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AMNESTY IN THE IMMIGRATION REFORM AND CONTROL ACT OF 1986: POLICY RATIONALE AND LESSONS FROM CANADA

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INTRODUCTION

On November 6, 1986, President Reagan signed into law the Immigration Reform and Control Act of 1986 (IRCA).¹ This landmark legislation contains two key provisions: employer sanctions² and legaliza-

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1. This Comment went to print in March 1988, two months before the end of the Immigration Reform and Control Act's amnesty application deadline. Accordingly, the reader should not view this Comment as a review of the entire amnesty program. Instead, the Comment is meant to be an overview of the amnesty law, a description of the lessons that the Canadian amnesty program provided, and a "progress report" of the yearlong United States amnesty program, two months before its completion.

Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified in scattered sections of 8 U.S.C.) [hereinafter IRCA]; *President Signs Simpson-Rodino Bill*, 63 Interpreter Releases (Fed. Pub.) 1029 (Nov. 10, 1986). The Senate passed IRCA on October 17, 1986 by a vote of 63 to 24. Pear, *Immigration Bill Approved; Bars Hiring Illegal Aliens, but Gives Millions Amnesty*, N.Y. Times, Oct. 18, 1986, at A1, col. 6. The House of Representatives passed the bill on October 15 by a vote of 238 to 173. *Id.* IRCA is the most comprehensive change in the immigration laws of the United States since 1952. N. MONTWIELER, *THE IMMIGRATION REFORM LAW OF 1986* 3 (1987).

Earlier versions of the bill that eventually became IRCA were known as the Simpson-Mazzoli bill, named for its sponsors, Senator Alan Simpson and Representative Romano Mazzoli. Martin & Houstoun, *European and American Immigration Policies*, in U.S. IMMIGRATION POLICY 51 (R. Hofstetter ed. 1984) [hereinafter U.S. IMMIGRATION POLICY]. In 1982 and 1983, the Senate passed versions of the bill, but the House failed to act. M. MORRIS, *IMMIGRATION — THE BELEAGUERED BUREAUCRACY* 2 (1985). In June 1984 the bill passed both Houses of Congress but died in the final days of the Ninety-eighth Congress when a House-Senate conference failed to agree on a single version. *Id.* at 2-3. Morris points out that because such a controversial measure came so close to fruition in an election year it would only be a matter of time before the bill became law. *Id.* at 3; see also CONG. REC. S7039 (daily ed. May 23, 1985) (statement of Sen. Alan K. Simpson) (stating that the framework of previous proposals represents the most desirable type of immigration reform).

IRCA, also called the Simpson-Rodino Act, was incorporated into the Immigration and Nationality Act (INA), the basic immigration law of the United States. For the sake of clarity this Comment cites principally to the INA.

2. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, §§ 101-03, 100 Stat. 3359, 3360-80 (codified in scattered sections of 8 U.S.C.). The employer sanctions provision makes it illegal for an employer knowingly to hire undocumented aliens. *Id.* § 101(a)(1); see Note, *The Simpson-Mazzoli Bill: Employer Sanctions and Immigration Reform*, 17 N.Y.U.J. INT'L L. & POL. 987, 998-1022 (1985) [hereinafter *Employer Sanctions*] (explaining the concept of employer sanctions in immigration re-

tion, or amnesty, of undocumented aliens.³ In their final form, these provisions represent a compromise of years of debate and controversy.⁴ This Comment analyzes the amnesty provision in IRCA.

IRCA is a response to the growing problem of illegal immigration in the United States.⁵ Although general awareness of the problem existed for years, illegal immigration did not become an urgent national issue until the 1970s.⁶ In 1986, the Immigration and Naturalization Service (INS)⁷ reported that apprehensions of undocumented aliens⁸ reached

form efforts); see also Smith, *The Immigration Reform and Control Act of 1986: A Commentary and Overview*, 22 TEX. INT'L L.J. 211, 212-24 (1987) (discussing the employer sanctions provision in IRCA).

3. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, §§ 201-04, 100 Stat. 3359, 3394-3411 (codified in scattered sections of 8 U.S.C.). The amnesty provision essentially legalizes the status of undocumented aliens who arrived before January 1, 1982 and have remained in the United States. *Id.* § 201(a)(2); *United States Legislation Concerning Immigration*, 26 I.L.M. 479, 480 (1987) [hereinafter *United States Legislation Concerning Immigration*]; see *infra* notes 129-72 and accompanying text (detailing the specifics of the amnesty provision); see also Pear, *supra* note 1, at A1, col. 6 (reporting the approval of IRCA and briefly describing the amnesty provision).

The purpose of IRCA is to "control illegal immigration to the United States, make limited changes in the system for legal immigration, and provide a controlled legalization program for certain undocumented aliens." H.R. REP. NO. 682, 99th Cong., 2d Sess., pt. 1, at 45 (1986). In effect, the employer sanctions provision is the "stick" and the legalization provision is the "carrot." Applebome, *Amnesty Program for Illegal Aliens Gaining Momentum*, N.Y. Times, Aug. 3, 1987, at A1, col. 2.

In addition, IRCA grants amnesty to certain "special agricultural workers" (SAWs). Immigration and Nationality Act, §§ 101(a)(15)(H)(ii), 210, 210A, 8 U.S.C. §§ 1101(a)(15)(H)(ii), 1160, 1161a (Supp. IV 1986). This provision, which contains many of the same requirements as the main legalization program, applies to aliens who have performed 90 days of seasonal agricultural work during the twelve month period ending on May 1, 1986. *Id.* § 210(a)(1)(B); see *Immigration Bill-Special Agricultural Workers*, Federal Practice Advisory, (Law. Coop. & Bancroft Whitney) 6 (Jan. 12, 1986) (stating that the SAW program is a legalization program).

Because the SAW program merits an extensive discussion in and of itself, this Comment will only discuss the main legalization program.

The terms "amnesty" and "legalization" are synonymous and are used interchangeably in this Comment.

4. See Fuchs, *Immigration Policy and the Rule of Law*, 44 U. PITT. L. REV. 433, 433 (1983) (stating that because immigration is an emotional issue, comprehensive reform of immigration policy occurs infrequently); see also D. REIMERS, *STILL THE GOLDEN DOOR, THE THIRD WORLD COMES TO AMERICA* 234-40 (1985) (discussing the controversial nature of the years of debate over various immigration reform bills in Congress).

5. 131 CONG. REC. S11,258 (daily ed. Sept. 11, 1985) (statement of Sen. Alan K. Simpson). Senator Simpson makes the point that IRCA is a response to the rapidly increasing problem of illegal immigration. *Id.*; see *United States Legislation Concerning Immigration*, *supra* note 3, at 479 (stating that IRCA is an effort to control illegal immigration in the United States).

6. Corwin, *The Numbers Game: Estimates of Illegal Aliens in the United States, 1970-1981*, in U.S. IMMIGRATION POLICY, *supra* note 1, at 223.

7. The Immigration and Naturalization Service (INS) of the Department of Jus-

an all-time record, suggesting that the number of undocumented aliens residing in the country was larger than ever before.⁹

Several alternative solutions were available to control illegal immigration.¹⁰ Congress, however, chose a generous amnesty program to legalize the status of millions of aliens. Before the late 1970s, the United States government had never employed amnesty to address immigration problems.¹¹ The controversial nature of legalizing the status of millions of people illegally present in the country accounted for much of this reluctance.¹² Despite this controversy, Congress viewed an amnesty program as the least costly alternative, politically as well as financially and administratively.¹³

tice is the branch of the United States government most responsible for enforcing and administering the immigration laws of the United States. See T. ALEINIKOFF & D. MARTIN, *IMMIGRATION, PROCESS AND POLICY* 82 (1985) (explaining that the Attorney General, through the INS, is responsible for administering most of the INA); see also *infra* note 99 (discussing the federal agencies that are responsible for the enforcement of the immigration laws).

8. The term "undocumented alien" refers to an alien who is in the United States in an unlawful status because he or she entered without inspection (EWI) by the INS or, in the case of a nonimmigrant visa holder, such as a student, when he or she no longer has valid documents to remain in the United States. See *Immigration and Nationality Act*, § 101(a)(15), 8 U.S.C. § 1101(a)(15) (Supp. IV 1986) (enumerating the types of nonimmigrant categories); *id.* § 235 (describing the procedure by which the INS inspects aliens seeking to enter the United States).

The terms "undocumented alien," first used in the Carter administration, and "illegal alien" are synonymous. This Comment uses the former term because many persons consider the term "illegal alien" derogatory.

9. *Enforcement: Dealing with Illegal Immigration*, INS REP. 4 (Fall/Winter 1985-86) [hereinafter INS REP.]. The number of aliens the INS apprehends are often the most reliable count because it is difficult to estimate the actual number of undocumented aliens in the United States.

10. See *Recent Developments, Legalization of Illegal Aliens: A Humanitarian Approach Long Overdue*, 12 SYRACUSE J. INT'L L. & COM. 572, 575-76 (1986) (discussing the shortcomings of deportation efforts to deal with illegal immigration); see also *Employer Sanctions*, *supra* note 2, at 998-1022 (discussing employer sanctions as a way of stopping illegal immigration).

11. D. NORTH, *AMNESTY: CONFERRING LEGAL STATUS ON ILLEGAL ALIENS A-5* (1982).

12. See Wilentz, *Harvest of Confusion*, TIME, Nov. 3, 1986, at 28 (stating that the amnesty is one of the immigration bill's controversial sections); cf. *Is Amnesty for Illegals a Sound U.S. Policy?*, 56 CONG. DIG. 235, 235 (1977) (statement of Sen. Richard S. Schweiker), reprinted in CONG. RESEARCH SERV. *SELECTED READINGS ON U.S. IMMIGRATION POLICY AND LAW* 177 (1980) [hereinafter *SELECTED READINGS*] (arguing that an amnesty rewards lawbreakers). But cf. Scanlan, *Immigration Law and the Illusion of Numerical Control*, 36 U. MIAMI L. REV. 819, 832 (1982) (arguing that failure of the government to close the "back door" of illegal immigration is attributable to a number of factors, including a demand for cheap labor, ethnic pressures, foreign policy and civil rights considerations, and cost concerns); see also *infra* notes 175-96 and accompanying text (outlining the arguments in favor of and against amnesty).

13. Note, *The Simpson-Mazzoli Bill: Altering the Policy of Neglect of Undocumented Immigration from South of the Border*, 18 TEX. INT'L L.J. 347, 363-64 (1983)

Unlike the United States, Canada has experimented with a broad amnesty program for aliens. In 1973, the Canadian government enacted an amnesty program that legalized the status of thousands of aliens.¹⁴ Although important differences exist in the immigration situations and policies of the two countries, the Canadian experience with amnesty provides valuable lessons for the United States.

Part I of this Comment discusses amnesty from a historical perspective, focusing on legislative proposals since the 1970s, the current state of the illegal immigration problem, and the results of the Canadian amnesty program. Part II examines amnesty under IRCA, addressing its specific provisions and INS implementation measures. Part II also analyzes opposing policy arguments concerning amnesty for undocumented aliens in the United States. Part III discusses the lessons that the United States can learn from the amnesty program in Canada. Part IV gives a progress report of the yearlong IRCA amnesty program three-quarters of the way to its completion. Finally, this Comment discusses how well the United States has learned the lessons from Canada.

I. HISTORICAL PERSPECTIVE

A. IMMIGRATION POLICY IN THE UNITED STATES

1. *Background*

Historically, United States immigration policy has involved a compromise between two competing principles. First is the notion that the United States is a "nation of immigrants" that continues to welcome immigrants and offer them the opportunity to improve their lives.¹⁵

[hereinafter *South of the Border*]; see also Buck, *The New Sweatshops: A Penny for Your Collar*, N.Y. MAG. 42, 44 (1979), reprinted in SELECTED READINGS, *supra* note 12, at 36 (describing a 1978 operation in New York where the INS spent \$23.6 million locating 10,607 deportable aliens, a cost of \$2,225 for each person). One INS agent, describing this as "petty harassment," stated, "[w]e will never contain the flood of illegals now coming to New York; the numbers are just too great." *Id.* Cf. Keely, *Current Status of U.S. Immigration and Refugee Policy*, in U.S. IMMIGRATION AND REFUGEE POLICY 341-42 (M. Kritz ed. 1983) [hereinafter U.S. IMMIGRATION AND REFUGEE POLICY] (highlighting government studies indicating the futility, political costs, and inhumanity of the massive round-up and deportation efforts of the past).

14. Act of July 27, 1973 to amend the Immigration Appeal Board Act, ch. 27, 1973-1974 Can. Stat. 423 (proclaimed in force Aug. 15, 1973); Immigration Adjustment of Status Regulations, 107 Can. Gaz. II 2069 (Aug. 3, 1973).

15. Note, *U.S. Immigration and Refugee Reform: A Critical Evaluation*, 22 VA. J. INT'L L. 805, 809 (1982) [hereinafter *A Critical Evaluation*]; see Maingot, *Ideology, Politics and Citizenship in the American Debate on Immigration Policy: Beyond Consensus*, in U.S. IMMIGRATION AND REFUGEE POLICY, *supra* note 13, at 363 (stating that the immigration problem has a moral dimension because it appeals to the "American Creed").

Second, practical considerations dictate that controls are necessary to curtail the detrimental effects of unfettered immigration.¹⁶ The compromise between these two principles, which shaped past policies, continues to affect current efforts to reform United States immigration laws.¹⁷

Many observers define the roots of illegal immigration, especially during the 1960s and early 1970s, in terms of a "push-pull" phenomenon.¹⁸ This theory holds that negative socioeconomic conditions in developing countries "push" people toward the United States, while opportunities for wealth and prosperity "pull" people into the United States.¹⁹ In the mid-1960s, the Johnson administration's Great Society

The tradition of "open arms" is reflected in Emma Lazarus's words inscribed on the Statue of Liberty: "Give me your tired, your poor, your huddled masses yearning to breathe free; the wretched refuse of your teeming shore; send these, the homeless, tempest-tost to me; I lift my lamp beside the golden door!" reprinted in *MOTHER OF EXILES* i (1986). *But see* P. EHRLICH, *THE GOLDEN DOOR* 50 (1979) (pointing out that the label "nation of immigrants" is not really appropriate because historical demographers have calculated that only half of all United States citizens are descendants of post-1789 immigrants).

16. P. EHRLICH, *supra* note 15, at 51; *see A Critical Evaluation, supra* note 15, at 809-13 (mentioning several forms of immigration controls that the United States has imposed since the Civil War).

Beside imposing numerical controls, the United States has also historically restricted the immigration of certain classes of aliens, including alcoholics, vagrants, prostitutes, and insane persons. Immigration Act of Feb. 5, 1917, ch. 29, 39 Stat. 874. The immigration laws also excluded Chinese workers at one time. Chinese Exclusion Act of May 6, 1882, ch. 126, 22 Stat. 58. *See generally* E. HARPER & R. CHASE, *IMMIGRATION LAWS OF THE UNITED STATES* 3-48 (3d ed. 1975) (listing and briefly discussing laws that control immigration).

17. *See* Whelan, *Principles of U.S. Immigration Policy*, 44 U. PITT. L. REV. 447, 461 (1983) (stating that recommendations for an "open society" do not imply a "totally open society"); Zall, *Asylum and Sanctuary: The American Dilemma*, 72 A.B.A. J. 66, 66 (1986) (explaining the dilemma as the conflict between the desire to continue the immigrant tradition and the ability of the United States to fulfill that desire); *see also* *United States v. Zayas-Morales*, 685 F.2d 1272, 1278 (11th Cir. 1982) (stating that the existence of the United States depends on its ability to respond to the needs of aliens and at the same time to cope with the realities of an expanding population); SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, FINAL REPORT, U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST 5 (1981) (stating that although immigration is in the national interest of the United States, there are limits on the number of immigrants that the country can absorb).

18. M. MORRIS, *supra* note 1, at 63.

19. *Id.* The "push-pull" model is not limited to economic factors alone. *Id.* This model also considers other factors, such as the political instability in certain developing countries that "pushes" people out, while the "pull" of the United States political climate brings them into the United States. *Id.* at 63-77; *see* Pastor, *Migration in the Caribbean Basin: The Need for an Approach as Dynamic as the Phenomenon*, in U.S. IMMIGRATION AND REFUGEE POLICY, *supra* note 13, at 101 (dividing "push" factors into three broad categories: social and demographic trends, including population growth and urbanization; economic development and employment; and political currents).

program,²⁰ which enhanced this "pull" phenomenon, coincided with the lapse of the Mexican contract labor program by which thousands of Mexicans had legally entered the United States.²¹ This combination of push and pull factors significantly contributed to increasing the number of undocumented aliens entering the United States.

Although the socioeconomic realities of the United States and developing countries are the principal reasons for the large numbers of aliens entering the United States, political strife has also been a major cause of immigration.²² Most of the immigrants who left Southeast Asia in the 1970s, for example, fled from war and oppression in their native countries.²³ The United States admitted most of these persons as refugees.²⁴ In the 1980s, many persons fled from parts of Central

20. See D. KEARNS, LYNDON JOHNSON AND THE AMERICAN DREAM 220-21 (1976) (describing the Great Society as focusing on programs for the relief of poverty, help to education, and other measures for the just distribution of rising abundance).

21. Corwin, *supra* note 6, at 224-25. One of the effects of the demise of the Mexican program was that it encouraged employers in the United States to turn to undocumented aliens from Mexico and other countries as a source of labor. *Id.*

The Mexican contract labor program, known as the Bracero program, consisted of an agreement with Mexico under which the United States admitted Mexican laborers into the country for seasonal employment in agriculture. Agreement Respecting Temporary Migration of Mexican Agricultural Workers, Aug. 4, 1942, United States-Mexico, 56 Stat. 1759, E.A.S. No. 278.

22. Hofstetter, *Economic Underdevelopment and the Population Explosion: Implications for U.S. Immigration Policy*, in U.S. IMMIGRATION POLICY, *supra* note 1, at 63-64. Mexico provides a useful comparison because it is a close neighbor and provides the largest source of immigrants. *Id.*; see Passel, *Estimating the Number of Undocumented Aliens*, Monthly Lab. Rev., at 33 (Sept. 1986) (estimating that 55% of the undocumented aliens in 1980 were Mexican).

Throughout much of the 1970s, the economy of Mexico was in decline and the country faced a population explosion and a serious trade deficit with the United States. Corwin, *supra* note 6, at 259; see also Hofstetter, *supra*, at 63 (discussing statistics predicting that the population of Mexico will increase eightfold in this century). An open border, which thousands of people could easily cross acts as a "safety valve" for Mexico to relieve the pressures that its socioeconomic problems have caused. *Id.* Some studies indicate that in the 1970s, as a result of adverse economic conditions in their home countries, approximately three-quarters of the undocumented aliens who came to the United States came in search of jobs. D. NORTH & M. HOUSTON, THE CHARACTERISTICS AND ROLE OF ILLEGAL ALIENS IN THE U.S. LABOR MARKET: AN EXPLORATORY STUDY S-4 (1976).

23. See 80 DEP'T ST. BULL. 26-27 (June 1980) (statement of Richard C. Holbrooke, Assistant Secretary of State for East Asian and Pacific Affairs) (describing Indochinese persons arriving in the United States as refugees fleeing from war); Pringle, *An Eyewitness to Border Carnage*, NEWSWEEK, Mar. 31, 1980, at 43 (detailing the plight of Cambodian refugees fleeing war and repression in their country); J. CERQUONE, USCR ISSUE PAPER, UNCERTAIN HARBORS: THE PLIGHT OF VIETNAMESE BOAT PEOPLE 4 (1987) (stating that about 660,000 persons are known to have left Vietnam since 1975).

24. 83 DEP'T ST. BULL. 68 (Aug. 1983) (statement of James Purcell, Director of the State Department's Bureau of Refugee Programs). In 1983, the United States admitted approximately 40,000 persons from Southeast Asia as refugees. *Id.* This is by

America, particularly El Salvador, to the United States for political rather than economic reasons.²⁵ Because granting refugee status to many of these persons, however, presents foreign policy dilemmas for the United States, most remain in the United States in an unlawful status.²⁶

Congress first recognized the growing number of undocumented aliens as a significant national concern in the early 1970s.²⁷ By then, actual immigration in the United States had exceeded three times its legal limit.²⁸ In October 1974, the United States Attorney General esti-

far the largest number of refugees admitted from a single group. *Id.*; see also Gwertzman, *Policy that Limits Indochina Refugees is Reversed by U.S.*, N.Y. Times, May 31, 1981, at A1, col. 4 (reporting Secretary of State Alexander Haig's statement that anyone coming from Indochina is a refugee).

