DON’T DREAM IT’S OVER: ANALYZING THE POLICY, BENEFITS, AND CHALLENGES OF STATE STATUTES FOR POSTSECONDARY EDUCATION ACCESS AND FINANCIAL ASSISTANCE TO UNDOCUMENTED IMMIGRANTS AND THEIR IMPACT ON THE FEDERAL DREAM ACT

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INTRODUCTION

A S “a [United States] birthright citizen, I am fully aware of the gift and accident of my nationality, conferred on me through no effort of my own.” With this, Professor Michael Olivas pinpoints the crucial reason why children brought to the United States by their parents or guardians during their childhood should be given the same access to education and financial aid as received by United States citizens and lawful, permanent residents. Quite simply, undocumented children are often blameless and hard-working individuals who fell upon their status as innocently as birthright citizens. An estimated 2.1 million undocumented minors live in the United States, and every year, approximately 65,000 of them graduate

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1MICHAEL A. OLIVAS, NO UNDOCUMENTED CHILD LEFT BEHIND: PLYLER V. DOE AND THE EDUCATION OF UNDOCUMENTED SCHOOLCHILDREN 3 (Ediberto Roman ed., 2012). Michael Olivas is the William B. Bates Distinguished Chair in Law at the University of Houston Law Center; he received his J.D. from the Georgetown University Law Center. He holds a B.A. from Pontifical College Josephinum, and an M.A. and Ph.D. from Ohio State University. He has authored or co-authored fourteen books. Additionally, he teaches and writes in the areas of business, higher education, and immigration law. Olivas was the 2011 President of the Association of American Law Schools (AALS), and presently serves as the Immediate Past President of the same. He chaired the Section on Education for AALS three times and has chaired its Section on Immigration twice. Elected a member of the American Law Institute, the National Academy of Education, and the American Bar Foundation, Olivas has participated on the editorial boards of over twenty scholarly journals and received lifetime achievement awards from the Hispanic Bar Association of Houston and the Mexican American Legal Defense and Education Fund (MALDEF), of which he has served as Director since 2002. This synopsis highlights some of the accomplishments of Professor Olivas; the list is not exhaustive. See generally, Michael A. Olivas, UH Law Ctr. Faculty, Univ. of Houston Law Ctr, http://www.law.uh.edu/faculty/main.asp?PID=31.


from an American high school. With graduation looming, they face a tough decision of whether or not to pursue higher education with little to no access to financial aid and with little to no hope of attaining post-degree professional employment.

Although higher education is considered a necessity rather than a luxury in the United States today, approximately 47% of undocumented young adults do not graduate from high school. Of the portion of undocumented young adults who do graduate, less than half continue on to college due to lack of access to financial aid to supplement high tuition costs and the uncertainty of whether a college degree will generate greater job prospects without legal status. The poverty level of children of undocumented immigrants, regardless of whether the children themselves are also undocumented, and undocumented adults is more than double the poverty level of children born to United States citizens. Facing few prospects for professional employment and careers, these children are forced to accept manual labor jobs, perpetuating their place in a low socioeconomic status. Unfortunately, this underclass status ignites a xenophobic and nativist mentality in a portion of permanent residents, who seek to detain and deport these individuals or worse, take

http://www.immigrationpolicy.org/sites/default/files/docs/Dream_Act_updated_051811.pdf. An undocumented student or immigrant refers to individuals present in the United States without legally documented status to reside in the United States. This occurs when individuals cross the United States border deceptively or overstay a temporary, legal visa without receiving authorization for an extension. The term “undocumented” immigrant or student will be used in this Note, but this term is interchangeable with “illegal” and “unauthorized” alien or immigrant. In recent years, controversy has erupted over use of the term, “illegal alien” on the premise of being pejorative, eventually leading to a campaign by social advocacy magazine COLORLINES to begin a campaign aptly named, “Drop the i-word.” See, Leslie Berenstein Rojas, The ‘Undocumented’ vs. ‘Illegal’ Debate Continues, on Multi-American: Immigration and Cultural Fusion in the New Southern California, S. Cal. Pub. Radio broadcast (Sep. 6, 2011) (corresponding report, available at http://www.scpr.org/blogs/multiamerican/2011/09/06/7279/the-undocumented-vs-illegal-debate-continues/; for an argument over which term should be used in the judicial system, see Martinez v. Regents of the Univ. of Ca., 241 P.3d 855, 863 (Cal. 2010)).


5 ROMERO, supra note 2, at 93.


8 Id.

9 ROMERO, supra note 2, at 93.

10 PASSEL & COHN, supra note 7, at iv.

11 See ROMERO, supra note 2 at 93.

12 Solorzano, supra note 6, at xxxi.
it upon themselves to commit racist, hate crimes, forcing undocumented immigrants into the shadows of American society.\textsuperscript{13}

Many controversial aspects of immigration law are beyond the scope of this Note; yet, immigration reform is clearly needed.\textsuperscript{14} Such reform must be approached practically to address the reality that undocumented immigration has existed and will continue to exist.\textsuperscript{15} In order to preserve the constitutional guarantee of equality, providing an avenue, or at least an option (vis-à-vis financial aid and opportunity for citizenship), for undocumented students to rise to a status equal to their documented peers in the nation they call home is necessary. Such equality can only be achieved through federal legislation.\textsuperscript{16} To preface and support that federal legislation, however, states can and should advance the issue by enacting state legislation to provide in-state tuition, state aid, and scholarships to these students\textsuperscript{17} and, subsequently, showcase the socioeconomic benefits stemming from enacting such legislation.

\textsuperscript{13}OLIVAS, supra note 1, at 4. The fate of Luis Eduardo Ramirez Zavala (known as Luis Ramirez) details a heartbreaking example of nativist hate crime against an undocumented immigrant in the United States. In July 2008, a handful of teenage football players confronted Ramirez, an undocumented young adult of Hispanic descent who had immigrated to Pennsylvania from Mexico, in a park in the small mining town of Shenandoah, Pennsylvania. His attackers called him a “spic” and advised him, “This is Shenandoah. This is America. Go back to Mexico,” before beating him so badly while shouting racial slurs that he convulsed, foamed at the mouth; and died in a hospital two days later. Two of the five boys, Scott Piekarsky and Derrick Donchak, were tried as adults and were found guilty of committing federal hate crime under the criminal component of the Fair Housing Act, which prohibits interfering with one’s right to live where he chooses on basis of race or ethnicity through violence or threat of violence. Both were sentenced to nine-year prison terms in federal court, after first-round acquittals by an all-white state jury. Two police officers were subsequently found guilty of obstructing justice for lying to the Federal Bureau of Investigation to help cover up the teens’ crime in a separate but related case. Press Release, U.S. Dept. of Justice, Two Shenandoah, Pa. Men Convicted of Hate Crime in Deadly Beating of Luis Ramirez (Oct. 14, 2010), available at \url{http://www.justice.gov/opa/pr/2010/October/10-crt-1154.html}; See Julianne Hing, Luis Ramirez’s Attackers Get Nine Years in Prison for Deadly Beating, COLORLINES, Feb. 24, 2011, \url{http://colorlines.com/archives/2011/02/luis_ramirezs_attackers_get_nine_years_in_prison_for_deadly_hate_crime.html}; See generally, MARY BAUER, S. POVERTY LAW CTR., ALABAMA’S SHAME: HB56 AND THE WAR ON IMMIGRANTS, (2012), available at \url{http://www.splcenter.org/alabamas-shame-hb56-and-the-war-on-immigrants} (describing the lives of both documented and undocumented Hispanics subjected to nativism resulting from enacting an anti-immigration law in Alabama).

\textsuperscript{14}OLIVAS, supra note 1, at 73, 77.

\textsuperscript{15}Seventy-nine percent of children of undocumented immigrants are United States citizens by birthright; whereas twenty-one percent of children of undocumented immigrants are foreign-born and were unlawfully brought to the United States. JEFFREY PASSEL & PAUL TAYLOR, UNAUTHORIZED IMMIGRANTS AND THEIR U.S. BORN CHILDREN, PEO HISPANIC CTR., 1-2 (2010), \url{http://www.pewhispanic.org/2010/08/11/unauthorized-immigrants-and-their-us-born-children/}.

\textsuperscript{16}WILLIAM PEREZ, WE ARE AMERICANS: UNDOCUMENTED STUDENTS PURSUING THE AMERICAN DREAM 153-54 (Stylus Publishing, 2009).

\textsuperscript{17}See Elisha Barron, The Development, Relief, and Education for Alien Minors (DREAM) Act, 48 HARV. J. ON LEGIS., 623, 653 (2011) (discussing state actions as a model for creating a successful federal DREAM Act).
This Note provides an analysis and argument in support of practical immigration reform to extend postsecondary education access and benefits, as are afforded to citizens and legal residents, to undocumented high school graduates seeking higher education and who are successful but for their inability to conquer their unlawful status. The Note begins with a brief history of pertinent immigration law, highlights the goals of the failed federal Development, Relief and Education for Alien Minors (DREAM) Act, and explores a sampling of state-enacted legislation for in-state tuition bills and financial aid, otherwise known as state DREAM Acts. This Note then analyzes economic and social benefits gained by states with pro-immigration laws for postsecondary education and compares these benefits to the detrimental effects of state legislation that excludes undocumented students from having access to postsecondary education or aid. From that comparison, it is evident that continued enactment of state DREAM statutes providing postsecondary access and aid to undocumented students is necessary to pressure Congress into enacting the long-proposed legislation that provides a pathway to legal citizenship for undocumented students.

