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Undocumented Immigrants' Struggle for Education and Their Right to Stay

Benita Veliz, Walter Lara and Jorge Alonso Chehade share many things in common. All three are undocumented immigrant students who, through significant efforts, have enrolled and graduated from college.¹ Unfortunately for them, their status has become the target of immigration authorities. In 2009, all three had to launch individual campaigns to fight efforts by Immigration and Customs Enforcement (ICE) to deport them to the countries from which they emigrated as children.² Contrary to the media image that all those who are caught are criminals, these youth were detained under questionable tactics which include the now common practice where local police are deputized to enforce immigration law. In all three cases, the students were stopped by immigration while driving. This type of enforcement will inevitably increase the number of deportations.³

The cases of Veliz, Lara and Chehade sparked a flurry of activity this summer. Their efforts to successfully delay their deportations are part of an increasing movement to generate support for the Dream Act, the federal proposal which would allow some undocumented students to begin the path towards permanent residency. Beginning in Summer 2009, when more than 500 converged in DC for a national Dream Act graduation ceremony, students and their allies have organized a number of activities to build support for the Dream Act culminating with the national "Back to School Day of Action." Across 26 states, students organized more than a hundred events including workshops, panels, rallies, forums and petition drives at state and private universities, community colleges and high schools. They involved representatives in press conferences, attended marches, mock graduations, sleep strikes, film screenings, speak outs, informational meetings, press conferences, book presentations and participated in open mics. Most of the activi-

ties were organized by the students and the advocacy organizations they have created on their campuses while others were linked to state or city wide immigrant rights organizations. The United We Dream network registered activities in Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Texas, Virginia, Washington, Wisconsin.⁴ Since only ten states have passed in-state tuition laws⁵, most of the activities took place in places where these young adults cannot attain college degrees. In most states, their immigration status—and the poverty that such status imposes on them—makes postsecondary education unattainable as they are charged out of state tuition fees regardless of the fact that they have graduated from US high schools. Students and supporters continue to fight this situation at the state level by pressing for passage of in-state tuition laws.

¹ Veliz, a Mexican national, double-majored in biology and sociology at St. Mary's University (TX). Lara, born in Argentina, received an associate's degree in computer animation from Miami Dade College (FL) and Chehade, from Peru, graduated from the University of Washington.

² In all three cases US senators introduced private reprieve bills on their behalf. In the case of Chehade, Representative Jim McDermott's private bill delayed his deportation order (Firm 2009; Thomas 2009c). Lara was granted a deferment of his deportation for one year (Hing 2009, Thomas 2009a, 2009b). In Veliz's case, Representative Charles Gonzalez introduced a private bill on her behalf (Downes 2009).

³ Continuing efforts which began during the Bush presidency, the Obama administration renewed its commitment to the deportation of thousands of immigrants who land in local jails (McKinley 2009).

⁴ For a full list of the activities which took place on September 23, 2009 visit <http://www.dreamactivist.org>. House and Senate briefings for Congressional staff about the DREAM Act took place in October to educate staff about the bill.

⁵ From 2001–2006, ten states— Texas, California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Utah, and Washington—passed in-state tuition policies.



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In 2009, a few states were particularly active. Although advocates' efforts in Colorado, North Carolina, Rhode Island and Washington did not yield a full victory for students, the campaigns illustrate the different challenges at the state level. Those obstacles range from lack of financial aid to undocumented students in the states which already permit them to attend college, to inability to get the bill passed after several legislative attempts, to narrow and restrictive policies at the community college level which impede access in states with increasing number of immigrants.

In some states, such as Arkansas and Colorado, the in-state tuition law is still elusive after multiple legislative sessions. In Colorado, Senate Bill 170 (2009) died by a close margin when it could not garner enough support from Democrats. This was the same fate encountered by the tuition bill in Arkansas, which was rejected by the Senate in 2009. The bill there had faced opposition from the governor who argued that passing such measure would violate federal law. Other states proposed in-state laws, including Connecticut, Missouri, New Jersey, Oregon, and Rhode Island (Wood 2009).

