

# **UNDOCUMENTED STUDENT ADVOCACY: RALLYING FOR CIVIL AND DEMOCRATIC RIGHTS**

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During the last two decades the United States has undergone a dramatic demographic transformation chiefly due to increasing immigration. This change has been registered in school districts across the nation, where children of immigrant stock represent twenty percent of students and are expected to become thirty percent of the student body by 2015 (Fix and Passel, 2003).

A significant portion of this historic immigration largely from Latin America, Asia and Africa has been denied legal status and access to a number of areas of society, including higher education. In 1982, the U.S. Supreme Court recognized in *Plyler v. Doe* that undocumented students have a right to primary and secondary education. However, they face considerable barriers to higher education based on their race, class, language ability, unfavorable high school academic tracking and placement and immigration status. Those undocumented students who are able to surmount these obstacles find that most universities in the United States use their immigration status to selectively charge them non-resident or international tuition fees (three times in-state fees). This, in tandem with their poverty, effectively bars most of them from attending college. However, as of this writing ten states have adopted legislation to enable certain undocumented state residents to attend state colleges at the normal in-state tuition.

This presentation begins by referring to the legislative initiatives, which have allowed undocumented high school graduates to pay in-state tuition fees and, in some cases, receive state financial aid. The presentation starts with Texas as the first state to pass an in-state tuition policy. The impact of this policy at the federal level is addressed by reviewing proposed legislation known as the Dream Act that would enable certain students to obtain legal immigration status. The main goal of this presentation is to emphasize the importance of undocumented student advocacy in the face of mounting anti-immigrant legislation which seeks to criminalize their presence in the United States (specifically the highly controversial House Bill 4437). In particular this presentation ties the fight for access to a college education to the ongoing debate about an amnesty for the 12 million undocumented workers currently present in the United States. This presentation draws particular attention to student advocacy in favor of legalization and the Dream Act, activism which mushroomed during the spring of 2006 when undocumented immigrants demonstrated across the U.S. culminating with an over 2 million strong show of forces on May 1<sup>st</sup>, 2006.

This presentation argues that the exclusion of undocumented students from institutions of higher education on the basis of their immigration status, and despite their long residence in the United States, constitutes a denial of civil rights.

## **COLLEGE ACCESS FOR UNDOCUMENTED IMMIGRANTS**

Each year, tens of thousands of undocumented students who have lived in the United States for at least five years become high school graduates. These graduating seniors, whose numbers oscillate between 65,000 and 80,000, are a subset of the total undocumented student population in public schools that is estimated at 1.5 million (Urban Institute, 2001). In high immigration areas such as California, the figures can be higher with undocumented youth constituting half of senior and graduating classes (Johnston, 2000; Leovy, 2001). Indeed, out of the low estimate of 10.3 million undocumented immigrants residing in the United States, California has the largest number, reckoned at 2.4 million, or 24% of the total. As in any other state, a significant percentage of the undocumented population is composed of minors. It is calculated, that “California has about 40% of the estimated number of undocumented students (all grades and levels)” in the nation (Urban Institute, 2003a).

Immigrant and undocumented students who graduate from high school face a number of additional obstacles in their quest for higher education. Inadequate secondary preparation along with the less than supportive role of college counselors (Clark, 1961) has a direct impact in their ability to gain access to an institution of post-secondary education and to eventually succeed in college. In addition to the intersection of the poverty and lack of academic preparation that affects most immigrant students, a significant number are also faced with the legal barriers imposed by their lack of immigration status. The weight of their immigration status becomes evident during the college preparation process in high school and is exacerbated during the admissions process. In most of the United States, a variety of legal statutes sharply curtail undocumented student access to college both by selective application of residency rules to include only U.S. citizens and permanent residents and indirectly by imposing discriminatory requirements that create undue financial demands. Specifically, in most of the United States, universities either deny them access or charge these students international tuition fees (three to six times in-state fees) which effectively constitute a *de facto* ban from attending college. In order to address this issue, starting in 2001, Texas, followed by nine other states, passed an in-state tuition policy that began to open the doors of higher education to undocumented students. Such measures have moved to the forefront of the national debate over legislation concerning thousands of undocumented high school graduates who are *de facto* forbidden access to higher education, through discriminatory application of state and county residency requirements directed at largely pauperized immigrant workers.

