

Anchor Babies, Over-Breeders, and the Population Bomb: The Reemergence of Nativism and Population Control in Anti-Immigration Policies

Priscilla Huang*

INTRODUCTION

At the start of 2008, news of a “baby boomlet” made headlines.¹ For the first time in 35 years, the U.S. fertility rate, or average number of children born to each woman, reached 2.1 in 2006, the number statisticians say is needed for a population to replace itself.² Demographers pointed to an increase in the number of immigrants as a main reason for the higher birth rate.³

Many economists welcomed the surge in population growth as a sign of the country’s likely future prosperity. While most industrialized nations struggle with shrinking populations due to low birth rates, the United States can look forward to a stable tax base and a steady workforce.⁴

However, not everyone greeted the news with enthusiasm. Many interpreted the increased birth rate as an indication of the country’s failed immigration laws and turned a hostile eye toward immigrant women.⁵ For example, when asked to comment about the increased fertility rate, John Vinson, president of the conservative American Immigration Control Foundation claimed: “The [U.S.-born] child is an automatic American citizen,

* Policy and Programs Director, National Asian Pacific American Women’s Forum. Priscilla received her J.D. from American University, Washington College of Law in 2006, where she was a Public Interest/Public Service Scholar.

¹ Mike Stobbe, *Against the Trend, U.S. Births Way Up*, ASSOCIATED PRESS, Jan. 16, 2008, available at http://www.boston.com/news/nation/articles/2008/01/16/against_the_trend_us_births_way_up/.

² *Id.*

³ *Id.* Experts also attributed the birth rate increase to declines in contraceptive use and access to abortion. *Id.*

⁴ *Id.*

⁵ In 2006, Latinas had the highest fertility rate at 2.96 per woman, followed by 2.11 for black women and 1.86 for whites. John Leland, *From the Housing Market to the Maternity Ward*, N.Y. TIMES, Feb. 1, 2008, at A17. Asian and Pacific Islander (API) women also have higher than average birth rates, and the Asian population is expected to grow at almost the same rate as the Latino population. JEFFREY S. PASSEL & D’VERA COHN, PEW RESEARCH CTR., U.S. POPULATION PROJECTIONS: 2005–2050, at 22 (2008). Although not all Latinos and APIs are non-citizens, sixty-eight percent of the Latino population and eighty-eight percent of the API population in 2005 were either foreign-born or U.S.-born children of an immigrant parent. *Id.* at 15, 17.

thus entitled to all benefits of American citizens. This gives a certain financial incentive for people coming from other countries illegally to have children here.”⁶

The accusation that immigrant women enter the United States to give birth and reap the benefits of U.S. social service programs is false. “Undocumented immigrants,” or non-citizens who overstay their visas or enter the United States unauthorized, have never been eligible for most public benefit programs. Moreover, beginning in 1996, Congress added a number of eligibility and documentation requirements to the existing laundry list of exclusionary rules that already limit the ability of immigrants to access such services.

News of the rising population growth rate coupled with the official “birth” of the three-hundred-millionth American in late 2006 also prompted immigration control proponents to revive the connection between immigration and the environment, a link that most advocates in the environmental movement rejected in the 1990s.⁷ Anti-immigrant organizations such as Negative Population Growth and the Carrying Capacity Network base this link on the assumption that immigrants unnecessarily deplete the natural and economic resources of an already overloaded national ecosystem.⁸ These groups exploit legitimate concerns about the environment to promote alarmist fears about overpopulation. Furthermore, their messages are simply recycled eugenic arguments that favor controlling the population growth of groups tacitly understood to be communities of color.

Regardless of the line of reasoning—economic or environmental—the anti-immigrant movement has a clear goal: to reduce the fertility of immigrant women of color. In addition, reports of a projected shift in the U.S. demographic composition to a majority non-white population has prompted calls for white women to “make more babies.”⁹ This Essay seeks to reveal the underlying nativism of the immigration control movement and its effort to limit the reproductive capacities of immigrant women of color. Part I provides an overview of the federal public benefits system, the 1996 policy changes, and the impact of the resulting added barriers on the ability of immigrant women to access safety net programs. Part II reviews the eugenic origins and population control history of the anti-immigrant movement, and its continued effort to popularize ant-immigrant ideas about the environment. Lastly, Part III reveals the ongoing nativist tactics of the anti-immigration movement. This section also examines some of the current policy efforts to place unnecessary restrictions on immigrant women’s access to public benefits and the punitive tactics of immigration officials to forcibly

⁶ Stobbe, *supra* note 1.

⁷ See Blaine Harden, *America’s Population Set to Top 300 Million; Immigration Fuels Much of Growth*, WASH. POST, Oct. 12, 2006, at A1.

⁸ See Negative Population Growth, Statement of Purpose, <http://www.npg.org/purpose.html>; Carrying Capacity Network, What is Carrying Capacity Network?, <http://www.carryingcapacity.org/whatis.html>.

⁹ *The Big Story with John Gibson* (Fox News television broadcast, May 11, 2006).

remove undocumented women during their pregnancies. Part III also uncovers the nativist rationale driving the anti-immigration movement's seemingly contradictory alliance with the anti-choice and pro-natalist movements.

I. IMMIGRANT WOMEN AND PUBLIC BENEFITS

U.S. immigration laws and policies have placed limits on the ability of immigrant women to start and raise families since the country began regulating its borders. In fact, the nation's first immigration restriction law, the Page Law of 1875, was intended to limit the entry of women from Asia.¹⁰ Facially, the law prohibited the entry of Chinese prostitutes, but in practice the law sought to prevent the wives and prospective brides of Chinese laborers from joining their husbands in the United States.¹¹

A. *Public Charge*

In the early days of federal immigration regulation, the U.S. government imposed limits on who could receive public benefits. Shortly after passing the Page Law, Congress passed the Public Charge Law of 1882, which barred from entry "any person unable to take care of himself or herself without becoming a public charge."¹² The "public charge" exclusion has since been codified as a provision of the Immigration and Nationality Act (INA) and is one of the few remaining relics of early U.S. immigration law.¹³

Today, consular officials mainly use the public charge provision to prevent immigrant applicants from seeking a U.S. visa; however, the provision has also been used to deny lawful permanent residents re-entry into the United States.¹⁴ To determine an applicant's admissibility, consular officials apply a "totality of the circumstances" standard, which takes into account the immigrant's health, age, income, education, skills, and affidavits of support.¹⁵ The public charge exclusion is the most frequent ground for denial of

¹⁰ Page Law of 1875, ch. 141, 18 Stat. 477 (1875). Although many immigration scholars cite the Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (1882) as the nation's first U.S. immigration law, the Page Law pre-dated this Act.

¹¹ See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 643 (2005).

¹² Public Charge Law of 1882, ch. 276, 22 Stat. 214 (1882). "Public charge" is a term used to describe immigrants who have become or are likely to become dependent on public benefits.

¹³ Kevin R. Johnson, *Public Benefits and Immigration: The Intersection of Immigration Status, Ethnicity, Gender and Class*, 42 UCLA L. REV. 1509, 1521 (1995).

¹⁴ *Id.* at 1521-22.

