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## Effects of IRIRA on Illegal Immigrants from Mexico in California

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**Effects of IRIRA on illegal immigrants from Mexico in  
California**

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## Chapter 1 Introduction

Over the past three and half years I have been employed as an immigration caseworker in the office of U.S. Senator Dianne Feinstein. I have worked on numerous immigration issues and became familiar with many laws and regulations. One issue in particular has left a deep impression on me, the issue of long-time residents of the U.S. being deported to their countries of origin.

About a year ago, I was contacted by several California families, who were facing deportation to Mexico. Their stories seemed almost identical; young couples in search of a better life, illegally crossed the border, settled in the U.S., starting working, bought property, had children. All of them tried to adjust their status with the help of various attorneys. All of them would have been able to adjust their status in the past; however, a 1996 Immigration Law made it impossible for these families to become legal permanent residents.

After having worked on a number of tragic deportation cases, I became really interested in this particular law and its effects on California immigrants, especially immigrants from Mexico. The main of purpose of this research paper is to assess the law's effects on such immigrants. In addition, I plan to research three more specific issues: the effects of past legislation on the ability of illegal aliens from Mexico to adjust their status prior to passage of the 1996 law, the effects of the law on U.S. citizen children of illegal aliens from Mexico and the contributions of illegal aliens to the State of California.

The law in question, called Immigration Reform and Immigrant Responsibility Act of 1996 or IRIRA was enacted on September 30, 1996. IRIRA increased criminal

penalties for immigration-related offenses, authorized increases in enforcement personnel, enhanced enforcement authority and changed removal proceedings. The Act allows for expedited removal of inadmissible aliens at ports of entry, requires increased employment eligibility verification, restricts the eligibility of aliens for public benefits and imposes new requirements on sponsors of alien relatives for immigration. While these provisions are important and have certainly affected the immigrant community in many ways, the purposes of this paper will not allow me to go into in-depth analysis of each provision. Instead, I will concentrate exclusively on the IRIRA's Removal Proceedings, which became effective on April 1, 1997 for proceedings commenced on, or after that date. The Act makes any illegal alien subject to determination of eligibility. According to the Citizenship and Immigration Services (formerly known as the Immigration and Naturalization Service), the IRIRA provides new forms of relief to both deportable and inadmissible aliens. Section 240A(b) allows illegal aliens to seek cancellation of removal and adjustment of status, provided that they have resided in the U.S. for at least ten years, have demonstrated good moral character, have not had criminal offenses and have an immediate relative who is a U.S. citizen or a lawful permanent resident. At first glance, the Section 240A (b) may look like a perfect opportunity for illegal aliens to adjust their status. However, in order to adjust under the 240A (b) Section, aliens must demonstrate that their removal from the U.S. will result in an extremely unusual hardship to a U.S. citizen or a lawful permanent resident spouse, parent, or child. Proofing extremely unusual hardship is extremely and unusually difficult. I have personally seen several legal opinions, in which the judges agreed that the parents' removal from the United States would be a hardship to U.S. citizen children,

but refused to identify the hardship as an extremely unusual one. Needless to say the parents were subsequently removed.

In the past, immigration attorneys were able to assist illegal aliens from Mexico by having them apply for asylum. It was known that asylum is unavailable to Mexican nationals, but submitting an asylum application allowed immigrants of good moral character to apply for cancellation of removal. Immigrants who tried to follow that route in 1995 and later were adversely affected by the passage of IRIRA as they could not prove exceptional hardship necessary to qualify for cancellation of removal. The majority of such cases have gone through numerous courts, with the Ninth Circuit Court of Appeals usually being the last stop for Californians. In the majority of cases, the legal proceedings took years and the deportations did not take place until 2003 or 2004. One can just imagine the financial and emotional toll IRIRA took on these families.

IRIRA is the most recent comprehensive immigration law. It was preceded by several other major acts; such as, Immigration and Nationality Act of 1952, Illegal Immigration and the Immigration Control Act of 1986, Legal Immigration and the Immigration Act of 1990, etc. It is worth mentioning that almost every Immigration Act reflected political and social conditions of a particular period. For example, the Immigration and Nationality Act passed during the Cold War period restricted immigration from the Eastern Hemisphere, reaffirmed the 1921 national origins quota and tightened security. The national origins quota was abolished in 1965 during the Civil Rights Movement. The 1986 law was passed after many lawmakers came to the conclusion that employment was a primary magnet for illegal aliens and established sanctions for employers hiring illegal aliens. Interestingly enough, the 1986 Act

legalized aliens residing in the U.S. since January 1, 1982. The law being researched in this paper, IRIRA, resulted from recommendations of the U.S. Commission on Immigrant Reform, which was established by President Clinton to review both legal and illegal immigration issues. The original goal was to develop bipartisan legislation dealing with both legal and illegal immigration; however, Congress had to narrow its focus on illegal immigration only. As a result, the provisions of the IRIRA were aimed towards stronger penalties against illegal aliens.

Despite its rather harsh provisions, IRIRA has many supporters. Even pro-immigrants, such as myself, agree that this law has many useful provisions. For instance, expedited removal of immigrants who committed violent crimes is certainly beneficial to our society. Enhanced border protection is a definite post 9/11 necessity and increased criminal penalties for those who make a living out of alien smuggling and document fraud are unlikely to raise protests. However, removing long-term residents, who make an honest living, contribute to the economy and have U.S. citizen children is a different matter. One may argue that illegal aliens take away jobs from U. S. citizens and use valuable resources, such as the environment, healthcare and education. This argument does not take into consideration the fact that illegal aliens work jobs unlikely to be filled by U.S. citizens, that they come to the United States in search of employment not in search of free health care, that undocumented immigrants pay state and federal taxes, that U.S. citizen children of illegal aliens have every right to American education and healthcare. So is it really fair to these children, who are natural-born citizens, to grow up without their parents or in a third-world country? Is it fair that the nation of immigrants

sends its newer immigrants back? Does their removal benefit our society? This paper will search for answer for these complicated questions.

