

Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination

Volume IV: The Miami Report

October 1997

A Report of the United States Commission on Civil Rights

U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;
- Submit reports, findings, and recommendations to the President and Congress;
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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Letter of Transmittal

The President
The President of the Senate
The Speaker of the House of Representatives

Sirs:

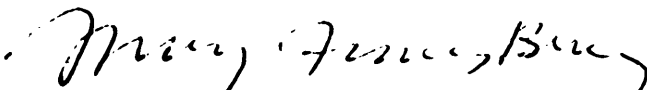
The United States Commission on Civil Rights transmits this report to you pursuant to P.L.103-419. It is the product of a 2-day factfinding hearing, sworn testimonies of numerous witnesses, subpoenaed data, and field investigation and research.

The Miami Report is the fourth volume in a series of Commission reports on *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*. The report examines immigration in south Florida, focusing on three major areas of immigration that relate to racial and ethnic tensions in Dade County: official private and governmental language policies, immigrant use of public benefits, and distinctions in refugee and asylum policies. It finds that political and economic disparities between native-born and newcomer residents of Dade County continue to be sources of racial tension and occasional conflict; that existing language education programs are not meeting the needs of monolingual residents; that there is no meaningful protection against language-based discrimination in the workplace; that the new welfare legislation will have serious effects on communities with high concentrations of immigrants, such as Dade County; and that perceptions that Cuban refugees are afforded better treatment under refugee laws than Haitian refugees is a source of concern and continued debate.

Our recommendations are directed to the State of Florida, Dade County, and the Federal Government. With respect to matters under Federal jurisdiction, the Commission recommends that the Department of Justice's Community Relations Service be adequately funded to ensure appropriate conflict prevention and resolution authority and that the Service undertake additional measures to educate the public and dispel misperceptions; that any "Official English" legislation be tailored narrowly to address only the establishment of an official language; that Congress address the issue of language policies and language education in private employment; that a task force be commissioned to evaluate conflicting studies on the net national economic effect of immigration; that the Welfare Reform Act be amended to make noncitizens eligible for certain benefits on the same basis as citizens; and that the Immigration and Naturalization Service and the Community Relations Service, as well as State and local governments, work closely with the private sector to ensure a coordinated approach to the assistance offered to incoming refugees.

We urge the executive and legislative branches of government to act upon and implement the recommendations in this report, and to move forward with policies designed to meet the changing needs of America's ethnically and linguistically diverse communities. The Commission hopes that this report will be a useful reference in the formulation of that strategy.

Respectfully,
For the Commissioners,



MARY FRANCES BERRY
Chairperson

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Preface

Miami is an archetype of the city of the future. Its ambiance and cultural diversity . . . reflects the changing face of this Nation It is undeniable that our cultural numerous assets and geographical location have not only transformed our city in a few short decades, but have also been the cause of some of our major social problems. One of the most pressing underlying issues is immigration.¹

—Hon. Stephen Clark, Mayor, City of Miami

With this introduction, the late Mayor Stephen Clark framed the challenge before the Commission as it began 2 days of hearings on immigration and related issues impacting racial and ethnic tensions in Dade County, Florida, and, specifically, Miami. The Miami hearing, held September 14 and 15, 1995, in the fifth city to host the Commission in this endeavor, continued the Commission's multiyear project entitled *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination*.

The Commission first embarked on its extended examination of racial and ethnic tensions in 1991. In that year, and again in 1992, hearings were held in Washington, D.C. In the 1992 Washington hearing in the Mount Pleasant section of the District, the Commission examined the concerns of a largely Latino community with limited English proficiency, particularly with respect to allegations of police misconduct and the lack of bilingual services in the provision of critical public services. Later that year, the Commission explored racial and ethnic tensions in Chicago. Economic opportunity for minorities in the Chicago area was one of several topics examined. The following year the Commission visited Los Angeles, where it examined the impact of media portrayals of minorities and police-community relations on racial and ethnic tensions in that city. In 1996, the Commission revisited Los Angeles in the wake of controversy surrounding the use of force by Los Angeles local law enforcement. In 1994 and 1995, the Commission conducted hearings in New York City. Economic opportunity, including employment in the financial industry and access to capital for minorities in the city, was one of the issues examined in the New York.

This report, the fourth of seven to be published as part of the Commission's *Racial and Ethnic Tensions in American Communities* project, focuses on official private and governmental language policies, immigrant use of public benefits, distinctions in refugee and asylum policies, and the effect of each on race relations in Dade County, including Miami. Within these topics, the Commission examined the following immigration-related issues as they apply to Dade County:

- 1) Language policies in government, education, and private employment and the impact of these policies on economic opportunity and race relations in the community;
- 2) The economic impact of public benefits programs, Federal and State measures to restrict public services for immigrants, and the impact of these issues on community attitudes toward immigration; and
- 3) Perceived distinctions among racial and ethnic groups in refugee and asylum policies, refugees' access to public benefits, and the role of these issues in attitudes toward refugees resettled in the United States.

The Commission wishes to emphasize that the concerns described in this report are not unique to Miami, or even Dade County, but rather, are manifestations of issues facing the Nation as a whole. Since the Commission began to develop the Miami hearing, a variety of legislation affecting immigrants, their families, and immigrant-related issues has been introduced or considered in both Florida and at the Federal level. With passage of the Welfare Reform Act of 1996, States, including Florida, are implementing sweeping reforms that will af-

¹ Stephen P. Clark, Mayor of Miami, FL, testimony, *Hearing Before the United States Commission on Civil Rights*, Miami, FL, September 14–15, 1995, vol. 1, p. 24 (hereafter cited as *Miami Hearing*).

fect distribution of and access to public benefits programs, including access to services and assistance by immigrants. Proposed measures to declare English the official language of the United States have also been introduced in the States and in Congress. Tied to some official language proposals are provisions to eliminate most language assistance programs, including Federal bilingual education and bilingual voting ballots, and, in Florida, to require most government operations to be conducted only in English.

Thus, not only does the Miami report reflect the challenges of a local multicultural, predominantly Hispanic community, it also implicates challenges faced by our populace as traditional minority groups experience continued growth, and issues of language, equality of access, and economic mobilization take on greater national import. As the Commission explained in its 1993 Mount Pleasant report, "How the Nation responds in this critical hour to its increasingly diverse population, the well-evidenced racial and ethnic tensions, and the frustration of unmet needs in our cities, will determine the future well-being and progress, not only of its urban communities, but of the Nation as a whole."²

Similarly, how States and the Federal Government implement new legislation and shape future policies will determine how our nation integrates its immigrants while balancing the needs of its native-born population. Within this working framework, this report has sought to: 1) identify pressing immigration-related issues of consequence to Dade County and the rest of the Nation; 2) examine pending and enacted legislation and policies to address the selected issues; and 3) relate these actual and proposed developments to race relations and racial and ethnic tensions in Dade County, the State of Florida, and the United States.

It has been 20 years since the Commission first conducted hearings in Miami. Its focus in 1977 was on age discrimination in federally assisted programs.³ Five years later, in 1982, the Commission held hearings to explore numerous concerns of the Miami African American community in the areas of education, housing, economic opportunity, and the administration of justice. In its ensuing report, *Confronting Racial Isolation in Miami*,⁴ the Commission found that African Americans in Miami faced isolation and exclusion from public resources and were "noticeably absent from [Miami's] economic success story."⁵

Recently, the Florida Advisory Committee to the Commission completed a series of six briefing meetings followed by a report entitled, *Racial and Ethnic Tensions in Florida*. Participants at the Miami meeting, held in 1992, cited Hurricane Andrew disaster relief, immigration, language, and lack of opportunities for full participation in the economic sector as sources of persistent tensions in race relations. The Florida Advisory Committee has also addressed race relations and community tensions in Miami in its reports, *Police-Community Relations in Miami* (November 1989) and *Policed by the White Male Minority: A Study of Police-Community Relations in Miami and Dade County, Florida* (1976). In both of these studies, the Florida Advisory Committee found that police misconduct continued to be a source of tensions and community unrest.

Based on the testimony of witnesses, analysis of subpoenaed documents, and other research, the Commission makes a number of findings and recommendations it hopes will assist lawmakers, community leaders, public interest groups, and private citizens in charting the path of newly enacted legislation, and in formulating the course of future action with thoughtful consideration of their potential consequences on race relations in Florida and nationally. This report will be submitted to the President and Congress and will also be used to prepare a comprehensive summary report on racial and ethnic tensions nationally after conclusion of this series of hearings

² U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, Volume I: The Mount Pleasant Report* (Washington, D.C.: U.S. Government Printing Office, 1993), Letter of Transmittal.

³ U.S. Commission on Civil Rights, *Age Discrimination in Federally-Assisted Programs* (Washington, D.C.: U.S. Government Printing Office, 1977).

⁴ U.S. Commission on Civil Rights, *Confronting Racial Isolation in Miami* (Washington, D.C.: U.S. Government Printing Office, 1982).

⁵ *Ibid.*, p. 18.

Acknowledgments

The hearing was organized and the report written under the supervision of General Counsel Stephanie Y. Moore. Prehearing research, investigation and planning was conducted by project team leader Lillian Moyano Yob and attorney advisors Marlissa Briggett, Erik Brown, and Sicilia Chinn. Assistance in hearing preparation was also provided by attorney advisors Peter R. Reilly, Miguel A. Sapp, and Mark Spencer*; social scientist Eileen Rudert; legal technician Sarah Bernice Rhodes; and summer interns Hope Goldstein and Darren Sudman. The report was drafted by project team leader Lillian Moyano Yob, and attorney advisors Marlissa Briggett, Erik Brown, and Sicilia Chinn. Legal sufficiency review was conducted by Deputy General Counsel Edward A. Hailes, Jr., and attorney advisors Deborah A. Reid, Peter R. Reilly, and Maxine Sharpe. Editorial policy review was provided by John Foster Dulles, Farella Robinson, and Christine M. Plagata-Neubaeuer.*

* No longer with the Commission.

The verified transcript of the Miami hearing is on file at the U.S. Commission on Civil Rights Library.

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Chapter 1

Introduction

Section I: Overview of Florida and the Greater Miami Area

Demographic Characteristics

Florida has one of the fastest growing populations in the United States. In 1940, Florida was the least populated State in the South, ranking 27th nationally in population with 1.9 million people.¹ In 1995, Florida boasted a population of over 14 million and ranked fourth in population behind California, Texas, and New York.² In 1994, Florida gained over 23,000 residents per month.³ Dade County's population recently passed the 2 million mark.⁴ With over 90 percent

of the population living in urban areas, Florida is the Nation's seventh most urbanized State.⁵ Of all the States, Florida has the highest proportion of residents over the age of 65.⁶ The median age is 36.3 years, with 18.3 percent of the population 65 years old or older.⁷ In Dade County the median age is 34.2 years, with 16.8 percent of the population age 62 and over. The figures for Dade and Broward Counties together are a median age of 35.5 years and 19.4 percent of the populace age 62 or over.⁸

According to 1990 census figures, 73.2 percent of Florida residents are white non-Hispanic; 13.2 percent are black non-Hispanic; 0.2 percent, American Indian, Eskimo, or Aleut; 1.1 percent, Asian or Pacific Islander; and 0.1 percent, other races. Hispanics represent 12.2 percent of the total population of the State.⁹ Of Florida's 14

¹ Tom Fiedler, "The Dizzying Change," *Miami Herald*, Jul. 23, 1995, pp. 1A, 12A (hereafter cited as Fiedler, "Dizzying Change").

² Reginald Myers, "Feeling Crowded? No Wonder," *Miami Herald*, Aug. 9, 1995, p. 1A.

³ *Ibid.*

⁴ David Hancock and Dan Keating, "Dade's Populace Tops Two Million," *Miami Herald*, Aug. 9, 1995, p. 1B. The 1990 census indicated that the population of the Miami-Hialeah Primary Metropolitan Statistical Area was 1,937,094 and the population of the Miami-Fort Lauderdale Consolidated Metropolitan Statistical Area was 3,192,582. U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population and Housing: Miami-Fort Lauderdale, FL CMSA, Miami-Hialeah, FL PMSA (CPH-3-229B)* (Washington, DC: U.S. Government Printing Office, 1993), table 1, General Characteristics of Persons, p.1 (hereafter cited as *1990 Miami Census*). The general concept of a metropolitan area (MA) is one of "a large population nucleus, together with adjacent communities that have a high degree of economic and social integration with that nucleus." Some MAs are defined around two or more nuclei. To meet the needs of various users, the standards governing delineation of MAs provide for designation of a "consolidated metropolitan statistical area" (CMSA) that is divided into primary metropolitan statistical areas (PMSAs). A PMSA consists of a large urbanized county or cluster of counties that have very strong internal economic and social links, in addition to close ties to the larger CMSA of which it is a part. *1990 Miami Census*, app. A, pp. A-8, A-9. The Miami-Hialeah PMSA basically consists of Dade County, while the Miami-Fort Lauderdale CMSA consists of Dade and Broward

Counties.

⁵ Fiedler, "Dizzying Change."

⁶ *Ibid.*

⁷ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Florida (CP-1-11)* (Washington, DC: U.S. Government Printing Office, 1992), table 1, Summary of General Characteristics of Persons, p.1 (hereafter cited as *1990 Florida Census*).

⁸ *1990 Miami Census*, table 1, General Characteristics of Persons, p.1.

⁹ *1990 Florida Census*, table 4, Race and Hispanic Origin, p. 22. The Florida, Dade County, and Miami figures herein reported for all the racial classifications—white, black, American Indian, Eskimo or Aleut, Asian or Pacific Islander, and "other race"—exclude those who designated themselves as of Hispanic origin. Without this correction, statistics by race alone are misleading, because a rule known as Statistical Directive 15, adopted by the Office of Management and Budget (OMB) in 1978, defines race and ethnicity as two different demographic characteristics, classifies Hispanic origin as an ethnic category, and requires Federal agencies like the Census Bureau to fit all of their racial data into the four categories white, black, American Indian, Eskimo or Aleut, and Asian or Pacific Islander. Hispanics are thus not allowed to choose "Hispanic" as a race. Many Hispanics designate white or black on this question, but a small number also indicate that they are

million residents, barely 13 percent (about 2 million) are foreign born. The top 10 countries of origin of the foreign-born residents in the State are shown in table 1. Grouped by region, the data in table 1 show that people from the Caribbean dominate immigration into Florida.

Dade County is home to half of Florida's foreign-born residents,¹⁰ and approximately 45 percent of the people in Dade County are foreign born.¹¹ The racial and ethnic composition of the greater Miami area is also significantly different from the rest of Florida. In Dade County, Hispanics make up 49.2 percent of the population. Cubans constitute 59.2 percent of Hispanics in Dade County (and 29.1 percent of the general populace); Puerto Ricans, 7.6 percent (3.8 percent); Mexicans, 2.4 percent (1.2 percent), and other Hispanics, 30.8 percent (15.1 percent). White non-Hispanics make up 30.2 percent of the population in Dade County; non-Hispanic African Americans, 19.1 percent; Asian or Pacific Islanders, 1.3 percent; American Indians, 0.1 percent; and 0.1 percent identify themselves as "other race."¹² In the City of Miami, 62.5 percent of the populace are of Hispanic origin (including 38.9 percent who are Cuban), 24.6 percent are non-Hispanic African American, 12.2 percent are non-Hispanic white, 0.5 percent are Asian or

Pacific Islander, 0.1 percent are American Indian, and 0.1 percent are "other race."¹³

About 17 percent of the residents in neighboring Broward County were born outside the United States according to the 1990 census.¹⁴ The census identified 8.6 percent of the residents in Broward County as Hispanic; 74.9 percent as non-Hispanic white; 14.9 percent as non-Hispanic black; 0.2 percent as American Indian, Eskimo, or Aleut; 1.3 percent as Asian or Pacific Islander; and 0.1 percent as non-Hispanic "other race."¹⁵ In late 1994, Broward County planners estimated that Hispanics would account for about 27 percent of the county's growth between 1990 and 1995, and based on 1990 census figures, at least 25 percent of these new arrivals would be Cuban. Hispanics would then be 10 percent of Broward's population. Unlike Dade County, where Cubans are by far the Hispanic majority, Puerto Ricans are the largest single Hispanic group in Broward County.¹⁶ The 1990 census indicated that of Broward County's Hispanic population of approximately 110,000, 24.8 percent were Puerto Rican, 22.1 percent were Cuban, 6.8 percent were Mexican, and 46.3 per-

American Indian or Asian. A significant number of Hispanics, however, do not consider themselves as either black, white, or any other race listed, and thus choose "other race." In 1990, about 10 million people in the United States chose this option and 98 percent of these people claimed Hispanic origin on the ethnicity question. In other words, over 40 percent of the Nation's 22 million Hispanics do not identify themselves as either black or white. For an extensive discussion of this phenomenon, see Gabrielle Sandor, "The 'Other' Americans," *American Demographics*, June 1994, p. 36; Monica Rhor, "Are Hispanics a Race?" *Hispanic Outlook*, Jan. 5, 1996, p. 12. Like the rest of the Nation, 96.5 percent of the people in Florida who identified themselves as "other race" also claimed Hispanic origin. Ignoring Hispanic origin, the statistics by race alone for Florida are: 83.1 percent white, 13.6 percent black, 0.3 percent American Indian, Eskimo or Aleut, 1.2 percent Asian or Pacific Islander, and 1.8 percent "other race." *1990 Florida Census*, table 4, Race and Hispanic Origin, p. 22.

¹⁰ *Ibid.*

¹¹ *1990 Miami Census*, table 17, Social Characteristics of Persons, p. 460.

¹² *Ibid.*, Table 8, Race and Hispanic Origin, p. 207. In Dade County, the statistics for race alone (i.e., excluding Hispanic origin) were 72.9 percent white, 20.5 percent black, 1.4 percent Asian or Pacific Islander, 0.2 percent American Indian, Eskimo, or Aleut, and 5 percent identified themselves as "other race." *Ibid.* Like the rest of the Nation, 97.5 percent of the people in Dade County who identified themselves as "other race" also claimed Hispanic origin. *Ibid.*

¹³ *1990 Florida Census*, table 6, Race and Hispanic Origin, p. 66. The statistics for race alone (again, including Hispanics in each of these racial categories) were: white 65.6 percent, black 27.4 percent, American Indian, Eskimo, or Aleut 0.2 percent, Asian or Pacific Islander 0.6 percent, and "other race" 6.2 percent. Again, like the rest of the Nation, the overwhelming majority of people identifying themselves as "other race" also claimed Hispanic origin. *Ibid.*

¹⁴ Sergio R. Bustos, "Report Details Recipe of Broward Melting Pot," *Fort Lauderdale Sun-Sentinel*, Apr. 6, 1995, p. 1B. This article discusses anthropologist Judy Wingerd's study, "Cultural Assessment of Broward County: Hidden Populations," which sketches a partial portrait of the people Wingerd says are "hidden because institutions obscure their ethnicity and nationality by labeling everyone as white, black, Hispanic, Asian/Pacific Islander or American Indian . . . That's why we don't know who's really here."

¹⁵ *1990 Florida Census*, table 5, Race and Hispanic Origin, p. 23. The statistics for race alone were: white 81.7 percent, black 15.4 percent, American Indian, Eskimo, or Aleut 0.2 percent, Asian or Pacific Islander 1.4 percent, and "other race" 1.3 percent. The vast majority—92.5 percent—of people identifying themselves as "other race" also claimed "Hispanic origin." *Ibid.*

¹⁶ Deborah Ramirez, "Broward Attracts Cubans; Ex-Dade Residents Move In Hopes of a Better Life," *Fort Lauderdale Sun-Sentinel*, Nov. 11, 1994, p. 1A. The author also notes that Broward's Cubans are typically "young first-generation Americans, unlike the older Cuban-born Dade residents who settled in Miami's Little Havana during the past two decades . . . [and they] tend to be better educated, better off financially and better able to speak English than their Dade counterparts, according to statistics from the 1990 U.S. Census."

TABLE 1
Country of Origin of Foreign-Born Residents of Florida

Rank	Country of origin	Number of residents	Percentage of all foreign-born residents
1	Cuba	502,590	28.2
2	Canada	85,902	4.8
3	Haiti	84,163	4.7
4	Germany	79,605	4.5
5	Jamaica	76,495	4.3
6	Nicaragua	73,074	4.1
7	United Kingdom	70,391	3.9
8	Colombia	68,809	3.8
9	Mexico	58,238	3.3
10	Italy	32,520	1.8

Source: David Adams, "Immigration Debate Lacks Facts," St. Petersburg Times, Feb. 11, 1996, p. 8A (citing U.S. Department of Commerce, Bureau of Census, Ethnic and Hispanic Branch, 1990 census special tabulations).

ment of Commerce, Bureau of Census, Ethnic and Hispanic Branch, 1990 census special tabulations).

TABLE 2
Region of Origin of Foreign-Born Residents of Florida

Rank	Region	Number of residents	Percentage of all foreign-born residents
1	Caribbean	733,329	41.1
2	Europe	333,795	18.7
3	Central America	201,433	11.3
4	South America	169,950	9.5

Source: David Adams, "Immigration Debate Lacks Facts," St. Petersburg Times, Feb. 11, 1996, p. 8A (citing U.S. Department of Commerce, Bureau of Census, Ethnic and Hispanic Branch, 1990 census special tabulations).

ment of Commerce, Bureau of Census, Ethnic and Hispanic Branch, 1990 census special tabulations).

cent were identified as "other Hispanic."¹ Presumably, the latter figure would include some of the large number of foreign-born Florida residents arriving from Nicaragua and Columbia, as well as from other nations in the Caribbean, Central America, and South America.²

Palm Beach County, north of Broward and Dade Counties, is also growing more crowded and racially and ethnically diverse. A 1995 study by the University of Florida's Bureau of Economic Research indicated that the total population increased by 100,000 people from 1990 to about 961,000. Nearly a third of the increase was due to growth in the Hispanic population, which

increased by over 50 percent from 66,000 to 100,000. Hispanics now constitute a little over 10 percent of the population in Palm Beach County. This is slightly more than the African American population for the first time in county history.³ Population figures from the City of West Palm Beach Special Census in February 1995 are similar. Since 1990, Hispanics increased by 28 percent in number and by 2 percent as a proportion of the city population.⁴

The differences between Florida as a whole and the greater Miami area in racial and ethnic

¹ 1990 Miami Census, table 8, Race and Hispanic Origin, p. 297.

² See tables 1 and 2 and accompanying text.

³ Steve Nichol, "Community Group Will Discuss How To Bridge Racial Gaps," *Fort Lauderdale Sun-Sentinel* (Palm Beach edition), Jan. 2, 1996, p. 3B.

⁴ Bill Douthat, "Changing Face of West Palm," *Palm Beach Post*, May 29, 1995, p. 1B.

diversity and the proportion that is foreign born are reflected in census statistics on the language spoken at home and the ability to speak English. In Florida, 83.7 percent of the population speaks only English at home and 17.3 percent sometimes or always speak another language at home. Twelve percent of Florida's population speaks Spanish, with all other languages below the 1 percent level. Of the 17.3 percent of Floridians who speak a language other than English at home, 69 percent speak Spanish; 5.3 percent, French; 3.9 percent, French Creole; 3.9 percent, German; 3.4 percent, Italian; 1.3 percent, Yiddish; 1.3 percent, Polish; 1 percent, Chinese; 1 percent, Greek; 1 percent, Tagalog; and over 150 other languages, all below 1 percent.⁵

The Census Bureau categorizes a household as "linguistically isolated" if no person over age 14 speaks only English and no person over 14, who speaks a language other than English, speaks English "very well." For Florida as a whole, 7.9 percent of the population lives in a linguistically isolated household. For those who speak Spanish, 50.4 percent are linguistically isolated according to the Census Bureau. Of French Creole speakers, 60.2 percent are linguistically isolated.⁶ Of the population that speaks a non-English language at home, 54 percent speak English "very well"; 22 percent speak it "well"; 15.5 percent, "not well"; and 8.5 percent speak English "not at all."⁷

In Dade County, 57.4 percent of the population speaks a language other than English at home, while the figure is 17.3 percent for Florida as a whole. Approximately 31.3 percent of Dade County residents do not speak English "very well," and 19.3 percent live in a linguistically isolated household, more than double the proportion of similarly situated Florida residents. About 50.1 percent of the population in Dade County speaks Spanish, and of this group, 56.1 percent do not speak English "very well" and 34.3 percent are linguistically isolated. The pro-

portion of Dade County residents who speak an Asian or Pacific Island language is 0.7 percent, and of these, 49.5 percent do not speak English very well and 28.5 percent are linguistically isolated.⁸ Half of the City of Miami's residents do not speak English "very well."⁹

Economic Characteristics

Tourism remains strong in Florida, but it is facing increased competition from other vacation spots such as Mexico and Costa Rica.¹⁰ South Florida's ethnic diversity and location have attracted significant international business activity. International trade has become a very important part of Florida's economy, generating approximately half of Florida's new jobs.¹¹ Rosabeth Moss Kanter, a professor at the Harvard Business School, contends that by developing a strategic regional strength in international trade, Miami will be better able to weather unavoidable economic storms, such as the current wave of corporate downsizing, brought on by the global economy. "Corporate mobility is inevitable," she says, but cities that are "global skill centers" in a particular area—such as Miami in international trade—"can hold more of the jobs that result from downsizing companies and create more jobs in emerging small- and mid-sized firms."¹²

⁵ 1990 Miami Census, table 17, Social Characteristics of Persons, p. 460.

⁹ Peter Mitchell, "Bigger, Younger, Smarter," *Orlando Sentinel*, Apr. 3, 1992, p. A4. Miami's mayor testified that "there are 104 different languages fluently spoken in Dade County." Stephen P. Clark, Mayor of Miami, FL, testimony (hereafter cited as Clark Testimony), Hearing Before the U.S. Commission on Civil Rights, Miami, FL, Sept. 14–15, 1995 (hereafter cited as *Miami Hearing*), vol. 1, p. 27). Mayor Clark passed away June 4, 1996. "Stephen P. Clark, 72, Mayor of Miami," *St. Petersburg Times*, Jun. 5, 1996, p. 6A.

¹⁰ Fiedler, "Dizzying Change."

¹¹ Ibid.

¹² Rosabeth Moss Kanter, "AT&T Call Home; In an Era of Mass Layoffs, Can Cities Fight Back?" *Washington Post*, Jan. 14, 1996, p. C1. This article is adapted from Prof. Moss Kanter's recently published book *World Class: Thriving Locally in the Global Economy* (New York: Simon & Schuster, 1995). Prof. Moss Kanter calls Miami a "quintessential Trader," with "its Latin American, and increasingly, European connections, as well as an airport that handles more international cargo than any other U.S. airport . . . Companies such as Disney or Kodak chose Miami for their Latin American headquarters because it is considered pan-hemispheric, enabling dealings with diverse countries throughout the Americas. Miami bridges Anglo and Latin cultures, just as the great trading cities of Singapore and Hong Kong link Anglo, Chinese, and Southeast Asian cultures."

⁵ U.S. Department of Commerce, Bureau of the Census, 1990 census special tabulation, *Language Spoken At Home And Ability to Speak English For United States, Regions And States (1990 CPH-L-133)*, table A, Language Spoken at Home and Ability to Speak English Ranked for Persons 5 Years and Over for United States, Regions, and States, p. 5; *ibid.*, p. 22, table 15, Detailed Language Spoken at Home and Ability to Speak English for Persons 5 Years and Over: 1990 Florida.

⁶ *Ibid.*, pp. 5, 22.

⁷ *Ibid.*, p. 5.

TABLE 3
Educational Attainment of Dade County Residents

Population	High school graduate	Bachelor's degree or higher
White, non-Hispanic	83.5%	29.3%
Asian/Pacific Islander	77.0	36.5
Hispanic	55.1	14.1
American Indian, Eskimo, or Aleut	67.2	16.5
African American	56	9.9

Source: U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Miami-Fort Lauderdale, FL CMSA, Miami-Hialeah, FL PMSA (CPH-3-2298)* (Washington, DC: U.S. Government Printing Office, 1993), table 30, Social and Labor Force Characteristics of White, Not of Hispanic Origin Persons, p. 861; table 26, Social and Labor Force Characteristics of Asian

or Pacific Islander Persons, p. 767; table 28, Social and Labor Force Characteristics of Hispanic Persons, p. 775; Table 24, Social and Labor Force Characteristics of American Indian, Eskimo, or Aleut Persons, p. 765; table 22, Social and Labor Force Characteristics of Black Persons, p. 711.

In 1980, Florida ranked 29th nationally in per capita income. In 1993, Florida's rank advanced to 19th.¹ According to 1993 estimates, Florida was first nationally in new business incorporations, third in retail sales at \$130 billion, and eighth in total dollar value of exports, at \$18.2 billion.² Despite the signs of economic growth, however, there is a widening gap between the rich and poor in Florida. In 1991, approximately one-sixth of Florida's population lived below the poverty line (\$14,763 for a family of four).³ Only 15 States had a higher percentage of poor.⁴

According to another study, by the University of Pittsburgh, of the 50 largest cities in the United States, Miami has the highest percentage of blacks and whites below the poverty level.⁵ The income of 46 percent of blacks and 25 percent of whites is below the poverty level.⁶ Na-

tive-born blacks tend to be poorer as a group than either white or Hispanic people.⁷

According to the 1990 census, the median income of families in Dade County was \$31,113;⁸ for white non-Hispanic families the median income was \$45,766;⁹ for Asian or Pacific Islanders the median family income was \$36,391;¹⁰ for Hispanic families it was \$27,083;¹¹ for American Indian families it was \$24,091;¹² and for African

specialized skills and end up taking low-income jobs. John Hall, Beacon Council's vice president of financial services, contends that the area's poorly educated masses also keep earnings down and unemployment high. Census data showed that 45 percent of Hispanics, 44 percent of blacks, and 32 percent of whites over age 25 in Dade County have no high school diploma. "The correlation between poverty and education is very strong. That problem will be a challenge this community will have to find a way to wrestle with," Hall said. Ibid.

⁷ Larry Rohrer, "Black-Hispanic Tensions Growing: Miami Conflict May Presage U.S. Trend as Latino Population Continues To Rise," *Dallas Morning News*, Jun. 21, 1993, p. 5A. H.T. Smith, a leader in Miami's native-born black community, reportedly stated that the University of Pittsburgh study confirms what area African Americans have been saying for two decades: "When the rest of the economy went through a boom, we were going through a bust. While a lot of black communities were going from poverty to low income, black Miami was going from poverty to misery." Pugh, "Miami Has Highest Percentage of Poor."

⁸ *1990 Miami Census*, table 19, Income and Poverty Status in 1989, p. 562.

⁹ Ibid., table 31, Occupation, Income in 1989, and Poverty Status in 1989 of White, Not of Hispanic Origin Persons, p. 606.

¹⁰ Ibid., table 27, Occupation, Income in 1989, and Poverty Status in 1989 of Asian or Pacific Islander Persons, p. 771.

¹¹ Ibid., table 29, Occupation, Income in 1989, and Poverty Status in 1989 of Hispanic Origin Persons, p. 818.

¹² Ibid., table 25, Occupation, Income in 1989, and Poverty Status in 1989 of American Indian, Eskimo, or Aleut Persons, p. 706.

¹ Ibid.

² Mimi Whitefield, "The Dream: Immigrants, Global Trade Energize Economy," *Miami Herald*, July 26, 1995, p. 6A.

³ Fiedler, "Dizzying Change."

⁴ Ibid.

⁵ Tony Pugh, "Miami Has Highest Percentage of Poor," *Miami Herald*, Oct. 24, 1994, p. 1B. Black Miamians also ranked last in a formula to determine "standard of living," according to Ralph Benge, who conducted the study. By dividing per capita personal income by the cost of living, blacks averaged \$5,364 per person annually. That "was by far the worst," Benge said. Miami's white residents ranked third lowest in the country, at \$10,494. Ibid.

⁶ Ibid. Hispanics were not included as a separate category, since the study was done primarily to determine how Pittsburgh ranked nationally, and it has a negligible Hispanic population. Figures for both races, therefore, include Hispanics. Pat Fiske, an economics professor at the University of Miami, maintains the comparison of Miami with other cities is also misleading because the ever-expanding immigrant population drives down the area's income level, since so many lack

American families it was \$22,230.¹³ A report by the University of Miami's North-South Center, citing the 1990 census, indicates that Cubans had a median income of \$27,294. "Cuban-Americans represent the economically strongest ethnic group among the U.S. Hispanic population," says the report, commissioned by the Dade County government.¹⁴ Unemployment in the predominantly African American neighborhood of Overtown in Miami has long been very high, some say over 50 percent.¹⁵ These income differences track fairly well the differences among racial and ethnic groups in Dade County in educational attainment, as reflected in table 3.

Housing

According to the *Dallas Morning News*, the 1990 census reported that "the desegregation of housing is occurring more rapidly in Dade County than elsewhere in Florida or the Nation."¹⁶ But that "is the result largely of the willingness of Hispanic whites and blacks to live together, or mixed with Haitians and other Caribbean blacks, in integrated neighborhoods that are largely free of racial tension."¹⁷ As two professors of sociology at Florida International University put it, the "apparent desegregation of Dade [County] neighborhoods, however, may reflect a tendency of Caribbean blacks and Hispanics to integrate more than black Americans moving into formerly all-white neighborhoods."¹⁸

¹³ Ibid., table 23, Occupation, Income in 1989, and Poverty Status in 1989 of Black Persons, p. 738.

¹⁴ Marlene Sokol, "Refugees At Our Doorstep: Steady Influx of Cubans Is A Touchy Issue In Florida," *Atlanta Journal and Constitution*, Aug. 17, 1994, p. 6.

¹⁵ Editorial, "Republic Branch Welcome," *Miami Times*, Dec. 14, 1995, p. 4A. Another article placed the unemployment level in Liberty City, the predominantly African American neighborhood between Little Havana and Little Haiti, at around 60 percent. Reinhard Meier, "Cubans and Haitians in a Growing Miami," *Swiss Review of World Affairs* (December 1993), pp. 6-8.

¹⁶ Rohter, "Black-Hispanic Tensions."

¹⁷ Ibid.

¹⁸ Marvin Dunn and Alex Stepick III, "Blacks In Miami" in Guillermo J. Greneir and Alex Stepick III, eds., *Miami Now! Immigration, Ethnicity and Social Change* (Gainesville: Univ. Press of Florida, 1992) (hereafter cited as Greneir and Stepick, *Miami Now!*), pp. 50-51. These assessments were basically confirmed in a 1992 study conducted by University of Miami geographer Thomas Boswell for the Cuban American Policy Center, a research arm of the Cuban American National Council. For over four decades, sociologists, geographers, and demographers have utilized a measure of segregation known as the "index of dissimilarity" (I.D.). The I.D. in Dade

County represents the percentage of either of two populations that would need to be redistributed among the county's 264 census tracts in order for both populations to exhibit the same percentage distributions within those census tracts. Values can range from 0 to 100 percent. Values above 60 percent are considered "high," below 30 percent "low," and 30-60 percent "moderate." Cuban American Policy Center, *Ethnic Segregation in Greater Miami 1980-1990* (Miami: Cuban American National Council, Inc., 1992), pp. 10-11 (hereafter cited as CAPC, *Ethnic Segregation in Greater Miami*). Desegregation in Miami is considered to be proceeding more rapidly than other areas in the Nation, in part, because it historically has been at very high levels. The I.D. for non-Hispanic whites and non-Hispanic blacks in 1970 was 87 percent; by 1980 it had declined to 80 percent; and by 1990 it reached 71.4 percent. Ibid., p. 15. Although still high, this level of segregation between blacks and whites was almost exactly in the middle, when compared to 24 other U.S. cities. Ibid. (citing William P. O'Hare and Margaret L. Usdansky, "What the 1990 Census Tells Us About Segregation in 25 Large Cities," *Population Today*, vol. 20 (September 1992), pp. 6-10).

¹⁹ CAPC, *Ethnic Segregation in Greater Miami*, p. 34.

²⁰ In 1990, the I.D. for white Hispanics with black non-Hispanics was 76.7 percent; for white Hispanics and black Hispanics it was 49.6 percent. This very substantial 27 percentage point difference "supports the hypothesis that common Hispanic culture decreases the degree of residential segregation Thus, white Hispanics are heavily segregated from non-Hispanic blacks, but only moderately segregated from Hispanic blacks." Ibid., pp. 16, 21. Similarly, black Hispanics are more heavily segregated from white non-Hispanics (57.9 percent I.D.) than from white Hispanics (49.6 percent I.D.), although the difference is less (about 8 percent) and both I.D.s are in the moderate range.

²¹ Ibid., p. 21.

²² Rohter, "Black-Hispanic Tensions." The president of the Urban League of Greater Miami testified that this flight was in reaction not only to increased integration, but also to increased Hispanic immigration, particularly the large numbers—an estimated 125,000 Mariel Cubans who arrived "at one time . . . that created sort of a shock wave throughout this community." There were "significant numbers of whites who said they are taking our city, and I'm sick and tired of hearing this language, and they're taking our jobs and . . . our neighborhood. And they fled to Miramar, and Pembroke Pines, and Davie, and Fort Lauderdale, and to the suburbs. And there were others in this community who understood that this was part of the transition this community was going to go through . . . and learned to respect each other." T. Willard Fair, Presi-

occurring in which whites are not just fleeing cities for the suburbs. They are leaving entire metropolitan areas—especially coastal cities like Miami that are among the top immigration destinations—and States for destinations that attract fewer immigrants. Tampa-St. Petersburg in Florida is one area that has experienced this sort of growth along with Seattle, Phoenix, Atlanta, and Las Vegas.²³

The Cuban American Policy Center study also found that “[i]n Miami, non-Hispanic blacks are the most segregated group.”²⁴ Thus, native-born, English-speaking blacks remain the most segregated group in Miami and continue to reside in clearly identifiable pockets in the northwest section of the county. They also tend to be poorer as a group than white or Hispanic people.²⁵ The Miami-Dade home ownership rate is 54 percent, compared to the national average of 64 percent. The minority home ownership rate is even lower, at 48 percent for Hispanics and 45 percent for African Americans.²⁶

dent, Urban League of Greater Miami, testimony, *Miami Hearing*, vol. 1, pp. 140–41, 172–73 (hereafter cited as Fair Testimony).

²³ William H. Frey and Jonathan Tilove, “Immigrants In, Native Whites Out,” *New York Times*, Aug. 20, 1995, section 6, p. 44.

²⁴ Non-Hispanic blacks are more segregated from both white Hispanics (76.7 percent I.D.) and white non-Hispanics (71.4 percent I.D.) than are black Hispanics (49.6 percent I.D. with white Hispanics and 57.9 percent with white non-Hispanics). CAPC, *Ethnic Segregation in Greater Miami*, p. 21. Another recent study found that non-Hispanic Asians are much less segregated from non-Hispanic whites than are non-Hispanic blacks in Miami. *Ibid.*, pp. 21–22 (citing Thomas D. Boswell, “A Comparison of Racial and Ethnic Segregation Patterns in Metropolitan Miami, Florida: 1980–1990,” *The Southeastern Geographer*, vol. 33, forthcoming in May 1993).

²⁵ Rohter, “Black-Hispanic Tensions.” A new study by the Cuban American Policy Center concludes that most of Dade County’s non-Hispanic blacks residents “would prefer to live in racially mixed neighborhoods – but don’t because they feel unwelcome in mostly Hispanic or white non-Hispanic areas.” Andres Viglucci, “The Racial Divide—Study: Fear of Bias Isolates Dade’s Blacks,” *Miami Herald*, Mar. 23, 1997, p. 1A. Nationally, blacks, like whites, are also leaving high-immigration metropolitan areas, if not in the same numbers as whites. Their primary destination is Atlanta, Georgia. By contrast, the primary destination for Asian Americans is Los Angeles, and that for Hispanic Americans is Miami. Frey and Tilove, “Immigrants In, Native Whites Out.”

²⁶ “Fannie Mae President And Chief Operating Officer Lawrence Small Announces \$5 Billion House Miami-Dade Investment Plan To Provide Affordable Housing For Nearly 70,000 Families In Next Five Years,” PR Newswire, July 28, 1995, available in NEXIS, News Library, BSDTL file.

Immigration to Florida and Miami

In 1993, 904,292 people became legal permanent residents across the United States. The number of undocumented or illegal immigrants who enter the United States each year is estimated to be between 200,000 to 300,000.²⁷ As of October 1992, Florida’s estimated undocumented or illegal immigrant population numbered 322,000, the fourth largest behind California, New York, and Texas.²⁸

Nearly 80 percent of the Nation’s immigrants settle in seven States: California, Arizona, Texas, Illinois, New York, New Jersey, and Florida.²⁹ Approximately 8 percent of the Nation’s legal immigrants settle in Florida. In 1993, Miami’s metropolitan area received just over 30,000 legal immigrants. The top six countries of origin for these immigrants were as follows: Cuba (10,292); Columbia (1,938); Haiti (1,925); Dominican Republic (1,626); Jamaica (1,424); and Honduras (1,143).³⁰

Over two-thirds of the State’s immigrants settle in south Florida, mostly in Dade County.³¹ Approximately 45 percent of Dade County residents are foreign born,³² and at least 29 percent are foreign-born noncitizens.³³ According to the 1990 census, the foreign born make up about 70 percent of the adult population in the City of Miami.³⁴

Twenty-five percent of the students in Dade County public schools are foreign born.³⁵ These

²⁷ Michael Fix and Jeffrey S. Passel, *Immigration and Immigrants: Setting the Record Straight* (The Urban Institute, May 1994), p. 4. This figure represents the estimated number of illegal immigrants who enter and remain in the United States.

²⁸ U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1993* (Washington, DC: U.S. Government Printing Office, 1994), p. 183 (hereafter cited as *INS, Yearbook*).

²⁹ State of Florida, Executive Office of the Governor, *The Unfair Burden: Immigration’s Impact on Florida* (March 1994), p. I.

³⁰ *INS, Yearbook*, pp. 64–65.

³¹ Lizette Alvarez, “Immigration, The Reality Defies Easy Stereotypes,” *Miami Herald*, Jun. 14, 1994, p. 1A (hereafter cited as Alvarez, “Immigration Reality”).

³² 1990 *Miami Census*, table 17, Social Characteristics of Persons, p. 460.

³³ Lizette Alvarez, “Prop. 187’s New Frontier, Anti-Immigration Drive Taking Root Here,” *Miami Herald*, Feb. 5, 1995, p. 1A.

³⁴ Raymond A. Mohl, “Blacks and Hispanics in Multicultural America: A Miami Case Study,” *Amerikastudien/American Studies* (Germany), vol. 40 (1995), p. 389 (hereafter cited as Mohl, “Blacks and Hispanics in Miami”).

³⁵ Alvarez, “Immigration Reality.”

students represent a multitude of ethnicities and languages. Indeed, according to Mary Jo Butler, administrator of the State's dropout prevention program, "the Dade County school system has to deal with 125 languages."³⁶ Foreign-born students make up 8 percent of the student population in Broward County and 5 percent of the public school students in Palm Beach County.³⁷

History of Racial and Ethnic Relations in Miami

Raymond A. Mohl has studied and written extensively about the history of race and ethnic relations in the United States, Florida, and particularly, the Miami area. He has stated that "the political squabbles, the bitter election battles, and the debates over language and immigration, as well as the racial violence that has devastated Miami since 1968, all have rather specific historical origins."³⁸ According to Professor Mohl, any study of these origins must begin with recognition that Miami has, from its founding in 1896:

been a "deep South" city, with all that implied in the area of race relations. Until the 1960s, Miami's sizable black population was confined to segregated residential neighborhoods, prohibited by various means from political participation, denied equal opportunities in education and employment, subjected to demeaning Jim Crow ordinances, and often terrorized by white supremacy groups, such as the Ku Klux Klan.³⁹

The civil rights movement held out some hope to the south Florida black community of the 1960s. "In the Miami area, however, the civil rights movement coincided with, indeed collided with, the Cuban Revolution of 1959, and the

subsequent Cuban exile migration to Florida."⁴⁰ In 1950, prior to the Cuban exodus, there were only 20,000 Hispanics in the Miami area, mostly Puerto Ricans, and they made up about 4 percent of the population. Over 800,000 Cubans arrived in south Florida between 1959 and 1980. Nicaraguans, perhaps as many as 100,000, also began concentrating in Miami following the 1979 overthrow of the Somoza regime by the Sandinista revolutionaries. By 1990, after 30 years of Cuban, Nicaraguan, and other Latin migration, more than 950,000 Hispanics resided in the Miami area, forming about 50 percent of the metropolitan population and 63 percent of the population of the City of Miami. By contrast, the percentage of African Americans in the Miami area has remained relatively stable over many decades, ranging from 18 percent in 1940 to about 20 percent in 1990.⁴¹

While other cities, both north and south, sought to address the fiery issues dividing blacks and whites, Miami was preoccupied with absorbing the Cuban exiles, "pushing civil rights and social reform issues into the background. The Cubans and other Hispanics from the South seized opportunities as they found them, and then created new opportunities for themselves in an amenable economic and political environment."⁴² African Americans, however, have not fared as well and generally believe that they have been "displaced from mainstream opportunities by the newly arrived immigrants."⁴³ The legal barriers of segregation are gone, but Miami blacks have "remained economically and politically invisible, especially between riots."⁴⁴

The Cuban migration, in retrospect, "short-circuited in Miami the kinds of economic, political, and social gains blacks were making elsewhere in the civil rights era," according to Professor Mohl.⁴⁵ H.T. Smith, a prominent African American attorney and community leader in Miami, has echoed this "short-circuit" theory, saying that "[j]ust as we were at the front of the line, waves of Cubans came and skipped ahead of us."⁴⁶

³⁶ Martin Merzer, "Not Making the Grade, State Dropout Rate Among Worst—Again," *Miami Herald*, July 27, 1995, pp. 1A, 9A. In testimony before the Commission, Miami Mayor Stephen Clark estimated that there were 104 languages spoken fluently in Dade County. Presumably this refers to primary languages for a substantial community, as opposed to languages spoken by a very small number of people in Dade County, but with which the school system must nevertheless contend. See note 27.

³⁷ Alvarez, "Immigration Reality."

³⁸ Raymond A. Mohl, Professor of History, Florida Atlantic University, "Racial and Ethnic Relations in Miami," written statement submitted at *Miami Hearing*, p. 5.

³⁹ Raymond A. Mohl, Professor of History, Florida Atlantic University, testimony, *Miami Hearing*, vol. 1, pp. 59–60 (hereafter cited as Mohl Testimony).

⁴⁰ *Ibid.*, p. 61.

⁴¹ Mohl, "Blacks and Hispanics in Miami," pp. 394, 396–98.

⁴² *Ibid.*, p. 35.

⁴³ Frank Solar, "Thoughts From A Wounded Heart," *Miami Mensual*, vol. 5 (Aug. 5, 1985), p. 11.

⁴⁴ Robert Joffe, "Riot Politics: The Tokenism Aftermath," *South Florida*, vol. 42 (May 1989), p. 32.

⁴⁵ Mohl Testimony, *Miami Hearing*, vol. 1, pp. 61–62.

⁴⁶ David LaGesse, "Miami Hopes To Repair Its Image With

Although often destitute upon arrival in south Florida, the earliest Cuban exiles had "education, skills and a strong work ethic." An entire business and professional class was literally uprooted from Havana and set down in Miami. They lacked, however, capital, English-language skills, and the appropriate credentials to practice their professions in the United States. They moved:

at first into the low-paying service-type jobs traditionally held by blacks, particularly in tourist hotels and restaurants in Miami and Miami Beach. They also found work in downtown retail, office, and service jobs; in the expanding Miami garment industry, in building and construction; and in other blue-collar jobs, where they competed with black and white workers. The stories are legendary of Cuban bankers working as janitors, Cuban accountants washing dishes . . . and Cuban doctors emptying hospital bedpans.⁴⁷

As earlier exiles moved upward economically and professionally, newer exiles from Cuba and elsewhere took their places during the 1970s and 1980s in Miami's low-wage service and manufacturing economy. By the 1980s, Hispanics made up two-thirds of Miami's construction labor force and 85 percent of the workers in Miami's extensive garment industry.⁴⁸ Over time, Hispanics replaced blacks in the service economy where they had previously been predominant. In the hotel industry, for example, a survey of 12 major hotels in 1981 showed that blacks held only 9.9 percent of almost 4,300 jobs. In 1982, this Commission reported that "[b]y all social indicators, blacks have been excluded from the economic

mainstream in Miami."⁴⁹ A Florida study on the 1980 riots reported that Miami was an ethnically polarized community and African Americans and Hispanics were "pitted against each other in a scramble for the most marginal jobs."⁵⁰

Not only did the Cubans move into the local labor market, but their collective entrepreneurialism soon had a significant impact on business activity in Dade County. By 1972, when the Hispanic population of the area was about double that of African Americans, Hispanics had established more than three times as many businesses as blacks, and gross receipts surpassed those of black businesses by five times.⁵¹

This energetic Hispanic business expansion suggested to many analysts that Cuban exiles created a self-sufficient "enclave economy," entirely separate from both the mainstream white non-Hispanic and the peripheral African American economy. In other words, these social scientists maintain that, on balance, Cuban exiles' success did not come at the expense of the African American community and, in fact, benefited the entire area economy.⁵²

Recent research suggests, however, that the importance of the "Cuban enclave" economy has been exaggerated.⁵³ Economic census data from 1987 on minority businesses show that while only 14 percent of Miami's African American businesses had employees, only 14.9 percent of Cuban-owned businesses had employees—about the same rate. Moreover, the number of workers at these Cuban-owned business was only about 25,000.⁵⁴ Guillermo J. Greneir, director of the Florida Center for Labor Research and Studies and professor of sociology at Florida International University, has found that as of 1987, approximately 10 percent of Cubans owned their own

Summit: City Prepares To Host Americas Leaders This Week," *Dallas Morning News*, Dec. 5, 1984, p. 1A (hereafter cited as LaGesse, "Miami Hopes").

⁴⁷ Mohl, "Blacks and Hispanics in Miami," p. 398 (citing Cal Brumley, "Cuban Exodus," *Wall Street Journal*, Nov. 28, 1960, pp. 1, 16; Neil Maxwell, "Unwelcome Guests," *Wall Street Journal*, May 6, 1963, pp. 1, 18; Tom Alexander, "Those Amazing Cuban Refugees," *Fortune*, vol. 74 (October 1966), pp. 144-49; and Edward J. Linehan, "Cuba's Exiles Bring New Life to Miami," *National Geographic*, vol. 144 (July 1973), pp. 63-65).

⁴⁸ U.S. Commission on Civil Rights, *Confronting Racial Isolation in Miami* (Washington, DC: U.S. Government Printing Office, 1982), pp. 1-26, 124-80 (hereafter cited as *Confronting Racial Isolation in Miami*); Michael Hirsley, "Hispanics Overwhelm Blacks in Miami Jobs Fight," *Chicago Tribune*, Jan. 18, 1983; Harold M. Rose, "Blacks and Cubans in Metropolitan Miami's Changing Economy," *Urban Geography*, vol. 10 (1989), pp. 464-86.

⁴⁹ *Confronting Racial Isolation in Miami*, pp. 18-22, 34.

⁵⁰ State of Florida, *Report of the Governor's Dade County Citizens Committee* (Tallahassee: State of Florida, 1980), p. 14.

⁵¹ *Ibid.*, pp. 19-22.

⁵² See, e.g., Kenneth L. Wilson and Allen M. Martin, "Ethnic Enclaves: A Comparison of the Cuban and Black Economies in Miami," *American Journal of Sociology*, vol. 88 (July 1982), pp. 135-60; Antonio Jorge and Raul Moncarz, *The Political Economy of Cubans in South Florida* (Coral Gables: Institute of InterAmerican Studies, Univ. of Miami, 1987); Kenneth L. Wilson and Alejandro Portes, "An Analysis of the Labor Market Experience of Cubans in Miami," *American Journal of Sociology*, vol. 86 (September 1980), pp. 295-319.

⁵³ See, e.g., Guillermo J. Greneir, "The Cuban American Labor Movement in Dade County: An Emergent Immigrant Working Class," in Greneir and Stepick, *Miami Now!*, pp. 137-38.

⁵⁴ *Ibid.*

businesses, that they employed only 4 percent of the Cuban work force, and that 96 percent of this labor force worked for wages outside the enclave. A percentage of these workers occupy supervisory or managerial positions, but "most of these persons belong to the working class—the class of hourly, production or service laborers that occupies a nonsupervisory role and earns a living by selling its labor power."⁵⁵ Lisandro Perez, chairman of the sociology and anthropology department at Florida International University, has also studied the "Cuban enclave" extensively. Professor Perez has noted that more than 80 percent of the Hispanic-owned businesses in Dade County are owner operated and are so small that they are most often staffed exclusively by family.⁵⁶ Most Hispanics who work for companies outside these family-owned firms are working for Anglo-owned firms.⁵⁷

From the beginning of the Cuban exile migration, there was a perception in the black community of governmental favoritism toward the new immigrants and a "sort of sensitivity to the vast array of Federal Government programs that were designed to assist the Cubans in terms of their resettlement, their education, their job training . . . programs to retrain doctors and lawyers and other professionals. A lot of . . . entrepreneurial activity was sustained by the Federal Government and the Small Business Administration, and even by the CIA, which was very active [in Miami]."⁵⁸ Comprehensive research indicates that for years the Central Intelligence Agency:

had thousands of Miami Cubans on the CIA payroll—perhaps as many as 12,000 or more at one point in the early 1960s. Under Eisenhower and Kennedy, the CIA had been authorized to recruit and train a Cuban exile guerrilla force to overthrow the Castro regime—an endeavor that ended in abject military failure at the Bay of Pigs in 1961 During the 1960s, the Miami CIA station was the largest in the world outside Langley, Virginia, and the CIA may have been Miami's largest employer. The CIA established doz-

ens of front businesses in Miami, including an airline, shipping firms, boat shops, gun shops, real estate agencies, and travel agencies. One scholarly analyst has suggested that the CIA played an important role in facilitating the early entrepreneurial success of the Cubans. In the cold war era, the hard-line, anti-Communist Cuban exiles in South Florida found a ready source of financial and other support in the federal government.⁵⁹

Over time, "the blacks were frozen out" by the Cubans, who, according to writer David Rieff, "saw no particular reason to have to assume the burden of America's historical obligation to black people."⁶⁰ Comparisons between the rising condition of the Cuban refugees and the still-downtrodden situation of Miami's blacks have "contributed to a pervasive sense of powerlessness, resentment, and despair in Black Miami."⁶¹ Some observers also see considerable irony in the fact that "the conservative, right-wing Cubans who benefitted so extensively from government welfare in their early years in the United States, adamantly oppose the kinds of social investment that Miami's black community needs."⁶² One result has been that much of the black anger and frustration that historically had been directed at a political and economic system dominated by whites is now deflected toward the Cubans.⁶³

The tensions between Hispanics and blacks are widespread, according to H.T. Smith, who helped organize the convention boycott of Miami, in response to the perceived snub of Nelson Mandela in 1990.⁶⁴ "It is an icy, almost glacial

⁵⁵ Ibid.

⁵⁶ See Mimi Whitefield and Marlene Sokol, "Se Habla Espanol: The Ability to Speak Spanish Is Rapidly Becoming A Requirement to Do Business and Get Ahead At Work In South Florida," *Miami Herald*, Aug. 17, 1987, Business Monday section, pp. 1, 14.

⁵⁷ See Marlene Sokol, "Firms Tip-Toe On Bias Mine Field," *Miami Herald*, Aug. 17, 1987, Business Monday section, p. 17.

⁵⁸ Mohl Testimony, *Miami Hearing*, vol. 1, pp. 85–86.

⁵⁹ Mohl, "Blacks and Hispanics in Miami," p. 407 (citing Joan Didion, *Miami* (New York: Simon and Schuster, 1987), pp. 83–98; David Rieff, *Going to Miami: Exiles, Tourists, and Refugees in the New America* (Boston: Little, Brown, 1987), pp. 193–207; Cynthia Jo Rich, "Pondering the Future: Miami's Cubans After 15 Years," *Race Relations Reporter*, vol. 5 (November 1974), pp. 7–9; Carlos A. Forment, "Political Practice and the Rise of an Ethnic Enclave: The Cuban American Case, 1959–79," *Theory and Practice*, vol. 18 (January 1989), pp. 47–81; Warren Hinckle and William Turner, *The Fish Is Red: The Story of the Secret War Against Castro* (New York: Harper and Row, 1981)).

⁶⁰ David Rieff, *Going to Miami: Exiles, Tourists, and Refugees in the New America* (Boston: Little, Brown, 1987), pp. 172, 174.

⁶¹ Mohl, "Blacks and Hispanics in Miami," p. 396.

⁶² Ibid., p. 413.

⁶³ Sheila L. Croucher, "Contested Reality: The Discourse of Job Displacement in Miami, Florida" (paper presented at Florida International University, Miami, FL, Nov. 19, 1992).

⁶⁴ Section III of this chapter discusses the Mandela incident in greater detail.

relationship between our communities.”⁶⁵ Kendra Meek, a black Miami native who is serving his first term in the Florida Legislature, has noted that most entry-level Dade County jobs, for example, require or prefer Spanish fluency. Dade County schools, however, do not require students to learn Spanish. According to Representative Meek, “Black Miami, they really don’t see the opportunities which [they] hoped would have been gained by now.”⁶⁶ In a recent report to the new Metro Dade County Commission, the Community Relations Board noted that the “economic success of many Cuban-Americans stands in stark contrast to the limited economic success of African Americans, which clearly adds to the tensions” between the communities. The report also stated that “[l]anguage is a key source of friction. Since only a small percentage of African Americans speak Spanish, the use of Spanish among Cuban Americans serves to separate and isolate the two communities.”⁶⁷

Cuban leaders say it is unfair to blame them for the continued economic problems of Miami’s African Americans. The “centuries-old structures of racism” account for the economic condition of Miami’s blacks, according to Cuban American sociologist Lisandro Perez, not “Miami’s newly arrived Hispanic peoples, who are now being scapegoated for the consequences of those long-standing structures.”⁶⁸ “These are problems that modern Miami inherited from the past,” says former Miami City Manager Cesar Odio, a Cuban immigrant. “We were not responsible for the years of discrimination that caused them.” Still, Mr. Odio says that Miami’s Hispanics understand the problems of being a minority and are “working hard to include blacks in the city’s

prosperity.” H.T. Smith remains hopeful that as Miami’s Hispanics assert greater control over city affairs, they will also assume new responsibilities: “They will realize this is their community to build or destroy.”⁶⁹ But racial and ethnic tension and polarization “will not be easily dissipated in this new immigrant city in what was once the Deep South.”⁷⁰ For now, as Professor Mohl summarizes the prevailing sentiment, Miami “remains a city on the edge, an ethnic cauldron that often boils over—no melting pot here.”⁷¹

Efforts are being made in Dade County, however, to ease racial and ethnic tensions and improve interethnic relations. Dade County’s Community Relations Board (CRB) has proposed creating a countywide Ethnic Relations Task Force made up of CRB members and community activists and leaders to study further the causes of racial and ethnic tensions. The Metro Dade County Commission asked the CRB to form the task force initially to address relations between Cuban Americans and African Americans, after six Cuban American metro commissioners, including Alex Penelas (now Metro Dade County Mayor), walked out of a March 1996 ceremony honoring former United Nations Delegate Andrew Young “to protest Young’s 1977 remarks sympathetic to Fidel Castro.”⁷² Although the commissioners later apologized,⁷³ for African Americans the incident rekindled unpleasant memories of similar treatment accorded Nelson Mandela when he visited Miami in 1990.⁷⁴

The CRB also hosted a 4-day National Conference on Community Relations, March 12–15, 1997, featuring local community leaders and national figures, including U.S. Attorney General Janet Reno, Metro Dade Mayor Alex Penelas, and keynote speaker Cornel West, professor of Afro-American studies at Harvard University. The conference sought to create a local and a national dialogue that would help foster greater mutual respect and understanding of cultural and ethnic diversity.⁷⁵ The *Fort Lauderdale Sun-*

⁶⁵ LaGesse, “Miami Hopes.”

⁶⁶ Teresa Mears, “Miami Celebrating Its 100th Birthday and Its Ethnic Diversity,” *Dallas Morning News*, Jul. 29, 1996, p. 3A.

⁶⁷ Fabiola Santiago, “Board Plans National Forum On Ethnic Understanding,” *Miami Herald*, Sept. 3, 1996, p. 1B (hereafter cited as Santiago, “Ethnic Understanding”). The conference, held March 12–15 1997, involved civic activists and decisionmakers in the public and private sectors, and addressed issues such as the strained relations between the Cuban and African American communities. Ibid.

⁶⁸ Lisandro Perez, “Where Analysts of the 1980 Miami Riot Went Astray,” Letter to the Editor in *New York Times*, June 5, 1981, p. 15A. For similar views, see also Sergio Lopez-Miro, “Shattering a Few Latin-Black Myths in South Florida,” *Miami Herald*, Feb. 14, 1989, p. 15A; Anthony Ramirez, “Making It,” *Wall Street Journal*, May 20, 1980, pp. 1, 35.

⁶⁹ Ibid.

⁷⁰ Mohl, “Blacks and Hispanics in Miami,” p. 413.

⁷¹ Ibid.

⁷² Santiago, “Ethnic Understanding”; Jim DeFede, “Coming of Rage,” *Miami New Times*, Feb. 27, 1997, available in NEXIS News Library, Curnws File.

⁷³ Santiago, “Ethnic Understanding.”

⁷⁴ DeFede, “Coming of Rage.”

⁷⁵ “National Luminaries, Local leaders Join Program For

Sentinel reported that the conference "came when tensions in South Florida's black community are approaching the boiling point," citing the "cries for ethnic solidarity from Cuban American radio" in the 1996 Metro Dade mayor and City of Miami commissioner races and the defeat of African American candidates by Cuban Americans in those races.⁷⁶ Prominent members of the Miami African American community were also "peevish that all three of the people [initially] selected to be ceremonial leaders of the conference were Cuban" and that when Mayor Penelas "flew to New York with a delegation of nearly two dozen people to impress Wall Street that Dade County is a serious place to do business, not a single black was invited."⁷⁷

Raul Diaz, chairman of the CRB, said that the stationery for the conference initially listed only his name and those of two other Cubans—Miami-Dade Community College President Eduardo Padron and County Manager Armando Vidal—at the top of the letterhead.⁷⁸ The conference leadership issue was resolved by making all 19 members of the steering committee for the conference, including 9 Cuban Americans and 4 African Americans, cochair,⁷⁹ but Rev. Willie Sims, assistant director of the CRB's Office of Black Affairs, who had raised the cochair issue, stated his opinion that the controversy exposed "the fact that African Americans are more often than not excluded in key policymaking decisions here in Dade County, in both the private sector and public sector."⁸⁰ These incidents reflected the feeling of many in the Miami African American community that they are "being passed by"

economically and politically.⁸¹ Ari Sosa, director of the Dade County Department of Community Affairs, has called attention, however, to programs in the last 3 years to promote Hispanic- and black-owned businesses in each other's neighborhoods and to increase black hiring that he maintains have brought the groups closer.⁸²

Metro Dade Mayor Penelas announced in early 1997 an economic plan that targets urban redevelopment and job creation in the black community, although some pointed out that these proposals came "only after the announcement of Blackout '97 galvanized the black community's outrage over economic and political impotence." Blackout '97 was "a day of protest designed to call attention to the economic and political plight of blacks in Dade County." The protest itself stirred some interethnic conflict "because it coincided with the first anniversary of the day Cuban MIGS shot down two unarmed Cessnas piloted by exiles searching for refugees off the Cuban coast To Cuban Americans, who had a full slate of memorial observances planned, scheduling Blackout for the same day was insensitive and disrespectful."⁸³ City of Miami Mayor Joe Carollo also announced in early April the formation of a panel to study redistricting the city to ensure black representation on the city commission. This came, however, only after the civil rights group People United to Lead the Struggle for Equality (PULSE) "sued the city for denying blacks adequate representation."⁸⁴

Many at the March 1997 National Conference on Community Relations viewed the attempt to create an ongoing local (and national) interethnic dialogue as a hopeful sign. As Cornel West noted at the conference, Miami is hardly alone in its ethnic strife and the conference was the type of event that is needed nationwide.⁸⁵

Although Florida's Latino population has increased dramatically over the last three decades,⁸⁶ the growing presence of an active Asian

First National Conference On Community Relations," *Business Wire*, Jan. 31, 1997, available in NEXIS News Library, Curnwa File; Martin Wiscol, "A Lesson On Community Relations," *Fort Lauderdale Sun-Sentinel*, Mar. 16, 1997, p. 8B (hereafter cited as Wiscol, "Community Relations").

⁷⁶ Wiscol, "Community Relations."

⁷⁷ DeFede, "Coming of Rage."

⁷⁸ Karen A. Holness, "Planners of Community Relations Talks Dubbed Insensitive To Blacks," *Miami Times*, Feb. 6, 1997, p. 3A.

⁷⁹ Fabiola Santiago, "Conference Leadership Now A Team," *Miami Herald*, Jan. 28, 1997, p. B1.

⁸⁰ Holness, "Planners of Community Relations Talks." Interethnic controversy is not new to the Community Relations Board. In 1989, one observer noted that even the Community Relations Board "is a power struggle between blacks and Hispanics—with the Anglos watching expectantly and playing as the occasional referee." Irwin S. Morse, Letter to the Editor, *Miami Herald*, July 24, 1989, p. 14A.

⁸¹ Mireya Navarro, "Many Florida Blacks Say They Feel Passed Over By Prosperity," *Palm Beach Post*, Feb. 18, 1997, p. 1A.

⁸² Ibid.

⁸³ Mike Clary, "Cubans Rise to Power Dividing Miami," *Dallas Morning News*, Apr. 2, 1997, p. 27A.

⁸⁴ Ibid.

⁸⁵ Wiscol, "Community Relations."

⁸⁶ See Raymond A. Mohl, "The Latinization of Florida," to be published in W. W. Rogers et al., eds., *Cultural Diversity in*

population, especially in the major metropolitan areas, must also be recognized. The Asian American community has long maintained that its concerns have frequently been ignored, particularly regarding civil rights issues. During the Commission's Florida Advisory Committee's meetings addressing the state of racial and ethnic tensions in Florida, particular examples were cited concerning the elimination of Asians from local governments and their reduced access to minority business opportunities through the minority "set-aside" programs operated by State and local governments.⁸⁷ To some extent, these complaints likely stem from the relatively small numbers of Asian Americans in Florida and the greater Miami area and the concomitant relative lack of influence in local politics and government. Asians (including Pacific Islanders) constitute about 1.2 percent of the population in both the State of Florida and in Dade County.⁸⁸ During the 1970s and 1980s, however, Asian newcomers emerged as the fastest growing foreign-born group in Florida. The approximately 154,000 Asians who resided in Florida according to the 1990 census is triple the number present in 1980.⁸⁹ Three factors account for this increased Asian immigration to Florida. First, the abolition of the national origins quota system—which had heavily favored European immigrants—and the adoption of training, skills, and family reunification as the new standards for admission to the United States have dramati-

cally shifted the base of American immigration from Europe to Latin America, the Caribbean, and especially Asia and the Pacific Rim nations. Second, United States military involvement in Asia has brought a steady stream of Asian newcomers to Florida as war brides, military employees, and refugees. Finally, a "secondary, internal migration of newcomers searching for better economic opportunities has been reflected in a rapid increase in the numbers of Asians in Florida, and in the Sunbelt States, generally, since 1970."⁹⁰

Beyond low aggregate numbers compared to African Americans and Hispanics, the "invisibility" of Asian Americans to local policymakers may also be due, in part, to the reality that Asians consist of many separate communities and are dispersed all over the State. Table 4 shows the various Asian groups in Florida and the degree to which they have increased over the years.

Since the 1960s, the new Asian Americans have tended to concentrate heavily in Florida's major metropolitan counties: Dade (Miami), Broward (Fort Lauderdale), Palm Beach (West Palm Beach, Boca Raton), Duval (Jacksonville), Orange (Orlando), Hillsborough (Tampa-St. Petersburg), and Escambia (Pensacola). The largest number of Asian Americans lives in Dade County, and the second largest concentration is in Broward County, as shown by table 5. Between 1980 and 1990, Broward County experienced the second greatest proportional increase in its Asian population among all Florida counties. Asian Indians' group strength has increased dramatically in the last 25 years, and more than one-third, or about 12,000, of Florida's Asian Indians live in Dade and Broward Counties. Chinese have, however, been the dominant Asian group in the Miami area for over 40 years.⁹¹

Dade County's 26,000 Asian Americans are dispersed widely throughout the population and do not appear to experience the degree of ethnic conflict or controversies affecting the larger groups, such as Hispanics and African Americans. Instead, Dade County's Asian American population appears to be integrating effectively, possibly because their numbers are much lower than other groups. Still, there have been some incidents of hate crimes against Asians, but they

Florida History (Birmingham, AL: Univ. of Alabama Press); Thomas D. Boswell, Cuban American Policy Center, *The Cubanization and Hispanicization of Metropolitan Miami* (Miami: Cuban American National Council, Inc., 1994).

⁸⁷ Rabbi Solomon Agin, Temple Beth El, Fort Myers, FL, Chairperson, Florida Advisory Committee to the U.S. Commission on Civil Rights, testimony, *Miami Hearing*, vol. 1, pp. 17, 19 (hereafter cited as Agin Testimony).

⁸⁸ 1990 Florida Census, Table 1, General Population Characteristics; 1990 Miami Census, Table 8, Race and Hispanic Origin, p. 207.

⁸⁹ Raymond A. Mohl, "Asian Immigration to Florida" (paper delivered at Meeting of the Pacific Coast Branch Meeting of the American Historical Association, Maui, HI, Aug. 7, 1995), p. 2. Since 1970, Asians have been the fastest growing minority group nationally as well. Some observers suggest that, if current immigration trends hold, Asians may outnumber African Americans by the year 2050. Robert W. Gardner et al., *Asian Americans: Growth, Change, and Diversity* (Washington, DC: Population Reference Bureau, 1985); see also William O'Hare and Judy Felt, "Asian Americans: America's Fastest Growing Minority Group," *Population Trends and Public Policy*, No. 19 (Washington, DC: Population Reference Bureau, 1991).

⁹⁰ Mohl, "Asian Immigration to Florida," pp. 12–13.

⁹¹ *Ibid.*, pp. 14, 24.

TABLE 4**Most Numerous Asian Groups in Florida, 1960-1990**

Group	1960	1970	1980	% increase 1970-80	1990	% increase 1980-90
Filipino	2,530	5,092	15,252	199.5	31,945	109.4
Asian Indian	524	—	11,039	—	31,457	185.0
Chinese	1,501	3,133	12,930	312.7	30,737	137.7
Vietnamese	—	—	7,077	—	16,346	131.0
Korean	193	—	4,948	—	12,404	150.7
Japanese	1,591	4,090	5,667	38.6	8,505	50.1
Thai	—	—	—	—	4,457	—
Pacific Islander	—	—	2,148	—	4,446	107.0
Pakistani	19	—	—	—	2,800	—
Laotian	—	—	—	—	2,423	—
Cambodian	—	—	—	—	1,617	—
Total Asians in Florida	6,801	21,772	62,514	187.1	154,302	146.8

Source: Raymond A. Mohl, "Asian Immigration to Florida" (paper delivered at Meeting of the Pacific Coast Branch Meeting of the

American Historical Association, Maui, Hawaii, Aug. 7, 1995), table 1, p. 35 (source: U.S. Census, 1960-1990).

TABLE 5**Asians in Florida, 1970-1990**

County	1970	1980	% increase 1970-80	1990	% increase 1980-90
Alachua	488	1,917	292.8	4,556	137.7
Brevard	793	2,212	178.9	5,379	143.2
Broward	1,355	4,923	263.3	17,130	248.0
Dade	5,379	14,069	161.6	26,307	87.0
Duval	2,555	6,107	139.0	12,940	111.9
Escambia	1,474	3,347	127.4	5,048	50.8
Hillsborough	1,040	3,876	272.7	11,379	193.6
Okaloosa	508	1,841	262.4	3,658	98.7
Orange	824	3,264	340.0	13,994	286.1
Palm Beach	1,011	2,905	187.3	9,020	210.5
Pinellas	1,168	3,385	190.0	9,790	189.2
Seminole	120	1,463	1,119.2	4,843	231.0
Florida	21,772	62,514	187.1	154,302	146.8

Source: Raymond A. Mohl, "Asian Immigration to Florida" (paper delivered at Meeting of the Pacific Coast Branch Meeting of the American Historical Association, Maui, Hawaii, Aug. 7, 1995),

table 2, p. 36 (source: U.S. Census, 1970-1990). The census provided data for the 12 counties with the largest Asian population in 1980.

seem to be isolated and there is no discernible trend. Overall, Asians in the Miami area have enjoyed relative economic success.¹ According to 1990 census data, the median family income of Asians or Pacific Islanders of \$36,391 trailed only the \$45,766 median income of white non-Hispanic families and was nearly \$10,000 more than that of Hispanic families (\$27,083), \$13,000 more than that of American Indian families (\$24,091), and \$15,000 more than that of African American families (\$22,230).²

Section II: Governmental Structure

Historical Development of Dade County Government

Dade County, one of Florida's 67 counties, was created by an act of the Florida Legislative Council in 1936. From approximately 1885 until 1957, Dade County was governed by a county commission comprised of five members elected at large. Section 11 of Article VIII of the 1885 Florida Constitution provided that "the electors of Dade County, Florida, shall have the power to adopt, revise and amend from time to time a Home Rule Charter of government for Dade County, Florida under which the Board of County Commissioners shall be the governing body." In 1956, the voters of Florida approved an amendment to Article VIII, section 11, of the Florida Constitution, permitting Dade County voters to adopt a home rule charter.³ Dade County became Florida's first home rule county.⁴

¹ Mohl Testimony, *Miami Hearing*, vol. 1, pp. 104-05.

² 1990 *Miami Census*, tables 23, 25, 27, 29, 31 on pp. 738, 766, 771, 818, 898.

³ Much of this description of the history of Dade County government is derived from the opinion in *Meek v. Metropolitan Dade County*, 805 F. Supp. 967, 974-75 (S.D. Fla. 1992).

⁴ John F. Stack, Jr., and Christopher I. Warren, "The Reform Tradition and Ethnic Politics: Metropolitan Miami Confronts the 1990s," in Greneir and Stepick, *Miami Now!*, p. 162 (hereafter cited as Stack and Warren, "Ethnic Politics"). The idea of "home rule" as a legal concept originated in the late 19th century, when American State legislatures interfered with the functioning of local government. Home rule "does not grant total autonomy by any means, since state legislatures through general law and the courts through interpretation still restrain local government. Nevertheless, the concept contradicts the principle of municipal inferiority" whereby local governments were considered "creatures of the legislature," which could control them at will. Duane Lockard, "Local Government," in *International Encyclopedia of the Social Sciences*, vol. 9 (New York:

In the late 1950s, Dade County's population was much more ethnically homogeneous than it is today.⁵ At that time, black and Hispanic political power was insignificant. In 1957, the voters of Dade County adopted a home rule charter, providing for the election of five members of the county commission from single-member districts, five by the voters at large, and one representative from each municipality with a population exceeding 60,000. In 1957, the City of Miami was the only municipality that qualified to have its own commissioner. After the 1960 census, Miami, Miami Beach, and Hialeah qualified to have municipally elected representatives on the county commission. By 1963, the county commission was comprised of 13 members: 5 elected from districts, 5 at large, and 1 from each of the Cities of Miami, Miami Beach, and Hialeah. In 1964, the home rule charter was amended, resulting in the elimination of the mixed system of electing county commissioners.

From 1964 to April 1993,⁶ the Metropolitan Dade County Commission (Dade County Commission) was composed of eight commissioners and the county mayor, all of whom were elected through countywide at-large nonpartisan elections. The mayor could reside anywhere in the county, but the commissioners were required to run from designated residence districts. The commissioners' terms ran for 4 years, and beginning in 1966 elections were staggered so that one-half of the seats were filled every 2 years. The county manager was hired and fired by the commissioners and had the administrative authority over Dade County operations.⁷

Dade County's metropolitan area includes 27 municipalities and an unincorporated area.⁸ In

McMillan Co. and the Free Press, 1968), p. 452. In the context of Florida government, the grant of home rule to Dade County, upon the approval of Dade County voters in 1957, conferred a high degree of autonomy from the State on Dade County, most particularly in the form of self-government it chose to create.

⁵ In 1960, Dade County's population was 80 percent non-Hispanic white, 14.7 percent black, and 5.3 percent Hispanic. Metro-Dade Planning Department, Research Division, *Dade County Facts* (Miami: Metropolitan County Government, 1990) (cited in Alejandro Portes and Alex Stepick III, *City on the Edge: The Transformation of Miami* (Berkeley: Univ. of Calif. Press, 1993), p. 211, table 8).

⁶ The reformulated Dade County Commission was elected in November 1992. It took office on April 22, 1993.

⁷ Stack and Warren, "Ethnic Politics," p. 162.

⁸ As of the Dade County Commission's recess in 1995, the

the metropolitan form of government, county-wide policymaking authority is vested in the Dade County Commission in such areas as mass transit, public health, parks, and recreation. In addition, the Dade County Commission establishes minimum standards of performance for those services still provided by the 27 cities within their geographical areas of authority. The cities retain control over their police departments, tax rates, and other services. In addition, they may exceed county standards in zoning and service delivery. The Dade County Commission possesses exclusive authority over the sprawling areas of unincorporated Dade County.⁹

Viewed from the perspective of 1957 and the early 1960s, it is not surprising that the architects of Dade County's political system were insensitive to the needs of the black and Hispanic communities. The system was created in the years just prior to the civil rights movement and the massive Cuban immigration. Miami's African American population was relatively small and severely disenfranchised. The Hispanic population in the 1950s (mostly Puerto Ricans) was limited to only about 4 percent of the population.¹⁰ Given the rather homogeneous population, the primary local political conflicts at the time of the Dade County Commission's creation were between "turf-conscious" municipal politicians and those who supported the creation of the commission. Ethnic conflict was simply not part of the equation.¹¹ Despite the influx of Hispanics and the growth of both the Hispanic and African American population in Dade County, prior to the November 1992 election, only one black and one Hispanic served on the nine-member commission.¹²

following cities were incorporated within Dade County: Bal Harbour, Bay Harbor Island, Biscayne Park, Coral Gables, El Portal, Florida City, Golden Beach, Hialeah, Hialeah Gardens, Homestead, Indian Creek, Islandia, Key Biscayne, Medley, Miami, Miami Beach, Miami Shores, Miami Springs, North Bay Village, North Miami, North Miami Beach, Opa-Locka, South Miami, Surfside, Sweetwater, Virginia Gardens, and West Miami.