Part I of this Note gives a brief overview of the history of immigration law relating to the education of undocumented students. Specifically, it will focus on access and availability of educational, financial aid for these minors and young adults. Part II provides a relevant history and definition of the proposed federal DREAM Act. It then compares four state-enacted DREAM statutes by addressing their benefits and drawbacks. Part III summarizes the arguments supporting the enactment of the federal and state DREAM statutes. Part IV identifies the detrimental effects on states that have enacted legislation prohibiting postsecondary access or aid to undocumented students. Finally, Part V suggests states should continue to enact DREAM statutes as a catalyst for passing a federal DREAM Act to achieve comprehensive immigration reform. Such reform is necessary to realize the “dream” of equal postsecondary education, the possibility of citizenship for all students, and social and economic benefits for the entire nation.

I. HISTORY OF IMMIGRATION LAW AND REFORM PERTAINING TO EDUCATION

State and local governments share the principal responsibility of establishing, developing, maintaining, and funding the compulsory public education system for primary and secondary schools in the United States. Thus, states have autonomy to enact laws and form education policy as long as they do not conflict with standards set by federal law. The federal government’s role has traditionally been limited to

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19 ROMERO, supra note 2, at 94.
providing a small portion of funding.\textsuperscript{21} More recently, the federal government has also studied and implemented success standards, attempted to maintain competitiveness with other nations, and aimed to ensure equal access to all children.\textsuperscript{22} Essentially, although states maintain primary responsibility for regulating public education, the federal government regulates immigration law and “often use[s] its immigration power to influence state policies affecting immigrants . . . in areas traditionally left to the states.”\textsuperscript{23} Federalism, the division of power between federal and state governments, punctuates the history of immigration legislation and the case law.

Such a conflict of laws arose in \textit{Plyler v. Doe}, which the United States Supreme Court agreed to hear in 1981.\textsuperscript{24} \textit{Plyler} is the landmark case regarding the education of immigrants, famously holding that undocumented children are entitled to equal protection under the Fourteenth Amendment of the Constitution and are entitled to receive the free benefit of public education through secondary school; the decision also rejected the state’s attempt to justify the denial of free education by proving an overriding, substantial state interest.\textsuperscript{25} The class action suit was brought on behalf of undocumented children in Texas in response to a section of the Texas Education Code, which allowed withholding of state funds to school districts that permitted undocumented students to attend and allowed school districts to deny enrollment to undocumented students.\textsuperscript{26}

Still valid today, Justice Brennan penned the majority opinion, explaining the Court’s rationale that “[u]ndocumented aliens cannot be treated as a suspect class . . . [n]or is education a fundamental right . . . [t]he statute, however, imposes a lifetime hardship on a discrete class of children not accountable for their disabling status.”\textsuperscript{27} Brennan reasoned that public “education has a fundamental role in maintaining the fabric of our society,”\textsuperscript{28} enforcing the idea that depriving these students of education would have an “inestimable toll” on their well-being and ability to achieve success in the future.\textsuperscript{29} Though not a fundamental right, the Court emphasized education is of great importance.\textsuperscript{30} Denying a free, public education to any child present in the United States violates the Equal Protection Clause by placing government obstacles in the path of a child’s success, impairing their ability to become “self-reliant and self-sufficient participants in society”\textsuperscript{31} and preventing them

\textsuperscript{21}Id.
\textsuperscript{22}Id.
\textsuperscript{23}ROMERO, \textit{supra} note 2, at 94.
\textsuperscript{25}Id. at 215, 222-23, 227-30.
\textsuperscript{26}Id. at 205-06.
\textsuperscript{27}Id. at 223.
\textsuperscript{28}Id. at 221.
\textsuperscript{29}Id. at 222.
\textsuperscript{30}See id. at 221.
\textsuperscript{31}Id. at 222.
from receiving “basic tools[,]”\textsuperscript{32} which enable individuals to “lead economically productive lives to the benefit of . . . all.”\textsuperscript{33}

Thirty years have passed since the \textit{Plyler} ruling, and the holding has received much criticism and several challenges over the years at both the state and federal levels.\textsuperscript{34} In contemplation of the growing costs to educate these students, states with high immigration populations, most notably California, challenged \textit{Plyler},\textsuperscript{35} aiming to exclude undocumented students from their public schools.\textsuperscript{36} Proposition 187, also known as the ""Save Our State""[I]nitiate[,]” was a voter-passed referendum seeking to prohibit state funding of public education to undocumented school-age students in California.\textsuperscript{37} With the intention of rescinding the \textit{Plyler} decision, preventing all public benefit from reaching undocumented residents, and forcing undocumented residents to leave the state of California, enacting such legislation would have given law enforcement mandatory authority to check the status of suspected undocumented immigrants and report their findings to federal and state agencies.\textsuperscript{38}

Fortunately, a trial judge enjoined implementation of most of the sections of Proposition 187, and virtually all of the propositions were eventually struck on the basis of preemption by federal law or \textit{Plyler} precedent.\textsuperscript{39} Another failed attempt to overturn \textit{Plyler} occurred in 1996 with the Gallegly Amendment\textsuperscript{40} to the federal Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).\textsuperscript{41} Specifically, the Amendment sought to give states the power to regulate whether undocumented children could attend public schooling and whether they would be charged tuition, much like the overruled statute in \textit{Plyler}.\textsuperscript{42} The failure of this Amendment was a combination of wide opposition and strong objection by then-President Bill Clinton, who advised he would veto any legislation seeking to disturb the \textit{Plyler} precedent.\textsuperscript{43}

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is controversial, active federal law enacted to deter illegal immigration through reform to heighten border control, inspections, and deportation proceedings, and to place

\begin{itemize}
\item \textsuperscript{32}Id. at 221.
\item \textsuperscript{33} Id.
\item \textsuperscript{35} Id. at 389-90.
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Id. at 390; OLIVAS, supra note 1, at 39.
\item \textsuperscript{38} OLIVAS, supra note 1, at 40.
\item \textsuperscript{39} Id. at 40-42.
\item \textsuperscript{40} Id. at 42-43 (The amendment was named for its author, Elton Gallegly, a Republican House Representative from California).
\item \textsuperscript{42} OLIVAS, supra note 1, at 42-43.
\item \textsuperscript{43} Id. at 43.
\end{itemize}
the interest of citizens above that of undocumented residents. Section 505 of the Public Laws pertains to postsecondary education, providing undocumented residents living in a state cannot receive the benefit of in-state tuition for postsecondary institutions unless the state allows non-resident citizens of the state to receive the same tuition break. The deterrent effect of IIRIRA is evident considering only thirteen states, including Texas and California, enacted legislation in accordance with IIRIRA’s state-resident tuition specifications to allow in-state tuition access for undocumented students through 2011.

Without any supplemental congressional reports or agency regulations providing guidance to the provisions of Section 505, subsequent state-level lawsuits centered on how to interpret the provisions. Specifically, non-resident citizens, who were charged out-of-state tuition, sued colleges offering in-state tuition to undocumented residents living in those states, citing preemption of state law by Section 505. This allegation occurred most notably in Martinez v. Regents of the University of California, in which California’s Supreme Court held that California’s in-state tuition statute did not violate Section 505 because requirements for providing in-state tuition were not based on establishing residency in the state; instead, the California in-state tuition statute required other, non-residency related criteria to receive the in-state tuition benefit. The court concluded its opinion by noting “[i]t cannot be the case that states may never give a benefit to unlawful aliens without giving the same benefit to all American citizens.” Although Martinez was ultimately a win for California, Section 505 remains in effect and continues to discourage states from enacting in-state tuition statutes for undocumented students.

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45 Id.
46 OLIVAS, supra note 1, at 66-67.
48 See, e.g., Martinez, 241 P.3d at 855.
49 Id. at 860.
50 CAL. EDUC. CODE § 68130.5 (2002).
51 Martinez, 241 P.3d at 860.
52 CAL. EDUC. CODE § 68130.5 (2002).
53 Martinez, 241 P.3d at 870; see Day v. Bond, 500 F.3d 1127, 1131, 1139 (10th Cir. 2007) (holding that nonresident students who claimed that Kansas’s in-state tuition statute violated Section 505 of IIRIRA lacked standing to bring an equal protection claim and had no private right to sue under the Kansas statute allowing access to in-state tuition to undocumented students.)
54 See Martinez, 241 P.3d at 860.
55 JODY FEDER, CONG. RESEARCH SERV., supra note 47, at 1.
that effect, language for the repeal of Section 505 has consistently been included in all proposed versions of the federal DREAM Act.\textsuperscript{56}

In the same year as IIRIRA, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) was also enacted.\textsuperscript{57} PRWORA aimed to make undocumented aliens ineligible for certain public benefits, including postsecondary education, but to provide circumstances when states could allow undocumented aliens to receive public benefits.\textsuperscript{58} Similar to their argument regarding Section 505 of IIRIRA, non-resident plaintiffs in \textit{Martinez} claimed PRWORA invalidated the California in-state tuition statute because the statute did not provide adequate express eligibility of undocumented aliens for postsecondary tuition benefits in compliance with PRWORA.\textsuperscript{59} The Court disagreed, stating such a conclusion would require adding a requirement to eligibility that Congress did not intend.\textsuperscript{60} Based on this reasoning, the court in \textit{Martinez} concluded that California’s statute was in compliance with PRWORA by stating the in-state tuition statute applied to undocumented aliens.\textsuperscript{61} Despite the vagueness of the PRWORA language, section (d) of the PRWORA effectively makes it a state-by-state decision as to whether or not in-state tuition should be granted to undocumented aliens.\textsuperscript{62}

II. \textbf{THE DREAM ACT: A NATIONAL AFFAIR}

A. Proposals for a Federal DREAM Act

The DREAM Act is federal legislation which seeks to provide a pathway to citizenship and financial aid for undocumented students-turned-adults who were brought to the United States as children, successfully graduated high school or received a graduation equivalency degree (GED) and continued on to college or to the military.\textsuperscript{63} In tandem with the proposition for citizenship, proposed acts have included language to repeal Section 505 of the IIRIRA, thus restoring autonomy to the states to freely offer in-state tuition to undocumented students based on


\textsuperscript{59}Martinez, 241 P.3d at 867-68.

