Proposition 187 and Its Political Aftermath: Lessons for U.S. Immigration Politics After Trump

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Although many Americans today consider California to be nothing less than a sanctuary for immigrants, the state has a long history of anti-immigrant outbursts. Examples are legion, including the attacks, violent as well as legal, on Chinese immigrants in the late 1800s and the mass deportation of persons of Mexican ancestry during the Great Depression.

Nor are all of California’s xenophobic episodes part of the distant past. This symposium directs attention to a relatively recent nativist chapter in the Golden State. In 1994, California voters, by a landslide two-to-one vote, polarized along racial lines, passed Proposition 187. This milestone initiative, among other things, sought to:

1. deny undocumented immigrants access to virtually all public benefits as well as to a public education;
2. require police, school administrators, and other state employees to verify the immigration status of persons with whom they come into contact in their official capacities; and

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1 See, e.g., Chae Chan Ping v. United States (The Chinese Exclusion Case), 130 U.S. 581 (1889) (rejecting a legal challenge to the Chinese Exclusion Act, a comprehensive federal immigration law passed with strong political support from California that prohibited most immigration from China to the United States); Alexander Saxton, The Indispensable Enemy: Labor and the Anti-Chinese Movement in California (1971) (documenting anti-Chinese agitation in California in the 1800s); see also Robert L. Tsai, Racial Purges, 118 Mich. L. Rev. (forthcoming 2019) (manuscript at 1) (reviewing Beth Lew-Williams, The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America (2018), which discusses the “purge” of Chinese from the United States in the late 1800s).

2 See Francisco E. Balderrama & Raymond Rodriguez, Decade of Betrayal: Mexican Repatriation in the 1930s, at 1-5 (rev. ed. 2006) (chronicling the mass removal of persons of Mexican ancestry from the United States, including California, during the Great Depression).

mandate state and local employees to fully cooperate with federal immigration officers, a precursor to the twenty-first century “anti-sanctuary” laws later passed by several states.\(^4\)

Proposition 187 contrasts sharply with the conventional wisdom about California's liberal pro-immigrant politics. The story of the dramatic transformation of the state’s politics, which in no small part was triggered by the initiative, warrants exploration.

In a rancorous, racially-charged campaign, Republican Governor Pete Wilson used Proposition 187 as the springboard for his successful reelection bid: “Wilson seized on [the initiative] and, through a racist campaign, tapped the latent bigotry of Californians to rescue his flagging candidacy, a Pyrrhic victory that badly damaged Republicans by alienating Latinos in the state and nationwide ever since.”\(^5\) The lopsided passage of Proposition 187 “sent a message”\(^6\) well beyond the state about public concern with immigration. Congress responded and passed three major pieces of immigration legislation in 1996, all of which adversely impacted immigrants. The two immigration

\(^4\) See infra text accompanying notes 24–27; Rick Su, The First Anti-Sanctuary Law: Proposition 187 and the Transformation of Immigration Enforcement, 53 UC DAVIS L. REV. 1981 (2020) (analyzing Proposition 187 as the first anti-sanctuary law). In recent years, Texas, Mississippi, and Georgia passed anti-sanctuary laws, which barred cities and localities from providing “sanctuary” to immigrants. See Rose Cuisin Villazor & Pratheepan Gulasekaram, Sanctuary Networks, 103 MINN. L. REV. 1209, 1265-66 (2019). Jennifer Chacón aptly observed that “[g]enerally speaking, in recent years, discrimination against Latinos has increased in jurisdictions that have prioritized immigration control measures.” Jennifer M. Chacón, Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions, 52 UC DAVIS L. REV. 1, 79 (2018). In contrast, other state and local governments have enacted “sanctuary” laws that offer protections to immigrants. See Ming Hsu Chen, Sanctuary Networks and Integrative Enforcement, 75 WASH. & LEE L. REV. 1361, 1363 (2018) (analyzing the emergence of “sanctuary networks” resisting federal immigration enforcement); Christopher N. Lasch et al., Understanding “Sanctuary Cities,” 59 B.C. L. REV. 1703, 1704-05 (2018) (outlining ways that a growing number of cities have resisted President Trump's immigration enforcement agenda).


enforcement laws passed that year\textsuperscript{7} are among the toughest such laws enacted in U.S. history and continue to have devastating impacts on immigrants.\textsuperscript{8} In addition, through welfare reform legislation,\textsuperscript{9} Congress achieved most of its cost savings by stripping legal immigrants of public benefits.\textsuperscript{10}

With Proposition 187, California became one of the first states in the modern era to pass a law designed to spur heightened enforcement of the federal immigration laws. Finding that the initiative impermissibly interfered with the federal power to regulate immigration, a federal court enjoined most of it from going into effect.\textsuperscript{11} During the Obama administration, laws similar to Proposition 187 spread like wildfire in Arizona, Georgia, South Carolina, and several other states.\textsuperscript{12} The widespread popularity of the laws reflected the general dissatisfaction with the then-current levels of immigration and the enforcement of the U.S. immigration laws.

\textsuperscript{7} See infra text accompanying notes 73–81.


\textsuperscript{10} Seeinfra text accompanying notes 82–87.

\textsuperscript{11} Seeinfra text accompanying notes 66–67, 69.

\textsuperscript{12} See, e.g., Arizona v. United States, 567 U.S. 387 (2012) (invalidating in large part Arizona immigration enforcement law known as S.B. 1070); United States v. South Carolina, 720 F.3d 518 (4th Cir. 2013) (same for similar South Carolina law); United States v. Alabama, 691 F.3d 1269 (11th Cir. 2012) (Alabama law); Georgia Latino All. for Human Rights v. Governor of Georgia, 691 F.3d 1250 (11th Cir. 2012) (Georgia law). Despite the fact that the Obama administration removed record numbers of noncitizens, states passed laws to facilitate immigration enforcement. See Kevin R. Johnson, Lessons About the Future of Immigration Law from the Rise and Fall of DACA, 52 UC Davis L. Rev. 343, 350-58 (2018) [hereinafter Lessons from the Rise and Fall of DACA].
As it turns out, the legacy of Proposition 187 reaches far beyond immigration. Even though the law was never fully implemented, the reverberations of the initiative contributed to the slow but steady — and in the end, dramatic — political transformation of California. In the aftermath of the initiative’s passage, Latinx immigrants in record numbers naturalized and became U.S. citizens. Due to the public’s perception of the Republican Party as anti-immigrant and anti-minority, in no small part due to its rabid support for Proposition 187, new Latinx citizens became new Democratic voters; consequently, the state legislature and statewide political leaders became more Democratic and increasingly Latinx.

When all was said and done, California experienced nothing less than what political scientists would characterize as a political realignment. In essence, a Republican stronghold became a Democratic bastion. The Democratic Party today dominates California politics and controls both the legislature and governorship; not coincidentally, the legislature today consistently passes laws that protect, not punish, immigrants and steadfastly resists many of President Trump’s immigration (and other) policies.

The practical result of the political transformation of California was that the same state that enacted Proposition 187 now passes laws to benefit undocumented immigrants, such as making them eligible for driver’s licenses and improving their access to public higher education. The legislature ultimately went so far as to declare California to be a “sanctuary” for immigrants. Strangely enough, Proposition 187 contributed significantly to the amazing reversal of

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13 See NARDA ZACCHINO, CALIFORNIA COMEBACK 153-54 (1st ed. 2016).
14 See generally infra Part II.
15 See generally infra Part II. In 1998, Chris Edley correctly observed that the emerging political realignment in California might have national reverberations. See Christopher Edley, Jr., Color at Century’s End: Race in Law, Policy, and Politics, 67 FORDHAM L. REV. 939, 943-44 (1998).
16 See infra Part II.D.
political fortunes in the state. Consequently, one cannot imagine California voters in 2020 passing anything resembling Proposition 187.

The wholesale transformation of the political terrain of California from a state with an electorate that overwhelmingly supported Proposition 187 to one that protects immigrants from federal immigration enforcement — or, put differently, from an anti-sanctuary to a sanctuary state — is now complete. In response to President Trump’s aggressive immigration enforcement measures, California has passed laws that restrict state and local involvement in federal immigration enforcement. The state also defiantly filed scores of lawsuits attempting to block the implementation of many Trump administration immigration enforcement and other policies.