⁹ Stack and Warren, "Ethnic Politics," p. 162.

¹⁰ Raymond A. Mohl, "Ethnic Politics in Miami, 1960-1986," in Randall M. Miller and George E. Pozzetta, eds., *Shades of the Sunbelt: Essays on Ethnicity, Race, and the Urban South* (New York: Greenwood Press, 1988), p. 144.

¹¹ Stack and Warren, "Ethnic Politics," p. 164.

¹² In 1992, Dade County was 50 percent Hispanic and 20 percent African American. Nevertheless, the Dade County Commission was still 80 percent non-Hispanic white. Filkins and Todd Hartman, "A Bumpy, Hopeful Start for New Metro Dade

Court-Ordered Reform of Dade County Government

In response to these disparities, in 1986 a group of black and Hispanic plaintiffs, led by U.S. Rep. Carrie Meek, then a member of the Florida Legislature, filed a lawsuit in Federal court against Metropolitan Dade County and the Dade County Board of County Commissioners. After a series of rulings on motions for summary judgment, the United States District Court for the Southern District of Florida held that Dade County's at-large system of election to the Dade County Commission violated section 2 of the Voting Rights Act by diluting both black and Hispanic voting power.¹³ The court enjoined Dade County from conducting at-large elections and ordered the defendants to submit a new plan for electing persons to the Dade County Commission.¹⁴

The first Dade County Commission election under the reformulated election plan took place in November 1992.¹⁵ The new Dade County Commission, composed of 13 members, each representing one district, was the most diverse in the county's history. As a result of the first election by district, the commission's ethnic composition changed dramatically. The new commission was made up of six Hispanic, four African American, and three non-Hispanic white commissioners.¹⁶ In contrast to the previous at-large system in which every voter cast ballots for each of the nine commissioner seats (thus permitting

Commission, Revamped and Enlarged, is Tackling Tough Issues," *Miami Herald*, Jun. 5, 1994, p. 1A.

¹³ *Meek*, 805 F. Supp. at 983-94. Section 2 (a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 (a) (1988) provides: "No voting qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied in a manner which results in a denial or abridgment of the right of any citizen to vote on account of race or color." Section 2 (b), 42 U.S.C. § 1973 (b) (1988) provides that a "violation of subsection (a) is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."

¹⁴ *Id.* at 994.

¹⁵ Filkins and Hartman, "A Bumpy, Hopeful Start."

¹⁶ The 13 Dade County Commissioners were: Arthur Teele, Chair; Alex Penelas; Vice-Chair; James Burke; Miguel Diaz de la Portilla; Betty Ferguson; Maurice Ferré; Larry Hawkins; Bruce Kaplan; Natacha Millan; Dennis Moss; Pedro Reboredo; Javier Souto; and Sherman Winn.

large voting blocs to control elections), the current district system limits voters to one ballot for the commissioner representing that voter's district. The commissioners serve on a part-time basis and receive a small compensation.¹⁷

The reformulated commission suspended the position of county mayor for its first term. Thus the chairperson of the commission, Arthur Teele, served as the highest elected official in Dade County, acting as *de facto* county mayor.¹⁸ Executive authority over Dade County governance still rested with the county manager, Armando Vidal, until the county mayor position was reestablished in 1996. Alex Panelas, a 34-year-old Cuban American attorney recently defeated Mr. Teele, an African American, to become the first "strong mayor" of metropolitan Miami. Mr. Panelas took office October 15, 1996. Unlike previous mayors, he will have the power to veto commission votes, hire or fire the county manager, and help oversee a \$4.1 billion budget. While Mayor Panelas called for unity, even his supporters concede that it may be difficult to balance the demands of Dade County's Hispanics, blacks, and non-Hispanic whites.¹⁹

During its first year, the reformulated commission emphasized access to political participation and economic opportunities for blacks and Hispanics.²⁰ It chose African American and Hispanic firms to handle Metro Dade multimillion dollar bond deals.²¹ It voted to set aside \$1 billion in contracts awarded by Metro Dade yearly to black-, Hispanic-, and women-owned firms.²² The commission also repealed the "anti-bilingualism" county ordinance, a source of contention within Dade County's Hispanic and Haitian Creole communities since its enactment in 1980.²³ Despite those developments, however,

the commission has faced criticism from those who believe the reformulated system is inadequate to address the needs of all constituencies. According to T. Willard Fair, Urban League president, the neighborhood district system has harmed blacks by ensuring them permanent representation on the commission at the price of real influence. It was better, according to Mr. Fair, when no metro commissioner could afford to write off the black vote. Now, he says, most of them can.²⁴

Dade County government is the largest local government in the Southeastern United States, spending approximately \$3.6 billion annually on public services.²⁵ The reformulated Dade County Commission supervises road building; controls the county's water, sewer, and garbage systems; runs the airport and seaport; and provides municipal services to the 1 million residents of unincorporated Dade County, such as fire and police protection.²⁶

The Dade County School Board

The Dade County School Board is an independent board composed of five board members, a chair, and a vice-chair.²⁷ Like the Dade County Commission, the Dade County School Board recently voted to divide the school board into single-member districts. The plan was negotiated to settle a lawsuit filed in 1991 by former Florida legislator Darryl Reaves, Rev. Richard Dunn III, and former Miami Mayor Xavier Suarez. The negotiated settlement provided that the reformulated school board would contain nine seats, each representing a single district. Under this

¹⁷ Filkins and Hartman, "A Bumpy, Hopeful Start."

¹⁸ Under the current structure, the chair of the Dade County Commission is elected by his or her fellow commissioners by a simple majority. See Mohamed Hamaludin, "Curry is Out, Teele in Danger," *Miami Times*, Dec. 22, 1994, p. 1A.

¹⁹ Will Lester, "New Mayor Calls For Unity in Long-Divided Metro Miami," *Associated Press*, Oct. 2, 1996, available in LEXIS, News Library, AP file.

²⁰ Filkins and Hartman, "A Bumpy, Hopeful Start."

²¹ *Ibid.*

²² *Ibid.*

²³ This ordinance prohibited the county from "utilizing any language other than English, or promoting any culture other than that of the United States" in its activities. It also provided that "all county governmental meetings, hearings and publications shall be in the English language only." Larry Rohter, "Repeal Is Likely for 'English Only' Policy in Miami,"

New York Times, May 14, 1993, p. A12. Dade County, FL, Ordinance 93-46 (May 18, 1993) simply repealed the 1980 English Only ordinance in its entirety, citing the following reasons in the preamble to the text actually repealing the law: "Metropolitan Dade County has become an international community serving multiple ethnic groups"; "this Board desires to serve all its residents and provide for all needs"; "in order to meet the needs of its residents, this Board must be able to use all means by which to address its population and not be hindered by language restrictions"; "this Board desires to increase understanding of its services and plans for Dade County's future."

²⁴ Filkins and Hartman, "A Bumpy, Hopeful Start."

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ The chair of the Dade County School Board is Betsy H. Kaplan. The vice-chair is G. Holmes Braddock. The five board members are: Fredrica Wilson, Rosa Castro Feinburg, Michael Krop, Robert Renick, and Janet McAliley. The superintendent is Octavio Visiedo.

reformulated system, it is expected that two districts will be predominantly African American, four will be predominantly Hispanic, two will be predominantly non-Hispanic white, and one will be a racially diverse "swing district."²⁸

The City of Miami

Each of the 29 incorporated cities in Dade County also has its own leadership. In the City of Miami, Joe Carollo, a 42-year-old former city commissioner now heads the city government.²⁹ The city has a board of commissioners and a separate city manager. The five-member commission includes the mayor. The commissioners are chosen in nonpartisan, at-large elections.³⁰ Unlike the problems of county government, however, Miami government historically has not faced the same lack of diversity challenges. Prior to the recent election, one of the Miami commissioners was Hispanic, one African American, and one Anglo. With the election of Humberto Hernandez, however, the Commission now has four Hispanics and one Anglo and is without an African American for the first time in three decades.³¹

The city also faces the daunting task of dealing with a \$68 million deficit in its \$275 million budget for the year that began October 1, 1996, and a ballot proposal to dissolve the city entirely and to make it part of Dade County government.³² A State Emergency Oversight Board created by the legislature and appointed by Governor Lawton Chiles to oversee the city's financial matters approved the city's 5-year financial recovery plan on May 19, 1997. The plan includes dozens of measures designed to overcome the deficit, including a new fire fee for businesses, many homeowners, and some previously tax-exempt properties such as hospitals or social service agencies that is expected to raise \$24 million.³³ The ballot measure will be voted on

September 4, 1997.³⁴ Proponents of the measure "see an opportunity to eliminate a deficit-ridden government and stimulate investment by coming under Dade County's umbrella—and a lower tax rate. But many Miami residents fear losing not only public services but also the city's identity."³⁵ Opposition is particularly strong in the Cuban American community, which lays "claim to having built Miami into a hub of international trade and [is] wary of any move to do away with it."³⁶ Dario Moreno, a political scientist at Florida International University in Miami, argues that "dissolving Miami would leave the city's poorer Hispanic and Black neighborhoods—Little Havana, Little Haiti, Overtown and Liberty City—without adequate services. Blacks and Hispanics...have a lot to gain from the city of Miami," according to Dr. Moreno. "The city...is a source of jobs and they see a great deal of economic stakes in the city of Miami continuing the way it is."³⁷

Section III: Racial and Ethnic Tensions in Miami

Miami: Window to the Future of American Cities

A number of prominent commentators have opined that Miami represents a look into the future of urban America. Sociologists Guillermo J. Greneir and Alex Stepick III of Florida International University suggest that the "intensity of diversity [in Miami] . . . magnified by the dynamics of immigration and ethnicity" offers the Nation a look "into the future. Miami now gives

²⁸ Leslie Streeter, "School Board to Have District Elections," *Miami Times*, May 5, 1994, p. 1A.

²⁹ Carollo succeeded Mayor Stephen P. Clark following his death in June 1996. Joan Cavanaugh, "New Miami Mayor No Has-Been; Carollo Back After 8 Years on the Skids," *New Orleans Times-Picayune*, Aug. 11, 1996, p. A21.

³⁰ Stack and Warren, "Ethnic Politics," p. 162.

³¹ Karen Branch, "Miami Lawyer Defeats Sole Black Commissioner," *Miami Herald*, Nov. 18, 1996, p. 1B.

³² Maria Puente, "One Solution for Miami: Nonexistence," *USA Today*, Dec. 6, 1996, p. 4A; "Dissolving Miami," *USA Today*, Jan. 9, 1997, p. 2A.

³³ Martin Wiscol, "State Accepts Miami's Recovery Plan."

Fort Lauderdale Sun-Sentinel, May 13, 1997, p. 3B; Will Lester, "Miami Financial Recovery Plan OK'd," *Associated Press*, May 12, 1997, available in LEXIS News Library, Curnwa File (hereafter cited as Lester, "Plan OK'd"). In light of the oversight board's approval of the recovery plan, Moody's Investors Service raised Miami's credit outlook from "negative" to "stable," and Standard & Poor's bumped Miami's credit rating up a notch, although it is still at junk bond levels. "Moody's Raises Miami's Outlook," *Associated Press*, May 19, 1997, available in LEXIS News Library, Curnwa File.

³⁴ Lester, "Plan OK'd."

³⁵ Kirk Nielsen, "Miami: Caught Between Its Pride and Pocketbook," *Christian Science Monitor*, Feb. 12, 1997, p. 3.

³⁶ *Ibid.* An opinion poll published in late January 1997 by the *Miami Herald* indicated that 69 percent of the city's Cuban Americans opposed abolition of the city, compared with 49 percent of non-Hispanic whites. *Ibid.*

³⁷ *Ibid.*

us a glimpse of America tomorrow."³⁸ Eduardo J. Padron, president of the Miami-Dade Community College system and a member of the National Association for the Advancement of Colored People (NAACP), concurs, noting that "[t]he situation we are living in Miami today will be true of most major cities in America in the next 10 years."³⁹ The late Miami Mayor Stephen P. Clark also viewed Miami as "an archetype of the city of the future," both for its racial, ethnic, and cultural diversity and for the prominent role that international trade plays in the local economy.⁴⁰

African Americans have long been accustomed to being the principal minority group in American cities, with whites in the majority.⁴¹ The emergence of a dominant, numerically significant group of Hispanic people in urban centers is a relatively recent phenomenon. In Miami, however, where Hispanics outnumber African Americans and have replaced non-Hispanic whites as the dominant group, all three groups are confronting new challenges requiring creative and cooperative adjustments. Due in large part to the continued flow of immigration and high birth rates within immigrant communities, scholars and commentators predict that this demographic phenomenon is likely to occur with increasing frequency over the next decade in cities around the country.⁴² Thus, examining

recent manifestations of and the response to racial and ethnic tensions in Miami may be instructive for the entire country.

Witnesses at the U.S. Commission on Civil Rights hearing in Miami differed on whether racial and ethnic tensions are, in recent times, increasing or decreasing. Mayor Clark testified that racial and ethnic tensions are decreasing in Miami and that they do not pose "a major stumbling block in our community."⁴³ T. Willard Fair, president of the Urban League of Greater Miami, agreed, stating that racial tension in Miami has mellowed out right now and that Miami's racial and ethnic groups have "learned to respect each other."⁴⁴ Conversely, Rabbi Solomon Agin, chairperson of the Florida State Advisory Committee to the U.S. Commission on Civil Rights, spoke about the six briefing meetings it recently held around the State, including two in Miami, on racial and ethnic tensions. Rabbi Agin indicated that "in every city from both public officials and community people, the responses were emphatic that racial and ethnic tensions had increased in recent years."⁴⁵ Raymond Mohl supported this perception. He testified that: "[n]umerous instances of racial violence in the past 15 years, as well as long-running controversies over political representation, language use, immigration policy, and other issues, have all suggested to many observers that Miami is a place with deep racial and ethnic divisions."⁴⁶ It may "seem on the surface right now that things are calm and moderate, but that has been the case in the past as well. We've [had]... periods of calm and seemingly peaceful relations among different groups in the area, but then periodically that peace is shattered by one incident or another, leading to demonstrations, to riots, to police activity of one sort or another. So if it

³⁸ Stack and Warren, "Ethnic Politics," pp. 2, 15.

³⁹ Larry Rohter, "As Hispanic Presence Grows, So Does Black Anger," *New York Times*, Jun. 20, 1993, p.1 (hereafter cited as Rohter, "Black Anger").

⁴⁰ Clark Testimony, *Miami Hearing*, vol. 1, p. 24. Mayor Clark noted that Miami is a prominent reminder of the global economy, with its "leadership in international business and banking" and its "seaport and airport that act as a gateway to the Americas." Ibid.

⁴¹ Rohter, "Black Anger." Another writer notes that the dramatic growth of the Hispanic community poses a serious challenge to . . . traditional black politics, because blacks are accustomed to being the 'dominant minority' in this country." Earnest Harris, "Coalition Impossible? How Changing Demographics Push Hispanics and African Americans Into A Struggle For Power," *Hispanic*, January 1995, p. 35.

⁴² See Rohter, "Black Anger"; Harris, "Coalition Impossible?" While examining changing relations among the three largest groups, the extent to which the concerns of Asians, American Indians, and other smaller minority groups' concerns are considered and accommodated should not be ignored. Asians have long argued that the concerns of their community are frequently ignored, due to the comparatively smaller size of their numbers in south Florida. Asians are, however, the fastest growing ethnic group in Florida, having doubled in population during the 1980s to 150,000, according to the 1990 census. See section II, chap. 1, of this report; Mohl Interview. This figure

is still, of course, a small percentage of the population of Florida—about 1.2 percent. 1990 *Miami Census*, table 1, General Characteristics of Persons, p. 1.

⁴³ Clark Testimony, *Miami Hearing*, vol. 1, pp. 34, 47–50.

⁴⁴ Fair Testimony, *Miami Hearing*, vol. 1, pp. 142, 171–73. In an interview with Commission staff, Mr. Fair also stated that he did not believe that the state of racial and ethnic relations in Miami was any worse than in other major cities, and he was confident of the area's ability to adjust successfully to its multiracial, multiethnic, and multilingual future. T. Willard Fair, President, Florida Urban League, telephone interview, Aug. 14, 1995.

⁴⁵ Agin Testimony, *Miami Hearing*, vol. 1, pp. 16–17.

⁴⁶ Mohl Testimony, *Miami Hearing*, vol. 1, p. 59.

looks calm now, that doesn't mean the problems are solved."⁴⁷

In Miami, color, class, language, and culture interact to produce a "confusing scene where racial solidarity alternates with class and ethnic factionalism as well as economic competition" to produce shifting alliances and divisions among racial and ethnic groups.⁴⁸ While acknowledging these complexities, it can still be said that, at bottom, Miami is "riven by two fundamental divisions: black versus white and U.S.-born Americans versus immigrants. The former was established at the city's founding and persists in spite of the recent transformations. The latter emerged only recently but is nonetheless profound as it provides new answers to the old questions of who rules, who benefits, and how immigrants fit in."⁴⁹ Recent examples of racial and ethnic tensions in Miami illustrate both the complexities and the two fundamental divisions noted above.

Nelson Mandela and the Boycott Miami Campaign

On June 28, 1990, Nelson Mandela, now President of South Africa, in the midst of a triumphal tour of the United States, came to Miami to address the international convention of the American Federation of State, County and Municipal Employees at the Miami Beach Convention Center. He had already visited New York City, Washington, D.C., and Atlanta, where he had been greeted and welcomed warmly by the Nation's and those cities' top elected officials and celebrities.⁵⁰

Things were different in Miami. There, the Miami City Commission, urged by Cuban American and Jewish constituents, rescinded a proclamation welcoming Mr. Mandela. At the time, Miami Mayor Xavier Suarez, a Cuban American, and four other mayors in South Florida, criticized Mr. Mandela for his alleged ties to Cuban Communist leader Fidel Castro and the Palestinian Liberation Organization's Yasir Arafat.⁵¹ Later accounts attributed "the snubbing of President Mandela of South Africa . . . by Cuban

American politicians" to "his refusal to denounce Castro"⁵² or his expression of "support for Fidel Castro and Yassar Arafat."⁵³ Mr. Mandela delivered his speech as some 300 protesters, mostly Cuban Americans, and 3,000 Mandela supporters, mostly black, squared off outside for about 5 hours. Both pro- and anti-Mandela Jewish groups participated in the demonstrations and counterdemonstrations. The chief confrontation, however, was between Miami's two largest ethnic groups, Cuban Americans and African Americans.⁵⁴

According to one account, the city "pointedly refused to honor Mr. Mandela because Cuban politicians feared alienating right-wing Cuban radio talk show hosts by welcoming a supporter of Fidel Castro."⁵⁵ Neither the sole black member of the city commission nor the one black member then on the Dade County Commission publicly defended Mr. Mandela.⁵⁶

Some black leaders, however, confronted the Cuban opposition and spoke out in support of Mandela. "Miami may go down in infamy as the only city in America that denounced, criticized, castigated and threw its 'welcome mat' in the face of Nelson Mandela," said H.T. Smith, chairman of the Miami Coalition For A Free South Africa, in a letter to Mayor Suarez.⁵⁷ Mr.

⁵² Mireya Navarro, "Many Florida Blacks Say They Feel Passed Over By Prosperity," *Palm Beach Post*, Feb. 18, 1997, p. 1A.

⁵³ Ann Davis, "Miami's H.T. Smith Puts Black Bar Group In Gear," *National Law Journal*, Jan. 9, 1995, pp. A1, A6.

⁵⁴ Portes and Stepick, *City On The Edge*, pp. 176-77.

⁵⁵ *Ibid.*, p. 177. Victor DeYurre, a Cuban American on the Miami City Commission, said ideology, not racism, was behind the decision not to honor Mandela. "I think the black community, after living with us for some 30 odd years, is well aware of our No. 1 issue and that's Fidel Castro. There is no compromise in the Cuban community when it comes to Fidel Castro." Maya Bell, "Miami—A City Torn Over Mandela," *Orlando Sentinel Tribune*, June 27, 1990, p. A4.

⁵⁶ Carl Goldfarb, "Mandela's Visit Prompts Rerun Of Old Ethnic Battles," *Miami Herald*, July 1, 1990, pp. 1B, 4B. The City Commissioner, after publicly claiming that he would not forgo the city commission meeting to attend Mandela's speech, subsequently did go to the convention to greet Mandela. Mr. Mandela was late, however, and the commissioner had to leave before Mandela arrived. Kimberly Crockett, Elinor Burkett, and Karen Branch, "Grassroots Welcome Counters Official Snub," *Miami Herald*, June 29, 1990, pp. 1A, 12A.

⁵⁷ Carl Goldfarb, "Mandela Backers, Critics Brace For Momentous Visit," *Miami Herald*, June 28, 1990, pp. 1B, 4B. The intensity of community sentiment at the time, and the importance to black Floridians of Mandela as a symbol, was expressed by Patricia Due, one of the founders, three decades earlier, of the Tallahassee chapter of the Congress of Racial

⁴⁷ *Ibid.*, p. 74.

⁴⁸ Portes and Stepick, *City On the Edge*, p. 178.

⁴⁹ Stack and Warren, "Ethnic Politics," pp. 14-15.

⁵⁰ Portes and Stepick, *City On the Edge*, pp. 176-77.

⁵¹ William Booth, "Miami Agreement Ends A Costly Black Boycott," *Washington Post*, May 13, 1993, p. A3. (hereafter cited as Booth, "Miami Agreement").

Smith considered this incident to be but the latest in a series of affronts to the black community in Miami, including alleged incidents of Hispanic and white police brutality against blacks and shrinking economic opportunities for blacks as the Cuban influx continued.⁵⁸

Mr. Smith and local NAACP leader Johnnie McMillian initiated the "Boycott Miami: Coalition for Progress campaign," and on July 17, 1990, the National Bar Association, an organization of 16,000 black lawyers, became the first group to cancel a convention in Miami. Over the next 4 months, at least 13 national organizations, including the American Civil Liberties Union and the National Organization of Women canceled planned conventions in Miami. Not all agreed with the Boycott Miami strategy, however, including some prominent members of Miami's African American community. For example, T. Willard Fair, president of the Urban League of Greater Miami, criticized the move as counterproductive, and none of Miami's elected black officials endorsed the convention boycott. The boycott continued, however, for 1,030 days and is estimated to have cost Miami up to \$50 million.⁵⁹

By the end of 1991, the Miami business community, which, despite the increasing importance of international business in Miami, was still dominated by the tourism industry, agreed to discuss with the Coalition for Progress what was agreed to be the overriding problem of unequal access for black Americans to economic op-

portunity, particularly in the tourism industry.⁶⁰ The new mayor of Miami Beach unilaterally issued a proclamation and formal honor to Nelson Mandela early in 1992. In December 1992, the Dade County Commission, by a 5-3 majority with 1 abstention, voted to issue a proclamation to honor Mr. Mandela.⁶¹

The boycott did not end, however, until 17 months of negotiation produced an agreement establishing a joint Miami Partners for Progress team to oversee a 20-point plan of action. The plan targets business development and job creation in the tourism sector coupled with education and training for management positions. The Miami tourism industry agreed to provide scholarships in tourism, host job fairs, hire more African American managers, funnel some \$1.6 million to minority businesses, and help support a black-owned hotel in Miami Beach.⁶²

Boosters in both the black and white communities consider the agreement as a symbol of Miami's improved race relations. James Batten, CEO of Knight-Ridder, Inc., said that "Miami, usually a symbol of discord, is enormously receptive to taking on the task of bridging the gap between communities."⁶³ Six years after the costly

Equality (CORE). Ms. Due reacted this way: "I feel sick. How dare they do this to us? Mr. Mandela is a symbol. He is a link to our motherland. After all the blood, sweat, and tears of Black Americans, and people are still trying to tell us who we can hear." Margarita Fichtner, "Still Far to Go, Sisters Who Led Sit-ins Still Seek Dignity, Isn't That Ridiculous?" *Miami Herald*, Jul. 3, 1990, pp. 1C, 2C.

⁵⁸ Davis, "Miami's H.T. Smith." Mr. Smith was the president of the National Bar Association for 1985. Thomas Battles, senior conciliation specialist in the Miami office of the U.S. Department of Justice Community Relations Service, indicated that beyond disagreement regarding honoring Nelson Mandela, "economic issues . . . [concerning] the Miami African American community . . . really generated the beginning of the long boycott." Thomas Battles, Senior Conciliation Specialist, U.S. Department of Justice, Community Relations Service, Miami Field Office, testimony, *Miami Hearing*, vol. 1, pp. 89-90 (hereafter cited as Battles Testimony).

⁵⁹ Margarita Drogowski, "Tourism is Big Money-Maker for Dade But Black Managers Are Few," *Miami Times*, Jun. 8, 1994, p. 1C (hereafter cited as Drogowski, "Tourism"); Ann Davis, "Miami's H.T. Smith," pp. A1-A6; Portes and Stepick, *City on the Edge*, pp. 177, 184; Booth, "Miami Agreement."

⁶⁰ Jeffrey Weiss, "Blueprint for Common Ground; Building Successful Partnerships Takes Consensus, Collaboration and Inclusiveness," *Dallas Morning News*, Mar. 5, 1995, p. 1J.

⁶¹ "Mandela Honor Long Overdue," *Miami Times*, Dec. 24, 1992, p. 4A. The Community Relations Committee of the Greater Miami Jewish Federation and the Southeast Region of the American Jewish Congress issued a joint statement saying "we applaud the efforts of the County Commission and previous action by the City of Miami Beach to bring an end to the divisiveness in our multi-cultural community." The committee called on the Miami City Commission "to join its two fellow governmental bodies in their quest for seeking common ground and improved relations." "Jewish Groups Welcome Resolution Honoring Mandela," *Miami Times*, Dec. 24, 1992, p. 1A. The Miami City Commission never issued a similar proclamation.

⁶² Carol U. Osemhoya, "Progress Slow in Meeting Goals Set for Ending of Boycott Miami Campaign," *Miami Times*, May 12, 1994, p. 1A; Booth, "Miami Agreement." Cliff Hocker, "Boycott Produces Results: Black-Owned Miami Beach Hotel Scheduled To Open In 1996," *Black Enterprise*, Dec. 31, 1994, p. 20; Drogowski, "Tourism."

⁶³ Booth, "Miami Agreement." Former NAACP Executive Director Benjamin Chavis, Jr., cited the boycott and the agreement, in stating that the "struggle for racial justice is still on and Miami will be the prototype of race relations for the world This city has always been in the news because of its diversity, but its also a place of despair. I believe that the extent to which we come together will determine how much we can build bridges in this community. Out of conflict, we can improve the way of life. There's no problem or obstacle that we can't overcome if people work together." Mr. Chavis was the

boycott, H.T. Smith said that progress has been made toward meeting nearly all of the agreement's objectives. Plans for the black-owned hotel are coming to fruition, and Miami Beach will contribute \$10 million in land for the project, as well as loan guarantees. The city hopes to recoup its investment from the hotel's profits. "This is a real turning point for Miami," according to Mr. Smith. The city of Miami Beach has become partners with blacks. This is a symbol of economic hope. We've moved from charity to economic partnership."⁶⁴

Others indicate that the wounds inflicted by the boycott have not healed. "The boycott was an enormously painful thing for me," says Merrett Stierheim, president and CEO of the Greater Miami Convention and Visitor's Bureau.⁶⁵ The Metro Dade County Commission recently asked the county's Community Relations Board to address relations between Cuban Americans and African Americans after six Cuban American metro commissioners walked out of chambers while former Atlanta Mayor Andrew Young was being honored for his efforts to bring Olympic soccer to Florida. The commissioners were protesting Mr. Young's sympathetic remarks in 1977 about Fidel Castro's involvement in Angola. The county's Community Relations Board has proposed creating a countywide Ethnic Relations Task Force to study further the causes of racial and ethnic tensions and held a national conference on ethnic understanding discussed earlier in this chapter.⁶⁶

The Haitian Beatings

In July 1990, just a week after Mr. Mandela's Miami visit, a Haitian customer became involved in a fistfight with a clerk in a Cuban-owned clothing store in the heart of Little Haiti.⁶⁷ Subsequently, 1,000 protesters blocked access to the

store during a 9-hour confrontation. Helmeted police called to the scene knocked protesters to the ground and continued to strike many while they were down. Sixty-three, who had no proof of their immigration status, were arrested.⁶⁸ The proximity of the "Mandela incident" to the Haitian beatings "helped cement an alliance based on color"⁶⁹ between African Americans and Haitians.

Police-Community Relations

It is no accident that native African American Miamians identified so strongly with their Haitian brethren in the incident discussed above. Police relations with the African American community in Miami over the years have been a major source of racial and ethnic tension. Miami is the only city in the United States to have had three major urban riots, each related to the shooting or beating death of an African American by white or Hispanic police officers.

In December 1979, a black motorcyclist, Arthur McDuffie, was beaten to death by 6 to 10 police officers following a brief chase. Four white officers were indicted for manslaughter and evidence tampering, and a fifth for second degree murder. The acquittal of all the officers in 1980 set off 3 days of rioting in Liberty City that left 18 dead, 400 injured, and about \$100 million in property damage.⁷⁰

⁶⁴ Charles Strouse and David Hancock, "1,006 Haitians Trap Store-Owner," *Miami Herald*, July 1, 1990, pp. 1B, 2B; Kimberly Crockett, David Hancock, and Carlos Harrison, "Police Crush Haitian Protest," *Miami Herald*, July 6, 1990, pp. 1A, 2A.

⁶⁵ Portes and Stepick, *City On the Edge*, p. 189. The authors note that the cultural differences between Haitians and American-born blacks are strong and did not remain completely submerged. They contend that although supportive of common causes, each group remains profoundly ambivalent about the other. Many African Americans regard Haitians in Miami as a competitive threat in the labor market and the business world. Many Haitians, on the other hand, do not wish to be fully identified with what they perceive as the poorest and most downtrodden group in the host society. African Americans also view Haitians as newcomers who must learn about American society and adapt to its culture, while Haitians sometimes resist heavy-handed acculturation efforts and seek to hold on to much of their heritage. *Ibid.*, p. 190. Similar friction also exists between native-born African Americans and other Caribbean blacks from Jamaica, the Bahamas, Barbados, Guyana, and Trinidad and Tobago, and is also based in part on workplace competition. Sam Fulwood III, "U.S. Blacks: A Divided Experience; Animosity Clouds Relations Between Caribbean Immigrants, Native-Born African Americans," *Los Angeles Times*, Nov. 25, 1995, p. 1A.

⁷⁰ Florida Advisory Committee to the U.S. Commission on

guest speaker at a ceremony awarding the Miami Herald's Spirit of Excellence Award to H.T. Smith. See Erick Johnson, "NAACP Chief Says Miami Can Be Model of Racial Harmony in America," *Miami Times*, Sep. 30, 1993, p. 1A.

⁶⁴ Mike Williams, "A Turning Point for Miami: Black-Owned Hotel Plan Signals Healing, Growth," *Atlanta Journal and Constitution*, June 6, 1996, p. 1C.

⁶⁵ Davis, "Miami's H.T. Smith," p. A7.

⁶⁶ Fabiola Santiago, "Board Plans National Forum On Ethnic Understanding," *Miami Herald*, Sep. 3, 1996, p. 1B; Martin Wiscol, "A Lesson On Community Relations," *Fort Lauderdale Sun-Sentinel*, Mar. 16, 1997, p. 8B.

⁶⁷ This incident is recounted in greater detail in chap. 4 of this report.

In December 1982, Cuban-born police officer Luis Alvarez shot Neville Johnson, Jr., to death in a confrontation in a video game parlor. Rioting erupted in the black Overtown neighborhood. Following Officer Alvarez's acquittal on manslaughter charges in 1984, Miami again exploded in riots.⁷¹

In January 1989, Cuban American police officer William Lozano fatally shot black motorcyclist Clement Lloyd. Mr. Lloyd's passenger, Allan Blanchard (also black), was killed in the ensuing crash. Three days of rioting followed during the week prior to the Super Bowl. Two people died, and more than \$1 million in property damage was incurred.⁷² Mr. Lozano was suspended without pay by the Miami Police Department, and he was convicted of manslaughter in November 1989. He was later fired. In 1991, however, an appeals court ordered a new trial on the ground that a change of location should have been considered because of the threat of violence if Mr. Lozano was acquitted. In 1993, Mr. Lozano was acquitted in a retrial in Orlando, and the Justice Department declined to prosecute him for violating the civil rights of Messrs. Lloyd and Blanchard, citing insufficient evidence.⁷³ In January 1995 an arbitrator ordered the City of Miami to reinstate Mr. Lozano and to pay him backpay and attorney fees totaling \$975,000. The arbitrator concluded that the city improperly added new administrative charges after Officer Lozano was acquitted on criminal charges. His firing was thus "double jeopardy" because the city took steps to terminate Mr. Lozano twice, based on the same set of facts. The city

resisted reinstating Mr. Lozano and initially refused to pay the award.⁷⁴

The Fraternal Order of Police filed suit to enforce the arbitrator's award and a circuit court judge affirmed the award in January 1995. Mr. Lozano's attorney had filed a \$1.7 million lawsuit after the city rejected his request for payment of \$700,000 for defending Lozano on the criminal charge. On January 29, 1995, the Miami City Commission voted 4-1 to pay \$250,000 in backpay and \$650,000 in legal fees, to avoid civil contempt. In exchange, Mr. Lozano agreed not to seek reinstatement to his former job as a patrolman with the Miami police. Commissioner Victor De Yurre voted against the measure saying, that he did not like the way Overtown was put down in the trial. "It was demeaning to the people in that community."⁷⁵

The settlement provoked harsh criticism from the African American press, with the *Miami Times* describing the whole affair as "a sad comment not only on the state of race relations in Miami, but also on the way justice is dispensed. Once more the black community has gotten the short end of the stick."⁷⁶ The Lozano case is still cited as an example of the differential jus-

Civil Rights, *Police-Community Relations in Miami* (1989), p. 14 (hereafter cited as FAC, *Police in Miami*); "Significant Events In Miami Race Relations In the Past 15 years," Associated Press, Jan. 24, 1986, available in NEXIS, News Library, AP file (hereafter cited as "Events In Miami Race Relations"). The U.S. Commission on Civil Rights produced a major report on the Liberty City civil disturbance and its underlying causes, entitled *Confronting Racial Isolation in Miami*. An earlier report of the Florida State Advisory Committee to the U.S. Commission on Civil Rights entitled, *Policed By the White Male Minority: A Study of Police-Community Relations in Miami and Dade County, Florida*, was published in 1976.

⁷¹ FAC, *Police in Miami*, p. 14; "Events in Miami Race Relations."

⁷² "Events in Miami Race Relations."

⁷³ Ibid.; "Federal Prosecutors Decide Against Lozano Charges," United Press International, Sep. 23, 1993, available in NEXIS, News Library, UPI File."

⁷⁴ "Lozano Case Decided," *Fort Lauderdale Sun Sentinel*, Jan. 20, 1995, p. 3B.

⁷⁵ Erick Johnson, "County, City Commission OK Big Payout to William Lozano," *Miami Times*, Feb. 2, 1995, p. 1A; Editorial, "Bad Judgement Follows Lozano Case," *Fort Lauderdale Sun-Sentinel*, Feb. 2, 1995, p. 1A (hereafter cited as Editorial, "Bad Judgement"); Pat Jordan, "Courting the Jury; Attorney Roy Black's Best Defense Is His Close Relationship with Jurors," *Fort Lauderdale Sun-Sentinel*, July 23, 1995, Sunshine Magazine, p. 8. Very poor police-community relations in Overtown were a feature in Lozano's defense against double manslaughter charges. Editorial, "Republic Branch Welcome," *Miami Times*, Dec. 14, 1995, p. 4A.

⁷⁶ Editorial, "Over But Not Forgotten," *Miami Times*, Feb. 2, 1995, p. 4A. An African American columnist, in criticizing the mainstream media's focus on the disturbances following the Lozano, McDuffie, and Neville Johnson incidents, referred to the "astonishingly unfair ruling by a federal arbitrator that William Lozano, who, as a policeman, killed two unarmed young Black men, must be reinstated into the Miami Police Force, with full back pay and that his lawyers, who defamed Overtown, and Blacks, in general, be paid three-quarter-million dollars." Mohamed Hamaludin, "The Media's Message," *Miami Times*, Feb. 2, 1995, p. 1A. Not only the African American press was disconcerted by the Lozano case. The *Fort Lauderdale Sun-Sentinel* wrote that "[i]n a sane, just world, Lozano would have paid a high price for what his own department called inexcusably poor judgment and unjustified use of force, causing needless deaths In an outrageous miscarriage of justice, both a federal judge and arbitrator ordered city officials to reinstate him and give him back pay and attorney fees totaling \$975,000." Editorial, "Bad Judgement."

tice received by young black men.⁷⁷ A March 1995 article in the *Miami Herald* reported that Mr. Lozano wanted to resume his police career in nearby Hialeah Gardens and that Police Chief Tony Sanchez seemed willing to consider his application.⁷⁸ He subsequently was hired.⁷⁹

Thomas Battles, a conciliation specialist with the Department of Justice, Community Relations Service in Miami, reports that Miami and Dade County continue to have difficulties in police-community relations.⁸⁰ On February 28, 1995, a melee broke out at Coral Gables High School between black students, who had just participated in a Black History Month activity, and Coral Gables police. The altercation resulted in minor injuries to, and the arrest of, six black students.⁸¹

⁷⁷ In a July 13, 1995, editorial, the *Miami Times* commented on the conviction of two young black men of murdering a German tourist in Miami in a nationally publicized case:

"It emerged in court . . . that they had not only robbed Mrs. Miller-Jensen but had deliberately set out to prey on someone that April 2. What they had not intended to do was kill her. The evidence was that they bumped her car from behind and grabbed her purse. She held on, was dragged a short distance and then fell below the robbers' car and was run over.

" . . . That the two young men had set out to rob somebody cannot be excused. That they actually robbed someone—a helpless visitor, in fact—requires that they be punished. That their victim died in the criminal act requires that they be severely punished. But there is lingering suspicion that these two men were railroaded during the trial, as they and their relatives insisted, and that they were sacrificed for the sake of the all-important tourism industry.

" . . . The community again expresses its regrets at the death of Mrs. Miller-Jensen and still feels the shame it brought on us. However, it is difficult not to draw a comparison between this case and that of then Miami Police Officer William Lozano, who killed two young Black men and not only avoided any punishment but also received hundreds of thousands of tax dollars to pay his attorney."

Editorial, "Crime and Punishment," *Miami Times*, Jul. 13, 1995, p. 4A (emphasis added).

⁷⁸ Geraldo Reyes, "Lozano Considering New Police Job," *Miami Herald*, Mar. 26, 1995, p. 2B.

⁷⁹ Editorial, "Experience No Advantage To Retired Police Officer Seeking A Job," *Fort Lauderdale Sun-Sentinel*, Apr. 30, 1995, p. 4G.

⁸⁰ Florida Advisory Committee to the U.S. Commission on Civil Rights, *Racial and Ethnic Tensions in Florida* (1995), pp. 4-5. Mr. Battles indicated that he spends 60 to 70 percent of his time in Miami addressing police-community relations/excessive force concerns. Thomas Battles, Senior Conciliation Specialist, U.S. Department of Justice, Community Relations Service, Miami Field Office, telephone interview, Aug. 15, 1995 (hereafter cited as Battles Interview).

⁸¹ Black Advisory Affairs Board, Metro-Dade Office of Black Affairs, Community Affairs Department, FY 1994-95 *Semi-Annual Report to the Board Of County Commissioners and the*

On July 18, 1995, a white police officer fatally shot a black teenager in the Coconut Grove section of Miami. Black community leaders are "incensed over the shooting," have called for a Federal investigation, and plan to take their case to the Miami City Commission. "We are angry, frustrated and discontented and the black community is being snowballed by the City of Miami Police," said J.A. Alex, chairman of the Black Leadership Conference executive board and director of the Black JUSTUS Center. "Of the last 20 Black youths killed by Miami police, 18 were by White and Latin officers," Mr. Alex said. "Black youths are ten times more likely to be killed than their white counterparts. The killing must stop."⁸²

Some of the decades-long increase in violent crime is implicitly attributed to the 1980 Mariel boatlift, when "Castro opened his jails, mental hospitals and borders, and Miami was flooded with 125,000 new Cubans, some of whom were criminals."⁸³ About one-third of the Marielitos were black.⁸⁴ A "significant minority were hardened criminals who were released from Cuban prisons," in Castro's words, "to flush the toilets . . . Their arrival—which coincided with violent feuding among drug dealers—helped produce South Florida's crime wave of the early 1980s."⁸⁵

Police shootings of young black men, as well as the black-on-black violence in Miami's African American neighborhoods wrought by crime, continue to be a top priority of African American community leaders. In March 1996, a group of community leaders met with 40 prominent pub-

County Manager, p. 9.

⁸² Fatima L. Hall, "Protesters Plan to Take Complaint Over Teen's Shooting to Commission," *Miami Times*, Aug. 10, 1995, pp. 1A, 2A.

⁸³ Mike Williams, "Focus On Miami's Centennial," *Atlanta Constitution*, July 28, 1996, p. 10.

⁸⁴ Myriam Marquez, "Democracy Is Diversity: Marielitos Deserve Respect Too," *Orlando Sentinel Tribune*, Apr. 26, 1996, p. A19 (hereafter cited as Marquez, "Marielitos Deserve Respect Too").

⁸⁵ William Gibeon, Ana Arana, and Kathy Hensley Trumbull, "Cuba To Take Back Criminals," *Fort Lauderdale Sun-Sentinel*, Sept. 29, 1993, p. 24. Myriam Marquez, a member of the *Orlando Sentinel Tribune* editorial board who arrived from Cuba in 1959, maintains that although "thieves and murderers are the people you may remember when talk turns to Mariel . . . they made up less than 5 percent of that immigration . . . But the small numbers haven't removed the stigma from . . . the tens of thousands of . . . Mariel Cubans who have worked hard to find their niche in American society." Marquez, "Marielitos Deserve Respect Too."

lic and private sector officials at a forum titled "Stop the Killing" to voice their concern and press for action.⁸⁶ At a planning session, Georgia Ayers, organizer of the forum, quoted from a Dade County medical examiner's report noting that "[s]ince 1992, over 600 Blacks under 21 years old have been murdered in Dade County."⁸⁷ Most recently, the 1997 NAACP Southeastern Conference held in south Florida to develop, recruit, and train volunteers, had at the top of its agenda "stopping violence committed by blacks—and by police."⁸⁸ Black law enforcement officials told NAACP members that black communities must become involved in crime prevention and also keep an eye on the police.

While some community activists do not see sufficient progress in this area, Thomas Battles testified that he was "very encouraged by the state of police-community relations," saying that "with the hiring and assigning [of] police officers in the various communities [who] . . . understand that population and that ethnic group . . . you don't see the frequency of shootings . . . I think that the hiring must continue . . . of minorities. You have 2 million people in this community, and Hispanics represent the minority majority. But you have other communities that are crying for police officers to be assigned to their community."⁸⁹

Researchers Portes and Stepick note that the issue of police use of excessive force against blacks illustrates well the intersection of class with color in black Miami. There is a growing process of differentiation by class in the black population of Miami:

⁸⁶ Gregory Chin, "Forum Adopts Four-Point Plan To End Killing Of Young Men," *Miami Times*, Mar. 28, 1996, p. 1A.

⁸⁷ Gregory Chin, "Morgue Is Picked As Venue For Forum On Killing Of Young Men," *Miami Times*, Mar. 21, 1996, p. 2A. The report noted that a total of 1,229 blacks had been killed from 1992 to 1996. *Ibid.*

⁸⁸ David Cazares, "Communities Seek To Handcuff Police Violence: NAACP Members Look For Long-Term Solutions," *Fort Lauderdale Sun-Sentinel*, Apr. 4, 1997, p. 1E.

⁸⁹ Battles Testimony, *Miami Hearing*, vol. 1, pp. 100–01. Mr. Battles also cited community policing and increased training in excessive force policy and sensitivity to racial and ethnic diversity as contributing to improved police-community relations. *Ibid.*, pp. 99, 120. As America becomes more ethnically diverse, law enforcement experts increasingly emphasize the critical need for police training in cultural sensitivity and in foreign languages and cultures. Anita J. Colvard, "Foreign Languages: A Contemporary Training Requirement," *FBI Law Enforcement Bulletin* (September 1992), p. 20.

While middle class blacks were indignant about the symbolic slights meted out to them by the Latins, the inner city ghetto exploded regularly . . . [following] the killing of a Black by police, and each [disturbance] was spontaneous and leaderless, a desperate expression of anger . . . Black professionals did not lead these riots, nor did they participate in them, but the local establishment treated them as if they had, addressing them as valid interlocutors in their efforts to prevent the next outburst. Hence, a peculiar dynamic developed in which regular explosions in the ghetto fueled programs that mainly benefitted educated Blacks, thereby accentuating the rift between the two segments of the native minority.⁹⁰

Monitoring and Mediating Racial and Ethnic Tension: The Community Relations Service

The Miami Field Office of the Community Relations Service (CRS) has played an important role in the prevention and resolution of racial and ethnic tension in Miami. Following the July 18 shooting noted above, for example, a CRS mediator was in Coconut Grove "working to calm tensions and to assist in contingency planning for events of mourning, community demonstrations, and calls for investigations of other recent police shootings."⁹¹ Since 1983, the CRS has also provided resettlement assistance to Cuban and Haitian entrants, as well as to unaccompanied alien minors. This function is discussed in chapter four.

The CRS, a component of the Department of Justice (DOJ), was established under Title X of the Civil Rights Act of 1964.⁹² Under Title X, the CRS is responsible for providing "assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating

⁹⁰ Portes and Stepick, *City On the Edge*, pp. 178–79. The authors continue, quoting one African American Liberty City leader following the 1980 disturbance in that community: "The white power structure once again took the easy way out . . . Once again they listened to the wrong people. They invited the middle class Black people downtown who did not participate in the riot and asked them, 'Why did you all riot?' They didn't know, so what they did was articulate their own frustrations, which were 'We're not in business, so if you put us in business we will not riot.' And so the white community went out and raised seven million dollars to put us in business . . . but the riots didn't occur because Blacks are not in business and the folks who rioted couldn't go into business tomorrow if they wanted." *Ibid.*, p. 179.

⁹¹ Attorney General Janet Reno, letter to Sen. Connie Mack (FL), Jul. 28, 1996, p. 4; Battles Testimony, *Miami Hearing*, vol. 1, p. 65.

⁹² Pub. L. No. 88–352, Title X, § 1001(a), 78 Stat. 267 (codified as amended at 42 U.S.C. § 2000g (1994)).

to discriminatory practices based on race, color, or national origin which impair the rights of persons under the Constitution of the United States.”⁹³ In any of these situations it is authorized to offer its services “whenever, in its judgment, peaceful relations among the citizens are threatened thereby, and it may offer its services either upon its own initiative or upon the request of an appropriate State or local official or other interested person.”⁹⁴

CRS’s Title X responsibilities are addressed through its conflict prevention and resolution program, which provides conciliation, mediation, and technical assistance directly to people and their communities to help them address conflicts in a wide variety of areas, including immigration, employment, housing, education, hate crimes, gang and drug violence, and law enforcement.⁹⁵ The CRS mission statement provides an indication of the agency’s approach in this area: “CRS does not take sides among disputing parties and, in promoting the principles and ideals of non-discrimination, applies skills that allow parties to come to their own agreement. In performing this mission, CRS deploys highly skilled professional conciliators, who are able to assist people of diverse racial and cultural backgrounds.”⁹⁶ In the Miami office, there are currently two full-time conciliation specialists, with four additional staff, including the director, cross-trained as conciliators.⁹⁷

CRS assists mayors, city council members, police chiefs, community representatives, business leaders, and school officials in developing and implementing approaches for reducing or minimizing community racial tensions that accompany racial or ethnic conflict.⁹⁸ In its conflict prevention and outreach efforts, CRS seeks to reduce the prospects for community discord and violence through dialogues and problemsolving workshops involving the groups between which

there are tensions. The CRS also provides structured training interventions. In Miami, this has involved arranging dialogues between the Cuban and Haitian communities and between local law enforcement and each of these communities separately.⁹⁹ CRS has also “served as a liaison between the Cuban and Haitian communities and DOJ to assist in the resolution of tension-causing problems, communicate information to and from the community, and diffuse rumors.”¹⁰⁰ In addition, CRS operates a “hotline” service to answer the questions and concerns of Miami’s large immigrant community. This service helps CRS gauge the level of concern regarding a particular issue in the community and assists the agency in early identification of a developing issue involving racial and ethnic tension. It also affords the agency one means of rumor control.¹⁰¹

CRS provided mediation and conciliation services to the African American and Hispanic communities regarding the Mandela incident, which the senior conciliation specialist in Miami, Thomas Battles, characterized as “one of the cornerstones of tension for a while in this community.” CRS “worked quite a while with all the community trying to bring groups together to discuss . . . [and] educate everybody about the issues”—why each “community felt the way they felt.” Mr. Battles noted that “at the same time, it was bigger than just that at that point. There were some other economic issues that played into the Miami African American community . . . that really generated the beginning of the long boycott. But we worked behind the scenes . . . with the communities to bring them together for meaningful discussion on that issue.”¹⁰² CRS also served on a multicultural advisory committee in Dade County that established “Project Proud—Peacefully Resolving Unsettled Differences,” a program aimed at creating a self-sufficient community entity to help resolve racial and ethnic tensions in Miami.¹⁰³

⁹³ 42 U.S.C. § 2000g-1 (1994).

⁹⁴ *Id.*

⁹⁵ U.S. Department of Justice, Community Relations Service, *Management Overview* (1995), p. 1 (hereafter cited as *CRS Overview*).

⁹⁶ U.S. Department of Justice, Community Relations Service, *Community Relations Service Annual Report For Fiscal Year 1993* (1994), p. 19 (hereafter cited as *CRS Annual Report FY 1993*); Battles Testimony, *Miami Hearing*, vol. 1, p. 64.

⁹⁷ Jay Laroche, Director, Miami Field Office, CRS, telephone interview, Aug. 14, 1995 (hereafter cited as Laroche Interview).

⁹⁸ Battles Testimony, *Miami Hearing*, vol. 1, pp. 64-65.

⁹⁹ Battles Interview.

¹⁰⁰ *CRS Overview*, p. 6. For example, CRS has held meetings with the various ethnic groups in south Florida to educate them regarding the population arriving from the Guantanamo detention center. Battles Testimony, *Miami Hearing*, vol. 1, pp. 67-68.

¹⁰¹ Laroche Interview.

¹⁰² Battles Testimony, *Miami Hearing*, vol. 1, pp. 89-90.

¹⁰³ *CRS Annual Report FY 1993*, p. 32.

The agency provides contingency planning assistance both to groups planning to demonstrate or march and to local law enforcement.¹⁰⁴ CRS responded to heightened "Black and Hispanic community tension generated by the Cuban and Haitian migrant influx CRS was on-site for demonstrations at the INS District Office in Miami's Little Haiti, and at marches and demonstrations at various public sites to provide conflict prevention and conciliation services."¹⁰⁵ In its FY 1993 report, CRS states that it "reduced racial tension between INS and the African American Council of Christian Clergy and the Haitian community when a demonstration march to the INS District Office was held in Miami."¹⁰⁶ In FY 1993, 29.2 percent of the disputes CRS responded to involved interracial confrontation.¹⁰⁷

Prior to the protests of the Miami Cuban community in May 1994 following the Clinton administration's change in policy on Cuban rafters, there were extensive meetings, arranged by CRS, between leaders of the Cuban community in Miami and local law enforcement in which issues of tension assessment, crowd control, notice of likely law enforcement reaction to disorder, mass arrests, rumor control, and mobilization of community resources to prevent violence were addressed.¹⁰⁸ Essentially, CRS applied its "crisis response model" developed in the late 1960s and previously applied in the Miami riots of 1980 and 1982.¹⁰⁹ The change in policy on Cuban rafters helped relieve racial and ethnic tensions related to Cuban and Haitian entry into the United States.¹¹⁰

In addition to mediating protests over changes in U.S. refugee policy, CRS also provided conflict prevention and conciliation services at the INS Krome Processing Center (also referred to as the Krome Detention Center by

some observers) and at the Guantanamo Naval Base in Cuba. At one point, over 50,000 people allegedly apprehended trying to enter the United States illegally were detained at Guantanamo.¹¹¹ Due to the more favorable treatment accorded Cubans under the Cuban Adjustment Act of 1966, it was not unusual, during the height of the Cuban and Haitian migrant influx, for a Cuban national to be detained for only 2 to 3 days at the Krome Center, while a Haitian national would be held 6 to 8 months.¹¹² In 1993, "as a result of meetings between the INS and representatives of the NAACP facilitated by CRS, Haitians detained at the INS Krome Processing Center ended a hunger strike when INS discussed and resolved issues between them and agreed to sensitivity training for Border Patrol agents."¹¹³ Allegations of abuse by the military at various detention centers and CRS services at these centers are discussed in more detail in chapter four.

Section IV: Topical Summary

The Impact of Language Policies on Race Relations in Florida

Chapter two of this report presents information on the impact of language policies on racial and ethnic relations in Florida. The Language Policies in Government and Public Services section of the chapter examines the development of the Official English movement in Florida and Dade County in the context of the national movement. The impact that current and proposed language policies have on racial and ethnic relations in Miami and the extent to which government-endorsed policies promote inequality and/or discrimination is examined.

Examination of job opportunities and conditions of employment and the effect of language policies of private employers on racial and ethnic relations is also explored in this chapter. Section II examines the state of Title VII law regarding employment discrimination on the basis of na-

¹⁰⁴ *Ibid.*, p. 6; Battles Testimony, *Miami Hearing*, vol. 1, p. 89.

¹⁰⁵ *CRS Overview*, pp. 5-6.

¹⁰⁶ *CRS Report FY 1993*, p. 32.

¹⁰⁷ *Ibid.*, p. 27. The remainder of the disputes responded to were categorized as follows: Housing/Land Use/ Construction/Urban Planning—9.5 percent; Employment/Recruiting—9.3 percent; Demonstrations—7.1 percent; Community Disorder—3.8 percent; Voting rights/Representation—2.4 percent; Health/Environment/Natural Resources—2.4 percent; Revenue Sharing/Funding—1.6 percent; Transportation—0.5 percent; and General/Other—34.2 percent. *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*, p. 9.

¹¹⁰ Battles Interview.

¹¹¹ Laroche Interview. The *CRS Management Overview* refers to this as the provision of "temporary safe havens," and notes that "thousands of [Cuban and Haitian] migrants were provided shelter in temporary safe havens at the Guantanamo Naval Base in Cuba, on board Naval and Coast Guard vessels, in Kingston Jamaica, on Grand Turk Island, at the INS Krome Processing Center in Miami, and in Port Isabel, Texas." *CRS Overview*, p. 5.

¹¹² Battles Interview.

¹¹³ *CRS Report FY 1993*, p. 32.

tional origin in the Federal courts and before the Equal Employment Opportunity Commission and the Dade County Equal Opportunity Board, and the impact of language requirements on racial and ethnic tension in Miami. Finally, this chapter also addresses the Dade County public school system's role in providing adult language instruction to its residents and addresses the budgetary limitations of those programs.

Economic Impact of Immigrant Use of Public Services

Chapter three examines immigrant use of public benefits programs. Federal legislative proposals and Florida's State initiatives containing restrictions on immigrant access to public benefits are reviewed. Although the State initiatives would only deny benefits to undocumented immigrants, legal immigrants are concerned that the measures will heighten anti-immigrant sentiment. The extent to which this concern has been borne out is explored in this chapter.

Distinctions in Refugee and Asylum Policies

Chapter four examines the assertion that the United States has a history of according differential treatment to similarly situated groups of refugees and asylees.¹¹⁴ Miami has a high concentration of refugees. Chapter four discusses the extent to which perceptions of distinctions in refugee and asylum law among groups generate racial and ethnic tensions in Miami.

Another source of tension with respect to refugees arises because of their access to public benefits. Chapter four examines the concern of refugee resettlement advocates that anti-immigrant sentiment in many parts of the country could soon be directed towards refugees resettled in the United States.

¹¹⁴ See, e.g., Gil Loescher & John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door 1945-Present* (1989); Norman L. Zucker & Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (1987).

Chapter 2

The Impact of Language Policies on Race Relations in Florida

Section I: Language Policies in Government and Public Services

Overview

The Congress finds and declares that throughout the history of the United States, the common thread binding those of differing backgrounds has been a common language.

—House Resolution 123, Sec. 101(3), introduced by Rep. Bill Emerson (R-MO) and passed in the House of Representatives on August 1, 1996.

America's common thread of language is facing a test of its resilience. The large-scale arrival of immigrants who speak languages other than English has spurred the language debate to the nation's capital. The cultural weave spun by this common thread appears to unravel within the national debate over language policy and the accommodation of non-English speakers. The question of language stirs up practical concerns over jobs, political participation, and costs to the government. In addition, the issue raises concerns of social exclusion and a sense of rejection on the basis of national origin. These concerns have led to a polarization within and among different racial and ethnic groups. To understand the debate surrounding the "Official English" movement and its relevance to Florida, it is helpful first to understand its history.

Origins of the National Official English Movement

During the formative years of this nation's development, the Framers considered the question of language and chose not to establish an

official national language in the Constitution, in part because they feared that such a provision would infringe on the religious freedom of those who worshipped in languages other than English.¹ The Framers also recognized the cultural diversity of the nascent country's immigrant colonies and deliberately upheld diversity and unity as equally important aims.² This legacy of tolerance for diverse languages was evidenced in some original States' multilingual government and education policies.³ It was not until the early 20th century that social, political, and economic forces challenged linguistic diversity and sought to impose standard English requirements.⁴ This move was spurred by the sharp increase in immigration levels between 1880 and World War I and the shifting source of immigrants from

¹ Rachel F. Moran, *Bilingual Education as a Status Conflict*, Calif. L. Rev., vol. 75 (1987), pp. 321, 326 (citing Shirley B. Heath, "English in Our Language Heritage," *Language in the U.S.A.* (C. Ferguson & S. Heath, eds. 1981), pp. 6-7, 12).

² Juan Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, Minn. L. Rev., vol. 77.

³ Various States had bilingual policies until the late 19th and into the 20th century. In Pennsylvania, for example, statutes were published in both English and German, and both local government business and lower courts were conducted in German. Similarly, Louisiana published its statutes in French and English, and both languages were used in the legislature and the courts. New Mexico's constitution required official bilingualism until 1964. Language diversity was also evident in the public schools. In 1836, Pennsylvania permitted the establishment of German-language schools. In 1840, Ohio expressly sanctioned the German-English school system in Cincinnati. Laura A. Cordero, *Constitutional Limitations on Official English Declarations*, 20 New Mexico L. Rev., vol. 20 (Winter 1990), pp. 17, 19; see also Perea, *Demography and Distrust*, pp. 319-23.

⁴ Cordero, *Constitutional Limitations*, pp. 17, 19, 20.

northwestern to southwestern Europe.⁵ Both developments caused the nation to react. In 1911, the Federal Immigration Commission issued a report expressing concern over the slower assimilation rates of these recent immigrants, maintaining that the newest wave of immigrants was less intelligent and less willing to learn English than its predecessor.⁶ According to Laura A. Cordero, in her article, *Constitutional Limitations on Official English Declarations*:

This antagonism reached a peak in 1920 with a movement to transform these immigrants into "Americans." The movement sought to assimilate the new immigrants in order to maintain national unity. The English language was viewed as the "glue" that bonded ethnically diverse groups. Consequently, language became the focus of the Americanization movement and English language education emerged as the chief goal . . . By 1923, thirty-four states had enacted legislation restricting the use of languages other than English in schools.⁷

States and the Federal Government also enacted laws to restrict language usage and require English proficiency for admission into the country, naturalization, and voting.⁸

Fears fueling the Americanization movement subsided with passage of the Immigration Act of 1924, also referred to as the National Origins Act of 1924.⁹ The act was the first immigration law to place a permanent¹⁰ numerical limit on the number of immigrants permitted to enter the United States annually. It placed an annual ceiling of 150,000 per year on European immigration, completely barred Japanese immigra-

tion, and provided for the admission of immigrants based on the proportion of national origin groups that were in the United States according to the 1890 census.¹¹ Because the national composition in 1890 was largely made up of immigrants of northern and western European descent, this final provision ensured a bias in favor of immigrants from these geographic areas.¹² In the 1960s, the question of language rights resurfaced as an integral part of the civil rights movement with the passage of the Bilingual Education Act¹³ and the 1975 amendment to the Voting Rights Act of 1965.¹⁴

Like earlier periods of heightened concern over language unity, the most recent drive to declare English the official national language follows a new wave of immigration. The modern Official English movement is fairly recent, claiming its genesis in Florida where, according to Professors Alejandro Portes and Alex Stepick, it was born of a grassroots movement of native whites reacting to the Mariel immigration crisis in 1980. Fearing that this newest wave of immigrants would refuse or find it unnecessary to learn English, this group, led by the newly created Citizens for Dade United, quickly mobilized to obtain the requisite petition support to place the language issue before Dade County voters in the 1980 election.¹⁵ The Official English referendum passed by an overwhelming majority, catching by surprise the Miami Cuban community, which, until that point, had never organized itself politically.¹⁶

⁵ U.S. Department of Justice, Immigration and Naturalization Service, *An Immigrant Nation: United States Regulation of Immigration, 1798-1991*, June 18, 1991, p. 9.

⁶ Open Letter to the Legislators Re: Laws Declaring English the Official Language, CONFERENCE ON LANGUAGE RIGHTS AND PUBLIC POLICY, Stanford University (Apr. 16-17, 1988), cited in Cordero, *Constitutional Limitations*, p. 21.

⁷ Cordero, *Constitutional Limitations*, p. 21; McFadden, *Bilingual Education and the Law*, J. L. & Educ., vol. 12 (1983), pp. 1, 7.

⁸ Cordero, *Constitutional Limitations*, p. 22 (citing Note, *The Proposed English Language Amendment: Shield or Sword?*, Yale L. & Policy Rev., vol. 3 (1985), pp. 519, 534).

⁹ Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952). See also Cordero, *Constitutional Limitations*, p. 22.

¹⁰ Prior to the National Origins Act of 1924, the Quota Act of 1921 set temporary numerical limits based on national origin. See Quota Act of May 19, 1921, ch. 8, 42 Stat. 5 (repealed 1952). The Immigration Act of 1924 made such quotas permanent.

¹¹ 43 Stat. 153. See also Michael Fix and Jeffrey Passel, *Immigration and Immigrants: Setting the Record Straight* (The Urban Institute, May 1994) (hereafter cited as Fix and Passel, *Setting the Record Straight*).

¹² Fix and Passel, *Setting the Record Straight*, p. 10.

¹³ Pub. L. No. 90-247, 81 Stat. 816 (codified as amended in scattered sections of 20 U.S.C.).

¹⁴ See Voting Rights Act of 1965, Pub. L. No. 94-73, 89 Stat. 400, as amended (codified in 42 U.S.C. § 1973). See also Cordero, *Constitutional Limitations*, p. 22, (citing 42 U.S.C. § 1973aa-1a(b) (1982)).

¹⁵ Only 4 weeks after registering itself as a political action group, Citizens for Dade United had gathered 44,166 signatures, nearly twice as many as needed, in its petition drive to bring the measure before the voters. Max Castro, "The Politics of Language in Miami," in Guillermo Grenier and Alex Stepick III, eds., *Miami Now! Immigration, Ethnicity and Social Change*, eds. (Gainesville: Univ. Press of Florida, 1992), p. 120.

¹⁶ Until 1980, Cuban exile politics had concentrated on strategies for returning to Cuba. In response to the perspective advanced by the antibilingual movement, Cuban American leaders mobilized politically and, by mid-decade, the

As a result of the success of Citizens for Dade United and the Dade County ordinance, the modern Official English movement was born.¹⁷ In 1981, Senator S.I. Hayakawa of California urged passage of an amendment to the U.S. Constitution declaring English the official language of the United States. Arguing for national unity and peace between different ethnic and language groups, Senator Hayakawa sought an unequivocal affirmation that the United States was an English-speaking nation.¹⁸ Legislation for an English-language amendment was thus introduced in both houses in 1981, 1983, and 1985.¹⁹

Together with John Thanton, then director of the Federation for American Immigration Reform (FAIR), Senator Hayakawa created in 1983, U.S. English, a nonprofit, nonpartisan group that promotes the establishment of a common language in the United States.²⁰ U.S. English lobbied Congress to pass Senator Hayakawa's English-language amendment, which would have repealed laws permitting ballots to be printed in other languages and limited bilingual education programs to brief transition courses designed to prepare students for instruction exclusively in English.²¹ While the English Lan-

guage Amendment never passed in either the Senate or the House of Representatives, the Official English movement continued to grow, and between 1981 and 1990, 15 States adopted measures making English their official language.²²

Federal Government Services in Languages Other than English

Notwithstanding the increasing popularity of Official English measures in the 1980s, the Federal Government continued to provide information and services in languages other than English, either directly or through funding for State and local programs. The 1975 amendment to the Voting Rights Act, for example, requires written and spoken assistance for non-English speakers in counties where at least 5 percent of potential voters speak a single language other than English and where either English literacy in that community is below the average for the country as a whole or where English-language elections attract less than 50 percent of eligible voters.²³ Language assistance is also provided for education through grants available through the Bilingual Education Act of 1968,²⁴ the Emergency Immigrant Education Act of 1984,²⁵ the Carl D. Perkins Vocational Education Act of 1963,²⁶ and the Adult Education Act of 1966.²⁷

The Internal Revenue Service, Social Security Administration, Department of Education, Immigration and Naturalization Service, and other government and quasi-government agencies at Federal, State, and local levels have also taken measures to provide non-English speakers with

mayors of Miami, Hialeah, and West Miami were Cuban born, and 10 State legislators were Cuban Americans. Alejandro Portes and Alex Stepick III, *City on the Edge: The Transformation of Miami* (Berkeley: Univ. of Calif. Press, 1993), pp. 27-37.

¹⁷ Portes and Stepick, *City on the Edge*, p. 161.

¹⁸ Paul Lang, *The English Language Debate* (New Jersey: Enslow Publishers, Inc., 1995), p. 53.

¹⁹ In 1981, S.J. Res. 72, 97th Cong. Rec. 7400 (1981); in 1983, 129 Cong. Rec. E757-58 (daily ed. Mar. 2, 1983), S.J. Res. 167, 98th Cong., 1st Sess., 129 Cong. Rec. S12,640-44 (daily ed. Sept. 21, 1983); in 1985, H.R.J. Res. 96, 99th Cong., 1st Sess., 131 Cong. Rec. H167 (daily ed. Jan. 24, 1985), S.J. Res. 20, 99th Cong., 1st Sess., 131 Cong. Rec. S468 (daily ed. Jan. 22, 1985). During the 104th Congress, members of both the U.S. House of Representatives and the Senate again introduced legislation to declare English the official national language.

²⁰ According to Daniel Bradfield of U.S. English, the group commands a nationwide membership in excess of 630,000, 46,000 of whom reside in Florida. Daniel Bradfield, Director of Political Field Operations, U.S. English, testimony, Hearing Before the U.S. Commission on Civil Rights, Miami, FL, (hereafter cited as *Miami Hearing*), pp. 296-97. Mr. Bradfield identified two primary objectives of U.S. English: "One, to make English the official language of government at the Federal, State, and local levels. And, two, to guarantee all people of the United States the opportunity to learn English." *Ibid.*, p. 298.

²¹ Lang, *The English Language Debate*, pp. 53-54.

²² *Ibid.*, p. 20.

²³ Voting Rights Act, 1965, as amended in 1975. S. Rep. No. 295, 94th Cong., 1st Sess. 8 (1975), reprinted in 1975 U.S.C.A.N. 775. The 1975 legislation, by expanding the act's protection to include not only racial minorities but also language minorities, broadened the act beyond the boundaries of the 15th amendment and its original geographical focus on the South. *Construed in Meek v. Metro. Dade County*, 805 F. Supp. 967 (S.D. FL. 1992).

²⁴ 20 U.S.C. § 3221 *et seq.* (1997) (offering financial assistance for local bilingual programs designed to meet the needs of children with limited facility in English).

²⁵ 20 U.S.C. § 7541 *et seq.* (1997) (providing funds to assist districts with large numbers of immigrant students to provide special education assistance).

²⁶ 20 U.S.C. § 2441(a)(1) (1997) (providing grants to States and localities for bilingual vocational education and training for individuals with limited English proficiency).

²⁷ 20 U.S.C. § 1201 *et seq.* (1997) (providing supplemental funding of adult education programs).

information and services in their own languages.²⁸ Some of these measures have drawn sharp criticism from Congress and private groups.

In 1994, the Internal Revenue Service printed and distributed 500,000 tax forms in Spanish as part of a test program. Only 718 of the special forms were returned, and the IRS, under pressure from Congress and Official English groups, suspended the program.²⁹ In another example, the INS office in Tucson, Arizona, conducted a swearing-in ceremony for U.S. citizenship in Spanish in July 1993. In response, Senator Lauch Faircloth of North Carolina introduced a bill seeking to prohibit further INS swearing-in ceremonies in languages other than English.³⁰ Although Senator Faircloth's bill never passed, subsequent Official English bills, including the Bill Emerson English Language Empowerment Act passed in the House of Representatives in August 1996, also require citizenship ceremonies to be conducted only in English. Still, many of these programs, and their authorizing legislation, face repeal under bills pending before Congress.³¹

Federal law also mandates foreign-language services in other contexts. Interpreters must be provided in Federal court proceedings³² and in

examinations of aliens seeking to enter the United States³³ for persons whose primary language is not English. Federally funded migrant and community health centers³⁴ and alcohol abuse and treatment programs³⁵ are also required to provide personnel who can speak the language of the clientele served. Pending legislation to officialize English may eliminate or modify some of these programs. However, the Language Education Act would exempt from the English requirement publication of documents designed to protect public health and safety.³⁶

Official English Bills Pending Before the U.S. Congress

The U.S. House of Representatives passed the Bill Emerson English Language Empowerment Act during the 104th Congress.³⁷ The act declares English the official language of the Federal Government; requires all naturalization ceremonies to be conducted entirely in English; requires all official publications, including tax forms, to be in English; and repeals the bilingual ballot requirements of the Voting Rights Act. The act also reallocates savings achieved through the legislation to English classes for immigrants. The bill has been reintroduced in the 105th Congress. The new version, however, omits all reference to the Voting Rights Act.³⁸

In the 104th Congress, there were also two bills introduced in the U.S. House of Representatives, one in the U.S. Senate, and a House resolution to amend the Constitution to declare English the official language of the United States Government.³⁹ The most restrictive of these was the proposed National Language Act of 1995, introduced by Representative Pete King of New York, which sought to repeal the Bilingual Education Act and the bilingual voting requirements of the Voting Rights Act, and to amend the Immigration and Nationality Act to require all public ceremonies in which the oath of allegiance is administered to be conducted

²⁸ According to a recent search by the General Accounting Office (GAO), at least 48 Federal departments and agencies have issued documents relating to their operating mission and functions in foreign languages between 1990 and 1994. Of the agencies specifically named in the GAO document, the Social Security Administration, the Department of Health and Human Services, the Food and Drug Administration, the Department of Education, and the National Institutes of Health are the top five agencies issuing the greatest number of documents in a foreign language. GAO, letter to U.S. Sen. Richard C. Shelby and U.S. Reps. William F. Clinger, Jr., and Bill Emerson, Sept. 20, 1995.

²⁹ The forms were published at a cost of \$113,000. U.S. English, "Facts & Figures on Official English," undated.

³⁰ S. 1678, 103rd Cong., 1st Sess. (1993).

³¹ The Official English bill passed by the U.S. House of Representatives requires the INS to conduct all naturalization ceremonies exclusively in English, repeals the bilingual voting requirements of the Voting Rights Act, and requires all official Federal Government publications to be in English. H.R. 123, 104th Cong., 2nd Sess. (1996). H.R. 351, entitled the Bilingual Voting Requirements Repeal Act of 1996, would repeal the bilingual ballot election requirements of the Voting Rights Act. H.R. 351, 104th Cong., 1st Sess. (1996). Other Official English bills pending before the 104th Congress would have also repealed the Bilingual Education Act. See, e.g., H.R. 1006, 104th Cong., 1st Sess. (1995); H.R. 739, 104th Cong., 1st Sess. (1995).

³² 28 U.S.C. § 1827 (1982).

³³ 8 U.S.C. § 1224 (1982).

³⁴ 42 U.S.C. § 254 (1982).

³⁵ 42 U.S.C. § 577(b)(1982).

³⁶ See H.R. 123, Sec. 169, 104th Cong., 2nd Sess. (1996).

³⁷ H.R. 123, 104th Cong., 2nd Sess. (1996).

³⁸ H.R. 123, 105th Cong., 1st Sess. (1997).

³⁹ H.J. Res. 109, 104th Cong., 1st Sess. (1995); H.R. 739, 104th Cong., 1st Sess. (1995); H.R. 1006, 104th Cong., 1st Sess. (1995); and S. 356, 104th Cong., 1st Sess. (1995).

exclusively in English.⁴⁰ Representative King has indicated he will introduce another bill at the start of the 105th Congress that would abolish the U.S. Department of Education's Office of Bilingual Education.⁴¹ As of February 1997, no such bill had yet been introduced.

Unlike Representative King's National Language Act of 1995⁴² and the Declaration of Official Language Act of 1995,⁴³ the English Language Empowerment Act of 1996⁴⁴ did not propose the abolition of bilingual education. Instead, it recommends that savings derived by the Federal Government from reforms under the act be used to teach English to non-English-proficient persons. In response to the officialization of English and in an effort to assist the naturalization of legal permanent residents who, because of their advanced age, may no longer be capable of passing naturalization exams in English, Representative Peter Blute of Massachusetts introduced a bill in September 1996 to amend the Immigration and Naturalization Act to waive the language and civics requirements for naturalization of persons who are over the age of 65 and who have legally resided in the United States for over 20 years.⁴⁵

Other measures have also sought to encourage the acquisition of English and other language skills. In January 1993, Representative Bill Emerson of Montana introduced legislation to amend the Internal Revenue Code by ex-

tending an income tax credit to employers for the cost of providing English-language instruction to their limited-English-proficient employees.⁴⁶ House Concurrent Resolution 6, also proposed by Representative Emerson, encourages nonnative English speakers to learn English and to maintain fluency in their native language while retaining their individual heritage.⁴⁷ The English Plus Resolution, reintroduced in the 105th Congress by Representative Jose Serrano of New York, encourages all Americans to become proficient in English and to acquire or maintain foreign-language skills.⁴⁸ With the exception of the Bill Emerson English Language Empowerment Act and the English Plus Resolution, none of the other measures had been reintroduced in the 105th Congress as of February 1997.

Challenges to Official English Policies

To the extent courts have linked language to national origin,⁴⁹ legislation establishing a national language, to the exclusion of other languages and at a disproportionate impact on language minorities, may face constitutional challenges. Twenty-two States have declared English their official language.⁵⁰ Although most of the

⁴⁰ H.R. 1005, 104th Cong., 1st Sess. (1995). Like the National Language Act (NLA), the proposed constitutional amendment would also require the use of English "for all public acts including every order, resolution, vote or election, and for all records and judicial proceedings of the government of the United States and the governments of the several states." Unlike the NLA, however, it does not expressly repeal the laws that currently authorize such services in other languages, but it mandates Congress and the States to enforce the article by appropriate legislation. H. J. Res. 109, 104th Cong., 1st Sess. (1995).

⁴¹ See Teri Bailey, "Texas Lawmakers Leery of English-Only Bills," *The Houston Chronicle*, Dec. 10, 1996, p. 12A.

⁴² H.R. 1005.

⁴³ H.R. 739.

⁴⁴ The Senate version of the Language Empowerment Act, S. 356, remains in Committee. S. 356, 104th Cong., 1st Sess. (1996).

⁴⁵ H.R. 4143, 104th Cong., 2nd Sess. (1996). The Immigration and Nationality Act currently exempts persons 55 and older who have lawfully resided in the United States for a period of years from the requirement that applicants demonstrate an understanding of the English language. Such persons are not exempt, however, from the civics requirements. 8 U.S.C. § 1423 (b)(2) (West Supp. 1996).

⁴⁶ H.R. 124, 103rd Cong., 1st Sess. (1993).

⁴⁷ H. Con. Res. 6, 104th Cong., 1st Sess. (1995).

⁴⁸ H. Con. Res. 4, 105th Cong., 1st Sess. (1997).

⁴⁹ *Hernandez v. New York*, 500 U.S. 352, 369 (1991) (noting that in some contexts proficiency in particular languages might be "treated as a surrogate for race"); *Lau v. Nichols*, 414 U.S. 563 (1974) (holding that the failure to provide special language assistance for children of foreign descent violates Title VI's prohibition on discrimination on the basis of national origin); *Meyer v. Nebraska*, 262 U.S. 390, 398-99 (1922) (recognizing that the only children affected by a statute mandating English as the exclusive language were those of foreign origin); and *Olague v. Russoniello*, 79 F. 2d 1511 (9th Cir. 1936) (recognizing that language can be a proxy for national origin). See also Cordero, *Constitutional Limitations*, pp. 25-35.

