

# Housing, Fair Housing and Immigration

Housing Justice Network Conference  
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# Fair Housing Act

- Covers persons regardless of immigration status
- Does not expressly protect non-citizens
- Forbids discrimination against “any person”  
ex. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rent, or otherwise make unavailable or deny a dwelling to any person because of \* \* \* national origin. 42 U.S.C. § 3604(a).

# Fair Housing Act

- Standing: Any person injured by a discriminatory housing practice, whether or not the target, can sue to recover for his or her own injuries. *Harris v. Itzaki*, 183 F.3d 1043 (9<sup>th</sup> Cir. 1999)
- Can prove case through disparate impact or disparate treatment

# Discriminatory Housing Practices

- Refusal to sell or rent or Otherwise Make Unavailable
- Discriminatory terms or conditions
- Discriminatory statements or advertisements
- Misrepresentations about availability
- Interference, Threats, or Coercion (Harassment)
- Failure to Affirmatively Further Fair Housing

# Otherwise Make Unavailable or Deny

- Unlawful to: refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race \* \*  
\* or national origin. 42 U.S.C. § 3604(a).

# Otherwise Make Housing Unavailable

- Refusing to provide municipal services or property or hazard insurance for dwellings or providing such services differently because of race \* \* \* or national origin. 24 C.F.R. § 100.70(d)(4)
- Engaging in unlawful conduct that results in the termination of housing benefits. Idaho AIDS Foundation v. Idaho Housing Finance, 422 F. Supp. 2d 1193, 1203 (D. Idaho 2006)

# Otherwise Make Housing Unavailable

- But see, *Cox v. City of Dallas*, 430 F.3d 734, 740 (5th Cir. 2005)(Section 3604(a) must affect ability to secure housing or locate in a particular area)

# Differential Terms and Conditions

- Unlawful to: discriminate against any person in terms, conditions or privileges of the sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race \* \* \* or national origin. 42 U.S.C. § 3604(b).

# Differential Terms and Conditions

- Discrimination in the provision of municipal services violates § 3604(b). Committee Concerning Community Improvement v. City of Modesto, 583 F.3d 690 (9th Cir. 2009), pet. for reh'g en banc filed

# Differential Terms and Conditions

- But see, *Cox*, 430 F.3d at 746-7 (services must be connected with the initial sale or rental of a dwelling)

# Interference

- Unlawful to: coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed \* \* \* any right granted by [the Fair Housing Act]. 42 U.S.C. § 3617.

# Interference

- Interference has been broadly applied to reach all practices that have the effect of interfering with the exercise of rights under federal fair housing laws. *Walker v. City of Lakewood*, 272 F.3d 1114, 1129 (9th Cir. 2001) but see *Bloch v. Frischoltz*, 587 F.3d 771 (7th Cir. 2009) (en banc)
- Discriminatory provision of police services interferes with right to services connected with residency and violates § 3617. *Campbell*, 815 F. Supp. At 1144.

# Prima Facie Case

- **Statistical evidence**, e.g. Neighborhood where enforcement is targeted has higher percentage of minorities. 2922 Sherman Avenue Tenants v. District of Columbia, 444 F.3d 673, 682 (D.C. Cir. 2006).
- **Historical background of decision and specific sequence of events.** Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 267 (1977); *Id.*
- **Comparative evidence**, e.g. differential treatment because of race or race of neighborhood. *Id.*
- **Evidence of subjective decision making**, e.g. having no justification for subjective choices. 2922 Sherman Avenue Tenants, 444 F.3d at 683.

## **Prima Facie Case – Other Evidence Giving Rise of Inference of Discrimination**

- Public statements by municipal leaders
- Statements by public
- Statements in chat rooms
- Enforcement primarily against one racial or national origin group
- Persons of one racial or national origin group displaced
- Harassment by investigators of one racial or national origin group

# Pretext

- Evidence showing or raising inference that proffered justification is untrue such as deviation from usual practice or dealing with racial minorities or persons living in minority neighborhoods differently. 2922 Sherman Avenue Tenants, 444 F.3d at 683.

