Still Waiting for the DREAM: The Justice of Punishing Undocumented Immigrant Students

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You come to the U.S. and find that there is no American Dream, unless you are American.

—Elena, undocumented student from Northern California

Elena, an undocumented immigrant student born in Mexico, came to the United States on a tourist visa with her mother when she was three years old. Her family moved to California, where Elena attended school and made friendships and ties to the community. Elena knew that she wanted to be a doctor; to reach this goal she worked hard in school and earned high grades. She also stayed active in the community, interning during high school at a children's hospital and at a teen clinic, among other organizations. During her childhood, Elena always considered the United States her home. It was not until her junior year of high school, when getting a driver’s license and taking trips out of the country became popular topics at school, that she realized she was not in the same position as her classmates: because she and her mother had overstayed their visas, remaining in the country past the authorized stay, she was an undocumented immigrant—under the law, a criminal.

As an undocumented immigrant, Elena knew that attending college would be difficult. She learned that federal financial assistance is unavailable to undocumented immigrants; she also realized how challenging it would be to obtain employment without legal work authorization. Elena grew more frustrated as her friends talked about
their plans for college and studying abroad. She remembers being very
disheartened during this time: “It was very discouraging to know that
these brick walls were in front of me.”

Instead of giving up on her dreams, Elena decided to work even
harder. For her high school senior project, she organized an educational
exposition for the Latino community in her area, teaching members
about their rights as immigrants in this country. Part of her presentation
centered on the Development, Relief, and Education for Alien Minors
Act (“DREAM Act”), proposed federal legislation that would allow
undocumented immigrants like Elena to receive in-state tuition at public
universities and permit them to apply for permanent legal residency.
With the help of the International Institute of the East Bay, a local non-
profit immigration organization, Elena prepared flyers explaining the
Act to hand out at pro-immigrants’ rights protests across the state. She
hoped, too, that before she graduated high school, Congress would pass
the Act so that she could afford to attend college and start on the path to
legal residency.

High school graduation came with no new federal legislation to
assist Elena or the thousands of others in her situation. Elena refused to
give up, however, and she applied and was accepted to a nearby college.
With the support of her guidance counselor, she researched and applied
for scholarships that did not require U.S. citizenship or legal residency.
Through the scholarships she obtained and grants from her college,
Elena succeeded in paying tuition.

Elena has remained involved in advocacy efforts for other students
because she knows that her level of success is not common. She knows
that many other undocumented students with similar dreams and
aspirations are not able to afford college and are still waiting. Yet these
students cannot continue to wait as financial constraints and other
obligations hinder their ability to pursue higher education and lack of
work authorization restricts their access to employment. Elena is sure
that “[i]f the DREAM Act were passed, it would give us hope. If we had
hope, there would be more students who achieved more.”

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4. As a long-term resident of California, Elena did have the option of utilizing AB 540, codified
as CAL. EDUC. CODE § 68130.5 (West 2002), California state legislation allowing undocumented
immigrant students to pay in-state tuition if they meet certain requirements. See discussion infra Part
III, Section C.
5. Private institutions, such as the one Elena attends, can offer grants to undocumented students,
but these grants often do not cover the full tuition cost. Susana Garcia, Note, DREAM Come True or
True Nightmare? The Effect of Creating Educational Opportunity for Undocumented Youth, 36
GOLDEN GATE U. L. REV. 247, 257 (2006). Students may not be able to pay for the remaining costs
without the option of financial aid. See id.
INTRODUCTION

An estimated 1.7 million undocumented immigrants under the age of eighteen live in the United States. Under United States immigration and criminal laws, these youth face deportation and criminal consequences for their immigration status, a status acquired by accompanying their parents into the United States without inspection or, as in Elena’s case, by overstaying a visa. Yet, often unaware of their immigration status, or at least unaware of the legal implications of such status, undocumented youth grow up as Americans and consider this country their home, attending primary and secondary school, making friends, and forming ties in their communities. Consequently, undocumented youth face a painful paradox: the country they call home is also the country that criminalizes their presence.

Each year, 50,000 to 65,000 undocumented students like Elena graduate from high school in the United States. Yet current federal laws effectively bar access to higher education for many of these students by imposing substantial financial barriers and by preventing these students from obtaining legal residency. Federal law prohibits states from offering in-state tuition to undocumented students unless states likewise offer the in-state tuition rate to out-of-state legal residents and citizens. Furthermore, undocumented immigrants are not eligible for federal—and in most cases state—financial assistance. Finally, without legal work authorization, undocumented students cannot independently subsidize their education. The high cost of attending college combined with a dearth of funding options prevents many undocumented youth from seeking a college degree. Those who do obtain funds face an additional obstacle upon graduation; their college degrees do not hold much weight without legal work authorization.

Opponents of extending public education benefits to these students argue that undocumented immigrants should not be rewarded for breaking the law. Supporters maintain that it is only fair to extend
education opportunities to students who have grown up in the United States. The Supreme Court has safeguarded the right of undocumented children to attend free public primary and secondary schools in the United States. Yet when these undocumented students graduate high school, they do not have similar protections supporting their efforts to attend college.

Legislators have responded to this gap by proposing legislation in both the House and Senate: specifically, various versions of the DREAM Act in the Senate and its companion bill, the American Dream Act, in the House of Representatives. This bi-partisan legislation would repeal the current federal law prohibiting states from defining residency for purposes of in-state tuition, and it would also establish a path to legal residency for qualifying undocumented immigrant students, like Elena. Unfortunately, the DREAM Act has faced strong opposition from some members of Congress and from anti-immigration groups.

Federal laws barring undocumented students from attending college and from adjusting their status to permanent residency punish these students by attaching culpability to an act beyond their control: entering the country with their parents. These laws focus on undocumented immigration status and grow from the premise that undocumented students, as lawbreakers, should not receive benefits. Denial of education benefits does not fall under traditional or even typical ideas of punishment. Nevertheless, it is my contention that federal legislation excludes many undocumented youth from attending college and from obtaining work authorization does punish these students by depriving them of future opportunity. As this Note will discuss, this punishment does not reflect the economic and social realities that define these students' lives; I argue that it is not realistic or fair to deny youth who have grown up in the United States the opportunity to succeed in this country.