\textsuperscript{60}Id. at 868.

\textsuperscript{61}Id. at 867-68.


\textsuperscript{63}The Immigration Policy Ctr., supra note 3, at 2.
residency, without requiring in-state tuition to be offered to out-of-state citizens.\textsuperscript{64}
First proposed in 2001, the DREAM Act has taken multiple forms in both Congressional houses, being proposed as both “a stand-alone bill and as part of major comprehensive immigration reform bills.”\textsuperscript{65} The act, however, has not passed both houses to date.\textsuperscript{66} Through its numerous versions, the act generally has maintained the core objective of providing a path to citizenship for undocumented students who meet certain criteria.\textsuperscript{67} The DREAM Act would not grant outright citizenship; rather, it would provide conditional lawful permanent resident (LPR) status to undocumented young adults who: (1) received either a high school diploma or GED; (2) entered the United States before age sixteen; and (3) have lived in the United States at least five years, remaining in good, moral character the entire time.\textsuperscript{68} The six-year long conditional LPR status would grant these individuals the opportunity to legally work, attend postsecondary education, and join the military.\textsuperscript{69} At the conclusion of that period, if the individual has either completed at least two years of college towards a bachelor’s degree (or higher degree) or completed at least two years of military service with honorable discharge, he or she would become eligible to remove his or her conditional status to LPR status.\textsuperscript{70}

In 2010, the DREAM Act had its greatest success, passing the House by a vote of 216-198 on December 8, 2010, before being defeated by a Republican filibuster in the Senate on December 18, 2010, falling five votes short of the sixty votes necessary for cloture.\textsuperscript{71} The devastating defeat in the Senate was attributed to bad timing, falling in between the midterm elections, and becoming a casualty of “extremely partisan politics.”\textsuperscript{72} The DREAM Act enjoyed bipartisan support for many of the years proposed before Congress, yet its eventual demise was ironically theorized as the result of being both “too much (for conservative legislators who

\begin{thebibliography}{9}
\bibitem{BARRON}BARRON, supra note 17, at 632-33, nn.76-78.
\bibitem{Batalova}Jeanne Batalova & Margie McHugh, DREAM vs. Reality: An Analysis of Potential Dream Act Beneficiaries, INSIGHT (Migration Policy Inst./Nat’l Ctr. on Immigrant Integration Policy, Wash. D.C.), July 2010, at 1, available at http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf. The DREAM Act was first introduced as bipartisan legislation in the House of Representatives in May 2001 as the Student Adjustment Act, by Representative Chris Cannon (Republican-Utah) and Representative Howard Berman (Democrat-California). It was then introduced again as the DREAM Act in the Senate in August, 2001, by Senator Orrin Hatch (Republican- from Utah) and Senator Richard Durbin (Democrat- from Illinois). H.R. 1918, 107th Cong. (2001); S.1291, 107th Cong. (2001). Originally anticipated to be enacted quickly, the terrorist attacks in the United States on September 11th, 2001, prevented any chance for immediate immigration reform, due to overarching concerns for national security. OLIVAS, supra note 1, at 66.
\bibitem{Olivas}OLIVAS, supra note 1, at 66.
\bibitem{Immigration}THE IMMIGRATION POLICY CTR., supra note 3, at 2.
\bibitem{Id}Id.
\bibitem{Id}Id.
\bibitem{Id}Id.
\bibitem{Id}Id. at 5.
\bibitem{Olivas}OLIVAS, supra note 1, at 81.
\end{thebibliography}
feared being tarred as supporting an ‘amnesty’) and too little [for liberals who feared] (enacting it would torpedo the larger strategy of reforming overall immigration problems).” Despite the defeat in the Senate and the looming uncertainty for the DREAM Act in 2011, President Barack Obama, Democrat and longtime supporter of the DREAM Act, reaffirmed his commitment and signaled that the DREAM Act would continue to be a priority for his administration in the upcoming year.

On May 11, 2011, another version of the DREAM Act was introduced in both congressional houses. These bills provided undocumented young adults, referred to as “aliens” in the Act, who were brought into the country prior to the age of fifteen and who were under the age of thirty-two or thirty-five upon the date of enactment, could be eligible to apply for conditional permanent resident status upon meeting requisite conditions. Under the Act, undocumented students and undocumented military recruits must have a history of “good moral character” during his or her time living in the United States and must not have been convicted of any crimes. In addition, each alien must elicit proof of graduating from a high school in the United States or attaining a GED, submit biometric and biographic data, undergo background checks and medical examinations and register for

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73 Id. at 78-79.


76 The Senate bill had an age limit of thirty-five for eligibility, whereas the House bill’s cutoff age was thirty-two. H.R. 1842 § 3(a)(1)(E) (2011); S. 952 § 3(b)(1)(F) (2011).

77 “Good moral character” is not defined in the DREAM Act itself; however, the revocation of conditional residency status for committing a felony, fraudulent voting, abuse of student visas, or likelihood of being a public charge or threat, may imply such character would not fulfill the “good moral character” requirement. The DREAM Act, On the Floor, Democratic Leader Nancy Pelosi, http://www.democraticleader.gov/floor?id=0414. See also U.S.C.A. § 1101(f) (2012) (defining what “good moral character” is not within the immigration laws).

78 The bills slightly differed here; the Senate went into greater detail of defining crimes rising to the level of tarnishing one’s moral character. H.R. 1842 §3(a)(1)(B) (2011); S. 952 §3(b)(1)(C) and (D) (2011).


80 Biometric data refers to objective, physical identification information or traits, such as fingerprints and facial recognition information to be stored in an electronic database and used to conduct background checks and comparisons. The use of biometries is required for anyone entering the United States on a visa under the Enhanced Border Security and Visa Entry Reform Act of 2002, the intent of which is to facilitate legitimate visitors to the United States and protect the sanctity of the United States and its borders. For example, in accordance with the Department of Homeland Security, all U.S. embassies must administer an electronic scan of all ten fingerprints of any individual applying for a visa in the U.S., which remains in a database held by the U.S. Department of State for access and use by Homeland Security officials at all U.S. security and border checkpoints as verification for entrance into the country. Safety and Security of U.S. Borders: Biometrics, U.S. Dept. Of State, http://travel.state.gov/visa/immigrants/info/info_1336 html (last visited Feb. 11, 2013).
military selective service as required by law.\textsuperscript{81} In the alternative, the Secretary of State has the authority to grant conditional permanent resident status by waiver of the above requirements for humanitarian, family unity, or public interest purposes.\textsuperscript{82}

If all of the requirements are met and an application is timely filed, conditional permanent residency is established for a general period of six years but may be extended.\textsuperscript{83} During the conditional residency period, the Act provides for protection from deportation and allows aliens to work, to attend postsecondary educational institutions, and to serve in the military; such protection and privileges remain in effect until expiration of the conditional residency period or commission of an act inconsistent with the requirements for residency (i.e. committing a felony or dishonorable discharge from military).\textsuperscript{84} During this period, aliens are also ineligible for most types of federal financial aid; however, they gain eligibility if and when their conditional status is transferred to permanent resident or naturalized citizen.\textsuperscript{85}

In order to successfully petition for permanent residency and naturalized citizenship, an alien must complete his or her bachelor’s degree or complete at least two years of postsecondary education or serve at least two years of military service during the conditional residency period.\textsuperscript{86} In the event the foregoing requirements are not met, the Secretary of State may confer permanent resident status under a hardship exception—compelling circumstances where the alien or alien’s family has demonstrated an extreme hardship if permanent residency is not granted.\textsuperscript{87} Finally, the DREAM Act of 2011 proposed to repeal Section 505 of the Immigration Reform and Immigrant Responsibility Act of 1996 and to restore power to the individual state to determine whether a state would provide postsecondary educational benefits by in-state residency.\textsuperscript{88} Although ten years transpired between the introduction of the first DREAM Act and the version proposed in 2011, the 2011 version is virtually the same as the original.\textsuperscript{89}

Due to the political climate, both bills were referred to subcommittees on immigration and silently expired there.\textsuperscript{90} Despite their stagnancy, the issue remains highly controversial and one in which further action seems imminent. Pending passage of a federal DREAM Act, states have met concerns of their constituents in several instances by passing state-level DREAM Acts, which grant in-state tuition to

\textsuperscript{81} H.R. 1842 § 3(a)(3-6) (2011); S.952 § 3(b)(3-6) (2011).
\textsuperscript{83} H.R. 1842 § 3(e)(2), §4(a); S. 952 § 3(d)(2), § 4(a).
\textsuperscript{84} H.R. 1842 § 4(b); S. 952 § 5(a).
\textsuperscript{85} H.R. 1842 § 8(a); S. 952 § 9(a).
\textsuperscript{86} H.R. 1842 § 5(a)(1); S. 952 § 5(a)(1).
\textsuperscript{87} H.R. 1842 § 5(a)(2); S. 952 § 5(a)(2).
\textsuperscript{88} H.R. 1842 § 8(b)(1); S. 952 § 9(b)(1).
\textsuperscript{89} OLIVAS, supra note 1, at 67.
\textsuperscript{90} Id.
undocumented students.\textsuperscript{91} Though states lack the power to adjust the legality of one’s residency status,\textsuperscript{92} these state-level acts are important for two reasons. First, the acts provide current aid to undocumented students for postsecondary education, thereby making them more likely to succeed and to contribute to the economy rather than live in poverty.\textsuperscript{93} Second, it is likely that some type of federal DREAM Act will be enacted due to the globalization of economies and the need for immigrants in the United States.\textsuperscript{94} “When [such] a DREAM Act becomes law, the structural features of federal immigration legislation and state college-tuition policies will still necessitate coordinated and integrated state legislation for full implementation at the institutional level. . .\textsuperscript{95} If state law already exists at that time, full implementation may occur more efficiently.\textsuperscript{96}

