

Institute for the Study of International Migration. Georgetown University. Washington, DC.

# Children Affected by Unauthorized Migration:

## An Overview of Applicable Legal Frameworks for Accessing Education, Health Care and the Labor Market in the United States

Sanjula Weerasinghe  
Elżbieta M. Goździak  
Nina Laufbahn



## Acknowledgements

This legal background paper is part of a larger comparative project on the effects of unauthorized and undocumented immigration on children and adolescents' access to education, health care and the labor market carried out in collaboration with the Center for Migration, Policy, and Society (COMPAS) at Oxford. We wish to express our gratitude to the Barrow Cadbury Trust and the Carnegie Corporation of New York for providing financial support for this project.

## Introduction

The United States saw a rapid growth in its unauthorized population in the 1990s and early 2000s. An estimated 2.5 million unauthorized migrants were in the U.S. in 1989. Current estimates center around 12 million. Fifty-six percent of the estimated unauthorized population in the United States is from Mexico. Another 22 percent come from elsewhere in Latin America and the Caribbean. Smaller proportions are from Asia (13%), Europe/Canada (6%), and Africa (3%).

A significant proportion of unauthorized migrants are children—persons under the age of 18. Jeffrey Passel estimates that “[a]s of 2005, there were 6.6 million families in the US in which either the head of the family or the spouse was unauthorized. These unauthorized families contained 14.6 million persons” (2007: ii). Of these families, almost 2.7 million had children. According to Passel, “a significant share can be classified as being of ‘mixed status’—in other words, families in which at least one parent is unauthorized and at least one child was born in the United States” (2007: 8). He estimates that 725,000 families, or 27% of all unauthorized families with children, had only non-citizen

children whereas the rest had either all citizen children or a combination of citizen and non-citizen children. There has been a trend toward an increasing number of citizen children and a decreasing number of non-citizen children in these households. The most recent estimates for 2010 indicate that 1 million children (or about 9% of the estimated 11.2 million unauthorized migrants) are themselves unauthorized and another 4.5 million are the US citizen children of parents who do not have legal status and are thus subject to many of the same uncertainties and problems affecting the unauthorized children (Passel and Cohn, 2011).

It is this complexity that made it necessary to examine both unauthorized children and U.S. citizen children of unauthorized parents in this study. This paper is intended to provide a basic overview of the legal and policy frameworks relevant to the focus areas of the study. The first section discusses access to education, the second access to health care, and the third identifies the legal landscape with regard to livelihoods.

## I. Education

### Elementary and Secondary Education

Since 1982, based on the Supreme Court's seminal decision in *Plyler v. Doe* (1982), children in the United States, irrespective of their immigration status, have a constitutional right to free public elementary and secondary education. In *Plyler*, the Supreme Court held that the state of Texas violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution by denying unauthorized school-age children a free public education. The *Plyler* Court recognized the importance of access to education by noting, “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education,” and acknowledged that education is a child's only path to becoming a “self-reliant and self-sufficient participant in society.”

Notwithstanding criticism of *Plyler* (Kurland and Hutchinson, 1983; Perry, 1983; Hutchinson, 1982), over the intervening years, the core constitutional guarantee of K-12 educational access has remained intact (Olivas, 2010), even in the face of direct legislative challenges. For example, at the federal level, the proposed Gallegly Amendment of 1996 would have removed states' obligation to educate unauthorized children and instead allowed states to regulate for themselves the conditions under which unauthorized children could access public schools (U.S. Congress, 1996a).<sup>1</sup> Similarly, the 1994 Californian voter approved Proposition 187 is a notable state level example of an attempt to deny educational benefits to unauthorized children (Olivas, 2004).<sup>2</sup>

Despite continuing efforts to overturn *Plyler*, (Rabin et al., 2008) its resilience has enabled thousands of unauthorized students to graduate from high school (Gonzales, 2007). According to a 2003 report by the Urban Institute, approximately 65,000 unauthorized students who have lived in the United States for at least the previous five

years graduate from high school every year (Passel, 2003).

### Post-Secondary Education

Whilst *Plyler* addressed the right to education in the K-12 context, it was silent on whether the relevant protections extended to the college setting. In this regard, even though federal law does not expressly prohibit the admission of unauthorized students to U.S. colleges (Gonzales, 2009), upon graduation from high school and application to colleges, the limitations associated with unauthorized status become more acute, and barriers multiply (Diaz-Strong et al., 2010; Gonzales, 2010; 2007). Although commentators have argued that *Plyler's* reasoning should be applied to post-secondary education (Pabón López, 2005), questions relating to the rights of unauthorized students to access public higher education have become embroiled within the larger political struggle relating to unauthorized immigration (Chacón, 2008).

### Welfare Legislation and Effects on Educational Pursuits of Unauthorized Children

The passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (U.S. Congress, 1996c) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) have further engendered this controversy (Salinas, 2006). The PRWORA prohibited states from providing federal post-secondary grant, loan, or work-study assistance to unauthorized students; states wishing to provide financial aid to unauthorized students were mandated to affirmatively pass legislation addressing eligibility (Chacón, 2008).