While undocumented youth did violate the law by entering the country without authorization or overstaying a visa, like Elena, they do
not have the same culpability as an adult who willingly violates immigration requirements. Accordingly, due to this lack of culpability—and lack of voluntariness in the original violation of the law—the punishment of undocumented youth is not justified by any theory of punishment. Using popular theories of punishment, this Note argues that there is no basis for punishing undocumented youth. Instead, Congress should enact the DREAM Act and give undocumented students the ability to attend college and seek legal permanent residency, enabling them to fully contribute to society.

Part I explores the merger of criminal law and immigration law. The fusing of these two areas of law negatively affects undocumented immigrants, particularly young immigrants who entered the country at an early age and who did not intend to break the law.

Part II discusses the current laws surrounding undocumented immigrants’ access to education. This Part also argues that restricting undocumented immigrants’ access to higher education punishes them by depriving them of the success contingent upon receiving a college degree in today’s society. Part III lays out the provisions and the legislative history of the DREAM Act.

Part IV analogizes three common theories of criminal punishment—deterrence, retribution, and rehabilitation—to the denial of access to higher education and legal residency to undocumented immigrant youth and argues that these theories do not support punishing undocumented students. This Part uses the theories of criminal punishment as a framework even though immigration law—in particular the denial of post-secondary educational benefits to undocumented youth—is not actually criminal in nature.

This Note concludes that the DREAM Act must be enacted in order to recognize the valuable contributions of undocumented students to society.

I. THE CRIMINALIZATION OF IMMIGRANTS

Before discussing the DREAM Act, it is important to understand the social and political climate into which the Act has been introduced. In recent years, immigration policy and crime control have become more intertwined. Both areas of law have incorporated punitive measures and


have departed from rehabilitative policies.\footnote{Id. at 110.} For example, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"),\footnote{Id. at 118.} discussed for other purposes below, employs criminological terms to justify harsher immigration restrictions.\footnote{Id. at 123.} The convergence of immigration and criminal law has led "lawmakers [to] see immigrants as criminals and criminals as subcitizens,"\footnote{Id. at 117.} and has prompted immigrants’ rights activists to defend immigrants against being treated like criminals.\footnote{Id. at 123.}

A. THE MERGING OF IMMIGRATION AND CRIMINAL LAW

Immigration law has merged with multiple aspects of criminal law, causing scholars to define the phenomenon as "the criminalization of immigration law"\footnote{Bohrman & Murakawa, supra note 21, at 117.} or "crimmigration."\footnote{Id.} Exploring sanctions or punishment associated with immigration and criminal law demonstrates the increasing connections between the two areas. The law often provides criminal and immigration consequences for the same act.\footnote{Id. at 383-85.} Thus, a criminal conviction may result in incarceration, a criminal consequence, in addition to a future inability to immigrate, an immigration consequence. Likewise, an immigration violation may result in jail time. For example, entering the country without inspection, i.e., crossing the border through a point other than an official checkpoint, is an offense that under immigration law places restrictions on future attempts to immigrate—specifically, a five year bar—through legal channels;\footnote{See Bohrman, supra note 21, at 384.} this same offense is a misdemeanor.\footnote{8 U.S.C. § 1326(a) (2000). If an immigrant is found after a prior deportation order subsequent to conviction for specified misdemeanors and felonies, the immigrant faces a maximum ten year prison term. This maximum term increases to twenty years if the prior deportation occurred subsequent to a conviction for an aggravated felony. Id. § 1326(b).} Similarly, reentering the country after a previous deportation order is a felony offense under criminal law with a basic statutory maximum penalty of no more than two years imprisonment;\footnote{8 U.S.C. § 1182(a)(9)(A)(i). The individual faces a permanent bar if the prior deportation was subsequently to a conviction for an aggravated felony. Id.} individuals with this conviction are inadmissible for twenty years.\footnote{33. 8 U.S.C. § 1182(a)(9)(A)(i). The individual faces a permanent bar if the prior deportation was subsequently to a conviction for an aggravated felony. Id.} The list of immigration violations that also now qualify as criminal offenses has expanded to include knowingly hiring

\begin{itemize}
\item \footnote{22. Id. at 110.}
\item \footnote{24. Bohrman & Murakawa, supra note 21, at 117.}
\item \footnote{25. Id. at 118.}
\item \footnote{26. Id. at 123.}
\item \footnote{28. Id.}
\item \footnote{29. Id. at 380-81.}
\item \footnote{31. See Stumpf, supra note 27, at 384.}
\item \footnote{32. 8 U.S.C. § 1326(a) (2000). If an immigrant is found after a prior deportation order subsequent to conviction for specified misdemeanors and felonies, the immigrant faces a maximum ten year prison term. This maximum term increases to twenty years if the prior deportation occurred subsequent to a conviction for an aggravated felony. Id. § 1326(b).}
\item \footnote{33. 8 U.S.C. § 1182(a)(9)(A)(i). The individual faces a permanent bar if the prior deportation was subsequently to a conviction for an aggravated felony. Id.}
\end{itemize}
undocumented immigrants, marrying to avoid immigration laws, voting as a non-citizen and claiming citizenship to obtain employment or immigration benefits.\textsuperscript{34}

Furthermore, the terrorist attacks of September 11, 2001, have affected the way in which Americans view immigration law.\textsuperscript{35} In the aftermath of this tragic event, legislators injected anti-terrorism provisions and language into immigration legislation\textsuperscript{36} and debate, making it easier for anti-immigrant forces to blend and blur images of terrorists with hard-working immigrants entering the country to find a better life.\textsuperscript{37} The characterization of immigrants, both undocumented and documented, as terrorists has further merged the fields of criminal law and immigration law.

Finally, proposed legislation further reflects the merging of criminal and immigration law. In 2006, the House of Representatives passed a bill which threatened to attach serious criminal penalties to undocumented status.\textsuperscript{38} H.R. 4437, sponsored by Representative James Sensenbrenner (R-Wisconsin), would have made it a felony to be undocumented, subjecting undocumented immigrants to expedited removal from the country with fewer due process guarantees.\textsuperscript{39} The legislation failed to pass before the 110th Congress assumed office in 2007.