# Section 1981

- *All persons* within the jurisdiction of the United States have the same rights in every state and territory to make and enforce contracts, to sue, to be parties, to give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and no other

# Section 1981

- Section 1981 prohibits private discrimination on the basis of citizenship. *Anderson v. Conboy*, 156 F.3d 167 (2d Cir. 1998)
- Requires proof of discriminatory intent
- Non-citizens have standing under Section 1981
- Prohibits racial discrimination but many courts recognize national origin claims as race claims. *See St. Francis College v. Al-Khazarji*, 481 U.S. 604, 613 (1987)

# California Civil Code § 1940.3

- City or County may not require a landlord or his agent to: (a) inquire about or report the citizenship or immigration status of applicants or residents; (b) deny tenancy or evict based on citizenship or immigration status of an applicant or resident; (c ) take any action based on citizenship or immigration status of an applicant or resident

# Civil Code § 1940.3

- No landlord or agent may: (a) make any inquiry regarding or based on the immigration or citizenship status of a tenant, prospective tenant, occupant or prospective occupant of residential rental property; (b) Require that any tenant, prospective tenant, occupant or prospective occupant make any statement, representation, or certification concerning his or her immigration status

# Civil Code § 1940.3

- Nothing prohibits a landlord from either (a) complying with any legal obligation under federal law or (b) requesting information or documentation necessary to determine or verify the financial qualifications of a prospective tenant or to determine or verify the identity of a prospective tenant or prospective occupant

# Practical Implications

- Cannot ask for specific identification such as a government issued driver's license
- Requesting government issued photo identification such as a passport, foreign issued driver's license or other foreign identification
- Screening policy must include process for evaluating applicants who have neither a SSN or Tax Id number

# Practical Concerns

- Threat of plaintiffs or complainants being reported to INS and deportation

*Sure-Tan v. NLRB*, 467 U.S. 883, 886-7 (1984)  
(employer reported five undocumented workers after they voted in favor of union representation);  
*Singh v. Jutla & C.D. & R's Oil, Inc.*, 214 F.Supp.2d 1056, 1057 (N.D. Cal. 2002)(employer recruited an undocumented worker and then reported him to INS after he filed an FLSA claim for unpaid wages)

# Practical Concerns

- No agreement between HUD and ICE regarding deportation of complainants in fair housing cases
- Possible Solution – fair housing organization as plaintiff

# Discovery of Immigration Status

- *Rivera v. Nibco*, 364 F.3d 1057 (9<sup>th</sup> Cir. 2004)
- District court correctly granted protective order against discovery into plaintiffs' immigration status
- Chilling effect discovery of immigration status could have on the bringing of civil rights actions unacceptably burdens the public interest in enforcing Title VII

# Discovery of Immigration Status

- Private plaintiffs act as private attorney generals in bringing civil rights cases

# Citizenship Discrimination

- *Espinoza v. Hillwood Square Mutual Ass'n*, 522 F.Supp. 559 (E.D. Va. 1981)
- Discrimination based on citizenship may be evidence of a violation of the FHA
- Alienage is not a per se violation of the FHA
- Policy of discriminating based on citizenship may have a discriminatory effect based on national origin in violation of the FHA

# Citizenship Discrimination

- Section 1981 reaches private discrimination based on alienage

# Examples

- English Only Rules
- Municipal occupancy limits cases
- Municipal services cases
- Municipal ordinances banning rentals to immigrants

# English Only Rules

- *Vialez v. New York City Housing Authority*, 738 F.Supp. 109 (E.D. N.Y. 1991)
- Failure to translate termination notice into Spanish did not state a disparate impact claim based on national origin. All non-English speaking persons were affected in the same manner.

