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THE Changing Face OF North Carolina

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This issue of *Popular Government* is devoted to the subject of immigration. A small portion of the issue deals with immigration in its technical sense—that is, the circumstances in which noncitizens may enter and remain in the United States. The scope of the discussion is far broader, however, as are the responsibilities of state and local government. North Carolina is becoming more and more of a melting pot, attracting members of many racial and ethnic groups. The state's growing Latino population is a diverse segment in itself, in terms of country of origin, citizenship status, culture, income, and education. The articles in this issue discuss some challenges—and opportunities—that this growing diversity poses to government and to North Carolina in general.

—John Rubin

On the Cover *The images of these smiling first-graders convey North Carolina's growing ethnic diversity. The children have gathered on a richly colored rug that displays a map of the United States. Photo by Will Owens.*

Photo by MJ Sharp

A Profile of Hispanic Newcomers to North Carolina

JAMES H. JOHNSON, JR.,
KAREN D. JOHNSON-WEBB,
AND WALTER C. FARRELL, JR.

Photo by Lew Johnson

Historically, whites, blacks, and Native Americans have constituted a numerical majority of the population of North Carolina and the South generally. In recent years, however, population growth driven by immigration has dramatically transformed the racial and ethnic composition of the state and the region. Over the past two decades, newcomers to the state and the region have included substantial numbers of people who either were born in, or are offspring or descendants of people who were born in, Mexico, another Latin American country, or Southeast Asia. Between the two demographic groups represented by the newcomers, Hispanics constitute the larger and therefore the more visible one.

In this article we provide a general overview of the size and the composition of North Carolina's Hispanic newcomers, describe their settlement patterns, and assess the response of other North Carolinians to the influx. We conclude by discussing several issues that must be addressed if the state is to avoid some of the tensions and the conflicts that have accompanied the settlement of Hispanics in communities like Los Angeles that have traditionally been gateways for immigrants.[1]

HOW MANY HISPANICS ARE THERE IN NORTH CAROLINA?

Historically, Hispanics have settled in the southwest United States—mainly in Texas, New Mexico, Arizona, and California.[2] Until recently,

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only three states outside the Southwest—New York, New Jersey, and Florida—had large concentrations of this group. Since the early 1980s, however, a major redistribution of the Hispanic population has been afoot.[3] In the early 1990s, several states in the Midwest and the South experienced sharp increases in their Hispanic populations, their rates of growth outpacing those in the traditional gateway communities of the United States.[4]

North Carolina is one of these newly emerging magnets for Hispanics.[5] According to the most recent *State of the South* report, five of the thirty U.S. counties that experienced the most rapid growth in their Hispanic population between 1990 and 1996 were located in North Carolina—Wake, Mecklenburg, Forsyth, Guilford, and Durham (in order of percentage of growth, highest first).[6] The most current population estimates, compiled by the U.S. Census Bureau, indicate that North Carolina's Hispanic population increased by 95 percent between 1990 and 1997, from 76,726 to 149,390. During the same period, the Hispanic population of the entire United States and of the South increased by 31 percent and 35 percent, respectively. Moreover, North Carolina's total population increased by only 12 percent. (See Table 1.)

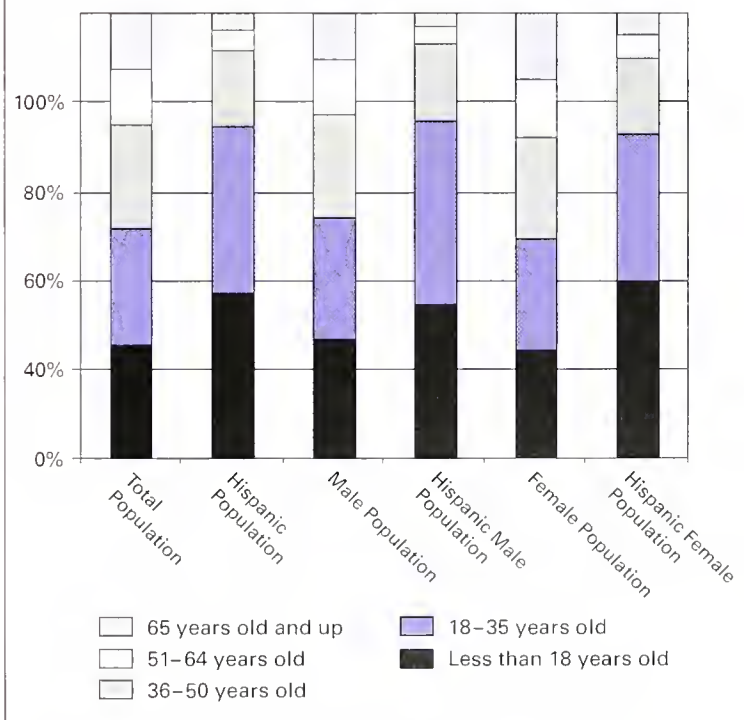
Nevertheless, the influx of Hispanics into North Carolina actually began before the early 1990s. During the 1980s the state's Hispanic population grew far more rapidly (35 percent) than its white (12 percent), black (10 percent), Native American (24 percent), and total (13 percent) populations.[7] By 1990 the number had reached 76,726.

In terms of this broader time span—1980 to 1997—the state's Hispanic population increased by 164 percent. By comparison the state's white, black, Native American, and total populations grew by only 26 percent, 25 percent, 48 percent, and 26 percent, respectively.[8] The rates of Hispanic population change for the nation and for the South were 101 percent and 105 percent, respectively, during this time span. In 1997, according to estimates compiled by the U.S. Census Bureau, nearly 150,000 Hispanics were living in North Carolina.[9]

Breaking down the U.S. Census Bureau's 1997 estimates of North Carolina's total and Hispanic populations by age and sex reveals some striking contrasts (see Figure 1). It is immediately apparent that the Hispanic population is much younger than the total population. Thirty-seven percent of the Hispanic population is under age eighteen compared with 25 percent of the total population. A similar disparity exists for the population ages eighteen through thirty-five. Nearly 40 percent of the Hispanics are in this age group but only 27 percent of the total population. Combining the statistics for these two age groups shows that 77 percent of the state's Hispanic population is age thirty-five or under whereas only 52 percent of the state's total population fits this age profile. For the elderly population (age sixty-five and up), the disparity is in the opposite direction. That is, there is a higher concentration of elderly people in the total population (13 percent) than in the Hispanic population (4 percent). Given the fact that young people are more inclined to migrate or immigrate than older people, the foregoing statistics, which hold for both the male and the female population of North Carolina, should not be surprising. Moreover, because most of the female Hispanic newcomers are in their peak childbearing years, the potential for continued growth of the state's Hispanic population is enormous.

The following statistics are indicative of this growth potential. Data compiled by the Office of Minority Health in the North Carolina Department of Health and Human Services reveal that Hispanic births in the

Figure 1. Distribution of North Carolina Population, by Age and Sex, 1997



Source: U.S. Bureau of the Census, Population Division, Population Estimates Program, *Estimates of the Population of Counties by Hispanic Origin, Age, and Sex: July 1, 1997* (Washington D.C.: Sept. 4, 1998).

Table 1. Population Change by Race/Ethnicity for the United States, the South, and North Carolina, 1980–97

	White	Black	Hispanic	American Indian	Asian and Pacific Islander	Total
U.S. Population						
1980	188,371,622	26,495,025	14,608,673	1,420,400	3,500,439	226,545,805
1990	199,686,070	29,986,060	22,354,059	1,959,234	1,273,662	248,709,873
1997	221,334,048	33,947,084	29,347,865	2,322,044	10,032,885	267,636,061
U.S. Percentage Change						
1980–90	6.0%	13.2%	53.0%	37.9%	–63.6%	9.8%
1990–97	10.8	13.2	31.3	18.5	687.7	7.6
1980–97	17.5	28.1	100.9	63.5	186.6	18.1
South Population						
1980	58,960,342	14,047,807	4,473,966	372,230	469,822	75,372,362
1990	65,582,199	15,828,888	6,767,021	556,057	1,122,248	85,455,930
1997	76,670,967	18,138,300	9,149,384	646,396	1,739,949	94,187,161
South Percentage Change						
1980–90	11.2%	12.7%	51.3%	49.4%	138.9%	13.4%
1990–97	16.9	14.6	35.2	16.2	55.0	10.2
1980–97	30.0	29.1	104.5	73.7	270.3	25.0
North Carolina Population						
1980	4,457,507	1,318,857	56,667	64,652	21,176	5,881,766
1990	5,008,491	1,456,323	76,726	80,155	52,166	6,628,637
1997	5,594,769	1,642,980	149,390	95,398	92,036	7,425,183
North Carolina Percentage Change						
1980–90	12.4%	10.4%	35.4%	24.0%	146.3%	12.7%
1990–97	11.7	12.8	94.7	19.0	76.4	12.0
1980–97	25.5	24.6	163.6	47.6	334.6	26.2

Sources: U.S. Bureau of the Census, *Census of Population and Housing 1980* (Washington, D.C.: April 1982); *Census of Population and Housing 1990, Summary Tape File 1C* (Washington, D.C.: April 1992); Population Division, Population Estimates Program, *Estimates of the Population of Counties by Race and Hispanic Origin: July 1, 1997* (Washington, D.C.: Sept. 4, 1998).

Note: The South Census Region includes Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

state increased by 294 percent between 1990 and 1997. In 1997—a year when the Hispanic population made up only 2 percent of the state's population—Hispanic births (6,017) accounted for 5.7 percent of all births (106,428) in North Carolina. Statistics generated by the North Carolina Department of Public Instruction reveal that approximately 33,000 Hispanic children were enrolled in the state's public schools in the 1997–98 academic year—a 250 percent increase over the previous year.[10] Before the 1980s most Hispanics migrating to North Carolina were seasonal, male agricultural workers. The foregoing data suggest that a large proportion of the more recent arrivals probably have brought along family members, including spouses and children, and that they have come to stay.

Given the U.S. Census Bureau's history of undercounting minority and inner-city populations and undocumented aliens,[11] the statistics just cited probably greatly underestimate the size of North Carolina's Hispanic population. The estimates derived by the Division of Women and Children's Health, North Carolina Department of Health and Human Services, probably are more accurate than the U.S. Census Bureau's estimates. On the basis of a survey conducted by that division at the time of the rubella outbreak in the state in 1996, the department estimated that the state's Hispanic population totaled nearly 230,000.[12] Other recent estimates place North Carolina's Hispanic population at 315,000.[13]

WHERE HAVE HISPANICS SETTLED?

The state's newcomers are settling mainly in two types of communities: (1) metropolitan[14] or "urban crescent"

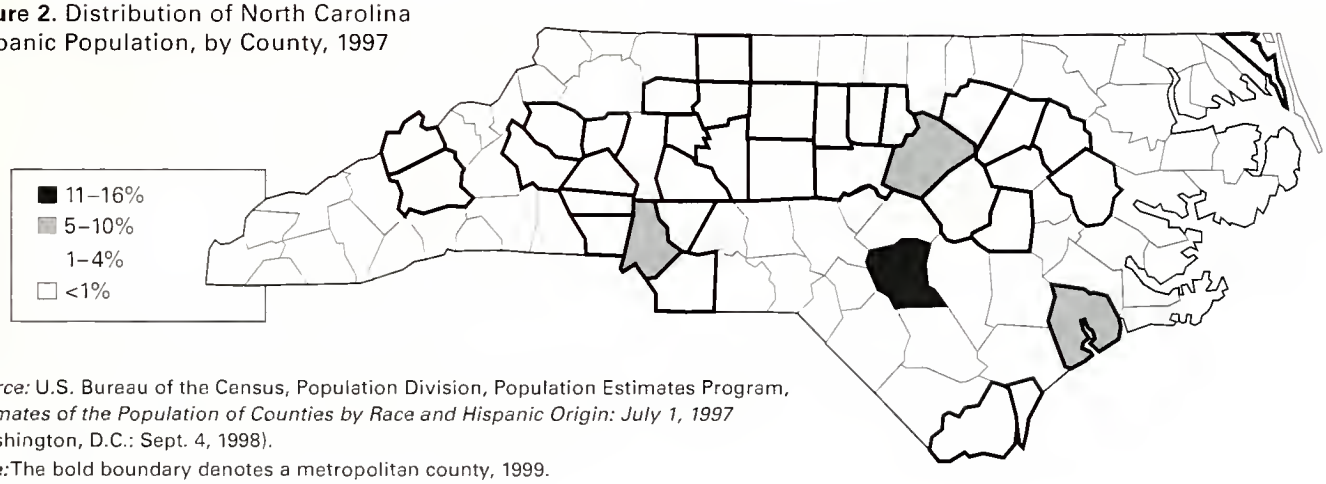
communities along the I-85 corridor, where most of North Carolina's employment growth has occurred over the last fifteen years; and (2) the military complexes in Onslow County (Camp Lejeune) and Cumberland County (Fort Bragg and Pope Air Force Base).[15] Together these communities were home to almost half of the state's Hispanic population in 1997 (see Figure 2).

However, analyses of 1997 county-level birth records suggest that Hispanics are beginning to settle in significant numbers beyond those areas. In fact, in 1996 the highest concentrations of Hispanic births occurred in five of the state's nonmetropolitan counties: Duplin (25.8%), Lee (19.9%), Montgomery (17.6%), Sampson (15.9%), and Greene (13.6%) (see Figure 3).[16] In each of these jurisdictions, the Hispanic proportion of all births was considerably higher than the Hispanic proportion of all births in the state as a whole (5.7 percent). In only two of the state's metropolitan counties—Chatham (17.0 percent) and Yadkin (12.0 percent)—was the percentage considerably higher than the statewide proportion. In short, these data suggest that Hispanics are settling throughout the state, in rural and urban communities.

WHERE ARE HISPANICS COMING FROM?

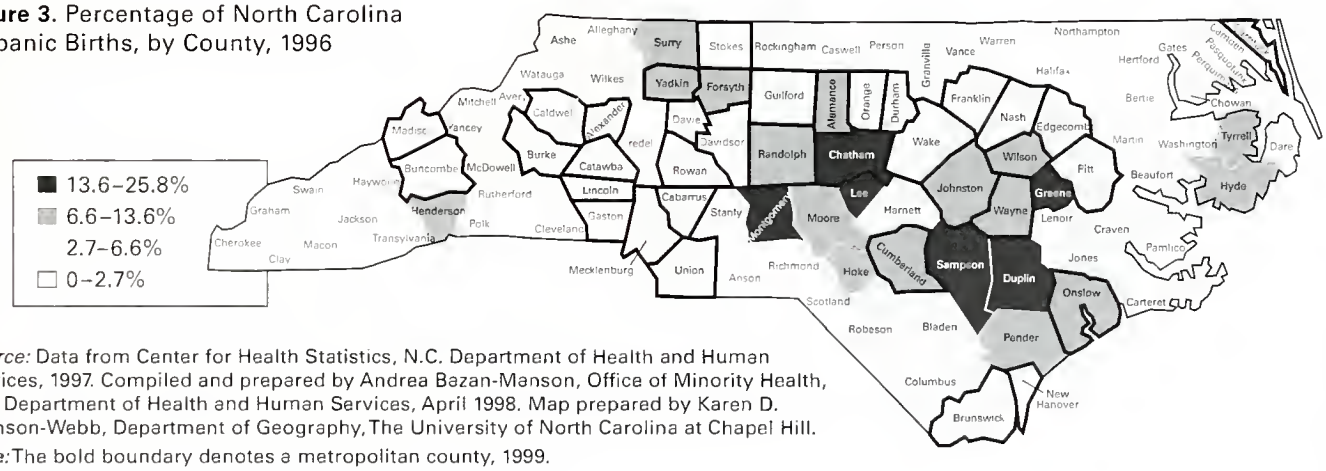
Additional information to determine where Hispanics are coming from will not be available until the 2000 census is completed. But data from the 1990 Census Public Use Microdata Samples (PUMS) file suggest that Hispanic newcomers, or "in-migrants," to North Carolina are coming from two types of communities: Hispanic gateway communities in the United States, and other countries.[17] Between 1985 and 1990, the largest numbers of Hispanic in-migrants to North Carolina

Figure 2. Distribution of North Carolina Hispanic Population, by County, 1997



Source: U.S. Bureau of the Census, Population Division, Population Estimates Program, *Estimates of the Population of Counties by Race and Hispanic Origin: July 1, 1997* (Washington, D.C.: Sept. 4, 1998).
Note: The bold boundary denotes a metropolitan county, 1999.

Figure 3. Percentage of North Carolina Hispanic Births, by County, 1996



Source: Data from Center for Health Statistics, N.C. Department of Health and Human Services, 1997. Compiled and prepared by Andrea Bazan-Manson, Office of Minority Health, N.C. Department of Health and Human Services, April 1998. Map prepared by Karen D. Johnson-Webb, Department of Geography, The University of North Carolina at Chapel Hill.
Note: The bold boundary denotes a metropolitan county, 1999.

Figure 4. State of Origin of North Carolina Hispanic In-Migrants, 1990

Source: U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993). Map produced by Karen D. Johnson-Webb, Department of Geography, The University of North Carolina at Chapel Hill.

Note: In-migrants are Hispanics who are five years old and up who indicated a different county of residence in 1985. The number migrating within North Carolina represents Hispanics who are five years old and up who indicated a different North Carolina county of residence in 1985. Additionally, 23,474 Hispanics were nonmovers or less than five years old.

came from California, Texas, Florida, and New York, each accounting for 2,600 to 15,000. The next-largest numbers—700 to 2,600 each—arrived from New Jersey, Virginia, and Georgia. From 200 to 700 each came from another thirteen states. (See Figure 4.)

According to the PUMS data, 8,873 Hispanics moved to the state from abroad between 1985 and 1990. Unfortunately the PUMS file does not identify specific points of origin for these international in-migrants. It contains information pertaining only to their ethnic ancestry. However, those data provide insights into where the Hispanic newcomers from abroad originated. We describe them in the next section.

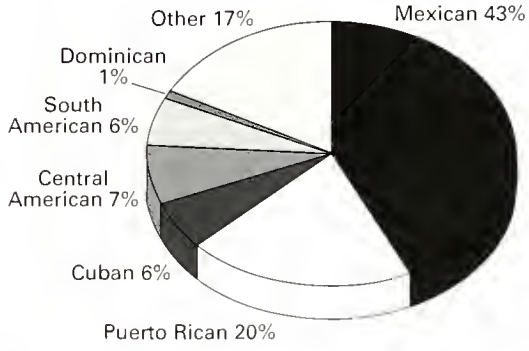
Most of the Hispanics are coming to North Carolina to take advantage of employment opportunities in the state's booming economy.[15] Given that the economic boom began in the early 1980s and continues today, it is reasonable to surmise that the influx of Hispanics from other states and other countries has intensified during the 1990s. Nonetheless, we must await the results of the 2000 census before we can confirm the relative magnitude of the flows. One thing is certain, however: North Carolina's Hispanic population is growing rapidly, and only part of the growth can be explained by high birth rates among Hispanics who already live in the state.

WHO ARE THE HISPANIC NEWCOMERS?

Like information on Hispanic interstate and international flows into North Carolina, detailed, up-to-date data on the ethnic and socioeconomic characteristics of the Hispanic newcomers must await completion of the 2000 census. Yet insights can be discerned from the 1990 PUMS data. In terms of ethnic origin, Hispanics of Mexican descent constituted the largest group of in-migrants to North Carolina between 1985 and 1990—43 percent. Puerto Ricans made up the second-largest group, accounting for 20 percent. Smaller percentages of Cubans, Central Americans, South Americans, Dominicans, and other Hispanics accounted for the balance. (See Figure 5.) Puerto Ricans appeared to be overrepresented in the military towns.[16]

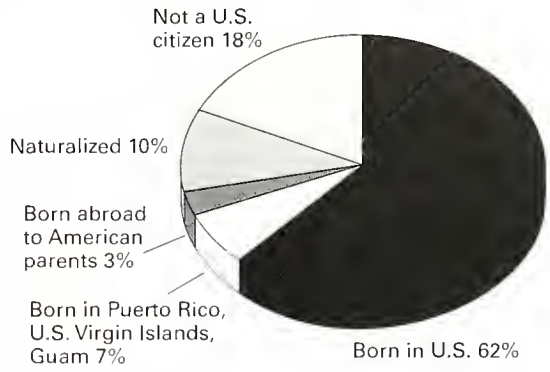
With regard to citizenship status, 69 percent of the Hispanics arriving in North Carolina between 1985 and 1990 were born in the United States, Puerto Rico, or another U.S. territory and therefore were presumably U.S. citizens. Three percent more were born abroad to American parents and therefore were presumably U.S. citizens too. Another 10 percent were naturalized citizens. Only 18 percent were not U.S. citizens. (See Figure 6.) In 1990 the highest proportions of Hispanics

Figure 5. Ethnicity of Hispanic In-Migrants to North Carolina, 1990



Source: U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993).

Figure 6. Citizenship of Hispanic In-Migrants to North Carolina, 1990



Source: U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993).

who were born in the United States were in Onslow County (74.8 percent of all the Hispanics in that county) and the Piedmont Triad (64.1 percent of all the Hispanics in that area). Charlotte/Mecklenburg County (25.3%) and the Research Triangle (27.2%) had the greatest concentrations of Hispanic newcomers who were not U.S. citizens.[20]

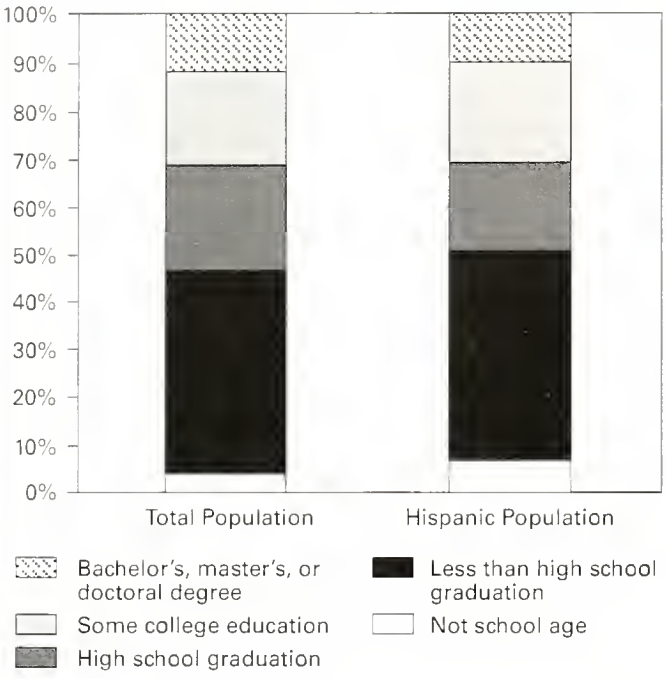
In terms of years of school completed, the 1990 census revealed that North Carolina Hispanics, 43 percent of whom had less than a high school diploma, are generally less well educated than the state's population as a whole, 40 percent of whom had less than a high school diploma (see Figure 7). However, the Hispanics who have settled in the Triangle area are generally better educated than the statewide Hispanic population, one-quarter of them having completed college. The highest percentage of those with a high school diploma or some college education have settled in Onslow County and the Fayetteville/Fort Bragg/Cumberland County areas.[21]

WHAT KINDS OF JOBS ARE THE HISPANIC NEWCOMERS GETTING?

Most of what is known about Hispanic employment patterns in North Carolina (outside

In photographic collages like the one at right, photographer-artist Susan Simone tries to capture the vibrancy and the spirit of the growing Hispanic community.

Figure 7. Level of Education of Hispanic In-Migrants to North Carolina, 1990



Source: U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993).

of agricultural work) is based on studies of specific industries (for example, poultry and hog processing) or of local communities that have experienced a significant influx of Hispanics in recent years (for example, Siler City in Chatham County and Charlotte in Mecklenburg County).[22] To date, no systematic efforts have been undertaken to assess the overall employment impact of Hispanic migration to North Carolina.

