'Twisted Tongues' Take the Stand:

Legal Advocacy & Educational Reform for National Origin Minorities in California, 1931-1997

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Introduction

"'Twisted Tongues' Take the Stand" addresses the intersection of California's immigration policy and educational reform, acknowledging how diasporic communities solidified their students' educational interests through sustained, multifaceted activism across the twentieth century. This thesis aims to demonstrate the cross-generational impact of restrictionist immigration policy, illuminating common trends in defensive and responsive litigation over pressing educational issues. Hence, this thesis considers educational reform impacting national-origin minority students as a whole—both native and foreign-born children demarcated by the "physical, cultural, or linguistic" traits c[illegible]d ancestry.[1] Local, state, and federal immigration policies had a sweeping effect o[illegible]rigin minority students who experienced discrimination in education, regardless of their [illegible]grant status. Crucially, the category of national-origin minorities encompasses this article's various subjects and leaders in educational reform, who demonstrated strong ties to diasporic communities, as well as a palpable investment in pervasive immigrant issues. In sum, "'Twisted Tongues' Take the Stand" explores the overarching legacy of immigrant activism—the strategies national origin minorities employed on the road to litigating central issues in equal educational opportunity.

Legal advocacy played a central role in the various stages of educational reform, where national-origin minority activism countered waves of exclusionary policies. Through examining case studies of school segregation, bilingual education, and undocumented students, this thesis identifies common discriminatory practices and compares advocacy techniques employed by

[1] CFR (Code of Federal Regulations) § 1606.1 definition of national origin. Note it is defined within the context of discrimination and denial of equal opportunity.

diasporic communities to promote educational equity. Although rhetorical strategies varied between cases, this thesis argues that the core means of advocacy remained consistent. Ultimately, national origins minorities had to navigate racialized assessments and solidify their membership in the national community.

Drawing inspiration from legal, sociological, and educational historical scholars such as Michael Olivas, Leisy Abrego, and Richard Valencia, this thesis explores the connection between immigration policy and responsive educational programs. However, most of their legal historical analysis includes scattered case law across the country, occasionally narrowing focus on precedent set in Texas. When it comes to scholarship within California, a comprehensive overview throughout the 20th century is notably lacking, with observations instead concentrated on shorter clips of time—like the 1930s, the 1990s, and of course the implications of DACA after 2012. Hence, this thesis narrows its geographic focus on California and expands its temporal scope to cover the 20th century, building upon strategies and issues explored by legal historical scholars nationwide.

This thesis relies on case-specific secondary sources—law review articles, think tank publications, and other journal essays—to gauge pivotal shifts in educational reform, as well as contextualize immigration patterns alongside state politics. In addition to illuminating the environmental backdrop for key events, these sources provide scholarly insight into the scope and impact of specific case studies. For primary sources, this article examines an assortment of newspaper articles documenting national-origin minority activism, often bridging the efforts of civil rights organizations and local communities' response to educational issues. When examining legal advocacy, this thesis considers the rhetoric utilized by national-origin minorities and the organizations they collaborate with. Newspaper articles similarly demonstrate the

rhetoric of restrictionist advocates, who range from social scientists, political figures, INS law enforcement, and other vocal members of the public. Finally, this thesis examines the briefs, transcripts, and supplementary litigation files of the cases themselves, dissecting what rhetorical strategies national-origin minorities and legal civil rights organizations employed on the road to contest unfair educational practices, as well as the practical considerations of critical rulings.

Chapter 1 presents the litigation process—the rhetorical tactics Mexican communities and their plaintiffs employed—to dismantle school segregation at a local level, as in the case of *Alvarez v. Lemon Grove (1931)*, then onto the federal level in *Mendez v. Westminster (1947)*. In California, the Mexican community's presence endured long before the modern state's inception and continued after the Mexican Government's cession of Alta California in 1848. Despite their longstanding presence in the state, these case studies highlight the recurring conception of foreignness towards Mexican American communities coupled with other racialized conceptions that stymied their right to equal-opportunity education. The influx of Mexican immigrants between 1910 to 1930 initiated a dramatic transformation within educational policy, ramping up the creation of Americanization schools throughout southern California in particular. Mexican families and communities, however, did not always accept the establishment of separate schools or curricula for their children. Early into the century, many contested their second-class status.

California's pattern of responsive immigration policy carried over well into the latter half of the twentieth century, as the state's educational initiatives melded alongside migrational trends, assuming various experimental forms. The interim of the 1950s to 1960s shifted from the question of segregation to the new challenge of integration. Chapter 2 presents one of the Golden State's more unique forms of integration, bilingual-bicultural education, which rode the tide of the Civil Rights Movement during the 1970s and 1980s. While *Lau v. Nichol* featured Chinese

American students, Chapter 2 demonstrates how the maintenance, or on-the-ground practices, of bilingual-bicultural education, required consistent involvement of various diasporic communities, with immigrant families and advocates for national-origin minorities participating in reformative processes, functioning as vital lifelines to local programs. Chapter 2 further illustrates what consequences arose when school districts severed the lifelines of community involvement. This phenomenon, in conjunction with restrictionist English-only initiatives, contributed to bilingual-bicultural programs' gradual disintegration.

Notwithstanding the dismantling of bilingual programs, the courts upheld the right to educational access to all, regardless of legal status. Chapter 3 investigates the "policy neutral" reasoning of the Supreme Court's ruling in *Plyler v. Doe*, how it consolidated equal protection and education for undocumented students alongside state resources, and how California Proposition 187 tested its strength in a series of legal challenges in 1994. Across all chapters, community activism, and legal action amongst national origin minorities proved instrumental in preserving their students' rights to equal opportunity education. This thesis investigates the strategies implemented during different stages of educational reform, and how national origin minorities adeptly responded to fluctuating dynamics of immigration politics. Specifically, how they solidified their students' educational interests when the concept of national membership, or requisites for a satisfactory education, hinged on factors such as race, language, and immigration status.

Naturally, this thesis's selection of events and caselaw often feature Hispanic plaintiffs, who throughout these changes, petitioned against unequal educational practices as central participants in the reformation of state policy. Even in the case of *Lau v. Nichols*, which featured Chinese American subjects on the stand, the bilingual needs of Hispanic students were

considered throughout the litigation process. They, then, became all the more pronounced during *Lau's* practical application of bilingual education in schools. While the caselaw and educational initiatives this thesis will discuss involved various ethnic and racial communities throughout the state, featuring Mexican and Latin American actors serves to reflect the state's demographic realities. Still, this thesis utilizes the term "national origin minority" to account for cases like *Lau* where the contribution or involvement of different races must be recognized, rather than focus entirely on one race or ethnicity, or categorically omit the conversations other communities provided during the policy reformation process. However, due to this thesis's focus on rhetorical strategies employed during the policy reformation process, extensive consideration of leading advocates' unique racial challenges must also be addressed. This priority, particularly in Chapter 1, is justified when considering how restrictionist rhetoric and scholarship in California overwhelmingly targeted Latin American communities. Various national origin minorities had to contend with unique brands of discrimination. Their activism reformed the contours of national membership.

Limitations imposed through racialized constructions obstructed national-origin minority students' equal access to education, demanding they perform above expectations to solidify their educational interests. This thesis will examine several cases where restrictionists viewed education as an assimilative tool and questions the recurrent pattern of assessment students confronted during educational programs' development. From Americanization school practices to later renditions of English-only curriculum, national-origin minority students confronted a barrage of IQ or literacy tests, evaluating their placement in the state's educational system. Consequently, students' academic success served to inform policymakers' estimation of their assimilative potential, shaping the framework for educational programs down the line. Legal

historical and political scholarship, like that of Michael Olivas or Abrego Leisy, often feature proactive students who came to the stand—those who petitioned in court or engaged in mediums of public protest. Although their activism proved valuable, this thesis wishes to consider another sphere of influence students held during educational reform, simply by participating in the state's various educational experiments. In other words, students' mere existence in the school system, from their demeanor to their academic performances, determined educational policy analysis. From the scores produced in IQ tests and literacy tests to the behavior they exhibited in front of faculty and staff, students faced heightened assessment during critical periods of educational reform.

Additionally, this thesis seeks to acknowledge this phenomenon of assessment, or heightened scrutiny, outside the academic space, and into spheres of student activism. As this thesis will note in Chapters 1 and 2, student representation and engagement in the court had to consolidate common perceptions towards their race. Arguably, one of the most pervasive proxies for discrimination was assessing English proficiency. The phrase "twisted tongue" refers to the difficulties non-native speakers may face when learning a new language.[2] Historically, however, it had been associated with common forms of language discrimination and prejudice, sometimes used as a derogatory term towards foreigners.[3] In several cases that will be discussed, students who spoke on the stand had to demonstrate strong English language skills, in addition to meeting behavioral and academic standards, currying favor from local or federal justices. This heightened level of scrutiny carried over into the general public sphere, as Latin American students who engaged in forms of public protest fell subject to gross criticism. Restrictionists depicted

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[2] Taken from the Cambridge and Merriam-Webster Dictionaries.
[3] Lamont, Tom, *'Why do we stereotype accents,'* The Guardian, 2014. See also Mochizuki, Mike, *'Linguistic Stereotyping and Minority Groups in Japan,'* Routledge, 2017.

students' advocacy as an extension of anti-nationalist behavior, their freeform expression of multiculturalism as grossly foreign.

