More Than Just a DREAM: The Legal and Practical Implications of a North Carolina DREAM Act

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As Guillermo walked across the graduation stage to receive his law degree, he took a few moments to reflect on all of the hard work and sacrifice that led him to this place: his parents deciding to move from Mexico when he was four years old to give him a better life, being ridiculed in grade school because English was a challenge, being named valedictorian of his high school class, and taking out private loans and grants at high interest rates to pay his way through four years of college and three years of law school. Guillermo has been through a lot. But still, one last hurdle stands in his way before all of that work pays off and he officially becomes a lawyer—licensure by the North Carolina Board of Law Examiners.

For some law school graduates, this may seem like an afterthought. However, licensure poses a serious challenge for Guillermo. The North Carolina Board of Law Examiners requires that each applicant to the Bar provide either a birth certificate to establish that he or she was born in the United States or other documentation to show that he or she is legally residing in the United States.¹ For Guillermo, this requirement is problematic because he entered the United States illegally as a young child. Should Guillermo’s hard work, effort, and talent go to waste? This is the question that many are asking themselves today and the problem that thousands are facing across the United States.

Over the past decade, there has been a strong push at both the state and federal level to allow individuals like Guillermo easier paths to citizenship.² First introduced in 2001, the proposed federal Development, Relief, and Education for Alien Minors Act (DREAM Act) would permit certain qualified immigrant students to obtain conditional

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permanent residency and eventually, citizenship. The DREAM Act has received strong bipartisan support, and both the U.S. House of Representatives and the Senate have proposed numerous versions, yet each has failed to garner enough votes to become law.

Although the DREAM Act has yet to come to fruition, numerous states have enacted their own legislation to “help certain immigrant students gain legal status.” As of February 19, 2014, fifteen states had adopted statutes favorable to the advancement of undocumented immigrants. These provisions offer in-state tuition options for undocumented immigrants by “condition[ing] eligibility for instate tuition on attendance and graduation from a state high school and acceptable college admission applications.” The specific qualifications that illegal immigrants must satisfy and the benefits offered, however, vary by state. Conversely, some state legislatures have taken the opposite approach and have adopted anti-DREAM Act legislation that prevents their states from offering benefits to unauthorized immigrant students.

This Comment evaluates the possibility of a DREAM act in North Carolina. Part I presents the historical background of the DREAM Act and includes a discussion on how case law and federal statutes have


6. Id. (noting those states as California, Colorado, Connecticut, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington).

7. Id.

8. Id.

9. See id. (noting those states as Alabama, Arizona, Georgia, Indiana, South Carolina, and formerly Colorado).
affected undocumented immigrants’ ability to obtain access to public education. It also takes a detailed look at the requirements and conditions set forth in the most recently proposed DREAM Act. Part II analyzes North Carolina’s professional licensure requirements and how DREAM act legislation in other states affects their licensure procedures. Part II also tells the story of Sergio Garcia, an undocumented immigrant who recently gained admittance to the California State Bar. Part III takes a stand on whether North Carolina should adopt its own version of the DREAM act. In support of a North Carolina DREAM act, Part III walks through a discussion of both the positive and negative impacts that a DREAM act would have on the professions in North Carolina that require licensure. Finally, this Comment concludes that North Carolina should adopt a DREAM act because of the opportunities it would provide for children who entered the United States illegally, but through no fault of their own. Educational opportunities would encourage these children to be morally responsible and productive individuals, which in turn would make North Carolina a more morally responsible and productive society. A North Carolina DREAM act would enable these individuals to obtain professional licenses and would allow them to make a positive impact within their professions.

I. BACKGROUND

A. Primary Education Rights of Undocumented Immigrants

“Undocumented immigrants are foreign nationals who (1) entered the United States without inspection or with fraudulent documents; or (2) entered legally as a nonimmigrant but then violated status and then remained in the United States without authorization.”\(^{10}\) The expansion of educational rights for undocumented immigrants started more than thirty years ago with the landmark case of \textit{Plyler v. Doe}.\(^{11}\) The Supreme Court of the United States held that states may not deny undocumented immigrant children the right to K–12 education.\(^{12}\) The opinion in this case not only identified the problems surrounding illegal immigration,
but it also highlighted the fundamental importance of education in our society.\footnote{See id.}

