

Keeping the Dream Alive

With the federal DREAM Act stalled in Washington, the dream of college education is alive in some states but not others.

ON THE LAST DAY OF AUGUST and first day of classes at the University of Rochester, freshman Albert Ngobeni went downtown to the bus station to retrieve a bag lost on the trip from his Indiana hometown. He was wearing a college T-shirt, jeans, and tennis shoes, with the silver high school class ring on his finger. He speaks without an accent and apart from the African surname, nothing hinted he was from anywhere other than the Midwest. But when the Border Patrol stopped him in the Rochester bus station and asked if he was a U.S. citizen, Albert told them he was originally from South Africa but had been living in this country since age 5 on the visa of his father, an occupational therapist. They made the 19-year-old wait while they checked an Immigration and Customs Enforcement (ICE) database, and when they couldn't find him in there, took him into custody and brought him to a federal detention center in Batavia, New York, where he spent six days and nights until his family posted a \$5,000 bond.

EDITOR'S NOTE:

The federal DREAM Act aims to provide a pathway to legal residency for undocumented students. State Dream Acts aim to provide in-state tuition for undocumented students, which is not related to immigration status.

It was not how the soccer midfielder and aspiring pre-med student with a half-dozen Advanced Placement credits and a \$20,000 merit scholarship expected his college career to start. He knew his parents were still trying to get green cards and his own legal status was in limbo. He was aware there might be risks—border patrol agents twice questioned passengers including his mother on the bus they rode together a week earlier from Indiana—“but I didn't think I'd actually be detained. I don't have a criminal record. I've been a pretty good kid. I honestly didn't think I'd be a high priority for them to catch.”

But Albert was in a predicament faced by thousands of undocumented immigrants' children, pawns in a bigger battle being fought over immigration laws and policy in the halls of Congress and state capitols. The federal Development, Relief, and Education for Alien Minors (DREAM) Act, which would provide a pathway to legal residency for undocumented college graduates and those who serve two years in the military, remains mired in Congress as it has been for the past decade. A dozen states have laws allowing undocumented residents and graduates of their high schools to pay in-state tuition. Connecticut and

Maryland were added to that list in 2011, and Rhode Island did it by action of its Board of Governors for Higher Education (Opponents of the Maryland law, which provides for in-state tuition first at community colleges, then at four-year campuses, quickly secured tens of thousands of signatures on petitions to put the statute on hold and force a November 2012 referendum). California, long a Dream Act state, just made its undocumented students eligible for need-based Cal Grants and Illinois created a private scholarship fund for its students. But Wisconsin repealed its in-state tuition statute, Indiana barred undocumented students from paying legal residents' tuition rate, and Alabama barred such students from its colleges and universities altogether.

Texas was the first state to enact an in-state tuition law back in 2001, signed by then-new Governor Rick Perry, now a Republican presidential hopeful. Perry's rivals hammered him after he stood up for the Texas Dream Act in a debate and declared, “If you say that we should not educate children who have come into our state for no other reason than they've been brought there by no fault of their own, I don't think you have a heart.”

President Barack Obama, Homeland Security Secretary Janet Napolitano and Immigration and Customs Enforcement (ICE) Director John Morton all have said that ICE is targeting criminals, not college students for deportation. Morton sent a memo to ICE officers, agents, and prosecutors on June 17, 2011, instructing them to use discretion on the apprehension, detention, and removal of noncriminal aliens, “particularly if the alien came to the United States as a young child,” graduated from a U.S. high school, and obtained or are pursuing college or advanced degrees. Obama told the Congressional Hispanic Caucus, “It’s heartbreaking to see these incredibly bright, gifted people barred from contributing to our country and to our economy.”

Still, the Obama administration deported nearly 400,000 people, a record, in 2010. Half had criminal records—and half had none. Despite Obama’s support of the Dream Act, it did not ultimately become law. The bill did pass the lame-duck House in the final days under Democratic control

on a 216–198 vote in December 2010, but came up five votes short of the 60 necessary in the Senate to avert a filibuster. Earlier Dream Act proposals had Republican co-sponsors, but only Democrats have signed on to Illinois Senator Dick Durbin’s bill in the current session of Congress.

Nonetheless, immigration attorney and Cornell Law School adjunct professor Stephen Yale-Loehr sees grounds for optimism. “To me it is similar to the civil rights movement and the environmental movement,” he said. “In the early 1960s there was a lot of agitation and frustration about civil rights, and then Congress passed the Civil Rights Act of 1964,” and similarly before passage of the Environmental Protection Act of 1970.