¹⁵ TANYA BRODER, NAT'L IMMIGRATION LAW CTR., OVERVIEW OF IMMIGRANT ELIGIBILITY FOR FEDERAL PROGRAMS 4.1, 4.5 (2007), available at http://www.nilc.org/immspbs/special/pb_issues_overview_2007-10.pdf.

immigrant and non-immigrant visa applications after non-compliance with appropriate documentation requirements and visa overstays.¹⁶

In addition to serving as a bar to admission, a public charge finding can also jeopardize an immigrant's ability to adjust her immigration status after she has lawfully entered the United States and can even constitute grounds for deportation.¹⁷ Although this deportation ground is rarely invoked, its continued existence in the INA often deters eligible immigrants from seeking public benefits.¹⁸

B. Federal Changes to Public-Benefits Eligibility

Over the past two decades, Congress has created additional restrictions that limit the ability of immigrants to access most public benefit programs. In 1986, Congress passed the Immigration Reform and Control Act (IRCA), which implemented reforms to the U.S. immigration system and provided a pathway to citizenship for certain undocumented immigrants.¹⁹ To be eligible for adjustment to lawful permanent residency status, all undocumented immigrants were required to meet a number of requirements including proof of their non-use of federal assistance programs.²⁰

This requirement expanded the definition of "public charge," and caused confusion among immigrants who had received some type of government benefit in the past regardless of whether the program was state or locally funded—for which the exclusion did not apply—or federally funded—for which it did. Moreover, because undocumented immigrant women were more likely to be recipients of social safety net services for their children, the disqualification disproportionately affected undocumented immigrant women and only a small proportion of undocumented immigrant women applied for legalization under IRCA.²¹ Lastly, the chilling effect of the "public charge" label and the confusion it has created about all forms of local, state, and federal assistance programs continues to deter eligible immigrants from seeking such services, even in times of need.²²

A decade after IRCA's passage, Congress passed Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), more

¹⁶ BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, REPORT OF THE VISA OFFICE tbl.XX (2006).

¹⁷ Immigration and Nationality Act, 8 U.S.C.A. §§ 1882, 241(a)(5) (1994).

¹⁸ See Johnson, *supra* note 13, at 1522.

¹⁹ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986).

²⁰ *Id.*

²¹ Doreen J. Mattingly, "Working Men" and "Dependent Wives:" Gender, "Race," and the Regulation of Migration from Mexico, in WOMEN TRANSFORMING POLITICS 47, 54 (Cathy J. Cohen et al., eds., 1997). A 1989 INS study estimated that 300,000 eligible immigrant women did not apply for legalization.*Id.*

²² See Antonio Rodriguez & Gloria J. Romero, *Where's the Amnesty for Women? Barriers to Legalization Fall Most Heavily on Them*, L.A. TIMES, Feb. 2, 1988, at B7.

commonly known as “welfare reform.”²³ The new law created additional barriers to social services, particularly to health care, for immigrant women. One of the Act’s most onerous provisions narrowed the eligibility criteria for public benefits by imposing a five-year waiting period for new immigrants. Under the new rule, immigrants who enter the country after August 22, 1996 must reside continuously in the United States for at least five years to “qualify” for federally funded service programs.²⁴ Consequently, state and local governments that recognize and value the importance of providing safety-net services for both their citizen and non-citizen residents must use their own funds to extend such services to new immigrants.

In addition, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 made it more difficult for recent immigrants to establish income eligibility for public benefits, even after expiration of the five-year probationary period.²⁵ The law requires new immigrants with sponsors—usually family members or employers who helped the applicants immigrate—to include, or “deem,” their sponsors’ income when applying for federal benefits. Thus, an agency must calculate the available income and assets of the immigrant’s sponsor in addition to the immigrant’s when making a determination about her eligibility for a certain federally-funded program.

Congress made the affidavit of support legally enforceable under IIRIRA. Although immigrant sponsors have long been required to sign affidavits or bond agreements stating their commitment to prevent the sponsored immigrant from becoming public charges, a number of judicial opinions held that pre-IIRIRA affidavits were not enforceable contracts.²⁶ Thus, before the 1996 changes, the custom and practice of publicly funded agencies was to provide sponsored immigrants with health and other social services at the same level as their citizen counterparts. Now, a sponsor is legally responsible for supporting the immigrant at a minimum of 125% of the federal poverty level and must repay certain benefits that the immigrant may use.²⁷

In short, the deeming and sponsor liability rules post-IIRIRA have rendered most immigrant women ineligible for public benefits because adding the sponsors’ income often disqualifies the immigrant for the program. Moreover, IIRIRA increased from three to ten years the time period that agencies must impose deeming rules on an individual immigrant’s application for public benefits, making it unlikely that any newly arriving immigrant will be eligible for any public benefits for ten years or more.²⁸

²³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

²⁴ *Id.* § 403.

²⁵ Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

²⁶ See Julia Field Costich, *Legislating a Public Health Nightmare: The Anti-Immigrant Provisions of the “Contract With America” Congress*, 90 Ky. L.J. 1043, 1047–48 (2002).

²⁷ 8 U.S.C. § 1183a(a)(1)(A) (2006).

²⁸ 8 U.S.C. § 1631(b) (2006); Costich, *supra* note 26, at 1063.

It is important to note that neither PRWORA nor IIRIRA changed the eligibility requirements for undocumented immigrants, who have always been ineligible for Medicaid and most other entitlement benefits. Rather, both acts restrict newly arriving, legal immigrant women from accessing federal benefits, compounding the financial strain and hardship that many immigrant families face when they first enter the country.

C. *Impact on Immigrant Women*

The foregoing policies have had an especially acute impact on the ability of immigrant women to access public benefits. Before the 1996 changes, non-citizens were generally eligible for public benefit programs like Medicaid on the same basis as their U.S.-born counterparts. In 1996, immigrants represented just nine percent of the U.S. population and fifteen percent of all welfare recipients.²⁹ By 1999, the number of immigrant welfare recipients dropped to twelve percent.³⁰ Moreover, the number of low-income, non-citizen children and parents receiving Medicaid fell by seven to eight percentage points between 1995 and 2000, even though the same population experienced a six to seven percentage point increase in uninsurance rates during the same time period.³¹

The decline in welfare and Medicaid utilization by immigrant women was due in part to the increased restrictions imposed by the 1996 reforms. However immigrant rights advocates and scholars also attribute the decline to an increased fear of deportation.³² The 1996 reform laws, PRWORA and IIRIRA, permitted for the first time the exchange of information between the then-named Immigration and Naturalization Services (INS)³³ and state public benefit agencies, creating a chilling effect that further discouraged immigrants from accessing social service programs.³⁴ Additionally, IIRIRA increased the severity of penalties associated with a public charge determination, creating an additional barrier to accessing health care, food stamps, and other important services.³⁵

Soon after the 1996 changes to welfare and immigration laws went into effect, health and social service providers around the country reported enrollment decreases in all public benefit programs due to deportation fears.³⁶ Immigrants of all ages and of varied immigration statuses refused to apply

²⁹ AMANDA LEVINSON, MIGRATION POL'Y INST., IMMIGRANTS & WELFARE USE (2002), <http://www.migrationinformation.org/USfocus/display.cfm?ID=45>.

³⁰ *Id.*

³¹ *Id.*

³² CLAUDIA SCHLOSBERG & DINAH WILEY, NAT'L HEALTH LAW PROGRAM, THE IMPACT OF INS PUBLIC CHARGE DETERMINATIONS ON IMMIGRANT ACCESS TO HEALTH CARE (1998), available at <http://www.healthlaw.org/library/attachment.67362?print>.

³³ In March 2003, INS became restructured as part of the Department of Homeland Security.

³⁴ See Lisa Sun-Hee Park, *Perpetuation of Poverty Through "Public Charge,"* 78 DENV. U. L. REV. 1161, 1170-71 (2001).

³⁵ 110 Stat. 3009.

