

RELIEF FOR UNDOCUMENTED STUDENTS: THE DREAM ACT

A PIECE OF THE PUZZLE IN OVERALL IMMIGRATION REFORM OR A PUZZLE WITH MISSING PIECES?

Legislative proposals are often advanced as promising more than they will deliver. Currently, the DREAM Act—which purports to provide relief to undocumented students—falls into that category. Advocates are rallying around legislation without understanding that, as written, many people who meet the criteria advanced in support of the change of the law will be unable to obtain relief. Furthermore, by using a narrow definition, equally situated individuals are not treated equally.

BY CECELIA M. ESPENOZA

Summer vacation in our household involves searching for the perfect puzzle. Choosing a simple puzzle with only 250 pieces or tackling the 3-D version with 2,500 pieces depends on who joins. When my niece visits, the more complex the puzzle is, the better the activity. She was so proficient at 1,000-piece puzzles that by the time she was 10 years old she would jumble five or six puzzles into a box before she began—just to keep things interesting.

Congress' recent attempts to achieve comprehensive immigration reform remind me of how my niece approaches puzzles. All the pieces of several different issues have been placed into one box and jumbled. As a result, efforts to address the needs of discrete groups—such as students and agricultural workers—have been swept into the larger attempt at immigration reform. But unlike my niece, who had the time, skills, and desire to separate and complete the jumbled puzzles, negotiators for comprehensive reform seemingly lack the skill or tenacity to bring comprehensive reform to fruition. But then, meaningful reform may be beyond the reach of even the most accomplished legislators. It is unclear whether there is enough support for comprehensive immigration reform at this time.¹ It is unlikely that Sen. John McCain (R-Ariz.) and Sen. Edward Kennedy (D-Mass.), the acknowledged champions of the last attempt, will lead the charge.

Sen. McCain's credibility as the Republican leader for comprehensive immigration reform was severely strained when, as a presidential candidate, he flip-flopped and stated that he would not vote for his own reform bill.²



Sen. Kennedy's poor health and his desire to focus what strength he has left on comprehensive health reform, suggests that his political capital and leadership may be directed elsewhere.

In the absence of a consensus or strong leadership, significant political drawbacks to proceeding with comprehensive immigration reform exist. First, Democrats are not united on this issue. Consequently, the lack of leadership means that, if discussions start, those who push the issue are most likely to default and put forth immigration reform measures that were introduced previously. The failure of those earlier measures demonstrates that they were not adequate enough to satisfy people on either side of the issue. Second, the levers that might propel reform are no longer available to lawmakers. Provisions that included enhancing border security as a prerequisite to any discussion about the status of those who are in the country unlawfully have already been addressed in other legislation and through the Obama administration's budget priorities.³ Finally, the fact that the immigration issue is great political fodder because any declared position can be used against a candidate during an election creates a disincentive for Congress to take any action at all.

Sen. McCain's campaign stance provides an example of how positions can be restated to the detriment of those who took them. McCain's campaign staff claimed that Sen. Barack Obama's positions on amendments to the comprehensive reform bill revealed that he did not support immigration reform.⁴ The McCain camp argued that, as a senator, Obama

had, in fact, worked to kill the Senate's bipartisan immigration reform compromise in 2007. The McCain campaign pointed to Sen. Obama's vote for five "poison pill" amendments, including Obama's sponsorship of Amendment 1202, to S. 1348. The McCain campaign cast the amendments as thinly veiled attempts by special interest groups to kill legislation dealing with comprehensive immigration reform. In contrast, supporters of the amendments saw the provisions as necessary to limit competition for jobs posed by guest workers, to assure a timely review of the new merit-based standards for employment visas, and to prohibit temporary workers from becoming subject to unworkable requirements. The complexity of the issues addressed and the attendant compromises demonstrate that proceeding with a "comprehensive" approach is likely to fail to gain enough support to withstand perceptions that the provisions contain compromises that lean too far in one direction or the other.

