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

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INTRODUCTION

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 1800s¹ and the mass deportation of persons of Mexican ancestry during the Great Depression.²

Nor are all of California's xenophobic episodes part of the distant past.³ 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

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 RODRÍGUEZ, *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).

³ See Felice Batlan, *Deja Vu and the Gendered Origins of the Practice of Immigration Law: The Immigrants' Protective League, 1907-1940*, 36 LAW & HIST. REV. 713, 720 (2018) ("Rarely has there been a time between the 1870s and the present day, when nativist and anti-immigration sentiment did not exist in some form."). See generally JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925*, at 4 (1994) (providing a classic account of nativism, defined as the "intense opposition to an internal minority on the grounds of its foreign (i.e., 'un-American') connections," which fueled passage of the early U.S. immigration laws); ERIKA LEE, *AMERICA FOR AMERICANS: A HISTORY OF XENOPHOBIA IN THE UNITED STATES* (2019) (reviewing various xenophobic episodes in U.S. history).

(3) 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 flailing 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 Cuison 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).

⁵ Mark Z. Barabak, *On Politics: Pete Wilson Looks Back on Proposition 187 and Says, Heck Yeah, He’d Support It All over Again*, L.A. TIMES (Mar. 23, 2017, 3:00 AM), <https://www.latimes.com/politics/la-me-on-politics-column-20170323-story.html> [<https://perma.cc/BAB6-HWQ5>]; see *infra* Part I (reviewing the Proposition 187 campaign). A podcast released in 2019 summarizes the Proposition 187 campaign and the initiative’s legacy. *This is California: The Battle of 187*, L.A. TIMES (Oct. 29, 2019, 12:50 PM), <https://www.latimes.com/california/story/2019-10-15/prop-187-this-is-california-battle-podcast> [<https://perma.cc/AC3Z-NPRT>].

⁶ Opinion, *The Message of Prop 187*, WASH. POST (Nov. 13, 1994), <https://www.washingtonpost.com/archive/opinions/1994/11/13/the-message-of-prop-187/5f93f9a6-cb33-4580-b3f6-c0c2ecc5eb69/> [<https://perma.cc/AY6L-7DQ8>].

enforcement laws passed that year⁷ are among the toughest such laws enacted in U.S. history and continue to have devastating impacts on immigrants.⁸ In addition, through welfare reform legislation,⁹ Congress achieved most of its cost savings by stripping legal immigrants of public benefits.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.¹¹ During the Obama administration, laws similar to Proposition 187 spread like wildfire in Arizona, Georgia, South Carolina, and several other states.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.

⁷ See *infra* text accompanying notes 73–81.

⁸ See Daniel Kanstroom, *Deportation, Social Control, and Punishment: Some Thoughts About Why Hard Laws Make Bad Cases*, 113 HARV. L. REV. 1890, 1891 (2000). One influential commentator characterized the 1996 immigration reforms as “the most radical reform of immigration law in decades — or perhaps ever.” PETER H. SCHUCK, *CITIZENS, STRANGERS, AND IN-BETWEENS* 143 (1998). For a critical analysis of the reforms, see, for example, Jennifer M. Chacón, *The 1996 Immigration Laws Come of Age*, 9 DREXEL L. REV. 297 (2017); Teresa A. Miller, *Citizenship & Severity: Recent Immigration Reforms and the New Penology*, 17 GEO. IMMIGR. L.J. 611 (2003); Nancy Morawetz, *Understanding the Impact of the 1996 Deportation Laws and the Limited Scope of Proposed Reforms*, 113 HARV. L. REV. 1936 (2000). The Trump administration’s immigration policies, have deep roots in the 1996 immigration reforms, which significantly expanded the criminal removal and detention provisions of the U.S. immigration laws. See Part III; see also Anil Kalhan, *Revisiting the 1996 Experiment in Comprehensive Immigration Severity in the Age of Trump*, 9 DREXEL L. REV. 261, 262-63 (2017).

⁹ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 400, 110 Stat. 2105, 2260 (1996); see also *infra* text accompanying notes 82–87 (discussing the welfare restrictions on immigrant benefit receipt imposed by the Act).

¹⁰ See *infra* text accompanying notes 82–87.

¹¹ See *infra* text accompanying notes 66–67, 69.

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.¹³ 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.¹⁴

When all was said and done, California experienced nothing less than what political scientists would characterize as a political realignment.¹⁵ 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.¹⁶

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 licenses¹⁷ and improving their access to public higher education.¹⁸ The legislature ultimately went so far as to declare California to be a "sanctuary" for immigrants.¹⁹ Strangely enough, Proposition 187 contributed significantly to the amazing reversal of

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.

¹⁷ Assemb. B. 60, 2013-14 Leg., Reg. Sess. (Cal. 2013) (codified at CAL. VEH. CODE §§ 1653.5, 12800, 12801-12801.11 (2013)).

¹⁸ See Assemb. B. 540, 2001-02 Leg., Reg. Sess. (Cal. 2001) (adding CAL. EDUC. CODE § 68130.5).

¹⁹ See S.B. 54, 2017-2018 Leg., Reg. Sess. (Cal. 2017). A few California "cities like Los Alamitos, Huntington Beach, and Santa Clarita, along with counties like Orange County, have voiced their displeasure with state sanctuary laws and announced their willingness to bolster federal enforcement efforts." Pratheepan Gulasekaram, Rick Su & Rose Cuison Villazor, *Anti-Sanctuary and Immigration Localism*, 119 *COLUM. L. REV.* 837, 883 (2019) (footnote omitted).

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.²⁰ The state also defiantly filed scores of lawsuits attempting to block the implementation of many Trump administration immigration enforcement and other policies.²¹

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.²² That change might also spur the passage of other pro-immigrant legislation.²³

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

²⁰ See *infra* Parts II.D and III.B.2.

²¹ See *infra* text accompanying notes 201–202.

²² See generally Symposium, *Comprehensive Immigration Reform Symposium: Problems, Possibilities and Pragmatic Solutions*, 55 WAYNE L. REV. 1599 (2009) (collecting articles analyzing the possibility of Congress passing comprehensive immigration reform); Symposium, *Stalemate on Immigration Reform*, 18 CHAP. L. REV. 315 (2015) (analyzing immigration reform possibilities).

²³ See *infra* Part IV.

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

²⁴ See Shaun Bowler, Stephen P. Nicholson & Gary M. Segura, *Earthquakes and Aftershocks: Race, Direct Democracy, and Partisan Change*, 50 AM. J. POL. SCI. 146, 148-49 (2006). California had previous anti-immigrant initiatives, including one directed at Japanese immigrants that prohibited noncitizens from owning real property. See, e.g., *Oyama v. California*, 332 U.S. 633, 658-59 (1948) (Murphy, J., concurring) (discussing racist nature of campaign for California "alien land" law initiative); see also Keith Aoki, *No Right to Own? The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37, 66 (1998) (contending that the land laws paved the way to the internment of persons of Japanese ancestry during World War II).

²⁵ The term "illegal alien," embedded in the official title of Proposition 187, has been criticized as a racial code referring to the particular group of disfavored immigrants of the day. See generally MAE N. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 3 (2004) (tracing the origins and evolution of the "illegal alien" in U.S. law and society). In contemporary discussions of immigration, "illegal aliens" is commonly employed to refer to Mexican nationals. See generally Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545 (2011) (noting, among other uses of the term, Chief Justice Rehnquist's reference to "illegal aliens" as Mexicans); Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1996-97) (analyzing the racial code embedded in the terms "alien" and "illegal alien"); D. Carolina Nuñez, *War of the Words: Aliens, Immigrants, Citizens, and the Language of Exclusion*, 2013 BYU L. REV. 1517 (same).

²⁶ See VOTER INFORMATION GUIDE FOR 1994, GENERAL ELECTION, CAL. BALLOT PROPOSITIONS AND BALLOT INITIATIVES 1, 4, 50 (1994), <https://repository.uchastings.edu/>

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

[cgi/viewcontent.cgi?article=2090&context=ca_ballot_props](https://perma.cc/ERE6-89X2) [https://perma.cc/ERE6-89X2] [hereinafter *VOTER INFORMATION GUIDE*]. As a precursor to Proposition 187, the California legislature had passed a number of laws designed to address undocumented immigration and various issues relating to immigrants. See Ruben J. Garcia, Comment, *Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law*, 17 *CHICANO-LATINO L. REV.* 118, 130 (1995) (noting that, shortly before the passage of Proposition 187, the “California legislature introduced 21 pieces of legislation aimed at taking away rights from undocumented immigrants”) (footnote omitted); Robert S. Ryan, Comment, *Proposition 187: California’s Stance Against Illegal Immigration*, 25 *CAP. U. L. REV.* 613, 622 (1996) (reviewing the proposed legislation).

