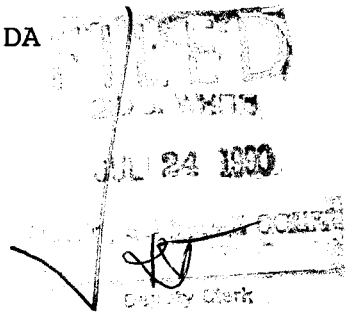
IN THE SUPREME COURT OF FLORIDA



DEPARTMENT OF HEALTH AND
REHABILITATIVE SERVICES,

Petitioners,

vs. CASE NO. 75,553

LUISA SOLIS,

Respondent.
_____/

BRIEF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION AS AMICUS CURIAE

On Certified Question from the
District Court of Appeal, Third District

VICTOR PANOFF, ESQ.
for American Immigration
Lawyers Association
c/o 224 Datura Street
Suite 301
West Palm Beach, FL 33401
Telephone: (407) 655-8944

IRA J. KURZBAN, ESQ.
Of Counsel
Kurzban, Kurzban & Weinger, P.A
2650 S.W. 27th Avenue
Miami, FL 33133
Telephone: (305) 444-0060

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INTEREST OF AMICUS

Amicus Curiae, the American Immigration Lawyers Association offers this brief in support of respondent, LUISA SOLIS.

The American Immigration Lawyers Association [AILA] is a national professional bar association. AILA's objectives include the advancement of law pertaining to immigration, nationality, and naturalization, and promoting reforms and facilitating the administration of justice.

AILA maintains an Amicus Curiae Committee to appear as friend of the court in significant cases pertaining to and effecting the immigration and nationality laws. AILA's Amicus Curiae Committee uses volunteer lawyers to represent AILA's interests before the federal district courts, the United States circuit courts of appeal, the Supreme Court of the United States, as well as the state courts. The Amicus Curiae Committee entered AILA's appearance as friend of the court in seventeen lawsuits this year, including appearances in Commissioner of INS v. Jean, 58 U.S.L.W. 4701 (June 4, 1990), Ardestani v. INS, No. 89-8458 (11th Cir. July 6, 1990), and U.S. v. Ramirez, No. 89-2506 (5th Cir. July 10, 1990).

AILA submits this brief because the certified question has a direct effect on the development of the law concerning aliens living in the United States. AILA believes that a uniform interpretation of "permanently residing in the United States under color of law" [PRUCOL] is essential to a fair allocation of public benefits. AILA believes that the decision of the Third District

Court of Appeal produces a uniform interpretation of PRUCOL. In filing an amicus brief in support of the legal position advanced by the Respondent, AILA urges this Court to affirm the decision of the Third District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

Amicus agrees with Respondent's Statement of the Case and Facts but adds the following explanation of the asylum process.

The asylum process is lengthy, tortuous, and results in few actual deportations. For example, only 19 Nicaraguans were actually deported in 1988 as compared to the 21,054 persons with asylum applications pending at the end of that same year. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 56, 122. Asylum is available only to aliens fleeing persecution. 8 U.S.C. §1158; 8 C.F.R. §208.5.

An alien requests asylum by completing form I-589. 8 U.S.C. §1158(a); 8 C.F.R. §208.2. This form instructs the applicant, "You may remain in the United States until a final decision is made on your case..." (Form I-589 attached as Appendix 1 to Respondent's Brief). Aliens entering the United States without inspection[1] may affirmatively bring themselves to the attention of the Immigration and Naturalization Service [INS], receive INS I-94 Arrival/Departure cards, and request asylum by completing a Form I-589.

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[1] "According to the Refugee Act, current immigration status, whether legal or illegal [i.e. entry without inspection], is not relevant to an individual's asylum claim." Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at xxvii.

INS reviews the asylum request and grants work authorization only if the request is non-frivolous. 8 C.F.R. §274a.12. Additionally, Nicaraguans are beneficiaries of a policy of the Office of the Attorney General to grant work authorization to qualified Nicaraguans: "each and every qualified Nicaraguan seeking work authorization shall be entitled to one." July 2, 1987 Memorandum attached hereto as Appendix 1 (R. 27-33, 114-115).

After an asylum application is filed and work authorization granted, INS conducts an interview with the alien. 8 C.F.R. §208.6. Following the interview, INS is required to seek an advisory opinion on each asylum application from the State Department Bureau of Human Rights and Humanitarian Affairs [BHRHA]. 8 C.F.R. §208. INS rules on the asylum request only after receipt of the BHRHA advisory opinion.[2] If INS grants asylum, the asylee is eligible to adjust status to lawful permanent resident after one year. 8 U.S.C. §1159; INA §209. If the asylum request is denied, the process of deportation is initiated by the service of an Order to Show Cause. 8 C.F.R. §242.1.