Neither the political nor the economic climate appears to support true comprehensive immigration reform at this time. Even though Barack Obama promised to advance comprehensive immigration reform during his first year in office, political commentators are increasingly questioning the Obama administration's willingness and ability to move on comprehensive immigration reform before the end of the year. Recently, "official sources" have indicated that the administration supports a "discussion" on reform but not new legislation.⁵ The Obama administration's ambiguity signals to reformers that they might want to abandon comprehensive immigration reform efforts and concentrate their energies on narrower approaches. Pushing for improvements to current law through the introduction of legislative fixes that enjoy bipartisan support could provide a foundation for consensus and, eventually, more legislative reforms. Addressing the unique needs of a discrete population of students provides an excellent starting point; as currently drafted, however, the proposed solution leaves many similarly situated individuals without relief.

The DREAM Act as a Starting Point

Congress should enact the Development, Relief, and Education for Alien Minors (DREAM) Act with the modifications discussed below in order to assure that similarly situated individuals receive access to relief. The DREAM Act should be adopted with provisions that provide a remedy to all people currently in the United States who were brought here when they were minors and who demonstrate that they are willing to obtain education or skills that will be beneficial to the United States. A law targeted in this way would offer relief to those who had no choice in the manner in which they entered the United States—a small subset of those who overstay their permits to be in the country. A recent report by the College Board indicates that only 15 percent of undocumented persons residing in the United States would fall into this category.⁶ For the law to cover those residing in the United States following their original entry as minors, Congress would need to amend the current provisions of the DREAM Act to allow such individuals to continue in this status until they complete requirements demonstrating a willingness to fully integrate into American society.

The proposed relief would be properly added to the Immigration and Nationality Act after the current Special Rule Cancellation provisions. Section 240A(b)(2) of the act cancels removal of immigrants who entered the country as minors and allows adjustment of status to battered spouses or children. Just like victims of spousal abuse, the applicants covered under this provision would obtain access to conditional residency to rectify a harm that was done to them. These immigrants did not ask to be brought to the United States as minors, but they did grow up here, attended school here, and became "American." The relief that they seek is an opportunity to be legally present and to have access to higher education in order to become more fully integrated into society. The proposed law should not be limited to current students. Anyone willing to meet certain scholastic or service requirements—such as obtaining a high school diploma or a general education development (GED) certificate, attending higher education institution, or serving in the military—should be allowed to remain in the United States legally.

The DREAM Act was originally driven by those who saw equities in assisting academic superstars who demonstrated an ability to overcome institutional barriers enacted in 1996. The current proposal uses language that seems to provide relief to a greater number of students, but it still does not open the door for all those who were brought to the United States when they were minors. As written, the act would provide a path to conditional legal residency and would repeal provisions of earlier federal statutes in order to clarify issues surrounding higher education of undocumented students. Because the act focuses on granting relief to students who were adversely affected by passage of the 1996 changes in the law regarding access to funding for higher education, the age requirements have proven to be restrictive and bar relief for many people who did not freely choose to enter the country illegally. The proposed change should be adopted because there are several generations of undocumented students who deserve relief. The full measure of the promise and desire of the United States to tap the potential that they represent has been lost by years of avoiding action on the bill. The need to expand the relief beyond its original parameters is anchored in a moral imperative to hold minors harmless for the acts of their parents. At a minimum, the proposed class to whom the legislation applies should be expanded to assure that those who have been waiting for relief since 2001 are covered. Students who stayed in the United States because they believed that relief was going to occur should be given an opportunity to adjust their status to lawful residents. A decision by the U.S. Supreme Court gave most of these students the opportunity to attend public schools, and in turn they pursued higher education in response to the initial promise that they would obtain legal status if they showed a willingness to gain the skills necessary to fully integrate into the United States.