⁵⁰ The following States have statutes or constitutional amendments declaring English their official language: Alabama—ALA. CONST. amend. 509 (1990); Arizona—ARIZ. CONST. art. XXVII, §§ 1-4 (1988); Arkansas—ARK. STAT. ANN. §§ 1-4-117 (1987); California—CAL. CONST. art. III, § 6 (1983); Colorado—COLO. CONST. art. II, § 30A (1988); Georgia—1986 Ga. Laws 529 (1986); Florida—FLA. CONST. art. II, § 9 (1988); Hawaii—HAWAII CONST. art. XV, § 4 (1978); Illinois—5 ILCS 460/20 (1989); Indiana—IND. CODE Ch. 10 § 1 (1984); Kentucky—KY. REV. STAT. § 2.013 (1984); Louisiana—Louisiana Enabling Act, 2 U.S. Stat. 641 § 3 (1811); Mississippi—MISS. CODE ANN. § 3-3-31 (1987); Montana—MONT. CODE ANN. § 1-1-510 (1987); Nebraska—NEB. CONST. art. I, § 27 (1920); New Hampshire—N.H. RSA 3-

statutory or constitutional language of these State enactments is largely symbolic, one State, Arizona, has faced and lost a challenge to its restrictive Official English law.⁵¹ An Arizona State constitutional amendment passed by ballot initiative in 1988 provided not only that "English is the official language of the State of Arizona," but also that the "State and all [of its] political subdivisions"—defined as including "all government officials and employees during the performance of government business"—"shall act in English and no other language."⁵²

In *Yniguez v. Arizonans for Official English*,⁵³ an Arizona State government employee brought an action against the State and State officials seeking an injunction against enforcement of Arizona's Official English amendment. The Latina plaintiff handled medical malpractice claims asserted against the State, regularly speaking Spanish to monolingual Spanish speakers and a combination of Spanish and English to bilingual claimants.⁵⁴ The Ninth Circuit Court of Appeals found the amendment unconstitutionally overbroad and violative of the first amendment.⁵⁵ The court ruled that language is often a "close proxy for national origin, and restrictions on the use of languages may mask discrimination against specific national origin groups or, more generally, conceal nativist sentiment."⁵⁶ In addition, the court found troubling the extremely restrictive nature of the Arizona statute. Unlike laws that encourage immigrants to learn English, the Arizona statute simply prohibits the use of other languages. Declaring the law unconstitutional, the court stated:

[T]olerance of difference—whether difference in language, religion, or culture more generally—does not ultimately exact a cost. To the contrary, the diverse and multicultural character of our society is widely recognized as being among our greatest strengths. Recognizing this, we have not, except for rare repressive statutes . . . tried to compel immigrants to give up their native language; instead, we have encouraged them to learn English. The Arizona restriction on language provides no encouragement, however, only compulsion: as such, it is unconstitutional.⁵⁷

Opponents of a national Official English policy argue that at least some of the bills pending before Congress may encounter the same constitutional challenge faced by Arizona. According to these advocates, laws seeking to restrict the government's ability to use languages other than English violate the civil rights of non-English speakers in three ways:

1. By denying non-English speakers equal access to government. Restrictions or limits on language assistance in the areas of voting, education, social security, and health services would infringe upon important (and, in some instances, fundamental) rights. Official English laws that seek to preempt inconsistent State and Federal laws⁵⁸ exclude "language minorities from equal participation in the normal political process and impose upon them special burdens not placed on other groups who are free to seek favorable legislation at the local level. Barring such a discrete minority from equal access to the political process violates equal protection."⁵⁹

C:1-6 (1995); North Carolina—N.C. GEN. STAT. Ch. 145 § 12 (1987); North Dakota—N.D. CENT. CODE § 54-02-13 (1987); South Carolina—S.C. CODE ANN. § 1-1-(696-698) (1987); South Dakota—S.D. Codified Laws § 1-27-(20-26) (1995); Tennessee—TENN. CODE ANN. § 4-1-404 (1984); Virginia—VA. CODE § 7.1-42 (1996). Attachment to letter dated Nov. 29, 1995, from Leah Simone, Legislative Assistant, U.S. English, to Stephanie Y. Moore, Deputy General Counsel, U.S. Commission on Civil Rights.

⁵¹ Arizona's challenged law provides, in part, that "This State and all political subdivisions of this State shall act in English and in no other language." ARIZ. CONST. art. XXVIII, § 3(1)(a).

⁵² *Ibid.*

⁵³ 69 F. 3d 920 (9th Cir. 1995).

⁵⁴ *Id.*

⁵⁵ See also sec. II of this chapter.

⁵⁶ 69 F. 3d at 947-48.

⁵⁷ *Id.* at 948. The U.S. Supreme Court granted certiorari and heard oral argument in *Yniguez* in December 1996. *Yniguez v. Arizonans for Official English*, 69 F.3d 920 (9th Cir. 1995), cert. granted sub nom., *Arizonans for Official English v. Arizona*, 116 S. Ct. 1316 (1996). Based on questions from the Justices throughout oral argument, commentators correctly anticipated that the Court would not address the merits of the lower courts' rulings but would likely decide the case on procedural grounds. See Tom Edmonson, "Justices Probe Procedural Posture of Arizona English-Only Dispute," *BNA Daily Labor Reporter*, Dec. 5, 1996, p. AA -1. Instead the Court held that the challenge filed by State government employee Maria-Kelley Yniguez became moot when she accepted a job in the private sector. *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1059-60 (1997).

⁵⁸ H.R. 739 contains a preemption clause in sec. 167.

⁵⁹ Edward Chen, written testimony, "Civil Liberties Implications of 'Official English' Legislation," *Hearings Before the U.S. House of Representatives Subcommittee on Early Childhood, Youth, and Families on English as the Common Language*, Nov. 1, 1995 (citing *Washington v. Seattle School Dist. No. 1*, 458 U.S. 457 (1982), and *Hunter v. Er-*

2. By prohibiting the government from communicating with its citizens in a language other than English, these laws would violate the first amendment rights of elected officials and public employees.⁶⁰

3. By fostering anti-immigrant intolerance and exacerbating ethnic tensions in fostering assumptions based on false and disparaging stereotypes about immigrants.⁶¹

Supporters of an official language policy counter that, rather than threatening the American tradition of diversity, a common language would preserve that tradition by serving as a unifying bond.⁶² They also maintain that lack of English proficiency is sustained by governmental "linguistic welfare" policies that encourage dependency on multilingual government services so long as these services continue to be available. The cost of providing such services in languages other than English should be reallocated to teaching limited-English-proficient persons English. Elimination of bilingual ballots, bilingual education, and multilingual government services would also save money that could be used to teach English to nonspeakers⁶³ and eliminate present unfunded State mandates.⁶⁴

In addition, according to Daniel Bradfield of U.S. English, "[g]overnment-mandated multilingualism simply does not work. While such policies might be designed to be inclusive, in reality they are separatist in nature."⁶⁵ The role of the government in negotiating language diversity within a democracy, Mr. Bradfield testified, is to unite, not to divide:

ickson, 393 U.S. 385 (1969)) (hereafter cited as Chen, written testimony, "Civil Liberties Implications"). Daniel Bradfield disagrees. He testified before the Commission that "a common language allows persons, regardless of their individual native language, to participate on an equal basis with all others in society." Bradfield Testimony, *Miami Hearing*, c. 299.

⁶⁰ Karen Narasaki, Executive Director, Asian Pacific American Legal Consortium, Testimony Before the Senate Committee on Governmental Affairs, *Federal News Service*, Dec. 6, 1995.

⁶¹ Chen, written testimony, "Civil Liberties Implications."

⁶² Mauro Mujica, Chairman, U.S. English, testimony before the U.S. House of Representatives, House Economic Early Childhood, Subcommittee on Early Childhood, Youth and Families, Nov. 1, 1995.

⁶³ *Ibid.*

⁶⁴ Jim Boulet, Jr., Exec. Dir., *English First*, testimony before the U.S. House of Representatives, House Economic Early Childhood, Subcommittee on Early Childhood, Youth and Families, Nov. 1, 1995.

⁶⁵ Bradfield Testimony, *Miami Hearing*, p. 300.

The job of government, at all levels, is to foster and advance the common good. The one absolutely certain way of bringing a nation or state to ruin, or preventing all possibility of its continuing to grow, would be to permit it to become a tangle of squabbling nationalities. A state with an official policy of advancing our common language, English, is preferable to a state divided by linguistic factions.⁶⁶

Finally, Mr. Bradfield noted that "over the long term a common language is imperative to sustaining a unified yet diverse society." Moreover, he added, "[i]t is impractical, divisive, and costly for government business to be conducted in more than one language."⁶⁷

Origins of the Official English Movement in Dade County and Florida

The history of Official English in Dade County is coterminous with that of the modern national movement. The 1980 antibilingualism campaign in Dade County was a spontaneous, local phenomenon, but it had important national implications.⁶⁸ As discussed earlier in this chapter, the present-day Official English movement was conceived with the passage of a Dade County ordinance in 1980 declaring English the official language of local government.⁶⁹ The "antibilingualism ordinance," as it was called, was passed by a vote of 60 percent and imposed the following requirements on local government operations:

- It prohibited the expenditure of Dade County funds for the purpose of using any language other than English or promoting any culture other than that of the United States.
- It required all county governmental meetings, hearings, and publications to be in English only.⁷⁰

The ordinance was subsequently amended in 1984 to allow for the provision of emergency services (including police, fire, ambulance, and hurricane-preparedness services), medical services to the county hospital and other medical facilities, voter information, tourism and trade

⁶⁶ *Ibid.*, p. 298.

⁶⁷ *Ibid.*, p. 299.

⁶⁸ Castro, "The Politics of Language in Miami," p. 127.

⁶⁹ DADE COUNTY, FL, CODE OF METROPOLITAN DADE COUNTY § 2-11.18 (1980), *repealed by* ORDINANCE NO. 93-46, CODE OF METROPOLITAN DADE COUNTY (1993).

⁷⁰ *Ibid.*

information, and essential services to the aged and disabled, in their own language.⁷¹

Led by the group Citizens for Dade United, supporters of Official English amended the Florida Constitution in 1988 to include a clause declaring English the State's official language.⁷² Eighty-four percent of Florida voters voted in favor of the amendment in the November 1988 election.⁷³ Florida thus became the 18th State to declare English its official language.⁷⁴

That Dade County was the birthplace of the Official English movement is not surprising, given the context of the historical impact of Latin American immigrants, and thus of language, in Miami. In the 1960s and 1970s,⁷⁵ key institutions in Miami adopted significant language policies that represented a substantial departure from those adopted by their counterparts in other parts of the country in which large populations of Hispanic immigrants or native minorities lived. In general, the policies adopted in Miami tended to be more accommodating of the linguistic and cultural background of the newcomers, due, at least in part, to the higher educational and economic status of Miami's immigrants.⁷⁶ As noted by Max Castro, professor of sociology, North-South Center, University of Mi-

ami, in his essay, "The Politics of Language in Miami":

What was so unusual about Spanish in Miami was not that it was so often spoken, but that it was so often heard. In Los Angeles, by contrast, Spanish remained a language only barely registered by the Anglo population, part of the ambient noise: the language spoken by the people who worked in the car wash, trimmed the trees, and cleared the tables in restaurants. In Miami, Spanish was spoken by the people who ate in the restaurants and owned the cars and the trees. On the socioauditory scale, this contrast made a considerable difference.⁷⁷

The three most significant language-related policies in this regard were the institution of bilingual education in the Dade County Public Schools in 1963, the declaration of Metropolitan Dade County as officially bilingual and bicultural in 1973, and the publication of the Spanish daily, *El Herald*, beginning in 1976.⁷⁸

The first modern bilingual program in a United States public school was founded in Dade County in 1963. The pioneer program, at the Coral Way Elementary School, was a two-way maintenance program designed to teach English to native Spanish speakers, and to assist them in maintaining their Spanish-language skills, while simultaneously teaching Spanish to native English-speaking students. This bilingual education model was subsequently implemented in some other schools in the Dade County system. The Dade County bilingual program, while limited, was a model for programs that would be adopted later in other parts of the country.⁷⁹

A decade later, in 1973, the Dade County Commission (which, at the time, did not have any Hispanic members) declared the county officially bilingual and bicultural. The declaration specifically identified Spanish as the second official language and created a division of bilingual and bicultural affairs.⁸⁰

⁷¹ ORDINANCE NO. 84-84, CODE OF METROPOLITAN DADE COUNTY (1984). See also *The English Language Debate*, p. 19.

⁷² Florida's Official English declaration was by constitutional amendment, which provides simply:

"Section 9. English is the Official Language of Florida

"(a) English is the official language of the state of Florida.

"(b) The Legislature shall have the power to enforce this section by appropriate legislation."

FLA. CONST., art. II, § 9. See also Portes and Stepick, *City on the Edge*, p. 161.

⁷³ Portes and Stepick, *City on the Edge*, p. 161.

⁷⁴ As of Nov. 29, 1995, 22 States have enacted Official English laws. See attachment to letter dated Nov. 29, 1995, from Leah Simone, Legislative Assistant, U.S. English, to Stephanie Y. Moore, Deputy General Counsel, U.S. Commission on Civil Rights.

⁷⁵ Between 1960 and 1980, the Hispanic population of metropolitan Miami increased by 150 percent, from 20,000 to 50,000 residents. By 1970, metropolitan Miami's Hispanic population had grown to almost 300,000, a 496 percent increase from 1960. See Metro-Dade Planning Department, Research Division, *Dade County Facts* (Miami: Metropolitan Dade County Government, 1980), cited in Portes and Stepick, *City on the Edge*, table 8, p. 211.

⁷⁶ Castro, "The Politics of Language in Miami," p. 115; Sandra Fradd, *The Economic Impact of Spanish-Language Proficiency in Metropolitan Miami* (Miami: Greater Miami Chamber of Commerce and Policy Center of The Cuban American National Council, Inc., 1986).

⁷⁷ Castro, "The Politics of Language in Miami," p. 113.

⁷⁸ *Ibid.*, p. 115.

⁷⁹ Bilingual education in Dade County is discussed in greater detail in sec. III of this chapter.

⁸⁰ Among the reasons cited for the resolution was that "a large and growing percentage of Dade County is of Spanish origin . . . many of whom have retained the culture and language of their native lands, [and therefore] encounter special difficulties communicating with governmental agencies and officials." The resolution also held that "our Spanish-speaking population has earned, through its ever increasing share of the tax burden, and active participation in

Another important acknowledgment of the new linguistic reality was made by the *Miami Herald*, when it began publishing a daily Spanish-language edition, *El Herald*, in 1976. The *Miami Herald* thus became the only major daily metropolitan newspaper in the United States to publish a daily edition in Spanish.⁸¹ By creating *El Herald*, the *Miami Herald*, a leading business institution, civic actor, and editorial voice in Miami, made a decision based largely on business considerations, but which has had important symbolic, political, and economic implications. For whatever reasons, the Miami establishment had found it necessary not only to listen to the newcomers, but also to speak to them in their native language.⁸² The decision paid off. So high has the demand for Spanish media grown over the last two decades since the *Miami Herald's* Spanish version was introduced, that south Florida's Spanish-language market currently sustains the second largest expenditure for media advertising in the nation.⁸³

"Thus," according to Professor Max Castro, "within the first two decades of massive Latin American immigration, three leading institutions in Miami—the public school system, the largest local governmental entity, and the leading communications media corporation—had made substantial commitments to some level of bilingualism and biculturalism."⁸⁴ The looming prospect of a large Hispanic vote and growing Hispanic economic clout were, according to Professor Castro, significant factors in the decision to declare the county bilingual and bicultural.

The proliferation of these policies troubled some in the native Anglo population in Miami, who maintained that these policies rendered assimilation unnecessary and permitted immigrants from Latin America to dominate Miami without becoming fluent in English.⁸⁵ Partially

in response to these concerns, many whites left Miami, causing their representation in the Miami and Dade County population to drop from 82.8 percent in 1950 to 47.7 percent in 1980.⁸⁶ Those who resisted the prominence of biculturalism and remained in Miami organized a movement to oppose the bilingual policies that had taken root. By 1980, the Official English movement began measures to roll back official bilingualism and biculturalism in Dade County and to reestablish English as the official language of Dade County government.⁸⁷ Citizens for Dade United, a private organization formed in 1980 in response to the influx of approximately 125,000 Cuban refugees during the Mariel boat-lift, found support in the community and led the movement to pass, with overwhelming support of non-Hispanic, white voters, the antibilingualism ordinance.⁸⁸ Seventy-one percent of non-Hispanic whites supported the referendum, while only 44 percent of blacks and 15 percent of Hispanics favored it.⁸⁹

The antibilingualism ordinance remained in effect until May 1993, when the reformulated Dade County Commission voted unanimously for its repeal.⁹⁰ Both Hispanic and African American groups supported the repeal, with the Spanish American League Against Discrimination (SALAD), the Miami chapter of the NAACP, and the New Miami Group (an organization designed to encourage black leadership in government and business) leading the drive to effectuate the process.⁹¹ Repeal of the ordinance was upheld by

community affairs, the right to be serviced and heard at all levels of government." Castro, "The Politics of Language in Miami," p. 116 (citing Metro-Dade County Board of County Commissioners, 1973).

⁸¹ Castro, "The Politics of Language in Miami," p. 116.

⁸² *Ibid.*

⁸³ Fradd, *The Economic Impact*, p. 9. In the November 1996 ratings sweeps, for the first time in the United States, a Spanish-language station affiliate in Dade County—Univision—outtrated all of the English-language network affiliates in prime time. See Tom Jicha, "Caramba! Spanish TV Sweeps the Ratings," *Sun-Sentinel*, Dec. 4, 1996, p. 1A.

⁸⁴ Castro, "The Politics of Language in Miami," pp. 115–17.

⁸⁵ *Ibid.*, p. 118.

⁸⁶ While the white, non-Hispanic population increased in raw numbers between 1950 and 1980, from 410,000 to 776,000, their relative representation of the population fell. See Portes and Stepick, *City on the Edge*, p. 211 (citing Metro-Dade Planning Department, Research Division, *Dade County Facts* (Miami: Metropolitan Dade County Government, 1990)).

⁸⁷ *Ibid.*, p. 119.

⁸⁸ Castro, "The Politics of Language in Miami," p. 120.

⁸⁹ *Ibid.*

⁹⁰ ORDINANCE NO. 93-46, CODE OF METROPOLITAN DADE COUNTY (1993).

⁹¹ Erik Johnson, "Metro Repeals Law Mandating English Only," *Miami Times*, May 20, 1993, p. 3A. According to T. Willard Fair, long-time president of the Urban League of Greater Miami, the acceptance of multilingualism among some members of the African American community is based upon the realities of "the demographics of the consumer market" in Dade County. T. Willard Fair, President, Urban League of Greater Miami, testimony, *Miami Hearing*, vol. I, p. 142 (hereafter cited as Fair Testimony). Fair added, however, that "[a]s the community was having this debate about whether or not it ought to be English only or bilingual in its

the District Court of Appeal of Florida, Third District, which held, in part and without explanation, that repeal of the antibilingualism ordinance did not violate the Official English clause of the Florida Constitution.⁹²

Response to Repeal of the Antibilingualism Ordinance

Supporters of the repeal heralded the unanimous Dade County Commission's vote as a first, important step toward establishing a local government that was, for the first time in Dade County history, not only truly representative of its constituents, but also fully responsive to them.⁹³ Opponents of the repeal construed the commission's action differently. To them, the repeal was an example of the political power of the economically successful Cuban community in the Miami area.⁹⁴

Some members of the African American community also express concern that native English speakers are becoming more entrenched in their isolation as masses of bilingual and monolingual Spanish speakers continue to grow.⁹⁵ The black Haitian community, however, has a complex set of concerns. While the Haitian community in Miami has generally been silent in response to language policies, it also faces challenges in Spanish-speaking Miami. Guy Victor, director of the Haitian Refugee Center in Little Haiti, opines that most job opportunities in south Florida favor Spanish speakers.⁹⁶ Haitians may also face greater opposition to speaking Creole on the job than workers who speak Spanish, according to Father Thomas Wenski,

director of the Haitian Catholic Center in Little Haiti.⁹⁷

Coupled with the rising tide of concern over the costs of immigration and the sustained influx of undocumented or illegal aliens, repeal of the antibilingualism ordinance has fueled the move to enact measures in Florida aimed at decreasing the levels of immigration to the State and forcing those already there to assimilate quickly. Joining forces with the well-established Citizens for Dade United, Floridians for Immigration Control and the Florida 187 Committee, Inc., were founded after the repeal to support a ballot initiative that would, among other things, prohibit any local government in Florida from declaring itself bilingual.⁹⁸ As part of that edict, all State and local government services, except emergency services, would be provided in English, and anyone applying to work for State or local government would be required to pass an English-proficiency test.⁹⁹ Although the Florida 187 Committee, Inc., failed to collect enough signatures to place the initiative on the November 1996 ballot, the group intends to continue efforts to place the initiative before Florida voters in 1998.¹⁰⁰ Opponents of this ballot initiative question its constitutionality under Dade County's home rule charter.¹⁰¹

Impact of Repealing the Antibilingualism Ordinance

Dade County's antibilingualism ordinance

nature, that was not a debate that was honored, nor discussed in any intensities, in the black community here in Dade County." *Ibid.*, p. 162.

⁹² *Martin v. Metro. Dade County*, 637 So. 2d 313 (Fla. App. 3 Dist. 1994).

⁹³ Osvaldo Soto, President, Spanish American League Against Discrimination (SALAD), telephone interview, Aug. 14, 1995 (hereafter cited as Soto Interview).

⁹⁴ According to one community leader, Cubans "have already established another Cuba inside Dade County, and now they are forcing Spanish down our throats," quoted in Larry Rohter, "Repeal is Likely for 'English Only' Policy in Miami," *New York Times*, May 14, 1993, p. A12 (hereafter cited as Rohter, "Repeal is Likely for 'English Only' Policy in Miami").

⁹⁵ Marvin Dunn, Professor, Florida International University, quoted in "As Hispanic Presence Grows, So Does Black Anger," *New York Times*, June 20, 1993, p. 1.

⁹⁶ Guy Victor, Haitian Refugee Center, telephone interview, Aug. 8, 1995.

⁹⁷ Father Thomas Wenski, Haitian Catholic Center, telephone interview, Aug. 3, 1995.

⁹⁸ Eliot Kleinberg, "Boca Group Touts Amendments to Stem Flood of Immigration," *Palm Beach Post*, May 5, 1995, p. 1A. The proposed measure will: (a) seek to cut all funds for undocumented immigrants; (b) seek to cut all public education for undocumented immigrants; (c) require mandatory reporting by school, city, and county administrators of suspected undocumented aliens to the INS; and (d) prohibit any State, city, or local government from proclaiming itself bilingual and requiring that all government operations, except for emergency services, be conducted in English. Sergio Busto, "2nd Drive Focuses on Aliens," *Orlando Sentinel*, May 5, 1995, p. C1; Rick Barry, "Amendment Backers Pen Hopes on Voters," *Tampa Tribune*, Jan. 17, 1996, p. 1.

⁹⁹ Under the measure, Florida would be required to develop a test to ensure English proficiency. Government employees who could not pass the test could lose their jobs. Rick Barry, "FLA 187 Targets Governments; Proposed Amendment Orders Workers to Use Only English," *Tampa Tribune*, Feb. 5, 1996, p. 1.

¹⁰⁰ Viglucci, "Anti-Immigrant Petition Drives Drag," and Silva, "Immigrant Amendment Supporters Aim at '98."

¹⁰¹ Soto Interview.

prohibited funding of projects that involved the use of a language other than English or the promotion of any culture other than that of the United States. It also required all county governmental meetings, hearings, and publications to be in English exclusively.¹⁰² So broad was the original ordinance that it barred Dade County from advertising tourism in Spanish (or other languages) in foreign countries and made it unlawful for zoo signs to identify the animals by their Latin names.¹⁰³ In 1984, the ordinance was amended to allow certain exceptions for promoting tourism, providing medical and emergency services, and serving the elderly and the disabled.¹⁰⁴ The breadth of the 1984 amendment to the ordinance made its repeal in 1993 largely symbolic.¹⁰⁵

Nevertheless, repeal of the ordinance brought challenges about the costs to the county of providing services in several languages.¹⁰⁶ Officially, repeal of the ordinance reauthorized the county to consider and implement policy regarding the use of languages other than English in conducting business, including the use of county funds for the provision of services in languages other than English.¹⁰⁷ The repeal also authorized the use of translators at the Dade County Commission and other local government meetings, and authorized press releases and other information describing county reports in languages other than English.¹⁰⁸ Perhaps the most significant impact of the repeal was that Dade County service providers were once again permitted to address and assist the public in languages other than English. Prior to the repeal, Dade County workers were not permitted to address the public in a language other than

English, even if the workers were fluent in the languages spoken by those seeking assistance from them.¹⁰⁹

Supporters of national Official English policies cite the costs of multilingualism to State and Federal governments as one important reason for eliminating services in other languages.¹¹⁰ According to statistics compiled by U.S. English, Los Angeles and cities in Texas spend millions annually to provide services or translations to non-English speakers.¹¹¹ In Dade County, however, the cost of providing government services to the largest non-English-speaking populations is lower. According to Arthur Teele, then chairperson, Dade County Commission, Dade County's diversity keeps the cost of providing multilingual services lower than in other areas of the country where the language minority populations are smaller.¹¹² Whereas less diverse geographical areas may face greater challenges in their search for multilingual service providers, Dade County's diversity means that job applicant pools and existing service providers are already saturated with persons who speak more than English.¹¹³ As a result, it is not a challenge to hire bilingual workers for departments that have direct contact with the community. Dade County does not maintain statistics on the language ability of its employees, however.¹¹⁴

Dade County also does not maintain statistics

¹⁰² Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, Harvard C.R.-C.L. L. Rev., vol. 24 (1989), pp. 293, 301.

¹⁰³ *Ibid.*

¹⁰⁴ ORDINANCE NO. 84-84, CODE OF METROPOLITAN DADE COUNTY (1984), and *Florida's Official English Amendment*, p. 896.

¹⁰⁵ Eduardo Padron, President, Miami-Dade Community College, Wolfson Campus, telephone interview, Aug. 15, 1995.

¹⁰⁶ Rohter, "Repeal is Likely for 'English Only' Policy in Miami."

¹⁰⁷ Joaquin G. Avino, Dade County Manager, memorandum to the Dade County Board of County Commissioners, May 18, 1993; Diana Leland, Budget Coordinator, Dade County Office of Management and Budget, telephone interview, Aug. 15, 1995 (hereafter cited as Leland Interview).

¹⁰⁸ Leland Interview.

¹⁰⁹ Ari Sosa, Director, Dade County Department of Community Affairs, telephone interview, Aug. 14, 1995.

¹¹⁰ Bradfield Testimony, *Miami Hearing*, vol. II, p. 299.

¹¹¹ Attachment to letter from Leah Simone, U.S. English, to Stephanie Y. Moore, Deputy General Counsel, Nov. 29, 1995.

¹¹² Arthur Teele, Chairperson, Dade County Commission, testimony, *Miami Hearing*, vol. II, pp. 249-50 (hereafter cited as Teele Testimony).

¹¹³ According to Chairperson Teele "[I]f we were in Hot Springs, Arkansas, . . . providing . . . services in Spanish, or in Creole . . . would be an identifiable cost, but here in Miami, many of these costs are not really identifiable." Teele Testimony, *Miami Hearing*, vol. II, p. 250. Such cost containment in areas with large linguistically diverse communities is also manifested in efforts to comply with Federal law. According to a study by GAO, most jurisdictions incur no additional costs in providing bilingual oral assistance required by the Voting Rights Act because they hire no additional workers. Instead, they seek to find poll workers who are able to converse in the covered minority language. In addition, the publication costs of providing bilingual written assistance may also decline over time. GAO, *Bilingual Voting Assistance: Costs of and Use During the 1984 General Election*, GAO/GGD-86-134 BR (September 1986).

¹¹⁴ Teele Testimony, *Miami Hearing*, vol. II, p. 272.

on governmentwide costs of multilingual services.¹¹⁵ The Dade County Communications Department does, however, maintain statistics on publication and translation costs. Since repeal of the ordinance, Dade County has spent \$305,171 and \$318,145 in translators' salaries, printing, advertising, and broadcasting to the Spanish- and Haitian Creole-speaking communities during fiscal years 1993–1994 and 1994–1995, respectively.¹¹⁶ In fiscal year 1994–1995, these costs equaled 9 percent of the communications department budget¹¹⁷ and 0.01 percent of Dade County's entire operating budget.¹¹⁸

Impact of Immigration and Language Policies on Racial and Ethnic Tensions

From the beginning, languages have bound and separated groups.¹¹⁹ According to a report by the Ford Foundation entitled, "Changing Relations: Newcomers and Established Residents in U.S. Communities":

Beyond segregation and social distance, it should come as no surprise that communication—language—stands out as the most important feature of interactions among newcomers and established residents. Language binds and separates. Patterns of language usage often express power relations. But they also reveal individual and collective perceptions of the human experience. Language serves throughout diverse communities as a source of intergroup conflict, tension, and distance. Creating institutional settings for language acquisition, however, also provides a source of shared interests, an opportunity for interac-

tion and a purpose behind cooperation.¹²⁰

In southern Florida, the proximate existence of statistically significant, unique ethnic groups makes the debate over language a daily reality in all aspects of life, including employment, education, and the political process.¹²¹ According to the 1990 census, 57.4 percent of Dade County's residents speak a language other than English at home.¹²² Spanish is the language most widely spoken at home, spoken by 50.1 percent of the total population, followed by English (spoken in 42.6 percent of homes), Haitian Creole (3.8 percent), Yiddish (0.4 percent), German (0.4 percent), Italian (0.3 percent), and Portuguese (0.2 percent).¹²³ About 45 percent of the county's residents were born in a foreign country, and only 42.6 percent speak English at home.¹²⁴

Such ingrained linguistic diversity sometimes leads to intergroup friction. Language conflicts in Dade County are manifested through intergroup and intragroup competition, barriers to communication, and political struggles. Language can generate tension by intentionally or unintentionally isolating groups from one another.¹²⁵ It can also lead to conflict as a tool of social authority and dominance. According to Joanne Bretzer, a doctoral candidate in political

¹¹⁵ *Ibid.*, pp. 249–50.

¹¹⁶ Nancy Fuente, Dade County Communications Department, memorandum to Marilyn Wall, Office of Management and Budget, Aug. 28, 1995.

¹¹⁷ In FY 94/95, the Communications Department had an operating budget of \$3,417,000. Source: Metropolitan Dade County 1995–1996 Proposed Operating Budget, p. 202.

¹¹⁸ Based on the \$2,530,314,000 Metro-Dade Operating Revenue for FY 94/95. Source: Metropolitan Dade County 1995–1996 Proposed Operating Budget.

¹¹⁹ In Genesis' account of the Tower of Babel, languages were created to divide groups and impede communication: "The Lord came down to see the city and tower, which mortals had built. And the Lord said, 'Look, they are one people, and they have all one language; and this is only the beginning of what they will do; nothing that they propose to do will now be impossible for them. Come. Let us go down, and confuse their language there, so that they will not understand one another's speech. So the Lord scattered them abroad from there over the face of all the earth, and they left off building the city.'" Genesis, 11.

¹²⁰ Robert Bach, "Changing Relations: Newcomers and Established Residents in U.S. Communities," a report to the Ford Foundation by the National Board of the Changing Relations Project (New York: Ford Foundation, 1993), p. 20.

¹²¹ The City of St. Petersburg Beach considered a resolution to declare English the city's official language during its meeting in September 1996. In response to opposition by city residents, the resolution was pulled from the agenda without further debate. Leonora Minai, "Commission Tables English-Only Issue," *St. Petersburg Times*, Oct. 3, 1996, p. 4B.

¹²² U.S. Department of Commerce, Bureau of the Census, 1990 Census of Population and Housing Population Characteristics for Census Tracts (Washington, DC: U.S. Government Printing Office, 1992), table 17, p. 460 (hereafter cited as *1990 Census*). See also, Larry Rohter, "Repeal is Likely for 'English Only' Policy in Miami," *New York Times*, May 14, 1993, p. A12.

¹²³ *1990 Census*; Teresa Yearwood, "Families Facing Pressure to Use Only English," *Miami Herald*, Sept. 19, 1996, p. 1A.

¹²⁴ *Ibid.*

¹²⁵ The "Changing Relations" report cites an example of this clash in a meeting held to improve interethnic relations. A Latino man with a heavy Spanish accent addressed the group. After a couple of minutes, an elderly African American woman, a grassroots leader, got up and walked out, saying in an angry tone, "I can't understand him! I can't understand him!" Bach, "Changing Relations," p. 36.

science at the University of Washington at the time of her essay, "Language, Power, and Identity in Multiethnic Miami," "the choice of language in Miami—and it is often a matter of choice—can be an everyday act of resistance."¹²⁶ Bilingualists exercise their choice to use English over Spanish (or vice versa) as a means of demonstrating dominance over monolingual groups. Even within ethnic groups, choice of language represents authority and rebellion among different generations.¹²⁷

While the debate over language affects all of Dade County's linguistic groups, the most common source of friction is between Spanish speakers and native English speakers, who each claim to suffer the greater harm from language policies favoring the other. Monolingual English speakers are also concerned that the Hispanic-run government of Dade County is isolating and excluding non-Spanish-speaking residents. Included in this group are some members of the African American community of Dade County, who express concern that these policies lead to politics of exclusion that heighten the level of tensions that already exist between the Hispanic and African American communities in Miami due to economic disparities and competition for resources.¹²⁸ Spanish-speaking residents argue that measures to declare English the official, sole language of government or the exclusive language of the workplace are discriminatory attempts to stifle the cultural expression and full participation of Hispanics in a county where they constitute almost 50 percent of the popula-

tion.¹²⁹ Monolingual English speakers claim that Spanish is a *de facto* requirement for employment in most service-sector jobs. Bilingual workers, on the other hand, believe their language skills, which often translate into additional responsibilities at work, should be compensated through additional pay.

There are differing views in Dade County over the question of language requirements for public employment. Then-Chairperson of the Dade County Commission Arthur Teele testified that Dade County government has safeguards to ensure that language is not a criterion for employment in the public sector.¹³⁰ According to statistics compiled by the Metro Dade County Equal Employment Opportunity Board, in 1994, Metropolitan Dade County had a work force that was 29.8 percent white, 34.9 percent black, and 33.8 percent Hispanic.¹³¹ It is not possible to assess how many of these employees speak two or more languages, however, because no statistics are maintained on the language capacities of government employees.¹³²

¹²⁶ Joanne Bretzer, "Language, Power, and Identity in Multiethnic Miami," in James Crawford, ed., *Language Loyalties: A Source Book on the Official English Controversy*, (Chicago: Univ. of Chicago Press, 1992), p. 214 (hereafter cited as Bretzer, "Language, Power, and Identity in Multiethnic Miami").

¹²⁷ Ibid. See also Bach, "Changing Relations" (Young bilingual Hispanics, often second-generation immigrants, use language as a form of authority and status over their monolingual or limited-English-proficient elders).

¹²⁸ According to Adora Nwese, a member of the Miami-Dade Branch of the NAACP, the emphasis on Spanish, as opposed to the many other languages spoken in south Florida, fuels racial and ethnic tension unlike any other topic currently affecting Dade County. Adora Nwese, member, Miami-Dade Branch, NAACP, telephone interview, Aug. 4, 1995. See also, "As Hispanic Presence Grows, So Does Black Anger"; Harold Long, Jr., Chairperson, Metro Miami Action Plan, testimony, *Miami Hearing*, vol. II, p. 418 (hereafter cited as Long Testimony).

¹²⁹ Soto Interview. 1990 Census, Summary Tape File 1A.

¹³⁰ According to Mr. Teele: "I have worked to try to ensure that as we hire people that we look more toward multicultural[ism] and diversity in our work force, as something that we think is very, very important But I can categorically state that the policies, the process and the safeguards from an affirmative action officer to an equal employment office, including an independent review panel, . . . which reviews these types [of complaints], would prohibit and safeguard against hiring people with a language bias in the public sector." Teele Testimony, *Miami Hearing*, vol. II, p. 275. These safeguards against language bias in county hiring were requested of Mr. Teele through letters dated Oct. 24, 1995 and Dec. 13, 1995 but were not provided.

¹³¹ Approximately 1.5 percent of its work force was characterized as belonging to a racial group other than those listed above. Metro-Dade County Equal Employment Opportunity Survey 1974 and 1994, Metro Dade County Twenty-Year Overview: 1974-1994, submitted by Harold Long, Jr., Chairperson, Metro Miami Action Plan. Based on the racial composition of Dade County in 1990, blacks are the only racial group that is overrepresented in county government jobs. According to 1990 census data, non-Hispanic whites constitute 30.2 percent, Hispanics constitute 49.2 percent, and blacks constitute 20.5 percent of the Dade County population. Source: 1990 Census, tables 5 and 6.

¹³² Teele Testimony, *Miami Hearing*, vol. II, p. 272. An informal poll of county employees conducted in fall 1996 found that employees speak 43 languages fluently. Chief among these were English (spoken fluently by 63 percent of respondents) and Spanish (30.8 percent). The remaining 6 percent of employees who speak other languages include French (56) and Creole (25) speakers. See Maria Saunders, "Diversity Survey Broadens Insights," Metro-Dade County Communi-

Other community leaders posit that bilingualism is a requirement for many jobs in Dade County. Harold Long, Jr., chairperson, Metro Miami Action Plan Trust, testified that many jobs in Dade County (public and private) have express or implicit language requirements.¹³³ These requirements, he argues, have "hindered many African Americans seeking jobs in the open market."¹³⁴ State Representative Kendrick Meek also notes that while many Dade County jobs require Spanish fluency, Dade County schools do not impose uniform Spanish-language requirements for students.¹³⁵

Language in the public sector work force is also inspiring a new debate about compensation. The U.S. Treasury Department released regulations outlining an awards program for multilingual Customs Service officers. Under the program, Customs officers who use their foreign-language skills on the job to communicate with non-English-speaking travelers are eligible to receive a financial reward equaling up to 5 percent of the employee's base pay.¹³⁶ The Treasury Department guidelines were released, in part, under pressure from U.S. Customs Service inspectors in Miami who threatened to stop speaking Spanish or other languages on the job.¹³⁷ Supporters of Official English in Dade County assert that use of languages other than English should be discouraged, rather than compensated.¹³⁸ Proponents of the extra compensation argue that paying for language skills is an acknowledgment that language skills are important, valuable tools in the United States' work force.¹³⁹

cations Department, "Inside Metro," vol. 9, no. 1, December 1996/January 1997, p. 2.

¹³³ Long Testimony, *Miami Hearing*, vol. II, p. 419. *De facto* language requirements seem to exist in both the private and public sector, according to Mr. Long.

¹³⁴ *Ibid.*, p. 419.

¹³⁵ Theresa Mears, "Miami Celebrating Its 100th Birthday and Its Ethnic Diversity," *The Dallas Morning News*, July 29, 1996, p. 3A.

¹³⁶ "Foreign Language Skills Translate into Financial Rewards," *NTEU Bulletin*, February 1996, p. 3.

¹³⁷ William Booth, "Growth in Bilingual Jobs Brings Demands for More Pay," *The Washington Post*, Jan. 19, 1996, p. A3. Congress authorized the cash grants 2 years ago, for Treasury Department employees who utilized their multilingual skills in their official capacities.

¹³⁸ Booth, "Growth in Bilingual Jobs" (citing Enos Schera, Vice-President, Citizens for Dade United).

¹³⁹ *Ibid.* (citing George Rodriguez, a Miami Customs agent, the Cuban American National Foundation, and the Spanish

Although such opposing views on language and job opportunities are a source of tension in Dade County in their own right, language by itself is not usually the isolated cause of overt conflict.¹⁴⁰ Several witnesses testified that language by itself is not a source of racial or ethnic tension. Rather, community concerns over poverty, inequality, and discrimination are inaccurately attributed to language.¹⁴¹ According to former Dade County Commission Chairperson Arthur Teele:

[L]anguage clearly is perceived to be a problem, particularly for those who are suffering from an economic and, perhaps, even a social dilemma, or ostracization, on both sides Once you recognize that there is a problem, which I firmly believe is unemployment in this county, then all these other factors become a part of the debate, but they are not really the debate. If there were enough jobs to go around, in my judgment, language would not be an issue at all.¹⁴²

Osvaldo Soto, president, Spanish American League Against Discrimination, agreed: "We don't think, really, that in Dade County language is a real problem. Yes, there are people who complain. I think that unemployment, discrimination in other areas, sometimes bring out the problem of language."¹⁴³

For the monolingual, native-born population, then, language may be simply the most obvious link between immigrants and the fundamental concerns they raise over politics, economics, and social hierarchy.¹⁴⁴ Legislating monolingualism

American League Against Discrimination). It is noteworthy that Osvaldo Soto, president, Spanish American League Against Discrimination, acknowledged through his testimony that requests for extra pay on the basis of language abilities would create problems for Dade County's Hispanic community. Soto Testimony, *Miami Hearing*, vol. II, p. 290.

¹⁴⁰ According to the "Changing Relations" report, "Even in Miami, where tensions between groups sometimes reach a flashpoint, a conference of community leaders convened by the Cuban American National Planning Council concluded that although Black and non-Hispanic leaders found language differences and mass immigration to be sources of tension, they did not consider them the most critical issues dividing the community." Bach, "Changing Relations," pp. 36-37.

¹⁴¹ Teele Testimony, *Miami Hearing*, vol. II, p. 228.

¹⁴² *Ibid.*, p. 237.

¹⁴³ Soto Testimony, *Miami Hearing*, vol. II, p. 257.

¹⁴⁴ See generally Bretzer, "Language, Power, and Identity in Multiethnic Miami" ("[Language] has become a metaphor for everything from the decline of the schools to the rampaging growth of a frighteningly alien metropolis, a sentiment captured by Senator S. I. Hayakawa when he said, 'The issue is

becomes a way to restore order over these institutions and equalize access to resources.¹⁴⁵

Regardless of the relative merits on either side of the debate, the results of pending measures to establish English as the official national language or to preclude Florida and local governments from declaring themselves multilingual will likely draw legal challenges and social tension among groups. Heightened levels of immigration, concerns over global competitiveness and relaxation of trade barriers, and the renewed examination of entitlements in the broader context of Federal deficit spending have exhumed the debate between "Americanization" and multiculturalism. Federal and State governments must continue an active role in responding to the public's concern about the process for absorbing newcomers and addressing the challenge this process can pose for the native and newly arrived populations.

Section II: Language Policies in Private Employment

Immigration and the Growth in Workplace Language Policies

The easing in 1965 of national origin limits on Asian and Latin American immigration has resulted in "an influx of non-European newcomers unrivaled since the turn of the century. From 1981 to 1990, Asians made up 37% of all immigrants, compared with 6% in the '50's, and Latin American and Caribbean natives were 47% of the total, compared with 25% three decades ago." In what some civil rights groups say is a reaction to these recent waves of immigrants whose primary language is not English, a growing number of private businesses are requiring that their employees speak English on the job. These "English-only" policies generally bar the use of

languages other than English during employees' work time in all areas of the workplace and in some cases during employees' breaks and lunch hours as well. The result has been a sharp jump in the number of charges of employment discrimination on the basis of national origin at the U.S. Equal Employment Opportunity Commission (EEOC). In 1992, 14,394 complaints were filed, up 30 percent from the 11,114 filed in 1989.¹⁴⁶ According to published accounts, in south Florida, the Spanish American League Against Discrimination (SALAD) has recently had more than 50 active cases, most of which address language problems where workers claim they were fired for not speaking English.¹⁴⁷

There is disagreement about whether English-only rules are motivated primarily by racial or national origin discrimination or whether such provisions reflect employer efforts to manage appropriately the workplace.¹⁴⁸ Daniel Bradfield of U.S. English, which advocates English as the official language of the United States, emphasized in testimony before the Commission that his organization's effort affects government

not the Spanish vs. English languages, but English vs. Chaos.").

¹⁴⁵ Community advocates have voiced these concerns over political, economic, and social exclusion. For example, several community leaders have expressed concerns over access to local government meetings or public addresses by elected officials conducted in Spanish, access to jobs and other economic opportunities by monolingual English speakers, and the effects of school overcrowding on native children. See Rohter, "Repeal is Likely for 'English Only' Policy in Miami"; Booth, "Growth in Bilingual Jobs"; Bill Douthat, "Activists Defend Immigration Curbs: 'We Are Not Haters,'" *Palm Beach Post*, Mar. 7, 1995, p. 1B; Sergio Bustos, "2nd Drive Focuses on Aliens," *Orlando Sentinel*, May 5, 1995, p. C1.

¹⁴⁶ Catherine Yang, "In Any Language, It's Unfair," *Business Week*, June 21, 1993, p. 110. It is difficult to determine the number of national origin charges that are based on employer language policies, because neither the EEOC nor State and local fair employment agencies that may also enforce Federal law (as well as their own fair employment laws) keep statistics on the various bases for national origin charges. Their computer-generated data only track the number of national origin charges. Additionally, some complaints combine national origin and race discrimination charges, or are lumped together with other individual cases. Seth Mydans, "Pressure for English-Only Job Rules Stirring Sharp Debate Across U.S.," *New York Times*, Aug. 8, 1990, p. 12A; Manuel Roa, "Companies Set Up Programs To Teach Workers To Get Along," *Miami Review*, Jan. 22, 1993, p. 12A; Marcos Regalado, Director, Dade County Equal Opportunity Board, testimony, *Miami Hearing*, vol. I, pp. 159-60 (hereafter cited as Regalado Testimony). Complaints about national origin and race, however, topped the numbers of complaints received in 1992 and are expected to increase, according to Helia Pico, special assistant to the EEOC's Miami District Director. See Roa, "Companies Set Up Programs."

¹⁴⁷ "English Only Rule at Work Allowed, Action Muddies Bilingual Debate," *Miami Herald*, June 21, 1994, p. 1A (hereafter cited as "English Only Rule Allowed at Work").

¹⁴⁸ Federal courts, however, have generally held that employer's proffered reasons for English-only work rules meet the business necessity test. See, e.g., *Jurado v. Eleven-Fifty Corp.*, 813 F.3d 1406, 1410-11 (9th Cir. 1987); *Flores v. Hartford Police Dept.*, 25 Fair Empl. Prac. Cas. (BNA) 180, 186 (D. Conn. 1981).

policies only.¹⁴⁹ Mr. Bradfield attributed occasional racial motivation for support of official English provisions to "special interest political groups that use the issue to benefit their own existence and their own organization."¹⁵⁰

In areas with a significant population whose primary language is not English, such as south Florida, there have also appeared charges by non-English-speaking employees or job applicants that an employer's bilingual (usually Spanish) requirement discriminated against monolingual, English-speaking, U.S.-born employees.¹⁵¹ In Dade County, 57 percent of the population speak a language other than English. It is "the most bilingual area in the nation, according to a 1994 Census Bureau Report. Broward and Palm Beach counties also have far more than the national average of non-English speakers . . . about one in five. . . . Many jobs in Dade, Broward and Palm Beach County require a second language. In some neighborhoods across the region, grocery clerks, barbers, and garbage workers simply must be bilingual to do their work."¹⁵²

Workplace language policies or requirements in south Florida, both English only and bilingual, are a source of racial and ethnic tension in the area. Terence Connor, a prominent employment attorney in Dade County and coauthor of the *Employment Handbook for Dade County Employers*, says that it "is clearly a point of social friction in this town. No question about it."¹⁵³ English-only cases are more numerous in

Dade County, and none of the bilingual cases has thus far reached the public hearing stage.¹⁵⁴ Just north in Broward County, however, most of the language complaints are from English-speaking individuals upset with an employer's requirement that employees be bilingual. It is "a very significant source of racial and ethnic tension in Broward County," according to Gloria Battle, the director of the Human Rights Division of Broward County. As she explained it, the common sentiment expressed is something along the lines of the following: "I was born in America. There is no reason why I should have to speak another language [besides English] in order to get a job here."¹⁵⁵

Demographic trends would seem to indicate that workplace language policies will only increase in the future. Census data released in October 1995 showed that about 1 in 10 Americans is Hispanic. A higher birth rate and the entry of about 2 million Hispanic immigrants spurred far higher growth rates for Hispanics than for the rest of the U.S. population.¹⁵⁶ Hispanics will constitute 13.5 percent of the population by the year 2010, surpassing African Americans (about 12 percent) and thus becoming the country's largest ethnic minority.¹⁵⁷ In relative terms, Asians are also a fast growing minority in the U.S.; currently barely 3 percent of the population, they are expected to grow to 6 percent by

¹⁴⁹ The 1980 Dade County "antibilingual" ordinance, discussed in the preceding section, by its own terms imposed language restrictions only on county government. The director of the Dade County Equal Opportunity Board testified, however, that while the 1980 ordinance had no legal effect upon the private sector, "our experience . . . [was that] some employers saw it as . . . a green light to tell their employees now we have this antibilingual ordinance, and started initiating some policies that could be perceived as discriminatory in terms of language." Regalado Testimony, *Miami Hearing*, vol. I, p. 161.

¹⁵⁰ Bradfield Testimony, *Miami Hearing*, vol. IV, p. 366.

¹⁵¹ Regalado Testimony, *Miami Hearing*, vol. I, pp. 136-37; Gloria Battle, Director, Broward County Human Rights Division, Broward County Office of Equal Opportunity, telephone interview, Aug. 11, 1995 (hereafter cited as Battle Interview).

¹⁵² Charles Strouse, "Language Issue Speaks To All of South Florida; Experts Say Problem Can Unite or Divide," *Fort Lauderdale Sun-Sentinel*, Jan. 21, 1996, p. 1A.

¹⁵³ Terence G. Connor, Morgan, Lewis & Bockius, Miami, FL, former chairman, Florida Bar Labor and Employment Law Section, testimony, *Miami Hearing*, vol. I, p. 200

(hereafter cited as Connor Testimony). Mr. Connor maintains, however, that area employers are successfully dealing with the workplace language issue. *Ibid.*, p. 156.

¹⁵⁴ Regalado Testimony, *Miami Hearing*, vol. I, pp. 136-37.

¹⁵⁵ Battle Interview.

¹⁵⁶ For 1995, 10.4 percent of the population was Hispanic; for 1996, the figure was 10.7 percent. U.S. Department of Commerce, Bureau of the Census, Population Division, *United States Population Estimates, by Age, Sex, Race and Hispanic Origin: 1990 to 1996* (PPL-57), table "Resident Population of the United States: Estimates by Sex, Race, and Hispanic Origin with Median Age." See also Mimi Whitefield, "1 in 10 in U.S. is Hispanic, Survey Shows," *Miami Herald*, Oct. 6, 1995, p. 1C.

¹⁵⁷ Census Bureau projections estimate the Hispanic population in 2010 to be 13.8 percent of the total and the black Non-Hispanic population to be 12.6 percent. U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050* (Series P25-1130), table "Resident Population of the United States: Middle Series Projections, 2006-2010, by Sex, Race, and Hispanic Origin, With Median Age." See also Reinhard Meier, "Cubans and Haitians In A Growing Miami," *Swiss Review of World Affairs* (Zurich, Switzerland: December 1993), pp. 6-8.

2015.¹⁵⁸ By the year 2050, immigration patterns and differences in birth rates, combined with an overall slowdown in population growth, will produce a country in which Hispanics make up 24.5 percent of the population, up from the current 10.2 percent. Asians will make up 8.2 percent, an increase from the current 3.3 percent. The percentage of the non-Hispanic black population will remain relatively stable, rising to 13.6 percent by 2050 from the current 12 percent, while non-Hispanic whites will constitute 53 percent of the population, down from 74 percent today.¹⁵⁹

More than 31.8 million people in the United States speak languages other than English at home, according to the 1990 U.S. census. This represents a dramatic 38 percent increase from the 1980 census figure of 23.1 million non-English speakers. Of these 31.8 million non-English speakers, 17.3 million (54.4 percent) speak Spanish, 1.7 million French (5.3 percent), 1.5 million German (4.7 percent), 1.3 million Italian (4.1 percent), and 1.2 million (3.8 percent) speak various Chinese dialects.¹⁶⁰ From

1980 to 1990, the number of people who speak Spanish increased 56 percent and the number of Chinese speakers grew 109 percent.¹⁶¹

The immigration boom has particularly affected south Florida. Half of Florida's foreign-born residents live in Dade County,¹⁶² and approximately 45 percent of the people in the county are foreign born.¹⁶³ Nearly half the population (49.2 percent) is Hispanic. Cubans constitute 59.2 percent of Hispanics in Dade County (and 29.1 percent of the general populace); Puerto Ricans, 7.6 percent (3.8 percent); Mexicans, 2.4 percent (1.2 percent); and other Hispanics, 30.8 percent (15.4 percent). White non-Hispanics make up 30.2 percent of the population in Dade County; non-Hispanic African Americans, 19.1 percent; Asian or Pacific Islanders, 1.3 percent; American Indians, 0.1 percent; and 0.1 percent identify themselves as "other race."¹⁶⁴ In Dade County over 57 percent of the population speak a language other than English at home and over 31 percent do not speak English "very well." Over half the population speaks Spanish and of this group, about 56 percent do not speak English "very well."¹⁶⁵

In the City of Miami, 62.5 percent of the populace are of Hispanic origin (including 38.9 percent who are Cuban), 24.6 percent are non-Hispanic African American, 12.2 percent are non-Hispanic white, 0.5 percent are Asian or

¹⁵⁸ Census Bureau projections estimate the Asian and Pacific Islander population to be 5.6 percent by 2015. U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050* (Series P25-1130) table "Resident Population of the United States: Middle Series Projections, 2015-2030, by Sex, Race, and Hispanic Origin, With Median Age." Another reported projection puts the Asian and Pacific Islander population at 9 percent by 2015. Meier, "Cubans and Haitians In Miami." The source for this reported projection is not identified.

¹⁵⁹ "Census Bureau Cites Hispanic Birth Rates; By 2050, Whites Will Be But 53 Percent of U.S., Study Predicts," *Chicago Tribune*, Mar. 14, 1996, p.10 (hereafter cited as "Census Bureau Cites Hispanic Birth Rates"); U.S. Department of Commerce, Bureau of the Census, Current Population Reports, *Population Projections of the United States by Age, Sex, Race, and Hispanic Origin: 1995 to 2050* (Series P25-1130), table "Resident Population of the United States: Middle Series Projections, 2035-2050, by Sex, Race, and Hispanic Origin, With Median Age." Overall, the Census Bureau report suggests that the U.S. is experiencing one of the most dramatic shifts in its racial and ethnic makeup since the trade in slaves transformed the South and waves of immigrants from Eastern and Southern Europe provided an ethnic flavor to the industrialized cities of the Northeast and Midwest around the turn of the century. The projections assume few changes in immigration policy, fertility rates, or increases in life expectancy based on medical breakthroughs. "Census Bureau Cites Hispanic Birth Rates."

¹⁶⁰ Parliman and Shoeman, *Discrimination or Employer Prerogative?* p. 551 (citing Employment Practices, Report 477, Issue 590 (Sept. 7, 1993), p.1; U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population (CPHL-133)* (Washington, DC: U.S. Government

Printing Office, 1993), table 5, Detailed Language Spoken at Home and Ability to Speak English; U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Social and Economic Characteristics: United States (CP-2-1)* (Washington, DC: U.S. Government Printing Office, 1993), table 13, Nativity, Citizenship, Year of Entry, Area of Birth, and Language Spoken at Home, p.13.

¹⁶¹ Aaron Epstein, "Conflicting Suits Test English-Only At Work," *Miami Herald*, June 2, 1994, p. 1A.

¹⁶² David Adams, "Immigration Debate Lacks Facts," *St. Petersburg Times*, Feb. 11, 1996, p. 8A (citing U.S. Department of Commerce, Bureau of Census, Ethnic and Hispanic Branch, 1990 census special tabulations). According to the 1990 census, of Florida's 1,662,601 foreign-born persons, 52.9 percent (874, 569) reside in Dade County. 1990 U.S. Census Data: Database C90STF3A, Florida, table "Place of Birth"; 1990 U.S. Census Data: Database C90STF3A, Dade County, table "Place of Birth."

¹⁶³ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population and Housing: Miami-Fort Lauderdale, FL CMSA, Miami-Hialeah, FL PMSA (CPH-3-229B)* (Washington, DC: U.S. Government Printing Office, 1993), table 17, Social Characteristics of Persons, p. 460 (hereafter cited as *1990 Miami Census*).

¹⁶⁴ *1990 Miami Census*, table 8, Race and Hispanic Origin, p. 207.

¹⁶⁵ *Ibid.*, table 17, Social Characteristics of Persons, p. 460.

Pacific Islander, 0.1 percent are American Indian and 0.1 percent are "other race."¹⁶⁶ Half of Miami's population does not speak English "very well."¹⁶⁷

Broward and Palm Beach Counties to the north also have "far more than the national average of non-English speakers. In both counties, about one in five people speaks another language."¹⁶⁸ According to the 1990 census, about 17 percent of the residents in neighboring Broward County were born outside the United States.¹⁶⁹ About 8.6 percent of the population are Hispanic; 74.9 percent, non-Hispanic white; 14.9 percent, non-Hispanic black; 0.2 percent, American Indian; 1.3 percent, Asian or Pacific Islander; and 0.1 percent, non-Hispanic "other race."¹⁷⁰ In late 1994, Broward County planners estimated that Hispanics would account for about 27 percent of the county's growth between 1990 and 1995, and, based on 1990 census figures, at least 25 percent of these new arrivals would be Cuban. Hispanics would then be 10 percent of Broward's population.¹⁷¹

The Importance of Workplace Language Policies

According to Juan Perea, a leading scholar on language policies, the demographic and linguistic trends outlined above suggest that the racial and ethnic tensions generated by language and by required bilingualism will increase over time.¹⁷² Before examining how these rules have

fared in the legal arena or how they affect racial and ethnic tensions, however, it is important to get some sense of what the affected parties believe is at issue.

According to some commentators, adoption of an English-only rule is often "premised on an intention to alleviate some actual or perceived potential disharmony among their staff involving language controversies."¹⁷³ Usually the controversy involves complaints by monolingual English-speaking employees that Spanish-speaking employees are making fun of them or talking about them in Spanish, or simply that the constant Spanish-speaking made those who cannot speak Spanish uncomfortable. The employer asserts that an English-only rule serves to reduce racial and ethnic tension in the workplace.¹⁷⁴ Some employers may base an English-only policy in part on complaints from customers.¹⁷⁵ Proponents of English-only rules may also

indefinite future . . . [A]ll demographic statistics suggest that we're becoming more and more diverse, racially and linguistically, so that this problem is likely to recur and increase rather than go away."

¹⁷² Parliman and Shoeman, *Discrimination or Employer Prerogative?* p. 552. For various employees' views on English-only rules in the workplace, see, e.g., cases cited in notes 174-75.

¹⁷⁴ See e.g., *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1482 (9th Cir. 1993) (employer adopted rule to "promote racial harmony in the workplace" after "receiving complaints that some workers were using their bilingual abilities to harass and to insult other workers in a language they could not understand"), *cert. denied*, 512 U.S. 1228 (1994); *Guitierrez v. Municipal Court*, 838 F.2d 1031, 1042-43 (9th Cir. 1988) (employer feared Spanish could be used to make discriminatory or belittling comments about non-Spanish-speaking employees), *vacated as moot*, 490 U.S. 1016 (1989) (parties settled prior to decision); *Long v. First Union Corp. of Virginia*, 894 F. Supp. 933, 942 (E.D. Va. 1995) (employees complained that coworkers were making fun of them in Spanish and that the "constant Spanish-speaking" by these coworkers made them "uncomfortable"), *aff'd mem.*, 86 F.3d 1151, No. 95-1968, 1996 U.S. App. LEXIS 12431, at *5 (4th Cir. May 29, 1996). The Ninth Circuit upheld the employer's policy in *Spun Steak*. See notes 234-244 and accompanying text for a discussion of the decision. In *Guitierrez*, the Ninth Circuit struck down the employer's rule, but the decision was vacated as moot when the parties reached a settlement prior to the U.S. Supreme Court's consideration of the appeal. See notes 209-213 and accompanying text. In *Spun Steak*, the court noted that it was not bound by the *Guitierrez* decision. See note 214. The employer also prevailed in *Long*. See notes 236-38 for a discussion of the decision.

¹⁷⁵ *Garcia v. Gloor*, 618 F.2d 264, 267 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981) (employer stated that monolingual English-speaking customers who understood no Spanish became irritated when employees spoke Spanish to each other).

¹⁶⁶ U.S. Department of Commerce, Bureau of the Census, *1990 Census of Population: Florida (CP-1-11)*, (Washington, DC: U.S. Government Printing Office, 1992), table 6, Race and Hispanic Origin, p. 66 (hereafter cited as *1990 Florida Census*).

¹⁶⁷ Peter Mitchell, "Bigger, Younger, Smarter," *Orlando Sentinel*, Apr. 3, 1992, p. A4. The mayor of the City of Miami testified that there are 104 different languages spoken fluently in Dade County. Clark Testimony, *Miami Hearing*, vol. I, p. 27.

¹⁶⁸ Strouse, "Language Issue."

¹⁶⁹ Sergio R. Bustos, "Report Details Recipe of Broward Melting Pot," *Fort Lauderdale Sun-Sentinel*, Apr. 6, 1995, p. 1B.

¹⁷⁰ *1990 Florida Census*, table 5, Race and Hispanic Origin, p. 23.

¹⁷¹ Deborah Ramirez, "Broward Attracts Cubans; Ex-Dade Residents Move In Hopes of a Better Life," *Fort Lauderdale Sun-Sentinel*, Nov. 11, 1994, p. 1A.

¹⁷² Juan F. Perea, Associate Professor of Law, University of Florida College of Law, testimony, *Miami Hearing*, vol. I, pp. 181-82 (hereafter cited as *Perea Testimony*). Professor Perea stated that discrimination against non-English speakers in the workplace "is something that may endure into the

contend that they facilitate more effective supervision; that they are necessary to permit an employer to be aware when employees are breaking workplace rules, sexually harassing coworkers, or making derogatory remarks about supervisors, when the supervisor does not speak a language other than English.¹⁷⁶ The need for clear communication to ensure job safety is also frequently cited.¹⁷⁷ Less frequent reasons offered include the need to reduce disruptions and prevent the workplace from becoming a "Tower of Babel,"¹⁷⁸ that the rule improves the English fluency of persons whose primary language is not English,¹⁷⁹ and that a State Official English statute requires the policy.¹⁸⁰

Opponents generally consider English-only rules to be "unnecessary, discriminatory and divisive."¹⁸¹ To them, "[l]anguage is the lifeblood of every ethnic group. To economically and psychologically penalize a person for practicing his native tongue is to strike at the core of ethnic-

ity."¹⁸² As Florida University Professor of Law Juan Perea, a leading legal scholar in the area of workplace language policies, stated in his testimony to the Commission, primary language is a fundamental aspect of the ethnic identity of the 31.8 million people in the U.S. who speak languages other than English at home.¹⁸³ In their view, the fact that an employee may also speak some English—and therefore be considered bilingual by an employer—"does not eliminate the relationship between his primary language and the culture that is derived from his national origin. Although an individual may learn English and become assimilated into American society, his primary language remains an important link to his ethnic culture and identity."¹⁸⁴ Furthermore, advocates of the right to speak one's primary language in the workplace argue that although primary language is not as immutable as the characteristics of race and sex—which are protected by Title VII, in part, because they are

¹⁷⁶ "English-Only Rules Are Increasing; Critics, Backers Debate Legality," *Employee Relations Weekly (BNA)*, Jan. 17, 1994, p. 60 (hereafter cited as "English-Only Rules Are Increasing").

¹⁷⁷ *Ibid.* (remarks of Jim Boulet, legislative director for the lobbying group *English First*); Connor Testimony, *Miami Hearing*, vol. I, pp. 156–57. Safety and efficiency are well-recognized grounds for establishing a business justification under Title VII. *Dothard v. Rawlinson*, 433 U.S. 321, 331–32 & n.14 (1977) ("a discriminatory practice must be shown to be necessary to safe and efficient job performance to survive a Title VII challenge"). The EEOC accepted an employer's claim that an English-only policy was necessary while employees were working with potentially dangerous equipment and materials. EEOC Dec. No. 83–7, 2 *Empl. Prac. Guide (CCH)* Para. 6836 (1983).

¹⁷⁸ *Guiterrez*, 838 F.2d at 1042.

¹⁷⁹ *Gloor*, 618 F.2d at 267.

¹⁸⁰ *Guiterrez*, 838 F.2d at 1043. A State provision that, by its terms applied only to government operations would have no legal effect upon private employment. *Guiterrez* involved a municipal court employee, to whom California's provision was applicable. The court found this argument unpersuasive, however, noting that California's provision appeared to be "primarily a symbolic statement concerning the importance of preserving, protecting, and strengthening the English language." *Id.* at 1044. Further, the court held that a State enactment cannot constitute the business justification for the adoption of a discriminatory rule unless the State measure itself meets the business necessity test: "otherwise employers could justify discriminatory regulations by relying on state laws that encourage or require discriminatory conduct." *Id.* (citing *Dothard v. Rawlinson*, 433 U.S. 321, 331 n.14 (1977)).

¹⁸¹ "English-Only Rules Are Increasing."

¹⁸² Comment, *Native-Born Acadians and the Equality Ideal*, La. L. Rev., vol. 46 (1986), pp. 1151, 1167 (hereafter cited as Comment, *Native-Born Acadians*).

¹⁸³ Perea Testimony, *Miami Hearing*, vol. I, p. 151. In Dade County 57 percent of the population speaks a language other than English at home. 1990 *Miami Census*, table 17, Social Characteristics of Persons. "Primary language" is usually defined as "a person's native language, usually the language spoken by one's parents in the home and one's first language." Perea, *Right To Speak*, p. 266 n.7. A number of other legal commentators agree that language is closely linked to national origin. Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, N.C.L.Rev., vol. 64 (1986), pp. 303, 351–57; Myres S. McDougal, Harold D. Lasswell & Lung-Chu Chen, *Freedom from Discrimination in Choice of Language and International Human Rights*, S. Ill. U. L.J., vol. 1 (1976), pp. 151, 152 ("[L]anguage is commonly taken as a prime indicator of an individual's group identifications."); Bill Piatt, *Toward Domestic Recognition of a Human Right to Language*, Hous. L. Rev., vol. 23 (1986), pp. 885, 894–901; Note, *A Trait-Based Approach to National Origin Claims Under Title VII*, Yale L.J., vol. 94 (1985), pp. 1164, 1165 & n.5 ("Differences in dress, language accent, and custom associated with non-American origin are more likely to elicit prejudicial attitudes than the fact of the origin itself."); Note, *"Official English": Federal Limits on Efforts to Curtail Bilingual Services in the States*, Harv. L. Rev., vol. 100 (1987), pp. 1345, 1355 (1987) ("Litigants have argued that no factor is more intimately tied to a person's ethnic or national identity than is language."); Comment, *Language Discrimination Under Title VII: The Silent Right of National Origin Discrimination*, J. Marshall L. Rev., vol. 15 (1982), pp. 667, 676; Comment, *Native-Born Acadians*, pp. 1165–67.

¹⁸⁴ *Guiterrez v. Municipal Court*, 838 F.2d 1031, 1039 (9th Cir. 1988) (citing Karst, *Paths to Belonging: The Constitution and Cultural Identity*, N.C.L.Rev., vol. 64 (1986), pp. 303, 351–57), *vacated as moot*, 490 U.S. 1016 (1989) (parties settled prior to decision).

immutable—it is for many persons “practically immutable.”¹⁸⁵

Most English-only proponents, as well as prevailing social attitudes in the U.S., deny any relationship between language and ethnicity or culture.¹⁸⁶ They also deny that one’s primary language is practically immutable and assert that for employees with any degree of English-speaking ability, “the language a person who is multilingual elects to speak at a particular time is . . . a matter of choice.”¹⁸⁷ These views have found expression in the courts, with the first court to rule on the issue stating that “neither the statute nor common understanding equates national origin with the language one chooses to speak,” and that for a “bilingual” Hispanic employee an English-only rule “is one that the affected employee can readily observe and nonob- servance is a matter of individual preference.”¹⁸⁸

If English-only policies are a relatively new issue, controversy regarding bilingual policies is of extremely recent origin and appears to be confined for the most part to south Florida, for

now.¹⁸⁹ Employers that adopt bilingual policies requiring an employee to speak another language (usually Spanish) in addition to English usually claim that it is either necessary for doing business with clients who are non-English monolingual, or preferred by bilingual clients who wish to converse in Spanish. Some cite the location of the business in a heavily Hispanic area, and others say that bilingualism is an additional skill that factors in promotions.¹⁹⁰

Opponents of the growing employment requirement in south Florida that one speak another language (usually Spanish) express resentment that, having been born in America where English is predominant, they can be required to know another language in order to get a job.¹⁹¹ Often, they are skeptical of business necessity claims, especially in the African American community in Miami, which lags far behind all groups economically.¹⁹² There is similar skepticism in Broward County.¹⁹³

Language Policy as Title VII Discrimination: The Developing Federal Law

It is fairly well established that an employee’s foreign accent is not a legitimate justification for discrimination under Title VII, unless it interferes with the employee’s ability to perform his

¹⁸⁵ Perea, *Right To Speak*, pp. 279–80. Perea contends that: studies of second-language acquisition demonstrate the difficulty of acquiring English as a second language; the acquisition and mastery of a new language is far more difficult for adults than for children; second-language acquisition is more difficult for members of language minority groups, in part, because of discrimination against them; many persons with limited ability to communicate in English are not properly considered bilingual, and a restriction on their ability to speak their primary language may be a serious handicap equivalent to forcing a right-handed person to write left-handed; and the practically immutable nature of a primary language is the unstated premise of a number of Federal laws designed to accommodate persons whose primary language is not English. *Ibid.*, pp. 279–87, 292; Perea Testimony, *Miami Hearing*, vol. 1, pp. 166–67 (English-language acquisition is a three-generation process).

¹⁸⁶ Margaret Lourie and Nancy Conklin, *A Host of Tongues: Language Communities In the United States* (New York: Free Press, 1983). The authors note that “prevailing mainstream attitudes deny any relationship between language and culture, arguing that revocation of language rights in no way compromises the integrity of cultural freedoms upon which our nation was constituted. Paradoxically, while language is generally viewed as nothing but a means of communication, standard English is held up as the only appropriate embodiment of national character.” *Ibid.*, p. 279.

¹⁸⁷ *Spun Steak*, 998 F.2d at 1487 (9th Cir. 1993) (quoting *Garcia v. Gloor*, 618 F.2d 264, 270 (9th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981)), *cert. denied*, 512 U.S. 1228 (1994).

¹⁸⁸ *Gloor*, 618 F.2d at 265, 270. The employer in *Gutierrez* asserted that “where an employee can readily observe an English-only rule, a failure to comply is nothing more than a matter of personal preference.” 838 F.2d at 1040.

¹⁸⁹ Toni Eisner, chairwoman of the Dade County Equal Opportunity Board, noted that “we are the only community in the nation that I know of where non-Hispanics feel that they are the victims of discrimination because of the preference for bilingual employees.” Susana Barciela, “Language Ruling Won’t Impact S. Fla.,” *Miami Herald*, June 22, 1994, p. 3C. Similarly, in Broward County just north of Miami, the Human Rights Division of the Office of Equal Opportunity reports that it is receiving an increasing number of such complaints. Battle Interview.

¹⁹⁰ Regalado Testimony, *Miami Hearing*, vol. 1, p. 137.

¹⁹¹ See note 105 and accompanying text.

¹⁹² Gary Siplin, president of the New Miami Group, formed in 1990 to encourage black leadership in business and government, states that there is a significant portion of the black community in Miami that believes that bilingual requirements by area employers are a significant barrier to economic advancement for that community and that for many jobs with such requirements, there is no business necessity for the requirement, and it is rather, a means of “choosing one’s own.” Gary A. Siplin, Esq., Miami, FL, telephone interview, Aug. 9, 1995 (hereafter cited as Siplin Interview). The black owner of a major business in Liberty City put it this way: “There is also a growing number of Cuban-owned businesses in Black neighborhoods but they don’t hire Blacks.” Portes and Stepick, *City on the Edge*, p.12.

¹⁹³ Battle Interview.

job duties.¹⁹⁴ Alleged discrimination in the form of requiring employees to speak English on the job and prohibiting the speaking of any other language is, however, "a brand new issue."¹⁹⁵ Edward Chen of the ACLU in San Francisco observed in March 1995 that caselaw in this area "is in its infancy."¹⁹⁶ More recently, Terence G. Connor, a prominent employment lawyer in Miami, noted that there are very few reported cases "under this theory of language requirements. If you do the research, you'll find out that only two of the U.S. circuits have issued definitive decisions on the subject."¹⁹⁷ There is also an unreported decision from the Eleventh Circuit, as well as a reported district court opinion, which was affirmed in an unpublished opinion from the Fourth Circuit. Although Federal caselaw is in its infancy, these cases all deny the relationship between primary language and national origin asserted by the U.S. Equal Employment Opportunity Commission. A more recent Ninth Circuit case, however, affirms this relationship, although it is a constitutionally based decision that does not address the EEOC's guidelines. It is also on appeal to the U.S. Supreme Court.

Legal challenges to English-only workplace rules have alleged that they violate the prohibition in Title VII of the Civil Rights Act of 1964 of discrimination in employment because of an individual's "national origin."¹⁹⁸ In its interpretive

guidelines, entitled "Guidelines On Discrimination Because of National Origin,"¹⁹⁹ the EEOC broadly defines national origin discrimination to include denial of employment opportunity because of an "individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group."²⁰⁰

The EEOC guidelines further provide that:

A rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The primary language of an individual is often an essential national origin characteristic. Prohibiting employees at all times from speaking their primary language or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment. Therefore, the Commission will presume that such a rule violates Title VII and will closely scrutinize it.²⁰¹

The EEOC guidelines allow an employer to impose a "rule requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity."²⁰² The employer must also provide effective notice of the rule and the consequences of violating it to employees, or an adverse employment decision based on a violation of the rule will be considered "evidence of discrimination on the basis of national origin."²⁰³

¹⁹⁴ See, e.g., *Carino v. University of Oklahoma Bd. of Regents*, 750 F.2d 815, 819 (10th Cir. 1984); *Bell v. Home Life Ins. Co.*, 596 F. Supp. 1549, 1555 (M.D.N.C. 1984); *Berke v. Ohio Dept. of Public Welfare*, 30 Fair Empl. Prac. Cas. (BNA) 387, 391-94 (S.D. Ohio 1978), *aff'd per curiam*, 628 F.2d 980 (6th Cir. 1980).

¹⁹⁵ Tony E. Gallegos, a Commissioner of the EEOC in Washington, said in 1990, "I hear a growing rumble of these kinds of problems. I hear it in Los Angeles . . . Denver . . . Albuquerque . . . Phoenix . . . San Antonio . . . Miami [and] in New York. We don't know how many complaints there are out there. It's a brand new issue." Mydans, "Pressure for English-Only."

¹⁹⁶ "EEOC Holds Meeting On Tools To Combat National Origin Bias," *Employment Policy & Law Daily* (BNA), Mar. 16, 1995.

¹⁹⁷ Connor Testimony, *Miami Hearing*, vol. I, p. 154.

¹⁹⁸ Sections 703(a)(1) and (2) of Title VII provide:

(a) It shall be an unlawful employment practice for an employer —

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a) (emphasis added). See, e.g., *Long v. First Union Corp. of Virginia*, 894 F. Supp. 933, 937-39 (E.D. Va. 1995), *aff'd mem.*, 86 F.3d 1151, No. 95-1986, 1996 U.S. App. LEXIS 12431 (4th Cir. May 29, 1996); *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1483-84 (9th Cir. 1993), *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 1418 (1994); *Guiterrez v. Municipal Court*, 838 F.2d 1031, 1036 (9th Cir. 1987), *vacated as moot*, 490 U.S. 1016 (1989) (parties settled prior to Supreme Court's consideration of case); *Garcia v. Gloor*, 618 F.2d 264, 266 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981).

¹⁹⁹ 29 C.F.R. Part 1606 (1995).

²⁰⁰ 29 C.F.R. § 1606.1 (1995).

²⁰¹ *Id.* § 1606.7(a) (1995) (emphasis added).

²⁰² 29 C.F.R. § 1606.7(b) (1995) (emphasis added).

²⁰³ 29 C.F.R. § 1606.7(c) (1995).

The net effect of the EEOC guidelines is that for an adverse impact cause of action "[t]he [EEOC] presumes that an employer's English-only rule is national origin discrimination if the rule is enforced at all times, but permits such a rule provided that it is enforced only at certain times, is justified by business necessity and adequate notice is provided."²⁰⁴ The guidelines thus provide "that an employee meets his or her burden of proving a *prima facie* case in a disparate impact cause of action merely by proving the existence of the English-only policy."²⁰⁵ Moreover, under the EEOC's guidelines, "an employer must always provide a business justification for such a rule."²⁰⁶

The guidelines note that in examining charges of national origin discrimination, "the Commission will apply general Title VII principles, such as disparate treatment and adverse impact."²⁰⁷ All cases thus far have been advanced under the adverse impact theory, although some legal commentators assert that disparate treatment is more appropriate for English-only cases.²⁰⁸

Only one Federal court of appeal has ever concluded that restrictions prohibiting employees from speaking Spanish, their primary language, violated the prohibition against national origin discrimination when the employer could not prove any business necessity for the restrictions. In *Guitierrez v. Municipal Court*, the court struck down an employer's rule that forbade employees to speak any language other than English, except when acting as translators or during

lunch.²⁰⁹ The court wrote that the "cultural identity of certain minority groups is tied to their use of their primary tongue," and the "mere fact that an employee is bilingual does not eliminate the relationship between his primary language and the culture that is derived from his national origin."²¹⁰ The court then stated:

We agree that English-only rules generally have an adverse impact on protected groups and that they should be closely scrutinized. We also agree that such rules can "create an atmosphere of inferiority, isolation and intimidation." 29 C.F.R. § 1606.7(a). Finally we agree that such rules can readily mask an intent to discriminate on the basis of national origin. The EEOC guidelines, by requiring that a business necessity be shown before a limited English-only rule may be enforced, properly balance the individual's interest in speaking his primary language and any possible need of the employer to ensure that in particular circumstances English shall be spoken. The business necessity requirement prevents an employer from imposing a rule that has a disparate impact on groups protected by the national origin provision of Title VII unless there is a sufficient justification under the Civil Rights Act of 1964 for doing so. Accordingly, we adopt the EEOC's business necessity test as the proper standard for determining the validity of limited English-only rules.²¹¹

The court then concluded that none of the justifications put forward by the appellants for their English-only rule met the business necessity standard.²¹² The court's rejection of the "racial and ethnic harmony" rationale is particularly noteworthy. Not only did the court find the argument that the rule fostered racial harmony unsupported by the evidence; it found that, rather, there was evidence that the rule *increased* racial hostility "because Hispanics feel belittled by the regulation."²¹³

Because *Guitierrez* was vacated as moot when the parties reached a settlement prior to the Supreme Court's consideration of the case, it has no precedential value. Moreover, its persuasive value is undermined by the Ninth Circuit's sub-

²⁰⁴ Long v. First Union Corp. of Virginia, 894 F. Supp. 933, 938 (E.D. Va. 1996) (quoting EEOC determination letter on discrimination charges filed by plaintiff Luz Long), *aff'd mem.*, 96 F.3d 1151, No. 95-1986, 1996 U.S. App. LEXIS 12431 (4th Cir. May 29, 1996).

²⁰⁵ 894 F. Supp. at 940; accord *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1489 (9th Cir. 1993), *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).

²⁰⁶ *Spun Steak*, 998 F.2d at 1489 (citing 29 C.F.R. § 1606.7 (a) & (b)).

