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PREVENTING A PERMANENT UNDERCLASS: IN-STATE TUITION FOR DACA STUDENTS

Christian Bowcutt¹ and Eliza Allen²

The subject of immigration is one that is becoming an increasingly controversial point of debate and deliberation. Many people acknowledge the difficulty of attaining legal citizenship in this country and the subsequent influx of undocumented immigrants as a result. Despite the “unalienable rights...of life, liberty, and the pursuit of happiness” guaranteed by the Declaration of Independence, many living in America are deprived these freedoms because of their status as an immigrant.³

Many of these rights are granted through the possibility of education. Accessible education for children provides the opportunity to contribute to one’s community. As it stands, states cannot deny children a public K-12 education based on immigration status. However, similar protections are not guaranteed for higher education. Currently, Deferred Action for Childhood Arrivals (DACA), a United States immigration policy, allows some eligible individuals with unlawful presence in the United States the opportunity to work and receive an education. This policy does not, however, guarantee access to in-state tuition rates of public universities. This paper

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3 THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

analyzes the reasons why DACA recipients should be guaranteed in-state tuition as a part of their legal right to higher education.

I. BACKGROUND

America has a rich history of immigration. Immigration has continually been the subject of much debate and scrutiny. The children of undocumented immigrants suffer from a lack of stability in immigration law. These children are left underprivileged in a country that prioritizes “liberty and justice for all.”⁴ The inequality is apparent in the educational disparities DACA recipients face in the United States, namely denial of admissions, lack of financial aid, and the inability to pay in-state resident tuition.⁵ This paper will focus on in-state resident tuition.

Tuition costs are at record highs. College tuition on average has risen 78% from 1978 to 2010.⁶ This number continues to rise. Thus, receiving financial aid is increasingly mandatory. As costs continue to rise, DACA recipients, who are excluded from the benefits of in-state tuition, will be at a perpetual disadvantage. This issue has been at least partially resolved in the context of a K-12 education. In the court case *Plyler v. Doe*, the Supreme Court ruled that all children, regardless of immigration status, shall have the same right to access K-12 Education.⁷ Thus, states were federally prohibited from denying students access to free education and from charging tuition based on citizenship status. Justice Brennan’s ruling used the Equal Protection Clause in the Fourteenth Amendment to state that

4 4 U.S.C. 4 § 2011.

5 Citizens who have lived in a single state for many years are defined as residents. Students who move from one state to another solely for the purpose of attending college are considered nonresidents. Typically, states will allow a nonresident to become reclassified as a resident after a certain period of time, usually nine to twelve months; see Michael A. Olivas, 30 J. COLL. UNIV. L. 435, 438 (2004).

6 Grey Gordon & Aaron Hedlund, *Accounting for the Rise in College Tuition*, (Nat’l Bureau of Econ. Res., Working Paper No. 21967, 2016).

7 *Plyler v. Doe*, 457 U.S. 202 (1982)

denying an education would create a “lifetime of hardship” and a “permanent underclass” since “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education.”⁸ While this was a victory for K-12 students, states have proceeded to restrict access to affordable higher education for DACA recipients by denying in-state tuition rates.

In recent decades, legislation has permitted states to withhold in-state tuition rates from DACA recipients. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, which changed the federal social welfare and health benefits for undocumented immigrants, denied certain higher education benefits to undocumented students. This required states to pass their own legislation if they wanted to permit DACA recipients to pay in-state tuition rates.⁹ The Development, Relief, and Education for Alien Minors (DREAM) Act was introduced in 2001 which would repeal the section of the IIRIRA that allows states to discriminate against undocumented students on the definition of residency for the purpose of in-state tuition. Since its initial introduction, several forms for the DREAM Act have been proposed, but none have passed.¹⁰ The majority of states are still yet to guarantee the right to in-state tuition rates to many undocumented students who are eligible for DACA and residing in their state. Unless federal legislation guarantees the right to affordable higher education to all DACA recipients, there will continue to be a “permanent underclass” that is inhibited only by delayed action by government.

