Irene Gomez-Bethke Papers.

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Raúl Yzaguirre
President

June 11, 1984

Ms. Irene Gomez-Bethke
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Dear Irene:

Enclosed is the National Council of La Raza's most recent information on Immigration. I hope it proves useful.

Please let me know if I can be of any further help.

Sincerely,

Debra A. Schiebel

NCLR

Perspectivas Públicas

NATIONAL COUNCIL OF LA RAZA
Office of Research, Advocacy, and Legislation

ISSUE BRIEF

Date: March 1984

Title: SECOND THOUGHTS ON EMPLOYER SANCTIONS: A BRIEF ANALYSIS

Contact: Charles K. Kamasaki/ Martha M. Escutia, (202) 628-9600

I. OVERVIEW

The Immigration Reform and Control Act of 1983 (H.R. 1510), also known as the Simpson-Mazzoli bill, will soon be considered by the U.S. House of Representatives. One of the major provisions in the bill establishes a system of penalties against employers found to have "knowingly hired" undocumented workers, commonly referred to as employer sanctions. Under the Simpson-Mazzoli bill, each newly hired employee and his/her employer would have to sign a form stating that the employee is entitled to work in the United States and that the employer has inspected documents establishing this right. Initially, employers would rely on existing forms of identification such as a birth certificate, driver's license or Social Security card. Eventually, the federal government would have to devise a more secure identification system capable of verifying that each and every citizen and legal resident is entitled to work in the United States. Employers would be required to verify the documents of each worker hired (but not of each applicant). This is known as the "uniform verification" requirement. An employer charged with hiring, recruiting, or referring an undocumented worker would be presumed to be innocent if that employer could produce records showing that documents were inspected. This is known as the "good faith" defense.

It is widely suggested that employer sanctions are necessary in order to protect American workers from being displaced by undocumented persons. Some proponents of the bill have gone so far as to characterize Simpson-Mazzoli as a "jobs bill." These proponents claim that, once employer sanctions are enacted, jobs currently held by undocumented persons will be available for American workers.

Hispanic organizations, civil rights groups, and others have charged that employer sanctions will increase employment discrimination because employers, in trying to comply with the law, would place stricter scrutiny against citizens and legal residents that looked "foreign" or otherwise fit immigrant stereotypes.

The purpose of this analysis is to provide interested persons with the research findings and empirical evidence necessary to judge the validity of these claims.

II. THE EXTENT OF JOB DISPLACEMENT

The Judiciary Committee Report accompanying H.R. 1510 asserts that sanctions are needed because the United States is "obligated to protect our own workers from adverse competition in the labor market...." The Report goes on to note that the current high unemployment rate underscores the need for sanctions (House Report

98-115, pp. 32, 33). The Report provides no evidence of the existence of job displacement, and makes no attempt to quantify the impact of the alleged displacement. What the Report does is assume that displacement is a serious problem without offering any substantiation for that position.

This assumption is refuted by many economists. For example, Niles Hansen, Professor of Economics at the University of Texas, explains:

> [The] notion -- known as the "lump-of-labor" fallacy -- suggests that there is only a fixed, total amount of work that can be performed in our society. In fact, the size of the nation's economic pie depends on the way in which all productive factors -- labor, capital, land, and entrepreneurship -- interact. The undocumented may, in effect, create their own employment, or jobs may be created for them because they have special skills or because they are willing to perform tasks shunned by American workers. The fact that [the] undocumented...have little difficulty in finding jobs in the United States suggests that they do not displace U.S. citizens to a significant degree (Hansen, The Border Economy, University of Texas, 1981 p. 110).

More important, empirical evidence contradicts the notion that large-scale job displacement occurs as a result of undocumented immigration. If that position were valid, one would expect that those cities and states with the largest numbers of undocumented workers would have correspondingly high rates of unemployment. In fact, the reverse is true. As the U.S. Chamber of Commerce has pointed out:

- In 20 cities with a high concentration of undocumented workers, the unemployment rate was 7.17% in 1981; while
- In 20 cities with little or no concentration of undocumented workers, the unemployment rate was 10.9%;
- In 10 states with a high concentration of undocumented workers, the unemployment rate was 6.8% in 1981; while
- In 10 states with little or no concentration of undocumented workers, the unemployment rate was 9.4% (Thompson, House Hearings, Subcommittee on Immigration and Refugee Policy, September 1981, p. 99; emphasis in the original).

A more detailed recent analysis by the Urban Institute confirms these findings. The Urban Institute study examined the effects of immigration on Southern California, which has the highest population of undocumented persons in the country. Using special tabulations of the 1980 Census and other empirical data, the Urban Institute researchers found that:

> ...the immigrant influx was not accompanied by job losses for other workers....Although Hispanic workers filled a large proportion of jobs added during the decade [1970s], particularly in manufacturing, there is no indication that work opportunities for nonimmigrants lessened. Despite mass immigration to Southern California, unemployment rates rose less rapidly there than in the remainder of the nation (Muller, The Fourth Wave, A Summary, 1984, p. 13.).

Many of the jobs held by undocumented workers are in the "secondary labor market"; jobs that offer little security, opportunity for advancement, or prestige -- jobs often shunned by native workers. Wayne Cornelius, noted immigration expert from the University of California's Center for U.S.-Mexican Studies, has pointed out that:

> Workers cannot be displaced if they are not there, and there is no evidence that disadvantaged native Americans have ever held, at least in recent decades, a significant proportion of the kinds of jobs for which illegals are usually hired.... (Cornelius, "Research Findings," Congressional Record, July 13, 1977, p. H7063).

Cornelius' findings have been verified recently through follow-up studies carried out in the aftermath of "Project Jobs." Project Jobs was a national campaign conducted by the Immigration and Naturalization Service (INS) in April 1982 to remove undocumented workers from jobs paying above the minimum wage. INS reported 5,440 apprehensions of undocumented persons who made an average wage of $4.81 per hour. Studies showed that, within a few months, about 80% of those jobs were filled again by undocumented persons because American citizens either wouldn't take them or left because they were considered undesirable positions. (Larry Stammer and Victor Valle, "Most Aliens Regain Jobs After Raids: Survey Contradicts INS Findings That Sweeps Succeeded," Los Angeles TIMES, August 1, 1982).

It has also been suggested that undocumented workers depress wages for all workers. Empirical studies suggest that this may occur, but to a limited degree. Economists Barton Smith and Robert Newman compared wages paid in areas along the U.S.-Mexico border with wages paid in areas further from the border and found that the differential between the two areas was about eight percent. They concluded:

> If migration from Mexico is having a negative impact on wages along the border, it is not as severe as many have contended. In fact, this differential is of the order of magnitude that it could represent the implicit premium that individuals are willing to pay for nonpecuniary advantages such as remaining close to their cultural heritage (Smith and Newman, cited in the Staff Report of the Select Commission on Immigration and Refugee Policy, April 30, 1981, p. 509).

The Urban Institute study in California did find that wages in some industries were depressed by immigrant workers. Where this occurred, however, the net effect was to increase employment overall. Moreover, Urban Institute researchers determined that wages of all employees in the area increased, that the area's competitive advantage in manufacturing was preserved, and that the effect of immigration on per capita income was positive (See National Council of La Raza, "Highlights and Implications of the Urban Institute's Study on the Impact of Immigration on California," March 1984, pp. 2-3).

In addition, researcher Michael Piore has pointed out that many undocumented persons hold jobs that tend to benefit American workers. As summarized by the staff of the Select Commission:

> Some of the secondary labor market jobs that undocumented/illegal aliens take are in industries that would [otherwise] close or relocate outside the United States.... Since these industries also

have jobs desired by U.S. workers, undocumented/illegal aliens actually provide opportunities rather than displace citizens (Piore, cited in Staff Report, p. 512).

