AMERICA'S NEW IMMIGRATION LAW: ORIGINS, RATIONALES, AND POTENTIAL CONSEQUENCES

Edited by Wayne A. Cornelius and Ricardo Anzaldúa Montoya

Monograph Series, 11

Center for U.S.-Mexican Studies
University of California, San Diego Q-060
La Jolla, California 92093
EMPLOYER SANCTIONS LAWS:  
THE STATE EXPERIENCE AS COMPARED  
WITH FEDERAL PROPOSALS*  

by Carl E. Schwarz  
Fullerton College  

Introduction  

Any serious consideration of recent proposals for an 
employer sanctions law should include a review of the 
enforcement experience of the eleven states and one city 
that have such statutes on the books.1 This essay will 
analyze and compare eight of those state statutes2 as to 
the content and enforcement of their employer sanctions 
provisions and will also compare them with the employer 
sanctions and worker-identification provisions of the 
Simpson-Mazzoli Bill under consideration by the 98th 
Congress. The conclusion of this work will consider 
briefly the experiences of Illinois and New Jersey, states in 
which sanctions bills failed but which have undertaken 
intensive efforts to punish employers for violating fair-
labor standards and minimum-wage laws in their treatment 
of alien workers.  

*The author would like to extend his thanks to the staff and fellows of the 
Center for U.S.-Mexican Studies, where he conducted much of the 
research for this study. He also expresses his gratitude to the state 
officials listed in Appendix 2, who generously shared their time and their 
insights about the problem of employer sanctions legislation.  

1. Beginning with California in 1971, these entities now include the 
states of Connecticut, Delaware, Florida, Kansas, Maine, Massachusetts, 
Montana, New Hampshire, Vermont, and Virginia and the city of Las Ve-
gas, Nevada.  

2. It will not include the laws of Delaware, Maine, or New Hampshire.
The central argument of this essay is that the Simpson-Mazzoli Bill’s “law-enforcement approach” to the issue of illegal migration is fraught with obstacles; in the long run, it will not solve the “problem.” As revealed in the enforcement experience of the eight states here considered, the fatal defects of employer sanctions laws stem from three factors: the inadequacy of administrative capability and commitment; court challenges based on the protection of individual rights; and political resistance by a wide variety of Hispanic, civil rights, and business groups. In considering the several proposals advanced at the federal level over the past decade, government officials have given little attention to the problems encountered by states with similar laws, despite the fact that the experience of the latter covers more than a decade and ranges over a wide variety of demographic, economic, and political circumstances.

The main pattern in all these states is an almost perfectly consistent failure to enforce employer sanctions statutes. Few prosecutions and even fewer convictions appear on the record. California, the first state to enact such a statute, has never convicted an employer under its 12-year-old Labor Code 2805. The few convictions in other states can be listed quickly: Kansas convicted one employer prior to revising its statute in 1978 and levied a $250 criminal fine in that case; the Montana Labor Standards Division won two default judgments against the same out-of-state corporation, which decided not to contest the rulings because it would have spent more in legal fees than it lost by paying the $3,200 in assessed damages; and Virginia recorded two convictions in 1981 (out of seven prosecutions during 1979-82), of which one resulted in an $80 fine and a suspended sentence of 30

3. Kansas General Statutes 21-4409 (1978); information on the conviction was obtained through an interview with Mr. Neil Woerman, Special Assistant to the Attorney General, Office of the Attorney General, Topeka, Kansas.

4. Interview with Paul Van Tricht, Attorney for the Commissioner of Labor and Industry; see also Department of Labor and Industry vs. Forest Development, Inc. (Judgments of the 18th District Court, Gallatin County, Montana: December, 1982 and January, 1983.)
days in jail, and the other a $55 fine and the same suspended sentence.\(^5\)

The reasons for this pattern can be explained partially by the “symbolic law” argument of Professor Kitty Calavita and others.\(^6\) Deriving her framework from the work of Murray Edelman on the “symbolic uses of politics,”\(^7\) Calavita has postulated that symbolic manipulations of law can instill a false consciousness among the public and divert the various political constituencies from the concrete economic and social problems which governments should address directly. Her work further explains that California’s employer sanctions statute has never been effectively enforced because of political resistance to it by employer groups, Mexican-American interests, and civil rights organizations — that is to say, because of “dialectical contradictions in the political economy.”\(^6\)