²⁰⁷ 29 C.F.R. § 1606.1 (1994); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

²⁰⁸ Prof. Juan Perea argues that English-only rules are not facially neutral in the same sense as other neutral rules analyzed under an adverse (or disparate) impact theory. Rather, the exclusive adverse impact falls on members of protected groups. An English-only rule will never disqualify persons whose primary language is English, unlike truly facially neutral rules that can ostensibly operate to exclude members of both the majority class and the protected minority class. Perea, *Right to Speak Ones' Primary Language*, at 284-92, 319-20.

²⁰⁹ 838 F.2d 1031 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989) (parties settled prior to Supreme Court's consideration of case).

²¹⁰ 838 F.2d at 1040.

²¹¹ *Id.* (citations omitted).

²¹² *Id.* at 1042-44.

²¹³ *Id.* at 1042.

sequent rejection of its reasoning and the EEOC guidelines themselves in *Spun Steak*.²¹⁴

The EEOC guidelines had been adopted in response to a Fifth Circuit decision upholding an employer's English-only rule. In *Garcia v. Gloor*, the court held that a limited English-only rule did not constitute national origin discrimination under Title VII, as "neither the statute nor common understanding equates national origin with the language that one chooses to speak."²¹⁵ The court essentially looked at the "plain meaning" of the statutory language and found that Title VII "does not support an interpretation that equates the language an employee prefers to use with his national origin."²¹⁶ The court specifically noted the absence of an EEOC administrative interpretation with respect to language preferences, despite the fact that the EEOC had considered the lawfulness of such rules in specific instances.²¹⁷ The EEOC subsequently moved to fill this void, publishing the 1980 Guidelines on Discrimination Because of National Origin, which specifically referenced the *Gloor* decision.²¹⁸ The guidelines explicitly stated that "[t]he primary language of an individual is often an essential national origin characteristic."²¹⁹

Despite its 1988 decision in *Gutierrez*, in 1993, the Ninth Circuit in *Spun Steak* rejected the EEOC guidelines, choosing to follow *Gloor*.²²⁰ In *Spun Steak*, the employer, a producer of poultry and meat products, required bilingual workers to speak only English while working, but allowed them to speak Spanish at lunch and on breaks, if they wished. The employer claimed that the English-only policy was the result of

some complaints by non-Spanish speakers that two Spanish-speaking Hispanic workers were making disparaging remarks about them in Spanish. The employer concluded that an English-only policy would solve the problem and improve employee morale. The employer also concluded that the rule would enhance worker safety, given the complaints of some non-Spanish-speaking employees that Spanish speaking was a distraction while operating machinery. The district court granted the plaintiffs motion for summary judgment, concluding that the English-only policy had a disparate impact on Hispanic workers without sufficient business justification. *Spun Steak* appealed to the Ninth Circuit.²²¹

On appeal, the Ninth Circuit noted that it "cannot be gainsaid that an individual's primary language can be an important link to his ethnic culture and identity." The court held, however, that "Title VII . . . does not protect the ability of workers to express their cultural heritage at the workplace."²²² There is, the court said, "nothing in Title VII that requires an employer to allow employees to express their cultural identity."²²³ The wording of the statute simply did not support the EEOC guidelines, according to the court, and the plaintiffs could not cite anything in the legislative history of Title VII on the meaning of "national origin" or which indicated that English-only policies are to be presumed discriminatory.²²⁴ The court stated, "[w]e do not reject the English-only rule Guideline lightly. . . . But we are not bound by the Guidelines. . . . We will not defer to an 'administrative construction of a statute where there are 'compelling indications that it is wrong.'"²²⁵ Although the EEOC's

²¹⁴ Five years after the *Gutierrez* decision, the Ninth Circuit commented on the case as follows: "The Spanish-speaking employees rely on the reasoning in *Gutierrez v. Municipal Court*, 838 F.2d 1031 (9th Cir. 1988), *vacated as moot*, 490 U.S. 1016 (1989), which held that English-only policies adversely impact Spanish-speaking employees. The case has no precedential authority, however, because it was vacated by the Supreme Court. We are in no way bound by its reasoning." *Garcia v. Spun Steak Co.*, 996 F.2d 1480, 1487 n.1, *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).

²¹⁵ 618 F.2d 264, 268 (5th Cir. 1980), *cert. denied*, 449 U.S. 1113 (1981).

²¹⁶ *Id.* at 270.

²¹⁷ *Id.* at 268 n.1.

²¹⁸ 45 Fed. Reg. 85,632, 85,635 (1980).

²¹⁹ 29 C.F.R. § 11606.7(a) (1995).

²²⁰ 996 F.2d 1480, *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994).

²²¹ See *id.* at 1483-84.

²²² *Id.* at 1487 (citing *Garcia v. Gloor*, 818 F.2d 264, 269 (5th Cir. 1980)).

²²³ *Id.*

²²⁴ *Id.* at 1486, 1489-90. For a discussion of the "relatively insignificant" legislative history of the term "national origin" in Title VII and the importance of this sparse legislative history, see Juan Perea, *Ethnicity and Prejudice: Reevaluating "National Origin" Discrimination Under Title VII*, Wm. & Mary L. Rev., vol. 35 (1994), pp. 805, 817-31 (hereafter cited as Perea, *National Origin Discrimination*).

²²⁵ *Id.* at 1489 (citing *Espinoza v. Farah Mfg. Co.*, 414 U.S. 86, 94 (1973)). In *Espinoza*, a Mexican citizen sued Farah Mfg. Co. in San Antonio, TX, for refusing to hire her as a seamstress because she was an alien, alleging national origin discrimination. 414 U.S. at 87. The Court held that, contrary to the EEOC guidelines, the plain meaning of "national origin"—"the country where a person was born, or,

expertise as the agency responsible for enforcing Title VII's protections generally entitles its guidelines to deference, the courts have held that they may properly accord EEOC guidelines "less weight . . . than administrative regulations which Congress has declared shall have the force of law."²²⁶

The court also found that the EEOC guidelines provision that an employee meets the *prima facie* case in a disparate impact case merely by proving the existence of an English-only policy²²⁷ contravened long-standing Title VII caselaw. Instead, the plaintiff must prove any alleged discriminatory effect before the burden shifts to the employer to show a business necessity for the rule.²²⁸ It found no disparate impact as to the bilingual employees, since "the rule is one that the affected employees can readily observe and nonobservance is a matter of individual preference."²²⁹ Under the Ninth Circuit decision, since the employee did not make out a *prima facie* case of national origin discrimination

more broadly, the country from which his or her ancestors came"—did not include citizenship status. This interpretation was also supported, according to the Court, by the "quite meager" legislative history wherein the only direct definition given the phrase in Title VII was "it means the country from which you or your forbears come from." *Id.* at 88–89 (quoting 110 Cong. Rec. 2549 (1964) (remarks of Rep. Roosevelt)). The Court also found it inconceivable that Congress would maintain citizenship requirements for Federal employment while simultaneously prohibiting similar requirements for private employers. *Id.* at 89–91. *Espinosa* is the only Supreme Court decision interpreting "national origin" under Title VII. Juan Perea maintains that the plain meaning of the statutory language and its meager legislative history "easily could have been interpreted to prevent discrimination against a legal alien" and the Supreme Court therefore "probably interpreted 'national origin' overly narrowly in *Espinosa*." Perea, *National Origin Discrimination*, p. 823.

²²⁶ *General Elec. Co. v. Gilbert*, 429 U.S. 125, 140–41 (rejecting EEOC guidelines providing that failure to cover pregnancy-related disabilities under any health or temporary disability insurance or sick leave plan violated Title VII's prohibition against sex discrimination); see also *Public Employees Retirement Sys. v. Betts*, 492 U.S. 158, 171 (1989) (rejecting EEOC's position that denial of disability retirement benefits to employees over age 60 violated the Age Discrimination in Employment Act).

²²⁷ 29 C.F.R. § 1607.6(a) & (b).

²²⁸ *Spun Steak*, 996 F.2d at 1488–89.

²²⁹ *Id.* at 1487 (quoting *Garcia v. Gloor*, 618 F.2d 264, 269 (8th Cir. 1980), cert. denied, 449 U.S. 1113 (1981)). In the case of monolingual Spanish-speaking employees, the court remanded to determine whether there were any such employees and whether they had suffered any adverse impact. *Id.* at 1488–90.

merely by proving the existence of an English-only policy, the employer was not required to prove a business necessity for the rule, both of which are in direct contravention of the EEOC guidelines. The court also rejected Spanish-speaking employees' contentions that the English-only policy contributed to an atmosphere of "isolation, inferiority or intimidation." The court noted that the plaintiff had presented no evidence other than the conclusory statements to raise a genuine issue that the effect of the rule is to create a hostile environment.²³⁰

The plaintiffs requested and were denied a rehearing *en banc*. Circuit Judge Stephen Reinhardt issued a strong dissent in which he chastised the panel's rejection of the EEOC guidelines and characterized its analysis as insensitive. He noted that "the imposition of an English-only rule may mask intentional discrimination on the basis of national origin Even those who support the majority's view acknowledge that 'language can be a potent source of racial and ethnic discrimination' History is replete with language conflicts that attest, not only to the crucial importance of language to its speakers, but also to the widespread tactic of using language as a surrogate for attacks on ethnic identity."²³¹

The plaintiffs appealed to the Supreme Court, which requested that the Clinton administration advise the Court regarding the Federal Government's position on the case. According to published accounts, the Justice Department's brief noted that the case presented "an issue of great national importance to national origin minorities" and urged the Court to overturn the Ninth Circuit's ruling.²³² The Justice Department also noted that the EEOC was litigating approximately 120 cases concerning English-only policies in the workplace.²³³ Despite the Justice Department's position, the Court declined to hear the case, thereby letting stand the Ninth Circuit's decision that English-only rules were not prohibited under Title VII and its rejection of the EEOC guidelines providing that English-only rules are presumed to discriminate on

²³⁰ *Id.* at 1488–89.

²³¹ *Garcia v. Spun Steak Co.*, 13 F.3d 296, 297–98 (9th Cir. 1993).

²³² Brief for the United States as Amicus Curiae at 6, *Garcia v. Spun Steak Co.*, 512 U.S. 1228 (1994) (No. 93–1222) (*certiorari denied*).

²³³ "English Only Rule at Work," p. 1A.

the basis of national origin absent an employer's showing of business necessity.

The Eleventh Circuit, which includes Florida, followed this approach in *Gonzales v. Salvation Army*, an unpublished decision that is not binding precedent.²³⁴ In Tampa, Florida, the Salvation Army issued an English-only rule that applied at all times—including lunch or break times—to the conference area of the office where conversations could be overheard by clients and staff. The office receptionist and another employee had expressed concern that they were being talked about and complained to management that employees' speaking of Spanish during lunch and break time disturbed them. The court held that the English-only rule served a legitimate need, since supervisors must know what is being said in the workplace, and cited the need of non-Spanish-speaking employees to know what was being said within hearing distance. The court stressed that the plaintiff was fully bilingual and therefore not aggrieved by an English-only requirement, that only one of the supervisors could understand Spanish, and that the rule to speak only English was implemented for the conference area of the office where conversations could be overheard by clients and staff.²³⁵

Another recent decision also followed the *Gloor* and *Spun Steak* line of reasoning in rejecting the EEOC guidelines. In *Long v. First Union Corporation of Virginia*, the plaintiffs were bilingual Hispanic bank tellers from the Dominican Republic, Puerto Rico, El Salvador, and Chile. Two were U.S. citizens and two were permanent resident aliens. Several monolingual English-speaking employees complained that the plaintiffs were making fun of them in Spanish

and that the "constant speaking" of Spanish by the plaintiffs made them uncomfortable. The plaintiffs were instructed not to speak Spanish at all times while at work, unless it was necessary to assist a Spanish-speaking customer of the bank.²³⁶ The EEOC "determined that the evidence obtained during the investigation establishes violations of Title VII of the Civil Rights Act of 1964, as amended, on the basis of national origin, Hispanic."²³⁷

The district court held that the:

EEOC's determination that the mere existence of an English-only policy satisfies the plaintiff's burden of proof is not consistent with the drafting of the statute but is rather agency-created policy. The plaintiff still bears the burden of showing a *prima facie* case of discrimination Denying bilingual employees the opportunity to speak Spanish on the job is not a violation of Title VII. There is nothing in Title VII which protects or provides that an employee has a right to speak his or her native tongue while on the job.²³⁸

Thus, the four Federal circuits that have considered the issue have all rejected the EEOC's determination in 29 C.F.R. § 1606.7(a) that "the primary language of an individual is often an essential national origin characteristic."²³⁹ These courts have considered an English-only rule to be a facially neutral policy, since it applies to all

²³⁴ *Gonzalez v. Salvation Army*, No. 91-3588 (11th Cir. Feb. 1, 1993), 965 F.2d 578, 1993 U.S. App. LEXIS 1649 (11th Cir. 1993) (mem.), cert. denied, 508 U.S. 910 (1993). See "Supreme Court Refuses To Review Propriety of English-Only Rule for Hispanic Employees," *Daily Lab. Rep. (BNA)*, May 18, 1993, p. 4 for a description of the decision. Section 36-2 of the Eleventh Circuit's rules provides: "Unpublished opinions are not considered binding precedent. They may be cited as persuasive authority, provided that a copy of the unpublished opinion is attached to or incorporated within the brief, petition, motion, or response in which such citation is made."

²³⁵ *Gonzalez v. Salvation Army*, No. 91-3588 (11th Cir. Feb. 1, 1993); see also "Supreme Court Refuses To Review Propriety of English-Only Rule for Hispanic Employees," *Daily Lab. Rep. (BNA)*, May 18, 1993, p. 4.

²³⁶ 894 F. Supp. 933, 938-39, 942 (E.D. Va. 1995).

²³⁷ *Id.* at 938 (quoting the EEOC's determination letter).

²³⁸ *Id.* at 940-41 (citing *Garcia v. Spun Steak Co.*, 998 F.2d 1480, (9th Cir. 1993), cert. denied, 512 U.S. 1228 (1994)), *aff'd mem.*, 86 F.3d 1151, No. 95-1986, 1996 U.S. App. LEXIS 12431, at *5 (4th Cir. May 29, 1996). The Fourth Circuit's local rule 36(c) provides: "In the absence of unusual circumstances, this Court will not cite an unpublished disposition in any of its published opinions or unpublished dispositions. Citation of the Court's unpublished dispositions . . . is disfavored, except for the purpose of establishing res judicata, estoppel, or the law of the case. If counsel believes, nevertheless, that an unpublished disposition of any court has precedential value in relation to a material issue in the case and that there is no published opinion that will serve as well, such disposition may be cited if counsel serves a copy thereof on all other parties in the case and on the Court."

²³⁹ *Long v. First Union Corp. of Virginia*, 894 F. Supp. 933, 941 (E.D. Va. 1995), *aff'd mem.*, 86 F.3d 1151, No. 95-1986, 1996 U.S. App. LEXIS 12431 (4th Cir. May 29, 1996); *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1486-89 (9th Cir. 1993), *reh'g denied*, 13 F.3d 296 (9th Cir. 1993), cert. denied, 114 S.Ct. 1418 (1994); *Gonzalez v. Salvation Army*, No. 91-3588 (11th Cir. Feb. 1, 1993). The Fifth Circuit's opinion preceded the EEOC guidelines, but held that Title VII "does not support an interpretation that equates the language an employee prefers to use with his national origin." *Garcia v. Gloor*, 618 F.2d 264, 270 (5th Cir. 1980), cert. denied, 449 U.S. 1113 (1981).

workers, and plaintiffs are required to prove adverse impact. As long as the affected employees speak English to any degree, they have been considered to be bilingual. The choice whether to speak English is characterized as a matter of personal preference, which does not implicate a fundamental aspect of their cultural identity. Therefore, these courts have found that bilingual employees are not adversely impacted by an English-only rule.²⁴⁰

Federal caselaw is not, however, entirely uniform. Prior to *Spun Steak*, a Federal district court recognized the validity of the EEOC Guidelines on Discrimination Because of National Origin in the only reported case addressing a Title VII complaint of a monolingual English-speaking employee. In *McNeil v. Aguilos*, an English-speaking African American nurse asserted, among other claims, a claim of racial and national origin discrimination, alleging that the head nurse and other Filipino American nurses at Bellevue Hospital in New York City spoke in Tagalog (a Filipino language) in order to isolate her and prevent her from effectively doing her job. Citing the EEOC guidelines, the court held that this portion of plaintiffs' suit stated a valid claim under Title VII and could go forward.²⁴¹ After a series of procedural rulings, however, the suit was ultimately dismissed for the *pro se*

plaintiffs' willful disregard of discovery orders and failure to prosecute her claims.²⁴²

Even when the Federal courts have honored the EEOC guidelines' presumption, they have generally held that the employer's proffered reason was sufficient to meet the business necessity test.²⁴³ Therefore, "[u]ntil recently few cases were filed, and employers won many of them. They argued successfully that to run a business, managers need to base hiring decisions on such factors as language skills."²⁴⁴ Plaintiffs have had more success in State courts and in local fair employment agencies, such as the Dade County Equal Opportunity Board. These agencies are usually authorized to enforce Title VII as well as their own statute or ordinance and apply the EEOC guidelines. In these jurisdictions, employers have increasingly been settling cases.²⁴⁵

Local Law and the Impact of Language Policies on Racial and Ethnic Tensions in South Florida

As previously noted, the EEOC Guidelines on Discrimination Because of National Origin provide that "[t]he primary language of an individual is often an essential national origin characteristic," and presume that an English-only rule violates Title VII's prohibition on national origin discrimination. An English-only rule will be allowed only if it is limited to certain times and the employer can show that the rule is justified by business necessity.²⁴⁶ As the preceding section explains, the four Federal circuits that have considered the issue have rejected these positions and upheld English-only policies.²⁴⁷ The EEOC

²⁴⁰ In *Spun Steak*, for example, the court found no disparate impact upon employees who could speak some English, since "the rule is one that affected employees can readily observe and nonobservance is a matter of individual preference." 998 F.2d 1481, 1487 (9th Cir. 1993), cert. denied, 512 U.S. 1228 (1994) (quoting *Garcia v. Gloor*, 618 F.2d 264, 269 (5th Cir. 1980)). Similarly, in *Long* the court stated that the "fact that an employee may have to catch himself or herself from occasionally slipping into Spanish does not impose a significant enough burden to amount to a denial of equal opportunity." These plaintiffs are all bilingual and . . . the English-only policy was applied to all employees." 894 F. Supp. at 941 (quoting *Spun Steak*, 998 F.2d at 1488). The progenitor of this line of cases, *Garcia v. Gloor*, 618 F.2d 264, 272 (5th Cir. 1980), cert. denied, 449 U.S. 1113 (1981), held that "an employer's rule forbidding a bilingual employee to speak anything but English in public areas while on the job is not discrimination based on national origin as applied to a person who is fully capable of speaking English and chooses not to do so in deliberate disregard of his employer's rule."

²⁴¹ *McNeil v. Aguilos*, 831 F. Supp. 1079, 1081-84 (S.D.N.Y. 1993). See also "Allowing Language Diversity In Workplace May Violate Rights of English Speakers," *Employment Policy & Law Daily* (BNA), Sept. 29, 1993 (discussing the case); Epstein, "Conflicting Suits," (same).

²⁴² *McNeil v. Aguilos*, No. Civ. 6938 (SS), 1996 U.S. Dist. LEXIS 5741, at *7-10 (S.D.N.Y. Apr. 30, 1996).

²⁴³ See, e.g., *Flores v. Hartford Police Dept.*, 25 Fair Empl. Prac. Cas. (BNA) 180, 186 (D.Conn. 1981); *Jurado v. Eleven-Fifty Corp.*, 813 F.3d 1406, 1410-11 (9th Cir. 1987) (no disparate impact where bilingual disc jockey fired for disobeying rule forbidding use of an occasional Spanish word or phrase on the air; employer had right to determine nature of programming).

²⁴⁴ Yang, "In Any Language." See, e.g., *Flores v. Hartford Police Dept.*, 25 Fair Empl. Prac. Cas. (BNA) 180, 186 (D.Conn. 1981); *Jurado v. Eleven-Fifty Corp.*, 813 F.3d 1406, 1410-11 (9th Cir. 1987) (no disparate impact where bilingual disc jockey fired for disobeying rule forbidding use of an occasional Spanish word or phrase on the air; employer had right to determine nature of programming).

²⁴⁵ See Yang, "In Any Language."

²⁴⁶ 29 C.F.R. § 1606.7(a) & (b).

²⁴⁷ The Fifth Circuit's *Gloor* decision was reached prior to the EEOC's promulgation of its guidelines on national origin

continues to apply its guidelines in all Federal circuits except the Ninth.²⁴⁸ Field offices in the Ninth Circuit "are instructed to follow *Spun Steak* and consider the 'totality of the circumstances' to prove that an English-only policy has an adverse impact." A list of factors to consider is provided that appears very similar to standard EEOC analysis involving assessment of the adverse impact on a particular national origin, whether the entire employee population is affected to the same degree, and whether the rule is applied at all times or only at specified times.²⁴⁹ At least one commentator maintains that the EEOC has not really changed its position anywhere regarding the processing of charges involving an English-only policy. Companies "regularly buckle," he says, "because it just doesn't pay to fight." The "EEOC continues to prosecute cases both inside and outside the jurisdiction of courts where it has lost. 'The commission has not revised or modified its position,' says the agency, 'nor does it intend to do so.'"²⁵⁰ To date, local law in south Florida on language policies parallels that of the EEOC, or is perhaps even slightly more favorable to plaintiffs.

To begin with, Dade County's equal employment opportunity ordinance covers more employers. Title VII applies to employers with 15 or more employees on the payroll for 20 or more weeks during the year.²⁵¹ Dade County's Equal

Opportunity Ordinance, chapter 11A of the Dade County Code, prohibits discrimination in employment and other areas on the basis of national origin, and applies to employers with five or more employees for 4 or more calendar weeks during the year.²⁵² Broward County's Human Rights Act, chapter 16½ of the Broward County Code, and the Florida Civil Rights Act of 1992 both prohibit discrimination in employment on the basis of national origin and apply to employers with 15 or more employees for 20 or more calendar weeks, as does Title VII.²⁵³

The Dade County Equal Opportunity Board (DCEOB), a division of Metro Dade County's Department of Community Affairs, consists of 13 members appointed by the Metro Dade Commission and staff. The DCEOB investigates charges of discrimination in employment and applies Dade County's Equal Opportunity Ordinance.²⁵⁴ A complaint must be filed with the DCEOB within 180 days of the alleged unlawful practice. The DCEOB director issues an investigative report and recommended final order on the merits

discrimination, but remains good law in that circuit. The Fourth, Ninth and Eleventh (which includes Florida) rejected the EEOC's guidelines. See notes 229-38 and accompanying text. The Eleventh Circuit's unpublished *Salvation Army* decision is not binding precedent, but may be cited as persuasive authority. See notes 234-35 and accompanying text. The decision's effect in the Federal courts in Florida, as well as on the decisions of State and local bodies that apply laws in large part modeled on the EEOC guidelines, is at this point uncertain.

²⁴⁸ Elizabeth Thornton, Deputy Legal Counsel, EEOC, memorandum to District Directors, Area Directors, Local Directors, Washington Field Office Director (Oct. 5, 1994) (on file with the U.S. Commission on Civil Rights).

²⁴⁹ *Ibid.*

²⁵⁰ David Andrew Price, "English-Only Rules: EEOC Has Gone Too Far," *USA Today*, March 28, 1996, p. 13A (hereafter cited as Price, "EEOC Has Gone Too Far"). The article notes that Mr. Price "is an attorney with the Washington Legal Foundation, a conservative public-interest firm." *Ibid.*

²⁵¹ 42 U.S.C. § 2000E (b) (1996). The U.S. Supreme Court, in a unanimous ruling, recently held that this provision meant that Title VII applied to employers which had at least 15 employees on the weekly payroll for the requisite number of

weeks, even if 15 employees were not actually working every day for some of these weeks. *Walters v. Metro. Educ. Enter.*, 117 S. Ct. 660 (1997). See also Jan Crawford Greenburg, "Court Widens Net for Job Bias Complaints; More Firms Covered Under New Employee Count," *Chicago Tribune*, Jan. 15, 1997, p. 1 (Business).

²⁵² DADE COUNTY, CODE § 11A-1 (9) (1995); *Dade County Employment Law Handbook*, p. 24. The law also applies to all municipal employees within Dade County and to county employees. Marcos Regalado, Director, Dade County Equal Opportunity Board, telephone interview, Aug. 10, 1995 (hereafter cited as Regalado Interview).

²⁵³ Morgan, Lewis & Bockius, Miami FL, 1995 *Employment Law Handbook: A Guide to Employment Laws for Dade County Employers* (Miami: Greater Miami Chamber of Commerce, 1995), pp. 18-19, 27 (hereafter cited as *Dade County Employment Law Handbook*). The Broward County Human Rights Division administers the county's Human Rights Act, and the Florida Commission on Human Relations or the Attorney General of Florida enforce the Florida Civil Rights Act. *Ibid.*

²⁵⁴ The DCEOB has been a designated 706 deferral agency by the EEOC since 1974. Regalado Testimony, *Miami Hearing*, vol. I, p. 135. This means that, pursuant to sec. 706 of Title VII, Dade County's fair employment ordinance "was deemed to be substantially equivalent to Title VII The 706 deferral status allows the agency to contract with the EEOC to investigate employment discrimination charges under Title VII and receive payment from the EEOC for completed investigations." DCEOB, *FY 1994-95 Semi-Annual Report To The Board of County Commissioners and the County Manager* (1995), p. 2. The EEOC must initially defer investigation of a charge filed with it to a State or local agency that enforces laws similar to Title VII. *Dade County Employment Law Handbook*, p. 1.

of a charge, which becomes final if it is not appealed within 10 days after receipt to the 13-member board. The board has the authority to uphold, modify, rescind, or reverse the staff's recommendation in a public hearing on the matter. The board's decision may be appealed to the Dade County Circuit Court. The DCEOB's final order is also enforceable in the circuit court, by either the DCEOB or the complainant.²⁵⁵

Section 11A-27(1) of the Dade County Code proscribes employment discrimination, including the failure to hire, on the basis of national origin. It is also unlawful to "print or circulate . . . an advertisement . . . which expresses a limitation, preference, specification or to otherwise discriminate" on the grounds of national origin.²⁵⁶ The DCEOB issued its own *Guidelines For Language Requirements in the Workplace* to assist in the application of the county antidiscrimination ordinance and to provide further guidance for employers.²⁵⁷ The guidelines state that to a large degree, the DCEOB:

follows the guidelines of the EEOC in the analysis of charges of employment discrimination. Within Dade County, the uniqueness of our population suggests the need for amplification of the existing Federal guidelines on language fluency requirements, be they fluency in English or in any other language. . . . At issue, is whether the requirement of knowledge of a particular language, or of more than one language, is a bona fide occupational requirement (BFOQ), a business necessity, or whether it is an action which adversely impacts the members of a particular race, color or national origin more than another in a discriminatory fashion.²⁵⁸

The guidelines provide that if the language requirement can be shown to be necessary "for the health and safety of employees, the public and/or customers, then it will be allowable under

the business necessity exception." Examples cited include "hospital switchboard operators, where the hospital administration identifies a service population need for coverage on all shifts" or "security guards, where the employer identifies a need for employees to be able to communicate with residents in the community being patrolled." A language requirement can also be allowable under the business necessity exception if it "can be shown to be necessary to the performance of the essence of the business." One example given is "clerical workers who are required to have proficiency in a particular language(s), where the job content includes typing or other communication in the required language."²⁵⁹

In each of the above instances, the DCEOB guidelines provide that in determining whether there is a business necessity:

there will be a review of whether there are alternative means of meeting the language need that would either have no impact or a more limited impact on the affected groups. For instance, if an office has five clerical workers, and approximately five percent of the total work volume for the office is in a specific language, it is unlikely that knowledge of that language would be accepted as a business necessity for all five of the clerical positions. It would be expected that the employer would use the alternative, which would be to assign all work in that language to one or two employees who are fluent in it, so as to limit the impact on other groups.²⁶⁰

The guidelines further provide that "the preference of coworkers will not be accepted as a business necessity under any circumstances," and that "customer preference will be reviewed very carefully in charges alleging disparate impact." To be considered a valid business necessity, the employer must show that, "while the language requirement does not fulfill the essence of the business, the business will lose trade or money if staff members (i.e., salespersons, bank tellers) are not fluent in a particular language." The employer bears the burden of showing that: "(1) failure to provide staff fluent in the specific language would result in appreciable loss of business; (2) the proportion of staff required to be fluent in the language reflects the minimum level needed to avoid loss of business;

²⁵⁵ Regalado Testimony, *Miami Hearing*, vol. 1, pp. 135-36; *Dade County Employment Law Handbook*, p.25; DADE COUNTY, CODE §§ 11A-3, -4, -6, -8 (1995). The only exception to these procedures is that Metropolitan Dade County employees must file an internal complaint with the affirmative action director in the Dade County Office of Fair Employment Practices. Regalado Interview; DADE COUNTY, CODE § 11A-28.

²⁵⁶ DADE COUNTY, CODE § 11A-28 (2).

²⁵⁷ DCEOB, *Guidelines For Language Requirements in the Workplace* (May 7, 1991) (hereafter cited as *DCEOB Guidelines*); Regalado Testimony, *Miami Hearing*, vol. 1, pp. 137-38. The guidelines were approved by the Board of Dade County Commissioners in resolution no. 471-91.

²⁵⁸ *DCEOB Guidelines*, p. 2.

²⁵⁹ *Ibid.*, p. 3.

²⁶⁰ *Ibid.*, p. 4.

and (3) there is no other reasonable alternative means to meet this business need."²⁶¹

Unlike the EEOC guidelines, the DCEOB guidelines speak only of "a language requirement" and never mention English-only policies or the "primary language of an individual." They are undoubtedly intended to apply to both English-only requirements and "bilingual" (or even "trilingual") requirements, wherein the employer requires the ability to speak a language or languages other than English.²⁶² The guidelines were formulated based on the results of a DCEOB research study entitled "Bilingualism in Employment," funded by the Metro Miami Action Plan, a largely African American civil rights organization.²⁶³ The study analyzed 22,000 job advertisements in the *Miami Herald* to obtain an idea of the extent of bilingual requirements in the Dade County labor market. Researchers then contacted many of the employers that indicated a requirement or preference for bilingual employees to obtain an estimate of the extent to which such requirements violated equal employment opportunity laws or were at least legally questionable without more indepth analysis.²⁶⁴ Two goals of the study were to clarify "for employers when bilingual requirements are appropriate and when such requirements may violate equal employment opportunity laws" and to "[i]ncrease enforcement of this area of equal employment opportunity . . . so as to not unnecessarily restrict Black employment."²⁶⁵

Although the DCEOB guidelines were intended to apply to both English-only and bilingual requirements, like the EEOC's guidelines they do presume adverse impact of a language requirement and always require an employer to provide a business justification for such a rule.

An employee, therefore, meets his or her burden of proving a *prima facie* case in an adverse impact case by proving the existence of the language requirement.²⁶⁶

The DCEOB guidelines differ significantly from Federal caselaw in their treatment of co-worker and customer preference. Unlike a number of Federal circuits,²⁶⁷ the guidelines provide that the preference of coworkers "will not be accepted as a business necessity under any circumstances."²⁶⁸ Mere discomfort with the language coworkers are speaking or a belief that "they are talking about me" on the part of an employee who does not speak the language cannot be a basis for upholding a restrictive language requirement before the DCEOB.²⁶⁹ The mere assertion of "customer preference," under the DCEOB guidelines, will not be sufficient. Rather, the employer must show that the business will lose trade or money without the language requirement and that its impact on affected groups has been effectively limited.²⁷⁰

The Dade County Equal Opportunity Board has applied the Equal Opportunity Ordinance and DCEOB guidelines to find discrimination in employment where the prohibition of use of a language other than English at work was alleged.²⁷¹ During the 1995 fiscal year, the DCEOB held public appeals hearings and issued final orders in *Gilbert v. Studio Cosmyl, Inc.*, and *Gault v. Studio Cosmyl, Inc.*, in favor of the charging parties and awarded them \$278,756 in back wages, interest, costs, and attorneys' fees.²⁷² Ms. Gilbert alleged that she was discharged in 1989 as a masseuse because she spoke Spanish at work and that her dismissal constituted discrimination on the basis of her national origin, Brazilian. She was fluent in Por-

²⁶¹ *Ibid.*, pp. 3, 4; see also Regalado Testimony, *Miami Hearing*, vol. I, pp. 188-90 (discussing application of guidelines on customer preference).

²⁶² Regalado Testimony, *Miami Hearing*, vol. I, pp. 137-38.

²⁶³ DCEOB, *Bilingualism in Employment* (1989); Marcos Regalado, Director, Dade County Equal Opportunity Board, written statement submitted at *Miami Hearing*, p.2. The DCEOB was at that time called the Fair Housing and Employment Appeals Board (FHEAB). The study notes that at the "1987 Annual Conference of the Metro-Miami Action Plan (MMAP), the [FHEAB] was designated as the lead authority to develop and carry out [the study]." DCEOB, *Bilingualism in Employment*, p. 1.

²⁶⁴ DCEOB, *Bilingualism in Employment*; Regalado Testimony, *Miami Hearing*, vol. I, p. 137.

²⁶⁵ DCEOB, *Bilingualism in Employment*, p. 1. The results of the study are discussed later in this report.

²⁶⁶ The guidelines in fact state: "It is likely that requiring knowledge of a particular language will have an adverse impact on members of one or another racial or national origin group." *DCEOB Guidelines*, p.2.

²⁶⁷ See notes 173-74 and accompanying text.

²⁶⁸ *DCEOB Guidelines*, p.4.

²⁶⁹ Essentially, one's primary language is recognized—as in the EEOC guidelines—"as an essential national origin characteristic," 29 C.F.R. § 1604.7 (a) (1995), and "private fears or biases cannot constitute the business justification for a rule that discriminates against a protected group." "English-Only Rules Are Increasing," p. 60 (statement of University of Florida Law Professor Juan F. Perea).

²⁷⁰ See notes 259-61 and accompanying text.

²⁷¹ Regalado Testimony, *Miami Hearing*, vol. I, p. 136.

²⁷² *Ibid.*

tuguese, Spanish, and English. The spa director posted a set of "Employee Rules and Regulations" in the employee lunchroom, one of which read: "Employees are not allowed to speak Spanish amongst one another, only to Spanish-speaking clients." The board found that Studio Cosmyl "failed to establish a legitimate business necessity for its implementation of the rule prohibiting employees from speaking Spanish at work, and that the rule 'created a discriminatory working atmosphere for the Charging party and other employees of Hispanic origin.'" ²⁷³ The board also found that Ms. Gault, a Hispanic, was fired in 1989 from her job as a manicurist for violation of the same rule. ²⁷⁴ The DCEOB's rulings in both cases were affirmed by the Dade County Circuit Court. ²⁷⁵

Similarly, the DCEOB recently ruled that a Miami woman, Lourdes Paneda, was terminated from her position as multiple listing service (MLS) clerk in 1991 because of her national origin, Hispanic, for speaking Spanish on the job. The employer had issued a memorandum prohibiting employees from speaking Spanish in the office. The handwritten memorandum from an executive vice president in charge of administration read as follows: "Please remember to speak English (even when I'm not here). It is the official language of this office and the U.S.A. Give me a break! I'm ugly when I'm upset." ²⁷⁶ When Ms. Paneda spoke English to one of the board members in keeping with the English-only policy, he asked her why she wasn't speaking Spanish with him like she always did. Informed of the memorandum, the 15-year board member became upset and went to speak with the executive vice president who had issued the memorandum. Two and a half weeks later, Ms. Paneda, a 5-year employee, was fired, ostensibly

due to a "reorganization," unsatisfactory performance, and insubordination. ²⁷⁷

The DCEOB director found that the asserted reasons for Ms. Paneda's termination were pretextual; the rule applied at all times, as the record did not reflect an attempt to "differentiate between actual work hours and employee breaks, such as lunch." The policy, according to the director's findings, was directed exclusively at employees of Hispanic origin: "It is obvious that those employees that did not speak any language other than English were not so adversely affected." ²⁷⁸ Further, the report stated that, but for her national origin, Ms. Paneda would not have been discharged; that the record did not show that the employer's speak English-only rule was justified by business necessity; and that the rule created a discriminatory working atmosphere for the Charging Party and other employees of Hispanic origin. ²⁷⁹ The board ordered the Coral Gables Association of Realtors to reinstate Ms. Paneda to any clerical position, including those in the areas of MLS listings or bookkeeping that became available within 24 months and awarded her the equivalent of 3 years' salary, annual bonuses, vacation pay, legal costs, and interest, totaling \$156,818. ²⁸⁰ This case was also appealed to Dade County Circuit Court, but the parties reached a settlement for a lesser undisclosed amount. Today, says Martha Bullman, executive vice president for the Realtors' association, the association "encourages the use of any language that would assist our customers service." ²⁸¹

The DCEOB has also received and investigated charges alleging failure to hire because the individual was not bilingual. In most cases this meant that the employer required the ability to speak Spanish, as well as English. To date none

²⁷³ *Gilbert v. Studio Cosmyl, Inc.*, DCEOB No. 89-0809-604 (Nov. 17, 1994) (Final Order), at 1-2.

²⁷⁴ *Gault v. Studio Cosmyl, Inc.*, DCEOB No. 89-0809-605 (Nov. 17, 1994) (Final Order), at 1-2.

²⁷⁵ Marcos Regalado, Director, Dade County Equal Opportunity Board, telephone interview, January 1997.

²⁷⁶ *Paneda v. Coral Gables Ass'n of Realtors*, DCEOB No. 91-0823-963, (Nov. 17, 1994) (Final Order) at 2. The investigative report stated that the record was unclear whether the memo was fully distributed to all the staff, but Ms. Paneda was given a copy. *Paneda v. Coral Gables Bd. of Realtors*, EOB No. 91-0323-963 (Dec. 30, 1993) (Investigative Report), p. 3. The company changed its name from "Board" to "Association" prior to the hearing before the DCEOB.

²⁷⁷ *Paneda* (Investigative Report), pp. 1-4; *Paneda* (Final Order), pp. 1-3.

²⁷⁸ *Paneda* (Investigative Report), pp. 3, 5, 6.

²⁷⁹ *Ibid.*, pp. 4-6.

²⁸⁰ *Paneda* (Final Order), pp. 3-4; Regalado Testimony, *Miami Hearing*, vol. I, p. 136. See also Fabiola Santiago and Maydel Santana, "Gables Realtors Told to Reinstate Hispanic Woman," *Miami Herald*, July 9, 1994, p. 1B (description of case). For a similar local agency decision, see "Agency Says 7-Eleven English-Only Policy Violates Arlington County, Va. Ordinance," *Daily Labor Report (BNA)*, June 12, 1995, p. A-5 (Arlington County Human Rights Commission ruling that an English-only rule violated the prohibition against national origin discrimination).

²⁸¹ Strouse, "Language Issue."

of these cases has reached the public hearing stage.²⁸² There was, however, one "celebrated case" involving blacks who charged that they had been dismissed from a janitorial company because they could not speak Spanish, according to the president of the Urban League of Greater Miami.²⁸³

The case involved two sisters, Beverly Barnes and Shirley Drayton, who in 1984 alleged that Florida Building Services, a janitorial firm, denied them jobs cleaning offices at night because they could not speak Spanish. Their complaint, filed with what was then known as the Dade County Fair Housing and Employment Appeals Board (FHEAB), "was the first of its kind in Miami."²⁸⁴ The company employed English-speaking janitors in Broward and Palm Beach Counties,²⁸⁵ but all employees in Dade County, including supervisors, spoke Spanish.²⁸⁶ The director of the FHEAB, who commented that she doubted "that language can be much of a problem while cleaning a building at night,"²⁸⁷ found that "[t]his universe of 100 percent strongly implicates the respondent as a practitioner of past discrimination," and recommended that the sisters be awarded jobs and backpay from the date they were denied employment. Shortly before the scheduled appeals hearing before the full board, the company settled. The sisters say they

received \$1,700 each and worked for the firm for about 3 months.²⁸⁸

Workplace language issues have been addressed in at least one collective bargaining agreement in Florida benefiting Haitian and Hispanic workers. The Teamsters negotiated a contract for some 350 employees of the Walt Disney World Hotel that included provisions designed to ensure that non-English-speaking workers would be able to read safety signs and disciplinary notices placed into their files. Specifically, the contract provides that safety signs be printed in Creole and Spanish in addition to English, and that disciplinary notices must be written in the employee's own language before being placed into the employee's file.²⁸⁹

Some observers believe that workplace language policies, both English-only and bilingual, are a significant source of racial and ethnic tension in south Florida.²⁹⁰ For Hispanic, Asian, Haitian, and other ethnic groups for whom a non-English language is their primary language, language is a fundamental aspect of their ethnic

²⁸² Regalado Testimony, *Miami Hearing*, vol. I, pp. 136-37.

²⁸³ T. Willard Fair, President, Urban League of Greater Miami, testimony, *Miami Hearing*, vol. I, pp. 161-62 (hereafter cited as Fair Testimony).

²⁸⁴ Marlene Sokol, "English Is a Losing Battle, Say Two Who Won Bias Case," *Miami Herald*, Aug. 17, 1987, p. 15 (hereafter cited as Sokol, "English Is a Losing Battle"). At the time, United Press International reported that it was likely "one of the nation's first cases involving discrimination against people who don't speak Spanish," and the director of the EEOC in Miami said that he did not know of any caselaw on the issue. *Non-Spanish Speakers Denied Jobs*, UPI, Oct. 25, 1984, available in LEXIS, News Library, UPI File (hereafter cited as *Non-Spanish Speakers Denied Jobs*).

²⁸⁵ *Non-Spanish Speakers Denied Jobs*.

²⁸⁶ "Settlement For Sisters Denied Jobs For Not Knowing Spanish," Associated Press, Feb. 14, 1985, available in LEXIS, News Library, AP File. The company responded to the complaint by writing: "All of the employees who work for the company in Dade County speak Spanish and a very large number of them speak little or no English. Therefore, Spanish is the language used by all the company's Dade County employees." Sokol, "English Is a Losing Battle," p. 15.

²⁸⁷ *Non-Spanish Speakers Denied Jobs*.

²⁸⁸ Sokol, "English Is a Losing Battle," p. 15. Both sisters were still angry in 1987, but were considering Spanish lessons. Barnes said: "Everything we see is bilingual. That's discrimination." Her sister, Shirley Drayton, said: "I feel trapped. Everywhere I go, there's Spanish. I really have no future in Miami." Ibid.

²⁸⁹ "Dolphin Hotel Pact with Teamsters Addresses Staff Language Issues," *Daily Labor Report (BNA)*, Mar. 27, 1995, p. A-8. The contract was part of a settlement between the union and the hotel resulting from the October 1994 filing of a class action suit, *Campoverdo v. Dolphin Hotel Ass'n*, 94-1075-Civ-Orl-22 (M.D. Fla. 1994), charging that the hotel's "English-only" policy discriminated against the Haitian and Hispanic staff. "Haitian, Hispanic Workers Sue Hotel Charging English-Only Policy Discriminates," *Daily Labor Report (BNA)*, Oct. 13, 1994, p. D8. See also "Union Members Sue Florida Hotel Over Alleged English-Only Policy," Associated Press, Oct. 12, 1994, available in LEXIS, News Library, AP File (according to Teamsters, primary language of 45 percent of workers was Spanish and another 45 percent primarily spoke Creole); Tamar Lewin, "Teamsters Sue Hotel at Disney World on 'English-Only' Policy," *New York Times*, Oct. 13, 1994, p. A23; "AFL-CIO Boycotting 2 Hotels At Disney World," *Chicago Tribune*, Oct. 17, 1994, p. 6 (Business); Tim Chavez, "Disney's Immigrant Discrimination—A U.S. Disgrace," *Gannett News Service*, Oct. 20, 1996, available in LEXIS, News Library, Allnews File.

²⁹⁰ Terence Connor, a prominent employment attorney in Dade County and coauthor of the *Employment Handbook For Dade County Employers*, said that the issue "is clearly a point of social friction in this town. No question about it." Connor Testimony, *Miami Hearing*, vol. I, p. 200, Battle Interview.

identity.²⁹¹ To be "vulnerable to being fired merely for speaking a language in which they feel most comfortable . . . to a coworker . . . even if they're doing their jobs . . . constitutes an intolerable lack of equal treatment and dignity in the workplace."²⁹² In Dade County, the primary language of 57 percent of the population is a language other than English,²⁹³ and the first language requirement cases prosecuted to conclusion by the Dade County Equal Opportunity Board involved English-only rules found to discriminate against Hispanics.

As the Hispanic population increases, some in the monolingual white and African American communities express frustration or anger regarding the increasing number of jobs that require bilingual ability and voice suspicion regarding the bona fide need for such a requirement in many cases. In Broward County, most of the language complaints are from English-speaking individuals challenging an employer's requirement that employees be bilingual. It is "a very significant source of racial and ethnic tension in Broward County," according to the director of the Human Rights Division of Broward County.²⁹⁴

In Dade County, the most economically marginal group is native-born blacks,²⁹⁵ and "the principal resentment probably comes from the black community where the perception might be that 'we started out at the bottom of the social ladder and in came the Spanish-speaking com-

munity that grew up all around us and became an economic force in the community and we've ended up even lower down the ladder.'"²⁹⁶ In particular, comparisons between the rising economic condition of Cuban refugees over time and the still-dismal economic condition of much of black Miami "has contributed to a pervasive sense of powerlessness, resentment, and despair in Black Miami."²⁹⁷ H.T. Smith, a leader in Miami's native-born black community who helped organize the convention boycott of Miami in response to the perceived snub of Nelson Mandela in 1990, noted that area African Americans have been saying for two decades that "[w]hen the rest of the economy went through a boom, we were going through a bust. While a lot of black communities were going from poverty to low income, black Miami was going from poverty to misery."²⁹⁸ The tensions between blacks and Hispanics are widespread, according to Mr. Smith: "It is an icy, almost glacial relationship between our communities."²⁹⁹ Although the barrier that bilingual language policies pose to the economic advancement of monolingual blacks is only one aspect of that relationship, a leading employment lawyer in Miami testified that workplace language policies are "clearly a point of social friction in this town. No question about it."³⁰⁰

²⁹¹ Prof. Juan Perea contends that sociological study has established the significance of primary language as a fundamental aspect of an individual's ethnicity. Perea, *Right To Speak One's Primary Language*, pp. 276-79. See generally Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, 70 N.Y.U.L. Rev. 965 (1995) (arguing that the failure of our legal system and society to recognize the significance of language and other ethnic characteristics to Latino identity renders them invisible and foreign, thus precluding their full recognition as equal members of our community).

²⁹² Perea Testimony, *Miami Hearing*, vol. I, p. 151.

²⁹³ See note 183 and accompanying text.

²⁹⁴ Battle Interview.

²⁹⁵ According to a University of Pittsburgh study, 46 percent of Miami's black population—the highest percentage in the country—have incomes below the poverty level. Tony Pugh, "Miami Has Highest Percentage of Poor," *Miami Herald*, Oct. 24, 1996, p. 1B (hereafter cited as Pugh, "Miami Has Highest Percentage of Poor"). Black Miami's also ranked last in a formula to determine "standard of living, according to Ralph Bangs, who conducted the study. Dividing per capita personal income by the cost of living, blacks in Miami averaged \$5,364 per person annually. That "was by far the worst," Bangs said. *Ibid.*

²⁹⁶ Connor Interview.

²⁹⁷ Raymond A. Mohl, "Blacks and Hispanics in Multicultural America: A Miami Case Study," *Amerikas-tudien/American Studies* (Germany), vol. 40 (1995), pp. 10-11 (advance copy).

²⁹⁸ Pugh, "Miami Has Highest Percentage of Poor"; see also Larry Rohter, "Black-Hispanic Tensions Growing: Miami Conflict May Presage U.S. Trend as Latino Population Continues To Rise," *Dallas Morning News*, June 21, 1993, p. 5A.

²⁹⁹ David LaGesse, "Miami Hopes To Repair Its Image With Summit: City prepares To Host Americas Leaders This Week," *Dallas Morning News*, Dec. 5, 1994, p. 1A.

³⁰⁰ Connor Testimony, *Miami Hearing*, vol. I, p. 200. Dr. Eduardo Padron, now president of Miami Dade Community College, has said that "language has almost become a condition of employment in this city, no matter where you go. Being bilingual—or trilingual—is very important. You need that to be successful in almost any job." Eduardo Padron, President, Miami-Dade Community College, Wolfson Campus, telephone interview, Aug. 15, 1997 (hereafter cited as Padron Interview). The president of the Urban League of Greater Miami testified that in comparison to the tension that the issue language in government brought to Miami in the 1970s and later "the whole issue of language . . . has sort of mellowed out right now," and that "the marketplace is going to dictate" that "multilingualism is going to be a prerequisite for us." He admitted however, that he has had blacks express concern to him regarding the barrier bilingual jobs pose to them and the loss of lower skilled jobs to immigrants. Fair

Metro Miami Action Plan and the Dade County Equal Opportunity Board were concerned enough about whether bilingual job requirements "unnecessarily restrict black employment" and "when such requirements may violate equal opportunity laws" in 1987 and 1988 to conduct the analysis referenced earlier of 22,000 advertisements in the classified section of the *Miami Herald*.³⁰¹ The study found that 1,825 employers, or 8 percent, openly required or preferred bilingual applicants. Approximately 50 percent of these employers were in the office/clerical field; 13 percent, medical; 11 percent, sales; 8 percent, professional; 5 percent, retail stores; 4 percent, restaurants/clubs/hotels; 2 percent, banking/finance or insurance, and 6 percent, miscellaneous industries.³⁰² The office and clerical fields having the greatest proportion of jobs that required bilingual ability included jobs such as secretary, receptionist, and switchboard operator that required public contact.³⁰³

Five hundred of these employers were contacted regarding their reasons for requiring or preferring bilingual applicants. About 83 percent stated customer preference as a reason, claiming that Hispanic customers or clients preferred to deal with a Spanish-speaking employee; 13 percent stated that their business was in a heavily Hispanic-populated area, and 4 percent cited bilingualism as an additional skill for promo-

tions.³⁰⁴ The second reason noted above could also be indicative of customer preference. Thus, while limited, this study indicated that possibly 96 percent of the jobs that required bilingual skills were legally suspect. The mere assertion of customer preference is not sufficient justification under DCEOB and EEOC law.³⁰⁵

It is difficult to determine precisely the number of national origin discrimination complaints handled by the DCEOB or the EEOC in the Miami area. The data kept by the DCEOB identify only the number of "Local Employment" and "Title VII" charges. These charges could allege racial, sexual, or national origin discrimination not based on language policy.³⁰⁶ Marcos Regalado, director of the DCEOB, testified that his best estimate is that language cases constitute about 10 percent of the national origin cases the agency handles. He was unable to estimate what percentage of those involved English-only policies, as opposed to bilingual requirements.³⁰⁷ The Spanish American League Against Discrimination has recently had, however, more than 50 active cases in south Florida involving workers allegedly fired for violation of an English-only rule.³⁰⁸

There is some reason for concern whether the agency has adequate resources to process its caseload. The data for half of fiscal year 1994-1995 indicated that 78 charges were filed with DCEOB and 508 deferrals from the EEOC were offered to the agency. Only 64 charges were accepted for investigation, however, "because the open inventory as of September 30, 1994 contained 306 charges."³⁰⁹ The DCEOB has only five investigators to investigate charges of discrimination in housing, public accommodations, credit and financing practices, and employment. Each compliance officer carries a caseload of between

Testimony, *Miami Hearing*, vol. I, pp. 141-43, 163-64. His lack of concern regarding the effect of bilingual requirements is apparently a minority opinion within the black community, as well as perhaps the larger community. A Cuban civic activist, the head of a multiethnic community organization, has noted that in Miami language "has great importance because if an individual owns a store whose clients come from Latin America, he will need bilingual employees. During Christmas time, ninety percent of the stores advertise for bilingual employees. To a person who does not know the language, this situation represents an economic problem because he knows that, unless he knows Spanish, he would not compete successfully in the labor market. This problem is especially important in the Black community, which has the greatest number of underemployed. The young Black knows that it would be much more difficult to secure a job if he does not speak Spanish." Portes & Stepick, *City on the Edge*, p. 12. See also note 62.

³⁰¹ DCEOB, *Bilingualism in Employment* (1989), p. 1; see also notes 263-65 and accompanying text.

³⁰² DCEOB, *Bilingualism in Employment* (1989), p. 1; Marcos Regalado, Director, Dade County Equal Opportunity Board, written statement submitted at *Miami Hearing*, p. 2; Regalado Testimony, *Miami Hearing*, vol. I, p. 137.

³⁰³ DCEOB, *Bilingualism in Employment* (1989), p. 3.

³⁰⁴ *Ibid.*, p. 2; Regalado Testimony, *Miami Hearing*, vol. I, p. 137.

³⁰⁵ See discussion of DCEOB and EEOC guidelines earlier in this section.

³⁰⁶ Regalado Testimony, *Miami Hearing*, vol. I, pp. 159-60. These limited data are provided in monthly "Summary of Activity" reports within the semiannual report submitted by the DCEOB. DCEOB, *FY 1994-95 Semi-Annual Report To The Board of County Commissioners and the County Manager* (1995).

³⁰⁷ Regalado Testimony, *Miami Hearing*, vol. I, p. 160.

³⁰⁸ "English Only Rule At Work," p. 1A.

³⁰⁹ DCEOB, *FY 1994-95 Semi-Annual Report To The Board of County Commissioners and the County Manager* (1995), p. 4.

110 to 120 open charges (up in the last 2 years from 90), and the average processing time is 270 days.³¹⁰ The agency's resources allow for only "limited outreach and educational" activities, and no other Dade County agency attempts to educate either employers or employees of the law regarding language policies.³¹¹

The data provided by the EEOC Miami District Office identify only the number of EEOC and local fair employment practice agency (FEPA) charges involving "national origin" that were received. Between fiscal year 1991 and the first 3 months of fiscal year 1996, 4,062 national origin charges were received, 23.8 percent of the total charges received. The number of national origin charges received and their percentage of the total charges received were: 1991—499 charges, 29.3 percent; 1992—479 charges, 27.0 percent; 1993—490 charges, 23.4 percent; 1994—447 charges, 21.2 percent; 1995—435 charges, 20.9 percent; and for the first 3 months of 1996, 276 charges constituting 20.5 percent of the charges received.³¹²

Professor Perea testified that "all demographic statistics indicate that we're becoming more and more diverse, racially and linguistically, so that this problem is likely to recur and increase rather than go away."³¹³ Workplace language policies are a significant source of racial and ethnic tension in Miami and directly or indirectly affect large numbers of people. Some commentators feel that, given demographic trends in the country, "Miami Now gives us a

glimpse of America tomorrow."³¹⁴ Even if it were true that workplace language policies did not affect that many people, it is "an unacceptable conclusion to . . . say . . . to those people it does affect [that] their right to equal treatment in the workplace and equal dignity doesn't matter."³¹⁵ To be true to the ideals upon which this country was founded, we simply must deal in some manner with the civil rights implications of workplace language policies.

Private Sector and Public Law Proposals for Dealing with Language Discrimination

Some contend that only legislative amendment of Title VII of the 1964 Civil Rights Act can adequately address the civil rights implications of workplace language policies. Other observers maintain that certain private initiatives and the corrective action of the free market, as the value of speaking languages other than English increases, will be sufficient to deal fairly with the large increase in workers whose primary language is not English. Terence Connor, a prominent employment law attorney advising management in Miami, is among those who hold this latter view. He acknowledges that language policies arouse social tensions.³¹⁶ Mr. Connor maintains, however, that dealing with the issue of language in the workplace "requires an enormous amount of flexibility," that "the marketplace" takes care of language discrimination problems "before much time goes by," and that an employer language policy of "common sense . . . and common courtesy" will be successful in addressing all concerns.³¹⁷ He does not "see a crying need for legislation in this area."³¹⁸ In-

³¹⁰ Ibid., p. 6; Regalado Interview. This is the highest caseload of any city or county civil rights enforcement agency in Florida. DCEOB, *FY 1994-95 Semi-Annual Report To The Board of County Commissioners and the County Manager* (1996), p. 6.

³¹¹ Regalado Interview.

³¹² Equal Employment Opportunity Commission, *Total Number of EEOC and FEPA Charge Receipts in Dade and Broward Counties from FY 91 to FY 1996* (printout from National Database Automatic Reporting Facility).

³¹³ Perea Testimony, *Miami Hearing*, vol. I, p. 182. An attorney specializing in employment litigation recently put it this way: "The significance of language discrimination is underscored for Americans by the recent increase in the population of people for whom English is not a primary language. Because these individuals represent a growing percentage of the labor force, language discrimination will continue to play an important role in the labor market." Steven I. Locke, *Language Discrimination And English-Only Rules in the Workplace: The Case For Legislative Amendment of Title VII*, 27 Tex. Tech L. Rev. 33, 43 (1996) (hereafter cited as Locke, *Language Discrimination*).

³¹⁴ Guillermo J. Grenier and Alex Stepick III, "Introduction," in Grenier and Stepick, *Miami Now!*, p. 15.

³¹⁵ Perea Testimony, *Miami Hearing*, vol. I, p. 181.

³¹⁶ Connor Testimony, *Miami Hearing*, vol. I, 200.

³¹⁷ The model policy Mr. Connor provided to the Commission states: " — is a multi-cultural company. Because of specific safety-sensitive regulatory requirements, all employees must be able to communicate in a common language. Accordingly, the ability to communicate in English during the conduct of business is required and is especially important when dealing with data, operational procedures and administrative information. Otherwise, employees should use common sense and courtesy with one another in communicating on other matters." Terrence Connor, *Model "Official Company Language" Policy* (undated).

³¹⁸ Connor Testimony, *Miami Hearing*, vol. I, pp. 134, 156-57, 200. See also Fair Testimony, *Miami Hearing*, vol. I, pp. 141-43, 163-64 (marketplace competition will eliminate language discrimination issues).

stead, beyond the "common sense and common courtesy" language policy he recommends to employers, the primary recommendation he has for easing racial and ethnic tensions based on language is "a broad initiative to teach people both Spanish and English."³¹⁹

Florida University Professor of Law Juan Perea, a leading legal scholar in the area of workplace language policies, agrees that such language education initiatives are critical.³²⁰ They will not solve, however, the dilemma posed by current law in the only four Federal circuits that have considered the question, which would allow an employee to be fired for using Spanish or Mandarin, even though he was adequately performing his job.³²¹ Professor Perea notes that often "job performance and the use of language are quite independent. And it is the job performance, not the language used, that should be the proper concern of the employer."³²² Professor Perea testified that another "kind of training is also crucial, which is training in the very basic proposition that people whose primary language is not English will feel the same comfort in their primary languages as you and I may feel in English, and will naturally tend to speak to each other . . . in those languages."³²³ Moreover, according to Professor Perea, the free market cannot be relied upon to correct language discrimination problems:

[W]e did have [a] free market regulating employment before 1964. And the result of that free market regulation was outright racism and denial of all but the most menial opportunities for virtually every per-

son of color in society. So it seems to me history tells us that . . . sometimes racism is more powerful than someone's best interest. . . . [T]he free market left alone resulted in something . . . quite offensive to principles of equality and dignity in the workplace. So I would be loath—be very frightened—to rely on the free market to correct discrimination.³²⁴

Professor Perea is among those who contend that only legislative amendment of Title VII can adequately address the civil rights implications posed by workplace language policies. He argues that "primary language" should be protected under Title VII for three reasons. First, Professor Perea observes that the EEOC and the courts have consistently interpreted "national origin" broadly to include other ethnic characteristics that are correlated with national origin. Thus, *Gloor*, *Garcia*, and their progeny fall squarely outside this pattern and were wrongly decided.³²⁵ Second, he contends that sociological study has sufficiently established the significance of primary language as a fundamental aspect of ethnicity to merit protection.³²⁶ Finally, Professor Perea notes that while language is not an immutable characteristic like race or sex, it is "practically immutable" and therefore deserves like protection under Title VII.³²⁷ The EEOC guidelines, he contends, correctly prohibit employment discrimination on the basis of ethnic characteristics like language.³²⁸ Discrimination

³¹⁹ Connor Interview. Dr. Eduardo Padron of Miami-Dade Community College also believes that language education is "an economic necessity in Miami today" and that it will contribute to the lessening of racial and ethnic tensions in Miami. Miami-Dade Community College has been in the forefront of providing such education, especially to young people preparing to enter the labor market. The college offers "the largest bilingual education program in the country," in which students train in specific disciplines, receiving instruction throughout in both English and Spanish. Padron Interview.

³²⁰ Juan Perea, Professor of Law, University of Florida College of Law, telephone interview, Aug. 19, 1995 (hereafter cited as Perea Interview).

³²¹ Perea Testimony, *Miami Hearing*, vol. I, p. 151.

³²² Juan F. Perea, Professor of Law, University of Florida College of Law, written statement submitted at *Miami Hearing*, p.9 (hereafter cited as Perea written statement).

³²³ Perea Testimony, *Miami Hearing*, vol. I, p. 201. Perhaps this should be a component of the "diversity training" offered by management consultants across the country.

³²⁴ *Ibid.*, p. 208.

³²⁵ Perea, *Right To Speak*, pp. 274–75, 287–88.

³²⁶ *Ibid.*, pp. 276–79. See generally Juan F. Perea, *Los Olvidados: On the Making of Invisible People*, N.Y.U.L. Rev., vol. 70 (1995), p. 965 (arguing that the failure of our legal system and society to recognize the significance of language and other ethnic characteristics to Latino identity renders them invisible and foreign, thus precluding their full recognition as equal members of our community).

³²⁷ Perea, *Right to Speak*, pp. 279–85. Another expert in employment and civil rights law reaches the same conclusion. He notes that while "linguistic minorities will most likely learn English and assimilate over time, the process is slow and often depends on intergenerational interaction. The length of the assimilation period is often extended for the Spanish speaking population because of 'the resilience of Spanish over time and the apparent difficulty for many immigrants in learning English even after a substantial period of residence in the country.'" Locke, *Language Discrimination*, pp. 45–46 (quoting Scott Koslow et. al., *Exploring Language Effects In Ethnic Advertising: A Sociolinguistic Perspective*, J. Consumer Res., vol. 20 (1994), p. 575).

³²⁸ Perea, *Los Olvidados*, p. 984. He notes that the EEOC's broad conception of "national origin discrimination" as including employment discrimination "because an individual has the physical, cultural, or linguistic characteristics of a

usually occurs, he argues, not because of where an individual is from, but rather because of perceived differences in ethnic characteristics.³²⁹

However, Professor Perea acknowledges that "[t]he problem with the EEOC's interpretation is the same as the problem with broad judicial interpretations of [Title VII]: the statutory language and legislative history simply do not support it," given the current Supreme Court's penchant for strict construction of civil rights statutes.³³⁰ The nature of "national origin" was given little consideration by Congress in 1964 when it passed Title VII, and the full meaning the act's legislative history can supply is the nation of one's birth or of one's ancestors.³³¹ The only Supreme Court decision interpreting "national origin" noted this sparse legislative history, held that citizenship status was not included within "national origin," and generally failed to provide any more guidance than did Congress.³³² Agency attempts to broaden the scope of Title VII will likely be futile, as the clear trend in the Federal circuits that have considered the issue is also to ignore or reject the EEOC's guidelines.³³³

national origin group," 29 C.F.R. § 1606.1, reads much like the social science understanding of ethnicity. Perea, *National Origin Discrimination*, p. 831.

³²⁹ Perea Testimony, *Miami Hearing*, vol. I, p.149; Perea, *Los Olvidados*, p. 984.

³³⁰ Perea, *National Origin Discrimination*, pp. 830-31.

³³¹ *Ibid.*, p. 821.

³³² *Ibid.*, pp. 822-24; Perea Testimony, *Miami Hearing*, vol. I, pp. 147-48; see also note 225.

³³³ Professor Perea would amend Title VII, 42 U.S.C. § 2000e-2(a)(1) to read: "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, sex, national origin, ancestry, or ethnic traits." See Perea, *National Origin Discrimination*, p. 860; Perea Testimony, *Miami Hearing*, vol., pp. 152-53; Perea written statement, p.10. He would also add a new section, 2000e(o) to the definitions section, defining "ethnic traits" as follows: "(o) The term 'ethnic traits' includes, but is not limited to, language, accent, surname, and ethnic appearance." Perea, *National Origin Discrimination*, p. 861; Perea Testimony, *Miami Hearing*, vol. I, pp. 153-54; Perea written statement, pp. 10-11. He compares this provision to Congress' clarification in the Pregnancy Discrimination Act that discrimination because of pregnancy constitutes sex discrimination. Perea written statement, pp. 10-11. Finally, Professor Perea contends that "the EEOC should be given full rulemaking authority, so that courts can not so easily ignore the agency's current guidelines." Perea written statement, p. 11. The Hispanic National Bar Association has taken the position that the "current statutory language of 'national origin' must be defined clearly so that it prohibits discrimination because of an employee's language use when

Section III: Language Education and Racial and Ethnic Tensions

Overview

The Congress finds that as the world becomes increasingly interdependent and as international communication becomes a daily occurrence in government, business, commerce, and family life, multilingual skills constitute an important national resource which deserves protection and development.

—Bilingual Education Act, 20 U.S.C.A. §7402(a)(10)(1995).

The instruction of foreign languages and of English to nonnative speakers has a long history in the United States, intertwined with our roots as an immigrant nation. As early as the 18th century, Americans pondered the role of language in shaping our national identity.³³⁴ During the 19th century, the States of Pennsylvania and Louisiana and the territory that would later become New Mexico all considered the issue of bilingual education.³³⁵ Responding to the anti-German climate spawned by World War I, 15 States by 1919 had banned the teaching of foreign languages and required English to be the sole language of instruction in all schools, public and private.³³⁶ Historically, language has been a key component of the national character that defines our American culture.³³⁷

For first-generation immigrants, the English language defines most poignantly our national

such use is not related to job performance. Alternatively, the statute should be amended so that unlawful discrimination because of ethnic characteristics not related to job performance, including language, is clearly prohibited." Hispanic National Bar Association, *Language Rights in the Workplace: Statement of position of the Hispanic National Bar Association* (Sept. 12, 1995).

³³⁴After the Revolutionary War, the Continental Congress published the Articles of Confederation in English, French, and German. According to Prof. Juan Perea, "by publishing this fundamental document in several languages, the Continental Congress explicitly recognized the linguistic and cultural pluralism within the new American realm and the need to communicate with linguistically different populations in the languages they understood." Perea, *Demography and Distrust*, p. 286.

³³⁵ *Ibid.*

³³⁶ *Ibid.*

³³⁷ Although beyond the scope of this report, it should be noted that the first Americans—Native Americans—traditionally spoke non-English languages, dozens of which continue to be spoken today.

persona—reflected by our popular culture, our art, and our system of government—and is an ever-present reminder to them that, without English proficiency, they are peripheral members of American mainstream culture. For this reason, language policy also serves as a barometer of States' varied reception and integration of newcomers in the absence of a Federal "immigrant" policy.³³⁸

Florida and Dade County's policy toward immigrants, as reflected in the State and local school districts' limited-English-proficient educational programs, is one that embraces newcomers and strives to ensure that their transition from "immigrant" to "American" is achieved with opportunity for improvement and self-reliance. In this respect, Florida has laws that ensure language instruction for children and adults who have limited or no proficiency in English.

At the elementary and secondary education levels, foreign-language courses are elective in nonmagnet schools. Similarly, adult education programs, both through the Dade County Public Schools and the Miami-Dade Community College, provide few foreign-language instruction courses compared to the number of English courses designed for nonnative speakers.

This chapter addresses Dade County's language education programs in the context of Federal and State policies. It also examines the future of limited-English-proficient (LEP) programs,³³⁹ both nationally and in Florida, and the role of language policies and proposed reforms on race relations in Florida.

Language Education and Job Opportunities in Dade County

More than ever before, knowledge of a foreign language is a necessity for native English speakers in Dade County, where languages other than English are pervasive in the community and in

industry.³⁴⁰ Fifty-seven percent of Dade County residents speak a language other than English at home.³⁴¹ Seventy percent are racial or ethnic minorities, according to the 1990 census.³⁴² More important, the demand for bilingualism in business and industry has continued to rise along with Miami's preeminence as an international city. As early as 1982, the U.S. Commission on Civil Rights recognized the significance of acquiring second-language skills for native English speakers in its report, *Confronting Racial Isolation in Miami*: "Given the multicultural, bilingual nature of the Miami-Dade County area, a functional command of Spanish is advantageous, particularly in the area of employment. Many businesses actively seek Spanish speakers. If blacks could communicate effectively in Spanish, job opportunities might be more readily available."³⁴³

This observation appears more accurate and compelling 13 years later as Miami increasingly has relied on Latin America, the Caribbean, and Europe to revitalize its economy through international tourism³⁴⁴ and business.³⁴⁵ According to the Dade County School Board, more than 100 multinational companies have surfaced in Miami

³⁴⁰ Hoffman Interview.

³⁴¹ 1990 Miami Census, table 17, Social Characteristics of Persons, p. 460.

³⁴² 1990 Miami Census, table 8, Race and Hispanic Origin, p. 207; and Edwina Hoffman, Report to the USCCR from the OATACCE, Dade County Public Schools, Sept. 14, 1995 (hereafter cited as Hoffman Report to the USCCR).

³⁴³ U.S. Commission on Civil Rights, *Confronting Racial Isolation in Miami* (Washington, DC: U.S. Government Printing Office, 1982).

³⁴⁴ Since 1992, international tourism has exceeded domestic tourism in Dade County both in raw numbers and in economic impact. In 1992, 1993, and 1994, 4,673, 5,401, and 5,029 international tourists visited Dade County, respectively. During these years, international tourism generated 59 percent, 64 percent, and 63 percent of the total Dade County tourism revenue. Source: Metropolitan Dade County, Florida, Comprehensive Annual Financial Report for Fiscal Year Ended Sept. 30, 1994, p. 126.

³⁴⁵ According to the president of the Miami-Dade Community College, Dr. Padron, Miami's economic base has drastically changed from tourism (mostly domestic) as the main source of economic activity in the 1960s and 1970s, to international trade and finance in the 1990s. Because of its linguistic diversity, Dade County has "positioned itself extremely well within the new global economy." Padron Testimony, *Miami Hearing*, vol. II, p. 319. Florida's top export trading partners in 1992 were Venezuela, Colombia, Brazil, Argentina, and the Dominican Republic. Florida Department of Commerce, 1992. Notwithstanding this potentially lucrative base, Miami has failed to stabilize its economy and faces bankruptcy.

³³⁸ Although the Federal Government has a defined immigration policy that sets numerical limits on the level of emigration to the U.S., it has no *immigrant* policy designed to ensure the uniform integration of immigrants into life as American citizens. Fix and Passel, *Setting the Record Straight*. For a discussion of Florida's lawsuit against the Federal Government concerning the consequences of the failure to create an immigrant policy, see chap. 3 of this report.

³³⁹ For purposes of this section, a reference to "LEP" students means both limited English proficient and non-English proficient, unless otherwise indicated.

since 1990, employing over 44,000 persons.³⁴⁶ This increased emphasis on revenue from international sources translates into a near requirement that businesses have management and customer-contact employees who are conversant in languages other than English.³⁴⁷ According to Eduardo Padron, president, Miami-Dade Community College, big business and small entrepreneurs alike acknowledge that they cannot survive in Miami without an approach that links themselves to the international markets.³⁴⁸

Yet while Miami's linguistic diversity has been a boon for both large and small businesses, it is also a source of concern to native English speakers who cannot compete with bilingual persons for jobs in these markets. Dr. Padron observes that "[becoming multilingual] is definitely an economic necessity. People who speak only one language in this community today are at a true disadvantage in competing for better jobs [W]hile language before was an issue of basic concern for different reasons, today it's more because of an economic reason."³⁴⁹

In response to these real concerns, the Dade County school system and the Miami-Dade Community College emphasize adult language instruction on two levels: English instruction to nonnative speakers and foreign-language instruction to monolingual English speakers. Because of funding shortfalls and Federal, State, and judicial requirements, however, the majority of language instruction resources at both the local and State levels are devoted to providing English-language instruction to students with a

limited knowledge of English.

Language Education: Dade County Public Schools

The Dade County public school system is the fourth largest school district in the nation. It provided instruction to approximately 330,000 K-12 students and 189,631 adult students in the 1994-1995 school year.³⁵⁰ Twenty-six percent of these students are foreign-born, and an average of 100 new students enter the school system daily from dozens of countries.³⁵¹ The school district's language programs serve 47,000 students in grades K-12, and provide English for speakers of other languages (ESOL) training to another 70,000 adults.³⁵²

The Dade County public school system has recognized the importance of language education for over 30 years. In 1963, the Dade County school system established the first modern bilingual education program in the United States at Coral Way Elementary School.

Recently, the Dade County School Board again reexamined its objectives for language education and reaffirmed the need for language instruction as a means of instilling cultural awareness and increasing the competitiveness of its students in a global economy. In a position paper, the Dade County School Board members observed:

The growing international interdependence between our nation and other nations and the pluralistic nature of the world society demand that we develop citizens with a thorough understanding of international and cross-cultural issues and with the ability to communicate in more than one language. It is imperative to the county wide objectives of the Dade County Public Schools that the largest possible number of students be provided the opportunity to become functionally proficient in a second language.³⁵³

Language instruction in the Dade County

³⁴⁶ Octavio Visiedo, Superintendent, memorandum to Members of School Board of Dade County, FL, containing the *Position Paper Relative to the Expansion of the Foreign Language Program*, Sept. 29, 1994 (hereafter cited as *Position Paper Relative to the Expansion of the Foreign Language Program*).

³⁴⁷ *Ibid.* Indeed, the Dade County School Board acknowledges that "Dade County must count on a bilingual or multilingual workforce that can provide services for [multinational] companies and for the millions of visitors to the greater Miami area." *Ibid.*

³⁴⁸ Padron Interview.

³⁴⁹ Padron Testimony, *Miami Hearing*, vol. II, pp. 320-21. In his interview with staff, Dr. Padron stated: "[L]anguage has become almost a condition of employment in this city, no matter where you go. Being bilingual or trilingual in this city is very important—you need that to be successful in any job. That affects the native population, that affects blacks, that affects a lot of people if they don't get the proper training, if the children are not provided the opportunity to learn the languages in the school systems, etc." Padron Interview.

³⁵⁰ Rick Barry, "Dade Isn't Worried About Cuban Influx," *The Tampa Tribune*, May 5, 1995, p. 1 (hereafter cited as Barry, "Cuban Influx"); Henry Fraind, Assistant Superintendent, Office of Management, Operations, and Communications, Dade County Public Schools, telephone interview, Aug. 8, 1995 (hereafter cited as Fraind Interview).

³⁵¹ Fraind Interview.

³⁵² Barry, "Cuban Influx"; Hoffman Interview.

³⁵³ *Position Paper Relative to the Expansion of the Foreign Language Program*, p. 1.

Public Schools is provided on two levels: the traditional elementary and secondary education, and adult education. Within those categories, language instruction has a dual purpose in Dade County: primarily to provide English instruction to limited- or non-English-proficient students, and, to a lesser degree, to provide foreign-language instruction to monolingual speakers. This prioritization is required by a lack of resources, not a lack of demand for services.

Elementary and High School Instruction

The Dade County school system provides foreign-language instruction and language education for limited-English-proficient students through English for speakers of other languages, bilingual, extended foreign-language, magnet, and traditional foreign-language programs. Foreign-language instruction is provided through elementary bilingual schools, elementary extended foreign-language, and foreign-language magnet programs. Instruction for limited-English-proficient students is provided through ESOL, home-language instruction, and developmental bilingual education. This section of the report examines limited-English-proficient and foreign-language education policy federally and in Florida and Dade County. Also reviewed in this section are arguments supporting and opposing bilingual education, and funding for language education programs, each within the context of educational strategies for limited-English-proficient and foreign-language programs.

Federal Policies. Although the U.S. Supreme Court examined the question of language assistance in the education of children as early as 1923,³⁵⁴ it was not until 1968 that Congress became involved in legislating a bilingual education policy with the enactment of the Bilingual Education Act.³⁵⁵ The act is one of several vol-

untary grant programs through which school districts apply to the Federal Government for grants to implement and develop language education programs for limited-English-proficient students. Because of unresolved differences about the objectives of language education programs,³⁵⁶ the act has never clearly defined "bilingual education."³⁵⁷ The act does, however, mandate that 75 percent of appropriated funds be used for transitional bilingual education programs, and that up to 25 percent of appropriated funds be used for special alternative instructional programs.³⁵⁸

Although the act applies to adult programs as well as elementary and secondary school programs,³⁵⁹ the term "bilingual education" generally refers to English-language instruction programs at the elementary and secondary education levels. As the name for the various language instruction programs, bilingual education generally refers to one of the following educational strategies: transitional bilingual education, developmental bilingual programs, English as a second language, and immersion programs.³⁶⁰

sively to the special needs of non-English-proficient and limited-English-proficient students.

³⁵⁴ Some supporters saw the legislation simply as a way to maximize proficiency in both the English and the native language, while others viewed it as a way of furthering proficiency in both the native language and English and of instilling respect for the child's cultural heritage. See Moran, *Status Conflict*, p. 327.

³⁵⁷ Ibid.

³⁵⁸ 20 U.S.C. § 7426(i)(2)(1997).

³⁵⁹ 20 U.S.C. § 206a (d)(1997).

³⁶⁰ GAO, *Limited English Proficiency: A Growing and Costly Educational Challenge Facing Many School Districts*, a report to the Chairman, Committee on Labor and Human Resources, U.S. Senate, January 1994, pp. 24-25 (hereafter cited as GAO, *Limited English Proficiency*). The GAO defines these bilingual instructional methodologies as follows:

- * Transitional Bilingual Education. This instructional method uses English and the student's native language to provide instruction. It is designed to enable LEP students to make a transition to an all-English instruction program while delivering content-based instruction in the students' native language, thereby ensuring that the students do not fall behind academically while in the process of acquiring English skills. Transitional bilingual education programs vary in the amount of native-language instruction provided and the duration of the program.

- * Developmental Bilingual Programs. These are programs in which native-English-speaking and LEP students receive instruction in both English and the native language of the LEP students, with the goal of bilingual literacy for both groups.