Nevertheless, even after deportation proceedings have been initiated, the alien may renew his/her asylum request, or request other forms of relief from deportation, before an immigration

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[2] In addition to the alien's particular situation, the BHRHA advisory opinion considers conditions in the alien's home country as analyzed by the U.S. State Department. Nationality of the alien plays a significant role, because the grant of asylum ultimately reflects U.S. foreign policy. Aliens from countries with regimes hostile to U.S. interests, such as Communists [and the Nicaraguan Sandinistas], are given greater consideration in asylum requests. Helton, Political Asylum Under the 1980 Refugee Act: An Unfulfilled Promise, 17:2 U. Mich. J. L. Ref. 243, 253 (1984).

judge.[3] 8 C.F.R. §208.9(1989). The amended asylum request is again referred to the BHRHA. 8 C.F.R. §208.1. An alien whose renewed request for asylum or other relief from deportation is denied by the immigration judge may ultimately appeal to the Board of Immigration Appeals [BIA].[4] 8 U.S.C. §§1253(h), 1254(a),(e), 1255; (R. 60-61). Nearly all such denials are in fact appealed. An appeal to the BIA automatically stays a deportation order of the immigration judge. 8 C.F.R. §§3.37, 3.6(a), 242.20, 242.21; (R. 59). AILA's experience is that it often takes two years or longer for the BIA to issue its decision. Finally, the decision of the BIA is a final administrative order which is subject to judicial review through the federal courts.[5] After which, decisions of the federal courts in asylum and deportation cases are also reviewable by the United States Supreme Court. INS v. Cardoza-Fonseca, 107 S.Ct. 1207 (1987).

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[3] Other forms of relief from deportation include, inter alia, renewing the request for asylum, suspension of deportation, and voluntary departure. Ms. Solis could ultimately be eligible for all of these forms of relief. 8 U.S.C. §§1254(e), 1255.

[4] Before appeal to the BIA, the alien may file a Motion for Reconsideration and/or a Motion to Reopen before the immigration judge for the consideration of new evidence or evidence previously unavailable. 8 C.F.R. §242.22.

[5] The record evidence includes the deposition of a senior INS official who states that appeals can take "an enormous amount of time" (R. 59). For example, at the end of fiscal year 1988, there were 818 judicial reviews of orders of deportation pending. Yet during the same period the courts only disposed of 208 cases. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 135.

The asylum applicant has numerous opportunities to prevail in successive administrative and judicial forums. Thousands of people are actually granted asylum at some time during this process.[6] In fact, the number of Nicaraguans granted asylum has been steadily increasing since 1985: from 557 in 1985 to 3,725 in 1988. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 56. Nicaraguan represented the leading nationality granted asylum in the United States during 1987 and 1988. Id. at xxviii.

SUMMARY OF ARGUMENT

AILA agrees with Respondent that Ms. Solis permanently resides under color of law [PRUCOL] and is eligible for Aid to Families with Dependent Children [AFDC]. PRUCOL includes all aliens who reside pursuant to immigration law, policy, or practice. H.R. 727, 99th Cong., 2d Sess. 111, reprinted in 1986 U.S. CODE CONG. & ADMIN. NEWS, 3607, 3700-01. Asylum applicants reside here indefinitely pending the resolution of their asylum claims pursuant to immigration law, policy, or practice. Asylum applicants are closely analogous to several other immigration statuses which HRS recognizes as PRUCOL. Thus, asylum applicants are PRUCOL.

Ms. Solis, a Nicaraguan asylum applicant with work authorization, is permitted to reside here pending the resolution of her asylum claim pursuant to immigration law, policy, or practice.

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[6] "The number of individuals granted asylum increased by over 40 percent from 1987 (5,093) to 1988 (7,340)." Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at xxviii.

Ms. Solis is married to a lawful permanent resident who filed an I-130 alien relative petition on behalf of her and her children. (Brief of Amicus United States at 12, n. 6.) Thus, the Solis', if not all asylum applicants, are PRUCOL: they reside "with government knowledge and approval...until changed by other official INS action." Alfred v. Florida Dep't of Labor and Employment Security, 487 So.2d 355, 357 (Fla. 3d DCA 1986).