To address this issue, we created an employment profile of the Hispanic population of North Carolina using 1990 PUMS occupational data. Although these data are somewhat dated, they are the best and most reliable source of information on the statewide employment patterns of North Carolina's Hispanic population. For our purposes, we grouped occupations into the following categories, as defined by the U.S. Census Bureau:[23]

- Primary activities, including agriculture, forestry, and fisheries
- Transformative activities, including manufacturing and construction
- Distributive services, including transportation, communication, and wholesale and retail trade
- Producer services, including finance, insurance, real estate, and business services
- Personal services, including entertainment, repairs, and eating and drinking
- Social services, including health care, education, and government
- Active military service, including active status in a branch of the U.S. military

We broke down our data according to Hispanic settlement patterns: those who resided in the two military communities and those who resided in the I-85 corridor communities (see Figure 8). For comparison we also examined the statewide distribution of both total Hispanic employment and total employment.

Several patterns are apparent in these data. First, contrary to popular stereotypes, Hispanic workers were widely dispersed in the North Carolina economy in 1990. The statewide distribution indicates that North Carolina Hispanics were overrepresented in primary activities—as Hispanics are in communities outside North Carolina that have a substantial Hispanic presence. But unlike Hispanic workers in many other such communities, they also are overrepresented in social services and military service, occupations that pay higher wages. In addition, although Hispanics are underrepresented by statewide standards, they are substantially represented in transformative activities, especially construction.

The occupational distributions in the two types of communities that served as magnets for Hispanic inmigration between 1985 and 1990—military settings and the I-85 corridor communities—show radically dif-

A Christmas tree worker in western North Carolina

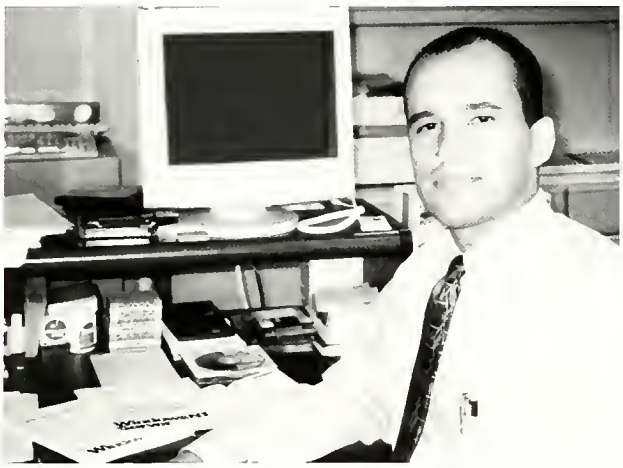


Photo by Teresa Smith Perrien

An information technology specialist in the Research Triangle Park

ferent patterns. In the military settings, Hispanics are greatly overrepresented in military service occupations and underrepresented in all other occupational categories. In the I-85 corridor communities, Hispanics are overrepresented in the other occupational categories, compared with the pattern in military settings. Thus the typical image of a migrant farm worker or a gardener no longer applies to North Carolina's Hispanic newcomers. They are distributed throughout the state's economy, in both high- and low-wage occupations.

HOW DO LONG-TERM RESIDENTS RESPOND TO HISPANIC NEWCOMERS?

Considerable tensions and conflicts over jobs, housing, schools, and other goods and services have accompanied the influx of Hispanics into gateway communities.[24] Anecdotal evidence and media accounts suggest that the same types of tensions and conflicts are emerging in North Carolina as the state's Hispanic population expands. To gauge public attitudes toward Hispanic newcomers systematically, we analyzed data from the Spring 1996 Carolina Poll, conducted by The University of North Carolina at Chapel Hill's School of Journalism. It posed the following four questions (among others) to a sample of 655 North Carolinians:

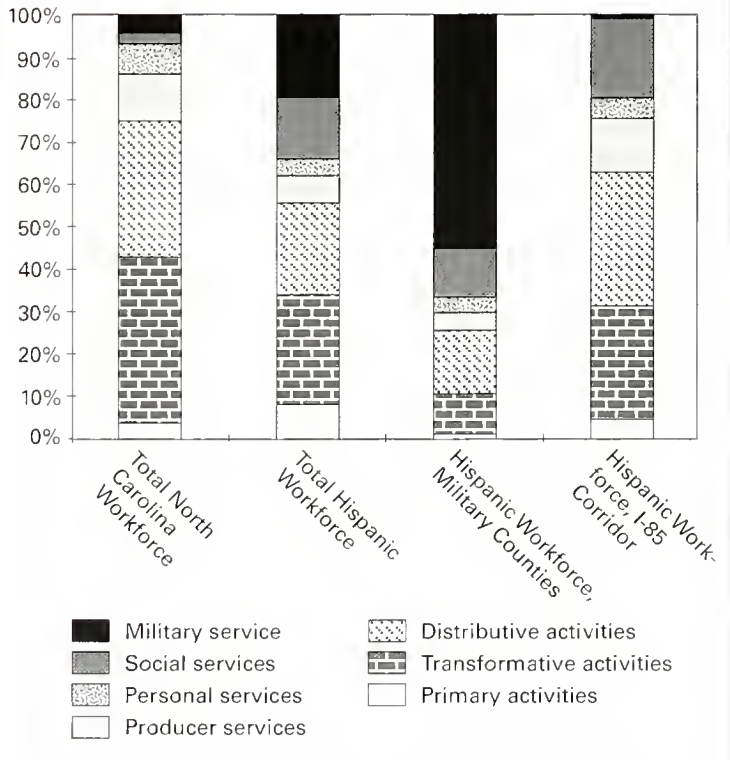
1. How comfortable are you with the influx of Hispanics into the state?
2. How would your neighbors feel about Hispanics moving into your neighborhood?
3. How comfortable are you around people who are not speaking English?
4. How comfortable are you with the influx of northerners into the state?

(For a summary of the answers of all survey respondents and a breakdown of responses by selected socioeconomic and demographic characteristics, see Table 2.)

In general, North Carolinians harbor negative feelings about the influx of Hispanics. Nearly half (42 percent) stated that they were uncomfortable with the increasing presence of Hispanics, about two-thirds (67 percent) said that they thought their neighbors would not approve of Hispanics moving into their neighborhood, and more than half (55 percent) said that they did not feel comfortable around people who do not speak English. Respondents did not express these sentiments at such high levels toward non-Hispanic in-migrants from the North. Only 26 percent said that the influx of northerners made them uncomfortable.

Significantly more North Carolinians who had no high school diploma (49 percent) were negative about the influx of Hispanics than were their more educated counterparts (35 percent). Also, more North Carolinians who lived in nonmetropolitan areas (45 percent) were negative about the Hispanic influx, compared

Figure 8. Employment Distribution of North Carolina Hispanic Workforce and Total Workforce, 1990



Source: U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993).
Note: A very small percentage is unemployed, not shown in the figure.

Table 2. Selected Results of Spring 1996 Carolina Poll

	Negative Attitude about Influx of Hispanics %	Negative Attitude of Neighbors about Influx of Hispanics %	Negative Attitude about Non-English-Speaking People %	Negative Attitude about Influx of Northerners %
INDICATOR				
All Respondents	42	67	55	26
Age				
Less than 35 years old	41	70	56	31
35 years old or more	42	66	55	24
High School Graduate				
Yes	35	64	50	22
No	49*	71	59*	28*
Years of Education				
Less than 12 years	49	69	55	29
12 years or more	41	67	55	24*
Marital Status				
Married	44	68	58	29
Not married	37	65	50	21
Political Affiliation				
Democrat	43	67	46	50
Republican	45	69	66	32
Independent and other	40	68	53*	40
Employment				
Full-time	44*	70	41*	27*
Part-time	29	71	50	35
Unemployed	60	60	33	13
Other	39	63	42	16
Race				
Black	38	54*	51	23
White	44	69	57	26
Other	26	55	44	27
Gender				
Male	44	70	59	29
Female	40*	65	52	24
Metropolitan/Nonmetropolitan				
Metropolitan	39*	66	55	26
Nonmetropolitan	45	69	55	27
Region				
Coastal	35*	65	46	30
Piedmont	45	66	33	22
Mountain	37	67	42	37
Registered to Vote				
Yes	42	65	56*	27
No	40	76	52	24
State of Residence at Age 16				
North Carolina	49	70*	58*	30*
Other	26	59	47	13
Consider Self Southerner				
Yes	46*	68*	58*	28*
No	28	62	46	17

Source: Spring 1996 Carolina Poll (Chapel Hill, N.C.: Institute for Research in the Social Sciences, The University of North Carolina at Chapel Hill, 1996). Number of North Carolinians in the sample = 655.

*Statistically significant difference.

with those who lived in the state's metropolitan areas (39 percent). Significantly more of those who considered themselves to be Southerners and those who lived in the state at age sixteen, compared with newcomers to the region, harbored negative attitudes about Hispanics (46 percent and 49 percent respectively, versus 26 percent), and about northerners (28 percent and 30 percent respectively, versus 13 percent).

Responses varied significantly by region, but the pattern was not clear-cut. More of those in the Piedmont (45 percent) were uncomfortable with the Hispanic influx, compared with those on the coast (35 percent) and those in the mountains (37 percent). Almost equal proportions of residents of all three regions felt strongly that their neighbors would be uncomfortable with Hispanics moving into the neighborhood: mountain residents, 67 percent; coastal residents, 65 percent; and Piedmont residents, 66 percent. More residents of the coastal region (46 percent) appeared to be negative about non-English-speaking people, compared with Piedmont residents (33 percent) and mountain residents (42 percent).

Significantly more of those who were unemployed (60 percent) expressed negative attitudes toward the Hispanic influx than did their counterparts who were employed full-time (44 percent) and part-time (29 percent). When asked how their neighbors would feel about Hispanics moving into their neighborhoods, more whites than blacks (69 percent to 54 percent) expressed negative attitudes. More of those who were registered to vote had negative attitudes toward non-English-speaking newcomers than did those who were not registered to vote (56 percent to 52 percent). More males than females (44 percent to 40 percent) had negative attitudes toward the Hispanic influx. Further, more Republicans than Democrats or independents (66 percent, 46 percent, and 53 percent, respectively) harbored negative feelings toward non-English-speaking newcomers.

These responses and attitudes do not bode well for North Carolina Hispanics. Nearly one-half of them live in the communities that are magnets for migration. The I-85 corridor communities lie within the Piedmont, and more residents of this region (45 percent) expressed

negative attitudes, compared with residents of the coastal region (35 percent) and the mountain region (37 percent). Generally, however, more nonmetropolitan respondents had negative attitudes toward Hispanics than did metropolitan respondents (45 percent to 39 percent). This may be fortunate for the large number of Hispanic newcomers who are concentrated in metropolitan areas in North Carolina. The negativity of unemployed North Carolinians about the Hispanic influx suggests that ethnic tensions related to the labor market may be festering.

The range of groups that expressed negative feelings about Hispanics is very broad. What is alarming is how openly these views were expressed. Respondents tend to temper their responses when similar questions are posed about blacks, in all probability to avoid appearing racist.[25] Yet these same concerns do not appear to be present when they are discussing immigrants—in this case, Hispanics.

WHAT DO THESE FINDINGS TELL US?

From the preceding analyses, we can make the following generalizations about North Carolina's Hispanic population during the past two decades:

- It has grown rapidly.
- It is relatively young, which means that the potential for continued growth through natural increase, not to mention continued in-migration of other Hispanics, is great.
- Hispanics are arriving in North Carolina from other states in the United States and directly from other countries.
- Hispanics have begun to settle in metropolitan areas in the state, but county-level birth statistics suggest that they also are beginning to settle in nonmetropolitan areas throughout the state.
- Hispanic newcomers are concentrated in low-paying primary, transformative, and service jobs.
- There is considerable opposition to the Hispanic influx among long-term residents of the state.

WHAT ARE THE IMPLICATIONS OF THE FINDINGS?

These findings have several practical and policy implications. First, North Carolina communities urgently need to develop human relations policies to deal with the negative attitudes toward Hispanic newcomers uncovered in the Carolina Poll. If such attitudes exist in times of economic growth and prosperity, one can imagine the depth and the intensity of the backlash should the state's economy experience a downturn. Initiatives to nurture and improve relations between Hispanic newcomers and long-term residents will enhance North Carolina's image as a world-class community and its competitiveness in the global marketplace.

Second, in attempting to design effective human relations policies, state and local policy makers must recognize the diversity that exists within the Hispanic newcomer population. Recognition of this diversity will help North Carolinians provide better services to Hispanics and integrate Hispanics more readily into southern culture. Although most Hispanics settling in North Carolina are of Mexican ancestry, they come from different parts of Mexico, ranging from geographically isolated rural villages to Mexico City, one of the oldest, most populous, and most cosmopolitan cities in the Western Hemisphere. Other Hispanic newcomers are from communities in Central America or other parts of Latin America with unique ethnic and cultural backgrounds. And although the Hispanic newcomers from other U.S. jurisdictions, such as California, Texas, and New York, are likely to be familiar with American culture and institutions, they may not fully understand southern culture.

Third, in an era of dwindling revenues from state and federal sources, local governments will have to develop innovative ways to deal with the increased demand for social and public services that accompanies an influx of immigrants into a community. Given the demographic and social makeup of the Hispanic newcomer population, described earlier, the demand for health care and education services, including English-as-a-second-language classes, will increase sharply. This will be a major challenge for the nonmetropolitan counties where Hispanic births are on the rise. Already, many of these communities are showing signs that they are ill equipped to handle service provision for their long-term residents, many of whom, like the Hispanic newcomers, are members of North Carolina's growing legion of the working poor.[26]

In June 1998, Governor James B. Hunt, Jr., signed an executive order creating an Advisory Council on Hispanic/Latino Affairs (see page 16). What is needed now is a strategic, long-range plan that will allow this advisory council, in collaboration with other state and local community stakeholders, to mobilize the requisite resources to address the practical and public policy issues associated with the increasing diversity of North Carolina's population. Only through such efforts will the state be able to enjoy the fruits of its growing Hispanic presence.

NOTES

1. James H. Johnson, Jr., Walter C. Farrell, Jr., and Chandra Guinn, "Immigration Reform and the Browning of America: Tensions, Conflict, and Community Instability," in *The Handbook of International Migration*, ed. C. Hirschman, J. DeWind, and Phillip Kasinitz (New York: Russell Sage Foundation, forthcoming).

2. James H. Johnson, Jr., Karen D. Johnson-Webb, and Walter C. Farrell, Jr., "Newly Emerging Hispanic Communities in the U.S.: A Spatial Analysis of Settlement Patterns, In-Migration Fields, and Social Receptivity," in *Immigration and Opportunity: Race, Ethnicity and Employment in the United States*, ed. F. D. Bean and S. Bell-Rose (New York: Russell Sage Foundation, in press).

3. William H. Frey and Kao L. Liaw, "Immigrant Concentration and Domestic Migrant Dispersal: Is Movement to Nonmetropolitan Areas 'White Flight'?," *Professional Geographer* 50, no. 2 (April 1998): 215–32; Johnson, Johnson-Webb, and Farrell, "Newly Emerging Hispanic Communities."

4. Johnson, Johnson-Webb, and Farrell, "Newly Emerging Hispanic Communities."

5. Karen D. Johnson-Webb, "Hispanics Are Changing North Carolina . . .," *Journal of Common Sense* 5, no. 1 (Spring 1999): 8–12; Karen D. Johnson-Webb and James H. Johnson, "North Carolina Communities in Transition: The Hispanic Influx," *North Carolina Geographer* 5 (Winter 1996): 21–40.

6. MDC, Inc., *The State of the South* (Sept. 1998), available at http://www.mdcinc.org.

7. It should be noted that the rate of growth of North Carolina's Hispanic population was slower than the rate of growth of the Hispanic population in the nation (53 percent) and in the South (51 percent) during this period. It also should be noted that North Carolina's Asian population grew more rapidly (146 percent) than its Hispanic population during this period. However, the absolute numbers of this population were smaller, and the Asians were more widely dispersed geographically than the Hispanics were.

8. Again, as in the 1980s, the Asian population grew more rapidly than the Hispanic population, but the absolute numbers of Asian newcomers were smaller than those of Hispanic newcomers and thus had less of an impact on the social geography of the state.

9. U.S. Bureau of the Census, Population Division, Population Estimates Program, *Estimates of the Population of Counties by Race and Hispanic Origin: July 1, 1997* (Washington, D.C.: Sept. 4, 1998).

10. Andrea Bazan-Manson, comp., "1996 Latino Births" (data from Center for Health Statistics, N.C. Department of Health and Human Services); "Public School Enrollment Data" (data from N.C. Department of Public Instruction) (reports compiled and prepared under auspices of Office of Minority Health, N.C. Department of Health and Human Services, April 1998) (hereinafter "Birth and School Enrollment Data").

11. Juanita Tamayo Lott, *Asian Americans: From Racial Category to Multiple Identities* (Walnut Creek, Calif.: Altamira Press, 1998).

12. Andrea Bazan-Manson, comp., "1996 County Population Estimates of Latinos" (data from Division of Women and Children's Health, N.C. Department of Health and Human Services, Local Health Department Survey, 1996) (report compiled and prepared under auspices of Office of Minority Health, N.C. Department of Health and Human Services, April 1998).

13. Mark R. Sills, *Hispanics in North Carolina: Introduction to Our New Neighbors* (Greensboro, N.C.: Kairos Publications, for Faith in Action Institute, 1999).

14. The U.S. Census Bureau defines a "metropolitan" area as one having at least "one city with 50,000 or more inhabitants, or a Census Bureau–defined urbanized area (of at least 50,000 inhabitants) and a total metropolitan population of at least 100,000 (75,000 in New England)." U.S. Census Bureau Web site, available at http://www.census.gov/population/www/estimates/aboutmetro.html. Counties that do not meet these criteria are considered nonmetropolitan.

15. Johnson-Webb and Johnson, "North Carolina Communities."

16. Bazan-Manson, "Birth and School Enrollment Data."

17. Johnson-Webb and Johnson, "North Carolina Communities." In-migrants may or may not be immigrants. They are people who moved in, in this case, to North Carolina.

18. Johnson-Webb, "Hispanics Are Changing North Carolina . . . ."; Johnson-Webb and Johnson, "North Carolina Communities."

19. Johnson-Webb and Johnson, "North Carolina Communities."

20. Johnson-Webb and Johnson, "North Carolina Communities."

21. U.S. Bureau of the Census, "Census of Population and Housing, 1990: Public Use Microdata Samples," in *Technical Documentation* (Washington, D.C.: U.S. Government Printing Office, 1993) (hereinafter "PUMS file").

22. David C. Griffith, *Jones' Minimal: Low-Wage Labor in the United States* (Albany: State University of New York Press, 1993); Kimberly Levin et al., "A Community Diagnosis of the Latino Community in Siler City" (secondary data document, School of Public Health, The University of North Carolina at Chapel Hill, Feb. 1995); United Way of Central Carolinas, "Hispanic Needs Survey. The Hispanic Program" (report, UWCC, Aug. 1995).

23. PUMS file.

24. James H. Johnson, Jr., and Walter C. Farrell, Jr., "The Fire This Time: The Genesis of the Los Angeles Rebellion of 1992," *North Carolina Law Review* 71, no. 5 (June 1993): 1403–20; Johnson, Farrell, and Guinn, "Immigration Reform"; Johnson, Johnson-Webb, and Farrell, "Newly Emerging Hispanic Communities"; Melvin Oliver and James H. Johnson, Jr., "Interethnic Conflict in an Urban Ghetto: The Case of Blacks and Latinos in Los Angeles," *Research in Social Movements* 6 (1984): 57–94.

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Helping Hispanics in Transition

An Interview with H. Nolo Martinez

In June 1998 Governor James B. Hunt, Jr., signed an executive order creating the state Office of Hispanic/Latino Affairs, the Advisory Council on Hispanic/Latino Affairs, and the position of director of Hispanic/Latino Affairs. The Office of Hispanic/Latino Affairs, a division of the state Office of Minority Affairs, is part of the Office of the Governor and is housed in the Executive Building in Raleigh. Its purpose is to coordinate and develop state and local programs to meet the needs of North Carolina's Hispanic/Latino residents.

News & Observer/Corey Lowenstein

In September 1998 Governor Hunt appointed H. Nolo Martinez, a member of the faculty at North Carolina State University, as director of Hispanic/Latino Affairs. In this position Martinez oversees the work of the Office of Hispanic/Latino Affairs, staffs the Advisory Council on Hispanic Affairs (see sidebar, page 16), and is special adviser to Governor Hunt on issues related to the Hispanic community.

The Office of Hispanic/Latino Affairs answers requests statewide for information about social services, immigration laws, the census, economic development, and other issues. In addition, Martinez holds regularly scheduled meetings twice a month with representatives of Hispanic groups throughout the state to talk about race relations, health and agriculture issues, and other concerns. At least once a month, he travels to farm communities to meet with farm workers. He also meets with university administrators, employers, and members of Latin American organizations, among others.

In a recent interview in his office near the governor's, Martinez talked about the needs of Hispanics in North Carolina and how public policy might address them.

This interview with *Popular Government* was conducted on June 2, 1999, by Eleanor Howe. Howe is a freelance writer living in Chapel Hill who specializes in government, public policy, planning, and medicine.

What is the main focus of your work as director of Hispanic/Latino Affairs?

Within the Hispanic community, there are a number of groups differentiated not only by country of origin but also by factors such as immigration status and language—for example, by whether or not they speak English and, if they don't, by whether or not they are literate in Spanish. While I basically follow the governor's philosophy, which is to be inclusive of all people and to address the needs of everyone who speaks Spanish, realistically most of my work is to help individuals who are still in transition, who are not assimilated into the culture, and who aren't politically represented.

What are the most pressing needs, as you see them, for people who are still in transition?

I used to think, and I still do to some extent, that language barriers and a lack of understanding of the culture and the government infrastructure were the top concerns. But the advisory council came up with a list of sixty issues important to Hispanics, and we categorized those into eight areas: education; human relations; health and human services; workers' rights; immigration, licensing, and documentation; economic development; political representation; and crime control and public safety.

In the area of education, is the English as a Second Language (ESL) program the answer to helping students whose English is limited or nonexistent, or should we be doing more?

How best to educate students who aren't proficient in English is a challenge. If kids start ESL early, the chances of them staying in school are higher. It takes about two to three years to become proficient enough in English to study other subjects. But if these students come into ESL when they are in middle school or high school, the chances of them staying in school are very low. They're probably going to have to go out and earn a living before they can learn enough English for school.

And the ESL program has been outmatched almost from the start. We don't have the programs to prepare the teachers, and we have a higher growth rate of students than of ESL teachers, although the metropolitan areas are doing better than the rural areas.

Related to this issue is the fact that appropriations for the ESL program are very low. There are about 28,000 students in the state classified as LEP [limited English proficient], and probably 70 percent of those are Hispanic. Last year the state appropriated $5 million for the ESL/LEP program. The advisory council is talking about spending $1,000 per child, or $29 million a year. I don't think that will pass. If we get $12 million, it will be a gain, but a lot more has to be done.[1]

So the council is recommending a different strategy in the metropolitan areas, where we have the highest growth. It is trying pilot programs that integrate English-speaking and non-English-speaking students. One program, in Greensboro, is a Spanish immersion program, in which classes like science and math are taught in Spanish to students whose native language is not Spanish. It shows that academic achievement is possible by teaching in the Spanish language. The other program, in Charlotte, is a bilingual program that uses English and Spanish together to teach mixed classes of English- and Spanish-speaking students. The difference between ESL and this kind of program is that here you're teaching students subjects like math or history in their native language—in this case, Spanish. With ESL you're teaching the target language—English—for an average of forty minutes per day outside the regular classroom. The ESL strategy helps students with social integration, but bilingual education helps them more with academic achievement, and that's what I think we should be shooting for. Bilingual education would also be beneficial for English-speaking students.

You have said that, in the areas of crime control and public safety, the main issue for Hispanics is communication. Can you elaborate?

Many Hispanic immigrants come from countries that use the military to handle public safety, and they're not well respected. People fear them and run away from them. Here the relationship between the police and the community is different, but many Hispanics don't understand that; plus they have language differences and they don't know the laws. And the criminal justice system and public safety folks are ill equipped to handle the needs of Hispanics, especially because of language differences.

There are basically two ways in which our criminal justice and public safety systems work: one is to react to problems when they come up, and the other is to establish links with the community. Unless there is communication, though, there is a big barrier to both.