- * English as a second language. This instructional method uses English as the primary or exclusive method of content-

³⁵⁴ *Meyer v. Nebraska*, 262 U.S. 390 (1923) (striking down a Nebraska statute that prohibited the teaching of any subject in a modern language other than English to students below the ninth grade as being violative of the 14th amendment). The Court limited its decision to foreign-language instruction in private schools.

³⁵⁵ Bilingual Education Act of 1968, Pub. L. No. 90-247, 81 Stat. 816 (codified as amended in scattered sections of 20 U.S.C.). See also Moran, *Bilingual Education as a Status Conflict*, Calif. L. Rev., vol. 74 (1987), pp. 321, 327 (hereafter cited as Moran, *Status Conflict*). The Bilingual Education Act was the first piece of Federal legislation devoted exclu-

English as a second language (ESL) and immersion programs are known as "special alternative instructional programs" (SAIPS). Unlike SAIPS, which depend on English as the primary or exclusive method of instruction, traditional bilingual education programs use the students' native language to provide content instruction while providing specialized English instruction as part of the educational curriculum.

An increasing limited-English-proficient student population and decreased funding have produced significant reductions in the funding levels for bilingual education programs. According to the General Accounting Office, taking inflation into account, 1990 funding for Title VII programs under the Elementary and Secondary Education Act of 1965 was 40 percent less than 1980 funding, while the number of LEP students rose by 25 percent.³⁶¹ In 1994, Congress appropriated \$195 million for bilingual education programs. In 1995, the U.S. Department of Education requested \$155 million for bilingual education but received only \$117 million.³⁶² For fiscal year 1996, the President requested that the total funding for the program be brought back up to \$155 million. As of October 1995, the U.S. House of Representatives appropriations mark-up was for \$53 million, while the U.S. Senate mark-up was for \$107 million.³⁶³

Elementary and secondary education LEP students also receive services under other Federal programs. Chief among them are chapter 1 of the Elementary and Secondary Education Act, which provides supplemental instruction in reading, math, and language arts to educationally disadvantaged students; the Emergency

Immigrant Education Act of 1984, which allocates approximately \$30 million annually to assist districts in meeting the educational needs of immigrant students; and, particularly in Florida, the Targeted Assistance Program, which reimburses counties with high concentrations of refugees for the cost of educating these students.³⁶⁴

Like the Bilingual Education Act, the Emergency Immigrant Education Act (EIEA) is also a voluntary grant program that distributes funds to States based on their ratio of EIEA-eligible students. The States in turn distribute the funds to each school district in proportion to the number of EIEA students in the district.³⁶⁵ Under the EIEA, local school districts that have at least 500 immigrant students, or 3 percent of the total number of students enrolled in the public or private schools in that district, are eligible for assistance.³⁶⁶

EIEA funds are intended to ease the financial burden of providing language programs for States and counties with substantial immigrant student populations. According to 1990 census data, 72 percent of all LEP students are from six States—California, Florida, Illinois, New Jersey, New York, and Texas.³⁶⁷ During the 1991-1992 academic year, Florida had the fourth largest limited-English-proficient population.³⁶⁸ Because the funding levels for EIEA districts have remained constant since the act was passed in 1984, the actual amount available per student is minimal. While the EIEA authorizes up to a maximum of \$500 per student in a participating school district, the number of eligible students has increased while funding has remained constant, according to the General Accounting Of-

based instruction, while simultaneously providing special instruction in the English language.

* Immersion. This method of instruction does not use students' native languages. Depending on the type of immersion program, the teachers may understand the students' native language and permit students to address them in their native language, while all responses and instruction are delivered in English, at a pace that ensures understanding. The submersion method, also known as "sink or swim," is an immersion technique that provides no special programs or assisted instruction to help students overcome language barriers. Submersion was found unconstitutional by the U.S. Supreme Court in *Lau v. Nichols*. 414 U.S. 563 (1974).

³⁶¹ GAO, *Limited English Proficiency*, p. 45.

³⁶² Refugee Reports, "House Appropriations Mark-Up for Bilingual Education Program Cut Drastically," Oct. 30, 1995, p. 14.

³⁶³ *Ibid.*

³⁶⁴ State of Florida, Executive Office of the Governor and Florida Advisory Council on Intergovernmental Relations, *The Unfair Burden: Immigration's Impact on Florida* (March 1994) (hereafter cited as *The Unfair Burden*). See also, GAO, *Limited English Proficiency*, p. 3.

³⁶⁵ GAO, *Immigrant Education: Information on the Emergency Immigrant Education Act Program* (March 1991, pp. 2-3. EIEA-eligible students are immigrant students who have been enrolled in U.S. schools for less than 3 years and are in a school district that receives EIEA funds.

³⁶⁶ 20 U.S.C. § 7544 (1997); GAO, *Immigrant Education*.

³⁶⁷ GAO, *Limited English Proficiency*, p. 33. In Dade County, 39 district schools have 500 or more foreign-born students. Sixteen schools have over 1,000 foreign-born students. See Immigration Impact Briefing Package, Dade County Public Schools, Miami, FL, June 30, 1995.

³⁶⁸ U.S. English, "Bilingual Education in the U.S. 1991-1992."

fice. As a result, participating school districts received an average of \$27 per student during the 1993-1994 school year.³⁶⁹

Education policy for language-deficient students has also evolved through the courts. In 1974, the U.S. Supreme Court decided *Lau v. Nichols*.³⁷⁰ In *Lau*, the plaintiffs, a class of limited-English-proficient Chinese students in San Francisco, established that approximately 1,800 Chinese-speaking students were receiving no special language assistance. The Court concluded that the school district was required, under Title VI of the Civil Rights Act of 1964, to take measures to rectify the language barrier when English-only instruction had the effect of excluding LEP students from meaningful participation in the educational program.³⁷¹

Congress codified the *Lau* holding through the Equal Education Opportunities Act, which requires school districts to "take appropriate measures to overcome language barriers that impede equal participation by its students in its instructional programs."³⁷² The act requires school districts to take affirmative measures to ensure that LEP students with special educational needs are not excluded from educational programs. It also provides a private right of action to enforce violations by school districts.

Foreign-language instruction programs in schools of primary and secondary education are eligible for Federal funding under the Foreign Language Assistance Act of 1994.³⁷³ The act reimburses States for 50 percent of the cost of establishing, improving, or expanding innovative foreign-language programs for elementary and secondary school students. Programs at the elementary level receive the greater share of funding: the statute requires at least 75 percent of funds to be used for foreign-language programs at the elementary level.

The statute also authorizes appropriation of "such sums as may be necessary" to carry out the program.³⁷⁴ During fiscal year 1995, \$35 million was appropriated for State and local programs.

State Policies. At the State level, Florida has laws and regulations to ensure equal educational access to limited-English-proficient students. The Florida Educational Equity Act prohibits, in any education program that receives Federal or State funds, discrimination on the basis of race, national origin, sex, disability, or marital status.³⁷⁵ The act also preserves programs designed to meet the needs of limited-English-proficient students.³⁷⁶ Florida also requires its school districts to provide specialized English instruction to its LEP students.³⁷⁷ Such instruction must be provided either through the English for speakers of other languages program or through a program that utilizes home-language instruction.³⁷⁸ The Dade County public school system uses both methodologies in satisfying its LEP instructional requirements.

Florida school districts are also bound by the consent decree in the *LULAC v. Florida Board of Education* case.³⁷⁹ More commonly known as the META consent decree, this agreement requires Florida and public school districts to ensure equal educational access to all limited-English-proficient students. Schools with more than 15 students from the same language group must employ at least one teacher or teacher's aide who is proficient in that language. LEP students must be provided language training through ESOL or home-language instruction methods. META requires each public school district to submit LEP plans every 3 years outlining how the district is implementing the consent decree.³⁸⁰

³⁷⁵ 16 Fla. Stat. § 228.2001(2) (1995).

³⁷⁶ *Id.*

³⁷⁷ 16 Fla. Stat. § 233.058 (1995).

³⁷⁸ *Id.* English for speakers of other languages is a language arts program offered to limited-English-proficient students as an alternative to the regular English language arts program. Home-language instruction uses the limited English proficient's native language as a medium of instruction. *General Fund Annual Budget Plan Dade County Public Schools, 1995-1996*, Financial Affairs, Office of Management and Budget, June 1995, p. 40.

³⁷⁹ *League of United Latin American Citizens v. Florida Bd. of Educ.*, U.S. District Court, Southern District of Florida, Miami Division, No. 90-1913.

³⁸⁰ Each school district plan must describe how prospective LEP students are identified and assessed, how these students are served, how their progress is monitored, and how students are exited from the LEP programs. Florida Department of Education, Office of Multilingual Student Language Education, District LEP Plan Workshops, June 23, 24, 29, July 1, 1993.

³⁶⁹ GAO, *Immigrant Education*, p. 1.

³⁷⁰ 414 U.S. 563 (1974) (holding that a school district's failure to provide assistance tailored to the needs of non-English-speaking students of Chinese ancestry violated Title VI of the Civil Rights Act of 1964).

³⁷¹ *Moran, Status Conflict*, p. 328.

³⁷² 20 U.S.C. § 1703 (f) (1997).

³⁷³ 20 U.S.C. § 7511 *et seq.* (1997).

³⁷⁴ 20 U.S.C. § 7516 (1997).

Parents of LEP students may not waive LEP instruction for them, pursuant to the Florida Department of Education's construction of the META consent decree.³⁸¹ Under the Bilingual Education Act, however, parents are authorized to decline enrollment of their LEP children in bilingual education programs receiving Federal assistance.³⁸² According to the Florida Department of Education, no Federal assistance programs may be used to meet the requirements of the META consent decree. Nevertheless, all LEP students, for whom Federal funds are expended in Florida, are also covered under the consent decree.

META's requirement that students be provided educational assistance in their native language has also led to conflicting views in Dade County's Haitian community. According to Rosa Castro Feinburg, member, Dade County School Board, the Haitian community is split on whether Haitian students are ill-served by efforts to preserve a language that is not widely used.³⁸³ Supporters of home-language instruction argue that Haitian should be taught to help preserve these students' heritage. Opponents argue that Creole maintenance inhibits English acquisition and hinders their subsequent economic advancement.

These arguments resonate on a larger scale between supporters and opponents of bilingual education policy. The bilingual education debate centers around the controversy between traditional bilingual education programs that rely on students' native language to provide instruction in core subjects and programs that use English predominantly or exclusively. On a continuum, the range of support for these programs extends from those who would preserve traditional bilingual education programs because they have intrinsic value over ESL programs, to those who would eliminate all language assistance programs and place LEP students in submersion

systems where no special language assistance is provided.

Those who oppose traditional bilingual education as an instruction methodology argue that it causes students to remain in native-language instruction programs for too long, and does not effectively transition students to an exclusively English education environment.³⁸⁴ They argue that traditional bilingual education programs generally fail to graduate their students to exclusively English instruction in the 2 to 5 years projected by bilingual education advocates. Groups advocating reform of the traditional bilingual education system, such as U.S. English, cite to ESL-style programs that emphasize instruction of and in English as a preferable alternative to the current process. Bilingual education opponents also argue that States should be granted greater discretion to create English education programs that best serve their students. Under current Federal law, grants emphasize traditional bilingual education programs over alternative instruction methods.

Proponents of traditional bilingual education programs, such as the Dade County Public Schools, argue that bilingual education is important to ensure maintenance of the native language and to insure fluency in languages other than English for monolingual students. They also counter that academic English, the kind needed to succeed in the classroom, takes longer to learn, usually between 5 and 8 years, than conversational English.³⁸⁵ For this reason, immersion programs are not as effective as traditional bilingual education programs.

Funding. The cost of educating foreign-born students in Dade County is paid for by Federal, State, and local resources. Education represents the largest single cost of immigration to the State of Florida, according to the Governor's *Unfair Burden* report.³⁸⁶ Over 70 percent of the total estimated annual cost of immigration to

³⁸¹ *Ibid.*

³⁸² 20 U.S.C.A. § 7602(b)(2)(1997). Parental discretion over their children's participation in bilingual education programs is a common issue raised by opponents of bilingual education programs. A recent lawsuit by the Bushwick Parents Organization, a Brooklyn group that has challenged New York City's bilingual education policies, is one such example. See A New York's Bilingual 'Prison,' *New York Times*, Sept. 21, 1995, p. A22.

³⁸³ Rosa Castro Feinburg, Member, Dade County School Board, telephone interview, Aug. 21, 1995 (hereafter cited as Feinburg Interview).

³⁸⁴ William Booth, "Bilingual School Has Word for Dole: Wrong," *The Washington Post*, Sep. 22, 1995, p. A3.

³⁸⁵ Hoffman Testimony, *Miami Hearing*, vol. II, pp. 353-54.

³⁸⁶ *The Unfair Burden*. This report was prepared in response to a law passed in 1993 that required a comprehensive study to focus on the economic impact of immigration on State and local finances over the past decade. The study was designed to identify documented costs of services for immigrants between 1990 and 1993, examine Federal immigration-related grants and other reimbursements, and develop strategies to assist Florida in obtaining increased Federal assistance for immigration costs. *Ibid.*, p. ii.

Florida in 1993 was attributable to educational resources needed to educate Florida's LEP students. Nearly one-half of these students reside in Dade County.

Over 1,000 new foreign-born students enroll in Dade County public schools monthly, yet the Federal Government pays less than 3 percent of total expenses needed to educate these students. In 1993, Dade County received only \$8.6 million in total Federal aid for immigrant education, while the actual cost of educating these students reportedly exceeded \$300 million.³⁸⁷

Limited-English-Proficient Programs. The Dade County school system provides instruction for limited-English-proficient students through one of two types of programs: 1) Special Instruction in and through English, and 2) Basic Skills in the Home Language. The first category includes programs in which English is the medium of instruction. The second category includes programs in which a language other than English is used as the medium of instruction.³⁸⁸

The first type of program referenced above includes the programs of English for speakers of other languages and curriculum content in English utilizing ESOL techniques. ESOL is a required language arts program for all LEP students and serves as an alternative to the regular English language arts program patronized by English-proficient students.³⁸⁹ Unlike ESOL, curriculum content in English utilizing ESOL strategies is not a formal language program. This program is intended to accelerate LEP students' acquisition of English by making English immediately functional within the regular English curriculum.³⁹⁰

The Basic Skills in the Home Language category uses the student's home language as a medium of instruction. This category consists of home language arts (Spanish for Spanish speakers and Haitian Creole language arts) and curriculum content in the home language (i.e., science, math, etc.).³⁹¹ The curriculum content model is the program used for LEP students in

the pioneer bilingual education program implemented at Coral Way Elementary in 1963. The first modern bilingual school in the nation, Coral Way Elementary uses developmental bilingual programs that instruct students in English and in Spanish from kindergarten through fifth grade.³⁹²

While the Coral Way program and others like it are completely bilingual, Dade County teaches most of its English-deficient students (about 15 percent of its total) in transitional bilingual education programs that provide content instruction in the student's native language, while teaching English for 1 hour and 15 minutes daily.³⁹³

Foreign-language Instruction Programs. The Dade County school system offers foreign-language instruction through one of several programs. The approach of each varies according to the type of program involved. Dade County schools offer various dual-language instruction programs in select schools, in addition to traditional foreign-language instruction programs emphasizing conversation and grammar. The dual-language programs provide instruction through one of the following approaches: the Elementary Bilingual Schools Organization Program, the Elementary Extended Foreign Language Program, or the Foreign Language Magnet Programs.³⁹⁴

The Elementary Bilingual Schools Organization (BISO) model provides content instruction in the students' native language and reinforces the concepts and skills introduced in the native language through ESOL. Spanish for Spanish speakers, or Spanish as a second language methods. Students in this model receive 40 percent of their daily instruction in Spanish. The major objective of the BISO model, used in five elementary schools, including its pioneer school, Coral Way Elementary, is to make Spanish a second language for English language origin students.³⁹⁵

The Elementary Extended Foreign Language Program was initiated during the 1993-94 school year in five elementary schools. Students in this

³⁸⁷ Ann Davis, "Schools Seek Funds for Foreign Influx," *Miami Herald*, Feb. 28, 1994.

³⁸⁸ Dade County Public Schools, *Procedures Manual Bilingual/Foreign Language Education*, Bulletin 1-C revised November 1995, p. 13 (hereafter cited as *Procedures Manual Bilingual/Foreign Language Education*).

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*, p. 35.

³⁹¹ *Ibid.*, p. 36.

³⁹² Feinberg interview.

³⁹³ Booth, "Bilingual School Has Word for Dade."

³⁹⁴ Position Paper Relative to the Expansion of the Foreign Language Program, p. 3. Maria Morales, "Bilingual Courses Get Big Boost," *The Miami Herald*, Nov. 7, 1994, p. 1B (hereafter cited as Morales, "Bilingual Courses Get Boost").

³⁹⁵ Position Paper Relative to the Expansion of the Foreign Language Program, p. 3.

program receive 60 percent of their instruction in English and 40 percent in Spanish, French, or Haitian Creole. The program is limited to two classrooms per grade in the six elementary and two middle schools where it is currently provided.³⁹⁶

The Foreign Language Magnet Programs include the International Studies Program and the International Affairs Program. Both seek to produce bilingual and bicultural students through intense academic programs that are language centered. The International Studies Program, taught in one elementary, one middle, and one senior high school, is a dual accreditation program which meets all the academic and legal requirements of the Dade County Public Schools and the governments of France and Spain.³⁹⁷

Schools not offering one of the specialized dual-language programs offer traditional 1-hour daily foreign-language courses.³⁹⁸ These courses focus on teaching the language itself and do not usually provide content instruction in other subjects.

Spanish as a second language (Spanish-SL) is offered in all of Dade County's elementary schools. Although enrollment is voluntary, parents are encouraged to enroll their children in these courses. Students are enrolled when their parent signs a parental authorization form. The form indicates that students will be automatically reenrolled in such courses each succeeding year, unless the parent otherwise indicates.³⁹⁹ Unlike the Spanish-SL courses, students eligible to participate in the Spanish for Spanish speakers (Spanish-S) courses are automatically enrolled at the elementary level. Parents must affirmatively withdraw these students from the program if they choose not to have their children participate.⁴⁰⁰ From the time students enter middle school, enrollment in Spanish-SL or Spanish-S is purely at the discretion of parents and students. Neither automatic enrollment nor

parental authorization forms are utilized.⁴⁰¹

Because of Dade County's commitment to innovative foreign-language programs that produce fully bilingual students, recent findings by a Dade County Chamber of Commerce study that only 2 percent of Dade County's students graduate fully bilingual appear enigmatic.⁴⁰² Yet because English-proficient students are not required to enroll in foreign-language courses to graduate from high school,⁴⁰³ enrollment in these courses declines significantly in traditional foreign-language programs when students enter middle school. Whereas 95 percent of students in Dade County's elementary schools study Spanish, that number drops to 5 percent by the time these students enter middle school, improving only slightly at the high school level, where 10 percent of all students are enrolled in Spanish courses.⁴⁰⁴

Thus, while Dade County students who participate in the dual-language programs demonstrate high levels of bilingual literacy,⁴⁰⁵ most students graduating from schools with traditional foreign-language programs lack the requisite level of literacy in Spanish for scholarship or business transactions.⁴⁰⁶ Only 21 out of the 286⁴⁰⁷ public schools in Dade County offered dual-language programs through the 1996-97 school year.

Adult Language Instruction

The Dade County Public Schools' Office of Applied Technology, Adult, Career, and Community Education (OATACCE) provides second-language instruction under its vocational, career, community, and adult education pro-

³⁹⁶ Octavio Visiedo, Superintendent, memorandum to Elementary Principals containing the *Elementary Extended Foreign Language Program Request for Proposal*, Sept. 26, 1994; Morales "Bilingual Courses Get Boost."

³⁹⁷ *Position Paper Relative to the Expansion of the Foreign Language Program*, p. 3.

³⁹⁸ *Procedures Manual Bilingual/Foreign Language Education*, p. 72.

³⁹⁹ *Ibid.*, p. 61.

⁴⁰⁰ *Ibid.*, p. 65.

⁴⁰¹ *Ibid.*

⁴⁰² Tim Collie, "Spanish Language Losing Ground," *The Tampa Tribune*, Aug. 12, 1996, p. 1.

⁴⁰³ Dade County Public Schools, Division of Student Services, Dade County Public Schools Course Requirements, revised October 1996.

⁴⁰⁴ Morales, "Bilingual Courses Get Boost."

⁴⁰⁵ According to a position paper by the Dade County School Board, high school students enrolled in the International Studies Program had a 90 percent passing rate in national French exams. See *Position Paper Relative to the Expansion of the Foreign Language Program*, p. 3.

⁴⁰⁶ See generally Fradd, *The Economic Impact*.

⁴⁰⁷ This figure represents the number of elementary, middle, and high public schools in Dade County in the 1994-95 school year. Dade County Public Schools, Management and Accountability, Office of Educational Accountability, *District & School Profiles, 1994-1995*, June 1995.

grams.⁴⁰⁸ During the 1994–1995 school year, Dade County's adult education program, through OATACCE, provided instruction to 189,631 students, including English as a second language instruction to 70,117 students.⁴⁰⁹ Approximately 121,577 students who have enrolled in adult education programs are foreign born.⁴¹⁰ While the Dade County Public Schools' adult education program provides services other than language instruction,⁴¹¹ language courses,⁴¹² nevertheless, constitute more than 37 percent of the adult education programs.⁴¹³

During the 1994–1995 school year, OATACCE provided foreign-language instruction in four languages: Spanish, French (which includes Haitian Creole), Italian, and Portuguese. Approximately 3,337 students enrolled in these foreign-language courses.⁴¹⁴ Of these, 2,786 students enrolled in the Spanish courses, 256 enrolled in the French courses, 106 enrolled in the Italian courses, and 187 enrolled in the Portuguese courses.⁴¹⁵ In contrast, over 70,000 students enrolled in adult ESOL classes during the same fiscal year.⁴¹⁶

The small enrollment in Portuguese courses is significant because Brazilian tourism and business has recently embraced Miami as a vacation and commercial hub.⁴¹⁷ According to Ar-

thur Teele, chairman of the Dade County Commission, there is a real need for Portuguese speakers in Miami's tourism and private industries:

I can assure you that if someone comes out of either Little Haiti, or Little Havana, or Overtown, [and] speaks Portuguese . . . they will get a job . . .

Our business is tourism. We are very dependent on how many hotel rooms we can fill in terms of the job and the service industry that we have, and that becomes very, very important to our community. And again, in the private marketplace, . . . language is a factor [in getting a job] in my judgment

A person who speaks Portuguese can get a job on a switchboard, can get a job in a hotel, because that is a very strong market right now.⁴¹⁸

Similarly, there is a need for Haitian Creole and Portuguese speakers in Dade County government jobs. While Dade County is serving the needs of its Spanish-speaking clients, some argue that its work force is not meeting the needs of the Portuguese- and Haitian Creole-speaking public.⁴¹⁹ Thus, the small enrollment in Portuguese and Haitian Creole classes translates into a loss of job opportunities for native and foreign-born Dade County residents.

The relatively low enrollment of adult students in foreign-language classes generally, and in Portuguese and Haitian Creole specifically, can be attributed to several factors, the most significant of which are limited State and local resources and statutory requirements placing a higher priority on educational assistance to limited-English-proficient students.

Federal and State Policies. Limited-English-proficient and non-English-proficient adults who enroll in OATACCE programs are assured equal access to all programs under Title VI of the Civil Rights Act of 1964, the Florida Educational Act,⁴²⁰ and the *LULAC v. Florida Board of Education*, the META consent decree. LEP stu-

⁴⁰⁸ Hoffman Report to the USCCR.

⁴⁰⁹ Ibid.

⁴¹⁰ Hoffman Interview.

⁴¹¹ The Dade County Public School adult education program provides the following programs: ESOL, GED, vocational education, literacy classes, citizenship instruction, and other services. Hoffman Interview.

⁴¹² The term "language courses" is used here to mean both courses for limited- or non-English-proficient students and traditional foreign-language courses.

⁴¹³ This is a conservative figure because it only accounts for ESOL students, since statistics for other language programs were not at the disposal of Ms. Hoffman during the interview. Hoffman Interview.

⁴¹⁴ Hoffman Report to the USCCR; Civil Rights Commission Summary Statement of Documents Provided, Exhibit 10 (b), from table entitled "Dade County Public Schools, Office of Applied Technology, Adult, Career and Community Education" (hereafter cited as Civil Rights Commission Summary Statistics of Documents Provided). See also, Hoffman Testimony, *Miami Hearing*, vol. II, p. 306.

⁴¹⁵ Civil Rights Commission Summary Statement of Documents Provided, Exhibit 10(b).

⁴¹⁶ Hoffman, Dade County Public Schools, Office of Applied Technology, Adult, Career and Community Education, Enrollment Figures for the 1994–95 School Year, Exh. 10(b).

⁴¹⁷ According to a recent *Time* magazine article about Miami: "The Brazilians, who discovered Miami with a vengeance two years ago, now jokingly call it 'Brazil's fastest

growing city.' Last year they were so ubiquitous that Portuguese became the predominant language among shopkeepers in downtown Miami." Cathy Booth, "Miami," *Time*, Fall 1993, pp. 82, 84.

⁴¹⁸ Arthur Teele, Chairperson, Dade County Commission, testimony, *Miami Hearing*, vol. II, pp. 276–77.

⁴¹⁹ See, e.g., Teele Testimony, *Miami Hearing*, vol. II, p. 274.
⁴²⁰ 16 Fla. Stat. § 228.2001.

dents cannot be denied access to adult and vocational programs on the basis of their English proficiency. LEP students are also afforded specific coverage under the Adult Education Act.

The Adult Education Act requires Florida educational program plans to provide appropriate language assistance to LEP or non-English-proficient students to the extent necessary to ensure that these students will progress effectively through adult education programs.⁴²¹ The act imposes no requirements for foreign-language instruction as part of its stated purpose of establishing adult education programs that will enable adults to acquire basic educational skills sufficient to obtain gainful employment.⁴²² To be eligible for funding under the Adult Education Act, Florida is required to submit a program plan for the administration of its adult education program.⁴²³

Vocational education programs are funded at the Federal level through the Carl D. Perkins Vocational Education Act. To be eligible for funds under this act, Florida must ensure that vocational education programs provided at the State and local levels will include sufficient English instruction to equip LEP students with the linguistic tools to pursue such occupations in an English-language environment.⁴²⁴ In the Commonwealth of Puerto Rico, the act also permits vocational programs to provide for the needs of students with limited *Spanish* proficiency.⁴²⁵ No similar accommodation is provided under the act for fluent English speakers in Dade County seeking to obtain vocational education while simultaneously learning technical Spanish, although, like Puerto Rico, the majority of Dade County's residents speak a language other than English and over one-half of the population is unable to speak English or speaks English with difficulty.⁴²⁶

⁴²¹ 20 U.S.C. § 1206 (c)(6)(1997).

⁴²² 20 U.S.C. § 1201(1997).

⁴²³ 20 U.S.C. § 1206(a)(1997); Florida's Program Plan for Adult Education, p. iv.

⁴²⁴ 20 U.S.C. § 2441(a)(1) (1990).

⁴²⁵ 20 U.S.C. § 2441(e)(2)(1990).

⁴²⁶ As noted elsewhere in this report, 88 percent of Dade County's residents speak a language other than English or do not speak English very well. Of that number, 87 percent speak Spanish as the other language. Spanish is the most widely spoken language at home, spoken in 50.1 percent of homes. In Puerto Rico, 76.3 percent of the population is unable to speak English or speaks English with difficulty. 1990 Census, table 17. Puerto Ricans are also exempted

In Dade County, bilingual vocational education courses are provided for LEP students through OATACCE. These programs are designed to "bridge regular ESOL studies . . . [with] vocational programs."⁴²⁷ As part of its requirement under the META consent decree, OATACCE trains vocational staff to meet the instructional needs of LEP students, where the bilingual vocational education programs are not available.⁴²⁸ Under the META consent decree, adult students may not be denied access to adult or vocational education programs on the basis of limited English proficiency.⁴²⁹

Thus, while statutes, administrative rules, and judicial mandates require language access for limited-English-proficient students, there are no requirements that Florida or Dade County provide similar language access programs to monolingual English speakers.⁴³⁰

Funding. OATACCE's provision of adult education services is severely limited by the funding caps established by the State of Florida in fiscal year 1991-1992.⁴³¹ Because the allocation figures were established during the year of Hurricane Andrew, Dade County's allotted share of funds was based on an underinflated count taken during a year when the community's response to the hurricane led to a significantly lower adult student population.⁴³² Since the cap was imposed, local funding has been based on the overall growth of the State.⁴³³ This method of calculation hurts counties like Dade that experience significantly larger rates of growth than the State as a whole.⁴³⁴ Since the 1991-1992 fiscal year, OATACCE has experienced a growth of an additional 3,247 full-time-equivalent students for whom State funds are not available.⁴³⁵

from English literacy requirements under the Voting Rights Act of 1965, 42 U.S.C. § 1973b(e)(1997).

⁴²⁷ Hoffman Report to the USCCR.

⁴²⁸ Hoffman Testimony, *Miami Hearing*, vol. II, p. 305; Hoffman Report to the USCCR.

⁴²⁹ META Consent Decree, Part III. A. 1.

⁴³⁰ This despite the fact that monolingual English speakers are a language minority in Dade County. According to the 1990 Census, only 42.6 percent of Dade County residents speak English at home. 1990 Census, table 17, p. 460.

⁴³¹ Hoffman Report to USCCR.

⁴³² Ibid.

⁴³³ Liza McFadden, Program Director, Bureau of Adult and Community Education, Florida Department of Education, telephone interview, Aug. 28, 1995 (hereafter cited as McFadden Interview).

⁴³⁴ Ibid.; see also, Adult Educational Grants report stats.

⁴³⁵ Hoffman Report to the USCCR.

As a result of underfunding by the State and Federal governments, OATACCE is unable to deliver language services at optimal capacity.⁴³⁶ Prior to its elimination in 1993, the Florida Department of Education had an office that was responsible for providing foreign-language instruction to native English speakers.⁴³⁷ Since elimination of that office, foreign language instruction has been relegated to the school districts, which must fund these programs through their respective local county governments, if they elect to provide them.⁴³⁸ As a result, during fiscal year 1994–1995, there was only one full-time teacher in the Spanish department of OATACCE's foreign-language programs. In the same year, there were 58 full-time ESOL teachers, 63 part-time foreign-language teachers (in all four departments), and 1,065 part-time ESOL teachers.⁴³⁹

Budget limitations also mandate that students in adult education programs pay fees to participate in the program.⁴⁴⁰ In general, students enrolled in State-sponsored adult general education programs pay for their courses. Some students, however, are exempt from these fees by statute. Students who:

- 1) do not have a high school diploma or its equivalent and who are enrolled in adult basic, adult secondary, or vocational-preparatory instruction; or
- 2) have a high school diploma or its equivalent, who are enrolled in adult basic, adult secondary, or vocational-preparatory instruction, and who have academic skills at or below the eighth-grade level;

are exempt from registration, matriculation, and laboratory fees for instruction.⁴⁴¹

The Florida Administrative Code measures prospective students' academic skills through

standardized tests.⁴⁴²

According to a report prepared by Florida's Bureau of Adult and Community Education, Division of Applied Technology and Adult Education, Florida's adult education providers served 448,543 students in fiscal year 1993–1994. Of these students, 43 percent were in *beginning* adult basic education⁴⁴³ or English as a second language programs. Seventeen percent participated in the *intermediate* adult basic education or ESL programs.⁴⁴⁴ Of all students participating in adult education programs that year, 35 percent stated that earning their high school diploma or GED was their reason for participating in the program.⁴⁴⁵ Based on these figures, between 35 percent and 43 percent⁴⁴⁶ of adults enrolled in adult education programs in Florida were eligible for a fee waiver during the 1993–1994 school year.

In addition to the severe express fee waivers,⁴⁴⁷ Florida law also authorizes school districts and community colleges to waive fees for any nonexempt student, subject to certain conditions.⁴⁴⁸ Dade County's Office of Applied Technology, Adult, Career, and Community Education waives fees for students enrolled in OATACCE programs who have high school diplomas and score below the 8.9 grade level on the Test of Adult Basic Education.⁴⁴⁹ According to Edwina Hoffman, educational specialist, OATACCE, fees can be waived under OATACCE programs for economically disadvantaged students to take Spanish or Haitian Creole.⁴⁵⁰

Nevertheless, there is frustration among interested students who do not qualify for fee exemptions but who nevertheless wish to learn Spanish or Haitian Creole. Interested potential language students sometimes perceive that free

⁴³⁶ Hoffman Testimony, *Miami Hearing*, vol. II, p. 312.

⁴³⁷ McFadden Interview.

⁴³⁸ *Ibid.*; see also, McFadden Testimony, *Miami Hearing*, vol. II, pp. 356–57.

⁴³⁹ Table called "Foreign Language Teachers."

⁴⁴⁰ Fla. Stat. § 239.117.

⁴⁴¹ Fla. Stat. § 239.117(2)(a) and (b). The statute also exempts other types of students from these fees. These include: students enrolled in dual enrollment or early admission programs; students enrolled in approved apprenticeship programs; students for whom the State is paying a foster care board payment; students enrolled in employment and training programs; and students who lack a regular nighttime residence or whose primary nighttime residence is a shelter.

⁴⁴² Florida Administrative Code, Rule 6A-6.014(4).

⁴⁴³ As defined in app. A.

⁴⁴⁴ State of Florida, Department of Education, *Challenges and Accomplishments, Report on Florida's Adult Education Programs, A Report for Fiscal Year 1994* (Spring 1995), p. 5.

⁴⁴⁵ *Ibid.*, p. 12.

⁴⁴⁶ This range assumes that some of the adults in the 43 percent grouping are enrolled in strictly ESL courses and would not therefore be eligible for a fee waiver on that basis alone.

⁴⁴⁷ Fla. Stat. § 239.117(2).

⁴⁴⁸ Fla. Stat. § 239.117(3).

⁴⁴⁹ Hoffman Report to USCCR; Hoffman Testimony, *Miami Hearing*, vol. II, p. 307.

⁴⁵⁰ Hoffman Report to USCCR, at p. 3; Hoffman Testimony, *Miami Hearing*, vol. II, p. 307.

language classes, such as English as a second language, are reserved for immigrants, while the native-born population must pay for its language classes.⁴⁵¹

While neither citizenship nor place of birth are factors for fee exemption eligibility under the law, the language ability of an applicant can play a role in the score an applicant receives on the basic skills test.⁴⁵² Because the test is administered in English, it:

naturally makes it very favorable to limited-English-proficient students to score poorly, and of course, they are then going to be able to get the class for free.

... [I]t's more a lack of understanding on what the criteria are, and unfortunately, they were set using English as a standard, and obviously, a native speaker of English is going to do much better on these tests and show that they should be paying a fee.⁴⁵³

The State of Florida accepts the Spanish version of the basic skills test, called the Spanish Assessment of Basic Education (SABE) test, for adult vocational education programs.⁴⁵⁴ For adult general education programs, however, only the English-language version of the basic skills test is approved for use in determining whether a student enrolled demonstrates skills at or below the eighth grade level.⁴⁵⁵ Limited-English-

proficient or non-English-proficient students enrolling in adult general education courses are thus more likely to qualify for fee exemptions than are native English speakers with similar educational backgrounds due to the likelihood that the language barrier they face will produce lower test results.

The problem is compounded by fraudulent applications for fee waivers from students who claim not to have a high school diploma or who deliberately score low on the skills test in order to qualify for the fee waivers. Such claims are more successful among foreign-born applicants, for whom it is more difficult to verify high school graduation.⁴⁵⁶

The cost of adult basic education courses through the Dade County public school system ranges from between \$5 and \$15 per credit hour. According to Edwina Hoffman, the State of Florida considered eliminating the educational status requirement and imposing a fee of \$5 per credit hour for all students. Such a requirement would lead to hardship among the low-skilled and the poor.⁴⁵⁷

Vocational education courses are more expensive, ranging in the hundreds of dollars. The DCPS offers some loans and scholarships to eligible students. Students who reside outside of Dade County pay higher fees, although determining who qualifies as a resident is a difficult process, because there are no stated guidelines for determining residency.⁴⁵⁸ As a result, there is abuse by noncounty residents who take advantage of county rates or free instruction programs.

Language Education: Miami-Dade Community College

The Miami-Dade Community College is the largest single community college in the Nation,⁴⁵⁹ with five campuses throughout Dade County enrolling over 120,000 credit and non-credit students in the 1994-1995 academic

⁴⁵¹ Hoffman Interview.

⁴⁵² Foreign-born residents generally also score lower on literacy tests than native residents, according to the Florida State Adult Literacy Survey. Across the literacy scale, about half (between 41 percent and 51 percent) of foreign-born adults performed in Level I, compared to 16-19 percent of the native-born adults. See State Adult Literacy Survey; McFadden Testimony, *Miami Hearing*, vol. II, p. 316. According to Liza McFadden, the report also found "that Florida residents born in another country had completed fewer years of schooling in this country on average, 11 years, than residents who were born in the U.S.—12.5 years." Adult Literacy in Florida, Results of the State Adult Literacy Survey (August 1994), p. 316; McFadden Testimony, *Miami Hearing*, vol. II, p. 316.

⁴⁵³ Hoffman Testimony, *Miami Hearing*, vol. II, p. 352.

⁴⁵⁴ As defined in app. A. See also, Hoffman Testimony, *Miami Hearing*, vol. II, p. 351; F.A.C. § 6A-10.040.

⁴⁵⁵ Florida Administrative Code, Rule 6A-6.014 (4). That section provides:

(4) Academic skills tests for adults. The following tests, English language versions only, are approved to be used to determine whether a student enrolled in the adult general education program demonstrates skills at or below the eighth grade level according to the standards established for the test by the test developers.

(a) Test of Adult Basic Education (TABE);
(b) Adult Basic Learning Examination (ABLE);
(c) Basic Skills Assessment Program (BSAP);

(d) Minimum Essential Tests (MET).

⁴⁵⁶ Hoffman Interview.

⁴⁵⁷ Ibid.

⁴⁵⁸ Ibid.

⁴⁵⁹ While fall 1992 statistics revealed that two other postsecondary institutions, the University of Minnesota—Twin Cities, and Ohio State University main campus, had higher enrollments than MDCC, these institutions had graduate programs that had a significant percentage of their enrollment. Miami-Dade Community College Fact Book, 1994-1995, p. 21.

year.⁴⁶⁰ The college is nationally recognized for its racial and ethnic diversity; it enrolls more Hispanic and black students than any other postsecondary institution in the United States.⁴⁶¹ In addition, over half of the college's student population speaks a native language other than English, with 74 languages represented on its campuses.⁴⁶²

In response to its unique student body, Miami-Dade Community College (MDCC) has an extensive language program involving English as a second language, Spanish, and other languages. To prepare students for the international trade and finance opportunities found in Miami, the college also offers the largest bilingual instruction program in the country. This program enrolls over 4,000 students and provides vocational instruction bilingually throughout the program.⁴⁶³ The stated purpose of the program is to ensure that participating students complete their respective vocational programs with the ability to operate bilingually in their chosen fields.⁴⁶⁴ Students are required to have a certain level of proficiency in both languages⁴⁶⁵ before entering this program, however.⁴⁶⁶

MDCC places all of its limited-English-proficient students in an intensive English instruction program designed to teach students enough English to enable them to take content courses in English. Once they pass the requisite English comprehension exam, these students are permitted to enroll in the degree courses. No similar intensive Spanish course appears to exist for monolingual English speakers wishing to en-

roll in one of the bilingual vocational instruction programs.⁴⁶⁷

The importance of language acquisition for Dade County residents is evinced by the popularity of language classes at MDCC. In the 1995–1996 academic year, 48,172 students, or approximately one-third of the entire student body, were enrolled in foreign-language classes at MDCC.⁴⁶⁸ The largest enrollment in all courses offered by the college is in the English as a second language course.⁴⁶⁹ Since repeal of the Dade County antibilingualism ordinance in 1988, the demand for Spanish instruction has also risen significantly.⁴⁷⁰ By 1991, Spanish enrollment at MDCC had risen by 70 percent over the previous level 4 years before.⁴⁷¹ So high is the demand for Spanish classes that budgetary constraints require south Florida community colleges to turn away many prospective Spanish students.⁴⁷² Fri-

⁴⁶⁷ While Dr. Padron indicated during the interview that programs exist at MDCC to help students achieve language fluency, it is unclear from his testimony and the document provided whether MDCC offers an intensive language acquisition program for its monolingual English speakers that is similar to the exclusive language instruction program offered for its limited-English-proficient students. At the InterAmerican Center of the Wolfson Campus, where the bilingual vocational programs are offered, there were 27 full-time faculty and staff devoted to the ESL program in 1995, but only 3 full-time faculty and staff devoted to foreign-language training, including translation and interpretation studies. Miami-Dade Community College, Wolfson Campus, Interamerican Center, Staffing (Padron Exhibit 9V(v)).

⁴⁶⁸ MDCC, Institutional Research, *Language Course Enrollments, 1995–96 Academic Year, Miami-Dade Community College*, prepared by A. Baldwin (hereafter cited as *Language Course Enrollments, 1995–96 Academic Year*).

⁴⁶⁹ Padron Testimony, *Miami Hearing*, vol. II, p. 323. In the 1995–1996 academic year, 42,640 students enrolled in English as a second language courses. See also *Language Course Enrollments, 1995–96 Academic Year*.

⁴⁷⁰ There were 3,869 students registered in Spanish courses during MDCC's 1995–1996 academic year. See *Language Course Enrollments, 1995–96 Academic Year*.

⁴⁷¹ Mary Voboril, "The Bilingualism Biz," *Miami Herald*, Jul. 18, 1991, p. 1F (citing Oswaldo Lopez, then chairperson of the Department of Foreign Languages and International Studies at MDCC).

⁴⁷² Ibid. (citing Irmargd Bocchino, then head of the Communications Department at Broward Community College). According to Mr. Bocchino, there is a large interest in Spanish as a second language: "We have so many students packed in our Spanish classes, and I've asked for more and more sessions as the budget will allow. I could offer ten more sessions and have them all full if I had the budget." Ibid. In some parts of the country, English classes are in such high demand that many remain open 24 hours per day. In Los Angeles, statistics show that waiting lists are as long

⁴⁶⁰ Miami-Dade Community College Catalog, 1994–1995, p. 7.

⁴⁶¹ During the 1994–1995 academic year, Miami Dade Community College had an enrollment that was 57 percent Hispanic and 20 percent African American. Padron Interview; see also, Miami-Dade Community College Fact Book, 1994–1995, p. 21.

⁴⁶² MDCC enrolled students from 123 different countries, speaking 74 different languages, in the 1994–1995 academic year. Padron Testimony, *Miami Hearing*, vol. II, p. 323; see also, Padron Interview. In fall 1993, slightly more than half of MDCC's students reported English as their native language: 52 percent reported English, 40.5 percent reported Spanish, 5 percent reported French Creole, and 2.7 percent reported other languages as their native languages. Miami-Dade Community College Fact Book, 1994–1995, p. 18.

⁴⁶³ Padron Testimony, *Miami Hearing*, vol. II, p. 324.

⁴⁶⁴ Ibid., p. 324; Meta Institute Brochure (Padron Exhibit 9J(i)).

⁴⁶⁵ The program is offered only in English and Spanish.

⁴⁶⁶ Padron Interview.

vate language instruction programs have also witnessed a large increase in Spanish enrollment. In the 4 years ending in 1990, for example, enrollment in Dade County's Berlitz Spanish classes rose by 174 percent.⁴⁷³ According to Dr. Padron, the rise in Spanish enrollment is due to an acknowledgment by the community following the repeal of the antibilingualism ordinance that Dade County is a bilingual community and that bilingualism opens doors to jobs and economic prosperity.⁴⁷⁴

MDCC enrolls approximately 75 percent of all students who graduate from the Dade County Public Schools.⁴⁷⁵ Many of these students arrive at MDCC with no prior foreign-language education because they have not been required or encouraged to take a foreign language at the elementary or secondary levels.⁴⁷⁶ The Dade County school system imposes no foreign-language requirements for its middle or high school students.⁴⁷⁷ Moreover, attempts to require

mandatory Spanish classes for students in the Dade County schools have met sharp opposition in the past.⁴⁷⁸

Language Education and Community Responses

Language instruction is especially important in Dade County because of the population's large linguistic diversity. According to Edwina Hoffman, language instruction is one of the most effective ways to mediate race relations.⁴⁷⁹ Yet, language instruction is not, by itself, a remedy to these problems. To be effective in diffusing hostilities and educating people about other cultures, it must be accompanied by cultural instruction.⁴⁸⁰

The need for cultural instruction is crucial in multicultural communities, like Dade County, where cultural differences unrelated to language can lead to confusion and segregation that is often erroneously attributed to language differences. In Dade County, the school system, the community college, and community-based education centers often serve as laboratories where large numbers of cultures come together to learn about each other through the medium of language. The Dade County school system serves students from 125 countries. Miami-Dade Community College has students from 123 countries, speaking 74 different languages.

Language education also plays an important role in alleviating economic concerns over jobs and upward mobility. Increased student registration in language programs at MDCC and other public and private educational institutions evinces an acknowledgment by south Florida residents that multilingualism is a practical (if not actual) requirement for economic well-being.⁴⁸¹ For the monolingual population of Dade County, acquisition of a foreign language significantly improves access to jobs. Despite this realization, local educational institutions do not have the resources to meet the language needs and demands of the monolingual commu-

as 40,000 to 50,000. Testimony of Rep. Patsy Mink (D-HI), Hearing on S.356, The Language of Government Act of 1995, Mar. 7, 1996; Testimony of Karen Narasaki, Executive Director, National Asian Pacific American Legal Consortium, Before the Senate Committee on Governmental Affairs, Federal News Service, Dec. 6, 1995.

⁴⁷³ Voboril, "The Bilingualism Biz" (citing Patricia Sze, Director of Marketing, Berlitz Center). According to Ms. Sze: "[T]here's a realization that, . . . more than any other place in the country, Miami is turning into a bilingual city. And to get ahead in business and careers, being bilingual has got to be a plus."

⁴⁷⁴ Padron Interview.

⁴⁷⁵ Padron Testimony, *Miami Hearing*, vol. II, p. 330.

⁴⁷⁶ *Ibid.*, p. 331.

⁴⁷⁷ See generally *General Fund Annual Budget Plan, Dade County Public Schools, 1995-1996*, Financial Affairs, Office of Budget Management, June 1995. The plan generally describes requirements for graduation from DCPS programs. While Spanish is an elective at the elementary schools, parents are strongly encouraged to enroll their students in Spanish for foreign language speakers and Spanish for native Spanish speakers courses. At the middle and high school levels, foreign language is an elective in the traditional schools, and schools do not urge parents to have their children participate. Dade County Public Schools, Division of Student Services, Dade County Public Schools Course Requirements, revised October 1996.

Dade County Public Schools are not unique in their lack of emphasis on foreign-language instruction. According to a U.S. Senate Report: "Less than five percent of American elementary school students study any foreign language and only fifteen percent of our high school students study a language for more than two years. At the postsecondary level, just twenty percent of American colleges and universities require a foreign language for admission, and only five percent of our college graduates are fluent in a second language. All told, less than one percent of American students

study the languages, cultures and geography of nations with three-fourths of the world's population." Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Senate Report No. 100-222, p. 176.

⁴⁷⁸ Padron Testimony, *Miami Hearing*, vol. II, p. 332.

⁴⁷⁹ Hoffman Interview.

⁴⁸⁰ *Ibid.*

⁴⁸¹ Padron Interview.

nity.⁴⁸²

Lack of funding and a priority on English proficiency by Federal and State sources are partly responsible. Yet, private sources have also failed to step up to the challenge. A recent survey of businesses in Dade County found that fewer than 21 percent of all companies provide job training or incentives to promote English or Spanish proficiency in their employees, despite the fact that 95 percent of the survey respondents agreed that a bilingual workforce is important for Miami's future economic development.⁴⁸³ Nationally, the percentage of companies offering basic skills and ESL training to their employees is even smaller. A survey by the U.S. Department of Labor's Bureau of Labor Statistics revealed that only 3 percent of businesses that receive no Federal or other public funds for training actually provide such training. The cost of providing these programs, both in dollars and loss of productivity time, has prevented private industry from taking a more aggressive role in filling in the gap.⁴⁸⁴

Impact of Official English Movement on Language Education and Job Opportunities Federal Developments

The Official English movement has recently edged its way to the forefront of national and congressional focus in response to recent concerns over immigration levels. In the 104th Congress, four bills and at least one resolution advocating English as the United States' official language were introduced. Appendix B provides a brief summary of the Federal English language measures introduced since 1995.

One of the bills passed in the U.S. House of Representatives. In August 1996, the House passed the Bill Emerson English Language Empowerment Act. The act declares English the official language of the Federal Government; requires all naturalization ceremonies to be conducted entirely in English; requires all official publications, including tax forms, to be in English; and repeals the bilingual ballot requirements of the Voting Rights Act. The act also re-

allocates savings achieved through the legislation to English classes for immigrants. The bill has been reintroduced in the 105th Congress, but the new bill omits all reference to the Voting Rights Act.⁴⁸⁵

In addition to H.R. 123, there were two bills in the U.S. House of Representatives and one bill in the U.S. Senate to declare English the official language of the United States introduced in the 104th Congress: the bicameral Language of Government Act of 1995,⁴⁸⁶ the Declaration of Official Language Act of 1995,⁴⁸⁷ and the National Language Act of 1995.⁴⁸⁸ A joint resolution to amend the Constitution to establish English as the official language was also introduced in the 104th Congress.⁴⁸⁹

Two of the proposed bills would eliminate bilingual education programs. The National Language Act of 1995 (NLA) would repeal the Bilingual Education Act and terminate the U.S. Department of Education's Office of Bilingual Education and Minority Languages Affairs.⁴⁹⁰ The NLA suggests no alternative program, but it authorizes the Secretary of Education to assist local educational agencies in transitioning "children enrolled in programs assisted under the Bilingual Education Act to special alternative instructional programs that do not make use of the native language of the student."⁴⁹¹ The Declaration of Official Language Act of 1995 (OLA) would repeal Title VII of the Elementary and Secondary Education Act of 1965 (the Bilingual Education Act is an amendment to Title VII).⁴⁹² Foreign language instruction programs also face an uncertain future under the OLA. While the OLA would not affect "programs in schools designed to encourage students to learn foreign languages," it expressly exempts the use of languages other than English in educational settings only where such other languages are used for "training in foreign languages for inter-

⁴⁸⁵ H.R. 123, 105th Cong., 1st Sess. (1997).

⁴⁸⁶ H.R. 123, 104th Cong., 1st Sess. (1995); S. 356, 104th Cong., 1st Sess. (1995). H.R. 123 was eventually passed in the House as the "Bill Emerson English Language Empowerment Act."

⁴⁸⁷ H.R. 739, 104th Cong., 1st Sess. (1995).

⁴⁸⁸ H.R. 1005, 104th Cong., 1st Sess. (1995).

⁴⁸⁹ H.J. Res. 109, 104th Cong., 1st Sess. (1995).

⁴⁹⁰ H.R. 1005, 104th Cong., 1st Sess. (1995).

⁴⁹¹ *Ib.d.*

⁴⁹² H.R. 739, 104th Cong., 1st Sess. (1995).

⁴⁸² Voboril, "The Bilingualism Biz."

⁴⁸³ *The Economic Impact of Spanish-Language Proficiency.*

⁴⁸⁴ See generally, Miriam Burt, "Selling Workplace ESL Instructional Programs," Educational Resources Information Center (Washington, DC: National Clearinghouse for ESL Literacy Education, 1995).

national communication."⁴⁹³ Under a strict reading of the bill, publicly funded schools could be limited to vocational foreign language instruction designed for students who would be using this knowledge for "international communication."

Unlike the OLA and the NLA, the Language of Government Act of 1995 (LGA) does not address bilingual education. Instead, the bill provides that the Federal Government's obligation to preserve and enhance the role of English as the official language "shall include greater opportunities for individuals to learn English."⁴⁹⁴ Under the LGA, any monetary savings derived from enactment of the bill "should be used for the teaching of non-English speaking immigrants in the English language."⁴⁹⁵ With the exception of the Bill Emerson English Language Empowerment Act, none of these other bills had been introduced in the 105th Congress as of May 1997. Nevertheless, Congress has vowed to renew efforts to reform bilingual education programs.⁴⁹⁶

Elimination of Federal bilingual education programs would negatively affect the ability of Florida and other States to provide bilingual education or other language-assistance educational programs to its limited-English-proficient students. In States with a high percentage of limited-English-proficient students, like Florida, repeal of bilingual education programs would require States to fund their own language assistance programs, possibly at the expense of other programs, such as foreign language instruction. Moreover, under the OLA, any Florida-funded program providing bilingual education would expose the State to civil liability under the act's preemption and enforcement clauses.⁴⁹⁷

Elimination of Federal assistance for bilingual education would also require Florida and

Dade County taxpayers to bear a greater share of the cost of educating English-deficient students. Florida school districts are required under State law and the META consent decree to ensure equal educational access to its limited-English- and non-English-proficient students.⁴⁹⁸ The funding gap between Federal assistance and Florida's unreimbursed share of educating its immigrant students was the largest public expenditure identified in Florida's lawsuit against the Federal Government in 1994.⁴⁹⁹ To impose a heavier burden on Florida residents by eliminating Federal assistance for bilingual education may spur greater animosity against Federal immigration policies and fuel existing concerns over the impact of immigration on public education.⁵⁰⁰

State Developments

Proposed measures sought to be placed on Florida's ballot in 1996 would have, in part, reaffirmed Florida's Official English constitutional amendment and also affected language education policies and job opportunities for limited-English-proficient Florida residents. The Florida 187 Committee, Inc., sought to advance four constitutional amendments relating to immigration.⁵⁰¹ One of the amendments would imple-

⁴⁹³ *Id.*, § 166.

⁴⁹⁴ H.R. 123, §162.

⁴⁹⁵ *Id.*, § 2.

⁴⁹⁶ Rep. Peter King (R.-N.Y.) reportedly has indicated he will introduce another bill at the start of the 105th Congress that would abolish the U.S. Department of Education's Office of Bilingual Education and eliminate funding for State bilingual education programs. See Teri Bailey, "Texas Lawmakers Leery of English-Only Bills," *Houston Chronicle*, Dec. 10, 1996, p. A12.

⁴⁹⁷ Section 167 of the OLA "preempts any State or Federal law which is inconsistent with [that] chapter." Section 169 provides a cause of action to anyone "injured by a violation of [that] chapter." H.R. 739, 104th Cong., 1st Sess. (1995).

⁴⁹⁸ Under the Florida Educational Equity Act, the State educational system cannot eliminate "programs designed to meet the needs of students with limited proficiency in English . . ." 16 Fla. Stat. § 228.2001(2)(c). Each school district is required to "provide limited English proficient students ESOL instruction in English and ESOL instruction or home language instruction in the basic subject areas of mathematics, science, social studies, and computer literacy." 16 Fla. Stat. § 233.058 (3)(1995).

⁴⁹⁹ *Chiles v. United States*, 874 F. Supp. 1334 (S.D. Fl. 1994). For a more detailed discussion of Florida's lawsuit against the Federal Government, see chap. 3 of this report. According to a report issued by the Governor's office, more than 70 percent of the \$751 million Florida spent on immigrants in 1993 was for extra teachers, classes, desks, and specialized English instruction. See *The Unfair Burden*; Bell, "School Budgets Burst Under Strain of Immigrants," *The Orlando Sentinel*, May 1, 1994, p. A1.

⁵⁰⁰ See, e.g., Sergio Bustos, "Immigration Debate Organizing," *Fort Lauderdale Sun-Sentinel*, Aug. 5, 1995, p. 1B.

⁵⁰¹ For a discussion of the Florida 187 Committee, Inc., measures and other immigration reform measures pending in Florida, see chap. 3 of this report. Although the Florida 187 Committee failed to generate enough signatures to place the measure before Florida voters in the 1996 general election, the committee has vowed to continue its efforts to place the measure on the 1998 ballot. Andrea Viglucci, "Anti-Immigrant Petition Drives Drag," *Miami Herald*, May 24,

ment the Official English provision of the Florida Constitution. The committee's Official English amendment would require that any document produced by State and local government be produced in English. In addition, the measure would provide that:

1. State and local government must conduct all meetings in English with the exception of judicial proceedings;
2. No State or local government shall declare itself bilingual or multilingual;
3. Applicants for government employment must demonstrate an ability to communicate in English in order to be eligible for employment. Such proficiency will be measured through an exam developed by the State government.⁵⁰²

Requiring English proficiency and restricting the use of languages other than English, on the other hand, would likely affect the ability of limited-English-proficient residents to receive meaningful assistance from State and local government.⁵⁰³ The consequences of either requirement on racial and ethnic tensions as it relates to the job market in south Florida are noted in the previous section of this report.

1996, p. B1; Mark Silva, "Immigrant Amendment Supporters Aim at '96," *Miami Herald*, Aug. 9, 1996, p. B5.

⁵⁰² Sergio Bustos, "2nd Drive Focuses on Aliens," *Orlando Sentinel*, May 5, 1996, p. C1; and Rick Barry, "Amendment Backers Pea Hopes on Voters," *Tampa Tribune*, Jan. 17, 1996, p. 1.

⁵⁰³ In Dade County, there is a need for Portuguese and Haitian Creole speakers to assist monolingual members of the community with court services. According to Arthur Teele: "I hope that I have not testified today to say that we are fully addressing the multilingual needs. I happen to believe that we are grossly underrepresented, particularly as it relates to Brazil, Brazilians, Brazilian-Americans, as well as Haitian-Americans." Teele Testimony, *Miami Hearing*, vol. II, p. 274.

Chapter 3

Immigrant Use of Public Benefits Programs

Public policy regarding the poor has been a contentious issue for most of United States history. What began as primarily a local responsibility evolved into a partnership between local, State, and Federal governments. While needy immigrants were criticized for burdening charitable organizations or government-supported programs, relief efforts generally included them among the rest of the nation's poor. The 1970s brought the first restrictions, limiting participation in some Federal programs to citizens, legal permanent residents, and those permanently residing in the U.S. under color of law.¹ In more recent years, State governments have drawn attention to the burdens on State and local governments from providing services to undocumented immigrants. Florida Governor Lawton Chiles unsuccessfully sued the Federal Government for reimbursement of public expenditures on immigrants since 1980.² Arizona, Texas, New Jersey, and New York followed with similar, unsuccessful lawsuits.³

Heightened public awareness of immigration-related issues has generated support for State initiatives banning public benefits to undocumented immigrants. In November 1994, California voters passed Proposition 187, restricting public benefits for undocumented immigrants.⁴ Following the success of the California initiative, two groups in Florida organized to pass amendments to the State constitution similarly restricting undocumented immigrants from receiving public services.

Nationally, support for welfare reform gathered momentum and culminated in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act).⁵ The effects of the Welfare Reform Act are not uniform among the poor. Although all are subject to new work requirements and limitations on the length of eligibility, most legal immigrants are barred or restricted from major assistance programs. Of the \$54.2 billion total anticipated savings from the act between 1997 and 2002, \$23.7 billion derive from the elimination of eligibility for legal immigrants.⁶ Since immigrants tend to concentrate in particular areas of the country,⁷ States with large immigrant popula-

¹ Restrictions were placed on the SSI (supplemental security income) program in 1972. Elizabeth Bogen, *Immigration in New York* (New York: Praeger Publishers, 1987), p. 112; see Act of Oct. 30, 1972, Pub. L. No. 92-603, 1972 U.S.C.A.N. 1722 (codified as amended at 42 U.S.C. § 1383c(a)(1)(B)(i) (1994)). The same restrictions were placed on AFDC and medicaid in 1974. Bogen, *Immigration in New York*, pp. 112-13.

² *Chiles v. U.S.*, 874 F. Supp. 1334 (S.D. FL 1994), *aff'd*, 69 F.3d 1004 (11th Cir. 1995), *cert. denied*, 116 S.Ct. 1674 (1996).

³ These lawsuits were unsuccessful at the Federal district court and circuit court levels. *California v. United States*, 104 F.3d 1006 (9th Cir. 1997); *Arizona v. United States*, 104 F.3d 1006 (9th Cir. 1997); *Texas v. United States*, 106 F.3d 661 (5th Cir. 1997); *New Jersey v. United States*, 91 F.3d 463 (3d Cir. 1996); *Padavan v. United States*, 82 F.3d 23 (2d Cir. 1996).

⁴ Many of the provisions were ruled unconstitutional by a Federal judge and were not implemented. William Claiborne, "Judge Strikes Some Immigrant Bans," *Washington Post*, Nov. 21, 1995, p. A1.

⁵ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2262, 2263 (to be codified as 8 U.S.C. § 1612).

⁶ Congressional Budget Office, *Federal Budgetary Implications of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (December 1996), pp. 1, 27.

⁷ Over 70 percent of immigrants to the U.S. settle in California, New York, Texas, Florida, New Jersey, and Illinois. U.S. Immigration and Naturalization Service, *Statistical Yearbook of the Immigration and Naturalization Service, 1993*, (Washington, DC: U.S. Government Printing Office,

tions will lose more funding for Federal programs. Similarly, because immigrants are not distributed evenly throughout a State, counties with high immigrant populations will feel the most acute effects. Within Florida, immigrants are concentrated in a few cities. In 1993, nearly half of new immigrants to Florida settled in Miami.⁸ Some 69.1 percent of Florida's legal immigrants receiving either AFDC/TANF (aid to families with dependent children/temporary assistance to needy families), food stamps, or medicaid reside in Dade County.⁹ Criticizing the Welfare Reform Act as "cruel" and "unfair," Governor Chiles recently responded with another lawsuit, asking the courts to declare the immigrant restrictions in the Welfare Reform Act unconstitutional.¹⁰

At the time of the Miami hearing, the public debate over immigrants and public benefits was well underway among concerned segments of the population. Although studies draw conflicting results over whether immigrants benefit or drain the economy, the proposed measures focused only on costs to Federal, State, or local governments. The Miami hearing uncovered frustration among native citizens over immigrant-related costs. The hearing also revealed that immigrant concern over the proposed Federal and State initiatives extended beyond those receiving direct benefits from public assistance programs. Immigrant advocacy groups testified that these initiatives engender anti-immigrant sentiment that touches all immigrants regardless of their legal or economic status.

1994), pp 21-22 (hereafter cited as 1993 *INS Statistical Yearbook*).

⁸ In 1993, of the 61,423 immigrants who settled in Florida, 30,464 selected Miami as their intended place of residence 1993 *INS Statistical Yearbook*.

⁹ The figures for other Florida counties are as follows: Broward—7.0 percent, Palm Beach—4.3 percent, Hillsborough—3.9 percent, Orange—2.6 percent, Pinellas—1.6 percent, Duval—1.3 percent. These figures depict counties with over 1 percent of Florida's legal immigrant recipients for AFDC/TANF, food stamps, and medicaid (not including SSI recipients). SSI data are not available by county Florida Department of Children and Families, *Impact of Restrictions on Legal Immigrants*, December 1996/January 1997 (hereafter cited as *Impact of Restrictions on Legal Immigrants*).

¹⁰ Office of the Governor, State of Florida, Press Release, "Governor Chiles Sues Federal Government Over Welfare Reform Restrictions on Legal Non-Citizens," Apr 23, 1997.

Section I: Background on Immigrant Status and Public Benefits

Immigrant Categories

The following section describes immigration categories with a general note on each group's eligibility for public benefits. For a more detailed discussion on eligibility for specific programs and changes brought by the 1996 Welfare Reform Act, turn to section III of this chapter.

Lawful Permanent Residents

Lawful permanent residents have authorization to live and work permanently in the United States and include immigrants holding "green cards." After 5 years of residency, lawful permanent residents are eligible for citizenship through naturalization. A lawful permanent resident who is married to a United States citizen may naturalize after 3 years.¹¹ Naturalized citizens have the same rights and responsibilities as citizens by birth. Lawful permanent residents were previously eligible for nearly all public benefits available to United States citizens. With welfare reform, States have the option of continuing coverage of former AFDC and medicaid recipients. However, lawful permanent residents are no longer eligible for supplemental security income (SSI) and food stamps unless they have worked for 40 qualified quarters¹² without receiving any Federal benefit for any such quarter after December 31, 1996.¹³

Refugees

Refugees must demonstrate a well-founded fear of persecution in their home country and are designated as refugees before entering the United States.¹⁴ The Federal Government sets a limit on the number of refugees admitted each year. When that number is exceeded, persons fleeing persecution may be "paroled" into the United States as refugees.¹⁵ Under the Welfare

¹¹ National Immigration Law Center, *Guide to Eligibility for Federal Programs* (Los Angeles: National Immigration Law Center, 1994), p 4 (hereafter cited as *NILC Guide to Eligibility*). Those who acquire lawful permanent resident status through marriage to a United States citizen obtain conditional permanent residence if they have been married for less than 2 years.

¹² The 40-quarter requirement, essentially 10 years, is the eligibility requirement for collecting social security benefits.

¹³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2262, 2263 (to be codified as 8 U.S.C. § 1612).

¹⁴ *NILC Guide to Eligibility*, p 5.

¹⁵ *Ibid.*

Reform Act, refugees generally may not receive benefits beyond 5 years after entering the United States.¹⁶

Cuban and Haitian Entrants

According to past practice, the Immigration and Naturalization Service (INS) paroled Cubans and Haitians as Cuban or Haitian entrants. Formerly, they were eligible for refugee assistance if they were granted parole, applied for asylum, or in exclusion or deportation proceedings but did not receive a final order of deportation.¹⁷ Cuban or Haitian entrants who entered the United States after enactment of the Welfare Reform Act will be eligible for temporary cash assistance and medical assistance for approximately 8 months through the Refugee Assistance Program.¹⁸

Asylees

People who are not designated as refugees before entering the United States but have a well-founded fear of persecution in their home country, thus otherwise satisfying the requirements for refugee status, may apply for asylum after entering the United States.¹⁹ Under the Welfare Reform Act, they are generally not eligible for benefits beyond 5 years after they are granted asylum.²⁰

Temporary Protected Status

Persons living in the United States may obtain temporary protected status (TPS) if they come from specifically designated countries with hazardous living conditions. They may remain in the country for a specific time period during which they are not eligible for most cash assistance programs but may receive some forms of in-kind assistance for basic needs such as food and housing.²¹ Persons with temporary protected status may obtain a work permit.²²

Parolees

Parole is a discretionary status granted for humanitarian or public interest purposes. Parol-

ees may be authorized for a temporary stay for example to receive medical treatment while others may be admitted for the purpose of applying for asylum.²³ Under the Welfare Reform Act parolees will be ineligible for food stamps and SSI. States may opt to cover former AFDC and Medicaid recipients who have been paroled in the United States for at least 1 year.²⁴

Undocumented Immigrants

Undocumented immigrants are in the U.S. without authorization. They either enter unlawfully by circumventing INS inspection or enter lawfully on a nonimmigrant visa and remain after the visa expires. Undocumented immigrants remain ineligible for cash assistance programs under the Welfare Reform Act, but may receive minimal in-kind assistance for emergency medical services, immunizations, and emergency disaster relief.²⁵

Welfare in Historical Context

Delivery of aid to the poor has become more centralized in the last century, shifting responsibility from local to State and Federal levels. At the same time, the range of services has expanded to reach larger numbers of people. What has not changed is the reliance of the needy on government as a primary source of relief. Also unchanged is the public concern over how the effort to make employable welfare recipients self-sufficient and public measurement that welfare stimulates the incentive to work.

Government and not long been a source of relief to the poor, often helping people in greater numbers than private funds.²⁶ During colonial times, local towns or counties were responsible for taking care of the poor although the government often contracted with private agents to provide care.²⁷ In the 19th century, the government subsidized schools, hospitals, and orphanages.²⁸ By the late 1920s, most cities spent three times more than private agencies on non-institutional medical or cash relief.²⁹

¹⁶ 8 U.S.C. § 1612 et seq.

¹⁷ NILC, *Guide to Eligibility*, p. 5.

¹⁸ Florida Department of Health and Rehabilitation Services, *Economic Services Program: Restrictions on Welfare and Public Benefits for Aliens*, by Don Wimmer, Sept. 29, 1996.

¹⁹ NILC, *Guide to Eligibility*, p. 5.

²⁰ 8 U.S.C. § 1612 et seq.

²¹ NILC, *Guide to Eligibility*, p. 11.

²² *Ibid.*, pp. 5-6.

²³ *Ibid.*, p. 4.

²⁴ 8 U.S.C. § 1612.

²⁵ *Id.* § 1612.

²⁶ Murray Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (New York: Basic Books, 1986), p. xii. See also Katz, *Shadow of the Poorhouse*.

²⁷ *Ibid.*, p. x.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 154.

The cost of relief and the cause of welfare dependency were also concerns. By identifying the cause of welfare dependency, reformers concluded that they could provide the most effective treatment and reduce the need for welfare. Reformers shaped public welfare policy according to popular theories of the time. Traditionally, local communities practiced outdoor relief (aid to people in their homes in the form of food, fuel, or small amounts of cash). Outdoor cash assistance has generally been unpopular. In the 1880s and 1890s, charity organization societies attempted to eliminate all outdoor aid on the ground that it created negative work incentives.³⁰ Throughout the 19th century, the poorhouse became the cutting edge of relief and dominated welfare reform efforts.³¹ The poorhouse arose as part of a trend towards institutionalization. Proponents expected that institutions could rehabilitate criminals, the mentally ill, and the poor.³² In theory, poorhouses were to transform the behavior and character of the poor by institutionalizing them. Another goal was to save money by providing care at lower cost and deterring people from applying for relief.³³ Despite the hopes of its proponents, poorhouses were more expensive than outdoor relief and failed to entirely replace outdoor relief. The majority of people continued receiving aid outside of institutions.³⁴

Beginning in the 1870s, reformers sought to remove children from families living in poorhouses on the theory that separating and putting them in a different environment would break a cycle of dependence.³⁵ When that policy was abandoned in the 1890s, outdoor relief was necessary to keep families together.³⁶ Illinois was the first State to provide public aid to mothers with dependent children in 1911. By 1926, all but eight States had passed similar legislation.³⁷

In the early 20th century, eugenics popularized the notion that traits such as criminal behavior, mental illness, and welfare dependency were inherited. Extremists within the eugenics movement worked to prevent reproduction by

sterilization or incarceration of individuals possessing such traits during their reproductive years. Eugenics was also linked to anti-immigrant sentiment against southern and eastern European immigrants, leading to legislation restricting immigration from those countries.³⁸ With rising sentiment against Nazi Germany in the 1930s, the eugenics movement lost popularity in America.³⁹

In the 20th century, social theories made way for the needs of business and industry. Technological advances in the industrial era reduced the demand for unskilled labor. Businesses became more willing to support legislation eliminating child labor and immigration quotas such as the immigration restrictions of 1921 and 1924.⁴⁰ Older workers were also less desirable. In the 1920s, Federal and State governments passed legislation for old age pensions.⁴¹ Between 1917 and 1920, State legislatures passed 400 new public welfare laws.⁴² Public expenditures on welfare tripled the amount of private expenditures.⁴³ Between 1917 and 1929, 25 States established social welfare agencies.⁴⁴ According to one estimate, spending for social insurance and welfare at all levels of government rose from \$114 million in 1913 to \$500 million in 1929.⁴⁵

Until then, public relief largely originated from State and local government. However, staggering numbers of destitute people during the Great Depression grew beyond the means of

³⁰ James T. Patterson, *America's Struggle Against Poverty 1900-1980* (Cambridge: Harvard Univ. Press, 1981), p. 21.

³¹ Katz, *Shadow of the Poorhouse*, pp. 3-4.

³² *Ibid.*, pp. 10-11.

³³ *Ibid.*, pp. 22-23.

³⁴ *Ibid.*, p. 37.

³⁵ Katz, *Shadow of the Poorhouse*, pp. 118-25.

³⁶ *Ibid.*, pp. 124-25, ff.

³⁷ Patterson, *America's Struggle Against Poverty 1900-1980*, p. 27.

³⁸ Herbert J. Gans, *The War Against The Poor*, (New York: Basic Books, 1995), pp. 22-24. The First Quota Law of 1921 limited immigration of each nationality to 3 percent of the number of foreign-born persons of that nationality living in the United States in 1910. The National Origins Act of 1924 limited new immigrants of each nationality to 2 percent of the number of persons of that nationality according to the 1890 census. Because large-scale immigration from southern and eastern European countries was relatively recent, these laws favored immigrants from northern and western Europe who were already in the United States in large numbers. See Marta Tienda and Zai Liang, "Poverty and Immigration in Policy Perspective," in *Confronting Poverty, Prescriptions for Change*, ed. Sheldon H. Danziger, Gary D. Sandefur, and Daniel H. Weinberg (Cambridge: Harvard Univ. Press, 1994), pp. 332-35.

³⁹ Katz, *Shadow of the Poorhouse*, pp. 184-86. See also Gans, *The War Against the Poor*, pp. 22-24.

⁴⁰ Katz, *Shadow of the Poorhouse*, p. 181.

⁴¹ *Ibid.*, p. 203.

⁴² *Ibid.*, p. 208.

⁴³ *Ibid.*, pp. 208-09.

⁴⁴ Patterson, *America's Struggle Against Poverty 1900-1980*, p. 27.

⁴⁵ *Ibid.*

local government and ultimately brought the Federal Government into the relief effort.

President Herbert Hoover, stressing the need for voluntary and local relief efforts, provided only minimal Federal aid in 1932.⁴⁶ President Franklin Roosevelt also assigned responsibility for relief of the poor to the States. However, with the economy sinking deeper into the depression, President Roosevelt launched the Federal Government into a massive relief effort.⁴⁷ Federal relief included matching funds to States and work relief programs.⁴⁸ Beginning in 1933, the Roosevelt administration established several direct cash and work relief programs. Together, the Federal Emergency Relief Administration, the Civil Works Administration, and the Civilian Conservation Corps provided aid to 28 million people by February 1934.⁴⁹ In 1935, total spending for public assistance at Federal, State, and local levels reached \$3 billion, 15 times the amount spent in 1933.⁵⁰ With the pending enactment of a social security program perceived as a way to prevent poverty, the Roosevelt administration planned to withdraw from aiding unemployable people, letting States and localities retake responsibility.⁵¹ Nevertheless, the trend continued towards increasing Federal involvement.

By the 1940s, the New Deal had greatly expanded the Federal role in welfare, creating a partnership with State and local governments.⁵² Federal programs continued to grow 4.6 percent annually between 1950 and 1965 and 7.2 percent annually between 1965 and 1976. Spending was greatest in non-means-tested programs such as social security, unemployment compensation, and medicare.⁵³ Between 1965 and 1975, means-tested programs such as AFDC, public housing, and food stamps made up only 8–14 percent of social welfare expenditures.⁵⁴ Coinciding with the civil rights movement, government programs

in the 1960s and 1970s reduced poverty, hunger, and disease.⁵⁵ Amendments to the Social Security Act increased the categories of eligible people so that access to many services was no longer conditioned on low income.⁵⁶ As a result, the poor received a smaller share of cash benefits.⁵⁷ Nevertheless, with Federal aid, Americans living in poverty declined by 42 percent between 1959 and 1980.⁵⁸

The Federal Government began cutting back on welfare expenditures in the mid-1970s as economic growth slowed. However, while public assistance programs diminished, social insurance programs did not.⁵⁹ Perceived as earned and therefore different from welfare, programs such as social security gained broad acceptance and support. Because social security recipients contribute part of their earnings, and since eligibility is not dependent on income level, it does not have the same stigma as public assistance benefits, even though recipients may ultimately take out much more than they put in. Furthermore, because low income is not a prerequisite, social insurance benefits cross class lines and enjoy broader support.⁶⁰ At the end of the 1980s and early 1990s, social welfare programs for the poor became gradually more liberal.⁶¹

Until the early 1970s, social welfare legislation placed few restrictions on immigrant eligibility for welfare programs. The SSI program was the first to do so in 1972 by excluding all immigrants except permanent residents and those who were "permanently residing in the U.S. under color of law."⁶² In 1974, Federal regulations applied the same restriction to

⁴⁶ Katz, *Shadow of the Poorhouse*, p. 215.

⁴⁷ *Ibid.*, p. 217, ff.

⁴⁸ *Ibid.*, p. 219, ff.

⁴⁹ Patterson, *America's Struggle Against Poverty 1900–1980*, p. 57.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*, pp. 59–60.

⁵² Katz, *Shadow of the Poorhouse*, p. 239.

⁵³ Patterson, *America's Struggle Against Poverty 1900–1980*, p. 164.

⁵⁴ *Ibid.* Social Security Administration, *Annual Statistical Supplement, 1996, to the Social Security Bulletin*, table 3.A3, p. 159 (hereafter cited as 1996 SSA Statistical Supplement).

⁵⁵ Katz, *Shadow of the Poorhouse*, p. 254.

⁵⁶ *Ibid.*, pp. 261–62.

⁵⁷ *Ibid.*, p. 262.

⁵⁸ Poverty rate in 1959: 22.4 percent; poverty rate in 1980: 13.0 percent; percent change: $13.0 - 22.4 \div 22.4 = -42$ percent. See 1996 SSA Statistical Supplement, table 3.E., p. 170.

⁵⁹ *Ibid.*, p. 274.

⁶⁰ *Ibid.*, pp. 238–39.

⁶¹ Gary Burtless, "Public Spending on the Poor: Historical Trends and Economic Limits," in *Confronting Poverty, Prescriptions for Change*, ed. Sheldon H. Danziger, Gary D. Sandefur, and Daniel H. Weinberg (Cambridge: Harvard Univ. Press, 1994), p. 53.

⁶² Bogen, *Immigration in New York*, p. 112; see Act of Oct. 30, 1972, Pub. L. No. 92–603, 1972 U.S.C.A.N. 1722 (codified as amended at 42 U.S.C. § 1382c(a)(1)(B)(i) (1994)). Payments under the SSI program began in January 1974. Carolyn W. Colvin, Deputy Commissioner for Programs and Policy, Social Security Administration, letter to Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights, May 8, 1997.

AFDC and medicaid.⁶³ The Food Stamp Act was amended in 1977 to enumerate specific categories of eligible immigrants.⁶⁴ The first restriction on benefits to permanent residents was imposed in 1980 with deeming provisions for the SSI program.⁶⁵ The restrictions specifically affected those immigrants who entered the United States with the aid of a sponsor's affidavit of support. Upon applying for SSI benefits, a portion of the sponsor's income and resources were considered available to the immigrant for the purpose of determining an immigrant's eligibility for means-tested benefits.⁶⁶ In 1981, a 3-year deeming period was applied to permanent residents applying for AFDC⁶⁷ and food stamps.⁶⁸ The Welfare Reform Act of 1996 provides for further restrictions on immigrant eligibility for benefits as discussed in section III of this chapter.

