

Population, Immigration and Growth in California

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FOREWORD AND ACKNOWLEDGEMENT

Immigration has become a highly controversial and publicized topic, and will continue to be so in the coming years. It is clear that immigration, both legal and illegal, has had a central role in California's startling demographic changes and fiscal stress during the last decade. Unabated, it promises similar changes in the future.

The debate to date has focused largely on the economic consequences of illegal immigration. Among other things, there has been a sharp deterioration of work skills of immigrants since the 1970s, with current law paying scant attention to U.S. economic needs. However, there are potential social consequences as well. Never before in the nation's history has so disproportionate a share of all immigration fallen on one state, California. In addition, the breakdown of the traditional American goal of assimilating immigrants into the mainstream culture threatens the social cohesiveness and sense of community that California will need if it is to prosper as a multi-ethnic society in the 21st century. For California, unabated immigration on the scale of recent years will be the social equivalent of the deficit unless we deal with it positively: a destructive legacy, the consequences of which will be faced by our children and grandchildren because we failed to.

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The United States, and California in particular, can no longer afford — socially, financially, or economically — an immigration policy that ignores workforce needs, poses an enormous financial burden on taxpayers, tears at the country's social fabric under the banner of divisive multiculturalism, and throws open the doors of America to a shrinking world overburdened with billions of impoverished and unskilled people with no end in sight. At some point we must attend to the pressing needs of our own population. A 19th and 20th century immigration policy must now change for the 21st. We should use our immigration policies to attract the skilled, the educated, the hardest working, and the most self-reliant to our shores, to help the U.S. economy prosper and to compete in the global market.

The sources of quantitative and other data used in this study are indicated. I am grateful to the Demographic Research Unit of the California Department of Finance, the Health and Welfare Agency, and other California state government offices for their input, review, and comment. I am similarly grateful to outside demographers including Peter Morrison of RAND in Santa Monica and Tony Quinn of Braun Ketchum in Sacramento.

I also hasten to add that I am solely responsible for the content of this paper. As the state Director of Planning and Research from 1991 to 1993, I was statutorily responsible for analyzing and assessing the long-term impacts of population and settlement trends in California. I have waited until I was no longer in that position to make clear these are my personal views and not necessarily those of the Administration. At the same time, I can think of no subject more vital to the future of California. I hope this paper will add to and inform the debate.

EXECUTIVE SUMMARY

The issue of population growth is increasingly raised in California, particularly in the context of immigration. Some people believe that California should somehow limit its population before the "carrying capacity" of the state is exceeded, either in terms of environmental impacts or in the general quality of life for those already here.

California has grown substantially since World War II. The state has tripled its population, from ten million to thirty million, in the roughly two generations from 1950 to 1990. Traditional environmental concerns about the impacts from such growth have lately been joined by objections to greater congestion and demographic changes.

Rapid population growth in California has spurred associated problems, such as congestion and environmental impacts. It has also brought diversity and economic stimulus. People want to come to California because of opportunity and because it is a good place to

live. The population is increasing through economic and social forces that to date are beyond the ability of state government to address significantly.

The primary driver in population growth in California is now immigration. Net domestic migration to California from the other forty-nine states has turned negative. The largest single component in growth, natural increase, is in fact probably due in greater part to the higher birth rate among many immigrants.

As many as 7.4 million of California's population, or nearly a quarter of the total, is foreign-born, including 1.6 million amnesty immigrants legalized by the 1986 Immigration Reform and Control Act (IRCA). New 1990 federal immigration and refugee laws will raise total annual immigration to the United States to approximately 800,000. An additional 200,000 are expected to arrive illegally each year, for an annual total of one million.

Of this number, 300,000 to 350,000 (including fully half of the illegal immigrants) are likely to settle in California, or roughly one-third. This is proportionally two-and-one-half to three times greater than California's twelve percent share of the national population. Even so, this understates the long-term impact on the state because of sharply higher fertility rates among immigrant groups.

However, efforts to meet the needs of California's rapidly growing and diversifying population with shrinking state revenues are seriously hampered by the federal government's failure to make good on its pledge to adequately fund (or enforce) its immigration policies. It is important not to blame these fiscal impacts on legal immigrants themselves, most of whom work hard and whom we should want to succeed.

Instead, the blame is the federal government's, which effectively is forcing California to pay for national immigration and refugee policies as much as four times out of proportion to its population. This is a disservice both to the existing population and to the immigrants. For the federal government, immigration has become a profit center.

The federal government is solely responsible for immigration and refugee policies. The federal government's failure to compensate California for this disproportionate impact from national policies is a primary factor in the state's continuing fiscal crisis. This in turn hamstringing the state in dealing with growth because it cannot pay for needed infrastructure, better planning, investments in education and housing, or even the existing level of services that a growing population needs and deserves.

Studies in Orange, San Diego, and Los Angeles counties have determined uncompensated local costs from immigration to be significant. The most recent Los Angeles county study found that, with the exception of public health services, immigrants do not use county services at higher levels than non-immigrants, but at a relative net cost up to four times greater because of fewer taxes paid. Without full federal assistance, the effect is that the non-immigrant population is heavily subsidizing the cost of immigration. The Orange and San Diego county studies also found significant impacts from, respectively, refugees and illegal immigration.

Uncompensated state costs associated with immigration are also substantial. The California Department of Finance estimated the cost of immigration-related services to the state at approximately \$4.787 billion in 1992-1993, including \$474 million in Medi-Cal, \$444 million in Aid to Families with Dependent Children (AFDC) and SSI/SSP, \$243 million for the prison system, and \$3.626 billion in K-12 school costs. These figures do not include the costs of additional infrastructure, greater congestion, or environmental impacts.

These billions of dollars spent on immigration-related services are then not available to build needed infrastructure, protect open space, or otherwise pay for better planning and development patterns. Paradoxically, this population growth heightens the need for just such programs.

In effect, California is paying the bill for the nation's immigration policies. The state is forming the human capital for much of the nation's future growth.

While high immigration and birth rates have substantial short-term and medium-term net service costs, in the long term they may benefit the economy (to which they certainly contribute now, but most benefits are private while most costs are public) by increasing the skilled labor pool, assuming adequate educational levels and assimilation. Changing age demographics of California and the United States indicate potentially serious labor shortages in the future and higher dependency ratios of older, as well as younger, residents to the working-age population.

At the same time, the skills level of the future workforce will be significantly higher and different than today. In a free-trading world, neither the United States nor California can compete on the basis of unskilled labor. Our competitive advantage, if we wish to maintain higher living standards, must come in adding value through an educated workforce and high productivity. Changed immigration policy, which currently focuses on extended family reunification and results in largely low-wage, low-skill flows, can help achieve these goals by focusing more on workforce needs and skills. The most recent immigration work-needs program is a step in this direction.

California should seek federal action on two levels: (1) to compensate California for the hugely disproportionate financial burden it bears from the nation's immigration and refugee policies; (2) to reform immigration law to reduce overall numbers and put greater focus on workforce needs.

These actions are advisable if California is to maintain a high quality of life for all its people, newcomers as well as long-time residents. If the state proves unable to control or cope with further population increases, and as a result the quality of life, economy, and the environment become sufficiently degraded, growth will stop and population will decline as residents seek more hospitable locations. It is only through such a failure of public policy that the projections of population increase reverse. However, that increase can be moderated, controlled, and compensated. Unmanaged growth can overwhelm California. Managed growth — fairly funded, intelligently shaped, and welcoming new energy — can focus on the quality of life for all Californians.

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I. INTRODUCTION

California's astonishing population growth, although slowed by the current economic difficulties of the state, is continuing. From ten million in 1950, to seventeen million a generation later, to more than thirty-two million in 1994, our state is growing by 600,000 people a year, the equivalent of adding an entire Ventura County annually, or six Burbanks. Today, there are nearly ten million people in Los Angeles alone.

In the late 1980s, when growth was even greater at some 800,000 a year, the issue of population growth was often raised in the context of "growth management," based on the belief that too many people are destructive to the environmental quality of California and, hence, have a negative impact on the quality of life. This area of enquiry was also based on the environmental notion of "carrying capacity," which assumes that the land or the earth has a limited ability to support life, specifically human population.¹

In the 1990s, environmental concerns over population growth gave way to fiscal concerns as it became apparent that immigration was the driving force in that growth directly and indirectly, and was overwhelming the fiscal capability of California to offer services both to its own residents and to disproportionate waves of newcomers. With twelve percent of the nation's population, California was taking in three or four times that number of the nation's immigrants. A lively debate over the contributions and costs of immigration has followed, while the state's attempts to secure even partial federal reimbursement for costs have largely foundered. Most of the discussion

1. "Carrying capacity" as used in these debates can have two meanings. The first is technical, scientific carrying capacity. In this sense, California can support a far larger population than it does now, albeit under changed conditions that most Californians probably would not like. The second meaning of "carrying capacity" is the level of population we would like California to have, as necessary to support a given quality of life or resource protection. It is this second sense that people usually intend.

has focused on the impacts of illegal immigration specifically.

Population increases in California, and immigration trends throughout history, have been demonstrably related to both lifestyle and economic opportunities. California is a destination point because it offers both. Indeed, California's success in managing its own growth is to a certain extent the very reason that more growth is forthcoming. The other side of this coin is that people will stop coming here if the state becomes an unpleasant place to live. This is a "goal" to which no responsible government can subscribe.

Reality is that California's population will continue to increase, through social and economic forces that are beyond the ability of state or even national government to address significantly. However, three significant steps can be taken, all at the federal level, to moderate and improve the impacts of that growth:

1. First, the federal government can abate illegal immigration by enforcing our borders. As in most other countries, the armed forces are suited to this role.
2. Second, Congress should reform immigration law to moderate the numbers of arrivals and to put greater emphasis on U.S. workforce needs in regulating admission. Asylum and refugee laws should be tightened to fight abuse.
3. Third, the federal government should reimburse California and other recipient states for the considerable fiscal impacts of immigration. We should insist that the federal government pay for those impacts which are the result of national policy.

In the meantime, we should try to manage and deal intelligently with the growth that does occur.

There are also social consequences of large-scale immigration. The basic "deal" that has historically sustained the United States as a proud and successful nation of immigrants has broken down. In exchange for the economic opportunity and personal liberty that this country affords, immigrants were expected to learn English and to assimilate into the mainstream culture — in short, to become Americans. That deal is now breaking down, under the weight of enforced multiculturalism and diversity. Thus, there is a social and cultural aspect to the immigration issue as well.

This paper presents objective data and analysis regarding the components of California's population growth. It also reviews fiscal impacts from immigration — their main component. While there is some debate as to the exact parameters of these fiscal impacts, there should be no doubt that they are substantially negative for state and local governments. Finally, the paper examines United States workforce needs as they may be affected by an expanding population

and as they may implicate immigration.

II. HISTORICAL GROWTH

California's population has seen tremendous growth in the decades since World War II. Most Californians have come from somewhere else. Opportunity and plentiful natural resources have made the Golden State the destination of millions who seek the "California lifestyle" and the benefit of the state's economy. Sustained economic growth has been fed by these large population increases. Since 1945, the state has experienced unparalleled economic expansion tempered only by brief periods of recession. The current economic downturn promises to break that pattern.

At the same time, burgeoning population growth — over ten million new people in the last twenty years — has increasingly given many Californians a sense of discomfort. The state's physical and human infrastructure systems, including roads, sewers, and schools, all have been stressed. Straight-line projections based on historical data predict as many as ten to fifteen million more Californians in the next twenty years. Those projections have raised not only anxiety and resistance on the part of many Californians, but have also created serious discussion about growth management, growth control, growth limitation, and population limits.

Environmental interests in the state have long been concerned about the impact of increased population on the destruction of forests and wetlands, the urbanization of coastal areas, and the loss of prime farmland to suburban sprawl. Historically there have been many attempts to manage and direct growth to protect California's resources, beginning with the Williamson Act in the 1960s and the Coastal Act of 1976 (with its genesis in Proposition 20 four years earlier). Both policies were established to protect threatened resources from the negative impacts of development. Other analogues have followed, such as establishment of conservancies to protect Lake Tahoe and the Santa Monica Mountains.

The debate about the impact of growth on natural resources resumed again in the late 1980s with new force as population growth accelerated. This time, traditional environmental interests were joined by a large and vocal number of the state's voters and residents who believed that with more population comes not only the destruction of natural resources and the environment, but also a general loss of "quality of life."

Among older Californians, for example, there is almost a collective "genetic memory" of open space and land resources in a wide-open state where everyone could enjoy the benefits of climate and aspire to homeownership and economic prosperity. In less than fifty

years, for example, the Los Angeles Basin, which was once filled with orange groves, has been transformed into a crowded, traffic-congested, urban environment. The Santa Clara Valley in Northern California has seen a similar transformation.

On a lesser scale, similar fates have befallen other parts of California. Crowded and aging central cities, plagued with high crime rates and deteriorating facilities, have become less desirable. The middle class has fled to the suburbs in search of better housing and schools, more open space, cleaner air, and a more "hassle-free," more "traditionally California" lifestyle.

Changing demographics also undoubtedly play a part in public unease over growth. Most recent immigration in California has been largely Hispanic and Asian, increasing the state's cultural diversity but also potentially adding to social tension. Diversity undoubtedly has its limits; Bosnia is diverse. The seeming abandonment of assimilation as a goal has sharpened this concern.

As the suburbs become more crowded, duplicating the congestion and other ills of the city, residents begin to ask where this will end and whether there are limits. Understandably they associate these conditions with the influx of additional population, and they seek to stem or stop it. And certainly unchanged land use and development patterns will in fact result in this cycle repeating itself as new residents continue to come into California. The two alternatives, if strong population growth continues, are new forms of urban development, or acceptance of increased congestion, lessened air quality, and other quality of life factors. Alternatively, immigration, the major driver in California's population growth, could be curbed.

There has already been some testing of "limits." The Southern California Association of Governments (SCAG) completed a population model in the mid-1980s which projected five million more people in the Los Angeles basin, raising the population from thirteen million to eighteen million. This model predicted that the region could not absorb the additional population without exceeding regional environmental and infrastructure capacity. Mandated air quality standards would be violated even with increased mass transit and decreased automobile emissions. Existing stationary source controls would prohibit the building of sufficient housing and economic development to support the projected population increases. SCAG is now seeking new forms of urban development (and not growth limitation measures) as an alternative to this "overcrowding" of the basin. Other similar efforts are sure to follow.

California's continuing fiscal crisis has now moved the focus from the environmental impacts of population growth to the fiscal impacts of immigration, particularly illegal immigration. The two are closely related, however. The following section examines the central role of immigration in population growth and in added state and local government costs.

III. COMPONENTS OF GROWTH

Different components have made up California's recent population growth. According to the California Department of Finance, the breakdown of the state's population increase during 1980 to 1990 was: domestic migration, 1,125,000 or 18%; foreign immigration, 2,275,000 or 37%; natural increase (births over deaths), 2,794,000 or 45%; total population growth, 6,194,000 or 100%. These components changed over time.² By 1992, under the weight of the recession, defense cuts, and job losses in California, domestic migration had ceased to be a factor and in fact turned negative; the primary factors were immigration (roughly 45%) and natural increase (roughly 55%), which in turn was largely fueled by higher birth rates among immigrants. Immigration has remained strong because, even in a recession, U.S. social services and economic opportunity, particularly in California, are relatively more attractive than in many foreign countries.

A. Domestic Migration

A relatively small proportion of California's growth in the recent past came from residents (both citizens and non-citizens) from other states moving to California, and even this now appears to have stopped. The proportional distribution of this new population varies annually, but in the last ten years less than twenty percent of population growth came from such domestic migration. In 1991, the California Department of Finance stated that domestic in-migration had dwindled to almost nothing (net in-migration totalled 26,000), and 1991-1992 figures showed net out-migration.³ Some domestic in-migration in any event is secondary foreign immigration, that is, immigrants relocating from other states. Such secondary immigration is

2. The percentages for the second half of this period, 1985 to 1990, were domestic migration, 23%; natural increase, 44%; and immigration, 33%.

3. It is important to note that this is net. There may still be large domestic population movements in and out of the state. In fact, California may suffer from net tax producers moving out while net tax consumers move in. See CALIFORNIA DEP'T OF FINANCE, CALIFORNIA'S TAXPAYER SQUEEZE (1991).

In data on driver's license changes released August 31, 1993, the Demographic Research Unit of the California Department of Finance estimated that 583,000 Californians left the state during fiscal year 1993 (July 1992 - June 1993), the biggest exodus in

probably more common among refugee populations, whose initial settlement locations are involuntary. For example, California has received thirty-five percent of all Southeast Asian refugees since 1980, but secondary migration raises the estimate to one-half.⁴

Domestic migration cannot be restricted legally. The U.S. Supreme Court has upheld a constitutional implied right to travel, and by further implication there is a right to reside. Numerous court decisions forbid discrimination between new residents and long-term residents of the same state. In addition, the economic foundations of the U.S. market-based economy, as well as the interstate commerce clause of the U.S. Constitution, require that people and businesses be allowed freedom to build, invest, and create wealth without undue restrictions between the various states.

B. Foreign Immigration

Approximately one-third or more of California's recent annual growth has come from direct (immediate) foreign immigration, both legal and illegal, primarily from Mexico, Central America, and Asia. Because secondary migration is hidden in domestic migration and immigration's role in natural increase, the overall impact of foreign immigration is probably substantially higher. However, California has no legal authority to regulate foreign immigration, which is an area preempted by federal law, although largely uncompensated by federal dollars.⁵

Because net domestic migration to California appears to have

the two decades since 1970 in which such records have been kept. The net loss was 150,000. Actual driver's license address changes (DLAC) moving out of state were 389,275, up 10%; DLAC in-state was 289,373, down 15%. Net DLAC was -99,902, as compared to -13,060 in fiscal year 1992. DEMOGRAPHIC RESEARCH UNIT, CALIFORNIA DEP'T OF FINANCE, NOTES ON DRIVERS' LICENSE ADDRESS CHANGE REPORT FY 1993 (noting that at the time of the 1990 Census there were an estimated 1.5 persons per license).

4. DEMOGRAPHIC RESEARCH UNIT, CALIFORNIA DEP'T OF FINANCE, REPORT SR 91-92, ESTIMATES OF REFUGEES IN CALIFORNIA COUNTIES AND THE STATE: 1991 AND 1992 (1994).

5. The federal government is vested with the sole and exclusive responsibility of protecting the borders of the United States of America and legislating with respect to aliens. U.S. CONST. art. I; *see also* Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948); *Graham v. Richardson*, 403 U.S. 365, 378 (1971); *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976). Because regulation of immigration is an exclusively federal function, a state has little power to protect its economy or its ability to provide services from the effects of either legal or illegal immigration. *De Canas v. Bica*, 424 U.S. 351 (1976). In addition, as Justice Powell noted in his concurrence in *Plyler v. Doe*, 457 U.S. 202, 236 (1982), the federal government has largely failed to deal effectively with the flood of illegal immigration. *Id.* at 237.

slowed to a trickle and even reversed, and because high birth rates appear directly related to immigrant populations, immigration is undoubtedly the primary driver in California's continuing rapid population growth (some 442,000 in 1993, despite the state's economic woes).⁶ The federal government's failure to compensate California for its disproportionate impact from national immigration policies is in turn a primary factor in the state's continuing fiscal crisis. The next section examines the immigration phenomenon in greater detail.

