

***Unauthorized Welfare:  
The Origins of Immigrant Status Restrictions in American Social Policy***

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On July 22, 1971, officials from the U.S. Department of Health, Education, and Welfare (HEW) met to clarify regulations concerning non-citizens' access to welfare and Medicaid. The meeting was prompted by the Supreme Court's judgment in *Graham v Richardson* a month earlier. Carmen Richardson, the lead plaintiff, immigrated from Mexico at the age of 51. Thirteen years later, she became disabled and applied for public assistance in Arizona, but was denied because she did not satisfy the state's 15-year residency requirement for non-citizens. Without the \$90 monthly grant, she was forced to subsist off the charity of friends and neighbors. With help from a legal aid lawyer, she sued the state on behalf of the 3,000 other non-citizens, like her, barred from public assistance in Arizona. In a unanimous decision, the Supreme Court declared state alienage-based restrictions, like Arizona's, unconstitutional because they violated the Equal Protection Clause of the 14<sup>th</sup> Amendment and encroached on the federal government's exclusive power to regulate immigration.<sup>1</sup>

At their meeting, HEW officials had to interpret the ruling and issue guidance for states when non-citizens like Richardson applied for assistance. They reached a consensus to make "full use" of the *Graham* decision and "prohibit the denial of Federally aided financial or medical assistance...to an otherwise eligible individual solely because he is not a citizen or because of his status as an alien." This position, they clarified, would prohibit states from denying aid even if the alien was "in the country illegally." They estimated that the "incremental" cost of this regulation would be "minimal" because, unlike Arizona, most states already covered individuals regardless of citizenship or legal status.<sup>2</sup>

Despite the anticipated low marginal cost, the regulation was a bold move. Carmen Richardson was a "lawfully admitted resident alien," and HEW officials noted that mandating coverage of unauthorized immigrants "may be considered to go beyond the Supreme Court

decision because the decision in several places refers to aliens ‘lawfully admitted’ to the country rather than merely to aliens.” But some officials convinced their peers that the decision applied to non-citizens regardless of legal status. By June 1972, the proposed regulation was published in the *Federal Register*, and the Nixon administration appeared well on its way to creating a federal right to welfare and Medicaid for all non-citizens, including unauthorized immigrants.<sup>3</sup>

HEW, however, never implemented the proposed regulation. Instead, within a year it reversed course and adopted a new policy which, for the first time, *prohibited* states from providing welfare and Medicaid to unauthorized immigrants. Within four years, unauthorized immigrants were also barred from most other federally-funded programs.

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The restrictive turn in federal policy during the Nixon years was a pivotal moment in American social policy, but one that welfare and immigration scholars have overlooked. The welfare scholarship for this period has focused on the legacies of the expansion of the welfare state through Johnson’s War on Poverty, the failure of Nixon’s Family Assistance Plan, and the politics of retrenchment that subsequently ensued. The dominant narrative paints this era as the moment when the public face of poverty and welfare shifted from white to black, and when whites’ resentment toward blacks began to temper their support for welfare and liberalism more generally. Immigrants play no role in this narrative.<sup>4</sup>

Immigration scholars, meanwhile, portray the 1970s as an era of rising popular nativism, but political stalemate on the regulation of unauthorized immigration. Scholars who study the emergence of policies that limit immigrants’ access to social benefits focus instead on the 1990s. According to these scholars, California led the way to restriction when in 1994 voters passed Proposition 187, which barred unauthorized immigrants from most non-emergency services.

While Proposition 187 was invalidated by the courts before it was implemented, a number of states subsequently passed similar legislation. In 1996, the federal government followed suit, passing the Personal Responsibility and Work Opportunity Reconciliation Act, better known as “welfare reform.” The legislation barred states from using federal funds to provide Medicaid and welfare to most recent legal immigrants. According to the dominant narrative, these federal restrictions were unprecedented, and represented a major departure from previous federal policy. State-level restrictions on unauthorized immigrants were seen as redundant, since these immigrants were thought to have never been granted public assistance. Nevertheless, these restrictions were deemed significant because they denoted the emergence of a “new nativism,” distinct from the “old” for its emphasis on immigrants’ consumption of public benefits. Proponents of these reforms, however, argue that restricting benefits to American citizens has been an important principle of American policy since colonial times.<sup>5</sup> Neither account is accurate.

When the modern welfare state was established in 1935, there were no *federal* laws barring non-citizens, even unauthorized immigrants, from social assistance. States were free to enact their own alienage-based restrictions on jointly funded programs, but in 1970 only Texas required Aid to Families with Dependent Children (AFDC) and Medicaid recipients to be U.S. citizens. Arizona and eight other states barred non-citizens from some of their other welfare programs, but the vast majority of states did not ask applicants about their legal status. And welfare officials interpreted federal law to prohibit cooperation between welfare and immigration officials. All of this changed during the Nixon administration, when the federal government first barred unauthorized immigrants from nearly all federal welfare programs. Federal policies have grown more restrictive ever since.

Far from being unprecedented, therefore, the 1996 welfare reforms represented the culmination of a restrictive turn that started in the 1970s. The Nixon era, in fact, marks the moment when the boundaries of social citizenship—the line separating those with a right to social assistance from those without—were being redrawn. State poor laws had long restricted public assistance to individuals with a “settlement,” typically residence in a community for a period of months or a few years. Under this logic, neighbors—whether citizens or aliens—were entitled to support in time of need; transients were not. But in the 1970s, welfare became limited instead by the terms under which an individual entered the nation. National citizenship eclipsed state and local citizenship as a key boundary of social citizenship.<sup>6</sup>

To explain the origins and timing of the shift toward federal restriction, I draw on federal and state welfare records, court cases, legislative transcripts, constituent letters, and newspapers. The roots of federal restriction, I argue, stretch back to the 1960s when changes in immigration and welfare policy led to an unexpected rise in unauthorized migration and an increase in the welfare rolls. These changes alarmed government officials, reflecting and reinforcing broader racial and economic anxieties. There was no evidence that unauthorized immigrants were responsible for the increase in welfare recipients. Nevertheless HEW’s attempt to mandate coverage infuriated Texas welfare officials and members of Congress, who worried that the policy would increase costs and induce further migration. In response, HEW reversed course and adopted the new regulation barring unauthorized immigrants from welfare and Medicaid.

The 1970s, therefore, was not characterized by political stalemate on the regulation of unauthorized immigration; rather, it featured new efforts to regulate immigration by other means: by using welfare policy to alter individual incentives to migrate. Few were happy with this outcome, however, including the state and local officials in the southwest who, perhaps

inadvertently, helped bring about the change of policy. Barring unauthorized immigrants from welfare did little to control unauthorized immigration, which continued to rise.<sup>7</sup> Yet with mandatory restriction, states were no longer reimbursed by the federal government for the costs of social assistance given to unauthorized residents as they had been for almost 40 years. Instead of mandatory coverage or mandatory restriction, most state and local communities wanted the federal government to cover the entire cost or give them the option to restrict benefits when they so desired.

This policy shift had deep and lasting effects. Federal restriction exacerbated the consequences of illegality for unauthorized migrants who were no longer eligible for most federal programs. But the effects were distributed more broadly, too, reaching U.S. citizen children in mixed-status families as well as anyone *suspected* of entering the country illegally. The federal restrictions adopted during the 1970s, therefore, represent another chapter in a long history of racial discrimination in welfare provision, albeit one that affected Latinos, especially Mexicans, in particular.<sup>8</sup>

Federal restriction had important policy feedbacks, too, ushering in years of struggle between local, state and federal officials over who was responsible for the social—and especially the emergency medical—costs of unauthorized immigrants, sowing the seeds of discontent that helped propel the passage of Proposition 187 and similar state initiatives more than 20 years later. Paradoxically, decisions intended to liberalize access to non-citizens set in motion a chain of events that led to greater restriction.

## **Immigrants in the New Deal**

The significance of the Nixon-era restrictions is evident when contrasted to the treatment of immigrants and minorities in the New Deal. Racial inequality, scholars have demonstrated, was built into the structure of the modern welfare state with the passage of the Social Security Act in 1935. The Act barred agricultural and domestic workers from Social Security and Unemployment Insurance, thereby disqualifying large numbers of blacks, Mexicans and other minorities from these new social insurance programs and forcing them to rely disproportionately on means-tested cash assistance programs, like Aid to Dependent Children (ADC) or Old Age Assistance (OAA). The federal government also failed to provide safeguards to protect minorities in these public assistance programs, acceding to Southern demands to jettison language mandating that benefit levels provide, at minimum, “a reasonable subsistence compatible with decency and health.” As leaders of key congressional committees, Southern Democrats had the power to demand these concessions to maintain Jim Crow. But they were not the only ones who supported this course of action. “In fairness to the south,” noted Paul Douglas, who observed the process first-hand, “there were Congressmen from [other] sections of the country where there were unpopular racial or cultural minorities who wanted to have their states left more or less free to treat them as they wished.”<sup>9</sup>

Less well known, however, is how the Social Security Act treated non-citizens. The Act made no mention of citizenship with respect to Social Security or Unemployment Insurance. But the Committee on Ways and Means report clarified that “Services performed by aliens, whether resident or nonresident, within the United States are included,” a provision codified in the 1939 Amendments to the Social Security Act. For almost four decades, Social Security officials interpreted this to mean that unauthorized immigrants were eligible for these programs, too.<sup>10</sup>

Concerned that unauthorized immigrants might hesitate to apply for Social Security numbers, the Foreign Language Information Service—an immigrant advocacy organization—tried to calm their concerns. They assured immigrants that information supplied to the Social Security Board (SSB) would not be used by other branches of government to “check up on the applicants.” “The application forms...do not ask whether the applicant is a citizen or an alien, or, if an alien, when or in what manner he or she entered the United States.” More important, the SSB operated under a strict confidentiality provision. “Only government employees having official responsibility in connection with the Social Security files” would have access to the information supplied. In fact, Frances Perkins, who as Secretary of Labor oversaw the Immigration and Naturalization Service (INS), instructed the agency to refrain from requesting information from the SSB. Since it did not collect citizenship data, the SSB did not publish statistics on non-citizens’ use of its programs. But census data suggest that non-citizens made good use of it. Compared to citizens, a slightly higher percentage of non-citizens in the labor force in 1940 told census takers they had a Social Security number (66% vs. 62%) or had Social Security funds deducted from their pay (65% vs. 61%). Since the majority of Mexicans were barred from Social Security by occupational restrictions, European immigrants benefited most from this provision.<sup>11</sup>

Unlike Social Security which was federally administered, states were responsible for roughly half the expenses of operating means-tested programs, including ADC and OAA. The Social Security Act allowed states to decide whether to bar non-citizens from these programs—but not because federal officials thought restriction was desirable. Frances Perkins and Harry Hopkins, the two most active members of the Committee on Economic Security (CES) charged with drafting the legislation, believed that non-citizens were entitled to assistance. Policy

precedents informed their views, since historically most relief was open to those who had a settlement in a locality regardless of citizenship. But they also defended inclusion on principle. Immigrants, they argued, paid taxes. Moreover, since many immigrants had American children, discrimination against alien parents entailed discrimination against their citizen children. For these and other reasons, Perkins and Hopkins fought to ensure that non-citizens would benefit from New Deal programs.<sup>12</sup>

