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**From *la Migra* to *el Amigo*: The INS' Campaign to Befriend
Undocumented Immigrants during IRCA**

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by

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Dedication

To my family who has supported me all my life and to immigrants everywhere.

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Abstract

From *la Migra* to *el Amigo*: The INS' Campaign to Befriend Undocumented Immigrants during IRCA

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Before the passage of the 1986 Immigration Reform and Control Act (IRCA), the relationship between undocumented immigrants and the Immigration and Naturalization Service (INS) was highly antagonistic. Undocumented immigrants were distrustful of the immigration service due to its deportation mission that implemented deceitful tactics, which included using immigrant children to lure their undocumented parents and sending letters to immigrants promising legalization only to deport them once they arrived to INS offices among many others. However, this changed for a brief period after the passage of IRCA when INS transformed its image in the eyes of immigrants and became their *amigo* – their friend. INS accomplished this by engaging in a furious public relations campaign and training their staff to be supportive of immigrants as they applied for legal status – unprecedented measures for an agency that was set on deporting immigrants. Immigrants began to trust INS and went to them for help to get legalization during IRCA, something that experts thought would be impossible. While the literature on IRCA has studied its legislative history, short-term effects and long-term impact, it has overlooked the central

question this study analyzes: why did INS implement unprecedented measures to help undocumented immigrants attain legalization? Using congressional hearings on INS, interviews and public statements made by INS officials, institutional evaluations of IRCA's implementation, news articles and secondary data, I show that INS was going through a legitimation crisis, meaning that Congress and other overseeing institutions questioned INS' effectiveness and management leading to stagnation in INS' growth, something INS wanted to change. Implementing the legalization component of IRCA successfully was one way in which INS could regain its standing in the eyes of Congress, which meant helping immigrants attain legal status. In other words, the interests of immigrants and INS converged during IRCA leading to a change in INS' behavior. To understand this process, this study shows how INS went from being *la migra* (immigration services) to *el amigo* of undocumented immigrants during IRCA.

Table of Contents

| | |
|---|----|
| List of Tables | x |
| List of Figures | xi |
| Chapter 1: Introduction | 1 |
| Organizational Legitimacy..... | 5 |
| Theories on Government Agency's Behavior | 10 |
| A Look Ahead..... | 13 |
| Chapter 2: Methodology and Data | 15 |
| Method..... | 15 |
| Operationalization of Concepts..... | 19 |
| Data..... | 20 |
| Chapter 3: Background on IRCA and INS | 23 |
| IRCA and INS in the Literature | 23 |
| INS: Formation and Administrative Change | 26 |
| INS: Leadership and Hierarchy During IRCA..... | 29 |
| IRCA's Legislative History | 32 |
| Chapter 4: The INS' Image Crisis | 36 |
| Troubled Perceptions from Above: GAO, OMB and Congress | 37 |
| Troubled Perceptions from Below: Immigrant Advocacy Groups and Undocumented Immigrants..... | 44 |
| Chapter 5: Becoming <i>El Amigo</i> and Regaining Legitimacy..... | 49 |
| Befriending Immigrants: The PR Campaign, Establishing Legalization Offices and Creating a New Image..... | 50 |
| Praise from Above: The Relegitimization of the INS..... | 55 |
| Chapter 6: Conclusion..... | 61 |
| INS, IRCA and the Convergence of Interests | 61 |
| Contemporary Relevance for the Literature | 63 |
| Directions for Future Research | 64 |

| | |
|----------------------|----|
| A Final Thought..... | 66 |
| Bibliography | 68 |

List of Tables

| | |
|--|----|
| Table 3-1: Administrative History of Immigration Agencies in the United States, 1817- Present | 28 |
| Table 4-1: INS Budget Requests, Appropriations and Rates of Change, Fiscal Years 1969-1984 | 42 |
| Table 5-1: Immigration and Naturalization Service's Budget, 1975-2003 | 59 |

List of Figures

| | |
|---|----|
| Figure 3-1: INS Organizational Chart..... | 30 |
|---|----|

Chapter 1: Introduction

“[INS is] the ugly stepchild of the Justice Department.”
-Alan Nelson, Former Federal Commissioner of INS (quoted in
Magaña 1995: 86)

Undocumented immigrants had great distrust for the Immigration and Naturalization Service (INS). While the entrance of immigrants at Ellis Island has become a romantic moment in United States history, this has not been the reality lived by immigrants of color in the last 60 years – especially when considering the creation of the “illegal alien”¹ (Johnson 1996/1997; Ngai 2004). INS, while in charge of both naturalization services and enforcement, concerned itself primarily with the enforcement aspect of the job as it relates to dealing with undocumented immigrants living in the U.S. (Purtell 1986). They implemented various unethical tactics to earn its negative image in the eyes of immigrants which included using immigrant children to lure their undocumented parents and sending letters to immigrants promising legal status only to deport them once they arrived at INS offices. These tactics caused undocumented immigrants to see INS as an enforcing entity that they could not trust (INS 1988; Cosco 1988).

However, this changed for a brief period during the late 1980’s after the passage of the Immigration Reform and Control Act (IRCA) of 1986. This immigration law, while containing two provisions that increased enforcement against undocumented migration, also provided a legalization provision, known as amnesty or *amnestia* by the

¹ I will refer to this group of people as “undocumented migrants” or “undocumented immigrants” from this point forward.

Spanish-speaking migrants who were the primary targets of the law. There were two legalization programs under IRCA. The first was the general legalization program (I-687) which lasted for a one year period from May 5, 1987, to May 4, 1988. Any immigrant who entered the U.S. before 1982 was eligible for this program. The second program under IRCA was the Special Agricultural Workers (SAW) program aimed at legalizing farmers and other agricultural workers which lasted from June 1, 1987, to November 30, 1988. Legalization² was to be funded completely by the application fees paid by the migrants seeking legalization – meaning that INS would not receive any additional funds or profit as a result of these legalization efforts.

The passage of IRCA was a contentious endeavor, but it was not more difficult than having to implement it, the responsibility falling on INS. When combining the distrust between migrants and INS, INS' poor management and leadership structure (GAO 1973, 1991) and INS having no incentive to enact extraordinary measures to promote legalization, legalization was expected to fail (Hing 1992). To make matters worse, INS was not fully prepared to deal with the expected number of potential applicants – very liberal estimates (by those who oppose undocumented immigrants) predicting that there would be an upward of 12 million applicants, even though the true number was closer to 3 million applicants with 2.7 million receiving legalization (Hing 2004). However, INS' implementation of legalization was a large success from start to

² Legalization and amnesty are not always synonymous with one another in how they are used in the literature. Legalization can mean a required participation in English and civic training to get a green card while amnesty is known as the legal pardon for being in the U.S. without authorization. However, no distinction is made in this study – they are used interchangeably to mean a legal pardon for being in the U.S. without authorization. Any references to civic training will be called civic training, not legalization.

finish – INS undertook extraordinary measures to promote legalization and gained the trust of undocumented immigrants (GAO 1990; Gordon 1988; Creppy 1988). They did so by engaging in a furious public relations campaign that rebranded their image, transforming them from *la migra* (the Spanish name for immigration services) to *el amigo* (a friend) – something that neither INS had ever done before or has been replicated since (Magaña 2003). Yet, INS’ efforts during IRCA have often been overlooked by scholars who have studied IRCA and INS. Why did INS implement unprecedented measures to help undocumented immigrants attain legalization? Moreover, how did the INS become *el amigo* of undocumented immigrants – something that was thought to be impossible (Hing 1992; Magaña 2003)?

Many will point to the law itself as the explanation to these questions, but there are two factors that make this an unlikely possibility. The first, as mentioned above, is there was no significant monetary incentive in IRCA for INS to carry out legalization effectively. While the application fees would eventually pay for the expenses of the INS’ efforts during legalization, these fees did not serve as a profit for the INS and their then dismal funding – they were to break even at best (IRCA 1986; U.S. Congress 1988). If they were unsuccessful, they would have been blamed for their failures, but could have blamed Congress for producing a faulty law that made it impossible to succeed. Secondly, the legalization program was not the “heart” of IRCA – the sanctions provision (and to a lesser extent, the increased border protections) was the driving force behind IRCA. INS could have potentially failed to help immigrants as much as they did and still covered themselves in the eyes of Congress and anti-immigrant Americans if they

showed progress in regards to sanctions against employers and their beefed up border patrol. In other words, INS could have survived any backlash without the legalization program (thus putting undocumented immigrants in a bind) as long as they focused on the other two provisions of IRCA.

Nevertheless, INS wanted to do more than just survive without backlash. Like any agency, organization, or institution, it wants to prosper and expand (Browne 1980). This was especially true of the INS who had been seen by Congress and many others at the federal level as inadequate. This has been well documented in the history of INS by Congress, the Government Accountability Office (GAO), and the Office of Management and Budget (OMB) (GAO 1973, 1987, 1990; Morris 1984). In one report, Congressional members described INS as “inadequately equipped, overwhelmed by its work, deeply demoralized, and in a hopeless state of disarray” (Morris 1985: 88). This meant that INS had a problem - a perception problem. More specifically, INS had a *legitimacy*³ problem in the eyes of Congress and undocumented immigrants – neither believed in the job INS was doing. Congress, along with other major U.S. institutions like GAO and OMB, all felt that INS was poorly managed and could not complete many of the tasks that Congress asked of it (GAO 1973, 1987, 1990; Morris 1984). Congress’ troubled perception of INS would prevent it from growing, as it was denied many of the budget requests that it asked for (Morris 1984). In order for the INS to find a way to survive and expand beyond its past failures, it had to be perceived and accepted as an efficient and

³ Legitimacy is used in terms of its emphasis on social perceptions rather than the legal conception that is often used when thinking of governments or government agencies. I do not argue that INS was viewed as non-legal, but rather, that its competency and morality were questioned by Congress and immigrants, respectively. A fuller discussion of this is found later in this chapter and in chapter 2.

useful entity – it had to be seen as legitimate – and the only way to be legitimate was to help undocumented immigrants attain legalization during IRCA.

Yet, on a structural level, the end goal was not about helping migrants, but changing INS' image in the eyes of immigrants *as a means* to change its image in the eyes of Congress so it could get an increase budget and more responsibilities – so it could expand. In other words, the interests of immigrants (legalization) and INS (desire to change its image for Congress in order to expand) converged during this historical moment. Thus, it becomes clear why INS took the extraordinary measures to help immigrants and the process it undertook to do so.

Organizational Legitimacy

The study of legitimacy has a longstanding tradition within sociology, particularly in social psychology, organizational sociology and studies on states and their stability (Habermas 1975; Johnson et al 2006). While these three major paradigms focus on different actors and levels of analysis when discussing legitimacy, all three regard it as a process that explains behaviors by groups, organizations and states (Johnson et al 2006)⁴. Because INS is a governmental organization, the social psychology literature on legitimacy will not be discussed at length, rather focusing on the literature of organizations and states. Still, many of the contributions made by social psychology can be found in how other approaches which study legitimacy (Johnson et al 2006). Before analyzing the literature, it is important to have a working definition of legitimacy.

⁴ For those interested in a fuller discussion on social psychology, organizations and legitimacy, an in-depth reading of Johnson et al (2006) will provide the reader with a thorough understanding of legitimacy in these fields.

