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## THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY ACT OF 1996:

### POISON PILLS FOR LEGAL IMMIGRANTS

Meredith Barton & Deborah M. Chandler

*I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed, and teeming with people of all kinds living in harmony and piece, a city with free ports that hummer with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and heart to get here. That's how I saw it and see it still.<sup>1</sup>*

Former president Ronald Reagan's vision of America as this shining city ended Thursday, August 23, 1996, when President Bill Clinton signed his name to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),<sup>2</sup> considered the most far-reaching welfare reform package in history. Although the Congressional Budget Office (CBO) estimates that the federal government will save over \$57 billion between fiscal year 1997 and fiscal year 2002, this welfare reform package profoundly impacts immigrants, particularly legal immigrants.<sup>3</sup> Overall 44% of federal savings (approximately \$23.8 billion) stems from denying public assistance benefits to legal immigrants.<sup>4</sup>

This new welfare legislation directly conflicts with United States immigration policies. The federal government's need to cut costs, the politicians' finding immigrants as an easy target on whom to place the burden of cutting costs, as well as the desire to deter unwanted immigrants will ultimately undermine this country's ability to remain effectively competitive in the international market for valuable

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<sup>1</sup> President Ronald Reagan, Farewell Address to the Nation (Jan. 11, 1989).

<sup>2</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-93, 110 Stat. 2105 (1996), (Hereinafter PRWOA).

<sup>3</sup> *Impact of Immigration Provisions of Welfare Reform*, Nat'l Conference of State Legislatures, Feb. 5, 1997 <<http://www.ncsl.org/statefed/welfare/impact.htm>>.

<sup>4</sup> *Id.*

immigrants. Therefore, it is necessary to examine the effects of the Act and the impacts upon both immigrants and non-immigrants. In order to assess the far-reaching implications of the immigration provisions on America's future, the motivation behind these changes must be explored. Primarily, this paper focuses upon the differential treatment that PRWORA affords to citizens versus non-citizens as well as the long-term effects on U.S. immigration policies.

## I. Effects of the Act on Non-Immigrant Citizens

PRWORA mandates that block grants will be appropriated to the states to implement Temporary Assistance for Families with Needy Children (TANF), Supplemental Security Income (SSI) and Food Stamps. These funds total \$82.8 billion over the next five years.<sup>5</sup> The Act also describes three new areas of restriction to aid: work requirements, family make up requirements, and prohibited behavior restrictions.

### A. *The Work Requirement*

Under the new reform package, Temporary Assistance for Needy Families (TANF), a capped block grant for states, replaced Aid to Families with Dependent Children (AFDC) (individual entitlements).<sup>6</sup> TANF requires that a parent or caretaker who receives this assistance be engaged in work within two years of receiving aid.<sup>7</sup> Enforcement of this provision is the state's responsibility. In fact, states' receipt of funds is dependent on the percentage of aid recipients who are working in a given year.<sup>8</sup> Recipients face penalties for refusing to work, including reduction in amount of aid provided or even termination of benefits.<sup>9</sup> The language of the Act is mandatory. If the work requirement is not met, the state *shall* implement one of these penalties.<sup>10</sup> Parallel requirements apply to Food Stamps, with similar deadlines and penalties.<sup>11</sup>

### B. *The Family Make up Requirements for Eligibility*

This aid is for families with minor children. PRWORA specifically defines "family" to accommodate instances of divorce and custody arrangements, and to eliminate abuses, such as having more children to increase one's amount of aid.

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<sup>5</sup> Ann Morse, *Welfare Reform is the Law – Now What?*, Immigrant Policy Project, Aug. 22, 1996 <<http://www.ncsl.org/statefed/s19611.htm#nowwhat>>.

<sup>6</sup> *Id.*

<sup>7</sup> Pub. L. No. 104-193, § 402(a)(1)(A)(ii), 110 Stat. at 2113.

<sup>8</sup> *Id.* at § 407(a)(1), 110 Stat. at 2129.

<sup>9</sup> *Id.* at § 407(e)(1)(A), (B), 110 Stat. at 2133.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at § 815, 110 Stat. at 2315.