# English Only Rules

- *Veles v. Lindow*, Case No. C-96-20245-JW (EAI)(N.D. Cal. 1998)
- English only rule does not have a disparate impact on persons of a particular national origin but rather all persons who do not speak English
- English only rules is not sufficient to establish plaintiffs' prima facie case. Persons of different national origins can attain English proficiency

# English Only Rules

- If a housing provider employs an English only rule to mask discrimination against a particular national origin, the defendant may be liable under the FHA
- Evidence of English only policy combined with alleged statement that “We don’t rent to people who speak Spanish” was sufficient to establish a prima facie case

# Manassas, Virginia Ordinance

- Manassas City Council adopted ordinance that precluded extended relatives from living in a household, even when the total number of persons is below the occupancy limitation. Ordinance was repealed after threats of litigation.
- Hispanic households are more likely than non-Hispanic households to include persons related by blood or marriage in addition to a husband, wife and their children.
- Manassas Latino population grew from less than 6% of the population to 15% of the population

# Manassas Ordinance

- Chief Building Official announced that definitional change in family was prompted by need for City to break up families
- Vice-Mayor defended ordinance by stating that it attacks the issue of overcrowding caused by illegal immigration
- Reverted to old ordinance which allows no more than three unrelated persons to live under one roof or allows a family to share its home with one unrelated person
- Anonymous hotline allows residents to complain anonymously about neighbors suspected of violating ordinance

# Manassas Ordinance

- More than 60% of hotline calls were against Hispanics
- Complaints were mostly against those who did not violate limitations on the number of persons who could reside in a dwelling
- All of complaints under repealed ordinance were against Hispanics
- 200 Hispanic residents displaced by city inspection

# Manassas Ordinance

- Harassment by inspectors
- Administrative complaints filed by two fair housing organizations, HOME of Richmond and The Equal Rights Center of DC, and 10 Manassas residents who alleged that they were displaced by inspections or harassed

# Manassas Settlement

- Discontinue use of hotline
- Fair housing training
- Adoption of inspection standard operating procedures
- Hiring of Housing Manager and Advocate
- \$725,000 in damages and attorneys' fees

# Exclusion in Modesto, California

- Withholding of Services:
  - Sewer
  - Police protection
  - Street lights
  - Sidewalks
  - Stormwater Management

