

THE AMERICAN FANTASY:
XENOPHOBIC IMMIGRATION POLICY AND ITS INFLUENCE ON
THE RACIAL TENSIONS THAT PERPETUATE SEGREGATION AND
DISPARITY IN CALIFORNIA'S PUBLIC SCHOOLS

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A junior paper
submitted to the Department of Politics
in partial fulfillment of the requirements for
the degree of Bachelor of Arts

Princeton University
Professor David Abalos

May 9, 2006

*Give me your tired, your poor
Your huddled masses yearning to breathe free
The wretched refuse of your teeming shore
Send these the homeless tempest-tost to me
I lift my lamp beside the golden door!*

~Emma Lazarus, *Statue of Liberty*

Introduction

The United States takes pride in its reputation as the land of opportunity. Over the past two centuries, the allure of the *American Dream* has created a nation filled with immigrants from every corner of the world. The story that keeps this dream alive and thus keeps our borders busy, advertises universal equality, opportunities for all, and claims that coming to America with the determination to work hard will result in a better life for oneself and one's family. While many people have made the *American Dream* a reality, this idealistic myth masks the historical preference for certain immigrant groups and disregards the actual xenophobic attitudes which have continually tainted U.S. immigration policy.

In the realm of contemporary immigration politics, xenophobes are clamoring for stringent reform targeted primarily at the Latino community. In December 2005, the House of Representatives passed the Sensenbrenner bill: HR 4437, *The Border Protection, Antiterrorism, and illegal Immigration Control Act of 2005*. The bill's most controversial part would make unlawful presence in the U.S. a federal felony, thus putting nearly twelve million undocumented immigrants, predominately from Mexico, at risk of immediate deportation.

This paper uses HR 4437 to analyze the contemporary landscape of immigration reform and to illustrate the ways in which xenophobic immigration policies enforce racial

tensions at the local level, paying particular attention to the situations in California schools and communities with large Latino populations. Instead of addressing genuine national security threats, the Sensenbrenner bill targets and criminalizes an innocuous and contributing contingent of the U.S. population. In the past, this type of xenophobic legislation might pass without protest; however, the severity and extremity of the proposed bill has been a call to arms to the immigrant community and its supporters to unite and confront policies laden with racism and fear of “illegal alien.” We are at a time when we can no longer ignore the needs of twelve million undocumented immigrants; the Latino population has made itself a visible, integral thread in the fabric of society and its further marginalization would be mutually detrimental to the subjugated peoples and to the nation as a whole. If we are to believe in the promises of the *American Dream*, our policies should not criminalize immigrants, but provide them with opportunities and education that will enable them to better their lives in future generations.

Historical Background of Immigration Policy

From the end of the 18th century to the present, the immense immigrant influx into the United States has produced periodic tensions between nativists¹ and inclusivists that have often found release in the organization of xenophobic movements.²

Historically, the rise of nativism has been episodic; therefore, xenophobic trends have been discontinuous, erupting only when the native-born feel threatened by emerging

¹ Higham's Definition of Nativism from *Strangers in the Land*: “an intense opposition to an internal minority on the grounds of its foreign connections.”

² Curran, 22.

immigrant groups. The distrust of foreigners usually appears following an event of societal economic downturn; in seeking explanation for negative change, xenophobes cast blame on a foreign menace.³ Anti-foreign movements have closely correlated with political and economic trends and thus the anxieties that have spurred xenophobic outbursts have been largely pragmatic, caused by foreign born competition in the political and economic spheres.⁴ Restrictionists will map hostility toward aliens “as an ephemeral and cyclical reaction to the nation’s swelled unemployment and economic slump.”⁵ The historical pattern has been one of “periods of receptivity” such as the ‘open door’ era of 1776-1881 alternating with “periods of exclusion” like the ‘era of regulation during 1882-1924.⁶ The conventional liberal wisdom concerning the public’s attitude toward immigration is as follows: “when things are going well and there’s a shortage of labor, people either look the other way or are actively supportive of bringing cheaper labor into the United States. But when jobs are tight, and the cost of supporting people goes up, then we suddenly redo the calculus.”⁷

Legislation employing the term “alien” and the labeling of immigrants as “illegal” perpetuate stereotypes and xenophobia within society. The first political manifestation of xenophobia occurred in the passage of the Alien and Sedition Act of 1798 by John Adams and his Federalist administration. Although this act was short-lived, Adams glorified the “native born” as the ideal citizen, stating that “true Americans have no attachments or exclusive friendship for any foreign nation.” The particular etymology of

³ Connors, 257.

⁴ Connors, 257.

⁵ Behdad, 113.

⁶ Behdad, 113.

⁷ Cain, 1993.

the *Alien and Sedition Act* further engrained the idea of the inferior and to-be-feared foreigner: “the figure of ‘alien’ as a menacing source of sedition, discontent, insurrection, and resistance provides a differential other whose perpetual presence is necessary in order to manufacture a homogenous national identity.”⁸

In legal terms, the word ‘alien’ can be employed as a rhetorical device to define non-persons. While “persons” retain their rights and dignity, “aliens” are not guaranteed these privileges and thus “by distinguishing between aliens and persons, society is able to reconcile the disparate legal and social treatment afforded the two groups.”⁹

Furthermore, ‘alien’ conjures up the image of outer space creatures, allowing the categorization to “actualize an otherness defined as foreign, dissimilar, and strange- the opposite of the native, similar and familiar ‘citizen.’”¹⁰ When using the term ‘illegal alien,’ society simultaneously identifies the undocumented as illegal “evil doers”¹¹ and aliens deserving of “legalized exclusion.”¹²

The remainder of this section outlines a history of immigration policy, tainted by periods of xenophobic legislation and rhetoric. The following compilation of examples is by no means exhaustive, but it attempts to illustrate the fluctuations in political attitudes toward foreigners.