25. See J. SILK, USCR ISSUE PAPER, *DESPITE A GENEROUS SPIRIT: DENYING ASYLUM IN THE UNITED STATES* 36 (1986) (stating that political violence and civil war in El Salvador, Guatemala, and Nicaragua have displaced thousands of persons, many of whom have made their way to the United States). Silk provides figures estimating that between 300,000 and 500,000 Salvadorans are presently living in the United States in an undocumented status. *Id.*; see also Magnuson, *Double Standard for Refugees?*, TIME, Apr. 28, 1986, at 34 (reporting the perception that the United States government is unfair because it grants refugee status to many more Nicaraguans than Salvadorans). Between June 1983 and September 1986, 14% of asylum cases involving Nicaraguans were approved compared to 2.6% for Salvadorans. J. SILK, *supra*, at 9; cf. AMNESTY INTERNATIONAL REPORT 1982 at 138 (1982) (pointing out that in 1981 the Inter-American Commission on Human Rights of the Organization of American States (OAS) denounced the human rights record of El Salvador).

26. See Posner, *Comments and Recommendations on Proposed Reforms to United States Immigration Policy*, 36 U. MIAMI L. REV. 883, 887 (1982) (stating that United States admission of Salvadoran refugees would be tantamount to admitting that the United States-backed government of El Salvador is persecuting Salvadorans); see also J. SILK, *supra* note 25, at 7-8 (arguing that United States asylum policies reflect a double standard); cf. Gordenker, *The International Setting of American Refugee Policy*, in THE UNAVOIDABLE ISSUE: U.S. IMMIGRATION POLICY IN THE 1980'S 251, 260 (D. Papademetriou & M. Miller eds. 1983) [hereinafter THE UNAVOIDABLE ISSUE] (indicating that the United States government draws a distinction between political and economic refugees).

27. Corwin, *supra* note 6, at 223; see Leaf, *Legalizing the Illegals: A Case for Amnesty*, 12 COLUM. HUM. RTS. L. REV. 65, 79 (1980) (pointing out that by the mid-1970s, when the level of undocumented aliens in the country became intolerable, the federal government finally responded to the problem of illegal immigration); see also *Illegal Aliens: Hearings Before the Subcomm. on Immigration, Citizenship and International Law of the Comm. on the Judiciary of the House of Representatives*, 94th Cong., 1st Sess. 136 (1975) (statement of Rep. Mario Biaggi) (stating that Congress cannot ignore the illegal immigration problem any longer).

28. See M. MORRIS, *supra* note 1, at 49-50 (discussing various estimates on the numbers of undocumented aliens). Between 1971 and 1980, the annual ceiling on immigration stipulated by law totaled 290,000, while actual immigration averaged about 450,000 a year. *Id.* at 49. The number reached 600,000 in 1978, and was probably as high as one million a year. *Id.*; cf. STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE 1 (1982) (showing in a chart that between 1971 and 1980, over 4.4 million legal immigrants entered the United States, more than any other ten-year period).

mated that between four and seven million undocumented aliens lived in the United States, while other reports estimated even higher numbers.²⁹ A 1981 report estimated that between 7.9 million and 9.9 million undocumented aliens were in the United States.³⁰ By 1986, the most widely accepted figures indicated that between four and six million aliens were living in the country.³¹

2. *Amnesty Proposals Before IRCA*

Although immigration has always been an issue in United States political history,³² amnesty has not. Amnesty is only part of the immigration debate and, prior to the 1970s, was not seriously considered a major policy option. From 1975 to 1986, however, Congress considered various amnesty proposals designed to regulate the problem of illegal immigration.

a. *The Ford Years*

In 1975, President Ford established the Domestic Council Committee on Illegal Aliens (Committee)³³ to develop a comprehensive ap-

It is important to remember that these figures reflect only legal immigration; they rise sharply when estimates of illegal immigration are included.

29. Corwin, *supra* note 6, at 227; see T. KESSNER & B. CAROLI, *TODAY'S IMMIGRANTS, THEIR STORIES* 21 (1981) (pointing out that in 1975, INS district directors estimated that more than six million undocumented aliens lived in the United States).

30. Corwin, *supra* note 6, at 248-50; see also *infra* note 93 and accompanying text (reporting estimates of the numbers of undocumented aliens and the regions from which they originate).

31. Whelan, *supra* note 17, at 455; *Developments in the Law — Immigration Policy and the Rights of Aliens*, 96 HARV. L. REV. 1285, 1436 (1983).

The four to six million range is only an estimate and could be even higher. See Comment, *The Legal Status of Undocumented Aliens: In Search of a Consistent Theory*, 16 Hous. L. REV. 667, 667 (1979) [hereinafter *The Legal Status*] (stating that the estimates of undocumented aliens in the United States vary from four to twelve million). The wide discrepancies in the estimates show the difficulty of assessing the accurate number of undocumented aliens, a difficulty that one observer calls "the morass of estimates." Keely, *supra* note 13, at 342; see D. REIMERS, *supra* note 4, at 214-15 (describing the frustrating efforts to ascertain the exact number of undocumented aliens in the 1970s).

INS apprehension numbers reflect the tremendous rise in the numbers of undocumented aliens in the 1970s, when the figures rose from 450,000 in 1970 to 1,076,000 in 1979. *Aliens Apprehended, Aliens Deported, and Aliens Required to Depart, Fiscal Years 1892-1984*, in STATISTICAL Y.B. OF THE IMMIGRATION AND NATURALIZATION SERVICE 188 (1984).

32. See Seller, *Historical Perspectives on American Immigration Policy: Case Studies and Current Implications*, in U.S. IMMIGRATION POLICY, *supra* note 1, at 137 (stating that debates about immigration policy began with the Thirteen Colonies and continue to the present).

33. Midgley, *Comings and Goings in U.S. Immigration Policy*, in THE UNAVOIDA-

proach to resolving the issue of illegal immigration.³⁴ The Committee rejected a massive effort to deport undocumented aliens residing in the United States as both impractical and inhumane.³⁵ Instead, the Committee recommended advancing the eligibility date for admission to lawful permanent residence for aliens in the United States from June 30, 1948 to July 1, 1968.³⁶ Some criticized the proposal as ineffective because it did not include the large majority of aliens who entered after 1968.³⁷

President Ford accomplished little progress in the illegal immigration issue. During his administration, no legislative reforms were proposed and the recommendations of the Committee received only mixed reviews. By the time President Carter assumed office in 1977, the problem still remained.

b. *The Carter Years*

In August 1977, President Carter presented a six-part proposal for

BLE ISSUE, *supra* note 26, at 53.

34. U.S. DOMESTIC COUNCIL COMMITTEE ON ILLEGAL ALIENS, PRELIMINARY REPORT 242-43 (1976) [hereinafter DOMESTIC COUNCIL REPORT]. The Committee's rather simplistic conclusions were the following: (1) immigration is rooted in socioeconomic forces both in the United States and developing countries; (2) illegal immigration is a significant and growing problem; (3) immigration has an impact on the labor market; (4) effective enforcement is crucial; and (5) the country has to rethink its immigration policies. Corwin, *supra* note 6, at 252-54. The Committee recommended that the administration (1) give priority to the issue of illegal immigration; (2) aggressively pursue legislation; (3) evaluate the temporary worker program in the Immigration and Nationality Act; (4) give high priority in allocating resources to the INS; (5) develop policies aimed at aliens already within the United States; (6) cooperate with foreign governments; (7) research immigration problems; and (8) reexamine the operation of current immigration policy. *Id.* at 255-56.

35. DOMESTIC COUNCIL REPORT, *supra* note 34, at 243.

36. *Id.* This eligibility date is called the registry. Immigration and Nationality Act, § 249, 8 U.S.C. § 1259 (Supp. IV 1986).

A person must have resided in the United States before the registry date to apply for adjustment to legal status. *Id.* § 249(b), 8 U.S.C. § 1259(b). Originally set at June 3, 1921, Congress later advanced the registry date to June 28, 1940, and then to June 30, 1948. Leaf, *supra* note 27, at 81. IRCA advanced the date to January 1, 1972. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 203, 100 Stat. 3359, 3405 (1986) (codified at 8 U.S.C. § 1259).

The registry provision gives the Attorney General the discretion to provide a record of lawful admission to any alien lacking that record, provided that the alien (1) entered the United States before January 1, 1972; (2) has continuously resided in the United States since entry; (3) is of good moral character; and (4) is eligible for citizenship. Immigration and Nationality Act, § 249, 8 U.S.C. § 1259 (Supp. IV 1986).

37. See Leaf, *supra* note 27, at 80 (stating that the Committee failed to address the critical question of dealing with the overwhelming majority of undocumented aliens who would be ineligible for relief under the new registry date). Leaf characterized the work of the Committee on the whole as a "disappointment." *Id.*

legislative reform in immigration law.³⁸ One part constituted an adjustment of status, or amnesty proposal.³⁹ Under this proposal, aliens who had continuously resided in the United States before January 1, 1970 would be eligible for permanent resident status.⁴⁰ Those who had entered between January 1, 1970 and January 1, 1977 would be eligible for "temporary residence" consisting of a special nondeportable status for five years.⁴¹

When Congress first considered the plan in October 1977,⁴² the ensuing debate illustrated the controversial nature of the amnesty. Conservative members of Congress criticized the proposed amnesty for rewarding lawbreakers and thereby condoning disrespect for law.⁴³ Liberals, fearing that the continued existence of a large underground class of people would negate the goals of the legislation, argued for a more generous amnesty with a more recent cutoff date.⁴⁴ The Carter administration proposals received a mixed reception from the public; one observer characterized them as a "politician's accommodation" to conflicting pressures.⁴⁵

38. President's Message to Congress on Undocumented Aliens, 13 WEEKLY COMP. PRES. DOC. 1169 (Aug. 4, 1977) [hereinafter President's Message on Undocumented Aliens]. The six-part proposal included legislative reform proposals on amnesty, employer sanctions, increased border enforcement, cooperation with other countries, review of the temporary foreign worker program, and a comprehensive review of United States immigration policy. *Id.*

President Carter stated that although the aliens had violated the immigration laws by illegally entering and willfully remaining in the United States, many were law-abiding residents and productive members of society. *Id.*

39. *Id.*; D. REIMERS, *supra* note 4, at 234.

40. *Id.*

41. President's Message on Undocumented Aliens, *supra* note 38, at 125. Those eligible for temporary resident alien status would be granted the status only after registering with the INS. *Id.* They would be ineligible for social services such as Medicaid, food stamps, Aid to Families with Dependent Children, and supplemental security income. *Id.*

42. S. 2252, 95th Cong., 2d Sess., 123 CONG. REC. 35,792-94 (1977); H.R. 9531, 95th Cong., 1st Sess., 123 CONG. REC. 33,493 (1977). The two bills, introduced by Sen. James Eastland and Rep. Peter Rodino, were identical. Bevilacqua, *Legal Critique of President Carter's Proposals on Undocumented Aliens*, 23 CATH. LAW. 286, 286 (1978).

43. *Hearings on S. 2252: Alien Adjustment and Employment Act of 1978, Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, Part 1, 95th Cong., 1st Sess. 193 (1978) [hereinafter *Hearings on S. 2252*] (statement of Sen. James A. McClure).

44. *Id.* at 368 (statement of the Mexican-American Political Association); Leaf, *supra* note 27, at 82; see Bevilacqua, *supra* note 42, at 287 (arguing that the cutoff date should be advanced to a date close to the effective date of the bill).

45. Piore, *The "Illegal Aliens" Debate Misses the Boat*, reprinted in SELECTED READINGS, *supra* note 12, at 39. According to Piore, the President's proposals did not give the problem the priority that was due:

In the current debate, illegal immigration is frequently seen as an oversight; if

The proposal for temporary resident status, as expected, generated the most debate. This proposal would allow aliens to remain in the United States for five years and to travel and work.⁴⁶ The plan, however, barred aliens from receiving aid through federal assistance programs.⁴⁷ More importantly, because the plan was silent about what would happen at the conclusion of the five-year period, aliens would have been reluctant to take advantage of the amnesty.⁴⁸ In the end, this uncertainty contributed to the defeat of the Carter proposals in Congress.⁴⁹

The second major development during the Carter years was the establishment of another committee to study the problem of illegal immigration. In 1979, President Carter created the Select Commission on Immigration and Refugee Policy (SCIRP).⁵⁰ Composed of members of Congress, the executive branch, and the public, SCIRP reflected the level of national concern that illegal immigration had generated.⁵¹

the laws were better enforced, Americans could calmly provide for limited legal immigration and protect themselves from an uncontrollable influx of foreign workers. That is a bit like thinking that illegal liquor during Prohibition was an oversight. If people want something that is prohibited by law badly enough, a black market will develop.

Id.

46. President's Message on Undocumented Aliens, *supra* note 38, at 126; see Fragomen, *President Carter's Amnesty and Sanctions Proposal*, 11 INT'L MIGRATION REV. 524, 527-28 (1977) (outlining the controversial nature of the proposal's temporary resident status provision). Fragomen argues that the provision would place persons in a legal limbo, prolonging separation from family members with no certainty as to their eventual status. *Id.* A large subculture of people would continue to exist, defeating a main purpose of the amnesty: family reunification. *Id.*

47. President's Message on Undocumented Aliens, *supra* note 38, at 126; Leaf, *supra* note 27, at 82.

48. Leaf, *supra* note 27, at 83; Midgley, *supra* note 33, at 53; see Fragomen, *supra* note 46, at 528 (arguing that an undocumented alien would have too much at stake to voluntarily surrender himself or herself to the INS with no guarantee of eventual immunity from deportation).

49. Midgley, *supra* note 33, at 53. The Carter proposals died amid widespread criticism in Congress. Leaf, *supra* note 27, at 84. As Rep. Morris Udall put it, "[a]bout the only thing we could get agreement on was that the President's proposal was not the answer." *Hearings on S. 2252*, *supra* note 43, at 86. *But see* Bevilacqua, *supra* note 42, at 286-87 (recognizing that although the author preferred a "broader" amnesty, President Carter's initiative was a courageous and humane attempt to deal with the problem of illegal immigration).

50. See Pub. L. No. 95-412, § 4, 92 Stat. 907-09 (1978) (establishing the Select Commission on Immigration and Refugee Policy (SCIRP)). SCIRP was charged with studying the immigration laws, policies, and procedures and making administrative and legislative recommendations to the President and Congress. *Id.* § 4(c), 92 Stat. 908; D. NORTH, *supra* note 11, at C-3; see Fuchs, *supra* note 4, at 436-46 (outlining the mandate of SCIRP).

51. See Midgley, *supra* note 33, at 54 (stating that the chief purpose of creating SCIRP was to develop measures for controlling illegal immigration). SCIRP originally consisted of four senators, Alan Simpson, Charles Mathias, Edward Kennedy, and

The findings of the SCIRP, issued in early 1981, contained an amnesty proposal similar to the Carter plan.⁵² The SCIRP recommended a single legalization program for aliens present in the country prior to January 1, 1980.⁵³ SCIRP premised commencement of the amnesty on the implementation of "appropriate enforcement measures."⁵⁴ The term "appropriate enforcement measures," because it was vague, eventually became a focal point of contention in the ensuing debates over amnesty under IRCA.⁵⁵

The amnesty program outlined in the SCIRP report contained three major components: a continuous residency requirement, a January 1, 1980 cutoff date, and exclusion based on appropriate grounds.⁵⁶ In choosing 1980 as the cutoff date, the SCIRP sought to avoid rewarding aliens who had recently entered the United States relying on the enactment of an amnesty.⁵⁷ The 1980 cutoff date also balanced the desire to provide amnesty to large numbers of aliens with the need to limit that amnesty to those aliens who held some equity in the United States.⁵⁸ The SCIRP proposals, however, were vague about the amount of time that should elapse before the government could grant permanent residence to amnestied aliens.⁵⁹ According to Lawrence H. Fuchs, Staff Director of the SCIRP, the "rule of law" guided the SCIRP in considering the amnesty.⁶⁰ It was this rule of law, along with the weight of

Dennis DeConcini; four House members, Peter Rodino, Elizabeth Holtzman, Robert McClory, and Hamilton Fish; four members of the executive branch, Secretary of State Cyrus Vance, Attorney General Benjamin Civiletti, Secretary of Labor Ray Marshall, and Secretary of Health and Human Services Patricia Harris; and four public members, Joaquin F. Otero, Vice President of the Brotherhood of Railway and Airline Clerks, Judge Cruz Reynoso of the California Court of Appeals, Rose M. Ochi, Executive Assistant to the Mayor of Los Angeles, and the Rev. Theodore Hesburgh, former Chair of the Civil Rights Commission and President of Notre Dame University. *Id.* at 55; SCIRP REPORT, *supra* note 17, at vii. Other cabinet members later replaced three of the original executive branch members. *Id.*

52. D. NORTH, *supra* note 11, at C-3.

53. SCIRP REPORT, *supra* note 17, at 76; Keely, *supra* note 13, at 341-42; Leaf, *supra* note 27, at 85-86.

54. SCIRP REPORT, *supra* note 17, at 82; Midgley, *supra* note 33, at 59.

55. See *infra* notes 78-83 and accompanying text (explaining the debates over the "triggered amnesty" proposal of IRCA which would delay the amnesty until the government implemented enforcement mechanisms).

56. SCIRP REPORT, *supra* note 17, at 72-85; see Leaf, *supra* note 27, at 84-86 (discussing the three-part proposed amnesty program).

57. SCIRP REPORT, *supra* note 17, at 77.

58. *Id.* at 77-78.

59. See *id.* at 148-51 (establishing no definite period of time for legalized aliens to be granted permanent residence, but implying that it would be soon after legalization).

60. Fuchs, *supra* note 4, at 438. Fuchs actually mentions three "guiding principles" for SCIRP: international cooperation, the open society, and the rule of law. *Id.* According to Fuchs, the rule of law emerged as the most powerful principle:

Although several commissioners had expressed concerns early in their delibera-

the recommendations, that formed the basis for the eventual approval of the amnesty provision in IRCA.⁶¹ SCIRP presented its report to President Reagan and Congress on March 1, 1981.⁶²

c. *The Reagan Years*

The Reagan administration considered the SCIRP recommendations and incorporated them into its July 1981 immigration reform proposals.⁶³ The proposals of the administration, however, were quite different from those of the SCIRP. The administration proposed to permit individuals who entered the country before January 1, 1980 to apply for a three-year renewable temporary resident status.⁶⁴ Under the administration proposal, eligible aliens could apply for permanent resident status only after ten years of continuous residency.⁶⁵ During this time, aliens would be unable to bring relatives to the United States or to

tions that a legalization program would be interpreted as a reward for illegality, after consideration of the importance of legalization as a part of the entire effort to restore the rule of law to immigration policy, all commissioners recognized: that qualified aliens would be able to contribute much more to United States society once they came into the open; that they would no longer be exploitable at the work place or continue to contribute to the depression of United States labor standards or wages; that legalization would aid in the enforcement of United States immigration laws by enabling the INS to focus its enforcement resources on new flows of illegal aliens; and that for the first time the United States would have reliable information about the sources of illegal migration, its characteristics and its impacts.

Id. at 440. *But see*, Whelan, *supra* note 17, at 454 (suggesting that an increase in the INS budget could greatly reduce illegal immigration and that it would be an alternative more in line with the rule of law basis).

61. See McLean, *International Institutional Mechanisms for Refugees*, in U.S. IMMIGRATION AND REFUGEE POLICY, *supra* note 13, at 183 (stating that SCIRP became the focal point for discussions of issues relating to United States immigration policies).

62. Abrams, *American Immigration Policy: How Strait the Gate?*, in U.S. IMMIGRATION POLICY, *supra* note 1, at 125; Midgley, *supra* note 33, at 58.

63. Midgley, *supra* note 33, at 64; Giuliani, *The Immigration Program of the Reagan Administration*, 36 U. MIAMI L. REV. 807, 813 (1982); Martin & Houstoun, *supra* note 1, at 50; see also Hiller, *Immigration Policies of the Reagan Administration*, 44 U. PITT. L. REV. 495, 500-04 (1983) (outlining the Reagan administration proposals for immigration reform); cf. Exec. Order No. 12,324, 46 Fed. Reg. 48,109 (1981) (announcing several measures to interdict the illegal entry of aliens by sea).

