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Interview with: An American DREAMer Shaping the Land of Opportunity

By Thalia Roussos

For two brothers, it started as a weekend trip to visit a high school friend. As the boys heard the train conductor announce their stop in Buffalo, New York, United States Immigration and Customs Control agents (“ICE”) stepped aboard and ordered passengers to present identification of United States citizenship. Since the 9/11 terrorist attacks, the reach of ICE within the U.S. has broadened in an effort to find undocumented individuals with criminal records and suspected terrorists. However, while border control in southern states like Arizona has been a topic of lively debate, the New York Times notes that border security changes along the Northern U.S. border are “happening without public debate.” But experiences like that of the Robles brothers put undocumented young people in the spotlight.

Just minutes after the ICE agents boarded the train to check passengers’ documentation, these agents led the two teenage brothers off the train car. Carlos Robles and his younger brother are not U.S. citizens. They had nothing to show the agents that day. “Everyone was staring at us suspiciously,” Carlos said. Yet despite the glares from passengers on the train, Carlos described the border patrol agents as lenient. “They were apologizing, acknowledging that we didn’t do anything wrong, but also telling us that they had to do what they had to do.” Carlos suggested that his American English, young age, and untarnished legal record distinguished the treatment he and his brother received from others at the immigration detention center. The agents seemed “conflicted about how to treat us because we were kids–easy to relate to and able to express ourselves clearly.”

Against the instinct to turn to their parents for help, upon arrest, Carlos and his brother did not call their parents. They knew this would expose their parents’ undocumented status. After eight hours of paperwork, immigration agents took the brothers to the county jail. Carlos explained, “when we were taken off the train, I thought they would send us straight to Mexico. I didn’t know that the deportation process could take so long.” Carlos mentions his fleeting
thought of living in his family’s old town in Mexico as he sat in the station. Carlos matter-of-factly said, “You don’t go to school there . . . it is not nice to live there. Maybe we would find somewhere new to go?” The teenager pondered these life-changing situations, wracking his brain for what to do next.

The first people Carlos called from the police station were his high school tennis coaches. Carlos and his brother played on the school’s tennis team throughout high school. They grew close to the teachers and coaches who recognized their ability to overcome language barriers and other challenges as new students in the U.S. Within hours of calling his coaches, they had built a network that connected Carlos and his brother to a lawyer from the National Immigrant Justice Center (“NIJC”). One of the coaches came to the county jail in Buffalo to post their bond. Carlos reflected on his parent’s commitment to their children’s academic and extra-curricular excellence; with his parents’ motivation and guidance, the people with whom Carlos had built relationships all worked together to help on that Saturday in Buffalo.

Carlos and his family, which consisted of his brother, his sister, and his parents, all came to the U.S. from Mexico in 2004 on a temporary six-month tourist visa. Carlos was fourteen and ready to start high school. Since their arrival, Carlos and his family have remained in the U.S. Carlos excelled in his first three years of high school, only confronting his undocumented status as it came time to apply to college. “I was mad and confused about the whole process. I didn’t know what to do; I just thought college was this place where, once you are there, you are there.” He explained his struggle to understand the Federal Application for Student Aid (“FAFSA”), as well as his frustration that, being undocumented, he did not qualify for any significant scholarships. Carlos recalled, “I didn’t know where to turn. Should I go back to Mexico?”

After extensive brainstorming between his parents, counselors, and teachers, they ultimately found a private scholarship dedicated to sending a Hispanic student to Harper Community College for two years, all expenses paid. After two years at Harper Community College, Carlos enrolled at Loyola University Chicago, a private school that could accommodate his financial needs. However,
as a part-time student, he still could not receive substantial financial aid. Committed to furthering Carlos’s education, his parents paid out of pocket from their savings for the first two years in order for Carlos to attend Loyola University. Even after confronting great financial difficulty, Carlos has a notably optimistic outlook: “I do not resent or blame my parents for leaving Mexico because we would be much worse off if we were still there.”

While Carlos’s story may sound similar to the journey undertaken by many others, Carlos decided to share his story. The NIJC, working with Carlos and his brother on their case, invited the Robles brothers to speak at a conference about the Development, Relief, and Education for Alien Minors Act (“DREAM Act”). After the Robles brothers shared their experience with others at the conference, the NIJC reached out to the Los Angeles Times. Carlos and his brother sought to illuminate the personal struggles of undocumented students, as well as the positive outcomes that could be achieved through collaboration and advocacy. The article published in the Los Angeles Times prompted interest from newspapers all over the country, including the Chicago Tribune. At that point, Carlos remembers telling himself, “even if I do get deported, at least people have heard about my experience.”

This publicity paved the way for the next step in the Robles brothers’ case. The NIJC subsequently sent the case to Senator Dick Durbin of Illinois, who spoke with the U.S. Department of Homeland Security (“DHS”). Senator Durbin arranged for the Robles brothers to receive Federal Deferred Action for Childhood Arrivals (“DACA” or “Deferred Action”), without a deportation order. Deferred Action allows children who are brought into the U.S., and pose no risk to the public, to avoid removal proceedings. However, Deferred Action does not change a person’s undocumented status. Deferred Action normally requires renewal every two years to avoid deportation, at the discretion of the DHS; however, because DHS granted the Robles brothers Deferred Action without a deportation order, they would avoid being subject to this unpredictable renewal process entirely. Carlos asserted, “it was so rare, it felt like we had won the lottery. It was a year earlier than anyone else got it. It’s been an amazing change to have a Social Security number, a driver’s license. I feel
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legitimate—I can show my ID without question.” But should a child’s access to these documents be a rare and astounding occurrence, or should it be the humanitarian norm for children?

Though Carlos and his brother feel a weight lifted from their shoulders, Carlos still feels weighed down by the plight of others who have been less fortunate. He explains that people in the same position, including his own sister, could not get the same break. Today, however, his sister has applied for DACA. Carlos smiled and said, “When we got Deferred Action, it’s almost like my parents did, too. They know now that their children can live without fear.”