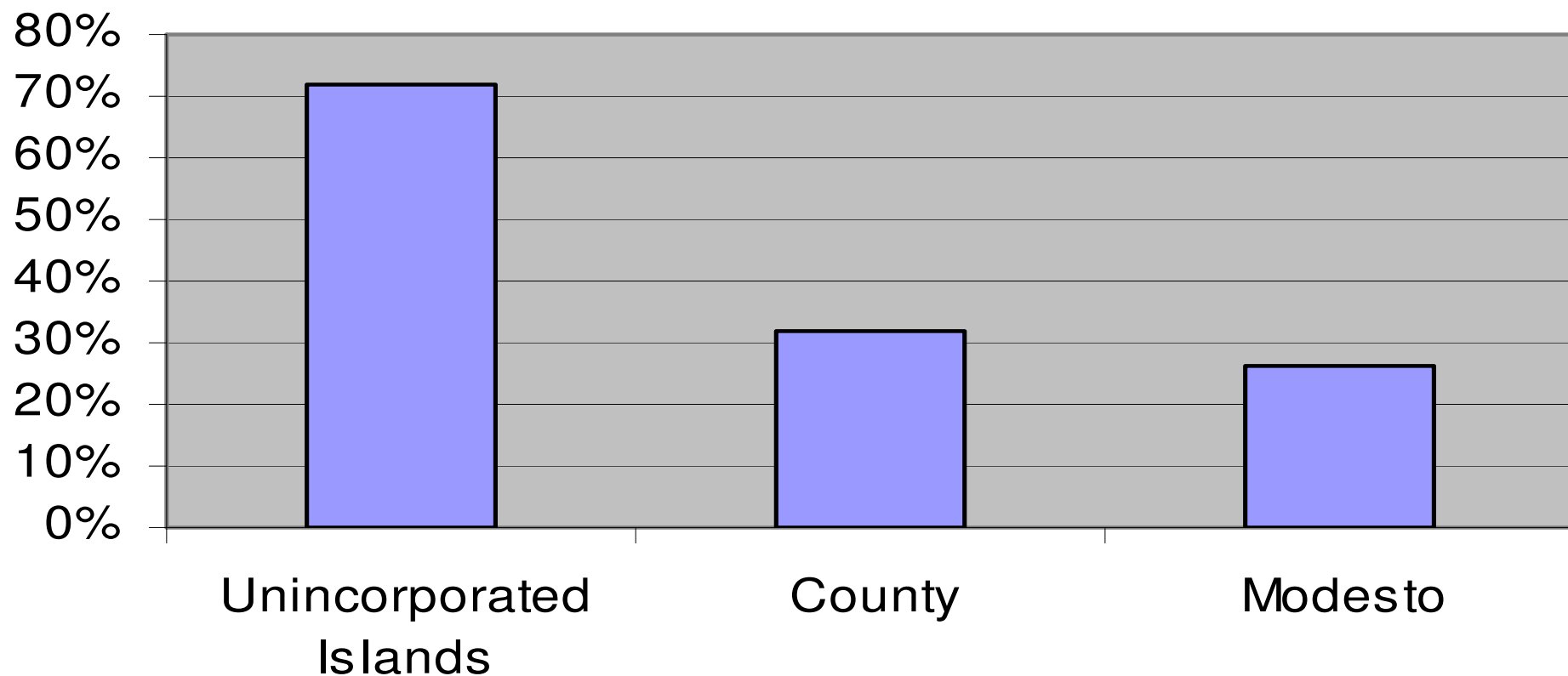
## *Who is affected?*

