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Interior Borders: INS and Police Enforcement Practices

Ignatius Bau

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The sanctuary movement began in the 1980's as a direct response to the United States government's inability or unwillingness to grant refugee status or legal protection to Central American refugees. Many church and other religious congregations declared themselves sanctuaries as a way of providing Central Americans with the protection that the United States Immigration and Naturalization Service (INS) refused to provide. Beginning in 1985, several cities, including Berkeley, California, declared their cities as places of sanctuary, cities of refuge. These city declarations and ordinances stated that it would be city policy not to cooperate with the INS in either arresting or deporting Central American refugees. A number of different ordinances were ultimately passed in over 20 cities throughout the United States. Most of these ordinances were here in California, but they were also passed in Maryland, Washington, Minnesota, New Mexico, Vermont, Washington D.C., and New York. Subsequently, certain cities and states also promulgated executive orders, or executive policies, which essentially accomplished the same goals, namely prohibiting city officials or state officials from cooperating with the INS and protecting the rights of persons, regardless of immigration status, to obtain city or state benefits.

The San Francisco ordinance is currently the focus of much attention due to an opinion issued by California Attorney General Daniel Lungren in November 1992, and because of subsequent legislation introduced by State Senator Quentin Kopp. This legislation, SB 691, sought to overturn the San Francisco ordinance and similar ordinances and policies.

San Francisco was part of the sanctuary movement back in the mid-1980's and passed a sanctuary resolution in December 1985. However, in the summer of 1989, two incidents occurred in San Francisco that caused the city's Board of Supervisors to strengthen the resolution and enact it as an ordinance. The first incident involved a meeting between Central American refugees and the Salvadoran Consul General at the Salvadoran
Consulate in San Francisco. At the meeting, a member of the San Francisco Police Department (SFPD) assisted the Salvadoran consulate staff in taking photographs of the refugees despite their protests. There was real concern about the involvement of the San Francisco police, local police, in surveillance activities of a foreign government, in this case, El Salvador.

The second incident was more egregious: the INS, the state Alcohol and Beverage Control Department, and the SFPD conducted a joint raid on a Saturday night at Club Elegante, one of the most popular nightclubs in the Mission District in San Francisco. At around eleven o'clock, they blocked the exits, stopped the music, and announced to some 200 nightclub patrons that they could not leave until their identification was checked. Patrons were detained for upwards of two hours while this process took place.

These two incidents raised questions regarding the role of the SFPD in enforcing federal immigration law on behalf of or in conjunction with the INS. In response to these concerns, the San Francisco Board of Supervisors considered an ordinance as an attempt to strengthen the spirit of the sanctuary resolution. Under the ordinance, city policy would continue to preclude affirmative cooperation with the INS. At the same time, however, it would continue to require all city departments, including the police department, to continue compliance with any applicable federal and state laws requiring them to inquire into a person's immigration status. The classic case would be where the city was acting as an employer. When hiring an individual, the city would be required to comply with employer sanction provisions of the Immigration Reform and Control Act of 1986. The city would have to ask the potential employee to show documentation of their legal authorization to work. Such cooperation, however, would clearly be an exception under the ordinance. When there was no such duty to cooperate, it would be the policy of the police or any other city department or official to refrain from affirmative cooperation with the INS.

Both the ordinance and its rationale have recently been attacked by both Attorney General Lungren and Senator Kopp. They premise their argument on the idea of federal preemption. They argue that under the Supremacy Clause of the United States Constitution, federal immigration law is the supreme law of the land, and neither the City of San Francisco nor any other state or local government can legislate in the area of immigration.

There are three different types of preemption under federal law. First, if Congress has expressly stated that a state or local government cannot legislate in a particular area, then that area is preempted. This is called "express preemption." The second type of preemption, pervasive scheme preemption, occurs when Congress has so thoroughly legislated and created "such a pervasive scheme" regarding that particular area, that any state or local legislation in the area is precluded. The final type of preemption,
conflict preemption, is where state or local legislation creates a direct conflict with federal law. Where such conflict occurs, federal law overrides state and local legislation.

The United States Supreme Court has held that not all state and local legislation affecting immigration law is preempted. One could probably argue that to the extent there are criminal immigration law provisions relating to smuggling persons across the border illegally, it is probably clear that there is either express or pervasive scheme preemption of state and local legislation. But, when it comes to civil immigration law in determining a person’s status and how that status might affect their public benefits, there has been, and continues to be, valid state legislation. For example, the state could validly limit who becomes a state police officer or a state teacher to citizens or certain classes of non-citizens.

