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## Chapter Twenty

### “Joke’s on you”: So-called undocumented students in the United States

Johanna Ennsner-Kananen

#### Acknowledgments

I am not and I have never been an undocumented student. As I am trying to understand their experiences, I am humbly aware of my privilege as a white, middle class citizen of a wealthy country. Thus, my deepest thank you goes first and foremost to the undocumented youth whose stories have been the basis for much of the literature I synthesized for this chapter. I offer my gratitude and admiration also to all their advocates and mentors, who have affected real change and inspire me to do the same. Last but not least, thank you to my dear friend Nicole Pettitt, whose comments on early drafts of this chapter were not just valuable but uplifting.

#### Abstract

This chapter focuses on the experience of undocumented college students in the USA. While K-12 education has been opened to undocumented students, at least on paper, since the landmark case Plyler vs. Doe, college education remains a highly precarious terrain for undocumented students, which offers little to no legal protection. Within the United States, the situation of undocumented college students differs greatly among individual states. This chapter provides an overview of national-level policies or nationally relevant work in the area, as well as insights into some successful local initiatives.

## **The context**

In 2012, an estimated 11.2 million people in the US were undocumented immigrants (Passel, Cohn, Krogstad, & Gonzalez-Barrera, 2014), including an increasing number of long-term residents as well as around 775,000 children and adolescents under the age of 18, a decline from 1.6 million in 2006, which is due to a *'recent slowdown in unauthorized immigration overall,'* a consequence of the unstable US economy as well as tighter border controls (Passel, Cohn, Krogstad, & Gonzalez-Barrera, 2014, para 5-11). According to 2012 statistics, over half (52.4%) of the undocumented immigrants to the US come from Mexico, about 15.2% from Central America, 12.4% from Asia, 6.3% from South America, 4.9% from the Caribbean, 5.3% from Europe and Canada, and 3.5% from the Middle East, Africa, and other parts of the world (Passel & Cohn, 2014).

This chapter focuses on the experience of undocumented college students. K-12 education (kindergarten - grade 12/end of high school) has been opened to undocumented students, at least on paper, since the landmark case Plyler vs. Doe (1982), which overturned a Texas state law that was barring undocumented children from free public education. Although this certainly did not eradicate all problems to access fair and quality education for all undocumented K-12 students, the legal framework helped to keep undocumented children and youth in school. In contrast, college education remains a highly precarious terrain for undocumented students, which offers little to no legal protection. Within the US, the situation of undocumented college students differs greatly among states. This chapter provides an overview of national-level policies or nationally relevant experiences as well as insight into some local initiatives.

### **'Undocumented?' - What's in a word?**

*You call me undocumented but joke's on you. So maybe if you took a look beyond what's in front of your eyes, you'd understand that there's no such thing as being undocumented, that borders only exist because we create them. To be documented is*

*to choose to live, to dream, to exist, to fight, and aspire without barriers. That's why I am here. I am documented and no one, no one can take that from me.*

Brenzy Solorzano, L.A.

There has been much debate about the appropriate term to be used for immigrants who lack legal immigration status in the US, more specifically who do not have official documents and/or permits to stay in the country. When referring to this population, supporters of more liberal immigration policies have been found to use the term “undocumented”, whereas the conservative side seems to prefer “illegal”, and official documents have also used “unauthorized”. Merolla, Ramakrishnan, and Haynes (2013) provide evidence that changing the terminology for immigrants without legal status provides very limited opportunities for shaping the public debate around immigration - in contrast to shifts in policy framing, which seems to be a more effective tool. Nevertheless, as applied linguist, I believe that a mindful choice of language is important to signal our stance of solidarity with this population.

In this chapter, I am distancing myself from the term “illegal immigrant” as it seems to point to a situation where a person exists outside of the legal borders that were created by other people. Not only does the placement of the adjective suggest that an existence, rather than an action, is against the law, the term also fails to critically question the implications of one group of people (immigrants, often people of color) being identified as the law-breakers in opposition to those who lay down an apparently unquestionable law (usually citizens of immigrant-receiving countries). These binary identifications, the oppositional positioning, as well as the implied absoluteness of the legal norms is what I take issue with.