Nonenforcement of state sanctions laws can also be attributed to the legal constraints imposed by federal and state courts acting according to an “autonomy model” of judicial decision-making. Rather than reinforcing or legitimating such statutes, the courts have most often enjoined or discouraged executive agencies from administering them, on a wide variety of constitutional and statutory grounds. The latter have included the employment rights of undocumented workers, the lack of proof that employers “knowingly” hired such workers, violation of Fourth Amendment protections against unreasonable search and seizure, and discrimination against aliens “authorized to work” by federal regulations but not necessarily “lawful residents” of the United States. Some decisions have also noted the discriminatory effects of state

---

5. Interviews with Leonard Hopkins, Assistant Attorney General, and William Turpin, Department of Labor and Industry, Richmond, Virginia.

6. Kitty Calavita, “California’s ‘Employer Sanctions’: The Case of the Disappearing Law,” Research Report Series, 39 (La Jolla, Calif.: Center for U.S.-Mexican Studies, University of California, San Diego, 1982); see also Professor Calavita’s contribution to this volume.


sanctions laws and INS detentive questioning on legal aliens and citizens who resemble undocumented workers. All these judicial restrictions have been applied in such a way as to inhibit state enforcement practices, in spite of the United States Supreme Court’s ruling in DeCanas vs. Bica that California’s sanctions law—and presumably those of other states—represented a legitimate exercise of state legislative authority in the area of immigration.

Penalties and Evidentiary Requirements

All of the laws passed by state and local jurisdictions, as well as the proposed Simpson-Mazzoli Bill, require the prosecutor to prove that an accused employer “knowingly” hired an alien unauthorized to work in the United States. The California and Connecticut statutes define an “unauthorized alien” as one who has not established “legal residency,” while the others rest their definition on the failure to produce necessary permits and identification documents issued by the INS, the U.S. Department of Labor, or state authorities. Court decisions in both California and Connecticut have effectively curtailed the requirement of “lawful residence” in those states. Marin vs. Smith and Dolores Canning Co. vs. Howard both noted the discriminatory effect of imposing such narrow grounds for worker eligibility on aliens otherwise “authorized to work” by the INS or the Labor Department.

By comparison with the penalties called for by the Simpson-Mazzoli Bill, those imposed on offending employers by the state laws are mild: a range of $100-$500 in civil or criminal fines and from one to six months’ imprisonment under local misdemeanor statutes. The Simpson-Mazzoli Bill, in both its House and Senate versions, would establish sanctions which escalate with successive offenses, particularly in the House version, which authorizes penalties on the fourth offense of up to a $3000

10. See Appendix 1.
criminal fine and/or one year in jail per unauthorized alien hiring.\textsuperscript{13}

The varying evidentiary requirements for proving the \textit{scienter} of employer intent invite comparison and offer some hard lessons for the proponents of federal employer sanctions. Some laws require an affirmative ("good faith" or "reasonable") effort to check documents to determine worker eligibility at the time of the hire or application; but others merely require a threshold inquiry as to immigration or citizenship status and a document check only upon a negative or doubtful response from the applicant. The standard selected, which turns at the moment of enactment on the issue of political acceptability, has obvious repercussions in terms of effectiveness. Simpson-Mazzoli and the statutes of Connecticut, Virginia, Montana, and Vermont place the more stringent evidentiary burden on the employer; the sanctions laws of California, Massachusetts, Florida and Kansas have the less burdensome (see Appendix 1). The 1981 Report of the Select Commission on Immigration and Refugee Policy opted for a similarly light verification requirement for employers in the absence of "a dependable mechanism for determining a potential employee's eligibility."\textsuperscript{14}

Both sets of verification requirements produce negative results. The less stringent evidentiary proposals, such as that proposed by the Select Commission, seek to avoid transforming the employer into a surrogate immigration agent and to minimize discrimination against U.S. citizens and legal aliens who share ethnic and/or racial characteristics with undocumented migrants. Even though the Supreme Court has limited challenges to private-sector employment discrimination on the grounds of alienage,\textsuperscript{15} a

\textsuperscript{13} H.R. 1510, Section 274A (d), 1983 (H.R. 6514 in 1982). For a summary comparison of evidentiary requirements and penalties in the laws under consideration, see Appendix 1.