²⁷ *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1249 (C.D. Cal. 1997). For analysis of the legacy of Proposition 187’s education provisions, see Rachel F. Moran, *Dreamers Interrupted: The Case of the Rescission of the Program of Deferred Action for Childhood Arrivals*, 53 *UC DAVIS L. REV.* 1903 (2020). The impacts of the initiative’s criminal provisions are analyzed in Huyen Pham, *Proposition 187 and Legacy of Its Law Enforcement Provisions*, 53 *UC DAVIS L. REV.* 1955 (2020).

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

³⁰ See *id.*

³¹ See *id.*

³² See Stephen H. Legomsky, *E Pluribus Unum: Immigration, Race, and Other Deep Divides*, 21 S. ILL. U. L.J. 101, 108 (1996) (noting that racism at times contributes to popular support for restrictionist immigration measures, such as Proposition 187). For analysis of the racial undercurrents to the Proposition 187 campaign, see, for example, ROBIN DALE JACOBSON, *THE NEW NATIVISM: PROPOSITION 187 AND THE DEBATE OVER IMMIGRATION* (2008); LEE, *supra* note 3, at 251-88; KENT A. ONO & JOHN M. SLOOP, *SHIFTING BORDERS: RHETORIC, IMMIGRATION, AND CALIFORNIA'S PROPOSITION 187* (2002); Garcia, *supra* note 26; Kevin R. Johnson, *An Essay on Immigration Politics, Popular Democracy, and California's Proposition 187: The Political Relevance and Legal Irrelevance of Race*, 70 WASH. L. REV. 629 (1995) [hereinafter *Race and Proposition 187*]. For analysis of Proposition 187's threatened impacts on poor immigrant women of color, see Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509 (1995). For an exploration of various aspects of Proposition 187, see Linda S. Bosniak, *Opposing Prop. 187: Undocumented Immigrants and the National Imagination*, 28 CONN. L. REV. 555 (1996); Hiroshi Motomura, Comment, *Immigration and Alienage, Federalism and Proposition 187*, 35 VA. J. INT'L L. 201 (1994); Gerald L. Neuman, *Aliens as Outlaws: Government Services, Proposition 187, and the Structure of Equal Protection Doctrine*, 42 UCLA L. REV. 1425 (1995).

³³ See David A. Sklansky, *Proposition 187 and the Ghost of James Bradley Thayer*, 17 CHICANO-LATINO L. REV. 24, 37 (1995).

automobiles near the United States/Mexico border;³⁴ in the background, the narrator ominously proclaims “[t]hey keep coming.”³⁵

The dubbing of Proposition 187 as the “Save Our State” (“SOS”)³⁶ 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!³⁷

Race and racism have long been embedded in immigration law and enforcement.³⁸ As a result, immigration enforcement for generations has had dramatic impacts on Latinx immigrants and U.S. citizens.³⁹ Racial animosity toward immigrants, especially those from Mexico,

³⁴ Susan Shelley, *Trump Ad Echoes Campaign for CA Prop. 187*, CAL. POL. REV. (Jan. 13, 2016), <http://www.capoliticalreview.com/top-stories/trump-ad-echoes-campaign-for-ca-prop-187/> [<https://perma.cc/FW7U-ZCAL>].

³⁵ danieljbmitchell, *Wilson’s Re-Election Ads on Illegal Immigration*, YOUTUBE (July 15, 2007), <https://www.youtube.com/watch?v=o0f1PE8Kzng> [<https://perma.cc/4SGR-ZQB6>].

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.

³⁹ See, e.g., Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: United States v. Brignoni-Ponce and Whren v. United States and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005, 1009–45 (2010) (analyzing how the Supreme Court sanctioned racial profiling in immigration enforcement); Katie Kelly, *Enforcing Stereotypes: The Self-Fulfilling Prophecies of U.S. Immigration Enforcement*, 66 UCLA L. REV. DISCOURSE 36 (2018) (considering the racialized nature of modern immigration enforcement); Yolanda Vázquez, *Constructing Crimmigration: Latino Subordination in a “Post-Racial” World*, 76 OHIO ST. L.J. 599 (2015) (analyzing disparate impacts on Latinx immigrants of the enforcement of the criminal removal provisions).

expressed during the Proposition 187 campaign,⁴⁰ are reminiscent of what the nation has heard from Donald Trump and others in recent years.⁴¹ 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,”⁴² a textbook example of nativist rhetoric.⁴³ To combat the threat, Prince conjured up deeply disturbing imagery from the era of lynching of African Americans and Latinx people⁴⁴: “*You are the posse and SOS is the rope.*”⁴⁵

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.”⁴⁶ 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

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.

⁴² Patrick J. McDonnell, *Prop. 187 Turns Up Heat in U.S. Immigration Debate: Election: Backers Seek Revolution in National Policy. Foe Predict Ill-Educated, Disease-Prone Underclass*, L.A. TIMES (Aug. 10, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-08-10-mn-25543-story.html> [https://perma.cc/2WW6-6Z75] (quoting Ronald Prince, cosponsor of Proposition 187).

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

⁴⁴ See generally Richard Delgado, *The Law of the Noose: A History of Latino Lynching*, 44 HARV. C.R.-C.L. L. REV. 297 (2009) (analyzing history of lynching of Latinx people); EQUAL JUSTICE INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR (3d ed. 2017), <https://lynchinginamerica.eji.org/report/> [https://perma.cc/D9BL-KM39] (reviewing history of lynching of African Americans).

⁴⁵ George Ramos, *Prop. 187 Debate: No Tolerance but Abundant Anger*, L.A. TIMES (Oct. 10, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-10-10-me-48635-story.html> [https://perma.cc/B5G4-AT55] (emphasis added) (quoting Ron Prince).

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).

⁴⁹ *Id.* at 653-54 n.116 (citing Linda R. Haynes, *Letter to Editor*, N.Y. TIMES (Oct. 15, 1994), at A18 (emphasis added)); see also Gebe Martinez & Patrick J. McDonnell, *Prop. 187 Backers Counting on Message, Not Strategy*, L.A. TIMES (Oct. 30, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-10-30-mn-56690-story.html> [<https://perma.cc/392H-NFMW>] (quoting leader of anti-immigrant groups claiming that undocumented immigration is “part of a reconquest of the American Southwest by foreign Hispanics . . .”).

undocumented immigrants as “those little f—kers.”⁵⁰ 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*.”⁵¹

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.’”⁵² 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.”⁵³

6. The “Invasion” of “Illegal Aliens”

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

⁵⁰ Johnson, *Race and Proposition 187*, *supra* note 32, at 656 n.132 (citing Elizabeth Kadetsky, *Bashing Illegals in California: “Save Our State” Initiative*, NATION, Oct. 1994, at 416, 418 (quoting Kiley)).

⁵¹ Johnson, *Race and Proposition 187*, *supra* note 32 at 657 n.135 (emphasis added) (citing Margot Hornblower, *Making and Breaking Law*, TIME (Nov. 21, 1994), at 68 (quoting Kiley)). During the campaign, mass marches, which included many Latinx citizens and immigrants, protested Proposition 187 as, among other things, racially discriminatory. See Patrick J. McDonnell & Robert J. Lopez, *L.A. March Against Prop. 187 Draws 70,000: Immigration: Protestors Condemn Wilson for Backing Initiative that They Say Promotes ‘Racism, Scapegoating,’* L.A. TIMES (Oct. 17, 1994, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1994-10-17-mn-51339-story.html> [<https://perma.cc/M72U-FUVC>] (quoting civil rights activist: “We’ve got to send a message to the rest of the nation that California will not stand on a platform of bigotry, racism and scapegoating . . .”).

⁵² Johnson, *Race and Proposition 187*, *supra* note 32, at 655 n.122 (citing Olga Briseno, *Mister Migra, Harold Ezell*, SAN DIEGO UNION-TRIB. (Aug. 23, 1989), at F1 (quoting Ezell)). In addition, a U.S. Senator reportedly complained to Immigration & Naturalization Service Commissioner, Alan Nelson, that Ezell used the term “wets,” a shortened version of the epithet “wetbacks,” to refer to immigrants seeking, without authorization, to cross the Rio Grande to come to the United States. Johnson, *Race and Proposition 187*, *supra* note 32, at 655 n.122 (citing Jay Mathews, *Tough-Talking INS Official Raises Profile, Ire in the West*, WASH. POST (Mar. 24, 1986), at A1). On the use of the term “wetbacks” as a racial slur, see NATALIA MOLINA, *HOW RACE IS MADE IN AMERICA: IMMIGRATION, CITIZENSHIP, AND THE HISTORICAL POWER OF RACIAL SCRIPTS* 113 (2014); Cunningham-Parmeter, *supra* note 25, at 1547 n.4; Kevin R. Johnson, *Race, The Immigration Laws, and Domestic Race Relations: A “Magic Mirror” into the Heart of Darkness*, 73 IND. L.J. 1111, 1136-37, 1136 n.154 (1998).

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 VOTER INFORMATION GUIDE, *supra* note 26, at 54.

⁵⁵ See sources cited *supra* note 25.

⁵⁶ Johnson, *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)).