First, the definition of a "family" eligible under this section includes a minor child living with a custodial parent or caretaker relative, or a pregnant woman.<sup>12</sup> A state must deny assistance to any family that has been receiving federal aid for five years unless they are covered under an exception which allows children to receive, among other things, emergency aid and medical treatment.<sup>13</sup> Furthermore, if individuals receiving aid are not working within two years, they will be penalized. Possible penalties include reduced aid, or termination of benefits.<sup>14</sup> No additional aid will be granted to families for children born after they have begun receiving aid.<sup>15</sup>

There will be no assistance for teenage parents who are not attending high school or equivalency training,<sup>16</sup> or who are not living in adult supervised settings.<sup>17</sup> Minors who run away from home, or are absent from home for a significant period, are ineligible to receive any aid.<sup>18</sup> In addition, families must assign certain support rights to the state.<sup>19</sup> For example, the state may acquire the right to pursue child support on behalf of a family receiving aid under this section.<sup>20</sup> Because of a new emphasis on child support obligations, families must participate in establishing paternity,<sup>21</sup> and states must form a plan to establish paternity and to enforce child support obligations.<sup>22</sup> The Food Stamps program has been amended to add the possibility of denying food stamps to those who are obligated by law, court order or other mechanism to support a minor and refuse to do so.<sup>23</sup>

### *C. Prohibited Behavior Restrictions to Aid*

Certain individuals are barred from receiving aid because of their past behavior. It was a concern that if states had separate welfare rolls, food stamp rolls and SSI eligible lists, individuals would seek to defraud the system by attempting to qualify in more than one state and in effect, receive double aid. To combat this, a person who has fraudulently represented residence in order to gain this double aid is barred from receiving any aid for ten years.<sup>24</sup> The same is true for both SSI<sup>25</sup> and food

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<sup>12</sup> *Id.* at § 408(a)(1)(A), 110 Stat. at 2134.

<sup>13</sup> *Id.* at § 408(a)(1)(B), 110 Stat. at 2134-35.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at § 408(a)(4), 110 Stat. at 2135-36.

<sup>17</sup> *Id.* at § 408(a)(5), 110 Stat. at 2136.

<sup>18</sup> *Id.* at § 408(a)(10)(A), 110 Stat. at 2139.

<sup>19</sup> *Id.* at § 408(a), 110 Stat. at 2135.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at § 301, 110 Stat. at 2199.

<sup>22</sup> *Supra*, note 20.

<sup>23</sup> *Id.* at § 823, 110 Stat. at 2322.

<sup>24</sup> *Id.* at § 401(a), 110 Stat. at 2261.

stamps.<sup>26</sup> Similarly, if fugitive felons or parole violators attempt to get onto welfare rolls or qualify for SSI<sup>27</sup> or Food Stamps,<sup>28</sup> they will not only be denied assistance,<sup>29</sup> but because cooperation with local law enforcement is mandated in the Act, there is a better chance of apprehending such individuals.<sup>30</sup>

## II. Effects on Legal Immigrants

The provisions specifically affecting legal immigrants are fewer than those affecting non-immigrant citizens, as listed above, but the immigrant provisions are more sweeping as discussed below. In fact, one commentator thinks that these changes will "redefine the status of legal aliens in our society."<sup>31</sup> When benefits are denied, needy immigrants will necessarily rely on private aid, or suffer deprivation of the barest necessities, hunger or homelessness. Such circumstances may, in turn, cause some to turn to panhandling, squatting or even crime. This additional negative exposure could easily turn public opinion against immigrants even further so that as a whole, their status in society will be redefined at a lower echelon.

### A. Changes to Eligibility for Federal Aid

Legal immigrants are part of a group that is termed "qualified aliens" under PRWORA. This group includes those granted asylum, refugees and other immigrants who are defined by other statutory provisions.<sup>32</sup> Section 401 states that non-qualified aliens, those not included in the statutory definition as just listed, are ineligible for *all* federal aid except certain emergent and short-term disaster care, immunizations, housing programs, various aid programs for children, and other aid, such as soup kitchens.<sup>33</sup> Section 402 applies to qualified aliens denying them eligibility for federal aid as well. The language is clear that qualified aliens shall "not [be] eligible for any specific Federal Program."<sup>34</sup> However, there are exceptions to this broad denial, as well as a transition provision.