In other states, most notably in North Carolina, their community college system has recently changed their policy to allow undocumented students to attend their system albeit paying out-of-state tuition. This change is void. The classification of these students as nonresidents, and the cost associated with that, constitutes a de facto ban given their poverty. Even in states which have passed in-state tuition policies, the lack of access to state financial aid continues an ongoing challenge. Indeed, California and Washington have been pushing for a financial aid bill companion to their in-state tuition laws. In California, after passing the legislature three times, the bill has been vetoed by the governor each time.⁶ The movement for in-state tuition has involved a multi-prong approach combining individual struggles by undocumented students to fight their deportation orders, continuous efforts to pass equal tuition laws at the state level, changes within institutions of higher education and increasing pressure to pass the federal Dream Act. While the movement has grown in many different states, arguments in favor of the students have remained the same. The nature and usefulness of these arguments should be considered as this population fights against being demonized and for their basic recognition as human beings.

Arguments for In-State Tuition: Effective or Counterproductive?

In examining the merits of the various arguments for allowing undocumented students to attend college at the same in-state tuition rates as every other high school graduate, it would seem relevant to consider what exactly is at issue. Is the demand for in-state tuition for the undocumented a matter of economics, fiscal policy, social planning, and the like, or is it a demand for equality, equity and civil rights? Looking at it from the perspective of the students, and in light of similar issues through history, it would seem clear that this is a matter of equality and fairness.

The key arguments for and against undocumented students' presence in institutions of higher education fall into three broad categories: economics, cultural assimilation and crime deterrence. Versions of all three are frequently used by opponents and by many supporters of in-state tuition policies. Here each type of argument is reviewed briefly.

Educating Undocumented Students: Who Pays?

The defense of and the opposition to in-state tuition policies, and to the federal DREAM Act, have centered predominantly on arguments based on economics. These arguments have been touted mainly by organizations whose focus is lobbying politicians or enlisting the support of the business community. Opponents typically argue that immigrants are a drain on the economy or an additional burden, particularly at the state level. Supporters typically respond in kind, pointing out that, if educated, immigrants do provide additional resources, to the benefit of state and federal treasuries.

The use of economic arguments and strategies to bar disenfranchised populations from access to social services and democratic rights has a long history. Discriminatory tuition requirements (from K-12 to higher education) that exclude the undocumented bear a striking resemblance to Jim Crow techniques, such as poll taxes and literacy tests, designed to disenfranchise Chicanos and blacks.⁷ As in the Jim Crow South, today most states do not explicitly prohibit undocumented students from accessing higher education. Instead, they present immigrants who have recently graduated from high school or earned GED diplomas with the impossibly high hurdle of paying annual out-of-state or international tuition fees. This constitutes a de facto

⁶ SB 1301 (Cedillo) known as the California Dream Act was vetoed last year.

⁷ See Hendricks (2004).

⁸ See Federation for American Immigration Reform (2004b).

⁹ See Federation for American Immigration Reform (2004a) and Friends of Immigration Law Enforcement (2004).

¹⁰ The undocumented pay sales taxes, and their paychecks reflect the mandatory withholding of federal and state payroll taxes, as well as deductions for unemployment insurance, workers' compensation, retirement, disability, and survivor benefits.

ban, since the majority of these students come from impoverished conditions and simply cannot afford the higher fees.

Fiscal-economic arguments generally focus on immigrants' positive or negative budgetary impact on the economy. Nativist forces assert that immigrants are a drain on economic resources because they are being educated without the participating institutions receiving enough resources to bear the alleged additional costs.⁸ They argue that giving this population access to in-state tuition rates amounts to a special subsidy or discount for immigrants, extends a privilege not available to US citizens while limiting citizens' access to the same resources, and is likely to cost states substantial sums.⁹ Here, as in other areas of the overall immigration debate, nativist forces can be counted on to present calculations that simply ignore the fact that immigrants are taxpayers themselves and that their labor adds greatly to employer profits and to government coffers.¹⁰

Proponents of in-state tuition often have simply accepted the terms of the debate as set by anti-immigrant opponents and have responded in kind. As a result, in-state tuition laws frequently have been defended simply as mechanisms that would allow undocumented students to add to the economy by increasing employers' profits and contributing to the overall soundness of state and national budgets.¹¹ Some proponents point out that allowing these students to attend college and legalizing their status would turn them into "productive citizens" who would repay society's "investment" in them. A related argument calls for lifting state and federal restrictions on tuition fees because these provisions "are merely creating a subclass of citizens who otherwise are fully capable of becoming successful individuals—i.e. skilled professionals and thus, significant taxpayers."¹² Although well intended, such logic accepts the misrepresentation that millions of working undocumented immigrants—the overwhelming majority of whom lack a college education—are not productive and are a burden on society.