64. S. 1765, 97th Cong., 1st Sess. § 101(b)(2), 127 CONG. REC. 25,126-56 (1981); Palmieri, *Foreword to U.S. IMMIGRATION AND REFUGEE POLICY*, *supra* note 13, at xv; see Smith, *Introduction to U.S. IMMIGRATION POLICY*, *supra* note 1, at 7 (stating that while both SCIRP and the Reagan administration proposed an amnesty for undocumented aliens in the United States, the proposals differed in their mechanics); see also H.R. 4832, 97th Cong., 1st Sess., 127 CONG. REC. 24,981 (1981) (containing the administration bill as introduced in the House of Representatives).

65. S. 1765, 97th Cong., 1st Sess. § 102(a)(1), 127 CONG. REC. 25,126-56 (1981); Smith, *supra* note 64, at 7.

receive federal benefits, despite their obligation to pay taxes.⁶⁶

In response, critics accused the administration of being unfair by denying federal benefits to tax-paying aliens.⁶⁷ Additionally, undocumented aliens would not have been able to apply for permanent residence until ten years had elapsed.⁶⁸ Others argued that the Reagan proposals would prove useless or counterproductive because the stringent conditions would dissuade aliens from applying for the amnesty.⁶⁹ One observer argued that in attempting to look generous and tough at the same time, the administration would deny with one hand what it offered with the other.⁷⁰

On the legislative side, the 1980 congressional elections changed the leadership of the Senate and House subcommittees on immigration. Senator Alan Simpson, a former member of SCIRP, and Representative Romano Mazzoli brought a strong interest in immigration reform directly to the subcommittees.⁷¹ Over the next few years, both Houses of Congress debated the proposed Simpson-Mazzoli bills.⁷² These bills

66. Palmieri, *supra* note 64, at xv.

67. Mendez, *The Rights of Aliens in the 1980's*, 2 ANTIOCH L. J. 39, 41 (1982). Mendez argues that the Reagan administration proposals would create a class of workers that contributes to the wealth of the country but is entitled to few of its benefits. *Id.*; see also Leaf, *supra* note 27, at 77 (discussing the inconsistency regarding undocumented alien access to federal benefits and taxes).

68. Mendez, *supra* note 67, at 41. One of the benefits of the permanent resident status is that the person can apply for citizenship in five years. Immigration and Nationality Act, § 316(a), 8 U.S.C. § 1427(a) (Supp. IV 1986).

69. Palmieri, *supra* note 64, at xv. Palmieri argues:

The administration's version of amnesty makes sense only if it is intended to minimize participation; otherwise it would seem to be an exercise in futility. It is difficult to appreciate the purpose of legalization when its effect is to create a class of residents who for a long period pay taxes but are ineligible for services, unable to reunify their families, and unable to participate in the political process. Since it seems unlikely that many undocumented people would come forward to claim these highly indistinct benefits, the plan will fail to achieve the basic purpose of an amnesty—that is, reducing significantly the number of people residing here illegally.

Id. Palmieri points out that undocumented aliens are often wary of trusting a government that previously pursued and deported them. *Id.*; see *Immigration Control and Legalization Amendments: Hearings on H.R. 3080 Before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary*, 99th Cong., 1st Sess. 93-94 (1985) [hereinafter *1985 House Legalization Hearings*] (statement of Dale S. De Haan, Director of the Church of World Service of the National Council of Churches) (discussing the undocumented aliens' acceptance of the legalization program).

70. Palmieri, *supra* note 64, at xvi.

71. M. MORRIS, *supra* note 1, at 1-2; D. NORTH, *supra* note 11, at C-4; see D. REIMERS, *supra* note 4, at 152 (stating that in 1981 Senator Simpson assumed leadership in the Senate in formulating immigration proposals).

72. S. 2222, 97th Cong., 2d Sess., 128 CONG. REC. 4,422-26 (1982); H.R. 4327, 97th Cong., 2d Sess., 127 CONG. REC. 18,584 (1981); S. 529, 98th Cong., 2d Sess.,

generally contained a two-tiered amnesty similar to those previously proposed,⁷³ but with a shorter time period than that proposed by the Reagan administration before the legalized aliens could apply for permanent residence.⁷⁴ Although the Senate passed versions of the bill in 1982 and 1983, the House failed to act on the legislation until 1984. The 1984 bill, however, died in the last days of the Ninety-eighth Congress when a House-Senate conference failed to reach agreement on an amnesty proposal.⁷⁵ Although unsuccessful, the various Simpson-Mazzoli bills focused debate and clarified issues, setting the stage for the approval of IRCA in 1986.

The 1986 debates over IRCA focused on three main issues. As already discussed, the first issue was whether to provide government benefits or services to aliens that receive amnesty.⁷⁶ The final version of IRCA excludes aliens from receiving benefits for five years except for a few selected programs.⁷⁷

The second issue in the debates concerned whether to enact an immediate amnesty or a "triggered" amnesty.⁷⁸ A triggered amnesty would delay the legalization of aliens until a presidential commission

129 CONG. REC. 51,308 (1984); H.R. 1510, 98th Cong., 2d Sess., 129 CONG. REC. 4,578 (1984); see *supra*, note 1 (discussing a brief history of the Simpson-Mazzoli bills).

73. See *supra* notes 40-41 and accompanying text (discussing the two-tiered amnesty).

74. See S. 2222, 97th Cong., 2d Sess., 128 CONG. REC. 4,422-26 (1982) (providing permanent resident alien status for persons who arrived in the United States before January 1, 1977, and temporary resident alien status for those who arrived after that date, but before January 1, 1980).

75. M. MORRIS, *supra* note 1, at 2.

76. See *supra* notes 157-63 (discussing the debate over the denial of benefits under the amnesty proposals). The exclusion of benefits is usually justified as a cost-saving measure. See 1985 House Legalization Hearings, *supra* note 69, at 258-61 (statement of Janice Peskin of the Congressional Budget Office) (expressing concern over the costs of amnesty with regard to government programs). *But cf.* Leaf, *supra* note 27, at 77 (arguing that because undocumented aliens are situated similarly to other taxpayers, their exclusion from federal programs may violate the equal protection clause of the United States Constitution). A 1975 Labor Department study estimated that 73% of all undocumented aliens had federal income taxes deducted from their paychecks, while 77% had social security taxes withheld. *Id.*

77. Immigration and Nationality Act, § 245A(h), 8 U.S.C. § 1255a(h) (Supp. IV 1986); Pear, *supra* note 1, at A1, col. 6.

78. *Immigration Reform and Control Act of 1985, S. 1200 Hearings Before the Subcomm. on Immigration and Refugee Policy of the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. 444-46 (1985) [hereinafter 1985 Senate Hearings] (statement of Alan C. Nelson, Commissioner of the INS); see Leibowitz, *Comparative Analysis of Immigration in Key Developed Countries in Relation to Immigration Reform and Control Legislation in the United States*, 7 HUM. RTS. L.J. 1, 68 (1986) (stating that in 1985 the Senate made a radical change in the amnesty provision of S. 1200 by making it contingent on the effective enforcement of employer sanctions).

determines that adequate enforcement mechanisms are in place and the entry of undocumented aliens is under control.⁷⁹ The rationale is that without adequate enforcement, an amnesty would offer an invitation to thousands of aliens to cross the borders of the United States seeking legal status.⁸⁰ Although some groups expressed support for a triggered amnesty,⁸¹ widespread criticism quickly surfaced. Many argued that the complexity of the provision would preclude its enactment and instead advocated a simplified administrative program.⁸² In the final version of the bill, Congress rejected a triggered amnesty in favor of a program beginning almost immediately.⁸³

The cutoff date was a third major issue in the amnesty debate.⁸⁴ Supporters of a liberal amnesty argued for a date relatively close to the date of enactment, whereas supporters of a restrictive amnesty wanted a date further in the past.⁸⁵ In the end, IRCA established a date of

79. S. 1200, 99th Cong., 1st Sess. § 201-02 131 CONG. REC. S7040-54 (daily ed. May 23, 1985). The bill provided that the amnesty take effect only when a presidential commission determined that adequate border enforcement and employer sanctions were functioning effectively. *Id.* In particular, the commission would have to establish that the following conditions were satisfied: (1) illegal entry into the United States has been controlled, (2) violations of terms of entry have been reduced, and (3) the employment of undocumented aliens has been eliminated. 1985 Senate Hearings, *supra* note 78, at 93.

80. 1985 Senate Hearings, *supra* note 78, at 255 (statement of Rep. James H. Scheuer).

81. *Id.* at 264 (statement of Roger Conner of the Federation for American Immigration Reform); *id.* at 298 (statement of Dr. M. Rupert Cutler of the Environmental Fund); see also Leibowitz, *supra* note 78, at 68-69 (suggesting that the Reagan administration's concerns about the cost of the amnesty bolstered the idea of a delayed amnesty because a presidential commission would almost assure that no money would be spent for several years).

82. 1985 Senate Hearings, *supra* note 78, at 362-63 (statement of Dale S. De Haan of the National Council of Churches). Some argued that because the conditions for amnesty depend on uncertain factors, such as adequate border enforcement and an end to undocumented alien employment, making amnesty contingent on those factors may mean that it is never enacted. See *id.* at 459-69 (statement of Richard H. Keatinge of the American Bar Association) (arguing that the provisions of S. 1200 do not guarantee that there will ever be a legalization program or, if one is established, that its results will be definite); see also Abrams, *supra* note 61, at 127 (pointing out that if an alien has a sufficient stake in the United States, the amnesty should be full, not partial).

83. See Immigration and Nationality Act, § 245A, 8 U.S.C. § 1255a (Supp. IV 1986) (providing for an amnesty that is not contingent on anything to "trigger" it); see also *infra* notes 129-72 and accompanying text (outlining the specifics of amnesty under IRCA).

84. See D. NORTH, CIS PAPER, IMMIGRATION REFORM IN ITS FIRST YEAR 19-20 (1987) [hereinafter CIS PAPER] (stating that there was spirited debate in Congress over the cutoff date of the amnesty).

85. See 1985 Senate Hearings, *supra* note 78, at 151-52 (statement of Richard Fajardo of the Mexican American Legal Defense and Educational Fund) (arguing for a relatively late cutoff date). Advocates of a late cutoff date were concerned that many

January 1, 1982, reflecting a compromise between these two positions.⁸⁶

B. CURRENT STATE OF THE PROBLEM

Illegal immigration is undoubtedly a major problem in the United States.⁸⁷ The number of INS apprehensions of undocumented aliens illustrates the magnitude of the problem.⁸⁸ In the middle of fiscal year 1986, the INS produced an all-time apprehension record of over 1.2 million aliens, a 10.9% increase over those apprehended during the entire year of 1984.⁸⁹ Because these figures represent only aliens the INS has apprehended, the total number of undocumented aliens in the United States is much higher. Although the precise number is not known, in early 1987 INS officials estimated that 6.5 to 7 million undocumented aliens were living in the United States.⁹⁰

aliens would not be brought into legal status if the date was set far before the passage of the law. *Id.* at 152. *But see 1985 House Legalization Hearings, supra* note 69, at 189 (statement of Dr. M. Rupert Cutler of the Environmental Fund) (arguing for the cutoff date to be rolled back to an earlier date).

86. CIS PAPER, *supra* note 84, at 20. The cost of implementation was another issue in the debates over amnesty. *See 1985 House Legalization Hearings, supra* note 69, at 265 (statement of James Muller of the Urban Institute) (citing Congressional Budget Office estimates, finding that excluding 1.4 million legalized persons from federal assistance programs would cost states and localities as much as \$730 million a year); *see also id.* at 256-61 (statement of Janice Peskin of the Congressional Budget Office (CBO)) (stating that \$600 million may cover the costs of amnesty). The CBO premised this estimate on 60% of undocumented aliens applying for amnesty. *Id.*

87. *Immigration Reform and Control Act of 1983, Hearings on H.R. 1510 Before the Subcomm. on Immigration, Refugees, and International Law of the House Comm. on the Judiciary, 98th Cong., 1st Sess. 1247 (1983)* [hereinafter *1983 House Hearings*] (statement of Rep. Dante Fascell); *see 1985 House Legalization Hearings, supra* note 69, at 31 (statement of Alan C. Nelson, Commissioner of the INS) (stating that the illegal immigration problem is getting worse).

88. *See Leaf, supra* note 27, at 67 (stating that INS apprehension figures are the only hard data available on the trends of illegal immigration).

89. *Enforcement: Dealing With Illegal Immigration, INS REP. 4 (Fall/Winter 1985-86)*. 94% of these apprehensions were made in the southwest border states of California, Arizona, New Mexico, and Texas. *Id.*

90. Arocha, *INS Braces for Flood of Aliens*, Wash. Post, Feb. 7, 1987, at A8, col. 1. Another way of attempting to determine the number of undocumented aliens is through the national census. The 1980 census counted 2,057,000 undocumented aliens. *1985 House Legalization Hearings, supra* note 69, at 228 (statement of Jeffrey Passel, Chief, Population and Analysis Staff, Bureau of the Census). The Bureau of the Census derived its 1980 numbers from a comparison of two different sets of estimates: (1) estimates of the total number of aliens included in the census, and (2) estimates of the number of aliens residing legally in the country at the census date. *Id.* The difference represents the number of undocumented aliens. *Id.* Because the census figures are lower than other estimates, their validity is questionable. In general, arriving at accurate numbers when based on a census is problematic. *See M. MORRIS, supra* note 1, at 51 (pointing out that census-based estimates are only marginally useful because undocumented aliens are unlikely to report their status, and the Census Bureau has no way of accurately enumerating undocumented aliens).

The ethnic composition of the majority of aliens entering the country since the 1970s is quite different from that of those aliens who entered in previous time periods. From 1971 to 1976, forty-one percent of the aliens admitted to the United States came from Latin America while thirty-two percent came from Asia.⁹¹ From 1977 to 1979, the numbers were forty-two percent and thirty-nine percent, respectively.⁹² The majority of the undocumented aliens in the United States, about fifty-five to sixty percent are Mexican.⁹³ Available evidence indicates that the typical undocumented alien is a young Hispanic male between the ages of fifteen and twenty-nine who is relatively unskilled and poorly educated.⁹⁴

This consistent pattern of illegal immigration has resulted in an enormous underground population living outside the law and avoiding both its sanctions and protections.⁹⁵ It has created an image of lawless-

91. M. MORRIS, *supra* note 1, at 51; T. KESSNER & B. CAROLI, *supra* note 29, at 17 (discussing that of the 21 countries responsible for the bulk of immigration to the United States since 1965, only two, Greece and Italy, are "traditional" sources of immigration).

92. M. MORRIS, *supra* note 1, at 58. Morris draws a useful comparison with immigration patterns from earlier time periods. For example, the current numbers can be compared to the years 1901 to 1930, when 81% of immigrants came from Europe, as opposed to the 5% from Latin America and 3% from Asia. *Id.*; see also U.S. NEWS AND WORLD REPORT, Nov. 24, 1986, at 32 (suggesting that if trends continue, by the year 2080 more than half of all United States citizens will be Hispanic, Asian, or Black, and 40% of workers will be immigrants or descendants of immigrants who arrived after 1980). See generally D. REIMERS, *supra* note 4, at 122-54 (describing how, since the legislative changes of 1965, more persons from the Western Hemisphere have been immigrating into the United States).

93. 1985 House Legalization Hearings, *supra* note 69, at 224 (statement of Jeffrey Passel, Chief, Population and Analysis Staff, Bureau of the Census); Developments in the Law, *Immigration Policy and the Rights of Aliens*, 96 HARV. L. REV. 1286, 1436 (1983); Corwin, *supra* note 6, at 223. Corwin's study revealed a low number of 5.4 million and a high number of 6.79 million Mexicans residing illegally in the United States. *Id.* at 248. Other regions were represented as follows: 400,000 to 530,000 people from the Caribbean; 390,000 to 500,000 Central Americans; 270,000 to 380,000 South Americans; 440,000 to 540,000 Asians; 320,000 to 350,000 Middle Easterners and East Indians; 500,000 to 600,000 others, including Canadians, Europeans, and Africans. *Id.* at 248-49.

94. See 1985 House Legalization Hearings, *supra* note 69, at 224 (statement of Jeffrey Passel, Chief, Population and Analysis Staff, Bureau of the Census) (citing figures showing that 49% of undocumented aliens are between 15 and 29 years old, 22% are in their thirties, 18% are under 15, and 11% are over 40); M. MORRIS, *supra* note 1, at 62 (stating that undocumented aliens are not as well educated as the legal immigrant population and more likely to be of labor age); Waldinger, *The Occupational and Economic Integration of the New Immigrants*, in U.S. IMMIGRATION POLICY, *supra* note 1, at 197 (stating that most undocumented aliens are poorly educated and worked in agricultural and blue collar jobs in their native countries).

95. See *Employer Sanctions*, *supra* note 2, at 991 (acknowledging the problems resulting from communities of undocumented aliens living outside the law). Senator Simpson stated that one of the purposes of the Simpson-Mazzoli bills was to "bring an

ness and disrespect for law and has generated an entire range of illegal activities peripheral to the undocumented population.⁹⁶ The sheer numbers of newly arrived persons also affects socioeconomic conditions in the United States.⁹⁷ While some effect is certain, the benefit or detriment of this phenomenon is debatable.⁹⁸ Part II of this Comment dis-

illegal subsociety" out into the open. 129 CONG. REC. S6906 (daily ed. May 18, 1983)(Statement of Sen. Alan K. Simpson).

There is widespread confusion as to what the legal rights of undocumented aliens are. See *The Legal Status*, *supra* note 31, at 668-69 (explaining that while some courts have treated undocumented aliens as outlaws who forfeit their legal rights upon violations of immigration laws, other courts maintain that undocumented aliens are legal persons entitled to basic rights).

96. See United States Department of Justice, *The Criminal Use of False Identification*, in SELECTED READINGS, *supra* note 12, at 145 [hereinafter *Criminal Use*] (outlining several kinds of illegal activities associated with illegal immigration). One such activity involves the duplication and forgery of documents, such as "green cards," that help undocumented aliens avoid capture and deportation. *Id.* The "green card" (INS Form I-551) is the basic proof of status as a lawful permanent resident of the United States. R. MADISON, *THE GREENCARD BOOK 1* (1981). There is widespread fraud involving the duplication and forgery of social security cards which, like green cards, undocumented aliens use for identification purposes. D. REIMERS, *supra* note 4, at 211-12.

Another effect of illegal immigration is an increase in the number of professional smugglers, commonly called "coyotes," who help dozens of aliens cross the border every day. *Criminal Use*, *supra* at 145; see also R. GOLDEN & M. MCCONNELL, *SANCTUARY: THE NEW UNDERGROUND RAILROAD* 37-40 (1986) (describing one particular "coyote" responsible for bringing approximately 700 Central Americans across the border).

97. See Waldinger, *supra* note 94, at 197 (noting that, as an aspect of economic impact, the key question in the immigration debate is the impact of immigrants on the labor market); 1983 *House Hearings*, *supra* note 87, at 431 (statement of Rep. Charles Wilson) (expressing concern over the negative impact of illegal immigration on the unemployment situation); see also *Economic and Demographic Consequences of Immigration: Hearings Before the Subcomm. on Economic Resources, Competitiveness, and Security Economics of the Joint Economic Comm. of the Congress of the United States*, 98th Cong., 2d Sess. 157 (1986) [hereinafter *Hearings on Economic Consequences*] (statement of Beryl W. Sprinkel, Chairman of the Council of Economic Advisers) (noting that although immigrants work, save, pay taxes, and consume public services, there is concern about their effect on the job opportunities and wages of native-born persons). But see P. HILL, *THE ECONOMIC IMPACT OF IMMIGRATION INTO THE UNITED STATES* 27 (1975) (arguing that immigration has negligible effects on the per capita income of the population).

98. See Waldinger, *supra* note 94, at 197 (discussing the debate over the socioeconomic effects of immigration). Waldinger offers two opposing arguments regarding the impact of aliens on the labor market: one side argues that the presence of new immigrants increases the labor supply leading to lower wages, increased unemployment, and a disruption of normal labor patterns; the other side argues that immigrants fill the lower level "noncompeting" jobs that complement the higher level jobs filled by natives. *Id.*; see also T. KESSNER & B. CAROLI, *supra* note 29, at 74 (noting that many industries, especially the agricultural and clothing industries, depend on undocumented Mexican workers); D. REIMERS, *supra* note 4, at 227 (stating that the issue of the effect of undocumented aliens on the labor market is highly controversial).

Illegal immigration also has created adverse political effects for United States for-

cusses this economic debate.