This Article critically examines how Proposition 187 set in motion a chain of events that forever transformed California politics. That history poses an important — and seemingly incongruous — series of questions for the future of U.S. politics: will the aggressive enforcement measures of the Trump administration have political ramifications for the entire nation similar to those that Proposition 187 had on California? Might the responses to President Trump’s immigration policies lead to a political realignment on a national scale similar to that which occurred in California?

Ironically enough, the actions of President Trump, similar to those of California Governor Pete Wilson, who championed Proposition 187, might ultimately have wholly unintended consequences. The administration’s harsh immigration policies, in fact, may pave the way for a more immigrant-friendly national political climate. Such political change might lead to the passage of comprehensive immigration reform, which has been proposed for many years but is yet to be passed by Congress. That change might also spur the passage of other pro-immigrant legislation.

Part I of the Article reviews Proposition 187, the racially-tinged campaign that led to its passage, and the litigation successfully barring most of the measure from going into effect. Part II analyzes how the initiative forever changed California politics. Nothing less than a political
watershed, Proposition 187 set into motion a chain reaction that, if replicated on the national level, may reverse the contemporary trajectory of immigration law and enforcement. Part III draws parallels between the campaign for Proposition 187 and Donald Trump’s harsh immigration rhetoric and agenda. Finally, Part IV contends that, if current trends continue, the Trump administration’s immigration policies might well boomerang, triggering a national political transformation like that seen in California in the wake of Proposition 187.

I. PROPOSITION 187 IN BRIEF

In November 1994, California voters passed what is now considered one of the most anti-immigrant ballot initiatives in the state’s history.\(^24\) Officially titled the “Illegal Aliens, Ineligibility for Public Service, Verification and Reprinting. Initiative Statute,”\(^25\) Proposition 187 sought to strip undocumented immigrants of non-emergency healthcare, public assistance, social services, and public education; it also would have required local and state law enforcement agencies, as well as the public schools, to report suspected undocumented immigrants to the Immigration and Naturalization Service (“INS”), the U.S. government’s primary immigration enforcement agency at the time.\(^26\)


In enjoining most of Proposition 187 from going into effect, the U.S. District Court for the Central District of California encapsulated the measure as follows:

The stated purpose of Proposition 187 is to “provide for cooperation between [the] agencies of state and local government with the federal government, and to establish a system of required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State of California.” Prop. 187, § 1. The initiative’s provisions require law enforcement, social services, health care and public education personnel to (i) verify the immigration status of persons with whom they come in contact; (ii) notify certain defined categories of persons of their immigration status; (iii) report those persons to state and federal officials; and (iv) deny those persons social services, health care and education.\(^{27}\)

Designed to enlist full state and local cooperation in the federal government’s immigration enforcement efforts, Proposition 187 included what today would be characterized as anti-sanctuary provisions,\(^{28}\) mandating local governments to cooperate fully with federal immigration enforcement authorities.

Supporters of Proposition 187 claimed that the initiative would save hundreds of millions of dollars each year.\(^{29}\) Yet the cost of verifying the immigration status of students, parents, and persons seeking healthcare


\(^{28}\) See Villazor & Gulasekaram, supra note 4, at 1217-25 (analyzing various forms of “sanctuary” for immigrants).

\(^{29}\) See VOTER INFORMATION GUIDE, supra note 26, at 50.
and social services was estimated at potentially more than $100 million in the first year alone.\(^{30}\) Moreover, due to conflicts between the measure and federal immigration law concerning the treatment of immigrants, the initiative risked the loss of billions of federal dollars.\(^{31}\) Ultimately, cost savings alone fail to explain the groundswell of support for Proposition 187.

### A. The Proposition 187 Campaign: Racism and Nativism at Work

The historic Proposition 187 campaign was, to say the least, tumultuous.\(^{32}\) Today, the animosity expressed toward immigrants in California may be difficult for some to believe. Later, the anti-immigrant foundations for the campaign found themselves replicated in other states that passed similar laws.

In a tough reelection bid, California Governor Pete Wilson tied his political fortunes to the passage of Proposition 187 and portrayed undocumented immigrants as nothing less than a scourge on the state, which, if left unchecked, would bring about its economic, social, political, and cultural ruin.\(^{33}\) His now-famous television spot showed shadowy black and white footage of migrants running between

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\(^{30}\) See id.

\(^{31}\) See id.


automobiles near the United States/Mexico border; in the background, the narrator ominously proclaims “[t]hey keep coming.”

The dubbing of Proposition 187 as the “Save Our State” (“SOS”) initiative reveals how it effectively blamed undocumented immigrants for California’s fiscal challenges. Shocking to modern sensibilities, the official voter’s pamphlet included this argument in favor of Proposition 187:

It has been estimated that ILLEGAL ALIENS are costing taxpayers in excess of 5 billion dollars a year . . . While our own citizens and legal residents go wanting, those who choose to enter our country ILLEGALLY get royal treatment at the expense of the California taxpayer . . . . IT IS TIME THIS STOPS!

Race and racism have long been embedded in immigration law and enforcement. As a result, immigration enforcement for generations has had dramatic impacts on Latinx immigrants and U.S. citizens. Racial animosity toward immigrants, especially those from Mexico,

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36 Linda S. Bosniak, Membership, Equality, and the Difference that Alienage Makes, 69 N.Y.U. L. REV. 1047, 1052 n.12 (1994) (noting that Proposition 187 was “[d]ubbed by its sponsors [as] the ‘Save Our State’ initiative”) (citations omitted); Emilie Cooper, Note, Embedded Immigrant Exceptionalism: An Examination of California’s Proposition 187, the 1996 Welfare Reforms and the Anti-Immigrant Sentiment Expressed Therein, 18 GEO. IMMIGR. L.J. 345, 348 (2004) (“Proposition 187 was nicknamed the Save Our State (‘SOS’) provision because politicians touted it as a way to save California from a variety of ills including ‘economic and social bankruptcy.’”) (footnote omitted).
37 VOTER INFORMATION GUIDE, supra note 26, at 54 (Argument in Favor of Proposition 187) (capitals in original).
38 See sources cited supra notes 1–2.
expressed during the Proposition 187 campaign, are reminiscent of what the nation has heard from Donald Trump and others in recent years. Consider these examples from the initiative campaign.

1. “You are the Posse and SOS is the Rope.”

One of the Proposition 187 sponsors, Ron Prince, bluntly asserted that “[i]llegal aliens are killing us in California . . . . Those who support illegal immigration are, in effect, anti-American,” a textbook example of nativist rhetoric. To combat the threat, Prince conjured up deeply disturbing imagery from the era of lynching of African Americans and Latinx people: “You are the posse and SOS is the rope.”

2. The Take Over of California with Crime and “Third World Cultures”

One drafter of Proposition 187, Barbara Coe, proclaimed that the “militant arm of the pro-illegal activists . . . have vowed to take over first California, then the Western states and then the rest of the nation.” In her doomsday scenario, Coe linked “illegal aliens” with crime:

You get illegal alien children, Third World children, out of our schools, and you will reduce the violence. That is a fact . . . . You’re not dealing with a lot of shiny face, little kiddies . . . . You’re

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40 The racism in the Proposition 187 campaign is reviewed in detail in Johnson, Race and Proposition 187, supra note 32, at 650-54.

41 See infra Part III.A.


43 See HIGHTHAM, supra note 3 (offering definition of “nativism” as including opposition to “foreign (i.e., ‘un-American’)” persons).


