government policy.
ACKNOWLEDGMENTS

This monograph reflects the contributions of many fine researchers. I would like to thank the research teams from The Urban Institute and the RAND Corporation who collected and analyzed the data on which this research relies. These individuals include Jason Juftras, Julie Goldsmith, Wendy Zimmermann, Demetra Nightingale, and Regina Yudd of The Urban Institute, and Lorraine McDonnell, Abby Robyn, Elizabeth Rolph, Patrick Murphy, David Menefee-Libey, Lin Liu, and Kathi Webb of the RAND Corporation. Michael Fix of The Urban Institute and Paul Hill of the RAND Corporation deserve special thanks for their stewardship of the entire IRCA implementation project.

I would also like to acknowledge the contributions of the manuscript’s readers, who provided valuable insights and cogent critiques through its production. These include Frank Bean of The Urban Institute, David North of Trans-century Development Associates, and Rick Swartz of the National Immigrant, Refugee, and Citizenship Forum. Special gratitude goes to Felicity Skidmore of The Urban Institute, who gave valuable editorial advice at an earlier stage of this volume.

Finally, I thank the many respondents whose openness and patience afforded the research team a singular opportunity to explore a complicated piece of legislation from many vantage points. Their cooperation made this study possible.
This report chronicles the design, implementation, and outcomes of the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA). These provisions, representing IRCA's inclusionary aspects, allow certain types of undocumented immigrants to adjust their status to legal permanent residence and eventually to citizenship. The key legalization provision creates a temporary program that permits the status adjustment of undocumented immigrants who can demonstrate continuous residence in the United States as of January 1, 1982. A second major provision allows for the adjustment of certain undocumented farm workers through the Special Agricultural Worker (SAW) and Replenishment Agricultural Worker (RAW) programs. The study is based on data collected from October to December 1988 and from April to July 1989. Topics covered by the study include the degree to which IRCA's implementers have met the challenges of the legislation, the legislative history of legalization proposals, the organization, financing, and staffing plans adopted by the Immigration and Naturalization Service to implement the legalization provisions, the politics behind legalization implementation, discrepancies in implementation and outcomes, and issues remaining to be resolved.
## CONTENTS

**Executive Summary**

1 1 Meeting IRCA'S Implementation Challenges
   The Challenges
      Broad But Uncertain Scope
      Mounting A Temporary Program
      Coordinating A Multi-Stage Program
      Interagency Coordination
   Meeting the Challenges
      Broad But Uncertain Scope
      Mounting A Temporary Program
      Coordinating A Multi-Stage Program
      Interagency Coordination
   Next Chapters

2 2 IRCA Paths to Legal Residence
   General Legalization
      Legalization Proposals in the 1970s
      Legalization Proposals in the 1980s
      Summary
   Special Agricultural Worker (SAW) Legalization
   Replenishment Agricultural Worker (RAW) Legalization
   Registry
   Cuban/Haitian Adjustment
   Conclusion
3 The Implementation Plan for General Legalization and the SAW Program 55
"Getting Ahead of the Curve" 55
International Comparisons 56
Early INS Planning Efforts 60
Key Operational Units 62
The Qualified Designated Entity 62
The Legalization Office 64
The Regional Processing Facility 66
The Legalization Appeals Unit 67
Legalization Program Resources 68
Funding the General Legalization Program 69
Funding the SAW Program 72
Staff 75
Conclusion 77

4 Legalization Standards and Procedures: the Politics of Rule Making 81
Proving Eligibility: The Setting of Standards 82
Qualifying for Temporary Residence in the General Legalization Program 82
Qualifying for Temporary Residence in the SAW Program 90
Evaluating Evidence in the General Legalization and SAW Programs 93
Qualifying for Permanent Residence in the General Legalization Program 98
Qualifying for Permanent Residence in the SAW Program 103
Family Unity and Legalization 103
The Legalization Process 105
Applying for Temporary Residence 105
Procedural Changes 109
Applying for Permanent Residence 112
Conclusion 115
5 The Role of Implementation in Legalization

- Program Outcomes: Evidence from the Field 119
  - Publicity and Outreach 120
    - The National Publicity Effort 121
    - Local Efforts 125
  - Temporary Residence (Phase I): A View from the Field 131
    - Dimensions of Local Variation 131
    - Implementation and its Effect on Legalization Statistics 149
    - Legalization Turnout versus Pre-Implementation Estimates 160
  - Permanent Residence (Phase II): The Final Step Out of the Shadows 167
    - Phase II Publicity and Outreach 167
    - The Phase II English/civics Requirement: Problems of Standards and Financing 170
    - The Phase II Interview 177
  - Second Chances: The Appeals Process 179

6 Abiding Issues in Legalization and Future Immigration Policy 185

- Enduring Problems 185
  - Phase II Completion 186
  - Resolving Legalization Appeals 189
  - Family Unity versus "Family Fairness" 190
  - SAW Program Problems 191
  - Replenishment Agricultural Workers (RAWs) 193
- Concluding Comment 194
List of Tables

3.1 A Comparison of Legalization Programs in Six Countries 58

5.1 General Legalization Adjudications by Quarter Filed, National Totals 158

5.2 General Legalization Adjudications by Site, Selected Legalization Offices 159

5.3 An Illustrative Comparison: 1980 Census Estimates of Undocumented Immigrants vs. Legalization Applicants, Selected SMSAs 163

5.4 An Illustrative Comparison: INS Legalization Planning Estimates vs. Legalization Applicants, Five States 165

5.5 Phase II (Permanent Residence) Applications by Phase I Monthly Cohort, National Totals 175

List of Figures

4.1 The Legalization Process: Applying for Temporary Residence 107

4.2 The Legalization Process: Applying for Permanent Residence 113

5.1 Monthly Legalization Applicants: Selected Legalization Offices 150
This report examines the design, implementation, and outcomes of the legalization provisions of the Immigration Reform and Control Act of 1986. It draws on two types of data: interviews with those responsible for program implementation and firsthand observations of a wide range of program activities in the field. It is intended for a broad audience with an interest in immigration and immigration issues, including public policymakers, state and local officials, and the business and academic communities.

This study is part of a broader two-year study of the implementation of IRCA undertaken by the Program for Research on Immigration Policy.

The Program was established in February 1988, with initial core funding from The Ford Foundation, to provide analysis that will help inform immigration and immigrant policies. The Program has three basic goals:

- To study the domestic and international issues raised by the 1986 Immigration Reform and Control Act (IRCA);

- To address the larger question and problems that continue to characterize immigration and immigrant policies;

- To disseminate and exchange information about IRCA, immigration and immigrant policies
through publications, working groups, and conferences.

The Program publishes books and Immigration Policy Reports. The Program’s research will help policymakers identify the degree to which IRCA is achieving its objectives. The research should also help practitioners assess the effectiveness of several previously untested "tools" of immigration policy.

Conclusions or opinions expressed are those of the authors and do not necessarily reflect the views of other staff members, officers, trustees, or advisory groups of either the RAND Corporation or The Urban Institute, or any organizations that provide either of them with financial support.

Persons interested in receiving the Program’s publications or in attending its working groups and conferences should address enquiries to either of the Program’s codirectors:

Dr. Frank D. Bean
The Urban Institute
2100 M Street, NW
Washington, DC 20037
(202) 833-7200

Dr. Georges Vernez
The RAND Corporation
1700 Main Street
Santa Monica, CA 90406
(213) 393-0411
EXECUTIVE SUMMARY

This report chronicles the design, implementation, and outcomes of the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA). These provisions, representing IRCA's inclusionary aspects, allow certain types of undocumented immigrants to adjust their status to legal permanent residence and eventually to citizenship. The key legalization provision creates a temporary program that permits the status adjustment of undocumented immigrants who can demonstrate continuous residence in the United States as of January 1, 1982. A second major provision allows for the adjustment of certain undocumented farm workers through the Special Agricultural Worker (SAW) and Replenishment Agricultural Worker (RAW) programs.

Project Design

This study of IRCA legalization provisions draws on two types of data: interviews with those responsible for program implementation—representatives of the relevant public and private agencies at the federal, state, and local levels—and firsthand observations of a wide range of program activities in the field. These data were collected in two waves to permit observations of change over time.
The first wave was conducted from October to December 1988 and the second wave from April to July 1989. Eight cities served as study sites: Los Angeles, San Jose, San Antonio, El Paso, Houston, Chicago, New York City, and Miami. Teams of two to three researchers visited each site for two weeks interviewing nine categories of respondents ranging from local INS officials to immigrant advocates to union representatives; in total, 484 interviews were conducted. Interview data were supplemented with INS data on legalization program outcomes for the eight field sites and for the nation, permitting comparison of field observations to actual program performance.

Meeting IRCA’S Implementation Challenges

The challenges to operationalizing the legalization program were many. They included the broad but uncertain scope of the legalization program (no one knew exactly how many undocumented immigrants would apply); the inherent problems associated with mounting a temporary program in a short amount of time (the general program was to last one year and begin six months after enactment); the difficulty of managing a multi-stage program that must track a highly mobile population over the course of a process that can last over several years; and the need for inter-agency coordination that required traditional adversaries (the INS and the advocacy community) to forge a new, cooperative relationship. This report illustrates how these challenges were met in a reasonably successful manner.

History of Legalization Proposals

Tracing the development of IRCA from the early 1970s, the beginning point for the latest historical wave of concern
about undocumented immigration, yields a congressional portrait of an ideal program, but one that reflects a basic contradiction. This contradiction is the fundamental struggle between the inclusionary and exclusionary strands of political thinking on U.S. immigration. Both elements are present in IRCA 1986; as mentioned above, the legalization provisions represent the inclusionary strand.

Like any major policy reform, IRCA legalization is filled with compromises, tradeoffs, and ironies. The road to IRCA legalization began in the 1970s, when the Congress and the White House were beginning to consider three elements of immigration reform that went on to be included in IRCA: employer sanctions, enhanced border enforcement, and legalization of certain undocumented immigrants. The political tension between those who supported immigration reform as an opportunity to implement a generous legalization program and those whose primary agenda was tightened enforcement was reflected in the final legislation. Legalization as it emerged in IRCA was a targeted program that balanced the offer of legalization with stringent requirements for both temporary and permanent residence.

The Implementation Plan: Organization, Financing, and Staffing

The implementers of the general legalization and the SAW programs had two sources of guidance to draw upon: the experience of other countries and the yearly plans that the INS and the advocacy community advanced as the legislation began to take shape. The lessons learned from other countries implementing similar programs were clear. Implementers should marshall resources early for public-
ity, seek maximum cooperation among public and private agencies in encouraging applicants to come forward, and write regulations that allow for flexibility in implementation. The INS's own planning efforts drove home an additional point, that the INS had to extricate itself from its reputation for unclear standards and interminable delays, and implement IRCA's legalization program accurately and efficiently.

Key operational units were created to serve a particular function in the one-time-only legalization program including the following:

- **Qualified Designated Entity (QDE).** These are generally voluntary agencies that had served as immigrant intermediaries in the past. They were authorized by IRCA to receive general legalization and SAW applications and, with the consent of the applicant, to forward those applications to the INS for adjudication. QDEs received $15 reimbursement for every application they submitted to the INS.

- **The Legalization Office.** Under the authority of the INS district director, these offices were staffed by adjudicators who interviewed all applicants and forwarded files to one of four Regional Processing Facilities with a recommendation for approval or denial. These offices were physically separate from INS district offices to separate the legalization program from the enforcement side of the INS in the minds of the immigrants and staff, and to be more accessible to immigrant neighborhoods. Regional commissioners decided where and how many legalization offices would be placed in the various districts.
• **The Regional Processing Facility (RPF).** Created as a center for the standardized adjudication of legalization petitions, these facilities fell under the four INS Regional Offices. Unlike local legalization personnel, RPF officers had direct responsibility for the outcome of an application and could approve, deny, or return the file to the legalization office with instructions to re-interview the applicant. They were also involved in applications for permanent residence.

• **The Legalization Appeals Unit (LAU).** This was created as a new adjudicatory body separate from the INS’s Administrative Appeals Unit. Located in Washington, D.C., the LAU was staffed by senior immigration examiners (rather than attorneys) who reviewed denials in general legalization and SAW cases and rendered final appellate decisions.

Many of the personnel hired to assist with the legalization program were retired INS employees; some came from other agencies or the outside. The higher the position, the more likely the worker had some prior experience either in the INS or another federal agency. However, quality distinctions among personnel became blurred, especially at the local level, in the wake of hiring freezes, attrition, and concomitant surges in the application rate. Lawyers were conspicuously absent from INS legalization staff. Rather, they were concentrated on the enforcement side of the INS, where it was felt they were more needed with the employers sanctions program. Although the absence of INS attorney involvement in legalization may have streamlined the adjudication process, it may also
have contributed to a spate of class action suits charging the INS with unclear interpretations of the eligibility standards for applicants. The INS lost virtually all these legal challenges.

The legalization program implemented by the INS was user-funded, giving the INS discretion to reallocate its resources largely independent of congressional oversight. In order to build a legalization infrastructure, the INS placed budgetary emphasis on computer equipment and enhanced data systems. Fewer resources went to legalization training or staffing. The costs associated with these choices included local and regional personnel shortages at key points in the program, a spate of legal challenges stemming from inadequate or improper adjudicatory practices, and backlogs, as adjudicatory personnel were forced to redo much of their work under court mandates. Ultimately, the high quality of the legalization technological hardware could not substitute for thorough adjudicator training.

The Politics of Rulemaking

In the general legalization program, the incentives to ration the benefits of legal status (rationing was purposely drafted into the regulations) diminished over time because the INS became target of a litigation effort on behalf of those undocumented immigrants who stood to benefit enormously from a slightly more generous interpretation of the statute. As the courts repeatedly sided with the applicants, incentives to ration benefits diminished further, because court battles were costly in terms of workload and image. Thus, the INS increasingly sought to avoid such litigation through regulatory changes that would increase the applicant’s chances of completing the legalization process successfully.
The INS felt comfortable liberalizing its general legalization regulations because of its confidence of a low incidence of fraud in that program. However, this was not the case with the SAW program. From the outset there was great concern over SAW fraud (soon justified). The resultant SAW denials did not meet legal criteria (partly the fault of rapidly trained adjudicatory personnel who were ill-equipped to judge SAW cases), and the INS paid for its rationing efforts with court-mandated readjudications and growing backlogs.

Discrepancies in Implementation and Outcomes

By most accounts the national-level effort to publicize legalization did not meet with great success, while local initiatives proved much more important in determining the awareness and program participation in a given community, particularly for smaller immigrant enclaves and non-Hispanic immigrant groups. The publicity and outreach efforts of the national and local INS targeted the information networks of the Mexican-origin community more effectively than those of other immigrant groups. To compensate, local advocacy and service organizations augmented these efforts with campaigns of their own, targeting their own diverse constituencies. Although most sites recovered from the slow start in time to see a significant legalization turnout, both INS and advocacy respondents reported that this turnout did not include many applicants who became eligible in the wake of court decisions and administrative changes.

Specific dimensions on which local practice varied include the relationship between the INS and the advocacy community, the way the INS handled its competing missions, the treatment of documents and affidavits, responses
to suspected SAW fraud, and implementation of "family fairness."

Continuing Issues

Several issues remain to be resolved:

- **Completion of the permanent resident (Phase II) transition.** Nearly two years after the close of Phase I, about 600,000 of the 1.6 million general legalization temporary residents have yet to file their Phase II permanent residence applications, and 20 percent of the Phase II applications filed have yet to be adjudicated. Implementing agencies face the challenges of disseminating adequate information on Phase II requirements, assuring that all routes to permanent residence are available to all applicants, and preserving the stability of funding for the provision of Phase II English/civics course requirements.

- **Family Unity Considerations.** Because greater attachment to life in the U.S. increases the likelihood over time of family members joining the original settlers, the more restrictive the cutoff date in a one-time-only legalization program, the more likely are eligibility divisions within families to occur. By setting an eligibility cutoff date for legalization that predated implementation by nearly six years, IRCA framers ensured that the issue of mixed-legal status would arise. Both the INS and the Congress have the authority to address this issue. Setting a cutoff date closer to the actual implementation of legaliza-
tion would accomplish the goals of preserving family unity more completely.

- **SAW Program Problems.** More than a year since the close of the SAW program, most SAW petitions remain unadjudicated. The INS’s pursuit of SAW fraud is targeted at document vendors and fraud facilitators rather than the SAW applicants themselves, yet these investigations increase the likelihood of SAW applicants being statutorily denied or having their status terminated at the local level. To the extent that these denials depart from uniformity in SAW adjudication procedures and from due process, they may well be challenged in the courts for years to come. The controversial nature of the SAW program stems from its originally flawed design. Congress mandated that the INS determine eligibility for a population whose migration histories and employment practices are unsuited to the construction of a documentary record of evidence. Under such conditions the INS has found it nearly impossible to distinguish a legitimate from a fraudulent SAW application. Given the magnitude of the backlog and the court constraints, the INS must ask itself whether initiating a large effort devoted to the investigation of SAW fraud and the development of legally defensible regulations governing such an investigative effort are worth the cost in the context of the many other competing investigatory burdens placed on the INS.

- **The RAW Program.** The opportunity to legalize through the RAW program is an attractive alter-
native to many undocumented immigrants, but regulations governing the program do little to enable RAWs to fulfill their statutory obligations, and the program offers only a remote opportunity to enjoy the benefit of U.S. citizenship. Furthermore, for RAWs, citizenship only comes at the cost of an extended period of agricultural indenture. In design and implementation, RAW most closely resembles the very guest worker policies that originally generated the perceived need in Congress for agricultural immigration reform.

The lesson of legalization is that change in the U.S. immigration system can be effected as much by reforming the benefits side as by modifying immigration law enforcement. Clear statutory and regulatory standards, the cooperation of many agencies, and the adoption of a generous spirit in implementation combine to enhance the effectiveness of such benefits-based strategies.
Chapter One

MEETING IRCA’S IMPLEMENTATION CHALLENGES

Over the decade preceding IRCA’s passage, legislators struggled with the problem of controlling unauthorized migration to the United States, including how to deal with undocumented aliens already living and working in this country.¹ From protracted debates touching upon issues of equity, economics, politics, and national cultural identity, five alternative routes to legal status for particular sets of undocumented immigrants found their way into IRCA:

1) an updated registry program;

2) a provision adjusting the status of Cubans and Haitians who entered during the Mariel era;

3) a one-time legalization program for certain undocumented immigrants who could demonstrate continuous U.S. residence as of January 1, 1982;

4) a Special Agricultural Worker (SAW) legalization program; and

5) a Replenishment Agricultural Worker (RAW) legalization program.
The first two provisions, registry update and Cuban/Haitian adjustment, had direct precedent in U.S. immigration law. The third, the legalization or "amnesty" program for pre-1982 entrants, represented a new approach to the conferral of U.S. immigration benefits. The last two provisions, both directed at legalizing agricultural workers, were neither simple revisions to existing policies nor completely new programs. Although the SAW and RAW provisions shared many of the elements of the new legalization program, they were directed toward a population over which the U.S. government has long sought policy control.

Each of the five IRCA paths to permanent residence required a mechanism through which the benefit of legal immigration status could be delivered to the target population. Congress charged the Attorney General with this mission and the assignment fell to the Immigration and Naturalization Service (INS).² In response to the IRCA mandate, the INS implemented a variety of procedures that channelled undocumented immigrants on to the paths to permanent residence.

---

THE CHALLENGES

The major legalization programs for aliens entering before 1982 and SAWs posed at least four major implementation challenges to the INS, the key administrative agency.

**Broad but Uncertain Scope**

The legalization and SAW programs were expected to generate a sizable but unknown demand for a very desir-
able benefit—U.S. legal residency. For this reason the INS could expect both eligible and ineligible undocumented immigrants to apply, but how many applicants would fall into each category was unknown. The INS-generated estimates of the eligible undocumented population covered a considerable range, from a low of 1.3 million to a high of 2.6 million nationwide. Thus the implementing agencies had to build an administrative mechanism capable of handling a flow of applications whose number, timing, location and authenticity could not be known.

Mounting a Temporary Program

The legalization program was mandated by statute to begin no later than six months after enactment and to last only one year. Similarly, the legalization program for Special Agricultural Workers (SAW) was to last only 18 months. Within this short period of time the implementing agencies had to assemble a large temporary bureaucracy, develop guidelines for new programs with complicated eligibility standards and procedures, publicize the programs, and adjudicate applications accurately. The tasks would have been formidable without time constraints, but these made the tasks even more daunting and the need for streamlined and standardized procedures even greater.

Coordinating A Multi-Stage Program

The pre-1982 legalization provision included a one-year application period, an 18-month temporary residence period, and a one-year window of eligibility for adjustment to permanent residence. Ultimate adjustment to permanent residence depended upon completion of an
English/civics course requirement within that year of permanent residence eligibility. Further deadline complications were added in the special cases of eligible undocumented immigrants who were under deportation orders or who were in detention at the time of the law’s passage. Thus, the implementing agency had to develop a program that would keep track of applicants throughout the legalization process (which could last well into the 1990s), would keep applicants informed of their current status and any further requirements throughout that time period, and would accurately evaluate successful completion of those requirements. Planning for and achieving these objectives would be particularly difficult given the high mobility of the target population.

Interagency Coordination

IRCA required that community groups be involved in the implementation of legalization—a mandate that seemed uncontroversial. The involvement of such groups would mitigate the often cited "fear factor" and encourage maximum participation in the program—a crucial consideration given the program’s large scope and temporary window of eligibility.

The reality was rather different, however, because the INS and the advocacy community were historical adversaries, leading to tension on both sides. The INS would now not only have to work with community groups but also fund them, because groups being granted Qualified Designated Entity status were entitled to $15 reimbursement for each application filed. Yet the advocacy community did not trust the INS commitment to making legalization a success. Joining forces with the agency as mere "paper-pushers" did not sit well with groups whose
pre-IRCA community roles had been both protective and affirmative. Bridges would first have to be built between the INS and the QDE community before QDEs could serve as bridges between the INS and the immigrant community.

**MEETING THE CHALLENGES**

How then did those charged with implementing the law meet these challenges? The discussion below is organized by each of the four challenges outlined above.

**Broad but Uncertain Scope**

One way to assess whether the legalization program met this challenge is to compare the number of aliens who legalized with those expected to legalize. In this regard the general legalization program reached the lower bound estimate of 1.7 million persons. In so doing the program was far and away the largest of its kind undertaken in modern history. Furthermore, these results appear to have been achieved with a rather low incidence of fraud. From an institutional perspective, the program’s ability to process so many petitions with comparative success appears to reinforce the merits of the adjudication process adopted that involved intake and initial case review at the local level and case disposition at the regional level.

The fact that these lower bound estimates could eventually be met is due in part to the INS’ adoption of more flexible and inclusive eligibility standards and procedures over time. This general trend toward inclusiveness is especially evident in the conduct of Phase II (the permanent
residence phase of the program) and the liberalized approach to family unity issues announced by the INS in early 1990.

But while the program as a whole can be viewed as meeting the challenge of scope, in some important respects the results are more mixed. For example, the alien population that eventually qualified for temporary resident status under the general legalization program was, compared to pre-enactment estimates, disproportionately composed of Mexicans. Although the reach of the program was commendably broad within the Mexican community, its success in reaching into other ethnic communities that presumably contain large numbers of undocumented aliens was far more limited.

To some degree these results can be linked to the law’s design, which favored people who had entered in completely undocumented status over those who had violated their visas (and were more likely to be non-Mexican), and disqualified post-1982 arrivals, eliminating many Central Americans from consideration. But implementation choices also favored Mexican immigrants. For example, the national publicity campaign targeted Hispanic audiences. Together, these design features suggest the implementation problems inherent in reaching smaller, perhaps more insular ethnic groups that might significantly contribute to the numbers of undocumented aliens.

While total national results were relatively strong, results at the regional level varied dramatically and were more mixed. Again, using pre-enactment estimates of the undocumented population as a measure, we see that turnout in California was heavy, as anticipated, that participation in Texas far exceeded expectations, and that New York applications lagged far behind early estimates.

The general legalization program demonstrated that a large, temporary adjudication program can be mounted
effectively when most applications are judged to be valid and are eventually approved. But the same cannot be said of the SAW program. Not only were far more SAW applications received than expected (1.3 million vs. 250,000), but the broad impression conveyed by reviews of early applicants’ petitions was that fraud was rife in the program. And while approvals of applications for benefits were rarely contested, denials usually triggered both substantive and procedural challenges. Not only did suspected fraud in the SAW program swamp the INS’s limited investigative capacity, but procedural short cuts taken by INS examiners as a means of coping with the number of applications led to unfavorable court rulings for the Agency. As a result the Agency had to reexamine thousands of cases, leading to massive backlogs.

Mounting a Temporary Program

There is a natural tension in all adjudication systems between deciding cases quickly and weighing the evidence thoroughly. This tension was heightened by the time-bound, temporary character of the legalization program. As a result, the INS and many of the private agencies with which it was working eventually moved more or less successfully from the elaborate, legalistic process used in applications for refugee or asylum status to a more streamlined, de minimis approach to adjudication. As indicated above, this worked to the advantage of the general legalization program but not the SAW program, where procedural shortcomings led to court challenges and defeats.

In other instances, implementation failed to meet the particular challenges presented by administering a temporary program. Perhaps the most questionable choice made by the law’s implementers was the decision to make the
general legalization program self-funding. Because turnout was low during the program's first full year (thus bringing in less applicant fees to fund the program), the INS and the QDEs suffered financially through the program's critical early stages. Although Congress pressed the INS to make an appropriations request for start-up costs, the agency refused, and found itself unable to pay back its own account without cutbacks late in the program. These cutbacks came on the eve of a massive eleventh-hour turnout in April and May 1988 as the program came to a close. As it turned out, self-funding, combined with low early turnout, made it difficult for the agency to have staff in place when they were needed.

The temporary character of the program also had unwelcome effects on issues of equity. In some cases rulings expanding the eligible population did not come in time to identify and reach the target groups. In other cases, the right to file for legal status was extended beyond the program's termination date.

Finally, the temporary character of the program made it difficult for local agencies to make up for the ground lost by the delayed and generally inadequate informational campaign administered by the INS central office during the program’s first year.

Coordinating a Multi-Stage Program

The general legalization program unfolds in three stages: receipt of temporary resident status (Phase I), receipt of permanent resident status (Phase II), and naturalization and citizenship. Temporary resident aliens who fail to take the next step to become permanent resident aliens revert to undocumented status. The obvious challenges presented by this multi-stage process have been to insure
that temporary resident aliens understand what is further required of them and that they are able to readily satisfy those requirements.

To date, the evolution of a streamlined Phase II (the elimination of artificial and confusing application dates, the broad availability of required classes in English and civics, and the generally flexible and lenient approach taken to IRCA's Phase II requirements) suggests that this challenge has been well met by the implementing agencies. Although there have been problems with the administration of the State Legalization Impact Assistance Grant (SLIAG) program--those funds remain a frequent target of advocates for other underfunded programs--these problems do not seem to have had a dramatic impact on the progress of legalization.

Interagency Coordination

Of all the challenges facing the agencies implementing IRCA, one of the most daunting was the challenge of working together. Our field data showed that both the INS and members of the advocacy community considered their relationships improved for having gone through the IRCA experience together. Still, the pressures of limited time, limited resources, unknown program scope, varied interests, and pre-existing biases toward one another led to ongoing problems that diminished the effectiveness of legalization.

Both the INS and the advocacy community learned important lessons from the QDE implementation model. First, the INS came to appreciate the depth of the commitment QDEs felt toward the immigrant community. Not content to serve as mere "paperwork" intermediaries for the INS, QDEs adopted a proactive role as advocates for
their clients, even to the point of filing lawsuits on their behalf. This proactive stance was critical in the gradual INS transition toward more inclusive revisions of regulations to avoid the threat of court battles.

Second, the QDEs learned the limits of their own role in the immigrant community. Once it became clear that legalization was not a "sting operation," immigrants chose to file their petitions directly with the INS in increasing numbers. Although the QDEs were crucial sources of preliminary information about the program, they were not always able to shepherd applications through to completion, particularly in the case of those QDEs adopting a legalistic, heavily documented approach to the applications. Thus, QDEs were often not reimbursed for their labors and the outcome statistics on QDE filings—about 18 percent of all applications—understated the importance of their community role.

Third, interagency coordination was necessary on additional levels. Community groups based on ethnic, religious, and political ties found themselves forging new coalitions, as in the case of the Jewish Federation and the Latino Institute in Chicago, which jointly administered SLIAG funds. The private immigration bar became more involved with nonprofit immigrant advocacy groups in some of our sites. Often the tensions within these private coalitions were as great as those between the community and government. Yet the ultimate effect of such efforts was a stronger network of immigration advocates prepared to mobilize political power in support of immigrant interests.