Finally, the volume of illegal immigration has strained the administrative offices of the federal government.⁹⁹ In particular, the great number of cases that the INS handles has overburdened that agency and resulted in low morale and widespread criticism.¹⁰⁰ One response, increasing both the INS budget and the ranks of the agency, is not enough.¹⁰¹

As a consequence of these problems, Congress enacted an immigra-

tion policy. *See* TIME, July 9, 1984, at 58 (describing the resentment felt in Mexico over Senate passage of the Simpson-Mazzoli bill in 1984). Many Mexicans were angry about the employer sanctions provisions. *Id.* Some viewed the bill not as immigration reform, but as an act of aggression because it threatened Mexico's "safety valve" of an open border with the United States. *Id.*

99. M. MORRIS, *supra* note 1, at 88-89. Six federal agencies share the administration of immigration policies. *Id.* at 87. Two of these agencies have the primary responsibility for enforcement: the Immigration and Naturalization Service within the country, and the State Department's Bureau of Consular Affairs outside the country. *Id.* The other agencies include the Office of Labor Certification in the Department of Labor, the Bureau of Public Health and the Office of Refugee Resettlement in the Department of Health and Human Services, and the Office of the United States Coordinator for Refugee Affairs in the Executive Office of the President. *Id.*

100. *Id.* Morris instructively labels the problem "the beleaguered bureaucracy." *Id.* Many today still share Rep. Joshua Eilberg's 1977 view that the INS is incapable of administering and enforcing the INA. *Id.* The following statement is instructive:

The Service is at this point a disgrace. Each year we institute some new "initiative" in the name of efficiency and come one additional step closer to simply giving up the store. It is high time someone took a long hard look, not only at the effects of illegal immigration on this society, but at the state of affairs that benign neglect has created in this agency. The picture is not a pretty one. The INS is a management disaster, it is undermanned, it has been underfunded for more years than I have been in its employ. It begs for philosophical leadership and a clear law enforcement mandate.

Immigration and Naturalization Service Budget Authorization, Fiscal Year 1986, Hearings Before the Subcomm. on Immigration, Refugees and International Law of the House Comm. on the Judiciary, 99th Cong., 1st Sess. 63 (1985) [hereinafter INS Budget Hearings] (statement of Charles J. Murphy, President, National Immigration and Naturalization Service Council, American Federation of Government Employees, AFL-CIO); *see Panel Discussion*, 36 U. MIAMI L. REV. 939, 953 (1982) (statement of Rudolph W. Giuliani) (stating that the severe management and budget problems are the product of years of treating immigration as a secondary problem); *1983 House Hearings, supra* note 87, at 1305 (statement of the Federation for American Immigration Reform) (citing an estimate that the Border Patrol is operating at an effectiveness level between 33% and 50%, allowing one to two persons to enter the country for every one apprehended).

101. *See* M. MORRIS, *supra* note 1, at 132 (showing that INS budget requests and congressional appropriations increased every year between 1969 and 1984). Illustrative of Congress's perception of the immigration problem is the percentage increase in appropriations from 1981 to 1982, a 21.1% increase. *Id.*; *see also*, INS REP., *supra* note 89, at 4 (pointing out that the INS added 768 new Border Patrol agents in 1985). *But see* Abrams, *supra* note 62, at 124 (stating that since the 1970s, the INS budget has not kept up with the number of aliens that it has to process). As Abrams explains, "there are too few people attempting to accomplish far too much work." *Id.*

tion reform law containing a broad amnesty. IRCA is a response from a Congress that was long inactive in the face of a growing national problem. As in Canada, the United States Congress is hoping that the amnesty will bring within the law millions of undocumented aliens currently living outside of it.

C. THE CANADIAN AMNESTY EXPERIENCE

1. Background

Canada, like the United States, has welcomed immigrants throughout much of its history.¹⁰² In 1973, Canada continued this "open arms" policy with legislation granting a generous amnesty to undocumented aliens. To understand why the Canadian government decided to enact an amnesty, however, one must examine Canadian immigration policies and their effects in the 1960s.

Although Canadians expected their Conservative Party government to provide some legislative action on immigration matters in the early 1960s, by the time the Liberal Party under Lester Pearson regained power in 1963, there had been little action by the government or Parliament.¹⁰³ The Liberals, especially Minister of Citizenship and Immigration Rene Tremblay, were therefore determined to change the way Canada formulated its immigration policies.¹⁰⁴ Accordingly, beginning in 1966, they took a series of steps that would have long-term effects.

First, the government enacted the Government Organization Act of 1966 (Act).¹⁰⁵ The Act eliminated the Department of Citizenship and

102. See G. DIRKS, CANADA'S REFUGEE POLICY: INDIFFERENCE OR OPPORTUNISM? preface (1977) (stating that Canada traditionally has welcomed and encouraged immigration). But see F. HAWKINS, CANADA AND IMMIGRATION: PUBLIC POLICY AND PUBLIC CONCERN 33 (1972) (stating that unlike the United States, Canadians have no settled view or common convictions about immigration). Hawkins disputes the reference to Canada as a "nation of immigrants" by pointing out that there are essentially two founding groups in Canada: the British and the French. *Id.* at 34; see Harakas, *Canadian Immigration Law and the Canadian Charter of Rights and Freedoms*, 1985 DET. C.L. REV. 1089, 1093 (1985) (stating that immigration to Canada has been a privilege and not a right); cf. THE IMMIGRATION PROGRAM, REPORT OF THE CANADIAN IMMIGRATION AND POPULATION STUDY 37-38 (1974) [hereinafter IMMIGRATION PROGRAM] (stating that historically immigration priorities have shifted according to national requirements in the development of Canadian society and its economy).

103. C. WYDRZYNSKI, CANADIAN IMMIGRATION LAW AND PROCEDURE 58 (1983).

104. F. HAWKINS, *supra* note 102, at 141. Hawkins writes that Tremblay initiated a badly needed "new deal" in immigration which focused on administrative improvements. *Id.*; see also Marr, *Canadian Immigration Policies Since 1962*, 1 CANADIAN PUB. POL'Y 196 (Spring 1975) (stating that attempts to enhance the efficiency of Canadian immigration offices began with Tremblay in 1964).

105. Government Organization Act of 1966, ch. 25, Can. Stat. 161 §§ 11-14 (1966).

Immigration in favor of a new Department of Manpower and Immigration.¹⁰⁶ This change reflected the prevailing view that immigration was a function of domestic labor and economic policy and, thus, a single administrative structure should regulate it.¹⁰⁷

Second, the newly formed Department of Manpower and Immigration published the *White Paper* on immigration in late 1966.¹⁰⁸ The *White Paper* emphasized the need in Canada for immigrants and, therefore, recommended that immigration be actively encouraged.¹⁰⁹ The report, produced during a period of relative economic prosperity, presented a very positive statement on immigration.¹¹⁰

Two decisions made in 1967 had a significant impact on the immigration policies of Canada. First, the government permitted short-term visitors, such as students and tourists, to apply for readjustment of status from nonimmigrant to immigrant while in Canada.¹¹¹ Second, Parliament made the Immigration Appeal Board (IAB) of the Department of Manpower and Immigration independent and reorganized it to allow all aliens facing deportation to appeal their cases.¹¹²

106. *Id.*; C. WYDRZYNSKI, *supra* note 103, at 58.

107. C. WYDRZYNSKI, *supra* note 103, at 58; F. HAWKINS, *supra* note 102, at 338-39. Hawkins explains that this is a highly logical arrangement for Canada because "[e]ven if immigration could manage without manpower, it would be difficult for manpower to manage without immigration." *Id.* at 339; see IMMIGRATION POLICY PERSPECTIVES: REPORT OF THE CANADIAN IMMIGRATION AND POPULATION STUDY 60 (1974) (stating that as Canada's industrial growth produced new labor priorities, its immigration policies changed); Marr, *supra* note 104, at 198 (maintaining that the "wedding" of immigration with manpower is logical and advantageous for Canada; see also *id.* at 197 (explaining that since 1962 the Canadian government has stressed economic factors, such as education, training, and job opportunities in the immigration selection system)).

108. DEPARTMENT OF MANPOWER AND IMMIGRATION, WHITE PAPER ON IMMIGRATION (1966) [hereinafter WHITE PAPER]; see F. HAWKINS, *supra* note 102, at 159-61 (describing the *White Paper* and its objectives).

109. WHITE PAPER, *supra* note 108, at 41. The *White Paper* specifically states that "[i]mmigration has made a major contribution to the national objectives of maintaining a high rate of population and economic growth." *Id.* at 5. Immigration programs meant "[a] steady policy of recruitment based on long term considerations of economic growth." *Id.* at 12; see also C. WYDRZYNSKI, *supra* note 103, at 59-60 (outlining the *White Paper's* recommendations).

110. C. WYDRZYNSKI, *supra* note 103, at 59.

111. Immigration Regulations, Pt. I, 101 Can. Gaz. II 1350 (Sept. 13, 1967). Previously, persons could apply for immigrant status only from outside Canada. D. North, *supra* note 11, at A-13; see also LAW UNION OF ONTARIO, THE IMMIGRANT'S HANDBOOK 41 (1981) (stating that in the late 1960s and early 1970s it was relatively easy to obtain landed immigrant status in Canada).

In Canada, "landed immigrant" status is analogous to permanent resident status in the United States. D. NORTH, *supra* note 11, at A-13.

112. Immigration Appeal Board Act of 1967, Can. Rev. Stat. ch. 1-3 (1970). The Immigration Appeal Board (IAB) of 1967 replaced the one created in 1956, which had no authority to consider appeals. *Id.*; cf. G. DIRKS, *supra* note 102, at 230 (explaining

Immigration to Canada greatly increased as a result of large numbers of people entering the country to seek landed immigrant status. The monthly total of persons arriving in Canada almost doubled from early 1972 to September of that year, and more than doubled again by the middle of 1973.¹¹³ As a result, appeals from aliens facing deportation flooded the IAB. The IAB, designed to handle 100 cases a month, began receiving new cases at the rate of 1000 a month.¹¹⁴ The result was an immigration system out of control.

2. Canadian Amnesty

The amnesty program in Canada consisted of two tiers: Project 80, adopted in June 1972, and Project 97 enacted in 1973. Project 80 was aimed at alleviating the backlog of IAB cases.¹¹⁵ This measure consisted of a relatively simple administrative program that involved a screening of the backlog of cases before the IAB and the subsequent weeding out of relatively easy cases.¹¹⁶ Canada liberalized the criteria for granting landed immigrant status and, except in extreme criminal cases, granted most aliens that status.¹¹⁷

In November 1972, the Canadian government revoked its 1967 decision to allow nonimmigrants to apply for readjustment of status.¹¹⁸ This

that the IAB has had a great impact on Canadian refugee policy since 1967).

113. D. NORTH, *supra* note 11, at A-13—A-14; *see* IMMIGRATION PROGRAM, *supra* note 102, at 36 (discussing the dramatic rise in immigration).

114. *See* DEBATES OF THE SENATE (Canada), Sess. 1973-1974, 891 [hereinafter SENATE DEBATES] (statement of Sen. Paul Yusyik). (citing figures showing the following increase in the IAB's caseload since 1969: Jan. 1, 1969, 200 cases; Jan. 1, 1970, 1750 cases; Jan. 1, 1971, 4750 cases; Jan. 1, 1972, 8081 cases; Jan. 1, 1973, 11,875 cases; June 1, 1973, 17,472 cases); *see also* Liebowitz, *supra* note 78, at 31 (indicating that the number of applications for adjustment of status before the IAB rose from a monthly total of 3,750 in 1970 to 8,700 in late 1972).

115. Liebowitz, *supra* note 78, at 30-31; *see* IMMIGRATION PROGRAM, *supra* note 102, at 36-37 (describing Project 80 as an administrative program to clear the IAB backlog through a partial amnesty).

116. D. NORTH, *supra* note 11, at A-19; *see* Liebowitz, *supra* note 78, at 31 (outlining the procedure under Project 80). The alien did not need to apply or decide whether to participate. *Id.*

117. Liebowitz, *supra* note 78, at 31. The following cases are illustrative of the types of criminal cases where the IAB has deported aliens in the past. *See* Claud Albert Akkaoui, 7 I.A.C. 177 (1973) (deporting an alien for a conviction in the United States for interstate transportation of a stolen vehicle); Roosevelt Bernard Douglas, 10 I.A.C. 428 (1975) (deporting an alien convicted of mischief under the *Criminal Code of Canada*); Lorraine Carol Burton, 9 I.A.C. 277 (1974) (deporting an alien for possession of marijuana).

118. Amendment of Immigration Regulations, Pt. 1, 106 Can. Gaz. II 1991 (Nov. 6, 1972); D. NORTH, *supra* note 11, at A-16. North described the revocation of the decision allowing nonimmigrants to adjust their status as "changing the rules in the middle of the game." *Id.* This decision left a large number of aliens who had arrived in

decision had the effect of placing in a legal limbo those aliens who had arrived in Canada seeking landed immigrant status. As a result, the government proposed a generous amnesty to Parliament in the form of an amendment to the Immigration Appeal Board Act of 1967.¹¹⁹ Legislators introduced the bill, called Project 97, in June and it took effect less than two months later.¹²⁰ Project 97 was a legislative response to the illegal immigration problem, whereas Project 80 was an administrative measure. The legislation provided a sixty-day period during which all undocumented aliens residing in the country since November 30, 1972 could apply for landed immigrant status.¹²¹

Under Project 97, individual immigration officers who interviewed the aliens retained discretion to grant landed immigrant status. As was done under Project 80, they denied only the hard criminal cases.¹²² The Ministry of Manpower and Immigration handled the administration of the amnesty and was sensitive to the aliens' concerns of government reprisals.¹²³

One interesting aspect of the amnesty was the relatively short time frame of the offer. The rationale for this was that the sixty-day period would focus the attention of the aliens on the amnesty and produce as many applicants as would a long and relaxed campaign.¹²⁴ In addition,

Canada with the intention of seeking adjustment of status without any legal recourse. *Id.*; see IMMIGRATION PROGRAM, *supra* note 102, at 37 (stating that the Parliament intended that the legislation be a holding measure until new legislation could be prepared).

119. Act of July 27, 1973 to Amend the Immigration Appeal Board Act, ch. 27, 1973-1974 Can. Stat. 423 (proclaimed in force, Aug. 15, 1973); see SENATE DEBATES, *supra* note 114, at 884 (statement of Sen. Jean-Paul Deschatelets) (stating that the bill was an emergency measure); *id.* at 891 (statement of Sen. Paul Yuzyk) (stating that the bill was an emergency response to an intolerable crisis).

120. D. NORTH, *supra* note 11, at A-17; see Immigration Adjustment of Status Regulations, 107 Can. Gaz. II 2069 (Aug. 3, 1973) [hereinafter Adjustment Regulations] (promulgating regulations for the act to take effect on August 15, 1973).

121. Act of July 27, 1973 to Amend the Immigration Appeal Board Act, ch. 27, 1973-1974 Can. Stat. 423, 429 (proclaimed in force, Aug. 15, 1973); Leibowitz, *supra* note 78, at 31-32.

122. See *supra* note 117 (describing the types of criminal cases where the IAB denied appeal from deportation). The regulations gave broad discretion to the immigration officers. See Adjustment Regulations *supra* note 120, at 2 (allowing consideration of the alien's financial situation, employment, education, linguistic abilities, availability of family, and business in Canada).

123. D. NORTH, *supra* note 11, at A-22. An alien who was fearful of coming forward could send a third person to the immigration official with the pertinent information and the alien would then have to come forward only after the Ministry made a prospective decision on the application. Leibowitz, *supra* note 78, at 33. If the alien decided not to take advantage of the amnesty, he or she faced deportation without appeal if discovered. *Id.*

124. D. NORTH, *supra* note 11, at A-23. But see SCIRP REPORT, *supra* note 17, at 79 (arguing that the sixty-day time period for the Canadian amnesty was too short).

Project 97 received wide publicity and faced a minimum amount of opposition from political parties, the public, and the media.¹²⁵

Although the Canadian government initially speculated that as many as 200,000 persons would take advantage of the amnesty, in the end only about 52,000 aliens benefited: 13,000 from Project 80 and 39,000 from Project 97.¹²⁶ It is noteworthy that aliens filed fully ten percent of the applications for amnesty on the final day of the program.¹²⁷ Although the amnesty did not produce the numbers expected, Canadians viewed the program as a success.¹²⁸ Additionally, the program provides the United States with useful lessons in the implementation of the IRCA amnesty.

II. AMNESTY UNDER IRCA

A. The Law

Title II of IRCA provides an amnesty for undocumented aliens currently residing in the United States and directs the Attorney General to promulgate implementing regulations.¹²⁹ Although Title II is divided into four sections,¹³⁰ it is the first one, the legalization of status sec-

125. D. NORTH, *supra* note 11, at A-24—A-26.

126. *Id.* at A-20—A-28. About half of those receiving Project 97 amnesty resided in Ontario and about 20% resided in Quebec. *Id.* at A-37.

It is significant that about 19,500 of the 39,000 aliens that came forward under Project 97 were "illegal aliens" in the sense that the phrase is used in the United States. *Id.* This group included some of the aliens facing deportation when they became eligible for Project 80. *Id.* at A-38. "Non-immigrants," which included large numbers of foreign students residing in Canada accounted for 20,000 of the aliens participating in Project 97. *Id.*

127. CIS PAPER, *supra* note 84, at 22.

128. W. ROBINSON: A REPORT TO THE HONORABLE LLOYD AXWORTHY MINISTER OF EMPLOYMENT AND IMMIGRATION ON ILLEGAL MIGRANTS IN CANADA 33 (June, 1983) [hereinafter ROBINSON REPORT]; see D. NORTH, *supra* note 11, at A-48; cf. Leibowitz, *supra* note 78, at 21 (stating that Canada is often looked at as the key analogue to the United States with respect to amnesty).

129. Immigration and Nationality Act, § 245A, 8 U.S.C. 1255a (Supp. IV 1986). In IRCA, Congress directed the Attorney General to prescribe regulations after consulting with the Judiciary Committees of the House of Representatives and Senate. *Id.* § 245A(g). IRCA is only enabling legislation. Wilentz, *Harvest of Confusion*, TIME, Nov. 3, 1986, at 28. The regulations contain the mechanics of the amnesty program. See *INS Issues Final Regulations to Implement Simpson-Rodino Act*, 64 Interpreter Releases (Fed. Pub.) 517, 517-19 (May 4, 1987) [hereinafter *INS Final Regulations*] (describing the final regulations that the INS issued to implement legalization under IRCA); see also *INS Announces Proposed Simpson-Rodino Act Regulations*, 64 Interpreter Releases (Fed. Pub.) 307, 307-11 (Mar. 19, 1987) [hereinafter *INS Proposed Regulations*] (reporting on the regulations that the INS proposed in March 1987).

130. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, §§ 201-204, 100 Stat. 3359, 3394-3411 (1986) (codified in scattered sections of 8 U.S.C.). Section 202 provides for a special adjustment of status for Cubans and Haitians. *Id.* § 202. Section 203 updates the registry date to January 1, 1972. *Id.* § 203 (codified at 8

tion,¹³¹ that is most important for amnesty purposes. Additionally, Title III provides an amnesty for "Special Agricultural Workers" (SAWs).¹³² This Comment focuses solely on the main amnesty program under Title II.

IRCA provides that the Attorney General shall adjust the undocumented status of aliens to that of lawfully admitted for temporary residence provided that the aliens meet certain requirements.¹³³ First, aliens must apply for adjustment of status during the twelve-month period beginning on a date set by the Attorney General.¹³⁴ The implementing regulations designated May 5, 1987 as that date; therefore, aliens must apply for amnesty by May 4, 1988.¹³⁵

Second, aliens must establish that they entered the United States before January 1, 1982 and that they have resided continuously in the country in an illegal status since that date.¹³⁶ Aliens who entered as

U.S.C. § 1259). Section 204 appropriates \$1 billion over four years to carry out the amnesty program. *Id.* § 204.

131. Immigration and Nationality Act, § 245A, 8 U.S.C. § 1255a (Supp. IV 1986).

132. *Id.* §§ 210, 216.

133. *Id.* § 245A.

134. *Id.* § 245A(a)(1)(A). The Attorney General, through the INS, commenced the program on May 5, 1987. 52 Fed. Reg. 16190, 16209 (1987) (to be codified at 8 C.F.R. § 245a.2(a)); Thornton, *INS Begins Amnesty Program*, Wash. Post, Nov. 22, 1986, at A1, col. 2. INS officials did not arrest any aliens who reported before that date, but asked them to return later. *Id.*

This "timely application" requirement is important because if a person fails to apply within this period of time, the INS will not grant relief. *See* Immigration and Nationality Act, § 245A(f)(2), 8 U.S.C. § 1255a(f)(2) (Supp. IV 1986) (providing that no administrative or judicial proceeding may review the legalization denial based on a late filing of an application); *see also* Richards v. INS, 554 F.2d 1173, 1177 (D.C. Cir. 1977) (denying relief to an alien who failed to file a "timely application" for a change of status); *cf.* Hernandez v. Warden, 813 F.2d 633, 633 (3rd Cir. 1987) (stating that upon enactment IRCA did not change an alien's status automatically; he or she must apply for a change of status).

