DREAMing of an Equal Future for Immigrant Children: Federal and State Initiatives to Improve Undocumented Students’ Access to Postsecondary Education

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I. INTRODUCTION

Like any typical Mexican restaurant in Smalltown, U.S.A., La Fogata’s coffee is terrible—lukewarm and watered down, grainy sludge clouding the last few sips of each cup. Their menudo, on the other hand, is outstanding—pungent and rich, generous chunks of tripe in each spoonful. The small, family owned and operated restaurant in the town of Sunnyside reflects only one piece of the prototypical profile of rural Eastern Washington. Down the main drag and around the corner sits the community high school. Like a number of other schools in the lower Yakima Valley, more than two-thirds of the students of Sunnyside High are Hispanic,1 and 56% qualify for the school’s free or reduced-price lunch program.2 And like those other schools, somewhere between one-

∗ J.D. candidate, University of Arizona James E. Rogers College of Law, 2005. First and foremost, my thanks go to the students, teachers, counselors and attorneys that agreed to participate in interviews for this project; their life experiences and stories provide the most important voices to straighten the path for misguided policy. Big thanks also to Chris Goodman, Eric Beane, Lise Johnson, Kevin Bray, Sarah Baker and my family for their comments on the evolution of this piece.
1 Washington Office of Superintendent of Public Instruction, Sunnyside High School, at http://www.greatschools.net/cgi-bin/wa/other/1897 (2001-02); Interview with Sandra Linde, Public Policy Director, Latino/a Educational Achievement Program, in Sunnyside, Wa. (Nov. 6, 2003) [hereinafter Linde interview].
quarter and one-third of the senior class lacks legal immigration status and faces extraordinary difficulties in obtaining a postsecondary education.\textsuperscript{3}

Unchecked immigration of undocumented persons from Mexico and Latin America to the U.S. is not a new problem. For years, this population has provided American industry—especially the agricultural sector—with a cheap source of labor.\textsuperscript{4}

Nevertheless, as the numbers of permanently settled undocumented immigrants in the U.S. increase, debate stirs. If these immigrants are here to stay, employed year-round and paying taxes, their children enrolled in the public school system, should they be permitted to adjust their status and enjoy the benefits of legal residency in this country like the rest of their community?

In 1986, attempting to address this question, Congress passed the Immigration Reform and Control Act,\textsuperscript{5} which allowed for large classes of undocumented immigrants to adjust their status and become legal residents.\textsuperscript{6} Nearly twenty years later, however, U.S. communities are facing new generations of undocumented immigrant families. Although the bulk of these families are similar to those who benefited from the mass legalization seventeen years ago in their vocation and economic status, they also face new challenges. Not the least of these is the backlash against illegal immigration in the

\begin{footnotesize}
\textsuperscript{3} Linde interview, \textit{supra} note 1; Interview with Jan Phillips, Counselor, Wahluke High School, in Mattawa, Wa. (Nov. 6, 2003) [hereinafter Phillips interview]; Interview with Oscar Martinez, Chris Bazaldua and Meche Brownlow, Counselors, Toppenish High School, in Toppenish, Wa. (Nov. 7, 2003) [hereinafter Toppenish counselors interview]; Interview, Trino Sandoval, Recruiter, Central Washington University, Toppenish, Wa. (Nov. 7, 2003) [hereinafter Sandoval interview].
\end{footnotesize}
aftermath of the terrorist attacks of September 11, 2001, whose effects range from the spread of cultural prejudices to increased border security.\(^7\)

Today, undocumented youth face an especially intriguing challenge. Although they may have been no more than baggage for their parents in a border-crossing trip they did not plan, their undocumented status makes their presence in the U.S. a violation of federal law.\(^8\) Nonetheless, they are embraced by the American public school system because a 1982 Supreme Court case guaranteed all children in the U.S. the right to a free K-12 education regardless of their immigration status.\(^9\) This creates a substantial disconnect between the childhood and adult lives of undocumented immigrants in this country. As these children grow up, the government and their communities treat them as equals to other kids. After graduation day, however, a harsh reality sets in, fraught with inequality and silent discrimination.\(^10\)

Judged by their appearance, high school seniors who lack valid immigration documents are indistinguishable from their classmates. On any given fall day at school, they wear sweaters and jeans, and mingle in the hallways between classes gossiping and joking with their friends. These youth enjoy the right to a public education in the U.S. that provides them—just like citizen and legal resident students—with a social center, a place to enroll in free classes, get an affordable lunch, join a sports team, play in the band

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\(^10\) Interviews with undocumented high school students and graduates in Eastern Washington State (Mattawa and Toppenish) and Southern Arizona (Phoenix and Tucson) (Nov. 2003-Feb. 2004) [hereinafter Student interviews]. Although these students’ stories are real, the names included in this note have been changed to maintain student confidentiality.
or sing in the choir. But the similarities begin to dissolve when you sit across the table from them and talk candidly about their outlook on the future and their possibilities after high school. While discussing school and community activities they are currently involved in—student government, clubs and organizations, church and service groups—undocumented students perk up and are eager to share.\textsuperscript{11} In contrast, many of the same students seem ashamed and physically drained when speaking of their postsecondary plans, hunching their shoulders and speaking softly, eyes focused downward.\textsuperscript{12}

The outlook for these students’ future is bleak, at least when weighed against the postsecondary plans of their classmates. Many undocumented students finish high school, but a significantly lesser number are likely to graduate from a postsecondary institution.\textsuperscript{13} The primary source of discouragement for these students is strict federal policy that excludes them from eligibility for government educational loans, in-state tuition rates and adjusting their immigration status, effectively denying them access to postsecondary education benefits.\textsuperscript{14} Following the current federal mandate, several states have spoken out against any favorable state treatment of undocumented students and expressly denied them in-state tuition.\textsuperscript{15}

\begin{itemize}
\item \textsuperscript{11} Id.
\item \textsuperscript{12} Id.
\item \textsuperscript{13} Phillips interview, supra note 3; Student interviews, supra note 10.
\item \textsuperscript{15} See AM. ASS’N OF ST. CS. & U., Access for All? Debating In-State Tuition for Undocumented Alien Students (last modified Nov. 6, 2003), available at http://www.ascu.org/policy/special_report/access_for_all.htm [hereinafter, Access for All]. To date, Virginia has been the only state to pass legislation denying state educational benefits to undocumented students, but similar laws have been proposed in Alaska, Arizona, and North Carolina. Id. Additionally, state officials in Colorado and Maryland have publicly spoken out against granting such benefits. Id.
\end{itemize}
However, the movement to grant undocumented students opportunities for postsecondary education is growing. At the state level, steps are being taken to counteract federal exclusionary measures. Over the past three years, seven states have passed legislation that entitles certain undocumented students to in-state tuition at public postsecondary schools, contrary to current federal policy. Sixteen other states have introduced but not yet passed similar legislation.

On the federal level, although support has been limited to date, several pieces of legislation addressing the issue have been proposed. Importantly, these put forward uniform policies that would eliminate broad policy disparities at the state level. To date, the federal measure with the most support is the Development, Relief and Education for Alien Minors (“DREAM”) Act, mirrored in the House by its companion bill, the Student Adjustment Act. In addition to repealing the federal law that prohibits granting in-state tuition to undocumented students, the DREAM Act proposes a legalization

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16 These states include: California, Delaware, Illinois, New York, Texas, Utah and Washington. Id. Additionally, Wisconsin passed similar legislation in August 2001 as part of its budget bill, but the provision was line item vetoed by the Governor. Id.

17 Although the measures differ according to each law, all states have set requirements that undocumented students must meet to establish eligibility for in-state tuition. Typically, these involve at least three years of continuous residency in the state and graduation from a state high school. See, e.g., WASH. REV. CODE ANN. § 28B.15.012(2)(e) (West 2003).

18 These states include: Alaska, Arizona, Colorado, Florida, Georgia, Hawaii, Kansas, Massachusetts, Minnesota, Nebraska, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island and Wisconsin. Access for All, supra note 15.


21 S. 1545 (proposed by Senator Orrin Hatch (R-UT)). A similar version of the bill was introduced in the 107th Congress, but never made it past committee consideration. See DREAM Act, S. 1291 (2001).

22 H.R. 1684 (introduced by Representative Chris Cannon (R-UT)). Like the DREAM Act, the Student Adjustment Act was introduced but received little attention in the 107th Congress. See H.R. 1918 (2001).
program for these youth, allowing them to obtain conditional legal status in the U.S.\textsuperscript{23} Not only would this measure grant these students access to in-state tuition rates, it would also make them eligible for federal financial aid programs to help pay for their postsecondary education.\textsuperscript{24} Nonetheless, despite garnering favorable press attention, the DREAM Act is still in the process of gathering Congressional support; it is unclear whether the Senate will reach a vote on it during the 108\textsuperscript{th} Congress, and the House companion Student Adjustment Act has yet to be considered in committee.\textsuperscript{25}

This Note will broadly discuss the debate over undocumented high school students in the U.S. who desire to attend college and the ways current state and federal laws both empower and discourage them. In Part II, some of the realities faced by undocumented students nationwide will be revealed through case studies in Washington State and Arizona. In Part III, the constitutional controversies that surround these students’ right to an education in the U.S. will be considered. Based on this framework, Parts IV and V will outline legislative barriers and solutions that seek to block or enable this right.

