

8

Manifest Destiny's Last Stand?
Prop 187 and the Future of North American Labor and Human Rights

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1. Introduction

The up swell of support for Proposition 187 in California, the so called "Save Our State" ballot initiative, is an ominous manifestation of the fear many U.S. voters have of their future position in a rapidly integrating world economy and an increasingly multi-cultural society. Facing radical changes in the state's economy, which are much more East-West and North-North in origin (ie., the end of the Cold War, and a new Pacific economy, and GATT), Californians have been led to believe by desperate politicians that the State's fiscal crisis is rooted in its North-South relations, particularly its long term dependence on immigrant labor from Mexico and Central America. The image of brown welfare moms streaming across the border to live off taxpayers and populate the schools with "illegal" children of another language was seen as too politically potent to pass up by Governor Wilson's fledgling re-election campaign. Needing to energize his Republican political base, which is anxious about the dwindling white majority in the state, the subtext of the California "ethnic cleansing" initiative would transport white voters back to manifest destiny: their God-sponsored right to control and purify the Southwest borderlands.

As imitation propositions, bills, and campaigns begin to spring up across the country, the national debate must be made to focus on the wildly false and essentially racist claims concerning the economic impacts of US-Latin American migration, as well as on the disastrous socio-economic, human rights, and transnational consequences of any attempt to implement these misguided policies. Yet since the well orchestrated Prop 187 campaign so starkly caricatured the immigrant scapegoat with a series of highly suspect "studies" and wrote the initiative in such a way to guarantee a Supreme Court challenge, Proposition 187 provides an opportunity to clearly discuss US-Latin America migration and integration relations, challenge the fundamentally anti-constitutional basis of this approach, and propose and mobilize for an alternative policy direction.

Not only is it clear that the Prop 187 proponents exaggerate the fiscal costs of immigration, but it can also be shown that Mexican-U.S. labor migration is a major net positive subsidy for California, especially for the proto-typical Proposition 187 voter. It is also possible, and indeed imperative, to propose an alternative vision of the how bi-national labor markets can be managed in such a way as to improve wages, working conditions, human rights, and economic growth on both sides of the border. The irony is that while such new arrangements are economically possible, the existing

institutional structures and political forces on both sides of the border currently prevent a move towards needed long term transnational social compacts for sustainable and equitable development.

The real challenge to California's future is its ability to reject the short term politics of racial division which are not only incapable of stopping the economic and demographic changes sweeping California, but will make only the formation of new multi cultural and inter-national social pacts a more difficult and longer process.

2. The Devious Design of Proposition 187 and The Legal Fight to Derail It

Governor Wilson's cadre of right wing political consultants were very clear as to the provocative mission and objectives of Proposition 187: place an initiative on the ballot that would mobilize older white male conservative voters, the Republican base, with a macho "we can stop the hoards at the border" campaign; and write the proposition with such language to insure another chance to bring to anti-immigrant arguments before a more conservative Supreme Court, specifically challenging Plyler v Doe, the 1982 Supreme Court decision which mandated the education of undocumented immigrant children. The formal argument for the initiative on the ballot was clearly written to state its goals in almost militia tones:

WE CAN STOP ILLEGAL ALIENS.

If the citizens and the taxpayers of our state wait for the politicians in Washington and Sacramento to stop the incredible flow of ILLEGAL ALIENS, California will be in economic and social bankruptcy. We have to act and ACT NOW! On our ballot, Proposition 187 will be the first giant stride in ultimately ending the ILLEGAL ALIEN invasion.

Proposition 187 proponents made the argument that undocumented migration can be stopped by prohibiting the provisions of publicly funded social services to undocumented persons residing in California. In order to achieve this purpose, it contains five important measures regarding the provision of education, health care and other social services, law enforcement and the use of false immigration or citizenship documents.

Public Elementary and Secondary Schools

Proposition 187 includes provisions that prohibit public schools from admitting and allowing the attendance of children who are not (1) citizens of the United States; (2) aliens lawfully admitted as permanent residents; and, (3) aliens admitted lawfully for a temporary period of time. Starting in January 1, 1995, each school district must verify the legal status of each child enrolling in the district for the first time. By January 1, 1996, each school district must verify the legal status of every child already enrolled in the district as well as that of the parents or guardians of those students. If the district determines or "reasonably suspects": that a student, parent or guardian is not legally in the United States, then the district must take the following steps: (1) Within 45 days, it must report the apparent undocumented status of the person to the Superintendent of Public Instruction, the Attorney General, the Immigration and Naturalization Service and the affected parent or guardian. (2) Provide 90 days of additional instruction to undocumented students in order to accomplish an orderly transition to a school in the

student's country of origin.

Public Post-Secondary Education

The measure also prohibits public Post-Secondary educational institutions from enrolling or permitting the attendance of students who are not in the United States legally. Under the measure, each institution would be required to verify the legal status of every student at the end of every term after January 1, 1995.

Health Care and Social Services

The measure limits the provisions of public social services and of publicly funded health care (except emergency care required by federal law) only to those persons who are citizens of the United States or lawfully admitted aliens. Agencies must notify the state Department of Social Services or the Department of Health Services as well as the state Attorney General and the Immigration and Naturalization Service regarding the applicant's undocumented status and provide any additional requested information.

Law Enforcement Agencies

The measure requires every law enforcement agency in the state to attempt to verify the legal status of every arrestee who is suspected of being in the United States illegally, to notify the Attorney General and the Immigration and Naturalization Service of the apparent illegal status of arrestees.

New Crimes

Proposition 187 creates two new state crimes. Specifically, it makes the manufacture of false immigration or citizenship documents a felony punishable by a fine of \$75,000 or imprisonment for five years. It also makes the use of false immigration or citizenship documents a felony punishable by a fine of \$25,000 or a five-year prison term.

The plain language of Proposition 187 sets forth only three categories of persons who will *not* be denied services, reported to state and federal law enforcement authorities, or told to "leave" the country: (1) United States citizens; (2) immigrants lawfully admitted as permanent residents; and (3) immigrants lawfully admitted for temporary periods.¹ Persons not falling within these categories are automatically treated as deportable immigrants ("illegal aliens" in the parlance of Proposition 187). Proposition 187 assumes that all persons who enter the United States unlawfully forever thereafter retain the status of "illegal aliens."

The term "illegal" when applied to immigrants has no basis in law. Rather, it is a vernacularism that roughly describes non-citizens who are either deportable or who, perhaps, have not been issued documentary proof of their right to be or remain in the United States. Federal law does not define immigrants as "illegal." Immigrants are either "deportable" or not deportable. In making this determination, the federal Government, through the Immigration and Naturalization Service (INS), applies a complex series of substantive and procedural statutory provisions, regulations, and administrative and judicial case law.²

Spreading the flames of Nativism: The Drive to Nationalize Proposition 187

The initiators of Proposition 187 are already linked to like-minded people and groups throughout the country. They understand that white middle-class workers in major states with the largest immigrant populations, including Texas, Florida, New York and Illinois, will be as easily swayed as were California voters by the simple appeal that the blight of their lives is caused not by complex economic policies or inept political leadership, but by the presence of largely non-white, non-English speaking "illegal aliens." They also appreciate how easily in a Republican-controlled Congress support will be found for a national Proposition 187.