An important section of IRCA provides that aliens who the INS apprehends before or during the application period and who can establish a prima facie case for amnesty, may not be deported. Immigration and Nationality Act, § 245A(e), 8 U.S.C. § 1255a(e) (Supp. IV 1986); *see* Carrete-Michel v. INS, 811 F.2d 442, 443-44 (8th Cir. 1987) (holding that INA section 245A(e) provides an alien relief from deportation); Kalaw v. Ferro, 651 F. Supp. 1163, 1171 (W.D.N.Y. 1987) (granting a preliminary injunction against the deportation of an alien until such time as she could apply for legalization); *see also* Holley, *Suit Seeks to Bar INS Deporting of Aliens Eligible for Amnesty*, L.A. Times, Nov. 13, 1986, Part I, at 3, col. 5 (reporting a lawsuit by a coalition of immigrants' rights organizations seeking to enjoin the INS from deporting aliens who appear to qualify for amnesty); *cf.* Lopez-Rayas v. INS, 828 F.2d 1134, 1134 (5th Cir. 1987) (holding that temporary residence cards issued under IRCA's amnesty program protected aliens from deportation).

135. 52 Fed. Reg. 16,190, 16,209 (1987) (to be codified at 8 C.F.R. § 245a.2(a)(1)).

136. Immigration and Nationality Act, § 245A(a)(2)(A), 8 U.S.C. § 1255a(a)(2)(A)

nonimmigrants¹³⁷ before January 1, 1982 must establish that their periods of authorized stay expired before that date through the passage of time or that their unlawful status was known to the government as of that date.¹³⁸ The key phrase here is "known to the government" and it is a source of controversy.¹³⁹ Despite considerable public opposition, the implementing regulations defined the phrase as meaning "known to the INS."¹⁴⁰

(Supp. IV 1986). Aliens are deemed to have "resided continuously" if they were not absent from the United States for an aggregate of 180 days between January 1, 1982 and the date they apply for amnesty, with no single absence of more than 45 days. 52 Fed. Reg. 16,190, 16,205 (1987) (to be codified at 8 C.F.R. § 245a.1(c)(1)(i)). In addition, the aliens must have been maintaining a residence in the United States and their departure must not have been based on a deportation order. *Id.* at 16,205 (to be codified at 8 C.F.R. § 245a.1(c)(1)(ii),(iii)). This is a potentially problematic section of IRCA because aliens must provide tangible documentation that they have resided in the United States for more than five years. Immigration and Nationality Act, § 245A(g)(2)(D), 8 U.S.C. § 1255a(g)(2)(D) (Supp. IV 1986); 52 Fed. Reg. 16,190, 16,210 (1987) (to be codified at 8 C.F.R. § 245a.2 (c)). According to the regulations, this documentation may include such items as: past employment records, including paycheck stubs and tax forms; utility bills; school records; hospital or medical records; attestations by churches, unions, or other organizations; or any other supporting documents, including money order receipts, bank books, social security cards, automobile registrations, deeds or contracts, or insurance policies. 52 Fed. Reg. 16,190, 16,210-11 (1987) (to be codified at 8 C.F.R. § 245a.2 (d)(3)). Many undocumented aliens in the United States, however, have avoided accumulating such documentation for fear of being discovered and deported. Wilentz, *supra* note 129, at 28. Consequently, many aliens may have difficulty proving that they arrived before 1982. *Id.* This potential lack of proof prompted fears that aliens would use fraudulent documentation. Pear, *Immigration Bill Approved; Bars Hiring Illegal Aliens but Gives Millions Amnesty*, N.Y. Times, Oct. 18, 1986, at A8, col. 5 (statement of Sen. Phil Gramm); see May, *A.B.A. Sees Risk of Fraud by People Aiding Illegal Aliens*, L.A. Times, Nov. 4, 1986, Part I, at 6, col. 1 (reporting American Bar Association fears that aliens will resort to fraud).

137. See Immigration and Nationality Act, § 101(a)(15), 8 U.S.C. § 1101(a)(15) (Supp. IV 1986) (enumerating the various kinds of nonimmigrant classes, including diplomats, visitors, temporary workers, and students, among others).

138. *Id.* § 245A(a)(2)(B).

139. See *INS Final Regulations*, *supra* note 129, at 518 (reporting that the INS received 91 negative comments on its initial proposal on the meaning of "known to the Government"); see also *INS Proposed Regulations*, *supra* note 129, at 309 (labelling as "unduly restrictive" the definitions given by the INS to, among others, the "known to the Government" phrase).

140. See 52 Fed. Reg. 16,190, 16,208 (1987) (to be codified at 8 C.F.R. § 245a.1(d)) (defining the term "Government" as meaning the INS). The regulations provide that an alien's unlawful status was known to the government in only four situations: first, if the INS received information on the alien from another federal agency; second, if the INS made an affirmative determination prior to January 1, 1982 that the alien was subject to deportation proceedings; third, if the INS responded to an inquiry by another agency regarding the alien's status; fourth, if the applicant produces documentation from a school stating that he or she had violated his or her nonimmigrant student status. 52 Fed. Reg. 16,190, 16,208 (1987), amended by 52 Fed. Reg. 43,845 (1987) (to be codified at 8 C.F.R. § 245a.1 (d)); see *INS Final Regulations*, *supra* note 129, at 518 (predicting that the controversy is likely to result in litigation).

A lawsuit did challenge the position of the INS on the interpretation of the "known

Third, aliens must prove that they have been continuously present in the United States since the date of enactment of IRCA.¹⁴¹ They will not, however, be deemed to have failed in this by "brief, casual and innocent" absences.¹⁴² This too has been a source of controversy. After

to the Government" phrase. *Farzad v. Chandler*, 670 F. Supp. 690 (N.D. Tex. 1987). In *Farzad*, the court held that the INS definition was inconsistent with IRCA and outside the scope of authority of the INS. *Id.* at 694. *But see Kalaw v. Ferro*, 651 F. Supp. 1163, 1170 (W.D.N.Y. 1987) (endorsing the view of the INS on the "known to the Government" phrase). The court in *Kalaw*, however, expressed some concern that the INS definition may make IRCA legalization difficult to administer. *Id.*

141. Immigration and Nationality Act, § 245A(a)(3)(A), 8 U.S.C. § 1255a(a)(3)(A) (Supp. IV 1986). The statute requires that aliens prove that they have been physically present in the United States since November 6, 1986, the day IRCA was enacted. *Id.* The regulations later modified this. *See infra* note 143 and accompanying text (explaining the change in the regulations).

142. Immigration and Nationality Act, § 245A(a)(3)(B), 8 U.S.C. § 1255a(a)(3)(B) (Supp. IV 1986). Specifically, the phrase "brief, casual and innocent" means a departure lasting no more than 30 days and authorized by the INS subsequent to May 1, 1987 for a humanitarian purpose. 52 Fed. Reg. 16,190, 16,205-06 (1987) (to be codified at 8 C.F.R. § 245a.1(g)).

The definition of the phrase "brief, casual and innocent" has been the subject of much controversy, in particular in a lawsuit filed in federal court in California. *Catholic Social Services, Inc. v. Meese*, 55 U.S.L.W. 2569 (9th Cir. April 28, 1987), *vacated*, 820 F.2d 289 (9th Cir. 1987). The court held that the original INS view that an alien's illegal entry into the United States after November 6, 1986 broke the "continuous physical presence" requirement was reasonable. *Id.* The illegal reentry was, in effect, not innocent. *Id.* The court's decision was later vacated in light of the final implementing regulations of May 4, 1987. *Catholic Social Services, Inc. v. Meese*, 820 F.2d 289 (9th Cir. 1987).

The phrase "continuous physical presence" has long been an issue in immigration law. *Compare Fidalgo-Velez v. INS*, 697 F.2d 1026, 1029-30 (11th Cir. 1983) (holding that an alien's one-day trip to Canada interrupted the seven years of continuous physical presence in the United States required by INA § 244(a)(1), for suspension of deportation) *with Wadman v. INS*, 329 F.2d 812, 815-16 (9th Cir. 1964) (holding that a five-day absence in Mexico did not interrupt an alien's continuous physical presence). *See Rosenberg v. Fleuti*, 374 U.S. 449, 461 (1963) (stating that Congress did not intend to exclude aliens long residing in the United States for the sole reason of making a brief trip abroad); *see also Matter of Salazar*, 17 I & N Dec. 167 (BIA 1979) (holding that an alien's five-month trip abroad disrupted his permanent residence).

The Supreme Court, in a 1984 decision, held that a provision for an alien's continuous physical presence should be construed strictly and according to plain meaning. *See INS v. Phinpathya*, 464 U.S. 183, 183-84 (1984) (holding that an alien's three-month absence disrupted her continuous physical presence requirement); *see also Moreno-Alaniz v. INS*, 781 F.2d 1054, 1060 (5th Cir. 1986) (applying the *Phinpathya* doctrine to an alien who had departed the United States for a week).

IRCA, however, overruled *Phinpathya*. Immigration and Nationality Act, § 244(b)(3), 8 U.S.C. § 1254(b)(3) (Supp. IV 1986); *see INS v. Hector*, 107 S. Ct. 379, 383 n.7 (1986) (stating that IRCA overruled *INS v. Phinpathya*); H.R. REP. NO. 682, 99th Cong., 2d Sess., pt. 1, at 124 (1986) (pointing out that the then-proposed provision would overrule *Phinpathya*). Specifically, new INA section 244(b)(3) (IRCA section 315(b)(3)) provides that an alien shall not be considered to have failed to maintain a continuous physical presence in the United States if an absence was brief, casual and innocent, and did not meaningfully interrupt his or her presence. Immigration and Nationality Act, § 244(b)(3), 8 U.S.C. § 1254(b)(3) (Supp. IV 1986).

considerable public pressure, the final regulations permit eligibility for aliens absent from the United States on November 6, 1986 (the date of enactment of IRCA) or who departed after that date and reentered before May 1, 1987 (the date the final amnesty regulations took effect).¹⁴³

Fourth, aliens must establish that they are admissible to the United States as immigrants.¹⁴⁴ Persons who are admissible as immigrants are not subject to most of the thirty-three grounds for exclusion in the INA.¹⁴⁵ IRCA, however, provides the Attorney General the discretion

143. 52 Fed. Reg. 16,190, 16,208 (1987) (to be codified at 8 C.F.R. § 245a.1(f)). In the proposed regulations, the INS initially took the position that aliens who were absent from the country on or after November 6, 1986 were ineligible for amnesty because their continuous physical presence was broken. 52 Fed. Reg. 8,754 (1987) (to be codified at 8 C.F.R. § 245a.1(f)) (proposed Mar. 19, 1987). This position, however, was widely opposed. See *INS Final Regulations*, *supra* note 129, at 517 (pointing out that the 130 comments the INS received regarding this matter unanimously opposed the initial INS position). In the final rule the INS modified its position to allow aliens who were outside the United States on or after November 6, 1986 to apply for legalization if they reentered prior to May 1, 1987. 52 Fed. Reg. 16,190, 16,208 (1987) (to be codified at 8 C.F.R. § 245a.1(f)).

144. Immigration and Nationality Act, § 245A(a)(4)(A), 8 U.S.C. § 1255a(a)(4)(A) (Supp. IV 1986).

145. *Id.* § 212(a). Section 212 lists the classes of aliens that are excludable from the United States, including, among others, insane persons, alcoholics, persons afflicted with a contagious disease, criminals, prostitutes, persons likely to become public charges, drug offenders, persons who are members of anarchist or communist organizations and are a threat to national security, and persons who assisted in the Nazi persecutions. *Id.* Some cases have examined the question of "national security risks." See *Makarian v. Turnage*, 624 F. Supp. 181, 185 (S.D. Cal. 1985) (holding that an alien who had a history of recourse to violence and boasted of terrorist affiliations was excludable as a national security threat); *Abourezk v. Reagan*, 785 F.2d 1043, 1058 (D.C. Cir. 1986), *aff'd per curiam*, 108 S. Ct. 252 (1987) (holding that an actual threat to the security of the United States must be present independent of an alien's membership in a proscribed organization).

IRCA specifically provides that certain grounds for exclusion will not apply to aliens applying for amnesty. Immigration and Nationality Act, § 245A(d)(2)(A), 8 U.S.C. § 1255a(d)(2)(A) (Supp. IV 1986). These grounds include aliens who entered to work without Labor Department approval, aliens who entered without a valid passport or entry document, aliens who entered without a valid preference or employment visa, aliens unable to read a language, and aliens who are medical school graduates who have not passed a required exam. *Id.* § 212(a)(14),(20),(21),(25),(32).

A unique feature of IRCA is its treatment of the public charge ground of exclusion. As with most other grounds of exclusion, aliens who are likely to become public charges are ineligible for legalization. See *id.* § 245A(a)(4)(A) (stating that to qualify for amnesty a person must be admissible to the United States as an immigrant). However, as with most grounds of exclusion, the Attorney General may waive the public charge ground when aliens apply for amnesty. *Id.* § 245A(d)(2)(B)(i). When aliens apply for permanent residence status eighteen months later, however, the Attorney General may not waive the public charge ground. *Id.* § 245A(d)(2)(B)(ii)(II). IRCA, however, provides a "special rule" for public charges which states that aliens are not ineligible for adjustment of status based on the public charge ground of exclusion if they can demonstrate a history of employment in the United States evidencing self-

to waive certain grounds for exclusion in individual cases for humanitarian reasons, to assure family unity, or when otherwise in the public interest.¹⁴⁶ Finally, aliens must establish that they have not been convicted of a felony or three or more misdemeanors committed in the United States;¹⁴⁷ have not assisted in the persecution of any person on the basis of race, religion, nationality, membership in a particular social group, or political opinion;¹⁴⁸ and have registered, if required, under the Military Selective Service Act.¹⁴⁹

Aliens who meet all of the above requirements and are granted temporary resident status may then apply for adjustment to permanent residence eighteen months after they received temporary residence status.¹⁵⁰ In general, the same timely application,¹⁵¹ continuous

support without public cash assistance. *Id.* § 245A(d)(2)(B)(iii). This "special rule" is available at either the temporary resident stage or at the permanent resident stage. Wheeler & Zacovic, *The Public Charge Ground of Exclusion for Legalization Applicants*, 64 Interpreter Releases (Fed. Pub.) 1046, 1047 (Sept. 14, 1987).

The regulations define "public cash assistance" as income or needs-based monetary assistance, to include but not limited to supplemental security income, received by an alien or his or her immediate family members through federal, state, or local programs designed to meet subsistence levels. 52 Fed. Reg. 16,190, 16,209 (1987) (to be codified at 8 C.F.R. § 245a.1(i)). It does not include assistance in kind, such as food stamps or public housing; work-related compensation; or certain kinds of medical assistance programs. *Id.*

The Congressional intent behind the "special rule" was to liberalize the test for public charge exclusion, enable more people to qualify for amnesty, and preclude the use of federal poverty income guidelines as the sole criteria for determining public charge excludability. Wheeler & Zacovic, *supra*, at 1047; *cf.* Marti-Xiques v. INS, 741 F.2d 350, 353 (11th Cir. 1984) (holding that an alien is deportable as a public charge only if such fate befalls him or her within five years of entering the country).

146. Immigration and Nationality Act, § 245A(d)(2)(B)(i), 8 U.S.C. § 1255a(d)(2)(B)(i) (Supp. IV 1986). There are certain grounds, however, that the Attorney General may not waive, including those relating to criminals, drug offenders, persons who are members of certain organizations or a threat to national security, and persons who participated in the Nazi persecutions. *Id.* § 245A(d)(2)(B)(ii).

As discussed above, the Attorney General may waive the public charge ground at the application for legalization but not when the legalized alien who has obtained temporary residence applies for adjustment for permanent residence. *Id.* § 245A(d)(2)(B)(ii)(II). Wheeler & Zacovic, *supra* note 145, at 1047.

147. Immigration and Nationality Act, § 245A(a)(4)(B), 8 U.S.C. § 1255a(a)(4)(B) (Supp. IV 1986). Despite the plain meaning of the statute, the INS at first proposed that a "felony" includes crimes committed outside the United States. 52 Fed. Reg. 8,754, 8,755 (1987) (to be codified at 8 C.F.R. § 245a.1(f)) (proposed Mar. 19, 1987). The final regulations, however, restrict the definition to crimes committed in the United States. 53 Fed. Reg. 16,190, 16,209 (1987) (to be codified at 8 C.F.R. § 245a.1(f)).

148. Immigration and Nationality Act, § 245A(a)(4)(C), 8 U.S.C. § 1255a(a)(4)(C) (Supp. IV 1986).

149. *Id.* § 245A(a)(4)(D).

150. *Id.* § 245A(b)(1)(A). Arocha, *INS Braces for Flood of Aliens*, Wash. Post, Feb. 7, 1987, at A8, col. 1.

151. Immigration and Nationality Act, § 245A(b)(1)(A), 8 U.S.C. §

residence,¹⁵² and admissibility requirements¹⁵³ are necessary for adjustment to permanent residence status. There is an additional requirement of "basic citizenship skills" before aliens can obtain permanent residence.¹⁵⁴ During the temporary residence period, aliens are authorized to obtain employment¹⁵⁵ and take brief trips abroad.¹⁵⁶

IRCA temporarily disqualifies newly legalized aliens from receiving certain kinds of public assistance for a period of five years.¹⁵⁷ Specifically, these aliens are ineligible for any federal program of financial assistance on the basis of financial need,¹⁵⁸ any medical assistance under a state plan approved by the Social Security Act,¹⁵⁹ and assistance under the Food Stamp Act of 1977.¹⁶⁰ There are, however, some exceptions to these disqualifications. Aliens who are blind, elderly, or disabled qualify for some benefits,¹⁶¹ as do aliens under eighteen years of age.¹⁶² In addition, certain programs of financial assistance will ap-

1255a(b)(1)(A) (Supp. IV 1986); *see id.* § 245A(f)(2) (providing no review for denials based on late filings of applications).

152. *Id.* § 245A(b)(1)(B).

153. *Id.* § 245A(b)(1)(C).

154. *Id.* § 245A(b)(1)(D). These citizenship skills include a minimal understanding of English and a knowledge of United States history and government. *Id.* § 245A(b)(1)(D)(i).

155. Immigration and Nationality Act, § 245A(b)(3)(B), 8 U.S.C. § 1255a(b)(3)(B) (Supp. IV 1986); 52 Fed. Reg. 16,190, 16,213 (1987) (to be codified at 8 C.F.R. § 245a.2(n)(3)).

As part of a settlement to *Catholic Social Services v. Meese*, the INS agreed to grant work authorization to aliens who plan to file for legalization. *INS Agrees to Temporary Work Authorization for Legalization Applicants*, 64 Interpreter Releases (Fed. Pub.) 376, 376-77 (Mar. 26, 1987). Under the settlement, aliens seeking employment may sign a declaration that they believe they qualify for amnesty and intend to apply for it. *Id.* at 376. This work authorization expired on September 1, 1987, after which the aliens affected were required to conform to the documentary and other requirements of IRCA. 52 Fed. Reg. 16,190, 16,226 (1987) (to be codified at 8 C.F.R. § 274a.11); *cf.* *League of United Latin American Citizens v. Pasadena Independent School District*, 672 F. Supp. 280, 281-82 (S.D. Tex. 1987) (enjoining a school district from dismissing undocumented alien employees until they exhaust their administrative remedies under IRCA).

156. *Id.* § 245A(b)(3)(A). Any travels abroad, however, must be taken with the intention of returning to the United States to seek permanent residency. *Id.* The implementing regulations provide that an alien in temporary residency status may not be absent from the United States for a single thirty-day period or ninety days in the aggregate after he or she received temporary status. 52 Fed. Reg. 16,190, 16,213 (1987) (to be codified at 8 C.F.R. § 245a.2(m)(2)).

157. Immigration and Nationality Act, § 245A(h), 8 U.S.C. § 1255a(h) (Supp. IV 1986).

158. *Id.* § 245A(h)(1)(A)(i).

159. *Id.* § 245A(h)(1)(A)(ii). This limitation, however, does not apply to emergency services and services for pregnant women. *Id.* § 245A(h)(3)(B).

160. *Id.* § 245A(h)(1)(A)(iii).

161. *Id.* § 245A(h)(2)(B).