It is also interesting to review the studies upon which the claims of displacement are founded. Vernon Briggs, Ray Marshall and others have repeatedly asserted that employment displacement is a major problem, and that Mexican Americans are the chief losers from the employment of undocumented workers (See, for example, Briggs, "Illegal Aliens: The Need for a More Restrictive Border Policy," Social Science Quarterly, December 1975). As Gilberto Cardenas of the University of Texas has pointed out, however, these advocates of the displacement theory have yet to gather a single piece of data to support their claims (Cardenas, Remarks at the Center for Immigration Policy Studies, Georgetown University, May 24, 1983).

More recently, Senator Alan Simpson (R-WY) cited the work of Rice University Professor Donald Huddle in support of his claim that undocumented workers were displacing American workers in the construction industry in the Southwest (Congressional Record, April 28, 1983 p. S5571). The Huddle study, however, is of questionable value because of two severe methodological flaws. First, Huddle failed to use accepted sampling procedure. Second, Huddle's method of identifying undocumented workers was clearly unacceptable. As Huddle himself later admitted, he used the color of construction workers' helmets to distinguish between legal and illegal workers, a practice inconsistent with any accepted verification method. (See excerpt from Huddle's testimony in Garcia et. al. v. INS et. al., cited by Estevan Flores, The Impact of Undocumented Workers on the U.S. Labor Market, UCLA: Institute of American Cultures, April 21, 1983.) Flores suggests that the Huddle study, which has not been published, would have been rejected by any professional journal because of the above-cited methodological flaws.

In summary, then, the proponents of the displacement theory continue to assume that displacement occurs without demonstrating it. In contrast, a growing body of theoretical and empirical evidence contradicts the alleged negative effects of undocumented workers on unemployment and wages. Employer sanctions are based on the premise that job displacement and depressed wages are caused by the undocumented. However, that premise is not supported by existing research.

III. THE EFFECTIVENESS OF EMPLOYER SANCTIONS

Even if one were to assume that large-scale employment displacement is taking place, and that, therefore, there is a need for employer sanctions, need alone does not justify policy. The proposed policy must also provide an acceptable means of fulfilling that need. While sanctions are proposed as a way of reducing the employment of undocumented workers, and thereby the flow of undocumented persons, there is little evidence that they actually have this effect. A recent General Accounting Office (GAO) study of employer sanctions laws in 20 countries concluded that, for the most part, these laws were not "an effective deterrent to stemming illegal employment" (GAO, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," August 31, 1982).

Moreover, there has been considerable experience with employer sanctions laws in the United States. Eleven states have employer sanctions laws on the books. Dr. Carl E. Schwarz, Professor of Political Science and Public Law at Fullerton College studied how these laws have been implemented, and found that not a single conviction has been obtained under California's 12-year-old sanctions law; the situation in the other states is similar:

> The main pattern in all these states (speaking of Connecticut, Delaware, Florida, Kansas, Maine, Massachusetts, Montana, New Hampshire, Vermont, and Virginia) is an almost perfectly consistent failure to enforce employer sanctions statutes (Schwarz, "Employer Sanctions Laws: The State Experience As Compared With Federal Proposals," America's New Immigration Law: Origins, Rationales, and Potential Consequences, University of California at San Diego, 1983, p. 84).

There is even a federal employer sanctions law, embodied in the Farm Labor Contractor Registration Act, as amended. Schwarz has noted, and testimony before the House Agriculture Committee verifies, that this law has not significantly reduced the employment of undocumented persons in agriculture (See Schwarz, p. 91; see also, for example, testimony of representatives from the Western Growers Association, the Farm Bureau Federation, the National Council of Agricultural Employers, and others who describe their reliance on, and need for, undocumented workers; House Hearings, Committee on Agriculture, June 15, 1983).

The reasons for the uniform ineffectiveness of employer sanctions in other countries, at the state level, and at the federal level are twofold. First, as noted by the GAO, "Employers either were able to evade responsibility for illegal employment, or once apprehended, were penalized too little to deter such acts." Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunication between government agencies, lack of enforcement resolve, and lack of personnel" (GAO Report, p. 2). This experience has been replicated in the United States as well. In his study of state employer sanctions laws, Schwarz found that:

> When interviewed about why employer sanctions laws were not enforced, state and local prosecutors...most often attributed nonenforcement to judicial rulings....Such rulings parallel the experience of the 20 nations with employer sanctions laws studied by the U.S. General Accounting Office (Schwarz, p. 91).

As Wayne Cornelius has concluded:

> Clearly, judges do not consider the employment of undocumented workers a serious crime, and they are reluctant to impose penalties. And the more severe the penalty, the less likely it is to be applied, especially criminal fines and jail sentences (Wayne Cornelius, "Simpson-Mazzoli vs. the Realities of Mexican Immigration," America's New Immigration Law: Origins, Rationales, and Potential Consequences, p. 143).

Given the historical underfunding of, and the documented inefficiencies within, the INS, there is little reason to believe that the enforcement of federal employer sanctions laws would be significantly more effective than the previous experiences of other countries and the states (For a review of INS' record of underfunding and poor management, see NCLR, "Hispanic Concerns with the Immigration and Naturalization Service," August 1982). Similarly, the kinds of judicial rulings to which state and local prosecutors and the GAO attribute the nonenforcement of sanctions are already embodied in U.S. law. Cornelius summarizes the existing research on sanctions by stating:

> [T]here is still not a single documented case of successfully using employer sanctions laws to reduce the population of illegal immigrants anywhere in the world (Cornelius, p. 144).

IV. EMPLOYMENT DISCRIMINATION AND EMPLOYER SANCTIONS

The existence of employment discrimination against Hispanics is widely acknowledged (See, for example, U.S. Commission on Civil Rights, Affirmative Action in the 1980s: Dismantling the Process of Discrimination, November 1981; and Unemployment and Underemployment Among Blacks, Hispanics and Women, November 1982). If employer sanctions are enacted, the available evidence suggests that this discrimination will increase in two ways. The most obvious is that the legislation will provide a pretext for employers who are inclined to discriminate anyway. If the Simpson-Mazzoli bill passes, these employers will be given an affirmative defense against charges of employment discrimination. Thus, the inclusion of sanctions in the bill risks exacerbating existing employment discrimination.

The second type of discrimination will result from good faith efforts on the part of employers to comply with the law. The bill would create a "suspect class" of persons -- those who, on the basis of physical characteristics, language, or other factors, appear "foreign" to employers. These persons will not be hired by employers because of the possibility of them being undocumented (See, National Council of La Raza, Employer Sanctions and Employment Discrimination Issue Brief, August 1983).

The possibility of sanctions has already triggered discrimination against Hispanics. The response of many employers to Operation Jobs and to Operation Cooperation, two recent INS initiatives, shows that employers tend to go beyond the law's minimum requirements to demonstrate their compliance with immigration-related rules. As a result of the two INS initiatives, some employers terminated employees of Hispanic origin even though they were legally entitled to work (See, for example, testimony of Antonia Hernandez, Mexican American Legal Defense and Education Fund, before the House Agriculture Committee, June 15, 1983). In fact, some employers involved in the INS initiatives admitted reluctance even to take back workers who managed to prove their legal status to arresting officers (See, "Dragnet for Illegal Workers, Time Magazine, May 10, 1982).

It is not argued that if employer sanctions are enacted all employers will discriminate against all Hispanics. Employers will react to sanctions in

different ways, and some reactions will have discriminatory effects. Sanctions could be that slight difference that would make Hispanics less attractive to some employers, thus placing them at a competitive disadvantage in the job market.

V. NCLR POSITION

NCLR opposes employer sanctions for three reasons. First, they are likely to increase employment discrimination against Americans of Hispanic and Asian descent, and others who "appear foreign" to employers. Second, given even the possibility of employment discrimination, there is no evidence to suggest that employment displacement is of sufficient magnitude to justify the risk of such discrimination. Finally, sanctions have not worked when tried before, either in the United States or in other countries.