C. *Natural Increase*

The largest immediate component of California's growth is natural increase (net of births over deaths). As with domestic migration, some of this growth again can be directly attributed to foreign immigration, whose cultural norms include larger families than are the norm in this country. This phenomenon probably will lessen over time as succeeding generations become more assimilated to American culture, but in the meantime new waves of immigration may repeat the same effect.

There is little doubt that the immigrant population accounts for a larger share of natural increase than its percent of the total state population. California Department of Finance data from 1992 for California's fertility rates for different ethnic groups indicates 1.74 for Anglos, 2.48 for Blacks, 3.33 for Hispanics, and 2.15 for Asians, for a total of 2.42, or sixteen percent higher than the current national average. Demographers consider 2.1 to be the replacement rate.

This represents a startling rise of 23.5% in just nine years, during a period in which there has been heavy immigration to California. In 1991, forty-three percent of the births in California were to foreign-born women, almost twice the foreign-born share of the state's population. California Department of Finance analysis confirms this conclusion:

Although between 1950 and 1980 fertility between California and the nation did merge, a sharp divergence began during the 1980's. While the nation's fertility was flat, fertility in California rose sharply. The majority of this divergence was due to California's greater race/ethnic diversity and the fertility differences among these groups.⁷

A recent article noted: "With immigrants accounting for about half of the state's growth and contributing to the other half with high birth rates, California's population has risen at an average of

6. There has been a slight rise in domestic birth rates due to deferred childbearing, but arithmetically this cannot have been more than a minor factor.

7. DEMOGRAPHIC RESEARCH UNIT, CALIFORNIA DEP'T OF FINANCE. REPORT 93 P-5. BIRTH PROJECTS FOR CALIFORNIA STATE AND COUNTIES 2 (1993).

2.2% a year since 1980, a rate faster than China, India, or Indonesia and in some years as fast as Bangladesh.”⁸

It is this combination of immigration and fertility that also accounts for startling changes in school age populations. According to California Department of Finance figures, between 1984 and 1992, public school enrollment in California grew by 1,011,065, or on average by 126,000 children each year (all years were not average, however; later years have seen smaller numbers, 88,138 in 1992, for example). The increase has been 69% Hispanic, 19% Asian, 3% Pacific Islanders and American Indians, 5% Anglo, and 4% black.

IV. IMMIGRATION

A. Numbers of Foreign-Born

California has the largest population of foreign-born persons (including both legal and illegal immigrants) of any state, as many as 7.4 million of the state’s nearly thirty-two million people. Foreign births is perhaps the most convenient measure of historical immigration to California over the long run, as it treats the entire current population and avoids debates over when one ceases to become an immigrant.

With twelve percent of the nation’s population, California had twenty-five percent of the total national population of foreign-born persons in 1980. During the 1980s the state received twenty-six percent of legal foreign immigration, or 2,787,792 persons according to the U.S. Census Bureau, and roughly half of illegal immigration. A Census report released December 18, 1992 reported that California was home to almost one-third of all foreign-born U.S. residents as of April 1, 1990, using a figure of 6.5 million (a doubling in one decade) or 21.7% the state’s population, up from eight percent in 1960.⁹

However, this figure does not include what most regard as a continuing Census undercount, particularly of illegal immigrants. The Census Bureau’s Director has conceded an estimated 1990 undercount in total population of at least 1.6% — undoubtedly larger

8. Vlae Kershner, *A Hot Issue for the '90s California Leads in Immigration—and Backlash*, S.F. CHRON., June 21, 1993, at A1 [hereinafter *Immigration—and Backlash*]. The director of a group called Californians for Population Stabilization noted, “It’s the worst possible scenario. We have the population growth rates of the Third World and the resource consumption of the First World.” *Id.* at A1, A6.

9. *Percentage of Foreigners in U.S. Rises Sharply*, N.Y. TIMES, Dec. 20, 1992, § 1, at 36.

for California because of its large foreign population — but apparently determined not to make a correction for legal considerations.¹⁰

It is in fact impossible to accurately determine the non-citizen population in California. In almost every case, estimates of foreign population in California have been lower than the actual numbers. The most recent count, in the 1990 U.S. Census, was 2,017,610 naturalized citizens and 4,441,215 non-citizens, for a total of 6,458,825. The Demographic Research Unit of the California Department of Finance (DOF) estimates that nearly one million of these people (975,000) were illegal. In addition, DOF estimates a total of 325,000 additional illegal immigrants for 1991, 1992, and 1993. Another 608,000 persons are estimated as legal immigrants during those three years, according to Immigration and Naturalization Service (INS) figures and California DOF estimates. This would make the total number of foreign-born in California 7,391,825 in 1993, or about 23.3%. Of these, an estimated 6.1 million are legal immigrants and 1.3 million are illegal. Obviously, these figures may increase with continued immigration.

The number of legal immigrants includes a total of 1.5 million persons in California legalized as a result of the 1986 Immigration Reform and Control Act (IRCA). The IRCA legislation allowed two categories of previously illegal immigrants in California to become legal residents through the process of amnesty: those who were here before 1982; and special agricultural workers (SAWS, also alternatively referred to as replenishment agricultural workers, or RAW), those engaged in farm employment for at least ninety days between May 1985 and May 1986. Some 900,000 pre-1982 illegal immigrants had been approved for residency as of August 1992, along with 550,000 SAWS. SAWS applications turned out to be five times the entire number of seasonal agricultural workers in California, according to the Employment Development Department. The total number of IRCA amnesty applications in California was approximately 1,636,000, far higher than anticipated.

California has received more immigrants in recent years than any other state in the union. In fiscal year 1991, according to the INS, California was the intended state of residence for fully 40% of legal immigrants (47.9% of legalization immigrants and 27.6% of others).¹¹ Eleven of the top twenty metropolitan areas of intended residence, including three of the top five, were in California. The

10. Felicity Barringer, *U.S. Population Passes 256 Million, Bureau Says*, N.Y. TIMES, Dec. 30, 1992, at A12.

11. The high incidence of legalization immigrants is possibly misleading because such immigrants were already here, although these numbers will come into play (and have already) when legalization immigrants become eligible to bring family members into the United States.

U.S. Census Bureau estimates that more than three in ten of all immigrants to the United States from July 1991 to July 1992 settled in California. Other estimates, however, are higher. According to Georges Vernez, thirty-seven percent of what he calculates as California's 6.1 million population growth in the 1980s was foreign immigration. Of the 8.9 million legal immigrants to the United States since 1980, 3.2 million — more than a third — came to California, more than to New York, Texas, Florida, and Illinois combined, states that are often lumped in with California as having the biggest immigration problems. More than half of the three million amnesty immigrants were in California. The state has received 655,000 political refugees since 1986, almost one-half the national total. One in three in the Los Angeles-Long Beach statistical area is now foreign, and one in five in the Anaheim-Santa Ana area.¹² Immigrants now comprise a larger share (more than twenty percent) of the state's population than at any time since at least 1920.

A City of Los Angeles analysis of Census data found that forty-four percent of the city's adults were born in another country, including thirty-eight percent of the adults in the San Fernando Valley, an area traditionally thought of as white suburbia.¹³ Three in ten adults spoke a language other than English at home. The number of Asians tripled from 1980 to 1990, while the number of Latinos doubled.

B. Projected Future Growth in Foreign-Born Population

In order to determine likely foreign-born population growth in the immediate future, it is instructive to look at growth in the immediate past. The components of California's average yearly growth in the late 1980s were as follows:

12. Robert Reinhold, *A Welcome for Immigrants Turns to Resentment*, N.Y. TIMES, Aug. 25, 1993, at A1, A12.

13. Dorothy Peters, UNITED PRESS INT'L, Aug. 1, 1993.

SOURCES OF GROWTH, ANNUAL AVERAGE INCREASES, 1985-1990		
NATURAL INCREASE (BIRTHS MINUS DEATHS)	316,000	44%
NET DOMESTIC MIGRATION	162,000	23%
NET IMMIGRATION FROM ABROAD	237,000	33%
LEGAL IMMIGRATION	137,000	
UNDOCUMENTED IMMIGRATION	100,000	
TOTAL	715,000	100%
SOURCE: California Department of Finance, May 1992.		

Recent statistics reported by the California Department of Finance show a sharp slowing and then reversal of domestic migration. From June 1990 to June 1991, domestic migration fell from 207,000 to 26,000. It then fell further to negative 46,000 in fiscal year 1992, and negative 252,000 in fiscal year 1993.

Overall population statistics for California since 1980 are demonstrated in the following chart:

**ESTIMATES OF POPULATION OF CALIFORNIA
AS OF JULY 1, AND COMPONENTS OF CHANGE — 1980-1993
(In Thousands)**

COMPONENTS OF CHANGE										
NET MIGRATION										
FOREIGN MIGRATION										
Year	Total	Change	Births	Deaths	Natural Increase	Illegal	Legal	Total	Domestic	Total
1980	23782									
1981	24278	496	413	189	224	100	148	248	24	272
1982	24805	527	425	186	239	100	116	216	72	288
1983	25337	532	435	188	247	100	101	201	84	285
1984	25816	479	437	191	246	100	106	206	27	233
1985	26403	587	457	202	255	100	119	219	113	332
1986	27052	649	481	200	281	100	129	229	139	368
1987	27717	665	493	214	287	100	134	234	144	378
1988	28393	676	517	216	303	100	139	239	134	373
1989	29142	749	547	216	331	100	137	237	181	418
1990	29976	834	594	213	381	100	146	246	207	453
Total		6194	4799	2005	2794	1000	1275	2275	1125	3400
Annual Average		619	480	201	279	100	128	228	113	340
1991	30646	670	609	213	396	100	148	248	26	274
1992	31300	654	613	216	397	100	203	303	-46	257
1993	31742	442	587	212	375	100	219	319	-252	67
Total		1766	1809	641	1168	300	570	870	-272	598
Annual Average		589	603	214	389	100	190	290	-91	199

Source: Demographic Research Unit, Department of Finance, February 1994

Some demographers believe the slowed economy has made California less attractive for out-of-state migrants. Others cite reasons such as high business costs, crime and school problems, and greater congestion.

It remains to be seen whether foreign immigration will also fall. There are reasons to believe it will not. At least one demographer¹⁴ projects a "high end" range of population of as much as fifty million people by 2010, with growth driven in large part by high fertility rates among the immigrant population already here. Others note that social and economic conditions overseas lead people to immigrate to California, and thus that foreign immigration may continue even if the recession decreases job opportunities here.¹⁵

The most recent population growth estimates by the U.S. Census

14. LEON F. BOUVIER, CENTER FOR IMMIGRATION STUDIES, FIFTY MILLION CALIFORNIANS? (1991). In addition, a January 1990 State Senate Office of Research report concluded that IRCA has not stopped illegal immigration over the long run. SENATE OFFICE OF RESEARCH, REPORT ON SELECTED ISSUES RELATING TO UNDOCUMENTED PERSONS IN SAN DIEGO (1990).

Bouvier projects a national population of 396 million by the year 2050, given current immigration trends. LEON F. BOUVIER, CENTER FOR PUBLIC POLICY AND CONTEMPORARY ISSUES, THE DEMOGRAPHY OF AMERICA'S FUTURE 3 (1993) [hereinafter BOUVIER, DEMOGRAPHY OF AMERICA'S FUTURE]. The U.S. Bureau of the Census projects an increase of 131 million from 252 million in 1992 to 383 million in 2050, with the major part of the increase Hispanic and Asian. Whites will decline from 75% to 53% of the population. U.S. BUREAU OF THE CENSUS, SER. P25, NO. 1092, CURRENT POPULATION REPORTS, POPULATION PROJECTIONS OF THE UNITED STATES, BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1992 TO 2050, at vii (112th ed. 1992); see also Dennis A. Ahlburg & James W. Vaupel, *Alternative Projection of the United States*, 27 DEMOGRAPHY 639, 648-60 (1990) (projecting a possible population of 500 million in 2050 and 811 million by 2080).

15. Relative population pressure between different parts of the world will also undoubtedly continue to play a part. Two of California's principal sources of immigration, Asia and Latin America, are growing very quickly, somewhat slower than in the recent past, but still at more than twice the rate of North America. Current doubling times for population are 43 years for Latin America, 52 years for Asia, and 110 years for North America. U.S. BUREAU OF THE CENSUS, *supra* note 14; UNITED NATIONS POPULATION FUND, THE STATE OF WORLD POPULATION (1993). The population of Mexico is expected to rise from its current 88 million to 125 million in the next 15 years. *Id.*

World population, which is growing by 900 million a year, will not stabilize until the end of the 22nd century, at 11.6 billion, according to senior U.N. population analyst Armindo Miranda. At the same time, after decades of steady increases, world per capita food production has recently declined along with increased deforestation, water use, and topsoil loss. Michael D'Antonio, *Apocalypse Soon; The Latest Overpopulation Alarm Has a Twist: Not Only Lives But Lifestyles are at Stake*, L.A. TIMES, Aug. 29, 1993, Magazine, at 18. Increased immigration pressure is one consequence of this deferred Malthusian dynamic. According to the United Nations Population Fund:

The impact of international migration is far greater than the figures suggest: numbers are substantially greater than reported; migrants are often in the peak years of fertility; migrants tend to concentrate in a few areas, increasing their visibility and the perception of cultural differences; and the economic integration of migrants is not matched by their social integration in the host society. . . . [T]he 'migrant profile' has changed significantly from the 1960s when flows were dominated by skilled and professional workers. Family unification

Bureau, released April 20, 1994, project a population for California of 47.9 million by the year 2020. According to the projections, California will lead the nation in population growth, with 16.5 million new residents, and increase its share of the U.S. population from 12.2% to 14.7%. Ten million of the new arrivals will be foreign immigrants. The Latino share of the population will increase to 36.5% (from 27.3% in 1993), while whites will drop to 34% (from 52% in 1993), Asians will increase to roughly 20% and blacks will increase marginally to 8%. California's so-called dependency ratio, the number of young and elderly compared to workers, will continue to increase. Four million Californians will leave for other states. Initial reaction from the Demographic Research Unit of the California DOF was to confirm that its projections were similar.

The INS does not track the reasons for immigrants choosing a particular city or state in which to reside. However, members of the INS research division believe that the two main reasons for location decisions are existing family location and existing ethnic communities. Other reasons no doubt include the traditional motivations for coming to California, including weather, economic opportunity, and popular imagery. In addition, the relatively generous government benefits here (even after recent cuts, California has one of the highest welfare levels in the country), together with easy residency requirements, cannot be entirely discounted as factors, although costs, particularly housing, are higher.

If past trends continue, using a conservative estimate of thirty percent of the seven million legal immigrants who will arrive in the United States this decade, California could receive 2,100,000 legal immigrants in the 1990s, or 210,000 per year. To this figure might be added 100,000 illegal immigrants, assuming that illegal immigration remains at the same level in the 1990s as in the 1980s, bringing

has been a major influence on the composition of flows in recent years. Increasing numbers of women and undocumented migrants have raised the proportion of unskilled workers.

UNITED NATIONS POPULATION FUND, *supra*, at ii. International smuggling of immigrants to the United States is on the rise. Pamela Burdman, *Smuggling of Immigrants — No Letup*, S.F. CHRON., July 14, 1993, at A1.

Immigration pressures similar to those faced by the United States are leading Western European nations to restrict entry. In France, the Interior Ministry has said it aims for "zero immigration." *Zero Option*, ECONOMIST, June 12-18, 1993, at 57. In Germany, the Basic Law or Constitution has been amended to restrict the almost universal right of asylum it offered. Greece is rounding up and deporting illegal Albanian entries, and Italy is preventing more from arriving. Other nations from Sweden to Austria have pulled out the welcome mat, particularly in the wake of mass refugees from the disintegration of Yugoslavia. Bruce W. Nelan, *Europe Slams the Door*, TIME, July 19, 1993, at 38.

the new immigrant figure to 310,000 annually.¹⁶ The evidence to date seems to bear these estimates out. Since 1990, population growth in California has slowed but immigration has not. In 1991 and 1992, the state took in 303,000 immigrants and lost a net of 41,000 residents to other states.

The Demographic Research Unit of the California DOF has used a projected net figure of 300,000 foreign immigrants annually until the year 2005. These estimates show a small positive domestic migration in 1990-1991 and net domestic out-migration in 1991-1992 and 1992-1993. Total net migration to California in 1992-1993 was 67,000.

In addition to immigration, continuing social and political upheavals around the world, ranging from change and ethnic tension in Eastern Europe and the Soviet Union to the return of Hong Kong to China, can be expected regularly to generate flows of refugees, which past history shows the United States will be called upon to accommodate. Historically, many of these flows, such as from Southeast Asia and Iran, have ended in California.¹⁷ California has been receiving approximately thirty percent of refugees initially coming into the country, or approximately 35,000 per year, although this has been slowing with the increase in Eastern European refugees (and may also with those from Haiti). This percentage probably increases with subsequent refugee relocation.

Total annual immigrants and refugees to California in the 1990s therefore will likely be in the range of 300,000 to 350,000 a year. However, this could understate the ultimate impact on the state due to several factors. First, the 465,000 places reserved for regular

16. The usual rough estimate is that California receives one-half of 200,000 annual illegal immigrants into the United States. However, data in this area is imprecise and fragmentary. One source calculates a conservative estimate is closer to 300,000. CENTER FOR IMMIGRATION STUDIES, IMMIGRATION-RELATED STATISTICS-1993 (June 1993).

In 1993, the Census Bureau in fact updated its estimate to increase annual illegal immigration to 300,000, the 1980 figure to 3 million, and the 1993 figure to 4 million, made up as follows:

California	2,083,000
Texas	521,000
New York	371,000
Illinois	270,000
Florida	137,000
Others	618,000
	4,000,000

This occurred shortly after the state's Demographic Research Unit had estimated 1.3 million illegal immigrants in January 1993. Tony Bizjak, *Trying to Count the Uncountable*, SACRAMENTO BEE, Aug. 15, 1993, at A5.

17. There has been some recent return activity to Southeast Asia from refugee camps. Overall, foreigners (both refugees and immigrants) leaving California have averaged 30,000 annually.

(non-IRCA) family preferences (see discussion below of current immigration law) are likely to have a high Mexican and Asian percentage, and immigration to California from Mexico and Asia is higher than the national average. (This was also true in the 1980s, when California received initially twenty-five percent of national immigration.) Recent immigrants in general, and Hispanic immigrants in particular, tend to have high fertility rates. Because of these higher fertility rates, the immigrant population will then produce larger numbers of children, who should be factored into growth projections resulting from immigration.

A second major factor will be the amnesty population. Some 54% of the nationwide pre-1982 amnesty applications were made in California, and 53% of SAWS applications. These populations were heavily male (57% of pre-1982 applications and 82% of SAWS).¹⁸ As early as November 1992, these immigrants began achieving citizenship and became eligible to bring in family members. This could have a major impact on California. As soon as the legalization immigrants become citizens, five years after obtaining permanent resident status, their immediate relatives become automatically eligible to join them in the United States. In addition, unmarried adult children of citizens have first preference for the regular immigration proceedings.