This Note argues that undocumented students in the U.S. desperately need changes in the law. The most effective way to ensure these students realistic access to postsecondary education is to pass federal legislation already proposed on the issue. Not only would a bill like the DREAM Act lessen the financial burden on already poor populations, but more importantly, it would also provide a means for marginalized youth all across the country to assimilate into mainstream American society.

\textsuperscript{23} See S. 1545, § 5.
\textsuperscript{24} See U.S. DEP’T OF EDUC. sources cited supra note 14. But see S. 1545 § 12 (recent amendment added to the bill in committee limiting financial aid availability).
II. SETTING THE STAGE FOR DISCUSSION: CASE STUDIES IN EASTERN WASHINGTON STATE AND SOUTHERN ARIZONA

The personal experiences and perspectives of high school students, teachers, counselors and immigration attorneys paint a clear picture of the lives of undocumented students. The reality, in short: the average undocumented high school student does not have an equal, or even a reasonable chance to obtain a postsecondary education.

A. Washington State

Driving down the rural highways of the Yakima Valley in Central Washington State, it is clear even to the untrained eye that agriculture dominates the local economy. Fruit and vegetable stands dot the sides of the road between large expanses of orchards and cropland. Graveyards of agro-industrial machinery, fence parts and irrigation pipe lie strewn about. Occasionally, fields give way to rows of large concrete processing and distribution facilities. Where crops are lacking, an earthy odor announces the presence of large cattle stockyards.

It is equally obvious to the outsider that the area is home to a large Hispanic population. Taco trailers pop up frequently along the highway, improvising patios on the dirt roadside with blue tarps strung up above plastic tables and chairs. Inside many traditionally Anglo farming communities, Spanish is well integrated. Chainsaw dealers sit across the street from tortillerías. Gas station signs advertise the price of “fountain drinks” alongside “carne asada y chivo.”

Nowhere is the coexistence of these two cultures more evident than at area public schools. Signs are posted on the door in both English and Spanish, directing visitors to the office. Phone calls and paperwork are managed in both languages. Pictures in trophy
cases and yearbooks reflect mixed race clubs and student government boards. Yet there remain serious lines drawn between some Hispanic students and the rest of the community, even if they go unspoken.

Conversations with high school teachers and counselors are particularly revealing of these differences. Jan Phillips, counselor at Wahluke High School in Mattawa, Washington, confirms that undocumented high school students face significant difficulties after they graduate.26 A college education—taken for granted by some students—is nearly unattainable for many teenagers in the undocumented immigrant community.27 Of some fifty undocumented seniors that graduate in an average Wahluke High class of slightly less than one hundred students, only five may find adequate funding to attend a four-year college or university.28 Another thirty to thirty-five may aspire to enroll in nearby community colleges, but will be frustrated by funding issues along the way.29 The fundamental question for these students, according to Phillips, is whether they can find a way to work at least part-time while attending school.30 Even a minimum wage job—when combined with a reduced course load—may provide enough income to compensate for the educational loans they cannot receive.31

Cases of undocumented students like these with limited futures after high school abound in Eastern Washington State.32 This emergence of educational difficulties can be

26 Phillips interview, supra note 3.
27 Id.; Linde interview, supra note 1; Toppenish counselors interview, supra note 3; Sandoval interview, supra note 3; Student interviews, supra note 10.
28 Phillips interview, supra note 3.
29 Id.
30 Id. Finding a job outside of the agricultural sector is difficult and sometimes impossible for undocumented youth. See supra text accompanying notes 182-97.
31 Id.
32 Id.; Linde interview, supra note 1; Toppenish counselors interview, supra note 3; Sandoval interview, supra note 3; Interview with Raquel Pérez, Secretary, Toppenish High School, in Toppenish, Wa. (Nov. 7, 2003) [hereinafter Pérez interview].
explained generally by a shift in immigration patterns. Over the past twenty or so years, immigration by Hispanics—primarily from Mexico—has supplied the principal work force for agricultural growers and packing companies in the area. Many of these workers have brought their families with them and have enrolled their children in public schools.

When this trend first became prevalent, Washington employers hired migrant workers who came and went with their families seasonally, staying anywhere from five to seven months depending on that year’s fruit and vegetable crops. Because this transient lifestyle affected the education of these families’ children, migrant education programs were created to coordinate efforts between schools and allow for maximum recognition and transfer of high school credits. The youth enrolled in these programs faced some difficulties in pursuing a higher education, but ultimately, most were eligible for federal financial assistance because they were either United States citizens or legal permanent residents.

In the past ten years, however, communities have undergone demographic changes; the growth and diversification of the agricultural industry has created more jobs

33 Toppenish counselors interview, supra note 3; O’Hara interview, supra note 6; Sandoval interview, supra note 3; Pérez interview, supra note 32. See generally Green, supra note 4.
34 Toppenish counselors interview, supra note 3; O’Hara interview, supra note 6; Pérez interview, supra note 32. See generally Green, supra note 4.
35 O’Hara interview, supra note 6; Pérez interview, supra note 32.
36 O’Hara interview, supra note 6. See SECONDARY EDUC. FOR MIGRANT YOUTH (last modified 2003), at http://www.semy.org (including information on the Portable Assisted Study Sequence (PASS) and other migrant programs).
37 O’Hara interview, supra note 6. O’Hara stated that despite the best efforts of teachers and program directors to ensure that migrant students’ classroom time in varying schools was documented and credited to their academic record, standards differed between states that made coordination difficult. For example, because of different graduation requirements from public schools in Washington State and Texas, it took some migrant students that transferred between these states an additional semester or two above the normal four years to graduate from high school.
38 O’Hara interview, supra note 6; Pérez interview, supra note 32.
and more Hispanic immigrants have come to take them. Simultaneously, dramatic shifts have occurred in immigration patterns. For one, the majority of agricultural workers in Eastern Washington are no longer migratory but permanent residents of their communities. This has occurred because the expansion of industrial operations has allowed for year-round employment or spillover into processing, packing and other non-field work during the off-season. Additionally, growing numbers of workers and their families are undocumented immigrants, crossing the U.S. border without legal permits. The combination of these trends has established a permanent population of undocumented youth growing up in local communities.

Despite its current prevalence in the area, the undocumented status of students is not a common topic of conversation at school. Toppenish High School counselors Oscar Martinez, Chris Bazaldua and Meche Brownlow admit that they do not know exactly which students have legal documentation and which do not. Their rough estimate is that 10-20% of Toppenish students are undocumented. They are sure of one thing, though: there are precious few resources available for helping local undocumented students seek a higher education.

A number of these students are discouraged by visions of a future confined to low-income jobs, removing the incentive to follow through with any formal schooling

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39 Toppenish counselors interview, supra note 3; O’Hara interview, supra note 6; Johnson, supra note 7, at 432.
40 O’ Hara interview, supra note 6; Pérez interview, supra note 32; Phillips interview, supra note 3; Student interviews, supra note 10.
41 Toppenish counselors interview, supra note 3; Phillips interview, supra note 3; Student interviews, supra note 10.
42 O’ Hara interview, supra note 6; Pérez interview, supra note 32; Phillips interview, supra note 3; Student interviews, supra note 10; Sandoval interview, supra note 3.
43 Toppenish counselor interviews, supra note 3.
44 Id.
whatsoever. Even more disheartening are cases of students who persevere and manage to finish college, yet are unable to find professional employment because of their lack of proper documentation. For these reasons and others, many of these students eventually end up working—like their parents—as manual laborers in the agricultural industry.

Still other undocumented students in Eastern Washington choose to buck the trend, although a multitude of not-so-subliminal forces in the Yakima Valley push them away from higher education and toward low-paying jobs close to home. These young people finish high school and struggle through the frustrating search to obtain a college education with impressive determination. One shining example of these students is Julia, who graduated near the top of the Wahluke High class of 2003. She is now attending the University of Washington on full scholarship and strives to become a farmworker attorney. Even though students like Julia consider themselves fortunate to be enrolled in college, they know their trials as undocumented immigrants are far from over. Further challenges—like finding a job without a Social Security number—loom on the post-college horizon, but for now, most of these students take things one day at a time.

**B. Arizona**

In many other rural regions across the country undocumented students suffer from similar predicaments, but things are a bit different along the U.S.-Mexico border. In

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46 Student interviews, supra note 10.
47 Id.
48 Id.; Phillips interview, supra note 3; Sandoval interview, supra note 3; Pérez interview, supra note 32; O’Hara interview, supra note 6.
49 Phillips interview, supra note 3. “Julia” is a fictitious name. See supra note 10.
50 Phillips interview, supra note 3.
contrast to Washington—one of the states currently experiencing rapid growth in its immigrant population\(^{51}\)—Arizona and other border states have long been home to many Hispanic families, not just in rural farming communities but also in urban areas.

In the neighborhoods of south central Phoenix, Hispanic culture is totally dominant. Brightly colored letters painted on whitewashed concrete walls advertise typical Mexican businesses. At bus stops, in public restrooms and on business flyers, notices are universally posted in Spanish, English added almost as an afterthought. For the non-Spanish speaking visitor to a typical fast food joint, the first recognizable words spoken from behind the counter may well be “How can I help you?”