After the *Alien and Sedition Acts*, xenophobic movements did not resurface until the pre-civil war era with the expansion of population and suffrage to immigrants in the 1820’s and 1830’s. The first nativist political parties emerged in an effort to prevent

⁸ Behdad, 11.

⁹ Johnson, 273.

¹⁰ Cacho, 407.

¹¹ Contreras, 19.

¹² Cacho, 407.

immigrants, primarily Irish Catholics, from voting and holding office. After achieving little success as a political party following the civil war, xenophobic lobbyists began forming pressure groups with the intent of convincing state and national legislatures to end America's legal tradition of the open door through the statutory curbing of immigration. The xenophobes' first victory came with the passage of the Chinese Exclusion Act of 1882 which strictly limited the immigration of Asians in an effort to curb the influx of "coolie laborers" who posed a threat to unionism in California.¹³

As the United States shifted from its rural, agricultural roots into an urbanized, industrial nation in the early 20th century, xenophobes found a new scapegoat for the growing labor unrest and financial panics. The APA¹⁴ and the Immigration Restriction League advocated the belief that the unrestricted immigration from Southern and Eastern Europe was the new threat to society. In the anti-foreign backlash that followed WW1, legislators mollified the xenophobes' anxieties by passing the naturalization laws of 1921, 1924 and 1929.¹⁵ The racist quota laws of the 1920's were justified by the eugenics movement which scientifically labeled Jewish and other Southern and Eastern European immigrants as genetically inferior.¹⁶ The 1921 National Origins Quota Act was particularly discriminatory in that it granted citizenship to newcomers only in proportions equivalent to the United States' prior racial composition. This of course favored Western Europeans who had already become a large presence in the U.S. population and thus were provided with more citizenship allocations.

¹³ Connors, 257.

¹⁴ American Protective Association

¹⁵ Connors, 258.

¹⁶ Behdad, 13.

Throughout the interval of the first and second world wars, the United States loosened its immigration policies with the admission of political refugees. This period of hospitality ended in 1952 when nativists struck back with the Immigration and Nationality Act which defined detailed categories of “undesirable aliens,” and in 1954 with the implementation of “Operation Wetback” which sanctioned the mass deportation of Mexican farm workers.¹⁷ Immigration from Mexico and other South American countries suffered an additional blow in 1965 with the demise of the Bracero Program¹⁸ and the endorsement of the Hart Cellar Act which imposed the first quantitative restrictions on immigration from the Western Hemisphere.¹⁹ Approximately twenty years later, Ronald Reagan’s conservative Administration approved the 1986 Immigration reform and Control Act (IRCA) which further tightened the nation’s borders and criminalized undocumented immigrants.²⁰ Since 1986, the U.S. has implemented increasingly restrictive policies toward Mexican immigration, including the militarization of the border through massive increases in personnel and the criminalization of hiring undocumented workers.²¹

These policies have been largely ineffective in decreasing immigration because migrants have shifted their routes from fortified segments of the border to less patrolled sectors. Furthermore, the lack of fluidity on the border and increased risks of traveling back and forth between countries has reduced the rate of return migration. This has resulted in higher percentages of extended residency among the undocumented and has

¹⁷ Behdad, 113.

¹⁸ This program was enacted in 1942 as a temporary measure to relieve wartime shortages, specifically in the agricultural industries of Texas and California.

¹⁹ Massey, 19.

²⁰ Behdad, 7.

²¹ Massey, 22.

also increased the instance of migration among women and children who now cross the border with their husbands and fathers to prevent the risk of permanent separation.²² Prior to the IRCA, most Mexicans who came to the U.S. in search of work did not intend to live here permanently. Instead, they sought to migrate as part of a strategy to compensate for the failures of their domestic markets. In other words, border militarization and the criminalization of undocumented immigrants transformed what once had been a circular flow of male workers into a social network of families.²³

The nation's treatment of its immigrants, particularly its conduct along the Mexican border, has been marked by "violence and militarization, surveillance and discipline, all to produce a docile and cheap labor force, while also normalizing and assuring the illusive exercise of disciplinary power over immigrants, and increasingly over the general citizenry." Furthermore, the rhetoric of "illegality and transgression at the border, coupled with the fear of terrorism, has broadened and justified the extent of the federal government's disciplinary power."²⁴ The results of this take form in the post 9/11 era.

In the aftermath of 9/11 yet another cycle of xenophobic immigration policy gained momentum in the United States. The perception of the foreigner as a threat to democracy was again codified into law through the passage of the USA Patriot Act of 2001. In an effort to prevent future terrorist attacks, this act legitimized the routine subjection of nonwhite immigrants to "surveillance, interrogation, incarceration, and deportation."²⁵

²² Massey, 23.

²³ Massey, Panel Discussion 5/1/06.

²⁴ Behdad, 9.

²⁵ Behdad, 7.

The most recent assault on the immigrant community came in December 2005 with the introduction of Republican House Judiciary Committee Chairman James Sensenbrenner's HR 4437 bill.²⁶ Already approved by the House of Representatives, the passage of this unfairly discriminatory bill rests on the outcome of Senatorial debate. Essentially, the proposed legislation threatens the potential deportation of twelve million undocumented people by making unlawful presence in the U.S. a federal felony. The bill not only criminalizes the immigrants, but also has provisions that incriminate people who assist or employ any undocumented persons, thereby treating social service organizations, churches, and refugee agencies with the same regard as smuggling organizations.²⁷ A summary of the provisions outlined in HR 4437 can be found in *Appendix A*.