46 Johnson, Race and Proposition 187, supra note 32, at 657 n.139 (citing Carol Byrne, Proposition 187’s Uproar, STAR TRIB. (Oct. 20, 1994), at 7A (quoting Barbara Coe)).
dealing with Third World cultures who come in, they shoot, they beat, they stab and they spread their drugs around in our school system. And we're paying them to do it.47

Voicing similar themes in an op-ed supporting Proposition 187, Coe equated undocumented immigrants with criminals: “[v]iolent crime is rampant. Illegal-alien gangs roam our streets, dealing drugs and searching for innocent victims to rob, rape and, in many cases, murder those who dare violate their ‘turf.’ . . . [N]early 90% of all illicit drugs are brought here by illegals. . . .”48

3. California’s Possible Annexation by Mexico

Linda Haynes, the Proposition 187 media director for Southern California, expressed stark concerns with an “illegal alien” takeover of the state:

Proposition 187 is . . . a logical step toward saving California from economic ruin . . . . By flooding the state with 2 million illegal aliens to date, and increasing that figure each of the following 10 years, Mexicans in California would number 15 million to 20 million by 2004. During those 10 years about 5 million to 8 million Californians would have emigrated to other states. If these trends continued, a Mexico-controlled California could vote to establish Spanish as the sole language of California, 10 million more English-speaking Californians could flee, and there could be a statewide vote to leave the Union and annex California to Mexico.49

4. “Those Little F—kers,” “Mexican Flags and Brown Faces”

During the Proposition 187 campaign, Barbara Kiley, mayor of a city in Southern California, reportedly described the children of

47 Id. at 657 n.140 (emphasis added) (citing Pamela J. Podger & Michael Doyle, War of Worlds, FRESNO BEE (Jan. 9, 1994), at A1 (quoting Barbara Coe)).
48 Id. at 658 n.141 (citing Barbara Coe, Keep Illegals Out of State, USA TODAY (Oct. 12, 1994), at 12A).
undocumented immigrants as “those little f—kers.”

Her political consultant husband opined that participants in a mass public protest of Proposition 187 damaged their cause because “[o]n TV there was nothing but Mexican flags and brown faces.”

5. Fears of California Becoming a “Third World Country”

Harold Ezell, Western Regional Commissioner of INS during Republican President Ronald Reagan’s administration in the 1980s, once observed that “illegal aliens . . . should be ‘caught, skinned and fried.’” During the Proposition 187 campaign, Ezell explained that support for the measure was strong because “[t]he people are tired of watching their state run wild and become a third world country.”

6. The “Invasion” of “Illegal Aliens”

Hyperbole about an “invasion” of “illegal aliens” figured prominently in the Proposition 187 campaign. One of the arguments

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53 Johnson, Race and Proposition 187, supra note 32, at 655 n.124 (emphasis added) (citing Daniel B. Wood, Ballot Vote on Illegal Immigrants Set for Fall in California, CHRISTIAN SCI. MONITOR (June 1, 1994), at 1 (quoting Ezell)).
supporting the measure in the voter pamphlet bluntly stated that “Proposition 187 will be the first giant stride in ultimately ending the ILLEGAL ALIEN invasion.”\(^{54}\) In this context, “ILLEGAL ALIEN” serves as code for Mexican immigrants.\(^{55}\)

In endorsing Proposition 187, Richard Mountjoy, a Republican member of the California legislature, proclaimed that undocumented mothers “come here for that birth certificate [i.e., birthright citizenship for their children]. They come here to get on the California dole.”\(^{56}\) “[I]f you want to stop the flow of illegal aliens to our hospitals, stop the benefits. . . . ‘Having a child at our expense is not an emergency.’”\(^{57}\) In Mountjoy’s eyes, “[t]he people of California are subsidizing the illegal invasion to the tune of somewhere around $5 billion a year . . . .”\(^{58}\)

7. A Spike in Hate Crimes

The anti-Mexican undertones to the Proposition 187 campaign could be seen in actions after passage of the measure. Latinx citizens and immigrants reported harassment, including being subject to hate crimes, racial epithets, and being told to go back to Mexico.\(^{59}\) A study documented adverse aftereffects of the measure’s passage on Latinx residents, including:

1. An escalation of discrimination by businesses against Latinx persons.
2. Increased hate speech and hate crimes against Latinx persons.
3. Growth in the abuse and discriminatory treatment against Latinx persons by law enforcement officers.

\(^{54}\) \textit{Voter Information Guide, supra} note 26, at 54.

\(^{55}\) \textit{See} sources cited \textit{supra} note 25.

\(^{56}\) Johnson, \textit{Race and Proposition 187, supra} note 32, at 656 n.129 (citing Sonya Live (CNN television broadcast Feb. 16, 1994) (talk show with Mountjoy answering questions)).


\(^{58}\) Sonya Live, \textit{supra} note 56 (emphasis added) (interview of Mountjoy).

4. The majority of victims who reported incidents of discrimination are U.S. citizens and lawful permanent residents, not undocumented immigrants.60

In a similar vein, a founder of an Arizona group seeking to place a Proposition 187-type initiative on the state’s ballot flatly denied that race was the issue: “My friends have never heard a racist word out of me. I just don’t like wetbacks.”61 “Wetbacks,” of course, is a racial epithet for undocumented Mexican immigrants.62

8. The Racially Polarized Vote

In California’s 1994 election, exit polls showed that white voters supported Proposition 187 by a two-to-one ratio while Latinx voters overwhelmingly opposed it by a three-to-one margin.63 The racially polarized vote speaks volumes about the racial undertones to the campaign.

B. The Successful Legal Challenge

In addition to mass protests during the campaign,64 several lawsuits challenged the constitutionality of Proposition 187 for intruding on the federal government’s power to regulate immigration.65 Agreeing with the plaintiffs, the United States District Court for the Central District of California issued a preliminary injunction barring most of the

60 See id. at 10-20.

61 Johnson, Race and Proposition 187, supra note 32, at 661 n.154 (citing Maria Puente, States Setting Stage for Their Own Prop. 187s, USA TODAY (Nov. 18, 1994), at 3A (emphasis added)).

62 See sources cited supra note 52.


proposition from being implemented\textsuperscript{66} and later issued a permanent injunction.\textsuperscript{67} The parties ultimately settled the case.\textsuperscript{68}

The prevailing legal claim was that federal immigration law preempted Proposition 187, a relatively novel claim at the time in the realm of immigration.\textsuperscript{69} Proposition 187 began what would become a national discussion over the role of the states in immigration enforcement.\textsuperscript{70} The discussion has lasted for more than a generation. In the new millennium, several states supported greater immigration enforcement through passing laws similar to California’s.\textsuperscript{71}

Although it never went into effect, Proposition 187 had long-term impacts both in California and at a national level. Parts II and III explore some of those changes, including the federal response to Proposition 187, the political transformation of California spurred by its passage, California’s resistance to Trump’s immigration agenda, and the similarities between the political dynamic leading to the passage of Proposition 187 and the current national political climate.

II. THE POLITICAL TRANSFORMATION OF CALIFORNIA

The passage of Proposition 187, and the accompanying harsh rhetorical attacks on immigrants, ultimately led to a dramatic transformation of California politics. But it initially had significant, and very different, national reverberations, with Congress passing a series of laws consistent with the initiative’s overall intent to strip immigrants of public benefits, deter immigration, and increase deportations of immigrants from the United States.


\textsuperscript{69} See League of United Latin Am. Citizens, 997 F. Supp. at 1254-57; see also Jose T. ex rel. Gregorio T. v. Wilson, 59 F.3d 1002, 1004 (9th Cir. 1995) (issuing a similar ruling).

\textsuperscript{70} See infra Part III.B.

\textsuperscript{71} See cases cited supra note 12.
A. The Federal Response to Proposition 187

The U.S. government, which has the undisputed power to regulate the admission and removal of immigrants,72 responded to the landslide passage of Proposition 187 in California. Congress passed tough federal immigration and welfare reforms that sought to address the same concerns targeted by Proposition 187; the laws have had dramatic impacts on the admission and removal of immigrants.