The recent legislative history of PRUCOL shows that Congress wants this term interpreted broadly. The passage of the Immigration Reform and Control Act [IRCA] does not affect this Congressional mandate, and no anomaly is created in immigration law by PRUCOL aliens' receipt of AFDC.

AILA supports a uniform interpretation of PRUCOL for all state benefit programs. PRUCOL language is the same in both the AFDC, Medicaid, and unemployment compensation statutes. §§409.026, 443.101(7), Fla. Stat. Petitioner (HRS) uses a proper PRUCOL standard to find Ms. Solis eligible for Medicaid (R. 10). There is no legal or factual basis to interpret PRUCOL differently for AFDC than for Medicaid or unemployment compensation. The decision below provides a uniform approach and should be affirmed by this Court.

Since AILA's expertise is immigration law, this brief will address the immigration laws, policies, and practices under which Ms. Solis is recognized and permitted to indefinitely reside in the United States.

ARGUMENT

I. ASYLUM APPLICANTS RESIDE PERMANENTLY UNDER COLOR OF LAW

The asylum process is lengthy and convoluted. It may last six years or more, as there is no maximum time limit for the completion of the process. Sudomir v. McMahon, 767 F.2d 1456, 1467 (9th Cir. 1985) (Canby, J. dissenting)[7]; (R. 60).[8] During this time, under INS law, policy, and practice, the alien seeking asylum from persecution is permitted by INS to continue residing in the United States.[9] 8 C.F.R. §208.8(f)(4); Form I-589; (R. 59-60). If this

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[7] While the dissenting judge in Sudomir states that about 25% of asylum applications are granted after a wait of three to six years, more recent statistics indicate that for Nicaraguans the odds are better than 50-50. Slightly more Nicaraguan asylum applications are granted than are denied: in 1988, 2,786 Nicaraguan applications were granted versus 2,455 denied. Overall that year, the percentage of asylum cases granted, without regard to nationality, was 39.2 percent. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 56, 57.

[8] The record evidence also shows that there is no maximum time limit for a person to remain in this country "under docket control" (R. 44). The I-94 cards of the Solis family indicate that they are "under docket control" (R. 15A-16B). Thus, docket control also satisfies PRUCOL, because it is a recognized category permitted to reside in this country under "immigration law, policy, and practice."

[9] Legal commentators have noted that the legislative history of the term PRUCOL reveals Congress' desire to provide public benefits to persons who fear persecution, such as asylum applicants. 8 U.S.C. §1158; 8 C.F.R. §208.5.

> Congress' earliest concern...was to provide for the needs of persons fleeing persecution. These were not persons who already had been granted legal refugee status but rather applicants seeking to attain such status. In employing the color of law standard, Congress intended that a humanitarian approach be taken toward the transitional needs of noncitizens,

continued residence is considered "permanent," then the alien meets PRUCOL.

PRUCOL consists of two parts: residence that is "under color of law," and residence that is "permanent." "Under color of law" is adequately briefed by Respondent.[10] Therefore, AILA will only address the issue of "permanently [residing]" which is more technical in nature and requires AILA's expertise in immigration law.

A. ASYLUM APPLICANTS RESIDE "PERMANENTLY" AS DEFINED IN IMMIGRATION LAW

Courts defining "permanence" look to the definition in Section 101 of the Immigration and Nationality Act [INA].[11] "Permanent" is defined as:

> [A] relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or the individual, in accordance with law.

8 U.S.C. §1101(a)(31).

This definition is contrasted with the term "temporary," as used in the INA, referring to students, tourists, business visitors, and workers admitted for specific jobs. 8 U.S.C. §1101(a)(15)(B),(F),

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> particularly those fleeing persecution, who are permitted to remain in this country while seeking to legalize their status.

Rubin, Walking a Gray Line: The "Color of Law" Test Governing Noncitizen Eligibility for Public Benefits, 24 San Diego L. Rev. 411, 414 (1987).

[10] See Respondent's brief at 7-8.

[11] See Respondent's brief at 8-13.

(J). "The common characteristic of all these temporary relationships is that they exist for a **defined purpose** with a **defined end**, and there is never any intention of abandoning the country of origin as home."[12] Gillar v. Employment Division, 717 P.2d 131, 138 (Or. 1986) quoting Sudomir, 767 F.2d at 1467 (Canby, J. dissenting) (underlined emphasis added, bold emphasis in original).

