

Summer 2008

## Make the Dream a Reality: Why Passing the Dream Act is the Logical First Step in Achieving Comprehensive Immigration Reform, 41 J. Marshall L. Rev. 1251 (2008)

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### Recommended Citation

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# MAKE THE DREAM A REALITY: WHY PASSING THE DREAM ACT IS THE LOGICAL FIRST STEP IN ACHIEVING COMPREHENSIVE IMMIGRATION REFORM

AIMEE DEVERALL\*

## I. INTRODUCTION

Dan-el Padilla endured a childhood that included living in homeless shelters, being abandoned by his father and thirteen separate moves from one slum apartment to another.<sup>1</sup> So it was all the more commendable when, after maintaining a 3.9 grade-point average, Dan-el was named the salutatorian of his class at Princeton and delivered a commencement address in Latin.<sup>2</sup> When Dan-el, whom one professor predicts will be “one of the best classicists” of his generation was awarded a two-year scholarship to Oxford University, he faced a painful reality: Although he grew up in this country, he is here illegally and under current law, upon leaving the United States, is barred from applying for reentry for ten years.<sup>3</sup> Among other things, the ten-year bar would block Dan-el from returning to attend the high school graduation of his U.S. citizen brother.<sup>4</sup> Moreover, should he choose to forgo the scholarship and remain in the United States, he is not authorized to work here due to his immigration status.<sup>5</sup>

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\*J.D. Candidate, The John Marshall Law School, 2010; B.A., Miami University. Heartfelt thanks to my friends and family for their assistance and encouragement throughout the process of writing this Comment, especially to Sue Ann and Pete Deverall, who I am lucky to have as parents.

1. Miriam Jordan, *Princeton's 2006 Salutatorian Heads to Oxford, Still an Illegal Immigrant*, WALL ST. J., Sept. 14, 2006, at B1.

2. *Id.*

3. Miriam Jordan, *Illegal at Princeton*, WALL ST. J., Apr. 15, 2006, at A1; see also 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2000) (barring any alien who “has been unlawfully present in the United States for one year or more” from seeking readmission within ten years from the date of the alien’s departure from the United States).

4. Jordan, *supra* note 1. Statistics indicate that “mixed status” families, containing at least one undocumented parent and at least one U.S. citizen child, are common. JEFFREY PASSEL, PEW HISPANIC CTR., *THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.* 8 (Mar. 7, 2006). Approximately 3.1 million children who are U.S. citizens by birth live in families containing an unauthorized parent. *Id.*

5. 8 U.S.C. § 1324a (2000) (making it unlawful to knowingly employ any

There are countless young adults like Dan-el who have grown up in the United States after being brought here illegally by their parents.<sup>6</sup> An estimated 65,000 undocumented children graduate from U.S. high schools each year.<sup>7</sup> Upon graduating, an uncertain future looms over them because undocumented students are ineligible for federal loans to finance higher education<sup>8</sup> and in-state tuition benefits,<sup>9</sup> prohibited from serving in the U.S.

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“unauthorized alien”). Dan-el Padilla ultimately accepted the scholarship from Oxford University. Michael Juel-Larsen, *Padilla '06 Receives One-Year Visa*, DAILY PRINCETONIAN.COM, Apr. 27, 2007, <http://www.dailyprincetonian.com/archives/2007/04/27/news/18295.shtml>. While overseas, he obtained an ineligibility waiver, which allowed him to apply for and ultimately receive an H-1B visa. *Id.* He works as a part-time research assistant with his Princeton thesis advisor and is able to travel back and forth between England and the U.S. *Id.* The visa is only valid for one year and upon its expiration Dan-el will be forced to apply for another ineligibility waiver and travel visa. *Id.*

6. See, e.g., Tim Padgett, *Can Two Kids Alter Immigration Law?* TIME, Aug. 2, 2007, available at <http://www.time.com/time/nation/article/0,8599,1649483,00.html> (chronicling teenage brothers Alex and Juan Gomez' fight against deportation after being brought to the United States as toddlers by their parents); Mark Brown, *Oscar a True Immigration Success Story*, CHI. SUN-TIMES, Sept. 4, 2007, <http://www.suntimes.com/news/brown/540787,CST-NWS-brown04.article#> (reporting on an undocumented student in his third year at Governors State University carrying a 4.0 grade-point average and working his way through school); News Release, National Council of La Raza, Extraordinary College Students Fighting Deportation (July 25, 2006), <http://www.nclr.org/content/news/detail/41362/> (identifying several undocumented college students testifying before Congress who “have made great accomplishments” but “will be forced to take their talents elsewhere and leave the United States due to current law”).

7. IMMIGRATION POLICY CTR., *Dreams Deferred: The Costs of Ignoring Undocumented Students* (Oct. 18, 2007), available at [http://www.aifl.org/ipc/policybrief/policybrief\\_2007\\_dream.pdf](http://www.aifl.org/ipc/policybrief/policybrief_2007_dream.pdf). An estimated 715,000 undocumented children between the ages of five and seventeen currently attending U.S. primary and secondary schools could become eligible for adjustment of status under the DREAM Act. MIGRATION POLICY INSTITUTE, *New Estimates of Unauthorized Youth Eligible for Legal Status Under the DREAM Act 1* (Oct. 2006), [http://www.migrationpolicy.org/pubs/Backgrounder1\\_Dream\\_Act.pdf](http://www.migrationpolicy.org/pubs/Backgrounder1_Dream_Act.pdf).

8. 20 U.S.C. § 1091(a)(5) (2000).

9. 8 U.S.C. § 1623 (2006). Despite the federal statute, ten states (Texas, California, Utah, New York, Oklahoma, Washington, Kansas, Illinois, New Mexico, and Nebraska) currently offer in-state tuition benefits to undocumented students who: (i) have attended high school for a certain number of years in the state; (ii) have graduated from high school in the state; and (iii) sign an affidavit promising to apply for permanent residency whenever they become eligible to do so. Josh Bernstein, NATIONAL IMMIGRATION LAW CTR., *Court Upholds California In-State Tuition Law (AB 540)* (Oct. 10, 2006), <http://www.nilc.org/immlawpolicy/DREAM/Dream006.htm>. A California court upheld the state policy as not conflicting with federal law because the state permitted all U.S. citizens to qualify for the in-state rate if they met the previous high school attendance and in-state graduation requirements. *Martinez v. Regents of the Univ. of Cal.*, No. CV 05-2064, 2006

military<sup>10</sup> and cannot work in the United States legally.<sup>11</sup>

Aware that many of these undocumented children “grew up [in the United States], went to school here, and want to be productive members of our society,” Senators Richard Durbin (D-IL) and Orrin Hatch (R-UT) introduced the Development, Relief, and Education for Alien Minors Act (DREAM Act).<sup>12</sup> The DREAM Act would enable undocumented students who (i) have lived in the United States for at least five years, (ii) have graduated from high school, and (iii) are “of good moral character” to apply for conditional permanent resident status.<sup>13</sup> They could then petition for removal of the conditional status after serving honorably in the Armed Forces for at least two years or successfully attending at least two years of college.<sup>14</sup>

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WL 2974303, at \*3 (Oct. 4, 2006).

10. 10 U.S.C. § 504 (2000).

11. 8 U.S.C. § 1324a (2000).

12. E-mail from Richard Durbin, U.S. Senator, to author (Sept. 21, 2007, 10:45:33 EST) (on file with author).

13. DREAM Act of 2007, S. 2205, 110th Cong. § 3(a)(1) (2007). Lawful permanent resident status is frequently referred to as a “green card.” United States Citizenship and Immigration Services Home Page, <http://www.uscis.gov> (last visited Jan. 30, 2008).

14. DREAM Act of 2007, S. 2205, 110th Cong. § 4(d)(1)(D)(i) (2007). The House of Representatives’ version of the DREAM Act (called the American Dream Act, H.R. 1275, 110th Cong. (2007)) was introduced on March 1, 2007 by Representatives Howard Berman (D-CA), Lincoln Diaz-Balart (R-FL), Ileana Ros-Lehtinen (R-FL) and Lucille Royball-Allard (D-CA). H.R. 1275, 110th Cong. (2007). Students eligible under the DREAM Act are also required to have arrived in the United States before the age of sixteen and be under the age of thirty on the date of the law’s enactment. Press Release, U.S. Senator Richard Durbin, Durbin, Along with Military and Education Leaders, Urges Congress to Support Bright, Accomplished Kids with Bipartisan DREAM Act (Oct. 23, 2007), available at <http://durbin.senate.gov/showRelease.cfm?releaseId=285898>. Some DREAM Act opponents suggest that lowering the age requirement from age thirty to primarily target young children would address concerns regarding the numbers of those who may become eligible under the Act for citizenship. See Brian Donohue, *A Generation Excluded: Immigration Laws Limit Kids’ American Dreams*, STAR-LEDGER (Newark), Nov. 16, 2007 (quoting the Center for Immigration Studies director Mark Krikorian who favors lowering the age requirement to children under the age of seven).