While some argue that Deferred Action is a temporary fix, Carlos acknowledged that, “While it is a patch, it’s a really nice one. And it is pretty groundbreaking—such a big change after thirty plus years of the same thing. Hopefully the Obama administration will keep moving forward.” If ever given the opportunity to stand in front of Congress in support of undocumented people seeking the American dream, Carlos would relay the following message: “We aren’t asking for the very best of everything, we’re just asking not to live in the shadows, and to have a place in society. The U.S. gave us tools to do well, and we want to use these tools here.” He asserted that although some people think undocumented immigrants benefit from U.S. services without paying their dues, mechanisms like Tax Identification Numbers ensure all types of people are accountable to the government.

Carlos has told his story to many different people and in many different forums. But each day he thinks of more he would like to share. Carlos emphasized:

“We don’t need your sympathy, we need your support to change the system and make a difference for thousands of students who want to make the U.S. better, not just better themselves. Give us a legal identity so that we are able to give back. So we’re on the books as an ‘American.’”

Carlos shrugged his shoulders as he explained that he is unsure of whether he is Mexican or American. He says he is from Mexico, but the U.S. is the country that has given his family a better life.
Interview with an American DREAMer

Everyone in the U.S. has a different heritage behind being “American”—after all, many Americans came here to express their heritage freely. Why should young people, like Carlos and his brother, be precluded from claiming the identity they already have? Why must they be forced into choosing one identity, rather than embracing two? By giving undocumented children a legal identity, these children can stop living in fear and can openly contribute to society through the experiences that have shaped their unique identity.

Sources:

Interview with Carlos Robles, Undergraduate Student, Loyola Univ. Chi., in Chi., Ill. (Feb. 7, 2013).


The United States Department of Homeland Security ("DHS") collects data on immigration and publishes a variety of annual reports. Two of the reports are the *Estimates of the Unauthorized Immigrant Population Residing in the United States,* ("Estimates") and *Immigration and Enforcement Actions* ("Enforcement Actions"). The *Estimates* report provides general demographic information including the total estimated number of unauthorized immigrants, the regions from which they emigrated, the states to which they have immigrated, and their gender and age. The *Enforcement Actions* report details information about the United States Customs and Border Protection ("CBP") and United States Immigration and Custom Enforcement ("ICE") actions such as apprehension, arrests, detentions, returns, and removals.

These reports do not convey information specific to youth. However, a report published by the Pew Hispanic Center describes several statistics about immigrant children. All three reports are significant because the information they convey offers some context for the potential impact immigration reform can have on society and on undocumented youths.

The *Estimates* report uses a residual method to generate the illegal immigrant population estimate. The residual method, as the report indicates, results from the remainder after estimates of the legally resident foreign-born population are subtracted from the estimate of the total foreign-born population. Legally resident foreign-born individuals include legal permanent residents, naturalized citizens, asylees, refugees, and certain aliens who were legally admitted temporarily, such as students. Most of the data used to generate such estimates are derived from the United States Census and the American Community Survey ("ACS") of the United States Census. Estimating population and demographics for an entire country is challenging and those challenges are amplified when trying to collect data about undocumented individuals. Further, the
Estimates report notes the variability in the report’s data because of sampling error and undercounts in Census information. Specifically, the 2011 Estimates Report states that approximately 11.5 million unauthorized immigrants were living in the United States in January 2011. The report notes that the unauthorized immigrant population likely has not increased since 2007 because the rate of immigration is affected by the U.S. unemployment rate, the economic conditions in Mexico, the number of apprehensions of unauthorized immigrants at U.S. borders, and the level of border enforcement. It is also reported that about 59 percent of the unauthorized immigrant population emigrated from Mexico, while other unauthorized immigrants came from El Salvador, Guatemala, Honduras, and China. The states that had the highest levels of unauthorized immigrant populations were California (2.8 million individuals), Texas (1.8 million), Florida (740,000), New York (630,000), and Illinois (550,000). Finally, the report estimated that 12 percent of the unauthorized immigrant population was less than 18 years old.

The Enforcement Actions, is another annual DHS report. This report illustrates the number and type of actions the CBP and ICE offices engage in each year. The report also offers helpful definitions of immigration enforcement terms. For example, the report defines an expedited removal as, “the removal of an alien who is inadmissible because the individual does not possess valid entry documents or is inadmissible for fraud or misrepresentation of material fact . . . The alien may be removed without a hearing before an immigration court.” The data reported is collected in a variety of DHS databases and is reported by event, which means that each action, regardless of whether the action is taken against the same individual, counts as a separate record.

The data reported for 2011 indicates the number of apprehensions, detentions, returns, and removals. An apprehension involves being identified by CBP or ICE and often results in removal, return, detention, or being issued a Notice to Appear before the immigration court. In 2011, there were 642,000 apprehensions reported. Detention is “the seizure and incarceration of an alien in order to hold him/her while awaiting judicial or legal proceedings or
return transportation to his or her country of citizenship.” In 2011, ICE detained 429,000 foreign nationals—an all-time high. The report also indicates that 324,000 foreign nationals returned to their home countries. A return is a confirmed movement of an inadmissible or deportable alien out of the United States not based on an order of removal. Finally, 392,000 individuals were removed, meaning “compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal.”