The Case Law: *Plyler v. Doe*

Prior to 1982, there was no national statement regarding undocumented children and their access to education. States applied their own laws and requirements on whether

and how to welcome incoming students into public education systems or to restrict them from entering. As more and more undocumented students from Mexico entered the Texas school system, the Texas legislature decided to prohibit free access to public education. Students seeking access to the Texas public schools sued to overturn the law on equal protection grounds. In *Plyler v. Doe*, 457 U.S. 202 (1982), the U.S. Supreme Court invalidated the Texas statute, finding that: (1) the illegal alien plaintiff children could seek relief under the Equal Protection Clause; (2) the rational basis test was appropriate and the Texas statute did not meet the test; and (3) the undocumented status of the children alone failed to establish a sufficient rational basis for denying the benefits that the state afforded to other residents. Moreover, the Court found that the state could not point to any national policy that justified denying children an elementary education and that the Texas statute could not be sustained as furthering its interest in the preservation of the state's limited resources for the education of its lawful residents.

In its ruling, the Supreme Court stated that the minor children had no authority over the their parents' conduct and had no choice about the manner of entry into the United States.⁷ Therefore, the Court reasoned that using the children as a way to punish the acts of the parents was inconsistent with fundamental conceptions of justice. Furthermore, the Court noted that education plays a pivotal role in maintaining the fabric of society and determined that precluding access to public education harms both the individual and society.

Relevant Federal Statutes

Current federal law does not bar access to higher education. However, for undocumented students educational opportunities are severely restricted after high school and upon reaching the age of 18. Such restrictions are found in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1623(a) (2004) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. §§ 1611, 1641. Both statutes place restrictions on public support of undocumented immigrants' higher education.

Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act places a restriction on states' rights to grant financial benefits to undocumented aliens by providing that "[n]otwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a state for any post-secondary education benefit unless a citizen or national of the United States is eligible for such benefit (in no less amount, duration or scope) without regard to whether the citizen or national is such a resident." Over the years, the exact meaning of this restriction has been debated. The statutes do not provide a clear answer as to whether or not public institutions of higher education can offer in-state tuition to undocumented students. On its face, the provision eliminates the ability of states to provide "post-secondary educational benefits" to any alien who is not lawfully present in the United States unless the

state also provides the same benefit to a U.S. citizen or national residing in another state. Despite this restriction, several states narrowly read the statute and offer opportunities to undocumented but otherwise qualified students and give them access to state institutions of higher education. Several states note that the statute ties eligibility for any "post-secondary education benefit" only to residency, and 10 states—Texas, California, Utah, Washington, New York, Oklahoma, Illinois, Kansas, New Mexico, and Nebraska—have passed statutes that use factors other than residency to permit certain students without documentation to pay in-state tuition rather than the more expensive out-of-state tuition rate at state universities.⁸ The Kansas statute was challenged by parents of students paying out-of-state tuition in *Day v. Sebelius*,⁹ in which the district court found that the plaintiffs lacked standing and therefore granted the motion to dismiss the lawsuit.

Unfortunately, even students who have availed themselves of these provisions are only delaying the inevitable. Because they are undocumented, they cannot use the skills that they acquire through the higher education they receive in the United States. The law makes them ineligible to work in the United States.

Tolling and the Ten-Year Bar to Re-entry

In addition, § 301 of the Illegal Immigration Reform and Immigrant Responsibility Act created a barrier that subjects those who are "unlawfully present" in the United States to periods of ineligibility for adjustment of their status. The term "unlawful presence" is defined as being in the United States "after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled."¹⁰ The law includes a penalty that is triggered upon departure from the United States and also requires the person to leave the country in order to obtain a visa and return to the United States as a legal resident. The penalty bars a person from getting legal permanent residency for three years if the unlawful presence was for fewer than 180 days and for 10 years if the unlawful presence was for more than 180 days. As a result, this provision gives the individual an incentive to remain in the United States. The unlawful presence provision is tolled until a person reaches 18 years of age.¹¹ Because the provision is tolled, and undocumented minors have legal access to primary and secondary schools, many students are unaware that they are considered illegally present until they begin to pursue higher education opportunities.