Although the legislation has bipartisan support,<sup>15</sup> strong Congressional opposition has prevented the DREAM Act from being voted on since it was originally introduced in 2003.<sup>16</sup> With more than twelve million undocumented immigrants already in this country, and a half million more entering illegally each year,<sup>17</sup> it is not surprising that most Americans believe that the current immigration system is broken.<sup>18</sup> There is an increasing demand for legislators to address undocumented immigration in general and specifically the status of undocumented individuals who have

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15. See October 24, 2007 Roll Call Vote, S. 774, 110th Cong., CONG. REC. 394 (2007) (identifying 52 Senators voting in favor of the DREAM Act). The Senators included 12 Republicans (Bennett-UT, Brownback-KS, Coleman-MN, Collins-ME, Craig-ID, Hagel-NE, Hatch-UT, Hutchison-TX, Lott-MS, Lugar-IN, Martinez-FL, Snowe-ME), 38 Democrats (Akaka-HI, Bayh-IN, Biden-DE, Bingaman-NM, Brown-OH, Cantwell-WA, Cardin-MD, Carper-DE, Casey-PA, Clinton-NY, Durbin-IL, Feingold-WI, Feinstein-CA, Harkin-IA, Inouye-HI, Johnson-SD, Kerry-MA, Klobuchar-MN, Kohl-WI, Lautenber-NJ, Leahy-VT, Levin-MI, Lincoln-AR, Menendez-NJ, Mikulski-MD, Murray-WA, Nelson-FL, Nelson-NE, Obama-IL, Reed-RI, Reid-NV, Rockefeller-WV, Salazar-CO, Schumer-NY, Stabenow-MI, Webb-VA, Whitehouse-RI, Wyden-OR), and 2 Independents (Lieberman-CT, Sanders-VT). *Id.* The vote to invoke cloture, which would have permitted the Senators to proceed to consider the bill, required a three-fifths majority. *Id.*

16. See Lisa Friedman, *Dream Act Out of Defense Bill; Vote Still Likely*, THE DAILY NEWS OF L.A., Sept. 28, 2007, at N6 (recounting Senator Jeff Sessions' (R-AL) vow to "use every tool available to block" the bill). Rep. Tom Tancredo (R-CO) has also been vocal in his opposition to the DREAM Act. See, e.g., Eunice Moscoso, *Bill Creates a Path to Citizenship*, ATL. J. CONST., Sep. 24, 2007, at 1A (quoting from Tancredo's letter to Senate Majority Leader Harry Reid (D-NV) requesting that the Senate put an end to efforts "that would reward illegal aliens with amnesty or allow them increased access to publicly funded benefits"). Only three of the 74 total sponsors of the House version of the bill are Republicans. See American Dream Act, H.R. 1275, 110th Cong. (2007) (listing Republican co-sponsors as of November 16, 2007 to be Diaz-Balart (R-FL), Ros-Lehtinen (R-FL) and Gillmor (R-OH)).

17. Passel, *supra* note 4, at 2 (estimating a population of 11.5 to 12 million undocumented persons as of March 2006 with an average of more than 500,000 additional undocumented entrants per year).

18. See ABC News Poll (Sept. 27-30, 2007), <http://www.pollingreport.com/immigration.htm> (showing that 67 percent of Americans believe that the United States is not doing enough to prevent illegal immigration). More surprising may be that a majority would support laws that allow undocumented immigrants to legalize their status under certain conditions. *Id.* (reporting that 58 percent would favor legalization for immigrants who pay a fine and meet other requirements); see also NATIONAL IMMIGRATION FORUM, WHILE DEBATE RAGES, THE PUBLIC CONTINUES TO SUPPORT REALISTIC IMMIGRATION SOLUTIONS (Dec. 10, 2007), <http://www.immigrationforum.org/documents/PressRoom/PublicOpinion/2007/PollingSummary0407.pdf> (providing a series of polls illustrating that a majority of those sampled would favor a path to legalization for most undocumented immigrants currently in the United States).

already settled here.<sup>19</sup> Part II of this Comment presents a background of three of the most significant factors that have contributed to current migration patterns and fueled the growing undocumented population in the United States, all of which play a role in the current plight of DREAM Act students. Part III tackles some of the most common views opposing the DREAM Act which have, to date, stood in the way of its passage. Part IV proposes that the DREAM Act should be passed and offers two suggestions about how the bill can be tailored to increase its chances of successful passage after several years of failed attempts.

## II. PAST AND PRESENT UNITED STATES POLICIES THAT HAVE CONTRIBUTED TO CURRENT LEVELS OF UNDOCUMENTED IMMIGRATION

In discussing the debate over passing the DREAM Act, it is crucial to analyze the contributing factors behind the presence of these undocumented children. For example, Mexican immigration now accounts for an estimated 69 percent of the undocumented population,<sup>20</sup> and, thus, past U.S. policies with Mexico that have created push-pull effects to draw immigrants to the United States are particularly relevant. Similarly, the Immigration Reform and Control Act of 1986 contributed to altered migration patterns and sharp increases in undocumented immigration. Finally, with chronic backlogs and restrictive numeric caps, federal visa allocation standards have also unwittingly spurred undocumented migration to the United States.

### *A. Early U.S. Policy with Mexico that has Contributed to Current Unauthorized Migratory Patterns*

When Mexican laborers began coming to the United States in the mid-1800s to work as field hands, the regions in which they worked had, until recently, belonged to Mexico.<sup>21</sup> Congress

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19. One example of this is the debate in New York over the decision to issue drivers' licenses to undocumented immigrants. See, e.g., Danny Hakim, *D.M.V. Chief is Pressed to Defend Plan to Give Licenses to Illegal Immigrants*, N.Y. TIMES, Oct. 16, 2007, <http://www.nytimes.com/2007/10/16/nyregion/16license.html>. A similar controversy was sparked by the *Dallas Morning News'* decision to name "the illegal immigrant" as its 2007 Texan of the Year. See Editorial, *2007 DMN Texan of the Year: The Illegal Immigrant*, DALLAS MORNING NEWS, Dec. 30, 2007 (describing the undocumented immigrant as "less a complex human being and more a blank screen upon which both sides can project their hopes and fears").

20. HIROSHI MOTOMURA, *AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES* 178 (Oxford University Press 2006).

21. DEEPA FERNANDES, *TARGETED: HOMELAND SECURITY AND THE BUSINESS OF IMMIGRATION* 55 (Seven Stories Press 2007). The United States

permitted open borders throughout most of the nineteenth century in an effort to provide the still-developing United States with labor and capital.<sup>22</sup> Informal long and short-term border crossings were constant and commonplace along the southern border, especially stretching from the border cities of Matamoros/Brownsville to Tijuana/San Diego.<sup>23</sup> Even early into the twentieth century the United States did little to control its land borders.<sup>24</sup> In fact, just seventy-five immigration inspectors patrolled the United States-Mexico border in 1906 as immigration efforts were largely focused on Ellis Island and other ports of entry.<sup>25</sup>

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signed the Treaty of Guadalupe Hidalgo with Mexico in 1848 to end the Mexican-American War; as a result of the war, Mexico lost more than 500,000 square miles of land to the United States, constituting nearly half of its territory. Richard Griswold del Castillo, *War's End: Treaty of Guadalupe Hidalgo*, [http://www.pbs.org/kera/usmexicanwar/war/wars\\_end\\_guadalupe.html](http://www.pbs.org/kera/usmexicanwar/war/wars_end_guadalupe.html) (last visited Aug. 19, 2008).

22. THOMAS ALEXANDER ALEINIKOFF, DAVID A. MARTIN & HIROSHI MOTOMURA, *IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY* 170 (5th ed. 2003).

23. ROGER DANIELS, *GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882* 179 (Hill and Wang 2004); see also *Shortfalls of 1986 Immigration Reform Legislation: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. 12 (Apr. 20, 2007) [hereinafter Pitti] (statement of Stephen Pitti, Professor, Yale University) (recounting that during the nineteenth century families living on either side of the border regularly crossed back and forth between the United States and Mexico to "attend church, social gatherings, weddings, and funerals"). Laredo's mayor Raul Salinas explains of cross border relationships that "[t]o be of one is to be of both . . . . We're not divided; we're united by a river." Nat Stone, *El Paso as Prologue*, NAT'L J., Sept. 8, 2007.

24. MOTOMURA, *supra* note 20, at 48-49. The Border Patrol was not created until 1924; its formation is linked to the birth of the term "illegal alien." *The Border* (PBS television broadcast Sep. 23, 1999), available at <http://www.pbs.org/kpbs/theborder/history/timeline/17.html>.

25. MOTOMURA, *supra* note 20, at 48. U.S. Immigration data accounts for only 13,315 Mexican immigrants between the years 1850 to 1900 but the reports stress that "land arrivals [were] not completely enumerated until 1908." DANIELS, *supra* note 23, at 179. The 1890s, for example, were a time of constant, informal border crossings along the southern border. *Id.*

Then events on both sides of the border, including the Mexican Revolution in 1910<sup>26</sup> and the advent of large scale agribusiness in this country,<sup>27</sup> sent large numbers of Mexicans to the United States looking for work.<sup>28</sup> The United States also actively recruited Mexicans to fill temporary labor shortages during World War I.<sup>29</sup> The floodgates opened again for legal immigration of Mexican laborers when the United States entered World War II and signed the Bracero Treaty with Mexico in 1942.<sup>30</sup>

Under the Bracero Program,<sup>31</sup> more than four million Mexican farm workers came to work the fields of the United States.<sup>32</sup> Some four hundred thousand temporary workers were admitted annually between 1942 and 1964, the year the program finally ended.<sup>33</sup> By that time, the several extensions of the wartime program had solidified the “mutually dependent reciprocal relationship” between U.S. growers and Mexican workers.<sup>34</sup> Dependence on Mexican labor, both lawful and

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26. The political instability that followed the Mexican Revolution in 1910 kept employment scarce in Mexico for two decades. *The Border*, *supra* note 24.

27. The U.S. agriculture industry, assisted by the invention of the refrigerator car which enabled nationwide distribution of produce, has been credited with creating the single greatest “pull” factor affecting Mexican immigration in the twentieth century. DANIELS, *supra* note 23, at 180. Thus, as the twentieth century progressed, migrant labor in the Southwest and California became “heavily [dominated by] Mexican[s].” *Id.*

28. MOTOMURA, *supra* note 20, at 48.

29. See DANIELS, *supra* note 23, at 89 (attributing the United States’ active recruitment of Mexican labor to a 1917 immigration act that allowed the INS Commissioner “to control and regulate the admission and return of otherwise inadmissible aliens for temporary admission”); see also *The Border*, *supra* note 24 (stating that during World War I, Mexicans worked in trades in the service and industry fields as machinists, mechanics, and plumbers while much of the U.S. labor force was abroad).

30. *The Border*, *supra* note 24.