The Pew Hispanic Center released a report specifically related to youth in 2009 titled, *A Portrait of Unauthorized Immigrants in the United States*. The Pew Hispanic Center is a research organization and project of the Pew Research Center. The Pew Research Center works to provide information on the issues, attitudes, and trends shaping the U.S. and the world. The Pew Hispanic Center conducts studies on a wide range of topics. The 2009 report related to immigrant youth stated that there were 1.8 million unauthorized immigrant children—under age 18—living in the U.S. and that there has been no increase in that number since 2003. The report also stated that children of unauthorized immigrants, “both those who are unauthorized themselves and those who are U.S. citizens, make up 6.8% of the students enrolled in the nation’s elementary and secondary schools.” Additionally, in states such as Arizona, California, Colorado, Nevada, and Texas, at least one-in-ten students have parents who are unauthorized immigrants. Further, the research shows that in 2008, four million U.S.-born children lived with unauthorized parents, and 47 percent of unauthorized immigrant households consist of couples with children.

These three reports offer some numerical context to the large number of individuals that may be affected by immigration reform. As these reports indicate, it is estimated that a large number of unauthorized immigrants reside in the United States, a significant number of children have unauthorized parents, and many individuals are impacted by the enforcement actions of CBP and ICE. Further, these numbers should illustrate the need for immigration reform in the United States.
Immigration by the Numbers

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Review: Exploring *Half the Sky*

*By Elizabeth Scannell*

Shery WuDunn and Nicholas Kristof travel to five different countries to tell the stories of activists and survivors of gendered violence in *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (“Half the Sky”). Joining them are a variety of female celebrities, each paired with an activist organization working to empower girls across the globe. Each country brings new barriers and cultural norms, but the recurrent theme runs true: *violence against women and girls is a global crisis*.

Kristof begins the film with the story of how he and WuDunn began to explore global gender-based violence, contending that the two of them quickly found that “. . . the central human rights abuse of our age didn’t involve political repression, didn’t involve so many other things we focused on, but involved the chromosomes that people were born with.”

The film covers a variety of gender-based violence, including rape culture in Sierra Leone, sex trafficking in Cambodia, educational repression in Vietnam, genital mutilation in Somaliland, and economic empowerment in Kenya. In Sierra Leone, an activist characterized the 9,000 rape survivors her organization has seen over eight years as being composed of fifty-two percent children between twelve to seventeen years old, and twenty-six percent under twelve years-old. Somaly Mam, an activist in Cambodia, explains the systemic culture that allows sex slavery to persist, and even conducts a brothel raid with Kristoff.

Mam tells Kristoff and Meg Ryan about how she wants to help the girls she works with become children again, and also help them learn to laugh again. WuDann and others such as Gloria Steinman call attention to the prevalence of trafficking within the United States, and how a multi-leveled response is needed to combat it on a domestic and international scale. Activists in Vietnam focus on educational repression, and argue that education is the key to empowerment—while Gabrielle Union rides the seventeen-mile distance with a girl who rides her bike to get to school every day.
Review of *Half the Sky*

It is extremely difficult to measure the quantitative prevalence of sex trafficking within the U.S., but some activists estimate that over 1.6 million children have been caught in the sex trafficking syndicate within the U.S. The U.S. Immigration and Customs Enforcement averages that 800,000 children and adults are trafficked into the U.S. for prostitution or forced labor per year. Further, the average age of entry into the trafficking syndicate in the U.S. is twelve to fourteen years old.

Melanne Verveer, the U.S. Ambassador for Global Women’s Issues, recommends a “Heat at the Top and Heat at the Bottom” response to trafficking: government action, informed legislation, and consistent enforcement of those laws — as well as a societal and communal response to the devaluation of women and girls as human beings.

*Half the Sky* has drawn criticism for employing a “white savior” tone, particularly with its use of Western celebrities to serve as audience surrogates. Critics questioned why viewers needed celebrities to tell the stories of other women and girls, when those women and girls were able and willing to share their stories directly to the audience. They also argue that it is extremely problematic for Kristof and the various celebrities, all Western and privileged, to barge into a culture and use dramatics to trigger fleeting change for the sake of the cameras.

However, Kristof and other contributors are honest about that component early on in the miniseries, and Kristof directly addresses the problems with “outsiders” coming in and expecting an entire culture to change. He states very honestly that the famous women who accompany him will draw attention to the film and therefore the issues, and thus the ends justify the means. In contrast to what critics say, the fundamental message of *Half the Sky* is empowerment, and how progress for women and girls will benefit the greater society. These women and girls are the solution to many problems communities face. As Mam poignantly puts it, “This country cannot be a better country if women are not part of the solution.”
Review of *Half the Sky*

**Sources:**


In the Courts: Special Immigrant Juvenile Status and the Problem of Federal Consent to State Jurisdiction

By Katherine Hinkle

Special Immigrant Juvenile Status (“SIJS”) was created by the Immigration Reform Act of 1990, and amended by the Trafficking Victims Protection Reauthorization Act of 2008, to protect undocumented immigrant children who had been abused and neglected and to give them a path to citizenship. However, a 1997 amendment to the Immigration Reform Act allowed the Federal Government to step in and deny children seeking SIJS the opportunity to present their case for permanent residency if the federal government had reason to believe that they were seeking SIJS for reasons other than protection from abuse. Courts have repeatedly found that this amendment gives the federal government broad powers to deny children SIJS. As a result of these developments, vulnerable immigrant youths are being denied the protection they were originally guaranteed under SIJS.

Immigrant youths, including the undocumented, may apply for SIJS status in order to seek protection from abuse or neglect, proceed on the path to permanent residency, and get their “green card.” In order to receive this special status, the child must have been declared dependent by a juvenile court in the United States. Additionally, a state court must determine that reunification with the juvenile’s parents is impossible due to abuse, neglect, or abandonment.

In 1997, the process to apply for SIJS became more complicated when the federal government became more involved and took the determination of abuse, neglect, and abandonment out of the hands of state courts. When an immigrant youth is in the custody of the United States, the Attorney General must expressly consent to the juvenile pursuing SIJS in state court by allowing the juvenile court to have jurisdiction over the traditionally federal matter of immigration. In other words, the Attorney General, or a lower official appointed by the Attorney General, serves as a gatekeeper to state court proceedings. The federal government must approve the petition to ensure that SIJS is not being sought for means other than protecting the child from abuse and neglect.

