

3-1987

Moving Toward Citizenship: Immigration Reform and the English Language Amendment

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MOVING TOWARD CITIZENSHIP

IMMIGRATION REFORM AND THE ENGLISH LANGUAGE AMENDMENT

ASSEMBLY OFFICE OF RESEARCH

MARCH 1987

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MOVING TOWARD CITIZENSHIP

IMMIGRATION REFORM AND THE ENGLISH LANGUAGE AMENDMENT

ASSEMBLY OFFICE OF RESEARCH

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MARCH 1987

INTRODUCTION

For non-English speaking residents of California, 1986 was a year of important political decisions -- decisions that will have a lasting impact on their lives. The Federal Immigration Reform and Control Act (IRCA), Public Law 99-603, establishes a legalization program for previously undocumented immigrants as part of this country's efforts to control the flow of illegal immigration. The Act provides federal funds to the states to cover certain costs of services provided to immigrants, including helping them learn English -- a requirement of the legalization program.

In the same year, California voters approved a Constitutional Amendment, referred to as the English Language Amendment, declaring English as the State's official language. To implement the new amendment, the State will have to take an active role in teaching English to non-English speaking persons -- a task that will be made more difficult by the fiscal limitations facing the State. The availability of federal funding through IRCA, however, gives the state the opportunity to mount a major offensive in teaching English language skills to California immigrants.

CALIFORNIA'S CHANGING DEMOGRAPHICS

While both the *Immigration Reform and Control Act* and the *English Language Amendment* have been the subject of much controversy, they each reflect a practical reality. One, California is the home of vast numbers of immigrants. Two, in order to survive and prosper in California, immigrants must be proficient in English.

Since 1970, California's population has undergone significant demographic changes, which are projected to continue beyond the year 2000. Shortly after the end of this century, a majority of California's population will be nonwhite, non-Anglo. Most of this new majority will be Asian and Hispanic in origin, and most will speak languages other than English. Already most students in the lower

grades of our public schools are minority youngsters, and the demand for bilingual services for these children grows every year.

In fiscal 1985, 27 percent of all legal immigrants to the United States indicated that California was their intended state of residence. Many of those who indicated another preference eventually moved to California. Moreover, the Department of Finance's Population Research Unit and the U.S. Census Bureau both estimate that California is currently the place of residence for more than 50 percent of the estimated two to four million undocumented immigrants in the United States. Even this figure may be conservative because of the significant two-way traffic across the border with Mexico.

These new immigrants are younger and less educated than the population in general. According to the U.S. Census Bureau, the immigrant population arriving in the United States between 1970 and 1980 differs from previous immigrants in several ways:

- o They speak English to a far less extent than previous immigrants. (Table 1)
- o They attain lower levels of employment than previous immigrants. (Table 2)
- o They earn less income than previous immigrants. Table 3)

TABLE 1
PERCENT OF PERSONS 5 YEARS AND OVER WHO SPEAK ENGLISH "NOT WELL", OR "NOT AT ALL", BY NATIVITY, REGION OR COUNTRY OF BIRTH, AND PERIOD OF IMMIGRATION TO THE UNITED STATES:
1980 Census

Nativity and Region or Country of Birth	Period of Immigration To The United States				
	All periods	1975 1980	1970 1974	1960 1969	Before 1960
Native Population	0.6	(x)	(x)	(x)	(x)
Foreign-born Population					
All Countries	21.6	39.0	27.4	20.2	9.9
Latin America	39.7	55.2	39.8	27.8	29.1
Mexico	51.6	68.5	50.3	42.1	38.4
Asia	21.7	32.0	12.6	11.1	17.2
Europe	10.7	25.0	22.9	13.6	6.7
Soviet Union	16.4	46.2	17.2	18.5	9.5
Africa	7.2	10.9	5.0	4.6	4.1

(x) Not Applicable

Source: 1980 Census, Detailed Population Characteristics

TABLE 2
Percent of Employed Persons Aged 16 years and over in professional specialty occupations, by nativity, country or region of birth, period of immigration to the United States, and sex:
1980 Census