Additionally, the IIRIRA discouraged states from providing in-state tuition rates (which are significantly lower than out-

of-state tuition rates) without regard to immigration status (Dougherty, 2010; Gonzales, 2009). Specifically, section 505 of the IIRIRA prohibits states from providing higher education benefits based on residency to unauthorized immigrants unless the state provides the same benefits to U.S. citizens in the same circumstances, regardless of their state of residence (National Immigration Law Center, 2010; National Conference of State Legislatures, 2010). Similar to the PRWORA, in order to accord in-state tuition to unauthorized students, the IIRIRA mandates that states enact laws which affirmatively provide for such eligibility (Olivas, 2009, 2004).

The restrictions imposed by PRWORA and IIRIRA, when combined with unauthorized students' general inability to qualify for state student aid (Texas and New Mexico are exceptions) significantly circumscribes their ability to access post-secondary education (Olivas, 2009). Indeed, Olivas notes that even citizen college applicants of unauthorized parents face several technical and administrative problems in negotiating the complex financial aid application process (2009). The low family income profiles of unauthorized immigrant families (Passel, 2005) as well as the limited sources of private funding, including scholarships, which are available to unauthorized students (Dougherty, 2010; Gonzales, 2009; 2007) further compound these barriers (Gonzales, 2009).

### In-State Tuition Initiatives

In the absence of clear federal guidelines on access to higher education, and notwithstanding the penalizing effect of section 505 of the IIRIRA, some states have undertaken efforts to provide in-state tuition rates to unauthorized students. To date, 11 states have enacted laws permitting individuals, regardless of immigration status, who attended and graduated from high school in the state to qualify for the in-state tuition rates at public colleges and universities. These states are California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington, and Wisconsin (National Immigration Law Center, www.nilc.org).

These state laws are however, not without controversy and opposition. For example, in April 2011, both houses of the Maryland legislature passed a similar law to the other 11 states granting in-state tuition discounts to unauthorized immigrants. Just before this law was to go into effect, opponents of the act garnered sufficient signatures on a petition to suspend the act and force a referendum in November 2012.

In contrast, Arizona, Colorado, Georgia and South Carolina, have legislated bans on unauthorized student' access to in-state tuition (National Conference of State Legislators, 2010). Indeed, South Carolina and Alabama ban unauthorized students from attending state colleges altogether (Diaz-Strong et al., 2010; Olivas, 2009; Gonzales, 2009) while other states have taken action to preclude unauthorized students from receiving in-state tuition rates (Olivas, 2010, 2004). Oklahoma, which had legislated to provide unauthorized students access to in-state tuition rates has since rescinded the legislation (National Conference of State Legislators, 2010; Olivas, 2009). Restrictionist litigious and legislative efforts also continue to challenge earlier legislation granting

resident tuition benefits, or to stall state-level efforts to grant resident status to unauthorized college students, creating significant uncertainty for this population (Olivas, 2010; 2004).

In spite of the limited number of states that provide in-state tuition benefits to unauthorized students, recent research indicates that unauthorized students benefiting from in-state tuition legislation are faring better than similar students in states without legislation (Flores, 2010; Flores and Horn, 2009/2010). However, while in-state tuition has the ability to significantly increase the number of unauthorized students who are able to go to college, such laws do not eliminate all barriers to access for post-secondary education (Gonzales, 2009).

### The Development, Relief, and Education for Alien Minors Act

Amidst this deluge of state activity regarding in-state tuition, the bipartisan, federal Development, Relief, and Education for Alien Minors (DREAM) Act is also intended to alleviate some of the barriers faced by unauthorized students. The DREAM Act has been introduced and debated repeatedly in Congress since 2001, including as part of two comprehensive immigration reform bills in 2006 and 2007, although it has languished without success (Migration Policy Institute, 2010; Olivas, 2010). The most recent effort to reintroduce the legislation occurred in May 2011. The DREAM Act has also been incorporated into the Comprehensive Immigration Reform Act of 2011, which was introduced in June 2011.

The DREAM Act seeks to eliminate section 505 of the IIRIRA, which essentially penalizes states that provide in-state tuition irrespective of immigration status (National Immigration Law Center, 2009) and seeks to restore the state option to determine residency for the purposes of higher education benefits (National Conference of State Legislatures, 2010). Even if passed, however, the current version of the Act would not eliminate the importance of state decisions on in-state tuition eligibility and consequently, legal access to post-secondary education for unauthorized students (Dougherty, 2010; Department of Homeland Security, 2008).

More generously, the federal DREAM Act also seeks to provide a path to legalization for eligible unauthorized children and young adults as unauthorized children generally derive their immigration status solely from their parents and do not have viable mechanisms to obtain legal residency. If passed, the DREAM Act would, *inter alia*, extend conditional permanent resident status for a limited duration of six years to unauthorized youth who:

- Entered the United States before 16 years of age and are younger than 35 years of age;
- Have continuously lived in the United States for at least 5 years before the date of the bill's enactment; and
- Have obtained a high school diploma or its equivalent.

The conditional status provided under the DREAM Act would enable recipients to work and go to college in the United States. After six years, the recipients are eligible to apply for lawful permanent residence provided they have:

- Obtained a degree from an institution of higher education, completed at least two years in a program

for a bachelor's degree or higher, or honorably served at least two years in the U.S. military; and

- Maintained a good moral character while in conditional residence status (Migration Policy Institute, 2010; National Immigration Law Center, 2009).