31. The term *Bracero* derives from the Spanish word *brazo*, meaning “arm”; it is commonly interpreted to mean farm hand. MERIAM-WEBSTER’S ONLINE DICTIONARY, <http://www.m-w.com/dictionary/bracero> (last visited Aug. 19, 2008). Most Braceros were experienced but impoverished farm laborers from important Mexican agricultural regions. The Farm Workers Website, *The Bracero Program*, <http://www.farmworkers.org/bracerop.html> (last visited Aug. 19, 2008). They stopped working on their own land in the hopes of earning significantly more money on the other side of the border. *Id.*

32. *The Border*, *supra* note 24. Braceros were contracted for temporary work only. *Id.* They were allowed to return home only in cases of emergency and only then with the written permission of their employer. *Id.* When their contracts expired, laborers were required to hand in their work permits and return to Mexico. *Id.*

33. MOTOMURA, *supra* note 20, at 134.

34. DANIELS, *supra* note 23, at 180; see also MOTOMURA, *supra* note 20, at 135 (recounting that, by the time the program was phased out, generations of both lawful and unlawful Mexican immigration including the Bracero



unlawful, had spread to a variety industries as employers realized that undocumented workers would be easier to exploit than documented ones.<sup>35</sup> The program undeniably created the pattern now at the core of today's immigration debate.<sup>36</sup>

*B. The Effects of the Immigration Reform and Control Act of 1986 on the Undocumented Population*

Another critical U.S. policy decision that contributed to current undocumented immigration levels was the passage of the Immigration Reform and Control Act of 1986 ("IRCA").<sup>37</sup> Recognizing the fact that thousands of hard-working, otherwise law-abiding immigrants had been criminalized for entering the country illegally or overstaying visas, Rep. Pelegrino Rodino (D-NJ) co-sponsored the legislation.<sup>38</sup> To qualify, immigrants had to prove they had lived in the United States continuously since January 1, 1982.<sup>39</sup> More than three million undocumented

Program had "created and institutionalized expectations on the part of sending communities, employers in the United States, and the migrants themselves.").

35. *Id.* at 48. Although Bracero laborers worked under contracts that guaranteed, *inter alia*, minimum wages, employers participating in the program were suspected of "gross humanitarian violations." *The Border*, *supra* note 24. Braceros were willing to work for low wages in conditions that were "questionably humane." *Id.*

36. See, e.g., JOEL MILLMAN, *THE OTHER AMERICANS: HOW IMMIGRANTS RENEW OUR COUNTRY, OUR ECONOMY AND OUR VALUES*, 110-11 (Penguin Books 1997) (describing Manuel Gomez's experience as a Bracero who, following the phasing out of the Bracero program, continued commuting into the United States illegally to work).

37. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986). A product of a number of political compromises, IRCA sought to battle illegal immigration through a "three legged stool" of increased border security, employer sanctions and a legalization program for certain undocumented immigrants. *Oversight Hearing on the Shortfalls of the 1986 Immigration Reform Legislation: Hearing Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. 1 (Apr. 19, 2007) [hereinafter Chishti] (statement of Muzaffar A. Chishti, Director, Migration Policy Institute's office at New York Univ. School of Law). Its passage took several years. *Id.*

38. MILLMAN, *supra* note 36, at 106. President Reagan recognized this as well. DANIELS, *supra* note 23, at 223. In a 1981 policy statement, President Reagan acknowledged, "both the United States and Mexico have historically benefited from Mexicans obtaining employment in the United States . . . . Illegal immigrants in considerable numbers have become productive members of our society and are a basic part of our work force. Those who have established equities in the United States should be recognized and accorded legal status." *Id.* IRCA is recognized as Congress' first major attempt to address the issues of undocumented migration. Chishti, *supra* note 37.

39. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 201, 100 Stat. 3359, 3394 (1986).

immigrants qualified to begin new lives as legal residents.<sup>40</sup>

The lawmakers behind IRCA, however, narrowed the legislation's focus to curbing additional undocumented migration, and in doing so ignored the biggest single factor behind illegal immigration: the law of supply and demand.<sup>41</sup> IRCA legislators failed to provide for the ongoing demand for labor in this country, particularly low-skilled labor.<sup>42</sup> Although IRCA created sanctions for employers who knowingly hired undocumented workers,<sup>43</sup> numerous exemptions and exceptions for employers created an environment of "ambivalence" regarding enforcement, permitting unauthorized employment to continue.<sup>44</sup>

Moreover, the buildup of border security that followed IRCA's passage, rather than reducing undocumented immigration, actually created strong incentives for illegal immigrants to remain in the U.S.<sup>45</sup> Family members—many of them women and

40. MILLMAN, *supra* note 36, at 62. There were two separate amnesty programs under IRCA: the general program and a program for "Seasonal Agricultural Workers" ("SAW"). DANIELS, *supra* note 23, at 228. More than 1.7 million applications for the general program were accepted, while more than 1.3 million SAW applications were accepted under IRCA. *Id.* at 229. By 1998, 88 percent of the applicants (some 2.68 million undocumented immigrants) had been granted legal permanent resident status. *Id.* Seventy percent of those were Mexican, while nearly twenty percent were Central American. *Id.*

41. DANIELS, *supra* note 23, at 2. Undocumented migration is, above all, a response of workers to openings in the workforce. *Id.* Two-thirds of the current undocumented population is working, including 94 percent of undocumented men who are employed. *Id.* See also Demetrios Papademetriou, *Reflections on Restoring Integrity to the United States Immigration System: A Personal Vision*, 5 MIGRATION POLICY INSTITUTE INSIGHT 5-6, (Sept. 2005) [http://www.migrationpolicy.org/pubs/Insight\\_Sept05\\_5.pdf](http://www.migrationpolicy.org/pubs/Insight_Sept05_5.pdf) (criticizing legislators' unwillingness to confront the United States' reliance of many sectors of the economy on immigrant labor and workers "willing to do the jobs that few Americans were eager to do then and are even more reluctant to do now").

42. Chishti, *supra* note 37, at 2.

43. See DANIELS, *supra* note 23, at 224-25 (indicating that by using the word "knowingly" in the statute, Congress had "no intention of . . . put[ting] large numbers of respectable and often wealthy [employers] in legal jeopardy"). IRCA was the first legislation to implement sanctions on employers for hiring unauthorized immigrants; until that time although it was unlawful for an immigrant to be in the United States without authorization, it was not unlawful for an employer to hire him. Papademetriou, *supra* note 41, at 4.

44. Papademetriou, *supra* note 41, at 7; see also MOTOMURA, *supra* note 20, at 178 ("IRCA is just one episode in the story of enforcement ambivalence in immigration law . . . . Chronic but broadly accepted tolerance of illegal immigration prevails . . ."); Chishti, *supra* note 37, at 1 ("[E]vidence suggests that many employers continue to hire unauthorized immigrants either unknowingly, or willfully, with impunity").

45. Pitti, *supra* note 23, at 9-10.

children—attempted risky border crossings in order to join their newly-legalized relatives.<sup>46</sup> Thereafter, the increasing dangers associated with stricter border security measures led many immigrants to settle down in the United States.<sup>47</sup> Thus, by trapping many undocumented immigrants on this side of the border, IRCA transformed what had historically been a seasonal flow of temporary workers into permanently settled immigrant population.<sup>48</sup>

More than twenty years after IRCA attempted to “wipe the slate clean” of illegal immigration, there are actually three times as many undocumented immigrants as there were in 1986.<sup>49</sup> Unauthorized laborers continue to find employment<sup>50</sup> and, foreshadowing the dilemma of DREAM Act students, thousands of families have become socially and economically integrated into a country where they are not legally authorized to live.<sup>51</sup> Undocumented immigrants continue doing essential work in this country but without the legal protections afforded to immigrants under IRCA who arrived prior to 1982.<sup>52</sup>

### C. Current Visa Waiting Periods

Opponents of the DREAM Act and other legalization legislation frequently argue that immigrants should “go to the back of the line” to wait their turn to be admitted through legal channels.<sup>53</sup> Current immigration procedures and processing times are thus particularly relevant in addressing those claims.

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46. *Id.* IRCA’s stepped up border security measures led to increasingly treacherous migration patterns through the desert and dangerous smuggling operations promising safe passage into the United States. *Id.* at 9.

47. *Id.* at 11.

48. *Id.* at 10 (labeling IRCA’s failure to slow undocumented entry into the United States the “great transformation in recent immigration history.”).

49. Chishti, *supra* note 37, at 1 (calculating that there were four million undocumented immigrants in the United States in 1986 and twelve million in 2007).

50. “Virtually all” undocumented men (some 96 percent) were employed in 2003, a rate higher than that of U.S. citizens or green card holders. JEFFREY S. PASSEL, RANDY CAPPS & MICHAEL FIX, UNDOCUMENTED IMMIGRANTS: FACTS AND FIGURES (Jan. 12, 2004), [http://www.urban.org/UploadedPDF/1000587\\_undoc\\_immigrants\\_facts.pdf](http://www.urban.org/UploadedPDF/1000587_undoc_immigrants_facts.pdf).

51. Papademetriou, *supra* note 41, at 7.

52. *Id.*

53. Compare CONG. REC. S13305 (daily ed. Oct. 24, 2007) (statement of Sen. Sessions) (arguing that the DREAM Act would “allow illegal aliens to obtain a green card before many individuals who are currently lawfully waiting in line”), with Andres Oppenheimer, *Five Myths of Anti-Immigration Talk*, Jan. 14, 2008, <http://andresoppenheimer.blogspot.com/2008/01/five-myth-of-anti-immigration-groups.html> (criticizing the anti-immigrant movement for demanding that undocumented immigrants get into a line for visas when there is no opportunity for them to do so).