The Deferred Action for Childhood Arrivals (DACA) program was introduced in 2012 by a Department of Homeland Security (DHS) memorandum to provide the possibility to work and temporarily remove the risk of deportation for eligible undocumented

8 *Id.* at 223.

9 H.R. REP. NO. 104-828 (1996).

10 See Elisha Barron, *Recent Development: The Development, Relief, and Education for Alien Minors (DREAM) Act*, 48 HARV. J. ON LEGIS. 623, 644-45 (2011).

immigrants who had entered the United States as minors.¹¹ DACA recipients are children of immigrant families who are allowed to reside in the United States for renewable two-year periods. Young people who meet the DACA requirements are granted a temporary deferment of deportation and are eligible for work authorization, Social Security numbers, driver's licenses, and the opportunity to pursue higher education. Recipients are not, however, eligible for federal and most state financial aid, nor are they offered a path to citizenship.¹² Likewise, DACA recipients are not guaranteed the discounted rates at public colleges offered to legal citizens residing in a state.

In September 2017, the DACA program was rescinded through a memorandum from the Department of Homeland Security despite approximately 800,000 active participants.¹³ The rescission has led to several federal court cases which have permitted existing recipients to continue in the DACA program without accepting new applications.¹⁴ On June 18, 2020, a 5-4 decision was issued by the U.S. Supreme Court which determined that the Trump administration had terminated the DACA program in violation of the Administrative Procedure Act.¹⁵ Meanwhile, the 652,880 active DACA recipients as of September 2019 were quite limited in the opportunities granted

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- 11 Napolitano, Janet., 2012. *Exercising prosecutorial discretion with respect to individuals who came to the United States as children [Memorandum]*. Washington, D.C.: Department of Homeland Security.
 - 12 Youngro Lee, *To Dream or Not to Dream: A Cost-Benefit Analysis of the Development, Relief, and Education for the Alien Minors (Dream) Act*, 16, CORNELL J. OF L. AND PUB. POL'Y. 232, 234-240 (2006).
 - 13 Duke, E. C. 2017. *Rescission of the June 15, 2012 memorandum entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" [Memorandum]*. Washington, DC: Department of Homeland Security.
 - 14 NAACP v. Trump, 321 F. Supp. 3d 143 (D.D.C. 2018).; Regents of the University of California v. Bakke, 438 US 265 (1978).; Vidal v. Nielsen, 279 F. Supp. 3d 401 (E.D.N.Y. 2018).
 - 15 Department of Homeland Security et al. v. Regents of the University of California et al., 591 U.S. 140 (1891).

them.¹⁶ Over one-third of DACA recipients were enrolled in college, and approximately one-fourth were simultaneously employed and enrolled in college. Because they were ineligible for federal aid and in-state tuition fees, these students had to finance their education otherwise.¹⁷

As a result, thousands of students are struggling to attend college because states are not required to offer in-state tuition rates to immigrants residing in that state. Undocumented immigrants are guaranteed equal access to public education through high school, but despite the increasing necessity of a college education to obtaining decent employment and maintaining a good quality of life today, equally affordable education is not granted to DACA recipients in college. Therefore, Congress must pass federal legislation to guarantee undocumented students in-state tuition rates in order to ensure the rights guaranteed in the Equal Protection Clause of the Fourteenth Amendment which states that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”¹⁸

II. PROOF OF CLAIM

A. Current Legislation

In 1975, a class action was filed against the revised education laws in Texas which denied enrollment and withheld state funds for the education of children not “legally admitted” to the country. When certain school-age children from Mexico were denied education, the case was filed to guarantee free public education to all. The district court ruled that these revised education laws were not meant to nor effective in keeping illegal aliens out of the State of Texas. The court

16 Daniel Alulema, *DACA and the Supreme Court: How We Got to This Point, a Statistical Profile of Who Is Affected, and What the Future May Hold for DACA Beneficiaries*, 7, J. ON MIGRATION & HUM. SEC., 123-130 (2019).

17 Erica Regan & Anne McDaniel, *Examining DACA students' financial experiences in college*, 48, EDUC. RES., 564-567 (2019).