As I use the term “undocumented”, which has been popular among liberal voices in the debate, originally pointing to an absence of immigration documents, I take Brenzy Solorzano’s (Solorzano, n.d.) comments to heart and recognize the term’s problematic associations with meanings of “non-existing”. Recognizing that no term is neutral or good enough, I use ‘undocumented immigrants’ for the following reasons:

- a. It refrains from judgment of the individual, focusing on the absence of immigration documents rather than a legal, moral, or personal evaluation of a person and
- b. Derived from a noun (document) as well as a verb (to document someone), it implies that processes, actions have been and can be set in motion that affect an individual's immigration status.

The consequences of this implication are twofold: First, it establishes a sense of accountability for the 'documenter,' the authority or society that is supposed to do the documenting. Second, it identifies immigration status not as a 'given' but a result of an action that can be redone or undone. In sum, the term 'undocumented' represents a shared responsibility rather than to a moral evaluation and points to the reality and possibility of actions and their consequences (both ways that liberate and harm immigrants), all of which I deem critical in this discussion.

### **Current and proposed laws and policies**

Although the legal situation of undocumented immigrants is constantly changing, it is worth mentioning some of the landmark policy decisions that have improved the overall situation of unauthorized immigrants in the US. While legalized by the Plyler & Doe ruling throughout their K-12 schooling, the right to receiving an education is not legally protected for undocumented students at the college-level. Several initiatives have been proposed to provide relief and some stability, especially through so-called 'deferred action,' which refers to a temporary delay of deportation.

The DREAM (Development, Relief, and Education for Alien Minors) Act, first presented to Congress in 2001 and having undergone several rounds of revisions since, would offer legal status and pathways to citizenship for immigrant minors who a) have come to the US before age 16, b) have lived in the US for a minimum of 5 years, c) have graduated from high school, have a GED diploma (high school diploma equivalent), or are enrolled in a higher education institution, and d) have 'good moral character,' which would be assessed through background checks. The

temporary legal status could transition into a permanent one if students complete two years in a degree program or the armed forces.

The DACA (Deferred Action for Childhood Arrivals) Program, introduced and implemented by the Obama administration in 2012, has granted eligible undocumented youth under the age of 31 temporary legal residence and work permits for two years, but does not provide pathways to citizenship or permanent residency. The requirements are very similar to those of the DREAM Act. Gonzales, Terriquez, and Ruszczyk (2014) noted an increase of short-term benefits (new jobs, access to healthcare, driver's licenses, and banking, etc.) for undocumented young adults, even though these benefits seem to follow the patterns of persistent social hierarchies (educational level, access to resources, etc.). In 2014, the Obama Administration proposed an extension of the program, sometimes referred to as DACA+ or DACA Extension, which would, among other things, extend DACA to three years and extend eligibility to "people of any current age who entered the United States before the age of 16 and lived in the United States continuously since January 1, 2010" (NNIRR, n.d., para "Daca Expansion"). Part of the proposition was also the implementation of a related program called DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents), which would grant this status to parents of children who are US citizens or permanent residents. Both DACA+ and DAPA have been objected and blocked by a court in Texas, which prompted an appeal to the US Supreme Court as *United States vs. Texas* (2016). After the Supreme Court's 4:4 vote in June 2016, the rulings of lower courts remain intact. The request for rehearing the case was denied in October 2016.