It is very difficult to project numbers for such "chain migration," since it is hard to predict how soon the legalization immigrants will go through the process of obtaining citizenship. However, California could reasonably expect to receive a substantial portion of the 465,000 family reunification immigrants permitted in the country annually, given the fact that half the IRCA amnesty applications are in California. Using a conservative figure for California of thirty percent of permitted family reunification immigrants, this means as many as 140,000 legal family reunification immigrants could be anticipated annually in the state throughout the 1990s. Calculated another way, if each IRCA-legalized immigrant accounts for one additional immigrant (the number is not larger because many family members are already here), the 1.5 million amnesty immigrants would result in an additional 1.5 million immigrants over the decade.

18. The prominence of single males in SAWS (47%), among illegal immigrants apprehended by the INS, and to a lesser degree in pre-1982 IRCA populations, means that the full impact of population growth from higher fertility rates for immigrant populations is yet to come, when these largely male populations have families. The impact to date has come largely as a result of previously legal, not illegal immigrants. However, there is also strong evidence that many SAWS do not live in the United States.

This is consistent with the projection of 140,000 annually, and would be a subset within the overall immigration figures calculated above.

The initial evidence is that such legal immigration through IRCA immigrants will be substantial. Legal immigration from Mexico, the country of origin of the overwhelming number of amnesty immigrants, more than doubled in 1991-1992, up 108% from 22,515 to 46,905. Overall legal immigration to California jumped twenty-three percent, from 193,278 to 237,492. Asians comprised fifty-four percent of this total, a drop of five percent. According to the Demographic Research Unit, "[m]ost of this change was due to a large increase in the number of immigrants coming from Mexico to California . . . due to family reunification of persons who were legalized in the amnesty . . . program."¹⁹

Updated figures for calendar year 1992 are similar. Under the 1990 amendments to federal immigration law, there was a dramatic reduction, from fourteen to two years, in the waiting time for immigration of spouses and children of citizens from Mexico and the Philippines. A total of 810,635 persons then immigrated legally to the United States in 1992, up fifteen percent from 1991, one of the largest one-year increases since the turn of the century. Fully forty-one percent of these people, or 336,663, came to California, 129,669 to the Los Angeles-Long Beach area alone.²⁰ Chain migrations can also occur in other immigrant categories for which there are "pierceable" caps in the 1990 Immigration Act. In effect, the number of relatives who can come in is virtually unlimited.

One caveat, however, may be economic conditions. If the California economy continues to decline, illegal immigration may fall, and family reunification may be delayed. Typically, the IRCA population consists of a male working in a lower-skilled job. Economic conditions may lead to slowed growth of these types of jobs, which grew dramatically in the 1980s. However, California DOF figures showed continued population growth of 442,000 in 1993, similar to previous years, despite economic recession and high unemployment.

An unknown factor is the effect of the North American Free Trade Agreement (NAFTA). Some predict that short-term economic dislocation in Mexico as a result of NAFTA, privatization, and restructuring in the Mexican economy will send fresh waves of immigration across the border. (This may occur anyway because of agricultural reforms in Mexico's overpopulated and underemployed countryside.) Others believe long-term improvements in the Mexican

19. DEMOGRAPHIC RESEARCH UNIT, CALIFORNIA DEP'T OF FINANCE, LEGAL FOREIGN IMMIGRATION TO CALIFORNIA FISCAL YEAR 1992, at 1 (1993).

20. These figures do *not* include illegal immigrants, estimated at 200,000 to 300,000 nationally each year. They also do not include a further 163,342 persons granted legal status under the 1986 amnesty law (IRCA).

economy will ease immigration to the United States. Of course, both may be true. In any event, free trade or not, through market forces low-skill jobs naturally seek low-wage labor; these jobs will either be exported or willing workers will be imported.

In summary, there is reason to expect another approximately three million foreign immigrants will arrive in California in this decade, as well as continued high rates of fertility among immigrants already here.²¹

C. Sources of Immigration

According to the INS, in federal fiscal year 1992, a total of 237,492 legal immigrants came to California. This was a twenty-three percent increase over the 1991 figure of 193,278. The 1993 figure is expected to show the same level as 1992.

The Demographic Research Unit of the California DOF has tabulated these figures by region of origin as follows. These figures include legal immigrants, refugees approved and admitted, and asylees approved. They do *not* include illegal immigrants, for which no reliable figures are available.

NUMBER AND PERCENT OF IMMIGRANTS TO CALIFORNIA BY AREA AND FEDERAL FISCAL YEAR OF ENTRY					
AREA	NUMBER		PERCENT		FY 91-FY 92 PERCENT CHANGE
	FY 1991	FY 1992	FY 1991	FY 1992	
ASIA	114,733	128,549	59	54	12
NORTHAMERICA	42,788	70,077	22	30	64
EUROPE	25,172	27,195	13	11	8
SOUTHAMERICA	4,756	5,642	3	2	19
AFRICA	4,002	4,361	2	2	9
OCEANA	1,827	1,668	1	1	9
TOTAL	193,278	237,492	100	100	23

Source: Demographic Research Unit, Department of Finance, August 1993, based on data from INS, *Aliens Granted Legal Permanent Residence in the United States, Fiscal Year 1991-1992*.

21. Bouvier projects a range of from 3,108,000 to 4,144,000 legal and illegal immigrants to California in the 1990s.

According to the Demographic Research Unit, the area with the largest percentage and numerical change from fiscal year 1991 to fiscal year 1992 was North America, with a percentage change of sixty-four and a numerical change of 27,289. Most of this change was due to a large increase in the number of immigrants coming from Mexico to California. This increase was due to family reunification of persons who were legalized in the amnesty (Immigration Reform and Control Act of 1986) program. The number of immigrants from Mexico increased 108% from 22,515 to 46,905. Immigrants from the former Soviet Union totaled 12,627, a twelve percent decline from fiscal year 1991.

The Demographic Research Unit also calculated legal immigration to California by country in federal fiscal year 1992, similarly based on INS data:

COUNTRIES THAT CONTRIBUTED 2,000 IMMIGRANTS OR MORE IN FY 1992							
AREA/ COUNTRY	NUMBER		FY 91-FY 92 PERCENT CHANGE	AREA/ COUNTRY	NUMBER		FY 91- FY 92 PERCENT CHANGE
	FY 1991	FY 1992			FY 1991	FY 1992	
ASIA	114,733	128,549	12	EUROPE	25,172	27,195	8
Vietnam	21,457	33,367	56	Armenia	NA	5,920	NA
Philippines	25,935	25,149	-3	United Kingdom	2,591	4,030	56
China Mainland	11,891	11,565	-3	Ukraine	NA	2,327	NA
Taiwan	5,509	7,470	36	All Other	22,581	14,918	-34
India	5,857	6,915	18				
Iran	10,874	6,817	-37	NORTHAMERICA	42,788	70,077	64
Korea	6,461	5,790	-10	Mexico	22,515	46,905	108
Hong Kong	4,405	4,509	2	El Salvador	7,444	11,827	59
Laos	4,779	4,409	-8	Guatemala	2,698	3,940	46
Japan	1,580	4,073	158	Canada	1,906	2,201	15
Thailand	3,068	3,376	10	Nicaragua	5,155	2,125	-59
All Other	12,917	15,109	17	All Other	3,070	3,079	0

Source: Demographic Research Unit, Department of Finance, *Legal Foreign Immigration to California Fiscal Year 1992*, at 2, /August 1993, based on data from INS, *Aliens Granted Legal Permanent Residence in the United States, Fiscal Year 1991-1992*.

According to the INS, forty-six percent of immigrants were male and fifty-four percent were female. The median age of immigrants in fiscal year 1992 was 27.7, compared to 30.0 in fiscal year 1991. Almost half of the new immigrants were in the 19 to 44 age group in fiscal year 1992. Few immigrants are over the age of sixty-five.

PERCENT AGE DISTRIBUTION OF IMMIGRANTS BY YEAR OF ENTRY					
YEAR	AGE				TOTAL
	<19	19-44	45-64	65+	
FY 1991	27	50	16	7	100
FY 1992	32	49	14	5	100

Source: Demographic Research Unit, Department of Finance, *Legal Foreign Immigration to California Fiscal Year 1992*, at 2, August 1993, based on data from INS, *Aliens Granted Legal Permanent Residence in the United States, Fiscal Year 1991-1992*.

For that portion of the immigrant population age sixteen and over, half were homemakers, retired, students, or unemployed, while a quarter were in professional or technical employment, fourteen percent were employed in blue-collar industries, eight percent were in service industries, and three percent were in farming or fishing industries.

As noted, none of the above figures include illegal immigration after IRCA was enacted in 1986. No reliable figures are available. However, as stated above, estimates of this flow are in the 200,000 to 300,000 range annually. It also stands to reason that the breakdown of illegal immigration is likely heavily skewed toward Mexico and Central America because of the proximity and porousness of the border. The U.S. General Accounting Office as of August 1993 estimated that the "likely maximum" number of illegal aliens in the United States is 3.4 million. Other sources have estimated that there were 1,283,000 illegal immigrants residing in California as of October 1992, with 596,000 from Mexico, 187,000 from El Salvador, 83,000 from Guatemala, 142,000 from Asia, and 45,000 from Europe. Also in 1993, the Census Bureau updated its own estimate to four million illegal immigrants nationally, and 2.1 million in California.

D. Changes in Immigration Law

Previous federal immigration and refugee law (pre-1990) admitted approximately 580,000 immigrants and refugees annually into this country. This included 270,000 "general" immigrants — 216,000 admissions for immigrants with family members in the United States, and 54,000 admissions for individuals (and their families) with special employment skills. In addition, immediate relatives of U.S. citizens could be admitted with no numerical ceiling; this category has numbered approximately 220,000 annually. "Immediate relatives" are spouses, minor children, and parents. The final category for admission is refugee status. This number is set each year by statute and has been approximately 125,000 annually, although the actual number of refugee immigrants has been approximately 90,000 annually during the past five years.

Immigration law was changed, effective in 1990, to sharply increase the number of immigrants allowed into the country from the prior limit of 490,000 (270,000 general immigrants, 220,000 immediate relatives), to the new annual limit of 700,000 immigrants (675,000 after 1994). Of this number, 520,000 of these places are

reserved for family preferences (480,000 after 1994), of which some 25,000 visas were reserved for families of legalized IRCA immigrants for fiscal years 1992 through 1994.²² Immediate relatives of U.S. citizens, while still given automatic entry, are now counted as a part of the 520,000 family preference visas. However, if immediate family visas exceed 294,000, there will continue to be at least 226,000 visas available for other family preferences such as brothers, sisters and adult children (*i.e.*, the 520,000 cap is “pierceable”).

Another 140,000 visas are reserved for immigrants with special employment skills, or unskilled laborers in industries in which there is a shortage of U.S. laborers. The number of those actually admitted under this preference rose from 59,525 in 1991 to 116,198 in 1992. Of these 140,000 employment-based visas, 10,000 are available for those individuals who invest at least \$1 million in new commercial enterprises that employ at least ten people. This section of the bill was included with the knowledge that a number of Hong Kong businessmen would be trying to leave the colony before it reverts to Chinese control in 1997. Only fifty-seven people applied under this provision in 1992.

The final 40,000 visas are reserved to “increase the diversity” of the immigrant pool. This is achieved by making special allowances for individuals from countries with a small number of immigrants to the United States, a provision which was enacted into law with the support of Senator Edward Kennedy (with an eye to immigration from Ireland).

Refugees are still a separate class of immigrants, and their numbers will continue to be addressed separately. Assuming annual average refugee numbers remain at 90,000, this will make the total annual immigration under the new 1990 law approximately 800,000.

A final class of legal immigrants includes those claiming asylum, fleeing a “well-founded fear of persecution” in their home countries. This category is not limited, and theoretically, at least under the Bush Administration’s prior interpretations, could include all 1.2 billion Chinese fleeing their country’s one-child-per-family population

22. One of the intentions of Congress in adopting the 1990 reforms was to alleviate the backlog of visa applicants seeking reunification with their family members who were legalized under IRCA. To that end, Congress inflated the total immigration figures for the first three fiscal years by 25,000 and set aside 55,000 visas specifically for these reunification applicants (raising the overall family reunification figure from 465,000 to 520,000). Congress assumed that after three years the backlog would be eliminated. Consequently, provisions were included in the 1990 reforms to eliminate the special set-aside for IRCA reunification in 1995, requiring instead that such applications be processed along with other family preference visas. To offset the increased demand which is sure to result, the Immigration Act increases the allocation of family preference visas in 1995 from 465,000 to 480,000. Additionally, the overall immigration cap will be reduced in 1995 by 25,000, from 700,000 to 675,000. *See* 136 CONG. REC. S17,106 (1990) (statement of Sen. Kennedy).

control policy. It is also a category which is widely acknowledged to be abused. In the mid-1980s, on the order of magnitude, 20,000 people a year claimed asylum in the United States; in 1992 the figure was more than 103,000, and the projection for 1993 was 120,000. The backlog of asylum cases for hearing is now some 300,000, with only 150 officers to hear them. California alone had 110,407 asylum applications pending as of October 1, 1992. As one commentator put it, this is a long way from the defecting Russian ballerina whom the law's drafters probably had in mind.

Claimants are often released before a hearing and disappear. Revised asylum guidelines in July 1990 have continued to be abused.²³ The situation has led to U.S. officials pleading with Mexico to let a boatload of illegal Chinese immigrants land there, since if they landed in the United States they could claim asylum and effectively stay indefinitely.²⁴

Perhaps an additional category should be considered of those immigrants who are here illegally and who are apprehended, but who then stymie deportation because of system abuse similar to asylum. According to a recent article, the INS fails to deport three out of four immigrants ordered out of the country. The sheer number of illegal immigrants is overwhelming the system. "So the pressure builds and we start releasing," said one officer.²⁵ The lack of money to process deportations is also critical. Nearly 10,000 law enforcement officers, including Border Patrol agents, special agents, inspectors, and examiners, send cases to just 276 deportation officers nationwide. From 1988 to 1992, the nationwide deportation caseload increased from 133,000 to 200,000. Many awaiting hearings disappear or fail to appear. In 1989, the Federal General Accounting Office found that very few illegal immigrants were deported, and a quarter failed even to attend their hearings. Non-criminals are released first, but so are some criminals.²⁶

23. *They're Coming*, *ECONOMIST*, July 24-30, 1993, at 23, 23-24; Patrick J. McDonnell & William J. Eaton, *Political Asylum System Under Fire, Faces Revision*, *L.A. TIMES*, July 19, 1993, at A1, A14.

24. *Our Lax Asylum Laws Reform of Fundamental Flaws are Necessary*, *SAN DIEGO UNION-TRIB.*, July 14, 1993, at B8.

25. Pamela Burdman, *Deportations Stymied—Sheer Number of Illegals*, *S.F. CHRON.*, Aug. 17, 1993, at A1.

26. *Id.*

E. Immigration on the National Level

The current sustained level of immigration to the United States is the highest in U.S. history and unprecedented in its ethnic and cultural composition. Bouvier describes the numbers and make-up:

Immigration reached a then historical peak in the 1905-1914 period, when about eight million people moved here. . . . After 1920 immigration to the United States fell substantially, and it was not until the 1950s that it increased again. The 1965 amendments to the Immigration and Naturalization Law signaled the beginning of an "immigrant boom" that has had and will have significant consequences for the nation.²⁷

Since 1968 immigration levels have soared, and in the 1980s the number of newcomers surpassed that noted in 1905-1914. When even a conservative estimate is made of illegal entries, the total number entering the country over the 1980s exceeded nine million. . . . In marked contrast to the first decade of the 20th century when about 85 percent of all immigrants came from Europe, by the 1980s only 15 percent came from Europe while some 80 percent came from Latin America, the Caribbean, and Asia. . . . The 76 percent Anglo share of the 1990 [national] population marked a substantial reduction from the 85 percent share in 1950.²⁸

A *Newsweek* cover story in mid-1993, in which a survey found that sixty percent of Americans thought immigration now hurt the country although it was a good thing in the past, described what it termed the immigration backlash. Largely as a result of increased levels of immigration, the annual population increase in the United States (more than three million a year) is by far the highest in the industrialized world. We admit more legal immigrants than the rest of the world combined.²⁹

These changes are reflected in California at the state level. The number of immigrants has increased rapidly in the last decade, and the composition has changed. More immigrants entered California in the 1980s than in the five previous decades. One in four California residents is now foreign-born, versus one in six a decade ago. There has been a decline in the level of education. Along with an increasing concentration in a few states, the new wave of immigrants is concentrated in only a handful of major metropolitan areas. One in three of the new immigrants goes to California. Of these, three in five go to Los Angeles metropolitan area, which means that the Los Angeles area is home to fully one-fifth of the *nation's* immigration.

27. Ironically, the 1965 amendments were advertised specifically as avoiding the very effects they proved to have. Senator Edward M. Kennedy (D-Mass.) agreed, "First, our cities will not be flooded with a million immigrants annually. Under the proposed bill, the present level of immigration remains substantially the same. Secondly, the ethnic mix will not be upset. Contrary to charges in some quarters, [the bill] will not inundate America with immigrants from any one country or area, or the most populated and deprived nations of Africa and Asia." *Hearings on H.R. 2580 Before the Subcomm. on Immigr. of the Senate Comm. on Judiciary*, 89th Cong., 1st Sess. (1965).

28. BOUVIER, *DEMOGRAPHY OF AMERICA'S FUTURE*, *supra* note 14, at 2-3.

29. Tom Morganthau, *America: Still a Melting Pot?*, *NEWSWEEK*, Aug. 9, 1993, at 16.

One-third of Los Angeles County and forty percent of the City of Los Angeles is foreign-born.³⁰

Bouvier estimates that California took 34.54% of the legal immigration in the 1980s, or 2,331,300 of 6,750,200 people. Next highest was New York with 14.21%; Texas with 8.81%; Florida with 6.51%; Illinois with 5.94%; and New Jersey with 3.94%.³¹

This massive increase in immigration occurred despite the lack of an express policy rationale. In March 1981 the Hesburgh Commission, a Select Committee on Immigration and Refugee Policy, had reported that immigration was "out of control." It noted, "this is not the time for a large-scale expansion in legal immigration." Yet within ten years, there were two major immigration reforms — the 1986 IRCA law which legalized nearly three million illegal aliens, and the 1990 amendments increasing legal immigration, which, along with a major and continuing influx of illegal entries, led to the highest immigration levels in U.S. history.³² The 1990 changes alone raised the limit for legal immigrants by forty percent to 700,000 a year, more than the rest of the world put together.

V. IMMIGRATION COSTS AND MANDATES

Large-scale immigration is imposing enormous financial burdens on California and, in particular, on its largest county, Los Angeles, home to thirty percent of the state's population. The California Health and Welfare Agency has estimated that the state hosts nearly forty percent of the nation's refugees, fifty-four percent of amnesty immigrants, more than fifty percent of illegal immigrants, and is the intended state of residence for forty percent of all legal immigrants. California has approximately twelve percent of the nation's population.³³ A recent series of independent studies in Southern California's most populous counties, including Orange, San

30. Georges Vernez, *From Bonanza to Headache: Immigration in California has Changed Character*, SAN DIEGO UNION-TRIB., Oct. 15, 1993, at B7.