Undocumented immigrants pose the “most difficult problems for a Nation that prides itself on adherence to principles of equality under law.”\footnote{Id. at 219.} Parents who consciously choose to enter the country illegally “should be prepared to bear the consequences” of those illegal actions.\footnote{Id. at 220.} “[T]he children of those illegal [immigrants],” however, should not bear those same consequences.\footnote{Id.} These children “can affect neither their parents’ conduct nor their own status.”\footnote{Id. (quoting Trimble v. Gordon, 430 U.S. 762, 770 (1977)).} Thus, \textit{Plyler} points out the critical distinction between adult immigrants who enter the country illegally, on their own accord, and their children, who enter the country involuntarily.\footnote{Id.} For many of these children, life in the United States is the only life they have ever known. Deporting them to another country, after living a majority of their lives in American society—comporting with American standards of morality and social well-being—as a result of their parents’ actions would be unjust.\footnote{See id. (stating that “[l]egislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice”).}

While it is important to focus punishment for illegal immigration on the willful parents, not the innocent children, it is equally important to focus on what the children are being denied—full access to educational opportunities. The significance of education was recognized by the Supreme Court when it stated that the “American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.”\footnote{Meyer v. Nebraska, 262 U.S. 390, 400 (1923).} Education provides individuals with the basic tools needed to “lead economically productive lives.”\footnote{Plyler, 457 U.S. at 221.} “[E]ducation has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests.”\footnote{Id.}

While the Supreme Court has highlighted the fundamental importance that elementary education has in our society, one could easily translate that analysis to the importance of access to higher

\footnotesize{\textsuperscript{13} See id.\textsuperscript{14} Id. at 219.\textsuperscript{15} Id. at 220.\textsuperscript{16} Id.\textsuperscript{17} Id. (quoting Trimble v. Gordon, 430 U.S. 762, 770 (1977)).\textsuperscript{18} Id.\textsuperscript{19} See id. (stating that “[l]egislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice”).\textsuperscript{20} Meyer v. Nebraska, 262 U.S. 390, 400 (1923).\textsuperscript{21} Plyler, 457 U.S. at 221.\textsuperscript{22} Id.}
education. It is evident that society is placing an even higher premium on the value of education given the steady increase in the percentage of the population receiving high school degrees, bachelor’s degrees, and post-graduate degrees since the 1940s.\(^\text{23}\) The proposed DREAM Act and its state equivalents are realizations of this transformation. They represent a continuing desire to have a well-educated society, regardless of documented citizenship.\(^\text{24}\)

**B. Federal Postsecondary Education Legislation**

Although rights for undocumented immigrants have progressed since *Plyler*, the road has not been easy. In the mid-1990s, Congress adopted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.\(^\text{25}\) Specifically, section 505, codified at 8 U.S.C. § 1623, states:

\[(a) \text{In general. Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.}\(^\text{26}\)\]

Thus, states have two options: (1) follow the provisions set forth by this section and deny undocumented immigrants in-state tuition, or (2) “pay the section 505 penalty by providing the same in-state discount rate to current residents of other states who previously went to high school and graduated in the state.”\(^\text{27}\) In effect, federal law does not require students to prove their citizenship in order to enroll in colleges and universities. However, it fails to provide undocumented immigrant students with in-
state tuition options, making it more difficult for them to afford higher education.  

During the 2013–2014 school year, the average tuition and fees for North Carolina’s sixteen public institutions of higher learning was $6,096.27 for an in-state resident. In comparison, the average tuition and fees for an out-of-state nonresident was $18,465.83. Thus, the difference in costs for an undocumented immigrant compared to an in-state legal citizen was $12,369.56 per year, or $49,478.24 over a four-year period. Even though the federal policy under 8 U.S.C. § 1623 has made it extremely difficult for undocumented immigrants to access affordable higher education, states have enacted their own legislation to circumvent paying the penalty while still allowing undocumented immigrants to attend public institutions at in-state tuition rates.

C. Federal DREAM Act Requirements

Further progression regarding the educational rights of undocumented immigrants led to the first introduction of the DREAM Act in 2001. The DREAM Act’s main purpose is to allow undocumented immigrants who entered the United States at a young age and who have either completed certain education or military requirements to become lawful permanent U.S. residents. After its initial introduction, the DREAM Act has been amended and reintroduced into Congress numerous times, most recently in 2013.


30. Id.

31. Id.

32. See Undocumented Student Tuition: Federal Action, supra note 2 (explaining how states have enacted legislation basing in-state tuition grants on high school attendance and graduation rather than on state residency).

33. S. 1291, 107th Cong. § 3 (2d Sess. 2001).


Individuals must meet certain threshold requirements before qualifying under the DREAM Act. In order to qualify under the most recently proposed version, an applicant must prove that he:

(i) has been a registered provisional immigrant for at least 5 years;
(ii) was younger than 16 years of age on the date on which the alien initially entered the United States;
(iii) has earned a high school diploma or obtained a general education development certificate in the United States;
(iv) (I) has acquired a degree from an institution of higher education or has completed at least 2 years, in good standing, in a program for a bachelor’s degree or higher degree in the United States; or (II) has served in the Uniformed Services for at least 4 years and, if discharged, received an honorable discharge; and
(v) has provided a list of each secondary school (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that the alien attended in the United States.