The opinion by Attorney General Lungren implicitly acknowledges the absence of express or pervasive scheme preemption by citing only one case for the proposition that federal law preempts the San Francisco ordinance. Lungren cites to a conflict preemption case out of the Third Circuit, called the City of Philadelphia v. the Department of Justice. This is the case which is, ironically, now very topical, in which the city of Philadelphia had passed a local non-discrimination in employment ordinance which included within its protections a protection against discrimination on the basis of sexual orientation. In implementing the ordinance, Temple University Law School asked that the United States military, which has a policy of discriminating on the basis of sexual orientation, not recruit at Temple University Law School. The military challenged that prohibition from recruitment at Temple University Law School.

In City of Philadelphia, the Third Circuit found that while it was certainly legitimate for the city of Philadelphia to enact an ordinance prohibiting discrimination in employment, whether based on sexual orientation or not, there was an overriding federal interest which was in direct conflict with the purpose of the local ordinance. That federal interest was supported by numerous statutes related to military recruitment which made clear that the funding and success of military recruitment required open access to all campuses so that we could get the best and the brightest of the United States for the United States military. There was also evidence in the record that Temple University, and other schools in the Philadelphia area which would be bound under this local ordinance, had in fact been a fruitful area of recruitment for the United States military in the past. So here you had a direct conflict between a federal law which mandated that access be granted and a local law that on its own was certainly a legitimate exercise of local government authority, but was in direct conflict with that federal

3. 798 F.2d 81 (3d Cir. 1986).
law and those federal interests. Thus, the Third Circuit held that the local law in that particular area would be preempted.

Now facially, this sounds exactly like the San Francisco City of Refuge ordinance. You have a local law that says we are not going to allow access or cooperation with a federal agency. On its face, it seems like there is an analogy. But Attorney General Lungren fails to examine what the actual San Francisco ordinance says. The ordinance says that we will continue to cooperate with the INS and we will continue to follow all applicable federal and state statutes related to such cooperation. It is only when there is no such statute or duty in the law that San Francisco will decline to expend its resources in affirmatively helping the INS. So, for example, the INS could not force the SFPD to participate in the Club Elegante raid because the only allegations before the raid were that there might be undocumented persons there who had committed civil violations of the immigration law. There were no allegations that in that particular raid, or in that particular situation, there was criminal activity that might require the involvement of the San Francisco police.

In contrast, I give the example of the freighter ship that came into San Francisco Bay in December 1992 which was part of a smuggling operation involving criminal violations of immigration law. That was a ship that had brought 180 Chinese nationals into San Francisco Bay and had run out of food and water. Even though it would probably make more sense for the INS, to make the arrests, because there is criminal activity supposedly going on it would be appropriate for the SFPD to be part of that operation to make any other criminal arrests that they deemed necessary. Again, it might not even be necessary for the local police to be involved in that situation because the INS could make those arrests.

The most important reason why conflict preemption doesn't apply in this particular situation is that Attorney General Lungren simply did not read or did not understand how the ordinance actually operated. Even before the ordinance was passed in December 1989, as a result of the Club Elegante raid, the local INS office entered into a Memorandum of Understanding with the SFPD. Both the SFPD and the local INS agreed that enforcement of federal immigration law was the business of the INS and enforcement of state criminal laws was the business of the San Francisco Police Department. Furthermore, the INS would not interfere with San Francisco police operations and San Francisco police operations would not interfere with, or assume, federal immigration operations. This was a voluntary memorandum of agreement between the local INS and the San Francisco police.
More recently, in the 1992 settlement of *Velasquez v. Ackerman*, a longstanding lawsuit which involved joint operations between local police officers and the INS, the local INS again agreed that they would not request or seek the assistance of local police officers in conducting immigration operations. The INS might ask for backup when criminal violations were alleged, but otherwise they would not seek assistance from the local police.