Many persons reluctantly support the Simpson-Mazzoli bill because they believe in the need for immigration reform. Such persons should consider that viable, less onerous, and more effective alternatives to sanctions do exist. These alternatives include:

- Strict enforcement of existing labor laws. Wage and hour laws already prohibit many of the practices that some employers use to exploit undocumented workers. Once these laws are strictly enforced, there will be little incentive for these employers to hire undocumented persons.

- Enhanced enforcement activities. Too many of the INS' resources are expended in attempting to seek out undocumented persons already in the country. These persons are familiar with immigration law and INS procedures, and are, therefore, very difficult to apprehend. If more resources were redirected to the border and other points of entry, with special emphasis on smugglers, illegal immigration could be significantly reduced.

These and other positive approaches are embodied in the proposed Immigration Reform Act of 1984 (H.R. 4909), sponsored by Rep. Edward Roybal (D-CA). NCLR supports the Roybal bill because it avoids the use of employer sanctions, includes a legalization program that is likely to be more effective than that included in the Simpson-Mazzoli bill, and does not include expanded "guestworker" programs which are likely to increase exploitation of foreign workers.

Immigration is a complex, international phenomenon. It is unreasonable to expect a simple, domestic solution to the problems created by immigration. The Simpson-Mazzoli bill, through the imposition of employer sanctions, purports to provide this simple solution, but as this analysis suggests, the need for sanctions is unproven, and the possibility for success is doubtful. As immigration law specialist Kitty Calavita of Middlebury College has written:

> [C]ongressional supporters of the (Simpson-Mazzoli) bill have chosen to ignore consistent research findings about employer sanctions, which make it illegal to knowingly employ an undocumented worker. That research has shown that employer sanc-

tions are at best ineffective, and at worst exacerbate the vulnerability of both the documented and undocumented worker (Kitty Calavita, "Employer Sanctions Legislation in the United States," America's New Immigration Law: Origins, Rationales, and Potential Consequences, 1982, p. 143).

Those who call Simpson-Mazzoli a "jobs bill" assume that the enactment of sanctions will reduce unemployment, despite the lack of evidence proving that displacement occurs. They further assume that sanctions work, despite the growing body of research that demonstrates the opposite. Finally, these proponents ignore the loss of jobs by Hispanic- and Asian-Americans likely to result from employment discrimination created by sanctions. The National Council of La Raza supports the Roybal bill as a positive alternative which offers real immigration reform and protects the civil rights of all those who live in the United States.

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NATIONAL COUNCIL OF LA RAZA
Office of Research, Advocacy, and Legislation

ISSUE BRIEF

Date: March 1984

Title: Highlights and Implications of the Urban Institute's Study on Immigration

Contact: Charles Kamasaki or Martha Escutia at 628-9600

HIGHLIGHTS AND IMPLICATIONS OF THE URBAN INSTITUTE'S STUDY ON THE IMPACT OF IMMIGRATION ON CALIFORNIA

I. BACKGROUND

On February 28, 1984 the Urban Institute released a report summarizing the findings of an investigation of the impact of recent Mexican immigration to California. Urban Institute researchers studied economic, fiscal, and social issues associated with immigration to California, with emphasis on the implications for Los Angeles and Southern California.

The study relied extensively on quantitative analysis of empirical data bases including the Public Use Sample from the 1980 Census and special tabulations of the Current Population Survey for the years 1970 to 1983. The study thus represents one of the few empirically-based analyses of the impact of immigration on a defined geographical area. The full study, The Fourth Wave: California's Newest Immigrants, will be published by the Urban Institute Press in the Spring of 1984.

These data are directly relevant to the current debate in Congress over immigration reform legislation.

II. STUDY HIGHLIGHTS AND IMPLICATIONS

A. Numbers of Undocumented Persons

The study found that independent statistics, such as school enrollment data:

> ...correspond closely with the [1980] estimates... suggesting that the Census did enumerate most Mexican immigrant families with children, whatever their legal status (p. 5).

The Urban Institute researchers concluded, however, that the Census did undercount single males. It was estimated that this undercount of single males was in the 25-37.5% range (p.5).

These findings have important implications for the current national debate over immigration policy since a key unresolved issue in that debate is the size of the undocumented population. The 1980 Census enumerated slightly over two million undocumented persons. If the Urban Institute's estimated undercount rate is projected

over the entire U.S. undocumented population, the size of this population in 1980 was between 2.56 and 2.82 million. This estimate is far lower than the three to six million figure used by the Select Commission on Immigration and Refugee Policy and both the House and Senate Judiciary Committees, and confirms Census' conclusion that:

> Estimates of the numbers of illegal aliens in the United States have varied widely -- generally falling in a range of 2 to 12 million. Much of the debate on the matter has been unhampered by empirical evidence, with the result that "estimates" have been based on pure speculation, gut feelings, or perceived special interests. As more empirical evidence has become available, the estimates have gotten smaller and smaller (Robert Warren and Jeffrey Passel, "Estimates of Illegal Aliens from Mexico Counted in the 1980 United States Census," U.S. Bureau of the Census, 1983, p. 1).

B. Impact on Employment

It has been asserted, primarily by proponents of more restrictive immigration policies, that undocumented workers "displace" native Americans from jobs. Moreover, it is suggested that, since most undocumented persons are employed in menial or unskilled jobs, minorities -- especially Blacks -- suffer disproportionately from job displacement by the undocumented.

The Urban Institute study found no empirical evidence to support these charges. With respect to the job displacement issue overall, the study concluded that, in the 1970s, the influx of immigrants did not reduce the jobs available to nonimmigrant workers. The researchers noted that:

> ...there is no indication that work opportunities for nonimmigrants lessened. Despite mass immigration to Southern California, unemployment rates rose less rapidly there than in the remainder of the nation.... [T]he immigrant influx was not accompanied by job losses for other workers (p. 13).

As for the charge that undocumented workers tend to heighten job competition with -- and disproportionately displace -- Blacks, the researchers found:

> ...no statistical relationship between the size of the Hispanic population and black unemployment.... An analysis of the black unemployment rate and the size of the Mexican immigrant population in Southwestern metropolitan areas indeed suggests a negative relationship (p. 13).

While the study did note that wages in some sectors rose more slowly in Southern California than elsewhere as low-skilled immigrants entered the labor force, researchers found that:

> [D]uring the surge of immigration between 1972 and 1980, wages of all employees, already above the national average, rose 9 percent more rapidly in Los Angeles than in the nation (p. 16).

In those industries where wages rose more slowly than the national average, the researchers found that:

> The net result was to preserve the area's competitive advantage in manufacturing and to modestly increase profit margins. In

> addition, area prices in restaurants and for personal services dropped somewhat.... As had been the case during earlier immigration waves, the depressed wages in low-skill jobs caused more such jobs to open up. In manufacturing sectors with declining employment nationally, additional jobs for skilled and white collar workers were created in Los Angeles to complement unskilled production jobs (p. 16).

Finally, the effect of immigration on per capita income appeared to be positive; the study concluded that:

> ...despite the arrival of 325,000 Hispanics whose current average income is only half that of the average income for the area... per capita income from all private sources -- the earnings of those who are self-employed as well as wages, salaries, rents and dividends -- rose more rapidly in Los Angeles than in the nation as a whole. During the same period, per capita growth in transfer payments was considerably lower than that in most other metropolitan areas (p. 16, emphasis in the original).

Since growth in transfer payments -- welfare, Social Security, and other "entitlement" programs -- decreased in Los Angeles relative to the rest of the country, the growth in per capita income in the area can be attributed directly to improved economic conditions.

C. Fiscal Impacts

The Urban Institute found that state -- and to a lesser extent local -- expenditures for public services used by Mexican immigrants were "not offset by taxes paid by this immigrant group," primarily because of low earnings (p. ix). The study concluded that net fiscal impacts were -$1,739 and -$460 for the state and local levels, respectively. When U.S.-born children of these households are excluded (U.S.-born children are American citizens), these figures drop to -$1071 and -$357 for the state and local levels, respectively (pp. 20, 21).