“The Dream Act students have been very good at mobilizing and marching and advocating and doing sit-ins. Although it’s a painful process that takes a long time, I think that is their best chance of making significant changes, rather than just sitting back and hoping that somebody’s going to do it on their behalf,” he said.

Yale-Loehr represented Dan-el Padilla Peralta when the Princeton salutatorian and classics scholar born in the Dominican Republic was faced with being barred from reentering the United States when he won a graduate scholarship to Oxford in 2006. Padilla later was granted an H-1B specialty visa to be a research assistant at Princeton and now is on an F-1 visa pursuing a PhD at Stanford University. “I was very, very lucky to enjoy this kind of success in my applications,” Padilla said.

Some cases, like Padilla’s, make headlines. Harvard sophomore Eric Balderas, brought to the States from Mexico at age 4, was arrested at the San Antonio, Texas, airport in June 2010 as he tried to catch a flight back to Boston. A high school valedictorian and biology student on a full scholarship, Balderas was released after a day and ICE later said it would not try to deport him. Shing Ma (Steve) Li, a City College of San Francisco nursing student who was born in Peru, spent two months incarcerated in 2010 before Democratic Senator Dianne

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Feinstein (California) secured his release. Jessica Colotl, Kennesaw State University undergraduate who was turned over to Cobb County, Georgia, authorities after a campus officer stopped her for a minor traffic violation, spent 37 days in a federal detention center in Alabama before being freed and allowed to finish her degree.

Undocumented students often turn to or are directed to the international student office on campuses, due both to the international educators' expertise on the complex U.S. immigration laws and their natural inclination to help these students.

"We serve as a default resource to the students because there's really no other place on campus for them to go," said Teri Albrecht, director of international student and scholar services at the University of Texas at Austin. "We've had students come here and say, 'Where on campus can I work?' And we have to tell them they're not eligible."

"The main thing we do is listen and let them know we understand the difficulties that they're going through. A lot of times they've never talked about this to anyone before," said Albrecht, who wrote her PhD dissertation on the obstacles undocumented students face. Many study to enter "helping professions" such as teaching and medicine, but upon graduation "they hit the next wall. Their possibilities start diminishing. What's next? They can't work. They can't go out into their field and do what they've been studying for."

When Cary Jensen, director of the University of Rochester's International Services Office, found out after two days about Albert Ngobeni's arrest, he immediately headed to the Batavia detention center and made a second trip the next day to bring the student a chemistry text, a copy of *Uncle Tom's Cabin*, and other books to read. Jensen got in because he is a licensed attorney, but guards turned the books away; only paperbacks mailed directly from a publisher were allowed. Albert was kept an extra four nights in the jail—which holds both undocumented adults and criminal suspects—after a fam-

States with a Dream Act allowing in-state tuition:

Texas, California, Utah, New York, Washington, Illinois, Kansas, New Mexico, Nebraska, Maryland, Connecticut. Rhode Island did so administratively. Wisconsin repealed its law in 2011. Oklahoma repealed its in-state tuition law in 2007, but left the Oklahoma Board of Regents free to set policy; the Regents still allow undocumented students to pay in-state rates.

States that prohibit undocumented students from paying in-state tuition:

Arizona, Colorado, Georgia, and Indiana.

Source: National Conference of State Legislatures

ily friend arrived half an hour late on Friday afternoon to post a \$5,000 bond before the long Labor Day weekend.

Albert was the second Rochester freshman picked up in this manner by Border Patrol agents who regularly perform identity checks in Rochester's bus and rail stations, Jensen said. "They spent time in jail for doing nothing wrong other than they turned 18 and didn't immediately turn themselves in or go back to a country they've never even known."

While the White House and Homeland Security may have declared college students a low priority for deportation, "that message hasn't gotten to the boots on the ground," said Jensen. (Jensen later said a deputy chief of the Border Patrol told immigration lawyers attending a conference at Cornell Law School that the agency was no longer going to have standing immigration checks at the Rochester bus station, train station and airport, but would still carry out checks in response to investigations or leads.) A spokesman for the Border Patrol's Buffalo sector, Supervisory Agent Raymond Mandel, said the agency detains every person arrested for immigration violations, college student or not, and ICE then makes the decision whether to release or hold them.

In a speech given at American University in October, Secretary of Homeland Security Janet Napolitano admitted that it takes time to "turn the ship around" and said that she was meeting with her staff to discuss how to better shift practices on the ground based on the department's priorities. Albert will appear before an immigration judge in Buffalo in February, where in all likelihood ICE will decline to prosecute him.