We are hoping to have more Spanish-speaking and bilingual officers. And we want to train EMS [emergency medical services] staff in survival Spanish so that the dispatchers can get a call and at least go from say-

ing to the caller, *"Despacio por favor"* (Slower please), to *"Conteste 'si' o 'no' a las preguntas"* (Answer 'yes' or 'no' to the questions) and then *"¿Necesita un doctor?"* (Do you need a doctor?) and so on. The advisory council has people working on training EMS workers throughout the state on how to take calls from Spanish speakers. Communication is very important.

Is communication as important a need in workers' rights and immigration issues, or are there other, more pressing concerns?

Language is a concern but also legal representation and understanding the law, especially workers' compensation. And we're not looking just at farm workers but at construction workers and textile workers too. In many instances, workers' rights are violated because the workers are here without the right eligibility status and they feel they can't file complaints. They may be afraid, or not know where to file, or lack legal advice. And not all migrant or seasonal workers have workers' compensation. Also, they can be threatened with the employer providing information to the INS [Immigration and Naturalization Service].

But I also know that a large number of employers would like to do many things for those workers, who work very hard and have strong work ethics, but they can't because of their workers' legal status. It's easier for employers to help highly skilled workers, like people working on high-tech activities, than to help low-skilled workers. If employers need these skills and can prove they can't find anyone else to do the work, then they're in a better position to petition the INS for a work visa. But the reality is we have an unskilled labor force in the state that doesn't have legal status to be here, and they're hired to work. Maybe we'll have to go to an amnesty program or special work visas. It's a big issue in North Carolina and in many other states.

It's true that immigration and documentation policies are regulated by the federal government, but you can't be blind to the fact that our economy and public services are affected by illegal aliens. So I think we need to look at policies that affect us, whether they're under state jurisdiction or not. One example is that children in this country have a constitutional right to an education from grades K through 12, regardless of their immigration status. To me, an ignorant child is as contagious as a sick child. You can't deny education if you're going to keep the country moving forward.

There are other immigration issues that seem small, perhaps, when you look at them from the federal perspective, but when you look at them from the state perspective and how they affect people's lives, they become big issues. The marriage license is a good example. In many counties, people who don't have a Social Security number are denied marriage licenses. The same is true for a driver's license.[2]

What is the advisory council hoping to achieve in the areas of health care and economic development?

North Carolina has done a very good job in trying to close the gaps in medical services to migrant farm workers. There are about twelve or thirteen migrant health clinics throughout the state, and they seem to have interpreters and bilingual staff. But again, the biggest growth in the Hispanic population is in the metropolitan areas. And in some counties, like Montgomery and Chatham, the bulk of services that the health department provides is for Hispanics.

News & Observer/Scott Sharpe

WRAL's David Crabtree [left] interviews Andrea Bazan-Manson, Office of Minority Affairs, and Nolo Martinez.

In the area of economic development, we're looking at what people need in order to understand financial institutions and practices, not only banks and banking but savings and investments, like buying a home. You know, the American dream isn't necessarily a realistic dream for these new immigrants because without formal credit you can't buy a home. So one area of major interest is creating a *cooperativa latina*, or Latino credit union. We're working on this with the help of the State Employees Credit Union.

ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

The Advisory Council on Hispanic/Latino Affairs was created to bring attention to issues affecting the Hispanic population in North Carolina. It has four major duties: to advise the governor on matters concerning the Hispanic community; to establish a forum for the Hispanic community; to work on issues of race, ethnicity, and human relations; and to see that Hispanics are represented in all facets of government. The council meets periodically at different locations around the state to discuss Hispanic/Latino issues and to gather data and opinions that will help shape its recommendations on state policies.

Recently the council has been instrumental in adding coverage for dental services for North Carolina Health Choice[1] recipients and making it possible for state residents without a Social Security number to obtain a marriage license. The council also has been a strong advocate of continued funding for Smart Start.[2]

The council's twenty-five members were appointed by Governor Hunt and sworn in on September 2, 1998. Fifteen are voting members, representing a range of occupational, social, economic, and political groups in the state, and ten are ex-officio members.[3] H. Nolo Martinez, director of Hispanic/Latino Affairs, staffs the advisory council and is a voting member. The other voting members, with their country of origin in parentheses (unless it is the United States), are as follows:

- Andrea Bazan-Manson (Argentina) of Durham is a founder of El Pueblo, Inc., a nonprofit Latino advocacy organization, and a William C. Friday Fellow for Human Relations, one of twenty-five people in the state who have been awarded two-year leadership fellowships. She also is a researcher for the North Carolina Office of Minority Health, part of the Department of Health and Human Services.
- Bill Herrera Beardall (Panama) of Raleigh is a general contractor in private business and a former U.S. Marine.
- Father Paul Brant of Kinston is affiliated with Catholic Ministries and serves as the itinerant priest for the east coast of North Carolina.
- Javier Castillo (Nicaragua) of Greenville hosts radio and television programs for the Latino community in the Pitt County area. Also, he is a member of a study group sponsored by the North Carolina Division of Motor Vehicles that is investigating ways to serve the Latino population better.
- Julio Cordoba (Colombia) of Raleigh is president of the Hispanic Chamber of Commerce of North Carolina.
- Martha Crowley (Cuba) of Chapel Hill is president of Hispanic County Human Services and a community activist who has helped develop culturally appropriate programs on the state and local levels. She chairs the advisory council.
- Ilana Dubester of Siler City heads Vinculo Hispano, a nonprofit resource and referral organization in Chatham County that provides information to Latino families about schools, health issues, driver's licenses, and legal matters.

Your appointment and the creation of the advisory council in themselves have increased the political representation of the state's Hispanic community. What other things are needed?

We have to start with pretty basic stuff, like the census. There have been tremendous undercounts, and the census is how states get federal aid and how they get redistricting. From there we have to move into registering to vote and actively participating in electing candidates who are committed to Hispanic issues. We have only one Hispanic in the General Assembly now, Danny McComas, a Republican businessman from Wilmington and a member of the Advisory Council on Hispanic/Latino Affairs. For most Hispanics in North Carolina, political representation is what's happening in Mecklenburg County, where Andrew Reyes has become the first Hispanic president of the county Democratic Party. He's close to the Hispanic community; he owns *La Voz de Carolina*, one of the few Hispanic papers in the state; and he's been recognized as one of the most successful businessmen in the nation.

People think it's the rural areas that are growing, and they are, but in terms of the overall number of Hispanic people, the metropolitan areas—Mecklenburg, Wake, Forsyth, and Guilford counties—are growing faster. And there are a number of organizations in Mecklenburg and Wake counties that started as places for social and cultural activities but are becoming more political and more service and education oriented. When I came here fourteen years ago, there was only LAANC [Latin American Association of North Carolina], which basically was doing international dances and social activities. Now some LANCC members in the Triangle have created the Society for Hispanic Professionals, whose mission is to enhance the education potential of Hispanic children.

You have often spoken of a "hierarchy of needs" for Hispanics. What do you mean by this?

I like to relate the needs of Hispanics to human development theory, which enumerates eight steps people need to go through, from survival to self-

- Daniel Gutierrez (Mexico) of Morganton teaches English as a second language for grades K–12 and hosts a public-access television program on Latino issues.
- Aura Camacho Mass (Colombia) of Raleigh is founder and executive director of Raleigh's American Latino Resource Center, which works to strengthen cross-cultural communication. Mass also is a member of both the Human Relations and Human Resources Advisory Committee for the city of Raleigh and a group by the same name working with the North Carolina Human Relations Committee.
- State Representative Danny McComas (Puerto Rico) of Wilmington is president of MCO Transport, Inc. He represents the thirteenth district in the General Assembly.
- Angeles Ortega (Mexico) of Charlotte is pluralism coordinator for the Hornets Nest Council of the Girl Scouts, where she conducts cultural awareness workshops and classes for scouts, staff, and volunteers, as well as outreach programs in Latino and Asian communities.
- Isaura Rodriguez (Mexico) of Newton Grove is a health outreach worker at Tri-County Community Health Center, which serves Duplin, Johnston, and Sampson counties.
- Ramiro Sarabia (Mexico) of Faison is a farm worker organizer for the national Farm Labor Organization Committee.
- Maria Velazquez-Constas (Puerto Rico) of Fayetteville is a licensed marriage and family therapist in private practice.

The ex-officio members of the advisory council are David Bruton, secretary, N.C. Department of Health and Human Services; J. Parker Chesson, chair, N.C. Employment Security Commission; Carolyn Q. Coleman, special assistant to the governor; Wayne Cooper, honorary consul of Mexico; Katie Dorsett, secretary, N.C. Department of Administration; Janice Faulkner, commissioner, Division of Motor Vehicles, N.C. Department of Transportation; Jim Graham, commissioner, N.C. Department of Agriculture and Consumer Services; Richard Moore, secretary, N.C. Department of Crime Control and Public Safety; Harry Payne, commissioner, N.C. Department of Labor; and Michael E. Ward, state superintendent, N.C. Department of Public Instruction.

NOTES

1. North Carolina Health Choice is a health insurance program for children from birth through age eighteen whose family income is at or below 200 percent of the poverty level and who are not eligible for Medicaid or covered by private insurance. Cover sheet, application form DMA/5063, N.C. Dept. of Health and Human Services Health Check (Medicaid/N.C. Health Choice Program), Oct. 1, 1998.
2. H. Nolo Martinez, director of Hispanic/Latino Affairs, e-mail interview with the author, June 25, 1999.
3. Web site of the Advisory Council on Hispanic/Latino Affairs, Office of Minority Affairs, North Carolina Office of the Governor, at http://minorityaffairs.state.nc.us/hispaniclatino/advisorycouncil.htm.

actualization. So if you're Hispanic and you're not a citizen—maybe you're not even here legally—you move up until you become a citizen, and that would be the highest level.

In terms of economic development, you want a job; that's why you're here. But when you get a job, you don't have workers' compensation or job security. Then maybe you get some training for another job with higher pay, then a job with medical insurance or one that pays enough so you can get a car if you don't have one. Eventually you get to the point of having a bank account, and you look at buying a house.

We need to help with the transition issues we've been talking about, but we can't stop there. Immigration is not "Okay, I've come here, I've established residency, and now I'm fine." You have to keep moving up. A lot of times the first generation rises to a certain level, and then the second or third generation goes higher. They're citizens; they establish neighborhoods and stores and banks; they know the language; they've become part of the fabric of the country.

So even though the Hispanic community is very diverse—we're made up of different groups, different cultures, different races—we need to raise expectations and standards so we can all continue to grow. We need to help with transition issues, but once someone is out of the ESL class, we shouldn't stop there, or be satisfied with just a middle school or high school education. We should aim for the best, rather than for just what is good, and that takes a lot of time.

NOTES

1. The 1999–2000 budget approved by the legislature on June 30, 1999, contained $10 million for ESL programs, $5 million more than was alloted in the previous budget. H. Nolo Martinez, director of Hispanic/Latino Affairs, telephone interview with the author, July 27, 1999.
2. This problem is discussed in William A. Campbell, "No Social Security Number? No License," *Popular Government* 64 (Spring 1999): 44–46. The marriage license law, N.C. Gen. Stat. § 51-8, was amended effective August 4, 1999, to allow people who do not have a Social Security number and are ineligible for one to obtain a marriage license on submitting a sworn statement to that effect.

ABCs of Immigration Law and Policy

JILL D. MOORE

The theme of this issue of *Popular Government* is immigration. What makes immigration to the United States possible? Under what circumstances may a noncitizen remain in the United States permanently? When and how may noncitizens become citizens? This article summarizes the nation's immigration law and policy. Also, the article and the accompanying glossary introduce readers to various categories of people potentially affected by immigration policy.

WHAT IS AMERICA'S IMMIGRATION POLICY?

The United States often is described as a "melting pot," a term that symbolizes the nation's history of immigration. The vast majority of today's citizens are the descendants of immigrants. Since the country's earliest days, people have come to the United States seeking opportunity, freedom from persecution, or reunification with families.

National immigration policy reflects and supports these aspirations. It reserves the largest number of immigrant visas for people who come to the United States to reunite with their families, showing both a respect for these people's motivation and a preference for intact families. Another policy priority is to strengthen the U.S. workforce. Accordingly, skilled workers are permitted to immigrate when there are no qualified citizens to fill jobs. Finally, U.S. immigration policy protects some people who are subject to religious or political persecution, "ethnic cleansing," and other atrocities in their own countries.

WHO CONTROLS IMMIGRATION?

The U.S. Constitution authorizes Congress to regulate immigration.[1] The federal law that governs immigration and naturalization is the Immigration and Nationality Act of 1952, as amended.[2] The Immigration and Naturalization Service (INS), a subdivision of the U.S. Department of Justice, enforces the law and makes rules governing its implementation.[3] The INS has a cen-

The author, an Institute of Government faculty member who specializes in public health law, frequently advises local health departments about immigrants' eligibility for benefits.

tral office in Washington, D.C., and three regional offices.[4] Each region is divided into districts. The district offices manage the day-to-day activities of the INS, which include processing applications for permanent residence, asylum or other special status, and naturalization; prosecuting violators of immigration laws; and managing deportations.[5]

WHAT RESTRICTIONS ARE PLACED ON IMMIGRATION?

Congress restricts immigration in three main ways. First, the law defines the categories of people who may enter and remain in the country. These categories include immigrants seeking to become lawful permanent residents, refugees, and people seeking asylum, among others. The categories are described in more detail in the next section and in the glossary.

Second, a limited number of visas are available for most categories of legal immigrants. The limits for immigrants seeking to become lawful permanent residents are determined annually, according to a formula.[6] In federal fiscal year 1997, the following limits applied:[7]

For immigrants seeking to reunite with their families through the family preference system (described later)	226,000 visas
For employment-based immigrants (skilled workers who fill jobs for which no qualified U.S. citizen is available)	140,000 visas
For the diversity visa program (described later)	55,000 visas

The number of refugees and asylees also is subject to annual limits.[8] In fiscal year 1999, a maximum of 78,000 people will be permitted to seek refuge or asylum in the United States.[9]

Third, people who fall into one of several categories of "inadmissible aliens" are not permitted to enter the United States.[10] There are a number of specific statutory grounds for inadmissibility, but all are generally directed at excluding people who are believed to pose some type of threat to the public—principally a health and safety, security, or economic threat. The categories of inadmissible aliens include the following:

- People who are infected with a communicable disease of public health significance (including human immunodeficiency virus, HIV)

GLOSSARY

U.S. citizen. Any person born in the United States, Puerto Rico, the U.S. Virgin Islands, or Guam; any person born outside the United States to at least one parent who is a U.S. citizen (if certain eligibility requirements are met); and any person who naturalizes—that is, any foreign-born person who becomes a U.S. citizen.

U.S. national. Any person who, though not a citizen, owes permanent allegiance to the United States. For example, people born in American Samoa are nationals but not citizens of the United States.

Foreign-born person. Any person born outside the United States to a noncitizen. This category includes both noncitizens and people who have become U.S. citizens through naturalization. Conversely, a **native-born person** is any person who is a citizen at birth.

Noncitizen or alien. Any person who is not a U.S. citizen.

Immigrant. Any noncitizen who wishes to live in the United States indefinitely.

Lawful permanent resident (LPR). Any immigrant with the right to live and work in the United States indefinitely. LPRs have "green cards," which are officially known as Alien Registration Receipt Cards, Permanent Resident Cards, or Immigration and Naturalization Service form I-551's.

Qualified alien. A designation created by the 1996 Welfare Reform Act to signify those aliens who may be eligible for certain public benefits. This category is discussed further in "Immigrants' Access to Public Benefits: Who Remains Eligible for What?," page 22 in this issue.

Nonimmigrant. Any noncitizen present in the United States temporarily, such as a student who has a temporary visa.

Illegal or undocumented immigrant or alien. Any person present in the United States without legal status. This category includes people who entered the United States illegally and people who entered legally but stayed beyond their authorized time or violated the terms of their visa.

Hispanic. Any person who indicates his or her origin as Central or South American, Cuban, Mexican, Puerto Rican, or some other Hispanic origin. A person of Hispanic origin may be of any race and may be a U.S. citizen or a noncitizen.[1] **Latino** is not as broad a term as Hispanic. People who indicate their origin as Mexican or Central or South American (but not a country outside the Americas, such as Spain) may refer to themselves as Latinos and also may prefer that term to Hispanic.

NOTES

1. This is the definition used by the U.S. Census Bureau. *See Current Population Survey (CPS)—Definitions and Explanations*, available at http://www.census.gov/population/www/cps/cpsdef.html.

- People with a criminal history
- People who are considered likely to become a "public charge"—that is, to become dependent on public benefits
- People whose initial entry into the United States was unlawful
- People with a history of involvement in terrorist activity

WHO IS A CITIZEN? WHO IS NOT?

People become citizens of the United States in one of three ways: by being born in the United States, by being the child of a citizen, or by "naturalizing" (that is, by successfully applying to become a citizen).

Anyone who is born in the United States, Puerto Rico, the U.S. Virgin Islands, or Guam automatically becomes a citizen at birth.[11] Anyone who is born outside the United States to a parent who is a U.S. citizen is usually a citizen at birth, provided that the citizen parent has met certain residency requirements.[12]

Some immigrants are eligible to become citizens of the United States through naturalization. To naturalize, a person must be eighteen years of age or older, a lawful permanent resident of the United States for five years (three years if the person has been married to a U.S. citizen for at least three years), and of good moral character.[13] The person also must demonstrate a basic understanding of the English language and the fundamentals of U.S. government and history.[14] The law makes no distinction between naturalized citizens and citizens by birth; the same rights and privileges apply to each.

Anyone who is not a citizen is considered an alien.[15] For convenience, aliens may be grouped into three categories: nonimmigrants, legal immigrants, and illegal or undocumented immigrants.

Nonimmigrants are noncitizens who are permitted to enter the United States for a specific purpose and a limited time. These include tourists, students, and those who have business in the United States.

There are a number of categories of legal immigrants. Lawful permanent residents (LPRs), or holders of "green cards" (which are actually white, blue, or pink),[16] constitute the largest group. They may live and work permanently in the United States and travel into and out of the country (with some restrictions). However, they may not vote, and they are ineligible for many benefits that are available to citizens.

Several categories describe noncitizens who are allowed to enter and remain in the United States for humanitarian reasons. "Refugees" are legal immigrants who have been subjected to, or have a well-founded fear of, persecution based on their race, religion, nationality, political opinion, or membership in a particular social group.[17] Refugees apply for admission to the United States before coming here. "Asylees" (people granted asylum) have the same history or fear of persecution as refugees but already are in the United States when they apply for permission to stay.[18] Refugees and asylees make up the second largest group of legal immigrants. "Persons granted withholding of deportation" are people who ordinarily would be deported, but the U.S. attorney general has determined that they would be subject to persecution if they were required to return to their home countries.

Some people are legal immigrants by virtue of being "paroled" into the United States by the U.S. attorney general, who has discretion to admit individuals or groups in certain circumstances. Parole is for a limited period and is usually granted for humanitarian reasons or because it serves a particular public interest.[19]

Finally, Congress has from time to time permitted the members of certain ethnic groups or the nationals of designated countries to apply for legal immigrant status. For example, Amerasians—children fathered by a U.S. citizen but born in certain Asian countries during times of U.S. military involvement—and nationals of Cuba and Haiti have been permitted to immigrate to the United States.

People who are in the United States without legal permission are usually called "illegal" or "undocumented" immigrants. The majority of illegal immigrants enter the United States lawfully—perhaps on a tourist visa—but remain in the country after their visas have expired. Other categories of illegal immigrants are people who fraudulently obtained their visas or violated the terms of the visa (for example, by working

without authorization), and people who entered the country without inspection (that is, they evaded immigration authorities when they crossed the border).

WHO MAY BECOME A LAWFUL PERMANENT RESIDENT?

The INS grants LPR status primarily to immigrants who come to the United States to join their families, to work, or to escape persecution. It also grants the status to a small number of immigrants who participate in the "diversity visa" program—a lottery designed to encourage immigration from countries in "low-admission regions" (that is, areas that have not contributed large numbers of immigrants in the recent past).[20]

United States citizens may petition for LPR status for their noncitizen spouses, children, parents, and siblings. Immigrants who are LPRs may petition for LPR status for their spouses and unmarried children. "Immediate" relatives of U.S. citizens—spouses, unmarried minor children, and parents—have first preference, and an unlimited number of visas are available for this category.[21] A "family preference" system provides a limited number of visas for others whose petition for LPR status is based on family relationships.[22]

Employment-based immigrants may obtain LPR status, provided that they perform skilled work and can show that no equally qualified citizen or current LPR is available to do the work.[23] Refugees and asylees may apply to become LPRs after they have been in the United States for one year.

Congress occasionally permits other categories of people to become LPRs. For example, people who can document that they have lived in the United States continuously since January 1, 1972, may apply for LPR status, as may people who are eligible for particular amnesty programs.

An LPR may apply to become a citizen after residing in the United States as an LPR for a time—usually five years (but only three years for spouses of citizens).

NOTES

1. U.S. Const. art. I, § 8, cl. 4.

2. Immigration and Nationality Act of 1952, 8 U.S.C. §§ 1101–1537.

3. The rules are contained in Title 8 of the Code of Federal Regulations.

4. North Carolina is in the eastern region, which has its headquarters in Burlington, Vermont. The central region has its headquarters in Dallas, and the western region, in Laguna Niguel, California.

5. The district office serving North Carolina is located in Atlanta. It maintains a "suboffice" in Charlotte, which provides some of the services of a district office.

6. 8 U.S.C. § 1151.

7. U.S. Department of Justice, Immigration and Naturalization Service, *Legal Immigration, Fiscal Year 1997* (Jan. 1999), 6–7 (available at http://www.ins.usdoj.gov/public_affairs/news_releases/Legal.pdf).

8. The president determines this number each year, in consultation with Congress. 8 U.S.C. § 1157.

9. U.S. Department of Justice, Immigration and Naturalization Service, *Fact Sheet: U.S. Asylum and Refugee Policy* (Oct. 29, 1998) (available at http://www.ins.usdoj.gov/public_affairs/news_releases/asylum.htm).

10. 8 U.S.C. § 1152.

11. 8 U.S.C. §§ 1401(a), 1401(b), 1402, 1406, 1407. People who are born in the "outlying possessions" of the United States—American Samoa and Swains Island—are considered nationals but not citizens of the United States. 8 U.S.C. § 1408. A "national" is a person who, though not a citizen, owes permanent allegiance to the United States. 8 U.S.C. § 1101(a)(22).

12. 8 U.S.C. §§ 1401(c), 1401(d), 1401(e), 1401(g). If the person was born out of wedlock to a U.S. citizen father and a noncitizen mother, a blood relationship with the father must be established, and other requirements must be met. 8 U.S.C. § 1409.

13. 8 U.S.C. § 1427. The person also must have been physically present in the United States for designated periods, 8 U.S.C. § 1427, and must take an oath of allegiance to the United States, 8 U.S.C. § 1448.

14. 8 U.S.C. § 1423. There are exceptions to the English-language requirement for people with certain disabilities and for certain older people who are long-term lawful permanent residents.

15. Many people consider the term "alien" to be offensive and less accurate than "noncitizen" or "immigrant." It is used in this article because the federal immigration law uses it.

16. The cards—also known as Alien Registration Receipt Cards, Permanent Resident Cards, or I-551 forms—were green in the past, and the name has stuck. In 1998 the INS began issuing a counterfeit-resistant green card that looks like a credit card. The new cards include security features and an optical memory stripe. They will eventually replace the old laminated-paper green cards.

17. 8 U.S.C. § 1101(a)(42).

18. 8 U.S.C. § 1158.

19. 8 U.S.C. § 1182(d)(5)(A).

20. 8 U.S.C. § 1151(e).

21. 8 U.S.C. § 1151(b)(2).

22. 8 U.S.C. § 1153(a).

23. The law sets forth a detailed system for allocating employment-based visas, giving preference to certain types of workers—principally professionals, people with exceptional abilities, and skilled laborers. 8 U.S.C. § 1153(b).

IMMIGRANTS' ACCESS

Since enactment of the Welfare Reform Act of 1996 and related legislation, human services workers and immigrants have often been confused about the

Who Remains Eligible for What?

JILL D. MOORE

In the summer of 1996, Congress set out to "end welfare as we know it," making sweeping reforms in U.S. public assistance programs. During the debates over how best to accomplish that goal, attention turned to the issue of noncitizens receiving public benefits. Fueled by the perception that increasing numbers of legal immigrants were receiving such benefits, and by the belief that generous benefits provide an incentive to illegal immigration, Congress took action to restrict immigrants' eligibility for those benefits.