Despite these two voluntary agreements, the first because of the Club Elegante raid, and the second in the settlement of litigation, Attorney General Lungren nevertheless concludes that the existence of the San Francisco ordinance is interfering and creating a direct conflict with the enforcement of the immigration law in San Francisco. This is simply not true. The INS is present in San Francisco and continues to arrest and deport people out of San Francisco. The only activities which no longer occur are those kinds of joint operations that took place during the Club Elegante incident in 1989. Nevertheless, the Attorney General’s opinion is going to make it very difficult for those of us who support the ordinance to advocate for its continued existence, because we will have to argue that Attorney General Lungren is wrong. However, an argument can be made that Mr. Lungren is wrong in both his legal analysis and his factual analysis of whether there is a conflict between the local ordinance and federal law. Senator Kopp, who requested the Lungren opinion initially, has now introduced legislation which would seek to overturn the San Francisco ordinance, presumably relying on the Lungren opinion. Claudia Martinez will talk a little more about the current mood within the California Legislature which is being expressed in anti-immigrant legislation. This may be one of the key battles that we will face in the months to come.

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Comments by Rebecca Chiao*

Good afternoon. I'm glad to be here and I welcome the chance to give some comments on Ignatius' paper. My remarks will focus on the two sides to preemption.

Ignatius Bau states, "It seems incongruous that local law enforcement officials are prohibited from making arrests for civil violations of immigration law, but a city cannot prohibit them from initiating enforcement activities based on such violations." I will discuss how current arguments regarding preemption do not make sense in light of the past cases on preemption and law enforcement. I will then discuss these arguments in the context of a case on which I am currently working, CARECEN v. Gates.

This panel is focusing on different kinds of interior borders which are erected against immigrants. Several such interior borders are the recent anti-immigrant proposals that have been made in the California state legislature, proposals for restrictions on immigrants' civil rights and public benefit eligibility.

I think the CARECEN v. Gates case and the pending anti-immigrant legislation show that preemption can be used by either side, those of us who are trying to help immigrants, and now the other side, those who want to restrict immigrant rights and scapegoat immigrants for various problems. These people have picked up the doctrine of preemption and turned it around. I'd like to see an effort to find new legal arguments and policy arguments to reach the same result on the side of immigrants' rights.

In spring of 1990, a man called Maximino Calderon came through Mexico on his way to the United States from El Salvador. He was seeking refuge because of political persecution in that country. While he was in Mexico, he was sold by the federal police there to some coyotes, smugglers who bring people across the border. He was brought to a house in Los Angeles where he was kept in a small bathroom, let out only to call his family members in Los Angeles and demand a thousand dollars so that he could be released.

At that time, his family members, who could not come up with a thousand dollars and who were afraid that he was going to be harmed, called the Central American Refugee Center (CARECEN), a place where they had...
gone for help with their political asylum cases, and eventually an attorney from CARECEN called supervising officers within the Los Angeles Police Department and explained the situation to them.

The CARECEN attorney asked that the INS not be called; that was the main worry of the family, that they did not want INS involved. She gave the police the phone number that the kidnappers had given the family. And even though the LAPD had a policy of not questioning people about their immigration status, and of not enforcing civil immigration laws (a policy similar to, but not as broad in scope as the San Francisco ordinance) and the CARECEN attorney had pointed their own policy out to them, the police nonetheless decided that they were going to go ahead and call the INS.

All of the victims of the kidnapping were held against their will by the police until the INS came. The smugglers had all fled and no investigation was really done to try and find them. What happened was that the victims of the kidnapping crime were turned over to INS, and the perpetrators got away. So Maximino and some other victims sued the LAPD in a case called *CARECEN v. Gates* for false arrest in violation of their civil rights. The police have argued in one way that because there was a federal crime, alien smuggling, they did not have the authority to investigate the kidnapping, a state law criminal violation. They argue that in fact they had no choice but to turn the matter over to INS, even though the people they were turning over were the victims and not the perpetrators of the crime.

If you compare this case to two earlier cases on police enforcement of immigration laws, you see how this is turning preemption inside out. In the CARECEN case police are saying federal law governing alien smuggling preempts them from even enforcing our own state laws against extortion and kidnapping. Some earlier cases are *Gonzales v. City of Peoria,*3 an Arizona case that went to the Ninth Circuit, and another case against the LAPD, *Gates v. Superior Court,*4 that resulted in an order that prohibited the police enforcement of civil immigration law. In these cases the courts came up with the idea that local police cannot arrest and hold people solely because they are suspected of being undocumented. Although they are authorized to enforce federal criminal laws regarding immigration, it is not very common that they can in practice, because entry without inspection, crossing the border without papers, is just a misdemeanor under federal law. In California, police officers can only make a misdemeanor arrest without a warrant if the crime has been committed in their presence.