The minority groups with unique linguistic skills, who expressed themselves effectively in diverse languages and mediums, had crossed the boundaries set by the restrictive policies for national membership. "'Twisted Tongues' Take the Stand" emphasizes the significance of their expression in shaping the educational opportunities for students belonging to national-origin minorities. By analyzing the legal tactics employed by these groups in response to restrictive policies, this research offers insights into the enduring impact of immigrant activism. Over the years, California has become a more diverse state due to the growing networks of various diasporic communities whose advocacy has preserved educational opportunities for students and strengthened their position in the national community.

Chapter 1

School Segregation

"We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal education opportunities? We believe that it does."

- Chief Justice Earl Warren

The Lemon Grove Incident

In the late 1920s, the Hoover Administration set a firm anti-immigrant standard during a series of repatriation programs nationwide, expelling almost half a million Mexicans and U.S. citizens of Mexican descent, with "hundreds and thousands" deported from Los Angeles alone.[4] California's deportation plans in the early 1930s made little distinction between lawful and unlawful migrants.[5] Neither did plans for new "Mexican" schools across the state.[6] In principle, deportation and segregation programs were efforts to promote Americanization, demarcating immigrant groups according to the rationale of their assimilative potential, or lack thereof. The local school board of Lemon Grove in San Diego considered this question, and in 1931, released its proposal to build a separate school for Mexican American students. The proposal denied explicit intent towards segregating Mexican students from their White counterparts, instead

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[4] Robert R. Alvarez, Jr., "Jim and Jose Crow: Conversations on the Black/Brown Dialogue," *Journal of Asian and African Studies*, 2016. 350. ., Robert R. Alvarez, Jr., "The Lemon Grove Incident: The Nation's First Successful Desegregation Court Case," *The Journal of San Diego History* (Spring 1986). 116-136.
[5] *See* R and E Research Associates, "Mexicans in California," *A Report to Governor Clement C. Young*, 1931. The report categorized any person of Mexican descent as a Mexican National.
[6] *Id*, Alvarez, *Jim and Jose Crow*.

claiming to generally provide "better instruction" for "backward and deficient children," only leaving room for "one or two exceptional" cases.[7] Quickly, the decision erupted into a famous lawsuit against the district, *Roberto Alvarez v. the Lemon Grove School Board (1931)*, reputed as the first successful desegregation case in the country.

Alvarez Junior, Alvarez Senior

During his research as a Ph.D. student, Robert Alvarez Jr. learned of the unique position his family played in the "Lemon Grove Incident." "An exemplary student who spoke English well," Robert's father, Roberto Alvarez Sr., represented his community as the case's plaintiff, selected by the neighborhood to testify in court.[8] The lawsuit developed through extensive local activism after Alvarez Jr.'s grandparents joined other Mexican families to form *El Comité de Vecinos de Lemon Grove* (The Lemon Grove Neighbors Committee).[9]

Upon interview for the 1985 *Lemon Grove Incident* documentary, Alvarez Sr. and several other students recounted their experience of being stopped at the entrance of their main school one January morning, redirected by Principal Jerome T. Green to a "new school" fellow students dubbed *La Caballeriza*, or "The Barn."[10] The "school" was a decrepit two-room structure expected to hold at least 85 students from four different grade levels. Situated along the "northerly section of town" where most Mexican families resided, the school had purportedly

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[7] *Id.* Alvarez, *Lemon Grove Incident*.
[8] *Id.* ; Ruiz, V. L. "South by Southwest: Mexican Americans and Segregated Schooling, 1900–1950." *Magazine of history* 15, no. 2 (2001): 26.
[9] Arredondo, Maria Luisa. "LEMON GROVE: EL PODER DE LA UNIDAD." *La Opinión (Los Angeles, Calif.)*. Los Angeles, Calif: My Code Media, 2004.
[10] West, Gail., Navarre. Perry, Doug. Jacobs, Bill. Brinsfield, Ann. Richardson, Guillermo. Gómez-Peña, Luisa. Vargas, Paul. Espinosa, Frank. Christopher, and Robert. Alvarez. *The Lemon Grove Incident*. New York, N.Y: Cinema Guild, 1985.

been designed in the interest of "student safety." [11] Rather than accept such conditions, students instead chose to return home. Principal Green later directly confronted students in the northern part of town, handing a document over to 12-year-old Roberto Alvarez Sr. while the boy played with neighborhood children.

> "[Principal Green] gave me the piece of paper, and told me to get [all the families] to sign the left side of the sheet if they're coming, the right side if they're not…When I came home, my uncle took the paper and tore it up." - Roberto Alvarez Sr.[12]

Media Activism

The local *San Diego Sun* published articles detailing Mexican students' prolonged absence as "school strikes." *El Comité de Vecinos* quickly came to their children's defense, contesting depictions from local media, and criticizing the school administration's silence after making repeated attempts at communication. In a publicized letter to the Lemon Grove Board, parents protested "the term strike," stating their "children did not leave the school on their own accord" but in fact were "thrown out."[13] Although aware of the "Mexican" school's existence during its construction, parents expressed surprise at the lack of prior consultation from the school administration. After meeting with County Superintendent, Ida York, who claimed to "know nothing about" the plan, the Committee demanded an assembly with school administration. "What we learned there was very far from what we wanted to learn…We are not looking for disturbances, what we want is fair [legal] play and we will have it."[14]

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[11] *Id.* Alvarez, *Lemon Grove Incident.*
[12] *Id,* West.
[13] Ferreira, Enrique, *The Lemon Grove incident, Mexican-American school desegregation case documents,* 1931.
[14] *Id.*

Not only did the announcement enable the Committee to assume control over local media narratives, but it also set the foundation for legal action. In collaboration with the state's most popular Spanish newspaper, *La Opinión*, as well as several Los Angeles papers, *El Comité de Vecinos* expanded its network, accumulating enough financial support and public pressure to bolster their legal platform.[15] English and Spanish newspapers even disseminated the Lemon Grove story across state borders. Considerable attention was sparked in Texas, where immigrant communities endured a parallel surge of "Americanization School" practices. Eventually, Mexico's Secretary of Foreign Affairs Manuel E. Otanora issued a public denunciation of Lemon Grove School authorities, along with those of other Americanizing schools, after his division received an influx of petitions from various Mexican residents in the States:

> "[The school segregation] project provoked a general movement of all those affected…whether or not the denomination of Indian children is intended for the children of Mexicans, our nationals have considered said project as depressing and detrimental to the education of their children…if they could join their cry of protest to that of other foreigners who would be affected, they could put moral pressure on legislative authorities."[16]

While precise racial categorization of Mexican Americans remained a point of contention in local jurisprudence, widespread assimilative initiatives for Mexican students reflected historic discriminatory measures toward Indigenous children. The parallels were alarmingly apparent. Parent petitions continued to roll in.

This brand of civic pressure was not unprecedented amongst Mexican diasporas in Southern California, just as such segregation measures when it came to schools were not

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[15] Id. Alvarez, *Lemon Grove Incident*.

[16] "La Segregacion De Los Escolares Mexicanos Causa Gran Malestar En California Y Texas." *Defensor* (Edinburg, Texas), May 15, 1931: 1. *Readex: Hispanic American Newspapers*. https://infoweb.newsbank.com/apps/readex/doc?p=EANASP&docref=image/v2%3A11C7719FDF8F010E%40EANASP-11C981A0283D9708%402426477-11C835A9F4512C58%405-120A7E7982D610F3.

unprecedented. Some records of parental opposition towards school segregation date back to the postwar 1920s, a time when scholars like Paul S. Taylor and Emory Bogardus claim protests from Mexican-American parents grew more commonplace. In fact, parent advocacy in the Imperial Valley area reputedly and single-handedly swayed Attorney General U.S. Webb's decision against Mexican school segregation in 1929.[17] Webb reasoned that schools "with special class hours for Mexicans could be maintained…[only] as long as all children of the school district are privileged to select the schools which they desire to attend."[18] The advent of increasingly restrictionist policies, coupled with the success of the more extensive networking efforts of *El Comité de Vecinos*, distinguishes the controversy at Lemon Grove from local precedents, not only as the first successful desegregation lawsuit but one that garnered an unusual amount of public attention.

The Meaning of Membership

When Judge Chambers ruled in favor of Mexican students, he did not base his decision on the fact that "95%" of Mexican students in Lemon Grove were "U.S. citizens," a fact the plaintiffs fervently emphasized in their petition. Instead, he granted racial membership to Mexican descendants, declaring they were "of the Caucasian race," which precluded them from segregation laws for "Orientals," "Indians," or "Negros."[19] The San Diego Superior Court further distinguished schools from other modes of segregation, finding special prerogatives in

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[17] *See* Wollenberg, Charles. *All Deliberate Speed : Segregation and Exclusion in California Schools, 1855-1975*. Berkeley: University of California Press, 1976. 123. Note that Wollenberg expressed doubt towards the strength of General Webb's ruling, as well as the widespread significance of Lemon Grove.

[18] Bogardus, Emory. "The Mexican in the United States," *University of Southern California Press*, 1934. 71.