Seeking SIJS is already challenging for vulnerable immigrant youths, but the most troublesome area of an SIJS proceeding is the issue of federal consent to SIJS. The federal government has final say over whether the child may pursue SIJS, even before a state court gets the chance to determine if the child meets the criteria. Courts
have upheld federal denials of consent in cases where there is clear evidence of abuse, denying the child the right to plead his or her case to the state court, in contravention of Congressional intent to leave such determinations of abuse, neglect, and abandonment to the expertise of state courts.

In a U.S. Court of Appeals Third Circuit case, *Yeboah v. U.S. Department of Justice*, a young man from Ghana was denied consent to seek SIJS because the Immigration and Naturalization Service (INS), acting on behalf of the Attorney General, believed that the boy was sent to America in order to procure citizenship for himself and bring his family over from Africa. A child psychologist found that the boy’s father had seriously abused him while they were living in Ghana, but the INS still refused to grant consent for SIJS, even though fact-finding of this nature is traditionally left to the family court system.

The Third Circuit found that any request for a dependency hearing for a child in the custody of the United States is entirely dependent on an INS director’s consent to such proceedings. The court reasoned that it was proper for the INS director to make a determination that the child’s primary purpose in seeking SIJS was not to gain protection from abuse or neglect, even when there was mixed evidence on the issue. This finding was in stark contrast to Congressional intent for SIJS, which clearly left the determination of dependency, abuse, and neglect to the more experienced state juvenile courts. Nevertheless, the Third Circuit affirmed the federal government’s ultimate authority in the SIJS procedures to make a preliminary determination that SIJS is sought due to abuse or neglect, and thus substitute the federal government officials’ own judgment for that of the state court.

Additionally, federal courts have held that the Department of Homeland Security (DHS), which took over the INS’s role in SIJS proceedings after its creation in 2002, may properly refuse to render a decision on a child’s request for consent to SIJS proceedings. In *F.L. v. Thompson*, a federal district court for the District of Columbia found that, not only may the federal government refuse to allow a child’s matter to be heard in state court, but it may also keep a child in limbo by refusing to grant or deny consent at all. The court found
that the revision of the Immigration Reform Act to require federal consent was “intended to curtail the granting of special immigrant juvenile status . . . [and] demonstrates an intent to remove immigration decisions from the exclusive control of juvenile courts and the social agencies affiliated with them.” Therefore, the F.L. decision strongly suggests that the purpose of federal consent to SIJS is to make it harder for children to receive the protections of SIJS.

Furthermore, because federal courts will review the actions of the federal government only to assess if such determinations are “arbitrary and capricious,” youth who are denied SIJS proceedings will rarely succeed in challenging a federal determination of ineligibility. In order to prove that the federal government’s determination was incorrect, a juvenile will have to prove that the DHS had no reasonable basis to make the determination. With such a deferential standard of review, once the federal officials have chosen to deny consent, it will be almost impossible for an immigrant youth to overturn the decision.

The judicial trend towards limiting access to SIJS status through denying federal consent has made seeking SIJS protection even more challenging for these vulnerable youths. By interpreting changes to the governing law as limits on access to SIJS, federal courts are denying these children the chance to present their case to state courts, which have the requisite expertise to determine whether there is sufficient evidence of abuse, neglect, and abandonment, to warrant SIJS. The complex issues of federal consent to SIJS means that some youths will never receive the benefit of being heard in juvenile court, where judges are better equipped to handle the types of determinations inherent in SIJS status.

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Special Immigrant Juvenile Status

Around the World: Illegal Immigrants and the Cost of Higher Education in the U.K.

By Amanda M. Walsh

In the most recent decades, the United States has witnessed an increased dialogue around the right to higher education for undocumented youth. At the center of this debate has been an understanding that children brought illegally to the U.S. before the age of sixteen were unable to make the decision to enter the country illegally, and thus cannot be held accountable for their undocumented status. Through this reasoning, the U.S. Supreme Court has held that undocumented children should have equal access to primary education. This decision has influenced recent legislation that provides a pathway to citizenship, which can allow undocumented youth to pursue higher education and qualify for financial aid and in-state tuition costs that are available to U.S. citizens.

Alongside the U.S., other countries face policy challenges due to illegal immigration. In 2009, there were an estimated 725,000 illegal immigrants present in the United Kingdom. Today, the number of illegal immigrants has increased to approximately 863,000, with an estimated 120,000 children who are illegal immigrants. These numbers have led to new government efforts to deport illegal immigrants as well concerns about the children’s welfare, children’s educational needs, and the economic cost of immigrant families present in the U.K.

The debate in the U.K. around illegal immigration swings between assisting undocumented children and their families to gain citizenship and removing them from the country through deportation proceedings. Recently, the U.K. Border Agency (“UKBA”) increased pressure on finding ways to remove illegal immigrants from the country and created tougher controls to protect the border.

In fact, undocumented youth and their families have little support from both the general public and the U.K. government. The U.K. defines an illegal entrant as an individual present in the U.K. who has either unlawfully entered or sought to enter in breach of a deportation order. An illegal entrant is also defined as a person who
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entered or sought to enter by means, such as deception by a third person. Unlike the U.S., however, children who are brought into the U.K. illegally by their parents’ deception may be viewed under the law as equal to adults who enter by deception of a third party. These children can then be treated as if they were active participants in their parents’ deception, which can lead to deportation. For those youth who manage to avoid deportation, they may face other challenges, such as obstacles that prevent access to education.

