

TARNISHING THE GOLDEN DOOR:

**A REPORT ON THE WIDESPREAD DISCRIMINATION AGAINST IMMIGRANTS AND
PERSONS PERCEIVED AS IMMIGRANTS WHICH HAS RESULTED FROM THE
IMMIGRATION REFORM AND CONTROL ACT OF 1986**

AUGUST 1989

THE CITY OF NEW YORK COMMISSION ON HUMAN RIGHTS

**DR. JOHN E. BRANDON
COMMISSIONER/CHAIRPERSON**

**EDWARD I. KOCH
MAYOR**

DEDICATION

This Report is dedicated to the memory of Felix Resto, Jr., a participant in the Immigrant Discrimination Project, who was a tireless fighter for justice and equal opportunity for all New Yorkers.

ACKNOWLEDGEMENTS

Special thanks to the New York Community Trust for funding the documentation study and this Report. Special thanks to Commissioner Glenn Lau-Kee for donating computer services.

COMMISSION STAFF

COMMISSIONERS

Dr. John E. Brandon, Commissioner/Chairperson
Rabbi Jacob Bronner
Dolly Christian
Dr. John Hong
Glenn Lau-Kee, Vice-Chairperson, Chair of Commissioners'
Immigrant Discrimination Committee
Carol Lister
Edward Mapp
Burt Neuborne
Philip Rivera
Xavier Rodriguez
Harilyn Rousso
Monsignor John Servodidio
David Wertheimer
Marie Wilson, Vice-Chairperson

EXECUTIVE STAFF FOR THE PROJECT

Rolando Acosta, Deputy Commissioner for Law Enforcement
Russell Pearce, General Counsel
Ben Tucker, First Deputy Commissioner

PROJECT COORDINATOR

Russell Pearce

HEARING COORDINATORS

Rockwell Chin
Juan Fernandez
Minette Gorelik
Michelle Quash

DOCUMENTATION COORDINATOR

Ann Crenovich

DOCUMENTATION ADVISORS

Pamela Goldberg
Agustin Lao

AUTHORS

Adam Crain
Ann Crenovich
Andrew Goldfarb
Valarie Hing
Russell Pearce

RESEARCH ADVISOR

Juan Fernandez

EDITOR

Jordana Zubkoff

PROJECT STAFF

Karen Arthur, Oscar Asencio, Kevin Atkins, Alemayehu Ayele, Katie Bracken, Yvette Bravo, Judith Charrington, Sol Cox, Lisa Douglas, Joe Falcon, Mary Faulk, Ted Finkelstein, Sherry Fisher, Jon Forster, Ghislaine Germaine, Melvin Gladney, Yanghee Hahn, Marie Harrell, Melvin Head, Steve Herrick, Lynne Hurdle, Barry Jamison, Charles Jenkins, Gloria Jordan, Cheryl Keshner-Asch, Norma Jean King, Adele Levy, Cyria Lobo, David Lopez, Ramon Maldonado, Edwidge Menard, Dorene Moore, William Newlin, Frank Ortiz, Gloria Osborne, Judy Outlaw, Anna Palmer, Patricia Pavez, Delma Perez, Gilda Pichardo, Joseph Placide, Georgette Punter, Nancy Quinones, Herbert Quinones, Conant Radcliffe, Ramon Raimundi, Barbara Reeves, Felix Resto, Jr., Carmen Rodriguez, Cindy Roeser, Lloyd Rogler, Anthony Rhone, Kathleen Russell, Fritz Sanchez, Domingo Santana, Marlin Segarra, Lonnie Soury, Rosa Suarez, Alma Torres, Robert Weber, Janice Williams, Elizabeth Zarrella

Give me your tired, your poor,
Your huddled masses yearning to breathe
free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tossed, to
me:
I lift my lamp beside the golden door.

-- Emma Lazarus

In January 1989 a Puerto Rican man applied for a job as a mechanic in an auto-body shop in Queens. When the owner of the shop asked him for a green card to prove his work eligibility, the man told him, "Puerto Ricans are citizens, they don't have green cards," and offered his birth certificate and driver's licence. But the owner refused to hire this man because he didn't want his competitor to report him to the INS.

In May 1989 a Polish immigrant was hired to work for a construction design company at \$8 an hour, but only received \$7 an hour. When he presented papers confirming his status as a work-authorized political asylee and asked the boss to pay him at the agreed-upon wage rate, he was fired.

CONTENTS

EXECUTIVE SUMMARY	1
INTRODUCTION	5
PART I: THE CONGRESSIONAL MANDATE: INVESTIGATING WHETHER IRCA HAS RESULTED IN INCREASED DISCRIMINATION	6
A. The Congressional Mandate to Investigate Discrimination	6
B. The Test for Discrimination	8
C. What Evidence Satisfies the Test	12
PART II: WHAT NEW YORK AGENCIES OTHER THAN THE COMMISSION HAVE FOUND	15
A. New York State Inter-Agency Task Force on Immigration Affairs	15
B. Center for Immigrants Rights (CIR)	16
C. New York Immigration Hotline	16
PART III: THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS IMMIGRANT DISCRIMINATION PROJECT	17
A. The Public Hearing	17
B. The Documentation Study	21
C. The Hiring Audit	29
PART IV: FINDINGS AND RECOMMENDATIONS	32
A. Findings	32
B. Recommendations	37
APPENDIX: UNITED STATES GENERAL ACCOUNTING OFFICE DATA COLLECTION FORM	38



EXECUTIVE SUMMARY

The New York City Commission on Human Rights sought to record the nature and breadth of discrimination in New York City against immigrants and people perceived as immigrants, and to provide the United States General Accounting Office (GAO) with evidence of discrimination for GAO's November 1989 report to Congress about whether the implementation of employer sanctions under the Immigration Reform and Control Act of 1986 (IRCA) has caused increased discrimination based on national origin and citizenship status.

WHAT THE COMMISSION DID: THE IMMIGRANT DISCRIMINATION PROJECT

1. The Commission reviewed the mandate requiring GAO to make three annual reports to Congress about the extent of IRCA-related discrimination and evaluated GAO's efforts to carry out its mandate. The Commission concluded that GAO defined its task in a way that precludes a determination of widespread discrimination. The Commission further concluded that GAO ignored relevant indicators of discrimination that it collected.
2. The Commission conducted a two-day public hearing on November 15 and 16, 1988 at which 70 witnesses testified to widespread discrimination. In addition, the testimony revealed that discrimination is occurring not only in employment, but also in housing and public accommodations.
3. Following up on the hearing, the Commission collected questionnaires from victims of discrimination during outreach workshops conducted in May and June 1989. The purpose of this documentation campaign was to fill gaps left by GAO in its second report and to provide GAO with a significant body of anecdotal evidence. Commission representatives conducted 55 workshops through community organizations and in the English as a Second Language, history, and civics classes run by the State

Legalization Impact Assistance Grants Program. The presentations, which reached about 1650 people, were conducted in English, Spanish, Haitian Creole, and Chinese. The Commission documented 343 complaints of discrimination in the areas of employment, housing, and public accommodations, of which 214 involved authorized workers and citizens and occurred after the implementation of employer sanctions on July 1, 1988. One-half of the employment-related complaints related to terms and conditions of employment, indicating the need to extend protection for workers beyond hiring, firing, and recruitment or referral for a fee, the aspects of employment now covered by IRCA's antidiscrimination provision.

4. At the suggestion of New York City Mayor Edward I. Koch, the Commission conducted a hiring audit in June 1989. In accordance with testing procedures commonly used in discrimination investigations, pairs of accented and non-accented testers answered help-wanted advertisements to test for discrimination by employers against foreign-sounding applicants. The hiring audit found that 41% of employers treated applicants with accents differently than applicants without accents. Of the employers contacted, 28% either told accented testers that the job was filled and told non-accented testers the same job was open or gave interviews to non-accented testers but not to accented testers. An additional 13% of employers asked only accented individuals for documents. This last group may very well be unaware that they are violating IRCA. Their actions, however, may have a negative impact on employment applicants. These results suggest that major efforts are necessary to educate employers about the requirements of IRCA.

FINDINGS

1. The employer sanctions provision of IRCA has resulted in widespread discrimination against immigrants and persons perceived as immigrants.

2. Employers are discriminating against citizens and authorized alien workers on the bases of national origin and alien status.
3. Discrimination resulting from employer sanctions extends from hiring and firing to terms and conditions of employment.
4. Employers are intentionally engaging in discriminatory practices.
5. Widespread policies that require all potential employees to produce documents in advance of the IRCA deadlines have a significant discriminatory impact upon ethnic and immigrant communities.
6. Many employers are treating authorized alien workers or other individuals who look or sound foreign differently because the employers are confused by IRCA's requirements.
7. IRCA's effects have reached beyond employment, indirectly causing discrimination in housing and public accommodations.
8. CAC interpreted its mandate in an unjustifiably narrow way and used inappropriately narrow definitions of discrimination for its investigation of sanctions-related discrimination.
9. GAO's methodological approach is biased against identifying the discrimination that exists.

RECOMMENDATIONS

1. GAO should reinterpret the mandate for its third report in a way that makes it possible to determine whether a "widespread pattern of discrimination" exists.

2. GAO should acknowledge that the evidence it and others have collected indicates that employer sanctions have caused a widespread pattern of discrimination, and report this in its third report to Congress.

