



LATINO POLICY & ISSUES BRIEF

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STILL DREAMING LEGISLATION AND LEGAL DECISIONS AFFECTING UNDOCUMENTED AB 540 STUDENTS

by

Nancy Guarneros, Cyndi Bendezu, Lindsay Perez Huber, Veronica N. Velez, and Daniel G. Solorzano

The dreams of undocumented students in California who want to earn a degree from one of the state's public colleges or universities came closer to reality in 2001, when California Assembly Bill 540 (AB 540) was passed. Under the legislation, which was signed into law in 2002, students who 1) attended a California high school for at least three years, 2) graduated from a California high school or received an equivalent degree (GED), and 3) signed the California Nonresident Tuition Exemption Request are eligible to pay in-state tuition at University of California (UC), California State University (CSU), and California Community College (CCC) campuses.¹

AB 540 is commonly perceived as legislation that aids only undocumented students. The University of California Office of the President (2008) reports, however, that students who benefit the most from this law are U.S. citizens (see Perez Huber, Malagon, and

Solorzano 2009). Some opponents argue that undocumented AB 540 students "displace" native-born students and add a financial burden to the state's public higher education system, yet research has found that AB 540 increases school revenues by bringing in tuition from students who otherwise would not be in college (Gonzalez 2007). Many undocumented AB 540 students come from low-income families and cannot pay out-of-state tuition (Olivérez 2007). AB 540 provides greater access to higher education for undocumented students in California.

Despite the proven value of AB 540, the dreams of undocumented students may have to be postponed because the legality of the statute is currently being contested in *Martinez v. Regents of the University of California*. The suit was brought in 2005 by a group of out-of-state U.S. citizen students who had been declared ineligible for AB 540 at UC, CSU, and CCC and, as a result, paid out-of-state tuition. The case has moved to the California Supreme Court, which will hear arguments later this year. Plaintiffs claim that AB 540 violates federal immigration law; the defense states that AB 540 is in compliance because legal status is not a criterion for eligibility. Rather, the criteria are based on whether the student

Table 1. Legal and Legislative Actions Affecting Undocumented Students

ACTION	SIGNIFICANCE
1982 <i>Plyler v. Doe</i>	Ruling by the U.S. Supreme Court that established that all children in the United States are entitled to free public K-12 education regardless of legal status.
1986 <i>Leticia A. v. Regents of the University of California</i>	Ruling by the California Superior Court of Alameda County that allowed undocumented students attending California public colleges and universities to pay in-state tuition and apply for state financial aid.
1991 <i>Regents of the University of California v. Superior Court (Bradford)</i>	Ruling by the California Court of Appeal, Second District, that reversed <i>Leticia A.</i>
1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	Federal statute that prohibits states from granting a postsecondary benefit to undocumented students if the same benefit is not granted to a U.S. citizen.
2001 AB 540	California statute that allows undocumented students attending UC, CSU, or CCC to pay in-state tuition if they meet specific requirements.
2009 SB 160— California Dream Act	Bill introduced in the California Senate that would allow undocumented students to apply for institutional aid. Three previous versions of the bill were vetoed.
2009 H.R. 1751—American DREAM Act	Bill introduced in the U.S. House of Representatives that would provide a path to legalization for undocumented minors who fulfill specific requirements.
2009 S. 729—DREAM Act of 2009	Similar legislation introduced in the U.S. Senate.

Source: Olivérez et al. 2006; Russell 2007.

has attended and graduated from a California high school.

A CONTINUING DEBATE

The debate surrounding AB 540 continues decades of legislative and legal wrangling over the education of undocumented students. Table 1 provides an overview of state and federal legal decisions and legislation regarding undocumented students' access to education. Access to education should be considered not only a legislative right but also a fundamental human right.