Similar to U.S. laws that state all youth, including undocumented youth, have a right to free, public education, each Local Education Authority (“LEA”) in the U.K. must provide an education to each child between the ages of four and sixteen. However, despite the LEA’s duty to provide this compulsory education to all children, many undocumented youth are still denied access. Many youth face barriers including difficulty obtaining forms of identification, a parent’s fear of being detected, and local school discretion. Further, the LEA’s do not have a duty to provide education before the age of four or after the age of sixteen. College and other forms of higher education can remain outside the reach of undocumented children raised in the U.K., as a result of the legal and financial barriers. In fact, if an undocumented child with limited funds pursues higher education, they will not qualify for financial aid, called Learner Eligibility funds, because they are not a legal resident of the U.K.

Similar to the U.S., universities within the U.K. differentiate tuition costs based on residency. These costs are called “home fees,” which are lower tuition rates for those students who have lived in the U.K., and “overseas fees” are higher tuition rates for students who are not from the U.K. In England, to qualify for the lower home fees, a student must fall into one of ten categories, all of which require that the student be “ordinarily resident” in the U.K. on the first day of classes. Ordinarily resident is defined as an individual who has habitually, normally, and lawfully resided in the U.K. Therefore, every category excludes undocumented children from qualifying for home fees.

While some politicians support relief for undocumented youth and their families, such as qualifying for home fees, the strong push
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against illegal immigration has prevented any immigration reform legislation from passing in the U.K. Without legislation to allow undocumented youth, who have resided in the U.K. for a long period of time, to qualify for home fees or to secure a path to citizenship, which would allow automatic qualification for home fees, many youth will be unable to afford higher education. The only current option for undocumented youth is to apply for asylum as a refugee, which would put them in a category that qualifies them for home fees and Learner Eligibility funds.

However, undocumented youth can only seek asylum if they are fleeing persecution in their home country. Unfortunately, this is not a viable option for all undocumented youth and can put them at risk for deportation. Only one-third of asylum applications are granted yearly and once an application is rejected, the undocumented youth can face immediate removal from the U.K. Because the chances of being granted asylum are slim, these youth have no remedy either to a pathway to citizenship or to meet qualifications for lower education costs.

Researchers and some politicians support the need for new governmental policy to protect the interests of all children within the borders of the U.K., whether by guaranteeing education opportunities or providing pathways to citizenship. One possibility to protecting these interests would be to apply the reasoning of a recent U.K. Supreme Court judgment, ZH (Tanzania) v. Secretary of State for the Home Department. ZH (Tanzania) involved the deportation of undocumented immigrant parents who had children who were born in Britain and were, therefore, legal citizens. The immigrant parents fought their deportation, arguing that it would either separate them from their children or force the removal of their children who are allowed to remain in Britain. The Court ultimately decided that the best interests of the child, as mandated by the United Nations Convention on the Rights of the Child, was a greater priority than a parent’s immigration status. Therefore, the Court affirmed that decisions regarding a parent’s or a child’s immigration status must not go against the best interests of a child.

This holding can be expanded to allow pathways to citizenship and access to higher education and lower tuition fees for
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undocumented youth by arguing that it is in the child’s best interest to have access to these options, regardless of their immigration status. This is especially true if they have resided in the U.K. for the same period of time as legal citizens. The best interest standard, despite legal immigration status, can be used to ignite legislation that provides pathways to citizenship by removing the blame for a child’s illegal immigration, which could stop automatic deportation of children brought to the U.K. below a certain age, or by allowing access to reduced costs for higher education.

Additionally, removing the requirement of legal residence from the qualifying categories for home fees is an alternative method to protect the best interests of undocumented youth who are pursuing higher education. In lieu of the legal residence qualification, universities can institute other requirements for undocumented youth, such as stating that the youth must have resided in the U.K. since before a certain age.

By using the best interest standard or flexibility around the concept of legal residence when determining the cost of higher education, the U.K. would follow the U.S.’s current legislative attempts to protect the overall welfare of undocumented youth. Although the U.K. has yet to propose such legislation, the recent court decision provides an opportunity for the government to do so.

Sources:

Illegal Immigrants and the Costs of Higher Education in the U.K.


In May 1975, Texas passed a law withholding state funds from local school districts for children who were not legally admitted into the United States. The law also allowed public schools the right to deny enrollment for children who were not legally admitted. Effectively, the Texas law denied illegal aliens access to free public education.

The law was quickly challenged and made its way to the Supreme Court in the case of Plyler v. Doe. In a 5-4 decision, the Supreme Court found the law unconstitutional. The Supreme Court stopped short of declaring education a fundamental right, but also found the state interest to be insufficient. Texas claimed that providing an education to undocumented children created a financial burden on the state. The Court found a financial reason to be unsubstantial, considering that there was no evidence that illegal immigrant children cost substantially more to educate than legal immigrant children. Furthermore, the majority considered that the effect of the Texas law would be extremely detrimental because the law would create “a subclass of illiterates within our boundaries, surely adding to the problems and cost of unemployment, welfare, and crime.”

The Plyler ruling has faced numerous challenges since 1975. In the 1990s, the Republican Congress almost pushed through a bill that would have granted states the option of denying illegal immigrants access to public education. In 1994, California voters approved Proposition 187, which denied illegal immigrants access to social services, including public education. A district court declared the law unconstitutional and California decided not to appeal.

Opposition to the Plyler ruling continues today. States have turned to alternative means to deter illegal immigrant children from accessing public education. Instead of laws directly denying access to
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public education, many states have passed legislation requiring schools to record and monitor the immigration status of the children upon registration. This has the effect of deterring parents from registering children at public schools in fear that their illegal status could be made known to the U.S. Immigration and Customs Enforcement or other government agencies. Though student immigration status systems do not directly deny illegal immigrant children access to public education, these systems have a chilling and deterring effect that creates a sufficient burden on immigrant families, such that many children and parents refuse to access these resources. Due to these secondary effects, student immigration tracking systems should be found unconstitutional according to the Plyler ruling.