The CES supported state discretion because it feared that requiring states to cover non-citizens in means-tested programs might spur a congressional backlash, which in turn might lead to federal restriction. This concern was not unfounded. Newspapers fanned the flames of nativist sentiment, and federal officials were deluged with letters from angry citizens protesting the granting of relief to aliens when so many Americans went without. According to several national polls, most American residents in the 1930s agreed that non-citizens should not receive relief, and those who did should be deported. Given this rampant nativism, the CES's Executive Staff Director, Edwin Witte, anticipated that an attempt would "be made to limit... federal aid to cases where pensions are granted to citizens. If an amendment to this effect is offered, I expect it will be adopted." Witte was not sanguine that states would grant "pensions to non-citizens." "But," he clarified, "there is nothing in the federal bill which would prevent them from doing so." Instead of forcing states to cover non-citizens, federal officials tried to convince states to pass more lenient provisions and drop any alienage-based restrictions they had adopted.<sup>13</sup>

Ultimately, only Texas adopted a citizenship requirement for ADC. Citizenship requirements were more popular in OAA programs. In 1939, 25 states (plus the District of Columbia) had citizenship requirements for OAA and an additional 6 had residence requirements of anywhere from 10 to 25 years for non-citizens only. However, within a decade, ten states had

already dropped these alienage-based restrictions, especially in states where European immigrants predominated. Though federal officials and advocates pressured states to do so, many states came to see alienage-based restriction as costly. State poor laws generally required that states cover non-citizens in their General Assistance programs if they were not covered under OAA. While General Assistance was funded entirely by states or counties, OAA was funded with a combination of state and federal funds. States discovered that it was cheaper to cover aged aliens on OAA than on General Assistance. By the time state alienage-based restrictions were invalidated in *Graham v. Richardson* in 1971, only 10 states still had citizenship requirements for *any* of their means-tested programs, and most of these permitted long-term residence in lieu of U.S. citizenship (See Table 1).<sup>14</sup>

--Insert Table 1 about here--

Until the 1970s the boundaries of social citizenship were limited more by state residence restrictions than alienage-based restrictions. This was a direct legacy of the poor laws, which restricted social assistance to individuals with a settlement, typically acquired through residence in a community for up to a few years. By 1948, only Texas barred non-citizens from ADC, yet all but eight states adopted one-year state residence requirements for dependent children. Similarly, while only 15 states had alienage-based restrictions for OAA, 46 had state residence requirements for the elderly poor, which ranged from one to five years. When the Supreme Court invalidated state residence laws in 1969 in *Shapiro v. Thompson*, 40 states still had residency requirements for public assistance.<sup>15</sup>

Federal law did not bar unauthorized immigrants from means-tested programs. And in general states did not ask whether applicants for aid were legal residents or not. Where citizenship was a precondition for assistance—as in Texas—unauthorized immigrants were

excluded alongside legal immigrants. Where citizenship was not a precondition for assistance, no questions were generally asked about legal status. Indeed, a New York welfare official testified in 1972 that a welfare applicant in his city was “not questioned as to whether he is an illegal alien. The question is, ‘Are you a resident of the city of New York?’” State and local citizenship, not national citizenship, mattered most.<sup>16</sup>

This is not to say that unauthorized immigrants had broad access to public assistance in practice. State residence restrictions barred recent immigrants, like recent state residents, from assistance. Racial discrimination blocked access for others. Mexicans and Mexican Americans had long faced discrimination at the hands of local relief officials, who, prior to passage of the Social Security Act, often co-operated with immigration officials to deport dependent Mexicans or used their own funds to repatriate those who could not be deported. While race-based discrimination declined somewhat with the advent of federal anti-discrimination policies, it remained prevalent in many communities. Lastly, scattered reports indicated that social workers in California, unclear about state and federal regulations, occasionally barred individuals because they lacked papers. But state officials there concluded that few counties inquired about legal status prior to 1971. And the U.S. General Accounting Office determined that prior to 1972 “cooperation between INS and local welfare agencies” was “limited and usually depend[ed] on INS officials’ finding a cooperative caseworker.” Federal welfare officials “interpreted Federal and State laws and regulations as preventing the disclosure of information on welfare applicants or recipients.”<sup>17</sup>

To summarize, between 1935 and 1971, there were no *federal* laws barring non-citizens, even unauthorized immigrants, from Social Security, Unemployment Insurance, OAA, or ADC (after 1962, renamed AFDC).<sup>18</sup> When additional public assistance legislation passed—creating

the Food Stamp program or Medicaid, for example—the same rules applied. Under federal law, both authorized and unauthorized immigrants were eligible for these programs on the same basis as citizens. Furthermore, the Social Security Act’s confidentiality provision prevented formal cooperation between welfare and immigration officials.

### **The Rise of Immigrant Status Restrictions**

The restrictive turn in federal policy started in 1972, the year that Congress created the Supplemental Security Income (SSI) program (See Figure 1). SSI excluded non-citizens not lawfully residing in the country. That same year, the Social Security Administration prohibited unauthorized immigrants from receiving Social Security numbers. In 1973, the Secretary of HEW barred unauthorized immigrants from receiving Medicaid and AFDC. In 1974, the U.S. Department of Agriculture issued regulations limiting Food Stamp benefits to U.S. citizens and permanently residing aliens—regulations formally ratified by Congress in 1977. And in 1976, Congress amended federal Unemployment Insurance law barring unauthorized immigrants. Many applicants for public assistance were now also subject to status verification, in which applicant information was often forwarded to INS.<sup>19</sup>

--Insert Figure 1 about here--

What caused this dramatic change in federal policy?

The roots of federal restriction stretch back to the mid-1960s, a time of broad transformation in American immigration and social welfare policy. Two historic changes in federal immigration law deserve special note. In 1964, Congress refused to re-authorize the Bracero Program, a largely Mexican migrant labor program in effect since World War II. The following year, Congress passed the Hart-Celler Act, eliminating the discriminatory national

origin quotas put into place in the early 1920s, which restricted immigration from southern and eastern Europe. But in seeking parity across nations, the Act also imposed quotas limiting immigration from the Western Hemisphere, including Mexico.<sup>20</sup>

These two policy changes led, unexpectedly, to a shift in the origins of immigration and the growth of unauthorized migration. While most immigrants previously came from Europe, Asia and Latin America became the largest sending countries. Apprehensions of unauthorized immigrants increased dramatically as well, from 82,000 in 1964 to more than 465,000 by 1972. The number of unauthorized immigrants in the country was unknown; press reports put it between 1 and 10 million. According to INS officials, 97 percent of unauthorized migrants apprehended by their agency hailed from Mexico.<sup>21</sup>

Elected officials were alarmed by these demographic shifts. Such concerns, Joseph Nevins argues, were exacerbated by at least two other developments. The first was the rise of the Chicano civil rights movement in the late 1960s, which, combined with the demographic shifts, fueled racial anxieties and stoked fears among some elites of the emergence of an “‘American Quebec’ in the Southwest.” The second was the sputtering of the American economy. While the 1973 oil crisis occurred after federal officials began the move toward restriction, this was not the first sign that economic conditions were deteriorating. Inflation increased during the late 1960s, and the unemployment rate rose from 3.5 percent in 1969 to nearly 6 percent by 1971—a combination that economists dubbed “stagflation.”<sup>22</sup>

Government officials, therefore, began to ponder how to halt the so-called “invasion” of unauthorized immigration. Neither the metaphor of “invasion” nor the nativism and anti-Mexican sentiment that lay behind it was new. Dating back to the Texas Revolution and the U.S. Mexico war, such nativism had culminated, periodically, in government efforts to restrict

immigration from Mexico and expel large swaths of the resident Mexican population: the repatriations of the 1930s and “Operation Wetback” in 1954 are two notable examples. In the 1970s, efforts to restrict unauthorized migration began with a series of Congressional hearings. Led by Congressman Peter Rodino (D-NJ), hearings were held to assess the effects of unauthorized immigration on the American economy. Though there was little data on the size of the problem, a rough consensus emerged. First, participants agreed that unauthorized immigrants migrated principally for jobs. Because hiring these immigrants was not against the law, employers had few incentives not to hire them. Second, the INS had few problems locating unauthorized immigrants; enforcement was hampered only by inadequate resources. After weeks of testimony, stretched out over a year, the conclusion was clear to most participants: Congress needed to authorize more funds for enforcement, make it unlawful to hire unauthorized immigrants, and impose sanctions on employers who flagrantly violated the law.<sup>23</sup>

The degree of consensus on employer sanctions was significant; the Attorney General, Justice Department, INS, Illinois State Legislature, Texas Good Neighbor Commission, California State Legislature, various state welfare authorities, labor leaders, and others agreed on this point. By focusing on reducing incentives to migrate and greater enforcement, legislators hoped to stem the rise in unauthorized migration. Neither of these solutions dealt with what was arguably the root of the problem: the great supply of and demand for immigrant labor, without any corresponding legal mechanism to fill the demand. But once the Bracero Program was abolished, it was politically hard to resurrect. And once caps were placed on the Western Hemisphere, it was politically difficult to increase legal immigration. Indeed, as it became clear that unauthorized migration was rising, Congress responded by cutting visas for Mexicans further.<sup>24</sup>

Though employer sanctions were seen as the best method to address incentives, they were unpopular with employers, and Congress failed to adopt legislation. Bills were introduced throughout the 1970s with strong support in the House as well as the Nixon, Ford, and Carter administrations. However, each time employer sanction bills moved from the House to the Senate, they were blocked by Senate Judiciary Committee leader, James Eastland, a Mississippi plantation owner alleged to employ unauthorized workers. After Eastland's retirement in the late 1970s, employer sanctions continued to face stiff opposition from growers and Chicano organizations, who feared it would increase discrimination against legal Mexican immigrants and Mexican Americans based on surname, skin color, or nationality.<sup>25</sup> Despite repeated failures, reducing incentives to migrate continued to dominate policy discussions.