Since Hispanic culture is commonplace close to the border, the population of undocumented immigrants in Arizona is large and diverse.\(^{52}\) Unlike Washington State, this group is not categorically confined in terms of employment opportunities.\(^{53}\) In fact, undocumented immigrants not only work in agriculture, but also in a variety of other industries from food service to construction.\(^{54}\) Some are even small business entrepreneurs.\(^{55}\)

Naturally, this large population of undocumented immigrants correlates with significant enrollment of undocumented students in Arizona public schools. Estimates gauge that some 7,000 students lack legal documentation in the state, between 5,000 and 6,000 of them living in Phoenix.\(^{56}\) Notwithstanding this fact, the documentation status of

\(^{51}\) Johnson, supra note 7, at 432.


\(^{53}\) Flanagan interview, supra note 52; Hauer interview, supra note 52.

\(^{54}\) Flanagan interview, supra note 52; Hauer interview, supra note 52.

\(^{55}\) Hauer interview, supra note 52.

students has not traditionally been a topic of interest there. Over the past two years, however, this has changed.

In June 2002, four undocumented students from Wilson High School—a charter school in Phoenix—traveled with a school group to New York to enter a solar-powered boat in a national science fair.\(^{57}\) On a side trip to Niagara Falls, immigration officers approached them and asked to see their identification.\(^{58}\) This encounter led to the issuance of deportation orders against all four students.\(^{59}\) The media took to the students, dubbing them the “Wilson Four” and used their story to illustrate the plight of undocumented students across the U.S.\(^{60}\) Because these youths had grown up and attended school in the U.S. since their early childhood, they felt almost no connection to their actual countries of citizenship.\(^{61}\) This fact inspired numerous governmental officials—including Arizona Senator John McCain—to oppose the students’ removal from the U.S.\(^{62}\) Thanks to media and governmental attention, and effective advocacy from Phoenix immigration attorney Judy Flanagan, an immigration judge has twice stayed these students’ deportation orders.\(^{63}\) Nevertheless, if proposed changes in immigration law do not allow for these students to adjust their status before the next hearing, they still stand to be deported.\(^{64}\)


\(^{58}\) Hauer interview, supra note 52; Greenhouse, supra note 57.

\(^{59}\) Hauer interview, supra note 52; Greenhouse, supra note 57.


\(^{61}\) See Greenhouse, supra note 57 (including comments by Yuliana Huicochea, one of the “Wilson Four”).

\(^{62}\) Flanagan interview, supra note 52; Hauer interview, supra note 52.


\(^{64}\) Flanagan interview, supra note 52.
Joe Hauer, the teacher that accompanied the Wilson Four to New York, had hardly even thought about his students’ immigration status before the trip, but has more than taken notice since then. He is now fully aware that Wilson High enrolls and gives diplomas to undocumented students each year, and offers his unconditional support where he can.65 These students, remarks Hauer, are no less American than he is, building their lives around local communities most of them have lived in as long as they can remember.66

Hauer is not the only one in the Wilson School District who feels this way. In fact, the administration and community have collaborated to ensure undocumented students better opportunities after high school.67 Whereas students elsewhere may be disadvantaged, those at Wilson stand a good chance of getting scholarships.68 In 1990, a private organization called the Wilson Foundation69 was founded. Since then, this group has provided funding for twenty to thirty full-tuition scholarships each year for college-bound high school seniors regardless of their immigration status.70 This support is a strong showing of solidarity, especially over the past two years, when issues surrounding undocumented immigrants have become more public at the school.

Yet funding is just one hurdle to overcome on the way to obtaining a higher education. Students in college continue to face challenges due to their lack of immigration paperwork. Victor, a 2001 graduate of Catalina High School in Tucson, was forced to withdraw from Pima Community College after studying for two years, the

65 Hauer interview, supra note 52.
66 Id.
67 Id.
68 Id.
70 Hauer interview, supra note 52.
second year on a full athletic scholarship.\textsuperscript{71} Ironically, his problems began upon a spontaneous visit to the International Student Office to ask a general question about the application process for student visas.\textsuperscript{72} In a matter of minutes, Victor’s hypothetical conversation with one Pima employee put his student status on hold.\textsuperscript{73} He was then told that he would not receive any more credits through the college unless he obtained proper immigration status and re-registered.\textsuperscript{74}

Victor came from Mexico to Tucson with his family almost seven years ago on a legal visitor’s visa.\textsuperscript{75} He did not make that trip by any choice of his own, and remains left with very few life choices.\textsuperscript{76} His current documentation—still legal—will expire in a matter of months, when he turns twenty-one.\textsuperscript{77} Although technically Victor is not “undocumented,” he faces the same problems as typical undocumented students. He has already been told that without proper immigration status he cannot get a job or enroll in college.\textsuperscript{78} And without that college degree, he has almost no hope of finding a job that can sponsor him to obtain a work-related visa.\textsuperscript{79}

\textsuperscript{71} Student interviews, supra note 10. “Victor” is a fictitious name. See id.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{76} Student interviews, supra note 10.
\textsuperscript{78} Student interviews, supra note 10.
\textsuperscript{79} Many of the work-sponsored immigration visas delegated by the federal government every year require advanced educational degrees. See Immigration and Nationality Act § 203(b)(1)-(2), 8 U.S.C. § 1153(b)(1)-(2). Most of the remaining visas require specialized training in a particular skill, public notoriety for ability within a field, a million dollar investment or other qualifications that are nearly impossible to attribute to a U.S. high school graduate. See id. at § 203(b)(2)-(5), 8 U.S.C. § 1153(b)(2)-(5).
If Victor chooses to comply with the law, he will have to leave the rest of his immediate family and return to Hermosillo, Sonora to live with relatives.80 Since he spent a significant part of his childhood in Mexico, perhaps Victor’s case is not as sympathetic as the Wilson Four, who have been in the U.S. since elementary school. But Victor makes a strong case for himself; after being in Tucson for six and a half years, he feels like part of the community.81 Simply put, he wants to live the life enjoyed by the rest of his high school classmates; he wants to obtain a college degree, get a decent-paying job and contribute to American society.

III. CONSTITUTIONAL FRAMEWORK: THE SPECIAL CASE OF EDUCATION FOR UNDOCUMENTED STUDENTS

Over the past several years, stories like these have provoked numerous debates over the issues surrounding undocumented students’ access to higher education.82 However, the legal underpinnings of the topic go back much farther in time. Two constitutional principles help to structure the arguments surrounding these students’ right to a postsecondary education. First, the Equal Protection Clause of the Fourteenth Amendment provides that a state cannot “deny to any person within its jurisdiction the equal protection of the laws.”83 Immigrant students’ advocates cite this clause—applicable to undocumented immigrants as well as lawfully admitted aliens and U.S. citizens84—to support a push for new legislation. In light of Supreme Court precedent

80 Student interviews, supra note 10.
81 Id.
82 See supra text accompanying notes 14-22.
83 U.S. CONST. amend. XIV, § 1.
84 Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) (describing the “universal” application of the Equal Protection Clause “to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality…”).
giving unique consideration to both undocumented students and the right to education, equal protection may pose a challenge to any law that hampers undocumented students’ ability to study at colleges and universities.

Second, the Supremacy Clause of the U.S. Constitution states that the “Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land.” This provision has been interpreted to reinforce the federal government’s exclusive power to set national immigration policy and challenge conflicting state law. If any disparity exists between federal and state law affecting immigration, federal law may preempt the state law and render it unconstitutional. Because there are several apparent conflicts between federal and state law concerning postsecondary education benefits to undocumented students, arguments concerning federal preemption are important to this discussion.

A. Equal Protection: A “Bottom Line” for State Accountability to Undocumented Students’ Right to Education?

The landmark decision Plyler v. Doe established the right of undocumented immigrant youth to an education in the U.S. Plyler struck down a Texas law requiring undocumented students to pay a tuition fee to enroll in the public K-12 school system. The Court found the law in violation of the Equal Protection Clause of the Fourteenth Amendment. This decision drew an important distinction between education and other public benefits; as noted in Justice Blackmun’s concurring opinion, “classifications

85 U.S. Const. art. VI, cl. 2.
87 Id.
88 See Access to All, supra note 15.
90 Id. at 206.
91 Id. at 224-25.
involving the complete denial of education are . . . unique, for they strike at the heart of equal protection values by involving the State in the creation of permanent class distinctions."  

The Court stressed two key points. First, it reaffirmed the right of undocumented persons to protection by the Fourteenth Amendment, recognizing the existence of a significant “shadow population of illegal migrants” in Texas. Although these immigrants provided the state with cheap labor, they had limited access to public benefits. This group’s disadvantaged status reinforced the application of the Equal Protection Clause: “if the constitutional conception of ‘equal protection of the laws’ means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.”

Moreover, the Court noted that the individuals targeted by the discriminatory state policy were not just undocumented immigrants, but undocumented immigrant children. The holding reasoned that since these children often illicitly entered the U.S. at a young age and had no choice in the matter, they should not be punished for the sins of their parents. These interpretations granted undocumented students a powerful position to stake a claim to their right to education.