B. States Take Action

State statutes that provide access and financial aid for postsecondary education to undocumented students by allowing them to establish residency through criteria other than traditional means have come to be known informally as DREAM Acts.\textsuperscript{97} Primarily, these statutes provide that undocumented students may receive in-state tuition at public colleges in that state upon meeting certain criteria such as attending a high school of the state for a minimum number of years, graduating from a state high school, and being accepted at an in-state college or university.\textsuperscript{98} Some states, like California and Illinois, have gone even further and provide that state or private financial aid and scholarships are available to undocumented students.\textsuperscript{99} Through 2011, thirteen states have active, DREAM statutes\textsuperscript{100} and at least nine other states were considering similar legislation in 2011.\textsuperscript{101}

\textsuperscript{91}WOLGIN & EDELSTEIN, supra note 18, at 1.
\textsuperscript{92}Id. at 2.
\textsuperscript{93}See ROMERO, supra note 2, at 105.
\textsuperscript{94}OLIVAS, supra note 1, at 86.
\textsuperscript{95}Id.
\textsuperscript{96}See id. at 84-86 (commenting on the complexity of comprehensive immigration reform and applying the state’s role in this process).
\textsuperscript{98}Id. at 3-4.
\textsuperscript{100}OLIVAS, supra note 1, at 66-67. Wisconsin had an in-state tuition program for undocumented students, but it was repealed, June 26, 2011. Maryland passed a similar statute in 2011, but it is suspended pending state referendum. Wis. STAT. § 36.27 [repealed by AB 40, June 26, 2011]; Md. CODE ANN. §15-106.8 [suspended, pending state referendum: M.D. Const. XVI, Sec. 2].
\textsuperscript{101}IMMIGRATION POLICY CTR, supra note 3, at 7.
These statutes cannot be the final solution, as they are incapable of adjusting the legal status of undocumented students, but they do keep the issue at the forefront.\textsuperscript{102} Equally important, state statutes demonstrate the economic and social benefits that can be reaped from this type of legislation and the harmless effect on legal residents.\textsuperscript{103} Below, a sampling of state DREAM statutes, including the statutes of Texas, California, Illinois, and Maryland will be discussed.

\textit{The Lone Star State}\textsuperscript{104}

In 2001, Texas became the first state to enact a statute providing in-state tuition rates for undocumented students meeting certain residency criteria.\textsuperscript{105} The current statute allows would-be college students to establish Texas residency by any one of three ways: (1) by maintaining a domicile in the state for at least one year prior to the last census of the academic term in which the student is enrolled in an institution of higher education; (2) by being the dependent of a parent who satisfies the aforementioned criterion; or (3) by graduating from a public or private high school in Texas, or receiving the equivalent diploma in Texas.\textsuperscript{106} Students in the third category also have to maintain a domicile for one year prior to enrollment under the same constraints mentioned above and are required to maintain a continuous residence in Texas for the three years preceding the date they graduated or received their diploma equivalent.\textsuperscript{107} In addition, if undocumented, such students must file an affidavit with their chosen institution of higher learning, stating that they will apply to become a permanent resident as soon as they become eligible.\textsuperscript{108}

A 2006 report from the Texas comptroller assessed the economic impact of undocumented immigration on Texas, which had the third highest population of foreign-born residents in the nation at the time.\textsuperscript{109} Of that population, an estimated 1.4 to 1.6 million were undocumented immigrants.\textsuperscript{110} Over the period surveyed, an estimated 135,000 to 225,000 undocumented children passed through Texas’s public school system per school year.\textsuperscript{111} The comptroller’s report concluded in fiscal year

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\item \textsuperscript{102}OLIVAS, supra note 1, at 82.
\item \textsuperscript{103} Solorzano, supra note 6, at xxvi-xxxiii.
\item \textsuperscript{105}OLIVAS, supra note 1, at 66.
\item \textsuperscript{106}TEX. EDUC. CODE ANN. §54.052 (Vernon 2005).
\item \textsuperscript{107}Id.
\item \textsuperscript{108}TEX. EDUC. CODE ANN. §54.053 (Vernon 2005).
\item \textsuperscript{110}Id. at 3.
\item \textsuperscript{111}Id. at 4.
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2005 that the state, as a distinct governmental entity, derived an estimated net benefit of $424.7 million from the economic activity of undocumented immigrants as a whole but candidly admitted local governments and hospitals suffered an estimated net loss of $928.9 million. Nevertheless, when asked about the policy of allowing undocumented residents to receive in-state tuition rates for higher education, Texas Governor Rick Perry reiterated that it was in the best interest of Texas, “economically and otherwise, to have those young people in our institutions of higher learning and becoming educated as part of our skilled workforce.”

“California Dreamin”

With the highest immigrant population in the United States at 9.8 million, including 2.45 million undocumented immigrants, California has been struggling for years with how to best deal with undocumented immigrants in the higher education arena. California, following Texas, became the second state to enact an in-state tuition statute. The original in-state tuition bill was met with controversy but was passed in October 2001. The statute granted in-state tuition to undocumented students who are registered to attend an accredited postsecondary education institute. To be eligible, the student must have completed at least three years of high school in California and graduated or received an equivalent diploma at the high school level, in conjunction with signing an affidavit agreeing to apply for legal status as soon as eligible to do so.

As previously discussed, disgruntled, non-resident students sued both the state and certain institutions, claiming the statute violated Section 505 of IIRIRA. The California Supreme Court upheld the state law, noting federal law did not preempt it. That decision helped forge the way to greater availability of student aid for undocumented immigrants with the recently enacted Assembly Bills (“A.B.”)

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112 Id. at 20.
114 The Mama’s and the Papa’s, California Dreamin, on IF YOU CAN BELIEVE YOUR EYES AND EARS (Dunhill Records 1966).
116 Olivas, supra note 1, at 67.
118 Id.
119 Id.
120 Martinez, 241 P.3d at 862-63.
121 Id. at 860.
and 131 by current, Democrat California Governor, Edmund “Jerry” Brown. A pioneer in its own right, the adoption of A.B.130 amended the existing section 68130.7 of the California Education Code and added a new section, 66021.7, to enable undocumented students, who already qualified for in-state tuition in California, to be eligible for privately funded scholarships for postsecondary education attendance at a California state or community college. The more controversial part of the two-part Californian DREAM bill, A.B. 131, was enacted by Governor Brown in October of 2011. A.B.131 is controversial because it enables undocumented students’ access to public funds during an economic slump, which has already forced the state to cut back on its education expenditures. The adoption of the two bills both completed the DREAM Act envisioned by its drafters and made a mark in immigration history as the state with the largest population of undocumented immigrants made both state and private funding available to qualifying, undocumented students.

Specifically, A.B. 131 added sections 66021.6, 69508.5 and 76300.5 to the California Education Code, extending all state-funded financial aid already available to citizens and permanent residents of California to any undocumented students who qualify for in-state tuition under the existing state law. This extended access to funding includes any state-funded financial aid benefits available for postsecondary education, such as “Cal Grants,” fee waivers for community college to those demonstrating financial need, and postsecondary institutional state-aid. Essentially, the legislation makes undocumented students equivalent to their documented peers as far as qualifying for state-level financial aid in California.


124 Assem. B. 130, supra note 123.

125 Id.; Noelle de la Paz, California’s DREAM Act is Finally a Reality—but Will Momentum Spread?, COLORLINES (October 11, 2011, 10:01 AM), http://colorlines.com/archives/2011/10/california_dream_act_finally_a_reality.html (last visited March 6, 2013).

126 Id.


128 Id.

129 Assem. B. 131, 2011-12 Reg. Sess. (Cal. 2011)(however, Cal Grants, granting aid to public universities in California, are first distributed to qualifying legal citizens and residents; after those are disbursed, undocumented students’ applications are considered).

130 See Nat’l Conference of State Legislatures, Undocumented Student Tuition: Overview, (2012) (state-aid is also already available to undocumented students in Texas and New Mexico).
Governor Brown noted the importance of the legislation when he remarked, “[the California Dream Act] benefits us all by giving top students a chance to improve their lives and the lives of all of us.”\textsuperscript{131} The California Dream Act creates a fairer playing field, by allowing undocumented students to receive scholarships and aid from the funds they and their parents pay into but had previously not been eligible to access.\textsuperscript{132} Additionally, California previously anticipated a shortage of college graduates to fulfill as many as one million jobs requiring a college degree by the year 2025;\textsuperscript{133} that shortage will be circumvented to some extent, as the California DREAM Act is expected to increase undocumented students’ enrollment at postsecondary institutions by making higher education more affordable.\textsuperscript{134}

\textit{Land of Lincoln}\textsuperscript{135}

Illinois is another state that has provided support to undocumented students to attain postsecondary education.\textsuperscript{136} Considering its high undocumented population—sixth highest in the country at 525,000—\textsuperscript{137} Illinois passed its initial in-state tuition bill via House Bill 60 in 2003.\textsuperscript{138} The bill granted in-state tuition to undocumented students who had graduated or received an equivalent diploma from an Illinois high school.\textsuperscript{139} Potentially eligible undocumented students also had to meet the specified requirements for the minimum amount of years spent attending an Illinois school and had to sign a waiver to apply for citizenship when, and if, the option became available.\textsuperscript{140} This provision remained active but stagnant until 2011, when Senate Bill 2085 was proposed to grant additional financial assistance via


\textsuperscript{133} Hans Johnson & Ria Sengupta, \textit{Closing the Gap: Meeting California’s Need for College Graduates}, PUBLIC POLICY INST. OF CAL. 1 available at \url{http://www.ppic.org/content/pubs/report/R_409HJR.pdf}.

