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# ARTICLE

## A DREAM Deported: What Undocumented American Youth Need their Schools to Understand

Maria Timmons Flores

Western Washington University

*What happens to a dream deferred (detained, deported)? Does it dry up like a raisin in the sun? Or fester like a sore – And then run? Does it stink like rotten meat? Or crust and sugar over -- like a syrupy sweet? Maybe it just sags like a heavy load. Or does it explode? ~ Langston Hughes (1994)*

<p><b>Detain:</b></p> <ol style="list-style-type: none"> <li>1) To keep from proceeding;</li> <li>2) To keep waiting; delay.</li> <li>3) To keep under restraint or in custody (Dictionary.com, 2012).</li> </ol>	<p><b>Deport:</b></p> <ol style="list-style-type: none"> <li>1) To expel from a country;</li> <li>2) To banish (2012).</li> <li>3) <i>To shatter families and dreams.</i></li> </ol>
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### Children Living in the Shadows

The current heated debate over immigration reform in the United States frequently overlooks the plight of the children of undocumented immigrants. According to many estimates, there are nearly 12,000,000 unauthorized immigrants in the United States (Gonzales, 2009), and of these, 1.8 million are children (Gonzales, 2007). As dramatic as these numbers are, they account for only a fraction of those affected by the negative climate surrounding immigration and increased deportations. Indeed, half of the 10.2 million undocumented adult immigrants living in the US have children, and 73% of children born to undocumented immigrants are US citizens by birth. An estimated 5.5 million children and adolescents are growing up in families of mixed immigration status (Suarez-Orozco, Yoshikawa, Teranishi & Suarez-Orozco, 2011). Although these young people are American by experience and identity, they live in the shadows of a broken immigration system, which views them or members of their families as “illegal” in the eyes of the law and the public.

Children living in families of mixed immigration status experience myriad challenges that significantly impede their potential to succeed in school and life. They are more likely to live in poverty, move frequently, and speak a language other than English at home. In a time of enhanced immigration enforcement and new laws criminalizing immigrants, they are stigmatized by public rhetoric regarding their race and national origin. Any one of these barriers is daunting, but the combining effect of multiple challenges can be overwhelming. These children face these obstacles with the added pressure of knowing that their lives could be disrupted at any time. They “face a unique psychological trauma that is largely driven by fears of family separation, arrest, detention, deportation or simply being ‘revealed’ as being in the country without the requisite documentation” (Lopez & Lopez, 2010, p.110). This fear of exposure exacerbates the challenges they face, further limiting the family’s access to work as well as access to medical, social, psychological, legal and educational services. Although life in the shadows is a reality for millions of our students, the need for invisibility also makes it more difficult for educators, schools and communities to understand and address the lived experiences and challenges that students and families of mixed immigration status face.

### The Political and Legal Context of Immigrants’ Rights as Lived Experience

This paper is theoretically informed by Critical Race Theory (CRT), which posits that racism and other forms of oppression are prevalent in our society and enacted insidiously and systemically through our institutions, policies, and laws (Solorzano, Ceja, and Yosso 2002). One of the hallmarks of CRT is intersectionality, the ways aspects of one’s identity combine to create multiple oppressions in our lives and make understanding racism in individual and collective experience more difficult (Lopez & Lopez, 2010). A related perspective, Latin@ critical theory, can be considered ... “a framework that can be used to theorize and examine the ways in which race and racism explicitly and implicitly impact on the educational structures, processes and discourses that affect People of Color generally and Latinas/os specifically” (Solorzano & Yosso, 2002 p. 479). As educators, influencing change at the level of policy and law may seem beyond our ability to make a difference, but understanding the systemic injustices our students face and how these are enacted in their daily lives is critical to our ability to advocate for their rights and support them to succeed in school and life.

The purpose of this paper is to help school professionals understand the experiences and challenges students who are

undocumented face and offer tangible roles schools can play in rethinking policies and practices to counter everyday injustices. I begin by sharing the stories of three students, to call the reader's attention to the lived realities of the intersecting social and economic issues that undermine their access to a quality education and their dreams for a better future. I then describe the current political context that creates a culture of fear and exacerbates the social and economic challenges they face. The paper then shifts to the legal context, first presenting possibilities created by the Development, Relief, Education Act for Minors (DREAM Act) and then civil rights laws that inform our work with undocumented youth and families. I offer tangible examples of ways school policies function to support or harm students and identify key principles to help schools to deliberately protect students' rights. Throughout these sections, I bring in stories and writings of other undocumented American youth as a reminder that the laws and politics often have traumatic consequences in the lives of young people. Finally, the paper offers specific recommendations on how schools can support undocumented American youth by focusing on educational success and protecting them from harm in an era of hostility towards immigrants. Schools play a critical role in the lives of these young people, for the quality of the education and support they receive from their earliest school encounters can determine whether their paths lead eventually to lives in the shadows, deportation, or the opportunity to pursue education and work as documented citizens.

