

Rights of Undocumented Students on Colleges Campuses

Yadi Wang

University of Southern California

EDHP 679 April 26, 2013

Rights of Undocumented Students on Colleges Campuses

Introduction

The United States, a nation of immigrants (Longo, 1997), has been continuously enjoying the culture, history and talents brought by different people that have settled here. At the same time, problems related to undocumented immigration are emerging in such an environment. It is estimated by the Pew Hispanic Center (2009) that unauthorized immigrants are 4% of the nation's population and California houses 2.7 million immigrants, the largest number of undocumented residents.

Built on such an inclusive country, the higher education system in the United States is featured with the diversity of students. On a national forum in 2008, the Presidents of Columbia University and Rutgers University, Lee Bollinger and Richard McCormick, spoke on the critical need of reviewing traditional strategies implemented to encourage underrepresented students' participation rates on college campuses (Davis, 2009). Among the underrepresented ones, the group of undocumented students is one that we should concern. Regarding America's immigration situation, rights of undocumented students are of social importance.

Current Situation

According to the report from University of California Los Angeles Center for Labor Research and Education (2007), undocumented immigrants are foreign nationals who: 1) entered the United States without authorization; or 2) entered legally but remained in the United States without authorization. In other words, undocumented student is one who is not a U.S. citizen or legal permanent resident and does not currently possess a green card, visa, or other legal documentation.

Every year, approximately 65,000 to 80,000 undocumented students who have grown up in the United States graduate from high school with limitations from fully participating in American society, including attending a postsecondary school, getting a legal citizen status, finding a job and so on (Perez, 2012). Only one out of every 20 (5%) of undocumented high school seniors attends college (Fact Sheet, 2005). Of undocumented high school graduates who have lived in the U.S. for at least five years, only 20% enroll in postsecondary education (Fact Sheet, 2005).

In general, there are two main challenges that are hindering undocumented students entering colleges: financial difficulties and identity development crisis. First, because most of undocumented students come from low-income families, the various legislations on tuition and limited financial support resources become the biggest barrier on the path into higher education. Second, Perez (2009) found that students often do not even become aware of their undocumented status until their final years of high school. Oftentimes they have little power in the decision to come into this country. As their exposure to the American society, they may be surprised and depressed by the prompt restrictions. Undocumented students keep negotiating with themselves on their social status in the U.S. with complicated emotions.

Thus, while discussing diversity or equal access to American higher education, attention should be paid to the undocumented youth. This paper will analyze legislations upon tuition fees in four different states, special financial support to undocumented students and then propose recommendations on implementing laws to serve such students.

In-State Tuition

Thanks to the case of *Plyler v. Doe*, 457 U.S. 202 (1982), undocumented children gained the right to K-12 public education under equal protection provisions of the 14th Amendment. In

2009 Pew Hispanic Center Report, children from unauthorized immigrant families made up 6.8% of the students enrolled in the nation's elementary and secondary schools (Passel & Cohn, 2009).

Plyler v. Doe, 457 U.S. 202 (1982) is a cornerstone for gateway legislations regulating undocumented students' rights to obtain education. In terms of the higher education, on the one hand, federal law does not prevent admission of undocumented students, nor does it require proof of citizenship or immigration status for enrollment (Biswas, 2005). On the other hand, repeatedly since 2001, considering providing conditional permanent residency to certain high graduate illegal aliens, versions of the Development, Relief, and Education for Alien Minors (DREAM) Act have been introduced in both the Senate and the House, but Congress has failed to pass the proposed legislation (Perez, 2012).

Undocumented students are eligible to receive the same on-campus services as documented ones, for example counseling, disability service, health center, academic support, etc. The difference as well as the barrier to higher education for undocumented students is the financial-related issue. Section 505 of the federal law *Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)* of 1996 prohibits states from giving in-state tuition to undocumented residents if they do not offer the same benefits to out-of-state citizens. As for states policies reported by National Immigration Law Center (2012), currently, 12 states have laws allowing undocumented students who meet specific requirements to receive in-state tuition rates at public postsecondary institutions. The states are California, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington. In September 2011, Rhode Island's Board of Governors for Higher Education approved a policy that allows undocumented students who meet requirements to pay in-state tuition. However, at least five

states—Arizona, Florida, Colorado, Georgia, and Indiana—bar undocumented students from receiving in-state tuition rates (National Conference of State Legislatures 2013).

It is noticed that there are differences between federal and state laws. Some agents such as the FinAid (n.d.) say these are conflicts and these state laws attempt to circumvent the federal law. While the explanation is provided by National Immigration Law Center (2012): It does not preclude states from providing in-state tuition to undocumented residents of the state as long as nonresidents in similar circumstances also qualify. The states that have passed in-state tuition laws are complying with this law, not getting around it.