Nativity and Region or Country of Birth	Males				Females			
	All Periods	1970 1980	1960 1969	Before 1960	All Periods	1970 1980	1960 1969	Before 1960
Total Population	11.0	(x)	(x)	(x)	14.1	(x)	(x)	(x)
Foreign-born Population								
All Countries	12.4	10.9	13.0	13.7	11.5	10.6	11.5	12.5
Latin America	5.2	3.2	7.0	7.8	7.1	4.4	8.8	10.5
Asia	22.8	19.5	31.7	22.9	17.1	16.0	20.2	15.8
Europe	13.2	13.7	11.6	13.9	11.1	11.1	9.7	11.8

(x) Not applicable

Source: 1980 Census, Detailed population Characteristics

TABLE 3
MEDIAN INCOME IN 1979 FOR MALES AGED 15 YEARS AND OVER WITH INCOME
BY NATIVITY, COUNTRY OF ORIGIN OR REGION OF BIRTH, AND PERIOD OF
IMMIGRATION TO THE UNITED STATES

1980 CENSUS

(all figures rounded to nearest \$100)

Nativity and Region or country of Birth	Total of All Periods	Period of Immigration To The United States				
		1975 1980	1970 1974	1965 1969	1960 1964	Before 1960
Total Population	\$12,200	(x)	(x)	(x)	(x)	(x)
Foreign-born Population:						
All Countries	\$10,500	\$7,500	\$10,600	\$12,300	\$13,300	\$11,100
Latin America	9,000	6,600	9,100	10,300	11,900	10,300
Asia	11,400	7,800	13,700	16,500	16,900	12,300
Europe	15,900	12,300	13,200	14,500	15,100	11,400
Soviet Union	9,500	6,500	11,300	12,700	14,000	9,700
Africa	11,000	7,200	11,500	17,300	16,400	14,100

(x) not applicable

Source: 1980 Census, Detailed Population Characteristics

California immigrants, particularly Hispanic immigrants, arrive in the State poorly educated; most new arrivals have had less than eight years of schooling. Hence, they often hold low wage, unskilled, and semi-skilled jobs in the service sector. Studies by the Urban Institute and the Rand Corporation have documented the significant contribution of these workers to the state's economy in the form of inexpensive labor and substantial tax payments. These studies, however, also suggest that if immigrant workers are not helped to advance up the employment ladder, California will find

itself with a growing number of workers competing for fewer and fewer unskilled jobs in the future. (1)

Clearly, it is in the interest of the state to have self-sufficient, productive new residents. The challenge for the state is to integrate these new residents into California's economy as quickly as possible. The new immigrants will need education, training, and employment. Conceivably the new *Immigration Reform and Control Act* may provide some of the necessary resources to begin that task; the first step of which is learning English.

IMPACT OF IMMIGRATION REFORM AND CONTROL ACT

The new Act provides greater control of immigration through various

means: employer sanctions, increased enforcement and a system of verification,

selected legalization (amnesty), and reform of legal immigration, including provisions for temporary agricultural workers. Each of these components will have an impact on California. This discussion, however, will focus on the legalization program for undocumented immigrants and the demand for educational services which will result from the new law.

LEGALIZATION PROGRAM FOR UNDOCUMENTED IMMIGRANTS

The *IRCA* provides a one-time-only opportunity for some undocumented immigrants to apply for legal residency. To qualify, individuals must demonstrate that they entered the U.S. prior to January 1, 1982 and have maintained continuous residency in this country since that time. Eligible individuals will then be required to follow a specific four-step process in order to become permanent legal residents and eventually naturalized citizens:

1. Temporary Resident Status

Between May 6, 1987 and May 5, 1988, undocumented immigrants residing in the U.S. since January 1, 1982, must apply for temporary resident status. The application must include:

- a) Proof of unlawful entrance into the United States prior to 1982
- b) Documentation of continuous residency since 1982
- c) Proof that normal requirements for admission as an immigrant -- no felony convictions; fewer than three misdemeanor convictions;

not registered with the selective service -- have been met.

2. Eligibility Waiting Period

After an undocumented immigrant is granted temporary resident status, he or she must continue to meet general eligibility requirements for 18 months from the time the application is approved. An applicant granted temporary resident status is not eligible for a period of five years for certain public services and programs, such as public housing and Medicaid.