\textsuperscript{134} Id. at 16.

\textsuperscript{135} Land of Lincoln” is the official state slogan of Illinois. Chosen by Illinois in recognition of former President Abraham Lincoln, Lincoln lived in Illinois from age twenty-one until becoming the sixteenth President of the United States and was a member of both the federal and state legislature while there. The slogan was adopted by the state in 1954. The slogan has graced Illinois license plates since that time. State Symbols USA, Illinois State Slogan, \url{http://www.statesymbolsusa.org/Illinois/state-slogan-Illinois.html}.

\textsuperscript{136} See Nat’l Conference of State Legislatures, \textit{supra} note 130.

\textsuperscript{137} Patler & Applebaum, \textit{supra} note 132, at 3.


\textsuperscript{139} Id.

\textsuperscript{140} Id.
private scholarships and to provide access to state-created college savings plans and prepaid tuition plans for undocumented students.\textsuperscript{141} Adopted in August 2011, the bill most notably created a DREAM Fund Commission, which was to be a voluntary board comprised of nine members with diverse backgrounds, whom the state governor, with the advice and consent of the state senate, would appoint.\textsuperscript{142} The DREAM Fund Commission aimed to establish and administer a non-profit entity to raise funds from private resources for a scholarship fund, which would benefit undocumented students in their dreams to attain postsecondary education.\textsuperscript{143} In addition to creating, administering, and raising funds, the commissioners would also be responsible for publicizing the availability of such scholarships, accepting and reviewing applications for the scholarships, and eventually selecting the recipients of such scholarships.\textsuperscript{144} To qualify for such a scholarship, a student must (1) prove residence with a parent or guardian in Illinois, (2) attend an Illinois high school for at least three years prior to graduation from an Illinois high school or its equivalent, as well as provide proof of receiving a high school diploma from an Illinois school or its equivalent, and (3) have at least one parent who immigrated to the United States.\textsuperscript{145}

Besides providing for private scholarships to aid undocumented students, Senate Bill 2085 also revised existing statutes for college savings and prepaid tuition plans by opening them up to all residents of Illinois.\textsuperscript{146} A college savings plan allows parents to invest up to $2,000.00 annually towards supplementing a college fund for their children.\textsuperscript{147} Specifically, the bill’s language made such a plan available to anyone with or on the behalf of anyone with a social security number or taxpayer identification number.\textsuperscript{148} Senate Bill 2085 also contained provisions requiring counselors to identify and advise undocumented students on higher education opportunities.\textsuperscript{149} The bill made similar revisions to Illinois’ prepaid tuition contracts.\textsuperscript{150} The original statute permitted only Illinois citizens to purchase prepaid tuition plans for the benefit of other United States citizens.\textsuperscript{151} The law was revised to extend availability to undocumented immigrants wanting to purchase tuition contracts by allowing the interested individual to use a taxpayer identification number in lieu of a

\textsuperscript{142} 110 ILL. COMP. STAT. 947-67 (2011).
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} 110 ILL. COMP. STAT. 947-75 (2011).
\textsuperscript{147} Id.
\textsuperscript{148} Id.
\textsuperscript{149} 105 ILL. COMP. STAT. 5/21-25 (2011).
\textsuperscript{150} 110 ILL. COMP. STAT. 979/45 (2011).
\textsuperscript{151} 1997 Ill. Legis. Serv. 90-546 (West).
social security number.\textsuperscript{152} Thus, the tuition plan became available to most Illinois residents.

Shortly after the passage of the Illinois’ DREAM Fund Commission Act in 2011, Chicago Governor Rahm Emanuel noted, “Immigrants are a driving force in our city’s cultural and economic life, and opening the way for all Chicago students to earn an excellent higher education will make our city even stronger.”\textsuperscript{153} He later added, “I am proud that families and students across Illinois will now have a better shot at the American Dream—which starts with a great education.”\textsuperscript{154} Although there are not yet any studies available on the impact this legislation has had on the state, there is hope and expectation that the legislation will provide greater opportunities for undocumented students living in Illinois to attend postsecondary education and to reap its benefits.

\textit{The Old-Line State}\textsuperscript{155}

Maryland, which has the tenth highest undocumented population in the country,\textsuperscript{156} passed a state DREAM statute in April of 2011.\textsuperscript{157} In the wake of the federal DREAM Act’s failure to pass the Senate vote in 2010,\textsuperscript{158} Maryland’s General Assembly was presented with a DREAM Act that would provide in-state tuition at state community colleges to undocumented students who met certain requirements.\textsuperscript{159} The Maryland statute provides a two-tiered system for accessing in-state tuition rates, where in-state tuition is provided for state community college

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\item \textsuperscript{152} 110 ILL. COMP. STAT. 979/45 (e) (2011).
\item \textsuperscript{153} Illinois DREAM Act Signed by Governor Quinn, HUFFINGTON POST (Aug. 2, 2011), http://www.huffingtonpost.com/2011/08/02/illinois-dream-act-signed_n_915434.html
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} State Nicknames, Maryland, http://www.50states.com/nickname.html. This nickname pays tribute to the “Maryland line,” the regiment of regulars who fought to protect the Continental Army during the Revolutionary War. Specifically, the first regiment is recognized for its heroic defense of the Continental Army as the Army retreated from the Battle of Long Island, the first battle of the Revolutionary War. George Washington is credited with coining the name in his personal writings, for recognition of the regiment’s reverence, organization and unwavering discipline in fighting the British Army, a feat not accepted by many. Official recognition of the name, “Old Line” is traced to a letter Washington wrote to Alexander Hamilton, dated December 14, 1799, shortly before Washington’s death. From that period, the name grew in usage and eventually became a nickname for the state of Maryland. Ryan Polk, Holding the Line: The Origins of ‘The Old Line State’, 1 ARCHIVES OF MD., index (2005), available at http://www.aomol.net/html/oldline.html.
\item \textsuperscript{156} Patler & Appelbaum, supra note 132, at 3.
\item \textsuperscript{157} Glynis Kazanjian, Maryland Dream Act Passed in Final Hours of Legislative Session, ROCKVILLE PATCH (Apr. 12, 2011), http://rockville.patch.com/articles/maryland-dream-act-passed-in-final-hours-of-legislative-session.
\item \textsuperscript{159} S.B. 167, 2011 Leg., Reg. Sess. (Md. 2011).
\end{itemize}
attendance upon completion of the requisite criteria. It further provides opportunities for in-state tuition at public, state colleges and universities upon successful completion of an associate’s degree or sixty credits at a community college.\textsuperscript{160} It does not provide for private scholarships or state-aid outside of the reduced in-state tuition rate as is afforded in Texas, California, and Illinois.\textsuperscript{161}

The Maryland statute provides that any individuals, including undocumented students, are exempt from the out-of-state tuition rate for state community colleges if they attended a Maryland high school for at least three years, beginning with the 2005-06 school year, and graduated from a Maryland high school or received an equivalent diploma, beginning with the 2007-08 school year.\textsuperscript{162} In addition, applicants must register as a student at the community college in the state, not earlier than the 2011 school year, and provide documentation to the community college proving they or their parent or guardian filed a Maryland income tax return during the three years of documented attendance in high school, any interim period between high school and college, as well as each year of college attendance.\textsuperscript{163} Like many other states, Maryland also requires undocumented students to file an affidavit with the community college they will be attending, stating that the individual will file to become a permanent resident within thirty days of becoming eligible for this benefit and will register with the Selective Service System for the military, as required by federal law.\textsuperscript{164} If the student does not register for in-state tuition with the appropriate documentation within four years of high school graduation or receipt of an equivalent diploma, the reduced tuition benefit will lapse.\textsuperscript{165}

If a student is enrolled in a community college program and successfully achieves an associate’s degree or sixty credits, the student becomes eligible for in-state tuition rates at four year state colleges as long as all of the requirements of the community college level are met, including providing income tax receipts and an affidavit agreeing to petition for permanent residency when eligible.\textsuperscript{166} To receive this additional opportunity for in-state tuition, students must apply within four years of graduating from a Maryland high school or within four years of achieving sixty credits in a Maryland community college.\textsuperscript{167} Additionally, undocumented students may be afforded the same in-county tuition rates as permanent county residents.\textsuperscript{168} To qualify, applicants must satisfy the requirements for qualifying for in-state tuition at the community college level, provide an affidavit stating that the individual will file

\textsuperscript{160} Id. § 1 (c)(1) & (2).


\textsuperscript{162} MD. CODE ANN., EDUC. § 15-106.8 (2011).

\textsuperscript{163} Id.

\textsuperscript{164} Id.

\textsuperscript{165} Id.

\textsuperscript{166} Id.

\textsuperscript{167} MD. CODE ANN., EDUC. § 15-106.8 (2011).