The DREAM Act's Drawbacks: History of the Act

When the DREAM Act was first introduced by Sen. Orrin Hatch (R-Utah) and Sen. Richard Durbin (D-Ill.), the Senate's bill provided relief only to students seeking four-year degrees who had managed to obtain access to a higher education institution. The popularity of the DREAM Act stems from the fact it would legalize a narrow class of undocumented individuals.¹² Consequently, this bill could be passed as a stand-alone piece of legislation with bipartisan support.

Efforts have been made to place the DREAM Act into larger immigration reform efforts. For example, the act's

provisions were incorporated into the Comprehensive Immigration Reform Acts of 2006 and 2007. In May 2006, the Senate passed the DREAM Act by a voice vote, without dissent, as an amendment to the Comprehensive Immigration Reform Act of 2006 (S. 2611), but it never came to a vote in the House. Subsequent efforts by Sen. Durbin and other co-sponsors to include the DREAM Act in the 2008 Department of Defense Reauthorization Bill failed. The current versions of the bills were introduced on March 26, 2009, as S. 729 in the Senate by Sen. Durbin and Sen. Richard Lugar (R-Ind.),¹³ and H.R. 1751 in the House by Rep. Howard Berman (D-Calif.), Rep. Lucille Roybal-Allard (D-Calif.), and Rep. Lincoln Diaz-Balart (R-Fla.).¹⁴

All pending versions of the DREAM Act propose to repeal § 505 of the Illegal Immigration Reform and Immigrant Responsibility Act and to permit states to determine state residency requirements for higher education purposes. Also under the proposals, the federal government, which has exclusive authority over immigration, would provide a path to legal permanent residency by adding a new cancellation of removal provision to the Immigration and Nationality Act.

Beyond those common threads, most versions of the bill treat the key provisions differently: the requirements that must be met to move from conditional status to legal permanent residency as well as the definition of the class that will be eligible. By looking at the DREAM Act and its history, it is clear that various schools of thought exist as to who should benefit and why they deserve relief. Now is the time to re-evaluate and restate the rationale behind their positions and then provide relief to all who are similarly situated.

The titles of the 2001 bill reveal the intent to define the class narrowly. First, a new provision dealing with cancellation of removal for “certain long-term resident students” was added, and § 3(a) was titled “Special Rule for Children in Qualified Institutions of Higher Education.” These features show that the bill narrowly defined a class whose members had to demonstrate exceptional skills and commitment to education and must already have gained access to higher education. Furthermore, to qualify the student was required to apply for relief within two years of enactment and be under 21 years of age on the date of the application.

The House’s companion bill, H.R. 1918—originally called the Student Adjustment Act (SAA)—also narrowly defined the class of those eligible for relief in the form of cancellation of removal. Coverage under the SAA would flow only to minor students destined for a four-year college education. In addition, the SAA titled its relief provision “Special Rule for Children in Middle School or Secondary School.” The House bill limited eligibility to students in the seventh grade or higher at the time of enactment and capped eligibility when the student reached 21 years of age. Also, the SAA required proof of five years of continuous presence in the United States prior to applying for relief and precluded applicants from traveling outside the United States for long periods of time. The original House and Senate versions did not intend to provide comprehensive relief to children who had been brought to the United States when they were minors. Unlike other grounds for cancellation, which grant relief to aliens on an ongoing basis because

the eligible alien falls within a sheltered class, the relief offered was limited.¹⁵ In summary, the original versions of the DREAM Act were narrowly tailored and showed no intent to encourage or reward education per se or to rectify the status of those who had been brought to the United States when they were children.

