

REAGAN-BUSH FAMILY FAIRNESS: A Chronological History

From 1987 to 1990, Presidents Ronald Reagan and George Bush, Sr. used their executive authority to protect from deportation a group that Congress left out of its 1986 immigration reform legislation—the spouses and children of individuals who were in the process of legalizing. These “Family Fairness” actions were taken to avoid separating families in which one spouse or parent was eligible for legalization, but the other spouse or children living in the United States were not—and thus could be deported, even though they would one day be eligible for legal status when the spouse or parent legalized. Publicly available estimates at the time were that “Family Fairness” could cover as many as 1.5 million family members, which was approximately 40 percent of the then-unauthorized population.¹ After Reagan and Bush acted, Congress later protected the family members. This fact sheet provides a chronological history of the executive actions and legislative debate surrounding Family Fairness.

November 6, 1986: President Reagan signs the Simpson-Mazzoli Immigration Reform and Control Act (IRCA).² The legislation makes certain immigrants eligible for temporary legal status and eventually green cards, primarily (1) those “continuously” present in the U.S. since January 1, 1982 (the general legalization provisions),³ and (2) special agricultural workers (SAW).⁴ At the time, roughly 3 million people are thought to be eligible to legalize, although that number will rise by 1990, due to an unexpectedly large number of SAW applicants, and litigation by several hundred thousand persons who claimed eligibility for the general legalization provisions.⁵

IRCA does not contain language regarding spouses and children who don’t independently qualify for legalization. As a Senate Judiciary Committee report accompanying the legislation stated, “the families of legalized aliens will obtain no special petitioning right by virtue of the legalization. They will be required to ‘wait in line’.”⁶

When the Senate-passed bill moved to the House, IRCA’s legalization provisions survived an amendment to strike them by seven votes.⁷

1987: The plight of “split-eligibility” families immediately becomes a key issue post-IRCA.⁸ For example, the National Conference of Catholic Bishops criticizes the separation of families, and urges Reagan’s intervention.”⁹

The Los Angeles Catholic archdiocese reports that up to 30 percent of the legalization applications it was assisting involved “split-eligibility” families.¹⁰

October 7, 1987: In an effort to address “split-eligibility” families, Sen. John Chafee (R-RI) offers an amendment to an unrelated bill that would give spouses and children excluded from IRCA a path to legalization.¹¹ The Senate defeats the amendment by a 55-45 vote.¹²

Among others, IRCA’s lead Senate sponsor, Sen. Alan K. Simpson (R-WY), opposes Chafee’s amendment as a “second amnesty” that “destroys the delicate balance of the recently passed immigration reform legislation.” Citing the Senate Judiciary Committee’s report, Simpson stated “[t]here is no question about what the legislative intent is or was.”¹³

October 21, 1987: Two weeks later, Reagan’s INS Commissioner Alan C. Nelson announces INS’ “Family Fairness” executive action.¹⁴ The INS’ memo explains the “clear” Congressional intent in 1986 to exclude family members from the legalization program.¹⁵ Nevertheless, the INS defers deportation for children living in a two-parent household with both parents legalizing, or living with a single parent who was legalizing. As to spouses, though, the INS directs that similar relief “generally not be granted”—only if “compelling or humanitarian factors” exist on top of marriage alone.¹⁶

October 27, 1987: The *Washington Post* editorial board, among other news outlets, applauds INS’ policy. Citing IRCA’s Congressional history and the recent Senate defeat of Chafee’s amendment, the Post argues that “If Congress will not be moved, the INS should have a heart.”¹⁷

October 27, 1987: Sen. Chafee and eight other Senators criticize INS’ policy for not going far enough to cover spouses and ineligible children.¹⁸

October 29, 1987: The House Appropriations Committee reports a continuing resolution (CR) on appropriations to the House floor.¹⁹ The CR includes an amendment by Rep. Edward Roybal (D-CA)—narrower than Chafee’s, but broader than INS’ Family Fairness policy—to block funding for deportation of *both* spouses and children of legalizing families.²⁰

December 3, 1987: IRCA’s lead House sponsor, Rep. Romano Mazzoli (D-KY), among others, criticizes Roybal’s amendment during the House floor’s CR debate because it “reverses the whole idea of the Immigration Reform and Control Act of 1986.”²¹ Rep. Hal Rogers (R-KY) also states, “[I]f my colleagues were concerned last year... about the amnesty portion of that bill, and it only carried by six votes... this continuing resolution violates completely the amnesty provisions delicately worked out last year.”²² Rep. Bill McCollum (R-FL) argues the amendment “means another 50 percent

or better expansion of the number of illegals who are immediately going to come into this country.”²³ Nevertheless, the CR passes the House with Roybal’s amendment included.