3. GAO should recommend that Congress enact legislation providing broader protections against discrimination by extending the antidiscrimination provision of IRCA
 - a) to include terms and conditions of employment,
 - b) to protect against discrimination in housing and public accommodations, and
 - c) to protect authorized workers who do not fall within the technical category of "intending citizens."

4. Congress should remove the provision of IRCA that allows employers to prefer citizens over immigrants in hiring when the applicants are equally qualified.

5. The federal government should launch an extensive campaign to educate employers and workers about IRCA, particularly the employer sanctions and antidiscrimination provisions.

INTRODUCTION

When employer sanctions went into effect in June 1988, the New York City Commission on Human Rights anticipated that discrimination based on national origin or citizenship status against both citizens and authorized immigrant workers would result. The Commission felt it necessary to supplement the documentation efforts of the United States General Accounting Office (GAO), which the law mandated to report on the extent of discrimination resulting from sanctions. The Commission quickly organized its three-part Immigrant Discrimination Project to record evidence that GAO disregarded -- anecdotal information from victims of discrimination.

The Commission began the Project with a two-day public hearing in November 1988. The hearing produced evidence of substantial discrimination at the same time GAO was reporting to Congress that it could not determine a widespread pattern of discrimination resulting from employer sanctions.

The Commission used the compelling testimony offered at the hearing as a springboard to launch the second and third phases of the Project. The documentation study, which involved outreach to immigrant communities in May and June 1989, collected 343 voluntarily completed questionnaires from victims of discrimination. A hiring audit, suggested by New York City Mayor Edward I. Koch, found that 41% of employers treated job applicants with accents differently from those without accents.

Based on its analysis of the Congressional mandate to GAO, the Commission determined that GAO's interpretation of its task was too narrow and that the methodology used to determine whether discrimination had resulted from employer sanctions was designed to fail. GAO discounted considerable evidence of discrimination that it collected. The Commission urges GAO to report to Congress that, as the Commission's findings show, employer sanctions have caused a widespread pattern of discrimination against immigrants and persons perceived as immigrants.

PART I
THE CONGRESSIONAL MANDATE: INVESTIGATING WHETHER IRCA HAS
RESULTED IN INCREASED DISCRIMINATION

A. THE CONGRESSIONAL MANDATE TO INVESTIGATE DISCRIMINATION

When Congress included employer sanctions in IRCA,¹ it worried that employer sanctions would cause discrimination against "foreign-looking" or "foreign-sounding" persons, or against authorized alien workers.² Congress feared that employers, out of a mistaken belief that IRCA permitted them to act on their prejudices or out of a misguided effort to protect themselves from sanctions, might initiate "citizen-only" or "green card-only" policies, or fire, penalize, or refuse to hire persons who look or sound foreign.

Accordingly, Congress took steps to prevent and monitor discriminatory hiring practices.³ First, Congress included in

¹ The employer sanctions provision, 8 U.S.C.A. Sec. 1324a(a)(1) (West Supp. 1988) states:

"It is unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States --

(A) an alien knowing the alien is an unauthorized alien with respect to such employment, or

(B) an individual without complying with the requirements of subsection (b) of this section."

² In the legislative history, Senator Kennedy spoke of being able "to rectify any unintended discrimination" resulting from employer sanctions (131 Congressional Record, S11422 [daily ed. Sept. 13, 1985]). In the House, several Representatives, including Representative Garcia, echoed Senator Kennedy's sentiments. See Antidiscrimination Provision of H.R. 3080: Joint Hearing Before the Subcomm. on Immigration, Refugees, and International Law of the House Judiciary Comm. and Subcomm. on Immigration and Refugee Policy of the Senate Judiciary Comm., 99th Cong., 1st Sess. 123-128 (1985) (statement of Rep. Garcia).

³ To allow the INS to monitor employers' hiring practices under IRCA, the law requires all employers to complete an Employment Eligibility Verification Form (known as the I-9 form), which lists all acceptable work-authorization documents, for every employee hired after November 6, 1986. Employers need not fill out an I-9 form for "grandfathered" employees, those hired before November 6, 1986.

IRCA an antidiscrimination provision⁴ which outlawed discrimination on the basis of national origin or citizenship status against citizens and authorized workers who were intending citizens. Second, Congress ordered GAO to monitor the extent of discrimination and to issue three annual reports commencing in November 1987, one year after IRCA was enacted.⁵

IRCA assigned GAO three tasks in its investigation of discrimination. First, IRCA instructed GAO to determine if "a widespread pattern of discrimination has resulted against citizens or nationals of the United States or against eligible workers seeking employment solely from the implementation of [employer sanctions]."⁶ If GAO finds widespread discrimination, Congress is to consider whether to end employer sanctions.

Second, IRCA required GAO to determine whether "no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of" employer sanctions.⁷ If GAO finds "no significant discrimination," Congress is to consider ending IRCA's antidiscrimination provision.

⁴ 8 U.S.C.A. Sec. 1324b (West Supp. 1988) states:

"(a) Prohibition of Discrimination based on national origin or citizenship status

(1) General Rule

It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee of the individual for employment or the discharging of the individual from employment --

(A) because of such individual's national origin, or
(B) in the case of a citizen or intending citizen, because of such individual's citizenship status."

⁵ For a complete summary of GAO's responsibilities outlined by IRCA, see the United States Commission on Civil Rights, The Immigration Reform and Control Act: Assessing the Evaluation Process (hereinafter "USCCR Report"), 1989, pp. 1-3.

⁶ 8 U.S.C.A. Sec. 1324a(1)(1)(A) (West Supp. 1988).

⁷ Id. at Sec. 1324b(k)(2)(A)(i) (West Supp. 1988).

Third, IRCA asked GAO to make "a specific determination as to whether the implementation of [Sec. 1324a] has resulted in a pattern of discrimination in employment (against other than unauthorized aliens) on the basis of national origin," to describe the scope of the pattern if one is found, and to make appropriate recommendations to Congress.⁸

B. THE TEST FOR DISCRIMINATION

Neither IRCA nor its legislative history expressly defines "widespread pattern of discrimination," "resulting solely from the implementation of," or "significant discrimination." However, the legislative history and context of discrimination law offer guidance in applying these terms.

1. "Widespread pattern of" and "no significant" discrimination

Common usage suggests that "widespread discrimination" would affect more than one or two industries, populations, geographical regions, and ethnic groups. In the context of the legislative history of IRCA, the term "widespread pattern" was introduced in comparison to "not just a few isolated cases."⁹ This usage is similar to the common usage in other discrimination laws of a "pattern" as activity "repeated, routine, or of a generalized nature."¹⁰ Similarly, "significant," while at times equated with "strong" and "serious," appears to set a standard no higher than "not just a few isolated cases."¹¹ The essential difference

⁸ *Id.* at Sec. 1324a(j)(2) and Sec. 1324a(j)(3) (West Supp. 1988).

⁹ Remarks by Senator Kennedy, 131 Congressional Record, S11422 (daily ed. Sept. 13, 1985).

¹⁰ *Teamsters v. United States*, 431 U.S. 324, 336-37 (1977) (quoting remarks by Senator Humphrey).

¹¹ The USCCR Report equates "significant discrimination" with "pattern or practice of discrimination," "pattern of discrimination," and "widespread pattern of discrimination" (USCCR Report, pp. 16-17). For a thorough analysis of the legislative and judicial background behind "widespread pattern" and "no significant," see USCCR Report, pp. 13-17.

between the "widespread pattern" standard and the "no significant" standard is that one requires GAO to prove the existence of a problem and the other requires GAO to disprove it. If the evidence GAO discovered was inconclusive, then GAO would be unable to prove either "widespread discrimination" or "no significant discrimination."

2. "Caused solely by employer sanctions"

During initial discussion of this phrase, Senator Symms said sanctions should be terminated if they "are making a contribution" to discrimination. The legislators settled on "caused by" as acceptable language.¹² All cases of discrimination related to employer documentation of authorized workers, including those that involve document validation or completion of the I-9 form, are directly attributable to employer sanctions. Before November 1986, employers were not required to check workers' papers for work authorization, nor to complete the employment verification form.

3. "Discrimination"

Does "discrimination" include discriminatory effects?

Common usage of "discrimination" refers to both disparate treatment and disparate impact. The language of IRCA clearly indicates Congress' intention to have GAO report on both forms of discrimination. In its directive to GAO, Congress consistently uses the phrase "has resulted . . . from the implementation of employer sanctions," indicating its interest in the effects of

¹² Remarks of Senators Symms and Simpson, 131 Congressional Record, S11425 (daily ed. Sept. 13, 1985). For a detailed analysis of "caused solely by employer sanctions," see the Report of the Committee on Immigration and Nationality Law of the Association of the Bar of the City of New York, Methodology, Legal Definitions and Interpretations in Documenting the Employer Sanctions and Anti-Discrimination Provisions of IRCA, August 1989, pp. 45-48.

the sanctions, regardless of intent.¹³

Does "discrimination" include citizenship or alien status discrimination?

GAO's decision to limit its study to discrimination based on national origin and not discrimination based on alien status is contrary to IRCA.¹⁴ Discrimination based on national origin refers to discrimination based on one's real or perceived ancestry, whatever his or her citizenship status. Discrimination based on alien status, such as a "citizen-only" or "green card-only" policy, refers to discrimination based on one's official citizenship status (e.g., citizen, temporary resident, political asylee) according to the United States Immigration and Naturalization Service (INS), regardless of national origin. IRCA expressly instructs GAO to report on discrimination against "any eligible workers," a term which includes work-authorized aliens as well as citizens and nationals.

