

Undocumented Students in American Higher Education

A White Paper Prepared for the Hispanic Association of Colleges and Universities and the
Latino Educational Research Initiative¹

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¹ As of August 13, 2012, this paper is a draft synthesis of the most influential research being done about undocumented students in higher education. Revisions will be on-going.

It is estimated that there are approximately 12 million undocumented immigrants within the United States (Pew Hispanic Center, 2008). Roughly 50,000 – 65,000 undocumented immigrant students graduate from U.S. high schools each year (Oliverez, 2006). Undocumented immigrant students struggle for opportunity through complex webs of social, cultural, political, and policy contexts (Gildersleeve, Rumann, & Mondragón, 2010; Gonzales, 2007; Perez, 2009). They face discrimination across divisive lines of racialization, geography, social class, and most pointedly, citizenship (Perez, 2010). Additionally, undocumented immigrant students often come from families that participate in labor contexts (e.g., migrant farmworking) that have been linked to constrained educational trajectories (Gildersleeve, 2010b).

In this white paper, we attempt a critical mapping of undocumented students' higher education opportunity, with particular attention paid to the most prominent policy concern in contemporary debate—in-state resident tuition (ISRT) for undocumented students. We begin with reviews of the participation and policy contexts for undocumented students in higher education as synthesized from the research literature. We then review and describe the research literature and significance of ISRT policy in particular, including both state policy and the proposed federal DREAM Act. This review is by no means exhaustive of the burgeoning literature related to undocumented students in American higher education, but rather an explication of key findings that provides a framework for making sense of how undocumented students' participate in higher education. We conclude the paper with suggestions of needed future research and a call for critical research interventions into the study of undocumented students in higher education.

As with any student population, there are myriad concerns to investigate about their experiences, and the mediators of those experiences, as they seek to participate and succeed in American higher education. In the case of undocumented students, these concerns, and the interests that shape them, are overtly political. Undocumented students' participation and opportunity in higher education has become a symbolic issue in the American zeitgeist. Research about undocumented students has relied heavily on legal arguments about undocumented immigrants' rights to higher education as well as quantitative analyses of policy outcomes related to undocumented students. For example, Michael Olivas (2012) provided syntheses of the legal landscape related to immigration and education. Meanwhile, scholars such as Stella Flores (2010) have used enrollment, financial aid, and census data to demonstrate the overall benefit of ISRT policies for undocumented immigrants, as well as the negligible impact of these policies on local higher education systems and economies. Some qualitative researchers, such as Lindsay Perez Huber (2012) have explored the lived experiences of undocumented students in American higher education, while Kenny Nienhuser (2012) has focused on the development and implementation of ISRT policy. Our own work has sought to understand the discursive effects and material consequences of higher education policy that targets undocumented students (Gildersleeve & Hernandez, 2012).

Participation context: Undocumented immigrant students in higher education

Approximately 15% of the nation's 12 million undocumented immigrants are under the age of 18 (Passel, 2006). This estimate suggests that the immigrant population living in the United States is relatively young and comprise an integral part of the American primary and secondary educational system. Estimates suggest that 65,000 undocumented

immigrant students graduate from high school every year (Passel, 2003), and anywhere from 7,000-13,000 undocumented immigrant students enter postsecondary education of some sort annually (Gonzales, 2007).

In their review of college access as a field of inquiry, McDonough and Gildersleeve (2006) identified a set of five known mediators of college-going over which scholars have generally reached consensus. These mediators include: academic preparation and counseling; schooling involvement with families, first generation status and family familiarity with college, college admission policies, and higher education cost and financial aid. College barriers to undocumented students are similar to those faced by other students. However, their status as undocumented immigrants informs these mediators creating particularized constraints for students to navigate and negotiate (Gildersleeve, 2010a).