In 1982, in *Plyler v. Doe*, the U.S. Supreme Court ruled that a Texas statute denying public-school enrollment to undocumented children violated the Equal Protection Clause of the

Fourteenth Amendment. The decision guaranteed access to public education to all K-12 students regardless of legal status. In 1986, in *Leticia A. v. Regents of the University of California*, the decision by a California Superior Court allowed undocumented students to establish in-state residency for tuition purposes and to apply for Cal Grants. Then in 1991, the ruling in *Regents of the University of California v. Superior Court (Bradford)* overturned *Leticia A.* A decade later, AB 540 was signed into law.

AB 540 improves access to California's public two- and four-year institutions, but for many undocumented students higher education is too expensive even with in-state tuition. The California Dream Act (Senate Bill 160) would

allow undocumented AB 540 students to apply for campus-based financial aid. The California Dream Act was first introduced in the state senate in 2005, but this bill and two subsequent versions were vetoed by Governor Arnold Schwarzenegger.² The latest version, SB 160, was introduced in March 2009.

The legal battles over undocumented students' access to higher education will continue until they are provided with a path to citizenship. Federal versions of the DREAM (Development, Relief, and Education for Alien Minors) Act were introduced in the House and the Senate in March. If enacted, the law will provide a path to legalization for undocumented students who meet specific requirements.³ Students who meet these criteria would be granted six years of "conditional permanent residency" if they obtain a two-year college degree or complete two years of military service. Following a wait period, they would have the opportunity to adjust their conditional permanent residency and apply for U.S. citizenship.

CONCLUSION

AB 540 has provided greater access to higher education for undocumented students. Yet with limited access to financial aid, higher education remains only a dream for many. It is critical that policy makers, institutional leaders, and educators take the following steps to create greater educational and life opportunities for undocumented students—students who are being left behind, and who are still dreaming of a college education.

- Advocate for undocumented AB 540 students by taking an active role when AB 540 faces legal challenges.
- Train administrative staff and educators on the provisions of AB 540 so that they can effectively guide undocumented students through college and university systems.
- Include information about AB 540 in all college and university materials, including those about financial aid.
- Provide outreach to potential undocumented AB 540 students about options for undergraduate, graduate, and professional school.
- Actively support passage of the California Dream Act and the federal DREAM Act.

NOTES

1. The tuition exemption is a contract between the student and the university stating that the student will apply for legal residency when he or she is eligible.

2. SB 160 was introduced in 2005, vetoed in 2006; SB 1 was introduced in 2006, vetoed in 2007; SB 1301 was introduced and vetoed in 2008.

3. The student must: 1) have proof of arrival in the United States before age 16, and be under age 35; 2) have graduated from high school or obtained a GED; 3) have good moral character (defined in immigration law as having no criminal record or deportation order); and 4) have at least five years of continuous presence in the United States prior to the passage of the bill. The federal DREAM Act has been introduced several times since 2003.

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AUTHORS Nancy Guarneros is a fourth-year sociology major at the University of California, Los Angeles. Cyndi Bendezu graduated from UCLA in 2007 with a bachelor's degree in political science. Lindsay Perez Huber is a doctoral candidate in social science and comparative education in the UCLA Graduate School of Education and Information Studies. Veronica N. Velez is a doctoral candidate in social science and comparative education in the UCLA Graduate School of Education and Information Studies. Daniel G. Solorzano is a professor of social science and comparative education in the UCLA Graduate School of Education and Information Studies and director of UC/ACCORD.

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STILL DREAMING

AB 540 allows undocumented students to apply for in-state tuition at California's public colleges and universities. This policy brief reviews AB 540's background, the legal challenge that threatens the statute, and legislation that would give undocumented students a path to citizenship.

FOR MORE INFORMATION, CONTACT:

UCLA Chicano Studies Research Center
193 Haines Hall
Los Angeles, CA 90095-1544
Phone: 310-825-2642
Fax: 310-206-1784
E-Mail: press@chicano.ucla.edu
Web: www.chicano.ucla.edu

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UCLA CHICANO STUDIES RESEARCH CENTER
193 HAINES HALL
LOS ANGELES, CA 90095-1544