\section*{B. The New Criminal}

The interconnectedness of immigration laws and criminal laws has colored public conceptions of undocumented immigrants in the United States today. Some members of the public readily perceive undocumented immigrants as morally corrupt, or even dangerous, modifiers often associated with criminals, based on their immigration status.\textsuperscript{40} "Illegals" or "illegal immigrants" are terms commonly used in the media\textsuperscript{41} and by members of the general public to describe immigrants

\begin{itemize}
  \item \textsuperscript{34} See Stumpf, supra note 27, at 384.
  \item \textsuperscript{35} Am. Ass'n of State Colls. and Universities, \textit{Access for All? Debating In-State Tuition for Undocumented Alien Students}, http://www.aascu.org/\texttt{policy\textbackslash special\textunderscore report\textbackslash access\textunderscore for\textunderscore all.htm} (last visited Jan. 1, 2008).
  \item \textsuperscript{37} See, e.g., Federation for Am. Immigration Reform (FAIR), \textit{Illegal Immigration Is a Crime}, http://www.fairus.org/site/PageServer?pagename=iic\_immigrationissuecenters6ce3 (last visited Jan. 1, 2008) [hereinafter FAIR].
  \item \textsuperscript{38} \textsc{Bill Ong Hing}, \textit{Deporting Our Souls: Values, Morality, and Immigration Policy} 10 (2006).
  \item \textsuperscript{39} Id.
  \item \textsuperscript{40} See Stumpf, supra note 27, at 395 ("Undocumented immigrants are increasingly perceived as criminals, likely to commit future criminal acts because of their history of entering the country unlawfully.") (footnote omitted).
\end{itemize}
living in the United States without proper documentation. The language places undocumented immigrants into one category: "illegals." There is no denying that undocumented immigrants violated the law when they entered the country without authorization or remained in the country past the terms of their visa. Yet the classification of a group of varied individuals as "illegals" may influence some to perceive undocumented immigrants solely as criminals.

Critics of undocumented immigration add to the public perception of undocumented immigrants as criminals by arguing that these immigrants "cause[] substantial harm to American citizens and legal immigrants." Specifically, these critics designate various "harms" caused by undocumented immigrants, including draining of public funds, depression of wages and living conditions through job competition, and overwhelming population growth. Whether or not undocumented immigration causes these "harms" is beyond the scope of this Note. However, accusing undocumented immigrants of harming the United States by their presence adds to the image of undocumented immigrants as wrongdoers or criminals.

Young undocumented immigrants, despite their lack of culpability in violating immigration laws, are also slotted into the image of "immigrants as criminals." Regardless of when or how they entered the country, if they are undocumented, they are given the same label by anti-immigrant forces. Unfortunately, punitive measures directed at undocumented immigrants unfairly punish young immigrants who are not culpable for the actions of their parents. It is time to take these undocumented students "off of the battlefield of the immigration wars."

II. UNDOCUMENTED IMMIGRANTS AND ACCESS TO PUBLIC EDUCATION

Obtaining an education is central to achieving success in today's society. As Elena, the undocumented Northern California student believes, "Education is the key to success." Moreover, equal access to education is a strongly held value in the United States. Undocumented immigrants, however, face both legal and financial barriers in their efforts to complete their education. In response to these barriers, states have passed legislation easing the burden on undocumented students to attend college, but federal action is still required.

42. See FAIR, supra note 37.
43. Id.
45. Interview with "Elena," supra note 2.
A. THE VALUE OF AN EDUCATION

Scholars laud higher education as an "engine of social mobility," identifying it as essential to earning a "healthy" income. Yet despite its role in achieving social mobility, higher education also serves as an "agent of stratification," further reinforcing social class for those who have access and for those who do not. Therefore, while the government and members of the public recognize the importance of education for children, both bodies must also realize the negative effect restrictions on education access have on youth.

The United States Supreme Court has recognized the value of primary and secondary education and has secured access to these levels of education for all United States residents regardless of their immigration status. In Plyler v. Doe, the Supreme Court considered a Texas statute denying undocumented children free public education. The Court declined to recognize education as a fundamental right, but did conclude that the right to education existed between an ordinary and a fundamental right, regardless of immigration status, and described education as a means to provide tools for "maintaining the fabric of our society." The Court proceeded to invalidate the Texas statute on equal protection grounds:

If the State is to deny a discrete group of innocent children the free public education that it offers to other children residing within its borders, that denial must be justified by a showing that it furthers some substantial state interest. No such showing was made here.

The Court emphasized that undocumented children are not responsible for their presence in the United States. While undocumented adult immigrants who intentionally enter the country in violation of immigration laws should face the consequences imposed by law, the Court did not consider undocumented children "comparably situated":

At the least, those who elect to enter our territory by stealth and in violation of our law should be prepared to bear the consequences,


48. Id. at 1–2.


50. Id. at 205.

51. Id. at 221–24.

52. Id. at 230.

53. Id. at 219–20.

54. Id. at 220.
including, but not limited to, deportation. But the children of those illegal entrants are not comparably situated. Their “parents have the ability to conform their conduct to societal norms,” and presumably the ability to remove themselves from the State’s jurisdiction; but the children who are plaintiffs in these cases “can affect neither their parents’ conduct nor their own status.”

Extending this reasoning, the Court concluded that undocumented children should not be punished for the actions of their parents. The court further noted, “By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” In addition, the Court considered the social stigma attached to depriving the children of a disfavored group access to education: “[W]e foreclose the means by which that group might raise the level of esteem in which it is held by the majority.”

_Plyler_, however, does not extend its holding or reasoning to access to higher education. Consequently, despite the significant obstacles that undocumented immigrant students like Elena have surmounted to succeed in their academic endeavors, the barriers only increase at the postsecondary education level.

**B. THE EFFECT OF FEDERAL LEGISLATION RESTRICTING ACCESS TO HIGHER EDUCATION**

Undocumented students face multiple levels of legal and economic obstacles in their attempt to obtain a college degree. For one, federal legislation limits states’ ability to define residency for purposes of in-state tuition at public colleges. Furthermore, federal law bars immigrants from receiving federal benefits, such as financial aid. Consequently, the exorbitant cost of college education, combined with the unavailability of financial aid and the inability to obtain work authorization, effectively prevents many undocumented immigrants from attending college. In addition, without a college degree, employment options decrease. Therefore, limited access to education results in limited access to

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55. Id. (quoting Trimble v. Gordon, 430 U.S. 762, 770 (1977)).
56. Id. at 220.
57. Id. at 223.
58. Id. at 222.
59. Critics of the DREAM Act argue that because _Plyler_ did not extend to postsecondary education benefits, once undocumented students turn eighteen, they should be responsible for their presence, and correspondingly, their undocumented status, in the United States. See Maki, _supra_ note 13, at 1355. This argument advocates educating undocumented immigrants until they turn eighteen, allowing them to make friends, participate in the community, and essentially become American by all means except immigration status, but then turning a cold shoulder at the age of majority. These students do not become any more culpable for the actions of their parents when they turn eighteen.
employment.\textsuperscript{60}

\textbf{I. Federal Legislation: IIRIRA and PRWORA}

There is no federal law that expressly bars undocumented students from attending college.\textsuperscript{61} Undocumented students can enroll in institutions of higher education, and many also argue that despite federal legislation, offering in-state tuition to undocumented students is permissible.\textsuperscript{62} Yet based on their interpretations of the federal laws discussed below, many states fear federal repercussions, such as discontinued federal funding, if they offer in-state tuition to undocumented students. In response, the majority of states charge undocumented students, who do not qualify as in-state residents under the immigration laws, out-of-state tuition.\textsuperscript{63}

Federal statutes enacted in 1996, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA")\textsuperscript{64} and the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA"),\textsuperscript{65} address the connection between immigration status and higher education. These statutes, however, do not provide a clear answer to whether or not public institutions of higher education can offer in-state tuition to undocumented students.