Section II: Immigrant Participation in Public Benefits Programs

Public concern over immigrants using public benefits coincides with tough economic times at Federal, State, and local levels. Some studies examine the participation rates of immigrants relative to citizens. In Florida, approximately 3 percent of noncitizens received AFDC or medicaid while 9 percent were recipients of SSI.⁶⁹ In fiscal year 1993, costs associated with providing services to noncitizens were 7.3 percent of statewide budgets for county health units, law enforcement, and State courts.⁷⁰ Several studies

comparing the national rate of welfare use between citizens and immigrants indicate that immigrants use some benefits at a higher rate. Others claim that when comparing citizen and immigrant populations of similar income level, immigrants tend to use public benefits at a lower rate. Studies attempting to assess the net national economic effect of immigrants are inconclusive.

Immigrant Participation Rates

Immigrants tend to be poorer, less educated, with larger numbers of children and elderly or disabled than the citizen population.⁷¹ The immigrant poverty rate is twice that of the citizen poverty rate. In 1993, 14 percent of citizen households reported incomes below the poverty line, compared to 29 percent of immigrant households.⁷²

Immigrant participation rates in public benefit programs varied with each program. Immigrant representation in the AFDC, medicaid, and food stamp programs was roughly comparable to their representation in the United States population.⁷³ In 1992, approximately 4 to 5 percent of America's population were noncitizens.⁷⁴ In the same year, noncitizens represented an estimated 4.8 percent and 4.7 percent of food stamp and AFDC recipients, respectively.⁷⁵ The percentage of noncitizen AFDC recipients, however, had been increasing since 1984.⁷⁶ Participation in medicaid was slightly higher, with immigrants making up an estimated 6.5 percent of medicaid recipients.⁷⁷ Within the SSI program, noncitizen participation was considerably higher than their representation in the population. Approximately 12 percent of SSI recipients were noncitizens.⁷⁸

Refugees and the elderly accounted for a large proportion of immigrant recipients of public benefits. According to a 1994 current population sur-

⁶³ Bogen, *Immigration in New York*, pp. 112-13. The restrictions were incorporated into the AFDC statute in 1981.

⁶⁴ *Ibid.*, p. 115; see Act of Sept. 29, 1977, Pub. L. No. 95-113, 1977 U.S.C.A.N. (91 Stat. 96) (codified at 7 U.S.C. § 2015(f) (1994)).

⁶⁵ Act of June 9, 1980, Pub. L. No. 96-265, 1980 U.S.C.A.N. (94 Stat. 471) The SSI program initially applied deeming provisions for 3 years. The time period was later extended to 5 years (codified as amended at 42 USC § 1382j(a) (1994)).

⁶⁶ Bogen, *Immigration in New York*, p. 115.

⁶⁷ *Ibid.* See Act of Aug. 13, 1981, Pub. L. No. 97-35, 1981 U.S.C.A.N. (95 Stat. 857) (codified at 42 U.S.C. § 615(a) (1994)).

⁶⁸ Bogen, *Immigration in New York*. See Act of Aug. 13, 1981, Pub. L. No. 97-98, 1981 U.S.C.A.N. (95 Stat. 1283) (codified at 7 U.S.C. § 2014(9)(1) (1994)).

⁶⁹ Rachel Peterkin, Office of the Governor, State of Florida, letter to Stephanie Y. Moore, Deputy General Counsel, U.S. Commission on Civil Rights, Dec. 29, 1995.

⁷⁰ State of Florida, Executive Office of the Governor and Florida Advisory Council on Intergovernmental Relations, *The Unfair Burden: Immigration's Impact on Florida* (March 1994), p. 11 (hereafter cited as *The Unfair Burden*).

⁷¹ U.S. General Accounting Office, *Welfare Reform* (February 1995), pp. 6-7.

⁷² *Ibid.*, p. 7.

⁷³ The Welfare Reform Act of 1996 essentially abolished AFDC, and restricts immigrant eligibility for most Federal programs. The figures in this section represent participation rates in programs prior to the changes.

⁷⁴ Congressional Budget Office, *Immigration and Welfare Reform* (Washington, D.C.: Congressional Budget Office, February 1995), p. 14 (hereafter cited as CBO, *Immigration and Welfare Reform*).

⁷⁵ *Ibid.*, pp. 14, 19.

⁷⁶ *Ibid.*, p. 19.

⁷⁷ *Ibid.*, p. 27.

⁷⁸ *Ibid.*, p. 24.

vey, although refugees and the elderly were 21 percent of the immigrant population, they represented 40 percent of immigrants who used public benefits.⁷⁹ Most noncitizen recipients who met income and resource tests previously qualified for SSI benefits based on age rather than on disability. This is not typical of citizens who receive SSI.⁸⁰ Some 58 percent of noncitizens collected SSI based on age, compared to 22 percent of citizen recipients. Approximately 61 percent of the immigrant population admitted for permanent residence are aged. Within the refugee population, approximately 51 percent are aged.⁸¹

Elderly immigrants are more susceptible than citizens to poverty because they are less likely to have worked long enough to qualify for social security benefits.⁸² Among SSI recipients aged 65 or older, approximately 63 percent also receive social security benefits, compared with 22 percent of noncitizen elderly recipients.⁸³

Refugees and asylees tended to use public benefits at a higher rate than other immigrants. Refugees arrive under special circumstances and are admitted as a matter of United States policy if they have a well-founded fear of persecution.⁸⁴ They are eligible for public benefits upon entry because their departure is unplanned and they often arrive with few resources and no family or job connections.⁸⁵

⁷⁹ *Immigration Control and Financial Responsibility Act of 1995: Hearings on S 269 Before the Senate Comm. on the Judiciary*, 104th Cong., 1st Sess. (March 1995) (statement of Michael Fix, Director of Immigrant Policy Program, the Urban Institute, and Wendy Zimmerman, Research Associate, the Urban Institute) (hereafter cited as Fix and Zimmerman, "Patterns of Welfare Use Among Immigrants," Statement before the Senate Comm. on the Judiciary).

⁸⁰ *The Use of SSI and Other Welfare Programs by Immigrants: Hearings Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong., 2nd Sess. (February 1996) ("The Use of Supplemental Security Income by Noncitizens," statement of Carolyn Colvin, Deputy Commissioner for Programs, Policy, Evaluation and Communications, Social Security Administration) (hereafter cited as Colvin, "Use of SSI by Noncitizens," Statement before the Senate Comm. on the Judiciary).

⁸¹ *Ibid.*

⁸² CBO, *Immigration and Welfare Reform*, p. 24.

⁸³ Social Security Administration, Office of Retirement and Survivors Insurance and Supplemental Security Income Policy, Division of Program Management, Research and Demonstrations, *Aliens Who Receive SSI Payments*, by Elsa Ponce and Charles Scott (Washington, D.C.: Social Security Administration, February 1995), p. 1 (hereafter cited as Ponce and Scott, *Aliens Who Receive SSI*).

⁸⁴ NILC, *Guide to Eligibility*, p. 5.

⁸⁵ See Colvin, "Use of SSI by Noncitizens," Statement before the Senate Comm. on the Judiciary.

Some analysts contend that including welfare participation rates of refugees and the elderly misrepresents the welfare participation rate of most immigrants.⁸⁶ According to the Urban Institute, "non-refugee working age immigrants (ages 15 to 64) used SSI and AFDC at approximately the same rate as working age natives, 5.0 and 5.1 percent," respectively.⁸⁷ Particularly among working age immigrants arriving during the 1980s, use of SSI, AFDC, and general assistance was substantially below that of working age natives.⁸⁸ Along similar lines, the Urban Institute asserts that immigrants who are poor are less likely to receive public assistance than natives who are poor.⁸⁹ Others argue that even if between two demographically similar groups, immigrants are no more likely to receive benefits than citizens, the proper comparison is between immigrant and native populations as they exist for the purpose of determining policy from the taxpayer's perspective.⁹⁰

Compared to citizens, noncitizen use of public benefits was growing at a faster rate, particularly in the aged program. Between 1983 and 1993, noncitizen SSI recipients increased from 3.9 to 11.5 percent of total recipients while the number of citizen SSI recipients based on age decreased by 25 percent.⁹¹

The growth in the number of noncitizen welfare recipients was partly attributable to an increase in the numbers of immigrants admitted as permanent residents. Some 2.7 million previously undocumented immigrants adjusted to legal status under the Immigration Reform and Control Act of 1986,⁹² contributing to large increases in

⁸⁶ Michael Fix and Jeffrey Passel, *Immigration and Immigrants, Setting the Record Straight* (Washington, D.C.: The Urban Institute, 1994), pp. 63-64 (hereafter cited as Fix and Passel, *Setting the Record Straight*).

⁸⁷ Fix and Zimmerman, "Patterns of Welfare Use Among Immigrants," Statement before the Senate Comm. on the Judiciary, p. 3.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, p. 4.

⁹⁰ George Borjas, *Friends or Strangers, The Impact of Immigration on the U.S. Economy* (New York: Basic Books, Inc., 1990), p. 157. See also *Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force: Hearings Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 104th Cong., 1st Sess. 28 (April 1995) ("The Economic Impact of Immigration," statement of George J. Borjas, Univ. of California at San Diego) (hereafter cited as Borjas, "The Economic Impact of Immigration," Statement before the House Subcomm. on Immigration and Claims).

⁹¹ GAO, *Welfare Reform*, pp. 7-8.

⁹² NILC, *Guide to Eligibility*, p. 68. Immigrants obtaining

the number of permanent residents.⁹³ In 1988, 643,000 people became permanent residents, the highest number since 1924. This trend continued, with 1.0 million, 1.5 million, and 1.8 million obtaining legal resident status in 1989, 1990, and 1991, respectively.⁹⁴ That number decreased to 973,977 in 1992.⁹⁵

Today's Immigrant: Economic Benefit or Burden?

Although we now have a more costly and more elaborate welfare system, public criticism of immigrants on welfare is not new. In 1827, the Philadelphia Board of Guardians of the Poor stated that "[o]ne of the greatest burdens that falls upon this corporation, is the maintenance of the host of worthless foreigners, disgorged upon our shores."⁹⁶ In 1880, the New York State Board of Charities accused Europe of dumping "its blind, idiotic, crippled, epileptic, lunatic, and other infirm paupers, incapable of supporting themselves, in order thereby to avoid the burden of their support."⁹⁷ In 1888, a congressional committee objected to poor immigrants lodging in New York City poorhouses 2 days after arriving in the United States.⁹⁸ According to a 1911 commission on immigration, over half of charity recipients in 1909 were immigrant families.⁹⁹ Foreign-born individuals made up one-third of the patients in public hospitals and mental institutions in the early 1900s.¹⁰⁰

Today, immigrant use of public benefits raises similar concerns about costs. Immigrants impose costs on public schools, emergency medical services, public assistance programs, and, some argue, displace natives in the workplace.¹⁰¹

legal status through IRCA were barred from eligibility for most public benefits programs for 5 years.

⁹³ Colvin, "Use of SSI by Noncitizens," Statement before the Senate Comm. on the Judiciary, pp. 2-3.

⁹⁴ *Ibid.*, p. 3.

⁹⁵ Ponce and Scott, *Aliens Who Receive SSI*, p. 1.

⁹⁶ Katz, *Shadow of the Poorhouse*, p. 17.

⁹⁷ Frederick Rose, "Muddled Masses, The Growing Backlash Against Immigration Includes Many Myths," *Wall Street Journal*, Apr. 26, 1995, p. A1.

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ George J. Borjas and Marta Tienda, "The Economic Consequences of Immigration," *Science*, Feb. 6, 1987, vol. 235, pp. 646-47. According to George Borjas, two flawed arguments are often advanced in this debate. One theory holds that every job filled by an immigrant is taken from a native worker. The premise of this theory, however, incorrectly assumes that the number of jobs is fixed and that foreign workers are perfect substitutes for natives. These assump-

The Florida Governor's Office estimates that in fiscal year 1993, State expenditures on documented immigrants totaled \$489.4 million while local expenditures totaled \$1.1634 billion.¹⁰²

Immigrants also pay taxes, contribute to economic growth as consumers, and generate jobs through their businesses. In south Florida, immigrants spurred economic development and growth. For example, Hialeah was transformed from a sleepy community of small houses and cow pastures to the fifth largest city in Florida.¹⁰³ With the growth in population came demand for housing and other consumer goods.¹⁰⁴ From 1969 to 1982, Hispanic-owned businesses in the Miami area increased from 3,447 to 24,898.¹⁰⁵ In 1987, the Federal Reserve Bank of Atlanta reportedly credited immigration-driven population growth with sustaining a healthy economy in Florida by forcing expansion of commercial, service, and other industries.¹⁰⁶ Today, immigrants continue to be an important part of Florida's economy as consumers and business owners.¹⁰⁷

On a national scale, the blanket statement that immigrants are good or bad for the economy is overly simplistic. Focusing on particular costs or benefits in isolation lends little support for broad statements on the national economy. Immigrants, like natives, span a wide socioeco-

tions ignore factors such as price, productivity, and technology in determining employment levels. The other theory, also untenable, is that foreign workers do not displace natives because they take jobs that natives do not want. If workers refused certain types of jobs, decreasing the supply of labor, wages would rise for those jobs and become more attractive to natives. In addition, Mr. Borjas' research revealed that a 10 percent increase in the number of immigrants reduces native wages by two-tenths of a percent.

¹⁰² Costs include education, health services, corrections, judicial services, law enforcement, and public infrastructure. *The Unfair Burden*, p. iii.

¹⁰³ Xose F. Alvarez-Alfonso, "What Makes Hialeah Run?" *New Miami*, vol. 4, no. 1, August 1991.

¹⁰⁴ *Ibid.*

¹⁰⁵ Max J. Castro, "The Politics of Language in Miami," in *Miami Now! Immigration, Ethnicity, and Social Change*, ed. Guillermo J. Greneir and Alex Sepick III (Gainesville: Univ. Press of Florida, 1992), p. 114 (citing the Cuban American Policy Center, 1988).

¹⁰⁶ Steve Geimann, "Economic Growth Predicted, but at a Slower Rate," United Press International wire service, Jan. 24, 1987, NEXIS News Library.

¹⁰⁷ See "Florida's Sphere of Influence," *Hispanic Business*, Sept. 1995, p. 28; Cathy Booth, "The Capital of Latin America, Miami," *Time*, Fall 1993, p. 85; Tom Fiedler, "The Challenge, Dizzying Change," *Miami Herald*, July 23, 1995, p. 1A; Sergio R. Bustos, "Immigrants Optimistic About Buying Homes," *Fort Lauderdale Sun-Sentinel*, July 17, 1995, p. 1B.

conomic spectrum. Another important factor is the length of time an immigrant has lived in the United States. Initially, median earnings are substantially lower than those of natives but increase with years of residency and grow at a faster rate than those of natives. For example, in the first 5 years of residency, the median income of immigrants entering in 1975–80 was 50 percent of natives' earnings. Ten years later, the same group's earnings increased to 83.9 percent of natives' income.¹⁰⁸

The complex nature of the issue and the lack of agreed-upon methodology lends itself to divergent analyses and conflicting conclusions. According to a study by Donald Huddle, commissioned by the Carrying Capacity Network, legal and undocumented immigrants imposed \$44.8 billion more in direct and indirect costs in 1993 than they paid in taxes.¹⁰⁹ Highly critical of the Huddle study, the Urban Institute contends that immigrants generate a net surplus of \$25 billion.¹¹⁰ Areas of disagreement include the average income of legal immigrants, and consequently their income tax contributions; the size of the undocumented population; the participation rates of immigrants in various programs; which programs to include; and costs associated with job displacement.

Julian L. Simon, author of *The Economic Consequences of Immigration*, found that legal immigrants contribute more in taxes than they use in public assistance. Using the Census Bureau's 1976 survey of income and education, he compared the average tax contributions of immigrants and natives. Natives paid an average tax

of \$3,008 in 1975. Yearly taxes paid by immigrant families averaged \$3,369 after they were in the U.S. for 10 years, \$3,564 after 11–15 years, and \$3,592 after 16–25 years.¹¹¹ On the other side of the equation, natives received an average of \$2,279 in welfare services. Immigrants tended to impose fewer costs in services than natives during their early years in the country. In years 1–5 in the U.S., the average immigrant family received \$1,404 in welfare services. That amount increased to \$1,941 during years 6–10, then \$2,247 during years 11–15, and finally catching up to natives, \$2,279 in years 16–25.¹¹²

The job displacement issue illustrates a fundamental disagreement between Dr. Huddle and the Urban Institute. The Huddle study attributes nearly \$12 billion in costs for aiding 2.07 million low-skilled workers displaced by immigrants.¹¹³ The Urban Institute, citing studies showing that immigrants have a positive impact on the labor market, does not allocate for job displacement costs.¹¹⁴ George J. Borjas studied a related issue by comparing wages of natives in cities with large numbers of immigrants with cities with few immigrants. He found that for every 10 percent increase in immigrants there is a 0.2 percent decrease in average native wages.¹¹⁵

Other commentators suggest that the impact of immigration on labor markets is far more complex. Economics Professor David Card notes that although immigrants tend to settle in a few cities and States, the effect of large concentrations of immigrants in those cities is diffused by trade with cities that have low concentrations of immigrants. For example, an influx of immigrant textile workers in one city could effect wages of textile workers in other cities.¹¹⁶ This is

¹⁰⁸ Harriet Orcutt Duleep and Mark C. Regets, "Social Security and Immigrant Earnings," *Social Security Bulletin* (vol. 58, no. 2), Summer 1996, p. 20, see table 4, p. 26.

¹⁰⁹ Donald Huddle, "The Net National Costs of Immigration in 1993," Executive Summary, Carrying Capacity Network, June 27, 1994, p. 1 (hereafter cited as Huddle, Carrying Capacity Network). This figure includes \$32.25 billion for direct public assistance and \$11.92 billion for indirect costs as a result of worker displacement. The largest cost was \$18.12 billion for primary and secondary education. Huddle also attributed \$9.05 billion for medicaid and \$919 million for AFDC.

¹¹⁰ *Hearing before the Subcomm. on Human Resources of the House Comm. on Ways and Means*, 103rd Cong., 1st Sess. (November 1993) ("Immigrants and Welfare: New Myths, New Realities," Statement of Michael Fix, Director, Immigrant Policy Program, Urban Institute, and Jeffrey S. Passel, Director, Program for Research on Immigration Policy, Urban Institute), p. 75 (hereafter cited as Fix and Passel, "Immigrants and Welfare," Statement before the Subcomm. on Human Resources, November 1993). See also Fix and Passel, *Setting the Record Straight*, pp. 60–62.

¹¹¹ Julian L. Simon, "Taxes Paid by Immigrants and the Net Balance," *Immigration, the Demographic and Economic Facts* (Cato Institute and National Immigration Forum: Dec. 11, 1995) (hereafter cited as Simon, *Economic Facts*).

¹¹² *Ibid.*

¹¹³ Carrying Capacity Network, "A Critique of the Urban Institute's Claims of Cost Free Immigration. Huddle Findings Confirmed," June 27, 1994.

¹¹⁴ Fix and Passel, "Immigrants and Welfare," Statement before the Subcomm. on Human Resources, November 1993.

¹¹⁵ Borjas, "The Economic Impact of Immigration," Statement before the House Subcom. on Immigration and Claims, April 1995.

¹¹⁶ "The huge amount of trade between cities connects the labor markets in immigrant-receiving cities like Los Angeles to the labor markets in low-immigration cities like Charleston, South Carolina. When newly arrived immigrants in Los

a potential obstacle in studies that attempt to determine the effect of immigrants by comparing cities with large immigrant populations with cities with small immigrant populations.¹¹⁷

As unbidden participants, undocumented immigrants nevertheless exert some economic impact. While undocumented immigrants are not eligible for most Federal assistance programs, they may benefit from public education and emergency medical services. Those who commit crimes impose a cost on the corrections system.¹¹⁸ On the other hand, many undocumented immigrants pay Federal and State income taxes, social security tax, and sales, gasoline, and property taxes.¹¹⁹ Undocumented immigrants are not authorized to work or to obtain social security numbers for that purpose. Nonetheless, many do work and have social security taxes withheld from their earnings through falsely obtained numbers.¹²⁰ In order to receive social security benefits, however, an individual generally must have a valid social security number.¹²¹ Because undocumented immigrants are difficult to track, figures on costs imposed or tax revenues generated by them are difficult to ascertain.

When considering undocumented immigrants alone, most studies agree that undocumented immigrants impose a net deficit on the economy. The amount of that deficit, however, varies widely. The Huddle study initially estimated the net cost at \$11.9 billion in 1992.¹²² The Urban Institute, using Dr. Huddle's findings and ad-

justing some of his costs and revenue estimates, calculated a net cost of \$1.9 billion in 1992.¹²³ Dr. Huddle then updated his estimate for 1993 to \$19.3 billion, adding costs and revenues not previously included.¹²⁴

Julian Simon found that taxes paid by undocumented immigrants more than offset the cost of welfare services that they used.¹²⁵ He calculated that while expenditures on undocumented immigrants were approximately 38 percent of expenditures on natives, taxes paid by undocumented immigrants were 46 percent of taxes paid by natives.¹²⁶

The lack of accurate data forces analysts to generate figures based on different assumptions, inevitably leading to different results. Fundamental differences in methodology undermine the usefulness of the studies, prompting calls for more uniform standards. As indicated by Georges Vernez, director of the Center for Research on Immigration Policy, "[u]ntil and unless we collect additional data on service usage and revenues (and develop a consistent accounting framework) the question of how much immigrants actually cost to the public fisc cannot be answered."¹²⁷

With reference to the Huddle and Urban Institute studies on undocumented immigrants, the U.S. General Accounting Office (GAO) concluded that "considerable uncertainty remains about the national fiscal impact of illegal aliens. Obtaining better data on the illegal alien population and providing clearer explanations of which costs and revenues are appropriate to include would improve the usefulness of the national estimates."¹²⁸

The Commission on Immigration Reform was similarly unable to make a conclusive assessment: "The current debate over the economic impact of immigration is marked by shaky statistics, flawed assumptions and an amazing range of contradictory conclusions from what ought to be commonly-accepted methods."¹²⁹ The

Angeles take textile and apparel jobs for low wages, they immediately compete with textile workers in South Carolina, in Florida, and around the entire country. Thus, inter-city trade diffused the impact of immigration from the cities where the immigrants chose to live to all cities." David Card, Theodore A. Wells Professor of Economics, Princeton University, "Economic Effects of Immigration: Past and Present," in *Immigration, Economy, and Policy in America, Policy Forum Proceedings*, The Jerome Levy Economics Institute of Bard College, New York (May 3, 1996), p. 7.

¹¹⁷ Ibid., pp. 7-9.

¹¹⁸ See generally *The Unfair Burden*.

¹¹⁹ U.S. General Accounting Office, *Illegal Aliens, National Net Costs Estimates Vary Widely* (July 1995), p. 5 (hereafter cited as GAO, *Illegal Aliens*).

¹²⁰ Social security tax may be withheld for undocumented immigrants who obtain employment by giving an employer (1) a social security number that has been assigned to another person; (2) a counterfeit social security card, or (3) a genuine social security card obtained by providing fraudulent documents to the Social Security Administration. GAO, *Illegal Aliens*, p. 5, n.13.

¹²¹ GAO, *Illegal Aliens*, p. 5.

¹²² Ibid., p. 7.

¹²³ Ibid.

¹²⁴ Huddle, Carrying Capacity Network, p. 1.

¹²⁵ Simon, *Economic Facts*.

¹²⁶ Ibid.

¹²⁷ *Impact of Illegal Immigration on Public Benefit Programs and the American Labor Force: Hearings Before the Subcomm. on Immigration and Claims of the House Comm. on the Judiciary*, 104th Cong., 1st Sess. 28 (April 1995) (statement of Georges Vernez and Kevin McCarthy, RAND, pp. 8-9).

¹²⁸ GAO, *Illegal Aliens*, p. 19.

¹²⁹ Testimony of Susan Martin, Executive Director, U.S.

lack of accurate data and standard methodology hinders attempts to make a definitive assessment on the net economic effect of immigration.

Pursuant to a request by the Commission on Immigration Reform, the National Academy of Sciences convened a panel of 12 experts to study the economic impact of immigration.¹³⁰ In a comprehensive investigation, the panel found that native-born workers may be affected by competition from immigrants for low-skilled jobs. The net economic effects of immigration depend upon whether the focus is at the national or State level. Immigrants have "a negative fiscal impact at the State and local level but a larger positive impact at the Federal level, resulting in an overall positive impact for the United States."¹³¹ Measuring the fiscal impact of immigrants at the State level, the study found that in New Jersey, the average household headed by an immigrant receives \$1,484 a year more in State and local services than it pays in State and local taxes. In California, the average immigrant-headed household receives \$3,463 more in benefits. According to the report, immigrant households tend to be costly at first, in large part because of education costs imposed on State and local governments. However, in 15 or 20 years, immigrants begin generating revenue as they finish school and begin working. The panel concluded that immigration is neither a panacea for the nation's problems nor a source of huge costs.¹³²

Federal and State Funding Responsibilities

Federal and State governments previously split the cost of medicaid and the former AFDC program according to the State's per capita income. In Florida, the Federal Government paid approximately 50 percent of the cost. The single largest immigration-related expenditure is for education, a cost primarily born by State and local governments. States with large immigrant populations claim that they are left with millions in unreimbursed costs each year. Pressing the need for reimbursement, Florida Governor Lawton Chiles sued the Federal Government in 1994.

Commission on Immigration Reform, before the Senate Committee on the Judiciary, Mar. 14, 1995, p. 3.

¹³⁰ Robert Pear, "Academy's Report Says Immigration Benefits the U.S.," *New York Times*, May 18, 1997, p. 1.

¹³¹ *Ibid.*

¹³² *Ibid.*

Bitterness against the Federal Government contributes to a backlash against immigrants.¹³³ The Florida Governor's Office argues that Federal reimbursement would reduce racial and ethnic tensions stemming from the cost of providing services to immigrants.¹³⁴ Other groups maintain that taxpayers, whether Federal or State, should not foot the bill for services to immigrants regardless of their legal status.¹³⁵ For these groups, the issue is not resolved by shifting the cost to the Federal Government. Instead, the solution lies in reducing overall levels of immigration and denying benefits to all immigrants.¹³⁶

Immigrant advocates counter that legal immigrants who have played by the rules and who are future citizens should be eligible for benefits.¹³⁷ Some claim that initiatives limiting immigrant eligibility for public assistance heighten anti-immigrant sentiment and create the mis-

¹³³ One hearing witness testified that "[a] mood of resentment in the State and nationally has contributed support for legislation proposals that may well punish all in our community: new arrivals or settled immigrants, the young and the elderly, and all those without private means to escape poverty no matter what their status as children." Msgr. Bryan Walsh, testimony (hereafter cited as Walsh Testimony), Hearing Before the United States Commission on Civil Rights, Miami, FL, Sept. 14-15, 1995 (hereafter cited as *Miami Hearing*), vol. III, p. 458.

¹³⁴ "If the people—this is a general type of a response—understand that they are not being asked to bear the burden of assimilating this other group of foreign nationals, clearly the resistance to assimilating that group will be far less. Will it be completely eradicated? Probably not. As we both know there is just tensions among various communities. But it is a significant issue . . . and we do agree that if the Federal Government provided us with the adequate resources, that overall will go a long way for dissipating these tensions." Mark Schlakman, Special Counsel, Florida Governor's Office, testimony, *Miami Hearing*, vol. V, p. 488 (hereafter cited as Schlakman Testimony). See also Mark Schlakman, Special Counsel to the Governor of Florida, Executive Office of the Governor, telephone interview, Aug. 16, 1995 (hereafter cited as Schlakman Interview).

Douglas Guetzloe from Save Our State disagreed: "The unfair burden refers to the fact that Florida residents are having to pay this, and the Federal Government should instead. But I think that many of us believe that it's robbing Peter to Pay Paul. If the State government is not going to pay for it, then the Federal Government—that's still primary revenue for the citizens of Florida and the United States." Douglas Guetzloe, member, Save Our State, testimony, *Miami Hearing*, vol. III, pp. 613-14 (hereafter cited as Guetzloe Testimony).

¹³⁵ David Ray, Eastern Regional Field Director, Federation for Americans for Immigration Reform, telephone interview, Aug. 8, 1995 (hereafter cited as Ray Interview).

¹³⁶ *Ibid.*

¹³⁷ Frank Sharry, Executive Director, National Immigration Forum, telephone interview, Aug. 3, 1995.

perception that immigrants come to the U.S. for welfare.¹³⁸

State Efforts to Defray Costs

State attempts to limit benefits by citizenship or length of residency in the United States have been struck down as unconstitutional by the United States Supreme Court. In *Graham v. Richardson*,¹³⁹ Arizona conditioned disability benefits on American citizenship or residency in the United States for at least 15 years.¹⁴⁰ Pennsylvania also made citizenship a prerequisite for public assistance.¹⁴¹ Striking down both statutes as violative of the equal protection clause,¹⁴² the Court concluded that the desire to conserve resources is not a valid justification for a State to restrict eligibility of benefits to citizens or long-term residents.¹⁴³

The Supreme Court extended this reasoning to public education for undocumented children in *Plyler v. Doe*.¹⁴⁴ In *Plyler*, the State of Texas attempted to reduce its costs by excluding undocumented children from public schools.¹⁴⁵ In a five to four decision, the Supreme Court invalidated the Texas statute on equal protection grounds. Although the parents were residing in the United States illegally, the Court found the children innocent of wrongdoing.¹⁴⁶ Considering the importance of education and the social implications of denying a class of children that benefit, the Court held that Texas failed to demonstrate a substantial State goal for excluding undocumented children from public education.¹⁴⁷ Save Our State representative Douglas Guetzloe predicts that the Supreme Court would reverse

this decision if the issue was brought before it today.¹⁴⁸

Florida Expenditures

Unable to reduce costs by excluding noncitizens, States have looked to the Federal Government for reimbursement of costs connected with providing services to undocumented immigrants. In 1994, Florida's Governor sued the Federal Government to recoup \$1.5 billion in public expenditures on immigrants since 1980.¹⁴⁹ The four-count complaint was dismissed by the United States District Court of the Southern District of Florida.¹⁵⁰ Although recognizing that Florida was forced to bear an unfair burden, the court found no legal theory on which to grant relief, and appeals by the Governor's Office were unsuccessful.¹⁵¹

According to Governor Chiles, there are over 345,000 undocumented immigrants living in Florida, costing Florida taxpayers over \$884

¹⁴⁸ "[O]ur amendment will be to cut off all funding whatsoever for education for illegals, the children of illegal aliens. The hope is the same with the founders of the effort in California, is that the legal challenges that resulted from the passage of 187 in California will elevate this issue to the Supreme Court where we are hopeful that the five to four decision that was rendered in 1982 will be reversed." Guetzloe Testimony, *Miami Hearing*, vol. III, pp. 553-54.

¹⁴⁹ *Chiles v. United States*, 874 F. Supp. 1334 (S.D. FL. 1994), *aff'd*, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 116 S.Ct. 1674 (1996). See "Fla. Sues Over Illegal Immigration," *USA Today*, Apr 12, 1994, p. 3A. California, Arizona, Texas, New Jersey, and New York also filed suit against the Federal Government. As noted previously, each lawsuit was unsuccessful at the Federal district court and circuit court levels. See *California v. United States*, 104 F.3d 1086 (9th Cir. 1997); *Arizona v. United States*, 104 F.3d 1095 (9th Cir. 1997); *Texas v. United States*, 106 F.3d 661 (5th Cir. 1997); *New Jersey v. United States*, 91 F.3d 463 (3d Cir. 1996); *Padavan v. United States*, 82 F.3d 23 (2d Cir. 1996).

¹⁵⁰ Count I alleged that plaintiffs were entitled to grants from an Immigration Emergency Fund administered by the U.S. Attorney General. Count II alleged that the United States failed to "enforce and administer the immigration laws or to accept the financial responsibility for such failure." Count III alleged that Florida is disproportionately affected by the Federal policy of restricting immigrant eligibility for the AFDC and medicaid programs to permanent residents. Count IV alleged that the United States violated the 10th amendment as well as the guarantee and invasion clauses of Article IV of the Constitution by imposing the financial burdens of immigration on Florida because the State is required to bear the cost of providing social welfare services to immigrants. *Chiles v. United States*, 874 F. Supp. 1344 at 1336-37 (S.D. FL.1994).

¹⁵¹ *Chiles v. United States*, 874 F. Supp. 1344 (S.D. FL.1994), *aff'd*, 69 F.3d 1094 (11th Cir. 1995), *cert. denied*, 116 S.Ct. 1674 (1996).

¹³⁸ Jack Karacko, Executive Director, South East Region, American Jewish Congress, telephone interview, Aug. 11, 1995 (hereafter cited as Karacko Interview).

¹³⁹ 403 U.S. 365 (1971).

¹⁴⁰ *Id.* at 367.

¹⁴¹ *Id.* at 368.

¹⁴² See U.S. CONST. amend. XIV. The 14th amendment of the Constitution provides, "Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Ibid.* The Supreme Court has held that the due process and equal protection provisions of the Constitution apply to all persons regardless of immigration status. See, e.g., *Shaughnessy v. United States*, 345 U.S. 206, 212 (1953); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

¹⁴³ *Graham*, 403 U.S. at 374.

¹⁴⁴ 457 U.S. 202 (1982).

¹⁴⁵ *Id.* at 205.

¹⁴⁶ *Id.* at 220.

¹⁴⁷ *Id.* at 221-24, 230.

million in 1993.¹⁵² This figure includes \$262 million at the State level and \$622 million at the local level.¹⁵³ Expenditures for documented immigrants totaled \$1.65 billion for the same year, including \$489.4 million in State and \$1.16 billion in local expenditures.¹⁵⁴

Education is the single largest expense to State and local government in Florida. According to the Governor's Office, education for immigrants tends to be more expensive than for citizens, partly because of the need for English-language instruction.¹⁵⁵ In fiscal year 1993, the Governor's Office attributed \$517,630,598 in State and local expenditures to education for legal and undocumented immigrants.¹⁵⁶

Conversely, State expenditures for programs such as AFDC, medicaid, and food stamps were relatively low. Among the noncitizen population in Florida, approximately 3 percent received AFDC or medicaid and approximately 9 percent were recipients of SSI.¹⁵⁷ Florida and the Federal Government each contributed approximately 50 percent for these programs.¹⁵⁸ The Governor's Office estimated State expenditures on immigrants for AFDC and food stamps at \$9.2 million and \$4.8 million, respectively, in FY 1993.¹⁵⁹ Out of a statewide budget of \$173.7 million for county health units, an estimated \$12.68 million or 7.3 percent was spent on noncitizens.¹⁶⁰ Some 58,440 legal noncitizens were receiving SSI benefits in Florida in December, 1992.¹⁶¹ The Governor recognizes the positive influence of immigrants but holds the Federal Government responsible for the financial cost. According to the Urban Institute, immigrants pay more in taxes than they receive in benefits. However, most tax revenues go to the Federal Government while States and localities bear most of the cost.¹⁶² The Commission on Immigra-

tion Reform supported some form of Federal reimbursement.¹⁶³

Section III: Immigrants and Public Benefits in Florida

At the time of the Miami hearing, Congress was considering versions of what ultimately became the Welfare Reform Act of 1996 which included provisions barring or restricting immigrant eligibility for Federal programs. At the same time, two Florida community groups, Save Our State and Florida 187 Committee, were campaigning for support to bar undocumented immigrants from receiving benefits.

The Welfare Reform Act of 1996

On August 22, 1996, President William J. Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.¹⁶⁴ Commonly referred to as the Welfare Reform Act, the new law makes sweeping changes in eligibility requirements of welfare recipients. The Welfare Reform Act contains provisions replacing AFDC with block grants to States, imposes mandatory work requirements, and limits the amount of time that a recipient is eligible for benefits. The impact is particularly great among poor noncitizens who are subject to stringent restrictions and new provisions enforcing and extending a sponsor's financial responsibility. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996¹⁶⁵ (Immigration Act) amended the Welfare Reform Act to place additional requirements on sponsors.

According to prior law, legal immigrants were eligible for most public benefits programs on the same terms as citizens except that they were subject to a 3-year deeming period for food stamps¹⁶⁶ and AFDC,¹⁶⁷ and a 5-year deeming

¹⁵² Gov. Lawton Chiles, Jr., Letter to the Editor, "Immigration: Ask the Natives if it Hurts," *Wall Street Journal*, Apr. 18, 1994, p. A-15.

¹⁵³ *The Unfair Burden*, p. i.

¹⁵⁴ *Ibid.*, p. iii.

¹⁵⁵ *Ibid.*, p. 15.

¹⁵⁶ *Ibid.*, p. iv.

¹⁵⁷ Rachel Peterkin, Office of the Governor, State of Florida, letter to Stephanie Y. Moore, Deputy General Counsel, U.S. Commission on Civil Rights, Dec. 29, 1995.

¹⁵⁸ *The Unfair Burden*, p. iv.

¹⁵⁹ *Ibid.*, p. 11. In 1993, Federal and State contributions were 55 and 45 percent, respectively.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*, p. 21.

¹⁶² Schlakman Testimony, *Miami Hearing*, vol. III, pp. 451-53. See also Fix and Passel, *Setting the Record Straight*, pp.

57-58.

¹⁶³ Testimony of Susan Martin, Executive Director, U.S. Commission on Immigration Reform, before the Senate Committee on the Judiciary, Mar. 14, 1995. "[W]e believe that some financial reimbursement of costs to states and localities is justified, contingent on accurate data, appropriate cooperation of states and localities with enforcement of immigration laws, and a plan to ensure that funding will be reduced as levels of illegal immigration are reduced." *Ibid.*, p. 2.

¹⁶⁴ 8 U.S.C. § 1661.

¹⁶⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (to be codified at 8 U.S.C. § 1101).

¹⁶⁶ The food stamp program provides coupons that recipients may use at most food stores.¹⁶⁶ The food stamp program is 100 percent federally funded; however, States share the

period for SSI.¹⁶⁸ Under the Welfare Reform Act, legal immigrants are generally no longer eligible for Federal means-tested programs.¹⁶⁹ States may exercise an option to continue providing coverage to medicaid and former AFDC recipients. However, there is no State option for SSI and food stamps. Permanent residents may be eligible for SSI and food stamps only after becoming United States citizens or working for 40 qualified quarters—essentially 10 years—without receiving public assistance for any such quarter after December 31, 1996.¹⁷⁰ The 40-quarter requirement is the eligibility requirement for collecting social security benefits. Certain categories of immigrants, including lawful permanent residents who entered the United States on or after August 22, 1996, are not eligible for Federal means-tested benefits for 5 years.¹⁷¹ There are exceptions for emergency medical services, child nutrition programs, immunizations, treatment of communicable diseases, short-term emergency disaster relief, and

costs of administering the program. To qualify, a household must have less than \$2,000 in disposable assets, a gross income below 130 percent of Office of Management and Budget (OMB) poverty guidelines, and a net income below 100 percent of the poverty guidelines. Social Security Administration, *Annual Statistical Supplement, 1995, to the Social Security Bulletin*, p. 138 (hereafter cited as 1995 SSA *Statistical Supplement*).

¹⁶⁷ As it formerly existed, AFDC provided monthly cash assistance to low-income families with children. AFDC was funded jointly by State and Federal governments according to each State's per capita income. The Federal Government provided approximately 50 percent of AFDC funding in Florida. 1995 SSA *Statistical Supplement*, p. 137. Families with children under 18 years old with one or both parents unemployed or absent from the home could qualify. The income level for eligibility as well as the benefit amount was set by each State. NILC, *Guide to Eligibility*, p. 32.

¹⁶⁸ SSI provides monthly cash assistance to low-income individuals who are either disabled, blind, or aged 65 or older. NILC, *Guide to Eligibility*, p. 34. To qualify, recipients may not have resources in excess of \$2,000. 1995 SSA *Statistical Supplement*, pp. 74–75. Couples may not have resources in excess of \$3,000. Essential items such as a home and an automobile are not included in calculating resources. *Ibid.*

¹⁶⁹ Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104–193 110 Stat. 2261 (to be codified as 8 U.S.C. § 1611). A means-tested program is one in which “eligibility for benefits under the program, or the amount of benefits, or both, are determined on basis of income, resources, or financial need.” U.S. House of Representatives, *Personal Responsibility and Work Opportunity Act of 1995, Conference Report to Accompany H.R. 4, 104th Cong., 1st Sess., 1995, Rept. 104–430*, p. 486 (hereafter cited as *H.R. 4 Conference Report*).

¹⁷⁰ 8 U.S.C. § 1612. The 40-quarter requirement is the eligibility requirement for collecting social security benefits.

¹⁷¹ *Id.* § 1613.

student assistance programs for higher education.¹⁷² The act also exempts certain classes of immigrants from eligibility restrictions.¹⁷³

Refugees and asylees are exempt for 5 years. Veterans under honorable discharge and active duty personnel are exempt as are their spouses and unmarried dependent children.¹⁷⁴ Lawful immigrants who are receiving SSI or food stamps on the date of enactment may continue receiving benefits for 1 year. The new law allows States to bar legal immigrants from State public benefits with exceptions for the same categories.¹⁷⁵ Undocumented immigrants are not eligible for benefits except for some inkind assistance such as emergency medical treatment,¹⁷⁶ immunizations, testing and treatment to prevent communicable diseases, emergency disaster relief, and programs specified by the Attorney General as necessary to protect life and safety.¹⁷⁷ Undocumented immigrants are also not eligible for any State or local means-tested benefits programs.¹⁷⁸ However, a State may choose to extend benefits to undocumented immigrants by passing a State statute with such provisions.¹⁷⁹

The Welfare Reform Act and amendments contained in the Immigration Act make substantial changes to sponsorship and deeming provisions. To gain admission to the United States,

¹⁷² *Id.*

¹⁷³ Refugees and asylees are exempt for 5 years. Veterans under honorable discharge and active duty personnel are exempt as are their spouses and unmarried dependent children. 8 U.S.C. § 1612.

¹⁷⁴ *Id.*

¹⁷⁵ 8 U.S.C. § 1622. This provision is apparently intended to allow States to overcome *Graham v. Richardson*. See *H.R. 4 Conference Report*, p. 474.

¹⁷⁶ 8 U.S.C. § 1611. The conference report states that the allowance for emergency medical services is very narrow and only applies to care that is strictly of an emergency nature. *H.R. 4 Conference Report*, pp. 464–65.

¹⁷⁷ 8 U.S.C. § 1611. The conference report states that the allowance for communicable diseases is very narrow. It only applies where absolutely necessary to prevent the spread of communicable diseases until the individual may be deported and it does not provide authority for long-term treatment. *H.R. 4 Conference Report*, p. 464.

¹⁷⁸ However, a State may choose to extend benefits to undocumented immigrants by passing a State statute with such provisions. 8 U.S.C. § 1621. Any such statute must be enacted by the State legislature and signed by the Governor subsequent to enactment of the Federal statute. Ordinances enacted by a city or county are not effective under this provision. See *H.R. 4 Conference Report*, p. 472.

¹⁷⁹ 8 U.S.C. § 1621. Any such statute must be enacted by the State legislature and signed by the Governor subsequent to enactment of the Federal statute. Ordinances enacted by a city or county are not effective under this provision. See *H.R. 4 Conference Report*, p. 472.

applicants must demonstrate financial self-sufficiency or have specific job skills. An applicant for permanent residency in the United States may be denied admission if he or she is likely to become a public charge.¹⁸⁰ Approximately 11 percent of visa applications are rejected on this basis.¹⁸¹ Applicants who fail to demonstrate sufficient resources or income may overcome the public charge provision by obtaining an affidavit of support from a sponsor. Previously, courts have not enforced affidavits of support. The Welfare Reform Act explicitly makes affidavits of support legally enforceable so that Federal, State, or local officials may seek reimbursement for any benefits paid to the sponsored immigrant until the immigrant becomes a United States citizen.¹⁸² The Immigration Act further provides that the sponsor must agree to maintain the immigrant at a minimum annual income of 125 percent of the Federal poverty line.¹⁸³

Whereas deeming previously applied only to SSI, AFDC, and food stamps, the Welfare Reform Act mandates deeming for all Federal means-tested programs.¹⁸⁴ Because deeming provisions no longer exclude an allowance for the needs of the sponsor's family, the entire in-

come and resources of the sponsor and the sponsor's spouse are attributed to the immigrant. Furthermore, in place of the 3-year deeming period for AFDC and food stamps and the 5-year deeming period for SSI, deeming now applies to all Federal means-tested programs until the immigrant becomes a citizen or works for at least 40 qualified quarters without receiving any Federal means-tested benefits for any such quarter after December 1, 1996.¹⁸⁵ The act, furthermore, allows State and local governments to deem the sponsor's income and that of the sponsor's spouse to the immigrant for determining eligibility and amount of benefit for State programs.¹⁸⁶

Florida Administration of the Welfare Reform Act

The Welfare Reform Act replaces aid to families with dependent children and two other programs with a block grant under temporary assistance for needy families (TANF). The act gives States the option of continuing coverage of legal immigrants under TANF and the medicaid¹⁸⁷ program. There is no State option, however, to extend SSI or food stamp benefits to legal immigrants. Because Florida has opted to include legal immigrants as authorized by the Welfare Reform Act, most legal immigrants receiving AFDC will still be eligible for benefits under TANF. Most legal immigrants receiving food stamps and SSI, however, will lose these benefits.

Governor Chiles has criticized the new law, estimating that Florida will lose over \$300 million per year in Federal cash assistance for legal immigrants.¹⁸⁸ This includes \$221 million annu-

¹⁸⁰ CBO, *Immigration and Welfare Reform*, p. vii. "Any alien who, in the opinion of the consular officer at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is excludable." 8 U.S.C. § 1182(a)(4) (1994). Persons who have become dependent on Federal or State assistance programs may be classified by the INS or State Department as a "public charge." Receiving benefits under certain public assistance programs such as SSI and AFDC may be grounds for refusing permanent resident status to those applying based on family relationship. Refugees, asylees, and those with deportation withheld are not affected. Factors considered in determining whether a person is likely to become a public charge include the person's income, assets, employment status, job skills, number of dependents, and affidavits submitted by family or friends who promise to support the person. Approximately 11 percent of visa applications are rejected on the public charge basis. *Guide to Eligibility* (1994), pp. 74-75.

¹⁸¹ *Ibid.*

¹⁸² 8 U.S.C. § 1183a. The statute of limitations is 10 years from when the immigrant last received benefits.

¹⁸³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009.

¹⁸⁴ 8 U.S.C. § 1631. According to past deeming provisions, a portion of the sponsor's income and that of the sponsor's spouse was considered available to the immigrant after allocating for the needs of the sponsor and his or her family. 1995 SSA *Statistical Supplement*, p. 77. Deeming did not apply to refugees and asylees, or, in the case of SSI, to persons who became blind or disabled after admission.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* § 1632. This provision addresses rulings by the highest courts of at least two States that previously held that *Graham v. Richardson* barred States from applying deeming provisions for State benefits. See *H.R. 4 Conference Report*, pp. 484-85.

¹⁸⁷ Medicaid provides reimbursement to medical care providers for treating low-income persons. NILC, *Guide to Eligibility*, p. 38. This is a joint program between State and Federal governments in which States receive matching Federal funds. Under the program, each State sets its own eligibility standards and determines the type, amount, and duration of services. 1995 *SSI Statistical Supplement*, p. 103.

¹⁸⁸ State of Florida, Executive Office of the Governor, Federal Welfare Reform Fact Sheet, *Effects on Legal Immigrants, Fiscal Impact on Florida*, Feb. 13, 1997. On Apr. 23, 1997, Governor Chiles again sued the Federal Government challenging the Welfare Reform Act. In the lawsuit, Florida asks the court to declare that denying SSI and food stamp

ally for legal immigrants receiving SSI (54,000 recipients at \$342 per month) and some \$89 million for immigrant food stamp recipients (97,658 recipients at \$76 per month).¹⁸⁹ In addition, by exercising its State option to extend benefits to legal immigrants under TANF and medicaid, the Florida Governor's Office estimates that the State will absorb costs of \$21 million and \$51 million, respectively, for those programs.¹⁹⁰

The impact of cutting public assistance to immigrants has become a bipartisan issue with "Democratic governors almost unanimously support[ing] reopening the bill."¹⁹¹ Several other State Governors, many of them Republican, are urging Congress to reconsider the immigrant provisions of the Welfare Reform Act. Governor George E. Pataki of New York, Governor Jim Edgar of Illinois, Governor George W. Bush of Texas, and Governor William F. Weld of Massachusetts are among the Governors who are advocating changes in the new law.¹⁹² Similarly, a bipartisan group of U.S. Senators sponsored a bill to restore benefits to certain classes of legal immigrants.¹⁹³ Conversely, Representatives Clay Shaw, Jr., and Lamar Smith argue that welfare for immigrants has grown out of control and allege that immigrants come to the U.S. intending to receive welfare benefits.¹⁹⁴

Florida opted to cover noncitizen AFDC recipients under its new welfare program, Work and Gain Economic Self Sufficiency Act of 1996 (WAGES). By exercising the State option to cover immigrant AFDC recipients, most will continue to be covered. According to the Florida Department of Children and Families, 98 percent of immigrant recipients will retain coverage while

2 percent, or 503 recipients, will lose their benefits.¹⁹⁵ With Florida exercising the State option to cover legal immigrants in the medicaid program, 96 percent of current immigrant medicaid recipients will maintain their benefits while 4 percent (3,062 persons) are expected to become ineligible.¹⁹⁶ Eliminating immigrant eligibility for medicaid would likely have a greater effect on local government than on State government. Immigrants no longer qualifying for medicaid would most likely seek treatment at public hospitals that are locally funded.¹⁹⁷

Because there is no State option to provide food stamps and SSI, most noncitizens will lose eligibility for those programs. With a few exceptions for refugees, asylees, and veterans, most immigrants must prove that they have worked for 40 qualified quarters to be eligible. In Florida, approximately 82 percent or 97,658 noncitizen food stamp recipients will become ineligible after their next review.¹⁹⁸ Most immigrant SSI recipients will also lose their eligibility for benefits. The Florida Department of Children and Families estimates that 68 percent or 54,000 immigrant SSI recipients will lose their benefits.¹⁹⁹

The new SSI restrictions will have a greater impact on south Florida, home to many senior immigrants, including Cuban refugees from the 1960s. In the past, citizenship was not a precondition to receiving SSI benefits. As a result, the Social Security Administration did not collect statistics on the immigration status of recipients. Consequently, there are widely varying estimates on the number of people who may be affected. The SSA estimates that approximately 25,000 to 30,000 elderly noncitizens could lose their SSI benefits.²⁰⁰ Only those seniors who are permanent residents and meet the 40-quarter work requirement will keep their SSI benefits under the new statute.²⁰¹

Supporters of the Welfare Reform Act maintain that the immigrant restrictions are a reasonable solution to a problem that is out of control.²⁰² They argue that the act aims to eliminate

benefits to otherwise eligible lawful permanent residents is unconstitutional and asks that these benefits be restored. Office of the Governor, State of Florida, Press Release, "Governor Chiles Sues Federal Government Over Welfare Reform Restrictions on Legal Non-Citizens," Apr 23, 1997.

¹⁸⁹ *Impact of Restrictions on Legal Immigrants.*

¹⁹⁰ State of Florida, Executive Office of the Governor, Federal Welfare Reform Fact Sheet, *Effects on Legal Immigrants, Fiscal Impact on Florida*, Feb. 13, 1997.

¹⁹¹ Judith Havemann, "GOP Governors Asks Congress to Revisit Law Ending Some Immigrant Benefits," *Washington Post*, Jan. 25, 1997, p. A8.

¹⁹² Robert Pear, "G.O.P. Governors Seek to Restore Immigrant Aid," *New York Times*, Jan. 25, 1997, p. 1.

¹⁹³ Cheryl Wetzstein, "Hill group attempting to restore SSI to legal immigrants," *Washington Times*, Apr. 19, 1997, p. A4.

¹⁹⁴ Reps. E. Clay Shaw, Jr., and Lamar Smith, "Immigrants, Welfare, and the GOP," Op-ed, *Washington Post*, May 28, 1997.

¹⁹⁵ *Impact of Restrictions on Legal Immigrants.*

¹⁹⁶ *Ibid.*

¹⁹⁷ CBO, *Immigration and Welfare Reform*, p. 50.

¹⁹⁸ *Impact of Restrictions on Legal Immigrants.*

¹⁹⁹ *Ibid.*

²⁰⁰ *Ibid.*

²⁰¹ 8 U.S.C. § 1612.

²⁰² Reps. E. Clay Shaw, Jr. and Lamar Smith, "Immigrants, Welfare and the GOP," Op-ed, *Washington Post*, May 28, 1997.

welfare for those who have not worked for their benefits. Supporters also point out that Congress provided for ways to ease the transition by delaying the effective date of some provisions for 1 year and by exempting certain classes of immigrants. Furthermore, immigrants may retain eligibility for benefits by becoming citizens, and States have the option of continuing benefits under TANF and medicaid.²⁰³

At the time of the Miami hearing, welfare reform proposals were still being considered by Congress.²⁰⁴ Witnesses who opposed the measures maintained that proposed legislation would shift costs to local communities.²⁰⁵ According to Max Castro, a senior research associate at the University of Miami, south Florida would suffer a disproportionate impact because it has many elderly residents who receive SSI as their only source of income.²⁰⁶ Dr. Castro concluded that cutting off benefits would have a multiplier effect on the local economy.²⁰⁷ He indicated that the measures would strain local government and nonprofit resources.²⁰⁸ Moreover, Dr. Castro suggested that, anti-immigrant sentiment aside,

economic pressures would put a strain on race relations as different groups began to compete for scarce resources.²⁰⁹

Monsignor Bryan Walsh, archdiocesan director of Catholic Charities in Miami, testified that legislation denying benefits to legal immigrants would have very serious effects in south Florida. Since Florida has not devoted as much of its resources to welfare as have some other States, it has not taken full advantage of Federal programs that provide matching funds to States.²¹⁰ This threat comes at a time of growing need for basic subsistence services. According to Monsignor Walsh, there has been an incredible increase in need for food, clothing, and shelter in the last 10 years. Ten or 20 years ago, Monsignor Walsh reported, Catholic Charities provided more sophisticated services, such as counseling and programs to strengthen family life and take care of dependent children. Now, it is opening food pantries for the first time in decades. Monsignor Walsh testified that private charities will not be able to handle the increase in need caused by Federal welfare legislation.²¹¹ This concern was echoed by several community leaders.²¹²

A few weeks after the act passed, the *Orlando Sentinel* reported that anxious agency leaders were "expecting the worst and worry that people will be forced to live on the streets when homeless shelters no longer can accommodate them."²¹³ Worries about the impact of welfare reform are not contained within south Florida. Jean Flavell, vice president of operations for the Coalition for the Homeless of Central Florida in Orlando, is similarly quoted as expressing grave concerns: "We expect to be overrun with people

²⁰³ Ibid.

²⁰⁴ The pending bills, H.R. 4 and S.1120, contained provisions that were similar to the immigrant provisions enacted in the 1996 Welfare Reform Act.

²⁰⁵ Referring to a question on what impact immigrant provisions in pending welfare reform legislation would have on public services in Dade County, one witness at the Commission's hearing responded: "There will be a shift towards the local responsibility. I don't think that this community is going to allow people to starve. You will probably have a bigger homeless problem to deal with which you barely have a handle on. So, yes, definitely, it will have an impact and would increase the pressure on the local community and, of course, this will have a rebound effect potentially because there will be fewer resources to go around and even more competition among the various groups for these scarce resources." Max Castro, Professor of Sociology, North-South Center, University of Miami, testimony, *Miami Hearing*, vol. III, pp. 462-63 (hereafter cited as Castro Testimony); see also Sharry Interview; Michael Fix, Director of Immigration Policy, Urban Institute, telephone interview, Aug. 7, 1997; Peter Slevin, "Dade Immigrants May Lose Benefits," *Miami Herald*, July 3, 1995, p. 1B; Nancy San Martin, "House O.K.s Crackdown on Illegal Immigrants," *Sun Sentinel*, Sept. 26, 1996, p. 1A.

²⁰⁶ Dr. Castro explained: "if SSI benefits were denied to legal permanent residents, it would have a very, very significant effect in this community because there are many elderly that are receiving SSI. And that is their sole income, as well as, I think, the food stamps program is being affected, it would have a major impact." Castro Testimony, *Miami Hearing*, vol. III, p. 460.

²⁰⁷ Ibid., p. 460.

²⁰⁸ Castro Testimony, *Miami Hearing*, vol. III, pp. 462-63. See also Slevin, "Dade Immigrants May Lose Benefits," *Miami Herald*, July 3, 1995, p. 1B.

²⁰⁹ Castro Testimony, *Miami Hearing*, vol. III, p. 463.

²¹⁰ Walsh Testimony, *Miami Hearing*, vol. III, pp. 482-83. See also "Mark Silva, 'Florida Lags While Other States Snag Federal Funds,' *Miami Herald*, Aug. 20, 1995, p. 6B.

²¹¹ "Right now we are back to what we were in the 1930s and 1920s in which we are literally running food kitchens and giving out immediate food and relief. All of our offices here are opening up pantries for the first time in 20 to 30 years because people are coming to us with hungry children . . . And anyone who thinks that private charity is able to take care of this [has] simply buried their head in the sand. There's nothing that can justify that. So it's an item of tremendous concern to us, and we're going to have hungry people." Walsh Testimony, *Miami Hearing*, vol. III, p. 481.

²¹² Colette Hall, Executive Director, Haitian American Foundation, Inc., telephone interview, Aug. 21, 1995; Karacko Interview.

²¹³ Sandra Mathers, "Lawyers: Reform Will Hurt Legal Immigrants," *Orlando Sentinel*, Sept. 10, 1996, p. C1.

who have needs we can't meet . . . We can't meet them now."²¹⁴

Referring to welfare measures proposed in the Immigration Act of 1996, Gilbert Rayford, professor of social work at Barry University, reportedly argued that "[t]he federal government may be washing its hands, but the local government cannot. Dade and Broward, in particular, will have to come up with its own policy to fill the gap."²¹⁵

Initiatives in Florida

Many Floridians blame immigration for the State's social and economic ills.²¹⁶ "Parents complain that their kids are relegated to portable classrooms while immigrant children continue to arrive and class size mushrooms. They sacrifice family vacations to pay for health insurance only to hear that immigrants get a free ride at Jackson Memorial Hospital. They bolt their doors to keep criminals from their homes, then learn that illegal immigrants are taking up jail space."²¹⁷ When the *Orlando Sentinel* asked, "Should illegal immigrants receive public services?" on its weekly phone-in, 9,100 readers responded, with only 294 answering "yes."²¹⁸ These and similar sentiments have bolstered proposals to enact measures banning public expenditures on undocumented immigrants.

In the aftermath of the national debate surrounding California's Proposition 187,²¹⁹ two State initiatives emerged in Florida seeking a place on the November 1996 ballot. One measure proposed by Florida Save Our State would amend the Florida Constitution to resemble closely the provisions of California's Proposition 187. The other ballot initiative sponsored by Florida's 187 Committee, with support from the Federation of Americans for Immigration Reform (FAIR), includes an English-language provision.

Florida Save Our State

California Proposition 187, passed by 61 percent of the State's voters in November 1994, bars

undocumented immigrants from receiving nonemergency health care, social health services, and public school education. The measure also requires State workers to report suspected undocumented immigrants.²²⁰

After Proposition 187 passed in California, Douglas Guetzloe, of Orlando, Florida, began organizing to explore the possibility of enacting a similar measure in Florida. Among the persons Mr. Guetzloe contacted was Robert Kiley, the political director of Save Our State in California, who orchestrated the Proposition 187 campaign.²²¹ The result of their contact was the founding of Save Our State. Save Our State was created as an issue-only political committee established to collect signatures for a referendum initiative that would prohibit public spending on social services for undocumented immigrants.

The Save Our State initiative "ha[s] the open endorsement of California's Prop. 187 leadership."²²² As explained by Mr. Guetzloe, "[t]heir committee is called Save Our State. We are affiliated with their committee. We are the Save Our State Florida Committee. They are actively consulting with our effort."²²³ "While very similar to the California Prop. 187 in impact," the Save Our State initiatives in Florida "have made several significant exceptions in an effort to make [their] . . . amendment reasonable and fair."²²⁴ The Save Our State amendment pertains only to illegal immigration. The amendment would prohibit any State, county, or municipal government from all spending on services for undocumented immigrants, including education, medical care, and social services. Emergency medical care and all children's medical

²²⁰ Shortly after California's Proposition 187 passed, a U.S. district court in California entered a temporary restraining order preventing most of the measures from taking effect. On November 20, 1995, Judge Mariana Pfaelzer ruled that the parts of Proposition 187 denying education, health and social welfare services to undocumented immigrants were unconstitutional. See William Claiborne, "Judge Strikes Some California Immigrant Bans," *Washington Post*, Nov. 21, 1995, p. A1.

²²¹ Guetzloe Testimony, *Miami Hearing*, vol. III, p. 541; Douglas Guetzloe, member, Save Our State, telephone interview, Aug. 14, 1995 (hereafter cited as Guetzloe Interview). See also "Prop 187 Luncheon Draws Cries of Racism," *Miami Herald*, Jan. 11, 1995, p. 1B.

²²² *Ibid.*, p. 557. Mr. Guetzloe continued: "Their committee is called Save Our State. We are affiliated with their committee. We are the Save Our State Florida Committee. They are not endorsing and do not endorse the effort of Florida 187." *Ibid.*, pp. 557-58.

²²³ Guetzloe Testimony, *Miami Hearing*, vol. III, p. 557

²²⁴ *Ibid.*, p. 542.

²¹⁴ *Ibid.*

²¹⁵ Martin, "House O.K.s Crackdown," p. 1A.

²¹⁶ Lizette Alvarez, "Prop 187's New Frontier, Anti-Immigration Drive Taking Root Here," *Miami Herald*, Feb. 5, 1995, p. 1A.

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ In November 1994, California voters approved Proposition 187, which banned immigrants from receiving all public services with the exception of emergency medical care.

care are exempted.²²⁵ The proposed amendment differs from California's Proposition 187 in the following respects:²²⁶

1. Save Our State would exempt all medical care for children under 18, whereas California's Proposition 187 has no exception for children.
2. The Florida initiative would take effect 8 months after enactment, whereas California's Proposition 187 was effective immediately.
3. Save Our State would amend the Florida Constitution, whereas California's Proposition 187 was statutory.

Both measures ban public education for undocumented children. As such, their provisions would conflict with legal precedent established by the Supreme Court in *Plyler v. Doe*,²²⁷ which mandated equal access to public education for children of illegal immigrants. Save Our State expects that litigation challenging California's Proposition 187 will result in the Supreme Court's reversal of *Plyler* prior to enactment of the Florida amendment.²²⁸

To place the proposed amendment on the ballot, organizers were required to collect

430,000 signatures. This figure was based on 8 percent of those who voted in the Florida general election in 1992. Once 10 percent of the required signatures are obtained, the Florida Supreme Court would automatically review the petition for consistency with the Florida Constitution.²²⁹

At the time of the Miami hearing, Save Our State was confident that the amendment would pass.²³⁰ According to a Mason-Dixon poll conducted in September 1996, 64 percent of those surveyed would vote for the amendment.²³¹ Support for the amendment crossed racial lines. In one poll, 57 percent of Hispanics polled supported the amendment while 40 percent opposed it.²³² In general, support was strongest in north Florida with 68 percent in favor of the amendment.²³³

As of January 1996, Save Our State had collected 50,000 petitions, enough to trigger review by the Florida Supreme Court.²³⁴ At that time, Mr. Guetzloe reportedly found that gathering signatures was "surprisingly easy."²³⁵ By August 1996, however, Save Our State was unable to gather enough signatures to place the proposed amendment on the ballot. Mr. Guetzloe testified that his organization had been hampered by lack of funds but would continue to work towards getting the measure on the 1998 ballot.²³⁶

²²⁵ Save Our State, "Limiting Taxpayer Supported Social Services to Aliens." If passed, Article VII, sec. 18, of the Florida Constitution will provide as follows:

Neither the State of Florida nor any county, municipality, special district, or school district therein shall expend any funds for the provision of goods and services to persons who are neither citizens of the United States of America nor aliens lawfully present in the United States of America. However, notwithstanding the above, nothing in this section shall be construed as a prohibition of the expenditure of funds for the purpose of providing goods and services to any person in connection with the rendition to that person of children's medical services or of emergency medical services, as those terms are defined from time to time by general law.

This section shall take effect on July 1 next occurring after approval hereof by the electors.

If any portion of this section is held invalid for any reason, the remaining portion of this section, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application.

²²⁶ In testimony before the Commission, Mr. Guetzloe explained: "Our petition language is simple and easily understood. While very similar to the California Prop. 187 in impact, we have made several significant exceptions in an effort to make our amendment reasonable and fair." Guetzloe Testimony, *Miami Hearing*, vol. III, p. 542. Despite the differences, Mr. Guetzloe testified that Save Our State's initiatives "have the open endorsement of California's Prop. 187 leadership." *Ibid.*, p. 557.

²²⁷ 457 U.S. 202 (1982).

²²⁸ Guetzloe Testimony, *Miami Hearing*, vol. III, p. 554.

²²⁹ *Ibid.*, pp. 541-42.

²³⁰ *Ibid.*, pp. 543-44.

²³¹ John Kennedy, "Floridians: Cut Help for Illegals," *Orlando Sentinel*, Sept. 12, 1995, p. A1. The Mason-Dixon poll was conducted on September 5-6, 1995, by telephone with a cross section of 420 Florida residents who said that they were registered to vote. Individuals were told the following, "A proposed amendment would limit taxpayer-supported social services to illegal aliens. The amendment would make exceptions for emergency medical services and children's medical services. If you were voting on this amendment today, how would you vote?" Four hundred and twenty Florida residents who said that they were registered to vote were by interviewed by telephone on September 5-6, 1995. The margin for error is plus or minus 4.9 percentage points.

²³² *Ibid.* Initially, California's Proposition 187 was popular among Hispanics. One month before the election, 52 percent of Hispanics supported the measure. This changed as they gained more information, and in the end, 25 percent of Hispanics voted for Proposition 187. See Stanley Eduardo, "Latino Community Must Build Coalitions to Fight Injustice," *The Ethnic NewsWatch*, Nov. 23, 1994, No. 169, p. 2.

²³³ *Ibid.*

²³⁴ Rick Barry, "Amendment Backers Pen Hopes on Voters; Petitions Calling for Changes to Illegal Immigrant Policies are Getting Mixed Results," *Tampa Tribune*, Jan. 17, 1996.

²³⁵ *Ibid.*

²³⁶ Mark Silva, "Immigrant Amendment Supporters Aim at '96," *Miami Herald*, Aug. 9, 1996, p. B5.

Save Our State explains that its primary goal is to save tax dollars. Mr. Guetzloe maintains that the measure would command public support even if undocumented immigrants were a net economic benefit to Florida. He concludes that, as a matter of principle, taxpayers will resist paying for services to undocumented immigrants even if the cost is offset by revenues or other benefits.²³⁷ According to Save Our State, Federal reimbursement to the State for expenditures on undocumented immigrants would not quiet the controversy over immigrant eligibility for public benefits. Save Our State is concerned not with which governmental entity pays, but whether citizen taxpayers ultimately should pay at all.²³⁸

According to Save Our State, the proposed amendment makes a legal distinction between documented and undocumented immigrants, not a racial distinction. Mr. Guetzloe testified that opponents of the amendment have increased racial tensions in Florida by framing the issue along racial lines.²³⁹

Florida 187 Committee

The other ballot initiative, spearheaded by the Florida 187 Committee, is broader in scope than the amendment proposed by Save Our State. The initiative consists of four provisions that would: 1) declare English the official language of government so that all government business must be conducted in English; 2) prohibit all social services to undocumented immigrants, except emergency medical care; 3) require interagency government cooperation with each other and with the INS; and 4) ban public education for undocumented children. Like the Save Our State amendment, this initiative does not address public benefits to legal immigrants.²⁴⁰

Florida Save Our State and Florida 187 Committee had competing rather than cooperative interests. Save Our State representative Douglas Guetzloe testified that his organization,

unlike Florida 187 Committee, has the open endorsement of California's Prop. 187.²⁴¹ Mr. Guetzloe objected to the English provision of the Florida 187 amendment.²⁴²

Florida 187 Committee collected just over 10,000 petitions as of February 1996.²⁴³ Still, Florida 187 also failed to gather enough signatures to be placed on the November 1996 ballot.²⁴⁴

The Impact of Benefits and Immigrants on Racial and Ethnic Tensions in Florida **Proponents of Legislation to Cut Immigrant Benefits and to Lower the Numbers of Immigrants—Effect on Race Relations**

The Commission's investigation examined a variety of organized efforts to address the immigration issue in Florida. Groups in favor of cutting benefits to immigrants and reducing immigration levels are motivated by a combination of economic and social concerns. Some organizations are primarily concerned with a perceived economic disadvantage resulting from immigrants using valuable resources and imposing costs that Florida cannot afford. According to estimates by the Governor's Office, State and local governments spent \$884 million on undocumented immigrants and \$1.65 billion on legal immigrants, for a total of \$2.5 billion on all immigrants for fiscal year 1993.²⁴⁵

Resentment of expenditures on immigrants coupled with social conflicts stemming from the large immigrant presence in south Florida fuels racial and ethnic tensions. Parents of children in public schools are concerned about overcrowding in the classrooms.²⁴⁶ Furthermore, immigrant children cost more to educate than native children because of their special language needs.²⁴⁷

²⁴¹ According to Guetzloe, "California's 187 sent a letter to Florida 187 just 2 weeks ago asking they cease and desist using the name 187 because it's misleading the citizens of Florida, thinking that they are an offshoot of that effort." Guetzloe Testimony, *Miami Hearing*, vol. III, pp. 557–58.

²⁴² "The one that is the most disturbing to us is the English only provision of that amendment which is simply, it's unenforceable." Guetzloe Testimony, *Miami Hearing*, vol. III, p. 559.

²⁴³ Rick Barry, "FLA-187 Targets Governments, Proposed Amendment Orders Workers to Use Only English," *Tampa Tribune*, Feb. 5, 1996, p. 1.

²⁴⁴ Mark Silva, "Immigrant Amendment Supporters Aim at '98," *Miami Herald*, p. B5.

²⁴⁵ *The Unfair Burden*, p. iii.

²⁴⁶ Lizette Alvarez, "Prop. 187's New Frontier," *Miami Herald*, Feb. 5, 1995, p. 1A.

²⁴⁷ According to Douglas Guetzloe, a non-English-speaking

²³⁷ Guetzloe Testimony, *Miami Hearing*, vol. III, pp. 613–16.

²³⁸ *Ibid.*

²³⁹ *Ibid.*, p. 543. Several southern California legal associations, claiming that California's Proposition 187 increased incidents of racial bias, formed the Proposition 187 Fight Back Coalition to provide free legal services to victims of discrimination. "Legal Groups Offer Free Services to Bias Victims," *Los Angeles Times*, Jan. 28, 1995, p. B2.

²⁴⁰ Rick Barry, "Amendment Backers Pen Hopes on Votes," *Tampa Tribune*, Jan. 17, 1996, p. 1; Chani Wiggins, "Proposal Seeks to Withhold Social Services to Illegal Aliens," *Tampa Tribune*, Nov. 16, 1995, p. 1.

Moreover, some native-born Floridians perceive that they are discriminated against by immigrants in south Florida. This perception is particularly evident in the employment context where job applicants are required to speak Spanish or Creole. There is appreciable sentiment that today's immigrants are not assimilating into mainstream America.²⁴⁸ This assessment is partly attributable to the high concentration of Spanish-speaking immigrants in south Florida and the continuing influx of new immigrants into that area.

The initiatives in Florida began as a response to citizen disgruntlement over the current state of immigration. Save Our State estimates that enacting a constitutional amendment denying education and all benefits (except emergency and children's medical care) to illegal immigrants will save Florida taxpayers close to \$1 billion per year.²⁴⁹

Save Our State makes a sharp distinction between its efforts, which only address illegal immigration, and Federal legislation eliminating the eligibility of legal immigrants for public benefits. Mr. Guetzloe testified that such legislation has heightened racial tensions in Florida and has been somewhat damaging to the Save Our State amendment, which the media and the public do not always distinguish.²⁵⁰

Mr. Guetzloe rejects the notion that the Save Our State campaign increases racial tensions. To the contrary, he maintains that citizen participation in such a measure will relieve tensions by allowing people to work constructively toward solving the problem.²⁵¹ Furthermore, the focus on illegal immigration will reaffirm the status of legal immigrants by making a clear distinction between the two groups.²⁵²

Opponents of Legislation to Cut Immigrant Benefits and to Lower the Numbers of Immigrants—Effect on Race Relations

Contrary to Save Our State's position that its measure would operate to reduce tensions in Florida, immigrant advocacy groups and other

individuals view the Florida initiatives as fueling anti-immigrant sentiment.²⁵³ Some maintain that the ballot initiatives create the perception that undocumented immigrants are entitled to a wide range of public assistance programs while, in reality, they may receive only minimal aid. Moreover, it is unclear how much the Save Our State initiative would actually save, since undocumented immigrants are currently not eligible for most benefits. County-supported Jackson Memorial Hospital absorbed \$33 million in unreimbursed costs for treating undocumented immigrants in fiscal year 1992.²⁵⁴ If the Save Our State amendment passed, it would allow only emergency medical treatment for undocumented immigrants. However, there would be little savings to the hospital because most undocumented immigrants seek medical treatment only for emergencies.²⁵⁵

Federal efforts to bar immigrants from receiving public assistance met with opposition from the Hispanic community and other immigrant groups.²⁵⁶ Concerned immigrants staged protests against welfare reform proposals, objecting to restrictions on the eligibility of legal immigrants who have been lawfully contributing to their communities and paying taxes.²⁵⁷ Immigrant groups contend that what started as an

²⁵³ Guarione Diaz, testimony, *Miami Hearing*, vol. III, pp. 545–46 (hereafter cited as Diaz Testimony); Castro Testimony, *Miami Hearing*, vol. III, p. 463; Karacko Interview.

²⁵⁴ Miami Hearing Record, exh. 19H, "Uncompensated cost for Services not covered by Federal or State Reimbursement," submitted by Ronald Ruppel, Senior Vice President, Corporate Affairs and Chief Financial Officer, Jackson Memorial Hospital.

²⁵⁵ Ronald Ruppel, Senior Vice President, Corporate Affairs and Chief Financial Officer, Jackson Memorial Hospital, telephone interview, Aug. 21, 1995.

²⁵⁶ See John Lantigua, "Migrants Brace for Anti-Immigration Storm," *Miami Herald*, Mar. 27, 1995, p. 1B; Vanessa Gallman, "In Nation built on Immigration, Benefits Cutoff Strikes a Nerve," *Miami Herald*, Apr. 14, 1995, p. 1A; Diana Aviv, "SSI Benefits a Must for Immigrants," *The Ethnic Newswatch* (vol. XLIX, no. 11), Mar. 16, 1995, p. 24; Romben Aquino, "Liberty's Light Dims for Immigrants," *The National Asian Pacific American Legal Consortium Review* (vol. 1, no. 2), Fall 1995, p. 1; Romben Aquino, "Immigrants to Bear Brunt of Welfare Reform," *The National Asian Pacific American Consortium Review*, (vol. 1, no. 2), Fall 1995, p. 5.

²⁵⁷ Lena Sun, "Ethnic Groups Unite Against Benefit Cuts, Hundreds Protest Bills Aimed At Immigrants," *Washington Post*, July 10, 1995, p. C1; Barbara Vobejda, "Senate Measure On Immigrants Draws Protest," *Washington Post*, June 11, 1995, p. A20.

child costs \$1,200 more per year to educate than an English-speaking child. Guetzloe Testimony, *Miami Hearing*, vol. III, p. 555. See also *The Unfair Burden*, p. 15.

²⁴⁸ Ray Interview. See also Lois Jones, telephone interview, Aug. 24, 1995; Jack Martin, Center for Immigration Studies, telephone interview, Aug. 24, 1995.

²⁴⁹ Guetzloe Testimony, *Miami Hearing*, vol. III, pp. 552–53.

²⁵⁰ *Ibid.*, pp. 556–57.

²⁵¹ *Ibid.*, p. 581.

²⁵² *Ibid.*

attack on illegal immigrants has spread to a general assault on all immigrants.²⁵⁸

Applications for Citizenship

At the time of the Miami hearing, witnesses testified that the then-proposed State and Federal measures were causing great concern among immigrant communities in south Florida.²⁵⁹ Threatened with the possibility of losing their safety net, eligible immigrants are scrambling to apply for citizenship.²⁶⁰ Voter registration drives accompany the surge in citizenship applications across the country. As citizens, eligible immigrants will have the right to vote and have a voice in public policy.²⁶¹ Some immigrants have worked and paid taxes in the United States for a number of years as legal permanent residents.²⁶² Social workers are helping immigrants become citizens as quickly as possible.²⁶³ Many immigrant SSI recipients are senior citizens who

have difficulty taking tests and learning English.²⁶⁴ Many are flocking to citizenship classes.²⁶⁵ After applying for residency, they must wait 5 years before qualifying to take the citizenship test.²⁶⁶ The Cuban community is older than other south Florida immigrant groups and is particularly concerned. Some Cuban elderly would be destitute without public assistance.²⁶⁷

After the Welfare Reform Act's predecessor, H.R. 4, was introduced in Congress in January 1995, the south Florida district INS office received a record 6,565 citizenship applications in February 1995. This figure was more than double the number of applications that had been received in December 1994.²⁶⁸ In the same period, citizenship inquiries to Hispanic Unity, a nonprofit agency serving Hispanics in Broward County, doubled from 85 in January to 170 in February 1995.²⁶⁹ The Hispanic community is not the only immigrant group expressing concern. Florida's small British community of approximately 20,000 (with 14,000 in Broward and Palm Beach Counties) is also uneasy. According to Patricia Kawaja, director of the Florida British Chamber of Commerce, "[p]eople are asking why the government is even considering going after legal immigrants."²⁷⁰ Similar events are occurring in other cities with large immigrant populations. Many farmworkers who obtained legal status in California through the Immigration Reform and Control Act are insecure in the current political environment and, reportedly, are promptly applying for citizenship.²⁷¹

Applications for citizenship rose 88 percent in fiscal year 1995 to 1,021,969, up from 543,353 applications in FY 1994.²⁷² Throughout the

²⁵⁸ Castro Interview, Diaz Testimony, *Miami Hearing*, vol. III, pp. 545-46. See also Connie Prater, "Hispanics Call for United Front in War on Anti-Immigration Law," *Miami Herald*, Mar. 20, 1995, p. 2BR; Patricia Walsh, "Hispanics Warned About Proposed Anti-Immigrant Bills," *Miami Herald*, Feb. 26, 1995, p. 1BR; Lantigua, "Migrants Brace," p. 1B; Vanessa Gallman, "In Nation Built on Immigration, Benefits Cutoff Strikes a Nerve," *Miami Herald*, Apr. 14, 1995, p. 1A.