Finally, interagency coordination was necessary across levels of government. Nowhere was this more challenging than in the administration of SLIAG funds. In each state, a multitude of agencies documented SLIAG-reimbursable costs. The Department of Health and Human Services
(HHS) accepted applications for state reimbursement. Ultimately (often months after the original costs had been incurred) resources went back to the state and local governments that had incurred the original health, education, and welfare costs of legalization. Breakdowns occurred at each point in this system, and, indeed, continue to plague both states and the HHS. This type of inter-agency coordination may be the weakest link in the IRCA implementation chain.

We found that the coordination between the INS and advocates mandated by the law enhanced legalization program outcomes, even though the role of advocates was not always the role they or the INS expected. By strengthening the strategic position of advocates with respect to immigration policy implementation, the IRCA framers, as intended, enhanced the integrity of the program. Similarly, IRCA gave advocacy groups the opportunity to forge new coalitions that can be brought to bear on future immigration policy initiatives.

---

**NEXT CHAPTERS**

Overall, IRCA’s legalization programs were put into practice in a fashion that reasonably successfully met the challenges confronting legalization implementation. A capsule discussion of how these challenges were met, such as the one presented above, does not fully reveal the legislative tensions out of which the legalization provisions arose, nor the fine-grained texture of the process that was followed in overcoming obstacles to successful implementation. The next four chapters examine these matters in greater detail.
Chapter two traces the historical path of the IRCA legalization provisions, focusing on the legislative history of legalization and concentrating on the Congressional and administrative proposals made since the 1970s.

Chapter three outlines the implementation plan created by the INS and other implementing agencies in response to the statutory mandate. It examines the basic organizational model for delivering the benefit to the target population and explains the origins and functions of the key operational units. It also looks in detail at the financing and staffing decisions made by the implementing agencies.

Chapter four examines the political evolution of the eligibility standards and program procedures for general legalization and agricultural worker legalization. It explores the influences of the courts, Congress, and the INS in generating both inclusionary and exclusionary revisions to the programs—revisions that had direct effects on the size and composition of the legalized population.

Chapter five examines the field data to determine the role of implementation in program outcomes, exploring, among other things:

- publicity and outreach
- general legalization turnout
- the preliminary legalization interview
- agricultural worker legalization turnout
- community and INS responses to perceptions of program fraud
- family unity concerns
Meeting IRCA’s Implementation Challenges

- English/Civics instruction for legalizing immigrants
- the permanent residence interview
- the legalization appeals process

The presentation in these chapters of the results of our data gathering and analysis efforts not only elaborates the bases for the conclusions drawn above, but makes clear the multiplicity of ways in which the implementation challenges were met. Finally, chapter six examines lessons for future immigration policy formation that have emerged from our research on the implementation of IRCA’s legalization programs.

Notes, chapter one


2. Interviews with immigrant advocacy groups in Washington, D.C. indicated that some groups supported the idea that the Community Relations Service in the Department of Justice should implement IRCA legalization.

Chapter Two

IRCA PATHS TO LEGAL RESIDENCE

The main legalization provisions of IRCA were the product of considerable congressional conflict and last minute compromise. Only the registry and Cuban/Haitian adjustment routes to legalization involved legislative consensus. Taken altogether, the legalization provisions constituted the major "reform" of the immigration benefits system emerging from IRCA. The legislative development of each of the IRCA paths to permanent residence is described below.

GENERAL LEGALIZATION

Both equity and economics had a hand in congressional design of the major legalization initiative. Some legislators supported a legalization program out of a sense of fairness toward those undocumented immigrants who had built substantial equity in the United States during a time when immigration law enforcement was ineffectual. The term "equity," as employed in the Judiciary Committee reports on IRCA, refers to both the material and social investments many undocumented immigrants made in their U.S. residence, demonstrated through their settlement, employ-
ment, and community formation within U.S. borders. Other supporters of IRCA legalization did so strictly as a way to increase the cost effectiveness of INS enforcement efforts. Much of the rationale from the Senate side used the latter argument, as illustrated in this passage from the Senate Judiciary Committee’s report:

The United States is unlikely to obtain as much enforcement for its dollar if the INS attempts to locate and deport those who have become well settled in this country, rather than to prevent new illegal entry or visa abuse.¹

The political tension between those who supported immigration reform as an opportunity to implement a generous legalization program and those whose primary agenda was tightened enforcement was reflected in the final legislation. Legalization as it emerged in IRCA was not an "amnesty" in the broadest sense of the term, but rather a targeted program that balanced the offer of legalization with stringent requirements. These included evidence of nearly five years of continuous residence, a filing fee of $185, proof of financial responsibility, ineligibility for most public benefits for a period of five years after application, and completion of an 18-month temporary residence period. Permanent resident status—the ultimate goal of the applicant—was contingent upon successful completion of an English language/civics education requirement within a year-long one-time window of eligibility beginning immediately after the temporary residence period had elapsed. In exchange for meeting these requirements, the applicant would have work authorization, travel authorization, and after becoming a permanent resident, the opportunity to petition for visas on behalf of relatives wishing to immigrate.
This balance between inclusionary and exclusionary elements was not new in 1986. Ever since a legalization proposal had been paired with employer sanctions in a 1975 House bill, every serious legislative proposal addressing undocumented migration included both a legalization program and new enforcement mechanisms to enhance immigration control. Along the legislative road, however, the political arguments behind legalization underwent some major shifts, which were reflected in the changing characteristics of the legalization proposals.

Legalization Proposals in the 1970s

A series of bills introduced in the House from 1971 to 1974 took aim at undocumented immigration solely through the imposition of employer sanctions. Although such legislation passed the House twice and enjoyed presidential support, it failed to inspire comparable legislation in the Senate. The link between legalization and employer sanctions was first forged in 1975, when the House Judiciary Committee produced a sanctions bill that included a legalization program for certain undocumented aliens who had been in the United States since June 30, 1968. The Senate Judiciary Committee followed the House's lead in 1976, when its chairman introduced a bill proposing employer sanctions and the opportunity for undocumented aliens who entered the U.S. prior to July 1, 1968 to establish a record of lawful admission. Neither the House nor the Senate "sanctions and legalization" bills of the 94th Congress made it very far past the committee stage, however.

As the debate on immigration reform took shape in Congress, the Ford administration also turned its attention toward the issue. In January 1975, President Ford established a cabinet-level Domestic Council Committee on
Illegal Aliens, chaired by Attorney General Edward Levi. In December 1976, the Domestic Council Committee concluded that: 1) the U.S. labor market bore the major impact of undocumented immigration, necessitating employer penalties for knowingly hiring undocumented immigrants; 2) enhanced border enforcement was a desirable policy objective; and 3) undocumented immigrants in the U.S. before July 1, 1968 should have the opportunity to legalize their immigration status.

These elements of reform—employer sanctions, enhanced border enforcement, and legalization of certain undocumented immigrants—were carried over into the Carter years. In August 1977 President Carter submitted a message to Congress outlining "a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here." Along with employer sanctions and increased Border Patrol resources, Carter's recommendations included two legalization provisions: permanent resident status for undocumented aliens in the U.S. as of 1970, and five-year temporary status for undocumented aliens entering the U.S. before January 1, 1977. Introduced jointly by the chairmen of the House and Senate Judiciary Committees as the "Alien Adjustment and Employment Act of 1977," the Carter proposal survived only until the Senate Judiciary Committee hearings of the following year.

THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

The most significant breakthrough in the immigration debate during the Carter years was the creation by the 95th Congress of the Select Commission on Immigration and
Refugee Policy (SCIRP). This 16-member commission spent two years evaluating prevailing immigration policy and setting forth an agenda for reform. SCIRP included representatives from both houses of Congress, the executive branch, and members of the public. It held numerous public hearings and commissioned several volumes of immigration research. After Ronald Reagan's election to the presidency, SCIRP released a report ushering in the next decade of debate on undocumented immigration.

The 1981 SCIRP report (U.S. Immigration Policy and the National Interest: The Staff Report of the Select Commission on Immigration and Refugee Policy. Washington, D.C. U.S. Government Printing Office, 1981; hereafter referred to as SCIRP) has been cited passionately by both advocates and critics of legalization. Given the centrality of this report to both sides of the IRCA debate, the SCIRP recommendations on legalization deserve close attention, not only for the agenda they set forth, but also for the legalization issues they omitted. Some of these issues arose later as key challenges to the implementation of the IRCA legalization provisions as finally enacted into law.

The basic recommendation in the SCIRP report was straightforward: "The Select Commission recommends that a program to legalize undocumented/illegal aliens now in the United States be adopted." (SCIRP, p. 72) Members arrived at this general endorsement through votes on four aspects of a legalization program: eligibility standards, strategies to maximize participation in the program, the interaction of legalization with new enforcement efforts, and a formal position toward the undocumented population ineligible for legalization.

The first SCIRP vote addressed eligibility for legalization. Eligibility discussions focused on three elements: date of entry, length of continuous residence, and admissibility under the prevailing grounds of immigrant exclu-
ability. The SCIRP report recommended that undocumented immigrants in the United States on or before January 1, 1980 be eligible for legalization. This date was described as "near enough to the enactment of legislation to ensure that a substantial portion of the undocumented/illegal alien population will be eligible, but . . . predates public discussion of the likelihood of a Commission recommendation in favor of legalization" (SCIRP, p. 77), thus excluding persons who might have entered just in order to take advantage of a legalization provision.

More contentious was the notion of establishing a minimum period of continuous residence in the United States. While some Commission members suggested keeping this requirement to a minimum of one year, other members recommended that undocumented immigrants be required to demonstrate continuous U.S. residence for three to four years prior to enactment of legalization. Ultimately, the Commission deferred to Congress in the determination of a continuous residency standard. Nowhere did the SCIRP report mention a continuous residency requirement of nearly five years—the requirement ultimately incorporated into the IRCA legalization regulations.

Excludability of legalization applicants raised a larger issue: the general appropriateness of the grounds of excludability in the 1952 Immigration and Nationality Act. Two camps emerged among SCIRP members. Some members felt legalization applicants should be exempt from all but the most serious grounds of excludability; others felt legalization applicants should be held to standards at least as strict as those of legal immigrants. The former group, which included all four of the "member of the public" Commissioners, argued that legalization would only work if applicants were not deterred by fear of excludability, and that the grounds for excludability themselves were outdated and required a substantive overhaul.
The latter position, expressed by Commission member Sen. Alan Simpson (R-WY), reflected a belief that, while the wording of the grounds for excludability might be outdated (referring as it did to "sexual deviation," "mental defect," etc.), the content was meaningful and reflected "characteristics which the American people deem to be offensive." (SCIRP, p. 422) Ultimately, the Commission recommendation amounted to a suggestion that grounds of excludability in the legalization program be "appropriate to the legalization program." (SCIRP, p. 76)

In sum, the only explicit eligibility standard proposed by SCIRP was the designation of a January 1, 1980 cutoff date. Beyond that, SCIRP members could only articulate the dilemma that would continue to plague lawmakers: balancing the goal of including as many undocumented immigrants as possible against the risk of encouraging new undocumented migration or rewarding those without stable equities in the United States.

In their second vote, SCIRP members unanimously endorsed the involvement of voluntary agencies and community organizations in the implementation of a legalization program. Citing the lower-than-expected legalization turnout in the programs of other countries, SCIRP members recommended that voluntary agencies and community groups adopt central roles in legalization outreach and preliminary intake. This recommendation would find its way into the IRCA statute five years later through creation of "Qualified Designated Entities" (QDEs)--local government agencies, community groups, and individuals who would act as intermediaries between the immigrant community and the INS.

The third Commission vote on legalization addressed the interaction between legalization implementation and the implementation of new enforcement procedures. This recommendation would come back to haunt SCIRP mem-
bers during the 1986 IRCA debate. The Commission recommended unanimously that "legalization begin when appropriate enforcement mechanisms have been instituted." (SCIRP, p. 84) Commission members dissented on what it actually meant to "institute" appropriate enforcement mechanisms. Senator Simpson's position reflected one interpretation of the vote: "No amnesty program should be adopted until effective additional enforcement measures are in place—not merely 'implemented,' but shown actually effective in substantially eliminating illegal immigration. It was in this context that I supported the concept." (SCIRP, p. 419) Senator Edward Kennedy offered an alternative interpretation: "...this does not mean that the legalization program should be delayed until the implementation of all the other...enforcement procedures recommended by the Commission. Rather, the legalization program should be undertaken at the same time new enforcement efforts are initiated and funds are authorized." (SCIRP, p. 361)  

The fourth SCIRP vote is the only one that was not unanimous. A majority of the Commission voted "that those who are ineligible for a legalization program be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities." (SCIRP, p. 83) Supporters argued that post-1980 undocumented migrants would not have established the equity necessary to qualify for the legalization benefit. Dissenters argued that such a distinction was arbitrary and would lead to continued ineffectual deportation efforts. Several commissioners recommended a temporary residency status for those who did not qualify for legalization, but the resolution passed without such assurances.

The SCIRP report established several ideas that would find their way into IRCA nearly six years later: legalization as a one-time-only program; a retrospective eligibility
cutoff date; advocacy community involvement in implementation; an explicit link between legalization and enhanced enforcement; and a recognition that, once enacted, legalization would statutorily exclude some subset of the undocumented population who would then be subject to deportation.

The final wording of IRCA addresses three key issues in legalization that receive little attention in the SCIRP report: 1) creating a "temporary" resident status as a preliminary step before permanent resident status; 2) additional criteria for legalization-derived permanent residents, i.e., fulfillment of an English/civics requirement and temporary ineligibility for public benefits; and 3) preserving family unity. Below is a brief description of the evolution of these issues.

- **Temporary Status.** In SCIRP recommendations, legalization implies direct adjustment from "undocumented" to "permanent resident" status. "Temporary" resident status is recommended only as an alternative to deportation for those who might be ineligible for legalization. Yet under IRCA all legalization applicants have to go through a temporary residence period and, indeed, revert to undocumented status if they do not complete the transition from Phase I (temporary residence) to Phase II (permanent residence) within a year of Phase II eligibility.

- **Additional Requirements.** The Phase II transition involves such additional requirements as English language/civics education and ineligibility for most public benefits for five years. Both of these requirements are unique to IRCA-provided permanent residency. Other legal
immigrants need not demonstrate English/civics knowledge unless they choose to naturalize, nor are they barred from most public benefits.

- **Family Unity.** Family unity issues did not receive explicit attention in the SCIRP recommendations. Although SCIRP recommends that ineligible undocumented immigrants be subject to deportation, little mention is made of the possibility that these ineligible applicants might live in U.S. households with eligible family members, or what effect this might have on applications.

In sum, while SCIRP set the stage for the 1980s debate on legalization, many important issues remained to be battled out through the legislative process.

**Legalization Proposals in the 1980s**

The SCIRP report generated two immediate responses. First, the House and Senate held joint hearings on immigration—the first since 1951. Second, the Reagan administration formed a task force to develop an administration proposal based on its interpretation of the SCIRP recommendations.

Both these responses led to immigration reform bills. The Reagan administration generated the first of them, the Omnibus Immigration Control Act, introduced by the Judiciary Committee chairs. The administration's legalization program set an eligibility date of January 1, 1980, but required 10 years of temporary residency and a demonstration of English proficiency before adjustment to perma-
nent status. Meanwhile, the joint congressional hearings generated the Immigration Reform and Control Act of 1982, cosponsored by Sen. Alan Simpson (R-WY) and Rep. Roman Mazzoli (D-KY). "Simpson-Mazzoli," as the bill was known, quickly became the focus of congressional and public attention.

The Simpson-Mazzoli bill of the 97th Congress included both reform of the legal immigration system and new measures to deal with undocumented immigration. The key provisions were employer sanctions and a legalization program. The bill passed the Senate in August 1982 by a healthy 80-19 vote. However, it collapsed in the House in December 1982 under the weight of approximately 300 amendments.

A political dynamic that would prove significant in the eventual drafting of IRCA emerged in the House debate on Simpson-Mazzoli. The two basic elements of immigration reform—legalization and employer sanctions—set the House against itself when the package came up for debate. The strongest advocates of legalization in the House and in the community of lobbyists, such as Hispanic groups and immigrant advocacy groups were also the strongest opponents of employer sanctions. Similarly, those who advocated enforcement as the cornerstone to immigration reform were opposed to legalization. Virtually no one strongly supported the entire package. While this ambivalence would ultimately be overcome by a fragile compromise, it proved too fractious for passage in 1982. Congress adjourned without House action on this first version of IRCA.

The 98th Congress again considered two versions of an immigration reform bill introduced by Senator Simpson and Representative Mazzoli. Again, the Senate version passed by a wide margin (76-18). It included permanent residence for those in the U.S. as of January 1, 1977, and
temporary residence for those arriving as of January 1, 1980. The House version of legalization was more inclusive, with permanent resident status offered for all undocumented immigrants in the country before January 1, 1982.

After being restrained from House consideration for over a year through the efforts of Speaker Tip O’Neill (D.-MA), the House version of IRCA finally made its way to the floor, where the battle over legalization ensued. The House bill passed with significant amendments in June 1984 by a vote of 216-211. The narrow vote was attributed to several factors: opposition by some to legalization, opposition by others to employer sanctions, and a continuing struggle over proposals aimed at seasonal agricultural workers.

One noteworthy amendment to legalization at this time was the move by Representative Jim Wright (D.-TX) to create a two-year probationary period of "temporary" resident status for all legalization applicants, and to require those applicants to demonstrate pursuit of English and civics education before permanent residency. The Wright amendment changed the design of the legalization program. Until passage of the Wright amendment, the House provision made undocumented immigrants in the U.S. before January 1, 1982 eligible for direct adjustment to permanent residence. Although the Wright amendment was criticized in floor debate as being unfair, unnecessary, and excessively complicated, it passed by a vote of 247-170. But despite the compromises and revisions, IRCA did not survive Conference Committee negotiations.

IRCA rose once more in the 99th Congress. Again, Senator Simpson introduced legislation (S. 1200) that included both employer sanctions and a legalization program with an eligibility cutoff date of January 1, 1980. However, this legalization program had a different twist. Under S. 1200, legalization would be implemented only
after a "Select Commission on Legalization" determined that employer sanctions were in place and undocumented flows had decreased. As his rationale Senator Simpson reached back to 1981, when the third SCIRP recommendation on legalization endorsed legalization "when appropriate enforcement mechanisms have been instituted." (p. 84) Political observers of IRCA read this "triggered legalization" provision as an indicator of Senator Simpson’s increasing displeasure with the failure of the bill, and as the onset of a trend toward more restrictive legalization provisions in the future. Public opinion was shifting toward that more restrictive position as well, bolstering Senator Simpson’s power in the immigration debate.

The Senate passed S. 1200 in September 1985 by a vote of 69-30, a narrower margin than in the two previous sessions. An important amendment to the bill came from Senator Pete Wilson (R.-CA), who sponsored a major guest worker program that would admit up to 350,000 foreign agricultural workers a year for up to nine years to harvest perishable crops.

In the House, Rep. Rodino brought his considerable influence to bear on IRCA by introducing a bill on behalf of himself and Rep. Mazzoli. In November 1985 the House Immigration Subcommittee agreed to move the bill, H.R. 3810, to the full Judiciary Committee, where it remained for the next six months.

During this time a group of House members led by Rep. Charles Schumer (D.-NY) hammered out an agricultural worker provision that would serve as an alternative to a guest worker model, while affording the agricultural employer an opportunity to continue hiring from the traditional labor pool. With this controversial provision, the House bill made its way through four committees for additional input before it reached the Rules Committee.
In the Rules Committee, opponents of the Schumer amendment successfully challenged the prevailing rule for House debate, and it appeared unlikely that IRCA would be considered by the House. However, continued negotiations over the Schumer provision, then joined by Senator Simpson with support from the White House, led to the granting of a new rule and debate on October 9, 1986. The entire bill passed by a margin of 230 to 166, wider than that of the 98th Congress. However, an amendment abolishing the legalization provision was defeated by only 7 votes (199-192).

In the Conference Committee, the House agenda held sway on many of the legalization issues. The Senate conferees dropped "triggered" legalization. The eligibility date for general legalization was set at January 1, 1982; the temporary residency period was set at 18 months. The Schumer amendment, somewhat more restrictive than the version that exited the House Judiciary Committee, survived.

On October 15, 1986 the House of Representatives passed the IRCA compromise by a vote of 238 to 173. Two days later, after an extended opposition speech by Texas Senator Phil Gramm, the Senate invoked Senator Simpson's previously filed cloture motion to cut off debate and passed IRCA by 63-24 votes. President Reagan signed the bill into law on November 6, 1986.

Summary

Throughout the legislative history of legalization, three trends unfolded. First, the cutoff date for eligibility became more remote in time, statutorily excluding a higher proportion of undocumented immigrants. Second, the level of obligation required of the applicant rose.
Legalization was transformed from a program allowing direct adjustment to permanent residence into a program requiring probationary periods, educational qualifications, and exclusion from the public service system. Third, the legislative consensus between legalization advocates and enforcement advocates became increasingly fragile. Legalization advocates found themselves concentrating more resources on defeat of the entire IRCA package than on affirmative revisions to the legalization provision. Meanwhile, as time passed, undocumented migration continued. Enforcement advocates on Capitol Hill and in the White House capitalized on IRCA as a sovereignty issue, setting the agenda for public perceptions of undocumented immigrants as a threat and mitigating sympathy or equity issues in the debate. This framing of the issue further weakened the bargaining power of those IRCA advocates whose principal objective was the passage of a legalization provision. These trends interacted to generate a legalization provision that withstood the political process only through increasing statutory deference to those interested in restricting the program’s scope.

SPECIAL AGRICULTURAL WORKER (SAW) LEGALIZATION

While the legislative history of legalization is a story of increasing restrictions, the legislative history of the IRCA agricultural worker provisions tells the opposite story. As we see in this and the next section, the contest between the interests of U.S. growers and those of international migrant farm workers played itself out in Congress in the form of dramatically different proposals to deal with agri-
cultural migrants. The agricultural proposal ultimately adopted was the most inclusive by design—a distinct departure from the trends in general legalization.

The Special Agricultural Worker (SAW) program, introduced as a last minute amendment by Rep. Schumer and enacted with virtually no public discussion or debate, has been credited as the compromise that allowed IRCA to pass. By the same token, the SAW program incurred the wrath of the original IRCA architects and has since received much of the post-IRCA criticism and challenge from the legal community.

The legislative history of the SAW provision is quite short in comparison to that of the general legalization program. Even so, the SAW program illustrates a well-entrenched historical dynamic: the tension between immigration reformers and the agricultural industry in the United States.

For most of the 20th century, Mexican immigrant workers were alternately courted and deported, depending on the agricultural business cycle. Immigration policies tailored explicitly to the needs of agriculture predate IRCA by at least 40 years, the most noteworthy being the 22-year "bracero" program that brought millions of Mexican farm workers to the United States as agricultural guest workers. By the time IRCA passed, most observers recognized that the agricultural industry exercised considerable influence over any attempt at immigration policy reform.

Against this historical backdrop, the SAW provision was the result of several legislators hammering out an eleventh-hour IRCA provision that sought to satisfy the demands of agriculture. The SAW program ensured the votes of many legislators while avoiding the traditional model of farm labor procurement—the guest worker program.
Opposition to temporary guest worker programs ran deep in Washington, even though this model was preferred by many growers. In 1981 the SCIRP report explicitly rejected such an immigration policy. As an alternative it included a resolution in which the Department of Labor was encouraged to streamline the H-2 nonimmigrant labor certification process and to expand worker protections under that program. The comments of Commission member Joaquin Otero left no doubt as to the rationale for the resolution:

This action by the Commission made it crystal clear that the overwhelming majority had rejected consideration of any new, large-scale, temporary, or guest worker program now or in the future. This decision should be reported in unmistakable terms leaving no room for conjecture or misinterpretation. (SCIRP, p. 395)

Shortly after its review of the SCIRP report, the Reagan administration produced an immigration proposal including a two-year program admitting up to 50,000 Mexican guest workers annually. SCIRP notwithstanding, the guest worker idea was alive and well.

The Reagan administration proposals were quickly usurped by the first versions of the Simpson-Mazzoli bill. Guest worker amendments to both the Senate and House versions were defeated. Then advocates of the Simpson-Mazzoli bill tried modifying the H-2 nonimmigrant labor program. Even this proposal met with successful opposition. In the 98th Congress the move toward IRCA progressed further, as did the contentiousness of the agricultural worker debate. In June 1983 the House Judiciary Committee reported a bill to four committees, including
the Agriculture Committee. The bill exited the Agriculture Committee with an amendment creating an expanded temporary agricultural worker program. When the bill made it to the House floor a year later, the amendment passed by a 56-vote margin. The House/Senate Conference Committee dropped the amendment. Agricultural employer associations went on record with their displeasure. Soon after, several of the 10 conferees from California effectively killed the bill by reversing their votes on a previous point of compromise.

By 1985 it was clear that an agricultural worker provision could make or break immigration reform. When Senator Simpson introduced S. 1200, much of the floor debate centered on a guest worker provision introduced by Senator Wilson. Senators Kennedy and Simpson both opposed the amendment and it was defeated by 2 votes. But the amendment returned, this time with a cap of 350,000 temporary guest workers at any given time. The Senate approved the new Wilson guest worker program, along with an amendment to sunset the program after three years in the absence of a joint congressional resolution.

In the House, tempers flared at the Senate guest worker amendment. Representative Rodino stated that no bill at all would be preferable to a bill with a guest worker provision. 6 Intense negotiations began among House members to generate an alternative to the guest worker model. When H.R. 3810 emerged from the House Judiciary Committee in June 1986, the public got its first look at that alternative: the Schumer amendment proposing the SAW and RAW programs.

Rep. Schumer, acting as broker between farm worker advocate Rep. Howard Berman (D-CA) and grower advocate Rep. Leon Panetta (D-CA.), forged a compromise radically different from the guest worker idea in one way:
the alien farm worker population qualifying for the program would be eligible for permanent U.S. residence. Through this SAW provision, undocumented aliens who could demonstrate 60 days of seasonal agricultural work in qualifying crops between May 1985 and May 1986 were eligible to apply for immediate permanent resident status. The growers would have their traditional labor source, and the workers would have permanent resident status.

The Schumer amendment met with as much opposition as had previous guest worker programs, albeit for different reasons. Rep. Mazzoli expressed his conviction that the SAW provision would kill the chances for IRCA’s passage, calling it a "rolling legalization program." His instinct proved correct. The SAW provision became a partisan issue when the bill reached the House Rules Committee. Democrats refused to expose the delicate SAW compromise to challenge, by declining to entertain a rule that would allow for the introduction of an alternative guest worker amendment on the House floor. The Republicans, led by Rep. Dan Lungren (R.-CA.), the author of just such a guest worker amendment, retaliated by charging the Rules Committee with a "railroad job." Rep. Lungren turned his attack against the rule itself, leading a successful defeat by a 22-vote margin, once more condemning IRCA to the legislative graveyard.

But the SAW architects in the House, with the added input of Sen. Simpson, succeeded in resuscitating the bill. Introduced under a new rule on October 9, 1986, the bill passed by 64 votes. Finally, in the House/Senate Conference Committee, the conferees codified the new SAW agreement, extending the length of qualifying agricultural employment to 90 days, and requiring a temporary residence period for SAW applicants.

The SAW provision contained many elements that forced comparisons with the far more restrictive general
legalization program, since both provided routes to permanent residence for formerly undocumented immigrants. But the SAW provision emerged from a legislative track completely separate from that of legalization. It was, first and foremost, an alternative to the guest worker provision that most observers were convinced would drive the last nail into IRCA’s coffin. As such, the SAW provision was viewed by many as a success. Of course, the challenges of implementing such a program lay ahead.

One of those challenges, voiced primarily by grower interest groups, was foreseen—the challenge of maintaining sufficient agricultural labor supply once SAWs were legalized. Nothing in the law compelled SAWs to continue to perform agricultural labor. For this reason the Schumer compromise included a "buffer" program known as the RAW program.

---

**REPLENISHMENT AGRICULTURAL WORKER (RAW) LEGALIZATION**

Advocates for the agricultural industry asserted that the problem of seasonal labor shortages would persist should SAWs leave agriculture in large numbers. Thus, the architects of the SAW compromise developed a back-up plan: the Replenishment Agricultural Worker program.

Through the RAW program, the Departments of Labor and Agriculture would make a joint determination, three years after the enactment of IRCA, whether additional seasonal agricultural workers were needed. The program to admit these additional workers would begin in FY 1990. RAWs were to be admitted with temporary resident status from both outside and inside the United States. Unlike
SAWs, RAWs would be required to work in perishable agriculture for 90 workdays in each of the ensuing three years in order to avoid deportation and be eligible for permanent residency. To be eligible for citizenship RAWs would have to work 90 workdays per year for two additional years after gaining permanent residency.

The RAW program emerged alongside the SAW provision in the final stages of House consideration of IRCA. Thus, like the SAW program, the RAW program was insulated from challenge on the House floor.

Unlike the other four IRCA paths to permanent residence, the RAW provision was designed to be implemented long after the enactment of the law, and was contingent upon further administrative action—the determination of a labor shortage by the Departments of Labor and Agriculture.