## Chapter 2 Literature Review

Not surprisingly, I found a great number of articles on illegal immigration over the course of my research. A heated topic, illegal immigration has both supporters and opponents. One of the opponents, James Thornton, blames illegal aliens for many of California's problems. According to Thornton, undocumented immigrants, over fifty percent of who settle in California, are responsible for "urban decay, rampant crime, declining property values and deterioration of social services". James Thornton also argues that education of illegal students costs California taxpayers \$3.6 billion per year, as foreign students are more expensive to educate due to their lack of English proficiency. He also raises concerns over the cost of health care for illegal immigrants, the additional burdens of the criminal justice system and the lack of assimilation among certain ethnic groups.

Thornton's concerns are shared by Jerry Seper of *Washington Times*. In a December 2004 article, Mr. Seper summarized a study, which reported that illegal immigration is costing California \$10.5 billion a year in education, health care and incarceration. Taxes paid by illegal aliens offset some of the costs, but do not match all the expenses.

The arguments of Thornton, Seper and many others are challenged by Raul Hinojosa and Peter Schey. Hinojosa and Schey believe that undocumented aliens contribute significant amount in federal, state, and local taxes and do not rely on social



services as much as typical citizen working-class families. Furthermore, the authors feel that tougher immigration laws may lead to an economic disaster in California because U.S. citizens and legal permanent residents will not rapidly fill jobs held by illegal aliens and if they do, citizens will require much higher wages. Higher wages would lead to price increases on numerous products. Another possible outcome would be that illegal immigration is simply driven deeper underground.

The voices of Hinojosa and Schey are echoed by Berk, Schur, Chavez and Frankel. The four authors of 2000 study published in *Health Affairs* magazine challenge the opinion that illegal immigrants come to the U.S. for medical care and public assistance. Using the data from 1996/1997 survey of undocumented Latino immigrants from El Paso, Houston, Los Angeles and Fresno, the authors show that seeking employment is the primary reason for immigration to the United States. Furthermore, the data used proves that illegal immigrants from Latin American countries obtain less health care and seldom rely on public programs for adults. Although there is a heavier reliance on programs for children, such as school lunches, the primary participants are likely to be U.S. citizens. Thus, the study seems to do a good job of disproving the theory of immigrants who drain on state resources.

Another study that came to my attention was conducted by economists at Northeastern University in Boston in 2001. This study reports that illegal aliens significantly contribute to Social Security funds, since they tend to be mostly young men and women who are on their employers' payrolls. Employers are likely to pay Social Security taxes for them. The economists of the Northeastern University do not believe that Social Security will face insolvency, if both legal and illegal immigration continues

at the current pace. Immigrants, who are a major part of workforce, will be able to provide the tax pay revenue necessary to support the retirees.

Immigration expert, Michelle Malkin, a columnist and author of Invasion: How America Still Welcomes Terrorists, Criminals and Other Foreign Menaces to Our Shores, calls for stricter immigration laws. In her interview to *Insight News*, a national biweekly magazine, Malkin mentioned that current immigration policies, such as IRIRA fail to protect our country's borders. Malkin believes that entering the U.S. should be considered a privilege, not a right that the U.S. should protect itself from illegal invasion in the form of mass immigration and that foreign nationals who are joining the American Army should be subject to more comprehensive background checks. Additionally, Malkin argues that the goal of the Homeland Security Department should be to try and deport every one of the estimated eleven million of illegal aliens.

Malkin's colleague, columnist Miguel Perez, is on the other side of the barricades. Not only does he oppose expedited removal, he also supports a bill introduced in 2001 by Congressman Luis Gutierrez that would grant amnesty to most America's illegals. Perez argues that illegal immigrants are vital to our agricultural workforce and keep many of the nation's factories and restaurants going. Perez cautions Congressman Gutierrez and other amnesty supporters against strong opposition to amnesty and urges them to come up with a strong argument of how amnesty can lower illegal immigration in the future.

*Washington Dateline* also reported on the Representative Gutierrez's bill. The bill, co-sponsored by Senator Edward Kennedy, would grant amnesty to undocumented immigrants who have resided in the country for at least five years and have been gainfully employed for at least two years; their spouses and minor children would also be

eligible for amnesty. Aliens, who have resided in the U.S. for less than five years, would be granted transitional status until they have accumulated enough time to qualify for amnesty. The *Washington Dateline* quotes Dan Stein, the executive director of the Federation for American Immigration Reform, who is highly critical of the Kennedy/Gutierrez bill. According to Mr. Stein, many of the applications are likely to be fraudulent, schools and hospitals will be unable to deal with the additional influx of people and it will be almost impossible to conduct background checks on all the applicants. Stein is also concerned with the fact that this bill does not have any enforcement provisions.

Stein's agency, Federation for American Immigration Reform has a negative view of illegal immigrants in the workforce. The Federation states that illegal aliens displace native workers and legal immigrants and depress wages. The Federation uses several examples. Examples specific to California include the case of legal immigrant tomato pickers who in the 1980's were displaced by illegal aliens willing to work for lower wages and unionized African American janitors who were displaced by crews of illegal aliens. The Federation for American Immigration Reform argues that illegal immigration harms the low-skilled segment of the population.

The Federation's views are shared by Phillip Martin, a professor of Agricultural Economics at the University of California-Davis. Professor Martin believes that removing illegal immigrants from agricultural workforce will not be damaging to the industry, since 80 percent of the work is done by farmers, who are natives. Martin argues that removing illegal farm workers will only slightly raise prices on fruits and vegetables and will double farm wages, eliminating rural poverty. Phillip Martin uses the

termination of Bracero program as an example. The Bracero program, which was in effect from 1942 until 1964, allowed Mexican nationals to enter the U.S. as temporary farm workers. When the program was terminated, many argued that the tomato industry will not survive; according to Martin, the end of Bracero only accelerated the mechanization of tomato harvesting. Despite his strong opposition to illegal immigration, Martin still acknowledges that immigrants have historically been the primary agricultural workforce in California because farmers could not employ Americans and Europeans for seasonal work.