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<sup>25</sup> *Id.* at § 201, 110 Stat. 2185.

<sup>26</sup> *Id.* at § 820, 110 Stat. at 2321.

<sup>27</sup> *Id.* at § 202, 110 Stat. at 2185.

<sup>28</sup> *Id.* at § 821, 110 Stat. at 2321.

<sup>29</sup> *Id.* at § 408(a)(9), 110 Stat. at 2139.

<sup>30</sup> *Id.*

<sup>31</sup> Michael Fix & Wendy Zimmerman, *When Should Immigrants Receive Public Benefits?* The Urban Institute (visited Feb. 9, 1997) <<https://www.urban.org/welfare/chap15.htm>>.

<sup>32</sup> *Supra*, note 7 at § 431(b), 110 Stat. at 2274.

<sup>33</sup> *Id.* at § 401(b), 110 Stat. at 2261.

<sup>34</sup> *Id.* at § 402(a)(1), 110 Stat. at 2264; "Specific federal programs" is defined in paragraph three of this section as supplemental security income (SSI) under the Social Security Act, and Food Stamps.

The general prohibition on federal aid does not apply to immigrants who have been admitted into the United States legally, and who have worked ten years in this country without receiving any aid or assistance during that time.<sup>35</sup> Nor does this section apply to veterans or those on active duty in the military, their spouses or children.<sup>36</sup> These exceptions seem to ring hollow since the groups described in this section are unlikely to require any aid. There is a transition portion included in the general prohibition which requires redetermination of eligibility for SSI and Food Stamps. A redetermination must be performed within one year of the welfare reform enactment to insure that only those qualified under the new Act will continue to receive benefits.<sup>37</sup> The time period before redetermination is not a specific amount of time for any individual currently receiving aid, but nonetheless is termed a transition period.

In addition to the general prohibition above, Section 402 gives states the authority to deny TANF aid and Medicaid under the social services block grant and Medicaid.<sup>38</sup> As previously stated, states can apply their own rules of eligibility to state services and some federal programs as long as the eligibility rules are stricter than the Act.<sup>39</sup> More than half of the states will provide continued assistance to current immigrants (resident non-citizens as of August 23, 1996) whereas four states, Alabama, Kentucky, South Carolina and Wyoming, plan to suspend TANF funds.<sup>40</sup> Of the majority states, Maryland, Nebraska, Utah and Vermont will also provide assistance to new immigrants.<sup>41</sup> In cases where a legal immigrant was receiving assistance under any of these programs, and the state chose to deny eligibility, a safety net allowed the legal immigrants to continue to receive these benefits until January 1, 1997.<sup>42</sup>

Whereas immigration information was once held confidential by certain organizations, PRWORA requires reporting to the government under Title IV of the Social Security Act.<sup>43</sup> Thus, agencies administering TANF, SSI or housing assistance are required to report regularly to the

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<sup>35</sup> *Id.* at § 402(a)(2)(B), 110 Stat. 2262.

<sup>36</sup> *Id.* at § 402(a)(2)(C), 110 Stat. at 2262.

<sup>37</sup> *Id.* at § 402(a)(2)(D), 110 Stat. at 2262-63.

<sup>38</sup> *Id.* at § 402(b)(1), 110 Stat. at 2264.

<sup>39</sup> *Id.* at § 402(b)(2)(D), 110 Stat. at 2265.

<sup>40</sup> *Welfare Immigration Provisions Side by Side*, Immigrant Policy Project at the Nat'l Conference of State Legislatures, Aug. 1995, revised Sept. 17, 1996 (visited Feb. 9, 1997) <<http://www.ncsl.org/statefed/welf-web.html>>.

<sup>41</sup> *Id.*; *See Summary of INS/White House Materials Issued Aug./Sept. 1996*, Immigrant Policy Project at the Nat'l Conference of State Legislatures, revised Sept. 19, 1996 (visited Feb. 9, 1997) <<http://www.ncsi.org/statefed/welfare/insdocs.htm>>; *See also, Alien Eligibility for Access to Public Benefits*, INS Fact Sheet, Oct. 10, 1996 <<http://www.usdoj.gov/ins/hqopp/welfare/factsfin.htm>>.

