

## **Higher Education Opportunities for Undocumented Students in the United States: What are the Policy Implications for Educators and Legislators**

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"Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!"  
Statue of Liberty

### **Prologue**

Alex's modern urban look contrasts with his reserved and quietly serious attitude. He is a 20-year-old Hispanic male that graduated from high school in the Spring of 2009 with a 3.4 GPA. Alex arrived in the United States as a young child. His mother crossed the border with him and his two older siblings when he was only one year old. His brothers were seven and nine. They settled in California for a few years and moved to Texas later, where he began school in kindergarten. Having arrived in the U.S. at such a young age, Alex does not remember a single detail about his life in Mexico. Most of his memories relate to his experiences in the United States.

One of the most influential people in Alex's life throughout his early years was his mother. In addition to risking her life when crossing the border illegally, she worked long hours for several years cleaning houses to provide her family with the necessary support, especially after Alex's father left the country. Even though she was not formally educated beyond a few years in elementary school, she would constantly encourage her children to do their schoolwork and obtain good grades.

Growing up, Alex was fortunate enough to have his brothers' support while attending school. He also remembers a specific teacher that encouraged him to stay out of trouble and utilize his potential in a more productive way. It was actually his fifth grade teacher who helped him complete an application for the magnet middle school in town where he was later accepted.

It was not until middle school when Alex's became cognizant of the implications of his undocumented status, listening to some of his friends discuss the issues of illegal immigration and the implications and impediments that such condition would impose upon people like him, people "without papers."

For years, Alex thought about going to college after finishing high school. He had an active life as a student and was also committed to his school's soccer team where he played as forward for four years, starting with the junior varsity team as a freshman and spending three years with the varsity team as an important member of the starting lineup.

Alex's abilities as a soccer player brought him hope and the possibility of higher education. While he was still playing for the varsity team in high school, one of the soccer coaches who was also working as a coach in a community college 35 minutes south of the city asked him to complete an application and apply for a scholarship.

Despite his proficient academic performance, passing all of his state assessments, and his desire to go to college, Alex was never enrolled in a college preparation class or test preparation course. His counselor

recommended he take the SAT during his junior year, and he did. His scores were not impressive and the idea of not going to college began looming above his head. For the first time in years, he realized that his limited financial opportunities and even his undocumented status would play an important part in his being admitted into a higher education institution. Not only was he skeptical but also became more realistic about his possibilities.

Alex's dream of attending college was shattered as graduation approached. In retrospect, he now realizes that his fear, lack of direction, and uncertainty also played a part in his condition. He explained, "I guess I just got scared or just didn't care for awhile. I just wanted to take a break." Moreover, he could not ignore the fact that being undocumented was still a very realistic problem, one that he and others were aware of.

Being undocumented in the U.S. has affected Alex's perception and reality. After graduating from high school with a 3.4 GPA, passing all of his tests and grade levels, playing for the varsity soccer team for four years, and enjoying school throughout his entire life, he is not attending college. He is unemployed, and as a matter of fact he's not even eligible for employment at all. The fact that he entered the country illegally when he was one year old has affected his life significantly. He knows that his opportunities for the future are very limited.

### **Introduction**

Alex is by no means unique. The demographic changes that the United States has experienced in the last five decades demonstrate that the Hispanic population (documented and undocumented) has increased and become the largest minority group in the nation (U. S. Census, 2009). U.S. demographers and researchers estimate that there are over 11.9 million people living illegally in the country. The majority of this undocumented population comes from Latin America, more specifically from Mexico, and resides in either Texas or California. It is estimated that at least 40 percent of the unauthorized immigrant population resides in either one of these states (Hoefler, Rytina, & Baker, 2010).

A large number of undocumented students graduate from high school every year in the United States. This number is estimated to be around 65 thousand (Passel, 2003). Out of this population, only 5-10 percent continue their education in a higher education institution.

As a society we should ask ourselves: What are the political, economic and moral implications of undocumented students inability to access higher education. How should educators and legislators approach this issue?

### ***Immigration and Demographic Changes in the United State: Past, Present and Future***

Over the last four decades, immigration from Latin America and Asia has been a key factor changing the racial and ethnic composition of the American population. In 1970 (Grieco, 2009), over 75 percent of the foreign born population was born in Europe. Two decades later, 39 percent were born in Europe and 52 percent were born in Latin America and Asia.

The U.S. Census Bureau (2006) indicates that in 1970, the Hispanic population was estimated to be 9.6 million. In less than four decades, the number of Hispanics in the United States more than tripled, and in 1980, 1990, and 2000 the Hispanic population was estimated to be 14.6, 22.4, and 35.3 million respectively.

The U. S. Census (2006) shows that between 2000 and 2006 Hispanics accounted for one half of the nation's growth with a growth rate over 24 percent while the rest of the population grew at a much smaller rate (6 percent). In 2006 there were at least 44.3 million Hispanics living in the United States or 14.8 percent of the total population (299 million).