18 U.S. CONST. amend. XIV, § 1.

therefore ruled that denying education to undocumented children was not beneficial to the schools and that illegal aliens were entitled to the protection of the Equal Protection Clause of the Fourteenth Amendment.¹⁹ As Justice Brennan stated in this case, *Plyler v. Doe*, inhibiting undocumented students from receiving an education creates a “permanent underclass” that is perpetually disadvantaged.

A similar ruling created precedence for this case when Justice Warren explained in *Brown v. Board of Education* that education is perhaps the most important function of government and the foundation of good citizenship.²⁰ Likewise in *Plyler*, the Court explained that “education has a fundamental role in maintaining the fabric of our society”²¹ and “provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.”²² The Court addressed the counterargument that certain rights can be denied to those who participate in unlawful conduct by stating that “legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”²³ A state could not discriminate “merely by defining a disfavored group as nonresident.”²⁴ The court stated frankly, undocumented students are people “in any ordinary sense of the term” and are thus protected under the Equal Protection Clause of the Fourteenth Amendment.²⁵ The Supreme Court’s ultimate decision and reasoning behind it illustrates the basic tenants upon which the argument behind in-state tuition for undocumented students lies: undocumented students are people and are thus entitled to equal protection under the law to pay in-state tuition rates as do all other people within a state’s jurisdiction.

19 *Plyler v. Doe*, 457 U.S. 202 (1982)

20 *Brown v. Board of Education*, 347 U.S. 483, 490 (1954).

21 *Plyler*, 457 U.S. at 203.

22 *Id.* at 221.

23 *Id.* at 220.

24 *Id.* at 227.

25 *Id.* at 210.

Plyler set the precedence for cases that would continue to grant access equal access to public education. In 1994, California voters passed Proposition 187 to deny undocumented students access to the state's public schools and other social services.²⁶ The proposed law would require that schools verify the immigration status of enrolled students, report suspected undocumented immigrants, and deny services. Legislation to authorize states to deny education to undocumented students failed in the Senate.²⁷ Nevertheless, Arizona, Alabama, and Texas passed legislation which required schools to report undocumented students in order to estimate the financial burden.²⁸ Meanwhile, Supreme Court cases like *Regents of the University of California v. Bakke*²⁹ and *Gratz v. Bollinger*³⁰ afforded equal opportunity to marginalized groups in education, furthering the progress toward available education for all.

The current protocol for dealing with undocumented students is a policy known as Deferred Action for Childhood Arrivals (DACA). DACA arose from an executive order signed by President Obama in 2012. Under this system, eligible children of illegal aliens can pay a fee every two years to defer deportation.³¹ In addition to protection from deportation, eligible recipients receive a work permit, a

26 H.R. 4134, 104th Cong. (1996).

27 *Id.*

28 S. B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010).; H.B. 56, 2011 Leg., Reg. Sess (Ala. 2011).; H.B. 22, 82d Leg. (Tex. 2011).

29 *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

30 *Gratz v. Bollinger*, 539 U.S. 244 (2003).

31 Eligibility for DACA is extremely limited. Candidates must meet the following requirements, as well as others: Were under the age of 31 as of June 15, 2012; Came to the United States before reaching your 16th birthday; Have continuously resided in the United States since June 15, 2007, up to the present time; Were physically present in the United States on June 15, 2012; Had no lawful status on June 15, 2012; Are currently in school, have graduated or obtained a certificate of completion from high school; and, have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors. See CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA), U.S. Citizenship and Immigration Services.

Social Security card, and a driver's license. However, there is no path to citizenship under this plan. Recipients are in a state of limbo, constantly hovering between legality and illegality. DACA recipients cannot fully participate in the economy. This creates overall deadweight loss in the economy and a perpetual lose-lose situation. DACA was suspended by the Trump administration, but after federal lawsuits challenged its rescission, the Supreme Court ruled in 2020 that this was in violation of the Administrative Procedure Act (APA), because it was done in an arbitrary and capricious manner.³² On January 20, 2021, President Joe Biden issued an executive order to reinstate DACA.³³

Even with the re-implementation of DACA which once again grants the right to work and receive a higher education to eligible minor immigrants, recipients are still limited access because of the financial burdens that they face. Undocumented students must rely upon policies adopted state-by-state or institution-by-institution to determine whether they can pay affordable tuition rates. Meanwhile, they receive fewer resources and networks.