\textsuperscript{168} Id.
an application to become a permanent resident within thirty days after the individual becomes eligible to do so and be able to prove he or she attended a high school within the county where the community college is located.\textsuperscript{169}

Soon after the Maryland statute passed, opponents of the act gathered the minimum required number of signatures on a referendum petition to suspend the newly adopted statute, preventing the statute from going into effect as planned on July 1, 2011.\textsuperscript{170} The referendum survived a legal challenge in August, leaving the statute in suspension pending the general election in November 2012.\textsuperscript{171} In spite of the controversy, proponents of the act maintain its passage would be fair and provide long-term economical benefits to Maryland by offering undocumented students an opportunity to receive the education they need to qualify for better jobs and give more back to the state.\textsuperscript{172} Furthermore, proponents argue undocumented taxpayers already contribute an estimated $270 million in taxes to Maryland each fiscal year.\textsuperscript{173} It is only fair to provide in-state tuition rates to undocumented immigrants because undocumented immigrants pay into the system via income taxes; providing proof of having filed one’s Maryland income tax is mandatory to receive the in-state tuition benefits.\textsuperscript{174}

Although a review of the state DREAM Acts reveals some variances amongst their requirements, there are notable similarities. Each of the four reviewed states is receptive of the potential economic benefits to be realized from extending a humane and fair benefit to undocumented students.\textsuperscript{175} Eligible students are required to “1) attend a school in the state for a certain number of years; 2) graduate from high school in the state; and 3) sign an affidavit stating . . . they will apply to legalize their status as soon as they are eligible to do so,”\textsuperscript{176} The expectancy of greater college enrollment leading to higher earning power and successful, educated residents capable of giving back to the community are common threads of support for passing such acts.\textsuperscript{177} The notion of justice in extending benefits is also present because undocumented students, permanent residents, and citizens all pay taxes.\textsuperscript{178}

\textsuperscript{169}Id.


\textsuperscript{171}Id.


\textsuperscript{173}Id. at 3.

\textsuperscript{174}Id.

\textsuperscript{175}See \textit{THE IMMIGRATION POLICY CTR.}, supra note 3, at 6-7; see also Nat’l Conference of State Legislatures, \textit{supra note 130}.

\textsuperscript{176}\textit{THE IMMIGRATION POLICY CTR.}, supra note 3, at 7.

\textsuperscript{177}See Md. State Educ. Ass’n \textit{supra note 172}.

\textsuperscript{178}Solorzano, \textit{supra note 6}, at xxi-xxii.
Frequently, these members of society, who lack “permanent” legal status, are full-fledged participants to the greatest extent of their ability; yet, they will be destined to remain poverty-stricken if they do not receive the benefit of lower tuition rates or financial aid via other means.\textsuperscript{179} Individual states recognize the existing significant reliance of their economies on the contributions and expenditures of the undocumented portion of the population as well as the need for a more highly educated and professional workforce in the future.\textsuperscript{180} This recognition is evident when considering four of the six largest immigrant-receiver states have enacted some version of a DREAM statute for the undocumented population.\textsuperscript{181}

Although there is little research to support a conclusion of the cost-benefit debate on providing in-state tuition to undocumented students, a recent study published by Rogers Williams University confirmed in-state tuition acts increase college enrollment amongst undocumented students by about 31%, decrease high school dropouts by about 14%, and most importantly, demonstrate no financial cost to states; in fact, these states appear to slightly benefit from such policies.\textsuperscript{182} Conversely, one primary drawback exists for all state DREAM Acts: states cannot grant citizenship to their undocumented residents.\textsuperscript{183} Until there is a change in federal legislation, undocumented students will not fully benefit from receiving post-secondary education because they will not have the ability to gain professional employment legally upon graduation.\textsuperscript{184}

Section 505 of IIRIRA is another drawback to all state DREAM Acts, preventing states from granting in-state tuition or financial benefits based upon residency. Though states with in-state tuition policies have avoided challenges to their statutes against federal preemption by Section 505 of IIRIRA, the issue of whether a state should have tuition residency requirements should be decided by state actors rather than federal ones. Keep in mind that the Federal government is the sole authority for immigration law and reform. Perhaps the success of the states over these preemption challenges demonstrates that the Federal government agrees that states should have the choice to provide this specific aid to the undocumented population.

\textsuperscript{179}See id.

\textsuperscript{180}Id.

\textsuperscript{181}Jeffrey Passel & D’Vera Cohn, Unauthorized Immigrant Population: National and State Trends, 2010, Pew Hispanic Ctr. 1 tbl. 4 (2011), www.pewhispanic.org/files/reports/133.pdf (California, Texas, New York and Illinois are four of the six states with the highest undocumented populations. All of these states offer in-state tuition (or more) to qualifying students); see also Olivias, supra note 1, at 67, tbl.1. Passel & Cohn, supra note 7 (Florida and New Jersey are the two states in the top six without DREAM Acts of any kind); The Immigration Policy Ctr., supra note 3, at 6-7; Nat’l Conference of State Legislatures, supra note 129.


\textsuperscript{183}ROMERO, supra note 2, at 94 (the Federal Congress reserves the power to manage the laws of naturalizing citizens); U.S. CONST., art. I, § 8.

\textsuperscript{184}ROMERO, supra note 2, at 93; Solorzano, supra note 6, at xxxi.
Specific drawbacks of the sampled state DREAM statutes are de minimis compared to the challenges all state DREAM statutes face in the absence of a Federal DREAM Act’s enactment. Obviously, the greater amount of aid and types of aid available to undocumented students presents a more affordable and clear financial situation for undocumented students. Therefore, states with statutes that provide in-state tuition, in addition to further aid, are more beneficial for actual undocumented students seeking aid. California, which provides the most amount of private and public aid to qualifying undocumented students, is a prime example of this.\footnote{See discussion supra.}

Despite the fact that some state DREAM Acts are more beneficial to undocumented immigrants than others, all state DREAM Acts bring undocumented students closer to the goal of attaining postsecondary education to the extent such education is available to and accessible by documented citizens. The ultimate benefit and beauty of individual state DREAM Acts reflects the ability of states to fashion their own respective versions.\footnote{Professor Olivas likens the varying approaches of states in legislating for in-state tuition policies to each state utilizing different “playbooks” for strategy, even though the same common tools may be available for each state. OLIVAS, supra note 1, at 84. See id., at 84 for a brief comparison of state-tailored legislation to broader, complex federal legislation.}

Keeping the history of the various DREAM Act statutes in mind, Part III turns to the general arguments for and against the DREAM Act at both the federal and state levels.

III. ARGUMENTS FOR AND AGAINST THE DREAM ACT

Support for and against the DREAM Act can be divided into two categories: (1) the economic benefits or detriments of the DREAM Act, and (2) the moral decency and adherence to constitutional ideals of equality and fairness.\footnote{ROMERO, supra note 2, at 101-02; Solorzano, supra note 6, at xxxi-xxxvii.} While these arguments are typically made in conjunction with the movement for and against a Federal DREAM Act, intuitively, they are substantially the same arguments for and against state DREAM statutes, only differing in proportionality.

Economically speaking, supporters of the DREAM Act suggest that providing financial assistance to undocumented students increases their likelihood of attending college and subsequently getting better jobs.\footnote{Solorzano, supra note 6, at xxxii.} Receiving a post-secondary degree provides greater career opportunities and the ability to rise above poverty and have greater earning power, including giving back to our society.\footnote{Patler & Appelbaum, supra note 132 at 5-7.} States and the nation alike benefit when their inhabitants become lawful employees who are skilled and educated; such inhabitants are subsequently more able to contribute to their
The types of contributions range from increased consumption of goods and services and increased support of local businesses to the creation of local job markets and the generation of greater tax revenue. Thus, it can be argued that the initial cost a state invests to educate undocumented students will be returned by the students’ increased participation in the tax system and their increased ability to purchase consumer goods, which will ultimately increase the national gross domestic product percentage.

Another economic argument in support of the DREAM Act stems from a cost-benefit analysis of the Act. In Plyler v. Doe, the Supreme Court held that states are required to provide free education to students through the twelfth grade, including those students who are undocumented. Under a cost-benefit analysis, the aforementioned evidence and the ability to avoid future stress on government resources justifies providing aid to provide a post-secondary education to undocumented students. Failure to provide the necessary tools to enable students to search for jobs and permanent residency or citizenship will result in these same students remaining in the country unlawfully and potentially being subject to costly deportation procedures. Additionally, these students may be forced to utilize already limited government-funded social service resources due to their inability to obtain a job, which requires proof of legal residency or citizenship.

America suffers financially and in other manners when it deports undocumented students. In financial terms, “the sum of funding required to apprehend, detain, legally process, and expel [the] 8.64 million [undocumented] individuals out of the United States is $200 billion.” In addition to the financial cost of deportation, America also loses intangible benefits by deporting undocumented students, since the deported, arguably smart and law-abiding students, would be forced to take their talent and twelve years of “free” education with them. In 2011, a new policy relating to deportation was implemented by the

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190 Id. at 6.
191 Id. at 7.
192 Solorzano, supra note 6, at xxviii.
194 Romero, supra note 2, at 101 (establishing that Plyler was meant “to establish a constitutional floor, not a ceiling”).
195 See Solorzano, supra note 6, at xxvii.
196 Id.; Patler & Appelbaum, supra note 132, at 6-7; See Passel & Cohn, supra note 7 (for a review of social and economic characteristics of undocumented families in the United States).
197 See Solorzano, supra note 6, at xxvii.
199 Id. at 14.
200 Plyler, 457 U.S. at 230 (holding that all students, including those without proper documentation, were entitled to a free education through twelfth grade).
Obama Administration and supports the idea that the deportation of undocumented youths should cease.  The change in policy deemphasized deportation of undocumented immigrants who are in good moral standing and shifts the focus to deporting individuals who pose a potential threat.

The economic argument made by opponents of the DREAM Act counters that undocumented students are using American tax dollars that should favor and benefit citizens and permanent residents. Opponents argue that allowing undocumented students to access financial aid for post-secondary education may take school seats as well as jobs away from lawful citizens and permanent residents. Critics of the DREAM Act also claim that giving financial assistance to children of undocumented immigrants provides greater incentive for more undocumented immigrants to enter the country, and the United States simply cannot afford the cost of providing financial aid to an unrelenting cycle of undocumented students.

