
GUESS WHO'S COMING TO DINNER: FEDERAL DISASTER RELIEF FOR UNDOCUMENTED ALIENS

INTRODUCTION

In 1791, Alexander Hamilton cautioned Congress that for the United States to become a true power in manufacturing, it would have to encourage immigration to prevent a scarcity in the labor pool.¹ Through advertisement and active recruitment of workers, government officials encouraged immigration into the United States in the nineteenth and the early twentieth centuries.² Unrestricted immigration continued until 1921 when Congress enacted the first laws placing numerical limits on European immigration.³ Throughout the pre-1921 period, immigrants became part of the very fabric of American society. Unskilled immigrant workers who labored in the factories and mills for significantly lower wages than nonimmigrants, and who endured difficult working conditions, enabled the great robber barons of the late nineteenth century to build their industrial empires.⁴

Despite the quotas and restrictions upon immigration that began

1. KITTY CALAVITA, *U.S. IMMIGRATION LAW AND THE CONTROL OF LABOR: 1820-1924*, 1 (1984) (citing Alexander Hamilton, *Report on Manufacturing*, in *AMERICAN STATE PAPERS, FINANCE* 1, 123 (1791)).

2. CALAVITA, *supra* note 1, at 1.

3. *Id.*

4. For commentary on the behavior of labor demographics, see ROBERT L. HEILBRONER, *THE WORLDLY PHILOSOPHERS* 63-70 (5th ed. 1980).

after World War I and continue into the present day, foreign workers have continued to pour into this country. Their efforts initially propelled the United States to leadership in trade and industry.⁵ Immigrants, whether legally or illegally present in the United States, willingly accepted substandard wages and working conditions⁶ simply to gain an economic foothold in their new country.⁷ However, their presence as a labor surplus during periods of slow economic growth and depression has prompted anti-immigrant sentiment by American-born workers.

This hostility has prompted public outcry against aliens receiving the benefits of American citizenship who have not undergone the naturalization process to become American citizens.⁸ Nativists⁹ challenge aliens' rights and entitlements — from welfare and social services to protection under federal and state laws.¹⁰ Attacks on

5. For a discussion of the impact immigrants have had on the U.S., see GEORGE J. BORJAS, *FRIENDS OR STRANGERS: THE IMPACT OF IMMIGRANTS ON THE U.S. ECONOMY* 45-46 (1990). Waves of immigrants are not homogeneous. Studies of immigrant groups indicate significant differences in their economic, demographic, and educational characteristics. For example, the most recent wave of immigrants beginning in the 1980s contained more immigrants who never even entered high school. This contrasts with the pattern of immigration from the 1930s through the 1960s, when groups of immigrants were successively better educated. *Id.*

6. See DAN LACEY, *THE ESSENTIAL IMMIGRANT* 64 (1990) (discussing the self-perpetuating poverty of industrial era immigrants).

7. See William F. Buckley Jr., *Paradox of Working Illegal Aliens*, *MIAMI HERALD*, Jan. 25, 1993, at A15: "Illegals show up with a different attitude toward work. They do not have available to them the welfare alternative. That is why while the national rate of unemployed is seven percent, among illegals, it is probably nearer zero percent."

8. See BORJAS, *supra* note 5, at 151 (commenting on arguments that welfare programs alter incentives to immigrants); see also *id.* at 150-62 (analyzing "worrisome" evidence that "[i]mmigrant welfare participation is on the rise").

9. "Nativism" means hostile sentiment towards immigrants. Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law into the Breach Once More*, 21 N.M. L. REV. 219, 241 n. 154 (1991) (citing W. CORNELIUS, *AMERICA IN THE ERA OF LIMITS: NATIVIST REACTIONS TO THE "NEW" IMMIGRATION* 3-4 (1982)). In the nineteenth century, European and Chinese immigrants were the primary targets of nativist movements. In the twentieth century, this focus shifted towards a wave of immigrants from Japan and Mexico, and in the 1970s, towards immigrants fleeing from Southeast Asia. *Id.*; see also CALAVITA, *supra* note 1, at 26-34 (discussing various nativist movements).

10. See RICHARD D. LAMM & GARY IMHOFF, *THE IMMIGRATION TIME BOMB: THE FRAGMENTING OF AMERICA X* (1985) ("The United States clearly cannot continue to accept twice as many immigrants and refugees as all other nations combined . . . massive immigration will exacerbate [minority unemployment.]").

undocumented aliens have become especially acrimonious.¹¹ The terms "undocumented alien," "illegal alien," or "unauthorized alien," refer to a foreign national who has either illegally entered the United States or who has remained in the United States longer than he or she is legally permitted.¹² Hostility towards undocumented aliens recently became apparent after the Los Angeles earthquake on January 17, 1994.¹³ After that disaster, debate focused on the question of whether undocumented aliens are entitled to emergency aid following natural disasters.¹⁴

This Note considers whether undocumented aliens should receive federal emergency relief following a natural disaster. Part I examines the historical development of the United States' immigration policy. Part II discusses the role of the federal government when a natural disaster strikes an area of the country. Part III narrows the focus by analyzing recent federal legislation passed for emergency aid to victims of the January 17, 1994 Los Angeles earthquake, and summarizing the benefits provided for undocumented aliens under that legislation. Part IV sets out policy reasons to encourage the Supreme Court and Congress to tackle this issue and to provide emergency aid for undocumented aliens.

I. A HISTORICAL OVERVIEW OF FEDERAL IMMIGRATION POLICY

The federal government presently lacks a comprehensive policy for

11. In the past, mob violence and legal harassment were the nativists' weapons against the immigrant worker. DAVID M. REIMERS, *STILL THE GOLDEN DOOR: THE THIRD WORLD COMES TO AMERICA* 2-4 (2d ed. 1985). Much of the anti-immigrant sentiment was motivated by racism. *Id.* Beginning in the late nineteenth century, this manifested in anti-Asian immigrant quotas and policy, such as the Chinese Exclusion Act of 1882. *Id.*

12. "Illegal Alien" is defined as "a foreign national who has entered the United States surreptitiously or by fraud or had violated the terms of lawful entry by, for example, overstaying a tourist visa or accepting unauthorized employment." AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, *ILLEGAL ALIENS: PROBLEMS AND POLICIES* 1 (1978). Lawful resident aliens, also known as "lawful permanent residents" or "green card holders" are foreign nationals who have obtained the requisite authorization from the Immigration and Naturalization Service (INS) to live and work in the United States, with the intent to eventually become citizens. See 8 U.S.C. §§ 1101(a)(3), (20) (1988) (defining "alien" and "lawfully admitted for permanent residence," respectively).