Student immigration tracking systems have gained traction in several states over the last few years. In 2010, Arizona lawmakers introduced a bill that would mandate all school districts to collect and report data on “aliens who cannot prove lawful residence.” The Arizona Department of Education would then report on the costs associated with educating undocumented children to the state legislature. In Texas, state lawmakers introduced similar legislation that would require school districts to determine whether a child is undocumented. Texas also justified its system as an analysis of the costs of illegal immigration.

Tracking systems have not passed without challenge. In 2008, Maryland lawmakers introduced legislation requiring public schools to count the number of undocumented students. Students who could not provide proof of their lawful status would be recorded and tracked. The Maryland legislature claimed the tracking system was necessary to determine the cost of providing education for undocumented students.

Later that year, the Maryland State Board of Education took under review whether the local school system had the authority to collect such data. In March 2009, the School Board decided that “the impact of illegal immigrant students on the school system's budget is not a valid public purpose under the ruling and reasoning of Plyler v. Doe.” Because the purpose of the legislation was not valid, the School Board ruled that schools were not authorized to collect
Student Immigration Tracking Systems

Student immigration status data.

On June 2, 2011, Alabama passed the most aggressive tracking proposal. The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, also known as H.B. 56, mandates that all K-12 public schools determine whether a child wishing to enroll was born outside of the U.S. or born to undocumented parents. If a child is unable to provide a birth certificate demonstrating that the child was born within the U.S., he has to provide some other form of official documentation or attestation by a parent as to his immigration status. If neither of these is presented within thirty days, the child is deemed to be “an alien unlawfully present in the United States.” The Alabama Department of Education then uses this data to create an annual report detailing the costs associated with educating undocumented students.

The Alabama statute encompasses more than just tracking systems. The law also requires employees of the state, including school employees, to report any violation of the law. For example, in May 2010, Michelle Obama visited a suburban Washington D.C. school. A second grader asked if “Barack Obama is taking everybody away that doesn't have papers?” Mrs. Obama replied that it is something that needs to be worked on. The young girl continued, disclosing “but my mom doesn’t have any papers.” Had this occurred in an Alabama elementary school, school officials would have been required to report the child’s mother’s violation.

This mandatory reporting requirement puts school officials in a difficult situation. Often times, immigrant students, legal and illegal, are misinformed about what is required or the different options available to access higher education. These students’ only source of information comes from school officials, teachers, and counselors. With the new Alabama legislation, school employees may be reluctant to aid likely immigrant students for fear that a violation could be innocently disclosed. The school official would then be obligated to report the violation or face the potential of a Class A misdemeanor, which can result in a sentence of up to one year in jail or a $6,000 fine.

Section 13 of the Alabama law raises additional concerns due to its non-clarity. The section makes it a crime to “conceal, harbor, or
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shield an alien from detection in any building, place, or means of transportation . . . if the person knows the alien remains in the U.S. in violation of Federal Law.” Depending on the interpretation, a teacher, a principal, or even a bus driver could conceivably be held in violation of the criminal statute. Even if no one is prosecuted, the vagueness of the law is likely to create a level of fear in school officials, deterring them from their usual daily interactions with students.

The numerous provisions of the Alabama legislation create a substantial burden on undocumented children and their families. Undocumented immigrant families, often unclear about the registration process at schools, could be instantly deterred from enrolling their child simply because of the immigration questions. Even if the child is a U.S. born citizen, if the parent is an undocumented alien, the parent could be dissuaded from registering the child in fear that the parent may be found and deported. Immigration tracking systems violate *Plyler* due to their secondary effects. The information that the schools demand in order to register is so sensitive in nature that many parents decide not to register their children in the state and, instead, move out of the state. The tracking system has the effect that the *Plyler* decision sought to prevent. Undocumented children end up without access to public education due to state action. This indirect result should be sufficient to find all immigration tracking systems unconstitutional.

Even if *Plyler* does not apply to tracking systems, the laws still create a hardship on undocumented children that is not faced by non-immigrant students. As undocumented children are protected under the Equal Protection Clause, the state would still need to provide a compelling interest for the legislation. In *Plyler*, the Supreme Court found that financial concerns did not constitute a compelling interest. This opinion was also expressed by the Maryland Board of Education when deciding whether local schools could track immigration status. The purpose of the Alabama law is to determine the financial effect of undocumented students. Though undocumented students have a financial effect, there is no evidence that the effect is substantial. In *Plyler*, this was the deciding factor in determining whether Texas had a compelling interest. The Supreme
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Court understood that undocumented children had some effect; but with no evidence that the effect was substantial, the state’s interest was not compelling. Because there is still no evidence that undocumented immigrants have a substantial financial effect on school systems, it is likely that tracking systems would be found unconstitutional under the Equal Protection Clause.

The tracking systems being implemented in Alabama, Arizona, and Texas have the effect of excluding undocumented children from the public education system. By requiring evidence of immigration status, these states deter parents from registering their children at public schools for fear that the child or the parent will be deported back to their home country. In Plyler, the Supreme Court determined by a 5-4 decision that undocumented children could not be denied a public education. Immigration status systems are unconstitutional because they deny undocumented students a public education. In addition, these systems are simply bad policy. Twenty-five years after the Plyler decision, the plaintiff from that case, Jim Plyler has changed his mind on denying access to public education. He believes that had he won the case, it “would have been one of the worst things to happen to education.” Requiring a student’s immigration status during registration has been found unconstitutional in Texas, Alabama, and Arizona. However, attempts are still being made by states to create a tracking system that can pass constitutional muster. To prevent serious societal harm, and because they violate Plyler, immigration status systems should be found unconstitutional.