⁵⁷ Johnson, *Race and Proposition 187*, *supra* note 32, at 656 n.130 (citing Major Garrett, *Economic Plan Includes Aliens’ Medical Funds*, WASH. TIMES (July 14, 1993), at A1 (quoting Mountjoy)).

⁵⁸ *Sonya Live*, *supra* note 56 (emphasis added) (interview of Mountjoy).

⁵⁹ See generally Nancy Cervantes, Sasha Khokha & Bobbie Murray, *Hate Unleashed: Los Angeles in the Aftermath of Proposition 187*, 17 CHICANO-LATINO L. REV. 1 (1995) (exploring violence and hate crimes directed at Latinx people in greater Los Angeles area after passage of Proposition 187).

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.

⁶³ See Johnson, *Race and Proposition 187*, *supra* note 32, at 658, 659 n.144 (citing *Times Poll/A Look at the Electorate*, L.A. TIMES, Nov. 10, 1994, at B2).

⁶⁴ See Scott Harrison, *From the Archives: Protests Against California Proposition 187*, L.A. TIMES (Nov. 6, 2019, 5:00 AM), <https://www.latimes.com/california/story/2019-11-06/from-the-archives-protests-against-california-proposition-187> [<https://perma.cc/Y4CX-E3DF>]; McDonnell & Lopez, *supra* note 51.

⁶⁵ See Press Release, ACLU, CA's Anti-Immigrant Proposition 187 is Voided, Ending State's Five-Year Battle with ACLU, Rights Groups (July 29, 1999), <https://www.aclu.org/press-releases/cas-anti-immigrant-proposition-187-voided-ending-states-five-year-battle-aclu-rights> [<https://perma.cc/PNE2-6JEU>].

proposition from being implemented⁶⁶ and later issued a permanent injunction.⁶⁷ The parties ultimately settled the case.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.⁶⁹ Proposition 187 began what would become a national discussion over the role of the states in immigration enforcement.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.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.

⁶⁶ See *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 764 (C.D. Cal. 1995).

⁶⁷ See *League of United Latin Am. Citizens v. Wilson*, 997 F. Supp. 1244, 1261 (C.D. Cal. 1997).

⁶⁸ See Patrick J. McDonnell, *Davis Won't Appeal Prop. 187 Ruling, Ending Court Battles*, L.A. TIMES (July 29, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-jul-29-mn-60700-story.html> [<https://perma.cc/8A5X-H6X7>].

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).

⁷⁰ See *infra* Part III.B.

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

⁷² See *Arizona v. United States*, 567 U.S. 387, 394 (2012) (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”) (citations omitted).

⁷³ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

⁷⁴ William J. Clinton, *Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996*, 32 WEEKLY COMP. PRES. DOC. 719, 721 (Apr. 24, 1996), <https://www.govinfo.gov/content/pkg/WCPD-1996-04-29/pdf/WCPD-1996-04-29-Pg719.pdf> [<https://perma.cc/8977-2AF3>] (acknowledging that the bill “makes a number of major, ill-advised changes in our immigration laws having nothing to do with fighting terrorism”).

⁷⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-546 (1996).

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 “cimmigration” law.⁷⁷ Criminal removals and detention have featured prominently in the immigration enforcement efforts of both the Obama and Trump administrations.⁷⁸

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,”⁷⁹ in effect promising to ensure that the sponsored noncitizen will not access public benefits. IIRIRA amended the

from many forms of relief from removal and can result in mandatory detention. *See, e.g.,* *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562, 1567-68 (2017) (rejecting U.S. government’s arguments that criminal conviction for statutory rape was an “aggravated felony” mandating mandatory removal); *Mellouli v. Lynch*, 575 U.S. 798, 135 S. Ct. 1980, 1990-91 (2015) (vacating an order for the removal of a lawful permanent resident based on a single criminal conviction for possession of drug paraphernalia); *Moncrieffe v. Holder*, 569 U.S. 184, 206-08 (2013) (same for the order of removal of a long-term lawful permanent resident with U.S. citizen children founded on a single conviction for simple marijuana possession). Scholars have roundly criticized the expanded use of immigration detention. *See, e.g.,* CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, *MIGRATING TO PRISON: AMERICA’S OBSESSION WITH LOCKING UP IMMIGRANTS* (2019); Geoffrey Heeren, *Pulling Teeth: The State of Mandatory Immigration Detention*, 45 HARV. C.R.-C.L. L. REV. 601, 601-03 (2010); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 251-60 (2017); César Cuauhtémoc García Hernández, *Immigration Detention as Punishment*, 61 UCLA L. REV. 1346, 1351-1413 (2014); Stephen H. Legomsky, *The Detention of Aliens: Theories, Rules, and Discretion*, 30 U. MIAMI INTER-AM. L. REV. 531, 533-34 (1999); Anita Sinha, *Arbitrary Detention? The Immigration Detention Bed Quota*, 12 DUKE J. CONST. L. & PUB. POL’Y 77, 84-102 (2016).

⁷⁷ For a sampling of the voluminous literature criticizing the increasing reliance on the criminal justice system for removals, frequently referred to as cimmigration law, see, for example, Jennifer M. Chacón, *Overcriminalizing Immigration*, 102 J. CRIM. L. & CRIMINOLOGY 613, 630-640 (2012); Alina Das, *The Immigration Penalties of Criminal Convictions: Resurrecting Categorical Analysis in Immigration Law*, 86 N.Y.U. L. REV. 1669, 1681-88 (2011); Mary D. Fan, *The Case for Cimmigration Reform*, 92 N.C. L. REV. 75, 101-32 (2013); Stephen H. Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH. & LEE L. REV. 469, 475-500 (2007). *But see* Daniel I. Morales, *Transforming Crime-Based Deportation*, 92 N.Y.U. L. REV. 698, 710-35 (2017) (calling for transformation of the system of crime-based removals). *See generally* Rachel E. Rosenbloom, *Policing Sex, Policing Immigrants: What Cimmigration’s Past Can Tell Us About Its Present and Its Future*, 104 CALIF. L. REV. 149 (2016). For the foundational cimmigration article, see Juliet Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006).

⁷⁸ *See* Jennifer M. Chacón, *Immigration and the Bully Pulpit*, 130 HARV. L. REV. F. 243, 245-57 (2017) [hereinafter *Immigration and the Bully Pulpit*].

⁷⁹ *See* Immigration and Nationality Act § 213A, 8 U.S.C. § 1183a(a)(1)(B) (2019).

requirements for sponsors, establishing a minimum income level of 125% of the federal poverty level.⁸⁰ Because many families are unable to meet this requirement,⁸¹ 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”),⁸² 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.⁸³ As expressed by the supporters of Proposition 187,⁸⁴ many citizens believed that public benefits served as the magnet attracting immigrants to the United States.⁸⁵ 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.⁸⁶ 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.⁸⁷

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

⁸⁰ 8 U.S.C. § 1183a(f)(1)(E) (2019).

⁸¹ See Christine Marie Sierra et al., *Latino Immigration and Citizenship*, 33 PS: POL. SCI. & POL. 535, 536 (2000).

⁸² Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996). For a critical analysis of contemporary immigrant access to public benefits, see generally Andrew Hammond, *The Immigration-Welfare Nexus in a New Era?*, 22 LEWIS & CLARK L. REV. 501 (2018).

⁸³ See Gregory A. Huber & Thomas J. Espenshade, *Neo-Isolationism, Balanced-Budget Conservatism, and the Fiscal Impacts of Immigrants*, 31 INT’L MIGRATION REV. 1031, 1042 (1997).

⁸⁴ See *supra* Part I.A.

⁸⁵ See Lynn H. Fujiwara, *Immigrant Rights are Human Rights: The Reframing of Immigrant Entitlement and Welfare*, 52 SOC. PROBS. 79, 80 (2005). The social science literature firmly establishes that (1) undocumented immigrants are not eligible for most public benefit programs; and (2) lawful immigrants access benefits at lower rates than U.S. citizens. See Christopher Ingraham, *There’s No Immigration Crisis, and These Charts Prove It*, WASH. POST (June 21, 2018, 10:22 AM), <https://www.washingtonpost.com/news/wonk/wp/2018/06/21/theres-no-immigration-crisis-and-these-charts-prove-it/> [<https://perma.cc/KUG7-Z824>].

⁸⁶ See Sierra et al., *supra* note 81, at 536.

⁸⁷ Fujiwara, *supra* note 85, at 79.

President Clinton signed PRWORA into law.⁸⁸ 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.⁸⁹ However, Congress failed to restore food stamp eligibility for lawful permanent residents.⁹⁰

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.⁹¹ Legal challenges followed.⁹²

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.⁹³ Lawful permanent residents generally are eligible to naturalize and become U.S. citizens.⁹⁴ 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.⁹⁵ 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.⁹⁶ Moreover, many immigrants view the naturalization process as “one rife with patronizing officials, unreasonable criminalization, humiliation, fear, and anxiety.”⁹⁷

⁸⁸ *Id.* at 81.

