

Denying Medical Services to
Undocumented Immigrants within the
United States:
Short-Sighted Policies with Disastrous
Consequences

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On November 19, 1994, twelve-year old Julio Cano died shortly after his parents took him to the neighborhood clinic in Orange County, California. Earlier that week on November 11th, when he suffered from a fever and cough and first complained of a pain in his leg shooting into his bowels, his parents did not take him to the public-hospital. Fearing deportation because of their undocumented immigrant status under the recently passed anti-immigration initiative in California (Proposition 187), his Mexican parents waited until they could raise the \$60 needed to pay for a private doctor to care for their son (Romney 3). Julio died of a bacterial infection, which his immune system could not fight off because he suffered from acute leukemia, the most common form of childhood cancer. Unfortunately, the diagnosis of this disease, and the treatment of this infection came too late for him. Sadly, the death of Julio Cano is just one of many tragic situations and adverse clinical consequences following patient delays in seeking health care for undocumented immigrants. Our nation's struggle with how to handle the provision of basic health care to undocumented immigrants should not be ignored at the expense of people's lives and health. Furthermore, Proposition 187 is only one component of the larger movement to reduce legal and illegal immigration within our nation, and was "largely a symbolic expression of frustration with illegal immigration" at the time (Martin 255).

Immigrant health care needs (legal and illegal) have emerged as an important factor in the American health care system which greatly affects public health. State and national governments currently debate whether or not undocumented immigrants¹ should be provided non-emergency medical treatment in publicly funded health care facilities. As policy makers attempt to determine if medical services ought to be provided to

undocumented immigrants, the possible health consequences of denying care, cost analysis on the state and national level, and political feasibility of such programs are integral to our understanding of the complex issue. With attention to each of these areas, this paper will demonstrate that denying basic medical care services to undocumented immigrants is dangerous, short-sighted, and unjust. Basic medical services ought to be offered to people in need, regardless of citizenship status, in order to protect the public health and promote public good.

This paper will dispel myths about immigration, which become the reasons for the driving opposition against providing social services to immigrants. In addition, this paper will take a legal and human rights approach. It will first develop a moral argument that has some legal precedence in another area (in this case in education in the Plyler v. Doe, 457 U.S. 202 Supreme Court case of 1982). It will show that one day this legal argument could gain legal standing pertinent to basic health care. Finally, it will examine anti-immigration policies and provide a prescription for how our nation should handle this health care concern.

I. The Ethical Argument: The Basis for Eventual Legal and Constitutional Change

The argument that it is necessary to provide undocumented immigrants with basic and preventative health care is not constitutionally supported. Furthermore, the chances of political action for legislation regarding health care provision to undocumented immigrants may not be any greater in the present climate. However, legal provision for this right is still an appropriate long term goal. By applying the premise of the legal precedence of the Plyler v. Doe case to health care, a moral argument can be supported,

which then has the potential to gain legal status through legislation. This paper is not attempting to make a legal argument. It is not likely that the United States will establish such a right for undocumented immigrants anytime in the near future because our government does not even provide the legal right to basic health care for our citizens. Instead, the provision of these health care services to undocumented immigrants must be argued from a moral rights perspective. As Henry Shue establishes in his book Basic Rights (1996), if a person has a particular moral right this means that the “demand that the enjoyment of the substance of the right be socially guaranteed against standard threats is justified by good reasons” (13). In such a case, the “guarantees ought, therefore, to be provided” (Shue 13). A moral right may not be a legal right in a given society (as is the case with non-emergency health care provision to undocumented immigrants within the U.S.), but if it is a reasonable demand, it should be a legal right. A moral right is both a rational and universal demand. The moral right can then be used to begin making justified demands that may one day be recognized as legal rights through legislation and court action.

Henry Shue establishes that subsistence, security, and liberty are the three classes of basic rights. With his definition “basic rights need to be established securely before other rights can be secured,” giving basic rights a priority or urgency over other rights (Shue 23). When basic rights are provided and protected people are able to exercise their other rights. Shue argues that subsistence, “or minimal economic security,” is “justified for treatment as a basic right” because it is necessary for the exercise of any other right (23). Shue explains that the provision of subsistence requires that persons “have available for consumption what is needed for a decent chance at a reasonably healthy and

active life of more or less normal length, barring tragic interventions” (23). He includes minimal preventive public health care under this definition.² Basic rights provide protection for the defenseless against devastating and common life threats. Sickesses, poor health, and diseases constitute threats to one’s life. Therefore, many health care needs are basic rights and at the level of subsistence. In some cases, the consequences of not receiving health care are worse than not receiving welfare. Fundamental services which would provide a subsistence level of health care should include immunizations and treatment for communicable diseases, non-emergency wellness care, pre-natal, labor and delivery, and post-natal care, and pediatric care.

Logically, Shue states that because “death and illness prevent or interfere with the enjoyment of rights, everyone has a basic right not to be allowed to die or be seriously ill” (25). Further, “it is not impractical to expect some level of...effective management, when necessary, of the supplies of the essentials of life,” or subsistence (25). Within this argument, an institution to manage the provision and distribution of elementary health care is necessary. In short, Shue’s argument states:

when death and serious illness could be prevented by different social policies regarding the essentials of life, the protection of any human right involves avoidance of fatal or debilitating deficiencies in these essential commodities. And this means fulfilling subsistence rights as basic rights. (25)

Because the problems are serious and general, the provision of basic rights becomes society’s concern.

Being socially guaranteed, standard rights necessitate correlative duties of others.

As a basic and moral right, minimal preventive public health care is universal. Those who can provide others with a universal right without depriving themselves of basic rights are obligated to do so. As a universal right, the U.S. has some responsibility to satisfy the right to basic health care whether the subjects of the right are in the U.S. or in another location where the U.S. is able to act. In addition, if the undocumented immigrants are here within the U.S. they are compatriots, even if they are not citizens. Moreover, because the U.S. job market and our employment policy act to bring these persons here our healthcare system must serve them. Our government and healthcare institutions have a duty to meet the subsistence rights of undocumented immigrants.