Garnering Support by Expanding the Class

Those sponsoring various bills may find it easier to galvanize support for the DREAM Act if they clarify for the immigration community whom the act will cover. Moreover, because current supporters of the DREAM Act have not focused on the differences between the various approaches, it is quite possible that many immigrants will be surprised to find out that the final bill fails to provide the coverage that they thought was included. As now proposed, the cancellation requirements no longer focus on an extremely narrow group of students, but even so, relief is limited. Many who believe they will be eligible for relief will be surprised to learn that they have no access to relief if either pending proposal becomes law.

Sections 4 and 5 of the 2009 versions of the House and Senate bills contain the following provisions that are similar to those in the previous bills. Section 4 is titled, “Cancellation of Removal and Adjustment of Status of Certain Long-Term Residents Who Entered the United States as Children” and subsection (a) thereto calls this a “Special Rule for Certain Long-Term Residents Who Entered the United States as Children.” Both bills allow the secretary of homeland security to “cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in Section 5, an alien who is inadmissible or deportable from the United States... .”¹⁶ Furthermore, conditional permanent resident status in both bills applies only to those who (1) came to the United States before the age of 16, (2) have lived in the United States at least five years at the time the law was enacted, (3) have good moral character, and (4) have graduated from a U.S. high school or obtained a GED certificate.¹⁷

An Equitable Amendment

The following modification would allow Congress to create a durable provision dealing with cancellation of removal while clearly indicating that the relief would not be given to anyone not in the United States on the date the law was enacted. I suggest that § 4 (a)(1) be amended by doing the following:

- striking the current provisions (A) and (F);
- renumbering provisions (B), (C), (D), and (E) to (C), (D), (E), and (F);
- inserting “(A) the alien at the time of initial entry had not reached the age of 18 years of age; (B) the alien has been physically present in the United States for a continuous period of not less than five years immediately preceding the application”; and
- expanding the newly numbered section (E) to read: “the alien, at the time of application, has been admitted to an institution of higher education in the United States, or

has earned a high school diploma or obtained a general education development certificate in the United States, or has served in the U.S. Armed Forces for at least two years.”

These changes would create a durable form of cancellation relief and provide several benefits that the pending proposed legislation does not offer: (1) The suggested amendment would limit the eligible group to only people residing in the United States on the date of enactment, and it would not allow anyone entering after enactment to benefit from the provision. (2) The modification would establish a burden on applicants to demonstrate that they were minors at the time of their initial entry into the United States, thus providing a remedy only to those who entered through no fault of their own. (3) Although the amended provision still requires five years of continuous physical presence as a prerequisite to eligibility, it does not cut off children who are currently in the United States but are younger than five years of age; moreover, the amendment would not bar children between the ages of 16 and 18 nor set a ceiling to preclude those older than 35. Adopting these changes consistently applies the rationale of granting relief to people who were brought to the United States by people whose conduct the minor could not influence.

The Senate bill unnecessarily cuts off relief to those who are younger than 12 or older than 35. People should not be punished for the acts they engaged in as minors, and when students meet the scholastic or service requirements set forth in the provisions as amended they should be able to adjust their status. Because these students currently are entitled to public elementary and secondary education under *Plyler* and because periods of unlawful presence are tolled during their minority, these students share the characteristic of innocence that is the basis for granting relief. Consequently, amending the existing language is both sensible and fair.

Moreover, redesigning the DREAM Act to apply to the undocumented immigrants who were minors when they entered the country is consistent with several existing provisions in the Immigration and Nationality Act. First, § 212(a)(9)(B)(iii) of the Immigration and Nationality Act already recognizes the unique condition of minors by exempting them from accruing unlawful presence until they are 18 years old. In addition, the relief proposed will free students from the current conundrum that prevents them from leaving the United States to avoid the application of the ten-year bar to entry found in § 212(a)(B)(9).