## **LEGISLATIVE INITIATIVES EXPANDING COLLEGE ACCESS TO UNDOCUMENTED STUDENTS**

In 2001, thanks to the activism of undocumented students and their supporters, Texas became the first state to pass a law intended to begin dismantling exclusionary practices at the higher education level. The Texas law is known as House Bill 1403. It allows undocumented high school students who have spent at least three years in high school prior to graduation, the opportunity to attend college at standard in-state tuition rates and receive state financial aid. Following suit after Texas, and in the midst of increasing immigrant advocacy, several states have passed laws that address the impact of immigration status on undocumented student entry into institutions of postsecondary education. California, Utah, New York, Washington, Illinois, Oklahoma, Kansas, New

Mexico and Nebraska have enacted state laws lifting de facto proscriptions and thus permitting undocumented high school graduates to attend college. Following suit, similar bills have been introduced in 17 other states, while four more states (Alaska, Arizona, Colorado and Virginia) have introduced legislation restricting immigrant student access to higher education.

The in-state tuition measures passed in the states mentioned were modeled after the blueprint provided by Texas. In essence, they require students to (1) have completed a high school or a GED in the state where they reside; (2) have resided in the given state for three years while in the company of their parents; (3) have not started college before the passage of the law and (4) provide the university an affidavit of intent as to the effect that they will seek to legalize their immigration status at the earliest opportunity they are eligible to do so. Without exception, this last provision is required of all eligible students in the states where the laws have passed.

Many immigration advocates have supported these measures arguing that the students should not be penalized for the actions of their parents. While such position is in favor of in-state tuition rates for immigrant students it holds these children's parents accountable for bringing them without proper documentation to the United States. Arguing that these parents have unfairly imposed the burden of their immigration status ignores an examination of the broader forces at play.

As a growing number of youngsters enroll in college under the auspices of these measures, another problem for these students is surfacing. Specifically, the larger issue over the legalization of these youngsters remains unresolved as some of these undocumented students have already graduated from the institutions which originally granted them admission in 2001. A pending proposal known as the Dream Act, has brought to the national debate the need for comprehensive legislation to address the fact that nationwide, thousands of undocumented high school graduates are not only forbidden access, de facto, to higher education but have no prospects of ever becoming permanent residents of the country where they have grown up.

### ***Dream Act: Undocumented Students Legalize***

The growing size of the undocumented population along with its dispersal to nontraditional destinations (states other than California, Texas, Florida, Illinois, New York and New Jersey) has made immigrant students' lack of access to higher education a nation-wide phenomenon. As mentioned above, the fact that states such as Utah, Washington, Oklahoma, Kansas and Nebraska have passed legislation to allow in-state tuition for undocumented students underscores the need for national legislation to insure nationwide college access and legalization opportunities to this population. Between 2001 and 2004 several bills have been introduced in the U.S. House of Representatives (Student Adjustment Act, HR 1918) and in the U.S. Senate (Development, Relief and Education for Alien Minors, SB 1291, hereinafter "Dream Act") to address this issue.

The Development, Relief and Education of Alien Minors (Dream) Act is a bill in the U.S. Senate that would legalize a number of undocumented immigrant students. Specifically, this bill would (1) eliminate the federal law provision barring states from providing in-state tuition to its undocumented residents and (2) allow certain immigrant students the opportunity to obtain permanent residency in this country and obtain the

right to live and work legally in the United States. Though less than the much desired amnesty, this is crucial in states like Texas where the first generation of in-state tuition beneficiaries began to graduate in 2005 without the opportunity to work given their undocumented status. The expansion in the civil rights and democratic registered in the ten states mentioned above collides with federal government denial of employment opportunities for undocumented college graduates. As one author put it, without a guarantee that an undocumented person can achieve lawful immigration status following graduation from college, such a person will always live under the double threat of being ineligible to lawfully hold a job and possible deported from the United States (Romero, 2002, p. 406-407). The most recent mobilizations of hundreds of thousands of immigrants, many composed primarily of young Latino students, has made reference to the need to pass the Dream Act as part of a larger legalization program.

### ***Immigrant advocacy: the motor behind new changes***

Throughout the history of the United States, immigration and immigration laws have been marked by dramatic fluctuations and contradictions. Undocumented immigration, in particular, has historically served the purposes of private economic interests in the United States (e.g. agro-business, the service sector, the food industry and increasingly basic industry). The government, for instance, has encouraged mass immigration to serve these special interests.

