EDUCATING THE UNDOCUMENTED: PROVIDING LEGAL STATUS FOR UNDOCUMENTED STUDENTS IN THE UNITED STATES AND ITALY THROUGH HIGHER EDUCATION

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I. INTRODUCTION

Seeking a better life for their five year old daughter, Gabby’s parents illegally crossed the U.S.-Mexican border nearly thirteen years ago. Eventually settling in Philadelphia, they worked long hours packing mushrooms and cleaning debris at local agricultural factories. Gabby attended public school and quickly excelled academically, earning a 3.7 grade point average in high school. Volunteering for a local farm worker mission inspired Gabby’s dream of attending college and law school. As an undocumented immigrant, however, Gabby faces many obstacles to attending college and entering the legal profession.

Under current U.S. law, the majority of undocumented students are ineligible for in-state tuition or federal aid, which effectively bars them from completing college educations. Denied access to the majority of higher education institutions, many talented and promising students fall prey to a cycle of poverty by following their parents’ paths and accepting low-paying jobs. Although the occasional undocumented student is able to overcome

2 Id.
3 Id. See Plyler v. Doe, 457 U.S. 202, 230 (1982) (holding that all students, regardless of immigration status, must have equal access to public education).
4 Bahadur, supra note 1.
6 Alfred, supra note 5, at 615-16.
7 Id. at 615 (describing the situation of Monique Silva, a young undocumented immigrant who excelled academically in high school and was accepted to college, but was unable to attend due to a lack of financial resources. Instead, Monique accepted a low-paying job and faces limited prospects of career advancement.). Monique’s situation is hardly unique and is a
financial obstacles to acquire a college education, upon graduation, she may find limited employment prospects because of her immigration status.\(^8\)

While Gabby has found a Catholic college in Pennsylvania willing to ignore her immigration standing and to grant her a scholarship,\(^9\) her undocumented status will ultimately restrict her ability to fulfill her dream of attending law school and practicing law.

Each year, roughly 50,000 to 65,000 undocumented students\(^10\) like Gabby graduate from American high schools or receive their equivalency diplomas.\(^11\) Many undocumented students have lived in the United States for a number of years and are unlikely to return to their countries of origin.\(^12\) These undocumented high school graduates “wish to enjoy the upward mobility a college degree provides, but face obstacles because of their immigration status.”\(^13\) With the exception of nine states, undocumented students are ineligible for in-state college tuition rates.\(^14\) Further, undocumented students

\(^8\) Id. at 618.

\(^9\) Bahadur, supra note 1.

\(^10\) While undocumented immigrants are frequently referred to as illegal aliens, the word alien carries negative connotations that emphasize a lack of belonging in the community. Further, the term illegal, in the immigration context implies there has been a crime committed. Jessica Salsbury, Comment, Evading “Residence”: Undocumented Students, Higher Education, and the States, 53 AM. U. L. REV. 459, n.5 (2003). Therefore, the author prefers to use the terms, undocumented immigrants and undocumented students.

\(^11\) Jeffrey S. Passel, Urban Inst., Further Demographic Information Relating to the DREAM Act 1-2 (Oct. 21, 2003), http://www.nilc.org/immlawpolicy/DREAM/DREAM_Demographics.pdf (noting that there are an estimated 65,000 undocumented high school students that graduate each year who have been living in the United States for at least five years. Of these graduates, 7,000 to 13,000 are estimated to attend public universities each year. Large concentrations of undocumented college students are found in California due to the state’s relaxed policies on tuition and financial aid for undocumented immigrants.). See also Coalition of Student Advocates, DREAM Act Timeline, http://www.cosaonline.org/legislations.html (last visited Feb. 3, 2006) (estimating that between 50,000 to 65,000 undocumented high school students graduate in the United States each year); Salsbury, supra note 10, at 468 (reporting the findings of the Urban Institute).

\(^12\) Alfred, supra note 5, at 618. See, e.g., Professor Peter Spiro, Lecture at the University of Georgia School of Law (Oct. 20, 2004) (on file with author) (noting that, according to immigration data, fewer than 100,000 undocumented immigrants were deported in 2002 and that, with estimates of the undocumented population running as high as ten million, the likelihood of deportation for undocumented individuals is not high).

\(^13\) Alfred, supra note 5, at 616.