Resisting the impulse to respond to anti-immigrant arguments using the same cost-benefits language and framework these groups favor does not mean leaving their many inaccuracies unanswered. It is significant that in the *Plyler* ruling¹³, the Supreme Court did more than affirm the importance and applicability of the Fourteenth Amendment's equal protection clause to the arena of education. The court also explicitly recognized that undocumented workers are "encouraged by some to remain here as a source of cheap labor, but nevertheless [are] denied the benefits that our society makes available to citizens and lawful residents."¹⁴ Today, that same "cheap labor" accounts for billions of dollars in surplus value and millions more in the taxes paid by those exploited women and men who provide it.

Ultimately, economic arguments in support of undocumented students' access to higher education are doomed to fail. They are fundamentally beside the point. US immigration and economic policy is designed to create and sustain the economic, social, political, and military conditions that drive the immigration flows that underpin the US economy. Immigrants are denied legal status precisely because their caste-like condition as undocumented is what is most profitable for business interests. Likewise, this precarious status makes immigrants politically and socially useful as scapegoats for ever-growing problems ranging from health care to unemployment. The idea that the economic contributions of college graduates whose degrees have been attained through in-state tuition legislation will be sufficient to persuade government and business interests to support such measures, which contradict the core reasons for the current immigration policy, fails to grasp the hard realities that underlie the whole debate.

In-State Tuition and Policies of Cultural Assimilation

In addition to economic arguments, some proponents of in-state tuition policies emphasize the importance of assimilation. They note that having grown up in this country, many undocumented students already are culturally assimilated, as measured by their English-language proficiency as well as the abandonment of their national heritage. Providing access to college, these supporters maintain, will facilitate even greater assimilation and adherence to the status quo. From this perspective, in-state tuition laws are a matter of good social policy—a means of preserving "American culture" and "sound values." The form assimilationist arguments take varies with the degree of the proponents' own assimilation and level of participation in mainstream political activities, as well as the type of audience being addressed.

For example, in response to accusations that the DREAM Act would confer blanket amnesty, the Senate Judiciary Committee rushed to assure opponents that in reality the act would simply allow some immigrants "who have been acculturated in the United States the privilege of earning the right to remain."¹⁵ Placating nativists' fears that immigrants do not assimilate is a priority for some supporters of undocumented students.¹⁶ Thus, they describe as the most important contribution of the DREAM Act that "it would provide a means for marginalized youth all across the country to assimilate into mainstream American society."¹⁷ Similarly, others, in citing reasons that an in-state tuition law should pass, emphasize the essential "American-ness" of some potential beneficiaries of the bill, noting that the students "speak unaccented [italics added] English [and] consider themselves Americans."¹⁸ Arguments like these make the mistake of presenting equal access to higher education as a "reward" that is "deserved" by students who demonstrate a high degree of assimilation.

¹¹ Speaking at a May 18, 2007 hearing of the House Judiciary Committee's Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law, Diana Furchtgott-Roth, senior fellow, Hudson Institute, supported the DREAM Act by saying that students with college degrees "produce streams of income taxes and Social Security payments to bolster our fiscal position." In Texas, the Harris County tax office estimated that over a lifetime, "a college educated person is likely to earn approximately \$620,000 more than a person with only a high school diploma" (Harris County Tax Office, 2000, p. 2). In Illinois, officials estimated that undocumented workers increase their wages by 5 percent for every additional year of college education (Mehta et al., 2003, as cited in Mehta and Ali, 2003).

¹² Alfred (2003), p. 618.

¹³ In a landmark decision, the Supreme Court ruled in 1982 in a case known as *Plyler v. Doe* that undocumented immigrants have access to a public education.

¹⁴ *Plyler v. Doe* (1982), p. 219.

¹⁵ Stevenson (2004), p. 574.