December 22, 1987: The Senate appropriations bill does not include Roybal’s amendment, and the amendment does not survive House-Senate conference negotiations.²⁴

August 23, 1988: House Judiciary Committee testimony details the still-large problem of “split-eligibility” families. Vanna Slaughter of Catholic Charities in Texas testifies that about one-third of Catholic Charities’ applicants had ineligible family members.²⁵ Another witness testifies that Slaughter’s numbers are “going to be the tip of the iceberg,” since many applying have no lawyer and might not know family could qualify for Family Fairness.²⁶

January 20, 1989: President George H.W. Bush takes office.

June 16, 1989: INS Commissioner Alan C. Nelson leaves office.

July 13, 1989: The Senate passes immigration legislation.²⁷ The legislation includes an amendment by Sen. Chafee to protect both ineligible spouses and children from deportation—scaled back from his prior amendment that provided a path to legalization.²⁸

Despite Chafee scaling back the amendment, Sen. Simpson repeats his objections based on the Congressional intent behind IRCA.²⁹ He states that Chafee’s amendment “is not quite the same but yet it is,” and calls it “a *de facto* second amnesty.”³⁰

However, Sen. Pete Wilson (R-CA) switches his vote and speaks for Chafee’s amendment. Echoing the current debate, Wilson argues that “this country was built on certain values” like the “value of the family unit,” and in any event, “we simply do not have the manpower” to enforce the law as written.³¹ Chafee’s amendment passes 61-38.³²

Sen. Chafee’s office publicly estimates that about 1.5 million family members would be affected, based on several recent immigration reports made available to senators.³³

August 1989: The INS releases its *Statistical Yearbook 1988*, which provides demographic information on the legalizing individuals whose family members are under debate.³⁴

The *Yearbook* reports that INS had received nearly 3.1 million legalization applications.³⁵ Of those that had applied for legalization by 1988, about 41.5 percent of those seeking general legalization were married, with another 9.8 percent separated, divorced, widowed or unknown. Of those

applying for SAW legalization, 42.5 percent were married.³⁶ Combined, these categories indicate that a large pool of potential Family Fairness applicants exists (i.e. spouses and children of legalizing individuals, whom themselves are ineligible for IRCA).

August 1989: Additionally, a California study which surveyed a sample of the legalizing population finds that 68 percent of those applying for general legalization, and 43 percent of SAW applicants, were married. Only 30 percent of those applying for general legalization, and 63 percent of SAW applicants, reported no children living with them.³⁷

October 26, 1989: New INS Commissioner Gene McNary is sworn into office.

November 9, 1989: The House Judiciary Committee's immigration subcommittee holds a hearing on Rep. Bruce Morrison's (D-CT) H.R. 3374, which includes a provision echoing Chafee's amendment to protect both ineligible spouses and children from deportation.³⁸

The INS (among others) strongly opposes the provision as creating a "second legalization program contrary to the intent of Congress," and "outside the carefully crafted balance" of IRCA.³⁹ Other groups support the provision,⁴⁰ arguing that individuals are afraid to apply for Family Fairness because the INS would put applicants into deportation proceedings.⁴¹

The INS' counsel testifies it is "correct" that potentially eligible spouses and children constituted a "lot of people," although he didn't "have the numbers."⁴² Now-former INS Commissioner Nelson states "the potential number is obviously enormous."⁴³ The Director of the Center for Immigration Studies also cites "immense demographic consequences," and that Chafee's provision "would grant de facto residence status to some 1.5 million."⁴⁴

H.R. 3374 does not move forward.

February 2, 1990: President Bush's INS now expands Reagan's Family Fairness policy to all ineligible spouses *and* children under 18 of legalizing family members, provided they meet certain criteria.⁴⁵ The INS also provides them eligibility to apply for work authorization. INS Commissioner McNary noted that Bush's executive policy matched the Senate provisions,⁴⁶ even though the House had not yet acted.

The Commissioner also states, "We can enforce the law humanely... To split families encourages further violations of the law as they reunite."⁴⁷

The *San Francisco Chronicle* reports that INS officials said the policy “is likely to benefit more than 100,000 people,” while the *Washington Post* reports that it could “prevent the deportation of as many as 100,000 illegal aliens.”⁴⁸ That said, an INS spokesman also said that the number of immigrants affected “may run to a million,” and did not dispute large estimates from immigrant advocacy groups.⁴⁹ The unpredictability appears to depend on whether immigrants overcome their fear and apply.⁵⁰