At the same time that immigration law was radically transformed, welfare policy was dramatically liberalized. The change was due in part to a series of Supreme Court decisions, which helped to increase access to public assistance. Between 1960 and 1972, the number of ADC/AFDC recipients more than tripled, to roughly 11 million. Martin Gilens, who analyzed media portrayals of poverty from 1950 to 1992, shows that between 1972 and 1973 newsmagazines ran “story after story” about the so-called “welfare mess,” focusing on “mismanagement in state welfare bureaucracies” and “welfare cheaters.” Media portrayals of the poor shifted dramatically, too. Once portrayed as a problem among rural whites, the new face of poverty and welfare was now overwhelmingly black. As whites came to associate welfare with African Americans, resentment toward those on assistance increased.<sup>26</sup>

Some of that media attention, however, also targeted unauthorized immigrants. In the early 1970s, news outlets began to publish pieces about unauthorized immigrants' access to social assistance. In 1971, the *New York Times* ran a letter by a local INS investigator who

complained that “These two million illegal aliens will also fail to pay \$1 billion in Federal taxes. They will attend our public schools and facilities, enjoy our welfare and social services and earn credit for Social Security retirement by this illegal employment to the tune of another \$35 billion a year.” If unauthorized immigrants were not on welfare themselves, they were blamed for driving up the public assistance rolls indirectly because job competition drove Americans to seek welfare. Mexicans were sometimes singled out in these attacks, especially in the Southwest. An article in the *Oxnard Press Courier* in 1970 averred that “California has long been known as a land of milk and honey. Its reputation is well known in Mexico, where to wetbacks...the word is out: ‘Go to California, where welfare workers hand out free food, free money and free medical-dental care just for the asking.’”<sup>27</sup>

Unauthorized immigrants’ use of welfare, however, was not a salient public issue prior to restriction. I found few letters from the public on the subject in state and federal archives. Moreover, no opinion polls asked Americans their views on immigrants’ welfare use during this period, as they did during the Great Depression. Indeed, scholars agree there was little broad-based public concern about unauthorized migration in the early 1970s. This situation would soon change in response to increasing newspaper coverage and public statements by INS Commissioner Leonard Chapman, who claimed that America was being “flooded” with unauthorized immigrants. But this shift in public opinion transpired after HEW decided on federal restriction, not before.<sup>28</sup>

There was also no evidence that non-citizens were “abusing” welfare in 1972. In fact, some state and federal officials suggested that unauthorized immigrants were hesitant to use such services. Colorado’s regional HEW director testified in 1971 that “the presence of illegal aliens who are recipients of welfare benefits is not a major problem. In fact, it is a relatively minor

problem in this State.” Texas authorities concurred, asserting that they believed the numbers to be quite low but had no data to prove it. Federal HEW officials questioned the value of even making an inquiry into the matter. In 1970, the foreign-born made up less than 5 percent of the population—the lowest percentage on record—and nearly a third of these were over the age of 65. HEW’s own studies showed that only 11 percent of OAA recipients and 4 percent of AFDC heads were foreign born—a figure that included those who had naturalized, non-citizens in the country legally, as well as those in the country without authorization. The lack of data on the issue astounded congressmen at the 1971 immigration hearings. But since most welfare officials believed there were few unauthorized immigrants on welfare, trying to ferret out the few that were was a waste of time and resources. Unauthorized immigrants, they argued, came to the United States to work, not for welfare.<sup>29</sup>

Officials in California were most insistent that unauthorized immigrants relied significantly on social assistance. A member of the State Social Welfare Board testified in 1971 that “a tremendous amount” of “illegal aliens” picked up “by the Immigration Department have in their possession” welfare and Social Security cards. But they did not conduct any serious study of the issue until 1975. Nonetheless, officials testified that “a review by the state welfare board strongly suggests the count is high enough to demand action.” Part of the reason for the concern stemmed from the fallout from *Shapiro v. Thompson*. The Los Angeles County Board of Supervisors complained in 1970 that ever since that Supreme Court decision, the welfare rolls had soared. According to Supervisor Dorn, “It is a shocking fact that there are now 850,000 persons on welfare in the county and this is growing between 8,000 to 10,000 a month because residency requirements were eliminated.” He went on to state that 5,000 individuals from 43 countries had been approved for welfare *over the last two years* who would not have previously

been eligible because they had recently moved to the state. “Even though some of the aliens have entered the United States illegally,” Dorn noted, the “State Social Welfare Department gave them access to public assistance.” The addition of 5,000 non-citizens over two years—only some of whom may have been in the country illegally—was relatively trivial, representing 2 to 3 percent of the growth at most. But lacking any legal mechanism to reinstate residence restrictions in the wake of the *Shapiro* ruling, officials looked for other ways to limit the growth of the welfare rolls. The Board of Supervisors adopted a motion “urging Governor Reagan and the Legislature to reinstate a citizenship requirement for welfare eligibility.” The State Social Welfare Board followed suit and urged the Governor to bar applicants who were either “temporary” or “illegal immigrants.”<sup>30</sup>

Protests erupted as soon as the news of the proposed ban in California leaked out. While many Mexican-American leaders and community members had long held ambivalent and even restrictionist views on immigration, by the early 1970s groups like El Centro de Acción Social Autónoma (CASA), founded by veteran activists Bert Corona and Soledad “Chole” Alatorre, helped stimulate support for the rights of immigrants, including those who entered without authorization. Reflecting this new perspective, Abe Tapia, president of the Mexican American Political Association, a moderate advocacy organization founded in California in 1959, now promised a “‘blood bath’ if the Democrats didn’t immediately pledge their opposition” to the ban. But the Democrats—who controlled the state legislature—refused to satisfy their demands. At a conference on *Immigracion y La Raza*, in Los Angeles in 1971, attendees expressed “strong opposition” to the “Departments of Public Welfare...playing the role of immigration agents by denying services or benefits to those they deem to be here without papers.” They asserted that “all people, whether with or without documents, have the right to jobs, unemployment and

disability insurance, and to public welfare, if necessary, on the basis of qualifications and needs. If all people are taxed alike, all people deserve equal service.” *La Opinion* published an editorial cartoon of a needy individual looking up at a sign on the door of the welfare department, which read, “No hay ayuda para extranjeros,” translating roughly to: “There is no help for aliens.” The caption at the bottom of the page wondered “¿Se Aprobara Esta Propuesta?” Or in English: “Will this proposal be approved?”<sup>31</sup>

Approved it was. Reagan incorporated the ban into the Accountability Act of 1971, one of three bills introduced to overhaul the state welfare system. The final legislation contained a provision “designed to prevent the granting of aid to illegal aliens and temporary foreign visitors.” The act also “set up a mechanism for communication between county welfare offices and INS to identify illegal aliens on welfare.”<sup>32</sup>

California was not the only state where this issue took hold. Governor Nelson Rockefeller had recently overhauled New York’s welfare system and all welfare applicants were now being referred to the State Department of Labor for job referrals and training. But by law, unauthorized immigrants were ineligible for job training funds. As a result, American citizens and legal immigrants were required to work to receive assistance, while unauthorized immigrants—still eligible for Medicaid and AFDC—were not. Making matters worse, the *Daily News* ran a series of stories in 1971 that claimed—without evidence—that “25,000 illegal aliens” in New York were on welfare. Unlike California, however, New York would wait for federal guidance, concerned that *Graham v. Richardson* might prevent them from addressing the issue themselves.<sup>33</sup>

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When HEW officials met, then, in July 1971 to determine how to interpret the *Graham* ruling, they did so in a time of growing economic malaise and racial tension, and at the exact moment when politicians were debating how best to curb unauthorized immigration and soaring welfare costs. Nevertheless, participants at the meeting reached a consensus to make “full use” of *Graham* and prohibit the denial of welfare and Medicaid to authorized and unauthorized immigrants. Not everyone was convinced about the desirability of this regulation. John Twiname, who as head of HEW’s Social and Rehabilitation Service would have to sign the regulation, was not present at the July meeting. He told his staff that he was “very uncomfortable” with it. He thought the mandate would encourage unauthorized migration, which might lead to a backlash against all immigration. Though participants at the meeting were concerned that barring unauthorized immigrants would turn caseworkers into INS workers, Twiname saw the issue differently. He likened forcing states to provide welfare to unauthorized immigrants to forcing states to provide “cash assistance to somebody on the ‘ten most wanted list’ because it is somebody else’s business to prosecute him for his misdemeanors.” Frustrated that his staff gave him no other options, he nonetheless conceded that if *Graham* required that states cover these immigrants, he would sign the regulation.<sup>34</sup>

The proposed regulation was published in the *Federal Register* in June of 1972. It stated that to be accepted, state plans could not “exclude an otherwise eligible individual solely on the basis that he is not a citizen or because of his alien status.” While the wording was vague, HEW officials told Texas administrators that “any State plan which will not provide” financial or medical assistance “to all non-citizens irrespective of whether they are legal or illegal entrants would not be in conformity with the new Federal regulations.”<sup>35</sup>

Before adopting the final regulation, HEW followed protocol and offered to consider comments submitted in writing. Comments came from 59 persons—mostly state and local officials—in 17 states, 50 of which opposed the proposed regulation. There were three primary objections. First, some believed that *Graham* and the Equal Protection Clause were “not applicable to aliens not lawfully admitted to the United States.” Second, some feared that the new policy “would raise caseloads beyond the State’s fiscal capacity or require a corresponding reduction in assistance to citizens and lawfully admitted aliens.” Third, opponents argued that if benefits were provided to unauthorized immigrants, then they “should be fully financed from Federal funds, since the Federal government has responsibility for immigration.” Perhaps ironically, among the few who wrote in support of the proposed regulation was the Los Angeles County Board of Supervisors, which was concerned about the local costs of emergency medical treatment to unauthorized migrants. It asked for guidelines “which will assure us that eligibility for all Federally sponsored welfare and health programs are determined without considering the alien status of the applicant.”<sup>36</sup>

About half the negative comments came from a single state: Texas. Texas officials were especially concerned about the proposed regulations for at least three reasons. First, Texas had the greatest number of citizenship restrictions in place when the *Graham* decision came down, so they were more sensitive to the added fiscal burden of the regulation. Second, Texas had a long and especially virulent history of anti-Mexican sentiment and institutionalized discrimination. Officials in Texas, like their counterparts in California, had long viewed Mexicans as dependent, and they frequently discriminated against Mexicans in the allocation of public benefits. Indeed, state legislators in Texas were reluctant to fully fund ADC during the Depression because Mexican-American (and black) families might benefit. Motivated by similar concerns, the state

reminded federal officials in 1972 that they shared a long land border with Mexico, and they estimated that as many as half a million unauthorized immigrants—a group they sometimes referred to derisively as “wetbacks”—might reside in their state alone. Without any basis, they speculated that the costs of covering non-citizens, already estimated to be \$9 million for legal immigrants recently made eligible, could triple if they were forced to cover unauthorized immigrants as well. Finally, Texas was unique in that spending limits for public assistance were written into the state constitution. If HEW forced Texas to expand eligibility further, benefits for other recipients would decline in the absence of a public vote to increase spending. In July 1972, the Texas State Senate unanimously passed a resolution against HEW’s proposed regulation, and sent copies of the resolution to the Texas congressional delegation, as well as to the other 49 state legislatures. They refused to comply, and threatened to file suit against HEW to force a Supreme Court ruling on the matter.<sup>37</sup>

Importantly, while Texas welfare officials opposed forcing states to shoulder the costs of unauthorized migration, they did not request that the federal government bar their access either. Rather, they wanted federal officials to leave coverage optional. The distinction was significant. Under optional restriction, states would be reimbursed by the federal government for over 50 percent of the costs of social assistance granted to immigrants. Under federal restriction, they were not reimbursed at all. If optional coverage was not possible, Texas welfare officials wanted the federal government to pick up the entire tab. HEW authorities, however, claimed they had no authority to reimburse states for the full costs of unauthorized immigrants’ use of welfare and Medicaid. They argued that “legislation would be required of Federal assumption of responsibility for support of aliens unlawfully in the country.”<sup>38</sup> And such legislation was not forthcoming from Congress.