Although the 2011 version required a showing of “good moral character,” that requirement was eliminated from the 2013 version. Another difference between the 2013 Act and its predecessors is the lifting of the age cap for applicants. In previous versions, the applicant must have met age specifications, which generally excluded immigrants who were not thirty-five years or younger on the effective date of the act. However, the 2013 Act has no age-cap and would allow any applicant who meets the five requirements to apply for a change in status. Upon satisfying the five requirements stated above, “[t]he


37. Id.

38. S. 952, 112th Cong. § 3(b)(1)(C) (2011) (requiring that “the alien has been a person of good moral character since the date the alien initially entered the United States”).

39. See Foley, supra note 35.


41. See Foley, supra note 35.
Secretary of Homeland Security may adjust the status of a registered provisional immigrant to the status of a lawful permanent resident.\textsuperscript{42}

The federal scheme described above would not only make it easier for undocumented immigrants to attain citizenship, compared to more traditional routes, but it would also provide the foundational framework for many states’ DREAM act legislation.\textsuperscript{43} It is important to note that while the DREAM Act would allow undocumented students to obtain lawful permanent resident status, it would not require states to offer those students in-state tuition.\textsuperscript{44} The Act would only change the citizenship status of the applicant, certifying that he or she legally resides in the United States, even if only conditionally. The decision to offer these individuals in-state tuition would be left up to each individual state.\textsuperscript{45} Lawmakers, however, in an effort to encourage states to offer in-state tuition or financial aid to students qualifying under current state DREAM acts and the proposed federal DREAM Act, have proposed another bill “that would provide money to states that offer in-state tuition or financial aid to such students.”\textsuperscript{46} Accordingly, even if the DREAM Act cannot break down all of the barriers to education for undocumented immigrant students, supporters are still working to enact more laws that would give these students a chance to obtain a higher education.

II. IMPACT ON PROFESSIONAL LICENSURE

A. Obstacles to Professional Licensure Under Federal Law

For undocumented immigrants, the major obstacle to overcome under federal law in order to obtain a professional license is 8 U.S.C. § 1621.\textsuperscript{47} It provides:

\begin{itemize}
  \item \textsuperscript{42} Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. § 2103, sec. 245D(b)(1)(A).
  \item \textsuperscript{44} More states grant in-state tuition to immigrants, FOXNEWS.COM (Feb. 1, 2014), http://www.foxnews.com/politics/2014/02/01/more-states-grant-in-state-tuition-to-immigrants/.
  \item \textsuperscript{45} Id.
  \item \textsuperscript{46} Id.; IN-STATE for Dreamers Act of 2014, S. 1943, 113th Cong. (2014).
  \item \textsuperscript{47} 8 U.S.C. § 1621 (2012).
\end{itemize}
(a) In general. Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not—

(1) a qualified alien (as defined in section 1641 of this title),
(2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], or
(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C § 1182(d)(5)] for less than one year, is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

The definition of a “State or local public benefit” includes “any . . . professional license . . . provided by an agency of a State or local government or by appropriated funds of a State or local government.”

While there has been controversy about whether this statute specifically encompasses a license to practice law, some courts have assumed, without deciding, that the statute does in fact cover law licenses. Although this might seem like the ultimate bar to undocumented immigrants seeking professional licenses, the exception found in subsection (d) provides relief:

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

Subsection (d) allows states to enact legislation that exempts them from the prohibition in subsection (a). In order to fall under this exception, however, two requirements must be met. First, the state must have enacted legislation after August 22, 1996. Second, the legislation must affirmatively provide that undocumented immigrants qualify for such eligibility. In determining whether legislation has met the “affirmatively provides” requirement, courts have required the law to expressly state that it applies to undocumented immigrants, although courts have not required the law to explicitly refer to 8 U.S.C. § 1621(d) itself. This exception effectively places the decision to allow

48. Id. § 1621(a).
49. Id. § 1621(c)(1)(A).
50. See, e.g., In re Garcia, 315 P.3d 117, 127 (Cal. 2014).
51. 8 U.S.C. § 1621(d).
52. Id.
53. Id.
54. See, e.g., In re Garcia, 315 P.3d at 128–29.
undocumented immigrants to obtain professional licenses to individual states.

B. Obstacles to Professional Licensure Under North Carolina Law

In North Carolina, licensure for both the practice of medicine and the practice of law requires an applicant to provide documentation showing valid residency or lawful citizenship within the United States. The North Carolina General Assembly has enacted no such legislation as contemplated by 8 U.S.C. § 1621(d).