Sociological studies of legitimacy date back to the days of Max Weber (1978 [1924]). Weber states that something is legitimate “only if action is approximately or on the average oriented to certain determinate ‘maxims’ or rules” (31). According to Johnson et al (2006), Weber’s definition of legitimacy “offers the central insight that legitimation occurs through a collective construction of social reality in which the elements of a social order are seen as consonant with norms, values and beliefs that individuals presume are widely shared, whether or not they personally share them” (55). In other words, legitimacy is something that is granted by a collective (not individuals) and abides by the norms and values of that collective. Organizational sociology has been heavily influenced by Weber’s initial conception of legitimacy. This is seen in Suchman’s (1995) formulation of legitimacy in organizations. He writes that legitimacy is a “generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions” (574). The important takeaway from Weber’s original conception of legitimacy and Suchman’s refined definition that suits organizations is that legitimacy is above all else a perception that is managed by the collective. This means that there can be dissenters or people who view organizations or other entities as illegitimate, but it ultimately is irrelevant as long as the desired group believes that the organization is legitimate.

Research on legitimacy and organizations has focused on legitimacy as a process – how new social objects acquire legitimacy and how this can explain organizational behavior. Johnson et al (2006) believe that there are four components that new

organizational forms must meet in order to be considered legitimate: innovation, local validation, diffusion and general validation (53). Whenever a new organization is formed, it must create something that satisfies a need in a way that either has never been satisfied or satisfied in a more efficient manner. If the innovation fulfills the need, then it gains local validation – meaning that it is consistent with the beliefs, values and norms of that community (Suchman 1995). This becomes the new, “acceptable way of doing things to meet local needs and goals” (Johnson et al. 2006: 60). From there, an innovation reaches diffusion whenever it spreads to other communities. This requires the innovation to pass through the local validation stage again (for it must be validated in order to be legitimate) and once multiple communities begin to accept the innovation, then its diffusion is complete. The final stage to legitimacy is general validation, which can be attained once the innovation has received validation across multiple settings and contexts and has come under the belief that it is acceptable and becomes part of the community’s culture (61).

Johnson et al. (2006) illustrate how legitimacy works as a social process in their discussion of DiMaggio’s (1982) study of the emergent nonprofit arts organization in Boston. In the late 1800’s, there weren’t any organizations that were able to house art. For-profit organizations were mainly concerned with garnering large audiences, focusing most of their attention on theaters and concerts. This coupled with the entrance of immigrants and the emergence of the nouveaux riche created nonprofit organizations for art, such as the Museum of Fine Arts (MFA) and the Boston Orchestra (BSO) – the nonprofit art organizations representing the innovation. Accordingly, the MFA and BSO both succeeded in Boston (local validation) and after their success in Boston, other areas

of the country began to adopt the nonprofit organizational form as their own (diffusion). The final stage arrived (general validation) came once colleges and universities began to accept this type of art and it reflected in their curriculum (Johnson et al 2006).

Going through the legitimation process and receiving legitimacy allows organizations that were once in danger of not being accepted into a community's culture gain stability. As part of this stability, organizations have leeway in how their organizations are run without the immediate threat of losing their legitimacy. One of the consequences to having stability and legitimacy is that this can lead to inefficient policies and practices. The work of Walker & Zelditch (1993; Zelditch and Walker 1984) show that legitimacy grants organizations the power to retain that legitimacy within the organization because of the ability to enforce sanctions to those working within the organization. The manner in which this operates across organizations has also been studied by DiMaggio and Powell (1983); Dobbin et al (1993); Sutton and Dobbin (1996); Kelly (2003). In these instances, policies and practices become diffused and legitimated to other organizations, better known as institutional isomorphism (DiMaggio and Powell 1983).

However, much of the literature on legitimacy – while strong and apt at describing how organizations gain legitimacy and the effects of legitimacy both within and across organizations – does not explain how organizations deal with the threat of delegitimization. Legitimacy, like any other form of capital, can be taken away – it is not eternal. Organizations that have been legitimated are able to maintain that legitimacy through various means as noted above, but this does not explain how organizations can

lose legitimacy or handle situations in which it is threatened – what Habermas would call a legitimation crisis.

This, however, does not mean that governments and government agencies are synonymous with one another. While government agencies are part of the government, they are not as permanent as the ruling government itself – if a government agency is disbanded, this does not mean the government itself is disbanded. Also, while an existing agency is dependent on the government for its survival, it is not completely controlled by the government. As criminology literature has taught us, discretion is present in government agencies and is one of the most prevalent features of the criminal justice system, from the law enforcers who have discretion in how laws are implemented to the court system in which prosecutors and judges control indictments, plea bargains and sentencing (Inciardi 2010).

With discretion, the federal government cedes some of its control to agencies and the people who operate them. Because of this discretion, government agencies are able to be studied independently of the government – having their own interests, motives, and strains to deal with. In most instances, “the government” is represented by Congress since members of Congress are in charge of the laws that these agencies are supposed to implement. They are also the ones who regulate the budgets of these agencies. However, as noted in the example of law enforcement and the court system, government agencies have discretion to combat Congress’ control over them. In other words, this can be seen as the separation between government and government agency – the autonomy of the government agencies. One of the advantages to studying INS is that it is a government

agency and will allow us to understand how it deals with a legitimation crisis. By understanding how INS gained the trust of immigrants and why they did so, we can understand how government agencies regain legitimacy and gain more insight into the motives behind this route of re-legitimization.

Theories on Government Agency's Behavior

Why do government agencies behave the way they do? This has been the central question surrounding the study of government agencies and their behavior – practices, policies and regulation. While my discussion on the autonomy of government agencies argues that government agencies have some degree of separation between themselves and Congress (the representative of “the government” in this instance), there are theories on government agencies that argue the opposite. For example, Weingast and Moran (1983) state that agencies do not have autonomy, but rather that Congress and its committees “possess sufficient rewards and sanctions to create an incentive system for agencies” (769). According to this view, also known as Congressional control or Congressional dominance, agencies want the awards that Congress has to offer them and therefore, acts in the interest of Congress. They use the Federal Trade Commission (FTC) as a case to study the level of influence that Congress has and find that congressional preferences, especially subcommittee preferences were significant factors in how the FTC chose which cases to handle (Weingast & Moran 1983: 780). Another perspective that theorizes the relationship between government agencies and Congress argues that while Congress does possess awards and sanctions that can influence the behavior, actions and practices of agencies, government agencies have autonomy given their complexities and own power

in handling their duties. Moe (1985) argues that a government agency's knowledge of its own practices and organization allow them to exercise discretion – not being under complete “domination” like Weingast and Moran suggest. In his study of the National Labor Relations Board (NLRB), Moe comes to the conclusion that while Congress, the courts and even the president had an influence on the NLRB, they ultimately did not affect its policies (1114).

However, both theories have a nonreciprocal conception of the relationship between Congress and the government agency they seek to study. In their formulations, government agencies only respond or interact with Congress (or a branch of government higher than agencies in Moe's formulation of the NLRB). By doing so, they overlook the role that other groups can have on government agencies – primarily, the masses. While these first two theories overlook this part of the equation, public-interest theories and the external-signals model take into consideration the role of the people and put it at the forefront of analysis. For instance, the public-interest theory of regulation argues that agencies take into consideration the benefits that the public stand to gain (wanting to maximize these benefits). Baron and Besanko (1984) suggest that there is an ongoing relationship between the regulation and the consumer. Stigler (1971) and Peltzman (1976) have a similar perspective to that of Baron and Besanko, except both of these projects study the relationship between government agencies and the industries they seek to regulate – what they both call capture theory. According to capture theory, government agencies behave in ways that maximize the benefits of the industries that they are regulating.

Another theory that studies the dynamic between government agencies and the people they serve (be it industries or the public) is external-signs theory. This theory, first used by Joskow (1974), Noll (1985), and Magat et al (1986), argues that government agencies need positive feedback from an outside group in order to avoid obstacles that may disrupt the agency's operations (Olson 1995). According to Olson, "[c]omplaints about agency decisions or agency behavior can lead to congressional oversight, investigations, or other outside attempts by interest groups to intervene in agency operations" (1995:388). In order to avoid these interventions by Congress or interest groups, government agencies seek positive feedback to allow their operations to go uninterrupted. Moreover, positive feedback grants government agencies political support, allowing an agency to "shelter itself from changing political environments and [maintaining] its autonomy" (389).

With the exception of external-signs theory, the literature on government agency behavior has a narrow conception of what influences an agencies' behavior. The congressional dominance theory and its alternative by Moe (1985) suggest that the only influencing group that exists for agencies lies in the government, forgetting about the public. On the other hand, public-interest theory and capture theory both argue that it is the subject under regulation (the public, industries, etc.) that affect how agencies behave, diminishing the role of Congress and other entities that are superordinate to themselves. The compromise between these two types of theory is external-signals theory, which accounts for Congress' power over an agency, the agencies autonomy from Congress, and an agency's desire to receive positive feedback from the public in order to avoid

interventions from Congress. By making this turn, not only does external-signs theory converge with legitimacy theory, it expands it when discussing government agencies because it captures the balance agencies must strike between Congress and the public. Positive feedback in the external-signs theory is analogous to the positive perception the public has whenever an organization's actions fall in line with a community's norms and beliefs as Suchman described.

Both of these theories, however, assume that the outside group (the public) which provides legitimacy/positive-feed back is legitimate, i.e. has the power to provide legitimacy to the organization at hand. Undocumented immigrants are the exact opposite of a legitimate group; they are viewed as illegitimate people (best seen in the moniker, "illegal alien"). By making this assumption, both the literatures of legitimacy and government agency behavior miss (1) that organizations and agencies have the power to grant legitimacy to the people (not just the people to the organizations) and more importantly, (2) that these illegitimate audiences can ultimately have an effect on the legitimacy of organizations – as was the case during IRCA. The implicit assumption of the literature on legitimacy and government agencies assumes that only legitimate agents can affect the positive feedback or legitimacy that organizations can receive. As I will show in this study, "illegitimate" people can also have an effect on governments and its agencies.

A Look Ahead

The following chapters show why INS helped immigrants during IRCA. Chapter 2 is a comprehensive methods section, outlining the historical method that will be used

for this study, the operationalization of key concepts and a discussion of the primary and secondary documents that are used as data. Chapter 3 provides a history of the INS (its formation, duties and functions) and IRCA (its beginnings at the state level, the political controversy behind legalization and employer sanctions and its signing into law). A brief overview of what previous scholars have said about INS and IRCA will also be included. Chapter 4 outlines the legitimation crisis that INS was going through, facing criticism by Congress, GAO and OMB. This was coupled by the distrust that immigrants and advocacy groups had for INS. I will argue that INS needed IRCA to be successful just as much as immigrants needed INS to implement it. Chapter 5 shows how INS took unprecedented measures to ensure its legitimacy during IRCA and how those unprecedented measures were successful and led to INS' expansion in the coming years. This chapter shows how an organization can be re-legitimated through a process that is similar to the initial legitimation process. Finally, chapter 6 provides a conclusion of the study, a discussion of the implications for studies of organizations and legitimacy, and avenues for future research.

Chapter 2: Methodology and Data

“Sociological explanation is necessarily historical. Historical sociology is thus not some special kind of sociology; rather, it is the essence of the discipline.”

– Philip Abrams (1982:2)

Method

Historical sociology has been at the heart of sociology since its inception. Even though sociology has shifted towards quantitative methods and large data sets, the foundational thinkers of sociology (such as Augustus Comte, Emile Durkheim, Karl Marx, Max Weber and W.E.B. Du Bois) all employed historical methods to explain social phenomenon in different societies. This is usually thought of as the first wave of historical sociology, one in which questions of modernity were the primary focus (Charrad 2006: 351). The second wave that came in the 1970’s and 1980’s sought to respond to Marx and Weber, focusing on building theories of state, class and politics (352). Moreover, the unit of analysis matched the “big” size of those topics covered, focusing primarily on nation-states during critical junctures.

