

Dare To Dream: The Dream Act, Turning Dreams into Reality

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Introduction

Each year approximately sixty-five thousand undocumented students graduate from United States high schools with dreams of continuing onto college, however their prospects of attending college are grim because of their immigration status and cost barriers to higher education.¹ The vast majority of undocumented students were brought to the United States not of their own free will, but as children by their parents and have lived in the United States for the greater part of their lives.² For undocumented students the American Dream of education and opportunity falls short of reality.³

Part I of this paper provides a brief history of undocumented children and the current hurdles and regulations they face in order to pursue higher education. Part II discusses the Supreme Court's landmark decision in *Plyler v. Doe*. Part III addresses the *Plyler* Court's intentions and whether they have been fulfilled almost thirty years later. Part IV analyzes the DREAM Act and its potential impact on undocumented students. Finally, Part V concludes that the *Plyler* Court's intentions have not been fulfilled and the DREAM Act must be passed in order to abolish a caste system which has been created and give undocumented students an opportunity to achieve the American Dream.

I. Undocumented Children

Undocumented children come from all over the world, with the vast majority from Mexico.⁴ It is estimated there are between eleven and twelve million undocumented immigrants living in the United States, with children accounting for almost two million.⁵ Undocumented children are distinct from first generation migrants, given that they did not voluntarily come to

the United States. They are unlike U.S. born children because they do not possess birthright citizenship and live with the constant fear of deportation and the knowledge that their futures are bleak under current immigration law.⁶

Over the years, both federal and state governments have placed restrictions upon the civic participation of noncitizens in virtually all areas of the United States' societal landscape, including education.⁷ In 1994, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act as well as the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA").⁸ Both laws had profound effects on "federal benefits in many areas of health and welfare," including higher education.⁹ In some states, undocumented students are barred from attending college, and in others, a college education is unaffordable due to federal laws effectively excluding undocumented students from the benefits of in-state tuition and federal financial aid.¹⁰ Consequently, less than half of all undocumented students attend college.¹¹

For the small number of students who are able to fund their own education and earn their degrees from institutions of higher education, they find themselves at a standstill when they graduate because no matter how educated, capable or motivated they are, they cannot obtain a job in the United States at their skill level due to their undocumented status.¹² As a result, undocumented students find themselves permanently regulated to the margins of society and live with the knowledge that their future prospects are desolate.¹³

II. Plyler v. Doe

Nearly thirty years ago, a landmark decision was made in *Plyler v. Doe*, by the Supreme Court concerning undocumented Latino children's access to primary and secondary education.¹⁴ In 1975, the Texas legislature revised its laws to withhold from local school districts any state

funds for the education of children who were not "legally admitted" into the United States, and authorized local school districts to deny enrollment to such children.¹⁵ A class action suit on behalf of these school-aged undocumented children followed.¹⁶ In a five to four opinion the Court struck down the statute and held that a state could not deny undocumented children residing within its borders a free primary or secondary education.¹⁷

Plyler was ground breaking, in the sense that for the first time, the Court clearly stated that undocumented persons are protected under the Equal Protection Clause of the Fourteenth Amendment.¹⁸ The Court found that “[w]hatever his status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that term.”¹⁹ The Court stated that “[l]egislation imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control suggests the kind of ‘class or caste’ treatment that the Fourteenth Amendment was designed to abolish.”²⁰ The Court further stated that depriving undocumented children an education could result in the creation of a caste system by imposing “a lifetime [of] hardship on a discrete class of children not accountable for their disabling status.”²¹ In addition, the Court recognized that penalizing children who have no control over their status was fundamentally unfair.²²

Furthermore, the Court was concerned about the creation of a permanent uneducated class of persons and its potential impact on society.²³ The Court recognized that denying undocumented students access to education would lead to “the creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment, welfare, and crime.”²⁴ The Court stated that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of education.”²⁵

III. *Plyler v. Doe* Nearly Thirty Years Later

The children affected by *Plyler* have since grown up and benefited from a free primary and secondary education, however today college still remains out of their reach.²⁶ Although *Plyler* did not apply to higher education, has the *Plyler* Court's intentions of preventing a caste system been fulfilled almost thirty years later? No. The caste system the *Plyler* Court so vehemently attempted to prevent has been created and survives because access to free primary and secondary education means little without a meaningful opportunity to work and pursue higher education.²⁷

The primary and secondary education undocumented children receive is useful individually for personal growth; nevertheless it is of little value for the betterment of the overall condition of Latinos in the United States since they remain unable to pursue higher education.²⁸ According to a study of 15,000 eighth-grade students in the United States, Latinos are overrepresented with respect to higher education risk factors.²⁹ These factors included having parents without a high school degree, a low family income, siblings who have dropped out of school, being held back in school, having a C or lower grade point average, changing schools, and having children while still in high school.³⁰ The study concluded that, "[a]t almost every level...Latino youth face an upward struggle."³¹