So even though Maximino Calderón might have told the police, "yes, I was brought here and no, I don't have papers," the police do not have authority under the Fourth Amendment and under California law to hold him

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3. 722 F.2d 468 (9th Cir. 1983).
against his will. Some of the people who were held with Maximino had family members come with the money and say "Can we take them?" They didn't know the police were there, and the police said "No, sorry they're not free to leave." So actually they were being held under arrest even though the police had no reason to believe they had committed a crime.

In the two earlier cases, the courts said that police can enforce the criminal provisions of immigration law, but they cannot enforce civil immigration laws. In both these cases the police argued against the plaintiffs saying, "No, we can enforce civil immigration laws, we should be able to just hold someone because we think they are undocumented. Even though it might not be a crime, it is still a violation of the laws and we should be able to make those kinds of stops and take the time to say, 'where's your green card?' If you don't have one we're going to hold you, and we're going to call the INS."

So the police wanted to do that kind of federal civil law enforcement, but the courts said: "no, unless you have probable cause or you've seen the crime happen you can't hold the person." Now we see in the CARECEN case that they are saying, even when there is a state crime that has been committed and they know that to be the case, they do not want to get involved because of preemption. They cannot even help the victims of state law crime because of federal power over immigration.

We see how the idea of preemption flip-flops one more time with Attorney General Lungren's opinion. In the cases we have just discussed concerning the police, the result is that no matter what, the immigrants get turned over to INS, regardless of whether the police can enforce civil immigration law. We see now, in the Lungren opinion that the preemption doctrine is being used as a way to force local police to enforce federal immigration law. In both of the other cases, the kind of common knowledge of preemption is that the federal government's power in an area stops local or state laws from acting in that same area. So state and local governments cannot get involved in immigration because of preemption. But here the Lungren opinion turns the argument around to say that because of the federal immigration policies, the states have to get involved in immigration law.

When the Attorney General comes to the conclusion that no city may have an ordinance that prohibits its employees from cooperating with the Immigration and Naturalization Service, the next logical result is to say that the cities have to cooperate with the INS. And in fact, that is exactly what has happened with a bill introduced by Senator Quentin Kopp, the person who requested the Attorney General's opinion. The bill that he has proposed states: 1) that no city can have an ordinance that says you cannot cooperate with the INS and 2) that state employees must turn people over to the INS when they know that the person has been arrested for a crime. The
bill doesn’t say that only police officers have to turn people over, it requires it of any state employee.

For example, a social agency worker who happens to know that someone has been arrested for a crime would be required under Senator Kopp’s law to make notification to the INS. The meaning of the doctrine of preemption, is taken one step further; they are going against past precedents which say that the state can’t get involved in immigration law and that enforcement of the immigration laws is not the job of the state. They are now saying that because of the doctrine of preemption, one has a duty to help the INS. Since the doctrine of preemption can now be used by both sides to justify opposite results, I think that it is important to look for new arguments to stop police and local governments from enforcing immigration laws.

For example, in the CARECEN case the police did not have authority to hold the victims of crimes. Even if they have the authority to tell the INS that they know the names of the places where people are who are undocumented, they do not have the authority to hold someone against their will under arrest unless they have been suspected of committing a crime.

Even aside from the legal issue, it does not make sense to deprive immigrant communities of police protection. If someone is here as a visitor to California and they are a victim of a crime such as a mugging, of course they would be entitled to police protection. However, the LAPD is trying to use the doctrine of preemption to argue that they cannot help these poor kidnapping victims because their hands are tied. That is just not so. Furthermore, it does not make sense. If you deprive entire communities of the security of knowing that they have police protection without being turned over to the INS, those communities will never be able to come forward with reports of crime. They will be left to lawlessness, and that is certainly not a desirable result.

A second example of how the doctrine of preemption can be used in new ways comes up in the recently introduced anti-immigrant bills. Alan Nelson, a consultant with the Federation for American Immigration Reform and the former INS Commissioner under Ronald Reagan, recently asked the California Legislature to declare a war on illegal immigration. I think that sounds familiar. I think that the “war” on drugs did not really work so now they are trying to find a new “war” to start here, and so now it is a war against illegal immigration. The New California Coalition, a group that Claudia Martinez is going to talk a little bit about, has identified twenty one anti-immigrant bills that were recently introduced in California. These bills seek to deny health care, housing, workers compensation, job training, education, and driver’s licenses to immigrants. Some bills even want to make it a crime under state law to be “unlawfully present,” whatever that would mean.
The doctrine of preemption is relevant to these recent bills because states are preempted from establishing laws or policies for the sole purpose of regulating immigration. If they can come up with a valid state purpose for the bill, such as raising revenue, then it is valid. But, if the only purpose is to regulate the flow across the border, then it is preempted. It would be a federal concern. States are not supposed to be involved in the issue of how many immigrants come and from where. Also, state laws might be preempted even if they have a valid state purpose, if they conflict with federal immigration laws. I am going to show you how some of these pending bills either have no purpose whatsoever but to regulate immigration law or actually conflict with federal immigration laws.