¹⁶ Former House Representative Tom Trancredo (CO) summed up this longstanding nativist fear succinctly when speaking to New York Times reporter Kirk Johnson, "'The impact of immigration—legal and illegal—on jobs, schools, health care, the environment, national security, are all very serious problems,' he said. 'But more serious than all of them put together is this threat to the culture. I believe we are in a clash of civilizations'" (Johnson, 2007).

¹⁷ Stevenson (2004), p. 555.



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Another attempt to gather support for undocumented students has led to an overemphasis on the alleged willingness of this population to be productive and patriotic in exchange for eligibility for benefits like higher education or legal status. The presentations of these students as uniformly talented, assimilated, academically gifted, English speaking, and flag weaving is problematic and reinforces the idea that only those who meet these criteria are deserving of benefits. What about opportunities for students whose English is still far from impeccable and those who do not aspire to be their high school's valedictorian? What about those who have not grown up in this country but were forced to come because of dire economic and political circumstances in their countries of origin? What about students who were not able to attend college upon graduation from a US high school, or those who retain a strong sense of membership in their home countries? How does one evaluate which students merit adjustment of their status, and upon whom do we confer the right to make such determinations?

Criteria based on assimilationist views run far too close to the nativist waters of historically anti-immigrant groups. Indeed, arguments made under the aegis of Americanizing undervalue immigrant cultures and ultimately fail to recognize the degree to which immigrants enrich the cultural, political and social experience of life in the United States.¹⁹ By implication, these arguments also reinforce the idea that those immigrants who are not assimilated are themselves responsible for their caste-like condition (a position more in line with arguments set forth by nativist groups such as the Federation for American Immigration Reform). In the end, assimilation-based arguments flounder because they are neither inclusive nor democratic propositions but rather are measures that "identify aliens who are likely to fit in."²⁰ The goal then becomes to legalize the cream of the crop.

This strategy has a corollary favored by a number of advocates for undocumented student access to higher education who focus their efforts on policymakers. These advocates increasingly have sought to make their argument more attractive by stressing that only a few such students would have access under the proposed

legislation they support, and that access would be conditional.²¹ To call for limited access to education, under the delusion that this would be more palatable to the very authorities that have denied such access, is both an erroneous and a self-defeating proposition. This strategy is mistaken in that it fails to understand that calls for equal educational access can be attractive and have success only to the degree that they appeal to a sense of fairness that in turn is predicated on its universality.²² Rights and equity are premised precisely upon their availability to all, not simply to a privileged few.²³

Uneducated Undocumented Students: An Impending Threat?

The third and perhaps most extreme type of argument brought to bear on the question of in-state tuition laws casts education as a form of crime prevention, promoting the shocking proposition that it is cheaper to educate undocumented youth than it is to incarcerate them. In this "last resort" form of argument, proponents raise the menacing specter of potential criminality and position young immigrants as a possible threat to the US social system. They are presented as "criminals to be," unless educated. This is a modern incarnation of 19th-century "criminal class" theories in which all working-class people, including the native born, but immigrants in particular, were considered likely to engage in criminal behavior. Education-as-crime-deterrence arguments echo the questionable logic of the assertion that the death penalty should be abolished because it is more expensive to execute than to incarcerate. Arguments based on "cost effectiveness" are dehumanizing and are not likely to generate a laudable response, such as humanitarian sympathy. More important, these arguments sharply contradict the experience of the students and the immigrant community, who tend to view the issue as a matter of fairness, equality and equity based on their arduous labor and poor working conditions.

The use of the specter of criminality as justification for educating the underserved is not new. Here, too, the Supreme Court's Plyler ruling is relevant. The court's view that not educating undocumented children would promote the "creation and perpetuation of a subclass of illiterates within our boundaries, surely adding to the

¹⁸ Yates (2004), p. 601.

¹⁹ One example arose during the first wave of marches in opposition to HR 4437 (the 2005 federal legislation aimed at criminalizing immigrants and all those who associated with them) in the spring of 2006. During the first mobilizations many immigrants proudly marched with their national flags. This prompted a virulent response from jingoist forces, as well as chiding from much of the mainstream media. During subsequent rallies immigrants were specifically discouraged by a number of organizers from carrying the Mexican flag. Referring to the work of the "ethnic media," one commentator noted: "They publicized the rallies and, among other things, advised listeners to wear white shirts, downplay the Mexican flag in favor of the American flag, and present a dignified image to the rest of America" (Wang and Winn, 2006, p. 6).