### **Profiles of Undocumented American Youth**

At the heart of the paper are the estimated 1.8 million undocumented American youth (Gonzales, 2009). The majority of these young people came to this country as children and have grown up and been educated here. For many of them, this is the only home they have known, and many no longer speak the language of their parents. Every year, 65,000 of these undocumented American youth graduate from high school. Another 25,000 turn 18 each year without a diploma (Gonzales, 2009). While their right to access a quality and free public education is guaranteed while in US public schools (*Plyler v. Doe*, 1982), there is no financial or legal support for these students to continue their education past high school. It is estimated that currently only 5 – 10% of undocumented high school graduates go on to higher education. Upon graduation from either high school or college, these young Americans face an uncertain future with no legal authorization to be in this country, to work, to vote, and in many states to earn a driver's license. For these young people, there is currently no pathway for them to pursue legal permanent residency in the country they consider home, so they are constantly faced with the threat of deportation to a country they may not even remember. These young people are in our classrooms and our communities, but too often they must remain invisible to protect themselves and their families. In an attempt to bring the legal and political issues presented in this paper alive, I develop profiles of three of my students, Isabel, Mario and Edgar. Each student is unique, yet the challenges they face are part of the collective experience of millions of students and families who are undocumented.

Isabel just completed her first year in college. Her mother married an American citizen and came to the United States from Guatemala when Isabel was five years old. Isabel remembers little about that time, except being in school immersed in a language she did not understand and fighting at home. Now at 18, Isabel knows the story of her mother's pursuit of legal residency and the denial of that request when her marriage dissolved after two years. Her mother worked hard to support three children, and they often lived with her aunt and cousins to get by. Isabel loved school and was a natural leader. In high school, she developed a service club, led summer leadership camps for Latino students, and participated in regional Latino Educational Aspiration Program (LEAP) conferences. She volunteered after school with younger children to support their learning in English and Spanish and wanted to become a bilingual teacher. Until she applied for college, Isabel did not know that she was undocumented. Through her first year in college, she discovered what this meant for her. She could not apply for financial aid, she could not work, and she could not pursue teaching as a career. She could not tell any one about the challenges she faced out of fear that it would put her or her family at risk. During high school, Isabel worked with her mother and aunt at night to clean a local restaurant. Her mother earned a decent wage, and Isabel never considered herself poor. Then as immigration enforcement increased in their community, the restaurant owner cut their pay in half and half again because he "knew my mom could not complain." Finishing her freshman year, Isabel, who was always a good student, is on academic probation. The toll of working six days each week on top of school has extracted a heavy price as Isabel's dreams of teaching slip away.

Mario tells his family's story as "life before and after cancer." When he was seven, Mario's family lived in their own home and were doing well economically. Then his aunt was diagnosed with cancer. First his parents sent money, and then went to Mexico to care for her. They returned a year later when she died. The following year, Mario's mother was diagnosed with cancer. Mario and his brother stayed with an uncle while his parents returned to Mexico to get treatment that his mother could not access in the U. S. They lost their home due to the cost of treatment for his aunt and mother. His mother recovered, and returned to the U. S. to work in the fields. The family lived in the migrant camps in the summer, and moved frequently for work. The family was federally qualified as migrant based on mobility, so the children received medical

benefits. When his brother was diagnosed with Leukemia, he was able to get treatment in the U. S. and is now surviving cancer. As an eighth grader, Mario does not know the research on cancer in his community, but he clearly knows the role cancer played in his family. Farmworkers face elevated risks of cancer due to exposure to numerous toxic substances, including excessive sunlight, heat, fumes, fertilizers, dust, and pesticides (Mills, Dodge & Yang, 2009). Working with a migrant advocate in his school, Mario has had the opportunity to write and tell his story in way that has allowed him to turn his pain into motivation to pursue high education so he can work in a safer profession and care for his family.

Edgar introduced himself at a recent public talk about the DREAM Act as a “refugee from NAFTA.” His family farmed corn in Oaxaca, Mexico, for generations but with the advent of the North American Free Trade Agreement (NAFTA), they could no longer compete with the price of corn that was subsidized by the U. S. government and imported to Mexico. His family of 12 moved to Baja California Norte to pick tomatoes with the promise of a dollar a day per person. But once they arrived to work, the U. S. - owned agri-businesses took the costs of housing and education from those wages. So after two years of struggling to survive, the family moved to the U. S., first to California, then Washington to pick fruit. Edgar spoke Mixteco at home, Spanish in the community, and learned English when he entered the U. S. school system at age six. Despite his language abilities -he is tri-lingual and often translates for family and community members - Edgar struggled with academic English through high school and in the university. Washington is one of 10 states that recognize students like Edgar as residents, and allow them to attend college and pay in - state tuition (House Bill 1079, 2003). With hopes that a college degree would ensure his success, his family sacrificed to support him to attend college. He graduated with a Bachelors degree in 2012, with the goal to work in public health to provide farmworkers with medical information and services. But Edgar cannot work without papers, so he returned to the fields. Although the experience of berry picking is familiar, he now has the theoretical constructs to understand the social and environmental injustices that he and all farmworkers face. In the evenings, he volunteers at a public health clinic and still volunteers as a youth mentor whenever he can. Knowing that refugees can seek asylum based on persecution and war, Edgar views his family as economic refugees. His family was forced to leave their home country to survive, and now they are subjected to environmental and social injustices because they are here without papers.