³⁶ SCHLOSBERG & WILEY, *supra* note 32.

for needed social service programs, including Medicaid; Medicare; the State Children's Health Insurance Program (SCHIP);³⁷ food stamps; and Women, Infants, and Children nutrition programs.³⁸ Pregnant immigrant women also refused free and low-cost prenatal care because they were afraid that receiving such care would put them at risk of being considered public charges and jeopardize their immigration statuses or the statuses of close family members.³⁹

Although the State Department and INS subsequently issued guidance and a proposed rule clarifying that receipt of non-cash public benefits would not jeopardize the immigration status of a recipient or her family members, widespread confusion and concern about the application of public charge rules remain.⁴⁰ Consequently, thousands of eligible immigrant women and their children have not accessed the public programs and services available to them, including Medicaid and SCHIP.

Meanwhile, the more than three million undocumented women and children currently in the United States continue to pay out of pocket for health services or forego health care altogether.⁴¹ Undocumented immigrants have never been eligible for cash-benefit programs, but they may receive emergency medical care under Emergency Medicaid.⁴² Some undocumented pregnant women may also qualify for prenatal care as a result of a 2002 amendment to SCHIP that gives states the option to use federal funds to provide prenatal services for uninsured pregnant women. However, in order to provide prenatal care to undocumented immigrant women, the Centers for Medicare and Medicaid Services (CMS), the agency that administers SCHIP, revised the definition of "child" to include an "unborn child." Because children born in the United States are entitled to Medicare and Medicaid services, this change allowed states to extend prenatal coverage to women who could not otherwise qualify by giving personhood status to their fetus.⁴³

Notably, the extension of SCHIP benefits to undocumented pregnant immigrant women was an unintended outcome of the new CMS rule.⁴⁴ The

³⁷ SCHIP is a federally funded public health program that provides health coverage for children and pregnant women who are ineligible for Medicaid but too poor to afford private health insurance.

³⁸ SCHLOSBERG & WILEY, *supra* note 32.

³⁹ *See id.*

⁴⁰ *See* BRODER, *supra* note 15, at 4.1, 4.6.

⁴¹ Although undocumented immigrants may receive services under Emergency Medicaid, treatment is limited to sudden onset of non-chronic, serious health emergencies such as labor and delivery.

⁴² 8 U.S.C. § 1621(b)(1) (2006). Emergency Medicaid provides short-term medical coverage for uninsured individuals without regard to their immigration status. To qualify for Emergency Medicaid services, a patient must have an "emergency medical condition" such that the absence of immediate medical attention could result in serious health or bodily injury.

⁴³ State Children's Health Insurance Program; Eligibility for Prenatal Care and Other Health Services for Unborn Children, 67 Fed. Reg. 61956 (Oct. 2, 2002).

⁴⁴ Patricia Gray, *Unborn v. Undocumented: A Collision of Policy and Politics*, HEALTH LAW PERSPECTIVES, Jan. 2008, available at [http://www.law.uh.edu/healthlaw/perspectives/2008/\(PG\)%20CHIP%20peri.pdf](http://www.law.uh.edu/healthlaw/perspectives/2008/(PG)%20CHIP%20peri.pdf).

accidental coverage of undocumented immigrant women came to light when Louisiana submitted its initial claim for reimbursement for prenatal services provided to undocumented immigrant women.⁴⁵ At first, CMS denied the claim, stating that SCHIP was a federally funded program and could not be used to provide services for undocumented women.⁴⁶ CMS later reversed its position, yet the dispute made it clear that undocumented immigrant women were never intended to be the beneficiaries of the SCHIP expansion.⁴⁷

Ensuring that undocumented immigrant women receive prenatal care coverage is a step in the right direction. However, making the fetus, rather than the pregnant woman, the recipient of SCHIP-funded services undermines the ability for immigrant women to access comprehensive health care, a limitation that can have detrimental effects on the health of the woman and the fetus.⁴⁸ For example, an uninsured pregnant woman with a broken bone or certain types of cancer could receive prenatal care, but would remain uninsured and could not be treated for her other conditions because they do not directly affect the gestation or delivery of the fetus.

Although several states have implemented this option to provide prenatal care to all their citizen and non-citizen pregnant residents, public charge fears continue to dissuade qualified immigrant women from enrolling for prenatal SCHIP benefits. Moreover, the government has done little to dispel such fears. In fact, when CMS was given the opportunity to adopt requests by immigrant rights advocates to specify that immigrant women applying for SCHIP services would not be subject to inquiries about their immigration status or reported to immigration officials, it did the opposite and clarified that nothing in the rule would alter the ability for states to exchange information with INS officials.⁴⁹ Such actions only discourage immigrant women of all statuses from seeking needed safety net services.

II. "LOVE YOUR MOTHER—DON'T BECOME ONE"⁵⁰: IMMIGRANT WOMEN AND POPULATION POLITICS

Throughout U.S. history, anti-immigrant population control advocates have imposed oppressive tactics in an effort to limit the reproductive capacities of immigrant women of color. Beginning in the late 1800s, the infa-

⁴⁵ Marsha Shuler, *Medical Cost Flap Flares*, BATON ROUGE ADVOCATE, Nov. 14, 2007 at A1.

⁴⁶ *Id.*

⁴⁷ Marsha Shuler, *Feds Agree La. To Get Some Aid in Medical Care*, BATON ROUGE ADVOCATE, Nov. 15, 2007 at A20.

⁴⁸ NATIONAL IMMIGRATION LAW CENTER, ISSUE BRIEF: PRENATAL COVERAGE FOR IMMIGRANTS THROUGH THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (2003), available at http://www.nilc.org/immspbs/health/Issue_Briefs/Prenatal%20coverage%20through%20SCHIP.pdf.

⁴⁹ See 67 Fed. Reg. 61966. Gray, *supra* note 44.

⁵⁰ Earth First! slogan used in the 1980s. Earth First! is a radical environmental organization formed in 1979 that promotes direct action tactics to prevent environmental destruction. See EarthFirst! Home Page, <http://www.earthfirst.org/>.

mous eugenics movement sought to curb pregnancies by women deemed “unfit” for motherhood (i.e., immigrant, poor, non-white, or socially deviant women). Eugenacists promoted coercive policies, such as the compulsory sterilization of “unfit” persons, as necessary tactics to “prevent the American people from being replaced by alien or negro stock, whether it be by immigration or by overly high birth rates among others in this country.”⁵¹ Supporters advocated other “negative” eugenics methods, including involuntary confinement and immigration restrictions to prevent “undesirable” people from reproducing.⁵²

At the same time, a corollary movement encouraged the reproduction of “racially superior” middle- and upper-class Anglo-Saxon women using “positive” eugenics methods, such as tax incentives and awareness campaigns.⁵³ Neither movement believed women were capable of making their own reproductive decisions, and their distrust was grounded in the advancement of one ultimate goal: to protect the political and economic interests of the “old stock” elite.⁵⁴

A. *The Rise of Environmental Nativism*

The U.S. environmental conservation movement emerged during the early twentieth-century, and with it came new theories that perpetuated the undesirability of immigrants. Early conservationists believed that new immigrants “threatened ‘native’ values and wildlife,” and coupled their campaigns for wildlife protection with anti-immigrant rhetoric.⁵⁵ As the environmental conservation movement gained in popularity, nativists adopted environmental rhetoric to argue that population stabilization was needed because the country’s population was growing at a rate that threatened to upset the delicate balance of the natural environment.⁵⁶ Reducing immigration, they reasoned, was the solution.

In 1968, the theory of overpopulation went mainstream when the Sierra Club published Paul Ehrlich’s *The Population Bomb*, which warned against rapid population growth in a resource-limited world.⁵⁷ Based on the work of Thomas Malthus, a British economist credited with first theorizing about the apocalyptic impact that the high growth rate of the poor could have on the

⁵¹ See Loretta J. Ross, *African American Women and Abortion: 1800–1970*, in THEORIZING BLACK FEMINISMS: THE VISIONARY PRAGMATISM OF BLACK WOMEN 141, 149 (Stanlie M. James & Abena P.A. Busia eds., 1993) (quoting BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL AND CONTRACEPTIVE CHOICE 97 (1987)).