[19] Donato, Ruben, and Jarrod S Hanson. "Legally White, Socially 'Mexican': The Politics of De Jure and De Facto School Segregation in the American Southwest." *Harvard educational review* 82, no. 2 (2012): 202–225.

assimilation through education. It wasn't just because the decision came from a lower court, which could not compel decisions of neighboring jurisdictions, that limited its scope and potency. The ruling's reasoning alone divided Mexican Americans from other diasporic communities, maintaining the integrity of classical segregation—aimed toward Black, Indigenous, and Asian minorities. Though not completely "unassimilable," Mexican Americans' membership in the class of those "of Caucasian race" proved fickle.

Ultimately, the position of Mexican students on the racial gradient was tenuous, tipped along either side based on a collection of arbitrary factors: bilingualism, skin color, whether children were second, or third generation, whether they presented themselves as more "American," and shed cultural signifiers of dress or behavior.[20] Such reasoning stymied the decision's effect on other communities of color, even limiting its flexibility towards Mexican Americans, whose assimilative potential would constantly be called into question. Yet at the same time, the court's decision illuminated a shifting [illegible] towards Mexican diasporas, a movement away from completely "monolithic" assessments of Mexicans that dominated Americanization attitudes during the earlier twentieth century.[21] For instance, USC Professor of Sociology Emory Bogardus used the following language when advocating Mexican school segregation, at least until future generations fully acculturated into American society:

> "While their grandparents speak chiefly Spanish, while their parents speak both Spanish and English, they are refusing to speak Spanish…Despite all handicaps, the third-generation Mexican Americans are better assimilated than the second and, of course, than the first generation."[22]

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[20] Bogardus, Emory. "The Mexican in the United States," *University of Southern California Press*, 1934. 70-74.
[21] Ruiz, V. L. "South by Southwest: Mexican Americans and Segregated Schooling, 1900–1950." *Magazine of history* 15, no. 2 (2001): 23–27.
[22] Bogardus, Emory. "The Mexican in the United States," *University of Southern California Press*, 1934. 74.

Alvarez Jr. aptly pointed out how his father's legal victory in *Roberto Alvarez v. The Lemon Grove School Board* was an ironic anomaly when considered against the backdrop of widespread repatriation programs and anti-immigrant sentiment.

Mendez v. Westminster

In 1943, Westminster Elementary rejected the presence of three children of Felicita and Gonzalo Mendez, sending them home on account of their complexion being "too dark." The Mendez family found this event particularly surprising since Gonzalo himself attended the school as a child. To make matters worse, the Mendez children were denied standing beside first cousins of similar ethnic backgrounds. Still, the teacher differentiated the Mendez children from their Vidarauri cousins, by claiming that the latter were "White, American," or perhaps "Belgian."[23] Traditionally, school placement interviewers weighed elements such as "Spanish surnames and phenotypes," sometimes more closely inspecting children who were "offspring of a Mexican mother" who could "slip into the wrong school." [24] The Mendez family was infuriated by the arbitrary and discriminatory practice they encountered, which not only denied admission to their children but also revealed the prevalent discriminatory practices. This provoked the lawsuit that would climb from local Southern Californian courts to the Ninth Circuit Court of Appeals of San Francisco, which ultimately issued a ruling banning school segregation practices in California.

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[23] McCormick, Jennifer, and Cesar J Ayala. "Felicita 'La Prieta' Mendez (1916-1998) and the End of Latino School Segregation in California." *Centro journal* 19, no. 2 (2007): 12–35.
[24] *Id.*

When taking up the appeal case, LULAC attorney David Marcus aimed for a broader ruling than predecessors like *Lemon Grove*, constructing a legal argument that challenged the constitutionality of school segregation as a whole. His argument was the legacy of several experimental arguments NAACP lawyers had already been in the process of workshopping at the time. The Orange County School was high on the civil rights lawyers' radar, as LULAC oversaw the litigation process with careful scrutiny. Marcus collaborated with other lawyers, like Thurgood Marshall, before writing the brief.[25] On March 2, 1945, representatives from four school districts—Garden Grove, Westminster, Santa Ana City, and El Modeno—petitioned against their respective school administrators. The districts had collaborated on a common plan for separate schools for Mexican students, a plan which precluded Mexican students from benefits and services received by their White counterparts. The petition invoked the rights and privileges of the Fifth and Fourteenth Amendments:

> "Petitioners are entitled to such equal accommodations, advantages, and privileges and to equal rights and treatment with other persons as citizens of the United States, in the use and enjoyment of the facilities of said Schools and to equal treatment with other persons and to the equal protection of the laws in their use and enjoyment of said privileges."[26]

On behalf of these petitioners and the 5,000 other persons of Mexican descent residing within the districts, Marcus set the foundation for a comprehensive constitutional challenge against educational segregation, then further solidified this constitutional line of argumentation through expert witness testimonies.

Conversations in Court

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[25] Ruiz, V. L. "South by Southwest: Mexican Americans and Segregated Schooling, 1900–1950." *Magazine of history* 15, no. 2 (2001): 23–27.

[26] Not sure how to cite this primary source document

While respondents presented several school faculty members as expert witnesses on the selection procedure, Marcus flipped the conversation on its head, pushing faculty to define the exact qualifications considered during the enrollment process. The case rested upon whether petitioners could prove public school authorities segregated students based on purely "discriminatory" or racialized standards, or eligibility requirements without a "reasonable" basis, as opposed to weighing more pragmatic factors like mental capability or other linguistic qualifications. Upon cross-examination, one faculty witness explained how enrollment tests occurred during parent-student interviews, and how eligibility centered on factors of "Americanization": students' temperament, English proficiency, and "cleanliness." The witness claimed her school conducted this test on all students (excluding those whose parents did not bring them to school for an interview). However, Marcus illuminated the contradictory nature of her statement, inquiring whether there were any Mexican students in the main school, then pressed further, asking whether any Mexican students in the segregated school demonstrated English proficiency. It was soon revealed there were no integrated classrooms, despite how several students in the segregated school satisfied eligibility requirements. In doing so, Marcus deconstructed school administrators' claims that the tests allowed some room for exceptional cases.

There was, however, a point of contention around district lines—the question of whether students were placed based on race or neighborhood configuration. Faculty frequently reiterated that Mexican students who spoke English were placed in a separate school, not because of race, but because of district lines. Students' convenience and safety on their way to school relied on proximity and ease of transportation. From Lemon

Grove to Westminster, a purported interest in safeguarding educational "accessibility" disguised explicit segregationist practices.

> "Because we have many children qualified, but they are not within the district of this other school up there. They live around Hoover School, all around Fifth and Jackson, and around that neighborhood, many of them…Transportation difficulty [is one of the reasons]."
> —unnamed faculty witness

Bringing a map of districts to the court, Marcus cross-examined neighborhood families, inquiring whether they had any white neighbors and whether their children attended school in a different district. One parent from Santa Ana, while attempting to get her child to switch to the better-quality Franklin school, confronted faculty advisor Mr. Reinhard. Reinhard rejected her request, based on the fact that she did not live in that district:

> "I told him that if I didn't live in that district, why was it that other children that didn't live in that district were going to Franklin School? Then he changed the subject, and [illegible] in plain English that he wanted to know why the Mexi[illegible] were so dirty, and I answered him back…that if he could tell me why some of the people, why the Oklahoma people were dirty and filthy [illegible] have seen them, then I could tell him why some of our Mexican people were like that.
>
> "He says…' Because we are not all classified the same."

Evidently, schools did not separate children based on language proficiency or neighborhood lines. These arguments were not based on pragmatic conditions, like students' ability to perform amongst their peers, but rooted in purely racist rhetoric that justified school segregation. Old-stock Americans drew from their own assumptions and prejudices in developing and executing the state's educational policy. However, these strategies had grown overused, allowing LULAC the benefit of hindsight, and greater

flexibility in their selection of witness testimony that would subvert the Respondent's reasoning.

Another dispositive element to the Petitioner's success involved counteracting stereotypes surrounding Mexican students. Much like Alberto Alvarez, Sylvia Mendez testified on the stand as an exceptional student with respect to her English proficiency. "I had to testify because [school authorities] said we didn't speak English."[27] Marcus then brought forth an expert social scientist affiliated with the school administration whose thesis work investigated the intellectual capacity of Mexican children, which served as the foundation behind rationalizing Americanization programs. *See* Image 1.0. When scrutinizing the scholar's research at the time, Marcus identified several inconsistencies in common stereotypes and assumptions surrounding Mexican descendants.

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[27] Ruiz, V. L. "South by Southwest: Mexican Americans and Segregated Schooling, 1900–1950." *Magazine of history* 15, no. 2 (2001): 26.

Q Didn't you determine from your investigation there was no such thing as a Mexican race, but only a Mexican nationality?

A I believe that was the statement, yes, sir.

Q That was the statement?

A That was an assumption.

Q And you believe that the Mexican race, as you have so designated them, is inferior to the white race, don't you?

A No, I don't.

Q Well, as a matter of personal hygiene, you believe that, don't you?

A Those that I have come in contact with in the school are, yes.

Q All of those in the school you have come in contact with, as to every single one of them you believe that; is that true?

A No, sir.