13. See Rich Connell, *Quake Brings Immigration Issue to National Forefront*, L.A. TIMES, Feb. 3, 1994, at A1.

14. See H.R. REP. NO. 415, 103rd Cong., 2d Sess. 27 (1994) (discussing provisions of H.R. 3735, 103d Cong., 2d Sess. (1994), which prohibited using funds to aid persons known to be illegally in the United States).

handling the influx of undocumented aliens.¹⁵ A significant percentage of undocumented aliens in the United States come from Mexico.¹⁶ Recently, to stem the tide of immigrants, the United States extended a fourteen mile fence along the Mexico-California border.¹⁷ Physical boundaries like this, however, historically have proven ineffective in preventing illegal migration.¹⁸ Nevertheless, public clamor for closing the California border has been especially intense due to a period of economic distress, caused by the recession.¹⁹

The common experience of early American history was that of migration.²⁰ The country began in the seventeenth century with the English migration to Virginia and Massachusetts. The majority of early immigrants were English, although Scots, Irish, and Germans, and African slaves also arrived in large numbers.²¹ Though immigration remained steady through the seventeenth and eighteenth centuries, the end of the French and Indian War in 1763 washed a new tide of immigrants to both the western frontiers and the large urban areas on the Eastern seaboard.²² Ironically, the English government, once so concerned about overpopulation, became concerned about depopulation and attempted to restrict landowners' advertisements for new immigrants.²³

15. A. PETER MUTHARIKA, *THE ALIEN UNDER AMERICAN LAW* ch. IX, at 88 (1981).

16. BORJAS, *supra* note 5, at 58-59. Borjas notes, however, that illegal immigration from other countries is almost as large as that from Mexico. *Id.* at 59.

17. Peter Eisner, *On Border, NAFTA Hits a Nerve*, *NEWSDAY*, Nov. 12, 1993, at 17.

18. *See* BORJAS, *supra* note 5, at 58 (describing methods immigrants use to enter the United States).

19. *Id.*

20. Bernard A. Weisberger, *A Nation of Immigrants*, 45 *AM. HERITAGE*, Feb.-Mar. 1994, at 75, 77.

21. *Id.* at 77. Civil and religious wars, poverty, and overcrowding promoted the mass exodus from Europe. The English government started colonies in part to alleviate overcrowding in England. Some colonists came independently, as indentured servants, and even as prisoners. For example, the governor of Virginia in 1611 requested that all death row prisoners be sent over from London. *Id.*

22. *Id.* at 80.

23. *Id.* Thomas Jefferson referenced this intrusive attempt at regulating the colonies' immigration policy in his bill of particulars. Jefferson wrote "[King George] has endeavored to prevent the Population of these states; . . . obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their Migrations hither, and raising the Conditions of new Appropriations of Lands." *Id.*

Throughout the United States' history, there has been a dearth of federal immigration legislation. The earliest policy was the "Open Door Policy," welcoming settlers to populate the new land.²⁴ The earliest law, however, which came from a Federalist Congress, was the Alien and Sedition Act in 1798.²⁵ This act permits the President to expel foreigners who present some danger of treason.²⁶

The development of steam power brought a new wave of immigrants to the United States in the mid-nineteenth century. Many fled civil wars, and in the case of the flood of Irish, a severe famine.²⁷ Emerging nativism, however, led to urban riots,²⁸ the organization of anti-immigrant political parties,²⁹ and eventually proposed legislation to

24. See AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, *ILLEGAL ALIENS: PROBLEMS AND POLICIES* 5 (1978) (describing early immigration policy).

25. 10 U.S.C. § 894 (1988).

26. *Id.*

27. Weisberger, *supra* note 20, at 81. The "Great Hunger" in Ireland accounted for the largest wave of immigrating Irish. While Irish migration had begun early in the history of the country, the fungus-destroyed potato crop of three successive years, beginning in 1845, resulted in horrible mass starvation. "In the hovels inhabited by the 'Paddies,' rats gnawed on unburied bodies while others in their death throes looked on, too weak to move. 'All with means are emigrating,' wrote one official; 'only the utterly destitute are left behind.'" *Id.*

28. Originally, American nativism began as an anti-Catholic movement because of the disproportionate number of unskilled, Irish Catholic workers settling in Northeastern urban areas. CALAVITA, *supra* note 1, at 26-27. In 1860, 3,000,000 Catholics lived in the United States compared to the 195,000 Catholics 40 years earlier. *Id.* at 26. The population of the United States also increased dramatically during this 40 year period, from 9,600,000 in 1820 to 31,500,000 in 1860. *Id.*

Although the early anti-immigrant movement was anti-Catholic, it rapidly evolved into a labor struggle. The depression of 1837-1843 prompted violent anti-immigrant protests. The Broad Street Riot in Boston in 1837 involved over 15,000 people, rioters took to the Irish sections of the city, burning, looting, and dispossessing Irish immigrants of their dwellings. Other significant riots included those involving American and foreign workers from textile mills and the railroads in Philadelphia in 1844, and the Kensington riots in 1842, 1843, and 1844, which ended only after nativists burned down the homes of immigrant laborers and 3000 troops arrived to enforce martial law after two days of rioting. These riots typify nativist-immigrant confrontations. By the 1850s, almost every state had witnessed such armed conflict. *Id.* at 27.

29. Weisberger, *supra* note 20, at 82. The Know-Nothing Party, organized in the 1850s, led the most successful nativist movement. The Know-Nothings captured a large percentage of the labor vote by advocating anti-immigration through xenophobic slogans and policy. CALAVITA, *supra* note 1 at 27. In Massachusetts, the governor was a Know-Nothing as were all of the state's senators (Boston was the hub of Irish immigration). Know-Nothings also predominated in the state senates of Delaware, Pennsylvania and New

restrict and regulate immigration.³⁰ Early attempts at restricting immigration by labor unions, which saw themselves displaced in the factories and mills by cheaper immigrant workers, failed.³¹ On the other hand, measures by industrialists to encourage immigration succeeded.³² In fact, American industry depended on immigration and

York. On a national level, 75 congressmen were Know-Nothings by 1855. By 1855, Rhode Island, New Hampshire, Connecticut, Maryland and Kentucky all were dominated by the Know-Nothings. *Id.*

The Know-Nothing party crusade abandoned the American ideal of equal rights. In 1855, when asked if he was a supporter of the Know-Nothing party, Abraham Lincoln responded:

How could I be? How can any one who abhors the oppression of negroes, be in favor of degrading classes of white people? Our progress in degeneracy appears to me to be pretty rapid. As a nation, we began by declaring that *all men are created equal*. We now practically read it, *all men are created equal, except negroes*. When the Know-Nothings get control, it will read, "all men are created equal, except negroes, and *foreigners*, and *catholics*." When it comes to this I should prefer emigrating to some country where they make no pretence of loving liberty — to Russia, for instance, where despotism can be taken pure, and without the base alloy of hypocrisy.

Weisberger, *supra* note 20, at 83.

30. See CALAVITA, *supra* note 1, at 31-34. Proposed federal legislation was extremely slow in coming. In 1836, as a response to numerous petitions from northeastern states, the Senate resolved that the state department should gather information on paupers and criminal immigrants. *Id.* at 31 (citing CONG. GLOBE, 24th Cong., 1st Sess., 373 (1836); H.R. EXEC. DOC. No. 219, 24th Cong., 1st Sess., (1836); S. DOC. No. 342, 24th Cong., 1st Sess., (1836)). The federal government eventually confirmed that European governments encouraged emigration of paupers and criminals. While a House resolution instructed the Judiciary Committee to review naturalization laws, the resulting bill died in Congress. Subsequent bills and petitions also suffered quick deaths in congressional committees. In the 1850s, the flourishing Know-Nothing Party caused much congressional discussion on naturalization laws, especially petitions from New England states urging a naturalization period of twenty-one years as a deterrent to would-be immigrants. The bills, like the others before them, died in the Judiciary Committee. CALAVITA, *supra* note 1, at 31-32.