- February 6, 1990:** The *Washington Post* editorial board, among others, applauds INS’ expanded Family Fairness policy, calling it “sensible, humane and fair.”⁵¹ The Post notes it is “not an extension of amnesty, which would have required legislation,” but calls it “in line with traditional policy to favor immigration that reunites families.”
- February 6, 1990:** Senator Chafee applauds Bush’s Family Fairness action, which largely mirrored the Senator’s own legislative proposal. He says, “Mr. President... the family unit is sacred,” and “I am delighted, after four years of hard work, to see this principle triumph through the new Family Fairness guidelines.”⁵²
- February 8, 1990:** An INS internal Decision Memorandum to Commissioner McNary states that Family Fairness “provides voluntary departure and employment authorization to potentially millions of individuals,” and discusses processing options given the “large workload.”⁵³
- An INS “Draft Processing Plan,” also dated this day, states that “current estimates are that greater than one million IRCA-ineligible family members will file for” Family Fairness.⁵⁴ The plan calculates the financial resources required to process 1 million applications in 100 workdays.⁵⁵
- February 12, 1990:** The INS releases Family Fairness processing guidelines. The filing fee for a work authorization application is \$35.⁵⁶
- February 21, 1990:** INS Commissioner McNary testifies before the House Judiciary Committee.⁵⁷ McNary states to Rep. Morrison that there are about 1.5 million ineligible family members covered by Family Fairness here in the United States. McNary also states that there are another 1.5 million ineligible family members of the legalizing population, presumably outside the United States.⁵⁸
- February 26, 1990:** A bulletin reports that the INS statistics office estimates that of the 3.1 million IRCA applicants at that point, 42 percent (1.3 million) were married.⁵⁹ The INS conceded that it lacked “reliable data” regarding children.⁶⁰ (Using current estimation tools, as many as 600,000 children of IRCA applicants may have been residing in the U.S in 1990).⁶¹

The INS also notes that over 740,000 legalization applications are pending or on appeal, and other class-action litigants are suing to legalize as well.⁶² Their relatives cannot yet apply for Family Fairness protection.⁶³ However, once their legalization applications are approved, their family members will be eligible to apply.⁶⁴

- March 5, 1990:** The *New York Times* reports McNary's February 21 testimony that "as many as 1.5 million illegal aliens could be affected by the new policy."⁶⁵
- March 19, 1990:** Rep. Morrison introduces legislation which again includes a provision to defer deportations of the Family Fairness relatives.⁶⁶
- September 1990:** The INS updates its statistics on the legalizing population in its *Statistical Yearbook 1989*.⁶⁷ The INS reports that over 3 million have applied for legalization through general provisions or SAW.⁶⁸ Of those whom applied for general legalization, 41.2 percent are married, and 9.9 percent are separated, divorced, widowed, or unknown. Of those whom applied for SAW, 41.7 percent are married, and 4.6 percent are separated, divorced, widowed, or unknown.⁶⁹ The INS does not report data on children.
- October 27, 1990:** The House and Senate conference agrees to a combined Immigration Act of 1990, which includes the provisions to defer deportation of the Family Fairness relatives (now called "Family Unity" provisions).⁷⁰
- November 29, 1990:** President Bush signs the combined Immigration Act of 1990.⁷¹ He salutes its "support for the family as the essential unit of society,"⁷² and "respect for the family unit."⁷³ He also issues a signing statement, preserving the "authority of the executive branch to exercise prosecutorial discretion in suitable immigration cases."⁷⁴
- Congress' "Family Unity" provisions supersede the executive "Family Fairness" policy, as of Oct. 1, 1991.⁷⁵ Those Family Unity provisions are still in place today.⁷⁶
- The Immigration Act of 1990 also dramatically increases the number of visas available to spouses and minor children of those with lawful permanent resident status (i.e. a green card).⁷⁷
- 1990-1995:** Although it is unclear how many spouses and children of the legalizing population ultimately apply for the "family fairness" or "family unity" provisions, large numbers likely apply directly for green cards that were made available under the Immigration Act of 1990. For example, the 1995 report of the State Department's Office of Visa Services estimated that spouses or children of those legalized under IRCA represented 80 percent of the 1.1 million applications by immediate relatives of lawful permanent residents, at that time (about 880,000 people).⁷⁸

Family Fairness continued through Oct. 1, 1991. As of October 1, 1990, INS had received 46,821 applications.⁷⁹ Explanations for low application rates included fear and stringent documentary requirements.⁸⁰ As to Family Unity protection, it is unclear how many applied. About 140,000 individuals likely applied for a related “legalization dependent” visa, made available to the class of individuals eligible for Family Unity protection, and outside the normal visa caps.⁸¹ One reason for relatively low rates of application for Family Fairness/Unity protection may be that many decided to apply directly for a green card, rather than making two applications.⁸²

Endnotes

¹ Jeffrey S. Passel, D’Vera Cohn, Jens Manuel Krogstad, and Ana Gonzalez-Barrera. “As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled” Washington, D.C.: Pew Research Center’s Hispanic Trends Project (September 2014), http://www.pewhispanic.org/files/2014/09/2014-09-03_Unauthorized-Final.pdf.

² The Immigration Reform and Control Act of 1986 (IRCA), P. L. 99-603, at <http://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3445.pdf>.

³ *Ibid.* Sec. 201, creating new Sec. 245A(a)(2)(A).