In May 1995 a group of "political consultants" and right wing activists gathered in Dallas, Texas, to plot a national anti-immigrant strategy. The California drafters of Proposition 187 were the key organizers of this get together. Representatives from California, Texas, Florida and Arizona announced the formation of the "National Save Our State Coalition." Their efforts are now being seen in states around the country, as well as in Congress.

"Texas First," a campaign started by a conservative Houston entrepreneur, is now stirring the passions of Texans with the battle cry that if only the state's immigrants could be forced back across the Rio Grande, over 118,000 families could get free health care, 21,000 additional public school teachers could be hired, and 10,000 more criminals could be put in prison. As with most of these campaigns, Texas First is initially focusing on mass mailings to raise money for its "consultants" and the expenses of their xenophobic campaign. The promoters of Texas First are collecting funds for a ballot initiative unless state legislators enact a law similar to Proposition 187, even though ballot initiatives are not allowed under Texas law.

The efforts of Texas First may be countered by Texas business interests which have taken advantage of trade benefits under NAFTA. These businesses believe that an atmosphere of immigrant-bashing may well result in a backlash from Mexico, reducing their lucrative NAFTA deals. There are also some politicians in Texas, and other states considering anti-immigrant measures, who are prepared to wait for the outcome of the pending legal challenges to Proposition 187 in California.

Finally, Texas, unlike California when Proposition 187 was on the ballot, does not yet have a Governor desperately seeking reelection in the midst of large-scale unemployment and widespread crime. Most high government technocrats are acutely aware of the administrative nightmare involved in actually implementing a measure like Proposition 187. Schools, hospitals and social service agencies have little interest in investigating the immigration status of millions of people and having to report thousands to the federal Government while they are already without sufficient resources to offer the basic services they are supposed to be providing. Most elected officials securely in office will hesitate to support measures like Proposition 187.

In Florida, the "Floridians for Immigration Control" is circulating a petition ("Save Our State Florida") to qualify a ballot initiative that goes further than Proposition 187 to purify the state. The Florida initiative not only denies all essential services and education to suspected undocumented immigrants, it requires all state government employees to speak, read and write English. Indeed, in most states the anti-immigrant groups are generally one and the same as the "English-only" crowd. It is not surprising that

Florida would take Proposition 187 one step further. Florida has historically been inhospitable to non-white immigrants, repeatedly demanding that the federal Government halt the flow of Haitian refugees regardless of the persecution they faced when interdicted and forcibly returned to Haiti, and insisting the Cuban flotillas be stopped by federal force, while at the same time vigorously denouncing the evils of the island's communist policies. Florida is a state in which immigrant-bashers will raise a lot of money and find a receptive market for their nativist, English-only line of products.

In Arizona, a former burglar-alarm company president has initiated a campaign cleverly called "AZ-187 Border Blockade." The campaign claims that "illegal aliens" from Mexico are "flooding" Arizona's hospitals and sapping its educational resources. At the same time, California's Proposition 187 organizers, now operating as the National Save Our State Coalition, have moved into Arizona and initiated a competing fundraising drive for their measure, "Save Our State Arizona." Arizona, a state in which Mexican immigrants have been shot and killed by white United States citizens with impunity, may well be the place in which a "border blockade" mentality is sufficiently pervasive to support two distinct state-wide anti-immigrant campaigns.

In the United States Congress, legislators have recently introduced a swath of bills seeking to clamp down on services to undocumented immigrants and requiring that their presence be reported to the INS. Proposals have been made to amend the Constitution to deny citizenship to the children of undocumented immigrants born in the United States. (insert more info on pending bills).

As these trends continue, we offer immigrants no ability to live within the structure of our civic institutions. We only offer them the ability to sneak across the border and the chance to work at menial jobs under conditions of indentured servitude. We understand that given the harshness of conditions from which they have come, and for many their family ties in the United States, they will not leave the country merely because they are forced to live deep underground and often denied their fundamental civil and human rights. We do not give them food when they are hungry. We do not give them medical attention when they are sick. When victimized, they cannot report the crime without fear of being turned over to the INS and deported. When forced to work without pay, or under conditions which violate labor laws, they cannot turn to the Department of Labor to change these conditions without being arrested and deported by the INS. In the name of ethnic and racial cleansing, we have allowed the creation of a sub-class of people of color who are completely marginalized, terrorized and terrified. That's the way the United States likes it foreign workers.

Legal challenges to Proposition 187.

Several law suits have been filed in both the California state courts and the federal courts challenging the constitutionality of Proposition 187. In one of the principle challenges, *League of United Latin American Citizens (LULAC) v. Wilson*, several community-based organizations and Latino political leaders have asked a federal court in Los Angeles to issue a judgment, without requiring a trial, that Proposition 187 was enacted to control immigration into California and invades Congress' exclusive power to regulate immigration. The Constitution, art. I, § 8, charges Congress with the duty "to establish a uniform rule of naturalization," and inherent in the naturalization power is the authority to regulate immigration.³ The Supreme Court has also held that

controlling immigration is a power inherent in the nation's sovereignty.⁴ The Framers of the Constitution clearly intended the immigration power, as a component of the power over foreign relations, to reside exclusively in the federal government: "The powers [of the federal government] ... provide for the harmony and proper intercourse among the states ... to establish an uniform rule of naturalization. ... The dissimilarity in the rules of naturalization, has long been remarked as a fault in our system, and as laying a foundation for intricate and delicate questions." *The Federalist* No. 42, at 213-15 (J. Madison) (G. Wills ed. 1982)

It is equally well established that the several states have absolutely no authority to regulate immigration. Power to regulate immigration is neither granted to the states by the Constitution nor is it a power retained by the states under the United States Government's system of federalism. Hence, the Supreme Court has stated that "[t]he power to regulate immigration is unquestionably exclusively a federal power."⁵

Proposition 187 posits a broad statutory scheme aimed at questioning all students, their parents, arrestees and people seeking medical and social services about their federal immigration status; obtaining and examining documents relating to their federal status; identifying "suspected" immigrants present in California in violation of federal deportation laws; recording and documenting information about suspected violations of federal immigration laws; reporting suspected undocumented immigrants to state and federal authorities; and telling people to obtain federal immigration status or "leave the country." This broad scheme is clearly intended to accomplish more than "the denial of state-taxpayer benefits to illegal aliens," as Governor Wilson now argues.⁶

In defending Proposition 187 in federal court, Governor Wilson has argued that the initiative is *not* aimed at controlling immigration, a function constitutionally delegated solely to the federal Government, but rather simply seeks to deny certain social, health and educational services to undocumented immigrants. However, both the text of the proposition itself and the ballot arguments accompanying that text make clear that the primary goal of Proposition 187 is to discourage the entry of and expel "illegal" immigrants from California. As we noted above, the ballot argument in support of the initiative called upon voters to "Stop Illegal Aliens," to "end[] the illegal alien invasion," and declared that Californians "have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state."