Gillar holds that an asylum application is indefinite, as opposed to temporary or having a defined end. "An indefinite claim is one which has no definite ending either in time or purpose (as opposed to a student, temporary, visitor or business visa)." Id. at 140. See Div. of Employment & Training v. Turynski, 735 P.2d 469, 471 (Colo. 1987). Thus, one who files an indefinite claim with INS, like Ms. Solis, is "permanently" residing. Gillar at 140. "An alien awaiting action on an asylum application is present in the United States with no defined end or defined purpose. Thus, an asylum applicant fits within the statutory definition of 'permanent' rather than within the statutory use of 'temporary.'" Id. at 138.

Statistics on the number of aliens actually deported show that asylum applicants reside "permanently." For example, by the end of 1988, the year Ms. Solis applied for AFDC, there were 21,054 Nicaraguan applications for asylum pending; yet only 19 Nicaraguan persons were deported that year! In fact, since Ms. Solis' arrival, the number of Nicaraguans deported each year has been

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[12] "By contrast [to temporary aliens], applicants for asylum are necessarily 'unable or unwilling to return' to their countries." Rubin, supra at 430 (emphasis in original).

steadily decreasing: from 163 in 1985, to 19 in 1988 (most recent statistics published). Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 57, 122.[13]

Under the asylum process previously described, INS cannot enforce the departure of an alien who has applied for asylum until all administrative and appeal remedies have been exhausted (R. 59-61). In fact, under Medicaid PRUCOL, "permanence" is satisfied where INS does not contemplate enforcing the alien's departure (R. 10, 26). Because INS is not contemplating enforcing her departure, Petitioner grants Ms. Solis Medicaid (R. 9).

Simply stated, INS cannot "contemplate enforcing the departure" of any asylum applicant until the asylum claim has been finally adjudicated. Application of this principle requires that an asylum applicant be considered "permanently residing." Because their continued presence is guaranteed throughout the lengthy asylum process by INS policy, federal regulation, and international treaty obligations, asylum applicants are deemed "permanently residing" within the meaning of PRUCOL. Rubin, supra, at 432. The Third District Court of Appeals correctly holds that "deportable aliens are 'permanently' residing in the United States under color of law until a final determination of deportability is made following a hearing pursuant to 8 U.S.C. §1252(b)." Alfred at 358-

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[13] These statistics belie INS' bare, check-marked response to Petitioner that it "actively pursues the expulsion of an alien in [Ms. Solis'] class/category." Petitioner's Appendix 11.

359. Thus, asylum applicants reside permanently as defined in immigration law.

B. ASYLUM APPLICANTS ARE ANALOGOUS TO OTHER PRUCOL STATUSES

HRS and its Amicus recognize several immigration statuses which automatically satisfy the "permanently residing" requirement of PRUCOL. Ms. Solis' status as an asylum applicant is closely analogous to several of these statuses. As an asylum applicant, Ms. Solis' ties to this country and the conditions under which she is permitted to reside here are no less "permanent" than that for parolees, conditional entrants, or aliens granted suspension of deportation, stay of deportation, or voluntary departure.[14] 42 U.S.C. §602(a)(33); (See Petitioner's Appendix 2-3, for a list of statuses which it considers PRUCOL).

The Gillar court compares asylum applicants to conditional entrants and temporary parolees, two statuses provided as examples of "permanently residing" [under color of law] in the AFDC statute. Gillar at 139. Individuals in these two statuses are permitted in this country pursuant to the discretion of the Attorney General pending a determination of their final admissability. 8 U.S.C. §§1153(a)(7), 1182(d)(5). Likewise, the Attorney General's discretion permits asylum applicants to remain in the United States. 8

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[14] Conditional entrants, 8 U.S.C. §1153(a)(7), and parolees, 8 U.S.C. §1182(d)(5), are parenthetical examples of PRUCOL in the AFDC statute. Under HRS' guidelines, the following additional statuses are recognized as PRUCOL: suspension of deportation, indefinite stay of deportation, indefinite voluntary departure, or renewable voluntary departure for one year or more. Petitioner's Appendix 1-3.

U.S.C. §1158. Thus, the Gillar court finds that all three are permanently residing. Gillar at 139.

Gillar also rejects Sudomir's distinction between asylum applicants and parolees. Both are "legitimated" via the Attorney General's discretion. Gillar further holds that since "parolees and conditional entrants are eligible for [PRUCOL] benefits...there is no logical reason to exclude individuals in claimant's [asylum applicant] position." Gillar at 139.