The consideration for the arguments against providing for the right to basic health care for undocumented immigrants then becomes a test of the realism of the moral argument for the right. The practicality of the government securing this basic and moral right of basic health care for undocumented immigrants within our nation must be evaluated. Overall, to provide the basic subsistence right of health care to undocumented immigrants: 1) the sacrifice is not too great; 2) the consequences will not make satisfaction of the right impossible; and 3) the duty does not include non-compatriots. There will be sacrifices in order to provide this right to undocumented immigrants in the U.S. However, as will be presented within this paper, the sacrifices to provide this moral right to undocumented immigrants has a smaller effect on the overall economy than believed. In actuality, providing basic health care to undocumented immigrants has long-term public health and cost benefits for the nation. The cost of satisfying this right will not be prohibitive. Upfront public funding used to provide these services saves money in the long-run (the best example being pre-natal care). Provision of these rights is not

devastating to national or state budgets, and does not weaken the services for other citizens. In addition, the provision of health care to undocumented immigrants helps to prevent the creation of an under-class. Plyler v. Doe makes this claim in regards to education. Because provision of basic non-emergency health care to undocumented immigrants does not overwhelm individuals within the U.S. or the government with duties, we are obligated to work in order to satisfy the rights. The sacrifices to secure these subsistence rights are not so heavy that they abrogate the right.

II. The Myths of Illegal Immigration and Provision of Basic Health Care

There are two myths that drive the opposition toward undocumented immigrants, and this opposition leads to anti-immigration acts such as Proposition 187. The majority of American citizens believe that: 1) social services provide an incentive for persons to immigrate; and 2) social services for undocumented immigrants cost too much when they immigrate, even if it is not the reason for immigration. In addition, the majority of citizens, politicians, and policymakers do not consider the health consequences for failing to provide basic services to immigrants, and do not realize the cost savings gained in the long-run by providing these basic services and preventative health care. These myths and misunderstandings are not about the overall effects of immigration, legal or illegal, but rather about the provision of social services to undocumented immigrants. Many regard immigrants as burdens on our state (public charges) rather than future contributory members. This modern perception of our nation's immigrants as "unacceptable" and "undesirable future citizens" has led to anti-immigrant policies such as: the Immigration Act of 1990 with increased border patrol programs; Proposition 187 in California passed

in 1994; and the immigration legislations within the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, which curtailed public assistance to noncitizens.

Undocumented immigrants find entrance into the country in many different ways, such as by entering fraudulently, through misrepresentation, or without inspection. Still others enter on a legal visa and then illegally remain within the country after the visa expires. Immigrants come to the United States for various reasons, which have been termed “push-pull” factors (Fallek 951). “Push” factors encourage immigrants to depart their countries of origin, while the “pull” factors function as incentives attracting immigrants to the United States (951). Past policies have played a role in encouraging immigration (legal and illegal) to the U.S. (Mitchell 93). For example, the embracing 1965 Immigration Act put into effect in 1968, allowed more individuals from third world countries to enter the U.S, entailed a separate quota for refugees, and made it so that immigrants were welcomed because of their skills and professions and not for their countries of origin. After this act was implemented, immigration rates increased significantly. U.S. foreign policy during the Cold war also prompted immigration. Furthermore, national migrant communities within the U.S., which promise support to those thinking about immigrating, have served as “pull” factors in the past. However, today there is no broad or simple explanation for immigration, which makes creating policies regarding immigration, as well as analyzing policies currently in place, a challenge. These “push-pull” factors remain for legal and undocumented immigrants, but this paper will specifically discuss their influence on illegal immigration.

Approximately eight million unauthorized immigrants currently reside in the United States and are affected by anti-immigration policies (*National Conference of State Legislatures* Bush Immigration Reform). Our nation fears that the ability of an illegal alien to access our public benefits constitutes an incentive (a “pull” factor) for immigration to the United States, although there is no empirical evidence that this is the case. In fact, according to many immigrants, free education, health care and other social services are not the factors that “pull” them to this country (Fallek 958). Instead, immigrants have identified the job market, the ability to find substantial work, and the dream of making a better life for themselves and their families as the primary reasons for immigrating illegally across the United States border. Many immigrants also admit that onerous conditions such as economic hardship or political oppression within their own countries reinforce their decision to immigrate. In a San Diego study conducted by Chavez et al., interviewees from Mexico typically migrate for economic reasons, whereas many of the Salvadorans, Guatemalans, and Nicaraguans cite reasons related to political upheavals in their countries (Chavez 10). The majority of undocumented immigrants indicate that they decide to immigrate primarily on the basis of an estimation of their earning potential in the United States being significantly higher than that in their country of origin (*The Economist* 27).

In a 1996/1997 survey of undocumented Latino immigrants in four cities (El Paso, Houston, Fresno, and Los Angeles), Berk et al., examined the reasons these Latino immigrants come to the United States, the use of health care services (what services were utilized and how often), and the degree of participation in government programs. They found that undocumented Latinos come to this country primarily for jobs. In three out of

the four cities, at least half of the respondents cited work as their most important reason for immigrating. El Paso was the exception where “49 percent cited uniting with family and friends as their main reason for immigrating, followed by finding work (cited by one fourth of respondents)” (Berk 48). More importantly, less than 1 percent of the respondents cited obtaining social services as the most important reason for immigrating. Therefore, anti-immigrant activists and legislation are misguided. Anti-immigration proponents will not prevent immigrants from coming to this country simply by cutting off their access to welfare benefits. Providing health care to undocumented immigrants does not attract immigrants to the United States, and therefore if provided to undocumented immigrants, it would not affect the amounts of immigrants coming to the United States.