Martin's views are the opposite of the view of President Reagan's Council of Economic Advisers. The report released by the Council in 1986 stated that: "although many aliens work on farms illegally, the availability of such workers may enable U.S. production of certain fruit and vegetable crops to remain competitive with that of other nations." Furthermore, the Council also found no evidence that illegal aliens displace native workers and argued that they use fewer resources, such as Social Security.

Those who are concerned about the inability of immigrants from Mexico, both legal and illegal, to assimilate may want to refer to a study presented by the Public Policy Institute of California. The study's authors, Jeffrey Groger and Stephen Trejo, conclude that U.S. citizen children of Mexican immigrants differ dramatically from their parents both in education and earnings. Second-generation Mexican Americans in California have an average four more years of schooling and more than 35 percent higher wages than do Mexican immigrants. Groger and Trejo caution against analyses that lump together Mexican immigrants and their descendants because such analyses mask the

substantial intergenerational gains. Indeed, children of legal and illegal Mexican immigrants assimilate into the larger society and become productive members.

Scholars Laura Hill and Hans Johnson also presented a research paper to the Public Policy Institute of California. Hill and Johnson challenge the population projections that estimate that there could be more than ten million new Californians over the next twenty years. Of course, such increase would significantly implicate natural resources, health education and welfare systems. However, such projections may not be accurate. Hill and Johnson suggest that the projections may be too high since they do not consider declining fertility rates of immigrants and their descendants. For instance, American-born Latinos have much lower fertility rates than immigrants of the same ethnic group. The declining fertility rates are likely to be the result of higher educational levels, lower rates of poverty and lower marriage rates among the descendants of Mexican and Central American immigrants.

Perhaps such studies would convince West Virginia Senator Robert Byrd who strongly opposes illegal immigration. In a speech he delivered to the Senate in 2001, Byrd argued that many of the recent immigrants lack education and job skills and as a result, live in poverty. Byrd also mentioned that immigration-related population growth translates into fewer environmental resources, overcrowded schools and increased pressure on health care. Senator Byrd spoke passionately against granting amnesty to illegal immigrants, arguing that America cannot afford any more people and that amnesty sends a wrong message to the world regarding U.S. immigration policy.

Unlike Senator Byrd, immigration attorney Ann Carr strongly opposes IRIRA. She argues that removing long term U.S. residents to their home countries is inhumane

and forces separation and impoverishment of families. A pro-immigrant, Carr states that immigrants contribute to the economy more than they take out, that immigrants do not commit more crimes than citizens and bring enterprise to the society by performing jobs nobody else is willing to take. Carr brings up some heartbreaking examples. A young man was deported to Mexico weeks before his wife was due to deliver their second U.S. citizen child; left without their primary breadwinner, the family was forced to go on welfare. A mother of a six-month-old U.S. citizen was also deported to Mexico and did not have time to make travel arrangements for the baby. She died trying to reenter the U.S. to pick up her child. Ann Carr makes a valid argument by saying that "almost every element of flexibility and discretion has been removed from the current immigration laws. We are supposed to stop thinking about immigrants as human beings. Indeed, we are encouraged to see them as a plague on society, like rabbits to be rounded up and shipped off". Carr finishes off her article by quoting her friend, who said: "These laws seem to have taken away from Americans the right to exercise the freedom to be humanitarian".

William Paul joins Ann Carr in criticizing the IRIRA. Paul feels that this law takes away the historic role of courts as protectors of the people and thus undermines the principle of separation of powers. Paul passionately speaks out against expedited removal and other IRIRA's provisions, such as making minor crimes grounds for deportation. In addition, he argues that imprisoning and deporting immigrants is expensive.

IRIRA does not only affect illegal immigrants, it also affects their family members who are U.S. citizens. According to Michael Fix and Wendy Zimmerman, nearly one in ten American families with children contains parents who are non-citizens

and one or more children who are citizens. In their research paper written for nonpartisan Urban Institute, Fix and Zimmerman examine the effects of immigration policies on "mixed-status" families. Although the main focus of the paper is on the limitations mixed-status families face when it comes to public assistance, the authors also indicate that the 1996 legislation further divides the fate of mixed-status family. For fifty percent of Los Angeles children, whose parents are not citizens, that may mean either having to grow up without parents or having to grow up in another country. Additionally, the parents' inability to legalize their status may negatively affect the children's intergenerational mobility. Fix and Zimmerman conclude their research by stating that one effect of the current immigration policy is preventing economic and social integration of new immigrants and treating mixed-status families as second class citizens. Fix and Zimmerman reject the solution to deny birthright citizenship to children of illegal aliens because this would be a major departure from American historic tradition.

Columnist Nina Bernstein is also concerned about the effects of the IRIRA on mixed-status families. In two separate articles, she tells tragic stories of U. S. citizen children whose illegal alien parents were removed by the Department of Homeland Security. Ten-year-old Adnan followed his mother to Bangladesh, where he is having a hard time due to his limited language proficiency and lack of social network. Eight-year-old Virginia was left in the care of her disabled father, also a U.S. citizen, after the deportation of her mother. Although both Adnan and Virginia are from New York, many California children are in the same boat. According to current demographic estimates, approximately three million young U.S. citizens have at least one parent who is in the country illegally. Immigration and Customs Enforcement removed 157,281 illegal

aliens from the U.S. in the last fiscal year. The agency does not keep track of how many of these aliens took U.S. citizen children with them, but immigration experts believe thousands were taken away from their native country. Thousands more were left behind. While federal officials say that they give parents ample time to arrange for child care and often refer them to social service agencies, the results of parental deportation can be devastating on youngsters. According to Birdette Gardiner-Parkinson, the clinical director at the Caribbean Community Mental Health Program, "when children lose a family member this way, even though they may have a phone conversation with them, the physical separation feels like death."