⁴ *Ibid.* Sec. 302. IRCA also made legalization possible for certain Cubans and Haitians, *see* Sec. 202, and those whom had entered before 1972, by updating the registry date under INA § 249, *see* Sec. 203.

⁵ Charles Kamasaki, *Doubling Down on a Grievous Error* (Dec. 4, 2014), p. 2, available at NCLR Blog, *Setting the Washington Post Straight on Executive Action* (Dec. 4, 2014), <http://blog.nclr.org/2014/12/04/setting-washington-post-straight-executive-action/>.

⁶ S. Rep. No. 99-132, 99th Cong., 1 Sess. 343 (1985); *see also Angeles v. Ilchert*, 700 F. Supp. 1048, 1051 (N.D. Cal. 1988) (it is “clear” that “Congress did not intend to extend this legalization program to aliens who entered the United States after January 1, 1982—including the families of legalized aliens.”), at http://www.leagle.com/decision/19881748700FSupp1048_11564.

⁷ *See* H.Amdt 1291 to H.R. 3810, 99th Cong. (offered Oct. 9, 1986) (amendment, sponsored by Rep. Bill McCollum (R-FL), to strike provisions in the bill permitting aliens who entered this country illegally prior to 1982, and who are otherwise eligible for admission, to apply for temporary resident status). The amendment failed 192-199. Record Vote No. 455.

⁸ 64 Interpreter Releases 1191 (Oct. 26, 1987) (“The family unity issue has been an area of serious concern”); Doris M. Meissner & Demetrious G. Papademetriou, *The Legalization Countdown: A Third-Quarter Assessment*, 36 (February 1988) (the family unity issue has become “the most polarized of the disagreements between the government and immigrant advocates”), at <http://files.eric.ed.gov/fulltext/ED291836.pdf>.

⁹ Marita Hernandez, *Qualifying for Amnesty--a House Divided by Law*, Los Angeles Times (May 25, 1987), at http://articles.latimes.com/1987-05-25/news/mn-1459_1_family-unity/3.

¹⁰ 64 Interpreter Releases 1191 (Oct. 26, 1987), citing “Family Unity Called Need of Immigrants,” *San Diego Tribune*, August 8, 1987, at C4, col. 1. The diocese said it had analyzed over 6,000 applications.

¹¹ S. Amdt 894 to S. 1394, 100th Cong., at <https://www.congress.gov/amendment/100th-congress/senate-amendment/894>.

¹² Record Vote No. 311. <https://www.congress.gov/amendment/100th-congress/senate-amendment/894/actions>.

¹³ 133 Cong. Rec. S13727 et. seq. (Oct. 7, 1987). *See also* *ibid.* (Sen. Chafee: “this bill passed the Senate 69 to 30... Frankly, I do not think many of us realize that we are possibly breaking up families in giving this amnesty.”); (Sen. Thurmond: “a decision was consciously made to require everyone to qualify individually for the amnesty program.... Simply because one member of the family qualifies does not mean you have to bring in all members of the family. It just does not make sense. That was never the intention of the bill.... Without this requirement I do not believe the amnesty program would have been passed in the first place.”); (Sen. Simpson: “indeed the bill did pass

the Senate by a better margin than in the House. But the issue of legalization is what I was saying passed the House by only 7 votes.”).

¹⁴ 64 Interpreter Releases 1191 (Oct. 26, 1987).

¹⁵ U.S. Immigration and Naturalization Service Commissioner Alan C. Nelson, *Legalization and Family Fairness – An Analysis* (Oct. 21, 1987), at http://www.prwatch.org/files/ins_family_fairness_memo_oct_21_1987.pdf. This contrasts the Washington Post’s December 3, 2014 argument that President Bush’s executive action “was in step with legislation recently and subsequently enacted by Congress.” Washington Post, *President Obama’s unilateral action on immigration has no precedent* (Dec. 3, 2014), at http://www.washingtonpost.com/opinions/president-obamas-unilateral-action-on-immigration-has-no-precedent/2014/12/03/3fd78650-79a3-11e4-9a27-6fdb612bff8_story.html.

¹⁶ *Ibid.* at pp. 4-5. This was true even for the parents of U.S.-citizen children. *Ibid.* at p. 5.

¹⁷ Washington Post, *Amnesty Families*, p. A18 (Oct. 27, 1987) (op-ed), at <http://pqasb.pqarchiver.com/washingtonpost/doc/306940299.html?FMT=FT>.

¹⁸ Senators Alan Cranston, John H. Chafee, Claiborne Pell, Robert T. Stafford, Barbara A. Mikulski, Daniel P. Moynihan, Spark M. Matsunaga, Albert Gore, Jr., and Brock Adams, *Letter to Alan C. Nelson, INS Commissioner* (Oct. 27, 1987), reported at 133 Cong. Rec. S15999 et. seq. (Nov. 6, 1987) (statement of Sen. Cranston).