⁸⁹ See John P. Collins, Jr., *Developments in Policy: Welfare Reform*, 16 YALE L. & POL'Y REV. 221, 226 (1997).

⁹⁰ See Fujiwara, *supra* note 85, at 95.

⁹¹ See *infra* Part III.A.7.

⁹² See *infra* notes 156–158 and accompanying text.

⁹³ See Adrian D. Pantoja, Ricardo Ramirez & Gary M. Segura, *Citizens by Choice, Voters by Necessity: Patterns in Political Mobilization by Naturalized Latinos*, 54 POL. RES. Q. 729, 730 (2001).

⁹⁴ See Immigration & Nationality Act § 316, 8 U.S.C. § 1427 (2018) (outlining the requirements for naturalization).

⁹⁵ See Angela M. Banks, *The Curious Relationship Between “Self-Deportation” Policies and Naturalization Rates*, 16 LEWIS & CLARK L. REV. 1149, 1205-06 (2012).

⁹⁶ See Adrián Félix, Carmen González & Ricardo Ramirez, *Political Protest, Ethnic Media, and Latino Naturalization*, 52 AM. BEHAV. SCIENTIST 618, 621 (2008).

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,”⁹⁸ 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.”⁹⁹

The Immigration Reform and Control Act (“IRCA”), passed in 1986, further fueled the increase in naturalization in the 1990s.¹⁰⁰ IRCA created amnesty programs that afforded lawful permanent resident status to hundreds of thousands of long-term undocumented residents.¹⁰¹ 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.¹⁰² In addition, the Clinton administration sought to

⁹⁸ *Id.* See generally MING HSU CHEN, PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA (forthcoming 2020) (reviewing phenomenon of “defensive citizenship” among immigrants seeking to naturalize because of the feared loss of public benefits and possible removal).

⁹⁹ Pantoja et al., *supra* note 93, at 731.

¹⁰⁰ See Sierra et al., *supra* note 81, at 536-38.

¹⁰¹ See STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 1224 (6th ed. 2015) (“In total, almost 2.7 million people acquired [lawful permanent resident] status through IRCA’s various legalization programs.”).

¹⁰² See David A. Martin, *New Rules on Dual Nationality for a Democratizing Globe: Between Rejection and Embrace*, 14 GEO. IMMIGR. L.J. 1, 1-3 (1999) (“With the end of the Cold War, and a host of other developments that promote a more tightly linked, more peaceful, more democratic globe, it is indeed time to reconsider the classic aversion to dual nationality, and to eliminate some of the rules and practices that have constricted it.”); Mie Murazumi, *Japan’s Laws on Dual Nationality in the Context of a Globalized World*, 9 PAC. RIM L. & POL’Y J. 415, 435-39 (2000) (summarizing practices of seventy nations that, as of 1999, allowed dual nationality); Peter J. Spiro, *Dual Nationality and the Meaning of Citizenship*, 46 EMORY L.J. 1411, 1461 (1997) (“[A]t least in the United States and the rest of the democratic world, . . . dual nationality should not simply be tolerated but embraced.”). Mexican law also has increasingly permitted dual nationality of its citizens. See generally Jorge A. Vargas, *Dual Nationality for Mexicans*, 35 SAN DIEGO L. REV. 823 (1998).

facilitate naturalization through the Citizenship USA program, which Republican critics claimed was pursued for partisan political ends.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 378,014.¹⁰⁴ The number increased at roughly the same time that California voters passed a series of initiatives viewed as anti-Latinx and anti-minority.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.¹⁰⁶ However, many Latinx residents of California cannot vote because they are not U.S. citizens.¹⁰⁷ Those able to vote, especially naturalized Latinx citizens, tend to vote in greater numbers when immigration is a campaign issue.¹⁰⁸

Latinx immigrants historically have had a stronger connection with the politics of their native countries than with those of the United States.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.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.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.

¹⁰⁶ See Matt A. Barreto & Stephen A. Nuño, *The Effectiveness of Coethnic Contact on Latino Political Recruitment*, 64 POL. RES. Q. 448, 449-50 (2011).

¹⁰⁷ See Kevin R. Johnson, *A Handicapped, Not “Sleeping,” Giant: The Devastating Impact of the Initiative Process on Latina/o and Immigrant Communities*, 96 CALIF. L. REV. 1259, 1266-71 (2008).

¹⁰⁸ See Barreto & Nuño, *supra* note 106, at 449-50.

¹⁰⁹ See Matt A. Barreto, *Latino Immigrants at the Polls: Foreign-Born Voter Turnout in the 2002 Election*, 58 POL. RES. Q. 79, 79 (2005).

¹¹⁰ See Adrian D. Pantoja & Gary M. Segura, *Fear and Loathing in California: Contextual Threat and Political Sophistication Among Latino Voters*, 25 POL. BEHAV. 265, 266-67 (2003).

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

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

¹¹² See Félix et al., *supra* note 96, at 632.

¹¹³ See Barreto, *supra* note 109, at 83.

¹¹⁴ See *id.*

¹¹⁵ Alex Nowrasteh, *Proposition 187 Turned California Blue*, CATO INST. (July 20, 2016, 3:13 PM), <https://www.cato.org/blog/proposition-187-turned-california-blue> [<https://perma.cc/AGW6-X8J>].

¹¹⁶ See Bowler et al., *supra* note 24, at 149.

¹¹⁷ See *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007, 1012 (N.D. Cal. 1998) (rejecting legal challenges to Proposition 227). See generally Kevin R. Johnson & George A. Martínez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 UC DAVIS L. REV. 1227, 1247-68 (2000) (reviewing the evidence of racial animus in the Proposition 227 campaign). In 2016, the voters repealed Proposition 227 and restored the possibility of bilingual education in the state. See Proposition 58, Non-English Languages Allowed in Public Education (2016) (approved by voters Nov. 8, 2016); Ashley Hopkinson, *A New Era for Bilingual Education: Explaining California's Proposition 58*, EDSOURCE (Jan. 6, 2017), <https://edsource.org/2017/a-new-era-for-bilingual-education-explaining-californias-proposition-58/574852> [<https://perma.cc/3WYL-PXY7>]. The elimination and reinstatement of bilingual education by the voters is another example of the dramatic political transformation of California.

them. Because many Latinx voters saw these Republican-backed initiatives as discriminatory, many voted Democratic.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.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.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.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.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.¹²³ Notably, Xavier Becerra, the son of Mexican immigrants, is the current California Attorney General

¹¹⁸ See Bowler et al., *supra* note 24, at 156.

¹¹⁹ See Joshua J. Dyck, Gregg B. Johnson & Jesse T. Wasson, *A Blue Tide in the Golden State: Ballot Propositions, Population Change, and Party Identification in California*, 40 AM. POL. RES. 450, 451 (2012).

¹²⁰ See Nowrasteh, *supra* note 115.

¹²¹ See John L. Korey & Edward L. Lascher Jr., *Macropartisanship in California*, 70 PUB. OPINION Q. 48, 49-50 (2006).

¹²² 2015 *Latino Legislators*, NAT'L CONF. ST. LEGISLATURES (Feb. 15, 2018), <http://www.ncsl.org/research/about-state-legislatures/latino-legislators.aspx> [<https://perma.cc/DPX5-WY5U>].

¹²³ Irvis Orozco, *Making History: Who are the Latinos Leading California's Legislature?*, NBC NEWS (May 26, 2016, 5:36 AM), <https://www.nbcnews.com/news/latino/making-history-who-are-latinos-leading-california-s-legislature-n577546> [<https://perma.cc/7MXN-7ULQ>].

and leads the charge against the Trump administration's immigration policies.¹²⁴

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.¹²⁵ Some state and local governments, including California, staunchly resisted the new federal immigration enforcement agenda.¹²⁶

A. President Trump on Immigration

In ways unprecedented among modern presidents, President Trump has focused on immigration enforcement.¹²⁷ Many of his administration's measures, at least in part arguably motivated by racial animus, have had disparate impacts on immigrants of color.¹²⁸ The

¹²⁴ See Carla Marinucci & Heather Caygle, *Becerra Appointed California Attorney General*, POLITICO (Dec. 1, 2016, 12:57 PM), <https://www.politico.com/story/2016/12/becerra-appointed-california-attorney-general-232063> [<https://perma.cc/GT3N-TWGZ>].

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).

¹²⁶ See *infra* Part III.B.

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).

¹²⁸ See generally Rose Cuison Villazor & Kevin R. Johnson, *The Trump Administration and the War on Immigration Diversity*, 54 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.