Image

Two integral elements of the Mendez segregation case are demonstrated through these last two witness testimonies. First, Marcus's deference to scientific expertise responded directly to pervasive intellectual studies at the time. In the early 20th century, Mexican schools functioned as a site for sociological inquiry—where intelligence testing, literacy testing, and other thinly veiled pedological devices served the ulterior purpose of confirming Mexican students' intellectual deficiencies.[28] Due to demographic realities along the Southwest, Southern California schools became a critical region of study, justifying segregational practices towards Mexican students across the country. All that

[28] David Torres-Rouff. "Becoming Mexican: Segregated Schools and Social Scientists in Southern California, 1913–1946." *Southern California Quarterly 94, no. 1* (2012): 91–127.

considered, the motivation behind LULAC's heightened investment in the Mendez case, situated in the regional hotbed for eugenicist research and Mexican Americanization schools, becomes apparent. The trajectory of school segregational practices—how Mexican students were to be assessed, and how these results would inform educational policymakers in the future—relied upon the *Mendez* ruling. Marcus understood the rhetorical impact of utilizing recent sociological findings, which subverted racialized conceptions of Mexican inferiority, to flip the eugenicist script.

Second, there is the integral role Sylvia Mendez played when testifying before the court. Much like Roberto Alvarez in the Lemon Grove case back in 1931, nine-year-old Sylvia stood before the court to represent her local community. The context behind their selections was strikingly similar: both demonstrated English proficiency, and both held positive records in school. Ultimately, both came to the stand to counteract commonplace racial assumptions of their race. While thousands of Mexican students across the Southwest took various IQ tests, with social scientists probing empirical justifiers for school segregation, Sylvia and Roberto fell under a similar level of scrutiny. Their temperament and communication skills contributed to the trajectory of education for Mexican students across the state.

Conclusion

By the year 1928, Americanization programs had become so prevalent that southern California alone housed sixty-four schools almost entirely compromised of Mexican and Mexican American students.[29] Amidst this wave of segregation, the *Mendez*

[29] *Id.*

and *Alvarez* decisions emerged as noteworthy exceptions, as they represented a strategic move to secure a narrow win for Mexican Americans. Capitalizing on ambiguous standards for Whiteness was born out of strategic necessity at the time. Nevertheless, these cases marked a significant turning point on the path towards equal opportunity education. Of the two, the *Mendez* case carried several longstanding implications, as Thurgood Marshall, coauthor of the NAACP brief submitted to the *Mendez* court for consideration, later recycled his arguments in the landmark case *Brown v. Board.*

This thesis endeavors to demonstrate that discussions surrounding the legal status of Mexican students, including whether they would be considered "white" under the letter of Californian law, were inherently linked to an experimental phase of educational reassessment and reform. It was no coincidence that the rise of sociological studies examining Mexican students corresponded with the emergence of stronger national origin minority communities, whose successful acculturation into American society forced policymakers to reconsider their narrow definitions of national membership. As a result, historic practices that allowed for segregation based solely on biased assumptions and prejudices were no longer defensible under judicial scrutiny. The activism of local communities sparked a wave of civic action and collective mobilization, with legal civil rights organizations such as LULAC and the NAACP spearheading desegregation efforts through legal channels first in California and then across the nation.

Alongside this experimental process of educational assessment and reform, the social and academic performances of students themselves were also under constant evaluation. Whether it was through testimony given in a legal setting or through separate intelligence assessments in standardized tests, the trajectory of a student's education was

impacted by their social and academic performances. Thus, this Thesis seeks to explore the complex interplay between legal, sociological, and educational initiatives that shaped the experiences of national-origin minority students, like Mexican Americans, during transformative periods in American history.

Chapter 2

Bilingual-Bicultural Education

> "One need not speak only English to learn English well; one need not adopt only Anglo-Saxon attitudes to be a full and contributing citizen of the United States, much less a complete person. By recognizing the need of young children for physical, emotional, and intellectual development–as well as language development—a program fulfills its responsibility for children and does society at large a great favor: the program produces bilingual children with multicultural understanding and tolerance." — June Sale, GAC Child Development Program Chair (1976).

Bilingual education predates "English-Only" instruction laws and the influx of American nativism in the 19th and 20th centuries. Even with the rise of Americanization practices, four of the seven colonial languages (English, Spanish, French, and German) "have maintained uninterrupted continuity on American soil." Spanish in particular continues to preserve its prevalence throughout the Wes[illegible]uthwest.[30] Although familiar with diverse demographic realities, California educational programs in the post-World War II period struggled to adjust to the ebb and flow of new migration patterns. The advent of multicultural education in place of pure Americanization initiatives during the 1960s to 1970s opened the doorway for innovative teaching strategies, as schools grew to accommodate new waves of immigrant children. But bilingual-bicultural education posed unique challenges for the growing pool of racially integrated, multicultural school districts. To guide this process, local immigrant activism supplied the lifeline for constructing a bilingual-bicultural curriculum. Furthermore, transparent communication and collaboration between immigrant families, schools, and legislatures proved paramount in the upkeep of bilingual education—from the conception of bilingual education

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[30] *Toward Meaningful and Equal Educational Opportunity : Report of Public Hearings on Bilingual-Bicultural Education*. Sacramento: The Subcommittee, 1976. 39

mandates to their gradual deterioration. Throughout this entire process, immigrant students and children born of immigrant parents confronted routine assessments of their performance, the results of which often determined the quality of education they could receive.

Lau v. Nichols

In 1971, Mrs. Kam Wai Lau visited the Chinatown Neighborhood Legal Services office to seek advice for a conflict with her landlord. Offhandedly, she remarked on her son Kinney's academic struggles in school, piquing the curiosity of her public interest attorney, Edward Steinman, who had been closely monitoring similar complaints towards San Francisco schools at the time.[31] School desegregation litigation posed a unique point of tension in San Francisco Chinese communities, as it became difficult to consolidate the cultural and linguistic demands of Chinese students with racial integration. Many parents expressed concern that, without specialized attention or sufficient bilingual program support, the needs of their children could not be satisfied.[32] Come 1972, the Laus would join 13 other Chinese parents—representing the 2,856 limited English proficient Chinese students—for a lawsuit against the San Francisco school board. Two years later, the Supreme Court resolved *Lau v. Nichols* in a resounding unanimous decision, affirming the right to bilingual education.

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[31] Moran, Rachel. *The Untold Story of Lau v. Nichols*, University of California at Berkeley, 2009. 281-3.
[32] *Id.*

United States Supreme Court

LAU v. NICHOLS, (1974)

No. 72-6520

Argued: December 10, 1973 Decided: January 21, 1974

The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program and thus violates 601 of the Civil Rights Act of 1964, which bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance," and the implementing regulations of the Department of Health, Education, and Welfare. Pp. 565-569.

483 F.2d 791, reversed and remanded.

Snapshot of decision, Lau v. Nichols, 414 U.S. 563

In her article, 'The Untold Story of Lau v. Nichols,' Moran noted the strain school desegregation posed for cultural preservation within San Francisco's Chinatown, fanning the flames of the Chinese Six Compa[illegible] intervention in a desegregation case just a few months after Steinman filed *Lau*.[33] Local [illegible]ent advocacy against integrated schooling demonstrated a unique challenge to equal oppor[illegible]ducation within multicultural communities, faced with a diverse set of educational needs. Another point of tension Moran touched upon, which merits further investigation, was the intersection between Latino and Chinese educational interests during *Lau's* litigation process. In personal communication with Moran, Steinman revealed he made a conscious choice to petition "solely on behalf of Chinese-speaking students." Recounting his conversation with an attorney from the Latino Mission District, Steinman expressed how the lawsuit's success hinged on it being "*Lau*, not *Lopez*."[34] Asian American academic success and 'model minority' narratives, Steinman argued, curried additional favor from the courts. When dissecting the rhetorical tactics immigrant communities employed while advocating for children

[33] *Id.* Note that the school board's resolution to demands for bilingual education required busing students outside of Chinatown for afterschool programs, initiating a series of parent protests and boycotts.
[34] *Id.*

in courtrooms, it is worth noting the recurring use of exemplary students as witnesses. During desegregation litigation, both Alvarez and Mendez similarly functioned as model minority students, placed on the stand, or pedestal, to garner sympathy and *prove* they were deserving of local academic resources. Their testimonies represented the first of many assessments immigrant students confronted. In order to secure their education, minority students had to find a workaround for common stereotypes. In this sense, discourse around immigrant educational rights was not only racialized but highly meritocratic.

Lau v. Nichols decreed there could not be "equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education." Justice Douglas further emphasized that schools should "act in the face of changing social and linguistic patterns" and "take affirmative steps to rectify the language deficiency." However, these patterns of linguistic and social needs varied between students and across regions. The ambiguous nature of this guideline posed a unique challenge for educational institutions and future courts to contend with, as they questioned what baseline requirement schools should take to comply with the Civil Rights Act of 1967. What kind of bilingual services would be required? Who would be responsible for monitoring these services? And finally, what were the ruling's practical applications in a multicultural community?

The Emergence of Bilingual-Bicultural Education

The late 1970s demarcated shifting strategies towards educating a multicultural nation, as the State Department assigned publicly-subsidized child care or development programs for "non-English" and "limited English" speaking residents, supplementing the additional wave of

federal and privately-funded aid.[35] The origin of bilingual-bicultural education in California rode the wave of the Civil Rights movement. This movement was sustained in large part by Mexican American activists, educators, and parents. They demanded equal educational opportunities for their children who, much like Chinese students in *Lau*, were often limited by their English language proficiency and cultural difference. Lau ultimately revealed how California's system of instruction violated the rights of non-English speaking students. To remedy this issue, bilingual-bicultural programs were created, providing students with instruction in both English and their native language, while also incorporating their cultural backgrounds and experiences into the curriculum.