31. POPULATION-ENVIRONMENT BALANCE, BALANCE DATA/STATE BY STATE IMMIGRATION INTO THE UNITED STATES IN THE 1990s (Washington D.C., Aug. 1992).

32. Faced with a similar situation in Canada, one Canadian commentator has written, "The most glaring defect in the government's mass immigration program is the absence of any reasonable explanation for it. . . . Whether Canada takes in 250,000 or 50,000 immigrants annually will have virtually no effect on third world population, but a high rate of immigration is having a major impact on Canada." Michael Valpy, *It's Not Racist to Discuss Immigration*, GLOBE & MAIL (Toronto), Sept. 16, 1993.

33. CALIFORNIA HEALTH AND WELFARE AGENCY, A FAILED FEDERAL PROMISE (1993).

Diego, Los Angeles, and Ventura, showed marked and disproportionate fiscal impacts from a growing immigrant and refugee population. These impacts are largely uncompensated by the federal government.

It is important not to blame these costs on legal immigrants, who merely follow the rules we make. Illegal immigrants, by contrast, know they break the laws of their host country. Immigrants historically have built this country, and continue to make important contributions, not least of which are drive and work ethic (and indeed, often stronger family structures than exist in the resident population). We should want legal new arrivals to this country to be successful. To be successful, they need help. California cannot, and should not be asked to, provide this help alone.

Instead, the blame is the federal government's, which effectively is asking California to pay for national immigration and refugee policies as much as four times out of proportion to its population.

VI. COUNTY COSTS

A. *Los Angeles County*

In April 1991, the Chief Administrative Officer of Los Angeles County released memoranda detailing the costs of illegal immigration. According to the study, 62.6% of all births in Los Angeles County's public and contract hospitals in fiscal year 1990-1991 were to illegal immigrants, up from 54.9% in fiscal year 1988-1989. One-half of the \$249.1 million federal share of AFDC in the county went to these children. Net estimated county costs for public health, education and welfare benefits to these families totalled \$276.2 million in 1990-1991, an increase of a third in just one year, from \$207.2 million in 1989-1990.

A November 1992 report by the Los Angeles County Internal Services Department suggested that the county's total immigrant population of 2.3 million imposed large net costs on county government. According to the study, Los Angeles county paid \$946.7 million in 1991-1992, or 30.9% of total County costs, to provide public services to recently arrived immigrants (legal immigrants, illegal immigrants and their children, and amnesty immigrants), who in turn paid \$4.3 billion in taxes to federal, state, and county governments. Only \$139 million of this amount, or 3.2% (10% of county revenue), went to the county for a net cost to the county of \$308 million, \$2.6 billion (60%) went to the federal government, \$1.2 billion (27%) to the state, and \$356 million (8%) to other local entities.

In total, immigrants paid 8.7% of total taxes despite a twenty-five percent share of the population, indicating the relatively lower wage scales of many immigrant jobs, and suggesting that, at least in the

short term, the net per capita contribution of immigrants is less than a third of that of non-immigrants — 35 cents generated per dollar of public services consumed, versus \$1.22 for non-immigrants. Illegal immigrants (700,000 of the total) received \$308.4 million in county services, and paid only \$36.2 million in county taxes, but an additional \$777 million to the state and federal governments.

The report found that immigrants constituted 25% of the population, accounted for 23% of spending in the criminal justice system, 21% in the social services, and 68% in the county public health system. These costs totalled 30.9% of county expenditures. Education costs were estimated at \$1.485 billion, or 23% of the total costs in Los Angeles County school districts. Of these costs, \$368 million (5.7% of total school spending) was for illegal immigrant children and \$662 million (10.3%) was for citizen children of illegal immigrants. No figures were given for state or federal services and impacts.

These numbers support the notion that, with the notable exception of public health services where immigrants' use is three times their share of the population (see table below), for other county services and for education, immigrants do not use more than their "fair share" of resources according to population. However, they *do* use more than their "fair share" according to tax contributions.

The revenue and expenditure figures show a cost-benefit ratio for the county of 3.1 for the immigrant population (i.e., \$3.10 spent for each \$1.00 of taxes), versus 0.77 (i.e., 77 cents spent for each \$1.00 of taxes) for the non-immigrant population. This means that the net cost of county services is four times more expensive for immigrants than for non-immigrants. Without full federal assistance, the effect is that the non-immigrant population is heavily subsidizing the costs of immigration, both legal and illegal. Alternatively, local taxpayers are subsidizing employers of cheap labor.³⁴

Another county study identified a mismatch between tax receipt and service provision as the main culprit, finding that immigrants in

34. The liberal Urban Institute in Washington D.C. has criticized the Los Angeles County study because, the Institute asserts, natives and long-term residents also cost government more than they pay. (Actually, this is not supported by the figures in the Los Angeles County study.) However, it reached the same basic conclusion: the per capita cost to county government of recent immigrants is higher than for the rest of the population. In addition, the criticism identified no evident reason in the first place to accept any greater financial burden than already exists. Greg Miller, *Immigrant Costs Overstated, Study Finds*, L.A. TIMES, Sept. 3, 1993, at B1, B4; Vlae Kershner, *Think Tank Hits L.A. Study of Immigrant Costs*, S.F. CHRON., Sept. 3, 1993, at A17.

Los Angeles County paid \$4.3 billion in taxes to all levels of government in 1991-1992, but only \$139.1 million went to the county. The county paid out \$947 million in services, with schools costing an additional \$1.5 billion.³⁵

A subsequent study by Julian Simon asserts that both the Los Angeles County study and Huddle's studies (see below) are wrong, citing a variety of other studies from 1970 and 1980 Census data, and even earlier to 1960. "Immigrants do not abuse the welfare system, nor do they steal jobs from native-born Americans," the study says. Simon as well suggests the basic problem is one of tax distribution between levels of government.³⁶

Healthcare is an area of particular concern. Fiscal year 1993-1994 Medi-Cal costs for illegal aliens statewide are estimated at \$880 million, three times the cost figure of \$299.4 million only four years earlier, in fiscal year 1989-1990. These costs are concentrated in a few counties, with Los Angeles County alone home to more than half the estimated illegal population, more than 700,000 people and growing by 66,000 a year. Most of the care is provided by the county's six public hospitals and forty-five health centers. Two-thirds of the births in Los Angeles County public hospitals are to illegal aliens. Although illegal immigrants form an estimated 7.6% of the county population, they use \$159.5 million or nearly a third of county indigent healthcare expenses, in addition to \$273.7 million of Medi-Cal expenses, for a total of \$433.2 million.

The following figures show the disproportionate use of county healthcare dollars by all immigrants, legal and illegal, in Los Angeles County.

	% OF POPULATION v. % OF HEALTHCARE COSTS
Children of Illegal Immigrants	2.7 v. 6.8
Recent Legal Immigrants	6.9 v. 23.7
Illegal Immigrants	7.6 v. 29.6
Amnesty Immigrants	7.6 v. 7.6
Rest of Population	75.0 v. 32.2

35. Patrick Lee, *Studies Challenge View That Immigrants Harm Economy*, L A TIMES, Aug. 13, 1993, at A1, A33.

36. Julian L. Simon, *The Nativists are Wrong*, WALL ST. J., Aug. 4, 1993, at A8.

B. Orange County

Another recent study has examined the uncompensated fiscal impacts of immigration in Orange County.³⁷ The study suggested that, in the five-year period following the passage of IRCA, Orange County Medi-Cal caseloads increased 145% and its AFDC caseload rose 76%. The number of children citizen cases doubled in the last year. Like the later Los Angeles County report, the Orange County study predicted a substantial further impact on financial assistance programs because of higher fertility rates and younger age structure of the immigrant population, and the expiration (beginning in the spring of 1992) of the five-year IRCA ineligibility period for federal financial assistance.

The Orange County study also found significant impacts from refugees, who constitute 24% of all children on AFDC in Orange County, 30% of all AFDC costs, and more than 50% of all AFDC cases three years or longer. These costs are exacerbated by the federal policy of not tying the level of refugee funding to the number of refugees admitted. The study also noted that the federal government does not enforce the pledges of financial support by friends or relatives for sponsored immigrants admitted outside the regular quota system and who are ineligible for federal assistance for their first three years of U.S. residency. As a result, immigrants in this category make up fifteen percent of Orange County's general assistance caseload. In total, Orange County estimates that it is spending approximately \$9.8 million a year, or forty-four percent of total county expenditures for public assistance, on immigrants. In other reports, an estimated \$31 million was provided for hospital care for illegal aliens. Medi-Cal costs doubled from \$29.5 million in fiscal year 1990 to \$59.8 million in fiscal year 1992.

C. San Diego County

A third major county study, by the State Auditor General, concluded that uncompensated illegal immigration is a considerable burden to San Diego County and probably to the state overall.³⁸ The Auditor General found that illegal immigrants in San Diego County — an estimated 200,000, or nine percent of the County's population

37. ORANGE COUNTY SOCIAL SERVICES AGENCY, IMMIGRATION AND FINANCIAL ASSISTANCE CASELOAD GROWTH (1991).

38. AUDITOR GENERAL, FISCAL IMPACT ANALYSIS OF UNDOCUMENTED IMMIGRANTS RESIDING IN SAN DIEGO COUNTY (1992).

— paid a total of \$60.5 million annually in local and state taxes, but incurred \$206.4 million in state and local government costs (\$105.8 million for criminal justice, \$26.6 million in health services, \$60.7 million in education and \$13.4 million in social services), for a net cost of \$145.9 million. Noting that these estimates were conservative, the report concluded that if other California counties had the same cost and revenue structure as San Diego, “the net quantifiable state and local cost associated with undocumented immigrants throughout the state is estimated to be approximately \$3 billion.”³⁹

In another San Diego study, San Diego State University researchers Richard Parker and Louis Rea found San Diego County costs of \$244 million (\$5 billion for the entire state) for an estimated 220,000 illegal immigrants, up from an estimated \$146 million (\$3 billion for the state) the year before.⁴⁰ Parker and Rea found per capita state and local tax revenues of \$270, and costs of \$380, for each illegal immigrant.

D. Ventura County

According to a report dated December 2, 1993 from the Ventura County Chief Administrative Officer, illegal immigration costs Ventura County’s health, welfare, and criminal justice systems approximately \$15 million a year: \$11.4 million for health and welfare services and \$3.6 million for criminal justice. County officials earlier released a study (in November 1993) showing one half of the women who delivered babies and twenty-seven percent of the patients admitted to the public Ventura County Medical Center were in the United States illegally.

VII. STATE COSTS

Uncompensated state costs associated with immigration are significant and substantial. Federal law imposes significant cost mandates on California in regard to both legal and illegal immigrants, who settle in disproportionate numbers in California.

A. Medical Care

First, federal legislation requires states to provide a Medicaid program (in California’s case, Medi-Cal) for illegal immigrants as well

39. An earlier report on such costs in San Diego County suggested they may be substantial and called for further research. SENATE OFFICE OF RESEARCH, *supra* note 14.

40. ILLEGAL IMMIGRATION IN SAN DIEGO COUNTY: AN ANALYSIS OF COSTS AND REVENUES. REPORT TO THE CALIFORNIA STATE SENATE ON BORDER ISSUES (1993).

as legal immigrants and refugees. Federal law prohibits checking eligibility of illegal immigrants, and therefore claims of poverty in order to qualify for Medi-Cal cannot be confirmed. Illegal immigrants are exempted from requirements to prove eligibility by supplying social security numbers or other documentation.⁴¹ California also is required by federal law (Omnibus Budget Reconciliation Act (OBRA) 1986) to pay for approximately half of the cost of providing emergency and pregnancy-related services to undocumented residents who meet Medi-Cal-related income and other standards of eligibility. More than 400,000 of these California residents are eligible for services each month, with associated total costs budgeted for 1992-1993 at nearly \$1 billion, including about \$474 million from California's General Fund. This has been the fastest-growing category of Medi-Cal costs.

In 1993-1994, Medi-Cal costs for illegal immigrants were \$811 million, including forty percent (96,000 of 237,000) of births to Medi-Cal recipients. Labor and delivery services make up a third of total OBRA Medi-Cal expenditures. Pre-natal care expenses have been driven from \$17.7 million in 1989-1990 to \$82 million in 1993-1994, a 360% increase in four years. This open-ended entitlement is in contrast to the capped state appropriation for the Access for Infants and Mothers (AIM) program, which provides pre-natal and well-baby care to low-income California families that are legally resident.

Locally, county governments in California are responsible for providing basic and emergency health care to indigent adults who do not meet Medi-Cal eligibility standards. No statewide figures are available for these costs, including those provided to illegal immigrants.

B. Education

Second, as a result of the 1982 U.S. Supreme Court decision in *Plyler v. Doe*,⁴² current federal law requires that the children of illegal immigrants be schooled at state expense, and state law, of course, requires that legal immigrant children be schooled. In *Plyler*, the Texas Legislature had enacted a statute withholding state funds from local districts for the education of children not legally admitted

41. See, e.g., Irene Wielawski, *Humanitarian Health Laws Leave Door Open to Abuse*, L.A. TIMES, Sept. 1, 1993, at A14.

42. 457 U.S. 202 (1982).

into the United States, and authorizing local school districts to deny enrollment. Texas specifically argued the classification was required to preserve the state's limited resources for the education of its lawful residents. While acknowledging the problem was a direct result of federal dereliction, the Court concluded, in a 5-4 decision, that the state of Texas had the responsibility to educate these children.⁴³

In California, foreign immigration is the driving force behind the state's substantial school-age population increase, which included approximately 220,000 additional children in 1992 and some 140,000 in 1993. At current K-12 funding levels of approximately \$4,200 per pupil, this translated to an annual incremental cost of \$1 billion.

The California DOF most recently estimated 942,852 immigrant students in California or nearly nineteen percent of total statewide enrollment, at a state and local cost of more than \$3.6 billion. Illegal immigrants between the ages of 5 and 17 are estimated to number 456,000 in January 1995, with 392,000 in public classrooms. A July 27, 1993 RAND report found that California has forty-five percent of *all* immigrant students, nationwide.⁴⁴

Uncompensated immigration also sets the education system into a vicious cycle: unprecedented cultural diversity requires increased resources, expertise, and services; but in fact less money is available for these because of the press just to keep up with enrollment and the costs of other social programs. As a result, large urban school districts fall ever farther behind.

C. Welfare

Together, subsidized healthcare and education constitute two of the three major cost-drivers in California's rapidly escalating general fund expenditures. The third is welfare, or AFDC, where despite the lack of a direct federal mandate, federal law prevents reduction of benefits below 1989 levels absent a waiver, in order to maintain eligibility for federal funds. State AFDC costs to immigrants (including refugees) in 1992-1993 were estimated at \$401 million.

Illegal immigration is suspected of playing a major role in the doubling of the AFDC rolls in the 1980s. The November 1992 Los Angeles County report cited above noted that one of the greatest

43. The dissenters, however, added a footnote.

It does not follow, however, that a state should bear the costs of educating children whose illegal presence in this country results from the default of the political branches of the Federal Government. . . . If the Federal Government, properly chargeable with deporting illegal aliens, fails to do so, it should bear the burdens of their presence here.

Id. at 242 n.1 (Burger, J., dissenting).

44. The report, by Lorraine McDowell and Paul Hill, found that immigrant schoolchildren are clustered in a half-dozen big city school systems, most notably in California, and that they are being poorly prepared for a place in American society.

fiscal impacts of illegal immigration has been on AFDC payments to citizen children of ineligible alien parents who entered the United States illegally.⁴⁵ The report noted that the number of these children in Los Angeles County grew steadily in the early 1980s, dropped with the enactment of IRCA in 1986, and then began a steady rise from 40,682 in January 1989 to 97,665 in February 1991. This is consistent with the report's assertion that IRCA has been ineffective in arresting illegal immigration, other than in the few immediate years after its passage.

The report stated a concern that total AFDC payments to these children and their families could quadruple to \$1 billion a year by the end of the decade, even without further illegal immigration, for a number of reasons: the number of citizen children will grow because of the high birth rate and relatively young age of the illegal immigrant population; more than 850,000 illegal immigrants have applied for amnesty in Los Angeles County, and by the end of 1993 all who have been legalized will be eligible for AFDC; and, finally, under the 1990 Immigration Act, pre-1988 illegal immigrant spouses and children of legal immigrants may not be deported, and are permitted to receive AFDC benefits after five years. Los Angeles County has the greatest impact from these costs, but the same is true to a lesser degree throughout California.

Statewide, the number of citizen children on AFDC has increased nearly 400% in six years, from 40,800 in 1987-1988 to 193,800 in 1994-1995. For 1994-1995, the total AFDC costs for these children are estimated at \$553 million, education costs at \$400 million, and health costs at \$157 million. California has not sought federal reimbursement for any of these citizen children costs.

D. Migrant Labor

Migrant farm workers, a major category source of employment for immigrant labor, are another source of immigrant-related costs (although, as is true generally, the economy also realizes a benefit from immigrant labor). The final report of the State of California's Farm Worker Services Coordinating Council,⁴⁶ found that due to chronic underemployment, California agriculture averaged 350,000 year-

45. A child can become eligible for AFDC even though the parents are here illegally; the mother gets the check. Tom Bethell, *Immigration: The Problem is Federal Rules*, L.A. TIMES, Sept. 12, 1993, at M5.

46. STATE OF CALIFORNIA FARM WORKER SERVICES COORDINATING COUNCIL, COORDINATING CALIFORNIA'S FARM WORKER SERVICES (Nov. 1992).

round equivalent jobs for 900,000 workers. Seventy-seven million dollars in annual direct, unreimbursed state costs, and \$16.9 million in indirect costs, were identified as spent in 1990-1991 on programs and services both specifically for farm workers and their families and on programs and services in agricultural areas likely to serve a significant number of farm workers. The report noted:

In addition to the problems associated with chronic underemployment, it appears that migration patterns may also be changing. Instead of returning to Mexico, more workers and their families appear to be settling here. If these trends continue, California farm worker assistance programs are likely to become immigrant integration programs for up to 100,000 newly arrived workers each year. The continued immigration of workers and the chronic underemployment in California are conditions that dramatically impact the plight of the farm worker and the ability of state and local agencies to respond to their needs.⁴⁷

E. Prisons and Jails

Finally, in fiscal year 1992-1993, California spent some \$243 million for the costs of incarcerating illegal immigrants in the state's correctional system. This includes inmate housing, parole costs for both standard and summary felon parolees, and illegal aliens in the California Youth Authority. In the current fiscal year, costs are \$375 million, plus \$18 million for illegal juveniles in the California Youth Authority, and \$9.2 million in parole costs. The California Department of Corrections estimates that about fifteen percent of the state prison population, all felons, are eligible for deportation. The U.S. Bureau of Prisons says that more than a quarter of those felons are in federal prisons. Local prison costs add to this burden. Los Angeles County prison costs are put at \$75 million, exclusive of apprehension or civil costs; those for San Diego County, where county officials estimate illegal immigrants commit twelve percent of the felonies, are \$151 million.⁴⁸ The State Board of Corrections estimates there are about 7,000 illegal immigrants in California jails at annual costs of more than \$117 million.