²⁰ Aleinikoff (1989), p. 15.

²¹ Seeking to downplay the potential numerical impact of in-state tuition, some supporters reassure the opposition that the number of students who are likely to enroll under these policies is minuscule. See, for instance, the statement of the Austin-based University Leadership Initiative, which includes the following: "Less than 2 percent of this year's national high school graduating class is undocumented immigrants, and only a fraction of these will attend college even if they are able to pay the in-state rate." Formerly available at http://www.criminaljusticecoalition.org/university_leadership/in-state_tuition.

problems and costs of unemployment, welfare and crime” was part of its argument for including undocumented immigrants in public schools.²⁴ This reasoning, though, also appeals to the same fears of a “criminal class” that many supporters and opponents of immigration hold with respect to people of color.²⁵ This is clear in the language of some current supporters of in-state tuition policies who, regrettably, use age-old portrayals of working-class immigrants as “alien, uncouth, menacing”²⁶ as a warning for the need for equal access to higher education.²⁷ A memorandum circulated during the first hearing on the Texas policy stated that banning these students from college was the equivalent of “creating a second class of citizen who would be a burden on our social services and criminal justice systems.”²⁸

Equality, Equity and Civil Rights

The overall framework of the arguments surrounding the issue of access to education for undocumented immigrants emphasizes “investment” and “profits.” Supporters and opponents debate the question of whether in-state tuition bills represent a useful investment that would yield greater economic profits, and most address their arguments to policymakers and powerful private interests. Rarely is it argued that equal access to higher education is a matter of civil or democratic rights and that its ultimate benefit is to the young people themselves and society as a whole. In light of the history of the movement for civil rights in this country and elsewhere, the issue is not a matter of economics, fiscal policy or social planning. It is a question of equality, equity and civil rights, with implications for society as a whole.

The challenge facing immigrant students is to remain at the center of their own fight as the protagonists of the modern civil rights movement. History would indicate that in order to succeed, immigrant students must reject persistent efforts to frame the debate in economic terms and, instead, present their case as a matter of equality, stressing the principles of basic fairness and democratic rights. In rejecting arguments that the opportunity to attend college should be available only for those who will guarantee maximum profits and minimal dependence on social services, the students should affirm the demand for universal access to education. As they have become active, the students have rejected the distorted characterization of the undocumented population as economically dependent and potentially criminal as not only inaccurate but deeply offensive. The massive mobilizations in the spring of 2006 were an expression of the vehement objections by undocumented students and the immigrant community as a whole to the current tenor of the debate.²⁹

Reframing the issue also requires finding a way to extend constitutional protections based on the equal protection clause of the Fourteenth Amendment to the undocumented, particularly youth who are seeking access to institutions of higher education.³⁰ The Supreme Court’s ruling in *Plyler v. Doe* applied to undocumented children in grades K-12, but it reverberated far beyond public primary and secondary schools.³¹ The court recognized that the exclusion of children from public education reinforced their minority status. Most important, the justices acknowledged that although the undocumented were not authorized to be in the United States, they were nevertheless protected under the provisions of the Fourteenth Amendment by their very presence in the country. By allowing undocumented students to pay in-state tuition rates, even with the arbitrary restrictions that some of the bills contain, the states have extended this constitutional guarantee of equal protection for all to include laws pertaining to postsecondary education. In-state tuition policies also function as an extension of the ideals inherent in *Brown vs. Board of Education* (1954). They aim to make education equal and available to all students. In that sense, in-state tuition policies represent another step toward the even larger goal of equal opportunity for all.

Advocates for in-state tuition have yet to make full use of these constitutional guarantees. Doing so is imperative in order to defend existing gains and advance the educational cause of immigrant youth. Civil and democratic rights codified in law and supported in the court of public opinion as aspects of fundamental human dignity, and rights are more likely to endure than promises of aggrandizement for business interests. Significantly, referencing these kinds of principles also tends to break down rather than reinforce the caste-like status imposed on the undocumented.