Three of the four references to GAO's reporting obligations use the term "discrimination" generally. One reference is

¹³ Edmund D. Cooke, Jr., Counsel to Committee on Education and Labor of the House of Representatives, noted that the language of section 1324b was selected carefully. "[I]t was assumed and intended that the use of the phrase 'pattern or practice' would permit use of a disparate impact standard" (Speech of Cooke, submitted at the Symposium of the Association of the Bar of the City of New York, "Methodology, Legal Definitions, and Interpretations in Documenting the Employer Sanctions and Anti-Discrimination Provisions of IRCA: The Results So Far" [hereinafter "NYC Bar Conf."], January 30, 1989, p. 5). Representative Berman, member of the House Subcommittee on Immigrant Refugees and International Law, echoed Cooke: "Unquestionably, it was the intent of the Congress that the criteria for proof of discrimination under the Frank Amendment [1324b] should be . . . discriminatory effect regardless of intent" (Remarks of Representative Berman, NYC Bar Conf., p. 5). However, President Reagan, when signing the bill, interpreted the antidiscrimination provision to cover only instances of disparate treatment. Cooke stated definitively that "The position taken by the Reagan administration is disingenuous and incorrect." (Speech of Cooke, NYC Bar Conf., p. 5.)

¹⁴ United States General Accounting Office, Office of the General Counsel, "Legal Analysis of the Comptroller General's Determinations under the IRCA Termination Provisions," draft, July 14, 1989, p. 16.

limited to "national origin." The express use of national origin in one reference indicates that where not so specified, "discrimination" is intended to include both national origin and alien status discrimination. This interpretation is consistent with the Congressional concern about discrimination based on alien status that led Congress to prohibit such discrimination in the IRCA antidiscrimination provision.

Does "discrimination" include terms and conditions of employment?

GAO's assertion that it need not investigate discrimination in the terms and conditions of employment is also contrary to IRCA. The mandate to GAO uses only the broad term "discrimination" when outlining what GAO must cover in its report, unlike the antidiscrimination provision, which limits consideration to matters of hiring, firing, and recruitment or referral for a fee. Moreover, the line that separates hiring and firing from terms and conditions of employment is vague. For example, an employer might create intolerable working conditions, forcing any reasonable employee to resign.¹⁵

Does "discrimination" require identifiable victims?

In its 1988 report, GAO found that 16% of employers surveyed admitted that they had begun to adopt discriminatory policies against persons who looked or sounded foreign. GAO concluded that such policies could not be termed discrimination without identifiable victims. This conclusion is contrary to basic concepts of discrimination law. If, for example, an employer has a policy of hiring no Blacks or Hispanics or Jews, that policy constitutes an unlawful discriminatory practice whether or not a specific victim of the policy is identified.

¹⁵ Lucas Guttentag, American Civil Liberties Union Immigration and Alien's Rights Task Force, Immigration-Related Employment Discrimination: Prohibitions and Remedies Under the Immigration Reform and Control Act of 1986, 1987, p. 3.

C. WHAT EVIDENCE SATISFIES THE TEST

IRCA provides little guidance as to what evidence GAO should use. A review of evidence legislators have used to justify enactment of other antidiscrimination laws indicates the types of evidence legislators find compelling. GAO has rejected two of the most important forms of evidence, specifically, anecdotal evidence and testing, and has relied upon two of the less reliable forms, surveys and formal complaints.

1. Anecdotal Evidence

Congress has often depended upon anecdotal evidence to justify voting for civil rights laws. Courts have also considered anecdotal testimony a persuasive form of evidence in civil rights cases.¹⁶ Despite these precedents, GAO has disregarded anecdotal evidence.

2. Testing of Those Who Discriminate

In housing discrimination, legislators have placed great reliance upon the results of tests in which two investigators, one White and one Black, seek the same housing accommodation.¹⁷ The Commission's hiring audit was a similar, albeit small-scale test of New York City employers. To date, GAO has not attempted to test employers.

¹⁶ Courts have relied on anecdotal evidence. In 1987, the 8th Circuit Court ruled that anecdotes "alone may be sufficient to establish a pattern or practice of discrimination." See Catlett v. Missouri Highway and Transport Commission, 828 F.2d 1260 (1987). See also Moze v. Jeffboat, Inc., 746 F.2d 365, 373, 35 FEP 1810, 1816 (7th Cir. 1984) -- "anecdotal evidence may bring the cold numbers convincingly to life" and Carter v. Duncan-Huggins, Ltd., 727 F.2d 1225, 34 FEP 25 (D.C. Cir. 1984) -- "specific incidents . . . [are] sufficient to prove intentional discrimination regardless of absence of statistical proof."

¹⁷ For example, during consideration of the Fair Housing Amendments Act of 1988, the results of several regional tests were presented to show that racial discrimination in housing continues nationwide. (1987 U.S. Code Cong. and Adm. News 2176.)

3. Surveys of Those Who Discriminate

Legislators have used such surveys in the past.¹⁸ This method is likely to generate results that underrepresent the actual level of discrimination because when asked directly, individuals will generally not admit that they discriminate.

For its second report GAO relied mainly on the results of its survey of employers.¹⁹ The most significant statistic to emerge from the survey is that 16% of employers who admitted that they were aware of the law "began or increased" policies of discriminating against persons who look or sound foreign.²⁰ Representative Berman noted that in light of the natural inclination to deny discriminatory practices, the 16% estimate is "a remarkable figure."²¹

4. Formally Registered Complaints

GAO also relied heavily on the numbers of formal complaints filed with civil rights law enforcement agencies. Immigrants, however, are not as likely as others to know their rights, and consequently are less likely to report incidents of discrimination. Most do not know where or how to register formal complaints, and many do not voice strong complaints for fear of being deported or fired. The United States Commission on Civil

¹⁸ The House Report on the Fair Housing Amendments Act of 1988 mentions a 1984 landlord survey conducted in California to show discrimination against families with children. (1987 U.S. Code Cong. and Adm. News 2181.)

¹⁹ GAO argued that employers were a more stable and reachable population than employees, and therefore employers were more easily sampled than employees. GAO distributed the voluntary, self-administered surveys from November 1987 to May 1988. The questionnaire requested anonymous responses to a range of questions about the employer's understanding of IRCA's sanctions, employment practices, and costs to the employer of complying with the sanctions provision. GAO, Immigration Reform -- Status of Implementing Employer Sanctions After Second Year (hereinafter GAO Report), 1988, pp. 18-19.

²⁰ GAO Report, 1988, p. 39.

²¹ Remarks of Representative Berman, NYC Bar Conf., p. 6.

Rights has noted that "[i]t is impossible to know how many unreported incidents there are for every official complaint."²²

GAO's consideration of the number of complaints filed with the United States Department of Justice Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) is particularly problematic. OSC has only one office, located in Washington, DC, and its outreach has been limited. Only recently has it made materials available in Spanish. In addition, OSC has little or no capacity in other major immigrant languages, such as Haitian Creole, Chinese, and Korean.

²² USCCR Report, p. 27.

PART II
WHAT NEW YORK AGENCIES OTHER THAN
THE COMMISSION HAVE FOUND

A. NEW YORK STATE INTER-AGENCY TASK FORCE ON IMMIGRATION
AFFAIRS

In 1988, the Task Force conducted 400 random interviews with employers in the New York City metropolitan area and surveyed 46 community-based organizations. The Task Force relied heavily on statistical data and supplemented it with individual accounts of discrimination. The report estimated that 21% of employers had difficulty determining which documents were acceptable for the I-9 form, that 22% of employers who used the form "experienced hiring delays while job seekers obtained documents," that 73% of employers using the form required documents before the first day of work, and that for 18% of jobs for which the I-9 form was used, the employer denied the applicant a job because the documents were not available fast enough.²³ Methodologically, "whatever bias has occurred [non-response and lying] would tend to reduce the amount of discrimination found. [The] estimates are therefore lower-bound estimates."²⁴

The Task Force concluded that a "widespread pattern of discrimination" has resulted against groups that have trouble securing work authorization papers on demand. It recommended that GAO expand the scope of its inquiry beyond hiring and firing to include treatment of citizens and authorized alien workers in the workplace.

²³ New York State Inter-Agency Task Force on Immigration Affairs, Workplace Discrimination Under the Immigration Reform and Control Act of 1986: A Study of Impacts on New Yorkers (hereinafter NYS Report), November 4, 1988, pp. 25-29.

²⁴ NYS Report, 1988, p. 35.

B. CENTER FOR IMMIGRANTS RIGHTS (CIR)

In June 1988 CIR established an Employer Sanctions Hotline to record charges of IRCA-related discrimination. As of June 9, 1989, CIR had received 245 calls, 207 of which related to employer sanctions. Of those 207 calls, 41% were from citizens or work-authorized aliens, a percentage CIR attributes to "anti-immigrant and racist sentiments" promoted by employer sanctions.²⁵ CIR testimony submitted to the House of Representatives Subcommittee on Immigration asserts that "the vast majority of cases involving sanction-related employment discrimination and abuses remain unreported. Individuals are unaware of where to seek assistance or refrain from filing complaints because of the fear of retaliation by employers."²⁶

C. NEW YORK IMMIGRATION HOTLINE

The Hotline, run by the Travelers Aid Services, reported that between July 1, 1988 and June 30, 1989, it received more than 400 calls related to employment discrimination, an average of 35 calls per month. In comparison, during that time the Commission averaged 42 employment discrimination complaints per month from all protected classes, only 7 more than the Hotline's average for cases of employment-related discrimination solely against immigrants.