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Legislative Update: Michigan Joins Majority of States Allowing Driver’s Licenses for Immigrants who are Lawfully Present Under DACA

By Erin Wenger

The topic of immigration reform has become a widely discussed and hotly debated issue in the United States during the 21st Century. In his 2013 State of the Union address, President Obama discussed the need for comprehensive immigration reform that addresses illegal immigration, as well as accessible pathways to citizenship. President Obama referred to bipartisan efforts currently underway to create and pass immigration reform bills, the results of which have yet to be seen. However, some signs of progress are visible as the United States Senate formally initiated hearings on immigration reform on February 13, 2013.

The present level of immigration in the United States is at the highest number in the country’s history. Of the current immigrant population, there are nearly 1.8 million individuals who are unauthorized immigrants that could be eligible, or become eligible, for a deferred action initiative. In June 2012, the Obama Administration, through the Secretary of Homeland Security, announced that immigrants meeting certain criteria could apply for deferred action on removal proceedings under the Deferred Action for Childhood Arrivals policy (“DACA”). Under DACA, any removal proceedings would be delayed for the immigrant for two years, and extensions beyond that period could be considered.

Among the qualifications for DACA, a person must: (1) be under the age of thirty-one as of June 15, 2012; (2) have arrived in the United States prior to his or her sixteenth birthday; and (3) be enrolled in school, have graduated from high school, have obtained a general education development (“GED”) certificate, or be honorably discharged from the military. If an individual qualifies for DACA, he or she will not be granted legal status, but he or she will also not be considered to be unlawfully present in the United States during the Deferred Action period. The individual may attend school or possibly
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gain employment during the Deferred Action stage. However, DACA does not remove all obstacles that may be involved in pursuing those activities, such as state-imposed restrictions on gaining a driver’s license to simply travel to and from school or place of employment.

Many states have laws that require an applicant for a driver’s license to not only be a resident of that state, but to also provide proof of citizenship, lawful status, or a Social Security number. These types of requirements can prevent an illegal immigrant from getting a driver’s license if he or she cannot provide adequate documentation. Individuals who qualify for DACA, however, are able to apply for a Social Security number, and, therefore, would presumably be able to apply for a driver’s license. Additionally, the federal government has officially announced that qualified individuals under DACA are *not* unlawfully present in the United States. Most states have thus recognized that this lawful presence and ability to get a Social Security number would allow these individuals to qualify for driver’s licenses, even if a state statute prohibits granting licenses to unlawful immigrants.

Unfortunately, not all states have interpreted DACA and their own statutes regarding driver’s licenses to coincide in this manner. Because DACA is a discretionary determination made with regard to enforcing removal proceedings, and not a federal law granting lawful status to immigrants, individual states can still pass their own laws restricting benefits to those that have lawful status and, in doing so, can choose to not recognize lawful presence as qualifying under their standards.

Prior to February 1, 2013, only three states continued to prevent DACA recipients from being eligible to obtain driver’s licenses—Michigan, Arizona, and Nebraska. However, on February 1, 2013, Michigan took the necessary steps toward leaving this minority group by announcing an official policy change. The Michigan Secretary of State’s Office declared that it would change its policy pursuant to the federal government’s determination that DACA conferred legal status on recipients for the specified time period allowed under DACA. Therefore, as of February 19, 2013, noncitizens living in Michigan who qualify for Deferred Action are eligible to apply for Michigan driver’s licenses for the pendency of
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their deferred status under DACA. Making this official announcement not only clearly establishes Michigan’s policy for the public, but also brings the state in line with the federal government’s position with regard to the legal status of immigrants that qualify for DACA.

In order to prevent confusion or misinterpretation of legal authority, it would be advisable for states to make their policies clear with regard to allowing DACA recipients to qualify for state driver’s licenses, as Michigan has now done. This can also be accomplished through enacting new legislation or an updated vehicle code provision, as in the case of Illinois. The Illinois Vehicle Code’s current provisions concerning the issuance of driver’s licenses went into effect on January 1, 2013. The Illinois statute governing driver’s license applications requires a residence address and a Social Security number, but it does not contain a provision regarding immigration status of an applicant. Similarly, Iowa’s statute on driver’s license applications does not explicitly state that lawful citizenship status is required, but it does require a Social Security number unless the applicant is a foreign national temporarily present in Iowa, and it requires certification of residency within Iowa. Therefore, those who qualify under DACA and subsequently obtain a Social Security number would be able to apply for a driver’s license in Illinois and Iowa.

These states’ statutes are in stark contrast to Arizona’s licensing requirements. Arizona’s statute explicitly states that a driver’s license shall not be issued to an applicant who cannot prove that his presence in the United States is authorized under federal law. Although Arizona’s current statute was enacted in 2008, it remains one of only two lingering states that refuse to recognize individuals who are granted deferred action under DACA as having a lawful presence in the United States, despite the federal government’s support for such recognition.

Like Arizona, Nebraska also does not allow DACA recipients to obtain driver’s licenses. Nebraska’s statute requires that applicants “present valid documentary evidence that he or she has lawful status in the United States,” and lists nine possible documents that could fulfill that requirement. Additionally, the statute provides that other
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documentation of lawful status can be produced to fulfill the criterion, if approved by the Director of Motor Vehicles. When considering Nebraska’s statutory language, it would appear that if the Director acknowledged DACA as providing a lawful status to qualified recipients, they would be eligible for driver’s licenses in that state. However, Nebraska has yet to take such action.

Only time will tell if the remaining two states adjust to follow the lead of the other forty-eight and allow DACA recipients to obtain driver’s licenses. The American Civil Liberties Union (“ACLU”) has a pending lawsuit in Arizona challenging this very issue, and across the United States there continues to be a push for immigration reform that includes a pathway to citizenship for individuals meeting criteria similar to that which is contained in DACA. Given that President Obama touched upon immigration issues in his 2013 State of the Union address, which was given shortly after beginning his second term as President of the United States, the next four years could be very dynamic in immigration policy.