In August 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, known for short as the Welfare Reform Act.[1] Title IV of the act placed new limits on the ability of immigrants, including those legally present in the United States, to obtain benefits from government agencies. For benefit eligibility, the act distinguished between "nonqualified" and "qualified" aliens.[2] It barred nonqualified aliens from receiving most public benefits. But it also barred most qualified aliens from receiving significant benefits, including food stamps and Supplemental Security Income (SSI, the federal program that provides cash assistance to poor people who are disabled or elderly). In addition, for qualified aliens entering the United States after August 22, 1996 (the date the Welfare Reform Act became law), the act imposed a five-year waiting period for many other benefits. Finally, the act authorized states to restrict immigrants' access to federally funded benefits even further.

Immediately after the Welfare Reform Act was signed into law, the Clinton administration proposed a number of legislative changes designed to soften some of the restrictions, especially those affecting legal immigrants. Congress agreed and in subsequent federal legislation broadened the definition of qualified alien and restored some immigrants' eligibility for food stamps, SSI, and other federal programs.

This article describes the provisions of the various federal laws that address immigrants' eligibility for public benefits. The article addresses the complex changes made by these laws in three ways. The body of the article describes in broad strokes Congress's developing approach to immigrants' eligibility for public benefits. A sidebar (see page 24) lists the relevant federal laws and describes the main effects of each. Following this and the next article is a guide (see page 35) summarizing the current state of the law and identifying the benefits for which immigrants now are eligible.

The legislation discussed in this article addressed many other important issues. One set, relating to the duty of some government agencies to verify noncitizens' immigration status before providing services, is discussed in the next article, "Immigrants' Access to Public Benefits: When Should Agencies Inquire about Immigration Status?," page 29. The discussion here is confined to which immigrants are eligible for what federal, state, and local benefits.

QUALIFIED AND NONQUALIFIED ALIENS

A noncitizen's eligibility for public benefits depends largely on whether he or she is a "qualified alien," a

TO PUBLIC BENEFITS

latter's eligibility for public benefits. The following articles explain what has changed and how noncitizens and service agencies are affected.

designation created by the Welfare Reform Act. The largest group in this category is lawful permanent residents, which primarily includes noncitizens who have been admitted to the United States to join their families or to work.[3] Other qualified groups include noncitizens admitted for humanitarian reasons—among them, refugees, political and religious "asylees" (people granted asylum), and people granted withholding of deportation (noncitizens who ordinarily would be deported, but the U.S. attorney general has determined that they would be subject to persecution if they were required to return to their home countries).[4]

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996—for short, the Immigration Reform Act—added to the list of qualified aliens certain immigrant spouses and children who have been battered or subjected to extreme cruelty.[5] The Balanced Budget Act of 1997 added certain ethnic groups to the category of noncitizens admitted for humanitarian reasons.[6]

Any noncitizen who does not meet the definition of qualified alien is considered a nonqualified alien for the purpose of determining eligibility for benefits. "Undocumented," or illegal, immigrants fall into the nonqualified category, but so do aliens considered to be nonimmigrants, such as students or foreign visitors, and others who are lawfully present in the United States, such as applicants for asylum.

QUALIFIED ALIENS' ELIGIBILITY FOR FEDERAL BENEFITS

The Welfare Reform Act and the legislation amending it addressed qualified aliens' eligibility for three categories of federal benefits:

- Food stamps
- SSI
- Other federal means-tested public benefits

All these benefits have other eligibility criteria that individual recipients, including qualified aliens, also must meet.

Food Stamps and SSI

The Welfare Reform Act made most qualified aliens *ineligible* for food stamps and SSI.[7] Initially, Congress exempted only two categories of qualified aliens from this bar on eligibility:

- Those with strong military connections—namely, honorably discharged veterans and members of the armed services on active duty, along with their spouses and dependent children[8]
- Lawful permanent residents with long work histories in the United States—that is, those with forty qualifying quarters, or ten years, of work for purposes of receiving Social Security benefits[9]

Certain aliens admitted to the United States for humanitarian reasons—such as refugees and asylees—also were exempted from the bar but only for their first five years of residence in the United States.[10] The largest group of qualified aliens—lawful permanent residents without strong military connections or a long work history—was rendered completely ineligible for food stamps and SSI under the Welfare Reform Act.

Immediately after the act's passage, the Clinton administration asked Congress to restore eligibility to

FEDERAL LEGISLATION AFFECTING IMMIGRANTS' ELIGIBILITY FOR PUBLIC BENEFITS

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act") —Public Law 104-193

The Welfare Reform Act created a distinction between "qualified" and "nonqualified" aliens for purposes of benefit eligibility, and it imposed limits—in some cases outright bans—on all aliens' eligibility for benefits. With certain exceptions the act barred nonqualified aliens from receiving any federal, state, or local public benefits. The act also imposed strict limits on qualified aliens' eligibility for benefits. It made most qualified aliens ineligible for food stamps and Supplemental Security Income (SSI). Further, it imposed a five-year waiting period for eligibility for federal means-tested public benefits on qualified aliens who first enter the United States after August 22, 1996. Finally, the act authorized states to place additional restrictions on qualified aliens' eligibility for Medicaid, Temporary Assistance for Needy Families (TANF), and programs funded under the Social Services Block Grant.

Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("Immigration Reform Act") —Public Law 104-208

The Immigration Reform Act expanded the definition of "qualified aliens" to include certain battered immigrant spouses and children. It also directed the U.S. attorney general, in consultation with the secretary of health and human services, to develop procedures for verifying citizenship or immigration status when such verification is required.

Balanced Budget Act of 1997—Public Law 105-33

The Balanced Budget Act restored SSI eligibility to the following groups of aliens: people who are disabled or blind who were lawfully present in the United States on August 22, 1996; people who are lawfully present in the United States and were receiving SSI on August 22, 1996; people whose applications for benefits predated January 1, 1979; cross-border Native Americans; and members of Hmong or Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War. The act also extended from five to seven years the period of SSI eligibility for refugees, asylees, Cuban/Haitian entrants, Amerasians, and persons granted withholding of deportation.

Further, the Balanced Budget Act clarified that the bar on federal public benefits for nonqualified aliens does not apply to Medicare benefits for aliens who are lawfully present in the United States and who were authorized to do the work that earned them eligibility for those benefits. Finally, the act provided that the bar does not apply to benefits earned under the Railroad Retirement Act or the Railroad Unemployment Act by nonqualified aliens who are lawfully present in the United States.

Agricultural Research, Extension and Education Reform Act of 1998 ("Agriculture Act")—Public Law 105-185

The Agriculture Act restored food stamp eligibility to the following groups of aliens: disabled people who were lawfully present in the United States on August 22, 1996; children under age eighteen who were lawfully present in the United States on August 22, 1996; adults who were at least sixty-five years old on August 22, 1996, and were lawfully present in the United States on that date; cross-border Native Americans; and members of Hmong or Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War. The act also extended from five to seven years the period of food stamp eligibility for refugees, asylees, Cuban/Haitian entrants, Amerasians, and persons granted withholding of deportation.

Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 ("Welfare Reform Technical Corrections Act")—Public Law 105-306

The Welfare Reform Technical Corrections Act provided that nonqualified aliens who were receiving SSI on August 22, 1996, may continue to receive SSI and Medicaid (if their eligibility for Medicaid is based on their eligibility for SSI) as long as they continue to meet all other eligibility requirements for benefits.

certain groups that had been rendered ineligible by the act. In response, in the Balanced Budget Act of 1997, Congress restored SSI *eligibility* to qualified aliens who (1) are currently lawfully residing in the United States and were receiving SSI on August 22, 1996 (the date the restrictions in the Welfare Reform Act went into effect), or (2) were lawfully residing in the United States on that date and are, or become, disabled or blind.[13] Congress also restored SSI eligibility to specific ethnic groups—namely, "cross-border Native Americans" (Native Americans whose tribes have treaty rights to cross the United States' border with Canada or Mexico and who thus may have been born outside the United States);[14] and members of Hmong and Highland Lao tribes who provided assistance to U.S. military forces during the Vietnam War.[15]

In addition, the Balanced Budget Act extended the period of eligibility for SSI benefits from five to seven years for immigrants admitted for humanitarian reasons. It also added to that category Cuban/Haitian entrants and Amerasian immigrants (noncitizens who were fathered by a U.S. citizen but were born in Vietnam between 1962 and 1975, or in Cambodia, Korea, Laos, or Thailand between 1951 and 1982).[14]

The Agricultural Research, Extension and Education Reform Act of 1998, known for short as the Agriculture Act, thereafter restored *eligibility for food stamps* to many of the same groups. It also restored eligibility to children under age eighteen who were lawfully present in the United States on August 22, 1996, and to adults who were both lawfully present and at least sixty-five years old on that date. Finally, the Agriculture Act extended from five to seven years the period during which people admitted for humanitarian reasons are exempt from the bar on food stamp eligibility.[15]

Federal Means-Tested Public Benefits

The Welfare Reform Act made qualified aliens who enter the United States after August 22, 1996, ineligible to receive any "federal means-tested public benefit" for five years after their lawful admission to the United States.[16] Only those described earlier as having strong military connections or having been admitted for humanitarian reasons are exempt from the five-year waiting period.[17]

The Welfare Reform Act did not define "federal means-tested public benefit." Significantly, however, it specified several important public benefits that are *not* subject to the five-year waiting period, among them, Medicaid for emergency services (although not for organ transplants) for people who otherwise meet Medicaid eligibility criteria; immunizations; and testing for and treatment of symptoms of communicable diseases. Also exempted from the five-year waiting period are programs, services, or assistance specified by the U.S. attorney general that (1) deliver in-kind (noncash) services at the community level, (2) do not condition assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety.[18] This potentially expansive exemption also applies to nonqualified aliens and is discussed later in connection with that group.

Because Congress failed to define "federal means-tested public benefit," three federal agencies—the U.S. Department of Health and Human Services (DHHS), the Social Security Administration, and the U.S. Department of Agriculture (USDA)—developed and published their own definitions. DHHS interpreted the term to mean mandatory spending programs that condition eligibility for benefits, or the amount of those benefits, on the income or the resources of the recipient. Applying that definition, DHHS concluded that, among its programs, only Medicaid and Temporary Assistance for Needy Families (TANF, which replaced Aid to Families with Dependent Children, or AFDC) are subject to the five-year waiting period for qualified aliens who arrive after August 22, 1996.[19] The Social Security Administration concluded that its sole means-tested public benefit is SSI,[20] and the USDA concluded that its only means-tested public benefits are the food stamp program and the food-assistance block grant programs in Puerto Rico, the Northern Mariana Islands, and American Samoa.[21] Because eligibility for SSI and food stamps is addressed separately in the Welfare Reform Act and subsequent legislation, these conclusions have no bearing on qualified aliens' eligibility for those benefits or the five-year waiting period that applies to aliens who arrived after August 22, 1996.[22] Significantly, the USDA's notice found many of that department's programs *not* to constitute federal means-tested public benefits, among them school breakfast and lunch programs, the special milk program for children, and the special supplemental nutrition program for women, infants, and children (WIC).

State Restrictions on Qualified Aliens' Eligibility for Benefits

As noted earlier, the Welfare Reform Act authorized states to impose further restrictions on qualified aliens' eligibility for federal benefits. States may bar qualified aliens from receiving Medicaid, TANF, and benefits funded by the Social Services Block Grant (SSBG), including child care programs and services for the elderly.[23] States also may bar qualified aliens from receiving benefits funded or provided by state or local governments.[24] However, states must exempt from any state-enacted bar on federal, state, or local benefits those qualified aliens described earlier as having strong military connections or long work histories. Further, any state bar on eligibility for TANF and SSBG programs may not apply to the groups described earlier as being admitted for humanitarian reasons, at least for their first seven years in the United States, and state

and local benefits must continue to be made available to those groups for at least the first five years.

States must affirmatively pass legislation to create limits on qualified aliens' eligibility for these benefits. Otherwise, qualified aliens are eligible according to the provisions of federal law. North Carolina has not enacted a state bar, so qualified aliens in North Carolina remain eligible for these benefits to the extent provided by federal law.

NONQUALIFIED ALIENS' ELIGIBILITY FOR FEDERAL BENEFITS

Before the Welfare Reform Act of 1996, some federal programs explicitly prohibited undocumented immigrants from receiving benefits. Others explicitly provided that benefits were available to all who met program eligibility criteria, without regard to citizenship or immigration status. Still others did not address undocumented immigrants' eligibility for benefits.

The Welfare Reform Act sought to bring about uniformity in federal programs' treatment of noncitizens who are undocumented or otherwise not qualified aliens under the act. It explicitly barred immigrants who do not meet the definition of qualified alien from receiving most federal, state, and local benefits.[25]

The act made nonqualified aliens ineligible for any "federal public benefit," defined as follows:

> (A)any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
>
> (B)any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.[26]

Although broad, this general rule of ineligibility is not absolute. The Welfare Reform Act included a number of exceptions to the bar on benefits. Subsequent actions of federal agencies have expanded the exceptions and construed the statutory definition narrowly, with the result that nonqualified aliens remain eligible for a number of federal public benefits.

The Welfare Reform Act excluded from the bar several key federal benefits, including Medicaid benefits for emergency services (but not for organ transplants), provided that the person otherwise meets Medicaid eligibility criteria; immunizations; and testing for and treatment of symptoms of communicable diseases.[27]

Subsequent federal legislation added other exceptions to the eligibility bar. For example, the Balanced Budget Act stated that the bar does not apply to Medicare benefits for aliens who are lawfully present in the United States and were authorized to be employed during the time they earned wages rendering them eligible for Medicare.[28]

One of the exceptions enumerated in the Welfare Reform Act allows nonqualified aliens access to public benefits related to emergencies or other threats to life and safety. The act authorized the U.S. attorney general to specify programs and services that should be excepted from the bar on benefits because they deliver in-kind services at the community level, do not condition assistance on the recipient's income or resources, and are necessary for the protection of life or safety.[29] Attorney General Janet Reno released a provisional specification in August 1996. Reno first stated that she did not construe the act to preclude aliens from receiving police, fire, ambulance, transportation, sanitation, and other widely available services. Accordingly she did not include those items in her specification. She then found that several programs and services are necessary for the protection of life and safety and may be provided to nonqualified aliens, among them crisis counseling and intervention programs, child and adult protective services, violence and abuse prevention programs or services, programs or services for victims of domestic violence or other crimes, and treatment of mental illness or substance abuse. Also included is a catch-all exception for any other programs, services, or assistance necessary for the protection of life and safety.[30]

Other actions at the federal level also have served to expand nonqualified aliens' eligibility for benefits. Several federal agencies have taken the position that some of their programs and services do not meet the definition of "federal public benefit." To date, though, only DHHS has formally stated its position. In August 1998 it issued an interpretation concluding that many of its programs are not federal public benefits and therefore may be provided to all otherwise eligible persons without regard to citizenship or immigration status.[31] The DHHS interpretation construes the term "federal public benefit" narrowly. DHHS first examined part (A) of the definition, which refers to "any grant" provided by a federal agency or federal funds. DHHS concluded that this part of the definition applied to grants pro-

vided to individuals and therefore did not include block grant funds that federal agencies award to states or localities.

DHHS then considered part (B) of the definition. It noted that a benefit must satisfy two conditions to be considered a "federal public benefit" under part (B): (1) it must be a "retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit" or a similar benefit; and (2) it must be provided to "an individual, household, or family eligibility unit." DHHS reasoned that the second condition narrows the set of benefits that fall within the categories described in the first condition. Accordingly it concluded that benefits targeted at communities or specific sectors of the population—such as people with a particular physical condition or people of a certain age—do not fall within the scope of the term "federal public benefit."

DHHS ultimately concluded that, among its programs, only certain ones provide federal public benefits that must be denied to nonqualified aliens. However, some significant benefits fall within DHHS's interpretation—for example, Medicare, Medicaid (except assistance for an emergency medical condition), TANF, and benefits under SSBGs—and so must be denied to nonqualified aliens unless other exceptions apply.[32]

DHHS has directed all states and localities that administer programs supported by it to comply with its interpretation. Accordingly, nonqualified aliens in North Carolina remain eligible for all DHHS benefits that do not fall within its interpretation of federal public benefit.

NONQUALIFIED ALIENS' ELIGIBILITY FOR STATE AND LOCAL BENEFITS

Under the Welfare Reform Act, states may choose to provide state and local public benefits to nonqualified aliens, but they must enact a state law affirmatively making this choice.[33] North Carolina has not done so. In the absence of such a law, most nonqualified aliens are ineligible for state and local public benefits.[34] The definition of state and local public benefits parallels the definition of federal public benefits described earlier, except that the benefits are supported by state or local funds instead of federal funds.[35]

Once again, the Welfare Reform Act created a number of exceptions to this general bar on eligibility. Nonqualified aliens remain eligible for certain state or local public benefits, including assistance for health care items and services necessary for treatment of emergency medical conditions (but not for organ transplants); immunizations; and testing for and treatment of symptoms of communicable diseases.

CONCLUSION

In the Welfare Reform Act of 1996, Congress embraced the policy that noncitizens should not rely on public resources to meet their needs and that public benefits should not constitute an incentive for immigration to the United States.[36] The act created a set of benefit-eligibility rules to implement that policy. Subsequent legislation carved out exceptions or exemptions designed to further other policy objectives, such as providing humanitarian assistance to certain groups of noncitizens. The result is a very complicated set of benefit-eligibility rules, which in some cases are still being refined or changed. For instance, as this article goes to press, Congress is considering legislation that would extend food stamps, SSI, and Medicaid to additional groups of immigrants.[37]

Understanding the benefit-eligibility rules is difficult. Nevertheless, North Carolina's governing bodies and agencies must undertake to do so. As the state's immigrant population grows, more and more immigrants will approach state or local government agencies seeking public benefits. At the same time, state and local governments may wish to promote existing benefits to meet the needs of these new residents, or to develop new programs. Government officials and agencies should make every effort to prepare themselves for these occasions.

NOTES

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).

2. The Welfare Reform Act does not use the term "nonqualified alien." Rather, it defines the term "qualified alien" and describes all other noncitizens as "aliens who are not qualified aliens." The term "nonqualified aliens" is commonly used, however, to refer to the latter group. Other terms that readers may encounter include "not-qualified aliens" and "unqualified aliens."

3. A small proportion of lawful permanent residents are admitted through the "diversity visa" program—a lottery designed to encourage immigration from certain countries.

4. "Refugee" and "asylee" are special statuses accorded to immigrants who are permitted to enter and remain in the

United States because they have a well-founded fear of persecution in their native countries. The Welfare Reform Act also designated as qualified aliens "parolees" admitted to the United States for at least one year (that is, noncitizens who ordinarily would not be admitted but are "paroled" into the United States—allowed to enter temporarily—for humanitarian, medical, or legal reasons) and people who have been present in the United States since before April 1, 1980, as "conditional entrants" under federal immigration laws. § 431(b). For purposes of this article, the latter two groups are not included in the category of those admitted for humanitarian reasons because their eligibility for benefits differs.

5. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter Immigration Reform Act), Pub. L. No. 104-208, Division C, § 501, 110 Stat. 300a-546 (codified in scattered sections of 8 U.S.C.).

6. Balanced Budget Act of 1997, Pub. L. No. 105-33, §§ 5302, 5306, 111 Stat. 251.

7. Welfare Reform Act § 402.

8. Welfare Reform Act § 402(a)(2)(C).

9. Welfare Reform Act § 402 (a)(2)(B). A qualified alien may receive credit for a spouse's work. He or she also may receive credit for the work of a parent that occurred while the qualified alien was an unmarried dependent under age eighteen. The qualifying quarters may not include any quarter after December 31, 1996, in which the qualified alien received a federal means-tested public benefit. Congress has not defined the term "federal means-tested public benefit." Three federal agencies have developed their own definitions and identified the programs that must be considered when determining whether an alien has received a federal means-tested public benefit. See the text under "Federal Means-Tested Public Benefits."

10. Welfare Reform Act § 402(a)(2)(A).

11. Balanced Budget Act § 5301.

12. Balanced Budget Act § 5303.

13. Members of Hmong and Highland Lao tribes who provided such assistance are to be treated the same as veterans in determining eligibility for benefits. Balanced Budget Act, § 5566.

14. Balanced Budget Act §§ 5302, 5306. Other groups whose SSI eligibility was restored are listed in the guide accompanying this article (see page 35).

15. Agricultural Research, Extension and Education Reform Act of 1998, Pub. L. No. 105-185, §§ 503–508, 112 Stat. 523. The Balanced Budget Act added Cuban/Haitian entrants and Amerasian immigrants to the list of people who had a time-limited exemption from the bar. §§ 5302, 5306.

16. Welfare Reform Act § 403.

17. Welfare Reform Act § 403(b); Balanced Budget Act §§ 5302, 5306.

18. Welfare Reform Act § 403(c).

19. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Means-Tested Public Benefit," 62 Fed. Reg. 45,256 (Aug. 26, 1997).

20. Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Federal Means-Tested Public Benefits Paid by the Social Security Administration, 62 Fed. Reg. 45,284 (Aug. 26, 1997).

21. Federal Means-Tested Public Benefits, 63 Fed. Reg. 36,653 (July 7, 1998).

22. However, the conclusions do affect some qualified aliens who are eligible for benefits on the basis of their long work histories in the United States. To receive credit for a long work history, a qualified alien must have worked forty qualifying quarters. Any quarter after December 31, 1996, in which the alien received a federal means-tested public benefit such as SSI is not a qualifying quarter.

23. Welfare Reform Act § 402(b).

24. Welfare Reform Act § 412. States also may require programs offering means-tested state or local benefits to include the income and the resources of the alien's immigration sponsor and the sponsor's spouse in determining the alien's eligibility for the benefits. § 422. The Immigration Reform Act further authorized states to prohibit qualified aliens from receiving general public cash assistance, or to limit qualified aliens' eligibility for cash assistance programs. States may apply limitations to all aliens or to specific classes of aliens but may not place greater restrictions on eligibility than are placed on comparable federal programs. § 553.

25. Welfare Reform Act §§ 401(a), 411(a).

26. Welfare Reform Act § 401(c)(1). Part (A) of this definition does not apply to the employment-related contracts or licenses of nonimmigrants whose entry visas are related to their employment in the United States. § 401(c)(2).

27. Welfare Reform Act § 401(b).

28. The law also does not apply to aliens who are lawfully present in the United States and eligible for benefits under the Railroad Retirement Act or the Railroad Unemployment Act. Balanced Budget Act § 5561. The Welfare Reform Technical Corrections Act also restored eligibility for SSI and certain other federal public benefits to nonqualified aliens who were lawfully present in the United States and were receiving those benefits on August 22, 1996. Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, Pub. L. No. 105-306, § 2.

29. Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation, 61 Fed. Reg. 45,955 (Aug. 30, 1996).

30. The term "necessary for the protection of life and safety" has not been defined by Congress or any federal agency. Therefore its scope is ambiguous.

31. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,657 (Aug. 4, 1998).

32. DHHS has cautioned that even the listed programs may provide certain benefits that are not federal public benefits. The test to be applied is whether the benefit is targeted at recipients based on their membership in a particular group, or at individual "eligibility units."

33. Welfare Reform Act § 411(d).

34. Nonqualified aliens who are nonimmigrants or pa-

rolees for less than one year remain eligible under federal law. Welfare Reform Act § 411(a).

35. Welfare Reform Act § 411(c)(1). As with eligibility for federal benefits (see note 26), part (A) of this definition does not apply to the employment-related contracts or licenses of nonimmigrants whose entry visas are related to their employment in the United States. § 411(c)(2).

36. Welfare Reform Act § 400.

37. Fairness for Legal Immigrants Act of 1999 (S. 792/H.R. 1399, 106th Cong., 1st Sess.).

IMMIGRANTS' ACCESS TO PUBLIC BENEFITS

When Should Agencies Inquire about Immigration Status?

ALISON BROWN

The 1996 Welfare Reform Act,[1] combined with the 1996 Immigration Reform Act[2] and other federal legislation, dramatically changed the rules on immigrants' access to federal and state public benefits. These changes have added to existing confusion and fear in the immigrant community in dealing with government agencies. They also have created confusion among North Carolina human services workers, who are charged with administering federal and state public benefit programs.