As I have mentioned in the first chapter, many of the illegal aliens would have been able to adjust their statuses prior to the passage of IRIRA. In fact, many would have been eligible to become legal permanent residents under the Immigration Reform and Control Act of 1986, commonly known as IRCA. According to the Citizenship and Immigration Services, "former illegal aliens were allowed to gain residence in the United States under the following provisions of IRCA: Main Legalization Program and the Special Agricultural Worker Program". The Main Legalization Program made adjustment possible for those who have continuously resided in the U.S. since 1982, were not inadmissible due to criminal history and were not likely to become public charge. Special Agricultural Worker Program was designated for illegal aliens who have worked on perishable crops for at least ninety days and were generally admissible as immigrants. Close to three million people were able to adjust under IRCA and petition for their dependents.



A great number of aliens who became legal permanent residents eventually became U.S. citizens. A study conducted at the University of Texas, which relied on a sample of 562 legal permanent residents applying or planning to apply for naturalization, demonstrated that 38% of the respondents were able to legalize under IRCA. The findings of this study seem to rebut the views of those who believe that immigrants, particularly from Latin America, do not integrate into American society. A great number of respondents indicated that they want to become American citizens because they love their new country, because they want to fully participate in American life, because they want to be able to vote. Furthermore, the study shows that those who received amnesty under IRCA applied for citizenship more rapidly than nonamnesty applicants.

A study conducted by Nancy Rytina shows similar results. Rytina used data from the administrative systems of the Citizenship and Immigration Service to summarize transitions in legal status of the IRCA population through 2001. According to the study's findings, one-third of IRCA applicants naturalized by 2001. In addition, Rytina reports that IRCA beneficiaries naturalized at over one-half the rate of other immigrants who came to live in the U.S. at the same time and that many have changed their occupation or labor force status, indicating upward mobility.

### Chapter 3 Methodology

In addition to working on immigration issues, I am also an immigrant. Almost thirteen years ago my family and I came to California from Ukraine. Like many of the immigrants affected by IRIRA and described in this paper, we have struggled financially and emotionally, but gradually learned the language and the customs and began to call this country our home. Therefore, I can certainly imagine the feelings of someone who

and forces separation and impoverishment of families. A pro-immigrant, Carr states that immigrants contribute to the economy more than they take out, that immigrants do not commit more crimes than citizens and bring enterprise to the society by performing jobs nobody else is willing to take. Carr brings up some heartbreaking examples. A young man was deported to Mexico weeks before his wife was due to deliver their second U.S. citizen child; left without their primary breadwinner, the family was forced to go on welfare. A mother of a six-month-old U.S. citizen was also deported to Mexico and did not have time to make travel arrangements for the baby. She died trying to reenter the U.S. to pick up her child. Ann Carr makes a valid argument by saying that "almost every element of flexibility and discretion has been removed from the current immigration laws. We are supposed to stop thinking about immigrants as human beings. Indeed, we are encouraged to see them as a plague on society, like rabbits to be rounded up and shipped off". Carr finishes off her article by quoting her friend, who said: "These laws seem to have taken away from Americans the right to exercise the freedom to be humanitarian".

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has to leave the country he has grown to love and go to a place he has not lived at in years. What I cannot imagine is having to leave my entire social network, my job and my home and having to go to a country where I have no family and which has changed dramatically since I left. And yet, this is exactly what thousands of immigrants have to experience.

My own immigrant experiences gave me a unique perspective on the problems associated with IRIRA. Although I was lucky enough to be able to legally enter the country and not many in my community were affected by IRIRA, I definitely sympathize with the immigrants who were deported under the IRIRA provisions and their U.S. citizen children. One of the reasons for choosing this topic was to bring attention to this major problem.

The methodology I used included review of related literature and statistics and summarizing the cases I have worked on in the office of Senator Feinstein. I choose to explore the effects of IRIRA on immigrants from Mexico because immigrants from Mexico make up the largest group of illegal immigrants. As a result, this group is most likely to face removal under IRIRA. I decided to assess the effects of IRIRA on Californians because of personal familiarity with the stories of deported California residents and due to the fact that California has a very large population of illegal aliens. The first sub-question (the ability of Mexican immigrants to adjust their status under past legislation) came from reviewing legal opinions in the cases of IRIRA deportees. Many attorneys strongly emphasize the fact that deportees would have been able to become legal permanent residents under past laws, such as IRCA. The second sub-question, which assesses IRIRA's effects on the U.S. citizen children of illegal immigrants, was

chosen because I have personally worked on several cases which involved children, who were American citizens by birth. Facing deportation, their parents had to make a choice of either leaving the youngsters behind or taking them to an unfamiliar land. I felt that it was important to explore if the spill-over effects of IRIRA are hurting American citizens. The third sub-question, contributions of undocumented aliens to California's economy, came to my mind after reviewing related literature. While many immigration experts argue that illegal aliens are critical to the survival of agriculture, take jobs nobody else is willing to take and pay taxes, many others claim that immigrants drive down the wages, take away jobs from U.S. citizens and are a burden on educational and health care systems. This is very important argument for both pro and anti immigrants.

For the literature review I used articles from the following databases: Proquest, Infotrack, Lexis-Nexis, Opposing Views and Google Scholar. Statistical data mainly came from the website of the Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov). In addition, I used data presented by Dr. Gonzalez in his paper on Ethnic Diversity, Immigration and Partnerships in California. Description of all related immigration legislation came from the Citizenship and Immigration Services and the Federation for American Immigration Reform. For the immigrant narratives I used real-life stories of California residents who came to the office of Senator Feinstein for help after they were ordered deported. No names were used to protect the privacy of the immigrants.

#### Chapter 4 Analysis

United States has always been a nation of immigrants. Even today both legal and illegal immigration contribute significantly to the population growth. According to the Federation for American Federation Reform, between 1970 and 2004 American

population grew from 200 million to 300 million; immigrants and their U.S. born children were largely responsible for the 50 percent increase. The Census Bureau reports that the U.S. has had an average annual growth rate of more than 2.8 million a year. Immigration directly accounts for 44.6 percent of the increase, adding 1,269,780 new residents each year. This constitutes a dramatic increase from 1990s when immigration accounted for only 32 percent of the population growth. The Census Bureau reported the U.S. population at 290,809,777 as of July of 2003. Over the past 40 years California's population increased by 683 percent. Almost as much of the population growth came from immigration as from birth rates.