Congress enacted IIRIRA in response to concerns of newly arriving immigrants taking advantage of social services and benefits.\textsuperscript{66} Section 505 of IIRIRA discusses postsecondary education benefits.\textsuperscript{67} In particular, section 505 provides:

\begin{quote}
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 for any post-secondary education benefit unless a citizen or national of the United States is eligible for such benefit (in no less amount, duration or scope) without regard to whether the citizen or national is such a resident.\textsuperscript{68}
\end{quote}

In sum, this provision eliminated the ability of states to provide postsecondary educational benefits to undocumented immigrants unless the state also provided the same benefit to a U.S. citizen residing in another state. Therefore, undocumented students with no immigration

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\textsuperscript{60} KATARINA TOMASEVSKI, EDUCATION DENIED: COSTS AND REMEDIES 32 (2003).

\textsuperscript{61} Id. at 6.

\textsuperscript{62} Id. at 1.

\textsuperscript{63} Id. at 3. See also infra Part III, Section C (discussing state efforts to offer or deny undocumented students in-state tuition).


\textsuperscript{66} See Bohrman & Murakawa, supra note 21, at 115.

\textsuperscript{67} 8 U.S.C. § 1623(a).

\textsuperscript{68} Id.
\end{flushleft}
status, even if they have resided in a state for most of their lives, are not eligible for in-state tuition based on residency under IIRIRA.69

PRWORA, a comprehensive welfare reform plan focused on the transition from welfare to work, also includes provisions discussing immigration status and higher education.70 These provisions provide that any alien who is not a qualified alien (generally an immigrant with a documented presence in the United States) is not eligible for any public benefit.71 Therefore, undocumented students, who do not fall under the definition of a “qualified alien,” are not eligible for financial assistance to help fund tuition fees.72

Neither of these statutes prohibits a state from enrolling or admitting an undocumented student.73 Instead, IIRIRA and PRWORA allow states to decide who pays in-state tuition.74 Nevertheless, the statutes do establish that postsecondary education benefits cannot be offered to undocumented students based solely on residency in a state and that undocumented students are not eligible for financial assistance. Both of these consequences result in significant obstacles for undocumented students in their efforts to attend institutions of higher education.

2. The Economic Obstacles Facing Undocumented Students

Even in the absence of exclusionary federal legislation, undocumented students face the same obstacle as many United States citizens and legal residents: poverty. As Victor Romero writes, “undocumented status and poverty are mutually reinforcing obstacles to advancement.”75 In fact, one in four children living in poverty in the United States is an undocumented child.76

In addition, as a result of federal legislation discussed above, undocumented students cannot personally fund their college tuition fees because (1) they do not have access to financial aid;77 and (2) without

69. Id.
70. Ruge & Iza, supra note 9, at 263.
72. Ruge & Iza, supra note 9, at 263.
73. Id. at 262.
74. Id.
76. Ruge & Iza, supra note 9, at 259.
proper documentation, they cannot compete for jobs. Out-of-state tuition fees remain exceedingly high, diminishing the prospects of attending college without financial assistance or the opportunity to pay in-state tuition. Private institutions can offer institutional funding to undocumented students, but the confusion surrounding federal education laws has dissuaded many institutions, both private and public, from providing such funding. Therefore, undocumented immigrants face obstacles unique to their immigration status, effectively barring many students from the option of attending college in the first place.

Moreover, undocumented students who are not able to attend college face employment obstacles. Without a college degree, undocumented students will have fewer opportunities to make significant economic contributions to the states they live in and to the country as a whole. Statistics show that individuals with a bachelor’s degree earn significantly more than individuals with only a high school education: $45,078 compared to $24,572, respectively, in 2000. These statistics epitomize the concept that an individual’s education level is the best “predictor of income in the modern American economy.” The disparity in income between college graduates and others continues to widen as the value of a college diploma increases. Ultimately, lower economic capacity will not only hurt undocumented immigrants; it will also deprive society of talented and able workers.

C. STATE EFFORTS TO PROVIDE IN-STATE TUITION

States, primarily those with large immigrant populations, have
enacted legislation to circumvent the federal obstacles presented by IIRIRA and PRWORA. These efforts have provided a much needed financial reprieve to undocumented students who want to attend college. The problem remains, however, that after graduation, these students will have a college degree but few job prospects, no work authorization, and a continued unlawful status.\(^4\)

As first mentioned above, scholars disagree as to whether or not state laws permitting undocumented students to pay in-state tuition conflict with federal laws.\(^5\) States themselves have little guidance on whether or not such state legislation passes federal muster. Some states have responded by attempting to prevent undocumented immigrants from receiving in-state tuition.\(^6\) Yet other states have fashioned a different strategy: creating legislation to offer in-state tuition to undocumented students without defining these students as residents.\(^7\) Refraining from using residency as a determining factor allows states to bypass the language, if not the intent, of IIRIRA. California, for example, has passed Assembly Bill 540, codified as California Education Code section 68130.5, in 2002.\(^8\) This law allows undocumented students who (1) have lived in California for three years; (2) graduated from a California high school; (3) are enrolled in a public university in California; and (4) have signed a document affirming that they will apply for legal residency when they can,\(^9\) to attend college at the in-state tuition rate.\(^10\) Even though critics continue to claim that state efforts to

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84. It is important to note, however, that even if states cannot grant lawful permanent residency to these students, a college degree still has the potential to increase the students’ earning power in the future. For example, if future legislation grants amnesty to long-time residents or students become eligible to adjust by other means, a college degree will enable them to obtain a better paying job. Ruge & Iza, supra note 9, at 275.