In Holley v. Lavine, 553 F.2d 845 (2nd Cir. 1977), cert. denied sub nom. Shang v. Holley, 435 U.S. 947 (1978), the court observes that the alien statuses listed as parenthetical examples of "permanence" in the AFDC law are all "instances where the alien is permitted to stay in the United States not necessarily forever, but only so long as he is in a particular condition." Id. at 851.[15] Ms. Solis is also permitted to stay in this country so long as she is in the condition of applying for asylum. Thus, asylum applicants, like conditional entrants and parolees, reside "permanently."

Like an asylum request, suspension of deportation, stay of deportation, and voluntary departure, are all forms of relief from

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[15] Berger v. Heckler, 771 F.2d 1556 (2nd Cir. 1985) embraces the Holley approach to "permanence" and finds that all the alien statuses listed in the Berger decree meet that standard. Note that four of the Berger statuses involve "mere" applicants for relief. Thus, they are analogous to Ms. Solis: applicants with an approved relative petition; applicants who have properly filed for adjustment of status; aliens whose deportations have been stayed; and aliens whose deportations have been suspended. These statuses are considered permanently residing, because, like Ms. Solis, they are being permitted to stay while in their particular condition. Id. at 1577-1578 and at note 33.

deportation. All these forms of relief apply to aliens who would otherwise be deportable.[16] All delay or stop deportation. 8 C.F.R. §208.9. For example, if deportation proceedings were ever commenced against Ms. Solis, she would be eligible to request voluntary departure. If proceedings were not commenced until 1992 or later, she would also be eligible to request suspension of deportation. 8 C.F.R. §208.9. If a final order of deportation were ever entered against her, she would be eligible to request a stay of deportation. 8 C.F.R. §243.4.

Similarly, an asylum applicant is analogous to an alien granted indefinite stay of deportation. Both statuses meet the INS definition of "permanent": relationships of continuing or lasting nature though they may eventually be dissolved at the instance of the INS or the alien. 8 U.S.C. §1101(a)(31). In the same way that an alien granted indefinite stay of deportation resides indefinitely, an asylum applicant also resides indefinitely, because there is no maximum time limit for the completion of the asylum process (R. 60). See also Sudomir, 767 F.2d at 1467 (Canby, J. dissenting). Finally, both statuses may be terminated by INS; therefore, neither is more "indefinite" than the other. 8 U.S.C. §§1227(d), 1253; 8 C.F.R. §243.4.

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[16] There is an enormous distinction between the terms "deportable" and "deported." Only 19 Nicaraguans were actually "deported" in 1988, the year Ms. Solis applied for benefits, as compared to the 21,054 "deportables" whose asylum applications remained pending at the end of that same year. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 56, 122.

An asylum applicant is analogous to an alien requesting suspension of deportation because both types of aliens may ultimately adjust to lawful permanent resident status after their applications are granted. 8 U.S.C. §§1159, 1254(d). The alien can obtain lawful permanent resident status from either asylum or suspension; neither status is more "permanent" than the other.

Moreover, an asylum applicant may have <u>better</u> PRUCOL standing than a recipient of renewable voluntary departure for one year. The asylum applicant may actually be more "permanent," because, by its terms, renewable voluntary departure for one year can terminate in a year (renewal is purely discretionary, not automatic). 8 C.F.R. §244.2. In contrast, an asylum applicant's residence is open-ended. Ms. Solis has already continuously resided in this country unmolested since 1985.

Asylum applicants such as Ms. Solis reside indefinitely so long as they are in the condition of applying for asylum. They are deportable but eligible for relief from deportation. In this regard, Ms. Solis resides here just as "permanently" as do parolees, conditional entrants, or aliens granted suspension of deportation, stay of deportation, or voluntary departure, statuses which are all <u>per se</u> PRUCOL.

II. MS. SOLIS' FACTS AND CIRCUMSTANCES SHOW SHE WILL NOT BE DEPORTED

This Court should find that Ms. Solis satisfies PRUCOL even assuming arguendo that it does not find that all asylum applicants are PRUCOL. An alien is PRUCOL if: 1)the alien resides with the

knowledge and permission of INS[17]; and 2)INS does not contemplate enforcing the alien's departure (R. 10, 26, 112). INS is not considered to be contemplating enforcing an alien's departure if, from all the facts and circumstances in a particular case, it appears that the INS is permitting the alien to reside in the United States indefinitely. 53 Fed. Reg. 38032 (proposed September 29, 1988).