Given the nature of the lives of undocumented immigrants as living in the "shadows" of the United States population, there is no actual data regarding the number of undocumented persons in the country, only estimates are available.³² Estimates show that among undocumented immigrants ages eighteen to twenty-four who have graduated from high school, only half are in college or have attended college, as compared with seventy-one percent for U.S.-born

residents.³³ The existence of this underclass is the direct result of their limited educational attainment.³⁴

Although *Plyler* did not apply to higher education its rationale provides support for why such a right should exist.³⁵ The *Plyler* Court's reasoning regarding the injustice of penalizing undocumented children for their parent's illegal acts and the concern over the creation of a permanent caste of undocumented immigrants could be applied to undocumented students seeking access to higher education.³⁶ Especially since the Court recognized the role of education in ending the caste system, or conversely, the deprivation of education as perpetuating it.³⁷ As the Court's plurality opinion stated, "the goal of the Equal Protection Clause was to remove all caste-based distinctions and aboli[sh] governmental barriers [that present] unreasonable obstacles to advancement on the basis of individual merit."³⁸

IV. The DREAM Act

The Development, Relief, and Education for Alien Minors Act (DREAM Act) addresses the situation faced by undocumented students who were brought to the United States as children and have since grown up in the United States.³⁹ The DREAM Act is a bipartisan piece of proposed federal legislation that was reintroduced in both the Senate and House of Representatives on March 26, 2009.⁴⁰ Under the DREAM Act, undocumented students have an opportunity to go to college or enlist in the military and are provided a path to citizenship.⁴¹

The DREAM Act proposes to repeal Section 505 of the IIRIRA, which denies educational benefits to undocumented students if a United States national would not be eligible for the same benefits, without regard to State residence.⁴² The DREAM Act directs the Secretary of Homeland Security to cancel the removal of, and adjust to permanent resident status, certain (inadmissible or deportable) undocumented students who meet certain requirements.⁴³

Additionally, the DREAM Act makes undocumented students eligible for Federal and State higher education assistance during the pendency of their application for permanent residence.⁴⁴

The DREAM Act sets forth specific requirements that, if met, allow undocumented students to receive conditional resident status for six years and, later, to become lawful permanent residents.⁴⁵ To qualify under the DREAM Act the undocumented student must: (1) have entered the United States before the age of 16, (2) have been present in the United States for at least five consecutive years prior to the enactment of the bill (3) have graduated from a United States high school, or have obtained a GED, (4) be between the ages of twelve and thirty-five, and (5) have good moral character.⁴⁶ During the six conditional year period, the student would be required to graduate from a two year college, complete at least two years towards a four year degree, or serve in the United States military for at least two years.⁴⁷ At the end of the six year period, permanent residence would be granted if the student had met at least one of these requirements and continued to maintain good moral character.⁴⁸

In addition, the DREAM Act opens the door for undocumented students to drive, work, get federal work study, and partake in most activities as legal residents with protection from deportation.⁴⁹ As previously discussed, the exclusion from these benefits traditionally serves as barriers to undocumented students' attending college and full integration into American society.⁵⁰ Numerous studies demonstrate that legal status brings fiscal, economic and labor-market benefits to individual immigrants, to their families and to society in general.⁵¹

Furthermore, economists recognize that education has a value to society beyond its value to the individual student.⁵² Those social benefits include "a more educated and better informed electorate, lower rates of crime and violence, lower rates of poverty, better health and nutrition, and, generally, a more smoothly functioning society."⁵³ Investing in this country's youth is an

investment in the future of the nation.⁵⁴ The DREAM Act finds the appropriate balance between the interests of undocumented students and the interests of the country.⁵⁵

The DREAM Act is currently pending in the United States Congress and continues to attract bipartisan support.⁵⁶ For the first time, the DREAM Act enjoys the strong backing of the House and Senate leadership, all of the relevant committee chairs, and President Obama.⁵⁷ Estimates suggest that the DREAM Act would provide 360,000 undocumented high school graduates with a legal means to work and secure additional resources for college, and could provide incentives for another 715,000 youngsters between the ages of five and seventeen to finish high school and pursue postsecondary education.⁵⁸ Supporters continue to argue that the nation will gain no benefit by leaving this sector of the population undereducated and thereby limited to low-paying jobs, insufficient for supporting a family.⁵⁹

V. Conclusion

Undocumented students are in many ways like their U.S.-born classmates. For example, they were educated in American classrooms, have been instilled with American values, dream of attending college, and aspire to achieve the American Dream. However, they are unlike their U.S.-born classmates due to the fact that their dreams of opportunity and higher education fall short of reality due in part to their immigration status and cost barriers to higher education.

Despite the *Plyler* Court's inventions of preventing a caste system from being created, almost thirty years later a caste system has been created and unfortunately survives. Providing undocumented school-aged children with access to free primary and secondary education means nothing without a meaningful opportunity to work and pursue higher education. It would be beneficial for the country that invested in the primary and secondary education of these undocumented students to make certain they had access to college so they could in turn give

back to the country by utilizing the talents and skills they acquired. Without access to higher education, undocumented students will continue to be regulated to the margins of society and perpetuate a second caste.