<sup>42</sup> *Supra*, note 5; *see* INS Fact Sheet, *supra* note 41.

<sup>43</sup> *Supra* note 40; *see* INS Fact Sheet, *supra* note 41.

U.S. Immigration and Naturalization Service (INS) the names and addresses of known illegal immigrants. Furthermore, INS must issue regulations within eighteen months for verifying that applicants are qualified immigrants and eligible for public benefits.<sup>44</sup> In addition, states must comply with this verification system and cannot withhold information to the INS regarding the immigration status of an immigrant in the U.S.

### B. *Changes Dealing with Sponsors and Affidavits of Support*

Under the Immigration and Nationalization Act, all immigrants who are allowed to enter this country must have a sponsor who signs an affidavit of support for the immigrant.<sup>45</sup> In the past, this has served as a largely symbolic promise by the sponsor to support the immigrant. The income of the sponsor was deemed to be income of the immigrant when applications for aid were considered. If the sponsor did not follow through with the promises included in the affidavit, there was no recourse; the affidavits were not enforceable. The Act significantly changes this area.

The income and resources of sponsors (and their spouses) who execute affidavits of support shall be considered available to those immigrants in determining program eligibility.<sup>46</sup> This availability continues until either the immigrant attains citizenship or works forty qualifying quarters (i.e. ten years) in the U.S. Furthermore, qualifying requires that the immigrant must not receive any federal means-tested public assistance during those quarters.<sup>47</sup> Federal regulations for quarter verification are pending. However, states have the option to deem income and resources of sponsors for their own public assistance programs. In addition, the Act makes the affidavit an enforceable contract that may be enforced in any court, state or federal.<sup>48</sup> This section also authorizes states to implement the same rules to its programs.<sup>49</sup>

Prior to this Act, legal immigrants were treated much like natural-born citizens by the federal government. They paid taxes, were allowed to serve in the armed forces, and could even be drafted. Federal aid in the form of welfare was also available to them, just as to citizens. But the passage of the Act marked a bright distinction in these two groups in the area of federal aid. Legal immigrants still pay taxes, may serve in the

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<sup>44</sup> *Id.*

<sup>45</sup> *Supra*, note 5 (discussing PRWORA).

<sup>46</sup> *Supra* note 7 at § 421(b), 110 Stat 2270; *see also supra*, note 5 (discussing PRWORA).

<sup>47</sup> *Supra* note 40 (discussing PRWORA).

<sup>48</sup> *Supra*, note 7 at § 423(a), 110 Stat. at 2271-72.

<sup>49</sup> *Id.* at § 422, 110 Stat. at 2271.

armed forces and can be drafted, but their eligibility for federal aid has been generally denied.

Section 400 of Title IV of the Act sets out a national policy with regard to immigrants.<sup>50</sup> It states in two places that public benefits should not be an incentive for individuals to want to enter the United States.<sup>51</sup> This section outlines the policy towards immigrants which was already in place prior to PRWORA being signed into law. The references in this section state that aliens have been applying for and receiving public benefits at higher rates<sup>52</sup> and that current rules for eligibility as well as unenforceable immigrants' sponsorship agreements have proved ineffective in keeping immigrants from requiring federal aid.<sup>53</sup> Finally, the Act indicates that the United States has a compelling interest in changing the problems with eligibility and sponsorship contracts so that immigrants be self-reliant.<sup>54</sup> But these policy justifications should be taken at face value in light of the political picture surrounding this issue. Some may even say the reasons given by politicians are "disingenuous."<sup>55</sup> These policy justifications will be explored in an attempt to determine why the Act contains such differential treatment for these two groups.

### *C. New Obligations Brought About by Act*

This significant restructuring of the welfare system does not come without cost. Ultimately, these costs are based upon the continuum of responsibility for public assistance as shared by federal, state and local governments as well as nonprofit organizations. Shifting the burden as enumerated in the immigrant provisions within this Act will seriously disadvantage immigrants, particularly legal immigrants. The most significant obligation incurred under the Act is the shifting of public assistance costs from the federal government to the states and other entities. According to INS, there were an estimated 10.525 million legal permanent residents or immigrants in the United States as of April 1996.<sup>56</sup> Approximately 5.776 million were eligible to apply for U.S. citizenship.<sup>57</sup> A disproportionate number of all U.S. legal residents live in

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<sup>50</sup> *Id.* at § 400, 110 Stat. at 2260.