Indeed, Congress learned of HEW's proposed rule changes just as they were debating the 1972 Amendments to the Social Security Act. In September, bills were introduced in both the House and Senate to prohibit states from granting unauthorized immigrants' access to public assistance, but the bills died. What passed instead was a federal restriction on unauthorized immigrants' access to SSI, the entirely federally-funded program then under consideration. HEW's proposed regulation also came up during debates about the Immigration and Nationality Act. While those discussions focused on employer sanctions, the House Judiciary Committee noted that if unauthorized immigrants could no longer get jobs they might still be eligible for public assistance if HEW's proposal to mandate coverage went through. It therefore recommended greater cooperation between INS and HEW. Some members of Congress—flabbergasted to learn unauthorized immigrants were eligible for Social Security numbers and that for 40 years, HEW and INS had operated without formal communication—claimed that HEW was “grossly” misinterpreting *Graham*. And they linked proposals barring unauthorized immigrants from welfare to the goal of reducing incentives to migrate. Representative James Collins (R-TX) put the matter bluntly: “Obviously, a comfortable welfare living will tend to encourage more and more aliens to come into this Country. We are trying to develop a system of getting the Wetbacks under control and HEW has an incentive program of encouraging them to enter our country.” Congressman James Pickle (D-TX) therefore proposed an amendment, which would authorize HEW personnel to notify INS of any unauthorized immigrant who was receiving or had received public assistance. He then suggested that by passing this amendment, “it will be a direct message to HEW to get off its backside...and not allow this to continue to go on.” Representative William Randall (D-MO) concurred, saying: “if this bill is passed with this amendment the executive branch, meaning HEW, are going to have to pay some attention to

congressional intent.” The amendment passed by a voice vote but the larger bill—which included employer sanctions—failed.<sup>39</sup>

It is unclear whether Nixon was aware of any of these events. The President left a complicated legacy on race and welfare. Deeply opposed to “busing” and committed to a “southern strategy,” which deepened racial polarization, the Nixon administration also helped to expand some minority rights, including affirmative action and bilingual education. Early in his presidency, Nixon advocated the passage of the Family Assistance Plan (FAP), which would have provided a federal guaranteed income for poor families. But stung by Congress’ failure to pass FAP, and frustrated with spiraling welfare costs, in the run up to his second term, he advocated a decisive shift to the right on welfare issues, including a new emphasis on cutting costs and curbing fraud. An important signal of this shift was a complete reorganization at HEW from top to bottom. Elliot Richardson was replaced by Casper Weinberger. Weinberger’s protégé, James Dwight, took Twyname’s position as head of the Social and Rehabilitation Service. Many social welfare professionals in lower positions were replaced by “management experts” with no previous ties to the social welfare profession. Weinberger, Dwight and others had served in Governor Reagan’s administration “where they vigorously implemented” the Governor’s “cutbacks in welfare,” which included the state ban on assistance to unauthorized immigrants.<sup>40</sup>

In June 1973, the new team at HEW changed course and proposed a regulation mandating federal restriction of unauthorized immigrants in welfare and Medicaid. To justify the reversal, Weinberger cited the negative comments HEW received about its original mandate to cover, Congress’s decision to bar unauthorized immigrants from SSI, and a desire for consistency across programs. The new policy required that beneficiaries be “either a citizen or an

alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law”—now known as PRUCOL—“and must exclude any individual who is not lawfully in this country.” The term PRUCOL was exceedingly vague because there was no such category in federal immigration law, and the phrase was not defined in the regulation. But it allowed federal officials to include some non-citizens who may not have been lawfully admitted for permanent residence but who nonetheless resided in the country under the full knowledge of immigration authorities, such as refugees or aliens granted a suspension of deportation. But the fact that there was no common definition of PRUCOL allowed for the development of different eligibility requirements across programs. In other words, a non-citizen might find herself “legal” enough to qualify for Medicaid or SSI, but not AFDC. The lack of firm guidelines resulted in great confusion and decades of litigation.<sup>41</sup>

Why HEW chose to enact a federal ban rather than leave the issue to the states is not clear. State officials, including those in Texas, did not demand federal exclusion. And optional coverage was the only policy alternative HEW considered when they decided to originally mandate coverage. Of course, thinking inside HEW shifted dramatically once Weinberger took over. In the years that followed, the new administrators explained that mandated exclusion was necessary, even desirable because it would save money and it served the larger aim of reducing incentives for unauthorized migration. Dwight also later claimed that *Graham* required restriction because the ruling mandated uniform state policies. Having abandoned the proposal to mandate coverage, they may have felt they had to require exclusion. But the necessity of uniform state policies is uncertain; federal officials have allowed optional state restriction since the 1996 welfare reforms.<sup>42</sup>

## **The Consequences of Immigrant Status Restriction**

The consequences of federal restriction were significant for unauthorized immigrants, their family members, and those mistakenly presumed to lack papers—usually Latinos. Soon after the change in federal policy, reports emerged that the new verification procedures resulted in discriminatory treatment, as individuals applying for assistance or seeking health care were targeted for scrutiny based on surname, skin color, and foreign accent. Carlos Mata, head of San Antonio’s Food Stamp Task Force, asked Texas officials in 1974 that social workers’ end their “discriminatory practice of asking only persons of Mexican-American origin or appearance if they are illegal aliens.” A 1979 HEW report on the effect of denying reimbursement for hospital services “provided to illegal immigrants” confirmed that “Hispanics were sometimes closely questioned during admittance regardless of their citizenship status. Also, there were reports that U.S. citizens were refused hospital services because they could not provide...proof of citizenship. Project staff also reported many unsubstantiated rumors of systematic exploitation of county medical facilities by undocumented aliens” and that “A climate of racial prejudice was established by such rumors.”<sup>43</sup>

The change in policy also increased cooperation between welfare, health, and immigration officials. Texas officials began to require reporting of AFDC applicants to INS. And the USDA adopted regulations mandating reporting of all suspected unauthorized immigrants who applied for Food Stamps for themselves or their American children. A hospital in Yuma, Arizona, not only reported Hispanics seeking services to Border Patrol, they also posted a sign in the emergency room informing patients that the hospital cooperated with INS. Officials in Orange County, California required that all indigent patients apply for Medicaid. By state law, “information on suspected undocumented immigrants” who applied for public assistance was

“sent to the INS for verification of immigration status.” UC Irvine Medical Center labeled those who refused “uncooperative;” their names and addresses were forwarded to INS, too. A 19-member county task force made up of “representatives of business, labor, churches, politics and academic life” was appointed by the Board of Supervisors to study “the question of medical care for illegal aliens.” It found that “within the tightly-knit” immigrant community, “word spread quickly about the danger of visits to health centers. Many people...heard of someone who had been deported when they had sought...treatment at a health center.” UCI medical students noted the dangers of delayed care. And the dean of the Medical Center reported feeling “disgust, shame, and anger” at being pressured to “implement what are essentially immigration service functions.”<sup>44</sup>

As the consequences of federal restriction became clear, those affected and their allies fought back. With the help of a legal aid lawyer, a woman living in the United States without authorization “for a number of years,” sued Texas welfare officials on behalf of her two American-born children whose benefits to AFDC and Food Stamps were “terminated” after a Hidalgo County welfare worker “advised her that she would be reported to the Immigration Service and deported if she renewed her application for the children’s benefits.” Without assistance, her family was forced to rely on her meager \$60 monthly income. “The only way the children can exercise their rights to AFDC or food-stamp benefits when they are eligible,” her lawyer explained, “is through an application by their caretaker. Texas officials have put them in a cruel ‘Catch-22’ by using this application process to cause deportation of the caretaker.” The policy not only violated federal law, another lawyer involved in a similar case argued, it also “works against one particular class of Texas citizens, Mexican-Americans.” “Many laws enforcing restrictions on immigrants from Mexico,” he explained, “have the effect of terrorizing

Mexican-Americans who are legally in Texas. Only Mexican-Americans must display their papers in border areas. Only Mexican-Americans are questioned and intimidated about citizenship at check points or by roving patrols. Only Mexican-Americans will be discouraged from applying for food stamps and welfare.” As a result of the lawsuits, the state was forced to abandon its reporting policy.<sup>45</sup>

In California “a delegation of concerned Chicanos,” including representatives from CASA, the Chicana Welfare Rights Organization (CWRO), and other allies “met with top state officials” in 1976, “to protest oppressive and ‘illegal’ regulations adopted by the State...to restrict welfare to aliens.” Bert Corona “warned the state to get out of the immigration business.” State Assemblyman Richard Alatorre, a member of the Chicano Legislative Caucus, wrote to Governor Brown expressing his “total and absolute opposition” to welfare department regulations “requiring all applicants for assistance to show proof of citizenship or immigration papers. Many poor people, primarily Chicanos,” he explained, “do not have these documents in their possession and even though residing in this country legally, are nonetheless being discriminated against by the enforcement of this unjust and racist regulation.” A year later, Irene Villalobos, President of CWRO, told state officials that “nothing has changed,” and that “the abuse of aliens by the Los Angeles County Department of Public Social Services continues as before.” During “an emotion-packed 2 ½ hour” meeting in 1978, Orange County supervisors heard a “parade of speakers,” composed primarily of “advocates for the aliens,” including medical professionals, religious leaders, and others, “tell them that the county’s illegal aliens were being frightened away from needed medical care” because of UC Irvine Medical Center’s cooperation with INS. At the end of the meeting, the supervisors voted unanimously that “county

medical services and enforcement of federal immigration laws ‘should be separate and independent of one another.’”<sup>46</sup>

Over time, state and local officials found that they had to continue providing limited services to unauthorized immigrants but now without any federal reimbursement. Some states, like California and New York, had laws mandating emergency medical treatment regardless of legal status. In others, like Arizona, court decisions guaranteed the same. The San Diego Board of Supervisors testified in 1977 that because fear of deportation was leading some unauthorized immigrants to abstain from seeking medical treatment for communicable diseases, “many California communities have extended some health services—on almost a no questions asked basis—because the individual and communitie’s [sic] health is more important than a sick person’s legal residency status.” Others found it hard to deny aid to those seen as especially “deserving” of assistance. Indeed, moved in part by the plight of Mercedes Cardenas, a 76-year-old Central American widow without papers, the Los Angeles County Board of Supervisors voted in 1976 to grant General Assistance to certain elderly immigrants whose benefits had been denied or terminated. Cardenas, who had lived in the United States for 30 years, had never attempted to change her legal status; she did not know how and she was afraid of immigration officials who “could send me out of the country in spite of all the years I have been here.” When she was no longer able to work, she was forced to move to a neighbor’s “drafty tool shed.” With the help of the \$167 monthly county grant, Cardenas could finally afford an apartment.<sup>47</sup>