At the same time, the government refuses to provide visas or immigration status to all the workers that the businesses require which ensures that labor costs are kept down. One of the results has been the rise of undocumented workers, a population group that lacks the legal protections ordinarily enjoyed by U.S.-born workers. This disenfranchised caste-like condition assists the employers who use these workers' undocumented status and their constant fear of deportation to create a more subservient work force to drive undocumented worker's salaries and labor conditions down, creating economic sectors of low wages and poor working conditions largely occupied by immigrant labor (Garcia, 1995). The burden of discrimination is greatly exacerbated by the dehumanizing branding of these immigrant families as "illegals" and "aliens". The message sent by federal, state and local governments, echoed daily in the media, is that these families — among the most impoverished segments of the working class, locked in the lowest-paying dead-end jobs — are a threat to U.S.-born workers and are somehow responsible for their insecure employment. One of the results is the common dynamic of xenophobic forces which scapegoat immigrants to further justify their economic exploitation (Garcia, 1995). The debate, however, is not about the presence of undocumented immigrants in the United States, but about the condition of their presence. This is especially evident when one considers the fact that the U.S. economy could not function without undocumented labor.

Just as immigration legislation has responded to changing economic and political needs and interests, the laws examined in this presentation concerning immigrants' access to education also have been subject to this constant change. The passage of in-state tuition policies throughout the country were responses to the impressive advocacy work by undocumented immigrants themselves. One could also argue that these policies were limited concessions benefiting only a small subset of the undocumented population. Such interpretation notwithstanding, one could add that regardless of the limitations of these laws, they represent an extension of democratic rights. This is an important gain

which followed a surge of immigrant activism in the mid nineties against anti-immigrant state propositions and draconian federal laws. Specifically in California, the proposal that sought to deny basic health and education services to undocumented gave rise to a new era of immigrant rights activism that began with a 70,000-participant march in 1994 in Los Angeles to oppose Proposition 187 (Migration News, 1996). The defeat of Proposition 187 contributed to a greater sense of immigrant resistance and entitlement that saw its climax with the October 12, 1996 march in Washington, the nation's first pro-immigrant march (Migration News, 1996).<sup>1</sup>

This growing activism spawned numerous local struggles and initiatives ranging from unionization efforts and the establishment of day labor centers to protests against police brutality (Barnes, 1999). As described above, one of these initiatives was the campaign to gain higher education access for undocumented students. This struggle which first bore fruit in Texas with the 2001 passage of an in-state tuition law opened the doors of higher education to undocumented immigrants and spurred the debate across the country. The in-state tuition laws that have followed in the nine states were achieved in the midst of virulent anti-immigrant legislation (i.e. HR 4437) and rhetoric following the September 11 events. The growing trend of in-state tuition legislation has accompanied the passage of additional anti-immigrant legislation and increasing federal prosecutions for immigration violations, especially after September 11, 2001 (Peters, 2001, p.1). Immigration related prosecutions, for instance, have more than doubled in the four years following September 11, 2001, from 16,300 in 2001 to 38,000 in 2004. The pretext for the prosecutions and the anti-immigrant legislation has been the fight against terrorism (Lichtblau, 2005). Additional examples abound.

Counterpoised to this anti-immigrant legislation has been the growing advocacy of immigrant students demanding a place in institutions of higher education across the nation. These efforts at the state level have effectively counteracted the demonization of these students and have raised awareness regarding their plight. In addition, the legislative victories indicate that the government and rightists have been unable to foment sufficient anti-immigrant sentiment despite the intense and prolonged campaigns which escalated after September 11, 2001. As a result, undocumented students and their advocates have been able to galvanize support beyond immigrant communities to achieve legislative victories, among others. The unexpected continuing gains on the immigrant rights front, while far from sufficient or irreversible, point to a deeper and broader historic sentiment of support for democratic rights and equal access to education, which immigrant rights supporters may be able to draw upon.