While each of these young people is unique, their stories also highlight many commonalities with other undocumented American youth. As children, they experience economic hardship, mobility, disrupted schooling, limited access to medical or social services, exposure to environmental toxins, and they frequently face extended periods of time separated from family members. Emerging research documents how these factors combine to negatively impact the emotional and academic development of immigrant children that can have a cumulative effect as the child develops (Suarez - Orozco, et al, 2011). As undocumented youth come of age, their awareness of the uncertainties, limitations, and racism they face become evident (Gonzales, 2011) creating a sense of hopelessness and disengagement as they question the value of schooling. These developmental factors combined with the critical awareness of injustice coalesced in adolescence tend to inadvertently channel undocumented youth into the pipeline to deportation.

The pipeline effect is not facile and can be disrupted when educators recognize students’ challenges and support the strengths their students bring. I share the stories of my students to highlight the resiliency and strength of these young people despite the odds. The challenges have not eliminated their dreams and, indeed, have fueled their desire to succeed and to make a contribution. They recognize the sacrifices their parents made in the hope of a better life for their children. Each of them talks about the people who have supported them. Each has at least one sibling who was born a U. S. citizen. They identify themselves as *privileged* in their communities, with the ability to pursue an education. Each of them has a desire to give something back to their families and their communities. These young people, along with the majority of the 1.8 million undocumented American youth, possess tremendous tenacity, resilience, talent, and motivation to succeed. This country has invested millions of dollars to educate them in our public schools, yet at present, these talents are wasted with no legal outlet for them to improve the quality of their own lives or give back to the country they see as their own.

### **Criminalizing Immigrants: How the Broader Context Affects Students**

These young people are living through a period of harsh immigration policies and hateful public rhetoric that exacerbate the challenges they face. The Obama administration has overseen an unprecedented period of immigration enforcement, deporting immigrants at a higher rate than any previous president. The 2010 – 2011 financial year set a record at 400,000 immigrants deported and exceeded one million deportations since he took office (O’Toole, 2011). The Obama administration characterizes its immigration policy as prioritizing the deportation of *criminals* who are undocumented immigrants. They employed section 287(g) of the Immigration and Nationality Act (1996) to deputize increasing numbers of local law enforcement officials as immigration agents. They enacted the Secure Communities (2008) program to link local law enforcement to federal data-bases for the purposes of immigration enforcement. Many of these targeted *criminals*,

however, were detained for giving false social security numbers to pursue work or were identified as unauthorized in routine traffic stops. The rhetoric used by this administration to justify immigration detentions and deportations codifies the image of immigrants without papers as criminals, regardless of whether the individual overstayed a visa or committed multiple felonies. The public rhetoric also is becoming increasingly vitriolic, with even mainstream media commonly using the term *illegals* in referring to unauthorized immigrants. Use of this term constructs and consistently reinforces the idea that immigrants without documentation are criminals.

Latino children, even those who are citizens of this country, are stigmatized further by public misconceptions. Over 50% of all immigrants without papers are from Mexico, and another 25% of unauthorized immigrants are from other countries in Latin America (Pew Research Center, 2009). This certainly gives foundation to the public perception of undocumented workers as Latino, yet it inappropriately fossilizes an image that all undocumented immigrants are Latino, and even more damaging, that all Latinos are undocumented immigrants. In May, one of my students called asking if I believed it was safe to drive to campus from her home 20 miles away. Her mother told her of local police targeting Latino drivers and detaining them if they could not produce their papers. The culture of fear fueled by the current anti-immigrant rhetoric in the media touches the lives of all immigrants from Latin America, regardless of their status, indeed of all U. S. citizens of Latin American descent. This representation of immigrants as criminals and profiled as Latino encourages children to distance themselves from their heritage language and culture as they internalize messages of shame and hatred (Gandara & Rumberger, 2009). This distancing from heritage language and culture has been shown to inhibit school success (Valdes, 2001). The criminalization of immigrants and the profiling of undocumented immigrants as Latino have a harsh, chilling effect on immigrant communities. It increases fear of exposure, and clearly leads to disparate treatment, all of which are violations of the 14<sup>th</sup> Amendment of the Constitution.

*Excerpt for:*

***American Dream: A Rap***

*The governor of Arizona passed the bill SR1070 that allowed the police to identify, prosecute, and deport illegal immigrants. This reminds me of the Holocaust cause the police are like Nazism. This law created a spiral of pervasive fear, community distrust, and also increased crime and costly litigation with nationwide repercussions. Now many states look to Arizona SR1070 as a model for new immigration legislation.*