According to the Migration Policy Institute (MPI), the enactment of this legislation would make 726,000 unauthorized young adults eligible immediately for conditional legal status. Of this group 114,000 would be eligible for lawful permanent residence after six years, as they have already fulfilled the degree requirements. In sum, MPI estimates that 38 percent of potential beneficiaries are likely to obtain permanent legal status through the DREAM Act's education and military routes (2010).

### Citizen Children

U.S. citizen children living in mixed status households also feel the brunt of their parents' unauthorized status. Citizen children are "in danger of becoming the unsuspecting victims of state and federal policies aimed at addressing illegal immigration" (Seo, 2011: 312). In Arizona, "[i]n early 2011, the legislature (...) introduced bills that would deny U.S. citizenship to children of unauthorized immigrant parents and mark them with a different birth certificate" (Seo 2011: 311-312); this could possibly revoke their eligibility for public benefits such as in-state tuition or financial aid.

Citizen children living with their unauthorized parents in Virginia have also faced difficulties in accessing educational benefits. In 2008, the Office of the Attorney General in Virginia published a memorandum indicating that the unauthorized status of parents could effectively disqualify their U.S.-born children from receiving in-state tuition if the children were unable to independently prove eligibility (Virginia, 2008; Seo 2011). The issue is whether unauthorized immigrant parents can be considered residents of the state and whether minor children can prove that residency independently. It appears that many public universities in Virginia resolve this issue on a case-by-case basis.

### The No Child Left Behind Act

A piece of bipartisan federal legislation which moves

## II. Health Care

### U.S. Health Care System

Neither the U.S. Constitution, nor the common law, recognizes an affirmative right to health care in the United States (Gunnar, 2006). Unlike many other industrialized countries, the existing U.S. system of health care is not a national system of health care access (Calvo, 2008). Rather, it is a system, which relies predominantly on health insurance from employers for workers and their families (Furrow, 2007). However, a proportion of health insurance programs offered by employers do not cover part-time employees or dependents of employees, let alone unauthorized workers. In this regard, unauthorized immigrants represent a significant proportion of the uninsured population in the United States. The Patient Protection and Affordable Health Care Act of 2010 (ACA) (commonly referred to as the Affordable Care

beyond access and impacts the quality of education provided at public elementary and secondary schools is the No Child Left Behind (NCLB) Act of 2001 (U.S. Congress, 2002). This law aims to improve the academic performance of students and to eliminate the achievement gap among students from difference backgrounds (Ryan, 2004) by fundamentally changing the way students are taught and evaluated (Murray et. al, 2007). More specifically, the law holds schools accountable for the academic performance of all students, including limited English proficient (LEP) students (Consentino de Cohen, 2005).

Although the law does not single out unauthorized students as a protected subgroup, many LEP students are immigrants or children of immigrants (Consentino de Cohen, 2005; Capps et al., 2005). Moreover, such children also often fall into other protected groups such as "major racial and ethnic groups" (Hispanics, Asians), low-income students, and students in special education programs (Capps et al., 2005).

The NCLB Act also impacted bilingual education. The Act consolidated grants under the Bilingual Education Act and under the Emergency Immigrant Education Act into a single population-based formula grant (U.S. Congress, 1965). The new system allocates funding according to the population of LEPs (80%) and according to the population of recently arriving immigrants (20%) (CRS Report for Congress, 2007). "The law gives state and local educational agencies greater flexibility in the design and administration of language instructional programs and removes language in Title VII that encouraged bilingual instruction methods (i.e. curricula that develop proficiency in more than one language). At the same time the law develops and focuses greater attention to the achievement of English proficiency" (CRS Report for Congress, 2007: Summary).

Many perspectives weigh in on the merits of the NCLB Act. For example, whilst some argue that the Act has the potential to improve the education of LEP children through changes in curriculum, greater emphasis on pre-kindergarten enrollment and enhanced parental rights (Capps et al., 2005); others note that despite the Act's laudable goals, the Act creates incentives that work against those goals (Suárez-Orozco et al., 2009; Ryan, 2004).

Supplementing the U.S. system of health insurance Act, Healthcare Reform, or Health Insurance Reform) (U.S. Congress, 2010) is predicted to increase the percentage of unauthorized immigrants amongst the uninsured population (Zuckerman et. al, 2011). The ACA aims to expand coverage, control health care costs and improve health care system delivery. Yet, its programs aimed at assisting the uninsured obtain coverage exclude unauthorized immigrants (Zuckerman et al., 2011), although citizen children of unauthorized parents are not necessarily excluded (National Immigration Law Center, 2010). In tune with the controversy surrounding the passage of the ACA, many states have filed actions challenging the constitutionality of the Act. The Supreme Court has agreed to review these challenges and determine the constitutionality of the ACA in March 2012.

Supplementing the U.S. system of health insurance

provision by employers are a variety of federal, state and local government programs for individuals who cannot obtain private health insurance (Calvo, 2008). In this context, the Medicaid and the State Children's Health Insurance Program (CHIP) are of particular relevance to children.