Secondly, proponents of anti-immigrant policy claim that providing health care to undocumented immigrants drains the state of resources, making it more difficult to provide care to its citizens. As the cost of medical care in the United States rapidly increases, many health facilities have begun to explore ways in which to cut costs or raise additional revenues. Hospitals in some areas of the country, not surprisingly in states which have the highest percentages of undocumented immigrants (CA, TX, AZ, FL, NY, NJ, IL), assert that they are burdened with a large number of unpaid bills owed by undocumented immigrants who are in the United States illegally (Weintraub 733). While it can be argued that undocumented immigrants utilizing health care pose some financial burdens on these states and particular hospitals, undocumented immigration is not a significant cause for the rising medical costs within the United States (Pagaduan 31). In the same 1996/1997 study Berk and his team found that compared to other Latinos, as well as the U.S. population as a whole, undocumented immigrants obtained fewer

ambulatory physician visits and rates of hospital admission. One exception was hospitalizations related to childbirth, which were comparable between undocumented immigrants and other Latinos (Berk 49-50).

A number of studies have attempted to estimate the percentage of undocumented immigrants who have used medical facilities during their stay in the United States. These studies have been based on self-reports of those who have been apprehended by the Immigration and Naturalization Service (INS) or other small samples of undocumented immigrants who have not been apprehended or who have left the U.S. One study showed that a quarter of the undocumented immigrants reported that either they or a family member used health care services while in the United States (Arnold 708). However, of the reported use of services only 4.6-15.4 percent of those cases were utilizing free medical care (the percentage varied within this range over the small populations surveyed) (708). In this same study, a substantial proportion of undocumented immigrant workers said that they had hospitalization insurance withheld from their pay to cover the costs of medical services they might require (708). This study showed undocumented immigrants taking what responsibility they could to ensure medical care in the future. Arnold indicated several self-reported reasons why undocumented immigrants make less use of health services, which included:

- 1) Fear of detection-Undocumented immigrants avoid unnecessary contact with public institutions because of their fear of being detected and deported;
- 2) Inability to pay-Most undocumented immigrants work in the second labor market for relatively low wages. Moreover, undocumented aliens are ineligible to receive Medicare and Medicaid benefits. These circumstances raise serious

questions about the ability of many undocumented aliens to pay for medical services and they may consequently delay or entirely forego seeking needed medical care;

3) Selectivity of migration-Undocumented immigrants tend to be heavily concentrated in the young adult ages and persons in this age group are not heavy consumers of health care (except perhaps, for maternity services). Moreover, individuals with particularly serious health problems are usually selected out of the migration process because of their inability to travel long distances under difficult circumstances; and

4) Cultural and language barriers- Undocumented immigrants generally live in communities in which they can rely for various kinds of support on others from their own national or cultural group. Reliance on this community may extend to health care as well, except in the case of severe medical problems. Language and cultural differences encountered at medical facilities may also discourage undocumented immigrants from seeking help outside the community.

(Arnold 709-10)

Some argue that if these services were more available, this access might change, and a study similar to that of Berk's group would then find radically different results. However, even when undocumented immigrants were legalized under special programs, such as the Immigration Reform and Control Act of 1986 (IRCA), they encountered restrictions. With this act, undocumented patients could receive Medicaid (or MediCal) until they had been officially denied Medicaid services. While this provided practitioners with a brief period of reimbursement and thus they temporarily opened their doors to care

for undocumented immigrants, the decision to utilize these services was not as simple for the undocumented immigrants. A patient who utilized these services and then later attempted to legalize his status could be considered likely to become a public charge for having used government-funded health services. A label or reputation as a “public charge” was enough for the government to deny legal immigration status. These policies make it complicated for undocumented immigrants to use public third party payment programs, even when offered, because of future ramifications (Chavez 8).

In many cases, undocumented immigrants actually pay more to the state than they consume in public services. Julian L. Simon in his 1995 study regarding public expenditures on immigrants (legal and illegal) to the United States, past and present, shows that immigrant families take substantially less funding from public service than do native families. Simon’s data reveals that from the time of entry until twelve years later, immigrant families receive less funding from public health services. Eventually, their usage of public services becomes about average. Furthermore, within two to six years of entering the country, immigrant families pay roughly the same in taxes, and then ultimately immigrant families pay more (Pagaduan 31-2). Another survey conducted of undocumented immigrants and providers of public services in the state of Texas showed that the state “receives more from taxes paid by undocumented persons than the cost of the state to provide them with public services, such as education, health care, corrections, and welfare” (Weintraub 733). Although border cities within Texas bare the brunt of these costs and are heavily impacted by such health care provisions, the state as a whole is unaffected, if not benefited by, the presence of undocumented immigrants. The disparity between the financial burden of health services provided to undocumented

immigrants between areas within the state, as well as our entire nation, merely supports the need for a national program to ensure health care provision to undocumented immigrants. The fact that health care provision to undocumented immigrants is not an overwhelming financial sacrifice for state or national budgets supports the realism of the U.S. government providing this moral and basic right.

Furthermore, denying health care to undocumented immigrants could lead to dangerous national health consequences. Without properly immunizing undocumented immigrants living and working within the U.S, the chance of spreading communicable diseases common among immigrants, such as tuberculosis, hemorrhagic dengue fever, Chagas', typhoid, amebiasis, Hepatitis A, and malaria, increases greatly (Center for Disease Control and Prevention 1998). Those most affected by this medical oversight are children attending schools with children of undocumented immigrants and our poorest citizens working and living beside undocumented immigrants. Political leaders in favor of anti-immigration policies argue that undocumented immigrants take the jobs of our lowest-income citizens. They believe it is imperative to protect our poorest citizens from this usurpation of employment opportunities through legislation against undocumented immigrants. However, in the meantime these same politicians do not take the proper procedures to protect the lives of these lower-class citizens exposed to such infectious diseases.