While most think of historical sociology as dealing with historical questions in the manner that the first and second waves dealt with them, historical sociology has evolved over time, created different logics of practice and has been used differently by different scholars (Lachmann 2013). This is best shown by the third and most recent wave of historical sociology. As Charrad states, the “third wave offers an opportunity to reexamine the core questions that preoccupied our predecessors and to ask new questions in regard to culture, agency, the character of modernity, gender, colonized peoples, race

and the world beyond the West” (2006: 352). This shift in historical sociology has opened it up to study a more versatile range of themes and processes that were not under the scope of the first two waves. The emergence of third wave does not discredit the first two waves but rather gives it an added breadth and depth to which this study belongs.

Nevertheless, understanding the genealogy of historical sociology is not the same as understanding how to *do* historical sociology. I begin the next part of this thesis by discussing comparative-historical methodology and how it is implemented in this study to understand the factors that led INS to help undocumented immigrants during IRCA.

This study, while not employing the comparative-historical method as classic studies have done (see Moore 1966; Skocpol 1979 and Charrad 2001 for examples), shares the logic and telos of the comparative-historical method. Comparative-historical analysis¹ is characterized as “examining how long-term trajectories combine with short-term developments at critical historical moments to lead to different political outcomes” (Charrad 2001: 10). This is done by selecting cases that are similar on multiple dimensions to isolate the dimension that is thought to be responsible for the change that occurred during the critical historical moment. For example, Charrad (2001) analyzes why Tunisia, Algeria and Morocco (three countries with similar histories or “background variables”) had divergent forms of family law and gender equality/inequality after independence from France. The difference in these cases is that Tunisia had a strong central state in relation to kin groups during the pre-colonial and colonial era which

¹ I use “comparative-history,” “comparative-historical analysis” and “comparative-historical methodology” (or “methods” for short) interchangeably throughout this study, referring to the same methodology described in this section.

allowed the postcolonial state to pass improved legal status for women in Tunisia, while Algeria and Morocco had a weak central state in relation to the kin groups, causing both to eventually adopt a more conservative form of family law which lead to durable gender inequality.

While it is impossible for comparative-historical analysis to gather large data sets or control for all possible variables, the goal of comparative-history is two-fold. Skocpol (2003) calls this two-fold goal in comparative-historical analysis a “doubly engaged social science” because it aims to examine evidence while building theory. This is the strength of comparative-history. In fact, this “approach makes possible a dialogue between theory and evidence of an intensity that is rare in quantitative social research” (Mahoney and Rueschemeyer 2003: 13). Having a small number of cases allows the researcher to know their cases intimately and also allows them to account for issues such as measurement validity, independence and applicability of theory across contexts – making “contextualized comparisons” (Locke and Thelen 1995). Comparing a case with other similar cases allows for many methodological and theoretical advantages, including the creation of higher-order theory – theory that can be applicable towards other cases through the use of comparisons.

There are two ways that cases can be compared according to Mill (1950): the method of agreement and the method of difference. The method of agreement takes cases that share the phenomenon being studied to strengthen the theoretical argument. The method of difference contrasts cases in which the phenomenon being studied is present to cases in which it is absent. These comparisons are often done through the use of

“negative cases” – cases that have a divergent outcome to those being studied. The use of negative cases is seen as an advantage in comparative studies (whether it is comparative history, analogical theorizing and even ethnography) and is something that is desirable in order to “test” the proposed theory. By comparing a negative case to a positive case, we are able to determine the strength of the proposed hypothesis by seeing how it failed in one case and succeeded in another.

This study will analyze one case, INS during IRCA’s legalization period, and compare it to the time periods before and after the legalization program began in 1987. The time period before the beginning of legalization that this study considers is 1970 to 1986. This period is chosen because discussions of legalization and INS’ management issues began to surface during the early 1970’s until the passage of IRCA in 1986. The second time period ranges from 1988 to 2003. This time period is considered because it captures the success of INS after its implementation of the legalization program. The life-span of the legalization program (May 1987 to May 1988) serves as the critical historical moment that separates the two periods of time. For the purposes of this study, the time periods before and after the legalization program serve as “negative” cases, meaning that INS did not take unprecedented measures to help undocumented immigrants during these periods. The legalization period serves as the “positive” case meaning that INS did take unprecedented measures in helping undocumented immigrants. By comparing the “positive” case to the two “negative” cases, the importance of INS’ desire to expand, INS’ discretionary power during IRCA and the legitimation crisis that it faced are highlighted to reveal why INS helped immigrants during IRCA.

Operationalization of Concepts

Before discussing the data used in this study, it is useful to examine how some key concepts are utilized, especially the concepts of legitimacy and unprecedented measures. Without having a clear understanding of legitimacy or unprecedented measures, it will be difficult to analyze how INS suffered from the dual legitimacy crisis and then regained its legitimacy. Suchman (1995) defines legitimacy as “a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions” (574). This definition is important because it focuses on the perceptual aspect of legitimacy. Legitimacy for Suchman is above all else a perception of the entity – it is socially constructed. It is a form of social capital, and, like all other forms of social capital, it is prescribed by other individuals, groups or institutions.

This clarification is needed because this study diverges from standard studies of governmental legitimacy in that legitimacy is not conceptualized as the *legality* of the agency, but rather, the *image or perception* that Congress or undocumented immigrants have of INS. In other words, this study is not analyzing the legal legitimacy of INS (something that is unquestioned since Congress did not defunct INS during IRCA). I do argue that because INS’ standing with Congress was unfavorable before IRCA, it had to make sure to implement IRCA in a certain way to regain its standing with Congress. However, much more is at stake than just having a “bad image.” As with any social construction, the ramifications are tangible. Not being seen as competent by Congress would mean that INS would not be able to expand as it desired or attain an increase in its

budget. The lack of this “perceptual legitimacy,” then would have negative consequences on INS. Thus, the “legitimation crisis” can be solved and seen empirically when Congress grants more funds and power to INS, being seen as competent enough to use it.

Secondly, I use “unprecedented measures” as a “catch-all” phrase for the actions that the INS would not normally do to help migrants with their legal status *on a systemic level*. While there were INS agents who were kind to immigrants and helped them in various ways, this was not the policy of the INS as an organization. However, unprecedented measures were implemented to be seen as a competent organization, which include the massive PR campaign INS created, their cooperation with community organizations, and the creation and efficiency of various legalization offices throughout the U.S. that were build from the ground up to help implement IRCA.

Data

This study is based on primary data such as congressional hearings, newspaper articles, public statements made by INS officials, Congressional members, the Department of Justice (DOJ) and other high ranking government officials, non-governmental evaluations and secondary sources. The congressional hearings were collected via the ProQuest Congressional database. I searched the database for all documents relating to IRCA, INS and the implementation of IRCA by INS. After choosing the documents based on their titles (anything that said “immigration,” “IRCA” or “INS”), I read through the table of contents and read through any sections for relevant

material. Newspaper articles were collected in a similar manner using the ProQuest Historical Newspaper databases, particularly the New York Times, the Los Angeles Times and the Washington Post.

The statements made by INS officials and other important players during IRCA were collected through the aforementioned sources along with interviews given to Lisa Magaña in her dissertation (1995) and her 2003 book. She interviewed Alan Nelson, the Federal Commissioner of the INS from 1982 to 1989, Harold Ezell, the Western Regional Commissioner of the INS from 1985 to 1988, Bill King, the Western Regional Manager of IRCA, Ernest Gustafason, the Los Angeles District Director of the INS from 1985 to 1990, along with deputy directors in important posts during IRCA (Magaña 1995). The questions ranged from organizational discretion of INS employees on the ground to the higher level objectives of INS.

Non-governmental evaluations refer to those made by independent immigration institutes that analyzed INS and its implementation of IRCA. These include studies by the RAND Corporation, the Urban Institute and the Migration Policy Institute. These studies were supplemented with governmental data taken from the 1980 and 1990 Census, the Department of Justice's online archives and government documents such as publications from the GAO, DOJ and INS.

Lastly, data on INS during IRCA is supplemented by secondary sources primarily composed of academic publications. The data for this study were collected through the University of Texas at Austin Library System databases, the Nettie Lee Benson Latin American Collection Library, and the Tarlton Law Library. The combination of the

methods, concepts and data are used to triangulate the motivations, actions and events of legalization in the U.S. during IRCA.

Chapter 3: Background on IRCA and INS

This chapter provides a history of the INS (its formation, duties and leadership) and IRCA (its beginnings at the state level, the political controversy behind legalization and employer sanctions and its signing into law). A brief overview of what previous scholars have said about INS and IRCA will also be included to see how this study fits into the larger body of work on the INS and IRCA. The purpose of this chapter is to get the reader acquainted with how INS functioned and existed before IRCA to understand its abilities and limitations.

IRCA and INS in the Literature

The story of IRCA has been told and examined by the most respected scholars of immigration, leaving no shortage of literature on the topic. When thinking about the literature on IRCA, it is useful to do so in terms of two thematic categories: IRCA's formation from bill to policy and its social, economic and political impact - its creation and outcomes. The following is a review of these two major perspectives that have studied IRCA across various methodologies and theoretical frameworks.

The passage of IRCA from bill to law has been extensively covered by immigration scholars. Most notably, the works of Hing (2004), Kubat (1993) Gimpel (1999) and Maddux (2005) show how much of the debate around employer sanctions and legalization (the two highly contested and controversial provisions within IRCA) were first attempted at local levels (California), failed, and then attempted at the national level. These debates and processes are what culminated into IRCA in November 6, 1986 when

then-President Ronald Reagan signed IRCA into law (see below for a more detailed history of IRCA's legislation).

A shift in how we understand how immigration control is produced came with Tichenor's (2002) *Dividing Lines*. In this work, Tichenor advocates for a historical-intuitionist approach which aims to study how institutions (particularly, political parties) influence how immigration control is formed and ultimately passed into law. This allows Tichenor an advantage over other historical works on immigration policy because it avoids the individualist trap that is often associated with studying politicians as having total control of a historical moment. Instead of looking at one or two politicians that crafted a specific immigration bill (something that can at times be ahistorical), Tichenor's analysis of the party system itself and its influence on policy necessitate that he provide a context and history that is often lost when studying individuals onto themselves. Moreover, studying institutions can help ground studies of the state. When studying "large" entities such as the State, History, and Processes, it is easy for theories to become so general that they ultimately become abstract and don't speak to the reality of immigration. By studying institutions, Tichenor is able to reach a middle ground that is run by the politicians and is part of the state and its actions. This allows Tichenor to marry both the individual and the abstract, all while studying the elites who are responsible for shaping immigration policy.

Another thread of studies focused on the outcomes of IRCA. Many prominent immigration scholars in multiple disciplines (such as sociology, history and political science) have discussed how IRCA has affected migrants who benefited from amnesty as

well as how employers were affected by the sanctions imposed on them for hiring undocumented workers. For example, the work of Douglas Massey has explored how migrants and Latinos have faced discrimination in the hiring process after IRCA. His 1999 article with Julie Phillips examines the effect of IRCA on immigrant's wages (Phillips and Massey 1999). They find that IRCA did not increase discrimination against Mexican workers, but rather "encouraged greater discrimination against undocumented migrants" (233). Another study by Michael Crocenzi (1992) examines specifically the effect of employer sanctions on immigration trends in the U.S. from Mexico and Central America finding that the sanctions did not do enough to overturn the "pull" of migration. Other studies (Sorensen and Bean 1994; Taylor 1996; Taylor and Thilmany 1993; Donato and Massey 1993; Davila, Pagan and Grau 1998; Bansak and Raphael 1998) have all provided (much like the first two mentioned) an analysis of IRCA's effect on wages, employer discrimination, migration flows, and the everyday lives of the migrants who are leaving their home countries for the U.S.