²⁵⁹ Castro Testimony, *Miami Hearing*, vol. III, p. 463; Antonia Canero-Davies, testimony, *Miami Hearing*, vol. III, pp. 567, 570 (hereafter cited as Canero-Davies Testimony, *Miami Hearing*); Diaz Testimony, *Miami Hearing*, vol. III, pp. 545; see also Walsh Testimony, *Miami Hearing*, vol. III, pp. 480-83;

²⁶⁰ Castro Testimony, *Miami Hearing*, vol. III, p. 461. See also Sergio Bustos and Deborah Ramirez, "Legal Immigrants Face New Welfare Concern; Bill Would Deny Benefits to Non-Citizens," *Sun-Sentinel* Mar. 19, 1995, p. 15A; Andres Viglucci, "Milestone Million Seek Citizenship," *Miami Herald*, Nov. 9, 1995, p. 1A; Andres Viglucci, "The Wait Grows Longer to Become a U.S. Citizen," *Miami Herald*, May 17, 1995, p. 1A; Leslie Casimir, "Haitians Rush to Preserve Benefits," *Miami Herald*, Mar. 9, 1995, p. 1B; Slevin, "Dade Immigrants May Lose Benefits."

²⁶¹ Pamela Constable, "Becoming Citizens to Fight Anti-Immigrant Tide," *Washington Post*, July 9, 1995, p. B1; Ruben Martinez, "Prop. 187 Spurs Citizenship Drive," *Fresno Bee*, July 23, 1995; Joyce Purnick, "Immigrants Fighting Back as Citizens," *New York Times*, Oct. 20, 1996, p. B1; Nancy San Martin, "Get-Tough Policies Speed Up Applications for Citizenship," *Sun-Sentinel*, Aug. 13, 1996; Michael Winters, "Prop. 187 Sequel Would Narrow Door to Citizenship," *San Francisco Examiner*, Oct. 16, 1995, p. A4.

²⁶² Sergio Bustos and Deborah Ramirez, "Legal Immigrants Face New Welfare Concern; Bill Would Deny Benefits to Non-Citizens," *Sun-Sentinel*, Mar. 19, 1995, p. 15A.

²⁶³ Walsh Testimony, *Miami Hearing*, vol. III, p. 482. See also "Andres Viglucci, 'The Wait Grows Longer to Become a U.S. Citizen,'" *Miami Herald*, May 27, 1995, p. 1A; "Drive to Help Create Citizens," *Miami Herald*, Apr. 12, 1995, p. 2B.

²⁶⁴ Castro Interview.

²⁶⁵ John Lantigua, "A New Rush for Citizenship in Effort to Protect Benefits," *Miami Herald*, Mar. 5, 1995, p. A1.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

²⁶⁸ Bustos and Ramirez, "Legal Immigrants," p. 15A.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.*

²⁷¹ Thomas D. Elias, "Wave of Farm Workers Seeks Citizenship; '86 Immigration Reform Has Made 1.2 Million Eligible," *Washington Times*, Jan. 20, p. A1. According to Bobbi Murray, from the Los Angeles-based Coalition for Humane Immigrant Rights, "They are applying in droves because they are afraid . . . They feel there is a very real threat to the benefits that they have worked a long time for. And they worry that the law might be changed and they might be deported, green card or not, unless they become citizens." *Ibid.*

²⁷² Anne R. Carey and Dave Merrill, "Citizenship Applications Rocket," *USA Today*, Jan. 25, 1996, p. A1.

1990s, 76 percent of the applications were filed in Chicago, Los Angeles, Miami, New York, and San Francisco.²⁷³

Immigrant Professionals

A discussion of the impact of immigration would be incomplete without reference to the significant impact immigrants have had on Miami. In 1940, Florida was the smallest State in the South with 1.9 million people. Today, the State is the fourth largest in population, behind New York, Texas, and California.²⁷⁴ Once dependent on seasonal whims of domestic tourism, Miami has become the hub of international trade with Latin America. Thirty-four of the top 50 exporters listed by *Hispanic Business* are based in Florida.²⁷⁵ By most accounts, the mix of language and culture brought by immigrants promises easy access to needed skills. Miami also attracts foreign investment and tourists from all over the world.²⁷⁶ Venezuelan and Brazilian investors have developed hotels and malls and set up thriving businesses.²⁷⁷ Norwegians have contributed \$1 billion in investments to south Florida.²⁷⁸ Miami is also the capital of Hispanic TV and music, attracting Spanish-language TV and film production from around the world.²⁷⁹ A popular destination for foreign photographers, Miami is the third busiest fashion city after Paris and New York.²⁸⁰ In 1994, Florida ranked second nationally in creating new jobs. Many of those jobs were in international trade.²⁸¹

Anti-immigrant attitudes may have a potentially damaging effect on businesses and institutions that rely on skilled foreign workers. According to one hearing witness, many people come to the United States on a nonimmigrant visa²⁸² and eventually become immigrants.²⁸³

Nonimmigrants are not entitled to public benefits, but work and pay taxes.²⁸⁴ Fortune 500 companies headquartered in south Florida bring in multinational executives. These highly sought after workers may ultimately shun the United States for friendlier destinations.²⁸⁵

The ability to attract immigrant professionals is important not only to Miami, and not only for international trade, but for many other professions around the country as well. Universities rely on international scientists for research in medicine, engineering, and other sciences, thereby strengthening America's competitiveness in scientific research.²⁸⁶ An inadequate supply of skilled workers in the United States compels high technology companies such as Microsoft, Hewlett-Packard, Intel, and Texas Instruments to recruit skilled workers from abroad.²⁸⁷ Many ethnic restaurants depend on foreign-born chefs to maintain authenticity of the cuisine and to keep abreast of new ideas.²⁸⁸

Foreign personnel also make substantial contributions to the medical profession. International medical graduates make up 23.9 percent of all medical residents in the nation. Foreign recruits are particularly important in rural and poor urban areas where recruiting native-born

549-50.

²⁸⁴ Ibid.

²⁸⁵ "Miami is full of nonimmigrants. The Beach, Miami Beach, has been developed by investors from European countries, the capital, the European capital who are here on what we call a E-2 investment visa. They have no public benefits. They simply work and pay taxes. . . . Our research, our cutting edge biotechnology, are constantly bringing professionals in. All of these people are people we want to work here. These are the people we want to immigrate. They find easy ways to come because there are special glitches in the law because these are people we like. These are the people we woo. All of these we have seen in Florida, in California, are suffering from what I call the 'fallout effect.' When 187 hit, it was like a big bomb, a big nuclear bomb. But what happens afterwards is that gray film spreads and is beginning to touch the people that we want here. They don't want to be here. They don't have to be here, so they don't come. And is that what we want?" Canero-Davies Testimony, *Miami Hearing*, vol. III, pp. 549-50.

²⁸⁶ Lena Sur, "Universities Say Wage Rule for Foreigners Hurts Research," *Washington Post*, July 3, 1995, p. A1.

²⁸⁷ Eric Schmitt, "Debate on Immigration Bill Yields Deep Division and Unusual Allies," *New York Times*, Feb. 26, 1996. See also Mathew Purdy, "Unlikely Allies Battle Congress Over Anti-Immigration Plans," *New York Times*, Oct. 11, 1995, p. B1; Empower America, *Employment-Based Immigration and High Technology*, by Stuart Anderson (Washington, D.C.: Empower America, 1996).

²⁸⁸ Judith Weinraub, "From Feast to Famine? Immigration Reforms Would Hurt Ethnic Eateries," *Washington Post*, Mar. 7, 1996, p. C1.

²⁷³ Ibid.

²⁷⁴ Tom Fiedler, "The Challenge, Dizzying Change," *Miami Herald*, July 23, 1995, p. 12A.

²⁷⁵ "Florida's Sphere of Influence," *Hispanic Business*, September 1995, p. 28.

²⁷⁶ Ibid.

²⁷⁷ Cathy Booth, "The Capital of Latin America, Miami," *Time*, Fall 1993, p. 85.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Tom Fiedler, "The Challenge, Dizzying Change," *Miami Herald*, July 23, 1995, p. 1A.

²⁸² Nonimmigrants are authorized to enter the U.S. for a specific purpose and for a limited time. Tourists, students, and visitors on business are in this category. *Guide to Eligibility* (1994), p. 7. See also 8 U.S.C. § 1184 (1994).

²⁸³ Canero-Davies Testimony, *Miami Hearing*, vol. III, pp.

professionals is often difficult. According to some observers, hospitals in poor or rural areas are forced to recruit foreign-born doctors who come to the United States seeking higher earnings.²⁸⁹ Moreover, more than half of all hospital residents in New York City are international medical graduates. They make up over 40 percent and 57 percent of hospital residents in North Dakota and New Jersey, respectively.²⁹⁰

In North Dakota, Lowell Hergindahl, chief executive of the Tioga Medical Center, has attempted to hire domestically for up to 2 years without success.²⁹¹ Based upon published reports, Mr. Hergindahl asserts that despite the

surplus of doctors in this country and his efforts to recruit them, most are simply not interested in working in North Dakota.²⁹²

In search of higher earnings and a better life, skilled and professional workers naturally consider the political climate of their future home. One of the hearing witnesses, an immigration attorney who helps employers obtain work visas for foreign recruits, testified that her clients are troubled by current developments.²⁹³ State and Federal initiatives aimed at saving money on public benefits may turn away potential immigrants who are not only self-supporting, but have much to contribute.

²⁸⁹ Almar Latour, "How Curbing Immigration Could Hurt Health Care in Inner Cities, Rural Areas," *Wall Street Journal*, Mar. 5, 1996, p. B1.

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ Canero-Davies Testimony, *Miami Hearing*, vol. III, pp. 550, 571.

Chapter 4

Distinctions in Refugee and Asylum Policies

Section I: Refugee and Asylum Policies Among Similarly Situated Groups

Overview of Refugee and Asylum Policies

*Give me your tired, your poor
Your huddled masses yearning to be free
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tossed to me:
I lift my lamp beside the Golden Door.¹*

Historically, the United States has embraced sizable numbers of those who have fled persecution elsewhere.² Yet, the United States also has a history of according differential treatment to similarly situated groups of refugees and asylees.³ The Refugee Act of 1980⁴ implemented an explicit set of policies that committed the United States to receiving annually a substantial number of refugees and decreed that the United States grant refugee status in a politically neutral manner rather than pursuant to foreign policy concerns.⁵ Under the Refugee Act, the United States may grant political asylum to applicants who demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social

group or political opinion,"⁶ and agrees not to return those meeting this definition to their country of origin.

Although advocacy groups generally see an improvement in the treatment of refugees and asylum seekers⁷ since enactment of the Refugee Act, there remains a sense that foreign policy concerns still play a role in determining the treatment accorded different groups of refugees. According to some, preferential treatment continues to be afforded different groups, as in the past, based on the nature of the government the refugees are fleeing. Those fleeing totalitarian regimes may be granted preferential treatment, for example. But critics point out that in 1993 more than 85 percent of refugee applications from Bosnia-Herzegovina, Laos, the former Soviet Union, Vietnam, and Cuba were accepted. Less than 35 percent of applications from Burma, Romania, and Haiti (all known for human rights abuses) were accepted.⁸

Unlike refugees whose applications for asylum in the United States are processed overseas, asylum applicants are individuals who have already arrived in the United States and are seeking political asylum. Asylum applicants must meet the "well-founded fear of persecution" standard that refugees have to meet, but they are entitled to more procedural safeguards than refugee applications that are processed overseas. Under the law, asylum decisions are individual case-by-case determinations based on neutral standards. Some note, however, that actual

¹ Emma Lazarus, "The New Colossus," as inscribed on the Statue of Liberty.

² Kathleen Newland, *U.S. Refugee Policy: Dilemmas and Directions* (1995), p. 4.

³ See, e.g., Gil Loescher and John A. Scanlan, *Calculated Kindness: Refugees and America's Half-Open Door 1945-Present* (New York: The Free Press, 1996); Norman L. Zucker and Naomi Flink Zucker, *The Guarded Gate: The Reality of American Refugee Policy* (San Diego: Harcourt Brace Jovanovich, 1987).

⁴ 8 U.S.C. §1101 et seq., Pub. L. No. 96-212, 94 Stat. 102.

⁵ S. Rep. No. 96-236, at 1 (1980), reprinted in 1980 U.S.C.C.A.N. 141, 144.

⁶ 8 U.S.C. § 1101 (1)(42).

⁷ Refugees apply for admission to the United States and are processed overseas. Asylum applicants apply upon or after entry into the United States.

⁸ David Rohde, "U.S. Urged to End Bias in Policy Toward Refugees," *Christian Science Monitor*, Aug. 11, 1994, p. 4.

practice in asylum law may differ significantly from published legal standards.⁹

Finally, some refugees are admitted into the United States pursuant to the parole power granted to the Attorney General in the Immigration and Naturalization Act.¹⁰ That power has come under attack. For example, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Immigration Reform Act) limits the Attorney General's authority to allow parole "only on a case by case basis for urgent humanitarian reasons or significant public benefit."¹¹ The Immigration Reform Act further provides that the number of parolees who remain in the country for more than a year and do not adjust to permanent resident status shall be subtracted from the worldwide level of immigrants for the subsequent year.¹²

The Immigration Reform Act also affects asylum law. The act tracks closely the recommendations of the Commission on Immigration Reform.¹³ Testimony before Congress on the act indicated that asylum claims exploded from less than 5,000 applications in 1980 to more than 15,000 a year.¹⁴ The new law restricts the filing of asylum applications by aliens with no documents or fraudulent documents unless they can prove a "credible fear" of persecution, defined as "a significant possibility" that the alien could

establish eligibility for asylum.¹⁵ Refugee advocates argue that most people who flee their home countries because of war or political persecution cannot obtain valid travel documents or documents that would evidence torture or victimization.¹⁶ The Immigration Reform Act also requires asylum applications to be filed within a year of entry into the United States.¹⁷ Previously, there was no such deadline. Critics argue that many who are eligible for asylum may not apply for a variety of reasons. Among other things, potential asylees may not speak English, may not know how to apply, or they may be suffering from post-traumatic stress disorder, which would impede their attention to the application process.¹⁸ In addition, the Immigration Reform Act limits judicial review. Generally, no court has jurisdiction to review discretionary decisions or actions of the Attorney General, other than the granting of asylum.¹⁹

Moreover, the Immigration Reform Act restricts the grant of work authorization to 180 days after the asylum application is filed and requires final administrative adjudications to within 180 days, in the absence of exceptional circumstances.²⁰ According to Senator Alan K. Simpson, such provisions address the "many unlawful aliens [who] have discovered the key to extending their stay in the United States. By claiming fear of political persecution at home, they are able to delay their departure for years as they remain here and work while awaiting their hearing."²¹

Refugee Resettlement in Florida

Florida ranks among the top States for receipt of refugees. In 1993, Florida ranked as the third highest State receiving refugees/entrants.²²

⁹ See, e.g., Note, *Prisoners of Foreign Policy: An Argument for Ideological Neutrality in Asylum*, Harv. L. Rev., vol. 104 (1991), p. 1878.

¹⁰ 8 U.S.C. § 1182(d)(5) (1988 & Supp. V 1993).

¹¹ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, § 603, Pub. L. No. 104-208, 110 Stat. 3009 (1996) (hereafter cited as Immigration Reform Act). Formerly, the Attorney General was granted discretion to parole into the United States for "emergent reasons or for reasons deemed strictly in the public interest," any alien applying for admission to the United States. 8 U.S.C. § 1182(d)(5)(A).

¹² Immigration Reform Act at § 603. Previously, parolees entering the United States under the Attorney General's authority had no effect on the level of immigrants to be admitted.

¹³ *Proposals to Reduce Illegal Immigration and Control Costs to Taxpayers: Hearing Before the Subcomm. On Immigration of the Senate Comm. On Judiciary*, 104th Cong., 1st Sess. (Mar. 14, 1995) (written testimony of Susan Martin, Executive Director, Commission on Immigration Reform). Ms. Martin testified with respect to Senator Simpson's immigration bill (S. 269). Many of the provisions in S. 269, including many of the ones discussed in this section, were incorporated into the Immigration Act.

¹⁴ *Ibid.* (written testimony of Daniel Stein, Executive Director, Federation for American Immigration Reform (FAIR)).

¹⁵ Immigration Reform Act at § 302.

¹⁶ Haider Rizvi, "U.S.-Refugees: Have Fake Documents, Can't Enter U.S.," *Inter Press Service*, Nov. 19, 1996.

¹⁷ Pub. L. No. 104-208, 110 Stat. 3009 (1996) at § 604.

¹⁸ Joyce Shelby, "Lawyers Group Builds Bridges for Refugees," *New York Daily News*, Nov. 20, 1996, p. 3.

¹⁹ Pub. L. No. 104-208, 110 Stat. 3009 (1996) at § 306.

²⁰ *Id.* § 604.

²¹ Statement on Introduction of S.269 by Sen. Alan K. Simpson, Jan. 24, 1995, p. 2. Many of the provisions in S. 269, including the ones discussed within this paragraph, were incorporated into the Immigration Act.

²² State of Florida, Department of Health and Rehabilitative Services, *Florida's Refugee Fact Book: 1994*, by Julia A. Spinthourakis et al., p. 29 (hereafter cited as *Florida Fact Book*).

Between 1975 and 1993, Florida ranked second in the country for cumulative refugee/entrant resettlements, and ratio of refugees/entrants to the population.²³ With the emphasis on family reunification in U.S. immigration policy, the numbers of the current refugee/entrant population in Florida may beget a continuing large number of legal immigrants to the State.

Florida is the resettlement site of over 80 percent of all Cuban and Haitian boat people entering the United States.²⁴ Following the Mariel boatlift in 1980 that resulted in a large influx of Cuban refugees, the Fascell-Stone amendment was introduced by the Florida congressional delegation and passed.²⁵ This amendment entitled Cubans and Haitians, who were classified not as refugees but as "entrants," to the same services as other refugees.²⁶ Unlike refugees, however, who are considered and planned for as part of the refugee admissions program, entrants usually arrive unexpectedly due to crises in either Cuba or Haiti. There is thus little time to prepare for their arrival, and the costs of this population are not included in preparing budget estimates.²⁷ Since Florida receives most of the entrant population, entrants are an issue of particular concern to Florida.²⁸

Historical Background on Cuban Refugees

The Cuban Adjustment Act of 1966²⁹ granted preferential treatment to Cuban refugees. This amendment to the Immigration and Nationality Act allowed all Cuban citizens who came to the United States after January 1, 1959 (the beginning of the Castro regime) to become eligible for permanent resident status after 1 year's residence in the United States.³⁰ According to the House report, this treatment was consistent with Congress' "willingness to approve legislation to aid persecuted peoples of the world" and "is be-

ing given for purely humanitarian and practical reasons."³¹

Cuban rafters, or *balseros*, were routinely picked up by the U.S. Coast Guard and welcomed into the United States.³² Because the United States does not recognize the Cuban Government, Federal authorities did not have any mechanism for deporting Cuban arrivals back to Cuba.³³ Rather than detain them indefinitely, Cubans were granted work permits and, after 1 year in the United States, permanent residence.³⁴ In a reversal of long-standing policy, President Clinton announced on August 19, 1994, that the Coast Guard would no longer bring Cuban refugees to the United States but would instead hold them in safe haven at the U.S. naval base in Guantanamo Bay, Cuba.³⁵

On September 9, 1994, the United States and Cuba reached an agreement whereby the United States agreed to permit at least 20,000 Cubans to enter the United States annually, and Cuba agreed that the Cuban Government would restrict Cuban citizens from leaving Cuba. This agreement was an abrupt reversal of prior U.S. policy towards Cubans fleeing the Castro regime. Refugee advocacy groups decried the agreement with Cuba.³⁶ In addition, those who advocate reforming immigration also opposed the agreement. On November 16, 1994, the Federation for American Immigration Reform

²³ Ibid.

²⁴ Ibid., p. 55.

²⁵ Ibid.

²⁶ Refugee Education Assistance Act of 1980, Pub. L. No. 96-422, 94 Stat. 1799 (1980).

²⁷ President Clinton's proposed FY 1996 budget incorporated expected arrivals of Cuban and Haitian entrants for the first time, anticipating up to 20,000 Cuban and Haitian parolees. U.S. Committee for Refugees, "President's Budget for Refugee Programs Encounters New Era of Republican Control in Congress," *Refugee Reports*, Feb. 28, 1995, p.3.

²⁸ *Florida Fact Book*, p. 36.

²⁹ Pub. L. No. 89-732, 80 Stat. 1161, 1360-61 (1966).

³⁰ Id.

³¹ H.R. Rep. No. 89-1978, 89th Cong., at 3794-3795 (1966).

³² Dan Cadman, former Miami District Director, Immigration and Naturalization Service, telephone interview, Aug. 16, 1995 (hereafter cited as Cadman Interview).

³³ Ibid.

³⁴ Ralph Thomas, Congressional Affairs, U.S. Department of Justice, telephone interview, Aug. 9, 1995.

³⁵ U.S. Department of State, "Cuban Refugees," Department of State Dispatch (Aug. 29, 1994).

³⁶ They contend that the United States' participation in an agreement providing for the restriction of Cuban citizens leaving Cuba is inconsistent with international law. Article 12.2 of the International Covenant on Civil and Political Rights provides that "everyone shall be free to leave any country, including his own." According to refugee advocacy groups, an agreement with the oppressive regime of another country to restrict the rights of its citizens to leave is inconsistent with respect for the rights recognized in the covenant. Sanders, "Refugee and Asylum Issues," p. 13. On September 9, 1994, the U.S. Committee for Refugees issued a press release stating that "[t]he U.S. government is asking Castro to return to . . . policies that violate internationally recognized human rights standards and [that] contradict decades of U.S. policy." U.S. Committee for Refugees, *World Refugee Survey 1995*, p. 177.

(FAIR) filed a lawsuit.³⁷ The lawsuit challenged the agreement as exceeding the government's authority to admit Cuban immigrants and charged the Attorney General with abusing her parole authority by admitting Cuban migrants beyond the limits on immigration set by Congress.³⁸

In May 1995, the administration announced that the Cubans being held in safe haven in Guantanamo would be processed and resettled into the United States. The Guantanamo Cubans were scheduled to arrive in the United States at a rate of approximately 500 weekly.³⁹ Those who did not have families in the United States would be resettled in States outside Florida. The bulk of the Guantanamo Cubans, however, would be resettled with their family members in Dade County.⁴⁰

In May 1995, President Clinton also announced that any future Cuban rafters would be interdicted at sea.⁴¹ Cuban American groups sharply criticized the administration's decision. The Cuban American National Foundation, for example, refused to assist the United States in resettling the Cubans brought in from Guan-

tanamo.⁴² At the Commission's hearing, Raul Pino from the Cuban American National Foundation stated in opening remarks that the foundation "does not support and has objected to the recent change of policy of the current Clinton Administration regarding Cuban refugees."⁴³

These recent events belie the historical favorable treatment that had been accorded Cuban refugees since the enactment of the Cuban Adjustment Act of 1966. In the past, much attention in Miami has focused on the disparate treatment between Cuban and other refugees. In his testimony, Walter D. Cadman, former Immigration and Naturalization Services (INS) District Director in Miami, noted the concern among non-Cuban immigrants:

that Cubans have been accorded the ability to obtain their permanent residence in the United States after having entered the U.S. or landed in the U.S. a year and a day later, . . . this isn't, of course, simply an issue of Haitian versus Cubans.

There are other groups as well that feel disadvantaged by the inability to obtain their permanent residence in the United States, many after a considerable period of time in the U.S., and certainly one of the difficulties that I face as an administrator of the immigration laws is that—and I speak only for myself on this—I perceive two different kinds of immigration laws: those such as the visa quota system that are facially very, very neutral, and those that are passed with foreign policy goals in mind.⁴⁴

Witnesses at the hearing representing the Cuban American community testified that they believed that Cuban and Haitian refugees should be treated equally. Mr. Pino stated that "we have taken a position with the Haitians; and

³⁷ *Federation for American Immigration Reform v. Reno*, Civ. Act. No. 1:94CV02459/JHG (D.D.C. filed Nov. 16, 1994).

³⁸ The suit was dismissed by the district court of the District of Columbia for lack of standing. *Federation for American Immigration Reform v. Reno*, 897 F. Supp. 595, 597 (D.D.C. 1995).

³⁹ U.S. Committee for Refugees, "Arrival of Cuban Rafters from Guantanamo in Full Swing," *Refugee Reports*, Sept. 29, 1995, p. 2.

⁴⁰ According to Florida State government estimates, as many as 77 percent of all the Cubans who had arrived in the U.S. from Guantanamo from late 1994 through September 1995 were settled in the Miami area. Yet, observers noted that the large influx of Cubans in a relatively short period is not drawing significant attention or concern and "there appears to be a high level of confidence about the new arrivals' prospects and the city's ability to handle the influx." *Ibid.*, p. 1. On the other hand, Father Wenski noted that the weekly influx of Cubans would exacerbate the problems facing recent Haitian arrivals who are trying to find employment. Father Thomas Wenski, Director, Haitian Catholic Center, telephone interview, Aug. 3, 1995 (hereafter cited as Wenski Interview).

⁴¹ These individuals would be provided with an interview conducted by INS asylum officers. Those determined not to have a credible fear of persecution are taken to Guantanamo where they receive a second indepth interview. Those found to have a credible fear are resettled in third countries. Migrants determined not to have protection concerns are returned to Cuba. Doris Meissner, Commissioner, Immigration and Naturalization Service, letter to Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights, May 8, 1997.

⁴² According to *The Orlando Sentinel*, a representative from the Cuban American National Foundation said, "If the government of the United States, without consultation, reached agreements with the Castro dictatorship, it should now also resolve, without the help of the Cuban-American community, the grave problems concerning Guantanamo." Myrian Marquez, "New Cuban Policy Stinks—But So Does Foundation's Response," *The Orlando Sentinel*, May 5, 1995, p. A-14.

⁴³ Raul Pino, Trustee, Cuban American National Foundation, testimony (hereafter cited as Pino Testimony), *Hearing Before the United States Commission on Civil Rights, Miami, FL, Sept. 14-15, 1995* (hereafter cited as *Miami Hearing*), vol. V, p. 635.

⁴⁴ Walter D. Cadman, former District Director, Miami District Office, Immigration and Naturalization Service, testimony, *Miami Hearing*, vol. IV, p. 670 (hereafter cited as *Cadman Testimony*).

we have said, 'Look, these people should have been treated the same from Day 1'; but besides that, there is not very much we can do about it."⁴⁵ Mr. Pino also testified that he believed that the difference in treatment of Cubans and Haitians was not based on racial or ethnic considerations but rather was based on the United States' unfriendly relationship with Cuba.⁴⁶ Some within the Haitian and Cuban communities in Miami were careful to point out that the disparate policies toward the two groups do not result in tensions between them.⁴⁷

In January 1995, Senator Alan Simpson of Wyoming introduced an immigration bill that, among other things, repealed the Cuban Adjustment Act.⁴⁸ In his introduction of the bill, Senator Simpson stated, "the Cuban Adjustment Act remains on the books as an anachronism that is both unfair and unnecessary. While nearly four million persons await their immigration visas in our vast immigration backlogs, some for as long as 20 years, any Cuban who gets to the United States, legally or illegally, can get a green card after one year. This special treatment is no longer justifiable and is not right."⁴⁹ The Immigration Reform Act that was signed into law in October 1996 did not repeal the Cuban Adjustment Act. Rather, it provided that the Cuban Adjustment Act may only be repealed if the President determines that a democratically elected government is in power in Cuba.⁵⁰

Historical Background on Haitian Refugees

Alex Stepick and Carol Dutton Stepick refer to Haitians in south Florida as the "pariah minority."⁵¹ According to Haitian refugee advocates, the United States has consistently pursued a policy of unwelcome toward Haitians

leaving their country and seeking to enter the United States, which is contrary to the welcome historically afforded Cuban refugees.⁵² In 1978, for example, the INS launched a program in which INS and State Department officials worked to stem the backlog of Haitian asylum cases.⁵³ In connection with the program, the number of asylum hearings for Haitians dramatically jumped from an average of between 5 and 15 per day to 100-150 a day within a period of months.⁵⁴ Lawyers representing Haitians were often scheduled to represent several clients whose hearings were scheduled simultaneously.⁵⁵ The number of denials of asylum and deportations substantially increased.⁵⁶

A lawsuit filed on behalf of the Haitians resulted in an injunction temporarily blocking the deportation of Haitians by the INS. In his final opinion, District Judge James Lawrence King found that:

Those Haitians who came to the United States seeking freedom and justice did not find it. Instead, they were confronted with an Immigration and Naturalization Service determined to deport them. The decision was made among high INS officials to expel Haitians, despite whatever claims to asylum individual Haitians might have. A Program was set up to accomplish this goal. The Program resulted in wholesale violations of due process and only Haitians were affected.

This Program, in its planning and executing, is offensive to every notion of constitutional due process and equal protection. The Haitians whose claims for asylum were rejected during the program shall not be deported until they are given a fair chance to present their claims for political asylum.⁵⁷

The court also noted that the Haitians seemed to have been singled out for such harsh treatment.

The Plaintiffs are part of the first substantial flight of black refugees from a repressive regime to this country. All the plaintiffs are black. Prior to the most recent Cuban exodus all of the Cubans who

⁴⁵ Pino Testimony, *Miami Hearing*, vol. IV, p. 635. See also Omar Lopez Montenegro, Cuban American National Foundation, testimony, *Miami Hearing*, vol. IV, p. 666 (hereafter cited as Montenegro Testimony).

⁴⁶ Pino Testimony, *Miami Hearing*, vol. IV, p. 661.

⁴⁷ See text accompanying notes 75-78.

⁴⁸ Immigrant Control and Financial Responsibility Act of 1995, S. 269, sec. 181 (1995).

⁴⁹ Statement on Introduction of Immigrant Control and Financial Responsibility Act (ICPRA) by Alan K. Simpson dated Jan. 24, 1995.

⁵⁰ Immigration Reform Act at § 606.

⁵¹ Alex Stepick and Carol Dutton Stepick, "People in the Shadows: Survey Research among Haitians in Miami," *Human Organization* (vol. 49), 1990, p. 66.

⁵² Cheryl Little, Florida Rural Legal Services, Inc., telephone interview, Aug. 21, 1995 (hereafter cited as Little Interview).

⁵³ Loescher and Scanlan, *Calculated Kindness*, p. 175.

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, p. 176.

⁵⁶ *Ibid.*

⁵⁷ *Haitian Refugee Center v. Civiletti*, 503 F. Supp. 442 (S.D. Fla. 1980), *aff'd*, 676 F.2d 1023 (11th Cir. 1982).

sought political asylum . . . were granted asylum routinely. None of the over 4000 Haitians processed during the INS program at issue in the lawsuit were granted asylum. No greater disparity can be imagined.⁵⁸

Between 1981 and 1991, interdicted Haitians were prescreened aboard Coast Guard vessels and were allowed to apply for asylum only if they demonstrated a "credible fear of persecution." An internal memorandum dated October 29, 1981, from the United Nations High Commission on Refugees (UNHCR) stated:

Whether or not the measures can be challenged from a legal point of view is not certain. The newly introduced interdiction measures, of course, deprive asylum seekers at sea of access to counsel and of the appeal possibilities which they would have had had they entered the USA The new interdiction measures would certainly constitute an undesirable precedent for other areas of the world (e.g. South East Asia) where UNHCR has sought to prevent asylum seekers being towed out to sea.⁵⁹

In practice, almost all Haitians were repatriated prior to the Haitian coup of 1991. From September 1981 through September 1991, approximately 24,600 Haitians were interdicted at sea by the U.S. Coast Guard. Of these, only 28 were found to have credible asylum claims and were taken to the U.S. for more careful examination of their claims.⁶⁰ The remainder were returned to Haiti.⁶¹

The U.S. treatment of Haitians stood in stark contrast to that afforded Cuban rafters. A dramatic example of this contrast occurred in July 1991 when an old wooden boat overloaded with 161 Haitians came upon two Cubans in an inner tube raft. After rescuing the Cubans, the Haitians headed for Miami. The U.S. Coast Guard intercepted the boat, brought the two Cubans to Miami and returned the Haitians back to Haiti.⁶²

After the Haitian coup of 1991, the United States established facilities at Guantanamo Bay, Cuba, for temporary detention and prescreening of interdicted Haitians. The Bush administration worked on developing safe havens in countries in the Caribbean and Latin America.⁶³ In addition, a substantial percentage of the postcoup asylum claims were granted. Even still, a 1992 National Asylum Study Project reported that special incentives were given to asylum officers to deny Haitian cases from Guantanamo Bay: "INS could be encouraged to . . . [count] a completed denial as a double case completion and a completed grant as a simple case completion for purposes of their internal [illegible] and officer evaluation."⁶⁴ President Bush reversed U.S. policy in May 1992 and authorized immediate repatriation of all interdicted Haitians without prescreening.⁶⁵ In June 1993, the Supreme Court upheld the government's policy of intercepting Haitians at sea and forcibly repatriating them to Haiti.⁶⁶

On June 16, 1994, President Clinton announced that Haitian boat people would be given full refugee status determination interviews on ships. In less than a month, the flow of Haitians accelerated to such a large extent that the President announced that interdicted Haitians would no longer be processed for refugee resettlement but would, instead, be held in a temporary safe haven camp at Guantanamo. Over the next sev-

⁵⁸ This policy was ultimately unsuccessful as the third countries were unable to deal with the numbers of Haitians leaving Haiti. There were, however, some countries who accepted Haitian refugees at the United States' request. Among the countries accepting Haitians were Honduras, Venezuela, Belize, and Trinidad. *Cuban and Haitian Immigration: Hearings Before the Subcomm. On International Law, Immigration and Refugees of the House Comm. on Judiciary*, 102d Cong., 1st Sess. (1991) (statement of Robert S. Gelbard, Principal Deputy Assistant Secretary of State for Inter-American Affairs). When President Clinton announced in June 1994 that Haitians would not be processed for refugee resettlement in the United States but would be held in safe haven at Guantanamo, many Haitians opted to repatriate to Haiti, particularly following the return of President Aristide to Haiti. See U.S. Committee for Refugees, "Updates," *Refugee Reports*, Dec. 31, 1994, p. 1.

⁶⁴ Jan C. Ting, Director, Asylum Policy and Review Unit and Kristen A. Giuffreda, Assistant Director, Asylum Policy and Review Unit, memorandum to Rcx J. Ford, Associate Deputy Attorney General, U.S. Department of Justice, May 26, 1992, p. 3 (cited in Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 NEW YORK LAW SCHOOL JOURNAL OF HUMAN RIGHTS 269, 314 n.186 (1993)).

⁶⁵ Exec. Order No. 12,807, 57 Fed. Reg. 21133 (1992).

⁶⁶ *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993).

⁵⁹ *Id.* at 451.

⁶⁰ Loescher and Scanlan, *Calculated Kindness*, p. 194.

⁶¹ *Refugees: U.S. Processing of Haitian Asylum Seekers: Testimony Before the Subcomm. on Legislation and National Security of the House Comm. on Government Operations*, 102nd Cong., 2d Sess. 1 (1992) (statement of Harold J. Johnson, Director, Foreign Economic Assistance Issues, National Security and International Affairs Division, General Accounting Office).

⁶² *Ibid.*

⁶³ Rick Bragg, "Haitian Refugees Cast Adrift by Politics of Immigration," *St. Petersburg Times*, July 15, 1991, p. 1A.

eral months, many of the Haitians opted for voluntary repatriation, particularly following the introduction of U.S. troops into Haiti on September 19 and the return of President Aristide on October 15.

On December 29, 1994, the Clinton administration told the Haitians remaining in detention at the Guantanamo camp that they must repatriate.⁶⁷ Those who believed they could not return to Haiti in safety could have their cases heard, but "under no circumstances will any Haitian currently at Guantanamo be admitted to the United States."⁶⁸ Instead, such persons would be able to stay in safe haven for a longer period of time. Haitian advocates pointed out that if such persons could demonstrate a credible claim, they deserved more than indefinite detention at Guantanamo.⁶⁹ A Federal judge in the southern district of Florida denied the Haitian Refugee Center's motion for a temporary restraining order or a preliminary injunction to prevent the U.S. Government from repatriating the Haitian refugees from Guantanamo.⁷⁰ The Eleventh Circuit affirmed the district court's decision, finding no support "that provision of safe haven created a protectable liberty interest, deprivation of which would require that the government's actions comport with due process."⁷¹

Haitian-Cuban Community Relations

In July 1990, just a week after Nelson Mandela's Miami visit, a Haitian customer got into a fistfight with a clerk in a Cuban-owned clothing store in the heart of Little Haiti. The next day a Haitian radio announcer related the incident and called on fellow immigrants and "blacks in Overtown, Liberty City and Opa-Locka to join in protest." Another announcer proclaimed: "We are going to make the Cubans pay for the way they treated Mandela." One thousand protesters blocked access to the store during a 9-hour confrontation. About half left during an afternoon downpour, but in the early evening, 100 helmeted police carrying shields began closing in with their nightsticks. With television stations

broadcasting the event, police knocked protesters to the ground and continued to strike many while they were down. According to reports, approximately 60 Haitians were arrested and charged with the misdemeanor of unlawful assembly. Some, however, were sent to Krome to determine whether they were in the United States illegally. Seven who lacked proper legal papers were detained at Krome.⁷² Both the Haitian customer and the Cuban clerk had reputations for less than civil conduct.⁷³ Still, the radio announcements encouraging the protests seemed to incite the conflict that ensued.

Nevertheless, the proximity of the "Mandela incident" to the Haitian beatings "helped cement an alliance based on color . . . Haitians felt that Cuban support for the merchant who had allegedly attacked his customer was akin to Cuban rejection of Mandela." Black Americans agreed and joined Haitian efforts to fight deportations from the INS Krome Detention Center. For black leaders, the fact that Cubans rescued in the Florida straits were brought to Miami, while Haitians in the same situation were returned to Haiti "was the clearest evidence of racism. Reactive ethnicity promoted by outside discrimination . . . brought the two groups together, temporarily reducing the salience of culture to highlight their common color."⁷⁴

On the other hand, some leaders within the Haitian and Cuban communities are careful to point out that the disparate U.S. policies toward the two communities do not result in tensions

⁷² See Laura Parker, "Haitian Tensions Surface," *Washington Post*, July 7, 1990, p. A4.

⁷³ Charles Strouse and David Hancock, "1,000 Haitians Trap Store-Owner," *Miami Herald*, July 1, 1990, pp. 1B, 2B; Kimberly Crockett, David Hancock, and Carlos Harrison, "Police Crush Haitian Protest," *Miami Herald*, July 6, 1990, pp. 1A, 2A.

⁷⁴ Portes and Stepick, *City On the Edge*, p. 189. The authors note that these cultural differences are strong and did not remain completely submerged. Though supportive of "brothers" in color, each group is profoundly ambivalent about the other. Many black Americans regard Haitians in Miami as a competitive threat in the labor market and the business world, and do not generally appreciate the immigrant drive to get ahead at any cost. Haitians, on the other hand, do not wish to be fully identified with what they see as the poorest and most downtrodden group in the host society. Black Americans also view Haitians as newcomers who must learn about American society and adapt to its culture, while Haitians sometimes resist heavy-handed acculturation efforts and seek to hold on to much of their heritage. *Ibid.*, p. 190.

⁶⁷ U.S. Committee for Refugees, "Updates," *Refugee Reports*, Dec. 31, 1994, p. 1.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, pp. 1-2.

⁷⁰ *Haitian Refugee Center v. Christopher*, No. 95-22-CV-KMM (S.D. Fla. 1995).

⁷¹ 43 F.3d 1431, 1433 (11th Cir. 1995), *cert. denied*, 115 S.Ct. 2578 (1995).

between the two communities.⁷⁵ Omar Lopez Montenegro, of the Cuban American National Foundation, testified that:

when you talk about the differences between the treatment to Haitians and Cubans, we [Cuban Americans] also believe that they got to have the same treatment, the Cubans and the Haitians. If there are some—if there is going to be some benefits, you have benefits for the Cubans and Haitians. That's what we believe.⁷⁶

In fact, the Cuban American community volunteered to finance flights into the U.S. from Guantanamo for the unaccompanied Haitian minors in 1995.⁷⁷ Moreover, in a 1991 *Miami Herald* article, attorney Cheryl Little, then with the Haitian Refugee Center, noted that her office had been barraged with phone calls from Cubans wishing to help the Haitians or to express their sympathies toward them.⁷⁸

Current Policies Toward Cubans and Haitians

In early May 1995, the Clinton administration reversed the policy on Cuban asylum seekers. Attorney General Janet Reno announced that "effective immediately, Cuban migrants intercepted at sea attempting to enter the United States, or who enter Guantanamo illegally, will be taken to Cuba, where U.S. consular officers will assist those who wish to apply to come to the United States through already established mechanisms. Cubans must know that the only way to come to the United States is by applying in Cuba."⁷⁹ Cubans are effectively being treated as Haitians have been consistently treated.⁸⁰

The Clinton administration's change in policy on Cuban asylum seekers was accompanied by protests from Cuban exiles in Miami that spawned hostility among others in the Miami

community. Members of the non-Cuban Miami community felt that the Cuban protesters were given preferential treatment that had not been afforded black demonstrators in similar circumstances. A poll for the *Miami Herald* revealed that 63 percent of non-Cuban Hispanics, 65 percent of non-Hispanic whites, and 75 percent of blacks believed that Miami-area police treat Cuban American protestors better than they would treat African Americans staging similar demonstrations.⁸¹

According to Haitian advocates, disparities in treatment between the Cubans and the Haitians continued despite the change in the Cuban policy.⁸² The May 1995 announcement regarding Cuban rafters stated that the Cubans in Guantanamo would be admitted to the United States as "special Guantanamo entrants" and that "sponsorship and resettlement assistance will be obtained prior to arrival."⁸³ In contrast, the Haitians remaining in Guantanamo in December 1994 were told that they must repatriate. The Rev. Dr. Joan Brown Campbell wrote, "[o]n many occasions in recent years we have decried the differential treatment of Haitians and Cubans by the US Government. Today, the differences in treatments are so blatant that we must protest in the strongest possible manner. While the government has announced that some Cubans will be paroled into the United States on a case-by-case basis for humanitarian reasons, the government is seeking to return Haitians to Haiti without adequate safeguards for their safety."⁸⁴ The government's position with respect to the disparate policies was that Haitians could return home to a democracy, an option the Cubans did not have.⁸⁵ There is a belief in the Haitian community, however, that the government

⁷⁵ See, e.g., Guy Victor, Haitian Refugee Center, telephone interview, Aug. 8, 1995.

⁷⁶ Montenegro Testimony, *Miami Hearing*, vol. IV, p. 666.

⁷⁷ Florida Rural Legal Services, "Not in Their Best Interest," May 1995, p. 19.

⁷⁸ Lisette Alvarez, "Advocates Seek Even Break for Haitian Refugees in U.S.," *Miami Herald*, Aug. 5, 1991, p. 1-A.

⁷⁹ U.S. Committee for Refugees, "Clinton Policy Reversal on Cuban Refugees," *Refugee Reports*, May 31, 1995, p. 6.

⁸⁰ The *Atlanta Constitution* reported that Haitians and African Americans felt a sense of justice in that Cuban rafters will now be treated the same as Haitians fleeing their homeland. Mike Williams, "Refugees at Our Doorstep: A Growing Problem," *The Atlanta Journal and Constitution*, Aug. 21, 1994, p. A-10.

⁸¹ Deborah Sharp, "In Miami, Backlash over Cuban Protest," *USA Today*, May 16, 1995, p. 3-A.

⁸² Little Interview.

⁸³ U.S. Committee for Refugees, "Clinton Policy Reversal on Cuban Refugees," *Refugee Reports*, May 31, 1995, pp. 6-7.

⁸⁴ "US Government Begins Forced Repatriation of Haitians from Guantanamo," *Monday*, vol. 14 (Jan. 16, 1995), p. 1. Kathleen Newland writes that "[t]he Haitian experience with the Guantanamo base ended on an unnecessarily sour note because of the U.S. government's unwillingness to allow internationally approved refugee determination to precede the involuntary repatriation of the last few thousand Haitians." Kathleen Newland, *U.S. Refugee Policy: Dilemmas and Directions* (1995), p. 29.

⁸⁵ Mireya Navarro, "Many Haitian Children View Camps' Limbo as Permanent," *New York Times*, May 1, 1995, p. A-15.

wanted to "get rid of the Haitians" at Guantanamo before paroling the 21,000 Cubans there into the United States.⁸⁶

Earlier, in October 1994, the administration announced that certain categories of Cubans at Guantanamo would be paroled directly into the United States.⁸⁷ In contrast, the previous policy was that all refugees in the camps would first have to return to Cuba. Among the categories of Cubans who could be paroled were chronically ill persons, their care givers, unaccompanied young children, and migrants over 70 years of age. Parole was not offered to Haitians in similar categories.

In addition, in December 1994, the government announced that *accompanied* Cuban minors "for whom long term presence in the safe havens at Guantanamo or Panama would constitute an extraordinary hardship" would be paroled into the United States with their family members on a case-by-case basis.⁸⁸ The accompanied Cuban minors numbered approximately 3,000 children with 5,000 family members.⁸⁹ Cheryl Little testified that the repatriation of the Haitian unaccompanied children in light of the Cuban children's parole into the United States was "part of the U.S. Government's double standard."⁹⁰ A district court order directing that the unaccompanied Haitian children be paroled into the United States on the same basis as the unaccompanied Cuban children was dissolved by the Eleventh Circuit.⁹¹ The Eleventh Circuit rejected the plaintiffs' constitutional argument and held that aliens outside the United States have no rights under the U.S. Constitution.⁹²

⁸⁶ Wenski Interview.

⁸⁷ "Humanitarian Steps to Aid Cuban Refugees," U.S. Department of State, Department of State Dispatch, Oct. 31, 1994.

⁸⁸ U.S. Department of Justice, press release, "Department of Justice to Review Cuban Childrens Cases Individually," Dec. 2, 1994.

⁸⁹ Little Interview.

⁹⁰ Cheryl Little, attorney, Florida Rural Legal Services, testimony, *Miami Hearing*, vol. IV, p. 646 (hereafter cited as *Little Testimony*).

⁹¹ *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412 (11th Cir. 1995).

⁹² *Id.* at 1428-29. The court also held that the children had no claim to be paroled into the U.S. under the Immigration and Nationality Act because there are no limitations on the power of the Federal Government to determine what classes of aliens will be permitted to enter the United States or what procedures will be used to determine their admissibil-

The United States' refusal to take in the 356 unaccompanied Haitian minors at Guantanamo generated considerable anger and resentment in the Haitian community in Miami. In fact, the entire Miami community rallied behind the Haitian children.⁹³ For example, Cuban and black activists in Miami promised to assist financially with the transportation, education, and medical costs of Haitian children paroled into the United States for humanitarian reasons.⁹⁴ Of the 356 children, Florida Rural Legal Services had identified U.S. relatives for over 200 and found willing U.S. sponsors for those without relatives in the U.S.⁹⁵

In January 1995, the UNHCR began to arrange for the repatriation of the unaccompanied minors to Haiti. Statements obtained by Florida Rural Legal Services from some of the children indicate that they were told by staff of UNHCR that a family member had been found to care for them even as they had maintained that no such family member existed or was able to care for them.⁹⁶ When factfinding teams went to Haiti after the repatriation of the unaccompanied minors, they discovered some repatriated children who were left abandoned and homeless. In the Final Mission Report of the UNHCR, child specialist Michael Troje wrote that "many minors were linked to caregivers where the durability of the caregiving relationship could be seriously questioned . . . many minors were returned to Haiti with designated caregivers who abandoned

ity so long as the Attorney General asserts a facially legitimate and bona fide reason. *Id.* at 1427-28.

⁹³ See, e.g., School Board of Dade County Res. 95-15 (May 24, 1995); Octavio Visledo, Superintendent of Schools, Dade County, letter to Attorney General Janet Reno, May 15, 1995.

⁹⁴ "Haitian Advocates Work to Parole Unaccompanied Haitian Children," Associated Press, AP Worldstream, Feb. 28, 1995.

⁹⁵ Florida Rural Legal Services, "Not in Their Best Interest," May 1995, p.19 (hereafter cited as "Not In Their Best Interest").

⁹⁶ See, e.g., "Not in Their Best Interest," pp. 1-2, 39. The UNHCR representative on Guantanamo wrote "[i]n regard to the remaining seventy-five percent [of unaccompanied minors], these children have stated that there (sic) parents are dead, there (sic) is serious abuse in the house, their family had gone into hiding because of political problems or their (sic) are other serious problems standing in the way of their return It is anticipated that the majority of this group of minors have safe and adequate homes to return to." Michael Troje, UNHCR Consultant on Haitian Unaccompanied Minors in GTMO, memorandum to Rene van Rooyen, Washington Representative, UNHCR, Jan. 23, 1995, p. 1.

this role once the minor arrived in Haiti Many minors returned from GTMO were discovered by various groups to be wandering the streets of Port au Prince without the protection of home and family."⁹⁷ Cheryl Little, of Florida Rural Legal Services, testified, "[a]lthough the U.S. Government claims it acted in the children's best interests, it displayed no interest in the fact that the closest living relatives of many of the children reside in the United States until June of 1995—after most of the children had been forcibly repatriated."⁹⁸ On its part, the government pointed to statistics that show most of the 204 children returned to Haiti were returned to parents, relatives or former caregivers.⁹⁹

Moreover, beyond concerns with the broader governmental policies as applied to the Haitians and Cubans at Guantanamo, there was concern with the treatment accorded the Haitians and Cubans while at Guantanamo. Micheline Ducena testified that she spoke to two of the board members from her organization who had visited Guantanamo "and apparently the attitude was completely different. The way that the Haitians were treated and the Cubans were treated over there were completely different."¹⁰⁰

Cheryl Little testified that "when they were talking about allowing relatives from the United States to visit those detained at Guantanamo, we were told that that applies exclusively to Cubans and not to the Haitians who were there."¹⁰¹ Ms. Little also noted that her organization was unable to receive the list of Haitians who were at Guantanamo so that family members would be able to find out about their relatives while the list of Cubans at Guantanamo was released to the Cuban community.¹⁰² The Community Relations Service of the Department of Justice averred as late as November 1994 that the Hai-

tian names were not released in order to protect family members in Haiti from retaliatory actions.¹⁰³ Yet, in December 1994, the United States told the Haitians remaining at Guantanamo that they must repatriate.¹⁰⁴

There were also complaints regarding treatment of the unaccompanied Haitian minors at Guantanamo. According to a statement of Cheryl Little following a visit to Guantanamo in January 1995, the children complained that they were routinely subject to physical and verbal abuse. Finally, there were reports of disparities between school facilities and supplies between the Haitian and Cuban children.¹⁰⁵

Complaints about Haitians' treatment have continued even upon their arrival on U.S. shores. In 1990, for example, the court in *Molairé v. Smith* stated: "INS has routinely engaged in underhanded tactics in dealing with Haitians seeking asylum in this country, and has singled them out for special discriminatory treatment. Repeatedly, this Court and other federal courts have found that INS has engaged in illegal practices and policies with respect to Haitians."¹⁰⁶ The government's response to charges of discrimination between the Haitians' detention and the Cubans' release from Krome has been rooted in the law. Dan Cadman testified:

If you are talking about treatment as a human being, we have an absolute obligation to treat a human being as a human being.

If you are talking about disposition of their case, I think it is a fair distinction to say case dispositions do, in fact, differ according to law. If there is a concern about the basis of that statute, it is not properly directed to administrators and executors, to "technocrats."

It should be addressed to the legislature.¹⁰⁷

⁹⁷ Michael Troje, "Final Mission Report of Child Specialist, GTMO," United Nations High Commissioner for Refugees, June 22, 1995, p.2. See also "Haitian Unaccompanied Minors Released; Advocates Remain Concerned for those Forcibly Repatriated," *Monday*, vol. 14 (July 17, 1995), p. 1.

⁹⁸ Little Testimony, *Miami Hearing*, vol. IV, p. 644.

⁹⁹ "U.S. Policy Leaves Many Haitian Kids in Poverty, Homeless; The Last Young Refugees Arrived in Haiti Recently, Greeted By Their Families and Growing Poverty," *The Orlando Sentinel*, July 2, 1995, p. A14.

¹⁰⁰ Micheline Ducena, President, Haitian Organization for Women, testimony, *Miami Hearing*, vol. V, p. 652 (hereafter cited as Ducena Testimony).

¹⁰¹ Little Testimony, *Miami Hearing*, vol. V, p. 678.

¹⁰² *Ibid.*

¹⁰³ Declaration of Kenneth Leutbecker, Associate Director for the Office of Immigration and Refugee Affairs, Community Relations Service, U.S. Department of Justice, Nov. 4, 1994, pp. 3-4. The decision to not release the names of Haitian migrants was made in August 1994 after interagency consultation. Dorris Meissner, Commissioner, Immigration and Naturalization Service, letter to Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights, May 8, 1997.

¹⁰⁴ See text accompanying notes 67-69.

¹⁰⁵ Jodi Mailander, "Guantanamo Refugees Lean on Make-shift Teaching," *The Houston Chronicle*, Dec. 18, 1994, p. 24-A; Patricia Zengerle, "Attorneys see U.S. Admission for Haitians at Camp," Reuters North American Wire, Dec. 12, 1994.

¹⁰⁶ *Molairé v. Smith*, 743 F. Supp. 839, 850 (S.D. Fla. 1990).

¹⁰⁷ Cadman Testimony, *Miami Hearing*, vol. V, p. 730.

In addition to complaints regarding the detention policy itself, there have been past allegations of mistreatment and abuse of Haitian detainees while at Krome that have spawned considerable resentment and anger within the Haitian community in Miami about conditions at Krome. In the past, for example, observers noted that the administrative staff appeared to treat the detainees with disrespect and dismissiveness.¹⁰⁸ There seem to be fewer such complaints recently. A November 1991 report by the Human Rights Watch noted that its team had been able to speak freely and out of the earshot of officials with several dozen detainees, none of whom reported that they themselves had been physically abused.¹⁰⁹

Haitian detainees at Krome have also been subject to transfer from Krome in Miami to, most recently, northern Florida, Texas, and Louisiana. Transfer to such places creates a situation for the detainees where counsel is unavailable to represent them and Creole interpreters are unavailable to assist them. According to Cheryl Little, Haitians transferred from Miami were routinely woken in the middle of the night and put on a bus in shackles and chains for 2 to 3 days. They had no access to telephones or to their attorneys prior to transfers and often ended up in local jails, along with convicted felons.¹¹⁰

Finally, those Haitians who make it to the United States shores, or who were paroled in

from Guantanamo, are not necessarily settled. As a few of the witnesses pointed out, the Haitians are customarily paroled in for a limited period of time (1 year, e.g.) within which time they may apply for political asylum.¹¹¹ On the other hand, Cubans paroled into the United States are automatically entitled to permanent residency 1 year and a day after parole into the United States under the Cuban Adjustment Act. Father Thomas Wenski testified that the asylum hearing:

looms over their [Haitian parolees] head like the Sword of Damocles; and it affects the ultimate successful integration of this community in the larger community. In fact, it puts that integration in danger . . . they don't have any guarantee of asylum, so they are basically left in a limbo world; and that . . . being in limbo is really what paralyzes their integration into American society.¹¹²

To some, the possibility of asylum became more tenuous at the time of President Jean-Bertraude Aristide's return to Haiti. There were complaints among Haitian immigration attorneys in Miami that immigration judges were denying asylum claims presumably based solely on the fact of the President's return. The attorneys charged in a November 10, 1994, letter to the chief immigration judge that immigration judges were deporting Haitians based on a generalized assumption that Haiti is safe. The letter cited at least one case where an immigration judge ordered a Haitian deported before he was given an opportunity for a hearing on his claim.¹¹³

Contrary to the immigration judges' rulings, in a memo dated October 27, 1994, Gregg Beyer, director of the INS Asylum Division, counseled those who investigate asylum claims that the change in Haiti's government does not guarantee safety when Haitians return to Haiti. The memo stated, "[m]ore significant is the continuing, often 'invisible' presence of these perpetrators of past violations who have simply, and probably only temporarily, retreated into the back-

¹⁰⁸ For example, in an interview in *USA Today*, Krome's former deputy administrator Mike Rozos stated with respect to the detainees, "This is not the creme de la creme . . . You have got scumbuckets here." Jeanne DeQuine, "Critics call for closure of immigration center," *USA Today*, June 14, 1991, p. 6A. It should be noted that the Inspector General of the U.S. Department of Justice determined that some high-ranking INS officials deceived a congressional delegation in June 1995 when it made a factfinding visit to Krome. In particular, a large number of aliens detained at Krome were moved to other facilities or were released into the community without the proper criminal and medical checks. The intent was to create the impression that Krome was not seriously overcrowded. *Hearings on Allegations of Deception of Congressional Task Force before the Subcomm. on Immigration and Claims of the House Comm. on Judiciary*, 104th Cong., 2d Sess. (1996) (statement of Michael R. Brownwich, Inspector General, U.S. Department of Justice).

¹⁰⁹ One male detainee, however, told of an incident in early 1991 in which a guard struck a detainee who had fainted, claiming that the detainee was feigning illness to in order to leave Krome. "Prison Conditions in the United States," A Human Rights Watch Report, November 1991, p. 92.

¹¹⁰ United States Haitian Policy, p. 278 n. 36-37.

¹¹¹ Father Thomas Wenski, Haitian Catholic Center, testimony, *Miami Hearing*, vol. IV, p. 745 (hereafter cited as Wenski Testimony); Little Testimony, *Miami Hearing*, vol. IV, p. 680; Cadman Testimony, *Miami Hearing*, vol. IV, pp. 682-83.

¹¹² Wenski Testimony, *Miami Hearing*, vol. V, p. 746.

¹¹³ Paula Park, "Judges Accused of Dumping Haitian Asylum Cases," *Legal Times*, Nov. 28, 1994, p. 2.

ground."¹¹⁴ The U.S. Ambassador to Haiti, William L. Swing, challenged the Beyer memo, however. He wrote on April 24, 1995, "[h]ad we been consulted, we would have agreed that September-October 1994 was a transitional period . . . By the time the [Beyer] memo was issued [on October 27], it was evident that there was almost no political violence directed toward Aristide's supporters."¹¹⁵ Staff interviews with those involved with Haitian asylum claims indicated that, as of summer 1995, immigration judges were no longer routinely denying political asylum based on President Aristide's return.¹¹⁶

Nicaraguan Community in Miami

Although national attention often focuses on policies with respect to Cubans and Haitians in Miami, there is a significant Central American community in Dade County that is impacted by U.S. asylum policies. In particular, the Nicaraguan community is currently in the midst of a change in their immigrant status that may be the source of much tension in Miami.¹¹⁷ In 1987, then-Attorney General Edwin Meese established a Nicaraguan Review Program, requiring Attorney General review of all denied Nicaraguan asylum claimants. Through the end of 1994, the relatively few Nicaraguans who were deported were persons who had committed serious crimes in the United States.¹¹⁸ As of the end of fiscal year 1994, there were about 34,000 Nicaraguans with cases still pending in deportation or exclusion proceedings, about 11,000 with final orders of deportation that had not been executed, and

more than 24,000 asylum cases pending.¹¹⁹ In January 1995, Florida congressional representatives introduced a bill to provide for the adjustment of status to lawful permanent resident of Nicaraguans who arrived in the United States before January 20, 1993.¹²⁰

The Nicaraguan Review Program remained in effect until June 1995 when the Immigration and Naturalization Service announced that Nicaraguans would be treated the same as nationals from other countries claiming asylum.¹²¹ Nicaraguans could apply for suspension of deportation if they have been in the United States for 7 years, were of good moral character, and would suffer severe hardship if returned.¹²² Since June 1995, there has been one published case regarding a Nicaraguan's suspension of deportation before the Board of Immigration Appeals. In the case, the board granted suspension of deportation where the 24-year-old Nicaraguan had lived in the United States since the age of 13, spoke English fluently, was fully assimilated into American life and culture, and, if deported, would return to a country where economic and political conditions were difficult.¹²³

Before the abolishment of the Nicaraguan Review Program, Nicaraguans were routinely granted work permit renewals prior to their review of deportation by the Attorney General. Pursuant to the new policy, Nicaraguans were

¹¹⁴ Gregg A. Beyer, memorandum to Asylum Office Directors regarding Adjudication of Haitian Asylum Applications Following President Aristide's Return to Haiti, Oct. 27, 1994, p. 2.

¹¹⁵ U.S. Committee for Refugees, "State, INS, UNHCR Weigh in on Changed Country Conditions in Haiti," *Refugee Reports*, Apr. 29, 1995, p. 2.

¹¹⁶ Little Interview; Wenaki Interview. Individual claims for asylum are decided administratively; individual asylum decisions are not routinely published.

¹¹⁷ Census figures indicate that 169,000 Nicaraguans are in the United States. U.S. Department of Commerce, *Statistical Abstract of the United States 1995* (1995), p. 52. Unofficial estimates, however, set the figure at 200,000 with 70 percent living in southern Florida. Esteban Cespedes, "Population: Nicaraguans Face Deportation from U.S.," *Inter Press Service*, Oct. 16, 1995.

¹¹⁸ Bill Frelick, Senior Policy Analyst, U.S. Committee for Refugees, "U.S. Refugee Policy in the Caribbean: No Bridge Over Troubled Waters," Prepared for delivery at the 1995 Meeting of the Latin American Studies Association XIX Congress, Sept. 30, 1995.

¹¹⁹ Cespedes, "Population: Nicaraguans Face Deportation from U.S."

¹²⁰ H.R. 712, 104th Cong., 1st Sess. (1995). The bill was referred to the House Judiciary Committee and no further action has been taken on it.

¹²¹ 60 Fed. Reg. 31,167 (1995). The Nicaraguan Review Program was originally established in response to the war between the Contras and the Sandinistas, during which time many Nicaraguans fled to the United States. See Nicole Winfield, "Nicaraguans Protest Change to Special Status," *The Ledger* (Lakeview, FL), Oct. 14, 1995, p. 4B. The change in the Nicaraguan Review Program resulted from an INS review of country conditions in Nicaragua and a determination that "the political situation in Nicaragua and the United States government's asylum adjudications procedures had improved to such an extent that it was no longer necessary to have a special review of every final order of deportation involving a Nicaraguan national." 60 Fed. Reg. 31,167 (1995). In particular, the Clinton administration cited the end of the war in Nicaragua and the election of a democratic government as reason to terminate the program. Winfield, "Nicaraguans Protest Change to Special Status."

¹²² 60 Fed. Reg. 31,167 (1995).

¹²³ In re O— J— O—, U.S. Department of Justice, Board of Immigration Appeals, June 14, 1996, available in BIA LEXIS, File No. A23 726 233, Interim Decision No. 3280.

not eligible for renewed work permits unless they applied for suspension of deportation before July 1996.¹²⁴ According to Walter D. Cadman, former INS District Director in Miami, very few Nicaraguans had come forward to apply for suspension of deportation at the time of the hearing.¹²⁵ There is a fear that many Nicaraguans will be without work authorization. It is estimated that nearly 50,000 Nicaraguans have lost their work permits.¹²⁶ According to advocates for the Nicaraguan community, this has been the cause of tremendous tension and could prove to become even worse in the upcoming months.¹²⁷ In his testimony, Mr. Cadman noted that the tensions may be exacerbated after the grace period when there is no avenue available to those individuals who have not applied for suspension of deportation and that there is a potential for unrest within the Miami community.¹²⁸

Mr. Cadman spoke of frustration that the Nicaraguan community is not coming forward to apply for the suspension of deportation. He stated:

One notable comment was that people don't trust INS; . . . prior to the decision to discontinue the review process at the Justice Department, my office had been routinely granting work authorization to those individuals, since I came here . . . So, there had been, I had thought, a basis of trust. I can't change policy from headquarters or DOJ level . . . but I certainly thought that people would understand that, within the context of policy, we would work with that community; and the other response is that if they don't

trust us and make the application now, what happens in a year from now when it's not available?¹²⁹

In June 1996, the Immigration and Naturalization Service announced that it would extend by 1 year the time for granting transitional work authorization to Nicaraguans.¹³⁰ Thus, those Nicaraguans who had not yet applied for a suspension of deportation could obtain work permits if they applied for suspension of deportation before June 12, 1997.¹³¹

Monitoring and Mediating Racial and Ethnic Tension: The Community Relations Service

The Community Relations Service (CRS) fulfills dual responsibilities: it provides conflict prevention and resolution services within communities to alleviate racial and ethnic tension, and it provides resettlement for Cuban and Haitian entrants. As noted in the introduction, the Miami field office of the CRS plays an important role in the prevention and resolution of racial and ethnic tension in Miami, including that arising from immigration and refugee policies. CRS has also "served as a liaison between the Cuban and Haitian communities and DOJ to assist in the resolution of tension-causing problems, communicate information to and from the community, and diffuse rumors."¹³² Attorney General Janet Reno has said that "there is a natural linkage between CRS' efforts to resolve racial conflicts and its responsibility to resettle significant numbers of Cubans and Haitians within communities."¹³³

In Miami, CRS operates a "hotline" service to answer the questions and concerns of Miami's large immigrant community. This service helps CRS gauge the level of concern regarding a particular issue in the community and assists the agency in early identification of a developing issue involving racial and ethnic tension. It also affords the agency one means of rumor control.¹³⁴ In fiscal year 1995, the hotline fielded

¹²⁴ 60 Fed. Reg. 31,167 (1995).

¹²⁵ Cadman Interview.

¹²⁶ Frank Chavez, *Immigración Latina* Foundation, telephone interview, Aug. 11, 1995 (hereafter cited as Chavez Interview).

¹²⁷ *Ibid.*

¹²⁸ Cadman Testimony, *Miami Hearing*, vol. V, p. 736. In a report prepared by D.C. Latino Civil Rights Task Force regarding the 1991 civil disturbances in the Mount Pleasant neighborhood of the District of Columbia, the task force found that the disturbances were in part an expression of the frustration of the Salvadoran community whose members felt themselves without power to control their lives, largely because of their tenuous immigration status. D.C. Latino Civil Rights Task Force, "The Human Impact of Immigration and Refugee Law on the District of Columbia's Latino Population," report prepared for presentation to the U.S. Commission on Civil Rights, Jan. 29, 1992, p. 64. The Salvadorans were granted temporary protected status, which provided work authorization and the threat of deportation suspended for a limited period of time. Like the Nicaraguan community, their immigration status was neither permanent nor ultimately certain.

¹²⁹ Cadman Testimony, *Miami Hearing*, vol. V, pp. 734-35.

¹³⁰ 61 Fed. Reg. 28,596 (1996).

¹³¹ *Ibid.*

¹³² U.S. Department of Justice, Community Relations Service, *Management Overview* (undated), p. 6 (hereafter cited as *CRS Overview*).

¹³³ U.S. Department of Justice, Community Relations Service, *Community Relations Service Annual Report For Fiscal Year 1994* (1995), p. 1 (hereafter cited as *CRS Annual Report FY 1994*).

¹³⁴ Laroche Interview.

over 27,000 calls with respect to Cuban refugee policies and nearly 800 calls with respect to issues of concern to the Nicaraguan community.¹³⁵

Again, as noted earlier, CRS responded to heightened "Black and Hispanic community tension generated by the Cuban and Haitian migrant influx . . . CRS was onsite for demonstrations at the INS District Office in Miami's Little Haiti, and at marches and demonstrations at various public sites to provide conflict prevention and conciliation services."¹³⁶ CRS also worked to ensure that the May 1994 protests of the Miami Cuban community following the change in policy toward Cuban rafters were peaceful.

Finally, the agency also provides conflict prevention and conciliation services at the INS Krome Processing Center and at the Guantanamo Naval Base in Cuba.¹³⁷ The agency has been involved with defusing tensions associated with the differential treatment accorded Haitian and Cuban refugees as a result of the Cuban Adjustment Act of 1966. In 1993, "as a result of meetings between the INS and representatives of the NAACP facilitated by CRS, Haitians detained at the INS Krome Processing Center ended a hunger strike when INS discussed and resolved issues between them and agreed to sensitivity training for Border Patrol agents."¹³⁸

Section II: Refugee Resettlement Assistance

Overview of the Goals of Federal Policy Towards Refugee Resettlement

*"If we force them into menial jobs without giving them a proper opportunity to learn English and train for other positions, we put them in a situation they can't cope with. If they break down and end up applying for disability, that's much more expensive in the long run than providing better assistance when they arrive."*¹³⁹

Refugees tend to be highly skilled and motivated individuals who are likely to do quite well in the United States but who need transitional assistance in adjusting to a new country.¹⁴⁰ The first influx of Cuban refugees after Fidel Castro assumed power in Cuba in 1959 offers an example. By late 1960, many of the Cuban refugees, numbering more than 30,000 in Miami, were reportedly in "desperate economic straits."¹⁴¹ Max Castro testified at the hearing that:

The much-touted success of 1960s Cuban exiles was not accomplished solely by dint of previous education, hard work, and initiative. The road was paved by a government program—a comprehensive and generous Federal program that included educational loans—and I'm a beneficiary of one-income support, nutrition, medical care, and relocation assistance. So that the Cuban success story cannot be told as a *laissez faire* tale counseling benign neglect. And the investment made on Cuban refugees has paid off handsomely for this community.¹⁴²

Today, Cuban Americans represent the strongest ethnic group in economic terms among the Hispanic population in the United States.¹⁴³

For policy reasons, refugees have been treated separately from other immigrants in terms of benefits that are available to them. They may be considered to have strong claims to

¹³⁵ Statistics for hotline operations, prepared by Community Relations Service Miami office.

¹³⁶ *CRS Overview*, pp. 5-6.

¹³⁷ Battle Interview. CRS was criticized by some, however, for its role at Guantanamo. For example, one military doctor noted that CRS did not employ quality workers in the children's camp. She noted that CRS chose people for their Creole language abilities, many of whom weren't interested in the children. She contrasted these employees with those working with Cubans, who tended to be much more qualified for the job. Telephone conversation between Cheryl Little and Dr. [name redacted], Sept. 26, 1995. According to INS Commissioner Doris Meissner, CRS' Creole-speaking staff were well-qualified to provide services. The CRS staff included Creole-speaking former Peace Corps volunteers, Creole-speaking professional conciliators, Haitian Americans who worked for CRS during the 1991-1993 Haitian migrant operation, Creole-speaking teachers, and other individuals recruited from nongovernmental organizations. See Doris Meissner, letter to Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights, May 8, 1997.

¹³⁸ *CRS Overview*, p. 32.

¹³⁹ U.S. Committee for Refugees, "ORR, California, Announce New Resettlement Reform Initiative," *Refugee Reports*, Oct. 27, 1994, p. 7 (quoting Sang Q. Do, chairman of the Unified Vietnamese Community Council).

¹⁴⁰ David W. Haines, "Refugees and the Refugee Program," in David W. Haines, ed., *Refugees in the United States: A Reference Handbook* (1985), p. 12.

¹⁴¹ *Florida Fact Book*, p. 4.

¹⁴² Castro Testimony, *Miami Hearing*, vol. III, p. 448.

¹⁴³ Marlene Sokol, "Refugees At Our Doorstep: Steady Influx of Cubans Is a Touchy Issue in Florida," *Atlanta Journal and Constitution*, Aug. 17, 1994, p. 6.

public benefits because they are fleeing persecution, often suffer physical or psychological impairments, and often do not have family or job connections.¹⁴⁴ Therefore, Congress has determined that refugees should be eligible for public assistance from the time of their entry.¹⁴⁵ The assistance involves Federal Government reimbursement of what would normally be State and local government costs.

With the Refugee Act of 1980,¹⁴⁶ policy issues with respect to resettlement, the administration of Federal refugee programs, and the availability and duration of Federal refugee resettlement assistance were incorporated into the act.¹⁴⁷ Among other things, the act established an Office of Refugee Resettlement (ORR) in the Department of Health and Human Services.¹⁴⁸ The act also mandated State and local consultations, the designation by each State of a coordinator of refugee affairs, and the drawing up of State plans for refugee resettlement services.

The Refugee Act and its amendments stress labor participation and economic self-sufficiency by refugees as soon as possible after their arrival into the United States.¹⁴⁹ Economic self-sufficiency involves striking a balance among the various factors affecting resettlement, including employment potential of the refugees, together with their skills, education, English-language competence, health, and desire for work; their need for financial resources, whether food, housing, or child care; and, the economic envi-

ronment in which they settle, including the availability of jobs and housing.¹⁵⁰

Prior to passage of the Welfare Reform Act by Congress in 1996, Cuban and Haitian entrants were eligible for aid to families with dependent children (AFDC), supplemental security income, and medicaid. Those Cuban and Haitian entrants who were in the U.S. prior to passage of the act on August 22, 1996, will continue to be eligible for temporary assistance for needy families (TANF, the successor to AFDC), food stamps, and medicaid. Cuban and Haitian entrants entering after August 22, 1996, will not be eligible for these benefits. They will continue to be eligible, however, for ORR-funded assistance under the Refugee Education Assistance Act of 1980.¹⁵¹

The government's assistance to incoming migrants, however, may cause interethnic minority conflict. In the wake of the civil unrest in Overtown and Liberty City in 1989, one middle-aged black man expressed his discontent about the newly arriving Nicaraguans in Miami: "Watch what happens. They're going to give them an income, they're going to give them food stamps and a place to stay. We've been here all our lives and we can't get anything. That's the problem. That's what it's [the civil unrest] all about."¹⁵² Similarly, in a letter to the editor of the *Tampa Tribune*, one writer responded to a story about a refugee who expected to lose her SSI and her food stamps. He wrote, "[i]t's hard to feel sorry for refugees who never contributed to the system when they get cut off from federal aid, when your own natural-born American relatives who did contribute receive fewer federal benefits than refugees."¹⁵³ For their part, immigrants in Florida have expressed concern over the antici-

¹⁴⁴ *Hearings Before the Senate Judiciary Committee on S. 269 Immigration Control and Financial Responsibility Act of 1995*, 104th Cong., 1st Sess. (1995) (statement of Michael Fix and Wendy Zimmermann, The Urban Institute)

¹⁴⁵ See, e.g., §§ 402 and 403, Pub. L. No. 104-193, 110 Stat. 2106 (codified at 8 U.S.C. §§ 1612-1613).

¹⁴⁶ 8 U.S.C. § 1101 *et seq.*

¹⁴⁷ Zucker and Zucker, *The Guarded Gate*, p. 109.

¹⁴⁸ 8 U.S.C. § 1521.

¹⁴⁹ U.S. Department of Health and Human Services, Office of Refugee Resettlement, *Report to the Congress, FY 1994*, 54 (hereafter cited as 1994 ORR Report). Those fleeing by rafts and boats from Cuba and Haiti directly to the United States are not legally recognized as "refugees," since the U.S. is their first country of asylum, eliminating the screening and processing requirements accompanied with refugee status. In June 1980, the Federal Government chose to identify them as "entrants" (status pending). Title V of the Refugee Assistance Extension Act of 1980 required that Cuban and Haitian entrants be entitled to the same services as other refugees under the Refugee Act of 1980. 8 U.S.C. § 1523 note. For the purposes of this report, reference to refugee resettlement assistance will include assistance to Cuban and Haitian entrants, unless otherwise noted.

¹⁵⁰ 1994 ORR Report, p. 54.

¹⁵¹ See text accompanying note 193.

¹⁵² James H. Johnson, Jr., and Melvin L. Oliver, "Interethnic Minority Conflict in Urban America: The Effects of Economic and Social Dislocations," *Urban Geography*, vol 10 (1989), pp. 456-57, (citing Richard Estrada, "Miami and the Fire Next Time," *The Dallas Morning Herald*, Jan. 20, 1989, p. 1.) Similarly, in an interview with Commission staff, Raul Hernandez pointed out that public benefits awarded to recent arrivals may cause ethnic tension within the black and Hispanic communities in Miami. Raul Hernandez, United States Catholic Conference/Migration and Refugee Services, telephone interview, Aug. 11, 1995 (hereafter cited as Hernandez Interview).

¹⁵³ "Refugee Benefits," *The Tampa Tribune*, Mar. 31, 1997, p. 8.

pated welfare cuts. In a letter to Florida Representative Lincoln Diaz-Balart, Governor Lawton Chiles wrote that "[w]e have been responding to many inquiries from affected constituents, advocacy groups and State legislative officials about the new restrictions in federal law which prohibit most legal immigrants from receiving Supplemental Security Income, Food Stamps, and other federal benefits."¹⁵⁴

Labor Force Participation of Refugees and Use of Public Assistance

Each year, ORR completes a survey of a national sample of refugees relating to education, training, employment, labor force participation of adult members of the refugee household, and the family income of the entire household.¹⁵⁵ The 1994 survey indicated that refugees appear to find employment at a lower rate than the general population, but that they improve their economic circumstances over time.¹⁵⁶ For example, while the employment-to-population ratio (EPR)¹⁵⁷ of 1994 arrivals was only 29 percent, the EPR of refugees who had arrived in 1989 was 45.3 percent.¹⁵⁸

ORR's annual survey illustrates that English-language proficiency is a crucial factor toward economic self-sufficiency. Of those refugees in the 1994 survey who judged themselves to be fluent in English, the EPR was 46 percent.¹⁵⁹ In contrast, the EPR for those who judged that they spoke English "a little" and for those who indicated that they did not speak or understand English at all was 32 percent and 12 percent,

respectively.¹⁶⁰ The survey also confirms that refugees are attending English-language training classes at a high rate during their first year in the United States. Moreover, English-language instruction appears effective. Nearly 50 percent of refugees in the U.S. more than 3 years believed that they spoke English well or fluently as compared to only 28 percent of first-year arrivals.¹⁶¹

Although refugees have high welfare use rates,¹⁶² existing data have demonstrated that the use of assistance declines over time.¹⁶³ Moreover, a comparison of 1994 data and 1993 data indicates that refugee welfare dependency is going down. In 1993, the use of cash assistance was 48.7 percent; in 1994, it was 43 percent.¹⁶⁴ Factors that are related to the use of cash assistance include the following: the household size, the number of wage earners per household, whether there are children in the household, and whether there is at least one fluent English speaker in the household.¹⁶⁵ ORR's 1993 survey confirms that refugees face significant problems upon arrival in the United States, but that over time refugees move toward economic self-sufficiency.¹⁶⁶

In Florida, the rate of public assistance utilization by refugees is debated. Those voluntary agencies who contract with the Community Relations Service to resettle the Cubans from Guantanamo and directly from Havana believe that a high percentage of the recently arriving

¹⁵⁴ Gov. Lawton Chiles, letter to Rep. Lincoln Diaz-Balart, Feb. 11, 1997 (hereafter cited as Chiles Letter). The Governor's Office posits that the change in law could place a significant burden on the delivery of social services in Florida which could impact services for elders, place a strain on public hospitals, increase health care costs, and put more people on the streets. Attachment to Chiles Letter, "Federal Welfare Reform: Effects on Legal Immigrants: Q & A."