Providing basic health care services to undocumented immigrants through regular physical exams and prenatal services for pregnant women will be cost effective in the long-run for our national health care system. Currently, federal law requires emergency rooms to provide treatment to anyone seeking emergency care, which includes

undocumented immigrants for whom emergency care is their only access to public medical services. On the Federation for American Immigration Reform (FAIR) website in an article entitled “Health Care for Illegal Aliens Draining Tax Funds” (March 4, 2003), the organization cites that:

in 2000, almost \$190 million (about 25 percent) of southwest border hospitals uncompensated costs were for emergency medical treatment for illegal aliens, with another \$13 million in ambulance costs. Costs for follow-up care by the hospital (and emergency service care team) were as high as an additional \$100 million. (*U.S. Newswire*)

While these figures seem shocking, what FAIR fails to acknowledge is that the undocumented immigrants are given no other option. If ill or suffering from a medical problem (even if a non-emergency problem), in order to get any sort of medical treatment undocumented immigrants must utilize the emergency room. The Center for Studying Health System Change calculated that the national average emergency room visit costs \$383, while the national average physician’s office visit costs \$60 (*Tracking Health Care Costs*). Delayed or ignored treatment of minor illnesses with simple remedies can lead to more serious health complications with more expensive treatment needs in the future. Forcing undocumented immigrants to rely upon emergency room care is not only insufficient but also undermines the nation’s self-proclaimed attempts to cut back on health care costs.

Additionally, denying prenatal care to illegal mothers, who then give birth to U.S. citizens (to whom the nation is now obligated to care for by law) creates a larger financial burden on our nation than if preventative care was provided to these mothers initially.

The National Institute of Health projects that every dollar spent on prenatal care services saves three dollars on future medical expenditures, while other studies have determined the range of future cost-savings to be between \$1.70-\$3.38 (Connell; Kolata) Children born to mothers who received care need less medical attention in the future.

Furthermore, promoting healthy childhoods through regular medical treatment leads to productive, healthy adults, who can be contributory members of society. Providing prenatal care reduces the average cost of deliveries, as well as the risks of complicated medical situations and birth outcomes, such as low-birth weight (which is correlated with slowed mental and physical development), neonatal infant mortality, children with birth defects, and severe cases of childhood asthma.

III. The Paradox of Illegal Immigration

Ultimately, providing basic health care to undocumented immigrants is not detrimental to U.S. citizens (in particular the poorest citizens). Provision of basic health care to undocumented immigrants would not negatively affect our society. It would prove both beneficial to the public health of our citizens and cost-effective for our nation in the long-run. It is rational and appropriate for our national and state governments to provide basic (non-emergency) health care to undocumented immigrants. All of these reasons lead to the realism of this right as it would require the duty for the government to secure it. However, our nation and states refuse to pass such legislation and create such policies, suggesting that there are underlying issues and deeper-rooted politics in this debate over illegal immigration. If economic potential and the job market within the U.S. have been designated by undocumented immigrants as the central reasons for

immigrating, and our government (as it claims) wants to deter such immigration, it would be logical to pass legislation that would stifle these job opportunities. Reducing possibilities for work for undocumented immigrants (or even denying them completely), enforcing laws that make hiring undocumented immigrants illegal, and increasing the severity of the punishment for those employers who break such laws would abate the flow of undocumented immigrants into our society. However, this political approach does not usually enter the discussion of how to fix our nation's "broken borders."

The 1986 Immigration Act did focus on curtailing illegal US immigration. This 1986 Act legalized hundreds of thousands of undocumented immigrants and then introduced the employer sanctions program to fine employers for hiring illegal workers. It is one thing to create social policy, and quite another to mobilize monetary resources to implement and enforce it. The 1986 Immigration Act satisfied people who were angered by the lack of consequences for those U.S. employers hiring and encouraging undocumented immigrants to come and work within our nation. Yet, in reality these laws and fines created under the 1986 reform were empty words without money to back such action. In 2002, only 13 employers across the nation were prosecuted for hiring undocumented immigrants (Chiswick 111).

As it is, our country lives a contradiction. While people want to "execute a coordinated public punishment of undocumented immigrants for coming in to their states, they also want to exploit them for cheap labor" (Song 3). Ultimately, powerful lobbies do not oppose illegal immigration at all. What they oppose is providing public resources for undocumented immigrants. Those who do oppose illegal immigration believe that it threatens employment opportunities for other low-skilled workers (legal immigrants and

American citizens), but this perception has been proven wrong with data collected in regards to what types of jobs undocumented immigrants take. After all, “an illegal alien working in conditions of near-slavery can still earn enough to support an extended family back home,”³ thereby guaranteeing a cheaper, bottomless labor force “to take the nation’s dirty and dangerous jobs because Americans will not” (*Economist* 29). It can be argued that undocumented immigrants do not replace jobs of low-skilled citizens, but rather take the positions that even the poorest Americans and legal immigrants refuse to accept. However, tougher enforcement of laws prohibiting employment of undocumented immigrants could have positive results for legal low-paid workers. Employers would drop some jobs that undocumented immigrants currently fill, but more significantly they would be forced to pay more for other jobs to be done by poor citizens and legal immigrants. These second sector jobs would still be in demand, only at a higher wage.