In 1855, a bill to bar the importation of foreign paupers, criminals, lunatics, and the blind also died in committee because it was considered unconstitutional to bar a class of immigrants. *Id.* at 32-33 (citing CONG. GLOBE, 33rd Cong., 2nd Sess. 350,616 (1855); U.S. CONGRESS, REPORTS OF CONGRESSIONAL COMMITTEES, 34th Cong., 1st Sess., 1-152 (1856)).

31. Labor leaders, such as the AFL's Samuel Gompers, a Dutch-born Jewish immigrant from England, pushed for restrictions on immigration by insisting that the surplus labor provided by the immigrants took jobs from Americans and made working conditions in existing jobs intolerable. Weisberger, *supra* note 20, at 86.

32. CALAVITA, *supra* note 1, at 33. Amendments to the Passenger Law of 1819 bettered the steerage conditions on immigrant ships. *Id.* In an explicit proimmigrant

the constant, ready labor pool immigrants provided.³³

It was not until the 1880s³⁴ that Congress attempted to regulate the activities of immigrants with federal legislation.³⁵ After Congress enacted the first federal immigration law in 1882,³⁶ it amended the Contract Labor Laws³⁷ in 1888, calling for the deportation of aliens entering the United States in violation of the laws.³⁸ Early legislation designed to curb the influx of immigrants was ineffective. An incredible number of immigrants entered the U.S. between the end of the Civil War and the Great Depression. Between 1860 and 1900, 14,000,000 immigrants arrived; another 18,600,000 entered between 1900 and 1930, almost all from Europe.³⁹

move, the act governing the territories of Nebraska and Kansas in 1854 allowed immediate suffrage to all persons who declared an intention to become citizens. *Id.* (citing IMMIGRATION COMM'N. REP., S. Doc. No. 747, 61st Cong., 3d Sess. 568 (1911)).

33. CALAVITA, *supra* note 1, at 33. By 1864, regular complaints about decreased immigration, the resulting loss of labor surplus, and wage increases poured in from mine operators, iron manufacturers, and railroads. *Id.* at 35.

34. The Supreme Court recognized that the federal government had the exclusive power to regulate immigration in *Ekiu v. United States*, 142 U.S. 651 (1892). The Supreme Court examined the constitutionality of state laws regulating immigration in *The Passenger Cases*, 42 U.S. (7 How.) 283 (1849). The Court held Massachusetts and New York's head taxes on arriving immigrants unconstitutional. *Id.* By 1876, the Court had found all state laws that regulated immigration void. *Chy Lung v. Freeman*, 92 U.S. 275, 280 (1876).

35. See CALAVITA, *supra* note 1, at 51-59 (discussing federal immigration legislation of the 1880s).

36. Act of Aug. 3, 1882, ch. 376, 22 Stat. 214 (1882).

37. Act of Oct. 19, 1888, ch. 1210, 25 Stat. 566 (1888) (amending Act of Feb. 23, 1887, ch. 220, 24 Stat. 414 (1887)) (providing for the return of illegal aliens at the expense of those who brought them into the country); Gene McNary, *INS Response to Immigration Reform*, in 14 IN DEFENSE OF THE ALIEN 1,4 (Lydia F. Tourasi, ed. 1991).

38. Act of Feb. 23, 1887, ch. 220, 24 Stat. 414 (1887) (amending Act of Feb. 26, 1885, ch. 164, 23 Stat. 332 (1885)) (prohibiting the importation of foreigners under contract to perform labor). Deportation refers to the physical expulsion of aliens deemed undesirable as a matter of legislative policy. See generally 8 U.S.C. § 1251(a) (1988 & Supp. IV 1992) (listing classes of deportable aliens); see also *Ng Fung Ho v. White*, 259 U.S. 276, 280 (1922) ("Congress has power to order at any time the deportation of aliens whose presence in the country it deems hurtful."); accord *Wong Wing v. United States*, 163 U.S. 228 (1896); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

39. Weisberger, *supra* note 20, at 83-85. The "new" immigrants, though, did not come from the traditional European countries. A flood of immigrants arrived from southern and eastern Europe — Russia, Poland, Italy. The record-setting year was 1907, which saw 1,280,000 aliens enter the United States. *Id.* at 84.

According to the Immigration and Naturalization Service (INS), three general principles have guided immigration law since the earliest federal regulation: 1) immigration should be encouraged because of its ultimately positive impact on the United States; 2) uniform national regulations and procedures should direct immigration policy; and 3) a balancing test between benefits and controls should be at the heart of immigration policy.⁴⁰ The federal government has attempted to realize these objectives through its main weapons: deporting undocumented aliens, enacting employer sanctions, and prosecuting smuggling and harboring undocumented aliens.⁴¹ For the most part, these efforts have been unsuccessful.⁴²

The Immigration Act of 1917⁴³ was the forerunner of existing immigration laws.⁴⁴ One example of modern immigration legislation is the Immigration and Naturalization Act of 1952,⁴⁵ which had three significant sections aimed at reducing the number of undocumented aliens: 1) 8 U.S.C. § 1325 imposes criminal sanctions for entering the United States illegally; 2) 8 U.S.C. § 1324 imposes sanctions for smuggling, harboring, transporting or encouraging the entry of illegal aliens; and 3) 8 U.S.C. § 1255(i) provides that aliens who violate their terms of entry by accepting unauthorized employment may not adjust their status from nonimmigrant to immigrant as long as they remain in the United States.

The Social Security Amendments Act of 1972⁴⁶ is another example of modern immigration legislation aimed at curbing the flow of

40. McNary, *supra* note 37, at 4.

41. See 8 U.S.C. § 1324(a) (1988); MUTHARIKA, *supra* note 15, ch. IX, at 88-90.

42. MUTHARIKA, *supra* note 15, ch. IX, at 88-90. For a history of federal regulation of the employment of undocumented aliens, see R. Paul Faxon, Comment, *Employer Sanctions for Hiring Illegal Aliens: A Simplistic Solution to a Complex Problem*, 6 NW. J. INT'L L. & BUS. 203 (1984); Susan H. Welin, Note, *The Effect of Employer Sanctions on Employment Discrimination and Illegal Immigration*, 9 B.C. THIRD WORLD L.J. 249 (1989).

43. Pub. L. No. 64-301, 39 Stat. 74 (1917).

44. McNary, *supra* note 37, at 5.

45. Pub. L. No. 82-414, ch. 477 (1952) (codified at 8 U.S.C. § 1101-1525 (1988 & Supp. III 1991)). The Act was popularly known upon its enactment as the McCarran-Walter Act.

