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PAYING FOR THEIR STATUS: UNDOCUMENTED IMMIGRANT STUDENTS AND COLLEGE ACCESS

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PAYING FOR THEIR STATUS: UNDOCUMENTED IMMIGRANT STUDENTS AND COLLEGE ACCESS

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Dedication

To all the undocumented immigrants who day to day build the country that denies their children educational opportunities.

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PAYING FOR THEIR STATUS: UNDOCUMENTED IMMIGRANT STUDENTS AND COLLEGE ACCESS

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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 therefore access to a number of areas of society, including higher education. While the Supreme Court has recognized a right to primary and secondary education for undocumented students, 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 across the United States use their immigration status to selectively charge them non-resident or

international tuition fees (three times in-state fees). This effectively bars most of them from attending college. However, as of this writing nine states have adopted legislation to enable certain undocumented state residents to attend state colleges at the normal in-state tuition.

This dissertation is a policy analysis that largely focuses on various legislative initiatives, which have allowed undocumented high school graduates to pay in-state tuition fees and, in some cases, receive state financial aid. The research focuses on Texas as the first state to pass an in-state tuition policy and it gives particular attention to the role of that state in policy innovation along with its national implications. The impact of this policy at the federal level is addressed by reviewing proposed legislation that would enable certain students to obtain legal immigration status.

The significance of this research is based on the fact that these policies not only respond to changing demographics but they also, for the first time, open the college door to populations which have been traditionally excluded from institutions of post secondary education.

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Chapter 1: *Introduction*

Demographic changes brought about by immigration growth in the past decade are having an enormous impact on public education in the United States. This has prompted a national discussion both on the effects of these changes on the public schools as well as the responsibility schools and society have to the children of this massive wave of immigration. The discussion touches on language acquisition and academic achievement. However, it has also spurred a debate concerning the right of these young people to attend institutions of higher education. Across the nation, the rights of immigrant youth are sharply restricted, in particular, by the selective enforcement of out-of-state residency tuition rates. This policy amounts in most cases to a *de facto* ban on the right of undocumented immigrant youth to attend college. This dissertation analyzes higher education policy in Texas, the state that has led the nation in formulating ameliorative policies.

In particular, this study pays close attention to the 2001 law passed by the Texas Legislature (known informally as HB 1403) that grants some undocumented immigrants the right to attend universities at in-state tuition fees. Broadly speaking, HB 1403 addresses the issue of educational access for undocumented immigrants in Texas. Beyond an examination of the events that lead to the passage of HB 1403, this study analyzes the favorable impact that the legislation has had in other states. Stated briefly, other states have followed suit by passing similar bills and removing the inequitable onus placed on undocumented immigrants wishing to attain a higher education. HB 1403, and similar measures since taken in eight other states, has granted immigrant youth statutory protection against discrimination in the higher educational arena based chiefly on their high school graduation.

PURPOSE OF THE STUDY

This study aims to analyze the historical development of Texas public policy concerning undocumented immigrant students' access to higher education and its relationship to other state and federal policies. In particular, this dissertation examines the law's broader impact in the United States. Since the passage of HB 1403, eight states have followed the example set by Texas. These states have passed parallel legislation in the following order: California (October 2001), Utah (July 2002), New York (October 2002), Washington (May 2003), Illinois (May 2003), Oklahoma (May 2003), Kansas (May 2004) and New Mexico (April 2005).

This examination also explores the political and legal challenges that the policy faces. Indeed, three years after Texas enacted its legislation, an anti-immigrant organization, namely the Federation for American Immigration Reform (FAIR), has filed a lawsuit seeking to overturn a similar law. The suit, filed on July 19, 2004, challenged the constitutionality of the Kansas law that granted undocumented students the opportunity to attend college at in-state tuition rates. It argues that federal law, particularly the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) precludes states from offering its undocumented state residents higher education benefits not automatically available to non-resident U.S. citizens.

The following subsections contextualize the problem from a historic, demographic, economic and educational perspective. Special emphasis is given to Latino immigrants, the group that saw the largest population increase during the past decade. Other subsections address a brief review of immigration policy, the socioeconomic dynamics that have accompanied demographic changes and the implications for the educational advancement of the larger Latino population and in particular of its undocumented immigrant component.

IMMIGRATION AND EDUCATION: A HISTORICAL BACKGROUND

Immigrants were initially excluded from public schools on the basis of their race, culture, language, religion and foreign origin, creating the foundations for the current *de jure* exclusion of undocumented students from institutions of higher education in most of the United States. This section provides a brief historical overview of the relation between immigration policies and education regulations. The role of Texas is highlighted especially as it pertains to historical decisions guaranteeing the right of undocumented students to public education.

In its dealings with the foreign-born population, the U.S. government has instituted various immigration policies since the 1800s. From explicit bans on nonwhite immigration, set since 1790, nativism has been a strong force influencing U.S. culture and consequently, the policies of various governmental organizations such as educational institutions. During the colonial period, the approach to immigrant students' presence in U.S. schools deal particularly with the question of assimilation. Spring (2001) details the character of education during this period when charity schools were established with the sole purpose of anglicizing German pupils, allegedly in response to an ostensible fear, which was fostered under the familiar refrain that their culture was expanding. As such, Germans as well as immigrants of Polish descent were banned from establishing dual language programs in certain cities. Exclusionary language policies imposed on immigrant children generated conflict with their parents and imposed a view where anything that was not American was seen as less. The view has not changed much as is described by more contemporary research (Olsen, 1998; C. Suarez-Orozco, 2001).

While English-language charity schools were used to acculturate the Germans, the Irish immigrants who came after 1845 were forced to religious assimilation. "[…] Poor Irish children in the public schools see their parents looked upon as an inferior race…and public schools taught children to feel ashamed of the creed of their forefathers, which is often assailed" (Kaestle, 1983, p. 164).

In spite of the fact that European arrivals were initially the target of xenophobia, they were eventually able to assimilate (Blauner, 1987). Much of this was possible due to immigration policy, specifically the Immigration Restriction Act of 1924 also known as the National Origins Act. By establishing for the first time numerical quotas on immigration based on the 1890 census, it imposed the image of a white America (Tienda, 2002).

Contrary to European arrivals, immigrants from the Third World have remained the target of harsh immigration policies, which have been able to brand them as an untouchable-like caste predicated upon easy identification largely based on skin color (Garcia, 1995). In the case of Mexico, immigration dates back to the signing of the Treaty of Guadalupe Hidalgo in 1848, when Mexico was forced to cede around half of its territory to the United States (Rodriguez, 1996). Since then, there has been a long history of policies, which have attempted to either restrict or encourage the presence of Mexicans in the United States based on the requirements of U.S. business for a source of cheap labor (e.g. Bracero Program[1], Operation Wetback[2]).

Early immigration policies which disfavored non-white immigration became increasingly untenable after World War II as the United States deepened its intervention in Asia. Specifically, the Immigration and Nationality Act (INA) of 1952 repealed the Chinese Exclusion Act[3] which had banned immigration from Asia on the basis of alleged "differences of race" and the view that "Chinese were a danger to American morals, institutions and the preservation of civilization" (Smith, 1985). As a result of the Cold War, the INA used numerical ceilings to restrict Eastern European immigration (Tienda,

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[1]The Bracero Program was instituted as a response to the labor shortages created by World War II. Agricultural growers "convinced the United States government to enter into the Bracero Program, a large scale contract labor program with Mexico. Braceros were the perfect exploitable underclass, willing to work for low wages and in deplorable conditions" (Garcia, 1995, p. 4).

[2]Between 1954 and 1955 the government mounted a military operation, termed "Operation Wetback," to reduce the number of undocumented crossings in the Southwest. A total of 1,075,168 Mexican immigrants were apprehended as a result (Robledo, 1977).

[3]Restrictive legislation passed in the 1880s to slow Chinese immigration to the United States.

2002, p. 591). However, it apportioned immigration quotas based on the 1920 census thus maintaining a white national identity (Tienda, 2002).

The impact of the civil rights movement together with worldwide events, in particular those in Asia such as the Vietnam War opened the doors for further immigration changes. The abolishment of quotas through the passage of the Immigration Act of 1965 opened the immigration of other groups mainly from Asia and Africa. Increasing arrivals from Latin America were fueled by a shift "on the visa allocation preference system from labor market priorities to family reunification" (Tienda, 2002, p. 591). During this same year, the Higher Education Act of 1965 spawned federal financial aid but limited it to citizens, permanent residents, refugees & those granted asylum.

The immigration growth that started during the mid sixties took place during a time of increased political and economic instability. Between 1973 and 1974, the United States experienced an energy crisis coupled in 1974, with Nixon's resignation and the Watergate scandal. As in previous times in the history of this country, the economic crisis manifested itself in a backlash against foreigners. The rapid increase in the number of deportations illustrates this fact. The number of undocumented workers apprehended rose from 30,000 in 1960, to 100,000 in 1965 and 788,145 in 1974 (Robledo, 1977; Rodriguez, 1990). The increase in the number of apprehensions along with the 1970 U.S. Census figures reporting, for the Latino population alone, over 11 million Spanish speaking people was used to foster a perception of an "illegal alien" invasion which was to blame for the economic recession and rising unemployment (Robledo, 1977).

In the face of this alleged invasion, individual states began to take the immigration issue as their own by passing policies either restricting the employment of undocumented immigrants (California) or banning the presence of undocumented children in U.S. public schools (Texas). In the latter case, a 1975 Texas' Legislature attempt to exclude undocumented immigrants from access to K-12 constitutes an

example of legislation targeting a select group of the school age population based on their race and national origin while using the fig leaf of immigration status.

Texas legislation impacting immigrant access to public education

This section first introduces the historical background that led to a 1975 Texas' legislature decision to exclude undocumented immigrants from public schools. It presents a brief description of the events that ultimately lead to the 1982 Supreme Court decision affirming undocumented students' right to attend public schools.

As shown earlier in this chapter, the presence of immigrants in U.S. public schools has often constituted an issue of debate. However, prior to 1975 there were only a few references as to the legality of their enrollment based on their immigration status. Below are two decisions that had bearing on the 1975 law:

> 1921 — Attorney General Opinion No. 2318, Book 55, p338 (1921) held that alien children have the same right to attend public free schools of the state as do the children of citizens of this state" (Opinion No. H-586, 1975, p.2).
>
> 1940 — Quoting from Tape v. Hurley, 6 Pac. 129 (Cal. Sup 1885) Attorney General Opinion O-2318 (1940) notes: 'As the Legislature has not denied to the children of any race or nationality the right to enter our public schools, the question whether it might have done so does not arise in this case'" (Opinion No. H-586, 1975, p.2).

In spite of these two previous legal opinions, the Texas State Legislature, alleging an economic burden in educating the growing immigrant population, decided in 1975 to exclude undocumented immigrants from K-12 on the basis of their immigration status. This exclusion was to be achieved through two methods. Public schools were allowed to demand proof of citizenship of certain students based on undefined criteria in order to deny admission to those unable to verify their legal status. The state was also to withhold from school districts those funds allocated to students deemed undocumented. Even where students were allowed to enroll they were charged for attending public schools.

Supporters of this law asserted that it would prevent immigrants from coming to the United States for the alleged purpose of sending their children to school. Supporters of that decision affirmed that drastic measures were needed to control immigration. It was argued that limiting these students' access would discourage their parents from coming to the United States while improving the quality of education programs ostensibly burdened by their presence.

The Texas legislature decision (codified in the Texas Education Code as 21.031), constituted the first affirmative step taken at a state level to deny undocumented children the access to an education thus provoking a series of lawsuits. The most renowned were those brought against the Tyler Independent School District (TISD) in 1977, and the subsequent legal actions against school districts within northern, western and southern federal district courts between 1977 and 1978. The lawsuit filed against TISD and its board of trustees, was referred to as *Doe v. Plyler*[4], while all the other ones became known as *In re: Alien Children Education Litigation*. In these two cases, the plaintiffs were children could not attend K-12 under the new statue because they were undocumented.[5]

In September of 1980 Judge Woodrow Seales of the Federal District Court for the Southern District of Texas, ordered school districts in Texas to allow the undocumented immigrant students to enroll in school pending decision of the higher court. "Following that order, the Texas Education Agency (TEA) conducted a survey in which school

[4]*Doe* refers to an anonymous party in a legal action. In this case *Doe* refers to the plaintiff undocumented children who, once the litigation began, had the legal burden of going forward with the evidence. Since the Fifth Circuit ruled in favor of them, the burden shifted to the defendants and therefore the suit became known as *Plyler v. Doe* (*Plyler v. Doe*, 1982).

[5]It is worth noting that even though *Doe v. Plyler* and *In Re: Alien Children Education Litigation* are the most prominent cases, there was an initial case filed in 1975 against the Houston Independent School District (Robledo, 1977). While in the Houston case the students were denied admission for the 1975-1976 school year, in the TISD case the plaintiff children attempted to enroll in the 1977-1978 but were denied admission unless they could pay a "full tuition fee" (*Plyler v. Doe, 1982*, p. 206). In the Houston case, the school district denied enrollment "except upon the payment of $90.00 per child per month tuition" (Robledo, 1977, p. 131). In the *Hernandez v. HISD* case, the plaintiffs were students who were in the process of obtaining documentation from the Immigration and Naturalization Service (INS). Additionally, in this case, some of the students were citizens of the United States but were unable to prove so and could not afford to pay the amount of tuition the school districts were demanding (Robledo, 1977).

districts were asked to indicate the number of undocumented children enrolled in their public schools" (IDRA, 1981, p. 1). TEA's survey was an attempt to circumvent the court's order by attempting to demonstrate an onerous economic burden imposed by educating these students. Such position indicated a disposition against the undocumented children, rather than a neutral stance.

At the end, both cases were resolved in favor of the plaintiffs, and the defendants (namely the district superintendents, their board of trustees, the State of Texas, the Texas Education Agency, and local officials) appealed to the Fifth Circuit, where the cases were consolidated. They became companion cases and were ultimately resolved by the Supreme Court decision known as *Plyler v. Doe*, which was finally adjudicated on June 15, 1982. The decision for the majority stated that "without an education, these undocumented children already disadvantaged as a result of poverty, lack of English speaking ability and undeniable racial prejudices...will become permanently locked into the lowest socioeconomic class" (*Plyler v. Doe*, 1982, p. 208).

In its defense, the State of Texas argued that 21.031 was simply a "financial measure designed to avoid a drain on the State's fisc" (*Plyler v. Doe*, p. 207). In its response to the state's claims of educational savings, the Supreme Court was forced to recognize the relation between the government's immigration policy and the economy's dependency on cheap immigrant labor. At the hearing of *Plyler v. Doe*, the Supreme Court observed that "government policies had resulted in the presence of a large number of illegal aliens whose presence is tolerated, whose employment is perhaps even welcomed as a source of cheap labor but nevertheless denied the benefits that our society makes available to citizens and lawful residents" (*Plyler v. Doe*, 1982). Additionally the high court found no financial drain.

Soon after the Supreme Court ruling in *Plyler v. Doe* and in the context of continuous immigration from Latin America, a legalization program took place during the Reagan administration. While the Immigration Reform and Control Act (IRCA) of

1986 extending amnesty to nearly 3 million undocumented immigrants, its provisions included restrictions on the financial aid eligibility of those unable to demonstrate their immigration status. Indeed, "Congress amended the education law in 1986 to require institutions to verify the immigration status of federal aid applicants" (Casey, 1996, p. 41). Undocumented students' access to higher education was further restricted in the nineties.

The nineties: State and federal attempts to revert *Plyler v. Doe*

While the 1982 Supreme Court decision in *Plyler v. Doe* became the law of the land on matters of undocumented children's unlimited access to public primary and secondary education, it did not stop nativist forces from trying to reverse such gains. Two proposals in the nineties, one at the state level and the other one at the federal, attempted to overturn that decision.

The first one was Proposition 187, which was placed in the California ballot in 1994 under the banner of Save our State (SOS). As in the past, xenophobic forces argued that "the multitude of problems facing California —economic recession, social unrest, high crime, environmental degradation- are being caused or aggravated by undocumented immigrants" (Tomas Rivera Center, 1994).

At the core of Proposition 187 was the denial of public services (K-12 among them) to the undocumented. In addition to denying access to educational and health services, Proposition 187 required that school and health officials report to the Immigration and Naturalization Service (INS) the presence of suspected undocumented immigrants on their premises.[6] This posed the question of what persons, or class of persons, would be subjected to scrutiny as to their citizenship or immigration status, and based upon what assumptions or criteria. Although this initiative was approved during the November 1994 elections in California, it was never enforced due to public outcry and the resistance exercised by various groups such as teachers and high school students who

[6] In 2003, the INS became part of the Department of Homeland Security.

organized large student walkouts in the Los Angeles metropolitan area (Los Angeles Times, 2004). At the court level, litigation was brought successfully challenging its constitutionality. In addition, Proposition 187 was not carried out because a federal court granted an injunction against the enforcement of this measure.

The other proposal, not so widely known, was the Gallegly Amendment, which would have allowed states to deny elementary and secondary education to undocumented children.[7] This measure was introduced by Congress members "from California who had been thwarted in their efforts to deny children access to education through a state referendum [Proposition 187]" (IDRA, 1996, p. 5).

The measure was initially included in the Immigration Bill (HR 2022) before Congress, which ultimately became the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Had it succeeded, it would have effectively overturned *Plyler v. Doe* and would have left it up to the states to provide or deny access to education for undocumented immigrants (Council of Great City Schools, 1996). Although it has been a question of much debate, the ban did not apply to U.S. citizen children of undocumented immigrants. In addition to IIRIRA, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), also signed by President Clinton during his second term, equally sought to limit the participation of immigrants in state benefits.

IIRIRA resulted in a direct increase in the number of deportations. That, along with the 2000 census figures showing a growing Latino population, whose growth is fueled by immigration, was used, again, to foster a perception of a huge "illegal alien" invasion. Such demographic growth, which has been accompanied by an increasing poverty and limited educational opportunities for this population, is examined next.

[7]"Congressman Elton Gallegly from California thus introduced an amendment to HR 2022, a comprehensive immigration reform proposal originally introduced by Congressman Lamar Smith of Texas" (Cortez, 1996, p.5)

DEMOGRAPHIC GROWTH

This study offers a timely analysis given the historic demographic changes largely caused by immigration over the past decade, when the number of new arrivals to the United States leaped by 13 million. According to Fix and Passel (2003), in 1990, there were less than 20 million foreign-born people in this country. A decade later, the 2000 Census revealed that in 2000, the foreign-born had increased to 31.1 or 11% of the total U.S. population doubling since the 1970s. These same researchers estimate that this number will increase to 13% of the total U.S. population by 2050 (Fix and Passel, 2003). An updated count of the U.S. foreign-born population, based on the March 2002 Current Population Survey (CPS), brings the population up to 34.5 million (Urban Institute, 2004b).

Immigrants are a growing subset of the minority population in this country. Murdock and Hoque (1999) point out that between 1990 and 1997, minorities accounted for 66.8% of the overall U.S. population growth.[8] They project an increase of 74.2 million Latinos between 1990 and 2050, making that population one of the fastest growing in the United States. Most of this growth is due to immigration from Latin America. These researchers estimate that immigrants will contribute 55% of total net Latino population growth by 2050 (Murdock et. al, 1999).

This rise in immigration has been accompanied by substantial growth in the undocumented population. Present-day estimates based on the Urban Institute's analysis of CPS data reckon that the undocumented population ranges between 9.3 million and 10 million, thus constituting 26% of the foreign-born population (Urban Institute, 2004a). Over 57% of the undocumented are from Mexico while 23% are from other Latin American countries (Urban Institute, 2004a).

[8]For the purposes of this literature review, references to immigrants allude to the foreign-born population belonging to ethnic minorities whose life circumstances in the United States and relationship with the dominant culture are defined by their collective experience of "conquest, slavery, annexation, or a racial labor policy" (Blauner, 1987, p. 151).

In summary, the prodigious immigration from Asia and Latin America, which has exploded since the mid 1990s, has contributed significantly to population growth trends. According to one observer, this was especially evident by 2000 when "the 'foreign stock' (foreign born plus the U.S. born second generation) population of the United States reached nearly 55 million people" (M. Suarez-Orozco, 2001, p. 348).

ECONOMIC TRENDS

Two primary factors contribute to immigration to the United States: the deteriorating social and economic conditions faced by working people throughout the Third World; and the seemingly inexhaustible demand for cheap labor in the United States. Conditions in the sending countries have triggered immigration flows for most of the twentieth century and will most probably continue to do so in the foreseeable future. At the same time, employer needs for such cheap labor will continue to influence U.S. government immigration policy (Meissner, 2005). This means that immigrants will remain important additions to the U.S. work force. The 2002 Current Population Survey (CPS) calculates that "while immigrants represent roughly 11 percent of the total U.S. population, they make up 14 percent of the U.S. labor force and 20 percent of the nation's low wage force" (Urban Institute, 2003, p.2).

Latinos register high levels of poverty primarily because of low earnings. In Texas, the majority of Latinos are in the lowest income categories. In 2000, Latinos represented 32.8 percent of families with incomes of less than $10,000 per year, 33.7 percent of household with incomes between $10,000 and $15,000 and 34 percent of houses with salaries between $15,000 and $20,000 (Murdock et al., 2003). Projections for 2040, estimate that the proportion of Latino families in poverty will increase to 58.6 percent of those families earning less than $10,000 per year; 60.5 percent of households making between $10,000 and $15,000 and 61.3% of homes with incomes ranging from $15,000 to $20,000 (Murdock et al., 2003).

As it pertains to the relation between socioeconomic level and education, similarly drawn estimates have found that "among low wage immigrant workers, nearly half (45 percent) have less than a high school education and over a quarter (28 percent) have not completed the ninth grade" (Urban Institute, 2003, p.3).

The problem of low educational attainment among immigrants contributes significantly to low earnings and high poverty levels among the Latino population. Categorized as Limited English Proficient (LEP) persons, immigrants register a low high school completion rate. The majority of them are Spanish-speaking. Almost 30 percent of workers classified as LEP have been in the United States for more than 20 years. Their low educational level is not likely to change in part because federally funded workforce training programs are only available to people who have at least a 9^{th} grade diploma, have minimal competency in English and can prove their legal status. Under these policies, undocumented immigrants are condemned to low wage jobs that require little formal education and proficiency in English.

As a readily available source of cheap labor, immigrants play a decisive role in the U.S. economy. According to the National Research Council (1997), immigrants provide as much as $10 billion to employer profits every year. That same study indicated that in 1997 immigrant households paid an estimated $133 billion in federal, state and local taxes (National Research Council, 1997). Taxes paid by immigrants are clearly substantial and boosts government tax coffers rather than depleting them as is often alleged (American Immigration Lawyers Association, 2004). The fact that profits exceed taxes clearly indicate that the $10 billion figure provide by the NRC is likely to be significantly higher.

Immigrants' undocumented status adds another element to the story of economic inequality. Since a significant percentage of foreign born workers work with false documentation, they are not be able to claim social wage benefits such as unemployment, workers compensation, retirement, disability or survivor benefits from the social security

system that they have financed. Simply put, undocumented immigrants pay into the system creating a surplus but are legally prevented from collecting as other workers do. According to the Social Security Administration, from 1937 to 2000, the amount of unaccounted wages reported under the Earning Suspense File (ESF) reached $374 billion (Mehta, Theodore, Hincapie, 2003). In the 1990s alone, "$189 billion worth of wages ended up recorded in the 'earning suspense file'" (Porter, 2005). Immigrant workers earned an undetermined, yet significant, portion of these wages. In addition, undocumented workers provide an annual subsidy of up to $7 billion a year, representing about 10% of the 2004 social security surplus (Porter, 2005).

The increasing number of immigrant workers in poverty has profound implications, especially for their youth. One of every six U.S. families with children is headed by a foreign-born worker. Not surprisingly, "nearly one fourth of all children of immigrants live in poor families," and "twenty three percent of all poor children in the United States are either first or second generation immigrants" (Urban Institute, 2001a). According to this author, Texas has the highest poverty rates for children of immigrants at 36 percent. Indeed, "nearly three-fourths of the children of immigrants in Texas live in families with incomes more than 200 percent below the federal poverty level (FPL)" (Capps, 2001, p.3). Immigrant poverty affects the well-being of youth in other ways. Overcrowded housing and segregated neighborhoods, for instance, characterize their life of poverty. Immigrant parents also often have difficulty finding affordable food for their children. Such living conditions in Texas are also exacerbated by the fact that 40 percent of immigrant children are uninsured. All of these factors have an impact in the educational attainment of immigrant students, as detailed in the next section.

LOW EDUCATIONAL ATTAINMENT

The effects of poverty are also evident in the educational record of immigrant youth. One of the most obvious is that immigrant youth perform poorly in the schools, graduate at low rates and are less likely than their counterparts to attend college.

Given the known demographic trends, growing numbers of immigrant youth will face these problems. According to Suarez-Orozco, "today one in five children in the United States is the child of immigrants, and it is projected that by 2040 one in three children will fit this description" (C. Suarez-Orozco, 2001, p. 579). Some observers predict that such estimates will be reached sooner (Fix and Passel, 2003).

Presently, the "foreign stock" population of children includes 10.5 million or 20% of the total U.S. school age population which has reached 55 million students. The majority of those students were born in the United States (76%). The remaining 24% (or 2.7 million) are immigrants (that is foreign-born of immigrant parents). Out of these 2.7 million, an estimated 1.5 million students are undocumented (Fix and Passel, 2003).

Given that much of the population growth during the past decade arises from immigration from Latin America, this section will present general educational characteristics of the Latino population (both U.S. born and foreign-born). In an attempt to set the context, specific factors affecting Latino immigrants are presented to elaborate further on the way in which legal status affects higher educational opportunities for immigrant youth.

In Texas, projections for the year 2040 suggest that the growth of the Latino student population will increase by 66.3 percent, registering a growth from over 1.5 million in 2000 to nearly 5.5 million in 2040. With their growth in K-12 grades, Latino students will also increase their enrollment in special instructional programs such as Bilingual/ESL, Economically Disadvantaged, Immigrant, Limited English Proficient and Title 1 programs" (Murdock et al., 2003, p.157).[9] These same authors estimate a 183 percent increase for the immigrant student population in Texas from 61,917 in 2000 to 182,485. While this number seems high, the actual size of the immigrant student population in any given district is, in fact, even higher. School counts of foreign-born

[9] ESL programs are designed for students learning English as a Second Language while Title I programs are for Economically Disadvantaged students. Immigrant students often belong to both categories.

students are based in the federal definition of immigrant children who have been in the United States for less than three years. In other words, governmental counts only include recent arrivals and exclude a number of other students, including those immigrants who have been in the United States for over three years and have been already being served by Bilingual/ESL programs, among others.

The increasing diversity of the student population has also raised other educational issues. The classification of foreign stock children is often associated with the term English Language Learner (ELL), a new term, which follows the more derogatory Limited English Proficient (LEP). ELL children total 2.6 million children across the United States. They represent about 5 percent of all the students nationwide, enrolled in K-12 (Fix and Passel, 2003). Out of those 2.6 million ELLs, or 46 percent (or 1.2 million) are second generation that is they were born in the United States of immigrant parents. The second largest group is composed mainly of first generation immigrant students (born outside the United States) who make up 35 percent of the total ELL population. The last grouping (19 percent) corresponds to what is defined as third and higher generations. In this category, both children and parents are born in the United States (Fix and Passel, 2003).

The historic segregation of Spanish-speaking Latinos causes half of all the students identified as ELL at the K-12 level to "attend schools where a third or more of their fellow students also have difficulty speaking English" (Ruiz de Velasco and Fix, 2002, p. 248). The implications of such educational segregation are profound in view of the fact that ELL students do poorly in standardized tests (McNeil, 2004). These combined factors have a negative impact on the statewide graduation rates.

Unfortunately failed educational approaches (increased high stakes testing, harmful retention policies, misguided or outright punitive notions of "zero tolerance" that disproportionately affect Latinos as well as African Americans particularly, poor quality of majority-minority public schools, etc) coupled with student poverty have resulted in an

inordinate number of immigrant students, most of whom are Latino, dropping out of high school (McNeil, 2004). In Texas, the graduation rate in four major cities fluctuates from a low of 47.61% in the Dallas Independent School District (DISD) to a "high" of 57.69 percent in Austin Independent School District (McNeil, 2004). This same author describes how the data, once disaggregated by race, reveals the graduation rate for Latinos oscillates from a low of 21.1 percent in DISD to a high of 30.1 percent in El Paso Independent School District.

The percentage of Latinos 25 years of age or older who have a high school degree has only increased slightly, from 44.6 percent in 1990 to 49.3 percent in 2000. While registering a 4.7 percent increase, the figure remains low compared to whites in the same age bracket. In 1990 81.5 percent of whites had a high school degree and 87.2 percent had attained that same educational level in 2000 (Murdock et al., 2003). These differing graduation rates also have an impact on the college enrollment patterns of this population. For instance, while in 1990 Latinos in Texas registered the low rate of 7.3 percent in college graduation, whites claimed a 25.2 percent figure. By 2000, Latinos had increased their rate to 8.9 percent. This increase was significantly lower than the 30 percent attributed to whites (Murdock et al., 2003).

As previously stated, income disparities by race coupled with low educational achievement levels also undermine the possibility of a higher education. Latino students who may qualify for enrollment at either a community college or a university typically lack the family financial resources to continue into post-secondary education. Worsening economic trends suggest that the problem will intensify. This is evident in the claims of financial need among Latinos in Texas and the decreasing allocation of state, institutional and federal funds for low-income students (Fernandez, 2005; Ludwig, 2005).

While 35 percent of Latinos in Texas reported financial need in 2000, 61.2 percent are expected to claim a need by 2040 (Murdock et al., 2003). The overwhelming majority of Latinos require the highest level of yearly assistance currently available. This

is true both at the community college level where 49.5 percent of Latinos have financial needs that cannot be met by household resources. At the university level, 34.8 percent experience similar demands. Such high percentages of Latino students in need will increase in the years to come. By 2040, Latinos will constitute 71.1 percent of the needy students at the community college and 57.5 percent at the university level (Murdock et al., 2003).

The increasing number of students in need, along with rising demand on state financial aid programs such as the Texas Grant (which allocated $300 million from 2000 to 2010) means that in order to cover college expenses most students will have to depend on alternative sources such as federal subsidized loans and work-related income (Murdock et al., 2003). These circumstances are particularly troubling for undocumented immigrants who are only eligible for state financial aid, are not eligible for work-study and face permanent impediments to finding employment.

Undocumented students represent a growing figure of the total population of foreign stock children in the United States (10 percent) and they face enormous and unique obstacles to higher education due to their legal status. Such obstacles increase their likelihood of dropping out and under perform. Indeed, undocumented students often leave school before graduating because they perceive that their path to post-secondary education is blocked by their immigration status and lack of financial resources (Urban Institute, 2000).

The educational circumstances of similarly situated immigrants in other parts of the country presents a number of similar challenges. The most salient obstacle is the fact that in most of the United States, undocumented students are required to pay international fees when attending institutions of higher education. With the exception of California, Utah, New York, Washington, Illinois, Oklahoma, Kansas and New Mexico undocumented immigrants in the United States are not eligible to attend college at in-state tuition rates or to receive federal financial aid. Increasing immigration and its

attendant effects on population growth mean that the estimated 65,000 undocumented immigrants who graduate from high school every year without the opportunity to attend college will only continue to grow. Discriminatory and restrictive legislation, at both the state and federal level, represent the most important immediate challenge.

STATEMENT OF THE PROBLEM

In light of the impact of demographic growth, along with increasing poverty and limited educational opportunities for undocumented students, this study examines education policies that seek to provide them with access to higher education.

Research Questions

1. What events led to the development of Texas legislation that provides access to higher education to undocumented immigrant students?
2. What has been the impact of Texas legislation on other states?
3. What challenges have states faced in the implementation of this policy for undocumented immigrants?

SIGNIFICANCE OF THE STUDY

Practical contributions

The practical contributions of this study are grounded in the historical role that Texas has played in the development of educational policy concerning undocumented students. Thirty years ago, in 1975, the State of Texas passed a law (TEC 21.031) to deny undocumented immigrant students' access to public education. In a lawsuit that reached the highest court, the Supreme Court decided in 1982 that undocumented students had the right to attend K-12 regardless of their immigration status. Almost twenty years after that ruling, in 2001, Texas became the first state to allow the same population of undocumented students' access to college at in-state tuition rates by passing HB 1403. Today, in 2005, the first crop of undocumented students is graduating from college in Texas without the opportunity to practice their degrees because, even after thirty years of

litigation over their right to an education, they remain undocumented and unable to make use of their training because of nativity strictures in employment. In this respect, the debate over access to post-secondary education for undocumented high school graduates has highlighted the need for proposals that would allow this population to adjust its immigration status as opposed to being the subject of greater immigration enforcement.

Given the future demographic projections, policy analysts have underscored the importance of increasing the educational level of all minorities. This is particularly important for undocumented students whose immigration status has traditionally prevented them from having access to institutions of higher education. However, from a public policy perspective, proposals to increase the educational level of undocumented immigrants are less than effective if they are not accompanied by additional legislation that addresses the fact that these college graduates are unable to work in this country because their immigration status.

The relevance of this study is heightened by the historical role that Texas has played in the development of educational policy concerning undocumented youth. The proposed analysis takes on a special significance because Texas was the last state to allow undocumented students access to K-12 public education, yet it was the first state to partially open the doors of higher education. Given that this state is a major immigration destination, Texas policies affect the rest of the immigrant population in the country.

The growing importance of higher education for immigrant youth, coupled with the changing demographic realities nationwide, mean that research into this subject will take on increasing significance for school districts, institutions of higher education and policy-makers alike.

THEORETICAL CONTRIBUTIONS

In 1982, supporters of the right of undocumented immigrants to a K-12 education argued before the Supreme Court that the equal protection clause of the Fourteenth Amendment applied.

From a democratic perspective, this research draws on the precepts of equal opportunity to argue for an expansion of undocumented students' educational rights to include higher education. While some researchers (Oakes, 1985; Wells and Serna, 1996) have drawn on the precepts of equality and equity guaranteed under the U.S. constitution to argue against school practices such as academic tracking, those same arguments have not yet been advanced vis-à-vis undocumented immigrants access to college. On the contrary, advocates of immigrant students have seldom used these arguments and have limited their position to human capital theories where education is desired as means to better jobs and in turn increased earnings, tax revenues and government savings in social services (National Immigration Law Center, 2005).

Equal access to higher education by undocumented immigrants is all the more salient given the economic contributions to the U.S. economy made by their parents (and many of these youth themselves who must also find employment while attending school). The lack of legal documentation, poverty and difficulty speaking English have determined that many foreign-born laborers and their immigrant children are limited to jobs that pay low wages coupled with miserable working conditions; jobs that in the U.S. economy are increasingly reserved for immigrant labor and undocumented workers in particular. From a perspective of democratic and civil rights, there is a clear dissonance between policies that exploit the labor of this population while denying them access to an education beyond high school.

In its ruling over twenty years ago, the Supreme Court referred to this fact. The majority decision pointed out that "without an education, these undocumented children, "[a]lready disadvantaged as a result of poverty, lack of English speaking ability and undeniable racial prejudices...will become permanently locked into the lowest socioeconomic class" (*Plyler v. Doe*, 1982, p. 208). Moreover, the high court decision underscored the contradictory nature of the anti-immigrant argument pointing out that undocumented immigrants are "encouraged by some to remain here as a source of cheap

labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents" (*Plyler v. Doe*, 1982, p. 219).

In this respect the argument that the denial of education creates a permanent underclass still holds as it is widely accepted that a high school diploma is not sufficient to acquire certain jobs. However, this research moves beyond arguments of economic contributions to address the links between policy over education and immigration. Specifically it addresses the fact that the debate among policy makers over access to post-secondary education for undocumented high school graduates has revived discussion concerning a fundamental choice over their immigration policy: should undocumented immigrants face more stringent enforcement of existing statutes, driving them further down into a caste-like status or should these immigrants be allowed to adjust their legal status to remain in the U.S. with the guarantees available to others?

From a democratic perspective, the implications of consigning an entire section of youth to a life of poverty simply because of their immigration status runs counter to purported values of equal opportunity and should be deeply disturbing to any serious educator.

Definitions

This study refers to common terms used in the immigration and education arenas. As a study on the issue of access, such concept can be defined as either the number of pupils that attend college immediately following high school graduation or by the number of students that receive a four-year degree (Bailey and Weininger, 2002). Contemporary definitions of access combine both approaches. Thus, access is understood as the likelihood that a high school graduate will enroll in either a two or four-year college and will graduate with a four-year degree (Bailey et al., 2002; Chaney, Muraskin, Cahalan, Goodwin, 1998; Harrington and Sum, 1999).

As it pertains to the focus of this study, this research is concerned with undocumented immigrant students. These are defined as children and youth who entered

the United States without documentation or whose documents expired while living in this country. They are a segment of the 'foreign stock' population which is defined as the foreign born plus the U.S. born second generation (M. Suarez-Orozco, 2001). The term undocumented, used throughout this study, refers to their lack of immigration documentation and it is used throughout because it bears no pejorative connotation unlike "illegal" or 'illegal alien". As stated by the head of the Georgia Association of Latino Elected Officials, terms such as "illegal" "serve to dehumanize the person, makes them less than human" (Worldnet Daily, 2004).

Limitations and Delimitations

Some of the general factors that determine immigrants' access to education include first generation college students, financial need, academic limitations, and language barriers among others. While those topics are pertinent, this study only treats the legislative initiatives, which have opened the doors of public and higher education to undocumented students.

CHAPTER SUMMARY

The proposed research is a historical analysis of educational policy in the State of Texas as it pertains to undocumented immigrant students. Beyond that, this is a study of implementation of educational policies and how certain policies become part of larger debates on social and political issues. The question of non-discriminatory access to post-secondary education is far from settled and remains a question of heated debate given that in most of the United States, undocumented students face current de jure and de facto exclusion from institutions of higher education.

This first chapter presented the topic in the context of immigration policy and offered supporting arguments based on demographic, economic and educational realities. Chapter Two introduces the literature review. Research on the issue of whether undocumented immigrants, a subset of the foreign-born population, should have access to

higher education is sporadic. Given the demographics and concomitant factors described in this Chapter One, this study should be viewed as an attempt to expand the research available, which has generally ignored issues faced by undocumented students and their educational access to institutions of higher education. Chapter Three introduces the methodology and in particular Sabatier et. al (2003) concept of Advocacy Coalition Framework. According to this model, the increase in the foreign-born population and the socioeconomic and educational implications of this growth has provided what Sabatier (1993) describes as "the constituency base for major policy changes" (p. 15). Chapters Four to Six will provide the reader with an analysis of the Texas policy and its impact in other states. It will begin by documenting the 2001 Texas law (known informally as HB 1403) that allows certain undocumented high school graduates the right to attend universities at in-state tuition levels. In documenting its passage, this research shows how HB 1403 uses traditional human capital arguments citing evidence that there is a higher cost in not allowing undocumented students the right to attend college. This chapter's initial section focuses on efforts by undocumented students and their supporters to obtain legal access to higher education in the State of Texas, and the process involved. It is bolstered, in chapters Seven, by an examination of the impact that legislation in Texas has had in other states, which have followed suit to allow undocumented students access to higher education. The relevance of this issue is predicated upon the fact that education of immigrant children has historically, been a contentious issue. It has acquired growing weight over the past decade in part because recent immigration is composed substantially of youth and current demands to extend post-secondary access to undocumented immigrants. Chapter Eight touches on some of the legal challenges these policies have faced. Chapter Nine addresses the challenge that research on this issue should tie the fight for educational access to the ongoing debate over the legalization of undocumented students. This last section of the dissertation ties the educational issues in Texas to the Dream Act, a senate proposal first introduced in 2001, which would legalize certain

undocumented immigrant students. This is crucial in states like Texas where the first generation of HB 1403 beneficiaries will start graduating in 2005 in Texas without the opportunity to work, unless they have been allowed to legalize in this country.

This study provides practical contributions as it identifies the role of casual demographic, social and economic conditions in the development of innovative educational legislative policies. As a recommendation, the last chapter addresses in particular, the need to advocate for this issue beyond a mere question of economic benefit but rather to defend undocumented students' right to an education as a matter of equal opportunity.

Chapter 2: *College Access*

This section introduces the definition of access and refers to (1) socioeconomic status (SES) and (2) academic tracking as determining factors impacting one's ability to enter an institution of higher education.

Access to higher education can be measured by either the number of pupils that attend college immediately following high school graduation or by the number of students that receive a four-year degree (Bailey and Weininger, 2002). Contemporary definitions of access combine both approaches. Thus, access is understood as the likelihood that a high school graduate will enroll in either a two or four-year college and will graduate with a four-year degree (Bailey et al., 2002; Chaney, Muraskin, Cahalan, Goodwin, 1998; Harrington and Sum, 1999).

The literature on pre-collegiate academic preparation identifies tracking of secondary coursework as one of the general schooling features that affect student access to post-secondary education. Much has been written on academic tracking and its effects on social stratification (Gamoran and Mare, 1989; Oakes, 1985; Wells et al., 1996). Beyond the fact that there is a circular and derivative, or causal relationship between academic and socioeconomic-class stratification and tracking, this section will focus on the impact of academic tracking on college preparedness.

Socially defined stratification is usually tied to the concept of tracking, namely, the assignment of students to courses based on their alleged interests, preferences and ability, as determined by school administrators (Quiroz, 2001) and student performance on what is represented as objective testing (McNeil, 2005). Gamoran et al. (1989) as well as Wells et al., refer to the enduring impact of academic tracking on students who graduate without "the proper high-status qualifications that allow them access to the most selective universities and to the credentials those institutions confer" (p.97). Following this logic, research on academic tracking has demonstrated that enrollment in college

preparatory programs has a positive impact on higher academic achievement and graduation rates (Gamoran et al., 1989; Nyberg, McMillin, O'Neill-Rood, Florence, 1997). A study by the National Center for Education Statistics (NCES) showed "a positive relationship between both the SES[10] quintiles and highest mathematics studied in high school and the students' likelihood of first entering a doctoral degree-granting institution" (Adelman, Daniel, Berkovitz, 2003, p. 22). These same researchers referred to the impact that the highest level of math taken in high school has on student probability of completing a college degree. They concluded that the rate of degree completion ranged from 60% for students who had taken pre-calculus courses to 83% for those pupils who had completed calculus (Adelman et al., 2003).

Gamoran's conclusion is decisive. He states that students who have been tracked into non-college preparatory classes have consequently been subjected to an "uneven quality of instruction attached to noncollege tracks [and] may in fact learn less or be less likely to realize their academic and vocational goals when assigned to a noncollege track than they could in a different track or in an untracked high school system" (Gamoran et al., 1989, p.1148).

Regardless of whether post-secondary access occurs via an "open admissions" college or a limited admission four-year university, the opportunity to enter an institution of higher education is determined by the ability to comply with formal academic admissions requirements as well as by financial circumstances. Academic performance and qualifications are significantly determined by socioeconomic factors, contrary to those who suggest that they exist independent of class and economic distinctions. Academic and economic variables have been identified as impacting college access (Nora et al., 2001) and are briefly described below.

Much of the literature argues that academic factors are major determinants in determining access to a college or university. Socioeconomic factors, however, are the

[10]Socio-economic status.

conditions sine qua non for success, serving as the genesis of success for some students, while acting as an obstacle for others' academic potential (Nora, 2001). Nora et al. (2001) refer to socioeconomic resources as "extrinsic pre-collegiate characteristics." These include work experience and family educational level, the latter described by Nora (2001) as "parents' education, socio-economic status and community of residence" (p.5).

Various studies have sought to document the impact of socio-economic resources on student educational achievement and hence college access (Murdock et al). Nora (2001) for instance, has noted that adequate financial resources enhance academic performance, campus involvement and persistence towards graduation among students enrolled in college. Indeed, as part of his research, Nora (2001) has reported that while the majority of low-income students (over 90%) need financial assistance to be able to pay for college, over 66% of that group rely completely on such aid.

Some of the literature has traditionally identified affordability as a major predictor of college access. However, a few recent studies have sought to elevate academic performance as the central factor in access, downplaying socio-economic status as a determinant (Harrington and Sum, 1999). These researchers' argument that "family income does not act as a substitute for academic preparedness" (p.16) is undercut by observations such as the following: "high income students with strong basic skills are nearly twice as likely to complete college (76% versus 36%) as low income students with similarly strong basic skills" (p.17).