The prescriptions of HR 4437 are simply a manifestation of the xenophobic tensions that have perpetually plagued Latino immigrants. While the bill is veiled in antiterrorism rhetoric and champions the goal of bolstering national security, a closer inspection of HR 4437's objectives reveals its racist and discriminatory motives. As Douglass Massey said: "Who armors their front door, but leaves the back door swinging open? This bill has little to do with terrorism; it is just an expression of the latent hostility toward Mexicans and the failure to recognize them as human beings."²⁸

On a more local level, immigration reform following HR 4437's recipe tears apart families and causes turmoil within communities and schools. This is especially apparent in Southern California where Latino students in public schools have led large-scale

²⁶ HR 4437 (1995).

²⁷ Immigration Legal Resource Center (2006).

²⁸ Massey, Panel Discussion 5/1/06.

demonstrations protesting the criminalization of themselves, their parents, their friends and their extended family.

These xenophobic policies have particularly important consequences for public education. A logical and lasting solution to the question of immigration reform, unlike HR 4437, would necessarily take into consideration the provisions of the U.S. Supreme Court decision *Plyler v. Doe* (1982) which guarantee undocumented children access to public education.”²⁹ By taking this into account during the process of policy decision making, politicians would recognize the shortcomings of such wide sweeping reform by foreseeing the inevitable backlash of opposition that would ensue as a result of deportation threats.

This paper explores the consequences of the political attitudes expressed in legislation such as HR 4437 as they relate to the discriminatory treatment of Latinos in California’s public school system. The next section of this paper reviews recent movements in California that utilized public referendums, often in flagrant contradiction to the protections mandated in *Plyler v. Doe*, to change education policy with the intent of demoralizing, weakening, and depriving rights to undocumented families.

²⁹ *Plyler v. Doe* (1982). The court held that any statute which “withholds from local school districts any state funds for the education of children who were not legally admitted into the United States, and which authorizes local school districts to deny enrollment to such children, violates the Equal Protection Clause of the Fourteenth Amendment.”

California's Anti- Immigrant Initiatives

Proposition 187

In the early 1990's California Governor Pete Wilson and his supporters began the Save Our State (SOS) movement, which effectively put Proposition 187 on the 1994 ballot. The proposition intended to deny medical care, public education and other taxpayer-paid benefits and services to anyone who was "reasonably suspected" of being undocumented.³⁰ Proponents of 187 argued that "illegal aliens" were receiving unfair benefits, draining state resources and crowding their children out of the public schools.³¹ The authors of Prop 187 were well aware of its direct undermining of *Plyler v. Doe*, however, one of the ulterior motives driving the proposition was "to call on a more politically conservative Supreme Court to overturn the *Plyler* decision."³² Despite tremendous mobilization against Prop 187, the initiative passed with 59% of the vote, reflecting the essence of "educational segregation that Hispanics have historically contested in efforts to gain their constitutional right to an equal public education."³³

While Proposition 187 was eventually overturned on the grounds of its unconstitutionality, its initial approval by the citizenry exposes the widespread perception that the undocumented population is a non-contributing economic burden. Section 1 of the proposition reads as follows:

³⁰ Contreras, 18. Teachers and other school officials were held responsible for reporting those suspected to be here illegally.

³¹ Contreras, 18.

³² Contreras, 19.

³³ Contreras, 19.

The People of California find and declare as follows:

That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state.

That they have suffered and are suffering personal injury and damage by the criminal conduct of illegal aliens in this state.

That they have a right to the protection of their government from any person or persons entering this country unlawfully.

The rhetoric of Section 1 sends the message that legal citizens are victims, suffering from the influx of “aliens” destroying their state. The ideology of white suffering is emphasized in a campaign commercial which aired during the 1994 gubernatorial race in which Candidate Pete Wilson

used footage of undocumented border crossers at the San Diego-Tijuana checkpoint. The advertisement opened with a black-and-white video of a dozen presumably Mexican immigrants scurrying across the border, dodging cars and running from the checkpoint, as the announcer intoned, “They keep coming! Two million illegal immigrants in California. The federal government won’t stop them at the border, yet requires *us* to pay billions to take care of *them*.”³⁴

Wilson’s campaign ad resembles earlier manifestations of nativism in that the anti-immigrant campaigns in California during the 1990’s “systematically distorted and misrepresented California’s socioeconomic problems” by directing blame at the immigrants.³⁵ Not only does this sort of political rhetoric deny the fact that undocumented workers pay more in taxes than they take in the form of handouts and government services, but blaming the state’s fiscal woes on immigrants fails to recognize the “ruinous effects of a decade and a half of irresponsible tax cuts for the wealthy coupled with the disinvestment in education and infrastructure.”³⁶

³⁴ Behdad, 111.

³⁵ Behdad, 112.

³⁶ Lipsitz, 51.

The myth that undocumented immigrants drain the resources of the nation drove most of the support for Prop 187 (as well as subsequent anti-immigrant policies including HR 4437). In reality, the average immigrant pays nearly \$1,800 more in taxes than he costs in public benefits.³⁷ Of the twelve million undocumented people currently in the U.S., 7.2 million are employed (5% of the labor force) and 86% of them fulfill their taxpaying obligations.³⁸ Since the large majority of the undocumented do indeed pay taxes, these immigrants actually ease the tax burden on other Americans.³⁹ Furthermore, in addition to the direct economic contributions made by the immigrants, “Hispanic buying power approached one trillion dollars nationally”⁴⁰ in 2005, which is overwhelming evidence that they are valuable consumers in the U.S. economy.