These data, however, should be treated with extreme caution, for several reasons. First, they exclude fiscal impacts at the federal level. Most empirical studies of this issue have concluded that the total fiscal impact, i.e., combined federal, state and local revenues and expenditures, of undocumented persons is positive. The reason for the disparity is that the undocumented tend to use federally-funded programs (Social Security, Unemployment Compensation, Medicare, Medicaid, Food Stamps, AFDC) relatively less than the state- and locally-funded services (schools, hospitals, highways) identified in the Urban Institute study. This notion is confirmed by the study's above-cited finding that growth in transfer payments -- which are usually federally-funded -- in the Los Angeles area was lower than in other areas.

Second, the study sample only included those immigrants, both documented and undocumented, who were enumerated by the Census. The researchers note that:

> The characteristics of Mexicans who were not enumerated are unknown, but it is believed that this group consists primarily of single workers.... From a fiscal perspective, the fact that these workers have no dependents in California means that they do not add to either school enrollment or welfare rolls (p. 21).

Thus, inclusion of these single workers would tend to decrease the average state-local expenditure per household. Finally, the report notes that California

has one of the most progressive tax systems in the nation, i.e., tax rates are higher for those with high incomes, lower for those with low incomes. Since most of the undocumented earn relatively low wages, their tax contributions are lower than might be expected in other states. A recent study carried out by researchers at the University of Texas of the fiscal impacts of the undocumented in that state, which has a much more regressive tax structure than California, concluded that:

> The total revenues received from undocumented aliens [in Texas] exceed the total costs of providing public services to them (Sidney Weintraub and Gilbert Cardenas, "Use of Public Services by Undocumented Aliens in Texas," October 1983).

In fact, the Texas study concluded that state revenues from the undocumented were about three times the state expenditures for this group. Thus, the Urban Institute data, when properly interpreted, are not inconsistent with previous studies that show that the tax contributions of the undocumented exceed the costs of public services used by the undocumented.

III. POLICY IMPLICATIONS

The debate over immigration reform has been characterized by sharp differences over the facts underlying various policy choices. Among the most controversial subjects is the issue of job displacement. Proponents of more restrictive immigration policies assert that displacement of Americans from jobs by undocumented workers is a problem of enormous magnitude. The Urban Institute's findings, which are based on rigorous analysis of a large data base, directly contradict this belief.

A second area of contention has been the extent to which undocumented persons' use of public services has negative fiscal impacts for various levels of government. The study's findings that negative fiscal impacts can be ascertained for some governments is not surprising; it has long been known that the undocumented tend to have greater negative fiscal impacts on states and localities than on the federal government. The important conclusion to be drawn from the Urban Institute study is that, when the entire undocumented population is considered, and when revenues and expenditures for all levels of government are included, the undocumented have a positive fiscal impact with respect to the use of public services.

It now appears that the House will soon consider immigration legislation. As Congress considers the different policy options embodied in the Simpson-Mazzoli bill (H.R. 1510), the Roybal bill (H.R. 4909), and various amendments, it is critical that informed decisions be made based on the best evidence available. The Urban Institute study is the latest in a series of empirical research studies which show that many "facts" upon which proposed immigration policies are based -- such as the notion of job displacement -- are not supported by such evidence.

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NATIONAL COUNCIL OF LA RAZA
Office of Research, Advocacy, and Legislation

ISSUE BRIEF

Date: March 1984

Title: EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION

Contact: Charles Kamasaki/ Martha Escutia (202) 628-9600

EFFECTIVENESS OF LABOR LAW ENFORCEMENT IN DETERRING ILLEGAL IMMIGRATION

I. INTRODUCTION

The immigration debate is heating up in light of imminent action to be taken by the House with regard to this issue. Proponents of the Simpson-Mazzoli bill (HR 1510) have attacked the enforcement provisions of the alternative legislation that has been introduced by Congressman Roybal. The Roybal bill (HR 4909) relies on a wide spectrum of labor law enforcement rather than employer sanctions as a means to curb illegal immigration. Since labor law enforcement has long been posited as an alternative to sanctions, arguments and responses should be clearly defined so that the debate is founded on substantive rather than rhetorical grounds.

II. ARGUMENTS

The Federation for American Immigration Reform (FAIR) and others have argued against the effectiveness of labor law enforcement in the following manner:

A. Immigration and Naturalization Service (INS) data show that about 70% of aliens apprehended report receiving the minimum wage or higher. Therefore, enforcement of labor laws will not reduce employers' incentives to hire the undocumented.

B. Labor law enforcement has been tried before and it doesn't work. A 1981 GAO study concluded that the Department of Labor's (DOL) 1977 program to deter the use of the undocumented by enforcing labor laws was ineffective, and that employer sanctions were needed to stop the hiring of unauthorized workers.

C. Labor law enforcement will, even if effective, fail to cover all firms. Unless all, or most, firms are covered, aliens will still find jobs and illegal immigration will continue. It has been argued that anything short of sanctions will not be effective in stemming the flow of the undocumented workers.

- Proponents of the Simpson-Mazzoli bill argue that removal of the Texas proviso and a clear, definitive ban on the hiring of undocumented workers is the only means of effectively reducing illegal immigration.

III. RESPONSES

A. Whether undocumented workers receive minimum wages or higher:

1. The 70% figure is by no means definitive. First, previous studies have shown much lower wage rates for samples of the undocumented than the INS data (See, North-Houston Study, 1976). Second, it is widely known that INS is concentrating its enforcement efforts on those industries that have "jobs Americans want," i.e., those that tend to pay relatively high wages; thus, INS' data are skewed to reflect these higher wages. Finally, little is known about the reliability of the INS data. It is possible that apprehended aliens are attempting to protect their employers so that their jobs will be open if they return.

2. Enforcement of labor laws goes far beyond minimum wage enforcement. The Roybal bill covers all wage-and-hour violations including the failure to pay overtime, OSHA, and National Labor Relations Act. Violations of these laws save employers as much -- if not more -- than minimum wage violations. The 1979 DOL Noncompliance Survey found, for example, that violations of overtime provisions were more common than minimum wage violations (21.1% vs. 4.9% of the surveyed firms). Moreover, overtime violations resulted in underpayments of $11.2 million; violations of the minimum wage resulted in only $3.9 million in underpayments. The Roybal bill is more comprehensive in that it attacks a wide spectrum of labor law violations which save employers sizeable amounts of money. By enforcing labor laws and preventing violations, the Roybal alternative kills the employers' incentive to hire the undocumented rather than citizens or legal residents.

3. There is documentation that industries that hire large numbers of undocumented do so to avoid compliance with various labor laws. A study by the International Ladies' Garment Workers Union showed that garment manufacturers can save up to $5,000 per worker per year by violating labor laws. (See, Sol C. Chaikin and Phil Comstock, "Toward a Rational Immigration Policy," The Journal, The Institute for Socio-economic Studies, Spring 1982.)

B. Whether labor law enforcement is effective in deterring the use of undocumented workers:

1. The 1981 GAO study indicated that DOL's 1977 program was based on complaints by workers. Because of the fear of arrest and deportation, the undocumented tend not to complain about mistreatment. The Roybal bill provides for a self-directed program, and targets industries based on research into which sectors of the economy have high rates of employment of undocumented workers.

2. The 1977 DOL program referred establishments with suspected undocumented workers over to the INS. This not only deterred employees from reporting labor law violations but also reduced the incentives for workers to cooperate with the DOL program. The Roybal program would not have any INS involvement and should, therefore, have greater cooperation from workers.