Presently, a lawful permanent resident (green card holder) who wishes to bring a spouse or child from Mexico to the United States must wait more than six years for a visa to issue.<sup>54</sup> The wait for citizens petitioning for adult sons or daughters from Mexico is *more than fifteen years*.<sup>55</sup> The magnitude of current processing backlogs leads many immediate family members to “reunify on their own,” fueling undocumented migration.<sup>56</sup>

One of the primary reasons behind the current wait times is the fact that visas are issued in accordance with strict numerical limitations.<sup>57</sup> The annual minimum limit for family-sponsored visas is 226,000 while the limit for employment-sponsored visas is 140,000.<sup>58</sup> Additionally, the law requires that each country receive no more than seven percent of the allotted visa supply,<sup>59</sup> this means that Iceland, for example, is allotted the same amount of visas as Mexico. Similarly, despite the country’s widespread demand for low skill labor, current employment-based immigration law makes only 5,000 permanent visas available for

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54. See VIII VISA BULLETIN: VISA BULLETIN FOR FEB. 2008 115 (Feb. 2008), available at [http://travel.state.gov/visa/frvi/bulletin/bulletin\\_3925.html](http://travel.state.gov/visa/frvi/bulletin/bulletin_3925.html) (listing a priority date of May 1, 2002 for family sponsored immigrants under the second preference category in February 2008).

55. *Id.* (citing a July 1992 priority date for family sponsored immigrants under the first and third preference categories). Pending applications for immigration benefits grew by a staggering 1,000 percent from 540,000 in 1998 to more than six million in 2003. MIGRATION POLICY INSTITUTE, BACKLOGS IN IMMIGRATION PROCESSING PERSIST, 1 (June 2005), [http://www.migrationpolicy.org/pubs/Jernegan\\_Fact\\_Sheet\\_June\\_2005.pdf](http://www.migrationpolicy.org/pubs/Jernegan_Fact_Sheet_June_2005.pdf). In 2004, U.S. Citizenship and Immigration Services offered a Backlog Immigration Plan to Congress to address the backlog problem. *Id.*

56. Papademetriou, *supra* note 41, at 13; see also *Funding for Immigration in the President’s 2005 Budget: Hearing Before the Subcomm. on Immigration, Border Security and Claims of the H. Comm. on the Judiciary*, 107th Cong. 5 (Mar. 11, 2004) (statement of Demetrios Papademetriou, President, Migration Policy Institute) (discussing the “obvious correlation between absurd delays in adjudications and illegal immigration”). Numerically, the backlog for green card and citizenship applications stood at “well over six million” in 2004. *Id.* at 3. Citizenship and Immigration Services is now taking on average eighteen months to process naturalization applications, up from seven months last year. Julia Preston, *Legal Immigrants Facing a Longer Wait*, N.Y. TIMES, Jan. 18, 2008. Applications for green cards are now taking one year to process, up from the prior six month average. *Id.* A midyear processing fee increase of 66 percent, which took effect July 30, 2007, is being blamed for an “unprecedented” spike in immigration applications that is overwhelming the agency. *Id.*

57. See 8 U.S.C. § 1151 (2006) (listing percentages of visas that may be issued). The children and spouses of U.S. citizens are not subject to numerical limitations. *Id.* See also VISA BULLETIN, *supra* note 54 (quantifying current numerical limits).

58. VISA BULLETIN, *supra* note 54.

59. *Id.*

low skill workers.<sup>60</sup> Current visa allocation standards and numeric caps have contributed to enormous processing backlogs, spurring many immigrants with intentions of coming to the United States to rely on illegal channels.<sup>61</sup>

Finally, it is important to note that immigrants who have entered the country illegally are prohibited by law from applying for adjustment of status to that of a lawful permanent resident.<sup>62</sup> Regardless of the fact that an undocumented immigrant may desire to become a U.S. citizen by pursuing the proper legal channels, paying the administrative fees and following the normal application process, in the overwhelming majority of cases, he is barred by law from doing so.<sup>63</sup> The DREAM Act seeks to assist a small percentage of the undocumented immigrants impacted by the harshness of current law by allowing qualifying young adults an opportunity to pursue legalization through military service or higher education.

### III. PLAYING DEVIL'S ADVOCATE: AN ANALYSIS OF OPPOSITION TO THE DREAM ACT

The debate over what to do about undocumented migration is unquestionably polarizing. A host of viewpoints exist over legalization programs such as the DREAM Act, and this section will address four of the most common opposition platforms.

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60. Chishti, *supra* note 37, at 3. Although the Immigration and Nationality Act (INA) provides 10,000 visas for low-skilled workers, the number was temporarily reduced to 5,000 to make visas available under the Nicaraguan and Central American Relief Act of 1997. *Id.*

61. See Papademetriou, *supra* note 41, at 16 (advocating an "expanded visa environment" in response to demand for both work visas and family reunification visas).

62. See 8 U.S.C. § 1182(a)(6)(A) (2000) (stating that "[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."). Moreover, an undocumented immigrant who has been in the United States unlawfully for more than one year and seeks to apply for legal admission is barred from seeking re-entry into the United States for ten years. 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2000).

63. NAT'L IMMIGRATION LAW CTR., BASIC FACTS ABOUT IN-STATE TUITION FOR UNDOCUMENTED IMMIGRANT STUDENTS 2 (Apr. 2006), [http://www.nilc.org/immlawpolicy/DREAM/instate\\_tuition\\_basicfacts\\_041706.pdf](http://www.nilc.org/immlawpolicy/DREAM/instate_tuition_basicfacts_041706.pdf). In fact, a likely outcome for an undocumented student who tries to apply for a green card under current law is deportation of his entire family. *Id.* There are limited exceptions to this rule. See 8 U.S.C. § 1255(a) (2000) (permitting adjustment of status to that of lawful permanent resident for certain undocumented immigrants arriving prior to January 1, 1982).

### A. Claim Number One: The DREAM Act Rewards Illegal Behavior

The most common argument of DREAM Act opponents is that the legislation rewards illegal behavior.<sup>64</sup> The author of the bill, Senator Richard Durbin (D-IL), responds that most of the children who would be assisted by the DREAM Act “were brought to the United States when they were very young and did not have the opportunity to make an independent decision about where they would live.”<sup>65</sup> In no other area of the law do we punish children for the acts of their parents.<sup>66</sup> Yet under current immigration laws, immigrant children derive immigration status from their parents and do not have another way of pursuing legal permanent residency.<sup>67</sup>

Supporters of the DREAM Act agree that children should not be penalized for the decisions of their parents.<sup>68</sup> Instead, undocumented young adults who have met the Act’s requirements could be given an opportunity to contribute back to the U.S. economy.<sup>69</sup> As long as current policy continues to limit these students’ ability to pursue higher education, military service and higher-paying jobs, the country will be unable to reap the economic benefits of its initial investment in their primary and secondary education.<sup>70</sup>

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64. See, e.g., Debra J. Saunders, *To Link, Perhaps to DREAM*, S.F. CHRON., Oct. 11, 2007, at B7 (quoting Steven Camarota that, “you don’t start enforcing the rule of law by rewarding illegal behavior”); *Lou Dobbs Tonight* (CNN television broadcast Oct. 8, 2007) (“[T]hese idiots, like Senator Dick Durbin and these people trying to push through this push-up, this escalation in visas, I mean, these people need to get real, because they are really offending the American people. They are offending our traditions and our laws. It’s disgusting.”).

65. E-mail from Richard Durbin, *supra* note 12; see also Margie Peterson, Editorial, *Illegal Immigrants’ “Crime” is Wanting Better Life for Kids*, MORNING CALL (Allentown, PA), Aug. 23, 2007, at B1 (arguing that most undocumented immigrants’ only “crime” is not being born in the United States and wanting a better life for themselves and their families).

66. Douglas McGray, Editorial, *A Uniquely American DREAM; With a Small Act of Immigration Reform, Congress Can Help Deserving Kids*, L.A. TIMES, Sept. 19, 2007, at A21.

67. Roberto Gonzales, IMMIGRATION POLICY CTR., *Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students*, IN FOCUS, Oct. 2007, at 8, <http://www.immigrationpolicy.org/images/File/infocus/Wasted%20Talent%20and%20Broken%20Dreams.pdf>.

68. See, e.g., Friedman, *supra* note 16, at N6 (echoing Senator Harry Reid’s agreement that children who are brought to the United States when they are very young and grow up thinking of themselves as Americans should not “be penalized for the actions of their parents”); McGray, *supra* note 66, at A21 (contending that while the government has spent the last twenty years ignoring undocumented migrants, their children have grown up here).

69. McGray, *supra* note 66, at A21.

70. Gonzales, *supra* note 67, at 3.

### 1. *Undocumented Students Have an Equal Right to Elementary and Secondary Education*

The Supreme Court's landmark decision in *Plyler v. Doe* upheld the right of undocumented children to elementary and secondary education.<sup>71</sup> A 1975 Texas statute permitted public schools to deny enrollment to undocumented children.<sup>72</sup> The Court, citing the Fourteenth Amendment in its decision, reaffirmed that the Equal Protection Clause applied to *all persons* within a state's jurisdiction, regardless of immigration status.<sup>73</sup> Furthermore, the Court equated the "substantial shadow population" of undocumented immigrants within the United States to "a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law."<sup>74</sup> The Court held that the Texas statute did not serve a substantial state interest that justified its status-based denial of education.<sup>75</sup>

In making its ruling, the Court gave considerable deference to the fact that the plaintiffs were children whose presence in the United States had been involuntary.<sup>76</sup> The Court reasoned that "legislation directing the onus of a parent's misconduct against his children does not comport with fundamental conceptions of justice."<sup>77</sup> The Court also found it significant that by denying these children basic education, the State was in effect barring their ability to contribute back to the country.<sup>78</sup>

### 2. *The DREAM Act Rewards Motivated, Hardworking Young Adults*

Rather than rewarding illegal behavior, former U.S. Attorney General Janet Reno describes the DREAM Act as a reward for hard work.<sup>79</sup> To qualify under the DREAM Act, undocumented

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71. 457 U.S. 202 (1982).

72. *Id.* at 205.

73. *Id.* at 210-12.

74. *Id.* at 218-19.