The North Carolina Medical Board’s full application for licensure does not require the applicant to be a United States citizen. If the applicant is a United States citizen, he or she must provide a United States birth certificate, a valid and unexpired United States passport, or other documentation allowed by the North Carolina Medical Board showing citizenship. If the applicant is not a United States citizen, the following documents are acceptable to show valid immigration status and are sufficient to satisfy the application requirements:

1. Alien Registration Card or Green Card,
2. Employment Authorization Document,
3. Certification of Report of Birth,
4. Arrival-Departure Record, or
5. Other documentation providing lawful status in the United States.

Thus, undocumented immigrant applicants who lack legal documentation to establish lawful United States residence cannot be licensed by the North Carolina Medical Board to practice medicine.

The North Carolina Board of Law Examiners is responsible for admitting applicants to the North Carolina State Bar. To be eligible for the bar examination, the Board of Law Examiners requires, inter alia, a

56. Rules, supra note 1.
58. Full License Application, supra note 55.
59. Id.
60. Id.
state or county-certified copy of the applicant’s birth certificate. It also requires the applicant to pass a character and fitness assessment. One factor taken into account during this assessment is the unlawful conduct of the applicant. Undocumented immigrants, by the very definition of their status, lack valid United States birth certificates and are engaged in unlawful conduct by illegally residing in the United States. Just as the requirements set forth by the North Carolina Medical Board preclude an undocumented immigrant from gaining a license to practice medicine, the Board of Law Examiners’ requirements likewise preclude undocumented immigrants from obtaining a license to practice law.

A potential issue that could arise regardless of the problems relating to professional licensure is that “[f]ederal law prohibits employers from knowingly hiring illegal workers.” This makes it unlikely that a law firm would hire an undocumented immigrant, even if he or she were lawfully licensed. One way around this federal law is for undocumented, licensed lawyers to open their own practices as independent contractors. After all, “a client who pays for [the] services [of an independent contractor] isn’t breaking the law even if the contractor isn’t authorized to work in the U.S.” Although this may seem like an uphill battle for many undocumented immigrants seeking professional licensure, stronger support and eventual realization of a federal DREAM Act would help these young people achieve citizenship and accomplish their dreams.

64. Character and Fitness Guidelines, supra note 63.
65. Joe Palazzolo, California, Florida Consider Law Licenses for Illegal Immigrants, WALL ST. J. L. BLOG (June 11, 2012, 11:22 AM), http://blogs.wsj.com/law/2012/06/11/california-florida-consider-law-licenses-for-illegal-immigrants/; see also 8 U.S.C. § 1324(a) (2012) (“It is unlawful for a person or other entity . . . to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.”).
66. See Palazzolo, supra note 65.
67. Id. (explaining that “federal law doesn’t require those who hire independent contractors to ask for proof of immigration status”).
68. Id. (citing Stephen Yale-Loehr, Cornell Law School law professor).
69. Id. (noting the progress Cesar Vargas has made with his lobbying firm, DRM Capitol Group, and his support for a federal DREAM Act).
C. Professional Licensure Developments Across the United States

On January 2, 2014, the Supreme Court of California issued a decision that addressed the conflict between undocumented immigrants and their ability to obtain professional licensures head on when it considered the case of Sergio C. Garcia. In 1977, when Sergio was just seventeen months old, his parents brought him to California without documentation. He lived in California until age nine when his parents decided to move back to Mexico. He returned to California with his parents at age seventeen, again without documentation. During his second period of residency in California, Sergio “graduated from high school [and] attended Butte College, California State University at Chico, and Cal Northern School of Law.” After receiving his law degree in 2009, he passed the California bar examination and applied for admission to the California State Bar. The Committee of Bar Examiners determined that Sergio had “the requisite good moral character to qualify for admission to the [California] State Bar.” Notwithstanding its determination, when the Committee supplied Sergio’s application to the Supreme Court of California for admittance to the State Bar, it brought to the court’s attention that Sergio’s immigration status was of concern. The Committee noted that it was “not aware of any other jurisdiction that has ever knowingly admitted an undocumented alien to the practice of law.”