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However, presently without enforcing strict employer sanctions, employers can exploit undocumented immigrants in these jobs for the lowest wages. Without legal protection and political representation, undocumented immigrants are even more vulnerable to businesses looking to take advantage of them. The Essential Worker Immigration Coalition attempts to call attention to this hypocrisy by lobbying Congress and the White House on behalf of “ill-paid sectors such as the hotel industry, fast-food, farming, nursing and animal slaughtering; these could not survive without immigrant workers, many of them undocumented” (*The Economist* 28). Unfortunately, undocumented immigrants in many cases *are* better off in the lowest paying jobs here than working in their country of origin. Therefore, a dependency between the migrant laborers and the employers in the United States endures without being challenged by new

immigration policies. Because these immigrants are within our country, they are compatriots, and we are obligated to give them the basic right to health care services. John Acosta, a former illegal fruit-picker who now manages a construction company, sums up the paradox with reference to a specific initiative, Proposition 187:

Come on guys, the businessmen backing Prop. 187 are the guys employing these people. Everyone agrees, even in the Latino community, that something has to be done about illegal immigration. But everyone knows what the game is. If you have a job to do, go down the corner and grab a few Mexicans. (Song 4)

IV. California Proposition 187, Arizona Proposition 200, PRWORA

Further, politicians have used anti-immigration techniques to create an “us versus them” scenario and a believed need for increased government involvement to provide security against invading world populations. Often aligning themselves with such anti-immigration initiatives and using this rhetoric, politicians target specific political party backing. The most well-known case of such political manipulation regarding immigration policy surrounds Proposition 187. California voters approved Proposition 187, the “Save the State” (SOS) initiative, 59 to 41 percent on November 8, 1994 (Martin 255). The primary goal of Proposition 187 was to create a state-mandated screening system for persons seeking tax-supported benefits. Within the document Proposition 187 stated: “no person,”—citizen, legal immigrant or illegal immigrant—“shall receive any public social services to which he or she may otherwise be entitled until the legal status of that person has been verified.” Therefore, Proposition 187 denies undocumented immigrants non-emergency medical treatment in publicly funded health care facilities.

Proponents of this measure, misinformed by a common public myth, argued that state resources were being unfairly drained by the provision of care to undocumented immigrants, making it more difficult to serve other populations within the state. In a 1993 letter, California Governor Pete Wilson reinforced a second myth about undocumented immigrants. He wrote to President Bill Clinton lobbying for federal legislations to “limit or eliminate ‘the giant magnet of federal incentives’ that draw foreigners into the country illegally” (Berk 44). Echoing Wilson’s plea to Clinton, the California Ballot Pamphlet for the 1994 elections stated, “welfare, medical and educational benefits are the magnets that draw these ILEGAL ALIENS across our borders” (Martin 255).

Pete Wilson’s “Save our State” initiative in actuality saved his political career. He was as much as 25 points down in the polls before he found this issue (Ono and Sloop 73). His unpopularity was not surprising, as he presided over the destruction of the economy in California and the loss of nearly half a million jobs since 1990. Taking up Proposition 187 helped draw attention and discussion away from Wilson’s role in the economic crisis. The rhetoric of Wilson’s campaign created an “us vs. them” situation in which he depicted immigration as a threat to the quality of life of California residents, and he as the person who would right these injustices. In this case, the concern about taxpayer costs for providing social services to undocumented immigrants was bogus and manipulated for Pete Wilson’s political gain. This effort used the two public myths about immigration (1) that the costs of such benefits drain local and state economies, rendering them ineffective at providing care to citizens; and 2) that immigrants are lured to the United States by public benefits) to gain political support. Wilson aimed to cut back

immediate costs without alienating businesses by really trying to curtail immigration through stricter enforcement of laws against hiring undocumented immigrants.

Such political manipulation is unjust because federal and state policy decisions profoundly affect the health care of undocumented immigrants living in the U.S. Proposition 187 had five major sections. It barred illegal aliens from the state's public education systems from kindergarten through university, requiring public educational institutions to verify the legal status of both the students and the parents. Secondly, all persons seeking cash assistance and other benefits must verify their legal status before receiving such benefits. A third provision made the production, distribution and use of false documents to obtain public benefits or employment by concealing one's legal status a state felony, punishable by fines and prison terms. Most importantly to the health care of undocumented immigrants were the other two provisions of this proposition. One required that all providers of publicly paid, non-emergency health care services verify the legal status of persons seeking service (including children) in order to be reimbursed by the State of California. Persons seeking emergency care must also establish their legal status, even though all persons, despite their legal or illegal status, would receive emergency health care services. The final provision stated that all service providers were required to report suspected illegal aliens to the state Health Services Department, the California's Attorney General and to the Immigration and Naturalization Service (INS).

The initiative's definition of "publicly funded health care facilities" includes virtually all hospitals and clinics. Specifically, "clinic" is defined by the Health and Safety Code as "an organized outpatient health facility which provides direct medical,

surgical, dental, optometric, podiatric advice, services or treatment to patients who remain less than 24 hours” (LaVally 25). Health facility is defined in Section 1250 as:

any facility, place or building that is organized, maintained, and operated for the diagnosis care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. (LaVally 25)

Ron Prince, co-author of Proposition 187 and the initiative’s campaign chairman, said that the intent of this section within the proposition was “to prevent undocumented immigrants from receiving publicly subsidized, non-emergency care in county hospitals or private hospitals that are receiving Medi-Cal payments” (LaVally 26). Prince stated that, “an illegal alien with a phony Medi-Cal card can get services now [1994]” which is what this provision attempts to block. Prince later said, “Undocumented persons willing to pay their own way should not be deprived care” (LaVally 26). However, this provision denies all undocumented immigrants non-emergency health care in publicly funded facilities regardless of who is paying.

In addition, the latter provision places responsibility on public health personnel, doctors, and nurses to regulate immigration laws. If legal citizens suspect that the persons applying for public benefits, or needing medical treatment are unauthorized aliens, they must report them by law. Essentially, this provision requires that the health care system of California, as well as other citizens, act as immigration enforcement officers. This requirement clashes with medical ethics more so than any other sector of society. The practice of medicine requires privacy and confidentiality. Physicians are

bound by Section 2263 of the state Business and Professions Code, which declares, “The willful, unauthorized violation of professional confidence constitutes unprofessional conduct” (LaVally 3). The California Board of registered Nursing, which licenses registered nurses by regulatory law, defines a competent nurse as one who serves “as the client’s advocate as circumstances require by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the clients” (LaVally 3). Immigration must be controlled on other state and national levels so that doctors and other health professionals are not required to choose between their ethical commitment to patients and the practice of medicine and their responsibility to the U.S. government.