<sup>51</sup> *Id.* at § 400(2)(b)(6), 110 Stat. at 2260.

<sup>52</sup> *Id.* at § 400(3), 110 Stat. at 2260.

<sup>53</sup> *Id.* at § 400(4), 110 Stat. at 2260.

<sup>54</sup> *Id.* at § 400(5), 100 Stat. at 2260.

<sup>55</sup> *Welfare Reform: An Analysis of the Issues*, The Urban Institute (Isabel V. Sawhill ed.) <<http://www.urban.org/welfare/overview.htm>>.

<sup>56</sup> *INS State Estimates on Naturalization Eligibility*, Nov. 20, 1996 (last modified Nov. 27, 1996) <<http://www.usdoj.gov/ins/hqopp/welfare/lprest.html>> (describing is a margin of error of +/- 350,000 in the calculation of legal residents and +/- 325,000 for those eligible for citizenship).

<sup>57</sup> *Id.*

California and New York respectively.<sup>58</sup> Other leading states of residence are Texas, Florida, New Jersey, Illinois and Massachusetts.<sup>59</sup> Three out of every four immigrants live in these seven states.<sup>60</sup> Therefore, these states will bear a disproportionately large strain on their respective budgets and resources.

According to the UCLA Center for Health Policy Research, approximately 830,000 immigrants in California will lose government-funded health insurance.<sup>61</sup> Ninety-two thousand elderly immigrants on Medi-Cal, the California state-funded health insurance, are expected to lose medical coverage once the provisions of the welfare bill take effect.<sup>62</sup> Suspension of federal health care benefits forces states to scramble for additional funds to compensate and provide for basic medical care for its residents. Loss of benefits also imposes a financial hardship on hospitals which suffer big losses without payment from Medicaid, or state equivalents of the Medicaid program.<sup>63</sup> There is the added problem of numerous people going without preventive health care. This translates into increases in communicable diseases such as tuberculosis, greater problems for U.S. citizen babies born to immigrant mothers, and greater strain on emergency rooms.<sup>64</sup> In addition, community resources, such as food banks, and other nonprofit community groups will shoulder the burden. The National Immigration Forum (NIF) estimates that \$20 billion in costs for public benefits to immigrants will shift from the federal level to state and local providers over the next five years.<sup>65</sup>

### III. WHY LEGAL IMMIGRANTS ARE DISTINGUISHED FROM CITIZENS IN THE WELFARE REFORM ACT

In exploring the rationale behind the distinction between natural-born citizens and non-citizens, or "qualified citizens," as established in the Act, it is necessary to examine the underlying objectives of welfare which, according to PRWORA has motivated this recent, insistent push for

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<sup>58</sup> *Id.* at Table 1. (As of April 1996, 35% of all legal immigrants reside in California; 14% in New York, 8% in both Texas and Florida, 4% in New Jersey and Illinois, and 3% in Massachusetts. These state estimates are based on information collected in the 1990 Census by the U.S. Census Bureau and on immigration and naturalization data collected by INS.).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Bert Eljera, *Poisons Pill: Proposed welfare bill denies benefits to non-citizens*, Asian Week, Aug. 2, 1996 <<http://www.asianweek.com/080296/PoisonPill080296.html>>.

<sup>62</sup> *Id.*

<sup>63</sup> Robert A. Rosenblatt, *Budget Would Restore Some Immigrant Aid*, L.A. Times, Feb. 7, 1997, available in 1997 WL 2180112.

<sup>64</sup> *Supra*, note 61.

<sup>65</sup> Brendan Maturen, *The U.S. and Them: Cutting Federal Benefits to Legal Immigrants*, 48 WASH. U. J. URB. & CONTEMP. L. 315, 338-39 (Summer 1995).

welfare reform. These motivations include personal responsibility, deficit reduction, and public appeal (i.e., political gain). Careful scrutiny of each individual motivating factor will facilitate a clearer understanding as to how immigrants, specifically legal entrants, have been singled out under the welfare reform provisions.