*Francisco Aged 15 (Blackmore, 2012)*

Concurrent with increased immigration enforcement, there has been a dramatic increase in punitive immigration laws that criminalize immigrants. Arizona's SB 1070 (2010) introduced a wave of anti-immigrant legislation when it was signed into law on April 23, 2010. This law required all immigrants to carry registration documents; made it a crime to seek or hold a job without papers; and included a provision allowing police to arrest suspected undocumented immigrants without warrants. The following year, 31 states introduced legislation that was modeled on Arizona's law and laws passed in Alabama, Georgia, South Carolina, Indiana and Utah. Alabama's law is arguably the most punitive. It adopted much of the Arizona law and incorporated other provisions, including a requirement that public schools verify the citizenship status of new students and report data collectively on students' immigration status. Alabama is also the only state where courts allowed a provision to go into effect that requires officers to make a *reasonable attempt* during any traffic stop or other police encounter to determine the immigration status of a person if there is suspicion of someone being an illegal immigrant. Of vital importance to undocumented American youth, Georgia and South Carolina passed laws banning access for students without papers to any public higher education institution. The proposed DREAM Act requires students to be academically successful. These restrictive laws would block students' ability to apply for residency, using higher education as the pathway to temporary or permanent relief, even if the law were enacted. Despite the passage of punitive immigration laws, in repeated public opinion polls since 2004 to the present, the majority of U. S. voters support passage of the DREAM Act.

On June 25, 2012, the Supreme Court struck down three of four provisions of the Arizona law based on the argument that immigration was a federal issue. However, they left in the most contentious element of the law, the ability for local law enforcement to check identification for any person suspected of being undocumented. The court offered stringent warnings about disparate treatment of individuals under this law, and many of the lower courts' cases related to these immigration laws will move forward based on charges of racial profiling. To enact the new laws without disparity of enforcement, police officers would need to verify the immigration status of *all* people they encounter in traffic stops. The chilling effect of these laws is undeniable for all immigrants and for Latinos as a whole, even those who are US citizens. In Alabama, when the law passed requiring a social security number to attend schools, 15% of the Latino students stayed home from schools (Robertson, 2011). In response to the Supreme Courts' decision, Utah's Attorney general, Mark Shurtleff,

acknowledged, "there's going to be ongoing litigation, civil rights lawsuits, and people living in fear (Kinnard, et al., 2012)."

*Excerpt from*  
***The American Dream: A Rap***

*Did I mention I'm a legal citizen, not an illegal. But I still suffer like one of them. I worked in the fields. I saw kids helping their parents so they could get out of poverty I was criticized by rich white boyz. Now I advocate for my people helping them become a legal citizen by walking out during school. During the summer I didn't go to school. I was working in the fields to help my parents get out of poverty so they could live the American dream. Now that's impossible for my mom and especially for my dad cause not long ago he just got deported. They still don't lose the hope cause they know that I'm gonna get them out of poverty.*

*Francisco, 15*  
*(in Blackmore, 2012)*

Many children go to school each morning, fearful that they will not see their family members again. In 2011, at least 46,000 parents of U. S.-born citizen children were deported. That same year, over 5,100 children were placed in foster care across 22 states when their parents were. In areas where local police cooperated with Immigration and Customs Services (ICE) officials, the chance of children being placed in foster care was 29% higher than in counties where the police refuse to cooperate (Wessler, 2011). Many of the parents who were detained were actually authorized U. S. residents, but by the time they could prove their residency, the foster care system had terminated their parental rights. The ICE detention system does not cooperate with Child Protective Services, so parents who were detained missed required hearings. Child Protective Services does not have pro-active policies to reunite families who have been separated by deportation and are often biased against placing children with other family members in the U. S. In only 10 – 15% of cases are U. S.-born children reunited with their parents in the parents' home country following a deportation (*New York Times*, 2012). Ironically, many of the children who are reunited with their parents in Mexico, are denied medical services or public education because they were born in the U. S. If this rate of detention continues without a shift in policies or law, then an additional 15,000 young people will be placed in foster care or separated permanently from their families due to immigration detentions by 2015. Representative Lucille Roybal-Allard (D-Los Angeles) introduced House Resolution 6128, the *Help Separated Families Act* (2012) on July 12, 2012 to make it easier to identify extended family members as legal guardians to curb this separation (Berenstein Rojas, 2012). For now, all children in mixed immigration status families face tremendous injustice and live with the genuine fear that they may be permanently separated from their families at any time.

The emotional trauma that undocumented American youth face and the role this plays in undermining educational access call into question our very beliefs of educational opportunity. Without comprehensive immigration reform, millions of children will continue to be subjected to these daily injustices. These children are in our classes, yet the pain they face remains hidden to the majority of educators as their stories and pain are silenced by life in the shadows of a broken immigration system. "If we cannot muster the political will to fix current immigration malaise, we should at least face with eyes wide open what the status quo means for millions of children and youth caught in a situation not of their own making" (Suarez-Orozco, et al, 2011, 465). As educators, we may not be able to address comprehensive immigration reform, but we can develop an understanding of the political climate and civil rights laws that protect our students and employ this knowledge to become compassionate advocates to keep our children's hopes alive and within their reach.

### **The DREAM of Undocumented American Youth**

Jose Antonio Vargas is a Pulitzer Prize winning writer who *came out* as undocumented in a 2011 *New York Times Magazine* article, titled *Outlaw*. He later started a campaign, *Define American*, to document the lives of unauthorized U.S. residents and garner support for the immigration reform. In a video introduction to the website, *Define American* (2012, minute 1.21), Vargas says that the experience of undocumented youth is "arguably the most fundamentally misunderstood issue in America ... I don't know how many times I have heard 'why don't you just go back to your country and get in line? Why don't you just become a citizen?'" What most people fail to realize about undocumented American youth is that the United States *is* their country, and currently, there is absolutely no avenue for them to pursue a pathway to legal residency or citizenship. Since 2001, the DREAM Act has provided the only hope that undocumented American youth may one day step out of the shadows.