3. Permanent Resident Status

At the end of the 18 month eligibility period, the individual must apply within 12 months for permanent status. To apply for permanent status, the person must demonstrate:

- a) Continuous residency during the temporary status
- b) Financial self-sufficiency
- c) Minimum proficiency and understanding of English and U.S. History as required for naturalization
- d) Certification of good health through a medical examination paid for at his or her own expense
- e) payment of an application fee, expected to range from \$185 per person to a cap of \$420 per family of four or more (2)

4. Naturalization

An applicant who is granted permanent status must then wait five years before he or she is eligible to apply for full naturalization and must meet the same requirements all other legal immigrants seeking citizenship.(3)

According to the Northern California district office of the Immigration and Naturalization Service (INS), a substantial percentage of California's two million undocumented residents will apply for temporary resident status. However, no one, including the INS, knows how many of these temporary residents will need English language and citizenship classes to meet the requirements for permanent resident status. Most observers assume that large numbers of applicants will seek to improve their knowledge of English and of U.S. history and government during the 18 month waiting period in order to apply for permanent status. If correct, the demand for classes in English and U.S. his-

tory and government will increase sharply.

The state currently provides educational programs in English language and citizenship, primarily through the Adult Education Division of the State Department of Education. But these programs cannot meet the increased demand expected to come from the state's new temporary residents.

The *IRCA*, however, provides limited funds to reimburse state and local governments for the cost of services provided to legalized immigrants. Congress has appropriated one billion dollars a year, minus the federal share of costs over the next four years for State Legalization Assistance Grants. (Table 4)

California's share of federal funds for the first year, 1987-88, may be as high as \$450 million, decreasing every year thereafter. These funds must be spent on health, public assistance, and educational services rendered to the newly legalized immigrants.

TABLE 4
LEGALIZATION ASSISTANCE GRANTS
FEDERAL FISCAL YEARS 1988 THROUGH 1991
(dollars in millions)

	1988	1989	1990	1991	Total
Appropriation	\$1,000	\$1,000	\$1,000	\$1,000	\$4,000
Offset	72	305	410	445	1232
Allocation	\$928	\$695	\$590	\$555	\$2,768

Source: Congressional Budget Office Estimates

IMPACT OF THE ENGLISH – LANGUAGE AMENDMENT

Proposition 63, the *English Language Amendment* to the California Constitution, was approved by the voters of the state in November 1986. The amendment designates English as the official language of the state and provides for the right to sue the state to enforce this mandate. Because California law currently requires the use of English in public settings, for example in public schools and the courts, legislation is not required to implement this aspect of the amendment. (4) The rights and restrictions in bringing suit against the State to enforce the use of English, however, have not been clarified in statute. Although several other states have passed similar language amendments, they have differed from California's in this important aspect: only California provides the right for individuals to sue to enforce the provisions of the amendment. Hence, California cannot look to these states for guidance to develop implementing language.

The second major issue raised by the passage of the *English Language Amendment* is the need to encourage more rapid acquisition of English for all immigrants. Testimony by the amendment's proponents as well as comments made at exit polls indicate that the passage of Proposition 63 was based on the voter's desire for all Californians to speak English, so that our society could function with a common language.

Given this mandate, the state clearly needs to increase the availability of English language classes and to improve student referral systems for those classes, even though the state faces declining state revenues and the Gann Expenditure Limit. Both the Governor and the Legislature have proposed additional funds for English as a Second Language (ESL) classes. The Governor has proposed an additional \$6 million for these programs and legislation has been introduced to provide even more funds. (see page 9)

PROGRAMS AND SERVICES

The state supports instruction in ESL classes for immigrants. These services are provided primarily through adult education classes offered by local school districts and some community college districts. Some English as a Second Language classes are also provided as a part of employment training programs.

ADULT EDUCATION

In fiscal year 1986–87, the state will spend approximately \$229 million in local

assistance for adult education -- \$220 million from the State General Fund and \$9 million from federal trust funds. These funds support programs offered by local school districts and some community colleges districts.