75. Nina Rabin et al., *Understanding Plyler's Legacy: Voices from Border Schools*, 37 J.L. & EDUC. 15, 16 (2008).

76. MOTOMURA, *supra* note 20, at 78. The Court stated specifically that "the children who are plaintiffs in these cases 'can affect neither their parents' conduct nor their own status'" and that "[i]t is thus difficult to conceive of a rational justification for penalizing these children for their presence within the United States." *Plyler*, 457 U.S. at 220.

77. *Id.*

78. *Id.* at 223.

79. Yolanne Almanzar, *Reno: U.S. Must Educate All Its Kids: Former U.S. Attorney General Janet Reno Said Education Should be Offered to Every U.S.*

students must first have either graduated from high school or earned a GED.<sup>80</sup> Immigration relief is then only awarded to those students who pursue a college education or enlist in the military.<sup>81</sup> Qualifying students are thus young adults who have shown a genuine desire to contribute back to the United States.<sup>82</sup>

Supporters of the DREAM Act show particular concern at the idea of the United States turning away the talent and potential these students offer.<sup>83</sup> The DREAM Act could thus assist in reducing high school dropout rates among immigrant students, who are much more likely to drop out of school than U.S. born students.<sup>84</sup> Many undocumented students become discouraged upon nearing high school graduation knowing that their immigration status will prevent them from going to college or finding a good job.<sup>85</sup> Although federal law does not expressly

*Child — Including Undocumented Ones*, MIAMI HERALD, Sept. 16, 2007, at 3PP.

80. DREAM Act of 2007, S. 2205, 110th Cong. § 3(a)(1)(D) (2007).

81. *Id.*

82. Padgett, *supra* note 6; see also Jordan, *supra* note 1, at B1 (citing a letter written by New York Senators Schumer and Clinton and Representatives Rangel and Harman, on behalf of Dan-el Padilla, stating that “Dan-el’s contributions and lawful record attest to his loyalty to our country”).

83. See, e.g., Lesley Clark, *Foes Line Up to Oppose DREAM Act*, MIAMI HERALD, Sept. 15, 2007, available at <http://www.miamiherald.com/campaign/08/story/238390.html> (quoting the director of the Florida Immigrant Advocacy Center that “it’s counterintuitive to be deporting success stories” when these students have “done everything right, studied hard, worked hard”); Jordan, *supra* note 3, at A1 (reflecting the sentiment of Dan-el Padilla’s close friend that it would be a waste for the United States to give Dan-el’s talent to another country); Press Release, U.S. Representative Charles Rangel, Rep. Rangel Says Princeton University Student Padilla Decision Is America’s Loss (Sept. 14, 2006) (on file with author) (expressing Rep. Rangel’s (D-NY) disappointment with the government’s failure to adjust Dan-el Padilla’s status because “[n]o one benefits . . . not his loved ones who cannot see him and definitely not American society, which may lose out on his future contributions”).

84. NAT’L IMMIGRATION LAW CTR., *THE ECONOMIC BENEFITS OF THE DREAM ACT AND THE STUDENT ADJUSTMENT ACT 1* (Feb. 2005) [hereinafter *Economic Benefits*], [http://www.nilc.org/immlawpolicy/DREAM/Econ\\_Bens\\_DREAM&Stdnt\\_Adjst\\_0205.pdf](http://www.nilc.org/immlawpolicy/DREAM/Econ_Bens_DREAM&Stdnt_Adjst_0205.pdf). The barriers to higher education associated with students’ immigration status, including ineligibility for financial aid, undoubtedly contribute to the high dropout rate. *Id.*; see also Alfredo Gutierrez, IMMIGRATION POLICY CTR., *The Sins of the Fathers: The Children of Undocumented Immigrants Pay the Price*, Jan. 2007, available at <http://www.immigrationpolicy.org/index.php?content=p0701> (arguing that “the most effective, immediate step we can take to lower the drop-out rate in the Hispanic community is to pass the DREAM Act and let kids and their parents have hope.”).

85. See, e.g., Tania Deluzuriaga, *Pursuing Dreams Amid Hope, Fear: Undocumented Students Work to Finish High School Without Knowing Whether College, Deportation or Something Else Is Next*, MIAMI HERALD, Aug. 20, 2007, at A1 (quoting a 16-year-old undocumented student’s frustration



prohibit undocumented students' admission into colleges, given the numerous financial barriers to their continued education, only ten to fifteen percent of undocumented students who graduate from high school go on to college.<sup>86</sup>

Upon completing high school, the DREAM Act would also make military service an option for these young adults.<sup>87</sup> Despite a greater tendency to enlist in the armed forces, the Hispanic population is underrepresented in the military because they often do not meet some of the requirements, such as graduation from high school.<sup>88</sup> The DREAM Act's high school graduation requirement could act as a powerful incentive for undocumented students to complete their high school education and, through college or military service, earn a path to permanent legal residency.<sup>89</sup>

*B. Claim Number Two: The DREAM Act Would  
Contribute to "Chain Migration" by Allowing Students  
to Petition for Other Undocumented Family Members*

The DREAM Act is frequently attacked by those claiming that students legalized under the legislation could then sponsor an uncontrollable number of family members.<sup>90</sup> However, the experiences of other immigrants who have gained the right to sponsor family members reveal that this suggestion is unfounded.

*1. Restrictive Numeric Caps and Lengthy Wait Times for Family Visas Preclude Opportunities for Chain Migration*

Immigrants who have gained legal permanent residency or United States citizenship on average sponsor 1.2 family members.<sup>91</sup> That figure differs sharply from the frightening projections crafted by many DREAM Act opponents.<sup>92</sup>

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with trying to do well in high school when "[i]t feels bad, I do all this work and afterwards I'm not going to be able to do anything"); Brown, *supra* note 6, at 8 (recounting one undocumented student's story who put himself through school after realizing how limited his options would be after high school).

86. Gonzales, *supra* note 67, at 3.

87. DREAM Act of 2007, S. 2205, 110th Cong. § 4(d)(1)(D)(ii) (2007).

88. Miriam Jordan, *Politics & Economics: Dream Solution to Recruiting?*, WALL ST. J., Sept. 21, 2007, at A8.

89. Economic Benefits, *supra* note 84, at 2.

90. *Comprehensive Immigration Revision: Hearing on H.R. 1645, H.R. 1275 and H.R. 371 Before the Subcomm. on Immigration, Citizenship, Refugees, Border Security, and Int'l Law of the H. Comm. on the Judiciary*, 110th Cong. (May 22, 2007) [hereinafter Murguía] (statement of Janet Murguía, President and CEO, National Council of La Raza).

91. *Id.*

92. See, e.g., CONG. REC. H11926 (Oct. 23, 2007) (statement of Rep. Steve King) (observing that "one legal immigrant can bring in about 277 family members by the time you go out through the chain of the family tree.").

One of the reasons for the low sponsorship rate among immigrants who have earned lawful permanent resident status or citizenship are the lengthy waiting times that family members must endure before a visa becomes available.<sup>93</sup> As Senator Durbin points out, the current visa backlog for siblings of U.S. citizens is decades long.<sup>94</sup> The average application backlog for children and spouses is five years, although the actual waiting periods for individuals from a number of specific countries is much longer.<sup>95</sup>

Family members of DREAM Act beneficiaries, therefore, could be forced to wait decades to gain legal status through the family visa system.<sup>96</sup> Moreover, DREAM Act beneficiaries who wish to sponsor family members must show the financial ability to sustain them or else their right to sponsor is extinguished.<sup>97</sup> Finally, should a DREAM Act student who has been awarded citizenship wish to petition for her parents, the chain ends there.<sup>98</sup> Grandparents, nieces, nephews and other extended family members are not eligible for visas through the family system.<sup>99</sup>

## *2. DREAM Act Students Have Limited Ability to Sponsor Family Members by Law*

After successfully graduating from high school, DREAM Act students may apply for six years of conditional permanent residency, during which time they must complete either two years of college or military service.<sup>100</sup> Therefore, no student would be entitled to begin sponsoring family members for at least six years.<sup>101</sup>

Once a DREAM Act beneficiary has earned the status of a lawful permanent resident, she is only eligible to sponsor her children and spouse for a visa.<sup>102</sup> As eligibility under the DREAM Act requires students to have arrived in the United States before

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93. Murguia, *supra* note 90; *see also supra* text accompanying notes 55-56 (discussing current processing backlogs at U.S. Citizenship and Immigration Services).

94. Durbin, *supra* note 14.

95. IMMIGRATION POLICY CTR., THE DREAM ACT OF 2007: FREQUENTLY ASKED QUESTIONS 2 (Oct. 2007) [hereinafter IPC FAQs], <http://www.aif.org/ipc/factchecks/DREAMFAQ10-23-07.pdf>.

96. *Id.*

97. 153 CONG. REC. S7271-05 (June 7, 2007) [hereinafter Menendez] (statement of Sen. Menendez). To sponsor a family member, a U.S. citizen or lawful permanent resident must be able to demonstrate a stable income and commit to financially supporting the family member so that he or she does not become reliant on public assistance. Murguia, *supra* note 90.

98. Menendez, *supra* note 97.

99. Murguia, *supra* note 90.

100. Durbin, *supra* note 14.

101. *Id.*

102. IPC FAQs, *supra* note 95, at 2.

their sixteenth birthday, the likelihood is that any of their children would have been born in the United States and thus would already be U.S. citizens.<sup>103</sup> An undocumented spouse would still be subject to the ten-year bar under the Immigration and Nationality Act before becoming eligible to join the DREAM Act beneficiary in the U.S.<sup>104</sup>

Should a DREAM Act beneficiary, upon completing the requirements for citizenship, decide to naturalize, she would then be permitted to sponsor her parents or siblings living abroad.<sup>105</sup> However, if these family members have been living in the United States out of status, by law they are subject to the same penalty which requires them to leave the country for ten years before they are eligible to be sponsored for a visa.<sup>106</sup> Under no circumstances are immigrants able to sponsor extended family members, such as grandparents, cousins, nieces or nephews, for a visa.<sup>107</sup>

### *C. Claim Number Three: DREAM Act Beneficiaries Would Burden Universities and the Economy*

There are an estimated 2.1 million potential beneficiaries who would qualify for legalization under the DREAM Act.<sup>108</sup> Opponents of the bill argue that these DREAM Act beneficiaries could take away jobs, seats in universities, and financial aid from U.S. citizens.<sup>109</sup>

#### *1. Students Are Not Given Benefits; They Must Earn Them*

The DREAM Act would not automatically entitle undocumented students to financial aid. It would merely allow

103. *Id.*

104. *Id.* "Any alien . . . who has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible." 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2006).