The California State Legislative Joint Committee on Prison Construction and Operations issued a report entitled *The Criminal Alien*

47. *Id.*

48. Part of the problem is asserted procedural requirements: "Illegal immigrants have the right to criminal counsel at public expense. They have the right to a jury trial and to judicial appeals. They can appeal a deportation order too. . . . [M]any . . . cannot be deported. . . . If their country refuses to accept them, or if they can prove that deportation would endanger their lives, the United States must keep them here." Dianne Klein, *A Hit or Miss Approach to Curbing Deportable Felons*, L.A. TIMES, Nov. 27, 1993, at A1.

on March 22, 1993.⁴⁹ It reported that the cost of keeping all immigrants in state and local California prisons and jails is \$497 million, exclusive of processing, administrative and court costs and losses from the criminal activity. Twelve to fifteen percent of state inmates, eight percent of California Youth Authority wards, and nine to eleven percent of county inmates are immigrants, seventy-five percent of whom are here illegally. Seventy percent are Mexican and twelve percent are from other Latin American countries. In total, 21,170 of the 109,000 inmates are foreigners (the percentage figure for federal inmates is even higher, about twenty-six percent of the population of 76,000). The report concluded: "Absent a federal initiative, California's best option would seem to be to organize and lead a coalition of 10 to 20 impacted states in pursuit of federal funding or federal assistance in housing serious alien felons in federal institutions."⁵⁰ The report urged quicker deportation of convicted felons, leasing unused portions of new state prisons to the federal government, tougher sentences for re-entry by deported felons, a \$1 to \$2 border-crossing fee, and better coordination between the Legislature and the Governor for a comprehensive legislative approach.

On April 22, 1994, the Clinton Administration asked Congress to authorize \$350 million to California and other states that incarcerate significant numbers of illegal immigrant prisoners.⁵¹ According to news reports, California will receive approximately \$200 million in the federal fiscal year beginning October 1994, and the state will spend an estimated \$403 million to jail 18,000 non-citizens during the state's fiscal year beginning July 1994. No actual appropriation, however, was made.

Prison costs for immigrants may get worse before they get better. According to a recent article in *California Lawyer*, the journal of the California State Bar Association, immigration will undoubtedly affect the crime rate. Older people, with generally law-abiding ways, will continue to leave the state. The percentage of 10 to 24-year-old males, the group most prone to trouble, will increase to thirteen percent by the year 2000. The population will also be more diverse and less homogenous. By the year 2020, the percentage of Hispanics will

49. THE CALIFORNIA STATE LEGISLATIVE JOINT COMMITTEE ON PRISON CONSTRUCTION AND OPERATIONS, *THE CRIMINAL ALIEN* (1993).

50. *Id.*

51. News reports speculated that the Administration's move was in reaction to a potentially more expensive amendment to the pending crime bill to make such reimbursement automatic beginning in 1998. James Bornemeier, *U.S. Aid Urged for State Prison Costs*, L.A. TIMES, Apr. 23, 1994, at A25.

rise from 26% of the state's population to 41%, while whites will fall to the same 41% from 57%; blacks will dip from 7% to 6%, and Asians will rise from 10% to 12%. According to the article, the criminal system will be increasingly filled with people unacquainted with American customs and legal standards, immigrants from countries where people are reluctant to report crimes or otherwise cooperate with police.⁵²

Federal help in offsetting any of these costs has been minimal. In the Immigration Reform and Control Act of 1986 (IRCA), Congress established the State Legalization Impact Assistance Grant (SLIAG) program to partially reimburse states for costs of providing public health, public assistance, and educational services to aliens granted lawful permanent residence. A total of \$3.5 billion (after "offsets" for certain federal costs) was to be provided to the states by IRCA during the five years such aliens were ineligible for many federal benefits. In establishing SLIAG, the federal government tacitly acknowledged that the amnesty population would have a major impact on state and local costs.

Of the 3 million amnesty applicants granted lawful residency under IRCA, 1.6 million reside in California. California has incurred more than \$1.9 billion in SLIAG-defined costs for these amnesty immigrants to date, and projects such costs through fiscal year 1994 at \$2.18 billion. As of October 1992, however, California had received only \$1.63 billion in SLIAG funds, a shortfall of hundreds of millions of dollars which was expected to grow.

Congressional action on SLIAG put the viability even of this promised partial funding in doubt. The federal fiscal year 1990 and fiscal year 1991 Labor-HHS-Education Appropriations Acts deferred \$1.12 billion of SLIAG funding to fiscal year 1992. However, actual proposed appropriations in 1992 were zero until strong protests from California resulted in an appropriation of \$325 million in October 1992, thus effectively stripping \$812 million from the previously approved \$1.1 billion that had been set aside for health and education programs for legalization immigrants. The Clinton Administration budget submitted in early 1994 for fiscal year 1994-1995 contained zero dollars for such reimbursement.

F. Refugee Costs

The federal policy of shifting immigration program costs to state and local government also applies to refugees. The Federal Refugee Act of 1980 requires that refugees be immediately eligible for AFDC, SSI/SSP, and Medicaid when they enter the country. At the

52. Philip Hager, *California Courts, The Future of Crime*, CAL LAW, Nov. 1993, at 31, 32.

time the Act was passed, the federal government realized that the required match for these programs would have a significant financial impact on state and local general funds. Therefore, the Act provided that the federal government would reimburse the states for the non-federal share of these programs during the first thirty-six months refugees were in the country. Also, to protect state and local general assistance programs, the Act provided for full federal funding of a special Refugee Cash and Medical Assistance Program (RCA/RMA) for those needy refugees who did not qualify for the categorical programs during their first thirty-six months in the country.

This reimbursement commitment was conditioned on the appropriation of adequate funding. However, there has been a steady series of cutbacks from this commitment, to the point that in January 1993, RCA/RMA was terminated and replaced with a privately run program which may not be adequate to prevent further cost transfers.⁵³ In the meantime, between 1986 and 1992, when most of these cost transfers took place, annual refugee admission levels nearly doubled, from 62,000 to 120,000. The impact to the state of California has been to transfer costs of nearly \$200 million each year to state and local taxpayers for the costs of AFDC, SSI/SSP, and Medicaid services provided to refugees each year.

G. Total Costs

What do all these numbers add up to? The California Department of Finance estimated the cost of immigration-related services to the state at approximately \$4.787 billion in 1992-1993, including \$474 million in Medi-Cal, \$444 million in AFDC and SSI/SSP, \$243 million in Corrections, and \$3.626 billion in K-12 school costs. This figure was broken down to \$1.687 billion for illegal aliens, \$158 million for legalization immigrants under IRCA,⁵⁴ \$121 million for refugees,

53. The issue of discretionary or mandatory reimbursement has been addressed in *Thongsamouth v. Schweiker*, 711 F.2d 465 (1st Cir. 1983). The court held the language of Title 8, U.S.C. § 1522(e)(1) requiring payment of special cash and medical assistance benefits to refugees is merely permissive and confers complete discretion upon the Director of the Office of Refugee Resettlement.

54. In at least one California county, the 1986 legalization of amnesty immigrants by IRCA is directly blamed for an explosion in costs. The 1993 Orange County Grand Jury, in calling for a nationwide three-year moratorium on immigration, noted the IRCA response in Orange County was overwhelming, 192,000 amnesty applications, of which 88% came from Mexican nationals. Claimed IRCA effects from 1986 to 1991 were a 145% increase in Medi-Cal (470% for Hispanics), a 76% increase in AFDC (154% for Hispanics), and a doubling, to 20%, of the AFDC share of citizen children. For the period 1983-1989, immigrant families comprised 50% of the AFDC caseload, and 30%

and \$2.821 billion for legal immigrants and citizen children (i.e., children born in the United States of illegal immigrants). These figures do not include local government costs, nor do they include indirect costs such as additional burden on physical infrastructure like roads, water and sewers, increases in housing prices, additional air pollution, or just plain crowding.⁵⁵

of county births in 1989 were to illegal immigrants. The report also found severe overcrowding in many instances.

55. By way of comparison, the Governor of Florida, Lawton Chiles, has claimed that illegal immigrants cost his state more than \$1 billion annually. The INS estimates that some 345,000 illegal immigrants reside in Florida, versus some 2.1 million in California. A 1994 report prepared by the Governor's office and the Florida Advisory Council on Intergovernmental Relations, entitled *The Unfair Burden: Immigration's Impact on Florida*, calculated that Florida state and local governments in 1993 spent \$884 million on healthcare, education, prisons, and other public services for illegal immigrants. The report, the first attempt to cost out those services, reportedly is being used to support a lawsuit filed by Florida against the federal government. *Chiles v. United States*, No. 94-0676 (S.D. Fla. Dec. 20, 1994). Florida's suit was dismissed.

California followed suit shortly thereafter. After announcing his plans in a speech in Los Angeles on April 25, 1994, Governor Wilson filed the first in what he said would be a series of lawsuits against the federal government for the cost of providing services to illegal immigrants. Governor Pete Wilson, Speech at Los Angeles Townhall (Apr. 25, 1994), in 60 VITAL SPEECHES 534 (1994). Suit was filed April 29, 1994 in United States District Court in San Diego, seeking \$377.8 million for the costs of incarcerating nearly 17,000 illegal immigrant prisoners, an order that the INS take custody of such felons upon the end of their sentences and deport them directly into their own countries rather than at the border, and \$1.6 billion reimbursement for the costs of building eight new prisons. The state argues that existing federal immigration policy violates the 10th Amendment to the U.S. Constitution, which reserves to the states those powers not specifically enumerated to the federal government, because it effectively requires California to spend 10% of its tax dollars in ways it does not choose. The suit also charges that the effective shift of immigration costs to the states violates the constitutional provision establishing a republican form of government. *California v. United States*, No. 94-0674 (S.D. Cal. Feb. 13, 1995). California's suit was also dismissed. At the same time, Wilson announced he would increase from 49 to 176 the number of National Guard troops assigned to the border to repair and build roads and mend fences, thus freeing up the U.S. Border Patrol to apprehend illegal immigrants.

Meanwhile, at least one Los Angeles city councilman has called for a similar suit against the state.

In 1992, New York sued the federal government for failing to take custody of both legal and illegal immigrants in that state's prison system. Negotiations are currently underway to resolve these claims.

COST OF IMMIGRATION-RELATED SERVICES TO THE STATE OF CALIFORNIA FISCAL YEAR 1992-1993 (Dollars In Millions)					
	TYPE OF IMMIGRANT				
	Refugees [a]	Amnesty [b]	Undocumented [c]	Other [d]	Total
AFDC					
State	\$99	\$39	0	\$263	\$401
Federal	\$111	\$42	0	\$287	\$440
Total	\$210	\$81	0	\$550	\$841
SSI/SSP					
State	\$20	\$23	0	0	\$43
Federal	\$20	\$28	0	0	\$48
Total	\$40	\$51	0	0	\$91
Medi-Cal					
State	\$2	\$96	\$376	[e]	\$474
Federal	\$21	\$96	\$377	[e]	\$494
Total	\$23	\$192	\$753	[e]	\$968
K-12 Education					
State	[f]	[f]	\$1,068	\$2,558	\$3,626
Federal	[f]	[f]	[f]	[f]	[f]
Total	[f]	[f]	\$1,068	\$2,558	\$3,626
Corrections					
State	[f]	[f]	\$243	[f]	\$243
Federal	0	0	0	0	0
Total	[f]	[f]	\$243	[f]	\$243
Total					
State	\$121	\$158	\$1,687	\$2,821	\$4,787
Federal	\$152	\$166	\$377	\$287	\$982
Total	\$273	\$324	\$2,064	\$3,108	\$5,769

[a] Services provided only to time-eligible refugees.
 [b] Services provided to immigrants who have obtained legal status under the Immigration Reform and Control Act.
 [c] Services provided to undocumented immigrants pursuant to the Omnibus Budget Reconciliation Act of 1986.
 [d] Services provided to permanent resident immigrants and citizen children whose parents are legalized or undocumented immigrants. Identifiable costs only.
 [e] Unknown, but probably tens of millions of dollars.
 [f] Unknown

Source: Department of Finance, *From Adversity to Opportunity*, Governor's Budget 1993-1994 (January 1993).

According to the Wilson Administration, state and local figures for fiscal year 1993-1994 were also substantial for both illegal immigrants and citizen children, totalling almost \$3 billion:

	STATE COSTS (million)	TOTAL (million) (inc. local)
Medi-Cal (Emergency)	\$367	\$734
Medi-Cal (Pre-natal)	\$82	\$82
Corrections	\$380	\$490
K-12	\$636	\$1,100
Citizen Children AFDC	\$236	\$472
Citizen Children Medi-Cal	\$35	\$70
	\$1.736 billion	\$2.948 billion

Average daily K-12 attendance by citizen children was 255,000, up from 158,800 in 1988-1989, with a corresponding rise in costs from \$640 million to \$1.1 billion. The number of illegal immigrants incarcerated for felonies rose from 5,581 in 1988-1989 to 16,392 in 1993-1994, with a rise in costs from \$104.3 million to \$350 million. The number of monthly eligible recipients of Medi-Care under OBRA provisions requiring treatment of illegal immigrants rose from 23,750 (\$22 million) in 1988-1989, to an estimated 368,830 (\$367.6 million) in 1993-1994. Monthly Medi-Cal treatments of citizen children rose from 38,800 (\$8 million) in 1988-1989, to an estimated 176,750 (\$35 million) in 1993-1994. AFDC payments to citizen children rose from \$45 million to \$236 million during the same period.

For 1994-1995, the Wilson Administration estimated illegal immigration costs to the state of \$2.5 billion: \$1.7 billion for public education, \$402 million for prison costs, and \$400 million for health services under Medi-Cal. The Governor sought federal reimbursement of \$2.3 billion, allowing for the later start of the federal fiscal year:

1994-1995 IMMIGRATION REIMBURSEMENT PROPOSAL		
PROGRAM	POPULATION	STATE COSTS
Education	392,260	\$1.7 billion
Corrections	23,363	\$300 million
Medi-Cal	390,000	\$300 million
TOTAL		\$2.3 BILLION

These figures do not include any costs for citizen children or capital costs. Addition of the former and some modest estimates for the latter brings the total annual state costs related to illegal immigration

to \$3.6 billion.

H. California's Attempt to Secure Federal Reimbursement

The Wilson Administration sought reimbursement for California from the federal government for a substantial portion of these unfunded federal mandates for fiscal year 1993-1994, but to little avail. In a January 18, 1993 letter to President Clinton, released contemporaneously with the Governor's 1993-1994 budget, Governor Wilson complained about unfunded federal mandates and noted that three-quarters of the state budget is devoted to education, health, and welfare. The letter stressed the impact of federal requirements that states provide benefits for immigrants and refugees, and assessed the costs of such benefits at more than \$4 billion. The Governor's Budget 1993-1994 states:

Given the state's extraordinary fiscal problems, California can no longer continue to subsidize federal immigration policy. Accordingly, the Governor's Budget for 1993-1994 proposes that the federal government formally acknowledge its financial responsibilities associated with immigration policy. The Governor has requested the federal government, beginning in the 1993-1994 fiscal year, to assume financial responsibility for a variety of mandated health, welfare and correctional programs. Specifically, the budget is predicated upon Congress authorizing and appropriating funds totalling \$1.5 billion, no later than May 15 for the following purposes:

- The balance of federal SLIAG funds owed the state, primarily for federally mandated entitlement programs: \$324 million.
- Enhanced federal funding for the cost of refugee resettlement: \$104 million.
- 100% federal funding for the cost of AFDC grants provided to citizen children of undocumented parents: \$209 million.
- 100% federal funding for the cost of Medi-Cal services provided to citizen children of undocumented parents: \$31 million.
- 100% federal funding for the cost of Medi-Cal services provided to legalized and undocumented immigrants: \$534 million.
- Full federal funding for the cost of incarcerating undocumented immigrants in state prisons: \$250 million.

These federal funds are needed in order to allow the state to continue providing high priority education, public safety, health and social services to all of the state's residents. If the state is unable to obtain additional federal funding as budgeted, the state will be forced to reduce services for non-federally mandated services.

The Wilson Administration also later ran full-page ads in the *New York Times*, *Washington Times*, and *USA Today* in August 1993 to bolster its claims that California's quality of life and economic recovery were "under siege" from illegal immigration and to urge the repeal of federal mandates. The Governor also suggested to the Clinton Administration that California be the testing ground for a new

tamper-proof federal identification card to keep illegal immigrants from receiving public benefits or getting jobs in the United States.⁵⁶

The Wilson Administration's request did not include any reimbursement for K-12 school costs for immigrants, which totalled \$3.626 billion in fiscal year 1992-1993. In any event, ultimately only \$324 million in SLIAG funding was provided, after a conference committee deleted funding for emergency healthcare for illegal immigrants.

This scenario may be repeated. The Governor's budget for fiscal year 1994-1995 has requested some \$2.5 billion in federal reimbursements for immigration, including \$1.7 billion to educate 392,260 school-age illegal immigrant children, \$400 million to provide emergency and pregnancy-related medical care to 390,000 illegal immigrants, and \$403 million to imprison more than 18,000 illegal immigrant felons. President Clinton's 1994-1995 budget has provided for zero funding.

I. *What Are The Real Costs?*

The California DOF figure, despite its size, of nearly \$4.8 billion in fiscal year 1993-1994 state costs for immigrant-related services, including education, does not give a complete picture of total costs. It did not include any amount for additional state and local spending for transportation, solid waste and sewer facilities, school construction, clean water and air treatment, or other infrastructure necessitated by a larger population. State infrastructure spending varies (the 1991-1992 figure was \$1.8 billion; the 1992-1993 figure was \$4.8 billion); \$1.5 billion is a conservative annual figure. In addition, state financing costs for this funding (i.e., interest on G.O. bonds) has risen steadily from \$630 million in 1989-1990 to \$1.501 billion in 1992-1993; it is not expected to go down. A total annual figure of \$3 billion in capital costs and interest is therefore not unreasonable. It may be open to debate whether all of this is incremental spending related to population growth (e.g., open space and parks may not

56. Bill Stall, *Wilson Expands on Plan for ID Card*, L.A. TIMES, Sept. 10, 1993, at A3.

Meanwhile, the issue of immigration also found its way into the gubernatorial campaign in California, with State Treasurer Kathleen Brown, then widely expected to be a Democratic candidate against Wilson, making her own proposals for a tamper-proof social security card, employer sanctions, and military troops on the border. Danelia Wild, *Brown Calls for Package of Immigration Reforms*, UNITED PRESS INT'L, Sept. 29, 1993.

Governor Wilson also requested, in an August 30, 1993 letter that was made public, that Mexican President Salinas help seal the border against illegal entries. Mexican Foreign Relations Secretary Fernando Solana replied rather icily that to do so would violate the Mexican Constitution: "The proposal you make that Mexico help impede the flow of persons toward our border is unacceptable." Patrick J. McDonnell, *Mexico Rebukes Wilson Over Immigrant Plan*, L.A. TIMES, Sept. 11, 1993, at A1.

be), but given a foreign-born population of 26.5% in addition to citizen children, it is not unreasonable to attribute a quarter of this amount, or \$750 million, to this, making the total annual state immigrant-related costs approximately \$5.5 billion in fiscal year 1992-1993. The figure is undoubtedly higher for subsequent years. Costs for illegal immigrants alone will probably total \$3.6 billion in 1994-1995, and legal immigrants are estimated at twice the number of illegal immigrants in California (approximately 200,000 versus 100,000). It is not unreasonable, therefore, to believe that the total annual immigration-related state costs may exceed \$10 billion in the near future.