Many immigrant communities, and undocumented immigrant students in particular, attend underperforming schools (Arzubiaga & Nogueron, 2009; Rumbaut, 1995), exacerbating the ways that college-going mediators can become college access barriers. The schooling contexts for undocumented immigrant students may not support adequate college information or counselors who are well informed on how to adequately advise undocumented students (Arzubiaga & Nogueron, 2009). Furthermore, many immigrant students may not know they are undocumented given that many enter the US as children. Undocumented students are likely to be the first in their family to pursue American higher education and must navigate the college admission process from novice perspectives, making them increasingly reliant on schools and admission offices for assistance.

Undocumented immigrants are concentrated in six states in the United States: California, Texas, Florida, New York, Illinois, and New Jersey (Pew Hispanic Center, 2008). However, there is greater dispersion of immigrant groups into new settlement regions that are not familiar with their presence, such as Midwestern states like Iowa (Flores & Chapa, 2009). As underrepresented students, they are more likely to be enrolled at community colleges, the most common point of entry for low-income, and many communities of color (Erisman & Looney, 2007). Overall, the participation context in higher education for undocumented immigrant students is marked by struggle to institutionalized resources and educational trajectories tied into the broader social stratification of American higher education.

Undocumented immigrant students in law and policy

Undocumented immigrant students' participation in higher education is located in a dynamic nexus of federal, state, local, and institutional authority. Immigration policy in the United States is under the purview of the federal government while education generally, and state residency in particular, is legislated and determined by each state. As demonstrated by the sociopolitical contexts of opportunity, undocumented immigrant students are affected by policies that are hotly politicized and are often legislated under hostile circumstances.

Federal policy context

One of the most important cases related to undocumented immigrants' access to education is the US Supreme Court case *Plyler v. Doe* (1982). The court held that the state of Texas could not deny undocumented immigrants access to a free primary and secondary education. In a five-to-four decision, the court found that there was no significant financial

burden to the state imposed by undocumented immigrants and denying undocumented immigrants an education would not deter future illegal immigration (Frum, 2007; Olivas, 2004). The court also found that denying a K-12 education to children would create a “lifetime of hardship” and create a permanent “underclass” of individuals (Frum, 2007). This is particularly important given that at the time, a high school diploma provided opportunity for social and economic mobility.

Another important federal statute influencing undocumented immigrant students’ persistence is the Illegal Immigration Reform & Immigration Responsibility Act (IIRIRA) of 1996. Section 505 of IIRIRA is most often cited and debated concerning undocumented students access to higher education (Olivas, 2004). Section 505 states:

an alien who is not lawfully present in the United States is not eligible for any postsecondary education benefit on the basis of residence unless a citizen of the United States is eligible for the same benefit (in no less an amount, duration, and scope) of whether or not the citizen is a resident.

Olivas (2004) interprets IIRIRA as granting the state with the authority to determine state residency for tuition purposes. The statute does not prohibit states from providing in state resident tuition as long as qualified out of state U.S. citizen students are eligible for a similar benefit (Ruge & Iza, 2005). The vagueness of the statute however, has led to significant differences concerning the intent of the stipulation (Frum, 2007).

A closely related statute is the Personal Responsibility & Work Opportunity Reconciliation Act (PRWORA) of 1996. The statute states that unqualified aliens are not eligible for any federal public benefit including postsecondary education or any other benefit in which payment or assistance is provided. While the intent behind these two

statutes are interpreted in different and controversial ways, it is important to note that these statutes do not preclude institutions from enrolling or admitting undocumented immigrant students (Ruge & Iza, 2005). Further, in the decentralized and diverse system of American higher education, *federal* postsecondary benefits are generally limited to federal financial aid, such as student loans and the Pell Grant.