²⁵ Telephone interview with Shirley Lung, Director of the Employer Sanctions Hotline of the Center for Immigrants Rights (July 15, 1989).

²⁶ Shirley Lung, "Written Testimony on the Impact of Employer Sanctions Submitted to the House Subcommittee on Immigration, Oversight Hearings on IRCA," May 9, 1989, p. 1.

**PART III
THE NEW YORK CITY COMMISSION ON HUMAN RIGHTS
IMMIGRANT DISCRIMINATION PROJECT**

A. THE PUBLIC HEARING

In November 1988 the New York City Commission on Human Rights held a two-day public hearing on immigrant and national origin discrimination. At the hearing, the Commission heard testimony from 70 groups and individuals representing ethnic organizations, immigrant advocacy groups, and State and City agencies. The testimony indicated that IRCA's employer sanctions have resulted in widespread and significant discrimination against immigrants and those perceived to be immigrants. Furthermore, since the passage of IRCA and employer sanctions, a general environment of mistrust and suspicion has negatively affected the lives of authorized immigrant residents and citizens. Qualified residents are being denied critical employment opportunities as a result of employer sanctions.

1. Disparate Treatment in Employment

The Commission heard testimony indicating that employer sanctions have resulted in employment discrimination against immigrants or those who appear to be immigrants, and have provided employers with a ready excuse for discrimination. The latter point was emphasized by Evelyn Linares of the Communities Association of Progressive Dominicans who testified that IRCA, and especially employer sanctions, gives employers the ultimate power to choose a non-immigrant-looking applicant over a foreign-looking applicant, even though they are both United States residents.²⁷

George Holmes of the Congress of Racial Equality (CORE) concurred. He stated, "It is this very kind of selective scrutiny based on race or ethnic background that we in the civil

²⁷ New York City Commission on Human Rights Public Hearing Re Discrimination against Aliens and Persons Perceived as Aliens, November 15-16, 1988 (hereinafter CCHR Hear. Tr.), p. 232.

rights movement fought to eliminate. In one swift stroke, employer sanctions have erased many long years of struggle and turned the clock back to the days when equal opportunity was just a dream."²⁸

CORE records show an abrupt increase in the number of complaints that could be related directly to the employer sanctions provision. During the one year amnesty period following the passage of IRCA, CORE received more than 500 discrimination complaints, 94% of which were from persons of African-American and Hispanic backgrounds.²⁹

Testimony from several sources indicated that citizens who are perceived as immigrants have suffered IRCA-related discrimination. The New York State Assembly Task Force on New Americans found that "U.S. citizens, especially Puerto Ricans in the New York City area, are suffering discrimination due to employers' fear of sanctions. Many employers do not recognize that Puerto Ricans are U.S. citizens and are not trained to recognize what Puerto Rican documents (for example, birth certificates) are acceptable as proof of citizenship."³⁰ Indeed, according to Ruth Noemi Colon of the Commonwealth of Puerto Rico, "there was even one case where we had to dig up the Jones Act of 1917 . . . to prove that Puerto Ricans are citizens."³¹

2. Disparate Impact in Employment

Many individuals at the hearing testified that even equal application of certain policies negatively affects certain groups more than others. This discriminatory impact occurs when employers require work authorization documents before or upon hiring without granting the grace period offered to employers by IRCA. The failure to grant this period results in harsh consequences for those who are not able to produce documents upon

²⁸ CCHR Hear. Tr., p. 418.

²⁹ CCHR Hear. Tr., p. 422.

³⁰ CCHR Hear. Tr., p. 338.

³¹ CCHR Hear. Tr., p. 269.

demand, especially young workers and temporary workers.

IRCA does not require workers to produce documents before or even immediately upon hiring. The law permits employers to give employees a grace period of up to 21 days -- up to 3 days to produce receipts showing that they have applied for the required documents, and up to 21 days to produce the actual documents. However, according to the testimony of Margarita Rosa, speaking on behalf of the New York State Inter-Agency Task Force on Immigration Affairs, "a vast majority of employers surveyed said they would not hire until they have received appropriate documents."³² As noted above, the Task Force determined that 73% of employers who are familiar with the I-9 procedure require work-authorization documents before the first day of work.³³

The disparate impact resulting from employers' reluctance to grant the allowed grace period is further compounded by the length of time it takes for the INS and Social Security offices to process applications and issue required documents. As Dr. Nikolai-Klaus von Kreitor of the Polonia Organizations League pointed out, it can be more than 10 months before a successful amnesty applicant receives a Social Security number.³⁴

Young workers, whether they are immigrants or U.S. citizens, are especially vulnerable to document-related employment problems. New York State Senator David Paterson highlighted this situation. He testified about the difficulty that the Kentucky Fried Chicken Company has had in its attempt to comply with IRCA regulations. According to Senator Paterson, "16 and 17 year old American citizens were unable to obtain photo identification documents required to complete the I-9 employment eligibility form. The disturbing result has been the creation of a new group of unemployable American youth."³⁵ Such a situation

³² CCHR Hear. Tr., p. 134.

³³ NYS Report, 1988, p. 35.

³⁴ CCHR Hear. Tr., pp. 254-255.

³⁵ CCHR Hear. Tr., pp. 314-315.

impacts disproportionately on urban youth who lack drivers' licenses, many of whom are Black and Hispanic.

3. Disparate Treatment in Housing and Public Accommodations

The concept of "eligibility" as defined by IRCA has had a strong, negative impact on the availability and delivery of services to the immigrant community. Landlords and service providers may select potential tenants and clients on the basis of citizenship or immigrant status, with the ultimate goal of denying service to certain national origin groups.

As Mary Ellen Rhindress, former Director of the New York Immigrant Coalition, said, "Perhaps the most devastating consequence of IRCA is its message that has been conveyed to the American public, that is, it's okay to discriminate against aliens. The message which is carried by this legislation and reinforced through the enforcement of sanctions tells employers, landlords, insurance salesmen, government officials: discrimination against people who look or sound foreign is acceptable because they don't belong here anyway. They don't deserve the rights the rest of us do."³⁶

Testimony at the hearing indicated that, in the area of housing, discrimination based on national origin is extensive. Hillary Salmons, of the Church Avenue Merchants Association, testified about the situation of more than 50 Asian tenants who were denied leases and repairs by a landlord in Brooklyn.³⁷

Testimony at the hearings also revealed discrimination in the provision of services and public accommodations, including insurance and banking services, even though IRCA does not directly affect these areas. For example, one witness who was authorized to work described the difficulty he encountered in trying to obtain auto insurance. He received a written reply to his inquiry stating that the company had a policy of insuring

³⁶ CCHR Hear. Tr., p. 11.

³⁷ CCHR Hear. Tr., p. 411.

United States citizens only.³⁸

B. THE DOCUMENTATION STUDY

In light of the testimony at the hearing indicating a widespread pattern of discrimination against immigrants, the Commission decided to document the effects of employer sanctions by gathering data directly from immigrant and ethnic communities. In May 1989, with funding from the New York Community Trust, the Commission initiated the documentation study to gather anecdotal evidence from immigrant populations around New York City, and to provide GAO with more specific information about the extent and nature of discrimination against authorized workers.

The results of the study confirmed previous reports on the prevalence of discrimination against immigrants and those who appear to be immigrants.

1. Methodology

The documentation component of the study, which took place in May and June 1989, consisted of short anonymous interviews with complainants using a prepared questionnaire to record incidents of discrimination in employment, housing, and public accommodations. Some of the interviews were obtained through short presentations given by Commission staff at churches, community meetings, and through formal complaints filed at the Commission offices. However, most of the interviews were obtained through presentations in English as a Second Language classes and history and civics classes of the State Legalization Impact Assistance Grants Program, where the great majority of the students are documented residents. The presentations, which were made in English, Spanish, Haitian Creole, and Chinese, relayed information on such subjects as IRCA, employer sanctions, the immigrant experience, and discrimination. Although the ethnic

³⁸ CCHR Hear. Tr., pp. 182-188.

makeup of the classes was diverse, Hispanics were the major group represented in the classes and in our results.

After the presentations, those who indicated that they had experienced discrimination were asked to fill out questionnaires or relate the incidents to a Commission representative who would then complete the questionnaires. The project avoided double-counting of discrimination charges by asking each respondent if he or she had filed a complaint with any other agency.

A total of 55 presentations were made, reaching an estimated 1650 people.

2. Findings

The Commission staff observed that, although many immigrants spoke out about discrimination during the presentations, very few were willing to fill out questionnaires. The reasons for their reticence are noted below.

Immigrants in general are reluctant to speak out about their problems. The fear of reprisals is very real to an immigrant community that is often mistrustful by virtue of previous experience with discrimination. Many immigrants, temporary residents in particular, feared deportation for having cooperated with a government agency. This occurred despite the anonymity guaranteed by the Commission staff. The questionnaire at no point asked for any identification from the complainant. Nevertheless, temporary residents expressed the fear that their immigration status would be revoked if they spoke up about discrimination.