In 2000, the Census found 33,871,648 people residing in California. This number was 1.3 million more the Census expected to find based on a 1996 estimate. The shortfall is likely to be a result of illegal immigration. The Census also recorded 8,864,255 foreign-born residents in the State of California in 2000. A 2003 estimate claims that 26.5 percent of California's population is foreign-born, which implies a population of about 9,400,000 people. The 2000 Census demonstrated that the foreign-born population increased 37.2 percent from 1990. The amount of increase was the highest in the country, with the foreign-born population accounting for 58.5 percent of the state's overall population increase. 36.9 percent of the immigrants arrived since 1990. 44.3% of immigrants arrived from Mexico, followed by Philippines and China. The Census Bureau estimates that 15,986,000 Californians were of "immigrant stock", meaning that they were immigrants or children of immigrants. Based on that estimate, California's immigrant stock is 46.9 percent is the highest in the country.

The source of the above information, the Federation for American Immigration Reform is concerned that a large number of immigrants drains the state's resources and will eventually result in tremendous overpopulation. My opinion is quite the opposite. Given a high number of natives leaving California where would our state be without all the tax money paid by immigrants both legal and illegal? Would our cities attract as many tourists without the charm of the ethnic enclaves?

My theory on the contributions of immigrants is further confirmed by the statistics presented by Dr. Gonzalez. First, immigrants are concentrated in young adults groups. Over 60 percents of immigrants make up the 25-29 age group, compared to only 40 percent of U.S. born. The situation is very similar in the 30-34 group. In the 35-39 age group, immigrants are at 57 percent and natives are at 43 percent. This data clearly demonstrates that the vast majority of immigrants are in the workforce, meaning that they significantly contribute to California's economy. Furthermore, many of the state's industries are highly dependent on immigrant workers. For example, immigrants make up over 70 percent of the workforce in agriculture, forestry and fishing. It is highly likely that many of the workers are undocumented. One can just imagine the loss agricultural industry and the state would suffer if all undocumented employees were deported. Agriculture is not the only industry that employs a large number of immigrant workers. Thirty percent of construction workers are immigrants; more than 40 percent of manufacturing employees are also foreign-born and over 30 percent of aliens make up the

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trade industry. What would happen to all these industries if they could not employ legal and illegal aliens?

Those, who are concerned with overpopulation due to immigration, should perhaps review a recent *Los Angeles Times* article. According to a piece by staff writer David Kelley, last year California grew the slowest since the recession of the early 1990s. Although California's population grew by 539,000, this is significant decrease from 2000 when growth peaked at about 689,000. The rate of growth has been continuously slowing down since 2001 due to decline in immigration (both legal and illegal), stabilized birth rate and a greater number of people leaving the state. As numerous report indicate, the cost of living is the main reason why immigrants and natives move out of the state. California remains a top destination for immigrants, but not as much as ten or fifteen years ago, when about one-third of Latino immigrants first came to the Golden State. Now, only about a quarter of this group immigrates directly to California. Imagine what would happen if the state lost two or three million people due to deportations. This would be disastrous to businesses, especially in the agricultural sector. In addition, vacated housing would drive down property values, which would hurt many home owners.

Despite the benefits of immigration, immigrants are routinely removed from the United States. According to the Citizenship and Immigration Services, in 2003 alone, 1,046,422 aliens were removed. Out of 1,046,422, 114,865 were removed by investigations and 931,865 were by Border Patrol. The aliens who removed by Border Patrol were probably trying to enter the country, but were expeditiously removed. Those, who were removed by investigations, are likely to have resided in the United States for



several years. Although the agency does not tell how many were deported because they did not qualify for Cancellation of Removal under IRIRA, chances are that many immigrants were removed directly as the result of this provision. Out of all the 2003 deportees, 956,963 were Mexican nationals. Many of those removed were residents of California. For instance, Investigative Units removed 13,329 Los Angeles residents and 21,192 San Francisco residents.

Aliens, who are facing removal, often contact elected officials asking them to stop the deportation and/or to introduce private legislation. As I have mentioned previously, many of such aliens contacted our office. I would like to tell their stories.

One of the first families who contacted us was that of Mr. and Mrs. A. They have crossed the border in 1987 with their two toddler daughters and settled in the Los Angeles area. Two more children were born in California. The parents worked, paid taxes, bought property and never relied on state or federal assistance. The family has worked with several attorneys to try to adjust their status. Around 1996, they applied for asylum, planning to later ask for cancellation of removal. By the time their case went before an immigration judge, IRIRA was passed, making them ineligible for cancellation of removal. The A family tried numerous appeals with both the immigration courts and the Board of Immigration Appeals; each time it was ruled that the parents' removal would not constitute an extreme and unusual hardship to their U.S. citizen children. When the case was denied by the Ninth Circuit Board of Appeals, the desperate family came to us. What made their case unique were the accomplishments of the oldest daughter, also an illegal alien. Brought to the U.S. at a very young age, this girl maintained a 4.0 grade point average throughout high school and currently attends

young lady, who was educated in American schools and speaks better English than Spanish, would certainly be to nobody's advantage. The Senator was moved by the story of this family and introduced a private bill on their behalf. Although the bill put a stop on the immediate deportation, if it is not passed, family A, including their talented daughter, will have to leave the country and will be barred from re-entering for at least ten years.

Family B, who settled in the Bay Area, has a very similar story. The father, who could not find decent employment in Mexico, came to the U.S. first. His wife and their two-year-old son followed a year later; the two daughters were born in the States. The father worked for a construction company and the mother was employed as a para-professional at a local high school. Independent and self-sufficient, this family seemed to be living the American dream; except for one thing, they did not have a permission to be in America. Their legal struggle was identical to that of family A. Just a few days prior to their departure date, the family contacted our office. Unfortunately, we did not have enough time to do anything for them. I have spoken to the mother several times. She was so emotionally exhausted from dealing with Citizenship and Immigration Services, working with attorneys, talking to newspaper reporters that she decided to end the family's struggles. In February of last year, family B moved back to Mexico City. Their two U.S. citizen daughters, ages eleven and thirteen, went with them. The two girls were deprived of the right to grow up in their native country.