The DREAM act has been introduced repeatedly since 2001, and is designed to create a provisional pathway to citizenship for select undocumented youth. Over the years, the specific parameters of the law have changed, but in general, the bill includes only young people who have 1) resided in the U. S. continuously for 3-5 years before turning 18 years old; 2) graduated from U. S. high schools; 3) demonstrated good moral character; and 4) completed a minimum of two years of

higher education or service in the military. These young people would be required to apply for temporary and then permanent residency, and eventually citizenship in the same long-term, conditional process that any immigrant to this country pursues. The bill has been reintroduced many times in the last decade, and has generally become more restrictive. The upper age range has varied dramatically over the years, first set at 21 and then going as high as 35, and most recently set at 30. The 2001 version eliminated young people who had committed felonies or had multiple misdemeanors, with most recent versions eliminating those who have overstayed student visas or been convicted of Driving Under the Influence (DUI). The length of continuous residency before high school graduation has ranged from three to five years. These seem like minor changes in the proposed legislation, but each shift represents thousands of individuals who either have a possibility of a future in the U. S. or are excluded. The most recent version of the bill passed in both houses of Congress in December 2010 but failed to receive the 60% super-majority it needed in the Senate to be passed into law.

If passed, it is estimated that the DREAM Act could offer 1.5 million young people a legal pathway to citizenship (Gonzales, 2009). It is also expected to provide additional incentive to an estimated 800,000 unauthorized children to persevere and graduate from high school (Migration Policy Institute, 2012). Graduation rates among those potentially eligible—largely Latino and low income—have historically been extremely low. According to the 2000 Census, only 40 percent of undocumented Hispanic males between ages 18 to 24 who arrived in the United States before age 16 had completed high school or obtained a general education equivalent (GED). However, school completion rates might improve significantly given the incentives to graduate from high school that the DREAM Act provides. Academic success, including high school graduation and the ability to pursue higher education, is essential if these young people are to have any possibility of a future.

On June 15, 2012, President Obama issued a directive to the Department of Homeland Security that would give the *Dreamers*—those who qualify for the DREAM Act if passed—a reprieve. He ordered the department to create a process through which individuals could apply for temporary relief from deportation and authorization to work for a two-year period. Applications for *Deferred Action for Childhood Arrivals* (DACA) were accepted beginning August 15, 2012. The DACA application requires young people to formally apply, provide documentation of continuous residency, and pay a fee. If the directive stays in effect, those eligible could reapply every two years. Estimates of the number of young people who could benefit from this temporary injunction vary dramatically from 800,000 to 1.5 million young people (Migration Policy Institute, 2012). As of September 20, 2012, nearly 150,000 DACA applications have been filed (Bell Garden Sun, 2012). DACA could be rescinded at any time and is not a permanent solution. Immigration advocates claim that it puts those who apply at greater risk of deportation if the decision is overturned by the next president, for essentially Immigration and Customs Enforcement, would have all the background information on these young people (*Arizona Daily Star*, July 13, 2012). Only passage of the DREAM act or a similar law would offer these young people a possibility of permanent legal residency or citizenship in the country they consider their home.

President Obama (2012), in his speech announcing the temporary reprieve for the Dreamers, said “These young people study in our schools, play in our neighborhoods, are friends with our children, pledge allegiance to our flag. They are Americans in their hearts and their minds and in every way except for one, they do not have papers.... put yourselves in their shoes. Imagine that you have done everything right, studied hard, made good grades, maybe even graduated at the top of your class, yet every day you face deportation to a country you do not know.”

## **Educational Rights of Undocumented Students**

The DREAM act and DACA are both conditional pathways to legal residency, predicated on the ability to graduate from high school and pursue higher education. If these young people are to have any hope of a future, a quality education is critical. For the 800,000 unauthorized students currently in U. S. schools, academic success is a prerequisite to temporary or permanent residency under the law. Without a focus on educational equity and a quality education for students without papers, we are condemning a generation of students to life without access to legal work and to living in fear of deportation in a country they call home.

### *Legal Precedents for Educational Rights*

*Plyler v. Doe* (1982) was a landmark Supreme Court case that guaranteed the rights of undocumented students to attend U. S. public schools. The Plyler decision has faced many challenges both legislative and legal through the years, but it sets the legal precedent to guide public school policy and practice. Now, 30 years after the Plyler decision, many schools face the challenge of protecting students’ educational rights in the face of new anti-immigrant legislation that directly challenges those rights. The arguments made in the case provide legal and ethical principles to guide schools in protecting

the rights of undocumented students and families. The overview of the Plyler decision and subsequent civil rights law is provided here to give the legal context for the key legal principles of *chilling*, *exposure*, *disparate treatment* and *educational equity*.