The INS is charged with implementing a program to process these RAW workers. Strange as it may seem in light of 1.3 million SAW applications, INS respondents in Washington reported that agricultural industry advocates indeed promoted a need for the importation of a RAW work force in 1990, although the Departments of Labor and Agriculture ultimately set the 1990 shortage number at zero.

In creating a set of procedures for a potential RAW program, the INS drew upon both the successful and unsuccessful elements of general legalization and the SAW program. The INS introduced its RAW program with the publication of proposed rules in March 1989. Interim final rules were published six months later. The program has two stages: preliminary registration and actual application.

First, the INS conducted a single registration from September 1, 1989 to November 30, 1989, during which registration cards were mailed to the Central Processing
Facility in London, Kentucky. Each registrant could submit one card, along with a $10 registration fee. This registration would generate the RAW pool of eligibles for the entire four years of the program. Ultimately, nearly 100,000 people registered for the RAW program. Applicants could register within the United States or abroad, but overseas registration had to be submitted through a QDE.

The INS establishes three eligibility criteria for RAW registrants. First, the registrants must be 18 years old by October 1, 1992. Second, registrants must be able to demonstrate 20 person-days of previous qualifying employment in U.S. agriculture. Third, registrants applying within the United States must have entered the United States before November 30, 1988. Registrants who meet all these criteria are then separated into four priority groups. First priority includes those registrants in the United States who have immediate family members legalizing under the general legalization or SAW provisions. Second priority includes those in the United States without such family ties. Third priority includes those outside the United States with immediate family ties to general legalization or SAW immigrants. Fourth priority includes those outside the United States without such family ties.

Once the Departments of Labor and Agriculture determine a shortage number of agricultural workers, a random draw begins with the first priority category and continues until the shortage number is filled. These registrants will be invited to apply for RAW adjustment. The adjustment process will require a local Legalization Office interview, during which the applicant's eligibility claims will be reviewed. Local adjudicators will make the decision on a RAW petition. A denial can be appealed to the LAU. Thus, the dialectic observed in legalization between local authority and centralization also exists in the RAW program.
There is one dramatic difference between the RAW and SAW interviews. RAWs will not be required to show documentary evidence of their previous farm work. Rather, local adjudicators will conduct the interview aided by an interview manual designed to determine agricultural experience. The reason is straightforward. As an INS respondent in Washington noted, "We learned in the SAW program that, whatever documents we ask for, we'll get." In the absence of authentic documentary evidence, greater responsibility will be placed on the adjudicator to make a legally defensible finding. Thus, more than ever before, the training of local adjudicators in "burden of proof" standards will determine the success of the INS in accurately rationing an immigration benefit.

If approved, the RAW will receive a temporary resident card and information on agricultural employment. The regulations currently require the RAW to perform 90 workdays of qualifying agricultural employment each year for three years after admission into the program. In essence, RAWs are handed work authorizations and a map of the United States, at which point they are responsible for finding qualifying agricultural work in order to keep their status. Nothing in the statute or the implementation plan assures that RAWs will be able to find the work. Failure to maintain qualifying employment may result in deportation, setting the stage for yet another group of immigrants whose only hope of remaining in the United States may be isolation from the communities in which they live and deeper entrenchment in the informal, unregulated sectors of the U.S economy.

Since the 1990 shortage number was zero, the RAW registrant pool will be retained in the event a shortage number is announced in 1991. In the meantime Congress will have an opportunity to reevaluate the wisdom of a
program that admits potential permanent residents whose legal status depends entirely on their ability to make their way to places where there are purported agricultural labor shortages and to secure qualifying employment.

REGISTRY

The updated registry provision of IRCA was the simplest of the new routes to permanent residence—a limited update of Section 249 of the 1965 Immigration and Nationality Act (INA) Amendments, which provided the closest approximation to a legalization provision in pre-IRCA immigration law. This provision allowed long-term undocumented immigrants—those present in the U.S. before June 30, 1948—to petition to adjust their status to that of permanent residents. These petitions could be made at any time.

The idea of an unrestricted updating of the registry provision as a legalization policy option had two advantages. First, it was procedurally simple. Second, it offered Congress the opportunity to include the latest wave of undocumented migration, thereby "cleaning the slate" of a large undocumented population. The Select Commission on Immigration and Refugee Policy rejected an unrestricted registry update as a model for legalization. Commissioners claimed that such a "drawn-out mechanism for establishing eligibility" would "only perpetuate an already serious problem"—the problem being the creation of an accurate, efficient system whereby undocumented immigrants could document their eligibility for legal status. (SCIRP, p. 79) The Commission feared that registry update, being a permanent revision in immigration law,
would result in a protracted stream of undocumented applicants and would give ineligible applicants time to perfect fraudulent cases.

Registry declined in importance as a legalization model throughout the next three sessions of Congress. However, it was never completely forgotten by legalization advocates. In keeping with the original function of registry—providing a mechanism for legalizing long-term undocumented immigrants—Congress updated the registry cutoff date in IRCA from June 1948 (the cutoff date adopted in the 1965 INS Amendments) to January 1, 1972. Thus, any noncitizen who can demonstrate continuous residence since that time, good moral character, and general admissibility as an immigrant is eligible to apply for adjustment to permanent resident alien status. By October 30, 1989, 57,985 persons had adjusted their status through the updated registry provision. Mexican-born applicants accounted for roughly three-fourths of the total.

The registry update, while not particularly controversial during the development of IRCA, nonetheless illustrates a consistent theme in the legislative history of IRCA: the tendency for House proposals on legalization to be more inclusionary than Senate proposals. When IRCA reached the House/Senate Conference Committee in October 1986, the House bill included a registry provision updated from 1948 to January 1, 1976. The Senate version omitted any reference to registry update. The Conference compromise resulted in settling on the 1972 date.

---

CUBAN/HAITIAN ADJUSTMENT

The Cuban-Haitian Adjustment provision of IRCA confers the right to permanent residence on Cubans and Haitians
who entered the United States before January 1, 1982 as Mariel-era "special entrants." Its purpose is to correct the imbalance between the treatment of Cuban "special entrants" and Haitian "special entrants," which stems from the U.S. response to the Mariel boatlift of 1980.

In 1980 Congress passed the Refugee Act—a law establishing a uniform eligibility standard for refugee and asylee status independent of foreign policy considerations. But no sooner had the Refugee Act been signed into law then a true asylum crisis faced the U.S. government. Thousands of Cubans crossed open seas from the port of Mariel, landing without INS authorization on the southern shores of Florida and petitioning for political asylum. Joining that migration stream were thousands of Haitians fleeing the Duvalier regime.

The political context of the Cuban situation differed from that of the Haitian. The Mariel Cubans had fled a country whose leadership enjoyed no favor in the United States, and they arrived in a community where their fellow expatriates exercised considerable political pressure on the government to admit them. Haitians, on the other hand, were leaving a regime friendly to the United States government, and had no comparable advocacy network on the U.S. side. Yet Congress had just passed a law rejecting the use of such considerations in the adjudication of asylum positions, making all Mariel arrivals subject to a new eligibility standard for political asylum—"a well-founded fear of persecution."

Caught between the political pressure to admit all Mariel arrivals and the standards of the new Refugee Act to screen their claims systematically, the administration created a new immigration status—Cuban-Haitian Special Entrant. All Mariel arrivals as of October 20, 1980 would be accepted under this status, but could not adjust to permanent resident alien status without special legislation.
In 1984 the Reagan administration provided a route to permanent resident alien status for Cuban special entrants through an administrative interpretation of a 1966 statute. However, Haitian special entrants were omitted from this decision, and thus remained in immigration status limbo. While legislation providing a route to permanent legal status for Haitian special entrants came close to passage twice in the 1980s, it was not until IRCA that such a provision finally became law.

In this case, also, the Senate version of Cuban-Haitian adjustment was more restrictive than the House version. In the Senate bill, Cuban and Haitian entrants continuously residing in the U.S. since January 1, 1981 were eligible to apply for temporary resident status. After three years of temporary status, the Cuban and Haitian aliens would be eligible to adjust to permanent residency. The Cuban-Haitian proposal in the House, however, provided for direct adjustment to permanent resident status. Over the opposition of the Justice Department, the House version of Cuban-Haitian adjustment became law. In addition to the opportunity for direct adjustment to permanent residence, Cubans and Haitians adjusting under Section 202 of IRCA were immediately eligible for public assistance programs and were allowed to establish their permanent residence record retroactively to 1982, thus affording them the opportunity to naturalize quickly.

**CONCLUSION**

The IRCA paths to legal residence spanned the continuum from simple revisions of existing immigration law to major innovations in immigration policy. Like any major policy
reform, IRCA legalization is filled with compromises, tradeoffs, and ironies.

Tracing the development of IRCA from the early 1970s, the beginning point for the latest historical wave of concern about undocumented immigration, yields a congressional portrait of the ideal program. However, that portrait reflects a basic contradiction: the fundamental struggle between the inclusionary and exclusionary strands of political thinking on U.S. immigration. Both elements are present in IRCA.

The legislative history of the SAW and RAW legalization programs illustrates another longstanding tension: the tension between the demands of growers for cheap and plentiful labor and the demands of farm workers and their advocates for legal protection from grower exploitation. Ironically, the SAW/RAW compromise may have been one of the only times growers and farm workers found themselves aligned. In the absence of a guest worker program, both growers and farm worker advocates were motivated to make the SAW/RAW programs as inclusive as possible. Ultimately, the SAW/RAW compromise satisfied grower needs by imposing very low eligibility standards, thus ensuring a large population of eligibles, and satisfied advocates by providing a route to permanent resident status independent of continued agricultural employment. The result was a program mandate with only the loosest of implementation guidelines.

__________________________

Notes, chapter two


3. The 16 SCIRP members were: Senators Alan Simpson (R-WY), Edward Kennedy (D-MA), Dennis DeConcini (D-AZ), and Charles Mathias (R-MD); Representatives Peter Rodino (D-NJ), Robert McClory (R-IL), Elizabeth Holtzman (D-NY), and Hamilton Fish (R-NY); Attorney General Benjamin Civiletti; Secretary of Health and Human Services Patricia Roberts Harris; Secretary of Labor Ray Marshall; Secretary of State Edmund Muskie; the Rev. Theodore Hesburgh, then president of the University of Notre Dame and the SCIRP chair; Rose Matsui Ochi, Executive Assistant to the Mayor of Los Angeles; Joaquin Francisco Otero, Vice President of the Brotherhood of Railway and Airline Clerks; and Judge Cruz Reynoso, Associate Justice, California Court of Appeals.

4. See also the comments of Commissioners Ray Marshall and Cruz Reynoso in SCIRP, p. 371 and p. 403, respectively.


7. For proposed rules, see Federal Register, vol. 54, no. 41, Friday, March 3, 1989, "Admission or Adjustment of Status of Replenishment Agricultural Workers," p. 9054. For interim final rules, see Federal Register, vol. 54, no. 169, Friday, September 1, 1989, p. 36275.

Chapter Three

THE IMPLEMENTATION PLAN FOR GENERAL LEGALIZATION AND THE SAW PROGRAM

The implementers of the general legalization and the SAW program had two major sources of guidance: the experience of other countries and the yearly plans that the INS and the advocacy community advanced as the impending legislation began to take shape. This chapter reviews the contents of that guidance and describes the organizational structure, resources, and staff put into place by the implementers on the basis of those lessons.

"GETTING AHEAD OF THE CURVE"

Throughout IRCA's legislative journey, private and public agencies sought guidance in planning for a U.S. legalization program. Other nations provided one important source of guidance, particularly by identifying ways to encourage program participation. Thus, policymakers commissioned research on the legalization programs of other countries. In addition, private interest groups convened international conferences on the topic and invited a variety of government and private sector representatives to share insights and anticipate problems.
International Comparisons

The exercises in cross-national comparison highlighted some important themes in the implementation of a legalization program and generated a few specific recommendations to the U.S. implementing agencies. These comparisons also made it clear that the conditions that led to IRCA’s passage were not unique to the United States. Legalization programs tended to emerge when two trends were simultaneously present. The first trend involved economic factors. In each country implementing such a program, economic slowdown and rising unemployment had generated public concern about the labor market absorption of "foreigners." The second trend involved political factors. For instance, in each case backlogged visa petitions or increasing undocumented migration had led governments to conclude that the international migration process had outstripped the administrative capacity of the nation’s immigration agency to cope with the flow of migrants. Legalization was one way to "clean the slate" as governments revamped their immigration system. Also, legalization was often accompanied by significantly more restrictive admission and enhanced enforcement policies.

Table 3.1 compares the design and outcomes of the legalization programs of six countries implemented between 1973 and 1988. 3

All six programs summarized in table 3.1 featured temporary "windows of opportunity" for legalization. The United States featured both the longest application window (one year) and the longest residential eligibility standard. On average, applicants in the comparison countries had to demonstrate less than a year of unauthorized residence. U.S. applicants, in contrast, had to demonstrate continuous unlawful residence in the U.S. for more than five years.
The immigration benefit in the U.S. program was not immediate permanent residence, as it was in most other programs. Instead, U.S. applicants underwent 18 months of temporary residence and a second application process to attain permanent residence. Also, the U.S. program was the only one to involve a substantial application fee. In sum, the U.S. legalization program, born of extensive legislative debate and compromise, emerged from that process considerably more restrictive than similar programs in other countries. Nonetheless, the United States was the only country in which the turnout was high enough to approach even the lower-bound planning estimate. Indeed, the turnout in the U.S. legalization program exceeded the combined turnout of all five comparison programs in table 3.1.

The problems other nations had faced in encouraging program turnout led to some valuable lessons for U.S. legalization planners. International advisors suggested that extensive publicity and outreach would be necessary if the scope of the U.S. program was to exceed more than the minimum estimate of eligibles. Program implementers in other nations attributed their turnout deficits to insufficient preliminary publicity. This "turnout" issue would be even more important if the U.S. Congress was serious about its temporary legalization program also being a "one-time-only" program. Three of the five comparison countries in table 3.1 (Australia, France, and Argentina) implemented legalization programs more than once.

International experiences also illustrated the need for active participation of nongovernmental entities in legalization, particularly those voluntary organizations and churches with credibility in the immigrant community. Whether or not this involvement extended to actual processing of applications, it would enhance the credibility of the governmental implementing agency.
Table 3.1  A COMPARISON OF LEGALIZATION PROGRAMS

<table>
<thead>
<tr>
<th></th>
<th>Canada</th>
<th>Australia</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Program Duration</td>
<td>2 months</td>
<td>6 months</td>
<td>2 months</td>
</tr>
<tr>
<td>Eligibility Cutoff Date&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Nov. 30, 1972</td>
<td>Jan. 1, 1980</td>
<td>Jan. 1, 1981</td>
</tr>
<tr>
<td>Immigration Status Available</td>
<td>Permanent Residence</td>
<td>Permanent Residence</td>
<td>Permanent Residence</td>
</tr>
<tr>
<td>Applicant Fees</td>
<td>None</td>
<td>$50 (US)</td>
<td>None</td>
</tr>
<tr>
<td>Estimated Number of Eligibles</td>
<td>200,000 to 300,000&lt;sup&gt;c&lt;/sup&gt;</td>
<td>...&lt;sup&gt;b&lt;/sup&gt;</td>
<td>300,000&lt;sup&gt;c&lt;/sup&gt;</td>
</tr>
<tr>
<td>Number of Applicants</td>
<td>52,000</td>
<td>14,000</td>
<td>149,226</td>
</tr>
</tbody>
</table>

<sup>a</sup> Undocumented aliens entering country after this date were not eligible for legalization.

<sup>b</sup> Data unavailable.

<sup>c</sup> As reported in Meissner, Papademetriou, and North (1986).
## IN SIX COUNTRIES

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Venezuela</th>
<th>United States</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 months</td>
<td></td>
<td>4 months</td>
<td>1 year</td>
</tr>
<tr>
<td>Permanent Residence</td>
<td>1-year renewable nonresident status; automatic adjustment to permanent residence after 2 years</td>
<td>18-month temporary residence; permanent if filed within 1 year of initial eligibility</td>
<td></td>
</tr>
<tr>
<td></td>
<td>_b</td>
<td>_b</td>
<td>$185/adult</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$50/child</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$420/family cap</td>
</tr>
<tr>
<td>200,000 to 300,000</td>
<td>1.2 million&lt;sup&gt;c&lt;/sup&gt;</td>
<td>1.3 to 2.6 million&lt;sup&gt;d&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>147,383</td>
<td>301,662&lt;sup&gt;c&lt;/sup&gt;</td>
<td>1,768,089&lt;sup&gt;e&lt;/sup&gt;</td>
<td></td>
</tr>
</tbody>
</table>

<sup>d</sup> As reported in unpublished INS planning statistics, INS Statistical Analysis Branch, October 1986.

<sup>e</sup> As reported in "Provisional Legalization Applications Statistics," INS Statistical Analysis Branch, May 12, 1989.
Finally, the international evidence suggested that regulatory changes during the program were inevitable. The plans would need to include opportunities for flexible implementation, since parts of the plan in all countries had proved unworkable in practice.

The international experience reinforced what U.S. planners already anticipated—the need for maximum publicity and outreach. But along with attention to facilitating turnout, the program had to accurately identify eligible applicants and process their claims efficiently. For guidance in this area, the INS drew upon elements of its own earlier plans for legalization and some independent reforms in INS adjudication procedure that had emerged in the years preceding IRCA's passage.

Early INS Planning Efforts

For several years before the passage of IRCA, new trends had been emerging, albeit slowly, in INS management and adjudications. The watchwords were "centralize and standardize." Implementing a major program like legalization gave the INS an opportunity to test the limits of this approach.

While the various IRCA bills were being debated in Congress in the early 1980s, the INS considered two implementation models: a model in which legalization would be administered as an INS Central Office special project, and one in which legalization would be administered through the 33 INS districts and 4 INS regions.

**THE CENTRAL OFFICE MODEL**

In the Central Office model the chain of command led directly from the Office of the Associate Commissioner for
Examinations in Washington to the field. Involvement was minimal at the district and regional levels. Deputy district directors served as local points of contact for legalization; regional information officers would coordinate legalization publicity. Otherwise, power and oversight rested with the Central Office. Advocates of this plan saw two advantages to it. First, such a model could help standardize adjudications, as all operational authority would rest in one administrative unit—the Central Office. Second, the model could contribute to an ongoing effort to centralize the INS organizational structure. INS had long been accused of operating its 33 districts like fiefdoms. District directors, through the wide local discretion afforded by most immigration policy, had a history of implementing procedures across districts that were often inconsistent and, occasionally, directly contradictory. The Central Office model would minimize the risk of such accusations arising.

The Central Office model did not get very far in the real world of INS politics, however. Not surprisingly, regional commissioners and district directors balked at the idea of conceding operational responsibility for a program as high-profile as legalization. As an alternative, an implementation plan emerged in which the INS districts and regions occupied a more prominent position.

THE DISTRICT AND REGIONAL MODEL

Under the "hierarchical review" model, intake and initial recommendation (for approval or denial of the petition) would be made at the district level. Final adjudication would take place at the regional level, and appellate review would take place at the national level. In Phase II—the transition from temporary to permanent residence—the
process would be altered. The regional office would process applications for permanent residence and schedule final Phase II interviews to be conducted at the local legalization offices.

This model was organizationally more complicated than the Central Office model, but more politically palatable within the INS. Rather than removing all authority from the local units, the "hierarchical review" model would reduce district office discretion by transferring much of the adjudicatory process to the region while preserving some local authority. This was the model that was adopted. Of course, the model assumed the regional offices would be up to the task, an assumption that would be tested by the post-enactment political developments reviewed in chapter four.

KEY OPERATIONAL UNITS

Implementing legalization would fall to Qualified Designated Entities (QDE), Legalization Offices (LO), Regional Processing Facilities (RPF), and the Legalization Appeals Unit (LAU). Although each was created to serve a particular function in the one-time-only legalization program, each had some counterpart in pre-IRCA immigration policy.

The Qualified Designated Entity

IRCA authorized QDEs to receive general legalization and SAW applications and, with the consent of the applicant, to forward those applications to the INS for adjudication.
As noted earlier, the QDEs would receive $15 reimbursement for every application they processed and submitted to the INS. An additional dollar would be provided to QDEs operating under national umbrella organizations.

The most likely candidates for QDE status were voluntary agencies that had served as immigrant intermediaries in the past. For decades the federal government had relied upon voluntary agencies in the refugee resettlement process. Voluntary agencies served as "accredited representatives" who assisted immigrants in a wide variety of benefit petitions. These accredited representatives, the United States Catholic Conference, for example, constituted the majority of QDEs.

But they were not the only entities to sign QDE cooperative agreements with the INS. Since QDE status included reimbursement from the INS, legalization "entrepreneurs" soon seized upon the opportunity to gain such status. Prominent among these were "notarios publicos" in Texas, some of whom became QDEs and opened branch offices in heavily Hispanic communities. Notarios benefited from the fact that "notary public" status serves as a functional equivalent to legal counsel in many Latin American countries. Some of these individuals were quite enterprising. For example, one notary office in Houston distributed handbills offering a set of flatware as a prize to the person generating the most legalization referrals. Although the INS conferred legitimacy on some notaries through QDE status, this group was regarded with much skepticism by nonprofit groups and attorneys.

In addition to voluntary agencies and notaries, Western growers organized a QDE network under the name Alien Legalization for Agriculture (ALFA). These grower-sponsored QDEs, setting up trailers throughout the fields in the western United States, focused on SAW applicants. Through ALFA QDEs, grower associations ultimately
received reimbursement for 52,000 SAW and general legalization applications.

Midway through the general legalization program, the INS had certified 977 QDEs. Some were individual entities, others were members of larger national voluntary organizations. These QDEs provided a buffer between the legalization applicant and the INS. But preliminary recommendation on all QDE-based applications still had to be made by a legalization adjudicator at a local INS legalization office.

The Legalization Office

Legalization offices were under the direct authority of the INS District Director and the day-to-day supervision of the Deputy District Director for Legalization. Adjudicators in these offices interviewed all applicants and forwarded their files to one of four Regional Processing Facilities (RPFs) with a recommendation for approval or denial. If the applicant was found to be ineligible based on an admission of fraud, the local adjudicator could statutorily deny the application. In all other cases, the local adjudicators, regardless of their recommendation to the RPF, would issue the applicant an Employment Authorization Card. This card could be used for work authorization while the application waited at the RPF. The local legalization office would also be responsible for processing applicants during Phase II.

The INS decided to physically separate local legalization offices from the INS district offices and to choose sites for the local offices in neighborhoods accessible to the immigrant population. The intention was to separate the legalization program from the enforcement side of the INS in the minds of the immigrants and in the minds of the
staff. Thus, no INS business other than legalization was to take place in these local legalization offices. This rule was bent in some INS districts after Phase I legalization was completed, however. For instance, in Houston such district activities as SAW fraud investigations and asylum interviews took place at the legalization office.

The typical local legalization office looked like a department of motor vehicles or a social security office. Large waiting areas faced partitioned cubicles where applicants discussed their cases with adjudicators. The planned rhythm of activity for applicants at a legalization office included signing in with a receptionist, waiting, making one’s case before a civil servant, waiting some more, and leaving with either a statutory denial, instructions to bring in some additional documentation, or an Employment Authorization card.

Regional commissioners decided where and how many legalization offices would be placed in the various districts. Each INS district opened at least one legalization office. Using INS estimates of the eligible undocumented population in each state, the 4 regional commissioners targeted particular districts. For example, the Western Region authorized 16 offices for the Los Angeles district. Yet, the correspondence between estimated workload and legalization office placement was not perfect. Houston opened only one office; and New York City opened only three, even though New York was expected to generate between 128,000 to 230,000 applications, or 10 percent of the total program applications.

Legalization office jobs such as receptionist, legalization assistant, fee clerk, and adjudicator were temporary positions. A mix of new hires, reassigned INS personnel, and rehired annuitants filled the positions. Some but not all new hires came from other branches of government, the Social Security Administration and the Internal Revenue
Service, for example. INS personnel transferred to legalization offices from airport and border inspections, detention and deportation, and the Border Patrol. In addition, IRCA provided employment for rehired annuitants in legalization, limiting such employment to 18 months and limiting the INS to 300 such retirees. Typically, these retirees occupied supervisory positions in legalization offices.

The Regional Processing Facility

The model for the Regional Processing Facility (RPF)—a center for the standardized adjudication of legalization petitions—was a pre-IRCA INS innovation called the Regional Service Center. Regional Service Centers, under the supervision of the four INS Regional Offices, had been designed to remove the adjudication process from the immediacy of the face-to-face interview and, by extension, away from the longstanding charge that the decentralized INS structure led to inconsistent decisions across districts. Once legalization ended, the RPFs were to be merged with the Regional Service Centers.

Two sets of staff occupied the Regional Processing Facility. INS staff handled the actual adjudications and operated a Document Analysis Unit for the investigation of document fraud. A contractor’s staff—Appalachian Computer Systems of London, Kentucky—handled such support services as mail, filing, and automated data processing. Once a file left a local legalization office, it remained in the hands of contractor personnel until it reached a legalization officer’s desk at the RPF.

Unlike local legalization personnel RPF officers had direct responsibility for the outcome of an application. After reviewing a file, the RPF legalization officer could
approve, deny, or return the file to the legalization office, typically with instructions to reinterview the applicant. Applicants were notified by mail of the outcome. An approval letter instructed the applicant to return to the local legalization office to pick up a new card—the Temporary Resident Alien (TRA) card. A denial letter informed the applicant of the appeal process.

For pre-1982 legalization applicants, the RPF was also responsible, when it became relevant, for mailing out permanent residence application packets, receiving and reviewing the applications for completeness, and scheduling, via computer, Phase II interviews for the temporary residents at their local legalization offices. Final processing for permanent residence was conducted in the field, not in the remote workings of the RPF.  

The Legalization Appeals Unit

IRCA mandated a single level of appellate review for pre-1982 legalization and SAW petitions. Rather than incorporating the legalization appellate function into an existing appellate unit, such as the Administrative Appeals Unit, the Attorney General created a separate adjudicatory body—the Legalization Appeals Unit (LAU). Housed in Washington, D.C. in the same offices as the Administrative Appeals Unit, the LAU was staffed not by attorneys, but by senior immigration examiners who reviewed denials in general legalization and SAW cases and rendered final appellate decisions. Although the INS modeled the LAU after the Administrative Appeals Unit, LAU staff dealt only with legalization petitions. INS planned to merge the LAU with the Administrative Appeals Unit once legalization was completed.
The LAU exercised one of three options upon receipt of an appeal. First, the appeal could be sustained and the applicant granted the legalization benefit. Second, the appeal could be denied, in which case the applicant had no further remedy. Third, the appeal could be remanded to the Regional Processing Facility for reconsideration. Should the RPF stand by the remanded denial, the applicant would still have the opportunity to appeal the case to the LAU. Of the three options, remands were the most time- and labor-intensive. Neither the LAU nor the RPF was enthusiastic about having remanded cases, particularly in such a short-term program. But with the many changes in standards and procedures that unfolded during legalization, particularly in SAW applications, the remand process took place much more frequently than the INS had originally anticipated.

The LAU had the power to recommend particular cases to the Associate Commissioner for Examinations for consideration as "precedent decisions" to be adopted in the field. These precedent decisions would clarify policy and establish a uniform response from the INS on some issue in immigration policy interpretation. The precedent decisions issued by the LAU were destined to become an important route to legal status for applicants who were denied under standards that were challenged and struck down.

---

LEGALIZATION PROGRAM RESOURCES

Driven in part by statute and in part by the INS’s internal priorities, a new immigration funding system emerged in legalization, the self-funded benefits program.
Funding the General Legalization Program

IRCA became law shortly after the beginning of fiscal year 1987. As a result, any IRCA-related increase in the INS budget for 1987 would have to come from a supplemental congressional appropriation. The IRCA statute authorized $422 million for fiscal year 1987 and $419 million for fiscal year 1988 for INS to carry out all of the IRCA missions. But the INS submitted a far smaller supplemental request to Congress in April 1987: $137.8 million to implement the first year of IRCA reforms, of which $122.8 million (89 percent) was earmarked for enforcement, and the remaining $14.9 million to fund the SAW program. Not a dime of the request was devoted to the implementation of general legalization. Instead, INS planned to fund general legalization entirely out of the application fees collected, estimating $125 million in fee receipts for FY 1987 and $144 million for FY 1988. Rather than requesting a congressional appropriation for legalization startup costs, the INS requested $200 million in advance spending authority against its own account from the Office of Management and Budget.8

All sides involved in legalization implementation agreed that the program demanded a considerable startup investment but did not agree on where it should come from. The IRCA statute mandated that the Attorney General "provide for a schedule of fees to be charged for the filing of applications for adjustment" in the general legalization program. The Conference Committee report outlined the rationale to be employed in setting the fees: "the fee level should be sufficient to cover the costs of processing applications and should be comparable to those (sic) charged for aliens seeking entry into the United States as immigrants."9
Citing this language, the INS determined that general legalization, unlike the new IRCA enforcement missions or the SAW program, would be completely user-funded. The INS set the legalization fee at $185 per adult and $50 per child, with a maximum family cap of $420. The same fee structure would be implemented for the SAW program. All general legalization fee money, per congressional directive, would be deposited into a separate INS account and used solely for the administration of the legalization program.