105. IPC FAQs, *supra* note 95, at 2.

106. Durbin, *supra* note 14.

107. IPC FAQs, *supra* note 95, at 2.

108. CTR. FOR IMMIGRATION STUDIES, DREAM ACT OFFERS AMNESTY TO 2.1 MILLION, (Oct. 23, 2007) (on file with author). This estimate includes 800,000 undocumented immigrants under the age of seventeen who have been in the United States long enough to qualify and 1.3 million undocumented immigrants between the ages of eighteen and twenty-nine who arrived in the United States before the age of sixteen. *Id.* The precise number of potential beneficiaries under the DREAM Act is, not surprisingly, a point of contention. The Migration Policy Institute, for example, estimates that 350,000 children would benefit. Durbin, *supra* note 14. The Immigration Policy Center estimates that 360,000 high school graduates could qualify in the first years of the program; thereafter, approximately 55,000 graduating students per year could receive conditional residency under the program. IPC FAQs, *supra* note 95, at 2.

109. Gonzales, *supra* note 67, at 8.

students to apply for federal financial aid through the same process as U.S. born students.<sup>110</sup> Similarly, the bill does not affect college admission rules as DREAM Act students would still be required to demonstrate academic eligibility and merit for admission.<sup>111</sup> States would be given the power to determine their own residency rules for in-state tuition eligibility and whether or not undocumented students could qualify for in-state tuition rates.<sup>112</sup>

In ten states that have allowed undocumented students to qualify for in-state tuition rates, there has been no evidence of native-born students being displaced by undocumented students nor of any financial drain on the education system.<sup>113</sup> In California, for example, an estimated 1,620 undocumented students enrolled in the University of California and California State University systems in 2005 to take advantage of the tuition break.<sup>114</sup> This represented just a small percentage of the 208,000 students enrolled in just the University of California system.<sup>115</sup>

In-state tuition provides students a discounted tuition rate, but it is not synonymous with free tuition.<sup>116</sup> Accordingly, evidence indicates that in-state tuition paid by undocumented students actually boosts school revenues because it represents income that the school would otherwise not have received.<sup>117</sup> A 2006 Massachusetts study found that the state would gain millions of dollars in new revenue if undocumented students were permitted to attend universities at in-state tuition rates.<sup>118</sup>

When discussing eligibility for tuition breaks, it is also

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110. E-mail from Durbin, *supra* note 12.

111. *Id.*

112. *Id.*

113. Gonzales, *supra* note 67, at 8-9; *see also* Bernstein, *supra* note 9 (listing the ten states that currently permit undocumented students to qualify for in-state tuition rates and their requirements). Although some immigration hardliners claim that these state laws undercut federal law, 8 U.S.C. § 1623 only prohibits states from providing higher education benefits to undocumented immigrants if the same benefits are not offered to U.S. citizens in similar circumstances. NAT'L IMMIGRATION LAW CTR., *supra* note 63, at 3. Because in-state tuition benefits in these ten states are based on length of residency, they are equally available to U.S. citizens and comply with the provision. *Id.*

114. Gonzales, *supra* note 67, at 9.

115. *Id.* In Texas, the total number of undocumented students paying in-state tuition after it enacted its own legislation was just 0.36 percent of the one million-plus students attending its public universities. *Id.*

116. NAT'L IMMIGRATION LAW CTR., *supra* note 63, at 2.

117. *Id.*

118. Gonzales, *supra* note 67, at 10. The Massachusetts Taxpayers Foundation determined that state universities would immediately receive several hundred thousand dollars in additional tuition from undocumented students, and by 2009 could earn \$2.9 million in revenue. *Id.*

important to note that undocumented immigrants do indeed pay taxes just like everyone else.<sup>119</sup> They pay the same real estate taxes as citizens, whether as homeowners or by taxes passed on through their rent.<sup>120</sup> They also pay the same sales tax on purchases they make.<sup>121</sup> Additionally, the U.S. Social Security Administration has estimated that three-quarters of undocumented immigrants pay payroll taxes and thereby contribute billions of dollars in Social Security funds that they are unable to claim.<sup>122</sup>

## *2. Access to Higher Education Will Generate a Larger Tax Base Through an Educated Workforce*

With an aging workforce that is shrinking and an unemployment rate that is relatively low, granting students access to higher education and legal status will benefit the economy rather than displace the jobs of U.S. citizen workers.<sup>123</sup> The economic advantages of higher education are clear.<sup>124</sup> For example, in 2006 workers who lacked a high school diploma earned on average \$419 per week and had an unemployment rate of 6.8 percent.<sup>125</sup> Workers with a bachelor's degree, in contrast, earned \$962 per week with a 2.3 percent unemployment rate while doctorate holders earned \$1,441 weekly with an unemployment

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119. RANDY CAPPS & MICHAEL FIX, UNDOCUMENTED IMMIGRANTS: MYTHS AND REALITY 1 (Oct. 25, 2005), <http://www.urban.org/publications/900898.html>.

120. *Id.*

121. *Id.*

122. *Id.* Although a common view is that undocumented immigrants burden the economy by overusing public resources, a California study found that undocumented immigrants in that state were fifty percent less likely than U.S. born Hispanics to use hospital emergency rooms. Mary Engel, *Latino's Use of Health Services Studied*, L.A. TIMES, Nov. 27, 2007, at B1, available at <http://articles.latimes.com/2007/nov/27/local/me-immigrants27>. Although undocumented immigrants are less likely to have medical insurance, they are also less likely to visit a doctor, clinic or emergency room out of fear of being reported to immigration authorities. *Id.*

123. Donna Poisl, Editorial, *Immigration Reform Will Benefit All of Us*, ARIZ. DAILY STAR, (Oct. 18, 2007), available at <http://www.azstarnet.com/allheadlines/206790.php>; see also Robert Gittelson, *The "Enforcement Only" Approach: Be Careful What You Wish For, You Just Might Get It*, IMMIGRATION DAILY (Oct. 17, 2007), <http://www.ilw.com/articles/2007>, (describing unemployment as "at almost historic lows" and arguing that loss of undocumented workers would result in "work shortages in virtually every vital level of our econom[y]" and "recession due to massive work interruption and loss of productivity").

124. IMMIGRATION POLICY CTR., DREAMS DEFERRED: THE COSTS OF IGNORING UNDOCUMENTED STUDENTS 1 (Oct. 18, 2007), [http://www.aifl.org/ipc/policybrief/policybrief\\_2007\\_dream.pdf](http://www.aifl.org/ipc/policybrief/policybrief_2007_dream.pdf).

125. *Id.*

rate of only 1.4 percent.<sup>126</sup>

The U.S. economy requires an educated workforce.<sup>127</sup> Ten of the fifteen occupations expected to grow fastest through 2014 require an Associates Degree or higher.<sup>128</sup> Undocumented students are an untapped potential source of the high-skilled workers needed to meet the increasing demand for jobs requiring a college education.<sup>129</sup> The U.S. economy does not benefit by relegating these students to unauthorized, unskilled work when they are prepared to become taxpaying members of the middle class.<sup>130</sup> If given the chance to legalize their immigration status, undocumented students can better integrate themselves into U.S. society to become successful working professionals.<sup>131</sup> Those who are able to continue on to college (or presumably serve in the military) will be poised to get better jobs, earn more income, and pay more taxes.<sup>132</sup>

#### *D. Claim Number Four: Undocumented Immigrants Should Be Deported*

Many opponents of legalization efforts like the DREAM Act simply call for the removal of the undocumented population from

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126. *Id.*

127. See Gonzales, *supra* note 67, at 6 (referencing a 2005 Bureau of Labor Statistics occupational projection).

128. *Id.* at 7. The ten occupations requiring an Associate's Degree or higher are Medical Scientists; Computer Software Engineers; Database Administrators; Postsecondary Teachers; Network Systems, Data Communication Analysts; Physical Therapists; Physician Assistants; Network and Computer Systems Administrators; Occupational Therapists; and Dental Hygienists. *Id.*

129. *Id.* at 8.

130. McGray, *supra* note 66; see also Dianne Solis, *Bill is a Dream for Migrants*, DALLAS MORNING NEWS, Oct. 24, 2007 (describing ten undocumented students who have graduated from a state university over the past four years as ready to "move into teaching positions immediately as soon as they get their immigration issue resolved . . . . In the meantime, [they] are trying to survive doing all sorts of menial work, including cleaning homes and doing whatever they can under the radar to avoid problems."). The ability to legalize one's immigration status has been shown to produce economic benefits. IMMIGRATION POLICY CTR., *supra* note 124, at 1. Undocumented immigrants who were able to legalize their status under the Immigration Reform and Control Act of 1986 increased their wages by fifteen percent five years later. *Id.*

131. See Norma Moreno, *Study Examines the Potential of Undocumented Students*, SANTA FE NEW MEXICAN, Oct. 11, 2007, at C-4 (citing a New Mexico study of immigrant children residing in the state).

132. IMMIGRATION POLICY CTR., *supra* note 124, at 1-2. A thirty-year-old Mexican immigrant woman with a college degree will pay on average \$5,300.00 more in taxes and cost the government \$3,900.00 less in expenses per year compared to a high school drop out with those characteristics. *Id.* at 2.

this country or the building of fences to deter their entry.<sup>133</sup> Although the simplicity of these types of measures may appeal to sectors of the public looking to “get tough” on undocumented migration, the reality of actually implementing them is much more complicated.