Ms. Solis is married to a lawful permanent resident who filed an I-130 alien relative petition on behalf of her and her children. (Brief of United States as Amicus at 12, n.6.). This petition commences step one of a two-step process[18] by which Ms. Solis will ultimately be able to receive lawful permanent resident status.[19] 8 U.S.C. 1152. Ms. Solis' husband appears eligible to petition for naturalization [citizenship], having already resided as a lawful permanent resident for the statutory period of five years. 8 U.S.C. §1427(a)(1). Should Ms. Solis' husband become a citizen,

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[17] Ms. Solis resides with INS knowledge and permission (R. 60, 62). See Respondent's brief at 7-8.

[18] Step one is the filing of the I-130 alien relative petition. After approval of the petition, step two is the processing of an immigrant visa (application for lawful permanent residency). Notably, at the conclusion of step one, when the I-130 relative petition is approved, the Petitioner's own rules require it to consider the alien PRUCOL for Medicaid. Petitioner's Manual attached hereto at Appendix 3.

[19] In fiscal 1988, 1,294 Nicaraguan immigrants were admitted to receive lawful permanent resident status under this "two-step" relative preference system. Department of Justice, Immigration and Naturalization Service, 1988 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICE at 13. Lawful permanent residents are also known as resident aliens. They possess what is colloquially known as a "green card" and are per se eligible for AFDC. 42 U.S.C. §602(a)(33).

Ms. Solis will be eligible to immediately receive a status of lawful permanent resident as the immediate relative of a citizen.[20] 8 U.S.C. § 1151(b). A lawful permanent resident is per se eligible for AFDC. 42 U.S.C. §602(a)(33). Moreover, even if Ms. Solis' husband does not become a citizen, it is almost a certainty that the process commenced by the I-130 petition will be completed before a final determination is made on her asylum claim,[21] thus ensuring her lawful permanent residency in any event. All these facts and circumstances are considered by INS in determining whether it contemplates enforcement of an alien's departure.[22] The

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[20] INS approves 96% of these immediate relative petitions. Central Office--Statistical Analysis Branch, Immigration and Naturalization Service, United States Dep't of Justice, ADJUDICATION SUMMARY REPORT FOR FISCAL YEAR 1984 (Form G22.2).

[21] Ms. Solis is the beneficiary of a "second preference" visa petition (spouse of permanent resident). INA §203(a)(2). The waiting period for approval of such petitions is governed by numerical quotas under a system of six preference categories. Second preference visa applications currently have a two year wait for approval. Thus, Ms. Solis is eligible for immigrant visa processing (step two) approximately March 1992, two years from the date the I-130 petition was filed on her behalf. Bureau of Consular Affairs, United States Department of State, No. 36 Vol. VI, VISA BULLETIN at 2 (July 1990). In comparison, she has not yet received an initial decision on her asylum claim. Under the process previously described, she could renew a denied asylum request before an immigration judge, appeal to the BIA, and seek judicial review in the federal courts thereafter, a process which will certainly take more than two years (R. 59).

[22] To determine whether it contemplates enforcing the departure of an alien, INS considers, inter alia: the likelihood of ultimately removing the alien; the likelihood that the alien will be able to qualify for some form of relief which would prevent or indefinitely delay departure; the immigration status or citizenship of all immediate family members residing with the alien in the U.S.; and the presence of sympathetic factors. Brief of Amicus United States at Attachment 1a-7a; Petitioner's Appendix 6.

facts and circumstances indicate that INS does not contemplate enforcing Ms. Solis' departure. Petitioner's statements to the contrary are based on faulty information.[23] The facts and circumstances of Ms. Solis' case indicate that INS is permitting her to reside indefinitely.

Ms. Solis satisfies PRUCOL: she resides with INS knowledge and permission (R. 60, 62), and INS does not contemplate enforcing her departure. Based on her continued, unmolested residence since 1985, her asylum application, her marriage to a lawful permanent resident, her I-130 petition, and her husband's eligibility for citizenship, it appears that INS is permitting her to reside indefinitely. Thus, Ms. Solis is PRUCOL even assuming that all asylum applicants are not.

III. IRCA DOES NOT SUPPORT PETITIONER'S PRUCOL INTERPRETATION

HRS argues that the passage of the Immigration Reform and Control Act of 1986 [IRCA] supports its narrow PRUCOL interpretation. In fact, the opposite is true. Congress rejected efforts to insert a restrictive PRUCOL definition into IRCA.