## **LESSONS LEARNED AND RECOMMENDATIONS**

In light of the relentless anti-immigrant campaigns and in order to continue advancing the fight for immigrant rights, it is necessary to advocate for change on the basis of principles of basic fairness and democratic rights. This requires that we seek to extend constitutional protections on the basis of the Equal Protection clause of the Fourteenth Amendment to the undocumented, particularly youth who are seeking access to institutions of higher education (Galassi, 2003; Yates, 2004). In *Plyler v. Doe* (1982), the Supreme Court extended, the Equal Protection Clause of the Fourteenth Amendment to undocumented immigrants. Although the unprecedented ruling applied to undocumented children in K-12 schooling, it reverberated far beyond the public schools (Olivas, 1995). The Supreme Court recognized that the exclusion of children from

public education reinforced their minority status. Most importantly, the court acknowledged that although they were unauthorized to be in the United States, they deserved protections under the Fourteenth Amendment by their very presence in the country.

Despite the effective use of these constitutional guarantees, advocates for in-state tuition have not made full use of them. Advocates have preferred to argue that in-state tuition would result in higher salaries, larger tax contributions and lower dependency on social services. They will need to adopt broader constitutional arguments if they expect to defend their gains and advance the educational cause of immigrant youth. In the face of mounting attacks against in-state tuition laws, civil and democratic rights codified in law and supported in the court of public opinion as questions of fundamental human dignity and rights are more likely to endure than promises of aggrandizement for business interests. Significantly this reasoning tends to break down rather than reinforce the caste-like status imposed on the undocumented.

In-state tuition policies function as an extension of the ideals inherent in *Brown vs. Board of Education* (1954), that is, to make education equal and available to all students. In that sense, in-state tuition policies represent another step towards equal opportunity for all students. Advocates should refute the pernicious argument of a ceiling on the amount of education undocumented immigrants should receive, and adopt arguments that incorporate notions of human dignity and civil rights. In light of the Supreme Court decision, it would be logical to believe that immigrant advocates will begin to seek to more explicitly extend the constitutional protections to undocumented youth in higher education.

Anti-immigrant forces, on the other hand, seek to undermine immigrants struggle for equal access to institutions of higher education because it is understood that all measures tending toward equal rights for immigrants are apt to strengthen their sense of worth and equality, with broader implications for the labor market and society as a whole. Anti-immigrant forces understand this and believe that they should respond now in anticipation of the broader implications of the in-state tuition bills beyond questions of educational opportunity. Indeed, the issue is not merely access to a specific benefit, or right, but rather involves a debate on the conditions that the larger population accepts for one group of people, and the impact this has on society as a whole.

In an effort to broaden the scope of this struggle, the question of undocumented immigrants' access to higher education should be posed within the framework of expanding college opportunities for all minorities and underrepresented groups. Attacks against the presence of the undocumented in college not only aim to limit the participation of immigrants in higher education but also open the way to broader attacks. It may be concluded that attacks against immigrant presence on colleges are not solely restricted to their immediate target but ultimately pursue restrictions affecting the class to which they belong.

The present-day fight of the undocumented is for equality. It is the current expression of the long struggle that minorities have waged in defending their right to attend institutions of public and post secondary education. Such an approach will be in line with the broader issue of civil rights. Indeed, an examination of the Civil Rights Movement demonstrates that Blacks did not ignite their fight under an economic

rationale of offering a more productive servitude, but rather drew compelling arguments on their behalf on the basis of their human dignity and their civil rights, best summarized in the protest signs of the 1968 Memphis Sanitation Workers' Strike which read —"I am a man." As some authors have suggested, immigrant rights advocates are obliged to examine the similarities between both struggles:

Today a growing number of labor, immigrant rights and Black political activists recognize the similarity between the denial of civil rights to African Americans and the second-class status of immigrants in the [United States]. U.S. Congresswoman Jackson Lee looks at the situation of immigrants, and sees the historic discrimination against people of color, especially Black people, and women. "I had the benefit of the 13th, 14th and 15th Amendments, the 1964 Civil Rights Act and the 1965 Voting Rights Act, and the executive order signed by Richard Nixon on affirmative action. Without them, I would never have seen the inside of the United States Congress," she declares, while cautioning, "the rights of minorities in this country are still a work in progress. Nevertheless, someone recognized that the laws of America were broken as they related to African Americans - that we had to fix them. Now we have to fix other laws to end discrimination against immigrants." (Bacon, 2005).

In light of relentless campaigns to undercut public education in general, and the broader debate over constitutional rights, efforts to extend the right of equal access to higher education for undocumented immigrant students inevitably become intertwined with the broader debate over civil rights, and are integral to the defense of public education today.