These programs experimented with child assessment strategies and unique curricula for early education in particular. With 14.4% of children enrolled in state-funded childcare or developmental programs speaking limited to no English, the need for comprehensive review proved urgent.[36] In 1976 the Administration of Children, Youth, and Families (ACYF) initiated a Bilingual/Multicultural Curriculum Development Effort. Based on extensive developmental psychology research and local school collaboration, the research effort set the foundation for new multicultural teaching models. Teachers, faculty, staff, and other concerned community members pitched their evaluations of these programs in a series of public hearings hosted by the California Association of Bilingual Educators (CABE). Spanish and English public service announcements publicized their testimonies in the Los Angeles and Bay Areas, then further disseminated the hearing's contents through newspapers, radio, and television broadcasts statewide.[37] These hearings showcased increased awareness for both bicultural and bilingual needs in education

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[35] Developmental Needs of Young Bilingual Children : a Report to the Governor and the Superintendent of Public Instruction. Sacramento, CA: The Committee, 1982. 5.
[36] The Governor's Advisory Committee (GAC) on Child Development Programs, *To Submit Testimony and Attend Hearings on the Bilingual/Bicultural Needs of Young Children* (Flyer), 1982.
[37] GAC Report, 3.

and, more importantly, demonstrated the role local community members played in developing multicultural education policy statewide.

> "At age 3 our children are still very young. We have tried our best to teach them at home, but there are many things about American culture that parents do not know. Children need to learn about the American culture in a way that makes them still respect their own parents and their own culture." – Kwong You Kwok, from the San Francisco Hearing.

The bilingual educator convention and hearings served to inform the Governor's Advisory Committee (GAC) on child development programs. On May 12, 1982, the Committee sent a report to Governor Edmund Brown and the Superintendent of Public Instruction Wilson Riles, listing additional strategies to meet the cultural and linguistic needs of national origin minority students. Crucial to their analysis was the increased demand for bilingual teachers. The report cited testimonials supporting a gradual adjustment into English-only curriculums, made possible by flexible bilingual instruction during students' formative developmental years. They produced overwhelming evidence that *English* development in children became "enhanced through continued development of their *Native* language."[38] Moreover, the multicultural learning environment fostered a sense of emotional comfort for children, allowing them to freely express themselves around their peers. This approach aimed to empower students, allowing them to maintain and develop their native language and cultural identity while acquiring English language proficiency and access to the mainstream curriculum.

> "Many mothers of children in the program agree that their children were so timid in a different nursery school that the child could not be left. In this bilingual program, however, the children felt more at ease and able to learn." — Charlene Rice, Anaheim parent.

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[38] GAC Report, 16-20.

These program initiatives departed from historic practices of Americanization or full cultural submersion—often known as "sink or swim" classrooms—that would thrust limited English proficient students in English-speaking classrooms without any attempt to provide special attention.[39] In contrast, bilingual education reoriented learning towards multicultural acceptance. Ultimately, what differentiated bilingual education from its predecessors was its intentional design to validate students' cultural identities, since patterns of poor academic performance often persisted amongst minority groups who expressed "ambivalence towards the majority cultural group and insecurity about one's own language and culture."[40] For instance, a 1976 Government report on Bilingual-Bicultural education followed the bilingual projects of French/English-Canadian students in St. Lambert and Culver City throughout elementary school. Their findings demonstrated that pupils' feelings toward French people—from the backdrop of French-Catholic and English-Protestant tension in these regions—were positive. Students considered themselves both French and English-Canadian. Students also demonstrated greater social flexibility across cultures without sacrificing their original heritage.[41] The report cited similar positive findings in a 1975 San Francisco Chinese bilingual program evaluation, where students in bilingual programs were "one full grade year ahead of those in ESL programs," or programs that only included English, despite having lived in the United States for a "substantially" shorter period of time.[42]

During the 1982 CABE hearing panels, community speakers placed special emphasis on consistent monitoring of bilingual programs: ensuring hiring patterns aligned with the linguistic

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[39] *Schooling and Language Minority Students : a Theoretical Framework*. Los Angeles, Calif: Evaluation, Dissemination, and Assessment Center, California State University, Los Angeles, 1981. 53.
[40] *Id* 35.
[41] *Toward Meaningful and Equal Educational Opportunity : Report of Public Hearings on Bilingual-Bicultural Education*. Sacramento: The Subcommittee, 1976. 68, 107.
[42] *Id.*

needs of local children and directing funds to produce multicultural instructional materials. To supply the increased demand for bilingual staff, keynote speakers emphasized how several programs even involved the community's parents, some of whom would later become hired by schools. The report pitched additional internship programs for new bilingual recruits as well as incorporating multicultural training centers for existing staff.[43] However, these changes in curriculum were not met without logistical concerns. Consolidating the educational needs of English students with what local programs could afford proved to be tenuous. In committee hearings, program representatives from rural communities expressed concern about the shortage of qualified bilingual teachers.[44] One school district in Kern County faced a lawsuit for laying off experienced teachers in place of those with Spanish-speaking skills.[45] Another lawsuit in 1987 illuminated the controversy of classroom placement, as the State Board of Education amended their policy to reclassify students in a bilingual program regardless of standardized test results.[46] Comprehensive assessment of both staff and students matriculated across schools. How these experimental programs were to be structured to accommodate multicultural student bodies became a recurring issue for years to come.

California Proposition 227, and the Decline of Bilingual Educa

Passed by California voters in 1998, Proposition 227 supplanted bilingual programs in public schools with English-only programs after a series of anti-immigrant measures had been sweeping

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[43] GAC Report, 16-20.
[44] GAC Report, 16-20.
[45] Alexander v. Bd. of Trs., 139 Cal. App. 3d 567, 188 Cal. Rptr. 705, 1983 Cal. App. LEXIS 1352 (Court of Appeal of California, Fifth Appellate District January 28, 1983).
[46] Jimenez v. Honig, 188 Cal. App. 3d 1034, 233 Cal. Rptr. 817, 1987 Cal. App. LEXIS 1298 (Court of Appeal of California, Third Appellate District January 20, 1987).

across the state since 1994. Its passage sparked debate over bilingual education and English immersion programs, as the efficacy of language programs over the past decades was called into question. From the 1970s to the 1980s, bilingual education was the required default. Following Proposition 227's passage, programs for English language learners experienced greater variety between districts, as schools were essentially left to their own devices, causing the number of children in bilingual education to fall dramatically. "Proposition 227 offers only a 'sink or swim' model, not a bona fide instructional program," stated the San Francisco Superintendent of Schools Bill Rojas, who actively worked to oppose the measure alongside the rest of the San Francisco School Board.[47] With 70% of constituents voting for the measure, the racially charged implications of Proposition 227 generated great concern amongst diasporic communities.

On the other hand, discourse around Proposition 227 reinvigorated discussion around the efficacy of bilingual educational progr[illegible]some of which did not reflect the level of success CABE or the GAC case studies projecte[illegible]he Urban Institute recorded cases of "stigmatization" towards English learning students, who felt the assessment and special education process marginalized students. Many subjects lamented the difficulty of ability tests, which obstructed them from joining other students in the standard curriculum. Designating new immigrants to the proper language program, then properly monitoring their progress through several ability tests, proved to be a difficult task for school administrators.[48] This task grew all the more challenging when confronting students who spoke uncommon languages.

> "It's holding them down, it's capping them. Students are going through more criteria and more testing than the mainstream student and I would challenge anybody…if we had to give those same tests to mainstream students at our school…I see it as one more hurdle that adds to students who need one less

[47] Passage of proposition 227 slap in face to immigrants. 1998. *Oakland Post*, Jun 03, 1998.
[48] Gershberg, Danenberg, Sanchez, *Beyond Bilingual Education: New Immigrants and Public Schools*, The Urban Institute, 2004. 100-102.

needs of local children and directing funds to produce multicultural instructional materials. To supply the increased demand for bilingual staff, keynote speakers emphasized how several programs even involved the community's parents, some of whom would later become hired by schools. The report pitched additional internship programs for new bilingual recruits as well as incorporating multicultural training centers for existing staff.[43] However, these changes in curriculum were not met without logistical concerns. Consolidating the educational needs of English students with what local programs could afford proved to be tenuous. In committee hearings, program representatives from rural communities expressed concern about the shortage of qualified bilingual teachers.[44] One school district in Kern County faced a lawsuit for laying off experienced teachers in place of those with Spanish-speaking skills.[45] Another lawsuit in 1987 illuminated the controversy of classroom placement, as the State Board of Education amended their policy to reclassify students in a bilingual program regardless of standardized test results.[46] Comprehensive assessment of both staff and students matriculated across schools. How these experimental programs were to be structured to accommodate multicultural student bodies became a recurring issue for years to come.

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[48] Gershberg, Danenberg, Sanchez, *Beyond Bilingual Education: New Immigrants and Public Schools*, The Urban Institute, 2004. 100-102.

> hurdle. We've added six inches to the wall and said, 'Ok well now climb over this…" — unnamed teacher, Fresno.

Vestiges of concern around school segregation resurfaced in ESL program development. Students felt that if not between schools, they were being segregated within schools. Insufficient resources for bilingual education, in some cases, arguably generated more harm than good in terms of facilitating environments for free cultural expression. Upon interview, faculty members noted parental attempts at opting out of the bilingual program, in some cases even reporting their children could speak English, after overhearing rumors that the local bilingual program was not well supported.[49]

> "...It got so that I didn't even ask where the [bilingual learning] classes were. They were in the trailer or out in the field. That's always where they are, and it is true—that's what happens to newly arrived immigrants." —unnamed teacher, Fresno.