*Plyler v. Doe* originated in Tyler, Texas, in 1977 in response to the school district's decision to charge students without authorization \$1000 annually in tuition to attend school. This decision affected 60 of the districts 1600 students. The Mexican American Legal Defense and Education Fund (MALDEF) filed a class action suit on behalf of 16 students, claiming this decision violated the equal protections clause of the Constitution. The court filed a temporary and then permanent injunction allowing students to attend school while they heard lengthy arguments, eventually determining the Texas law violated the 14<sup>th</sup> Amendment based on the fact that

The predictable effects of depriving an undocumented child of an education are clear and undisputed. Already disadvantaged as a result of poverty, lack of English speaking ability, and undeniable racial prejudice, these children without an education, will become permanently locked into the lowest socioeconomic class. Furthermore, witnesses from both sides testified that the illegal alien of today may well be the legal alien of tomorrow (*Doe v. Plyler*, 1978).

This statement reflects the fact that of the documented immigrant population in Tyler, Texas, over 60% had previously been without papers. This fact led to arguments that educating undocumented children was not only moral and in the interests of the individual, but also in the interest of society, as many of these young people were likely to become citizens. The Texas court also found that federal law took precedence over state law and that the federal government's commitment to "expanding educational opportunity" weighed on the side of the immigrant children.

### ***We Are All Humans***

*Not having papers: It makes me feel bad and worried about too many things, instead of taking care of my work at school. If teachers mention college or voting, I worry about my class finding out. I worry that I can't go to college, that no one will help me get there. Even if I can go to college, I will not be able to get a job. I worry that I will get taken back to Mexico. I worry about being separated from my family. Sometimes I get headaches from caring too much about all of that.*

*For me and my family, not having papers is not cool, because we want to go somewhere or to visit my grandpa but we can't because we don't have papers. My uncle lived in Oaxaca and they killed him and we wanted to go back for the funeral but we couldn't because my dad had to work so that we could eat and we didn't have the money. It doesn't let us see our family. If there are emergencies, we can't get there. We feel like we're leaving them behind.*

*The kids who were born here get more freedom. They can go to sleepovers, hang out with friends, go to the movies, go walking. We can't because our parents are worried that we will get taken. It's not fair because we have to stay at the house and clean.*

*People that have papers get to work, but the ones who don't have papers have to work in the fields. Even if I have the skills to work for someone, I can't because I wasn't born here, so I don't have the right. How come some people get the right and others don't? We're all human. They have to understand that just because some have rights and some don't, we're still people.*

*We are the same. We are all humans.*

*Plyler v. Doe* (1982) was a watershed Supreme Court decision because, for the first time, the court determined that undocumented persons were protected under the equal protection clause of the Constitution. The decision read, "Is it not essential to the unity of the Government and the unity of the people that all persons, whether citizens or strangers, within this land, shall have equal protection in every State of the Union in the rights of life, liberty and property?" In their arguments, the court weighed the cost to the innocent child and to the nation. They linked the arguments in *Plyler* to the earlier *Brown versus Board of Education* (1954) decision, stating, "It is doubtful that a child may reasonably be expected to succeed in life if he is denied the opportunity of an education (*Plyler*, 457 US, at 223)." They determined that the state had to provide education to all children, to be made "available to all on equal terms education (*Plyler*, 457 US, at 223)." Citing concerns with the creation of a permanent underclass of residents and the fact that children did not choose to come to this country, the decision stated that, "legislation imposing special disabilities upon a group disfavored by virtue of circumstance beyond their control suggest the kind of class or caste system the 14<sup>th</sup> amendment was designed to abolish (*Plyler*, 457 US, at 218, no 14)." Depriving children of an education could



Veronica and Julia,  
13 and 14 years old  
(Blackmore, 2012)

impose “a lifetime of hardship on a discrete class of children not accountable for their disabling status (*Plyler*, 457 US, at 218, no 14).”

### ***Principles to Guide Equitable Policy***

As schools attempt to ensure students' educational rights during a time of political and legal challenges to those rights, the general principles of the *Plyler* decision can offer them guidance. These same principles can be used to identify and address the inadvertent consequences of other policy initiatives related to educational equity. When considering the effects of the *Plyler* decision, policy analysts generally focus on three interrelated issues to which schools should attend, specifically *chill*, *exposure* and *disparity* (Lopez & Lopez, 2010).

***Chill*** refers to actions that generally create a sense of fear for individuals or the community. For many families, especially those who are unfamiliar with how institutions (public schools, universities, social services) work, simply being asked to complete paperwork in schools can create a sense of vulnerability. For example, families are asked for a social security number on the application for free and reduced lunches. A number is not required, but merely asking for the number may make families fearful. Applications that require families' presence in schools, documentation of their address, or provision of school, medical, or immunization records can cause a chilling effect. To determine eligibility for language support, schools often ask families for home language surveys outlining their history and the duration of services in the U. S. Without thoughtful attention to how information is solicited, the need to complete paperwork may cause parents to opt out of services to which their children are entitled and even withdraw their children out of fear of exposure.