\textsuperscript{15} This ruling constrains challenges to such discrimination against aliens when that discrimination is not covered by Title VII of the Civil Rights Act. See \textit{Espinoza vs. Farah Manufacturing Co.}, 414 U.S. 86 (1973). But note also \textit{Hicklin vs. Orbeck}, 437 U.S. 518 (1978), wherein the Supreme Court struck down Alaska's total ban on private employment of all classes of aliens.
recent *Massachusetts Law Review* article specifically warned its employer-readers about their risking legal sanctions if they discriminated against job applicants on the basis of race, national origin, or ancestry.\(^{16}\) Several federal court rulings which protect undocumented workers under civil rights statutes and under the National Labor Relations Act reinforce this admonition. But by lightening the evidentiary burden on employers, these laws provide escape hatches which subvert their central purpose: to deter the hiring of illegal aliens by eliminating one of the "pull" factors in the United States economy.

On the other hand, if a law requires that employers prove "good faith" inquiry by looking at specific documentation on mere suspicion that the applicant is an undocumented alien, then it encourages the employer to discriminate against anyone with similar ethnic or racial characteristics. It also converts the employer into a surrogate police or immigration officer, as noted above.\(^{17}\) Some employers have responded to the dilemma by making their acceptance of employer sanctions in Simpson-Mazzoli contingent on a secure form of worker identification so as to verify eligibility.\(^{18}\) But Latino and civil rights organizations have countered just as strongly that such an onus on employers and workers would end up blocking Hispanic worker access to the labor market. The Select Commission report of March 1, 1981 reflected these countervailing pressures. The Commissioners agreed on the need for creating an effective verification system, incorporating reliability, the protection of individual rights, and "cost effectiveness." But they could reach no consensus on a

---


17. Both of these impacts were raised by the state trial court in the *Dolores Canning Co.* case and by the state District Court of Appeals in *Diaz vs. Kay-Dix Ranch*, a civil complaint filed against employers based on the "unfair competition" language of the California Civil Code. See Superior Court, Los Angeles County, Memorandum Opinion #016-928 (March 3, 1972); 9 Cal. App. 3rd 588, 595 (1970); and California Civil Code 3369.

"dependable mechanism" to prove intent to hire illegals. The Simpson-Mazzoli proposal, however, would correct all this confusion. It would require employers to check two standard pieces of identification, and it would require the President to establish, within three years after enactment, a nondestructible and "fraud-resistant" card or number verifiable through a call-in computer bank.

The problem with this hard-line approach is that it would urge the employer to check all worker applicants with Hispanic characteristics simply because Hispanics comprise the largest single group of undocumented aliens in the country. Worthy of note in this regard is the consistent rule of the federal courts in proscribing certain INS searches and detentive questioning of suspected illegal aliens in businesses, highways, and neighborhoods:

Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific, articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that vehicles contain aliens who may be illegally in the country.

In the case United States vs. Cortez, the courts ruled that:

Based upon the whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.

Finally, and most recently, in ILGWU vs. Sureck:

We feel the Fourth Amendment rights of workers would be impermissibly diminished were we to sanction the unconstrained use of warrantless,
detentive questioning of the sort depicted by this record [holding the entire factory work force for selective interrogation] — questioning which is frightening to the workers, intrusive, and often “based on nothing more than inarticulate hunches.”

Thus, if the Simpson-Mazzoli Bill transforms the employer into an immigration agent, then he will have a Hobson's Choice. Under-zealous compliance could lead to prosecution. Over-zealousness could produce massive civil rights offenses, including violations of citizens' rights to privacy and due process. At that point a whole new line of case and administrative law could well develop out of complaints of ethnic and racial discrimination filed against employers, instead of against the INS. Interestingly, when the Seventh Circuit Court of Appeals faced a choice between subjecting an employer to prosecution under California's employer sanctions law and upholding the rights of undocumented alien workers to reinstatement and back pay under the National Labor Relations Act (NLRA), it chose the latter. The court held that illegal aliens have a right under the NLRA to vote in a union election, and it ruled further that deportation of those aliens after the election did not invalidate the pro-union results of that election.