Frustrated with the consequences of federal restriction, state and local officials demanded federal relief—to little avail. On behalf of elderly immigrants like Mrs. Cardenas, Congressman Edward Roybal, who in 1962 was the first Mexican American elected to Congress from California since 1879, wrote to the Commissioner of Social Security, urging the federal

government provide SSI to a “small number of aliens” “whose public assistance was terminated.” The county grant supporting Cardenas had “been helpful,” Roybal wrote, but “it is my firm belief that the Federal government bears the responsibility for a permanent, nationwide solution to the problem.” In 1977, Congress held hearings on legislation designed to reimburse medical facilities that provided care to unauthorized immigrants. HEW opposed the legislation, preferring to wait for comprehensive immigration reform and national health insurance before promising to cover such costs. By the early 1980s, New York City sued HEW, charging that the regulation denying Medicaid benefits to unauthorized immigrants violated the Social Security Act.<sup>48</sup>

Comprehensive immigration reform came in 1986 with the Immigration Reform and Control Act. IRCA provided additional resources for border enforcement, imposed sanctions on employers who knowingly hired unauthorized immigrants, and offered “amnesty” to 3 million unauthorized individuals. The employer sanctions, however, were weak and largely symbolic. And most newly legalized immigrants were ineligible for full-scope Medicaid for 5 years. That same year, a U.S. District Court in New York found that HEW had overstepped its authority in 1973 when it issued the regulation requiring that states deny Medicaid to unauthorized immigrants. Only Congress, the court held, was authorized to restrict access. In response, Congress amended the Social Security Act to restrict unauthorized immigrants from full-scope Medicaid. But to appease some members of Congress who advocated full Medicaid coverage, the legislation contained a provision which guaranteed Emergency Medicaid coverage to otherwise eligible individuals regardless of legal status, including most needy children, their parents, and pregnant women. Separate legislation, passed the previous year, also specifically guaranteed individuals access to emergency medical treatment regardless of legal status. But

states called this an unfunded mandate because these new laws required hospitals to provide care regardless of legal status, even where individuals were not otherwise eligible for Emergency Medicaid. Issues around reimbursement continue to bedevil county, state and hospital officials.<sup>49</sup>

### **The Legacies of Immigrant Status Restriction**

In hindsight, HEW's attempt to force states to cover unauthorized immigrants in the midst of a congressional debate about the growth of unauthorized immigration and amid growing resentment over rising welfare rolls was foolhardy. Unlike their Nixon-era counterparts, New Deal officials understood that explicitly mandating coverage of non-citizens could backfire. Part of the reason that unauthorized immigrants were included in federal welfare provision for nearly 40 years was that federal officials could—away from the public glare—interpret the lack of alienage-based restrictions to require coverage. By proposing to mandate coverage, those HEW officials who gathered in July 1971 helped shine light on an issue that many no doubt wished would have remained obscure.

The ambiguous language in the *Graham* decision, moreover, did not offer HEW officials much political cover to force the issue. In fact, the decision may have pushed officials to one extreme or the other because it seemed to require uniform state policies absent congressional authorization. And neither Congress nor Nixon was in the mood to mandate coverage. During the controversy, Nixon replaced the staff at HEW with new officials strongly committed to cutting costs and curbing fraud. Reversing the mandate to cover unauthorized immigrants was likely one of the easier decisions they faced, especially since the policy initially generated few forceful supporters.

The federal government's decision to adopt mandatory over optional restriction was fateful. At the time that *Graham* was decided, only 10 states had citizenship requirements for access to any of their public assistance programs. Given the heightened attention to unauthorized migration and rising welfare costs there is no doubt that some states would have imposed their own restrictions had federal officials left coverage optional. California and Texas had done so by 1972 and New York was awaiting federal guidance to do the same.

Nevertheless, the record suggests that had restrictions remained optional, some states would have eventually decided that the administrative costs of restriction outweighed the benefits. San Diego welfare officials reviewed 5,894 cases in 1975 and found only 10 unauthorized immigrants on welfare, all of whom were technically eligible under state regulations. They concluded that the cost of detecting the presence of unauthorized immigrants on welfare "hardly justifies the expenditure." Officials in Monterey, California, agreed with this assessment and "flatly refused" to implement any verification procedure. Frustrated by the lack of resources for immigration enforcement, Washington State officials defied federal regulations and submitted a state welfare plan which explicitly covered unauthorized immigrants.<sup>50</sup> Under optional restriction, states could also grant access for unauthorized immigrants they saw as especially deserving, such as children or the elderly. Others might bar access for cash welfare but allow access to Medicaid, since health providers were under moral or legal obligations to provide emergency care regardless of legal status.

Despite the fact that few were pleased with the outcome, policy feedbacks made the federal policy resistant to change. Reversing course was difficult because restriction in one program triggered restrictions in others. Congress barred unauthorized immigrants from SSI in 1972 because HEW proposed requiring their inclusion in AFDC and Medicaid. HEW then cited

the SSI restriction as one reason for their sudden turnabout on inclusion in AFDC and Medicaid. Once legal status requirements were in place for these programs, the path toward restriction was set, as various federal agencies followed suit, applying them to Food Stamps, Unemployment Insurance, and other federal programs. The longer these restrictions remained in effect, the harder it was to change course because the logic of restriction was so symbolically powerful.

Reversing course was also difficult because the costs of federal exclusion were born by a handful of state and local governments. Mandated exclusion also heightened the perception of immigration as an “illegitimate burden” at the local level, reinforcing the logic of restriction. State and local governments repeatedly called on the federal government to pay their share of the social costs of unauthorized immigration. In 1994, Arizona, California, Florida, Texas and New Jersey sued the federal government for reimbursement. Some recent state initiatives designed to bar immigrants from social services, though clearly fueled by racism, also reflected this frustration with federal policy. California’s Proposition 187 was a case in point. Among other things, the initiative would have barred unauthorized immigrants from non-emergency services. In addition to encouraging immigrants to “self-deport,” Proposition 187 was designed to send a message to Washington: that the federal government should increase enforcement efforts and reimburse state and local governments for the social costs of unauthorized immigration. Getting federal aid—“that’s what it’s all about,” explained Governor Pete Wilson. Ironically, the federal government responded by barring more categories of non-citizens in 1996—thereby increasing the state and local burden further.<sup>51</sup>

The logic of restriction has in fact become so powerful that few scholars or immigrant advocates today appear aware that unauthorized immigrants were only first barred from federal welfare programs in the 1970s. What is more, the logic was quickly applied to other groups of

noncitizens. As early as 1975, federal officials were discussing their desire to bar newly arrived *legal* immigrants from public assistance.<sup>52</sup> While one might have expected that the *Graham* case would have protected *legal* non-citizens' access to assistance, the Supreme Court in *Mathews v. Diaz* (1976) upheld the federal governments' ability to make distinctions between citizens and legal non-citizens.

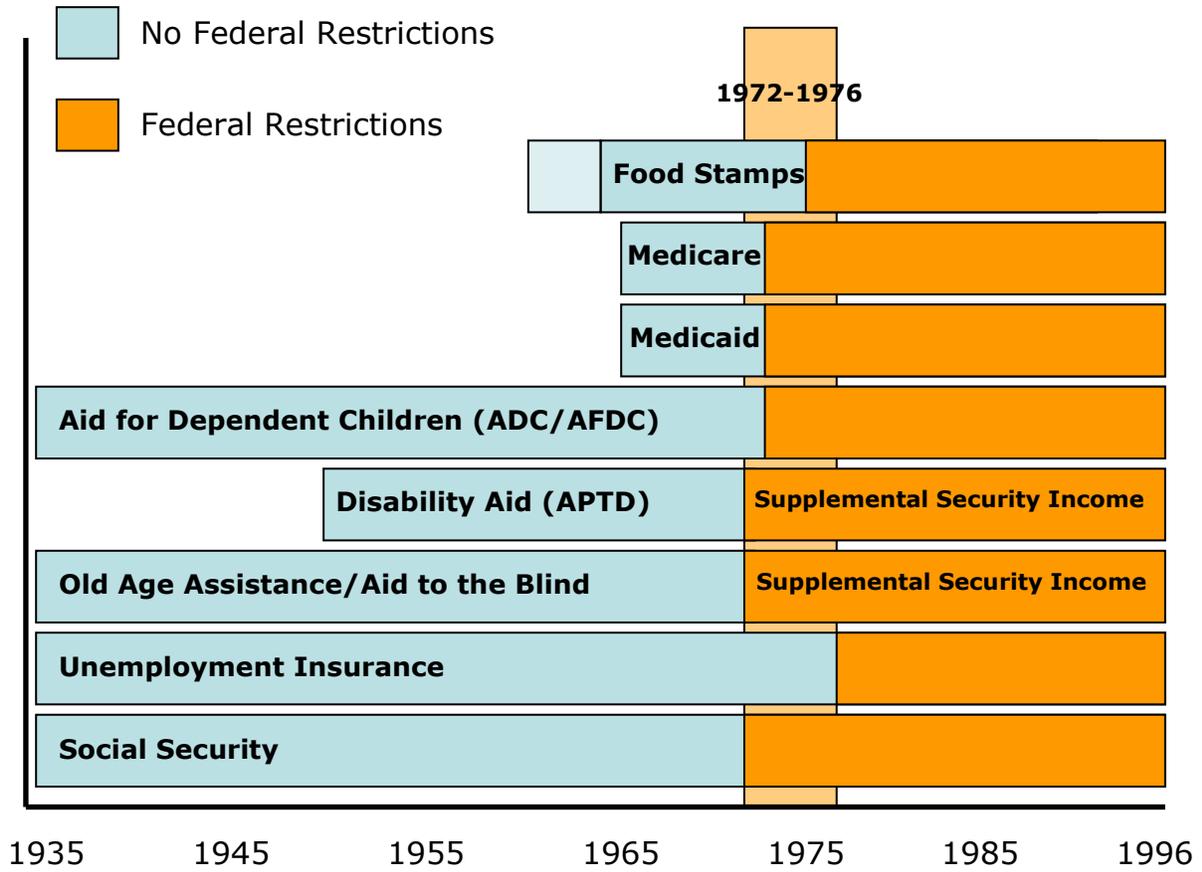
The move towards federal restriction and greater cooperation between welfare and immigration officials in the 1970s was obviously significant for those excluded from assistance or threatened with deportation. This included not only unauthorized immigrants but American citizens as well, most of whom were of Mexican-origin. But it also represented an important shift in the way the federal government would attempt to regulate immigration: by using welfare policy to alter incentives to migrate. That there was no measurable impact on unauthorized immigration was immaterial—the symbolic value of restriction was good enough. The logic of using welfare policy to help regulate immigration would set the stage for ever greater restriction and tighter enforcement in welfare policy in the years to come.

**Table 1: Alienage-Based Restrictions in State Welfare Programs Invalidated by *Graham v. Richardson* (1971)**

	<b>Old Age Assistance</b>	<b>Aid to the Blind</b>	<b>Aid to the Permanently and Totally Disabled</b>	<b>Aid to Families with Dependent Children</b>	<b>General Assistance</b>
Arizona	√	√	√		
Colorado	√*				
Florida	√	√	√		
Indiana	√*	√*			
New Hampshire	√		√*		
North Dakota	√	√	√		
Oklahoma					√
Pennsylvania					√
South Carolina	√*				
Texas	√	√*	√*	√	

Notes: \* Rigid citizenship requirements that did not allow long-term U.S. residency in lieu of citizenship

**Figure 1: Rise of Federal Legal Status Restrictions in Social Welfare Programs, 1935-1996**



## Endnotes

<sup>1</sup> John L. Costa to John D. Twiname, July 27, 1971, Box 1, Administrative Subject Files, Medical Services Administration, Records of the Social and Rehabilitation Service, RG 363 (National Archives, College Park); *Graham v. Richardson*, 403 U.S. 365 (1971).