***Exposure*** refers to the fact that schools are not supposed to expose the immigration status of their families to the Immigration and Customs Enforcement (ICE). One inadvertent way that schools may identify students from undocumented backgrounds is in complying with No Child Left Behind (NCLB, 2001). Under this law, immigrants who are newly arrived are not tested. In complying with this law, schools are identifying a group that is more likely to be undocumented, which may lead to a chilling effect or exposure. Alabama's HB 56, Section 28 (2011) requires families to provide a social security number to attend school, and schools, to report data on students who attend without one to the state. When this law passed, nearly half of the Latino families across the state kept their children home from school. The absence rate remained at 15% until the court issued a temporary stay on the law, and Latino students returned to school (Robertson, 2011). If this law is allowed to move forward, fear of exposure will keep families from sending their children to school, and will expose children to the genuine anxiety of being separated from their family members through the possibility of detention or deportation. The Family Educational Rights and Privacy Act (FERPA) adds legal weight to the *Plyler* decision when it comes to protecting families' information and makes the school's duty clear in protecting families from exposure.

***Disparity*** refers to the differential imposition of rules on individuals or members of a group. For example, if schools were to ask for documentation from a person based on perceived characteristics that they would not ask of another person, this would be disparity. When my student, Elena, recently applied for community college admission, the registrar asked for documentation of residency. This is not a requirement for application, and the registrar does not regularly ask for this information. Elena left the office without applying for school. Disparate treatment may also occur even with the best of intentions. For example, if schools proactively set up a system to gather information on family members' workplaces to ensure student safety in case of an immigration raid, then the school would need to request this information from all of the schools' families to avoid disparate treatment. Simply asking for information based on an assumption can cause a chilling effect or fear of exposure for not only undocumented families but for all students.

The general principles of chilling, exposure and disparity can help schools think through the equity issues of implementing any policy. Specifically, to comply with *Plyler*, education policy analysts have suggested that schools may not ask for documentation;

- deny admission to a student on the basis of undocumented status;
- treat a student fundamentally differently from others when determining residency;
- engage in practices that frighten undocumented students and their families away from school access;
- require students or parents to disclose or document immigration status;
- make inquiries of students or parents that may expose their undocumented status;
- require social security numbers from any student (Lopez & Lopez, 2010, p. 40).

The *Plyler* decision applies only to students in our public school system through high school graduation, and not to

higher education. Yet the arguments in this decision underlie the rhetoric used by advocates for the DREAM Act, from President Obama to legislators to activists to the media. Specifically, children covered by this act did not choose to come to the U. S. Without an education, they are denied economic and social opportunities; educating children benefits them individually and benefits us as a society. In reality, if we do not create some legal avenue for these young people to become productive and respected members of society, we are condemning them to a life of hardship and fear.

### ***Additional Legal Considerations for Undocumented Students***

Children who are undocumented generally are members of multiple protected classes, with civil rights case law and legislation protecting them based on their race, language, national origin, and economic status, regardless of their immigration status. Schools are often challenged to meet conflicting legal requirements, especially those that are politically driven. For example, recent laws banning bilingual education and multicultural education were put forth by voter initiative and funded by private interest groups. These initiatives run counter to educational research and professional knowledge and are currently being challenged in the courts based on violations of students' rights. Yet schools are left to navigate conflicted terrain between the laws and educational professional knowledge. In this section, I will highlight two cases to illustrate the challenges schools face in protecting the rights of these students and providing quality education supported by research. The first portrays the case law and policy related to supporting bilingual students (*Lau v. Nichols*, 1974; *Castañeda v. Pickard*, 1981), and the second example cites conflicts in implementing *No Child Left Behind* (2001).

In research discussing bilingual students in schools, language is alternately framed as a problem, resource, or right (Ruiz, 2004). Typically schools frame language as a problem to be overcome, a view our laws support while also guaranteeing students' rights to quality education. As English learners, the law requires schools to design programs to provide a quality education that is accessible to them (*Lau v. Nichols*, 1974). The *Castañeda* decision (1981) generally provides the principles that guide schools' actions related to services for bilingual students, specifically, that programs are designed based on research, provide ongoing monitoring of student progress and program effectiveness, and provide resources for space, materials, and professional development for educators. In recent years, though, successful voter initiatives in California, Arizona, and Massachusetts have prescribed language policy and program possibilities, making bilingual education illegal, despite extensive research that supports it as the most effective approach (Collier & Thomas, 2004; Collier, Thomas & Tinaiero, 2006; Thomas & Collier, 2002). There are currently court cases in Arizona that charge that this politically driven decision robs students not only of the right to speak their native languages but also their right to a quality education. Ultimately, in the case of students who are undocumented, the ability to develop written and spoken academic English that allows them to graduate from high school and succeed in higher education is crucial. These ethical and professional decisions in conflicted legal terrain become a matter of lived social and economic justice for these undocumented American youth.