The fight of the undocumented today is for equality. As the current expression of the long struggle that minorities have waged to secure their right to attend public postsecondary institutions, the in-state tuition movement is part of the broader issue of civil rights. This is why, as some authors have suggested, immigrant rights advocates are obliged to examine the similarities between these struggles:

Today a growing number of labor, immigrant rights and Black political activists recognize the similarity between the denial of civil rights to African Americans and the second-class status of immigrants in the [United States]. U.S. Congresswoman Jackson Lee looks at the situation of immigrants, and sees the historic discrimination against people of color, especially Black people, and women.

²² The focus on a “selected few” opposes education as a universal right. As Petronicolos and New (1999) argue, “those who would deprive certain classes of prospective students of educational opportunities do not question the value of education per se; they question the need for it to be universal and equal, and given this necessary limitation on its availability and quality, the right remains conditional rather than fundamental” (p. 403).

²³ An analogy with the Civil Rights movement is instructive. It is absurd to imagine that Jim Crow segregation could have been overcome by calling for only some blacks to be granted access to education or equal treatment. Indeed, this is not a matter of conjecture. Championed by Booker T. Washington, the limited, cream-of-the-crop, gradualist approach for Black equality and advancement was put to the test for several decades—and it failed. The success of the Civil Rights movement was predicated on its universality.

²⁴ *Plyler v. Doe* (1982), p. 230.

²⁵ A similar reasoning marked the Proposition 187 debate. Opponents of the provision to exclude undocumented children from K-12 argued that “leaving them on the streets to make trouble . . . would do nothing to reduce crime and graffiti” (Cooper 2004, p. 348).

²⁶ Katz (1987), p. 17.

²⁷ A 1999 RAND corporation study’s concluded that “the average 30-year-old Mexican immigrant woman who graduated from college rather than dropping out of high school would pay \$5,300 more in taxes every year while costing the criminal justice and welfare systems \$3,900 a year less” (cited in Galindo, Medina, and Chavez 2006, p. 97).

²⁸ Garcia (2001b), p. 2.

²⁹ Throughout the marches, immigrants loudly rejected being likened to criminals. Signs carried by protesters illustrate this point: “Immigrant not criminal”; “I am not a criminal. I am a dishwasher at a restaurant”; “We are hard workers, not criminals”; “After I built your home and grow your food, why do you treat me like a criminal?”; “Immigrants are workers and human beings”; “People are not illegal: Denying workers’ rights is illegal.”

"I had the benefit of the 13th, 14th and 15th Amendments, the 1964 Civil Rights Act and the 1965 Voting Rights Act, and the executive order signed by Richard Nixon on affirmative action. Without them, I would never have seen the inside of the United States Congress," she declares, while cautioning, "the rights of minorities in this country are still a work in progress. Nevertheless, someone recognized that the laws of America were broken as they related to African Americans—that we had to fix them. Now we have to fix other laws to end discrimination against immigrants."³²

Principles of equality and human dignity, as well as constitutional guarantees, form the most basic rationale for all formal and informal efforts to extend to undocumented immigrant students the right of equal access to higher education. Ultimately, these principles and democratic protections will prove the most persuasive criteria, as well.

In the words of José López, the foundry worker whose family became one of the plaintiffs in the *Plyler* case: "School is very important for all children, and they should not be discriminated against because they are Mexican or white or black. They should be equal."³³



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³⁰ Despite the importance of the Fourteenth Amendment in this area, little has been written about its specific application to higher education (an exception is Petronicolos and New 1999). Some authors argue that constitutional guarantees have not been extended because the nativist view that "there is of course, a significant difference between an elementary education and a university education" (Yates 2004, p. 594) has prevailed. Others have pointed out the legal impediment that in the Supreme Court's view, the undocumented are not a suspect class and that education is not a fundamental right (see Pabón-López 2005). See also Galassi (2003).

³¹ Washington Governor Gary Locke described his state's in-state tuition bill as "a logical extension of the constitutional right to a K-12 education for all students residing within our borders" (LEAP Educator 2003, p. 1). For additional discussion of the impact of *Plyler*, see Olivas (1995) and Pabón-López (2005).

³² Bacon (2005), p. 4.

³³ Leal Unmuth (2007).