The supporters of this argument contend that while ability to pay is an important determinant in a student's ability to attend an institution of higher education, college access is less a question of affordability than of individual academic performance. However, this assertion ignores the causal relationship between family income and academic preparedness, which is often advanced through at-home educational resources, private tutors, test prepping, broader cultural-educational outlook resulting from parental access to higher education or travel and the greater self-confidence and assuredness of

success of those students who have not lived in conditions of privation. Working class students simply do not have many of the advantages that middle class and wealthier students enjoy. While there are certainly many examples of working class youth who overcome such obstacles and excel, it does not change the fundamentally differential impact of class divisions.

MINORITY COLLEGE ACCESS

This section examines the literature on college access for minorities, especially Latinos, and concentrates on a description of the pre-collegiate academic factors that affect their opportunity to access post secondary education. A number of factors frequently undermine their chances of attending college. Specifically, overcrowded, segregated and poorly financed and equipped schools, as well as limited educational resources, and a dull curriculum that is often alienating reflect the environment that Latino students typically inhabit. Other debilitating factors include inadequate and outdated textbooks, a high teacher turnover, dilapidated facilities, teachers' often low expectations and a lack of encouraging advice from counselors and a generally hostile environment are factors which frequently doom student preparation, if any, for attending college (Gloria 1999; Olivas, 1982; Quiroz, 2001; Sanchez, 1951; Valencia, 1997). In general, the literature on this topic indicates that the failings of public school system represent major determinants in Latinos' low matriculation in institutions of higher education. The last section of this chapter addresses the special challenges to college access faced by undocumented immigrants due to immigration status and concomitant factors such as race, class and language.

Given the breadth of this topic, this literature review will first focus on the impact of segregated schools on minority college preparation. As Olivas (1982) points out, "the poor condition of Hispanic higher education is inextricably tied to the poor condition of elementary and secondary schooling for Hispanic children" (p.303). As the research summarized below has shown, most minorities attend highly segregated, poor,

understaffed and under-equipped schools, which determine conditions of unequal educational opportunity (Orfield, 2004). In this sense, access to higher education for minorities is a function of these students' previous academic experience, largely in public schools.

Segregation in education and housing based upon race and poverty has a substantial impact on students' academic preparation. Much of the literature has identified several characteristics in majority minority high schools that negatively affect student academic performance. These include high administrator and instructional turnover, teacher disinterest in students' performance in critical areas such as mathematics and science, disparate impact of standardized testing, inappropriate transferring procedures from bilingual to "regular" classes, and overall disaffection exhibited by educators either in the classroom, the hallways or the counselor's office (Abi-Nader, 1990; Gandara, 1995; Quiroz, 2001).

Above and beyond the political, social and economic factors affecting college access for Latino minorities (Gloria, 1999; Nora, 2000; Olivas, 1979, 1982) researchers have also identified factors that are harder to quantify. Although the use of race in the college acceptance process (e.g. affirmative action policies) will not be examined in this literature review, the paramount role of this variable should not be ignored.

Impact of Segregated Schools on Minority Student College Preparation

In the United States, as elsewhere, the confluence of a family's socioeconomic and educational levels determines not only where they live but where they send their children to school. Socioeconomic dynamics along with increasing housing isolation, carefully drafted school zoning policies and property ownership-based school funding formulas result in increasing educational segregation by race, class and language ability. Latinos, like other minorities, are workers in their majority and low wage earners—the product of class and racial conditions forcing into neighborhoods with sub-standard housing, where multiple families must live together in order to afford housing (Dohan,

2002). Orfield et al. (2004) have documented the link between educational segregation and poverty. During the 2001-2002 school year, in 88 percent of minority schools nationwide over 50 percent of the students were poor as determined by their eligibility for the free and reduced-cost lunch program.

The Latino educational experience has been historically defined by school segregation. While the presence of large, segregated Latino communities of student immigrant populations is a relatively recent phenomenon in many parts of the country, patterns of segregated education affecting Latinos have long been present in the Southwest. Among the pretexts for educational segregation and racial exclusion of Latinos were limited English proficiency and alleged limited academic potential (Donato, Menchaca and Valencia, 1991; Maldef, 2004). For instance, as early as the 1930s, the overwhelming majority of children of Mexican origin were shunted into separate classrooms or entirely separate schools (Maldef, 2004). The establishment of segregated "Mexican schools" or classrooms was done on the basis of so-called language handicaps, purported mental retardation if the students were older than their counterparts, and it was often done simply by last name or appearance (Maldef, 2004). Such overt rationalization of racist educational policy went unchallenged more often at that time. Today some, though by no means all, of those rationalizations have given way to new ones that are no less damaging and no more persuasive.

Besides racial and class segregation, the exclusion of Latinos by language and English language ability (Olivas, 1982; Plata, 1995, Ruiz de Velasco, 2002, 2004; Sanchez, 1951) not only affects educational placement in K-12 but subsequent entry to higher education (Friedenberg, 2002; Plata, 1995; Brilliant, 2000). In addition to establishing relationships between language competency and educational attainment, some of the research on this issue has illustrated the fact that language ability is a critical factor affecting college access for students identified as English Language Learners (ELL). Plata (1995) points out: "demonstration of writing ability is part of minimum

competency exams in the elementary grades, is an exit criterion for high school graduation, is used as a criterion for college level course placement, and…is a graduation requirement from college" (¶ 9). Indeed, not only does English language ability affect the chances that English Language Learners' (ELL) will graduate from high school, it is also a determinant of college admission exam results (e.g. SAT/ACT scores) and admission to certain universities[11].

Deepening race and class divisions in the United States accelerate trends towards highly segregated schools while at the same time diminishing the chances that students in those schools will enroll in institutions of higher education. The large number of majority minority schools marks an indisputable step back in the direction of segregated education, albeit de facto. The next part of this section will elaborate on the ways in the re-segregation of schools constitutes a denial of equal opportunities to prepare for college thus deepening the inequalities of students' preparation. As theories of educational stratification point out, the assignment of certain high school students to a less rigorous academic curriculum is an infringement of equal educational opportunities. In particular segregated schools offer few if any advanced secondary coursework and college preparatory programs. In addition to these factors, for immigrant students, language ability is a major determinant on college access.

The literature on college access (Nora et al., 2001) refers to pre-collegiate academic ability (e.g. performance in high school) as one of the main factors determining student opportunity to access either two or four-year institutions. Both Chaney et al. (1998) as well as Nora (2001) identify pre-collegiate factors as "secondary coursework, grade point averages, class ranks, and entrance examinations such as the Scholastic

[11]As an example, the University of Texas at Austin sends immigrant students who have taken English as a Second Language (ESL) courses a letter stating that they have a "deficiency" and are therefore unqualified to attend this university (regardless of their academic ability) unless they subject themselves to additional testing and instruction (Test of English as a Foreign Language (TOEFL) requirements and exemptions, UT website). Their academic accomplishments and the fact that many of those accepted to the University of Texas are in the Top 10% of their class are disregarded.

Aptitude Test (SAT) or the American College Test (ACT)…" (Nora et al. 2001, p.4). Some of the literature also refers to mechanisms that seek to increase student post-secondary awareness. Specifically various authors refer initiatives targeted to minorities in the form of pre-collegiate programs (e.g. federal TRIO programs), college preparatory curriculum (Gandara, 1995; Conchas, 2001; Nyberg et al., 1997) and enrollment in Advanced Placement courses (Olivas, 1982; Chaney et al., 1998; Nora, 2001).

Pre-collegiate academic abilities are influenced and determined in the first place by general prevailing socioeconomic conditions and forces. The assignment of minority students to segregated and inferior schools is tantamount to an intellectual and academic death sentence for the majority. In these schools, the proportion of pre-collegiate courses is minimal compared to the number of remedial classes to which they are assigned in disproportionate numbers (Orfield et al., 2004). The failings of public school systems and the means by which such deficiencies are mirrored in higher educational institutions, represent major determinants in Latinos' low matriculation in institutions of higher education.

To reiterate, socioeconomic factors (e.g. median annual incomes ranging from $10,000 to $15,000) with poor academic preparation explain the low attendance by Latinos in higher education. The additional problems associated with segregated and inadequate public schools along with college matriculation in the less prestigious and less well funded institutions (Olivas, 1982, p.305) complete the bleak picture that Latinos are facing. There is an added problem. Usually unable to afford any other option, and suffering from inadequate high school preparation leaves the student feeling intimidated by the prospects of attending a university. The stereotypes and biases that minorities experience in K-12 (Valencia, 1997) often cause these students to internalize such negative messages (Gandara, 1995) and to question their place in higher education (Gloria, 1999).

The role of institutions of post-secondary education

The convergence of all the factors examined in the previous section determines that those Latinos who do advance beyond high school are more likely to choose a college rather than a four year university as the starting point for their postsecondary degrees (Nora, 2000). Indeed, the literature indicates that most Latinos commence their post-secondary studies at the community college level (Adelman et al.; Bailey et al.; Nora, 2000; Olivas, 1982). Nora's (2000) extensive research has documented that "minority students represent 6 to 8 percent of all students enrolled in higher education, yet they constitute nearly 60 percent of the total enrollment in community colleges" (p. 3). More dramatically research by this same scholar, has found that the attrition rates for minorities in two year colleges is on average 60 percent reaching as high as 80 percent in some cases (Nora, 2000).

In recognition of the far-reaching consequences of the factors mentioned above, some of the literature has moved the focus of the discussion to the institutions of higher education (mainly two year colleges, which enroll most minorities). The underlying argument here is that higher education has to share the responsibility in developing strategic plans to improve the recruitment and retention of Latino students. This section reviews the role of institutions of post secondary education as determinants in college access for Latino minorities.

According to Nora et al., a considerable amount of the literature on higher education has focused on "students characterized as traditional age, generally white, whose parents or family members attended higher education [for whom] college was the next logical step, an expectation more than a choice" (p. 7). University recruitment strategies are thus implemented from the perspective of middle class students, particularly those who are white, whose circumstances offer the necessary infrastructure and preparation to be college-bound and who are most often inculcated with the self-confidence necessary to access and succeed in higher education (Gloria, 1999).

This approach, prevalent at two year colleges and four year universities, doom the retention strategies when they are applied to Latinos (Nora, 1987, Plata, 1995). For instance, a longitudinal study of 2,800 students using Student Support Services (which are part of the federally supported TRIO program to enhance participation of disadvantaged students in college) found that 35 percent of students reported after their third year in college that they were still classified as freshmen or sophomores, meaning they had failed to advance in their studies. Slow academic progress is especially common in community colleges, which deliver more remedial courses to incoming freshmen than universities (Bailey et al.; Adelman et al.).

This is an indictment of the abysmal quality of high school education. The disproportionate number of minorities enrolled in community colleges and their high participation in remedial courses — with the academic implication of student failure and boring repetitive content — has a negative impact on perceptions of self-worth and academic ability. A sense of alienation also affects the academic progress of Latino minorities in higher education. Nora et al. underscore the importance of pre-college psychological abilities and personal motivation that encourage students to establish goals towards graduation while becoming socially integrated in the institution they are attending. Gloria (1999) reports that Latino students in institutions of higher education do not benefit from an appropriate cultural ambiance. The author points to the absence of an inclusive environment, the under-representation of minorities in the faculty, administration and student body, the lack of diversity within the curriculum, little support from faculty and few links with the students' home community as some of the chief reasons why minorities, in particular Chicanos, have some of the lowest enrollment and graduation rates. Nora (2000) concurs that low academic expectations by faculty contributes to poor performance in key areas such as math, reading and writing.

Poor retention strategies for minorities combined with all the factors previously identified explain why the majority of students enrolled in two-year institutions are

nonwhite, over fifty percent of the degrees are earned by white students (Nora, 2001). In the case of four years institutions, Latino students rank second from the bottom in obtaining bachelor's degree followed only by Native Americans (Adelman et al., 2003). A National Center of Education Statistics (NCES) longitudinal study conducted between 1992 and 2000 found that out of two million participants in the study 49.7% of whites earned bachelors' degrees, while only 24.1% of Latinos did so (Adelman et al., 2003). Figures from other studies present a much lower statistic. In looking at figures from the 1990 census, Solorzano and Yosso () found that out of 100 Chicano elementary students entering the educational pipeline, only 6 received a bachelors' degree. Figures from the 2000 Census show a marginal increase with 11 percent of the U.S. Latino population having a college degree (U.S. Census Bureau, 2004).

The figures above confirm the fact alluded by most of the literature that the low educational performance at the college level is a direct result of high school preparation (Olivas, 1982) and family socioeconomics. Indeed, as described above, minority students often withdraw socially and eventually, academically (Chaney et al., 1998). The number of students who drop out or do not complete a four year degree (Bailey et. al, 2002) has led researchers to conclude that, "a reduction in the number of minorities at research universities, corresponding with high attrition rates and low transfer rates, will ultimately exclude people of color from fully participating in society" (Nora, 2000, p. 5). Such trends are even more acute in the case of those minorities who have been excluded from higher education on the basis of their legal status in this country.

The next subsection will review some of the literature on the question of college access for undocumented immigrants. This final section argues for the need for increased research on the various state policies that have allowed this subset of the minority population to enter into institutions of higher education.

COLLEGE ACCESS FOR UNDOCUMENTED IMMIGRANTS

Immigrant and undocumented students who graduate from high school face a number of additional obstacles in their quest for higher education. Like other minorities, immigrants enroll disproportionately in community colleges given their lower tuition, greater schedule flexibility, remedial coursework accessibility, as well as the opportunity to learn English, in order to acquire employment skills or transfer at some point to a four-year university (Bailey et al.; Brilliant, 2000). Immigrant students who grew up outside the United States also face the additional challenge of lacking cultural and historic references which are an integral part of education and testing.

The overall academic performance of immigrant students (Dozier, 2001) and the chances of graduating are a function of previously discussed obstacles in the community colleges (Nora, 2000). In a study of the City University of New York (CUNY) system, for instance, Bailey et al. found that immigrant students' likelihood of transferring to a four-year university and completing a bachelor's degree was closely correlated with nativity, race, ethnicity and whether or not the student completed high school in the U.S. or overseas. For instance, foreign-born students schooled abroad were more likely to enroll in a four-year program than immigrant students who attended school in the U.S.

Similarly, in a study of the academic performance of immigrants and natives in the City University of New York (CUNY), Bailey et al. found low transfer rates from community colleges to universities. This was evidenced in the fact that after eight years only one fifth of the students who had enrolled at a community college had earned an associate degree.

Inadequate secondary preparation also affects their expectations of academic success in college. Consequently, they often assume that this option is foreclosed. Some researchers have also pointed out that unfamiliar academic demands also affect the Latino students. This 'other side of the same coin' is manifested by those students who attempt higher education being overwhelmed by unfamiliar academic demands. For example,

"this is the student who wants to register for many more credit hours than can reasonably be handled or for courses for which he or she does not yet have the prerequisite skills" (Brilliant, 2000, p.580). In either case, the inability to achieve an adequate educational level (due to inadequate preparation or unrealistic expectations) along with the less than supportive role of college counselors (Clark, 1961), often leaves these students feeling inadequate. Indeed, research on this issue has identified the critical role that competent college counselors play in the overall adjustment of immigrant students in college (Chen, 1999; Brilliant, 2000; Lamkin, 2000; Peterman, 2003).

In addition to the intersection of pre-collegiate factors and pre-academic ability affecting most immigrant students, some 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, as described below.

Undocumented student immigration status prevents them from benefiting from federally funded college preparatory programs such as those under the TRIO program (e.g. Student Support Services, Talent search, Upper Bound, to name three of the six programs). In view of the poverty inevitably produced by government denial of a legal immigration status in the first place, this exclusion from college preparatory programs represents a considerable barrier even in those states where some legal obstacles have been lifted. While undocumented students may meet the general criteria for participating in the program (low income, first generation college students and/or physically handicapped), their immigration status denies them access. Equally discouraging, is the fact that most scholarship opportunities, although cast as decided by academic criteria, are limited to students who are permanent residents or U.S. citizens.

Secondly, and most importantly, 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. In other words, 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 seven other states, passed in-state tuition policies 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

The Urban Institute, based on 2000 data from the Current Population Survey, estimates that every year between 65,000-80,000 undocumented high school students graduate nationwide without any opportunity to attend institutions of post-secondary education. The numbers of undocumented high school graduates confirm the fact that the overall rise of the immigrant population has been evidenced not only in public schools but also in institutions of higher education (Bailey et al.; Brilliant, 2000; Lamkin, 2000; Peterman, 2003). Nationally, the Urban Institute estimates that the number of undocumented students who have been in the country for five or more years ranges from 7,000 to 13,000 (Urban Institute, 2001b, 2003). However, the actual figures must be much higher because Texas alone reported over 8,000 students enrolled in colleges as of the Spring of 2005 under the auspices of HB 1403 (See Appendix C) (Lewis, 2005).

This section examines the still meager literature on the first law allowing undocumented students access to college at in-state tuition rates. In 2001, Texas became the first state to pass a law intended to begin dismantling exclusionary practices at the

higher education level by allowing undocumented high school graduates who had resided in the state for at least three years, the opportunity to attend college at standard in-state tuition rates and receive state financial aid.

Following suit after Texas, several state laws have been passed that address the impact of immigration status on undocumented student entry into institutions of post-secondary education. California, Utah, New York, Washington, Illinois, Oklahoma, Kansas and New Mexico 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.

Minor exceptions to these general rules are variations in the amount of time required to establish residence: While most states with these laws have raised the bar by demanding three years of residency from undocumented students, New York's (SB 7784) and Oklahoma's (HB 1559) laws only require two years in the state while Washington's legislation (HB 1079) has kept the requisite at 12 months which is usually the time requirement for any person to establish residency in a given state (LEAP Educator, 2004). Most of these bills, with the exception of Texas, Oklahoma and New Mexico do not provide immigrant students access to state financial aid.

Although the issue of in-state tuition legislation for undocumented students has received growing attention, previous to this development in policy little had been published on this matter. Olivas conducted some of the earliest research. Olivas' piece (1986), together with a 1995 article by the same author entitled "Storytelling out of school", are valuable in that they move the discussion of immigrant presence in education beyond the K-12 arena, to document several court cases, particularly in California, where undocumented students attempted to gain access to institutions of post-secondary.

As mentioned above, given that Texas was the first state to pass this policy, the section below will concentrate on the research that has been published on this state's measure and the extent to which literature on this addresses other related issues such as the relation between state measures and federal legislation on the matter.

More detailed information on HB 1403 is found in three pieces published in Texas. Chronologically, they provide the supporting economic and demographic figures as well as a brief history behind the passage of HB 1403. The first, provided by the Harris County Tax Office (2000) and published before the passage of HB 1403 refers to the "magnitude of lost opportunity when high-achieving undocumented students, graduates of high schools in Harris County and throughout the United States, are denied a postsecondary education" (p.1). It provides demographic information on the rapid growth of the Latino population in the Houston area (where the bill was first conceived) and the abysmal dropout rate for this same population. From a purely economic perspective this proposal argues "providing undocumented students with a college education will provide increasing returns to taxpayers" (p. 2).

While this piece argues 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. This article describes the quagmire faced by these students who, without such a law, face

the impossible demand to pay "out of state tuition" rates which can be three to six times higher coupled with the fact that they cannot receive federal financial aid and have limited accessibility to scholarships and other kinds of financial aid.

The Harris County Tax Office (2000) concludes with three proposals: 1) the introduction of in-state tuition legislation for undocumented high school graduates, 2) the amendment of the Education Code to provide financial assistance to immigrant students in the top 10% of their class and 3) changes to the immigration code to grant legal status to students who entered and completed all four years of high school in the U.S. and who are in the top 10% of their class.

The other piece addressing HB 1403 was published by the Center for Mexican American studies at the University of Houston and it provides a "Profile of Undocumented Seniors in Select Houston Independent School District High Schools" (2002). While the figure may be larger this sample suggests that less than 10% of the total high school population of the 10 schools selected was undocumented. Such calculations were used in providing the State Legislature an estimate of the expected population that would benefit from a change in the policies.

The last article referring to this policy was written by Belanger (2002) and describes the obstacles confronted by undocumented Latino students in Nacogdoches, a community in East-Texas. Belanger (2002) briefly describes the steps that led to the passage of this bill, the arguments in favor of it as well as the projections by the Texas Higher Education Coordinating Board (THECB) for expected enrollment increases. Belanger (2002) states that "the State of Texas, in the passage of HB 1403, is challenging federal immigration legislation, policy and implementation" (p. 14). Below the question of federal policy banning in-state tuition for undocumented students is discussed.

Federal law vs. State Law

As detailed in Chapter One, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 contained a provision (Section 505) relating to states' implementation of in-state tuition measures for the undocumented.

Within the literature on college access for the undocumented, the impact of this provision on higher education is discussed by Casey (1996), Badger and Yale-Loehr (2000), Peters and Fitz (20001) and Olivas (2004). Both Stevenson (2004) and Peters et al. (2001) introduce the contradiction between state and federal policies which comes into being once the students graduate from high school. In other words, Peters et al. (2001) add: "initially the states are required to welcome these students [K-12] but at a federally designated time, they are required to cast them off" (p.2).

Undocumented students' presence in K-12 was reaffirmed in 1982 by a Supreme Court decision. The dissonance between federal mandates and state laws has been the subject of recent polemics in the literature on this issue. These have debated whether or not a federal prohibition exists barring undocumented students from attending institutions of post-secondary education. For instance, Peters et al. (2001) refer to HB 1403 as a measure that "circumvent(s) the [federal] prohibitions of Section 505" (p. 3) (Section 505 is explained below). Peters et al. (2001) further explain, "the approach adopted by Texas and subsequently pursued by other states, was to uncouple the determination of in-state benefits from residency per se…" (p.3). These scholars briefly mention similar measures approved in California and New York.

Casey (1996) argues that IIRIRA contains a provision (Section 505) which bars states from charging in-state tuition to undocumented aliens residing in their jurisdiction, arguing that in doing so "they would be treated more favorably than out of state residents who are citizens" (p. 2). While Peters at al. (2001) agree with the position that there is indeed such a prohibition, Badger and Yale-Loehr (2000) maintain that there is no such

federal law by stating that "no federal law prohibits undocumented students from attending public colleges or universities" (p. 414).

Olivas (2004) coincides with Badger et al. His most recent piece is helpful in that it dispels once and for all the myth that the states, which have approved in-state tuition policies, are doing so in violation of federal law. With this article, Olivas (2004) points out to the fact that Section 505 of the IIRIRA (1996) although it appears to strike down postsecondary benefits for undocumented students, in reality doesn't preclude states from conferring (or not) residency benefits to this population.

Even if the question is settled over the interpretation of federal law, the larger issue over the legalization of these youngsters remains. Pending proposals and bills (e.g. Dream Act, described below) have 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 adjusting their immigration status in the country where they have grown up.

Dream Act: Undocumented Students Legalize

The growing size of the undocumented population along with its dispersal to non-traditional destinations (states other than California, Texas, Florida, Illinois, New York and New Jersey) has made immigrant students' lack of access to higher education a nationwide phenomenon. As mentioned above, the fact that states such as Utah, Washington, Oklahoma and Kansas 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.

As discussed in their article "College for Undocumented Immigrants After All?" Mailman and Yale-Loehr (2001) explain that when it was introduced, and prior to compromises that watered it down somewhat, the purpose of these measures was threefold:

1. To repeal Section 505 of the IIRIRA of 1996 thus allowing states to determine their respective residency rules. This would permit undocumented immigrant students who have established domicile in their states, to attend college at in-state tuition rates.
2. To provide immigration relief to immigrant students in this predicament. In other words, it would effectively quash "removal" or deportation orders for these students, and would allow them to adjust their immigration status to that of permanent residents and eventually U.S. citizens.
3. A third provision, since removed, would have made undocumented students eligible for federal assistance such as Pell grants.

The Student Adjustment Act was reintroduced in 2002, 2003 and 2004. In 2003, it was reintroduced in the Senate under the Dream Act (S 1545) alongside its companion in the House (Student Adjustment Act, HR 1684). The 2003 proposal differs from previous versions in that it establishes a two-stage process to adjust a student's legal status (NILC, 2003). As Ayers (2003) explains, under the new provisions, eligible immigrant students would qualify initially for "a conditional lawful permanent resident status (LPR) provided the immigrant has completed either a bachelor's degree, two years in the Armed Forces or 910 hours of community service" (¶ 3).

Few research pieces have been published that address this legislation. While some are merely descriptive (Ayers, 2003; Salsbury, 2003), most support the passage of the Dream Act as a measure that would facilitate undocumented immigrants' integration into the fabric of U.S. life (Kragh, 2004) as well as an instrument to extend to this population some of the benefits available to those holding legal immigration status (Stevenson,

2004). A few also address the dichotomy between state and federal law in the implementation of these tuition policies (Galassi, 2003; Sebastian, 2002; Wishnie, 2001).

One of the most comprehensive pieces found includes Olivas (2004) "IIRIRA, The DREAM Act and Undocumented College Student Residency" which explores the ramifications of the Dream Act in the context of the September 11, 2001 events and the subsequent implementation of the U.S. Patriot Act.

As in previous articles, Olivas points out that the issue of undocumented student college admission is "alternatively, an admissions case, an immigration matter, a taxpayer suit, a state civil procedure issue, an issue of preemption, a question of higher education tuition and finance, a civil rights case, and a political issue. At bottom, though, it is a story about college-aged kids who have lived virtually all their lives in the United States and who want to attend college and enjoy the upward mobility a college degree provides" (1995, p.1021; 2004, p.36). In that respect while the in-state tuition laws allow these students the opportunity to obtain a post-secondary degree, current immigration federal law keeps them from being employed thus thwarting the possibility to enjoy the upward mobility conferred by their college diplomas.

CHAPTER SUMMARY

Immigrant access to education has been an abiding theme in U.S. public education since its founding. However, as demonstrated by this literature review, there has been modest research published regarding immigrant student access to institutions of higher education. The issue of how immigrant children "adapt and the educational pathways they take" (C. Suarez-Orozco, 2001) remains an area demanding additional examination. More recently, along with debates over language skills and academic achievement, the presence of these youngsters has spurred a discussion on their right to a genuinely equal opportunity to attend institutions of post-secondary education across the nation. It has also spurred some efforts to infringe on this right by selective enforcement of out-of-state residency tuition rates, therein presenting a de facto ban.

Given the scant research published to date, it is important to note that more information is needed on the laws providing in-state tuition to undocumented immigrants, the enforcement of these policies and their limitations. Indeed a more comprehensive study is needed that encompasses the reports found on this issue, one which can trace the arguments recycled in other states and at the federal level to deny these students access to post secondary education.

In particular, further studies should examine the extent to which these in-state policies provide college access as defined in the introduction. While these policies allow undocumented pupils to enter institutions of higher education, the retention aspect of college access is thwarted by the fact that in most states these students do not have access to financial aid and therefore face major obstacles in completing their degrees.

Finally, research on this issue should tie the fight for access to a college education to the ongoing debate about a legalization program for undocumented students. The last section of this literature review ties the educational issues in Texas to the Dream Act, the U.S. Senate proposal that would legalize a small number of undocumented immigrant students. Though less than what is needed this is crucial in states like Texas where the first generation of HB 1403 beneficiaries will graduate in 2005 in Texas without the opportunity to work, unless they win legal immigration status.

The proposed policy analysis takes on a special significance in Texas and it is not accidental that this was the first state to pass legislation that could begin to open the doors of higher education to the undocumented population. As a major destination for immigrants, Texas educational policies can have a broad impact on the immigrant population nationwide and on the broader society which must see this issue as one that affects every one, not solely immigrants.

Chapter 3: *Research Design and Methodology*

PURPOSE

The purpose of this dissertation is to conduct a policy analysis that will examine the specific question of undocumented students' access to higher education in Texas and its impact nationwide, both as a matter of statute and practice. In doing so, this dissertation applies policy analysis methodologies to detail the overall policy process composed of formulation, implementation and evaluation.

This dissertation begins with a historical analysis that will provide a context for an interpretation of the events leading to the 2001 passage of HB 1403, legislation granting undocumented immigrant students access to higher education in Texas at in-state tuition rates.

Beyond an analysis of Texas educational policy, this dissertation evaluates the extent to which policy innovations in this state have been replicated in other states and the potential for federal measures to expand this legislation nationwide to guarantee immigrant students access to college at in-state tuition rates, and ultimately prospects for obtaining permanent resident status in able to seek employment as college graduates.

RATIONALE

Theories of policy analysis refer to distinct sub-processes, which encompass formulation, implementation and evaluation. This format is in line with traditional analysis enabling the researcher to understand the different institutions and levels of government that come into play in the development of public policy (Easton, 1957; Kingdon, 1995). However, a policy analysis following this traditional framework ignores both the role of various non-governmental players and the fact that policy is not linear but it involves "interacting cycles involving multiple levels of government" (Jenkins-Smith and Sabatier, 1993, p. 4).

With the purpose of enhancing this inquiry beyond traditional frameworks, this study borrows from policy analysis methodologies especially those founded on democratic theories, which emphasize the role of various participants in the solution of what are seen as social problems. In particular, this dissertation uses an approach termed Advocacy Coalition Framework (AFC) by Sabatier and H. Jenkins-Smith (1993).

For the purposes of this study the relevance of the AFC is grounded in the fact that it is concerned with four main goals: (1) to explain policy change through an analysis of policy subsystems, (2) to analyze the role of state governments in the formation of *innovative policy*, (3) to examine the discretion exercised by states in interpreting and implementing federal law and (4) to understand some of the beliefs shared by members of a given coalition. Each one of these goals is analyzed below.

Policy subsystems. Advocacy Coalition Framework differs from traditional policy methods as it focuses on analyzing what is termed policy subsystems. The unit of analysis therefore, is not a governmental institution but the collection of individuals from public, private organizations and all levels of government who are active in both policy formulation and implementation. As it pertains to this dissertation, this method allows the study of the various actors who played a role in the policy enacted in Texas to allow undocumented students access to college at in-state tuition rates.

State policy. The Advocacy Coalition Framework parts from the understanding that (1) individual states exercise discretion in generating and implementing their own innovative policies and (2) the passage of such policies usually occurs at "a sub national level and then may get expanded into nationwide programs" (Sabatier, 1993, p.17). The rationale for using the aforementioned policy research method is based on the premise that it allows the researcher to go beyond an understanding of the internal dynamics in a policy generating coalition to assess the impact on the other states which have instituted policies on the same issue (i.e. undocumented student access to higher education at in-state tuition rates).

As mentioned in the previous two chapters, in addition to Texas, eight more states including California, Utah, New York, Washington, Illinois, Oklahoma, Kansas and New Mexico have passed measures effectively lifting the ban on undocumented students in higher education by allowing them to attend college at in-state tuition rates. The effect of Texas' policy on the decision of other states to pass similar legislation confirms the leading role played by certain states in the overall debate on immigration.

State policy and federal law. The discussion at the federal level is relevant because Texas, and the states which have followed suit, have asserted their right to apply their own state educational policies, in spite of opposition claims that in doing so they are violating federal policy. In addition, an ACF approach would allow the researcher to analyze legalization proposals such as the Dream Act—the logical next step at the federal level to address the issue taken by state legislatures. In other words, given that states have no jurisdiction over immigration matters, the Dream Act allows students who graduated from high school and entered college the possibility of adjusting their status to permanently live and work in this country.

Coalition beliefs. As mentioned above, traditional analysis of the policy process detail three major steps understood as policy formulation, policy implementation and policy modification based on evaluation. In all three steps of the policy analysis process, specific values are applied in the definition of problems as well as the identification and evaluation of policy alternatives.

From the perspective of this model (ACF), a shared set of beliefs constitutes "the principal glue of politics" (Sabatier et. al, 1993, p. 27). According to AFC, people who come together to work on a given policy issue adopt advocacy strategies in accordance with their viewpoints and do so out of conviction rather than convenience. In this respect, AFC holds that "the lineup of allies and opponents tends to be rather stable over periods of a decade or so" (Sabatier et. al, 1993, p. 27).

One of the main objectives of policy analysis is to structure policy options in accordance with certain values. Specifically, public policy analysis holds that problems are framed according to values of effectiveness, efficiency and equity.

Once an issue has been identified, advocacy organizations employ different mechanisms to present a set of recommendations to address the problem at stake. During this phase, values are included and decisions are labeled as either positive or negative. This phase is primarily concerned with the development of plausible arguments where information about a specific issue is translated into recommendations for governmental action. Plausible arguments have various rationales and thus involve access and equity considerations as well as fiscal and technical rationales. Much of the information on the topic relates to arguments of potential economic benefit in light of demographic changes.

From a traditional framework, once a problem has been structured and recommendations have been offered, an evaluation of the policy takes place. This view understands evaluation as an ex-post actual appraisal that determines whether a given policy and its consequences are in line with values of effectiveness, efficiency and equity. According to the ACF, the evaluation of a given policy is a constant process, best done through the eyes of coalition members who constantly redefine the problem according to their knowledge of remaining challenges. Those members who comprise the policy subsystem constitute the sample for this research. Methodological issues related to the research sample are described below.

RESEARCH SAMPLE

Advocacy Coalition Framework is primarily concerned with the role of those who have been instrumental in achieving policy changes over time. As such, the sample in this method is made up of those agents who "with relative regularity, follow and attempt to influence policy developments in a given issue area" (Sabatier and Jenkins-Smith, 1993, p. 241).

The sample for this study will be drawn from what has been termed as snowball or chain sampling (Patton, 1990; Kingdon, 1998) where key actors are asked to identify other critical players involved in the process at stake. According to this method, the snowball grows as interviewees suggest new names. In some cases, various informants may converge in their recommendations for follow-up interview. Patton (1990) points to the importance of those individuals referred by different sources. In summary, "the chain of recommended informants will typically diverge initially as many possible sources are recommended, then converge as few key names get mentioned over and over" (p. 176).

The role of these individuals has been amply described in the literature. Historical science research identifies them as knowledgeable informants who are defined as "a historical figure who has been in a position to gather reliable information" (Tuchman, 1998, p. 236).

For this particular study, key informants include students and parents affected, sponsoring legislators, university professors who have researched the issue, community organizations that advocated for the changes, teachers, politicians, public school and higher education administrators, judges adjudicating related cases and attorneys. These actors are useful in that they can corroborate, emphasize or even contradict what some of the written sources state about immigrant students' access to education. More importantly, interpersonal communications with these actors would familiarize the researcher with the most prevalent coalition values and beliefs.

The particular methods of data acquisition, from this and other sources, which will be employed for this research, are described below.

Data Collection Techniques

Qualitative analysis consists of three basic techniques to collect the data: "(1) in-depth open ended interviews, (2) direct observation and (3) written documents" (Patton, 1990, p. 10). For the purposes of this research, and in line with the data collection

approach taken by ACF, content analysis of written documents and open-ended interviews will be used.

In addition to the techniques identified, some researchers (Patton, 1990) have referred to the value of using multiple methods where both qualitative and quantitative data are included, arguing that "field work is not a single method or technique" (p. 244). The importance of mixed forms of data is grounded in the fact that using different sources allows the researcher to contrast, compare and cross-check the information collected. For the purposes of this research, this approach will be employed in order to provide a comprehensive policy analysis. The two main qualitative methods which will be used are, described below.

Content Analysis Method

From the perspective of ACF, this method is used to analyze "governmental and interest group documents to explore the beliefs, interests and policy positions of relatively large numbers of elites over periods of decade or more" (Sabatier et. al, 1993, p. 240). Patton (1990) describes the value of this method as: (1) being a basic source of information and (2) providing the researcher with additional questions that must be answered through additional interviewing and observation. Beyond coding the specific beliefs of the players involved in the passage of this policy, this method would allow the researcher to show the patterns and trends in the development of public policy concerning undocumented immigrant student access to higher education.

To identify those who have participated in the development of public policy and to examine their role within a particular debate, researchers conducting content analysis usually examine government records. For the purposes of this dissertation, this would include historical documents such as court records, public testimonies, personal observations of public hearings, transcripts from legislative committee sessions, issue related memos and personal correspondence between key actors in the process. Other key qualitative data sources encompass cross-national data, including primarily research

papers, newspaper accounts, official reports, manuscripts and interest group publications, which are analyzed to describe the historical context of the passage of in-state tuition laws.

In the case of the topic selected, additional sources comprise research articles (including electronic versions), monographs and annotated bibliographies. A review of the reference sections in those materials has proven very effective in revealing new data sources on this issue.

While some quantitative studies are employed, most of the sources consulted for this dissertation are qualitative materials such as relevant records and documents, which provide richer and more meaningful data on the phenomenon studied. Furthermore, qualitative writings provide an explanation beyond the "why" of these events to explain the origin of the laws that allow some undocumented students into institutions of higher education in certain states.

Given the breadth of materials potentially available on a certain topic, Patton (1990) notes that the researcher “should attempt to anticipate as many different sources of information as possible” (p. 233). A quick review of the sources identified so far, indicates three types of data: immigration documents, educational materials and legal sources. Immigration documents include those providing estimates as to the size of the undocumented student population in Texas, and nationally, along with research-based publications regarding the demographic and economic impact of immigration growth. Educational materials include school district materials and interviews with school administrators pertaining to policy implementation (i.e. directors of bilingual departments and immigrant programs in large urban school districts).

A review of legal sources yields another potential set of data to complement the study, among them: interviews with the attorneys that provided legal counsel to the state representative who introduced the in-state tuition bill, along with related records and briefs—some of which may be obtained through requests under the Freedom of

Information Act (FOIA). Also accessible under this category are law journals, law review articles, legal writings on current legal cases (e.g. in-state tuition for undocumented immigrants) and a wealth of materials on regulations, legal statutes and bills. Another important source of legal materials are the proceedings from the "Annual Higher Education Law Conference," as this gathering has regularly dealt with the issue of residency and in-state tuition for undocumented immigrants.

Interview Method

This is primarily comprised of "verbal data gathered in interpersonal interactions" (Mark, Henry and Julnes, 2000, p. 180). Patton (1990) has described this method as providing the researcher with "the most basic source of raw data in qualitative inquiry" (p. 24) as individuals express their "experiences, opinions, feelings, and knowledge" (Patton, 1990, p. 10). In depth, semi-structured interviews enable the researcher to reach conclusions concerning events referenced in various written documents. As indicated by Patton (1990), "qualitative data must include direct quotations from people" (p. 32). Indeed, when necessary and to illustrate the impact of Texas policy, quotes from personal interviews with the diverse constituencies will be included. This will allow the researcher, and in turn the reader, to understand the perceptions and experiences of the persons involved in the enactment and implementation of the policies affecting undocumented student access to education. Insights into the various levels and forms of commitment attached to these legislative efforts by students, parents, teachers, counselors, school administrators and policy makers will enrich the information that will be presented.

PROCEDURES

This section presents proposed research questions for interviews with key individuals and the examination of documents, and the procedure for their interpretation in order to reach conclusions based on the responses and findings. The last section

develops a procedure for the identification of key documents and provides the reader with a sample of the materials to be subjected to content analysis.

What events led to the development of HB 1403?

In order to identify key individuals and documents, a preliminary chronology of the events leading up to the passage of HB 1403 will be developed. This will assist the researcher in following the historical events from the introduction of the bill to the enactment of the legislation. This chronology will be developed as the researcher answers the first research question dealing with the circumstances that led to the passage of the 2001 law.

Further information on the passage of HB 1403 may be gathered through interviews with persons within Houston ISD who advocated for its passage. It is the largest school district in Texas and holds some of the constituency of the State Representative who sponsored the legislation. These informants include students involved, English-as-a-Second-Language (ESL) teachers in high schools with large immigrant populations, counselors, outreach workers and others instrumental in the passage of the legislation.

Also relevant in this section are conversations with community college board members familiar with the policy changes which admitted undocumented students to their institutions. There are, in addition, staff members with the Texas Higher Education Coordinating Board. It may also be appropriate to consult those university professors, either directly or their writings, involved in the passage of the legislation or who have followed the issue closely.

What has been the impact of Texas legislation on other states?

A number of studies employing the ACF approach recommend the creation of a database with the names and affiliations of those who have participated in hearings or who are listed in various documents as key figures. This section begins to develop such

listing starting with an initial chronology of the states that have passed policies alike those of Texas along with key individuals in the passage of such measures.

The key individuals who are identified below are drawn from a review of related documents, especially newspaper articles. This initial list of names constitutes part of the sample of potential interviewees who could recommend additional key players as suggested by snowball sampling techniques (Patton, 1990). By looking at their affiliations, this researcher may also identify other individuals in state universities and public community colleges, school districts and immigrant rights organizations.

Several professional organizations have published issue papers on this subject. Examples of this are newsletters or articles from organizations such as the American Association of State Colleges and Universities (AASCU), the National Association of College Admission Counseling (NACAC), National Association of Foreign Student Advisors (NAFSA), the National Conference of State Legislatures (NCSL) and the Texas Association of College Registrars and Admissions Officers (TACRAO) to name a few.

All of these should be considered as excellent resources that provide the researcher with insight into the debates within the higher education community as they pertain to the question of undocumented student admission and financial aid policies.

Table 1: Key individuals involved in passage of in-state tuition policies 2001-2004 (by date of passage)

State	Date signed	Name, number and principal sponsor of bill	Key individuals	Individuals' membership	Individuals' relation to issue
TX	June 16, 2001	Aliens Who Are Residents of Texas Based on Their High School Graduation or Receipt of a GED Certification, **HB 1403**, Representative Rick Noriega (D), District 145	Burgos-Sasscer Garcia Y Griego, Manuel Hines, Barbara Johnston, David Noriega, Rick	Former Chancellor HCC System University of TX-Arlington University of TX-Austin – Law S. Lee HS – Houston ISD State Representative (D) – Houston	Supported Noriega's legislation Written about issue Legal Counsel to Rep's Office ESL teacher pressing for legislation Sponsor of HB 1403
CA	October 12, 2001	Exemption from non-resident tuition, **AB 540** Assemblyman Marco Firebaugh (D), District 50, Assemblyman Abel Maldonado (R), District 33	Armendariz, Rosa Atkinson, Richard Bentley-Adler, Colleen Bernal, Belen Chavez, Leo Firebaugh, Marco Lundquist, Sara Walling, Esther	James Irvine Program University of California President CA State University spokeswoman Marco Firebaugh's office Anthropology Professor, UC Irvine Assemblyman (D) – Los Angeles Vice-president – Santa Ana College College Counselor – Los Angeles USD	Supporter of AB 540 Interviewed about issue Interviewed about issue AB 540 Sponsoring office Supporter of AB 540 Sponsor of AB 540 Supporter of AB 540, advocate for fin. aid Supporter of AB 540, Leticia A network
UT	March 6, 2002	Exemption from Non-resident Tuition, H.B. 144, 54th Leg., General Session (Utah 2002) Representative David Ure (R)	Bardsley, Ann Loudon, Joan Maak, Gerry	University of Utah – Public Relations State Representative David Ure's office Spanish teacher at Park City High School	Involved on issue HB 144 sponsoring office Pressed Ure to introduce legislation
NY	June 25, 2002	SB 7784, 225th Legislative Session, 2001 NY Session (NY 2002) Assemblyman Peter Rivera Assemblyman Adriano Espaillat	Arena, Michael Badger, Ellen H. Cortes-Vasquez, Lorraine Goldstein, Matthew King, Robert Schaffer, Frederick P. Schmidth, Benno	CUNY's director of media relations Dir. Intl Student Services SUNY- Binghamton President of the Hispanic Federation CUNY Chancellor SUNY Chancellor CUNY's Vice Chancellor for Legal Affairs CUNY's Vice chair	Interviewed about issue Author of several articles on the issue Applauded Pataki's decision to sign bill Applauded Pataki's decision to sign bill Interviewed about issue Author of changes in CUNY's policy Interviewed about issue
WA	May 7, 2003	HB 1079 Rep. Phyllis Gutierrez-Kenney (D), District 46 Senator Don Carlson (R), District 49	Carlson, Dan Gutierrez-Kenney, Phyllis Sanchez, Ricardo	Senator (R), District 49 Representative, (D), District 46 Executive Director of the Latino/a Education Achievement Program (LEAP)	Sponsor of HB 1079 Sponsor of HB 1079 Supporter of HB 1079
OK	May 12, 2003	HB 1559, 49th Legislative Session, 1st Reg. Session Kevin Calvey (R), District 94 Senator Keith Leftwich (D), District 44	Calvey, Kevin Leftwich, Keith Palacios, Maria Carlotta	Representative (R), District 94 Representative (D), District 44 Community Service Council - Tulsa	Sponsor of HB 1559 Sponsor of HB 1559 Involved with passage & implementation
IL	May 18, 2003	HB 60, Public Act 93-0007, Representative Edward Acevedo (D), District 2, Representative Mark H. Beaubien, Jr. (R), Dist 52 Representative Antonio Munoz (D), District 1	Cabrera, Tania Duque, Clarisol McCarthy, Mary Meg	Benito Juarez HS outreach to undoc. Immigrants Office of Senator Richard Durbin D-Ill Director Midwest Immigrant and Human Rights Center Heartland Alliance	Supporter of AB 60 Sponsors of federal immigrant legislation Supporter of AB 60
KS	May 20, 2004	Representative Sue Storm (D), Overland Park	Bautista, Ian Robinson, Reginald	El Centro Executive Director Pdent., Chief Exec. – Kansas Board of Regents	Supporter of in-state tuition policy Supporter of in-state tuition policy

What challenges have been posed in implementing this policy?