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92 Id. at 234.
93 Id. at 212 (quoting Yick Wo, supra note 84).
94 Id. at 218.
95 Id. at 219.
98 Id. at 220. See also Trimble v. Gordon, 430 U.S. 762, 772 (1977) (“Their ‘parents have the ability to conform their conduct to societal norms,’ . . . but the children who are plaintiffs in these cases ‘can affect neither their parents’ conduct nor their own status’”); Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1972) (“[I]mposing disabilities on [a] . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing . . . [P]enalizing the . . . child is an ineffectual—as well as unjust—way of deterring the parent”).
Second, the Court discussed education as a special public benefit, holding that the right to education lay somewhere between an ordinary and fundamental right, regardless of a person’s immigration status.\(^9^9\) The holding stated that the right to education fell short of a “fundamental right;” although providing an education to its residents was an important function of the state, precedent required that strict scrutiny not be applied to an equal protection analysis of school funding issues.\(^1^0^0\) The Court was mindful, however, of the consequences of regarding education as merely an “ordinary right,” acknowledging that such a decision might give way to permanent class distinctions and effectively defeat the purpose of the Equal Protection Clause.\(^1^0^1\) Consequently, the holding heightened the state’s burden of proof in upholding discrimination. In order to deny or set unreasonable limits on access to education to a certain population, the state had to show a “substantial interest” justifying this action.\(^1^0^2\)

The Court considered several state interests that Texas argued validated discriminatory treatment of undocumented students. First, the state sought to protect itself from the “harsh economic effects” of a sudden influx of undocumented immigrants.\(^1^0^3\) This premise was ruled untrue; based on the evidence in the record, undocumented immigrants imposed an insignificant, if any, burden on the state economy.\(^1^0^4\) Furthermore, the state could enforce a less restrictive alternative to denying

\(^1^0^1\) *Plyler*, 457 U.S. at 222 (stating that “[p]aradoxically, by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority.”).  
\(^1^0^2\) *Id.* at 224.  
\(^1^0^3\) *Id.* at 228.  
\(^1^0^4\) *Id.* (stating that “[t]o the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc.”)
children a public education to curb the negative effects of mass immigration—namely, the general prohibition on the employment of undocumented immigrants.\textsuperscript{105}

Second, the state contended that undocumented children were an appropriately excludable class “because of the special burdens they impose on the State’s ability to provide high-quality education.”\textsuperscript{106} This allegation also failed to persuade the Court; in fact, according to the evidence presented, undocumented children were “basically indistinguishable” from legal resident alien children in terms of educational cost to the state.\textsuperscript{107}

Finally, the state argued that undocumented children should be excluded from public schools because “their unlawful presence within the United States renders them less likely than other children to remain within the boundaries of the State, and to put their education to productive social or political use within the State.”\textsuperscript{108} This claim was soundly rejected on the initial basis that many undocumented children were likely to remain permanent residents of the state.\textsuperscript{109} Furthermore, the Court refused to question the “productive use” of a public education to undocumented persons who might later “[add] to the problems and costs of unemployment, welfare, and crime” as a result of their lack of education.\textsuperscript{110}

The magnitude of this judgment—marking undocumented children as a target group for unreasonable state discrimination and identifying education as a substantial right—carried tremendous potential to open the door for activism favoring the education

\textsuperscript{105} Id. at 228-29 n.24. (noting that “[v]irtually all of the undocumented persons who come into this country seek employment opportunities and not educational benefits”).
\textsuperscript{106} Id. at 229
\textsuperscript{107} Id.
\textsuperscript{108} Id. at 230.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
of undocumented students. The Court implicitly recognized this, harking back to the language of *Brown v. Board of Education*:

> [education] is the very foundation of good citizenship . . . it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be available to all on equal terms.\(^{111}\)

The Court was careful, however, to tread lightly in its commentary on protecting undocumented persons. In doing so, the holding granted deference to the federal power to regulate immigration.\(^ {112}\)

The *Plyler* decision clarified that “illegal aliens” were not an inherently “suspect” class entitled to stricter protection from state discrimination under the Equal Protection Clause.\(^ {113}\) Yet still, the Court was hesitant to set the stage for the exclusion of undocumented children from public schools.\(^ {114}\) Thus, a distinction between federal and state laws affecting undocumented immigrants was drawn. Independent of the federal government’s power to “discriminate” in its deportation of unauthorized immigrants, Texas had to show that state discrimination in excluding undocumented children from public schools was “reasonably adapted to the purposes” of a legitimate state interest.\(^ {115}\)

All in all, *Plyler’s* equal protection analysis brings a mixed bag to the table for undocumented high school students today seeking a postsecondary education. On one hand, undocumented children—although not a “suspect class” for equal protection

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\(^{111}\) *Id.* at 223 (quoting *Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954)).

\(^{112}\) *Id.* at 224-26.

\(^{113}\) *Id.* at 219 n.19 (stating that “[u]nlike most of the classifications that we have recognized as suspect, entry into [the class of undocumented persons], by virtue of entry into this country, is the product of a voluntary action. Indeed, entry into the class is a crime.”).

\(^{114}\) *Id.* at 226. Among other reasons, this was because federal immigration law lay silent with respect to the education of immigrants. *Id.*

\(^{115}\) *Id.*
purposes—are set apart from their parents as unwitting culprits, guilty of a “crime” they may not even comprehend. On the other hand, however, education cannot be protected as a fundamental right, though it is much harder to deny than a public benefit such as food stamps or a welfare check.

B. Preemption and Federal / State Conflicts of Immigration Law

Historically, immigration has been exclusively controlled by federal regulation. The U.S. Constitution expressly delegates to Congress numerous powers that together suggest a federal directive to regulate immigration. Beyond these enumerated powers, the federal government has filled in theoretical gaps to create authority for strict control over the area. For example, courts have held that since the establishment of relations between the U.S. government and citizens of other nations—an inherently political power—is a necessary part of immigration policy, such laws should be regulated and controlled exclusively by the executive and legislative branches of the federal government.

This federal monopoly on immigration policy can create conflicts of law with state policy. Because of the exclusivity of the immigration power, any state law affecting immigrants risks federal preemption. This line drawn in the sand by the federal government can create conflicts with state policy. Because of the exclusivity of the immigration power, any state law affecting immigrants risks federal preemption.

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116 See supra note 98.
117 Plyler, 457 U.S. at 221.
119 Most notable among these is the power “to establish a uniform Rule of Naturalization.” U.S. Const. art. I, § 8, cl. 4. Other provisions that suggest the Congressional mandate to regulate immigration are the Commerce Power (art. I, § 8, cl. 3); the War Power (art. I, § 8, cl. 11); the Migration and Importation Clause, (art. I § 9, cl. 1); and the Foreign Affairs Power. See T. ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 178-83 (5th ed. 2003).
120 See id. at 183-85; 3A AM. JUR. 2D supra note 118.
122 See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW, supra note 86.
government begs the question: how far can states legislate the rights and entitlements of non-citizens without implicitly interfering with federal immigration policy?

To answer this, the Supreme Court developed a standard for evaluating federal preemption of state law affecting immigrants’ rights and immigration policy in *DeCanas v. Bica*.\(^{123}\) In order to stand on its own and avoid being stricken as peremptorily invalid, a state law must pass three tests. First, the state statute must not be a “constitutionally proscribed regulation of immigration.”\(^{124}\) Second, it must be shown that Congress had no “clear and manifest purpose” to effect a “complete ouster of state power” in the area covered by the state law.\(^{125}\) Third, the state provision cannot “[stand] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” and make compliance with both federal and state measures impossible.\(^{126}\) Essentially, the federal immigration power does not necessarily preclude states from implementing any legislation that affects the lives of noncitizens; it only mandates that such laws avoid regulating immigration.\(^{127}\)

This analytical framework for preemption has helped to define and limit appropriate state regulation of the lives of noncitizens. There is still much controversy, however, over certain areas of immigration law. Currently, one of the most contested issues is postsecondary education benefits for undocumented immigrants. Over the past ten years alone, control over the topic has seesawed back and forth numerous times between the federal government and the states.

\(^{123}\) 424 U.S. 351 (1976). Simultaneously, this greatly narrows the power of judicial review over immigration policy, only to be exercised in limited situations. *See Mathews*, 426 U.S. at 81.
\(^{124}\) *DeCanas*, 424 U.S. at 355-56.
\(^{125}\) *Id.* at 357.
\(^{126}\) *Id.* at 363.
\(^{127}\) *Id.* at 355.
The mid 1990s produced a flurry of disputes on education and immigration. First, states led the way with legislation like California’s Proposition 187, aimed at “prevent[ing] illegal aliens in the United States from receiving benefits or public services in the State of California.” Among Proposition 187’s provisions were two distinct denials of education benefits to undocumented immigrants—enrollment in public elementary and secondary schools and admission to public postsecondary educational institutions. Because of the discriminatory nature of this legislation, the League of United Latin American Citizens (“LULAC”) filed a lawsuit against the State. The action alleged that Proposition 187 was unconstitutional, and therefore peremptorily invalid.

A federal court in the Central District of California heard the case in 1995 and delivered a mixed holding with regard to education. First, it held that state denial of public primary and secondary education was an impermissible regulation. To this point, Proposition 187 failed to meet the third prong of the De Canas test; the exclusion of undocumented students from the California public school system would preclude compliance with Plyler v. Doe. The holding, however, also declared that federal law did not preempt California’s denial of admission of undocumented applicants to publicly funded State postsecondary schools.