> "They're very separate. I'm going to be honest with you. At our school, our ESL program seems to be very separate from our regular program. They don't take classes together, really. Except for P.E., they don't interact much." —unnamed teacher, San Francisco.

Several interviews with school staff produced a consensus regarding the lack of information afforded to parents before making program placement decisions. Teachers asked parents to pitch in whether they wanted their children in bilingual or English submersion classrooms. In turn, parents often asked teachers for their opinion. In some cases, local policy or personal inclinations prohibited teachers from revealing extensive details of their student's progress. While many faculty members within bilingual education opposed Proposition 227, barriers to keeping parents informed on their child's development in the program made it difficult for staff to garner support for its maintenance. Without crucial components of feedback, convincing parents to sign a

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[49] *Id.*

petition proved difficult. This disrupted the collaboration between immigrant parents and local schools that demarcated earlier experiments for multicultural education.

> "Every year they have to sign a reelection form so they can continue in the [bilingual] program. We just say, 'this is so your child continues in the program—sign it." —unnamed elementary school teacher, San Diego

Conclusion

Regions with large diasporic populations had an advantage in sustaining bilingual-bicultural educational programs compared to less-connected counterparts. These areas tend to have more transparent and interconnected relationships between immigrant communities, school administrators, and local government. Interdependent program development facilitated the necessary elements to preserve students' legal rights, reap the benefits of bilingual mandates, and sustain multicultural environments in education. Conversely, regions, where bilingual programs struggled to take off, were often the same regions where these programs quickly regressed into familiar English Submersion environments. This highlights the significance of community engagement in shaping educational policies designed to benefit non-native English-speaking students.

The strength of these connections played a crucial role in influencing the persistence of bilingual programs under several points of anti-immigrant pushback, such as Proposition 227, which effectively eliminated most bilingual education programs across California. Despite this, regions with strong community ties were better equipped to resist such challenges, ensuring the continued provision of bilingual education for their students.

Throughout this process, immigrant students confronted constant periods of assessment. In *Lau*, it was a more subtle racialized assessment. During bilingual program development, it

was placement tests. Finally, after Proposition 227, students were evaluated based on their ability to thrive, even while several bilingual education programs were interrupted, dropping them back into English Submersion curriculums and leaving them to "sink or swim." These challenges highlight the fickleness of equal education for non-native English speakers, as well as the integral role community engagement plays in advocating for and sustaining bilingual-bicultural educational programs.

Chapter 3

Undocumented Students

"There is both power and danger in the use of courts. There is power in wielding a potent weapon, one which is symbolically powerful and can have severe consequences. But there is the danger of losing control of the weapon, of initiating a process that cannot be stopped. One risks being stigmatized for appealing to this form of power..."

- Sally Engle Merry, *Getting Justice and Getting Even*

In July 1994, California Proposition 187, or "The Save Our State Initiative," qualified for inclusion on the November ballot. Claiming to protect its constituents from "economic hardship" and "criminal conduct," Proposition 187 excluded undocumented immigrants from healthcare, education, and other public amenities.[50] Up to 400,000 undocumented students experienced the brunt of its impact.[51] Undocumented students already attending California public schools and universities feared exposing themselves and their families to school administrators who, under the new Education Code, would be compelled to report anyone "determined" to be, or at least under "reasonable suspicion" of being, undocumented to the INS.[52] Prospective students hesitated to enroll at all, with systematic verification checks mandated for every school district. The official docket acknowledged how the Proposition posed a direct challenge to *Plyler v. Doe (1981)*, affirming that a sweeping ban against K-12 education "would not be effective" so long as

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[50] See *Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. Initiative Statute. 1994*, p. 92 (Text of Proposed Law). "The People of California find and declare as follows: That they have suffered and are suffering economic hardship caused by the presence of illegal aliens in this state. That they have suffered personal injury and damage caused by the criminal conduct of illegal aliens in this state. That they have a right to the protection of their government from any person entering this country unlawfully."

[51] Pyle, Amy and Paul Feldman. "CALIFORNIA ELECTIONS PROPOSITION 187 Investigation of Walkouts Urged Initiative's Backers Say School Officials Encouraged Students to Leave Classes and Protest. Administrators Deny the Charge, and the Measure's Opponents Say its Passage would Lead to an Increase in Crime." Los Angeles Times (Pre-1997 Fulltext), Nov 05, 1994.

[52] *Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. Initiative Statute. 1994*, at 92.

Plyler remained strong law. But *Plyler's* reach did not extend to public colleges and universities. Neither did it hinder the "chilling effect" verification and reporting requirements wrought on school attendance across all levels of education.[53] Leading advocates of Proposition 187 like Governor Pete Wilson, whose anti-immigrant stance bolstered his reelection, must have anticipated the barrage of lawsuits and political backlash to come. Still, they proceeded, putting to the test the constitutional muster of *Plyler*, of undocumented immigrants' Fourteenth Amendment rights, in accordance with the collective will of a clear majority of their Californian constituency. On November 1994, voters approved Proposition 187 by a whopping 59% majority.

Background: Plyler v. Doe

This case specifically addresses the issue of public amenities within the educational system. The Texas Education Agency appeared in several district court hearings, arguing a compelling interest for "fiscal integrity" and protection against undocumented arrivals. Soon afterward, the statute barring undocumented students from public education arose. In 1982, a 5-4 Supreme Court majority struck down the Texas statute banning undocumented children from enrollment in local school districts. The court held that the Fourteenth Amendment extended to anyone "subject to the laws of a State," citizen *vel non*. Undocumented children carried no culpability in their parents' conduct or legal status, nor did their admittance impose sufficient strain on state resources. Instead, greater governmental interest leaned towards preserving public education, maintaining "political and cultural heritage" as well as "the fabric of our society."

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[53] *Id* at 51.

Categorical deprivation of educational needs for such students violated the Equal Protection Clause. Justice Brennan's majority opinion expanded on this point, contending the statute not only created a subclass of students but contradicted the Court's reasoning in *Wong Wing v. United States*, 163 U.S. 228 (1896). In *Wing*, the Court afforded equal protection to "any person within its [the State's] jurisdiction." Brennan clarified this to include anyone, "citizen or stranger…within the State's territorial perimeter." Furthermore, children exist within a separate *legal* perimeter from adults. Unable to extricate themselves from state jurisdiction, and devoid of any "individual responsibility or wrongdoing," children should not bear the brunt of legal repercussions. Hindering their education, Brennan reasoned, would only deny them social mobility, including the chance to contribute towards national progress. Although the Court never considered public education a "constitutional right," it nevertheless acknowledged education's societal significance. In fact, the preservation of democracy itself was tied to public schools' instillment of fundamental values. See *Ambach v. Norwick,* 441 U.S. 68 (1979).

The moderate stance in Plyler[illegible]s to deem a misguided social policy unconstitutional. First, the state of Texas failed to prove a significant burden due to illegal immigration, namely educational resources. Evidence suggested the primary objective for illegal immigration was employment, not free education. Targeted prohibition against undocumented students, as opposed to employment prohibition, was misdirected policy. Moreover, nothing in the record supported the claim "that exclusion of undocumented children is likely to improve the overall quality of education." Second, the statute falsely justified targetted prohibition of undocumented children, "less likely than other children to remain within the boundaries of the State." Again insufficient evidence supported this finding. Instead, the facts suggested disablement amongst undocumented children, who would remain "in this country indefinitely," with some becoming

"lawful residents or citizens." While this approach succeeded in solidifying students' educational interests in the postsecondary level, it still left much ambiguity to the ruling's reach to postsecondary education. Furthermore, future restrictionist litigators would prod at the decision's moderate approach in the construction of Proposition 187 a decade later.

Advocacy in Adversity: The Political Landscape

A first-year law student at the University of California, Davis, Alfred Hernandez considered the social ramifications of Proposition 187, namely its problematic application. Personal experiences growing up in Bakersfield left little to the imagination. Despite coming from a family whose roots could be traced back to California long before the state's formation, the legality of Hernandez's presence had repeatedly been called into question:

> "I have personally been called a "beaner," "spik," "wetback" and other names that I cannot include in this writing. I have taken my mother to the social security office where the case worker's first question for us was whether we spoke English. People have asked me what part of Mexico I am from. My reply is always, "The California part."[54]

Hernandez recognized how pervasive monitoring of potential undocumented immigrants would be sanctioned under a low threshold of "reasonable suspicion." All educators, physicians, or social workers needed to do, Hernandez noted, was determine "whether or not a person is legal based on such factors as color of skin, surname, accented speech, and appearance of poverty."[55] Despite the discriminatory climate Proposition 187 would clearly yield, half the Asian population voted for the measure, followed by 23% of voting Hispanics.[56] Yet when interviewing Hispanics who voted in favor of the measure, Hernandez met none who knew the extent of its

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[54] Hernandez, *The Economic, Social, and Political Impacts of Proposition 187*, 1995, p. 183.
[55] *Id.*
[56] *Id.*

implementation - the comprehensive verification checks, the ambiguous "reasonable suspicion" standard, and certainly not their racialized application. Regardless of legal status, various minorities would experience a resurgence of invasive scrutiny within presumably protected spaces.