In order to answer this research question, this section discusses a section of the federal immigration law (Section 505 of the IIRIRA of 1996) which has been interpreted as prohibiting states from implementing in-state tuition policies. In doing so, it would chronicle the events in Kansas where the in-state tuition policy has been challenged in court. The procedure to be followed consists of a review of newspaper articles and content analysis of academic journals to draw a list of arguments favoring and opposing in-state tuition policies.

As detailed all throughout this chapter, AFC gives written documents a prominent role as the material that allows the researcher to examine the beliefs and values of a coalition along with the evolution of a given policy over time. The main procedures which have been established to gather these documents include:

(1) An inventory of materials to support the development of an initial chronology. The data outlined in the above tables contain some of the information necessary to complete a chronology of the development of in-state tuition policies.

(2) An ongoing web search for library databases and indexes to additional articles that would complement the information presented in the chronology. Merely exploring the UTNetCAT Library Catalog, allows the researcher to useful databases and articles such as the *Chicano periodicals* and *Project Muse*. Both sources provide extended access to relevant periodicals on the topic of interest.

The UTNetCAT Library Catalog also provides access to WorldCAT, which is useful as it allows retrieval of documents from all university catalogs in the country. These internet research tools are very useful given the fact that the topic chosen has not been extensively studied. Finally, the UTNetCAT Library Catalog also provides access to Government Information. Specifically, congressional publications and records are available through this source, as well as legal research and interpreter releases through the Tarlton Law Library. The UTNetCAT Library Catalog also provides access to some of the major national

newspapers which contain historical data as well as current information on the issue of undocumented students' access to higher education.

A review of some of the documents on this issue reveals three basic sources of information: (1) newspapers, (2) releases from state officials' offices and (3) academic research which also includes position papers by professional organizations invested in this issue and conference proceedings with their respective materials and list of speakers.

In general, starting in 2001, a vast amount of newspaper articles have been published on this issue. While they provide an update on the status of the different in-state tuition bills, with few notable exceptions they are similarly structured and their content is primarily anecdotal with stories about students seeking college access.

Given the limitations of solely looking at newspapers, this research draws on the importance of scholarly materials to move beyond a recapitulation of personal stories to advance sound arguments in support of these policies. Some of the scholarly papers dealing with this issue, which were referenced in the literature review, have been carefully examined to find further sources of information. While not exhaustive, the list below provides a fair amount of material on the issue.

It is pertinent to add that the amount of literature on this issue is closely tied to the relevance that immigration has in a given state. In that respect, little academic research has been published on the issue in areas which are not traditionally immigration receiving states such as WA, OK, KS and UT. As will be evidenced by the bibliography on in-state tuition for undocumented immigrants in those states much of the content analysis will be based on newspaper articles and press releases from the offices of the governor and the state representatives filing the bill. Those will be gathered directly from the state legislatures' website or directly contacting the offices of the sponsoring representatives.

Data Analysis

The data analysis process is composed of organization, description and interpretation of the data collected (Payton, 1990). Indeed, the data analysis process encompasses

description of the data collected and an interpretation of that information based on the research questions formulated at the beginning of the study. This is done with the purpose of allowing the researcher to determine what is "possible to answer with the data that have been collected (and) to suggest new possibilities that have emerged as the result of field work" (Patton, 1990, p. 376). In the case of applied research, the review of those initial questions takes places along with a reexamination of the original literature review. Revisiting published literature on the issue allows the researcher to determine the contributions of the study, therefore focusing the analysis. In summary, "the investigator has two primary sources to draw from in organizing the analysis: (1) the questions that were generated during the conceptual phase of the study and clarified prior to final analysis and (2) analytical insights and interpretations that emerged during the data collection" (Patton, 1990, p. 378).

When dealing with qualitative data, key processes of organization and description of the material are needed in order to analyze information gathered in interviews and written documents. As it pertains to interviews, cross-case analysis will be used to "group together answers from different people to common questions or analyzing different perspectives on central issues" (Patton, 1990, p.376). This method allows the analysis by major topics and it permits the researcher to present the values and beliefs of coalition members as suggested by the ACF approach.

In the case of documents, those are filed in different categories dealing with the various aspects of the debate on in-state tuition policies for undocumented immigrants (i.e. state measures, federal legislation, arguments in favor and against, etc). From this, an index is created with some of the most salient topics found in the literature on the issue. As indicated in the section on data collection techniques, "the process of labeling the various kind of data and establishing a data index is a first step in content analysis" (Patton, 1990, p. 382). Besides allowing the researcher to organize the data, it also points to "recurring regularities in the data" (Patton, 1990, p. 403).

In the procedures section, different matrixes were presented as an initial attempt to describe some of the critical events which have happened over time along with key players identified. Besides organizing the data, those tables provide the researcher with ideas on how to conduct the analysis by discerning meaningful patterns of the policy process. In other words, organizing the data in matrixes allows the recognition of causes, consequences and relationships among different elements in the formulation of a given public policy. The interpretation of the data means "attaching significance to what was found, offering explanations, drawing conclusions, extrapolating lessons, making inferences, building linkages, attaching meaning, imposing order and dealing with rival explanations, disconfirming cases and data irregularities as part of testing the viability of an interpretation" (Patton, 1990, p. 423).

Limitations

The section on data collection described above identified interviewing and content analysis as the basic methods which would be used to conduct this policy analysis. Given that each method has its own limitations, a multiple approach was suggested where each technique could complement the other.

The limitations of a policy analysis on recent developments are defined by the possibilities of accessing information on the topic. The very specific nature of this issue also limits the availability of data sources, although to a lesser degree. As discussed in the literature review chapter, the debate over access to post-secondary education for undocumented high school graduates has only recently begun to develop. Therefore, as it pertains to the written record, there exists only a modest amount of published research on the phenomenon. This obliges the researcher to rely on position papers written on the issue in alternative sources (newspaper articles, media segments in radio and TV, etc). The limitations of written material can be offset by interviews with key participants. While the interviewing process can be limited due to the personal bias of those consulted, the weight of one's particular emotions can be balanced through observation. Given the fact that this is a

relative new phenomenon, participatory observation is possible as many events of interest are currently taking place.

CHAPTER SUMMARY

This chapter has reviewed some of the sources, procedures and methods of analysis already identified which would be used to piece together the history of in-state tuition policies in Texas and seven other states. In describing the procedure to be followed for this dissertation, this researcher outlined the contributions from Advocacy Coalition Framework (ACF) to the study of this issue.

The data sources include records of legislative sessions, newspaper articles, position papers, releases from state officials' offices, estimates of immigrant population as well as court records. Along this process, lists of key documents and players were developed in order to identify some of the participants and material that would contribute to a better understanding of these measures. In summary, the data analyzed is composed primarily of interviews and written documents.

The data analysis section reiterated the importance of presenting the information in typologies thus allowing the researcher to organize the data and begin the interpretation process. As suggested by Patton (1990) both sources of data would be analyzed following consecutive steps of organization, description and interpretation of the material along chronological lines. Critical steps included an inventory of available documents, chronology of the case and an ongoing web search for updated materials or hard to find sources. The final goal is to conduct the analysis following the pathway established by the original research questions.

Chapter 4: *Historical and Legal Context*

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).

Due to their immigration and derivative economic statuses, most of these students are prevented from attending institutions of post-secondary education. In most of the states, universities classify these long-time residents as out of state or international students and charge them tuition rates that can be three to six times more than what state residents pay. Their poverty, in tandem with their immigration status, in effect, denies them admissions and federal financial aid.

The debate over access to post-secondary education for undocumented students has only recently emerged (AASCU, n.d., Alfred, 2003; Ayers, 2003; Badger, E., Yale-Loehr, 2000; 2002; Belanger, 2002; Casey, 1996; Galassi, 2003; Guillen, 2002; Mailman, S., Yale-Loehr, S., 2001; Mehta, C., Ali, A, 2003; Mindiola, T., Salinas, L., Eschbach, K., 2002; Ness Rhymer, 2005; Olivas, 1995, 2004; Peters, B. Fitz, M.,2001; Rodriguez, 1992; Romero, 2002; Salsbury, 2003; Sebastian, 2002; Sibley, 2004; Stevenson, 2004). This is evident in the increased research attention given to the subject. Despite the delayed scholarly focus on the question of undocumented students' access to higher education, immigrant access to education has been a constant theme in the history of U.S. public education since its establishment. The question of access to post-secondary education by undocumented students now joins a broader debate over educational policy in the United States. Although the debate over who should go to school has apparently been settled legally at the K-12 level, access to the post-secondary level is a question of heated debate.

This chapter revisits the historical context that brought to light the general issue of undocumented students' access to education. Brief mention is made of the 1982 Supreme Court decision enabling undocumented children access to K-12. That introduction is followed by a review of developments in the seventies that led some states to address the issue of non-citizens' access to higher education. Specific measures in Mississippi, New York and California are reviewed. Following this history, the reader is introduced to a litigation measure in California (Leticia "A" case), which for the first time caused the courts to address the problems affecting undocumented students as they sought access to college at in-state tuition rates. Following a chronological order, the chapter then moves to review the anti-immigrant Proposition 187 which sought to ban undocumented immigrants from having access to a myriad of benefits that included higher education. This chapter concludes with an examination of Section 505 of the federal Illegal Immigration Reform and Immigrant Responsibility Act, a provision that has been interpreted as preventing states from introducing legislation to allow undocumented students to attend college at in-state tuition rates.

The first well-known attempt to limit undocumented students' access to education focused on the K-12 level. One such measure was a 1975 law (Texas Education Code, Section 21.031) passed by the Texas Legislature, which denied undocumented immigrants access to K-12. The Texas law withheld funds from school districts that enrolled undocumented children.[12] This law also allowed public schools to demand proof of citizenship and to deny admission to those who could not verify their legal status in this country. A series of local lawsuits successfully challenged the constitutionality of that law, and in 1982 the U.S. Supreme Court reaffirmed the right of undocumented children to a public education. The *Plyler v. Doe* decision noted that the Equal Protection Clause of the Fourteenth Amendment also protected undocumented immigrants: that "a person's entry into

[12]The 1975 Texas law was codified in the Texas Education Code under 21.031 (See Appendix A for complete language of the law).

the state was unlawful doesn't negate the simple fact of his presence within the State's territory" (*Plyler v. Doe*, 1982, p.215). The use of constitutional guarantees to reaffirm students' rights makes *Plyler v. Doe* a key decision on behalf of immigrants' rights in the United States (Olivas, 1995, p.1039). The Supreme Court's decision, however, did not reach the realm of higher education. In fact, the Supreme Court has never "considered the constitutionality of denying higher education to undocumented immigrants" (Yates, 2004, p. 586).

Although the Supreme Court has not ruled on the question of access to higher education by undocumented students, litigation on their behalf was evident between 1975 and 1982, around the same time that various courts were addressing the K-12 case. This litigation, appearing in several states, contested the limitations placed upon legally admitted immigrants to by calling for their classification as residents for the purpose of paying in-state tuition and receiving state financial aid. The next section reviews such cases.

INITIAL ATTEMPTS AT IN-STATE TUITION FOR NON-CITIZENS

The mid seventies mark the beginning of anti-immigration legislation in the education arena (i.e. the Plyler case in Texas detailed above) and the birth of litigation against state statutes keeping non-citizens from being classified as residents for in-state tuition purposes. While Plyler addressed the admission of the undocumented in public education systems, some of the litigation described below applied to the rights of foreign-born students who had been legally admitted to this country yet were precluded from obtaining a higher education at in-state tuition rates. The issue of undocumented students' access to college first surfaced in California under the Leticia "A" case, which will be reviewed below.

The struggle for in-state tuition has involved a long history of battles against individual university systems and educational statutes in particular states such as Arizona,

California, Illinois, New York and Texas. This study will address the history of this struggle in Texas, California and New York, states that share a tradition of high immigration.[13]

Restrictive legislation has been in place since the mid seventies and has severely limited non-citizens' access to educational benefits such as in-state tuition or state-based financial aid. The following discussion provides a chronological account of cases involving states that sought to restrict access to higher education to non-citizens. It will begin with a 1974 suit in Mississippi, followed by a 1975 case in California and 1977 litigation against the state of New York. The common thread among these cases are discriminatory state statutes against non-citizens' participation in college. In all three cases, the complainants were foreign-born students who were allowed by immigration authorities to be in the United States.

Mississippi recorded the first case against a statute which determined that "All aliens are classified as nonresidents" (Maxwell, 1979, p. 519). This 1974 suit was brought by a family from Guyana with permanent residency in the United States and whose members had resided in the state between one and three years before they decided to enroll at Mississippi State University. Regardless of the fact that they had been legally accepted into the country and had domiciled in Mississippi, they were classified as nonresidents for tuition purposes. The family argued that the statute denied them residency and that it "violated the equal protection and due clauses of the fourteenth amendment" (Maxwell, 1979, p. 540).

In the deliberations that ensued, Mississippi had to demonstrate a compelling reason to maintain the statute primarily because the Supreme Court had decided in 1971 that when a state makes a "classification based on alienage, it shoulders a heavy burden of justification" (Maxwell, 1979, p.519). The state's arguments of fiscal integrity, that is that its educational funds were limited and thus should be only earmarked for U.S. citizens, were not compelling

[13]In non-traditional immigration receiving states, the regulations have been equally discriminatory. In states such as Delaware, for instance, the education code had a clause requiring one-year residence in the state along with proof of voter registration for both the alien student and his parents. Given that the constitution prohibits aliens from voting, the requirement effectively excluded non-citizens.

and therefore the state lost its appeal as it was unable to justify the regulations it had enforced against non-citizens. Furthermore, the court found that the law violated the equal protection clause (Maxwell, 1979).

In California, litigation goes back to the mid seventies when a case (Wong v. Board of Regents, 1975) was brought against the limitations that the California Education Code (CEC) placed on non-citizens access to higher education. The CEC stated that "only permanent resident aliens [were] eligible to receive resident tuition benefits and even then, the alien must have held the permanent residency status for the previous year" (Maxwell 1979, p.515). If the immigrant student was not an adult, the regulations also applied to the minor's parents. The Code contained an exception that allowed certain non-immigrants (e.g. visa holders allowed to domicile) "to be classified as residents if they had attended for at least three years and had graduated from a California *public* school" (Maxwell, 1979, p.519-520). Although the provision was repealed in January 1, 1978 such language became the core of the in-state tuition law passed by the California state legislature in 2001.

The Wong case dealt with a student who had lived in California for several years and was therefore a bona fide resident. Wong, a national of Thailand, entered the country on a student visa and lived in the United States for eight years. She subsequently adjusted her status to become a permanent resident. Five months before the beginning of the fall semester at San Francisco State College, she applied for admission. Wong had not been a permanent resident for one year, as the statute required, and was denied the right to pay in-state tuition fees. The requirement ignored that some non-citizens, such as she, were bona fide residents of the state and therefore entitled to such benefits. She challenged "the additional burden the statute placed upon alien students" on the grounds that "citizen students were only required to live in California for one year to achieve residency status for tuition purposes" (Maxwell, 1979, p.520). As in the Mississippi case, the plaintiff argued that the state had to justify its classification with compelling reasons. While the court agreed with the petitioner by declaring that the statute was unconstitutional and a violation of the equal protection clause,

the Court of Appeals reversed the decision. Although the California Supreme Court subsequently denied review of the case, it did not allow the lower court to publish its decision, thus rendering it ineffectual (Maxwell, 1979, p.520). At the end, the statute remained in the CEC and continued excluding, by implication, all those immigrants who had not been permanent residents for over a year. In 1977, two years after the Wong case, State Assemblyman Montoya filed Assembly Bill 459 which eventually passed. It eliminated the one year waiting period and allowed undocumented persons to be immediately counted as residents for tuition and apportionment purposes (R. Black, personal communication, June 29, 2001). [14]

The Mississippi and California cases were addressed at the state level. In 1977 New York became the first state to produce a case that reached the U.S. Supreme Court (Nyquist v. Mauclet, 1977). The statute required applicants to meet certain conditions in order to qualify for financial assistance, particularly loans. The applicant had to be a citizen or had to have applied for citizenship. The applicant who did not qualify for citizenship had to sign a declaration of intent to become a citizen as soon as possible or had to be "a certain type of refugee" (Maxwell, 1979, p.521).[15] The requirements did not consider long-term residency in the state to qualify for educational benefits. The suits, brought in federal district court, involved two legal permanent residents who were long-time residents of New York but had decided against becoming U.S. citizens. One was a French citizen who had applied for a state educational loan to cover his graduate studies at the State University of New York at Buffalo while the other was a Canadian national attending Brooklyn College who had been told by university officials "that he was qualified for and entitled to a Regent's Scholarship

[14]Apportionment refers to state reimbursements for college hours registered.

[15]As defined by the federal immigration agency, the Bureau of Citizenship and Immigration Services (BCIS), a refugee is "any person who is outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. People with no nationality must generally be outside their country of last habitual residence to qualify as a refugee" (BCIS, 2005).

and tuition assistance" (Maxwell, 1979, p. 549). In both cases, the universities denied them state-based financial aid because neither one wanted to become a U.S. citizen.

The petitioners prevailed in district court and the State of New York appealed to the Supreme Court, which consolidated the cases as Nyquist v. Mauclet (1977). The Supreme Court ruled in favor of non-citizens much like had been decided in Mississippi and California state courts. The high court decision held that "alien classifications are *inherently suspect* and thus subject to *strict judicial scrutiny*" (Maxwell, 1979, p.522). One of the state's main claims was that the statute was justified to promote naturalization and that the purpose of the "financial assistance program was to enhance the educational level of the electorate" (Maxwell, 1979, p.550). In their defense, the plaintiffs pointed out that such political guidelines were not required of students who were U.S. citizens. In response to the state's argument that it "had a legitimate interest in limiting its funds to those aliens who make an affirmative political commitment to the United States," the Supreme Court concluded that the "state had gone beyond its permissible limits" (Maxwell, 1979, p. 550). The Supreme Court determined that New York had not proven a compelling interest by excluding non-citizens and thus was in violation of the equal protection clause. The highest court additionally raised the point that it was not fair to discriminate against permanent residents who paid taxes and supported the very financial aid programs that excluded them.

While litigation was taking place in the Nyquist v. Mauclet, a similar case emerged in Maryland. State policies denied non-citizens who held G-4 visas as representatives of international organizations the opportunity to attend college at in-state tuition rates.[16] The case was first brought to district court in 1976 and was adjudged by the Supreme Court in 1982 under Toll v. Moreno, only weeks after the landmark decision in *Plyler v. Doe*. While the Supreme Court had based its decision in favor of undocumented students on the equal protection clause in Nyquist v. Mauclet (1977), five years later the high court "based its

[16]G-4 visas are granted to international organization officers or employees as well as to their immediate family members.

opinion on the premise that the federal government is preeminent in matters of immigration policy and states may not enact alienage classifications, except in limited cases of political and government functions" (Olivas, 1995, p.1047). Specifically, non-immigrants who had been authorized by the government to domicile could not be discriminated by state statutes.

In 1983, following the Supreme Court decision in Toll v. Moreno, the state of California decided to modify its Education Code "to eliminate the requirement that alien students seeking resident tuition rates prove that they have legal permanent resident status" (Yates, 2004, p.593). The changes enacted by the State Legislature under Assembly Bill 2015 (Agnos-D-San Francisco Bay Area), were short lived (Archie-Hudson, 1993). A year later, in 1984, the California Attorney General (AG) published an opinion classifying all undocumented students as nonresidents for tuition purposes under the state's Education Code, arguing that the changes brought by the Legislature the previous year had been made to "conform to Toll and had not intended to incorporate undocumented aliens" (Olivas, 1986, p.34). The AG rendered his opinion at the request of the Chancellor of California State University.

Following the AG's opinion, five undocumented students filed a lawsuit against the University of California (UC) and the California State University (CSU) systems "seeking a declaration that state law violated the equal protection clause of the U.S. Constitution" (Archie-Hudson, 1993). The case, initially filed under Leticia "A" v. Board of Regents of the University of California (1985) and which extended for over a decade shed additional light on the plight of undocumented students who had graduated from U.S. high schools and were long time residents of their states but were prevented from paying in-state tuition fees. The "Leticia A" litigation, as it became known, stemmed from the case of five students who had been admitted into the University of California (UC) for the 1984 fall term. The university had informed them that they had to pay nonresident tuition and fees (Olivas, 1995, p.1051). Leticia, the lead plaintiff, was initiating her undergraduate program at UC-Irvine (Ed Apodaca, personal communication, June 2005). The UC officials based their decision on

their interpretation of the 1983 bill passed by the California Legislature. It read: "[A]n alien, including an unmarried minor alien, may establish his or her residence, unless precluded by the Immigration and Nationality Act from establishing domicile in the United States" (Olivas, 1995, p.1051). Their classification as undocumented residents was made by default. Their lack of U.S. citizenship or legal immigration status rendered them, in the eyes of the university, to be automatically classified as international students subject to international fees regardless of the fact that they were long-time residents in the state. Although the Supreme Court had decided in the Plyler case that "an illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within the state," that same ruling did not guarantee them consideration for higher education (Plyler, 1982). In other words, the constitutional protections reaffirmed under the *Plyler* decision did not prevail as applied to undocumented students wishing to attend college.

The California Superior Court did not agree with the UC opinion, pointing to the fact that immigration laws on residence could not determine a non-citizen's ability to establish domicile and therefore qualify for in-state tuition. Additionally, the Court stated that the application of different criteria than the guidelines used to determine the residency of U.S. citizens was unconstitutional (Supinger, 1999). After all, many had resided in the state as long as any U.S. citizen. In his 1985 opinion, the hearing judge stated that "The policies underlying the immigration laws and regulations are vastly different from those relating to residency for student fee purposes. The two systems are totally unrelated for purposes of administration, enforcement and legal analysis" (Olivas, 1995, p.1053). With this judgment, the court struck down the residency provision in the CEC. Relying on the Equal Protection clause of the California constitution, the judge recognized, as in earlier rulings in other states, that undocumented immigrants were bona fide residents of the states where they have settled. Void of the provision in the CEC, undocumented students could be considered residents for tuition purposes and were also eligible for state financial aid under the Cal Grant program (Olivas, 1986, p. 42).

The initial ruling in the Leticia "A" case, adjudged in 1985, preceded the Immigration Reform and Control Act (IRCA) of 1986, which authorized the legalization of undocumented immigrants who could prove they had resided in this country since 1982. Clearly, the U.S. government made residency a requirement to be eligible for the benefits established under IRCA. In other words, state statutes were still claiming that undocumented immigrants did not have a right to reside in a state and that they were not eligible for educational benefits afforded to other state residents at the same time that federal legislation was ruling in a different direction. Restrictive legislation by the states conveniently ignored the desire of these students to attend college with in-state tuition rates.

In 1990, five years after the judge's initial ruling in the Leticia "A" case, a University of California at Los Angeles (UCLA) registrar named Donald Bradford "refused to administer the residency policy claiming it was encouraging illegal immigration and then filed a tax-payer suit challenging the position in Bradford v. Board of Regents of the University of California (Bradford I)" (Olivas, 1995, p.1054). A former official at the Office of the President of the UC system remembered that the issue had resurfaced when an undocumented student applied to UCLA medical school. Bradford claimed that the university was coercing him to commit an illegal act by asking him to process the paperwork for an undocumented person (Ed Apodaca, personal communication, June 21, 2005). In a clear setback for undocumented students, the Los Angeles County Superior Court ruled in favor of Bradford arguing that the 1983 CEC statute was constitutional because it precluded undocumented students from establishing residence. The CSU, however, was not named in the lawsuit. In the fall of 1991, the UC began implementing the exclusionary policies under "Bradford", "allowing continuing undocumented students as of June 1991 to keep their resident classification but requiring newly enrolled undocumented students to be classified as non-residents" (Guillen, 2002). What followed "Bradford" was a stream of policies reversing the gains that undocumented students had achieved in the mid eighties under Leticia "A". Such setbacks included the fact that the California Student Aid Commission no

longer awarded state financial aid grants to undocumented students. In addition, the California Community Colleges (CCC) also interpreted the rules to deny to undocumented students the possibility of being classified as residents for tuition purposes.

After the Bradford decision, the state found itself with dual interpretations of the law regarding undocumented immigrant students and their right to in-state tuition. Indeed, a decade of legislation had resulted in a mismatch of the application of residency policies as it pertained to undocumented students.[17] While they could be treated as residents at CSU, they were not able to acquire the same classification at any of the eight campuses of the UC system or any of the 108 campuses of the California Community College (Wilson, 1995). In addition, despite being classified as residents by CSU, they were treated as non-residents by the Student Aid Commission, the agency that administers the state financial aid, and therefore deemed ineligible for state financial aid.

The effect of conflicting practices resulted in a final lawsuit, which was filed to determine whether Leticia "A" or "Bradford" would prevail. The case, known as American Association of Women (AAW) v. California State University was brought by an anti-immigrant group, the Federation for American Immigration Reform (FAIR).[18] During the lawsuit, the judge ruled in favor of FAIR by prohibiting the CSU system from treating undocumented students as residents for tuition purposes. The final 1995 ruling from the California Court of Appeals ruled in favor of "Bradford", thus excluding undocumented California residents from being able to qualify for in-state tuition rates. The ruling was expected to affect an estimated 1,000 undocumented students out of a total enrollment of 320,000 students at the 21 campuses of the CSU system (Wilson, 1995). In spite of the incredibly low number of undocumented students enrolled (0.3%), the ruling did not contain any provisions to grandfather continuing students (Wilson, 1995).

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[17]"Between 1989-1991 in UC/1986-1995 in CSU, students who met state residency requirements were able to receive state financial aid and were charged resident tuition" (Barrera, 2002; Ortiz, 2002).

[18]Formed in 1978, FAIR was founded by Sierra Club members based on a platform combining environmental concerns with a mission of restricting immigration.

It was now the mid nineties and the California voters had approved an anti-immigrant Proposition. The next section briefly reviews Proposition 187 in California. Among many other assaults, Proposition 187 attempted to reverse the gains of *Plyler v. Doe* in the educational arena. This measure sought to completely deny undocumented students' access to public education, state hospitals and other benefits. Although this was only a state measure, it set the stage for broader attacks against immigrants at the same time that federal legislation imposed draconian measures against documented and undocumented immigrants alike.

Ending the "Illegal Invasion": Proposition 187 in California

In 1994, nativist forces in California placed Proposition 187 on the ballot and nicknamed the anti-immigrant proposal as Save Our State (SOS) initiative. They did this with the support of then Governor Pete Wilson who based his reelection campaign on an anti-immigrant platform. The Proposition, which was coauthored by Ron Prince and by former Immigration and Naturalization (INS) Commissioner Alan Nelson, had the strong backing of FAIR and other anti-immigrant groups such as the California Coalition for Immigration Reform (Sifuentes, 2004). At its core, Proposition 187, called for the denial of social services (i.e. public health and education), to the undocumented as a way to discourage immigration to the United States and thus save money to the state for the alleged costs incurred in providing services to this population. As the 1975 Texas law had attempted to do, almost twenty years before, Prop 187 sought to "show the federal government that citizens were displeased with their efforts regarding illegal immigration and spur Washington to do more" (Cooper, 2004, p. 3).

The approval of the Proposition generated an outpouring of opposition, which included several California school districts that sought injunctive relief (Carter, 1997, p.3). A week after it was approved, several court injunctions prevented its enforcement. Had Proposition 187 being enacted and enforced, it would have quashed the gains codified under

the *Plyler v. Doe* ruling.[19] The passage of Proposition 187 in California and the challenges that it engendered, shows that while the issue of undocumented students' access to K-12 appears to have been settled in the legal domain, its enforcement remains the subject of debate.[20]

The anti-immigrant forces behind this initiative blamed immigrant students for the increasing cost of education (Reich, 1995; Seper, 2004). These same claims were made in Texas nearly twenty years earlier, around the time of the *Plyler v. Doe* case. The similarity between the 1975 Texas legislated provision and the 1994 California ballot initiative is striking. Both laws attempted to deny educational services to undocumented students and both targeted the Latino population. The allegations of fiscal burden caused by immigrants implicitly promoted anti-Latino attitudes. Indeed, various authors have concurred that Proposition 187 not only attempted to deny educational services to undocumented students but also targeted the Latino population, especially Mexicans (Garcia, 1995; Johnson, 1995; Olivas, 1995; Tamayo, 1995; Rush, 1998; Cooper, 2004). While the exclusion of undocumented students from K-12 was at the core of Proposition 187, it was not limited to

[19]Due to their inability to implement the proposition, proponents of Proposition 187, and in particular previous supporter Ron Prince, tried again in 2004 to get the same measure (Save our State) on the ballot (Cobb, 2004). While they failed, supporters of similar measures succeeded in other states. The most renowned was Proposition 200 which was approved in 2004 in Arizona. Like Proposition 187 from California, FAIR funded it under the banner of Protect Arizona NOW. Careful not to conflict with federal law, Proposition 200 in Arizona "would require proof of immigration status when applying for child care, housing assistance and other benefits" but it would not "block federally mandated programs such as emergency healthcare [or] prohibit children from attending school" (Los Angeles Times, 2004). As with Proposition 187 in California, the measure attempts to pressure the federal government to increase the enforcement at the Arizona border, one of the busiest corridors for the entry of undocumented workers. As with Proposition 187, the Arizona initiative is under court review as the Mexican American Legal Defense and Educational Fund (MALDEF) has requested an injunction against the implementation of the law.

[20]School districts were at the core of the litigation and they remain the sites of ample debate to the present time. For example, a reported challenge to the Plyler decision took place at a school district in September of 2002, twenty years after the Supreme Court ruling. In this case, a New Jersey school superintendent denied admission to a group of five undocumented children. In an infringement of the Plyler decision, the Superintendent not only violated the students' rights by questioning the mothers about their immigration status but also threatened to turn them over to the INS. This particular case involved a group of Canadian citizens of Salvadoran descent. One can only conjecture whether these children's right to a public education would have been denied if they had not been Spanish-speaking Latin American immigrants. Those opposed to undocumented immigrants' access to a basic education, use immigration status as a pretext, while targeting students on the basis of their race. In the New Jersey case, the Superintendent was ordered to retract his decision. His retraction is indicative of the hostility frequently encountered by immigrants in their dealings with school authorities: "While *diversity* [italics added] makes conflicts inevitable, these issues are related to governmental legalities and not to our commitment to all children, regardless of race and color, gender, ethnicity, or origin" (Sutherland, 2003).

public education. Section 8 of the Proposition sought to prevent undocumented students, even if classified as nonresidents, from being admitted to institutions of post-secondary education by verifying every semester the immigration status of enrolling students (Alarcon, 1994; Cooper, 2004; Olivas, 1995; Stevenson, 2004; Yates, 2004).

Soon after Prop 187 had passed, six undocumented students brought action against the University of California (Yates, 2004). They had already applied with federal authorities to adjust their immigration status. Their suit claimed that Proposition 187 violated "the U.S. Civil Rights Act and a federal law requiring public education officials to keep students' records private" (Reid, 1995, p.17). In response to the lawsuit, an injunction by a San Francisco Superior Court prevented the enforcement of Section 8. However, a later ruling in a California Federal District Court did not enjoin the section. Finally, a Los Angeles Appellate Court deemed undocumented immigrants attending CSU ineligible for in-state tuition fees.[21] The UC was not affected by the decision as undocumented students wishing to attend there were considered ineligible for in-state tuition under the "Bradford" ruling in the "Leticia A" case (see previous section). The Appellate Court decision also mandated the California Community Colleges to charge undocumented students out-of-state tuition. The decision affecting CSU and the community colleges was expected to affect a total of 13,625 undocumented students (Reid, 1995). In a summary judgment, a U.S. District Court affirmed the right of the undocumented students to public education and health, while their access to institutions of post-secondary education remained foreclosed (Olivas, 2005; Stevenson, 2004). Indeed, the ruling stated that Section 8 was not unconstitutional.

At the end, while Proposition 187 could not be implemented, its supporters had achieved their goal of gaining the attention of the federal government. Referring to a proposal filed by a representative from California, Governor Wilson stated: "despite the adverse ruling on Proposition 187, California taxpayers should know that Congress has heard

[21]By imposing the burden of non-resident tuition fees, these statutes effectively keep undocumented students out therefore fulfilling the promise of Proposition 187 (Badger and Yale-Loehr, 2002).

our outrage and they are acting" (Bolson, 1995). While President Clinton had campaigned against the measure, he eventually sided with Proposition 187 stating that the federal government needed to do more to toughen immigration laws. The 1996 passage of both the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) delivered on that promise and went further than Proposition 187 supporters could have ever envisioned. As Wilson's successor stated: "the spirit of Proposition 187 lived on in the federal legislation that supplanted it" (Yates, 2004, p.595). Indeed, the 1996 immigration laws carried a larger attack against immigrants, both legal and undocumented, and remained "deeply rooted in the politics of racial anxiety and xenophobia in this country" (Alfred, 2003, p.631).

Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act

This chapter ends with a brief review of Section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the federal offspring of the anti-immigrant climate created by Proposition 187 in California. In particular, it discusses the contents of Section 505 of the IIRIRA.[22] Immigration opponents have portrayed this provision as allowing states to deny the Plyler beneficiaries the opportunity to enjoy any postsecondary benefit not offered to U.S. citizens. A brief description of this provision is important as anti-immigrant forces have argued that those states which have passed in-state tuition laws have done so in violation of federal law, particularly Section 505. The analysis of Section 505 is preceded by a review of the Gallegly amendment which attempted to overturn the gains in *Plyler v. Doe*.

The hysteria created by Proposition 187 lead to draconian legislation limiting immigrants' access to public benefits and undocumented students' eligibility for in-state tuition fees based on their residence in a given state. While these measures were touted as alternatives to reduce the supposed incentives for the undocumented to seek social services and other public resources, supporters of these measures sought to eliminate immigrants'

[22]Filed as HR 2022 in the House of Representatives. The Senate companion was S.1664.

eligibility entirely.[23] Indeed, during the deliberations that led to the 1996 immigration-spending bill, other restrictive proposals were considered but not approved. While they failed, the bills illustrate the anti-immigrant tone permeating the overall debate. In one such proposal, according to one observer, "Congress was considering legislation to make non-citizen students ineligible for federal aid for college tuition" (Reid, 1995, p.18). Such a proposal would have quashed the gains of the 1965 Higher Education Act under which federal financial aid was made available to permanent residents, refugees and to non-citizens with asylum status.

Other efforts, which did not result in legislation sought to exclude undocumented students from K-12. Indeed, a less notorious measure than Proposition 187 also attempted to overturn the *Plyler v. Doe* gains. This was the Gallegly Amendment (HR 1377), an initiative initially attached to the Immigration Bill which eventually became the IIRIRA. The Gallegly Amendment stated that "Congress declares it to be the policy of the United States that aliens who are not lawfully present in the United States not be entitled to public education benefits" (Carter, 1997, n263). If included, the Gallegly Amendment would have effectively overturned *Plyler v. Doe* and would have allowed states to deny access to public education to undocumented children.

While the Gallegly Amendment did not succeed and thus did not affect the enrollment of undocumented children in K-12, Section 505 of the IIRIRA sought to regulate the presence of immigrant students in institutions of higher education across the United States. Indeed, although IIRIRA could not overturn Plyler, it included a series of provisions (such as Section 505) that have been interpreted to prohibit states from allowing undocumented students access to in-state tuition rates. Thus, while the government had to concede that the question of access to K-12 had largely been decided in the court of public

[23]One news report noted that "For many of the nation's 11 million *legal* (italics added) immigrants, there may be no more student loans. No Pell grants for college. No health care under the Medicaid program. No subsidized English classes, federal job training or Head Start programs for preschoolers…About 400,000 students receive Pell grants, a primary form of federal financial aid" (George, 1996).

opinion, the IIRIRA drew the line on the issue of postsecondary access for the undocumented as explained below.

Section 505 affirms that a state cannot offer postsecondary education benefits to undocumented students on the basis of state residence "*unless* (emphasis added) a citizen or national of the United States is eligible for such benefit" (IIRIRA of 1996, Title V, 505(a)). As originally crafted, the purpose of this provision was to prevent states from passing in-state tuition laws for undocumented residents in their jurisdictions. The rationale behind this provision was that by allowing undocumented residents of a given state to pay in-state tuition, the state was placing a higher bar on residents of another state who were required to pay out-of-state tuition. In other words, the core of this provision was to prevent institutions of post secondary education from charging in-state tuition to undocumented aliens, arguing that in doing so "they would be treated more favorably than out of state residents who are citizens" (Casey, 1996, p. 2). In addition to making undocumented students ineligible for federal, state and local benefits, IIRIRA demanded additional immigration verification of legal permanent residents requesting financial aid.[24]

In spite of the fact that there are no guidelines regulating this provision, Section 505 has discouraged states from determining their own educational policies. The mere presence of the statute at the federal level has been mistakenly interpreted by many states as either a prohibition imposed on the states or as a section preempting the states from taking action on the issue of undocumented students and their eligibility for in-state tuition. In the end, Section 505 has effectively created, at best, a climate of antipathy and suspicion toward undocumented students, and immigrants of color by default, whereby institutions avoid

[24]While not discussed here, Section 506 and 507 also limit immigrants, legal and undocumented, access to higher education. Section 506 demands from the Comptroller General a report to "determine the extent to which aliens who are not lawfully admitted for permanent residence are receiving postsecondary Federal student financial assistance" (Pub.L.104-208 IIRIRA of 1996). Section 507 requires that the state and institutions of higher education transmit to the Immigration and Naturalization Service copies of documents of those requesting financial aid assistance (Pub.L.104-208 IIRIRA of 1996).

dealing with them for fear of being penalized by the federal government or simply because they represent added paperwork.[25]

In the context of the 1996 harsh immigration legislation, the issue of undocumented students' access to higher education appeared foreclosed. Since then, when dealing with the passage of IIRIRA and its clause pertaining to undocumented immigrant students' access to higher education, states have taken diverse approaches. In spite of the assumed federal prohibition of in-state tuition for undocumented immigrants, beginning in 2001 nine states have implemented legislation affirming their right to offer postsecondary benefits to all state residents within their boundaries regardless of their immigration status. The remaining states, which have refrained from passing such policies, have apparently assumed that federal law prohibits them. The pressure of anti-immigrant forces which has mounted in the aftermath of the September 11, 2001 events no doubt also discourages these states from acting on behalf of undocumented youth.

[25]These attitudes towards undocumented immigrants are long standing. A case in point was found by Nestor Rodriguez while conducting interviews in on the possible admission of undocumented students. He noted that "…an admissions-office worker indicated that his response to applicants seeking admission varied by the characteristics of the applicants. The office worker simply directed applicants who "look immigrant" or spoke with a marked accent to the admissions office for international students. Hispanics and Asians were usually the applicants sent by the office worker to the international-student admissions office" (Rodriguez, 1992, p. 48).

Chapter 5: *Prior Efforts in Texas to Increase Access for Undocumented Immigrants*

Chapter 5 provides an analysis on the events that took place in Texas in the years preceding the passage of the in-state tuition bill. It mainly examines changes at the district by community colleges and then at the state level by legislative policies which led to the passage of the first law in the country allowing undocumented students access to college at in-state tuition rates. Specifically, it begins with a review of successful campaigns within Dallas and Houston community colleges to offer in-district tuition to undocumented students and the initial efforts to press the Texas Higher Education Coordinating Board (THECB) to modify their rules, which affect immigrant students' access to institutions of post-secondary education. This chapter demonstrates that the victories at the community college level and within the THECB constituted the groundwork that made possible the successful passage of the first in-state tuition law in the nation.

While the issue of non-citizens in higher education was legislated and litigated in California with far-reaching effect, related regulations were also codified in Texas as early as the mid seventies. A Texas Education Code statute from 1976, for instance, established that non-citizens who had filed a declaration of intent to become citizens qualified to become residents for tuition purposes.[26] Such regulations also qualified these students for certain kinds of financial aid such as foreign student scholarships, exemptions, waivers and student loans.[27]

As in other states, the issue of non-citizens and in-state tuition first dealt with students who had started their adjustment process with immigration authorities. Beyond those who had filed to become citizens, there were initial efforts in Texas to extend in-state tuition benefits to other immigrant students. This was evident in 1993 when the Texas Legislature considered a bill to address the problems of "intending permanent residents or persons

[26] Texas Education Code Ann. 54.057.
[27] Texas Education Code Ann. 52.32, 54.051 (i)

permanently residing under color of law (PRUCOL)" (Olivas, 1995, p.1034).[28] Regrettably, the bill died in committee. The failure to pass this measure meant that immigrants who had permission to stay in this country but had not yet become permanent residents were not eligible for in-state tuition fees. Those students found themselves in a Catch 22 situation. While they had permission to be in this country, and even documentation to work, the fact that they had not yet become permanent residents, due chiefly to long immigration queues, meant that they were classified as international students ineligible to receive federal or state financial aid. In summary, up until the mid 1990s, attention centered on those immigrant students who had qualified under immigration law to become permanent residents yet who were ineligible to pay in-state tuition fees.

Earlier accounts of undocumented students in Texas tell a story of despair, regardless of their level of academic achievement and interest in higher education. They often faced closed doors as a result of their immigration status (Rodriguez, 1992; Treviño, 2003). In some instances, institutions of higher education expressed interest yet refused them admission and financial aid, and even stopped corresponding with them once they learned of their immigration status. One observer described this situation as the universities' "own version of the military's 'don't ask, don't tell policy'" (Mitchell, 2001). From the perspective of the affected students, "the educational system that built their hopes up and then denied them higher education" betrayed them (Rodriguez, 1992, p.39).

POLICIES OF INCLUSION AT COMMUNITY COLLEGES

The following section analyzes the advocacy work conducted by various actors to promote the passage of policies opening the door of community colleges in Texas to immigrant students. This analysis is based on an examination of policy subsystems, or "the interaction among different institutions who follow and seek to influence governmental decisions in a policy area" (Sabatiers and Jenkins-Smith, 1993, p.16). As demonstrated in the previous section, the issue of higher education for undocumented students has long

[28] *See* H.B. No. 2510 Introduced Version, 73rd Reg. Sess., April 28, 1993.

resonated within the immigrant community and among advocates for an expansion of democratic and civil rights for disenfranchised populations. Much of the change in policy occurred as a result of the work of immigrant students and their supporters, members of educational institutions both at the K-12 level and in systems of higher education and some state legislators as well. The involvement of the affected immigrant community was especially important because it demonstrated the abiding interest of undocumented residents in higher education (Rodriguez, 1992).

Examining policy changes at both the district and county levels in two community colleges, Dallas County Community College District (DCCCD) and Houston Community College System (HCCS) will clarify how such changes enabled developments that led to the passage of the in-state tuition bill in Texas (HB 1403).

DCCCD was the first community college in Texas to allow undocumented students to register at in-district tuition fees. In the fall of 1997, college administrators began discussing undocumented student admission. The central condition in the discussions was that they had to show proof that they had lived in Dallas County for over 12 months. With this in mind, the DCCCD requested the Attorney General's opinion on tuition classification rates for undocumented immigrants (Rodriguez, 1997). The question at stake was whether undocumented immigrants qualified to pay resident tuition rates. Until that time, for purposes of tuition, state residency had depended on federal immigration law. In other words, a person was eligible to in-district college tuition if he or she was a permanent resident or had the respective visa. Non-citizens who did not fit in these federal categories faced an onerous tuition burden even if they met state residency requirements.

The DCCCD administration sought to ascertain the application of the law concerning undocumented immigrant students with the objective of increasing their enrollment. Taking a different approach, the legal counsel of the Texas Higher Education Coordinating Board (THECB) declined to request the AG opinion arguing that existing law provided sufficient legal guidance on the matter. The THECB quoted the Texas Education Code 54.051(m),

which stated that "tuition for students who are citizens of any country other than the United States of America is the same as tuition required of other nonresident students" (Rodriguez, personal communication, January 12, 1998). According to that opinion, "tuition for all aliens, regardless of their legal status, would be non-resident tuition" (Rodriguez, 1997). In other words, undocumented students would have to pay non-resident tuition. Their enrollment rights were never questioned. The DCCCD consequently moved to "legally admit such students and charge them out-of- country tuition" (Wenrich, personal communication, March 22, 1999). After conducting an additional review of their rules, the college allowed them to pay tuition as in-district students because as the DCCCD Chancellor argued: "it is patently unfair to require students without status and who are residents of Dallas County to pay out of country tuition" (Wenrich, personal communication, March 22, 1999).