Language. The documentation study staff noted that there was very little response to the presentations that were not made in the immigrants' native language. This communication barrier existed even when the presentation was translated by an interpreter.

Outcome. Many individuals who mentioned incidents of discrimination during the presentations declined to fill out questionnaires documenting their experiences because of a sense of skepticism about its impact on their situations. A majority of the people affected by discrimination in all areas accepted the loss of employment opportunities and looked elsewhere for employment, even if this meant being underemployed or underpaid.

Lack of information on antidiscrimination protections. None of the 1650 people the documentation project addressed had heard of the antidiscrimination provisions of IRCA or of the OSC. This lack of information about the existence of antidiscrimination protections has kept immigrants from complaining or looking for assistance when confronted with discrimination.

The documentation component of the Immigrant Discrimination Project collected a total of 343 questionnaires alleging discrimination in employment, housing, and public accommodations, eight of which were found to be unusable for lack of sufficient information. These questionnaires detailed incidents of discrimination based on national origin and alien status against immigrants and those who appear to be immigrants.

For the purposes of conforming to GAO stipulations, the following breakdown of complaints will only look at the 260 cases reported to have occurred after the implementation of employer sanctions in July 1988.

Of these 260 complaints, there were 150 complaints of discrimination in employment, 38 complaints in housing, and 72 complaints in public accommodations.

a. Employment-Related Complaints

The documentation of cases of discrimination against immigrants and those who appear to be immigrants has provided evidence of pervasive discrimination not only in hiring, firing,

and referral for a fee but also in the terms and conditions of employment. There were 121 complaints of employment-related discrimination -- 36% based on national origin, and 64% based on alien status. These cases of discrimination can be clearly associated with the existence of employer sanctions.

Citizens

Although there were few United States citizens in the presentation audiences, 26 (10%) complaints of discrimination were submitted by citizens, 13 of which were employment-related. (See Chart A.)

Authorized Alien Workers

Authorized alien workers account for the majority of the employment-related discrimination complaints reported to the Commission. The category of authorized alien worker includes permanent residents, temporary residents, political asylees, refugees, and visa holders with valid work authorization. Of all the employment-related complaints, 108 (72%) were reported by authorized alien workers. The high incidence of employment-related discrimination against these complainants clearly shows that the IRCA antidiscrimination provision is not protecting authorized alien workers.

Of the 108 complaints by authorized alien workers, 20% were related to refusal to hire, 21% to discriminatory firing, and 58% to terms and conditions of employment. (See Chart B.)

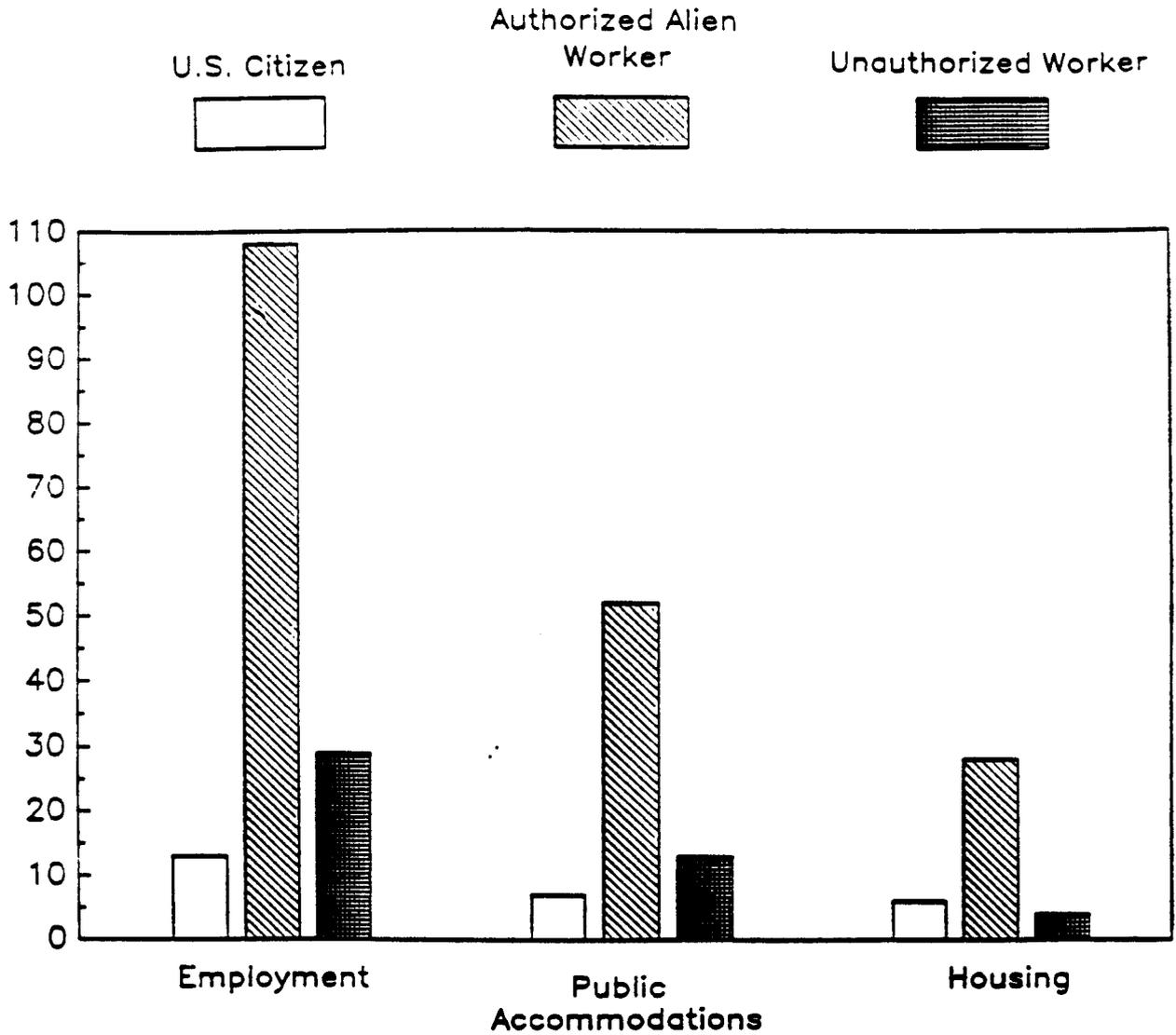
Refusal to hire

The complaints of discrimination in hiring made by citizens describe situations in which they were denied employment when their valid documents were not accepted as proof of work authorization. Many of these complaints described incidents that could easily be categorized as either national origin or alien status discrimination.

CHART A

DISCRIMINATION COMPLAINTS BY LEGAL STATUS

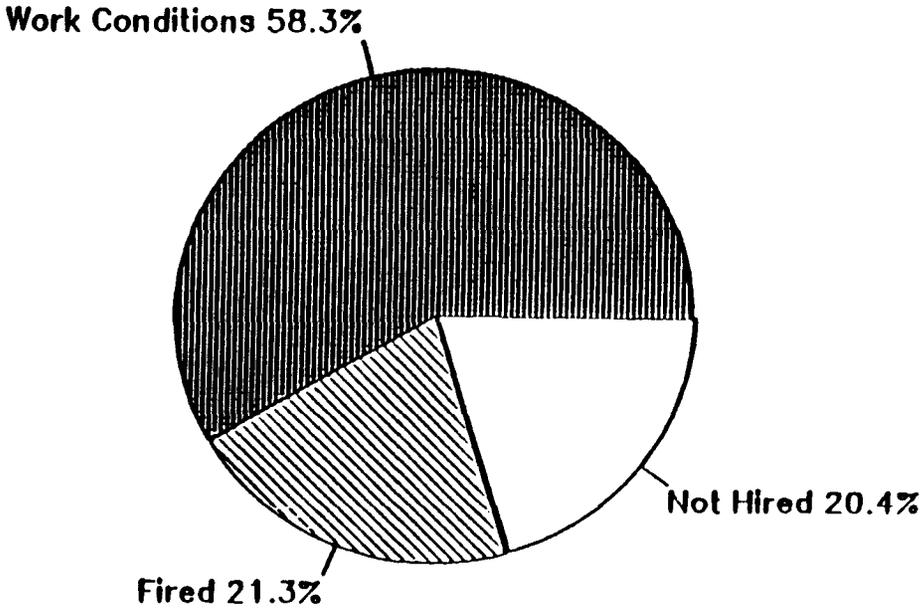
(Incidents Occurred Between July 1, 1988 and June 30, 1989)



EMPLOYMENT DISCRIMINATION COMPLAINTS BY LEGAL STATUS

Employment Discrimination	U.S. Citizen	Authorized Alien Worker	Unauthorized Worker	Totals	Percent
Not Hired	7	22	0	29	19.3
Fired	1	23	5	29	19.3
Work Conditions	5	63	24	92	61.4
TOTALS	13	108	29	150	100.0

CHART B
EMPLOYMENT DISCRIMINATION COMPLAINTS OF AUTHORIZED ALIEN WORKERS
(Incidents Occurred Between July 1, 1988 and June 30, 1989)



N=108

Two women went together to apply for service sector jobs that were advertised in the newspaper. One of the women was White and the other woman Puerto Rican. Both were born in New York City. The White woman was offered a job without being required to show documents, but the Puerto Rican woman was denied employment even when she produced her birth certificate and Social Security card. The employer refused to accept her³⁹ documents, stating that she was afraid of the law.