The substance of Proposition 187 faithfully implements this intent. The measure adds no fewer than eighteen ways in which private or public employees must join in an effort to drive unauthorized residents from the state: seven provisions requiring public and private employees to investigate persons' federal immigration status;⁷ six provisions requiring public or private employees to report persons suspected of being unauthorized residents for deportation;⁸ three provisions requiring public or private employees to order suspected unauthorized residents to either legalize their federal immigration status or "leave" the United States;⁹ and two provisions providing criminal deterrents against the evasion of federal immigration restrictions.¹⁰

Further indicating that Proposition 187 is principally aimed at controlling immigration, rather than access to publicly-funded services, is the fact that the measure's language makes no distinction between recipients of services willing to pay for those services versus those unable to do so.

For example, the initiative bars students from the public schools regardless of whether they pay the costs of their education or not. Similarly, the measure bars hospitals and health care facilities which receive any public funding from providing health care services to suspected undocumented immigrants, regardless whether those seeking care are able and willing to pay for services or not. The overriding purpose of Proposition 187 is therefore unmistakable. The measure has little to do with conserving public resources. If it did, it would simply bar the use of public funds to educate or provide health care to undocumented immigrants. Furthermore, other than public elementary and secondary education, and pre-natal care, Proposition 187 largely tracks federal law which already makes undocumented immigrants ineligible for most publicly-funded services. The overarching purpose of Proposition 187 is therefore not to preserve public resources, but rather, as the ballot initiative clearly stated, to "stop the incredible flow of illegal aliens ... ultimately ending the illegal alien invasion."

Governor Wilson has also argued that "California has every right ... to cooperate with the United States Government to remove these people from the state."¹¹ However, neither the Secretary of State nor the Attorney General, the only two federal officials delegated by Congress to implement this country's immigration policies, have expressed any desire for California's "cooperation" through Proposition 187. In any event, a State can no more overcome preemption by seeking to regulate immigration arguing it is simply "cooperating" with the federal Government, than it could begin printing money to lend the Treasury Department a hand in increasing the money supply, or begin seizing money to help the federal Government slow economic growth.

That a fundamental purpose of Proposition 187 is to rid the state of undocumented immigrants is also manifest from the substance of the proposition itself. Whether immigrants are denied services as a result of Proposition 187 or already existing federal and/or state laws, or even granted services permitted under the initiative, they are questioned about their immigration status, required to produce immigration documents, and those suspected of having entered the country unlawfully are reported to state and federal law enforcement authorities and instructed to leave the country. The most obvious intent of these steps is, in the words of one of Governor Wilson's attorneys, to "remove" perceived "illegal" immigrants from California, and to discourage "these people" from entering the State in the first place.¹²

The parties in the *LULAC v. Wilson* case have also argued that the initiative stands as an obstacle to and conflicts with federal law in that it fails to recognize that federal policy provides several remedies to permit immigrants who entered the United States unlawfully to legalize their status.¹³ Persons who entered the United States without inspection or through misrepresentations may, nevertheless, be granted lawful status by the INS through *inter alia* political asylum,¹⁴ special agricultural worker status,¹⁵ orders of supervision,¹⁶ a remedy called suspension of deportation available to 7-year residents,¹⁷ temporary protected status available to persons fleeing civil strife or natural disasters,¹⁸ adjustment of status through close U.S. citizen or lawful resident relatives,¹⁹ and amnesty available to residents since 1982.²⁰ Proposition 187's categorization of persons who will be denied services, reported to law enforcement agencies and told to leave the country clearly are inconsistent with the manner in which the federal Government, through the INS, has structured the nation's immigration policy. Immigrants whose presence is authorized by the federal Government pursuant to the terms of the INS will be denied services, reported to law enforcement agencies and told to leave the country. This action will conflict with federal

immigration policy and law.

In response to these arguments, Governor Wilson has attempted to block the federal court from reviewing the constitutionality of Proposition 187 by arguing that it should "abstain" while the California state courts review the measure. The *LULAC* plaintiffs have successfully countered that the federal court should not abstain for two reasons. First, no state court lawsuit is pending which challenges Proposition 187 on the ground that it unconstitutionally seeks to control immigration. Second, the federal court need not abstain given that the plaintiffs' primary argument is precisely that Proposition 187 seeks to control immigration and is therefore preempted by federal law. A federal court is in the best position to pass on this uniquely federal legal claim.

Finally, perhaps recognizing that parts of Proposition 187 are unconstitutional, Governor Wilson insists that the federal court must set about severing the gangrenous from the robust. Wilson demands a "painstaking line-by-line" analysis of Proposition 187. This, in his view, is required because not only must each infirm section of Proposition 187 be severed, but each offensive paragraph, sentence, phrase, and word within each section as well. After deleting from the initiative as needed, Wilson continues, the federal Court must then *add* qualifying language (or permit him to do so) wherever needed to elevate the measure to constitutional minimums. According to Wilson, all this cutting and pasting may take place under the guise of "interpretation" or "construction" of the voter-approved text of Proposition 187. The *LULAC* plaintiffs disagree. They argue that, for better or worse, the voters of California are entitled to have the initiative they approved passed upon by the federal Court. After the rewrite Wilson urges—a Sisyphian task at best—Proposition 187 would be no more than a specter of anything presented to the electorate. Wilson's bid for judicial alchemy--a *volte face* from the traditional conservative attack on "judicial activism"--offers neither a permissible nor an effective means to save a seriously flawed law. In the end, there is little, if anything, in Proposition 187 that is not imbued with the initiative's overarching aim of finishing a job the federal government is accused of neglecting: regulating immigration into the United States. That, however, is not a job a state is permitted to usurp.

While courts will strive to interpret laws in a way that avoids unconstitutionality, they are not licensed to rewrite the language of duly enacted laws. Federal courts will construe statutes to avoid constitutional difficulty only when fairly possible, or when a law is readily susceptible to a narrowing construction. However, courts have stressed principles of separation of powers in applying the general rule that the judiciary will *not* rewrite statutes simply to create constitutionality. In the final analysis, the parties challenging Proposition 187 argue that measure is simply not susceptible to judicial rescue. Where a law is clear on its face, as is the case with Proposition 187, the courts should not "interpret" it at all. When language the voters have approved is unambiguous, there is no need for interpretation, and courts should not indulge in it.

As of this writing, the federal court in Los Angeles has not yet issued a decision on the constitutionality of Proposition 187, although a ruling is anticipated before the end of the year. Whatever the outcome, an appeal is sure to follow and the legality of Proposition 187 will likely eventually be decided by the Supreme Court. Until then, the initiative will probably not be enforced.