Both the historical studies and outcome studies of IRCA have provided an overview of how IRCA came to pass and affected both employers and immigrants, however, very few of these studies are given attention as to how IRCA was implemented. Even Tichenor's work, which studies institutions, primarily focuses his analysis on Congress and their power to influence immigration laws forgetting the other actors that were important in how the law was applied. A study that diverges from this popular study of IRCA comes from Hagan and Gonzalez-Baker (1993). In their study, "Implementing the U.S. Legalization Program", they conduct an ethnography in a Maya community

living in Houston, TX and originally from Guatemala. They study how immigrant communities, community-based organizations and INS officials all played a role in legalization during IRCA. An innovation that this study provides is its focus on organizations and how it describes some of the actions these organizations undertook during the legalization period. This study is important because its analysis of implementation gives us a glimpse of how IRCA functioned instead of a structural overview of what happened.

Yet, as rich as the immigration literature on IRCA is, it does not help us understand why INS would help migrants as they did during IRCA. Studying INS' role during IRCA will allow us to understand how groups or organizations that were once antagonistic toward one another can ultimately have their interests converge in order to produce legalization for millions of undocumented immigrants. While neither INS nor IRCA stopped the flow of immigration as many scholars or politicians predicted, understanding why INS acted as it did can show how a paradoxical historical moment can be created, one in which an immigration service that was known to deport migrants was doing unanticipated actions to keep them in the country.

INS: Formation and Administrative Change

Immigration services in the United States have not changed often throughout history, but they have had occasional shifts in organization. Before the creation of immigration services, the Secretary of State was responsible for submitting immigration statistics to Congress. The U.S. created its first immigration office in 1864 in order to *help produce* immigration. A Commissioner of Immigration (under the State Department)

was created to regulate immigrants' transportation and the settlement. This law, however, was not effective at handling immigration at the state level, so the Commissioner of Immigration was abolished four years later and immigration was left up to the individual states to regulate, while the Secretary of State resumed his duties of submitting immigration statistics. The U.S. began to reconsider this position in the 1870's when the Supreme Court deemed that the Federal government should have exclusive regulation over immigration.

In 1882, two laws were passed that began to change the landscape of immigration in the United States. Congress passed the Chinese Exclusion Act and the Immigration Act of 1882 that established the Federal government as the appropriate judiciary over immigration policy, established the grounds for exclusion of certain people (prostitutes and convicts) and gave the Treasury Secretary power to coordinate with various states for law enforcement to control immigration. The control of immigration by the Federal government took a step forward with the creation of the first organization, the Federal Bureau of Immigration, which was established in 1891 under the Department of Treasury. The Bureau of Immigration began with 24 inspection stations (the most famous being Ellis Island in 1892) at both seaports and land borders. These inspections sites would eventually become the influence of the Border Patrol of the 1980's and today. Along with the "enforcement" of these various ports, Congress passed the Naturalization Act of 1906, adding the naturalization component to the immigration system (for a brief summary, see Table 3-1).

Table 3-1: Administrative History of Immigration Agencies in the United States, 1817-Present

| Department of State (1817-1874) | Department of Treasury (1869-1903) | Department of Commerce and Labor (1903-1913) | Department of Labor (1913-1933) | Department of Justice (1933-2003) | Department of Homeland Security (2003-Present) |
|---|---|--|--------------------------------------|--|--|
| Secretary of State (1819-1864) | Secretary of the Treasury (1869-1891) | Bureau of Immigration (1903-1906) | Bureau of Immigration (1913-1933) | Immigration and Naturalization Service (INS) (1933-2003) | U.S. Citizenship and Immigration Services (USCIS) (2003-Present) |
| Commissioner of Immigration (1864-1868) | Office of the Superintendent of Immigration (1891-1895) | Bureau of Immigration and Naturalization (1906-1913) | Bureau of Naturalization (1913-1933) | | U.S. Immigration and Customs Enforcement (ICE) (2003-Present) |
| Secretary of State (1868-1874) | Bureau of Immigration (1895-1903) | | | | U.S. Customs and Border Protection (CBP) (2003-Present) |

A new bureau was created in order to run the naturalization component named the Bureau of Immigration and Naturalization, which is the ancestor of the INS due to its dual mission of enforcement and naturalization. However, it ended after seven years when the two functions were separated in 1913 as a result of the separation between the Departments of Commerce and Labor. Enforcement and naturalization were maintained separated until 1933 when they were united again under the new formed Immigration and Naturalization Service (INS) under the Labor Department. Finally, in 1940, the INS moved from the Labor Department to the Department of Justice, the last major move for an immigration agency in the U.S. until the INS was disbanded in 2003 and duties split up between three new government agencies: the U.S. Citizenship and Immigration

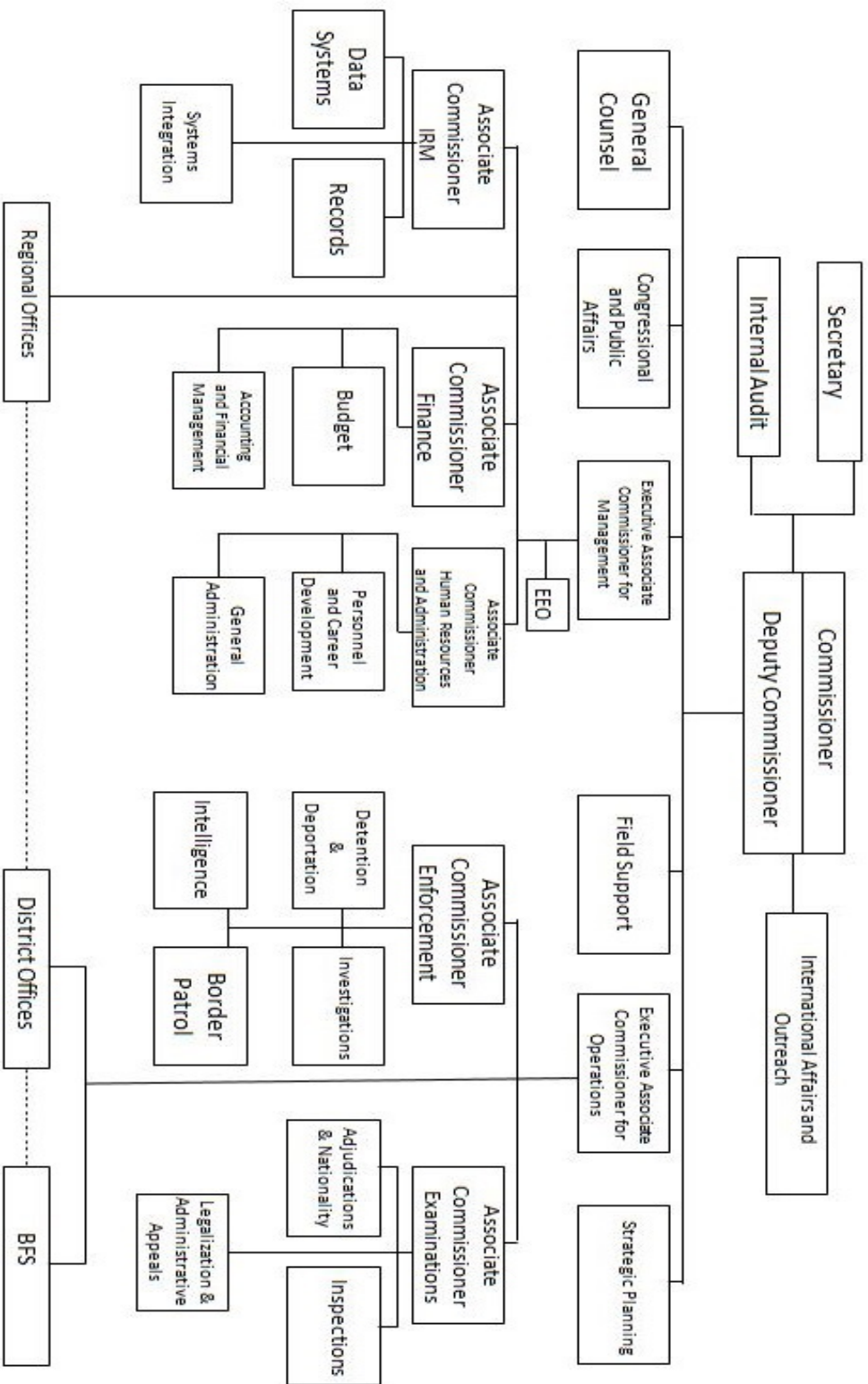
Services (USCIS), the U.S. Immigration and Customs Enforcement (ICE) and the U.S. Customs and Border Protection (CBP) (DOJ 2003). In total, immigration services have been housed in 6 parent agencies and have taken the form of 9 different government agencies.

INS: Leadership and Hierarchy during IRCA

Dealing with immigration in the United States has been a contradictory practice for policymakers and the INS (Calavita 1992). Since the introduction of inspections sites in 1891, INS has had to deal with both welcoming some immigrants while denying others. The history of immigration from Mexico is a microcosm of the structural reality faced by INS – while they must protect the borders from undocumented immigration (enforcement) they also grant authorization to immigrants while realizing the importance of immigrant labor (naturalization).

To serve these two conflicting missions, INS was composed of four regions nationally, with 4 regional service centers, 33 district offices and 20 sectors during IRCA (Magaña 1995). Alan Nelson served as the Federal Commissioner of the INS from 1982 to 1989 (the time before, during, and after IRCA). His job was to oversee the four regional offices (Northern, Southern, Eastern and Western). Within the four regions, there are district offices that were responsible for IRCA's implementation. Figure 3-1 shows the hierarchical chain of command found within INS during IRCA.

Figure 3-1: INS Organizational Chart (Magaña 1995)



However, Nelson was also responsible for translating policy and INS' objectives in every office (Magaña 1995). Once Congress passed new immigration policy, rules/regulations were developed by INS which described how the agency will implement the law. The Office of the Federal Register was the official government entity responsible for publishing all agency rules and regulations – the INS' rules/regulations could be primarily found in Title 8 of the Code of Federal Regulations (CFR), much like the three new agencies under the Department of Homeland Security (INS 2000). The general provisions of laws enacted by Congress are interpreted and implemented by regulations issued by various agencies, including INS. These regulations applied the law to daily situations and after the regulations are published in the Federal Register, they are collected and published in the Code of Federal Regulations, commonly referred to as the CFR (USCIS 2014).

Nelson, along with every other Commissioner of the INS, was delegated responsibility by the Attorney General to develop and publish changes to U.S. immigration rules and regulations found in the CFR. Yet, not every provision of law has to be supported by a federal regulation which allowed the Commissioner to prescribe rules and regulations as necessary or appropriate to carry out the functions of INS, with the only possibility of scrutiny coming from the Administrative Procedures Act (INS 2000).

There are three forms of regulations that the Commissioner of INS could produce: proposed rules, interim rules, and final rules. Proposed rules are those documents that are published in the Federal Register that propose changes to the INS' regulations in the CFR

and request public comments on those suggested changes. In order to be in compliance with the Administrative Procedures Act, almost all documents should first be proposed rules. Interim rules on the other hand were usually reserved if there is a statutory or emergency requirement to issue regulations immediately. While interim rules do not go through the process that proposed rules undergoes, they have the same legal effect as final rules because both interim rules and final rules amend the CFR and have an effective start date. Still, interim rules are not permanent and must be issued in the form of a final rule if it is to stay in the CFR after it expires. Lastly, final rules are documents that formally change and/or amend the CFR by adding or removing sections or whole parts of the existing regulations. If there is a need to discuss or explain matters of general concern to the public, notices are published in the Federal Register – usually reserved to announce meetings and application submission dates, as in the case of IRCA. However, notices do not amend the CFR and are only used to notify the public (INS 2000). While the INS was under the influence of agencies and departments with more authority (Congress, DOJ, OMB, and GAO), they had the ability to control their regulations and ultimately, the implementation of laws passed by Congress.