23. West Bulletin 3054, at 3077 (9th Cir., July 15, 1982). Representative William Dannemeyer (D-California) introduced H.R. 6506 in the 97th Congress (May 27, 1982), which would have amended the Immigration and Nationality Act (8 U.S.C. 1357) to prohibit the INS from entering farms, as well as businesses and residences, without owner consent or judicial search warrants. The INS had relied on *Hester vs. United States* (1922) and its “open fields doctrine” to justify warrantless searches. Dannemeyer's bill commanded widespread bipartisan support but lost narrowly in the Judiciary Committee. The U.S. Senate on May 18, 1983 passed a similar proposal under the sponsorship of Senator James McClure (R-Idaho) by a vote of 62 to 33. McClure's amendment was incorporated into the larger immigration reform package passed on the same day.

Enforcement Experiences: Some Lessons

When interviewed about why employer sanctions laws were not enforced, state and local prosecutors in the eight states under consideration most often attributed nonenforcement to judicial rulings — on evidence of employer intent, on potential racial discrimination against job applicants, and on due-process violations during INS raids. Such rulings parallel the experience of the twenty nations with employer sanctions laws studied by the United States General Accounting Office. The GAO found that laws penalizing employers of illegal aliens in each country, some carrying fines and prison terms far more severe even than those proposed in the Simpson-Mazzoli Bill, “were not an effective deterrent to illegal employment.” As reasons for this pattern, respondents to the GAO survey most often mentioned judicial unwillingness to impose harsh sentences and case dismissals for inadequate or improper evidence. Federal efforts to fine and imprison farm labor contractors for “knowingly” transporting and recruiting undocumented alien workers have met a similar fate in United States trial courts.

A second major reason for the states' reluctance to prosecute lies in their perception that preventing the employment of illegal aliens is “a low-priority task,” to use the words of deputy attorneys-general in Kansas and Connecticut. As a common corollary, many state attorneys feel that the problem of prosecuting employers belongs to someone else, in particular local district attorneys, the INS, or even state legislatures. The latter is most frequently mentioned as the responsible body in states such as California, in which the employer sanctions law has come

25. A list of the state attorneys interviewed for this research is included at the end of this essay as Appendix 2.


under court challenge. A final and related reason for nonenforcement mentioned by these attorneys is the relationship among state officials, the INS, and the Federal Justice Department. Some indicated a feeling of frustration with the federal agencies, while others (e.g., those in Florida, Kansas, and Montana) complained of their dependence on these agencies for the data and witnesses needed for successful prosecution. Their opinions on the INS ranged from a judgment that it is "effective but numerically inadequate" as an information provider to feelings that the agency "operates in a separate orbit" and fails to cooperate consistently with local and state prosecutors.

Although only partially applicable to the other state experiences under review, the "symbolic law" theory does seem to explain the sparse enforcement activity behind California's employer sanctions law. Professor Calavita's analysis reveals that passage of Labor Code 2805 in 1971 came as a response to "the immigrant-as-villain ideology" within the context of economic crisis and rising unemployment during the early 1970s. But in the process of making the statute acceptable to employers, the California Legislature deleted the provisions which might have made it an effective deterrent to hiring undocumented aliens. The statute nonetheless came under legal challenge, and the United States Supreme Court ultimately remanded it to the custody of the state in DeCanas vs. Bica. However, as both organized labor and Mexican-American groups began to express concern over the discriminatory effects of the legislation, the law became a political liability; although it continued on the books, the state made no attempt to enforce it. Neither the State Attorney General's Office nor the Department of Industrial Relations has attempted to appeal the Dolores Canning Co. decision of 1974, which voided Labor Code 2805 on the twin grounds of federal preemption and the statute's vagueness about the documentation required to satisfy its "lawful residence" provision. The permissive nature of the DeCanas decision and the California Administrative Code's subsequent specific

28. Calavita, "California's 'Employer Sanctions'," ch. VI.


listing of documents required for determining worker eligibility render the state's failure to appeal all the more curious. Authorities in Sacramento have explained during interviews with the author that "the law has been enjoined; look to the Legislature for the reason why it is not enforceable." These officials were saying, in effect, that nonenforcement has become a political rather than a legal problem.

But one must conclude that the "symbolic law" framework only partially explains the limited enforcement patterns in the other states and in the nations reviewed by the GAO study discussed above. Crowded caseloads and "high crime" priorities within state legal offices, as well as erratic coordinative relationships with the INS, provide another part of the explanation. But the dominant intrusive factor is the behavior of the courts. Given the high visibility of judicial rulings on evidence and on protecting the procedural and employment rights of suspected deportable aliens, one could well attribute the observed reluctance regarding enforcement to the impact of judicial policymaking in its most independent form. The federal and state courts, with some notable exceptions, have assumed an almost oracular role in delimiting or disallowing public policies and INS practices against undocumented aliens and substituting instead those based on constitutional and statutory rights.