California and Texas

In 2008, California and Texas are the top two states that host the most unauthorized immigrant populations: 2,500-2,850 in California and 1,300-1,550 in Texas (Passel & Cohn, 2009). These two states are also the pioneers who advocate for undocumented students in-state tuition rates.

In 2001, Texas's policy introduced as House Bill 1403 granted certain non-immigrant students, including undocumented students, access to in-state tuition rates at Texas public institutions of higher education and state financial aid. This bill was codified as Texas Education Code (TEC) 54.052(j). According to the Texas Higher Education Coordinating Board, more than 2,000 students enrolled in the fall 2003 session after qualifying under HB 1403 (Biswas, 2005). Soon after this, in California, Assembly Bill 540, signed into law in October 2001, permits undocumented students to qualify for in-state tuition, which was codified as in section 68130.5 of California Education Code. Generally laws require the students to have: (a) attended a school in the state for a certain number of years; (b) graduated from high school in the state; and (c) signed an affidavit stating that they have either applied to legalize their status or will do so as

soon as eligible (Zota, 2009). It is estimated that between 5,800 and 7,450 undocumented students per year are eligible to benefit from AB 540 (Abrego, 2008).

Arizona and Florida

According to the 2009 Pew Hispanic Center Report, Arizona and Florida are also on the top places of housing a number of unauthorized immigrants. On the contrary to California and Texas, some states' government discussed the issue of in-state tuition for undocumented students and came to a different conclusion. In 2006, Arizona citizens passed Proposition 300, which prohibits undocumented students from qualifying for in-state tuition rates and any type of state financial aid. Florida took up the issue of tuition and financial aid for undocumented students in 2003 and again in 2004, but legislation failed to pass. House Bill 119 and Senate Bill 1182 could have permitted students in-state tuition if they met certain requirements (Biswas, 2005). But both of them died in the conversation in committee. In a word, both Arizona and Florida, as examples of several other states, banned undocumented students' rights to in-state tuition and state financial aid.

Financial Aid

Each state differs in its laws regarding tuition rates, state-based financial aid and scholarships for undocumented students. States like California, Texas and New Mexico offer in-state tuition and state financial aid. For the four states mentioned above, California and Texas grant certain undocumented students access to state financial aid, while Arizona and Florida not.

Specifically, in California, the California Dream Act became law through the passage of two Assembly Bills, AB 130 and AB 131. AB 130 allows students who meet AB 540 criteria (AB 540 students) to apply for and receive non-state funded scholarships for public colleges and

universities. AB 131 allows AB 540 students to apply for and receive state-funded financial aid such as institutional grants, community college fee waivers, Cal Grant and Chafee Grant.

In terms of scholarship and financial aid, previous studies suggest that community colleges play a key role for undocumented students as they allow students to enroll at lower costs have some helpful financial aid programs. For example, in 2003, the state attorney of Virginia general suggested public four-year state colleges refuse admission to students without documentation (College Board, 2012). “However, Northern Virginia Community College and a few other schools have questioned the memo. They have accepted the recommendation with regard to tuition, but not regarding reporting students who legal status is suspect and charging out-of-state tuition” (Biswas, 2005, p. 5). In California, the East Los Angeles College set a counselor especially for helping undocumented students, financial aid advising included.

One of the programs is known as Extended Opportunity Programs and Services (EOPS). Beginning from January 1, 2013, AB540 students will be eligible for EOPS, which is a state-funded retention and support program designed to facilitate the success of the financially and educationally disadvantaged student. In California, there are some scholarships that undocumented students could apply because those may not inquire about immigration status or require a valid social security number to redeem the award. And there are some scholarships exclusively for undocumented students provided by various agents. For instance, University of California Los Angeles Academic Advancement Program AB 130 Scholarship, University of California Berkeley Undergraduate Dream Act Scholarship, Casa 2 Scholarship from Lambda Theta Alpha Latin Sorority (Inc) and Que Llueva Café Scholarship from Chicano Organizing and Research in Education have applying requirements of being undocumented (MALDEF Scholarship Resource Guide, n.d.). Others like A.R.E. Scholarship from The Association of

Raza Educators and the Fountainhead Essay Contest encourage undocumented students to apply (MALDEF Scholarship Resource Guide, n.d.). But they are still in small number compared to the ones to documented students.

So after the in-state tuition, undocumented students in some states are eligible for state financial aid and other kinds of scholarships or competition awards from both school and the society. The professional counseling and assistance on applications are also accessible. Community college is one option for students who are initially admitted to top 4-year schools but are not able to enroll due to financial constraints. But one problem is even after they satisfy all the transferring requirements, they still cannot afford to another 4 years in a public college or university.