IRCA's Legislative History

The Immigration Reform and Control Act was the product of decades-long debates, testimony, political maneuvering, agendas, and concessions. The battle for IRCA began in the 1970's with large numbers of Mexican workers migrating to the U.S. This also coincided with the wave of Central Americans who migrated due to political strife in their home countries. These two waves of immigration presented a problem to the Reagan

administration in the midst of a recession, especially since this wave of immigration was seen to be driven by economic motivations (Massey, Durand & Malone 2002; Hing 2004). Because economics was viewed as the primary motivation for immigration, the Reagan administration keyed on employer sanctions as the solution.

Employer sanctions, however, was not a novel idea created by the Reagan administration. Its origins stem in the 1950's, when the U.S. sought to impose sanctions on business to cut down on immigrants from antagonistic countries. However, this bill was quickly defeated because it would hurt businesses by preventing them from using immigrant labor. Employer sanctions would not be brought up again until the early 1970's when the House passed two bills that wanted to implement employer sanctions. Any traction for this legislation, however, would fail to leave the Senate. In 1975, President Gerald Ford would create a cabinet-level committee that recommended the three provisions that would eventually become IRCA: employer sanctions, enhanced border enforcement and legalization for undocumented immigrants (Gonzalez-Baker 1990).

During the Carter administration, these three ideas would be highly debated by the Select Commission on Immigration and Refugee Policy (SCRIP), a committee created by Congress to provide recommendations on the immigration situation. SCRIP's recommendations would be the basis of debate during the Regan years, taking the three essential propositions created during the Ford years and adding a more detailed and complete picture on potential immigration policy, such as the requirements for legalization, the implementation of immigration policy and the timing of legalization.

Nevertheless, the specter of employers being punished still made many members of Congress uneasy, especially as the U.S. was entering the neoliberal era of Reagan – which naturally led to the many debates in the 1980’s about requirements for legalization.

The influence of SCRIP moved beyond the debates surrounding the details regarding legalization and employer sanctions – it also brought the House and Senate to hold joint hearings on immigration for the first time since the 1950’s (Baker-Gonzalez 1990). This led to two bills on immigration, one by the Reagan administration titled the Omnibus Immigration Control Act and the other by the joint hearings authored by Senator Alan Simpson (R.-WY) and Representative Roman Mazzoli (D.-KY) – the bill known as the Simpson-Mazzoli act or the Immigration Control and Reform Act of 1982 (IRCA). However, despite the momentum that immigration policy was gaining in both chambers of Congress and with the Reagan administration, the House would pose a problem when it came time to vote. There would be no new immigration policy in 1982.

The next years saw more of the same: IRCA would easily pass the Senate but would always fail to garner the votes in the House. The bill would be weighed down by hundreds of amendments and protracted debates on the House floor, all revolving around the requirements for legalization with some debates surrounding employer sanctions. It wouldn’t be until 1985 when a group of congressman (notably, Peter Rodino, Charles Schumer and Pete Wilson) introduced ideas of a guest-worker program that would become the Special Agricultural Worker (SAW) program that allowed IRCA to pass (Baker-Gonzalez 1990). IRCA passed the House on October 15, 1986 and was signed into law by Reagan on November 6, 1986.

The passage of IRCA was considered by many a small miracle due to the highly contested debates that occurred on the House floor. While many were still skeptical if IRCA's philosophy was enough to curtail immigration, a bigger concern was on the horizon: trusting INS to implement IRCA. While it cannot be proven that IRCA in its perfect form and ideally implemented would have prevented waves of immigration, one thing was sure: INS would have to be better than it had been before to execute it. This, however, was not the perception of INS before IRCA was passed as we will see in the next chapter.

Chapter 4: The INS' Image Crisis

The quote that opens this study speaks to how the GAO and other powerful institutions perceived INS – as “the ugly stepchild of the Justice Department.” While this could be dismissed as the opinion of one person, there were many more reports expressing the dissatisfaction with the job INS was doing and how it dealt with immigration. Perhaps immigration was too difficult a task for any one agency to maintain and control by itself. However, this did not stop the GAO, Congress, community organizations and undocumented immigrants themselves from thinking that INS was poorly managed and “in a hopeless state of disarray” (Morris 1985: 88). In this chapter, I will outline how different agencies and organizations that were higher ranking or had major influence (such as the GAO, Congress, and the media) all went on record as to express the INS' incompetence when it came to management, budgeting and performing its duties. This comprises the first segment of this chapter which I call “Troubled Perceptions from Above.”

The second half of this chapter will focus on how undocumented immigrants and community groups (both groups that INS did not give much attention to before IRCA) negatively viewed INS in the section titled “Troubled Perceptions from Below.” This chapter is the first step in understanding why INS took unprecedented measures to implement legalization for undocumented immigrants during IRCA and how INS went from being the loathed immigration service to the aid of immigrants during IRCA.

Troubled Perceptions from Above: GAO, OMB and Congress

The General Accounting Office (GAO) is not well-known in the public consciousness, but it is in the consciousness of agencies. The GAO (known now as the General Accountability Office) is an agency that works for Congress, often called the “congressional watchdog” (GAO 2014). Its primary duty is to monitor and investigate how the government spends taxpayer dollars. Therefore, the reports and recommendations made by the GAO to Congress are important for other government agencies because the GAO helps determine where funds get used. In the most recent fiscal year, the GAO saved \$51.5 billion dollars of tax funds or about \$100 for every dollar invested in the GAO (GAO 2014). However, while the GAO saves money, there are agencies that are losing out on that money – meaning that agencies hope to be evaluated positively by it. Moreover, about 80 percent of all recommendations made by the GAO to congress had been implemented (GAO 2014). Due to the GAO’s influential relationship, it would benefit the financial interests of government agencies to get high recommendations from the GAO.

Unfortunately for INS, the GAO did not publish many positive reports about them. Before IRCA became law in 1986, GAO published two reports, one titled *Need for Improvement in Management Activities of INS* (1977), and another named *Prospects Dim for effectively Enforcing Immigration Laws* (1980), in which GAO painted a “grim picture of the [INS] – showing it to be inadequately equipped, overwhelmed by its work, deeply demoralized, and in a hopeless state of disarray” (Morris 1985: 88). However, the most critical and comprehensive report on the management problems faced by INS would

come later. The GAO published a report formally condemning the INS' leadership and operations. In this report, GAO states that "over the past decade [the 1980's] weak management systems and inconsistent leadership have allowed serious problems to go unsolved... Without coherent overall direction and basic management reforms, the organization has been unable to effectively address changing enforcement responsibilities and longstanding service delivery problems" (GAO 1991: 91). When discussing INS' use of money, the GAO had reported the INS' "lack of accountability has allowed managers to dramatically overspend budgets and disregard federal fiscal policy... The key to achieving program success and reordering priorities are sound financial management and budget systems. INS has neither" (GAO 1991: 9). The report continues by saying that the INS is incapable of reforming its financial situation without the help of the Attorney General, the Director of the OMB (Office of Management and Budget) and a group of "top experts from other federal agencies and the private sector" (GAO 1991: 9). Due to the severe budgetary problems that the INS suffered from, the GAO did not believe that it could resolve them on its own and recommended the aid of financial experts to help with the INS' dire problems. In fact, the GAO reported in 1980 that the "INS resources devoted to preventing illegal entry and reducing the number of illegal aliens will not change significantly for quite some time" (GAO 1980: 5).

The dire state of INS' budget problems was not confined to the findings from these GAO reports on management but also extended to their poor use of budget. In March of 1986, months before IRCA became law, GAO published another report that accused INS of violating federal regulations, specifically for awarding a computer

contract to IBM for \$61.3 million under illegal circumstances. The violations stem from the contract, which was manipulated by INS officials, after a late-night meeting between them and IBM executives after IBM and Electric Data Systems (EDS) gave their “best and final offers (GAO 1986: 11). According to the report, IBM’s best and final offer was reduced by \$3.3 million, making it \$2,713 lower than the EDS’ offer (GAO 1986: 2). In addition to violating how government contracts are negotiated, INS later accepted changes to IBM’s offer which altered the size and configuration of the system on which the award was originally made (GAO 1986: 2). According to the report, this increased INS’ computing capability fourfold and increased the contract cost to \$11 million more than the amount authorized by the DPA – only authorizing a twofold increase in their computer capability. The new contract total also exceeded \$100 million, a clear budgetary violation under established regulation. GAO also charged INS with several other violations outside of meeting after negotiations were closed and spending more than what they were authorized to spend, including non-compliance with the Financial Integrity Act, not evaluating IBM’s and EDS’ payment plans equally, applying technical criteria inconsistently, and accelerating the delivery dates in the contract to circumvent the bid protest and civil actions (GAO 1986).

The GAO was not the only powerful agency that did not believe in INS. The Office of Management and Budget (OMB) was another agency that thought INS had major problems in its operations and budgets. The OMB is the largest office in the Executive Office to the President, with the director being a member of the President’s Cabinet. The core mission of the OMB is to help the President implement his vision and

to measure the quality of agencies so that they comply with the President's policies (OMB 2014). The OMB has five primary goals:

1. Budget development and execution, a significant government-wide process managed from the Executive Office of the President and a mechanism by which a President implements decisions, policies, priorities, and actions in all areas (from economic recovery to health care to energy policy to national security);
2. Management — oversight of agency performance, Federal procurement, financial management, and information/IT (including paperwork reduction, privacy, and security);
3. Coordination and review of all significant Federal regulations by executive agencies, to reflect Presidential priorities and to ensure that economic and other impacts are assessed as part of regulatory decision-making, along with review and assessment of information collection requests;
4. Legislative clearance and coordination (review and clearance of all agency communications with Congress, including testimony and draft bills) to ensure consistency of agency legislative views and proposals with Presidential policy; and
5. Executive Orders and Presidential Memoranda to agency heads and officials, the mechanisms by which the President directs specific government-wide actions by Executive Branch officials. (OMB 2014).

This, along with the sheer size of the OMB makes it a very important governing and overseeing agency. While Congress was ultimately in charge of controlling INS' budgetary requests, the OMB controlled INS' budget requests to Congress and reflected the administration's thinking (Morris 1985). We gain insight from a report by the Brookings Institution, stating that the OMB "has consistently slashed INS and requests for increased funds, arguing that administrative and policy changes were required before any significant infusion of new funds [could be considered]" (Morris 1985: 130). It continues by saying that after "drastically reducing the Justice Department budget

recommendations to increase the INS budget and personnel in fiscal year 1980 [six years before IRCA], an OMB budget examiner said as much to a study team of the House Government Operations Committee...” (Morris 1985: 130). This OMB budget examiner “complained that the agency [INS] put too much emphasis on enforcement and too little on service” (Morris 1985: 130) leading him to say that “in the future, OMB is going to place more attention into the service aspects of INS and place the INS enforcement responsibilities in a holding pattern (House of Representatives 1980: 80-81).

The OMB’s analysis and recommendation of the INS was an important one: favor service over enforcement. The OMB’s budgetary support resided in INS’ ability to promote service more efficiently – something that we saw INS work hard towards during IRCA (see chapter 5). However, neither the OMB nor the GAO was the INS’ biggest concern – their biggest concern being Congress, the group that ultimately controls INS’ budget and the potential to expand.