The Development, Relief, & Education for Alien Minor's Act (DREAM Act), is proposed federal legislation that was first introduced in 2001. Among other objectives, the DREAM Act could provide a pathway to citizenship for undocumented immigrants pursuing higher education. The DREAM Act was incorporated into the National Defense and Authorization Act and on September 21, 2010, was presented for a procedural vote. The Senate, reached a 56-43 vote, falling four votes short to move the bill into a Senate floor discussion. The latest version of the DREAM Act could provide students with conditional permanent residency contingent upon postsecondary enrollment or military service, as well a provision for "good moral character" (H.R. 1751, 2009). However, even if the DREAM Act were passed, it is estimated that only 38% of undocumented students would be eligible for its benefits based on the college-readiness and preparedness of undocumented students generally (Betanova & McHugh, 2010). Furthermore, increasingly vocal voices of dissent from within the immigrant rights movement have withdrawn support for the DREAM Act, claiming it has been bastardized into a primarily military recruitment tool that undercuts systemic immigration and/or educational opportunity reforms (see for example Ochoa, R., 2010).

State policy context

Undocumented immigrants are comprised of many countries of origin, however, Latinos make up a greater majority of the undocumented immigrant population (Pew Hispanic Center, 2007). According to the Pew Hispanic Center, 80 percent of the undocumented immigrant population living in the United States is Latino. The state policy context for undocumented immigrants and education varies widely by state. However, across states, higher education policy contexts cannot be disconnected from policies that target underrepresented groups, and Latinos in particular.

For example, a number of states, such as California, Washington, and Michigan, have adopted anti-affirmative action policies that constrain educational opportunity for students of color. Similarly, legislation like California's Proposition 187 and Arizona's Proposition 300 dismantle bilingual education, disenfranchising many undocumented immigrant families. These are but a few examples of how undocumented immigrant students' educational opportunity is mired in a state policy context that some scholars, such as Nuñez and Jaramillo (2005) have called a hostile policy environment for immigrant families.

In addition, some states have adopted particular financial aid policies and programs that reward strict constructions of academic achievement (i.e., merit). Programs such as the Georgia HOPE scholarship and the West Virginia PROMISE scholarship help make college affordable. However, as a growing body of research into merit-based financial aid policies and programs has shown, these types of programs tend to benefit less-needy families and further disenfranchise first-generation and high-financial-need families (Heller, 2006; Perna, Rowan-Kenyon, Bell, Thomas, & Li, 2008; St. John, Paulsen, & Carter,

2005). Furthermore, the generous resources provided to these programs that generally perpetuate the status-quo in college admissions often accompany a dearth of resources dedicated to serving the human service and educational needs of immigrant families (Suarez-Orozco, Suarez-Orozco, & Todorova, 2008).

Particular to higher education admissions, a national standard does not exist for undocumented immigrant students' access and admission to postsecondary education. Regulations vary from state to state, and in some cases, within state systems and across institutions of higher education. Ten states currently have active legislative policies that extend in-state resident tuition benefits to undocumented students (Olivas, 2009). While federal legislation does not prohibit undocumented students from attending public colleges and universities, five states have adopted policies through legislation or popular referenda to effectively deny undocumented immigrant students in-state resident tuition (Dougherty, Nienhuser, & Vega, 2010; Author, et al., 2010). Moreover, some states (e.g., Georgia), as well as some individual institutions (e.g., Rutgers University), have adopted policies to restrict undocumented immigrants from even attending public colleges and universities (Hebel, 2010).

Institutional policy context

Caught somewhere in between, most public colleges and universities find themselves in policy ambivalent states. These are states where there is neither an ISRT that extends, nor any legislation that restricts in-state resident tuition benefits. Flores & Oseguera (2010) suggest that institutions in policy ambivalent states have significant responsibilities to assume in the absence of federal or state legislation. These institutions are left to interpret ambiguous state and federal regulations and determine their own

institutional practices in enrolling and assessing tuition for undocumented immigrant students.

College admission policies vary by and within each state. Undocumented immigrant students must navigate particular admission policies that are often complex and not easily accessible particularly for undocumented immigrant students whose admission and residency requirements vary by state. Undocumented immigrant students must not only navigate varying college admission policies but also are challenged to fund their higher education since they are not eligible for state or federal financial aid. Higher education costs are rising every year and undocumented immigrant students are not able to subsidize their college tuition compared to their peers. In her study of undocumented immigrant students in California, Perez (2010) found that higher education cost was the single most important factor involved in the college choice process. Students most often selected community colleges given that it was the most affordable postsecondary education option.