## Medicaid and CHIP

Since 1965, the federal Medicaid program (which was created under Title XIX of the Social Security Act of 1965) (U.S. Congress, 2000) has provided funding and a means tested, need-based entitlement framework for the provision of a comprehensive set of health services for specific categories of low-income individuals, including children (Wysen et al., 2003). It is the largest publicly funded health care program in the United States (Fremstad and Cox, 2004). Since its enactment, Medicaid has been amended repeatedly to extend certain categories of health care coverage to children at standards beyond those applicable to adults (Gunnar, 2006; Dubay and Kenney, 2001).

In 1997, federal coverage of health care services for children was further extended through CHIP, which was enacted as part of the Balanced Budget Act of 1997 (U.S. Congress, 1997; Fremstad and Cox, 2004; Wysen et al., 2003). Like Medicaid, CHIP is funded by a combination of state and federal funds (Calvo, 2008; Wysen et al., 2003). It provides health coverage to uninsured, low-income children whose family income is too high to qualify for Medicaid but too low to reasonably afford private health coverage (Fremstad and Cox, 2004; National Immigration Law Center, 2003; Wysen et al., 2003). Both programs have income and resource eligibility criteria (Calvo, 2008).

As adequate health insurance coverage is a critical first step to accessible, quality health care in the United States (Lessard and Ku, 2003), these programs have the potential to provide a safety net for children who are not covered under private health insurance programs (Calvo, 2008). In this regard, research suggests that children in low-income immigrant families, which include children in unauthorized or mixed status families, often lack health insurance (Ku, 2007; Capps et al., 2002; Berk and Schur, 2001). However, despite the potential of Medicaid and CHIP, the following discussion highlights how legal restrictions, primarily based on citizenship and immigration status, limit program eligibility to certain categories of children, which does not include the unauthorized (Calvo, 2008).

### Citizen Children

Under Medicaid and CHIP, citizen children (including citizen children of unauthorized parents) are eligible to access a broad range of health care services provided they meet relevant income and other eligibility criteria (Ku, 2007; Fremstad and Cox, 2004; Lessard and Ku, 2003; Costich, 2001/2002). However, research indicates that eligibility does not always lead to health insurance coverage and that, despite eligibility, many citizen children of unauthorized parents are not enrolled in Medicaid or CHIP (Fremstad and Cox, 2004; Lessard and Ku, 2003).

Various commentators note that fear of exposing their

immigration status and consequent repercussions may lead to a reluctance on the part of unauthorized parents to enroll their citizen children in these programs (Calvo, 2008; Gunnar, 2006; Lessard and Ku, 2003; Costich, 2001/2001). Some suggest that many immigrants are confused regarding state and federal eligibility rules and accordingly, the belief that their citizen children are ineligible for services prevent unauthorized parents from seeking health care for their citizen children (Gunnar, 2006; Fremstad and Cox, 2004). Dubay and Kenney argue that improving adults' eligibility and access to health care services will improve children's access to care (2001).

As a consequence of the passage of the Deficit Reduction Act of 2005 (DRA) (U.S. Congress, 2005), citizen children (as well as citizen adults) applying for or renewing Medicaid coverage for the first time are required to present satisfactory documentary evidence of citizenship (Sommers, 2010; Ku, 2006a). Under the Act, individuals who claim U.S. citizenship but are unable to produce acceptable documentation of both their citizenship and their identity are denied Medicaid benefits. Although, some exemptions do apply—these include citizens receiving Medicare, Medicaid, and certain categories of foster care children (Ku, 2006a).

According to Ku, “[b]etween 1.2 and 2.3 million U.S.-born citizens, including about 600,000 to 1.6 million children and 500,000 to 600,000 adults, may have serious problems getting or retaining their Medicaid coverage because they lack a birth certificate or passport and their citizenship cannot be ascertained through a cross-match with vital records data (or is not so ascertained because their state is not conducting cross-matching)” (2006b). Other forms of documents (such as a school identification card with a photograph, medical record with date of birth, or parental affidavit) may suffice for children aged 16 or younger (Rosenbaum, 2006).

While this legislation was purportedly for the purpose of preventing unauthorized immigrants from obtaining Medicaid, commentators disagree on whether it has also had negative repercussions for citizen children (Sommers, 2010; Clarke, 2008; Press, 2006).

### Unauthorized Children

In contrast to citizen children, United States law severely restricts unauthorized children's eligibility for health care. The 1996 welfare laws created a new classification system for immigrants, which affected their access to health and other welfare benefits at the federal, state and local levels. Under PRWORA, immigrants were classified into two categories: “qualified” and “not qualified” (Calvo, 2008; Costich, 2001/2002). Unauthorized children fell into the latter category, and barring access to emergency Medicaid for emergency medical conditions (as well as immunizations and testing and treatment of communicable diseases funded through other sources), these children are ineligible for both Medicaid and CHIP (Gunnar, 2006; Chang, 2005; Lessard and Ku, 2003; Costich, 2001/2002). Although unauthorized children were ineligible for Medicaid even prior to the passage of PRWORA, commentators note that some states provided unauthorized children with state-funded benefits and many publicly supported

health care providers dispensed free or discounted non-emergency care to such children (Calvo, 2008; Costich, 2001/2002). Subsequent to PRWORA's passage, states that wish to extend Medicaid coverage to individuals who are “not qualified” are permitted to do so only at their own expense and only after enacting legislation that affirmatively provides for the provision of health care services to unauthorized immigrants (Costich, 2001/2002).