These arguments fall short, as undocumented immigrants are required to pay income taxes just as if they were permanent residents or citizens; therefore, they pay into the system for benefits currently only afforded to citizens and permanent residents in the majority of states. States with large undocumented populations actually rely and benefit from the existing undocumented population and their contributions via taxes and expenditures, as well as the value of their labor.

The opportunity for education does not seem to be a chief incentive for the undocumented to immigrate to the United States, as immigration rates have remained static even though some states are now offering tuition assistance and other forms of financial aid to undocumented students. Alternatively, the reality for those who unlawfully immigrate to the United States entails laboring in low-skilled jobs to receive a higher wage than they would have earned in their native country.

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201 See Fitz, supra note 198, at i.


203 Id. (the Obama Administrations new policy assess threat levels by looking at factors such as security risks, threats to public policy or criminal history).


205 See OLIVAS, supra note 1, at 94.

206 ROMERO, supra note 2, at 102.

207 Lipman, supra, note 204, at 4-5.


209 ROMERO, supra note 2, at 102; OLIVAS, supra note 1, at 94.

The globalization of economies encourages those from developing nations to immigrate to developed nations, like the United States, where illegal immigration ebbs and flows with the status of the economy, rising and fulfilling a growing market for low-skilled labor in times of economic growth while decreasing in times of economic downturn.\textsuperscript{211} Even though the United States immigration system is not set up legally to admit the number of workers who desire to immigrate here, the undocumented population is needed to fill jobs, creating an unofficial tolerance for unlawful immigration until about a decade ago.\textsuperscript{212}

Due to a shift in policy to reduce unlawful immigration, especially in regard to the employment of undocumented workers, the government has developed employment verification procedures to overcome falsification of working papers.\textsuperscript{213} Such verification procedures have slowed unlawful immigration to the United States.\textsuperscript{214}

The second main category relied upon in support of or against the DREAM Act is whether there is a moral obligation to provide equal assistance and a pathway to citizenship for undocumented students.\textsuperscript{215} Proponents of the DREAM Act argue that these students should not be faulted for the sins of their parents who brought them here as children; consequently, the government must find a way to provide financial assistance and a pathway to citizenship for those blameless individuals in accordance with the notions of equality under the Constitution.\textsuperscript{216} An “acculturation”\textsuperscript{217} argument also exists: undocumented students have grown up in the United States and only know a life in this country; therefore, they are de-facto Americans deserving of the same treatment as citizens and permanent residents.\textsuperscript{218} Essentially, many undocumented immigrants have invested their lives in the United States with “family bonds, economic involvement, or cultural participation,” so formal exclusion and threat of deportation emphasizes a division between undocumented students and students of citizens or permanent residents that

\textsuperscript{211}Hanson, supra note 208, at 1.

\textsuperscript{212}Id. at 4.

\textsuperscript{213}Id.

\textsuperscript{214}Id.; see also E-Verify, History and Milestones, U.S. Citizen & Immigration Svcs., available at http://www.uscis.gov/portal/site/uscis/menuitem (follow, “Employment Verification,” “About the Program” and “History and Milestones” links) (the implementation of the E-Verify system brought the employers’ duty to verify the legal status of its workers in check. The computerized E-Verify Program was developed over the past decade through a partnership between the Immigration Naturalization Service and the Social Security Administration to create an electronic, internet-accessible database where United States’ employers can log-in nationwide to verify the legal work eligibility of newly hired employees through Social Security information).

\textsuperscript{215}Solorzano, supra note 6, at xxxiv.

\textsuperscript{216}ROMERO, supra note 2, at 102.

\textsuperscript{217}Solorzano, supra note 6, at xxix-xxx.

\textsuperscript{218}Id.
facilitates unwarranted discrimination against the undocumented. \footnote{Id. at xxxv-xxxvi.} Finally, the \textit{Plyler} precedent implies that more tolerant access to post-secondary education should be extended to all persons in the United States. \footnote{See discussion \textit{supra}, pp. 49-51.} At the time \textit{Plyler} was decided, one could thrive in society without post-secondary education, but the need for post-secondary education has become more of a necessity to live comfortably; consequently, \textit{Plyler} ought to be extended beyond primary and secondary education to cover post-secondary education. \footnote{See John Immerwahr with Tony Foleno, \textit{Great Expectations: How the Public and Parents-White, African American and Hispanic-View Higher Education VII} (2000).}

The counter moral arguments to the DREAM Act parallel the counter economic arguments. Opponents argue that granting aid and citizenship to undocumented immigrants rewards and promotes the continuance of unlawfully entering and remaining in the United States. \footnote{ROMERO, \textit{supra} note 2, at 102.} There has been, however, virtually no evidence suggesting individuals immigrate to the United States for free or subsidized education; even if that phenomenon was true, the “sins of the parents” should not be imputed to the children who were simply brought along to the United States. \footnote{Id. at 102, 105.} Although the arguments have some merit, it is a difficult position to argue that a child brought to the United States by another is morally wrong and should be deported or left to live in the United States without the same opportunities provided to other lawfully present children. The DREAM Act itself requires undocumented students have “good moral character” in order to be granted conditional permanent residency. \footnote{Id. at 102, 102.} Thus, to conform to the ideals of our Constitution, it is imperative to provide a pathway to citizenship for these students; one way to initiate this process is to provide affordable post-secondary education to undocumented students. \footnote{Id. at 102, 102.}

The foregoing arguments leveled against both state and federal DREAM Acts sometimes echo the loudest by states that have opted to discourage undocumented immigrants from residing in their states through anti-immigration statutes. \footnote{See discussion \textit{supra}, Part III.} Part IV addresses states that have passed anti-immigration statutes and the impact such statutes have had on an undocumented individual’s access to post-secondary education. \footnote{See discussion \textit{infra}, Part IV.}

\section*{IV. THE CASE AGAINST ANTI-IMMIGRATION STATE STATUTES\footnote{For the purpose of this Note, emphasis will be placed on the provisions which exclude undocumented students from in-state tuition rates and access to enroll at post-secondary schools.}}
Each state-enacted anti-immigration statute discussed in this section broadly attempts to provide law enforcement with greater authority to regulate and take punitive actions against undocumented immigrants. To date, six states have enacted anti-immigration statutes, which directly affect post-secondary educational access by prohibiting undocumented students from receiving the benefit of in-state tuition rates at the post-secondary level. Two of the six states, Alabama and South Carolina, went even further by barring undocumented students from enrolling at public state universities altogether.

In 2008, South Carolina became the first state to ban post-secondary access to undocumented students and also prohibited undocumented students from receiving any financial aid, scholarships, or in-state tuition rates for private colleges and universities. Georgia followed South Carolina’s lead in 2010, becoming the second state to prevent undocumented students from enrolling at public colleges and universities. Initially, a group of Senators in Georgia suggested that post-secondary institutes check and enforce the immigration status of enrolled students. As opposition arose, it paved the way to a compromise in the law-making process and led to an in-state tuition ban by the state legislature and a partial ban of access to undocumented students by Georgia’s Board of Regents. The new policy required public colleges, which turned away academically qualified applicants in the past two years, to ban enrollment of undocumented students from their schools. For undocumented students in Georgia, this policy created inaccessibility to the five most competitive state universities. In 2011, Georgia’s anti-immigration Senate Bill 458 included a provision to expand the enrollment ban of undocumented


230 See Nat’l Conference of State Legislatures, supra note 130 (the six states banning in-state post-secondary tuition to undocumented students are South Carolina, Georgia, Alabama, Arizona, Colorado, and Indiana).

231 Id.


234 Russell, supra note 233, at 8.

235 Id.

236 Id.

237 See id. (including the University of Georgia, the Georgia Institute of Technology, Georgia State University, Georgia College and State University and the Medical College of Georgia).
students to all public post-secondary institutions;\textsuperscript{238} it failed to pass, however, before the expiration of the legislative session.\textsuperscript{239} Doubt remains as to what will happen next in Georgia as the bill gained ground quickly and easily passed both the House and Senate panels before the legislative session expired.\textsuperscript{240}

In 2011, Alabama became the third state to enact anti-immigration legislation targeting undocumented students with the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, otherwise known as House Bill 56 (H.B. 56).\textsuperscript{241} Widely considered the harshest anti-immigration statute in the United States on all accounts, it exemplifies the truth in the assessment of the law’s character.\textsuperscript{242} On its face, H.B. 56 prohibits undocumented students from enrolling at any state college or university and further prohibits access to financial aid, scholarships, or in-state tuition rates of any kind.\textsuperscript{243}

The caustic nature of Section 28 of H.B. 56 put H.B. 56 at the forefront of the immigration reform debate by mandating all public elementary and secondary schools to check immigration status at the time of student enrollment.\textsuperscript{244} Specifically, Section 28 mandates school officials to obtain proof of a new student's lawful residence in the United States by requiring an original birth certificate or a certified copy of lawful immigration paperwork in addition to an attestation by a parent or guardian that the identity of the student is true and matches the birth certificate or immigration papers.\textsuperscript{245} Students whose parents cannot produce the required paperwork are presumed as having undocumented status.\textsuperscript{246} Once the information is collected, schools report the information to the State Board of Education,\textsuperscript{247} which is then responsible for providing a report to the state legislature detailing the population breakdown of documented versus undocumented students by school, the fiscal implications of all costs incurred by educating the undocumented population, and a report on both the short and long term impacts to the educational experience of lawful resident students learning side-by-side with undocumented students.\textsuperscript{248}

\begin{footnotesize}
\begin{itemize}
  \item \textit{Id.}
  \item H.B. 56, supra note 241, at § 18.
  \item \textit{Id.} at § 28(a)(1-3).
  \item \textit{Id.} at § 28(a)(4).
  \item \textit{Id.} at § 28(a)(5).
  \item \textit{Id.} at §28(c).
\end{itemize}
\end{footnotesize}
Lastly, the bill prohibits disclosure of any information identifying a student by name unless a valid legal waiver is produced.249 Despite that privacy measure, studies and news reports detailing the chilling effect the law has had on school attendance and flight of undocumented families from Alabama indicate the severe unsuitability of this provision.250