The State Department of Education, through its division of Adult Education estimates that \$80 million is spent on English as a second language (ESL) classes. In 1984–85, the last year for

which accurate data are available, 491,539 adults, representing 26 percent of the total adult education enrollment, and 40 percent of the average daily attendance (ADA) were enrolled in ESL. These figures demonstrate a 14 percent growth in ADA over the previous year. In fact, the enrollment in these classes has increased steadily each year since 1980-81. (5)

English as a Second Language classes are also offered as part of the community college curriculum. In 1984, an estimated 114,000 students enrolled in ESL classes (both for credit and non-credit). The community colleges report that there has been a significant increase in demand for ESL classes during the past few years.

The steadily increasing demand for ESL instruction in California is rapidly outpacing the state's ability to meet that demand. In the analysis of the 1987-88 Budget Bill, the Legislative Analyst reports:

Demand for ESL courses has grown over the last several years, due primarily to high rates of foreign immigration into California, and is expected to increase in the future.

No one, however, is able to adequately document the unmet demand. The Legislative Analyst states:

While the unmet demand for ESL is believed to be large, little dependable data exists which can provide an indication of the exact extent of the problem. Estimates of the number of individuals turned away from adult education programs due to enrollment limitations range from 28,000 adults statewide (in a survey conducted by the Department of Finance) to 40,000 in the Los Angeles area alone (reported in the Los Angeles Times).

In reviewing the State Department of Education's Budget Change Proposal for 1987-88, the department estimates an unmet need (those not served) of approximately 70,000 people statewide. The department also indicates that another 40,000 people receive ESL instruction in classes offered by local school districts for which no reimbursement is provided by the state.

Some districts have chosen to enroll all students seeking ESL instruction, leading to extremely large classes of up to 50 students per session; other districts have turned students away. The State Department of Education estimates that it will take an additional \$21 million annually to provide classes for those people who want, but cannot receive, ESL instruction and to reimburse districts that now serve students above their enrollment limit.

OTHER PROGRAMS

A limited amount of English language instruction is provided in California through vocational and employment training programs. The most prominent is the Greater Avenues for Independence (GAIN) program, which seeks to help current recipients of Aid to Families with Dependent Children (AFDC) find permanent unsubsidized employment. The program serves eligible refugees and legal immigrants who receive AFDC and provides remedial education, including ESL classes for these individuals.

Since the GAIN program has just begun, the number of people who will need ESL classes is not known. Early estimates, however, are that 40 to 50 percent will need some type of remedial education which would include ESL instruction. The total budget for GAIN is

\$93.1 million in 1986-87, of which, approximately \$13.1 million is appropriated for remediation education.

County implementation plans for GAIN have indicated a higher need for remediation education than originally anticipated. The cost of all kinds of education, including ESL, is expected to exceed the amount budgeted for 1986-87.

Legal immigrants also can receive some language instruction through vocational and employment training programs like the Job Training Partnership Act and vocational education. Such programs exist in counties with high population of limited- and non-English speaking persons. Data are not readily available on the number of these programs statewide or the amount of money they spend on English language programs. These programs, however, offer employment-related ESL classes.

POLICY DISCUSSION

ENGLISH LANGUAGE AMENDMENT

The Legislature's task in implementing the *English Language Amendment* is relatively straightforward. Because appropriate statutes already exist, legislative attention need not be diverted to development of policies to ensure the official use of English. The English language amendment, however, is so ambiguous about the issue of the right to bring legal action to enforce the provisions of the amendment, that the state judicial system could be unnecessarily burdened with time-consuming and costly law suits. Fiscal consequences to the state could be

enormous and necessary state services could be held up pending judicial action. Hence, clarification of this issue must be the first priority of the Legislature.

Legislation has been introduced in both the Assembly and the Senate to accomplish this task: AB 183, introduced by Assemblyman Elihu Harris, and SB 930 and SB 1536 introduced by Senators Torres and Keene, respectively. AB 183, introduced as a "spot bill" does not yet specify who has standing to sue, what procedures should be established or set time limits. These provisions will be included as amendments as the bill moves

through the legislative process. SB 930 and SB 1536, however, both establish specific procedures, time limits, jurisdiction, and standing, and, would clarify the legal issues raised by the amendment.