#### *A. Personal Responsibility as Motivation for Welfare Reform*

Many argue that the motivation for welfare reform is to change the system and what it represents, rather than totally eliminate it, in order to assist those in need without fostering dependence and to promote personal responsibility in general. This being true, there now seems to be different standards for citizens and non-citizens that previously had not been in place. For citizens on welfare, the wish is to wean them off of any aid dependency, rendering them completely self-sufficient without need for assistance and in a position to positively affect society. For those not currently on welfare, the goal of welfare is to serve as a safety net for Americans who fall on hard times and may need temporary assistance to get back on their feet.

However, this attitude of Christian charity combined with self-reliance does not necessarily extend to non-citizens. There are three categories of immigrants to consider in determining whether PRWORA similarly fosters the goals of self-sufficiency and personal responsibility for these non-citizens. First, there are those who do not qualify for the exceptions under this Act. These immigrants had until January 1, 1997, or until they were "redetermined," or reassessed before they were cut off from aid.<sup>66</sup> A second category of immigrants are those who fall under the exception because arguably, they are self-reliant and will not become dependent on federal aid programs. Finally, those who enter the country legally and would otherwise be deemed "qualified aliens," are ineligible for any aid, if at all, for five years.

The Act contains a provision which takes into account sponsors' earnings in determining eligibility.<sup>67</sup> This provision essentially works as a general ban on government assistance for most legal immigrants. On its face, these provisions seem to require greater self-reliance and faster results of our immigrants already residing in this country. As for newly arriving immigrants, self-sufficiency is a prerequisite, not a future requirement. The underlying policy of the immigrant provisions of PRWORA is to remove aid as an incentive for those wishing to come to the U.S. Implementing these provisions will certainly effectuate this goal. It is clear that immigrants are held to a higher standard of personal responsibility. This may be justified. If we ask citizens to make a sacrifice

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<sup>66</sup> *Supra* note 5.

<sup>67</sup> *Supra* note 5.

or to face risks for the national collective good, then should not immigrants contribute at least as much, if not more, in order to reap the benefits of residing in this country? Yet, immigrants bear many of the same burdens as citizens, such as paying taxes.

The only critical difference is where they, as immigrants, were born. Or is it? The difficulty in answering these questions demonstrates the inadequacy of this particular objective in singularly providing a logical explanation for the discriminatory treatment of immigrants under PRWORA. So it is necessary to look to other motivating factors.

### *B. Deficit Reduction as Motivation for Welfare Reform*

If deficit reduction is the sole motivation for welfare reform, then this objective provides a clear reason for the distinction between treatment of citizens and non-citizens under the Act. The immigrant provisions will cut approximately half a million immigrants from the rolls of SSI, saving \$283 billion a year.<sup>68</sup> Reducing eligibility of immigrants for food stamps will save \$600 million per year in the first year.<sup>69</sup> These are large numbers and although these are ballpark figures, the impact is obvious.<sup>70</sup> After signing the Act, President Clinton voiced his concerns about the provisions, stating that "[t]his provision has nothing to do with welfare reform. It is simply a budgetary saving measure. . . ." <sup>71</sup> But in this day and age of deficit reducing sentiment, how can those numbers not be appealing enough to rationalize? The action suggests that aliens are easy victims in furtherance of this ulterior motive and more importantly, a reason why PRWORA treats immigrants so differently than they have been treated in the past. But are the figures alone sufficient to motivate Congress to make these changes? It is possible that there were additional reasons contributing to Congressional approval of this legislation, as discussed below.

### *C. Public Opinion (Political Gain) as Motivation for Welfare Reform*

Congress would not have made these harsh changes regarding immigrants, if the public had not allowed it to happen. Most Americans have seen television news shows featuring stories of persons abusing welfare. Certainly as memorable are other news stories of the rising number of aliens crossing the into the U.S. illegally and the futility of

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<sup>68</sup> Federal Cost Estimate for Welfare and Medicaid Reform Act, Pub. L. No. 104-193 at 1941 (1996) *reprinted in* U.S.S.C.A.N. 2253, 2580.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* (Due to administrative record keeping, which includes citizenship inquiries on applications that may be outdated or inaccurate because of time, the figures in this report, which were based on administrative records are not exact.)