¹⁹ H.J. Res. 395, 100th Cong.

²⁰ H.J. Res. 395, 100th Cong., Sec. 110; see also 133 Cong. Rec. H11996 et. seq. (Dec. 21, 1987) (Rep. Roybal (D-CA) statements).

²¹ 133 Cong. Rec. H10900-03, 100th Cong. (Dec. 3, 1987) (Rep. Mazzoli: “Many of you who were here in the 99th and now in the 100th Congresses remember my saying so often that the legalization section of the immigration bill was not meant to be an amnesty but was meant to be a case-by-case examination.... “[I]t goes too far.... [T]hose individuals could be felons. They could be criminals.... under the amendment of the gentleman from California now in the bill, they could not be deported.”).

²² *Ibid.*

²³ *Ibid.*

²⁴ P.L. 100-202 (Dec. 22, 1987); 133 Cong. Rec. H11996 et. seq. Notably, Sen. Orrin Hatch (R-UT) supported the Roybal amendment, in a Dec. 15, 1987 letter. *Ibid.*

²⁵ Vanna K. Slaughter, North Texas Immigration Coalition, Hearing, Committee on the Judiciary, House of Representatives, *Family Unification, Employer Sanctions and Anti-Discrimination under IRCA* (Aug. 23, 1988), p. 4, at <http://www.loc.gov/law/find/hearings/pdf/00005124906.pdf>. Slaughter had analyzed five thousand cases to date. *Ibid.* “Very few” would benefit from Reagan’s policy alone. P. 33.

²⁶ Fernando Dubove, Assistant Director, Texas Project, National Immigration, Refugee, And Citizenship Forum, Hearing, Committee on the Judiciary, House of Representatives, *Family Unification, Employer Sanctions and Anti-Discrimination under IRCA* (Aug. 23, 1988), p. 92.

²⁷ S. 358, 101st Cong., 1st session. The legislation passed 81-17. See http://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_101_1.htm.

²⁸ *Ibid.*, sec. 108. Sen. Chafee argued that this provision was narrower than his prior amendment. See 135 Cong. Rec. S7748 et. seq. (July 12, 1989) (Sen. Chafee: “This is a modest solution... I offered an amendment similar to this in 1987 that was defeated, 55 to 45. But it was different. It was broader than this. That amendment would have granted legal status to the spouses and children of the legalized aliens. There is a lot of difference between granting legal status and what my bill does.... My bill does not confer legal status on the spouse or children who benefit from this legislation. My bill only applies to spouses and minor unmarried children. It does not apply to the whole family of brothers and sisters and cousins and parents.”)

²⁹ 135 Cong. Rec. S7748 et. seq. (July 12, 1989) (Sen. Simpson: “[I] oppose this amendment because to me it disturbs the delicate balance of the 1986 Immigration Reform and Control Act.... In the Judiciary Committee report we stated it very clearly.”)

³⁰ *Ibid.* (“It does not grant this actual legal status, but, as I say, it grants the thing that is most primed.... I promised all my colleagues during the presentation of the immigration bill over the course of 6 to 8 years that legalization is and will be a one-time-only program.”)

³¹ Ibid. (Sen. Wilson: “[T]he law as it now stands has produced unintended hardship in my State and in many others.... [T]he time has come for us to say if this is to be regarded as such an expansion of amnesty, then so be it.... [L]et us not continue with a situation that is both unworkable, inhumane, and one that does not benefit the present citizens of the United States.”); *ibid.* (“This is ridiculous in the sense that we are talking about setting a standard that cannot be enforced in any case. There is not the ability to enforce the law. The law should not be enforced as it is being proposed by the Senator from Wyoming... it is also... I reemphasize... an unworkable situation now. We simply do not have the manpower to expend but the threat of deportation remains.”).

³² S. Amdt. 244, Record Vote No. 107. See Helen Dewar, *Senate Votes Protection for Aliens’ Kin*, Washington Post (July 13, 1989), at <http://pqasb.pqarchiver.com/washingtonpost/doc/307193985.html>.

³³ Josh Getlin, *Senate Acts to Protect Families in Amnesty Plan*, Los Angeles Times (July 13, 1989) (lead of story: “In an action that could affect more than 1.5 million illegal aliens...”), at http://articles.latimes.com/1989-07-13/news/mn-4478_1_family-members.

³⁴ 1988 Statistical Yearbook of the Immigration and Naturalization Service (August 1989), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.l0062135033;view=1up;seq=9>.

³⁵ *Ibid.* at p. xxii (as of May 12, 1989, the INS had received applications from 1,768,089 legalization applicants and 1,301,804 Special Agricultural Worker (SAW) applicants). The *Yearbook* did not report numbers of Cuban-Haitian applicants, nor those whom had entered before 1972. *Ibid.*

³⁶ *Ibid.* at xxii-xxiii.