As Gonzales (2009:25) sums up, *'[un]documented students in the United States are currently trapped in a legal paradox. They have the right to a primary and secondary education and are generally allowed to go on to college, but their economic and social mobility is severely restricted due to their undocumented status.'* I argue that this can also put them in a social paradox, where their legal status is simultaneously the reason that keeps them from fully participating in the US society and the reason that is used for keeping them on the margins of the society. These paradoxes are, at least partly, the outcome of a failure to define college-level education as a

fundamental right. However, arguments have been brought forth in favor of undocu-inclusive education, for example in the Plyler vs. Doe case, that could be extended to the area of college education (Badger & Yale-Loehr, 2002). In other words, if we, as Plyler vs. Doyle intended, aim to avoid the creation of a 'permanent underclass,' the following roadblocks on undocumented students' pathways to and through college need to be removed.

## **Undocumented students' challenges and struggles**

### ***a. College application processes***

Although higher education institutions are not legally prevented from admitting undocumented students and neither faculty nor staff are mandated status reporters (Ruge & Iza, 2005), the obstacles for undocumented students permeate all stages of college life, starting from admission, to campus life, academic life, and extending beyond graduation. Admission procedures can pose obstacles in a variety of ways. In three states, Alabama, Georgia, and South Carolina, undocumented students are explicitly barred from enrolling in public higher education institutions. Although most states do not have a policy regarding undocumented applicants, procedures which require applicants to have a proof of citizenship or residency are still common among higher education institutions and, intentionally or not, discriminate against undocumented students (NCSL, 2014). In addition, students' own beliefs about their eligibility for college and opportunities for financial support (Oliverrez, 2006) as well as fear of their status being exposed and familial responsibilities can keep them from applying to higher education institutions, especially to 4-year programs of competitive schools (Abrego, 2006; Oliverrez, 2006). This perceived unattainability of a college degree can negatively affect students' performance in the last high school years and limit the life opportunities even for outstanding high school graduates, (Abrego, 2006; Pérez, Cortés, Ramos, & Coronado, 2010).

## ***b. Socioeconomic challenges***

While this can certainly not be generalized (Terashini, Suarez-Orozco, & Suarez-Orozco, 2015), a large number of undocumented students face socioeconomic challenges (e.g., Hermes, 2008; Huber & Malagon, 2006), which keep them from applying to college in the first place or, once accepted, affect their social and academic life and may even cause them to drop out. Currently, 18 US states have implemented legislation or policies that allow in-state tuition (in the US, residents of a state typically receive substantial tuition remissions in contrast to students from out of state) for undocumented students who have lived in the respective state for a period of time, attended high school, and obtained their high school diploma or GED. In contrast, three states - Arizona, Indiana, and Georgia - have legally banned undocumented students from receiving in-state tuition. (For an excellent literature review on in-state tuition policies, I recommend Dougherty, Nienhusser, & Vega, 2010). The contested text that is often cited as the basis for state legislation or policies, section 505 of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), states that

an alien who is not lawfully present in the United States shall not be eligible for in-state tuition on the basis of residence within a State (or political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit ... without regard to whether the citizen or national is such a resident (IIRIRA, 1996, section 505).

While some states have interpreted this to mean that undocumented students do not qualify for financial support or in-state tuition, others have read this more flexibly and implemented undocu-friendly tuition policies, usually granting undocumented students access to in-state tuition rates. The availability of financial aid is even more restricted for undocumented students (Pérez et al., 2010). To date, they are not eligible for federal financial aid and only five states have allowed them to receive state financial aid (California, New Mexico, Minnesota, Texas, and Washington) (NCSL, 2015). Even though the implementation of in-state tuition policies in several states has dramatically increased the likeliness for undocumented students to enroll in and graduate from college (Flores, 2010; Flores & Horn, 2009), the complexity of the application



process often acts as a deterrent or massive stumbling block for undocumented students (Olivas, 2009).

**c. *Academic challenges***

There is evidence that citizen students tend to outperform their undocumented peers in higher education contexts (e.g., Dozier, 2001), but rather than focusing on their academic scores, research has concentrated on examining the environment and factors that impact these scores and on identifying ways to improve the opportunities for undocumented students. Undocumented students from low-income families often attend under resourced schools and either do not have time to engage in college prep courses or are not provided with the resources at their schools to prepare them for college effectively (Conway, 2009). Even if they manage to enroll in a college, this opportunity gap is often perpetuated there, limiting their opportunities to fully invest in their academic life and careers. In addition, undocumented students may be English learners or first generation college students, further adding to their vulnerability in terms of academic performance, and overall wellbeing (Gonzales, 2009; Pérez, 2009).