162. *Id.* § 245A(h)(3)(B)(ii).

ply to newly legalized aliens.¹⁶³

To assist the INS in the amnesty program, IRCA authorizes the government to enlist help from "qualified designated entities" (QDEs).¹⁶⁴ The INS established the requirements for organizations to qualify as QDEs¹⁶⁵ and selected more than 250 QDEs on April 23, 1987.¹⁶⁶ Generally, the organizations selected were experienced in working with and assisting aliens, and included religious, labor, and farmworker organizations.¹⁶⁷ The QDEs have assisted aliens in completing their amnesty applications and accepted completed applications, which they then forward to the INS.¹⁶⁸

To implement the amnesty, the INS established 107 "legalization offices" nationwide to receive and process completed applications.¹⁶⁹

163. *Id.* § 245A(h)(4). Examples of programs under which assistance may be furnished to legalized aliens include the National School Lunch Act, the Child Nutrition Act of 1966, the Headstart-Follow Through Act, and the Public Health Service Act. *Id.* In addition, legalized aliens are eligible for federal student assistance. *Education Department Rules Amnestied Aliens Eligible for Student Loans*, 64 Interpreter Releases (Fed. Pub.) 1083 (Sept. 21, 1987).

164. Immigration and Nationality Act, § 245A(c)(2); 8 U.S.C. § 1255a(c)(2) (Supp. IV 1986).

165. 52 Fed. Reg. 6,230, 6,233-35 (1987). The types of organizations selected were described as: "national voluntary agencies and other national organizations; local independent voluntary agencies; community and ethnic organizations; state, county, or municipal organizations; farm labor organizations; associations of agricultural employers; and other designated persons selected by the Attorney General." *Id.* at 6233; *see* 52 Fed. Reg. 16,190, 16,209 (1987) (to be codified at 8 C.F.R. § 245a.1(l)) (defining the term "designated entity").

166. *INS Selects QDEs, Sets May 1 for Final Regs*, 64 Interpreter Releases (Fed. Pub.) 488, 488-89 (Apr. 27, 1987) [hereinafter *INS Selects QDEs*]. In November 1987, the INS published the list of the 977 QDEs it selected. 52 Fed. Reg. 44,812-24 (1987).

167. *INS Selects QDEs, supra* note 166, at 488. The organizations selected as QDEs include the United States Catholic Conference, the American Council for Nationalities Service, Lutheran Immigration and Refugee Services, the Presiding Bishop's Fund of the Episcopal Church, the Martin Luther King, Jr. Farmworker's Fund, and the International Ladies' Garment Workers' Union. *Id.*

168. Immigration and Nationality Act, § 245A(c)(1)-(3), 8 U.S.C. § 1255a(c)(1)-(3) (Supp. IV 1986). *See* N. MONTWIELER, *supra* note 1, at 61 (pointing out that QDEs may only assist the INS in the initial processing of applications—giving advice and information, and then forwarding the applications to the INS). The INS makes all decisions on the applications. *Id.* An important provision in IRCA protects aliens by providing for confidentiality of the information contained in the amnesty applications. Immigration and Nationality Act, § 245A(c)(5), 8 U.S.C. § 1255a(c)(5) (Supp. IV 1986). The information cannot be used for any purpose other than to make a determination on the application. *Id.* § 245A(c)(5)(A).

169. 52 Fed. Reg. 16,190, 16,191 (1987) (to be codified at 8 C.F.R. § 100.4(f)); *see* Arocha, *supra* note 150, at A8, col. 1 (stating that the INS initially expected to open 108 legalization offices and hire 2000 new employees).

An alien filing an application for amnesty must pay a fee of \$185 per adult and \$50 per child, with a family maximum of \$420. 52 Fed. Reg. 16,190, 16,193 (1987) (to be codified at 8 C.F.R. § 103.7(b)); *see* Thornton, *U.S. Urges \$185 Alien Amnesty Fee*,

The INS has also conducted a publicity campaign through the mass media to educate aliens about the amnesty.¹⁷⁰ The government initially expected this effort to convince 3.9 million persons to come forward for the amnesty.¹⁷¹ As the program progressed, however, that estimate was revised downward.¹⁷²

B. POLICY RATIONALE

Arguments in favor of and against amnesty are varied and impassioned. For years, government officials opposed the concept of a broad amnesty because it represented an acknowledgment of the failure of the United States government to control the national borders.¹⁷³ By the

Wash. Post, Mar. 17, 1987, at A3, col. 1 (reporting the INS proposal on amnesty fees). *But see* Barker, "Illegals" Line Up for Amnesty, Wash. Post, May 3, 1987, at D2, col. 1 (reporting on concerns that the amnesty fees are too high for some undocumented aliens).

Additionally, an alien applying for legalization is required to undergo a medical examination. Immigration and Nationality Act, § 245A(d)(2)(C), 8 U.S.C. § 1255a(d)(2)(C) (Supp. IV 1986); *Medical Exams Required for Legalization Under IRCA*, 64 Interpreter Releases (Fed. Pub.) 408 (Apr. 6, 1987). Applicants are also required to undergo testing for acquired immune deficiency syndrome (AIDS). Arocha, *AIDS Test Exemptions Sought for Some Aliens*, Wash. Post, Aug. 13, 1987, at C2, col. 1.

When an alien files an application at a legalization office, the office may make a decision on it, but the final decision rests with one of four "regional processing facilities" (RPFs). 53 Fed. Reg. 16,190, 16,192 (1987) (to be codified at 8 C.F.R. § 103.1(t)). An immigrant may appeal a denial of adjustment of status to an "Administrative Appeals Unit" (AAU). *Id.* (to be codified at 8 C.F.R. § 103.3(a)(iii)).

Finally, IRCA appropriates \$422 million for fiscal year 1987 and \$419 million for fiscal year 1988 to enable the INS to carry out its responsibilities, including the implementation of the legalization program. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603 § 111, 100 Stat. 3359, 3381. In addition, § 204 of IRCA appropriates \$ 1 billion to reimburse states for the costs resulting from the amnesty. *Id.* § 204, 100 Stat. 3405; N. MONTWIELER, *supra* note 1, at 27.

170. *See* Thornton, *supra* note 134, at A1, col. 2 (statement of Greg Leo, INS Director of Public Affairs) (reporting INS plans to begin a nationwide publicity campaign); N. MONTWIELER, *supra* note 1, at 61 (describing the kinds of information on the amnesty that the campaign would disseminate). Title II of IRCA authorizes the publicity campaign. Immigration and Nationality Act, § 245A(i), 8 U.S.C. § 1255a(i) (Supp. IV 1986).

171. Arocha, *supra* note 150, at A8, col. 1. INS officials hoped for an average of 16,000 persons a day. *Id.*; *see Legalization—The First Month*, 64, Interpreter Releases (Fed. Pub.) 704 (June 8, 1987) [hereinafter *The First Month*] (stating that the INS originally estimated that from two to four million persons would apply for amnesty); *see also* Arocha, *supra* note 150, at A8, col. 1 (reporting INS official Richard Norton as describing the program as the "largest experiment ever by the INS").

172. *See infra* notes 227-31 and accompanying text (discussing the revised estimates of the number of aliens that will apply for amnesty).

173. *See 1985 Senate Hearings, supra* note 78, at 281 (statement of Paul S. Egan of the American Legion). Mr. Egan commented that "[a]mnesty constitutes a departure from basic government obligations to the governed to protect the sanctity of sovereign borders and carefully fashion public policies which promote social well-being with-

time Congress debated IRCA, however, most concerns focused on the scope of the amnesty and on whether to delay its implementation until enforcement mechanisms were in place.¹⁷⁴

In general, there are two principal arguments against a broad amnesty. The first argument asserts that an amnesty rewards lawbreakers and penalizes legitimate immigrants.¹⁷⁵ The proponents of this argument insist that the law should aid persons who attempt to enter the United States through legitimate means. Instead, an amnesty rewards those who enter the country illegally and remain in violation of the law, thereby eroding respect for law.¹⁷⁶

The second argument, focusing on demographic and environmental concerns, views an amnesty as encouraging other aliens to enter the United States illegally.¹⁷⁷ According to this argument, more aliens would cross the United States borders because they either misunderstand what the amnesty represents or anticipate another amnesty.¹⁷⁸

out exposing the body politic to undue chaos." *Id.*

Although no longer the case, past arguments against liberal immigration policies at times advocated the exclusion of immigrants deemed racially or culturally "undesirable." M. MORRIS, *supra* note 1, at 28. Enactment of the Immigration Act of 1965, which eliminated the discriminatory national origins quotas largely repudiated these racially based arguments. *Id.*; see Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified at 8 U.S.C. §§ 1151-1182) (Supp. IV 1986) (eliminating national origin quotas).

174. See *supra* notes 78-80 and accompanying text (discussing the concept of a "triggered amnesty").

175. M. MORRIS, *supra* note 1, at 29; SELECTED READINGS, *supra* note 12, at 235 (statement of Sen. Richard S. Schweiker). Senator Schweiker argued that the amnesty "puts the government squarely behind the lawbreaker, and, in effect, says, '[C]ongratulations, you have successfully violated our laws and avoided detection—here is your reward.'" *Id.*

Morris places opponents of expanded immigration policies historically into three broad categories: patriotic-nationalistic organizations, such as the Liberty Lobby; certain labor organizations, such as the American Federation of Labor before its merger with the Congress of Industrial Organizations; and growth limitation organizations, such as Zero Population Growth and the Federation for American Immigration Reform. M. MORRIS, *supra* note 1, at 27-28. *But see* C. KEELY, U.S. IMMIGRATION & POLICY ANALYSIS 33-34 (1979) (pointing out that while many unions in organized labor only support partial amnesty, others such as the United Farm Workers support full amnesty).

Morris makes a similar categorization of supporters of liberal immigration policies: ethnic groups; liberal religious organizations; progressive and human rights organizations, such as the American Civil Liberties Union and Americans for Democratic Action; and some labor and business organizations such as the AFL-CIO and the National Association of Manufacturers. M. MORRIS, *supra* note 1, at 29.

176. *Hearings on S. 2252, supra* note 43, at 149 (statement of Rep. Richard C. White).

177. M. MORRIS, *supra* note 1, at 30.

178. *Id.*; see R. CONNER, ABOLISHING ILLEGAL IMMIGRATION 9 (1979) (pamphlet) (expressing concerns about the possibility that people will perceive that one amnesty will follow another). Conner argues that there cannot be any hint or hope that an

Opponents of amnesty also point out that when aliens currently in the United States gain citizenship after five years as permanent residents, they will bring in relatives residing in their native countries, thereby raising the population sharply and straining socioeconomic resources.¹⁷⁹ Advocates of this argument, therefore, favor a narrow, triggered amnesty that does not create perceptions of possible future amnesties.¹⁸⁰

Despite these pressures, Congress decided in favor of a broad amnesty over other alternatives.¹⁸¹ The relatively generous amnesty of IRCA embodies this concept. There are several reasons why this was the correct policy choice.

First, at a basic level, an amnesty is the best possible solution given the other alternatives. SCIRP, for example, considered three possible responses to the problem of illegal immigration: maintaining the status quo, massive deportation, and amnesty.¹⁸² Maintaining the status quo, in effect ignoring the problem, is not a realistic option. Likewise, a massive deportation effort is unworkable. In addition to its logistical and fiscal costs,¹⁸³ a massive deportation program carries with it the possibility of violating the civil rights of many persons, including lawful residents.¹⁸⁴ In light of these deficiencies of other alternatives, an amnesty is the best possible option.

A broad amnesty directly addresses the problem by eliminating the

amnesty program will be continuing or would become a rolling amnesty for other immigrants. *Id.*; see also Chiswick, *Guidelines for the Reform of Immigration Policy*, 36 U. MIAMI L. REV. 893, 927 (1982) (arguing that the SCIRP amnesty recommendations would increase illegal immigration because of expectations of repeated amnesties).

179. See 1985 Senate Hearings, *supra* note 78, at 303 (statement of the Environmental Fund) (showing that when aliens are granted amnesty and receive citizenship after several years, they may seek to bring in between one and four family members). Depending on how many persons apply for amnesty, anywhere from two million to thirty-two million additional aliens could eventually enter the United States. *Id.* For example, if four million undocumented aliens receive amnesty, and each brings in three family members, twelve million people will be added to the population. *Id.*

180. E. Midgley, *supra* note 33, at 62; see 1985 Senate Hearings, *supra* note 78, at 303 (citing an Environmental Fund study showing the possible eventual demographic effects of amnesty). The study concluded that "[t]he United States cannot afford such a massive influx of people, especially just as our economy is beginning to recover from a decade of recession. The additional population would further burden our already over-extended social welfare programs and increase unemployment, making life more difficult for millions of Americans." *Id.*

181. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 201, 100 Stat. 3359, 3394-3404 (codified in scattered sections of 8 U.S.C.); see *supra* notes 129-72 and accompanying text (describing the amnesty provision under IRCA).

182. SCIRP REPORT, *supra* note 17, at 72-74; Leaf, *supra* note 27, at 65.

183. *South of the Border*, *supra* note 13, at 363-64; see SELECTED READINGS, *supra* note 12, at 44 (describing the costs of INS apprehension and deportation efforts).

184. Leaf, *supra* note 27, at 65-66.

"shadow existence" of millions of persons. It is unacceptable in United States society to have a large underground population living outside the sanctions and protections of the law.¹⁸⁵ By legalizing the status of these persons, the government would allow them to contribute more fully to United States society and would regain control over the borders.¹⁸⁶ Moreover, the amnesty is a humanitarian measure.¹⁸⁷ Although undocumented aliens are often victims of employer exploitation they are powerless to change that exploitation because they maintain illegal status.¹⁸⁸ Legal status enables aliens to protect themselves under the law.

Second, a grant of amnesty is an acknowledgment of the partial responsibility of the federal government for allowing the illegal immigration situation to exist.¹⁸⁹ In the past, the government often encouraged immigration without considering the long-term effects.¹⁹⁰ Although the government did not actively aid the recruitment of aliens, it quietly tolerated the existence of large numbers of undocumented aliens.¹⁹¹ An amnesty, therefore, is an overdue acknowledgment of the role of the government in the current immigration situation.

Third, and perhaps most important, a grant of amnesty is a symbolic recognition of the contributions that aliens make to United States society. Evidence shows that most undocumented aliens provide revenues for the federal government in the form of taxes and help to create

185. Fuchs, *supra* note 4, at 440. President Carter said in 1977: "[Undocumented aliens'] entire existence would continue to be predicated on staying outside the reach of government authorities and the law's protection." SELECTED READINGS, *supra* note 12, at 125.

186. See 1985 House Legalization Hearings, *supra* note 69, at 2-9 (statement of Attorney General Edwin Meese) (indicating that the purpose of amnesty includes regaining control over the country's borders).

187. See 1985 Senate Hearings, *supra* note 78, at 338 (statement of Most Rev. Anthony J. Bevilacqua, Chairman of the Committee on Migration and Tourism, National Conference of Catholic Bishops) (describing the amnesty as a humanitarian measure because it brings hardworking and contributing members of society under the law's protection); 1985 House Legalization Hearings, *supra* note 69, at 99 (statement of Donald H. Larsen, Director, Lutheran Immigration and Refugee Service) (pointing out the humane characteristics of a generous amnesty program).

188. See SELECTED READINGS, *supra* note 12, at 34 (describing the harsh working conditions and exploitation that many undocumented aliens endure).

189. SCIRP REPORT, *supra* note 17, at 12. The report stated, "[i]n a sense, our society has participated in the creation of the problem. Many undocumented/illegal migrants were induced to come to the United States by offers of work from U.S. employers who recruited and hired them under protection of U.S. law." *Id.* at 13.

190. See Briggs, *Nonimmigrant Labor Policy: Future Trend or Aberration?* in THE UNAVOIDABLE ISSUE, *supra* note 26, at 100-02 (describing the Bracero Mexican labor program as an example of a federal program that encouraged immigration); see also *supra* note 21 (describing briefly the Bracero program). See generally C. MCWILLIAMS, NORTH FROM MEXICO (1976) (reviewing the Bracero program in depth).

191. Leaf, *supra* note 27, at 66.

wealth in the United States.¹⁹² Additionally, most aliens find gainful employment and, instead of taking jobs away from United States workers, often take the jobs that others are unwilling to accept.¹⁹³

Finally, there is no evidence that an amnesty leads to detrimental demographic and socioeconomic effects, as some opponents of amnesty argue.¹⁹⁴ Because of the entry and residence requirements, the amnesty only legalizes the status of persons that have already lived in the United States for several years.¹⁹⁵ It does not invite other aliens to cross the border, particularly when viewed in conjunction with employer sanctions.¹⁹⁶ Amnesty essentially "legalizes" an existing status and benefits the entire country, as the amnesty in Canada demonstrated.

III. LESSONS FROM CANADA

To evaluate the potential success of amnesty in the United States, it is helpful to assess the valuable lessons gained from the Canadian amnesty. Before describing the lessons, however, some crucial differences between the Canadian and United States situations merit discussion. Perhaps the most important difference is that the number of undocumented aliens in Canada in the early 1970s was much smaller than that in the United States in the 1980s.¹⁹⁷ The United States, therefore,

192. *Id.* at 77.

193. Piore, *supra* note 45, at 41-42. Piore divides the jobs of undocumented aliens into two categories: jobs that complement, or sometimes make possible the "good" jobs natives hold, and jobs that do not necessarily complement the jobs natives hold, but which contribute to the standard of living of better-off groups. *Id.*; see 1985 *House Legalization Hearings*, *supra* note 69, at 995 (statement of Rep. Major R. Owens) (discounting the "myth" that immigrants take jobs away from American workers); *Hearings on Economic Consequences*, *supra* note 97, at 543 (statement of Frank D. Bean of the University of Texas) (reporting a study finding that the effects of undocumented Mexican immigration on the wages of native workers are not very large).

194. SCIRP REPORT, *supra* note 17, at 98-99; see Midgley, *supra* note 33, at 62 (citing SCIRP conclusions that there is widespread disagreement on the population effects of immigration). SCIRP concluded that there is no agreement on the most desirable population for the United States, or among environmentalists, over whether increased population has an overall positive or negative effect. *Id.* SCIRP also concluded that most studies indicate that undocumented aliens do not place a substantial burden on social services. *Id.*; *Hearings on Economic Consequences*, *supra* note 97, at 559-60 (statement of Elizabeth Bogen of the New York City Office of Immigrant Affairs) (stating that the benefits immigrants bring to New York outweigh the detriments).

195. See Immigration and Nationality Act, § 245A, 8 U.S.C. § 1255a (Supp. IV 1986) (legalizing the status of aliens who have been present in the United States since before 1982).

196. See Applebome, *supra* note 3, at 1, col. 2 (explaining the interplay between employer sanctions and amnesty as a "carrot and stick" approach).

197. See D. NORTH, *supra* note 11, at A-20 (estimating that 200,000 undocumented aliens in Canada were eligible to apply for amnesty in 1973). The numbers in

must inevitably tailor any amnesty program to a much larger target population.

Additionally, the composition of the Canadian undocumented population in 1973 differed from that of the United States in 1986. A large number of the aliens in Canada came from Europe, the United States, and the West Indies.¹⁹⁸ In addition, undocumented aliens in Canada were relatively more educated and better off economically than were immigrants in the United States.¹⁹⁹ A majority of undocumented aliens in the United States, by contrast, are relatively poor and unskilled workers from Mexico and Central America.²⁰⁰

The significance of these differences is twofold. First, the educational level of the aliens in Canada made them more likely to respond to the amnesty offer.²⁰¹ Second, the fact that many aliens in Canada spoke English eliminated a major linguistic barrier. It was much easier to disseminate information about the amnesty in Canada than it is in the United States where many undocumented aliens speak little or no English.²⁰²

Within the limits of these important differences, the United States can learn valuable lessons from the Canadian experience with amnesty. First, as in Canada, the INS must carry out a large-scale and efficient publicity effort. The success of the Canadian program was due in large

the United States are much higher. *See 1985 House Legalization Hearings, supra* note 69, at 225 (statement of Jeffrey Passel, Chief, Population and Analysis Staff, Bureau of the Census) (giving a conservative estimate of 2.5 to 3.5 million undocumented aliens in the United States).

198. *See F. HAWKINS, supra* note 102, at 56 (indicating that from the years 1967 to 1970, the vast majority of immigrants to Canada came from Great Britain, the United States, Italy, and the West Indies). Many of the United States citizens who went to Canada were draft resisters opposed to the Vietnam War. *Id.* at 55; *see also* Marr, *supra* note 104, at 198 (stating that from 1956 to 1974 the great majority of immigrants to Canada arrived from the "traditional" sending countries of Europe and North America). The developing countries of Africa, Asia, and Central and South America contributed 16.3% of Canadian immigrants. *Id.* Marr makes the point, however, that the changes in the 1960s increased the probability that persons from areas other than Britain, France, and the United States would emigrate to Canada. *Id.* at 198-99.