> "I have to believe that this support will quickly wane when everyone with the last name of Lee, Chung, Gonzalez, or Hernandez will be required to verify their legal residency status."[57]

The foreseeable consequences of Proposition 187 did not go unnoticed. Just as Hernandez predicted, Proposition 187 triggered a revival of political activism. He described a "sleeping giant" of voting power amongst the Hispanic community, its brewing frustration under Proposition 187, and the potential for unprecedented levels of statewide civic participation.

This prediction was not unsubstantiated. Around the beginning of the voting season, grass-roots Latino groups in Los Angeles organized a protest march that drew 70,000 marchers downtown waving Mexican and Salvadoran flags.[58] On November 4, four days before the measure passed, 10,000 high school students in Southern California similarly took to the streets, Mexican flags in hand.

> "We are doing this because Mexicans have to stand up for themselves…Maybe if they see us, people will realize that this is what will happen if the proposition passes because then we will all be in the streets instead of school." - Leonardo Hernandez, 16-year old Montebello High School student.[59]

Washington Post Staff Writer, Roberto Suro, noted how despite virtually all student marches being peaceful, local television stations oversaturated coverage with one instance of Latino teenagers throwing rocks at cars and shopping center windows near

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[57] Id. at 184.
[58] Suro, *California Teenagers Rise Up: Latino Marches Add Unpredictable Element as Proposition 187 Vote Nears*, The Washington Post, 1994.
[59] Id.

Compton. Images of their arrest continued to circulate throughout the two-day duration of student demonstrations.

Even peaceful student protestors fell subject to intense criticism. The following Friday, sponsors of Proposition 187 organized a news conference outside Los Angeles Unified School District headquarters, where Republican Representative Dana Rohrabacher criticized school faculty collaborating with, or declining to enact disciplinary action on, student protestors. "We are outraged and we believe that taxpayers should be outraged that dollars for education…seem to be channeled into a political campaign," Rohrabacher stated. Los Angeles District Attorney Gil Garcetti received swarms of complaints from proposition sponsors, urging Garcetti to investigate allegations against teachers and administrators who "assisted angry students to plan and execute walkouts."[60]

> "The truth is that crime prevention means keeping kids in school…The law enforcement community is standing shoulder to shoulder saying, 'For us as professionals, Proposition 187 is not the way to go." - DA Garcetti

Peaceful protest did little to assuage the incendiary nature of the proposed measures to stem illegal immigration. Backed into their political corners, critics reinterpreted students' protests against Proposition 187 as disruptive, criminal acts rather than the legitimate expression of their opinion that the measure unduly compromised their access to education. Even sympathizers cautioned against freely waving foreign flags, possibly exacerbating the political climate by agitating Californian voters further. Co-author of Proposition 187 Alan C. Nelson, who served as INS Commissioner during the *Plyler*

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[60] Pyle, Amy and Paul Feldman. "CALIFORNIA ELECTIONS PROPOSITION 187 Investigation of Walkouts Urged Initiative's Backers Say School Officials Encouraged Students to Leave Classes and Protest. Administrators Deny the Charge, and the Measure's Opponents Say its Passage would Lead to an Increase in Crime." Los Angeles Times (Pre-1997 Fulltext), Nov 05, 1994.

decision, jumped at the opportunity to sway conservative voters. "People can draw their own conclusions," Nelson remarked, "but I would say that's un-American."[61]

Nascent waves of political activism manifested in a series of lawsuits against the Proposition, seeking to dismantle its unconstitutional provisions. Just like their Texan predecessors before *Plyler,* Californian student protestors gained enough traction to mobilize support for lawsuits against anti-immigrant educational provisions and institutions. Legal civil rights organizations, from MALDEF to LULAC, collaborated with organized activists, bringing their zealous representation to local courts.

Legal Challenges, Nelson & Wilson

Soon after the initiative passed, a series of constitutional challenges against Proposition 187 was filed. Amongst them, *League of United Latin American Citizens (LULAC) v. Wilson* quickly climbed its way to the 9th Circuit court. The class action represented all persons subject to the measure's verification checks, reporting requirements, and exclusion from public amenities.[62] Legal challenges arose for each section of the measure, several targeted the central issue of preemption or state encroachment on federal jurisdiction. The INA designated pervasive regulation of entry, residence, and other immigration matters to federal authority. States could only go so far as to formulate immigration policy, like the provision of public benefits and services, within acceptable boundaries federal authority set forth. Entitled "Exclusion of Illegal Aliens from Public Elementary and Secondary Schools," the provision's violation of the

[61] Suro, *California Teenagers Rise Up: Latino Marches Add Unpredictable Element as Proposition 187 Vote Nears,* The Washington Post, 1994.
[62] *League of United Latin American Citizens v. Wilson,* No. CV 94-7569 MRP to CV 94-7571 MRP.

Equal Protection Clause, as well as its encroachment over federal authority, was stark even at first glance.[63] Representing plaintiffs "Children Who Want an Education", LULAC highlighted the measure's blatant disregard for the *Plyler* precedent as well as its gross policy overreach, specifically under the reporting requirements and cooperation with immigrant enforcement. Not only did denying children access to an education entail nefarious consequences, but reporting the legal status of *parents* to circumvent *children's* education proved wholly unnecessary. The district court echoed LULAC's position, declaring that the Equal Protection Clause precluded Section 8's exclusive measures. Evidently, the court identified policy overreach in more ways than one.

Denying undocumented students access to a postsecondary education under Section 8, however, was an issue involving greater nuance. Claims that undocumented students were entitled to access to an education at the public college and university level could only be extended so far without the solid constitutional backing *Plyler* offered for K-12 education. While the court had no issue circumventing reporting requirements which, like reporting requirements in other sections, trespassed into federal jurisdiction, complicating factors preserved other elements of Section 8. Because unlike the simple nature of reporting requirements intended only for immigration regulation, verification requirements or the denial of admission based on legal status did not encroach on INA territory. It did not regulate who "may and may not remain" in the country.[64] It only served to designate public amenities. Historically, this purpose alone did not overstep federal immigration authority. And so the district court extracted INA reporting requirements from Section 8, leaving all other elements intact. I believe the divide

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[63] *Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. Initiative Statute. 1994*, p. 92
[64] *League of United Latin American Citizens v. Wilson*, No. CV 94-7569 MRP to CV 94-7571 MRP.

between the district court's treatment of Sections 7 and 8, of secondary and postsecondary education, reflected a more pervasive policy issue in connection with educational rights. Article 9 of the California Constitution long recognized education as a fundamental right. Moreover, the *Plyler* decision acknowledged the reduced culpability of undocumented children brought to the country. But when these dependents age out of the minimal amount of grace this legal system affords, their "right" to education falters.

Complications involving legal procedure left the class action Wilson lawsuit largely unresolved. Eighteen months later, however, the anti-immigrant Alan C. Nelson Foundation of Americans for Responsible Immigration ("ACNFARI") brought the issue forth again. Seeking to preserve the measure they took part in drafting and sponsoring, the ACNFARI expressed their "strong interest in the viability and constitutionality" of the initiative.[65] While the official ballot docket, coauthored by other legal analysts, acknowledged the measure's contradiction to *Plyler*, the measure's authors, ACNFARI, did not endorse this same view. On several occasions, Nelson announced how Proposition 187's ban on free public education was "sound policy."

> "The problem of educating illegal aliens at taxpayers' expense relates to illegal aliens already here and those who may come in the future. It is a sobering thought that any child born today anywhere in the world can obtain 12 years of education in the U.S. at taxpayers' expense simply by getting here."[66]

It is striking to see how Nelson - a seasoned attorney and immigration policy consultant, promoted as INS Commissioner the same year *Plyler* came into effect - took part in writing a major provision that so grossly contradicted the Supreme Court's authority. One possible explanation for this is that (while unsuccessful in doing so) he conceived

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[65] *Id.*

[66] Nelson, *Proposition 187: An Important Approach to Prevent Illegal Immigration*, Alan C. Nelson.

Proposition 187 as an attempt to sidestep (as opposed to defying) *Plyler*. During the verification and reporting process, the Proposition granted children a 45-to-90-day leeway period, allowing them to continue their education in the states before settling elsewhere.[67] I contend that Nelson based the measure's constitutional muster on this small window of flexibility. Rather than explicitly deny undocumented children their education, Nelson did so under gentler terms. Instead of depriving children of an education, Nelson assured Californians, education would simply be resituated back in the child's home country.[68] Nowhere, however, in the writing of the official docket is there any suggestion that such a transfer would take place, let alone any procedural details ensuring its effectiveness.

Most concerningly, Nelson's careful phrasing of "sound policy" struck at the heart of *Plyler's* great weakness: its moderate, policy-based approach. One of the dispositive factors against the Texas exclusionary statute was its "bad policy." For one, the state could not prove that, overall, the educational system would be unduly burdened by admitting undocumented students. Furthermore, the state did not present sufficient evidence to demonstrate that its statute would successfully deter immigration. Nelson made a strategic decision to frame Proposition 187 in a more pragmatic light.

> "Consider classroom size, teacher attention, costs, lack of facil... equipment, and other factors where illegal immigrants negative... mpact educational opportunities for legal residents…A November 199... tudy showed that the costs of educating illegal aliens in Los Angeles County alone total $1 billion per year. This money could be used to upgrade and improve our existing educational system which has slipped so badly in recent years."