Similar to citizen children of unauthorized parents, unauthorized children's access to the health care services to which they are entitled may also be negatively impacted by unauthorized parents' fear of exposing their immigration status, consequent repercussions, and confusion regarding eligibility rules (Calvo, 2008; Gunnar, 2006; Lessard and Ku, 2003; Costich, 2001/2001).

For unauthorized children in the D.C., Maryland and Virginia areas, there are some options for free healthcare. For example, Mary's Center in Columbia Heights has a health clinic that vows to assist patients regardless of their ability to pay. In Virginia and Maryland, there are similar programs, such as the Arlandria Clinic and the Arlington Free Clinic, both of which cater to uninsured, low-income patients. While there is a fee schedule according to income and number of family members in the household, the payments are nominal—some as low as 5 dollars. The DC Healthcare Alliance Card is another option for low-income families that are not eligible for Medicare or Medicaid; however, the Alliance card cannot be used by unauthorized children or their family members as it requires documentation of permanent residence status, refugee or asylum status, victimization in a domestic violence or trafficking situation or other extenuating circumstance (for more information, see: [DC.healthcareforyou.org](http://DC.healthcareforyou.org))

### Fetuses and the CHIP Amendment

Although unauthorized women are ineligible for federal health care services under PRWORA, an amendment to the CHIP regulations has enabled states to use federal funds to provide pre-natal health services to women regardless of immigration status (Fremstad and Cox, 2004; National Immigration Law Center, 2003). Under this amendment, however, it is the fetus rather than the pregnant woman who is the recipient of the CHIP-funded services and accordingly, the scope of services available to the pregnant woman is limited to those directly related to the fetus (Aguilar, 2005; National Immigration Law Center, 2003).

### Emergency Care

As discussed above, unauthorized children are eligible for emergency Medicaid provided they meet other eligibility criteria and are faced with an emergency medical condition. The definition of an emergency medical condition for Medicaid eligibility corresponds with the definition<sup>3</sup> under the Emergency Medical Treatment and Active Labor (EMTALA) Act, which was enacted in 1986 to guarantee emergency health care to all individuals. This Act aims to ensure that all persons have equal access to emergency medical care by requiring any hospital with an emergency room to provide emergency care (examination, treatment and stabilization) regardless of insurance coverage,

immigration status, ability to pay or any other criteria (Clarke, 2008; Cohen, 2007; Gunnar, 2006). Under the Act, hospitals or physicians that fail to meet appropriate standards of patient care are penalized (Gunnar, 2006). The scope of emergency medical conditions that meet the statutory definition has been heavily contested and state and federal courts have divergently interpreted the definition (Calvo, 2008). In addition to creating negative consequences for both individuals in need of care and emergency service providers, Calvo notes that the uncertainty created by these divergent views takes time away from responding to medical conditions and puts medical judgment and good medical practice at odds with the applicable legal standard (2008).

### State Replacement Programs

Notwithstanding federal restrictions, a limited number of states and local initiatives provide health insurance coverage to unauthorized children. In response to PRWORA's restrictionist effect on certain categories of legal immigrants (who, prior to PRWORA's enactment, had been eligible for Medicaid on the same basis as U.S. citizens (Fremstad and Cox, 2004)), some states have established state funded ‘replacement programs’. These programs generally provide coverage to legal immigrant children who lost coverage, although, eligibility rules and benefits packages vary amongst states (Ku, 2007; Lessard and Ku, 2003; Fremstad and Cox, 2004; National Immigration Law Center, 2002; Costich, 2001/2002). Within this context, a few states have also opted to use their own funds to insure children regardless of immigration status (Lessard and Ku, 2003; National Immigration Law Center, 2002; Dubay and Kenney, 2001). The District of Columbia offers replacement coverage for immigrant children regardless of status, but caps this program at 800 children (Fremstad and Cox, 2004). Neither Virginia nor Maryland offers state replacement programs.

Some communities have also developed their own local initiatives to provide coverage to uninsured immigrant children. One example is the Children's Health Initiative (CHI) in Santa Clara County, California, which provides universal health coverage for all children ineligible for Medicaid and CHIP, for up to 300% of the Federal Poverty Level, regardless of immigration status (Lessard and Ku, 2003).

### Public Health Consequences

Commentators argue that restrictions on access to health care imposed by law pervert the concept and provision of health care, undermine public health objectives that protect the public at large, and impede the economic and effective functioning of the health care system (Calvo, 2008; Fremstad and Cox, 2004; Kullgren, 2003). Whether this is, in fact, the current state of affairs and the impact of the present legal and policy framework for health care on unauthorized children and citizen children of unauthorized parents are examined in the paper on health care. The exclusion of unauthorized immigrants from the recent health care reform legislation is unlikely to assuage the pre-existing dilemmas for unauthorized children and citizen children of unauthorized parents. Many of these children will continue to be dependent on state-based and other safety net programs.