³⁷ Comprehensive Adult Student Assessment System, *Highlights: A Survey of Newly Legalized Persons in California* (August 1989), included in Hearing, Subcommittee on Immigration, Refugees, and International Law, House Judiciary Committee, *On H.R. 3374* (Nov. 9, 1989), at pp. 127-31.

³⁸ 101st Cong., H.R. 3374, IRCA Amendments of 1989, Sec. 205 (introduced Sept. 28, 1989), at <https://www.congress.gov/bill/101st-congress/house-bill/3374>. Sec 205 of Rep. Morrison’s bill was broader, in that it applied to spouses and children in the United States as of January 1, 1989, rather than November 6, 1986.

³⁹ Statement of Paul W. Virtue, Acting General Counsel, U.S. Immigration and Naturalization Service, Hearing, Subcommittee on Immigration, Refugees, and International Law, House Judiciary Committee, *On H.R. 3374* (Nov. 9, 1989), at p. 25; *see also* Prepared Statement, at p. 37 (IRCA “was never intended to place all illegal aliens within a legal status”). Former INS Commissioner Alan C. Nelson testified similarly. *Ibid.* at p. 171 (Statement of Alan C. Nelson, Former Commissioner, U.S. Immigration and Naturalization Service, Member of the National Board of Advisors and Consultant to the Federation for American Immigration Reform).

⁴⁰ *See, e.g.*, Statement of Lavina Limon, Steering Committee Member, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), at *ibid.*, pp. 111-12 (“INS under pressure to respond created the family fairness policy, but in our experience it doesn’t work.”).

⁴¹ Statement of Carolyn Waller, Director, Alien Rights Project, Washington Lawyers’ Committee for Civil Rights Under Law (Nov. 9, 1989), at *ibid.*, pp. 216-20.

⁴² *Ibid.* at 48 (Rep. Morrison: “On this issue of minor children and spouses, you would agree that most of the individuals in this class are receiving indefinite voluntary departure?” A: “Although I don’t have the numbers, I think that’s correct.” Rep. Morrison: “Very large numbers.... [I]t’s a lot of people?” A: “My sense is that’s correct.”)

⁴³ Section 205 “codifies an extraordinary expansion of the amnesty granted by IRCA.... I am aware of no reliable estimate of how many people will be made eligible for amnesty by this section....” [But] “[s]ince over three million illegal aliens were granted legalization by IRCA, the potential number is obviously enormous.” Testimony of Alan C. Nelson, Consultant to the Federation for American Immigration Reform, Member, National Board of Advisors, FAIR, and Former Commissioner of the U.S. Immigration and Naturalization Service, *On H.R. 3374* (Nov. 9, 1989), at *ibid.*, p. 179.

⁴⁴ Prepared Statement of David Simcox, Director, Center for Immigration Studies (Nov. 9, 1989), at *ibid.*, p. 209-10 (“[T]his proposal would be tantamount to a massive second stage amnesty...”). Simcox also criticized the administrative burden of adjudicating “millions of claims for such status.” *Ibid.* at 210. Simcox argued that Section 205 of Rep. Morrison’s bill was broader than Sen. Chafee’s provision, and that a recent Center for Immigration Studies study estimated the number of unlegalized spouses and children of legalized aliens, including Special

Agricultural Workers, who would settle here if permitted to be 2.6 million. *Ibid.* at 209-10. CIS called this a “conservative” figure, since it did not include spouses and children acquired subsequent to legalization. *Ibid.*

⁴⁵ INS Commissioner Gene McNary, Memorandum, *Family Fairness: Guidelines for Voluntary Departure under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens* (Feb. 2, 1990) (hereinafter “McNary Memo”). Bush’s INS memo built upon Reagan’s (see p. 1, referring to 1987 guidelines). The criteria were that the ineligible alien was otherwise admissible, had not been convicted of a felony or three misdemeanors, and had not assisted in persecution. *Ibid.*

⁴⁶ 67 Interpreter Releases 153, 154 (Feb. 5, 1990).

⁴⁷ *Ibid.*

⁴⁸ Tim Schreiner, *INS Reverses Policy That Split Alien Families*, San Francisco Chronicle (Feb. 3, 1990), at A1.