85. Compare Maki, supra note 13, at 1352 (suggesting that it is unclear whether “these state policies are preempted by IIRIRA”), with Michael A. Olivas, IIRIRA, the DREAM Act, and Undocumented College Student Residency, 30 J.C. & U.L. 435, 453 (2004) (arguing that IIRIRA has been misinterpreted as preempting state laws), and Vicky J. Salinas, Comment, You Can Be Whatever You Want to Be When You Grow Up, Unless Your Parents Brought You to this Country Illegally: The Struggle to Grant In-State Tuition to Undocumented Immigrant Students, 43 Hous. L. Rev. 847, 850 (2006) (“[Arguing] that granting in-state tuition to undocumented immigrants would not conflict with federal law.”).


88. CAL. EDUC. CODE § 68130.5 (West 2003).

89. For example, if amnesty is granted, these students would likely be eligible to apply for permanent residency.

90. CAL. EDUC. CODE § 68130.5.
grant in-state tuition conflict with federal law, the statutory language that states like California have chosen to implement deftly circumvents IIRIRA.

In addition to not offering in-state tuition to undocumented students, states also cannot award these students federal financial aid, the primary source of funding for many college-bound students. States do have the option of awarding students state financial aid packages. For example, Texas and Oklahoma have passed legislation granting state financial aid options to undocumented students. State financial aid, however, can only extend so far. Therefore, state efforts, by no means useless, still must be supplemented.

III. THE DREAM ACT AND THE AMERICAN DREAM ACT

The DREAM Act repeals section 505 of IIRIRA, allowing states to determine residency for purposes of in-state tuition, and provides a pathway to legal permanent residency for undocumented students who meet certain qualifications. The Act, which was first introduced in 2001, aims to offer immigration relief to students who “were brought to the United States as young children by their parents, speak English, consider themselves Americans, and will spend the rest of their lives in this country.” The events of September 11, 2001, and an increasingly hostile anti-immigrant environment, equating undocumented immigrants with criminals have encumbered the enactment of the Act.

A. PROPOSED LEGISLATION

1. The DREAM Act

The DREAM Act proposes to amend IIRIRA to repeal the requirement that a state cannot offer in-state tuition to an undocumented

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92. See also Tex. Educ. Code Ann. §§ 54.052(a)(3), 54.053(3) (Vernon 2001). To be eligible for in-state tuition in Texas, students must 1) have graduated from a Texas high school, 2) be enrolled in a state institution of higher education, 3) have resided in Texas for three or more years, and 4) sign an affidavit promising to file a petition to become a lawful resident at their earliest opportunity. Id.
93. The federal government administers federal financial aid through the Free Application for Federal Student Aid (FAFSA) application. The application specifies which non-citizen students are eligible for federal financial assistance; this list does not include undocumented immigrants. See sources cited supra note 77.
94. Ruge & Iza, supra note 9, at 269-70.
student unless it also offers the same benefit to out-of-state U.S. citizens. Furthermore, the Act allows the Secretary of Homeland Security to adjust the status of eligible students to conditional permanent residency. Eligible students must (1) have continuously lived in the country for at least five years preceding the date of enactment of the Act and must have been younger than sixteen at the date of entry; (2) have good moral character; and (3) must not be admissible or deportable under specified grounds. At the time of application for the benefits of the Act, the student must also be enrolled in an institution of higher education or have earned a U.S. high school diploma or the equivalent. Lastly, eligible students must have never been under an order of final deportation from age sixteen and older.

During the period of conditional residency, students would be eligible to obtain work authorization, allowing them to work legally to fund their education costs. As conditional residents, qualifying students under the DREAM Act could also apply for federal financial aid, removing the most significant barrier many students have in attaining a college degree.

After six years of conditional permanent residency, a student would be permitted to file a petition for removal of the conditional status if the student had (1) maintained good moral character; (2) had not abandoned residence in the U.S.; and (3) had acquired a degree from an institution of higher education, completed at least two years in a higher degree program, or served in the United States Armed Forces for at least two years. If the student met these statutory requirements, the Secretary of State could adjust the student’s status to legal permanent residency, a stepping stone for future citizenship. As legal permanent residents, the students targeted by the DREAM Act could work legally and utilize their college degree to pursue their dreams.

The DREAM Act was first introduced in the Senate in 2001 by Senators Orrin G. Hatch (R-Utah) and Richard J. Durbin (D-Illinois).

99. S. 774.
100. Id.
101. Id.
102. Id.
103. Id.
105. Garcia, supra note 5, at 258; see also sources cited supra note 77.
106. For example, 65.6% of students attending four-year undergraduate institutions borrowed funds to finance their college education. FinAid!, The Smart Student Guide to Financial Aid, http://www.finaid.org/loans (last visited Jan. 1, 2008). The average amount of debt these students accumulate is $19,202. Id.
107. S. 774.
108. Id.
It was subsequently reintroduced in the 108th, 109th, and 110th Congresses. The Act has also been placed in immigration related bills, such as the Comprehensive Immigration Reform Acts of 2006 and 2007. Most recently, Senator Durbin sought to include the Act in the 2008 Department of Defense Reauthorization Bill, but he and other co-sponsors did not succeed. As a result, the current state of the DREAM Act is uncertain.

2. The American Dream Act

The Student Adjustment Act ("SAA"), the original companion bill in the House of Representatives, is now called the American Dream Act. Both House bills contain similar provisions to the DREAM Act. In addition to repealing section 505 of IIRIRA, the SAA proposed granting lawful permanent status to undocumented students who (1) have not yet turned twenty-one; (2) are physically present in the United States at the time of enactment and have been in the United States continuously for five years; (3) have good moral character; (4) are enrolled above the seventh grade or are actively pursuing college admission; and (5) have no criminal history. The SAA also permits students to apply for federal financial aid by conferring temporary legal residency. As legal residents, students could obtain work authorization.

The SAA was first introduced in 2001 in the 107th Congress by Representative Chris Cannon (R-Utah), Howard Berman (D-California) and Lucille Roybal-Allard (D-California). Versions of the Act were also introduced in the 108th, 109th, and 110th Congresses, but as of
the publication of this Note, no significant action had occurred on the latest proposal.

IV. THEORIES OF PUNISHMENT

The main way to success is an education, but the current laws deprive us of that success by not giving us access to education.