Seven citizens reported that they were denied employment as a result of discriminatory hiring practices. Of the 108 authorized alien workers reporting employment discrimination, there were 22 (20%) who complained of an employer refusing to hire them based on national origin or alien status. These cases included 8 complaints in which workers reported that their valid documents were not accepted, 4 in which workers were told that a green card was required, 6 which indicated national origin discrimination, and 4 in which workers were told that they would not be hired simply because they were temporary residents.

Firing

A total of 23 (21%) authorized alien workers with employment complaints reported being fired as a result of discrimination. These complaints described incidents in which authorized alien workers were fired to make way for undocumented workers, when their valid documents were not accepted, because they were temporary residents, when they requested legalization assistance, or because of national origin.

Employer sanctions have initiated a pattern of discrimination against authorized workers and citizens in favor of unauthorized workers and the sanctioning of deplorable working conditions. Several temporary residents reported being fired after attaining legal status because their employers preferred to employ undocumented workers, despite the fact that this practice is illegal.

³⁹ New York City Commission on Human Rights Documentation Study (hereinafter CCHR Doc. Study), May-June 1989, Questionnaire #335.

Terms and Conditions of Employment

The complaints of discrimination in work conditions show the varied ways in which discrimination is practiced in the workplace. Some of the most glaring cases tell of employers who reduced the pay of employees who were granted legal status to below the minimum wage.

A work-authorized Mexican woman working at a leather goods factory reported that her employer refused to accept her valid Social Security number when she attained legal status. The employer said he would use her valid number only on the condition that she accept a lower salary and lose her seniority.⁴⁰

The many employers who, before IRCA, employed a predominantly undocumented workforce, now employ authorized workers under the same substandard and illegal conditions that prevailed before IRCA. The employer who pockets the money deducted from the employee's salary for taxes, instead of paying this money to the Internal Revenue Service, does so assuming that an immigrant will not complain about the fraudulent deduction.

Both authorized alien workers and citizens reported being denied wages or benefits by employers in situations that are clearly discriminatory. Temporary workers in particular indicated differential treatment by employers who took advantage of the fact that new residents are often not aware of labor law, nor are they vocal in demanding fair treatment.

Of the 121 citizens and work-authorized aliens reporting employment-related discrimination, 68 (56%) reported discriminatory treatment in the terms and conditions of employment. Authorized alien workers reported 63 (58%) incidents. Citizens reported 5 incidents. Of these 68 incidents, there were 38 that involved workers receiving less pay and fewer benefits than others, and 30 that cited other discriminatory treatment in the workplace, such as sexual

⁴⁰ CCHR Doc. Study, Questionnaire #292.

harrassment, longer work hours, and exclusion from the company's employment records.

b. Discrimination in Housing and Public Accommodations

The documentation study looked at discrimination in housing and public accommodations in order to determine if employer sanctions had created a "spillover effect" that might have an impact on the population in other areas of life.

Since more than 42% of the 260 discrimination complaints occurring after July 1988 related to housing and public accommodations, it appears that immigrants bear an undue discriminatory burden in many aspects of their lives.

Housing

Of the 53 reported complaints of discrimination in housing, 38 occurred between July 1, 1988 and June 30, 1989. Authorized alien workers reported 28 of the incidents, citizens reported 6 of the incidents, and unauthorized workers accounted for 4 complaints. Women accounted for 30 of the 38 housing discrimination complaints.

The housing discrimination complaints describe landlords and housing managers who denied housing because of the applicant's national origin or immigrant status. Where immigrants did find housing, the complaints described threats of eviction, sexual harrassment, and denial of services and repairs on the grounds of immigrant status and national origin.

Public Accommodations

Public accommodations complaints were the second-most common type of complaint documented by the study. Of the 72 incidents of discrimination in public accommodations occurring after July 1, 1988, 52 were reported by authorized alien workers, 13 by unauthorized workers, and 7 by citizens.

Of these complaints, 29 were lodged against banks for refusing services due to alien status. Authorized alien workers reported 21 incidents in which they were refused savings or

checking accounts if they could not supply documents requested by the bank. Citizens reported 5 complaints of discrimination by banks. These were reported by Puerto Rican residents of New York City who, when not able to produce green cards, were denied savings accounts in banking institutions. The difficulties described point to a lack of trust in new immigrants, specifically temporary residents, on the part of banking institutions which fail to recognize that immigrants are eligible to live and work in this country.

There were 16 complaints reported against public agencies, 12 of which were filed by authorized alien residents, one by a citizen, and 3 by unauthorized residents. The agencies cited in the complaints included the New York State Department of Motor Vehicles and the New York State Department of Labor's Unemployment Insurance Division. Again, the most common reasons given for the discriminatory treatment were temporary resident status and the inability to speak English.

Health care facilities were cited in 14 complaints of discrimination based on national origin and alien status occurring since July 1988. Authorized alien residents were refused services in 11 of the incidents in which a green card was required for treatment, the complainant was Hispanic, or the complainant did not speak English.

There were 13 complaints of discrimination in other public accommodations such as insurance companies and educational institutions. Of these complaints, 9 were from authorized alien residents, one was from a citizen, and 3 were from unauthorized alien residents.

c. Unauthorized Alien Workers

Of the 46 discrimination complaints reported by unauthorized alien workers, 29 involved employment discrimination, 4 concerned housing discrimination, and 13 involved discrimination in public accommodations. Discrimination in the terms and conditions of employment accounted for 76% of the employment discrimination complaints made by unauthorized workers.

C. THE HIRING AUDIT

The hiring audit was implemented to test for discrimination on the basis of national origin and immigrant status. The audit was designed to identify disparate treatment by prospective employers toward telephone callers with accents compared to callers without accents.

The audit's findings indicate substantial discrimination by employers in New York City. Of the 86 employers tested, 41% were found to demonstrate differential treatment towards job applicants with accents.

1. Methodology

In June 1989 four pairs of testers made telephone calls in response to help wanted advertisements in the four major New York City daily newspapers (Newsday, The New York Times, The New York Post, The Daily News). Each pair consisted of two investigators of the same sex (three male pairs and one female pair). One member of each pair had an unmistakable foreign accent. Each tester offered substantially similar qualifications and background as his or her partner. Each pair was assigned to one of four service sector industries: bookkeeping, reception, sales, and word processing. A total of 172, or 86 pairs of contacts were made: 12 pairs for bookkeeping positions, 27 pairs for receptionist jobs, 26 pairs for sales positions, and 21 pairs for word processing jobs.

Newspaper advertisements were selected at random within each of the four industries. The accented caller generally made the first contact in response to the advertisement. The second call was made within one hour of the first contact in order to limit the variables responsible for discrepancies in response.

All employers were asked whether the position was still open, if the caller could come in for an interview, and what papers the caller should bring. Differential treatment towards the accented tester was recorded based on the employer's response to these questions.

2. Findings

Of the 86 pairs of contacts, 35 (41%) recorded differential treatment. (See TABLE I.) In 14 (16%) pairs of contacts, the accented caller was told that the position was filled while the non-accented caller was told that the same position was still available. Of these 14, 8 were recorded in sales, 4 in reception, and 2 in bookkeeping.

In 10 (12%) pairs of contacts, the employers scheduled interviews with the non-accented callers, but did not with the accented. Seven of these discrepancies were recorded in sales, 2 in reception, and one in bookkeeping.

In 11 (13%) pairs of contacts, there were significant discrepancies regarding what papers were required. Three of these discrepancies occurred in sales and 8 in reception.

The testers recorded 3 cases in which two incidents of differential treatment occurred. (See TABLE II.) As a result, the total number of incidents of differential treatment was 38. These 3 cases all involved differential treatment in scheduling interviews and requesting documents. For example, while one non-accented tester was able to schedule an interview and was told that he needed only a resume, his accented partner did not get an interview and was told that he needed a green card and a Social Security card.

The audit probably undercounts discrimination since, at the telephone inquiry stage, employers are usually seeking to expand rather than limit the pool of qualified applicants. At the same time, it is not absolutely certain that the discrimination identified would result in denial of a job. The employers (16%) who discriminated in saying whether the job was open and those (12%) who discriminated in denying an interview do represent denial of a job. It is unclear whether the 13% of employers accused of differential treatment would actually deny a job to a qualified but presumably foreign applicant.

Also, while INS has defined differential requests for documents as discrimination under IRCA, it should be noted that

TABLE I
DIFFERENTIAL TREATMENT OF ACCENTED AND NON-ACCENTED
CALLERS BY INDUSTRY

	Sales		Reception		Bookkeeping		Word Proc.		Total	
	#	%	#	%	#	%	#	%	#	%
Diff. Treat.	18	69	14	56	3	25	0	0	35	41
No Diff. Treat.	8	31	13	44	9	75	21	100	51	59
Total	26		27		12		21		86	100

TABLE II
TYPES OF DIFFERENTIAL TREATMENT OF ACCENTED AND NON-ACCENTED
CALLERS BY INDUSTRY

Discrepancy	Sales	Reception	Bookkeeping	Word Proc.	Total
Pos Open	8	4	2	0	14
Interview	7	2	1	0	10
Papers Req.	5	9	0	0	14
Total	20	15	3	0	38

these 13% of employers may not be aware that they are doing something wrong. At the same time, their actions may very well have a negative effect on job applicants. These findings underscore the need to educate employers about the employer sanctions and antidiscrimination provisions of IRCA.

