

Analyzing the Dream

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Abstract

The Development, Relief, and Education for Alien Minors Act, otherwise known as the DREAM Act, is a proposed bill under consideration in the US Congress that would give undocumented immigrant minors greater access to higher education opportunities while also providing them with a path to achieving full and legal citizenship. The bill was first introduced in 2001 and is now being reintroduced with new amendments in 2009. My research will center on questions regarding the social and economic effects that this proposed bill would have on the undocumented students if it were passed. Specifically, I plan to investigate the potential consequences of this bill in the country by examining case studies of California, Maryland and Virginia with respect to: a) increases in higher education levels and admissions, and b) economic opportunities. My research will center on a policy-analysis in a non-empirical format. I will mostly use qualitative methods of research, although I will collect and analyze some data and statistics on the undocumented community in the aforementioned states.

Problem Statement

The Development, Relief, and Education for Alien Minors Act, also known as the DREAM Act in the senate or the American Dream Act in the House of Representatives, was recently reintroduced to congress on March 26, 2009 (U.S. Congress, 2009). The Dream Act would give undocumented students the opportunity to acquire temporary legal status while attaining a higher education or enlisting in the army for at least two years (National Immigration Law Center, 2009). The DREAM Act has been under scrutiny since 2001 when it was first introduced. This year, the bill has new and omitted provisions that affect its ultimate impact on the people it aims to help. It is these amendments that I plan to investigate in order to see whether they will improve the situation of the qualified undocumented population. A better understanding of the bill in question is necessary so that a greater number of people can be informed, people can see the bill's opportunities and threats, and so that actions can take place to fix the threats.

Research Question

Given the aforementioned purpose statement and the problem, my research seeks to answer this fundamental question: If it were passed, would the amendments in the DREAM Act of 2009 really ameliorate the situation of undocumented students nation-wide? The most fundamental change in the bill is the provision of leaving financial aid to the states, giving them the decision to provide in-state tuition to the students in question. By focusing on specific states- California, Maryland, and Virginia- I will attempt to predict the overall possible effects of the law. These states were chosen because of how they perceive the DREAM Act and other related statutes as well. California, for example, is a state that currently offers undocumented immigrants in-state tuition under A.B. 540 (Krueger & Zaleski, 2008). The state of Maryland remains in question on whether to pass the bill under H.B. 6 (Krueger & Zaleski, 2008), and Virginia under H.B. 2169 has “considered legislation that would ban undocumented immigrants from receiving in-state tuition” (Krueger & Zaleski, 2008). The aforementioned states exemplify three varied viewpoints on the issue. It is important to see the state’s decision-making and implementation process in order to apply their actions if the DREAM Act was passed.

Limitations and Delimitations of Research

In conducting my research, I was bound to have the limitation of time. This policy analysis was organized under a period of one month which limited the amount of research I could accomplish. However, knowing that I had this constraint, I tried to compensate time by constantly and readily working to achieve a good-quality product.

Moreover, my background makes me biased towards the research analysis. I am a first generation Latina immigrant in college. Although I am not undocumented, I have a connection with all immigrants regardless of their legal status. I will implement as much of the information I find on the Dream Act from both opposing and supporting views, and I will acknowledge and criticize them also. Furthermore, I decided to investigate Virginia to provide an opposing view to alleviate my possible bias.

Delimitations of my research includes that it will not attempt to discuss the second option of legal documentation which is the choice of enlisting in the uniformed services for at least two years. My analysis will also not discuss letter (c) and (d) of Section five which informs the qualified undocumented students of the procedures the student must follow in order to apply for permanent residency. Furthermore, my research will primarily focus on the undocumented population of three states- California, Maryland, and Virginia- and therefore cannot speak for the legal procedures in any other state unless it is as a general characteristic.

Definitions

Undocumented Alien: “A person who has entered the United States without inspection or surreptitiously, or a nonimmigrant (such as a visitor or foreign student) who has stayed beyond the time granted on his or her nonimmigrant visa. Such persons are sometimes derisively referred to as illegal immigrants,” (Hing, 1999, p. 303).

Plyler v. Doe (1982): “The Supreme Court held that the Equal Protection Clause of the Fourteenth Amendment was violated by a Texas statute that withheld from local school districts any state funds for the education of children who were not “legally admitted” into the United States and that authorized schools to deny enrollment to such children... The Court ruled on the [behalf of the unauthorized children] finding that the statute imposed a lifetime hardship on a discrete class of children not accountable for their status. These children could neither affect their parents’ conduct nor their own undocumented status,” (Hing, 1999, pp. 246-247).