3. A Critique of Nativist Political Economy

Proponents of Proposition 187 make the claim that undocumented migration is a major cause of the economic and fiscal problems of California, thus justifying a draconian campaign of anti-immigrant measures. Proponents of Proposition 187 based their policy approach on a series of studies that were conducted in the early 1990's which sought to draw the impression that immigration was a major cost to taxpayers and growing part of the state's fiscal crisis. The studies for San Diego (Rea and Parker, 1992) and Los Angeles (ISD, 1992) Counties, the State of California (GOPR, 1994), and the United States (Huddle, 1993a), all share a similar set of faulty estimating techniques concerning the number of undocumented immigrants and the cost of their use of social services. Utilizing highly doubtful behavioral assumptions, the focus on immigrants use of social services by these studies was the basis for the logic of Proposition 187 which held that by denying undocumented immigrants a right to services, this would represent a deterrence to new immigration and an incentive to leave the country.

In fact it can be shown that California-Latin American relations, as extensive as they are, are actually a small part of the state's vast economy and that Mexican-US migration is actually very large net positive for the state economy and its fiscal health, especially for the prototypical pro-187 voter. It can furthermore be shown that the attempted to implement 187 would have disastrous consequences for California, human rights, and US-Latin American relations. Thus not only does 187 not make good public policy sense, it is destructive to the future of California society.

Prop 187's Apartheid Accounting

Each of these studies can be faulted for their suspect estimates of undocumented immigrants, undocumented children attending schools, and the percentage of these immigrants who are by law actually legally deportable. Governor Wilson, for example, stated in his 1994-95 budget that the number of undocumented immigrants in California was 2.083 million in 1993, including 456,000 undocumented children between the age of 5 and 17. Interestingly enough, the Immigration and Naturalization Services, long know for excessively high numbers to justify increased expenditures, estimated the California undocumented population at only 1.441 million in October 1992. Using the INS estimates and the methodology of the State's Department of Finance to estimate the number of undocumented children attending public schools in California, one finds an excess of 111,528 in the Governor's estimates.

Starting with inflated numbers for the undocumented, none of these studies even bothered to estimate how many of these so-called "illegals" are actually legally deportable. U.S. immigration law allows for many people who enter the country unauthorized to legalize their residence, either through regularizing their status, obtaining political asylum, receiving amnesty, etc. The percentage that this represents can be quite large, as was established during the Texas School case in 1992 (*Plyler v. Doe*). The estimates in these studies are thus not only exaggerated, but implicitly advocate a violation of due process.

Perhaps one of the most sinister methodological tools used in these studies is the separate reporting of an accounting category for "Citizen Children of Undocumented Persons" (see table 1). This carrying around of separate blood lineage accounting is not only contrary to the constitutional definition of what constitutes citizenship rights in the United States, but also echos the kind of fiscal accounting that was used during the days of Apartheid in South Africa to distinguish the rights of particular legal-ethnic categories.

Having established inflated numbers for the targeted undocumented population, these studies move on to their main mission: generating large estimates of the costs of providing social services for undocumented persons and low estimates for local tax revenues. Large net costs estimates were needed by the state and local government agencies who authored these studies in order to argue for large recovery of funds from the federal government for what they see as a burden of immigration imposed on them by the failure of the national government to "control the border".

What is often overlooked in the loud debate is that all these California studies acknowledge that undocumented immigrants are large net total tax contributors, once federal, state and local taxes are added together. Overall the annual taxes paid by immigrants to all levels of government more than offset the costs of services received, generating a net annual surplus of \$25 to \$30 billion (Urban Institute, 1994). The argument that California agencies make is that immigrants pay a greater proportion of taxes to the federal government compared to state and local taxes, yet local governments are responsible for the bulk of social services compared to federal govt direct expenditures on immigrants. Thus the states, it is argued, are entitled to greater federal transfers.

What is not mentioned, of course, is this uneven local burden structure is true for most working class households in the U.S. The real issue is that the federal government has been shifting the burden of social services to local tax payers consistently over the last decades. Not only is immigration irrelevant to this phenomenon, but ironically, undocumented immigrants actual buffer the effect because they are much less intensive users of social services than the typical working class household. It is well known that immigrants, especially undocumented, are much less likely to use welfare, preventive or emergency medical care, educational services, etc. When refugees are excluded, immigrants use of public benefits actually decreased during the 1980's. Even the LA county study, which is see as one of the better ones, overstates the cost for recent legal immigrants by 60%, about \$140 million. This low use of public services is due, in part, to the fact that recent immigrants are much healthier than typical U.S. citizen and because of their fear of authority figures. Ironically, if the typical U.S. citizen household had the social service use profile of the typical undocumented household, a large part of the fiscal burden on local governments would be lifted.

In order to inflate the cost of immigration, the Governor's office thus had to take an average of all current state expenditures (on roads, parks, corporate subsidies, debt payments incurred before immigrant arrive, etc.) and charge it this figure to all undocumented immigrants and also to the children of undocumented immigrant (table 1). If this formula were used to calculate the actual net cost-benefit contribution of U.S. citizens, it could be proved that the county level deficit for natives is higher than for immigrants!

In addition to generating a distorted and exaggerated vision of the costs, the benefits side of the equation, ranging from direct and indirect tax revenues to broad economic contributions of immigrants, is systematically underestimated or absent altogether in these studies. Tax collection estimates are consistently understated. Huddle (1993), for example, well known for being one of the sloppiest anti-immigrant economists, ignores FICA, unemployment insurance, vehicle registration fees, state and federal gasoline taxes, totaling \$28.8 billion on a national scale. This is compounded by an additional \$21.3 billion error due to underestimating the income of legal immigrants and misspecifies their tax rates. Since Huddle estimates a "net cost" for immigrants in 1992 of \$42.5 billion, his underestimation of revenue by \$50 billion more than offsets his entire net cost estimate (Fix and Passel, 1994). The LA County study similarly, underestimated revenues from immigrants by as much as 30 percent because it underestimates the income of recent legal immigrants and does not take into account the contributions of long term immigrants who represent 15 percent of the population and pay 18 percent of the taxes. The county study also fails to mention that the county receives a greater share of all taxes paid by these immigrants than it did of taxes paid by natives. This is in part due to the fact that immigrants tend to have much faster income growth over their lifetime than native born workers.

In general, most studies on immigration have consistently underestimated the economic contribution, and thus the total fiscal contribution of immigrants, due in part to methodological difficulties. Benefits of immigrant owned business as well as the economic benefits generated by consumer benefits are usually ignored as are the productive and wealth effects of the work that immigrants do that create taxable goods and services. Both the liberal and conservative researchers, from the Urban Institute to the Rand Corporation, agree that a broader general equilibrium analysis over time is still needed.

Alternative Comprehensive Perspective

Researchers at the North American Integration and Development Center at UCLA have been developing a general equilibrium analysis that is also binational in scope with the ability to project alternative future scenarios for the formulation of sustainable development policy. We are constructing a alternative conceptual framework of dynamics of US-Latin American integration including trade, capital and migration flows as well as the structure of state-society institutions, legal structures and practices that are part of the historical evolution of the pattern of integration. Included is an understanding that migration is the result of a historical process of integration between US and Mexico which long before NAFTA has been generating a pattern of uneven development which has functionally marginalized the international migrating population into a secondary economic and legal-human rights status, contributing to the beneficial status of the more skilled workers and property classes on both sides of the border. California, in particular, has long benefited from the Mexican society paying the cost of social reproduction for this important part of the California labor forces.