My example is a Medi-Cal bill. It would deny state Medi-Cal funds for any provider who fails to report an undocumented person to the INS. The way this conflicts with federal law is that the federal law says that if you are undocumented, you can get Medi-Cal for emergency services. Therefore, federal law is saying that we want to provide medical care to people; it does not make sense to have cancer patients or people who have been in accidents go without medical treatment, regardless of their immigration status. Effectively, if they are here we want to treat them. The state now is saying, well you can go ahead and treat them, but unless you turn the person in to INS we will not give you any money. That is obviously an attempt to get around the federal obligation to help the people at all, because if they are going to be turned over to INS, no one will come forward and take the medical treatment. It also violates laws about doctor-patient confidentiality.

Four of the anti-immigrant bills would put restrictions on the ability of undocumented people to get a driver's license. People who have lawful status may not be able to get driver's licenses because they might not have the right proof from INS. Sometimes it takes a year to get the necessary documents. The reason that this kind of law might be preempted is that there really is no public purpose for the law except to stop immigration. It does not help to promote highway safety if people are not licensed, if they cannot get insurance, or if they cannot register their cars. It is only a means of trying to stop people from coming into California. That is an impermissible federal purpose under the preemption doctrine.

In both of these cases, the problem is that the people proposing the bills will try to turn preemption back upon itself. They will say, “How can the state not turn in an undocumented person who has come in for Medi-Cal when we know that they are undocumented? How can we foster such a violation of federal law? We must, under federal law and under the preemption doctrine, give this information to the INS, even though it conflicts with federal law.” Similarly, with the driver's license issue, the state is going to come back and say “but how can we allow these undocumented
people to have identification? How can we allow them to register their cars and get insurance in our state when they are not supposed to be here to start with? If we find out that they are undocumented, we should be out there helping to get rid of them.”

Therefore, preemption can be used either way, and I think that it is going to be interesting to see what the courts make of this. I think that what we have to point out is that there are significant public policy issues that exist in terms of health care. Do we want people with deadly illness and life threatening injuries to go without medical care? Do we want more unlicensed drivers, or people who have not gone through training and testing to be on the roads? They are still going to drive, so isn’t it better to have their name and address and be able to find them? We do not want to encourage people to use fraudulent documents but that is what would happen if they cannot get real documents.

In conclusion, I think that Attorney General Lungren’s opinion stating that the City of Refuge ordinances are preempted gives us the signal that we can no longer count on the doctrine of preemption to stand for the principle that state and local governments cannot enforce immigration laws. The state Attorney General has turned preemption upside down to argue that states cannot avoid enforcement of immigration laws. And I think that this twisted application of preemption is going to come up more and more in issues such as benefits eligibility and civil rights. As a result, we activists and lawyers must find new legal and policy arguments to raise in defense of immigrants, because they are presently in a precarious situation. They are trying to hold on to the most basic rights, much less anything resembling all of their deserved human rights. They are fighting for these basic rights: health care, education, housing, and subsistence levels of food and money. We must thus realize that the preemption doctrine is no longer a solid defense because rather than demand exclusive control over immigration, it is likely that the federal government is going to be asking the states to pitch in and give whatever help they can to try to stop immigration.
In San Francisco's first days as a sanctuary city, I was involved with the City of Refuge ordinance, working with community groups, and associating with people like Ignatius Bau and a number of others who are here today. I would like to tell some stories that illustrate the political struggle that we continue to face.