Advocates of Proposition 187 also complain that the growing presence of undocumented children in the public schools have led to the disintegration of the system’s quality and reputation. While it is true that these students have contributed to the overcrowding in the schools, the blame would more accurately be cast on California voters. Before 1978, California public schools had been among the nation’s top-rated. However, after the passage of Proposition 13 slashed over 6 billion dollars in tax revenue to local governments, California schools plummeted in student achievement ratings because of insufficient funding.⁴¹ By the late 1980’s California ranked 46th in public education spending, allocating only 3.8% of its annual income to improving its schools.⁴² Most alarmingly, the schools with the largest proportions of Hispanic student enrollment

³⁷ American GI Forum (2006). From U.S. National Research Council

³⁸ Abalos (2006).

³⁹ American GI Forum (2006). From New York Times

⁴⁰ American GI Forum (2006).

⁴¹ Chaddock, 2.

⁴² Contreras, 16.

were among the most severely under-funded and overcrowded in the state, leaving Hispanic students in segregated, resource-deprived schools.⁴³ Today, almost thirty years since Prop 13, the reputation of California schools has yet to be resuscitated, largely due to the failure to pass community based school bond initiatives that would provide funding to renovate and build schools, hire quality teachers, and purchase fundamental classroom necessities.

In areas with large Latino populations, school bond initiatives must overcome community resistance beyond the initial unease that accompanies the mention of increasing taxes. Such school districts must also combat the overt prejudices against the undocumented that are routinely expressed in newspaper editorials, radio broadcasts and local protests. Through these modes of propaganda, the erroneous claim that “free-riding illegal aliens have squeezed *our*⁴⁴ children out of the classrooms”⁴⁵ spreads throughout the community, preventing the immigrant’s acceptance and obfuscating the importance of their contributions to society.

Exclusionary policies such as Prop 187 convey the injurious message that Hispanic students are inferior and do not deserve society’s investment in their education.⁴⁶ While Prop 187 suggested *de jure* exclusion of an entire demographic to remedy the ills of California’s education system, many local school boards simultaneously proposed new school bond initiatives to alleviate the severe overcrowding within public schools. However, in several southern California school districts, including my own Vista Unified, the bonds failed largely because of the sentiment propagated by Pete

⁴³ Contreras, 16.

⁴⁴ Refers to the white or otherwise legal citizens in the community.

⁴⁵ Spencer, KIEV Radio Transcript (1999).

⁴⁶ Contreras, 7.

Wilson's governance and political statements like Proposition 187. Anti-tax groups led the opposition to school bonds, blaming immigration policies as the primary cause of the school funding crisis and arguing that "if legal and illegal immigration were reduced, additional schools and taxes would not be necessary."⁴⁷

Proposition 187 illustrates the recurring contradiction in U.S. immigration policies directed at the Hispanic community. Empirical evidence illustrates the dependence of the United States economy on immigrant labor, yet it implements legislation that worsens the immigrants' quality of life. The paradox of Prop 187 is as follows:

Supporters of the initiative essentially requested that mothers give birth in the streets, that people die from curable diseases, and that families go hungry. But, they did *not* ask that undocumented workers stop working. They did *not* ask that employers of undocumented workers be reprimanded. While California and Californians need immigrant labor, neither state nor citizen will admit the centrality of immigration and immigrant labor in keeping the state economy prosperous and middle-class lives comfortable.⁴⁸

Unwilling to explicitly admit their inextricable dependence on the highly exploitable undocumented labor force, supporters of the initiative embraced the claim to their own victimization and suffering. Under the guise of 'white injury,' Californians "conflated their growing economic insecurities with their heightening racial anxieties" and passed Prop 187 in an effort to suppress California's social and economic dilemma.⁴⁹

Proposition 209

For the past decade, California has led the national effort to dismantle affirmative action. In 1996, voters passed Proposition 209, *The California Civil Rights Initiative* which called for the elimination of all affirmative action in California. The authors of the

⁴⁷ Migration News (1999).

⁴⁸ Cacho, 389-390.

⁴⁹ Cacho, 390-394.

proposition wished to forbid the use of “race, sex color, ethnicity, or national origin as criterion for either discrimination against, or granting preferential treatment to any individual or group...”⁵⁰ The proponents of the referendum “embraced the notion of a color-blind constitution and meritocracy” in effect accusing affirmative action policies of reverse discrimination.⁵¹ However, these supporters failed to acknowledge the rampant social inequalities that have prevented minority groups from reaching the success levels of their white counterparts.

As with the aforementioned misperceptions regarding undocumented productivity, the concept of pervasive meritocracy is also a myth. Of approximately three million Hispanic students, only 3.9% of those in high school met the requirements for admission to the University of California schools in 2000.⁵² Proponents of Prop 209 would dismiss this statistic’s relevance and conveniently blame the Latinos general laziness and overall lack of ambition as the cause of their underachievement. These stereotypes have become so engrained in our societal discourse that most overlook the possibility that it is in fact the structure of our schools and curriculum that cause these disparities in academic success between white and Latino students.

Proposition 227 and the Bilingual Debate

Over the past 20 years, the proportion of Latino students in California public schools has grown tremendously. According to statistics from the Department of Education, between the years 1985 and 1995 the daily enrollment of California schools

⁵⁰ Contreras, 20.