<sup>2</sup> Costa to Twiname, July 27, 1971, box 1, Administrative Subject Files, Medical Services Administration, Records of the Social and Rehabilitation Service; quotes from John D. Twiname to Secretary, proposed amendments to 45 CFR 233.50 and 248.50, n.d., *ibid*.

<sup>3</sup> *Ibid*; *Federal Register* 37, no.117 (June 16, 1972), 11977. The terms “unauthorized,” “undocumented,” and “illegal” refer to immigrants without legal authorization to live in the United States. “Wetback,” a racial slur, also refers to such immigrants, but is directed at Mexicans. I use the term “unauthorized” because it is the most descriptively accurate. Other terms are used only in direct quotations.

<sup>4</sup> Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (1971, New York, 1993); Felicia Ann Kornbluh, *The Battle for Welfare Rights: Politics and Poverty in Modern America* (Philadelphia, 2007); Brian Steensland, *The Failed Welfare Revolution: American’s Struggle over the Guaranteed Income Policy* (Princeton, 2008); Vicent J. Burke and Vee Burke, *Nixon’s Good Deed: Welfare Reform* (New York, 1974); Martin Gilens, *Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy* (Chicago, 1999); Jill S. Quadagno, *The Color of Welfare: How Racism Undermined the War on Poverty* (New York & Oxford, 1994); Thomas Byrne Edsall with Mary D Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York, 1992); Jonathan Reider, *Canarsie: The Jews and Italians of Brooklyn against Liberalism* (Cambridge, MA, 1985); Michael B. Katz, *The Undeserving Poor: From the War on Poverty to the War on Welfare* (New York, 1989).

<sup>5</sup> For scholarship on immigration in the 1970s, see Daniel J. Tichenor, *Dividing Lines: The Politics of Immigration Control in America* (Princeton, 2002), 241; Leo R. Chavez, *Covering Immigration: Population Images and the Politics of the Nation* (Berkeley, 2001); Joseph Nevins, *Operation Gatekeeper: The Rise of the ‘Illegal Alien’ and the Making of the U.S.-Mexico Boundary* (New York, 2002). For scholarship on immigrants and public benefits in the 1990s, see Kitty Calavita, “The New Politics of Immigration: ‘Balanced-Budget Conservatism’ and the Symbolism of Proposition 187,” *Social Problems* 43 (August 1996), 284-305; Robin Dale Jacobson, *The New Nativism: Proposition 187 and the Debate over Immigration* (Minneapolis, 2008); Lynn Fujiwara, *Mothers Without Citizenship: Asian Immigrant Families and the Consequences of Welfare Reform* (Minneapolis, 2008). For proponents of the reform view, see Ron Haskins, “Limiting Welfare Benefits for Noncitizens: Emergence of Compromises,” in *Immigrants and Welfare: The Impact of Welfare Reform on America’s Newcomers*, ed. Michael E. Fix (New York, 2009), 43-45; Robert Rector and William Lauber, “America is Becoming a Deluxe Retirement Home,” *The Social Contract* 6 (Fall 1995), 58. Scholars have examined immigrants’ access to relief and health services in the Progressive and Depression eras. Cybelle Fox, *Three Worlds of Relief: Race, Immigration, and the American Welfare State from the Progressive Era to the New Deal* (Princeton, 2012); Natalia Molina, *Fit to Be Citizens? Public Health and Race in Los Angeles, 1879-1939* (Berkeley, 2006); Gwendolyn Mink, *The Wages of Motherhood: Inequality in The Welfare State, 1917-1942* (Ithaca, 1995); Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare, 1890-1935* (Cambridge, MA, 1994); Abraham Hoffman, *Unwanted Mexican Americans in the Great Depression: Repatriation Pressures 1929-1939* (Tucson, 1974); Emily K. Abel, “From Exclusion to Expulsion: Mexicans and Tuberculosis Control in Los Angeles, 1914-1940,” *Bulletin of the History of Medicine*, 77(Winter 2003), 823-49.

<sup>6</sup> T.H. Marshall first developed the concept “social citizenship” in “Citizenship and Social Class,” in *Class, Citizenship and Social Development: Essays by T.H. Marshall* (Garden City, NY, 1964), 65-122.

<sup>7</sup> Douglas S. Massey and Kristin E. Espinosa, “What’s Driving Mexico-U.S. Migration? A Theoretical, Empirical, and Policy Analysis,” *American Journal of Sociology* 102 (January 1997), 939-99; Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York, 2002), 44-45.

<sup>8</sup> On the production and variable consequences of illegality, see Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, 2004); Nicholas De Genova, “The Legal Production of Mexican/Migrant ‘Illegality,’” *Latino Studies*, 2 (2004), 160-85. On racial discrimination in welfare policies, see Ira Katznelson, *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York, 2005); Quadagno, *The Color of Welfare*; Gordon, *Pitied But Not Entitled*; Robert Lieberman, *Shifting the Color Line: Race and the American Welfare State* (Cambridge, 1998); Mary Poole, *The Segregated*

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*Origins of Social Security: African Americans and the Welfare State* (Chapel Hill, 2006); Ellen Reese, *Backlash Against Welfare Mothers: Past and Present*, (Berkeley, 2005); Fox, *Three Worlds of Relief*.

<sup>9</sup> Katznelson, *When Affirmative Action Was White*, 46; Ira Katznelson, *Fear Itself: The New Deal and the Origins of Our Time* (New York, 2013); Lieberman, *Shifting the Color Line*; Poole, *The Segregated Origins of Social Security*; Paul H. Douglas, *Social Security in the United States: An Analysis of the Federal Social Security Act* (New York, 1939), 100-101.

<sup>10</sup> U.S. Congress, House, Committee on Ways and Means, *Economic Security Act*, 74 Cong., 1 sess., January 21-February 20, 1935, 678-79, 713; U.S. Congress, House, Ways and Means Committee, Report No. 615, *The Social Security Bill*, April 5, 1935, 74 Cong., 1 sess; Public Law 379, 76<sup>th</sup> Cong., 1<sup>st</sup> sess. (August 11, 1939), *Social Security Act Amendments of 1939*, 16; U.S. General Accounting Office, *Issues Concerning Social Security Benefits Paid to Aliens*, (Washington, 1983). On non-citizens and the New Deal, see Fox, *Three Worlds of Relief*.

<sup>11</sup> Foreign Language Information Service, "Social Security Accounts and Those who have Failed to Apply for Them," Index No. 4392, February 17, 1937, Records of the American Council for Nationalities Service (microfilm, 26 reels, University Publications of America), reel 17; Secretary to Altemeyer, March 25, 1937, Social Security, box 93, Perkins General Subject File, Records of the Department of Labor, RG 174, (National Archives, College Park, MD); Shaughnessy to Miss Jay, April 1, 1937, *ibid*; Author's calculation, 1940 Census. Steven Ruggles, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. Integrated Public Use Microdata Series: Version 4.0 [Machine-readable database]. Minneapolis: Minnesota Population Center [producer and distributor], 2008; for effects of occupational restrictions on Mexicans and Europeans, see Fox, *Three Worlds of Relief*, 252-53, 270.

<sup>12</sup> Harry Hopkins and Frances Perkins to FDR, "Aliens on Relief," January 21, 1935, Official File 444, (FDR Library, Hyde Park, NY); Fox, *Three Worlds of Relief*.

<sup>13</sup> *Ibid*; Edwin E. Witte, Suggested amendments to Wisconsin Old Age Assistance law, box 11, Committee on Economic Security, Records of the Social Security Administration, RG 47, (National Archives, College Park, MD); Witte to Lewis Ludlow, January 18, 1935, box 57, *ibid*; J. Douglas Brown to Edwin Witte, January 8, 1935, box 55, *ibid*; U.S. Federal Security Agency, *Annual Report of the Federal Security Agency for the Fiscal Year 1947* (Washington, 1948), 114-115.

<sup>14</sup> Fox, *Three Worlds of Relief*, 263-68; Fred P. Graham, "Court Says Cities May Close Pools to Bar Racial Mix," *New York Times*, June 15, 1971, p.1; SRS Administrator to HEW Secretary, n.d., proposed amendments to 45 CFR 233.50, EA3, box 1, Administrative Subject Files, Medical Services Administration, Records of the Social and Rehabilitation Service.

<sup>15</sup> Charles R. Henderson, "Poor Laws of the United States," in *Proceedings of the National Conference of Charities and Corrections* (Boston, 1897), 256-71; Robert W. Hebbard, "Uniform Settlement laws," in *Proceedings of the National Conference of Social Work* (Fort Wayne, 1914), 420; George Warren, Draft Reply to Report of Committee of Experts on Assistance to Indigent Foreigners, 1934, 555.M 1/77, Records of the Department of State, RG 59, (National Archives, College Park, MD); Advisory Council on Social Security, *1948 Advisory Council Report*, Document No. 208, June 19, 1948, 80 Cong., 2 sess., 116-17; Fred P. Graham, "Residency Rules for Relief Invalidated by High Court," *New York Times*, April 22, 1969, p.1

<sup>16</sup> U.S. Congress, House, Committee on the Judiciary, Subcommittee No. 1, *Illegal Aliens*, 92 Cong., 1-2 sess., 1971-1972, 518-25, 1078.

<sup>17</sup> On state residence restrictions, see Beatrix Hoffman, "Sympathy and Exclusion: Access to Health Care for Undocumented Immigrants in the United States," in *A Death Retold: Jessica Santillan, the Bungled Transplant, and Paradoxes of Medical Citizenship*, Keith Wailoo, Julia Livingston, and Peter Guarnaccia, eds. (Chapel Hill, 2006), 241. Prior to the New Deal, relief officials targeted Mexicans for expulsion. Fox, *Three Worlds of Relief*, 124-155; Hoffman, *Unwanted Mexican Americans in the Great Depression*; Francisco Balderrama and Raymond Rodriguez, *Decade of Betrayal: Mexican Repatriation in the 1930s* (Albuquerque, 1995). Racial discrimination persisted after federal intervention. Fox, *Three Worlds of Relief*, 188-213; Reese, *Backlash Against Welfare Mothers*, 94. On access based on legal status, see Durwood Scott, "Illegal Aliens Reportedly Receiving County," July 30, 1970, box H32, Governor's Papers, (Ronald Reagan Library, Simi Valley, CA); Ellis P Murphy to Lucien Vandergrift, June 5, 1970, box H32, *ibid*; Robert Mitchell to Russ Walton, July 30, 1970, H33, *ibid*; U.S. General Accounting Office, *More Needs to be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States*, (Washington, 1973), 42.

<sup>18</sup> The WPA briefly barred non-citizens. Fox, *Three Worlds of Relief*, 214-49.