The initial proposal to consider a change in the DCCCD rules had been raised by some of undocumented students. The affected students, including an Irving High School valedictorian who had been denied admission to a four-year state institution, proposed the change before the Board of Trustees.[29] Even if admitted, he would still have been unable to pay the international fees, which were generally three times higher than the tuition paid by those classified as residents for tuition purposes. To exacerbate the situation, federal law prevented him from receiving financial aid and DCCCD did not provide students like him any state or local financial aid. Aware that many more shared his predicament, DCCCD made the determination to change their in-district policy. Board of Trustees Diana Flores actively promoted the change (Ray De Los Santos, personal communication, June 21, 2005). The chancellor reviewed the case and explained his position to the board by stating "we are not operating for the *migra* and we should not be keepers, our function is to educate the people that let us operate" (Wenrich, personal communication, October 10th, 2002).[30]

[29]At the time, the University of Texas at Dallas charged out of state tuition to undocumented students (Szelenyi and Chang, 2002).

[30] "Migra is a derogatory term for the Immigration and Naturalization Service" (Olivas, 1995, p. 1019).

In January 1998, DCCCD passed a district-wide policy to admit undocumented students and classify them as in-district students. The only stipulation was that they had to have lived in Dallas County during the previous twelve months. With this move, the college was recognizing the presence of undocumented students as residents of the county and extending the benefits that such presence entitled. The Chancellor's memo explained it in similar terms: "The policy of inclusion is based upon the fact that such students and/or their families have paid taxes either directly or indirectly to the support of this district" (Wenrich, 1999). The changes in the policy had the blessings of the college's Board of Trustees and the Chancellor's Cabinet. The support, however, was not consistent or complete. Some college officials used THECB rules and regulations to argue that DCCCD was mistaken and jeopardizing state funds (Wenrich, 1999).[31] Despite these obstacles within the college, the policy was implemented and became an inspiration among immigrant advocates in other areas of the state.

While this was taking place in Dallas, David Johnston, a high school teacher of English as a Second Language (ESL) in Houston had begun to organize a group under the name of *New American Student Coalition*. In letters to community colleges he described the plight of immigrant students and noted the refusal by public and private colleges and universities to admit undocumented high school graduates without a student visa (Johnston, 1999a). He related to Houston Community College System (HCCS) administrators that a large percentage (up to 40%) of students in the school where he taught could not attend college because of their immigration status. He urged "local colleges [to] adapt their admission policies and financial aid structures to help ease the burden facing inner city high schools with high populations of undocumented students who drop out" (Johnston, 1999a).

[31]Opponents of the changes referred to state audits which at the end never took place because the students under the DCCCD policy were not classified for state reimbursements. Under the DCCCD policy, the college could not submit the credit hours completed by undocumented students for state reimbursement. A portion of that cost was covered with local funds from the college. Public universities, on the other hand, do not have that option because they do not have local funds to support the cost of that enrollment.

The teacher's advocacy began to resonate among other persons who were also concerned about undocumented youth. In the fall of 1999 a small committee composed of a handful of Houston school district employees along with a university professor, a few immigrant students and some members from community-based organizations was formed under what became the Coalition of Higher Education for Immigrant Students (hereinafter *Houston Coalition*). The coalition eventually incorporated city government officials, private businesses and an incredible array of university and school district representatives. The Houston Coalition provided the grassroots support needed for the eventual passage of the in-state tuition policy.

The Houston Coalition's main objective was to "change state residency laws that exclude graduating high school immigrants from higher education and educate the community about the serious educational problems and obstacles faced by immigrant students" (Johnston, 2000, p.1). One such problem was their dismal graduation rates in districts like Houston ISD. The other problem was that undocumented students were generally not accepted by institutions of higher education and when allowed to enroll were charged non-resident tuition.[32] Initial meetings, as early as the fall of 1999, addressed the importance of formally establishing the group, the need to raise money for scholarships for immigrant students and the urgency of conducting community outreach, mainly in the Latino community.[33] Soon after it was established, the group began working on behalf of policy

[32]The University of Houston-Downtown, an open admissions institution, had established an application process since May 13, 1997 under which undocumented immigrant students out of status had to fill out a form entitled "Undocumented Immigration Form." The form required the students to certify that they had graduated from a Texas high school and were undocumented and therefore had to pay non-resident tuition. In compliance with rules from the THECB on competitive scholarships, the university also offered an academic scholarship, open to all students regardless of their immigration status, which allowed the awardee to receive a waiver of out of state tuition. Similarly, other schools allowed these students to enroll (University of Houston-Central and Prairie View A&M University) classifying them as out of state residents or international students (Houston Forum, 2001). The University of Houston did not report the students' immigration status, but placed them in a limbo classification known as "X-1" (Houston Forum, 2001). Prairie View A&M University coded them "XX." Commenting on similar procedures at other universities, Badger and Yale-Loehr (2002) note: "there has probably been a deliberate (and probably wise) decision not to maintain records on undocumented students" (p.12).

[33]Besides the obstacles in the admission process, undocumented students also faced the limitations imposed by private organizations as it pertained to scholarship funds. As an example, the "Go Tejano" committee, organizers of the annual Houston Rodeo, changed the eligibility of their scholarship to require proof of

changes. The coalition first set their eyes on the Houston Community College System (HCCS). Like the effort involving the DCCCD, the Houston coalition appealed to the HCCS board. In preparation to address the board, Johnston had contacted Chancellor Wenrich to get an understanding of their policy changes and their impact. Johnston obtained copies of DCCCD application for admission, which included the category of undocumented students, to share with members of the board.

During this period (1999), the Houston Independent School District (HISD) was being touted as one of the premier school districts in the nation and was receiving recognition for its application of the federal government's accountability system. Notwithstanding this attention, HISD was not able to assist a good percentage of its foreign born students with their college plans. Of the 210,000 students enrolled in HISD during the 2000 school year, 40,000 were born outside the United States. Over 14,000 of those 40,000 had been in the United States between one and three years, adding to the prodigious diversity of a district incorporating students from over 130 countries (HISD, 2000). About 11,000 of the whole student immigrant population lacked social security numbers.[34] Therefore, a segment of these undocumented students passing through the secondary grades each year faced a fundamental dilemma in the schools: they continued with their classes without any prospect of attending post-secondary education or without realizing that their college opportunities were foreclosed due to their immigration status. Their choices were mostly to drop out or join the labor force upon high school graduation.

During the fall of 1999, Rosendo Ticas, one of the students caught in this dilemma, brought the issue to light. A young Salvadoran who had dropped out from a Houston high school, Ticas had obtained a General Equivalency Diploma (GED) and was doing odd jobs, though he aspired to become a pilot. Ticas' immediate goal was to register at the Houston

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citizenship. This move, effective in the fall of 1997, came as a result of the anti-immigrant mood resulting from the passage of the IIRIRA in 1996. Up until then, the scholarship had been open to permanent residents.

[34] As per the 1982 Supreme Court decision (Plyler v. Doe), public schools were forbidden from asking students for their immigration status. However, some of these students are easily identified. Since they do not provide a social security number upon registration, schools assigned them a state identification number. Many, if not most, of the undocumented students in a given school or district had such a state identification number.

Community College System (HCCS), in their certification program for aviation mechanics (Noriega, 2000b). As for many other immigrant students who wished to enroll at HCCS, both for continuing education courses and regular credit classes, Ticas was prevented from doing so because he was undocumented. The need for a change in the policies became salient by the fact that HCCS de facto barred Ticas by refusing to recognize his state residency and consequently imposed non-resident fees. Ticas approached State Representative Rick Noriega from Houston. After hearing Ticas story, Noriega, along with other community members, approached the chancellor of HCCS and suggested that they consider the DCCCD policy, at the time the only one of its kind in Texas. This action by Noriega marked the beginning of a joint campaign by a network of concerned community advocates which began to operate during this period on behalf of undocumented students wishing to attend college. A meeting before the Board of Trustees was the next step.

Noriega, Ticas, Johnston and other advocates for immigrant rights prepared for this gathering by identifying each member of the Board of Trustees to wage a letter-writing campaign that included the Chancellor. In these letters they had argued that the college should also serve the growing immigrant population. They were favored by the fact that Chancellor Ruth Burgos-Sasscer, a Latina of Puerto Rican descent, was very sympathetic to changes in the admission policies that would fulfill the *community* mission of the college.

At the community college board meeting Ticas, accompanied by Noriega, argued in favor of a change in the policy because had completed his secondary education in the United States and paid taxes. He posed two basic questions to the board: (1) Why should he be denied the same educational opportunity as other residents and (2) why should he be required to prove citizenship status? In his address to the board members, Noriega referred to a report by the governor's office, "Moving Every Texan Forward" which proclaimed that the state sought to narrow the gap between high school graduation and college attendance. Noriega used the document to argue in favor of a change in the policy. Other supporters of immigrant students also attended this meeting, including Johnston, the concerned teacher. Johnston was

especially effective by reporting that the DCCCD already admitted undocumented students. In the interim, college administrators seeking to help Ticas awarded him a scholarship to HCCS. Ticas' admission, however, brought the issue into sharper relief as the policy remained unchanged and thus continued to deny admission to thousands of other students.

After being apprised of the Ticas case, the HCCS Chancellor contacted the Chancellor of the DCCCD system to explore the possibility of replicating changes regarding fees for undocumented students (Burgos-Sasscer, personal communication, October 4, 2002). The initial recommendation by the Chancellor to the board was to "adopt a policy allowing undocumented students who reside in the HCCS service area to register and pay out–of–state tuition and fees" (HCCS, 2000). This was the same approach that DCCCD had taken when confronted with the issue. This meant that while undocumented students were allowed to register, they were still not eligible for in-district tuition fees. Due to their poverty, a large number, if not the majority of the undocumented students, could not afford to pay such fees.

Although undocumented students were not guaranteed admission at in-district tuition fees, the initial inquiry by Ticas had opened the door to another group of students who now qualified: those in the process of being granted immigration status with the INS. On February 24, 2000, the board recommended that HCCS allow a distinct category of non-citizens to register and pay in-district tuition fees. These were students who "reside in-district, have graduated from in-district high schools, have applied for permanent resident status, and have waited at least 12 months for a response" [from the INS] (HCCS, 2000). This turn of events no doubt resulted from the fact that these students had completed their public education in the college's taxing district yet were prevented from registering at the college they helped fund through property taxes. For the few students expected to enroll under this policy, however, HCCS was not able to claim state funding. The college considered this loss as a service to the community (HCC, 2000).

While the college had partially opened its doors to those students who were in the immigration pipeline, the issue of access by undocumented students remained pending. In

preparation for vote on the issue, Dr. Burgos-Sasscer had begun facilitating the decision by preparing the board members. She had previously met with the board and explained the logistics that the change would require and the advantages of allowing undocumented students access to in-district fees. In a way, the vote had already been cast in favor of the immigrant youth.

In May 2000, the Board of Trustees of the HCCS convened again to decide on the issue previously brought to their attention by Rosendo Ticas. The Houston Coalition had also prepared by publicizing the meeting and encouraging community representatives to attend. Present at the board meeting were parents, students, HISD employees, businessmen and representatives of community organizations in the heavily immigrant area of Gulfton in Southwest Houston.[35] With the encouragement of the Chancellor and Board member Abel Davila, the Board voted unanimously (9-0) to allow undocumented students to enroll at in-district tuition rates, as long as they could demonstrate that they had resided within the taxing district for one year while attending a middle school or high school (Herrera, 2000). The policy also permitted undocumented students not meeting such requirements to be eligible to enroll although paying out of state tuition and fees. The Chancellor added that the newly adopted modifications represented a system policy and not a state law. This meant that the state would not reimburse HCCS for the students enrolled under these guidelines. Like her counterpart in DCCCD, the Chancellor expressed her support for the policy as an economic investment and social contribution: "Just like other residents, these people [undocumented immigrants] pay state and local sales taxes and many of their families pay property taxes that help support our community college" (HCCS, 2000b). Given the fact that the college was only expecting to enroll 500 to 700 students under this policy, the Board's decision was only expected to cost $150,000 to cover additional expenses for faculty and classes (Hegstrom,

[35]Testifying on behalf of undocumented students were community worker Gloria Barrera, teacher David Johnston, immigration attorney Elizabeth Mendoza Macias, student Juan Rene Rodriguez and parent Josephina Gonzalez. Attending but not testifying were businessman Gasper Mir, Patricia Rojas, representing Congressman Ken Bentsen's office and at least one HISD employee (HCCS, 2000a).

2000). The HCCS Chancellor added, "this is a small price to pay to help this many young people become better educated, more productive members of society" (HCCS, 2000b).

As expected, once the policy was passed, dissenters came from two places. There were those who seem to always oppose immigration and who questioned the policy as a measure that would be "subsidizing illegals." The other current of opposition came from international students who were attending HCCS but were obliged to pay fees that were four times higher than in-district tuition. They argued that it was unfair because, unlike undocumented immigrants, they had played by the rules.[36] At the end, the policy prevailed. In August of 2000, after learning of the changes at HCCS, San Jacinto Community College (SJCC) in the Houston area followed suit making use of the same language to implement a policy of admitting qualifying undocumented students in its taxing district (SJCC, 2000).[37]

Around the time of the policy change by HCCS, the Valedictorian of Madison High School, a primarily Black school in South Houston, made the news. He had achieved this coveted status while overcoming the difficulties he faced as an undocumented Mexican immigrant. The Adán Carranza case was widely covered in the media. Unlike Ticas, Carranza graduated from high school. As in the Ticas case, Carranza could not attend college because he was not able to afford the cost imposed by the inequitable application of state residency requirements. Although Ticas and Carranza had different experiences in the Houston public school system, both illustrated the breadth and depth of the problem: the door to post-secondary education for undocumented immigrants was effectively barred. Fortunately for Carranza, he received a full scholarship from Texas Southern University (TSU)—a historically Black university in Houston.

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[36]The college's response was that international students are only temporary visitors who come to the United States with the intention of only attending to school. In her article, "Dealing with confusion: Admission of Undocumented Aliens into Public Post Secondary Institutions," Mulay (1996) argues that international students cannot not establish residency while undocumented youth do. The reasoning behind this is that "an F-1 student in obtaining her visa declares that she will not abandon her homeland and thus cannot form the requisite intent to make a certain state her home, whereas an undocumented student does abandon her homeland and is capable of forming such intent" (Mulay, 1996, p. 142).

[37]During the fall of 2000, 35 undocumented students enrolled under that policy and were eligible to apply for the Texas Public Education Grant (TPEG). They filled out the financial aid form known as Free Application for Federal Student Aid (FAFSA) (Houston Area Forum for Advisors to Internationals, 2001).

The students' success went much further than the scholarships they received. Their efforts brought other students' experiences to light, underscoring the divergent treatment. Their situation underscored the need to change the rules that demanded international tuition and fees from these residents. The issue of undocumented high school graduates' access to post-secondary education had made the news and was now part of a public debate. The stories of the immigrant valedictorian and other students graduating in the top ten percent of their classes provided a vital element needed to galvanize a campaign around the issue (Noriega, personal communication, October 2002).

Two basic things must be noted about the process described above. First and foremost is the role of organizations like the Houston Coalition and in general the critical function performed by immigrant students and their advocates in the passage of the policies at the community college. Besides the network that operated on behalf of undocumented immigrants, the students and their supporters were able to attract the attention of key board members within the community colleges and most importantly gain the endorsement of the chancellors of each system. The second factor that should be noted is that the new community college policies were precursory activities to the passage of the in-state tuition legislation.

The following section in this chapter details prior activity on behalf of undocumented youth at the state level. In particular, it addresses the work that Noriega and Houston Coalition supporters conducted before the Texas Higher Education Coordinating Board (THECB). These efforts paved the way for the eventual successful passage of the first in-state tuition law in the country.

POLICY CHANGES AT THE TEXAS HIGHER EDUCATION COORDINATING BOARD

The change in HCCS policies gave the Houston Coalition the impetus to move the struggle forward, alongside State Representative Noriega. In anticipation of the 77th legislative session, members of the coalition, in particular David Johnston, aided in crafting a bill that would favor undocumented students across Texas. Coalition members raised the

issue in educational conferences across the state while Noriega reached out to organizations such as the National Association of Latino Elected Officials. Government officials such as Leonel Castillo, former INS Commissioner and now Educational Advisor for the City of Houston, were contacted in an effort to get a broad base of support. To estimate the potential impact of the bill, coalition members collaborated with University of Houston researchers in designing a questionnaire that was administered at different Houston ISD high schools with high immigrant populations. The purpose of the study was to "inform school administrators, legislators and other policy makers about the number and social characteristics of undocumented students and their aspirations for a college education" (Mindiola et. al, 2002). The results of the survey were used to prepare a "white paper," which provided research-based arguments on the need to pass an in-state tuition policy in Texas. The paper also assessed the fiscal and social impact that resulted from barring undocumented students from college.

While the Legislature convened, Noriega and other coalition members pressed for changes within the THECB.[38] The THECB had indicated that "undocumented aliens were not allowed to establish a domicile in the United States, and therefore, under the current residency laws were not allowed to establish residency in Texas for tuition purposes" (THECB, 2000). In addition, THECB rules indicated that citizens who were children of undocumented immigrants could not be classified as residents for tuition purposes because their residency was based on their parents' legal status.[39] Since undocumented parents were not able to establish domicile, THECB interpreted the rules to deny residency classification to their citizen children. Clearly, the statutes did not favor undocumented students and also penalized citizen children of undocumented parents. While there were no rules banning them

[38]Since the passage of the policy at HCC various questions had surfaced such as whether or not undocumented students could show a foreign identification from their homeland (i.e. A *matrícula*, or consular issued identification card by Mexican Consulate to their nationals) or a work permit to secure in-state tuition.
[39]Similar provisions were included in the California code forcing U.S. citizen children of undocumented parents to be classified as nonresidents for tuition purposes.

from institutions of higher education, their classification as non-residents constituted a de-facto ban.

Noriega's strategy was first to focus on those immigrants who had some kind of paperwork pending with immigration. With this in mind, he addressed a letter to the THECB expressing concerns regarding the negative impact of Section 54.057 of the Texas Education Code (TEC) which stated that only "aliens who have filed with the proper immigration authorities a declaration of intention to become a citizen may be considered [as] in-state resident student" (R. Noriega, personal communication, June 1, 2000). This requirement was especially grave given that the backlog in INS processing, which could last years, affected tens of thousands of potential students denied the opportunity to attend college.[40] His letter pointed out that in view of the backlog, the THECB requirement in practice denied those immigrant students' ability to go to college. His final objective was to explain that immigrants who are in the process with INS had the intention of becoming citizens and thus should be allowed to attend college at in-state tuition rates while their process is pending. Noriega also approached the Mexican American Legal Caucus and urged fellow legislators to follow suit by writing letters which pointed out that the THECB language excluded immigrants who had filed an application with the INS.

On July 13, 2000 Noriega addressed the THECB board meeting. He brought to their attention that, with the exception of two Texas community colleges, undocumented students were de facto forbidden from attending public institutions of higher education because they could not afford to pay international tuition fees. In response, Commissioner Don Brown referred to "DCCD and HCCS as taking a risk by allowing undocumented students to pay in-state tuition" (Brown, 2000). In his view, a person had to establish domicile under federal laws and rules to receive in-state tuition privileges. Some members of the board also

[40]The THECB requirement penalized students whose applications with INS had been on hold for several years. "As with all the family-based categories, there is typically a backlog since there are more applicants than visas available under the annual allocations. Currently applicants from most countries wait four years for a visa number. Applicants from certain countries have faced an even longer backlog: over fourteen years for nationals of the Philippines" (Parsons, 2005). Indeed, certain categories, such as that of U.S. citizens petitioning their foreign-born siblings face significant waiting periods (Parsons, 2005).

deferred a decision arguing that changes on behalf of undocumented students had to be made by the Legislature because the THECB was not in a position to do so. It was clear that raising the issue of in-state tuition represented a major challenge. For this reason, Noriega decided to focus his attention on immigrant youth in the process of obtaining residence from the INS, now the Bureau of Citizenship and Immigration Services (BCIS) under the Department of Homeland Security.

Besides suggesting changes in the regulations for students in the process of becoming permanent residents under immigration law, Noriega also inquired whether certain existing programs that allowed universities on the border to recruit students Mexico could be expanded to major metropolitan areas. Specifically, he brought forward the possibility of modifying a pilot program known as the "Mexican Citizens with Financial Need" which allowed up to two Mexican students per 1,000 enrolled students to qualify for in-state tuition fees at non-border universities.[41] Noriega pointed to the University of Houston to show how such regulations would yield an average of 66 Mexican students given the university enrollment of 33,000. In other words, he argued that colleges and universities, according to this rule, could have been admitting more Mexican nationals, regardless of their immigration status. His proposal was to increase the number of allocations under this program thus allowing more Mexican students in areas with high levels of immigration such as Houston and Dallas.

After further deliberations, the THECB agreed to partially roll back the additional residency requirement enabling those who were in the last stages of the permanent residency

[41]The Legislature began the program in 1987. It is mainly targeted to Mexican citizens who live in border states and show proof of financial need. Mexican students who have applied for U.S. citizenship or permanent residency are not eligible because the purpose of the program is to benefit students who have the intention to return to their home country and have not severed their ties with it. Students under this program are eligible to receive an international student visa (F-1), although they are not required to have one. At the University of Texas at El Paso, this state initiative was implemented under the PASE program (Programa de Asistencia Estudiantil para Mexicanos – Program of Educational Assistance for Mexicans). There is no limit to the number of students that a border university can enroll under this policy. At UTEP the enrollment has increased from 223 students in 1987 to 1,150 in 1996 to 1,375 in the Fall of 1999 (UTEP, 1997, 2000). In 2001, the program enrolled a total of 1,366 students at UT-El Paso. A couple years later, the figure increased to 1,800, a 10% of the total university enrollment.

process to be eligible to pay in-state tuition. The pilot program granting in-state tuition to two Mexican students per 1,000 remained intact. Commissioner Brown explained the new changes. Immigrants who were in the last stage of becoming permanent residents would now qualify for in-state tuition fees as long as the applicants had received approval from the BCIS. Brown's letter, however, reaffirmed the THECB's interpretation under which anyone who had "initiated the first step to be declared an immigrant [could not] be considered to have met the intent of the statute" (Brown, 2000a). In other words, applicants who had filed with immigration authorities and had waited for years due to the backlogs remained ineligible.

In a later communication to registrars, admissions officers and chief fiscal officers in Texas, Commissioner Brown offered an explanation for the changes allowing some immigrants the possibility of establishing residency for tuition purposes in Texas. According to Brown, immigrants' long residence in Texas resulted in tax contributions and an overall benefit to the economy. Commissioner Brown further argued that there was a dissonance between laws that allowed immigrant students to attend K-12 regardless of their immigration status and state regulations that charged them non-resident fees at institutions of higher learning. By forcing them to pay non-resident fees, undocumented immigrant students paid an excess of $6,000 a year and were thus barred from college.[42]

In spite of its importance, the new rules were beneficial only to those who had filed with the proper immigration authorities. The THECB continued to interpret state statutes in a narrow manner claiming that "undocumented students have to be considered nonresidents" (Brown, 2000b). In the end, Noriega's inquiry had raised the issue of an unequal application of the law affecting immigrant students who otherwise had established domicile in Texas. The result was that they were deemed ineligible to pay the resident tuition fees.

[42]At that time, a credit hour for a student classified as resident cost $40 while a non-resident paid $255 (J. Caldwell, personal communication, January 31, 2001).

In summary, the deliberations that took place within the THECB in the summer of 2000 demonstrated that circumstances could not yet allow for the issue of undocumented students' access to college to receive a fair hearing. Further, during the discussions within the THECB, the participants agreed that long-lasting changes needed to happen at the legislative level (Noriega, 2000a). Undaunted by an initial slow progress, Noriega and Houston Coalition organizers began to plan a strategy to move the issue to the state legislature. The following chapter documents the passage of HB 1403, the 2001 Texas' law allowing undocumented students the right to attend college at in-state tuition rates. The changes made by the THECB, along with those implemented by the two largest community colleges in Texas, opened the way for the passage of the first in-state tuition policy in the Texas 77th State Legislature.

Chapter 6: *A Movement Is Born, Immigrant Coalitions Appeal to the State Legislature*

The purpose of this chapter is to examine the circumstances that led to the passage of House Bill 1403.[43] Specifically, this chapter departs from the previous efforts on behalf of immigrant students and details some of the lobbying strategies employed by advocates in their campaign to expand the educational opportunities of undocumented high school graduates. The latter part of the chapter details the law's provisions as well as the challenges for its implementation.

The changes in admissions and tuition policies at Texas' community colleges grew from the frustration among immigrant students who were barred admissions in colleges and universities. While some members of the educational community had organized to support the students in their fight for non-discriminatory tuition fees, it was not until the victory at the HCCS and the subsequent changes at the THECB level that improvements became evident. The Houston Coalition became a rallying point for undocumented youth rights and Representative Noriega assumed a key leadership position in the campaign for new policies.

Pro-immigrant forces in Houston, working under the Houston Coalition sought to influence the state legislature to add an exemption to the code of higher education. They framed the proposal without mentioning the word *undocumented* to avoid controversy and opposition. The initial campaign took issue with the fact that undocumented students could only attend four-year universities on the basis of either one of two exemptions: (1) They had to have been awarded a competitive scholarship; or (2) they had to be enrolled as citizens of Mexico only in border colleges and universities where they could pay in-state tuition fees (Berger, 2001). As noted previously, this provision sought to increase the number of

[43]Although codified in the Texas Education Code under 54.052, this 2001 law is still commonly referred as House Bill (HB) 1403.

Mexican nationals at border institutions with tuition exemptions.[44] An additional regulation allowed the enrollment of 2 Mexican nationals per 1,000 students at non-border general academic institutions.[45]

The Houston Coalition turned its attention to the rule allowing 2 Mexican nationals per 1,000 students to be enrolled in universities in the state's interior at in-state tuition rates. It also began to explore the possibilities beyond the community colleges for immigrant students. Although the regulations waiving international tuition for Mexican students were in the books, few admissions administrators knew about them or were willing to accept students under these provisions. However, in the end, neither options (Academic Scholarship or tuition waiver for Mexican nationals) provided large numbers of immigrant students with the opportunity to attend college because eligibility was limited to either academic performance or nationality.

The Houston Coalition initiated this phase of their work by contacting Houston city officials and state representatives in the Dallas and Houston area to map out a statewide strategy. As early as November of 2000, Coalition members also invited State Representative Noriega and his staff to discuss possible alternatives. Noriega had already started to investigate the possibility of introducing a state law (Alanis, 2004). The intent of State legislation was to level the playing field for undocumented students by requiring that they demonstrate high school attendance in the state in order to be able to qualify for in-state tuition. The goal was to remove the coupling of state residency requirements with immigration status.

Noriega held a preliminary meeting in December 2000 for people interested in lifting the additional residency burdens placed on undocumented students. Together with the Houston Coalition, Noriega also sought support from academics by entrusting them with the

[44]In 2001, when the in-state tuition policy was passed in Texas, the state had 17 programs allowing non-residents to pay the resident rate. A total of 45,173 nonresidents qualified to pay tuition under those programs for a total of $135 million (D. Brown, personal communication, June 17th, 2002).

[45]At one meeting of the Houston Coalition, a representative from Prairie View A&M University, a Historically Black College and University, explained how under that program and with the collaboration of the Secretary of Tamaulipas, 10 Mexican students had enrolled at that institution.

task of determining the potential undocumented population who would benefit by a change in the law. This had been one of the critical questions raised by members of the THECB during the deliberations that lead to the initial policy changes. While references to the number of students who would be impacted by the changes in the law varied, a common denominator was the arguments in support of a possible change in the law. Studies such as one put together by the Harris County Tax Office were largely conducted from a human capital perspective that interpreted changes in the laws as a way to allow this population to acquire better jobs and contribute more to the economy. Most Houston Coalition members and Noriega encouraged this perspective with stories of undocumented valedictorians (Harris County Tax Office, 2000).

Noriega introduced the in-state tuition bill into the Texas Legislature under HB 901 on January 24, 2001. Domingo Garcia (Dallas) also introduced a bill (HB 158) with a similar intent.[46] Because their proposals were addressing the same issue, the Chairman of the Higher Education Committee, Irma Rangel (Kingsville), negotiated an agreement between Noriega and Garcia to file their bills under the same number and with the same language.[47] The understanding also meant that her committee would hold only one hearing for what became HB 1403. Republican Representatives Fred Hill (Richardson), Elvira Reyna (Mesquite) and Kino Flores (Mission) added their names to the list of co-sponsors.[48] State Senator Leticia Van de Putte (San Antonio) introduced the Senate version of the bill (SB 1526) almost two months later.[49] The purpose of SB 1526, filed with identical language as a companion bill to

[46]Bailey also filed HB 528, a bill relating to the tuition charged to foreign students attending junior colleges. This proposal sought to waive out of state tuition for Mexican residents who demonstrated financial need. The goal of this bill was addressed by Noriega's initial HB 901 as it pertained to all institutions of higher education and was not limited to nationals of only one nation.

[47]Garcia's initial bill also proposed classifying non-citizens as residents after high school completion in Texas and extended state financial aid eligibility to these students. A section of the bill sought to provide equal access to financial aid in the form of tuition waivers, student loans, scholarships or grants (Garcia, 2001a).

[48]Coauthors included Debra Danburg (Houston), Joe Deshotel (Port Arthur), Harryette Ehrhardt (Dallas), Scott Hochberg (Houston), Carl Isett (Lubbock), John Amos Longoria (San Antonio), Trey Martinez Fischer (San Antonio), Glen Maxey (Austin), Joe Moreno (Houston), Manny Najera (El Paso), Dora Olivo (Missouri City), Robert Puente (San Antonio), Arthur Reyna (Mesquite), Jim Solis (Harlingen), Carlos Uresti (San Antonio) and Mike Villarreal (San Antonio) (Texas Legislative Budget Board, 2001a).

[49]Coauthoring the measure were Senators Mario Gallegos (Houston), David Sibley (Waco) and Tedd Staples (Dallas) (Texas Legislative Budget Board, 2001b).

the house version, was to uncouple immigration status from eligibility for in-state tuition fees (Van de Putte, 2001). The Senate bill also incorporated the University of Texas at San Antonio in the pilot program enrolling 2 Mexican nationals per 1, 000 enrollments.

The initial language of HB 1403 applied to Section 54.052 of the Texas Education Code and proposed the following amendment by adding Subsection (j):

> Section 2 (j). An individual shall be classified as a Texas resident until the individual establishes a residence outside this state if the individual resided with the individual's parent, guardian or conservator while attending public or private high school in this state and:
>
> (1) Graduated from a public or private high school or received the equivalent of a high school diploma in this state; and
>
> (2) Resided in this state for at least one year between the first day the person attended a public or private high school in this state or received the equivalent of a high school diploma (Noriega, 2001).

The bill also amended Section 54.057(a) in the Texas Education Code by removing the requirement that a non-citizen needed to have become a permanent resident or filed an intention to become a citizen to qualify for in-state tuition fees. Under the original language of HB 1403, those who had applied with immigration authorities or had a petition pending with "the Immigration and Naturalization Service to attain lawful status under federal immigration law ha[d] the same privilege of qualifying for resident status for tuition and fee purposes under this subchapter" (Noriega, 2001, p.1). Finally, HB 1403 maintained the provisions that permitted Mexican citizens to pay in-state tuition at border universities or at any of the schools in the Texas State Technical College System and sought to expand the program to any county with a population of over 100,000. The term "undocumented student" was not a part of the language of the bill as the intent of the law was to make immigration status irrelevant in the determination of residency for tuition purposes.

The bill did not offer preferential treatment to undocumented students, as it required them to meet the same residency requirements as other students in addition to high school or GED completion. Indeed, a memorandum from Representative Garcia's office stated that the

bill allowed undocumented students to establish "equal status with a U.S. citizen in meeting Texas' residency requirements for in-state tuition" (Garcia, 2001b). The supporters of the bill noted that the state would be increasing a pool of eligible college students by allowing undocumented youth to be considered under the same state residency rules regardless of their immigration status. Nevertheless, some reservations were expressed. At a meeting of advisors to International Students, a representative from the THECB commented: "The problem with this [House Bill 1403] is that it will open the door for many people to apply and benefit under this" (Houston Forum, 2001).

Arguments in support of the bill were mainly framed from an economic perspective. Using a fact sheet with 1986-1998 data authored by the Intercultural Development Research Association (IDRA), David Johnston, who had done much of the lobbying on behalf of HB 1403, pointed out that 1.2 million students had dropped out in 12 years costing the state $319 billion dollars (Johnston, 2001c). Similarly, based on figures from the THECB showing an initial enrollment of 3,154 immigrant students under the new policies, Harris County Tax Assessor Paul Bettencourt conducted an analysis which forecast a contribution ranging from $1.2 to $1.7 billion of dollars as a consequence of higher degrees and resulting tax payments and investment in purchase of homes and the like.[50] In addition to the financial argument, letters from advocates pointed out that given the fact that some community colleges were accepting undocumented students the focus on in-state tuition rates at institutions of higher education. A related argument in support of these changes was that college admission officers should not be turned into immigration enforcement agents (House Bill 1403, 2001).

Support activities began in Houston before the bill was filed. Monthly meetings headed by the Houston Coalition brought together diverse groups associated with school

[50]The involvement of conservative figures such as Paul Bettencourt exemplified the bipartisan support that the issue enjoyed along with the diversity of forces involved in the Houston area. Mr. Bettencourt had been initially approached by Latino news anchor, Marcelo Marini, to help an undocumented student. After learning of the student's case, Bettencourt became convinced that the law needed to change. Besides conducting the study and sending his staff to share information with groups of immigrant advocates, Bettencourt volunteered to speak at conservative radio shows on behalf of the bill (Daniel Morales, D, personal communication, 2002).

districts, community colleges, universities, businesses and advocacy organizations.[51] The Houston Coalition, in collaboration with the University of Houston, also participated in a forum in February 2001 to target admissions counselors and registrars from universities and colleges in the Houston area. THECB representatives explained the previously adopted changes at the Coordinating Board level that allowed persons who had filed petitions with the INS to receive in-state tuition fees at district colleges and state universities. Noriega used the opportunity to explain the potential benefits of HB 1403. Some of the arguments made earlier in support of the bill emerged again. These included the creation of an educated workforce, higher tax revenues for the state and lower high school attrition rates. The overall argument again posited that the bill would help make immigrant students productive members of Texas society.

One of the Houston Coalition's first initiatives involved their participation in a city-wide event targeting Latinos in search of college opportunities. The event, organized by the Houston Hispanic Forum, provided coalition members with an opportunity to inform the community about pending legislation. Noriega spoke at the event where hundreds of signatures were collected in support of the bill. The Texas chapter of the National Association of Hispanic Nurses played a major role in gathering over 200 letters of support that were mailed to the offices of the Texas Governor. Other organizations such as the Society of Hispanic Professional Engineers (SHPE) also provided critical support in the form of participation in the advocacy efforts as well as reaching out to other organizations and promoting the Houston Coalition efforts (Hispanic Forum, 2001).

Researchers also examined the work that other advocates for the rights of undocumented students were conducting in other states, particularly in California. Based on our own knowledge of similar advocacy work elsewhere and the findings of this author, it

[51]Participants included representatives from Houston Community College System, Prairie View A&M University, University of Houston-Central and University of Houston-Downtown. Community service providers included El Centro del Corazon, GANO-Carecen and the Mexican Consulate among many others (Johnston, 2000).

became clear that Texas was poised to break new ground. This became evident on March 13, 2001 when approximately 40 undocumented immigrant high school students from all over Texas converged at the Texas Capitol to tell their stories at a two-hour hearing before the Higher Education Committee (Berger, 2001). The student who had initially brought up the issue to Noriega, Rosendo Ticas from Houston, was first to speak, followed by high school students from Dallas, the Rio Grande valley, and El Paso. Students who had already graduated and even those who had applications on file with the then Immigration and Naturalization Service overcame their fear of being deported and also described their cases. The students represented El Salvador, Ethiopia, Mexico and Peru. This demonstrated that the concern was not limited to Mexicans or Spanish-speaking immigrants. Other persons also testified before the Higher Education Committee in support of the bill. These included professors from universities, chancellor representatives, members of the League of United Latin American Citizens (LULAC) and the lawyers who had provided legal counsel in the wording of the bill.[52]

Much of the discussion before the committee centered on whether the students' parents paid sales and property taxes and on the potential impact of the bill on the problem of attrition.[53] A point reiterated by supporters, including MALDEF's general counsel, was that the bill did not grant preferential treatment to the new college population as they had to meet the same requirements as other students. More important, supporters emphasized that there was no cost attached to the bill and therefore HB 1403 would require no additional funding

[52]Students testifying included Lourdes Aguinaco, Maria Bautista, Olivia Bautista, Olga Lidia Cardoso, Edyael Casaperalta, Dulce Ibarra, Lissette Moreno, Alem Tewoldeberhan and Rosendo Ticas. Other participants testifying at the hearing included Joseph Berra, immigration attorney with MALDEF, Francisco Perez with the San Francisco de Asis Episcopal Church, Felicia Escobar with the National Council of La Raza (NCLR), Felipe Reyes with the HCCS, Lico Reyes with LULAC District III, Civil Rights Division, Dr. Angela Valenzuela, University of Texas at Austin professor and Dr. William Wenrich, Chancellor of the DCCCD (Higher Education Committee, 2001). Present but not testifying were Terri Aguero with Houston ISD, Charles Galindo with the Society of Hispanic Professional Engineers, ESL teacher David Johnston, Lorenzo Cano and Rebecca Trevino with the Center for Mexican American Studies at the University of Houston (Central Campus) and the author.

[53]Addressing this concern, Johnston noted in a letter of support the irony of the situation: "one must be documented to work [but] not having documents is never excuse for not paying ones taxes" (Johnston, 2001b, p.2).

appropriations. Better yet, freshmen, entering within this category, who would not have otherwise attended a postsecondary institution, constituted a new source of revenue for the different colleges and universities. At the end of the hearing Chairwoman Rangel noted that the entire testimony favored the undocumented students. She told the students: "You have made this a wonderful hearing. Every member of this committee is in favor of this bill. Take pride in the fact that no one testified against this bill" (Rangel, 2001). Indeed, this had been a momentous occasion for immigrant students who wished to attend college in a state that, less than twenty years ago (during Plyler v Doe), had attempted to bar them from receiving a K-12 education.

The bill was modified as it advanced through the different committees. Despite the changes, the initial intention of allowing these students access to in-state tuition rates survived the deliberations. A month after the hearing, students and their advocates organized a lobbying day in Austin for the passage of the bill. The lobbying day was organized by the Texas Immigrant and Refugee Coalition (TIRC) and sponsored by several groups, among them the Houston Coalition.[54] The lobbying day also sought to appease some concerns which had been raised by opponents that the expansion of the program enrolling Mexicans in non-border universities would amount to subsidizing the tuition of non-residents (Johnston, 2001b). Besides advocating for the passage of HB 1403, supporters of immigrants also focused on the importance of supporting legislation that would allow undocumented immigrants to obtain driver licenses.

On May 7, 2001, HB 1403 went through the education committee of the Senate where it underwent some changes. Texas Senate Committee Chair Senator Teel Bivens (Amarillo) disputed Noriega's preference for the original language of the bill requiring only one year of high school attendance. In addition, he sought to remove a critical provision that would

[54]Lobbying participants included students, administrators and teachers from school districts and universities, members of immigrant advocacy groups and representatives from unions such as the United Farm Workers (UFW). HISD participants included Johnston and Sherman Elementary School Principal Alma Lara along with this researcher who brought students from Houston ISD schools and joined main organizer Adriana Cadena along with Houston area supporter, Ana Nuñez.

allow undocumented students to be classified as residents. In the final legislative phases, the bill was being stripped of its capacity to benefit the undocumented high school population, remaining simply a positive measure for those who had started the adjustment process with the immigration service. A double compromise was reached and the time requirement was increased to three years (Berger, 2001a). In addition, undocumented students who were to benefit under this bill would have to fill out an affidavit indicating that they intended to adjust their immigration status as soon as they were eligible to do so.[55]

One month after the last changes were made, Governor Rick Perry signed into law HB 1403 on June 16, 2001. It became Texas Education Code 54.052. While the governor's endorsement could have been interpreted as supportive of immigrant rights, it was a small concession given his veto of the driver license bill which would have benefited a larger number of undocumented immigrants, workers and students alike. At the end, the door of higher education was partially open to those immigrant students who managed to graduate while the possibility of gaining a piece of state identification was foreclosed to the hundreds of thousands of undocumented workers in Texas.

ANALYSIS OF POLICY'S PROVISIONS

The passage of HB 1403 constituted an important historical event in the fight to secure immigrant student access to equal education. As it will be demonstrated below, the implementation of its provisions, however, immediately ran into moves by the THECB to limit the number of students eligible under the bill. The THECB has interpreted HB 1403 in a number of restrictive ways that have placed additional hurdles in the way of potentially

[55]Testifying at this hearing were Daniel Morales from the Office of the Harris County Office of Tax Assessor/Collector Paul Bettencourt and Vincent Ramos, Executive Director of Texas LULAC. Registering but not testifying were Jack Campbell, Governmental Affairs for the Texas Association of Business and Chambers of Commerce; Bill Carpenter, Assistant Superintendent for Governmental Relations (Houston ISD); Richard Daly, Executive Director of Texas Catholic Conference; Anne Dunkelberg, Senior Policy Analyst with the Center for Public Policy Priorities; Matthew Emal, Assistant Director of State Federal Relations for the City of Houston; William Harrell, Lawyer for the American Civil Liberties Union (ACLU); Rene Lara, Legislative Liaison with the Texas Federation of Teachers; Joe Sanchez, State and Policy Analyst with the Mexican American Legal Defense and Education Fund, Lauren Smith with the Association of Texas Professional Educators, Michael White, attorney with the Greater Houston Partnership and Barbara Hines, lecturer and immigration attorney with the University of Texas Law School.

eligible undocumented students, a vast majority of whom are of Latino descent. It should be additionally noted that Latinos are already the group showing the lowest proportional participation in Texas' institutions of higher education. The restrictions and additional hurdles would appear to be in contradiction with the THECB's stated concern over Latinos lagging educational achievement. It may also be observed that these tendencies are in line with the historic resistance of educational institutions to efforts to increase students' access, as noted in the cases of desegregation, busing and bilingual education, to name a few. This contradicts their stated mission.

In this section, the provisions of the bill are analyzed as they have been interpreted by the THECB and incorporated into the Texas Education Code. Specific issues addressed include those pertaining to the basic requirements of the law and the impact for undocumented students already in college prior to the passage of House Bill 1403.

To reiterate, House Bill 1403 permits undocumented high school graduates access to post secondary education by allowing them to pay in-state tuition fees and making them eligible for state financial aid upon their classification as Texas residents. In order to qualify, students must have graduated from a private or public high school in Texas or have received a GED. Prospective students are also expected to have resided in Texas for three years, and not have enrolled in college before the fall of 2001. In addition, they have to provide the institution of higher education with an affidavit affirming their intent to become a permanent resident as soon as they are eligible. By classifying these students as residents, the law also allows eligible undocumented students to receive state financial aid, so that they can pursue their studies.