⁵¹ Contreras, 20.

⁵² Conteras, 21.

increased by approximately one million; 73.6% of this increase was attributed to the Hispanic community. In the past decade, of the additional 850,000 students that have entered classrooms of all grades, roughly 70% do not speak English. In 1994, a Department of Health census quoted the birthrate for Hispanic women at 105.6,⁵³ nearly twice that of white women.⁵⁴ U.S. Secretary of Education Richard Riley reflected on these data with a combination of hopefulness and warning when he said that “some will certainly look at this rising wave of Latino students as a liability, but in the long run they are a tremendous asset to our nation- if we educate them well.”⁵⁵

Judging by these statistics, it is imperative that the United States formulate an effective education policy that provides Spanish-speaking children with a curriculum that allows them to succeed in the classroom. The exact recipe for an ideal program has eluded policymakers, and the actual efficacy of bilingual education programs is still heatedly debated. In 1998, California voters passed Proposition 227, *English Language Education for Immigrant Children* with 61% of the vote. The initiative called for the elimination of bilingual education in California and mandated that within sixty days of its passage, “1.38 million limited-English-speaking students be put into separate classrooms regardless of age, language background, and/or academic ability.”⁵⁶ Within these classrooms, teachers, under the threat of lawsuits, were forbidden from speaking to the students in their native tongues.

⁵³ The general fertility rate is births per 1,000 women and is the term used by the California Dept. of Health.

⁵⁴ Thom, 2-4.

⁵⁵ Riley, 1996.

⁵⁶ Contreras, 21.

Stated in Article 21 of the proposition, this provision countered educational research demonstrating that “unlike dual language immersion approaches, English immersion is one of the least effective ways to teach children with limited English proficiency.”⁵⁷ Furthermore, Article 2 states that all students of similar English proficiency would be grouped in the same classroom regardless of age or gender. Thus the diversity of the classroom prevents any uniform instruction in content areas such as math and science. This form of English immersion is destined to fail because “educators know from experience that placing all English-language learners into a separate classroom regardless of age and academic ability, and using rote memorization to teach English without academic instruction will not succeed because it was the standard process that failed miserably in the era of *de jure* segregation.” Ironically, its failure was the catalyst for change 30 years ago when the federal Bilingual Education Act was originally passed.

Eight years after the passage of Prop 227, the extent of its success in California schools remains unclear. Ken Noonan, superintendent of the Oceanside Unified School District in north San Diego praises the effects of English immersion: “Our students learned English far more rapidly than I thought they could, and I’ve been a bilingual teacher and advocate for 25 years.” Gains in Oceanside elementary schools were among the highest in the state, with math scores up 100% and reading up 93%.⁵⁸ However, conflicting evidence suggests these to be isolated and/or inflated results. According to the Department of Education, just “7.8% of English language learners were re-

⁵⁷ Contreras, 21.

⁵⁸ Chaddock, 3.

designated as fully English proficient in 2002 while a similar 7% were in 1998, the year before the initiative took effect.”⁵⁹

Ultimately, Proposition 227 and the current debate surrounding bilingual education are generated by the xenophobic fears that the hegemony of the English language has been threatened by climbing immigration rates. Like the broad xenophobic trends outlined above, views on language diversity have vacillated between periods of permissiveness and those of restrictive policies. During the Permissive Period of 1700-1880, records suggest “a fair amount of tolerance or benign neglect existing toward the many languages represented in the new society.”⁶⁰ It is important to consider, however, that although characterized as “permissive,” education during this period was not set up to actively promote bilingualism, but instead was “a policy of linguistic assimilation without coercion.”⁶¹ During the restrictive period of 1880-1960, a fervor of nationalism emerged as a result of the foreign wars and thus strict monolingual education was the acceptable norm.⁶² The aftermath of World War II and the beginnings of the Cold War ushered in the Opportunist Period of 1960-1980s. WWII exposed U.S. inadequacy in foreign language instruction and because diversified language skills were “essential for military, commercial, and diplomatic endeavors,” bilingual education became a priority in the national defense agenda during the Cold War.⁶³ Although this period is characterized as more open to the idea of a multilingual society, bilingual education was still popularly contested. The battle against bilingual education gained momentum in the 1980’s during

⁵⁹ Crawford, 3.

⁶⁰ Ovando, 4.

⁶¹ Ovando, 4.

⁶² Ovando, 5-6.

⁶³ Ovando, 7.

the so-called Dismissive Period that still exists today. In 1981, President Reagan stated that “it is absolutely wrong and against American concepts to have a bilingual education program that is now openly, admittedly dedicated to preserving their native language and never getting them adequate in English so they can go out into the job market and participate.”⁶⁴

The passage of Proposition 227 during the Dismissive Period represents the apex of the bilingual debate and reflects the growing attitude that bilingualism was utterly “un-American” and impeded English comprehension. This “assimilationist” view held that bilingualism was a divisive disability rather than an advantage.⁶⁵ Conversely, the “pluralist” perspective accepted “the multiplicity of languages as a necessary ingredient of public education” and viewed the child’s native culture and language as essential to the learning process.⁶⁶ In New Mexico’s *Serna v. Portales Municipal School* (1974) case, expert witnesses testifying on behalf of bilingual education stated that “when a child goes to school where he finds no evidence of his language and culture and ethnic group represented he becomes withdrawn and nonparticipating.”⁶⁷ Despite the courts decision to uphold the protections to provide Hispanic students with a meaningful bilingual education, the case itself illustrates the instances of local school districts efforts to curb the effective integration of Spanish speaking students.