Much like the GAO and the OMB, Congress also felt that INS was a flawed government agency that did not deserve an increased budget. According to the Brookings Institutions, “Congress [had] also been reluctant to approve large new allocations for the INS, mainly because of what it perceives to be major administrative problems at the INS. Indeed, after appropriating \$3.7 million in fiscal year 1980 to automate the INS district offices, Congress halted the effort because INS officials had failed to plan the undertaking appropriately” (Morris 1985: 131). This was a recurring theme for the INS – they would get an opportunity to receive or spend additional money, but they would squander the opportunity due to poor management, as seen with the IMB incident and the

Table 4-1: INS Budget Requests, Appropriations and Rates of Change, Fiscal Years 1969-1984¹

| <i>Fiscal Year</i> | <i>INS Request</i> ² | <i>Congressional</i> ³ <i>Appropriation</i> | <i>Percentage Change Over</i> <i>Previous Year's</i> <i>Appropriation</i> ⁴ |
|--------------------|---------------------------------|---|--|
| 1969 | 87.8 | 87.3 | - |
| 1970 | 94.9 | 94.6 | 2.5 |
| 1971 | 112.9 | 112.4 | 14.5 |
| 1972 | 130.6 | 130.6 | 12.9 |
| 1973 | 135.1 | 135.1 | -2.8 |
| 1974 | 143.3 | 143.3 | -4.9 |
| 1975 | 184.1 | 175.9 | 13.6 |
| 1976 | 209.7 | 208.0 | 12.5 |
| 1977 | 221.6 | 234.0 | 6.0 |
| 1978 | 256.3 | 266.5 | 6.2 |
| 1979 | 298.0 | 309.3 | 4.8 |
| 1980 | 304.4 | 318.5 | -10.5 |
| 1981 | 347.7 | 351.0 | -0.2 |
| 1982 | 363.4 | 446.5 | 21.1 |
| 1983 | 524.6 | 488.9 | 6.3 |
| 1984 | 512.6 | 501.3 | N/A |

1. Adapted from Morris 1985.

2. Figures in millions of dollars.

3. Total fiscal year appropriations (includes supplemental appropriation).

4. Adjusted for inflation, based on the consumer price index in the U.S. Bureau of the Census, Statistical Abstract of the United States: 1984 (Government Printing Office 1983: 485)

\$3.7 million appropriated to them in 1980. Table 4-1 shows the discrepancy between the budget requested by the INS and the Congressional appropriation it was granted. In this table, we see that from 1969-1976, Congress either gave Congress exactly the amount it

asked for (fiscal years 1971-1974), or *less* than the amount it asked for (1969-1971; 1975-1976).

Yet, we see the INS' budget increase dramatically from 1969 to 1984, from \$87.3 million to just over \$500 million. From 1977-1982, the INS experienced a period in its history that saw Congress grant it *more* than what the INS requested. While the raw numbers suggest that the INS was not suffering a legitimization crisis before IRCA, but instead, enjoyed an extended period of success, an in-depth analysis of INS' budget shows otherwise. The growth of the budget from 1969 to 1984 is attributed to two things outside of the INS' perceived excellence. Although the table adjusts the percent change over the previous year's appropriation for inflation, the raw dollar amounts are not adjusted, meaning that the increases in budget are largely due to inflation (Morris 1985). This coupled with an overall increase in government spending account for any increases in INS' budget. The Brookings Institution underscores this in their report, writing that the "real budget increase have been modest increments... due in large part to inflation and the overall increase in government spending during this period" (Morris: 1985: 132).

If budgetary concerns were not enough, Congressional opinions of INS' ability to perform its duties were very negative. For example, Representative Joshua Eliberg (a representative from Pennsylvania who was the chairman of the Subcommittee on Immigration, Naturalization, and International Law of the House Judiciary Committee, once said that "the INS at the present time [1977] is totally incapable of administering and enforcing provisions of the Immigration and Nationality Act [the most important law on immigration for the U.S. that was in affect then and today]" (U.S. Congress 1977:

444). This was followed up by his successor to the chairmanship, Representative Elizabeth Holtzman, stating that the INS “still uses 19th century tools” whose “record system... is a disaster” and lacks “professionalism” (New York Times, January 17, 1980). This opinion of INS was not tied to the two chairmen of the immigration subcommittee. According to the Brookings Institution, “[o]ther members of Congress... have all painted a similarly grim picture of the agency – showing it to be inadequately equipped, overwhelmed by its work, deeply demoralized, and in a hopeless state of disarray” (Morris 1985: 88).

Troubled Perceptions from Below: Immigrant Advocacy Groups and Undocumented Immigrants

The primary argument of this study is that because the INS was facing a legitimization crisis (its standing before Congress and other parent agencies was unfavorable before IRCA) it had to make sure to implement IRCA in a certain way to regain its standing with Congress. That “certain way” involved working with immigrant advocacy groups (such as churches, lawyers, and community organizations) and gaining the trust of undocumented immigrants in order to successfully implement the legalization portion of IRCA – or naturalization as the OMB called it in their recommendation to the INS before IRCA passed. However, wanting to obey the wishes of Congress, GAO and OMB and implementing them are two separate things, especially when we consider that immigrants and advocacy groups did not trust INS. This section outlines immigrants’ and advocacy groups’ negative perception of the INS.

While it is impossible to universalize any group's opinion about any topic, the relationship between immigration agencies and immigrants and their allies create a dichotomy, one in which neither side thinks highly of the other. For immigrants and community groups, their encounters with INS were conflictive, causing the distrust that INS needed to overcome. However, the circumstances that led to immigrants' distrust of INS were not unwarranted given some of the actions INS undertook in deporting immigrants.

For example, one of the most ethically problematic actions that INS used before the passage of IRCA was using the children of immigrants to ensnare their undocumented parents. News stories revolving around the use of this method circulated in various news outlets. In a story by the *Washington Post*, the newspaper wrote about two Salvadoran teenagers being released from INS detention after refugee advocates protested their use as “lures” for undocumented immigrant parents. The General Counsel for the National Center for Immigrants' Rights declared that “They [INS] are just trying to force the parents to come in” (Washington Post, July 20, 1985). A similar story reported by the *Los Angeles Times* stated that a class-action lawsuit was filed against the INS, charging it with detaining “The children of thousands of illegal aliens... and used as “bait” to capture parents” (quoted in Los Angeles Times, July 11, 1985). This lawsuit was brought forward by the aforementioned National Center for Immigrants' Rights in conjunction with the American Civil Liberties Union.

INS would vehemently deny these allegations however. One of the most controversial INS leaders – Harold Ezell, the Western Regional INS Commissioner –

would be a prominent voice in denying the use of children as lures, stating that INS did not want to contribute “to an already growing problem of child abuse” (quoted in Washington Post, July 20, 1985). While it is difficult to track if and how the INS used children to lure their parents and the precise effect that it had on immigrants and advocacy groups, the distrust of the INS can be simple to understand and seen in manifest ways, like in the form of lawsuits (Washington Post, July 20, 1985).

Prominent INS officials like Ezell did not help to sooth this distrust. In a 1986 news report (months before IRCA was signed into law), Ezell was on record saying that “I don’t believe the average congressman or senator in Washington has a clue to what really is happening with *the invasion of this nation* with illegal aliens – every day” (quoted in Washington Post, March 24, 1986; emphasis mine). In this same report, he denounced “sanctuary cities” – cities that take measures to protect undocumented immigrants, both by law and social practice, such as preventing the police from inquiring about people’s legal status – as provocative and illegal. He continued by saying that “[i]f the capital of this nation was out on the bluff overlooking that soccer field south of San Diego, we would have had immigration reform many years ago” – implying that the Latinos playing soccer are all undocumented and something should be done about it. A Los Angeles City Council member said of Ezell “I don’t think there has ever been a federal appointee before who used such hate and innuendo to arouse the community” (quoted in Washington Post, March 24, 1986).

The image problem that the INS faced is also chronicled by Hing (2004: 175), particularly as it pertains to Ezell. He writes

The image problem was exemplified by Harold Ezell, controversial INS regional commissioner for the western region, home of most anticipated applicants [for IRCA]. Prior to the passage of IRCA, Ezell was an outspoken opponent of “illegal” immigrants. He often invited television crews to the scene of INS workplace raids that he himself attended, and frequently charged that undocumented workers took jobs from Americans while exploiting the welfare system. While Ezell was apparently never personally involved in the physical mistreatment of aliens, he epitomized INS enforcement and symbolized the worst type of INS abuse of undocumented workers. Even his friends and church got into the act, helping establish a vigilante-type border watch group called Americans for Border control. Ezell’s verbal attacks on Mexican migrants particularly ignited the ire of the Latino community, and stirred several spokespersons to call for his firing.

Stories like the ones of children being used as lures, workplace raids, and stereotypical statements about immigrants made by high ranking INS officials made the INS a difficult agency to trust for advocacy groups and especially immigrant groups. This is why advocacy groups advised immigrants to “avoid the INS” when IRCA was on the cusp of becoming law (LA Times, October 24, 1986) and why the number of immigrants applying for legalization was initially low (Hing 2004). Even the INS itself recognized this fact. Sam Sinclair, the man hired by the INS to organize the publicity campaign during IRCA, was quoted as saying that INS “knew there would be a certain amount of the ‘fear factor’. The Border Patrol, they’re the cops” and legalization was thought to be another sting operation (quoted in Cosco 1988: 18). This meant that the only way for the INS to implement the legalization component of IRCA (one that would help it regain its standing before Congress and the other parent agencies) was to develop trust between itself and undocumented immigrants (see chapter 5).

This is evident by statements made by INS officials themselves. In interviews done by Magaña (2003) – which included then-Federal Commissioner Alan Nelson and

the controversial Harold Ezell – she finds that “[a]ll INS respondents [I interviewed] felt that legalization rather than sanctions was given first priority... For example, the head legalization officer in Los Angeles told me, “The aliens could really benefit from this program, *and it was a chance to change the image of the agency*”” (42; emphasis mine). According to Magaña, Ernest Gustafson (the Los Angeles District Director during IRCA) stated “that one of the most important nonstatutory objectives of legalization was to establish good rapport with the Spanish-speaking community” (45). There is little doubt that the INS was aware of this problem, and knew that it must be fixed if IRCA was to be successfully implemented.

Chapter 5: Becoming *El Amigo* and Regaining Legitimacy

Feeling pressure from Congress, the GAO and OMB along with being distrusted by the immigrants and their advocacy groups placed the INS in a precarious position. Even with IRCA providing an opportunity to prove itself, it faced an enormous challenge. Aside from the monumental task of having to get the trust of immigrants and work in conjunction with advocacy and other community groups, the INS was caught off guard with its new duties. Even though IRCA had been in the consciousness of Congress, INS and the public for the entire 1980's, its passage was somewhat of a surprise, being signed into law by Reagan in November of 1986. IRCA's legalization provision would thus begin on May of 1987, giving the INS a mere six months to get ready to serve millions of people. This put the INS in a bind, having the final regulations finalized on May 1, 1987, four days before "the doors to legalization opened" (Hing: 1992: 426). Despite this, INS would put forth an effort that exceeded the expectations of Congress, immigrant advocacy groups and the immigrants themselves.

The first part of this chapter will focus on the actions taken by INS during IRCA that ultimately won over the trust of undocumented immigrants. Specifically, this chapter will outline the massive public outreach/public relations campaign that was undertaken and the creation of Legalization Offices (LOs). The second part of this chapter will show the effectiveness of these strategies and how INS not only gained the trust of immigrants and advocacy groups (enough to implement the legalization provision), but also achieved its higher goal of changing its perception in the minds of Congress, GAO and OMB,

allowing it to enjoy a period of expansion that followed IRCA – the ultimate goal for the INS.

Befriending Immigrants: The PR Campaign, Establishing Legalization Offices and Creating a New Image

Gaining the trust of immigrants would not be an easy task for INS – it would take a rebranding and reconfiguration of its actions and image. One of the biggest concerns at the beginning of IRCA was that no immigrants would voluntarily go to INS to get the legalization process started. As shown in Chapter 4, INS recognized that undocumented immigrants would view the legalization program as just another sting operation (Cosco 1988: 18). This meant that the INS would have to work on changing that perception of immigrants.

