

UN Human Rights Violations Here at Home? The Plight of Undocumented and DACA Students in South Carolina, USA.

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Abstract: South Carolina is arguably the most restrictive state in the nation as it pertains to access to higher education for immigrant students, particularly undocumented and DACA (Deferred Action for Childhood Arrivals) students. As we show through personal interviews, this has had a detrimental effect on the lives of many immigrant students throughout the state. It also conflicts with the ideals of human rights in regard to access to higher education and equality which are laid out in the UNESCO Convention Against Discrimination in Education.¹ Our analysis of South Carolina's policies helps shed a light on the greater issues related to immigrant education rights across the nation and how they compare to the immigration policies of more welcoming developed nations. As the United States seeks to be a champion for human rights around the world, we need to confront our own problematic educational policies, which often leave many students behind.

As American high school students read current news magazines like *Time* and then discuss within their social studies classes the Syrian immigration policies of Angela Merkel and the German people, they are struck by the sweeping human rights efforts the country has made over the last seventy years. How has Berlin become the capital of a once divided and bitterly racist country that now welcomes the outsider and beleaguered "other" even as they realize quite fully the issues and challenges it would pose for a diverse country? As students reflect, they begin to realize that the changes have come about in big but also in very small ways as thoughtful German citizens have begun to face their history head-on, as they have begun to make reparations for their unspeakable acts against humanity. As a result, they have engaged in self-examination and made remarkable revisions in their laws and policies. Within less than two decades after the Holocaust, they also earned admission into the United Nations and have contributed more recently to its Development Goals with more financial support than even the U.S.A. Furthermore, they are setting the example for the world in terms of its global sustainability efforts that may well lead to the preservation of our planet and our continued life on it.

Global comparisons can help our American students rethink our own troubled human rights history as we deal with current challenges within classroom discussions. Within the Southeastern United States where we both currently work, we watched on the national news as the Confederate Flag was finally removed from the state grounds this past summer (2015) but only after a horrific slaughter in the Holy City (of Charleston) pricked our consciences and after families of the African American victims urged peace, forgiveness and an alternative way of living and being. In December of 2015, TIME featured an article about the tragedy, asking a pressing and universal human rights question. What does it take to forgive?

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Regrettably, other human rights concerns have surfaced within the state but have received far less notice. South Carolina currently has one of the harshest laws regarding the treatment of undocumented immigrants and DACA (Deferred Action for Childhood Arrivals) students. In 2008, the state passed the **South Carolina Illegal Immigration Reform Act**. The bill essentially placed tighter restrictions on immigrants in areas of housing, education, and employment. It went as far as making it a felony to transport an undocumented individual “with intent to further that person's unlawful entry into the United States.” It also called for local agencies to check the legal status of all arrested individuals. Perhaps somewhat ironic in a state known for its strong support of gun rights, the law stated that it was illegal for an undocumented individual to possess a firearm with a possible penalty of up to 10 years in prison. It also made it illegal for local municipalities to create any type of “sanctuary city,” which do not enforce policies against undocumented immigrants and would thus undermine state immigration policy.

Although we realize that the law that we will illuminate applies to all undocumented and DACA immigrants within the state, we will focus on the potential human rights violations that we see perpetrated upon the lives of teenage Latino students within our state's schools. In South Carolina, the overwhelming majority of undocumented and DACA students are from Latino descent. This follows national trends. For example, 77% of young people who apply for DACA are from Latin America (Rusin, 2015). Specifically, we will address the state law's aspects that relate to access to higher education for these talented and gifted teens whom deserve and have a right to decent educational opportunities. Of course, there are several other good reasons for calling into question this discriminatory legislation, but the denial of this fundamental human right to education is of far more import than the arguments related to the economic benefits of supporting undocumented immigrants. How will our international peers view our country as the word spreads and as comparisons are made with Germany and other representative democracies? Calling attention to our law and its effects on our youth is just one small step toward altering an unjust law that may be a violation of our country's commitment to our global community's United Nation's (UN) Universal Declaration of Human Rights.

One of the harshest aspects of the law was the issue of access to higher education for undocumented immigrants. The new legislation barred undocumented students from studying in public institutions of higher education. South Carolina led the nation in this policy, becoming the first state to officially ban undocumented immigrants from public colleges or universities (Ramirez, 2008). It also stated that no undocumented immigrant could qualify for state “scholarships, financial aid, grants, or resident tuition.”