The court ultimately concluded that Sergio could and should be admitted to the California State Bar. It determined that the California State Legislature had enacted a statute that effectively satisfied both requirements of the 8 U.S.C. § 1621(d) exception. Additionally, the court addressed two public policy concerns that Sergio’s opponents...
advanced: (1) His unlawful presence within the United States, and (2) federal law restrictions on employment of undocumented immigrants.81

In disposing of these concerns, the court reasoned, “the fact that a bar applicant’s past or present conduct may violate some law [does not] invariably render[] the applicant unqualified to be admitted to the bar or to take the required oath of office.”82 The court also failed to find a link between unlawful residence and the type of moral turpitude or unfitness that justifies exclusion from the bar.83 Accordingly, “the fact that an undocumented immigrant’s presence in this country violates federal statutes is not itself a sufficient or persuasive basis for denying undocumented immigrants, as a class, admission to the [California] State Bar.”84

The court also concluded that “existing federal limitations on the employment of undocumented immigrants did not justify excluding” them from being admitted to the California State Bar.85 The court first pointed to 8 U.S.C. § 1621 itself, noting that the statute expressly authorizes states to issue such licenses “notwithstanding the limitations on employment imposed by other federal statutes.”86 Next, the court noted that federal law is subject to change and has been trending toward lessening restrictions on work authorization for undocumented immigrants.87 Lastly, the court stated that “it would be inappropriate to deny a law license to . . . [an undocumented immigrant] on the basis of an assumption that he or she will not comply with the existing restrictions on employment imposed by federal law.”88 Because of these reasons, the court granted the California Committee of Bar Examiners’ motion to admit Sergio to the California State Bar.89

While this decision is a triumph for all undocumented immigrants seeking to practice law in California, undocumented immigrants in other states across the country still face uncertainty. An article written by Rafael Olmeda highlights the uncertainty for those who share situations like Sergio’s.90 Olmeda tells the story of José Godinez-Samperio, an

81. Id. at 129–30.
82. Id. at 130.
83. Id.
84. Id. at 131.
85. Id. at 132.
86. Id. (citing 8 U.S.C. § 1621 (2012)).
87. Id.
88. Id. at 133.
89. Id. at 134.
90. Rafael Olmeda, Aspiring Florida lawyer cheers as California grants license to undocumented immigrant, SUNSENTINEL (Jan. 6, 2014), http://articles.sun-sentinel.com/
immigrant who came to the United States from Mexico at age nine.91 José, an Eagle Scout, valedictorian of his high school class, successful undergraduate, and graduate from the Florida State University College of Law, now faces a challenge concerning licensure and admission to the Florida State Bar.92 After receiving a special waiver from the Florida Board of Bar Examiners to take the bar examination because he did not have proof of his immigration status, José passed the examination and sought admission to the Florida State Bar.93 The Florida Supreme Court issued an advisory opinion providing the Florida Board of Bar Examiners guidance in determining José’s eligibility to the Bar, as well as the eligibility of other applicants similarly situated.94 At the outset, the court noted: “In the present case, the issue is not the admission of a particular applicant, it is a request for an advisory opinion regarding a clearly stated question. The separate issue of the current applicant’s admission is not before the Court.”95 The court summarily announced that “unauthorized immigrants are ineligible for admission to The Florida Bar.”96 It found that the State of Florida had not yet enacted a state law that met the § 1621(d) exception allowing states to provide public benefit eligibility to undocumented immigrants.97 Although the opinion did not explicitly dispose of José’s application to the Florida Bar, the result of the advisory opinion is that José will likely not gain admission.98 This opinion demonstrates the inconsistency and uncertainty that undocumented immigrant law students face throughout the United States.

91. Id.
92. Id.
95. Id. n.1.
96. Id. at *16.
97. Id. at *8–11.
98. Id. at *16.
III. THE BENEFITS AND CONSEQUENCES OF A NORTH CAROLINA DREAM ACT

In response to the failed attempts at passing a federal DREAM Act, many states have enacted their own DREAM Act legislation.\(^9\) Texas was the first state to enact such legislation in June 2001, paving the way for other states to follow its lead.\(^10\) It allows for “an alien living in the U.S. who has petitioned the [Immigration and Naturalization Service (INS)] for legal status to be treated the same as an American citizen for the purpose of those who qualify for resident status for tuition and fee purposes.”\(^11\) The law focuses particularly on providing undocumented immigrant youths from Mexico access to in-state tuition rates.\(^12\) The law saw great success in its first five years, during which “11,000 Texas residents . . . used the Texas [DREAM] Act to attend Texas institutions of higher learning at resident rates.”\(^13\) This success has continued throughout recent years. In 2010 alone, “16,000 undocumented students attended Texas colleges and universities at in-state tuition rates.”\(^14\) Still, there is no provision in the law that changes the legal residency or citizenship status of individuals qualifying under the Act.\(^15\) That change would have to be made by a federal DREAM Act.