¹³⁰ Janell Ross, *From Mexican Rapists to Bad Hombres, the Trump Campaign in Two Moments*, WASH. POST (Oct. 20, 2016, 9:31 AM), <https://www.washingtonpost.com/news/the-fix/wp/2016/10/20/from-mexican-rapists-to-bad-hombres-the-trump-campaign-in-two-moments/> [https://perma.cc/CD8T-TCBB] (quoting Donald Trump's announcement of his candidacy for president). Despite the frequently made claim that immigrants disproportionately commit crime, the data show that immigrants in the United States commit crimes at lower rates than U.S. citizens. See Michelle Ye Hee Lee, *Donald Trump's False Comments Connecting Mexican Immigrants and Crime*, WASH. POST (July 8, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/08/donald-trumps-false-comments-connecting-mexican-immigrants-and-crime/?noredirect=on&utm_term=.b326aa8439ea [https://perma.cc/A4YN-MLCC].

¹³¹ See *infra* Part III.A.1-7, 9-10.

¹³² Josh Dawsey, *Trump Derides Protections for Immigrants from 'Shithole' Countries*, WASH. POST. (Jan. 12, 2018, 4:52 AM), https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html [https://perma.cc/UVZ6-U584] (quoting President Trump).

¹³³ See *id.*

in a matter of fact fashion, “Why do we need more Haitians? . . . Take them out.”¹³⁴

President Trump later sought to eliminate relief from removal known as Temporary Protected Status (“TPS”) for Salvadorans, Haitians, Nicaraguans, Hondurans, and other groups of noncitizens.¹³⁵

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

As president, Donald Trump frequently stated that crimes by immigrants justified increasingly aggressive enforcement measures.¹³⁶ In a similar vein, he equated all Salvadorans with MS-13 members, a violent street gang whose members he characterized as nothing more than “animals.”¹³⁷

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.¹³⁸ 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.¹³⁹

¹³⁴ See *id.* (quoting President Trump).

¹³⁵ See *infra* Part III.A.6.

¹³⁶ See, e.g., Hannah Darden, *President Trump Stirs Controversy on Twitter with Video of Sacramento Cop Killer*, SACRAMENTO BEE (Oct. 31, 2018, 6:36 PM), <https://www.sacbee.com/news/local/article220928885.html>; Ryan Sabalow, *‘Build the Wall!’: Trump Tweets About Immigration Status of California Officer’s Alleged Murderer*, SACRAMENTO BEE (Dec. 27, 2018, 2:03 PM), <https://www.sacbee.com/news/state/california/article223636980.html>.

¹³⁷ See Julie Hirschfeld Davis & Niraj Chokshi, *Trump Defends ‘Animals’ Remark, Saying It Refers to MS-13 Gang Members*, N.Y. TIMES (May 17, 2018), <https://www.nytimes.com/2018/05/17/us/trump-animals-ms-13-gangs.html> [https://perma.cc/639G-P2RR].

¹³⁸ See, e.g., Robert Donachie, *Trump: Caravan Migrants Are ‘Not Legitimate Asylum Seekers*, WASH. EXAM. (Nov. 1, 2018, 4:43 PM), <https://www.washingtonexaminer.com/news/white-house/trump-caravan-migrants-are-not-legitimate-asylum-seekers> [https://perma.cc/NN6K-QJTW]; Jennifer Epstein & Justin Sink, *President Trump Admits He Has ‘No Proof’ Terrorists Are in the Migrant Caravan*, TIME (Oct. 23, 2018), <http://time.com/5432702/president-trump-admits-he-has-no-proof-terrorists-are-in-the-migrant-caravan> [https://perma.cc/RNA8-P8VU].

¹³⁹ Michael M. Grynbaum & Niraj Chokshi, *Even Fox News Stops Running Trump Caravan Ad Criticized as Racist*, N.Y. TIMES (Nov. 5, 2018), <https://www.nytimes.com/2018/11/05/us/politics/nbc-caravan-advertisement.html> [https://perma.cc/LKB7-EHJ2].

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).

¹⁴² *See* Maeve Reston, *How Trump’s Deportation Plan Failed 62 Years Ago*, CNN POLITICS (Jan. 19, 2016, 2:08 PM), <https://www.cnn.com/2016/01/19/politics/donald-trump-deportation-mexico-eisenhower/index.html> [<https://perma.cc/EZT2-DQ7E>].

¹⁴³ *Id.*

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

¹⁴⁵ *See* UNITED STATES CITIZENSHIP & IMMIGRATION SERVS., CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca> [<https://perma.cc/HNB3-UYGB>]. *See generally* Johnson, *Lessons from the Rise and Fall of DACA*, *supra* note 12 (analyzing the impacts of the rise and fall of DACA).

States as children.¹⁴⁶ Natives of Mexico, El Salvador, and Guatemala constituted nearly 90% of all DACA recipients.¹⁴⁷

Lawsuits challenged the end of DACA and TPS.¹⁴⁸ The U.S. Supreme Court is currently considering whether the Trump administration acted lawfully in rescinding DACA.¹⁴⁹

7. A Tougher Public Charge Rule

One of Proposition 187's central goals was to reduce public benefit receipt by undocumented immigrants.¹⁵⁰ 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.¹⁵¹ 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.¹⁵² 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

¹⁴⁶ See UNITED STATES CITIZENSHIP & IMMIGRATION SERVS., *supra* note 145.

¹⁴⁷ Villazor & Johnson, *supra* note 128, at 607-08.

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.

¹⁵¹ See Immigration and Naturalization Act § 212 (a)(4), 8 U.S.C. §1182 (a)(4) (2019) (providing that any noncitizen who "is likely at any time to become a public charge is inadmissible").

¹⁵² See *Inadmissibility on Public Charge Grounds*, 83 Fed. Reg. 51,114 (proposed Oct. 10, 2018) (to be codified at 8 C.F.R. pts. 103, 212, 213, 214, 245, 248); Villazor & Johnson, *supra* note 128, at 588-92. The proposed regulation received over 210,000 comments, including many critical ones. See Dara Lind, *Trump's Controversial "Public Charge" Proposal that Could Change the Face of Legal Immigration, Explained*, VOX (Dec. 10, 2018, 12:21 PM), <https://www.vox.com/2018/9/24/17892350/public-charge-immigration-food-stamps-medicaid-trump-comments> [<https://perma.cc/VP49-CQPL>]. The final rule was issued in 2019. See *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019) [hereinafter *Inadmissibility on Public Charge Grounds Final Rule*]. Legal challenges followed. See, e.g., *Casa de Md. v. Trump*, 2019 U.S. Dist. LEXIS 177797 (D. Md. Oct. 14, 2019) (enjoining the rule). The Supreme Court stayed an injunction barring implementation of the new rule, thereby allowing it to go into effect. See *U.S. Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599 (2020). For an explanation of the rule, see Jacinta Ma, *Public Charge Regulation Summary*, NAT'L IMMIGR. F. (Sept. 4, 2019), <https://immigrationforum.org/article/public-charge-regulation-summary/> [<https://perma.cc/QL6V-3Z4W>].

such as Medicaid, Medicare Part D, and public housing.¹⁵³ The rule expands the application of the public charge inadmissibility grounds to nonimmigrants seeking to transition to another visa.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%.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.¹⁵⁶ Legal challenges have followed.¹⁵⁷ The U.S. Supreme Court stayed injunctions barring the implementation of the new public charge rule.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.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.¹⁶⁰ In *Trump v. Hawaii*,¹⁶¹ the Court by a five-to-four majority upheld the Trump

¹⁵³ See *Inadmissibility on Public Charge Grounds Final Rule*, *supra* note 152.

¹⁵⁴ See *id.*

¹⁵⁵ See JEANNE BATALOVA, MICHAEL FIX & MARK GREENBERG, MIGRATION POLICY INST., CHILLING EFFECTS: THE EXPECTED PUBLIC CHARGE RULE AND ITS IMPACT ON LEGAL IMMIGRANT FAMILIES’ PUBLIC BENEFITS USE 1 (2018).

¹⁵⁶ See *Inadmissibility on Public Charge Grounds*, *supra* note 152. For an explanation of the rule, see Jacinta Ma, *Public Charge Regulation Summary*, NAT’L IMMIGR. F. (Sept. 4, 2019), <https://immigrationforum.org/article/public-charge-regulation-summary/> [<https://perma.cc/QL6V-3Z4W>].

¹⁵⁷ See Geneva Sands, *13 States Sue Over Legal Immigration ‘Public Charge’ Rule*, CNN POLITICS (Aug. 15, 2019, 1:11 PM), <https://www.cnn.com/2019/08/15/politics/13-states-sue-public-charge-immigration/index.html> [<https://perma.cc/T7AF-DZ26>].

¹⁵⁸ See U.S. Dep’t of Homeland Sec. v. New York, 2020 U.S. LEXIS 813 (Jan 27, 2020).

¹⁵⁹ See, e.g., Noah Bierman, *Donald Trump Calls for ‘Extreme Vetting’ and an Ideological Test for Would-Be Immigrants*, L.A. TIMES (Aug. 15, 2016, 3:40 PM), <https://www.latimes.com/politics/la-na-pol-trump-national-security-20160815-snap-story.html> [<https://perma.cc/LEK5-BZDS>].

¹⁶⁰ See *Trump v. Hawaii*, 138 S. Ct. 2392, 2403-07 (2018) (tracing the history of the three versions of the travel ban).