**d. *Mental and emotional health***

Several studies exist that have examined the interactions of mental/emotional health and legal status of undocumented immigrants, some of which have specifically focused on youth, and one on 1.5 generation youth or young adults, who came to the US as children (Gonzales, Suárez-Orozco, & Dedios-Sanguinetti, 2013). Interrelated key issues that have been identified as negatively impacting undocumented immigrants' mental/emotional health by increasing their stress and anxiety levels include constant fear of apprehension and/or deportation, limited use of and access to services and resources, poverty and difficulties moving out of poverty, limited mobility, traumatic migration experiences, social exclusion, isolation, or discrimination, and feelings of shame and lack of self-worth (Gonzales, et al., 2013; Pérez et al, 2010; Sullivan & Rehm, 2005). Not only do undocumented students face a combination of factors that have been shown to put populations and individuals at risk for mental illness (depression, PTSD, etc.), those

factors also amplify each other. For example, fear of deportation restricts undocumented students' ability to work, socialize, or seek help, thus limiting their chances for financial and social stability, which in turn perpetuates their academic and social marginalization. This predicament, created by the current policy landscape, is not only a fertile breeding ground for chronic stress and anxiety, it also makes it difficult for undocumented students to access or build support systems that could prevent them from developing mental health problems.

Besides diagnosed mental health issues, undocumented students are frequently victims of social exclusion, racism, or nativism. For example, the participants in Huber and Malagon's (2007: 858) study reported feelings of insecurity, doubts of belonging, and being othered on the grounds of their race and immigration status. In other words, they described their experience of a 'racist nativist climate.' Similarly, Nienhuser, Vega, & Carquin, (2016) examined undocumented applicants' experiences of microaggressions during their college choice processes. Against this backdrop, the current political and social climate in the US deeply worries us. Aggressive and blatant anti-immigrant and nativist discourses have become increasingly common and socially accepted in the months leading up to the presidential election. Our fear is that the damage on the political and social climate is at least semi-permanent and these sentiments will continue to impact decision-making on the political and personal level.

### **Assets and agency**

In addition to the challenges and discrimination they face, the assets undocumented students bring to college campuses have received important attention in the academic literature. For instance, studies have found high levels of persistence, resilience, and determination for academic success as well as high investment in community life among undocumented students (Flores & Horn, 2009; Pérez, Espinoza, Ramos, Coronado, & Cortes, 2009; Pérez 2010).

Maybe the most compelling example of undocumented students' resilience and agency is the inception of the DREAMers movement. With the goals of legitimizing their status and challenging

existing systems of racism and nativism, the social movement gained momentum in the early 2000s and claimed new identities for undocumented immigrants, especially students, as rightful US Americans and cultural insiders (Nicholls, 2013).

Despite internal conflicts and external roadblocks, the movement has enabled undocumented students to position themselves as “undocumented, unafraid, and unapologetic” and come out of the shadows to advocate for themselves and their peers by demanding adequate services, changes in policies, and social recognition. Similarly, in her recent book, Muñoz (2015) shared and analyzed the narratives of 12 undocumented college students, highlighting their agency and skillfulness in navigating their daily lives, understanding and challenging their legal and structural oppression, and gaining access to resources. Thus, despite the rise of anti-immigrant and anti-undocumented sentiments in the run-up to the 2016 presidential elections, there is also evidence that undocumented student groups are gaining attention for their sustained investment in social change.

### **What has been done?**

From the many positive initiatives that have together formed a movement which advocates for undocumented individuals and communities in the US, I introduce two that have caught my attention because of their courageous stance and effective implementation.