State power to regulate the distribution of higher education benefits did not last long. One year later, in 1996, the federal government enacted two bills—the Personal

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130 See id. § 8.
131 LULAC, 908 F.Supp. at 764.
132 Id. at 785-86.
133 Id. at 785.
134 Id.
135 Id. at 787. It is interesting to note, however, that the Texas law questioned in Plyler was ruled not preempted by federal immigration law. Doe v. Plyler, 628 F.2d 448, 453-54 (5th Cir. 1980).
136 LULAC, 908 F.Supp. at 786.
Responsibility and Work Opportunity Reconciliation Act (“PRA”)\textsuperscript{137} and the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”)\textsuperscript{138}—that codified specific provisions governing immigrants’ postsecondary education.\textsuperscript{139} These and many other regulations passed by Congress necessitated a reexamination of Proposition 187 on new grounds of federal preemption.\textsuperscript{140} In this case, the District Court interpreted the recent federal legislation as a manifestation of Congress’ wide-ranging intent to regulate the distribution of federal, state and local benefits to immigrant populations.\textsuperscript{141} At least in principle, this holding appeared to curb almost any future state action granting or denying benefits to undocumented immigrants.

\textbf{C. Undocumented Students’ Constitutional Claims to Postsecondary Education: Pitting Equal Protection against Federal Preemption}

Chief Justice Burger, dissenting in \textit{Plyler}, commented on his belief that the judiciary should play a conservative role in determining social policy regarding immigrants to the United States:

While the ‘specter of a permanent caste’ of illegal Mexican residents of the United States is indeed a disturbing one, . . . it is but one segment of a larger problem, which is for the political branches to solve. I find it difficult to believe that Congress would long tolerate such a self-destructive result—that it would fail to deport these illegal alien families or to provide for the education of their children.\textsuperscript{142}

Yet today, more than twenty years after the Court’s holding, facing surging numbers of undocumented immigrants, Congress remains reluctant to take actual steps toward

\textsuperscript{140} \textit{Id.} at 1252.  
\textsuperscript{141} \textit{Id.} at 1254-55.  
facilitating undocumented students’ access to postsecondary education.\textsuperscript{143} In fact, Congress has succeeded in taken steps to \textit{hinder} these students from going to college.\textsuperscript{144}

Several possible explanations account for the lack of national legislative action on this point. First, extending the right to education to include postsecondary schooling goes beyond the \textit{Plyler} holding, which only established the right for undocumented students to obtain a free public primary and secondary education. It should be conceded that clear distinctions exist between the right to a public K-12 education and the right to a postsecondary education. For one, public K-12 education in the U.S. is offered free of charge, while postsecondary schools—both public and private—charge significant tuition fees that are becoming more costly with each passing year.\textsuperscript{145} Further, there are no limitations on child enrollment in public K-12 schools, while postsecondary schools only enroll limited numbers of students each year through competitive admissions procedures. Still, in the spirit of \textit{Plyler}, emphasizing education as a springboard for advancement in society,\textsuperscript{146} a persuasive equal protection argument can be made for increasing undocumented students’ access to higher education.\textsuperscript{147}

However, constitutional conflict muddles the argument surrounding this claim. Although the Equal Protection Clause has been interpreted to safeguard undocumented

\begin{footnotes}
\footnote{See supra note 14.}
\footnote{Id.}
\footnote{\textit{Plyler}, 457 U.S. at 221-22 (stating that “one of the goals of the Equal Protection Clause [is] the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”).}
\footnote{See Alfred, \textit{supra} note 20, at 642-44.}
\end{footnotes}
students against discriminatory exclusion from a public education,\textsuperscript{148} federal law effectively excludes them from access to a higher education.\textsuperscript{149} Initially, it appears that this federal action might be subject to a constitutional challenge,\textsuperscript{150} but the doctrine of preemption and the stubbornly extensive federal immigration power strongly uphold some standards for unequal treatment of undocumented immigrants.\textsuperscript{151} These conflicting constitutional arguments are confusing at best, and have given rise to problematic conflicts of law between the states and the federal government addressing undocumented students and their access to postsecondary education.

IV. OBSTACLES TO REFORM

A. Behind the Law: Sociological and Political Obstacles

Aside from concerns of preemption by federal immigration law, there are identifiable reasons why state legislatures, and especially the national Congress, have been somewhat reluctant to debate undocumented students’ virtual exclusion from U.S. postsecondary schools. One important explanation for this discrimination may be derived from selective representations of immigration issues in legislative discussions and debates. The pictures of undocumented immigrant communities that have been painted in hearings on Capitol Hill—especially in the aftermath of September 11—are often negative, sometimes bordering on malicious. In fact, many of the images presented by

\textsuperscript{148} See supra text accompanying notes 89-98.
\textsuperscript{149} See sources cited supra note 14.
\textsuperscript{150} Fifth Amendment equal protection against federal discrimination also extends to undocumented immigrants. Mathews v. Diaz, 426 U.S. 67, 77 (1976).
\textsuperscript{151} Significantly, some federal courts have recognized that federal laws denying benefits to undocumented immigrants are subject to a higher standard of protection from judicial scrutiny. See, e.g., Doe v. Plyler, 628 F.2d 448, 453 n.11 (1980) (“[a]ctions that are constitutional when taken by the federal government pursuant to its power to regulate immigration may be unconstitutional if taken by a state.”).
lawmakers fail to reflect reality, exaggerating challenges and tensions and underemphasizing the important roles immigrants play in their communities.\textsuperscript{152}

Examples of this bias against undocumented immigrants can be seen in the dialogue of national legislative committees. Even predating the September 11 terrorist attacks, the House subcommittee on Immigration and Claims called meetings to discuss the “serious and growing negative impact of illegal immigration.”\textsuperscript{153} In one of these hearings, on June 11, 1999, the subcommittee called eight citizen witnesses to testify about their experiences with undocumented immigrant populations in the U.S. Of these eight witnesses, seven delivered anti-immigrant testimony, focusing on negative perceptions of undocumented populations. The witnesses’ statements ranged from allegations that immigrants introduce “uncommon” and “devastating” diseases to the U.S.\textsuperscript{154} to claims that “border bandits prey upon the helpless.”\textsuperscript{155} In a particularly emotional testimony heralded by congressional representatives,\textsuperscript{156} one woman decried “illegal aliens” for bringing gangs to her neighborhood and killing her 13-year old son.\textsuperscript{157} Two more witnesses referred to undocumented youth in the American public school

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\footnote{\textsuperscript{152} See Green, \textit{supra} note 4, at 60 (noting significant contributions migrant families make to society, but also generally negative public sentiment toward them).}
\footnote{\textsuperscript{154} \textit{Id.} at 6 (testimony of Tobin Armstrong, county commissioner and rancher from Kingsville, TX).}
\footnote{\textsuperscript{155} \textit{Id.} at 7 (testimony of Larry Vance, owner of rural property and (then) chairman of Cochise County Concerned Citizens, Douglas, AZ). Mr. Vance is a good example of the narrow, extremist views represented by the majority of witnesses chosen to testify at this blatantly anti-immigrant hearing. Vance is affiliated with the Ranch Rescue group, which organizes armed patrols along the U.S.-Mexico border close to Douglas, AZ to prevent illegal immigration. \textit{See RANCH RESCUE, The People}, (last visited Jan. 6, 2004) at http://www.ranchrescue.com/theppeople.htm (where Vance’s protection of his border home is described, including “thick security bars,” “a chain-link fence” and “large, growling dogs”). \textit{See also RANCH RESCUE, Arizona}, (last visited Jan. 6, 2004) at http://www.ranchrescue.com/arizona.htm (depicting group militia volunteers patrolling the border as part of “Operation Thunderbird” near Douglas).}
\footnote{\textsuperscript{157} \textit{Id.} at 9-10 (testimony of Angie Morfin, Mothers Taking Action Against Gang Violence, Salinas, CA).}
\end{footnotes}
system in an exclusively negative context as instigators of racial tension and violence.\textsuperscript{158} The only witness to defend legal immigrants’ rights and advocate in favor of public education for undocumented immigrant children\textsuperscript{159} faced numerous negative questions and comments from committee members.\textsuperscript{160} Not once were undocumented immigrants recognized in a positive light for the important labor and services they provided their respective communities,\textsuperscript{161} and undocumented youth were categorically portrayed as troublemakers rather than the outstanding students, leaders and athletes that many of them are in school.\textsuperscript{162}

Since the September 11 attacks, anti-immigrant prejudices have reached a high point. In Washington, D.C., legislators have drawn connections between unregulated immigration and terrorism.\textsuperscript{163} For example, in a 2003 hearing of the House Subcommittee on Immigration, Border Security and Claims, committee Chairman John N. Hostettler (R-IN) discouraged the consideration of an amnesty law for undocumented immigrants, arguing that legalization “encourages smuggling and causes border

\textsuperscript{158} Id. at 11-12 (testimony of Carol Joyal, San Jose, CA); id. at 22-25 (testimony of Ezola Foster, president of Americans for Family Values, Los Angeles, CA). It is interesting to note that Ms. Foster was called by the Committee to testify about her experiences with immigrants as a representative of the public school system when her opinion clearly differed from the majority of the educators she worked with. In fact, these disagreements became so problematic that the Los Angeles Unified School District forced her to resign in July 1996. Her resignation followed several inflammatory statements made by Ms. Foster on national TV regarding immigrant students that other teachers denounced as “lies” and “distortions.” See Howard Blume, \textit{Pat Buchanan Meets His Match: And She Can Type Too!}, L.A. \textsc{Weekly}, (Aug. 15, 2000), available at http://www.laweekly.com/daily/ink/00/02/news-blume.shtml. Despite the inconsistency of Ms. Foster’s views with the other U.S. citizens she lived and worked with, the House subcommittee applauded her anti-immigrant testimony. 6/11/99 Immigration Hearing, supra note 153, at 24.