The House Judiciary Committee removed a restrictive definition of PRUCOL, proposed for inclusion in IRCA, from the final IRCA bill. Compare H.R. 3810, 99th Cong., 1st Sess. §121(c) (1985) to H.R. 3810, 99th Cong., 2d Sess. §121(c) (1986); see also Industrial Commission v. Arteaga, 735 P.2d 473, 478, n.8 (Colo.1897); Rubin, supra, at 422; Calvo, Alien Status Restrictions on Eligibility for

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[23] See Respondent's brief at 16.

Federally Funded Assistance Programs, 16 N.Y.U. Rev. L. & Soc. Change 395, 412 (1987-88); and Addendum to Brief of Amicus United States of America at 1a. "Congress...[knows] how to impose alienage requirements on social welfare programs....[I]ts refusal to impose such a requirement...should be respected." Lewis v. Gross, 663 F. Supp. 1164, 1183 (E.D. N.Y. 1986). Congress' refusal to pass legislation limiting PRUCOL must likewise be respected.

In contrast, when Congress wants to define PRUCOL it does so. **In 1986, the same year in which Congress passed IRCA**, Congress did provide an interpretation of PRUCOL. Congress admonished the Secretary of HHS and the states to interpret PRUCOL broadly so as to include aliens residing in the United States pursuant to immigration law, policy, or practice. H.R. 727, 99th Cong., 2d Sess. 111 (1986). The legislative history of the PRUCOL definition and of IRCA supports Respondent's position in this litigation.

HRS also argues that if this Court holds that asylum applicants are PRUCOL, Congress' immigration policy set out in IRCA will be disrupted. In fact, immigration law is not affected by the definition of PRUCOL and that term is not defined in either IRCA or in the Immigration and Nationality Act [INA]. Any alien who "permanently resides under color of law" (i.e. who is PRUCOL), is eligible to receive AFDC. Considering asylum applicants to be PRUCOL for the receipt of AFDC does not create an anomaly for the receipt of public benefits under immigration law.[24]

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[24] That asylum applicants are considered PRUCOL and can get AFDC is no more an anomaly to IRCA than the fact that a host of other non-IRCA related aliens, such as those granted stays of

IRCA creates special privileges for a class of previously illegal aliens and allows them to legalize under an amnesty process. INA §245A. As a trade-off for this special treatment, many of these aliens are prohibited from receipt of public benefits. PRUCOL aliens did not receive the benefit of the IRCA legalization process and must pursue legalization and citizenship [naturalization] by traditional, and slower routes. Because they did not receive IRCA's benefits, they are not affected by its restrictions on receipt of public benefits. There is no anomaly in this result.

IV. THIS COURT SHOULD ENSURE A UNIFORM INTERPRETATION OF PRUCOL

AILA agrees with legal commentators that a uniform interpretation of PRUCOL is essential. "[A]FDC eligibility should be afforded at least to those aliens who meet the SSI and Medicaid definition of permanently residing in the United States under color of law." Calvo, supra, at 420. "The recent trend...has been toward both liberality and uniformity in determining which classes of aliens are eligible for benefits." Carton, The PRUCOL Proviso

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deportation or voluntary departure, are considered PRUCOL and can get AFDC. Petitioner's Appendix 2-3. IRCA merely carves out a prohibition against the receipt of AFDC by aliens who specifically legalized under IRCA's provisions. IRCA does not affect the receipt of AFDC by scores of other miscellaneous aliens who fit under the PRUCOL definition. Petitioner's Appendix 2-3.

Indeed, IRCA itself carves out its own anomalies. For example, while permanent residents are generally eligible for receipt of AFDC, some permanent residents legalized under IRCA are AFDC eligible while other IRCA legalized permanent residents are not. 42 U.S.C. §602(a)(33); but compare 8 U.S.C. §1151(b) to 8 U.S.C. §1252(d) and to 8 U.S.C. §1255a(h)(2)(A).

in Public Benefits Law: Alien Eligibility for Benefits, 14 Nova L. Rev. 1031, 1032 (1990).

The decision below provides a uniform approach and ensures that only one PRUCOL standard is used in this State. The court, following Alfred, 487 So.2d 355, applies the PRUCOL standard used in unemployment cases. Thus, all of Florida's statutory PRUCOL requirements are interpreted uniformly.

The court's uniform approach is praised in a recent law review article:

> [T]he court took the eminently reasonable stance that dictated it apply the same meaning to 'the same words [regarding] persons in the same status.' In so doing, it provided a rare voice of common sense to the quagmire of cases seeking to justify divergent interpretations of PRUCOL for different benefit programs....
>
> It is hoped that the profound logic demonstrated by Florida's Third District Court of Appeal last year in Solis marks a judicial rejection of the hodgepodge of interpretations of the PRUCOL proviso.