I was the chair of what was called the Police Liaison Committee of the Human Rights Commission in San Francisco. We did a lot of work with the Police Department on issues like crowd control, intelligence and other areas. In the course of this work, we met rather regularly with police officials (as you know, San Francisco has had a lot of police chiefs in recent years). A number of contacts with the various chiefs illustrate the political problems we faced. At one point we had a meeting with Chief Richard Hongisto, the short-lived chief. There were a number of us there — Robert Rubin attended along with Lina Avidan, the Sheriff, the Police Chief and Supervisor Gonzalez. The Chief said he wanted to do away with the City of Refuge ordinance because it prevented him from handling the drug problems in San Francisco. He claimed that the ordinance prevented him from turning over drug arrestees to immigration officials. The Chief really should have been embarrassed because the comment revealed his failure to even learn what the ordinance said. Robert Rubin pulled out the directive from the Police Department that Chief Jordan had written, and cited the specific passage pointing out that the City of Refuge ordinance mandates that police officers comply with state law that requires them to report to Immigration those people arrested for drug offenses. Despite Robert Rubin's clear explanation of the Department order, which contradicted Chief Hongisto's statement, the Chief failed to acknowledge his error. Then, without missing a beat, he went on to repeat the same error again at the next public speech he gave. He obviously had a political agenda and was not going to let the truth stand in his way.

Our next meeting on the ordinance was with Chief Murphy, a much more intelligent person. He understood the issues, but he had this misconception that all the crime in San Francisco is caused by immigrants. He seemed to believe that the city's crime problem could be greatly reduced by simply getting rid of the immigrants. This type of misconception parallels

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the anti-immigrant sentiments that characterized the American response to previous waves of immigration.

Another instance of police distortion of the ordinance is as follows. I live near the Mission District in San Francisco. There is a big drug problem there at Dolores Park. Last year the city police repeatedly went to community meetings and told the people — people who were really harassed by drug dealers in horrendous ways — that the problem is the City of Refuge ordinance. The police claimed that the ordinance prevented them from arresting and prosecuting drug dealers. That is an outright contradiction of what the ordinance says.

The other day I was at a luncheon and one of the supervisors came up to me and he said, "you know, when I go out and talk to groups in the community very often there will be a representative of the Police Department with me. And they will stand up and tell the people that one of the greatest obstacles to reducing crime in San Francisco is the City of Refuge ordinance." That is an example of how one city department, the police, distorts the true meaning of the law. The harm they do, and the kind of message they get out to people is very difficult to overcome.

Those of us who have been working on this know why the City of Refuge ordinance came under fire in San Francisco last August. We were told that in May or June a group of conservative politicians got together and asked themselves, "what issues can we put on the ballot that will bring out the conservative vote west of Twin Peaks in San Francisco?" They chose pan handling and the City of Refuge ordinance. It is a crass way of trash­ing a group of people who have a hard time of it already, people who have fled persecution, and have come here to find themselves in a strange land being exploited for political purposes.

Typical of the climate in San Francisco is the comment by Herb Caen\(^1\) about two weeks ago. He wrote about a couple who were on a motorcycle and were hit by a car. He described how they had been in the hospital for months and ended the whole thing by saying that the person who hit them, who came through a red light at a high rate of speed, was probably an illegal alien without a license. I do not think he would have said the person was Jewish. I do not think he would have had the imprudence to say he was African-American. The term "illegal alien" is the new code word to express prejudice.

Finally, I think that the religious community is involved in an effort to do our homework and to really get the story out to our people, because the public perception is contrary to reality. This is a difficult job. Some of the people in this area and in Washington recently said that people are so prejudiced by the faulty economic arguments that you can hardly communi-

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cate with them about it. We are now involved in a campaign to educate people.

I think that our task is to unite all of the elements that are present here; people working with community groups, immigrant groups, refugee groups, the religious community and the legal profession and to stand up for truth and justice for immigrants.

I will conclude by simply saying that one cannot sit up here and look out at you people who are giving up a Saturday afternoon for this, or go to meetings with dedicated people, especially in the legal profession, without being very encouraged. I was in San Francisco when the Japanese were taken out of San Francisco and the local area and put in concentration camps. I do not recall anyone saying anything; they probably would have been lynched if they did. I do not recall anyone in any religious community, certainly not in my Roman Catholic religious community, who stood up on any pulpit and said this is a crime. That is not happening anymore. They criticize us because we are sanctuary churches and they criticize us because they do not like our stand, but people are speaking out. I am grateful to everyone who is part of that stand for justice for all immigrants.
Comments by Claudia Martinez* †

I would like to thank La Raza Law Students Association and Migrant Legal Services for inviting me here today. My remarks will take the form of an overview, a window into the California state Legislature today, and the rise in anti-immigrant sentiment at the local level. I would also like to point out, and I will return to this topic later in my comments, how civil rights advocates have been working together to combat the rise of anti-immigrant hysteria and some of the more hostile activities against immigrants that have been happening in California.

