

1995

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Alan C. Nelson

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### Recommended Citation

Nelson, Alan C. "Proposition 187: An Important Approach to Prevent Illegal Immigration." Human Rights Brief 2, no. 2 (1995): 8, 10.

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## POINT/COUNTERPOINT

### Proposition 187: An Important Approach to Prevent Illegal Immigration

by Alan C. Nelson

A day after the November 8th election, when 4.6 million California voters approved Proposition 187 by a substantial margin, opponents chose to ignore the simple message of the Proposition—stop illegal immigration. They believe that they can derail Proposition 187 by concerted attacks in court. While opponents might have some initial success, the result will be the same as that reached by the voters—the elements of Proposition 187 will be sustained.

#### A Comprehensive Approach to Stopping Illegal Immigration

Proposition 187 contains several components aimed at stopping illegal immigration. It strengthens current

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federal welfare law that already denies most benefits to illegal aliens, thereby making it more effective. If existing law is not adequately enforced it is of little value. Likewise, illegal aliens now cannot receive health benefits except emergency care. Proposition 187 does not change that aspect. Rather it strengthens current law to ensure that illegal aliens do not “beat the system,” which unfortunately happens all too frequently. The provisions of Proposition 187 also build on existing federal law relating to the use or sale of fraudulent documents and give the state an extra tool to combat these activities. As we all know, the problem of fraudulent documentation must be addressed in order to effectively prevent illegal immigration. Finally, Proposition 187 requires local, state, and federal agencies to share information. It is strangely ironic that current federal law prohibits illegal aliens from entering or staying in the U.S. and from working and receiving most benefits. Yet, in reality, other government actions and inactions undercut such laws. Proposition 187 is a major step forward in making existing

### The Controversy Over Proposition 187

In recent years, international migration has increased significantly for economic, political, and other reasons. Due to their relative prosperity and stability, developed nations have become the destination of many of these immigrants. Many of these countries have now taken measures aimed at restricting both legal and illegal immigration.

On November 8, 1994, the people of California adopted the controversial Proposition 187. The Proposition, in part, would deny most social services, including health and welfare benefits, as well as educational opportunities, to illegal immigrants.

Alan C. Nelson, California attorney and immigration consultant, co-authored Proposition 187. From 1982 to 1989, he served as Commissioner of the U.S. Immigration and Naturalization Service and was the lead Reagan Administration official responsible for the development, passage, and implementation of the Immigration Reform and Control Act of 1986.

Frank del Olmo is Deputy Editor of the Editorial Pages for the Los Angeles Times, and has written extensively on immigration issues in California, including on Proposition 187.

laws work. Sharing information between, but not beyond, local, state and federal agencies about illegal aliens is good government, makes sense, and meets standards of privacy.

Proposition 187 would prompt many illegal aliens to return to their home countries. An illegal alien family subject to deportation, unable to obtain work and other benefits, and which may be more effectively handled by the criminal justice system, is more likely to willingly leave the United States. Proposition 187 provides the only comprehensive vehicle to accomplish this goal.

#### A Sound Policy of No Free Public Education

Proposition 187 also establishes a number of important and sound principles in relation to public education. First, it aims to deter future illegal immigration for free education. The problem of educating illegal aliens at taxpayers' expense relates to illegal aliens already here and to those who may come in the future. It is a sobering thought that any child born today anywhere in the world can obtain 12 years of education in the U.S. at taxpayers' expense simply by getting here. Therefore, the deterrent aspects of Proposition 187 are very important.

Second, it proposes that education should be in the person's home country. Contrary to opponents' arguments, no one wants to deny education to any child.

Proposition 187 continues free education of illegal aliens in California for a semester after their illegal status is established (45 days plus 90 days), and provides for orderly transition to the alien's home country.

Third, the initiative addresses the problems caused by providing illegal immigrants with free education. The education of illegal aliens does not occur in a vacuum and prevents quality education for citizens and lawful alien children. Consider classroom size, teacher attention, costs, lack of facilities, equipment, and other factors where illegal immigrants negatively impact educational opportunities for legal residents. Proposition 187 is a necessary start because the numbers of illegal alien children in schools and the negative impact therefrom will only increase in future years if nothing is done to deal with the problem today. Proposition 187 also recognizes that the cost of educating illegal aliens is prohibitive. Education costs in California amount to one half of the state budget. Education growth requires the equivalent of building a new school every day. A significant part of this relates to educating illegal aliens. A November 1992 study showed that the costs of educating illegal aliens in Los Angeles County alone totals \$1 billion per year. This money could be used to upgrade and improve our existing educational system which has slipped so badly in recent years.

