Their family members are also currently ineligible to apply for family fairness benefits.

Inadmissibility. To qualify for the new program, an alien must be admissible as an immigrant. INS Assistant Commissioner for Legalization Terrance xx. O'Reilly said that he does not envision granting waivers of inadmissibility, as was done in the legalization program. No final answer is available on this question, though.

<u>Ineligible family members</u>. Ms. Charney noted that family members who do not qualify for the new family fairness program for whatever reason can still apply for voluntary departure under the INS' normal discretionary procedures at 8 CFR § 242.5.

Appeals. If the INS denies a person's family fairness application, can he or she appeal? Probably not, according to Ms. Charney. There is no formal appellate review under 8 CFR § 242.5, she told people attending the February 8 briefing, and the INS wants to make this program as simple as possible. She suggested that people whose applications are denied might be able to reapply or ask the RPF to reconsider the case if they have new evidence.

Number of eligible people. No one knows how many people will apply for the family fairness program. Informal estimates range from the thousands up to one million. According to the INS statistics office, 42 percent (1.3 million) of the 3.1 million legalization applicants were married. The INS lacks reliable data on how many amnesty applicants had children.

While the number of potentially eligible people seems high, the actual number of family fairness applicants may be much lower. For example, as noted above, over 740,000 legalization applications are still pending or on appeal, and so those applicants' family members are currently ineligible to apply. It is also unknown how many spouses have already applied for and received legalization, how many marriages occurred after November 6, 1986, how many aliens got divorced, how many spouses and children are ineligible because they entered the U.S. after November 6, how many people are inadmissible as public charges or for other reasons, or how many will not apply because of the lack of confidentiality. The INS' own current "guesstimate" is that no more than 250,000 aliens will apply for the family fairness program.

## 4. INS Urged to Halt Raids During 1990 Census

Several Democratic members of Congress have recently written the INS, demanding that the agency limit certain INS and Border Patrol enforcement activity until the end of the 1990 census. In response, INS Commissioner Gene McNary has written a letter to Rep. Don Edwards (D-Cal.), saying that while the Service could not relax its enforcement efforts, "[n]o enforcement action by the Service will be linked in any way with the administration of the Census." Commissioner McNary's January 23, 1990 letter is reproduced in Appendix III of this *Release*.

Members of the California Democratic Congressional delegation had asked the INS to reinstate a 1980 field directive imposing a temporary ban on apprehending undocumented aliens in homes or offices, except if the raid was part of a specific investigation or INS officers had a search warrant. Then-Acting INS Commissioner David Crosland established the enforcement limitations, which were in effect from April 1 to July 1, 1980, to ensure that INS activities would not adversely affect efforts by Census Bureau workers to count members of minority groups.

In his January 23 letter, Commissioner McNary assured Rep. Edwards that the "temporary operational instructions that were put into effect during the 1980 Census remain virtually unchanged today." The INS no longer engages in neighborhood "sweeps" or factory raids, he said. Mr. McNary also promised that the Service would be "discreetly sensitive" to enforcement publicity during the 1990 census.

But members of Congress did not accept the commissioner's assurances. Responding on February 1, 1990, Rep. Edwards alleged "serious inconsistencies between INS' stated policy and INS' actual practices." In 1989, Rep. Edwards wrote, INS raids have been reported in numerous cities in California.

For example, on May 4, 1989 INS officials raided a piano bar in San Francisco's Japantown and arrested 15 employees. Similarly, on July 22 INS officials detained about 200 people at a disco club in San Francisco's Mission District for two hours while they and agents of the state Alcohol Beverage Control Commission checked patrons' identification. Twenty-eight undocumented aliens were arrested. These and other raids, wrote Rep. Edwards, were "creating serious problems and making it ever more difficult to