Estimates from the U.S. Census (2006) indicate that by 2050, the Hispanic population in the United States will be 102 million and 24.4 percent of the entire population. Passel and Cohn (2008) note that between

2005 and 2050 Hispanics will triple in size, making up 29 percent of the entire U.S. population, while the nation's White population is projected to decrease from 67 percent in 2005 to 47 percent in 2050 and the African-American population will remain steady at 13 percent of the population.

The U.S. Census report describes the geographic distribution of the Hispanic population between 2000 and 2006. The report indicates that California, Texas, Florida, New York, and Illinois were the top five states by Hispanic population size and that 64 percent of the Hispanic population in the United States was originally from Mexico (U.S. Census, 2006). Out of the Hispanic or Latino foreign-born population, 31 percent were naturalized citizens and 59 percent were not U.S. citizens (U. S. Census Bureau, 2008).

### ***State and National Laws Impacting P-16 Eligibility***

In 1982, the U. S. Supreme Court ruled in *Plyler v. Doe*, that Texas could not exclude undocumented children from a tuition-free elementary and secondary education. In reaching this landmark decision, the Court determined that the equal protection clause was extended to undocumented immigrants. In a narrow decision by the Supreme Court members (5-4 votes), the Court noted that undocumented children could not be held responsible for being in Texas illegally, rejecting the argument that these students would constitute a financial burden on the state's funding for public education (Walsh, Kemerer, & Maniotis, 2005).

*Plyler v. Doe* (1982) was one of the most important judicial rulings in the history of undocumented immigrants in the United States (Frum, 2007; Olivas, 2005; Valencia, 2010; Yates, 2004). As a result of the *Plyler* decision, almost all undocumented children attend elementary and secondary school in the U.S. (Gonzalez, 2009). This right to education was considered a "special interest" protected by the Equal Protection Clause of the Fourteenth Amendment that continues to be of significant value in the lives of undocumented students, their families, and society (Valencia, 2010). The *Plyler* ruling, however, did not specifically address public education after high school was completed, creating uncertainty for undocumented students with aspirations to complete their educational journey and embrace the American dream.

Olivas (2004) states: "Plyler addressed the issue of public school children in the K-12 setting, but was silent on the issue of whether the protections extended to the college setting" (p. 437). As the law stands today, undocumented students can legally attend high school and most colleges since federal law does not prohibit the admission of undocumented immigrants to U.S. colleges and universities. As noted by Gonzales, "no federal statutes require disclosure and proof of immigration status and citizenship for students to enter higher education" (Gonzales, 2009, p. 12).

Despite the fact that federal law does not explicitly prohibit the admission of undocumented immigrants to U.S. colleges and universities (Drachman, 2006; Frum, 2007; Gonzales, 2007, 2009; Perez, 2010), there are financial barriers that relate to in-state tuition policies that affect undocumented immigrants. These policies have been influenced by federal legislation that limits undocumented students' eligibility to receive federal financial aid in the form of grants and scholarships. Drachman (2006) states that, "neither federal nor state law forbids undocumented students from attending college, but in effect many are turned away for financial reasons" (p. 92). As Gonzales (2007) asserts, given the many obstacles to their post-secondary education and their exclusion from the workforce, many undocumented students are discouraged from applying to college" (p. 3). Drachman (2006) notes that, "many undocumented children drop out of high school or do not take a college preparatory program because they do not believe they can afford college" (p. 94).

Since it is financially challenging for most higher education institutions to offer in-state tuition rates to all students, many institution and states have not developed in-state tuition policies for undocumented students who, in response to these policies, are kept from continuing their post-secondary education without federal and state financial aid (Yates, 2004).

Currently there are 13 states that have passed in-state tuition initiatives for undocumented students, which allow students to qualify for in-state tuition and other financial benefits such as state financial aid. They include California, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington and Rhode Island. The remaining states, however, do not have any state policies regarding illegal immigrants attending higher education institutions. Only three of these states (Texas, Oklahoma, and New Mexico) offer state financial aid to undocumented students (Drachman, 2006; Gonzales, 2009).

At least 23 states have considered legislation allowing resident tuition for undocumented students while others like Alaska, Arizona, Colorado, North Carolina, Virginia, and Mississippi) have contemplated legislation denying in-state tuition for undocumented students. Alaska and Mississippi have actually implemented legislation prohibiting undocumented students from becoming eligible for this financial benefit (Frum, 2007).

In essence, undocumented students in the United States are allowed to attend public schools in grades K-12 without having to pay tuition. Under federal legislation, these students are not banned from higher education institutions but are also not eligible for federal financial aid. Policies across the country for undocumented students vary by state. Some states like Alaska and Mississippi have enacted legislation barring undocumented students from qualifying for in-state tuition and financial aid. While 13 other states have passed legislation allowing undocumented students to qualify for in-state tuition but only three offer state financial aid. However, the possibility of a legal job after graduation is not an option in any state, demonstrating the inconsistencies and contradictions between federal and state regulations.