Despite the fact that the health care provisions within Proposition 187 opposed the fundamentals of medical practice within our nation, Governor Wilson preceded with actions to enforce them. On November 9, 1994 Governor Wilson ordered that state-reimbursed health services for prenatal care be stopped as soon as possible, and undocumented immigrants be no longer enrolled in state-reimbursed long-term health care programs (largely nursing home care). Even though federal and state courts blocked the implementation of Proposition 187, the state of California continued to prepare regulations to implement it.

While Proposition 187 is the most dramatic instance of legislation to cut provision of social services to undocumented immigrants, other states such as Arizona, Florida, and Texas have also initiated similar efforts. On December 22, 2004, Arizona voters passed Proposition 200, *The Arizona Taxpayer and Citizen Protection Act*. Proposition 200 primarily targeted restriction of the ability of undocumented immigrants to vote in

elections and their ability to receive public benefits. However, the broad language within this proposition has led to many questions about which health care benefits or programs will be implicated by this new law, and whether or not this proposition will impact public hospitals. This proposition in particular raises concerns about the political feasibility of creating a clear policy that denies access to health care services to undocumented immigrants.

Proposition 200 denies undocumented immigrants all “state and local public benefits that are not federally mandated” without further defining these benefits.⁴ The state has yet to specify whether or not free care provided by a public hospital and subsidized through state or local funds is a “public benefit.” A similar problem arose with the 1996 welfare reform law, when people questioned what qualified as “*federal* public benefits.” The welfare reform act later clarified “federal public benefits” with a two-part definition: 1) the benefit must be provided to an individual, household or family eligibility unit; and 2) the individual, household or family must, as a condition of receipt, meet specified criteria, such as income or residency in order to receive the benefit.⁵ Under PRWORA, undocumented residents still receive emergency Medicaid services, public health assistance for immunizations, testing, and treatment of symptoms of communicable diseases.⁶ Programs, services, or assistance necessary for the protection of life or safety that deliver in-kind services at the community level through public and non-profit entities, and that do not condition the assistance on income or resources are also provided under PRWORA. Proposition 200 would deny undocumented immigrants care through exclusively federal programs such as Medicare. But, considerable ambiguity still exists about the status of Medicaid programs. Medicaid and State

Children's Health Insurance Programs (SCHIP) could be included within the category of "public benefits that are not federally mandated" because they are programs optional for the state, and therefore are not "federally mandated." Furthermore, these programs involve both federal and state funds, and therefore may reasonably be interpreted as "state benefits."

In addition, under the ambiguous language of this bill, it is unclear as to whether or not public hospitals will be affected by the measure. The proposition includes the following as agencies that are required to deny care to undocumented immigrants:

any agency of [the] state and all of its political subdivisions, including local governments that are responsible for the administration of state and local public benefits that are not federally mandated.

(“Arizona Taxpayer and Citizen Protection Act: Proposition 200”)

Some argue that public hospitals may be considered a part of a political subdivision, either as a part of local health departments or independent taxing districts. Hospitals may even be regarded as “agencies,” and depending on the definition of “public benefits” hospitals could be viewed as administering such benefits. The vague wording of this bill makes policy decisions arbitrary and confusing and allows inconsistent interpretations by different institutions. This initiative, like Proposition 187 requires that state and local employees verify the immigration status of people applying for public benefits and report undocumented immigrants or face possible criminal prosecution.

Proposition 200 did not pass without controversy. Just before the November election immigrant advocates filed suit in Maricopa County court (which includes Phoenix, Tempe, and their surroundings) claiming that faulty petitions were used to

secure the proposition on the ballot. Opponents to the proposition asserted that the petitions may have been misleading by referring to “public welfare benefits” instead of using the broader language incorporated in the actual proposition, “public benefits that are not federally mandated.” However, Maricopa County Superior Court Judge Margaret Downie ruled that the challenge over faulty petitions would not be considered because it was brought to her attention too close to the election. Although the proposition was placed on the ballot, and passed by Arizona voters, further legal challenges to the new law continue to stall and may even prevent its implementation.⁷

In many ways, the passage of the federal PRWORA of 1996 has reduced the need for individual state legislation to cut off benefits to undocumented immigrants, which may explain why states like Texas and Florida have not yet produced similar propositions to those in California and Arizona. Under the welfare bill of 1996, most future immigrants have been barred from applying for benefits under federal means-tested programs for their first five years in the United States. The words “federal means-tested” were removed from the final draft of the welfare bill, making it less clear as to which programs fit into this category, but Section 403 (c)(2) of the Welfare Act does specify that medical assistance; short-term, non-cash, in-kind emergency disaster relief; certain child nutrition programs; and public health assistance do not. Therefore, with the 1996 Welfare Reform Act, the only health care provided to legal immigrants in their first five years within the United States is through community free clinics and emergency service providers (essentially the emergency room at the hospital). Emergency services include only treatment for medical conditions (including emergency labor and delivery) with acute symptoms that could place the patient’s health in serious jeopardy, result in serious

impairment to bodily functions, or cause serious dysfunction of any bodily organ or part (Fragomen 1091; Slosberg 2).

PRWORA denies non-emergency medical care to undocumented immigrants as well as legally admitted immigrants who have not been granted permanent residence. This anti-immigration policy aims to deter immigration and minimize public service budgets. The fact that the treatment of illegal and legal immigrants and their access to social services is the same under the PRWORA Act proves that these reforms have less to do with the legality of immigration and more to do with not wanting to allocate funds to provide these services to immigrants. Due to misperceptions and to political motives, as seen with Proposition 187, 200, and PRWORA, our nation is not progressing toward the fulfillment of these rights, but rather is moving backwards.