In congressional hearings, lawmakers conceded that the fee schedule language in IRCA called for user-financing of the program. But the lawmakers took exception to the INS decision not to seek any congressional appropriation whatsoever for implementing legalization. Several pithy exchanges between House members and the INS Commissioner on this topic dramatized the conflict. A House Immigration Subcommittee member expressed concern that the INS was "eating away at its own fat" by borrowing from its own budget in anticipation of fee receipts it could not guarantee. The INS refused to ask Congress for the money. Thus, the legalization program began with funds advanced from other INS programs. With the advance, the INS leased office space across the country, hired personnel, developed and distributed forms, purchased computers and computer software for each office, and established the four RPFs.

Just as members of Congress had anticipated, legalization receipts flowed into the INS more slowly than the Agency had expected. Although the INS had expected to collect $125 million in legalization fees by September 1987--the close of the fiscal year--it collected only $103.9 million. Even though these receipts exceeded the $88.6 million in legalization obligations for that fiscal year, INS officials began to worry that turnout would not be suffi-
cient to sustain the massive infrastructure of offices and staff through the end of the program.

The INS rolled back personnel in legalization offices across the country in April 1988. This belt tightening came just before the final rush in general legalization and well before the SAW legalization program was scheduled to close. As a result, busy local offices rode out the legalization programs in an atmosphere of personnel constraints. The "best and brightest" in the legalization offices sought transfers to more secure, permanent positions in other branches of the INS or other government agencies. Rehired annuitants, who had been able to draw both pension and pay for 18 months, returned to retirement.

The fact that FY 1988 legalization receipts would ultimately exceed original expectations--$189 million collected, compared to $145 million anticipated--would be little comfort in the Phase I period for a simple reason: the money followed the workload. The massive turnout in the last days of legalization followed on the heels of a sluggish period that had, in part, generated rollbacks in the first place. Thus, the concentrated pool of last minute fee receipts would provide little in the way of financial flexibility, although it would allow the INS to "break even" on the general legalization program, once all capital and personnel expenses had been paid.

The legalization fee account received a new infusion of cash from the Phase II permanent residence application fees. These fees--$80 per person, with a family cap of $240--generated $48 million for the account by August 1989.\textsuperscript{11} The INS expects to receive the balance of the Phase II fee money in FY 1990, an echo effect of the large applicant cohort filing in the last days of Phase I.

The INS summary of the legalization account, which is included in the FY 1990 budget request, reveals two trends. First, the absolute budget authority for the account
drops from a FY 1988 level of $189 million to $54 million in FY 1990, a 71 percent decline, as legalization fees taper off. Of the $71.7 million INS expects to collect in FY 1990--largely through Phase II fees--about $17 million (25 percent) will be retained as an end-of-the-year balance. Thus, the account will contain funds well into FY 1991, when some latecomers will still be adjusting to permanent residence. Second, the account segment devoted to "Immigration Support"--such areas as data and communications systems management, information and records, construction, and engineering--will grow in the 1988-1990 period from 52 to 62 percent of total program obligations. The "Adjudications and Naturalization" component hovers around one-third of total obligations each year. Thus, it seems that the legalization program at least in part has provided momentum throughout the INS for agencywide enhanced automation and capital improvements. Indeed, in our field interviews, a Western INS regional program head observed that "competition is taking place [among operational divisions] to cannibalize equipment left over from legalization."

**Funding the SAW Program**

Unlike legalization, the SAW program was funded with tax dollars, and SAW fees went into the U.S. Treasury to offset tax expenditures for the program. But the SAW application rate soared above all estimates, generating over $137 million in fees in the first two fiscal years after IRCA. Balanced against roughly $30 million in SAW program expenditures, the U.S. Treasury saw a return of over 4 fee dollars to each tax dollar spent.

As both the 1988 fiscal year and the SAW program drew to a close, another financing change occurred. In
September 1988 Congress authorized the INS to establish an Examinations Fee account into which a variety of immigration user fees, including SAW receipts, could be deposited and drawn upon for INS expenses. Congress imposed the condition that the U.S. Treasury would receive the first $50 million of this user fee account. Above that level, the money would be under the control of the INS. A last minute onslaught of SAW applications in the fall of 1988 brought an additional infusion to this new account of over $70 million—three times the amount expected for FY 1989.

Although this windfall came after the end of Phase I, at least three major SAW adjudicatory tasks still faced the INS: detecting SAW fraud, adjudicating appeals, and readjudicating remanded cases based on class action lawsuits. These tasks fell particularly heavily upon the southern regional RPF, where tens of thousands of SAW applications had been ordered readjudicated as the result of a major lawsuit. But the SAW money did not flow toward direct SAW program enhancement. Much of it had to be spent on a new immigration crisis that sprung up along the southern border of Texas.

Sometime around the end of 1988 the Harlingen, Texas INS district director stopped granting travel authorization to asylum applicants, nearly all of whom came from Central American countries. The district director expressed the conviction that "economic migrants" were abusing the asylum system by applying in his district and then leaving for Miami, Los Angeles, or Houston. In response, the Harlingen district detained all asylum applicants in a South Texas detention center and at the local Red Cross shelter. The INS Central Office, supporting the action, assigned personnel from across the country to these detention centers to conduct "same-day" asylum adjudications and deport those who were denied. The windfall profits from the SAW program came in handy, as the cost of this
South Texas program loomed to nearly $30 million. Most of the money spent on the program came from the new Examinations Fee account, to which the SAW program had been the major contributor. While INS respondents in Washington cited this as an example of useful resource flexibility, critics questioned the appropriateness of using the Examination Fee account not only for the adjudicatory aspects of the asylum crisis, but also to set up large detention facilities where unsuccessful applicants were held until deportation could be arranged. In any event, the SAW applicant population heavily subsidized the South Texas INS asylum project, even as the enormous SAW workload was grinding southern RPF operations to a virtual standstill.

The user-funded immigration program enhanced one of the most prized commodities within the INS: discretion. With user-funding the INS was free to reallocate its resources largely independent of congressional oversight. Thus, nothing compelled the INS to channel Examinations Fee account money back into the programs that generated the fees. SAW funds (or funds from any other high-volume applicant population) could pay for whatever INS adjudicatory crises emerged. Likewise, with freedom from the congressional appropriation process in general legalization, the INS could control which areas of its legalization budget commanded the largest share of fee resources. In order to build an entire legalization infrastructure, the agency placed budgetary emphasis on computer equipment and enhanced data systems. Fewer resources went to legalization training or staffing.

There were costs associated with these choices, including local and regional personnel shortages at key points in the legalization program, a spate of legal challenges stemming from inadequate or improper adjudicatory practices, and backlogs, as adjudicatory personnel were forced to
redo much of their work under court mandates. Ultimately, the high quality of the legalization technological hardware could not substitute for thorough adjudicator training.

STAFF

Although the INS could not be sure of the size of the applicant pool, planning estimates assumed an applicant population of 2 to 4 million. Even the 2 million far exceeded any workload INS had ever undertaken in a comparable time span.\textsuperscript{14} Clearly, the INS would not be able to accomplish this mission with its pre-IRCA staffing levels. Thus, the INS hired a large cohort of temporary employees for legalization.

Who did the INS bring on board to carry out the ambitious task of implementing legalization? The IRCA statute limited the use of rehired annuitants in the implementation of the IRCA missions to 300 positions. Typically, these employees had spent their entire career in the INS, working their way up from Inspections or the Border Patrol to district or regional supervisory positions. During IRCA implementation they became legalization office managers and RPF adjudications supervisors. The balance of the staff came from outside the INS or from intra-agency transfers. In the local legalization offices, "legalization assistants," hired at GS-5/7 pay levels, assisted applicants in organizing the application and conducted preliminary reviews for completeness. Adjudicators, typically at GS-7/9 levels, interviewed the applicant and issued the recommendation to the RPF. At the RPF, GS-11 legalization "officers" made the final decision on an application.
The higher the position, the more likely the occupant had some prior experience either in the INS or another federal agency. However, we shall see in our review of the field data that these quality distinctions among personnel, particularly at the local level, became blurred in the wake of hiring freezes, attrition, and concomitant surges in the application rate.

Lawyers were conspicuous by their absence from the staffing of the legalization program. Although IRCA generated a significant increase in the legal staff of the INS, that increase was concentrated in the new enforcement functions, where lawyers carved out an important niche for themselves. For example, INS lawyers were among the first to recognize that a few legal missteps in the implementation of employer sanctions might jeopardize the ability of the INS to retain this powerful new enforcement tool. As a result, INS attorneys lobbied for and obtained a central role in the operational management of sanctions enforcement. The attorneys in each INS district would have final "go-ahead" authority in sanctions cases built by INS investigators.

In contrast, INS district counsel had no real program authority or involvement in local legalization offices. Furthermore, while each RPF had access to a staff attorney, the INS program manual for implementing legalization made no reference to any specific attorney duties at the RPF. Even the appellate decisions on legalization denials were drafted by immigration examiners, not attorneys. The absence of INS attorney involvement may well have streamlined the adjudication process—an important consideration in a temporary program. Indeed, some QDEs learned that lesson the hard way, as their efforts to have attorneys review each application they processed led to intolerable delays.
But the absence of INS attorney participation early in the program, particularly in the issuance of legalization denials, may have contributed to a spate of class action suits charging the INS with unclear interpretations of the eligibility standards. The INS lost virtually all these legal challenges. The result was a significant increase in the adjudicatory workload late in the game, as cases were reopened, appeals were remanded, and new categories of applicants enjoyed court-mandated eligibility.

CONCLUSION

The message conveyed by other nations in implementing legalization was simple: marshal resources early for publicity, seek maximum cooperation among public and private agencies in encouraging applicants to come forward, and write regulations that allow for flexibility in implementation.

The INS's own prior planning efforts—efforts made during the years in which IRCA-type legislation was debated on Capitol Hill—drove home an additional point: the program would be judged not only by absolute applicant turnout, but also by how accurately and efficiently the INS conferred whatever benefit Congress finally mandated. Thus, the legalization program had to be as insulated as possible from the historical charges of unclear standards and interminable delays leveled at the Examinations division of the INS. Only if the INS heeded these warnings could it expect to emerge from legalization intact.

With these warnings in mind, the implementing agencies developed the organizational model described above. The test of the model's utility would come when real
people flowed through the actual process. Chapter Four reviews the eligibility standards and the procedures for the general legalization and SAW program and identifies the key judicial and political influences on the development of these standards and procedures— influences which, in many instances, would lead to significant regulatory changes.

Notes, chapter three


3. It bears mentioning that only in the United States were most of these program dimensions determined by statute. In the comparison countries the executive branch of government defined the program parameters.


7. Precedent decisions must all be issued through the Associate Commissioner for Examinations. They can be submitted to the Commissioner's office by district directors, the Administrative Appeals Unit, and other INS officials with adjudicatory authority. In addition, precedent decisions are issued outside the INS by the Board of Immigration Appeals under the Executive Office of Immigration Review.


Eligibility standards and program procedures provide a set of screens for targeting a statutory benefit. These standards and procedures emerge through a process of regulation writing, publication, public commentary, and subsequent revision, usually in that order. In a break from precedent, the INS circulated draft copies of its legalization program regulations to the public in March 1987, before they were published in the Federal Register. Indeed, the INS was proud of this "openness," employing it as an illustration of its good faith in implementing legalization as generously and liberally as Congress intended. Once the proposed rules were published, they were subject to another round of formal public commentary, some of which led to further revisions.

The INS published the final program rules for Phase I legalization in the Federal Register on May 1, 1987—four days before the doors opened in the legalization offices throughout the country. The final rules for Phase II were published in July 1989—nine months after the first legalization applicants had become eligible for Phase II. Throughout that period, continual changes in these rules took place at the insistence of the courts, of Congress, and as a result of lessons learned by the INS along the way. In this section
we examine the formal rules and the political influences upon them.

PROVING ELIGIBILITY: THE SETTING OF STANDARDS

Throughout the first phase of legalization two questions engendered major battles. First, exactly who qualified as an undocumented immigrant eligible for temporary residence within the language of the IRCA statute? Second, what standard of proof should the adjudicator invoke in reviewing the evidence presented in support of an application? Over time and across sites, the answers to these questions varied.

Qualifying for Temporary Residence in the General Legalization Program

IRCA set out four statutory eligibility standards for temporary resident status: timeliness of filing; evidence of unlawful entry before January 1, 1982 and continuous unlawful U.S. residence thereafter; continuous physical presence in the United States from the date of IRCA’s enactment (November 6, 1986) until the filing of the application; and general admissibility as an immigrant.

The "timeliness" standard required that the applicant file within the year-long application period beginning May 5, 1987, or within 30 days of a deportation order if the INS issued such an order to an alien during the Phase I application period. The "unlawful entry/continuous residence" requirement was fairly straightforward for those who had
"entered without inspection," that is, who had crossed the border surreptitiously. The issue was more complicated for those who entered legally but later violated the terms of their entry. For instance, a nonimmigrant alien who entered legally as a tourist or a student before January 1, 1982 would only be eligible under one of two conditions: (1) if the authorized stay expired by January 1, 1982, or (2) if the alien’s unlawful status was "known to the government" as of January 1, 1982.

The "continuous physical presence" standard was straightforward, the only exception being cases of "brief, casual, and innocent" absences. Finally, the applicant had to be admissible as an immigrant under the grounds of excludability of the 1965 Amendments to the Immigration and Nationality Act of 1952.

Each of these eligibility standards had to be defined in the program regulations. It was also up to the INS to put into operational terms such phrases as "continuous residence," "known to the government," and "brief, casual, innocent absence," and the grounds of excludability. In short, it was up to the INS to give the adjudicators in the field a "rulebook" by which they could make their decisions. Furthermore, this rulebook had to hold up in the face of congressional oversight and challenges from the advocacy community.

Reality fell short of this ideal, as virtually every one of the INS standards met with significant challenge, primarily in the courts. The net effect of these challenges was to broaden the size of the eligible population. The courts frequently found the INS regulations to have excluded applicants who were eligible according to the law.

The "timely" application issue arose in the context of those undocumented aliens who were apprehended by the INS after IRCA's enactment. The statute said that once these aliens were issued "Orders to Show Cause" (deporta-
They had 30 days in which to file their legalization applications. If the deportation order came before the legalization program began, the alien was to file in the first month of the legalization program. INS regulations went further, stating that all aliens apprehended during the 6-month period between the law's enactment and the beginning of legalization were required to meet that 30-day limit. Based on the "timeliness" standard, applicants were denied when they filed more than 30 days after an INS apprehension, even though these applicants had never been issued deportation orders. A nationwide class action lawsuit filed in the Northern INS region challenged the extension of "timely filing" requirements to those who were apprehended but not under deportation orders. INS rescinded that part of its rule and reopened cases denied on that basis.1

The "continuous unlawful residence" requirement (from January 1, 1982 to the date of application) also spawned considerable controversy. Public comment on the original regulations criticized the INS for defining any single absence over 30 days or a cumulative absence over 150 days as a break in the continuous residence requirement. In the final rule, the INS amended its regulation to expand the absence period to 45 days at any single time or 180 days in total. The "unlawful" aspect of the standard generated the greatest attention from the legal community. Specifically, legal battles arose on behalf of the "known to the government" applicants, those applicants who entered the U.S. legally before January 1, 1982, but lapsed into an illegal status. Eventually, lawsuits on this issue affected each of the four INS regions.2

The key "known to the government" case was Ayuda, Inc. v. Meese—a nationwide class action lawsuit filed by an immigrant advocacy group that also served as a local QDE in the Washington D.C. area. Ayuda challenged the INS
regulatory definition of "known to the government." Throughout the rule-making process, the INS interpreted the "known to the government" standard to mean "known to the INS," insisting that "only the Attorney General can make a determination that an alien’s status is ‘unlawful.’" Thus, an applicant who came to the U.S. in 1980 on a student visa and worked for pay, in violation of the visa restrictions, all the while filing tax returns and showing up on an employer’s payment records to the Social Security Administration, did not qualify as "known to the government" unless the INS had this information in its own records. Such an applicant would be denied the legalization benefit.

The plaintiffs in Ayuda successfully challenged this definition. A district court ruled that any federal agency record indicating a violation of the terms of an alien’s visa as of January 1, 1982 met the "known to the government" standard. Denials based on the INS regulations were vacated. However, a court-initiated Special Master system to receive Ayuda cases after the close of the general legalization program has been successfully appealed by the INS, leaving several thousand potential applicants ineligible, pending the outcome of a writ of certiorari filed to the U.S. Supreme Court.

Not only did the statute require an applicant to demonstrate "continuous unlawful residence," it also required a demonstration of "continuous physical presence" in the United States from the date of enactment (November 6, 1986) to the date of application. Only "brief, casual, and innocent" absences were statutorily allowable. The original INS regulations dictated that any departure from the United States after IRCA’s enactment would render an alien ineligible for legalization unless that departure had been cleared through the INS district director in advance through a procedure called "advance parole." The final
INS rule was slightly more liberal, requiring "advance parole" for departures after May 1, 1987. However, the courts rejected the notion that only pre-approved departures constituted "brief, casual, and innocent" departures. Instead, the courts interpreted the phrase "brief, casual, and innocent" to mean the same thing in legalization as it did in other immigration contexts, such as suspension of deportation proceedings. In those cases, previous court decisions required that such absences be reviewed on a case-by-case basis rather than be subject to a blanket definition. Legalization cases would be afforded the same case-by-case review.

Finally, the law's standard for "admissibility as an immigrant" was also controversial. Potential U.S. immigrants can be excluded from admission under the 1965 Amendments to the Immigration and Nationality Act of 1952 for a variety of reasons, including mental illness, communicable disease, political affiliation, criminal conviction, and such characteristics as "sexual deviation." However, pre-IRCA immigration law allowed some grounds of excludability to be waived under the following circumstances: for humanitarian purposes, preservation of family unity, or when the waiver was in the public interest. The IRCA statute specified a few grounds that could not be waived for legalization applicants, such as participation in Nazi persecution activities. But the statute allowed applicants to file for a waiver for most of the grounds of excludability. In fact, IRCA spelled out the rule on one ground that Congress expected to be particularly thorny: excludability on the grounds that the applicant is "likely to become a public charge." IRCA included a special rule stating that the legalization applicant could not be excluded on the basis of the "public charge" issue if the alien demonstrated a "history of employment in the United States evidencing self-support without receipt of public cash assistance."
But again, the INS regulatory interpretation of this standard met with opposition in the courts. The INS defined public cash assistance as income or needs-based monetary assistance, including supplemental security income received by the applicant or his or her immediate family members. If any evidence of use existed, the applicant’s only hope was to apply for a waiver of the public charge exclusion. Concern arose immediately that a retrospective review of an entire family’s use of public benefits was being used as evidence for a prospective evaluation of the "likelihood" that the applicant would become a public charge. The INS issued memoranda to the field early in the legalization program stressing that a "prospective evaluation" should be made by the adjudicator, exempting particular kinds of monetary assistance such as foster care payments.

Nevertheless, legal challenges on the public charge issue continued. One court case recently decided in the 9th Circuit, which covers California (under the INS Western Region) and the Pacific Northwest (under the INS Northern Region), has led to a reopening of cases denied on the public charge grounds, and the acceptance of new applications from undocumented immigrants prevented from applying for legalization by the public charge exclusion. Thus, another pool of immigrants excluded administratively has been included judicially.

Judging from the waivers filed in the temporary resident program, a far more common problem for immigrants than public charge exclusion was the risk of being excluded due to the use of a fraudulently obtained immigration document. While INS statistics indicate that about 7,000 waivers were filed for public charge excludability, 54,253 waivers were filed for the use of fraudulent documents in entering the U.S. after January 1, 1982. Typically, an undocumented immigrant would leave the United
States for a short period of time—for holiday visits, business in the country of origin, etc.—and return with a legitimate tourist visa or border crossing card, resuming unlawful residence in the United States. Thus, the immigration document used to obtain entry to the United States was obtained under fraudulent circumstances, constituting grounds for excludability. Initially, the INS would not grant waivers for this type of fraud, but in October 1987 the agency amended its policy, as another nationwide class action suit was under consideration by a federal court. As was the case in many of the class action suits brought on behalf of legalization applicants, these plaintiffs also sought and obtained an extension in the program for those who failed to apply under the old rule, an extension that the INS has appealed.

In each of the major lawsuits surrounding eligibility standards at least two issues arose: a change in the standards themselves, and the opportunity for some sort of extension to the program so that those affected by the case could apply. Although the INS fought both issues, it acceded to many of the changes in the standards without seeking an appeal to a higher court. However, in every case the INS did appeal court-mandated extensions of the legalization program. Furthermore, when a proposal for a program extension gained momentum in Congress near the end of general legalization, INS opposed it categorically.

Ultimately, each of the statutory eligibility standards emerged from the INS rule-making process with a tendency toward being somewhat restrictive. Admittedly, each revision in the published regulations—from draft version, to "proposed" version to "final" form—adopted slightly more inclusive interpretations of particular points. But it took the intervention of the courts to compel any significant expansions of eligibility standards. Most of the chal-
lenges in the courts were anticipated in the comments provided to INS by private attorneys during the regulation writing period.\textsuperscript{13}

The INS took the chance that it could prevail in the courts—a chance that proved to be a costly error in nearly every instance. Not only did the litigation engender confusion during the application process, as we shall see later in our field data, but it also left the INS vulnerable to the prospect of reopening thousands of cases for readjudication and implementing court-mandated "mini-legalization" programs for particular subgroups who missed out. While the INS may have avoided a \textit{de jure} extension in the legalization program, it was experiencing such an extension \textit{de facto}. These issues became even more nettlesome as the SAW applicants began to come forward.

In addition to action in the courts, congressional oversight affected the development of administrative standards. Congressional oversight during the temporary residence application period centered on the question of turnout. Concerned that only the minimum number of estimated undocumented immigrants would meet the May 4, 1988 deadline, Reps. Mazzoli and Schumer, key actors in the passage of IRCA’s legalization provision, introduced legislation to extend the application period.

At this point in the debate, the politics of estimating the size of the undocumented population entered the forefront. Before IRCA’s passage, proponents of employer sanctions had consistently presented high estimates of the size of the undocumented population in the United States to fuel their arguments for more strict enforcement. After passage, those same political actors found themselves face-to-face with their own pre-IRCA rhetoric, as supporters of legalization claimed that the program’s turnout reflected only baseline participation. Nevertheless, vehement INS opposition to any extension together with the collapse of
the pre-IRCA political consensus combined to stop the "extension" movement.

Qualifying for Temporary Residence in the SAW Program

The eligibility standards for SAW temporary resident status did not parallel those of the general legalization program directly, although the benefit was the same in both programs. On each statutory dimension--length of the application period, "residence" and "physical presence" requirements, and admissibility as an immigrant--the requirements for SAWs were less stringent than those for general legalization applicants.

While pre-1982 applicants had one year to apply for temporary residence, SAW applicants had 18 months (June 1987 to November 1988). While pre-1982 applicants had to prove nearly six years of continuous unlawful residence, SAW applicants had to demonstrate only six months of residence, without the requirement that such residence be "continuous" or "unlawful." Unlike pre-1982 applicants, SAWs could apply for the benefit outside the United States, and they were not required to maintain "continuous physical presence" while their applications were being adjudicated. Finally, while pre-1982 applicants were subject to "public charge" excludability if they evidenced "receipt" of public cash assistance, SAWs were at risk on these grounds only if they evidenced "reliance" on public cash assistance.

Three factors explain this imbalance between the two programs. First, legislators believed that the migration patterns and economic status of undocumented immigrants working in agriculture were qualitatively different from those of nonagricultural workers. That is, undocu-
mented farm workers, most of whom were assumed to be of Mexican origin, were more likely to be poor, spending the harvesting season in the United States and the rest of the year in Mexico (thus maintaining dual residences). Thus, some rationale existed for a longer application period, the opportunity to apply for SAW status outside the United States, and a more relaxed "public charge" standard.

The second factor was the political context of the SAW provision. Once it became clear that a guest worker provision would kill immigration reform, both growers and farm worker advocates were motivated to maximize participation in an agricultural legalization program. The former group was concerned with preserving its traditional labor source in the wake of employer sanctions, the latter with regularizing the status of a politically dispossessed group. Third, the lack of formal legislative debate on the last minute SAW provision precluded opportunities to make the statutory language more explicit or more consistent with that of the general legalization provision.

Ultimately, these influences generated statutory language that made the SAW program more generous by design than its pre-1982 counterpart. However, the ways in which the INS codified these standards met with charges that the agency compensated for loose statutory eligibility with tight regulations. Not only were these charges leveled from outside the INS, they were echoed within the INS in Washington, D.C. and in the field.

The statute required the SAW applicant to file a timely application, to demonstrate the performance of 90 person-days of "seasonal agricultural services" (such services to be defined by the U.S. Dept. of Agriculture) between May 1, 1985 and May 1, 1986, and to demonstrate general admissibility as an immigrant. Fulfillment of these requirements, as defined by the implementing agencies, made an individ-
ual eligible to apply for two-year temporary resident status, after which the applicant could adjust to permanent residence. If a SAW applicant could exceed these minimum standards by demonstrating 90 person-days of qualifying agricultural employment and six months of U.S. residence in each of two earlier years (May 1983 to May 1984 and May 1984 to May 1985), the adjustment to permanent residence could take place after only one year of temporary residence. This latter option, limited to the first 350,000 applicants who qualified, was referred to as "Group 1" SAWs. The remaining applicants were referred to as "Group 2" SAWs.

As was the case in the pre-1982 program, most of the challenges to the INS and USDA regulatory interpretations of SAW standards claimed that the standards were too restrictive. The major challenge to the eligibility standards was directed not at the INS but at the USDA—the agency responsible for defining which crops qualified as fruits, vegetables, and "other perishable commodities" for the purposes of the SAW program. This definition was the cornerstone to SAW eligibility, as SAW status was limited to those with evidence of at least 90 days past performance of "seasonal agricultural services" related to these qualifying crops.

Both grower and farm worker organizations brought lawsuits challenging the USDA definitions of qualifying crops. Often, growers and farm workers in one industry would file separate suits attacking the exclusion of the same crop. One successful challenge was launched by the National Cotton Council. In this suit, the court determined that cotton was a "fruit" under the SAW program, and cotton workers were thus eligible to apply for SAW status. However, legal challenges to include hay and sod in the category of SAW-eligible perishable commodities met with more difficulty. The court upheld the exclusion
of hay, and the status of sod workers remains ambiguous, with the USDA continuing to maintain that sod workers are ineligible and the INS holding their applications in abeyance until the case is resolved.\textsuperscript{15}

In a classic illustration of the complexities of class action litigation, sugarcane workers sought SAW eligibility by intervening as a class in a lawsuit brought by the Federation for American Immigration Reform (FAIR), a group opposed to the legalization and SAW provisions of IRCA. Ironically, the FAIR lawsuit sought to restrict the number of SAW-eligible crops, while the intervening class of sugarcane workers sought to expand the program to include their crop. In this case, neither the restrictionists nor the sugarcane workers prevailed, although the district court ruling has been since appealed.\textsuperscript{16}

Evaluating Evidence in the General Legalization and SAW Programs

SAW eligibility standards, while more liberal than those of the general legalization program, nevertheless met with political pressures for expansion. These pressures manifested themselves as efforts to expand the group of qualifying crops, thereby providing more growers with an opportunity to legalize their work forces and more undocumented farm workers an opportunity to enhance their labor market position by obtaining work authorization. However, the larger issue in the SAW program was the evidentiary standard imposed upon a SAW application. Indeed, the determination of "acceptable evidence" for general legalization and SAW applications was perhaps the most significant political development in the programs.

\textit{General Legalization Evidence.} The general legalization regulations call for three types of evidence: proof of identi-
ty, proof of residence, and proof of financial responsibility. In the ideal scenario, these pieces of evidence would include easily verifiable official documents, i.e., driver's licenses, rent receipts, social security cards, paycheck stubs, preferably all with the same name on them. However, the irony of requiring specific "documents" from "undocumented" immigrants was not lost on IRCA framers, who left the definition of acceptable documentation to the regulatory process, along with a clear mandate that the implementation of the program was to be generous. In response, the INS promulgated regulations in which affidavits—sworn statements from the applicant and from third parties—would be included in the list of acceptable documentation to fulfill each of the requirements. Controversy emerged quickly over the way the INS treated cases built solely or primarily on affidavits.

The INS final rule established "a preponderance of the evidence" burden of proof on the general legalization applicant, further specifying that the applicant must provide evidence apart from his or her own testimony. In cases where that separate evidence consisted primarily or exclusively of affidavits, concern quickly arose that the INS was denying applications due to insufficient evidence rather than probing the credibility of the sworn statements. In the INS Eastern Region, this charge reached the courts, where the INS agreed to reopen affidavit-based cases previously denied, and the Eastern Regional Processing Facility agreed to approve applications based on "credible and verifiable" affidavits in the absence of adverse information. In May 1989 a comparable suit was filed on behalf of applicants in the INS Southern Region.