Two years after the passage of Proposition 187, Congress passed three major pieces of immigration legislation. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act ("AEDPA"),73 which included a series of tough immigration enforcement measures. Although the stated purpose of the law was to fight terrorism, President Bill Clinton admitted in signing AEDPA into law that it changed the immigration laws in ways that had nothing to do with terrorism.74

Just months later, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA").75 It carried forward many of AEDPA's changes to the immigration laws. Among other immigration reforms, AEDPA and IIRIRA dramatically restricted judicial review of many immigration decisions by the Executive Branch and expanded the "aggravated felony" definition subjecting lawful immigrants convicted of crimes to removal from the United States; the laws also mandated the use of immigrant detention as an immigration enforcement device.76

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76 See M. Isabel Medina, Demore v. Kim — A Dance of Power and Human Rights, 18 GEO. IMMIGR. L.J. 697, 707 (2004) ("[The 1996 laws] increased the class of aliens subject to deportation by increasing the number of offenses that could constitute aggravated felonies and attempted to sharply curtail judicial review of immigration related executive decision-making. They also granted the executive greater discretion to detain aliens found in the United States and, in some cases, mandated the detention of criminal aliens . . . and aliens who engaged in terrorist activities.") (footnotes omitted). The Supreme Court in recent years has frequently interpreted the criminal removal provisions and the expanded "aggravated felony" definition, which bars a noncitizen
The changes had dramatic impacts on immigration enforcement, contributing to greatly increased numbers of criminal removals. This, in turn, led to increased scholarly attention to what is now known as “crimmigration” law.\(^7^7\) Criminal removals and detention have featured prominently in the immigration enforcement efforts of both the Obama and Trump administrations.\(^7^8\)

IIRIRA also restricted legal immigration. A sponsor is generally needed when an immigrant seeks lawful admission to the United States or tries to adjust their legal status to lawful permanent resident. The law, as amended, requires a sponsor to sign a legally-enforceable "affidavit of support,"\(^7^9\) in effect promising to ensure that the sponsored noncitizen will not access public benefits. IIRIRA amended the


\(^7^8\) See Jennifer M. Chacon, Immigration and the Bully Pulpit, 130 HARV. L. REV. F. 243, 243-57 (2017) [hereinafter Immigration and the Bully Pulpit].

requirements for sponsors, establishing a minimum income level of 125% of the federal poverty level. Because many families are unable to meet this requirement, IIRIRA created incentives for noncitizens to unlawfully come to, or remain, in the United States.

In the same year that it passed AEDPA and IIRIRA, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), colloquially known as “welfare reform.” The law stripped lawful immigrants of major federal public benefits. Promising to “end welfare as we know it,” the Act eliminated benefits for many persons and conditioned benefits for able-bodied persons on employment. As expressed by the supporters of Proposition 187, many citizens believed that public benefits served as the magnet attracting immigrants to the United States. Although Proposition 187 sought to bar undocumented immigrants from the receipt of public benefits, PRWORA excluded lawful permanent residents from eligibility for most federal public benefit programs. An estimated 500,000 immigrants were threatened with losing their Supplemental Security Income (“SSI”), a federal income supplement for elderly, disabled, and blind persons; approximately one million noncitizens stood to lose food stamps.

Congress later restored certain benefits for lawful immigrants. In 1997, the Balanced Budget Act allowed immigrants to maintain their SSI benefits if they had received them before August 22, 1996, the day

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84 See supra Part I.A.
86 See Sierra et al., supra note 81, at 536.
87 Fujiwara, supra note 85, at 79.
President Clinton signed PRWORA into law. It further allowed legal residents to apply for SSI benefits if they had lawfully been in the country before the passage of PRWORA, but became disabled after its passage. However, Congress failed to restore food stamp eligibility for lawful permanent residents.

Concern with public benefit receipt by immigrants animates some of the Trump administration’s immigration policies. In the face of considerable opposition, for example, the administration has tightened the public charge exclusion and restricted naturalization for legal immigrants who had consumed public benefits to which they were lawfully entitled. Legal challenges followed.

B. A Spike in Naturalization

Proposition 187 had some unexpected consequences, including on naturalization rates. Naturalization is the culmination of the process of the formal legal integration of immigrants into U.S. society. Lawful permanent residents generally are eligible to naturalize and become U.S. citizens. Rates of naturalization fluctuate over time, with different groups of immigrants having different naturalization rates.

For a variety of reasons, Mexican immigrants historically have had lower naturalization rates than immigrants from other nations. Besides feeling inhibited from seeking citizenship due to loyalty to their home countries, Latinx immigrants may fear losing rights and privileges in their nations of origin if they become U.S. citizens. Moreover, many immigrants view the naturalization process as “one rife with patronizing officials, unreasonable criminalization, humiliation, fear, and anxiety.”

88 Id. at 81.
90 See Fujiwara, supra note 85, at 95.
91 See infra Part III.A.7.
92 See infra notes 156–158 and accompanying text.
97 Id.
The fear of removal from the United States and the threatened denial of public benefits in combination result in a phenomenon now known as “defensive naturalization,” that is, naturalization to avoid removal or loss of public benefits. One of the immediate impacts of Proposition 187 was a spike in naturalization petitions that can be understood as defensive naturalization. Proposition 187 was viewed as an attack on Latinx immigrants and Latinx people generally. Consequently, “a large number of Latino non-citizens, perhaps out of fear of losing certain services or status, made the decision to begin the naturalization process.”

The Immigration Reform and Control Act (“IRCA”), passed in 1986, further fueled the increase in naturalization in the 1990s. IRCA created amnesty programs that afforded lawful permanent resident status to hundreds of thousands of long-term undocumented residents. Newly-legalized immigrants later became eligible to naturalize and, as U.S. citizens, could vote.

Other developments also contributed to the uptick in rates of Latinx naturalization. Several nations, including Mexico, began recognizing dual nationality and did not strip a person of their citizenship if they became U.S. citizens; U.S. law also grew more tolerant of dual nationality. In addition, the Clinton administration sought to...
facilitate naturalization through the Citizenship USA program, which Republican critics claimed was pursued for partisan political ends.\(^\text{103}\)

In 1993, the year before the passage of Proposition 187, 68,100 immigrants in California naturalized, a figure that doubled to 118,567 in 1994; by 1996, the number skyrocketed to 378,014.\(^\text{104}\) The number increased at roughly the same time that California voters passed a series of initiatives viewed as anti-Latinx and anti-minority.\(^\text{105}\)

C. Increased Latinx Voting and Political Activism

Latinx voters have been called the “sleeping giant” because, despite their growing numbers, Latinx voter turnout has historically lagged behind that of other groups.\(^\text{106}\) However, many Latinx residents of California cannot vote because they are not U.S. citizens.\(^\text{107}\) Those able to vote, especially naturalized Latinx citizens, tend to vote in greater numbers when immigration is a campaign issue.\(^\text{108}\)

Latinx immigrants historically have had a stronger connection with the politics of their native countries than with those of the United States.\(^\text{109}\) However, after Proposition 187’s passage, newly naturalized citizens in California registered and voted at higher rates than fellow naturalized citizens and native-born Latinx.\(^\text{110}\) The threats posed by Proposition 187 contributed to an increase in immigrant political engagement.

With more Latinx persons eligible to vote, both major political parties after 1994 increasingly focused on attracting the growing number of Latinx voters. They did so by, for example, initiating Spanish-language campaigns.\(^\text{111}\) Today, the two major political parties spend millions of

\(^{103}\) See Bob Barr, High Crimes and Misdemeanors: The Clinton-Gore Scandals and the Question of Impeachment, 2 TEX. REV. L. & POL. 2, 44-49 (1997).

\(^{104}\) Pantoja et al., supra note 93, at 733.

\(^{105}\) See infra text accompanying notes 116–118.


\(^{108}\) See Barreto & Nuño, supra note 106, at 449-50.