Discussion

Controversy

Conflict between pragmatism, compassion and fairness is in the center of the controversy concerning in-state tuition and financial aid for illegal immigrants. On the one hand, there are talented students who have no control of entering the U.S. illegally are refused by postsecondary institutions because of their financial difficulties. At very young ages, they are brought to a strange country by their parents or relatives, and then have to struggle to fit into a new culture while learning to navigate legislation that does not work in their favor. Many of these students will eventually become legal residents. But denying the in-state tuition rates to them is closing their access to a higher education, which will further hinder their life in the U.S. after they gain the residency. In Alabama, Montana, South Carolina, and some college systems in Georgia, undocumented students are outright banned from enrollment (Eusebio & Mendoza, n.d.). College-ready undocumented students have proven they can succeed academically despite

seemingly insurmountable social, financial, and legal barriers (Eusebio & Mendoza, n.d.; Olivas, 2008; Perez, 2009). It is neither fair nor consistent to provide undocumented students with public elementary and secondary school education, but without access to a postsecondary education.

On the other hand, some residents are arguing that undocumented students are taking away other students' opportunities. It is not fair to share the tuition benefit with whom staying in the country illegally (Eusebio & Mendoza, n.d.). Another aspect from the opponents is the cost of government discussion and legislation on the issue of tuition. University of Missouri law professor Kris Kobach (2007), asserted that the policy costs jurisdictions that implement it "staggering amounts of money" (p. 499). Given the allegedly extreme costs associated with extending in-state tuition to undocumented students, Kobach (2007) claimed, most taxpayers would prefer "give it to law-abiding U.S. citizens from out of state, who can legally settle and work in the state after graduation, rather than undocumented students" (p. 500).

Policy Learning and Recommendations

As the debate on the financial issue for undocumented students going on, something can be learned from certain states. As a pioneer in helping undocumented immigrants, the Texas experience provides one important implementation lessons for other states. It is the need for substantial staff education at institutions to help undocumented immigrants. In 2001, the Texas Higher Education Coordinating Board created a system to inform institutions of the policy changes (Biswas, 2005). Staff should have updated legal and governmental knowledge to offer the services, without which the underrepresented student population can be further confused and deterred from pursuing post secondary education.

In California, the progress of policy making was considered as a negotiating compromise. In the *Leticia A. v. Regents of the University of California*, No. 588-982-4. Cal. Super. Ct. (1986), the decision by a California Superior Court allowed undocumented students to establish in-state residency for tuition purposes and to apply for Cal Grants (Kaplin & Lee, 2006). Then, the decision was overturned by the ruling in *Regents of University of California v. Superior Court of County of Los Angeles*, 1991 Cal. LEXIS 1367 (1991). A decade later, AB 540 was signed into law. Based on the signed laws, individual institutions keep working closely to local high schools. Santa Ana Community College uses the high school seniors' application database to estimate enrollments and provide services (Biswas, 2005).

No matter whether state approves in-state tuition or in what way they figure out the final decision, what educators could do is to inform students of their situation or eligibility locally for in-state tuition as well as financial aid. Another suggestion is to encourage more private scholarship funds to set up certain scholarships particularly for undocumented students. Undocumented alumni who have successfully completed their higher education could help.

Additionally, as discussed in the introduction, identity development is also a big challenge for undocumented students. The care and support should be expanded in terms of the struggling identity developments of this vulnerable group of students. There is a continuing sense of risk and fear in the undocumented student population associated with divulging status. Concerns could be paid on the social attitude to their access into higher education, which is a recommended beginning for the leadership of expanding the care. For example, Palmer (2011) found that people who agree with bilingual education in schools also support undocumented immigrant access to higher education. So thinking more about the social attitude towards undocumented students is helping them build identities in colleges or universities.

Conclusion

Among the approximately 11 million illegal immigrants currently residing in the United States (Preston, 2011), undocumented students is one group that is underrepresented and should be paid more care from higher education educators and administrators. Two issues are at the forefront: (a) increasing access to higher education for these students by offering them in-state tuition; (b) making state financial aid programs and other scholarships accessible to undocumented students. The legislations from each state vary from each other and current help from carious scholarships is limited. In the future, no matter regarding laws making or campus services to undocumented students, critical implications from federal and other states' laws and psychological care to these fragile students are recommended.