Although most students in the United States attend a college institution with the support of federal and state loans, grants, and scholarships, most financial aid is not available to DACA recipients due to the Higher Education Act of 1965 (HEA) which states that only citizens and eligible non-citizens are eligible for federal financial aid.³⁴ DACA recipients are not eligible. They must find alternative sources of financial support. The cost of tuition as a non-resident for DACA recipients makes financing higher education even more difficult.

32 Department of Homeland Security et al. v. Regents of the University of California et al., 591 U.S. 140 (2020).

33 Memorandum from the Attorney General the Secretary of Homeland Security, *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)*, January 20, 2021.

34 Gabriel R. Serna et al., *State and Institutional Policies on In-State Resident Tuition and Financial Aid for Undocumented Students: Examining Constraints and Opportunities*, 25, EDUC. POL'Y ANALYSIS ARCHIVES, 1, 10 (2017).

In order to properly ensure the equal right to higher education that DACA recipients have been granted, in-state tuition must also be a guarantee for them in the state they reside. In the *Plyler* ruling, Justice Brennan explained that it should be up to Congress to address the social costs that occur when certain groups are denied their privileges. In doing so, he called upon the legislature to take action in implementing policy that would prevent the unequal access to higher education against the children of undocumented immigrants. Policy must be passed at the federal level in order to ensure that the Equal Protection Clause of the Fourteenth Amendment is, in fact, being executed for education throughout the United States.

B. Adversarial Concerns

One common argument opposing federal legislation granting all undocumented students in-state tuition is the notion that undocumented students and their families benefit from the state without contributing to it. However, undocumented persons pay property tax through normal rent and mortgages just like any other citizen, sales tax through normal spending, and even income tax through their employers.³⁵ In fact, undocumented Americans paid \$12 billion in 2007 to the Social Security Fund.³⁶ DACA recipients are paying taxes and contributing to the economy through employment, yet they are denied certain federal benefits such as financial aid and the right to in-state tuition rates.

With merely 5-10% of undocumented students attending college, it is evident that the inaccessibility of higher education does not deter undocumented youth from staying in the country.³⁷ Thus, it is in the best interest of the undocumented and the United States to

35 Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1 (2006).

36 Edward Schumacher-Matos, *How illegal immigrants are helping Social Security*, WASH. POST, (Sept. 3, 2010), <https://www.washingtonpost.com/wp-dyn/content/article/2010/09/02/AR2010090202673.html>.

37 Roberto G. Gonzales, *Young Lives on Hold: The College Dreams of Undocumented Students*, 1, COLL. BD. ADVOC. & POL'Y CTR., 21 (2009).

pass federal legislation granting in-state tuition to DACA recipients. DACA recipients will be able to obtain higher-paying jobs, consume more goods and services, and stimulate the economy. Far from being a burden, the undocumented student will be able to contribute more fully to the economy despite being the victim of archaic and cumbersome immigration policies.³⁸ Undocumented college students are 20 to 30 percent less likely than lawful permanent residents to find local work after graduation. Meanwhile, the states with the most undocumented students gain the highest wages and highest state taxes. This goes to show that granting work and college opportunities to undocumented students financially benefits the state.³⁹ In addition, access to in-state tuition rates is shown to reduce the number of undocumented immigrants living in poverty.⁴⁰

In *Plyer*, Justice Brennan acknowledged the financial implications of supporting undocumented students by saying “Modern education, like medical care, is enormously expensive, and there can be no doubt that very large added costs will fall on the State or its local school districts as a result of the inclusion of illegal aliens in the tuition-free public schools.”⁴¹ It should be noted that the Federal Government has previously excluded illegal aliens from several social welfare programs, such as the food stamp program, the Medi-

38 The long-term fiscal impact of an immigrant depends upon the level of education achieved. Immigrants with more education have greater financial contributions towards their community. Undocumented immigrants that are depicted as net consumers (rather than contributors) of public services is a result of their low incomes and educational levels rather than merely their immigration status. See Jennifer L. Frum, *Post-Secondary Educational Access for Undocumented Students: Opportunities and Constraints*, 3, AM. ACAD., 81, 81-108.