\(^{111}\) See id.
dollars on Latinx voter registration, education, mobilization efforts, and teaching Spanish to elected officials, candidates, and activists.\(^{112}\)

Naturalized Latinx citizens voted in greater numbers in the 1998 and 2002 elections. Naturalized Latinx voters in California rose from 172,241 in 1998 to 210,310 in 2002.\(^{113}\) Furthermore, out of the 451,844 registered to vote, more than 210,000 voted, a 46.5% turnout compared to the 34.6% turnout of native-born Latinx; naturalized Latinx voters had a larger turnout than the overall turnout rate (45.4%) and it was close to non-Latinx turnout (47.4%).\(^{114}\)

\textbf{D. The Changing California Legislature and the Golden State’s Political Climate}

California today is viewed as a Democratic stronghold. That has not always been the case. From World War II to 1988, California voted Republican in all but one presidential election; the two U.S. Presidents from California during that period, Richard Nixon and Ronald Reagan, were Republicans.\(^{115}\)

In 1996, California voters passed Proposition 209 by a wide margin and eliminated race-conscious affirmative action in public colleges and universities.\(^{116}\) In 1998, they passed Proposition 227 and ended bilingual education programs in the public schools, which directly affected the Spanish-speaking population.\(^{117}\) Supported by Republicans, these propositions were viewed by Latinx voters as a direct attack on...
them. Because many Latinx voters saw these Republican-backed initiatives as discriminatory, many voted Democratic.\textsuperscript{118}

As Latinx voters felt threatened by racially-tinged ballot initiatives, they sought legal protection through naturalization. Proposition 187 led many Latinx voters to view the Republican Party as generally anti-immigrant and anti-minority.\textsuperscript{119} Consequently, the new wave of Latinx citizens tended to vote Democratic, the party that opposed the discriminatory ballot initiatives.

As an article published by the conservative blog Cato at Liberty entitled “Proposition 187 Turned California Blue” contends, Proposition 187 commenced a massive turnaround in California politics.\textsuperscript{120} Since 1996, Democrats have won most elections for state-wide positions. Since 1994, gubernatorial elections have all gone Democratic except in 2002 and 2006 when Republican movie star Arnold Schwarzenegger won election and reelection. Otherwise, Democrats have generally dominated California politics for the last two decades.\textsuperscript{121}

In every election since 1994, the California State Senate and Assembly have maintained a Democratic majority. During the same time period, there has been an increase of Latinx running for office in California. By 2015, Latinx held twenty-three of the 120 seats in the state legislature; Latinx thus comprised roughly one-fifth of the legislature.\textsuperscript{122} The power of Latinx voters reached the point that California had two Latinx in key leadership positions (President pro tem of the Senate and Speaker of the Assembly) of the California Legislature.\textsuperscript{123} Notably, Xavier Becerra, the son of Mexican immigrants, is the current California Attorney General.

\textsuperscript{118} See Bowler et al., supra note 24, at 156.


\textsuperscript{120} See Nowrasteh, supra note 115.


### III. IMMIGRATION ENFORCEMENT AND RESISTANCE TO TRUMP’S IMMIGRATION AGENDA

Donald Trump ran for President on a fervently tough-on-immigration platform, with striking parallels to the Proposition 187 campaign. In a flurry of actions following the 2016 election, the Trump administration quickly toughened immigration enforcement in ways unlike employed by any modern U.S. president.\footnote{125 See, e.g., Chacón, Immigration and the Bully Pulpit, supra note 78 at 254; Bill Ong Hing, Entering the Trump ICE Age: Contextualizing the New Immigration Enforcement Regime, 5 TEX. A&M L. REV. 253, 316-321 (2018); Kevin R. Johnson, Immigration and Civil Rights in the Trump Administration: Law and Policy Making by Executive Order, 57 SANTA CLARA L. REV. 611, 614-615 (2017).} Some state and local governments, including California, staunchly resisted the new federal immigration enforcement agenda.\footnote{126 See infra Part III.B.}

#### A. President Trump on Immigration

In ways unprecedented among modern presidents, President Trump has focused on immigration enforcement.\footnote{127 See Kalhan, supra note 8, at 262 (“[T]he [Trump administration’s] sweeping, high-profile immigration enforcement initiatives — along with its inflammatory anti-immigrant rhetoric — mark the ascendance of immigration restrictionism to the highest levels of the executive branch to an extent that it is entirely without modern precedent.”) (emphasis added).} Many of his administration’s measures, at least in part arguably motivated by racial animus, have had disparate impacts on immigrants of color.\footnote{128 See generally Rose Cuisin Villazor & Kevin R. Johnson, The Trump Administration and the War on Immigration Diversity, 34 WAKE FOREST L. REV. 575 (2019) (reviewing how the Trump administration’s immigrant enforcement policies disparately impact immigrants of color). Racism long has contributed to tensions along the United States-Mexico border. See generally Kristina M. Campbell, A Dry Hate: White Supremacy and Anti-Immigrant Rhetoric in the Humanitarian Crisis on the U.S.-Mexico Border, 117 W. VA. L. REV. 1081 (2015) (analyzing racial tensions in the border region). For the argument that President Trump’s various immigration enforcement policies amount to a mass Latinx repatriation similar to previous chapters in U.S. history, see Kevin R. Johnson, Trump’s Latinx Repatriation, 66 UCLA L. REV. (forthcoming 2019).}
Trump administration’s divisive rhetoric, as well as the impacts of its immigration policies, harken back to Proposition 187.129

1. Mexicans as “Criminals” and “Rapists”
   Donald Trump launched his run for the presidency by making aggressive immigration enforcement a central plank of his campaign. He expressly targeted immigrants from Mexico: “When Mexico sends its people, they’re not sending their best . . . . They’re sending people that have lots of problems, and they’re bringing those problems to the U.S. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.”130
   As president, Trump has consistently pursued immigration enforcement policies that disparately impacted Mexican noncitizens.131

2. “Sh—hole Countries”
   During a meeting in 2016 about immigration with a bipartisan group of members of Congress, President Trump reportedly said the following in discussing Salvadorans, Haitians, and other noncitizens from the developing world: “Why are we having all these people from sh—hole countries come here?”132 The President further stated that the United States should admit more immigrants from countries with predominantly white populations such as Norway.133
   Consistent with those views, President Trump also directed that Haitians be left out of any immigration relief proposal, reportedly saying

129 See infra Part I.A.
131 See infra Part III.A.1-7, 9-10.
133 See id.
in a matter of fact fashion, “Why do we need more Haitians? . . . Take them out.”

President Trump later sought to eliminate relief from removal known as Temporary Protected Status (“TPS”) for Salvodorans, Haitians, Nicaraguans, Hondurans, and other groups of noncitizens.

3. MS-13 Members and Salvodorans as “Animals”

As president, Donald Trump frequently stated that crimes by immigrants justified increasingly aggressive enforcement measures. In a similar vein, he equated all Salvodorans with MS-13 members, a violent street gang whose members he characterized as nothing more than “animals.”

4. The “Caravans”

President Trump berated the highly-publicized “caravans” of “criminals” and “terrorists” from Central America and the alleged abuse of the asylum system by Central Americans. Major television networks, including the conservative Fox News, refused to air a Trump television spot attacking immigrants and the caravan, and tying the Central American asylum seekers to crime; the ad was widely decried as racist.

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134 See id. (quoting President Trump).
135 See infra Part III.A.6.
5. Bring Back “Operation Wetback”

“Operation Wetback” was “a massive, quasi-military operation that resulted in over a million deportations to Mexico under egregious conditions that often passed by formal administrative proceedings . . . . Those rounded up in Operation Wetback were deported en masse with little opportunity to raise defenses to deportation or claims to relief.”140 Immigration scholars generally view the operation as a racist chapter in U.S. history.141 President Trump, however, called for its revival, although not using the racial epithet in its official name.142 In an interview of President Trump, one television reporter observed that many people recall Operation Wetback as a “shameful chapter in American history”; Trump’s telling response: “Well some people do, and some people think it was a very effective chapter . . . . And it was very successful, everyone said.”143

6. Ending DACA and TPS

President Trump sought to rescind TPS for Salvadorans and Haitians, two countries he had previously disparaged.144 He also sought to eliminate the Deferred Action for Childhood Arrivals (“DACA”) policy.145 Similar to TPS, DACA provides temporary relief from removal and work authorization to recipients who were brought to the United

Trump aired a similar campaign ad in the 2016 presidential campaign. See infra text accompanying notes 207-208; Lindsay Perez Huber, “Make America Great Again!”: Donald Trump, Racist Nativism and the Virulent Adherence to White Supremacy Amid Demographic Change, 10 CHARLESTON L. REV. 215, 224-25 (2016) (discussing the ad).