¹⁵⁵ 1994 ORR Report, p. 54.

¹⁵⁶ *Ibid.*, p. 55.

¹⁵⁷ The employment-to-population ratio, or EPR, is the ratio of the number of individuals age 16 or over who are employed (full or part time) to the total number of individuals in the population who are age 16 or over.

¹⁵⁸ 1994 ORR Report, p. 55. The 1993 survey showed that the EPR of refugees arriving in 1989 was 39 percent. Thus, the EPR for this group of refugees increased 6.3 percent between the 1993 and 1994 surveys. See U.S. Department of Health and Human Services, Office of Refugee Resettlement, *Report to the Congress, FY 1993*, 55 (hereafter cited as 1993 ORR Report).

¹⁵⁹ 1994 ORR Report, p. 59.

¹⁶⁰ *Ibid.* Michael Fix testified before the Senate Subcommittee on Immigration that one legislative response to aiding immigrants' transition to self-sufficiency would be to focus on the resources dedicated to English-language acquisition by immigrants. He noted that economists have documented that the return on investment for increased language skills is higher than investment in other forms of human capital expenditures.

¹⁶¹ *Ibid.*

¹⁶² *Hearings Before the Senate Judiciary Committee on S. 269 Immigration Control and Financial Responsibility Act of 1995*, 104th Cong., 1st Sess. (1995) (written testimony of Michael Fix and Wendy Zimmerman, The Urban Institute).

¹⁶³ *Ibid.*, p. 12.

¹⁶⁴ *The Use of SSI and Other Welfare Programs by Immigrants: Hearings before Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong., 2d Sess. (1996) (hereafter cited as *Hearings on the Use of SSI*) (statement of Lavinia Limon, Director, Office of Refugee Resettlement, Office of Family Assistance, Administration for Children and Families, U.S. Department of Health and Human Services).

¹⁶⁵ 1993 ORR Report, p. 61.

¹⁶⁶ *Ibid.*, p. 63.

Cubans are not utilizing public assistance.¹⁶⁷ The U.S. Catholic Conference, for example, found that 68 percent of the Guantanamo Cubans it resettled in fiscal year 1995 found employment within 90 days.¹⁶⁸ Church World Service noted that only 20 percent of the Cubans its agency resettles are on public assistance after 3 months in Miami.¹⁶⁹

On the other hand, Gary Crawford from the Florida's Refugee Programs Administration Office cited statistics showing a significant rise in public assistance utilization over the years.¹⁷⁰ In recent years, he noted that 18 percent of refugees arriving in Florida utilized public assistance.¹⁷¹ The number of refugees using public assistance rose in 1994 to 43 percent and in fiscal year 1995, as of June 1995, to 77 percent of all arriving refugees and parolees, most of whom were Cuban.¹⁷²

Current Political Climate for Refugee Resettlement Assistance

The current interest in welfare reform and immigrant use of welfare assistance indicates that a perception exists that immigrants are inclined to welfare dependency.¹⁷³ Indeed, in congressional testimony, Professor Charles Keeley of Georgetown University blamed advocacy groups for welfare dependency. He also blamed Congress, saying the Refugee Act of 1980 "virtually mandated welfare dependency."¹⁷⁴ Either the perception or reality of welfare dependency has significant implications for the domes-

tic refugee resettlement assistance program, especially given that refugees are more likely to use public assistance than the rest of the immigrant population.¹⁷⁵ Susan Martin, the Executive Director of the U.S. Commission on Immigration Reform, testified at a congressional hearing that "[t]he high rate of welfare dependency has long been a concern to all of us who have interest in maintaining a strong U.S. commitment to refugee admissions. Certainly, many refugees become economically self-sufficient and important contributors to our economy and broader society. However, a significant proportion of refugees clearly need significant levels and periods of assistance."¹⁷⁶ She indicated that the Commission on Immigration Reform is undertaking a full examination of the domestic assistance program for resettled refugees.¹⁷⁷

At the Commission's hearing, some witnesses indicated that there was some confusion in the mind of the public as to the difference between a refugee and immigrant. Gary Crawford testified that sometimes the words were used interchangeably by the public, and even sometimes by the press:

They use the term "refugee" for any type of immigration matter; and, therefore, when we are looking at . . . refugees under the definition of section 207, then I think that that's a confusion within the public's eye; and we spend a lot of our time in trying to correct that type of confusion of what a refugee coming in under persecution from their country of origin means, compared to other immigrants or illegals.¹⁷⁸

Although refugees have always been treated separately from immigrants in terms of funding assistance available to them, it is not always clear to the public why refugees are receiving public assistance. Mr. Crawford testified that the reason:

¹⁶⁷ U.S. Committee for Refugees, "Arrival of Cuban Rafters from Guantanamo in Full Swing," *Refugee Reports*, Sept. 29, 1995, p. 9.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² *Ibid.* One observer noted that the disparity between the experience of the resettlement agencies and the State statistics may reflect differing rates of public assistance utilization between those refugees who are being resettled by agencies and those who are not receiving any assistance from the resettlement agencies, the latter possibly turning to public assistance in much greater numbers than the former.

¹⁷³ *But see Hearings on the Use of SSI* (statement of Michael Fix, Director, Immigrant Policy Program, Urban Institute). Fix notes that immigrants who are poor remain substantially less likely to use welfare than natives (16 percent versus 25 percent).

¹⁷⁴ U.S. Committee for Refugees, "U.S. Refugee Resettlement Program Debated at Senate Hearing," *Refugee Reports*, Mar. 31, 1995, p.2.

¹⁷⁵ *Ibid.*, p. 2. The welfare use rate for refugees is 13.1 percent versus 5.8 percent for the rest of the immigrant population.

¹⁷⁶ *Hearings on the Use of SSI* (statement of Susan Martin, Executive Director, U.S. Commission on Immigration Reform).

¹⁷⁷ *Ibid.*

¹⁷⁸ Gary B. Crawford, Senior Management Analyst, Refugee Programs Administration, Florida Department of Health and Rehabilitative Services, Office of the Secretary, testimony, *Miami Hearing*, vol. V, p. 802 (hereafter cited as Crawford Testimony).

we need the definition of "refugees" explained well to let the public understand why there is funding attached to a refugee. I think sometimes there is a confusion there: Well, why are we using dollars for these foreign people coming into the United States? So I think that that's where we need to make a distinction there to make people understand why there is funding attached to the refugee population¹⁷⁹

Mr. Crawford and his fellow panelists all agreed, however, that clearing up the confusion that exists between the meaning of refugees and immigrants will not necessarily defuse the tension in the community that arises from a large influx of refugees.¹⁸⁰

Federal Programs for Refugee Resettlement: Office of Refugee Resettlement, Department of Health and Human Services *Funding and Eligibility*

The overall level of refugee assistance funding has remained roughly equal for some years while the costs have increased.¹⁸¹ The Office of Refugee Resettlement has addressed this problem by limiting program eligibility. For example, prior to April 1981, the Federal Government funded refugee cash assistance with no time limitation. Then, beginning April 1, 1981, refugee cash assistance was limited to the first 36 months. By November 30, 1991, cash assistance to refugees was limited to 8 months and has remained at 8 months ever since due to the level of appropriated funds.¹⁸² Some have posited that such time is too short a timeframe for refugees to become adequately integrated and self-

supporting. Kathleen Newland of the Carnegie Endowment for International Peace argues that:

the speed with which refugees are moved to state welfare rolls creates too much variability among states in levels of assistance and therefore encourages concentration in the most generous states; it is also likely to fuel anti-refugee sentiments in communities experiencing high levels of resettlement. Ideally, the full costs of accepting refugees for permanent settlement in the United States should be absorbed by the federal government, at least until the refugees become eligible for citizenship. The decision to admit refugees is solely a federal responsibility; to pass responsibility to the states at an early stage, before integration can reasonably be expected to have taken place, is akin to an unfunded mandate.¹⁸³

Moreover, regulations were implemented to limit a refugee's use of social services (job training, English-language training, etc.) to within 5 years after arrival in the United States.¹⁸⁴ According to the Office of Refugee Resettlement, the limitation was necessary because an expanding pool of refugees was not matched by increased funding for social services. Studies prepared for the ORR indicated that, while comprehensive social services increase the likelihood of early employment if provided soon after a refugee's arrival, the effect of social services on the achievement of economic self-sufficiency diminishes significantly after the initial years in the United States.¹⁸⁵

Although some States already restricted refugees' receipt of social services to within a certain period after arrival to the United States, Florida allowed refugees access to social services without regard to how long they have been in the United States prior to publication of the 5-year limitation regulation.¹⁸⁶ Governor Chiles of Florida testified before the Senate Subcommittee on Immigration that limiting program eligibility to 5 years will shift additional costs to the State of Florida.¹⁸⁷

¹⁷⁹ Ibid., p. 808.

¹⁸⁰ Ibid., pp. 805-12. On the other hand, Timothy Wirth, Under Secretary for Global Affairs, U.S. Department of State, testified before the Senate that "The American people are rightfully concerned about the magnitude of our illegal immigration problem. The Administration supports reform to attack that problem vigorously. But study after study has shown that the American people overwhelmingly support the continued acceptance and support of bona fide refugees." *Annual Refugee Consultation: Hearings Before Senate Committee on the Judiciary*, 104th Cong., 2d Sess. (1996) (statement of Timothy Wirth, Under Secretary for Global Affairs, U.S. Department of State).

¹⁸¹ For FY 1996, the Office of Refugee Resettlement received approximately \$407 million. See *Annual Refugee Consultation: Hearings Before Senate Committee on the Judiciary*, 104th Cong., 2d Sess. (1996) (statement of Lavinia Limon, Director, Office of Refugee Resettlement).

¹⁸² Lavinia Limon, Director, Office of Refugee Resettlement, letter to Stephanie Y. Moore, General Counsel, U.S. Commission on Civil Rights, May 7, 1997.

¹⁸³ Kathleen Newland, "U.S. Refugee Policy: Dilemmas and Directions" (1995), p. 23.

¹⁸⁴ 45 C.F.R. § 400.152 (1995).

¹⁸⁵ 60 Fed. Reg. 33,584-33,585 (1995).

¹⁸⁶ Ronald A. Munia, Program Specialist, U.S. Department of Health and Human Services, Office of Refugee Resettlement, telephone interview, Aug. 10, 1995 (hereafter cited as Munia Interview).

¹⁸⁷ "[T]here must be sufficient aid to meet the needs of those refugees who are granted entry . . . the Office of Refugee Resettlement intends to cut back program eligibility to five

ORR also administers monies for targeted assistance activities that fund employment and other services for refugees and entrants who reside in local areas of high need. A certain percentage of these funds is awarded by formula to the 20 States eligible, based the number of refugee arrivals in qualifying counties.¹⁸⁸ Furthermore, an additional 10 percent of that appropriated for targeted assistance is awarded competitively.¹⁸⁹ For example, the projected award for the State of Florida for the fiscal year 1995 was \$435,000; \$185,000 of which was allocated for employment services for Haitians and \$250,000 of which was allocated to Christian Community Services of Florida to enhance the employability of the primary wage earner within 6 weeks of arrival.¹⁹⁰

Finally, the Federal Government has established an account earmarked for immigration emergencies. Florida was the first recipient of monies from that \$70 million account. In May 1995, Governor Chiles announced that Florida would receive \$18 million to help defray the costs of caring for Cuban refugees arriving from Guantanamo following the decision to parole them into the United States.¹⁹¹ Of the \$18 million, \$3.75 million was allocated to education and training; \$9 million supplemented the existing network of services to help new arrivals; and \$3.5 million was given to Dade, Broward, and Palm Beach Counties, areas with a high number of refugees.¹⁹²

Eligibility for refugee assistance is available for refugees admitted into the United States and asylees who are granted political asylum subse-

quent to arriving in the United States. In addition, Cuban and Haitian entrants are granted assistance to the same extent as such assistance and services are made available to refugees pursuant to the Cuban/Haitian program under Title V of the Refugee Education Assistance Act of 1980.¹⁹³ Public interest and humanitarian parolees arriving from nations other than Cuba and Haiti are not considered entrants and are not eligible for ORR-funded assistance.¹⁹⁴ Similarly, individual asylee applicants from nations other than Cuba and Haiti are not eligible for ORR-funded assistance unless and until asylum is granted.¹⁹⁵

For the first 5 years after they enter the United States, refugees may be eligible for aid to families with dependent children (AFDC)¹⁹⁶ or temporary assistance for needy families (TANF),¹⁹⁷ supplemental security income (SSI), and medicaid on the same basis as citizens.¹⁹⁸ Cuban and Haitian entrants arriving after the enactment of the Welfare Reform Act in August 1996 are not entitled to AFDC, SSI, medicaid, food stamps, or any other Federal means-tested benefit during their first 5 years in the U.S.¹⁹⁹ This may have significant implications for a State such as Florida with a large influx of Cuban and Haitian entrants. As noted above, however, they continue to be eligible for ORR-funded assistance under the Refugee Education Assistance Act of 1980.

Community Relations Service

As noted earlier in this chapter, the Community Relations Service of the Department of Justice also provides resettlement assistance to Cuban and Haitian entrants. CRS provides humanitarian and resettlement services to Cuban

years This program provides English training, job search, medical and other assistance that helps legal refugees, asylees and entrants succeed in our society. These are the kind of people who have made our nation great. Limiting program eligibility for legal aliens will shift additional costs to our state." *Hearings Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong., 1st Sess. (Mar. 14, 1995) (statement of Gov. Lawton Chiles, State of Florida).

¹⁸⁸ 45 C.F.R. § 400.311 (1995). For FY 1996, the State of Florida received over \$21 million in targeted assistance allocations. 61 Fed. Reg. 36,739 & 36,749 (1996).

¹⁸⁹ 1994 ORR Report, pp. 24-26.

¹⁹⁰ Administration for Children and Families, Office of Refugee Resettlement, U.S. Department of Health and Human Services, "Florida State Profile, Projected Grants, FY 1995."

¹⁹¹ "State Gets Money For Refugees," *Miami Herald*, Aug. 19, 1995, p. 5B.

¹⁹² Edna Negron, "MDCC To Teach Refugees," *Sun Sentinel*, Aug. 20, 1996, p. 3B.

¹⁹³ For the purpose of ORR-funded assistance and services, entrants are Cuban and Haitian nationals who are (i) paroled into the United States, or (ii) subject to exclusion or deportation proceedings under the act, or 1(iii) applicants for asylum. 1994 ORR Report, p. 10.

¹⁹⁴ *Ibid.*, p. 10 n.*.

¹⁹⁵ *Ibid.*

¹⁹⁶ The Federal Government provides approximately 50 percent of AFDC funding in Florida; the remaining cost is borne by the State. 1995 SSA Statistical Supplement, p. 137.

¹⁹⁷ Under the new welfare law, AFDC has been replaced by block grants referred to as TANF. See The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

¹⁹⁸ *Ibid.*, §§ 402, 403.

¹⁹⁹ *Ibid.*

and Haitian entrants through its Office of Immigration and Refugee Affairs in headquarters in Washington, D.C., the Miami field office, and its regional liaisons in the 10 regional offices. The Region IV office located in Atlanta, Georgia, has responsibility for the State of Florida.

The Cuban and Haitian entrant program consists of: (1) primary and secondary resettlement services; (2) halfway house facilities, family sponsorship, and aftercare programs for Mariel Cubans; and (3) health and mental health care for certain Cuban and Haitian nationals provided by the Public Health Service.²⁰⁰ In fiscal year 1994, more than 98 percent of CRS's Cuban/Haitian client resettlement caseload consisted of primary and secondary resettlement services.²⁰¹

The primary and secondary resettlement program is designed to "facilitate integration of Cubans and Haitians into the community, reduce the burden of this population on State and local resources, and avert community relations issues which might result from an uncoordinated or non-supportive federal response."²⁰² CRS awards grants and cooperative agreements (contracts) to voluntary agencies that provide shelter care, child welfare, and resettlement services within the State of Florida (primary resettlement) and in other States (secondary resettlement).²⁰³

During fiscal year 1994, CRS provided resettlement services to 13,225 Cubans and Haitians. Moreover, late in fiscal year 1994, CRS became a principal partner with the Department of Defense at Guantanamo Naval Base in providing safe havens for Cubans and Haitians fleeing their countries.²⁰⁴ In this capacity, CRS operated educational, recreational, and resettlement processing services for the more than 20,000 people housed at Guantanamo.²⁰⁵

Private Sector Assistance

Costs to the U.S. Government for refugee assistance are supplemented by the private sector and, in some cases, by specific ethnic and national groups in the U.S. For instance, Miami's Cuban community is financially and culturally

prepared to absorb refugees. Community organizations, funded by earlier immigrants, offer a wide range of social services, including housing.²⁰⁶ The Dade United Way recently undertook an acculturation program for those Cubans living on Guantanamo who were to be paroled into the United States. Participants in GRASP, Guantanamo Refugee Assistance Project, had a series of orientation sessions about immigration law, employment possibilities, the U.S. Constitution, and miscellaneous cultural information.²⁰⁷ Further, as noted earlier, the Miami community indicated its willingness to provide financial support for the unaccompanied Haitian minors at Guantanamo.²⁰⁸

State Assistance: Florida's Refugee Assistance Program

The Office of Refugee Resettlement provides funds through State-administered refugee resettlement programs. In addition to reimbursement for refugee cash assistance, ORR provides social service funds to States on a formula basis according to their proportion of all refugees who arrived in the U.S. during the past 3 years.²⁰⁹ Florida also receives money from the government for targeted assistance activities for refugees and entrants on a formula basis.²¹⁰

Although the total Federal reimbursement to the State of Florida for refugees/entrants has increased, it has not kept pace with the number arriving.²¹¹ The gap in reimbursement per refugee/entrant is particularly significant when the number of entrants exceeds the number of refu-

²⁰⁰ CRS Annual Report FY 1994, p. 34.

²⁰¹ Ibid., p. 35.

²⁰² Ibid., p. 36.

²⁰³ Ibid.

²⁰⁴ Ibid., p. 2.

²⁰⁵ Ibid.

²⁰⁶ Kaslow and Moffett, *Christian Science Monitor*, Mar. 1, 1995, p. 11. For example, more than 200 Cuban children who were paroled into the United States from Guantanamo in spring 1995 attended the Varela Centers, which were five small, free, private schools sponsored by the Cuba Ad Hoc Committee and the Archdiocese of Miami. John Lantigua, "Schools for Gitmo Children to Close," *Miami Herald*, July 31, 1995, p. 1-B. Private funding also came from Operation Angel, a program organized by Cuban Americans in Miami, that pays for medical insurance and scholarships at private schools. David Adams, "South Florida Braces for Influx of Cubans," *St. Petersburg Times*, May 4, 1995, p. 1-A.

²⁰⁷ John Lantigua, "Cuban Detainees Learn of Life, American-style," *Miami Herald*, July 25, 1995, p. 1-B.

²⁰⁸ See notes 75-78 and accompanying text.

²⁰⁹ U.S. Departments of State, Justice and Health and Human Services, *Report to the Congress on Proposed Refugee Admissions for Fiscal Year 1996*, July 1995, p. 25 (prepublication copy).

²¹⁰ See note 188 and accompanying text.

²¹¹ *Florida Fact Book*, p. 62.

gees, as the entrants' arrival is often unregulated and not considered in budget estimates.²¹² Moreover, ORR historically has not included "entrants" in its allocation formulas.²¹³ As a result of concerns expressed by Florida and other States, regulations for the disbursement of immigration emergency funds were released in June 1994.²¹⁴ Any State meeting one of three qualifications is eligible to apply for a portion of a fund established to reimburse States for costs associated with a sudden influx of aliens. An immigration emergency is defined as:

- certification by a district INS officer that the number of applications for asylum during a calendar quarter has exceeded by at least 1000 the number from the preceding calendar quarter;
- a determination by the Attorney General that circumstances involving the administration of the immigration laws endanger the lives, property, safety, or welfare of residents of a State or locality;
- a determination by the Attorney General that there exist any other circumstances which make it appropriate for the Federal government to seek assistance from a State or local government in administering the immigration laws of the United States or in meeting urgent demands arising from the presence of aliens in a State or local jurisdiction.²¹⁵

As noted above, Florida received \$18 million from the emergency fund in fiscal year 1995 to assist in the costs of caring for the Cuban refugees from Guantanamo.²¹⁶

Social Services Provided

Eligible refugees are entitled to cash and medical assistance from the Federal Government. In addition, Federal funds are used to fund social services for refugees through private organizations, including, for example, language classes, employment services, vocational training, and day care services.²¹⁷ The amount of available funding, however, is not enough to serve the eligible population, which leads to competition among refugees for the services.

Gary Crawford of Florida's Refugee Programs Administration Office noted in an interview that Florida tries to serve refugees on a first-come, first-served basis.²¹⁸

There are allegations that Cuban refugees are receiving more social services than Haitian refugees in Miami.²¹⁹ In an interview with staff, Mark Schlakman, advisor to Florida Governor Chiles, stated that the Governor was very sensitive to that allegation but noted that he could not say whether it was a perception or reality.²²⁰ Mr. Crawford noted that while there are ongoing services in the Haitian community, the community believes it is not being served unless the agencies are actually run by Haitians, which perhaps might lead to the allegations that Haitians are not receiving enough social services.²²¹

Impact of Proposed Block Grants

The Welfare Reform Act passed in 1996 adopts a block grant approach in Federal welfare disbursements to the States.²²² Prior to its enactment, refugee advocates worried that resettled refugees may not get the assistance they need for a successful transition under general social assistance block grants, as there would be no coordinated national refugee resettlement program.²²³ Moreover, advocates were concerned that States, under pressure to cut welfare costs, would attempt to do so by restricting eligibility for all persons, including refugees.

Mark Schlakman, special counsel to Governor Chiles, testified as to the Governor's opposition to block grants, generally, and more specifically with respect to refugee resettlement assis-

²¹² *Ibid.*

²¹³ *Ibid.*, p. 57.

²¹⁴ *Ibid.*, p. 12.

²¹⁵ 28 C.F.R. § 65.83 (1995).

²¹⁶ See note 191 and accompanying text.

²¹⁷ Gary Crawford, Refugee Programs Administration Office, and Mark Schlakman, Executive Office of the Governor, telephone interview, Aug. 15-16, 1995 (hereafter cited as Crawford-Schlakman Interview).

²¹⁸ *Ibid.*

²¹⁹ Guy Victor, Haitian Refugee Center, telephone interview, Aug. 8, 1995; Esta Hereux, Human Resources Agency, telephone interview, Aug. 11, 1995. Ronald Munia, a program officer with the Office of Refugee Resettlement, noted that there is a perception that the Cubans are receiving more assistance than the Haitians. He suggested that newly established agencies often have trouble fulfilling the Federal requirements and that perhaps some of the agencies in Little Haiti have this problem. Munia Interview.

²²⁰ Crawford-Schlakman Interview.

²²¹ *Ibid.*

²²² See, e.g., The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 1305 note (1996).

²²³ U.S. Committee for Refugees, "Welfare Reform Legislation Begins Journey Through Senate; Advocates Fight to Keep Refugee Assistance Out of Block Grants to States," *Refugee Reports*, May 31, 1995, pp. 7-8.

tance.²²⁴ He stated that block grants "favor a State that is in a point of equilibrium or perhaps the population is diminished A block grant is a potential disaster for a State like Florida because it gives a limited amount of funds on one target period which by definition will be clearly insufficient because when those funds are made available, the State has grown."²²⁵ With respect to refugee resettlement benefits, in particular, Mr. Schlakman alluded in his testimony to the political difficulties that exist where the State has to allocate benefits among refugees and the general population from the "same pot of benefits."²²⁶

Refugee advocacy groups have developed the transitional refugee initiative (TRI), which is premised on the idea that most refugees require specialized services designed to assist them to become self-sufficient. Because the Federal Government is responsible for refugee admissions, TRI supporters argue that the Federal Government should be responsible for providing a national program of resettlement services designed to move refugees to self-sufficiency "in the shortest time possible." TRI supporters argue that Federal funding outside the block grants to States should be provided to expedite resettlement and to minimize refugee access to State welfare systems.²²⁷

²²⁴ Mark Schlakman, Special Counsel to the Governor, State of Florida, testimony, *Miami Hearing*, vol. III, pp. 496-97.

²²⁵ *Ibid.*

²²⁶ *Ibid.*, pp. 497-98.

²²⁷ U.S. Committee for Refugees, "Welfare Reform Legislation Begins Journey Through Senate; Advocates Fight to Keep Refugee Assistance Out of Block Grants to States," *Refugee Reports*, May 31, 1995, p. 9.

Chapter 5

Findings and Recommendations

Chapter 1: Introduction

Race Relations Findings

1.1 Historically, periods of apparent calm and peaceful relations between Miami's different racial and ethnic groups have belied a city on the edge of conflict, an ethnic cauldron that periodically boils over when peace is shattered by one incident or another, leading to demonstrations, civil disturbances, and other manifestations of racial and ethnic tension. Racial and ethnic tensions between African Americans and Cuban Americans and other Hispanics are particularly widespread.¹

1.2 Public support of Fidel Castro by some African and some African American leaders has historically brought tensions between the Cuban and African American communities to the surface. In addition, Cuban American protests against African American leaders such as Nelson Mandela and Andrew Young have also engendered tensions. There has generally been insufficient effort by the Federal, Dade County, or Miami City governments to bring the communities together regularly to educate each other about both the symbolic and substantive importance of their leaders and why they react to particular political, social, and economic issues until after an incident has ignited smoldering tensions and resentments between the communities. Dade County's Community Relations Board has proposed creating a countywide Ethnic Relations Task Force to investigate the causes of racial and ethnic tensions and held a one-time conference on ethnic understanding in March 1997.²

Recommendation

- Dade County should authorize the Community Relations Board to create an Ethnic Relations Task Force, not only to further investigate causes of racial and ethnic tension in Miami, but also to facilitate ongoing, regular interaction and dialogue among the varied racial and ethnic communities in Miami on issues on which they share common or conflicting interests.

Economic Opportunities Among Groups Findings

1.3 The stark contrast between the economic success of many Cuban Americans and the limited economic success of African Americans in Miami has contributed to a pervasive sense of powerlessness, resentment, and despair in Miami's black community. Miami has the highest percentage of African Americans below the poverty level—46 percent—of the 50 largest cities in the United States. Native-born blacks are poorer as a group than non-Hispanic whites, Asians, or Hispanics. Cuban Americans are the economically strongest group among the Hispanic population. This contrast is a principal source of racial and ethnic tension, as much of the native-born black community's anger and frustration, which had historically been directed at a political and economic system dominated by whites, is now directed toward Cuban Americans.³

1.4 Racial and ethnic tensions are exacerbated by the widespread perception in the African American community that Hispanics, particularly Cubans, have benefited disproportionately from government economic aid. Hispanics have seven times as many businesses as blacks in Miami, though most are small entrepreneurs

¹ Pp. 12-13, 21.

² Pp. 13, 22-23, 27-28.

³ Pp. 4-6, 12-13.

with few employees. The vast majority of the Cuban American labor force in Miami—90 to 96 percent—works for wages outside the “Cuban enclave” economy, competing directly with African Americans, Asians, and whites in the Miami area. African Americans generally perceive that they have been displaced from mainstream economic opportunities by Cuban and other Hispanic immigrants arriving since 1959. Many in the black community attribute this, in part, to disproportionate Federal aid—beginning with the Cuban Refugee Program—provided to Cuban refugees arriving in Miami. Hispanics and whites have benefited disproportionately from Small Business Administration loans, compared to African Americans in Miami, and Hispanics have also benefited disproportionately from Dade County set-aside programs for contracting with minority businesses.⁴

Recommendation

- Congress, Dade County, and the City of Miami must ensure that government agencies administering economic programs, such as small business loans or set-asides for minority contractors, distribute resources fairly to all racial and ethnic groups in the Miami area. The development and implementation of criteria associated with such programs so as to include more fully African Americans in the area's prosperity must be a key priority for policymakers at the Federal, State, and local levels.

Chapter 2: The Impact of Language Policies on Race Relations in Florida

Section I: Language Policies in Government and Public Services

Public Perception of Immigrants and Multilingualism **Finding**

2.1 Movements to declare English the national language have historically followed large waves of immigration into the country.⁵ With each new wave of large-scale immigration, concerns over assimilation uproot old fears of a diminishing linguistic homogeneity. Entrenched economic and political factionalism inspire additional concerns regarding the public cost of pro-

viding for and integrating America's newcomers.⁶

Recommendation

- Public education is needed to address perceptions about immigrants that may be premised on erroneous assumptions or incomplete facts. Government and local community groups must collaborate on campaigns designed to provide the public with historical context and relevant facts upon which to base informed judgments and educated responses. At the Federal level, the Community Relations Service operates a hotline service in Miami to respond to questions and concerns about the immigrant community.⁷ In addition to the hotline, CRS should solicit sponsorship of public service announcements through local media and billboard advertising designed to educate the public about immigration and cultural diversity and to dispel common misperceptions.

Findings

2.2 Studies indicate that current immigrant families eschew their native languages more rapidly than earlier immigrant generations. A study of acculturation trends among Miami-Dade Community College students found that the number of Hispanic students who listed Spanish as their native language decreased from 80.5 percent in 1981 to 68.2 percent in 1991. Correspondingly, the number of Hispanic students who reported English as their native language increased from 18.8 percent to 31 percent between 1981 and 1991.⁸ Moreover, areas with

⁶ Ibid.

⁷ Pp. 25–27.

⁸ According to a study of the acculturation trends of students at Miami-Dade Community College between 1981 and 1991, while Spanish remained the native language reported by the majority of Hispanic MDCC students during that period, the percentage decreased steadily, from 80.5 percent in 1981 to 68.2 percent in 1991. In addition, the overall percentage who reported English as their native language increased from 18.8 percent in 1981 to 31 percent in 1991. At the same time, the number of black, non-Hispanic students who reported English as their primary language decreased, from 86.3 percent in 1981 to 78.8 percent in 1991. French and Creole were reported as the native language by 11.5 percent of black non-Hispanic students in 1981 and by 19.4 percent in 1991. “Acculturation at Miami-Dade Community College Fall Term 1981 Through Fall Term 1991,” Research Report No. 93-05R, Miami-Dade Community College, February 1993. See also, Andres Viglucci, “Studies Show Hispanics are Learning English—And Fast,” *Miami Herald*, July 31, 1988, 15A (Hispanics are learning English just as rapidly as preceding German, Italian, Jewish, and other immigrant

⁴ Pp. 8–13.

⁵ Pp. 29–31.

large numbers of nonnative-English-speaking immigrants eventually shift to exclusive use of English once the levels of immigration fall.⁹

Recommendation

• Public education is also needed to ensure understanding of the important economic role that bilingualism plays in Dade County's economy. Language ability is strongly correlated with economic success in multicultural, multilingual communities like Dade County.¹⁰ As such, local government agencies and community leaders must ensure public awareness of the importance of language education and native-language maintenance, especially among children and young adults.

Language Ability and Public Employment Findings

2.3 Community leaders disagree over the significance of language ability as an implicit requirement for public employment. The then-chairperson of the Dade County Commission testified that language ability is not a criterion for employment in public county jobs, adding that there are safeguards to protect against language bias in hiring.¹¹ The chairperson of the Metro Miami Action Plan Trust disagreed, testifying that language ability has hindered African Americans' access to public jobs.¹² Dade County maintains no statistics on the language ability of its employees.¹³

Recommendation

• The Dade County Equal Employment Opportunity Board should institute measures to track the language ability of employees as part of its survey of the racial and ethnic composition of the Metropolitan Dade County work force. In 1994, Metropolitan Dade County had a work force that was 29.8 percent white, 34.9 percent black, and 33.8 percent Hispanic, according to its Equal Employment Opportunity Board Survey.¹⁴ Countywide, non-Hispanic whites constitute 30.2

percent of Dade County's population, Hispanics constitute 49.2 percent, and non-Hispanic African Americans constitute 19.1 percent.¹⁵ Statistics on the language ability of employees are needed to assess claims of preferential hiring based on language ability.

Declaration of Official English Findings

2.4 The debate over whether to declare English the official language of the United States has existed since the Framers first considered the United States' founding constitutional principles.¹⁶ Although concerted efforts to declare a national official language have punctuated most of the 20th century, the modern Official English movement claims its genesis in south Florida's response to the Mariel immigration crisis of 1980.¹⁷ Language measures introduced in Congress since then have ranged from resolutions to encourage non-English speakers to learn English while maintaining fluency in their native languages, to bills seeking to establish English as the official language in conjunction with the repeal of language assistance legislation such as the Bilingual Education Act and the bilingual ballot requirements of the Voting Rights Act.

2.5 Supporters of a declaration of Official English cite to the need for a single language to preserve national unity, promote efficiency and fairness, ensure rapid acquisition of English proficiency by immigrants, and reduce costs associated with multilingual programs and publications.¹⁸

2.6 With respect to concerns that providing services in several languages translates into added costs, linguistically diverse communities, such as Dade County, contain expenses by tapping into the community to satisfy the need for multilingual access to government services by the public. The diversity of the Dade County community keeps the cost of providing some language services, such as that provided by bilingual employees able to communicate with the public, lower than in areas with smaller multilingual populations.¹⁹ It is thus a self-servicing cycle; the presence of a large bilingual community provides a ready pool of applicants who the

waves); and Calvin Veltman, *Comment*, 60 *Int'l J. Soc. Lang.* 178 (1986) (While it typically takes three generations for newcomers to become English dominant, Hispanics approached a two-generation model during the 1980s.)

⁹ *Ibid.*

¹⁰ Pp. 65-66.

¹¹ Pp. 40-41.

¹² P. 41. See also, pp. 13-14.

¹³ P. 41.

¹⁴ *Ibid.*

¹⁵ Pp. 2, and 41-42, footnote 131.

¹⁶ P. 29.

¹⁷ Pp. 30-31.

¹⁸ P. 35, and H.R. 123 105th Cong., 1st (1997).

¹⁹ Pp. 39-40.

county needs and may depend upon in order to serve its constituency more efficiently. The ready availability of a multilingual work force also ensures that linguistically diverse communities incur little or no expense in staffing employees and volunteers who can provide the language assistance required by Federal laws.²⁰

Recommendation

- Although a majority of Commissioners do not favor legislation declaring English the official language of the United States, the Commission recommends that if such legislation is enacted, it be narrowly drawn and that costs not be an overriding consideration in the policy debate. Concerns about costs should not play a major role in the policy debate because, at least with respect to staffing, the costs are insignificant in the majority of communities with the greatest need for multilingual services. Costs associated with publication of documents usually also decline over time.

Findings

2.7 Supporters of Official English legislation also cite to the need for English acquisition and proficiency by immigrants and their children.²¹ Such proficiency must come through opportunities for such persons to learn English. Two Official English bills introduced in the 104th Congress would have eliminated Federal bilingual education programs, requiring States to fund such programs alone, or, in the case of at least one bill with a preemption clause, penalizing States that provided these programs at all.²² Such legislation would cause States with high concentrations of limited-English-proficient students, like Florida, to assume an even larger share of the cost of educating and absorbing immigrants in their communities.

Recommendations

- Official language legislation should not seek to eliminate language assistance programs. To eliminate such assistance programs defeats one basic tenet of the Official English effort—to ensure rapid acquisition of English proficiency by the foreign born and their children.

- Proposals to reform bilingual education policy must consider the impact of such reforms on States to ensure that States are not left with

the financial burden of assimilating immigrants, who enter into the United States under the exclusive domain of Federal law.

Findings

2.8 The Immigration and Naturalization Service (INS) regional office in Tucson, Arizona, conducted a swearing-in ceremony of United States citizenship in Spanish in July 1993. In response, many Official English bills introduced in the 104th Congress contained a clause requiring that all naturalization ceremonies be conducted entirely in English.²³ The Immigration and Nationality Act (INA) exempts persons over the age of 50 who have lawfully resided in the United States for a period of years from the requirement that all persons seeking to become naturalized citizens demonstrate an understanding of the English language.²⁴

Recommendation

- Official language legislation should not create blanket requirements that INS swearing-in ceremonies be conducted exclusively in English. Requiring candidates who satisfy the English knowledge exemptions of the INA to take the oath of citizenship in English could preclude them from participating in this last step of the citizenship process or, at least, make any such oath administered in English meaningless to the candidate and, therefore, of dubious validity.

Section II: Language Policies in Private Employment

Primary Language Findings

2.9 Primary language is a person's native language, usually the language spoken by one's parents in the home and one's first language. Primary language is often an essential national origin characteristic and a fundamental aspect of ethnic identity and culture.²⁵

2.10 Second-language acquisition is more difficult for language minority groups, typically occurring over two or three generations. Individuals are most comfortable speaking in their primary language and will naturally tend to communicate in that language with others who speak it. Many persons with limited ability to speak English are not properly considered bilin-

²⁰ P. 39, footnote 113.

²¹ Pp. 32–33, 35.

²² Pp. 32–33.

²³ Ibid.

²⁴ P. 33, footnote 45.

²⁵ Pp. 47–48, 63–64.

gual, and a restriction on their ability to speak their primary language may be a serious handicap, equivalent to forcing a right-handed person to write left-handed. Exclusive use of English on the job should not be required unless it is necessary to the adequate and safe performance of the job.²⁶

2.11 Under the U.S. Equal Employment Opportunity Commission's Guidelines on Discrimination Because of National Origin, the primary language of an individual is considered an essential national origin characteristic. National origin discrimination under Title VII is defined as including denials of equal employment opportunity based upon an individual's linguistic characteristics of a national origin group. The EEOC presumes that an employer's English-only rule is national origin discrimination if it is enforced at all times, but permits such a rule provided that adequate notice of its requirements are supplied and it is enforced only at certain times and is justified by business necessity.²⁷

2.12 Bilingual job requirements are adjudicated under the same legal standards as English-only rules.²⁸

2.13 Despite the EEOC guidelines, there is no clear and meaningful protection against discrimination because of language in the workplace today. The four Federal circuits that have considered the legality of English-only rules have all rejected or ignored the EEOC Guidelines on Discrimination Because of National Origin, holding that the plain meaning of Title VII's statutory language and its legislative history do not support the EEOC's interpretation.²⁹

2.14 Demographic trends, EEOC national origin charge data, and the inclusion of claims of national origin discrimination involving language issues among the EEOC's enforcement priorities in its 1996-1997 fiscal year national enforcement plan suggest that the number of workplace language policies—and the number of cases alleging national origin discrimination—will continue to increase in the future.³⁰

2.15 Workplace language policies, both English-only and bilingual requirements, are a significant source of racial and ethnic tension in the Miami area.³¹

²⁶ Pp. 63-64.

²⁷ Pp. 49-50.

²⁸ Pp. 57-58, 59-61, 62-63.

²⁹ Pp. 49-54.

³⁰ Pp. 43-44, 47-48.

³¹ Pp. 44, 62-63.

Recommendation

• Dade County should establish a multiethnic, multiracial task force of businessmen, community leaders, and government officials to address language policies in the work force in order to clarify the issues. Concrete proposals should balance the competing interests of the employer and both the monolingual and multilingual employee by reducing the incidence of unremedied discrimination and avoidable workplace tensions.

Dade County Equal Opportunity Board Findings

2.16 The Dade County Equal Opportunity Board (DCEOB) applies Dade County's equal opportunity ordinance, chapter 11A of the Dade County Code, which prohibits discrimination in employment and other areas on the basis of national origin, and applies to employers with five or more employees for 4 or more weeks during the year. The DCEOB also processes EEOC charges deferred to it. In applying Dade County's law, the DCEOB largely follows the EEOC guidelines. The DCEOB issued its own *Guidelines For Language Requirements in the Workplace* to assist in the application of the county antidiscrimination ordinance and to provide further guidance for employers.

2.17 The DCEOB has only five investigators to investigate charges of discrimination in housing, public accommodations, credit and financing practices, and employment. Each compliance officer carries a caseload of 110 to 120 open charges (up in the last 2 years from 90) and the average processing time is 270 days. This is the highest caseload of any city or county civil rights enforcement agency in the State of Florida. Despite its intended secondary purpose of educating county employers and employees regarding the law on language policies, the agency's resources allow for only "limited outreach and educational" activities, and no other Dade County agency attempts to educate either employers or employees on the law regarding language policies.³²

Recommendation

• Dade County should consider providing additional resources for equal employment opportunity case processing and for educational and community outreach programs to educate em-

³² Pp. 61-62.

ployers and employees regarding when language requirements may be appropriate and when they may violate the law.

Section III: Language Education and Racial and Ethnic Tensions

Dade County Public Schools Elementary and Secondary Foreign-language Instruction Findings

2.18 Dade County is the most bilingual area in the Nation. For 57 percent of the population, the primary language is one other than English. Increasingly, knowledge of a second language is required by a wide variety of employers in the area. Monolingual English-speaking blacks, the most economically marginal group in south Florida, are especially impacted by their inability to speak a second language, particularly Spanish. These facts are a significant source of racial tension in Miami. Language instruction is also among the most effective ways to increase ethnic and cultural understanding among groups. Currently, Dade County's students are not adequately prepared for the economic opportunities available for bilingual individuals: while various programs are offered, only 2 percent of Dade county students graduate fully bilingual.³³

2.19 Dade County Public Schools have implemented innovative foreign-language instruction programs designed to provide intensive foreign-language instruction to monolingual English speakers from the start of their schooling. Specialized language programs in these dual-language schools provide content instruction in both English and the foreign language (usually Spanish) and graduate students who are functionally literate in both languages. Nevertheless, only 21 out of the 286 public schools in Dade County are dual-language schools. The remaining schools offer traditional foreign-language education consisting of 1 hour of foreign-language instruction several times weekly.³⁴

2.20 Students in the traditional foreign-language programs are not required to enroll in foreign-language courses. While foreign-language courses for monolingual English students are voluntary at the elementary level, educators strongly urge parents to enroll their children in one of the foreign-language courses offered by the school, and most children do enroll in Spanish. At the middle and high school levels,

however, enrollment in foreign-language courses is fully elective and there are no formal entry or exit procedures as with the elementary level programs. As a result, only 5 percent of middle school and 10 percent of high school students in schools with traditional foreign-language programs enroll in Spanish courses.³⁵

Recommendations

- Students in all of Dade County's public schools should have access to intensive foreign-language programs like those provided in the dual-language schools.

- Foreign-language programs should be reviewed periodically to ensure that they adequately respond to the economic needs of the community. Ninety-seven percent of businesses in Dade County believe that a bilingual work force is important to business development. The Dade County school system must ensure all of its students an opportunity to function in a language other than English by the time they graduate and prepare to enter the job market. Based on the current language needs of private and public sector employers in Dade County, Spanish, French, and Portuguese should be taught in all schools.

- Following the approach of the elementary level, Dade County middle and secondary schools should continue to urge parents and their students to continue in the foreign-language course of study started in elementary school. Automatic reenrollment of students in foreign-language courses should be extended into the middle and secondary schools. In addition, Dade County Public Schools should strive to educate parents and students about the importance of multilingualism in competing for jobs and other opportunities in south Florida and throughout the nation.

Monolingual English Speakers Findings

2.21 Federal and State laws protect the right of limited-English-proficient children and adults to acquire English proficiency through grants and other forms of assistance. At the Federal level, the Bilingual Education Act, chapter 1 of the Elementary and Secondary Education Act, the Emergency Immigrant Education Act, the Adult Education Act, and the Carl D. Perkins Vocational Education Act, among others, require

³³ Pp. 65-67, 71-73, 78-79.

³⁴ Pp. 71-72.

³⁵ Pp. 71-72.

States to provide appropriate language assistance to limited-English-proficient children and adults to equip them with the necessary language ability to eventually pursue their courses of study in English.³⁶ At the State level, Florida's Equal Educational Equity Act and the META consent decree require localities to ensure equal educational opportunities for children and adults with limited English proficiency.

2.22 While these laws are designed to assist language minority students in accessing educational programs, they do not address the needs of monolingual English speakers in communities, like Dade County, where they are the linguistic minorities. At the Federal level, Congress has taken into account the needs of monolingual English speakers within the Commonwealth of Puerto Rico by providing for Spanish-language instruction to these groups. Under the Carl D. Perkins Act, bilingual vocational education programs provided through the Commonwealth may provide for the needs of limited-Spanish-proficient adults.³⁷ Similarly, the Bilingual Education Act authorizes the Commonwealth of Puerto Rico to provide instruction, teacher training, curriculum development, and testing for programs designed to improve the Spanish-language skills of limited-Spanish-proficient students.

2.23 Although these statutes address the language needs of residents of Puerto Rico, as compared to the more localized county language needs found in pockets of south Florida, the similarities between Dade County and Puerto Rico, nevertheless, merit potentially similar treatment of both populations. In Puerto Rico, English and Spanish are joint official languages and Spanish is the predominant language. In Dade County, repeal of the antibilingualism ordinance has meant that official county business is not required to be conducted in English only.³⁸ Furthermore, the majority of Dade County residents speak Spanish at home.³⁹ As reflected by the hearing record, deprivation of adequate foreign-language training to monolingual English speakers in communities where English is not the predominant language produces the same results for these groups as depriving language assistance to limited-English-proficient groups:

both face limited opportunity for economic advancement and social integration through foreclosed employment opportunities, marginalized community participation, and limited awareness of and appreciation for cultural differences between groups.⁴⁰

Recommendation

• Federal, State, and local laws should recognize that monolingual English speakers are minorities in some communities, and ensure equal educational access to language programs by these groups within those areas. Federal and State laws that protect limited-English-proficient students should be expanded to protect the needs of limited-Spanish-proficient students in Dade County, as well as the needs of limited-other-than-English-proficient students in any county where they are language minorities.

Adult Education Finding

2.24 Adult education courses are offered through the State of Florida and through local school districts. These courses are provided to students at a fee. To enroll in an education program, prospective students must take an entry exam to determine their level of education. Scoring below the ninth grade level on an exam exempts a student taking courses through Dade County Public Schools from registration, matriculation, and laboratory fees.⁴¹

Generally, these entry exams are administered in English. A Spanish version of the entry exam is available for students seeking to enroll in adult vocational education programs. Students enrolling in adult general education programs, however, must take the English version of the exam. Limited-English-proficient students are more likely to score lower on English entry exams and thus be more likely to qualify for a fee exemption than native English speakers with similar educational backgrounds. The perception that foreign-born students receive free adult education instruction, while U.S.-born students must pay to enroll in these courses, increases frustration and tensions.⁴²

³⁶ Pp. 67-69, 73-74.

³⁷ P. 74.

³⁸ Pp. 74.

³⁹ Pp. 3-4, 47, 74.

⁴⁰ Pp. 40-41, 78-79.

⁴¹ Pp. 75-76.

⁴² Ibid.

Recommendation

• Entry exams for adult general education should be available in Spanish and other languages. Students who score below the ninth grade level in an exam administered in their language of greatest proficiency would be exempt from the fees. Students scoring higher than the threshold level would only be eligible for free or subsidized English-language instruction, in accordance with Federal and State laws. These students would not be exempt from fees for all other non-language-instruction courses.

Finding

2.25 Students who do not have a high school diploma or its equivalent are also eligible for fee exemptions.⁴³ Fraudulent applications for fee exemptions from students who claim not to have a diploma compound frustrations. According to Dade County's Office of Applied Technology, Adult, Career, and Community Education, these applications are more successful among foreign-born applicants, for whom verification of the claim is more difficult.⁴⁴

Recommendation

• The Florida Department of Education should require prospective students to sign an acknowledgment attesting to their automatic eligibility for fee waivers. It should conduct random checks to verify these applications, and access fees and a penalty should be charged to students found to have executed fraudulent applications.

Finding

2.26 Students who reside outside of the Dade County school district are charged higher fees for courses than Dade County residents. Determining residency is difficult, however, because there are no stated guidelines for making such determinations.⁴⁵

Recommendation

• The Dade County school district should develop and implement guidelines for determining residency of students.

Adult Language Instruction Findings

2.27 The relatively low enrollment of adult students in foreign-language courses, as compared to enrollment by limited-English-proficient students, can be attributed to several factors, the most significant of which are limited State and local resources and statutory requirements placing a higher priority on educational assistance to limited-English-proficient adult students. Limited-English-proficient students who enroll in programs through Dade County's Office of Applied Technology, Adult, Career, and Community Education (OATACCE) or the Miami-Dade Community College are assured equal access to all programs under the Adult Education Act, Carl D. Perkins Vocational Education Act, Title VI of the Civil Rights Act, the Florida Educational Act, and the META consent decree, among others. These programs essentially ensure that LEP adult students will receive appropriate language assistance to ensure effective progression through their adult education programs.⁴⁶

Due to the protections afforded to LEP students by these laws, funding shortfalls to State and local programs necessitate that cuts, when they are necessary, be made in other programs, such as adult foreign-language education. Funding caps established by Florida during FY 1991–1992 and the elimination of the Florida Department of Education's community education office, which oversaw implementation of adult foreign-education, have resulted in underfunding of OATACCE programs. Since the 1991–1992 fiscal year, OATACCE has experienced a growth of an additional 3,247 full-time-equivalent students for whom State funds are not available. During FY 1994–1995, OATACCE had only one full-time teacher in its adult foreign-language program's Spanish department. In the same year, the office employed 58 full-time and 1,065 part-time English as a second language teachers. Part-time foreign-language teachers (ESL) in the four foreign-language departments constituted only 63 members of the teaching staff.⁴⁷

2.28 Similarly, intensive language education programs at the Miami-Dade Community College place priority on LEP students. At the college's Interamerican Center of the Wolfson Campus, where bilingual vocational educational

⁴³ P. 75.

⁴⁴ P. 75-76.

⁴⁵ Ibid.

⁴⁶ Ibid., pp. 73–75.

⁴⁷ Pp. 74–75.

programs are offered, there were 27 full-time faculty and staff devoted to the ESL program in 1995, but only 3 full-time faculty and staff devoted to foreign-language training.⁴⁸

2.29 The cost of providing these programs, both in dollars and loss of productive time, has prevented private industry from taking a more aggressive role in filling in the gap. As a result, only 3 percent of businesses nationally and 20 percent of business in Dade County provide basic instruction, including language education, to their employees.⁴⁹ In 1993, Representative Bill Emerson introduced a bill to allow a tax credit to employers for the cost of providing English-language training to their employees.⁵⁰

Recommendations

- Congress should encourage private industry to provide language instruction for its employees by offering tax incentives for employer-sponsored education. Allowing a tax credit for the cost of providing language instruction would remove financial obstacles to providing such training and encourage private industry to satisfy the need created by insufficient funding of public education programs.

- The tax incentive should define "cost" to the employer as including tuition, fees, supplies, and wages paid to employees while in the training program. Language training should include training for limited-English-proficient employees and training in languages other than English spoken by either a majority of the residents of the community where the business is located or by a majority of the residents in the country with which the business conducts a substantial majority of its dealings.

Chapter 3: Immigrant Use of Public Benefit Programs

Immigrant Participation in Public Benefit Programs

Finding

3.1 Welfare participation rates of immigrants are often compared to native participation rates for advocacy and policymaking purposes. Immigrant participation in public benefit programs varies depending on the program type and the immigrant group. Refugees and asylees have significantly higher rates of welfare use than

other immigrants. They are distinct from other immigrant groups because they are fleeing persecution in their home country and often arrive in the U.S. with few resources. Aggregating the welfare participation rate of refugees and asylees with that of all immigrants distorts the participation rate of immigrants generally and diminishes the usefulness of the data for some policymaking purposes.⁵¹

Recommendation

- The participation rates of refugees and asylees in public benefit programs should be disaggregated from the participation rates of other immigrants.

The Net Effects of Immigration on the U.S. Economy

Finding

3.2 There is little agreement among studies purporting to measure, in dollar amounts, the net effect of immigration on the U.S. economy. Discrepancies arise from the lack of accurate data and conflicting methodology. Coming to a concurrence on methodology and factors to include in the analysis would improve the usefulness of these studies.⁵²

Recommendation

- Congress or the President should commission a task force to evaluate conflicting studies on the net national economic effect of immigration.⁵³ The task force should be directed to facilitate and/or develop a consensus on methodology to produce sound studies driven by facts rather than by assumptions.

The Welfare Reform Act and Florida Immigrants

Finding

3.3 The provisions of the Welfare Reform Act eliminating most immigrants from eligibility for means-tested programs will have serious effects in Florida. Particularly affected are those localities with the highest concentration of immigrants, such as Dade County. The Welfare Re-

⁴⁸ Ibid., p. 77 and footnote 467.

⁴⁹ P. 79.

⁵⁰ P. 33.

⁵¹ Pp. 87-89, 119-23.

⁵² Pp. 89-92.

⁵³ The Commission on Immigration Reform recently requested a study by the National Academy of Sciences on the economic and fiscal effects of immigration. This recommendation advises further that agreement on methodology be reached for all future studies of the impact of immigration on social, economic, and political matters which may generate, directly or indirectly, racial and ethnic tensions.

form Act eliminates immigrant eligibility for supplemental security income (SSI) and food stamps unless they fall into one of the excepted categories for refugees, asylees, veterans, or lawful permanent residents who have worked for 40 qualified quarters without receiving any Federal public benefits for any such quarter after December 1, 1996. The Florida Governor's Office estimates that the State will lose millions in Federal aid for immigrants. Unlike AFDC and medicaid, there is no State option to extend benefits to current immigrant recipients of food stamps and SSI. In Florida, 83 percent of immigrants currently receiving food stamps or 129,029 persons will lose their benefits. An estimated 62,000 will lose SSI benefits.⁵⁴

Recommendation

- Congress should amend the Welfare Reform Act, allowing noncitizens to be eligible for food stamps and supplemental security income on the same basis as citizens, subject to a limited deeming period for sponsored immigrants.

Finding

3.4 By exercising the State option to cover immigrant recipients of AFDC and medicaid, Florida will enable most of its immigrants to retain their eligibility for those programs. Of those receiving AFDC, 98 percent will remain eligible for benefits under the program of temporary assistance for needy families (TANF). In the medicaid program, 95 percent will still be eligible. Florida's decision to cover immigrant public benefit recipients to the extent permitted by law will cushion the effect of welfare reform on localities heavily populated by immigrants.⁵⁵

Recommendation

- Florida should continue covering immigrants who were receiving benefits under medicaid and the former AFDC program. The Federal Government should provide additional financial support for those States, like Florida, in which a substantial number of immigrants reside.

Florida Measures on Immigration

Finding

3.5 The experience in California under Proposition 187 heightened anti-immigrant sentiment without distinguishing on the basis of

legal status.⁵⁶ Initiatives in Florida, fashioned after California Proposition 187, that seek to restrict undocumented immigrants from receiving public benefits engender concerns among all immigrants that they are under attack, regardless of their legal status.

Recommendation

- The Commission recognizes and encourages efforts by proponents of measures restricting or prohibiting public benefits and services to undocumented immigrants actively to seek to minimize anti-immigrant sentiment stemming from such measures. To the extent that measures generate misperceptions, community groups should provide the public with factual information.

Immigration and Community Tensions

Finding

3.6 The large influx of immigrants in some south Florida communities has caused resentment among some residents, adding to racial and ethnic tensions.⁵⁷

Recommendation

- Immigrant advocacy groups should be sensitive to the concerns of all residents in areas heavily populated by immigrants. Cooperative educational and economic arrangements should be set up between and among advocacy groups, individuals, and Federal, State and local governments.

Chapter 4: Distinctions in Refugee and Asylum Policies

Disparate Treatment of Refugee Groups in the United States

Findings

4.1 Historically, Cuban refugees have been afforded special treatment under the law. This has created tension in Miami, an area with immigrants of many nationalities. The United States Government has explained this differential treatment by (i) pointing out that it has no mechanism for deporting Cubans as it does not recognize the Cuban Government and (ii) referring to the Cuban Adjustment Act. Yet, even upon arrival in the United States, Cubans tradi-

⁵⁴ Pp. 94-99.

⁵⁵ Pp. 96-99.

⁵⁶ Pp. 99-101.

⁵⁷ Pp. 101-02.

tionally have been treated differently from other migrants.⁵⁸

4.2 There is a continuing perception that the uncertain nature of the Haitians' immigrant status upon entering the United States jeopardizes their successful integration into the community.⁵⁹ It is outside the Commission's jurisdiction to comment generally on foreign policy determinations with respect to the Cuban Adjustment Act and to the government's stated inability to deport Cubans to Cuba. The Commission must, however, pursuant to its statutory mandate, study, appraise, and/or investigate matters that constitute discrimination or a denial of equal protection of the laws.

Recommendation

- The Immigration and Naturalization Service must ensure that all migrants are treated equally upon their arrival in the United States.

Finding

4.3 A widespread perception exists that the Haitian entrant community does not receive funding and services from the State government that is equal to that provided for the Cuban entrant community. Mark Schlakman, from the Governor's Office, indicated in a staff interview that the Governor was sensitive to the issue. He also noted that he was unsure whether it was merely perception or whether it represented reality. Gary Crawford from Florida's Refugee Programs Administration Office attributed the perception to the Haitian community's belief that it is not being served unless the agencies providing social services to Haitians are actually run by Haitians.⁶⁰

Recommendations

- The State refugee program must determine whether the Haitian community receives fewer services than the Cuban community in Miami. If the perception is based in fact, the State refugee program must correct the imbalance immediately. If the perception is false, the State refugee program and the Governor's Office must develop a relationship with the Haitian community that will allow them to provide information to correct the misperception and to develop a level of trust with the community.

- Where the U.S. Government is detaining refugees, all detainees must be treated with respect and dignity, regardless of their race or ethnicity.

Work Permits for Nicaraguan Refugees Finding

4.3 The Nicaraguan Review Program allowed Nicaraguans a review of their deportation by the Attorney General. They were routinely granted work permits prior to the Attorney General's review. In June 1995, this policy was abolished. The new policy granted work permits only to those Nicaraguans who apply for suspension of deportation before June 1997. At the time of the Commission's hearing, few Nicaraguans had applied for suspension of deportation. There is some concern that the loss of work authorization could be the source of tension in Miami, a city with an estimated Nicaraguan community of nearly 150,000. Tensions may be exacerbated after June 1997, when Nicaraguans will not be eligible for work authorization upon applying for suspension of deportation.⁶¹

Recommendation

- The Immigration and Naturalization Service must make greater efforts to educate the Nicaraguan community of their eligibility for transitional work permits.

Refugee Access to Public Benefits and Other Assistance Finding

4.4 Cuban and Haitian entrants are an issue of particular concern to Florida as most Cuban and Haitian entrants settle in south Florida. Prior to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Florida exercised its option to provide the entrants with AFDC, food stamps and Medicaid. Following enactment, however, such entrants who enter the United States will not be eligible for such programs. They will be eligible only for temporary cash and medical assistance for approximately 8 months through ORR.⁶²

Recommendation

- Refugees should continue to be eligible for benefits upon their arrival to the United States. Benefits should include cash and medical assis-

⁵⁸ Pp. 108-12.

⁵⁹ P. 112-13.

⁶⁰ P. 126.

⁶¹ Pp. 117-18.

⁶² Pp. 119-21; 123-24. See also pp. 96-99.

tance and social services, including language and job training.

Finding

4.5 The public often confuses refugees with immigrants, legal or illegal. As such, the public sometimes does not fully understand why refugees are entitled to certain governmental assistance. Yet, studies indicate that Americans support the continued acceptance and support of refugees.⁶³

Recommendation

- The public should understand that, for the purposes of governmental assistance, refugees are treated separate and distinct from other immigrants because of the nature of their entry into our country. To that end, Federal, State, and local officials and the media should be clear when they use the term "refugee" that they are referring to persons fleeing their native countries because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Finding

4.6 The private sector supplements government funding for refugees. During the recent influx of Cuban refugees from Guantanamo, private organizations provided assistance in education, medical insurance, and acculturation programs for the refugees. Furthermore, the Miami community offered to provide financial support for the unaccompanied Haitian minors on Guantanamo.⁶⁴

Recommendation

- The Immigration and Naturalization Services, the Community Relations Service, and State and local government should work closely with the private sector to ensure a coordinated approach to the assistance offered to incoming refugees.

⁶³ Pp. 122-23.

⁶⁴ Pp. 125.

Concurring Statement of Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners A. Leon Higginbotham, Jr., and Yvonne Y. Lee

This is an important and remarkable report. It is important because, by grappling with the intersection of the difficult issues of race, national origin, immigration, welfare reform, and language policies in Miami, the report addresses—and addresses in a balanced manner—the very questions that most every American city may have to confront in the next century. It is remarkable because, by being passed with a clear majority of six Commissioners—with only two voicing dissent on a single issue of substance—the report displays the vast common ground eight Commissioners of different political parties, ideological perspectives, and racial and ethnic backgrounds can and were able to attain.

As is customary, background research, interviews, testimony at the hearing, subpoenaed documents, and other materials submitted voluntarily were utilized in producing this report. The Commission's unique mission to serve as the moral conscience of the nation and its statutory obligation to investigate and study civil rights practices and policies permit wide latitude in completing its charge. As the Supreme Court suggested in *Hannah v. Larche*, 363 U.S. 420 (1960), this Commission, like many executive and legislative investigating agencies, as well as "the oldest and, perhaps, the best known of all investigative bodies, the grand jury," *id.* at 448, may rely on many sources, including undisclosed or confidential sources, in conducting its investigative function. Quoting Mr. Justice Cardozo, the Court indicated that "[w]hat issues from th[is] Commission as a report and recommendation to the President [and Congress], may be accepted, modified, or rejected. If it happens to be accepted, it does not bear fruit in anything that trenches upon legal rights." *Id.* at 450.

Like previous studies by this Commission, the questions addressed in this report are not easy, and, of course, the recommendations are not necessarily conclusive. Indeed, even those of us who wholeheartedly agree with the substance of the report understand that some of its findings and recommendations may be controversial; this is especially true with respect to the issue of language policies. In the past, two general arguments have been advanced in opposition to government action to protect so-called language minorities. One argument opposes government action on the ground that language involves one's essential individuality. The second argument presupposes that, left to its own devices, the marketplace will always protect minorities from what James Madison called the unwise tyranny of the majority. Unfortunately, history, our common sense, and indeed the United States Constitution itself teach that neither of these arguments, in and of themselves, offer a reasonable objection to government protection of language minorities.

In the first instance, every civil rights question, including race and gender discrimination, has been considered at one point or another to involve matters of individual choice, too intimate to be subject to government protection. Yet today, no one would seriously propose that government refrain, for example, from prohibiting racial and gender discrimination in the workplace, and from promoting equal opportunity. Issues surrounding language policies may indeed prove to be no different. In the second instance, it is too late in the day for us to continue to believe that the marketplace alone can be the resolution to problems of discrimination, whether these problems involve race, gender,

religion—or language. To paraphrase De-Toqueville, the marketplace is a lot like providence; it keeps moving forward but it is not always smart, wise or fair.

We are not dealing here with rhetoric, but with the reality of feeding families and fostering economic survival. For example, in anticipation of our visit to Miami, the *Miami Times* reported in October 1995 that approximately 49 percent, or one of every two blacks in the Miami area, lived below the Federal poverty level for a family of four. Unemployment in the Miami area was "double or triple the official national average, especially among young Black men."¹ This report confirms the existence of a significant gap in economic opportunity among racial and ethnic groups in south Florida, and links the gap, in part, to various language requirements. Although, in the end, these disparities may be difficult to explain completely and doubtless will be difficult to overcome, our obligation to propose meaningful solutions cannot be sacrificed to unrealistic, ideological visions of utopia. At bottom, the purpose of government protection of language minorities, or government action in support of multilingual education policies, is an acknowledgment that in today's marketplace—and particularly in south Florida—being multilingual is a means toward economic security and that a head-full of rights is scant consolation to a belly-full of hunger.

But perhaps our recognition of the controversial nature of the issues surrounding language policies is causing us to anticipate dubious arguments that no one will seriously pose in judging this report. In any event, the purpose of our separate statement is not to belabor this single point of potential controversy, but to highlight the strong consensus among a majority of the Commissioners on most every question addressed in this report, for we hope that consensus in this report will lead to unanimity in the next. And, in the final analysis, the absence of unanimity on every single point is simply a reflection of the fact that the civil rights issues examined in this report are still relatively new and further study may be needed. Still, the report is an important document. If read with a clear head and an open mind it will serve as a teaching tool for Miami and other cities to begin addressing questions to which no one can pretend to have easy answers.

¹ Salmon Barrington, "Civil rights panel expected to find much concern in Miami area," *Miami Times*, Aug. 24, 1995, p. 6A.

Concurring Statement of Commissioner Robert P. George

1. In connection with the Miami hearing, the Commission issued subpoenas duces tecum which were, in my opinion, overbroad in such a way as to threaten the rights of citizens who organize for legitimate political purposes. Although the Chair rightly decided not to enforce these subpoenas against persons who objected to them, I regret that the Commission did not withdraw them. Furthermore, I am disappointed that the Commission continues to rebuff efforts to reform its subpoena practice to prevent the issuance of overbroad subpoenas duces tecum in the future.

2. I believe that it is a mistake for the Commission to take position on national issues of welfare reform based upon the limited information and opinion gathered in connection with the Miami hearing.

3. The quality and persuasiveness of the Miami report is harmed by too great a reliance on interviews of witnesses by staff (particularly those conducted prior to the hearing). Reforms are needed to minimize reliance on such interviews in future Commission reports.

Concurring Statement of Commissioner Russell G. Redenbaugh

My vote to approve this report was cast with extreme reluctance. I find the report deficient on procedural grounds in that important issues, especially in the areas of language and immigration policy, were not treated in a balanced way. Another major concern is the excessive use of prehearing witness interviews which based major sections of the report on unsworn and unquestioned "testimony." I trust that my dissenting colleagues will more fully address these procedural defects in their statements.

In terms of language policy, in particular, my principal reluctance to endorse this report is based on three concerns. The first is that, in my view, the U.S. Commission on Civil Rights (USCCR) should not be asserting a "civil right" for public school students to be given access to foreign language instruction.

My second and larger concern stems from the first and is centered on the principle of local control of public education. In the context of this report on Miami, the USCCR should not be drifting toward a recommendation that local school boards take direction in matters of curriculum from this or any other Federal agency where there is not already established clear jurisdiction. The report argues that the Spanish language majority which controls the school board is unresponsive to the foreign language needs of a non-Spanish-speaking minority. I can only comment that it often happens that the majority is not fully sensitive to the demands of every minority. This, then, makes a strong case for the benefits of school choice and for allowing the "consumers" of education to choose more

freely, through the marketplace, the kinds of education they are willing to purchase.

My third area of concern, and by far the most troubling, goes to the question of language as a key element of one's personal identity. Language is not merely different names for the same objects. Language is also the mechanism through which any people invent their culture. It is the way in which their culture is kept alive and passed from one generation to the next.

At the same time, it is crucial for language minorities to become highly competent in the commercial and political language of the country in which they live or do business. Otherwise, they are cutting themselves off from prosperity, power, and perhaps even viability. Increasingly, English is the commercial language of the world, and of the Internet. "World Wide Web" is, after all, three English words.

The Commission's hearing in Miami provided an excellent opportunity to explore ways to reconcile these two competing notions: the primacy of language for maintaining cultural identity, and the importance of English proficiency for the commercial and political life of the United States. But this report falls short by suggesting a need to "mandate" government regulation of language policies. It fails to recognize that language raises certain questions of a deeply private and personal nature that should not be the province of government direction. Our citizens and residents should have both the rights and the responsibility to choose their own course of action.

Dissenting Views of Commissioners

Carl A. Anderson and Constance Horner

This hearing and the report based upon it have been the subject of controversy, first, regarding the manner in which witnesses and documents were subpoenaed and, second, regarding prehearing witness interviews. While it is true that other reports issued by the Commission have included material obtained from prehearing witness interviews and that documents and witnesses are routinely subpoenaed in the course of Commission hearings, we believe that the problems associated with these matters in this case have moved beyond quantitative concerns to qualitative ones. The result is a report issued by the Commission which in important respect bears little resemblance to the hearing in which we both participated. Moreover, we believe that a preoccupation with such matters prevented this report from realizing the full potential that originally motivated the Commission to select Miami as a hearing site as part of its multi-year study of racial and ethnic tensions in American communities.

A significant example of the report's shortcomings in our view is apparent in its first "factual" finding of Miami as "a city on the edge of conflict, an ethnic cauldron that periodically boils over." What we found during our hearing in Miami was a city making significant progress in economic and racial matters in the face of profound challenges arising from unprecedented developments in immigration. These developments have produced deeply rooted racial and ethnic tensions which the city has responded to with a mixed record of success. The Miami hearing and this report offered the Commission the opportunity to undertake a lengthy and thoughtful analysis of the ability of American cities such as Miami to successfully absorb the quantity, density and rapid influx of immigrants

of diverse national, ethnic, language, and economic backgrounds. This is a situation which many communities in the United States now confront and which many more will have to deal with in the next century. It is one which we thought the Commission ideally suited to consider. In our opinion, the Commission has failed to do so adequately in its report.

An example of the "ethnic cauldron" syndrome apparent in the report is its treatment of a July 1990 incident arising from a fistfight between a Haitian customer and a clerk in a Cuban-owned store in Little Haiti. What began as an incident unfortunately too common in large urban areas the next day escalated into a racial demonstration involving over 1,000 persons and 100 riot police *after* Haitian radio announcers used the incident to urge a public protest against Cuban American treatment of Nelson Mandela. Of course, there are important first amendment rights regarding speech and assembly involved in this event, but it nonetheless needs to be said, as the report does not, that community and civil rights leaders who acquiesce in actions which intentionally inflame racial tensions leading to public confrontations and civil disturbances do not serve the common good.

Section III of the report dealing with language and racial and ethnic tensions observes that "language has been a key component of the national character that defines our American culture." In our view, the clear implication of the report is that because this is so, and because the United States is incorporating large numbers of immigrants from diverse cultures, it must also therefore become a multilingual society. Certainly, there are communities—and Miami is one—in which large segments of the population speak and understand only a language other

than English. There are remedial steps which communities can and should take to help overcome language problems associated with access to governmental services, including stepped-up provision of English-language education. It is equally important to recognize that language can be an important element in the maintenance of ethnic heritage. Nonetheless, the important question remains of the long-term future of these communities in American society and whether they will remain profoundly insular, politically and economically, as a result of language. This report fails to directly address this issue. Worse, in our opinion it implies a course of action that would utilize the power of the national and State governments to *institutionalize* permanently the balkanization of American communities on the basis of language. The report notes with seeming approval that the Continental Congress published the Articles of Confederation in English, French, and German in order to "explicitly recognize[] the linguistic and cultural pluralism with the new American realm and the need to communicate with linguistically different populations in the languages they understood." Whatever the motivation or merits of this action by the Continental Congress, the fact remains that governmental documents are no longer published in French and German and it cannot be said that no longer to do so has been to the detriment of American government and society. Moreover, one might also conclude that this approach to language pluralism by the Continental Congress reflected a commitment to the type of pluralism and separation embodied in the Articles of Confederation—it was a type of plu-

ralism that failed. But what should be discussed at the national level today in a dispassionate and thoughtful manner is whether it is in the national interest to pursue governmental policies which will one day lead to having to publish government documents in Spanish and other languages.

Finally, we are concerned that this report relies in both its initial and final drafts on extensive prehearing witness interviews undertaken by staff. Citation to such interviews in the original text numbered approximately 120 and in the final text there are nearly 80 citations to such interviews. Such an unusually high reliance on these interviews in this report distances it, in our opinion, from much of the testimony that was taken during the hearing itself. Perhaps more importantly, such extensive use of staff interview does not permit the Commissioners themselves to pursue lines of questioning to those interviewed on the statements made prior to the hearing or to address assertions made during interviews to other witnesses testifying during the actual hearing. We believe this to be an issue which goes to the heart of the reliability of Commission hearing and report procedures.

For these reasons and in spite of areas in which the report does make contributions to the Commission's project on racial and ethnic tensions, we have voted against publication of this report in its present form. We would hold the Commission's work to a higher standard: one we think the Commission is capable of achieving and one to which, in our view, the public is entitled.

Appendix A

Adult Education in Florida

What Is Meant by Adult Education?

Federal and State statutes and regulations provide the legal framework for adult education programs. Nevertheless, they fail to explain precisely what is meant by the terms "adult basic education," "English as a second language," "bilingual education," "adult secondary education," and "adult vocational education" as methodologies of instruction. This section will define those terms, as implemented by Florida and Dade County programs.

Adult education is defined by Federal law as instruction below the college level for adults:

1. who are neither enrolled in nor required to be enrolled in a secondary school;
2. who lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a high school diploma or an equivalency diploma; and
3. whose lack of mastery of basic skills results in an inability to speak, read, or write the English language which substantially impairs their ability to get or retain employment commensurate with their ability, and thus are in need of programs to help eliminate such impairment and raise the level of education of such individuals with a view to making them less likely to become dependent on others.¹

Adult basic education under Florida statutory law is a curriculum of courses at or below a fifth grade level in the language arts, including English for speakers of other languages, mathematics, natural and social sciences, consumer education, and other courses that enable an adult to attain basic or functional literacy.²

The term is defined more broadly under the Florida Administrative Code. Adult basic education as defined by the Florida Administrative Code is instruction for adults functioning at or below the eighth grade level. The curriculum includes reading, mathematics, social studies, science, health, the language arts, consumer education, English for persons who speak other lan-

guages, life coping skills, and adult life stages.³

Adult secondary education under Florida statutory law and the Florida Administrative Code is a curriculum of courses designed to prepare adults to obtain their high school diploma or the general educational development test through instruction programs at or above the ninth grade level designed to achieve those goals. The courses offered through this method are equivalent in competencies to those required of other students in public high schools in the district.⁴

Adult general education under Florida statutory law is the amalgamation of all adult instruction programs, including adult basic education, adult secondary education, general educational development test instruction, vocational-preparatory instruction, college-preparatory instruction, and lifelong learning programs.⁵ Under the Florida Administrative Code, adult general education programs consist of adult basic skills education, adult secondary education, and lifelong learning programs.⁶

Educationally disadvantaged adults are adults who demonstrate basic skills equivalent to or below those of students in the fifth grade level, or who have been placed in the lowest or beginning level of an adult education program when that program does not use grade level equivalencies as measures of students' basic skills.⁷

Postsecondary adult vocational education is loosely defined in the Florida Administrative Code as programs that prepare adults for occupations that generally require more manipulative skills than theory. Postsecondary adult vocational education is not generally theoretical in content, but may be highly technical and require components in academic

¹ 20 U.S.C. 1202a (2)(D).

² Fla. Stat. Sec. 239.105(1)

³ F.A.C. §6A-6.013 (1)(a).

⁴ Fla. Stat. §239.105 (3); FAC §6A-6.013.

⁵ Fla. Stat. §239.105(2).

⁶ F.A.C. §6A-6.013.

⁷ 20 U.S.C. §1202a (3)(1997).

Appendix B

Federal Official Language Bills Introduced in the 104th and 105th Congress

104th Congress

Bill Emerson Language Education Empowerment Act, H.R. 123, 104th Cong., 2nd Sess (1996)

- Declares English the official language of the Federal Government
 - Requires all naturalization ceremonies to be conducted entirely in English
 - Requires all official publications, including tax forms, to be in English
 - Repeals the bilingual ballot requirements of the Voting Rights Act
 - Allocates savings achieved through the legislation to English courses for immigrants
- Originally introduced as the Language of Government Act of 1995 in both the House and Senate, this bill was passed in the U.S. House of Representatives in August 1996.

Language of Government Act of 1995, S. 356, 104th Cong., 1st Sess. (1995)

- Declares English the official language of the Federal Government
- Encourages greater opportunities for learning English
- Requires all official publications, including tax forms, to be in English, except for actions or documents that protect the public health, the rights of victims, and documents that utilize terms of art in other languages
- Allocates savings achieved through the legislation to English courses for immigrants

Declaration of Official Language Act of 1995, H.R. 739, 104th Cong., 1st Sess. (1995)

- Requires communication by officers and employees of the U.S. Government to be in English
- Requires all naturalization ceremonies to be conducted entirely in English
- Repeals Title VII of the Elementary and Secondary Education Act (the Bilingual Education Act)
- Exempts the use of languages other than English in educational settings only where such other languages are used to train students for international communication
- Preempts any State or Federal law that is inconsistent

National Language Act of 1995, H.R. 1005, 104th Cong., 1st Sess. (1995)

- Declares English the official language of the United States
- Repeals the Bilingual Education Act
- Terminates the U.S. Department of Education's Office of Bilingual Education and Minority Languages Affairs
- Authorizes the Department of Education to transition students formerly assisted under the Bilingual Education Act to special alternative instruction programs that do not use of the students' native language for 1 year after enactment

H.J. Res. 109, 104th Cong., 1st Sess. (1995)

- Amends the U.S. Constitution to establish English as the official language
- Requires that, as the official language, English be used for all public acts, including every order, resolution, vote, or election, and for all records and judicial proceedings of State and Federal Government

English Plus Resolution, H.Con.Res. 83, 104th Cong., 1st Sess. (1995)

- Encourages all U.S. residents to become proficient in English
- Expands educational opportunities for English language instruction
- Encourages all U.S. residents to learn or maintain skills in a language other than English
- Continues to provide government services in languages other than English to facilitate access to essential services, promote equal educational opportunity, and protect fundamental rights

105th Congress

Bill Emerson English Language Empowerment Act of 1997, H.R. 123, 105th Cong., 1st Sess. (1997)

- Declares English the official language of the Federal Government
 - Requires all naturalization ceremonies to be conducted entirely in English
 - Requires all official publications, including tax forms, to be in English
 - Allocates savings achieved through the legislation to English courses for immigrants
- Unlike the earlier version of H.R. 123, passed in August 1996, the version introduced in the 105th Congress does not address the Voting Rights Act.