Modifying the DREAM Act as I propose will have three additional benefits: (1) The amended act can generate higher revenues for the United States. (2) The act will discourage students from dropping out of school and will provide an incentive to complete high school and pursue higher education. (3) The change recognizes that education and the acquisition of new job skills are ongoing processes and not discrete acts that happen immediately following graduation from high school.

Generating Higher Revenues

The National Foundation for American Policy and a study conducted by the RAND Corporation in 1999 have found a positive fiscal impact on the United States if the DREAM Act is passed and the students it covers can participate in higher education.¹⁸ According to the RAND study, a 30-year-old immigrant woman who graduates from college will pay \$5,300 more in taxes and will cost the government \$3,900 less in expenses annually than an immigrant who never finished high school.¹⁹

Creating an Incentive to Obtain an Education

A second advantage to the proposed amendment is that it provides an incentive to remain in school, and an incentive for this purpose is needed. According to the most recent estimates, each year, between 50,000 and 65,000 undocumented students who entered the United States as minors graduate from high school in the United States. Although these numbers sound impressive, thousands more are discouraged from staying in school. The U.S. Department of Education reported a 22.1 percent dropout rate for Hispanics in 2006 (more than twice the rate among African-American students and more than three times the rate among white students).²⁰

According to surveys conducted among the Hispanic community, a contributing factor to the dropout rate is students' realization that their status as undocumented students blocks their access to higher education. Many of those who are discouraged by their circumstance abandon education at an earlier age and drop out of school. Many of these Hispanic dropouts are members of the so-called lost generation: those incapacitated by a sense of hopelessness because they realize that effort and hard work will not give them the opportunity to attend college. Doors that were opened to these students as a result of the *Plyler* decision in 1982 close once they graduate from high school.

If legalization is contingent on remaining in school, gaining legal status becomes an incentive for students. The failure to amend the DREAM Act to cover students who are currently in the United States simply pushes the dropout status from the current grades into lower grades, as children and their parents give up hope. Given the long-term benefits of an educated population, all steps that can be taken to provide incentives to succeed should be implemented. Incentives to drop out of school relegate students into low-paying under-the-table jobs and should be discouraged.

Recognizing Education as an Ongoing Process

Finally, by Congress removing the ceiling on eligibility, as proposed, Congress will send a message that pursuit of education that is relevant to the needs of today's world is not limited to a four-year degree obtained directly after high school. By enlarging the class, Congress can provide hope and better education to people who are failing to live up to their potential because they have been denied access to higher education on account of their status. Educating these people better equips them to compete in the job market, enriches their lives, and adds value to our society. Amending the bills and enlarging the class of persons

covered would not be an open pass, because prerequisites would have to be demonstrated in order to obtain immigration relief. Trends in higher education as reported by the U.S. Department of Education demonstrate that the student population of colleges and universities comprises both traditional students straight out of high school and a growing number of nontraditional students who have returned to school to obtain additional skills.²¹

Conclusion

Whether Congress passes comprehensive immigration reform or the DREAM Act as a stand-alone piece of legislation, Congress has the opportunity and obligation to forge a meaningful form of relief that clearly includes all people who were brought to the United States as minors. It makes sense to reward individuals who position themselves in a way that will make them productive to society. Because the current provisions still leave out too many innocent members of the class, Congress should be pushed to amend the pending bills in a way that will rectify the deficiencies found in the bills under consideration. Without such changes, a critical piece of the puzzle for many members of the class that is necessary to correct the harm to which they are subjected will be missing. Adopting these changes is consistent with the underlying rationale of not punishing children who entered the United States as minors.