Perhaps the most difficult issue raised by the English language amendment is how to enhance the use of English without preventing the use of other languages. Action to limit the use of other languages might easily be construed as punitive in nature. Currently no measures have been introduced which limit the use of languages other than English. Legislation to protect access to services for those individuals who have limited or non-English speaking abilities, however, has been introduced. AB 1787 by Assemblyman Vasconcellos and AB 1740 by Assemblyman Roos provide protections against the reduction of services for persons with limited- or non-English skills.

Assemblyman D. Brown and Assemblyman Longshore have introduced legislation to mandate the use of English in certain areas. AB 2361 (D. Brown) requires that English be used in keeping official records for people who are involved with the transmission of money abroad, and AB 1806 (Longshore) would require that schools provide classroom instruction entirely in English if requested by a parent or guardian.

As expected, the English language amendment has generated great interest in improving English language skills among California residents. AB 37 by Assemblyman Willie Brown and AB 406 by

Assemblyman Hill both focus on meeting the English language educational needs of limited- or non-English speaking K-12 students.

Even in a tight budget year, legislation to expand ESL classes for adults has been introduced. AB 135 (Clute) provides \$12 million and SB 8 (Hart) adds \$14 million. For 1987-88, the Governor has proposed a \$6 million augmentation for ESL instruction. SB 9 (Torres) would use \$3 million of this augmentation to support development of instructional television programs and voluntary programs in ESL instruction and establish the "English Language Opportunity Act". In addition, AB 1900 (Roos), provides income tax credits for educational expenses incurred by persons who enroll in English language classes.

A proposal to establish a Language Policy Task Force also has been proposed under legislation introduced by Senator Montoya (SB 1384). Clearly, the Legislature is addressing the issues of the *English language amendment*.

IMMIGRATION REFORM AND CONTROL ACT

The immediate task facing the Legislature, in response to IRCA, is to fashion an orderly process which:

- o Secures California's fair share of funds authorized by the new immigration law,
- o Develops a plan for the use of these funds in the short term, and,
- o Develops a long-term planning and monitoring mechanism.

Securing IRCA Funds— Federal Regulations For State Legalization Assistance Grants

The immediate concern of the Legislature should be to maximize California's share of funds made available by the *Immigration Reform and Control Act*. The Act provides \$970 million for 1987-88 to reimburse certain state costs incurred in assisting legalized immigrants. The U.S. Department of Health and Human Services (HHS), however, has indicated that states will receive allocated funds on the basis of demonstrated need.

HHS is considering regulatory language that would give a state only those funds needed to pay for services not currently provided by the state. This approach would, in effect, penalize states such as California, which already provide educational and other services to their immigrant populations, by not compensating the states for the costs of these existing services. Finally, HHS also may decide to return all unallocated monies to the federal Treasury rather than carry forward the funds for states to use in subsequent years. (6)

Federal regulations describing the allocation and distribution of IRCA funds should be completed sometime in April 1987. Until these final rules are promulgated, California will not know the exact amount of funds available, the programs that will be funded, and the procedures for applying for the funds. California's share of the funds could be reduced drastically if the regulations reflect the narrow interpretations of the law being

attributed to HHS. The Legislature, as a first step should direct members of the California Congressional delegation and the State Administration to take appropriate action to protect California's interest and to ensure that the new regulations allow California to receive its fair share of available federal immigration funds.

State Planning For Use Of IRCA Funds In 1987-1988

Even though federal regulations have yet to be released, and the date for submission of applications has not been established, the new immigration law does require the State to submit a plan to the federal government when it applies for *IRCA* immigration funds. Since the funds may be available as early as October 1, 1987, the Legislature should begin to develop a plan for the state's use of these funds by the state and submit this plan in application for *IRCA* funds. An ad hoc **Joint Legislative and Executive Task Force** could work on developing this plan during the current budget process.

Such a task force would need to focus on several issues, some of which have been identified by the Legislative Analyst in the 1987 Report on the Budget. The Analyst suggests that decisions will need to be made about "*what services will be available, which agency or level of government should provide them, and how funds will be divided among state and local agencies.*"

The educational needs of these newly legalized immigrants ought to be the cornerstone of any plan submitted by the state, for several compelling reasons: first, learning English is a requirement of

the *IRCA*; second, this focus responds to the mandate of the State's *English Language Amendment*; and third, it is clearly in the best economic interest of the State to provide education for these individuals. Funds applied for and received by the State under the new federal immigration law, should be used to expand and make existing English Language services more effective.