South Carolina's education policies not only negatively impact undocumented students, but they also affect DACA students, those young adults who were eligible for temporary legal status under Obama's 2012 **DACA** plan. While these students are able to legally study in the state, they do not qualify for in-state tuition or state scholarships and assistance. Todd Rutherford, the house minority leader from Columbia, SC introduced a bill in 2014 that would have allowed DACA students who had graduated from South Carolina high schools to receive in-state tuition and scholarships (Hutchins, 2014). However, as this time, there still has been no change to the policy. To understand the difference in costs between two high performing students in the state of South Carolina, one can look at a state university such as Clemson University where we both work and study. The total tuition and fees for an in-state resident per semester for the 2015-

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2016 school year is \$6,941 compared to a non-resident who would pay \$16,400 (“Clemson University Tuition,” 2015). In-state residents can also qualify for state scholarships which can cover a portion or all of the tuition costs. This means that two students, one a DACA student and one a traditional student, who both graduated from the same high school with high GPAs, would have a vast difference in educational costs. To add to this, DACA students do not qualify for federal financial aid, which makes higher education even more unattainable. There are even some public institutions in South Carolina who still deny DACA students admission which has led to student protest. South Carolina is in the minority of states that do not allow DACA students to receive in-state tuition. Even some of these other states with restrictive immigration policies such as Alabama and Arizona have still allow universities to offer DACA students in-state tuition. Although the Supreme Court case of Plyler v Doe (1982) forbids discrimination at the K-12 level based on immigration status, this does not necessarily apply to post-secondary education. Perhaps such a case should be put forth to see that this discrimination is eradicated for higher education as well.

U.S. Citizens with Undocumented Parents Barred from In-State Tuition

Even more disconcerting from a human rights perspective is the fact that some U.S. citizens with undocumented parents have been denied access to in-state tuition and financial aid in South Carolina based on their parents’ lack of “state residency.” These citizens are usually students who were born out of state. Even if they have spent years in South Carolina, they may not be able to qualify for in-state benefits. As Ed Buckley (2015) points out, this policy is “almost certainly unconstitutional.” A federal judge rejected a similar policy in Florida. In June 2015, three South Carolina students, Antonio Rojas Rodriguez, Cristal Carreno, and Alan Vasquez filed a suit through the Southern Poverty Law Center against this state policy claiming it to be unconstitutional (Buckley, 2015). Due to this lawsuit, the South Carolina Commission of Higher Education did send a recommendation to universities to allow these citizens to receive in-state tuition. However, it is not a binding policy. It is telling that the state that gives little flexibility when it comes to addressing the needs of these aspiring immigrant students also gives leeway to universities to be more discriminatory. One could easily argue that South Carolina actually has the most restrictive policy in the nation when it comes to these high-achieving and eager youth who think of themselves as Americans. Our state is alone with Alabama in completely banning undocumented students, in the minority of states that deny in-state tuition for DACA students, and one of the only states where in-state benefits and tuition for U.S. citizens of undocumented parents is not guaranteed.

One of our authors was able to interview two of the plaintiffs in the Southern Poverty Law Center case, Alan Vasquez and Cristal Carreno.ⁱⁱ Both expressed a sense of bewilderment when they discovered they would not be eligible for in-state tuition or benefits due to the immigration status of their parents. Both had moved to the state as young children. In Alan’s case, he was only one year old. Throughout high school, they had no knowledge such a policy existed. As Cristal describes it “when I received the news, it was shocking” Alan added to this when he described how immigrant students “are not aware, they do not even know it until they reach their senior year...that is how it was for me, that is how I am sure it is for most of them.” Naturally, they assumed as U.S. citizens that the state could not discriminate against them. Both expressed a true outrage at the unjust policies. Though neither was planning to become an activist, both began to see their struggles as part of a larger issue of educational justice in the state. As Cristal stated, “I would like to see an overall change in South Carolina” in contrast to

the state policies which she sees as based on mixture of “fear and narrow-mindedness.” Alan discussed his desire to become even more involved with these issues in the future.

Alan and Cristal also highlighted the effect these policies are having on students pursuing higher education. Cristal stated how among her DACA friends, “a lot of them decide not to go (to college) and start working . . . it’s really expensive...and they can’t afford it.” Alan adds that the students see “that no one is trying to help them, and if they are, help cannot always be given.” He said that some “even drop out of high school when they find that out...because the reason they graduate high school is so that they can go to college.” He also told about one friend who dropped out who said that “he didn’t regret it” because he did not have opportunities anyways.

The same author had another experience with a close family friend who had lived in South Carolina for over 8 years and graduated from high school in the Greenville area. His family currently has legal status under the U visa, which is for battered families.ⁱⁱⁱ He enrolled in community college after high school, assuming that he would be treated the same as any other student. Unfortunately, within the first few weeks of the semester he discovered that he would not be able to receive in-state tuition with the U-VISA because it was not on the approved list of VISAs for residency. Will sat with him in the office of the college, where the admissions officer told him that unfortunately there was nothing she could do. She informed us that this was one of the worst parts of her job and that she felt it was utterly unjust, but it was out of her hands.