⁵² See *id.*

⁵³ See Rachel Silber, *Eugenics, Family & Immigration Law in the 1920’s*, 11 GEO. IM-MIGR. L.J. 859 (1997).

⁵⁴ See *id.* at 869–70.

⁵⁵ Peter L. Reich, *Environmental Metaphor in the Alien Benefits Debate*, 42 UCLA L. REV. 1577, 1579 (1995).

⁵⁶ *Id.* at 1580–81.

⁵⁷ PAUL R. EHRLICH, THE POPULATION BOMB (1968).

natural environment,⁵⁸ the book's popularity prompted the creation of several national organizations to address overpopulation fears.⁵⁹

By 1978, the immigration control and environmental conservation movements institutionalized their coming together with the formation of the Federation for American Immigration Reform ("FAIR").⁶⁰ Known today as the largest anti-immigrant policy organization in the United States, FAIR was founded by several Sierra Club members and John Tanton, the president of Zero Population Growth, a group that advocated long-term birth control and tax incentives as a strategy for limiting population growth.⁶¹ Paul Ehrlich also endorsed the organization in his anti-immigrant publication *The Golden Door*, and, between 1985 and 1994, FAIR accepted \$1.2 million from the Pioneer Fund, a foundation that supports research in eugenics and "race science."⁶²

Over the years, FAIR has worked to pass anti-immigrant bills at the federal and state levels. One of its lobbyists co-authored Proposition 187, the 1994 California ballot initiative that imposed harsh and punitive measures against undocumented immigrants, which included barring undocumented children from attending public schools.⁶³ Many men and women with ties to white supremacist groups occupy some of FAIR's top positions, and the organization's influence even extends into Congress.⁶⁴ For example, Representative Brian Bilbray, the current chair of the House Immigration Reform Caucus, is a former FAIR lobbyist.⁶⁵

B. *The Greening of Hate*

Anti-immigrant "activists" assert that immigrant population growth is the major cause of environmental degradation in the United States. Central to their theory is the belief that the planet is running out of natural resources

⁵⁸ Paula Abrams, *Population Control and Sustainability: It's the Same Old Song but with a Different Meaning*, 27 ENVTL. L. 1111, 1116 (1997).

⁵⁹ Reich, *supra* note 55, at 1579.

⁶⁰ *Id.*

⁶¹ *Id.* at 1579–80. In 2002, Zero Population Growth changed its name to Population Connection. In 1994, the organization abandoned its Malthusian approach to immigration as a strategy for achieving environmental preservation. Instead, it seeks to address the "push" factors of migration and "call[s] on the United States to focus its foreign aid on population, environmental, social, education, and sustainable development programs." See Population Connection, Statement of Policy, <http://www.populationconnection.org/index.php?> (follow "About Us" hyperlink; then follow "Complete Statement of Policy" hyperlink).

⁶² *Id.*

⁶³ See THE BUILDING DEMOCRACY INITIATIVE, CTR. FOR NEW CMTY., NATIVISM IN THE HOUSE: A REPORT ON THE HOUSE IMMIGRATION REFORM CAUCUS 2 (2007). A federal district court struck down Prop. 187's most punitive provisions because they violated Fourteenth Amendment protections, and Prop. 187 was later preempted by federal law after passage of the 1996 welfare and immigration reform laws.

⁶⁴ See Heidi Beirich, *The Teflon Nativists*, THE INTELLIGENCE REP. (Southern Poverty Law Ctr., Montgomery, Ala.), Winter 2007, available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=846>.

⁶⁵ THE BUILDING DEMOCRACY INITIATIVE, *supra* note 63, at 6.

and is nearing its “carrying capacity.”⁶⁶ Likewise, population theorists believe the country is nearing its carrying capacity and immigration is to blame because it is the largest contributor to population growth.⁶⁷ FAIR and other immigration restrictionists promote three main arguments when they make this link. First, population control advocates claim that there is an ecological equilibrium between the U.S. population and the environment, which is being pushed to its limits by immigrants and their offspring.⁶⁸ Although “equilibrium theory” was the dominant school of thought in American ecological sciences at the beginning of the twentieth century, ecologists challenged its underlying assumptions in the 1970s and it soon fell out of favor.⁶⁹ The dominant theory today is that the environment cannot be self-contained and never reaches a stable point.⁷⁰ Rather, it is fluid and dynamic, without boundaries, and constantly in flux.⁷¹

Second, immigration control proponents assert that Americans consume more per capita than people in other countries, and when immigrants enter the United States they adopt similar consumption patterns.⁷² As one such writer explained, “grain and legume eaters become meat eaters, walkers or bus riders become car drivers, and users of one gallon of water daily consume fifty here.”⁷³ Accordingly, proponents of this theory also blame immigrants for causing other environmental consequences of over-consumption, including urban sprawl and traffic jams.⁷⁴ Yet, this line of reasoning erroneously assumes that immigrants, who are disproportionately poor, have the same consumption patterns and environmental impact as wealthier U.S. citizens.⁷⁵ Moreover, it shifts focus away from the ecologically damaging practices of the average American citizen’s economic, corporate, and consumer lifestyle patterns. These arguments simply use immigrants as convenient scapegoats for the country’s problems with ecological deterioration.

⁶⁶ See Diane L. Slifer, *Growing Environmental Concerns: Is Population Control the Answer?*, 11 VILL. ENVTL. L.J. 111, 115 (2000) (defining “carrying capacity” as the “number of people who can be sustainable [*sic*] supported in a given area without degrading the natural, social, cultural and economic environment for present and future generations”); see also Chris Crass, *Controlling Gendered Immigrants and Racialized Populations: Overpopulation, Immigration and Environmental Sustainability*, ALTERNATIVE MEDIA PROJECT, Dec. 24, 2004, <http://www.infoshop.org/texts/immigration.html> (quoting SCOTT CZERWONKA, POPULATION-ENVIRONMENT BALANCE, WHY EXCESS IMMIGRATION DAMAGES THE ENVIRONMENT (1992), *available at* <http://www.balance.org/articles/whyexcess.html>).

⁶⁷ See sources cited *supra* note 66.

⁶⁸ See Reich, *supra* note 55, at 1580.

⁶⁹ See *id.* at 1584–88.

⁷⁰ See *id.* at 1586; see also Slifer, *supra* note 66, at 151–52.

⁷¹ Reich, *supra* note 55, at 1586.

⁷² See *id.* at 1581.

⁷³ *Id.*, quoting David Simcox, *The Environmental Risks of Mass Immigration*, IMMIGR. REV. 1, 1 (1992).

⁷⁴ See Slifer, *supra* note 66, at 135.

⁷⁵ See FED’N FOR AM. IMMIGRATION REFORM, HOW IMMIGRATION HASTENS DESTRUCTION OF THE ENVIRONMENT (2002), http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecentersa45e (stating that immigrants “do not maintain the old lifestyle of their home country” and therefore “become greater consumers and damagers of natural resources”).

Lastly, population control advocates contend that immigrants negatively impact the environment because they create a drain on public resources. This is an indirect argument framed in terms of immigration's impact on the health of the country's "social environment"⁷⁶ and is based on two long-standing myths: first, that immigrants, particularly undocumented immigrants, do not pay taxes; and second, that immigrants overuse social service programs.⁷⁷ Both myths support the anti-immigrant movement's economic narrative: that immigrants burden U.S. citizen taxpayers who must "pick up the tab" and spend their hard-earned money on undeserving "foreigners."