Another Bay Area family would also have been removed if it was not for private legislation. The C family: father, mother and a very young daughter entered without inspection from Mexico in the late 1980's. The three younger children are U.S. citizens.

Having lost the battle for cancellation of removal, this family currently has a private bill pending in the House of Representatives. Only the support of their congressman has saved them from earlier deportation. If the bill is not passed and the family has to be removed, the mother is considering leaving her three younger children in the care of relatives so they can receive quality education. These young U.S. citizens may face the trauma of growing up without their parents.

Thanks to private legislation introduced by Senator Feinstein, a Reedley family did not have to move to Mexico in January of 2004. If the legislation does not pass, the family will consequently be removed. A fourteen-year-old U.S. citizen will accompany his illegal alien parents and older sister to a country that he has never been to. The "illegal" members of this family have certainly established themselves in the U.S. The family owns a home; the father works for a construction company and the mother is a seasonal fruit picker. The daughter is in high school, where she maintains a 4.0 grade point average. Her removal to Mexico will certainly be of extreme hardship to her, since she grew up in California and has been educated in English. What is interesting about this case is that the father applied for amnesty under IRCA; however, the Immigration and Naturalization Service did not act on his application in a timely manner. As a result, the family became ineligible for amnesty. In 1999, a sympathetic immigration judge ruled that the family was eligible for permanent residency. Unfortunately, this ruling was overturned by the Board of Immigration Appeals.

A Los Angeles couple suffered similar fate. In 2002, they were granted cancellation of removal based on extreme hardship their removal would cause their U.S. citizen daughters. The Board of Immigration Appeals later vacated the judge's decision.

With the help of their attorney, this family filed an appeal with the Ninth Circuit Court. Senator Feinstein and Representative Roybal-Allard introduced private legislation on behalf of this family, even before the appeal was dismissed. Indeed, this family deserved such drastic measures. Both the husband and the wife came to the U.S. in 1980's when they were still teenagers; the husband is a native of Mexico and the wife comes from Guatemala. In addition to having U.S. citizen children, the couple has siblings and parents who are American citizens and legal permanent residents. The two children are academically gifted and the oldest daughter won an academic scholarship to attend a four-year summer math and science program at the John Hopkins University. Threatened with deportation, this family considered leaving their daughters in Los Angeles in order not to jeopardize their education. If the girls were to leave the U.S., they would have to be separated from one of their parents because their father would have to go to Mexico and their mother to Guatemala. Neither outcome would have been favorable to these gifted American children.

Another Los Angeles resident who contacted us in 2004 was Ms. C. Along with her parents, Ms. C came from Peru when she was only fourteen. This family had valid tourist visas and applied for asylum. The visas have long expired and the asylum was denied. Once again, this family was denied Cancellation of Removal based on the lack of extreme and unusual hardship. However, Ms. C is a single mother of three U.S. citizen children, who would accompany her and her parents to Peru in the case of deportation. Furthermore, the youngest child is severely autistic. He is currently receiving educational and medical services, which would be unavailable in Peru. The staff in our office was moved by the story of this young woman, who works as a pre-school teacher and is

raising three children on her own. Unfortunately, at the time we were unable to introduce private legislation due to a high number of private bills recently introduced. On behalf of Ms. C., we contacted the office of her Congressperson and relayed her story. Luckily, the Congressperson sponsored a private bill for Ms. C and her parents, allowing them to remain in the United States. It is not clear if the bill will pass and what awaits this family in the future.

The most recent case that came to my attention involved a Bay Area woman, who came to the U.S. almost fifteen years ago. Having crossed the border illegally, she married another immigrant and had two sons with him. The woman divorced her husband who was abusive and worked as a housekeeper to support her children. Like many others, she applied for cancellation of removal. This lady met two of the three conditions necessary for cancellation of removal; she has resided in the country continuously for at least ten years and was a person of good moral standing. However, the judge ruled that removing this person from the U.S. would not be an extreme and unusual hardship to her U.S. citizen sons. Although this individual has not exhausted all of her legal remedies, it is very likely that her case will be denied. She will then face a devastating choice of either leaving her sons with their father, who is not close to them and has a history of abuse, or taking them to Mexico. The village from which this woman comes has no school and the boys would have to travel two to three hours to the nearest school. This will certainly be a hardship to these teenagers, one of whom has a learning disability and both of whom are illiterate in Spanish.

Of course, not every family is eligible for a private bill. Last year, the Senator's office was contacted by a family from Fresno, who was in removal proceedings and

whose only option was Private Legislation. Like many others, the husband, wife and their two older children crossed the border in the late 80s. The two younger children were born in the States; the oldest daughter was also a mother of a U.S. citizen. Although this was certainly a hardworking family, certain circumstances prevented the Senator from introducing a private bill. The parents spoke very limited English despite living in California for many years; the family has relied on state assistance and the oldest son had minor criminal convictions. This family had no choice but to leave for Tijuana; the illegal aliens were accompanied by three U.S. citizens.

Recently, two more families have approached the Senator requesting private legislation. Their cases are compelling, but not unique and are unlikely to meet the private bill criteria. The first case involves a Mexican couple who came to California as teenagers. They are now parents of two U.S. citizens, ages three and six. Leaving for Mexico would certainly constitute a hardship for both the parents and the children, but there are no special circumstances that would justify a private bill.

In the second case, the family is from India. The husband and the wife came to the U.S. over twenty years ago on a tourist visa. They established a business and had two U.S. citizen sons, who are now in college. Harsh as it sounds, the deportation of the parents will not be of extreme hardship to their U.S. born children as the children are grown up. In addition, the oldest son will soon turn twenty-one and will be able to file immigrant visa petitions on behalf of the parents.