### III. Labor Market

The Immigration Reform and Control Act of 1986 made the hiring of unauthorized workers illegal under federal law, imposed requirements on employers to check work eligibility documents and implemented a system of employer sanctions (Ryan, 2007; Lowell et al., 2007). In addition to exacerbating the barriers to access to post-secondary education by limiting financial options (Gonzales, 2007; 2009), the legal exclusion of post-secondary unauthorized students from the workforce is contributing to a growing pool of young adults who lack opportunities for social mobility (Gonzales, 2009).

While the merits of providing unauthorized students access to the labor market is open to subjective debate, it is clear that the initial investment in K-12 education pays relatively few dividends as long as unauthorized students are limited in their ability to continue onto college and obtain higher skilled and higher paying jobs (Gonzales, 2009). The two-stage process for acquiring legal permanent residency under the DREAM Act would enable some of

this pool of young adults to access legal employment. In the meantime, however, unauthorized students who choose to work without authorization are some of the most vulnerable members of the workforce. They face labor law violations and may not seek a remedy because they fear deportation (Lowell et al., 2007). The Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB* (2002), which held that unauthorized workers are not entitled to back pay when they are illegally fired from their jobs because of union activities, has compounded this vulnerability. These vulnerabilities are examined in more detail in the paper on labor.

Citizen children of unauthorized parents can work legally in the United States as long as they are over 14 years of age. However, until the child reaches 16 years of age, they are limited to three hours of work on a school day and 18 hours total in a school week. They are allowed to work 8 hours a day and a total of 40 hours a week during non-school weeks (Department of Labor, 2011).

### IV. Concluding Remarks

"Undocumented Latino youth are currently trapped in a legal paradox," write Abrega and Gozales (2010: 152). Indeed, they have the right to both primary and secondary education and, if they can afford it or secure private scholarships, are generally allowed to pursue college degrees. However, their unauthorized immigration status severely restricts their socioeconomic mobility. Graduates of even the most prominent universities are barred from working in the United States as evidenced by high-profile cases such as that of Dan-el Padilla Peralta from the Dominican Republic or Juan Gomez from Colombia. Padilla is the 2006 Princeton graduate and salutatorian, who was offered a scholarship to Oxford; as an unauthorized immigrant, he faced a dilemma: if he went to Oxford, he would not have been able to return to the United States, but if he stayed in the U.S., he would not have been able to legally obtain a job. Juan Gomez, a senior at the McDonough School of Business at Georgetown, told us in an interview that he would have to look for a job in Canada when he graduates. He has a job offer from JP Morgan in their Latin American Banking Division; however, the job requires foreign travel and that is impossible in his current legal situation. Juan is considering employment in Canada because he thinks he has a better chance of legal settlement there.

While these high achievers might find appropriate employment outside the United States, unauthorized children without college education or with less stellar

educational achievements face insurmountable barriers in securing decent livelihoods and attaining their career goals. Unauthorized youth's options are to remain chronically underemployed in the illegal labor market, return to their country of origin, or continue education at a great personal expense until laws change (Ortiz and Hinojosa 2010). Lack of access to healthcare services, particularly preventive healthcare, further exacerbates the unauthorized children and youth's well-being and their ability to become self-sufficient members of the society.

<sup>1</sup>The amendment was also introduced in 1995. H.R. 1377, 104th Cong. The Gallegly Amendment was eventually withdrawn after President Clinton threatened a veto.

<sup>2</sup>The provision excluding unauthorized students from public education was later ruled preempted by federal law and in conflict with Plyler in *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 775 (C.D. Cal. 1995). The full text of Proposition 187 also appears in this decision.

<sup>3</sup>An emergency medical condition is defined as a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part. (Costich, 2001/2002)

### References

Abrego, L.J. and R.G. Gonzales  
2010 "Blocked Path, Uncertain Futures: The Postsecondary Education and Labor Market Prospects for Undocumented Latino Youth," *Journal of Education for Students Placed at Risk* 15: 144-157.

Aguilar, D.O.  
2005 "Using SCHIP to offer prenatal care to

undocumented and non-qualified immigrants in Wisconsin: the benefits, risks, and shortcomings," *Wisconsin Women's Journal*, 20: 263.

Batalova, J., and M. McHugh  
2010 "DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries," Migration Policy Institute, <http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf>

Berk, M.L., and C.L. Schur  
2001 "The effect of fear on access to care among undocumented Latino immigrants," *Journal of Immigrant Health*, 3(3): 151-156.

Calvo, J.M.  
2008 "The consequences of restricted health care access for immigrants: lessons from Medicaid and SCHIP," *Annals of Health Law*, 2(Summer).

Capps, R., M.E. Fix, and J. Ost et al.  
2005 "The health and well-being of young children of immigrants," Urban Institute, <http://www.uww.edu/coe/eslbe/docs/RTHealthWellBeing.pdf>.

Chacón, J.M.  
2008 "Taking initiative on initiatives: examining proposition 209 and beyond: race as a diagnostic tool: Latinas/os and higher education in California, post-209," *California Law Review*, 96: 1215.