#### ***a. Freedom University Georgia***

Founded as a grassroots initiative of community members, college professors, and undocumented students, Freedom University in Georgia offers tuition-free college-level courses (e.g. in immigration history, music, and mathematics), assistance with college and financial aid applications, and leadership training for undocumented individuals in Georgia with the goal of empowering them and improving their access to college education (Soltis, 2015). As such, it understands itself as a direct response to the discriminatory laws in the state:

We opened our doors in 2011 following the passage of Policy 4.1.6, which bans undocumented youth from attending Georgia's top five public universities, and Policy

4.3.4, which prohibits undocumented students from qualifying for in-state tuition. ... Georgia is the only state in the country to ban students both from select universities and from in-state tuition. Because undocumented students are ineligible for federal financial aid, these policies effectively exclude undocumented students and usher in a modern era of educational segregation in the U.S. South. (F.U. Georgia, n.d., para 1)

Educators at Freedom University have also been important undocu-allies and -advocates outside of their classrooms. For instance, the executive director of the school and Human Rights Professor Laura Emiko Soltis gave a testimony supporting Senate Bill 44 in the Georgia Senate in February 2015, in which she explained why in-state tuition for undocumented students would be a fiscally viable, socially important, and morally right step for Georgia (Georgia Senate Higher Education Committee, February 2015). Even though the bill was not voted on, Georgian undocumented students and college applicants continue to receive liberatory, anti-racist, anti-nativist education and advocacy at the 'sanctuary of teaching and learning' (Muñoz, Espino, & Antrop-Gonzalez, 2014) that is F.U. (Soltis, 2015).

**b. USP at UC Berkeley**

The Undocumented Student Program (USP) at the University of California in Berkeley has worked towards its goal '*to provide a personal, holistic, multi-identity, and solution-focused*' (Sanchez & So, 2015: 467) service model since its inception in 2012. In collaboration with other on-campus units or external institutions, the program provides expert counseling on personal, legal, financial, and academic matters as well as access to academic opportunities (e.g. study abroad), good-quality housing, books and emergency loans. Importantly, the program has been successful in assisting over 70 students to acquire DACA or another legal status. The founding director of USP, Meng L. So and his colleagues, are generously sharing their expertise in institutions across the US.

## What more needs to be done? Some recommendations for the future

The undocumented rights movement in the US has both come a long way and a long way to go. In my engagement with this topic, these recommendations seem most relevant to us in maintaining and strengthening it.

- *Breaking the silence.* We need teachers and administrators who break the silence and engage in advocacy work and are given the tools and structures to do so. Dabach's (2015) case study of a high school teacher illustrates how teachers can breach norms of silence around citizenship status in the context of a formal mixed-status civics classroom at a public high school.
- *Creating undocu-friendly campuses.* Suarez-Orozco, Katsiaficas, Birchall, Alcantar, Hernandez, Garcia, Michikyan, Cerda, and Teranishi (2015) investigated the experience of undocumented undergraduate students on 264 US campuses, focusing among other things on their anxiety, academic resilience, college affordability, discrimination, as well as peer and institutional support. Based on findings from their survey (n=909), the authors provide a long list of suggestions for more undocu-friendly campuses, including changes in tuition policy, easily accessible services and resources, awareness raising, and all-campus trainings for especially in regards to legal situations, mental health, and being undocu-allies. The importance of support services and trained staff has been frequently noted (e.g., Huber & Malagon, 2007). In addition, research exists that makes a strong case for mixed-status alliances (Enriquez, 2014).
- *Utilizing politicized funds of knowledge.* Gallo & Link (2015) share the story of 9-year-old Ben who witnessed his father's arrest and, despite the effects of this traumatic experience on his personal, familial, and academic life, did not have the opportunity in the classroom to engage in this topic. The authors argue that the knowledges that are often banned from the classroom, especially what they call *politicized funds of knowledge*, need to be brought into the classroom so students can draw on them, process them, deepen their learning, form coalitions, and become empowered. This requires structural changes that allow for classroom time that is not shaped by scripted curricula, accountability policies,

and high stakes testing but instead carves out spaces for humanizing and culturally sustaining pedagogies (Del Carmen Salazar, 2013; Paris & Alim, 2014).