3. The lack of penalties for record-keeping hampered enforcement and

evaluation of program effectiveness. The FLSA requires employers to keep records that enable DOL inspectors to verify compliance with wage and hour laws. Because there are no penalties for failure to keep records, and because employers could keep erroneous or incomplete records, detection of violations was made more difficult.

- Record-keeping is said to be especially important in detecting overtime violations, and the lack of record-keeping by employers was cited as one reason for limited program effectiveness. The Roybal bill establishes a new $10,000 penalty for failure to keep proper records, and will, therefore, be more effective in detecting violations.

4. The DOL program was understaffed, and backlogs of cases hindered program effectiveness. The old program included 225 compliance officers, and in many respects, operated as an extension of DOL's regular enforcement program. The Roybal bill, on the other hand, provides for 600 compliance officers operating in a separate unit.

C. Whether labor law enforcement alone, without sanctions, will halt the influx of illegal immigration:

It must be emphasized that the Roybal bill should not be compared to the ideal, rather abstract notion of sanctions, but to the sanctions program as written in the Simpson-Mazzoli bill and as they are likely to be enforced in the real world. When this comparison is made, sanctions look less effective, and the Roybal bill becomes even more credible. Specifically:

1. There are many exceptions in the Simpson-Mazzoli bill which decrease the coverage, and presumably the effectiveness, of employer sanctions:

   - Employers with three or fewer employees are exempted from the verification and recordkeeping requirements under the Senate bill;

   - Employers hiring workers on a day-to-day or casual basis are similarly exempted in the House bill;

   - Agricultural employers have the 3-year transition program under which they may continue to use undocumented workers in the House version; and

   - All employers are exempted from verification and recordkeeping in the House bill until their first violation (Kindness amendment).

   Given these exceptions, the sanctions program in Simpson-Mazzoli cannot be credibly described as broad, and is certainly less credible than sanctions in the abstract. The Roybal bill will target industries that are most likely to hire and exploit the undocumented. In terms of coverage, there appears to be little actual difference between the two bills.

2. Sanctions have simply never worked anywhere else. They have failed in:

   - Other countries. A 1982 GAO study of sanctions laws in 19 other

countries and Hong Kong concluded that they had been ineffective.

- States. Twelve states now have sanctions laws on the books, and none of them have been effective (thus the alleged need for a federal sanctions law).

- Agriculture. The Farm Labor Contractor Registration Act includes an employer sanctions provision. This has apparently not worked since agricultural interests got the transition program, an expanded H-2 program, and the Panetta amendments all because of their dependence on undocumented workers.

One state with a sanctions program (California) has abandoned it in favor of what it calls the Concentrated Enforcement Program (CEP) which targets labor law enforcement on firms using large numbers of undocumented workers.

3. Labor law enforcement is more cost-effective than sanctions. Sanctions are very costly in terms of the numbers of visits to employer worksites that will be made to verify compliance. With the same number of compliance officers (600), between 3.5 and 6 times as many employer worksites can be checked under the Roybal bill than under employer sanctions.

   - Per the HR 1510 Report (Judiciary), INS will be able to make 10,000 worksite visits and detain 16,000 individuals under the authorized funding level of HR 1510. This is to be accomplished with about 600 investigation officers. (See, Rpt. 98-115, p. 102). This translates into 16.7 worksite visits per investigative workyear and about 26.7 persons detained per workyear.

   - Under the envisioned Roybal alternative, it appears that enforcement of FLSA and OSHA will be much more cost-effective. For example, DOL estimated in 1982 that with 612 compliance officers it would make about 63,000 inspections. This translates into 102 inspections per workyear, or more than six times the efficiency of sanctions. For OSHA, in Fiscal Year 1983, with 1200 inspectors, 68,577 inspections took place. This translates into an efficiency of about 57 inspections per workyear, or about 3.5 times the efficiency of sanctions. (See, Rpt. 97-909, p.4). The apparent reason for the fewer visits per inspector under OSHA is that OSHA requires actual physical inspection of the workplace, whereas detection of FSLA violations can take place with inspections of records and worker interviews.

The reasons for the vast difference between sanctions and labor law enforcement are threefold:

- The physical and administrative machinery for labor law violation enforcement is already set up and operating. New machinery would have to be set up for sanctions.

- Similarly, significant economies of scale would be achieved by adding to existing enforcement, since each added increment of enforcement under existing laws would require only modest increases in administration. Under sanctions, the added

enforcement would entail substantial administrative and logistical expenses (aside from start-up costs).

- Finally, sanctions will apparently require inspection of the documents of suspect employees and the appropriate records. In addition, because sanctions are focused on violations with respect to individual employees, and since detention of undocumented individuals will have to take place, they are much more time consuming than wage and hour violation, where a compliance officer can issue a citation on the spot.

IV. CONCLUSION

To the extent that deterrence is based on fear of detection, we can expect that that the enforcement provisions of the Roybal bill will be more effective than employer sanctions as contemplated under the Simpson-Mazzoli bill. In addition, unlike employer sanctions, the Roybal bill will not create employment discrimination against "foreign-looking" persons, and will extend additional labor protections to many citizens and legal residents that are employed in the affected industries. Furthermore, labor law enforcement is less burdensome on business enterprises (whether large or small) because compliance will be determined by the records that are required to be kept under current law, whereas sanctions would require business concerns to collect new records such as workers' documentation.

NCLR

Perspectivas Públicas

NATIONAL COUNCIL OF LA RAZA
Office of Research, Advocacy, and Legislation

ISSUE BRIEF

Ref: H.R. 1510 Date: August 1983

Title: Employer Sanctions and Employment Discrimination

Contact: Charles Kamasaki, Martha Escutia, or Rafael Magallan at (202) 628-9600

I. ISSUE SUMMARY

The Immigration Reform and Control Act of 1983 (H.R. 1510) has been passed by the Senate and will soon be considered by the House. One of the key elements in the bill is a provision which would establish a system of penalties for employers who knowingly hire, recruit or refer undocumented aliens. Throughout the debate over the reform of immigration policies, Hispanic groups have opposed employer sanctions on the basis that they are inherently discriminatory.

Because some Congressmembers have expressed doubts about whether employer sanctions will result in discrimination, the National Council of La Raza (NCLR) has prepared this brief analysis of the theoretical and empirical evidence on the subject. There are two primary questions to be answered with respect to this issue:

- Will employer sanctions increase the likelihood of employment discrimination against Hispanics and other "foreign-looking" persons?
- Are existing mechanisms, and those presently included in the bill, sufficient to remedy any discrimination that results?

The purpose of this Issue Brief is to provide interested parties with information that will allow an informed response to the questions posed above.

II. ISSUE ANALYSIS

A. Effects of Employer Sanctions on Employment Discrimination

The existence of employment discrimination against Hispanics is widely acknowledged (See, for example, U.S. Commission on Civil Rights, Affirmative Action in the 1980s: Dismantling the Process of Discrimination, November 1981; and Unemployment and Underemployment Among Blacks, Hispanics, and Women, November 1982). If employer sanctions are enacted, the available evidence suggests that this discrimination would increase in two ways. The most obvious is that the legislation would provide a pretext for employers who would be inclined to discriminate anyway. If the bill passes, these employers will be given an affirmative defense against charges of employment discrimination. Thus, the inclusion of sanctions in the bill risks exacerbating existing employment discrimination.

The second type of discrimination will result from good faith efforts on the part of employers to comply with the law. The bill would create a "suspect class" of persons -- those who, on the basis of physical characteristics, language, or

other factors, appear to be "foreign" to employers. Employers seeking to avoid sanctions, or those who may simply wish to avoid paperwork or disruption of their normal routines, may also avoid hiring Hispanics or other "foreign-looking" persons. Bernard Brown, of the Coalition of Apparel Industries in California, explains:

> Any statute which prohibits an employer from hiring an undocumented alien, with the necessary sanctions for a violation, places a tremendous burden on the employer.... Brown-skinned applicants or current employees would be regarded with considerable suspicion. This can hardly be viewed as a healthy situation.