Future Planning And Monitoring

While an ad hoc legislative and executive task force can develop the first year plan, the Legislature should consider creating a permanent body to assume overall responsibility for the immigration program. The creation of a **Commission on Immigration** would be advantageous for these reasons: the Commission would provide the state with a single entity responsible for overall planning and coordination of immigration programs and services; it also would monitor the impact of the new immigration law in California.

Legislation on this topic, while not fully defined, already has been introduced: Assemblyman Rusty Areias has introduced AB 2323 which establishes a task force on immigration reform for the purpose of planning for the use and distribution of *IRCA* funds; Senator Torres

has introduced several bills (SB 432, 1583, 1584, 1585, 1586) on the issue of immigration reform, and one in particular, SB 1584, establishes a California Office of Immigration. The concept of a **Commission on Immigration** could easily be incorporated into these bills, and if such a Commission were created, it could address other issues raised by legislation introduced in response to *IRCA*.

Because of the comprehensive nature of the *IRCA*, several areas are affected. The range of areas is reflected in several bills introduced by various Members in this session. These include: concerns about unethical business practices on the part of immigration consultants, AB 1729 (Isenberg) and SB 192 (Torres); a state tax amnesty program for previously undocumented immigrants, AB 790 (Roos); continued provision of certain state health services for undocumented immigrants, AB 2280 (Friedman) and SB 873 (Petris); and finally, enforcement of the provisions of *IRCA* prohibiting the hiring of undocumented immigrants, AB 540 (Ferguson) and the repeal of certain state sections on employment of undocumented immigrants, AB 656 (Floyd).

These issues should be areas discussed by a **Commission On Immigration**.

RECOMMENDATIONS

SECURING IMMIGRATION REFORM AND CONTROL ACT FUNDS

The Legislature, immediately, should direct members of California's Congressional delegation and the State Administration to take appropriate action to protect California's interests and ensure that the new regulations allow the state to receive its fair share of available federal funds.

DEVELOPING THE FIRST YEAR PLAN FOR THE STATE LEGALIZATION ASSISTANCE GRANT PROGRAM

The Legislature should create an ad hoc Joint Legislative and Executive Task Force to plan for the use of first-year funds, which should be used in application for federal IRCA funds in 1987.

The plan developed in the first year, and for subsequent years, should address all service needs (health, public assistance, education) of new legalized immigrants; and in education, focus on expansion of English as a Second Language and citizenship classes.

CREATING A COMMISSION ON IMMIGRATION

The Legislature should create a Commission on Immigration. The Commission should be comprised of representatives appointed by the Governor, the Speaker of the Assembly and the Senate pro Tempore. The charge of such a Commission would include:

- o The development and submission of a second-year plan and subsequent-year plans as required.
- o The monitoring and evaluation of the impact of the Immigration Reform and Control Act on California.

Assuming the creation of the Commission, the Commission should begin work by January 1, 1988 at which time the ad hoc task force on immigration would turn over its completed work in order to maintain continuity. The new Commission should report to the Legislature by March 1, 1988.

END NOTES

1. Muller, Thomas, And Thomas J. Espenshade, *The Fourth Wave: California's Newest Immigrants*. Washington, D.C.: The Urban Institute Press, 1985.

Estrada, Leo, And Kevin McCarthy, "Current And Future Effects Of Mexican Immigration In California". Santa Monica. California: Rand Corporation., 1985.
2. The fee structure is included in proposed regulations issued by the Immigration and Naturalization Service.
3. The naturalization requirements (for citizenship) includes residency for five years, proficiency in the English language and knowledge of U.S. history, and generally admissible as a citizen.
4. *California Code Of Civil Procedure*, SECTION 185
California Code Of Civil Procedure, SECTION 198
California Education Code, SECTION 30
California Penal Code, SECTION 893
5. The State Department Of Education estimates that six people enrolled in an ESL class equals one unit of Average Daily Attendance (ADA).
6. Due to a drafting flaw, the IRCA provides that money not expended by the federal government each year must be returned to the Treasury.