199. D. NORTH, *supra* note 11, at A-45.

200. *See supra* note 94 (describing the age and social characteristics of undocumented aliens in the United States).

201. D. NORTH, *supra* note 11, at A-45. North points out that, unlike in the United States, most aliens in Canada had not had unpleasant encounters with immigration officials. *Id.* Aliens in the United States may want to avoid further contacts with the INS, thereby making implementation of the amnesty difficult. *Id.*

202. *See Whelan, supra* note 17, at 470-71 (stating that some Mexicans in the United States appear to be more reluctant than other immigrant groups in adopting English).

part to the massive governmental publicity campaign.²⁰³

The publicity effort²⁰⁴ in the United States should emphasize two major factors for the amnesty program to succeed. The publicity campaign must first overcome the language barrier, which is a considerable obstacle.²⁰⁵ A campaign must also convince aliens of the good will of the government. Because most undocumented aliens have attempted to avoid the government since their arrival in the United States, it is unlikely that they will suddenly trust the government.²⁰⁶ Only a meaningful message that acknowledges the difficulties of the past will gain the trust of the undocumented population.

Second, seeking assistance from community and ethnic organizations that have contact with undocumented aliens²⁰⁷ would help overcome both the linguistic barrier and the mistrust that many aliens feel toward the government.²⁰⁸ The Canadian effort to enlist the help of ethnic organizations and the media directly contributed to the success of its program.²⁰⁹ In the United States, therefore, the INS should actively seek the assistance of such organizations in implementing the amnesty.

Moreover, extensive cooperation among government officials, political parties, the public, and the media contributed to the success of the Canadian amnesty.²¹⁰ Whereas the amnesty in Canada enjoyed nationwide support,²¹¹ in the United States the amnesty generates considera-

203. D. NORTH, *supra* note 11, at A-24—A-25. North describes how the Minister of Manpower and Immigration, Robert Andras, launched the publicity campaign within 48 hours with the theme, "make our country your country." *Id.* Andras held press conferences, made speeches, and appeared on radio and television talk shows. *Id.* Individual immigration officials discussed the program on radio and television and handled anonymous calls from persons seeking information regarding the amnesty. *Id.*

204. See Thornton, *supra* note 134, at 1, col. 2 (reporting that the nationwide advertising campaign to promote the IRCA amnesty was to begin in March and April, 1987).

205. See *South of the Border*, *supra* note 13, at 365 (stating that the language constraint is a major barrier to the success of an amnesty program).

206. *Id.*

207. See Leibowitz, *supra* note 78, at 70-71 (mentioning legalization efforts by other countries where ethnic and community organizations rendered assistance); see also AMERICA, Nov. 15, 1986, at 295 (urging the INS to cooperate with religious agencies that help undocumented aliens).

208. *South of the Border*, *supra* note 13, at 366; see *U.S. Can Learn from Legalization Experiences of Other Countries*, *INS Told*, 63 Interpreter Releases (Fed. Pub.) 1152, 1153 (Dec. 15, 1986) (advocating outreach to local ethnic groups and voluntary organizations to try to overcome mistrust of a country's immigration agency). This approach worked well in Canada. *Id.*

209. D. NORTH, *supra* note 11, at A-25.

210. *Id.* North described the Canadian amnesty as a "political honeymoon from start to finish." *Id.* at A-45; ROBINSON REPORT, *supra* note 128, at 33.

211. ROBINSON REPORT, *supra* note 128, at 33.

ble controversy.²¹² To implement the amnesty successfully in the United States, all sectors of society must lend their support.

A high degree of motivation and morale from Canadian immigration officials served as another important factor in the Canadian success.²¹³ In the United States, the unfortunate image of a demoralized and inefficient INS still prevails.²¹⁴ For the amnesty program to succeed, this will have to change. One suggestion to accomplish this is to provide the INS with the financial and personnel resources it needs to effectively implement the amnesty.²¹⁵ Another suggestion is to improve the management and planning operations of the agency.²¹⁶ In any case, it is crucial for the success of amnesty that the INS improve its efficiency and operations.

Perhaps the final lesson provided by Canada is that administering an amnesty program for a large underground population is very difficult. Given that the conditions in Canada were more conducive to amnesty than in the United States and yet resulted in numbers far below those expected, there should be no illusions about the amnesty in the United States. If enough attention and resources are provided, through thoughtful and careful administration, amnesty under IRCA will succeed.

IV. PROGRESS REPORT

At the time of this writing, the amnesty program under IRCA is three-quarters of the way to completion. The application period for amnesty is scheduled to end on May 4, 1988.²¹⁷ Perhaps as a reflection of the controversial nature of amnesty, there have been widely different evaluations of the program.²¹⁸ While some have declared it to be largely a success, others have expressed concerns that the amnesty will

212. See N. MONTWIELER, *supra* note 1, at 6 (stating that the sharp criticism levelled at the first Simpson-Mazzoli bill gave an indication of the controversy that the legislation engendered in the following years).

213. D. NORTH, *supra* note 11, at A-46—A-47.

214. See M. MORRIS, *supra* note 1, at 87-89 (describing reports of the INS as inadequately equipped, overwhelmed by its work, deeply demoralized, and in a state of disarray).

215. *Id.* at 138-39; *INS Budget Hearings*, *supra* note 100, at 62-63 (statement of Charles Murphy of the INS).

216. *Id.*

217. 52 Fed. Reg. 16,190, 16,209 (1987) (to be codified at 8 C.F.R. § 245a.2(a)).

218. See Arocha, *Immigration Law Backer Declares Success amid Others' Doubts*, Wash. Post, Nov. 6, 1987, at A12, col. 1 (reporting that while some are praising IRCA a year after Congress passed it, others are criticizing it for its detrimental effects on aliens).

fail because many aliens will not apply.²¹⁹ Because of this latter view, some members of Congress have proposed an extension of the application period beyond May 4, 1988.²²⁰

Observers of the amnesty program focus their attention, of course, on the number of undocumented aliens that have come forward to apply for legalization. This number, however, is contingent on a number of factors that one must initially evaluate. There are at least six relevant factors: the INS campaign to publicize and promote the amnesty program; the perception by aliens of the INS and any changes in that perception; the role of the QDEs; the twin problems of fees and documentation; the level of fraud that has occurred in the program; and the issue of family unity. The remainder of this Comment examines each of these factors.

A. THE NUMBERS

The legalization program began very slowly.²²¹ A month after the program began on May 5, 1987 only about 69,000 aliens had applied for amnesty.²²² Within two months, however, applications increased sharply and by early August, three months into the program, over 300,000 applications had been filed nationwide.²²³ This averaged out to

219. *Id.* (citing Rep. Charles E. Schumer, who found the amnesty program to be a "greater success than Congress ever thought it would be"); see also Montalvo, *INS Happy with Alien Law, so Far*, Miami Herald, Oct. 10, 1987, at 3D, col. 1 (reporting generally favorable INS views on IRCA as a whole). But see Rodriguez, *Amnesty Proves Insufficient*, L.A. Times, Aug. 2, 1987, Part V, at 5, col. 3 (criticizing the INS's implementation of the amnesty and advocating a one-year extension of the application period). But cf. Meissner, *Don't Extend Amnesty; Just Make it Work-Now*, L.A. Times, Aug. 2, 1987, Part V, at 5, col. 4 (taking the position that the amnesty program can work without extension).

220. See *infra* note 244 and accompanying text (explaining the proposals for an extension of the application period).

221. See Applebome, *Amnesty Program for Illegal Aliens Gaining Momentum*, N.Y. Times, Aug. 3, 1987, at 1, col. 2 (stating that after a slow start applications for the amnesty program have increased); LaFranchi, *Slow Response to Amnesty*, Christian Sci. Monitor, June 17, 1987, at 1, col. 1 (reporting that more than a month into the amnesty, fewer applications than expected have been filed nationwide). But see Ramos & Holley, *INS "Ecstatic" Over Stream of Applicants for Amnesty*, L.A. Times, May 7, 1987, Part I, at 3, col. 3 (reporting that INS officials are happy over the early numbers of amnesty applicants).

222. See *The First Month*, *supra* note 171, at 704, n.1 (stating that as of June 4, 1987, 70,705 applications had been filed, 69,299 under the main legalization program and 1,406 under the Special Agricultural Worker (SAW) program).

223. Braun, *Momentum Builds for Immigration Amnesty Program*, L.A. Times, Aug. 2, 1987, Part I, at 3, col. 1; see Hernandez, *Amnesty Sign-Ups Beginning to Climb*, L.A. Times, June 12, 1987, Part I, at 1, col. 1 (noting the sharp rise in applications in June).

It is important to remember that this number represents applications filed under both

about 40,000 applications a week, up from 11,000 a week in May 1987.²²⁴ About ninety-eight percent of the applications had been recommended for approval by the legalization offices accepting the applications.²²⁵

By October 1987, almost halfway through the amnesty program, the number of applications had risen to about 670,000 nationwide.²²⁶ Although the rise in the number was encouraging, by this point some expressed doubts that the INS would accomplish its initial estimate of two to four million applications.²²⁷ By early November 1987, at the program's halfway point, less than one million persons had applied for amnesty.²²⁸ As the end of 1987 drew near, however, the rate of applications decreased to about 30,000 a week.²²⁹ At that rate, less than two million applications will have been filed by the cutoff date.²³⁰ By early 1988, 904,000 applications had been filed.²³¹

As the program neared the three-quarter point to completion, applications increased only modestly.²³² About a quarter of the applications

the main legalization program and the SAW program. *See supra* note 3 and accompanying text (briefly describing the SAW program under IRCA).

Often the total legalization applications numbers given in news sources in this section reflect applications under both the main legalization program and the SAW legalization program. Whenever possible, this Comment will distinguish between the totals for each program.

224. Applebome, *supra* note 221, at 1, col. 2. The most weekly applications thus far, 64,574, were filed during one week at the end of August. Applebome, *Amnesty Requests by Aliens Decline*, N.Y. Times, Jan. 3, 1988, at 1, col. 1 [hereinafter Applebome II].

225. Applebome II, *supra* note 224, at 1, col. 1.

226. CIS PAPER, *supra* note 84, at 21. A total of about 800,000 persons had applied under both the main legalization program and the SAW program. *Id.*; see Vrazo, *Amnesty Program Falling Short*, Philadelphia Inquirer, Oct. 7, 1987, at 1, col. 2 (reporting a total of about 800,000 aliens applying for legalization); see also *Legalization - The Fifth Month*, 64 Interpreter Releases (Fed. Pub.) 1021 (Sept. 4, 1987) [hereinafter *The Fifth Month*] (reporting that by September 2, 1987, aliens had filed 620,456 applications, 527,451 under the main legalization program and 93,005 under the SAW program). Of the total 800,000 applications received, INS had given final approval to 60,000 of them. Griego, *Alien Law Purrs Along, Agency Says*, Denver Post, Oct. 7, 1987, at 3C, col. 1.

227. See Austin American-Statesman, Sept. 19, 1987, at B3, col. 1 (statement of Rep. John Bryant) (stating that an initial estimate of two million applicants was too optimistic). *But see* Griego, *supra* note 226, at 3C, col. 1 (reporting that some INS officials estimate that two million aliens will apply for amnesty).

228. Solis & Yoshihashi, *Immigration Law Cuts Illegal Border Crossing, but it's no Panacea*, Wall St. J., Nov. 6, 1987, at 1, col. 1.

229. Applebome II, *supra* note 224, at 1, col. 1.

230. See *id.* (reporting doubts that the two million minimum in applications will be reached).

231. *Id.* The total number of amnesty applications filed by early 1988, including the SAW program, was 1.2 million. *Id.*

232. See *Legalization-The Ninth Month*, 65 Interpreter Releases (Fed. Pub.) 73

had been fully reviewed and ninety-eight percent had been approved.²³³ By early March 1988, with two months left in the program, the INS had received 1,036,108 applications.²³⁴

The applications have been filed unevenly throughout the country. About sixty percent have been filed in the western region of the INS.²³⁵ The INS southern region has also been quite successful in encouraging applications.²³⁶ Few applications have been filed in the northern and eastern regions,²³⁷ a fact that has surprised and disappointed INS officials.²³⁸ INS legalization offices in major eastern region cities with large immigrant populations, like New York and Washington, D.C., have received relatively few applications.²³⁹ By contrast, aliens in the major cities of the southwest region have applied in large numbers.²⁴⁰

As expected, by far the largest group of aliens applying for amnesty have been Mexican.²⁴¹ Mexicans have filed about seventy percent of

(Jan. 25, 1988) [hereinafter *The Ninth Month*] (reporting a total by January 20, 1988 of about 939,000 applications, only about 35,000 more than two weeks earlier).

233. *Id.* at 74.

234. Telephone interview with the press information office of the INS Central Office in Washington, D.C. (Mar. 7, 1988). The total number of applications received, including those in the SAW program, was 1,335,915. *Id.*; see Applebome, *Amnesty Sale: The Medium is the Tortilla*, N.Y. Times, Mar. 1, 1988, at 1, col. 5 (reporting that INS officials expect only 1.35 million aliens to apply for amnesty).

235. *The Fifth Month*, *supra* note 226, at 1021; see Vrazo, *supra* note 226, at 1, col. 2 (reporting that 80% of the applications have been filed in the western and southwestern regions of the country); Getlin, *Over 800,000 Aliens Seek Amnesty; Arrests Dip 30%*, L.A. Times, Oct. 9, 1987, Part I, at 1, col. 1 (stating that the western states, southern California in particular, show the greatest number of applications). *But cf.* Burling, *5,000 Amnesty Bids Yield Four Approvals*, Rocky Mountain News, Aug. 19, 1987, at 7, col. 1 (reporting that only 4 of 5000 applications filed in the Denver area have received final approval).

There are four INS "regions" (northern, southern, eastern, and western) in the United States, each headed by a regional commissioner. T. ALEINIKOFF & D. MARTIN, *supra* note 7, at 83.

236. See *The Ninth Month*, *supra* note 232, at 74 (reporting that 23% of applications have been filed in the southern region); Montalvo, *33,000 Aliens in Florida File Amnesty Papers*, Miami Herald, Aug. 3, 1987, at B1, col. 1 (stating that large numbers of aliens in Florida have applied). *But see* Semien, *Amnesty Program Moving Slowly in La.*, Sunday Advocate (Baton Rouge), Aug. 9, 1987, at 1A, col. 1 (reporting that few aliens in Louisiana have applied).

237. *The Ninth Month*, *supra* note 232 at 74; see Randle, *Immigrants Slow to Seek Amnesty*, St. Paul Pioneer Press Dispatch, Sept. 21, 1987, at C1, col. 1 (reporting that in Minnesota few aliens have filed for legalization).

238. *Id.*

239. Priest, *D.C. Area Far Behind Other Regions in Immigrant Applicants*, Wash. Post, Oct. 15, 1987, at D1, col. 2; Hoffman, *Amnesty Gets Little Response Among Illegals in New York*, Dallas Times Herald, Sept. 8, 1987, at A1, col. 1.

240. *Id.*

241. *The Ninth Month*, *supra* note 232, at 74; see Delvecchio & Garcia, *Preying on Aliens' Dreams of Citizenship*, San Francisco Chronicle, July 27, 1987, at 4, col. 1 (showing a chart depicting Mexicans as the largest group of applicants in the San

the applications nationwide.²⁴² The fact that many Mexicans live in the southwest region of the INS, where most applications have been filed, reflects this fact. By contrast, the number of Asians applying has been relatively low, a fact that has surprised INS officials.²⁴³

It appears that the amnesty program will have difficulty meeting its numerical goals. By May 4, 1988, the two million minimum number of applications may be reached, but it is unlikely that the number will go much higher than this. By late 1987 there were calls for an extension of the amnesty program and two bills providing for such an extension were introduced in Congress.²⁴⁴

A. THE INS PUBLICITY CAMPAIGN

Although many observers considered a well-run publicity campaign as the most important factor for a successful amnesty,²⁴⁵ the INS publicity effort began slowly.²⁴⁶ The INS did not begin accepting bids for a campaign from publicity firms until January 1987²⁴⁷ and did not award a contract until April 1987.²⁴⁸ The campaign has involved advertisements through various kinds of media, including television, radio, and the print media.²⁴⁹

Francisco area); *see also* D. MEISSNER & D. PAPADEMETRIOU, *THE LEGALIZATION COUNTDOWN: A THIRD QUARTER ASSESSMENT* 88a (1988) (displaying a chart showing the estimated legalization applications, grouped by nationality, received by the INS as of Jan. 8, 1988). As of this date, the five nationalities with the greatest number of applicants were Mexico, El Salvador, Haiti, Guatemala, and the Philippines. *Id.*

242. *The Ninth Month*, *supra* note 232, at 74.

243. San Antonio Light, Aug. 17, 1987, at A4, col. 1; *see* Vrazo, *supra* note 226, at 1, col. 2 (stating that the number of Asians applying for amnesty has been lower than expected).

244. H.R. 3816, 100th Cong., 1st Sess. 133 CONG. REC. H11,866 (daily ed. Dec. 18, 1987); S. 2015, 100th Cong., 2d Sess. 134 CONG. REC. S 283-88 (daily ed. Jan 28, 1988). The bills, introduced by Rep. Charles Schumer in the House and Sen. Edward M. Kennedy in the Senate, call for a one-year extension of the application period. *See* D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 105-11 (discussing the Schumer and Kennedy bills); *see also* Pasztor & Hoffman, *Government Flaws Hamper Success of Immigration Reforms*, Dallas Times Herald, Dec. 20, 1987, at A21, col. 1 (reporting Rev. Theodore Hesburgh's statement arguing that aliens should be given more time to apply for amnesty).

245. *See* D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 10 (stating that one of the central lessons from other countries that have had amnesty programs is the importance of an extensive publicity effort).

246. Montalvo, *Ads on Immigration Law Don't Reach Aliens, Critics Say*, Miami Herald, Sept. 28, 1987, at 1, col. 1.

247. *Id.*

248. *Id.* Montana & Solis, *INS Starts Media Campaign to Promote New Amnesty Law, Improve its Image*, Wall St. J., Apr. 9, 1987, at 19, col. 1. A \$10.7 million contract for the publicity campaign was awarded to three public relations and marketing firms in April 1987. *Id.*

249. Montalvo, *supra* note 246, at 1, col. 1.

The main goal of the publicity campaign has been to change the image of the INS in the minds of undocumented aliens.²⁵⁰ Many observers viewed distrust of the agency as a potential major barrier to a successful amnesty.²⁵¹ As discussed below, the publicity campaign has at least partly succeeded in convincing some aliens to trust the INS.²⁵²

Partly as a result of its late start, however, the campaign has not reached a large number of aliens.²⁵³ There is apparently a large segment of the undocumented population that is misinformed about the specifics of the amnesty.²⁵⁴ A main reason for this is the campaign's focus on Spanish speaking aliens.²⁵⁵ Although this emphasis was logical because most of the undocumented population is from Mexico and Central America, it has meant that large communities of non-Spanish speaking undocumented aliens have not been reached.²⁵⁶ This has been especially true in New York City, with its diversity of immigrant groups.²⁵⁷

It appears that the publicity campaign has succeeded only in part. While the INS may have a somewhat better image in the minds of many aliens, the slow start of the campaign and its failure to reach many aliens have been major problems and have contributed to the low numbers.

250. See McCarthy, *Aliens Reportedly Fail to Learn of Amnesty*, Buffalo News, July 21, 1987, at D5, col. 1 (quoting several observers as saying that few aliens will apply for amnesty unless the INS changes its image); see also Ramos, *Amnesty Ad Campaign Hopes to Heat Up Cool Response*, L.A. Times, June 25, 1987, Part I, at 36, col. 1 (stating that a focus of the publicity campaign will be to persuade aliens that the INS is sincere).

251. Montana & Solis, *supra* note 248, at 19, col. 1.

252. See *infra* note 265 and accompanying text (reporting a more favorable view of the INS for some aliens).

253. See Pasztor, *Rural, Border Turnout Hurt by a Dearth of Information*, Dallas Times Herald, Sept. 28, 1987, at A1, col. 1 (reporting that outside the large cities in Texas, information on the amnesty is hard to obtain); see also Applebome II, *supra* note 224, at 1, col. 1 (reporting that the publicity campaign has not reached many aliens in New York City).