However, numerous studies and social science research analyzing the economic contributions of immigrants show quite the opposite. Immigrants, both documented and undocumented, represent an important base of taxpayers at the federal and state levels.⁷⁸ In fact, between one-half and three-quarters of the undocumented immigrant population pays federal and state income taxes, Social Security taxes, and Medicare taxes.⁷⁹ The Office of the Inspector General of the Social Security Administration has even noted that undocumented immigrants "account for a major portion" of the billions of dollars paid into the Social Security system, which are benefits that immigrants can never collect while undocumented.⁸⁰ Moreover, qualified immigrants, legal permanent residents, and undocumented immigrants routinely underutilize social service programs compared to their U.S.-born counterparts, and provide a critically important source of labor for the U.S. economy. One study found that "per capita health care expenditures were 55 percent lower for immigrants than for natives in 1998, even after adjusting for sociodemographic characteristics."⁸¹ Utilization rates are the lowest among undocumented immigrants: less than one percent of households headed by undocumented immigrants receive cash assistance, compared to five percent of households headed by native-born U.S. citizens.⁸²

⁷⁶ CZERWONKA, *supra* note 66.

⁷⁷ See Reich, *supra* note 55, at 1581.

⁷⁸ See NAT'L IMMIGRATION FORUM, TOP TEN IMMIGRATION FACTS AND MYTHS (2003), available at <http://www.immigrationforum.org/documents/TheJourney/MythsandFacts.pdf>. See also Eduardo Porter, *Illegal Immigrants Are Bolstering Social Security with Billions*, N.Y. TIMES, Apr. 5, 2005, at A1.

⁷⁹ IMMIGRATION POL'Y CTR., UNDOCUMENTED IMMIGRANTS AS TAXPAYERS (2007), available at <http://www.immigrationpolicy.org> (follow "Research and Publications" hyperlink; then follow "Immigration Fact Check" hyperlink; then follow "View Older Items" hyperlink; then follow "Undocumented Immigrants as Taxpayers" hyperlink).

⁸⁰ *Id.* (quoting OFFICE OF THE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION, REP. NO. A-08-99-41004, OBSTACLES TO REDUCING SOCIAL SECURITY NUMBER MISUSE IN THE AGRICULTURE INDUSTRY 12 (2001)).

⁸¹ IMMIGRATION POL'Y CTR., ASSESSING THE ECONOMIC IMPACT OF IMMIGRATION AT THE STATE AND LOCAL LEVEL (2007), available at <http://www.immigrationpolicy.org> (follow "Research and Publications" hyperlink; then follow "Immigration Fact Check" hyperlink; then follow "View Older Items" hyperlink; then follow "Assessing the Economic Impact of Immigration at the State and Local Level" hyperlink).

⁸² *Id.*

Despite evidence to the contrary, the anti-immigration movement today continues to espouse pseudoscientific theories about the “over-breeding” of immigrants and their “doomsday” impact on the environment. Yet, many mainstream environmental groups that supported immigration control efforts in the past have rejected this approach. Of particular note is the dramatic face-off that occurred between anti-immigrant population control “activists” and the mainstream environmental conservation movement during a 1998 referendum vote among Sierra Club members. Members were asked to vote on a mail-in ballot initiative to reverse a 1996 Board decision to “take no position on immigration levels or on policies governing immigration into the United States.”⁸³ Those who pressed for reversal argued that the Sierra Club needed a “comprehensive population policy for the United States that continues to advocate an end to US population growth . . . through reduction in net immigration.”⁸⁴

Proponents of the referendum accused the Board of taking a non-environmentalist stance and joined forces with FAIR and other anti-immigrant groups such as Negative Population Growth and Population Environment Balance to campaign for the referendum.⁸⁵ Critics of the initiative sought to affirm the Board position and urged the Sierra Club to “address the root causes of global population problems through its existing comprehensive approach.”⁸⁶ Those who opposed the referendum also recognized the inherent racism of immigrant population control arguments. As Executive Director Carl Pope explained, the referendum “is offensive to people of color. . . . It is seen by people in the immigrant communities as saying: You are a form of pollution.”⁸⁷

The controversial referendum was defeated with sixty percent of the vote, but the debate revealed a deeply divided environmental movement regarding population growth policies.⁸⁸ Immigrant scapegoating has only intensified in recent years, and immigration control supporters continue to integrate environmental conservationist messages to further their anti-immigration views. Said John Tanton, founder of FAIR, “[t]he Sierra Club may not want to touch the immigration issue, but the immigration issue is going to touch the Sierra Club.”⁸⁹

FAIR routinely espouses such views in their publications on the population and the environment. Their March 2006 report, entitled *Projecting the U.S. Population to 2050: Four Immigration Scenarios*, identifies increased competition for access to fresh water, urban sprawl, unhealthy air quality, traffic congestion, and diminishing wetlands as environmental consequences

⁸³ Crass, *supra* note 66.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Crass, *supra* note 66.

⁸⁸ *Id.*

⁸⁹ *Id.*

of “the current massive flow of immigrants.”⁹⁰ The report includes a one-page summary of the “environmental perspective” on immigration written by Alan Kuper, the president and founder of Comprehensive Sustainable U.S. Population, and a member of FAIR’s Board of Advisors.⁹¹ Interestingly, the report also identifies “Less Space, More Diversity” among its list of negative outcomes of immigration but fails to explain how the nation’s increasingly diverse population is a contributing factor to environmental destruction.

III. MODERN-DAY NATIVISM

Though coded otherwise, there is little question that the current immigration debate is really about race. The underlying nativism of the anti-immigration movement remains largely unrecognized and is being played out through the bodies of immigrant women in subtle and seemingly neutral ways. Both welfare restrictionists and anti-immigrant environmentalists view public benefits and the environment in zero-sum terms.⁹² Accordingly, any external force that “takes away” from one side of the public benefits or natural resource “equation” must be promptly removed. Anti-immigrant ideologues view reproductive-aged immigrant women as such a force, and blame them for breeding a host of social problems including excess government spending and environmental degradation. Consequently, immigrant women are particularly prone to ideological attacks, as well as punitive welfare and immigration policies, because of their capacity for child-bearing.

Some lawmakers take advantage of every policymaking opportunity to construct additional barriers to citizenship and access to public benefits. For example, in recent debates regarding comprehensive immigration reform legislation, proposals such as the 2006 Hagel-Martinez Amendment sought to require undocumented immigrants seeking legalization status to undergo a three-step process that would force them to wait up to eighteen years before becoming eligible for federal public assistance.⁹³ Such policies ignore extensive economic research that shows undocumented immigrants have lower rates of public benefit utilization than native-born citizens.⁹⁴

⁹⁰ JACK MARTIN & STANLEY FOGEL, *PROJECTING THE U.S. POPULATION TO 2050: FOUR IMMIGRATION SCENARIOS 3* (2006). See also JOHN L. MARTIN, *URBAN BLOAT: HOW IMMIGRATION FUELS POPULATION GROWTH* (2003).

⁹¹ MARTIN & FOGEL, *supra* note 90. Comprehensive Sustainable U.S. Population (CUSP) advocates for reduced population growth and consumption. CUSP promotes the message that “the U.S., like almost every country, is FULL” and seeks to “end the runaway population growth caused mainly by immigration.” CUSP Homepage, <http://www.uscongress-envirocore.org/cuspframes.html>.

⁹² “Zero sum” is based on the idea that there is a constant sum that balances both sides of an equation.

⁹³ Comprehensive Immigration Reform Act of 2006, §§ 2611, 2612, 109th Cong. (2006).