In early February of 1993, the few of us who actually work on immigrant issues in Sacramento realized that there was an inordinate number of anti-immigrant bills being introduced in the Legislature. Clearly, these bills were attacks on immigrants, efforts to blame immigrants for the failing economy and budget crisis in the state. The three or four organizations in Sacramento who work on these issues — the American Civil Liberties Union (ACLU), California Rural Legal Assistance Foundation (CRLA), and the Mexican American Legal Defense and Educational Fund (MALDEF) — realized that we needed help, and needed it quickly. We put out a call for assistance to other advocates in the state and met to discuss what we could do as advocates to combat anti-immigrant hysteria. We decided to form a coalition — the New California Coalition.

By the March 5th deadline for introducing bills, there were approximately 22 bills which we had identified as anti-immigrant in nature. These bills attempted to deny undocumented persons access to necessities ranging from Medi-Cal benefits¹ and workers compensation² to drivers licenses.³ Other bills would have effectively criminalized undocumented persons. Under AB 86, an undocumented person's mere presence in the state of California would be a misdemeanor, and those who received more than one conviction would be subject to immediate deportation.⁴ As previously mentioned,⁵ Senator Quentin Kopp (I-San Francisco) has continued his attack on immigrants by introducing SB 691 which would prohibit local gov-

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5. See Bau, supra at 68.

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ernments from enacting sanctuary ordinances. Such a law would create a chilling effect, discouraging both citizens and noncitizens from exercising their constitutional rights and interfering with their personal safety.

Moreover, some of the more vicious bills have been those that would deny educational opportunities for undocumented children. Of particular concern is AB 149, introduced by Assemblyman Mountjoy (R-Arcadia), which would prohibit the allocation of state funds for the education of undocumented children. Another bill, AB 1968, introduced by Bill Morrow (R-Carlsbad), would require teachers and school personnel to report to the Immigration and Naturalization Service (INS) the number of students who cannot verify their legal status. All these bills are basic attacks on immigrants and their right to be present in this country.

Furthermore, none of these bills make sense from a legal or policy perspective. While the authors of these bills argue that they will produce economic benefits by conserving resources, it has never been documented or proven that denying educational opportunities, employment opportunities or basic services would save the state money. On the contrary, these bills would only exacerbate the budget crisis and create enormous long term problems. In the long run these bills would harm everyone — not just immigrants, but all residents of California.

The other educational bills would similarly affect immigrant access to higher education. They would prevent undocumented students from enrolling in higher education institutions. Regardless of an individual’s ability to gain admittance or finance their education, they simply would be prohibited from enrolling in a state college or university.

The anti-immigration forces in the state, as well as in the entire nation, are becoming increasingly physical, increasingly daunting, and increasingly hostile. At the local levels, local taxpayer associations have been popping up and supporting anti-immigrant legislation. As pointed out by our keynote speaker Roberto Martinez, these local organizations have been undertaking very vigilante-like activities in order to carry out their agendas. These groups have emerged throughout the state, especially in areas where Latino and Asian immigrants are visible, including areas in California such as Marin, the San Francisco East Bay, San Jose and the San Fernando Valley. The most visible statewide organization, the Federation for American Immigration Reform (FAIR) has an office in Sacramento, and is probably one of our biggest foes. Their main agenda is to completely cut off all

6. S.B. 691, as introduced, would have also mandated reporting by arresting agencies of any person if there was reason to believe that the arrested individual may not be a citizen or legal resident of the United States. See Bau, supra note 3, at 68. While S.B. 691 was eventually signed into law, Cal. S.B. 691, 1993-94 Reg. Sess., enacted Oct. 4, 1993, Ch. 818 (codified as CAL. GOV'T CODE § 53069.75), the final version did not prohibit sanctuary ordinances. Instead, it created a limited expansion of the circumstances in which local law enforcement officials could inquire about and report an individual's immigration status to the INS. See Bau, supra at 68.
immigration, both legal and illegal. These organizations argue that they are not racist, they are not trying to be divisive. They argue that they are simply trying to save the state money and that the state is just too overburdened and cannot accommodate any more people. In several instances, however, members of these organizations and state legislators themselves, have made public comments about the true sentiments underlying their efforts.