Seen from this binational dynamic general equilibrium perspective, the nature of "cost-benefit analysis" takes on broader and richer dimensions. Undocumented immigrants, for example, are shown to contribute roughly 7% of the state's \$900 dollar Gross State Product. Large parts of the current California economy would simple not be viable at current prices without undocumented workers, including many agricultural products and the L.A.

garment industry, which is the largest and fastest manufacturing sector in the state. The fact that undocumented immigrants are paid on average 15-20% less for comparable work with the same human capital, this generates large relative price subsidies for the consumers of goods and services that immigrants provide. It turns out that some of the largest consumer of immigrant low cost services is the typical Prop. 187 voter: older white property owners with high levels of disposable income used on personal and other services. Meanwhile, job competition between undocumented immigrants and the bulk of pro 187 is virtually non-existent, while there is evidence of competition with other Latino residents who voted against 187. The Latino community, on the other hand, also benefits from the presence of undocumented immigrant goods and services.

The political economy of 187 support only seems contradictory until one understands the general equilibrium effects of ethno-racial-legal repression in the California labor market. The optimal scenario for pro 187 voter is that undocumented immigrants continue to come, work at even lower wages due to increased repression, and not consume any of their tax money for social reproduction. This is in fact the policy approach that Senator Wilson pressed in 1986 when he pushed for special provision to allow undocumented workers as a part of IRCA and when Governor Wilson called for a new bracero Program before the Heritage Foundation immediately after the passage of prop 187. While Latinos may suffer job competition from their recently arrived kin, they also are aware that an anti-immigrant campaign is not the solution. It is no wonder that some of the more innovative binational cooperative solutions on to the migration phenomenon find their strongest support in Latino community.

Transnational Interdependence and Its Denial

The binational general equilibrium dynamics of immigration are usually completely ignored by politicians, policy makers, and the courts, and only recently are attracting modest attention from researchers and activists. This is particularly striking since the US-Mexico migration relations is clearly the largest and most long-lasting mass migration process in the history of capitalism.

Beginning in the 19th Century, both documented and undocumented migration have linked families, communities, regions and economic sectors into what is now a highly embedded binational labor market, inextricably linking the fate of million of urban and rural workers on both sides of the border. In addition to the 1.9 million Mexican admitted as permanent residents from 1965 to 1990, it is estimated that there were an additional 36 million undocumented entries from Mexico into the United States and more than 31 million undocumented departures (Massey and Singer, 1995). This circular flow draws the 4.6 million entries recorded under the bracero program and indicates that, in essence, the United States has been sponsoring the largest guest worker program in the world, even though it has been unofficial and clandestine.

What has obviously not dawned upon Governor Wilson is that if one begins to start figuring out who owes who for the social reproduction of this labor force, it is the government of California that is heavily in debt to the Mexican taxpayers. Table 2 shows the result of calculations of how much Mexican taxpayers spend on educating Mexican who migrate without documents to the U.S. for their prime working years. In effect, the state of California should pay at least \$180 million a year to the Mexican government for preparing a large

part of its annual work force. This is clearly an underestimation since it does not include Mexico's spending on medical services, housing, urban infrastructure or each Mexican child's share of the annual service of Mexico's debt. It also represents a fantastic bargain for Governor Wilson because if California had to educate these same workers in California, which the state obviously needs, it would cost the state \$3.2 billion more per year, more than double of what the Governor is currently complaining it spends on educating undocumented immigrants.

This binational general equilibrium framework can also be used to determine the effects of alternative scenarios of a post 187 US-Mexico labor market interdependence. It turns out that both logically possible scenarios for the implementation of Prop 187 spell a disastrous future.

One scenario is to assume that the proponents of Prop 187 get what they say they want and all undocumented migrants go back to Mexico and no more come to California. This turns out to be disastrous for the economy of California and the fiscal health of the state. Even assuming the least realistically plausible scenarios of how quickly and at what wages U.S. residents would fill the jobs of the undocumented, it would still mean large price rises and a collapse in outside not seen since the great depression. This economic crisis would create a much larger fiscal state crisis, making the current deficits look small by comparison. The real income of all California residents, particularly 187 voters, would fall in ways unheard of in the post WW-II era.

If Proposition 187 works as it claims it would, it would place California on a permanently lower path of output and income growth, especially given the declining population growth rate in the U.S. Mexican real wages, particularly in the poor rural sectors would suffer the greatest, with clear destabilizing implications.

The other possible scenario is that Prop 187 does not deter undocumented migration and that a large undocumented population is pushed further underground in California. There is general agreement among researchers that this is the more likely scenario since immigrants are not drawn to the U.S. due to a presumed availability of social services. The employers of undocumented workers, traditionally strong supporters of Governor Wilson, likely believe that this will be the outcome also, or else they would have vocally opposed 187 like they did IRCA. The likely impact is that wages for undocumented immigrants would continue to fall, as they did after the passage of watered down Employer Sanctions in 1986, which thus would be good for employers. The ironic result is that as wages for undocumented workers continue to fall, the demand for them will continue to rise, this resulting in an even further dependence on low wage labor by California employers.

While this may seem as a rosy short term scenario for some of Governor Wilson's business supporters, the overall long term impact on Californian society would be very negative in a variety of ways. The harm that implementation of Proposition 187 may cause would most likely first be felt in the area of public health. Immigrant adults and children with serious illnesses will be denied needed health care. Others, fearing deportation, will be deterred from seeking care when they need it. Illnesses susceptible to early treatment will deteriorate into life-threatening emergencies. For example, immigrants suffering from hypertension or diabetes will not be

eligible for early elective care. Untreated, their conditions will deteriorate into emergencies, including strokes, heart attacks and renal failure, conditions that are painful, traumatic and often fatal. Under Proposition 187 physicians will be prohibited from conducting tests required to detect early cancers. With undocumented women being denied access to mammogram, early detection and treatment of cancer won't take place. Instead, massive emergency efforts will be undertaken when the patient is far closer to death. Undocumented immigrant children suffering from bacterial infections which could be easily treated will be denied services. Once the infection spreads and leads to life-threatening meningitis, the child will become eligible for emergency services. Of course, by then the child may also suffer permanent neurological damage, or die.

Under Proposition 187, communicable diseases will spread, endangering everyone's health. Undocumented children will become ineligible for vaccinations, resulting in the spread of communicable child diseases such as diphtheria, rubella, hepatitis-B and measles. Adults will not be eligible for testing and early treatment of tuberculosis, hepatitis, AIDS, syphilis, gonorrhea and other infectious diseases. Any delay in the treatment of an infectious disease may result in transmission of the disease as patients are exposed to other people at their jobs, where they live, and in their communities. Medical experts have logically observed that implementation of Proposition 187 would pose a health threat of epidemic proportions to all California residents. For these reasons, health care specialists and providers are unanimously opposed to implementation of Proposition 187.