254. Montalvo, *supra* note 246, at 1, col. 1.

255. See Hoffman, *supra* note 239, at A1, col. 1 (stating that public education efforts have concentrated on messages in English and Spanish).

256. *Id.*; see Montalvo, *supra* note 246, at 1, col. 1 (reporting that after a dismal response to the amnesty from aliens in New York City, the city established its own multilanguage hotline).

257. Hoffman, *supra* note 239, at A1, col. 1. Unlike cities in the Southwest, where most of the undocumented population is Hispanic, New York's undocumented population is extremely diverse. See *id.* (pointing out that New York is believed to have a population from as many as 82 countries); see also Applebome II, *supra* note 224, at 1, col. 1 (mentioning that the diverse nature of alien communities on the East Coast has made it more difficult to publicize the amnesty).

B. THE INS AND THE QDEs

When the amnesty program began in May 1987, some predicted that the negative perception of the INS by many aliens would hinder the program.²⁵⁸ Many argued that because many undocumented aliens knew the INS as the government agency that traditionally sought to deport them, they would be reluctant to trust it.²⁵⁹ As the amnesty has progressed, however, it appears that fear of the INS has not been as great a barrier as many initially thought.²⁶⁰ This is not to say that some aliens have not stayed away from amnesty because of fears of the INS. Negative perceptions of the agency still remain in the minds of many undocumented aliens and have been a factor in their decisions of whether to seek amnesty.²⁶¹

On the other hand, many aliens have not allowed fears of the INS to prevent them from applying for amnesty.²⁶² Most aliens that have decided to file applications have done so with the agency itself rather than with the QDEs.²⁶³ Throughout the program, the INS itself has received about eighty percent of all amnesty applications.²⁶⁴ This suggests that the INS has been partly successful, through its publicity campaign, in convincing many aliens that they can trust the agency.²⁶⁵

258. Applebome II, *supra* note 224, at 1, col. 1.

259. Uzelac, *Many Aliens Sign Up, but Others Remain Wary*, Balt. Sun, May 6, 1987, at 3A, col. 1. One observer argued that asking undocumented aliens to trust the INS was like "asking Indians to trust Custer." Montana & Solis, *supra* note 248, at 19, col. 1.

260. See Griego, *supra* note 226, at 3C, col. 1 (quoting INS Associate Commissioner Richard Norton as saying that fear of the INS has not been a factor in the first month of the amnesty program); CIS PAPER, *supra* note 84, at 3 (arguing that the fact that the majority of applications have been filed directly with the agency reflects a certain lack of fear of the INS).

261. Howe, *Strong Fears Remain over New Immigration Law*, N.Y. Times, Aug. 2, 1987, at A50, col. 3; see Wildes, *Illegal Aliens: Is it Safe to Come out of Hiding?*, Wall St. J., Aug. 13, 1987, at 20, col. 3 (stating that many aliens do not trust the INS).

262. See Vrazo, *supra* note 226, at 1, col. 2 (stating that fear of the INS has been less of a factor than originally thought, especially among Mexicans); Mathews, *Successes Outweigh Failures in First Year of Amnesty Program*, Wash. Post, Nov. 6, 1987, at A13, col. 1 (noting a statement by David North of the Center for Immigration Studies recognizing a lack of "alleged distrust of INS").

263. Mathews, *supra* note 262, at A13, col. 1; see CIS PAPER, *supra* note 84, at 25 (stating that less than 20% of applications have been filed with QDEs). *But cf.* Pasztor & Hoffman, *Critics Say Push to Cope with Amnesty Sapping INS*, Dallas Times Herald, Dec. 20, 1987, at A23, col. 1 (reporting that the administration of the amnesty has strained many sectors of the INS).

264. CIS PAPER, *supra* note 84, at 25.

265. See Applebome, *supra* note 221, at 1, col. 2 (citing Rep. Charles Schumer as stating that for some amnesty applicants, the INS has turned from the enemy into something else).

The gain for the INS, however, appears to have been a loss for the QDEs. At the start of the program, many predicted that the majority of applications would be filed through the QDEs.²⁶⁶ Statistics suggest, however, that fewer than one fourth of all applications have gone through QDEs.²⁶⁷

The reasons for these results are still unclear. Many QDEs place the blame on the INS, alleging that the agency has made the process too complicated²⁶⁸ and has been hostile to the QDEs.²⁶⁹ In response, the INS complains that the QDEs were caught unprepared and have been slow to submit completed applications.²⁷⁰ These opposing views have created a tense atmosphere in which the QDEs and the INS have exchanged accusations to the detriment of the entire program.²⁷¹ This tension has also complicated the process and contributed to the low numbers.

C. FEES, DOCUMENTATION, AND FRAUD

Throughout the legalization program, the fees set by the INS have

266. Holley, *INS Says it's Ready; Critics Expect Chaos*, L.A. Times, May 3, 1987, Part I, at 1, col. 6; see Devall, *Agencies are Battling over Aliens Registration*, Chicago Tribune, Aug. 3, 1987, at 1, col. 4 (stating that initial plans called for 80% of applications to come from the QDEs).

267. See *The Ninth Month*, *supra* note 232, at 73 (reporting that about 20% of applications have come from QDEs); see also Devall, *supra* note 266, at 1, col. 4 (stating that many aliens have received the message that they do not need to go through the QDEs). But see Braun, *supra* note 223, Part I, at 3, col. 1 (stating that while some QDEs have not filed many applications, others have been extremely busy).

268. Howe, *From New York Lawyers, Advice for Aliens*, N.Y. Times, Aug. 2, 1987, at A50, col. 3. Many QDEs complain that because the INS has failed to provide clear guidelines in many areas, the QDEs have been unsure whether to submit certain applications that deal with sensitive issues, such as the amount of documentary proof needed or the question of family unity. Schrieberg, *Immigration: Meeting of Minds on Promoting Amnesty*, San Diego Union, July 19, 1987, at C7, col. 1; see Fritze, *Officials Say Unpredictable Process Scares Aliens Away*, Dallas Times Herald, July 28, 1987, at A1, col. 1 (maintaining that the INS has been inconsistent in amnesty determinations).

269. Devall, *supra* note 266, at 1, col. 4 (stating that some QDEs are accusing the INS of taking an anti-QDE stand because many of the organizations have raised concerns about the amnesty program); D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 63-64 (citing the change by the INS of the agreement it had originally made with the QDEs as a major disruption in the preparations for the amnesty). The change in agreement between the INS and the QDEs involved the reimbursement structure that the INS was to use to compensate the QDEs for assisting in gathering amnesty applications. *Id.* at 64.

270. Braun, *supra* note 223, Part I, at 3, col. 1; see D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 65 (stating that as a result of various factors many QDEs were late in preparing for the amnesty).

271. Devall, *supra* note 266, at 1, col. 4; see Meissner, *supra* note 219, Part V, at 5, col. 4 (denouncing the tense relations between the INS and the QDEs).

been a subject of controversy.²⁷² Many have argued that the fees (\$185 per person and \$420 per family) set by the INS have been unfair to low-income undocumented aliens.²⁷³ When these fees are added to medical examination costs and possibly lawyers' fees, the cost of filing an application for many aliens is considerable.²⁷⁴ In response some groups have established loans and funds to help aliens pay the fees.²⁷⁵

A larger problem for many aliens has been obtaining the proper documents to prove their stay in the United States.²⁷⁶ At the start of the amnesty program, some foresaw this problem for many undocumented aliens, who have spent their entire lives in the United States avoiding the kind of "paper trail" that would now enable them to prove that they qualify for amnesty.²⁷⁷ Unclear guidelines from the INS as to what forms of documentation it requires have compounded the problem.²⁷⁸ As the amnesty program enters its final phase, this problem is likely to worsen because aliens who have not yet filed applications for lack of documentation may file anyway to meet the deadline. These applications are likely to not be as well documented as the ones that

272. See *supra* note 169 (discussing the fees set by the INS in the amnesty program).

273. Rodriguez, *Legalization Gets an Unjust Twist*, L.A. Times, Mar. 2, 1987, Part II, at 5, col. 4; see Berger, *Mugavero Assails High Fees for Illegal Aliens*, N.Y. Times, May 5, 1987, at D28, col. 4 (quoting Bishop Francis J. Mugavero of the Roman Catholic Diocese of Brooklyn as saying that the amnesty fees are burdensome for aliens).

274. Vrazo, *supra* note 226, at 1, col. 2.

275. See Danini, *INS Considers Fund for Aliens*, Laredo Morning Times, July 20, 1987, at 1A, col. 1 (reporting that the INS in Texas is considering establishing a fund to help amnesty applicants pay the fees); Barfield, *Amnesty-Processing Loans Offered*, The Tribune (San Diego), Aug. 10, 1987, at 1, col. 1 (reporting that loans are being offered to aliens in the San Diego area to help cover the amnesty costs).

276. Hoffman, *supra* note 239, at A1, col. 1; Applebome, *supra* note 221, at 1, col. 2.

277. See *supra* note 136 (discussing the types of documentation that aliens can use in the application for amnesty). One observer points out that families may not experience difficulty producing the proper documentation because they usually have been renting a house and paying utility bills, as opposed to many individual aliens. Malkowski, *Workers Leaving Life in Shadows*, San Antonio Express News, Aug. 4, 1987, at 9A, col. 2.

278. Lyall, *Alien-Amnesty Snag: Finding Proper Papers*, N.Y. Times, June 18, 1987, at B1, col. 2; see D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 45 (stating that documentation issues have been a persistent problem throughout the amnesty program); Fritze, *supra* note 268, at A1, col. 1 (reporting that the INS legalization offices have been inconsistent in which types of documentation they will consider); see also The Sunday Advocate (Baton Rouge), Aug. 9, 1987, at 12A, col. 2 (reporting that aliens are not applying for legalization because the documentation process is too difficult). Some employers have also hindered aliens by refusing to help them gather documentation. Montalvo, *Employers Snarl Amnesty Program*, Miami Herald, Aug. 10, 1987, at B1, col. 1.

came before, and the INS must decide whether to approve them.²⁷⁹

Another problem that may increase as the legalization program winds down is the use of fraudulent documents.²⁸⁰ Fraud has been a problem in the legalization program, although not as serious as some originally feared.²⁸¹ As expected, the problem of obtaining documentation has led to a proliferation of fraudulent documents purporting to show that the alien has resided in the United States for the requisite period of time.²⁸² A large extent of the fraud problem, however, seems to be in the SAW program rather than in the main legalization program,²⁸³ which is operating with less fraud than expected.²⁸⁴

D. FAMILY UNITY

The issue of family unity has perhaps been the most serious problem with the legalization program.²⁸⁵ The problem arises when a person qualifies for amnesty but his or her family members do not.²⁸⁶ In these situations, the person faces the difficult dilemma of whether to come forward for amnesty and take the risk that his or her family may have

279. Cf. Lyall, *supra* note 278, at B1, col. 2 (reporting that many QDEs have filed only applications that contain enough documentation to ensure approval); Braun and Hernandez, *Immigration Law Impact in Doubt*, L.A. Times, Nov. 15, 1987, Part I, at 1, col. 6 (stating that many expect a last minute rush to file applications).

280. See CIS PAPER, *supra* note 84, at 23 (pointing out that the best amnesty applications were filed first).

281. *Id.*; see *The Ninth Month*, *supra* note 232, at 78 (reporting that the INS has about 40 fraud investigations under way); see also Brannigan, *Amnesty Program for Illegal Immigrants Spurs Increase in Fraudulent Documents*, Wall St. J., Jan. 25, 1988, at 33, col. 4 (stating that the market for fraudulent documents purporting to prove residence has become quite lucrative).

282. McDonnell, *3 Accused of Fraud in Amnesty Application*, L.A. Times, Aug. 15, 1987, Part I, at 28, col. 1; see Montalvo, *INS Launches Crackdown on Amnesty Fraud*, Miami Herald, Nov. 7, 1987, at 1D, col. 5 (reporting that as a response to rampant fraud, the INS is taking stronger measures).

Another fraud-related problem involves the exploitation of many amnesty seekers by unscrupulous individuals looking to make money. Delvecchio & Garcia, *supra* note 241, at 4, col. 1. At times, an undocumented alien will turn over his or her documentary proof and money to one of these individuals thinking that they will be filed. *Id.* The individual will then abscond with the money and documents. *Id.*

283. CIS PAPER, *supra* note 84, at 23; see Tricarico, *Widespread Alien Fraud Cited by INS*, L.A. Herald Examiner, Nov. 5, 1987, at A1, col. 5 (reporting a high incidence of fraud in agricultural worker applications); see also *The Ninth Month*, *supra* note 232, at 78 (reporting that between June 1 and October 31, 1987, as many as half of the SAW applications filed in Florida may have been fraudulent).

284. CIS PAPER, *supra* note 84, at 23.

285. Applebome II, *supra* note 224, at 1, col. 1; see D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 36 (stating that the family unity issue has become the most polarized of the disagreements between the INS and immigrant advocates).

286. Hernandez, *Qualifying for Amnesty—A House Divided by Law*, L.A. Times, May 25, 1987, Part I, at 1, col. 1.

to leave the country, or to not apply for amnesty, keep the family together, and remain in an illegal status.²⁸⁷ Many aliens have chosen the latter and have not applied for amnesty.²⁸⁸

In October 1987, the INS clarified its position as to what would happen to ineligible family members of applicants for amnesty.²⁸⁹ The agency announced that it would not deport alien children who do not qualify for amnesty if both parents qualify.²⁹⁰ If only one parent qualifies, however, the INS may still deport the children as well as the ineligible spouse.²⁹¹

The issue of family unity has been controversial throughout the amnesty program. In October 1987, the Senate tabled a proposal that would have allowed ineligible spouses and children to remain in the United States with a qualifying spouse if they were residing in the country when IRCA became effective.²⁹² The INS October modification regarding children was inadequate and many aliens are still not applying because they fear that the INS will deport family members.²⁹³

CONCLUSION

Although, as of the date of this writing, the amnesty program is not yet complete, one can already assess whether the lessons of the Canadian amnesty were learned and, on a broader level, whether the IRCA amnesty is likely to succeed.

Perhaps the amnesty program in the United States started out at a disadvantage compared to the Canadian program. One of the factors for the success of the Canadian amnesty was the broad support it received from all sectors of Canadian society.²⁹⁴ In the United States, on the other hand, amnesty has always been a controversial topic.²⁹⁵

287. Arocha, *Aliens Wary of Amnesty*, Wash. Post, Oct. 21, 1987, at C1, col. 6.

288. See Corchado, *INS Expected to Ease Amnesty Rules to Avoid Splitting Immigrant Families*, Wall St. J., Oct. 14, 1987, at 2, col. 3 (reporting that many aliens have not applied for amnesty because of the family unity issue).

289. *The Ninth Month*, *supra* note 232, at 75; Arocha, *supra* note 287, at C1, col. 6.

290. Getlin, *Ineligible Children Face Deportation, INS Says*, L.A. Times, Oct. 22, 1987, Part I, at 1, col. 2; Baltimore Sun, Oct. 22, 1987, at 21A, col. 4. *But see id.* (reporting Rep. Romano Mazzoli's opinion that because Congress intended IRCA to be compassionate, children should not be deported under any circumstances).

291. Getlin, *supra* note 290, Part I, at 1, col. 1.

292. S. 1394, 100th Cong., 1st Sess. § 894, 133 CONG. REC. S13727-39 (1987); Miami Herald, Oct. 8, 1987, at 12A, col. 2.

293. *The Ninth Month*, *supra* note 232, at 75; D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 36.

294. See *supra* notes 210-11 and accompanying text (stating that the Canadian amnesty had nationwide support).

295. See D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 1 (stating that

Partly because of this atmosphere of controversy, the program began slowly and has not run as smoothly as possible.²⁹⁶

There were, however, two other important lessons from the Canadian amnesty that have not been fully reflected in the IRCA amnesty. Perhaps the most important of these was the importance of a well-run public education campaign.²⁹⁷ Because the Canadian amnesty operated in a short time frame,²⁹⁸ it was crucial that the publicity campaign begin quickly and progress effectively. Although the amnesty in the United States is a year-long effort, the publicity campaign should be no less crucial.

Unfortunately, the INS campaign has been largely unsuccessful. The delay in starting the campaign was a major problem.²⁹⁹ It is inexcusable that the INS waited so long to begin advertising its massive and long-awaited amnesty program. Subsequent problems with reaching certain groups of aliens have also hindered the program.³⁰⁰ The result is that large numbers of aliens have not received the amnesty message and, therefore, have not applied.³⁰¹

On the positive side, the INS campaign has been partly successful in overcoming the language barrier and in reaching many Spanish speaking aliens.³⁰² The program may have worked too well on this point, however, as it has not reached many non-Spanish speakers.³⁰³ Additionally, the publicity campaign has succeeded, at least in part, in overcoming some aliens' distrust of the INS.³⁰⁴

few issues evoke more emotion in the United States than immigration).

296. See *id.* (observing that the deep disagreements on legalization have carried over into the implementation of the program, pitting two traditional antagonists, the INS and the immigrant-assistance community, against each other).

297. See *supra* note 203 and accompanying text (discussing the effort to publicize the Canadian amnesty); see also D. MEISSNER & D. PAPADEMETRIOU, *supra* note 241, at 10 (maintaining that a central lesson to be learned from the legalization programs of other countries is the importance of a well-run publicity campaign).

298. See *supra* note 121 and accompanying text (stating that the Canadian amnesty program lasted only 60 days).

299. See *supra* notes 246-48 and accompanying text (describing the slow start of the INS publicity effort); see also Ramos, *Critics Label 11th-Hour Amnesty Publicity Push as Too Little, Too Late*, L.A. Times, Feb. 16, 1988, Part II, at 1, col. 1 (reporting that many view the last-minute publicity effort of the INS as inadequate).

300. See *supra* notes 254-57 and accompanying text (describing the INS publicity effort and how it has failed to reach certain aliens).

301. Montalvo, *supra* note 246, at 1, col. 1.

302. See *supra* note 255 and accompanying text (discussing the publicity campaign's focus on Spanish speaking aliens).

303. See *supra* notes 255-57 and accompanying text (maintaining that large numbers of non-Spanish speaking aliens have not received enough information on legalization).

304. See *supra* notes 263-65 and accompanying text (discussing how the publicity effort has succeeded somewhat in changing the image of the INS in the minds of some

A second major lesson from the Canadian amnesty was the high level of cooperation between the government and the ethnic and community organizations.³⁰⁵ The government enlisted the help of many such organizations and worked closely with them in promoting and implementing the amnesty. This too contributed to the success of the program.

In the United States, the INS made a genuine effort to reach ethnic and community organizations and enlist the help of many of them as QDEs.³⁰⁶ Initial hopes were high that this would contribute to a successful program. Since the beginning of the program, however, the INS and the QDEs have spent too much time bickering and exchanging accusations instead of cooperating.³⁰⁷ This belligerent atmosphere has done nothing but endanger the program. It has added confusion to an already confusing situation and has contributed to many aliens not coming forward.

Given these and other problems, Congress should approve the pending bills that seek to extend the application period for the amnesty beyond May 4, 1988.³⁰⁸ An extension is the only way to enhance the likelihood that the amnesty will succeed. The extra time may also help resolve some of the lingering issues. For example, the INS could correct the deficiencies in the publicity campaign. The documentation problems as well as the tense relations between the INS and the QDEs also may subside. Finally, the serious problem of family unity may be resolved. Only with an extension may the amnesty achieve IRCA's goal of bringing millions of persons out of the shadows and solving the illegal immigration problem in the United States.

aliens).

305. See *supra* notes 268-71 and accompanying text (discussing the cooperative atmosphere between the government, the community organizations, and others).

306. See *supra* notes 164-68 and accompanying text (reviewing the selection of QDEs by the INS and the role that the organizations were to fulfill).

307. See *supra* notes 268-71 and accompanying text (describing the tense atmosphere that exists between the INS and the QDEs).

308. See *supra* note 244 and accompanying text (providing the bills pending in Congress that seek to extend the application period for legalization); Blake, *Amnesty Deadline Extension Urged*, Boston Globe, Nov. 6, 1987, at 48, col. 1 (stating that many are calling for an extension of the amnesty application period); Portillo, *Congress Urged to Extend Amnesty for Aliens a Year*, San Diego Union, Feb. 13, 1988, at A5, col. 1 (reporting that a coalition of community groups are urging Congress to extend the application period for amnesty). But see Arocha, *INS Official Criticizes Amnesty Extension Plan*, Wash. Post, Jan. 14, 1988, at B11, col. 5 (quoting INS Commissioner Alan C. Nelson as saying that the plans to extend the amnesty program are "ill-advised and shortsighted.").