46. Pub. L. No. 92-603, 86 Stat. 1329 (1972) (codified as amended in scattered sections of the U.S.C.).

immigrants into the U.S. The Act limited the issuance of social security cards to only those aliens entitled to work.⁴⁷ In the same genre are the 1974 amendments to the Farm Labor Contractor Registration Act,⁴⁸ which provide for a criminal penalty of three years imprisonment or a fine of \$10,000 for contractors not registered under the Act who knowingly hire undocumented aliens,⁴⁹ and the Unemployment Compensation Amendments of 1976,⁵⁰ which restrict unemployment compensation benefits to citizens and legal immigrants.⁵¹

The first attempt to confront the recent influx of undocumented aliens occurred in President Jimmy Carter's *Undocumented Aliens Program*.⁵² Carter's program addressed four core concerns: 1) regaining control of United States' borders; 2) limiting employment opportunities to undocumented aliens in the United States; 3) registering and regulating undocumented workers; and 4) improving cooperative efforts between the United States and undocumented aliens' countries of origin.⁵³ President Carter proposed meeting these goals by adjusting the status of aliens living in the United States since January 1, 1970, and by enacting federal employer sanctions legislation.⁵⁴

In the 1980s, the legislative and executive branches further defined the rights of immigrants in the Refugee Act of 1980,⁵⁵ Executive Order

47. 42 U.S.C. § 605(c) (2)(B)(i)(II) (1988); see also MUTHARIKA, *supra* note 15, ch. IX, at 89 (describing relevant provisions of the Act).

48. Pub. L. No. 93-518, 88 Stat. 1652 (1974) (codified as amended at 7 U.S.C. § 2041-54 (1988)).

49. 7 U.S.C. § 2048(c) (1988); see also MUTHARIKA, *supra* note 15, ch. IX, at 89.

50. Pub. L. No. 94-566, 90 Stat. 2667 (1976) (codified as amended at scattered sections of the U.S.C.).

51. 26 U.S.C. § 3304(a)(14)(A) (1988); see also MUTHARIKA, *supra* note 15, ch. IX, at 89.

52. See President's Message to Congress, *Undocumented Aliens*, 13 Weekly Comp. Pres. Doc. 1170 (Aug. 4, 1977) (summarizing President Carter's plan); MUTHARIKA, *supra* note 15, at 88.

53. MUTHARIKA, *supra* note 15, ch. IX, at 88.

54. *Id.* The Carter Proposal, known as *The Alien Adjustment and Employment Act of 1977*, did not become law. *Id.*

55. Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified as amended in scattered sections of 8 U.S.C.). Congress found the number of refugees legally admitted into the U.S. each year completely inadequate. Charles B. Keely, *The United States of America: Retaining a Fair Immigration Policy*, in *THE POLITICS OF MIGRATION POLICIES: SETTLEMENT AND INTEGRATION; THE FIRST WORLD INTO THE 1990s* at 69-71 (Daniel Kubat, ed., 1993). The

12,324, concerning the interdiction of illegal aliens;⁵⁶ the Immigration Reform and Control Act of 1986 (IRCA),⁵⁷ offering legal status to long-time undocumented alien residents; and the Immigration Act of 1990.⁵⁸

Although federal immigration laws clearly restrict the rights of the undocumented aliens, they leave unanswered the many questions regarding what rights and entitlements are available to undocumented aliens. The judiciary has made the most significant strides in attempting to set out these rights. The Supreme Court has held that even undocumented aliens are entitled to basic constitutional rights.⁵⁹ In *Plyler v. Doe*,⁶⁰ the Supreme Court held that the Equal Protective

Executive Branch has always had the authority to admit refugees in special situations for up to two years. This was known as the "parole authority." The Refugee Act simply organized existing refugee procedures. Under the Act, refugee admissions would fluctuate annually although the goal was to maintain a number around 50,000. Before each fiscal year begins, the President must confer with Congress, through the President's representative, the Coordinator of Refugees, regarding the foreseeable number of refugees who will be in need of resettlement 8 U.S.C. § 1151(a) (1988).

56. Exec. Order No. 123,242, 3 C.F.R. 180 (1982).

57. Pub. L. No. 99-603, 100 Stat. 3359 (1986) (codified as amended at scattered sections of the U.S.C.). For further discussion on the IRCA, see Robin Alexander, *The Right of Undocumented Workers to Reinstatement and Back Pay in Light of Sure-Tan, Felbro, and the Immigration Reform and Control Act of 1986*, 16 N.Y.U. REV. L. SOC. CHANGE 125 (1988) (examining IRCA's greater protection of undocumented aliens in the work force); Charles E. Mitchell, *Illegal Aliens, Employment Discrimination, and the 1986 Immigration Reform and Control Act*, 40 LAB. L. J. 177 (1989) (surveying judicial approach to anti-discrimination provisions of the IRCA); Lucinda M. Cardinal, Note, *Immigration Reform: Solving the "Problem" of the Illegal Alien in the American Workforce*, 7 CARDOZO L. REV. 223 (1985) (discussing the problems with employer sanctions and the relative advantages of alternatively increasing the enforcement of labor laws).

58. Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended in scattered sections of 8 U.S.C.).

59. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (holding that the Fifth Amendment protects undocumented aliens' rights to due process); see also *Wong Wing v. U.S.*, 163 U.S. 228 (1896) (holding undocumented aliens have a right to a jury trial before punishment will be imposed); *NLRB v. Apollo Tire Co.*, 604 F.2d 1180 (9th Cir. 1979) (holding undocumented aliens could seek relief from unfair labor practices under the National Labor Relations Act); *Montoya v. Gateway Ins. Co.*, 401 A.2d 1102 (N.J. Super. Ct. App. Div. 1979) (upholding undocumented aliens' right to medical expenses under automobile insurance policy); *Gates v. Rivers Const. Co. Inc.*, 515 P.2d 1020 (Alaska 1973) (enforcing undocumented aliens' rights under an employment contract).

60. 457 U.S. 202 (1982). This holding was limited by *United States v. Verdugo-Urquidez*, 494 U.S. 259 (1990), which held that the Fourth Amendment protections did not apply to a search by American authorities of a Mexican residence belonging to a Mexican

Clause protects undocumented aliens.⁶¹ Specifically, the Court held that the Equal Protection Clause of the Fourteenth Amendment entitled undocumented alien children to tuition-free public education.⁶²

The circumstances under which undocumented aliens can access public benefits are limited. In some circumstances, undocumented aliens have a right to emergency medical care under federal statute.⁶³ However, coverage for nonemergency medical care, such as Medicaid and Medicare, is subject to federal restrictions requiring the recipient to be "permanently residing under color of law" in the U.S.⁶⁴ Undocumented aliens who have children in the U.S. are eligible for Aid to Families with Dependent Children (AFDC). When an undocumented alien has a child in the United States, the child is automatically a United States citizen, so the undocumented alien parent may receive AFDC money as the child's guardian.⁶⁵

In addition to federal benefits, undocumented aliens are entitled to some state benefits.⁶⁶ Many states provide benefits to undocumented aliens through workers' compensation, general assistance, and temporary disability insurance programs.⁶⁷ Courts have held that, like any other

citizen who was not voluntarily connected to the United States.