The historic devaluation of the Spanish language and its curricular suppression was an effective way to degrade, control and segregate a cultural group without the

⁶⁴ Ovando, 12.

⁶⁵ Contreras, 9.

⁶⁶ Contreras, 10

⁶⁷ Roos, 129.

explicit use of force.⁶⁸ Despite the end of *de jure* segregation, it was exceedingly common for Hispanic students to be “physically separated from other students within the same school.”⁶⁹ Policymakers with economic motives exploited the existence of the language-barrier to justify continued segregation within public schools. Hispanic students were routinely tracked into vocational classes which deprived them of opportunities to advance their future socio-economic class; for example, “young Hispanic women were tracked into home economics and clerical or secretarial classes, which prepared them for low-paying domestic and subservient work,”⁷⁰ thus perpetuating the socio-economic disparity between Latino and white America. In 1980, nearly 75% of all Hispanic high school seniors had been tracked in such a way that prevented any possibility of college matriculation and significantly contributed to the high Latino drop-out rate. Tracking Hispanics into these low-ability classes denies them adequate exposure to the “academic subjects, critical thinking and writing skills” requisite for success on college entrance exams.⁷¹

The question of how to educate the Latino community has yet to be answered, but the importance of the Latino population cannot be denied. As Riley warned, if this growing population is to become an asset to our nation, we must not ignore its need for a solid education. While in the past it has been somewhat easy to overlook the needs of the Latino population, experts such as California English Language Development Coordinator Monica Nava now emphasize the growing importance of reaching out to language-minority students; “They were once an invisible minority, with no voting power

⁶⁸ Contreras, 8.

⁶⁹ Contreras, 7.

⁷⁰ Contreras, 8.

⁷¹ Contreras, 17.

or speaking power, but they are quickly turning into the majority and we need embrace this change and work towards building a bilingual society.” She argues on behalf of bilingual education because she wants “the children to understand what they are learning and use language to discuss information to further strengthen their understanding of class material.” She explains that this involves learning in the language they understand because “many children in English immersion classes can easily fake English to their teachers by sitting and nodding quietly.”⁷²

Presently, the bilingual debate rests on two options: a language affirming path of two-way bilingual education in which “language-minority children and children from monolingual English homes learn side by side in multilingual classrooms, becoming bilingual and cross-culturally competent together;”⁷³ or continuing the practices of the dismissive period which resist and suppress teaching in foreign languages. The problem with the latter solution is that “assimilation and language acquisition can not take place through coercion.”⁷⁴ Furthermore, basic research shows that by hindering the development of their native language, the English-only path will prevent language-minority students from fulfilling their potential because “young children may not reach full proficiency in their second language if cognitive development is discontinued in their primary language.”⁷⁵ Full cognitive development is most likely to occur in language-affirming classrooms that “build on students’ linguistic foundations as opposed to destroying them.”⁷⁶ Thus, efforts to deny these children classroom exposure to their

⁷² Nava 4/26/06.

⁷³ Lindholm and Molina, 163-174.

⁷⁴ Fishman, (1991).

⁷⁵ Ovando, 15.

⁷⁶ Ovando, 19.

native language are a “denial of their participation in society and their very peoplehood.”⁷⁷

HR 4437 and the Current Conversation

Vista Unified School District- A case study

Even under the provisions of *Plyler v. Doe*, individual communities have found a way to perpetuate racist attitudes toward the Latino community through the aforementioned prejudiced education policies. Racism and discriminatory practices are so deeply embedded in California public schools that traces of xenophobia can be found in children well before they are capable of comprehending the intricacies of race and ethnicity.

In my first days of Kindergarten my classmates and I were already being indoctrinated to accept the separation of white and Latino students and were well on our way to acknowledging the inferiority of our Spanish-speaking peers. Nearly half of the students in Vista Unified School District were Mexican, yet I never had more than a few Mexicans in my class any given year. My curiosity as to why these students I saw everyday on the playground never came to class baffled my 6-year-old brain and led to an event that will forever be etched in my memory. One day after recess I asked my teacher, “why do all the Mexicans have class together?” Her initial response was not surprising and had to do with the language logistics. However after her explanation she told me, “Don’t call them *Mexicans*, that’s not nice... They are Spanish.” All my peers learned

⁷⁷ Hernandez-Chavez, 45.

early on that “*Mexican*” was a dirty word, saved only for insults and racist jokes. The Mexicans themselves internalized this oppression and would correct such classification by reminding the accuser that he/she was Hispanic. No one wanted to be identified with *Mexico* or being *Mexican* regardless if it was true, and it was considered insulting if you labeled someone as such. From being associated with the unsightly cars parked on lawns to the Mexican gang known as the Vista Home Boys, in my town the word *Mexican* represented poverty, violence and everything else evil in the community.

As we grew older, race issues went beyond the politics of nomenclature. In the 4th and 5th grades recess was the prime opportunity to try out our newly acquired racist rhetoric. I remember the soccer games we would play: the white kids versus the Mexicans; we called it the world cup. Every time the white kids won, they chanted “Gooo Back to Mex-i-co! Gooo Back to Mex-i-co,” smiling and clapping in the faces of the Mexican students, not for a moment considering how deeply wounding these words would be to their peers. Not surprisingly, 15 years later the people of Vista are yelling the same thing- this time as a response to the controversy sparked by the Sensenbrenner bill. On Monday March 27th, over 100 students left school to protest the bill. Vista High student Cindy Garcia said she was demonstrating against the proposed bill because “it is going to affect my family and everyone who is out here today. We’re just humans, we’re not criminals.”⁷⁸ Throughout the week, the protests intensified due to increased participation and the uproar caused by the protesters’ waving Mexican flags and by that Friday, V.U.S.D. cancelled all classes, citing concerns for student safety.⁷⁹

⁷⁸ North County Times 3/27/06.