39 Giovanni Per & Gaetano Basso, *Opportunity Lost: The Economic Benefit of Retaining Foreign-Born Students in Local Economies*, CHI. COUNCIL ON GLOB. AFF., 3, 3-23 (2016).

40 Catalina Amuedo-Dorantes & Francisca Antman, *Can Authorization Reduce Poverty Among Undocumented Immigrants? Evidence from the Deferred Action for Childhood Arrivals Program*, 147, ECON. LETTERS, 1 (2016).

41 *Plyer*, 457 U.S. at 253.

care hospital insurance benefits program, and other supplemental security income programs. Although referring to lower education, Justice Brennan explained that education is an essential human right and cannot be denied despite the possible cost implications. In fact, Justice Brennan declared that there was no evidence suggesting that immigrants entered the United States illegally for the purpose of a free education. In addition, Brennan explained that there was no evidence that excluding undocumented children from the rights of public education would improve the quality of education for others.

Notwithstanding, some states have still attempted to limit in-state tuition access to DACA recipients based on budgetary concerns. However, these claims have been largely refuted due to the fact that undocumented immigrants are net economic benefit to the country.⁴² Allowing DACA recipients access to in-state tuition increases their opportunity to succeed, and the United States can benefit economically from these contributions.

C. Federal Action

The precedents set by the case in *Plyler v. Doe*, which states that undocumented students are guaranteed the right to education, and the DACA program, which provides the opportunity to attend higher education to eligible children of illegal aliens, make clear the need for federal legislation to be passed to require all DACA recipients be eligible for in-state tuition rates, rather than paying what a non-resident would pay simply due to their status as an undocumented student. Texas, which was the first state to offer undocumented students financial aid, was one state which passed policy to provide in-state resident tuition to undocumented students who graduate high school in Texas, reside in the state for three years before graduation, and sign an affidavit declaring intent to apply for legal residency status.⁴³ In doing so, Texas set a clear example of the policy that ought

42 KEVIN R. JOHNSON, OPENING THE FLOODGATES: WHY AMERICA NEEDS TO RETHINK ITS BORDERS AND IMMIGRATION LAWS 173-43 (Richard Delgado & Jean Stefancic eds., 2007).

43 Serna et al., *supra* note 33, at 11.

to be implemented at a federal level as a part of the rights of DACA recipients.

One form of legislation proposed to support undocumented students was the Development, Relief, and Education for Alien Minors (DREAM) Act. This proposed act would create a path towards real citizenship for those children brought to the United States. It would do so by granting temporary citizenship for those who pursue military service or higher education. During that time, a person would be able to qualify for permanent citizenship by completing their higher education or military program. This act has yet to be passed. However, if all states offered in-state tuition to undocumented students then valid completion of higher education would be possible and therefore more youth would be able to achieve legal citizenship.

The DREAM act's original intent was to defend undocumented immigrants against the effects of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by repealing the section that allows states to discriminate against undocumented students on the definition of residency for the purposes of in-state resident tuition. In 1996, the IIRIRA was passed to deny higher education benefits to undocumented students. This act essentially re-segregated education benefits for undocumented students. As a result, states now have to pass legislation to allow in-state tuition for undocumented students. To date, twenty-one states have passed legislation granting this right.⁴⁴ Thus, there is still much work to be done to guarantee equal protection under the law for undocumented persons. Passage of the DREAM Act would grant undocumented immigrants fair access to higher education so they can legally contribute to the nation's economy.

Today, 65% of jobs in the United States require a form of higher education beyond merely a high school diploma.⁴⁵ The enrollment of only 5-10% of undocumented students, then, is evidence of a

44 Andrew Thangasamy & Deborah Horan, *Lowering the Cost Barrier to Higher Education for Undocumented Students: A Promising University-level Intervention*, 15, J. LATINS & EDUC. 113, 113-120 (2016).