As medical problems are ignored and transform into emergencies, even under Proposition 187 undocumented immigrants will be eligible for public funded emergency health care. Medical experts point out that the cost of providing health care will skyrocket as providers are mandated to provide expensive emergency services that could have been avoided by far less costly early intervention. However, under Proposition 187 hospitals must simply watch and wait while a condition becomes an emergency before they may provide public services to sick undocumented immigrants. Under Proposition 187 pregnant women will be denied prenatal care. Women who do not receive timely prenatal care, which costs a relatively modest \$900 to \$1,200, are at increased risk of giving birth to dangerously low-birth weight infants who may then require neonatal intensive care, which often costs over \$500,000.

It is forbidden under Proposition 187 to provide treatment when it is least costly and most effective. As a result, the Chief of Staff of the Los Angeles County Medical Center, the largest public hospital in California, has stated that while implementation of Proposition 187 will save the state about \$9 million annually, the medical costs in emergency care and treatment of U.S. citizens with communicable diseases will rise by \$47 million, leaving net costs of over \$38 million.

Under Proposition 187 children who have been abused or neglected will not receive social services. An undocumented child being sexually abused will no longer qualify for intervention services and foster care placement. Indeed, all children will be at risk since services will be denied until the child's citizenship has been investigated and established. Children will not be removed from homes in which they are physically abused until their immigration status has been determined. Since in most instances the parent rather than the child will be in possession of proof of citizenship, an abusive parent's refusal to cooperate by producing evidence of United States citizenship or lawful resident status may effectively block the emergency

intervention needed to protect the child's life or well-being. If the social workers wait until the child is sufficiently battered, the child would ironically then be eligible for emergency health care.

Proposition 187 would also bar undocumented children from attending the public schools. Testimonials from teachers and educators throughout the country speak to the irreparable harm caused to children banned from attending school. Excluding undocumented children from an education imposes a lifetime of hardship on them for a status over which they have no control. The stigma of illiteracy will mark them for the rest of their lives. At the same time, placing thousands of children on the streets will harm all residents of California. Children turned out of the schools will increasingly engage in crime and other forms of anti-social and self-destructive behavior. The costs associated with law enforcement and operation of the juvenile justice system will increase accordingly.

As most undocumented children eventually become lawful permanent residents, and later United States citizens, the long-term costs of implementing Proposition 187 on California are enormous. As the children denied education become adults they will not transform into productive members of the state. They will be largely unemployable, rely extensively on public support programs, and be far more likely to tax the criminal justice system. People who could have produced goods and services in California, adding to the production of wealth, will instead have no skills to tender, no contributions to make, no benefits to offer.

If implemented, Proposition 187 will move California well along the road towards a police state. The measure mandates a vast state network of immigration informants comprising employees of public schools, medical clinics, social service agencies, and state and local law enforcement agencies, all of whom will be required to ferret out suspected deportable aliens and report them not only to the INS, but to high state officials as well. Teachers, social workers and health care providers will all be required to act as Border Patrol agents. Those required to make decisions of "suspected" undocumented immigration status have no training to make such determinations. There can be no doubt but that race and national origin will often play a role in the classification of persons suspected of not possessing lawful immigration status. Persons will also be denied services and reported to the INS for vindictive and/or personal reasons having nothing to do with their actual immigration status. Reports must be filed with the INS without a request from that agency to do so, and even if the INS affirmatively tells state officials that it does not want or need their "cooperation."

Proposition 187 does not contemplate reporting merely as an incident to lawful state functions: it requires reporting of individuals who have neither applied for services nor otherwise come to the attention of state officials. For example, by January 1, 1996, each school district must have verified the legal status of each *parent or guardian* of each child, even if the child is a United States citizen. Parents "suspected" of being in the country in violation of federal immigration laws must be reported to various state officials and the INS. Here there is no possibility of any state interest is at stake. School children's parents and guardians are not seeking any public benefit; they have not been arrested for violation of any state law; they may have had no contact with any state official whatsoever, yet Proposition 187 dedicates state and local resources to ensure that they, too, are affirmatively ferreted out and reported to both state and federal authorities.

Implementation of Proposition 187's command that private citizens and public employees investigate immigration status and report suspected undocumented immigrants to state officials and the INS would also violate numerous federal privacy rights. For example, the measure's requirement that schools gather information about students and their parents, and report this information to non-educational state and federal agencies, clearly violates the federal Family Education Rights and Privacy Act.²¹ The requirement that medical staff report suspected undocumented applicants to various state officials and the INS violates several federal Medicaid provisions which protect the confidentiality of information provided by patients and strictly limit the sharing of such information to Government agencies involved in verifying eligibility for services.²²

4. Alternative Policy and Political Mobilization

It thus appears that California voters have been led down to a perilous cross-roads: either Prop 187 is implemented and it works (eliminating undocumented migration), or, more likely, it is implemented and it does not work (pushing undocumented migration further underground). In both scenarios, California voters suffer disastrous social and economic consequences. Given this looming contradictory impasse in the anti-immigrant backlash, it is essential to present an alternative vision for a more economically sound and humane immigration policy capable of mobilizing broad political support on both sides of the border. The same binational framework which exposes the Prop 187 dilemma can be a guide for constructing such a policy approach that can improve wages, working conditions, human rights, and economic growth in both the United States and Mexico.

Seen from a comprehensive binational perspective, migration is the result of the overall pattern of demographic and economic interdependence between Mexico and the US, including the historical development and uneven enforcement of human and labor rights in both countries. What became very evident during the NAFTA debate was that while the higher paid skilled groups in the U.S. and Mexico would continue to benefit from increased integration, the most vulnerable would also continue to be the lower skilled, lower paid workers who have been migrating internationally between the more marginal rural and urban economic sectors where labor and political rights are highly restricted on both sides of the border.

The key challenge to North American society is thus to attack the poverty and lack of basic rights in this bi-nationally linked labor market in such a way that provides economic benefits for both countries and is thereby politically viable. This will require reaching long term agreements on trade, capital, and labor migration relations, as well as a shared North American agreement on labor and human rights, all crafted with the clear goal of sustainable and equitable development. Interestingly enough, despite the current climate of a protectionist and nativist backlash, recent analysis indicates that these alternative policy goals could become more obtainable in the near future due to a fortuitous period of demographic and economic complementarity which North America is just entering upon and which could sustain a new regime of human and labor rights.

Demographically the US and Mexico are entering into a very different era than the post war period which saw an explosion of Mexican migration and the current (delayed) backlash. Since the Mexican birth rate declined precipitously over the last 25 years, the number of new entrants into the labor force will now fall over the next decade. The top priority should be to quickly close the poverty gap in the migrant sending regions of Mexico. The U.S. population, meanwhile, is ageing and shrinking so rapidly that the problem will soon be the need for new immigrants to sustain growth and care for an older population, particularly in California (David Hayes-Bautista, 1992). The top priority is thus not stopping U.S. immigration but rather to improve the human capital and social conditions of those people who will have to carry California in the next century, exactly the opposite of what Prop 187 will do.