⁴⁹ Paul Anderson, *New Policy on Illegal Immigrants*, Philadelphia Inquirer (Feb. 3, 1990), at http://articles.philly.com/1990-02-03/news/25883655_1_illegal-immigrants-rick-swartz-american-immigration-reform. The article reported that McNary and his top INS aides “said they could not predict how many dependents would come forward.” *Ibid.*

⁵⁰ Schreiner, *supra* note 48. For example, the San Francisco INS deputy district director stated, “I would not expect a big flood of people.” He stated that his office had only granted 150 families permission to stay under the previous, narrower family fairness policy. *Ibid.* Meanwhile, immigrants’ rights advocates said that the number would increase significantly under the new policy, because districts had been granting Family Fairness only if the applicant was already in deportation proceedings. “People could not come in and apply for it,” Charles Wheeler of the National Center for Immigrants’ Rights said. “Now they can. This will take the fear out of it.” Or, Kip Steinberg, an attorney with the National Lawyers Guild’s National Immigration Project, said that many family members had not been applying “because once it was explained to them that they could be deported if they did not qualify, a lot of people were not willing to take the risk.” *Ibid.*

⁵¹ Washington Post, *Amnesty and Compassion* (Feb. 6, 1990), p. A24, at <http://pqasb.pqarchiver.com/washingtonpost/doc/307234315.html>.

⁵² Cong. Record, 101st Cong., (Feb. 6., 1990), p. S929.

⁵³ Decision Memo to Gene McNary, Commissioner, “*The implementation of the Family Fairness Policy—Providing For Voluntary Departure under 8 CFR 242.5 and Employment Authorization under 8 CFR 274a.12 for the spouses and children of legalized aliens (section 245a and section 210)*” (February 8, 1990), cited in Cong. Record, 113th Cong., H8636 (Dec. 4, 2014), at <https://www.congress.gov/crec/2014/12/04/CREC-2014-12-04-pt1-PgH8632.pdf>.

⁵⁴ T. Andreotta, “Draft Processing Plan RPF Processing of Family Fairness Applications Utilizing Direct Mail Procedures” (Feb. 8, 1990), cited in Cong. Record, 113th Cong., H8635-36 (Dec. 4, 2014), at <https://www.congress.gov/crec/2014/12/04/CREC-2014-12-04-pt1-PgH8632.pdf>.

⁵⁵ *Ibid.*

⁵⁶ Michael T. Lempres, Executive Commissioner, U.S. INS, *Guidelines for Implementation: Family Fairness Policy for Ineligible Spouses and Children of Legalized Aliens* (Feb. 12, 1990), available at 67 Interpreter Releases 204, 230-33 (February 26, 1990).

⁵⁷ INS Commissioner Gene McNary, House Committee on the Judiciary, Hearing, *S. 358, H.R. 672, H.R. 2448, and H.R. 2646, Immigration Act of 1989* (Feb. 21, 1990), at <https://www.scribd.com/doc/248088098/Feb-21-1990-hearing-House-subcommittee-on-Immigration>.

⁵⁸ *See ibid.*, p. 49, 52, 56 (Mr. Morrison: “Mr. McNary, you used the number 1.5 million IRCA relatives who are undocumented but who are covered by your family fairness policy. Do I have that number right?” Mr. McNary: “Yes.... We think you are right as to the 1.5 million being here. There is an estimate of another 1.5 million that would come as a result of this change in definition [ED NOTE: through new legislation]... They are not here.”) This echoes other estimates of 3 million ineligible relatives of the IRCA-legalized. *Binational Study: Migration Between Mexico and the United States* (1997), p. 10, at <https://www.utexas.edu/lbj/uscir/binational/full-report.pdf>.

The Washington Post called McNary’s testimony a “misunderstanding,” based on Commissioner McNary’s comments to the paper 24 years later. Washington Post, *President Obama’s unilateral action, supra* note 15. The Post does not explain the misunderstanding, however. Glenn Kessler, *Obama’s claim that George H.W. Bush gave relief to ‘40 percent’ of undocumented immigrants* (Nov. 24, 2014, subsequently revised), at <http://www.washingtonpost.com/blogs/fact-checker/wp/2014/11/24/did-george-h-w-bush-really-shield-1-5-million->

illegal-immigrants-nope/. Kessler’s “Fact Check” refers to the “different category of 1.5 million people,” but does not explain that McNary’s testimony referred to 1.5 million outside the United States. *Ibid.*

⁵⁹ 67 Interpreter Releases 204, 206 (February 26, 1990). Kamasaki estimates that about 840,000 spouses were likely ineligible. Kamasaki, *Doubling Down*, *supra* note 5, at p. 2.

⁶⁰ 67 Interpreter Releases 204, 206 (February 26, 1990). The bulletin reports that “No one knows how many people will apply for the family fairness program” (emphasis added), and that “[i]nformal estimates range from the thousands up to one million.” Among the uncertainties are “how many will not apply because of the lack of confidentiality.” The bulletin also reports that INS’ current “guesstimate” is that no more than 250,000 aliens will apply for” Family Fairness, without citation. *Ibid.*

⁶¹ Kamasaki, *Doubling Down*, *supra* note 5, at p. 2, citing, e.g., Jeanne Batalova, Sarah Hooker, and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action* (Migration Policy Institute: Washington DC, August 2014), at <http://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>. Kamasaki thus estimated that nearly 1.5 million immigrants likely were, in fact, ineligible to legalize but potentially eligible for Family Fairness at that time. *Ibid.*

Glenn Kessler’s Washington Post “Fact Check” omitted children from its analysis, and erroneously argued that the 1.5 million estimate “is a rounded-up estimate of the number of illegal immigrants who were married.” Kessler, *supra* note 58. The Post also argued that “no underlying data or methodology to justify the 1.5 million figure has been uncovered.” Washington Post, *President Obama’s unilateral action*, *supra* note 15.