This view is supported by Daniel Leach, former Vice Chair of the Equal Employment Opportunity Commission:

> ...if legislation is enacted with employer sanctions provisions, employers might act in ways which would have the effect of job dis-discrimination based on national origin.... Many employers might decide to take no chances and refuse to hire applicants of Hispanic origin.

Senator John Tower (R-TX) agrees; during debate on the Senate version of the bill (S. 529), he expressed concern about:

> ...the discriminatory effect which I fear employer sanctions may cause against American citizens or legal aliens of minority groups. If an employer knows he is facing stiff monetary penalties...for hiring someone who turns out to be an illegal alien, can we be surprised if he elects not to hire anyone who looks or appears to be foreign?

Many respected groups have expressed similar concerns, including the U.S. Commission on Civil Rights, the American Bar Association, Notre Dame University's Schools of Law and Social Work, the American Civil Liberties Union, and many groups representing Hispanics and Asians.

Perhaps more important, experience with the State of California's employer sanctions law provides empirical evidence that employers will discriminate against "foreign-looking" persons. Colleen Logan, then Area Administrator of Labor Standards Enforcement, California Department of Industrial Relations, told the Civil Rights Commission in 1980 that:

> ...the response of some employers (to California's employer sanctions law) was to screen employees on the basis of the color of their skin or their speech accent. The employer response to a Federal employer sanctions law could not be any different.

Finally, the response of many employers to Operation Jobs, and to Operation Cooperation, two recent Immigration and Naturalization Service (INS) initiatives, shows that employers tend to go beyond the law's minimum requirements to demonstrate their compliance with immigration-related rules. As a result of the two INS initiatives, employers often terminated employees of Hispanic origin even though they were legally entitled to work (See, for example, testimony of Antonia Hernandez, Mexican American Legal Defense and Education Fund, before the House Agriculture Committee, June 15, 1983).

Thus, existing evidence, including the informed opinions of those familiar with the causes of employment discrimination and the actual results of previous experi-

ence, strongly suggests that employer sanctions will increase the likelihood of discrimination. At a minimum, persons with a "foreign" appearance will be placed at a competitive disadvantage in seeking employment, at a time when the unemployment rate of Hispanics is 50% above the national average.

B. Remedies for Employment Discrimination

Proponents of the bill suggest that, should any discrimination occur, existing mechanisms can solve the problem. There is little evidence to support this view, however. As is now widely known, the Equal Employment Opportunity Commission (EEOC), which is charged with enforcing Title VII of the Civil Rights Act of 1964 -- the primary enforcement tool against employment discrimination -- has serious deficiencies in its ability and track record in addressing discrimination based on national origin. EEOC's record of addressing discrimination against Hispanics is particularly poor. For example, only 4.9% percent of all charges filed with the EEOC in 1982 were filed by Hispanics, and 1.19% of the agency's total administrative recoveries were made on behalf of Hispanics. The Commission's record was recently described by its own Deputy General Counsel as worse than "dismal" (See letter of Michael Martinez, cited in the Congressional Record, May 17, 1983, p. S6825).

Moreover, Title VII contains a number of loopholes which prevent EEOC from adequately addressing the discrimination created by employer sanctions. For example, employers of 14 or fewer persons, and employers who hire workers for less than 20 weeks annually, are excluded from EEOC's jurisdiction. This excludes 70% of all employers from EEOC's purview. Ironically, it is these small employers that are least likely to completely understand the law and, therefore, most likely to discriminate. According to former EEOC Commissioner Daniel Leach:

> The smaller employer is perhaps where some of the problems remain most severe: those that lack sophistication, don't understand the law, choose not to deal with the law. That's a problem for EEOC as it is. I'm sure it would be a problem and continue to be a problem with any (sanctions) legislation.

Finally, one aspect of this whole issue that is often overlooked is the difficulty in resolving any form of employment discrimination. One who is discriminated against usually does not know it. Furthermore, any system which relies on complaint processing to address discrimination is inherently less effective than one which discourages that discrimination in the first place (See, for example, U.S. Commission on Civil Rights, The Federal Civil Rights Enforcement Budget: FY 1983, June 1982). This problem is increased for Hispanics and other minorities; as the Civil Rights Commission has pointed out:

> Persons who would be affected by the proposed employer sanctions law for the most part, would be citizens and legal residents who are racially and/or culturally identifiable with major undocumented groups.... Members of these groups are generally the least informed as to what their rights are and how to seek redress for them.

If employer sanctions were enacted, victims of discrimination resulting from sanctions would have little opportunity to seek redress, assuming that they knew that they had been discriminated against, and that they understood how to file a complaint.

As a means of ameliorating the discriminatory effects of employer sanctions, Rep. Augustus Hawkins (D-CA) has introduced an amendment which would establish administrative mechanisms to help fill in the gaps in EEOC's jurisdiction. Senators Gary Hart (D-CO) and Carl Levin (D-MI) unsuccessfully attempted to amend the Senate bill

by specifically prohibiting immigration-related employment discrimination, and providing for a Special Counsel of the Immigration Board to hear and resolve complaints from individuals who believed they had been discriminated against. The Hawkins amendment, which would also provide a similar administrative procedure for any person who was denied a job that was subsequently filled by an undocumented worker, is recognized by most Hispanic groups as an improvement of the bill. However, it would still place the burden of addressing employment discrimination on the victim; as noted by the Commission on Civil Rights:

> ...substantial burdens are imposed on a victim of discrimination in pursuing administrative procedures.... Showing that an employer denied employment to a bona fide job applicant because he/she is racially and/or ethnically identifiable with undocumented workers would often be a very difficult task, even if the applicant persisted in the substantial investment of time and effort to reach adjudication of his or her claim.

Therefore, even if the Hawkins amendment is adopted, few victims of employment discrimination created by employer sanctions will be properly compensated; the vast majority of discriminatory acts will not be observed, and those that are will be difficult to adjudicate.

Moreover, there is substantial evidence that employer sanctions would not be effective in either deterring the employment of unauthorized persons or in restricting the flow of undocumented immigrants. A recent General Accounting Office (GAO) analysis of such laws in 20 countries concluded that this approach was ineffective. Those who argue that the U.S. law will be more vigorously enforced, and, therefore, more effective, should recognize that vigorous enforcement would also increase the likelihood of employment discrimination. Thus, there is reason to believe that the scope and degree of employment discrimination created by sanctions may well be proportional to the level of enforcement of the sanctions provision. (For additional information on the ineffectiveness of sanctions, see Mexican American Legal Defense and Education Fund, Are Employer Sanctions An Effective Deterrent To Illegal Immigration?, May 4, 1983)

The preponderance of evidence suggests that, if sanctions are enacted, the incidence of employment discrimination will increase. Actual experience with California's sanctions law provides empirical support for this position. Further, serious jurisdictional gaps in Title VII and the poor enforcement record of the EEOC in national origin cases demonstrate the inadequacy of existing remedies for employment discrimination. Finally, if sanctions are vigorously enforced, discrimination is likely to increase in proportion to the severity of that enforcement.

III. NCLR POSITION

NCLR opposes H.R. 1510 in its present form. The most objectionable feature of the bill is the inclusion of employer sanctions. Employment discrimination is already far too prevalent. NCLR and other Hispanic groups view the sanctions issue as a key test of Congressional commitment to equal employment opportunity.

To the extent that a sanctions provision is included in the bill, NCLR supports the Hawkins amendment. However, NCLR believes that the adoption of that amendment would not, as this analysis suggests, remove the threat of employment discrimination resulting from sanctions, and would not, therefore, fully address the concerns about such discrimination. NCLR would be happy to provide specific citations for the research cited above. For more information on employer sanctions or other aspects of H.R. 1510, contact Charles Kamasaki, Rafael Magallan, or Martha Escutia at 628-9600.