This leads to the question of whether North Carolina should adopt its own DREAM act. As evidenced by Texas’s DREAM Act, this type of legislation can have great success. Disagreement on whether DREAM acts are appropriate, however, still remains. Advocates on both sides of the issue have strong arguments about the impact that a state DREAM act would have on the lives of undocumented immigrants, the productivity of our nation, and the safety of our nation’s borders.\(^16\)

\(^9\) Morse, supra note 5.
\(^10\) Id.
\(^12\) See TEX. EDUC. CODE ANN. § 54.231 (“The foreign student tuition fee prescribed in this chapter does not apply to a foreign student who is a resident of a nation situated adjacent to Texas[].”).
\(^13\) Whittington, supra note 101.
\(^16\) Undocumented Student Tuition: Overview, supra note 43.
A. Arguments Against State-Sponsored DREAM Acts

One strong argument against the adoption of state and federal DREAM acts is the unfairness to legal citizens residing in the United States. These opponents believe:

Allowing undocumented students to pay in-state tuition rates, especially during tight economic times, takes opportunities away from U.S. citizens and legal immigrants. Granting resident tuition rates rewards undocumented students and their families for breaking the law, while at the same time punishes legal citizens and legal immigrants by taking away enrollment slots for them.

Further, opponents contend that under such a scheme, the illegal resident benefits at the cost of the legal citizen, including those once-illegal immigrants who went through the traditional process to gain citizenship. These opponents maintain that not only is it unfair to the potential applicants whose enrollment spots will be taken away, but it is also unfair to the state and federal taxpayers who will have to foot the bill for these illegal immigrants to attend public institutions of higher learning. Since proposed federal and state DREAM acts provide no funding to cover the costs that the programs impose, the financial burden will fall to taxpayers. Many hold the view that “tax dollars should not be used to support undocumented students.” Rather, these opponents believe that tax dollars should only be utilized for the benefit of legal citizens who are providing those tax dollars.

Another argument against state DREAM acts is that they are futile because state laws cannot change the legal status of the qualifying immigrant student. The primary goal of most state DREAM acts is to provide educational opportunities to promising undocumented students in order to integrate them into the workforce. This, in turn, should

107. Id.
108. Id.
110. Steven A. Camarota, Estimating the Impact of the DREAM Act, CENTER FOR IMMIGR. STUD. (Nov. 2010), http://cis.org/dream-act-costs (explaining that the average illegal immigrant would receive a $6,000 tax subsidy each year, totaling $6.2 billion a year from taxpayers across the nation if a federal DREAM Act is enacted).
111. Id.
112. Undocumented Student Tuition: Overview, supra note 43.
113. Id.
114. Id. See also Toll v. Moreno, 458 U.S. 1, 26 (1982) (“Unquestionably, federal power over immigration and naturalization is plenary and exclusive.”).
increase the economic productivity of the state. With no change in legal status, however, the time and money spent educating these undocumented immigrant students will go to waste. Companies will not be able to hire them without fear of federal sanctions. That fear, combined with the fact that many undocumented immigrants do not have work visas, will result in an increase in the large number of college graduates still looking for employment.

The fear of being educated but unemployable is realized by both Julieta Garibay and Carlos Hernandez, as explained in an article written by Miriam Jordan. Her article follows the path of Julieta and Carlos, undocumented immigrants brought to the United States by their parents at young ages, and chronicles their struggles to gain employment notwithstanding their prestigious degrees. Julieta earned a nursing degree and Carlos obtained a petroleum engineering degree. Through the Texas DREAM Act, each was able to take advantage of in-state tuition at the University of Texas at Austin. The ability to use in-state tuition gave them the opportunity to attend college, which would otherwise have been financially unfeasible.

Yet, neither found employment due to their immigration statuses. Julieta is limited to volunteering as a nurse in hospitals where she is passed over in favor of workers from the Philippines, Jamaica, and Mexico who have been recruited legally. Although Carlos had a promising interview with ChevronTexaco Corporation, it turned “sour”
when the interviewer learned of Carlos’s immigration status. Students such as
Julieta and Carlos face an extreme disadvantage, even compared to
foreign workers brought by companies to the United States. Opponents to state DREAM acts see “young adults who are trained and ready to join the work force but are unable to do so legally” as a waste of resources and a drain of taxpayer money.

A final objection to state DREAM acts is that they encourage illegal immigration. By providing educational incentives to undocumented immigrants, legislation encourages not only new immigrants to enter the country illegally in hopes of a better future for their children, but it also encourages immigrants to remain in the United States illegally after their visas expire. Many view DREAM acts as “a magnet for illegal aliens to enter the United States to provide an education for their children.” With illegal immigration and the protection of our nation’s borders being important issues in today’s society, the provisions of state DREAM acts and the proposed federal DREAM Act will continue to be hotly debated.