¹⁶¹ *Id.* at 2420-23. For criticism of the Court’s decision, see, for example, Robert S. Chang, *Whitewashing Precedent: From the Chinese Exclusion Case to Korematsu to the*

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.¹⁶² 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."¹⁶³

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.¹⁶⁴ 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.¹⁶⁵

9. Ending "Chain Immigration" and "Anchor Babies"

By removing discriminatory quotas from the U.S. immigration laws, the Immigration Act of 1965¹⁶⁶ led to a more diverse immigrant stream, with the majority of the immigrant population today hailing from

Muslim Travel Ban Cases, 68 CASE W. RES. L. REV. 1183, 1188-90 (2018); Jill E. Family, *The Executive Power of Political Emergency: The Travel Ban*, 87 UMKC L. REV. 611, 620-27 (2019); Shoba Sivaprasad Wadhia, *National Security, Immigration and the Muslim Travel Bans*, 75 WASH. & LEE L. REV. 1475, 1498-1500 (2018). See generally KHALED A. BEYDOUN, *AMERICAN ISLAMOPHOBIA: UNDERSTANDING THE ROOTS AND RISE OF FEAR* (2018) (analyzing the history of anti-Muslim sentiment in the United States).

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).

¹⁶⁴ See *id.* at 2407-10 (discussing 8 U.S.C. § 1182(f), which allows presidents in certain circumstances to suspend entry of entire classes of noncitizens). The administration in 2020 expanded the number of countries, including several African nations, whose citizens are subject to the ban. See Monsy Alvarado & Alan Gomez, *New Donald Trump Immigration Policy Could Ban Thousands of African Immigrants from US*, USA TODAY (Feb. 25, 2020, 10:59 PM) <https://www.usatoday.com/story/news/politics/elections/2020/02/24/new-trump-travel-ban-could-keep-african-immigrants-out-us/4861122002%620>.

¹⁶⁵ See *E. Bay Sanctuary Covenant v. Trump*, 354 F. Supp. 3d 1094, 1121 (N.D. Cal. 2018) (granting a preliminary injunction against Proclamation No. 9822, Addressing Mass Migration Through the Southern Border of the United States, 83 Fed. Reg. 57, 661 (Nov. 15, 2018)), *aff'd*, 2020 U.S. App. LEXIS 6282 (9th Cir. Feb. 28, 2020). The President had sought to assert authority under 8 U.S.C. §§ 1182(f), 1185(a) to suspend "[t]he entry of any alien into the United States across the international boundary between the United States and Mexico." 83 Fed. Reg. at 57, 663.

¹⁶⁶ See Pub. L. No. 89-236, 79 Stat. 911 (1965).

Mexico, India, the Philippines, and China.¹⁶⁷ Many of these immigrants currently enter under visas allowing them to reunite with family members who are U.S. citizens or lawful permanent residents.¹⁶⁸ 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.¹⁶⁹

President Trump has called for amending the immigration laws to transform legal immigration, ending “chain migration,” and promoting skills-based immigration.¹⁷⁰ “Chain migration” is the pejorative term employed to describe family reunification, a primary goal of current U.S. immigration law.¹⁷¹ 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.¹⁷²

President Trump’s efforts to reduce the number of immigrants of color has not been limited to undocumented immigration.¹⁷³ He has railed against birthright citizenship — the rule that any person in the United States is a U.S. citizen — and “anchor babies.”¹⁷⁴

10. A Spike in Hate Crimes

President Trump’s harsh rhetoric has been accompanied by a rise in hate crimes directed at Latinx people.¹⁷⁵ In 2019, the American Civil

¹⁶⁷ See generally THE IMMIGRATION AND NATIONALITY ACT OF 1965: LEGISLATING A NEW AMERICA (Gabriel J. Chin & Rose Cuison Villazor eds., 2015) (analyzing the Immigration Act of 1965 from a variety of perspectives).

¹⁶⁸ See Zeke Miller & Jill Colvin, *White House to Push Merit-Based Immigration in New Campaign*, PBS (Dec. 15, 2017), <https://www.pbs.org/newshour/politics/white-house-to-push-merit-based-immigration-in-new-campaign> [<https://perma.cc/7H6Y-2J6Y>].

¹⁶⁹ See U.S. DEP’T OF HOMELAND SEC., LEGAL IMMIGRATION AND ADJUSTMENT OF STATUS REPORT FISCAL YEAR 2018, QUARTER 3, tbl.1B (2018).

¹⁷⁰ See Miller & Colvin, *supra* note 168.

¹⁷¹ See LEGOMSKY & RODRÍGUEZ, *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.

¹⁷⁴ See Aaron Klein, *Donald Trump: No More Anchor Babies!*, WORLDNETDAILY (Aug. 3, 2015, 8:50 PM), <https://www.wnd.com/2015/08/donald-trump-no-more-anchor-babies> [<https://perma.cc/2F4Y-2R9W>].

¹⁷⁵ See DAVID SCOTT FITZGERALD, GUSTAVO LÓPEZ & ANGELA Y. McCLEAN, MEXICAN IMMIGRANTS FACE THREATS IN CIVIL RIGHTS AND INCREASED SOCIAL HOSTILITY 64 (2019), https://ccis.ucsd.edu/_files/conference_papers_present/CNDH-final-3.4.19.pdf [<https://perma.cc/K7WE-MS5C>]; Griffin Sims Edwards & Stephen Rushin, The Effect of President Trump’s Election on Hate Crimes (Jan. 18, 2018) (unpublished manuscript); Jaweed Kaleem, *Latinos and Transgender People See Big Increases in Hate Crimes*, FBI Reports, L.A. TIMES (Nov. 12, 2019),

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

nation/story/2019-11-12/hate-crimes-fbi-2018 [https://perma.cc/T54B-PNA2]; see, e.g., Lizzie Dearden, *Donald Trump’s Victory Followed by Wave of Hate Crime Attacks Against Minorities Across US - Led by His Supporters*, INDEPENDENT (Nov. 10, 2016), <https://www.independent.co.uk/news/world/americas/us-elections/donald-trump-president-supporters-attack-muslims-hijab-hispanics-lgbt-hate-crime-wave-us-election-a7410166.html> [https://perma.cc/Y3HH-PDLF]; Maria Hinojosa, *Hate Crimes Against Latinos Increase in California*, NPR (July 15, 2018), <https://www.npr.org/2018/07/15/629212976/hate-crimes-against-latinos-increase-in-california> [https://perma.cc/M5ZC-9736]; Sarah Ravani, *CA Surge in First Year of Trump’s Presidency*, S.F. CHRON. (Nov. 14, 2018), <https://www.sfchronicle.com/crime/article/FBI-Hate-crimes-in-U-S-CA-surge-in-first-year-13389522.php> [https://perma.cc/3VAR-2VUG]; Dennis Romero, *In the Era of Trump, Anti-Latino Hate Crimes Jumped 69% in L.A.*, LA WEEKLY (Sept. 29, 2016), <https://www.laweekly.com/news/in-the-era-of-trump-anti-latino-hate-crimes-jumped-69-in-la-7443401> [https://perma.cc/NQ7G-LGKE]; N’dea Yancey-Bragg, *Utah Man Who Wanted to ‘Kill Mexicans’ Charged with Federal Hate Crimes*, USA TODAY (Feb. 20, 2019), <https://www.usatoday.com/story/news/nation/2019/02/20/utah-man-allegedly-wanted-kill-mexicans-charged-hate-crimes/2934909002> [https://perma.cc/Q34W-DXPK].

¹⁷⁶ *Rights Group Condemns U.S. ‘Vigilante’ Treatment of Migrants on Border*, REUTERS (Apr. 18, 2019, 11:14 PM), <https://www.reuters.com/article/us-usa-immigration-militia/rights-group-condemns-us-vigilante-treatment-of-migrants-on-border-idUSKCN1RV0C5> [https://perma.cc/8FB6-Q8AH].

¹⁷⁷ Jeremy W. Peters et al., *How the El Paso Killer Echoed the Incendiary Words of Conservative Media Stars*, N.Y. TIMES (Aug. 11, 2019), <https://www.nytimes.com/interactive/2019/08/11/business/media/el-paso-killer-conservative-media.html> [https://perma.cc/SH3N-AHL8].

the U.S. government responded with mass detention of asylum-seekers and other measures.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.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.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.¹⁸¹ Resistance

¹⁷⁸ See generally SUSAN BIBLER COUTIN, *THE CULTURE OF PROTEST: RELIGIOUS ACTIVISM AND THE U.S. SANCTUARY MOVEMENT* (1993) (summarizing the history of the 1980s "sanctuary movement"); ANN CRITTENDEN, *SANCTUARY: A STORY OF AMERICAN CONSCIENCE AND THE LAW IN COLLISION* (1988) (to the same effect).

¹⁷⁹ See Kevin R. Johnson & Bill Ong Hing, *The Immigrant Rights Marches of 2006 and the Prospects for a New Civil Rights Movement*, 42 HARV. C.R.-C.L. L. REV. 99, 99-100 (2007).