Another close family friend of this same researcher, who is under the DACA program, went to a local community college to get a license in aesthetics. She finished the program, passed her exams, and paid over \$4000 in out-of-state tuition, only to receive a letter from the state Board of Cosmetology, which told her that she could not qualify for licensure due to her immigration status. In the interview Will conducted with her, she tells a story of a meeting where many students in the same situation went to appeal the ruling. She describes how some of the girls had spent over \$20,000 and passed all their exams but were still denied licensure. In the interview, she describes how one by one the students had their appeals denied. As she explains, “a lot of them were crying that day. Because they spend so much time...it was their passion.” She describes the “frustration” she felt from the process and the “heartbreak” the students faced. Near the end of the interview she describes how she “loves school, I wish I could go sometimes. I love learning and I just get flashbacks of when I was back in high school.”^{iv} In another scenario, when Will was teaching high school, a fellow teacher came to talk to him in the middle of class. He asked him about a student of his who was in tears. She had completed a school program for two years to get her cosmetology license. She was not informed until near the end of the program that despite all her studies, she would not be able to get a license due to her status as a DACA student.

These stories are just small glimpses into the lives of many students who have been left behind in South Carolina due to the state’s restrictive policies. Ultimately, this not only hurts these individual students. It damages the state both economically and educationally. On an economic level, it is keeping young people from pursuing higher education and denying the state the benefits that these young people could provide upon their successful completion of their degrees or certifications and their matriculation into the work place. It has also caused problems in the state’s educational system. For one, it has been a barrier to diversity in state colleges and universities. A 2009 study shows that Latinos only made up about 2.4% of students at South Carolina colleges and universities (“Colleges and Careers,” 2009). However, the Pew Research Center shows that Hispanics made up 7% of the K-12 student population (2011).

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While this large difference may not be totally due to discriminatory policies towards undocumented immigrants, DACA students, and children of undocumented parents, there is little doubt that the state's educational policy is probably a major factor in suppressing the Hispanic population at state colleges and universities.

The state's educational policy towards immigrants is also detrimental to student performance in the K-12 classroom. If students realize that the options for higher education are either legally or financially out of reach, what is the motivation to work hard and succeed in the classroom? Though there are numerous examples of students that have excelled in their studies despite the educational hurdles, there are many others who have simply stopped trying. Alan Vasquez (cited above) confirmed that this occurred with some of his fellow immigrant friends when they realized they were being shut out of the system. This is damaging to the whole school environment. Apathy and despair are contagious. It is often hard enough for teachers to motivate students to succeed without the state putting hurdles before them that discourage a whole group of motivated students from academic achievement. South Carolina is fundamentally undermining its own K-12 system by creating a societal "sub-group" who are less likely to care about academic success and are likely to spread this undesirable outlook to the general student population.

In addition, restrictive immigration policies also have an impact on the dropout rate. A 2014 study shows that the dropout rate for foreign-born non-citizen Mexicans decreased by 8% in states that extended in-state tuition to undocumented students (Potochnick, 2014). High dropout rates not only internally damage the K-12 system, but they also put schools in South Carolina in danger of being reprimanded, having funding cut, or even being shut down. If a school is in a largely immigrant area, they likely already face many specific challenges with school performance based on socio-economic status and also the number of second language learners. When the state creates incentives to underachieve or drop out, it is further damaging the schools in these often high needs areas.

Perhaps most distressing of all, South Carolina and the U.S.A. is better than this. Our state and nation do not need to continue to treat undocumented and DACA minors in this way, especially in light of our state and country's fundamental commitment to human rights as is recognized within our embrace of the Universal Declaration of Human Rights as a founding member of the United Nations--not to mention our espousal of such beliefs within our country's founding declarations and constitution. Our very identity as a country may be at stake. South Carolina does not need to bring down the rest of the country because of its current restrictive policies, especially when our country still touts our belief in freedoms for ALL. Besides, we currently call out discrimination and inequality in education in countries such as Afghanistan and Saudi Arabia, so we as U.S. citizens should look within our own borders and help modify discriminatory policies against minors within any of our states who yearn for the cultural capital a college education could provide.

Perhaps hosting conversations within our classrooms and in the public sphere that reframe the conversation in terms of the kind of identity we hope to foster within our global community is a helpful, nonviolent way to reach consensus about our next best step in this ongoing global debate about the fair treatment of all immigrants, regardless of legal status, who need a chance in a time of need.

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- ⁱ The 1966 UNESCO Convention against Discrimination in Education calls for all nations to “make higher education accessible to all on the basis of capacity by every appropriate means” (“International Covenant,” 1966).
- ⁱⁱ The interview with Alan was conducted in the October of 2015, and the interview with Cristal was conducted in November of 2015. Both were approved by Clemson University’s Institutional Review Board.
- ⁱⁱⁱ The U Visa was first enacted in 2000 as part of the Victims of Trafficking and Violence Protection Act. It is set aside for those immigrants who have suffered physical or mental abuse and have been helpful to law enforcement in investigating and prosecuting this abuse.
- ^{iv} This interview was conducted in March of 2016 in Greenville, SC. The interview was approved by Clemson’s Institutional Review Board.