Advocates of *No Child Left Behind* present it as a means to hold schools accountable for all of their students equitably. NCLB mandates adequate yearly progress in meeting state standards for all students, and disaggregates data to monitor progress in closing the achievement gap for students across specific categories of difference. Yet the inadvertent consequences of this focused look often further marginalizes the students it is intended to support. According to Gandara and Rumberger (2009, p. 766), "The requirement that schools demonstrate that ELL students make adequate progress and meet the same standards required of native-born English-speaking students, in spite of significantly greater challenges and little additional funding, has placed many schools in jeopardy of losing their accreditation despite their best efforts. Some critics have also called attention to the ways in which such policies can stigmatize EL students as a source of problems for their schools." Under NCLB, the progress of students who are undocumented is often measured across multiple disaggregated categories - race, class, language, mobility - which further stigmatizes them. In many ways, because schools are held to unreasonable standards across multiple categories of difference, the law serves to add incentives for schools to drive students out who are not succeeding (Lopez & Lopez, 2010). Finally, under NCLB, newcomers are not required to take the test, and in identifying these families, schools may inadvertently cause a chilling effect as immigrant families are exposed as new to the country.

Closing the opportunity gap for undocumented students takes on new meaning when the consequences of a poor education deprive these young Americans of the ability to pursue an education, and work, or seek legal immigration status, even if the DREAM act becomes law. Although extended discussion of how schools can do this is beyond the scope of this paper, I mention the opportunity gap here to highlight that school achievement is truly life or death for these young people. Closing the gap begins with protecting rights of students and families. It involves designing culturally relevant curricula and pedagogy (Ladson-Billings, 1995) that support students to achieve academically, develop a positive sense of cultural identity, and act for the benefit of themselves and others as an essential foundation. Developing language

programs based on research rather than politics and providing resources to enact them are vital. Programs that affirm students' culture and language are resources in learning and life are essential elements in closing the gap. Focusing on educational *equity* and protecting students from *chilling*, *exposure* and *disparity* across institutional policies and practices may well determine if these young people achieve the academic success necessary to take advantage of either President Obama's temporary directive or the DREAM Act when it is enacted.

### **What Can Schools Do?**

**Take a Public Stand:** One of the most important first steps is to publically state that the district, school, and all personnel stand with families to ensure that every child has a quality education regardless of immigration status. Inform all employees of family's rights and ways to safeguard them from situations that lead to chilling, exposure, and disparity. Review school policies and forms to identify ways that families may inadvertently feel exposed.

**Set Policies Pro-Actively:** Keep informed of laws and policies regarding the rights of students and families and responsibilities of schools in light of changing immigration policies and laws. Pro-actively set policies that determine under what circumstances, if any, immigration and customs enforcement would be allowed on campus. Set policies to safeguard paperwork, require a warrant for any request for information, and consult the district's legal counsel if a request for information or access to a student is made (National Association of Secondary School Principals, 2011).

**Protect in Cases of Detention:** To protect families in the case of a workplace raid or detention, pro-actively ask *all* families for names of people who are authorized to legally pick up and care for children as well as their workplace locations. Explain to families why you are asking for this information and explain under what conditions it would be used.

**Reach Out to Families:** Designate a school employee as a family outreach coordinator, ideally led by someone trusted by families, who speaks their language. Create a family advisory committee and ask families to identify issues of concern and take a role in disseminating information regarding rights and resources. Coordinate with families to offer workshops on rights and topics of concern.

**Build Alliances:** Develop partnerships with community-based organizations and immigrant rights organizations that provide services to immigrant families. When families reveal their immigration status, refer them to trusted legal counsel. Support students in gathering the documentation they need to demonstrate residency to apply for DACA, or if your state grants it, for in-state tuition based on residency. Hold a clinic to answer questions and support applications for the *Deferred Action for Childhood Arrivals* (2012) application process.

**Prepare Students for Higher Education:** Closing the opportunity gap for all students is a complex and challenging process. For undocumented students, the barriers they face in accessing a quality education are often compounded by multiple challenges. Focus on an equity pedagogy that takes whatever steps necessary to support students to achieve academically, develop a positive sense of academic and cultural identity, and encourage a sense of efficacy in the belief that they can be successful. Ensure that students are exposed to learning experiences that focus on developing college aspirations and preparing students for entry into higher education to help all students have access to higher education. Help students and families understand the process of applying for college and any specific conditions they must meet. For example, in 10 states, laws allow undocumented students to apply for in-state tuition. Provide information about scholarships and other financial aid that may be available to undocumented students and support them to pursue these opportunities.

### **Conclusion**

Undocumented American youth are "caught in the crossfire of harsh law, policy and rhetoric" at the intersection of two systems in crisis, education and immigration. "They bear the brunt of the failure of the political process to secure comprehensive immigration reform" (Lopez & Lopez, 2010, p. 1). This paper has provided a window into the lived experiences of undocumented youth and their families as the nested layers of school and societal laws and policies affect their education and the possible lives to which that education may lead. As one of my students, Maria Rosario Corona del Horta, taught me, our role as educators is not to provide false hope to our students, promising that if they work hard, they can go to college and succeed. Our role is to provide real hope, to work with them and their families for changes in our laws and policies that will create a genuine path to citizenship. Our role is to ensure that their rights to a quality education are enacted, supporting them to gain the caliber of education they need to walk through the door of opportunity when it is opened. If we support these undocumented American residents to actualize their dreams, and recognize them as U.S.

citizens, then as a society, we all will benefit from their talents and commitments. As President Obama said in his June 15, 2012, address, “It is the right thing to do.”

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