Amid this spate of class action litigation, the Legalization Appeals Unit attempted to head off further court conflicts by recommending publication of a precedent decision on the treatment of affidavit evidence. This
decision—Matter of E.M.—offered guidelines on the use of the "preponderance of the evidence" standard for adjudicating general legalization applications:

...when something has to be proved beyond a reasonable doubt, the proof must demonstrate that something must be almost certainly true. And when something has to be proved by clear and convincing evidence, the proof must demonstrate that it is highly probably true. But, when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true...20

Invoking the "balance" and "flexibility" intended by Congress, Matter of E.M. walked through an affidavit-based case and, imposing the condition that the applicant's story was "probably true," granted the legalization benefit. Thus, once again the implementation of legalization became more inclusive. By the same token, once again that expansion came alongside legal challenges, and came slowly, in this case over a year after the temporary residence application period had ended. The benefits of Matter of E.M. would only accrue to those who had applied, been denied, and filed an appeal, and to those whose original applications were still pending at the four RPFs. Benefits would not accrue to those who might have been turned away or not have applied at all in the face of earlier policy.

SAW Evidence. The problems of evidence worsened in the implementation of the SAW program. On its face the SAW provision presented a generous standard by which undocumented farm workers could prove their eligibility. SAW applicants had to prove the fact of their past qualify-
ing agricultural employment by the relatively lenient "preponderance of the evidence" standard, and the extent of that employment (at least 90-days) as a matter of "just and reasonable inference." The INS designed a new form, I-705, an affidavit confirming seasonal agricultural employment that would be signed by both the applicant and an affiant—a grower, labor contractor, or farm worker union official, for example. Once these requirements were met, the burden of proof shifted to the INS to "disprove the alien's evidence with a showing which negates the reasonableness of the inference to be drawn from the evidence." 21

It was this shifting of the burden to the INS that proved difficult to implement, particularly as the SAW turnout exceeded expectations by hundreds of thousands. The INS began to discover that some legitimate farm labor contractors had signed the I-705 affidavit for former employees, but had also signed it (usually for a fee) for people they had never seen before. Similarly, some growers, unable to remember every person who had worked for them, presumed in favor of the people arriving on their doorsteps and signed every affidavit that appeared credible to them. In short, it became quite difficult to separate "good" from "bad" SAW applications in cases where the applications were virtually identical.

Rather than adopt a confrontational posture in the legalization office interview, trying to "break" fraudulent applicants into admitting fraud and identifying document vendors, local adjudicators would typically recommend the case for denial and note on the worksheet that fraud was suspected. The INS then used its computer facilities at the RPF to detect suspicious patterns in SAW applications. 22 Like the Security and Exchange Commission's monitoring of stock transactions, the fraud research at the RPF relied on the computer monitoring of affidavit volume. If on the INS computer one affiant's name kept
popping up attached to a suspiciously high number of applicants, the RPF’s Document Analysis Unit could issue an intelligence bulletin to the field telling adjudicators to be on the lookout for a particular type of SAW application. If an applicant with that type of application was then denied, the INS could use its evidence to meet its burden of proof requirement.

Thus, SAW legalization included not only an adjudicatory function but also an investigative one; if the INS was going to refute the evidence presented in SAW applications it would have to present its own adverse information. Advocates recognized this fact, and were prepared to insist in court that a SAW denial meet the requirements of the statute with a showing that negated the applicant’s evidence of eligibility.

But the INS was often unable to provide such adverse evidence. The investigative demands of the SAW program outstripped investigative capacity at the regional level. In addition, RPF adjudicators, who may have been sufficiently trained to generate 9 approvals out of every 10 applications in the pre-1982 legalization program, found the task of generating denials in the SAW program more difficult. In many cases these denials were issued without an explicit showing of adverse information. Indeed, they were issued in the Southern Region with little explanation, and in some cases with incorrect information on appeal procedures. Ultimately, the INS was challenged in the Southern, Western, and Northern regions on the adequacy of its SAW denials. As a result, RPFs would be charged with the task of readjudicating thousands of farm worker cases. The landmark case on this issue, *Haitian Refugee Center v. Nelson*, challenged not only the burden of proof issue, but several SAW adjudication procedures.23

*The Trend toward Exclusion.* The constant tension between creating rigorous rules and preserving generous
congressional intent played itself out throughout the legalization process. Ironically, those battles typically ended with an increasingly generous set of standards that came so late in the application period as to limit their utility. In the SAW cases, the difficulty in operationalizing reliable evidentiary standards generated the widest extremes between underinclusiveness and overinclusiveness. At the outset, the difficulty in separating bona fide from fraudulent applications generated numerous RPF denials, denials that did not comport with the INS’s own regulations when challenged in court. The court decisions, coming late in the program and at a time when the INS was experiencing budgetary pressures, may have led to questionable approvals as the short-term goal became one of clearing out the SAW backlog rather than expending the person power and resources necessary to conduct full-scale, legally defensible fraud investigations. As we shall see in our evidence from the field, these pressures also provoked some INS districts to take fraud investigation into their own hands.

Along with developing standards for temporary residence, the INS was charged with developing standards for the transition to permanent residence. Legalization applicants would lose all benefits and revert to undocumented status if they did not complete the adjustment to "permanent resident alien" immigration status. Thus, these standards would also be subject to close scrutiny by immigration advocates.

Qualifying for Permanent Residence in the General Legalization Program

In several ways, the general legalization standards for permanent residence (Phase II) mirrored those of tempor-
ary residence: timely filing, maintenance of continuous U.S. residence, and general admissibility as an immigrant.

Timeliness was as much an issue in permanent resident adjustment as it had been in temporary resident application. After 18 months in temporary resident status, an applicant had one year in which to adjust to permanent status. Once the year-long eligibility period expired, the alien would revert to undocumented status. The backlog in Phase I adjudications generated confusion on this point, as the onset of the 18-month temporary residence period lagged further and further behind the temporary residence application date. For instance, a calendar year might pass between the time an applicant entered a legalization office to apply for temporary residence and the time the application was finally adjudicated. A question then arose. If that applicant was approved, did that year of "pending" status count toward the 18 months of temporary residence?

The INS issued final regulations in July 1989 encouraging temporary residents to file their Phase II applications at any time after their temporary status was granted, and assuring that the 18 months of temporary residence began on the date the application was approved, no matter how far that date was from the original date of filing. While a "timely filing" confrontation had been the basis of court battles in Phase I, it was averted in Phase II regulatory revisions. This avoidance of court conflict through the amending of regulations would emerge as a theme in much of Phase II's implementation.

The INS Phase II regulations also defined the "continuous residence" requirement for the period between temporary residence approval and permanent residence adjustment. An IRCA temporary resident was authorized to use the temporary residence card as a travel document, allowing thousands of applicants their first opportunity in years to cross an international border in safety. However,
the Phase II regulations required that the temporary resident not exceed 30 days for a single absence, or a total of 90 days throughout the temporary residence period.

The admissibility standards applied in Phase II were similar to those applied in Phase I. Should the temporary resident violate these standards, by committing a felony, for example, the Phase II application could be denied. However, unlike Phase I, in which all applications were cross-listed with federal and state law enforcement databases before being adjudicated, no systematic check took place before adjudicating the Phase II application for permanent residence. Our field visits to the Southern RPF indicated that local law enforcement agencies would sometimes notify the INS if a temporary resident had been arrested, but this notification process was not systematic.

Disqualification on the grounds of "public charge" applied to Phase II applications, as it had in Phase I. The INS specified that a "public charge" waiver approved in the Phase I application would suffice for the Phase II application. However, the "public charge" consideration would be taken into account in the Phase II application, and a temporary resident could be denied permanent residence if unable to surmount it.

By far the most significant eligibility standard was the requirement that a temporary resident in the general legalization program demonstrate minimal understanding of English and a knowledge and understanding of U.S. history and government before adjusting to permanent residence. This "English/civics" requirement could be fulfilled in a variety of ways--by passing a test administered at the INS office, passing an INS-approved test administered by the private Educational Testing Service or the California State Board of Education, or by presenting a "certificate of satisfactory pursuit" of an INS-approved
course of study. This final option could be exercised after having completed 40 hours of a 60-hour course of study.

Never in the history of U.S. immigration policy had this educational requirement been made of a permanent resident applicant. Before IRCA, only immigrants seeking U.S. citizenship were subject to an English/civics requirement. Should the legalization program generate high turnout, the potential existed for an unprecedented demand for educational services in particular localities. Two issues weighed heavily in the development of regulations to operationalize this standard: curriculum and the cost of service delivery.

The content of such English/civics instruction was drawn from the content of the naturalization tests INS had administered in the past. Indeed, passing the INS English/civics test for permanent residence exempted an applicant from the testing requirement in any subsequent naturalization proceedings. However, the IRCA framers recognized that some proportion of the legalizing population would not be able to pass such a test within the time-bounded legalization program. Thus, the statute exempted persons over 65 years of age from the requirement. In its regulations, the INS further exempted persons under 16 years of age, persons over 50 years of age who had lived in the United States more than 20 years, the "developmentally disabled," and those "physically unable to comply."24 Furthermore, the regulations stipulated that the INS test would be given at an elementary literacy level, and could be given a second time should the applicant fail on the first try. As an alternative to taking the English/civics test, an applicant could present evidence of participation in an INS-approved course of study. Thus, the issue of service delivery costs arose. Who would pay for providing these instructional services, services for which there would likely be high demand?
Clearly, the responsibility for providing educational services would fall to the local educational agencies across the country. IRCA appropriated $1 billion per fiscal year for four years to reimburse states for the educational, public assistance, and public health costs of their legalized alien populations. State educational agencies were authorized to deliver educational services and to apply for reimbursement from these State Legalization Impact Assistance Grant (SLIAG) funds. SLIAG funding, administered by the Department of Health and Human Services, would be disbursed through state education agencies to their local districts and to community groups. While instructional services would be provided outside the SLIAG funding mechanism, the SLIAG program represented the major financial vehicle for providing English/civics instruction to the legalizing population.

A clear theme emerges in the implementation of standards for the second phase of legalization. It appears that the INS has initiated affirmative changes through its own regulatory process more readily than it did in the first phase. Phase I changes in eligibility standards typically took place at the insistence of the courts. Phase II changes—increasing exemptions from the English/civics test, authorizing several alternative strategies for fulfillment of the English/civics requirement, and amending regulations to ensure the maximum eligibility window—emerged without such battles.

Several factors may have contributed to Phase II’s less confrontational climate. First, as a subset of the Phase I population, the Phase II eligible population was not such an "unknown" quantity. The implementing agencies had a better idea of the scope of their target population in Phase II than in Phase I. Second, the consensus that fraud had been minimal in general legalization encouraged the INS to treat Phase II adjustment in a generous fashion. Had
rampant fraud been suspected in Phase I, the INS might have been less willing to confer the benefit of permanent residence upon legalization applicants. Third, the political fallout from processing 1.7 million people only to reject them in the final stages, condemning them to undocumented status once again, would have been devastating. Thus, the INS promulgated more inclusive regulations, in keeping with the emerging political and administrative pressures toward inclusiveness.

Qualifying for Permanent Residence in the SAW Program

In contrast to general legalization, the SAW transition from temporary to permanent residence was virtually automatic. "Group 1" SAWs—those first 350,000 SAWs whose employment histories had extended back to 1983—first became eligible for permanent residence in November 1989, one year after the close of the SAW program. "Group 2" SAWs—the balance of the SAW population—first became eligible for permanent residence in November 1990. Provided that the SAW temporary resident had not committed some act rendering him or her deportable, the adjustment process involved appearing at a legalization office and submitting to photograph and fingerprint processing for the permanent residence card. There was no window of eligibility constraint and no English/civics requirement.

Family Unity and Legalization

The eligibility standards specified in IRCA and implemented by the INS applied to the individual applicant. But throughout the regulatory process, public comment
continually focused on the question of family unity considerations in legalization. What was the federal government's position toward those undocumented aliens who did not qualify for legalization but who lived in the United States with legalized family members? Would ineligible family members be subject to deportation, or could they be considered for some special derivative status in the interest of preserving family unity—a central consideration in non-IRCA legal immigration policy?

The legislative history of IRCA expressed little sympathy for such problems, as reflected in the Senate Judiciary Committee report:

> It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning rights by virtue of the legalization. They will be required to 'wait in line' in the same manner as immediate family members of other new resident aliens.²⁵

In the end, the IRCA statute did not provide protection to ineligible family members of legalization applicants beyond that conferred indirectly by the confidentiality provision. That provision barred the INS from using any information on a legalization application for enforcement purposes, including information on ineligible family members living with the applicant. Still, the final rule on Phase I legalization noted that an ineligible family member apprehended independently by the INS would receive no special consideration solely by virtue of that individual's relationship to an IRCA-legalized immigrant.

Post-IRCA attempts to deal legislatively with split eligibility in legalization families met with little congressional support, and were opposed by major congressional actors in IRCA's creation.²⁶
Eventually the INS revised its policy through the issuance of an implementation wire in November 1987. Lower-than-expected turnout early in the legalization program generated concern that the INS had underestimated the chilling effect of ambiguity in the treatment of ineligible family members. To offset that concern, the INS issued a wire to the field, authorizing district directors to confer "indefinite voluntary departure" status upon ineligible minor children of temporary resident aliens, and indicating that on a discretionary basis ineligible spouses of temporary residents could receive the same benefit if "compelling or humanitarian" factors could be demonstrated. However, the procedure for obtaining this benefit was not specified in the implementation wire, leading to dramatically different implementation strategies at the local level (see chapter five).

THE LEGALIZATION PROCESS

Aside from defining the eligible population, the INS specified the procedures by which the benefit would be delivered to that eligible population.

Applying for Temporary Residence

Figure 4.1 provides a flow chart demonstrating the application process (Phase I) for temporary residence under the general legalization and SAW provisions.

Throughout the planning process, the INS intended general legalization and SAW applicants to go through the same procedures in the same locations. Legalization
decisions began at the district level. The applicant could seek preliminary help through a QDE or proceed directly to the local legalization office. Legalization offices accepted applications for general legalization and SAW status, reviewed the documentation presented in support of the eligibility claims, and forwarded the applications to one of four RPFs with a recommendation for approval or denial. The local adjudicator could also note on the application whether or not fraud was suspected in the documentation supporting the claim. The local legalization office issued the applicant an Employment Authorization Card (I-688A) for use while the application was adjudicated at the RPF. The Temporary Resident Card (I-688), also created during the initial interview, was retained by the legalization office until the applicant was notified by the RPF that a favorable decision had been rendered. These 107 legalization offices, under the authority of the 33 INS district directors, served as the frontline for program implementation.

Before going to the RPF for final adjudication, every file from every legalization office was shipped to a document processing center in London, Kentucky, which was staffed by Appalachian Computer Systems, an INS contractor. Here the information from the application was entered onto an INS database. The applicant's information was cross-listed or "bumped" with other INS, FBI, CIA, and state law enforcement databases to search for criminal records or previous immigration files. Next the file went to the appropriate RPF, where contractor personnel sorted files and routed them to the appropriate INS legalization officers for adjudication.

At the INS regional level a legalization officer in the RPF made the final adjudication. The RPFs were not open to the public. Rather they served as insulated centers
where files would be maintained and computer systems updated, places where cases could be dispassionately reviewed, far from the maddening crowds at the legalization offices.

If a general legalization applicant's file passed the computer search in London, Kentucky and was recommended for approval by the local legalization office, it would be approved automatically at the RPF. Only a small subsample of "recommended approvals" were audited for quality control purposes. All cases recommended for denial by local adjudicators were subject to a thorough RPF review, however. As a result, local legalization office personnel in our field interviews noted that recommendations for denial became a strategy to "flag" what they considered questionable or thinly documented cases, ensuring that they would undergo closer scrutiny at the RPF. In contrast, all SAW applications received an RPF review, regardless of the local adjudicator's recommendation, reflecting the INS's concern with fraud in the SAW application process.

For both programs the receiving RPF officer had the option of approving the case, denying it, or issuing an "I-72", a request for additional information that the applicant had to provide to the local legalization office where the original interview had taken place. The RPF was also responsible for reviewing appeals in the two programs and forwarding these appeals to the LAU in Washington, D.C.

The Central Office of the INS handled the adjudication of legalization appeals and the LAU processed these appeals. The LAU could sustain the appeal, remand it to the RPF for readjudication, or deny it. An LAU denial was final.
Procedural Changes

This basic procedure remained fairly consistent throughout most of the general legalization program. However, one important procedural change both facilitated applications and complicated adjudications. Near the close of each program (May 1988 for general legalization and November 1988 for the SAW program) the INS introduced a "skeletal" filing procedure. Under this expedited procedure, a completed application form and filing fee constituted a valid application. Those who filed these "skeletal" applications were able to make local interview appointments after the closing of the program, during which they could present their supporting documentation and have their applications entered into the work stream to the RPF.

The skeletal filing procedure significantly enhanced the ultimate legalization application rate. For example, New York INS respondents reported that the three legalization offices in the New York district received 35,000 applications in the final week of general legalization; Chicago INS officials reported receiving 10,000 skeletal applications. However, this enhanced turnout came at a price. Skeletal filing was announced shortly after the INS had initiated a nationwide legalization hiring freeze. Thus, the interviews for general legalization applicants filing skeletals took place alongside an upswing in SAW applications in the final months of the SAW program. These higher workloads in the face of an ill-timed limitation on personnel generated a perceived decline in adjudicatory quality. As one Houston INS official stated near the close of the SAW program in November 1988, "The mentality from [the
Southern Region] was 'Well, just pay [the legalization office staff] more money [in overtime], ... But there's a point when you are trading off on the quality of life. This last Saturday we had to direct 22 employees to work. I don't know how they did it. Some of our workers are just excessively tired.'

This stretching of personnel also impeded the efficiency of SAW fraud investigations. As the SAW application rate far outstripped even the most liberal INS planning estimates, the INS Central Office attempted to implement a new SAW interview procedure. Local office adjudicators were to preempt fraudulent applications by accepting SAW applications, scheduling interviews for a later date, and investigating claims of qualifying agricultural employment before the interview actually took place. This way, the adjudicator could confront the applicant with adverse information with the expectation that the applicant would either withdraw the petition or admit to the fraud, thereby justifying a statutory denial. However, there were never sufficient personnel to do the employment background checks, and with the exception of some efforts in Western districts, the procedure was never implemented. Instead, local adjudicators "recommended for denial" application upon application and forwarded the batches to the RPF.

The RPF had its own problems with SAW denials, stemming from the losses in major lawsuits. *Haitian Refugee Center v. Nelson*, the case filed on behalf of SAWs in Florida, charged that the Southern RPF had failed to specify the adverse information leading to a denial, thereby precluding the applicant from any opportunity to rebut the evidence. The class members of the suit were granted a reconsideration of their cases. The requirement to specify the adverse information forced RPF personnel to rewrite denials in considerably greater detail. Furthermore, the court decision made all other SAW cases in the
Southern region subject to the same requirements, exponentially increasing the workload of RPF adjudicators.  

Our visit to the Southern RPF in June 1989 provided dramatic confirmation of the effect of the revised SAW adjudication procedures. In June 1989 SAW adjudications in the Southern RPF had slowed significantly, as adjudicators turned their attention to reevaluating the cases of some 26,000 Haitian Refugee Center (HRC) class members. Non-HRC SAW applications were being shelved until the HRC backlog could be completed. With only seven legalization officers in the SAW adjudications unit--half the staffing the unit had enjoyed at its highest point--the immediate task was the issuance to each class member of a detailed notice of adverse information and a request for a response. Given that an RPF adjudicator reported having an average of 25 cases open at any one time, the SAW adjudications backlog was expected to last well beyond the December 1989 deadline the INS had set for SAW Phase I completion.

Even local legalization offices were called into service to deal with the backlog. In the spring of 1989, the Southern RPF sent boxes of cases to the San Antonio and El Paso legalization offices, where workloads were comparatively light, so that legalization office staff could assist with these "notices of adverse information" on SAW cases.

In sum, three factors converged to create backlogs in the adjudication process in legalization: the introduction of skeletal applications, the unexpectedly high volume of applications in the SAW program, and the court-mandated elaborations in the issuance of SAW denials. Each of these events took place alongside a Central Office hiring freeze late in the general legalization program. Although the initial investment in legalization was generous enough to allow the INS to open all its offices on schedule, the funding system did not allow the agency to reallocate
resources in a speedy fashion in the back stretch, which came at the end of fiscal year 1988. Having reimbursed itself for the start-up materials from the early fee receipts, the INS found itself cash-poor at a time when added personnel were necessary to offset growing backlogs. When the first legalization applicants became eligible for permanent residence, the INS was still devoting a significant component of its workload to completing the first phase of legalization.

Applying for Permanent Residence

Figure 4.2 outlines the application process (Phase II) for permanent residence for both general and SAW temporary residents.

Panel A outlines the adjustment from temporary to permanent residence for general legalization temporary residents. Phase II began at the RPF. The temporary resident received a Phase II application packet from the RPF in the mail, to be completed and returned to the RPF, along with an $80 application fee (capped at $240 for a family). At the RPF legalization officers reviewed the application for completeness, updated the computer system, and computer-scheduled an interview for the temporary resident with the local legalization office.

Before sending in their Phase II applications, many temporary residents prepared by enrolling in INS-approved courses of English/civics study at local school districts or community agencies. If they completed 40 hours of the approved instruction, they could mail their "certificates of satisfactory pursuit" to the RPF along with their Phase II applications. Otherwise the applicant was required to take the Phase II English/civics test or to present the certificate (if they had one) at the local office interview. Applicants
Figure 4.2  THE LEGALIZATION PROCESS: APPLYING FOR PERMANENT RESIDENCE

A. GENERAL LEGALIZATION

PRE-1982 TEMPORARY RESIDENT

Mails permanent residence application to Regional Processing Facility

OR: Proceed directly to Legalization Office

Notifies applicant of appointment at Legalization Office

LEGALIZATION OFFICE
- administers English/civics test or accepts course provider's certification
- updates applicant's computer file
- processes photos and fingerprints for creation of Permanent Resident Alien (PRA) card
- updates Temporary Resident Alien card for use until PRA card is mailed to applicant

Applicant takes certificate to Legalization Office

LOCAL COURSE PROVIDER
- provides English/civics instruction
- may:
- issue "certificate of satisfactory pursuit" after 40 hours of instruction
- receive federal reimbursement for services
- administer an INS-approved English/civics test

B. SAWS

SAW TEMPORARY RESIDENT

REGIONAL PROCESSING FACILITY
- refers applicant to nearest Legalization Office when eligible for permanent residence

LEGALIZATION OFFICE
- processes photos and fingerprints for creation of Permanent Resident Alien (PRA) card
- updates Temporary Resident Alien card for use until PRA card is mailed to applicant

Legislation Standards and Procedures 113
with certificates were free to take the English/civics test if they chose. Successful completion of the test exempted the individual from any later testing requirement should that individual choose to adjust to citizenship.

Local legalization officers interviewed the applicant, and if necessary, administered the English/civics test or accepted the certificate. If the applicant failed the test, the legalization officer could still accept the certificate as an alternative. The local officer would also complete processing for the permanent resident alien card, the "green" card, which would later be mailed to the successful applicant. Should the applicant fail to complete the Phase II requirements of the interview for any reason, a second interview scheduled for a later date. Meanwhile, the applicant's temporary resident card would be renewed, if necessary.

The single most significant change in the Phase II procedure just described is the "Apply Now" campaign. Rather than restricting the applicant to filing the Phase II application immediately before or during Phase II eligibility, the INS revised its procedures to allow for the early filing of the Phase II application. The intent was to allow more efficient scheduling of local office interviews in order to minimize confusion as the applicant struggled to keep track of the opening and closing of various windows of eligibility.

The SAW transition to permanent residence, outlined in Panel B of figure 4.2, was far simpler than that for the general legalization applicant. RPFs notified SAW applicants at the beginning of their permanent residence eligibility, one year after the granting of temporary residence for Group 1 SAWs, two years after temporary residence for Group 2 SAWs. At that point the SAW temporary resident was authorized to go to a legalization office and undergo
processing for the permanent resident card, without any further conditions or obligations.

CONCLUSION

There is little doubt that Congress intended legalization to be administered generously. However, both the statute and implementing regulations reflected a decidedly "limited" generosity. Particularly for Phase I, the implementing agencies drafted regulations that cautiously sought to ration the benefit of legal status.

In the general legalization program, the incentives to ration benefits diminished over time because the INS became the target of a concerted litigation effort on behalf of those undocumented immigrants who stood to benefit enormously from a slightly more generous interpretation of the statute. The incentives to ration benefits were further diminished as the courts repeatedly sided with the applicants. Court battles were costly in terms of workload and image. Thus the INS increasingly sought to avoid such litigation through regulatory changes that would increase the applicant's chances of completing the legalization process successfully. In addition, the perceived low incidence of fraud in the general legalization program generated confidence within the INS that the benefit was reaching the appropriate target population.

This trend from a "rationing" to a more flexible approach did not characterize the SAW program. From the outset, the INS was skeptical about its ability to operationalize the statutory eligibility standards for SAWs. This concern translated into a heavy emphasis on fraud detection
for which the rapidly trained adjudicatory personnel were ill-equipped. The resultant SAW denials did not meet legal criteria, and the INS paid for its rationing efforts with court-mandated readjudications and growing backlogs. Ultimately, these pressures on the INS will increase the share of SAW approvals.

Notes, chapter four


8. Ibid., p. 16200.


17. Federal Register, vol. 52, no. 84, Friday, May 1, 1987 p. 16211


21. IRCA Sec. 210(3)(B).


25. Senate Judiciary Committee Rept. no. 99-132, p. 16.


27. The INS expanded the Haitian Refugee Center decision to cover the entire Southern Region, as a similar lawsuit filed in El Paso sought comparable relief. See Ramirez-Fernandez v. Guigni, no. EP-88-CA-389 (W.D.Tex. 1988).
Chapter Five

THE ROLE OF IMPLEMENTATION IN LEGALIZATION PROGRAM OUTCOMES: EVIDENCE FROM THE FIELD

As previously noted, our data came from eight implementation sites: Los Angeles, San Jose, El Paso, San Antonio, Houston, Chicago, New York, and Miami. We conducted two waves of fieldwork, one in the fall of 1988 and the other in the spring of 1989. Research team members interviewed several categories of respondents in each site, including INS District Office, legalization office, and Border Patrol personnel; QDE and voluntary organization staff; private immigration attorneys; local and state public officials in health, education, and welfare offices; local elected officials; local media representatives; immigration researchers; employers; union officials; and trade association staff. In addition, we conducted interviews with state agency personnel in each of the state capitals, and with INS personnel at the four INS Regional Offices and Regional Processing Facilities. Finally, throughout the project we monitored the activities at the federal level by contacting key informants including INS Central Office personnel, program directors in other federal agencies affected by IRCA, members of Congress and their staffs, and key interest groups and advocates based in Washington.

Our respondent categories were selected to bring as many perspectives as possible to our assessment of the
legalization program locally, regionally, and nationally. Although perspectives in the field occasionally contradicted one another along predictable institutional and political lines, taken together, our field interviews clearly identify implementation patterns emerging across sites and over time. The field interviews also identify stress points in the continuing implementation of IRCA that may ultimately find their way back to Congress for remedy. The following sections use both interview data and INS-generated quantitative data to examine the key steps in the legalization process: publicity and outreach, temporary residence for general legalization and SAWs, permanent residence for general legalization, and the appeals process.

PUBLICITY AND OUTREACH

IRCA required that the general legalization program begin no later than six months after enactment of the law. In response to that mandate, 107 INS legalization offices across the nation opened their doors on May 5, 1987 prepared to accept applications for adjustment to legal status. Who was waiting on the other side of those doors depended on the publicity and outreach efforts to which potential applicants had been exposed.

There are two stories to tell about the post-IRCA publicity and outreach efforts to promote legalization: the national one and the local one. By most accounts the national-level effort to publicize legalization did not meet with great success. The local initiatives proved much more important in determining the awareness and program participation in a given community, particularly for smaller immigrant enclaves and non-Hispanic immigrant groups.
The National Publicity Effort: Too Little, Too Late

The INS awarded a $10.7 million contract for a national IRCA publicity campaign in April 1987, one month before the legalization offices opened their doors. This contract went to a consortium of prominent advertising and public relations agencies which organized solely for the purpose of bidding for the IRCA project. The consortium called itself The Justice Group.¹ This group assumed the ambitious task of publicizing all IRCA programs: legalization, employer sanctions, and the antidiscrimination provision that protects workers from IRCA-related discriminatory hiring practices.