¹⁸⁰ See Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L.J. 101, 102-04 (2013); Michael A. Olivas, *Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students*, 21 WM. & MARY BILL RTS. J. 463, 519-26 (2012); see also Rose Cuison Villazor, *The Undocumented Closest*, 92 N.C. L. REV. 1, 51-55 (2013) (noting the significance of the emergence of the political movement of undocumented immigrants focused on reform of the immigration laws and their enforcement). See generally WALTER J. NICHOLLS, *THE DREAMERS: HOW THE UNDOCUMENTED YOUTH MOVEMENT TRANSFORMED THE IMMIGRANT RIGHTS DEBATE* (2013) (explaining how undocumented college students sparked a nationwide interest in immigration reform); EILEEN TRUAX, *DREAMERS: AN IMMIGRANT GENERATION'S FIGHT FOR THEIR AMERICAN DREAM* (2015) (telling the stories of ten DREAMers (undocumented college students) and their struggles and efforts at political change); LAURA WIDES-MUÑOZ, *THE MAKING OF A DREAM: HOW A GROUP OF YOUNG UNDOCUMENTED IMMIGRANTS HELPED CHANGE WHAT IT MEANS TO BE AMERICAN* (2018) (discussing the individual stories of various DREAMers and how they have positively impacted the United States and pushed for immigration reforms).

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.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.”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.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.¹⁸⁵ In those

CONTESTING IMMIGRATION POLICY IN COURT: LEGAL ACTIVISM AND ITS RADIATING EFFECTS IN THE UNITED STATES AND FRANCE (2015) (analyzing the role of legal challenges to immigration measures as part of activism).

¹⁸² See Peter L. Markowitz, *Abolish ICE . . . and Then What?*, 129 YALE L.J.F. 130, 130 (2019); Matt Ford, *OK, Abolish ICE. What Then?*, NEW REP. (July 18, 2018), <https://newrepublic.com/article/149945/ok-abolish-ice-then>; [https://perma.cc/B2B4-DH34]; Elaine Godfrey, *What ‘Abolish ICE’ Actually Means*, ATLANTIC (July 11, 2018), <https://www.theatlantic.com/politics/archive/2018/07/what-abolish-ice-actually-means/564752/> [https://perma.cc/HN42-M98S]; see also Allison Crennen-Dunlap, *Abolishing the Iceberg*, 96 DENV. U.L. REV. ONLINE 148, 157 (2019) (examining call to abolish ICE); Kari E. Hong, *10 Reasons Why Congress Should Defund ICE’s Deportation Force*, 43 N.Y.U. REV. L. & SOC. CHANGE HARBINGER 40, 40 (2019) (to the same effect); Justin Jouvenal, *County by County, ICE Faces a Growing Backlash*, WASH. POST (Oct. 1, 2018), https://www.washingtonpost.com/local/public-safety/county-by-county-ice-faces-a-growing-backlash/2018/10/01/81052754-a64f-11e8-97ce-cc9042272f07_story.html [https://perma.cc/2ACX-NS6Q] (reporting on the increasing local resistance to ICE immigration enforcement efforts).

¹⁸³ Debra J. Saunders, *Democrats Embrace of ‘Abolish ICE’ Seen as Risky Move to the Left*, L.V. REV.-J. (July 2, 2018, 7:08 PM), <https://www.reviewjournal.com/opinion/opinion-columns/debra-saunders/democrats-embrace-of-abolish-ice-seen-as-risky-move-to-the-left/> [https://perma.cc/76DP-2T5U] (quoting statement adopted by Abolish ICE).

¹⁸⁴ See S.B. 54, 2017-2018 Leg., Reg. Sess. (Cal. 2017).

¹⁸⁵ See Annie Lai & Christopher N. Lasch, *Crimmigration Resistance and the Case of Sanctuary City Defunding*, 57 SANTA CLARA L. REV. 539, 545 (2017).

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’”).

¹⁸⁷ Assemb. B. 4, 2013-2014 Leg., Reg. Sess. (Cal. 2014); see IMMIGRANT LEGAL RESOURCE CTR., PRACTICE ADVISORY SB 54 AND THE CALIFORNIA VALUES ACT: A GUIDE FOR CRIMINAL DEFENDERS 1 (2018) [hereinafter PRACTICE ADVISORY].

¹⁸⁸ PRACTICE ADVISORY, *supra* note 187, at 3.

¹⁸⁹ Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

¹⁹⁰ *Id.* § 1, 82 Fed. Reg. at 8799.

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

¹⁹² See, e.g., *City & Cty. of S.F. v. Trump*, 897 F.3d 1225, 1245 (9th Cir. 2018). *But see New York v. U.S. Dep’t of Justice*, 2020 U.S. App. LEXIS 5831 (2d Cir. Feb. 26, 2020) (holding to the contrary).

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.¹⁹⁴ In contrast, Proposition 187 sought to prohibit undocumented students from attending public colleges and universities.¹⁹⁵

In 2013, the California Legislature passed AB 60, which allowed undocumented immigrants to obtain driver's licenses.¹⁹⁶ More than 900,000 people have received driver's licenses under the law,¹⁹⁷ which included a provision preventing police officers from targeting undocumented drivers.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰

SACRAMENTO BEE (July 9, 2018, 4:22 PM), <https://www.sacbee.com/news/politics-government/capitol-alert/article214595375.html>.

¹⁹⁴ See Assemb. B. 540, 2001-2002 Leg., Reg. Sess. (Cal. 2001) (codified at CAL. EDUC. CODE § 68130.5); Jacob Jackson, *California's Dream Act*, PUB. POL'Y INST. CAL. (Sept. 11, 2017), <https://www.ppic.org/blog/californias-dream-act/> [https://perma.cc/4A2W-TE8Q].

¹⁹⁵ See *supra* Part I.

¹⁹⁶ See Assemb. B. 60, 2013-2014 Leg., Reg. Sess. (Cal. 2013) (codified at CAL. VEH. CODE §§ 1653.5, 12800, 12801-12801.11); Allan Colbern & S. Karthick Ramakrishnan, *Citizens of California: How the Golden State Went from Worst to First on Immigrant Rights*, 40 NEW POL. SCI. 353, 364 (2018).

¹⁹⁷ See Alexei Koseff, *Undocumented Immigrant Driver's Licenses Near Milestone in California*, SACRAMENTO BEE (July 26, 2017, 6:00 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article163623103.html>.

¹⁹⁸ See Colbern & Ramakrishnan, *supra* note 196.

¹⁹⁹ See Assemb. B. 450, 2017-2018 Leg., Reg. Sess. (Cal. 2017).

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 Consenting 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->

California made headlines with its 50th lawsuit challenging Trump administration policies,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.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.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 187.²⁰⁴ 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,

voluntarily-consenting-to-a-federal-immigration-agents-request-to-enter-nonpublic-areas-or-for-voluntarily/ [https://perma.cc/ECF4-S7MK].

²⁰¹ See Bob Egelko, *State AG Becerra Sues Trump Administration for 50th Time*, S.F. CHRON. (May 13, 2019, 6:20 PM), <https://www.sfchronicle.com/news/article/State-AG-Becerra-sues-Trump-administration-for-13842589.php> [https://perma.cc/P4NA-99CK].

²⁰² See Angela Hart, *From Birth Control to the Border Wall: 17 Ways California Sued the Trump Administration in 2017*, SACRAMENTO BEE (Dec. 11, 2017, 12:01 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article188901094.html>.

The state also challenged the addition of a question on U.S. citizenship to the 2020 Census. See *California v. Ross*, 358 F. Supp. 3d 965, 1049-50 (N.D. Cal. 2019), *vacated and remanded in light of Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019) (requiring Trump administration to provide further explanation for the addition of a U.S. citizenship question).

²⁰³ See *supra* Part III.

²⁰⁴ See *supra* Part II.

with an accompanying growth in Latinx voting power.²⁰⁵ 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 1994.²⁰⁶ 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 187.²⁰⁷ 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.”²⁰⁸ 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.²⁰⁹

As exemplified by Pete Wilson’s campaign ad and its ominous catchphrase “[t]hey keep coming,” the Proposition 187 campaign unquestionably had racial undertones.²¹⁰ 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*

²⁰⁵ See Antonio Flores, *How the U.S. Hispanic Population is Changing*, PEW RES. CTR. (Sept. 18, 2017), <https://www.pewresearch.org/fact-tank/2017/09/18/how-the-u-s-hispanic-population-is-changing/> [<https://perma.cc/FAB8-7RKF>] (noting that the growth of Hispanic population in the United States had reached a new high and accounted for eighteen percent of the nation’s population).

²⁰⁶ See *supra* Part I.

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

²⁰⁸ Wall Street Journal, *Donald Trump Releases First TV Ad*, YOUTUBE (Jan. 4, 2016), <https://www.youtube.com/watch?v=qa3edsMzHkA> [<https://perma.cc/T9KN-APWY>].