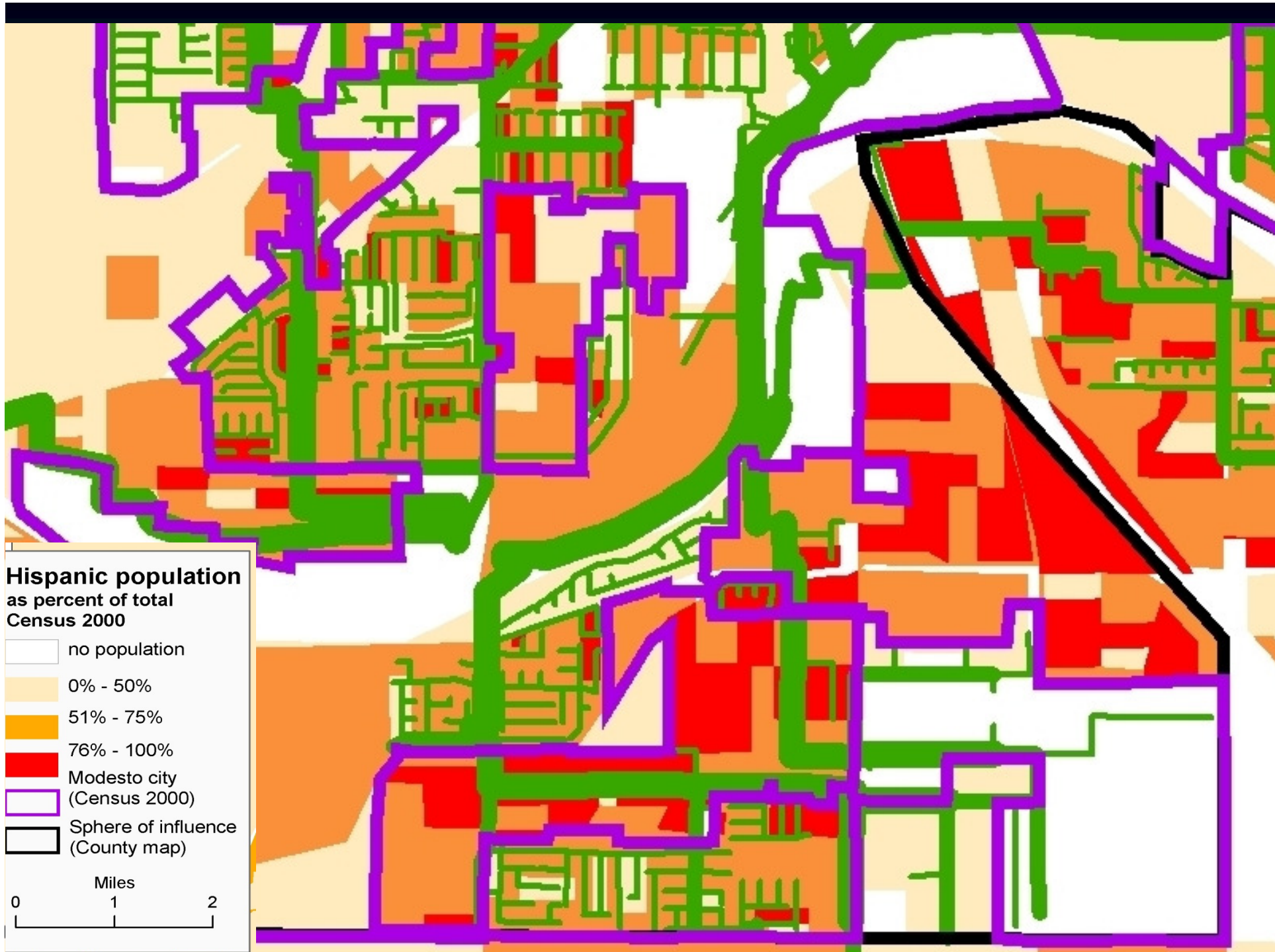
*Over 20,000 people live in these unincorporated islands.*