<sup>71</sup> Bill Clinton, Presidential News Conference, July 31, 1996, *reprinted in* The Congressional Quarterly Weekly Review, 2216, 2217 (1996).

INS efforts to stop it. True, these are illegal immigrants. But the public does not really make a distinction among non-citizens.

California recently passed Proposition 187 which denies benefits to all aliens, including public education and emergency medical care.<sup>72</sup> Given that California is traditionally considered to be liberal regarding social policy, this could be seen as what led the way for the Congressional enactment. Since Californians did not mind this drastic measure, Washington could have embraced the opportunity to follow suit, saving billions of dollars along the way.

Evidence of increasing anti-immigrant sentiment is the national movement to establish English as the official national language. Some groups are blaming immigrants for taking jobs from Americans or labeling immigrants as the source of economic problems. Public opinion has been embracing such anti-immigrant sentiment. Politicians were constantly polling, keenly aware of public opinion and its impact on an election year. Feeling the pressure to produce, Congress rode the wave of negative public sentiment towards immigrants. Public sentiment demanding welfare reform merged with public anti-immigrant sentiment.

#### *D. Reconciling Welfare Reform with Immigration Policies*

However, in spite of growing anti-immigrant sentiment and numerous stringent immigration laws, millions continue to emigrate to the United States. "In 1992, the U.S. accepted 700,000 newcomers. In fact, immigration generates 39% of the total population in this country . . . In 1971-91, 35.2% of legal immigrants came from Asia, 23.7% from Mexico alone, 13.1% from Caribbean countries, 12.0% from Europe and 11.1% from Central and South America."<sup>73</sup> Of those legal permanent residents who entered this country, 75% entered on family-based admissions.<sup>74</sup> While immigrants may use welfare more than non-immigrants, the difference is not profoundly significant. "The 1990 Census reveals that 4.7% of immigrants receive[d] welfare (cash transfers defined as AFDC, SSI or state general assistance) versus 4.2% of [non-immigrants]."<sup>75</sup> Furthermore, approximately 11 million immigrants work, earning at least \$240 billion annually and paying more than \$90 billion in taxes.<sup>76</sup> That's a lot more than the estimated \$5 billion immigrants receive on welfare.<sup>77</sup> There seems to be a lot of ignorance about the contributions

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<sup>72</sup> CA Prop. 187, 1994 Cal. Legis. Serv. (West).

<sup>73</sup> Stanislav Kelman, "New People": *Influence of Immigration on American Economy*, Apr. 18, 1993 <<http://www.cbu.edu/~skelman/Immigration.html>>.

<sup>74</sup> Michael Fix and Jeffrey S. Passel, *Perspective on Immigration: Who's on the Dole? It's Not Illegal Immigrants*, L.A. TIMES, Aug. 3, 1994, at B7.

<sup>75</sup> *Id.*

<sup>76</sup> *Supra*, note 73.

<sup>77</sup> *Supra*, note 65.

that legal immigrants make to American. In addition to contributing more in taxes than received in welfare benefits, they may "creat[e] jobs through entrepreneurial activity, produc[e] income equal to their share of the population, and [are] self-employed at a higher rate than citizens."<sup>78</sup> In fact, 7.2% of immigrants are self-employed, compared to 7% of natural-born citizens.<sup>79</sup>

Although the overall motivation behind welfare reform is to reduce federal spending, the motivation behind suspending welfare benefits to immigrants seems to be to deter unwanted immigrants -- those expected to live off of public assistance.<sup>80</sup> However, manipulating public assistance benefits is not the most effective way to effect immigration policies. While reducing immigration levels may result in an increase in immigrant quality, screening policies are a more effective means of attracting valuable immigrants and thereby remaining competitive in the international market for migrants.<sup>81</sup>