Section 2 of the Texas Education Code 54.052(j) states that high school students must have lived in Texas with parents, guardians or conservators in order to be considered residents of this state. The requirement, demanded by opponents of the bill, was to differentiate between immigrant students who came because of their parent's decisions and others who arrived independently. During the implementation meetings with the THECB,

immigrant advocates, explained that many immigrant students lived with relatives such as grandparents, aunts and uncles, older siblings and cousins.[56] The relatives of these students were often undocumented as well, which made it unlikely that they would go before a court of law to obtain legal guardianship of another undocumented person. Although the THECB was made aware of the informal guardianship issue, it decided to deny access to a considerable subset of the potentially eligible immigrant population (Teodoro Aguiluz and Nelson Reyes, personal communication, July 11, 2001; Ben Morris, personal communication, July 10, 2001).[57]

In addition, Section 54.052(j)(1) of HB 1403 makes the classification of resident dependent upon completion of three years of high school in Texas. It is pertinent to address the way in which this requirement excludes students who have not been able to complete three years of high school.[58] The three years attendance category largely includes students from countries that have a long history of immigration to the United States such as Mexico. Students who have a more recent history of immigration and who have only completed one or two years of high school are thus disqualified and the potential impact of the law is lessened, as are the chances that these students will graduate from high school or ever attend

[56]Regarding the THECB interpretation to require legal guardianship from eligible immigrant students, an e-mail communication sent from Noriega's Chief of Staff, clarified the intent of the law: "the THECB states that they believe this was legislative intent and it has been made abundantly clear to them that it was not" (Linda Christofilis, personal communication, August 30, 2001). A letter from State Representative Noriega to Commissioner Don Brown stated: "Low income and minority children are more likely than their affluent peers to reside with relatives other than a parent, are less likely to afford or have access to legal remedies; therefore they are more likely to be affected by the new rule. [Further] a court order has not been required previously to establish residency." (Noriega to Brown, August 28, 2001).

[57]The THECB's General Counsel argued that if undocumented students really wanted to attend college, they would seek legal guardianship from their relatives. This argument presupposes that immigrants come to avail themselves of benefits like a college education. On the contrary and as amply demonstrated by research, immigrants mostly come to the United States in search of jobs. They generally reject anything that appears to threaten their livelihood, such as going to a court of law. At the end, the narrow interpretation of the THECB prevailed.

[58]As explained in the previous section of this chapter, the original language of HB 1403 only required one year of attendance in high school. However once the bill reached the Senate, one of its opponents, Rep. Teel Bivins, demanded either a one-year of attendance requirement for students who had started an immigration process with INS or three years attendance with no immigration requirement. In a compromise, Noriega opted for the latter.

college. Denying students estranged from their parents and placed in the care of relatives access to post-secondary education further aggravates their onerous circumstances.[59]

While the passage of House Bill 1403 clearly opened the doors of college for a number of previous ineligible students, the law did not make college a reality for all. Section 54.052(j)(3) specifically determined that students who attended college before the fall of 2001, when the bill became law, were not to be grandfathered and therefore, could not benefit from in-state tuition fees. This excluded students who had overcome obstacles imposed on them by their immigration status, had started college before the fall of 2001 and were paying international fees. Policy makers justified their decision by arguing that the bill could not cover everyone and that if those who were already attending college were allowed to pay in-state tuition and fees, the universities would lose money and prevent them from submitting to the legislature a bill not requiring any additional funding.

This cutoff provision requires some analysis. The argument that a university's revenue would decrease by grandfathering previously enrolled students is flawed. First, the number of undocumented high school graduates attending college at international tuition rates prior to the passage of the law was negligible. Therefore, a loss of revenue from this source could not be significant, and certainly would be offset, at least in part, by the newly admitted students who were to pay in-state tuition. Furthermore, most undocumented students who attended universities before the passage of House Bill 1403 and paid international tuition and fees dropped out (Rodriguez, 1992; Mladinich, 1995). The original intent of the law to broaden educational opportunities was diminished by the decision not to grandfather previously enrolled students. The secondary effect of this provision is that

[59]A significant portion of young undocumented students, who have come to this country in the company of their parents are not able to enroll in high school due to their age. Although students are eligible to receive a public education until they turn 21, many school districts deny admission to students who are over eighteen, the compulsory age. The Texas Education Code states that "(a) A student is entitled to the benefits of the Foundation School Program if the student is 5 years of age or older and under 21 years of age on September 1 of the school year and has not graduated from high school" (Texas Education Code, 1995). In many instances, students in this age bracket (over eighteen) are denied admission to high school on the premise that they will not be able to complete enough high school credits, become discouraged and drop out of school. The inclusion of GED recipients in the HB 1403 clauses was an important victory for students in this predicament as that remains their only option.

undocumented students who were not grandfathered either had to continue paying international fees with the burden of eventually having to drop out and therefore be unable to continue their studies or realize that college is not an option for them (De los Santos, 2004).

In relation to Section 54.052(j)(3), the THECB also included a clause in the education code that excluded undocumented youth from the provisions of House Bill 1403 in another important way. The clause applied to "high school students taking dual-enrollment classes prior to fall 2001 as well as high school graduates or GED students who have taken summer 2001 classes" (THECB, 2001, p. 8). An interpretation by the THECCB of this section made ineligible those students who, while in high school, had enrolled in college level courses through dual enrollment programs. Students who had college credit hours before the passage of the law were not eligible under the provisions of HB 1403 and thus had to pay international fees if they wished to attend college. A letter from Noriega to Commissioner Brown explained that during the legislative session, the language referring to currently attending students "was meant to include only those who were enrolled as full time students prior to the Fall 2001 semester" (Rick Noriega, personal communication, 2001). It added that "it simply was never considered that such language could be interpreted to include 2001 high school graduates, just because they qualified for advance courses in high school" (R. Noriega, personal communication, 2001).

The Board acknowledged that such an interpretation of the law "penalize[d] students who showed initiative" by taking courses before high school graduation. The THECB nevertheless maintained a narrow interpretation of the provision arguing that someone with prior college credit was not technically an "entering student" and thus disqualified these students from possible classification for in-state tuition rates. Although Noriega and other supporters of House Bill 1403 opposed this interpretation of the provision, the view of the THECB prevailed.

The last requirement to qualify an undocumented student for in-state tuition fees require that undocumented students file an affidavit declaring that they would apply for

permanent residence as soon as that became an option. During discussions leading up to the passage of HB 1403, some members of the legislature wanted assurances that students would not leave the country and cause the state to forfeit the investment in their education.[60] It is axiomatic that undocumented persons typically seek to legalize their immigration status. In the case of the undocumented, a public declaration of undocumented status exposes them and makes them subject to deportation. More so, the affidavit exposes the paradox where a group of people barred by federal law from even being here are required by state law to affirm their intention of staying in this country.

While the THECB has proclaimed in their *Close the Gaps* campaign that it seeks to narrow the differences in college attainment for minority populations, especially Latinos, their policies have left a good portion of the students behind. As demonstrated above, the Board's one-sided interpretation of key provisions in HB 1403 has also closed the college door to significant number of otherwise eligible students.

POLICY IMPLEMENTATION

The passage of HB 1403 was a significant step in the fight to broaden educational opportunities for immigrant students. The law had the potential of significantly increasing the representation of undocumented youth in colleges and universities. To date, it has made it possible for well over 8,000 immigrant students in Texas to register and attend universities at the same tuition rates paid by fellow U.S.-born state residents (Lewis, 2005). However, their access to post-secondary education is dependent on (1) the degree to which everyone is informed and (2) the interpretation of the rules by the THECB. The following discussion addresses these issues as critical to the potential increase of undocumented students benefiting under the provisions of the bill.

[60] The immigrants' intention to legalize its status is almost identical to the one imposed to non-citizens in New York in the case of Nyquist v. Mauclet (1974) (see Chapter Four). The affidavit also resembles a form required of undocumented students enrolling at the University of Houston-Downtown (UHD) under pre-HB 1403 provisions which allowed them to register as non-resident students.

Despite the popular support for the bill, its implementation has been lacking mainly because public school systems and institutions of higher education have not been responsible in promoting its provisions. First of all, school districts have not effectively disseminated information regarding the law among students, parents, teachers, and administrative staff. Throughout the four years since the passage of the law, the media has reported widespread ignorance of the law among public school counselors. Indeed, the accounts of students described in newspaper articles and echoed at various Houston Coalition meetings indicate that counselors do not always inform them of course requirements to gain admission to higher education institutions (De los Santos, 2004; Fischer, 2004; McGee, 2004; Treviño, 2002). For the few who know about the law, the process is often described as a lesson in frustration (Alanis 2004; Yachnin, 2001). In addition to the lack of information in public high schools, at the higher education level there have also been reports of registrars who openly oppose the state law and fail to inform students (Eldridge, 2005).

Noriega, the bill's sponsor, openly recognized the problem in the public schools. He noted, for example, "[We] are getting better but we are not there yet" (R. Noriega, personal communication, October 25, 2002). He also expressed concern that other school districts throughout the state were failing to properly inform undocumented youth of their rights. In light of these problems, some institutions have tried to adhere to the law by informing undocumented students of their rights regardless of immigration status.[61]

Although the implementation of House Bill 1403 has been impaired by the limited diffusion of its benefits among the potential beneficiaries, the THECB created a greater

[61]The Houston Coalition conducted its initial outreach efforts at the community college level to inform the potential beneficiaries of the law and encourage their enrollment. It also put together informational materials to update others about the changes in the law (Johnston, 2001a). As the fall of 2001 approached, members of the Houston Coalition proposed a workshop with representatives from all Texas universities to inform them on the law as they prepared for registration. The program was organized in conjunction with the THECB and sponsored jointly by Houston ISD, the state's largest school district, and the University of Houston-Downtown, Houston's largest open admissions university. Soon after that, the Coalition conducted many more events at other Houston-area universities, including Historically Black Colleges and Universities. Across the state, outreach to the immigrant community has taken place at different venues in the state including public meetings at the Houston Community College System (HCCS), Lamar Institute of Technology, Midwestern State University, Stephen F. Austin State University and University of Texas at Arlington, among others.

dilemma by imposing on colleges and universities a narrow interpretation of the provisions. In the absence of an effective enforcement of the law by the board, the universities have been left to interpret it, often to the detriment of the students.[62] Anecdotal cases encountered by this researcher indicate that the lack of diffusion about this law within the educational community along with the narrow interpretations of the THECB, has been used by those opposing undocumented students' access to higher education. An open attempt to subvert the purpose of the bill at the El Paso Community College (EPCC) illustrates this problem. At the beginning of the 2002 school year, a handicapped undocumented student was denied admission to EPCC. Contrary to the state requirements in HB 1403, the admissions director requested an interpretation from the INS, and when he was told that unauthorized entrants did not have the right to be in the United States, he refused to enroll the student (Linda Christofilis, personal communication, October 17, 2002; D. Hendry, personal communication, August 2002).[63]

The increase in numbers of undocumented students attending college in Texas has had an impact across the United States. Notwithstanding a less than stellar role on the part of the state to inform potential beneficiaries of this new opportunity, the news in Texas has spread to other states and influenced the passage of similar legislation. To date, eight more states have passed in-state tuition policies, including California, Utah, New York, Washington, Illinois, Oklahoma, Kansas and New Mexico. The next chapter reviews the record of similar state legislative initiatives that have partially opened the door of higher education to undocumented immigrant students.

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[62]It took three years after the passage of the bill, for the THECB to add the generic affidavit, required of undocumented students, to the electronic application for admission (Texas Common Application). Up until then, undocumented students applying to more than one university had to fill out different affidavits which varied in language and requirements. The lack of a uniform document points to the need to have a more centralized process.

[63] Aware of this situation, Noriega's office sent a letter to THECB Commissioner Don Brown to request that a memo of clarification on the issue be released stressing the fact that "regional or local INS officer(s) do not make policy on college admissions (Noriega, personal communication, August 7, 2002).

Chapter 7: *Falling Dominoes: Replicating Texas' in-state tuition policy*

This chapter addresses the impact that the Texas legislation had on other states which have passed almost identical in-state tuition bills, affirming the role of Texas as a bellwether in the immigration and education debate. Starting in 2001, California, Utah, New York, Washington, Illinois, Oklahoma, Kansas and New Mexico have passed in-state tuition policies opening the door to higher education for undocumented students.

Although the changes in all of those states are significant, this author's focus will be on California and New York which, together with Texas, claim almost half of the undocumented population in the nation (Passel and Suro, 2005).[64] Proponents of higher education for undocumented students have been active in these two states since the 1980s, although neither been passed an in-state tuition policy. The purpose of this chapter is to describe the history of advocacy in both states which culminated in the successful passage of an in-state tuition policy in California (2001), and in New York (2002). Although the bulk of the discussion centers on states, in-state tuition laws in Utah, Washington, Oklahoma, Kansas and New Mexico are noted as examples of the wide impact of Texas' legislative changes. When available, information will be included about the extent to which all other in-state tuition proposals differ or coincide with the Texas law.

CALIFORNIA

Out of the estimated 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. In its calculated, that "California has about 40% of the estimated number of undocumented students (all grades and levels)" in the nation (Urban Institute, 2003a).

[64]Out of the total undocumented population in the nation, estimated at 10.3 million, California is calculated to have 24% while New York has 7% of the total. Texas stands in the middle with an estimate of 14% of the total undocumented population (Passel, 2005; Urban Institute, 2004b).

The following review of the advocacy efforts on behalf of California's undocumented students that led to the eventual passage of an in-state tuition law departs from the previous discussion on the Leticia "A" case of the 1980s. It highlights the work of the Leticia "A" Network (hereafter Network). The Network emerged as an advocacy group named after the student who had successfully won the state district court case (Guillen, 2002). The group advocated on behalf of the undocumented students who gained admission to California's institutions of higher education in the mid eighties, and continued its efforts until the successful passage of California's in-state tuition law, Assembly Bill (AB) 540, in October of 2001.[65] In order to contextualize the discussion, brief reference will be made to the successful Leticia "A" case and the "Bradford" ruling that overturned it. Most of the section is dedicated to the various attempts to achieve the passage of an in-state tuition law, including the following legislative measures: AB 592 (Richard Polanco, 1991); AB 3525 (Richard Polanco, 1992); AB 2114 (Hilda Solis, 1993); AB 3380 (Mickey Conroy, 1994); AB 1197 (Marco Firebaugh, 1999) and AB 540 (Marco Firebaugh, 2001).

The issue of undocumented students' access to higher education has been litigated in California since the mid seventies with important victories in the mid eighties when the students won the right to have access to college at in-state tuition rates.[66] The Network supporters scored an initial legislative victory in 1985 with the admission of undocumented students to the UC and CSU systems at in-state tuition rates and with eligibility to the Cal Grant. Unfortunately, the triumph was reversed with the 1995 hereinafter AAW Ruling (see

[65]The composition of the group resembles the Houston Coalition. As in Texas, participants in the Network included high school teachers and counselors, representatives of institutions of higher education, immigrant students and parents as well as community and civil rights advocates such as MALDEF and the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA). This last group was formed in Los Angeles, soon after the passage of Proposition 187 to defend immigrant rights on various fronts.

[66]In the early 1980s, a Los Angeles Community College District decided to allow undocumented students to enroll as residents for tuition purposes (Olivas, 1995). Such changes mirror similar ones from Texas where the policy changes initially took place at the local level (i.e. community colleges) before being implemented by the state (see previous discussion).

Chapter Four).[67] This, however, did not deter the Network from continuing with its advocacy efforts.

Between the time of the initial Leticia A case (1985) to the final AAW Ruling (1995), there were a number of attempts to implement in-state tuition bills which would have settled the issue once and for all. One of those proposals was Assembly Bill (AB) 592, filed by Assemblyman Richard Polanco (Los Angeles) in 1991 just one year after registrar Bradford filed his taxpayer suit challenging the admission of undocumented students at in-state tuition rates at the University of California. The bill proposed to allow undocumented students to establish residency for tuition purposes. Although the governor eventually vetoed the bill, Polanco filed it again in 1992. This time, the bill sought to return to the campuses the authority to establish residency, and therefore eligibility requirements for the Cal Grant for undocumented students. The bill, AB 3525, was also vetoed.

Assemblywoman Hilda Solis (San Gabriel Valley) filed the next proposal (AB 2114) in 1993, a year before the anti-immigrant Proposition 187 took central stage in California. It would have allowed undocumented students to be classified as residents for in-state tuition fees. The bill contained language that became the norm for most of the in-state tuition bills across the nation. It required: (1) graduation from a California high school; (2) proof that students had entered the country as minors and attended high school for at least three years; and (3) evidence that the students had filed an application with the INS to adjust their immigration status (Archie-Hudson, 1993).[68] The measure, however, did not make it to the governor's desk (Cabaldon, 2001).

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[67]In 1995 under the AAW decision, undocumented students previously eligible to attend college under the Leticia "A" case, were deemed ineligible for in-state tuition rates (Olivas, 1995).

[68]A bill analysis by the Governmental Relations and External Affairs Division of the California Community Colleges stated that the AB 2114 was intended to prevent those who were holding nonimmigrant visas as well as undocumented students, that is, those who did not have a "reasonable likelihood of remaining," the opportunity to attend college at in-state tuition fees. To demonstrate their intent of remaining, immigrants had to have met the above requirements in addition to attending a California institution of post-secondary education. These new specifications were clearly an attempt to grandfather students who could be excluded in the event of the passage of restrictive legislation that would overturn the gains of the Leticia "A" case (Archie-Hudson, 1993).

In 1994, Assemblyman Mickey Conroy (Orange) filed Assembly Bill (AB) 3380, a restrictive proposal which prohibited "any person from establishing residence in California for the purpose of paying in-state tuition unless he or she is a citizen of the United States" (Archie-Hudson, 1994).[69] By requiring that all enrollees be U.S. citizens, the bill was expected to exclude more than 265,000 students who had been given permission to be in the country, such as "permanent and temporary immigrant residents, nonimmigrant residents with visas, students in the federal amnesty program and refugees" (Archie-Hudson, 1994). The figures did not include international students or undocumented. If preventing undocumented immigrants from establishing residency was not enough, Conroy also proposed an Assembly Constitutional Amendment (ACA 44) to ban undocumented students from attending institutions of higher education.

In addition, the bill proposed to verify the citizenship status of every student and estimated a "potential savings of $550 million from decreased enrollment (assuming 80 percent attrition) and a net revenue increase of $200 million from assessment of non-resident tuition" (Archie-Hudson, 1994). The additional revenue in nonresident tuition would have been gained at the expense of students who were going to be assessed tuition increases ranging from 300% at the University of California and 550% at California State University to 825% at the California Community College (Archie-Hudson, 1994). It was estimated that as many as 200,000 students would drop out due to the tuition increase. In summary, the measure impeded undocumented students from accessing colleges both by statutory provisions and further by the increase in tuition.

In the end, the Board of Governors, which oversees the operations of the community colleges in California, opposed this restrictive measure. The bill analysis made a point that is seldom used to argue against proposals that seek to limit undocumented students' access to higher education. In its analysis, the Assembly Committee on Higher Education found AB

[69]In 1994, when this bill was filed, the California State University system was still allowing undocumented to be classified as residents for tuition purposes (Olivas, 1995).

3380 unconstitutional on the grounds that it discriminated against immigrants on the question of their alienage. Citing different court rulings, the Committee concluded that "the state cannot place limitations [on] the full participation of non-citizens without offending the Equal Protection and Supremacy clauses of the Constitution" (Archie-Hudson, 1994). Further, the analysis noted that it was still questionable whether or not it was constitutional to apply nonresident tuition rates to undocumented students. Although AB 3380 was defeated, in 1995, the California Supreme Court made its final pronouncement in the series of litigations that had spanned a decade since the Leticia "A" case. In its decision in American Association of Women v. Board of Regents, the Court mandated that all systems of higher education in California require proof of U.S. residency, therefore imposing out-of-state tuition on undocumented residents.

During this anti-immigrant period in California, typified by the adverse rulings against immigrant students and the nativist Proposition 187, one of the most important messages from the Leticia A Network was to remind counselors and other personnel in contact with undocumented students that they were "not obligated to report students or families who do not have U.S. documents" (Caine, Torres, Walling and Neilson, 1999). Indeed, much of the Network's advocacy efforts during the Proposition 187 years revolved around "fighting off legislative proposals to preclude legal immigrants from establishing state residency, prohibiting enrollment of undocumented immigrants or requiring citizenship verification procedures" (Guillen, 2002, p.2).

Throughout this period, Network members did not abandon the issue of immigrants' access to college and thus concentrated on reaching out to those who were "in transition to citizenship" (Caine et. al, 1999). Presentations conducted across the state and the country, informed them of their rights and explained that while they could enroll in college, they would have to do so at international rates (Leticia A Network, 1999). These advocates pointed out that residency requirements were often synchronized with federal guidelines to the detriment of undocumented students who either had to pay non-resident fees without the

opportunity for federal or state financial aid (Caine et. al, 1999; Leticia A Network, 1999). In lieu of that, members of the Network resorted to different strategies such as having undocumented students apply to private schools which are allowed to provide funding at their discretion and are in need of the diversity that immigrant students bring to their campuses (Johnston, n.d). In their tips for high school and college counselors, members of the Network emphasized the importance of communicating to families with ninth graders to "start the immigration process early [adding that] the senior year is too late to start the process" (Caine et. al, 1999).[70]

In 1999, the Network rallied behind AB 1197 which sought to overturn the ban placed by Bradford on granting in-state tuition to undocumented immigrants. Filed by Assemblyman Marco Antonio Firebaugh (Los Angeles), the bill came in the aftermath of Proposition 187.[71] Its initial purpose was twofold: (1) to provide certain exemptions of nonresident tuition for up to ten percent of enrolled foreign citizens who could demonstrate financial need in community colleges and (2) to waive the entire cost of tuition for undergraduate students of exceptional academic ability attending a California State University. The former provision, dealing with tuition exemptions for foreigners based on financial need was eventually dropped from the bill.

As AB 1197 made its way through the assembly, the bill was broadened to require that students who had completed three years of high school would pay only mandatory fees estimated at about $1,506 in the 1999 school year. The estimated 750-1,500 students who would benefit under the law would not be charged non-resident tuition calculated at about $9,253 during that same period. U.S. Census statistics provided a higher number, estimated between 9,000 and 10,000, of potential beneficiaries (Johnston, R., 2000; Rojas, 2003).

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[70]While this advice gave the impression that families' immigration status is a matter under their control, there was no guarantee "that an application for residency will be ready in time for college" (Johnston, 2000). Immigration law severely limits the opportunities of vast numbers of people to apply for legalization. Those who have been undocumented face bars to reenter the country ranging from 3-10 years (Parsons, 2005).

[71]Marco Firebaugh's work on this issue spans for a decade since he began working on it as a "young legislative staff member in the early 1990s" (Rojas, 2003).

The bill applied only to CSU and the California Community College as the UC was not included in the provisions of the measure. The UC may have warranted protection since this is where the initial battle was fought. In the end, the Senate Committee of the California Legislature stated that it would be up to the discretion of the Board of Regents of the UC to adopt AB 1197 if it became law but nonetheless recommended implementation of the provisions. Upon further deliberation, the Legislature requested that the Regents take action on the matter.

During the legislative debate, an analysis prepared in the California Legislature stated that the "educational rights of undocumented students is a long standing issue that has been debated within legislative and judicial arenas for years" (Supinger, 1999). Mindful of past controversy, AB 1197 did not seek to change the definition of California resident but allowed certain students to pay resident tuition fees on the basis of their high school graduation. Subsequent changes to the bill in the Senate removed undocumented students from the language and made it a requirement that students had an application pending with the Immigration and Naturalization Service (INS) in order to be exempt from nonresidential tuition fees.

Although AB 1197 passed with no opposition in its initial stages, the argument that many of the students would eventually become U.S. citizens did not resonate with the governor. Governor Gary Davis eventually vetoed the measure alleging conflict with federal immigration law.[72] Davis argued that offering in-state tuition to undocumented students "would require that all out-of-state legal residents be eligible for the same benefits" thus costing UC and CSU alone a "revenue loss of over $63.7 million to the State" (Gary Davis, personal communication, 9/29/00). This interpretation of Section 505 assumed that all students classified as non-residents were offered in-state tuition fees and ignored that the new

[72]The bill's author, assemblyman Marco Firebaugh had pointed out that many of the parents of the students in question were actually in the process of adjusting their paperwork with the immigration service (Supinger, 1999). Indeed, while the children were undocumented, many of the parents were beneficiaries of the 1986 amnesty (Plotkin, 1999).

group of eligible students would constitute a source of additional revenue. At the end, Davis added that "the State's priorities and funding must focus on higher education attainment for California *legal* residents (emphasis added)" (Gary Davis, personal communication, Davis, 9/29/00).

It was not until 2001 that the Network was finally successful in the passage of the in-state tuition law. California's law (AB 540), effective January 1, 2002 initially underwent implementation at the CCC and the CSU systems. In contrast to Texas, the law did not automatically apply to all public institutions. Specifically, the University of California (UC) was not bound by this legislation because according to the State's Constitution it is governed by the policies adopted by its Board of Regents.[73]

Seeking a uniform law, the language of the bill included a request that the Regents adopt and implement the policy at the UC. It took a special vote from the Board of Regents to adopt the policy and an amendment by the Legislature under AB 153 (also filed by Firebaugh) to limit the financial liability of the UC, the CSU and the CCC in case of lawsuits by U.S. citizens classified as out-of-state students (Hebel, 2001; Office of the President, personal communication, January 17, 2002). The amendment was void of references to state residency "to steer clear of a conflict with the federal law, which specifically prohibits benefits awarded on the basis of residence" (Hebel, 2001).

Understanding that the stakes were high, Chicano supporters of undocumented immigrant students organized a forum at the UCLA campus a week before the meeting of the Board of Regents, where a vote was scheduled to take place regarding the adoption of AB 540 (University of California at Los Angeles, 2002). The forum, organized by the MEChA chapter, sought to teach the history of the struggle of undocumented students, to update participants on the campaign to have AB 540 implemented across the UC system and specifically to press the Board of Regents to adopt AB 540.[74] A follow up rally was held the

[73]UCLA campus officials nonetheless voiced their support for the measure and were registered in the Legislature as one of the supporters of AB 540 (Boloorian and Anton, 2001).
[74]MEChA stands for Movimiento Estudiantil Chicano de Aztlan.

day of the Board Regents meeting to demand that the University open its doors to all students regardless of immigration status. A petition was presented to the Regents on that day (UCLA, 2002). AB 540 was adopted by the UC Board by a vote of 17-5, with figures such as Regent Ward Connerly in the opposing minority (Barrera, 2002; Connerly, 2002). The regulations were not legally effective until June 2, 2002.[75]

The request by the University to add the provision limiting its liability in case of lawsuits claiming conflict with federal law was certainly in anticipation of litigation such as the one experienced a decade before under Bradford. In doing so, UC agreed to adopt the policy but with legislative protection "limiting the relief state courts would be authorized to award in any suit [thus] eliminat[ing] or reduc[ing] the potential financial exposure to an acceptable level" (Office of the President, personal communication, Jan 10, 2002). In other words, UC conditioned its implementation of AB 540 on the creation of a statutory change to guarantee that no monetary damages could be awarded and that the only possible relief would be a termination of the waiver of non-resident tuition in the event of a successful challenge to AB 540 in the courts.

As initially filed, AB 540 sought to classify eligible students as meeting the residency requirements. This qualified them for California student aid programs, namely the Cal Grant Program which provides for tuition costs at both UC and the CSU.[76] However, last minute negotiations removed provisions which would have allowed undocumented students access to state financial aid (California Immigrant Welfare Collaborative, 2001).

Undocumented students now qualified under the law if they had: (1) attended a California High School for 3 or more years; (2) graduated from a California High School or received a GED; (3) registered or enrolled at an accredited institution of higher education in

[75]At the time AB 540 was made law, Ward Connerly was also the chairman of the American Civil Rights Institute and long time opponent of affirmative action policies.

[76]"Cal Grant A awards (equivalent to CSU) tuition are $1,428 and require a 3.00 GPA. Cal Grant B awards (access for subsistence) are $1,551 and require a 2.00 GPA. For the purposes of estimating a fiscal impact, it is assumed 90 percent of eligible students would be from lower-income families and would qualify for a Cal Grant B award and ten percent of the students would qualify for a Cal Grant B award for additional eligibility costs of $769,350 in the first year" (Franzoia, 2001).

California; and (4) filed or would file an affidavit as required by individual institutions, stating that they would apply for legal residency as soon as possible (Firebaugh, 2002). The affidavit was merely an expression of intent as there were no provisions in AB 540 requiring the students to prove that they had been able to start the immigration process (Mitchell, 2001).

The arguments on behalf of AB 540 paralleled the ones in support of HB 1403 in Texas. Section 1(a) of AB 540 declared that the Legislature acknowledged the long-time presence of undocumented students in the state yet it recognized the limited opportunities faced by these students in their quest for higher education. The recommendation for a fair tuition policy was made on the basis that such students had demonstrated their academic ability by being accepted into California's universities and that by providing access to them the state increased its "collective productivity and economic growth" (Firebaugh, 2001). Others pointed to the fact that undocumented students' families paid taxes and therefore should have access to educational benefits. Additional arguments came from Mexican President Vicente Fox during his 2001 address before a joint session of the California Legislature, where he spoke in favor of AB 540 as a way to recognize immigrants' contributions to the state's economic prosperity (Smith and Bustillo, *Fox urges state to ease tuition residency laws*, n.d.). The following pages detail the main difference between AB 540 and HB 1403 (Texas law).

Residency vs. Waiver of Non-resident Fees

The lack of any mention of residency in the California provisions means that students eligible under the law were not classified as residents for tuition purposes (as in the Texas statute) but instead are eligible for an exemption from nonresident tuition. California regulations pertaining to resident students, which are codified under Title V, are thus not affected by the passage of AB 540.[77]

[77]In regards to students who have started the immigration process, Title V of the California Code of Regulations states that an alien's classification as a resident cannot be made until that person has "taken

Classifying undocumented students as eligible for the exemption had profound implications for financial aid. The law noted that while undocumented students were exempted from paying non-resident tuition, they were still classified as non-residents and therefore ineligible for any state financial aid such as the Educational Opportunity Program (EOP), Board of Governors (BOG) Fee Waiver, California Grant and/or the Governor's Merit Scholar Program (Montemayor et. al, 2003). From an economic standpoint, the community colleges benefited from the tuition paid by the students since they reported them as full time equivalent students (FTES) for apportionment purposes (Young and Noldon, 2002).[78] The students, however, were left with a tuition which, although significantly reduced is still out of their reach (Guillen, 2002).[79] On the other hand, students who showed that they had started the permanent residency process with immigration authorities and had resided in California for over a year were classified as in-state residents for tuition purposes, in particular by the community colleges which then award them BOGG and/or book grants (Loya, 2002).

The lack of financial aid for the students implied that they had to be redirected to scholarship monies, which were never sufficient and often required proof of valid immigration status. To alleviate that problem, and in anticipation of Fall 2002, the Network organized a scholarship drive to award 12 students scholarships of $2500 each. The funds had been collected from employee donations in the Los Angeles Unified School District (LAUSD) and corporate donors, and funneled through the Hispanic Scholarship Fund (HSF).

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appropriate steps to obtain a change of status from the Immigration and Naturalization Service" (Black, personal communication, June 29, 2001).

[78]Before AB 540 was passed, undocumented students could not be claimed for apportionment purposes as it was considered that doing so would constitute a subsidy to their education. In a letter from the Chancellor's Office of the California Community College, the General Counsel further explained the policy: "…this does not mean that districts may not admit undocumented aliens to their noncredit courses. It meant only that if a district admitted an undocumented alien to a noncredit course, it had to absorb the cost of serving that student and could not claim him or her for apportionment purposes (Black, personal communication, June 29, 2001). This situation resembled the financial impact of the measures taken by two community colleges in Texas which decided to open its doors to undocumented students and enroll them at in-district tuition fees prior to the passage of a state law in 2001.

[79]The impact of the cost of tuition on these families, even at in-state tuition levels, was noted during the analysis of the previous in-state tuition bill which was vetoed by the governor (AB 1197).

While the HSF could not provide any additional funding (they lacked the financial backing of most of their corporate donors for undocumented students), the Network funneled the money through the HSF guaranteeing that the funds went directly to the students (Loya, 2002). One of the chairpersons explained in a Network meeting that giving the money to a California college or university would turn the donation into state funds, which could not be released to undocumented students (Alfred Herrera, personal communication, September 28, 2002). The fact that over 203 applications were received and only 12 were granted exposed the need to change policies at various levels.

In an effort to tackle this issue, legislation was filed after the passage of AB 540 in order to provide undocumented students access to state financial aid. Soon after the passage of AB 540, Network chairpersons, Alfred Herrera and Irma Archuleta, met with Assemblyman Firebaugh to secure Cal Grants as well as other state funds for undocumented students (Loya, 2002; Nicholson, 2003). A draft bill addressing this issue was introduced during the 2003-2004 regular session of the Legislature by Senator Martha Escutia (Norwalk) under SB 328. The Assembly version was introduced by Assemblymen Marco Firebaugh (Los Angeles) and Thomas Calderón (Montebello) as co-authors, and it sought to provide state financial aid to students eligible for in-state tuition under AB 540. Besides extending financial aid eligibility, this measure also sought to expand aid to undocumented students under AB 540. In particular, it sought to institute the tuition waiver program known as BOG at the community college for those in need. The new bill required the CSU and the CCC to implement an internal procedure to determine the financial need of undocumented enrollees since these students are unable to fill out the federal application for financial aid the Free Application for Federal Student Aid (FAFSA). The language of the bill was modified several times and advocates had to fight off efforts to gut the bill.[80] In the end, the governor

[80]One such amendment sought to make AB 540 inapplicable to the California State University system. This seemed inconsistent with the main purpose of the bill to make undocumented students eligible for in-state tuition aid (Office of Senate Floor Analyses, 2003).

vetoed the measure, arguing that the economy did not permit the state to provide financial aid to its undocumented residents (Gary Davis, personal communication, October 12, 2003).

Implementation

Like the Texas bill, California lacked a statewide funded campaign to inform undocumented students of their newly acquired eligibility for in-state tuition (Rojas, 2003). Immigration advocates in the Network repeatedly observed the lack of knowledge among community college clerks about the law. As a result, undocumented students have often been charged out-of-state fees (Loya, 2002). Members of the Network such as MALDEF have requested to be notified of errors in the implementation of the law.

While statewide informational campaign has been lacking, the work of the Network has influenced the dissemination, implementation and enforcement of the law. An added boost in the efforts to improve public knowledge about AB 540 was the publication of a resource manual by the office of the law's sponsor, Assemblyman Marco Firebaugh. Entitled, "AB 540 Assisting Immigrant Students to Pursue Higher Education," the manual contains information in English and Spanish about the content of the law, its requirements, the cost of college tuition, a sample affidavit, a glossary of immigration terms, a list of questions and answers pertaining to related immigration matters, an explanation of the process to adjust one's immigration status, a list of immigrant assistance organizations, an explanation of the California system of higher education, the required college entrance examinations, the high school curriculum, university academic requirements, a database of scholarships available to undocumented students and a list of university contacts both at the UC and at the CSU systems. The publication of informational fliers and uniform questionnaires from the Chancellor's Office has also aided in the diffusion of the benefits of the law (Young and Noldon, 2002; Gill, Regalado, Riegel, 2002).

Only couple years after the passage of AB 540, anti-immigrant forces sought to overturn the law blaming undocumented students for enrollment cutbacks. This has represented an additional obstacle to its implementation. During the 2003-2004 school year,

an estimated 7,500 qualified applicants to the UC system were turned down because of enrollment cutbacks. Anti-immigrant forces lead by two State Senators filed SB 349 (Tom McClintock-Thousand Oaks) and SB 589 (Bill Emmerson-Rancho Cucamonga) in 2005 with the purpose of recapturing those slots believed to be in the hands of "illegal immigrants" (Hiltzik, 2004). The assumption was unfounded given the fact that UC reported that only 719 students qualified under AB 540 during the previous academic year of 2002-2003 and that 93 of whom were thought to be undocumented (Hiltzik, 2004). In the end, none of the proposals filed in 2005 passed the Senate Education Committee. More importantly, the trend that California and Texas had begun with the passage of their in-state tuition policies continued across the nation.

NEW YORK

New York has been historically an immigration receiving state. The size of its undocumented population, however, is smaller than in California and Texas. One of the most diverse states in the nation, New York became the fourth jurisdiction which allowed undocumented students to attend college at in-state tuition rates. The passage of this legislation was of critical importance given the demographics of the city of New York, alone. Figures from 2000 Census and 1999 numbers from the City's Planning Commission estimated that 36% of the city's population was foreign born.[81] Moreover, immigrant communities and their advocates in New York have long fought for their right to attend college on equal terms with U.S. citizens. This section reviews that history of a successful advocacy effort that led to the passage of the New York in-state tuition law in 2002.

This section begins with a brief recount of policies that had been in place since the eighties at the two largest systems within the state, the City University of New York (CUNY) and the State University of New York (SUNY), which allowed undocumented students to pay in-state tuition fees. While these policies provided college access to undocumented

[81]In addition to the numbers of immigrants, 20% of residents are U.S. born children of immigrants (NYC Council's Committee on Higher Education, 2004). Adding the two figures shows that the majority of the population in the city is of immigrant stock (either first or second generation immigrant).

students, their gains were reversed upon the passage of anti-immigrant legislation (namely the 1996 IIRIRA) and the draconian measures that followed the New York bombings of September 11, 2001. The successful in-state tuition bill of 2002 reestablished previous gains by undocumented students and reaffirmed their right to a higher education.

Until the passage of IIRIRA in 1996, SUNY "undocumented students could qualify for in-state tuition, although many SUNY campuses did not permit it" (Badger and Yale-Loehr, 2000, p. 415). The apparent contradiction was due to the fact that university officials believed that federal law prohibited colleges from offering in-state tuition rates to the undocumented. SUNY consequently modified its rules in June of 1998 barring these students from receiving an affordable education (Harvard Law Review Association, 2002). SUNY's policy regarding immigrant students stated: "students who are unable to present valid documentation of their alien status are not eligible for in-state tuition rates" (Badger and Yale-Loehr, 2000, p. 415).

The CUNY experience was more complex. CUNY had a long history of providing a tuition-free higher education to everyone. This changed in 1976, when the university began charging tuition and established a distinction between residents and non-residents. It also began charging non-resident tuition to undocumented students (Yates, 2004, p.598). The policy was modified in 1989 when undocumented students began enrolling at in-state tuition rates. The inclusive policy even survived the 1996 immigrant legislation. After the passage of the IIRIRA in 1996, the university had received legal advice that it did not have to change its policy given that Congress had not implemented regulations or sanctions pertaining to Section 505 and its apparent ban on undocumented students' access to higher education.

The policy of inclusion, however, did not survive the anti-immigrant hysteria that followed the events of September 11, 2001. A number of politicians contributed to this by making immigrants the scapegoats for the attacks that took place in New York. State Senator Frank Padavan from Queens, a borough with a high immigrant population, for instance, stated that CUNY's inclusive policy was "a national security issue and an insult to every

citizen and legal immigrant seeking higher education" (Paget-Clarke, 2002, p.2). Soon after this, CUNY adopted a policy that required undocumented students to pay out-of-state tuition rates. The passage of the restrictive policy coincided with proposals to increase the cost of tuition and cuts in the financial aid programs that included the Peter Vallone Scholarships and the New York state Tuition Assistance Program (TAP).[82]

Changes occurred again following the September 11 attacks, when the CUNY Chancellor Matthew Goldstein along with general counsel Frederick P. Schaffer ended the in-state tuition rates for undocumented New York residents (Yates, 2004, p. 598).[83] The changes to the 12-year policy went into effect in the Spring of 2002, affecting approximately 2,000 undocumented students. They amounted to only 1% of the total 200,000 enrolled in degree programs (Szelenyi and Chang, 2002).[84] Although the number of beneficiaries was negligible, many reportedly dropped out due to their inability to pay out-of-state fees (Paget-Clarke, 2002).

The changes in the CUNY system, particularly those targeted at undocumented students, generated an outcry from the students who filed an Article 78 petition with the intention of nullifying the Chancellor's decision.[85] The undocumented students organized as the Mexican American Student Alliance (MASA). According to Yates (2004), the petitioners argued that Section 505 in the IIRIRA was "so vague as to be unenforceable" (p.599). They also charged that the reclassification of undocumented immigrants as nonresidents constituted an anti-immigrant act. Despite their spirited challenge, the judge

[82]According to the New York Public Interest Research Group, "the Mayor's Preliminary Budget cuts $6.5 million from the Peter F. Vallone Merit Scholarship program at the senior college level and $500,000 at the community college level. These cuts terminate the award at CUNY" (NYPIRG, 2002).

[83]Despite this decision, Chancellor Matthew Goldstein testified in favor of the in-state tuition bill, participated during the advocacy activities pressing for changes in the law and attended the signing ceremony where advocates celebrated the passage of the policy (Professional Staff Congress, 2002).

[84]Some estimates offered a higher figure with 3,000 students affected, most of whom (2,800) were attending CUNY (Barnard, 2002).

[85]Article 78 petitions are filed by New York residents to appeal decisions of state agencies in order to determine "whether state action is without sound basis in reason, is arbitrary or capricious, or is illegal as a matter of law" (Yates, 2004, p. 599).

reviewing the case concluded that "the Chancellor's efforts to comply with federal law were not arbitrary or capricious" (Yates, 2004, p. 599).

CUNY faculty and students also responded by organizing themselves under the "CUNY Is Our Future" banner. While the purpose of both groups was to raise educational issues pertaining to undocumented students, MASA students sought to support international students with visas who came under attack after September 11.[86]

Other supporters of in-state tuition for undocumented included labor unions as well as civil rights organizations such as the Puerto Rican Legal Defense and Education Fund, the Hispanic Federation, the National Korean American Service & Education Consortium, the New York Immigration Coalition, the Citizenship and Immigration Project, Youth Empowerment Activists (YEA) and unions such as the Professional Staff Congress, Jobs with Justice and AMAT (Mexican-American Workers Association).[87] Another key advocacy organization was the New York Public Interest Research Group (NYPIRG).

Assemblymen Peter Rivera (Bronx), Adriano Espaillat (Manhattan) entered the fray by offering in-state tuition proposals and Senator Pedro Espada introduced a similar bill.[88] Advocates for legislation that would allow these students to be classified as residents for tuition purposes at CUNY and SUNY also testified before the City Council, organized marches to City Hall and rallied at the steps of City Hall. The proposal, known as Assembly Bill (AB) 9612 and Senate Bill (SB) 7784 and which eventually became law, classifies as residents all those students who (1) attended an approved New York high school for more than two years and apply to a state institution of higher education within 5 years of high school graduation; (2) received a GED certificate and applied for admission to college as indicated above; and (3) filed an affidavit indicating their intention to submit an immigration

[86]Following the September 11 events, Orin Hatch cosponsored Senate Bill 1627 with Texas Senator Kay Bailey Hutchinson to establish a database to screen and identify inadmissible or deportable aliens. The measure had been introduced by Democrat Senator Dianne Feinstein from California and included several provisions requiring educational institutions to report data on foreign students.

[87]Youth Empowerment Activists is the youth program of the Latin American Integration Center (Ponce de Leon, 2003).

[88]Rivera is the Chairman of the Assembly Puerto Rican/Hispanic Task Force (Somos El Futuro, 2005).

application as soon as they were eligible to do so.[89] The bill also allowed for the retroactive charge of resident tuition to immigrant students attending SUNY or CUNY during the 2001-2002 academic year (Hebel, 2002).[90] The retroactive application of the law effectively grandfathered students who had been paying resident tuition rates prior to CUNY's reversal of its long time policy and whose likelihood of completing their programs of study would be severed by the increase in tuition rates.

The bill was signed on August 9, 2002 making New York the fourth state passing such legislation (See Appendix B). The signing ceremony was a testament to New York's diversity and the fact that the new in-state tuition law was for all immigrants and not just Latinos as some portrayed it.[91] An undocumented African student attending the City College addressed the crowd during the signing of the bill while other immigrant students participated in the ceremony. The organizations that had advocated for the changes, MASA in particular, issued statements exhorting both CUNY and SUNY to guarantee the confidentiality of the students' immigration status and to provide legal counseling as it pertained to the requirement to fill out an affidavit regarding their immigration status.

Financial aid programs continued to be limited despite the fact that the in-state tuition measure made SUNY and CUNY more affordable. According to a review of the requirements of different financial aid programs, undocumented students appeared eligible.[92] The requirements for most of state financial aid programs include 12-month residency period in the state prior to college enrollment, possession of a high school or GED diploma, acceptable academic standing and financial need.

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[89]Rivera and Espaillat's proposal had been filed under AB 9612 (Assembly Bill 9612, 2002).

[90]While the legislation was pending, "CUNY officials had allowed those students to defer payment on the portion of their tuition bill that reflected the non-resident rate" (Hebel, 2002).

[91]Soon after the measure was signed, Senator Olga Mendez stated: "Once more, Governor Pataki has shown caring for all Spanish speaking communities in New York State" (Office of the Governor, 2002).

[92]The consequences of lack of financial aid are well known, as students must find employment. A CUNY study found that 48% of registered undocumented had a mixed pattern of attendance ranging from full to part time. Financial need also had an effect on their academic performance as only 31% of them had a grade point average (GPA) of 3.0 or more (Dozier, 2001).