<sup>19</sup> U.S. General Accounting Office, *Issues Concerning Social Security Benefits Paid to Aliens*; Gerard Hildebrand, "Federal Law Requirements for the Federal-State Unemployment Compensation System: Interpretation and

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Application,” *University of Michigan Journal of Law Reform*, 29 (1995-1996), 527-84; Charles Wheeler and Robert Leventhal, “Aliens’ Rights to Public Benefits,” *Clearinghouse Review*, 20 (December 1986), 913-24.

<sup>20</sup> On the Bracero Program’s demise, see Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York, 1992); Gilbert G. González, *Guest Workers or Colonized Labor? Mexican Labor Migration to the United States* (Boulder, 2006); Don Mitchell, *They Saved the Crops: Labor, Landscape, and the Struggle over Industrial Farming in Bracero-Era California* (Athens, GA, 2012). On Hart Celler, see Ngai, *Impossible Subjects*, 258-264.

<sup>21</sup> *Ibid.*, 257-264; Nevins, *Operation Gatekeeper*; for divergent estimates of the unauthorized population in 1972, see Martin Tolchin, “U.S. Schedules an Inquiry Into Immigration Services,” *New York Times*, November 2, 1972, 1 and “Surge of Illegal Immigrants Across American Borders,” *U.S. News and World Report*, January 17, 1972, 32; for apprehension data, see U.S. Immigration and Naturalization Service, *2000 Statistical Yearbook* (Washington, 2002), table 63; Committee on the Judiciary, *Illegal Aliens*, 5. Various “push factors,” including Mexico’s “demographic explosion” and economic policies which uprooted Mexicans from the land, also increased unauthorized migration. Aristide R. Zolberg, *A Nation By Design: Immigration Policy in the Fashioning of America* (New York and Cambridge, 2006), 340-341.

<sup>22</sup> Academic Arthur Corwin and former CIA director William Colby used the Quebec analogy. Nevins, *Operation Gatekeeper*, 61-65; Bureau of Labor Statistics, *Employment Status of the Civilian Noninstitutional Population, 1941 to Date*, <http://www.bls.gov/cps/cpsaat01.pdf>.

<sup>23</sup> David Montejano, *Anglos and Mexicans in the Making of Texas, 1836-1986* (Austin, 1987); Nevins, *Operation Gatekeeper*, 16-37, 62-65; Committee on the Judiciary, *Illegal Aliens*. On the invasion metaphor, see Leo R. Chavez, *The Latino Threat: Constructing Immigrants, Citizens, and the Nation* (Stanford, 2008), 26-29; S.J. Holmes “Perils of the Mexican Invasion,” *North American Review*, 5(May 1929):615; Raymond A. Mohl, “The Saturday Evening Post and the ‘Mexican Invasion,’” *Journal of Mexican American History*, III(1973):131-138.

<sup>24</sup> U.S. General Accounting Office, *More Needs to be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States*, 52-60; Committee on the Judiciary, *Illegal Aliens*; Tichenor, *Dividing Lines*, 224-27, 234; Massey, Durand and Malone, *Beyond Smoke and Mirrors*, 43.

<sup>25</sup> Nevins, *Operation Gatekeeper*, 65; Calavita, *Inside the State*, 162; Tichenor, *Dividing Lines*, 228-29, 232-35; David G. Gutiérrez, *Walls and Mirrors: Mexican Americans, Mexican Immigrants and the Politics of Ethnicity*, (Berkeley, 1995), 187-202.

<sup>26</sup> U.S. Bureau of the Census, *Statistical Abstract of the United States*, (Washington, 1961-1973); Gilens, *Why Americans Hate Welfare*, 122-123.

<sup>27</sup> Edward Kavazanjian, “Illegal Aliens in the U.S.,” *New York Times*, September 6, 1971, p.18; “Aliens Reportedly Get \$100 Million in Welfare,” *Los Angeles Times*, January 27, 1973, p.A22; “U.S. Destroyed Data on Illegal Aliens,” *Washington Post*, February 19, 1972, p.A16; “Illegal Aliens Charged With Taking U.S. Jobs,” *ibid.*, May 6, 1971, p.A2; E. Brush, “Alien Hiring Ruling,” *ibid.*, March 7, 1972, p.C10; Mike Otten, “Illegal Aliens From Mexico Costing Taxpayers Millions,” *Press-Courier*, October 29, 1970, p.4. See also Chavez, *The Latino Threat*, 28-31.

<sup>28</sup> For one letter, see Theresa Barajas to Governor Reagan, July 22, 1970, box H32, Governor’s Papers, Ronald Reagan Library. Hadley Cantril, *Public Opinion: 1935-1946* (Princeton, 1951), 947; Nevins, *Operation Gatekeeper*, 62-64; Chavez, *Covering Immigration*, 90-99.

<sup>29</sup> Committee on the Judiciary, *Illegal Aliens*, 306, 518-24, 601-02, 1457-59; John G. Veneman to James D. McKevitt, June 12, 1972 and related correspondence, AW5, box 400, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare, RG 235, (National Archives, College Park, MD); John G. Veneman to James M. Collins, October 19, 1972, Texas 72, AW5, box 408, *ibid.*; Campbell J. Gibson and Emily Lennon, “Historical Census Statistics on the Foreign-born Population of the United States: 1850-1990,” Working Paper No. 29, (Washington: U.S. Bureau of the Census, 1999), <http://www.census.gov/population/www/documentation/twps0029/twps0029.html>.

<sup>30</sup> Committee on the Judiciary, *Illegal Aliens*, 114, 118-24; Frank Erbs, “Alien Demonstration Project,” 1975, Exhibit “F”, Social Services General, Research Files, Citizenship, J7, California State Archives, Sacramento; Frank Del Olmo, “Few Aliens on Welfare Illegally,” *Los Angeles Times*, July 1, 1975, p.C1; “The State,” *ibid.*, November 4, 1973, p.2; California Social Welfare Board, *State Social Welfare Board Position Statement: Issue, Aliens in California*, (Sacramento, 1973), 15; Walt Secor, “State, U.S. Job, Dorn Says,” *Los Angeles Times*, November 24, 1970, p.SF1; “Supervisors Ask Curbs on Aliens Getting Welfare,” *ibid.*, November 18, 1970, p.A3; “Board Urges No Welfare for Aliens,” *ibid.*, December 8, 1970, p.E4.

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<sup>31</sup> Tapia paraphrased in Richard Bergholz, “Tunney Protege Wins Top Democratic Post,” *ibid*, January 25, 1971, p.A3. Committee on the Judiciary, *Illegal Aliens*, 136, 271-72. On evolving views among Mexican-Americans, see Gutiérrez, *Walls and Mirrors*; Carlos Kevin Blanton, “The Citizenship Sacrifice: Mexican Americans, the Saunders-Leonard Report, and the Politics of Immigration, 1951-1952,” *Western Historical Quarterly* 40 (no.3, 2009), 299-320; Kelly Lytle Hernández, *Migra! A History of the U.S. Border Patrol* (Berkeley, 2010).

<sup>32</sup> Tom Goff, “Reagan Sends Welfare Reforms to Legislature,” *Los Angeles Times*, March 16, 1971, p.3; quotes in U.S. General Accounting Office, *More Needs to be Done to Reduce the Number and Adverse Impact of Illegal Aliens in the United States*, 43.

<sup>33</sup> *Ibid*, 41-42; Committee on the Judiciary, *Illegal Aliens*, 1066-1067, 1074-79; Edward Benes, Frank Faso, and Henry Lee, “Crackdown Pledged on Welfare for Illegal Aliens,” *Daily News*, September 30, 1971; Edward Benes, Frank Faso, and Henry Lee, “Illegal Aliens Ride on Uncle Sam & Rake in Relief,” *ibid*, September 29, 1971.

<sup>34</sup> Costa to Twiname, July 27, 1971, EA3, box 1, Subject Files, Medical Services Administration, Records of the Social and Rehabilitation Service; Twiname to Secretary, n.d. proposed amendments to 45 CFR 233.50 and 248.50, *ibid*; John D. Twiname to Luisa Iglesias, March 14, 1972, box 4, General Subject Files, Records of the Social and Rehabilitation Service; former HEW official to author, e-mail, Oct. 19, 2010, (in author’s possession).

<sup>35</sup> *Federal Register* 37, no.117 (June 16, 1972): 11977; Dudley S. Hall to Raymond W. Vowell, June 30, 1972, Texas 72 AW5, box 408, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare.

<sup>36</sup> *Federal Register* 38, no.123 (June 27, 1973): 16911; Joseph M. Pollard to John G. Veneman, June 13, 1972, California AW 1972, box 405, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare. The Administrative Procedures Act (1946) requires that federal agencies provide “notice” of a proposed rule change and a 30-day window for the public to respond via “comments.” Proposed and final rule changes are published in the *Federal Register*. While the Act does not require that agencies heed commenters’ concerns, they often do. Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy* (Washington, 2003).

<sup>37</sup> John Tower to Elliot L. Richardson, July 28, 1972, Texas 72 AW-5, box 408, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare; Charles F. Herring to O.C. Fisher, July 12, 1972, *ibid*; Raymond W. Vowell to Earle Cabell, July 3, 1972, *ibid*; Raymond W. Vowell to Omar Burleson, September 26, 1972, *ibid*; Burleson to Richardson, July 15, 1972, *ibid*; *Congressional Record*, 92 Cong., 2 sess., September 26, 1972, 32326; Charles F. Herring to Richard M. Nixon, July 14, 1972, box 4, Department of Health, Education, and Welfare, FG 23, White House Central Files, (Richard M. Nixon Library, Yorba Linda, CA); Ruth Whiteside, *The Impact of the Texas Constitution on Public Welfare* (Houston: Institute for Urban Studies, 1973); Committee on the Judiciary, *Illegal Aliens*, 539. On Texas’ history of anti-Mexican discrimination, see Montejano, *Anglos and Mexicans in the Making of Texas*; Neil Foley, *The White Scourge: Mexicans, Blacks, and Poor Whites in Texas Cotton Culture* (Berkeley, 1997); Hernández, *Migra!*; Fox, *Three Worlds of Relief*.

<sup>38</sup> Raymond W. Vowell to John D. Twiname, July 3, 1972 and related correspondence, Texas 72 AW-5, box 408, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare; David S. Hurwitz to Raymond W. Vowell, September 19, 1972, box 4, Administrator’s Name Files, Records of the Social and Rehabilitation Service.

<sup>39</sup> Pickle and Randall quoted in *Congressional Record*, 92 Cong., 2 sess., September 12-26, 1972, 30173-79, 30185, 30511, 32324-31; U.S. Congress, House, Judiciary Committee, Report No. 92-1366, *Amending the Immigration and Nationality Act*, 92 Cong., 2 sess., August 17, 1972, 5; *Federal Register*, 38, (No. 123), June 27, 1973, 16911; James M. Collins to Elliot Richardson, July 18, 1972, Texas 72 AW5, box 408, Secretary’s Subject Correspondence, Records of the Department of Health, Education and Welfare.