PART IV
FINDINGS AND RECOMMENDATIONS

A. FINDINGS

FINDING 1: THE EMPLOYER SANCTIONS PROVISION OF IRCA HAS RESULTED IN WIDESPREAD DISCRIMINATION AGAINST IMMIGRANTS AND PERSONS PERCEIVED AS IMMIGRANTS.

o At the Commission's public hearing in November 1988, 70 witnesses, including representatives from community organizations and advocacy groups, testified to widespread discrimination resulting from IRCA.

o In May and June 1989, through its documentation study, the Commission recorded 343 incidents of discrimination, of which 260 occurred between July 1, 1988 and June 30, 1989.⁴¹ Of these 260, 214 involved U.S. citizens or authorized immigrant workers.

c The Commission's hiring audit, conducted by telephone during June 1989, revealed that 41% of employers treated applicants with accents differently from applicants without accents. Of the 86 employers contacted, 28% clearly discriminated in hiring: 16% told accented callers that positions were filled, then later told unaccented callers that the same positions were still open and 12% invited only unaccented callers to interview. An additional 13% asked only accented callers about work authorization papers. This latter group might not have actually denied a job to an accented applicant and may have thought they were only following IRCA requirements.

o GAO reported that 16% of all employers responding to its survey admitted that they had begun or increased discriminatory practices since IRCA was implemented.

o The New York City Immigration Hotline received an average of 35 complaints of employment discrimination per month. In comparison, the Commission received a monthly average of 42 complaints of employment-related discrimination against all protected classes during the same period.

FINDING 2: DISCRIMINATORY PRACTICES ARE OCCURRING IN THE TERMS AND CONDITIONS OF EMPLOYMENT, AS WELL AS IN HIRING AND FIRING.

o In its documentation study, the Commission recorded 121 employment discrimination cases involving U.S. citizens and authorized workers. Of these, 56% involved the terms and conditions of employment and 44% involved hiring and firing.

⁴¹ All subsequent references to figures from the documentation study will be of incidents which occurred during this period.

o Employers are altering the terms and conditions of employment for authorized workers who are afraid to lose their jobs.

A Haitian man who was an authorized worker told of his employer reducing his wage from \$4.20 to \$3.00 per hour when his employer learned that he was a temporary resident.⁴²

A Mexican authorized worker was forced to work longer hours for less pay and with fewer benefits than other workers when his employer learned that he was a temporary resident.⁴³

o Unscrupulous employers are demanding sexual favors from authorized alien workers.

One woman was not paid by her employer for seven months. When she complained, her employer suggested that she seek employment elsewhere or provide⁴⁴ him with sexual favors for which he would give her money.

FINDING 3: DISCRIMINATION IS OCCURRING ON THE BASES OF BOTH NATIONAL ORIGIN AND ALIEN STATUS.

o Of the 121 cases of employment discrimination against citizens and work-authorized aliens filed through the documentation study, 36% were national origin complaints and 64% were alien status complaints.

o National Origin:

Hiring audit testers who did not have accents were invited to interview for positions that testers with accents were told earlier had been filled.

o Alien Status:

A man applied for a job, presenting his Social Security card and driver's license as proof of identity and work eligibility. These documents, which are legally sufficient under IRCA, were accepted until the interviewer noticed that the job applicant was Jamaican. The interviewer then insisted that the applicant produce a green card.⁴⁵

A Hispanic man testified that when he presented his temporary resident's card as proof of work eligibility, he

⁴² CCHR Doc. Study, Questionnaire #269.

⁴³ CCHR Doc. Study, Questionnaire #210.

⁴⁴ CCHR Hear. Tr., pp. 107-9.

⁴⁵ CCHR Hear. Tr., p. 38.

was told that the company has a strict⁴⁶ policy to hire only citizens or people with green cards.

o National Origin and Alien Status:

A Puerto Rican woman presented her Social Security card, driver's license and Puerto Rican birth certificate when applying for a job. She was not hired because the employer⁴⁷ said she had to be a U.S. citizen or a permanent resident.

FINDING 4: EMPLOYERS ARE INTENTIONALLY ENGAGING IN DISCRIMINATORY PRACTICES.

o Based on the results of its Immigrant Discrimination Project, the Commission concludes that many employers are engaging in practices which can be categorized as intentional discriminatory treatment.

o Employers are rejecting documents which are valid under IRCA.

A hiring audit tester, posing as an authorized worker, had her interview cancelled after the employer learned that she did not have a green card. The same tester was told by another employer that if she did not have a green card the employer would receive a big fine.

o Employers are not recognizing Puerto Rican identification as sufficient to establish employment eligibility.

A Puerto Rican man presented his birth certificate and driver's license when applying for a job. When the employer asked him for a green card, he explained that Puerto Ricans are citizens and don't have green cards. The employer refused to hire this man saying that he⁴⁸ did not want his competitor to turn him in to the INS.

FINDING 5: WIDESPREAD POLICIES OF REQUIRING ALL POTENTIAL EMPLOYEES TO PRODUCE DOCUMENTS IN ADVANCE OF DEADLINES UNDER IRCA RESULT IN SIGNIFICANT DISCRIMINATORY IMPACT UPON ETHNIC AND IMMIGRANT COMMUNITIES.

o Although IRCA only requires employers to demand documentation at hiring and then permits a grace period of 3 to 21 days, 73% of employers who use the I-9 form are requesting documentation before the first day of work, according

⁴⁶ CCHR Hear. Tr., p. 552.

⁴⁷ CCHR Doc. Study, Questionnaire #169.

⁴⁸ CCHR Doc. Study, Questionnaire #333.

to the New York State Inter-Agency Task Force on Immigration Affairs.

o As a result of INS delays, practices that appear neutral in fact discriminate against authorized workers, Puerto Rican citizens, and urban residents.

Testimony at the New York City Bar Association Conference noted that the backlog of work at the INS results in delayed processing of applications and that successful amnesty applicants have been receiving correspondence from the INS which has typographical errors and, as such, is not accepted by employers.

A Hispanic immigrant who applied for amnesty and had not yet received further correspondence from the INS was fired when his employer demanded documentation.

FINDING 6: EMPLOYERS ARE CONFUSED ABOUT THE REQUIREMENTS OF THE EMPLOYER SANCTIONS AND ANTIDISCRIMINATION PROVISIONS OF IRCA, AS ILLUSTRATED BY THE ABOVE FINDINGS.

FINDING 7: IRCA'S EMPLOYER SANCTIONS PROVISION HAS ALSO RESULTED IN DISCRIMINATION IN HOUSING AND PUBLIC ACCOMMODATIONS.

o The Commission recorded 110 incidents of discrimination occurring between July 1988 and June 1989 in the areas of housing and public accommodations. Of these, 93 involved U.S. citizens and work-authorized aliens.

A Mexican woman who was an authorized worker was denied the opportunity to open a bank account until her husband's employer wrote a letter stating that he would directly deposit checks into the account.

A permanent resident was told by an insurance company that the company issues policies only to U.S. citizens.

⁴⁹ NYS Report, 1988, p. 8.

⁵⁰ NYC Bar Conf., p. 53.

⁵¹ CCHR Hear. Tr., p. 496.

⁵² CCHR Hear. Tr., pp. 278-81.

⁵³ CCHR Hear. Tr., p. 184.

FINDING 8: IN ITS INVESTIGATION OF DISCRIMINATION RESULTING FROM IRCA, GAO USED AN INAPPROPRIATELY NARROW DEFINITION OF DISCRIMINATION.

o In its 1988 report, GAO maintained that it was not mandated to assess the extent of alienage discrimination. However, IRCA expressly requires GAO to investigate discrimination against eligible workers, thereby including work-authorized aliens as well as citizens.

o For its 1988 report, GAO refused to investigate discrimination in the terms and conditions of employment and reported only on discrimination in hiring, firing and recruitment for a fee. GAO has misinterpreted its mandate to report on discrimination, which, unlike IRCA's antidiscrimination provision, is not limited to discrimination in hiring, firing and referral for a fee. Further, in disregarding the terms and conditions of employment, GAO is overlooking cases of "constructive discharge" where an employee is forced to leave a job because the terms and conditions are unbearable.

o GAO reported that 16% of employers admitted that they are firing or not hiring persons who look or sound foreign, but claimed that this figure represented only potential and not actual discrimination because victims could not be identified. This analysis is insupportable. Certainly a policy of "No Blacks, Hispanics, or Jews" would be discrimination, even if no specific victims were identified.

FINDING 9: GAO'S METHODOLOGICAL APPROACH IS BIASED AGAINST IDENTIFYING THE DISCRIMINATION THAT EXISTS.

o GAO's primary evidence was based on its employer survey which is likely to underrepresent the actual level of discrimination. Moreover, as mentioned above, GAO has chosen to discount the results of this survey.

o GAO inappropriately discounted the value of anecdotal evidence which suggests that improper discrimination exists. Congress and the courts have relied heavily on anecdotal evidence in the past in determining whether discrimination exists.

o GAO did not conduct a hiring audit which would have offered significant evidence of discrimination.

o GAO should not have relied on formal complaints to OSC and the Equal Employment Opportunity Commission. The outreach of these offices has been limited. Only in the past year did OSC include materials in Spanish and it still does not have materials in Haitian Creole, Chinese, Korean, or other important immigrant languages. Of the 1650 participants in the Commission's

documentation study, none had heard of OSC or the antidiscrimination provision of IRCA. Moreover, evidence suggests that immigrants do not avail themselves of government protections, fearing reprisals from employers more than they expect to benefit from filing complaints.