Across these policy contexts, it is imperative to recognize that the federal government generally is ascribed responsibility for concerns of immigration, while state governments generally are ascribed responsibility for concerns of education, including higher education. Individual institutions mediate opportunity at the organizational level by crafting policies and enacting practices that can constrain/enable student access and success. At stake in this study is a policy context that rests at a complicated nexus of these federal, state, and institutional responsibilities: in-state resident tuition policy for undocumented immigrant students.

In-State Resident Tuition at the Center of Undocumented Contestation

Amid the tensions between federal, state, and institutional interests and across the social concerns of immigration, education, and social opportunity, ISRT policy emerges with complicated socio-historical, political, and cultural ramifications. This policy context draws broad audiences and constituents from across any political spectrum and commands attention from those working toward equity in educational opportunity. ISRT policy, as a context for inquiry, is ripe for examination as its consequences affect real people's lives and change the way organizations and institutions reflect democratic ideals in American society. Research to date has focused primarily on policy development, policy outcomes, legal analyses and affective consequences of ISRT policy in the everyday lives of undocumented immigrant students. There is a new terrain of critique emerging in the literature investigating the fundamental assumptions, ideologies, and politics of ISRT policy that regularly goes unquestioned.

Policy development and implementation

Dougherty, Nienhusser, and Vega (2010) investigated the dichotomous responses of Arizona and Texas toward undocumented immigrants generally, and their relationship to higher education. Their study provides a close examination of the political contexts in which Texas afforded in state resident tuition to undocumented students through TX House Bill 1403, while Arizona constrained college access for their undocumented student population through the passage of AZ Proposition 300. The state of Texas extended in-state tuition with a nearly unanimous bipartisan vote in the legislature as well as with little public opposition. In sharp contrast, Arizona denied in state tuition with strong public and legislative votes across partisan lines. The authors argue the main reasons that the politics of in-state resident tuition varied across the two states lies in the speed in which the

undocumented immigrant population was growing during the time the policies were introduced and considered, the racial political cultures of the states, the political power of the Latino population, the constitutional power of citizens' initiative, and the timing of in-state resident tuition legislation. The authors emphasize the importance of policy windows in shaping government and policy agendas as well as how policy subsystems are shaped by the social and political structure within the state.

Policy outcomes

Flores (2010) conducted a quantitative study to investigate whether Latino students likely to be undocumented living in states with ISRT policies were more likely to enroll in colleges than other undocumented students who lived in states without similar state legislations. She applies an econometric methodology to investigate the impact of IRST policies. Her research questions investigate whether the introduction of ISRT policies in Texas, California, Utah, New Mexico, Washington, Oklahoma, Illinois, Kansas, and New Mexico, have an impact on their college enrollment rates, compared to states without ISRT policies. Using the Current Population Survey, a nationally represented sample administered by the U.S. Census and the U.S. Bureau of Labor statistics, from 1998-2005, Flores adopted a cost-benefit framework to theorize the effect of a price reduction on college enrollment behavior. Using a logistic regression model, she finds that tuition policies have a positive and significant effect on the college-enrollment rates of undocumented Latino students living in states with ISRT policies.

Kaushal (2008) examines the effects of providing in state resident tuition to undocumented students on their college enrollment and educational attainment in states that extend in state resident tuition. Her work estimates the effect on a group of noncitizen

Mexican young adults, who arrived to the United States after 1987, have lived in the US for more than three years, and would be eligible for in state tuition. Her analysis is based on the Current Population Survey from 1997-2005. Her empirical analysis finds that ISRT policies are associated with a 2.5% increase in college enrollment, a 3.7% increase in the proportion of students who have some level of college education, and a 1.3% increase in the proportion of students with an associate degree. Her analysis further supports that access to subsidized tuition rates increases college enrollment of noncitizen Mexican youth living in states that extend in state resident tuition.