B. Arguments in Support of State-Sponsored DREAM Acts

Proponents of DREAM acts support their position by citing, inter alia, the innocence of these young students regarding their illegal status, the previously nonexistent opportunities that would now be available to them, the power to provide states with an educated and

126. Id.
127. Id.
128. Id. “Companies sometimes sponsor foreign workers with specialized skills, making a case for permanent residency, or a green card. But laws that apply to undocumented immigrants make it impossible for businesses to sponsor these youngsters because they have been living in the country illegally.” Id.
129. Id. (“We can’t hold taxpayers accountable to providing discounted education to people in this country illegally[,] . . . we can’t make economic arguments’ in favor of illegal immigration.” (quoting Congressman Steve King)); see also Whittington, supra note 101 (discussing arguments against the Texas DREAM Act).
130. Undocumented Student Tuition: Overview, supra note 43.
131. Id. (“In-state tuition for undocumented students provides incentives for people to immigrate illegally to the U.S., or to remain in the U.S. after visas have expired.”).
133. Undocumented Student Tuition: Overview, supra note 43.
skilled workforce, and the ability of these individuals to provide a unique viewpoint within their profession.

As Plyler pointed out, children who are brought to the United States at a young age by their undocumented immigrant parents “can affect neither their parents’ conduct nor their own status.” Because these children are nothing but innocent bystanders of their parents’ decisions, they should not be deprived of an opportunity to seek higher education. Plyler requires that these children have access to a primary public school education. The next logical step would be to provide them with access to higher education and an opportunity to work. “We’ve invested in these youths and that’s how they got where they are. Now what we will do is complete their learning so they become resources in our labor force. They’re an investment in our country.”

While opponents argue that providing such educational opportunities would encourage illegal immigration, the true incentive for illegal immigration lies in the existence of job opportunities, not affordable education. Generally, because illegal immigrants enter the United States due to the widespread availability of low-paying jobs, expanding opportunities for higher education and professional job opportunities provide little incentive for immigrants to enter the United States illegally. Specifically, the provisions of the 2013 federal DREAM Act focus on individuals who have been in the United States for five years, have either successfully graduated from high school or have

136. Miranda Leitsinger, Can an Illegal Immigrant Become a Lawyer?, NBC NEWS (Apr. 24, 2012, 6:52 AM), http://usnews.nbcnews.com/_news/2012/04/24/11369925-can-an-illegal-immigrant-become-a-lawyer?lite (“We need people who can reach out and provide access to communities that . . . have historically not had access.” (quoting Stephen N. Zack, former American Bar Association President)).
138. Undocumented Student Tuition: Overview, supra note 43. “A large percentage of undocumented students have either graduated from a public high school or obtained a GED. It is inconsistent to provide these students with an education that ends at high school graduation.” Id.
139. Id.
141. Plyler, 457 U.S. at 228 (“The dominant incentive for entry into the State of Texas 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.”).
142. See id.
earned a General Equivalency Diploma, and who have completed at least two years of higher education or joined the military. The requirements set a high bar for many undocumented immigrants. The assumption that an influx of illegal immigration will result when numerous hurdles are placed in front of non-citizens before they can even qualify under the DREAM Act is, therefore, based on a flawed understanding.

Although opponents argue that the mere fact that undocumented students are in the United States illegally should bar them from higher education, there is no guarantee that these individuals will ever be deported, despite their illegal status. The Obama Administration has made a huge push in favor of helping young, undocumented immigrants stay in the United States and escape deportation by announcing the Deferred Action for Childhood Arrivals program (DACA). Similar to the goals of the DREAM Act, DACA involves granting work permits, rather than educational and military opportunities, “to younger illegal immigrants who came to the U.S. as children and have since led law-abiding lives.”

Under the administration plan, illegal immigrants will be immune from deportation if they were brought to the United States before they turned 16 and are younger than 30, have been in the country for at least five continuous years, have no criminal history, graduated from a U.S. high school or earned a GED, or served in the military. They also can apply for a work permit that will be good for two years with no limits on how many times it can be renewed.

While DACA does not lead toward citizenship, the plan does alleviate the fear of deportation. In introducing DACA, President

144. Plyler, 457 U.S. at 226. “But there is no assurance that a child subject to deportation will ever be deported. An illegal entrant might be granted federal permission to continue to reside in this country, or even to become a citizen.” Id.
146. Caldwell & Kuhnhenn, supra note 145.
147. Id.
148. Id.
Obama shared many of the views that supporters of the DREAM Act hold when he stated: “It makes no sense to expel talented young people” who can positively contribute to our country in many ways.\footnote{149} A number of pro-DREAM Act supporters lauded the move, including former Mayor of New York City, Michael Bloomberg, who stated: “Ending deportations of innocent young people who have the potential to drive tomorrow’s economy is long overdue, as are many commonsense reforms needed to center our immigration policy around our economic needs.”\footnote{130} DACA has had a profound impact since its adoption. As of May 2013, over 500,000 people across the United States have applied for acceptance into the DACA program.\footnote{131} Specifically, North Carolina ranked sixth in the country in the largest number of applicants with 17,713.\footnote{132} With DACA being thrust into action, President Obama reiterated that the federal DREAM Act still remained a top administrative priority.\footnote{133}