The final contract amounted to less than half of the original INS public information spending proposal. Compared to other large-scale public education efforts, the IRCA publicity budget was small. To quote one comparative example, the IRCA public awareness program amounted to about one-tenth of the public information resources expended in the same fiscal year by the Centers for Disease Control for AIDS-related education.² The substance of the two projects obviously differed, but the IRCA publicity project shared one important characteristic with the AIDS awareness campaign: the messages of both efforts had to reach a vast array of target audiences, some of whom would be quite hard to reach through conventional media projects. For the IRCA campaign, these audiences included undocumented immigrants of all nationalities who might be eligible for legalization, virtually every employer in the United States, population groups that might be particularly vulnerable to IRCA-related discrimination, and all job seekers in the U.S., who would now be required to show documentary proof of their authorization for employment. In short, IRCA had a
direct impact on virtually every individual and corporate entity in the country.

The Justice Group pitched its proposal to the INS with an emphasis on three themes: knowledge of the immigration policy realm, cost effective use of the media, and the group’s ability to give equal weight in the publicity campaign to both enforcement and benefit components of the law. While the Justice Group assumed responsibility for the straight advertising campaign, it planned to subcontract its community outreach component to a prominent Washington-based coalition of advocacy groups whose members were active in many localities throughout the United States. The proposal emphasized cooperation among diverse groups and the urgency imposed by the short lead time. As the proposal’s executive summary noted: "There is no time for on-the-job training." (Justice Group Proposal, pp. 2-3)

The subcontract for community outreach never materialized, however, and tension immediately emerged between the INS-sponsored, centralized public relations effort and the QDE/advocacy community. The critique centered on several of the themes the Justice Group had touted in its proposal: adequate awareness of the target population, balance between sanctions and legalization publicity, and timeliness.

From the outset, non-Hispanic immigrant groups expressed concern that the national publicity program targeted Hispanic undocumented immigrants, particularly Mexican-origin immigrants, at the expense of other nationalities. Information on legalization was translated into 36 languages, but the dissemination of this multilingual information through $7 million in purchased and donated media time fostered only a basic awareness of the program in non-Hispanic communities, a finding borne out by the
Justice Group's own market research. In a series of letters advocacy groups warned the INS that such a campaign would not translate into applications without local community outreach, particularly for the Asian- and Caribbean-origin enclaves that had received less attention in the national media efforts. These concerns were echoed in our local field interviews in communities with significant non-Hispanic enclaves, even as local INS officials were pointing out the healthy representation of Spanish-speakers among their legalization personnel. In short, the publicity and outreach efforts were less than perfectly matched to community characteristics.

In addition, throughout our field interviews respondents reported a perception that more publicity effort was expended for employer sanctions than for legalization. However, the Justice Group did not spend significantly more dollars on its employer sanctions effort than on its legalization effort (Meissner and Papademetriou, p. 14). The field perceptions of imbalance reflect the INS's distribution of person power and resources to publicize the two programs. The design and implementation of employer sanctions placed greater emphasis on public education than was the case with legalization.

The INS preoccupation with employer sanctions was inevitable. The statute mandated an employer sanctions "public education period" to begin December 1, 1986, less than one month after enactment. That effort was to last for six months, during which the INS would disseminate "I-9" forms and information to employers. A one-year "citation/warning" period would follow, during which education efforts would continue. Thus, for 18 months education was the primary sanctions activity, affording the INS a far greater lead time than the six months in which legalization was to be implemented. Because of this time crunch the
INS created a new sanctions outreach position--"Employer and Labor Relations (ELR)" officer--for each INS District Office. This ELR position was funded as an Investigations agent--a higher civil service ranking than that accorded legalization office personnel--and was designed to devote full-time effort to coordinating community outreach and public information on employer sanctions. Furthermore, nearly all investigators in local INS offices were detailed in the early stages of sanctions implementation to community education efforts, handing out I-9 forms and explaining procedures to employers. Legalization staff, on the other hand, were hired only a short time before the legalization office doors opened and were expected to do processing as well as outreach. Any public appearances on their part reduced the person power available to deal with the daily workload of processing applications.

Thus, publicizing the legalization program fell disproportionately on the shoulders of district directors, and district legalization directors and their legalization office managers, who faced the dual tasks of public relations and daily program administration. Some INS districts assumed these tasks more willingly and effectively than others.

The primary problem with the national publicity effort was the simple matter of timing. Publicity materials from The Justice Group were slow to filter to the field. Several nationally coordinated QDEs complained to the INS within the first three months of the legalization program that public information materials were not being forwarded to local community groups, and that the national media campaign did not promote the availability of QDE services. In the final months of the Phase I application period, the Attorney General called a press conference announcing a final publicity campaign and unveiling a new poster with
the slogan "Live the Dream. Apply Now." However, field respondents noted that the poster's utility was limited by the fact that it expressed a rather abstract and unspecific message, was distributed only in English, and did not provide a telephone number for information and referral.

Local communities took to heart The Justice Group's prophetic observation that there was "no time for on-the-job training." As problems with the national publicity effort mounted, local initiatives sought to compensate for the deficiencies of the national campaign effort.

Local Efforts

Two types of community groups were particularly important in maintaining a high profile for legalization: the service organizations, often church-based, and the political and legal advocacy groups. Many of these organizations also served as QDEs and engaged in outreach activities, typically toward their parishioners or pre-IRCA clientele. The more active and cooperative these groups were with each other, the more rapidly information was diffused through the community.

While we found consistent evidence of this effort, we found wider variation across sites in the activities of two other key actors: local INS district personnel and local government. Active involvement by these agents of government not only seemed to encourage greater application rates, but also corresponded to a higher level of awareness and understanding of the program among all of our field respondents. In the absence of an engaged INS and local government, legalization emerged as a more insulated program, of interest primarily to those directly involved.
SERVICE ORGANIZATIONS
AND ADVOCACY GROUPS

Immigrant groups in the United States have a history of pooling economic and social resources through the formation of mutual assistance societies. Often these groups are organized through churches and provide an accessible source of information to community members. In each of our sites, such mutual assistance and religious groups viewed legalization as part of that community function. A prime example was the Polish assistance groups of Chicago, who assumed QDE status, processed applications, and provided Phase II English and civics classes in their community.

Across the country, such local QDE projects as those organized through Catholic Charities and Catholic Social Services were particularly important, but not necessarily in ways they had expected. By entering into cooperative agreements with the INS as QDEs, these agencies were reimbursed for each legalization application they forwarded to the INS, and they filed thousands of applications nationwide. However, many immigrants came to these trusted agencies for preliminary information, then filed their applications directly with the INS. Thus, INS statistics and our field data reflect a lower filing rate through QDEs than either the INS or the QDEs had expected. Nationwide, only about 18 percent of general legalization and SAW applicants filed through QDEs. Nevertheless, our field observations and interviews indicate that far greater numbers probably relied on their religious and ethnic community groups as their first source of legalization information. In sum, the significant role of these groups in disseminating information and providing outreach services was not always reflected in the legalization outcome statistics.
Political and legal advocacy groups in each of our sites also kept the program in the public eye. Some of these groups served as QDEs but others eschewed such formal affiliation with the INS, focusing instead on monitoring INS performance in adjudications and on convening coalitions of community groups. In Houston, for instance, a community task force organized by advocacy groups and members of the private immigration bar convened meetings with the INS and local law enforcement agencies, testified before subcommittee hearings on IRCA, and launched its own publicity efforts targeted toward legalization and immigrants’ rights throughout Phase I. Similar publicity efforts were sponsored by a San Antonio coalition of advocates and QDEs, which published a brochure on immigrant rights during INS detention, and established a hotline for legalization information and reports of discrimination.

Several advocacy organizations engaged in IRCA litigation that resulted in an expanded pool of eligible applicants and more inclusive adjudication procedures. Although many of these advocacy groups did not provide direct legalization services to immigrants, they contributed to the political evolution of the legalization program through both their own publicity materials and the publicity generated by their legal challenges.

THE LOCAL INS AND LOCAL GOVERNMENT

While private groups assumed an active outreach and publicity role in all sites, their public sector counterparts varied in the attention they devoted to legalization publicity. The Los Angeles and Houston sites illustrate heavy involvement on the part of the local INS in local legalization publicity. The two districts employed different publi-
city styles, yet both were cited by many respondents as the most important factor in encouraging applications.

In Los Angeles, local INS officials, joined by Western regional INS officials, engaged in what some respondents described as "Hollywood-style" publicity. Sporting sombreros and presenting themselves as the "Trio Amnestia," Los Angeles district and Western regional officials appeared at numerous photo sessions. In addition, the Los Angeles District sponsored "Thursday Night Live" information sessions at legalization offices, and the district director answered questions on his own Spanish radio call-in program.

Houston INS officials, though less flamboyant than their Los Angeles counterparts, also made legalization outreach a high priority. District officials made extensive use of the local media, particularly Spanish-language radio and television, and cultivated relationships with the private immigration bar through regular meetings at the District Office.

In both Los Angeles and Houston the extensive outreach and publicity by the local INS stimulated high application rates. Approximately one-third of the total general legalization applicants in the country listed Los Angeles/Long Beach as their metropolitan area of residence, and the lone Houston legalization office processed over 100,000 general legalization applications.6

Both sites began with considerable Mexican undocumented immigrant population bases, and local outreach efforts focused primarily on this population base, as evidenced by the role of Spanish-language media and Hispanic themes in the publicity efforts.7 Asian immigrant assistance organizations in both sites noted that these efforts were not complemented by extensive outreach in their communities. For instance, one voluntary organization involved with Indochinese refugee resettlement in
Houston noted a distinct upswing in the Hispanic share of the agency's clientele during legalization. A private attorney in Houston recounted the story of a client from Zambia who failed to apply for legalization because he thought it was "only for Mexicans." An Asian advocacy group in Los Angeles noted that the INS was not able to cover the diverse Asian-language newspapers in the community as effectively as the major Spanish-language electronic media. It appears, then, that the local INS offices maximized limited outreach resources by concentrating on the forums with the largest audiences.

While field respondents cited the high visibility of the local INS in Houston and Los Angeles as key factors in legalization, a different set of actors came into prominence in other sites. Local governments, either through the efforts of a single office or through the formation of coalitions, proved to be important contributors in some of the sites with more heterogeneous immigrant communities. New York City and Chicago provide prime examples of such public sector involvement.

In New York City both municipal and state officials became involved in legalization publicity. The significance of a legalized population as a future constituency was not lost on New York state legislators, who formed a "Task Force on New Americans" in the early 1980s, and who organized a mass mailing on legalization to all their district residents. This state-level task force reported procuring $800,000 in state money for legalization outreach and assistance to local community agencies.

Not to be outdone, the New York City Mayor's Office of Immigrant Affairs set up two task forces in December 1987 in response to concerns that the New York City application rate was not meeting expectations. One public agency coalition coordinated the city's response to the increasingly complex effect of immigration status on
public service eligibility. Another task force comprising both public sector and private community groups sought to identify barriers to legalization applications. In addition, a legalization information hotline was funded through the combined resources of the city, the state, and the INS. This hotline was staffed by several private advocacy groups, but its funding came from public sources. Respondents identified the hotline as the most important source of information during legalization, noting that even the local INS legalization offices would refer questions to it.

Chicago represented another active partnership between local government and private groups to publicize legalization. A coalition of immigrant-serving groups and city government offices produced its own publicity materials, again citing the slow dissemination of the INS-contracted messages. At times, the relationship between coalition members and the local INS was strained. The Chicago INS respondents reported that they had implemented legalization more generously than the community coalition would acknowledge. Still, despite these institutional conflicts, both the coalition and the INS Chicago District devoted considerable effort to publicity, enhancing the overall level of awareness throughout Chicago.

In sum, the local publicity and outreach efforts only partially compensated for a slow national publicity campaign and the absence of a nationally coordinated outreach effort. The publicity and outreach efforts of the national and local INS targeted the information networks of the Mexican-origin community more effectively than those of other immigrant groups. To compensate, local advocacy and service organizations augmented these efforts with campaigns of their own, targeting their own diverse constituencies. Although most sites recovered from the slow start in time to see a significant legalization turnout, both INS and advocacy respondents reported that this turnout
did not include many applicants who became eligible in the wake of court decisions and administrative changes that occurred during the Phase I period. The following section examines that Phase I period in greater detail across sites and over time.

TEMPORARY RESIDENCE (PHASE I): A VIEW FROM THE FIELD

Three questions guided our fieldwork on Phase I legalization:

- Did implementation of Phase I vary at the local level and, if so, on what dimensions?
- Did variation in implementation correspond to variation in program outcome?
- At the close of Phase I, had enough of the eligible population come forward in each site to deem the program a success?

Dimensions of Local Variation

Major dimensions on which local practice varied include the relationship between the INS and the advocacy community, the way the INS handled its competing missions, the treatment of documents and affidavits, responses to suspected SAW fraud, and implementation of "family fairness."
THE INS AND THE ADVOCACY COMMUNITY: ALLIES OR ADVERSARIES?

Advocacy community involvement was a constant in Phase I implementation. Variation came in the tenor of relations between advocates and the local INS office. Los Angeles provides an example of a relatively cooperative relationship, particularly between INS officials and the Catholic Church. Catholic service organization respondents reported meeting with INS officials on a weekly basis, and cited the public appearances of the INS Western regional commissioner and the Los Angeles archbishop as factors encouraging applications in the city's Hispanic immigrant communities.

In several other sites advocacy groups served more as monitors, keeping an eye on program implementation in their communities and challenging the INS to improve legalization services. In Houston, local advocacy groups reached into the statute itself to support their monitoring efforts. Section 111(c) of IRCA allowed for "the establishment of appropriate local community task forces to improve the working relationship between the Service and local community groups." Citing this statutory language, Houston advocacy groups convened a community task force and obliged the local INS to adhere to its statutory obligation by keeping the task force apprised of legalization problems and solutions. Although the task force opposed such Houston INS enforcement activities as highly publicized "neighborhood sweeps" by investigators, advocates were largely supportive of the agency's accessibility on legalization issues through the task force forum.

In San Antonio the relationship was adversarial, as reported by both INS and advocacy respondents. Advocacy groups reported that past conflicts with the INS San Antonio District on such issues as political asylum
adversely affected legalization. INS officials resisted meeting with community groups whose leaders included sanctuary activists with whom the INS had clashed repeatedly. Although some advocates acknowledged an improvement over time in INS-community relations, they lamented its slow pace: "The notion that they [INS] were going to help you instead of catch you just didn’t get through." (San Antonio QDE respondent) This tension extended to the INS-city government relationship, as evidenced by the remarks of one elected city official, "During the first few months, the best advice I could give people was not to go to Immigration [the INS]. We were afraid that these people would literally be turning themselves in... I never did send people directly to Immigration." Ultimately several San Antonio city council members cooperated with the local INS legalization director by appearing at publicity events, for example, but this involvement came only after community leaders were satisfied that legalization was insulated from the district’s enforcement activities.

LEGALIZATION AND THE COMPETING MISSIONS OF THE INS

Along with legalization, IRCA created new enforcement tools for the INS and mandated increases in the Border Patrol. Meanwhile, laws aimed at combating drug traffic infused the INS with money and responsibility for increased interdiction efforts. Along with these new missions, the INS faced the continuing demands of the traditional adjudicatory workload in immigration benefit petitions, detention and deportation proceedings, and border inspections. Thus, legalization had to fit within a broad range of INS district priorities. In some sites legalization implementation enjoyed the highest priority. In
others, the program fell victim to other concerns the local
district found more pressing.

This tension between legalization and competing INS
missions was clear in New York City. As one INS official
noted, "When I came here almost eight years ago, we were
confronted with a huge backlog of immigration cases . . . I
wasn't going to let IRCA get in the way of our catching
up." New York INS officials complained of the difficulty in
attracting people to temporary staff positions in legali-
zation. As a result, New York City rode out the final surge
of general legalization applications in May 1988 with 75
staff spread across three offices. By November 1988, the
end of the SAW program, this staff had been consolidated
into a single legalization office and had dropped to 50
members, 12 of whom were detailed from other INS divi-
sions.

Determined to avoid emptying out the New York
District office to cope with legalization, the New York INS
relied on the advocacy community, encouraging QDE
representatives to come to the legalization office and assist
adjudicators during the closing rush, and contributing
money to the community-based telephone information
hotline. In retrospect, district officials were satisfied with
this solution. "I'm glad we hadn't let up on our other
duties. We could have gotten way behind." (INS New
York District official) Ultimately, New York City pro-
cessed about 100,000 applicants, a figure well below pre-
implementation estimates.

At the other end of the spectrum, the INS Houston
District channelled a major effort into legalization:

Because we were so swamped with legalization,
we transferred people out of clerical to officer
positions...Deportation [division] was complete-
ly stripped...Information officers are still out there [at the legalization office] because of SAWs. (Houston INS officials)

The Houston District, with one legalization office staffed by 29 people at its high point, was second only to the Los Angeles District (with 16 offices and a high point staffing of 324) in total applications filed. Ironically, the major critique of the Houston INS from community respondents centered not on limited publicity, as it did in other sites, but on the District's determination to get the Phase I numbers as high as possible, thereby compromising the quality of adjudications in the process. "I went down there once and there was a mail clerk processing applications. He had been carrying boxes around on a dolly the day before, and now he was adjudicating applications." (Houston immigrant assistance organization respondent) Like the New York District, the Houston District processed approximately 100,000 applicants. But the Houston figure far exceeded pre-implementation estimates.

THE TREATMENT OF DOCUMENTS AND AFFIDAVITS

Respondents in nearly every site identified two countervailing trends in local Phase I implementation: an overall loosening up of documentary requirements in the general legalization program, and a considerable tightening up in the treatment of cases based solely on affidavits, particularly in the SAW program.

Over time, local adjudicators and QDEs became far more comfortable with fewer pieces of documentation in support of a general legalization application. As one QDE
approved. But the documentation was in the husband’s name, not the wife’s. All she has are those affidavits."

The most significant factor fueling resistance to affidavit cases was the flood of SAW applications supported solely by sworn statements attesting to previous agricultural employment. INS respondents in many of our field sites pointed out that a "good" SAW application was often virtually indistinguishable from a "bad" SAW application, given the reliance in both instances on sworn statements as evidence. Although INS dislike of the SAW program and mistrust of SAW applicants was virtually a field interview constant, what varied was the extent to which local districts took the issue of suspected SAW fraud into their own hands.

**LOCAL RESPONSES TO SUSPECTED SAW FRAUD**

Because our research sites were predominantly urban, only one of them, Miami, had more SAW applications than general legalization applications. Still, over 300,000 of the 1.3 million SAW applicants filed their petitions in our eight sites. Although the formal application process for SAW applicants paralleled that of general legalization, the attitude of the implementing agencies toward the SAW population was quite different. Both community groups and the local INS looked upon SAW applicants with suspicion and skepticism.

**Community Responses.** Many immigrant advocates were circumspect when our field researchers questioned them about SAWs. Some immigration attorneys refused to handle all but the strongest SAW cases, concerned that involvement with a program in which there was such a widespread perception of fraud would damage their credibility with the INS. Many urban QDEs--particularly those
whose backgrounds were in refugee assistance—felt uncomfortable representing immigrants whose entire documentary record consisted of a single affidavit from a farm labor contractor. Thus, local for-profit immigration agencies and "notarios publicos" tended to report much higher proportions of SAW clients than did the most prominent "service organization" QDEs. Indeed, local INS respondents cited such differences between SAW and general legalization applications as evidence of the poor quality of SAW applications. The perception of the SAW program as fraud-ridden led many of the most credible community and legal advocates to stop assisting SAW applicants, who turned increasingly to "notarios," many of whom were themselves the targets of immigration fraud investigations.

Local INS Responses. In the fall of 1988, when the SAW program was coming to a close, SAW had become synonymous with fraud in the local INS lexicon. Most of this criticism focused on those applicants who filed in the final six months of the program, the applicants whose ranks ultimately accounted for over half the total SAW population.

Local INS suspicions about SAW applicants were reflected in their actions. In San Jose the INS videotaped applicants suspected of submitting fraudulent documents during their interviews. In Miami an INS district official described the SAW program as a "national disgrace." In New York City INS Investigations officials cited "massive" SAW fraud as one of their primary investigative missions, and in the closing weeks of SAW eligibility they assigned investigators the task of verifying information obtained in the SAW interview. Some 5,000 SAW applicants denied at New York offices were not issued Employment Authorization Cards. Eight months later, under threat of court action, the New York district called the 5,000 applicants back, provided the work cards, and issued "notices of
intent to deny" the applications. This revision in policy averted a lawsuit in the Eastern region similar to successful class-action suits on the issuance of work authorization cards and SAW adjudication procedures in the West and the South.

Perceptions of rampant SAW fraud developed relatively late. Most of the early SAW applications were approved at the RPF level. In the Western region, where over 760,000 of the nation's 1.3 million SAW applications were filed, regional INS officers reported that SAW cases adjudicated as of June 1989 (about 30 percent of the Western total) reflected an approval rate of 85 percent, even though only 47 percent of these cases had come to the RPF with a recommendation for approval from the local legalization offices. At the time of our site visits, Western INS regional respondents pointed out that as more SAW cases were adjudicated, the denial rates in all regions would probably rise. However, in the first region where denial rates did rise--the Southern region--class action litigation successfully challenged the evidentiary standards that led to those denials. Although the INS was sure fraud was taking place, it did not have much luck proving it, at least to the satisfaction of the courts.

There are two reasons for the difficulty in dealing with SAW fraud, one inherent in the design of the law, the other the result of decisions during implementation. First, a SAW application typically consisted of affidavits attesting to the petitioner's eligibility. Having received these affidavits, the INS assumed the burden of proof for generating adverse information of sufficient quality to sustain a denial. This was no small feat, given the tendency of many SAW affiants (those who signed the affidavits) to sign both valid and fraudulent affidavits. In the world of undocumented farm laborers, distinguishing between valid and fraudulent documentation was extraordinarily difficult.
Under such conditions, widespread denials based on fraud could not be sustained in the courts. The Haitian Refugee Center lawsuit in the Southern region proved this point, as the Southern RPF was compelled to readjudicate thousands of SAW applications based on a finding of insufficient denial procedures.

The second reason it was difficult to control SAW fraud is that RPF resources devoted to SAW fraud investigation were no match for the high SAW application rate and the SAW investigative task. In the Northern RPF, for example, six staffers in the Document Analysis Unit (DAU) were responsible for investigating fraud among the 129,000 SAW applications filed in that region. During our visit to the Northern RPF, DAU respondents reported 3,046 confirmed cases of fraud, although 45,000 applications were under investigation. The Southern RPF received over 300,000 SAW applications; yet, in June 1989, with over half these applications still pending, its DAU consisted of four employees--one supervisory agent, one document analyst, one clerk, and an investigator on temporary loan from a district office. Although Southern RPF staff were convinced of the high level of SAW fraud, only about four percent of the total Southern SAW applicant pool had actually been denied on the basis of successful DAU fraud investigations. With meager prospects for more money and increased pressure to comply with SAW court decisions, RPF respondents harbored few expectations that their ability to detect fraud and deny fraudulent applications would improve significantly in the future. Against this backdrop, at least one INS district in the Southern region simply took matters into its own hands.

The Houston SAW Fraud Project. Houston became a dramatic example of a local INS jurisdiction seizing control of the fraud issue in the SAW program. Having processed 10,000 SAW applications in the usual manner--conducting
a local interview and forwarding the application to the RPF--Houston INS officials became convinced that fraud was rampant among Houston SAW applicants and that many of the fraudulent applicants were getting approved at the RPF. So in the final weeks of the program, the Houston District simply retained its last 14,000 SAW applications. These applicants were given their Employment Authorization Cards but told their temporary residence interviews would be scheduled for a later date. District officials then created a hybrid investigative/adjudicatory task force with two missions: to conduct an intensive interview of each Houston SAW applicant, and in the process to expose and prosecute vendors of fraudulent SAW documentation. We observed this task force's operations during our field work in the spring of 1989.

Each SAW applicant in this 14,000-member pool was to be interviewed by a fraud task force officer. The interview would have one of two possible outcomes. If the applicant's case could withstand the interviewer's scrutiny the petition would be sent to the RPF with a recommendation for approval. If applicants admitted to fraud the petition would be statutorily denied. Any information in the applicant's confession that implicated an affiant would be taken down in a sworn statement and used as evidence in criminal cases the task force sought to build against certain affiants.

This SAW fraud task force set up operation in early 1989 at the Houston legalization office. The Houston legalization director had no program authority over the task force's operations, even though these operations were putatively adjudicatory. Instead, the deputy district director appointed a task force director, and detailed six district investigators to the effort. Using a database program and a personal computer, the task force director organized the 14,000 applications by the 2,700 affiants included in those
applications. Next, investigators contacted affiants by mail to verify information on the affidavits they had signed. Affidavits were also checked against INS intelligence bulletins and state agricultural business records. Investigators compared affidavit signatures against one another. Any discrepancies—a direct report by an affiant that the affidavit was fraudulent, a verification letter returned as undeliverable, a suspicious signature—became grounds for a "letter of adverse information" sent to the SAW applicant and a request to appear at the legalization office for an interview.

At that interview the SAW applicant was led to a room separate from the main legalization office. Here, a fraud investigator presented the adverse information and gave the applicant an opportunity to respond. If the applicant admitted to fraud, he or she was instructed to sign a sworn statement. The applicant was allowed to leave, with an explanation that the petition was being denied, that the denial could be appealed, and that the sworn statement might be used as evidence against the affiant. A SAW fraud task force respondent estimated that 2,000 such interviews took place in the first six months of the task force operations. Fewer than 300 applicants left these interviews with recommendations for approval of their SAW petitions. The remaining cases constituted a population that had been "broken," to use one respondent's terminology, or were placed in a category called "unbreakables," meaning that their applications were still suspect after the interview even though they had not confessed to the fraud.

Interviewers had originally confiscated the Employment Authorization Cards of about 75 applicants denied locally under this procedure. However, Southern regional officials ordered the task force to contact these applicants and return the cards, since applicants could conceivably
appeal their denials and would have a right to work authorization while the appeal was pending. About 30 applicants actually returned to the legalization office to get their cards.

Houston INS officials admitted that some staff at the Southern RPF objected to the task force. However, the district respondents were quick to point out that they had the authority to investigate local immigration fraud, and that they did not intend to prosecute individual SAW applicants for fraud. Rather, the district intended to use the SAW interview as a means of constructing cases against fraudulent document vendors. "But," one Houston respondent noted, 'I'm not going to send [the applications] to the region so they can get 'remoted' to El Paso and approved. The region is making its decisions based on budgetary concerns, because of the court decisions that came out of the sugarcane worker lawsuit [Haitian Refugee Center vs. Nelson, which challenged SAW adjudicatory procedures in Florida]." Thus, while one goal of the SAW fraud task force was the prosecution of document vendors, the fact that the new procedure allowed the district to issue statutory SAW denials was not an unwelcome by-product.

The Houston story illustrates a more general point in the implementation of the legalization program. Attempts to standardize and centralize adjudications through such mechanisms as Regional Processing Facilities met with attempts by local districts to reassert the authority they had traditionally enjoyed. Regardless of the region's desires, the hierarchical model of legalization allowed districts considerable latitude even to the point of launching their own legalization operations, as in the Houston case while nominally remaining within the boundaries of the regulations. This tension between centralization and local autonomy emerged in yet another facet of local
variation of applicant treatment during the legalization program--the treatment of undocumented immigrants ineligible for legalization.

LOCAL IMPLEMENTATION OF "FAMILY FAIRNESS"

IRCA's framers justified the 1982 eligibility cutoff date as a way of limiting the legalization benefit to those who, by virtue of extended U.S. residence, had demonstrated a wholehearted investment in their futures in the United States. Ironically, one logical indicator of just such an investment by an undocumented immigrant was the decision to bring immediate family members to the United States--family members who were ultimately excluded by the 1982 cutoff date. Thus, whole families living in the United States at the time of IRCA's passage found themselves with mixed eligibility. For example, a household head who migrated to the United States in 1980 might be eligible, but his or her spouse and child who entered in 1984 were statutorily excluded. Congress made no provision for such situations in the IRCA statute.

Initially, the INS echoed this position, rejecting the implementation of such administrative routes to legal status as "indefinite voluntary departure," through which undocumented immigrants are allowed to remain in the United States at the discretion of the INS. The INS stated its position firmly in the May 1, 1987 IRCA implementing regulations:

...the Service cannot use the regulatory process to substitute its judgment for that of Congress and grant the equivalent of derivative status through any existing mechanisms such as voluntary departure.\(^8\)
But six months later, under the heading "Guidelines for Voluntary Departure... for Ineligible Spouses and Children of Legalized Aliens," the INS conveyed the following message to its district directors:

In general, indefinite voluntary departure shall be granted to unmarried children under the age of eighteen years who can establish that they were in an unlawful status prior to November 6, 1986... conditioned on the fact that both parents (or, in the case of a single parent household, the parent the child lives with) have achieved lawful temporary resident status.\(^9\)

This wire to the field also noted that district directors could grant voluntary departure to ineligible spouses on a case-by-case basis, but only if "certain compelling or humanitarian factors" existed beyond the hardship caused by family separation." (INS Wire, p. 5) These factors were not defined.