Carton, supra, at 1057, 1059.

The decision below not only creates uniformity in Florida's public benefits programs, it is also consistent with official federal PRUCOL interpretations. HHS has issued two official interpretations of the term PRUCOL. 20 C.F.R. §416.1618; 53 Fed. Reg. 38033 (1988). For purposes of Medicaid[25] and SSI an alien is

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[25] The Medicaid and AFDC PRUCOL requirement is contained in the identical state statute. §409.026, Fla. Stat. The Solis family receives Medicaid because HRS' Medicaid PRUCOL standard is less restrictive than its AFDC standard (R. 10, 148). Petitioner's Initial Brief at 13. HRS has not explained this inconsistency and the decision below correctly requires that the identical standard be applied (R. 150-151).

PRUCOL if known to INS and INS does not contemplate enforcing the alien's departure, or if from all the facts and circumstances it appears that INS is otherwise permitting the alien to reside indefinitely. These interpretations of PRUCOL are entirely consistent with each other[26] and with the Third District Court's decision below and in Alfred, 487 So.2d at 357.[27] As the United States Supreme Court has just held, "identical words used in different parts of the same act are intended to have the same meaning." Sullivan v. Stroop, 58 U.S.L.W. 4790, 4792 (June 12, 1990), citations omitted.

This Court should reject HRS' and HHS' conflicting and confusing AFDC PRUCOL interpretation and embrace the uniform approach adopted by the court below. A commentator laments that current restrictions on eligibility do not afford federal public assistance for all aliens residing in the United States pursuant to immigration law, policy, or practice. This unfortunate situation is the

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[26] In fact, the proposed Medicaid regulations specifically embrace Berger v. Heckler, 771 F.2d 1556 (2nd Cir. 1985), the case upon which the SSI regulations are founded. 53 Fed. Reg. 38032-38033.

[27] Ironically, the restrictive interpretation of PRUCOL urged here not only conflicts with Congressional intent but also conflicts with HHS' own longstanding policy in favor of a broad interpretation of PRUCOL. Indeed, HHS originally represented in an amicus brief to the United States Supreme Court, precisely the position urged here by Ms. Solis! The Berger court notes that the government's position was that the INA provisions listed in the parenthetical "obviously forbid any narrow reading of the word permanently" and the phrase "residing under color of law" includes those aliens whose residence in the United States is "continued by virtue of official permission or acquiescence." Berger, 771 F.2d at 1576.

result of restrictions which are complex, confusing, and without consistent rationale, resulting in harm to individual citizens and society as a whole. Rubin, supra, at 432.

Asylum applicants are PRUCOL, because they reside in this country pursuant to immigration law, policy or practice. Gillar, 717 P.2d 131. They are eligible for AFDC without an official, written, individualized determination from INS. PRUCOL does not require an affirmative grant of a particular status from INS. Consistent with Congressional purposes, PRUCOL includes instances where it is INS policy not to deport based on statutes, regulations, operating instructions, or simply on practice. Rubin, supra, at 446. The Third District Court of Appeal has created just such a uniform and rational PRUCOL standard. Its decision should be affirmed.

CONCLUSION

Amicus AILA prays the Court affirm the decision below.

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Respectfully submitted,

VICTOR PANOFF, ESQ.
for the American Immigration
Lawyers Association
c/o 224 Datura Street
Suite 301
West Palm Beach, FL 33401.
telephone (407)655-8944

IRA J.KURZBAN, ESQ.
Of Counsel
Kurzban, Kurzban, & Weinger, and P.A.
2650 S.W. 27 Avenue
Miami, FL 33133
telephone (305)444-0060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed this 23 day of July 1990 to: Louis Hubener, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol - Suite 1502 Tallahassee, Florida 32399-1050; Scott D. LaRue, Assistant General Counsel, Department of Health and Rehabilitative Services, 1323 Winewood Blvd., Bldg. One, Room 407, Tallahassee, FL 32399-0700; Frank A. Rosenfeld, Appellate Staff Attorney, Civil Division, Room 3617, Department of Justice, Washington, D.C. 20530; Thomas Zamorano, Esq. on behalf of Miami Coalition for the Care to the Homeless, Inc., c/o 225 N.E. 34 Street, Suite 300, Miami, FL 33137; and to Valory Greenfield and Paulette Ettachild, Legal Services of Greater Miami, Inc., 225 N.E. 34th Street, Suite 300, Miami, FL 33137.

VICTOR PANOFF

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