*Unincorporated island residents are almost 10 times more likely to be Latino than non-Latino*

*“Island” residents are much more likely to be Latino than are residents of the City or the*

### Percent Latino





## Land Use and Densities

City Limit

City block

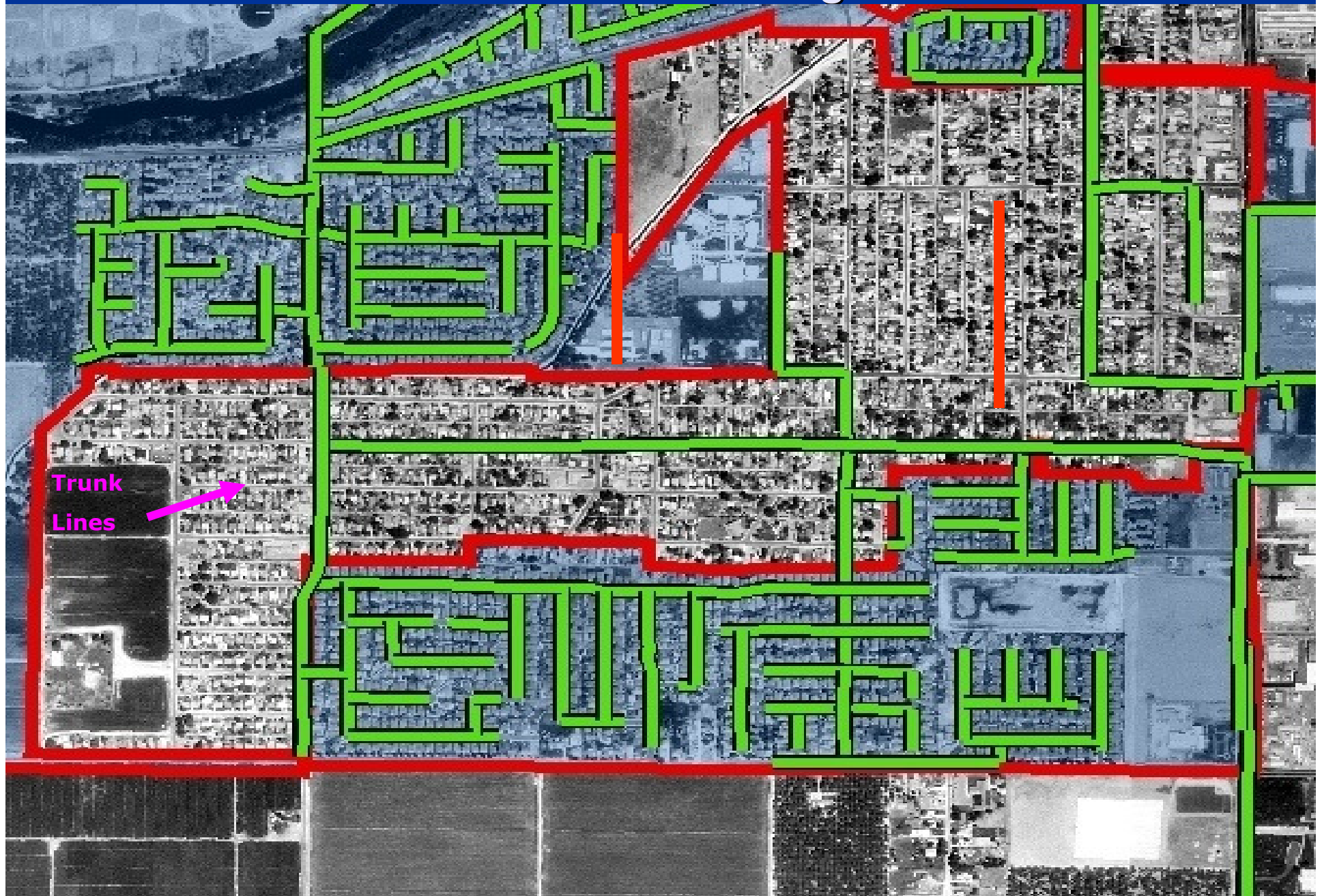


In the City

Out of the City

No Man's Land, Modesto, CA  
71% Latino

# Excluded Hispanic Neighborhoods: City Densities Bret Harte 1254 Housing Units



*Roberson Road*  
*A neighborhood of 1,459 people,*  
*built on a flood plain, of lots averaging 1/5 acre.*



No sidewalks or stormwater management means arriving at school with soaked shoes, socks and pantlegs -- or walking in the street ....