Chang, C.  
2005 "Health care for undocumented immigrant children: special members of an underclass," *Washington University Law Review*, 83: 1271.

Clarke, D.  
2008 "Stimulus plan on the table again," *CQ Weekly*, October 20: 2828-2829.

Consentino de Cohen, C.  
2005 "Who's left behind? Immigrant children in high and low LEP schools," The Urban Institute, <http://www.urban.org/publications/411231.html>.

Cohen, R.K.  
2007 "PRWORA'S immigrant provisions," *OLR Research Report*, <http://www.cga.ct.gov/2007/rpt/2007-R-0705.html>.

Costich, J.F.  
2001/2 "Legislating a public health nightmare: the anti-immigrant provisions of the 'Contract with America' Congress," *Kentucky Law Journal*, 90(4): 1043-1070.

CRS Report for Congress  
2007 "Education of Limited English Proficient and Recent Immigrant Students: Provisions in the No Child Left Behind Act of 2001", updated January 2007 by Jeffrey J. Kuenzi et al., Congressional Research Service, Washington, DC, <http://www.oswego.edu/~ruddy/Educational%20Policy/CRS%20Reports/NCLBA-Limited%20English%20Proficient.pdf>.

Diaz-Strong, D., C. Gómez and M.E. Luna-Duarte et al.  
2010 "Purged: undocumented students, financial aid policies, and access to higher education," *Journal of Hispanic Education*, 10(2): 107-119.

Dougherty, K.J.  
2010 "Undocumented Immigrants and state higher education policy: the politics of in-state tuition eligibility in Texas and Arizona," *The Review of Higher Education*, 34(1): 123.

Dubay, L., and G.M. Kenney  
2001 "Health care access and use among low-income

children: who fares best?," *Health Affairs*, 20(1): 112-121

Fremstad, S., and L. Cox  
2004 "Covering new Americans: a review of federal and state policies related to immigrants' eligibility and access to publicly funded health insurance," Kaiser Commission on Medicaid and the Uninsured, Washington, DC, <http://www.kff.org/medicaid/7214.cfm>, accessed 10 December 2011.

Furrow, B.R.  
2007 "Access to healthcare and political ideology: wouldn't you really rather have a pony?," *Western New England Law Review*, 29(2): 405.

Gonzales, R.  
2007 "Wasted talent and broken Dreams: the lost potential of undocumented students," *Immigration Policy in Focus*, 5(13).

2009 "On the rights of undocumented children," *Society*, 45(5):419-422.

2010 "On the wrong side of the tracks: understanding the effects of school structure and social capital in the educational pursuits of undocumented immigrant students," *Peabody Journal of Education*, 85(4): 469.

Gunnar, W.P.  
2006 "The fundamental law that shapes the United States health care system: is universal health care realistic within the established paradigm?," *Annals of Health Law*, 15(1): 151.

Hoffman Plastic Compounds v. NLRB  
2002 535 U.S. 137, 122

Hutchinson, D.J.  
1982 "More substantive equal protection? a note on Plyler v. Doe," *The Supreme Court Review*, 1982: 167-194.

Ku, L.  
2007 "Improving health insurance and access to care for children immigrant families," *Ambulatory Pediatrics*, 7(6): 412.

Kurland, P.B., and D.J. Hutchinson  
1983 "The business of the Supreme Court: O.T. 1982," *The University of Chicago Law Review*, 50(2): 628-651.

Kullgren, J.T.  
2003 "Restrictions on undocumented immigrants' access to health services: the public health implications of welfare reform," *American Journal of Public Health*, 93(10): 1630-33.

Lessard, G., and L. Ku  
2003 "Gaps in coverage for children in immigrant families," *The Future of Children*, 13(1): 100-115.

Lowell, B.L, M. Bump, and A. Sschoenholtz et al.  
2007 "Controlling irregular migration: the challenge of worksite enforcement," Institute for the Study of International Migration, Washington, DC, [http://www12.georgetown.edu/sfs/isim/Publications/SRFMaterials/CONTROLLING%20IRREGULAR%20MIGRATION\\_Fieldwork.pdf](http://www12.georgetown.edu/sfs/isim/Publications/SRFMaterials/CONTROLLING%20IRREGULAR%20MIGRATION_Fieldwork.pdf), accessed 10 December 2011.

Migration Policy Institute

2010 "Senate blocks passage of Dream Act by five votes", Migration Policy Institute, Washington, DC, <http://www.migrationinformation.org/Feature/display.cfm?ID=820>.

Murray, J., J. Batalova and M. Fix  
2007 "Educating the children of immigrants", in M. Fix (ed.), *Securing the future: US immigrant integration policy, a reader*, Migration Policy Institute, Washington, DC.  
National Immigration Law Center

2003 "Issue brief: prenatal coverage for immigrants through the state children's health insurance program (SCHIP)", National Immigration Law Center, Los Angeles, <http://www.nilc.org/document.html?id=483>.

2009 "Economic benefits of the Dream Act", National Immigration Law Center, Los Angeles, <http://www.nilc.org/DREAM-econbens-2009-03-26.html>.