⁹⁴ See SARITA A. MOHANTY, *Unequal Access: Immigrants and U.S. Health Care*, IMMIG. POL’Y IN FOCUS, July 2006, available at http://www.gcir.org/system/files/unequal_access.pdf; see also CALIFORNIA IMMIGRANT POL’Y CTR., *IMMIGRANTS AND THE U.S. HEALTH CARE SYS-*

A. *Legislation Overkill: Redundancies in Current
Anti-Immigrant Policymaking*

Undocumented immigrants have never been eligible for welfare benefits, and almost all newly arriving documented immigrants are no longer eligible for most of the social service programs that anti-immigrant advocates accuse them of abusing, including Medicaid, SCHIP, Supplemental Security Income, food stamps, and Temporary Assistance for Needy Families. Interestingly, immigration rates have not decreased since the passage of the 1996 welfare reform and immigration laws, a fact that directly challenges the allegation that immigrants come to the United States to access public benefits.⁹⁵ In addition, enrollment and participation rates in Medicaid, SCHIP, and the Food Stamp Program have declined among non-citizens since 1996.

Yet, when Congress considers public benefits legislation, conservative policymakers continue to include redundant provisions outlining the existing eligibility process for immigrants and impose unnecessary requirements such as proof-of-citizenship rules. In one instance, these efforts clearly backfired. In 2005, Congress passed the Deficit Reduction Act, which imposed dramatic changes to Medicaid including a requirement that current beneficiaries and new applicants submit citizenship-verifying documents to obtain Medicaid coverage.⁹⁶ According to proponents of the bill, the new documentation provision was intended to deter undocumented immigrants from fraudulently enrolling in Medicaid even though a 2005 study by the Health and Human Services Inspector General failed to find any substantial evidence supporting this allegation.⁹⁷

Instead, the new requirement has become a procedural burden for citizens because many individuals do not possess passports, original birth certificates, or other less common documents, which the legislation requires to prove one's citizenship status.⁹⁸ In fact, the requirement has impacted U.S. citizen children the most, particularly rural white and African-American children, thousands of whom have lost coverage.⁹⁹ Moreover, the requirement is unnecessary because it does not alter eligibility criteria; immigrant applicants have always been required to provide documents verifying their legal immigration status, and undocumented immigrants have never been

TEM 2-3(2006), available at <http://www.immigrationpolicy.org/images/File/onpoint/healthcare01-07.pdf>.

⁹⁵ See Political Research Associates, *Immigration, Health and Welfare* in DEFENDING IMMIGRANT RIGHTS: AN ACTIVIST RESOURCE KIT (2002), available at <http://publiceye.org/ark/immigrants/HealthWelfare.html>.

⁹⁶ Deficit Reduction Act of 2005, Pub. L. No. 109-171 (2006).

⁹⁷ FAMILIES USA, THE MEDICAID CITIZENSHIP DOCUMENTATION REQUIREMENT ONE YEAR LATER (2007), available at <http://familiesusa.org/assets/pdfs/dra-cit-doc-update-2007.pdf>. See DANIEL R. LEVINSON, DEP'T OF HEALTH AND HUMAN SERVS., SELF-DECLARATION OF U.S. CITIZENSHIP REQUIREMENTS FOR MEDICAID (2005), available at <http://oig.hhs.gov/oei/reports/oei-02-03-00190.pdf>.

⁹⁸ See FAMILIES USA, *supra* note 97.

⁹⁹ *Id.*

eligible for Medicaid coverage. The Inspector General himself found no need for the added precaution and recommended against implementing the documentation requirement.¹⁰⁰

Initially, the new citizenship documentation requirement also made it difficult for immigrant women to access Medicaid services for their newborns. Contrary to longstanding federal law that authorizes automatic Medicaid coverage for all U.S.-born infants, CMS issued an interim regulation that excluded immigrant women receiving only emergency Medicaid from accessing Medicaid services for their babies until they could verify the citizenship status of their U.S.-born children.¹⁰¹ After constitutional challenges to the regulation were raised, CMS reversed its position and reinstated automatic eligibility for infants regardless of maternal citizenship status.¹⁰² Nevertheless, anti-immigrant provisions continue to be introduced in health-related policies and perpetuate a chilling effect that discourages immigrant women from utilizing services that are legally available to them.

B. U.S.-Born "Aliens"

The image of pregnant immigrant women crossing the border to have children in the United States is a familiar one in the media and in immigration reform debates. The myth capitalizes on the stereotype that immigrant women of color are overly fertile and conspire to give birth to "anchor babies."¹⁰³ In response, members of the Republican Party have introduced legislation that would dramatically change the American tradition of birthright citizenship.

United States citizenship laws confer automatic citizenship status to persons born on U.S. soil. Birthright citizenship is a constitutional right guaranteed by the Citizenship Clause of the Fourteenth Amendment¹⁰⁴ and codified in the INA.¹⁰⁵ However, beginning in the early 1990s, nativist organizations such as FAIR started to lobby members of Congress to narrow the applicability of birthright citizenship to the children of U.S. citizens and le-

¹⁰⁰ Levinson, *supra* note 97.

¹⁰¹ CALIFORNIA IMMIGRANT POL'Y CTR., ACCESS TO MEDICAID FOR NEWBORNS OF IMMIGRANT MOTHERS 1-2 (2006), available at <http://www.caimmigrant.org/source/MedicaidInfant-sCIPC.pdf>.

¹⁰² KAISER COMM'N ON MEDICAID AND THE UNINSURED, CITIZENSHIP DOCUMENTATION REQUIREMENTS IN MEDICAID (2007), available at <http://www.kff.org/medicaid/upload/7533-02.pdf>.

¹⁰³ Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Nonpersons, 28 U. MIAMI INTER-AM. L. REV. 263, 291 (1997). An "anchor baby" is a term used to describe the U.S.-born children of immigrant women who, upon reaching the age of twenty-one, can sponsor the immigration of family members abroad. It is thought that immigrant women give birth to babies in the United States to serve as the "anchor" for the "chain migration" of the rest of the family. See Federation of American Immigration Reform, Anchor Babies: The Children of Illegal Aliens (2004), http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecenters4608.

¹⁰⁴ U.S. CONST. amend. XIV § 1.

¹⁰⁵ 8 U.S.C. § 1101 (2006).

gal permanent residents.¹⁰⁶ Their efforts saw some success when Representative Elton Gallegly (R-CA) introduced a bill in 1993 to amend the Constitution, repeal the original Citizenship Clause, and replace it with a provision that would confer citizenship on “persons born in the United States . . . of mothers who are citizens or legal residents of the United States.”¹⁰⁷ Similar bills have been reintroduced in subsequent congressional sessions, and the most recent iteration, the Birthright Citizenship Act of 2007, has ninety-seven co-sponsors.¹⁰⁸

Restricting birthright citizenship has gained such popularity in conservative circles that 2008 Republican presidential candidates Ron Paul and Mitt Romney voiced their support for ending birthright citizenship.¹⁰⁹ Yet immigration restriction proponents have been largely silent about the practical and legal consequences of creating a class of U.S.-born “alien” children. Creating a classification that would apply only to the offspring of immigrant women, the majority of whom are women of color, raises questions about whether citizenship status will soon become a proxy for national origin and a vehicle for racial discrimination.¹¹⁰

C. Coercive Immigration Enforcement Practices

The vilification of undocumented immigrant women in U.S. policy has also extended into practice. Increasingly, pregnant immigrant women have become the targets of punitive federal removal practices. Reports of the sudden and forcible detention and deportation of pregnant immigrant women have raised questions of whether pregnancy has become a red flag for removal by Immigration and Customs Enforcement (ICE) officials.