Flores & Chapa (2009) examined the political context for foreign-born noncitizen immigrants in the United States. They determined that there is an increase in state legislative action around issues of college access for undocumented immigrants whereas federal activity related to this issue remains unresolved. They also document the dispersion of Latino immigrant populations into new settlement regions where in many cases the state is policy ambivalent. These contexts present new challenges to higher education and political systems that are not familiar with new immigrant communities.

Flores & Oseguera (2009) acknowledge that higher education institutions are guided by state and institutional policies, or lack there of, in providing educational opportunities for students and in particular, undocumented students. They provide two case studies, California and North Carolina, as illustrations of states with and without ISRT policies, and investigate the availability of educational opportunity for undocumented students at the community college within the two states. They also use data from the American Community College Survey and the National Center for Education Statistics' Integrated Postsecondary Education, and system wide data from California and North

Carolina. They examine fall enrollment data from 2000 to 2007 and identified all undergraduate students enrolled during that time period. Their study highlights the significant responsibility institutions assume and take on in the absence of state and/or federal policies and legislation directly affecting undocumented students.

Legal analyses

Olivas (2004) examined how socio-political contexts influence policy and how the rise in interest in residency tuition as a result of increase and/or decrease of tuition fees. He particularly examines IIRIRA and how the provisions of this statute do not preclude states from enacting residency benefits to undocumented immigrant students. In state residency for tuition purposes is a state determined status and he provides a series of litigation that the federal courts have left the interpretation and determination of state benefits for the states to determine. Additionally, Olivas (2012; 2010; 2009; 2005) has closely examined the Dream Act and provides litigation and legal developments concerning this federal legislation along with other state initiatives dealing with state residency generally and affecting undocumented immigrant students particularly.

Salsbury (2003) examined the seven ISRT policies that existed during the early part of the 21st century. She analyzed the seven state laws in the context of IIRIRA and found that ISRT policies take one of two approaches in order to remain congruent with Section 505 of IIRIRA. Some policies *define* residency for tuition purposes, incorporating qualifications that will include some undocumented students. Other policies create *exemptions* from residency for tuition purposes, providing eligibility for some undocumented students. Salsbury argues that the states whose ISRT defines residency inclusively will more successfully stand up to scrutiny under federal regulations like IIRIRA

and PWRORA. She concludes that the process of determining who is or who is not a resident is filled with inconsistencies.

López and López (2007) provide important legal interpretations of Plyler and its antecedents. Additionally, they point to alternative bases for securing educational rights for undocumented students, in particular, the right to parent and state equal protection clauses. López and López also find promise in the social movements emerging around undocumented student concerns. These movements, according to López and López provide important in-roads for future policymaking, as they make known the real needs of undocumented students as they strategize to negotiate the inequitable terrain of higher education.

Lived Experiences of Undocumented Students

There is growing literature documenting the experiences of undocumented immigrant students. William Pérez (2010; 2012) has been at the forefront of investigations into the lived experiences of undocumented students pursuing higher education. His psychologically-based research has sought to document how undocumented students persevere within oppressive environments, as related to their immigration status. More directly related to ISRT policy and higher education opportunities, Gildersleeve (2010a) ethnographically depicted the life history of undocumented students' as they approached the college admission process. His findings noted that the experience of migration continued to shape the meanings available to students throughout their educational trajectory. Put simply, immigration is a lens that permeates undocumented students' worldview. In addressing ISRT policy, the students in Gildersleeve's ethnographic life

history seized the opportunity that ISRT policy provided as a continuation of their family's migration history-in-process.

Abrego (2008) examined the instrumental and constitutive effect of the ISRT policy in California, AB 540. She examines the legal consciousness of twenty-seven undocumented immigrant students in California to understand the intended and unintended consequences of the ISRT policy. One of the effects of AB540 in the day-to-day lives of the students is the new socially acceptable label and identity as an AB540 student. Students in her study used the ISRT name to identify as an undocumented student and to help conceal their migratory status. Despite their unchanged migratory status, the AB540 status provided a legally produced label to demand privileges for themselves and for other students in similar circumstances.