#### ***Implications for Schools and Society (Political, Economic and Moral)***

The issue of undocumented students attending higher education and receiving financial assistance has become a politically charged issue. In the Republican primary debate held in September 2011, Governor Romney and Senator Santorum opposed in state tuition being afforded to illegal students while Governor Perry supported Texas law that allows undocumented students to receive in state tuition (Austin American Statesman, 2012). This past year the Rhode Island became the thirteenth state to pass legislation permitting undocumented students to receive in state tuition (National Center for Education Statistics, 2012). In many ways the issue of undocumented students attending institutions of higher education and receiving in state tuition is a sub plot to the bigger issue of how should the country address illegal immigration and border security. Therefore should a student's educational opportunities be restricted and held hostage by this political issue?

Economically the State makes a significant investment in educating undocumented students in PK-12. According to the National Center for Education Statistics (2012) the average cost to educate in 2008 was \$10,441 nationally. One could conjecture that if 60,000 undocumented students graduate annually this is an investment in just this one group of students of \$626,460,000 annually and \$8,143,980,000 for the 13 years of public education they may have attended. Realistically upon graduating or dropping out-of-school undocumented aliens will find work, one way or another; with or without *papers*; they will either incorporate into the formal economy, insure their vehicles, and obtain a driver's license or they will continue to live in the shadows away from demographers, immigration authorities, educational institutions, credit rating agencies, banks, medical organizations, tax collection and law enforcement agencies. Therefore would it benefit the state and national economy to have more undocumented students contributing to the economy?

Perhaps the most difficult issue in addressing whether undocumented students should be able to attend higher education is the moral implications. In the United States education has always been the great equalizer for immigrants by allowing individuals to improve their life as a result of the American

education system. Proponents of allowing undocumented students the opportunity to attend higher education believe students should not be punished for the choices their parents made. Whereas, those who oppose the idea believe that it would just encourage more illegal immigration. Therefore, what is the responsibility of a compassionate society to afford educational opportunities to both its legal and illegal citizens?

### ***Recommendations for Policy Makers and Educators***

Understanding the complicated immigration laws and their overlapping with state regulations when applying them to undocumented students is a difficult task. The convoluted language utilized has created confusion among undocumented students, states, and higher education institutions. The fact that states have enacted different pieces of legislation that vary among them reveals the divide in the country with such a controversial issue.

One recommendation is to develop immigration policies that are consistent among federal and state governments and that deal with the topic of undocumented students' access to higher education and financial benefits. One sweeping piece of federal legislation being proposed is the Development, Relief and Education for Alien Minors Act of 2011 (the DREAM Act, H 1842), which would allow states the option to determine residency for purposes of higher education benefits. It would provide conditional legal status to an individual who meets the following conditions:

- 1) was under the age of 15 when he or she entered the country;
- 2) has been physically present in the United States for at least five years;
- 3) has earned a high school diploma or GED;
- 4) is a person of good moral character;
- 5) is not inadmissible or deportable under criminal or security grounds of the Immigration and Nationality Act; and
- 6) was younger than 32 years of age when the law is enacted.

(National Conference of State Legislatures In-State Tuition and Unauthorized Immigrant Students, 2011)

In addition the other recommendations for federal and/or state governments include:

- Provide opportunities for undocumented students that arrived in the U.S. as children and graduated from a U.S. high school to attain lawful employment so as to ensure state loan repayments and contribute to society through federal and state tax contribution, and other mechanisms and opportunities associated with legal employment.
- Provide undocumented students with identification numbers or documentation (i.e., student/work visa) that could also work for potential employment in the future to track students, grant financial aid, and ensure repayment of loans.
- Provide assistance for undocumented students through programs similar to Guest-Worker programs that would allow the state to take advantage of bilingual college graduates from public universities to remain in the state and contribute to society.
- Make immigration policies accessible to the general public by simplifying the language utilized in most bills that deal with undocumented students and eligibility for financial benefits.

### **Closure**

At one time in our history the Atlantic Ocean stood between our shores and the immigrants who yearned for a better way of life. For those immigrants Ellis Island and the Statue of Liberty were beacons of hope and prosperity. As the immigrants settled into the cities and countryside they sent their children to public schools and universities in hopes of improving their children's future.

Today many immigrants enter this country illegally along the Mexico and United States border. They too are seeking a better life for themselves and their children through increased economic and educational opportunities. Many of these children graduate from American schools with the skills, abilities and desires to continue their education in post secondary education. However, due to limited financial resources and confusion about their opportunities they are precluded from attending post-secondary education. Their reality and experiences cannot always be explained by statistics, data analysis, research studies, philosophical statements, or interpretations of the law.

Irrespective of ones political persuasion and the economic realities of illegal immigration, as a compassionate society we must ask ourselves should we deny educational opportunities to children who by no fault of their own find themselves as part of our society? The answer to this question will determine the future for hundred of thousands of illegal immigrants and their ability to attend institutions of higher education and partake in the American dream.

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