The U.S. and Mexico are also on the verge of a radical new form of economic integration which could, if managed properly, produce a pattern of upward growth and convergence in productivity and income levels across North America. Research shows that if moderately high growth in Mexico can be sustained for the next 10 years and investment is directed towards social infrastructure and poorer regions, the trend towards North American wage convergence would be powerful enough that potential migrants would begin to choose to stay in Mexico, even if US wages for immigrants also rise (Hinojosa and McCleery, 1992). Sustained growth in Mexico would also generate a large net increase in high wage U.S. export jobs, as well as help close the gap between high and low wage labor in the U.S.

This same research shows, however, that free trade by itself will never be enough to generate the type of development needed to close the income inequality gaps in North America. It is important to remember that the wage gaps between the US and Mexico and between Northern and Southern Europe were similar 35 years ago, but whereas the gap in North America is virtually the same today, European integration accomplished exactly such a combination of high growth, wage convergence, and a precipitous decline of south-north migration. In North America, new institutional mechanisms for macro-economic stability and long term investments with particular targeting for sustainable development financing will be required, building on the experience of European integration and expanding recently formed institutions like the NADBANK and the BECC (Hinojosa, 1994).

Finally, it can be shown that given these potential demographic and economic complementarities, the U.S. and Mexico could begin moving to a new North American immigration visa system which would provide basic human and labor rights to all North American residents regardless of their immigration status without triggering large scale migrations or economic dislocations. In essence, the demographic and economic complementarities in North America are potentially powerful enough to increase Mexican productivity and wages such that Mexican migration levels would not increase even if the U.S. would legalize the current flow of undocumented immigrants. Under wage convergence, migration would not increase even though granting visa-holders basic rights would eliminate the 10-15% "exploitation wage gap" we currently charge undocumented immigrants in the U.S. Mexico and the U.S. could thus finally begin to be weaned away from their dependence on an exploitative system of deny basic rights to the low wage bi-national migrating labor force as a source of profits and growth.

The irony is that while alternative policies approaches which provide a better future for both the U.S. and Mexico are economically possible, the

existing institutional structures and political forces on both sides of the border currently are obstacles to the formation of needed transnational social pacts for sustainable and equitable development. Such pacts will require the building of a transnational social movement for economic and political empowerment in throughout North America, including transnational grassroots coalitions of communities and of labor unions on both sides of the border. The real challenge to Californian society is its ability to reject the short term politics of racial division, which is incapable of stopping the economic and demographic changes sweeping California, and begin grappling with the long term task of building a economically and socially just North America.

A brief summary of the key provisions of Proposition 187.

Section 4 is entitled "Law Enforcement Cooperation with INS." This provision would amend California's Penal Code by providing that every person arrested by local police must be questioned about their federal immigration status, required to produce documents verifying their status, and, if "suspected of being present in the United States in violation of federal immigration laws," must be notified (by a local police officer) of his or her "apparent" unlawful immigration status, and instructed to "either obtain legal status or leave the United States."

Section 5, entitled "Exclusion of Illegal Aliens from Public Social Services," states that only citizens of the United States and "aliens lawfully admitted to the United States," may receive the benefits of public social services. All social and foster care workers are required to "diligently protect public funds from misuse" by requiring all applicants and recipients of services to prove that they are citizens of the United States or "lawfully admitted" permanent or temporary immigrants. Social workers who "suspect" that an applicant or recipient "is an alien in the United States in violation of federal law," must deny services to such person, notify the person of his or her "apparent" illegal immigration status, and instruct the person to either "obtain legal status or leave the United States."

Section 6, entitled "Exclusion of Illegal Aliens from Publicly Funded Health Care," states that, excepting emergency medical care as required by federal law, "only citizens of the United States and aliens lawfully admitted to the United States" may receive the benefits of publicly-funded health care. All applicants and recipients of health care services must prove that they are either citizens of the United States or immigrants "lawfully admitted" to the United States as permanent residents or temporary visitors. Persons who medical workers "suspect" are immigrants in the United States in violation of federal law, must be denied medical care--seemingly even if they are able and willing to pay for such care--and be notified of their "apparent illegal immigration status," and instructed that they must "obtain legal status or leave the United States."

Section 7 is entitled "Exclusion of Illegal Aliens from Public Elementary and Secondary Schools." Section 8 addresses the "Exclusion of Illegal Aliens from Public Post-Secondary Educational Institutions." These provisions bar schools from admitting, enrolling or permitting the attendance of students who are not citizens of the United States, immigrants lawfully admitted as permanent residents, or persons "otherwise authorized under federal law to be present in the United States." Section 7 requires that public schools verify the immigration status of all students and their parents. Section 8 requires colleges and universities to verify the immigration status of all students. Children who are suspected of being undocumented immigrants are to be given a 90-day grace period and then expelled. Higher education students must be expelled immediately. Parents who are suspected of being present in the United States in violation of federal immigration laws--including the parents of United States children--are to be instructed to obtain legal status or leave the country.

Under each of the sections of Proposition 187 described above, persons "suspected" of being undocumented immigrants must be reported to the California Attorney General, and to the Immigration and Naturalization Service.

TABLE 1:

Estimated California State Cost of Unocumented Migration
(1994-95, Millions of dollars)

Federal Mandates	Illegal Immigrants ¹	Citizen Children	Total
K-12 Education	\$1,531	470	2,001
Incaceration	474 ²	0	474
Health Services	395 ³	50	445
Welfare	0	260	260
Other General Services	1,027	118	1,145
Total	3,427	898	4,325

Estimated Total Tax Contributions of California Undocumented Immigrants (1994-95, Millions of dollars)

Government	High	Median	Low
Federal	2,005	1,309	542
State	1,066	739	465
Local	289	139	63
Total	3,360	2,187	1,069

Source: Governor's Office of Planning and Research, The Net Fiscal Impact of Illegal Immigration in California, Table ES-1, ES-2, September, 1994.

¹Estimated to be 1.4 million by the INS and 1.7 by the Governor's Office.

²Estimated by the GAO to be 360 million.

³Estimated by Urban Institute by 200 million.