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### Education Myths Created by Opponents of Proposition 187

Opponents of Proposition 187 make the specious argument that we do not want an uneducated class of people in the state, even though they are here illegally, because being uneducated means difficulty in getting employment. Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law? That violates concepts of common sense and good government.

Educators argue that they should not become immigration officers. Agreed. No one is asking teachers to do so. It is reasonable, however, for education personnel to perform the functions within their job descriptions, which includes determining the admissibility of students. Currently, all new school enrollees must establish their residency in the school district and submit immunization records and birth certificates. Ironically, schools usually do not perform such functions with respect to illegal alien children. Therefore, citizens and legal aliens are held to higher standards than illegal immigrants. It is

very simple for school officials, like employers, to ask basic questions regarding citizenship or immigration status. If there is any question, the school need only require the student to produce the necessary verification papers. Any enforcement action is left to the INS and to other law enforcement agencies.

Why use taxpayers' dollars to educate illegal aliens who are already subject to deportation and arrest and who cannot work under existing federal law?

Opponents also argue that if illegal aliens of high school age cannot attend schools, they may become involved in gangs and criminal activity. There seems to be no shortage of gang problems within schools today, so this assertion does not hold water. Also, consider the irony that one existing solution to gang activity in schools is to suspend or expel the violators from schools. Should we expel

citizen offenders but keep illegal alien offenders in school?

### Revisiting *Plyler v. Doe*

The K-12 education provisions of Proposition 187 are the vehicle for the courts to re-visit the concept of free public education for illegal aliens. Current federal law, as established by the U.S. Supreme Court in its 5-4 *Plyler v. Doe* decision of 1982, holds that illegal aliens are entitled to free public education. Proposition 187, with its status checks for all enrollees and a provision on the transition of illegal aliens to their home countries, provides the Court with an opportunity to either hold that the California initiative meets the standards of *Plyler*, or to modify or overturn *Plyler* and allow the plan to stand.

With the importance of the issue, it is essential that the Court revisit the issue of free public education of all present and future illegal aliens. By passing Proposition 187, California voters sent a strong message to political leaders that they want to stop illegal immigration and provided a strong catalyst for reasonable and responsible change, not only in California, but throughout the United States. ☹

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that basis alone, any sections of Proposition 187 that contradict federal laws or procedures may wind up being annulled by the courts.

### The Risks

Perhaps no single argument against Proposition 187 makes its proponents so uneasy as what their initiative could wind up costing California taxpayers. According to the California legislature's chief analyst, lost federal aid to schools, public hospitals, and clinics could add up to \$15 billion. That made it hard for Proposition 187's proponents to sell it as a tax-saving initiative in the spirit of Proposition 13. So they changed strategy, and conceded that they did not expect 187 to

go into effect right away. They then acknowledged their real goal: pushing the state into what is sure to be a long, costly lawsuit challenging the Supreme Court's *Plyler v. Doe* decision of 1982, which held that immigrant children are entitled to public education. In effect, Proposition 187's authors are gambling with California's tax money in the hope of winning a dubious legal battle. That fight is already well underway: a federal district court in Los Angeles issued a restraining order suspending most of Proposition 187's provisions while the measure is challenged in court, a process most legal experts figure could take a year or more.

And even if Proposition 187's backers win these law suits, what have they really

got to show for it? One need only ponder the divisive campaign waged over 187, with its overtones of hostility against Latinos, Asians, and other state residents who look or sound like "apparent illegal aliens" to get a sense of how difficult ethnic relations could become if the misguided initiative ever is allowed to go fully into effect.

So while Proposition 187 purports to offer a simple answer to a complex phenomenon, it really is no answer at all. Not only will Proposition 187 end illegal immigration, it will drag California into a series of ethnic and legal conflicts that could hurt the state far more than illegal immigration does. ☹

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ties provided by the Panel, and thereby to enhance the Panel's ability to hold the Bank accountable for its development strategies. Professor Bradlow, WCL Professor David Hunter, Senior Attorney at the Center for International Environmental Law, and the Center for Human Rights and Humanitarian Law, have offered their services to assist potential

complainants in filing requests before the Panel.

Professor Hunter applauds the Panel for "an independent and objective review of the claim" and for doing "an excellent job in identifying specific violations and calling into question the fundamental decision to pick [the Arun III] alternative." He believes that an investigation would reveal a "clear violation of Bank

policies." While the Panel "has made a very strong case for inspection," it will not succeed in improving Bank operations unless "the Board and Bank Management take the Panel's ultimate recommendations and findings seriously." ☹

Samir Desai is a WCL LL.M. graduate and former Articles Editor for *The Human Rights Brief*.