V. Extension of Plyler v. Doe to include Basic Health Care

Proposition 187, Proposition 200, and the 1996 PRWORA provision denying legal immigrants health care in their first five years in the U.S. all raise serious constitutional questions. On December 14, 1994, in response to Proposition 187 a Los Angeles federal judge Mariana Pfaelzer barred the enforcement that public schools and agencies verify legal status of all persons seeking education, health, and other services until the constitutionality of the Proposition was determined by the courts. She argued that such an initiative is not constitutional because it does not provide due process, or a hearing before an individual is denied benefits such as schooling or health care. Both schooling and health care are provided in the Equal Protection Clause of the Fourteenth Amendment. Pfaelzer claims that her ruling was based off of the decision in the 1982 Plyler v. Doe U.S. Supreme Court case. This case presented the question of whether,

consistent with the Equal Protection Clause of the Fourteenth Amendment, Texas may deny undocumented school-age children the free public education that it provides to children who are citizens of the United States or legally admitted aliens.

In May 1975, the Texas legislature revised its education laws to withhold from local school districts any state funds for the education of children who were not “legally admitted” to the country (Brennan 1). The legislation hoped to deter illegal immigration into the United States. However, Supreme Court Justice William J. Brennan, Jr.’s majority opinion⁸ cited that the Fourteenth Amendment provides that “No State shall...deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws” (U.S. Const. Amendments, § 14, cl. 1.). Justice Marshall, Powell, Blackmun and Stevens, joined Brennan’s opinion and concurred. Plyler, a superintendent for Tyler Independent School lost at the circuit court and appealed the case to the Supreme Court. Justice Brennan stated that appellants⁹ argued at the outset that undocumented immigrants, because of their immigration status, are not “persons within the jurisdiction” of the State of Texas, and “that they therefore have no right to the equal protection of Texas law” (Brennan 2). However, the majority opinion determined that even immigrants, “whose presence in this country is unlawful,” have long been recognized as “*persons* guaranteed due process of law by the Fifth and Fourteenth Amendments” (Brennan 3).

Justice Brennan’s decided opinion stated that:

the sheer incapability or lax enforcement of the laws barring entry into this country, coupled with the failure to establish an effective bar to the employment of undocumented aliens, has resulted in the creation of a substantial *shadow*

population of illegal migrants—numbering in the millions—within our borders (Brennan 3).

This situation raises the “specter of a permanent caste of undocumented resident immigrants, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents” (Brennan 3). Justice Brennan continues pointing out that “the existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law” (Brennan 3).

It was acknowledged in this case that public education is not a “right” granted to individuals by the Constitution as decided in *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973). Furthermore, in his opinion Brennan agrees that it is also not “merely some governmental *benefit* indistinguishable from other forms of social welfare legislation” (4). The deprivation of an education greatly impacts and stigmatizes a person within our nation. The public school “is a most vital civic institution for the preservation of a democratic system of government and the primary vehicle for transmitting the values on which society rests” (Brennan 4). Education plays a fundamental role in the maintenance of our society and provides the basic tools for individuals to become economically self-sufficient, benefiting the society as a whole. Brennan expands upon this idea and claims that “social costs” plague our nation “when select groups are denied the means to absorb the values and skills upon which our social order rests” (4). As presented in the decided opinion:

denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers

presenting unreasonable obstacles to advancement on the basis of individual merit. (Brennan 6)

The Court ruled that the denial of an education creates and perpetuates an “underclass” in our nation, which is in violation of the equality laws in our constitution.

Judge Pfaelzer based her ruling in the Proposition 187 case off of Justice Brennan’s presented majority opinion and the Court’s final decision on the Plyler v. Doe Supreme Court case. She specifically stated that implementing Proposition 187 would contribute to the creation of an “underclass” within our nation, which Justice Brennan had declared was against the equality laws of our constitution in Plyler v. Doe.

Ultimately, Judge Pfaelzer’s decision was not appealed by Governor Davis. Judge Pfaelzer did not specifically address the health care provision of Proposition 187.

However, according to Frank Michelman, a Constitutional-law specialist at Harvard Law School, “because access to health care is of comparable importance to education, denying basic health care to undocumented immigrants creates a situation exactly parallel with the one that you have in Plyler” (Felsenthal 31). Health care, just as in the case of public education, is not a “right” granted to individuals by the Constitution, but is also not a governmental “benefit” indistinguishable from other forms of social welfare legislation. The deprivation of basic health care marginalizes persons within our society. When the State provides health care to some and denies it to others, it immediately and inevitably creates class distinctions of a type fundamentally inconsistent with the Equal Protection Clause of the Fourteenth Amendment. For example, mothers denied prenatal care have a higher chance of having a child with more health problems who will be at a permanent and insurmountable competitive disadvantage. When those children and citizens are

members of an identifiable group, that group—through the State’s action—will have been converted into a discrete underclass. The creation of such an underclass by the State’s actions is unconstitutional.

The legal case of Plyler v. Doe and Judge Pflaeler’s opinions on Proposition 187 can, and should be expanded to include basic health care services for undocumented immigrants. These two cases serve as preliminary bases for making the moral right to basic health care a legal right. In this paper, I draw a moral parallel between the Plyler decision regarding provision of education to undocumented immigrants and a necessary extension of that provision to health care. However, I recognize that a legal parallel does not yet exist because citizens of the U.S. are not even guaranteed access to basic health care services. This case can still be used as legal precedence to argue that the moral right could become a legal right.