The confusion surrounding the new rules already has led to a marked decrease in immigrant households' use of basic benefit programs, such as Child Nutrition Act programs and public health services, even though eligibility rules for those programs remain largely unchanged and most immigrants remain eligible to use the programs.[3] This decrease in usage has fallen particularly hard on children who live in the nearly ten million households of "mixed immigration status"—households that include at least one child who is a U.S. citizen and at least one parent who is an immigrant.[4] One-fourth of uninsured children who are eligible for Medicaid or the Child Health Insurance Program (CHIP) live in such households.[5] These complicated situations can make eligibility determinations difficult and threaten a family's access to needed benefits. Further, members of households with mixed immigration status may be reluctant to apply for benefits for fear that undocumented family members will be deported or that their applying will have adverse consequences on their immigration status.[6]

To ensure that eligible immigrants receive needed benefits and to avoid liability for discriminatory treatment of applicants or wrongful denial of benefits, agencies that administer public benefits must understand the new rules and implement them properly. The preceding article, "Immigrants' Access to Public Benefits: Who Remains Eligible for What?" (see page 22), addresses which immigrants are eligible for various federal, state, and local benefits. This article focuses on two related issues:

1. When agencies that administer federal and state public benefits must verify immigration status before providing them
2. Under what limited circumstances agencies must report applicants for benefits who are undocumented immigrants to the Immigration and Naturalization Service (INS), and which agencies must do so

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BACKGROUND

Before passage of the Welfare Reform Act, the major federal benefit programs were required to verify an applicant's immigration status through the Systematic Alien Verification for Entitlements system (SAVE). The programs that used SAVE included Aid to Families with Dependent Children (AFDC), Medicaid, Food Stamps, federal housing assistance, unemployment insurance, and some education loan and grant programs.

The Welfare Reform Act expanded the verification requirements to cover all "federal public benefits" and "state public benefits" except those that continue to be available to all immigrants. The Welfare Reform Act also required the INS, along with the U.S. Department of Health and Human Services (DHHS), to develop regulations implementing a uniform verification system, at least for federal public benefits. From the date on which the INS publishes final regulations, states will have twenty-four months to put a verification system into effect for their programs that administer federal public benefits.[7]

Final regulations have not yet been issued, so the twenty-four-month period has not begun to run. However, federal agencies have issued two documents that address when and how local government agencies should verify immigration status in the meantime. On November 17, 1997, the U.S. Department of Justice (DOJ) issued interim guidance (hereafter DOJ Guidance) on procedures for verifying immigrants' eligibility for federal public benefits.[8] On August 4, 1998, the INS issued proposed regulations on verification procedures, which are very similar to the DOJ Guidance.[9] The regulations state that they should be used "in tandem" with the DOJ Guidance and that the DOJ Guidance should be followed to the extent that it is consistent with the proposed regulations. The remainder of this article focuses on the contents of the DOJ Guidance, discussing the proposed regulations only when they vary from the DOJ Guidance.

Before the verification procedure is reviewed, three preliminary issues must be addressed. First, the DOJ Guidance relates to federal public benefits only. Future DOJ guidelines will address the rules for state public benefits. The proposed INS regulations, however, give state and local governments the option of using the proposed verification procedures in administering state public benefits. State and local governments that wish to set up an alternative procedure should do so carefully. Under the U.S. Constitution, the federal government has plenary (that is, full) power over immigration matters, and any procedures that are inconsistent with federal law in this area will be subject to close scrutiny.

Second, the DOJ Guidance does not define which benefits fall under the definition of federal public benefit. Each federal agency bears the responsibility of determining which of its benefit programs meet the definition. For example, on the same day that the INS issued proposed regulations on verification procedures, DHHS published a notice identifying which of its programs fall under the definition of federal public benefit.[10] (DHHS's interpretation is discussed in the article that begins on page 22.)

Third, the DOJ Guidance instructs agencies that have been using SAVE to continue using it until the final regulations are issued and a final verification system is established. Thus, agencies such as those administering Medicaid and public housing benefits, which currently are using SAVE, should continue to do so pending establishment of the final verification system. The one exception to this rule is that states now may use a system other than SAVE to verify immigrants' eligibility for food stamps.[11] The continued use of SAVE includes the continued use of SAVE procedures, including the privacy protections. For example, information obtained through SAVE ordinarily may not be used for any purpose other than to verify a person's immigration status.[12]

Benefit providers that use SAVE still must understand the new welfare and immigration laws because SAVE will not always generate sufficient information to determine an immigrant's eligibility for benefits. For example, SAVE will not necessarily show whether a person is a "qualified alien," a designation critical to determining a person's eligibility for benefits under the Welfare Reform Act. Consequently, all benefit providers should become familiar with the verification procedure described in the next section.

Finally, as discussed on page 33, nonprofit charitable organizations are exempt from these verification regulations.

THE VERIFICATION PROCEDURE

The DOJ Guidance sets out a four-step procedure for verification. If it is properly implemented, the procedure should not operate to deny benefits to eligible immigrants or unduly deter them from applying. The

DOJ Guidance stresses that agencies administering federal public benefits continue to be subject to federal civil rights laws and privacy rules.[13] In this respect the new verification procedure must correspond to SAVE,[14] which likewise contains civil rights and privacy protections. The DOJ Guidance instructs agencies to implement neutral policies and procedures that apply equally to all applicants. It also provides that individuals should not be singled out or asked for additional documentation just because they look foreign, have ethnic-sounding names, or have a foreign accent.

The four steps established by the DOJ Guidance[15] are as follows.

STEP 1: Determine if the assistance being requested is a federal public benefit subject to the verification requirements.

The verification requirements do not apply to all federal benefits. They apply only if the benefits are (1) federal public benefits and (2) nonexempt. Before attempting to verify a person's immigration status, the benefit provider must determine whether the benefit being requested falls within the definition of federal public benefit. Whether a benefit meets that definition is determined by the federal agency overseeing the benefit program. For example, as discussed earlier, DHHS has issued a notice identifying which of its programs constitute federal public benefits and which do not.

If a benefit is a federal public benefit, the provider must determine whether the benefit falls within one of the exempt programs—that is, programs for which all immigrants continue to be eligible. For example, all immigrants continue to be eligible for emergency Medicaid. *If the benefit is part of an exempt program, the provider is not required and should not attempt to verify immigration status.* Only if the benefit falls within the definition of federal public benefit and is not an exempt program should the provider go to step 2. (For a further discussion of federal public benefits and exemptions, see page 35.)

STEP 2: Determine whether the person who is to receive the benefit is eligible under the general eligibility requirements.

Designed to minimize the intrusiveness of the verification procedure, this step supports the overall goal of the DOJ Guidance to ensure that verification of immigration status take place only when absolutely necessary to determine eligibility. The DOJ Guidance allows benefit providers to skip this step only if determining general eligibility would be more time-consuming and complex than verifying immigration status. The proposed INS regulations do not require benefit providers to take this step before verifying immigration status, but they do require that agencies make their decision about the timing of verification in a nondiscriminatory way.[16]

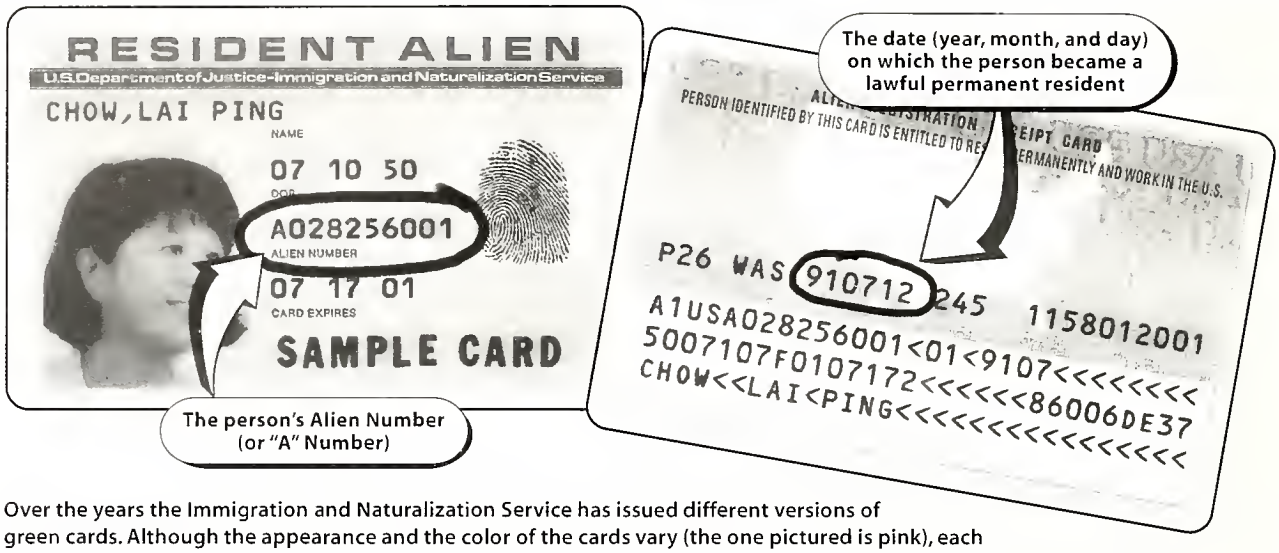
STEP 3: Verify that the person who is to receive the benefit is a U.S. citizen, a U.S. national, or a qualified alien.

The DOJ Guidance explicitly states that *verification should not take place unless the benefits are contingent on status.* The reason, according to the DOJ Guidance, is that the verification procedure raises significant privacy concerns and the potential for discrimination. Further, the DOJ Guidance states that if an immigrant is applying for benefits on behalf of another person, *the benefit provider should verify only the status of the person who actually will be receiving the benefit.* For example, if a mother is applying for Medicaid or disability benefits under Supplemental Security Income on behalf of her child, the benefit provider should verify only the status of the child, not that of the mother.

If the benefit is contingent on the person's status, the agency should take the following steps:

1. Ask the applicant for a written declaration, under penalty of perjury, that he or she is a U.S. citizen, a U.S. national, or a qualified alien. For definitions of "U.S. citizen" and "U.S. national" and an explanation of "qualified alien," see "ABCs of Immigration Law and Policy," page 18.
2. Verify the applicant's citizenship or immigration status. The DOJ Guidance states that the appropriate verification method will depend on the requirements and the needs of the program as well as a number of other factors. For example, if the agency provides a short-term benefit, a quick and simple verification procedure may be all that is necessary. The DOJ Guidance lists the types of documentation and methods that will prove citizenship or qualified alien status.[17]

If an applicant presents documentation that he or she is a U.S. citizen and the documentation appears valid on its face, such as a U.S. birth certificate or passport, the provider should accept it as conclusive evidence. The more complicated issue is what documentation will establish status as a qualified alien. The



Over the years the Immigration and Naturalization Service has issued different versions of green cards. Although the appearance and the color of the cards vary (the one pictured is pink), each contains the information noted. To obtain more information about green cards and how to read them, contact www.ins.usdoj.gov/graphics/index.htm.

The sample card above is reprinted from the INS guide *What Color Is Your Green Card?*

DOJ Guidance lists documents such as INS form I-551 (Alien Registration Receipt Card or "green card") as acceptable proof of qualified status. However, there are different versions of this card, the most current one being called Permanent Residence Card. Other documentation that may be used as evidence of qualified status is INS form I-94 (a person's arrival/departure record), but it establishes qualified status only if it bears certain codes, such as one showing a grant of asylum, or an unexpired temporary I-551 stamp.

The DOJ Guidance instructs providers not to delay, deny, or reduce benefits based on immigration status during the time it takes to complete the verification procedure unless they are instructed to do so by the federal agency administering the benefit.

STEP 4: Verify the potential recipient's eligibility under the provisions of the Welfare Reform Act and other federal legislation relating to immigrants.

If the person who is to receive the benefit is a U.S. citizen or a U.S. national, the verification procedure is complete because the benefit restrictions regarding immigrants do not apply. Likewise, if the benefit being requested is one for which all qualified aliens continue to be eligible, the verification procedure is complete. For example, all qualified aliens are eligible for higher education loans and grants if they otherwise meet the eligibility criteria for those benefits. (For a list of benefits that qualified aliens may receive, see page 35.)

If additional immigrant restrictions apply to the benefit, the provider will need to turn to the new eligibility rules. For example, lawful permanent residents, a subset of the new qualified alien category, are eligible for Medicaid only if they were in the United States and were granted legal permanent residence on or before August 22, 1996. To determine when a potential benefit recipient was granted legal permanent residence—and thus to determine the person's eligibility for Medicaid and certain other benefits—the benefit provider will need to know how to read the various codes on the person's I-551 form, or green card.

The DOJ Guidance specifically states that if at any time the benefit provider determines that verification of immigration status is unnecessary, the provider should not ask any additional questions about immigration status.

REPORTING REQUIREMENTS

The Welfare Reform Act expanded the circumstances under which federal agencies must report to the INS people applying for benefits. The principal change was to make three additional federal agencies subject to the reporting requirements. Previously, only agencies administering the Food Stamp program had to report. The other agencies now required to report are those responsible for Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), and some public housing agencies. On a quarterly basis (or

more often if requested by the INS), these agencies must provide the INS with the names, addresses, and other identifying information concerning people who are "known to be not lawfully present in the United States."[18]

As yet, neither the DOJ nor the INS has defined the phrase "known to be not lawfully present in the United States." Nor have they issued any guidance telling agencies what and when they are to report. In the absence of specific federal rules, the safest course for agencies to follow is to look to the Food Stamp program for guidance. Food Stamp agencies must report people who are "present in the United States in violation of the Immigration and Nationality Act."[19] This phrase has been interpreted narrowly to apply only to people with final orders of deportation from the INS. In addition, Food Stamp agencies have not been required to report or verify the immigration status of household members who are not applying for food stamps for themselves.[20]

The Welfare Reform Act did not impose any new reporting requirements on other agencies. It did, however, include a set of "anti-confidentiality rules," which have created some confusion about benefit providers' obligations. The anti-confidentiality rules were designed to counter any remaining "sanctuary" ordinances, which were being used in some places to prevent state or local agencies from cooperating with INS enforcement efforts. Under the anti-confidentiality rules, federal, state, or local laws may not prohibit state or local government entities from exchanging information with the INS regarding a person's immigration status. In addition, federal, state, or local government entities may not be restricted from maintaining records on immigration status or exchanging information about immigration status with other federal, state, or local governmental entities.[21]

The anti-confidentiality rules do not require any agency to turn information over to the INS. Nor do they impose an affirmative duty to collect information about immigration status. They do prevent agencies from assuring that immigration information will be kept completely confidential. An agency must report a person's immigration status to the INS *only* to the extent that it is subject to the reporting requirements discussed earlier.[22] To ensure equal access to services, and to prevent discriminatory treatment of applicants, agencies should establish procedures that minimize the collection of information about immigration status.

EXCEPTIONS AND LIMITATIONS

Special Verification Rules for Battered Spouses and Children

Certain battered spouses (victims of domestic violence) and children are included within the definition of "qualified aliens" and therefore continue to be eligible for certain benefits.[23] For these people the documentation requirements are not as stringent. The proposed INS regulations also would modify the SAVE procedures for this category of qualified aliens.[24] The INS has centralized in one office the handling of most applications from battered immigrants for lawful status, thereby making it easier to verify their status as qualified aliens.

Exemption for Nonprofit Charitable Organizations

Nonprofit charitable organizations are exempt from having to verify immigration status—even if they provide a federal, state, or local public benefit—and they may not be penalized for not verifying immigration status.[25] Further, state and local governments may not impose verification requirements on such organizations.[26] To be exempt, an organization must be both nonprofit and charitable. The DOJ Guidance defines "nonprofit organization" as one that "is organized and operated for purposes other than making gains or profits for the organization, its members, or its shareholders, and is precluded from distributing any gains or profits to its members or shareholders." It defines "charitable organizations" to include organizations "dedicated to relief of the poor and distressed or underprivileged, as well as religiously affiliated organizations and educational organizations."[27]

CONCLUSION

Many of the issues related to the new verification and reporting requirements are still unclear, including exactly which benefits fall under the definition of federal public benefit; when TANF, SSI, and public housing agencies will be required to report applicants to the INS; and how all the requirements will be implemented at the state and local levels. These unresolved issues are adding to the confusion in the immigrant community and among benefit providers. The situation offers an opportunity, however, for benefit providers and local immigrant advocates to work together to

clarify the new rules and ensure that immigrants continue to receive appropriate benefits.

NOTES

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter Welfare Reform Act), Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 8 U.S.C. and 42 U.S.C.).

2. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (hereinafter Immigration Reform Act), Pub. L. No. 104-208, 110 Stat. 3009 (codified in scattered sections of 8 U.S.C.).

3. Gillian Dutton, "The Effect of Welfare Reform on Immigrant Children," *Clearinghouse Review* 32 (Jan.–Feb. 1999): 504, *citing* Wendy Zimmerman and Michael Fix, *Declining Immigrant Applications for Medi-Cal and Welfare Benefits in L.A. County* (Washington, D.C.: Urban Institute, July 1998).

4. Sheri A. Brady, *One in Ten: Protecting Children's Access to Federal Public Benefits under the New Welfare and Immigration Laws* (Washington, D.C.: National Association of Child Advocates, 1998).

5. Brady, *One in Ten*, *citing* "Outreach to Medicaid Eligible Children," in *Chartbook on Children's Health Insurance Status* (GAO/HEHS 98-93), General Accounting Office for U.S. Department of Health and Human Services (Washington, D.C.: Dec. 1997). In North Carolina the CHIP is called North Carolina Health Choice.

6. Another issue that deters immigrant households from accessing benefits relates to the "public charge" ground of inadmissibility to the United States. Under the Immigration and Nationality Act of 1952, as amended, an immigrant's application for legal permanent residence or entry into the United States may be denied if the INS examiner finds that the person is likely to become a public charge or likely to need public benefits to support self or family. § 212(a)(4), 8 U.S.C. §§ 1101–1537. This issue was recently addressed in guidelines from the U.S. Department of Justice. Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28,689–93 (May 26, 1999).

7. Welfare Reform Act § 432. Section 504 of the Immigration Reform Act expanded the verification requirements further by requiring verification of citizenship, not just immigration status.

8. Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 62 Fed. Reg. 61,344 (Nov. 17, 1997) (hereinafter DOJ Guidance).

9. Verification of Eligibility for Public Benefits; INS Proposed Rule, 63 Fed. Reg. 41,662 (Aug. 4, 1998) (hereinafter INS Proposed Rule).

10. Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of "Federal Public Benefit," 63 Fed. Reg. 41,657 (Aug. 4, 1998).

11. DOJ Guidance, 62 Fed. Reg. 61,345.

12. Four types of agencies must report information about a person's immigration status to the INS. The new reporting requirements are discussed on page 32. In the narrow circumstances when these agencies must report to the INS, it is unclear how the SAVE privacy protections apply.

13. DOJ Guidance, 62 Fed. Reg. 61,346.

14. Welfare Reform Act § 432(a). *See also* 42 U.S.C. § 1320b-7(d).

15. DOJ Guidance, 62 Fed. Reg. 61,346–50. Unless noted otherwise, the discussion in this part is drawn from the DOJ Guidance.

16. INS Proposed Rule, 63 Fed. Reg. 41,662.

17. The DOJ Guidance lists the following as relevant factors in determining the extent of documentation required: the nature of the benefit to be provided; the need to provide the benefit in an expedited manner; the length of time the benefit will be provided; the cost of the benefit; and the time and the cost of the chosen verification procedure. 62 Fed. Reg. 61,347. *See also* DOJ Guidance, attachments 4 and 5, 62 Fed. Reg. 61,362–409.

18. Welfare Reform Act § 404(b).

19. 7 U.S.C. § 2020(e)(17).

20. 7 C.F.R. § 273.4(e)(2).

21. Welfare Reform Act § 434.

22. As a final point, the scope of these anti-confidentiality rules seems to be limited, for the DOJ already has clarified that existing confidentiality rules still apply in some circumstances. For example, it recently announced that census information will remain confidential. The Effect of 8 U.S.C.A. § 1373(a) on Requirements Set Forth in 13 U.S.C. § 9(a) That Census Officials Keep Covered Census Information Confidential, Memo from Office of Legal Counsel, U.S. Department of Justice (May 18, 1999).

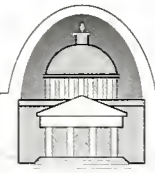
23. Immigration Reform Act § 501. To be eligible for benefits, the battered immigrant must establish that he or she either is the beneficiary of a spousal visa petition or has filed a self-petition under the Violence against Women Act (VAWA). In addition, he or she may no longer be residing with the abuser. The battered immigrant also must show a "substantial connection" between the domestic violence and the need for public benefits. The U.S. attorney general has issued guidelines on when agencies should find that this substantial connection exists. The guidelines broadly define the circumstances under which the substantial connection may be found. Guidance on Standards and Methods for Determining Whether a Substantial Connection Exists between Battery or Extreme Cruelty and Need for Specific Public Benefits, 62 Fed. Reg. 65,255 (Dec. 11, 1997).

24. INS Proposed Rule, 63 Fed. Reg. 41,662.

25. Immigration Reform Act § 505; DOJ Guidance, 62 Fed. Reg. 61,346.

26. INS Proposed Rule, 63 Fed. Reg. 41,662.

27. DOJ Guidance, 62 Fed. Reg. 61,345–46. The proposed INS regulations likewise exclude nonprofit charitable organizations from the verification requirements, stating that they do not come within the definition of "benefit granting agencies." INS Proposed Rule, 63 Fed. Reg. 41,662.



A GUIDE TO IMMIGRANTS' ELIGIBILITY FOR PUBLIC BENEFITS IN NORTH CAROLINA

JILL D. MOORE

ALL IMMIGRANTS

The Welfare Reform Act identified which aliens are *ineligible* for certain public benefits. It did not specify which benefits remain available to all aliens. Presumably, benefits not explicitly denied to aliens (or subsets of them) remain available to all people in the United States without regard to citizenship or immigration status. Those benefits include any that do not meet the statutory definition of "federal public benefit," which must be denied to nonqualified aliens (see "Nonqualified Aliens/ Federal Public Benefits," later in this guide). They also include the following benefits and services, which are excepted from the statutory definition of "federal public benefit":

- Medicaid benefits for emergency services (but not for organ transplants), provided that the person otherwise meets Medicaid eligibility criteria
- Short-term, noncash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Benefits from housing or community development assistance programs that the person was receiving as of August 22, 1996
- Benefits under Title II of the Social Security Act (that is, Old Age, Survivors, and Disability Insurance), provided that the alien is lawfully present in the United States
- Programs or services specified by the U.S. attorney general that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety:
  - — Crisis counseling and intervention programs, child protective services, adult protective services, violence and abuse prevention programs, programs for victims of domestic violence or other crimes, and treatment of mental illness and substance abuse
  - — Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children
  - — Assistance for people during periods of hot, cold, or other adverse weather conditions
  - — Soup kitchens, community food banks, senior nutrition programs such as Meals on Wheels, and other community nutritional services for people requiring special assistance
  - — Medical and public health services (including treatment and prevention of diseases and injuries) and mental health, disability, or substance abuse assistance necessary to protect life or safety
  - — Activities designed to protect the lives and safety of workers, children, or community residents
  - — Any other programs, services, or assistance necessary for the protection of life or safety

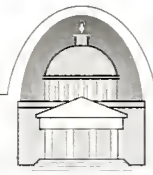
The *state and local benefits* available to all people regardless of citizenship or immigration status are those that do not meet the statutory definition of "state or local public benefit," and the following benefits, which are specifically excepted from that definition:

- Assistance for health care items and services necessary for treatment of emergency medical conditions (but not for organ transplants)
- Short-term, noncash emergency disaster relief
- Immunizations
- Testing for and treatment of symptoms of communicable diseases
- Programs and services such as soup kitchens or crisis centers that deliver in-kind services at the community level, do not condition assistance on the recipient's income or resources, and are necessary for the protection of life or safety

All people present in the United States also may make use of police, fire, ambulance, transportation, sanitation, and other widely available public services.