C. Impact on North Carolina

This persistent and determined effort by our national government to make the federal DREAM Act a reality is one of the primary, if not most important, reasons that North Carolina should adopt its own state DREAM act. Many opportunities exist for undocumented students to gain legal status while they are in school if they have previously applied for legal residency or citizenship.\footnote{134} Placing such students in positions to succeed benefits the United States by establishing a more educated population, given the fact that “the illegal alien of today may well be the legal alien of tomorrow.”\footnote{135} Taking action would help “the economy because students who may have once worked at McDonald’s now have opportunities to be doctors, teachers, architects.”\footnote{136} By opening up these

\footnote{130} Caldwell & Kuhnhenn, supra note 145.
\footnote{132} Id.
\footnote{133} Caldwell & Kuhnhenn, supra note 145.
\footnote{134} Medina, supra note 109.
\footnote{136} Vincent, supra note 134 (quoting Conrado Terrazas, communications director for Assembly Member Gil Cedillo).
professions to immigrants and individuals recently granted permanent resident status, states can provide unlimited benefits to both the professions themselves and undocumented immigrants in need.\textsuperscript{157}

In the next few decades, our nation’s minority will soon become the majority.\textsuperscript{158} People like José, Julieta, and Sergio would be able to reach out, connect, and provide professional services to the growing minority communities that, traditionally, did not have access to such services.\textsuperscript{159} They could offer trusted guidance to large groups of undocumented immigrants who may feel uncomfortable coming forward with their problems due to their illegal status.\textsuperscript{160} Accordingly, these young, educated individuals would be able to improve both the business prospects of their employers and the lifestyles of their clients.\textsuperscript{161}

If the realization of a federal DREAM Act does come to fruition, such a national policy would provide young, undocumented immigrants opportunities to access work permits and to begin professional careers.\textsuperscript{162} In order to take the utmost advantage of this national policy, North Carolina should place both its legal citizens and undocumented immigrants in the most advantageous position possible to utilize the potential influx of a new, educated workforce.

In order to fully implement and adopt a successful state DREAM act that would enable undocumented immigrants to obtain professional licenses, North Carolina must do two things. First, North Carolina must enact its own DREAM act. Currently, under North Carolina law, “[t]o qualify as a resident for tuition purposes, a person must have established legal residence (domicile) in North Carolina and maintained that legal residence for at least [twelve] months immediately prior to his or her classification as a resident for tuition purposes.”\textsuperscript{163} A North Carolina DREAM act would effectively act as an exception for undocumented immigrants qualifying under the act. This initial step would extend in-state tuition options to undocumented immigrants, thus providing them with a more affordable path to attend public colleges and universities in North Carolina. With an undergraduate degree in hand, undocumented immigrants in North Carolina would then have the potential to attend a graduate school and ultimately earn professional licensure.

\begin{itemize}
  \item \textsuperscript{157} Leitsinger, supra note 136.
  \item \textsuperscript{158} \textit{Id}.
  \item \textsuperscript{159} \textit{Id}.
  \item \textsuperscript{160} \textit{See id}.
  \item \textsuperscript{161} \textit{Id}.
  \item \textsuperscript{162} Obama, supra note 149.
  \item \textsuperscript{163} N.C. GEN. STAT. § 116-143.1(b) (2013).
\end{itemize}
Second, the North Carolina General Assembly must enact legislation that meets the requirements of the 8 U.S.C. § 1621(d) exception.\textsuperscript{164} By explicitly enabling undocumented immigrants to obtain local public benefits, particularly professional licenses, North Carolina would clear the way for qualifying undocumented immigrants to become licensed lawyers and doctors.

By educating and providing opportunities to undocumented immigrants, North Carolina would have a wealth of driven intellectuals ready to contribute to their families and North Carolina businesses. In adopting these provisions, North Carolina would place itself among the forefront of states ready and able to benefit from a federal DREAM Act.

CONCLUSION

A federal DREAM Act would have a profoundly positive impact on the ability of undocumented youths to gain access to institutions of higher education and professional schools. The hard work of self-motivated, undocumented youths would finally pay off and many of them could achieve their dreams of becoming licensed professionals. A North Carolina DREAM act would create a positive economic and social impact statewide. The North Carolina General Assembly should enact a DREAM act for the benefit of both undocumented immigrants within the state and for the state of North Carolina as a whole.

John J. Long Jr.

\textsuperscript{164} See supra notes 47–54 and accompanying text.