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Spotlight on: The Young Center for Immigrant Children’s Rights

By Elizabeth Youakim

Each year over 80,000 unaccompanied minors seek entry to the United States. In 2010, United States Immigration Authorities took more than 8,000 unaccompanied immigrant children into custody at borders and airports. As of 2013, more than 700 of these children are in federal custody in Texas alone and countless others remain in custody across the nation. The children come from around the world and for various reasons; some come to flee political turmoil, poverty, and child labor, while others are motivated to be reunited with family members already in the United States. Despite these variances, these children have one thing in common: they venture across United States borders alone, without the help or guidance of an adult guardian.

Named after one of the first child clients they served, the Young Center for Immigrant Children’s Rights (“Young Center”) advocates for the best interests of unaccompanied immigrant and refugee children in the United States. Although the Young Center is based in Chicago, Ill., they just opened a new office in Harlingen, Tex. in 2013. Staff attorneys, law students, social work students, and other volunteers receive training to serve as either Child Advocates or friends of the child. The volunteers get to know the children, determine why the children are in the United States, and identify the next steps for the child. Some children qualify for asylum or special protective visas. Regardless of where the children eventually end up, all of the volunteers and advocates protect the best interests of the children they serve.

Currently, the Young Center is sponsored by the Tides Center, a nonprofit organization that provides fiscal sponsorship to other organizations. Other organizations, such as the Chicago Bar Foundation, support the Young Center. Additionally, the organization asks for private donations from individuals.

Like many organizations dedicated to serving vulnerable populations, the Young Center relies on volunteers to continue their mission. The Young Center trains volunteers to become Child Advocates for unaccompanied immigrants. Although the Young Center has a need for bilingual volunteers, the organization welcomes volunteers from all backgrounds, professions, and cultures who are at least twenty-one years old. Volunteers attend a two-day training session covering child development, effective communication with children, United States immigration laws, and the issues facing unaccompanied immigrant children. After successfully completing
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the training, each Advocate is assigned to an individual child. The Advocates continue to receive training, support, and supervision from the Young Center throughout this process. In turn, the Advocates must maintain constant communication with the Young Center, the child’s case manager at the shelter, and the child’s attorney representing the child.

In addition to training, Advocates commit to serving the needs of their specific child. This includes: visiting the child at least once a week, helping the child think through options and decisions, and accompanying the child to court hearings and other important meetings or interviews. Additionally, the Advocate must conduct research on the current situation in the child’s home country, draft a written report regarding the best interest recommendations for the specific child, and advocate for the best interests of the child.

In 2004, the Young Center received seed funding from the United States Department of Health and Human Services Office of Refugee Resettlement (“ORR”) in order to develop a program where guardians ad litem (“GAL”) could assist unaccompanied immigrant children. In child protection proceedings or other proceedings involving incompetent adults, court-appointed GALs typically represent the minors and incompetent adults in order to represent the best interests of the individual. In this role, the attorney must investigate the case, interview the children and the parties involved, and submit a written report to the court regarding best interests recommendations. United States immigration courts, however, do not recognize the inherent differences between children and adults and do not distinguish between them in immigration and deportation proceedings.

With the help of the ORR funding, the Young Center developed a model program whereby both experienced attorneys and volunteers actively worked to serve as child advocates for unaccompanied immigrant minors. The attorneys have experience in both immigration and child welfare, combining the GAL model with the immigration proceedings. Additionally, by working on establishing a best interests standard for juvenile immigration proceedings, they hope to change the current immigration justice
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system into one that recognizes children as a class of their own and focuses on the safety and well being of this vulnerable population.

Children in immigration proceedings experience drastically different conditions than children in domestic child protection cases. Once immigration authorities take custody of an unaccompanied minor, the child faces removal proceedings in Immigration Court. These proceedings are adversarial and do not distinguish between adults and children. Children must adhere to the same rules of evidence and procedure as adults. Contrast this with the traditional child protection case, where the court appoints a GAL and must consider the child’s best interests before handing down a decision on whether to remove a child from his or her home.

In partnership with the Vera Institute of Justice, a nonprofit organization dedicated to improving justice and safety systems nationally, the Young Center has recommended expansion in three additional sites across the nation. The Young Center will tailor its programs and procedures to meet the specific needs of the site and its community. Until these new sites are fully operational, the Young Center is currently training volunteers from specific sites so they can be assigned as Child Advocates in complex cases. These volunteers will receive the same training, support, and guidance as volunteers in Chicago and Harlingen.

Additionally, the Young Center advocates for national policy change. First, the organization is working on protecting a child’s right to be raised by their parents, in accordance with Article 9 of the Convention on the Rights of the Child. The Young Center has also advocated against the increase of detention centers for unaccompanied minors along the United States-Mexico border. The organization posits that these detention centers place additional barriers between children and reunification with their families.

The Young Center lists fourteen principles that guide the organization and the work of their attorneys and Advocates. The principles come from international standards set forth by the United Nations as well as domestic proceedings. The organization focuses on caring for the safety and well being of the child involved. For example, “In all actions concerning children, the best interests of the child shall be a primary consideration.” The Young Center also
The Young Center for Immigrant Children’s Rights recognizes this as a right and not a privilege, stating, “Every child has the right to such protection and care as is necessary for his or her well-being.” The organization also goes so far as to suggest policy considerations, such as, “Organizations, government departments and professionals involved in providing services to unaccompanied children must cooperate to ensure that the welfare and rights of unaccompanied children are enhanced and protected.”

One story featured on the Young Center’s website highlights how advocates use these principles to guide their recommendations for the children they serve. The story involved two siblings who had been abandoned and abused by their family. At the request of an attorney, Child Advocates prepared an in-depth best interest report and provided recommendations based upon their findings, which was then submitted to the Immigration Judge. As a result of this report, the two siblings were granted asylum, which allowed them to lawfully stay in the United States. This story highlights how the Young Center embraces its guiding principles and advocates for unaccompanied children.

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