B. RECOMMENDATIONS

- 1. GAO should reinterpret its mandate in order to make a finding of "widespread discrimination" possible.**
- 2. GAO should acknowledge that existing evidence is sufficient to warrant a determination of widespread discrimination.**
- 3. The existing IRCA antidiscrimination provision should be broadened to include terms and conditions of employment. The Commission's documentation study has demonstrated severe and frequent discrimination against citizens and authorized workers. The line between terms and conditions of employment and hiring and firing is far from clear. An employee could be forced to leave a job if the working conditions are made unbearable.**
- 4. The antidiscrimination provision should cover discrimination in housing and public accommodations because such discrimination in these areas has resulted from IRCA.**
- 5. To make the antidiscrimination provision more powerful, the provision allowing employers to prefer citizens over immigrants when applicants are judged to be equally qualified should be removed. Such a clause legitimizes discrimination in hiring and offers employers a ready excuse for unlawful acts.**
- 6. The requirement that, in addition to being an authorized worker, a complainant must be an intending citizen should be abolished. This requirement places an unnecessary administrative hurdle in the way of persons who are already reluctant to assert their rights.**
- 7. More active efforts to enforce the antidiscrimination provision must be undertaken at the federal level. OSC should provide multilingual staff at local offices throughout the country.**
- 8. INS should implement an extensive campaign to educate both employers and workers about IRCA.**
- 9. Alien status should be made a protected class under antidiscrimination statutes. New York City recently adopted such a measure as part of its Human Rights Law, securing those protections which IRCA's antidiscrimination provision was intended to ensure.**

APPENDIX

U.S. GENERAL ACCOUNTING OFFICE

DATA COLLECTION OF STATE, LOCAL, AND PRIVATE ORGANIZATIONS
ON EMPLOYMENT-RELATED DISCRIMINATION COMPLAINTS
RECEIVED DURING THE PERIOD OF JULY 1, 1988 THROUGH JUNE 30, 1989

INSTRUCTIONS

The U.S. General Accounting Office, an agency of the Congress, is conducting a 3-year review of the Immigration Reform and Control Act of 1986 (IRCA). The purpose of this survey is to gather information from state, local, and private organizations on allegations made by individuals who claim to have been discriminated against in hiring, firing, or condition of employment. The data should be summarized allegations received during the period ~~July 1, 1988~~ through June 30, 1989. No individual's or employer's name needs to be given to us.

The U.S. General Accounting Office will use this data, along with data from a number of other sources in reporting to the Congress on whether the employer sanctions provision of IRCA has caused a widespread pattern of discrimination against United States citizens or authorized aliens. If we conclude affirmatively, and the Congress concurs, the law provides expedited procedures for the repeal of IRCA's employer sanctions. If we conclude there is no significant discrimination and the Congress concurs, the law provides expedited procedures for the repeal of the anti-discrimination provisions only. Consequently, your assistance in the collection of this data will be very helpful in drafting our report to the Congress.

We may need to contact someone in your organization to clarify some of the information. Please be sure to include a name and telephone number where we can follow up as necessary.

Please submit your data to us no later than July 29, 1989 so that we may have time to consider it in our review. Your report should be mailed to the following address:

U.S. General Accounting Office
Mr. John D. Carrera
Regional Assignment Manager
26 Federal Plaza, Room 4112
New York, NY 10278

If you have any questions, please call Mr. John Carrera at (212) 254-7973. Thank you so much for your help.

ORGANIZATION REPORTING
DISCRIMINATION COMPLAINTS

- New York City
- Organization's name: Commission on Human Rights
 - Address: 52 Duane Street
New York, NY 10007
 - Name of contact person: Russell Pearce
 - Telephone number: (212) 566-8965
(Area code) (Number)

DISCRIMINATION COMPLAINTS RECEIVED

- Discrimination data should be provided for July 1 1988 through June 30, 1989. Please specify the actual period for which your data was collected.

From 7 / 1 / 88 / Through 6 / 30 / 89 /
MM DO YY MM DO YY
- Total number of individuals reporting employment-related discrimination complaints: 150

7. Please provide us with a count of the types of discrimination issues alleged by the individual. While individuals may allege more than one issue, we can only count one for each individual, so we would like to identify the primary issue. If an individual alleges hiring or firing as an issue at all, please consider it the primary issue. If hiring or firing is not mentioned as an issue, consider it under work conditions and indicate the first allegation mentioned. (PLEASE USE ONLY ONE ISSUE PER INDIVIDUAL.)

DISCRIMINATION ISSUE	INDIVIDUAL'S STATUS				TOTAL (5)
	United States citizen (1)	Authorized alien (2)	Un-authorized alien (3)	Status unknown (4)	
1. Refusal to hire	7	22			29
2. Fired	1	23	5		29
3. Working conditions					
A. Wage reduction or extension of work hours	1	43	20		64
B. "Kickback" payment to employer to get or keep a job		1	1		2
C. Other working conditions (Please specify)	4	19	3		26
D. TOTAL OF LINES 3A, 3B, AND 3C	5	63	24		92
4. Unable to determine					
5. TOTAL (ADD LINES 1, 2, 3D, and 4)	13	108	29		150

THE NUMBER IN "TOTAL COLUMN, LINE 5" SHOULD EQUAL TOTAL INDIVIDUALS IN QUESTION 6.



8. Individuals may have report various types of employer actions. Please use the first action they mention and provide us with the number of individuals who said the employers did any of the following. If data not available, please write "N/A" for not available.

WHAT THE EMPLOYER DID . . .	INDIVIDUAL'S STATUS				TOTAL (5)
	United States citizen (1)	Authorized alien (2)	Un-authorized alien (3)	Status unknown (4)	
1. Required U.S. citizenship		2			2
2. Required a Permanent Resident Card (green card)		29			29
3. Did not accept a valid work authorization document	6	20			26
4. Retaliated because alien became legalized					
5. Retaliated because alien asked for employer's assistance with legalization application		2			2
6. Other employer action (please specify) _____	7	50	28		85
7. Unable to determine		5	1		6
8. TOTAL (ADD LINES 1, 2, 3, 4, 5, 6, AND 7).	13	108	29		150

THE NUMBER IN "TOTAL COLUMN, LINE 8" SHOULD EQUAL TOTAL INDIVIDUALS IN QUESTION 6.



9. For the individuals identified in Question 6, please indicate their immigration status.

	<u>Number of individuals</u>
1. Authorized workers	<u>121</u>
2. Unauthorized workers:	
A. Hired BEFORE November 7, 1986	<u>6</u>
B. Hired AFTER November 6, 1985	<u>22</u>
C. TOTAL unauthorized workers (ADD LINES 2A and 2B)	<u>28</u>
3. Unknown	<u>1</u>
4. TOTAL OF LINES 1, 2C, AND 3	<u>150</u>

10. Provide the number of authorized workers reported in QUESTION 9, LINE 1 for all ethnic/race categories below.

ETHNIC/RACE CATEGORY	United States citizen (1)	Authorized alien (2)	TOTAL (3)
1. Asian and pacific Islanders		6	6
2. Blacks (non-Hispanics)	1	9	10
3. Hispanics	9	87	96
4. White (non-Hispanics)	3	6	9
5. Other (specify) _____			
6. Unknown			
7. TOTAL (ADD LINES 1, 2, 3, 4, 5, AND 6)	13	108	121

THE NUMBER IN THE "TOTAL COLUMN, LINE 7" SHOULD EQUAL THE TOTAL NUMBER OF AUTHORIZED WORKERS IN QUESTION 9, LINE 1.



11. Of the authorized workers (as stated in QUESTION 9, LINE 1), how many were:

	Number of Individuals
1. United States citizens	13
A. Number of U.S. citizens that were Puerto Rican	6
2. Permanent residents (green card)	13
3. Temporary residents	91
4. Asylees/Refugees	2
5. Other legal status (please specify) <u>visa holders</u>	2
6. Legal status category unknown	_____
7. TOTAL OF LINES 1, 2, 3, 4, 5, AND 6.	121

12. According to the Equal Employment Opportunity Commission (EEOC), a national origin complaint is related to the employer sanctions provisions of IRCA if the employer:

1. asked only individuals of a particular national origin, or individuals who "looked foreign", for verification of their legal authorization for employment;
2. scrutinized more closely, or refused to accept, the documents submitted by individuals of a particular national origin to prove their identity or authorization for employment;
3. took any other action that was motivated by the employer's concerns about complying with the new immigration law; or
4. had citizenship requirements or preferences when there is no other federal law, regulation or contractual arrangement requiring him to do so.

Of the complaints received from authorized workers (as stated in QUESTION 9, LINE 1), how many has your organization identified as being employer sanctions-related using the EEOC criteria? (IF THE INFORMATION IS NOT AVAILABLE, ENTER "N/A".)

Number of complaints: 121



13. OPTIONAL NARRATIVE: If you have comments or additional information that you feel may be useful to the General Accounting Office, please provide them below. Attach additional pages as needed.

See attached report

Thank you for your assistance.