TABLE 2

Estimated Mexican Taxpayer Subsidy to California and the U.S. Via Educational Spending on Undocumented Immigrants

Government Spending on Primary and Secondary Education
(Thousands of Students, 1991 Pesos)

Mexico	Primary (K-6)	Secondary (7-9)	Const.	Total
Students	14,398	4,160		18,558
Total Spending	11,774 m	3,918 m	466 m	16,158 m
Spending Per Capita	817	942	25 \$	871 Mx 285 US
United States (K-12)				5,200
California (K-12)				6,300

Total Annual Subsidy by Foreign Taxpayers to the U.S. and California
(Assuming 9 school years per worker)
(Millions of U.S. Dollars)

	Total	Mexico
U.S.	769	320
California	320	179

Total Costs to the U.S. and California of Educating Workers to Replace Undocumented Immigrants
(Assuming 9 school years per worker)
(Millions of U.S. Dollars)

	Total	Mexico
U.S.	17,695	7,206
California	5,850	3,276

Sources: Anuario Estadístico de Los Estados Unidos Mexicanos, Capitulo 6, 1992; Robert Warren, "Estimates of the Undocumented Immigrant Population in the U.S., by country of Origin and State of Residence, October 1992," U.S. Immigration and Naturalization Service.

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¹ See Prop. 187, §§ 4-7 (codified at Cal. Penal Code § 834(b)(1); Cal. Welf. & Inst. Code § 10001.5(b); Cal. Health and Safety Code § 130(b); Cal. Ed. Code § 48215(d)).

² See generally 8 U.S.C. §§ 1251-1255; See generally, Denyse Sabagh, *Deportation, Exclusion, Discretionary Relief, and Waivers*, C505 A.L.I.-A.B.A. 337 (1990), available in WESTLAW, A.L.I.-A.B.A. Database (Sabagh, *Deportation, Exclusion, Discretionary Relief, and Waivers*).

³ See *Chy Ling v. Freeman*, 92 U.S. 275 (1876). The constitutional source of the federal immigration power is not as apparent as its acceptance today seems to suggest. Because the Constitution fails to mention the power specifically, the Supreme Court has held that controlling immigration is inherent in a country's sovereignty. *Plyler v. Doe*, 457 U.S. 189, 225 (1982) ("Drawing upon its [article 1, § 8] power, upon its plenary authority with respect to foreign relations and international commerce, and upon the inherent power of a sovereign to close its borders, Congress has developed a complex scheme governing admission to our Nation and status within our borders" [emphasis added]); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (describing "the power to expel or exclude aliens [as] a fundamental sovereign attribute exercised by the Government's political departments . . ."); *Fong Yue Ting v. United States*, supra, 149 U.S. at 707 (1893) ("[T]he plenary power of Congress to expel" immigrants stems from "the sovereign right to determine what noncitizens shall be permitted to remain within our borders"); *Chae Chan Ping v. United States (The Chinese Exclusion Case)*, 130 U.S. 581, 603-06, 609 (1889). See generally Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 Harv. L. Rev. 853 (1987).

⁴ See, e.g., *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) (recognizing inherent power of sovereign nation to control its borders). See also *Plyler v. Doe*, 457 U.S. 189, 225 (1982) ("Drawing upon its [article I, § 8] power, upon its plenary authority with respect to foreign relations and international commerce, and upon the inherent power of a sovereign to close its borders, Congress has developed a complex scheme governing admission to our Nation and status within our borders"); *Fiallo v. Bell*, 430 U.S. 787, 792, 97 S.Ct. 1473, 1478 (1977) ("Our cases 'have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments'" [citation omitted]); *Galvin v. Press*, 347 U.S. 522, 530, 74 S.Ct. 737, 742, 98 L.Ed. 911 (1954) ("Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of [the federal] government"); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953) (describing "the power to expel or exclude aliens [as] a fundamental sovereign attribute exercised by the Government's political departments . . ."); *Carlson v. Landon*, 342 U.S. 524, 534, 72 S.Ct. 525, 531, (1952) ("the plenary power of Congress to expel [aliens]"). See generally Henkin, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 Harv. L. Rev. 853 (1987).

⁵ *De Canas v. Bica*, 424 U.S. 351, 354, 96 S.Ct. 933 (1976);; see also *i. Plyler v. Doe*, 457 U.S. 202, 242 (1982); (Burger, C.J., dissenting) ("A state has no power to prevent unlawful immigration, and no power to deport illegal aliens, those powers are reserved exclusively to Congress and the Executive").

⁶ Wilson, Belshe and Anderson's Motions for Abstention, or in the Alternative, to Dismiss, filed Feb. 3, 1995 (Mo. Dismiss) at 35

⁷ Cal. Penal Code § 834b(b)(1), Cal. Welf. & Inst. Code § 10001.5(b), Cal. Health & Safety Code § 130(b), Cal. Educ. Code §§ 48215(b), (c), (d) and 66010.8(b);

⁸ Cal. Penal Code § 834b(b)(3), Cal. Welf. & Inst. Code § 10001.5(c)(3), Cal. Health & Safety Code § 130(c)(3), Cal. Educ. Code §§ 48215(e) and 66010.8(b), Cal. Gov't Code § 53069.65

⁹ Cal. Penal Code § 834b(b)(2), Cal. Welf. & Inst. Code § 10001.5(c)(2), Cal. Health & Safety Code § 130(c)(2)

¹⁰ , Cal. Penal Code §§ 113 and 114

¹¹ Mo. Dismiss at 35.

¹² Mo. Dismiss at 35.

¹³ As we discussed above, immigrants generally wait for long periods of time after petitioning for legalization of status. During this time the federal Government often does not seek to enforce their departures, while Proposition 187 treats them as “illegal aliens,” denies them services, expels them from schools, demands they produce documents proving their immigration status, reports them to law enforcement agencies and demands that they obtain legal status, which they cannot do because of statutory and administrative waiting lists beyond their control, or leave the country.

¹⁴ 8 U.S.C. § 1158;

¹⁵ 8 U.S.C. § 1160;

¹⁶ 8 U.S.C. § 1252(d);

¹⁷ 8 U.S.C. § 1254,

¹⁸ 8 U.S.C. § 1254a;

¹⁹ 8 U.S.C. § 1255;

²⁰ , 8 U.S.C. § 1255a

²¹ 20 U.S.C. § 1232g and regulations promulgated thereunder. *See* First Amended Complaint, ¶¶ 67 and 71.

²² 42 U.S.C. § 1320b-7, 1436a, 1437, et seq., 20 U.S.C. § 1091 and 7 U.S.C. § 2025 (AFDC and Medicaid applicants’ eligibility may be verified through SAVE program with INS, but information only used to verify eligibility); 45 C.F.R. § 205.50(a)(ii) and 42 C.F.R. § 431.306(b) (AFDC and Medicaid applicant information sharing limited to verification of eligibility and only to parties subject to confidentiality requirements); 45 C.F.R. § 205.50(a)(2)(I) (AFDC), 42 C.F.R. § 431.305(b) (Medicaid) (confidentiality provisions relating to personal information provided by applicants). Proposition 187 also conflicts with the federal Systematic Alien Verification for Entitlements (SAVE) system. *See* IRCA § 121(c); 42 U.S.C. § 1320b-7, 1436a, 1437 et seq.; 20 U.S.C. § 1091; 7 U.S.C. § 2025. The SAVE system was established by Congress to verify immigration status of applicants for six federal benefit programs. However, Congress made clear that information provided to the INS through the SAVE program was not to be used for purposes other than verifying applicants’ eligibility for federal benefits.