If the proposed changes are not made and any of the current versions of the law are enacted, the law will stigmatize and discourage both those who are too young and those who are too old to be members of the class. The students who are excluded from relief and cannot adjust their status or seek postsecondary education will continue to be barred from sharing the skills that they acquired while living in the United States. The minor children who are currently in public schools but are under the age cited in the bill will face the same disincentive that affects today's immigrant students. Those students who are too old to be part of the class will be discouraged from participating in the current re-engineering of the workforce that is being fueled by education. The state of our economy and all future opportunities for members of our society require an increase in knowledge that is not limited to the traditional post-high school college path. To fully embrace those who are integrated into our society and to complete the puzzle for the minors described in this article, Congress should create a plan that will address the needs of all members of the class. **TFL**

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Endnotes

¹S. 1349, which was introduced by Sen. Harry Reid (D-Nev.), had four Democratic co-sponsors, Sen. Edward Kennedy (D-Mass.), Sen. Robert Menéndez (D-N.J.), Sen. Patrick Leahy (D-Vt.), and Sen. Ken Salazar (D-Colo.).

²CNN, Republican Presidential Debate, Jan. 30, 2008, transcript available at www.cnn.com/2008/POLITICS/01/30/GOPdebate.transcript/.

³Anna Gorman and Peter Nicholas, *Obama Budget Puts Security First at the Border*, L.A. TIMES (May 6, 2009), available at www.latimes.com/news/nationworld/nation/la-na-border6-2009may06_0,1699514.story.

⁴See McCain Campaign Press Release, June 28, 2008, available at 2008central.net/2008/06/28/mccain-press-release-barack-obama-a-poison-pill-to-immigration-reform/.

⁵See CNN report that, according to multiple sources including the press secretary Robert Gibbs, the Obama administration won't push for comprehensive immigration reform this year; available at www.cnn.com/2009/POLITICS/04/09/obama.immigration/.

⁶Roberto G. Gonzales, *Young Lives on Hold: The College Dreams of Undocumented Students*, COLLEGE BOARD ADVOCACY at 6 (April 2009).

⁷See *Plyler v. Doe* at 219–220 (explaining that “the children who are the plaintiffs in these cases ‘can affect neither their parents’ conduct nor their own status’”) (quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977)).

⁸See National Immigration Law Center, *DREAM Act: Basic Information* (Oct. 2007), available at www.nilc.org/immlawpolicy/DREAM/dream_basic_info_0406.pdf; and National Immigration Law Center, *DREAM Act Summary* (Apr. 2006), available at www.nilc.org/immlawpolicy/DREAM/dream_act_06_summary_2006-04.pdf.

⁹376 F. Supp. 2d 1022, (D.Kan. 2005), *sub nom. Day v. Bond*, 500 F.3d 1127 (10th Cir. 2007); *cert. denied* in *Day v. Bond*, 128 S. Ct. 2987 (U.S. 2008) (No. 07-1193).

¹⁰Immigration and Nationality Act, § 212(a)(9)(B)(ii).

¹¹*Id.*, § (iii)(D), stating that “No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (D).”

¹²See Student Adjustment Act of 2001, H.R. 1918, 107th Cong. (2001); Student Adjustment Act of 2003, H.R. 1684, 108th Cong. (2003); American DREAM Act, H.R. 5131, 109th Cong. (2006); American DREAM Act, H.R. 1275, 110th Cong. (2007); S. 729 and H.R. 1751, (2009).

¹³Co-sponsors as of May 20, 2009, are: Sen. Jeff Bingaman (D-N.M.), Sen. Barbara Boxer (D-Calif.), Sen. Roland Burris (D-Ill.), Sen. Maria Cantwell (D-Wash.), Sen. Christopher Dodd (D-Conn.), Sen. Russell Feingold (D-Wisc.), Sen. Dianne Feinstein (D-Calif.), Sen. Kirsten Gillibrand (D-N.Y.), Sen. Thomas Harkin (D-Iowa), Sen. Edward Kennedy (D-Mass.), Sen. John Kerry (D-Mass.), Sen. Patrick Leahy (D-Vt.), Sen. Joseph Lieberman (I-Conn.), Sen. Richard Lugar (R-Ind.), Sen. Mel

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Martinez (R-Fla.), Sen. Robert Menéndez (D-N.J.), Sen. Patty Murray (D-Wash.), Sen. Bill Nelson (D-Fla.), Sen. Harry Reid (D-Nev.), Sen. Charles Schumer (D-N.Y.), Sen. Mark Udall (D-Colo.), and Sen. Sheldon Whitehouse (D-R.I.).