45 Anthony P. Carnevale et al., *Recovery: Job Growth and Education Requirements Through 2020*, 3 GEO. CTR. ON EDUC. AND THE WORKFORCE, 5, (2020).

perpetuating, permanent underclass.⁴⁶ This puts the vast majority of undocumented students at a disadvantage compared to their peers. Most undocumented students come from low-income families that do not have the resources available to pay full tuition for their children.⁴⁷ Undocumented students who reside in a state ought to be guaranteed the same rights as any other resident. After all, the ruling of *Plyler* explained that an “illegal entry into the country would not, under traditional criteria, bar a person from obtaining domicile within a State.”⁴⁸

Granting in-state tuition to undocumented students may not immediately contribute to the passing of laws such as the DREAM act, but it will help these students excel when this type of legislation does pass. Those who oppose granting in-state tuition often argue that doing so will deprive citizens of scarce education dollars. While funding for education is a major concern, the reality is that granting in-state tuition for undocumented students will have a minimal effect on each state’s financial situation. In fact, even in states with higher number of undocumented immigrants, undocumented students make up less than two percent of the overall student population.⁴⁹

The modification of the DACA program to guarantee the right to in-state tuition would prevent states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” Far from being a “permanent underclass,” these DACA recipients would be able to afford a higher education and secure the kind of job that would allow them to prosper in their community and the entire country. This was certainly the intent of creating a program like DACA. Similar to the federal protections endowed by *Plyler v. Doe*, federal legislation should be passed granting the right to in-state tuition to all persons in a state’s jurisdiction, including DACA recipients.

46 Gonzales, *supra* note 36, at 21.

47 Leisy J. Abrego & Roberto G. Gonzales, *Blocked Paths, Uncertain Futures: The Postsecondary Education and Labor Market Prospects of Undocumented Latino Youth*, 144, J. OF EDUC. FOR STUDENTS PLACED AT RISK, 144-57 (2010).

48 *Plyler* at 227.

49 H.R. 1403, 77th Gen. Assemb., Reg. Sess (Tex. 2001).

Although this would not resolve all financial aid issues for immigrants, it would significantly lower cost barriers for higher education.⁵⁰ DACA was initially introduced in order to provide a way in which qualified undocumented immigrants could legally work and study in the states. This freedom is limited without a guarantee of affordable tuition. Without a federal guarantee toward higher education, it has been up to the state to take action to allow undocumented students to pay in-state tuition. Many states have resisted enacting measures to allow in-state tuition to all residents due to budgetary concerns. Not only is access to higher education a national economic benefit, but it is a right that all residents of the United States must be granted.⁵¹

III. CONCLUSION

The implementation of the DACA program allowed eligible children of illegal aliens who have resided in the United States the right to work and access to higher education, executing the rights set forth in the Equal Protection Clause of the Fourteenth Amendment. Yet, DACA recipients are not eligible for financial aid or in-state tuition fees, so the availability of higher education remains unequal. The case *Plyler v. Doe* shows that education is necessary for social mobility. Free public education through high school is guaranteed even to undocumented students. Yet the same rights have not been extended through higher education, and accessibility for undocumented students is incredibly difficult without equal federal benefits.

Herein lies a concrete opportunity to help undocumented children, which is both economically beneficial and legally necessary. By guaranteeing in-state tuition to all eligible college students, the United States will raise a more educated and contributing generation which it owes to all under its jurisdiction. This education will pay dividends in these students' future and in the future of the United

50 David H.K. Nguyen & Gabriel R. Serna, *Access or Barrier? Tuition and Fee Legislation for Undocumented Students across the States*, 87, THE CLEARING HOUSE: J. EDUC. STRATEGIES, ISSUES & IDEAS (2014) at 124.

51 *E.g.* JOHNSON, *supra* note 42, at 173.

States. With higher education comes better employment and a higher income which in turn leads to more tax revenue through higher spending on goods and services and property taxes shifting from low rent payments to higher mortgage payments. Offering in-state tuition to DACA recipients is a necessary step to prevent discrimination of education on arbitrary terms.