<sup>40</sup> Quotes from Ronald Randall, “Presidential Power Versus Bureaucratic Intransigence: The Influence of the Nixon Administration on Welfare Policy,” *American Political Science Review*, 73 (no.3, 1979), 797, 802; Martha Derthick, *Uncontrollable Spending for Social Services Grants* (Washington, 1975), 104. Francis DeGeorge was Acting Administrator for SRS before Dwight took the position. On Nixon’s complicated racial legacy, see Edward G. Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton, 1989); Edsall and Edsall, *Chain Reaction*; Gareth Davies, “The Great Society after Johnson: The Case of Bilingual Education,” *Journal of American History*, 88 (no. 4, 2002), 1405-1429; John D. Skrentny, *Minority Rights Revolution*, (Cambridge, 2002). On Nixon’s shifting views on welfare, see Todd Hullin to John Ehrlichman, March 16, 1973 box 62, Ehrlichman Papers, (Richard M. Nixon Library, Yorba Linda, CA).

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<sup>41</sup> *Federal Register* 38 (no.123), June 27, 1973, 16910-11; *Federal Register* 38 (no.211), November 2, 1973, 30259; Wheeler and Leventhal, "Aliens' Rights to Public Benefits," 914-15; Sharon F. Carton, "The PRUCOL Proviso in Public Benefits Law: Alien Eligibility for Public Benefits," *Nova Law Review* 14 (1989-1990): 1033-1062.

<sup>42</sup> On state and local preferences for federal reimbursement, see U.S. Congress, House, Committee on Interstate and Foreign Commerce, Subcommittee on Health and the Environment, *Medical Treatment of Illegal Aliens*, 95 Cong. 1 sess., June 9, 1977, 77; *Congressional Record*, 92 Cong., 2 sess., October 3, 1972, 33361-62; Ronald Reagan, *California's Blueprint for National Welfare Reform*, September 1974, folder 16, box 40, Bert N. Corona Papers (Stanford University, Palo Alto, CA). Only the State Social Welfare Board demanded federal restriction. California Social Welfare Board, *State Social Welfare Board Position Statement*, 20. On optional restriction as alternative, see Twiname to Secretary, proposed amendments to 45 CFR 233.50 and 248.50, n.d., EA3, box 1, Administrative Subject Files, Medical Services Administration, Records of the Social and Rehabilitation Service. On the new thinking inside HEW, see James S. Dwight to Robert J. Huber, August 20, 1974, Aliens, box 2, Administrator's Alphabetic Subject Files, Records of the Social and Rehabilitation Service; Phillip J. Rutledge to Acting SRS Administrator, February 9, 1973 including Tab B, Require the Exclusion of Illegal Aliens, Medicaid Program, box 1, Administrator's Subject Files, Records of the Social and Rehabilitation Service; Elliot Richardson to O.C. Fisher, September 29, 1972, Texas 72 AW5, box 408, Secretary's Subject Correspondence, Records of the Department of Health, Education and Welfare. On the constitutionality of state restriction, see Michael J. Wishnie, "Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism," *New York University Law Review*, 76 (2001), 493-569.

<sup>43</sup> Carlos Mata to Raymond Cheeves, August 12, 1974, Raymond Vowell, Box 1989/1970-2, Field Operations Office, Texas Department of Human Services, (Texas State Library Archives Commission, Austin, TX); U.S. Congress, House, Committee on Appropriations, Subcommittee on the Departments of State, Justice and Commerce, the Judiciary and Related Agencies, *Undocumented Aliens*, 95 Cong., 2 sess., February 24, 1978, 57; Grace Flores, *Unpaid Medical Costs and Undocumented Aliens* (Washington: Department of Health, Education and Welfare, 1979), 48.

<sup>44</sup> Donald Thayer to Robert P. Jaye, October 31, 1974, box 7, Division of Regional Legal Precedent, Opinion Files, Office of General Counsel, Records of the Department of Health, Education and Welfare; Clyde Farrell to Raymond Vowell, Bob Bergland and Joseph Califano, May 22, 1977, folder 77, box 17, Administrator's State Files, Records of the Social and Rehabilitation Service; Flores, *Unpaid Medical Costs and Undocumented Aliens*; Geraldine Dallek, 1980, "Health Care for Undocumented Immigrants: A Story of Neglect," *Clearinghouse Review*, August/September, 409-410; Lynn O'Dell, "OC Won't 'Report' Alleged Aliens Who Spurn Medi-Cal," *Orange County Register*, March 23, 1978, C2; Task Force on Medical Care for Illegal Aliens, *The Economic Impact of Undocumented Immigrants on Public Health Services in Orange County*, (California: Orange County Board of Supervisors, 1978), 11-12, 50-51, 64-66.

<sup>45</sup> The woman, Jane Doe, was represented by Clyde Farrell. *Doe v. Texas Department of Public Welfare*, Education—Texas [O/A 6111], Container 11, Annie Gutierrez Subject Files, Domestic Policy Staff, (Jimmy Carter Library, Atlanta, GA). Farrell to Vowell, Bergland and Califano, May 22, 1977, folder 77, box 17, Administrator's State Files, Records of the Social and Rehabilitation Service; Clyde Farrell to John Hill, May 22, 1977, *ibid*; Fred McLeroy to Joseph Califano, May 20, 1977, *ibid*. Jerome D. Chapman to All Field Staff, Oct 24, 1977, Office of the Commissioner, Box 1989/1970-2, Field Operations Office, Texas Department of Human Services; "Undocumented Aliens Not Reported to INS by Texas Welfare Workers," *Plano Daily Star-Courier*, November 11, 1977, 4. *Rodriguez v. Texas Department of Public Welfare* concerned Martha Rodriguez, a U.S. citizen whose benefits were terminated when she refused to give information about unauthorized immigrants living in her home. Andrea Smith, "Undocumented Aliens: Education, Employment and Welfare in the United States and in New Mexico," *New Mexico Law Review* 9(Winter 1978-1979), 110-111.

<sup>46</sup> Peter Schey, Chicanos Meet with State Officials, November 19, 1976, Bert N. Corona Papers; Irene Villalobos to Mario Obledo, February 1, 1977, Social Services General, Research Files, Citizenship, J7, California State Archives; Craig Turner, "County Clarifies Alien Health Care Policy," *Los Angeles Times*, March 23, 1978, OC\_AI; O'Dell, "OC Won't 'Report' Alleged Aliens Who Spurn Medi-Cal." For more on the CWRO, see Rosie C Bermúdez, "Alicia Escalante, the CWRO, and the Chicano Movement," in *The Chicano Movement: Perspectives from the Twenty-First Century*, Mario T. Garcia, ed., (New York, 2014); Vicki L. Ruiz, *From Out of the Shadows: Mexican Women in Twentieth Century America* (Oxford, 1998, 2008); Marisla Rodriguez Chavez, *Despierten Hermanas Y Hermanos!: Women, the Chicano Movement, and Chicana Feminisms in California, 1966-1981* (Ph.D. Stanford, 2004).

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<sup>47</sup> U.S. General Accounting Office, 1977, *Impact of Illegal Aliens on Public Assistance Programs: Too Little Is Known*, Washington, DC; U.S. Commission on Civil Rights, New York State Advisory Committee, *Documented and Undocumented Persons in New York City* (Washington, 1982); Hoffman, "Sympathy and Exclusion," 241-242; For the Arizona case, see Beatrix Hoffman, "Emergency Rooms: The Reluctant Safety Net," in *History & Health Policy in the United States: Putting the Past Back In*, Rosemary A Stevens, Charles E. Rosenberg, & Lawton R. Burns, eds. (Rutgers, 2006). Committee on Interstate and Foreign Commerce, *Medical Treatment of Illegal Aliens*, 51-63, 65, 71-73, 90-92. On Cardenas: "Bishop Host for 'Coming Out' Party," *Tidings*, October 8, 1976, folder 10, box 15, Bert N. Corona Papers; Greater Los Angeles Community Action Agency, "Fete Move From Tool Shed to Shelter for Senior Citizen," October 8, 1976, *ibid*; Keith Comrie to Board of Supervisors, June 2, 1976, *ibid*; Frank Del Olmo, "Ban on Aid to Aged Illegal Aliens Hit," *Los Angeles Times*, B3.

<sup>48</sup> James S. Mize to Caspar W. Weinberger, August 30, 1974, Aliens, box 2, Administrator's Subject Files, Records of the Social and Rehabilitation Service; Caspar W. Weinberger to James S. Mize, October 7, 1974, *ibid*.; Edward R. Roybal to James B. Cardwell, January 26, 1977, folder 5, box 15, Bert N. Corona Papers; Committee on Interstate and Foreign Commerce, *Medical Treatment of Illegal Aliens*, 1, 53-55; Leonard Buder, "Judge Grants Medicaid to State's Illegal Aliens," *New York Times*, July 15, 1986, B1.

<sup>49</sup> Calavita, *Inside the State*, 168-70; Timothy Dunn, *The Militarization of the U.S. Mexico Border, 1978-1992* (Austin, 1996); Susan Drake, "Impact of New Immigration Reform Legislation on Aliens' Rights to Public Benefits," *Clearinghouse Review* 20 (1986-1987), 925-926; *Lewis v. Gross*, 663 F. Supp. 1164 (1986). Section 9121 of the Consolidated Omnibus Budget Reconciliation Act of 1986, also known as the Emergency Medical Treatment and Labor Act, guarantees individuals access to emergency treatment regardless of legal status. Section 9406 of the Social Security Act (1903(v)) provides limited state reimbursement for emergency medical services to unauthorized immigrants. *Federal Register* 53 (No.189), September 29, 1988, 38033; Committee on Ways and Means, *1996 Green Book*, Appendix J, 1300, 1311; U.S. General Accounting Office, *Undocumented Aliens: Questions Persist About their Impact on Hospitals' Uncompensated Care Costs* (Washington, 2004).

<sup>50</sup> *Federal Register* 38 (no.211), November 2, 1973, 30259; San Diego quote in Exhibit E-1, Section II, Welfare, n.d., Varela v. Swoap, J7, Social Service General, Research Files, Citizenship, (California State Archives, Sacramento, CA); Monterey County quote in William D. Dawson to Executive Committee, December 26, 1975, *ibid*; Nicholas Norton to William Morrill, June 2, 1976, Assistant Secretary for Planning and Evaluation, box 37, Administrative Records, Records of the Social and Rehabilitation Service.

<sup>51</sup> U.S. General Accounting Office, *Illegal Aliens: Assessing Estimates of Financial Burden on California*, (Washington, 1994); Daniel Martinez HoSang, *Racial Propositions: Ballot Initiatives and the Making of Postwar California* (Berkeley, 2010); William Safire, "Self-Deportation?" *New York Times*, November 21, 1994, A15; Bill Stall and Amy Wallace, "Prop. 187 Key to Getting U.S. Aid, Wilson Argues," *Los Angeles Times*, October 29, 1994, p. 1; Calavita, "The New Politics of Immigration," 298-99.

<sup>52</sup> U.S. General Accounting Office, *Number of Newly Arrived Aliens Who Receive Supplemental Security Income Needs to Be Reduced* (Washington, 1978); U.S. General Accounting Office, *Need to Reduce Public Expenditures for Newly Arrived Immigrants and Correct Inequity in Current Immigration Law* (Washington, 1975).