—Elena, undocumented Bay Area student

A common justification for opposing the DREAM Act and similar legislation benefiting undocumented youth is that giving these immigrants an equal footing with legal residents and citizens encourages undocumented immigration, contravening federal immigration laws. Similarly, opponents of the Act argue that granting benefits to undocumented immigrants rewards immigrants for breaking the law, further undermining U.S. immigration laws. "Throughout this Note, however, I have focused not on the act of breaking the law but rather the culpability—or lack thereof—that should be attached to the immigration and criminal violations undocumented students unknowingly and unwillingly commit. Current federal restrictions act to punish students for their immigration status by severely limiting the education and employment opportunities they have available. This federal legislation is a response to the blameworthiness imposed on undocumented youth, both through the passing of such legislation and through public perceptions of undocumented immigrants as morally culpable for their actions. Barring undocumented students from access to higher education and from future employment opportunities is not punishment in the criminal sense, which generally envisions a restriction on freedom, such as incarceration, but rather it evolves from a process of viewing undocumented youth as wrongdoers and attaching restrictions on this status. What I argue is that this blame is misplaced. Undocumented youth targeted by current immigration, criminal, and education laws are not culpable for the immigration and related criminal violations they committed as young children. Yet these youth are seen and treated by some as though they are culpable and deserving of restrictions placed on their future—i.e., punishable.

While punishment is not the explicit goal of the above mentioned federal legislation, such as IIRIRA, Congress has decided to place blame on undocumented youth for their immigration status, a status largely determined by a sequence of events that occurred before these youth had agency to exert control over their own futures. Moreover, by not

123. Interview with “Elena,” supra note 2.
124. Romero, supra note 14, at 396.
enacting legislation to expand the access of undocumented students to higher education and to legal residency, the government continues to punish students for their immigration status.

The punishment of undocumented students, however, has no foundation in common purposes of criminal punishment. These traditional bases of punishment arise from attempts to explain or justify the deprivation of liberty that results from physical imprisonment. They grow from criminal law, a field distinct from immigration law, which carries civil sanctions. Nevertheless, these theories in a larger sense are efforts to explain how the threat of punishment may influence individuals or society to refrain from undesirable conduct. In this sense, they are useful tools to explore the effects of federal legislation on undocumented youth because they separate the purposes of placing restrictions on these students from the everyday affect these restrictions have, and, as I argue, demonstrate that the purposes and the effects do not harmonize.

Accordingly, this Part utilizes popular theories of criminal punishment as a framework to discount the punishment of undocumented immigrant students. These sections look at the theories of deterrence, retribution, and rehabilitation in relation to the denial of higher education benefits and options for permanent residency to undocumented students. In response to these explanations, this Part argues that it is illogical to punish students for a decision their parents made and in which they had no involvement.

A. DETERRENCE

1. Theoretical Underpinnings

Deterrence is a form of utilitarianism, a theory that holds that the purpose of all laws is to maximize the net happiness of society. Deterrence itself rests on the theory that individuals take actions to avoid pain and maximize pleasure. Therefore, the infliction of punishment is justifiable only if it is expected to result in a net reduction of the pain that would otherwise occur in the absence of punishment.

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127. Immigration law is civil law, yet as immigration law and criminal law merge and anti-immigration protesters frame all undocumented immigrants as criminals, it is fitting to analogize to the theories of punishment when seeking to justify why opponents of the DREAM Act or similar legislation insist on punishing undocumented students.
128. See United States v. Brown, 381 U.S. 437, 458 (1965) ("Punishment serves several purposes: retributive, rehabilitative, [and] deterrent."); see also LAFAYE & SCOTT, supra note 126, § 1.5(a), at 26–31 (identifying the purposes of the criminal law as prevention (particular deterrence), restraint (incapacitation), rehabilitation, deterrence, education, and retribution).
130. Id. at 853–54.
131. Id.
Conversely, if a future act will yield more pain than pleasure, deterrence theory contemplates that an individual will refrain from committing the act to avoid the infliction of pain. If punishment is sufficiently painful, the theory is that the frequency of the illegal conduct will decline.

Deterrence comprises both general deterrence and specific deterrence, also referred to as prevention. General deterrence relies on the idea that punishing an offender will deter the general community from engaging in the same act. Specific deterrence, on the other hand, assumes that "criminal punishment aims to deter the criminal himself . . . from committing further crimes, by giving him an unpleasant experience he will not want to endure again."

2. General Deterrence Related to the DREAM Act

Opponents of the DREAM Act argue that permitting states to offer in-state tuition to undocumented students and giving these students a path to legal residency will encourage undocumented immigration. Conservative organizations, like the Federation for American Immigration Reform (FAIR) argue that there must be a "comprehensive effort to end illegal immigration . . . [by] ensuring that illegal aliens will not be able to obtain employment, public assistance benefits, public education, public housing, or any other taxpayer funded benefit without detection." Following these contentions, opponents believe that not passing the Act will deter undocumented immigration.

Nevertheless, there is little evidence that immigrants choose to come to the United States to access social services. The availability of government assistance is "rarely a factor in migrating to the United States." Accordingly, in Plyler the Court affirmed that undocumented immigrants generally do not choose to enter the United States to access free education. For those who cross the Mexican border, for example, the journey is treacherous and possibly fatal. Despite this danger, undocumented immigrants continue to cross the border to pursue a better life and to gain employment. Workers can earn much more in

133. See Cotton, supra note 20, at 1316.
134. Id.
135. LaFave & Scott, supra note 126, §1.5(a)(1), at 27.
136. Romero, supra note 75, at 93.
137. FAIR, supra note 37 (emphasis added).
139. Ruge & Iza, supra note 9, at 261.
141. See Hing, supra note 38, at 3.
142. Id. For example, since the implementation of Operation Gatekeeper, a program to deter undocumented immigration by building fences and militarizing parts of the Mexican-U.S. border, the
the United States than they can in many other countries, and the economic realities facing the impoverished will continue to fuel undocumented immigration. Federal laws permitting undocumented youth equal access to education will not alter the economic realities in other countries or the desperation and drive many immigrants have to pursue more secure options for their families in this country.

The DREAM Act would only benefit students who have been present in the United States for five years at the time of enactment. Youth who immigrate in response to such legislation would not benefit from the DREAM Act. FAIR has argued that legislation granting undocumented students legal residency acts as an amnesty, which would encourage more undocumented immigration. This argument, however, fails to take into account the narrow provisions of the DREAM Act and other proposed legislation. The Act is a response to an already existing group of deserving students in the United States, not a continuing option for immigration relief.