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Raúl Yzaguirre
President

MEMORANDUM

TO : Interested Parties
FROM : Charles Kamasaki, Director of Policy Analysis
DATE : June 1, 1984
SUBJ : Critique of HHS and CBO Cost Estimates of Legalization

I. ISSUE SUMMARY

The Simpson-Mazzoli immigration legislation (H.R. 1510) will soon be considered by the House. The legalization provisions of the bill will be hotly contested. One of the most controversial -- and most important -- issues in the debate over legalization involves fiscal and economic impacts on federal, state, and local governments. At issue are wide-ranging estimates of the numbers of undocumented workers eligible for legalization, the number that will actually come forward and participate in the legalization program, and the demographic characteristics, expected program participation rates, and tax contributions of the legalized population.

The legalization program in H.R. 1510:

- Permits all undocumented immigrants who have continuously resided in the United States since January 1, 1982, to apply for legalization.
- Provides for the screening of all applicants based on exclusions already in current law. These exclusions will preclude the legalization of applicants who would pose a public risk, who have "medical deficiencies," are likely to become "public charges," or who are considered unacceptable for other specified reasons.
- Provides that successful applicants shall receive permanent resident status.
- Imposes a five-year moratorium on federally-funded benefits to legalized persons, with some exceptions for emergency medical services and aid to the blind and disabled.
- Authorizes reimbursement to states for 100% of costs incurred on behalf of the legalized population through Fiscal Year 1987.

The Energy and Commerce Committee reported an amendment that would make legalized persons eligible for certain public health and medical benefits, including pre- and post-natal care (U.S.-born children are American citizens irrespective of the legal status of their parents) and immunization. This amendment had broad support and is expected to be adopted by the full House. The estimated cost of this amendment is included in the following analysis.

II. CURRENT COST ESTIMATES OF LEGALIZATION

A. Overview

The Congressional Budget Office (CBO) has estimated that the fiscal impact of legalization for the first five years of the program will total $3.994 billion. The Department of Health and Human Services (HHS) estimate is that legalization will cost about $6.759 billion over the same period.

The two estimates share many assumptions, especially with regard to the demographic characteristics of the undocumented population, their expected rates of income transfer and human service program participation, and other factors. The primary difference between the two estimates concerns the number of undocumented persons now in the United States.

The HHS estimate is based on a population of 6.25 million undocumented persons; CBO's estimate is based on a 4.5 million population. HHS utilizes a 1980 Census study (endorsed by the Select Commission on Immigration and Refugee Policy) that estimated that there were 3.5 to 6 million undocumented aliens in the U.S. in 1978, with an estimated growth of 250,000 per year.

CBO used a more recent Census study which reported that about 2 million undocumented persons were counted in the 1980 Census. Given that an undercount high enough to justify numbers of undocumented aliens at or above 6 million is unlikely, and adjusting for growth since 1980, CBO settled on an estimate of 4.5 million.

B. Assumptions

Aside from the difference in the estimated undocumented population, the CBO and HHS estimates make similar assumptions about the legalized population. Some of the more salient assumptions include:

- Participating Population: Both HHS and CBO derive their estimates of the number of persons participating in the legalization program by first estimating the percentage of the undocumented population that is eligible for legalization and then estimating the percentage of that group that will come forward and successfully complete the legalization process.
  - .. HHS estimates that about 46% of the total undocumented population will participate in the legalization program (70% eligible, 65.7% of these participating);
  - .. CBO estimates that 39% of the total undocumented population will participate in the program (65% eligible, 60% of these participating).
- Demographics: HHS and CBO appear to make similar assumptions about the characteristics of the undocumented population, such as family status, sex, and age, primarily based on Census data.
- Program Participation Rates: These assumptions vary by program. Both HHS and CBO, however, rely heavily on program participation rates of the U.S. population. CBO states that, "...over time, this group of aliens could be expected to resemble the U.S. population" in terms of program participation.

III. CRITIQUE

Most immigration experts believe that the HHS, and to a lesser extent, the CBO cost estimates are exaggerated. In this section, the assumptions underlying the cost estimates will be examined.

A. Participating Population

The first area of controversey involves the total number of undocumented persons in the United States. While previous, largely speculative, estimates have suggested a total population exceeding 10 million, most responsible sources agree with the 3 to 6 million estimate. Moreover, as more rigorous and reliable research findings have become available, the estimates have been getting smaller. Census demographers Robert Warren and Jeffrey Passel noted in 1983 that:

> Estimates of the numbers of illegal aliens in the United States have varied widely -- generally falling in the range of 2 to 12 million. Much of the debate on the matter has been unhampered by empirical evidence.... As more empirical evidence has become available, the estimates have gotten smaller and smaller.

More recently, the Urban Institute carried out a study of immigration in California. The study found that independent statistics known for their reliability such as school enrollment data:

> ...correspond closely with the [1980 Census] estimates...suggesting that the Census did enumerate most Mexican immigrant families with children, whatever their legal status.

The study did conclude that the Census undercounted single males by a rate of 25 to 37.5%. Adjusting the 1980 Census figures for this undercount would bring the estimated size of the undocumented population to about 2.8 to 3.35 million. Allowing for growth of 250,000 per year (per HHS estimates) results in an estimated 1982 total of between 3.32 and 3.85 million undocumented persons, substantially below both the HHS and CBO estimates of 6.25 million and 4.5 million, respectively. While no one can provide exact estimates of the illegal immigrant population, the most recent and most reliable estimates suggest that the numbers are far lower than previously thought, and are certainly lower than the HHS and CBO estimates.

This procedure probably over-estimates the total undocumented population in the U.S. The Urban Institute study concentrated on Mexican immigrants, who make up about half of the total undocumented population. Many demographers believe that the proportion of single males -- those most likely to be excluded from Census data -- is greater in the undocumented Mexican population than in the undocumented population as a whole. Thus applying the Urban Institute undercount rate to the entire undocumented population probably exaggerates the size of this population.

Second, the estimated legalization participation rates used by both HHS and CBO appear to be too high irrespective of the total number of undocumented persons. Both estimate that about 60% of the eligible population will come forward and complete the legalization process. As immigration expert David North has pointed out, the experience of legalization programs in other countries shows that only a small fraction of the illegal population can be expected to come forward, even under the best of circumstances. In Canada, even an aggressive legalization campaign brought forth only about 25% of the expected participation. Other countries have had similar results.

Moreover, the estimates do not seem to allow for the effect of the "public charge," "medical deficiency," and other exclusions. It can be assumed that a sizable number of applicants will be screened out of the program by the exclusions. In addition, the estimates do not take into account the probable deterrent effect of the fees that will be charged to applicants for legalization.

Third, the HHS and CBO calculations ignore the effect of "adjustees" that would otherwise be able to receive legal status without a legalization program. According to David North, some 100,000 aliens -- most of whom are in deportable status -- are able to obtain legal status under current law each year. Thus, over the five-year period in question, 500,000 undocumented persons will become documented even without legalization; these 500,000 persons should be subtracted from the estimates of those participating in legalization.

Adjusting the CBO and HHS estimates to account for the above factors produces significant reductions in the likely number of persons participating in legalization, even if the effects of the exclusions are discounted. For example, assuming a total undocumented population of 3.85 million in 1982, a 50% application rate less the 500,000 adjustees produces an estimate of about 1,425,000 persons participating in legalization, as opposed to the HHS and CBO estimates of 2,876,000 and 1,755,000 persons, respectively.

B. Demographics

Several specific assumptions regarding the demographic characteristics of the undocumented immigrant population and the effects of expected rates of program participation in both the HHS and CBO estimates appear to be inaccurate; these will be discussed below. There are, moreover, two general weaknesses in both sets of estimates.