⁷⁹ Ireland, 1.

Waving the Mexican flags not only deepened the racial divide in Vista and other southern California cities, it was the catalyst that sparked the intense racist name-calling, finger-pointing and violence that ensued in the following weeks. Feigning absolute disgust in a people who could publicly disrespect the American flag, xenophobes took advantage of the Latino's misstep of flag-waving and unleashed a barrage of anti-Mexican statements. One need only read the comments responding to published articles regarding the protest to realize the pure hatred for the undocumented teeming within the white community. Put simply, one common sentiment was: "Go back to Mexico, you make me sick."⁸⁰ A more vocal student wrote that: "They are ruining my education and getting free medical care and welfare. And my parents have to pay taxes for those dirty people. I love AMERICA. DOWN WITH THE MEXICANS!"⁸¹ Another person went so far as to compare the criminality of the undocumented to that of sex offenders: "We are a nation under the rule of law. An illegal alien is the same thing as a drunk driver or a child molester. All destroy the fabric of our society."⁸² Additional comments illustrating anti-immigrant sentiment can be seen in *Appendix B*.

While much of Vista's non-Latino citizenry opposed the protests, Vista's School Board President Carol Herrera respected the students' cause, though she would have preferred them to act after school hours. In a phone interview Mrs. Herrera said on behalf of the school board that "we encourage the students to peacefully protest for causes they believe in, we just hope that they do in the afternoons or on weekends because it costs the district a lot of money for each unexcused absence. However we do

⁸⁰ Ireland, 11. Comment by "perri" 3/31/06 3:09pm.

⁸¹ North County Times 3/27/06. Comment by "jon" 3/30/06 10:28pm.

⁸² Sisson, 8. Comment by "citizen" 3/31/06 5:27pm.

realize their civil rights and cannot punish them for missing class in the event protests occur during the weekday.”⁸³

Similarly, Herrera’s husband John, a local political activist, expressed enthusiasm in the growing activism among the immigrant community. He calls the protests a “terrific backlash” to an “unprecedented” anti-immigrant fervor, ripe with “overtly expressed racism” as opposed to the covert racism that have characterized past race-relations in Vista. He attributes this new form of racism to a fear that “privileged positions will be usurped from the powerful” and that Mexican immigrants have finally transformed “from what was conventionally perceived as an invisible community that did hard labor during the day and disappeared in the night into a legitimate force of competition” that could potentially threaten white hegemony. Mr. Herrera cites a Department of Justice study conducted in Vista in to show the extent to which HR 4437 would affect the community:

The last population census counted Latinos to be 40% of Vista’s residents and further found that over 50% of this number was undocumented. This means that the proposed anti-immigration bill would hit home, literally, to much of Vista. Right now, only 7% of the 40,000 Latinos make it to the polls—there is a great reservoir to improve voter turnout, we just haven’t been able to energize the people to get out there and do it. I’m optimistic in that this bill might finally mobilize our people to participate in the political process.⁸⁴

Surprisingly, there has been a nationwide consensus among the leading proponents of immigrant rights to interpret the current wave of xenophobia in a positive light.

Princeton Professor Patricia Fernandez Kelly excitedly stated in a panel discussion that “in a few years we will thank Sensenbrenner for giving us such an abominable suggestion

⁸³ Herrera, Carol Phone Interview 4/28/06.

⁸⁴ Herrera, John, Phone Interview 4/28/06.

that made people stand up against a racist policy and support the regularization of these immigrants.”⁸⁵

Conclusion

The question of how to address the tensions in immigration politics remains to be answered. However complicated the issue, “immigration is not a pathological condition to be stamped out”⁸⁶ as Sensenbrenner would like us to believe. It is a normal part of a globalizing economy and fair and sensible policies regulating its flow would ultimately benefit Americans as well as contribute to the economic development in the countries of origin.

Right now is a pivotal moment in determining the future of the United States and the Latino community as a whole. Do we racialize Hispanics and advocate Sensenbrenner’s plan to turn undocumented children into criminalized-alien in their own land? Do we wish to become a nation, like France, who has marginalized a portion of society to the point where they feel cornered into resorting to violence in an effort to be recognized? If the United States is to avoid the creation of a future Latino underclass it must seriously consider developing the potential avenues that will lead the immigrant community to a destination of self-sufficiency.

Preventing such a fate involves taking a stand against the xenophobic immigration policies that have plagued our nation’s history. As renowned Princeton

⁸⁵ Fernandez-Kelly, Panel Discussion 5/1/06.

⁸⁶ Massey, Panel Discussion 5/1/06.

scholar Dan-El Padilla stated, “there is a real necessity to reconsider the inequity and injustice of our laws and realign them with justice and equity.”⁸⁷ Padilla, who recently exposed himself in a Wall Street Journal article as residing here illegally on a Visa overstay, exemplifies the absurdity in criminalizing millions of young people like himself whose only crime involves coming to America with their parents.

Historically, when we have provided immigrants with incentives to property accumulation and a solid education, they have achieved the *American Dream* in 2nd and 3rd generations.⁸⁸ However, when we have routinely implemented policies to suppress, marginalize and exploit a certain demographic, as in the case of many African American communities, we have created an underclass incapable of ascending the socio-economic ladder.