These decisions fall into three broad categories. First, a series of federal decisions have stated that the Fourth Amendment prohibits INS agents from detaining and questioning an entire work force unless those agents can articulate reasons for suspecting "that each questioned person is an alien illegally in this country." A

32. See Appendix 2.
33. See ILGWU vs. Sureck (West Bulletin 9th Cir. U.S.C.A. 3054, 3066, July 15, 1982); also Blackie's House of Beef vs. Castillo, 467 F. Supp. 1978 (1979), upheld 659 F. 2d 1211 (D.C. Cir. 1981), cert. denied 102 S. Ct. 1432 (1982); United States vs. Brignoni-Ponce, 422 U.S. 873 (1975); Loya vs. INS, 583 F. 2d 1110 (9th Cir., 1978); and Illinois Migrant Council vs. Piliod, 540 F. 2d 1062 (7th Cir., 1976), modified as to remedy, 548 F. 2d 715 (1977), and 531 F. Supp. 1011 (N.D. Ill., 1982), granting summary judgment and permanent injunction on remand, stating further that "warrants to search premises simply do not authorize the seizure of persons found on the premises" (531 F. Supp. at 1020), emphasis added.
more recent Ninth Circuit ruling held that incriminating statements made by suspected illegal aliens after being improperly detained cannot be used as evidence at subsequent deportation hearings. Several other persuasive judicial constraints on employer sanctions enforcement reside in a series of court and National Labor Relations Board decisions which protect a surprising number of rights to employment, fair working conditions, and job-related benefits for undocumented aliens. In the case of NLRB vs. Apollo Tire Co., the court ordered reinstatement of the undocumented workers, even though the employer argued that to comply would force him to violate California's employer sanctions law.

Nowhere has judicial autonomy been more striking than in court decisions upholding the rights of the undocumented to a variety of non-employment related government services and benefits. The courts have based these "equal access" grants on the equal-protection clause of the Fourteenth Amendment, on equality rights under state constitutions, and on statutory law. Such grants have made the undocumented eligible to receive state-financed medical services under a Special Needs Act, to secure

34. Sandoval-Sanchez vs. INS (9th Cir. U.S.C.A., April 25, 1983), as reported in Los Angeles Times (April 26, 1983), Part I: 1.

35. See, for example, Demalherbe vs. International Union of Elevator Contractors, 476 F. Supp. 649 (N.D. Cal., 1979), which invalidated a union agreement restricting employment to citizens only; NLRB vs. Sure-Tan, Inc., 583 F. 2d 355 (7th Cir. Ill., 1978), which held that undocumented aliens have the right under the National Labor Relations Act to vote in union elections, that the pro-union results of that election must stand, and that the aliens in question must be reinstated with back pay; Ayala vs. Unemployment Insurance Appeals Board, 54 Cal. App. 3rd 676 (1976) which reversed state agency denial of disability benefits to undocumented workers; and NLRB vs. Apollo Tire, discussed immediately below (see note 24).

36. 604 F. 2d 1180 (9th Cir. Cal., 1979).

37. See Perez vs. Health and Social Services, 91 N.M. 334, 573 P. 2d 689 (1978), wherein the New Mexico Supreme Court rejected the state agency's argument that federal immigration authority preempted state assistance to Pérez under the Special Needs Act. The court held that "The agency's argument indicated that Pérez should be shipped out of the country or left here to die. We disagree. [The defendant's] . . . duty to human beings in serious medical condition cannot be thwarted by a misconstruction of the statute or a violation of its regulations" (91 N.M. at 692-93).
state benefits for victims of violent crimes; and to have access to divorce courts. More importantly, the U.S. Supreme Court recently invalidated a Texas statute and school district policy which excluded from the public schools any child not "legally admitted" into the United States. Although the Court apparently qualified this decision less than a year later by permitting Texas to charge tuition to children "who have not established a permanent residence," the former decision still stands along with \textit{Brown vs. Board of Education} as a landmark equal-protection case.