\textsuperscript{159} Id. (testimony of Selena Walsh, director of policy and communications for the League of United Latin American Citizens).

\textsuperscript{160} See id. (testimony of Chairman Rep. Lamar Smith (R-TX) and Rep. Elton Gallegly (R-CA)).

\textsuperscript{161} See supra note 4.

\textsuperscript{162} Student interviews, supra note 20; Phillips interview, supra note 3. See, e.g., Alfred, supra note 20, at 615 (describing the case of Monique Silva).

\textsuperscript{163} See, e.g., John H. Hostettler (R-IN) Holds Hearing on Illegal Immigrant Smuggling, 108th Cong. 2-3 (2003) [hereinafter 6/24/03 Immigrant Smuggling Hearing]. However, some believe these connections have been overstated and stand to adversely affect U.S. foreign relations, especially with Mexico. See generally Kevin R. Johnson, \textit{September 11 and Mexican Immigrants: Collateral Damage Comes Home}, 52 \textsc{DePaul L. Rev.} 849 (2003).
Turning around quickly to note a “relationship between smuggling and terrorism,” Hostettler stated his view on future policy: “We are compelled to prevent alien smuggling and severely punish alien smugglers, not only to save immigrants’ lives, but to prevent terrorists from entering this country with the intent to kill large numbers of people.”

These broad anti-immigrant sentiments underlie several general policy arguments that support the exclusion of undocumented students from access to postsecondary education benefits in the U.S. One argument for excluding undocumented students contends that allowing access to state-subsidized public education benefits imposes an unfair and expensive burden on taxpayers. This contention is largely based on general research indicating that immigrant populations in the U.S. claim and use a disproportionate share of public benefits. Additionally, some specific studies suggest that laws qualifying undocumented students for in-state tuition at public universities might be costly.

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164 6/24/03 Immigrant Smuggling Hearing, supra note 163, at 3.
165 Id.
167 FAIR Taxpayers, supra note 166.
169 See Craig Mehta & Asma Ali, Education for All: Chicago’s Undocumented Immigrants and Their Access to Higher Education, at iii (2003), available at http://www.uic.edu/cuppa/uicued/Publications/RECENT/undocumentedImmigrants.pdf (“[a]ssuming every eligible undocumented student goes on to attend an Illinois public university, the annual cost to the State of Illinois of [a law granting them in-State tuition] is between $3.3 million and $11.6 million for every graduating class.”). Government reports actually report that undocumented students’ access to federal educational assistance funds would likely result in a “negligible” increase in spending. S. REP. NO. 108-224, at 9 (2004), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_reports&docid=f:sp224.108.pdf. However, these reports project that if undocumented students are allowed to adjust status and become legal residents, government spending on food stamps and Medicare may increase. Id. at 8-10.
Second, some argue that undocumented students should be denied access to postsecondary education benefits because doing so would necessarily deny opportunities to U.S. citizens and legal residents, both in terms of admission to schools and access to federal and state funding.\footnote{FAIR Taxpayers, supra note 166.} Many media sources, these advocates protest, give a one-sided account of this issue.\footnote{See Dan Stein, Tuition Bill Would Hurt Md. Students, BALTIMORE SUN, May 13, 2003, available at http://www.fairus.org/Media/Media.cfm?ID=412&c=35.} Although the stories of undocumented students have human appeal as victims “in a state of legal and educational limbo,” the resulting exclusion of other U.S. citizen and legal resident students also desiring to succeed in their pursuit of a college education has remained largely unacknowledged.\footnote{Id.}

Finally, others argue that providing postsecondary education benefits to undocumented students will unjustly reward immigrants for breaking the law and attract illegal alien families to move to the U.S. so their children may receive education benefits and obtain legal resident status.\footnote{S. REP. NO. 108-224, supra note 169, at 13 (comments of Senator Jeff Sessions (R-AL)); FAIR Taxpayers, supra note 166.} Again, this point is reiterated both as part of the general policy argument against ceding public benefits to undocumented immigrants and also as a policy justification for exclusionary educational laws.\footnote{See, e.g., id.; Green, supra note 4, at 54-55 (as stated by Newt Gingrich in support of a 1996 amendment allowing states to deny free public education to undocumented children, “[o]ffering free tax-paid goods to illegal immigrants have increased the number of illegals. . . This used to be the land of opportunity; now it’s the land of welfare” (citation omitted)).}

B. Existing Legal Obstacles: Funding and Jobs

Based at least in part on these prejudicial attitudes and generalized policy arguments, existing federal law raises several sizeable barriers to undocumented students seeking a postsecondary education in the U.S. Among these, the most significant is the
exclusion of these students from the great majority of financial aid programs to fund schooling. Federal education policy declares undocumented students ineligible for all federal financial aid programs, including grants, loans and work-study programs.\(^{175}\) This classification of ineligibility alone presents a huge blockade to undocumented students, as these federal programs represent over two-thirds of all financial aid to U.S. college students.\(^{176}\)

Additionally, federal public benefit laws have been interpreted by most states to exclude undocumented students from state loan programs and tuition subsidies based on in-state residency.\(^{177}\) On a broad level, the PRA prohibits undocumented immigrants from accessing state and local public benefits.\(^{178}\) More specifically, the IIRIRA prevents states from granting in-state tuition rates to undocumented students unless the same rates are offered to all non-resident applicants.\(^{179}\) Combined with federal education policy, these laws have a devastating practical effect on undocumented students’ college opportunities. Together, denial of access to federal and state funding for postsecondary education makes them ineligible for more than three-quarters of all available financial aid.\(^{180}\) Although undocumented students are still theoretically eligible to receive institutional funding from the schools they apply to, the disfavoring attitude reflected by

\(^{175}\) Student Guide, supra note 14, at 33. Although undocumented students are ineligible for federal aid, some noncitizens—including legal permanent residents, refugees and persons on humanitarian parole in the U.S.—do qualify. Id.


\(^{177}\) Alfred, supra note 20, at 619; Galassi, supra note 20, at 82-83; Romero, supra note 166, at 398-400.


\(^{179}\) See id. at § 1623(a).

\(^{180}\) See AM. COUNCIL ON EDUC., supra note 176.
current federal law has rubbed off on many private institutions, which now are showing reluctance to offer this aid.\textsuperscript{181}

Beyond laws governing funding, another main legislative barrier to undocumented students’ quest for a college education arises from employment restrictions. Though it is common practice in some industries, hiring undocumented immigrants is a blatant violation of federal law.\textsuperscript{182} Outside of the narrow job market that disregards federal employment eligibility guidelines, these individuals simply cannot furnish the documentation necessary to meet basic employer requirements.\textsuperscript{183} Without access to many jobs, undocumented students are further limited in their options to pay for school.\textsuperscript{184} Moreover, even if an aspiring undocumented student finds adequate funding to pay for college, exclusionary employment regulations make landing a professional job all but impossible.\textsuperscript{185} As one undocumented student in Arizona put it, “this country is OK with illegal immigrants as long as they stay in one place, as long as we are dishwashers or landscapers or restaurant workers, but as soon as we try to do something more, that’s when the fear comes in.”\textsuperscript{186}

\textsuperscript{181} Alfred, \textit{supra} note 20, at 636-37.
\textsuperscript{183} 8 U.S.C. § 1324a(b)(1) calls for employer verification of employee documentation to establish requirements of “employment authorization” and “identity,” including special measures to protect against counterfeit alien resident and registration cards. See id. at 1324a(b)(1)(B)(ii)(III). When proper documents are presented, the employer notes compliance on a standard issue I-9 form that must be retained in case of inspection by immigration or Department of Labor officials. See id. at 1324a(b)(3).
\textsuperscript{184} Student interviews, \textit{supra} note 10; Alfred, \textit{supra} note 20, at 643 (stating that such laws “push these promising students to the low-end job sector”).
\textsuperscript{186} Daniel González & Elvia Diaz, \textit{Migrants Face Loss of In-State Tuition in Proposal by GOP}, ARIZ. REPUBLIC, Feb. 6, 2004 (on file with author).
The practical effects of these laws leave few viable options for the average undocumented student to pursue a higher education.\footnote{Phillips interview, supra note 3; Sandoval interview, supra note 3; Hauer interview, supra note 52; Trino Sandoval, Undocumented Students: The Search for Educational Opportunities (Nov. 6, 2003) (unpublished manuscript, on file with author).} Angel, a 2002 graduate of Toppenish High School, is one of many in Washington State who harbors little hopes for a higher education.\footnote{Student interviews, supra note 10. “Angel” is a fictitious name. See id.} Of the six students in his graduating class that he knew were undocumented, only one is currently enrolled in college.\footnote{Id.} Angel’s lack of money is the reason he is not continuing in school and he does not foresee his financial situation changing anytime soon.\footnote{Id.} The only jobs he can find are seasonal work in the agricultural industry, paying slightly above minimum wage and sometimes only providing a few weeks of income at a time.\footnote{Id.}

However, some undocumented students continue to prove there are exceptions to the rule. Francisco, a senior this year at Toppenish High, is very conscious of the immense financial burden current laws place on him yet he remains determined to get a college education.\footnote{Id.} Since his freshman year, he has worked part-time during the school year at local restaurants to save money for college.\footnote{Id.} During each summer, while other students go to camp and on vacation, Francisco works full-time in the fields.\footnote{Id.} After a typical school day he works from 5:00 to 10:30 each evening, fitting in sports, community service and church activities in his spare time.\footnote{Id.} He aspires to use this money to study psychology or marketing at nearby Heritage College next year, planning
to live with his parents to save a little extra.\textsuperscript{196} Although he knows he will have to keep working throughout college to afford tuition, Francisco has no doubt that a postsecondary degree will be worth the effort. Not only do his visions of the future give him hope to persevere, he wants to show his younger brother and sister that they too can make a life for themselves in the U.S.\textsuperscript{197}

\textbf{V. PROPOSED SOLUTIONS}

\textit{A. Existing Legal Solutions: In-state Tuition at Public Universities}

Fortunately for undocumented students, others are currently trying to find ways to help them achieve a postsecondary education. A corps of advocates—including immigration attorneys, educators, public officials and concerned citizens—has emerged, rejecting anti-immigrant policy arguments as xenophobic and misleading, and campaigning for new legal initiatives to grant undocumented students access to postsecondary education in the U.S.