2010 "How are immigrants included in health care reform?", National Immigration Law Center, Los Angeles, <http://www.nilc.org/immigrantsshr.html>

Olivas, M.A.  
2004 "IRIRA, the dream act, and undocumented college student residency", *Immigration and Nationality Law Review*, 30 J.C. & U.L. 435.

2009 "Undocumented college students, taxation, and financial aid: a technical note", *Review of Higher Education*, 32: 407-416.

2010 "The political economy of the Dream Act and the legislative process: a case study of comprehensive immigration reform", *Wayne Law Review*, 2010(6).  
National Conference of State Legislators

2010 "Undocumented student tuition: federal action", National Conference of State Legislators, Washington, DC, <http://www.ncsl.org/default.aspx?tabid=12851>.

Ortiz, A. M. and A. Hinojosa  
2010 "Tenuous Options: The Career Development Process for Undocumented Students", *New Directions for Student Services* 131: 53-65.

Pabón López, M.  
2005 "Reflections regarding the education of Latino/a undocumented children: Plyler v. Doe and Beyond", *Seton Hall Law Review*, 35(4): 1373-1406.

Passel, J. S.  
2003 "Further demographic information relating to the DREAM Act", The Urban Institute, Washington, DC.

2005 "Unauthorized migrants: numbers and characteristics", The Pew Hispanic Center, Washington, DC.

2007 "Unauthorized migration: numbers, trends and characteristics", Pew Hispanic Center, Washington, DC.

Passel, J.S., and D. Cohn

2011 "Unauthorized Immigrant Population: National and State Trends, 2010", Pew Hispanic Center, <http://www.pewhispanic.org/category/publications/>

Perry, M.J.  
1983 "Equal protection, judicial activism, and the intellectual agenda of constitutional theory: reflections on, and beyond, Plyler v. Doe", *University of Pittsburg Law Review*, 44: 329.

Plyler v. Doe  
1982 457 U.S. 202

Preston, J.  
2011 "After a False Dawn, Anxiety for Illegal Immigrant Students", *The New York Times*, 8 Feb., <http://www.nytimes.com/2011/02/09/us/09immigration.html> (accessed 10 December 2011).

Press, J.  
2006 "Care patterns in Medicare and their implications for pay for performance", *New England Journal of Medicine*, 356(11): 1130.

Rabin, N., M.C. Combs and N. González  
2009 "Understanding Plyler's legacy: voices from border schools", *Journal of Law and Education*, 37(1).

Ryan, L.  
2004 "Family matters: emigration, familial networks and Irish women in Britain", *Sociological Review*, 52(3): 351-70.  
2007 "Migrant women, social networks and motherhood: The experiences of Irish nurses in Britain", *Sociology*, 41(2): 295-312.

Salinas, V.J.  
2006 "You can be whatever you want to be when you group up, unless your parents brought you to this country illegally: the struggle to grant in-state tuition to undocumented immigrant students", *Houston Law Review*, 847(43).

Seo, M.J.  
2011 "Uncertainty of access: U.S. citizen children of undocumented immigrant parents and in-state tuition for higher education", *Columbia Journal of Law and Social Problems*, 44.

Sommers, B.D.  
2010 "Medicaid expansion: the soft underbelly of health care reform?", *New England Journal of Medicine*, 363(22): 2085.

Suárez-Orozco, C., and M. Suárez-Orozco  
2009 "Educating Latino immigrant students in the twenty-first century: principles for the Obama administration", *Harvard Educational Review*, 79(2): 327-340.  
U.S. Congress

1965 "Elementary Secondary Education Act of 1965", Title VII: Parts A and C.

1986 "Immigration Reform and Control Act of 1986", Pub. L.

No. 99-603, 100 Stat. 3359.

1996a "Gallegly amendment", H.R. 4143, 104th Cong. § 1.

1996b "Illegal Immigration Reform and Immigrant Responsibility Act of 1996", Pub. L. No. 104-208, 110 Stat. 3009-546.

1996c "Personal Responsibility and Work Opportunity Reconciliation Act of 1996", Pub. L. No. 104-193, 110 Stat. 2105.

1997 "Balanced Budget Act of 1997", Pub. L. No. 205-33, §§ 5301-5305, 11 Stat. 251, 596-601.

2000 "Social Security Act of 1965", 42 U.S.C. §§ 1396-1396(v).

2002 "No Child Left Behind (NCLB) Act of 2001", Pub. L. No. 107-110, 115 Stat. 1425.

2005 "Deficit Reduction Act of 2005", Pub. L. No. 109-171, S.1932.

2010 "Patient Protection and Affordable Health Care Act of 2010", Pub. L. No. 111-148, 124 Stat. 119 (2010) as amended by the Health Care and Education Act Pub. L. No. 111-152, 124 Stat. 1019.

Wysen, K., C. Pernice and T. Riley  
2003 "How public health insurance programs for children work", *The Future of Children*, 13(1): 170-191.

Zuckerman, S., T.A. Waidmann and E. Lawton  
2011 "Undocumented immigrants, left out of health reform, likely to continue to grow as share of the uninsured", *Health Affairs*, 30(1): 1997-2004.

**Institute for the Study of International Migration**

Harris Building

3300 Whitehaven Street NW, Suite 3100

Washington, DC 20007