⁶² 67 Interpreter Releases 204, 205-06 (February 26, 1990). There were several hundred thousand class action litigants at the time. Kamasaki, *Doubling Down*, *supra* note 5, at p. 2.

⁶³ *Ibid.*

⁶⁴ Kessler’s “Fact Check” erroneously argued that these relatives should be excluded from then-estimates of potential Family Fairness applicants at the time. Kessler, *supra* note 58.

⁶⁵ Marvine Howe, *New Policy Aids Families of Aliens*, N.Y. Times (Mar. 5, 1990), at <http://www.nytimes.com/1990/03/05/nyregion/new-policy-aids-families-of-aliens.html>.

⁶⁶ H.R. 4300, Family Unity and Employment Opportunity Immigration Act of 1990, Sec. 104 (“Prohibition of Deportation of Spouses and Children of Legalized Aliens”), 101st Cong., 2d session. As introduced, Sec. 104 applied to those in the United States as of Jan. 1, 1990. Sec. 104(a)(1).

⁶⁷ 1989 Statistical Yearbook of the Immigration and Naturalization Service (September 1990), available at <http://babel.hathitrust.org/cgi/pt?id=uc1.l0055031603;view=1up;seq=15>.

⁶⁸ *Ibid.* pp. xxiv-xxv (1,762,143 legalization applications)

⁶⁹ *Ibid.*

⁷⁰ S. 358, sec. 301, “Family Unity,” 101st Cong., 2d session. The final bill applied to those in the United States as of May 5, 1988. Sec. 301(a).

⁷¹ P.L. 101-649, at <http://www.justice.gov/eoir/IMMACT1990.pdf>.

⁷² President George H.W. Bush, *Statement on Signing the Immigration Act of 1990* (Nov. 29, 1990), at <http://bush41library.tamu.edu/archives/public-papers/2514>.

⁷³ President George H.W. Bush, *Remarks on Signing the Immigration Act of 1990* (Nov. 29, 1990), <http://bush41library.tamu.edu/archives/public-papers/2513>.

⁷⁴ President George H.W. Bush, *Statement on Signing the Immigration Act of 1990* (Nov. 29, 1990), at <http://bush41library.tamu.edu/archives/public-papers/2514>.

⁷⁵ Sec. 301(g). However, Congress stated that the delayed implementation “shall not be construed as reflecting a Congressional belief that the existing family fairness program should be modified in any way before such date.” *Ibid.* President Obama’s Office of Legal Counsel argued that this provision evidenced “Congress’s implicit approval” of President Bush’s executive action to defer deportations, and thus “some indication” of “congressional understandings about the permissible uses of deferred action.” U.S. Department of Justice, Office of Legal Counsel, *The Department of Homeland Security’s Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014), pp. 29-30 & n. 15, available at

<http://www.justice.gov/sites/default/files/olc/opinions/attachments/2014/11/20/2014-11-19-auth-prioritize-removal.pdf>.

⁷⁶ United States Citizenship and Immigration Services, *Adjudicator's Field Manual - Redacted Public Version, Chapter 24.4, Family Unity Program* (Family Unity program under IMMACT 1990 Sec. 301 “supersedes the administrative Family Fairness Program”); 8 C.F.R. §§ 236.10-18.

⁷⁷ Immigration Act of 1990, Sec. 111.

⁷⁸ Kamasaki, *Doubling Down*, *supra* note 5, at 1 (reporting that 80 percent of the 1.1 million applicants for immediate relative visas were spouses and children of those legalized under IRCA, according to a 1995 U.S. State Department report).

⁷⁹ David Hancock, *Few immigrants use family aid program*, Miami Herald (Oct. 1, 1990), at 1B (noting that relatively few immigrants had applied for Family Fairness because of fear or documentary requirements).

⁸⁰ *Ibid.*

⁸¹ Immigration Act of 1990, sec. 112 (creating a separate visa category for the spouses and children of the legalizing, and capping those visas at 55,000 per year for FY 1992 through FY 1994). *See The Immigration Act of 1990 and Legal Immigration*, (1994) at Table 4 (reporting 52,272 “legalization dependent” visas in FY 1992, 55,344 in FY 1993, and estimating 34,400 in FY 1994), at <https://migration.ucdavis.edu/mn/cir/94report/immact.htm>.

⁸² Kamasaki, *Doubling Down*, *supra* note 5, at 1.