Numerous college presidents have spoken out on behalf of Dream Act students, including UCLA Chancellor Gene Block and Indiana University (IU) President Michael McRobbie. McRobbie helped convince Indianapolis lawmakers to drop "even more draconian" provisions from the measure barring in-state tuition that Governor Mitch Daniels eventually signed, said Christopher Viers, IU associate vice president for international services.

Still, Viers likened the law to dumping "a bucket of ice cold water on our efforts to provide international students and scholars with a warm welcoming environment to IU and the state of Indiana." He added, "Measures like this, unfortunately, only lead to a growing perception that our institutions in the U.S. are closing their doors to the world's future leaders."

Over the summer, all 340,000 students registering for classes at Indiana's seven public colleges had to sign electronic affidavits verifying that they were U.S. citizens, permanent residents, asylees or refugees, or international students with valid visas. If they selected the box saying they were "unable to verify lawful presence in the United States," then their tuition immediately went up more than threefold, from \$8,432 a year to \$28,449. About 300 students statewide were hit with the increase.

Dream Act activists Erick and Omar Gama, twin brothers from Cuernavaca, Mexico, were among the 21 IU Bloomington students whose tuition bills skyrocketed. The 20-year-old twins also were arrested with four others in a rally and protest in-

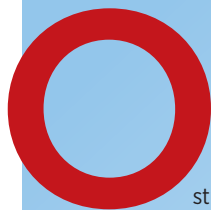
side the Statehouse in May. They spoke no English when they joined their parents in Indianapolis at age 11, but within two years were honors students.

Erick, an interior design major who performed in show choir at Arsenal Tech High School, used to let “only close friends who I trusted” know that he wasn’t a U.S. citizen, but became a Dream Act activist in college. After their arrest, they were charged with criminal trespass and disorderly conduct—both misdemeanors—and ordered to perform 24 hours of community service, “but ICE decided not to take us. They didn’t want to waste their resources.”

The state’s citizenship affidavit relied on the honor system, but “it was a Class B felony if you lied. We don’t want that on our record,” said Erick. He doesn’t expect to be deported, holds out hope a federal Dream Act eventually will pass, but fears that more states will deny in-state tuition to students like him (the federal Dream Act would leave tuition decisions in states’ hands). He cut back on classes to mitigate the steep tuition increase. “We had some money and we got some private scholarships and other families are helping us,” he said.

Another activist, University of Illinois student Andrea Rosales, went to Atlanta and was arrested in April with six other students after blocking a downtown street in protest of a Georgia Board of Regents policy that bars undocumented students from the state’s five most selective universities. A member of a student group called La Colectiva, she wore a T shirt that said “undocumented and unafraid” in a video posted on YouTube. Charged with obstructing traffic, they were held overnight, released and given a short community service sentence.

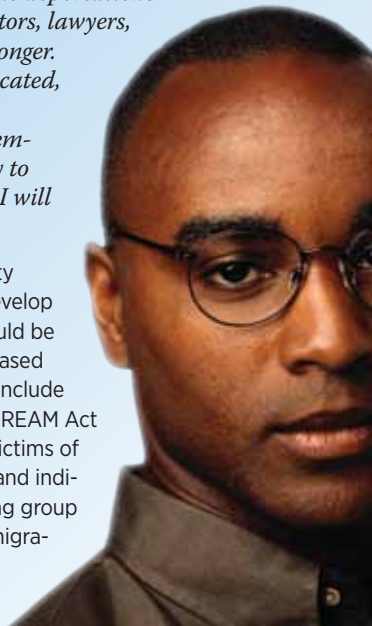
Rosales, 22, who graduated in May with a degree in sociology and Latino studies, was brought to the United States from Guanajuato, Mexico, at age 5 and didn’t find out she was undocumented until she had to turn down a work-study job in high school. “I’m not worried at all” about being deported, she said. “If you’re vocal and open about it, they really are too afraid to touch us.” She cannot work now, but aspires to get a PhD in ethnic studies and become a professor.



ON AUGUST 18, 2011, Department of Homeland Security Secretary Janet Napolitano announced [in a letter to Illinois Senator Richard Durbin and other senators] that the Obama administration established a new process for handling the deportation cases of DREAM Act students and other sympathetic individuals.

“If fully implemented, the new process should stop virtually all DREAM Act deportations,” Durbin said in a statement. He further noted: “The Obama administration has made the right decision in changing the way they handle deportations of DREAM Act students. These students are the future doctors, lawyers, teachers and, maybe, senators, who will make America stronger. We need to be doing all we can to keep these talented, dedicated, American students here, not wasting increasingly precious resources sending them away to countries they barely remember. The administration’s new process is a fair and just way to deal with an important group of immigrant students, and I will closely monitor DHS to ensure it is fully implemented.”