As I have mentioned several times, IRIRA made thousands of people throughout the country deportable. Many of these people reside in California. Needless to say that the Senator is unable to introduce private legislation for all of them. Not only are private

bills hard to pass, but introducing too many private bills can have a negative influence on the legislator's record among both colleagues and voters. Therefore, the legislator is limited to introducing private bills only for these aliens who have special circumstances. The special circumstances include, but are not limited to, having gifted children, having disabled children, being very active in the community, having an illness not treatable in the country of origin, having family members in active service, etc. Unfortunately, the "special circumstances clause" leaves out many hard-working honest individuals, who have resided in the U.S. for many years, worked and paid taxes here and are parents of United States citizens. And while I certainly understand that private bill is an extreme measure and can only be introduced in exceptional cases, my heart goes out to people whose circumstances were in no way unique and who had to leave their adopted country.

#### Chapter 5 Conclusion

The stories I presented in the previous chapter are certainly compelling and deserve attention. I am glad that our elected representatives were able to help some families by introducing private legislation. However, I do not believe that private legislation is the most effective measure when it comes to dealing with the problems associated with IRIRA. Thousands of individuals were affected by this law and introducing private bills on behalf of each one is almost impossible. Instead, lawmakers should focus their efforts on introducing comprehensive legislation that would grant relief to all those who face removal under the provisions of IRIRA.

The main efforts for the passage of an IRIRA-related bill should be on the federal level, since immigration is a federal matter. I would recommend granting relief to all the aliens who have entered the U.S. at least five years ago, do not have any criminal records,

are gainfully employed and are otherwise not inadmissible as immigrants. This amnesty is likely to benefit long-term U.S. residents, members of their families who are U.S. citizens and their employers. However, I do realize that given the current anti-immigration trends, passing an amnesty bill may be very difficult.

If granting amnesty to all illegal aliens is not option, I would recommend supporting less comprehensive bills that would grant relief at least to certain groups of illegal aliens. For instance, Senators Orin Hatch (R-UT) and Richard Durbin (D-IL) sponsored "The Development, Relief and Education for Alien Minor Act", also known as the "The Dream Act". If passed, the Dream Act will offer undocumented students an opportunity to gain conditional legal residence. The Dream Act would extend to these young men and women, who have resided in the United States for at least five years, were under the age of 16 at the time of entry, have graduated from high school or have been accepted to a college institution of higher education, are of good moral character and are not otherwise deportable. The beneficiaries of the Dream Act would be permitted to convert conditional status to a lawful permanent resident one, if they obtain a diploma from a junior college or trade school or complete at least two years of a bachelor's or graduate program or join the Armed Forces or perform part or full time volunteer community service under the direction of the USA Freedom Corps or with an entity eligible to receive funds for Combined Federal Campaign. Those who cannot fulfill the requirements will be allowed to demonstrate a compelling reason of why they cannot fulfill the requirements and extremely usual hardship if they were removed from the United States. Senator Dianne Feinstein choose to become a co-sponsor of this bill, which would benefit many young Californians who consider America their home and



would like to become citizens. The Dream Act would allow 50,000 undocumented students who annually graduate from American high schools to receive education, to legally work, to become productive members of the society and to give something back to their adopted nation.

Many of the parents of potential Dream Act beneficiaries would be able to become legal permanent under AgJobs, a hotly debated bill. Formally known as Agricultural Jobs, Opportunity, Benefits and Security amendment, this bill was offered by Senators Edward Kennedy and Larry Craig. AgJobs would allow farm workers, who have entered United States prior to October of 2004 and who can demonstrate at least a 100 days of employment in the agricultural industry, to gain temporary resident status. The farm workers would be able to gain permanent resident status if they can demonstrate commitment to future agricultural employment. This bill, of course, has many opponents. One of the main arguments against AGJobs is that it may be exploited by terrorists. However, all those who apply for adjustment of status will be required to undergo rigorous background investigations. Terrorists are no more likely to use AgJobs than they are to exploit any other adjustment of status program. Furthermore, having thousands of people become legal permanent residents will mean less pressure on Immigration and Customs Enforcement and will allow the agency to focus on those who are a real threat to our society. Another argument against AgJobs is that it will become a magnet for even more illegal immigrants. This is indeed a serious argument, especially given the fact that after President Bush's guest visa proposal there was a huge increase in the numbers of illegal immigrants trying to enter the country. I believe that some of the amendments introduced by Senators Feinstein and Cornyn can make AgJobs a much

given the fact that after President Bush's guest visa proposal there was a huge increase in the numbers of illegal immigrants trying to enter the country. I believe that some of the amendments introduced by Senators Feinstein and Cornyn can make AgJobs a much lesser magnet for future illegal immigration. Senator Feinstein recommends that workers be required to proof that they have worked in agriculture for at least three years prior to December 31, 2004. For each of the three years, they would be required to show 100 work days per year. Such rigorous residency requirements are likely to deter new immigrants from entering the border. Without such residency requirements borders are likely to be flooded, wages lowered and work harder to find. Those who will end up getting hurt the most will be the ones AgJobs is trying to help. A large influx of new immigrants is likely to hurt agricultural workers who have lived in the United States for years and have established ties to the country. Another amendment proposed by Senator Feinstein deals with criminal convictions. Feinstein strongly opposes allowing those who have two misdemeanor criminal convictions to benefit from AgJobs. This is an important amendment since in some states misdemeanors include petty theft, assault, certain drug offenses and driving under the influence. And while I understand that people who have really minor convictions may be adversely affected by this provision, I feel that it is more important to prevent criminals from adjusting their status. In addition, this strict rule is likely to win AgJobs more supporters. The last of Feinstein's amendments would prohibit those who live outside the United States to adjust their status under AgJobs. Once again, I agree with this amendment. The first commitment should to the people who currently reside in the United States.

Emphasizing the fact that AgJobs is not amnesty is very important, since many Americans have negative associations with the 1986 amnesty; after the passage of the amnesty the number of illegal immigrants significantly rose. Arguing that this bill is not Amnesty will make it more popular among both voters and legislators. The Senator also argues that locating and deporting over 8 million illegal immigrants would be expensive, impractical, disruptive to communities and devastating to businesses. All of Senator Craig's arguments are indeed valid and I feel that if amended, AgJobs is a fair piece of legislation, which can help millions of people. However, it only extends to agricultural employees and not all of the country's 8.7 illegal immigrants are employed in agriculture. Craig's colleague from California, Senator Barbara Boxer, proposes to extend AgJobs to other industries. Boxer urges industry-to-industry approach to legalize workers employed by businesses unattractive to Americans, such as hotels. Senator Boxer believes that extended to various industries AgJobs will create a stable workforce, preventing more illegal aliens from entering the United States. Boxer also advocates employing more Border Patrol agents and securing the borders.