61. Before *Plyler*, lower federal courts had applied the Equal Protection Clause to undocumented aliens. *Bolanos v. Kiley*, 509 F.2d 1023 (2d Cir. 1975) (holding that Due Process and Equal Protection Clauses of the Fourteenth Amendment apply to undocumented aliens); see *Commercial Standard Fire & Marine Co. v. Galindo*, 484 S.W. 2d 635 (Tex. Civ. App. 1972) (holding an undocumented alien within the protections of the Workmen's Compensation Act was not barred from receiving benefits under the Act).

62. *Plyler v. Doe*, 457 U.S. 202 (1982).

63. See 42 U.S.C. § 1396b(v)(2) (1988 & Supp. III 1991). See generally *Sana Loue, Access to Health Care and the Undocumented Alien*, 13 J. LEGAL MED. 271 (1992) (examining the supply and demand for health care among undocumented aliens).

64. See 42 U.S.C. § 1396b(v)(1) (1988); 42 C.F.R. § 435.406 (1993).

65. Michelle B. Carron, Comment, *Legalized Children of Illegal Aliens—Can the AFDC-UP Program Meet Their Needs?*, *Doe v. Reivitz*, 830 F.2d 1441 (7th Cir. 1987), 12 SUFFOLK TRANSNAT'L L.J. 623 (1989) (arguing that granting aid to children of illegal aliens exceeds the scope of the AFDC program).

66. See *Loue*, *supra* note 63, at 295.

67. See DAVID S. NORTH, *IMMIGRATION AND THE INCOME TRANSFER POLICIES IN THE UNITED STATES: AN ANALYSIS OF A NON-RELATIONSHIP 18* (1982) (discussing trends in state programs for immigrants).

laborers, undocumented aliens have the right to workers compensation.⁶⁸ Regarding medical care, most states recognize that the refusal to provide emergency care is both inhumane and a threat to public health.⁶⁹ In California,⁷⁰ for example, officials distributed a brochure to pregnant women, in English and Spanish, which read, "You do not need to be a citizen to get Medi-Cal⁷¹ Under the new law Medi-Cal cannot report you to immigration for applying for or receiving Medi-Cal while you are pregnant."⁷² Recognizing that government is to some extent responsible for the indigent, state constitutions typically decline to require citizenship to receive public assistance.⁷³

As the above survey of the law demonstrates, undocumented aliens enjoy some rights and benefits under federal and state law. These entitlements allow undocumented aliens to become productive assets to their communities. The federal government, however, has yet to clearly define the extent of these entitlements, as well as the lengths to which

68. See *Commercial Standard Fire & Marine Co. v. Galindo*, 484 S.W.2d 635, 636 (Tex. Civ. App. 1972) ("An illegal alien is not barred from prosecuting his action for personal injuries.").

69. For a comprehensive survey of state indigent entitlements, see NATIONAL HEALTH LAW PROGRAM, MANUAL ON STATE AND LOCAL GOVERNMENT RESPONSIBILITIES TO PROVIDE MEDICAL CARE FOR INDIGENTS (1985 & Supp. 1989).

70. Legal residents of California often protest the provision of health care for undocumented aliens. See, e.g., Fernando Romero, *Crash Victim's Coma Ends but not his Troubles*, L.A. TIMES, Mar. 3, 1994, at B1 (discussing the story of an undocumented alien who became involved in a car accident while trying to outrun a border patrol agent; Medi-Cal paid for over \$100,000 in hospital care during his resulting coma, but then refused to pay for his rehabilitation, although it will pick up the cost of nursing home expenses).

71. Medi-Cal is California's version of Medicaid, providing medical care for the uninsured or those otherwise unable to afford medical treatment. Tom Bethell, *They had a Dream*, NAT'L REV., Aug. 23, 1993, at 31.

72. *Id.* California's Proposition 187, however, which Californians voted into law in November 1994, radically changes the availability of basic services for undocumented aliens.

73. See ALA. CONST. art. IV; ALASKA CONST. art. VII, §§ 4, 5; KAN. CONST. art. VII, § 4; MICH. CONST. art. IV, § 5, N.Y. CONST. art. XVII, § 1; N.C. CONST. art. IX, § 4, WYO. CONST. art. VII, § 20.

The following state constitutions authorize instead of require aid for the needy; however, none of the constitutions require legal residency for benefits: ARK. CONST. art. XIX, §§ 16, 20; CAL. CONST. art. XVI, § 11; GA. CONST. art. IX, § 5; HAW. CONST. art. IX, § 3; MISS. CONST. art. IV, § 86; MONT. CONST. art. XII, § 3; S.C. CONST. art. XII, § 1; TEX. CONST. art. XII, § 26.

government will go to protect the entitlements.

II. THE ROLE OF THE FEDERAL GOVERNMENT WHEN NATURAL DISASTER STRIKES

Earthquakes, floods, fires, hurricanes, mudslides — when natural disaster strikes, both federal and state governments have a role to play in aiding private citizens with emergency relief. Victims' needs for medical care, food, water, home-repair materials, and clothing usually exceed available supplies.⁷⁴ Federal aid in these devastating situations can limit the risks people realize when a natural disaster strikes. Because of vast resources available to the federal government, its role in the past sixty years has shifted from supporting state and local governments⁷⁵ to leading the response to natural disasters.⁷⁶

Federal relief in disaster situations began in full force with the 1930s New Deal social programs.⁷⁷ Both the executive and legislative branches established agencies, departments, and councils to deal with specific disasters.⁷⁸ In 1958, the federal government started providing monetary assistance to state and local governments for natural disaster preparedness.⁷⁹ However, the administration of federal funds issued by several federal agencies became tangled and confused because states had to coordinate their relief with the federal agencies' different regulations.⁸⁰ Finally, in 1978, at the urging of many state

74. Edmund L. Andrews, *Urgency is Growing: 4 Days After Hurricane, Thousands Still Need Food and Shelter*, N.Y. TIMES, Aug. 28, 1992, at A1.

75. Local communities often resist the implementation or adoption of mitigation programs because of their political unpopularity. Avoiding development in high risk areas may be achieved through zoning and land-use laws, but these highly unpopular measures come only at a great personal political cost. NATIONAL RESEARCH COUNCIL, U.S. NATIONAL COMMITTEE FOR THE DECADE FOR NATURAL DISASTER REDUCTION, *A SAFER FUTURE: REDUCING THE IMPACTS OF NATURAL DISASTERS* 21 (1991) [hereinafter, "SAFER FUTURE"].

76. JAMES HUFFMAN, *GOVERNMENT LIABILITY AND DISASTER MITIGATION: A COMPARATIVE STUDY* 503 (1986) (describing the differing roles of state and federal government).

77. *Id.* at 477 (describing the patchwork of temporary programs established between the 1930s and the 1950s).

78. *Id.*

79. *Id.* at 478 (discussing the Federal Civil Defense Act which provided matching funds).