QUALIFIED ALIENS

A "qualified alien" is a noncitizen who fits into one of the following categories: lawful permanent residents; certain aliens admitted for humanitarian reasons (namely, refugees; political and religious asylees; people granted withholding of deportation; Cuban/Haitian entrants; Amerasian immigrants; and parolees admitted to the United States for at least one year); aliens who have been present in the United States since before April 1, 1980, as "conditional entrants" under federal immigration laws; and



certain immigrants who have been battered or subjected to extreme cruelty, and in some cases their parents.

Qualified Aliens with Strong Military Connections

Honorably discharged veterans, members of the armed services on active duty, and their spouses and dependent children are potentially eligible for any public benefit, including food stamps, Supplemental Security Income (SSI), and all federal means-tested public benefits. These people must meet all other eligibility criteria for the benefit before they may receive it. Congress has stated that members of Hmong or Highland Lao tribes who provided assistance to United States military forces during the Vietnam War should be treated the same as honorably discharged veterans in determining eligibility for benefits. Thus those people also are potentially eligible to receive any public benefit.

Qualified Aliens with Long Work Histories in the United States

Lawful permanent residents who entered the United States before August 22, 1996, and who have worked forty qualifying quarters (ten years) under Title II of the Social Security Act are potentially eligible to receive any public benefit, provided that they meet all other eligibility criteria for the benefit. People who entered the United States after August 22, 1996, but otherwise meet the eligibility criteria are eligible for SSI and food stamps immediately but must wait five years before they are eligible to receive other federal means-tested public benefits.

All Other Qualified Aliens

SSI

The following qualified aliens are eligible to receive SSI (provided that they meet all other program eligibility criteria):

- Those with strong military connections (described earlier)
- Those with long work histories (described earlier)
- People who were lawfully present in the United States on August 22, 1996, and who were, or who become, disabled or blind
- People who are lawfully present in the United States and were receiving SSI on August 22, 1996
- SSI recipients whose applications for SSI predated January 1, 1979
- Cross-border Native Americans

Qualified aliens admitted for humanitarian reasons (described earlier) are eligible to receive SSI only during their first seven years of lawful residence in the United States.

All other qualified aliens are barred from receiving SSI.

Food Stamps

The following qualified aliens are eligible to receive food stamps (provided that they meet all other program eligibility criteria):

- Those with strong military connections (described earlier)
- Those with long work histories (described earlier)
- People who were lawfully present in the United States on August 22, 1996, and who now are disabled or who become eligible for disability-based federal benefits in the future
- Children under age eighteen who were lawfully residing in the United States on August 22, 1996
- Adults who were lawfully residing in the United States on August 22, 1996, and were at least sixty-five years old on that date
- Cross-border Native Americans

Qualified aliens admitted for humanitarian reasons (described earlier) are eligible to receive food stamps only during their first seven years of lawful residence in the United States.

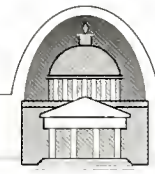
All other qualified aliens are barred from receiving food stamps.

Federal Means-Tested Public Benefits

Qualified aliens who entered the United States before August 22, 1996, are eligible for federal means-tested public benefits. Qualified aliens who entered the United States *after* August 22, 1996, are not eligible for those benefits until five years after their lawful admission to the United States.

The following groups are exempted from the five-year waiting period: qualified aliens with strong military connections and qualified aliens admitted for humanitarian reasons (both categories described earlier).

Congress did not define the term "federal means-tested public benefits." Based on federal agency interpretations, the term includes at least the following benefits and programs, and the restrictions just stated apply: Medicaid (except for emergency medical assistance), Temporary Assistance for Needy Families (TANF), and the food-assistance block grant programs in Puerto Rico, the Northern Mariana Islands, and American Samoa. No other programs administered by the U.S. Department of Health



and Human Services (DHHS), the U.S. Department of Agriculture, or the Social Security Administration meet the definition, according to those agencies, so qualified aliens are eligible for such programs (provided that they meet the particular program's criteria).

By statute, the following benefits also are exempted from the definition of federal means-tested public benefits under the Welfare Reform Act, so qualified aliens are eligible to receive them: Medicaid for emergency medical services (but not for organ transplants); short-term, noncash emergency disaster relief; services provided under the National School Lunch Act and the Child Nutrition Act; immunizations; testing for and treatment of symptoms of communicable diseases; payments for foster care and adoption assistance; student assistance under the Higher Education Act and the Public Health Service Act; means-tested programs under the Elementary and Secondary Education Act; Head Start; benefits under the Job Training Partnership Act; and programs, services, or assistance specified by the U.S. attorney general that (1) deliver in-kind services at the community level, (2) do not condition assistance on the recipient's income or resources, and (3) are necessary for the protection of life or safety.

NONQUALIFIED ALIENS

Federal Public Benefits

Nonqualified aliens are potentially eligible to receive the federal benefits and services listed earlier as being available to all aliens, provided that they otherwise meet eligibility criteria.

Nonqualified aliens are generally ineligible to receive other federal public benefits, which are defined as follows:

> (A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
>
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

One federal agency, DHHS, has issued an official interpretation of this definition, which must be applied to programs that receive funding from DHHS. Under DHHS's interpretation, nonqualified aliens are eligible for a number of DHHS-funded benefits that are provided at the local level, such as prenatal care and other health services. This interpretation concludes that only the following programs constitute federal public benefits: several programs of the Administration on Developmental Disabilities (ADD); adult programs/payments to territories; Agency for Health Care Policy and Research dissertation grants; child care and development fund; clinical training grants for faculty development in alcohol and drug abuse; foster care; health profession education and training assistance; independent living program; job opportunities for low-income individuals; low-income home energy assistance program; Medicare; Medicaid (except for emergency medical assistance); mental health clinical training grants; native Hawaiian loan program; refugee cash assistance; refugee medical assistance; refugee preventive health services program; refugee social services formula program; refugee social services discretionary program; refugee targeted assistance formula program; refugee targeted assistance discretionary program; refugee unaccompanied minors program; refugee voluntary agency matching grant program; repatriation program; residential energy assistance challenge option; social services block grant; state child health insurance program; and TANF.

The general bar on federal public benefits does not apply to Medicare benefits for nonqualified aliens who were lawfully present in the United States and authorized to be employed during the time they earned wages rendering them eligible for Medicare; benefits under the Railroad Retirement Act or the Railroad Unemployment Act for nonqualified aliens who are lawfully present; and SSI and associated Medicaid benefits for nonqualified aliens who were receiving those benefits on August 22, 1996.

State and Local Public Benefits

Nonqualified aliens are potentially eligible to receive the state and local benefits and services listed earlier as being available to all aliens, provided that they otherwise meet eligibility criteria.

Nonqualified aliens are generally ineligible to receive other state and local public benefits. The definition of state and local benefits parallels the definition of federal benefits set forth earlier, except that the benefits are funded by state or local governments, not the federal government.

Nonqualified aliens who are nonimmigrants or parolees for less than one year are eligible to receive state and local public benefits.

Overcoming Language Barriers to Health Care

JANE PERKINS

Overcoming language barriers to health care is critical to the well-being of millions of immigrants in the United States today. About 32 million people in this country, 13.8 percent of the population, speak a language other than English at home.[1] The health care delivery system is hard-pressed to handle this diversity. Health care providers in major cities and in West Coast states, in particular, deal with an amazing variety of languages and cultures. For example, in the first four months of 1993, Kaiser Hospital in Oakland, California, provided translation services in Amharic, Arabic, Cambodian, Cantonese, Chaochou, Hungarian, Ilocano, Italian, Japanese, Korean, Laotian, Mandarin, Romanian, Russian, Spanish, Tagalog, Tigrinya, Toishanese, and Vietnamese.[2]

Photo by Robert Miller

Although more pronounced in urban and western areas, dramatic increases in the number of residents with limited English proficiency (LEP) are occurring nationwide. North Carolina itself is experiencing an unprecedented influx. A growing number of the state's residents are from Bosnia, Central American countries, China, Laos, Mexico, and Vietnam. An accurate count of

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LEP speakers in the state is difficult to obtain, but it is estimated that there are between 250,000 and 300,000 Spanish speakers alone.

Communication barriers complicate the delivery of health care. The following recent accounts illustrate the problem:

- In central North Carolina, Hispanic residents have complained that they must wait longer than non-Hispanic residents to receive treatment from the local health department. When these residents do receive care, family members or unqualified health department employees translate during the visit, or they are asked to pay for each fifteen minutes of interpreting.
- In central North Carolina, a hospital used a child to translate during his parent's emergency room visit. As the boy and his parent left the facility, another LEP family arrived with an emergency. The boy had to translate during that visit as well.
- In South Carolina a hospital limited epidural anesthesia for women in labor to women who could speak English.

This article addresses the need for translation services during health care visits and the ways in which these needs are most frequently met. It describes the factors inhibiting appropriate linguistic access, then provides an overview of the laws governing linguistic access to health care. The article closes with some recommendations for making care more linguistically accessible.

THE NEED FOR TRANSLATION SERVICES

Patients who do not speak English need qualified interpreters to describe potentially complex medical problems and treatment plans. Words that English-speaking patients may use, such as "hypertension" or "allergies," often do not have equivalents in other languages. Further, communicating subtle distinctions can be very important. As one California doctor explains, "The difference between 'crushing pain' when the patient is walking and 'sharp pain' can mean the difference between severe coronary artery disease and gastritis [stomach inflammation]."[3]

Translation of a medical visit by unqualified interpreters is prone to omissions, additions, substitutions, volunteered opinions, and semantic errors that can seriously distort care.[4] In one study, analysis of recorded encounters during which an adult son interpreted for his Russian father demonstrated incorrect translation of more than 28 percent of words and phrases.[5]

In addition, the use of untrained interpreters can result in a breach of patient confidentiality. Reliance on interpreters who are not trained in the ethics of interpretation can cause a patient not to speak freely in front of a health care provider, especially when children are translating for parents about such sensitive issues as spousal abuse and sexual practices.[6]

The lack of appropriate translation services also affects the cost of care. Non-English-speaking patients may be reluctant to deal with providers who cannot communicate with them, seeking care only when their conditions become acute and more costly. Fifty-eight percent of LEP patients polled by the Asian Health Services in 1994 reported that they would not see a physician if interpreting services were not available.[7] Further, to fill the gaps created by the language barrier, doctors may turn to batteries of expensive, often unnecessary tests. One study found that language differences caused treatment of non-English- speaking patients to take 25 to 50 percent longer than treatment of English-speaking patients.[8] Finally, inadequate interpreting has been shown to delay a correct diagnosis and to increase the chances that the patient will not be able to follow the doctor's orders.[9]

Unfortunately, translation needs often go unmet or are handled inappropriately in health care settings. Many hospitals and clinics do not have qualified interpreters on hand. Rather, they rely on family, friends, or untrained staff, or they allow providers to deliver services without any verbal communication with the patient. Important medical information typically delivered to patients in writing—for example, informed-consent forms and discharge treatment plans—may be provided only in English.[10]

FACTORS INHIBITING LINGUISTIC ACCESS

A number of state and federal laws (discussed later) address provision of translation services to LEP patients.

NORTH CAROLINA RESOURCES

N.C. Office of Minority Health
(919) 715-0992

N.C. Bilingual Resource Group
(919) 715-3119

Hispanic Ombudsman, Office of Citizen Services, N.C. Department of Health and Human Services
(919) 733-4261

AT&T Language Line
1-800-821-0301
(demonstration and information)

Nonetheless, linguistic access is not well developed. Several factors create barriers.

First, the number of different languages spoken in the United States has grown dramatically in the last thirty years. Today, hundreds of languages are spoken in both urban and rural areas.[11] The trend will continue. Estimates are that by 2010 the U.S. minority population will have increased by 60 percent and will include immigrants from all around the world.

Second, translation services cost money, and current levels of funding are inadequate. States and health care providers have been slow to bill Medicare and Medicaid for the administrative costs associated with providing language services. Also, recent federal laws regarding immigrants have created confusion about the extent of providers' obligations to serve LEP populations. Federal law now makes many immigrants ineligible for significant public benefits, including Medicaid, during their first five years in the country or altogether.[12] The loss of federal Medicaid funds is particularly stressful to public hospitals and clinics, on which many immigrants rely. Moreover, many health care providers are uncertain about the extent to which they can and should provide health care, including translation services, to immigrant populations. (For more discussion of these issues, see "Immigrants' Access to Public Benefits: Who Remains Eligible for What?," page 22 in this issue.)

Third, there often is little public support for the affected minority groups. In a 1996 poll by The University of North Carolina at Chapel Hill's School of Journalism, nearly half of those surveyed (42 percent) stated that they were uncomfortable with the growth of the Hispanic population in North Carolina, and more than half (55 percent) said that they did not feel comfortable around people who do not speak English. (For an in-depth review of this poll, see "A Profile of Hispanic Newcomers to North Carolina," page 2 in this issue.)

Finally, although there are state and federal laws requiring access to linguistically appropriate health care, they are largely unused in practice. The remainder of this article discusses these laws.

LINGUISTIC ACCESS PROVISIONS AND POLICY DEVELOPMENT IN NORTH CAROLINA

North Carolina is just beginning to develop legal requirements for linguistic access in health care settings. For its Medicaid managed-care program, the state's Division of Medical Assistance uses contracts that specifically address linguistic access. These contracts require the managed-care plans that are contracting with the state Medicaid agency to comply with Title VI of the Civil Rights Act (which, as discussed later, prohibits discrimination on the basis of national origin); to provide marketing materials in English, Spanish, and other needed languages; and to make interpreter services available 24 hours a day by telephone and/or in person, to ensure that plan members can communicate with plan personnel and their providers.[13]

There also is activity at the policy development stage. Governor James B. Hunt, Jr., has appointed an Advisory Council on Hispanic/Latino Affairs, which, among other activities, is investigating ways to improve the provision of health care services to LEP patients. At the local level, the North Carolina Association of Local Health Directors has passed a resolution recognizing the critical need for interpreter services, particularly for the fast-growing Hispanic population, and asking local public health agencies to take a lead role in communicating with the public about the importance of providing linguistic access and complying with Title VI of the Civil Rights Act.[14]

On another legal front, failure to provide translation during health care visits may violate the laws of informed consent. A health care provider's failure to obtain informed consent is a basis for a lawsuit in North Carolina, originally grounded in common law[15] but also addressed in statute.[16] Generally, to establish a failure to secure informed consent, a person must show that (1) the provider failed to inform the patient of a material fact relating to treatment; (2) the patient consented to the treatment without being aware of that fact; (3) a reasonable patient under similar circumstances would not have consented if given such information; and (4) the treatment in question caused injury to the patient. A signed form creates a presumption that a consent is valid;[17] however, inability to read the form might overcome that presumption.[18] Although a North Carolina court has not ruled on the issue in any reported decision, courts in other jurisdictions have found language barriers to give rise to claims that the physician failed to obtain a patient's informed consent.[19]

LINGUISTIC ACCESS PROVISIONS IN FEDERAL LAW

Although North Carolina has only recently begun to develop specific policies and legal requirements regarding linguistic access in health care settings, a number of federal laws and regulations require health care providers in North Carolina to ensure linguistic access.[20]

Title VI of the Civil Rights Act

Congress passed Title VI of the Civil Rights Act to ensure that federal money is not used to support discrimination on the basis of race or national origin in government activities, including the delivery of health care. Title VI states, "No person in the United States shall, on ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[21] Taken together, Title VI and its implementing regulations bar both intentional discrimination and activities that have a disparate discriminatory impact based on race, color, or national origin—even when the recipient of federal funds does not have an actual intent to discriminate.[22]

In the thirty years since the Title VI provisions became law, federal subsidy of health care has become pervasive, causing the numbers of providers and entities that must comply with Title VI to skyrocket. (Generally, providers who bill Medicare or Medicaid or receive other federal funds must comply with Title VI.) When Title VI is violated, expansive remedies may be authorized, including injunctive relief, corrective action plans, termination of federal funds, and possibly the award of damages.

Neither Title VI nor the implementing regulations discuss linguistic access per se. However, courts have consistently found a close connection between national origin, which is specifically covered by Title VI, and language. In *Lau v. Nichols*, the U.S. Supreme Court held that the San Francisco school system violated Title VI by failing to take steps to assist LEP Chinese students: "It is obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" the Title VI regulations.[23] Since *Lau*, a number of lower courts have found that the failure to provide translation services may be discrimination on the basis of national origin.[24]

In addition, the U.S. Department of Health and Human Services' Office for Civil Rights (OCR) has consistently found that recipients of federal funds have an obligation under Title VI to communicate effectively with LEP people. As recently as last year, the agency reiterated that "where language barriers cause persons with limited English proficiency to be excluded from or be denied equal access to health or social services, recipients may be required to take steps to provide language assistance to such persons."[25] This statement reflects the position taken by OCR over the last decade, in more than 100 administrative decisions and compliance agreements affecting individual health care providers. These OCR decisions articulate the following basic requirements:[26]

Photo by Susan Simone

Father and child await their turn in a public health clinic, beneath a sign in Spanish telling parents about Medicaid procedures for their children's checkups.

1. Recipients of federal funds should have a written policy for linguistic access and should make sure that staff are aware of the policy.
2. Recipients of federal funds should have a procedure for offering translation services to LEP patients during all hours of operation.
3. Family and friends should be allowed to interpret only after a patient has been informed of the availability of the services of a qualified interpreter at no cost to the patient.
4. Minors should not be used to translate.
5. "Qualified" interpreters should have demonstrated bilingual proficiency and knowledge of medical terms and of the ethics of medical interpreting.
6. The use of telephone translation services should be limited to situations in which no bilingual staff person or qualified interpreter is available to provide services.
7. Important medical documents should be translated for the patient.

The Hill-Burton Act

The Hill-Burton Act, another federal law that bears on linguistic access to health care, encourages construction and modernization of public and nonprofit community hospitals, health centers, and nursing homes.[27] Although the act benefits communities nationwide,

As a woman gets an eye checkup, her child eyes the photographer.

health care facilities in the South have made heavy use of Hill-Burton funds.

In return for Hill-Burton support, facilities agree to be bound in perpetuity by provisions requiring "community service." Facilities must make services "available to all persons residing . . . in the facility's service area without discrimination on the ground of race, color, national origin, creed or any other ground unrelated to an individual's need for service or the availability of the needed service in the facility."[28] OCR has consistently taken the position that the community service obligation requires hospitals to address the needs of LEP patients.[29] Past OCR administrative remedies have included requirements that hospitals and nursing homes develop lists of bilingual interpreters, establish procedures for communicating with LEP patients at all hours of a facility's operation, and notify patients that interpreter services are available.[30]

Federal Block Grant Programs

The secretary of Health and Human Services makes grants to public and private nonprofit entities to plan, develop, and operate community health centers serving medically underserved populations and areas suffering shortages of health care personnel.[31] Grant monies also are given to public and private nonprofit clinics serving migratory agricultural workers, seasonal agricultural workers, and their families. If a substantial number of patients with limited English proficiency are in a service area, federal law requires migrant health centers and community health centers to provide linguistically and culturally appropriate services and outreach.[32] Similarly, federally funded alcohol abuse centers must use language-appropriate outreach workers and identify employees who are able to translate full-time.[33]

Protections against "Patient Dumping"

The Emergency Medical Treatment and Active Labor Act (EMTALA) protects patients against "dumping." That is, it generally requires all hospitals that participate in Medicare and have an emergency department to treat any patient in an emergency condition, regardless of the patient's ability to pay. A violation of EMTALA occurs (1) when a hospital does not adequately screen a patient to determine whether an emergency exists or (2) when a hospital discharges or transfers a patient (a) without informed consent before his or her condition is stabilized or (b) without certifying that, based on information available at the time, the medical benefits of transfer outweigh the risks involved.[34]

The extent to which EMTALA requires language-appropriate health care is largely untested. At the very least, issues arise with respect to EMTALA's requirements for informed consent and transfer. For example, the language barrier may be so severe that it is impossible for emergency room personnel to communicate effectively with a patient and obtain the patient's informed consent for transfer. It is less clear, however, whether EMTALA mandates language-appropriate screening, and to date, no court has looked at this question. Courts have ruled that EMTALA may be violated if a patient demonstrates that the screening examination he or she received was not as thorough or careful as that which the hospital typically provides.[35] This reasoning might support a finding that EMTALA is violated by failure to provide translation services that allow the emergency room doctor to communicate with a conscious patient and allow the patient to understand the outcome of the screening.

CONCLUSION AND RECOMMENDATIONS

La ley no es silenciosa—the law is not silent—on provision of linguistically accessible health care, but to date, enforcement has been spotty. As more LEP patients face the prospects of receiving delayed or inappropriate care or failing to understand the health care options available to them, health care providers confront increasing risks if they do not provide accessible care. A number of steps might be taken to make care more linguistically accessible.

First, medical and provider associations, state offices, and community-based organizations should educate the health care community about the laws that require provision of linguistically accessible health services and about the potential consequences of failing to adhere to these laws.

Second, policy makers should provide top-down clarity that these legal protections are important and should be recognized.

Third, the research community might assess the benefits and the net costs of providing linguistically accessible health care and articulate ways of providing this care economically.

Fourth, consumers and their representatives, health plans and providers, foundations, and policy makers might experiment with programs designed to overcome linguistic and cultural barriers. This already is occurring in some areas. For example, hospitals in Seattle are banding together to contract with on-call interpreter pools. Clinics across the country are working with community organizations to identify bilingual residents who can be trained as volunteer translators. Higher education institutions, such as New York's Hunter College, are teaching students to serve as professional-level interpreters for college credit.[36] In Oakland, California, Asian Health Services has trained community residents in interpretation skills and offered their services to local hospitals and community clinics.[37] In North Carolina, the Duke Endowment has funded the state's Office of Minority Health and the state's Area Health Education Centers Program to establish the Spanish Language and Cultural Training Institute, which is sponsoring statewide training for interpreters working in health and human service settings.[38]

Finally, health care consumers and consumer organizations might document problems with obtaining accessible care; report the problems to the affected providers and civil rights enforcement agencies; and participate in community-based efforts to resolve the problems.

NOTES

1. Bureau of the Census, Economics & Statistics Administration, *Selected Social Characteristics: 1990* (Washington, D.C.: 1990), table 1.

2. John Flinn, "Californians Talk in Most Languages of All: Its People Speak 224 Languages, 40 More than in N.Y.," *San Francisco Examiner*, April 28, 1993, p. A1.

3. Marilyn Lewis, "Translators Provide a Critical Link for Foreign-Born Patients," *San Jose Mercury News*, Nov. 25, 1988, p. 1A (quoting Dr. Kent Imai, chief of the Department of Medicine's Primary Care Division at California's Valley Medical Center).

4. *See* D. W. Baker et al., "Use and Effectiveness of Interpreters in an Emergency Department," *JAMA* 275 (Mar. 13, 1996): 783–88; Steven Woloshin et al., "Language Barriers in Medicine in the United States," *JAMA* 273 (Mar. 1, 1995): 724–28.

5. Bruce T. Downing, "Quality in Interlingual Provider-Patient Communication and Quality of Care" (manuscript, Sept. 1995), 7–9 [available from the Kaiser Family Foundation, Menlo Park, Calif., (800) 656-4533].

6. *See, e.g.*, Linda Hafner, "Translation Is Not Enough: Interpreting in a Medical Setting," *Western Journal of Medicine* 157 (Sept. 1992): 255–59.

7. Emily Friedman, "Language, Culture and Care" (manuscript, Sept. 1995), 32 [available from the Kaiser Family Foundation, Menlo Park, Calif., (800) 656-4533].

8. Mark M. Hagland, "Crossing Cultures: Hospitals Begin Breaking Down the Barriers to Care," *Hospitals* 67 (May 20, 1993): 29.

9. *See, e.g.*, Woloshin et al., "Language Barriers in Medicine," 724; A. Manson, "Language Concordance as a Determinant of Patient Compliance and Emergency Room Use in Patients with Asthma," *Medical Care* 26 (1988): 1119–28.

10. National Health Law Program, "Ensuring Linguistic Access in Health Care Settings: Legal Rights and Responsibilities" (manuscript, Jan. 1998), 7–18 [available from the Kaiser Family Foundation, Menlo Park, Calif., (800) 656-4533].

11. U.S. Department of Health and Human Services, Office for Civil Rights, *Limited English Proficiency as a Barrier to Health & Social Services* (prepared by Macro International, Inc.) (Washington, D.C.: 1995), 3.

12. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

13. North Carolina Division of Medical Assistance, *Contract for Services between the State of North Carolina, Division of Medical Assistance and _____, a Health Maintenance Organization* (Raleigh: 1997–98). The state also has entered into one or more contracts with local health departments, that require them to provide interpreter services at no cost to patients for health care services provided free to the general public. *See* North Carolina Division of Medical Assistance, *Consolidated Contract between State of North Carolina and Local Health Department for the Purpose of Maintaining and Promoting the Advancement of Health in North Carolina (July 1, 1998, to June 30, 1999)* (Raleigh:

NCDMA, 1998). As noted later, such provisions should be reviewed against the Title VI guidance issued by the federal Office for Civil Rights. See note 25.

14. North Carolina Association of Local Health Directors, Policy and Planning Liaison Committee, *Resolution on Language Services in Public Health* (Raleigh: NCALHD, Jan. 14, 1998) [available from North Carolina Office of Minority Health, Raleigh, (919) 715-0992].

15. *See* Hunt v. Bradshaw, 242 N.C. 517, 88 S.E.2d 762 (1955) (holding that failure to explain risks involved in surgery may be considered mistake on surgeon's part). *Hunt* is cited as one of the U.S. cases that marked the transition from simple consent to the contemporary concept of informed consent. *See* Paul S. Appelbaum, Charles W. Lidz, and Alan Meisel, *Informed Consent: Legal Theory and Clinical Practice* (New York: Oxford University Press, 1987), 38.

16. N.C. Gen. Stat. § 90-21.13 (hereinafter G.S.).

17. G.S. 90.21.13(b).

18. *See* Estrada v. Jaques, 70 N.C. App. 627, 321 S.E.2d 240 (1984) (holding that signed form is not conclusive when adequacy of underlying representations is disputed); Snyder v. Ash, 596 N.E.2d 518 (Ohio Ct. App. 1991) (holding that signing of informed-consent form does not have presumptive validity if plaintiff shows "that the person executing the consent was not able to communicate effectively in spoken and written English or any other language in which the consent is written").

19. *See generally* Rosario v. United States, 824 F. Supp. 268 (D. Mass. 1993) (ruling against Spanish-speaking patient when hospital provided Spanish-speaking doctor, and plaintiff failed to demonstrate that doctor withheld any information reasonably necessary to make informed decision).

20. This article does not discuss legal requirements for linguistic access that apply to the state Medicaid agency, county Medicaid offices, and agents of the state Medicaid agency. For a discussion of these provisions, *see* National Health Law Program, "Ensuring Linguistic Access."

21. 42 U.S.C. § 2000d.

22. "A recipient . . . may not . . . utilize criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color or national origin, or have the *effect* of defeating or substantially impairing accomplishment of the objectives of the program [with] respect [to] individuals of a particular race, color or national origin." 45 C.F.R. § 80.3(b)(2) (emphasis added). *See also* Guardians Ass'n v. Civil Serv. Comm'n of N.Y., 463 U.S. 582 (1983).

23. Lau v. Nichols, 414 U.S. 563, 568 (1974); *see also* 414 U.S. at 570–71 (Stewart, J., concurring in result).

24. *See, e.g.*, Odima v. Westin Tuscon Hotel Co., 991 F.2d 595, 601 (9th Cir. 1993) ("accent and national origin are obviously inextricably intertwined"); Garcia v. Gloor, 618 F.2d 264, 270 (5th Cir. 1980) ("To a person who speaks only one tongue or to a person who has difficulty using another language than the one spoken in his home, language might well be an immutable characteristic like skin color, sex or place of birth"); Sandoval v. Hagan, 7 F. Supp. 2d 1234, 1280–82 (M.D. Ala. 1998) (noting that "the multitude of cases that find a strong nexus between language and national origin" support a holding that English-only drivers' license tests violate Title VI); Asian Am. Business Group v. City of Pomona, 716 F. Supp. 1328 (C.D. Cal. 1989) (holding that ordinance restricting use of foreign languages on business signs "overtly discriminates on the basis of national origin"); Hernandez v. Erlenbusch, 368 F. Supp. 752 (D. Or. 1973) (finding that tavern's rule against speaking foreign languages amounted to racial discrimination against Mexican Americans).

25. Office for Civil Rights, *Title VI Prohibition against National Origin Discrimination—Persons with Limited English Proficiency* (Jan. 1998), available at http://www.hhs.gov/progorg/ocr/lepfinal.htm.

26. National Health Law Program, "Ensuring Linguistic Access," app. D.

27. 42 U.S.C. § 291.

28. 42 C.F.R. § 124.603.

29. Office for Civil Rights, *Guide to Planning the Hill-Burton Community Service Compliance Review* (Washington, D.C.: 1981), 16, 27.

30. *See, e.g.*, Saddleback Community Hosp., No. 09-87-8001 (OCR compliance agreement, Nov. 10, 1987); Children's Orthopedic Hosp., No. 10813023 (OCR memorandum agreement, Oct. 6, 1981) [available from National Health Law Program, Los Angeles, Calif., (310) 204-6010].

31. 42 U.S.C. § 254c.

32. These centers must provide "services to the extent practicable in the language and cultural context most appropriate to such individuals" and must identify staff "fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences." 42 U.S.C. §§ 254b(f)(3)(J), 254c(e)(3)(J).

33. 42 U.S.C. § 4577(b)(3).

34. 42 U.S.C. § 1395dd. EMTALA prohibits the transfer of a patient in an emergency medical condition unless (1) the patient provides his or her informed consent or a physician (or a qualified medical person working under the supervision of a physician) certifies that the benefits of transfer outweigh the risks; and (2) the transfer is appropriate. A patient has not given informed consent unless the patient consents in writing "after being informed of the hospital's obligations under [EMTALA] and of the risk of transfer." For a transfer to be "appropriate," the sending hospital must verify that the receiving hospital has both available space and qualified personnel for the treatment of the patient and that it agrees to accept the transfer and provide appropriate medical treatment. 42 U.S.C. § 1395dd(c)(2).

35. *See generally* Brooks v. Maryland Gen. Hosp., 996 F.2d 708 (4th Cir. 1993).

36. William Douglas, "Many Tongues Spoken, Students Translate at Clinics & Hospitals," *Newsday*, Jan. 3, 1993, p. 39.

37. Linda Okahara, director, Language and Cultural Access Program, Asian Health Services, interview with the author, Jan. 17, 1995.

38. North Carolina Area Health Education Centers, *Spanish Language and Cultural Training Initiative Informational Bulletin* (Raleigh: Aug. 1998).

Housing Discrimination against Hispanics in Private Rental Markets

ANITA R. BROWN-GRAHAM

A landlord charges twenty dollars per person per day for eight persons to live in a substandard trailer. Children spend the winter in an apartment with no heat, although their parents were assured at the time of rental that the unit was heated. A landlord routinely refuses to refund security deposits owed to tenants. A baby is bitten by the rats that share his abode.

The tenants in the preceding stories are all members of North Carolina's growing Hispanic population. For any tenant, such experiences represent poor housing conditions and possible violations of North Carolina's landlord-tenant laws. However, for a significant percentage of the Hispanic population, the stories reflect not only poor housing conditions but also discrimination in private rental markets.[1]

Not every case in which a tenant is forced to live in inadequate housing or to pay excessive rents constitutes a case of discrimination. A showing of discrimination requires that there be at least two groups of people who are similarly situated but unequally treated. So, in the preceding stories, there is no discrimination unless the landlord provides better services and facilities or charges lower rents to similarly situated non-Hispanics.

Various provisions in the U.S. and North Carolina Constitutions, state statutes, and municipal ordinances prohibit discrimination in housing. Typically the prohibitions apply to differential treatment based on race, color, sex, national origin, disability, familial status (whether or not families have children under age eighteen), and religion. The actions that are covered usually include the sale, rental, financing, and brokering of housing.

Top: Photo by Chris Johnson. Left: Photo courtesy of the North Carolina Fair Housing Center

Top: a kitchen sink with no plumbing underneath; above: a gaping hole in the ceiling over a shower.

The author is an Institute of Government faculty member who specializes in affordable housing and community development.

Race is the most frequently cited basis for housing discrimination complaints in North Carolina.[2] African Americans make up the majority of complainants,[3] and most of the complaints involve rental properties where property managers and landlords purposefully give misinformation about housing availability and cost to avoid renting to such people.[4] But industry watchdogs estimate that the state's emerging Hispanic population is the fastest-growing target of discrimination.[5] Further, the cases of discrimination against Hispanics differ from those involving African Americans in that they typically do not involve refusals to rent. Instead, they involve differential and discriminatory provision of rental services, privileges, terms, and conditions. This article focuses on the extent of such discrimination, individuals' recourse under existing laws, and local governments' options to encourage use of those laws.

Housing problems may violate other laws than those prohibiting discrimination. An in-depth discussion of them is beyond the scope of this article.[6]

HOUSING CONDITIONS

The 1990 census and more recent surveys reveal that Hispanics are both disproportionately poor and disproportionately poorly housed.[7] In North Carolina, Hispanic renter households have the highest incidence of housing problems (see Figure 1). In 1990, almost 80 percent of Hispanic renter households that earned 30 percent or less of the median household income in their area experienced at least one housing problem, as did about 75 percent of the Hispanic renter households in the 31–50 percent income group.[8] Housing problems include structural problems, excessive rent burdens, and overcrowding.

Structural problems are defined by the census as incomplete kitchen or plumbing facilities. The definition does not include other important structural deficiencies, however, such as unsafe wiring, leaking roofs, and holes in floors or walls, and there are no reliable statewide data to reflect the extent to which Hispanics live in housing characterized by such deficiencies.

Excessive rent burden is defined as paying in excess of 35 percent of gross household income in rent. North Carolina's statistics regarding excessive rent burdens mirror national findings. For example, the average rent in Wake County is $480 per month, but 44 percent of Hispanic households pay $500 to $749 per month, even though these households are poorer than the average Wake County household.[9] Reports from the U.S. Department of Housing and Urban Development (HUD) indicate that Hispanics have the "worst case housing needs" of any group. The phrase describes households that do not receive federal housing assistance, pay more than 50 percent of their income for rent, and earn less than half of the median family income for the area in which they live.[10]

Overcrowding is defined as having more than one person for each room in a dwelling. A family of six living in five rooms—two bedrooms, one bathroom, one kitchen, and one living room—would be considered overcrowded. In a typical situation, again in Wake County, a Hispanic household may consist of four adults and five children living in a small, two-bedroom apartment.[11]

> Some landlords preferred to rent to Hispanics, for Hispanics were willing to accept poorer conditions and were less likely to complain because of language barriers, unfamiliarity with housing laws, and fear of deportation even when they were in the country legally.

HOUSING DISCRIMINATION

Low income alone cannot fully account for the poor housing conditions in which many Hispanics live. When common factors, such as financial resources, are taken into account, differences in housing conditions still remain. Nationally, Hispanics are twice as likely as whites to be inadequately housed or overcrowded.[12]

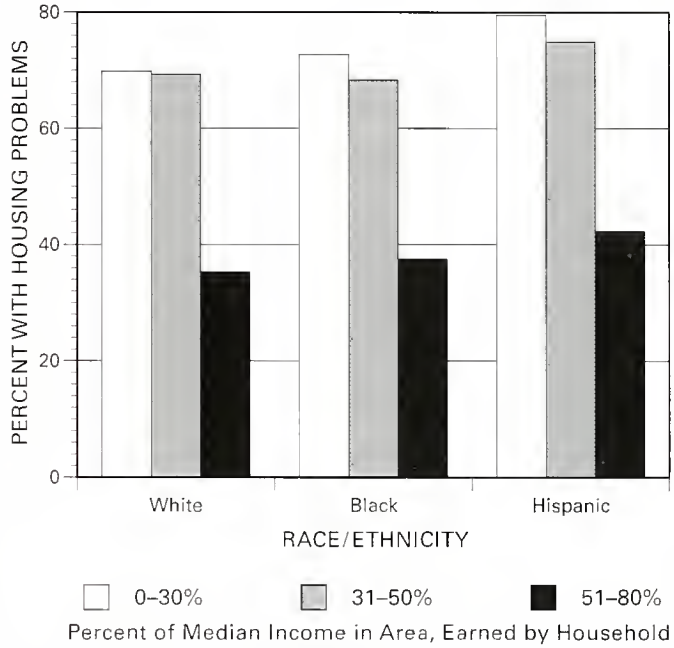
In considering the Hispanic housing problem generally, and housing discrimination specifically, it is important to recognize the significant diversity among Hispanics and their very distinct experiences with housing based on their country of origin and their region of residence in the United States. For example, Cubans tend to be the most integrated and the most affluent Hispanic group and have had the least difficulty accessing housing markets. On the other hand, Puerto Ricans, largely residing in New York, are the poorest and have had the most difficulty accessing housing markets. In North Carolina the stories of housing discrimination against Hispanics primarily involve people from Central America.[13]

Studies in other states indicate that some Hispanics, particularly those who are dark skinned, experience substantial discrimination in the private housing market.[14] A study of housing discrimination released by

HUD in 1991 indicated that Hispanic renters seeking homes experience discrimination in at least half of their encounters with rental agents and landlords.[15]

Researchers studying North Carolina's Durham County concluded that "finding safe, affordable housing in good condition can be especially difficult" for Hispanics. According to one community organizer cited in the study, "everywhere we go [in Durham] where there is substandard housing, there are Hispanics."[16] The study pointed to discrimination, language barriers, and immigration-related issues as causes for the poor housing conditions among Hispanics. Service providers and community members complained that some landlords preferred to rent to Hispanics, for Hispanics were willing to accept poorer conditions and were less likely to complain because of language barriers, unfamiliarity with housing laws, and fear of deportation even when they were in the country legally.

Figure 1. North Carolina's Low-Income, Renter Households with Housing Problems, by Race/Ethnicity and Income Group, 1990



Source: "Consolidated Plan for Housing and Community Development Programs, 1996–2000" (submitted to the U.S. Department of Housing and Urban Development by the State of North Carolina, Raleigh, 1996), 21.

LAWS PROHIBITING DISCRIMINATION

The Fair Housing Act

Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, is the principal federal statute designed to combat housing discrimination.[17] Congress passed the Fair Housing Act in 1968 primarily to eliminate racial discrimination in housing. However, the original protected classes included not only race but also color, religion, and national origin. Gender was added in 1974, familial status and disability in 1988.[18] Title VIII is enforceable through a suit in court or through the filing of an administrative complaint with HUD or a substantially equivalent agency. The North Carolina Human Relations Commission and seven local human relations commissions are considered substantial equivalents to HUD (for information on how to contact these and other human relations commissions in North Carolina, see the sidebar on page 48).[19]

Section 1982

Section 1982 of Title 42 of the U.S. Code—part of the Civil Rights Act of 1866—protects citizens of the United States from racial discrimination in, among other things, private and public rental housing. Although Hispanics are not technically a race (the group consists of many races), the statute prohibits discrimination against Hispanic citizens in rental housing[20] because Section 1982 defines racial discrimination as Congress considered it in 1866. Thus Section 1982 protects citizens against discrimination based not only on racial characteristics but also on ethnic characteristics and ancestry that were considered racial in the nineteenth century. Hispanics were considered a race in 1866.

Section 1981

Section 1981 of Title 42 of the U.S. Code—another part of the Civil Rights Act of 1866—prohibits discrimination based on race in the making of contracts. Section 1981 grants to all people the same rights as "white citizens" to make and enforce contracts. The statute is broad enough to cover housing discrimination cases alleging refusal to rent or to grant privileges that normally accompany rental contracts. Section 1981 applies to private as well as public discrimination.[21] Like Section 1982, Section 1981 protects all people who were considered to be nonwhite in 1866.[22] Section 1981 is broader than Section 1982,

RESOURCES IN NORTH CAROLINA

HUMAN RELATIONS AGENCIES

* Asheville-Buncombe Human Relations
Bob Smith, Director
50 South Frenchbroad Avenue, Suite 214
Asheville, NC 28801
Phone (828) 252-4713
Fax (828) 252-3026

Cabarrus County Human Relations
Greg Stewart, Director
104 Church Street
Concord, NC 28025
Phone (704) 795-3537
Fax (704) 786-7431

* Charlotte-Mecklenburg Community Relations
Willie Ratchford, Director
600 East Trade Street
Charlotte, NC 28202
Phone (704) 336-2424
Fax (704) 336-5176

Duplin County Human Relations
Warren Helper, Director
Wallace, NC

* Durham Human Relations
Chester Jenkins, Director
101 City Hall Plaza
Durham, NC 27701
Phone (919) 560-4107
Fax (919) 560-4092

Fayetteville Human Relations
Theo McClammy, Director
Elmer Floyd, Manager
City Hall—433 Hay Street
Fayetteville, NC 28301
Phone (910) 433-1696
Fax (910) 433-1535

Gaston Human Relations
Hugh Grant, Director
P.O. Box 1578
Gastonia, NC 28053-1578
Phone (704) 866-3692
Fax (704) 852-6048

Goldsboro Community Affairs Commission
LaTerrie Ward, Director
P.O. Drawer A—City Hall
214 North Center Street
Goldsboro, NC 27533
Phone (919) 735-6121
Fax (919) 580-4344

* Greensboro Human Relations
John Shaw, Director
P.O. Box 3136
Greensboro, NC 27402-3136
Phone (336) 373-2038
Fax (336) 373-2505

Greenville Human Relations
Cassandra Daniels, Director
201 Martin Luther King Drive
Greenville, NC 27835
Phone (252) 329-4494
Fax (252) 329-4313

High Point Human Relations
James Pettiford, Director
P.O. Box 230
High Point, NC 27261
Phone (336) 883-3124
Fax (336) 883-3419

Lexington Human Relations
Jean Thompson, Director
28 West Center Street
Lexington, NC 27292
Phone (336) 248-3955

Lumberton Human Resources Department
James Moore, Director
P.O. Box 1388
Lumberton, NC 28359
Phone (910) 671-3832
Fax (910) 671-3814

* New Hanover Human Relations Commission
County Administration Building
402 Chestnut Street
Wilmington, NC 28401
Phone (910) 341-7171
Fax (910) 815-3587

North Carolina Human Relations Commission
Eddie W. Lawrence, Director
217 West Jones Street
Raleigh, NC 27603
Phone (919) 733-7996
Fax (919) 733-7940

* Orange County Human Relations Commission
Annette Moore, Director
110 South Churton Street
P.O. Box 8181
Hillsborough, NC 27278
Phone (919) 732-8181, ext. 2250
Fax (919) 644-3048

Raleigh Human Resources Division
Hardy Watkins, Director
P.O. Box 590
Raleigh, NC 27602
Phone (919) 831-6101
Fax (919) 831-6123

Rocky Mount Human Relations Commission
Loretta Braswell, Director
P.O. Box 1180
One Government Plaza
Rocky Mount, NC 27802
Phone (252) 972-1182
Fax (252) 972-1232

Wilson Human Relations Commission
Maurice Barnes, Director
P.O. Box 10
Wilson, NC 27894-0010
Phone (252) 399-2308
Fax (252) 234-2054

* Winston-Salem Human Relations Commission
Eugene Williams
P.O. Box 2511
Winston-Salem, NC 27102
Phone (336) 727-2429
Fax (336) 748-3002

LATINO ORGANIZATIONS

Latin American Resource Center
P.O. Box 31871
Raleigh, NC 27622
(919) 870-5272

Latin American Association of North Carolina
P.O. Box 20863
Raleigh, NC 27619
(919) 833-8225

El Pueblo Inc.
P.O. Box 16851
Chapel Hill, NC 27516
(919) 932-6880

* HUD substantially equivalent agency.

however, because it protects all people (including aliens), not just citizens.

The Equal Protection Clause

The Equal Protection Clause of the U.S. Constitution requires courts to scrutinize strictly any governmental distinctions based on "suspect classifications," which include race, national origin, and alienage (whether or not a person is a citizen). To recover monetary damages for a violation of the U.S. Constitution, a plaintiff must sue under the Civil Rights Act of 1871, which is codified as Section 1983 of Title 42 of the U.S. Code. The purpose of Section 1983 is to allow people to seek compensation from local governments for violations of federally protected rights. A plaintiff may sue a private defendant under Section 1983 only when some nexus, or connection, exists between the private defendant's action and the state. In other words, there must be some governmental, or state, action. The mere fact that a private landlord has received federal or state funding or is subject to heavy governmental regulation may not by itself provide a sufficient nexus for the court to find state action under Section 1983.[23] The lower courts are in conflict about whether there is sufficient governmental action when a private landlord participates in the federal Section 8 program under Section 1437 of Title 42 of the U.S. Code, which provides vouchers or certificates for low-income people, to subsidize the cost of private rents.[24]

North Carolina Fair Housing Act

The state Fair Housing Act (Chapter 41A of the North Carolina General Statutes) makes illegal the same actions as the federal Fair Housing Act. The protected classes are race, color, sex, national origin, handicapping condition, and familial status. The state Fair Housing Act designates the North Carolina Human Relations Commission, which was created in 1963 to promote civil rights and equal opportunities for North Carolina residents, as the enforcing agency.

GROUNDS FOR LEGAL ACTION

The stories at the beginning of this article illustrate the poor housing conditions in which many Hispanics in North Carolina live. But to make a case of housing discrimination under any of the preceding laws, a plaintiff must show that the services or the facilities made available to Hispanics differ in quality from those made available to other groups.[25] Moreover, under all the housing discrimination laws except the federal and state Fair Housing Acts, the plaintiff also must show that any discrimination was purposeful.[26] This means that, under those housing discrimination laws, for a landlord or a property manager to be held liable, there must be some proof that he or she intentionally denied Hispanic tenants equal enjoyment of rental benefits because they were Hispanic.

Unlawful purposeful discrimination includes the following:

- Using different provisions in leases or contracts with Hispanics than in those with non-Hispanics
- Restricting the availability of facilities, such as an exercise or laundry room, to Hispanics while making the facilities fully available to all others
- Providing slower or lower-quality maintenance or repair services to dwellings owned or rented by Hispanics than to those owned or rented by others
- Requiring Hispanics to pay a higher security deposit than others must pay
- Refusing to return security deposits to Hispanics while refunding deposits to members of other groups
- Evicting Hispanics but not others for late payment of rent

Under the federal and state Fair Housing Acts, discrimination does not have to be purposeful. Discriminatory effect suffices. Thus a practice that is completely neutral on its face might be unlawful under either statute if a showing can be made that the practice has a disproportionate effect on a protected group. The following practices might be unlawful unless there is a legitimate, nondiscriminatory business justification:

- Refusing to allow unrelated persons to rent a unit together
- Imposing stricter occupancy limits than the law requires
- Requiring that English be spoken in common areas

OTHER OPTIONS

Despite decades of judicial and legislative pronouncements, housing discrimination remains an intractable problem. Steps that governments may take to combat the problem include market tests, or audits, to detect

misconduct; partnerships with housing organizations and other civil rights organizations to conduct outreach and education activities; and improved training of appropriate government officials and better coordination of local government efforts pursuant to the fair-housing component of consolidated plans (described later).

Audits

Private organizations like the North Carolina Fair Housing Center provide auditing services to local governments. In an audit, matched teams of at least two people of different racial and ethnic groups but of the same gender and approximately the same age test the market for differential treatment. The auditors receive the same training in how to behave during an audit and are assigned similar incomes, occupations, and family characteristics for purposes of the audit. During the audit they visit landlords or managers in succession (first one team member, then the other) to inquire about available housing. On a detailed survey form, each auditor separately records what he or she is told. Discrimination is determined by systematically less favorable treatment of minority auditors.[5] The resulting data, which are the property of the local government, may be used to refine outreach and education efforts.

Partnerships

Many Hispanics are unaware of either their right to file a discrimination complaint or the process involved in filing one.[5] This reinforces the need for education and outreach. Because the language barrier often is cited as a major contributing factor to Hispanics' failure to access the system, local governments might consider partnerships with local Hispanic organizations to disseminate information in Spanish on laws prohibiting housing discrimination.

Consolidated Plans and the Requirement for Fair-Housing Analysis

Local governments also have the authority and even the legal responsibility in some circumstances to promote fair housing. Local governments receiving community development block grants or HOME low-income assistance funds must consider the impediments to fair housing within their jurisdictions and formulate a consolidated plan for using their federal dollars to overcome the barriers. In formulating the plan, local governments must consider all residents, including those least likely to raise their voices. The fair-housing provision offers governments an opportunity to support staff training and coordinate efforts to promote fair housing.