One story in particular illustrates this trend. On February 7, 2006, Jiang Zhen Xing, a Chinese woman pregnant with twins, miscarried after federal immigration officers forcibly tried to deport her.¹¹¹ Ms. Jiang and her family had arrived at the immigration office near her Philadelphia home for what she thought was a routine interview. While her husband and two sons waited for her in the lobby of the immigration office, ICE officials escorted her into a minivan and drove her to New York’s JFK Airport for immediate deportation back to China. ICE agents held Ms. Jiang for eight hours, de-

¹⁰⁶ See Note, *The Birthright Citizenship Amendment: A Threat to Equality*, 107 HARV. L. REV. 1026, 1026–27 (1994).

¹⁰⁷ H.R.J. Res. 129, 103d Cong. (1993).

¹⁰⁸ H.R. 1940, 110th Cong. (2007).

¹⁰⁹ Ron Paul 2008, Issue: Border Security and Immigration Reform, <http://www.ronpaul2008.com/issues/border-security-and-immigration-reform/>; Teddy Davis, *Romney Eyeing End to Birthright Citizenship*, ABC NEWS BLOG, July 22, 2007, <http://blogs.abcnews.com/politicalradar/2007/07/romney-still-lo.html>.

¹¹⁰ For a more thorough analysis of the constitutionality of ending birthright citizenship see Note, *The Birthright Citizenship Amendment: A Threat to Equality*, *supra* note 106, at 1041. See also Jonathon Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Application of Birthright Citizenship in the United States*, 9 GEO. IMMIGR. L.J. 667 (1995).

¹¹¹ Nina Bernstein, *Protests Brew Over Attempt to Deport a Woman*, N.Y. TIMES, Feb. 14, 2006, at B5.

nied her food, and refused to provide her with medical care until she begged for help in a public waiting area at the airport. Eventually, Ms. Jiang was taken to a hospital, where doctors found that she had miscarried her twin fetuses.¹¹²

At the time of the attempted deportation, Ms. Jiang had lived in the United States as an undocumented immigrant since 1995. In 2004, she was notified that an order of deportation had been issued for her but was told that she could remain in the country “under supervision” as long as she attended routine check-in interviews with ICE officials such as the one on February 7, 2006.¹¹³

Outraged by her treatment, a community of Asian-American activists and residents in the greater Pennsylvania area launched a campaign to bring national attention to Ms. Jiang’s experience.¹¹⁴ Under increasing public and political pressure, ICE eventually agreed to drop Ms. Jiang’s order of deportation.¹¹⁵ However, the timing of her attempted deportation raised suspicion among her supporters.¹¹⁶ After all, why would immigration officials be in such a rush to send a pregnant woman back to her country of origin after she had been allowed to stay in the United States for over ten years? Similar reports of immigrant pregnant women targeted for removal continue to surface in the media.¹¹⁷

D. *The Driving Force of Nativism in the Anti-Immigrant and the Anti-Choice¹¹⁸ Movements*

In recent years, anti-immigrant policymakers introduced a new framework encapsulated by a sign board recently on display outside the New En-

¹¹² *Id.*

¹¹³ Jeff Gammage, *Zhen Xing Jiang Arrived Here Illegally in 1995 and Lived Quietly for 10 years. But She Miscarried This Year in U.S. Custody and Now Is Fighting to Stay*, PHILADELPHIA INQUIRER, June 20, 2006, at A1.

¹¹⁴ For more information about Jiang’s case, see Philadelphia Independent Media Center, Justice for Local Immigrant Jiang Zhen Xing, <http://www.phillyimc.org/en/node/64184> (last visited Apr. 4, 2008).

¹¹⁵ Nina Bernstein, *Once Facing Deportation, a Woman Gets Asylum*, N.Y. TIMES, Sept. 8, 2007, at A1.

¹¹⁶ Gammage, *supra* note 113.

¹¹⁷ See Ruben Rosario, *Deportation Case Is No Model of Justice Served*, ST. PAUL PIONEER PRESS, Nov. 7, 2005, at 1B (describing the case of Cynthia Lamah, a Cameroonian woman who miscarried while in ICE custody awaiting deportation); Richard Jacques, *RHS Senior Deported; Parents Concerned*, ROSWELL DAILY REC., Dec. 8, 2007, available at <http://roswell-record.com/main.asp?Search=1&ArticleID=19403&SectionID=49&SubSectionID=112&S=1> (recounting the removal of Karina Acosta, a pregnant 18-year-old from Mexico who was removed from class by a local police officer for a traffic ticket and subsequently handed over to ICE for deportation); *Pregnant Mother’s Arrest at School Sparks Outrage*, NEW AM. MEDIA, Dec. 21, 2007, available at http://news.newamericamedia.org/news/view_article.html?article_id=0840ee70d1c0286d3525db8b242adabb&from=rss (reporting on the arrest and deportation of Maria Ramirez, a married high school student who was eight months pregnant).

¹¹⁸ The term “anti-choice” refers to reproductive rights opponents.

gland Baptist Church: “If we didn’t abort our children the U.S. wouldn’t need to hire illegals to work.”¹¹⁹

Given the long history of population control activism within the anti-immigration movement, blaming the nation’s abortion laws appears to be a radical departure from the movement’s traditional support for policies that help limit family size. However, the seemingly newfound alliance between two apparently antithetical movements is not so surprising when one identifies their common goal: to maintain the population status quo and preserve the white American majority. In fact, an examination of the voting records of anti-immigrant lawmakers on issues relating to a woman’s right to choose reveals that these lawmakers have long opposed pro-choice measures.¹²⁰

Some politicians have become quite vocal about the supposed link between legal abortion and “illegal” immigration. For example, former Republican House majority leader Tom DeLay told attendees at a 2007 College Republicans gathering: “I contend [abortion] affects you in immigration. If we had those 40 million children that were killed over the last 30 years, we wouldn’t need the illegal immigrants to fill the jobs that they are doing today.”¹²¹ Months earlier, former Democratic Senator turned Republican Zell Miller also advanced this theory at an anti-choice fundraiser. He claimed that 45 million babies had been “killed” since *Roe v. Wade*, and “[i]f those 45 million children had lived, today they would be defending our country, they would be filling our jobs, they would be paying into Social Security.”¹²²

In another example, a November 2006 report from the Missouri House Special Committee on Immigration Reform concluded that abortion was partly to blame for the “problem of illegal immigration,” because it caused a shortage of American workers. The author, Representative Edgar Emery, explained: “If you kill 44 million of your potential workers, it’s not too surprising we would be desperate for workers.”¹²³

It is clear from these statements that immigrants are not a desired demographic, even though, contrary to Senator Miller’s claims, immigrants already serve in the military, work for U.S. companies and small business owners, and contribute to Social Security. Rather, this anti-immigrant, anti-choice “rationale” refuses to acknowledge the critical contributions of immigrants and strips them of their American identity.

There is also a racial undertone to these assertions, which is where the anti-immigrant and anti-choice movements connect. The dismay expressed by the movements’ adherents over the loss of forty million “unborn chil-

¹¹⁹ Picture accompanying Eleanor J. Bader, *Male Victims of Abortion*, THE PUB. EYE, Fall 2007, at 1.

¹²⁰ See THE BUILDING DEMOCRACY INITIATIVE, *supra* note 63, at 9 (comparing the immigration and pro-choice voting records of members of the House Immigration Reform Caucus).

¹²¹ Michael Roston, *Tom DeLay Tells College Republicans That Abortion, Illegal Immigration Are Linked*, THE RAW STORY (July 17, 2007), available at http://rawstory.com/news/2007/Tom_DeLay_tells_College_Republicans_that_0718.html.