First, neither estimate takes into account the selective effects of the "public charge" and other exclusions. Notwithstanding the difficulty of predicting how many persons will be screened out by the exclusions, it is clear that those who are most likely to participate in income transfer and other benefit programs are also most likely to be screened out. Thus, even if the demographic assumptions are accurate with respect to the entire undocumented population, they are not necessarily descriptive of the population that will successfully complete the legalization process.

Second, both HHS and CBO projected the demographic characteristics of the undocumented persons enumerated in the Census to the entire undocumented population. As noted above, the Urban Institute estimated a 25-37% Census undercount of single males in the undocumented population. This is consistent with previous studies of Census undercounts; single males are more likely to be transient, less likely to respond to the Census, and more difficult for enumerators to detect.

Ignoring the undercount of single males in applying the Census data to the entire undocumented population seriously biases the HHS and CBO assumptions. By ignoring the undercount, HHS and CBO mistakenly assume a greater proportion of intact families, elderly, women, and children in the undocumented population than actually exists. These groups tend to have the greatest need for income supplements and social services; by contrast, single males generally neither need, nor are they eligible for, most income transfer and social programs. Thus, the combined effect of the failure to allow for the effects of the exclusions and the misapplication of Census demographic data is to greatly exaggerate the proportion of the legalized population that will need, seek, and receive income transfer and other social programs.

C. Program Participation Rates

H.R. 1510 precludes participation in most federally-funded benefit programs by legalized persons; the exceptions to the moratorium on benefits include aid to the aged, blind, and disabled [equivalent to Supplemental Security Income (SSI)], Disability Insurance (DI) (DI), Unemployment Insurance (UI), and limited assistance such as Food Stamps and Medicaid for SSI-eligible persons. In addition, CBO and HHS provide estimates of the costs of federal reimbursement to the states for General Assistance (GA) benefits.

The cost estimates provided by CBO and HHS assume similar, but not identical, program participation rates. In general, the HHS estimates are higher, reflecting HHS' higher estimates of the undocumented population, higher legalization participation rates, and somewhat higher estimates of program participation rates. This analysis will examines the lower CBO estimates for the DI and SSI programs to illustrate key weaknesses in the assumptions.

1. Disability Insurance (DI)

CBO estimates that DI payments to the legalized population will range from $70 million in the first year of legalization to $190 million in the fifth year of legalization. CBO assumes a disability incidence rate paralleling the native U.S. population.

However, Disability Insurance is part of the Social Security system, which does not exclude undocumented persons from participation. Thus, H.R. 1510 would not affect the legal right of anyone to use this program. The inclusion of the DI program outlays for this population as a net increase in cost resulting from legalization is, therefore, highly questionable.

In addition, the CBO assumption that the disability incidence rate of the undocumented population equals the U.S.-native rate is inaccurate, on both logical and empirical grounds. Those who successfully complete the legalization process would have to overcome several barriers including often long and dangerous travel to the U.S., detection by the Immigration and Naturalization Service (INS), and the exclusions designed to screen out those with medical deficiencies and those likely to become public charges. To suggest, as CBO does, that those who overcome these barriers would have the same incidence of disability as the native population is at least highly questionable.

Second, the DI recipient population in the U.S. is heavily weighted towards the elderly. The Annual Statistical Supplement to the Social Security Bulletin shows that about 60% of DI recipients were in the 55-64 age bracket in 1982. About 9.6% of the U.S. population falls within that age bracket. Even with the undercount of young, single males, the Census showed that only about three percent of the undocumented enumerated by the Census were in that age group. Clearly, the CBO assumptions inflate the expected DI participation rate, by perhaps as much as a factor of three (300%).

2. Supplemental Security Income (SSI)

CBO estimates that SSI-equivalent benefits to the undocumented will cost about $20 million in the first year of legalization, and will increase to $85 million in the fifth year of legalization. CBO explains that:

> The CBO cost estimate...is based on Census data which show 1.8% of illegal aliens to be aged, an assumed income eligibility of 100%, and a participation rate for the eligible of 50%. The recipiency

rate for the blind and disabled is based on the current recipiency rate for the United States population.

There are two independent problems with these assumptions. First, the assumption that proportion of blind and disabled among the legalized population is analagous to that in the total U.S. population is unreasonable, given the analysis above. Since the undocumented population as a group is younger than the U.S. population, and since the exclusions will tend to screen out many blind and disabled applicants for legalization, the CBO assumption that legalized persons will resemble the U.S. population is unreasonable.

Second, the current SSI recipiency rate among the aged U.S. population is about 7%, while CBO estimates that 50% of the legalized aged will receive SSI. While the legalized population may tend to have lower incomes than the U.S. population, it nevertheless appears remarkable that CBO believes that program participation among the legalized will be seven times (700%) higher than for the native population. In addition, the assumption that the blind and disabled legalized population will use the program at the average U.S. rate, but that the aged legalized population will use the program at seven times the average U.S. rate appears to be internally inconsistent.

Exaggeration of SSI program participation rates is especially important in light of the fact that CBO's cost estimates for Food Stamp and Medicaid use are based on SSI eligibility (otherwise, legalized persons would be ineligible for Food Stamps and Medicaid under the five-year moratorium).

3. Other Considerations

Two other factors suggest that the CBO program participation rates are too high. First, CBO apparently assumes that all legalized persons will come forward at the beginning of the legalization period and begin drawing benefits immediately thereafter. H.R. 1510 provides for a 12-month period during which the undocumented may apply for legalization. Verification of documents and routine bureaucratic delays alone to suggest that some time will elapse between the application for legalization and the actual granting of permanent resident status. Moreover, the experience of legalization programs in other countries shows that many of the undocumented will apply towards the end of the 12-month period. Thus, it would be more appropriate to "phase-in" costs, rather than assume immediate legalization and program participation as CBO does.

Second, the CBO assumptions of program participation are, as noted above, in large part based on the recipient rates of the U.S. population. However, there is substantial evidence that immigrants -- both legal and illegal -- tend to have far lower rates of social program participation than natives. According to Julian Simon, an economist and Senior Fellow at the Heritage Foundation, studies of immigrant populations in the U.S. show that:

> In summing the figures for all transfers and services, the average immigrant family is found to receive $1,404 in welfare services in years 1-5, $1,941 in years 6-10, $2,247 in years 11 to 15, and $2,279 in years 16 to 25. Native families overall average $2,279, considerably more than the immigrants receive in their early years in the U.S.

Thus, although the CBO assumption that immigrants, over time, come to resemble the native population in terms of benefit recipiency rates appears reasonable, it is not until years 16-25 that immigrant program participation rates equal that of

natives'. The CBO assumes that this process will take only five years, thereby significantly over-estimating probable program participation rates of legalized persons.

IV. CONCLUSIONS

It is clear that both the HHS and CBO cost estimates are higher than the best available data will support. Both HHS and CBO overestimate the number of undocumented persons now residing in the country; both also assume very high rates of participation in the legalization program despite the experience of other countries which has shown that the majority of eligible population is not likely to seek legalization. Neither HHS nor CBO accounts for the fact that many undocumented persons would obtain legal status even in the absence of legalization, and neither set of estimates calculates the effects of the "public charge" and "medical deficiency" exclusions on the number of persons successfully completing the legalization process. Finally, both HHS and CBO assume very high rates of participation in income transfer and social programs, despite convincing demographic and other empirical evidence suggesting otherwise.

This analysis demonstrates that the current estimates of the costs of legalization should be treated with extreme caution. Exaggerated cost estimates may be used to justify amendments to H.R. 1510 that would severely restrict the scope and coverage of the legalization provisions. This analysis indicates that such amendments may be unjustified to the extent that they rely on the CBO or HHS cost estimates.

The National Council of La Raza (NCLR) supports a comprehensive and effective legalization program, and opposes amendments limiting the scope of legalization. NCLR would be happy to provide specific citations and further research supporting the positions taken above. For more information, contact Policy Analysis Director Charles Kamasaki or Legislative Director Martha Escutia at (202) 628-9600.