A frequent criticism of reports of illegal immigrant costs is that they ignore taxes such persons pay. However, the conclusion is intuitively obvious that costs must be substantially greater since illegal immigrants are lower-income for the most part, and the state's income tax is sharply progressive (i.e., those with more money pay more) while its delivery of services is regressive (i.e., the poor receive more). The best estimate is that in California, illegal immigrants pay to the state approximately one-quarter of their state costs.

In addition, it is probably not possible to quantify all costs from immigration because many of them are borne not by state government (at least not directly) but by the citizens of California in the private sector. These costs include everything from greater congestion on the roads to higher insurance costs on account of the high proportion of uninsured illegal immigrant drivers. To this must be added the costs of greater congestion, wear and tear on infrastructure, housing prices, and environmental impacts such as air quality.

Professor Donald Huddle of Rice University in Texas has purported to comprehensively analyze the public sector costs of legal and illegal immigrants.⁵⁷ He calculates current costs for 19.3 million legal, illegal, and amnesty immigrants accepted into the U.S. since 1970 at net \$42.5 billion (\$25.6 billion for the 11.97 million legal immigrants, \$11.9 billion for 4.8 million illegal immigrants, and \$5 billion for 2.52 million amnesty immigrants), or \$1,629 per capita revenue deficit for legal immigrants, versus a \$120 per capita revenue surplus for U.S.-born residents.⁵⁸

57. DONALD HUDDLE, CARRYING CAPACITY NETWORK, *THE COSTS OF IMMIGRATION* (update July 20, 1993).

58. Huddle estimates that the 7.4 million legal and illegal immigrants in California from 1970 to 1992 have cost taxpayers \$18 billion more than they paid in taxes. Two million of these have been illegal immigrants and have cost a net \$5 billion. Richard Simon, *1992 Cost of Immigrants \$18 Billion, Report Says*, L.A. TIMES, Nov. 5, 1993, at

Looking at prospective costs over the next decade, from 1993 to 2002, Huddle assumes continued immigration, legal and illegal, of 1.11 million per year. The net public cost of post-1970 immigration would then be \$668.5 billion in 1993 dollars, or some \$67 billion a year, with legal immigrants responsible for three-quarters of those costs. On average, Huddle asserts, U.S. taxpayers would save \$22 billion each year if immigration were halted. Illegal immigrants alone will cost \$221.5 billion in public assistance and employment displacement costs, but will provide only one-sixth that amount — \$35.1 billion — in taxes. Universal healthcare coverage will only add to the bill, since the poverty rate of immigrants is 42.8% higher than that of native-born Americans. Huddle asserts that permitting skilled and professional immigrants only (thirty-eight percent of the total) would save \$358.2 billion over the ten-year period and result in a revenue surplus of \$13.7 billion.

Huddle also challenges the notion that immigrants bolster the Social Security system by providing a continuing pool of younger workers. According to his calculations, in 1992 the foreign-born took out a net \$2.7 billion from the system; the native-born population contributed a net surplus of \$14.0 billion. Huddle calculates that from 1993 to 2002, the foreign-born net social security deficit will rise one percent annually, to \$2.98 billion. Thus, the addition of large numbers of foreign workers to help ensure social security solvency will have the opposite effect.

This weak contribution reflects the significantly greater proportion of low-wage earners in the foreign-born population; although they constitute 8.4% of the population, they make only 5.1% of Social Security contributions. In addition, the progressivity of the Social Security system creates imbalances in favor of low-wage immigrants: low-wage earners (defined as those making 45% or less of the national average wage) receive 58.3% of their wages in benefit levels (\$5.41 in retirement benefits for each dollar of contributions), average wage earners (100% of the average) receive 42.7% (\$3.96 in benefits for each dollar of contributions) and high wage earners (at or above the maximum salary subject to Social Security contributions) get 24% (\$2.22 for each dollar). Huddle concludes that adding large numbers of low wage earners would drain the system: "The additional payroll taxes would be modest and, in the case of families with children earning less than \$18,000, would be largely offset by refundable earned income tax credits and higher revenue losses from displacement."⁵⁹

A3.

59. DONALD HUDDLE & DAVID SIMCOX, CARRYING CAPACITY NETWORK, THE IMPACT OF IMMIGRATION ON THE SOCIAL SECURITY SYSTEM (July 20, 1993).

These studies are not unchallenged. An Urban Institute study by Jeffrey S. Passel, released in Los Angeles February 22, 1994, again took issue with Huddle's calculation and found instead that immigrants in California contribute \$12 billion more in taxes each year than they consume in services, versus Huddle's calculation of net state costs of more than \$18 billion.⁶⁰ On a national level, Passel found a net contribution by immigrants of \$28.7 billion, whereas Huddle claims a net cost of \$42.5 billion. The study was financed by the Tomas Rivera Center, a Claremont-based Latino policy study institute. Passel attacked Huddle's estimates of immigrant populations, school enrollments, and tax payments.⁶¹ In addition, a currently circulating draft report by Passel and Michael Fix of the Urban Institute, entitled *Immigration and Immigrants: Setting the Record Straight*, claims: "Overall, annual taxes paid by immigrants to all levels of government more than offset the cost of services received, generating a net annual surplus of \$25 billion to \$30 billion per year."⁶² (The draft notes, however, that most of this goes to the federal government.)

A recent State Senate Office of Research report, commissioned by State Senator Art Torres, has attempted to rebut the notion that immigrants impose special cost burdens.⁶³ Its basic point is that post-1980 immigrants to California use welfare only slightly more than do long-term residents, as a percentage of their respective populations, 4.8% versus 4.1%, respectively (actually, this is 20% higher). The report borders on the disingenuous, however, in deliberately ignoring the issue of net costs: the fact is that recent immigrants fail to generate the tax dollars that long-term residents provide.⁶⁴

60. Patrick J. McDonnell, *Immigrant Study Cites Fiscal Gain*, L.A. TIMES, Feb. 23, 1994, at B4.

61. *Id.* The Clinton Administration has hired the Urban Institute to determine the cost of services delivered to illegal immigrants and the amount of tax revenues they generate. In addition, Senator Barbara Boxer has asked the General Accounting office to look at the numbers. Both have questioned the fiscal estimates used by the Wilson Administration.

62. Jeffrey S. Passel & Michael Fix, Urban Institute, *Immigration and Immigrants: Setting the Record Straight* (unpublished draft 1994).

63. CALIFORNIA STATE SENATE OFFICE OF RESEARCH, *CALIFORNIANS TOGETHER: DEFINING THE STATE'S ROLE IN IMMIGRATION* (1993).

64. The report also asserted that *all* Americans carry per capita net government costs, but did not address the fact that residents already live here, whereas immigration policy is discretionary. The report's recommendations include a special office for immigrants with a director as "a state spokesperson for newcomers on immigrant issues," strengthening bilingualism, ensuring non-English speakers have access to government services, coordinating responses to "anti-immigrant media attacks," assisting the foreign-born in acquiring citizenship, an anti-discrimination campaign, and establishing a hot

Part of California's problem is of its own making, since the state has enacted extremely generous benefits which have now been locked in by federal regulation. According to the *Wall Street Journal*, for example, the reason illegal immigration is a major issue in California but not in Texas, is that California spends more on welfare and social services — more than \$3 billion, versus \$456 million in Texas.⁶⁵ According to another publication:

Illegal aliens are no fools. They know that the social services they will get in California are far better than those in Texas, and plan their routes accordingly. A recent study for the California legislature showed that \$5.1 billion of the \$50 billion state budget goes into services for both documented and undocumented immigrants, including about \$3.5 billion for education.⁶⁶

Essentially, as one commentator has noted, we have moved from welcoming immigration to subsidizing it.⁶⁷

Critics of immigration cost studies point out that immigrants pay taxes and provide benefit through hard work for low wages. Both of these points are undoubtedly true. However, most of the taxes paid go to the federal government, whereas most of the services are paid for at the state and local level. Second, most of the benefit goes to the private sector, whereas most of the costs are borne by the public. It is these twin imbalances which must be addressed if immigration is not to be a continuing concern for California.

New immigrants generally have an excellent work ethic, conservative family values, and do not exceed the welfare rates of long-term residents. But precisely because they are unskilled, they generate relatively little in tax revenue, while consuming an inordinate share of public resources, particularly in the schools because of their large families. The conventional wisdom, that overall immigration pays its way, is simply wrong, particularly when it is a continuing phenomenon.

In effect, California is paying the bill for the nation's immigration policies. As a practical matter, the state has been obliged to shoulder the disproportionately largest part of the considerable fiscal, social, and environmental impacts of large-scale national immigration. California is forming the human capital for much of the nation's future growth. The whole country is benefitted, but the whole country does

line to report exploitation of immigrants. *Id.*

65. *Review & Outlook: The New Neighborhood*, WALL ST. J., Oct. 12, 1993, at A20.

66. *Immigration; A Giant Sucking Sound*, ECONOMIST, June 5-11, 1993, at 28, 29. This discrepancy has not prevented efforts to enforce border restrictions in Texas, however. The Border Patrol mounted an effective blockade in the fall of 1993 at El Paso, resulting in an estimated almost 80% reduction in illegal crossings. Esther Schrader, *State Eager to Copy Border Blockade*, SAN JOSE MERCURY NEWS, Oct. 25, 1993, at A1.

67. Arnold Steinberg, *Government Policies at Root of Immigration Crisis*, L.A. TIMES, Sept. 12, 1993, at B15.

not pay. If California does a poor job of forming this human capital, in a generation the state will have a large population of poorly educated, unproductive citizens who will be free to settle as they will throughout the country, but who will be unable to make a corresponding contribution. By contrast, if California does a good job, it will enrich both itself and the nation.

The key to whether California does a good or bad job depends on its investment in this human potential. Investment will cost money. And money is in short supply. Not merely because it is right, but because it is productively self-serving, the nation must help California in this task. Under present circumstances, the cost-benefit ratio of immigration is unfairly skewed: benefits in terms of personal taxes, and business taxes based on cheap labor, flow mostly to the federal government; while costs are borne by state and especially local governments.

What significance does this have for California's future growth? First, these costs obviously are billions of dollars that we do not have available to build infrastructure, protect open space, or otherwise pay for better land use and development patterns. Second, the immigration itself is the principal driver in the population growth and impacts that spur the need to deal with growth in the first place.

VIII. PUBLIC AND LEGISLATIVE REACTION

A. Public Reaction

Public concern and controversy over immigration have been mounting. A Roper poll in 1992 found that 63% of Californians thought there were too many immigrants, the highest percentage in the nation. The national figure was 54%. Sixty-nine percent of California respondents said California's population was too large (28% nationally), and 78% said immigrants were a financial burden on the state (43% nationally).⁶⁸

In 1993, the Charlton Research Company in San Francisco found that 93% of Californians said immigration was a "serious problem," 79% said "very serious," and 89% thought it a major burden on the California economy. Eighty-one percent thought the state should not pay for immigrant education, and 79% said "no" to paying for immigrant health care.⁶⁹ A July 14, 1993 *USA Today*/Gallup Poll

68. *Immigration—and Backlash*, *supra* note 8, at A1.

69. John Jacobs, *Immigration Politics*, SACRAMENTO BEE, Aug. 15, 1993, at F04.

showed 49% of Americans said "immigration should be reduced until the economy improves," and 64% said immigrants "mostly hurt" the economy.

A Field Institute poll in August 1993 found 76% of California respondents agreeing that illegal immigration was "very serious" in California (up from 66% in 1987) and 17% "somewhat serious." Sixty-six percent supported deploying the National Guard on the border, 50% supported amending the U.S. Constitution to deny automatic citizenship to children of illegal immigrants, and 70% supported a cross-border toll. However, 70% of respondents said that immigrants made as good or better citizens and 52% said they did *not* take jobs from existing residents. Fifty-eight percent said illegal immigrants should receive emergency benefits, but not welfare (77%) and not attend public school (51%). Latinos sometimes responded just as strongly as Anglos. Two-thirds of respondents said immigrants should be able to preserve their own languages.

According to a *Los Angeles Times* poll in September of 1993, 86% of Californians described illegal immigration as a major or moderate problem. Nearly three-quarters — 73% — favored using the National Guard to patrol the U.S. southern border. Fifty-four percent favored a constitutional amendment to preclude children of illegal immigrants from automatically becoming U.S. citizens if born on American soil. However, by a 54% to 39% margin, they opposed preventing illegal immigrant children from attending school, and by 74% to 23% they opposed denying illegal immigrants emergency medical care.⁷⁰

National sentiment against liberal immigration policies also appears to be on the rise. According to an earlier poll in the summer of 1993, in addition to national polls noted elsewhere in this paper, 65% of Americans believed all immigration should be reduced and 55% said diversity mostly threatens American culture.⁷¹ A recent *New York Times*/CBS News poll reported 61% of those surveyed favored a decrease in immigration, up from 49% in 1986, 42% in 1977, and 33% in 1965.⁷² A 1992 *Wall Street Journal*/NBC poll showed 71% of those surveyed believed immigration should be cut back while 24% thought it should be allowed to remain at current levels.⁷³ Sixty percent of Americans thought immigration is "bad for the country," although it was a good thing in the past.⁷⁴ Perhaps

70. Dianne Klein, *Majority in State Are Fed Up with Illegal Immigration*, L.A. TIMES, Sept. 19, 1993, at A1.

71. *Public Wants Fewer Immigrants*, S.F. CHRON., July 23, 1993, at A26.

72. Seth Mydans, *Poll Finds Tide of Immigration Brings Hostility*, N.Y. TIMES, June 27, 1993, § 1, at 1.

73. Rich Jaroslovsky, *Washington Wire*, WALL ST. J., Dec. 18, 1992, at A1.

74. Morganthau, *supra* note 29, at 18.

more surprisingly, recent immigrants themselves may hold this view even more strongly. According to a Latino National Policy Survey, 73% of Cuban non-citizen U.S. residents, 74% of non-Hispanic white U.S. citizens, and 84% of Mexican non-citizen U.S. residents believe there are too many immigrants in the United States.⁷⁵ A CNN/*USA Today*/Gallup poll in the summer of 1993 found that 65% of respondents thought immigration should be reduced.⁷⁶

The view is beginning to re-assert itself against the "politically correct" position that multiculturalism is an unalloyed good. According to one recent commentary:

We should not let multiculturalism disunite America. The United States has been the most successful country in history in assimilating and integrating huge numbers of different ethnic and racial groups. We achieved this by turning foreigners into Americans who were educated in English, did business in English, and accepted the American Constitution, the American creed, and its values — not by bilingualism or multiculturalism.⁷⁷

Absent assimilation, the fear is that we will become little more than a collection of angry tribes who have in common only that they inhabit the same piece of real estate, a description that could well fit Bosnia.

In addition, the dimensions of the immigration flow itself retard assimilation. One commentator has said: "While it is true that many immigrants eventually assimilate, continued massive immigration retards that process."⁷⁸ And an *L.A. Times* reporter has added:

In this century, the long hiatus in large-scale immigration (from about 1925 until 1970) provided a crucial window of opportunity for the children of the great turn-of-the-century wave to be educated, assimilated and integrated. The long pause enabled the United States to invest in our own workers and improve American productivity.⁷⁹

Columnist George Will (in *Slamming Shut the Golden Door to Immigrants*, an article in the July 30, 1993 issue of *Times-Picayune*) has noted two key differences in the setting for immigration in the past and today: the current welfare culture and the weakening of assimilation:

America is not just an economy. . . . [i]t is a culture. The high rate of

75. *The World This Week: Politics and Current Affairs*, ECONOMIST, Dec. 19-25, 1992, at 6.

76. Major Garrett, *Economic Plan Includes Aliens' Medical Funds*, WASH. TIMES, July 14, 1993, at A1.

77. PETER DUIGNAN, *THE UNITED STATES: A HOPEFUL FUTURE* (Hoover Institution, 1993).

78. BOUVIER, *DEMOGRAPHY OF AMERICA'S FUTURE*, *supra* note 14, at 13.

79. Dan Stein, *Here's an Idea: Hold Off on Immigration*, L.A. TIMES, Nov. 29, 1993, at B7.

immigration since 1960, combined with the high fertility rate of immigrants relative to that of native-born Americans, is producing rapid change in the nation's ethnic and cultural balance. Peter Brimelow, a contributing editor of *National Review* and senior editor of *Forbes*, says, "The onus should not be on the critics of current policy to explain their motives. Instead, supporters of current policy must explain why they wish to transform the American nation as it had evolved by 1965."

There is increasing evidence as well that at least some of today's immigrants may not *want* to assimilate, something clearly rooted in common sense both in the greater diversity of current immigration and in the liberal political culture tolerating and even promoting cultural separateness.⁸⁰ A recent Latino mayoral appointee to a Los Angeles city commission, Xavier Hermosillo, was rejected in part by the City Council because of his undiplomatic remarks to the same end, for example that Latinos were taking over Los Angeles "block by block" and that Anglos should "wake up and smell the refried beans." According to the U.S. Bureau of the Census, English was a foreign language to 23 million U.S. residents in 1980 and to 32 million in 1990.

The immigration issue has also polarized debate⁸¹ and inspired a backlash from some liberal and Democratic quarters. Los Angeles Roman Catholic Cardinal Mahony, for example, has criticized political proposals to curb immigration, claiming that the right of people to immigrate in order to flee political persecution, or to seek economic opportunity, is more fundamental than the right of a country to control its own borders.⁸² An October 16, 1993 march in San Diego featured pro-immigrant demonstrators holding a banner with an Aztec face, reading "Who's the Illegal Alien, Pilgrim?"⁸³

Assembly Democrats in the California Legislature have tried to change the focus by concentrating on employer sanctions. One bill introduced in the 1993 Legislative Session would have allowed forfeiture of assets used by firms hiring illegal immigrants.⁸⁴ However,

80. See, e.g., Sam Fulwood III, *Children of New Arrivals Avoid Melting into the Mainstream*, L.A. TIMES, Sept. 7, 1993, at A5 (discussing a recent study by Johns Hopkins sociology professor Alejandro Portes and Michigan State sociology professor Ruben Rumbaut); David E. Hayes-Bautista et al., *A Wake-up Call at Death's Door: Chicano Studies Are Our Future*, L.A. TIMES, June 2, 1993, at B7 (asserting a Latino takeover of a dying Anglo culture in Los Angeles and noting "the slow social disintegration of a departing society").

81. Daniel M. Weintraub, *Legal Immigration to State Up By 23%, Report Finds*, L.A. TIMES, Sept. 4, 1993, at A24; Ronald Brownstein, *Polarization Marks Debate on Immigration Policy*, L.A. TIMES, Nov. 30, 1993, at A1.

82. Larry B. Stammer, *Mahony Blasts Political Stance on Immigrants*, L.A. TIMES, Oct. 9, 1993, at B1.

83. Juan Forero, *Anti-immigrant Trend Protested 400 Marchers Send Message: "Enough — Stop the Bashing,"* SAN DIEGO UNION-TRIB., Oct. 17, 1993, at B2.