In taking action to increase undocumented students’ access to higher education, activists pose arguments against the typical policy justifications for denying public benefits to undocumented immigrants.\textsuperscript{198} First, they emphatically deny that providing postsecondary education benefits to undocumented students would impose an unfair burden on taxpayers.\textsuperscript{199} To back this up, they cite a strong body of figures suggesting that the tax burden in subsidizing these students’ education may in fact be

\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{199} See id.; Mehta & Ali, supra note 169; Alfred, supra note 20, at 641-42.
insignificant. According to numerous analyses, immigrants actually benefit states’ economies, paying much more in taxes than they claim in public benefits. For example, undocumented immigrants in Illinois already contribute nearly $70 million in state income taxes each year despite their confinement to largely low-income jobs. Based on this figure, the economic stimulation likely to occur by investing in higher education and professional careers for undocumented students stands to have an overwhelmingly positive net effect on the State of Illinois.

Likewise, instead of emphasizing the inclusion of undocumented students as necessarily excluding other youth from postsecondary institutions, advocates stress the need for equality in the upper echelon of the educational system just as Plyler guaranteed for K-12 students in public schools. They cite the tremendous efforts of some undocumented students, excelling in school and gaining recognition for significant extracurricular achievements, conduct that objectively merits their access to higher educational opportunities. Taking this idea one step further, using an argument similar to affirmative action, others contend that freeing undocumented students from perpetual confinement to the lowest socioeconomic rung of society would be good public policy, even if it means that some citizen and legal resident youth are denied enrollment in American colleges and universities.

200 Mehta & Ali, supra note 169, at 11-12; Alfred, supra note 20, at 640.
201 S. REP. NO. 108-224, supra note 169, at 2-3; Immigration Myths, supra note 199 (according to a National Academy of Sciences study, “a dynamic analysis, with the appropriate assumptions, would likely show that 49 of the 50 states come out ahead fiscally from immigration, with California a close call” (citations omitted)).
203 Id.
204 Alfred, supra note 20, at 643-44.
205 Id. at 618.
Additionally, proponents of increasing undocumented students’ access to higher education benefits deny that such action would spur an increase in illegal immigration.\textsuperscript{206} To start with, there is little evidence that suggests that education benefits to undocumented students provide a major impetus for immigration to the U.S.\textsuperscript{207} Even so, assuming that prospects for an affordable college education for undocumented immigrant youth would attract illegal immigrants, both existing state laws and proposed federal laws set clear limits on access to these benefits.\textsuperscript{208} The Senate Judiciary Committee, reporting on the DREAM Act, assured that bill is limited in scope.\textsuperscript{209} Far from a wide-ranging grant of benefits, this law only applies “to a limited number of people who already reside in the United States and who have demonstrated favorable equities in and significant ties to the United States.”\textsuperscript{210}

Beyond the general rejection of anti-immigrant policy arguments, a growing corps of activists also distinguishes undocumented children from the larger group of undocumented immigrants.\textsuperscript{211} A key element of differentiating between undocumented parents and children goes beyond the mere culpability of their action in coming unauthorized to the U.S.; it also includes important cultural elements. Parallel to all the

\textsuperscript{206} Id. at 639-40.
\textsuperscript{207} Romero, supra note 166, at 412.
\textsuperscript{209} S. REP. NO. 108-224, supra note 169, at 2 (“The DREAM Act does not guarantee any illegal immigrant the right to remain in the United States, and does not grant automatic or blanket amnesty to its potential beneficiaries. However, it does give some who have been acculturated in the United States the privilege of earning the right to remain.”).
\textsuperscript{211} See, e.g., Sara Scavongelli, States Weigh Tuition Breaks for Illegal Immigrants, STATELINE.ORG (June 23, 2003) at http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=311857 (as stated by Tiana Murillo of the National Immigration Law Center, “I think there’s a fundamental value Americans share that children shouldn’t be punished for things that are beyond their control.”).
economic analyses and arguments over immigration policy lies the fact that thousands of
undocumented youth in this country have spent the great majority of their life here and
consider themselves Americans.\textsuperscript{212} To these youth, many of which cannot even
remember living outside the U.S., their citizenship to a foreign country is a technical
detail that separates them from their classmates only on paper.\textsuperscript{213} Still, the importance of
this detail cannot be understated. From this perspective, these teenagers watch their peers
face a myriad of educational and vocational choices after they graduate high school, yet
their own options remain drastically limited.\textsuperscript{214} Unfortunately, these limitations are much
more pervasive than missed school and job opportunities; undocumented students, though
they grow up equals to other children in school, soon learn that they—just like their
parents—are fugitives in this country, evading a deportation that stands to alienate them
from the country they would claim as their own.

Backed by these policy arguments for equal access to higher education, a
momentum of legislative action surrounding the issue has begun to build. To date, state
legislatures have been most active in taking steps to facilitate undocumented students’
access to postsecondary education. Over the past several years, seven states have passed
laws qualifying undocumented students to pay in-state tuition rates at public colleges and
universities.\textsuperscript{215} Some lawmakers have decried these state laws, claiming they are
preempted by the IIRAIRA, which states that undocumented aliens cannot be declared
eligible to receive any state postsecondary education benefit “on the basis of residence

\textsuperscript{212} Student interviews, \textit{supra} note 10; Hauer interview, \textit{supra} note 52. \textit{See also} Sara Scavongelli,
\textit{Legislation Touches the Lives of Undocumented Students}, STATELINE.ORG (June 23, 2003) at
http://www.stateline.org/stateline/?pa=story&sa=showStoryInfo&id=312158.
\textsuperscript{213} Student interviews, \textit{supra} note 10.
\textsuperscript{214} Id.
\textsuperscript{215} \textit{See supra} note 16.
within a State.”216 However, these laws justify granting in-state tuition to undocumented students by requiring compliance with additional requirements beyond in-state residency alone.217 According to advocates, these extra requirements create an independent justification for granting state postsecondary education benefits to undocumented students and thereby sidestep federal preemption.218

**B. Shortcomings of Existing Law**

Although the ongoing legislative debates encompass many relevant considerations about undocumented students, there are many practical concerns that also need to be brought to the table. For example, even in those states where laws do offer aid to undocumented students seeking a postsecondary education, there are many who believe that this only solves a small part of the problem.219 Essentially, the financial burden eased by these laws is negligible for many undocumented families; even if students are granted deeply discounted in-state tuition rates, the remaining costs are too much to bear on a low-income budget.220

216 8 U.S.C. § 1623(a) (2003). Opponents of granting postsecondary education benefits to undocumented students contend that the legislative intent of this provision was to “[provide] that illegal aliens are not eligible for in-state tuition rates at public institutions of higher education,” as suggested in a House Conference Report. FED’N FOR AM. IMMIGR. REFORM, In-State Tuition for Illegal Aliens (2002) (on file with author).
217 Galassi, supra note 20, at 81-82. See supra note 208.
218 Galassi, supra note 20, at 83. Advocates claim that these new standards are in fact authorized by the IIRAIRA, which grants States the power to set their own affirmative eligibility criteria for public benefits. See 8 U.S.C. § 1621(d) (stating that “[a] State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible…only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility”).
219 Phillips interview, supra note 3; Sandoval interview, supra note 3; Student interviews, supra note 10.
Additionally, aid from these state laws simply does not reach some undocumented students, especially those whose families are true migrant workers. Veronica, a junior this year at Wahluke High School, has lived in four different communities between three U.S. states over the past seven years.\textsuperscript{221} Her father followed job opportunities in Texas, Utah and Washington before finally deciding to take on a semi-permanent job at a Utah dairy.\textsuperscript{222} Veronica wants to be a doctor—specifically, an OBGYN—and her family decided that her chances for college were best in Washington State.\textsuperscript{223} Nevertheless, she will not qualify for in-state tuition because she will only have resided in Washington for two years prior to graduation, one less than the three required.\textsuperscript{224} Unfortunately, Veronica’s cumulative time in the U.S. does not make up for her family’s mobility in the eyes of the law.