80. *See id.*

organizations, including the National Governors' Association, President Carter presented to Congress Reorganization Plan Number Three.⁸¹ In 1979, this plan produced the Federal Emergency Management Agency (FEMA).⁸²

FEMA is responsible for coordinating response to civil defense emergencies and natural disasters.⁸³ The Director of FEMA coordinates an emergency management committee composed of the President's assistants on national security affairs, domestic affairs, and intergovernmental relations, and the Director of the Office of Management and Budget.⁸⁴ The Director of FEMA reports directly to the President and coordinates several federal agencies.⁸⁵

Initial natural disaster relief comes from local and volunteer assistance and the state warns, evacuates, renders immediate assistance, and protects property when necessary.⁸⁶ If the disaster is of such a

81. Reorganization Plan Number 3 of 1978, 3 C.F.R. 329 (1978); *see also* HUFFMAN, *supra* note 76, at 478.

82. *Huffman, supra* note 76, at 478 (citing NATIONAL GOVERNORS' ASSOCIATION CENTER FOR POLICY RESEARCH, COMPREHENSIVE EMERGENCY MANAGEMENT 3 (1979)).

83. SAFER FUTURE, *supra* note 75, at 59.

The Federal Emergency Management Agency (FEMA) operates under several statutes concerning emergency management. Civil defense or attack preparedness accounted for a disproportionately large share of FEMA's resources during the Cold War. With the end of the Cold War, more resources should be freed up in the future for natural disaster preparedness, response, and mitigation. *Id.*

84. HUFFMAN, *supra* note 76, at 479.

85. *Id.* Agencies within the ambit of FEMA's coordination include the Federal Insurance Administration from the Department of Housing and Urban Development, the U.S. Fire Administration from the Department of Commerce, and the Federal Emergency Broadcast System. *Id.* Consolidated into FEMA are the Defense Civil Preparedness Agency from the Department of Defense, the Federal Disaster Assistance Administration from the Department of Housing and Urban Development, the Federal Preparedness Agency from the General Services Administration, the National Weather Service Community Preparedness Program from Commerce, the Dam Safety Coordination Program and Earthquake Hazard Reduction Office, and two emergency responsibilities not belonging to any other agencies - Federal Response to Consequences of Terrorist Incidents and Coordination of Emergency Warning. *Id.* (citing NATIONAL GOVERNORS' ASSOCIATION CENTER FOR POLICY RESEARCH, COMPREHENSIVE EMERGENCY MANAGEMENT 3 (1979)).

86. HUFFMAN, *supra* note 76, at 479-80 (describing the sequence of disaster responses). Each state has a disaster response and mitigation statute. Ken Lerner, *Governmental Negligence Liability Exposure in Disaster Management*, 23 URB. LAW 333 (1991).

magnitude that state relief is inadequate, the Governor of the state can request that the President declare the stricken area a national disaster area.⁸⁷ Once the President declares a national disaster area, FEMA will provide assistance.⁸⁸ FEMA then must implement the provisions of several federal statutes.⁸⁹ For example, with floods, FEMA administers the flood insurance program pursuant to the National Flood Insurance Act.⁹⁰ The Disaster Relief Act of 1974⁹¹ and the Earthquake Hazards Reduction Act of 1977⁹² contain provisions for earthquake relief. In addition to these planned responses to mitigate natural disasters, the incredible damage caused by recent disasters has occasionally spurred Congress to provide emergency funding.⁹³

The federal government has increasingly taken responsibility for public suffering caused by natural disasters. The federal government's

87. HUFFMAN, *supra* note 76, at 480.

88. See Oliver A. Houck, *Rising Water: The National Flood Insurance Program and Louisiana*, 60 TUL. L. REV. 61, 129 (1985). The governor must certify that local authorities are not able to provide assistance or damage control for the disaster and that the state will contribute a reasonable amount of funds for coping with the disaster. The state must also specify the amount of federal assistance the state requests. *Id.* at 129 (citing 42 U.S.C. § 514(a), (b) (1988); see also REPORT BY THE COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, REQUESTS FOR FEDERAL DISASTER ASSISTANCE NEED BETTER EVALUATION 2-3 (1981)).

89. See generally HUFFMAN, *supra* note 76, at 480-91 (describing FEMA's statutory milieu).

90. Houck, *supra* note 88, at 129. Prior to the federal program of flood insurance, which took form with the National Flood Insurance Act of 1968, no source of relief existed for ruined homeowners living in the fertile floodplain. The private flood insurance industry took a severe beating in 1899, in Cairo, Illinois, when the great flood of that year bankrupted one of the largest insurers. The flood of 1927 completely collapsed the industry, rendering private flood insurance unobtainable for homeowners in the floodplain. Throughout the 1930s, 40s and 50s the government remained unsympathetic, but the entry of developers into the floodplain increased the pressure for federal assistance. In the end, flood insurance seemed cheaper than tax-financed disaster aid. Kathleen Best & Phil Linsalata, *In the End, Everyone Pays*, ST. LOUIS POST-DISPATCH, Nov. 21, 1993, *supp.* at 3.

For further discussion on the National Flood Insurance Program, see Houck, *supra* note 88; Brian R. Mrazik, *Flood Risk Analysis for the National Flood Insurance Program in APPLICATION OF FREQUENCY AND RISK IN WATER RESOURCES* 443 (Vijay P. Singh, ed., 1987); Saul Jay Singer, *Flooding the Fifth Amendment: The National Flood Insurance Program and the "Takings Clause"*, 17 B.C. ENVTL. AFF. L. REV. 323 (1990).

91. 42 U.S.C. §§ 5121-5262 (1988 & Supp. V 1993).

92. 42 U.S.C. §§ 7701-06 (1988 & Supp. III 1991).

93. See *infra* notes 94-96 and accompanying text.

emergence as a leader in responding to national disasters opens the way for a uniform system that establishes the rights and entitlements available to groups in need of aid.

III. THE JANUARY 17, 1994 EARTHQUAKE IN SOUTHERN CALIFORNIA, THE RESULTING FEDERAL AID PACKAGE, AND ITS APPLICATION TO UNDOCUMENTED ALIENS

Congress overwhelmingly approved a bill that provides \$8.6 billion in aid to the victims of the January 17, 1994, earthquake in Southern California.⁹⁴ The government funds were expected to run out in mid-February, so this bill was necessary to replenish the coffers of relief agencies.⁹⁵ Congress quickly approved the measure.⁹⁶

The debate that slowed the bill's passing centered on whether undocumented aliens should receive emergency assistance.⁹⁷ Representative Ron Packard, a Republican from California, prompted the debate by opposing any aid to undocumented aliens.⁹⁸ Ultimately, the House denied long-term earthquake relief to undocumented aliens. In a compromise, the Senate amended the bill, requiring disaster-aid agents to take reasonable steps to ascertain the residency status of relief applicants.⁹⁹

94. Act of Feb. 12, 1994, Pub. L. No. 103-211, 108 Stat. 3 (1994).

95. H.R. REP. No. 415, 103rd Cong., 2d Sess. (1994).

96. The Senate "overwhelmingly approved" the bill, by a vote of 85 to 10. William J. Eaton, *\$8.6 Billion Quake Aid OK'd by Senate*, L.A. TIMES, Feb. 11, 1994, at A5. The Senate approved the bill by voice vote before it reached the House. See *id.*

97. See Alan C. Miller, *Earthquake: The Long Road Back*, L.A. TIMES, Feb. 9, 1994, at B5 (noting that the "volatile issue of assisting illegal immigrants victimized" by the earthquake was the "major remaining fight" facing Congress).