- *Complicating undocumented identities.* Popular discourses around undocumented students exist that portray them as victims of their guardians' decision to migrate and as loyal and 'good' American citizens. Allard (2015) reminds us of the limitations of such discourses and brings less talked-about identities of undocumented youth to our attention, e.g. of 1.25 generation youth and/or unaccompanied youth, who take on adult responsibilities and roles at a very early age due to their legal and socio-economic situation. Some participants in her study prioritized work over school, showed pride and humor about their border-crossing stories, and resisted assimilationist tendencies. Allard importantly notes that these youths are just as worthy of legal protection as those who enact identities that are more compliant with the stereotypical and problematic discourse of the 'good immigrant' or 'good citizen.'
- *Addressing race and intersectionality.* As several scholars and advocates have pointed out (e.g., Huber, 2010; Soltis, 2015) undocumented student movement occurs in a historical context of oppression and resistance of people of color. It is critical to recognize and further explore the intersections of nativism with social factors such as race, gender, sexual orientation, religion, ability, etc. Highlighting intersectionality's does not only provide a fuller and more authentic picture of the reality, it is also a valuable tool for identifying and challenging racist and nativist discourses and promoting undocumented students' liberation and empowerment.
- *Talking about and implementing human rights.* As Waters (2015) has pointed out, from a legal standpoint, civil rights do not apply to non-citizens like undocumented immigrants and can therefore not (or not efficiently enough) serve as a legal framework for their inclusion or protection. What is needed is therefore a discourse about undocumented immigrants that views their experiences through a human rights lens. Such a framework grants them fundamental and inalienable rights and can thus advocate for this large population convincingly and effectively.

### Reflective questions

1. How can the differences in policies regarding undocumented students between K-12 education and college education in the US be explained?
2. What are the main arguments in favor of universal (i.e. undocu-inclusive) college education?
3. What are some valuable assets and perspectives undocumented students bring to the table? What can society learn from them?
4. Who should be allowed to make decisions about who is (not) eligible for college education? Why?

### Suggested further readings

Gonzales, R. G. (2009). *Young lives on hold: The college dreams of undocumented students*. College Board Advocacy & Policy Center, New York.

This booklet is a helpful introduction to the topic and offers data-based and concise information about policies and regulations concerning immigrants and undocumented students in the US, especially their professional and financial options and challenges.

Muñoz, S. M. (2015). *Identity, Social Activism, and the Pursuit of Higher Education*. Lang, Peter New York.

This book offers the personal narratives of 12 undocumented students, which are analyzed and discussed against the backdrop of US immigration policies and practices. Rather than reducing undocumented students to victims of their circumstances, the author highlights their agency, civil engagement, and valuable contributions to the US society.

Soltis, L. E. (2015). From Freedom Schools to Freedom University: Liberatory education, interracial and intergenerational dialogue, and the undocumented student movement in the U.S. South. *Souls: A Critical Journal of Black Politics, Culture, and Society*, 17(1-2), 20-53.

This article not only provides a helpful overview of the socio-political context in which policies concerning undocumented students came into being, it also makes important connections between racism and nativism and illustrates the purpose and necessity of liberatory education. As founder and of the Freedom University Georgia, its author Laura Emiko Soltis offers unique insights from her vast experience of being an undocu-activist.

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### **List of abbreviations**

DACA - Deferred Action for Childhood Arrivals

DAPA - Deferred Action for Parents of Americans and Lawful Permanent Residents

DREAM - Development, Relief, and Education for Alien Minors

GED - General Educational Development or General Education Diploma

K-12 - Kindergarten - Grade 12 (last grade of high school)

PTSD - Posttraumatic stress disorder

US(A) - United States (of America)