Lawful Temporary Resident: “Under the legalization (amnesty) provisions of the Immigration Reform and Control Act of 1986, a person who qualified first became a lawful temporary resident. After a qualifying period of time (eighteen months for general legalization, and one or two years under the agricultural worker program), the temporary resident could then apply for lawful permanent resident status” (Hing, 1999, p. 189)

Conditional Permanent Residence: “In two important situations, the lawful permanent resident alien immigration status of individuals is considered to be conditional for a two-year period. In other words, a particular status must be maintained for two years until the permanent residence is actually permanent,¹” (Hing, 1999, pp. 85-86).

Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA 1996): “Section 505 of IIRIRA prohibits states from offering higher education benefits to undocumented students without offering those same benefits to U.S. citizens and nationals who meet certain criteria. AB 540 and similar legislation was drafted in such a way so that all students who meet specific requirements are eligible for its benefits” (UCLA Center for Labor Research and Education, 2008, p. 3)

Summary

Based on the federal law and case studies conducted, I was able to conclude that I still had many concerns to answer after this study. Firstly, the decision of in-state tuition left to the states does not assure that in-state tuition will be provided. This would limit the overall effect of the law, since each state has its own opinion on the law. This also leads to a question of political lines, for example how ex Maryland and Virginia governors vetoed the DREAM Acts for their respective states and aligned with their political affiliations. This leads to a bigger question of whether the in-

¹ The difference stated in the Dream Act is that the status of lawful status is only valid for six years. (UCLA Center for Labor Research and Education, 2008)

state tuition will depend on politics and a most important question of how can it be assured that all undocumented students have the chance of receiving some financial aid without running into political battle within the state? Furthermore, financial aid the legislation could provide would not be enough for prospective DREAM Act students based on the barriers they face such as the fact that 39 percent of undocumented children live under the poverty level (Frum, 2007).

Literature Review

History of Education Laws

The DREAM Act of 2009 is the latest form of a higher education bill that aims to address an issue of a minority group. Previous laws that have shaped the access of education of undocumented students have helped shape and form what the DREAM Act currently proposes. The historical timeline of similar education laws is important to evaluate because not only have they attempted to address the issues regarding education, they also resonate when future laws are made.

In the past, there was legislation that helped benefit and hinder the undocumented students' availability to a higher education. According to Leisy Abrego (2003), the law in the 1980s admitted undocumented students attend "colleges and universities as state residents so long as they could prove that they had lived in the state for at least a year and a day" (p. 12). In 1980, the Uniform Residency Law of from California provided an exemption to long-term California residents to pay in-state tuition at all California public colleges and universities, (UCLA Center for Labor Research and Education, 2008). Following in 1985, the California case of Leticia A. v. UC Regents and CSU Board of Trustees further improved the situation for undocumented students by providing them access to Cal Grants (UCLA Center for Labor Research and Education, 2008). However, this ruling was repealed in 1990 in the case of Bradford v. UC Regents and the County Superior Court determined that undocumented students should be "charged out-of-state tuition and lost all eligibility to receive state or federal financial aid" (UCLA Center for Labor Research and Education, 2008). In 1986, the Immigration Reform and Control Act (IRCA) "was the last comprehensive federal immigration law passed" that provided "amnesty for undocumented immigrants that could prove residency for a number of years" (UCLA Center for Labor Research and Education, 2008). The federal law also disbursed \$4 billion to "state and local governments for welfare and education programs" (UCLA Center for Labor Research and Education, 2008). Proposition 187 of 1994 called for the denial of access to public education, and some health and social services to illegal aliens and their children (Lehrer, 1996). The bill passed with a 58.93% approval from Californians (Bill Jones, 1994, p. 26), however this law was repealed by the Supreme Court in 1995 (UCLA Center for Labor Research and Education, 2008) on the grounds that California designed Proposition 187 in order to regulate illegal immigration, which is a federal domain (McDonnell, 1997).

Higher education for undocumented Californians became more attainable with the passing of Assembly Bill 540 of 2001. In light of the Illegal Immigration Reform and Immigrant Responsibility Act (IRIRIRA) of 1996 which stated that in order for an undocumented student to receive in-state tuition, the same tuition must be available to any other American student (UCLA Center for Labor Research and Education, 2008), the AB 540 created a way for undocumented students to obtain higher education by sorting out qualifying students (Abrego, 2003). Thus far, 1,483 University of California students received AB 540 non-resident fee exceptions; however 1061 of the total were number of students who applied for the out-of-state fee exemption were documented students (Frum, 2007).