Perez (2010) examined the college choice process of 14 undocumented Latino students particularly focusing on why students decided to attend the institution they selected. Her study comprised of Latino, first-generation, low socio-economic status, and undocumented students attending a California community college or a public four-year university. Students accounted cost and affordability as the single most important factor in making their college choice. Students chose community college with the intention of transferring to a four-year institution as an affordable option for obtaining a bachelor's degree. Students also discussed the need to seek out information in order to create opportunities for themselves. Perez seeks to understand the barriers between undocumented students and four-year college attendance and identifies familial, peer, and school networks playing an important role in the college choice process for Latino undocumented students.

Perez-Huber & Malagon (2007) critically examine the experiences of 6 Latino undocumented students in California. The authors were guided by a Latino critical race theory framework, and identify several factors that were critical to students' successful transition throughout higher education: social support, financial aid and campus climate. Students expressed social support as a critical transition factor. Students identified peers, student organizations, or family members who were able to provide guidance and resources specifically related to their undocumented student status. Similar to Perez (2010), students identified financial support as the greatest obstacle in their college experience. Undocumented students ineligibility for federal and state financial aid, coupled with their inability for legal employment, further challenges their ability to fund their schooling. Students expressed feelings of isolation, fear, and invisibility in describing the feelings they experienced as a result of their immigration status. The authors argue Latino undocumented students experience additional barriers different and beyond the general Latino student population.

The Role of Critique in Understanding Undocumented Immigration and American Higher Education

While there is a growing literature on the experiences of undocumented immigrant students and ISRT policies, the policies themselves, the media representations around them, and the rhetoric used to describe undocumented student experiences remain largely unexamined in terms of their ideological formations and material possibilities. A few scholars have begun to perform critical analyses of these discursive configurations. Policy, media representations, and rhetoric affect real people and change real conditions.

Gildersleeve and Hernandez (forthcoming) examined how ISRT policies produce new

subject positions, and therefore, construct new identities for use in the rhetoric and representation of undocumented students. According to Gildersleeve and Hernandez, many of these identities perpetually circulate dehumanizing ideology in relation to undocumented students, crafting students as less important and less valuable to American society. Meanwhile, Buenavista (2012) has documented ways that the DREAM Act, and activism related to the DREAM Act reifies the militarization of immigration by structurally encouraging undocumented students to forego higher education in lieu of military service. Her insightful analysis illustrates how pervasively intertwined discourses and material practices between militarism, neoliberalism, capitalism, and education can target undocumented immigrant experiences. Such critical analyses can demonstrate the ways that policy creates and constrains opportunity for undocumented students while producing new imaginings of education and society.

Recommendations

Based on our cartography of the research literature related to undocumented students in American higher education, we have generated the following recommendations for future research:

- The estimates of undocumented high school graduates and postsecondary participants are based on inadequate and somewhat out-of-date data. It is imperative for demographers to find new and more adequate tools to provide up-to-date analyses of undocumented students across American education sectors.
- Across the board, policy development, implementation, and outcomes need more specific case study as well as state-wide and national analyses to more fully explain

the dynamic and changing nature of how policy matters in the structuring of opportunity for undocumented students.

- Legal analyses can continue to examine possible alternatives to relying specifically on Plyler. The restrictive ISRT genre of policy deserves attention.
- With the exception of Gildersleeve's ethnographic work, most of the research focusing on students' lived experiences has a psychological foundation, albeit some studies are more directly rooted in the discipline than others. Many use a primarily phenomenological method. We encourage more work to take interdisciplinary approaches, more widely exploring different dimensions of undocumented students' experiences.
- Discursive analyses of policy, representation, and rhetoric have only scratched the surface of critique that the interaction between immigration and education demands. Such analyses hold incredible promise for illustrating important connections across social practices and institutions.

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