The 'huddled masses' that have flocked to our nation in pursuit of the American Dream cannot be ignored. As their importance to our society increases, xenophobic policies which attempt to keep the Latino community 'homeless' in our great nation will also guarantee that they remain 'tired and poor' and thereby do great harm to our economy, education system, and societal fabric.

⁸⁷ Padilla, Panel Discussion 5/1/06.

⁸⁸ Fernandez- Kelly, Panel Discussion 5/1/06.

Appendix

A. HR 4437 Provisions- Courtesy of Immigrant Legal Resource Center (2006)

Under HR 4437:

- Three DUI convictions, including misdemeanors, will constitute an aggravated felony.
 - An undocumented person who is convicted of driving under the influence, or violates state law by failing to take a breathalyzer test, is deportable and subject to mandatory detention. State officers are directed to identify such persons and refer them immediately to immigration authorities.
 - First minor drug convictions that were considered eliminated under Lujan-Armendariz v Ashcroft will no longer be eliminated for immigration purposes.
 - The domestic violence/child abuse deportation ground also will be a basis for inadmissibility, as will an aggravated felony conviction.
 - Solicitation to commit a crime will be considered an aggravated felony. Thus offering to commit a drug trafficking offense will be an aggravated felony, overturning U.S. v Rivera-Sanchez, Leyva-Licea and Coronado-Durazo. Sec. 201(a)(3).
 - Aiding and abetting an aggravated felony will be an aggravated felony. This overturns Corona-Sanchez, Penuliar, Martinez-Perez. Sec. 201(a)(3).
 - A court's reduction of a sentence for immigration purposes will not be counted, overturning the recent Matter of Cota-Vargas and Matter of Song.
 - A recidivist sentence enhancement (i.e., an increased sentence based on having prior convictions) will be counted in the definition of sentence, overturning Corona-Sanchez in the Ninth Circuit. Sec 201(a)(4).
 - In a naturalization application, CIS can find a lack of good moral character based entirely on events that happened outside the period during which good moral character must be proved. Reverses Santamaria-Ames.
 - An aggravated felony is a permanent bar to good moral character regardless of the date of conviction. This eliminates the prior statutory provision that a conviction from before 11/29/90 was not a permanent bar.
 - One of the most damaging provisions, and most violative of basic fairness concerns, is that the burden of proof will be reversed for noncitizens charged with conviction of an aggravated felony. If the government, rightly or wrongly, charges someone with being an aggravated felon, that person (who will be detained) must somehow obtain the court documents and put out the legal arguments to try to prove that she is not. This reverses Supreme Court precedent such as Woodby v INS, and the longstanding statutory rule.
- The same provision expands the kinds of documents that can be consulted to prove exactly what offense the person was convicted of, to include police reports and probation reports. This is a fundamental change in the "record of conviction and divisible statute" rules that have existed for decades under the BIA, which now have come to be known as the "categorical analysis" by federal courts. This reverses fundamental Supreme Court precedent, such as Shepard and Taylor, upheld in dozens of federal court cases, for example, Chang, Corona-Sanchez, Rivera-Sanchez, Penuliar in the Ninth Circuit. Sec. 201(a)(4)(iii).
- There are several new criminal and immigration penalties for conviction for use of false identity documents (apparently such as false drivers licenses) and social security cards.

B. Anti-Immigrant comments found in response to articles in North County Times

-“Send them home!!! Should have just brought the border patrol to the protest.”⁸⁹

-“Illegal is illegal. AND we don’t want them. They use up (abuse) valuable resources. They take jobs away from teenagers and high schoolers trying to make money in the summer. Their culture has them believing that it’s ok, hell the roll models they dress like and look up to are gang bangers. Come on, send them all home and let them get in line like all the other immigrants who formed this nation.”⁹⁰

-“Here’s the solution. Close the borders, kick out al the ILLEGAL aliens, close welfare and send all those workers to Border Patrol and make the people on welfare take the jobs the illegals open up by being gone.”⁹¹

-“What part of “illegal” is so hard to understand? Since when does “illegal” become legal? I am so perturbed by this NOT so legal, peaceful, lawful demonstration. Americans have the right to assemble, everyone else is out of their realm. Go back to whatever country you came from and try doing what you did here, there. Don’t worry, Americans can pick their own fruit, mow their own lawns, and do whatever needs to be done ourselves. So get over yourselves, and GET OUT NOW!”⁹²

-“That’s it! I refuse to support any Mexican fast food place that I even think has illegals working the back. I’m so sick of these losers spitting in our faces. White, black and ll Americans of all races must stand up for America and not support people who just keep sucking our system dry. WRITE SENATORS AND TELL THEM NO MORE ILLEGAL IMMIGRATION WE WANT STRONGER BORDER CONTROL NOW NOW NOW NOW AND GET THESE LOSWER OUT OF OUR COUNTRY NOW NOW NOW NOW ENOUGH!”⁹³

⁸⁹ North County Times 3/27/06. Comment by “Escondido” 3/27/06 12:08pm.

⁹⁰ North County Times 3/27/06. Comment by “Roberto” 3/27/06 12:40pm.

⁹¹ North County Times 3/27/06. Comment by “Derik” 3/27/06 9:51pm.

⁹² North County Times 3/27/06. Comment by “Jannet” 3/27/06 10:56pm.

⁹³ North County Times 3/27/06. Comment by “Mandy” 3/29/06 10:35am.

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