Based on the literature analysis of the bill and related documents, many states had already implemented legislation regarding similar aspects to those of the DREAM Act. As of June 2007, approximately 32 states had attempted to pass legislation that would address the in-state or out-of-state tuition provision for undocumented students (Zaleski, 2008). Out of the total, ten passed legislation allowing undocumented students to receive in-state tuition. Correspondingly, 10 states have attempted or succeeded in passing legislation restricting undocumented students from receiving in-state tuition (Zaleski, 2008).

The DREAM Act of 2009

The DREAM Act of 2009 was introduced in congress on March 26th of 2009 as a bipartisan legislation by Senator Richard Durbin of Illinois and Representative Howard Berman of California (U.S. Congress, 2009). The legislation would provide conditional permanent residency for six years to undocumented students who meet the following criteria (Dream Act Portal, 2009):

- (A) The alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;
 - (B) the alien has been a person of good moral character since the time of application;
 - (C) the alien--
 - (i) is not inadmissible under...the Immigration and Nationality Act (8 U.S.C. 1182(a)); and
 - (ii) is not deportable under paragraph...the Immigration and Nationality Act (8 U.S.C. 1227(a));
 - (D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States;
 - (E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien--
 - (i) has remained in the United States under color of law after such order was issued; or
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- (ii) received the order before attaining the age of 16 years; and
- (F) the alien had not yet reached the age of 35 years on the date of the enactment of this Act (U.S. Congress, 2009).

The bill also denotes the fact that the “The Secretary of Homeland Security shall terminate the conditional permanent resident status of any alien who obtained such status under this Act” if the secretary determines that the undocumented alien did not fulfill the requirements of the bill, has become a “public charge”, or “has received a dishonorable or other than honorable discharge from the uniformed services” (U.S. Congress, 2009). Hardship exceptions may apply but are not always applicable to undocumented beneficiaries of the bill.

In regards to the provision of in-state tuition and financial aid eligibility to undocumented students, section 11 of the act establishes that the undocumented student is only eligible for student loans and federal work-study programs, and college advising services (U.S. Congress, 2009). The act does not include any language about in-state tuition as it did in previous Dream Act bills. There are also financial aid statutes that would restrict students from receiving Federal Pell Grants and Supplemental Educational Grants (The Library of Congress, 2009).

The omission of “in-state” language in the bill means to say that each individual state could determine the amount of financial aid given to the undocumented students (NILC, 2009). It would also repeal section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which currently discourages states from providing in-state tuition or other higher education benefits without regard to immigration status (NILC, 2009).

Proponents of the Act such as the Dream Act Portal and the Dream Act 2009 websites have assembled petition lists in order to “ask congress and the president to enact the DREAM Act in 2009” (Dream Act of 2009, 2009). According to the Dream Act 2009 website, 16,989 thousand supporters have signed the petition and some have donated for this cause (Dream Act of 2009, 2009). Both the websites mention high achieving students who call the United States their home and who “want nothing more than to be recognized as American citizens” (Dream Act Portal, 2009).

Opponents of the bill have also mobilized against the bill mobilizing to derail the bill (Friedman, 2007). Lisa Friedman’s article “Opponents Mobilize Against the ‘Dream Act’” exemplifies the opinions of those who are against the bill. For example, Dario Cafuentes from San Diego expressed his disagreement, “the uneducated are coming in from Mexico by the millions. They’re making it difficult for the law abiding people to get in, but they’re making it easier for illegals” (Friedman, 2007). Other opinions as expressed by Kris Kobach in “The Senate Immigration Bill Rewards Lawbreaking: Why the DREAM Act Is a Nightmare,” condones the bill as a violation of the federal law (IRRIRA) and excuses undocumented students by giving them a special amnesty (Kobach, 2006). Very different opinions emerge from different interest groups regarding the act in question. There is no question that the fate of the DREAM Act of 2009 is still uncertain.

Affected Population

According to the U.S. Department of Homeland Security (DHS) in 2008, the number of undocumented immigrants consists of 11.6 million (Hoefler et al, p. 3). In the same study, the DHS determined that 1,540,000 undocumented students were under the age of 18 was people, comprising 13 percent of the total undocumented population in the country (Hoefler et al, p. 5). The legislation could also make 715,000 undocumented children, between the ages of 5 to 17, eligible for legal status and it would immediately make about 360,000 young people eligible for conditional legal status (Friedman, 2007). Every year, around 65,000 undocumented students graduate from U.S. high schools. It is estimated that only five percent of these students will ever attend college (Frum, 2007). The vast majority of the undocumented population stipulated to qualify for the bill face major barriers to postsecondary education, for instance, 39 percent of undocumented children live under the poverty level (Frum, 2007). Furthermore, even though an undocumented student is accepted to a public college or university, that student will have to pay 140 percent more than the resident tuition in 40 states of the nation (Frum, 2007).