While the lack of financial aid is a burden for immigrant students, the higher education systems in New York are far from losing their foreign-born population. According to CUNY's Office of Institutional Research and Assessment, half (49.5%) of CUNY's undergraduates are immigrants, with 20% of them lacking U.S. citizenship or permanent residency and 2.7% attending the university under student visas (NYC Council's Committee on Higher Education, 2004).[93] This has led some researchers to describe CUNY as an "extremely important immigrant-educating institution" (Bailey et al., 2002). The characterization of CUNY as an immigrant-serving institution may be unique to that area, but the immigrant influx has been felt across the country in a manner that has obliged many other states to pass inclusive policies extending the benefits of in-state tuition to undocumented immigrants.

NINE STATES WITH IN-STATE TUITION POLICIES: COMMON FACTORS IN THE LAWS

This section provides a general discussion of the process leading to the passage of in-state tuition measures in Utah, Washington, Illinois, Oklahoma, Kansas and New Mexico. The organization of the discussion follows the pattern established in the previous treatment of the political and legislative history in Texas, California and New York. The primary areas of discussion include the following: (1) previous efforts on behalf of the legislative measures; (2) advocacy work among teachers; (3) the broadly-based campaigns of support by a network of community organizations and other advocates; (4) the diversity of the immigrant population benefiting under the law; (5) the low enrollment experience under the in-state tuition laws; (6) administrative issues such as residency classification, waivers of non-resident tuition and eligibility for financial aid; and (7) obstacles presented by federal immigration law. These seven characteristics will be addressed as apply to one state or the other.

[93]In addition, a study of academic performance at CUNY found that 76% of the undocumented had completed their high school education in the United States thus were long time state residents (Dozier, 2001).

The legislation in these states passed between 2002 and 2005 and generally followed the inclusive type found elsewhere. As shown above, the issue of in-state tuition is contentious. However, the precedent set by Texas, California and New York aided in the passage of the laws in these states which, with the exception of Illinois, are characterized by new immigrant flows. New Mexico stands as the one state which although unsuccessfully with previous attempts to pass this legislation, has the most inclusive bill found yet.

A review of the development of in-state tuition laws in the rest of the six states reveals some commonalities with Texas, California and New York. The issue of undocumented students' access to higher education surfaced in some of the other states before the passage of the in-state tuition bills. This was the case in Illinois, one of the six largest immigration-receiving states, where prior to the passage of HB 60, two of the state's nine public universities allowed in-state tuition rates (Office of the Governor, 2003).

The other states had smaller foreign-born persons, although they were not devoid of a history of immigration. In these cases the issue of undocumented students' access to higher education also emerged prior to the passage of the in-state tuition law. Nowhere was this more evident than in New Mexico where advocates requested in several occasions opinions from the Attorney General (AG) to determine the eligibility of undocumented immigrants for in-state tuition.

In 1983, the New Mexico Attorney General (AG) issued an opinion stating that "an illegal alien who has resided in New Mexico for the past ten years and graduated from a New Mexico high school cannot be denied resident classification at the New Mexico State University" (LESC, 2001). While the AG opinion applied to New Mexico State University, it was not clear what the situation was at the other institutions. Indeed, in 1991, the Mexican Consulate contacted officials from the University of New Mexico to manifest their concern regarding the number of undocumented students attending Albuquerque high schools who had good grades, but had no options after graduation (LESC, 2001).

During the next decade, since the inquiry from the Mexican Consulate, the issue appeared to lose prominence. In September of 2001, perhaps in response to the in-state tuition victory in Texas, defenders of undocumented students began consultations with the AG to request advice regarding the potential opportunities of these students to attend New Mexico colleges and universities (LESC, 2001). By that time, polls from the Legislative Education Study Committee (LESC) and the Commission of Higher Education (CHE) indicated that at least two institutions (University of New Mexico and New Mexico State University) allowed in-state tuition for undocumented immigrants.[94] Despite these polls, the lack of uniformity and consistency in dealing with the issue had generated a great deal of confusion and prompted the Executive Director of CHE to request another AG opinion. In 2003, the CHE requested from the AG an opinion regarding the eligibility of undocumented immigrants for post-secondary educational benefits at public colleges and universities (E.A. Glenn, personal communication, August 7, 2003). At the time, the AG concluded that:

> (1) undocumented immigrants are not prohibited from attending public colleges and universities in New Mexico; (2) an attempt by state colleges and universities to refuse admissions to undocumented immigrants would likely be challenged as preempted by federal law and in violation of constitutional equal protection principles; (3) absent a state law expressly making them eligible, undocumented immigrants may not participate in the lottery tuition scholarship program; and (4) although open to challenge, CHE arguably has sufficient legislative authority to promulgate regulations making undocumented immigrants eligible for in-state tuition (E.A. Glenn, personal communication, August 7, 2003)

Despite the AG opinion, the CHE did not change the regulations, although the Commission had the latitude to make them. A year later, the CHE reported that there "was institutional support for modifying the Commission's rule to remove language that prohibits the treatment of undocumented students as residents" (Commission on Higher Education, 2004). Meanwhile, concerns over legal challenges had prompted institutions of higher education to express support for changes blessed by the CHE. It was understood that

[94]Further, when the inquiry was made Texas had already changed its policy and certain New Mexico recruiters had used it as an example. The University of Texas at El Paso was accepting undocumented students from New Mexico because under reciprocity agreements, institutions bordering with other states are allowed to accept residents from those jurisdictions and offer them the benefit of in-state tuition.

"explicit statutory authority to treat undocumented students as residents would alleviate these concerns" (CHE, 2004).

Two decades of inquiries from advocates had sought to raise awareness among public officials and others regarding the plight of undocumented students. Undocumented students finally became eligible for resident fees when an in-state tuition law passed in the spring of 2005. With the passage of this measure, New Mexico became the ninth state offering in-state tuition to undocumented high school graduates and the third state, along with Texas and Oklahoma, that extended the possibility of state financial aid to these students. The New Mexico measure was by far the most comprehensive of all policies in the States. It requires only one year of high school attendance (as opposed to the three years required by most) and made undocumented students eligible for state financial aid benefits, including loans and scholarships funded by the state lottery.

The success achieved in New Mexico, as well in other states, was possible in large the advocacy work of teachers. As language instructors, teachers were the first to contact undocumented students. The important advocacy role played by teachers and especially by instructors of English as a Second Language (ESL) was obvious in Texas, as well as in Utah. There, Gerry Maak, a Spanish teacher pressed State Representative David Ure to address the issue. Maak taught at Park City High School, one of the schools with the highest percentage of Latinos in the state (The Park Record, 2002; Reade, 2002).

Like Maak in Utah, ESL teacher David Johnston in Texas has been recognized as one of the forces behind the movement which resulted in HB 1403 (Alanis, 2004; Axtman, 2002; Fischer, 2004). Johnston, along with this author, also an educator, were instrumental in organizing the Houston Coalition which galvanized the necessary support for the legislation.

Other states relied on building a broad coalition of supporters in order to assure passage of the law. In Washington State the advocacy efforts were lead by the Latino/a Educational Achievement Project which worked closely with the state representative filling the bill. Their coalition resembled the ones in Texas, California and New York. The

members came from school districts, colleges and universities and included seventeen school boards, and church, civic, community and labor organizations (LEAP, 2003, p.1).

A similar example is the advocacy work conducted by the Illinois Coalition for Immigrant and Refugee Rights, a statewide coalition that claimed over 100 organizations from the Chicago metropolitan area (Mehta and Ali, 2003). Notably, this coalition collaborated with the Center for Urban Economic Development and the University of Illinois at Chicago in administering a survey to determine the potential impact of an in-state tuition bill.

In Illinois, those organizing in support of HB 60 were successful in portraying the in-state tuition bill as a measure which would benefit a diverse population of immigrants. Immigrant activists provided statistics on the breakdown of the undocumented population in the city of Chicago alone. Of particular interest is the fact that Europeans of Polish descent made almost 20% of the total undocumented there with Latin Americans comprising nearly 70% of that population.[95] A smaller portion is composed of Asians. These figures demonstrate that these policies are not simply created to advance the Latino population.

Illinois advocates, like in other states presented the idea of in-state tuition as a measure that would benefit all undocumented immigrant students. Also, although the bulk of the state's undocumented population was of Latino descent, advocates often included non-Latino students in their activities. While the New York and Texas advocates included African students in the hearing and bill signing ceremonies, in at least one reported instance advocates in Utah secured the support of Asian students of Indian descent (NYPIRG, 2002; Ghandi, P., Aguilar, A., and Santillan, R., 2002)

Advocates employed other efforts that promoted the idea of diversity within the immigrant population. In New Mexico, for instance, proponents of the in-state tuition bill

[95]In the case of Latin Americans, the overwhelming majority were Mexicans (60%) while another 10% were from Central and South America (Mehta and Ali, 2003). These measures had special for urban areas such as Chicago where over 60% of the undocumented student population lived in households that earned less than $20,000 a year (Mehta and Ali, 2003).

helped to repeal legislation that would have excluded undocumented immigrants from nations deemed as "terrorists" by the Department of State.[96]

In spite of the efforts to secure inclusive bills benefiting a diverse array of immigrant students, most of the states reviewed registered low enrollment figures under the new inclusive policies. For example, in Utah a year after the passage of the in-state tuition bill, only 148 undocumented students were admitted across the 10 universities and colleges in the state, thus constituting 0.1% of the 140,000 students enrolled. Washington State faced a similar situation. According to one researcher the families of undocumented students could not even afford the in-state tuition (Sullinger, 2004a). The lesson became obvious to the advocates. States had to either pass policies to grant undocumented students state financial aid, or classify them as state residents, thus making them eligible for the pool of state financial aid.

The classification of undocumented students as residents of the state for tuition purposes is perhaps one of the key differences among many of the different in-state tuition laws. As explained above, classifying students as state residents can have a tremendous impact on whether or not they are able to receive state financial aid or participate in state funded programs for academically disadvantaged students (see previous section on NY programs). In this respect, and in contrast to Texas, California's law does not establish state residency for undocumented students. Thus, although they qualify for in-state tuition they remain ineligible for state financial aid which decreases the students' chances of completing their degrees (Abrego, 2002). New Mexico, Oklahoma, and Texas are the only states that make the students eligible for various grants under their state financial aid programs and therefore are more likely to have a higher number of students benefiting under their policies.[97]

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[96]A similar attempt took place in Washington state where an amendment was introduced to the in-state tuition bill to "exclude children of undocumented migrant workers in the state" (WSSDA, 2003).

[97]In Oklahoma, undocumented students eligible under the in-state tuition bill also qualify to receive the Oklahoma Tuition Grant.

In other states, which have also defined these students as residents for tuition purposes, financial assistance is limited to certain programs. For instance, in Washington undocumented students (under HB 1079) are eligible to receive the "Future Teachers Conditional Scholarship and Loan Reypament Program" (LEAP, 2004). However, the scholarship was limited to those interested in education and had to be repaid with interest if the student failed to teach (LEAP, 2004). This presented a problem for undocumented students who could not be guaranteed an adjustment of their immigration situation by the time they graduated from college and consequently could not be assured employment. The issue of federal legislation to solve this predicament is discussed in Chapter Nine, as it remains to be the most salient obstacle facing the growing undocumented student population that approaches college graduation.

Regardless of the fact that nine states have passed in-state tuition legislation, the issue of undocumented immigrants' access to higher education continues to be debated as anti-immigrant groups claim that these states are in violation of federal immigration law. Restrictionists have formulaically referred to Section 505 of the IIRIRA of 1996 to claim that states are barred from providing undocumented immigrants postsecondary education benefits on the basis of their residence in a given state. Aware of the limitations imposed by this provision of federal law, all in-state tuition proposals have been crafted to require high school attendance instead of state residence, in order to make the students eligible to qualify for in-state tuition.

Despite the passage of in-state tuition policies, some states slowed down the initial enrollment of students under the belief that the implementation of the bill at the state level had to conform to federal regulations. In Utah the bill was not implemented immediately since it was interpreted as becoming "effective only upon passage of a similar federal measure by Congress" (House, 2002). Consequently, its implementation was delayed for a significant portion of the year. The delay involved a wait for the proposed legislation known as the Dream Act, filed by Utah Senator Orin Hatch. If the bill had passed, it would have

allowed undocumented immigrants to adjust their immigration status for employment after college graduation. Although the state in-state tuition bill was to become effective in July of 2002, it was not given green light until November when the AG opined that Utah could remove state restrictions without the federal government's lead (AASCU, n.d).

Although the laws in Texas, California and New York did not face such obstacles, the states have deferred to federal regulations in the establishment of their own educational policies. In that respect, the 1996 IIRIRA achieved its purpose of creating a climate, which excluded undocumented immigrants from of in-state tuition consideration. By imposing immigration regulations on state educational policy, the federal government has undermined the prerogative of the states to determine their own educational policies in the form of eligibility for in-state tuition and other benefits. The next chapter reviews two legal challenges which have allowed undocumented students to attend college at in-state tuition rates. One of them is a federal lawsuit against Kansas funded by the nativist organization FAIR. The other is a legal complaint against Texas. The latter has been filed with the Department of Homeland Security and sponsored by the anti-immigrant Washington Legal Foundation. Both efforts go beyond the targeted states to deter other jurisdictions from implementing non-discriminatory tuition policies on behalf of the growing undocumented high school population in this country.

Chapter 8: *Kansas and Texas: Challenges to In-State Tuition Policies*

This chapter addresses the third research question related to the challenges that states have faced in implementing in-state tuition policies for undocumented immigrants. Implementation has confronted legal obstacles created by anti-immigrant groups seeking to overturn in-state tuition policies. Another kind of opposition has been based on immigration law that precludes the legalization of undocumented immigrants, including those who have attended school in the United States. Further, federal immigration law not only prevents these students from securing an immigration status in this country but, as explained in Chapter Four, Section 505 of the IIRIRA has been interpreted by some policymakers as a prohibition to the implementation of in-state tuition policies. This is especially evident in the legal challenge to the Kansas law, which was eventually dismissed in 2005, and the recent complaint filed with the Department of Homeland Security (DHS) against Texas' in-state tuition policy.

KANSAS

On May 20, 2004, Kansas became the eighth state to open the door of higher education to undocumented immigrants. With the passage of a state law (filed under House Bill 2145) undocumented students were made eligible for in-state tuition rates at public colleges and state universities. The requirements were aligned with those of the other states with similar policies. These included: (1) attendance in a high school for at least three years; (2) graduation from high school or earn a GED and (3) a filed affidavit stating the student intended to adjust his/her immigration status as soon as eligible to do so. The law was to take effect on July 1, 2004 and it was to benefit 370 incoming freshmen (or 0.22%) out of 165,000 students enrolled in Kansas' higher education system (Sullinger, 2004a).[98]

[98]Anti-immigrant groups had predicted a higher number estimated at 2,000 (or 1.2%) of the total enrollment (Hendricks, 2004).

Soon after, on July 19, 2004, the Federation for American Immigration Reform (FAIR) filed a federal lawsuit in federal court against the state, the University of Kansas, Kansas State University and Emporia State University (Day v. Sebelius, 2005, p.2). The lawsuit was the first legal challenge against in-state tuition laws (Melinda Lewis personal communication, July 6, 2005). Representing FAIR was Chris Kobach, a professor of constitutional law at the University of Missouri.[99] The plaintiffs were twenty-four U.S. citizens who had been classified as non-residents for tuition purposes. They were identified by FAIR through advertisements in the newspapers of the University of Kansas and Kansas State University in Manhattan (Sullinger, 2004b; Visalaw, 2004).[100] Intervening in the case as defendants was the Kansas League of United Latin American Citizens (KLULAC) and the Hispanic American Leadership Organization (HALO).[101] These two groups had been able to intercede even though the plaintiffs had sought to prevent them from participating in the case as intervenors on grounds that they lacked "associational standing" (Day v. Sebelius, 2005, p. 11). The court later found in favor of the intervenors coincided with other courts that "have determined that intervenors need not make a show of standing" (Day v. Sebelius, 2005, p. 13).

The suit sought both injunctive and declaratory relief. Injunctive relief was to be achieved by preventing the law from taking effect and by preventing the defendants from applying it. Also, injunctive relief was sought to prevent the defendants from "discriminating between students who had been classified as legal residents of Kansas and them [plaintiffs]"

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[99]Kobach was the former chief advisor to the U.S. Department of Justice on immigration and homeland security from 2001 to 2003 (FAIR, 2004a; Sullinger, 2005). While filing the lawsuit, Kobach was seeking the Republican nomination for a Kansas seat in the U.S. House of Representatives" (Hebel, 2004). His campaign against Democratic Congresswoman Dennis Moore in the Kansas 3rd district was unsuccessful (Hendricks, 2004; Sullinger, 2005).

[100]Similar strategies have also been used by other anti-immigrant groups. In its website, the Friends of Immigration Law Enforcement (FILE) invite students classified as out of state residents in Washington state, California, New York, Illinois, Oklahoma, Texas, Utah and some schools in Georgia to provide their information under the promise that they "may be entitled for a refund" (FILE, 2004).

[101]Three anonymous undocumented immigrants were also among the intervenors. In trying to intimidate them, the plaintiffs insisted that undocumented immigrants were the only ones having standing to intervene granted they disclosed their identities. The undocumented students were subsequently removed from the lawsuit because they did not disclose their names.

(Day v. Sebelius, 2005, p.2). In the words of FAIR, the lawsuit sought to "enjoin the law from taking effect, or to require the state of Kansas to extend the in-state tuition benefits to *everyone* [italics added] attending a public university in the state" (FAIR, 2004a). It is doubtful that FAIR's proposal to extend tuition to all students attending an institution of higher education included undocumented immigrants. Regarding the declaratory relief claim, the lawsuit asked the court to declare the in-state tuition law both unconstitutional and a violation of federal law.

The claimants alleged that they were harmed by the denial of the same educational benefits that Kansas was offering to undocumented immigrants. In the words of FAIR's Executive Director: "Under the guise of compassion, Gov. Sebelius and the [Republican dominated] Kansas Legislature are denying educational opportunities and financial assistance to hard-working, law abiding Kansans and Americans from other states" (Howard Price, 2004). Soon after filing the lawsuit, FAIR's efforts received a boost from the Kansas Attorney General who refused to "defend the Governor and the Board of Regents [by] delegating the task to the Civil Litigation Commission of his office" arguing that Kansas tuition law "rewards illegal activity while placing our institutions of higher learning in legal jeopardy for actions inconsistent with federal law" (FAIR, 2004b). The lawsuit claimed that the Kansas in-state tuition law violated federal immigration law, as well as regulations concerning alien students.[102] The other claims further alleged that the in-state tuition law was preempted by federal law, created a residency status contrary to federal law, infringed upon exclusive federal powers and violated the equal protection clause of U.S. constitution. The following discussion reviews the seven claims in the complaint.

The first count alleged a violation of federal immigration law, in particular of the PRWORA. The plaintiffs claimed that Section 1621 of that act prohibited states from

[102] In particular, the lawsuit claimed that the in-state tuition law violated Section 1621 of the PRWORA and and Section 505 of the IIRIRA. Both sections are under Title 8 Aliens and Nationality Section of the Immigration and Nationality Act.

offering any state or local benefit to undocumented immigrants. However, as noted previously, Section 1621 also notes the following:

> a state may provide that an alien who is not lawfully present in the United States is eligible for *any* (italics added) state or local public benefit for which such alien would otherwise be ineligible...only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility (PRWORA,1996).

Although Section 1621 was clearly an exclusionary measure, it recognized that states still had the right to implement laws that provide undocumented immigrants with certain benefits. In spite of this language, plaintiffs claimed that the Kansas in-state tuition law could not benefit from such a provision because it did not "contain the express statutory language required by federal law" (Day v. Sebelius, 2005, p.7).

The second count also alleged a violation of federal law, this time of the IIRIRA of 1996.[103] FAIR argued that offering in-state tuition rates to undocumented immigrants violated such federal statute. FAIR claimed that Section 505 precludes states from using the long-time residence of undocumented students in a given state to grant them higher education benefits, such as in-state tuition, on the ground that it is to the detriment of U.S. citizens paying out of state fees. However, as reviewed in the previous chapter, the undocumented students' classification as in-state students is based on their high school attendance and not their residence in the state. In addition, most of the in-state tuition bills have raised the bar by requiring undocumented students to have three years of residence in a given state plus high school attendance as opposed to the twelve months required of most U.S. citizens from other states.

The third count alleged a violation of regulations governing alien students. In this claim, plaintiffs refer to the Student and Exchange Visitor Information System (SEVIS). The SEVIS system is a computerized database instituted by the government as part of the Patriot Act, to track the admission and enrollment of international or non-immigrant students who come to the United States with the sole purpose of studying or conducting research.

[103] In this claim, plaintiffs referred to USC 1623 or Section 505 of the IIRIRA.

Plaintiffs argued that the Kansas statue "frustrates this federal purpose by allowing aliens to illegally pose as students at Kansas institutions of higher education while remaining outside the SEVIS registration system" (Day v. Sebelius, 2005, p.8).

The fourth claim alleged issues of preemption. In general terms, the question of preemption deals with the fact that "by virtue of the Constitution, Congress has exclusive power to establish a uniform rule of immigration and naturalization" (Maxwell, 1979, p.514). Plaintiffs argued that the Kansas in-state tuition law is preempted by federal policies regulating immigration and the provision of public benefits to undocumented immigrants. They portray the Kansas law as attempting to regulate immigration and is therefore unconstitutional. This claim argues that the Kansas law "is preempted because it is impossible for a person who is an illegal alien . . . to both receive postsecondary education ... and to comply with federal immigration law" (Day v. Sebelius, 2005, p.8).

The fifth claim referred to the creation of a residency status contrary to federal law. Under this claim, plaintiffs alleged that the Kansas law contradicts federal law by allowing undocumented to be classified as residents for tuition purposes. In their claim, they asserted: "Congress has created a legal disability under federal law that renders illegal aliens incapable of claiming bona fide legal domicile in Kansas, notwithstanding the fact of physical presence or a subjective 'intent' to remain indefinitely in the jurisdiction" (Day v. Sebelius, 2005, p. 9). In other words, plaintiffs argued that these immigrants' undocumented status renders them incapable of establishing the intent to domicile in the state.

The sixth claim referred to an infringement upon exclusive federal powers. Plaintiffs claim that the Kansas in-state tuition bill "impermissibly infringes on Constitutional powers reserved to the federal government" (Day v. Sebelius, 2005, p. 9). Specifically, under this claim plaintiffs "contend that the challenged Kansas law violates Congress' power over the regulation of interstate commerce and foreign affairs" (Day v. Sebelius, 2005, p.9).

The last claim alleged a violation of the equal protection clause of the U.S. constitution. FAIR argued that the Kansas law granting undocumented students the

opportunity to attend college at in-state tuition rates is unconstitutional because it violates the equal protection clause of the 14th amendment (FAIR, 2004a). Specifically, the plaintiffs alleged that Kansas in-state tuition law, "unlawfully and unfairly" allowed undocumented or illegal aliens to attend Kansas universities and be classified as residents for in-state tuition purposes (Day v. Sebelius, 2005, p.1). Their main contention is to demonstrate that federal law does not entitle undocumented students to receive post-secondary education benefits. Further, their claim is that by instituting the in-state tuition policy, "defendants have further denied nonresident U.S. citizens plaintiffs the identical postsecondary education benefits to which they are expressly entitled by federal law" (Day v. Sebelius, 2005, p.10).

The defendants and intervenors, on the other hand, have argued that the plaintiffs lacked standing; that "the statutes and regulations relied upon by the plaintiffs do not create private causes of action"; that the in-state tuition law is not preempted by federal law; that "plaintiffs have not pled an equal protection violation" and that Governor Sebelius should not be included as a party in the lawsuit (Day v. Sebelius, 2005, p.14-15).

Court deliberations began in May 10, 2005. On July 5, 2005 a Kansas judge dismissed the FAIR lawsuit. The dismissal was primarily based on FAIR's lack of standing to challenge the policy but it also addressed two of the particular complaints brought up by the plaintiffs. Specifically it referred to the supposed violation of federal immigration law and private right of action and the alleged infringement upon the equal protection clause. Below, the three main aspects of the ruling are reviewed.

In general terms, the judge found that the plaintiffs did not have a case. More importantly he ruled that students who are U.S. citizens are not harmed in any way by in-state tuition laws that provide access to higher education to undocumented residents. As explained by one of the activists who advocated on behalf of the in-state tuition law, "the issue of standing is not a procedural detail, it is a fundamental problem that demonstrates a key policy contention – that plaintiffs are not negatively impacted by the law" (Lewis, M.,

personal communication, July 6th, 2005). In its decision, the court alluded to the constitutional standing required of a plaintiff's in order to maintain a suit:

> A party raising only a generally available grievance about government –claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state and Article III case or controversy (Lujan v. Defenders of Wildlife as cited in Day v. Sebelius, 2005, p.17).

As explained by the Court in its ruling, "there are three requirements to Article III standing: (1) injury in fact, (2) causation and (3) redressability" (Day v. Sebelius, 2005, p.18). It is pertinent to analyze the last requirement as it closely sets the basis for the court's argument that the plaintiffs lack standing. As stated by the plaintiffs and intervenors regarding the in-state tuition law:

> [it] only affects the price certain students pay to attend a regents school. Thus, the only people affected by the amount of tuition charged to certain students under [the in-state tuition law] are the students who satisfy each of its requirements—and plaintiffs are not among them. Plaintiffs do not have personal rights which are affected (Day v. Sebelius, 2005, p.19).

The defendants' argument refers to the fact that annulling the in-state tuition law does not change the classification of the plaintiffs as out-of-state residents. More so, those filing the lawsuit were out of state students and therefore had not established intent to domicile as most undocumented residents in Kansas. In addition, the cost of their tuition had not been an issue prior to the passage of the in-state tuition law. Therefore, one must conclude that the plaintiffs' arguments are a sophism aimed at obfuscating the real concern of denying access to education to certain eligible undocumented students.

In response to the defendants' argument that the plaintiffs lack standing, the plaintiffs alleged that post secondary education "is a scarce resource and that competition for that resource gives them standing" (Day v. Sebelius, 2005, p. 20). The Court found that the plaintiffs had failed to demonstrate the ways in which the in-state tuition law injured them. Further, they had not provided support for their contentions that they had a "property right in in-state tuition rates" or that the in-state tuition bill had led to tuition increases (Day v.

Sebelius, 2005, p. 20). The Court added that the impact of the in-state tuition bill had been minimal given the negligible enrollment. Figures from the Kansas Board of Regents for the first year of the law's implementation showed only 30 students benefiting (Sullinger, 2005). That figure represents only 0.01% of the total enrollment at Kansas higher education system and as determined by the Court, most of the beneficiaries were not even undocumented immigrants.[104] As it pertains to federal immigration law, the Court found that plaintiffs are not affected by such regulations and they are unable to prove injury resulting from their violation.

One of the principal claims of plaintiffs was that the in-state tuition bill violated federal immigration law and the private right of action. This claim refers to Section 505 of the IIRIRA and in particular to the plaintiffs' argument that they have a private right to action to redress violations of federal law. In other words, plaintiffs interpret the language of the federal statute as granting them rights to remedy the so-called injury caused by state law providing undocumented students access to in-state tuition. According to their interpretation:

> the language of the [federal] statue makes the U.S. citizen or national who is granted eligibility for a state postsecondary education benefit, beneficiary of the provision even if he or she is *not* [italics added] a resident of the state (Day v. Sebelius, 2005, p. 29).

The Court found that the application of immigration laws is a matter reserved to immigration authorities. In addition, the Court added that "no support can be found for the idea that Congress intended to grant enforcement rights to any private citizens for the alleged violation" (Day v. Sebelius, 2005, p.28). Regarding the plaintiffs' adduced relationship between immigration violations and civil remedies, the Court stated that the focus of Section 505 is undocumented immigrants, not U.S. citizens. This piece of federal legislation targets undocumented immigrants and not U.S. citizens, thusly there is "no implication of intent to confer rights on [the plaintiffs]" (Day v. Sebelius, 2005, p.30).

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[104]As one newspaper commentator put it: "Such a lot of fuss for such a small number of kids" (Hendricks, 2004).

The court ruling also addressed the supposed violation of the equal protection clause. The last claim by the plaintiffs was that the in-state tuition law discriminates against them by creating "two classes of non-Kansas residents: illegal or undocumented aliens and United States citizens" (Day v. Sebelius, 2005, p.32). Plaintiffs alleged that the Kansas law is discriminatory as it provides in-state tuition to the former group while denying it to the latter. However, a careful reading of the Kansas provision demonstrates that it does not solely apply to the undocumented but to any student who meets the criteria "regardless of whether the person is or is not a citizen of the United States of America" (Day v. Sebelius, 2005, p.1). To this point, supporters of the law have argued that "plaintiffs primary flaw in its equal protection argument is that there is no classification based on alienage [pointing out that it] applies to all individuals, aliens or U.S. citizens" (Day v. Sebelius, 2005, p.32). This count was also dismissed as the Court found the plaintiffs lacked legal standing to assert an equal protection claim.

In addition, the Court stated that allowing undocumented immigrants to be classified as residents for tuition purposes, did not preclude the admission or alter the tuition rates charged to the plaintiffs. The court correctly pointed out that the non-resident tuition exemption created by the Kansas law does not differ from similar waivers which allow others to pay in-state tuition. Other waivers, such as those allowing members of the military to pay in-state tuition, do not have any impact on the tuition rates paid by the non-resident plaintiffs. To be able to prove a denial of equal opportunity, the plaintiffs would have had to show that they met the requirements set forth in the in-state tuition law. Given that they are out of state residents, their likelihood of having completed three years of high school in Kansas is improbable.

As shown in previous chapters, during different historical periods, different initiatives have used educational policy and control on educational resources in order to achieve certain other goals within the immigration arena. An example is the Nyquist v. Mauclet (1997) case in New York where the state attempted to impose on foreign citizens the requirement of

naturalization for financial aid purposes. Groups opposing in-state tuition policies for undocumented have based their arguments on the premise that limiting these students' access to education is an effective measure to deter unauthorized immigration. Beyond encroaching on federal policies and arguing that the area of education is not reserved to the states, groups such as FAIR have further tried to "dictate admissions policies at the state's colleges and universities" (Hendricks, 2004). The Kansas decision has reaffirmed that education has been traditionally a prerogative of the states while immigration has been historically an area regulated by Congress. By association, the Court ruling has also reaffirmed the fact that the in-state tuition policy is about education, not immigration.

In evaluating the purposes of FAIR's lawsuit, this researcher concludes that the federal challenge had a higher aim than the Kansas policy. Its proponents hoped that a ruling in their favor could affect similar policies in other states. In their words, "we expect that this case will set a legal precedent that will allow citizens and legal immigrants to challenge similar laws in other states" (FAIR, 2004b). No doubt, the in-state tuition laws in California, New York and Texas were on FAIR's mind as these states hold the bulk of the undocumented population (Urban Institute, 2004b). A negative ruling in Kansas would have had the potential of affecting other in-state tuition laws, including those already enacted and others that might be considered.

Although the dismissal of the lawsuit undoubtedly constitutes a victory for supporters of undocumented students' access to higher education, one must watch FAIR's activity on this issue. Its track record opposing undocumented students' access extends well over a decade (American Association of Women v. California State University, 1992). From Kansas to California, single issue nativists have orchestrated well-financed campaigns against in-state tuition policies for undocumented as sound immigration policy. While the Kansas ruling constitutes a blow to their efforts, it would be a mistake to assume that this will put an end to their decade-long campaign and their efforts to intimidate those states which have

taken affirmative steps to open the doors of higher education to undocumented immigrants.[105]

TEXAS

Following the defeat in Kansas, in-state tuition opponents attempted a new tactic that drew on the courts' holding that the enforcement of immigration law is the purview of federal authorities. A month after the dismissal of the Kansas lawsuit in federal court, another anti-immigrant group known as the Washington Legal Foundation filed a formal complaint with the Department of Homeland Security (DHS) Office of Civil Rights and Civil Liberties (OCRCL) regarding the Texas in-state tuition bill.[106]

The core of the complaint by the Washington Legal Foundation charges that Texas' implementation of its in-state tuition bill violates "the civil rights of U.S. citizens who live outside the State" (WLF, 2005).[107] This demand is related to similar claims in the Kansas case as it pertains to the rights of out–of–state students. As noted in the Kansas ruling, those coming from other states do not meet the requirements of the in-state tuition law and therefore do not qualify for such fees. Undocumented immigrants, on the other hand, meet state domiciliary requirements and therefore are able to claim in-state tuition fees.

The tactic of filing the complaint against the DHS is derived from the Kansas case ruling. Citing Day v. Sebelius, the complaint refers to the Kansas ruling that declared that the application of immigration laws is a matter reserved to immigration authorities. The WLF demands that the federal government prosecute the alleged violations which it asserts have

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[105]As some authors have noted, "while the IIRIRA does not specify the sanctions or consequences of noncompliance, however most institutions consider themselves bound by its language because they wish to avoid the scrutiny of the Bureau of Citizenship and Immigration Services (BCIS) and they fear losing federal financial student aid" (Yates, 2004, p.597).

[106]This office of the DHS is responsible for investigating complaints of violations of rights arising from federal immigration laws" (Howard Price, 2005).

[107]In line with other anti-immigrant groups, the WLF describes its objectives as "protecting the constitutional and civil rights of American citizens and aliens lawfully present in this country" (Popeo and Samp, 2005). However, in the letter sent to the DHS, all references to those affected by in-state tuition laws are to U.S. citizens and nationals and none to permanent residents or to what they refer as aliens lawfully present in this country. This is further indicative of the nativist rather than constitutional politics of these groups notwithstanding any protests to the contrary.

been created by the Texas decision to allow certain undocumented students to qualify for in-state tuition. By filing against the DHS, the plaintiffs seek to satisfy that requirement, and further, leave the matter in the hands of the Department of Justice. Specifically, the complaint demands that the U.S. Department of Justice to file a lawsuit in order to achieve both injunctive relief as well as monetary relief for what they term as "aggrieved nonresidents of Texas" (Popeo et. al, 2005, p.9).

The WLF complaint further requires the DHS to issue a "directive to Texas to cease further civil rights violations, withholding [DHS] funding until Texas brings itself into compliance, and referring this matter to the Department of Justice for appropriate enforcement action" (Popeo et. al, 2005, p. 1). It demands that the state either offer in-state tuition to all U.S. citizens and nationals or stop making undocumented students eligible for in-state tuition on the basis of residency. Regarding this claim, some authors writing in support of immigrant students not that because states do not offer in-state tuition to all applicants to its state institutions, such demands are meant to bar states from "extending in-state tuition rates to undocumented immigrant residents" (Yates, 2004, p.585). In a way, these proposals are framed as 'all or nothing' propositions to demand the state either to give in-state tuition to everyone or do not confer anyone with such a right. However, since the states do not extend the benefits to everyone, these proposals have a different aim: To exclude undocumented students from higher education by either blocking their access to in-state tuition or imposing on them out of state fees.

The WLF complaint claimed that Texas violated Section 505 of the IIRIRA, which has been interpreted as preventing states from offering in-state tuition rates to undocumented immigrants if such post-secondary benefits are not made available to U.S. citizens residing outside the state.[108] In other words, USC 1623 prohibits states from awarding post-secondary

[108]In an attempt to lend validity to their claims and deflect criticisms of anti-Latino racism, the complaint makes mention of an exceptional case where (ostensibly, on behalf of a Latino student) the WLF successfully challenged the University of Maryland's Bannerek scholarship program which was available only to African Americans. The final decision from the U.S. Circuit Court of Appeals for the Fourth Circuit ruled that racially exclusive scholarships are unconstitutional, a decision that the Supreme Court let stand. Pitting U.S.-born minorities against other disadvantaged groups is quite common. Indeed, FAIR portrays affirmative action

benefits on the basis of residence to undocumented immigrants if such benefits are not also awarded to out of state residents. However, the complaint notes "Section 1623 does *not* [italics added] prohibit a state from awarding postsecondary education benefits to an illegal alien, while denying similar benefits to non-resident citizens and nationals, where the basis for doing so is totally unrelated to residency" (Popeo et. al, 2005, p. 3). This claim admits that if eligibility is not based on an undocumented student's residence in the state but on any other requirement, nothing in the law precludes the state from offering the benefit to undocumented immigrants. In other words, the claimants recognized that undocumented students were eligible for in-state tuition but just not on the basis of residence in the state. An examination of Texas law indicates that eligibility for in-state tuition for undocumented immigrants is based on high school graduation or attainment of a GED certificate and not on a student's residence in the state. In other words, in-state tuition laws are not established to benefit undocumented immigrants, but for high school graduates or GED recipients, without drawing distinctions based upon immigration status. The critical distinction can be gleaned from a cursory reading of the law, that is, an undocumented person could have resided in the state for several years but if they had not graduated with a formal diploma or its equivalent (GED) they are not eligible for in-state tuition. Thus, eligibility is based on school attendance and graduation and not on residence in the state.

Anticipating a potential rebuttal by the state based on the foregoing, the WLF complaint asserted that Texas could not evade its violation of the federal statutes "simply by amending the language of [its in-state tuition law] to offer lower in-state tuition rates to residents of Texas; or those who graduated from a Texas high school" (Popeo et. al, 2005, p. 6). According to the WLF, even if eligibility is based on high school attendance or GED receipt, such criteria are not valid either. The WFL argues that the use of high school graduation would not comply with Section 1623 because it is "a close proxy for physical

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measures as "weapons" used against what they describe as "native born minorities vs. imported minorities" (FAIR, 2002).

presence within the state" (Popeo et. al, 2005, p. 6). In its reading of the Texas' in-state tuition law, the WFL argued that it attempts to treat undocumented high school graduates as bona fide residents of the state, something incompatible with federal regulations. In the summary of its complaint, the WFL repeats a common anti-immigrant mantra: unless the federal government steps in, "immigration-rights groups may be emboldened to encourage yet other states to flout the federal law" (Popeo et. al, 2005, p.6). A month after the complaint against Texas had been submitted, the WLF filed another complaint, this time against the State of New York. Both complaints were awaiting action from the Department of Homeland Security during the Fall of 2005.

As noted above, the legal challenges against in-state tuition policies have either taken the form of lawsuits against the states or complaints with federal agencies. While these challenges have not been successful in overriding the existence of in-state tuition policies, federal immigration law remains to be a significant obstacle barring undocumented students from the opportunity of securing employment in their fields once they graduate from college. The next chapter discusses a federal measure which would allow undocumented students who had been in the United States for at least five years the opportunity to adjust their immigration status and to apply for cancellation of removal (i.e. nullification of deportation orders). In the words of the president of Occidental College in Los Angeles, who has written in support of the proposed measure, there is a need "for an expedited citizenship program [for undocumented students] which would end the draconian penalty we impose on them for the crime of having been born somewhere else" (Mitchell, 2001).

Chapter 9: *Complementary Federal Initiatives*

This chapter first reviews the Development, Relief and Education of Alien Minors (Dream) Act, a bill in the Senate that would (1) eliminate the federal law provision baring 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. The last section of this chapter addresses the advocacy that was spurred by and coalesced around the bill, and provides a critical review of the arguments that have been used in support of this measure.

The basic provisions of the Dream Act, and its companion in the House, namely the Student Adjustment Act, seek to benefit a limited number of students who meet the following requirements:

1. have been brought to the U.S. more than 5 years ago
2. have entered the United States when s/he was 15 years old or younger and
3. must be able to demonstrate good moral character, as defined by the government[109]

If passed, the DREAM Act would enable high school graduates to apply for conditional status, which would authorize them for up to 6 years of legal residence. During the 6-year period, the student would be required to attend an institution of post secondary education and graduate from a 2-year, or more, college, complete at least 2 years towards a 4-year degree, or serve in the U.S. military for at least two years. If the student meets these requirements, s/he would be granted permanent residency at the end of the 6-year period (National Immigration Law Center, 2005).

Without such federal legislation, undocumented students will graduate with college degrees but be ineligible for legal employment. In the current legal framework, democratic and civil rights gains at the state level are frustrated by federal laws that make these students

[109]At least one author has noted that "children who knew that they were engaged in an 'illegal entry', still might be ineligible for adjustment" (Romero, 2002, p. 412) because of lack of what has been termed "good moral character" as defined by immigration authorities.

ineligible to receive federal aid, disqualify them from most scholarships because of their immigration status and bar them from working even if they graduate with a degree from a U.S. university.

The expansion in the civil rights registered in the nine states outlined above has taken place 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 removal from the United States (Romero, 2002, p. 406-407).

Under current immigration law (IIRIRA), there are no reasonable legal avenues to grant immigration status to undocumented students. There are very few means by which an undocumented person can obtain permanent residency by themselves. In addition, many of them do not have a family member (who is either a permanent resident or a U.S. citizen) who can petition for them (Alfred, 2003). As it will be shown below, these students often face the threat of deportation or removal. The only way for them to obtain legal status based on a minimum of 10 years in the United States is to apply for cancellation of removal and to prove that deportation would cause "exceptional and extremely unusual hardship to an immediate family member who is a permanent resident or a U.S. citizen" (Alfred, 2003, p. 633).

Even those students with a relative who can sponsor them for permanent residency face additional hurdles. In such cases, the government requires the family member to sign a legally enforceable affidavit of support showing that their income is over the poverty level by 125%. The government asserts this is to prevent immigrants from becoming a public charge. In practice, these requirements represent a bar for many low-income immigrant families from sponsoring family members, and discourage even those who financially qualify as sponsors (Alfred, 2003, p. 635). Given that most poor immigrants are people of color, such requirements continue to reflect historic race-based immigration policies aimed at restricting

non-white immigration — a representative example being the Chinese Exclusion Act (Tienda, 2002).

The limitations imposed by immigration law also apply to undocumented college graduates even in areas of high demand skilled employment such as nursing, bilingual education and engineering.[110] Local immigrant communities have expressed concerns over these restrictive federal employment regulations since the passage of in-state tuition policies. Immigrant rights activists draw attention to the consequences resulting from this clash between legislation at the state level, which affords an expansion of rights to undocumented students, and federal immigration law, which currently bars them from practicing their professions. Activists from Houston referred to this problem shortly after passage of the first in-state tuition law:

> Even though it goes beyond the reach of the present law, we are concerned about the future of these students once they graduate and have not been given the opportunity to legalize their status at the time of their graduation. It would be fitting to consider future actions to help these students be able to [practice] their profession" (Teodoro Aguiluz and Nelson Reyes, personal communication, July 11, 2001).

In the spring of 2001, various organizations across the country began pressing members of Congress for federal proposals that would enable states to implement in-state tuition bills while permitting undocumented students to obtain residence and the necessary legal status to secure employment after graduating from college. The first attempt was filed under the Student Adjustment Act in the U.S. House of Representatives under HR 1918 (Kim, n.d.). Three members of Congress, Chris Cannon (R-Utah), Howard Berman (D-California) and Lucille Royball Allard (D-California), introduced the bill. The Senate version of the bill, filed as the Children's Adjustment, Relief and Education (CARE) Act was introduced by Orin Hatch, a Republican member of Congress from Utah, and cosponsored by

[110] Unlawful presence in the United States is severely penalized after the IIRIRA of 1996. Even in the event that U.S. companies expressed interest in sponsoring these students, they would have to leave the United States and apply from their home countries. Departing the United States, activates a bar against their presence in this country.

Senator Richard Durbin from Illinois (See Appendix C for details on both measures and related legislation).

The Student Adjustment Act was touted as a bill that would (1) benefit undocumented students in school or applicants to college (2) would lift federal restrictions prohibiting states from providing undocumented students with in-state tuition and (3) would make students eligible for federal financial aid under programs such as the Pell grant. Although the bill was designed to provide relief to undocumented students, it contained a cutoff date as it only benefited those students who had been present in the United States at least five years, since age 15 or younger. As some authors have noted, this last requirement constitutes a significant restriction especially for those students who would not have lived in the United States for five years, as of the bill's enactment, and those who will enter the country after the bill is passed (Yates, 2004, p. 608). The Senate version of the bill contained the same language but extended the cutoff age to 21.