In the area of the rights of undocumented aliens, the courts have broadly extended the mantle of special judicial scrutiny for what Justice Harlan Stone in 1938 called a "discrete and insular minority." The courts have thus diverged from their more submissive role of legitimator or "validator" of legislative or administrative policy; any attempt to explain the enforcement patterns of state employer sanctions laws must therefore incorporate this salient, independent propensity of the courts to define and limit what the states — and prospectively, the federal government — can do to deter illegal hiring practices.

\textbf{Conclusion}

Employer sanctions programs and a national identification system are not the only ideas put forth to address the issue of undocumented migration. Some governmental bodies and agencies have proposed that

\begin{itemize}
  \item 42. 347 U.S. 438 (1954).
  \item 43. \textit{United States vs. Carolene Products Co.}, 304 U.S. 144, 152, n. 4 (1938).
\end{itemize}
more effective enforcement of existing state and federal laws governing minimum wages and fair labor standards would help deter commercial exploitation of the undocumented underclass while raising no difficulties with prevailing case law. The Select Commission itself recommended “necessary increases in budget, equipment and personnel to allow the Labor Department’s Employment Standards Administration . . . to increase efforts to monitor the workplace.”

The U.S. Civil Rights Commission also urged “vigorous enforcement of the Fair Labor Standards Act” (FLSA) so as to alleviate fears of detection among undocumented workers if they complained of poor working conditions. Effective enforcement of the FLSA thus would “help to ensure that neither citizens or aliens are subject to unfair working conditions.” The author’s interviews with officials of the California Department of Industrial Relations, particularly the Division for Concentrated Enforcement, indicated that monitoring working conditions with an eye to enforcing state and federal law would be much easier and less costly than finding and punishing employers for hiring undocumented aliens.

Similarly placed officials in Illinois and New Jersey shared this perspective. Both states had seen intense interest in employer sanctions legislation, but by 1982, two bills in each state’s legislature had failed to survive committee mark-up, and Illinois’ citizen-preference law on public works employment had also come under challenge in state and federal courts. State-level attorneys of both states therefore directed most of their energy and priorities towards enforcing state laws covering industrial safety, wages, and hours and showed a decided lack of enthusiasm for employer sanctions. During 1981-82, the New Jersey Department of Labor and Industry prosecuted seventy employers for illegal industrial “homework” and secured 30 convictions, with the remainder still pending. In punishing employers for such violations, the Labor

---


47. See Appendix 2.
Department had secured the "invaluable" cooperation of the International Ladies' Garment Workers' Union, which had targeted many of the estimated 300,000 illegal workers in New Jersey as potential members. Many of the complaints had been filed by shop stewards and other labor leaders in New Jersey.

A law-enforcement approach to stemming the flow of illegal migration to the United States will serve only to create enormous bureaucratic costs, a garrison-state mentality, and widespread threats to the civil rights of both job applicants and employers. Enforcement of fair labor standards, on the other hand, can make the workplace on this side of the border more attractive to native and legal alien workers. It would make many jobs now held by illegal aliens more competitive, and it would deter undocumented migrants from entering the U.S. labor market by reducing the incentive to hire them. This result would be particularly evident in urban commerce, where the FLSA and comparable state statutes apply more rigorously nationwide. Natural deterrence through the competitive forces of the free labor market seems far better than militarizing the border, computerizing the labor force, and making the INS a "hit squad" against U.S. businessmen.
# APPENDIX 1
EMPLOYER SANCTIONS LAWS IN EIGHT STATES AND THE SIMPSON-MAZZOLI PROPOSAL