The DREAM Act, if passed, would attempt to ameliorate their unauthorized situation. On 2006, the Migration Policy Institute estimated that 360,000 undocumented students would be immediately eligible for the DREAM Act legal residency status (Batalova & Fix, 2006). Nonetheless, this does not mean that all of the qualified students could or would choose the option of a

Case Studies

California

California has over 25,000 undocumented students graduating from California high schools each year. According to the Immigration and Naturalization Service (INS) , over “40 percent of the unauthorized immigrant population in the country resides in California” It is one of the few pioneer states that have implemented an in-state tuition provision allowing undocumented students to pay resident tuition in public universities and colleges. To many, the state law A.B. 540 of 2001 defied federal law. In 2008, the state was sued in the case of *Martinez v. Regents* where non-resident students challenged A.B. 540 stating that it violated section 505 of the federal law, IIRIRA. The state law was upheld with the holding that equal protection of the laws was not violated because the plaintiffs could receive in-state tuition benefits in their home states (Russell, 2007). Furthermore, out of the 1,483 University of California students that received A.B. 540 non-resident fee exceptions, 1,061 were undocumented students.

Maryland

In the state of Maryland, undocumented immigrants form 5 percent of the total population of the state (Aizenman, 2007). The 268,000 unauthorized immigrants have tempted the state to pass immigration reform legislation. Up to date, the state has attempted to pass legislation twice that would provide in-state tuition to undocumented students. The legislation H.B. 253 (2003) was close to provide in-state tuition, however it was vetoed by republican governor Robert L. Ehrlich. His veto states as follows:

“The Department is unable to determine what the cost of this law would be. State aid under the formula would be approximately...\$2,176 in 2008. The General Assembly is well aware of the fiscal crisis...Now is not the time to enact laws that could cost the State potentially large amounts of money.” (Ehrlich, 2003)

Virginia

In the state of Virginia, there are approximately 259,000 undocumented immigrants and form three percent of the total population of the state (Aizenman, 2007). This case study is different because unlike the aforementioned cases, Virginia has attempted to pass legislation that would deny undocumented students from receiving in-state tuition eight times. The closest one to passing was H.B. 2339 of 2003 which would have provided the state the power to deny in-state tuition on undocumented students;

“An alien who is unlawfully present in the United States within Virginia for any postsecondary educational benefit, including in-state tuition, unless citizens or nationals of the United States are eligible for such benefits in no less an amount, duration, and scope, without regard to whether such citizens or nationals are Virginia residents” (Drake, 2003)

The bill passed the state legislature but was vetoed by the democrat governor Mark R. Warner:

“My amendment was designed to expand opportunity to deserving students, allowing them to live the American Dream...The House of Delegates rejected even this modest amendment...Indeed, this bill would have done nothing at all, other than score a political victory against “illegal aliens” and contribute to anti-immigrant sentiment in this country...I will not attach my signature to legislation which has no substantive effect and is designed solely to score political points and divide people, rather than unite them in a common purpose” (Warner, 2003)

Conclusions

Based on the research conducted, the DREAM Act of 2009 proposes a path to citizenship but does not assure higher education for undocumented students. The legislation would provide two options for undocumented students, however, the provision of leaving in-state tuition up to the states and the disadvantage they

would have by not being eligible for federal financial aid, ultimately will affect the possible effects of the law. The DREAM Act of 2009 is weaker than its forefathers by establishing stricter qualifications and striking out the in-state tuition provision altogether. Nonetheless, based on the history of the bill and the challenges it faces because of the anti-immigration sentiments, the bill needed to have these provisions in order to have a good chance at being passed. To date, it is estimated that eight votes are pending on the decision that will decide whether the bill will become law (Dream Act Portal, 2009). For the lowest-income families without access to student aid, the average price of public four-year colleges and universities would comprise nearly 29 percent of their total household income and the price of two-year institutions would make up about 11 percent (Frum, 2007). What are the possibilities of a low-income family to take advantage of the postsecondary education option? Is a postsecondary education really an option for undocumented youth seeking to be legalized? Is the military service option of the DREAM Act more plausible for the undocumented youth seeking to be legalized? Does the DREAM Act really provide a choice for the undocumented youth in states that could or already have restricted in-state tuition?

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