The change in INS policy came at a time when the legalization application rate had ebbed. Concern was rising that the government had underestimated the effect mixed eligibility might have on undocumented families. Even so, the INS was not enthusiastic about extending the voluntary departure benefit, noting in the implementation wire that it was not fair to treat the ineligible family member "more favorably than the family members of legal permanent residents who may have to wait years to come to the United States due to the backlog of a demand for visas." (INS Wire, p. 5) Indeed, the INS dubbed the new guidelines "family fairness," as a rhetorical reminder that relatives of non-IRCA legal aliens were waiting around the globe to immigrate.
Family fairness policies varied widely across jurisdictions, from highly publicized and inclusive family fairness campaigns to what some immigration attorneys dubbed "sting operations" in which family members applied, were denied, and were promptly subjected to deportation proceedings.

Chicago adopted the most inclusive family fairness policy we observed in the field. The Chicago district director called a press conference announcing the policy and extending it to any undocumented spouses or minor children of Chicago's legal immigrant community, provided those undocumented family members had been in the United States before IRCA's enactment. Applicants submitted their petitions to the deportation section of the local INS district office, where officers developed their own application form since none had been issued by the Central Office. Over 3,000 family fairness petitions, most on behalf of relatives of legalization applicants, were approved; only about 200 were denied. A Chicago attorney described the local INS interpretation of "compelling or humanitarian factors" in petitions for spouses: "Basically, the humanitarian issues are 'I have ten kids, I make $4 an hour, and my wife needs to work to help support the family.'"

Chicago's inclusive approach was atypical, however. More often district offices incorporated the "family fairness" guidelines without fanfare into their Deportation or Investigations workloads. A San Antonio INS respondent explained that children's petitions were processed through the Deportation section, while spouses were routed to Investigations, where the officer in charge of the Criminal Alien Apprehension program handled them "because his desk is closest to the front door." San Antonio INS respondents estimated that fewer than 100 family fairness peti-
tions had been filed locally, with most children's petitions approved and most spousal petitions denied. In Los Angeles, despite the heavy legalization turnout, district officials reported only about 200 family fairness petitions filed by spring of 1989, all of which were approved. Los Angeles petitions were filed in the Deportation section and cleared personally by the district director. In Houston approximately 300 family fairness petitions were filed in the Investigations section of the district office, where district officials reported "rotating the responsibility for family fairness on a 'duty officer' basis so that everybody will know what is required." In contrast, the El Paso district began processing family fairness petitions in Investigations, then transferred the responsibility to the local legalization office, at which advocacy respondents claimed more favorable outcomes ensued.

The imprecise implementation of family fairness led other field respondents to question the policy's effectiveness. Some attorney respondents reported using family fairness as a last resort for clients who were already in deportation proceedings, but counseling legalizing aliens against presenting their relatives at the district office of their own volition. Advocacy group respondents noted that family fairness requests did not include a confidentiality protection. Once an undocumented immigrant applied for such a benefit, that individual was under "docket control," meaning that the INS had the authority to initiate deportation proceedings should the petition be denied.

In the final analysis the family fairness guidelines did not provide a clear standard or a uniform policy toward ineligible family members of legalizing aliens. The ambivalence expressed in the Central Office implementation wire manifested itself in the field, with most districts adopting a guarded approach to publicizing the opportu-
nity for voluntary departure and devoting little attention to the development of a procedure for family fairness petitions. In several instances, Houston and Los Angeles, for example, this posture was a decided departure from the enthusiasm with which the districts had embraced the legalization program itself. Under such circumstances, it is not surprising that advocacy group respondents in our field sites reported undocumented members of mixed immigration-status families continuing to remain unregistered rather than making a request of the local INS district.

In February 1990, over two years after the family fairness wire had gone to the field, a new INS commissioner revised the policy and issued a new implementation wire. The new policy granted annually renewable voluntary departure to ineligible minor children and spouses of legalized aliens, withdrew the condition of "compelling or humanitarian factors" from spousal eligibility, and provided for work authorization. The policy reflected a 180-degree shift from the position stated by the Department of Justice during IRCA's debate, and reflected the broader trend toward slow but substantive liberalization throughout IRCA's implementation.

Implementation and Its Effect on Legalization Statistics

Figure 5.1 presents monthly general legalization and SAW application rates for the busiest legalization office in each of our eight sites.

Two patterns clearly emerge. First, the basic workload pattern over time is quite similar across sites: an initial slow rise in applications, a gradual drop midway through the program, a sharp upswing in the closing months of
Figure 5.1 MONTHLY LEGALIZATION APPLICANTS: SELECTED LEGALIZATION OFFICES

East Los Angeles

Proportion of Total Applicants – General Legislation and SAW

Month and Year

General Legalization Applicants  SAW Applicants

Manhattan

Proportion of Total Applicants – General Legislation and SAW

Month and Year

General Legalization Applicants  SAW Applicants
Figure 5.1  (Continued)

San Antonio
Proportion of Total Applicants – General Legislation and SAW

San Jose
Proportion of Total Applicants – General Legislation and SAW
El Paso
Proportion of Total Applicants – General Legislation and SAW

Hialeah
Proportion of Total Applicants – General Legislation and SAW

general legalization, and a final spike of activity in the closing month of SAW eligibility. Second, it is clear that SAWs applying in urban areas did so disproportionately in the final months of the program, the single exception being the Miami legalization office at Hialeah.

The gradual upswing in applications in the first few months of legalization seems to have taken place largely independently of the level of publicity and outreach in the community. Such publicity-conscious sites as Los Angeles, Houston, and Chicago show patterns quite similar to the pattern in New York, where field respondents said publicity started slowly. Publicity and outreach did affect absolute turnout, however, as shown in the next section.

The April, 1988 rollback in legalization staffing could not have come at a worse time. Nearly all the offices in figure 5.1 took in roughly 30 percent of their applications in the final two months of the general legalization program. Furthermore, many of these last-minute filers tended to have spottier documentary evidence, according to field respondents in all sites, making the local interview and RPF case review more labor- and time-intensive, and increasing the already formidable problem of adjudicatory backlogs.

Figure 5.1 illustrates the problematic aspect of the self-funded legalization program. With modest turnout in the earliest months, strict adherence to "user-funding" compelled the INS to cut back operations despite a foreseeable increase in workload. Since the agency had used much of the early fee intake to reimburse itself for the heavy start-up costs, little was available for contingency funding to deal with the "midnight run" in April and May of 1988. Against this backdrop, such implementation changes as the skeletal application procedure made sense. They facilitated turnout and boosted needed revenues.
THE SAW PROGRAM

The share of SAW applications in the total legalization office workload varied substantially across field sites. The SAW workloads in East Los Angeles, Houston, Manhattan, and Chicago constituted less than 20 percent of each office’s total workload. In El Paso and San Jose, SAW applicants made up 36 and 37 percent of the respective totals, while in Miami’s Hialeah office SAW applicants made up 64 percent of the total.

This variation was linked to variation in local implementation practices. Where SAWs were more concentrated, they generated greater interest from advocacy and community groups. For example, in Miami and El Paso, with relatively high SAW application rates, class-action suits served to change SAW adjudication procedures throughout the Southern INS region. In Houston, where SAWs applied in significant numbers only at the end of the program, local advocacy took less dramatic forms. And in Manhattan, relatively few SAW applicants, advocates were as likely as the INS to express skepticism toward the claims of SAW applicants in their community.

In the long run we must rely on measures of applications approved and denied to evaluate directly the link between implementation and outcome. This assessment cannot yet be made for the SAW program, however, because little had been done in the area of SAW adjudications even a year after the close of Phase I. In January 1990 the INS released statistics indicating that nearly 700,000 of the 1.3 million SAWS had not yet been adjudicated for temporary residence. Of the 534,000 adjudicated applications, 92 percent had been approved, but because so much of the pool remained pending, no conclusions can be drawn from the early returns. It is possible, however, to
use our field observations to explain this backlog and to generate educated guesses about whether the balance of SAW decisions will be approvals or denials.

As the regulatory history demonstrates, the INS had great difficulty defending its SAW implementation decisions in the courts, prompting the agency to cancel thousands of denials and to adopt new, detailed adjudicatory procedures. Furthermore, the balance of the SAW workload came after the April 1988 legalization staff cutback. The backlog had still not been cleared when the South Texas asylum crisis arose in January 1989, nor when an INS hiring freeze went into effect in April 1989. In short, resources may well have been more constrained for the SAWs of late 1989 than for any other cohort in legalization, despite the unexpectedly high flow of SAW fees into the INS.

Under these conditions, two countervailing pressures are inevitable: the pressure to scrutinize applications closely and the pressure to rapidly adjudicate applications to meet time and resource constraints. To achieve the former task would take a significant investment of time and money. Even with sufficient resources, the difficulty in operationally defining statutory SAW eligibility may prove impossible to overcome. Thus, I expect that RPFs will seek denials only in strong cases of organized fraud, as the incentives to bring closure to the program by approving SAW cases outweigh the incentives to investigate fraud.

We may, however, continue to see local efforts to ferret out SAW fraud. INS districts may well have a stronger hand in the ultimate fate of a SAW applicant than is immediately evident. The IRCA regulations drafted by the INS give district officers the power to terminate both temporary and permanent resident status with a discovery
of fraud. Rather than seeing a summary denial of large numbers of SAW applications at the regional level, we are more likely to see localized, selective fraud investigations that will prosecute document vendors, and in the process, deny or revoke SAW status. It is probable that litigation will continue on the issue of SAW eligibility and the circumstances under which it is denied or revoked.

GENERAL LEGALIZATION

As far as the general legalization program is concerned, we have a clearer picture of outcomes because a much higher proportion of adjudications has been completed. Tables 5.1 and 5.2 present adjudication results for the general legalization program over time and across sites.

These results are also incomplete, but since applications still pending amount to less than 10 percent of the total for the first three quarters of the general legalization program, the adjudication results for this period are quite stable. The overwhelming majority of general legalization applications have been approved. Over 300,000 applications filed in the fourth quarter--43 percent of the quarterly total--were still pending nearly a year after the filing date. If all of these applications were denied, the total overall denial rate in general legalization would amount to one-fifth of the applicant pool. Our field data indicate that this outcome is unlikely. Both the changes imposed from without the INS and generated from within lead us to expect a low final denial rate. (The relatively high rate in El Paso, according to our INS field respondents, is due to a strict local policy on proof of U.S. residency because of the high concentration of commuters from Mexico who might be applying for legalization).
Table 5.1  GENERAL LEGALIZATION ADJUDICATIONS BY QUARTER FILED, NATIONAL TOTALS

<table>
<thead>
<tr>
<th>Quarter Field</th>
<th>Adjudications</th>
<th>Percent</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Approved</td>
<td>Denied</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May 1987-July 1987</td>
<td>333,512</td>
<td>5,937</td>
<td>1.7</td>
<td></td>
</tr>
<tr>
<td>August 1987-October 1987</td>
<td>386,893</td>
<td>8,035</td>
<td>2.0</td>
<td></td>
</tr>
<tr>
<td>November 1987-January 1988</td>
<td>179,232</td>
<td>5,647</td>
<td>3.1</td>
<td></td>
</tr>
<tr>
<td>February 1988-May 1988&lt;sup&gt;a&lt;/sup&gt;</td>
<td>390,545</td>
<td>17,551</td>
<td>4.3</td>
<td></td>
</tr>
<tr>
<td>TOTAL&lt;sup&gt;b&lt;/sup&gt;</td>
<td>1,290,182</td>
<td>37,170</td>
<td>2.8</td>
<td></td>
</tr>
</tbody>
</table>


<sup>a</sup> Includes applications filed in closing month of program. Most May 1988 applications filed within May 5 deadline.

<sup>b</sup> Totals reflect all adjudicated applications. Pending applications omitted.

Our evidence indicates that the low rate of denial is also the product of the "leveling" effect of the RPF. For example, in the Eastern RPF, 45 percent of the total workload came into the RPF "recommended for denial" by local legalization offices. But with 71 percent of that workload completed, the total RPF denial rate on adjudicated applications was 11.2 percent. Similarly, while "recommendations for denial" constituted 15 percent of the general legalization applications forwarded to the Western RPF, Western RPF respondents cited a final denial rate of 3 percent. INS respondents reported that local adjudicators
often used denial recommendations as a means of ensuring closer RPF review. Typically, that review resulted in an application's approval at the regional level.

In sum, although the jury is still out on SAW adjudications, general legalization adjudications were overwhelmingly positive. Through a combination of aggressive community-based advocacy on behalf of immigrants and affirmative regulatory changes within the INS, those
undocumented aliens who knew about the program and applied were likely to be approved. However, this finding begs the question of how many eligible undocumented immigrants may yet be "living in the shadows" in the wake of legalization. For an answer to that question, we turn to a comparison with pre-implementation estimates of the size of the undocumented population in the United States.

Legalization Turnout versus Pre-Implementation Estimates

Shortly after the 1980 Census, demographers at the U.S. Census Bureau set about the task of estimating the size of the undocumented population. Warren and Passel (see note 4, chapter one) developed a key set of estimates derived from the difference between the total number of foreign-born persons counted in the 1980 Census and an independent estimate, based on INS annual alien registration data, of the number of legally resident foreign-born persons. The residual, foreign-born persons counted in the Census who could not be accounted for in the INS legal immigrant data system, was interpreted as an estimate of the undocumented immigrant population counted in the U.S. Census. These estimates were generated for the nation as a whole (Warren and Passel, 1987), for the 50 states, and for individual Standard Metropolitan Statistical Areas (SMSA). Table 5.3 presents estimates for our eight field sites, together with the numbers of general legalization and SAW applications filed at legalization offices within those 1980 SMSA boundaries.

The comparisons in table 5.3 should be interpreted cautiously for several reasons. First, the numbers of the undocumented immigrant population represent lower-bound estimates. The undercount of the foreign-born in
Table 5.3  AN ILLUSTRATIVE COMPARISON: 1980 CENSUS ESTIMATES OF UNDOCUMENTED IMMIGRANTS VS. LEGALIZATION APPLICANTS, SELECTED SMSAs

<table>
<thead>
<tr>
<th>SMSA</th>
<th>1980 Census Estimate&lt;sup&gt;a&lt;/sup&gt;</th>
<th>General Legalization&lt;sup&gt;b&lt;/sup&gt;</th>
<th>SAW&lt;sup&gt;b&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles</td>
<td>657,900</td>
<td>596,650</td>
<td>172,808</td>
</tr>
<tr>
<td>Houston</td>
<td>51,956</td>
<td>113,870</td>
<td>23,880</td>
</tr>
<tr>
<td>New York</td>
<td>211,658</td>
<td>109,591</td>
<td>29,201</td>
</tr>
<tr>
<td>Chicago</td>
<td>127,113</td>
<td>118,815</td>
<td>29,613</td>
</tr>
<tr>
<td>El Paso</td>
<td>15,696</td>
<td>30,374</td>
<td>17,796</td>
</tr>
<tr>
<td>San Antonio</td>
<td>13,041</td>
<td>22,423</td>
<td>6,468</td>
</tr>
<tr>
<td>San Jose</td>
<td>26,477</td>
<td>24,865</td>
<td>16,365</td>
</tr>
<tr>
<td>Miami</td>
<td>49,672</td>
<td>28,369</td>
<td>50,509</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,153,513</td>
<td>1,044,957</td>
<td>346,640</td>
</tr>
</tbody>
</table>


b. Applications filed at Legalization Offices within 1980 SMSA boundaries.
the 1980 Census may have led analysts to understate the size of the undocumented population in 1980. In addition, 20 months elapsed between the 1980 Census and the January 1982 legalization eligibility cutoff date. Thus, post-Census undocumented immigration, estimated at between 100,000 and 300,000 annual additions to the U.S. population, is not reflected in the 1980 figures.12

Second, the legalization statistics in table 5.3 are not strictly comparable to the undocumented alien estimates. We have no way of accounting for the migration patterns of undocumented aliens after their arrival in the United States. Thus, undocumented immigrants counted in an SMSA in 1980 are not necessarily the same people who applied for legalization in that SMSA in 1987 and 1988. Indeed, many applicants in the greater Los Angeles area, with its 16 legalization offices, are not reflected in this SMSA total, as only 9 legalization offices fall within the 1980 boundaries of the Los Angeles SMSA. In addition, although we know general legalization applicants had to demonstrate residence in the U.S. before January 1982, we do not know what fraction of SAW applicants in these SMSAs may have been part of the 1980 Census count. Given the generous eligibility standards for SAW status, some longer term undocumented immigrants eligible for both programs may have opted for the SAW program. The weaknesses of the data in table 5.3 notwithstanding, they do provide a guide to the outcome of the legalization effort.

The undocumented population counted in these eight SMSAs in 1980 constitutes 55 percent of the 2.1 million undocumented immigrants counted nationwide at that time. The general legalization applicants in these eight SMSAs constitute about 60 percent of the total general legalization applicant pool nationwide. However, the relative concentration across the SMSAs representing our
research sites varied substantially. Los Angeles had a heavy representation of undocumented aliens and a correspondingly heavy representation of legalization applications. Each Texas SMSA—Houston, El Paso, and San Antonio—processed far more applications than would have been expected solely on the basis of the 1980 estimates. Chicago and San Jose generated applications corresponding quite closely to 1980 estimates. But New York and Miami turnouts were significantly lower than expected given the 1980 estimates.

Miami's low estimate may be explained by its heavy SAW turnout. With its longstanding dependence on immigrant labor in agriculture, Florida may have generated many SAW applications from people who were included in the 1980 Census and who could have applied for general legalization. Furthermore, Cuban and Haitian undocumented immigrants in Miami may have chosen the alternative of legalizing through the Cuban/Haitian provision of IRCA.

But why the low turnout in New York? High levels of emigration from New York to other parts of the United States between 1980 and 1987 might explain part of the relatively modest legalization turnout. However, during the debates about IRCA there was little rhetoric to this effect from New York legislators. One explanation is the implementation of legalization in that city. Suffering from the same publicity and outreach problems that plagued other communities with diverse immigrant populations, operating with only two legalization offices within the SMSA itself, and trying to maintain control over myriad other INS missions, the INS New York District was probably spread too thinly to implement legalization effectively. Another is the diversity of the foreign-born population, with no single national origin group constituting more than 10% of the total share of the foreign born.
The high Texas turnout was driven in large measure by the strong turnout in Houston. However, legalization applicants exceeded 1980 SMSA estimates by a factor of two in each of our Texas sites. Thus, Houston's efforts alone do not explain the discrepancies between Texas pre-implementation estimates and Texas turnout. Several other explanations may also have contributed. First, we have seen that both national and local publicity and outreach efforts disproportionately emphasized Hispanics, who are more heavily concentrated in the Southwest. Even New York respondents reported being surprised at the number of Mexicans they discovered among their applicants. Such an emphasis would generate higher levels of participation in places where Mexican undocumented immigrants were concentrated. Second, the legalization program was only part of a much broader immigration reform package, part of which was increased Border Patrol resources and employer sanctions. To the extent that these enforcement pressures were more salient to Texas undocumented immigrants than to those further from the U.S.-Mexican border, incentives for legalization would be enhanced. Finally, we cannot rule out the possibility that the original Census estimates of undocumented immigrants in Texas SMSAs may have been systematically biased downward in comparison to other regions of the country.

To look into the last possibility further, we can compare INS state-level pre-implementation estimates with actual general legalization and SAW turnout. Table 5.4 presents INS planning estimates and legalization turnout for the states in which our eight local sites are found. These INS estimates are also based on the 1980 Census counts of undocumented immigrants in each state, but are adjusted for undercount, estimated annual growth in the undocumented population between 1980 and January 1, 1982, and
<table>
<thead>
<tr>
<th>State</th>
<th>General Legalization</th>
<th>SAW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>High Planning Estimate&lt;sup&gt;a&lt;/sup&gt;</td>
<td>Low Planning Estimate&lt;sup&gt;a&lt;/sup&gt;</td>
</tr>
<tr>
<td>California</td>
<td>1,374,000</td>
<td>685,000</td>
</tr>
<tr>
<td>Texas</td>
<td>310,000</td>
<td>130,000</td>
</tr>
<tr>
<td>Illinois</td>
<td>174,000</td>
<td>88,000</td>
</tr>
<tr>
<td>New York</td>
<td>230,000</td>
<td>128,000</td>
</tr>
<tr>
<td>Florida</td>
<td>105,000</td>
<td>53,000</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,193,000</td>
<td>1,084,000</td>
</tr>
</tbody>
</table>

<sup>a</sup> Planning estimates from unpublished data. INS, Statistical Analysis Branch, June 23, 1988, in which INS reports general legalization estimates made in October 1986 and SAW estimates made in May 1987.

the loss of eligible applicants between 1982 and 1987 due to mortality, emigration, and alternative adjustments to legal status. Various combinations of these adjustments yield a "high" and "low" estimate of eligibles.

The turnouts in the top five states fall within the boundaries of pre-implementation estimates. Again, we observe a high turnout in Texas, and a comparatively modest turnout in New York and Florida. Both California and Illinois exceeded their lower-bound estimates.

Table 5.4 also clearly illustrates the magnitude of the SAW program. SAW turnout in these states was nearly five times the level anticipated in INS planning estimates. Furthermore, Washington INS respondents noted that although the INS estimated 200,000 to 300,000 people might be genuinely eligible for SAW status, the agency's most liberal estimates of the final application rate nationwide never exceeded 800,000. Ultimately, 1.3 million people applied for SAW status.

Taken together, these comparisons of estimated eligible immigrants to actual program applicants corroborate many of our discoveries in the field. On balance, the general legalization program succeeded in opening a door to legal status for the lower-bound estimate of the eligible population. Where local INS officials, advocates, and governments showed the greatest enthusiasm for the program, final turnout mirrored or exceeded pre-implementation estimates.

SAW turnout exceeded expectations dramatically in every site. Outreach and publicity had little to do with this unexpected deluge of SAW applications. Indeed, local INS district personnel were critical of the SAW applicant pool and marshalled their energies into deterring what they suspected were fraudulent applications, yet the SAWs applied by the hundreds of thousands. Thus, publicity was not the only factor associated with SAW turnout. Other
factors such as statutory design (i.e., burden of proof requirements), court constraints on INS denial activities, and the prospect of a U.S. labor market in which legal status would be required as a condition of employment all interacted to produce a large SAW applicant pool nationwide.

PERMANENT RESIDENCE (PHASE II):
THE FINAL STEP OUT OF THE SHADOWS

Two years after IRCA’s passage, in November 1988, the first legalization applicants became permanent legal residents of the United States. The local implementation of Phase II shared some basic characteristics with Phase I implementation: people had to be informed about their rights and responsibilities under the program’s regulations, and agencies had to implement a complex and changing set of procedures. In our visits to the field, which took place as Phase I drew to a close, we were also able to observe the early stages of Phase II implementation.

We examined three particular components of Phase II: publicity and outreach surrounding Phase II requirements, the availability and sources of English/civics instruction in the community, and the Phase II interview at the local legalization office. Against this backdrop of field data, we also examined the status of Phase II petitions and the likelihood that most temporary residents would take the final step out of the shadows.

Phase II Publicity and Outreach

The transition from temporary to permanent resident status required the legalizing alien to take several steps. First, temporary residents had to submit a permanent resi-
idence application to the appropriate RPF, along with an $80 filing fee and any waiver requests based on potential grounds of excludability.

Second, applicants had to fulfill an English/civics requirement by passing an INS-approved test or attending an INS-approved class. Third, applicants had to present themselves at a local INS office for final paperwork processing. Failure to accomplish these tasks would mean a return to undocumented status. Thus, the INS again faced the task of publicizing a new benefit and encouraging the target population to apply for it.

In contrast to Phase I efforts, the INS relied more heavily on the U.S. mail than on the media to accomplish Phase II publicity and outreach. Since the target population was known, the publicity was directed to that population through mailed notices. In addition, rather than having temporary residents come into local offices for their Phase II application packets, the INS mailed the packet directly to the applicant.

The basic INS information on Phase II came in three mailings. First, temporary residents received information on Phase II when they received their temporary residence cards. Second, the INS mailed a notice to all general legalization temporary residents with the message, "Don't get left behind," and an explanation of Phase II requirements. Third, the permanent residence application packet—the "M-306" packet—was mailed to all general legalization temporary residents.

Early returns to the four RPFs indicated that most temporary residents were receiving their M-306 application packets, but sufficient confusion arose in the field that the INS began distributing the application packets at local legalization offices as well.

It is not clear how well applicants understood the information, however. Advocacy respondents in several sites
noted that temporary residents seemed to be filling out the applications on their own, rather than coming to the advocates for assistance. Some assistance came from the providers of Phase II English/civics classes, who used the M-306 packet as part of their curriculum. At the Southern RPF, we encountered some evidence of applicants' confusion when respondents told us that many applicants included a waiver form (for such excludability grounds as "public charge") and the $35 waiver fee with their Phase II applications simply because the waiver had been part of the M-306 packet. We received conflicting reports on whether those waiver fees were subsequently returned to the applicants.

To augment the information sent through the mail, the INS announced a $3 million advertising campaign in the summer of 1989. The lessons learned by the national publicity problems in Phase I led to a stronger emphasis in Phase II on regional and local outreach. Outreach funds in Phase II went to the regions, rather than being managed out of the INS Central Office, and a new group of implementation actors gained importance, the local public education agencies.

The explanation for the new prominence of public education agencies stems from another IRCA provision: the State Legalization Impact Assistance Grants (SLIAG). These funds, dedicated to reimbursing states for the costs incurred by the legalizing population, underwrote the implementation of Phase II English/civics classes in each of our sites. With SLIAG funding, local public agencies provided classes, subcontracted the funds to community-based organizations, and became hosts to the INS as it publicized Phase II through visits to these classes. IRCA disallowed SLIAG funding for outreach services conducted by state and local public agencies, however. Thus, a local school district could publicize educational services for
legalizing aliens, but could not be reimbursed through SLIAF for any basic outreach focusing on the Phase II adjustment process itself.

Local INS offices adopted their own strategies for publicizing Phase II. During the relatively slow period of spring and summer 1989, local legalization officers were detailed to publicizing Phase II, much as INS investigators had been detailed to employer education in the early months of sanctions implementation. The El Paso District sponsored a supplementary mail-out on Phase II requirements in December 1988.

As it had in Phase I, the Western INS region placed a heavy emphasis on outreach, publishing publicity materials in ten languages and promoting significant changes in Phase II procedure, changes eventually adopted and publicized nationwide. Foremost among these was the "Apply Now" policy. The Western INS region encouraged applicants to send in their permanent residence applications immediately, rather than waiting until the end of the temporary residence period. The applications would be held at the RPF until the 18-month temporary residence period had elapsed. In addition, the Western region promoted alternatives to the INS naturalization test for IRCA-legalized aliens. The primary challenge of Phase II implementation was that faced by local communities in providing opportunities for legalizing aliens to meet the English/civics obligation.

The Phase II English/civics Requirement: Problems of Standards and Financing

The English/civics requirement could be fulfilled in two major ways. The applicant could take any of four INS-
approved tests or he or she could produce one of several possible credentials.

Three of the tests—the INS "312" naturalization test, a test designed by the Educational Testing Service to be administered by private agencies, or a test developed through the California Adult Student Assessment System (CASAS)—exempted the applicant from any later test requirement upon naturalization. The fourth test—a video-administered multiple-choice test also designed by CASAS—served as a means of qualifying for permanent residence but would not exempt one from a later naturalization exam. At the time of this writing, the two CASAS tests were not available outside the Western region.

Instead of taking a test an applicant could present a high school or General Educational Development (GED) diploma; evidence of one-year or more of attendance at a state-accredited educational institution; or a "certificate of satisfactory pursuit" of an INS-approved course of study attesting to 40 hours attendance of a 60-hour course. This last option proved the most popular among applicants. It was also the most challenging to implement because it involved cooperation among a wide range of public and private agencies.

Since English/civics instruction for Phase II was reimbursable from SLIAG funds, state education agencies had to implement service delivery procedures and track the costs for federal SLIAG reimbursement. SLIAG, administered by the U.S. Department of Health and Human Services, quickly became mired in conflicts between state agencies and HHS on reporting requirements and allowable services that held up the flow of SLIAG funds. During our 1988 field visits, few local education agencies had seen any SLIAG reimbursement. In some sites, conflicts between state education agencies and community-based organiza-
tions echoed the conflicts between the federal government and the states. Texas provides a good example.

Texas administered SLIAG funds through an existing network of adult education cooperatives. The result was a set of local public agencies responsible both for direct educational services and for processing subcontracts with local community groups seeking to provide these same educational services. Not surprisingly, community groups expressed concern that these local public providers were resistant to giving up funds that would otherwise be available for their own programs. Indeed, the ratio in our Texas sites of community-based providers to public education agency providers was lower than that observed in Chicago, New York, or Los Angeles. By the time we conducted our second wave of fieldwork in spring of 1989, much of the interagency dust had settled and SLIAG funds were being released. After months of delay, the Texas Education Agency released SLIAG funds in San Antonio, El Paso, and Houston to local church-based class providers. The administration of SLIAG funds in Chicago had been contracted to two prominent community groups—the Jewish Federation and the Latino Institute. Miami, with its network of English/civics course providers serving refugees and asylees, had absorbed most legalization clientele into existing services, although Haitian advocates noted that problems with SLIAG funding for their community persisted, even as Spanish-language classes were closed due to low enrollment.