The United States Department of Justice sued the state of Alabama in August 2011, seeking declaratory and injunctive relief to various provisions in H.B. 56, including the provision requiring schools to check and report on the immigration status of its students on grounds of federal law preemption.251 The district court denied all such relief,252 revealing the ill effect of the legislation. Nearly 2,000 Hispanic students were marked absent in the week following H.B. 56’s upholding,253 as parents forced their children to miss or withdraw from school out of fear of drawing attention to their undocumented status.254 Concurrently, an influx of over 1,000 calls poured in over the opening weekend for a hotline established by the Southern Poverty Law Center to provide an outlet for immigrants to talk about the effects they were experiencing from the enactment of H.B. 56, solidifying the reality of fear and unrest felt amongst the undocumented population in Alabama.255

Within weeks of the district court’s decision, the Eleventh Circuit Court of Appeals heard an expedited appeal and granted preliminary injunctions against two of H.B.56’s provisions.256 The injunctions stayed the provisions’ implementation into law pending resolution of the appeal in 2012.257 The temporary status of the school immigrant-checking status provision258 troubled its opponents who feared its ultimate enactment would chill the right of undocumented children to pursue primary and secondary education under Plyler. 259 The National Education Association (“NEA”) passionately expressed its support to overturn H.B. 56 and submitted a joint amicus brief to the Eleventh Circuit to that effect.260 The brief concluded that, by way of fear and intimidation and in an effort to drive undocumented families out of the state of Alabama, the law would chill an undocumented child’s right to receive a public education under Plyler.261

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249Id. § 28(e) and (f).
252Id. at 1311.
253Lacayo, supra note 229, at 17.
254Nat’l Educ. Ass’n, supra note 250.
255Bauer, supra note 13, at 4.
257Id.
258Id.
259Nat’l Educ. Ass’n, supra note 250.
260Id.
to NEA President, Dennis Van Roekel, “[n]obody wins when a state law pushes children out of our public schools and into the shadows of society.”

As Alabama’s anti-immigration law awaits its fate, two specific detriments of the law surfaced: an economic detriment and a social justice detriment. A recent study conducted by Professor Samuel Addy of the University of Alabama estimated Alabama will lose as much as 6.2% of its gross domestic product, 140,000 jobs, and $264.5 million in revenue as a result of the anti-immigration law. Such losses are attributable to undocumented immigrants fleeing from Alabama, leaving their jobs in agriculture behind in search of a more immigrant-friendly state in which to send their children to school.

In addition to the sharp economic detriment that has resulted from the enactment of the Alabama law, a social loss exists and continues to grow as undocumented immigrants and their children feel threatened that their families may be torn apart if they remain in the state. Under Alabama’s harsh law, lawfully documented Hispanics residing in Alabama have received the same hateful message demanding they return to Mexico. Regardless of legal status, such racial hatred is perilous and confirms Professor Olivas’s warning about the negative impacts of rising nativism and xenophobia towards undocumented immigrants.

In-depth studies aimed at analyzing immigration laws have begun in a few states such as Alabama, demonstrating the economic impact of anti-immigration laws via a reduction in tax revenue and the number of available workers, as well a shrinkage in consumption. State anti-immigration statutes are destined to cause economic hardship to their respective state economies, which, in turn, discourages states from passing similar bills. Such statutes have also produced unanticipated costs in legal fees, loss of tourism, tax and business revenue, and losses in the work force. These economic hardships and social inequities, as manifested in Alabama, are likely to deter other states from creating such draconian laws.

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261 Id.
262 Id.
263 See discussion supra.
265 See Baxter, supra note 242, at 1.
266 Id. at 2.
267 See Bauer, supra note 13, at 3.
268 See sources & discussion supra note 1.
270 Lacayo, supra note 229, at 11-12.
271 Id. at 7-8.
272 See Addy, supra note 264, at 8-9; see also Baxter, supra note 241, at 1-2.
With regard to education, tampering with the mandate that requires all children in the United States to have an equal right to access a free public education will deter undocumented children from attending school.\textsuperscript{274} This result is even more likely if no option exists for affordable post-secondary education, as undocumented children will perceive the laws to mean that they do not belong in public schools and are prohibited from receiving a public post-secondary education.\textsuperscript{275}

If such laws are not repealed, xenophobia may build and lead to the intended consequence of undocumented immigrant flight, which will have severe social and economic impacts on both documented and undocumented families as well as broader implications for the state implementing the law.\textsuperscript{276}

V. PROPOSED SOLUTIONS

Immigration reform is needed for a plethora of reasons, but one issue of great importance is addressing the needs of undocumented students who were brought to United States as children.\textsuperscript{277} As previously demonstrated, providing undocumented students with an equal opportunity to post-secondary education and financial aid as is afforded to citizens and permanent residents is necessary to conform to the constitutional and moral ideals of equality.\textsuperscript{278} Additionally, providing equal opportunities will likely positively impact both individual state and national economies.\textsuperscript{279} Many of the major immigration states, excluding Florida and Arizona, have passed legislation granting post-secondary access and some type of financial assistance to undocumented students. A strong moral argument also exists for providing access and financial aid to post-secondary education and a pathway to citizenship for undocumented students.\textsuperscript{280} Even those who do not accept this argument cannot deny that states with these statutes have benefited economically while states which have passed anti-immigration statutes are expected to experience economic setbacks.

While the constitutionality of anti-immigration statutes has not yet been determined,\textsuperscript{281} states with pro-immigration statutes specifically tailored to in-state

\textsuperscript{273}See Nat’l Conference on State Legislatures, supra note 130. (failing to aid undocumented students to attend postsecondary institutions results in higher costs to state prisons and welfare systems).

\textsuperscript{274}See Nat’l Educ. Ass’n, supra note 250, at 2.

\textsuperscript{275}See id.

\textsuperscript{276}Baxter, supra note 242, at 1-2; see also Addy, supra note 264, at 8-9.

\textsuperscript{277}See Passel & Taylor, supra note 15, at 1-2.

\textsuperscript{278}See text supra, pp. 48-50.

\textsuperscript{279}See discussion supra, Part II.

\textsuperscript{280}OLIVAS, supra note 1, at 93.

\textsuperscript{281}Laura Vazquez, With SB 1070 on Deck, Supreme Court Decision Will Be a Game Changer, Huffington Post- Latino Voices, Apr. 3, 2012, available at
tuition and/or financial assistance for undocumented students are yielding positive results and have helped increase enrollment of undocumented students in colleges and universities. Federal legislation, however, is still ultimately needed to work in tandem with these state statutes.

Only federal legislation can change the legal status or grant citizenship to undocumented immigrants who need that change in legal status to attain lucrative, professional employment. As various versions of the DREAM Act have failed, some argue the DREAM Act is more likely to be passed as part of a larger and comprehensive package coupled with other interrelated issues, such as energy and health care. Due to the interrelation and complexity of these issues and increasingly partisan politics over such issues, truly comprehensive reform is only possible at the federal level.

To facilitate the passage of such federal legislation, it is pivotal for states to enact and further refine their DREAM statutes. To make this “dream” a reality, all states ought to quantitatively assess the impact of the undocumented population in their state economies, including the revenue realized by having undocumented residents living and working in their state and the impact of losing that revenue if the undocumented population were to suddenly vanish. States should then use this information to support the drafting and enacting of statutes that create or expand financial benefits and access for the undocumented population to post-secondary educational facilities. The more states that extend the idea of Plyler to post-secondary schooling, the more likely Congress will act and pass a federal DREAM statute.

State legislation is also necessary to continue building an infrastructure of post-secondary access and aid to undocumented students. With an established infrastructure, the transition period of interweaving federal and state law will be less difficult. Even if federal immigration reform is forthcoming, states will likely remain responsible for making individual decisions regarding the availability of in-state tuition rates, scholarships, and aid for their residents. States are capable of enacting such legislation regardless of demographics, political affiliations, and existing opinions on immigration if the issue is framed in terms that appeal to the senses of the local population, such as a positive cost-benefit analysis of what the community could gain with such legislation.

CONCLUSION


282 Solorzano, supra note 6, at xxvi.
283 Id.
284 OLIVAS, supra note 1, at 81.
285 Id. at 82.
286 Id.
287 Id. at 83.
The time to pass a federal DREAM Act is now. All students, documented or undocumented, are created equal and deserve equal educational opportunities. If we choose to value equal opportunity for all, it naturally follows that children brought to the United States as minors deserve equal educational opportunities. States that have enacted state DREAM statutes have made greater strides toward making that dream a reality for undocumented students. State DREAM statutes offer lasting economic and social benefits at the local, state, and national levels, whereas anti-immigration statutes have had the opposite effect. With such positive results, state DREAM legislation may inspire Congress to pass a federal DREAM statute and/or comprehensive immigration reform measures. Even if federal legislation is not immediately forthcoming, states should continue their endeavors to support their undocumented students because having a pre-existing system of financial aid will benefit these students and the state economies currently and in the future. Providing equal benefits to children whose parents broke the law seems unfair to some, but one should remember that any of us could have been placed in this situation as innocently as the undocumented students. These students are seeking this aid to live happily, freely and productively as citizens in the country they call home.