Under the new process, a Department of Homeland Security (DHS) and Department of Justice (DOJ) working group will develop specific criteria to identify low-priority removal cases that should be considered for prosecutorial discretion. These criteria will be based on “positive factors” from the Morton Memo (see p. 5), which include individuals present in the United States since childhood (like DREAM Act students), minors, the elderly, pregnant and nursing women, victims of serious crimes, veterans and members of the armed services, and individuals with serious disabilities or health problems. The working group will develop a process for reviewing cases pending before immigration and federal courts that meet these specific criteria.



Michael Olivas, a University of Houston law professor who helped write the original Texas Dream Act and has been a forceful advocate for undocumented students, counsels students against civil disobedience. “They are still deporting people—students, military spouses, and others with no record of criminal behavior,” he said. “I keep begging students, ‘Please don’t out yourself.’ In the civil rights tradition that this is in, they all want to be Martin Luther King writing letters from Birmingham jail. But Martin Luther King wasn’t deported when he was released from jail.”

An estimated 65,000 undocumented students graduate from U.S. high schools each year, but the National Conference of State Legislators says “only 5 percent of these students attend college.” The Texas Higher Education Coordinating Board, which tracks the state’s so-called HB 1403 students (the number of the original House bill), counted 16,476 who qualified for in-state tuition in 2010. More than 12,000 attended community, technical, or state colleges; 4,400 were at universities. Some 2,500 of these students received financial aid from the state.

In California, Governor Jerry Brown, a Democrat who signed two Dream Act bills including the financial aid measure that had been vetoed four times by Republican governors, estimated that an additional 2,500 students will qualify for Cal Grants at a cost to the state of \$14.5 million, a sliver of its \$1.4 billion budget. Brown said in a statement, “Going to college is a dream that promises intellectual excitement and creative thinking. The Dream Act benefits us all by giving top students a chance to improve their lives and the lives of all of us.”

Illinois Governor Pat Quinn, also a Democrat, expressed similar sentiments in August when he signed a measure creating a privately funded Illinois Dream Fund to award scholarships to the children of immigrants. It also opened the state’s college savings funds to students whose parents have a taxpayer identification number, not just those with a Social Security number. In a signing ceremony held in Chicago’s largely Mexican Pilsen neighborhood, Quinn said, “Today we are showing what democracy is all about. We say to all the people in our country and in our state that we want every-

one in and nobody out. All children have the right to a first-class education.”

California’s original 2001 Dream Act, AB 540, extended in-state tuition to those high school graduates who signed affidavits that they had applied to legalize their status or would pursue legal status as soon as they were eligible. The University of California system reported 2,019 AB 540 recipients at its 10 campuses in 2008–09.

At UCLA, where administrators estimate 300 of the 39,000 students are undocumented, the Student Affairs division’s Bruins Resource Center provides meal vouchers, distributes \$140,000 in private scholarship funds, makes emergency loans, holds workshops, and provides academic support for these students. “We aim to be a one stop shop where students can get questions answered” and make a successful transition to UCLA, said Pamela Viele, executive director of student development. The center also serves veterans, foster youth, transfer students, and students who are parents.

“We really want them to hit the ground running and know exactly what the (legal) situation is...and how we can help them meet those challenges,” said Edward Gurrola, Jr., coordinator of services for undocumented students.

Bob Ericksen, director of UCLA’s Dashed Center for International Students and Scholars, is part of a campus support network for undocumented students. “A coordinated effort is being made to provide better services,” Ericksen said. His office has helped students get pro bono advice from top immigration attorneys on avenues to pursue legal residency.

University of California Berkeley Chancellor Robert Birgeneau created a task force in fall 2010 to make that campus a more welcoming place for AB 540 students. “We found (they) are often socialized to be invisible—many don’t think it safe to share their status widely,” said Gibor Basri, vice chancellor for equity and inclusion and task force chair. Its recommendations, now being

implemented, include creating a half-time support position, establishing a textbook lending library, arranging legal advice, and offering training on how to set up Limited Liability Corporations that can help students earn additional income, establish credit, and build resumes.

Other campuses such as the City University of New York offer detailed advice to undocumented students on matters including what to do if arrested by ICE and how to get someone out of detention facilities.

That’s a lesson Albert Ngobeni learned the hard way. “If this had to happen, I’m glad it happened at the beginning of the school year,” he said. “I’m trying to explore options to get legal. I’m pretty optimistic about not getting deported, but as for getting legal, I really don’t know. I’m kind of in a tough circumstance.”

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CHRISTOPHER CONNELL is a veteran Washington, D.C. education writer and author of NAFSA’s annual *Internationalizing the Campus* reports.

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