Recently, Senator Craven (R-San Diego) issued a report on the fiscal impact of undocumented persons in San Diego County, a report which has been criticized for extremely flawed methodology. The hearing on this report was attended by many Latino immigrants and civil rights advocates, all of whom were critical, not only of the findings of the report, but also of the fact that Senator Craven was taking such a high profile anti-immigrant stance. Senator Craven’s comments included a remark questioning why we “go out of our way” to address rights of people who are on the “lower scale of our humanity.” These remarks were made by a state representative, someone we vote for, and who is making policy that affects us all.

Supporters of AB 149 were even more straightforward in their comments at the Assembly Education hearing on this measure in March of 1993. One woman made the statement that even though Assemblyman Mountjoy and other supporters were too afraid to state the real reasons behind the bill, she was not. She believed that the reason we have crime in this state is because we let in illegal aliens. We would not have rape, we would not have murder or burglary if we would deport all illegal aliens. It was her opinion that these undocumented children bring third world cultures to the state, and create the problems we suffer.

As a newcomer to Sacramento and the legislative process, I naively believed that anti-immigrant forces considered their agenda to be a sensible approach to the true problems of California. This agenda, however, is divisive, it is racist, and it is completely unsound by any measure. It is telling to note that, as we have heard from today’s panelists, our state legislators and our Attorney General are so willing to spend an enormous amount of time, energy, and resources to defeat local government attempts to ensure the humane treatment of immigrants, but do absolutely nothing to prevent local vigilante groups from perpetrating overt acts of harassment and intimidation against immigrants. The inherent flaw of each and every anti-immigrant bill is the obvious failure to recognize one basic principle: that by denying educational and employment opportunities and access to basic services, these elected representatives have created barriers to the economic stability of California and the nation. Only through investing in the potential of new residents will our state economy be renewed. We must send a message to our state representatives that immigrants are not an acceptable

scapegoat for the budget crisis or for any and every economic or social ill. Hate legislation is simply too costly for our society.

I would encourage anyone who is interested in this topic to keep themselves informed about what is happening in the state Legislature. The debate over anti-immigrant legislation is very heated. Although we were able to defeat AB 149, the number of people who did support this bill, and the arguments that they made in favor of it, are very frightening. Supporters of AB 149 claim that these bills target only undocumented people and will not affect persons with legal immigrant status. Yet, no one will stop to check your immigration status if they want to assault you, if they want to harass you, or if they want to deny you services. I believe that there is a lot of hatred and prejudice against all people of diverse and ethnic backgrounds that manifests itself through these bills.

AB 149 was a flagship bill for the New California Coalition. It’s defeat was important because it set a precedent for the anti-immigrant legislation to follow. Yet, the fight against AB 149 also highlighted areas in which we needed to strengthen our approach. For example, when AB 149 was pending a hearing in the Assembly Committee on Education, we needed the votes of some Democrats on the committee who were from conservative districts. We were concerned that they would simply abstain from voting on the bill, rather than vote against it. We talked with them, educated them, and they eventually came around and voted against the bill. In order to continue such successes in the future, these legislators need continued support from their constituents and from advocates who point out the unacceptable results of such legislation. We as Latinos and as people concerned with the just treatment of immigrants and the future economic health of our state and nation must become vocal advocates familiar with the political and legislative processes. Finally, we need to educate ourselves about these issues so that we may both understand them and be able to educate others regarding them.

It is clear that civil rights have a vital role to play in affecting immigration policy at the state and local level. There is perhaps no more vulnerable group residing in California today than the undocumented population. Their rights, as we have witnessed, are in constant need of protection and advocacy. Given the combative nature and hostile tenor of the debate over immigration policy, it is clear that in order to prevent the wholesale denial of these rights, civil rights advocates in Sacramento must become more active than ever before.

The New California Coalition is a response to this great need. The Coalition is a statewide organization dedicated to defeating anti-immigrant legislation and working at all levels to educate the media, our elected offi-

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8. A.B. 149 was defeated in the Assembly Committee on Education, March 31, 1993.
cials, and our collective communities about the facts rather than the myths about immigrants. The New California Coalition is comprised of advocates for women, children, immigrants, civil rights and religion who represent over 75 different organizations. The Coalition’s mission is to inform the public about the current and historical contributions, fiscal and intellectual, made by immigrants regardless of their background, nationality, or legal status. Through our advocacy efforts, the New California Coalition hopes to become a central figure in the debate over immigration policy.