The DREAM Act would fulfill the *Plyler* Court's aim by abolishing the caste system which has been created, by providing undocumented students with career opportunities, access to higher education and obtainment of citizenship. The DREAM Act is the immigration reform undocumented students so desperately need, and despite its failed attempts, the DREAM Act remains promising. Despite their futures' looking grim, undocumented students may have reason to keep the faith and believe that they have a chance of attaining the American Dream if the DREAM Act becomes a reality.

¹ THE BELL POLICY CENTER, *Undocumented Immigrant Students and Access to Higher Education: An Overview of Federal and State Policy* 2 (2005), available at <http://www.thebell.org/PUBS/IssBrf/2005/03UndocTuition.pdf>.

² *Id.*

³ Joshua A. Boggioni, *Unofficial Americans—What To Do With Undocumented Students: An Argument Against Suppressing The Mind*, 40 U. Tol. L. Rev. 453, 454 (2009).

⁴ Nicole Ochi, *Reinventing Plyler: Undocumented Students, Public School Reform, and the DREAM Act* 1 (Fall 2008) (unpublished comment, on file with Loyola University Chicago's Children's Legal Rights Journal).

⁵ Boggioni, *supra* note 3, at 454.

⁶ Ochi, *supra* note 4, at 1.

⁷ Maria Pabon Lopez, *Reflections on Educating Latino and Latina Undocumented Children: Beyond Plyler v. Doe*, 35 Seton Hall L. Rev. 1373, 1374 (2005).

⁸ Boggioni, *supra* note 3, at 460-61.

⁹ *Id.* at 461.

¹⁰ Ochi, *supra* note 4, at 1.

¹¹ Lopez, *supra* note 7, at 1378.

¹² Ochi, *supra* note 4, at 1.

¹³ *Id.*

¹⁴ Lopez, *supra* note 7, at 1385.

¹⁵ *Plyler v. Doe*, 457 U.S. 202, 209 (1982).

¹⁶ Vicky J. Salinas, Comment, *You Can Be Whatever You Want To Be When You Grow Up, Unless Your Parents Brought You To This Country Illegally: The Struggle To Grant In-State Tuition To Undocumented Immigrant Students*, 43 Hous. L. Rev. 847, 852 (2006).

¹⁷ See Boggioni, *supra* note 3, at 457.

¹⁸ See Lopez, *supra* note 7, at 1385.

¹⁹ See Salinas, *supra* note 16, at 852-53.

²⁰ See Lopez, *supra* note 7, at 1389.

²¹ See Lopez, *supra* note 7, at 1389.

²² *Plyler*, 457 U.S. at 220.

²³ See Boggioni, *supra* note 3, at 459.

²⁴ *Id.*

²⁵ See Lopez, *supra* note 7, at 1389.

²⁶ See Salinas, *supra* note 16, at 847.

²⁷ See Ochi, *supra* note 4, at 1.

²⁸ See Lopez, *supra* note 7, at 1377.

²⁹ *Id.* at 1384.

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 1378.

³³ *Id.*

³⁴ *Id.* at 1377.

³⁵ See Boggioni, *supra* note 3, at 458.

³⁶ See Lopez, *supra* note 7, at 1401.

³⁷ See Ochi, *supra* note 4, at 4.

³⁸ *Id.*

³⁹ See Boggioni, *supra* note 3, at 478.

⁴⁰ National Immigration Law Center, *The DREAM Act: Basic Information* (2009), available at <http://www.nilc.org/immlawpolicy/dream/dream-basicinfo-2009-03-30.pdf>

⁴¹ United States Student Association Foundation, *Myths and Facts about the DREAM Act*, available at <http://www.usstudents.org/our-work/legislative/dream-act-factsheet>

⁴² United We Dream, *DREAM Act of 2009 Fact Sheet*, available at <http://dreamactivist.org/wp-content/uploads/2008/02/dream-act-of-2009-factsheet.doc>

⁴³ National Immigration Law Center, *supra* note 40.

⁴⁴ *Id.*

⁴⁵ United We Dream, *DREAM Act of 2009 Fact Sheet*, available at <http://dreamactivist.org/wp-content/uploads/2008/02/dream-act-of-2009-factsheet.doc>

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Boggioni, *supra* note 3, at 480.

⁵¹ *See generally* Lopez, *supra* note 7, at 1395.

⁵² Lopez, *supra* note 7, at 1395.

⁵³ *Id.*

⁵⁴ *Id.* at 481.

⁵⁵ *Id.* at 479.

⁵⁶ National Immigration Law Center, *supra* note 40.

⁵⁷ *Id.*

⁵⁸ Boggioni, *supra* note 3, at 480.

⁵⁹ *Id.* at 481.