Moreover, even if the DREAM Act, or future legislation, did apply to students who immigrate in the future, it still requires that the students it benefits live in the United States for at least five years and arrive in the country at an age younger than sixteen. Students living in the country for a short period only to obtain education benefits will not succeed because they have not met the five year requirement. This base time requirement, or another similar provision, focuses the Act and its benefits on youth who have become immersed in the country's culture, community and education system.

3. Specific Deterrence Related to the DREAM Act

Critics contend that the DREAM Act would encourage undocumented immigrants to maintain their unlawful status and to refrain from taking corrective measures to adjust their status. Under this reasoning, failing to pass the DREAM Act would deter undocumented immigrants from living in the United States due to the risk of deportation. On the contrary, failing to pass the DREAM Act will not deter undocumented youth from maintaining their undocumented

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number of apprehensions at the border has not decreased and the number of deaths resulting from the dangerous trek has increased. Id. In 2005, 451 people died from dehydration, sunstroke, or freezing while attempting to cross the border. Id.


144. Romero, supra note 14, at 411-12.

145. Some people, such as the Author, would argue that the requirement that students be in the United States for five years at the time of enactment is a shortcoming of the DREAM Act. Undocumented immigration will continue, and youth who enter today will face the same obstacles when they graduate from high school.

146. See Maki, supra note 13, at 1363.
status by remaining in the country because these students have no plans to leave the country and cannot easily become documented.

First, these students have grown up in the United States, and they have plans to remain in the country with their families and friends. The youth targeted by the Act, like Elena, have lived in the United States for many years. Many consider themselves American, not citizens of a foreign country. For Elena, it was never an option to return to Mexico, a country she left when she was only three years old. She and other students in her situation want to change their immigration status, an option that the DREAM Act would provide if passed, yet deny if rejected. Therefore, it is not likely that students will voluntarily leave their home and move to a country they hardly know due to ineligibility to receive education benefits. Instead, they will remain in the United States and face negative consequences.

Second, for the most part, undocumented children whose parents are undocumented immigrants do not have a readily available means to adjust their status. In other words, youth not born in the United States who lack documentation cannot adjust their status unless their parents qualify for one of the few means to adjust, such as asylum, or if the children themselves qualify for these narrow options at a later age. Therefore, in the unfortunate circumstance that the DREAM Act is not passed, these students do not have other tangible means to pursue legal residency in the current framework of immigration law. The DREAM Act is a solution to the undocumented status that critics bemoan, not a means of rewarding this status. Failing to pass the DREAM Act will not make a difference in the number of undocumented students entering the country. Passing it will instead make a positive difference in the lives of students who qualify for its benefits.

In conclusion, continuing to punish undocumented students by effectively barring their access to higher education and employment will not influence these students to voluntarily leave the country. Deterrence does not provide a basis for punishing these students because remaining in the United States and receiving punishment for acts they did not intend to commit, while painful, will not prompt undocumented youth to avoid the wrongful conduct at issue, their immigration status.

B. RETRIBUTION

i. Theoretical Underpinnings

One of the oldest and currently most popular theories of punishment is retribution, which "impos[es] merited harm upon the criminal" for the

147. Romero, supra note 14, at 403.
148. Id.
149. See Nat'l Immigration Law Ctr., supra note 44.
wrong committed. Under this theory, punishment is directed "only on one who is personally, morally guilty." Retribution theory aims to seek revenge on criminals for their conduct on the assumption that "it is only fitting and just that one who has caused harm to others should suffer himself for it." In other words, retribution requires "sameness" between the act committed and the punishment; punishment should be commensurate to the crime "in order to restore the peace and mind and repress the criminal tendencies of others." Today, retribution is experiencing a new found popularity as a justification for punishment, particularly "under the rubric of ... 'just deserts.'" Yet the theory assumes that an individual is punished only if he or she deserves it, and likewise not punished if innocent.

2. Related to the DREAM Act

Denying undocumented youth who have spent the formative years of their lives in the United States access to education and to residency is an overly harsh punishment for the illegal act of entering the country without inspection, an act these students had no choice but to undertake. Supporters of the DREAM Act describe undocumented students as "unsuspecting accomplices to U.S. immigration violations," with very little understanding of their actions when they entered the country.

Generally, undocumented students under the age of eighteen derive their immigration status from their parents. Consequently, when their parents do not have legal immigration status, children in undocumented families have no legal mechanism to adjust their status to legal residency. When these students turn eighteen, they have the same undocumented status as any adult who has entered the country illegally. The key distinction, however, is that the students potentially affected by the DREAM Act enter the country with their parents, not on their own,
and not with the intention—or likely even the knowledge—to violate U.S. immigration law.

By seeking to punish students for their immigration status, opponents of the Act are tying this status to denial of future education and employment options and benefits. The act of accompanying their parents into the U.S. and then remaining and building a life in the country is not the same in amount and degree as blocking education and legal residency access to undocumented students. The students who illegally entered the country were minors when they accompanied their parents. There is no blameworthiness tied to this act, but the form of punishment opponents of the DREAM Act hope to correlate with the act of illegally entering the country is a denial of full participation in a society that these students have grown up in and have contributed to in many ways. Deciding to restrict access to education and future employment opportunities at face value may seem appropriate as a way to send a message that the country does not tolerate undocumented immigration. Yet what effect does this message have? Current federal laws that restrict access to higher education and legal residency have an everyday effect and lifelong consequences for undocumented youth solely resulting from an act beyond the students’ control. In that sense, choosing not to reward undocumented youth has permanent effects, far exceeding a decision a child makes to remain with family, unaware of the illegality associated with this decision or culpability imposed by others due to this decision.

The question of degree of culpability arose in Plyler, where the Court made a distinction between the responsibilities expected of an adult undocumented immigrant and the responsibilities expected of a child, who did not intend to break the law when entering the country.\textsuperscript{159} Although adults have more culpability for their decision to break immigration laws, when undocumented youth turn eighteen, they face the same consequences as an adult who willingly broke the law. However, an adult who chooses to enter the United States fully cognizable of the criminal consequences is not in the same situation as an undocumented adult who entered as a child. Their culpability—in this setting, their just desserts—does not amplify as they age. Yet when undocumented students choose to enter college, their critics jump to the offensive and refuse to reward these students because they broke the law. Critics argue that even though the acts of undocumented immigration children are involuntary, when they reach the age of majority, undocumented students should assume responsibility for their actions.\textsuperscript{160} In other words, undocumented students must face the

\textsuperscript{160} Maki, supra note 13, at 1367.
punishment they deserve when they reach a certain age, not due to any changes in their immigration status or intent, but rather because of their age in relation to the definition of majority in the United States legal system. The irony in this argument, however, is that undocumented students who have grown up in the U.S. do not decide to intentionally or even consciously break the law when they turn eighteen. They do not choose to be undocumented immigrants.