84. Robert B. Gunnison, *Democrats' Sanctions for Hiring Illegals*, S.F. CHRON., Aug. 31, 1993, at B4; Eric Bailey, *Bill Would Allow Seizure of Firms Hiring Illegals*, L.A. TIMES, Aug. 31, 1993, at A16.

it is generally conceded that, to date, sanctions, at least those in the 1986 IRCA law, have been a failure. False papers are easily arranged. The INS has only 350 people to police the entire nation. Since IRCA, approximately 47,000 illegal aliens have been arrested at work, out of an estimated total of 10 to 12 million, at most a ratio of one-half of one percent.⁸⁵

Newspaper editorials have also been weighing in with judgments. The *San Diego Union-Tribune* has proposed a national identification system (August 29, 1993). The *L. A. Times* supports a tamper-proof I.D. card, enforcement of existing laws against employment of illegal aliens, a cross-border toll, better control of borders, more federal aid, economic development in sending nations, and "more carefully drawn rules" on legal immigrants and refugees.⁸⁶ The *L. A. Times* earlier suggested a "sophisticated guest-worker program," with temporary visas for immigrants to serve as nannies or home-care providers, as is done in Canada, for up to three years.⁸⁷

A number of newspapers have decried the focus on immigrants. The *New York Times* suggested it was "nativist demagogy" to blame immigrants for California's woes.⁸⁸ The *Los Angeles Times* criticized Governor Wilson as "restrictionist," in particular because of his proposal to deny citizenship to children of illegal aliens, and praised President Clinton for taking the "middle ground."⁸⁹

In California, citizens have taken matters into their own hands and circulated a popular initiative for placement on the November 1994 ballot, Proposition 187. Dubbed "Save Our State," it was promoted by former INS Western Regional Director Howard Ezell and former INS Commissioner Alan Nelson, and it would bar illegal aliens from most state services. Former Los Angeles County Supervisor Pete Schabarum had also earlier considered a second such initiative.

85. *Immigration; A Giant Sucking Sound*, *supra* note 66, at 28.

86. *The Smart Way to Get a Handle on the Immigration Issue*, L.A. TIMES, July 25, 1993, at M4; *Immigration Control: Doing It Right*, L.A. TIMES, Aug. 29, 1993, at M4; *How Best to Reduce Illegal Immigration*, L.A. TIMES, Dec. 6, 1993, at B6.

87. *Illegal Immigration: One Issue that Deserves Light, Not Heat*, L.A. TIMES, Mar. 7, 1993, at M4.

88. *California Scapegoats*, N.Y. TIMES, Aug. 16, 1993, at A16.

89. *Let's Not Panic, Says the President*, L.A. TIMES, Aug. 16, 1993, at B6; *Another False Solution for Immigration*, L.A. TIMES, Aug. 14, 1993, at B7.

B. Legislative Reaction

The increasing, and increasingly obvious, burden of immigration on California in particular caused the issue of illegal immigration to burst onto the political scene in 1993. Although earlier calls to enforce or reform immigration laws had been made (for example, by Congressman Elton Gallegly, R-Simi Valley), major policy proposals by California Governor Pete Wilson and Senator Dianne Feinstein apparently legitimized debate on the issue. Governor Wilson has noted, for example, "it is terribly unfair and wrong to be spending state tax dollars for illegal immigrants and declining it to working poor who are legal residents."⁹⁰

This has unleashed a flood of proposals to stem illegal immigration, including proposals to limit illegal immigration or to reduce costs of providing services to illegal immigrants. Proposals have been suggested by the major political players — Wilson, Feinstein, Senator Boxer, and President Clinton. These include a cross-border toll (Feinstein), use of the National Guard on the border (Boxer), sharp numerical reductions in legal immigrants and asylees (Congressman Duncan Hunter of San Diego), and tamper-proof identification and revision of automatic citizenship for children of illegal immigrants (Wilson).

Many other proposals were made in the California State Legislature. Of these, however, only four were enacted by both chambers and signed by the Governor into law in the 1993 legislative session:

- SB 691 (Kopp) to ban so-called local "sanctuary" laws, which prevented local law enforcement officials from identifying and reporting to the INS illegal immigrants who are arrested and booked for crimes.
- SB 733 (Russell) requiring state and local government and private entities to verify a person's legal right to work before providing job placement or training.
- SB 976 (Alquist) requiring first-time applicants to the Department of Motor Vehicles for a driver's license or personal identification card to produce evidence of citizenship or legal residence.
- SB 1131 to increase the penalties for making false statements to obtain Medi-Cal benefits and to penalize those who assist others in doing so.

At the federal level, President Clinton declared in July of 1993, "Our borders leak like a sieve. . . . These things cannot be permitted to continue." And the Administration's Secretary of Housing and Urban Development, Henry Cisneros, declared flatly, "There are some benefits that undocumented immigrants clearly ought not have . . . health benefits and welfare benefits and others that serve as a magnet attracting people here from other countries." Clinton's

90. Daniel B. Wood, *Confronting California's Immigration Issue*, CHRISTIAN SCI. MONITOR, Oct. 4, 1993, People, at 12.

Virtually all elected officials have continued to avoid addressing the impact of legal immigration, which is probably two or three times that of illegal immigration.

Attorney General, Janet Reno, stated in a July 6, 1993 speech before the B'nai B'rith annual convention in Washington, D.C., that growing immigration problems in the United States "will probably be the single most critical issue" she will face in office.⁹¹

Clinton Administration proposals made July 27, 1993 were developed by a task force chaired by Vice President Albert Gore and first outlined by President Clinton on June 18 of that year when he announced the nomination of Doris Meissner as the new INS Commissioner. Principally, the proposals covered asylum reform and beefing up the Border Patrol and were shaped in part by pending proposals from Senator Simpson (R-Wyoming). (The President's earlier budget on April 8, 1993 had called for a *decrease* in the Border Patrol.) The proposals included increased penalties for smuggling of illegal immigrants, additional staff to deport illegal immigrants in jail and a speed-up in asylum hearings. Nevertheless, according to critics, the proposals fell short in the asylum area, providing only for "expedited" instead of summary exclusion of asylum applicants, with a higher standard of proof. Other areas were not addressed, including employer sanctions, the 1990 increases in legal immigration, a national identification system, the issue of citizen children, or the issue of whether benefits provide a "magnet" to immigrants.⁹²

91. During the Association of Trial Lawyers of America convention in San Francisco on August 1, 1993, Attorney General Janet Reno told reporters: "One of the greatest challenges of the Department of Justice in the '90s is balancing this nation's tradition as a nation of immigrants with the serious burden [that immigration has put] on our communities." Benjamin Pimental, *Reno Seeks Immigration Solution*, S.F. CHRON., Aug. 2, 1993, at A17.

92. A July 27, 1993 "Background Briefing by Senior Administration Official" distributed in connection with the Administration's proposals stated they were an attempt "to pull together a number of initiatives and find out how to fund them in response to the World Trade Center bombing in New York and the alien smuggling problem that has existed along our borders over the last several months." The briefing suggested that the proposals break down in two parts: (1) new legislation for expedited exclusion proceedings, and additional penalties for alien smuggling, and (2) an increase in the Border Patrol and computer networking between the Border Patrol, the State Department, and the INS.

The issue of asylum and the Administration's proposed reforms in asylum and deportation regulations also came up in the briefing. For example, Sheik Obeid, the Muslim cleric accused of being behind the World Trade Center bombing, was admitted to the United States and given a visa without ever checking his immigration status. Even with a check, current procedures involve a manual microfiche system with a two-month lag. In the meantime, most asylum applicants are simply released and even given work permits. Asked one incredulous reporter at the background briefing, "You mean they're not kept in jail at all? They're just out on the town — all of them? And they've already got work permits?" The answer: "Our basic problem is that we're not able to detain everyone who has an immigration claim, because our resources are limited. . . . Normally, we do grant work authorization."

The Clinton Administration apparently rejected a Congressional proposal that apparently was in the initial planned text of Vice President Gore's proposals on "reinventing government," namely the merger of the INS Border Patrol with the U.S. Customs Agency in a new border management agency, leaving the rest of the INS to focus on assisting immigrants already here.⁹³ The House report asserted that federal immigration policy suffers from inadequate leadership, insufficient funding, failure to recognize the extent and impact of job-seekers flooding in, and "debilitating inefficiencies" in the INS.

Finally, President Clinton rejected a number of the proposals made by California's Governor Wilson, including amending the U.S. Constitution to stop automatic citizenship for children born in the United States of illegal aliens.⁹⁴ The President did state that a tamper-proof identification card "ought to be examined."⁹⁵

Other Clinton Administration proposals also bear on immigration costs. The Administration's healthcare proposals, for example, largely exclude illegal populations, leaving states like California in a difficult situation because of federal laws mandating care remain untouched. The proposed \$1 billion set-aside for illegal immigrants' care has been denounced as "absurdly low" — California's annual bill alone is \$750 to \$900 million, depending on whose estimates are

On March 29, 1994, the Administration proposed changes in refugee and asylum procedures to reduce fraud and speed up processing. The proposals would impose a filing fee, extend the waiting period for temporary work permits, and double the number of immigration judges and asylum officers assigned to the cases. Over 150,000 asylum applications were filed with the United States in 1993, up from 56,000 in 1991. The backlog of cases is up to 370,000. According to the INS, many asylum applications contain virtually identical information and are purchased by applicants in order to obtain a work permit while their cases sit.

According to the INS, the top 25 nationalities of asylum applicants were as follows:

<u>RANK</u>	<u>COUNTRY</u>	<u>APPLICANTS</u>	<u>RANK</u>	<u>COUNTRY</u>	<u>APPLICANTS</u>
1	Guatemala	34,361	14	Honduras	2,836
2	El Salvador	15,362	15	Yugoslavia	2,425
3	China	14,354	16	Nigeria	1,993
4	Haiti	11,377	17	Romania	1,591
5	Mexico	6,192	18	Ghana	1,572
6	India	5,902	19	Ethiopa	1,383
7	Pakistan	4,653	20	Colombia	1,315
8	Nicaragua	4,286	21	Liberia	1,192
9	Philippines	4,107	22	Poland	1,059
10	Bangladesh	3,759	23	Ukraine	1,027
11	Russia	3,427	24	Armenia	938
12	Peru	3,244	25	Syria	872
13	Cuba	3,010			

93. Ronald J. Ostrow, *House Report Calls for Quick Fix of INS*, L.A. TIMES, Aug. 25, 1993, at A3 (discussing the House Committee on Government Operation's report *The INS: Overwhelmed and Unprepared for the Future* published August 25, 1993); *Asking an Agency To Do Too Much*, L.A. TIMES, Aug. 26, 1993, at B6 (same).

94. David Lauter & John Broder, *Clinton Differs with Wilson Ideas on Immigration*, L.A. TIMES, Aug. 13, 1993, at A1.

95. *Id.*

used — and the proposals address neither how (or if) to provide such care, or who should pay.⁹⁶ California's Congressional delegation has criticized the proposal for failing to allocate enough money to state and local governments for providing emergency medical care to illegal immigrants.⁹⁷

In the end, the Senate approved a bill on October 21, 1993 providing \$45 million for 600 additional Border Patrol agents and \$171 million for federal immigration services, including \$40 million to build four new immigration detention facilities. Administrative steps were also taken. Additionally, a San Diego sector border fence begun in December 1990 was extended to the beach and low tide area. The force has pushed illegal immigrants into the Tucson Sector and marginally reduced apprehensions in 1992 from 565,000 to 531,000, a drop of six percent.

Additional proposals have come in 1994, some of them directed to legal immigration. One influential Senator in the immigration debate, Alan Simpson (R-Wyoming), introduced legislation (S. 1884) on March 2, 1994 to lower temporarily the number of legal immigrants and to increase penalties for those who smuggle illegal immigrants. Simpson's bill would cut legal immigration limits from 675,000 to 500,000 annually for five years, as well as cap the number of annual asylum refugees at 80,000 unless Congress raised that number for a "crisis or an emergency."⁹⁸ Simpson asserted that a "breather" was needed in legal immigration to allow the government to focus on illegal immigrants.⁹⁹

Other major immigration reform proposals introduced recently in the Congress include the following:

-HR 3862 (Stump, R-Ariz), the so-called Immigration Moratorium Act of 1994, would restrict family entries to spouses and minor children of U.S. citizens and sharply reduce political refugee and asylum entries. It would also reform asylum procedures, increase the Border Patrol, prohibit federal benefits for aliens who are not lawful permanent residents, and move to bar automatic citizenship by place of birth.

-HR 3362 (Mazzoli, D-Ky) would strengthen employer sanctions against

96. Sam H. Verhovek, *Health Proposal Could Leave Aliens in U.S. Without Care*, N.Y. TIMES, Oct. 25, 1993, at A1.

97. Vlae Kershner, *Lawmakers Press Clinton on Costs of Illegals' Health Care*, S.F. CHRON., Oct. 23, 1993, at A4.

98. Michael Ross, *Simpson Seeks 5-Year Cut in Legal Immigration*, L.A. TIMES, Mar. 3, 1994, at A15.

99. *Id.* Other calls have been made to lower the ceiling even further, to 200,000 a year. See, e.g., Yeh Ling-Ling, *The Welcome Mat is Threadbare*, L.A. TIMES, Apr. 13, 1994, at B7.

hiring illegal immigrants. HR 3363 by the same author would reform asylum law and improve immigration enforcement and anti-smuggling activities. S.1348/S.1358 (Bryan, D-Nev./Johnston, D-La.) are the companion bills in the Senate.

-HR 3320 (Bilbray, D-Nev.) would reduce legal immigration to 350,000 annually and refugees to 50,000 annually, eliminate extended family preference categories, beef up the Border Patrol, create a tamper-proof social security card, and reform asylum and deportation procedures. SB 1923 (Reid, D-Nev.) is the companion legislation in the Senate.

On April 21, 1994, the House of Representatives authorized the hiring of 6,000 new Border Patrol agents and added a provision of federal reimbursement to state and local governments that incarcerate illegal immigrant felons. No money was appropriated, however. Under the legislation, after October 1998 such reimbursement would be automatic. As of May 1994, the legislation had yet to pass the Senate and to be signed into law.¹⁰⁰

IX. WORKFORCE NEEDS

High birth rates and immigration are double-edged swords. While in the short and medium-term they may impose high service costs to society in the form of social programs and school populations, in the long term they may benefit the economy by increasing the skilled labor pool, assuming adequate educational levels and assimilation.¹⁰¹ As one angry commentator asserted a few years ago in response to criticism of immigrants:

Undocumented workers fill jobs that local workers will not accept; they stimulate the local economy by expanding the overall level of employment and lower the cost of locally produced goods and services.

We must put an end to this nonsense about the negative effects of immigration and embark upon a more constructive route that considers how we should meet the needs and improve this labor force that our economy demands.¹⁰²

100. The Administration also recently proposed partial reimbursement to states for costs of incarcerating illegal immigrants.

A group of 90 moderate and conservative House Democrats has also recently joined with Republicans in proposing elimination of welfare benefits for non-citizens in order to pay for welfare reform. William Claiborne, *Immigrants' Benefits at Risk*, WASH. POST, Mar. 24, 1994, at A1. Large numbers of elderly legal immigrants sponsored by their children are now drawing Medi-Care and Supplemental Security Income (SSI) benefits. Non-citizens make up about 11% of the rapidly growing SSI program, 601,430 in 1992, up from 127,900 in 1982. *Id.* at A18.

101. However, recent research at the University of California, San Diego indicates it now takes fully four generations for immigrants' wages to catch up. Vlae Kershner, *Calculating the Cost of Immigration*, S.F. CHRON., June 23, 1993, at A1. In the meantime, new immigration may have taken its place.

102. Sergio Muñoz, *The Divisiveness of Half-Truths*, L.A. TIMES, Nov. 12, 1992, at B7.

Another Mexican-American commentator, Richard Rodriguez, also has stressed that Mexicans work, and work hard. Richard Rodriguez, *Closed Doors: The Immigrant: To Work or Die in California*, L.A. TIMES, Aug. 15, 1993, at M1. Rodriguez states: "Californians are afraid of the future and cannot imagine themselves in the great world."

Actually, there is some substantial doubt as to the division between the displacement and expansion effects of immigrant labor. There is increasing concern that, with low skills, immigrants are displacing American workers. University of Texas Professor Frank Bean concluded in an August 1993 study that unemployment among African-Americans tends to rise in areas with large numbers of immigrants and a soft labor market.¹⁰³ Other economists agree as well. According to the *New York Times*:

The huge flow of low-skilled immigrants into a depressed economy has begun to change the thinking among some economists. Among those who has [sic] changed his mind is George J. Borjas of the University of California, San Diego. His 1990 book, "Friends or Strangers: The Impact of Immigrants on the U.S. Economy" (Basic Books), concluded that immigrants had not undermined Americans' income or job opportunities. Now, he says there is indeed an effect.

"If we have a huge influx of unskilled immigrants, it's almost unavoidable that the unskilled labor market will be affected," he said in a recent interview.¹⁰⁴

Huddle estimates that immigrants displaced 914,000 California employees in 1992, costing the state \$4.2 billion in unemployment insurance and other government benefits; he calculates the largest effect in general depression of wage levels. Illegal immigration in particular, contributes to a labor surplus that depresses farm wages and makes working conditions worse, according to one recent bipartisan report.¹⁰⁵

There is also anecdotal evidence of job displacement. For example, according to the executive vice president of Hospital and Service Employees Union Local 399 in Los Angeles, in the 1980s Los Angeles office building janitors, largely black, were displaced by Mexican and then Central American immigrants. The number of union janitors dropped from 13,000 to 8,000, average pay dropped from \$7.32 an hour plus full benefits to \$6.35 an hour, with many non-union janitors being illegal immigrants making between \$4.25 and \$5 an

Id.

Noting the "inevitable free flow of cash and labor around the modern world," Rodriguez writes, "[d]espite ourselves and because of the immigrants, California is becoming a world society — an extraordinary meeting place of Asia and Latin America with white and black America. . . . California does not have an immigrant problem. California has a native-born problem." *Id.* at M6. Left unsaid, apparently, was whether the resident population has decided it wants to *become* a "world society," or be taxed to pay for it.

103. Herbert A. Sample, *Do Illegal Migrants Take Minority Jobs?*, SACRAMENTO BEE, Aug. 29, 1993, at A3.

104. Reinhold, *supra* note 12, at A1, A12.

105. *Immigration; A Giant Sucking Sound*, *supra* note 66, at 28.

hour with few benefits.¹⁰⁶

Although it is often asserted that immigrants take low-paying or unpleasant jobs that residents will not, most commentators ignore the possibility that it is only an overly generous welfare system that enables residents to decline such work. For example, James Flanigan, business writer for the *Los Angeles Times*, says that low-skilled, inner city residents could take such jobs, but don't because of "social neglect."¹⁰⁷ The obvious suggestion is that immigration reform be tied to welfare reform.

In any event, the point is taken that immigrants may well contribute to the economy. The difficulty arises from the fact that most of the benefits are private, while many of the costs are public. In addition, the availability of this labor pool makes it possible to maintain such anti-competitive and socially harmful anachronisms as minimum wage laws which keep low-skill Americans unemployed and welfare programs that do not demand that recipients work.