### 1. *Deporting Twelve Million People is Not an Option*

Simply stated, the idea of deporting all of the undocumented immigrants currently living in the United States is a practical impossibility.<sup>134</sup> Even with a \$1.9 billion budget, the federal government has only been able to remove a small percentage of the country’s undocumented population.<sup>135</sup> Challenges to deportation efforts include a lack of personnel and detention facilities as well as a steady flow of additional undocumented immigrants.<sup>136</sup>

Even if much larger budgetary commitments were made to enforcing current immigration laws, there is little evidence to suggest that undocumented immigrants would simply leave or be deterred from entering.<sup>137</sup> First, many undocumented people belong to mixed families containing U.S. citizens and lawful permanent residents.<sup>138</sup> Second, as is the case of DREAM Act students and many undocumented immigrants, the United States

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133. See, e.g., Margie Peterson, Editorial, *Illegal Immigrants’ “Crime” Is Wanting Better Life for Kids*, MORNING CALL (Allentown), Aug. 23, 2007, at B1 (referring to a recent letter to the editor in which the writer suggested “[w]e must hunt [undocumented immigrants] down and send them back to where they came from”).

134. See Arlen Specter, Floor Statement of Senator Arlen Specter on Immigration (May 8, 2007), available at <http://specter.senate.gov/public/follow/Newsroom> (follow “Newsroom” hyperlink; then follow “Arlen Specter Speaks” hyperlink; then search by date) (describing the act of deporting eleven million undocumented immigrants as a “practical impossibility”); see also Papademetriou, *supra* note 41, at 11 (noting that, even by doubling or even tripling current rates, it would take decades to remove the undocumented population and the costs would be “prohibitive”).

135. James Pinkerton, *More Being Forced Out of U.S., But Criminal Deportations Declined, Latest Data Indicate*, HOUSTON CHRON., Oct. 13, 2007, at B1. U.S. Immigration and Customs Enforcement increased the number of undocumented immigrants it removed from 204,200 in fiscal year 2006 to 221,600 in fiscal year 2007. *Id.* The agency has budgeted \$2.1 billion for detention and removal operations in 2008. *Id.*

136. *Id.*

137. Papademetriou, *supra* note 41, at 11. Even the European Union, for example, which has more centrally coordinated and better resourced law enforcement agencies than the U.S., continues to struggle with undocumented migration rates comparable to our own. *Id.*; see also Anna Gorman, *Immigrant Detentions, Expulsion Up Sharply*, CHI. TRIB., Nov. 6, 2007, at A1 (claiming that fewer than one-third of deported immigrants who are not detained actually leave the country when ordered to do so).

138. *Id.*

is the only community they know.<sup>139</sup> Instead of returning to a country and culture that they are relatively unfamiliar with, many undocumented immigrants will choose to remain here, without a college education, earning and contributing less to the country.<sup>140</sup>

Simply throwing more money at enforcement efforts will not fix the current situation.<sup>141</sup> As a spokesman for the Federation for American Immigration Reform, an organization that favors stricter immigration controls, pointed out: “[U]ntil we deal with these magnets that draw people to this country, increasing deportations alone is like getting a larger bucket to get water out of a sinking boat.”<sup>142</sup> Furthermore, it is difficult to imagine the economic hardship that would result to the U.S. economy if millions of workers were suddenly removed from the national workforce.<sup>143</sup> In many cases, entire labor markets are dependent upon the undocumented immigrant workforce.<sup>144</sup>

## 2. Building a Taller Wall is Not a Solution

Last year President Bush signed the Secure Fence Act of 2006, which authorized the construction of a 700-mile fence<sup>145</sup> along the U.S.-Mexico border.<sup>146</sup> The initiative, which has a \$7

139. Nikki Weinstein, Editorial, *Letters from Readers*, ST. LOUIS POST-DISPATCH, Nov. 8, 2007, at B8.

140. *Id.*

141. *The Need for Comprehensive Immigration Reform: Strengthening Our National Security: Hearing Before the S. Subcomm. on Immigration, Border Security and Citizenship of the S. Comm. on the Judiciary*, 110th Cong. (May 17, 2005) [hereinafter Cornyn] (statement of John Cornyn, Chairman, Senate Subcomm. on Immigration, Border Security, and Citizenship).

142. See Pinkerton, *supra* note 135, at B1 (quoting Federation Spokesman Ira Mehlman).

143. See Cornyn, *supra* note 141 (comparing the damage that could be done to the U.S. economy by removing millions of undocumented workers to the removal of stocks of valuable natural resources).

144. Papademetriou, *supra* note 41; see also *Migration of Mexicans Can't Be Stopped, Says Felipe Calderon* (ABC television broadcast Oct. 8, 2007) (citing statements of New York City Mayor Mike Bloomberg that his city would “collapse if [Mexican immigrants] were deported” and Wisconsin Agriculture Secretary Rod Nilestuen that the Wisconsin agriculture and dairy industries would be “in crisis” without Hispanic labor).

145. The border between the United States and Mexico is 2,000 miles long. Tom Henderson, Editorial, *Fence Along Border – Gee, Go Figure*, LEWISTON MORNING TRIB. (Idaho), Oct. 15, 2007, at 10A. The proposed 700-mile fence would contain 370 miles of actual fence and the remaining portion would be a “virtual” barrier of border patrol agents, cameras and other technology. Alex Cohen, *Day to Day: Border Fence Stirs Mixed Emotions* (NPR radio broadcast Oct. 5, 2007).

146. Ruben Martinez, *Don't Fence Them In, Washington's Planned Border Barriers Are Running Into Cowboy Resistance*, L.A. TIMES, Oct. 17, 2007, at A17; see also *Good Morning America: The Immigration Battle; Who Are the Immigrants?*, (ABC television broadcast Oct. 8, 2007) (quoting the Mexican



billion price tag<sup>147</sup> and is labeled “the most ambitious and controversial infrastructure project in border history”, resembles past attempts to bolster border security.<sup>148</sup> Despite significant increases in enforcement budgets and high-tech surveillance equipment, undocumented immigration has persisted “virtually undaunted.”<sup>149</sup> These measures have instead resulted in a flourishing smuggling industry and soaring death rates among migrants who, notwithstanding the security, attempted to cross.<sup>150</sup>

The problem is that efforts to tighten border security have been guided more by fear than an attempt to address the economic and social issues that drive migration.<sup>151</sup> Indeed, increased enforcement and longer, higher barriers cannot contend with a 700 percent wage differential that fuels the migration of immigrant workers into the U.S.<sup>152</sup> Historical experience shows that militarized regulation of the border does very little to curtail the movement of immigrants into the U.S.<sup>153</sup> Any viable solution will require legislators to address the human needs behind migration and the labor relationships in the U.S. that have created mutual dependency.<sup>154</sup>

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President Felipe Calderon, who labeled the idea of building a fence “deplorable” and asserts that the only way to stop Mexican migration is to provide Mexicans employment opportunities in that country).

147. Other estimates place the cost at \$10 to \$50 billion over the next twenty-five years. *Good Morning America*, *supra* note 146.

148. Martinez, *supra* note 146, at A17; *see also* Pitti, *supra* note 23, at 8 (describing the “Tortilla Curtain” fence building efforts of the late-1970s). Immigrants attempting to cross cut holes in the fence near San Diego and El Paso and in 1986 alone some 2.1 million undocumented immigrants were able to successfully cross into the United States. *Id.* *See also* BILL ONG HING, *DEPORTING OUR SOULS* 3 (Cambridge University Press 2006) (recounting efforts of the Clinton administration in 1994 to “control through deterrence” under Operation Gatekeeper). This strategy also involved the construction of fences and militarization of the border. *Id.* It did not produce a decrease in the number of illegal entries, but deaths did increase as crossing immigrants shifted their routes to the desert and mountains. *Id.*

149. Pitti, *supra* note 23, at 9; *see also* Stone, *supra* note 23 (recalling how the sixteen-mile long barrier built between El Paso and Ciudad Juarez in 1995 “tended to detour than rebuff” undocumented immigrants).

150. Pitti, *supra* note 23, at 9.

151. *Id.* at 2-3.

152. Peter Schuck, *Bordering On Folly — A Commentary*, *THE AMERICAN LAWYER* (Oct. 1, 2007), <http://www.law.yale.edu/news/5693.htm>.

153. Pitti, *supra* note 23, at 3; *see also* Stone, *supra* note 23 (quoting Frank Bean, Director of the Center for Research on Immigration, Population and Public Policy at the University of California (Irvine) that “[a]s long as there continues to be a major need to find work, people are going to find a way to come in.”).

154. *Id.*

IV. TAILORING THE DREAM ACT FOR PASSAGE TO BEGIN  
ADDRESSING THE LEGAL STATUS OF UNDOCUMENTED  
IMMIGRANTS IN THE UNITED STATES

Passing the DREAM Act will begin to address the status of the millions of undocumented immigrants currently living in the United States. The vast majority of Americans agree that people should not be entering the country illegally.<sup>155</sup> However, with respect to the twelve million undocumented immigrants already residing here, there are essentially three choices that our legislators can make: they can attempt to expel the undocumented population, maintain the status quo (and in effect continue to ignore the issue), or begin to accept the undocumented population as part of our social fabric by adjusting our laws to respond to modern economic realities.<sup>156</sup>

Past efforts to expel undocumented immigrants—through increased budgets, tighter border security and amplified deportations—have generally been unsuccessful.<sup>157</sup> Moreover, as Americans become increasingly impatient with rising numbers of undocumented immigrants in our midst,<sup>158</sup> legislators will have a difficult time preserving the status quo. The most logical choice for legislators is to begin enacting laws that respond to current realities and are based on both common sense and fairness.<sup>159</sup> The DREAM Act is a prime example of such a piece of legislation.