The key lies in an admissions policy which selects on the basis of skills. Economic immigrants, including skilled workers, business immigrants and their dependents, constituted approximately 35% of Canada's total entrants during the 1980s whereas employment-preference immigrants constituted 5.7% , or 388,476 of total U.S. entrants from 1985-1991.<sup>82</sup> Instead, U.S. immigration policies are strongly based on family reunification principles. From 1985-1991, approximately 2.9 million immigrants were admitted under family reunification programs of the total 6.5 million entrants as compared to the remaining 3 million or so who were admitted as refugees or asylees.<sup>83</sup>

#### IV. CONCLUSION

This paper does not suggest that the United States abandon its pro-family commitments. Rather, part of the solution may lie in a more balanced admissions approach: allowing for more immigrants who can contribute to the economy so that the numbers more closely resemble those admitted under family preferences. Another part of the solution is to clearly distinguish legal aliens from illegal aliens. While there is the need for generous immigration policies for legal entrants, there is a parallel

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<sup>78</sup> *Supra*, note 74.

<sup>79</sup> *Supra*, note 68.

<sup>80</sup> F.H. Buckley, *The Political Economy of Immigration Policies*, 16 INT'L REV. L. & ECON. 81 (1996).

<sup>81</sup> *Id.* at 90.

<sup>82</sup> *Id.* at 94.

<sup>83</sup> *Id.* at 92-93.

need to counter illegal immigration.<sup>84</sup> A number of politicians and policy makers are demanding "tougher border enforcement, quicker deportation of criminal aliens, harsher penalties for persons over staying their visas, a streamlined Immigration and Naturalization Service bureaucracy and market-oriented solutions."<sup>85</sup>

Yet, the impact of the recent welfare reform legislation, PRWORA, is most acutely felt by legal immigrants. Since signing the welfare bill into law, President Clinton has promised to alleviate the undue burdens that the welfare bill places on legal immigrants. In his State of the Union address, President Clinton asserted,

We passed welfare reform. All of you know I believe we were right to do it. But no one can walk out of this chamber with a clear conscience unless you are prepared to finish the job. And we must join together to do something else, too, something both Republican and Democratic governors have asked us to do: to restore basic health and disability benefits when misfortune strikes immigrants who came to this country legally, who work hard, pay taxes, and obey the law. To do otherwise is simply unworthy of a great nation of immigrants.<sup>86</sup>

Consequently, President Clinton's fiscal 1998 budget plan provides for an estimated 350,000 of 500,000 immigrants whose eligibility is slated to expire in August and September, to continue on the benefit rolls.<sup>87</sup> Clinton's budget sets aside \$9.7 billion to restore those benefits.<sup>88</sup> Thus, disabled legal immigrants -- both adult and children -- would be restored to SSI eligibility. Clinton's proposal faces a Republican-controlled Congress opposed to changing the law. Rep. E. Clay Shaw, Jr. (R-Fla.), a leading architect of the welfare legislation, discussed congressional consideration of a block grant or other special funding to assist states heavily impacted.<sup>89</sup>

The U.S. government has a moral and social obligation to extend assistance when its citizens and legal permanent residents fall on hard times. The goal of welfare is to put people back to work in order to become productive, self-sufficient members of society. Although some reduction in welfare benefits may be inevitable, cost-cutting should not

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<sup>84</sup> Spencer Abraham, et al., *A Manifesto for Immigration*, Wall St. J., Feb. 29, 1996 at A18.

<sup>85</sup> *Id.*

<sup>86</sup> President Bill Clinton, State of the Union Address, (Feb. 5, 1997) in Wash. Post at A18.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Supra*, note 63.

come at the expense of leaving the entire legal immigrant community utterly disadvantaged. Doing so will only shift the burden to state and local assistance programs, hospitals, clinics and charities. Instead, the government should take a more egalitarian approach in reducing welfare benefits to citizens and non-citizens alike. Furthermore, changes in welfare benefits should correspond with immigration policies designed to attract more valuable immigrants, those less likely to warrant public assistance. "Because they work hard, immigrants create a 'brain gain' for the U.S. . . . Today, knowledgeable immigrants from around the world continue to want to come to our shores. Attracting inspired minds from around the world is America's greatest strength, not a weakness."<sup>90</sup>

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<sup>90</sup> *Supra*, note 84.