¹²² *Id.*

¹²³ David A. Lieb, *Mo. Panel’s Report Links Immigration to Abortion*, WASH. POST, Nov. 14, 2006, at A9.

dren” clearly runs counter to purported environmental concerns about rapid population growth. Moreover, when conservative anti-immigrant ideologues like Representative DeLay attack the mainstream reproductive rights movement, they are criticizing a movement that is composed of mostly white, middle-class feminists.¹²⁴ Thus, there is an implicit understanding that the “40 million children that were killed [by abortion]” referenced by DeLay, would have been white, and, at the very least, non-immigrant. In short, this subtle strain of nativism reveals the eugenic roots of a movement that continues to disfavor child-bearing by immigrant women of color.

E. The Population Double Standard: The Anti-Immigrant Movement and the Pro-Natalist Movement

Overpopulation fears have cast an unfavorable light on Asian and Latina immigrant women, who have higher-than-average birth rates. Yet little is mentioned of the high birth rates of certain predominantly white religious groups, such as Mormons and evangelical Protestants. The Mormon birth rate is significantly higher than the national average, and in 2006, Utah, which has a population that is over seventy percent Mormon and eight percent foreign-born, reported the highest general birth rate in the country.¹²⁵

Likewise, in recent years, white fundamentalist Protestants have quietly boosted their birth rates as part of a pro-natalist movement called the Quiverfull movement, named after Psalm 127: “Like arrows in the hands of a warrior are sons born in one’s youth. Blessed is the man whose quiver is full of them.” Adherents eschew birth control and family planning and instead demonstrate a willingness to trust that God will bestow as many children as He chooses.¹²⁶ Quiverfull families often have six or more children, concentrate in counties that are nearly 100% white, and view parenthood as a calling.¹²⁷ They also believe they are fulfilling God’s command to “be fruitful and multiply” and see their child-bearing practices as part of the missionary effort to build an army of Christians for God.¹²⁸

U.S. religious conservatives also see the Quiverfull movement as a solution to their concerns about immigration and “race suicide,” and as a strategy for building up their political power. Many U.S. religious conservatives are acutely aware of the declining birth rates of Europe’s “old stock” populations and are using the threat of a “demographic winter” to promote their

¹²⁴ See Jael Silliman et al., *Undivided Rights: Women of Color Organize for Reproductive Justice* 30 (2004).

¹²⁵ Nat’l Ctr. for Health Statistics, *National Vital Statistics Reports*, Vol. 56, No. 7 tbl.6 (2007); Migration Pol’y Inst., *2006 American Community Survey and Census Data on the Foreign Born by State*, available at <http://www.migrationinformation.org/datahub/acscensus.cfm#>.

¹²⁶ See Kathryn Joyce, ‘Arrows for the War’, *The Nation*, Nov. 27, 2006.

¹²⁷ See David Brooks, Op-Ed, *The New Red-Diaper Babies*, *N.Y. Times*, Dec. 7, 2004, at A27.

¹²⁸ *Genesis* 1:22, 9:7; see Joyce, *supra* note 126.

traditional ideology.¹²⁹ For example, Dr. John Wilke, founder of the National Right to Life Committee, testified as a medical witness for the 2005 Report of the South Dakota Taskforce to Study Abortion. In his testimony, he stated:

Muslim countries forbid abortion. Furthermore they have large families. Germany's birth rate is 1.2. . . . That is the Aryan Germans. What is happening? They're importing Turkish workers who do all of the more menial labor and right now there are over 1500 mosques in Germany. The Muslim people in Germany have an average of four children. The Germans are having one. So it's only a question of so many years and what do you think Germany is going to be? It's going to be a Muslim country.¹³⁰

Although Dr. Wilke's reference to Germany's rising Muslim population may seem out of context, his message is clear: the United States must increase restrictions on immigration and abortion or risk losing its white Judeo-Christian majority. Other immigration opponents have been even more blatant with their xenophobic messages. In response to a *Washington Post* article about the projected population growth of Latinos in the United States, John Gibson, co-host of a nightly Fox News show, said, "[b]y far, the greatest number [of children under five] are Hispanic. You know what that means? Twenty-five years, and the majority of the population is Hispanic."¹³¹ Gibson went on to say, "[W]e need more babies."¹³² It is clear from his use of "we" that he intended to speak to a non-immigrant, American audience of "European ancestry" similar to himself.¹³³

The demographic threat of a majority non-white population also harkens back to the negative and positive eugenic messages of the early twentieth century. Today's nativist policymakers and pundits continue to demonize non-Western immigrant women as "unfit" and pressure white Christian women to fulfill their domestic duties and give birth to "arrows for the war."¹³⁴

The Quiverfull movement is as much an electoral strategy as it is a religious one; there is a correlation between communities with high white fertility rates and those with conservative voters. In 2004, George Bush carried the nineteen states with the highest birth rates, while John Kerry took the sixteen states with the lowest rates.¹³⁵ It is not surprising then that con-

¹²⁹ See Kathryn Joyce, *Missing: The 'Right' Babies*, THE NATION, Mar. 3, 2008.

¹³⁰ E-mail from Lynn Paltrow, Executive Director, National Advocates for Pregnant Women, Dec. 15, 2006 (on file with author).

¹³¹ *The Big Story with John Gibson*, *supra* note 9.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See Joyce, *supra* note 126.

¹³⁵ Steve Sailer, *Baby Gap: How Birthrates Color the Electoral Map*, THE AM. CONSERVATIVE, Dec. 20, 2004; see also Joyce, *supra* note 126 (describing the political impact Quiverfull advocates hope to have, including attaining "both houses of Congress and the majority of state governors' mansions filled by Christians").

servatives like to shift attention away from their own childbearing patterns by accusing immigrant women of having too many children and burdening the environment and the U.S. government. In short, the nativist strain of the early anti-immigrant movement continues to impact contemporary anti-immigrant policies and practices.

CONCLUSION

The population-environment connection is not a new one. However, it has seen a resurgence in recent years as demographers continue to report imminent shifts in the racial composition of the U.S. population mainly due to immigration. Accordingly, anti-immigrant strategists are exploiting anxieties about the country's demographic future and using them as entry points for promoting their nativist messages to a broad audience of welfare restrictionists, environmental conservationists and more recently, the faith-based pro-natalist movement.

Thus, immigrant women's bodies have become the economic, demographic, and political battleground for America's future. Immigrant women continue to be accused of overusing public benefits and burdening the environment with their larger family sizes and assumed adoption of American consumption patterns. Such population alarmism drives policy-making that seeks to reduce the birth rates of immigrant women of color and increase the birth rates of "native" white women, while restricting the reproductive rights of all women in the United States.

A possible alternative to the current anti-immigrant rhetoric is one that many in the environmental movement, including the Sierra Club and Population Connection, have already embraced: we must engage in a unified strategy to increase access to quality reproductive health services for all women regardless of status, and we must simultaneously commit to hold all American citizens, immigrants, corporations, and our government accountable for reducing consumption levels.¹³⁶ Environmental sustainability does not require a reduction in immigrant births or a rollback of public benefits. Rather, the United States must support strategies that promote the basic humanitarian goals of livable wages and access to affordable health care—including the spectrum of family planning services such as pre-natal health care and contraceptive equity—and a life free from oppressive, fear-driven policies. If we do not pursue this path, then all women—citizen and immigrant—face a bleak future that could throw the country back to the height of the eugenics movement, and women will once again lack the ability to make autonomous life choices about their reproductive fates.

¹³⁶ See Roy Beck & Leon Kolankiewicz, *The Environmental Movement's Retreat from Advocating U.S. Population Stabilization (1970–1998): A First Draft of History*, J. POL'Y HIST. Vol. 12, No. 1 (2000), available at http://www.numbersusa.com/about/bk_retreat.html.