140 Rosenbloom, supra note 77, at 194.

141 See, e.g., Hing, supra note 125, at 277 (“Operation Wetback [was] another infamous chapter in the deportation of Mexicans from the United States.”). See generally JUAN RAMON GARCÍA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 (1980) (documenting the operation, which was headed by a retired military general).


143 Id.

144 See Villazor & Johnson, supra note 128, at 615-16.

States as children. Natives of Mexico, El Salvador, and Guatemala constituted nearly 90% of all DACA recipients. The U.S. Supreme Court is currently considering whether the Trump administration acted lawfully in rescinding DACA.

7. A Tougher Public Charge Rule

One of Proposition 187’s central goals was to reduce public benefit receipt by undocumented immigrants. Several Trump administration immigration policies share a common goal.

Under U.S. immigration law, potential “public charges,” i.e., noncitizens of limited economic means who might consume public benefits, can be denied entry into the United States. The Trump administration unveiled a proposed rule that would tighten the public charge exclusion and exacerbate the racial and national-origins impact of the current law. Among other things, the rule continues to consider a noncitizen’s reliance on cash benefits for income maintenance, but also seeks to include reliance on noncash benefits

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146 See UNITED STATES CITIZENSHIP & IMMIGRATION SERVS., supra note 145.
147 See id.
148 See id.
149 See Regents of Univ. of Cal. v. U.S. Dep’t of Homeland Sec., 908 F.3d 476 (9th Cir. 2018), cert. granted, 139 S. Ct. 2779 (2019).
150 See supra Part I.
such as Medicaid, Medicare Part D, and public housing.\textsuperscript{153} The rule expands the application of the public charge inadmissibility grounds to nonimmigrants seeking to transition to another visa.\textsuperscript{154}

The nonpartisan Migration Policy Institute estimated that the proposed rule could increase the number of people deemed inadmissible into the United States by up to 47%.\textsuperscript{155} Given the relationship between race, nationality, and class, the expanded rule would disparately affect immigrants of color.

The final version of the public charge rule, issued in 2019, will likely increase the number of people who the U.S. government would deem inadmissible on public charge grounds.\textsuperscript{156} Legal challenges have followed.\textsuperscript{157} The U.S. Supreme Court stayed injunctions barring the implementation of the new public charge rule.\textsuperscript{158} The rule went into effect in February 2020.

8. Muslims as “Terrorists” and the Travel Ban

During his presidential campaign, Donald Trump frequently derided Muslims as terrorists who warranted “extreme vetting” before admission into the United States.\textsuperscript{159} In his first days in office, President Trump issued the first of three bans on the admission of noncitizens from a group of predominantly Muslim nations.\textsuperscript{160} In \textit{Trump v. Hawaii},\textsuperscript{161} the Court by a five-to-four majority upheld the Trump
administration's third iteration of the travel ban, a measure defended on national security grounds. Many, including four Justices, believed that anti-Muslim animus, not security concerns, motivated the ban. After reviewing in detail Donald Trump's public expression of anti-Muslim sentiments, Justice Sotomayor concluded that the national security rationale was mere “window dressing.”

The targeting of a particular group of immigrants in the travel ban is an indication of the direction of the Trump Administration's immigration policies. The travel ban relied upon a rarely-used statutory provision that allows the categorical denial of admission to certain groups of immigrants. President Trump later relied on the same provision in a proclamation seeking to deny relief to persons who do not seek asylum at the United States-Mexico border.

9. Ending “Chain Immigration” and “Anchor Babies”

By removing discriminatory quotas from the U.S. immigration laws, the Immigration Act of 1965 led to a more diverse immigrant stream, with the majority of the immigrant population today hailing from


162 *Trump, 138 S. Ct. at 2429-33 (Breyer, J., dissenting) (joined by Justice Kagan); id. at 2433 (Sotomayor, J., dissenting) (joined by Justice Ginsburg).*

163 *Id. at 2433, 2440 (Sotomayor, J., dissenting).*


166 *See Pub. L. No. 89-236, 79 Stat. 911 (1965).*
Mexico, India, the Philippines, and China. Many of these immigrants currently enter under visas allowing them to reunite with family members who are U.S. citizens or lawful permanent residents. In the first three quarters of 2018, approximately two-thirds of the immigrants admitted to the United States to join immediate relatives of U.S. citizens.

President Trump has called for amending the immigration laws to transform legal immigration, ending “chain migration,” and promoting skills-based immigration. “Chain migration” is the pejorative term employed to describe family reunification, a primary goal of current U.S. immigration law. Family reunification policies have contributed significantly to the current racial demographics of immigration in the United States, which includes many people of color from the developing world.

President Trump’s efforts to reduce the number of immigrants of color has not been limited to undocumented immigration. He has railed against birthright citizenship — the rule that any person in the United States is a U.S. citizen — and “anchor babies.”

10. A Spike in Hate Crimes

President Trump’s harsh rhetoric has been accompanied by a rise in hate crimes directed at Latinx people. In 2019, the American Civil

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170 See Miller & Colvin, supra note 168.

171 See LEGOMSKY & RODRIGUEZ, supra note 101, at 269 (footnote omitted).

172 See Miller & Colvin, supra note 168.

173 See Johnson, Lessons from the Rise and Fall of DACA, supra note 12, at 382-85.


Liberties Union claimed that one vigilante group that detained migrants on the border “was a product of the Trump administration’s ‘vile racism’ that ‘has emboldened white nationalists and fascists to flagrantly violate the law.’”176 In a similar vein, the suspect in a mass murder of Latinx people in El Paso, Texas in 2019, had posted rants on social media about the “invasion” of immigrants from Mexico, mirroring language employed by President Trump.177

B. Resistance

The Trump administration’s immigration measures triggered political and legal resistance. Since the President’s inauguration, immigration enforcement has been in the daily news and the subject of frequent and fierce criticism.

1. The New Sanctuary Movement

Over time, as immigration policy has grown in the national consciousness, a potent immigrant political movement has emerged. The “sanctuary movement” of the 1980s sought to provide safe haven to noncitizens fleeing violent civil wars in Central America, to which


the U.S. government responded with mass detention of asylum-seekers and other measures.\textsuperscript{178} This movement spawned successor political movements. A harsh immigration reform bill (H.R. 37: Border Protection, Antiterrorism, and Illegal Immigration Control Act) passed by the House of Representatives in 2005, provoked immigrants and their supporters to take to the streets in mass marches in cities across the United States.\textsuperscript{179}

The prolonged push for immigration reform contributed to the emergence and maintenance of a powerful grassroots political movement, composed of many undocumented college students as well as immigrant rights activists, which advocated for the extension of legal protections to immigrants.\textsuperscript{180} This spirited activism has proven to be one of the most dynamic, inspiring, and surprising mass political movements of the early twenty-first century. At this point, it appears that such activism is likely to remain a political force in the United States for the indefinite future.

Political resistance from the energized immigrant rights movement, combined with a flurry of lawsuits, significantly slowed the Trump administration’s immigration enforcement initiatives.\textsuperscript{181}

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\item[181] See Sameer M. Ashar, Movement Lawyers in the Fight for Immigrant Rights, 64 UCLA L. REV. 1464, 1468-90 (2017); Enid Trucios-Haynes & Marianna Michael, Mobilizing a Community: The Effect of President Trump’s Executive Orders on the Country’s Interior, 22 LEWIS & CLARK L. REV. 577, 580-95 (2018). See generally LEILA KAWAR,
grew to the point that immigrant rights advocates have called for the outright abolition of Immigration and Customs Enforcement ("ICE"), the agency primarily responsible for enforcing federal immigration laws.\textsuperscript{182} Advocating for the dismantling of ICE, an organization called "Abolish ICE" formed, demanding the creation of "an immigration system divorced from white supremacy, and that respects the dignity of all human beings."\textsuperscript{183} The salience of race, humanity, and dignity to the activists contributes to what ultimately amounts to a new civil rights movement.