References

- Abrego, L. (2008). Legitimacy, social identity, and the mobilization of law: The effects of assembly bill 540 on undocumented students in California. *Law & Social Inquiry*, 33(3), 709-734. doi: 10.1111/j.1747-4469.2008.00119.x
- Biswas, R. R. (2005) Access to Community College for Undocumented Immigrants: A Guide for State Policymakers. Achieving the Dream. Retrieved from:
http://www.jff.org/sites/default/files/AccessstoCCUndoc_0.pdf
- Cal Ed Code § 68130.5
- Chavez, M. L., Soriano, M., & Olivérez, P.M. (2007). Undocumented students' access to college: The american dream denied. *Latino Studies*, 5(2), 254-263. doi: 10.1057/palgrave.lst.8600255
- Clark, C. (2011). Diversity initiatives in higher education: Just how important "is" diversity in higher education? *Multicultural Education*, 19(3), 57-59.
- College Board.(2012) Advising Undocumented Students. Retrieved from:
<http://professionals.collegeboard.com/guidance/financial-aid/undocumented-students>
- Davis, D. J. (2009). The future and diversity in higher education. *Equal Opportunities International*, 28(4), 351-353. doi:10.1108/02610150910954809
- Eusebio, C. & Mendoza, F. (n.d.) The Case for Undocumented Students in Higher Education. Educators for Fair Consideration Retrieved from
http://www.e4fc.org/images/E4FC_TheCase.pdf
- Fact Sheet: Undocumented Students (National) (2005) Retrieved from:
http://www.energyofanation.org/sites/25e1f498-741c-478a-8a08-aa486d8533a5/uploads/Undocumented_Students__National_.pdf

FinAid (n.d). Financial Aid and Scholarships for Undocumented Students. Retrieved from

<http://www.finaid.org/otheraid/undocumented.phtml>

Kaplin, W. A., & Lee, B. A. (2006). *The law of higher education*. San Francisco, CA: Jossey-Bass.

Kobach, W.K. (2007). Immigration Nullification: In-State Tuition and Lawmakers Who Disregard the Law. *New York University Journal of Legislation and Public Policy* 10.473: 473-523.

Illegal Immigration Reform and Immigrant Responsibility Act 8 U.S.C. § 1623 (1996)

Leticia A. v. Regents of the University of California, No. 588-982-4. Cal. Super. Ct. (1986)

Longo, J. (1997). America: A nation of immigrants. *Mailbox Teacher*, 26(2), 80.

MALDEF Scholarship Resource Guide (n.d.) Retrieved from

http://www.maldef.org/assets/pdf/MALDEF_Scholarship_Resource_Guide.pdf

National Conference of State Legislatures (2013). Undocumented Student Tuition: State Action.

Retrieved from: <http://www.ncsl.org/issues-research/educ/undocumented-student-tuition-state-action.aspx>

National Immigration Law Center (2012). Basic Facts about In-State Tuition for Undocumented Immigrant Students. Retrieved from <http://www.nilc.org/basic-facts-instate.html>

Olivas, M. A. (2012). *No undocumented child left behind: Plyler v. doe and the education of undocumented schoolchildren*. New York: New York University Press.

Olivérez, P. M. (2006). *Ready but restricted: An examination of the challenges of college access and financial aid for college-ready undocumented immigrant students in the U.S.* University of Southern California Libraries.

- Palmer, C., & Davidson, T. (2011). Entitled or excluded? attitudes toward access to postsecondary education for undocumented students. *Current Issues in Education, 14*(2)
- Passel, J., & Cohn, D. (2009 April). A Portrait of Unauthorized Immigrants in the United States. *Washington, DC: Pew Hispanic Center.* Retrieved from <http://www.pewhispanic.org/files/reports/107.pdf>
- Perez, W. (2009). *We ARE Americans: Undocumented students pursuing the American Dream.* Sterling, VA: Stylus.
- Perez, W. (2010). Higher education access for undocumented students: Recommendations for counseling professionals. *Journal of College Admission,*(206), 32-35
- Perez, W. (2012) Undocumented Students in Higher Education. *Encyclopedia of Diversity in Education* 2215-18. Ed. James A. Banks. Thousand Oaks, CA: SAGE
- Preston, J. (2011) 11.2 Million Illegal Immigrants in U.S. in 2010, Report Says; No Change from '09." The New York Times. 1 February 2011. Retrieved from <http://www.nytimes.com/2011/02/02/us/02immig.html>
- Plyler v. Doe*, 457 U.S. 202 (1982)
- Regents of University of California v. Superior Court of County of Los Angeles*, 1991 Cal. LEXIS 1367 (1991)
- Tex. Educ. Code § 54.052
- UCLA Center for Labor Research and Education. (2007). Undocumented Students Unfulfilled Dreams. Retrieved from <http://www.labor.ucla.edu/publications/reports/Undocumented-Students.pdf>

Zota, S. (2009). Unauthorized Immigrants' Access to Higher Education: Fifty States, Different

Directions. Retrieved from

<http://sogpubs.unc.edu/electronicversions/pg/pgspsm09/article7.pdf>