AgJobs and Dream Act are very promising pieces of legislation that can help millions of hard-working, law-abiding immigrants. I am praying that both are passed; however, I also want to see legislation that deals specifically with effects of IRIRA, that grants relief to those who tried to adjust their status prior to the 1996 passage of IRIRA. Last year, my boss, Dianne Feinstein, wrote to the Undersecretary of the Homeland Security Department, Asa Hutsinson regarding the low number of cancellation of removal approvals. In her correspondence, the Senator expressed concerns over frequent deportations of long term U.S. residents. Mrs. Feinstein placed particular emphasis on

those cases that involved immigration judges granting cancellation of removal "only to have that decision overturned by the Board of Immigration Appeals." The Senator strongly opposes this practice, which gives the power to rule people's lives to an appellate body that does not interview applicants or their witnesses. Senator Feinstein also points out that the Executive Office for Immigration Review can approve up to 4,000 cancellation of removal cases each year. Unfortunately, this ceiling has never been reached. For example, only 2,345 cancellation of removals were granted in 2003 and 798 in 1999. On average, 1,268 cancellation of removal cases are approved annually. The Senator seemed troubled by the fact that an authorized form of immigration relief is not used to the maximum. I certainly praise the Senator's efforts to bring the attention of the Homeland Security's top administration to this very serious issue. However, I am afraid that her position was not taken into consideration. Since June of 2004, when the letter was written, I have heard from many Californians who were denied cancellation of removal and as a result, were facing deportation. Obviously, a more aggressive type of action is needed to help those who are being removed from their adopted country. Perhaps, Senator Feinstein can introduce a bill that will offer relief to those individuals who were caught in the 1996 transitions of the immigration law. As the Senator herself states, "In most cases, individuals qualified for relief under the pre-IRIRA suspension of deportation provisions, but did not qualify for cancellation of removal relief post-IRIRA." I strongly feel that these individuals, who would have been able to adjust their status prior to 1996 and tried to do so, should be given an opportunity to become legal permanent residents. After all, illegal aliens who applied for cancellation of removal in

the early 90's were granted residency. Would it not be fair to treat those who applied just a year or two later the same?

A carefully crafted legislation that grants relief to those individuals, who tried to adjust their status prior to the passage of IRIRA, can demonstrate continuous residence in the U.S., do not have criminal convictions, are not likely to become public charge and are not inadmissible as immigrants, would help thousands of immigrants. Another way to help people hurt by IRIRA is to redefine the requirements for cancellation of removal. Many immigrants would be able to receive cancellation of removal and stay in the U.S. if they could prove simple hardship to their U.S. citizen relatives, not hardship that is extreme and unusual. It would be symbolic if a California politician championed the efforts to pass IRIRA-related legislation, since California is home to an approximate three million illegal aliens; many of them are victims of IRIRA.

Of course, one politician cannot make such serious amendments to the immigration law. Just like any other bill, an IRIRA-related relief bill would need to have two or more sponsors and co-sponsors. The more politicians support such bill, the stronger it will appear. But politicians do not always independently identify problems and offer legislation to solve them. It often takes an interest group to point the attention of legislators to a problematic area and to get them to take action. While many immigrant-rights groups lobby Senators and Congressmen for Amnesty, AgJobs, Dream and other immigration-related legislation, I have not observed any efforts to help those who would have become legal permanent residents, and possibly even citizens, a long time ago, if it was not for IRIRA. And although many of the elected officials, such as Senator Feinstein, are aware of this major issue, not many are willing to introduce a piece

of legislation for which they are likely to be criticized by many colleagues and constituents. However, if politicians know that this type of legislation would be important to many other constituents, immigrants and immigrant-rights supporters, they will become interested in offering it. Perhaps, the think-tanks of immigrant coalitions can draft legislation, similar to the one I described above, and bring it to the attention of pro-immigrant elected representatives. For example, the San Francisco Immigrant Rights Commission, whose mission is improve the life and enhance civic participation of immigrants, can lobby Bay Area politicians for the passage of such bill, which would improve the life of many Bay Area immigrant families. Another thing that the Commission can do is educate the immigrant community and the supporters of immigrant rights about the devastating effects of IRIRA. The more people are aware of this problem, the more likely are politicians to hear from their constituents; phone-calls, letters and emails from voters can definitely influence the decisions of political leaders on whether to introduce particular bills. What would be even more influential is the involvement of national groups, such as National Network for Immigrant and Refugee Rights (NNIRR). NNIRR and similar coalitions can reach out to a greater number of politicians and voters. What is interesting is that one of NNIRR's current projects deals with a legalization program. The project consists of ten principles and promotes such things as "a comprehensive program that allows undocumented immigrants to obtain legal permanent residency, access to all public services to all public services and benefits, fair treatment of immigrants who are being detained, etc". Incorporating a principle to assist those who were hurt by an unfair immigration law or having a project devoted specifically to this issue can be another great cause that this group can take on. In

addition, NNIRR, the Immigrant Rights Commission and similar organizations should educate the public about the contributions of immigrants and the dependency of our society upon immigrant labor.

Immigration issues and immigration-related laws are complex and controversial. Legislators who try to offer relief to immigrants often take heat from colleagues and voters; many in our country oppose legal and illegal immigration all together. However, this nation was built by immigrants and immigrants, both legal and illegal, continue to contribute today. Removing about eight million law-abiding hard-working individuals would mean huge gaps in businesses, empty houses and a financial burden to the government. It would be less expensive and less disruptive to society to grant relief to these individuals through Amnesty, Dream Act, AgJobs, cancellation of removal or the proposed IRIRA-related legislation. Hopefully, one day these pending bills will become laws and immigrants who have been productive members of our society will finally be granted residency.

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