CONCLUSION

In North Carolina the problem of housing discrimination has become more complicated in recent years as the state's demographics have shifted to a more multicultural society. Housing controls access to economic and social opportunity. It shapes social status and personal identity. A person's place of residence determines the school that his or her children will attend and the kind of community in which the children will grow up. It often affects the quality of public services, including public safety and recreation. To promote the well-being of residents, local governments must protect the right of every one to be free from discrimination in choosing a place to live.

NOTES

1. Fair housing advocates around the state told these stories to the author during interviews from March to May 1999. The stories are consistent with a study of Hispanics' housing conditions in Durham County, which revealed that 33 percent lived with cockroaches or rats; 23 percent lived with insufficient water, heat, or air conditioning; 22 percent had landlords who did not make timely repairs; 19 percent had windows and doors that did not work properly; and 14 percent lived in apartments in which the stove or the refrigerator did not work. Ben Cook et al., "Latinos of Durham County: A Community Diagnosis Including Secondary Data Analysis and Qualitative Data Collection" (unpublished manuscript, The University of North Carolina at Chapel Hill, April 1998).

2. Victoria Basolo et al., "A Study of Impediments to Fair Housing in the State of North Carolina" (prepared for N.C. Division of Community Assistance, N.C. Housing Finance Agency, and N.C. Human Relations Commission, Raleigh, Dec. 1995).

3. *See* Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, Mass.: Harvard University Press, 1993).

4. Basolo et al., "A Study of Impediments."

5. Stella Adams, executive director of the N.C. Fair Housing Center, telephone interview with the author, May 5, 1999.

6. *See* Phillip P. Green, Jr., *North Carolina Statutes Related to Lower-Income Housing* (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1990).

7. *See* "Consolidated Plan for Housing and Community Development Programs, 1996–2000" (submitted to the U.S. Department of Housing and Urban Development by the State of North Carolina, Raleigh, 1996).

8. "Consolidated Plan."

9. Teri Davis et al., "Latino Community of Wake County: A Community Diagnosis Including Secondary Data Analysis and Qualitative Data Collection" (unpublished manuscript, The University of North Carolina at Chapel Hill, April 1997).

10. National Council of La Raza, *Locked Out: Hispanic Underrepresentation in Federal Assisted Housing Programs* (Washington, D.C.: NCLR, 1997).

11. Davis et al., "Latino Community of Wake County."

12. *See* Charles Kamasaki, *Testimony on Segregation and Housing Discrimination in the Hispanic Community* (testimony before the Subcommittee on Housing and Community Development, Committee on Banking and Urban Affairs, U.S. House of Representatives, Feb. 4, 1988) (Washington, D.C.: National Council of La Raza, 1988).

13. John O. Calmore, "Racism Lost and Found: The Fair Housing Act at Thirty," *University of Miami Law Review* 52 (1998): 1111.

14. *See* Jon Hakeken, *Discrimination against Chicanos in the Dallas Rental Housing Market: An Experimental Extension of the Housing Market Practice Survey* (Washington, D.C.: U.S. Department of Housing and Urban Development, 1979) (finding that dark-skinned Mexican Americans face a far higher probability of experiencing at least one incident of discrimination in a typical housing search than light-skinned Mexican Americans do); Margaret L. Udansky, "Hispanics Caught in the Middle, Puerto Ricans Are Facing the Most Isolation," *USA Today*, Nov. 12, 1991, p. 6A.

15. Margery Turner, *Housing Discrimination Study* (Washington, D.C.: Urban Institute and Syracuse University, for the Office of Policy Development and Research, U.S. Department of Housing and Urban Development, 1991).

16. Cook et al., "Latinos of Durham County," citing L. Siebel, personal communication, Oct. 29, 1997.

17. 42 U.S.C. § 3601. The Fair Housing Act, once heralded as the lynchpin of civil rights legislation, has proven to be a weak mechanism for ensuring meaningful access to suitable housing for people of color. Justin D. Cummins, "Recasting Fair Share: Toward Effective Housing Law and Principled Social Policy," *Law and Equality* 14 (1996): 362. Until 1988 the act provided injured parties with minimal economic incentives to initiate corrective lawsuits. John C. Boger, "Toward Ending Residential Segregation: A Fair Share Proposal for the Next Reconstruction," *North Carolina Law Review* 71 (1993): 1583. Amendments in 1988 significantly modified the act by raising the allowable punitive awards from $1,000 to $10,000 for a first offense and by allowing attorney's fees and court costs to be recovered by a prevailing plaintiff. Fair Housing Amendments Act of 1988, Pub. L. No. 100-430, 102 Stat. 1419 (codified at 42 U.S.C. §§ 3602–3608, 3615–3619, 3631; 28 U.S.C. § 2341). The 1988 amendments also extended the time to file a housing discrimination lawsuit from 180 days to 2 years. 42 U.S.C. § 3613. The statute of limitations requires filing an administrative complaint under Title VIII within one year of the practice's occurring. 42 U.S.C. § 3610. Further, before the 1988 amendments, federal authorities had very limited authority to pursue independent federal enforcement efforts. Boger, "Toward Ending Residential Segregation," 1583. The 1988 amendments authorized the U.S. attorney general, the U.S. Department of Justice, and HUD to address housing discrimination more aggressively. For example, HUD now may initiate an administrative complaint, and the DOJ may intervene in a private action if it finds that the case is of general public importance. That authorization has resulted in unprecedented settlements in fair housing cases.

Notwithstanding these changes, the Fair Housing Act has failed to meet its potential for eradicating discrimination in housing. Its case-by-case approach depends heavily on an individual claimant's willingness to take on the financial and emotional burdens of protracted litigation. Moreover, it relies "on a tort liability model [that] requires the identification of a violation, the detection of a perpetrator, and proof at trial that the perpetrator's act violates" the Fair Housing Act. Landlords and their agents rarely reveal an intent to discriminate, and injured parties may be unaware that the law has been violated. Boger, "Toward Ending Residential Segregation," 1584.

18. 42 U.S.C. § 3604, as amended by Pub. L. No. 93-383, 88 Stat. 729 (1979); 42 U.S.C. §§ 3601–3661.

19. The seven local human relations commissions that may handle fair housing complaints within their jurisdictions and seek reimbursement from HUD on a per case basis are those of Asheville-Buncombe, Charlotte-Mecklenburg, Durham, Greensboro, New Hanover, Orange County, and Winston-Salem. Other human relations commissions exist throughout the state. Many of them handle housing discrimination complaints but are not considered substantially equivalent agencies.

20. Shaare Tefila Congregation v. Cobb, 481 U.S. 615 (1987).

21. Runyon v. McCrary, 427 U.S. 160 (1976).

22. Saint Francis College v. Al Khazraji, 481 U.S. 604 (1987).

23. *See* Rendell-Baker v. Kohn, 457 U.S. 991 (1982).

24. *See* Swann v. Gastonia Housing Auth., 675 F.2d 1342 (4th Cir. 1982) (finding sufficient state action); Miller v. Hartwood Apts., 689 F.2d 1239 (5th Cir. 1982) (finding no state action).

25. *See generally* Concerned Tenants Ass'n of Indian Trails Apts. v. Indian Trails Apts., 496 F. Supp. 522 (N.D. Ill. 1980).

26. General Bldg. Contractors Ass'n v. Pennsylvania, 458 U.S. 375 (1982).

27. John Yinger, "Access Denied, Access Constrained: Results and Implications of the 1989 Housing Discrimination Study," in *Clear and Convincing Evidence: Measurement of Discrimination in America*, ed. Michael Fix and Raymond J. Struyk (Washington, D.C.: Urban Institute Press, 1993).

28. John Herrera, executive director, El Pueblo Inc., interview with the author, April 20, 1999.

Helping Children Reach Their Potential

One School's Experience

KERRY CLEMENT

As the "family specialist" (school social worker) at Carrboro Elementary School, which is part of the Chapel Hill–Carrboro (N.C.) City Schools, I work with close to 150 families, about one-fourth of whom are Hispanic. My role is to help all families and students resolve issues that may be interfering with students' ability to reach their potential in school. These issues range widely, from attendance to medical matters to parenting skills to school involvement. I do much of my work in the community and in homes. I also spend considerable time functioning as a liaison to community agencies, helping locate services for the families I work with. This article describes my growing work with the Hispanic population in Carrboro. It also discusses the various needs of that population and the ways in which the school and the school system are trying to meet them. [For a discussion of schools' legal duties toward students who may not speak English proficiently—and toward the small proportion who may not be legal immigrants—see the sidebar, page 54.]

Carrboro Elementary serves about 540 students in kindergarten through fifth grade, 58 percent of them white, 20 percent African American, 16 percent Hispanic, and 6 percent of other races and backgrounds. The number of Hispanic students at the school has increased significantly in the 1990s, from 10 (2 percent) in 1993, to 49 (9 percent) in 1997, to 86 (16 percent) in March 1999. The growth in this group has been greater than that in any other Carrboro Elementary group.

Working with the expanding Hispanic population at the school has been challenging and rewarding. Most of the Hispanic parents who are referred for my services speak Spanish only. Both the parents and the students may

have skill deficiencies in their native language, in many instances the result of lack of education according to North American standards. Many of the families that I work with have come from poverty in their native countries. Some parents describe living in shacks with dirt floors and often eating only one meal a day. Many parents report that they have come to the United States to offer their children a better life. Generally they strongly support their children's education and are very grateful for any assistance they or their children receive from the school.

One or both parents in the families I serve typically work long days (10–12 hours), often at physically demanding labor such as construction or landscaping. Sometimes the pay is less than the minimum wage. For example, one father washes dishes at a restaurant from 10:00 in the morning until midnight, six days a week, with only a lunch and a dinner break. He earns $3 an hour.

Most Hispanic children who attend Carrboro Elementary live in communities that have become predominantly Hispanic as new arrivals have searched for support and commonality. Most parents report that their life is much better in the United States than in their countries of origin, although many North Americans would consider it poverty.

Historically in the Chapel Hill–Carrboro City Schools, students of "limited English proficiency" typically have been children of people who are in the United States for a limited time to attend graduate school at The University of North Carolina at Chapel Hill. In general, the parents have been somewhat bilingual, if not fluent in English, and thus their need for translators has been very limited. Their need for the services of a family specialist also has been limited.

However, as the number of Carrboro students and families who speak Spanish only has swelled and as those families have taken up long-term residence, the need for translators to communicate with them has become obvious. For many years Carrboro Elementary has offered Spanish language to students in grades 2–5, and as a result, the school has two Spanish teachers, one full-time and one part-time. Until recently these two teachers and the English-as-a-second-language (ESL) teacher who spoke Spanish fluently did most of the outreach and the translation to integrate Hispanic families into the school. They translated at parent-teacher conferences, helped new parents with forms, checked with families when students were not at school, and helped resolve issues with Spanish-speaking students during the school day. They did this work outside their teaching time, frequently during their planning time or in the evenings and on weekends.

As the number of parents and teachers seeking these services grew, it became a struggle for the Spanish teachers and the Spanish-speaking ESL teacher to meet everyone's needs and fulfill their teaching responsibilities. Also, it became apparent that because of the language barrier, services such as those of the family specialist were not reaching the Spanish-speaking-only families who could benefit from them. The Spanish teachers and the Spanish-speaking ESL teacher began to advocate for a nonteaching bilingual or translator position. In response, in fall 1998 the Chapel Hill–Carrboro City Schools contracted with a bilingual person to provide translation services. At first, the services were somewhat limited, focused on parent-teacher conferences. Soon, however, staff obtained permission to use the bilingual contractor as needed. Also, since fall 1998, the school has contracted with a second bilingual person.

Many parents report that they have come to the United States to offer their children a better life. Generally they strongly support their children's education and are very grateful for any assistance they or their children receive from the school.

The school system is committed to providing ESL services, but resources have not always been sufficient to bridge the language barrier. For the 1998–99 school year, the district as a whole had 8 ESL teachers serving 400 students, a ratio of 1 to 50. Often such a ratio does not allow children to make a full transition to English before they are "mainstreamed" (integrated full-time into the regular classroom) and required to take the North Carolina end-of-grade tests.

Another way in which Carrboro Elementary has attempted to help Hispanic families adjust to the school is to create the position of Hispanic liaison on the parent-teacher association (PTA) board. The liaison, a bilingual parent, keeps members of the Hispanic community informed about school activities so that they may participate. This person sends information home in Spanish with the students and contacts parents personally, by telephone, to invite them to events.

Despite the need for greater funding, the parents of the Hispanic students have generally praised the support services that Carrboro Elementary provides for their children. "When I would come to pick up my

SCHOOLS' LEGAL DUTIES

Most children enrolled in North Carolina's public schools are U.S. citizens, and the public schools' obligation to provide them with an education is not in doubt. Readers may wonder, though, whether public schools must serve children who are not U.S. citizens—who may, in fact, be illegal immigrants—and whether public schools must assist children, citizens or not, whose proficiency in English is limited. This sidebar addresses those issues.

MUST PUBLIC SCHOOLS ENROLL AND PROVIDE SERVICES TO ILLEGAL IMMIGRANTS?

Yes. Although the U.S. Constitution does not guarantee children a right to an education,[1] once a state provides public schooling, it may not discriminate on the basis of national origin. The Equal Protection Clause of the Fourteenth Amendment protects all people, whether they are legally or illegally present in the United States. Public schools may not refuse to enroll or provide services to a person on the basis of his or her immigration status.

The U.S. Supreme Court established this proposition in 1982 in *Plyler v. Doe*.[2] In that case the Court reviewed a Texas statute that prohibited illegal immigrants from enrolling in the state's public schools. For the statute to meet the requirements of the Equal Protection Clause, which generally requires that federal and state laws treat all people equally, Texas had to show that some substantial state interest justified its denial of educational benefits to illegal immigrants. The Court found on balance that the state's interests were insufficient to warrant denying educational benefits to a select group of children.

In its opinion the Court emphasized the extraordinary importance of education, both to individuals and to society as a whole. It found that education plays a fundamental role in maintaining the fabric of American society and is perhaps the most important function performed by state and local governments. Denying a free public education to children because of their immigration status would result in a lifetime of hardship for them, the Court reasoned. Also, the Court observed, the children who bore the burden of the statute were innocent of any wrongdoing, having little or no control over where they lived and whether their parents complied with U.S. immigration laws.

The Court rejected each of the justifications offered by the state of Texas for its policy, finding them insufficient to warrant the potentially devastating consequences of denying an education to a child. The Court also found little evidence to support the state's assertions—for example, that free public education leads to illegal immigration, which in turn imposes a significant burden on the state's economy. To the contrary, the Court noted, the dominant incentive for illegal immigration is employment; few if any illegal immigrants come to the United States to avail themselves of a free education. Further, the available evidence suggested that illegal immigrants underuse public services while contributing their labor to the local economy.

After *Plyler*, California voters approved a law (Proposition 187) denying the benefits of public elementary and secondary education to illegal immigrants. Relying on the mandate of *Plyler*, a federal district court declared the law unconstitutional.[3]

MUST PUBLIC SCHOOLS ASSIST STUDENTS WITH LIMITED PROFICIENCY IN ENGLISH?

Yes. The law requires public schools to take "appropriate action" to remedy any language deficiencies of students with limited English proficiency (LEP). In the 1974 decision *Lau v. Nichols*, the U.S. Supreme Court held that, by failing to provide English-language instruction to children who do not

kids," a parent told me, "I could see how much attention the teacher was giving them." The children themselves are aware and appreciative of their teachers' efforts. "My teachers would give me worksheets and bilingual books when the others were doing things that were too hard for me," recalled one fifth-grade girl. "Also, if there was something I didn't understand, they would finish explaining it to the others, and then they would explain it to me slowly." A fifth-grade boy reported, "My teacher would give me short assignments to do, and she would let me write them in Spanish."

The parents often are surprised and overwhelmed to learn how intelligent their children are. Many feel that their children already have far surpassed them in educational level.

Most of the parents consider themselves a part of the school and are comfortable in the school setting. "We feel welcome at Carrboro Elementary," says one parent. "Our children are happy because the teachers try to communicate with us. They call us and send us notes in Spanish. And if there is a meeting at the school, a translator comes to help us."

The families have warmly welcomed me into their homes, and they have been comfortable coming to my

speak English, a public school violates Title VI of the Civil Rights Act, which prohibits discrimination based on national origin. Such a failure denies these students a "meaningful opportunity" to participate in public education.[4]

Shortly thereafter, Congress passed the Equal Educational Opportunities Act.[5] This law prohibits states from denying educational opportunities to individuals on account of their race, color, sex , or national origin by failing to take "appropriate action" to overcome language barriers that impede equal participation in instructional programs.

An increasing number of students in North Carolina have limited English proficiency. The North Carolina Department of Public Instruction (DPI) counted 28,771 students in the 1997–98 school year who were enrolled in an LEP program. DPI estimates that, by the 1999–2000 school year, 35,771 students will be participating in such a program.[6]

Schools must take two basic steps to satisfy the requirement of "appropriate action." First, they must identify and evaluate LEP students. Second, they must devise and implement a sound educational program that helps LEP students overcome language barriers. Such a program may take various forms, among them English as a second language (ESL), which removes LEP students from the regular classroom for a short time each day for instruction in English; and bilingual education, which essentially leaves LEP students in the regular classroom, where they receive instruction in both English and Spanish until they develop proficiency in English.[7]

There is no consensus on which kind of program is the most effective, and the courts give local education institutions latitude in meeting the needs of LEP students. Courts generally use a three-part test to determine whether a school has met its obligations:[8]

1. Is the program based on an educational theory recognized as sound by experts in the field, or at least as a legitimate experimental strategy?
2. Is the program reasonably calculated to implement that theory?
3. After being used for a sufficient trial period, has the program produced satisfactory results?

Ultimately the courts focus on whether schools have "made a genuine and good faith effort, consistent with local circumstances and resources, to remedy the language deficiencies of their students."[9]—*Chad Ford*

The author is a third-year law student at the Georgetown University Law Center. He was a law clerk at the Institute of Government in summer 1999.

NOTES

1. San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973). The right to a free public education is guaranteed by the North Carolina Constitution, however. *See* Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997).
2. Plyler v. Doe, 457 U.S. 202 (1982).
3. League of United Latin American Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995), *off'd on reconsideration*, 997 F. Supp. 1244 (C.D. Cal. 1997) (finding additional support for holding in 1996 Welfare Reform Act).
4. Lau v. Nichols, 414 U.S. 563 (1974). Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d), prohibits exclusion from participation in, or denial of benefits under, any program receiving federal assistance, on the basis of race, color, or national origin.
5. 20 U.S.C. §§ 1701–1758.
6. Frances Hoch, section chief, English as a Second Language, DPI, telephone interview with the author, June 14, 1999.
7. For a more detailed description of such programs, see Ruth Dowling, "The Rights of Limited English Proficient Students," *School Law Bulletin* 24 (Fall 1993): 11–25.
8. *See* United States v. Texas, 680 F.2d 356, 371 (5th Cir. 1982).
9. *See* Castaneda v. Pickard, 648 F.2d 989, 1009 (5th Cir. 1981).

office in the school. However, finding resources to meet their needs is often challenging. The circumstances of their presence in the United States frequently block access to community resources. Many of the traditional resources require a Social Security number or a "green card" (Immigration and Naturalization Service form I-551, the Alien Registration Receipt Card, which authorizes the cardholder to work). Some of the Hispanic adults with whom I work have neither.

To enroll their children in public school, families must understand the registration process and produce a birth certificate and proof of residence. Most of the time, parents have a birth certificate. However, the registration process and proof of residence can be roadblocks. Word of mouth in the community seems to be effective in communicating how to register. Nonetheless, at times I learn about a family that has been in the community for several months and is keeping the children at home with their mother. For example, in an adult ESL class recently, the instructor was asking the students—all males, all fathers—about their families. One student described his children, and the instructor asked where they went to school. He replied that they did not. The family had been in the county for four

months, the father in the ESL class for four weeks. The ESL instructor notified me, and we arranged to register the children and take the family on a tour of the school.

As for proof of residence, because many families new to America move in with a relative, they do not have the necessary documentation, such as a lease or a bill in their name. The school system has made sure that it has information available in Spanish for these families about how to get an affidavit of their residency, an alternative form of proof. Sometimes, though, getting the children registered for school takes the creativity of a translator, a family specialist, and the registrar.

Helping students obtain adequate health care—a virtual prerequisite to their reaching their educational potential and sometimes a legal requirement—is a major challenge. For example, state law requires certain immunizations for school enrollment. Children may *register* for school without the immunizations, but to stay in school, children must be in the process of getting them. Because of the type of employment that many of the families have, they do not receive health benefits through their employer. Most of the families are either afraid to go to a government office to apply for services, or already have been informed that they do not qualify for a resource because they do not have the necessary information, such as verification of income (typically a pay stub). As a result, programs such as Medicaid are not being made available to them. Many health clinics also require information such as verification of income in order to extend financial assistance under their sliding-scale fees. Even a nominal fee of $15 per patient per visit can be unrealistic for a family with a monthly income of $1,000.

The Student Health Action Clinic in the Carrboro community has been a great resource for all families but especially for Hispanics. This UNC-CH clinic operated by medical students under the supervision of an attending physician is open on Wednesday evenings with no appointment necessary and no cost to the patient. The Inter-Faith Council for Social Service also offers an evening clinic and often has had a bilingual physician among the medical personnel who rotate through.

Transportation can be another roadblock to health care. If a family has a car, the father typically drives it to work. Frequently fathers work late hours and cannot go with their families to see a doctor. They hesitate to take a day off work because their families need the money they earn. Many of the mothers I work with prefer to have their husbands accompany them whenever they interact outside the home or the community. When the husbands cannot go, some mothers are uncomfortable about taking their children to a medical facility with which they are unfamiliar.

This year the Inter-Faith Council created a Hispanic division to ensure that Spanish-speaking families have access to all the council's services. Staffed by a bilingual person from AmeriCorps (a volunteer service organization created by the federal government in 1993), the division has been a tremendous support in locating resources of all kinds, translating, and physically helping families get to medical services.

There are similar roadblocks in obtaining other services that help children reach their educational potential—food, housing, legal assistance, and more. Once a family is comfortably connected with services, it will usually use them. However, the challenge is to connect the family and secure the level of comfort and trust necessary to support the connection.

Off the Press

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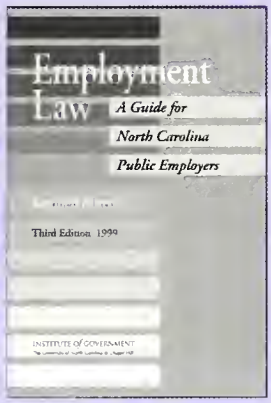

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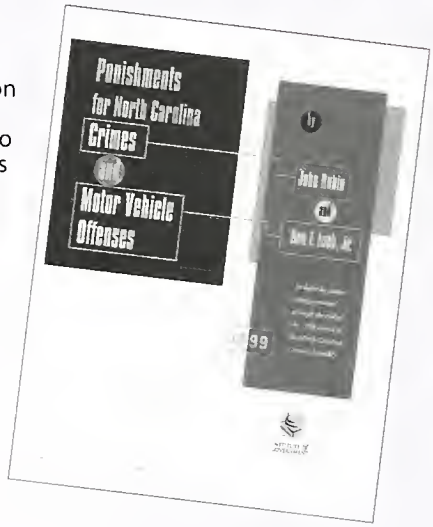

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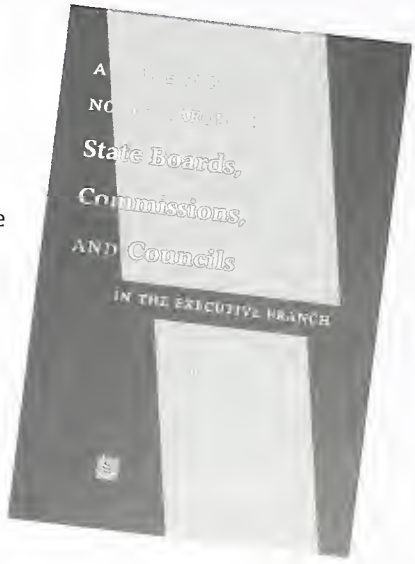

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