The DREAM Act targets a very specific group of young adults who have grown up and received much of their primary and secondary education here in the United States.<sup>160</sup> An investment in education can quickly pay for itself by benefiting the student, the economy, and society as a whole.<sup>161</sup> However, the Constitutionally-guaranteed initial investment that the country makes in a student's primary education yields very few economic

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155. Editorial, *Ain't That America*, N.Y. TIMES, Oct. 22, 2007, at A28 [hereinafter N.Y. Times America Editorial].

156. *Id.*

157. See *supra* notes 134-54 and accompanying text (discussing, inter alia, the futility of trying to deport an estimated twelve million undocumented immigrants currently in the United States).

158. See, e.g., Morton Kondracke, *Despite Danger, GOP Tees Up Immigration as 2008 Wedge Issue*, ROLL CALL, Nov. 8, 2007 (Pennsylvania Avenue Section) (referring to a September 2007 ABC poll in which two-thirds of Americans surveyed felt that the U.S. has not done enough to curb undocumented migration). This poll also found that 58 percent of Americans supported the idea of allowing undocumented immigrants an opportunity to "earn their way to legal status." *Id.*; *supra* note 18 (recounting polling data regarding immigration issues).

159. N.Y. Times America Editorial, *supra* note 155.

160. IMMIGRATION POLICY CTR., *supra* note 124.

161. ECONOMIC BENEFITS, *supra* note 84.

dividends if our laws continue unchanged.<sup>162</sup> Without offering undocumented students a means to legalize their immigration status, the U.S. is failing to fully realize the benefits of this initial investment by barring students from reaping the full potential of their educations.<sup>163</sup>

Taking into account the potential of these young adults and the contributions they could make to the country, the DREAM Act has been labeled “one of the least controversial immigration proposals that [has] been offered in the past five years.”<sup>164</sup> The bill, however, has continued to face staunch opposition, preventing its passage.<sup>165</sup> The biggest challenge to passage of the DREAM Act continues to be its association by many with “amnesty” for undocumented immigrants.<sup>166</sup>

Conservative columnist Michelle Malkin summed up her opposition to the DREAM Act on her Website, describing it as “a bad idea – providing instant amnesty, serving as a future illegal alien magnet, and perpetuating inequity.”<sup>167</sup> The view is a common one among Conservative opponents and is representative of “a national mood of frustration and anxiety” in the wake of rising numbers of undocumented immigrants.<sup>168</sup> Passing legalization legislation amid the current, widespread anti-immigrant fervor will certainly require compromise.<sup>169</sup> There are two compromises that backers of the DREAM Act must be willing

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162. Gonzales, *supra* note 67, at 3.

163. IMMIGRATION POLICY CTR., *supra* note 124; *see also* CONG. REC. S13203 (daily ed. Oct. 22, 2007) (Statement of Sen. Leahy) (noting that the Supreme Court recognized in *Plyler* “that we disserve ourselves when we discriminate against [these children]”).

164. Editorial, *A Chance to Dream*, N.Y. TIMES, Oct. 24, 2007, at A18 [hereinafter N.Y. Times Chance Editorial].

165. *See, e.g.*, CONG. REC. S13302 (daily ed. Oct. 24, 2007) (Statement of Sen. Durbin) (recounting Rep. Tancredo’s attempt to arrest three undocumented students speaking at a Capital Hill press conference about the DREAM Act); CONG. REC. S13301 (daily ed. Oct. 24, 2007) (Statement of Sen. Inhofe) (labeling the DREAM Act, “or any other type of an amnesty bill . . . a slap in the face to all those who came here legally”).

166. N.Y. Times Chance Editorial, *supra* note 164, at A18; *see also* Kondracke, *supra* note 158 (suggesting that the upcoming election season could “get ugly . . . with Republicans waving the ‘A’ word – ‘Amnesty’ like a bloody shirt”).

167. Nathan Burchfiel, *DREAM Act Won’t Spark More Illegal Immigration*, *Durbin Says*, CYBERCAST NEWS SERV., Oct. 24, 2007, <http://www.cnsnews.com/ViewNation.asp?Page=/Nation/archive/200710/NAT20071024a.html>.

168. N.Y. Times America Editorial, *supra* note 155, at A28.

169. *See, e.g.*, Kondracke, *supra* note 158 (depicting a “fervent minority – figured at a third of Republicans” who oppose any kind of “amnesty”). Conservative talk-show hosts, such as CNN’s Lou Dobbs, “for whom immigration is an obsessive cause,” are criticized for stirring up nativist zeal. N.Y. TIMES AMERICA EDITORIAL, *supra* note 155, at A28.

to make to increase the likelihood of its passage.

*A. Require College Graduation for Conditional Permanent Residence*

The DREAM Act's repeated defeats have forced Senator Durbin to chip away at the bill's target group.<sup>170</sup> For example, when Senator Durbin reintroduced the bill in October 2007, it contained a substantive difference from the prior version regarding which immigrants would be able to qualify under the DREAM Act.<sup>171</sup> Previously, undocumented immigrants who had, for example, failed to attend prior removal proceedings or overstayed student visas could qualify for DREAM Act benefits.<sup>172</sup> The most recent version of the bill, however, prohibits the eligibility of such immigrants.<sup>173</sup>

To ensure the DREAM Act's passage, an additional requirement must be added. Section four of the current bill contains the following condition to qualify for lawful permanent resident status:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.<sup>174</sup>

This condition must be amended to require the attainment of a degree. The first reason to do so is to keep the education requirement on par with the military service requirement.<sup>175</sup> Although the DREAM Act only requires that a young adult complete two years of military service to be eligible for a green card,<sup>176</sup> enlisting in the military clearly requires a level of dedication that is more evenly matched by the completion of a college degree.

170. N.Y. Times Chance Editorial, *supra* note 164, at A18.

171. See 84 No. 42 INTERPRETER RELEASES 2529, *Dream Act Cloture Vote Fails* 2529 (West Oct. 29, 2007) [hereinafter INTERPRETER RELEASES] (prohibiting under the most current version of the bill immigrants who are inadmissible pursuant to § 212(a)(6)(B), (C), (E), (F) and (G) (including misrepresentation and smuggling) and deportable pursuant to § 237(a)(3)(B), (C), (D) or (a)(6) (including document fraud)).

172. *Id.*

173. *Id.*

174. DREAM Act of 2007, S. 2205, 110th Cong. § 4(d)(1)(D)(i) (2007).

175. See CONG. REC. S13305 (daily ed. Oct. 24, 2007) (statement of Sen. Sessions) (arguing that "individuals are not going to take the military route. I would estimate at least ninety percent would take the option of just two years of college without any requirement to have to attain a degree.").

176. See DREAM Act of 2007, S. 2205, 110th Cong. § 4(d)(1)(D)(ii) (2007) ("The alien has served in the uniformed services for at least two years and, if discharged, has received an honorable discharge.").

The second reason to require DREAM Act students to complete a degree is to increase the bill's appeal to political moderates. Senator John Cornyn (R-TX), who voted against the DREAM Act, attributed one of the reasons for his vote to the fact that the bill contained "no firm requirement for the illegal immigrant to graduate with a degree from an accredited U.S. institution of Higher Education (either a two or four-year institution)."<sup>177</sup> Cornyn supports comprehensive immigration reform and the underlying purposes of the DREAM Act.<sup>178</sup> In seeking compromise with moderate Senators such as Cornyn, it is a reasonable concession to tailor the bill to require the completion of a college degree. Potential DREAM Act students have proven themselves capable of as much.

*B. Present the Bill as Part of a Comprehensive  
Immigration Reform Package*

The DREAM Act will also be much more likely to succeed if it is presented as part of a comprehensive immigration reform package. Although the DREAM Act was part of the unsuccessful Comprehensive Immigration Reform Act in the summer of 2007,<sup>179</sup> the bill is less likely to succeed on its own. Senators DeMint (R-SC) and Sessions (R-AL), in expressing their objections to the DREAM Act, stated that before enacting a legalization measure for undocumented students, Congress should address securing the borders and establishing an employment eligibility verification program.<sup>180</sup>

Comprehensive reform, which includes stricter border enforcement and employer sanctions, is crucial to achieving a viable compromise that addresses the legalization of undocumented young adults. Calling for tougher enforcement is the "immigration policy equivalent of motherhood and apple pie"; it is supported across the political spectrum.<sup>181</sup> If forced to choose, legislators will select enforcement over legalization efforts, but if the debate can be shifted to include enforcement *plus* legalization,

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177. Press Release, Sen. John Cornyn, Comprehensive Immigration Reform Must Remain Top Priority (Oct. 23, 2007) (on file with author).

178. See *id.* (stating that, although he did not intend on supporting the DREAM Act at this time, he believes "Congress should continue seeking reasonable and responsible ways [undocumented children] can complete their education and achieve opportunity.").

179. See Comprehensive Immigration Reform Act of 2007, S. 1348, 110th Cong. (2007) (setting forth, inter alia, border security measures, interior enforcement provisions, employer sanctions, a temporary guest worker program and legalization programs for agricultural workers and undocumented students).

180. INTERPRETER RELEASES, *supra* note 171.

181. Schuck, *supra* note 152.

the legislation has a much greater chance of success.<sup>182</sup>

#### V. CONCLUSION

Above all, Americans want to see legal behavior in immigration policy. The DREAM Act is a measure that provides that. By targeting diligent, responsible young adults, the bill offers a legal channel for just the type of citizens that Americans welcome as productive contributors to U.S. society. The reality of twelve million undocumented persons living among us is something that law makers will, sooner or later, have to face. Achieving a comprehensive solution that takes into account both our national security and our national economy will require great compromise but produce significant benefits. Passing the DREAM Act is an excellent place to start.

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182. Kondracke, *supra* note 158. Of course, successful enforcement of immigration laws will also require expanded channels for legal immigration and comprehensive legalization programs, such as the DREAM Act, that are mindful of national interests. Papademetriou, *supra* note 41.