Retribution does not serve as a base for punishment of undocumented students because these students are not "personally, morally guilty." They have no blameworthiness because they did not intend to break the law. The innocent act of accompanying a parent is not the same in degree and amount to second class status.

C. Rehabilitation

1. Theoretical Underpinnings

Rehabilitation theory aims to improve the character of the offender "to reduce the probability that he will offend again."161 The philosophy of rehabilitation views the "criminal act separable from the individual actor."162 This distinction allows the individual to reintegrate into society after appropriate treatment sans the desire or traits that caused the individual to offend.163 Therefore, this theory presupposes that offenders have the ability to change and re-enter society as full-citizens.164

2. Related to the DREAM Act

Restricting future education and employment opportunities of a group of offending youth in no way promotes their rehabilitation or entrance as full members into society. Conversely, giving students a chance to complete their education has the potential to greatly improve their lives by increasing their knowledge and by opening doors to career opportunities. Consequently, punishing students by restricting their education opportunities will result in harm because students who want to go to college but who are denied the opportunity will invariably have fewer career options and less economic agency. Therefore, the consequences of punishing undocumented students contradict the goals of rehabilitation; punishing these students by denying access to higher education will not improve their chances to succeed in a society that requires a college degree and legal status for many jobs.

Not only do limited education options result in fewer opportunities in the employment market, but restricting the educational achievement

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161. See Cotton, supra note 20, at 1316.
162. See Stumpf, supra note 27, at 403.
163. See id. at 403; LAFAVE & SCOTT, supra note 126, § 1.5(a)(3), at 27.
164. See Stumpf, supra note 27, at 403.
of a class of people perpetuates a lower class status for such a group. 165 Efforts to deny undocumented students access to higher education reflect an attempt to keep these students in a lower socioeconomic class, 166 essentially blocked from social mobility and the "American Dream" by means of limited education and consequently limited employment access. With fewer opportunities to succeed than citizens and legal residents—not based on any characteristic of their own but solely on their immigration status—undocumented students lose hope in their own future. 167 The consequences of diminished hope for the future make these students less likely to enter society as "full citizens," a status that will never be conferred through continued punishment.

Finally, rehabilitation theory assumes that after an offender is rehabilitated, she or he will become a full member of society. Likewise, retribution imagines a similar result: after an offender pays his or her price, he or she will be welcomed into society. The flaw in these theories as applied to punishing undocumented students is that undocumented immigrants are never allowed full membership in society. Continuing to punish students by not enacting the DREAM Act will never integrate undocumented students into society. Instead, the reverse effect will occur. These students will have few career options and opportunities to succeed, cementing them in a lower class status rather than giving them the chance to achieve their dreams.

In conclusion, restricting undocumented students' access to higher education will not deter undocumented immigration. Furthermore, punishing undocumented students for their immigration status does not correspond in degree or amount to their culpability in accompanying their parents into the United States as children. Undocumented students are not blameworthy, and they do not deserve the punishment imposed by current federal laws. Lastly, placing additional obstacles in front of undocumented students' dreams to attend college will not help integrate these students into society.

**CONCLUSION**

The exclusion of undocumented immigrant students from institutions of higher education not only damages the future psychological and economic well-being of these students, but it also negatively affects society as a whole. Undocumented students are

165. TOMASEVSKI, supra note 60, at 196 ("A policy based on fear of losing a privileged position necessarily entails measures to deny education to an entire population group, or to allow it access only to education at a lower level.") (citation omitted).

166. Id. at 197 ("The lack of opportunity for victims of discrimination is easily converted into factual evidence of their inferiority, feeding the perpetuation of discrimination and the underlying prejudices.").

167. See id.
valuable and functioning members of society whose immigration status, not lack of work ethic or motivation, excludes them from achieving the same goals as their classmates and peers. They have strong ties to family members in the United States, both citizens and non-citizens, and they have the potential to make significant societal and economic contributions. Education is the primary means of success in the United States, and blocking this channel for undocumented students not only unjustifiably punishes them, but it also stratifies society.¹⁶⁸

Furthermore, undocumented students are members of our community, whether or not opponents of the DREAM Act accept this view. These students will continue to be a part of the United States; their presence is a reality that restrictions in higher education will not alter. Why suffocate a vibrant, talented, motivated group in society who will be an integral part of the country’s future? Supporting the educational and professional achievements of undocumented students can only benefit the country, fully integrating a group of young people who consider themselves American and who hope to continue contributing positively to society.¹⁶⁹

Current federal laws punish undocumented students for the decisions of their parents. In addition, the merging of criminal law and immigration law further frames innocent undocumented youth as criminals. Nevertheless, there is no justification to punish undocumented students under popular theories of punishment. The DREAM Act is a remedy to the unjustified punishment of undocumented youth. The Act must be enacted to address the pressing needs of thousands of undocumented students living in the United States who aspire to attend an institution of higher education but are still waiting to achieve that dream.

¹⁶⁸. See Stumpf, supra note 27, at 378 (“Excluding and alienating a population with strong ties to family, communities, and business interests in the United States fractures our society in ways that extend well beyond the immediate deportation or state-imposed criminal penalty.”) (citation omitted). See also Ruge & Iza, supra note 9, at 278 (“To deny undocumented students access to higher education would result in a permanent underclass of under-educated and under-utilized persons.”).

¹⁶⁹. For example, the DREAM Act will not only reduce high school drop-out rates among immigrant students, but it will also increase tax revenues, reduce government expenses—due to higher educational achievements by these students—and strengthen the legal workforce. NAT’L IMMIGRATION LAW CTR., THE ECONOMIC BENEFITS OF THE DREAM ACT AND THE STUDENT ADJUSTMENT ACT 1–2 (2005), available at http://www.nilc.org/immlawpolicy/DREAM/Econ_Bens_DREAM&Stdnt_Adjust_0205.pdf. Undocumented immigrants for the most part plan to stay in the country; therefore, making an investment in the future of these students by providing them access to higher education benefits society socially and economically. Krueger, supra note 86, at 1.