Respondents typically interpreted the English/civics requirement in one of two ways: as a step in the adjustment to IRCA permanent residence, or as an unprecedented adult education program for immigrants, particularly for Hispanic immigrants, who were heavily represented in the legalization population but had not been historically heavy users of pre-existing adult education services. This
formerly undocumented community constituted a new target population for public educators.

Initially, some conflict arose between pedagogical goals and the goals of achieving permanent residence. With no clear standards for defining "satisfactory pursuit" in the issuance of class certificates, some teachers were unwilling to issue certificates to students with 40 hours of attendance if they were not convinced that significant progress had been made. INS officials in Houston reported having to insist that teachers release certificates after 40 hours regardless of proficiency levels. A Houston school administrator echoed the concern:

There are not enough bilingual or adult education teachers to go around. Eighty-five percent of our [legalization] students are preliterate or Level One. We had to make our teachers understand that some of these students may not even have experience holding a pencil, much less speaking, reading and writing English.

Similarly, a San Jose educator noted that, compared to the pre-IRCA English as a Second Language students, the legalizing population "has good listening skills, but can’t speak [English] too well."

These concerns were not limited to the educators. In some sites, local INS staff had difficulty accepting certificates from temporary residents who clearly spoke little or no English. As a Chicago educator noted, "The first way you start to learn a language is ‘listening comprehension.’ That’s demonstrating progress. We had a hard time convincing [INS] what a low [literacy] level these people are at to begin with." Controversy emerged in Chicago when advocates charged local INS adjudicators with forcing applicants with "certificates of satisfactory pursuit" to
submit to the INS 312 English/civics test. As a result, the INS district issued clarifying instructions to the legalization staff emphasizing the voluntary nature of test-taking when an applicant also possessed a certificate from an INS-approved course provider.

With a legalizing population comprised largely of immigrants with little English proficiency, the "certificate" route to fulfilling Phase II was crucial to the success of the program. Yet concern remained high in the field as to the long-term prospects for sufficient class availability and the security of the SLIAG funding mechanism. During the spring of 1989, most sites reported adequate classroom space. Houston public and private agencies had served 22,000 students, nearly one-quarter of the city's Phase II eligible population. Chicago had served 30,000 students. Statewide, California respondents reported nearly 500,000 students in SLIAG-funded classes. Even New York, which had encountered interagency problems administering SLIAG that resulted in slow start-up, expanded services by bringing such major community service providers as the Brooklyn Diocese into the SLIAG program. Yet without exception, both public and private agencies in all sites noted that this capacity would be strapped by year's end, as the eligibility window closed for the first legalization applicants, remained half-open for those who had applied in the middle of the program, and opened up for the hundreds of thousands who filed in the closing weeks of Phase I.

Table 5.5 corroborates this expected workload increase, presenting Phase II applications filed with the four INS RPFs, disaggregated by monthly Phase I cohort. The earliest legalization applicants appear to have filed their Phase II petitions well within the year-long window of eligibility. These rates varied so little by site that we present only the national totals. It is equally clear that the
<table>
<thead>
<tr>
<th>Month of Phase I Application</th>
<th>Phase II Eligible</th>
<th>Field for Permanent Residence (Phase II)</th>
<th>Percent Filed</th>
<th>Month Non-Filers Revert to Undocumented Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1987</td>
<td>48,495</td>
<td>44,349</td>
<td>91.5</td>
<td>November 1989</td>
</tr>
<tr>
<td>June 1987</td>
<td>142,944</td>
<td>125,642</td>
<td>87.9</td>
<td>December 1989</td>
</tr>
<tr>
<td>July 1987</td>
<td>152,884</td>
<td>129,614</td>
<td>84.8</td>
<td>January 1990</td>
</tr>
<tr>
<td>August 1987</td>
<td>162,371</td>
<td>128,308</td>
<td>79.0</td>
<td>February 1990</td>
</tr>
<tr>
<td>September 1987</td>
<td>130,366</td>
<td>93,063</td>
<td>71.4</td>
<td>March 1990</td>
</tr>
<tr>
<td>October 1987</td>
<td>104,057</td>
<td>66,148</td>
<td>63.6</td>
<td>April 1990</td>
</tr>
<tr>
<td>November 1987</td>
<td>75,593</td>
<td>42,759</td>
<td>56.6</td>
<td>May 1990</td>
</tr>
<tr>
<td>December 1987</td>
<td>70,843</td>
<td>36,256</td>
<td>51.2</td>
<td>June 1990</td>
</tr>
<tr>
<td>January 1988</td>
<td>45,821</td>
<td>22,226</td>
<td>48.5</td>
<td>July 1990</td>
</tr>
<tr>
<td>February 1988</td>
<td>61,638</td>
<td>28,292</td>
<td>45.9</td>
<td>August 1990</td>
</tr>
<tr>
<td>March 1988</td>
<td>97,501</td>
<td>41,573</td>
<td>42.6</td>
<td>September 1990</td>
</tr>
<tr>
<td>April 1988</td>
<td>179,795</td>
<td>61,056</td>
<td>34.0</td>
<td>October 1990</td>
</tr>
<tr>
<td>May 1988</td>
<td>254,612</td>
<td>69,318</td>
<td>27.2</td>
<td>November 1990</td>
</tr>
</tbody>
</table>

| TOTAL                       | 1,526,920         | 888,604                                | 58.2          |                                               |

balance of Phase II adjudicatory work will not be completed until the end of 1990. Sixty percent of the population had not yet filed by August 1989. Furthermore, while 54 percent of those applicants who had filed had received final approval, the remainder had yet to complete the Phase II adjustment process.  

With this remaining workload, the challenges of financing legalization arise once more. The first challenge is simply finding enough resources. For the INS, the "Apply Now" policy can offset the risk of insufficient funding by generating both applications and their fee dollars before the actual Phase II interviews take place. But the low application levels among the later cohorts indicate that this "Apply Now" policy may not yet have taken hold in the field.

The second financing challenge comes from the continuing vulnerability of SLIAG funding and some of the restrictions placed upon that funding in the educational context. At least two concerted attempts have been made to divert SLIAG appropriations to other uses. In 1989, congressional proposals sought to divert unencumbered SLIAG dollars to the resettlement of Soviet Jews marooned in Europe while seeking U.S. refugee status; and the Bush Administration sought to finance the war on drugs with SLIAG money. Even if SLIAG funds are preserved for their original statutory purposes, limitations on SLIAG reimbursement for state and local outreach efforts identified in the field will still impede the ability of localities to compensate for the modest publicity drives of the INS. Although efforts to publicize classes themselves are reimbursable under SLIAG, separate publicity efforts aimed at explaining to temporary residents exactly why they need the classes—fulfillment of Phase II requirements, pending Phase II deadlines, etc.—are not. In short, although most
field respondents felt the original level of SLIAC funding set by Congress was adequate to meet the challenge of providing educational services to the legalizing population, they expressed frustration at the conditions placed on reimbursement and the myriad threats to those original funding levels. As a Chicago public education respondent noted, "The federal government seems to be saying, 'Here is all this money, but you [the states] can't have it.'"

The Phase II Interview

Our observations of the Phase II interview itself illustrated the importance of widely available English/civics courses. As the first temporary residents became eligible for permanent status, local INS respondents noted that a high proportion of these applicants had pre-certified for Phase II by sending their "certificates of satisfactory pursuit" to the RPF along with their Phase II applications. Thus, the only task at the local legalization office was the "photo-and-fingerprint" processing necessary to create the permanent resident card (the "green card") to be mailed later to the applicant. These best-prepared applicants were gradually replaced by later cohorts, many of whom had completed their coursework and received their certificates only after filing their Phase II application. Applicants who arrived at the local office bearing certificates could attempt the "312" naturalization test. If they did not pass the test, they could still adjust to permanent residence upon presenting their 40-hour certificates. Those who failed the test and had no evidence of class attendance would be rescheduled for another interview six months later. If in that six-month period the applicant could not get into a class and earn the certificate, permanent resident status
depended upon passing one of the four IRCA tests mentioned earlier by the time of the second appointment. Otherwise, the petition was denied.

On balance, local adjudicators geared the INS interview questions toward their perceptions of the applicant’s proficiency level, typically drawing about 10 questions from the list of 100 civics questions. A typical Phase II interview lasted no more than 10 minutes. An applicant demonstrating little English proficiency would be asked simple questions—names of U.S. presidents, for example, while one with more advanced English skills might be asked to identify the three branches of government or to provide the number of amendments to the U.S. Constitution. The reading and writing components of the test, particularly the writing component, were cited by local adjudicators as more difficult for the applicants than the civics questions. Applicants were asked to read one short sentence from a list composed of such sentences as "The American flag is red, white, and blue," and to write a simple sentence dictated by the adjudicator. If any of these components proved too difficult, the adjudicator could either accept a "certificate of satisfactory pursuit," or reschedule the applicant with instructions to seek a Phase II class.

Local INS adjudicators across sites claimed that most applicants attempting the "312" test passed it. In Los Angeles, INS respondents also reported a steady increase in the number of people seeking to take the video-administered "proficiency test," which could be taken as often as once a day until passed and was offered free of charge on Thursday nights in Los Angeles legalization offices. Both advocacy groups and INS officials expressed a preference that applicants attempting to take a test try for the "312" citizenship exam, with its attendant benefit of
exempting the applicant from any subsequent naturalization exam.

In sum, the Phase II interview process was geared toward successful adjustment. Once people walked through the legalization office doors, their chances of being approved were quite high. Indeed, the INS embraced inclusive procedural changes in the Phase II transition more readily than had been the case in the Phase I application period. But again, these inclusive procedures were only useful to the extent that the applicants knew about them. With vulnerable SLIAG funding and limited outreach expenditures through SLIAG or the INS, the implementing agencies may well expect a last-minute deluge of Phase II applicants who possess only limited information about their rights and responsibilities under IRCA.

SECOND CHANCES: THE APPEALS PROCESS

IRCA provides applicants with the right to appeal general legalization and SAW denials. For this purpose the INS created a Legalization Appeals Unit (LAU). The LAU is responsible for all appeals of temporary or permanent residence denials in the general legalization and SAW programs.

The LAU faces two administrative problems that have become synonymous with the processing of immigration benefits: adjudicatory variability and backlogs. First, as the single repository for all legalization and SAW appeals, the LAU must somehow untangle the myriad interpretations of field adjudicators who issued the original denials
and replace those interpretations with a uniform standard for review. The LAU has overcome variation in field adjudications in two ways, through the remand and through the precedent decision.

A remand results when the LAU determines that an RPF's original grounds for denial had been unclear, insufficient, or invalidated by litigation or administrative changes in the program regulations. The LAU remanded thousands of appeals to the Regional Processing Facilities. In essence, a remand was an instruction to the RPF to either strengthen the rationale for the denial or grant the benefit. With 11,000 of the 13,000 LAU cases resulting in a remand, the procedure became an after-the-fact mechanism for imposing quality control on the RPFs with respect to their denials.

A precedent decision would be recommended by the LAU to the Associate Commissioner for Examinations to be published as guiding precedent in similar cases. At the time of this writing eight such decisions have been issued. Citing the generous intent of Congress, seven of the decisions granted legalization.

The LAU continues to face the challenge of promoting standardization as field adjudicators turn to SAW and Phase II cases. Field interviews with LAU and RPF respondents identified two key areas in which guidance from the LAU is warranted and may be forthcoming.

First, the LAU has yet to issue a precedent decision for the SAW program. While many SAW appeals have been remanded to RPFs based on litigation, the LAU has not issued its own precedent on such points as the treatment of affidavit evidence or the definition of the adjudicatory standard, points that the LAU did address in a general legalization precedent decision.

Second, the LAU may be faced in Phase II with appeals from temporary resident aliens whose status is terminated
by the INS. People who successfully complete Phase I may nonetheless have their status terminated after the fact, should the INS determine that they were granted the benefit in error. LAU respondents expect that this situation will arise during the Phase II process and that terminations will be appealed. In addition, LAU respondents expect some Phase II denials to result from failure to meet the English/civics requirement or to maintain continuous residency during temporary resident status. Thus, appeals may again impel the LAU to define these eligibility standards more explicitly than the statute or the regulations.

In sum, standardizing a new, highly decentralized adjudicatory system remains an abiding issue in the implementation of legalization, an issue faced particularly by the LAU.

Of more immediate concern to the LAU, however, is the backlog of unreviewed cases, which is likely to get worse before it gets better. The office began receiving appeals in October 1987. Six months later the backlog exceeded 1,000 cases. By November 1988, the end of the SAW application period, the LAU backlog grew to nearly 7,000 cases. With the resolution of several key lawsuits and the issuance of LAU precedent decisions, the backlog was reduced, and currently stands at approximately 5,000 cases. Yet over a year after the close of the general legalization program, two-thirds of this backlog consists of general legalization appeals. In addition, nearly 800,000 SAW applications have yet to be adjudicated, much less denied and appealed. Finally, regulations promulgated for the Replenishment Agricultural Worker program channel these appeals to the LAU. With a staff of approximately 10 examiners and one attorney, the prospect that unresolved appeals for this "one-time-only, temporary" program will stretch well into the 1990s does not seem farfetched.
Notes, chapter five

1. The Justice Group consortium consisted of three primary agencies: Coronado Communications Corporation of Los Angeles, a marketing and media firm; Hill and Knowlton, one of the largest public relations firms in the United States; and La Agencia de Ori & Asociados, an advertising agency specializing in Spanish language projects, with Fernando Oaxaca of Coronado Communications serving as program manager.


3. "Project USA/Proyecto USA: A Proposal to the Immigration and Naturalization Service in Response to RFP #C0-7-87 'Public Information and Awareness Campaign, Technical Proposal." Submitted by the Justice Group, 11340 West Olympic Boulevard, Suite 355, Los Angeles, CA, 90064, p. 6. Referred to below as Justice Group Proposal.

4. For more extended treatment of The Just Group's campaign, see Meissner and Papademetriou, pp. 10-15.

5. Nationwide data summary as of February 6, 1989 provided by INS Southern Regional Processing Facility during field interview June 22, 1989.


14. As of March 1989, the Legalization Appeals Unit had received 19,622 appeals and "closed out" 13,667 cases, according to unpublished information provided by the Statistical Analysis Branch of the INS.
15. Indeed, if a remanded case were reviewed at the RPF and denied, the applicant would still have the right to an LAU appeal, since the LAU had not formally reviewed the case in the first place.
Chapter Six

ABIDING ISSUES IN LEGALIZATION AND FUTURE IMMIGRATION POLICY

Although legislators designed legalization as a temporary, one-time-only program, several legalization issues remain unresolved. Nearly two years after the close of Phase I, about 600,000 of the 1.6 million general legalization temporary residents have yet to file their Phase II permanent residence applications, and 20 percent of the Phase II applications filed have yet to be adjudicated. Furthermore, more than a year after the close of the SAW eligibility period, nearly 700,000 of the 1.3 million SAW applications remain unadjudicated.¹

ENDURING PROBLEMS

Five issues remain in the implementation of legalization: the completion of the Phase II transition, the adjudication of legalization appeals, family unity considerations, the adjudication of SAW applications, and the implementation of the Replenishment Agricultural Worker (RAW) program. As has been the case thus far in the legalization story, implementation choices made in the field and in Washington will determine the degree to which these issues are resolved effectively.
Phase II Completion

Precious as temporary resident status may be to the formerly undocumented, it is only the first step. The fundamental issue facing the legalization program is the extent to which temporary residents are successfully adjusting to permanent residence.

Thus far we have seen a high degree of success for those who have taken the steps to go through the entire process. By January 1990, only 106 Phase II applicants nationwide had received outright final denials. In contrast, 812,727 had received final approval (Provisional Legalization Statistics, p. 17). But, as we saw in the last section, about half of all temporary residents have yet to complete the adjustment to permanent status. As the balance of the temporary resident population becomes eligible for permanent residence, several short-term and long-term implementation issues remain.

In the short term three immediate challenges face the implementing agencies: disseminating adequate information on Phase II requirements, assuring that all routes to permanent residence are available to all applicants, and preserving the stability of Phase II English/Civics educational funding through SLIAG.

PHASE II INFORMATION

The INS relies primarily on the U.S. mails to contact and educate temporary residents about their Phase II requirements. While most applicants will probably receive the message, translating that information into action will again require active community outreach, not only on the part of the INS but also on the part of non-INS groups.
Limitations on SLIAG funds for outreach were lifted in early 1990 in an effort to promote the efforts of English/civics course providers in publicizing the Phase II process. However, the lifting of these restrictions came at a time when the SLIAG budget was shrinking dramatically. In the wake of a $537 million reduction in SLIAG funding proposed by the Administration's 1991 budget, federal SLIAG officials conceded that a cut was inevitable, and that the abiding issue was the size of the cut and whether funds would be restored in 1992.

ENGLISH/CIVICS TESTING OPTIONS, COURSE AVAILABILITY, AND SLIAG FUNDING

Successful adjustment has also been enhanced by a wide range of Phase II testing options. Yet two of the four IRCA tests for permanent residence—the video-based CASAS proficiency exam and the CASAS version of the INS "312" exam—were not available outside the Western INS region a year after the close of Phase I. Although the INS demonstrated a willingness in Phase II to implement more creative, inclusive procedures, the use of such procedures was constrained by their limited availability. Indeed, by February 1990 only 2 percent of Phase II applicants had fulfilled their English/civics requirement through the video proficiency test. Similarly, educational funds are jeopardized. Although some temporary residents may not need English/civics instruction in order to pass the test, preliminary evidence on the enrollment levels in SLIAG-funded classes indicates that most applicants are indeed seeking such services. Nearly half of the successful Phase II applicants thus far have fulfilled the requirement with a "certificate of satisfactory pursuit" from a course provider. Under these conditions, restrictions of SLIAG educational
funding would seem to contradict both the pedagogical and practical goals of the Phase II legalization requirement.

**PHASE II IN THE LONG-TERM**

The long-term challenges of Phase II implementation also stem from pedagogical and practical goals. Whether or not congressional framers had anticipated it, the Phase II English/civics requirement brought a whole new constituency into the adult basic education system. This new constituency enrolled in large numbers and in many cases remained in classes beyond the 40-hour minimum requirement. This group of legalizing immigrants can achieve the practical goal of meeting the Phase II requirement after the equivalent of one full work-week of class attendance. But considerably more than a week of instruction will be necessary to make this educational opportunity a meaningful one, that is, to make it an experience that can enhance the prospects for social and economic mobility.

As it stands now, these wider goals are enhanced little by the SLIAG provision of IRCA. For instance, states and localities cannot seek SLIAG reimbursement for vocational training and employment programs for legalizing aliens. Given that IRCA statutorily bans most legalizing aliens from most public benefits, some rationale exists for enhancing the opportunities for legalized aliens to participate in the entire array of academic and vocational education programs, thus enhancing their ability to participate fully in the labor force. Affording states and localities the opportunity to reimburse themselves for the provision of some of these services through the statutorily appropriated SLIAG funds might help turn the educational requirements of Phase II into long-term educational opportunities.
Resolving Legalization Appeals

As noted in chapter four, the Legalization Appeals Unit carries the dual burden of imposing standardization on the legalization decision-making process and clearing out thousands of backlogged appeals. The latter issue has supreme significance for the lives of the immigrants who wait for their files to be decided upon. The former issue has profound implications for the ultimate outcome of the legalization program and the future of immigration policy.

Through the precedent decisions of the LAU, the INS made great strides toward specifying the standards by which immigration benefit determinations can and should be made. Phrases such as "preponderance of the evidence" were defined by these decisions in unmistakable terms. This articulation of policy is no abstract exercise. Not only can such statements determine the outcome of individual legalization petitions, they are also likely to frame the dialogue between immigrant advocates and the INS in non-legalization contexts. To the extent that the legalization precedent decisions continue to be referred to by policymakers and become institutionalized as part of the INS's working logic, they achieve the more general goal of wedding the bureaucracy of the immigration benefits system to the policy goal of justice.

The implicit significance of these precedent decisions beyond the legalization program itself may well be part of the reason that the INS issues them so slowly and has refrained, thus far, from issuing them on such topics as SAW fraud denial and Phase II denial. All legalization precedent decisions, save one, have resulted in an approval. The significance of an approval precedent in a SAW fraud case could potentially affect hundreds of thousands of petitions, petitions the INS is unwilling, as yet, to grant in such a sweeping fashion.
Family Unity vs. Family Fairness

The family fairness controversy, described in chapter five, illustrates the politics of immigration reform clashing with the realities of immigrant behavior. In essence, the policy did not reflect a realistic recognition of the way immigrants settle in the United States.

Policymakers justified creation of an eligibility cutoff date for an immigration benefit as a means of restricting the benefit to those with the firmest stakes in the United States. Yet the act of migrating to the U.S. has always involved a set of sequential decisions, with greater attachment to life in the U.S. increasing the likelihood, over time, of family members joining the original settlers. The more restrictive the cutoff date in a one-time-only legalization program, the more likely are eligibility divisions within families to occur. By setting an eligibility cutoff date for legalization that predated implementation by nearly six years, IRCA framers ensured that the issue of mixed-legal status would arise.

IRCA devoted little attention to solving the problems engendered by the cutoff date. Nor did the INS eagerly assume the responsibility for administratively correcting a legislatively created problem. Even with an increasingly liberal policy statement from the INS toward family fairness, low application levels for current family fairness relief are to be expected, unless the INS closely oversees the implementation of the new policy statement.

In any event, little evidence exists that legalized aliens are sending their ineligible family members back to their countries of origin. Thus, some family members of legalized aliens remain in the United States in undocumented status. These spouses and children, whose very presence illustrates the investment made by the legalized alien in continued U.S. residence, risk deportation should they be
apprehended by the INS. Furthermore, the enforcement of employer sanctions limits the contributions these ineligible family members can make to the household, even as family bonds keep them in the United States.

Both the INS and Congress have the authority to address this issue explicitly. Congress may attend to the issue through amendments to IRCA. One such proposal was introduced by Rep. Bruce Morrison (D.-CT) in September 1989 (H. R. 3374) as part of a set of amendments to IRCA. Section 205 of this bill prohibits deportation of spouses and minor children of general legalization temporary residents, provided those IRCA-eligible family members were in the United States before January 1, 1989. This is a more generous cutoff date than that implemented by the INS, which limits family fairness to those ineligible members in the United States as of November 1986. The stay of deportation is intended to last until the legalized alien adjusts to permanent status and obtains a visa petition on behalf of the family member. Furthermore, the provision grants work authorization to these family members. Given that a distant eligibility cutoff date engendered the mixed-eligibility problem in the first place, a date closer to the actual implementation of legalization would accomplish the goals of preserving family unity more completely.

SAW Program Problems

More than a year has passed since the close of the SAW program, yet most SAW petitions remain unadjudicated. Our field data indicate that widespread denials of SAW applications at the regional level are unlikely under the legal and resource constraints currently facing the INS.

However, as the Houston SAW fraud project indicates, the INS continues to pursue SAW fraud aggressively. The
ultimate targets of such efforts are not the SAW applicants themselves but the document vendors and fraud facilitators who profited from these applicants. Yet, SAW applicants are proximate targets. These investigations also increase the likelihood of SAW applicants being statutorily denied or having their status terminated at the local level. To the extent that these denials depart from uniformity in SAW adjudication procedures and from due process considerations, they may well be challenged in the courts for years to come.

Why did the SAW program become mired in controversy? Much of the difficulty in implementing the SAW provision emerged from design issues. Congress mandated that the INS determine eligibility for a population whose migration histories and employment practices are unsuited to the construction of a documentary record of evidence. Under such conditions the INS has found it nearly impossible in all but a few cases to distinguish a legitimate from a fraudulent SAW application.

Other provisions of IRCA exacerbated this problem. By statutorily excluding five years of undocumented migration from general legalization eligibility, IRCA created a significant residual population even as it provided a new route to legal status. The enormous SAW applicant pool implies that at least some of the members of this residual population accurately perceived that U.S. immigration policy, on balance, was moving in a more restrictive direction (i.e., the passage of employer sanctions and a more heavily funded Border Patrol). Their attempts to secure some sort of legal status in this context were to be expected, but the INS did not implement legally defensible contingency plans for such attempts to gain legal status.

Given the magnitude of the backlog and the court constraints, the only administrative solution remaining for
the INS is a significant increase in resources devoted to the systematic investigation of SAW fraud, and the development of legally defensible regulations governing such an investigative effort. However, the INS will have to ask itself whether the returns to such an effort will be worth the cost in the context of the many competing investigatory burdens imposed by such pressing issues as the enforcement of employer sanctions, the expansion of INS responsibility for drug interdiction, and the issues of immigration fraud not related to IRCA.

In the absence of such an effort, hundreds of thousands of SAWs will remain in an ambiguous immigration status for a long time to come, a situation Congress clearly sought to avoid in passing IRCA. Thus, Congress may soon find itself coming to grips with the design flaws of the SAW provision. One solution may be to rearticulate SAW eligibility in terms that may be more easily implemented—residence and some sort of credible attestation of farm work experience, for example. While most SAWs would probably be approved under such conditions, including some who may not have been eligible, closure for the program could be achieved, a significant farm labor force would be available to growers and would be empowered as legal residents, and attention could be turned to more effective reform of the legal immigration system.

Replenishment Agricultural Workers (RAWS)

The Replenishment Agricultural Worker (RAW) program will not bring additional people into the legal immigration system unless and until the Departments of Labor and Agriculture determine that a nationwide shortage of agricultural labor exists. To date, these agencies have set the
shortage number at zero. Nevertheless, the INS retains an applicant list some 100,000 strong. These potential agricultural workers will remain on the RAW list through 1993.

The opportunity offered by RAW status is clearly an attractive alternative to the current conditions facing the 100,000 persons who registered. But regulations governing the program do little to enable RAWs to fulfill their statutory obligations. And the statutory obligations themselves offer only a remote opportunity to enjoy the benefit of U.S. citizenship, and even this comes at the cost of an extended period of agricultural indenture. As part of an alternative legislative package to a guest worker or "bracero" program, the RAW provision was crucial to the passage of IRCA. But in design and implementation it most closely resembles the very guest worker policies that generated the perceived need in Congress for agricultural immigration reform.

CONCLUDING COMMENT

In the end, the basic lesson of legalization is quite simple: change in the U.S. immigration system can be effected as much by reform of the benefits side as by modifying immigration law enforcement. We have seen legalization portrayed (not inaccurately) to Congress and to the public as part of a trade-off for a more rigorous enforcement package. However, over time legalization proved, in its own right, to be an effective step toward easing the imbalance between immigrant supply and demand that has plagued the United States throughout its history. Clear statutory and regulatory standards, the cooperation of many agencies, and the adoption of a generous spirit in
implementation combined to enhance the effectiveness of such benefits-based strategies.

The fact that such strategies have not been explored more frequently reflects the basic ambivalence the U.S. population bears toward new immigrants. The cautious welcome extended through legalization marks a new stage in the historical discourse on immigration in this country. Although legalization per se does not deal with the issue of undocumented flows, and indeed may create an incentive for future increases in flows, it is clearly an important mechanism for dealing with undocumented migration after it has occurred. Other policy options are required to curtail undocumented migration before it occurs. But once undocumented migration has taken place, and once undocumented migrants become firmly rooted settlers in the United States, legalization becomes a policy option the relative merits of which should be seriously considered in comparison to enforcement-based options. The legalization programs of IRCA have provided evidence that generous, benefits-based immigration reform is feasible.

With increased trade linkages and renewed political dialogue emerging between the U.S. and immigrant-sending countries, true immigration control is increasingly likely to require not only enforcement-based strategies, but also a set of benefits policies that recognize the strong international ties the populations of these countries have already established. Legalization may thus provide a useful blueprint for the implementation of other benefits-based policies, especially as the issue of international migration continues to be one that must be confronted by U.S. policymakers.

Notes, chapter six


3. Ibid.
The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act

by

Susan González Baker

This study is part of a broader two-year study of the implementation of the 1986 Immigration Reform and Control Act (IRCA) undertaken by the Program for Research on Immigration Policy—a program conducted by The RAND Corporation and The Urban Institute. Among many other provisions IRCA allowed certain types of undocumented immigrants to adjust their status to legal permanent residence and eventually to citizenship. The key legalization provision creates a temporary program permitting status adjustment of undocumented immigrant who can demonstrate continuous residence in the United States since January 1, 1982. A second major provision allows for status adjustment of certain undocumented farm workers through two special programs.

This study chronicles the design, implementation, and outcomes of these legalization provisions. It demonstrates that change in the U.S. immigration system can be effected as much by reforming the benefits side as by modifying immigration law enforcement.