98. See Alan C. Miller, *Lawmakers Break Ranks to Steer Aid Bill*, L.A. TIMES, Feb. 11, 1994, at A1 (noting that Rep. Packard first pressed an amendment to deny illegal immigrants aid in the House Appropriations Committee).

99. Pub. L. No. 103-211 § 403(4), 108 Stat. 40 (1994). Providing relief for undocumented aliens was not an unprecedented measure. After the 1992 riots in Los Angeles, for example, FEMA provided short-term assistance for undocumented aliens. Yet the bill did have a novel clause prohibiting discrimination on the basis of sexual orientation. Pub. L. No. 103-211, § 403(5), 108 Stat. 40 (1994). Section 403(5) provides: "[I]n no case shall such Federal entity . . . discriminate against any individual with respect to . . . an application for funding on the bas[is] of . . . sexual orientation. . . ."

In 1992, after the Los Angeles riots, FEMA distributed leaflets reading: "Can I get Help Even If I'm Not a U.S. Citizen? . . . Applicants will not risk their request for legal residency under the Amnesty Program if they apply for or receive disaster assistance." See

The 1994 California earthquake caused an estimated twenty billion dollars in damage.¹⁰⁰ Funding included \$4.7 billion for emergency food relief and temporary shelter, \$1.3 billion for repair of major roadways, \$1.1 billion for small business loans, \$325 million for housing reconstruction, and \$500 million for other needs.¹⁰¹

The final version of the emergency relief bill became law on February 12, 1994.¹⁰² The relief provisions included the hotly-debated section providing emergency assistance to undocumented aliens. The law as enacted denied aid to undocumented aliens for more than ninety days.¹⁰³ The law further required officials to make reasonable efforts

BETHELL, *supra* note 71.

100. Helen Dewar, *Congress Approves Quake Relief Bill in Time for Recess*, WASH. POST, Feb. 12, 1994, at A11.

101. *Id.*

102. Act. of Feb. 12, 1994, Pub. L. No. 103-211, 108 Stat. 3 (1994).

103. Section 403 of Pub. L. No. 103-211 provides:

None of the funds made available in this Act may be used to provide any benefit or assistance to any individual in the United States when it is known to a Federal entity or official to which the funds are made available that —

(1) the individual is not lawfully within the United States;

(2) the direct Federal assistance or benefit to be provided is other than search and rescue; emergency medical care; emergency mass care; emergency shelter; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; warning of further risks or hazards; dissemination of public information and assistance regarding health and safety measures; the provision of food, water, medicine, and other essential needs, including movement of supplies or persons; and reduction of immediate threats to life, property and public health and safety;

(3) temporary housing assistance provided in this Act may be made available to individuals and families for a period of up to 90 days without regard to the requirements of subsection (4);

(4) immediately upon the enactment of this Act, other than for the purposes set forth in subsections (2) and (3) of this section, any Federal entity or official who makes available funds under this Act shall take reasonable steps to determine whether any individual or company seeking to obtain such funds is lawfully within the United States;

(5) in no case shall such Federal entity, official or their agent discriminate against any individual with respect to filing, inquiry, or adjudication of an application for funding on the bases of race, color, creed, handicap religion, sex, sexual orientation, national origin, citizenship status or form of lawful immigration status; and

(6) the implementation of this section shall not require the publication or implementation of any intervening regulations.

Pub. L. No. 103-211 § 403, 108 Stat 40 (1994).

to ascertain the residency status of anyone seeking long-term assistance.¹⁰⁴ Emergency benefits available to undocumented aliens, therefore, included those going towards search and rescue efforts, emergency medical care, emergency shelter, as well as necessities including food, water, medicine, and reducing threats to life, property, and public health and safety.¹⁰⁵ Though not generous, the Act's provision allowing undocumented aliens temporary relief was hotly contested in the House. Representative Dana Rohrabacher, a representative from an affluent, conservative, Orange County, California district, insisted early on that undocumented aliens had no right to emergency earthquake assistance.¹⁰⁶ Rohrabacher said he believed emergency aid policies encouraged illegal immigration and improperly used funds he thought should be allocated only to United States citizens and legal residents.¹⁰⁷ Those supporting aid to undocumented aliens argued that the U.S. provides a substantial amount of financial aid to assist residents of other countries during natural disasters, such as earthquakes, famines, and hurricanes.¹⁰⁸ The mayor of Los Angeles, Richard Riordan, decried cutting aid to undocumented aliens, in part because of the bureaucratic mess that would result from making such a distinction.¹⁰⁹

104. *Id.* § 403(4).

105. Pub. L. No. 103-211 § 403(1), 108 Stat. 40 (1994). Other benefits under the Act included temporary housing to individuals and their families for ninety days free of questioning. *Id.* § 403(3). After that time, federal agency officials are obligated to "take reasonable steps" to determine the resident status of the aid recipient. *Id.* § 403(4). The Act attempts to balance the harshness of these inquiry requirements with a provision that race, color, creed, national origin, sex, sexual orientation, citizenship status or form of lawful immigration status should not affect any individual's request for funding under the act. *Id.* § 403(5).

106. Miguel Bustillo & Marc Lacey, *Earthquake: The Long Road Back; U.S. Plan to Cut Aid to Illegal Immigrants Jolts Many*, L.A. TIMES, Feb. 2, 1994, at A14.

107. Rene Lynch, *Rohrabacher Proposes Legislation to Deny Federal Quake Relief to Illegal Immigrants*, L.A. TIMES, Jan. 23, 1994, at B1.

"I want the people of California to understand that hundreds of millions of dollars that should be going to them as citizens and legal residents are instead going to illegal aliens, and it's absolutely outrageous," said Rohrabacher . . . "Once people realize that there is free money available, the line will be never-ending and will reach all the way to the border. . . . The fact is that there are limited amounts of emergency funds in the country."

Id.

108. See Bustillo & Lacey, *supra* note 106.

109. Bustillo & Lacey, *supra* note 106.

The outcry against emergency assistance for undocumented aliens echoed anti-immigrant sentiments that have existed in the U.S. since the early nineteenth century.¹¹⁰ In California, the protest highlighted a growing concern over immigrant consumption of dwindling funds for public welfare. Months before the earthquake, California Governor Pete Wilson, urged the termination of health and education benefits for undocumented aliens in California, who number about 1.3 million.¹¹¹ Governor Wilson even proposed a constitutional amendment which would deny American citizenship to the American-born children of undocumented aliens.¹¹² Anti-immigrant sentiment climaxed with the passage of Proposition 187 in the November 1994 elections.¹¹³

As in the past, economic problems have fed anti-immigrant sentiments.¹¹⁴ The desperation wrought from a devastating natural

110. See *supra* notes 8-12 and accompanying text (discussing the history of anti-alien sentiment). Advocates of aid to undocumented aliens saw enforcement of disallowing aid as virtually impossible and forcing a racist approach in determining who was a lawful resident. A staff attorney with the Mexican-American Legal Defense Educational Fund opined that it would "come down to those . . . who look like immigrants: Latinos and Asians." Bustillo & Lacey, *supra* note 106.