Changing age demographics of California and the United States do indicate potentially serious labor shortages in the future. The population overall is aging rapidly as people live longer. Moreover, despite immigration from different cultures, overall birth rates remain relatively low outside of California; small family size seems to be a common element to post-industrial Western societies, and the wholesale entry of women into the workforce indicates that this will continue. Although demographers have been surprised at the numbers of women who now begin families in their mid-to-late thirties (the so-called baby boomlet), lowered birthrates nationally, if not in California, seem permanent.

This change is elaborated in the following extract from *An America That Works*, a recent publication of the Committee for Economic Development (CED) in New York:

Over the next decade, the rates of growth in the prime working-age population and the retirement population will be roughly equal. This parity is a significant change from the prior twelve years, when the average annual growth of 25- to 54-year-old group was fifty percent larger than for the 55 and over group. In the future, we will have relatively fewer working-age people than in the past to support the retired population.¹⁰⁸

Moreover, this parity in growth between the two age groups is a prelude to a period of much more rapid growth for the 55 and older group than for those 25 to 54 years old. The trend is even sharper than for those 75 and over.

An Urban Institute report by demographer Jeffrey Passel, released

106. Lee, *supra* note 35, at A1.

107. James Flanigan, *Blaming Immigrants Won't Solve Economic Woes*, L.A. TIMES, Aug. 15, 1993, at D1.

108. RESEARCH AND POLICY COMMITTEE, COMMITTEE FOR ECONOMIC DEVELOPMENT. AN AMERICA THAT WORKS 3 (1990).

August 9, 1993, stated that immigrants will constitute more than fourteen percent of the U.S. workforce by the year 2010, twice the proportion of the 1980 workforce. New workers, from an estimated 950,000 legal immigrants annually, will replace the older "Baby Boomers" who will begin retiring in large numbers in the next fifteen years.

In short, the national labor pool in the future will be a smaller percentage of the population. It will also have higher demands put on it, as society struggles to meet the medical and pension needs of a larger retired population. At the same time, the skills level required of tomorrow's workforce will be (and to some extent already is) significantly higher and different than today. In a free-trading world, neither the United States nor California can compete on the basis of unskilled labor. Our competitive advantage, if we wish to maintain reasonable standards of living, must come in adding value. That requires an educated workforce and high productivity.

There have been a number of suggestions of steps we, as a society, can take towards these ends. First, we can remove uneconomic and anti-competitive retirement restrictions; people ought to work as long as they want to and are able to contribute. Second, we can revise our education system to stress real, competitive skills, perhaps producing more engineers and fewer lawyers. In the modern world, usable education is a competitive advantage. Third, we can reform our tax system and labor laws to encourage savings, investment, and productivity.

Immigration policy can be a useful adjunct to all these efforts. As noted in the summary of a RAND study developed for the CED:

Immigration has historically played an important role in supplying U.S. labor needs. However, current immigration and immigrant policies emphasize noneconomic selection criteria, such as family reunification, for determining the annual volume and characteristics of legal immigrants . . . [D]emographics and changes in the labor market require policymakers to review that emphasis and consider more explicitly how immigration relates to U.S. labor market needs.¹⁰⁹

The RAND study notes that as much as forty percent of all new jobs created in the economy between 1988 and 2000 are likely to be in professional, technical, and managerial fields, with another third in skilled service jobs. Yet much of current immigration is low-skilled and low-waged, and that threatens to create a two-tier society. The study also points out that most immigrants wind up in the

109. GEORGE VERNEZ & KEVIN MCCARTHY, MEETING THE ECONOMY'S LABOR NEEDS THROUGH IMMIGRATION: RATIONALE AND CHALLENGES (1990).

labor pool, anyway, no matter why they came here, and therefore workforce impacts should be considered in any event.

Under current law, however, according to the RAND study, "family reunion is the dominant criterion for permanent legal entry." This has important ramifications not only for workforce needs, but implications for disproportionate regional and local impacts, including displacement of existing workers and depression of wage levels, in addition to the significant fiscal burdens already discussed. Workforce or occupation-related immigrants tend to go where the jobs are. Family reunification or relative immigrants, by definition, go where there are already existing concentrations of immigrants. The Center for Immigration Studies in Washington, D.C., for example, estimates that less than five percent of legal immigrants qualify for entry to the United States because of special work skills or training.¹¹⁰

Legal immigration during federal fiscal year 1992, for example, included, in addition to 170,720 spouses and minor children of U.S. citizens: 64,764 parents of U.S. citizens; 33,800 adult sons and daughters of U.S. citizens; 169,248 spouses and children of permanent resident aliens; and 58,749 brothers and sisters of U.S. citizens. Another 117,037 refugees, 33,911 winners of the diversity "lottery," and 59 million-dollar investors were admitted. Another 46,859 came in under miscellaneous categories, and 110,032 non-priority workers and their families were admitted. Of the total of 810,635 legal entries, only 5,456 consisted of "priority workers" and their families.

Indeed, according to Borjas, "the skill composition of the immigrant flow . . . has deteriorated significantly in the past two or three decades."¹¹¹ The immigration of large numbers of poorly schooled young people also makes more difficult the process of educating and training the immigrant population that will be necessary if the U.S. is to benefit from their arrival.¹¹² Borjas points out that twelve to thirteen percent of all U.S. high school dropouts in 1980 were illegal immigrants; in 1990, twenty-five percent. Half of all immigrants currently residing in California arrived here during the 1980s, and most are poorly educated, with only fifty-four percent completing high school.

The skills levels of most immigrants are completely unrelated to U.S. economic needs. Briggs, for example, points out that in 1991 U.S. employment dropped and unemployment rose by over a million; during the same year, immigration totalled more than 1.8 million.¹¹³

110. IMMIGRATION RELATED STATISTICS, *supra* note 16.

111. George J. Borjas, FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY 8 (1990).

112. BOUVIER, DEMOGRAPHY OF AMERICA'S FUTURE, *supra* note 14, at 9.

113. VERNON BRIGGS, CENTER FOR IMMIGRATION STUDIES. IMMIGRATION THE

Of these immigrants, 1,827,167 were granted permanent resident alien status in 1991, over half (932,000) cited their occupation at time of entry as being farm workers. California received fully forty percent of the total, or 735,732.

As reported in the popular press,

Ninety percent of current immigrants arrive from Third World countries with income and social-service levels one-tenth or even one-twentieth those of the United States. Their education levels relative to those of native-born Americans are steadily declining. So are their earnings. George Borjas of the University of California, San Diego, says that in 1970 the average immigrant actually earned 3 percent more than a native-born American but by 1990 was earning 16 percent less.¹¹⁴

This deterioration in skill levels is amplified by changes in the needs of the U.S. economy. MIT urban planner Abel Valenzuela notes, "Turn-of-the-century European immigrants, many of them illiterate or unskilled, were funneled into the type of manufacturing jobs that no longer exist in the United States."¹¹⁵

As pointed out by another commentator,

The economy of the past 200 years was mostly labor-intensive. With advances in technology, our economy now requires highly skilled workers to prosper. Yet nearly two-thirds of the legal immigrants entering this country every year are low-skilled. Half of them enter occupations that are disappearing, where they compete mostly with poor minority workers.¹¹⁶

It is a competitive advantage to the United States that people all over the world want to come here. The same is true of California. We may use this competitive advantage to our benefit. Instead of focusing on family reunification, which usually implies the addition of dependents and gives relatively little consideration of benefit to the larger U.S. society, immigration policy could be based more on workforce needs, skills, and on the lifetime contribution that an individual is likely to make to this country. In effect, we should be using the attractiveness of the United States to engineer a "brain drain" to our benefit. In addition, California by itself should investigate attracting to the state those immigrants into the U.S. who meet workforce needs.¹¹⁷

NEGLECTED ORPHAN OF ECONOMIC POLICY (1993). Briggs suggests a shift of immigration responsibilities from the U.S. Department of Justice back to the Department of Labor, where it was until World War II.

114. Rich Thomas & Andrew Murr, *The Economic Cost of Immigration*, NEWSWEEK, Aug. 9, 1993, at 19.

115. Susan Ferriss, *Immigrants: Teach Them Well, California Told*, TIMES-PICTURE, Sept. 28, 1993, at A3.

116. Yeh Ling-Ling, *supra* note 99, at B7.

117. One commentator, economics Nobel laureate Gary Becker, has suggested:

X. POLICY OPTIONS

Virtually any policy option designed to moderate population growth is fraught with social tension and political controversy. Family planning and immigration reform are primary examples. However, the most desirable policy option would be for the federal government to live up to its responsibilities and compensate California for the huge unfunded mandate inherent in federal immigration policies.

A. Family Planning

The largest immediate component of California's growth is natural increase (net births over deaths). Most of this growth again can be indirectly attributed to foreign immigration, whose cultural norms include larger families than are usual in this country. This phenomenon will lessen over time as succeeding generations become more assimilated to American culture, but in the meantime new waves of immigration may repeat the same effect.

The suggestions of effective controls on natural increase appear impracticable under current social, political, and legal restrictions. Large families impose a measurable, real cost on state services and other citizens generally. However, in a democratic and fundamentally Western society, the state does not forcibly interfere with private family decisions. Moreover, these suggestions raise real fears, whether well-founded or not, that they are directed against ethnic or racial minorities. As such, they are intensely divisive.

As with most questions, this is not an all-or-nothing issue. The governor has been consistently supportive of birth control, family planning clinics, and education, but the personal choice of family size still ultimately remains with individuals and families. Such support may be expanded and strengthened without restricting this personal choice.

Other indirect incentives and disincentives may be available to moderate natural population increase, but their practical success and political acceptability may be problematic. In addition to traditional family planning efforts, suggestions have been made for other indirect incentives and disincentives to moderate natural population increases. These suggestions include limitations on dependent tax

[T]he most rational approach would be to sell the right to immigrate, but a less radical method of improving present policy and combating illegal immigration would be to allow a larger number of skilled and young people to enter legally. To prevent immigrants from taking advantage of government handouts, however, they should not be eligible for welfare, food stamps, government-financed health care, or certain other benefits until they become naturalized citizens.

Gary S. Becker, *Illegal Immigration: How to Turn the Tide*, BUS. WEEK, Feb. 22, 1993, at 23.

deductions and caps on welfare benefits (such a step was taken in New Jersey, effective October 1, 1992), or conversely, provision for additional benefits to recipients who accept birth control measures, and withholding or reduction of benefits to those who do not have high school diplomas or G.E.D.s, unless they are currently working to receive one or the other, or conversely, providing additional benefits to teen mothers who stay in high school.

The main brunt of such measures may fall on those at the lower end of the economic spectrum, those receiving public benefits, and recent immigrants whose cultural norms include large families. The practical effect would thus be a disproportionate impact on ethnic and racial minorities, hence the intense political and social divisiveness of this issue.

B. Immigration Reform

The nation is currently admitting very large numbers of poor, unskilled immigrants, with no policy rationale. (Indeed, all coherent policy points in the opposite direction.) The economic needs that supported such immigration flows in the 19th and early 20th centuries no longer exist. We should no longer want to compete on the basis of cheap, unskilled labor, unless we wish to emulate the living standards of Calcutta and Shanghai. Instead, we should be adding value and competing upmarket by admitting more immigrants with skills, capital, and education. Traditionally, the U.S. has had a generous attitude toward family reunification and open immigration. However, circumstances and the world have changed. The numbers of persons able and willing to immigrate, in an increasingly overcrowded and economically troubled world with access to easy international travel, could easily overwhelm the U.S. and California specifically.

In particular, while the focus of U.S. immigration policy on family reunification is both historic and understandable in human terms, the recent expansion of family reunification as an immigration category comprising fully three-quarters (or 520,000 of 700,000 places annually) is questionable. The argument has been made that the United States, and in particular California, because of its disproportionately high share of immigration, cannot continue indefinitely to take in half-a-million people a year without regard to skills or contribution. As the Chairman of the 1981 Select Commission on Immigration and Refugee Policy, Father Hesburgh, noted, "[W]e believe there are many benefits which immigrants bring to U.S. society . . .

we [also] believe there are limits on the ability of this country to absorb large numbers of immigrants effectively.” It is also something of a misnomer, proponents of reform assert, to call this category “family reunification.” In fact, adding up the various preference categories, it includes parents, siblings, and ultimately others, and puts the United States into a choice whereby admission of one individual may ultimately mean admission of many more.

Proposals have been made, accordingly, to reform U.S. immigration law in the direction of workforce needs. The RAND study discusses various Congressional proposals, as well as the Canadian system, which awards additional “points” to family reunion immigrants, but still looks to applicants’ other qualifications, such as training, education, and language capability. The study suggests greater emphasis on labor market considerations to help meet changing demands for labor, while minimizing the current negative distributional effects which penalize California and speed up the economic and social integration of immigrants into the United States.¹¹⁸

A complementary step would be to re-examine U.S. refugee policy, including focusing U.S. efforts on international assistance, not domestic resettlement; offsetting any refugee admissions against immigration caps; basing refugee decisions on clear policies, consistently applied, rather than case-by-case political considerations; and conditioning U.S. refugee admissions, and international financial assistance, on other nations doing their fair share in each.

In addition, the United States should re-examine its refugee policy. As the world grows smaller while its population continues to rise, there is a limit to what this country can or should absorb. Every natural or social upheaval should not be treated as the responsibility of the United States. We cannot take in everybody.

The following changes could be made:

1. U.S. efforts should be focused on international assistance, not domestic resettlement, on helping refugees where they are, not moving them to the United States. This is far more cost-effective, avoids de facto immigration under the guise of refugee policy, and brings home the essential fact that foreign populations, and not the U.S., are ultimately responsible for what happens in their home countries.
2. Any refugee admissions should be offset against immigration caps. This will ensure that refugee policy does not vitiate immigration policy, and that the U.S. maintains policy control over the total numbers of persons admitted to this country.
3. Refugee decisions should be made on the basis of clear policies, consistently applied, rather than case-by-case political considerations.
4. U.S. refugee admissions, and international financial assistance, should be conditioned on other nations doing their fair share in each area.

118. Bouvier also points to the Canadian example. BOUVIER, *DEMOGRAPHY OF AMERICA’S FUTURE*, *supra* note 14, at 11 (“Our immigration policy should concentrate on what is good for the United States rather than on what is good for the immigrants.”).

In summary, immigration and refugee policy can be changed to give greater focus to U.S. workforce needs, without regard to race, ethnicity, or origin. Once admitted, related family admissions can be limited to the immediate nuclear family — spouses, children, and possibly parents. The total overall numbers admitted into the United States should be lowered, precisely the reverse of the policy steps taken by the Congress in the 1990 changes to immigration law. The 1980 Select Commission on Immigration and Refugee Policy, chaired by then-president of Notre Dame University, the Rev. Theodore Hesburgh, recommended that legal immigration be reduced to 500,000. With any significant level of domestic unemployment, there is simply no reason to admit large numbers of unskilled immigrants. To the degree that such immigrants take jobs that Americans will not, U.S. welfare laws ought to be reformed so that Americans will. To the extent that such immigrants provide an economic benefit by performing work at lower wages, that is a short-term, private benefit outweighed by the public and long-term social costs.

C. State Costs

Federal law should specifically compensate California for the disproportionate impact on our state from foreign immigration. This includes not only full SLIAG funding, but coverage for other impacts such as traffic, housing, and congestion generally. The federal government does not have a moral right to balance its immigration policies on the backs of California taxpayers. California should strive to use its large voting strength in the U.S. House of Representatives, together with that of other immigration-impacted states, to press for these necessary changes.

Proposals have also been made to ensure that state benefits themselves are extended only to bona fide legal residents. Again, certain measures have already been undertaken, such as barring illegal immigrants from resident tuition rates in public higher education. There are also other steps California may take by itself to discourage illegal immigration:

1. The State Employment Development Department (EDD) and other state agencies could be specifically directed to ascertain immigration status and provide information and services only to legal residents.
2. All state agencies, law enforcement authorities and service providers could be directed affirmatively to provide full cooperation with the INS.
3. State action, including the withholding of funds, could be taken against cities and counties who refuse such cooperation. All units of government, including such local jurisdictions, would serve only legal residents, with exceptions for emergency services, and affirmatively cooperate with the INS

and law enforcement authorities.

4. Illegal immigrants could be denied admission to higher education facilities, including the University of California, the California State University, the CSU system, and community colleges. Although federal law requires that the state fund primary and secondary education for children of illegal immigrants, if federal law permits, school authorities could be obliged to check for legal resident status of enrolled students, and advise state authorities of those who cannot provide it.

5. Similarly, steps could be taken to ensure that other state benefits are extended only to bona fide legal residents.

6. The State Bar could institute a regular and comprehensive auditing program of immigration attorneys in order to combat fraud.

7. Illegal immigrants arrested, tried, or convicted of crimes should be deported immediately rather than housed in prison at taxpayer expense. This will require cooperation with the INS. In cases where the individual is deemed likely to return to the U.S., deportation would be effected towards the end of incarceration.

Along these lines, the Claremont Institute's Lance Izumi and former INS Commissioner Alan Nelson have proposed requiring all state agencies to use the INS computer data system that identifies who is here legally and who is not, requiring state and local employment agencies to screen legal immigrants for job placement, restricting entry to state universities to legal residents only, and requiring information-sharing between state and local agencies and the INS.¹¹⁹ The "S.O.S." initiative, discussed above, also has been being circulated within the state to deny illegal immigrants all state services except emergency medical care. The measure may be unconstitutional under current federal case law, at least regarding the provisions of public education, but it may be intended to force a review of court decisions.

It is evident that many, if not most, proposals such as these are likely to be socially divisive and intensely controversial. On the other hand, we are faced with hard policy choices, and avoiding them simply ensures that choices are made by default. Whatever policy options are chosen should be pursued only after full public debate with adequate opportunity for participation by all parties.

Legal immigrants, once here, should be helped to be successful. Federal policy should not admit large numbers of immigrants who need assistance and services, and then dump them on state taxpayers. This is particularly unfair to California, which receives proportionally three or four times its share of total immigration. It is most unfair of all, however, to the legal immigrants themselves, who are prevented by lack of government funding from making the fullest contribution of which they are capable.

119. *What State Can Do About Illegal Immigration*, SACRAMENTO UNION, Aug. 15, 1993.

XI. CONCLUSION

As a practical matter, California's ability to take steps to moderate its population growth is highly problematic. Family planning efforts are voluntary and controversial, immigration and refugee policy is beyond the state's reach and equally controversial, and interstate movement is not only constitutionally protected but is net negative in any event.

A more realistic, less controversial and more immediate approach would be to seek federal action on two levels: (1) reform immigration law to focus on workforce needs; and (2) compensate California for the hugely disproportionate financial burden it bears for the nation's immigration and refugee policies.

In the meantime, as long as California is a good place to live, people will want to come here. If California's public policy, laws, and implementation strategies are unable to cope with further population increases, and if the quality of life, the economy, and the environment are sufficiently degraded, growth will stop and population will decline as residents seek more hospitable locations. It is only through such a failure of public policy that the projections of population increase reverse. However, that increase can be moderated, controlled, and compensated. Unmanaged growth can overwhelm the state. Managed growth can continue to focus on the quality of life for all Californians.