This bill received had been scheduled for a vote in the Subcommittee on Immigration on September 12, 2001. Statements were to be made by members of Congress, the Secretary of Education, educators from school districts and universities, employers, members of organizations promoting college attendance and most importantly, the affected students.[111]

Unfortunately, the events of September 11, 2001 were used to sideline the effort. In general, discussion of pro-immigration legislation was dropped while anti-immigrant regulations such as the USA Patriot Act took achieved prominence (Badger and Yale-Loehr,

[111]One of the speakers was a young woman from Illinois who had fought to return to the United States after the U.S. Embassy tried to deny her reentry following a visit to her native Mexico (Ramirez, 2001). The young woman had won a scholarship from a university in Illinois and thought that she could go back to Mexico and apply for a student visa to enter the country legally. Due to the fact that she was undocumented, her departure from the United States had activated a bar against her presence in the country for up to ten years. Although her application was initially rejected, she was eventually able to receive humanitarian parole and reenter the country (Mendieta, 2001). Her case exposed the need for federal legislation to remedy the situation of thousands of students who were being penalized by immigration laws while kept in limbo regarding their presence in this country.

2002).[112] As a result, the issue of repealing the federal prohibition on post-secondary education benefits for undocumented immigrants disappeared from public discussion.

Although the momentum for the Student Adjustment Act weakened in the House, a similar proposal regained support in the Senate during the spring of 2002. Although the Dream Act passed the Senate Judiciary Committee in June 2002, the U.S. war against Iraq again was used to derail the effort. However, supporters continued their nationwide activities and within weeks of the Iraq war, the Dream Act was reintroduced with bipartisan support on April 9, 2003. It was filed by 17 Republican and 18 Democrat cosponsors (see Appendix C).

In November 2003, the Senate Judiciary Committee voted 16 to 3 to approve the measure. However, it now contained amendments introduced by Dianne Feinstein (D-California) and Charles Grassley (R-Iowa). They included making undocumented immigrant students ineligible for federal financial aid programs such as the Pell grants, which seriously curtailed access for these students of limited means. An even bigger blow to democratic and immigrant rights was registered with an amendment that threatened to track undocumented students through SEVIS, a database system established to track international students. Proposals to include students in the government database were touted by some advocates as a selling point to anti-immigrant sectors. It should be noted that despite the inclusion of these anti-immigrant amendments, the Dream Act was not passed, and the failed arguments in favor of governmental surveillance of immigrants as an inducement, tended to put those advocates in the anti-immigrant camp.

In 2003, thanks to advocates renewed efforts on behalf of the Dream Act, the measure was approved by the Senate Judiciary Committee. By then, it enjoyed the support of 48 sponsors in the Senate and 150 in the House. However, in spite of this initial victory, the measure was never scheduled for a vote in the Senate. During 2004, the presidential elections were used to abandon efforts to pass the bill. No legislative activity was reported in

[112]Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT).

support of the Dream Act during the second term of the 108th Congress (2004) or during the first term of the current 109th Congress (2005). In spite of that, undocumented immigrants and their supporters continued to advocate for the Dream Act as it will be discussed below.

IMMIGRANT STUDENTS' ADVOCACY

The potential solution presented by the Dream Act has motivated the formation of various student groups and advocacy coalitions around the United States. These include, to name a few, the Comité de Apoyo para el Desarollo Estudiantil de la Nación Americana (CADENA) in Arizona; the Coalition of Human Immigrant Rights Los Angeles (CHIRLA), the Immigrant Legal Resource Center; WISE UP: The Leticia "A" Project; Coalition of Student Advocates (COSA), People United for the Legalization of the Students (PULS) in California; the Coalition for Immigrant and Refugee Rights in Illinois; Immigrant Rights Network of Iowa-Nebraska; the Sunflower Community Action: Hispanos Unidos Chapter and El Centro in Kansas; the Immigrant Rights Advocacy Coalition in Massachusetts; the Immigrant Policy Network in New Jersey; Somos un Pueblo Unido in New Mexico; the Young Korean-American Service & Education Center Inc, the Latin American Integration Center and Global Kids in New York; the Student Action with Farmworkers in North Carolina; Northwest Tree Planters & Farm Workers Unions in Spanish of Oregon; the Coalition of Higher Education for Immigrant Students in Texas; Immigrant Rights of Tennessee and the Latino/a Educational Achievement Project in Washington state. A number of immigrant student led groups, such as and Jóvenes Inmigrantes por un Futuro Mejor (JIFM) in Texas, have appeared across the nation with the main goal to win the right to remain in this country, go to school, and obtain employment.

These groups are primarily composed of immigrant students and supporters concerned with the need to take a more active stance to garner support for their right to work and live in this country. This section briefly describes some of their advocacy work and notes both the importance of such efforts in light of the onerous circumstances imposed by their immigration status and the potentially severe repercussions they face in coming forward

to publicly speak about the issue. Particular mention is made of the advocacy efforts in Texas. In addition, this section highlights several specific cases where undocumented students who were threatened with deportation came to the public light becoming poster children for the nationwide efforts in support of the Dream Act. It will be argued that the decision not to deport them can be ascribed to these advocacy efforts on their behalf. These cases and their results can also be held to demonstrate that, in spite of relentless anti-immigrant campaigns, the government faces difficulties in garnering significant public support for enforcement of its draconian immigration laws. The most remarkable impact of Dream Act is that it has galvanized immigrant students to organize under a common banner. While seriously limited, it offers a concrete measure and provides an aura of respectability, which doubtless is attractive to the highly vulnerable.

In the case of Texas, student supporters of the Dream Act in a number of universities across the state have rallied under the umbrella of Jóvenes Inmigrantes por un Futuro Mejor (JIFM).[113] Seeking to educate the public about the benefits of the Dream Act, students have organized press conferences, presented in conferences across the state, given media interviews (newspapers, radio and television), conducted outreach activities among the undocumented population, and traveled across the country to disseminate information about their fight through press conferences, speeches and newspaper articles. The students also organized public protests against related issues. JIFM chapters have joined campaigns in defense of fellow undocumented immigrants, such as protests against rightist anti-immigrant paramilitary organizations such as the Minutemen who have attacked immigrants along the U.S.–Mexico border, and in other cities with large foreign born populations. As detailed previously, similar student groups have emerged in other states.

The level and the extent of activism by undocumented students are remarkable given their vulnerable circumstances. As noted previously, they already face numerous forms of

[113]Immigrant Youth for a Better Future is organized across four universities in the states of Texas: Texas A&M University; University of Houston-Downtown; University of Houston-Central and the University of Texas at Austin.

discrimination based on color, national origin and limited language proficiency, in some cases, which might dissuade them from speaking in public on their status. Moreover, the dehumanizing branding of these youth and their families as outlaws, or "illegal aliens", as a result of the government refusal to grant them legal status, underscores the remarkable courage of their public advocacy. But by advocating for their cause, undocumented immigrant students have begun to contest these campaigns and the pernicious images promoted by the mass media[114].

The public outreach and education efforts conducted by undocumented immigrant pupils are indicative of a greater self-confidence among the students. As they have sought out supporters for their fight for educational rights the students have been drawn into broader fights affecting immigrants and other marginalized groups in U.S. society. This new sense of empowerment has also contributed new advocates and spokespersons for defense of other undocumented immigrants under attack, in particular those facing deportation from this country. Indeed, a remarkable feature of this advocacy work is the fact that the pressure of organized undocumented students and their supporters has been credited with significant contributions to preventing several important deportations. The concluding part of this section summarizes some of those cases.

From 2002 to 2005, when the Dream Act was being promoted nationwide, several cases which received some national attention illustrated the draconian impact of immigration law on students who arrived to the United States as minors. The first case that caught the attention of the advocacy community involved four Arizona students dubbed the Wilson Four, for the name of their Phoenix high school. After attending an academic competition in New York, the students sought to visit Niagara Falls and at the border were asked for their immigration status, detained and deportation proceedings were initiated against them. Following their initial release from immigration detention, the students participated in

[114]As an example, CNN airs nightly a program under the name of “Broker Borders.” Anti-immigrant groups such as the National Border Patrol Council describe the broadcast as “one of the most informative pieces of journalism on the subject of illegal immigration” (National Border Patrol Council, 2005).

activities to support the Dream Act. In the summer of 2002, they joined activists in Washington for a National Day of Action to demand passage of the Dream Acct. On July 2005, after a three year campaign, an immigration judge threw out their cases on grounds that their arrests had been based on racial profiling (Melendez, 2005).

The story of Jesus Apodaca further illustrates the high stakes in public efforts to increase understanding of the plight of the undocumented. An Aurora High School valedictorian from Denver, Apodaca was featured in a Denver Post article on the difficulties of undocumented students in entering college. A number of such stories have appeared in the press in various cities around the country. They have served to raise awareness about the obstacles that some pupils face in their journey to college including those who, like Apodaca, are honor students. After the article ran in August 2002, U.S. Representative Tom Tancredo (R-CO) called the former INS and demanded that Apodaca and his family, which included two permanent residents, be deported, and anti-immigrant forces initiated a campaign. In response, a number of persons and organizations spoke out to support the family, including Denver's Latino Campaign for Education, Padres Unidos. Ultimately, Senator Ben Nighthorse Campbell introduced private legislation that prevented the Apodaca family from being deported and extended the possibility of becoming permanent residents (The Denver Channel, 2002).[115] The student's dream of going to college, which had brought to the light his undocumented status, was achieved when an anonymous donor offered to pay his out of state tuition at the University of Colorado in Denver. He enrolled at the university while awaiting resolution on his immigration case (Florio, 2002).

In light of the fact that the Dream Act has been stalled, advocates have seen positive results in utilizing a strategy, which traditionally has limited application and success. Specifically, the introduction of private legislation has been utilized to shield students facing permanent exclusion from the United States. The case of Majan Jean, an undocumented Haitian resident of Norwich, Connecticut made the news in 2004. In the wake of unrest in

[115]Padres Unidos (United Parents) is an immigrant advocacy group in the Denver area (Ochoa, 2002).

Haiti, her mother had unsuccessfully applied for asylum in the United States. When the student and her mother were subsequently arrested and ordered deported, immigrant advocates organized to pressure Senate Majority Leader William Frist (R-Tennessee) to support the Dream Act. Advocates with the Tennessee Immigrant and Refugee Rights Coalition invited the student to speak at a rally outside an event honoring Frist. The political strategy of publicly campaigning paid off when Majan Jean was granted a private bill from Senator Christopher Dodd (D-CT) which prevented her deportation (AILA, 2004a).

Other cases that came to national attention in 2004 included that of Griselda Lopez Negrete, an undocumented Mexican orphan from South Carolina. The student's undocumented status was revealed while she was translating for a family member at an immigration office. While her relatives have immigration status, they had not adopted her until she was threatened with deportation (Markoe, 2004). In light of her particular circumstances, friends and advocates organized to raise funds and send her to Washington. There, she met with Senator Lindsey Graham who sponsored a private bill to effectively allow her to finish high school (Barra, 2004). At the end of 2004, another private bill was issued this time for Venezuelan student Heilit Martinez from Utah. A student at Utah State University, the student participated in a conference in New Mexico and joined others in a daytrip across the border. Upon her return, the student was detained and placed in deportation proceedings as her status could not be verified. Utah Senator Orin Hatch (R), the original sponsor of the Dream Act, filed a private bill to provide Martinez relief.

A prominent case in the news in 2005 involved Marie Gonzalez, a Costa Rican student raised in Jefferson City, Missouri. After 10 years of residence in the United States, the family was placed in deportation proceedings. The ensuing response from the community is illustrative of the powerful role of advocacy in defense of the undocumented. Friends of the family formed the Gonzalez Group, a community effort which involved neighbors as well as the students' teachers and parents of Marie's classmates. Through diverse activities and fundraising, the committee sustained the family through three years of

legal appeals and lobbied on its behalf by collecting hundreds of letters and thousands of signatures (Meyerson, 2005).

In April 2004, Marie Gonzalez addressed a Dream Act rally and received further attention and support, in particular from the immigrant community. Immigrant students and their supporters had organized a national day of action which included a mock graduation and the delivery to the Department of Education of over 65,000 petitions on behalf of the estimated number of students graduating every year without the opportunity to attend college due to their immigration status.

During the past year, Gonzalez's plight and that of the thousands of students she represents has gained more attention as advocates organized for her defense under the "I am Marie" campaign. In an indication of the broader linking up among immigrant rights advocates, undocumented students with JIFM in Texas supported the "I am Marie" campaign. This collaboration strengthened the students' ties as members of an informal national network. Despite all the efforts, in 2005 Gonzalez's parents were deported to their native Costa Rica, however Marie Gonzalez was granted a one year stay by the Department of Homeland Security in order to begin her college education.

In closing, the advocacy which has counteracted deportation attempts by the government shows three main characteristics. The first one is the critical role played by the undocumented students themselves, their advocates and the community at large in opposing government attempts to deport these students. In that respect, it must be noted that the government along with anti-immigrant forces face a problem: the inevitable co-mingling of native born with immigrants in the workplace, at school, in the daily activities of life, tends to break down the dehumanized stereotypes of immigrant opponents. Bonds of human solidarity forged by these shared experiences regardless of national origin or immigration status counteract the unceasing campaigns of fear and resentment. This assertion would appear to be supported by the fact that a number of these cases involve areas with small immigrant populations especially of people of color and are often portrayed as unsympathetic

or hostile to immigrants. The community effort behind Marie Gonzalez is a case in point. In a February 2005 letter to the former Secretary of Homeland Security, Tom Ridge, Jefferson City Mayor John Landwehr stated that the Gonzalez's are: "de facto citizens" (Fischer, 2005). Statements of this nature speak to the difficulties of the government in demonizing "illegals" other than in the abstract and are recognition by some that this population that is here to stay.

The second characteristic of these advocacy efforts is that many of the cases reviewed have originated in states that have not passed an in-state tuition law and thus in jurisdictions where immigrants have not even gained an equal access right to go to college. Thus, the cases of the students faced with deportation have brought into stark relief the need for a measure that would allow at least some undocumented students the opportunity to attend college and achieve their immigration status — the Dream Act.

The third point relates to the dichotomy in arguments put forward to defend the students versus those with regard to their parents. A common argument in defense of undocumented students is that they should not be penalized for the actions of their parents. This logic portrays the parents as criminals who have victimized their own children. It accepts the entire framework of the anti-immigrant forces but seeks exception for the students under some notion of innocence which presupposes that their parents are guilty. Blaming the parents who have been obliged to immigrate, precisely to provide for their children, may be expedient but ultimately self-defeating. Aside from ignoring the social and economic conditions that force millions to immigrate, it exonerates the U.S. immigration system. It would seem evident that the responsibility for the refusal to provide a documented immigration status be laid at the feet of those who create it, rather than the victims.

An ironic development involving the Jesus Apodaca case, the Denver valedictorian who was threatened with deportation by U.S. Representative Tom Tancredo, speaks eloquently to the contradictions that mark much of the immigration debate. As that story ended, the media reported that Tancredo had employed undocumented laborers to build an entertainment center in his house. The congressman defended himself saying that "he was

unaware of the immigration status of the workers" (Associated Press, 2001). This situation, which harkens back to the Zoe Baird and Kimba Wood scandals, is illustrative of this contradiction where a significant part of the economy is built on the back of undocumented workers yet their children are denied the opportunity to attend college at non-discriminatory rates.[116]

Hence, it would seem more accurate and effective for student advocates to refrain from rebutting anti-immigrant attacks with arguments that the parents are to blame for their children's status, and instead point to the myriad of ways in which this country systematically denies democratic, civil and human rights to millions of undocumented but indispensable immigrants.

[116]Kimba Wood and Zoe Baird were nominated for attorney general by then president William Clinton but withdrew after it was learned that they had hired undocumented workers (Associated Press, 2001).

Chapter 10: *Summary and Findings*

The purpose of this research was to analyze the historical development of Texas public policy concerning undocumented immigrants' access to higher education, and its relation to other policies at the state and federal level. The study sought to determine how the educational changes that originated in Texas affected immigrant students' access to higher education in that state and the nation. A significant portion of this dissertation was devoted to details of the passage of the first in-state tuition policy in the nation and the impact that such legislation has had in other states, along with the work of immigrant advocates and the obstacles they encountered in the implementation of unprecedent legislative initiatives.

This dissertation provided a historical overview of efforts by undocumented immigrants to gain the right to attend institutions of higher education at in-state tuition rates. Since 1982 the Supreme Court, in its *Plyler v. Doe* decision, affirmed their right to a public education, their struggle at both the state and national level has been to extend those educational guarantees beyond the K-12 level and into higher education. In the course of this fight, which had been waged unsuccessfully since the mid-eighties in states like California, a bill emerged in Texas in 2001 that sought to address the question of undocumented students' access to institutions of higher education at in-state tuition rates.

The in-state tuition bill was successful in Texas on its first attempt, perhaps in part due to preliminary support work conducted at key community colleges and within the Texas Higher Education Coordinating Board (THECB). Community colleges at Dallas and Houston anticipated House Bill 1403 by adopting measures that guaranteed in-state tuition rates to its immigrant students. State Representative Rick Noriega, along with immigrant rights advocates associated with the Houston Coalition, was instrumental in utilizing the growing support for the idea of in-state tuition rates to garner support for the bill by the 77th State Legislature. A decisive element in the local policy advances, particularly the ones in

Houston, was the advocacy work conducted by undocumented students and supported by teachers, university researchers, community activists and government employees, among many others. Indeed, research indicates that a key component of the Texas effort to open the doors of higher education to undocumented immigrants was the formation of advocacy groups, which successfully galvanized support on behalf of the bill.

The impact of the Texas legislation was felt beyond its borders as several states followed suit after its passage. The impact of Texas' policy together with accelerating demographic changes, and increased advocacy on behalf of immigrant students, has been registered in eight states. Their in-state tuition laws closely mirrors HB 1403. This research gave special attention to California and New York which, together with Texas, are home to the majority of undocumented immigrants in the country. The other states included were Utah, Washington, Illinois, Oklahoma, Kansas and New Mexico.

While these states have passed in-state tuition laws during the past four years, anti-immigrant groups seeking to restrict undocumented immigrants' access to college have organized a noticeable opposition. In particular, this research details a federal lawsuit filed in the state of Kansas, and a legal complaint submitted to the Office of Civil Rights in the Department of Homeland Security against the state of Texas for its in-state tuition bill. In Kansas, the anti-immigrant organization, Federation for American Immigration Reform challenged the legislature's decision to legislate over educational matters and therefore allow undocumented students access to college. FAIR, along with other anti-immigrant forces, has adopted a strategy claiming that federal policy trumps the states' right to legislate undocumented students' access to post secondary education. There are not above using scare tactics including the conjuring up of an invasion of "illegals." They are also fond of predicting that measures to cease restrictions on undocumented students' access to higher education will increase the number of unauthorized entrants into the country.

The increasing number of states extending educational opportunities to undocumented students highlighted a significant disjunction between state and federal policy.

While undocumented immigrants in nine states of the union are allowed to attend college at in-state tuition rates, these same students are not able to work in their chose careers owing to their undocumented status. The passage of federal legislation, which would allow undocumented students to legalize their immigration status in this country, is necessary if the students are to make full use of their degrees. The Senate bill known as the Dream Act, would allow some undocumented immigrant students to become permanent residents, and thus be able to remain and work in this country.

FINDINGS

This study has generated three important findings regarding the legislative process that has sought to provide undocumented youth in-state tuition rates. First of all, the advocacy work on behalf of in-state tuition bills was significant. Second, the Texas legislation influenced the bill-writing process nationally and contributed significantly to the coalescing of pro-immigrant advocacy in various states around the Dream Act. Lastly, supporters and opponents of in-state tuition measures typically embraced economic argument to argue in favor and in opposition to the legislation.

The first attempt to open the doors of higher education to undocumented students culminated with the passage of an in-state tuition law in Texas in 2001. The victory in the Texas legislature was predated by smaller successful battles at the community college level. This holds added significance because as demonstrated with the literature review, most minorities begin their post-secondary studies at the community college level. Undocumented students in Texas who met district and state residency requirements were still not eligible for in-district tuition even the "open admissions" policy practiced by the two-year institutions due to their immigration status. This prompted a number of students to press community college boards to change the policy. In 1998, the Dallas County Community College District (DCCCD) changed its policies in favor of the undocumented applicants. The victory in the DCCCD in 1998 constituted the base for the subsequent changes implemented at the Houston Community College System (HCCS) in 2000. Advocates, particularly in the Houston area,

used the victories at the community college level to press for changes in the institutions of higher education across the state. This research establishes a connection between the advocacy work, the gains in the Dallas and Houston community colleges and the ensuing filing of the bill. The state representatives sponsoring the in-state tuition bill (HB 1403) were from the Dallas and Houston districts home to the two community colleges that had enacted the initial changes. HB 1403 was filed in the spring of 2001 by Rick Noriega (D-Houston) and coauthored by Domingo Garcia (D-Dallas). Immigrant advocates and immigrant students waged a concerted and organized effort in support of HB 1403. A statewide strategy to mobilize in support for the bill culminated with immigrant students and their advocates testifying before the Higher Education Committee. The common thread of this advocacy effort was the building of a broad coalition between undocumented students and immigrant advocates that included high school teachers, labor representatives and public officials to ensure a successful passage of the bill. Hence, at the state level, the most important finding was the significance of advocacy by undocumented immigrant students and their supporters to galvanize support for these legislative initiatives.

The second finding of this research concerns the impact of Texas legislation on other states. Texas was a bellwether state that spawned the passage of in-state tuition legislation in eight other states. The new legislation reflected three important trends: First, was the passage of legislation in both traditional and new immigration receiving states followed by the drafting of similar legislation closely following the Texas language and third, the confluence of advocacy around the Dream Act.

The principal and most immediate impact of the Texas policy is that it enabled efforts at legislation to move forward in states, particularly in California, where the issue had come to a standstill. At the same time, it emboldened supporters around the country to push for similar legislation. As a large and important state with a significant and historic undocumented population, the passage of the legislation in Texas established a precedent for both traditional immigration receiving states (particularly in the southwest), and high growth

immigration regions, that have adopted the legislation (Urban Institute, 2004b). In general, the states that passed this legislation include those with a historic immigrant presence and significant weight of the immigrant population, as well as those registering new dispersal patterns. Out of the five traditional immigration receiving states (California, Florida, Illinois, New York, Texas), Florida does not have an in-state tuition law. The issue of in-state tuition may not have concerned Cuban American legislators because their immigrant constituency has enjoyed a privileged immigration status. The opposite is true in many of the other states where significant percentages of undocumented students — largely of Mexican but also Central American origin — have been able to galvanize support among Mexican American and Puerto Rican legislators. As was the case in Texas, Latino legislators introduced most of the other bills which enjoyed bipartisan support.

The language of the Texas law has been mirrored in the laws that emerged in the other states. This is particularly in the requirement that undocumented students wishing to benefit under the provisions of these laws be high school graduates of their respective states. All nine state laws benefit those students who completed their secondary studies in the given states irrespective of their immigration status. Only Oklahoma, New Mexico and Texas permit these students to apply for state financial aid. In view of the extremely low family incomes for many such students, the denial of financial aid in other states constitutes a continued bar to access higher education.

Lastly, the Texas experience indicates that initial advocacy activities occurred within the educational community, specifically at the school district level, and subsequently garnered broader support among a wider spectrum of forces. The experience in the other states suggests a similar trend where efforts began at the K-12 level and were echoed by support activities from various groups, in particular those traditionally dedicated to immigrant advocacy in general. In most of the states, significant support was observed among the higher education community. The passage of the legislation in Texas brought the issue to the national arena and encouraged state supporters to combine their efforts.

Moreover, these activists who supported in-state tuition efforts also embraced a concern over the lack of federal legislation that would allow undocumented students, whether in college or not, the possibility to remain legally in this country. They have established an informal network (aided by National Immigration Law Center) to coordinate efforts aimed at supporting the Dream Act, a federal initiative aimed at remedying this problem.

EDUCATING UNDOCUMENTED STUDENTS: WHO PAYS?

This study's third finding reveals that opponents and proponents of immigrant students' access to higher education have largely posited their views within an economic framework. Anti-immigrant forces have clearly controlled the content of this debate, and the advocates have mainly sought to mollify their opposition based on economic or fiscal assertions. Thus, the debate over in-state tuition frequently pits opponents decrying the burden of educating what they deem illegals and supporters' asserting positive fiscal and economic benefits of educating undocumented students. Access to education for undocumented immigrants is reduced to whether it represents a good investment that would yield greater economic profits, rather than a matter of civil or democratic rights, and its benefit to society as a whole.

The use of economic arguments or strategies to bar disenfranchised populations from greater access to social services and democratic rights is not new. In education, the discriminatory tuition requirements as a form of exclusion (from k-12 to higher education) bears a striking resemblance to the technique of poll taxes, literacy tests, and the like to indirectly disenfranchise Mexican Americans and Blacks under Jim Crow (Hendricks, 2004). In a similar fashion, most states do not explicitly prohibit undocumented students from accessing higher education. However, the state requirement that students who fulfill state residency requirements pay out-of-state or international tuition fees constitutes a de facto ban, especially in light of their impoverished conditions. Until the in-state tuition bills passed, some paid significantly higher tuition fees while the majority simply could not afford to attend college.

The main argument against non-discriminatory in-state tuition policies claims that immigrants are a drain on economic resources (FAIR, 2004c) because institutions are educating them without receiving enough resources to bear the alleged additional costs. Anti-immigrant forces argue that undocumented immigrants are a burden and that therefore they need to pay more for their college education. Opponents of in-state tuition rates for undocumented immigrants argue that this population should not have access to what they describe as subsidized or discounted in-state tuition rates and that by doing so states such as Texas open themselves up to substantial costs and limit citizens' access to the same resources (FAIR, 2004b; FILE, 2004). They add that in-state tuition represents a special discount for immigrants.

Research on the economics of immigration contradicts nativist assertions that immigrants are a drain on the economy. First, anti-immigrant groups fails to account for the billions in surplus value generated by the super-exploited labor of the undocumented. Entire sectors of U.S. industry, such as agriculture, food preparation, garment, and janitorial services to name but a few, are largely dependant upon undocumented immigrant labor. They also disregard that undocumented are obliged to be taxpayers themselves through sales taxes and the mandatory employer withholding of payroll taxes, among others, even though their immigration status prevents them from accessing the benefits of their contributions.[117] Mehta, Theodore, Hincapie (2003) indicate that withholding and sales taxes paid by the undocumented, as well as the surplus that the treasury generates when the undocumented are denied social benefits amounts to billions over expenditures. Therefore, arguments of a fiscal drain imposed by undocumented immigrants would appear to be specious.

[117]As stated in chapter one, since a significant percentage of foreign born workers work with false documentation, they are not be able to claim social wage benefits such as unemployment, workers compensation, retirement, disability or survivor benefits from the social security system that they have financed. Simply put, undocumented immigrants pay into the system creating a surplus but are legally prevented from collecting as other workers do. According to the Social Security Administration, from 1937 to 2000, the amount of unaccounted wages reported under the Earning Suspense File (ESF) reached $374 billion (Mehta, Theodore, Hincapie, 2003). In the 1990s alone, "$189 billion worth of wages ended up recorded in the 'earning suspense file'" (Porter, 2005). Immigrant workers earned an undetermined, yet significant, portion of these wages. In addition, undocumented workers provide an annual subsidy of up to $7 billion a year, representing about 10% of the 2004 social security surplus (Porter, 2005).

On this issue, the Supreme Court in its *Plyler v. Doe* decision pointed out that undocumented workers are "encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents" (*Plyler v. Doe*, 1982, p. 219). Thus, it is concluded that arguments claiming that taxpayers are burdened with the education of undocumented immigrants ignore the fact that immigrants are taxpayers themselves, and that the United States could not maintain its economic system without this source of cheap labor which provides billions in value and profits.

Beyond the denial of the indispensable role that immigrants play in the labor market, opponents of undocumented immigrants' access to college also point out that legislation that favors them encourages further unauthorized immigration. This despite the view in *Plyler v. Doe* that: "the dominant incentive for illegal entry is the availability of employment; few if any illegal immigrants come to this country, or presumably to the State of Texas, in order to avail themselves of a free education" (*Plyler v. Doe*, 1982, p. 228). That economic fact remains valid today.

THEORIES OF HUMAN CAPITAL: THE ADVOCATES' LINE OF DEFENSE

The response by immigrant advocates makes use of market based theories of human and social capital. Such theories are "predicated on awareness that a society can increase its national output or an individual can increase his or her income by investing…in human capital" (Levin, 1989, p.13). According to this theory the benefits of schooling may be measured in terms of higher rates of return on the educational investment, better health profiles among people who graduate from college, civic and socio-behavioral benefits as well as intergenerational well-being (for children of college educated individuals) (Levin, 1989).

The use of human capital theories to affirm the right to educate the underserved is not new. The Supreme Court, for instance, maintained in its 1982 decision that not educating undocumented children would promote the "creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the problems and costs of unemployment,

welfare and crime (*Plyler v. Doe*, 1982, p.230). Although this was an argument for the inclusion of undocumented immigrants in public schools, its reasoning, its reasoning also appeals to racist and class fears directed at immigrants of color, that is, it is predicated on the view that without an education, these undocumented students would become unemployed, join the welfare lines or commit crimes.[118]

Unfortunately, supporters of in-state tuition policies also raise the specter of unemployment, poverty and criminality. For instance, a memorandum circulated during the first hearing of the Texas policy stated that banning these students from college was the equivalent of "creating a second class of citizen who would be a burden on *our* [italics added] social services and criminal justice systems" (Garcia, 2001b). This implies that the millions of working immigrants without a college education are a burden to society. Moreover, it reinforces anti-immigrant arguments and accepts the us-versus-them nativist view. This also borders on characterizing immigrants in pathological terms, or with deficit thinking theories (Valencia, 1997). In that sense, longstanding portrayals of working class immigrants as "alien, uncouth, menacing" have not changed in substance, if regrettably at the hands of those claiming to support them (Katz, 1987, p. 17).

The central tenet of the human capital approach used by most supporters of undocumented students' access to college agues that — as individuals increase their level of education they will obtain higher earnings (Card and Krueger, 1990). For instance, in order to support the passage of the Texas policy, the Harris County Tax office estimated that over a lifetime "a college educated person is likely to earn approximately $620,000 *more* than a person with only a high school diploma" (Harris County Tax Office, 2000, p.2). In Illinois, officials estimated that undocumented workers increase their wages by 5% for every additional year of college education (Mehta, Theodore, Mora and Wade as cited in Mehta

[118]A similar reasoning took place during the Proposition 187 debate. Opponents of the provision to exclude undocumented children from K-12 argued "that leaving them on the streets to make trouble…would do nothing to reduce crime and graffiti" (Cooper, 2004, p. 348). In the words of another author: "not educating *these people* [italics added] will not diminish the problems but will likely exacerbate them" (Casey, 1996, p. 140).

and Ali, 2003). Referring to the investment already made in the K-12 education of these students, one advocate argued "we have in a sense, spent thousands of dollars on raising and training a racehorse to plow fields" (Johnston, 2000).

This study has found that immigrant rights supporters have simply responded to these arguments in the same language as the opposition. They have argued for the opportunity to attend college only for those who will guarantee maximal economic production and minimal dependence on social services. Such arguments, however, are ineffective in a debate over discrimination and human equality. Consequently, another line of reasoning is required. Overall, the biggest challenge for immigrant rights advocates is to advance arguments that speak to issues of democratic, civil and human rights for the undocumented, as well as the broader implications of these gains for society.

POLITICAL ANALYSIS

The passage of the law in Texas

It is difficult to determine why the in-state tuition bill first passed in Texas. Texas is generally portrayed as a conservative state that has often been hostile to immigrant rights. However, despite the virulent anti-immigrant laws and policies in the state, nothing has approximated the kind of opposition to immigration associated with Proposition 187 in California. Texas Governor George W. Bush, for instance, did not participate in the anti-immigrant hysteria typically associated with high officials in California. At a campaign rally in California, Bush himself noted, "I was against the spirit of 187 for my state. I felt like every child ought to be educated regardless of the status of their parents" (Marinucci, 1999).

While this statement may not be borne of compassionate politics, it could be argued that it reflects the weight of immigrants in the state and most importantly it recognizes the historic presence of Latinos and in particular of the history of struggle waged by Chicanos. Indeed, Texas has a unique history of political activism in the educational arena alone lead by Chicanos. Earlier struggles for bilingual education and school desegregation led by Chicanos

certainly benefited immigrants and the undocumented. In addition, the victory in *Plyler v. Doe*, initiated in Texas, necessarily created, within the immigrant and educational community, a sense that this population was here to stay (Midobuche, 2001).

Emergence of in-state tuition laws in a conservative era?

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), and the United States has regulated the economy to serve their needs. 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. On of the results is that anti-immigrant activists scapegoat the immigrants.

This further justifies 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 research 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 on behalf of immigrants. 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.

This research detailed the various efforts on behalf of undocumented students seeking to gain access to institutions of higher education at in-state tuition rates. It also related the history of contemporaneous legislative initiatives and propositions detrimental to undocumented immigrants in this country. An example of this was Proposition 187, the 1994 state initiative in California which sought, among other aspects, to ban undocumented students from K-12. Another example was the IIRIRA of 1996, which attempted to coerce states into denying state benefits in higher education to the undocumented. Both measures, which took place in the mid-nineties, accompanied the passage of anti-immigrant legislation at a federal level. On the other hand, these measures, especially in California, 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).[119]

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). One of these was the campaign to gain higher education access for undocumented students. Efforts first bore fruit in Texas with the 2001 passage of an in-state tuition law, which opened the doors of higher education to undocumented immigrants and spurred the debate across the country. The in-state tuition laws that followed in the eight states were achieved in the midst of virulent anti-immigrant legislation 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

[119]The march drew an estimated 25,000 participants who supported a seven point agenda that included: "human and constitutional rights for all; equal opportunities and affirmative action; free public education for all; expansion of health services; citizen police review boards; labor law reform and a $7 per hour minimum wage; a streamlined citizenship application program; and an amnesty for immigrants who illegally entered the United States before 1992" (Migration News, 1996).

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 unprecedent 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.

Justice Brennan, in the Plyler case, made it clear that the constitution extended educational rights to the undocument youth. One observer noted that Brennan "suggested a putative right to education" thus making the compelling argument, that "education cannot be characterized as just another government benefit" (Yates, 2004, p. 591). Governor Gary Locke from Washington state also said during the signing of the Washington State in-state tuition bill that the legislation "was a logical extension of the constitutional right to a K-12 education for all students residing within our borders" (LEAP Educator, 2003). By allowing undocumented students to pay in-state tuition rates, even with the arbitrary restrictions that some of the bills contain, the states have extended this constitutional right to the post secondary level. 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.

Despite the importance of the Fourteenth Amendment on questions affecting undocumented immigrants access to K-12, little has been written about the specific application of this guarantee to higher education. This may be due to an overly narrow interpretation of the 1982 Supreme Court decision. Some authors argue that constitutional guarantees have not been extended because nativist forces have been successful in arguing

that the facts presented in Plyler do not apply to higher education. In their view, "there is of course, a significant difference between an elementary education and a university education" (Yates, 2004, p. 594).

The prevailing attitude in much of society is that higher education is a privilege of the deserving or the affluent and not a right, and undocumented students' access to that higher level still remains largely foreclosed. As one author has argued, this presents the need to speak more broadly as "Plyler was intended to establish a constitutional floor, not a ceiling" (Romero, 2002, p. 411). 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 a 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.

Appendices

Appendix A: Texas Education Code

Admission of Students to Public Schools in Texas
Provisions of Section 21.031 (1975)

(a) All children who are citizens of the United States or legally admitted aliens and who are over the age of five years and under the age of 21 years on the first day of September of any scholastic year shall be entitled to the benefits of the available fund for that year.

(b) Every child in this state who is a citizen of the United States or a legally admitted alien and who is over the age of five years and not over the age of 21 years on the first day of September on the year on which admission is sought shall be permitted to attend the public free school of the district in which he resides or in which his parents, guardian or the person having lawful control of him resides at the time he applies for admission.

(c) The board of trustees of any public free school district of this state shall admit into the public free schools of the district free of tuition, all persons who are wither citizens of the United States or legally admitted aliens who are over five years and not over 21 years of age at the beginning of the scholastic year if such person or his parent, guardian or person having lawful control resides within the school district.

Appendix B: Table 2, *House Bill 1403, Language and Legislative Progress*

	Section 1 amends **54.051 (m)** **Tuition Rates**	**Section 2** amends **54.052(j)**	**Section 3** amends **Section 54.057(a)** **Aliens**	**Section 4** amends **Section 54.060 (b), (d) and (g)** **Resident of Bordering State or Nation or participant in Student Exchange Program: Tuition Good Neighbor Program**
HB 1403 as filed by Noriega on 2/8/01	Unless the student establishes residency as provided by Section 54.052(j) or 54.057, tuition for a student who is a citizen of any country other than the United States of America is the same as the tuition required of other nonresident students. **Main amendment: Grants resident status for tuition and fee purposes to individuals meeting the requirements in Section 2 or 4.**	Notwithstanding any other provision of this chapter, an individual shall be classified as a Texas resident until the individual establishes a residence outside this state if the individual resided with the individual's parent, guardian or conservator while attending a public of private high school in this state and: (1) graduated from a public or private high school or received the equivalent of a high school diploma in this state; and (2) resided in this state for at least one year between the first day the person attended a public or private high school and in this state and the date the person graduated from a public or private high school and in this state or received the equivalent of a high school diploma.	An alien who is living in this country under an unexpired visa permitting the person to reside in this county or who has applied to or has a petition pending with the Immigration and Naturalization Service to attain lawful status under federal immigration law (~~permanent residence or who has filed with the proper federal immigration authorities a declaration of intention to become a citizen~~) has the same privilege of qualifying for resident status for tuition and fee purposes under this subchapter as has a citizen of the United States. A resident alien residing in a junior college district located immediately adjacent to Texas boundary lines shall be charged the resident tuition by that junior college. **Main amendment: Deletes obsolete reference to federal immigration declaration form**.	(b) A [~~the~~] foreign student, without regard to the individual's immigration status, is entitled to pay tuition at the rate [fee] prescribed by [in] this chapter for a Texas resident if the individual [~~does not apply to a foreign student who~~] is a citizen [~~resident~~] of a nation situated adjacent to Texas who registers in any general academic teaching institution, public junior college [~~as defined in Section 61.003 (3) of this code~~] or component of the Texas Technical College System in a county located wholly or partly within 100 miles of [~~immediately adjacent to~~] the nation in which the foreign student resides or in a county having a population of 100,000 or more [~~or who registers for lower division courses at a community or junior college having a partnership agreement pursuant to subchapter N, Chapter 51, of this code, with an upper level university and both institutions are located in the county immediately adjacent to the nation in which the foreign student resides, or who registers in Texas A&M University Kingsville or Texas A&M University Corpus Christi, and, except as provided by this subsection, who demonstrates a financial need after the financial resources of the foreign student and the student's family are considered. The foreign student described in this subsection shall pay tuition equal to that charged Texas residents under Sections 54.051 and 54.0512 of this code~~]. (d) The Coordinating Board shall adopt rules governing [~~the determination of financial need of students under this subsection and rules governing~~] a pilot project to be established at general academic teaching institutions and at components of the Texas State Technical College System in counties that are not otherwise covered by this subsection [~~immediately adjacent to the nation in which the foreign student resides~~] (g) In this section, "general academic teaching institution," "public junior college" and "public technical institute" have the meanings assigned by Section 61.003 of this code.
Changes in Committee Substitute	No changes to Sec 1 in Substitute		Restores language relating to permanent resident visas that was previously deleted in Section 3.	Restores previously deleted language in Section 4 Amends subsection (g) to declare that a citizen of Mexico who meets the qualifications established in Sec. 1 of the bill (Sec. 54.052 (j) is not subject to the foreign student tuition.

Appendix C: Table 3, *Overview of In-State Tuition Policies 2001-2004, In Order of Passage*

State	Date signed & enacted	Name, number, principal sponsor of bill regulations codifying statue & overruling agency	Main Language of In-State Bill	3 yr HS	Consecutive 3 yr HS attendance?	GED	Former students eligible?	Fin Aid	Students enrolled
TX	June 16, 01 June 16, 01	**HB 1403 -** Aliens who are residents of Texas based on their HS graduation or receipt of a GED Representative Rick Noriega (D), District 145 **Texas Higher Education Coordinating Board**	Provides that a non-citizen shall be **classified as resident** for tuition purposes	Yes	Yes	Yes	No	Yes	8,000 (Lewis, 2005)
CA	Oct 12, 01 Jan 1, 02	Exemption from non-resident tuition, **AB 540** Assemblyman Marco Firebaugh (D), District 50, Assemblyman Abel Maldonado (R), District 33 No overruling agency	Would require that a person, including an alien precluded from establishing California residency because of federal law, who meets certain eligibility requirements, be **exempted from paying nonresident tuition**	Yes	No	Yes (But not graduates from adult schools)	Yes	No	**500** in university (0.26% of 195,066) **3,500** in Com. College (0.18% of 1.8 million)
UT (UCA 53-B-8-106)	March 6, 02 July 1, 02	Exemption from Non-resident Tuition, **H.B. 144**, Representative David Ure (R) **State Board of Regents**	This act modifies the State System of Higher Education code to allow a student who meets certain requirements to be **exempt from paying nonresident tuition** at institutions of higher education.	Yes	No	Yes	No	No	**148** (0.1% of the total 140,000 enrolled) (Sullinger, 2004; Bulkeley, 2005)
NY	June 25, 02 August 1, 03	**SB 7784**, 225th Legislative Session, 2001 NY Session (NY 2002) Assemblyman Peter Rivera (D) Assemblyman Adriano Espaillat (D)	In relation to payment of tuition and fees charged to **nonresident students** of the state university of NY, the city University of New York and Community Colleges	No (2 yr)	No	Yes (But applying to college in 5 yrs)	Yes	No	Not counted at SUNY; 2,800 at CUNY
WA	May 7, 03 July 1, 03	**HB 1079** Representative Phyllis Gutierrez-Kenney (D), District 46 Senator Don Carlson (R), District 49 **Higher Education Coordinating Board**	An Act Relating to **resident tuition** at institutions of higher education	Yes	No	Yes	N/A	No	123
OK	May 12, 03 May 12, 03	**HB 1559**, 49th Legislative Session Kevin Calvey (R), District 94 Senator Keith Leftwich (D), District 44 **Oklahoma State Regents for Higher Education**	Provides in-state tuition and/or state financial aide to **qualified immigrants** who graduate from Oklahoma high schools after at least two years of attendance	No (2 yr)	N/A	Yes	N/A	Yes	85 in 2004 (Oklahoma City Com. College)
IL (PA 93-0007)	May 18, 03 May 20, 03	**HB 60** - Public Act 93-0007 Representative Edward Acevedo (D), District 2, Representative Mark H. Beaubien (R), Dist 52 Representative Antonio Munoz (D), District 1 **Illinois State Board of Higher Education**	Requires an individual who is not a citizen or permanent resident of the United States to be **classified as an Illinois resident** if the individual graduated from a high school in IL	Yes	N/A	Yes	No	No	3,000-4,000 (Gov release) 2,226 (Mehta and Ali)
KS	May 20, 04 July 1st, 04	**HB 2145** Representative Sue Storm (D), Overland Park **Kansas Board of Regents**	Any individual who is enrolled or has been accepted at a postsecondary institution shall be a **resident of Kansas** for the purpose of tuition and fees for attendance at such institution.	Yes	N/A	Yes	Yes	No	**221** (Lewis, 2005)
NM	April 5, 2005 April 5, 2005	**SB 582** (admissions) and **SB 482** (financial aid) Sen. Cynthia Nava (D, Dona Ana County) **Commission on Higher Education**	Immigration Education Act. (Addressing the) Denial of College Benefits to Immigrants	No (1 yr)	No	Yes	N/A	Yes	**41** (Lewis, 2005)

Appendix D: Table 4, Chronological Review of Federal Legislation for Undocumented Students

Introduced	House Legislation	Sponsors	Language	Status
May 21, 2001 107th Congress	Student Adjustment Act (HR 1918)	Howard Berman (CA) Chris Cannon (UT) Lucille Royball-Allard (CA)	(1) Amend the IIRIRA of 1996 to permit states to determine residency for higher education tuition purposes; (2) Amend the Immigration and Nationality Act to cancel the removal and allow for the adjustment of status of certain college bound students who are long term U.S. residents. (3) Make these students eligible for federal financial assistance.	
2002 107th Congress	Student Adjustment Act (HR 1918)	Total sponsors: 62 Source: Cannon (2002)	Same language as above	Received little attention in the 107th Congress
April 9, 2003 108th Congress	Student Adjustment Act (HR 1684)	30 cosponsors: 15 (R); 15 (D) Total sponsors: 66	Same language as above	
2003, 108th Congress	Preserving Educational Opportunities for Immigrant Children Act (HR 84)			
	Senate Legislation			
2001 107th Congress	Dream Act (S. 1291)	Orin Hatch (R-UT)	(1) Eliminate the federal provision that discourages states from providing in-state tuition without regard to immigration status. (2) Permit eligible immigrant students to adjust their immigration status to that of permanent residents.	Voted out of committee on June 20, 2002 but never considered on the Senate floor before Congress adjourned.
2002 107th Congress	Dream Act (S. 1291)	Richard Durbin (D-IL) Orin Hatch (R-UT) 18 other cosponsors	(1) Eliminate the federal provision that discourages states from providing in-state tuition without regard to immigration status. (2) Permit eligible immigrant students to adjust their immigration status to that of permanent residents.	
July 31, 2003 108th Congress	Dream Act (S. 1545)	Richard Durbin (D-IL) Orin Hatch (R-UT) 48 cosponsors	Same language as above but introduces two stage process to adjust status: (1) Conditional lawful permanent resident status would last for 6 years and is tied to college enrollment, community or military service. (2) Upon completion of requirements, students are eligible for adjusting status An amendment to this bill limited the financial aid eligibility (Stevenson, 2004) Age ceiling is removed to avoid cutoff from benefits (Yates, 2004, p. 600).	Voted out of Senate Judiciary Committee by 16-3 vote. October 23, 2003
2003 108th Congress	Educational Excellence for All Learners Act (S. 8)	Thomas Daschle (D-SD).	(1) restoration of state option to determine residency for purposes of Higher Education benefit and (2) cancellation of removal and adjustment of status of certain alien high school graduates who are long-term residents of the United States.	
2004 108th Congress	Dream Act (S. 1545)	48 cosponsors	Same language as Dream Act (S. 1545)	Voted out of Senate Judiciary Committee by 16-3 vote.
2005 109th Congress	Dream Act (S. 2075)	Richard Durbin (D-IL), Chuck Hagel (R-NE) and Richard Lugar (R-IN).	Same language as Dream Act (S. 1545)	Introduced November 18, 2005

References

Abrego, L.J. (2002). Beyond the direct impact of law: Is Assembly Bill 540 Benefiting undocumented students? Unpublished manuscript. University of California at Los Angeles. Los Angeles, California.