One of the ways that the INS would do this is by embarking in an unprecedented publicity campaign to help ease the minds of immigrants. Sam Sinclair, the director of the Portland office of Cole & Weber Public relations who was in charge of the INS publicity campaign, said that “[t]he INS had never done a heavy public relations campaign, and had never gotten into the advertising side... In fact, the armed forces is the only government entity that routinely conducts such broad-based programs” (16). This public campaign would be important in the efforts to befriend immigrants. Their coalitions with community groups and establishment of effective legalization offices would be in vain if they could not help to curve their negative image in the beginning stages of IRCA.

This meant that every INS official, staff member and employee would have to participate in the campaign in one way or another. One of the most shocking participants

was Harold Ezell, the man who televised INS workplace raids and established a vigilante border watch group with his friend and church. Ezell, along with Ernest Gustafson (the Los Angeles district director) and a popular Spanish-speaking radio disk jockey known as *El Tigre* (The Tiger) embarked on a “massive public relations campaign on television and radio and at community events throughout Los Angeles” (Magaña 2003: 44). This group would go on to call itself *El Trio Amnestio* (The Amnesty Trio), which had such a broad impact on the immigrant consciousness that Ezell stated “that almost ten years after the media campaign he was still recognized by immigrants” (44). This was due in large part to the time commitment that Ezell put forth. Doris Meissner (a former INS official during IRCA and creator of a critical Carnegie report on the INS) reported that Ezell “had the throttle out fully for the whole year – 18 hours a day, seven days a week” (quoted in Cosco 1988: 20). Even the biggest enemy of undocumented immigrants was out promoting legalization.

A very well known-event that *El Trio Amnestio* embarked on was a weekly event called “Thursday Night Live” in which LOs opened and advertised legalization (Hing 1992: 435). These events placed a heavy emphasis on community activities and staged events to help spread the word. Other creative advertisements included stuffing reminders of the programs into 580,000 packages of tortillas from an area factory (which generated wide news coverage, including a mention on the *Tonight Show with Johnny Carson*), a song named “Amnestia” to commemorate IRCA’s legalization program, amnesty buttons and balloons handed out at INS offices that read “Amnesty Day” and Amnesty Month”, town meetings, amnesty fairs, Boy Scouts sending flyers to low-income neighborhoods,

INS floats and information booths at different holiday celebrations, PSAs and other television ads of success stories from immigrants who received their permanent-resident cards (20). The media campaign was very successful in getting its message across, particularly as it pertains to addressing Latino immigrants – “La Migra... now had a smiling face” (20). The INS was very much dedicated to this effort, to the extent that at one point during IRCA, 25 to 30 percent of staff was allocated to the public campaign (Hing 2004: 178).

A second important way that INS sought to combat its negative image was to create Legalization Offices (LOs) – a place where applicants could turn in their applications, be interviewed or have the applications renewed (Meissner & Papademetriou 1988; Baker 1990). The LOs handled most of the day-to-day work along with Regional Processing Facilities – or RPFs as they were known which were in charge of reviewing LOs recommendations, granted and denied applications and on occasion conducted investigations (Hing 1992). However, getting workers and training them during this time would be difficult. The LOs along with most of the legalization apparatus was completely new, making it difficult to recruit, hire and train 2,000 new workers in six months (427). In total, the INS opened 107 legalization offices and 4 regional processing facilities, one for each of the regional districts of the INS found in the 4 major regions. (U.S. Congress 1988: 157).

Still, the hiring of LO staff on a short notice was not the most difficult task for the INS – it would be getting migrants to trust them enough to seek their help for legalization. The INS feared that the LOs would be seen as synonymous with their

deportation image and their enforcement history. This posed one of the biggest early challenges for the INS: finding locations to help immigrants. One of the tactical maneuvers made by the INS was to place the LOs away from any of the INS' main offices (433). What also helped was that the offices were located in "bright, well-supplied buildings away from the [usual] gray facilities" and staffed with "cheerful, courteous INS retirees and non-INS temporary workers" in an attempt to portray the message: "This office isn't the same one you've been afraid of" (Cosco 1988: 19). During the training of LO staff, workers were reminded that "IRCA [was intended] to be applied generously applied and emphasized that employees were to help immigrants how they could qualify" (Hing 2004: 173).

In addition, staff was to treat immigrants fairly, opening interviews with immigrants by saying "I'm here to help you with your application today" to show immigrants that LO offices were different from the INS' enforcement image (173). Much of the success with the LOs relied on this staff, comprising of people who were sympathetic to amnesty and to helping immigrants (173). The trust gained by the LOs showed in the appraisal they received from community groups. Catholic Social Services lauded the INS and LO offices stating that the INS had created a new image of "openness, reasonableness and cooperativeness", and going as far as praising the INS for the "apparent non-issue of mistrust" (quoted in Meissner & Papademetriou 1988: 73).

The LOs did an effective job at helping reshape the image of INS. It transformed the "negative connection that immigrants initially made between the INS and its LOs [which] proved beneficial to the entire INS in the long run" (Hing 2004: 177). A report

sponsored by Carnegie noted that “Senior INS officials have been accessible and have earned respect that helped break down what some have called the ‘circle of fear’ surrounding the INS... [This is due to] the personal effort and commitment given by many INS officials [which] is reshaping the agency’s image in the public eye” (quoted in Cosco 1988: 47). More than breaking the “circle of fear,” the INS was able to become *el amigo* of immigrants. Hing (2004: 178) writes,

The legalization program represented a completely “new ballgame”... Neighborhood LO’s worked. There were no uniformed Border Patrol officers at LOs, and the offices were described by many as open, clean, friendly, and accessible places. The “new look” image of the INS – amicable and service-oriented – made a big difference. Local outreach by LOs and district personnel was unprecedented. The LOs’ attempt to reach out into the immigrant community was massive and inventive; for a period of time, 25 to 30 percent of all district staff were allocated to personal public appearances... the INS could claim to be the friend of undocumented immigrants.

Despite many doubts of the INS’ ability to gain the trust of immigrants, the combination of the public relations campaign and the success of its LOs allowed the INS to become the friend, *el amigo*, of undocumented immigrants. While many consulted private lawyers and advocacy groups, it is estimated that 71% of all applications were processed by LOs and that “most applicants went directly to the LO for information and filing” (174). Still, becoming the friends with immigrants was not the endgame for the INS – gaining credibility in order to expand was the ultimate end. These efforts would be for naught if they were unable to achieve that goal. Fortunately for the INS, it was lauded by not only immigrants and community groups, but also by Congress and the GAO.

Praise from Above: The Relegitimization of the INS

After the dust settled on IRCA and the legalization program ended, many reports and evaluations from entities that once criticized INS began to come out. The GAO stated in a report that “[a]s of May 1990 INS had processed over 3 million requests for legalization under IRCA. Also, INS’ handling of the amnesty program, despite short time frames for implementation and numerous problems, has received good marks from both INS critics and supporters” (GAO 1991: 18). The GAO was amongst those INS critics who gave them good marks for their work during legalization. They produced three reports with their evaluation of INS (GAO 1987; 1988; 1990). While there was an emphasis on employer sanctions (the other major provision of IRCA), they praised the implementation of IRCA by INS stating that the “GAO found that the law... has generally been carried out satisfactory by INS” (GAO 1990: 3). This is especially high praise coming from an agency that produced multiple reports outlining the INS’ poor management.

The GAO also reported to Congress its positive opinion of the INS during IRCA at a Congressional Hearing whose theme was to discuss the implementation of IRCA. This Congressional Hearing, named “The Implementation of Immigration Reform” (1988), was carried out a few weeks before the legalization program was to end. At this hearing, Arnold Jones (the Senior Associate Director of the GAO) presented the GAO’s assessment to Congress. Jones comments on the success of the public relations campaign, stating that “[i]n our opinion, INS is making a good faith effort to publicize the legalization program” (162) which resulted in “[a]wareness of the legalization program

[being] high among Hispanics, according to a study that addressed program awareness” (159). He continues by saying that the INS has handled the financial side of the legalization program well – “[a]s of March 1988, INS had spent about \$150 million and had collected \$176.2 million in fees... INS projects that the total fees that it will receive by the end of the application period (May 4, 1988) will cover all of the program-related costs. Should this not occur, INS will adjust the fee aliens pay when they apply for permanent resident status” (165). This is a reversal from the IBM contract scandal that occurred two years prior to this hearing and the management critiques that the INS had been receiving since the 1970’s.

However, the GAO’s positive evaluation of the INS after IRCA would mean little if Congress did not see the INS as successful. Fortunately for the INS, Congress also had many positive things to say about the implementation of the legalization program. Senator Alan Simpson, one of the architects of IRCA, stated in an early review of IRCA that “the INS is to be commended” for its efforts during IRCA (U.S. Congress 1987: 3). Another portion of this hearing was dedicated to praising the INS in a section named “INS TO BE COMPLIMENTED,” that states that “the INS should be complimented for the work they have done, for they have recognized the complexity. They have done something unique in my knowledge in handling legalization” (16). During this same congressional hearing, the Chamber of Commerce stated: “We commend the Immigration and Naturalization (INS) for its openness and willingness to listen to our concerns and their efforts to address concerns within the constraints of the statute and its budget. It is our view that many of the problems of this law result from the statutory language, not the

implementation efforts, per se, of the INS” (22). Even Senator Edward Kennedy, a vocal opponent of the INS and the Chairman during the evaluation of IRCA, had praise towards the INS. In his opening statement, Kennedy stated that “[m]uch has happened since then [since the last congressional hearing the year before], and most of it good. Thanks to the hard work of the immigration officers and voluntary and church agencies, over 1.5 million people have come forward to apply for amnesty” (U.S. Congress 1988: 1). In another setting outside of Congress, Kennedy also said that during IRCA, “[t]here was a great openness and real pride [in INS]. There was an esprit de corps there that was impressive” (Cosco 1988: 19).

Another telling moment during these congressional hearings occurred when the Federal Commissioner, Alan Nelson, boasted what he perceived was the INS’ success and received no refutation from Congressional members. In the 1988 congressional hearing, he states: “I think it is fair to say, as I believe both of you [Senators Kennedy and Simpson] have alluded to, that this bill has worked, and I think the Congress should be proud of its efforts in passing IRCA. I think the administration can rightly be proud of how we [INS] have implemented it” (U.S. Congress 1988: 18). Just a few years prior, during a congressional hearing surrounding the IBM contract, Nelson was repeatedly shot down by Senators and the GAO during a budget hearing for the INS (U.S. Congress 1986). This would completely change as a confident Nelson happily reminded Congress of INS’ success. In other hearings, Nelson would tout the INS’ implementation of legalization without debate. In 1989, during an IRCA oversight hearing he stated in regards to legalization: “The results speak for themselves... The bottom line, 3.1 million

applicants. I think if you go back over the years, not many people predicted that many would come forward, either that there weren't that many there or they would be afraid to come forward or INS would use it as a scam. None of the negatives turned out, the positives did... We're in a 1-year program and we did six times what everybody in the world did" (U.S. Congress 1989: 392).

Nelson would make claims like this throughout every congressional hearing on IRCA and the INS' budget. What helped was that experts who gave testimony during these hearings would praise the efforts made by the INS, even after it was clear that IRCA could not curtail the flow of undocumented immigration from Mexico and Latin America. Still, the consensus, as summarized above, regarding IRCA was that "the problems of this law result from the statutory language, not the implementation efforts."