<table>
<thead>
<tr>
<th>Statute and Provisions</th>
<th>Evidentiary Requirements</th>
<th>Penalty</th>
<th>Residency a Precondition for Work Eligibility?</th>
</tr>
</thead>
<tbody>
<tr>
<td>California Labor Code 2805. States that “No employer shall knowingly employ an alien . . . not entitled to lawful residence in the United States if such employment would have an adverse impact on lawful resident workers.”</td>
<td>Requires employer to conduct inquiry on citizenship and, upon negative response, to check documentation, per Administrative Code 16209.</td>
<td>Civil fine of $200-$500. No bar on further civil action.</td>
<td>Yes. Arnett amendment to substitute “authorized to work” rejected, 1972.</td>
</tr>
<tr>
<td>Connecticut General Statutes 31-51K (1972).</td>
<td>Requires element of intent in order to prosecute; employer must conduct concurrent inquiry and incurs the burden of checking documentation.</td>
<td>Criminal fine of $500 and 6 months in jail.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Massachusetts General Law 149-19C and regulation 3.00, 3.03 (1) (c), 1978, bans “knowingly” hiring an alien “unauthorized to work in the United States.”</td>
<td>Requires threshold inquiry as to eligibility at time of hire, not application; a negative response requires check of visa, Social Security card, birth certificate, or Department of Labor or INS cards.</td>
<td>Civil fine of $500.</td>
<td>No.</td>
</tr>
<tr>
<td>Virginia Code 40.1-11.1 (1977; 1979). Prohibits anyone “to knowingly employ . . . any alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States.”</td>
<td>Places affirmative burden on employer to check work permits and to inquire about citizenship on employment forms (but does not require use of such forms).</td>
<td>Criminal Class I misdemeanor; $500 fine and six months in jail.</td>
<td>No.</td>
</tr>
<tr>
<td>Statute</td>
<td>Scienter — no affirmative burden required.</td>
<td>First violation: civil fine of $500; second and successive offences: second-degree misdemeanor, $500 fine and/or sixty days in jail.</td>
<td>No.</td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>--------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>Florida Statutes 448-09 (1977). Prohibits intentional hiring of aliens not duly authorized to work.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vermont General Law, Title 21-444a (1977). States that “No employer shall knowingly employ ... an illegal alien.” “Illegal” defined as unauthorized to work or having overstayed a visa.</td>
<td>Places on employer an affirmative burden to check INS and/or Department of Labor documents.</td>
<td>First violation: fine of $100-$300; second violation: fine of $300-$750.</td>
<td>No.</td>
</tr>
<tr>
<td>Simpson-Mazzoli Bill (House version, H.R. 6514, as reported by House Judiciary Committee, September 22, 1982, except where otherwise indicated). Prohibits “knowing employment” of “unauthorized alien” and deletes the “Texas Proviso” of 1952, which exempted “employment practices” from the “harboring” section of the Immigration and Nationality Act (§ U.S.C. 1324).</td>
<td>Requires employer to verify worker eligibility by examining either a U.S. passport or a U.S. birth certificate or Social Security card and an alien identification card or a driver’s license or a state-issued identification card. Statute calls for “fraud-resistant system” to determine eligibility, to be implemented after three years.</td>
<td>First violation: warning; second offense: civil fine of $1,000 per unauthorized hiring; third: $2,000 civil fine per hiring; fourth: criminal fine of $3,000 or one year in jail per unauthorized hiring. Criminal offense not restricted to “pattern or practice” of violation as with Senate version (S. 2222, 1982). Limits sanctions to businesses which employ four or more employees.</td>
<td>Partly: statute requires employer to check documentation for establishing that worker-applicant is a “legal resident” of the U.S.</td>
</tr>
</tbody>
</table>
APPENDIX 2
LIST OF GOVERNMENT ATTORNEYS
AND SENIOR ADMINISTRATORS INTERVIEWED,
MAY, 1982 — APRIL, 1983

Florida:
Mr. Chad Motes, Legal Services Department, Department of Labor, Tallahassee
Mr. Zeke Sims, State Employment Service, Tallahassee

Kansas:
Mr. Neil Woerman, Special Assistant to the Attorney General, Office of the Attorney General, Topeka
Mr. Nicholas Tomasic, Deputy District Attorney, Kansas City

Illinois:
Mr. Michael Luke, Assistant Attorney General, Office of the Attorney General, Springfield

New Jersey:
Mr. Don Alten, Deputy Attorney General for Labor and Industry Code Enforcement, Trenton
Mr. William Clark, Assistant Commissioner of Labor, Trenton

California:
Anonymous attorneys with the Office of the Attorney General, Sacramento, and the Division of Concentrated Enforcement, Department of Industrial Relations, Sacramento and Santa Ana

Virginia:
Mr. Leonard Hopkins, Assistant Attorney General, Richmond
Mr. William Turpin, Staff Counsel, Department of Industry and Labor, Richmond

Montana:
Mr. Paul Van Tricht, Assistant Attorney General (for labor-standards enforcement), Helena
Connecticut:
Mr. John McCarthy, Staff Counsel for the Commissioner of Labor's Office, Hartford

Vermont:
Mr. David Lagala, Director, Wage and Hour Division and Child Abuse Section (and of employer sanctions enforcement), Department of Labor and Industry, Montpelier