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.

²¹⁴ See Erica L. Green, Matt Apuzzo & Katie Benner, *Trump Officials Reverse Obama's Policy on Affirmative Action in Schools*, N.Y. TIMES (July 3, 2018), <https://www.nytimes.com/2018/07/03/us/politics/trump-affirmative-action-race-schools.html> [<https://perma.cc/RP42-6MQK>].

²¹⁵ See Jesse Jackson, *Trump Administration Is Intent on Weakening Civil Rights Enforcement*, CHI. SUN TIMES (Jan. 7, 2019, 7:23 PM), <https://chicago.suntimes.com/2019/1/7/18378886/trump-administration-is-intent-on-weakening-civil-rights-enforcement> [<https://perma.cc/8KY2-KQ4K>].

²¹⁶ See Brendan Cole, *White House Reporter Says Trump Enjoys Insulting Women of Color*, NEWSWEEK (Nov. 10, 2018, 10:25 AM), <https://www.newsweek.com/black-white-house-reporter-says-trump-loves-insult-and-disdain-women-color-1210549> [<https://perma.cc/5CF7-KCQ8>].

²¹⁷ See generally DAN T. CARTER, *THE POLITICS OF RAGE: GEORGE WALLACE, THE ORIGINS OF THE NEW WHITE CONSERVATISM, AND THE TRANSFORMATION OF AMERICAN POLITICS* (2000) (analyzing the political legacy of former Alabama Governor George Wallace, an unabashed segregationist who ran for president in 1972).

²¹⁸ See, e.g., Michelle Goldberg, *Trump Is a White Nationalist Who Inspires Terrorism*, N.Y. TIMES (Aug. 5, 2019), <https://www.nytimes.com/2019/08/05/opinion/trump-white-supremacy.html> [<https://perma.cc/DF6P-TECS>].

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.

²²¹ See USCIS, NUMBER OF SERVICE-WIDE FORMS BY FISCAL YEAR TO-DATE, QUARTER, AND FORM STATUS (2015), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2015_qtr2.pdf [https://perma.cc/RT4J-K398].

²²² See USCIS, NUMBER OF SERVICE-WIDE FORMS BY FISCAL YEAR TO-DATE, QUARTER, AND FORM STATUS (2016) https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2016_qtr1.pdf [https://perma.cc/TM7G-MMQ7]; USCIS, NUMBER OF SERVICE-WIDE FORMS BY FISCAL YEAR TO-DATE, QUARTER, AND FORM STATUS (2017), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly_All_Forms_FY17Q2_Final.pdf [https://perma.cc/EF3N-ZKSK].

²²³ See *supra* Part II.

²²⁴ See Brittany Blizzard & Jeanne Batalova, *Naturalization Trends in the United States*, MIGRATION POL'Y INST. (July 11, 2019), <https://www.migrationpolicy.org/article/naturalization-trends-united-states> [https://perma.cc/3GK5-H6BN]; see also *supra* text accompanying notes 98–99 (discussing defensive naturalization).

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.²²⁶ In 2016, the turnout among naturalized voters increased slightly to 54.3% compared to the 2012 election where it was 53.6%.²²⁷ Although the percentage change was relatively small, naturalized voters increased from 9.3 million to 10.8 million.²²⁸ Naturalized Latinx voter turnout was 53.4% compared to the 45.5% turnout for native-born Latinx.²²⁹ Not surprisingly, given his anti-Latinx positions, President Trump decisively lost the Latinx vote.²³⁰

Because of Proposition 187, California is more firmly Democratic today than it ever has been.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.²³² Flourishing immigrant rights movements across the nation offer a concrete illustration of the strength of the growing resistance to the Trump immigration program.²³³

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

²²⁶ See Jens Manuel Krogstad, *Key Facts About the Latino Vote in 2016*, PEW RES. CTR. (Oct. 14, 2016), <https://www.pewresearch.org/fact-tank/2016/10/14/key-facts-about-the-latino-vote-in-2016> [<https://perma.cc/MRA5-PBJ6>].

²²⁷ Jens Manuel Krogstad & Mark Hugo Lopez, *Black Voter Turnout Fell in 2016, Even as a Record Number of Americans Cast Ballots*, PEW RES. CTR. (May 12, 2017), <https://www.pewresearch.org/fact-tank/2017/05/12/black-voter-turnout-fell-in-2016-even-as-a-record-number-of-americans-cast-ballots/> [<https://perma.cc/MNE6-UCLY>].

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ See Jens Manuel Krogstad & Mark Hugo Lopez, *Hillary Clinton Won Latino Vote but Fell Below 2012 Support for Obama*, PEW RES. CTR. (Nov. 29, 2016), <https://www.pewresearch.org/fact-tank/2016/11/29/hillary-clinton-wins-latino-vote-but-falls-below-2012-support-for-obama/> [<https://perma.cc/EGN8-DY2B>] (showing that Hillary Clinton won Latinx vote by 66% to 28% over Donald Trump).

²³¹ See *supra* Part II.

²³² See, e.g., Nicole Einbinder, *Trump Says if Asylum Seekers Don't Like Conditions in Detention Centers, "Just Tell Them Not to Come,"* BUS. INSIDER (July 3, 2019, 2:06 PM), <https://www.businessinsider.com/trump-asylum-seekers-dont-like-conditions-detention-centers-shouldnt-come-2019-7> [<https://perma.cc/WG6J-KMLZ>]; David A. Fahrenthold, *Trump Recorded Having Extremely Lewd Conversation About Women in 2005*, WASH. POST (Oct. 8, 2016), https://www.washingtonpost.com/politics/trump-recorded-having-extremely-lewd-conversation-about-women-in-2005/2016/10/07/3b9ce776-8cb4-11e6-bf8a-3d26847eed4_story.html [<https://perma.cc/NX48-J25F>].

²³³ See *supra* Part III.B.1.

elections, Democrats gained seven governorships and control of thirty-seven state legislatures.²³⁴ 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.²³⁵ 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.²³⁶ As previously discussed,²³⁷ 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.²³⁸ 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,²³⁹ 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

²³⁴ *Election Results, 2018*, BALLOTPEDIA, https://ballotpedia.org/Election_results,_2018 (last visited Dec. 24, 2019) [<https://perma.cc/RXW9-D2TY>]; *Election Results 2018*, POLITICO, <https://www.politico.com/election-results/2018> (last visited Dec. 24, 2019) [<https://perma.cc/U6LV-NTJD>].

²³⁵ See Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363, 400 (noting this phenomenon).

²³⁶ See generally TOM K. WONG, *THE POLITICS OF IMMIGRATION: PARTISANSHIP, DEMOGRAPHIC CHANGE, AND AMERICAN NATIONAL IDENTITY* (2017) (analyzing influence of immigrants on U.S. politics).

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.²⁴⁰ In addition, the unending Trump immigration initiatives generate legal challenge after legal challenge.²⁴¹

An active immigrant political movement is likely to continue to advocate for immigration reform, which has been debated for more than a decade.²⁴² 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”²⁴³ suggests that the reform agenda may yet become even more forceful. As occurred in California in the wake of Proposition 187,²⁴⁴ 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.²⁴⁵

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.²⁴⁶ 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,

²⁴⁰ See *id.* (discussing the emergence of an immigrant political movement).

²⁴¹ See Shoba Sivaprasad Wadhia, *Immigration Litigation in the Time of Trump*, 53 UC DAVIS L. REV. ONLINE 121, 121 (2019); see, e.g., Rebecca Klar, *13 States File Lawsuit Over Trump “Public Charge” Rule*, HILL (Aug. 14, 2019, 6:53 PM), <https://thehill.com/homenews/news/457485-washington-state-ag-files-lawsuit-over-trump-public-charge-rule> [<https://perma.cc/3Q79-32EN>].

²⁴² See *supra* text accompanying notes 22, 180-202. For various possibilities for immigration reform, see Kevin R. Johnson, *Possible Reforms of the U.S. Immigration Laws*, 18 CHAP. L. REV. 315, 316 (2015).

²⁴³ See *supra* text accompanying notes 181-183; Mariela Olivares, *Resistance Strategies in the Immigrant Justice Movement*, 39 N. ILL. U. L. REV. 1, 2 (2018) (considering how contemporary resistance could contribute to immigration reform).

²⁴⁴ See *supra* Part II.

²⁴⁵ See Matt Pearce, *As Trump Seeks Reelection, Immigrant Voters Stand in His Path*, L.A. TIMES (Oct. 23, 2019, 5:00 AM), <https://www.latimes.com/politics/story/2019-10-23/trump-attacks-immigrants-new-naturalized-citizen-voter-registration> [<https://perma.cc/Q69F-UJN3>].

²⁴⁶ See *supra* Part II.

President Obama noted that “our immigration system is broken — and everybody knows it.”²⁴⁷ 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.

²⁴⁷ President Barack Obama, Address to the Nation on Immigration (Nov. 20, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration> [<https://perma.cc/2PSV-UPRS>].