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[67] *Illegal Aliens. Ineligibility for Public Services. Verification and Reporting. Initiative Statute. 1994*, p. 92
[68] *Id* at 9.

Never mind that education is a fundamental right, or that Article I Section 20 of the California Constitution recognizes identical property rights for immigrants and citizens, or how educational restrictions towards specific groups must be examined with heightened scrutiny, the "sound policy" pitch won over several Californian voters during a time of economic insecurity.

In terms of constitutional strength, however, Proposition 187 stood on flimsy ground. Unlike its predecessor, *LULAC v. Wilson*, *LULAC v. Nelson* found itself quickly struck down by the district court. In fact, the district court didn't offer any additional explanation for their dismissal, releasing a swift, one-line reply to ACNFARI's appeal:

> "Having considered the motion and supporting papers, the Court denies the Motion."[69]

Even as the case progressed to the 9th Circuit Court, additional barriers led to its eventual downfall. This time, however, the court allowed more room for explanation. First, there was the issue of timeliness. In order to solidify their case, ACNFARI would have had to respond with a swift-action lawsuit. Waiting 18 months after the issue had been deliberated in four previous cases discredited their position, weighing heavily against the court's intervention. To make matters worse, ANCFARI provided no substantial explanation in either its written brief or the oral argument as to why they postponed the matter (aside from a reference made to the "stagnate nature of the case" suggesting "inadequate" representation). Evidently, ACNFARI ran out of material long before arriving at the stand. Second, they couldn't prove why an additional lawsuit needed to be filed, when Wilson had already provided vigorous representation on their behalf. During the month of November alone, Wilson opposed LULAC's motions. He

[69] *League of United Latin American Citizens v. Alan c. Nelson Foundation of Americans for Responsible Immigration.*

filed complaints and challenged their position at every turn - from opposing LULAC's preliminary injunction, all the way to filing a motion for partial summary judgment in an unsuccessful, last-ditch effort. Despite asserting a "strong interest" to defend the constitutionality of their proposition, ACNFARI remained silent on the legal front for over an entire year. The Nelson case offered too little material much too late.

Nelson had experienced much less trouble pitching Proposition 187 to the Californian constituency than he did in his attempts at preserving it. When directly questioned on the integrity of his proposition under *Plyler v. Doe*, Nelson admitted the proposition would have to find some working accommodation with *Plyler*, or the Supreme Court would have to overturn *Plyler* altogether.[70] I believe Nelson's intentions were clear. From the beginning of his career as INS Commissioner, throughout the drafting process of Proposition 187, Nelson sought to weaken *Plyler*, instigating a series of lawsuits challenging its existence. By prodding at *Plyler's* weaknesses, and proclaiming outright that it could be overturned, I contend that Nelson designed Proposition 187 as a potential trigger law, hoping the legal battlefield would eventually extend to the national level.

Conclusion

Proposition 187 did not generate the deterrence its advocates hoped to achieve. In his campaign to secure the Proposition's passage, Wilson had hoped to disincentivize undocumented immigrants from migrating or staying in California by cutting public

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[70] Nelson, *Proposition 187: An Important Approach to Prevent Illegal Immigration*, Alan C. Nelson.

benefits. Instead, California witnessed a surge of public protests, followed by successful lawsuits from legal civil rights organizations, chipping away at the measure with great efficiency and success. On March 17th, 1998, Judge Pfaelzer released a final decision that Section 1 and Sections 4 to 9 were preempted by federal law. Later, on July 29, 1999, MALDEF and other civil rights organizations signed an agreement with the state, effectively dismantling the provision in its entirety.

The recurring confluence of civic engagement and legal action in immigration law contradicted the "sleeping giant" narrative. MALDEF illustrated this fact through its consistent legal activism and networking attempts since the 1960s. Such organized opposition, especially within the legal realm, did not materialize without decades of cultivation. At this point, some additional (interpretive) context behind Hernandez's writing becomes crucial. A call to action, the article urged young Hispanics who weren't yet active to recognize their potential as prospective members of the Californian constituency; the sociopolitical significance of Proposition 187 demanded them to do so. Nevertheless, the legacy of immigrant rights organizations like MALDEF and LULAC demonstrated that the giant was never asleep. It had been in motion for decades before *Plyler* came into effect, then oversaw *Plyler's* preservation decades after. MALDEF was to the youth of Texas as LULAC was to the children of California.

But even if Proposition 187 could not withstand constitutional analysis, its exclusionary rationale proved far more potent. Lessons learned from the Texas statute helped inform Nelson's strategic framing of Proposition 187 a decade later. If prodding at *Plyler's* weaknesses wasn't enough, then by the very least the provision could stoke the flames of restrictionist sentiment. "By passing Proposition 187," Nelson stressed,

"California voters sent a strong message to political leaders that they want to stop illegal immigration and provide a strong catalyst for reasonable and responsible change, not only in California but throughout the United States."[71] Since *Plyler*, anti-immigrant educational policy grew more nuanced, molding against the contentions of its opponent. The legal battlefield continued to stretch and shift.

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[71] Nelson, *Proposition 187: An Important Approach to Prevent Illegal Immigration*, Alan C. Nelson.

Conclusion

Throughout the state, national-origin minority communities have a rich history of cultural and social contributions. However, despite these longstanding legacies, these communities have struggled to establish a strong relationship with educational institutions. This tenuous relationship has been perpetuated well into the turn of the 21st century alongside the ebb and flow of immigration politics. Although desegregation efforts in the 1930s to 1950s were successful by the letter of the law, socioeconomic barriers, and practical considerations hindered the full implementation of equal opportunity education. For example, even if Mexican Americans enjoyed the privileges of their Caucasian status for a brief period, neighborhood configurations and district lines continued to guide school allotment for many years to come. To this day, disparities in educational access and outcomes are shared by various minority communities, particularly those of Hispanic and Asian descent, as ongoing debates around immigration policy and anti-immigrant sentiment generate an environment of uncertainty. Existing inequities are rooted in the same factors witnessed across the 20th century—residential segregation, lack of educational resources, as well as linguistic and cultural barriers.

Efforts to implement bilingual-bicultural educational programs also faced significant challenges. Many promising models were cut short after the passage of Proposition 227, which effectively prohibited bilingual education unless local districts or counties could secure a waiver from the State Board of Education. Affirming how the "English language is the national public language" of the United States, then noting how young "immigrant children can easily acquire full fluency in a new language if they are

heavily exposed to that language in the classroom at an early age," Proposition 227 reflected an opposing legacy to that of national origin minority initiatives. English-only initiatives swept past psychological research supporting language proficiency in bilingual learning platforms. They looked past the barriers "sink-or-swim" learning methods posed to students' phonological awareness and reading comprehension in early learning environments. Crucially, they utilized data evaluating student performance against students themselves, stifling the potential for successful bilingual initiatives.

Proposition 227 cemented a bulk of its rationale off of criticizing the experimental nature of language programs, stating its "failure over the past two decades" was demonstrated by "high drop-out rates and low English literacy levels." While students' academic performance in literacy tests was designed to guide the process of forming bilingual-bicultural education, results drawn from less-established diasporic communities were utilized to dismantle bilingual programs across the state. Perhaps the waiver option gave some local leeway, but it was a lengthy process that succeeded in areas only with well-established networks of bilingual-bicultural education supporters. Meanwhile, the rest of the state dwindled into English-only immersion. Even by the time Proposition 227 was repealed in 2016, the bilingual-bicultural education movement did not carry the same level of momentum as it did during the 70s. Government funds allotted to bilingual-bicultural programs were notably lacking, and the brand of systemic change that the state was willing to undertake did not reach the resounding levels experienced fifty years prior.

The issue of undocumented students in education remains a highly contentious topic left unresolved in California, despite the Plyler decision, which provided a level of

protection for undocumented students during the state's anti-immigrant wave in the 1990s. However, the Plyler decision's policy-neutral language on immigration left much room for interpretation, contributing to significant challenges in times of economic hardship. Additionally, the decision's ambiguous language created confusion and unanswered questions regarding the availability of postsecondary educational opportunities for undocumented students.

Unfortunately, the obstacles to undocumented students seeking postsecondary education were further compounded in 1996, when the Illegal Immigration Reform and Responsibility Act was enacted. This legislation obstructed undocumented students from accessing educational benefits, making it incredibly difficult for them to pursue higher education. Under this law, undocumented students are required to pay at least triple the tuition of other residents, effectively pricing them out of college or university education. This policy has significantly limited the educational opportunities available to undocumented students, reinforcing the cycle of poverty and inequity that characterizes their experience in the United States.

Despite the ongoing struggles faced by national-origin minority communities in California, there are many ongoing advocacy efforts to alleviate these issues. The state has seen a resurgence of grassroots movements and initiatives aimed at promoting equity in education, especially in the wake of Proposition 227's repeal. These efforts have included community-based programs that provide academic support and resources to underserved students, as well as advocacy groups that work to promote policies advancing educational equity. The state has taken some steps toward supporting undocumented students, such as allowing them to apply for financial aid through the

California Dream Act and providing some feasible pathways to gaining permanent residency down the line. Additionally, some school districts have implemented innovative strategies to address the needs of diverse student populations, such as dual-language immersion programs and culturally responsive teaching practices. Those initiatives represent a significant step towards addressing the longstanding inequities that have plagued national-origin minority communities in California's education system.