This was reflected in the budget for the INS over the rest of its history (see Table 5-1). The INS' budget would increase from \$1 billion in the years after IRCA, to \$6 billion. A another increase in seen in the number of positions held by INS, anywhere from 17,000 to 18,000 during IRCA and the time following IRCA to 37,000 in the final year of the INS' existence. While there are many reasons for this increase (the passage of enforcement style immigration laws like the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the drug war at the border), trusting the INS to be a player and recipient of these funds was never a given – especially in the time period before IRCA. In fact, a major debate in the 1988 congressional hearing (which focused on the INS' performance during IRCA and budget discussions) surrounded the role that the INS should play in the drug war occurring at the border. We must remember that the

Table 5-1: Immigration and Naturalization Service's Budget, 1975-2003 (DOJ Archive)

| FISCAL YEAR | POSITIONS | INS BUDGET (Millions) | CPI INDEXED TO 1993 | INS BUDGET IN 1993 \$ (Millions) | INS BUDGET REAL PERCENT GROWTH FROM 1993 | INS BUDGET APPARENT PERCENT GROWTH FROM 1993 |
|-------------|-----------|-----------------------|---------------------|----------------------------------|--|--|
| 1975 | 8,082 | \$181.3 | 37.4 | \$484.7 | -68.4 | -88.2 |
| 1976 | 8,832 | 214.6 | 39.6 | 542.5 | -64.6 | -86.0 |
| 1977 | 9,473 | 244.5 | 42.1 | 580.6 | -62.1 | -84.1 |
| 1978 | 10,071 | 283.1 | 45.3 | 624.4 | -59.3 | -81.5 |
| 1979 | 10,997 | 309.3 | 50.4 | 613.2 | -60.0 | -79.8 |
| 1980 | 10,943 | 349.1 | 57.3 | 609.6 | -60.2 | -77.2 |
| 1981 | 10,886 | 371.5 | 63.2 | 587.8 | -61.7 | -75.8 |
| 1982 | 10,604 | 444.4 | 67.1 | 662.5 | -56.8 | -71.0 |
| 1983 | 10,483 | 495.7 | 69.2 | 715.9 | -53.3 | -67.7 |
| 1984 | 10,601 | 510.6 | 72.2 | 707.4 | -53.9 | -66.7 |
| 1985 | 11,649 | 585.0 | 74.8 | 782.5 | -49.0 | -61.8 |
| 1986 | 11,694 | 574.7 | 76.2 | 754.2 | -50.8 | -62.5 |
| 1987 | 17,544 | 902.5 | 79.0 | 1,142.6 | -25.5 | -41.1 |
| 1988 | 17,742 | 1,010.3 | 82.1 | 1,229.9 | -19.8 | -34.1 |
| 1989 | 18,505 | 1,085.3 | 85.9 | 1,263.1 | -17.6 | -29.2 |
| 1990 | 17,010 | 1,183.5 | 91.2 | 1,298.3 | -15.3 | -22.8 |
| 1991 | 17,187 | 1,270.5 | 94.5 | 1,344.0 | -12.3 | -17.1 |
| 1992 | 17,676 | 1,458.5 | 97.4 | 1,497.8 | -2.3 | -4.9 |
| 1993 | 18,417 | 1,533.3 | 100.0 | 1,533.3 | 0.0 | 0.0 |
| 1994 | 18,622 | 1,586.2 | 103.0 | 1,540.0 | 0.4 | 3.5 |
| 1995 | 21,048 | 2,158.7 | 105.6 | 2,044.7 | 33.4 | 40.8 |
| 1996 | 24,704 | 2,600.2 | 108.7 | 2,391.2 | 55.9 | 69.6 |
| 1997 | 26,123 | 3,132.7 | 111.1 | 2,818.8 | 83.8 | 104.3 |
| 1998 | 29,349 | 3,688.2 | 112.8 | 3,269.7 | 113.2 | 140.5 |
| 1999 | 31,502 | 4,001.7 | 115.7 | 3,457.7 | 125.5 | 161.0 |
| 2000 | 32,187 | 4,277.3 | 119.8 | 3,570.8 | 132.9 | 179.0 |
| 2001 | 33,990 | 4,902.0 | 122.9 | 3,988.6 | 160.1 | 219.7 |
| 2002 | 37,698 | 6,208.2 | 125.1 | 4,962.1 | 223.6 | 304.9 |

INS' perceived ability to take on difficult challenges and tasks was a problem that the INS faced. However, IRCA provided the opportunity to show that INS management could implement the wishes of Congress competently. While other structural and

historical circumstances helped the INS increase its budget, its managerial competence during IRCA showed Congress that it could be trusted with a bigger budget, one that it received.

Chapter 6: Conclusion

INS, IRCA and the Convergence of Interests

Amongst the many worries of Congress when drafting IRCA was how a policy, no matter how perfectly crafted, would be implemented. As chapter 4 showed, there were many concerns surrounding the INS during the decade prior to IRCA's signing in 1986. Serious questions about INS' management, leadership and budgetary maintenance left Congress, GAO, the OMB, immigrant advocacy groups and undocumented immigrants skeptical of how well legalization would be implemented. This background is important to understand why and how the INS helped undocumented immigrants attain legalization. We discover three important variables that led to the INS' actions during IRCA.

The first, the INS' desire to expand, is built into the DNA of the INS and other government agencies as shown in the literature (Browne 1980) but is also found empirically through the INS' numerous budget requests that demanded more money each year (Morris 1984). The second, the INS' discretionary power during IRCA, also proved to be important. While much of the literature on government agencies is focused on the subordination of the agencies to Congress, discretion exists even for agencies like INS. This was evident in how they approached legalization - many of the actions they took were not written into law (U.S. Congress 1988). However, this discretion needed to exist in the first place for the INS to implement its own provisions to help immigrants.

The last component is the legitimization crisis that INS was facing from Congress (and wanting to change its perception in the eyes of Congress) – the most important of

the dimensions and driving force behind the INS' actions. This was seen in the numerous testimonies, studies, reports, congressional hearings and newspaper articles denouncing INS. However, it is this pressure from Congress that ultimately led to the INS' extraordinary and unprecedented measures during IRCA. While it may seem like a hypocritical move for people like Harold Ezell to fight for IRCA's passage into law and to be one of the people working to befriend immigrants during IRCA, it makes sense when we think about its end goal. If expansion is something that is highly desired by an organization, then it is logical for it to engage in behavior otherwise avoided in order to gain something. It is true that there were many individuals that were interested in helping migrants, as seen in the Legalization Offices. However, this was not the main goal of INS. As I have shown, the INS was going through a *dual* legitimization crisis from both "above" (Congress, the Department of Justice, Government Accountability Office, etc.) and "below" (undocumented migrants). This meant that it had to be seen as trustworthy in the eyes of their foil, undocumented immigrants, which led them to the massive PR campaign, rebranding of their image and transforming itself from *la migra* to *el amigo*, all in the name of going from "the ugly stepchild of the DOJ" to an agency that would see its budget more than double in the next years (Department of Justice Online Archive).

The reformed image of INS would not last very long though (Cosco 1988). It would go back to its workplace raids, using children as lures and even tricking undocumented immigrants into coming to INS offices to "claim citizenship" (LA Times 1992). What's more, prominent INS officials returned to their normal behaviors. Again taking Ezell as an example, he showed that much like IRCA, his concern for immigrants

only lasted a year. While he was an advocate for IRCA and tried to show he was a friend of immigrants, he was a co-author to 1994's Proposition 187 in California – one of the most anti-immigrant legislations in U.S. history. Prop 197 sponsored a state-run citizenship screening system and prohibited undocumented immigrants from being able to participate in public education, health care and other social services. The law would later be found to be unconstitutional.

Contemporary Relevance for the Literature

This study is concerned with the power of legitimacy and the convergence of interests that create paradoxical historical moments, even though those moments may not last forever. While IRCA itself represented and fostered a benevolent climate for immigrants, the discretionary dimension is impossible to overlook. Should the INS had been in a position of strength during IRCA, this study argues that legalization would have had a different outcome in the U.S. However, since history did not occur in that manner, we see how an agency can regain its legitimacy: by being innovative in its actions (the PR campaign, legalization offices), becoming validated locally (at each LO), the diffusion of this validation (advertisements and word-of-mouth spreading) and general validation (acceptance of INS as doing a good job during IRCA). The process for re-legitimation is similar to the process for legitimacy. However, an agency or organization must start “from scratch” and create something innovative or new in order gain legitimacy, something that is not always possible.

Moreover, the case of the INS during IRCA also shows the power that “illegitimate” audiences can have. It is logical that undocumented immigrants do not

normally have power, just as the peasant classes during social revolutions do not always have transformative power (Skocpol 1979). Still, during critical historical moments, the role and agency of immigrants matter. While it may seem counterintuitive for immigrants to pass up on legalizations, seemingly against their interests, it is not unprecedented (Levinson 2005). With this in mind, undocumented immigrants' participation was key if legalization in the U.S. was to be successful and for the INS to regain its standing before Congress. While undocumented immigrants and other marginalized groups are often left in precarious positions due to structural forces, their agency and importance cannot be overlooked, particularly when a group, institution or society is faced with a historical moment, moments where we focus on the big and powerful, but should also pay attention to those in the periphery.

Directions for Future Research

While the claims made by this study are supported by empirical evidence, there is more than can and should be analyzed. Chapter 2 outlines the most pressing need for this study: the need to compare across cases. In order to see the applicability of the theories purported here, particularly those on legitimacy, legitimacy crises and re-legitimation, it must be tested in other contexts.

Two potential cases have been identified: France's immigration service, Office des Migrations Internationales (Office of International Migration or OMI), during their regularization¹ that lasted from July 1981 to February 1983 and Italy's immigration service, Dipartimento per le libertà civili e l'immigrazione (The Department for Civil

¹ Legalization is known as "regularisation" amongst European countries.

Liberties and Immigration or DCLI) during their 1986 Regularization Program. If a comparison is to be made, attention should be given to how they reacted to legalization policy when it was passed in their respective countries and how they differed from the INS in relation to the measures they took. Specifically, comparing the outcomes of each case (how they helped immigrants during regularisation) to one another to see if there are any similarities or differences in the explanatory variables. In France, the OMI was successful in advertising its regularisation program, much like the INS (Levinson 2005: 79), while in Italy, there was little publicity to support the program (78). Thus, a future study should test the dimensions found in the INS cases in Italy and France during their regularisation periods.

Another important test for this study's validity is the consideration of more data to test for alternative hypotheses. Again, while this study and its claims are supported by data, a more in-depth analysis of all INS budgets, congressional hearings, newspaper articles, independent evaluations and secondary sources could be used to strengthen the argument, either to provide more data in support or to alter the theory to better represent reality. Part of this data analysis will revolve around the analysis of the French and Italian cases, which could highlight or dismiss different parts of the INS case. Moreover, analyzing the two cases will strengthen not only the empirical and theoretical components of this study, but also the methodological, allowing it to slide towards a more robust comparative-historical method.

A Final Thought

If immigration reform passes in the future, there is an outline for how to treat immigrants. The years 2012 and 2013 were years of hope for undocumented immigrants with Barak Obama's executive order in 2012 (named Deferred Action for Childhood Arrivals (DACA), which allows those who are under 31 as of June 15, 2012 to gain certain rights) and the passage of S.744 in the Senate in 2013 (a law seen as the grandchild of IRCA by many). However, both are ultimately not enough to please the U.S. government or undocumented immigrants because DACA can be revoked by the next president and S.744 failed to pass in the House of Representatives. Still, there are many things we can learn from the IRCA experience.

While the first thing that jumps to the mind of scholars and commentators alike when thinking of IRCA is its failure to curb undocumented immigration, they overlook an important fact: it is possible for an immigration service to treat immigrants humanely. Instead of using IRCA as a means to trick immigrants into deportation, it was used to give many of them an escape from poverty and difficult lives. While it is naïve to think that an immigration service would help immigrants in the manner that the INS helped immigrants during IRCA, providing the proper incentives can produce this relationship and avoid the tragedies of family separation, protracted detainment and deaths at the border. It was a refreshing sight to see the INS show an innovative side and implement legalization successfully while become the friend of immigrants for IRCA's one year period to many. However, in the end, undocumented immigrants are not seeking to make

friends with immigrations services, but rather, to be treated humanely whether it includes “documented” status or not.

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