The new state laws also ignore a longstanding policy of “don’t ask, don’t tell” that has allowed many undocumented students to attend college at in-state rates over the years.\textsuperscript{225} Jan Phillips, counselor at Wahluke High, confirms that some students have been admitted to schools as Washington State residents simply by alleging that they were U.S. citizens on college applications.\textsuperscript{226} Although failing to record a social security number on paper usually raises some questions, college admissions officers do not always attempt to identify the reasons for these omissions.\textsuperscript{227} College admissions programs in other states have adopted similarly informal processes to circumvent higher tuition rates. In Arizona, in-state residency for tuition purposes is granted if an applicant has spent at least one year

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\textsuperscript{221} Student interviews, supra note 10. “Veronica” is a fictitious name. See id. \\
\textsuperscript{222} Id. \\
\textsuperscript{223} Id. \\
\textsuperscript{224} Id. See WASH. REV. CODE ANN. § 28B.15.012(2)(e) (West 2003). \\
\textsuperscript{225} Phillips interview, supra note 3. \\
\textsuperscript{226} Id. \\
\textsuperscript{227} Id.; Student interviews, supra note 10. \\
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in the state prior to admission at a state college or university. In state systems where documentation status is a non-factor, there is no need for laws like the one in Washington.

A further shortcoming of state legislation granting in-state tuition to undocumented students is the political volatility of the issue. In Washington State, the Latino/a Educational Achievement Project (LEAP) was the lobbyist group responsible for pushing through the in-state tuition law. LEAP’s public policy coordinator Sandra Linde admits that strategizing to pass the law involved more than mere support from legislators. The tuition bill was first proposed in 2002 but ultimately failed due to uncertainty and criticism from conservative legislators and the media. In 2003, however, covert tactics led to success. The tuition bill was proposed and discussed while the media focused its attention on the war with Iraq. Subject to minimal public scrutiny, legislators passed the law quickly and pronounced it a great success. Though such laws have found acceptance by some states, common sense suggests that similar state legislative action might not be a viable strategy nationwide. In states like Arizona, where immigration issues are a constant source of bitter political debate, it is unlikely that such legislation would ever go undetected by public radar. In fact, past Arizona bills

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228 Hauer interview, supra note 52; Student interviews, supra note 10.
230 Linde interview, supra note 1.
232 Linde interview, supra note 1.
on the issue have not gathered enough support to pass\textsuperscript{235} and a recently proposed law stands to prohibit state institutions from granting in-state tuition to undocumented students.\textsuperscript{236}

Because of these problems, report cards on these state laws show that their success in helping undocumented students obtain a higher education is marginal at best.\textsuperscript{237} In Washington State, only nineteen students registered at four-year universities under the tuition bill in 2003, and of these, twelve were foreign visa-holding students.\textsuperscript{238} Legislators and policy groups were left dumbfounded at the lack of response of undocumented students to the bill even though it went into effect late in the year after most college-bound students had already registered.\textsuperscript{239} LEAP director Ricardo Sanchez blamed ill-informed high school guidance counselors and fear within immigrant communities for lackluster undocumented enrollment in postsecondary schools.\textsuperscript{240} But many teachers and immigrants tell different stories; in fact, undocumented student populations already exist in colleges across the state. However, since many of them are virtually indistinguishable from citizen and legal resident students and find other ways to come up with funding, the in-state tuition bill offers little more than an unattractive label on their college application.\textsuperscript{241}

\textsuperscript{235} See Daniel González, State resists trend on migrant tuition, ARIZ. REPUBLIC, May 21, 2003 (on file with author).
\textsuperscript{237} See, e.g., Iwasaki, supra note 220.
\textsuperscript{239} Id.
\textsuperscript{240} Id.
\textsuperscript{241} Interviews.
C. A Comprehensive Solution: The DREAM Act and Student Adjustment Act

Shortcomings aside, state action without a federal counterpart cuts sharply against the grain under a system of immigration law that has unfailingly deferred power to the federal government. Yet state laws in this area not only dance dangerously close to the edges of federal preemption, they also point out a broad spectrum of attitudes on the subject of undocumented immigrants. In the wake of September 11, these laws are important minority voices, recognizing the importance of immigrants to the U.S. and responding to prevent undue discrimination in federal immigration law.

Because undocumented students are not constitutionally vested with the right to equal access to a postsecondary education, federal legislation is necessary to empower them to obtain it. While states have addressed funding issues to a limited extent through grants of in-state tuition, this still leaves undocumented students in an uncomfortable situation. Without legal immigration status and employment authorization—not to mention their lack of access to federal loans and work-study programs—these students remain highly disadvantaged. Federal legislation has the power to revise immigration law to allow these students to adjust status and qualify for federal, as well as state, public benefits. In the interest of practicality and uniformity of immigration law, a federal solution should be adopted.

Based in a large part on support from states, groups and individuals making efforts to aid undocumented students to obtain equal access to postsecondary education

242 See supra Section IV-D.
243 Id.
244 This is one point that all members of the Senate Judiciary committee agreed on despite their differences with respect to what they believe this uniform policy should be. See S. REP. NO. 108-224, supra note 169, at 13 (2004) (comment of Sen. Jeff Sessions: “The time has come to take an honest look at the broad problem of illegal immigration in America and to enact comprehensive reform…”).
benefits, the national House and Senate have proposed laws that would help undocumented students gain access to postsecondary education benefits.\textsuperscript{245} If passed, this legislation would serve as a much more powerful enabling tool for these students than disparate state legislation. First, these laws solve funding and public benefit access problems. The laws would repeal the section of the IIRAIRA prohibiting states from granting in-state tuition to undocumented students, giving state legislatures undisputed authority to pass in-state tuition bills.\textsuperscript{246} Additionally, the laws would substantially improve students’ access to federal public benefits, though the extent of this improvement is currently unclear. The House Student Adjustment Act would amend the PRA to include undocumented students as “qualified aliens,” fully eligible to receive any federal public benefits.\textsuperscript{247} The DREAM Act—at least as it emerged after markup from the Senate Judiciary Committee in November 2003—is one short step behind. Although it would limit the full scope of available federal financial aid, undocumented students would still be eligible for a range of federal loans and work-study programs.\textsuperscript{248} The playing field for funding college would not quite be made equal, but it would be much closer than before.

Furthermore, certain undocumented students would be able to adjust their immigration status and become legal residents in the U.S.\textsuperscript{249} This status would alleviate two major problems for undocumented students: first, they would no longer have to worry about immigration violations and deportation, and second, they would be eligible

\textsuperscript{246} See S. 1545 § 3; H.R. 1684 § 2.
\textsuperscript{247} See H.R. 1684 § 3(e) (standing to amend 8 U.S.C. 1641(b)).
\textsuperscript{248} See S. 1545 § 12.
\textsuperscript{249} See id. at § 4.
to apply for and procure employment without concerns about infringing labor regulations. However, exactly who will qualify for these immigration benefits is still unclear, as the House and Senate bills differ somewhat on this point. The Student Adjustment Act currently stands to qualify all undocumented students who are under twenty-one years of age, have been physically present in the U.S. for at least five years, are of “good moral character,” and are enrolled at or above the seventh grade level, or alternatively, are enrolled in or seeking admission to an institution of higher education. Any applicants who are subject to grounds of inadmissibility or deportation based on their criminal history or affiliation with terrorist organizations would be declared ineligible for adjustment of status, regardless of their compliance with other requirements. The DREAM Act’s eligibility requirements are largely the same, with slightly expanded grounds of automatic disqualification and additional details with respect to the process of adjusting status. Like other special grants of legal status under immigration law, qualifying undocumented students would be initially given conditional legal status, converting to permanent legal resident status only after each student completes a follow-up interview with immigration officials six to eight years later.

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250 See supra text accompanying notes 182-86.
251 Compare S. 1545 §§ 4-6 with H.R. 1684 § 3.
254 See id. at § 3(a)(3)(B)(ii).
255 See S. 1545 § 4(a)(1)(C).
256 See id. at § 5.
VI. CONCLUSION

On the 50th anniversary of Brown v. Board of Education257 and the movement to eliminate race-based segregation in public schools, equal access to educational opportunities is still a controversial issue in the U.S. Though important advances have been made, many have recognized that discrimination remains alive and well in our educational policies.258 One of the most blatant examples of contemporary inequality is the limited access of undocumented students to postsecondary education despite their unconditional acceptance by the public K-12 school system.

Only recently has this problem been formally identified in legislative circles, and various solutions have been proposed. A growing number of states are granting in-state tuition to undocumented students. Although these laws reduce the financial burdens borne by students, they do not address many other legal obstacles to obtaining a postsecondary degree. On the federal level, however, the DREAM Act and Student Adjustment Act stand to more fully grant immigrants the opportunities they now lack. Not only would these bills grant increased access to funding for college, they would also allow for undocumented students to adjust their status and become legal residents in the U.S. Importantly, all these laws reflect a desire to reinforce the Equal Protection clause and recognize that immigrant youth are defenseless victims of prejudice.

Despite efforts by many actors, it should be recognized that undocumented students themselves are their own most compelling advocates for federal legislative action. Though many students like the ones whose stories are shared here face unique challenges, their courage to share their experiences in hopes of a better future is

remarkable. The movement toward this legislation is one of poignant human interest and incredible determination to succeed, and continues to inspire Americans to show solidarity for undocumented students. After all, this population only seeks to fulfill the “American Dream” so attractively sold to them by our public school system.\textsuperscript{259}

\textsuperscript{259} Student interviews, supra note 10.