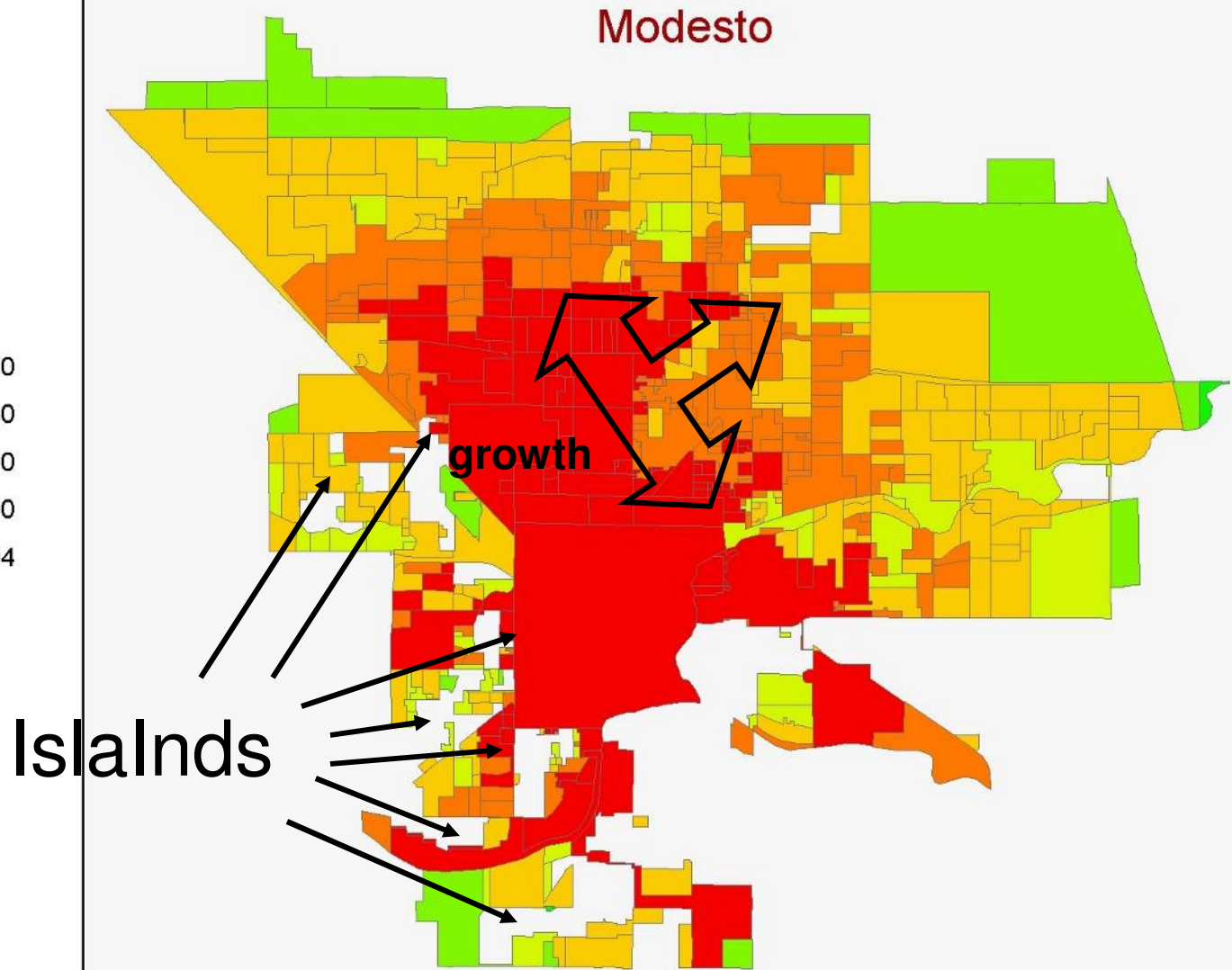
making the choice between the stress of social isolation or risking their lives.

*Without City Trash Pickup, the neighborhoods become a dumping ground.*



Without adequate police surveillance, dumpers know they're not likely to get caught.

# Disparities A Function of City's Power to Annex



# Municipal Ordinances

## Banning Rentals to Immigrants

- Illegal Immigration Relief Act Ordinance, Hazelton, Pennsylvania
- Prohibits illegal immigrants from leasing or renting property. Any property owner or other person in control of property who knowingly allows an illegal alien to use, rent or lease property shall be in violation of ordinance
- Any person or entity who violates ordinance shall be subject to a fine of not less than \$1000. A separate violation shall be deemed to be committed on each day during or on which a violations occurs or continues.

# Municipal Ordinances

## Banning Rentals to Immigrants

- Denies business permit or city contract or grant to any person or entity (other than a charity) that employs, retains, aids or abets illegal aliens or illegal immigration for a period of five years for the first violation and ten years for any subsequent violation. Aids and abets includes hiring, renting or leasing real or personal property, or funding or providing goods or services to illegal alien
- Establishes English as official language of City

# Municipal Ordinances Banning Immigrants and Fair Housing

- Creates incentives for landlords to discriminate based on national origin in violation of the FHA
- Housing providers may avoid renting to persons who appear or sound foreign
- Private housing providers may be violating Section 1981
- May be evidence of discriminatory treatment under the FHA
- May have a disparate impact upon national origin in violation of the FHA

# Lozano v. City of Hazelton, 496 F. Supp. 2d 477 (M.D. Pa. 2007)

- District court found that housing provisions preempted by federal law because ordinance would deny residency to persons that federal government allows to live in the United States
- Violates Fourteenth Amendment and Section 1981
- On Appeal to Third Circuit