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Although Plyler has not been revisited in the Supreme Court, there have been some legal attempts to extend Plyler to basic health care on a state and local level. One example of a legal attempt of this nature surfaced in Harris County, TX, which includes Houston and its surrounding suburbs. A controversy began when Texas Attorney General John Cornyn issued an opinion on July 10, 2001 finding that the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 bars Texas public hospitals from providing all non-emergency health care services to undocumented immigrants. Cornyn's ruling was legally unassailable, because the PRWORA specifically and unambiguously states that the only free or discounted services public hospitals can provide to illegal aliens are emergency room care, immunizations and treatment for communicable diseases and child abuse. However, some Harris County Hospital District

officials now use a 1999 Texas constitutional amendment to escape the conservative opinion of their Attorney General and the PRWORA legislation. These officials cite the 1999 Texas constitutional amendment provision that county hospitals “take full responsibility for providing medical and hospital care to needy inhabitants of the county” in order to continue treating undocumented immigrants. The hospital districts of Harris, Bexar, Dallas, and El Paso counties have continued to provide unlimited free health care to undocumented immigrants.¹⁰

V. Conclusion

Ultimately, controlling the U.S. border and punishing undocumented immigrants is not the function of our national health care system or of medical and public health personnel. This is the problem of the U.S. Immigration and Naturalization Services. No effective laws are currently preventing the employment of undocumented immigrants. Businesses continue to utilize them as a cheap labor force, luring them to the U.S. and trapping them here without health care. Health care provision does not attract immigrants to the United States, but the job market does. Therefore, until laws against hiring undocumented immigrants are enforced, which would discourage immigration, our government is obligated to provide health care to the undocumented immigrants within the nation.

Until we dispel the contradiction of desiring a cheap labor force of undocumented immigrants, while simultaneously attempting to rid them of our country we will not solve the problem of undocumented immigration. Furthermore, until we stop using immigration policy as a political device within states and on a national level, we will not

be addressing the problem. Denying people basic health care in order to regulate the flow of immigrants is:

- 1) Ineffective-Social programs and welfare provision does not encourage immigrants to come to the United States, and therefore, if removed they will not reduce immigration;
- 2) Unethical-We place undocumented immigrants as well as our citizens who come into contact with them at a great health risk if basic health care has been previously denied. Further, denying a large group of people such care leads to a sub-class of citizens, which will provide major political and social concerns in the future;
- 3) Short-sighted-From a cost-effective analysis perspective, denial of preventative health care leads to more expensive health problems in the future.

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For these reasons, basic medical services should be offered that support people in need, regardless of citizenship status, in order to protect the public health and promote public good. These fundamental services which would provide a subsistence level of health care should include immunizations and treatment for communicable diseases, non-emergency wellness care, pre-natal, labor and delivery, post-natal, and pediatric care. If health care is considered a basic subsistence right, it should have the same status as basic education. The Plyler v. Doe ruling should be applied to basic non-emergency health care provision. These services although administered mostly on the state level, should be funded through a national policy which gives resources to the welfare states providing them. Providing basic health care to undocumented immigrants is a constitutional and rational policy for

the United States government to accept. This moral right should become a legal right, guaranteed by government policy.

¹ The term “undocumented immigrants,” as used in this paper refers to individuals who are living or working in the United States without permission from the U.S. Immigration and Naturalization Service (INS). They are not permanent residents of the United States. They typically enter the country without passing through a standard INS check for passports, visas, and entry permits. If they do enter the country through the INS checkpoint, they present false documentation, or enter with a tourist or student visa (neither of which allows the recipient to work freely in the United States) and then stay beyond the time limit of their visa.

² Interestingly, Henry Shue includes basic health care, but not education under his definition of subsistence rights.

³ Work remittances to Mexico last year totaled \$16.6 billion, second only to petroleum in the country’s export revenues (*The Economist* 28).

⁴ Arizona Taxpayer and Citizen Protection Act, Amending Sections 16-152, 16-166, and 16-579, Arizona Revised Statutes, and Title 46, Chapter 1, article 3, Arizona Revised Statutes, by adding section 46-140.01.

⁵ Notice with comment period, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of ‘Federal Public Benefit,’ 63 Fed. Reg. 41658 (August 4, 1998).

⁶ Since 1996, state and federal governments have been attempting to work together in order to make sure that their policies compliment each other. Still, no state provides care beyond emergency health services, immunizations, and screenings, diagnosis, and treatment for communicable diseases. For further reading, see: Schlosberg, Claudia. “Not-qualified Immigrants’ Access to Public Health and Emergency Services After the Welfare Law.” [NHelp](http://nhelp.org/pubs/N_2_#N_2_>). 12 January 1998. NHelp. April 9 2005. <http://nhelp.org/pubs/N_2_#N_2_>

⁷ Information for this paragraph found in, Carroll, Susan. “Tucson Judge Clears It; Foes Plan to Appeal.” *The Arizona Republic* 23 Dec 2004. 16 Apr 2005 www.azcentral.com/specials/special29/articles/1223prop200hearing23.html - 63k and Hethmon, Michael. “Proposition 200: Cutting Through the Rhetoric and Getting to the Facts About the Protect Arizona Now Initiative .” *Federation for American Immigration Reform*. 12 July 2004. Federation for American Immigration Reform. 11 Apr. 2005 <<http://www.fairus.org/Media/Media.cfm?ID=2469&c=34>>.

⁸ BRENNAN, J., delivered the opinion of the Court, in which MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined. MARSHALL, J., post, p. 230, BLACKMUN, J., post, p. 231, and POWELL, J., post, p. 236, filed concurring opinions. BURGER, C. J., filed a dissenting opinion, in which WHITE, REHNQUIST, and O’CONNOR, JJ., joined, post, p. 242.

⁹ John C. Hardy argued the case for the appellants.

¹⁰ Information for this paragraph found in, “Texas AG Issues Opinion that County Hospitals Not Allowed to Serve “Not Qualified” Immigrants.” *Immigrants’ Rights Update*, Vol. 15, No. 5, Aug. 31, 2001. <http://www.nilc.org/immspbs/health/health012.htm> and Yardley, Jim. “(Illegal) Immigrants’ Medical Care Is Focus of Texas Dispute .” *The New York Times* 12 August 2001.