¹⁴For general information about the history of the legislation see dreamact2009.com/about.

¹⁵See, for example, INA, § 240A: “Special Rule for Battered Spouse or Child.”

¹⁶S.729 and H.R. 1751 (2009), § 4.

¹⁷*Id.*, § 5.

¹⁸See National Immigration Law Center, www.nilc.org/immlawpolicy/DREAM/DREAM-econbens-2009-03-26.pdf.

¹⁹For additional references on numerous studies finding a positive fiscal impact, see Gonzales, *supra*, 7, at 14.

²⁰U.S. Department of Education, National Center for Ed-

ucation Statistics, *The Condition of Education 2008* (NCES 2008-031), which defines the status of “dropout rate” as the percentage of 16- through 24-year-olds who are not enrolled in high school and who lack a high school credential. A high school credential includes a high school diploma or equivalent credential such as a GED certificate.

²¹Between 1990 and 2005, the enrollment of students under the age of 25 increased by 33 percent; the enrollment of people aged 25 and older rose by 18 percent during the same period. From 2005 to 2016, the National Center for Education Statistics projects enrollment of people under age 25 to increase by 15 percent and enrollment of aged 25 and older to increase by 21 percent. U.S. Department of Education, Institute of Education Sciences, *Fast Facts*, available at nces.ed.gov/fastfacts/display.asp?id=98.

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on jobs created by stimulus funding. Critics of mandatory participation in E-Verify applauded the measure, claiming that errors in the SSA database would result in U.S. workers being denied jobs and that the program would hurt small businesses that lack the resources to implement E-Verify in these tough economic times.

Numerous bills dealing with verification of authorization for employment have been introduced in Congress during the last year. Some of these bills mandate E-Verify and seek to expand it to current employees; others propose entirely new systems to prevent unauthorized employment. For instance, in late April 2009, some legislators took a step toward replacing the E-Verify Program. Rep. Gabrielle Giffords (D-Ariz.) and Rep. Sam Johnson (R-Texas) introduced a bill, the New Employee Verification Act, to establish a mandatory electronic verification system that would take the place of E-Verify. This new system would rely on the electronic system used to enforce child support payments or a database using biometric information, and then the information would be checked against the Social Security Administration’s and Department of Homeland Security’s databases. This bill also would do away with Form I-9 altogether. The representatives who introduced the new bill expressed hope that it would either be the foundation for employment verification in a broader immigration bill or move through Congress on its own.

Undoubtedly, the E-Verify Program will continue to be a hotly contested issue in Congress and more proposals dealing with mandatory participation in E-Verify or other employment verification programs as well as state legislation are likely to arise in the coming year. **TFL**

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Endnotes

¹See Office of the President, *Improving Border Security and Immigration Within Existing Law*, White House communication (Aug. 10, 2007), republished as a DHS Press Release; available at www.dhs.gov/xnews/releases/pr_1186757867585.shtm.

²The applicable federal regulations can be found at 8 C.F.R. §§ 214.2(f)(5),(10), (11), and (12) and 247a12(b)(6)(iv) and (v). Additional explanatory information about the rule can be found at www.uscis.gov/files/articleOPT_4Apr08.pdf.

³Office of the Inspector General, Social Security Administration, *Congressional Response Report: Accuracy of the Social Security Administration’s Numident File* (Dec. 2006); available at www.socialsecurity.gov/oig/ADOBEPDF/audittxt/A-08-06-26100.htm.

⁴The regulation amends 48 C.F.R. parts 2, 12, 22, and 52, and was published in the *Federal Register* at 73 F.R. 67651–67705 (Nov. 14, 2008).