"It's extremely dangerous," said David Hayes-Bautista, a professor at the UCLA School of Medicine who studies public policy issues affecting Latinos. "It is setting up a wedge (and) racializing policy in a very nasty way." Rich Connell, *Quake Brings Immigration Issue to National Forefront*, L.A. TIMES, Feb. 3, 1994, at A1.

111. See Martin Tolchin, *Aliens' Advocates See Peril in a Restrictive Health Plan*, N.Y. TIMES, Aug. 28, 1993, at 20.

112. Senators Dianne Feinstein and Barbara Boxer have also urged an increase in border security in an effort to limit unlawful border crossings. See Glenn F. Bouting, *Boxer's Bid to Put National Guard at Border is Stymied*, L.A. TIMES, Aug. 6, 1994, at 1.

113. See B. Drummond Ayres, Jr., *Californians Pass Measure on Aliens; Court Bars It*, N.Y. TIMES, Nov. 10, 1994, at B7.

114. The following quotations illuminate the problem.

"The bad economy is feeding [nativism] and the horrendous crime that exists in our communities," said Rep. Matthew G. Martinez (D-Monterey Park), who criticizes the aid restriction for being immoral and fostering a "condition for discrimination" against all Latinos. "It only manifests a sentiment that already was there and already growing."

Rich Connell, *Quake Brings Immigration Issue to National Forefront*, L.A. TIMES, Feb. 3, 1994, at A1.

"Once you start asking questions about people's immigration status, that has a real chilling effect," said Charles Wheeler, executive director of the National Immigration Law Center, a Los Angeles legal assistance office. "I think it is cruel and bizarre to link immigration status to a natural disaster of this magnitude."

Bustillo & Lacey, *supra* note 106.

disaster only enhances and directs the community's feelings of helplessness.¹¹⁵ It is the responsibility of Congress, as lead financier of disaster relief, to come up with a policy that will allay the public's fears and provide needed benefits.

IV. A PROPOSED POLICY FOR FEDERAL EMERGENCY ASSISTANCE FOLLOWING A NATURAL DISASTER THAT ENCOMPASSES THE NEEDS OF CITIZENS, LEGAL RESIDENTS, AND UNDOCUMENTED ALIENS

Until the Executive Branch regulates through FEMA, Congress enacts uniform legislation, or the Supreme Court adjudicates a case dealing with the issue of the rights of undocumented aliens to federal assistance following a natural disaster, fiery debates over whether undocumented aliens should receive aid will ensue whenever there is a natural disaster in a region with a substantial population of undocumented aliens. Such debates only cause unnecessary delay of federal funding when people in the disaster area need immediate relief.

The following proposal is a set of policy criteria for amending the Federal Emergency Management Act. Following these principles would be a first step toward uniform standards for distribution of emergency relief.

I. Federal entities, officials, and agents should not discriminate against any individual or family with respect to filing, inquiry, or adjudication of an application for funding on the basis of residency status.

II. Assistance should be administered on an as-needed basis for ninety days following a natural disaster.

III. After the first ninety days, all federal relief provided for necessities such as food, water, and shelter, with the exclusion of medical

"The Rev. Jesse Jackson, speaking Thursday at the Central American Resource Center, blasted the proposal as 'immoral and unfair.' Joined by Los Angeles City Council members Jackie Goldberg and Mark Ridley-Thomas, Jackson denounced the 'resurrection of anti-immigrant hysteria' nationwide and called for the defeat of the provision." Paul Feldman & Sonia Nazario, *Proposed Quake Aid Limits Seen as Mostly Symbolic*, L.A. TIMES, Feb. 4, 1994, at A1.

115. Bustillo & Lacey, *supra* note 106 ("City Councilman Mike Hernandez, whose inner-city district includes a significant immigrant population: 'What they are doing is creating scapegoats.'").

care and loans, should be documented and taxed¹¹⁶ as income to that individual.

Amending disaster relief laws in line with the foregoing principles would shift the focus from deciding who is eligible for immediate relief to how to administer such relief. Congress provided appropriate assistance in the 1994 California earthquake emergency aid bill. However, Congress did not go far enough. FEMA's operating procedures should include a uniform means of providing relief for undocumented aliens. Only federal legislation can accomplish this goal.

There are several policy reasons for adopting the foregoing proposal. In addition to basic needs such as food, water, and shelter, natural disasters also create public health concerns¹¹⁷ to which relief authorities must immediately respond. Citizenship status does not reduce a person's susceptibility to such health problems; disease spreads regardless of nationality.¹¹⁸ In addition, a view that undocumented aliens drain, rather than contribute to public coffers is incorrect.¹¹⁹

The policy of the United States has been to assist victims of natural

116. Such tax documentation would be optimal if it did not require the use of social security numbers because of the fear some undocumented aliens may have of an unlikely examination into residency status by the Internal Revenue Service. Assignment of a special number would be a more effective means of administering relief.

117. Since the January 17, 1994 California earthquake, dozens of people have been stricken with what is popularly known as "Valley Fever," or coccidioidomycosis. B. Drummond Ayres, Jr., *Dozens Stricken with 'Valley Fever,' and Earthquake is the Cause*, N.Y. TIMES, Feb. 24, 1994, at A2. A fungus living in the soil causes this flu-like, sometimes fatal, illness. *Id.* The fungus becomes airborne when soil and dust is disturbed, as during the earthquake. *Id.* The disease manifests itself with fever, muscular aches, lethargy, dermatitis, and a severe cough. Victims contract the disease simply by inhaling the dust containing the fungus. *Id.* The sickness may require hospitalization.

118. In fact, during the great waves of immigration of the late nineteenth and early twentieth century, immigrants imported several deadly public health hazards. For further discussion, see generally ALAN M. KRAUT, *SILENT TRAVELERS: GERMS, GENES, AND THE "IMMIGRANT MENACE"* (1994).

119. Unemployment among undocumented aliens approaches zero. Thus, they are contributing to our country's economy in both labor and taxes. Undocumented aliens often file tax returns without fear that government officials will discover their illegal status because interface between different agencies in the federal government (such as the Immigration and Naturalization Service and the Internal Revenue Service) is practically non-existent. Telephone Interview with Mary Kozlowski, Supervisor, Immigration and Naturalization Service, Westminster, Calif. (Feb. 28, 1994).

disaster both at home and around the world.¹²⁰ Indeed, the United States even has a history of assisting its former enemies in rebuilding their countries after war. Thus, it is sound policy to provide aid for people living within the United States' borders, regardless of their citizenship, after a natural disaster.

*Hadley Blake**

120. *See supra* notes 108-10 and accompanying text (discussing policy reasons debated in Congress for granting temporary disaster relief to undocumented aliens).

* J.D. 1996, Washington University.