Although its goals have not been fully achieved, the immigrant rights movement has had an impact. Pushed by activists and a growing awareness of the human impacts of immigration enforcement, the California legislature — supported by Democrats who today dominate the legislature — has declared itself to be a sanctuary state.\textsuperscript{184} Sanctuary policies generally limit state and local government involvement in federal immigration enforcement. Among other things, sanctuary laws can include restricting the detention of immigrants for possible removal and limiting the disclosure of information about noncitizens.\textsuperscript{185} In those

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\textsuperscript{185} See Annie Lai & Christopher N. Lasch, \textit{Crimmigration Resistance and the Case of Sanctuary City Defunding}, 57 SANTA CLARA L. REV. 539, 545 (2017).
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and other ways, the state and some cities have resisted pressure from the federal government to cooperate in immigration enforcement. 186

The California Value Act passed in 2017 amended the California Trust Act in an effort to protect immigrants. 187 The Trust Act prohibited “local jailors from cooperating with requests from Immigration and Customs Enforcement (ICE) to ‘hold,’ or detain, a non-citizen beyond the time that person would otherwise have been released from criminal custody so that ICE could apprehend that individual.” 188

In his first week in office, President Trump issued an executive order titled “Enhancing Public Safety in the Interior of the United States.” 189 Section 1 of the order states that sanctuary jurisdictions violate federal law and cause “immeasurable harm to the American People and to the very fabric of our Republic.” 190 Section 9 of the order threatened to bar sanctuary jurisdictions from receiving federal monies. 191 Lawsuits, including one brought by the City and County of Santa Clara and the City and County of San Francisco, successfully challenged the Trump administration’s attempt to defund “sanctuary” cities. 192 The Trump administration filed suit challenging some of the California sanctuary laws, but the Ninth Circuit dismissed most of its claims. 193

186 See Allan Colbern, Melanie Amoroso-Pohl & Courtney Gutiérrez, Contextualizing Sanctuary Policy Development in the United States: Conceptual and Constitutional Underpinnings, 1979 to 2018, 46 FORDHAM URB. L.J. 489, 540 (2019) (noting that, in 2007, “San Francisco became one of the first cities . . . to legally resist entangling local law enforcement with immigration law”); see also Huyen Pham & Pham Hoang Van, Measuring the Climate for Immigrants: A State-by-State Analysis, in STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY 21, 31 (Carissa B. Hessick & Gabriel J. Chin eds., 2014) (analyzing five years of data and finding that California and Illinois have the most positive climates for immigrants in the country); S. Karthick Ramakrishnan & Allan Colbern, The California Package: Immigrant Integration and the Evolving Nature of State Citizenship, 6 U.C. RIVERSIDE POL’Y MATTERS 1, 1 (2015) (referring to the more than a dozen laws passed in California since 2001 as producing “a de facto regime of state citizenship” that the authors call “the ‘California Package’”).


188 PRACTICE ADVISORY, supra note 187, at 3.


190 Id. §§ 1, 82 Fed. Reg. at 8799.

191 See id. § 9, 82 Fed. Reg. at 8801.


193 See United States v. California, 921 F.3d 865, 894-95 (9th Cir. 2019); Taryn Luna, Federal Judge Rejects Trump Lawsuit Against California’s Sanctuary State Law,
2. California

Within a decade of the passage of Proposition 187, the California legislature began passing laws benefiting, not punishing, immigrants. In 2001, California passed AB 540, which provides undocumented students with better access to higher education by allowing undocumented students to be eligible for in-state tuition at California colleges and universities. In contrast, Proposition 187 sought to prohibit undocumented students from attending public colleges and universities.

In 2013, the California Legislature passed AB 60, which allowed undocumented immigrants to obtain driver's licenses. More than 900,000 people have received driver's licenses under the law, which included a provision preventing police officers from targeting undocumented drivers.

The California legislature also responded to the Trump administration's immigration enforcement policies. For example, AB 450 provides protections to immigrants from immigration raids in the workplace. A federal district court ruled that, although private employers cannot be prosecuted for allowing federal immigration enforcement agents to enter nonpublic areas in the workplace or for providing access to employee records, some immigrant worker protections – and California's sanctuary law generally, were lawful.

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195 See supra Part I.


198 See Colbern & Ramakrishnan, supra note 196.


200 See United States v. California, 921 F.3d 865, 894-95 (9th Cir. 2019); Jonathan A. Siegel et al., Federal District Judge Puts on Hold Parts of AB 450 Which Prohibited Employers from Voluntarily Consent to a Federal Immigration Agent's Request to Enter Nonpublic Areas or for Voluntarily Providing Records, CAL. WORKPLACE L. BLOG (July 5, 2018), https://www.californiaworkplacelawblog.com/2018/07/articles/california/federal-district-judge-puts-on-hold-parts-of-ab-450-which-prohibited-employers-from-
Proposition 187 and Its Political Aftermath

California made headlines with its 50th lawsuit challenging Trump administration policies,\textsuperscript{201} including many challenging the administration’s immigration policies. The lawsuits claimed that, among other policies, the travel ban, DACA’s rescission, the construction of the wall along the United States-Mexico border, and the attempts to defund sanctuary jurisdictions violated the law.\textsuperscript{202}

IV. Proposition 187: The harbinger of the future of immigration politics in the United States?

As we have seen, President Trump’s extreme immigration enforcement policies have polarized the nation.\textsuperscript{203} Unlike any modern president, the Trump administration has placed immigration enforcement at the forefront of the national consciousness. In fact, immigration controversies due to new enforcement initiatives come with such regularity that it is difficult to even keep abreast of the changes.

One is left to wonder how the nation in the long run will respond politically to the Trump administration’s unrelenting immigration enforcement measures. One possible scenario might be somewhat surprising to those who have not followed the trajectory of Proposition 187. Namely, the United States could experience a national political transformation similar to that which occurred in California in the wake of Proposition 187.\textsuperscript{204} There are already nascent signs of precisely such a political shift.

As seen after the passage of Proposition 187, naturalization petitions have increased since the 2016 election. Newly naturalized U.S. citizens are voting in larger numbers. In addition, the nation has seen an increase in Latinx residents in many states over the last twenty years.
with an accompanying growth in Latinx voting power. Consequently, conditions similar to those that led to the political transformation of California are emerging today in the entire United States.

A. Polarizing Race-Based Immigration Measures

The current national political climate — marked by a flurry of tough-on-immigration policies — is eerily reminiscent of California’s political climate in the early 1990s, culminating in the passage of Proposition 187 in 1994. Take just one example: during the 2016 presidential campaign, Donald Trump aired a television ad that played on nearly identical themes as the famous television spot run by Governor Pete Wilson in support of Proposition 187. The Trump ad begins with an ominous warning about Islamic terrorism, accompanied with photos of the immigrants allegedly involved in a mass shooting, and then transitions to black-and-white footage of immigrants running across the United States-Mexico border, while the announcer promises that Trump will “stop illegal immigration.” As Governor Wilson did in California in 1994, President Trump prevailed in the 2016 presidential election in no small part by appealing to voters through attacks on immigrants for crime, over-use of public benefits, terrorism, and a wide variety of social ills.

As exemplified by Pete Wilson’s campaign ad and its ominous catchphrase “[t]hey keep coming,” the Proposition 187 campaign unquestionably had racial undertones. Somewhat surprisingly, President Trump’s rhetoric has even more explicitly played on racial themes than those seen in the Proposition 187 campaign. In kicking off his presidential campaign, for example, President Trump harshly denounced Mexican immigrants: “[w]hen Mexico sends its people, they’re not sending their best . . . . They’re bringing drugs. They’re

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206 See supra Part I.