Adelman, C., Daniel, B., Berkovitz. (2003). Post secondary attainment, attendance, curriculum, and performance: selected results from the NELS: 88/2000 Postsecondary Education Transcript Study (PETS), 2000. E.D. Tabs. National Center for Education Statistics. Jessup, MD.

Alanis, J. (2004, March 4). Making it count. Gulfton group to lobby for education bill. Houston Chronicle. Retrieved March 4, 2004 from http://www.chron.com

Alarcon, R. (1994). Proposition 187: An effective measure to deter undocumented migration to California?. Multicultural Education, Training and Advocacy (META). October 1994.

Aleinikoff, A. (1987). Citizens, Aliens, Membership and the Constitution. *Constitutional Commentary*, 7(9): 9-34.

Alfred, J. (2003). Denial of the American Dream: The plight of undocumented high school students within the U.S. educational system. New York Law School Journal of Human Rights, 19, 615-650.

American Association of State Colleges and Universities (n.d.). Access for All? Debating In-State tuition for Undocumented Alien Students. Retrieved November 6, 2005 from http://www.aascu.org/policy/special_report/access_for_all.htm

American Immigration Lawyers Association. (2004). Five immigration myths explained. Retrieved September 28, 2004 from http://aila.org/Content/default.aspx?docid=17242

American Immigration Lawyers Association (2004a). DREAM Act event: Connecticut Teenager Facing Deportation Calls for Passage of DREAM Act. Retrieved November 4, 2005 from http://www.aila.org/content/default.aspx?docid=11138

Archie-Hudson, M. (1993). AB 2114 – Student Residency. Bill Analysis. Assembly Committee on Higher Education. April 27, 1993.

Archie-Hudson, M. (1994). AB 3380 – Student Residency Status. Bill Analysis. Assembly Committee on Higher Education. April 5, 1994.

Associated Press (2001, January 9). Nominees, problems with hired help. Retrieved November 6, 2005 from http://quest.cjonline.com/stories/010901/gen_0109017656.shtml

Axtman, K. (2002, July 25). A diploma: new ticket for immigrants? Proposed law would give illegal-immigrant minors permanent residency if they finish US high school. The Christian Science Monitor. Retrieved October 2, 2005 from http://www.uh.edu/admin/media/topstories/2002/07/csmresidency072502.html

Ayers, A. (2003). Legislative Developments: Advancing the status of undocumented immigrants. *Georgetown Immigration Law Journal*, 18 (211).

Bacon, D. (2005) Uniting African-Americans and Immigrants. The Black Scholar, Summer 2005.

Badger, E., Yale-Loehr, S. (2000). They can't go home again: Undocumented aliens and access to U.S. higher education. *Bender's Immigration Bulletin*, 5(10), 413-423.

Badger, E., Yale-Loehr, S. (2002). Myths and Realities for Undocumented Students Attending U.S. Colleges and Universities. The Journal of College Admission, Winter 2002, 10-15.

Bailey, T., and Weininger, E.B. (2002) Performance, graduation and transfer of immigrants and natives in City University of New York community colleges. *Educational Evaluation and Policy Analysis*, 24(4), 359-377.

Barnard News Center (2002). Barnard Sociology Professor Robert Smith urges Governor Pataki to Adopt the Most Inclusive Assembly Bill 9556 Concerning Undocumented Immigrant Students. Tuesday, August 2 edition.

Barnes, J. (1999). Capitalism's World Disorder. Pathfinder Press. New York.

Barra, P. (2004, April 22). Aiken student update: Sen. Graham will sponsor bill to help Negrete. The Catholic Miscellany. Retrieved November 4, 2005 from http://www.catholic-doc.org/miscellany/2004/0404aikenstudent.html

Barrera, L. (2002). AB 540. Train the trainers: How immigrant students can achieve a higher education. Office of Assembly Member Firebaugh.

Belanger, K. (2002). Social Justice in Education for Undocumented Families. *Journal of Family Social Work*, 6(4) 61-73.

Berger, E. (2001, March 14). Plan would offer in-state tuition for visa students. Houston Chronicle.

Berger, E. (2001a, May 21). Undocumented Students May Get Big Tuition Break. Houston Chronicle.

BCIS (2005). *Refugee* in Glossary and Acronyms. Bureau of Citizenship and Immigration Services. Retrieved September 17, 2005 from http://uscis.gov/graphics/glossary3.htm#R

Blauner, R. (1987). Colonized and immigrant minorities. In R. Takaki (Ed.), *From different shores: perspectives on race and ethnicity in America* (pp.149-160). New York, NY: Oxford University.

Boloorian, S., Anton, N. (2001). AB 540 (Firebaugh and Maldonado). Hearing before Senate Committee on Education. 2001-2002 Regular Session. June 20, 2001. California State Legislature.

Bolson, B. (1995). Experts dissect federal judge's Proposition 187 ruling. Legal challenges expected to reach to Supreme Court. Retrieved June 28, 2005 from http://www-paradigm.asucla.ucla.edu/DB/Issues/9511.27/newsprop187.html

Brilliant, J.J. (2000). Issues in counseling immigrant college students. *Community College Journal of Research and Practice*, 24, 577-586.

Bulkeley, D. (2005). Undocumented students may lose in-state break. Deseret Morning News. Retrieved November 27, 2005 from http://deseretnews.com/dn/view/0,1249,600141750,00.html

Cabaldon, C. L. (2001). Positions on State Legislation. Board of Governors. California Community Colleges. May 14-15, 2001.

Caine, N., Torres, P.S., Walling, E., Neilson, D. (1999, September). Citizenship and Admission: Case study in admitting immigrant students in transition to citizenship. Presentation conducted at the meeting of the National Association of College Admission Counseling, Orlando, Florida.

California Immigrant Welfare Collaborative (2001). California Update. Legislature Passes Immigrant Rights Bill: Higher Education – AB 540 – Firebaugh and Maldonado. October 8th, 2001.

Cannon, C. (2002). Cannon Calls for Higher Immigrant Education. Press Release. Office of Congressman Chris Cannon. July 17, 2002.

Card, D., Krueger, A.B. (1990). Does school quality matter? Returns to education and the economic characteristics of public schools in the United States. Working paper No. 3358, National Bureau of Economic Research.

Carter, L.E. (1997). Intermediate scrutiny under fire: Will Plyler survive State Legislation to Exclude Undocumented Children from School? *University of San Francisco Law Review*, 31(345).

Casey, S.M. (1996). Dealing with confusion: Admission of undocumented aliens into public postsecondary institutions. *Immigration Law Report*, 15(2), 138-148.

Chaney, B., Muraskin, L.D. Cahalan, M.W., Goodwin, D. (1998). Helping the progress of disadvantaged students in higher education: The federal student support services program. *Educational Evaluation and Policy Analysis*, 20(3), 197-215.

Chen, C.P. (1999). Common stressors among international college students: Research and counseling implications. *Journal of College Counseling,* 2(1), 49-65.

Clark, B.R. (1961). The "cooling out" function in higher education In A.H. Halsey, Jean Floud and C. Arnold Anderson (eds.) *Education, Economy and Society*. New York: The Free Press.

Commission on Higher Education (2004). Revisions to the CHE Residency Regulation 5.7.18 NMAC. October 22, 2004. Santa Fe, New Mexico.

Conchas, G.Q. (2001) Structuring failure and success: Understanding the variability in Latino school engagement. *Harvard Educational Review*, 71 (3), 475-504.

Connerly, W. (2002, February 2002). California is rewriting the Constitution. Why it must say no to subsidized education for illegal immigrants.[Op-ed] Washington Times.

Conroy, A.M. (1994). AB 3380 – An Act to amend Section 68062 of the Education Code, relating to post-secondary education: Student Residency.

Cooper, E. (2004). Embedded Immigrant Exceptionalism: An examination of California's Proposition 187, the 1996 Welfare reforms and the anti-immigrant sentiment expressed therein. Georgetown Immigration Law and Journal, 18 (345).

Council of Great City Schools. (1996, March 24). Resolution: *Plyler v. Doe*. Retrieved November 12, 2003 from http://www.cgcs.org/about/onissues/resol04.html

Day v. Sebelius, No. 04-4085-RDR (D. Kan, July 5th, 2005).

De los Santos, K. (2004, March 23). Texas colleges admit illegal immigrants. The Daily Texan. Austin, Texas.

Dohan, D. (2002). Making cents in the barrios. The institutional roots of joblessness in Mexican America. *Ethnography*. 32(2): 177-200. Sage Publications.

Donato, R., Menchaca, M., Valencia, R. (1991). Segregation, desegregation and integration of Chicano students. In *Chicano school failure and success: Research and policy analysis for the 1990's.* Falmer. New York**:** 27-57.

Dozier, S. (2001). Undocumented and documented international students: A comparative study of their academic performance. *Community College Review*, 29(2), 43-53.

Eldridge, A. (2005, July 25). Study: Illegal immigrant enrollment up in state. The Daily Texan.

Federation for American Immigration Reform. (2004a). Lawsuit to Be Filed Challenging Constitutionality of Kansas Law Granting In-State Tuition to Illegal Aliens at Public Universities. Twenty four Americans Challenge Law, Claiming New Policy Discriminates against American Citizens. FAIR News Release. Friday, July 16th, 2004.

Federation for American Immigration Reform. (2004b). Kansas Attorney General Agrees with FAIR on Tuition Benefits for Illegal Aliens. FAIR News Release. Friday, July 22nd, 2004.

Federation for American Immigration Reform. (2004c). Taxpayers should not subsidize college for illegal aliens. http://www.fairus.org. Retrieved July 25, 2004.

Fernandez, I. (2005, October 31). College enrollment up 0.4%. *Corpus Christi Caller-Times*. Retrieved October 31, 2005 from http://www.caller.com/ccct/local_news/article/0,1641,CCCT_811_4193786,00.html

Firebaugh, M., Maldonado. (2001). AB 540 – An Act to Add Section 68130.5 to the Education Code, relating to Public Postsecondary Education.

Firebaugh, M. (2002). Assembly Bill AB 540. Assisting Immigrant Students to Pursue Higher Education. Resource Manual. Office of Assembly Member. 50th Assembly District.

Fischer, K. (2005, December 10). Illegal Immigrants Rarely Use Hard-Won Tuition Break. Some states offer in-state rates, but students still have trouble paying. Chronicle of Higher Education.

Fisher, W. (2005, June 30). Hoping for a Miracle. Inter Press Service News Agency. Retrieved November 4, 2005 from http://www.fairimmigration.org/wearemarie/learnmore_news_interpress_063005.php

Fix, M., & Passel, J. (2003, January). *U.S. Immigration – Trends & Implications for Schools*. Paper presented at the meeting of the National Association of Bilingual Education, New Orleans, LA.

Florio, G (2002, October 20). College dreams face harsh reality. Laws in several states hamper immigrants' quest for education. The Denver Post. Retrieved November 6, 2005 from http://www.denverpost.com/Stories/0,1413,36~11~936735,00.html

Franzoia, B. (2001). AB 540 (Firebaugh). Appropriations Committee Fiscal Summary. California State Legislature.

Friedenberg, J.E. (2002). The Linguistic Inaccessibility of U.S. Higher Education and the Inherent Inequity of U.S. IEPs: An Argument for Multilingual Higher Education. *Bilingual Research Journal,* 26(2), 213-230.

Galassi, J. (2003). Dare to Dream? A review of the Development, Relief and Education for Alien Minors (Dream Act). *Chicano Latino Law Review*, 24 (79).

Gamoran, A., Mare., R. (1989). Secondary School Tracking and Educational Inequality: Compensation, Reinforcement or Neutrality? *American Journal of Sociology*, 94(5), 1146-1183.

Gandara, P. (1995). Over the Ivy Walls: Educational mobility of low income Chicanos. Albany: State University of New York Press.

Garcia, D. (2001a). A bill to be entitled an Act: Relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition and to qualify for higher education financial aid. Retrieved January 26, 2001 from http://www.capitol.state.tx.us/

Garcia, D. (2001b). Committee Hearing for 1403. Memorandum to witness for HB 1403. March 8, 2001.

Garcia, R.J. (1995). Critical race theory and proposition 187: The racial politics of immigration law. *Chicano-Latino Law Review.* 17(118), 1-28.

George, D. (1996). Legal immigrants say dreams at risk. Houston Chronicle. June 29, 1996.

Gill, M., Regalado, E., Riegel, V. (2002). Revised Guidelines on AB 540. Exemption from nonresident tuition. California Community College Chancellor's Office. May 2002.

Ghandi, P., Aguilar, A., and Santillan, R. (2002, March 27). Leavitt a strong backer of resident tuition bill. The Salt Lake Tribune.

Gloria, A.M. (1999). Comunidad: Promoting the educational persistence and success of Chicana/o college students. In *JSRI Occasional Paper # 48. Julian Samora Research Institute*. East Lansing, Michigan.

Guillen, L. (2002). Undocumented Immigrant Students: A brief overview of Access to Higher Education in California. Public Advocates Inc. Retrieved on July 16, 2005 from www.publicadvocates.org

Harris County Tax Office (2000). *Undocumented Valedictorians: Problems, Solutions and Implications*. Houston, TX: Morales, D.

Harrington, P.E. and Sum, A.M. (1999). Access…is about more than money. *New England Board of Higher Education*. Connection Fall/Winter 1999, 15-17.

Harvard Law Review Association. (2002). California extends in-state tuition benefits to undocumented aliens – Act Relating to Public Postsecondary Education. *Harvard Law Review*. 115 Harvard Law Review 1548.

Hebel, S. (2001, November 30). States take diverging approaches on tuition rates for illegal immigrants. Chronicle of Higher Education. A22.

Hebel, S. (2002, June 26). N.Y. Legislature passes bill to provide illegal immigrants in-state tuition rates. Chronicle of Higher Education.

Hebel, S. (2004). Opponents of Lower Tuition for Illegal Immigrants Seek to Strike Down Kansas Law. Chronicle of Higher Education. July 21, 2004.

Hegstrom, E. (2000, May 25). HCC to admit immigrants at same tuition as Texans. Houston Chronicle. Retrieved May 25, 2000 from http://www.chron.com/index.html

Hendricks, M. (2004, June 2). One issue, but many fictions. Kansas City Star.

Herrera, L. (2000, August). Undocumented Students. Southwest College News, 1, 1-3. Houston Community College.

Hiltzik, M. (2004, May 24). Fabricating a statistic in the immigration debate. *Los Angeles Times*. Retrieved May 24, 2004 from http://www.latimes/com/news/education

Higher Education Committee (2001). HB 1403 Witness List. House Committee Report. Retrieved July 7, 2005 from http://capitol.state.tx.us/tlo/77R/witbill/HB01403H.HTM

Hispanic Forum (2001). Higher Education for Immigrant Students. Career & Education Day. March 24, 2001.

House, D. (2002). Leavitt seeks to implement tuition break. The Salt Lake Tribune. September 6, 2002.

H.Res. 418, 109th Cong., (2005) (enacted).

Houston Area Forum for Advisors to Internationals. (2001). February 7, 2001 meeting. Prairie View A&M University.

Houston Independent School District. (2000). Demographic overview of HISD population. Emergency immigrant education program. Multilingual Programs. Annual Report, 1999-2000.

Houston Community College (2000). Admission of Undocumented Students. Action Item. February 24, 2000.

Houston Community College (2000a). Policy to Allow Certain Undocumented Students to Pay In-State Tuition Fees Approved. Regular Meeting of the Board of Trustees. Houston Community College System. May 25, 2000.

Houston Community College (2000b, May 30). HCCS Lowers Tuition for Undocumented Students. Retrieved June 7, 2000 from http://www.hccs.edu/news/index.htm

Howard Price, J. (2004). Kansas gives illegal aliens tuition break. The Washington Times. May 24, 2004.

Howard Price, J. (2005, August 24). Texas' tuition policy challenged. Complaint hits discount for illegal aliens denied to legal nonresidents. The Washington Times.

Illegal Immigration Reform and Immigrant Responsibility Act (1996). Chapter 14. Restricting welfare and public benefits for aliens.

Intercultural Development Research Association (1981). *The distribution of undocumented pupils in Texas public schools: A first look*. San Antonio, Texas: Cortez, A.

Intercultural Development Research Association (1996, May). I*mmigrant education policy: Why attempt to fix what is not broken?* San Antonio, Texas: Cortez, A.

Johnson, K. (1995). Public benefits and immigration: The intersection of immigration status, ethnicity, gender and class. *UCLA Law Review*, 42 (1509).

Johnston, D. (2000). Coalition of higher education for immigrant students. Unpublished manuscript. October 5, 2000.

Johnston, D. (2001a). Some questions and answers on House Bill 1403. Unpublished manuscript. February 2001.

Johnston, D. (2001b). Dear Senator letter. April 24, 2001.

Johnston, D. (2001c). HB 1403 – Immigrant Tuition. Unpublished manuscript.

Johnston, R. (2000, May 31). Talented but not legal. Los Angeles Times.

Johnston, R. (n.d). Guidance Counselors Often Struggle to Help Undocumented Students. Los Angeles Times.

Kaestle, C. (1983). Ins and outs: acquiescence, ambivalence and resistance to common-school reform. In *pillars of the republic: common schools and American society, 1780-1860 (*pp 136-181). New York**:** Hill & Wang.

Kim, L. (n.d.). Higher Education of Undocumented Immigrants: The Student Adjustment Act. Unpublished manuscript.

Kragh, E. (2004). Book review: Forging a common culture: Integrating California's Illegal Immigrant Population: Mexifornia: A State of Becoming. *Boston College Third World Law Journal*, 24 (373).

Lamkin, A. (2000). International students at community colleges. ERIC digest. Los Angeles: ERIC Clearinghouse for community colleges.

LEAP Educator. (2003). Students gain access to higher education: Legal residency is next hurdle. Latino/a Educational Achievement Project. October 2003.

LEAP Educator. (2004). State policies help "1079 students" aim for college, universities. Latino/a Educational Achievement Project. September 2004.

Legislative Education Study Committee. (2001). Access to Higher Education for Undocumented Immigrants. LESC meeting. September 24, 2001. Santa Fe, New Mexico.

Leovy, J. (2001). Tuition law praised, attacked. Giving undocumented students a break on college is backed by educators but opposed by an immigration reform group. Los Angeles Times.

Leticia A Network (1999). Immigrant Students. Rights and Opportunities. How counselors can help students qualify for resident tuition.

Levin, H.M. (1989). Mapping the economics of education. *Educational Researcher* (18)4, 13-16.

Lewis, R. (2005, November 9). In-state tuition not a draw for many immigrants. The Boston Globe. Retrieved on November 27, 2005 from http://www.boston.com/news/education/higher/articles/2005/11/09/in_state_tuition_not_a_draw_for_many_immigrants?mode=PF

Lichtblau, E. (2005, September 29). Prosecutions in immigration doubled in last four years. The New York Times.

Loya, L. (2002). Leticia A Network News Regarding AB 540 Students. September 27, 2002 meeting at Rio Hondo College.

Los Angeles Times. (2004, October 23). Decade later, California's Proposition 187 is Resurrected in Arizona. Los Angeles Times.

Ludwig, M. (2005, October 28). College rolls trail population growth. San Antonio Express News. Retrieved October 31, 2005 from http://www.mysanantonio.com/news/education/stories/MYSA102805.collegeenroll.en.305847a.html

Mailman, S., Yale-Loehr, S. (2001). College for Undocumented Immigrants after all? *New York Law Journal*. New York Law Publishing Company.

Marinucci, C. (1999, June 30). GOP's Fair-Haired Boy Sweeps Into California. Texas Gov. Bush reaches out to Latinos in his first political swing through the state. San Francisco Chronicle.

Mark, M.M., Henry, G.T., Julnes, G. (2000). Evaluation. An integrated framework for understanding, guiding and improving public and nonprofit policies and programs. San Francisco: Jossey Bass.

Markley, M. (2004, September 25). Students who do not have a legal status are worried about their futures. *Houston Chronicle*.

Markoe, L. (2004, March 21). Illegal is illegal. Time to take out the trash. Aiken, S.C., Student Must Return to Native Mexico. Retrieved November 4, 2005 from http://www.nnnforum.org/forums/index.php?showtopic=2181

Maxwell, J.F. (1979). An Alien's Constitutional Right to Loan, Scholarship and Tuition Benefits at State Supported Colleges and Universities. California Western Law Review. Vol. 14, 514-562.

McGee, P. (2004, June 14). Immigrants May Get Help for College. Page 1A. Fort Worth Star-Telegram.

McNeil, L. (2005). Faking equity: High stakes testing and the education of Latino youth In A. Valenzuela (Ed) *Leaving Children Behind. How Texas' style accountability*

*fails Latino youth (*pp. 57-111). New York, NY: State University of New York Press.

Mehta, C. & Ali, A. (2003). Education for All: Chicago's Undocumented Immigrants and their access to higher education. Center for Urban Economic Development and University of Illinois at Chicago. March 2003.

Mehta, C., Theodore, N., & Hincapie, M. (2003). *Social Security Administration's No-Match Letter Program: Implications for Immigration Enforcement and Workers' Rights*. Retrieved November 23, 2004, from University of Illinois at Chicago, Center for Urban Economic Development Web Site: http://www.uic.edu/cuppa/uicued/npublications/recent/SSAnomatchreport.pdf

Meissner, D. (2005). *Learning from History*. Retrieved November 28, 2005 from The American Prospect Online Edition Web Site: http://www.prospect.org/web/page.ww?section=root&name=ViewPrint&articleId=10482

Melendez, M. (2005, July 29). Sweet relief: Latinos rejoice at 'Wilson 4' verdict, but officials plan appeal. The Arizona Republic.

Mendieta, A. (2001, September 11). Bill seeks to help illegal immigrants make it to college. Chicago Sun Times.

Meyerson, H. (2005, June 29). A Deportation Tragedy. Washingtonpost.com. Retrieved November 4, 2005 from http://www.washingtonpost.com/wp-dyn/content/article/2005/06/28/AR2005062801250.html

Mexican American Legal Defense and Educational Fund (Maldef). (2004, May). *Black, White and Brown: Latino school desegregation efforts in the pre- and post-Brown v. Board of Education era*. Los Angeles, CA: Ferg-Cadima, J.

Midobuche, E. (2001). More than Empty Footprints in the Sand: Educating Immigrant Children. Harvard Educational Review, 71(3), 529-535.

Migration News (1996). Assessing 1996 Immigration Changes. Retrieved October 31, 2005 from http://migration.ucdavis.edu/mn/comments.php?id=1068_0_2_0

Mindiola, T., Salinas, L., Eschbach, K. (2002). A Profile of Undocumented Seniors in Select Houston Independent School District High Schools." Center for Mexican American Studies. University of Houston: 1-24.

Mitchell, P. (2001). AB 540 (Firebaugh). Public Postsecondary Education: Residency. Hearing before Assembly Committee on Higher Education. April 17, 2001.

Mitchell, T.R. (2001, April 15). Busted from College because of where they were born. [Op-Ed]. Los Angeles Times.

Mladinich, L. (1995). Falling through the cracks. Prism Online. Retrieved July 16, 2005 from http://journalism.sfsu.edu/www/pubs/prism/may95/fall.htm

Montemayor, S.J., Regalado, E. Riegel,V. (2003). Revised guidelines and Retrieved on AB 540 exemption from nonresident tuition. California Community College Chancellor's Office. Retrieved June 29, 2005 from http://gwc.info/admissionsold/ab540.html

Murdock, S. & Hoque, M.N. (1999). Demographic factors affecting higher education in the United States in the Twenty-First Century. *New Directions for Higher Education*, (27)4, 5-13.

National Immigration Law Center. (2003). *Dream 2003 introduced in the Senate. National Immigration Law Center*. Washington, DC: Bernstein, J.

National Immigration Law Center. (2005, February). *The Economic Benefits of the DREAM Act.* Retrieved July 11, 2005, from http://www.nilc.org/immlawpolicy/DREAM/Econ_Bens_DREAM&Stdnt_Adjst_0205.pdf

National Research Council (1997). *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington: National Academy Press.

Ness Rhymer, R. (2005). Taking back the power: Federal vs. State Regulation of Post-Secondary Education benefits for Illegal Immigrants. Washburn Law Journal, (44) 3, 603-625.

New York City Council Committee on Higher Education (2004). Immigration law and obstacles faced by students pursuing a higher education. March 3, 2004.

Nicholson, M. (2003). Outreach Director Honored for Social Work. Herrera placed in Congressional Record for Effort in Transfer Students. The Daily Bruin Online. Retrieved May 15, 03 from http://www.dailybruin.com/news/printable.asp?id=24413&date=5/15/2003

Nora, A. (2000). Reexamining the community college mission. New expeditions: charting the second century of community colleges. Issues Paper No. 2. *American Association of Community Colleges*. Washington, DC.

Nora, A. (2001). How minority students finance their higher education. *Urban Education*. New York. Pp. 1-4.

Nora, A. and Lang, D. (2001). Pre-college psychological factors related to persistence. In *Annual Meeting of the Association for Institutional Research*. Long Beach, CA.

Noriega, R. (2000a). Barriers to higher education eased for some Texas immigrants. July 2000.

Noriega, R. (2000b). Immigrants face barriers to higher education. Houston Business Journal. Week of August 4-10, 2000.

Noriega, R. (2001). HB 1403 Introduced version – Bill Text. A bill to be entitled an Act: Relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition or to pay tuition at the rate provided to residents of this state. 77th Regular Legislative Session. Retrieved February 19, 2001 from http://www.capitol.state.tx.us/tlo/77r/billtext/HB1403.HTM

Nyberg, K.L., McMillin, J.D., O'Neill-Rood, N., Florence, J.M. (1997). Ethnic differences in academic retracking: A four year longitudinal study. *Journal of Educational Research*, 91(1).

NYPIRG (2002). Testimony of the New York Public Interest Research Group before the New York City Council Higher Education Committee. Tuesday, February 19, 2002 New York, N.Y. Retrieved August 2, 2005 from http://www.nypirg.org/news81202.htm

Oakes, J. (1985). *Keeping track: How schools structure inequality* (pp. 1-213). Binghamton, NY: Vail Ballou Press.

Ochoa, J (2002, September 29). Teen sparks debate on immigrant rights. Greely Tribune. Retrieved November 4, 2005 from http://www.greeleytrib.com/article/2002109290042

Office of the Governor (2002). Governor helps keep college affordable for immigrants. August 9, 2002. New York State.

Office of the Governor (2003). Blagojevich Opens Access To Higher Education For Immigrant Students. Governor Signs In-State Tuition Bill. May 18, 2003.

Office of the Senate Floor Analyses (2003). SB 328 Senate Bill Analysis: Student Financial Aid. California State Legislature. Retrieved July 16, 2005 from http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0301-0350/sb_328_cfa2003091

Olivas, M. (1979). The Dilemma of Access. Minorities in two-year colleges. Institute for the Study of Educational Policy. Howard University Press. Washington, DC.

Olivas, M. (1982). Federal Higher Education Policy: The case of Hispanics. *Educational Evaluation and Policy Analysis*, 4 (3), 301-310.

Olivas, M. (1986). "*Plyler v. Doe*," "Toll v. Moreno" and postsecondary admissions: undocumented adults and "enduring disability." *Journal of Law and Education*, 15 (1), 19-55.

Olivas, M. (1995). Storytelling Out of School: Undocumented College Residency, Race, and Reaction. *Hastings Constitutional Law Quarterly*, 22(4), 1019-1086.

Olivas (2004). IIRIRA, the Dream Act and Undocumented College Residency. The Journal of College and University Law. 30(2), 435-464.

Olsen, J. (1998). *Made in America: Immigrant Students in Our Public Schools*. New York, NY: The New Press.

Opinion No. H-586. (1975). *Alien children whose parents are illegally residing in this country entitled to attend public schools*: John Hill, Attorney General of Texas. Austin, TX.

Orfield, G. and Lee, Ch. (2004). *Brown* At 50: King's Dream or *Plessy's* Nightmare? The Civil Rights Project. Harvard University. Cambridge, Massachusetts.

Ortiz, M.L (2002). College Outreach Campaign. Education at your reach! Educación a tu alcance.

Paget-Clarke, N. (2002). CUNY undocumented students organize to stay in college. Interview with Angelo, Mexican American Student Alliance. *In Motion Magazine*. Retrieved June 30/05 from http://www.inmotionmagazine.com/hrcr/nyund.html

Passel, J. (2005). Unauthorized migrants. Numbers and characteristics. Background briefing prepared for taskforce on immigration and America's future. Pew Hispanic Center. Retrieved June 15/05 from www.pewhispanic.org

Passel, J. and Suro, R. (2005). Rise, Peak and Decline: Trends in U.S. immigration 1992-2004. Pew Hispanic Center. Retrieved October 1/05 from www.pewhispanic.org

Patton, M.Q. (1990). Qualitative Evaluation and Research Methods. Sage Publications. Newbury Park.

Peterman, D.S. (2003). International and immigrant students in community colleges: who they are and how to help them. *Community college journal of research and practice*, 27, 61-65. Taylor & Francis, Inc.

Peters, B., Fitz, M. (2001). To repeal or not to repeal: The federal prohibition on in-state tuition for undocumented immigrants revisited. *American Immigration*, 1-8. Retrieved October 4, 2002 from www.ilw.com.

Plata, M. (1995). Success of Hispanic college students on a writing examination. *Journal of Educational Issue of Language Minority Students*, 15: Boise State University.

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

Plotkin, S.P. (1999). Assembly Bill 1197 Bill Analysis. Senate Committee on Education. 1999-2000 Regular Session. California State Legislature.

Ponce de Leon, J. (2003). The underground of higher education. *Voices that must be heard*. Edition 72. Retrieved August 2, 2005 from http://indypressny.org/article.php3?ArticleID=942

Popeo, D. and Samp, R. A. (2005). In re: In-state Tuition for Illegal Aliens. Washington Legal Foundation. August 9, 2005.

Porter, E. (2005, April 5). Illegal Immigrants are Bolstering Social Security with Billions. New York Times. Retrieved April 5, 2005 from http://select.nytimes.com/search/restricted/article?res=F7091FFC345B0C768CDDAD0894DD404482

Professional Staff Congress (2002). Higher Education Access for Immigrant Students. Retrieved on August 2, 2005 from http://www.psc-cuny.org/June14rally.htm

Quiroz, P.A. (2001). The silencing of Latino student 'voice': Puerto Rican and Mexican narratives in eighth grade and high school. *Anthropology and Education Quarterly* 32(3):326-349.

Ramirez, B.T. (2001, August 10). La migra en la embajada de EE.UU. Vejaciones y despojos a la estudiante Tania Unzueta al tramitar una visa. La Jornada. Los Angeles.

Rangel, I. (2001). Public Hearing. Tuesday, March 13, 2001. Committee on Higher Education. Texas House of Representatives. Texas State Legislature.

Reade, J. (2002). Rep Ure's bill narrowly passes Utah house. Exemption from non-resident tuition heads to the Senate, where proponents predict smoother passage. The Park Record. March 6-8, 2002.

Reich, P. (1995). Environmental metaphor in the alien benefits debate. *UCLA Review*. 42 (1577).

Reid, G. (1995). Guardians at the bridge: Will immigrants maintain equal access? Community College Journal 65(6): 14-19.

Robledo, A. (1977). *The impact of alien immigration on public policy and educational services on selected districts in the Texas educational system*. Unpublished doctoral dissertation, University of Houston, Texas.

Rodriguez, N. (1992). Undocumented immigrants students and higher education: A Houston study. Institute for Higher Education Law and Governance (IHELG). Monograph 90-10. University of Houston Law Center.

Rodriguez, O. (1996). The politics of Chicano liberation. New York: Pathfinder Press.

Rojas, A. (2003, March 2). The publicizing of in-state fees for illegal immigrants at state colleges stirs a backlash. Sacramento Bee.

Romero, V. (2002). Post-secondary Education Benefits for Undocumented Immigrants: Promises and Pitfalls. *North Carolina Journal of International Law and Commercial Regulation*, 27, 393-418.

Ruiz de Velasco, J., Fix, M. (2002). Limited English Proficient Students and High Stakes Accountability Systems In D.M. Piche, W.L. Taylor and R.A. Reed (ed) *Rights at Risk: Equality in an Age of Terrorism*. Report of the Citizens' Commission on Civil Rights.

Rush, S. E. (1998). The Education of Immigrant Children. The Competing Goals of State Sovereignty and racial equality. *Rutgers Race & Law Review*, 155.

Sabatier, P., & Jenkins-Smith, H.C. (1993). *Policy change and learning. An Advocacy Coalition Approach*. Boulder, Colorado: Westview Press.

Salsbury, J. (2003). Evading residence: Undocumented students, higher education and the states. *The American University Law Review*, 53, 459.

San Jacinto Community College (2000). VI-X: Policy on Undocumented Immigrants Tuition. Effective August 8, 2000.

Sanchez, G. I. (1951). Concerning segregation of Spanish speaking children in the public schools. *Inter-American Occasional Papers, II*, 1-39.

Sebastian, L.Y. (2002). Legislative branch developments: Dream put on hold Congress and in-state tuition for children of illegal immigration. *Georgetown Immigration Law Journal*, 16, 874.

Seper, J. (2004). Illegal aliens cost California billions. Retrieved September 17, 2005 from http://www.washingtontimes.com/national/20041206-102115-6766r.htm

Sifuentes, E. (2004, February 28). Echoes of Proposition 187 in Save our State Initiative. North County Times.

Sibley, M. (2004). Analysis and Implications of Texas House Bill 1403. Unpublished manuscript. University of Texas at Austin.

Smith, J.F., Bustillo, M. (n.d.) Fox urges state to ease tuition residency laws. In address to Legislature, Mexican leader speaks bluntly on an issue opposed by Gov. Davis. Los Angeles Times.

Smith, R.M. (1985). *The meaning of American citizenship.* Retrieved November 12, 2003 from the American Political Science Association Web site: http://www.apsanet.org/imgtest/AmericanCitizenship.pdf

Somos El Futuro (2005). New York State Assembly Puerto Rican/Hispanic Task Force. Retrieved November 6, 2005 from http://www.somoselfuturo.org/home.htm

Spring, J. (2001). Hispanic/Latino Americans: exclusion and segregation. In *The American school 1642-2000* (pp. 191-211). Boston: McGraw Hill**.**

Stevenson, A. (2004). Dreaming of an equal future for Immigrant Children: Federal and State Initiatives to Improve Undocumented Students' Access to Postsecondary Education. *Arizona Law Review*, 46, 551.

Suarez-Orozco, C. (2001). Afterword: Understanding and serving the children of immigrants. *Harvard Educational Review*, 71(3), 579-589.

Suarez-Orozco, M. (2001). Globalization, Immigration and Education: The Research Agenda. *Harvard Educational Review*, 71(3), 345-365.

Sullinger, J. (2004a). Rush to Kansas colleges not expected under immigration tuition law. The Kansas City Star. June 1, 2004.

Sullinger, J. (2004b). Kansas tuition law under fire. Activist group vows suit over in-state rates for some immigrants. The Kansas City Star. Retrieved from June 7, 2004 http://www.kansascity.com/mld/kansascity/news/local

Sullinger, J. (2005). Judge hears tuition lawsuit. Immigration laws at issue in case. The Kansas City Star. Retrieved June 25, 2005 from http://www.kansascity.com/mld/kansascity/11614133.htm

Supinger, A. (1999). Assessment of Non-Resident Tuition. Assembly Committee on Higher Education. AB 1197 (Firebaugh) Bill Analysis. April 20, 1999.

Szelenyi, K., Chang, J.C. (2002). Educating immigrants: The Community College Role. *Community College Review*, 30(2), 55-74.

Tamayo, B. (1995). Proposition 187: Racism leads to deaths and more poverty. Poverty & Race Research Action Council. January/February 1995 issue of Poverty & Race.

Texas Education Code (1995). Section 42.003. Student Eligibility. Texas Education Agency. Retrieved from September 27, 2005 from http://www.capitol.state.tx.us/statutes/docs/ED/content/word/ed.002.00.000042.00.doc

Texas Higher Education Coordinating Board. (2000a). Chapter 21, Subchapter BB. Pilot Program for Enrolling Students from Mexico. Retrieved March 6, 2000 from http://www.thecb.state.tx.us/rules/21/21_BB.htm

Texas Higher Education Coordinating Board. (2000b). Residency determination for non-U.S. citizens (aliens).

Texas Higher Education Coordinating Board. (2001). Residency. Questions and Answers Generated from the June 19 and July 25T, 2001 Residency Conferences. Division of Student Services. August 2001.

Texas Legislative Budget Board. (2001a, March). *HB 1403 by Noriega: Relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition*. Fiscal Note, 77th Regular Session. Austin, TX: Keel, J.

Texas Legislative Budget Board. (2001b, March). *SB 1526 by Van de Putte (Relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition or to pay tuition at the rate provided to residents of this state*. Fiscal Note, 77th Regular Session. Austin, TX: Keel, J.

The Denver Channel (2002, September 27). INS Delays Deporting Honor Student: Nighthorse Campbell Wants To Give Jesus Apodaca Permanent Status. Retrieved November 4, 2005 from http://www.thedenverchannel.com/NEWs/1690263/detail.html

The Park Record (2002, March 6-8). HB 144, allowing in-state tuition for illegals, is a feather in Ure's cap. Editorial.

Tienda, M. (2002). Demography and the Social Contract. *Demography*, 39(4), 587-616.

Tomás Rivera Center. (1994). *California School District Administrators speak to Proposition 187*. (Research Report No. 4004). Los Angeles, CA: Richard Fajardo.

Treviño, A. (2002, June 26). Eligible immigrants unaware of affordable tuition. Chronicle Cub 2002. Houston Chronicle. University of Houston Journalism Workshop.

Treviño, R. (2003, February). Hereford, Texas to Harvard: Low Income Mexican origin parents and high achieving bilingual children. Paper presented at the 2003

National Conference of the National Association of Bilingual Educators. New Orleans, LA.

Tuchman, G. (1998). "Historical social science methodologies, methods and meanings" In Strategies of Qualitative Inquiry. Denzin, Norman K.; Lincoln, Yvonna S. (Eds) Thousand Oaks, Calif. Sage Publications.

University of California at Los Angeles (2002). January 2002 Announcements. Retrieved July 25, 2005 from http://www.chavez.ucla.edu/jan02ancmnts.htm

University of Texas at El Paso. (1997). Información para estudiantes Mexicanos. [Brochure]. El Paso, TX.

University of Texas at El Paso. (2000). Office of International Programs. *Programa de Asistencia Estudiantil para Mexicanos*. [Brochure]. El Paso, TX.

Urban Institute. (2000, December). *Overlooked and underserved: Immigrant students in U.S. secondary schools*. Washington, DC: Ruiz-de-Velasco, J., Fix., Chu Clewell.

Urban Institute. (2001a). *Hardship among children of immigrants: Findings from the 1999 National Survey of America's Families*. Washington, DC: Capps, R.

Urban Institute. (2001b). *Undocumented aliens graduating from high school. Demographic information related to H.R. 1918 the Student Adjustment Act*. Washington, DC: Passel, J.S.

Urban Institute (2003). *Further Demographic Relating to the DREAM Act*. Population Studies Center. Washington, DC: Passel, J.S.

Urban Institute. (2004a). Immigration trends: A quick look at the numbers. *Journal of Poverty Law and Policy*, 38(5-6), 249-252.

Urban Institute. (2004b). *Undocumented immigrants: Facts and figures*. Urban Institute Immigration Studies Program. Washington, DC: Passel, J.S., Capps, R., Fix, M.

Valencia, R. (1997). Conceptualizing the notion of deficit thinking. In R. Valencia (ed.) *The evolution of deficit thinking* (pp. 160-210). London: Falmer Press.

Van de Putte. (2001). SB 1526 Introduced version – Bill Text. A bill to be entitled an Act: Relating to the eligibility of certain persons to qualify as residents of this state for purposes of higher education tuition or to pay tuition at the rate provided to residents of this state. 77th Regular Legislative Session. Retrieved April 26, 2001 from http://www.capitol.state.tx.us/tlo/77r/billtext/.HTM

Vincent, D. (n.d.) The Dream Act: Eliminating Barriers to Higher Education for Undocumented Latino Immigrants. Unpublished manuscript. Indiana University.

Visalaw (2004). Kansas immigrants will receive in-state tuition rates. Visalaw Immigration Information. Retrieved June 7, 2004 from http://www.visalaw.com/04jun1/14jun104.html

Washington Legal Foundation (2005). WLF files Civil Rights Complaint Against State of Texas Regarding Benefits for Illegal Aliens. News Release. August 9, 2005.

Washington State School Directors Association (2003). Locke signs tuition bill into law. Retrieved May 7, 2003 from http://www.wssda.org

Wells, A. S., & Serna, I. (1996). The Politics of Culture: Understanding Local Political Resistance to Detracking in Racially Mixed Schools. *Harvard Educational Review, 66*(1).

Wilson, B. (1995). Bradford Decision – "Leticia A." From the President's Desk. California State University Northridge. Retrieved July 16, 2005 from http://www.csun.edu/~hfoao102/president_desk/desk_archives/presdesk13.htm

Wishnie, M.J. (2001). Laboratories of bigotry: Devolution of the immigration power, equal protection and federalism. *New York University Law Review*, 76 (493).

WorldNetDaily (2004, January 29). 'Illegal immigrant' an offensive slur? Retrieved November 29, 2005 from http://www.worldnetdaily.com/news

Yachnin, J. (2001, April 13). Bills in 2 States Would Cut College Costs for Some Illegal Immigrants. The Chronicle of Higher Education.

Yates, L.S. (2004). *Plyler v. Doe* and the rights of undocumented immigrants to higher education: Should undocumented students be eligible for in-state tuition college tuition rates? *Washington Law Quarterly*. 82 (585). Summer 2004.

Young, J., Noldon, D. (2002). AB 540 – New Law increases Access to Community College for Non-resident Students. *Ijournal*. September 2002: Beyond Customer Service. Retrieved June 29, 2005 from http://www.ijournal.us/issue_02/ij_issue02_Young AndNoldon_01print.htm

Vita

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Upon receiving her Master's degree, she worked with the Houston and Austin school districts, two of the largest in the state. In that capacity, she was active in the passage of HB 1403, Texas legislation allowing undocumented high school graduates to attend college at in-state tuition rates. During her 6 years working with Texas school districts, she developed a number of programs designed to increase the participation of undocumented and other high school students in institutions of higher education. She currently serves as the Director of Multicultural Affairs at Prairie View A&M University, where she continues to assist immigrant high school and college students.

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