207 See supra text accompanying notes 34–35 (discussing Pete Wilson television spot).


209 See supra Part III.A.

210 See supra text accompanying notes 34–35.
bringing crime. They're rapists.”211 He directly targets, among others, Mexican, Central American, and Muslim immigrants, while expressing the need to boost the immigration of white people to the United States and specifically identifying the need for more immigrants from Norway.212

President Trump later referred to MS-13 members as “animals” and countries like El Salvador and Haiti as “sh—hole countries,”213 whose citizens should be denied the ability to remain, even temporarily, in the United States. Along with the President’s race-baiting rationale for restrictive immigration policies, his administration has fomented racial tensions through opposition to affirmative action214 and civil rights enforcement,215 as well as attacks on women of color in Congress,216 all unique characteristics of the Trump presidency. Critics have claimed that, unlike any other modern president (or for that matter, any national political figure since George Wallace),217 President Trump is a white nationalist, white supremacist, and downright racist.218

President Trump’s hyper-aggressive immigration stance, along with other policies, have polarized the nation along racial lines. As occurred in the wake of Proposition 187,219 Latinx immigrants are now seeking to naturalize in greater numbers, fearful of possible removal and the loss of public benefits if they do not. New Latinx citizens most logically will be drawn to oppose candidates who vilify immigrants, who, today, are

211 Ross, supra note 130 (emphasis added) (quoting Donald Trump).
212 See supra Part III.A.
213 See supra Parts III.A.2-3.
219 See supra Part II.
more likely to be Republican than Democratic. Democrats ultimately could expand their voting base and win more elections. In the end, the Trump immigration agenda could thus have a boomerang effect similar to that of Proposition 187 in California.

B. An Increase in Naturalization and Latinx Voting

As occurred after the passage of Proposition 187,220 naturalization applications increased after the tumultuous 2016 presidential campaign, in which immigration was a more significant campaign issue than any other presidential election in at least fifty years. According to U.S. Citizenship and Immigration Services data, the 2015 fiscal year saw the filing of more than 773,000 naturalization applications.221 With the presidential election on the horizon, naturalization petitions increased to more than 963,900 in 2016; by 2017, they soared to a high of 975,213.222 One logical explanation is that, as occurred in response to Proposition 187,223 President Trump’s anti-immigrant rhetoric, fervent dedication to building a wall along the United States-Mexico border, commitment to ramp up immigration enforcement, and tough immigration enforcement measures have pushed noncitizens to seek defensive naturalization to avoid possible removal and loss of public benefits.224

Similar to the Latinx voters’ response to Proposition 187,225 Latinx voters in 2016 responded to Donald Trump’s staunch immigration enforcement positions. The 2016 election bore many similarities to

220 See supra Part II.B.
223 See supra Part II.
225 See supra Part II.C.
California’s 1994 election, replete with tough immigration enforcement talk and anti-immigrant messages. New Latinx citizens were more likely to vote.\textsuperscript{226} In 2016, the turnout among naturalized voters increased slightly to 54.3\% compared to the 2012 election where it was 53.6\%.\textsuperscript{227} Although the percentage change was relatively small, naturalized voters increased from 9.3 million to 10.8 million.\textsuperscript{228} Naturalized Latinx voter turnout was 53.4\% compared to the 45.5\% turnout for native-born Latinx.\textsuperscript{229} Not surprisingly, given his anti-Latinx positions, President Trump decisively lost the Latinx vote.\textsuperscript{230}

Because of Proposition 187, California is more firmly Democratic today than it ever has been.\textsuperscript{231} At a national level, we currently see a public backlash in certain quarters to the Trump administration’s immigration policies toward undocumented immigrants, harsh treatment of asylum seekers, much-criticized family separation policy, and reportedly inhumane conditions of immigrant detention, in addition to the President’s unflinching inflammatory rhetoric about immigrants.\textsuperscript{232} Flourishing immigrant rights movements across the nation offer a concrete illustration of the strength of the growing resistance to the Trump immigration program.\textsuperscript{233}

In the 2018 midterm election, Democrats won enough seats in the House of Representatives to gain a comfortable majority; in state

\begin{footnotes}
\item228 \textit{Id.}
\item229 \textit{Id.}
\item231 See \textit{supra} Part II.
\item233 See \textit{supra} Part III.B.1.
\end{footnotes}
elections, Democrats gained seven governorships and control of thirty-seven state legislatures. With newly naturalized citizens becoming a new wave of Democratic voters and a growing political force, it is possible to imagine a movement in the entire nation like that which began in California twenty-five years ago.

Of course, it is difficult to predict whether this trend will continue. Sitting presidents frequently see the other party gain significant numbers of congressional seats in mid-term elections. Still, at least for now, President Trump’s immigration policies are triggering a response, including increased naturalization and political mobilization, similar to that of Proposition 187 in California. Time will tell whether the nation is seeing the beginning of an enduring trend like the one that transformed California politics.

C. Immigrant Activism and Its Implications for Immigration Reform

Immigrants have unquestionably influenced U.S. politics; their impact has become increasingly pronounced in recent years. As previously discussed, immigrant activism is on the rise across the country. Times have changed and immigrants, including undocumented immigrants, are no longer relegated to the shadows, but are leading activist organizations and are frequently at the center of protest activity. There is no sign that the contemporary wave of immigrant activism will fade away any time soon. In fact, the potent immigrant rights movement appears to have staying power.

As previously discussed, the Trump immigration enforcement measures fueled activism and a plethora of legal challenges. Such activism has been encouraged by the administration’s continued escalation of aggressive enforcement measures. Democratic politicians and presidential candidates have made immigration — and responding

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237 See supra Part III.B.
238 See id.
239 See id.
to Trump’s aggressive enforcement measures, from family separation, immigrant detention, ending DACA and TPS, and more — central campaign issues. In addition, the unending Trump immigration initiatives generate legal challenge after legal challenge.

An active immigrant political movement is likely to continue to advocate for immigration reform, which has been debated for more than a decade. However, the push may be even more aggressive and far-reaching than past calls for incremental reform, with some activists calling for nothing less than justice for immigrants. The call to “Abolish ICE” suggests that the reform agenda may yet become even more forceful. As occurred in California in the wake of Proposition 187, a more aggressive national movement for immigrant rights may emerge from the harms caused by aggressive Trump immigration enforcement measures. Indeed, immigrants appear to be seeking to naturalize as the 2020 election is on the horizon, a trend that ultimately may well serve as an impediment to President Trump’s reelection.

The powerful political resistance to President Trump’s immigration enforcement measures will likely continue. Indeed, the growing Latinx voting population, feeling directly or indirectly threatened by harsher immigration enforcement policies, will likely continue to press for change, just as it did (and does) in California. With an organized political movement continuing to push political leaders, it seems likely that political pressure for change will continue indefinitely.

At this point in the nation’s history, in light of the sharp divisions on immigration law and policy, a national political transformation would seem to be a prerequisite for meaningful immigration reform. In 2014,
President Obama noted that “our immigration system is broken — and everybody knows it.” Because the perception of a “broken” system is bipartisan, immigration reform is likely only a matter of time. For now, given the composition of Congress, bipartisan efforts are more likely to lead to immigration reform. Congress is unlikely, at least in the short run, to go consistently Democratic, which would have accelerated change.

CONCLUSION

The political change in California over the past twenty-five years makes Proposition 187 a distant memory. Politically, 1994 California is very different from 2020 California. Instead of facilitating immigration enforcement, Proposition 187 ultimately became a catalyst for changes that have transformed the Golden State’s politics. The Latinx community felt threatened by the racist attacks prevalent in the Proposition 187 campaign, and in response, mobilized, naturalized, and voted; new leaders were elected, and they consistently champion fervently pro-immigrant laws. In the end, the Trump administration’s unforgiving immigration enforcement policies and anti-immigrant rhetoric could result in a nationwide political realignment similar to that experienced in California in the aftermath of the 1994 election.

The lessons of California’s Proposition 187 thus offer an optimistic pro-immigrant prognosis for the long-term impacts of the aggressive immigration enforcement approach embraced by the Trump administration. Increased political activism focuses on the injustice of the nation’s immigration policies. Naturalization rates are on the rise. New citizen voters were increasing as well. Immigration is front and center in the national consciousness. The human impacts of mass detention of migrants, immigration raids, and other tough immigration measures have been on the nightly news for years. Time will tell what the long-term effects are of President Trump’s immigration enforcement revolution.