\(^14\) Id. See also Salsbury, supra note 10, at 473 (noting that certain high-immigration states, including Texas and California, have passed laws enabling most in-state high school graduates to qualify for in-state tuition rates); Carl Krueger, Educ. Comm’n of the States, In-State Tuition
are barred from receiving federal grants or loans to offset the cost of their educations.\textsuperscript{15} These financial barriers make it impossible for many talented students to "fulfill their dreams" of higher education and "to further assimilate into American society."\textsuperscript{16} Lacking higher educations, these students are unable to use their talents to contribute fully to the U.S. economy.\textsuperscript{17} As a result of the barriers they face, these students often turn to low paying jobs upon graduating high school and forfeit their dreams of advancing their educations, themselves, and society.\textsuperscript{18} The select few that are able to obtain college educations face limited job prospects upon graduation due to their immigration status.\textsuperscript{19}

This unfortunate situation is not unique to America. Italy also faces an unending influx of undocumented immigrants.\textsuperscript{20} While this phenomenon is fairly recent in Italy compared to the United States, both countries are immersed in a struggle to improve oversight of their immigrant populations and are beginning to debate the educational needs of undocumented students.\textsuperscript{21} In the United States, undocumented students are given the right to complete high school, but lack financial support to attend post-secondary education.\textsuperscript{22}


\textsuperscript{15} PRWORA, 8 U.S.C. § 1621.

\textsuperscript{16} Alfred, \textit{supra} note 5, at 616.

\textsuperscript{17} Id. at 618. \textit{See also} Halle I. Butler, \textit{Note, Educated in the Classroom or on the Streets: The Fate of Illegal Immigrant Children in the United States}, 58 OHIO ST. L.J. 1473, 1488-93 (discussing the economic consequences of denying education to undocumented immigrant children).

\textsuperscript{18} Alfred, \textit{supra} note 5, at 616-18.

\textsuperscript{19} Id. at 616.

\textsuperscript{20} \textit{Compare} Passel, \textit{supra} note 11, at 1 (suggesting that, based on 2002 Census date, the undocumented immigrant population in the United States ranges between 7.5 and 9.5 million), \textit{with} David Christensen, \textit{Leaving the Back Door Open: Italy's Response to Illegal Immigration}, 11 GEO. IMMIGR. L.J. 461, 462 (1997) (estimating the undocumented population in Italy during the 1990s to be from 600,000 to 1.2 million).

\textsuperscript{21} \textit{See} Percy Allum, \textit{Italian Society Transformed}, in \textit{SHORT OXFORD HISTORY OF ITALY: ITALY SINCE 1945}, at 26 (Patrick McCarthy ed., 2000); Jeffrey S. Passel, \textit{Undocumented Immigration to the United States: Numbers, Trends and Characteristics}, in \textit{ILLEGAL IMMIGRATION IN AMERICA: A REFERENCE HANDBOOK} 27, 30-32 (David W. Haines & Karen E. Rosenblum eds., 1999) (noting that the start of undocumented immigration in the United States may be traced back to at least the 1960s). \textit{See also} Guido Bolaffi, \textit{Redesigning Italy: The New Flow of Immigration}, 4 IND. INT'L & COMP. L. REV. 291, 295 (1994) ("The recent massive waves of immigration have created two main problem areas which Italy must face. One has to do with politics and culture, the other concerns socio-economic questions.")).

In Italy, undocumented students are given the right to complete a compulsory education\textsuperscript{23} and are granted financial support to attend higher education institutions. In both countries, however, the job market is extremely limited for undocumented pupils who complete either secondary or post-secondary education.\textsuperscript{24}

Historically, the United States has attempted to restrict the flow of undocumented immigrants into the country. Most of these restrictions, including recent measures such as the Immigration Reform and Control Act of 1986 (IRCA),\textsuperscript{25} have been unsuccessful in staunching the unending flow of undocumented immigrants arriving in the United States.\textsuperscript{26} In fact, estimates suggest that, as of 2002, a staggering 7.5 to 9.5 million undocumented immigrants resided in the United States\textsuperscript{27} and that an additional 200,000 to 300,000 enter the country each year.\textsuperscript{28}

Once in the United States, these individuals are unlikely to be deported and may reside in the country for a number of years.\textsuperscript{29} Cognizant of the long-term residence of many undocumented immigrants, the U.S. Supreme Court has held that, while residing in the United States, all children are entitled to free public education through the secondary grade levels, regardless of their immigration status.\textsuperscript{30} Supplying free education to these undocumented students has placed a burden on U.S. taxpayers as many undocumented families, due to low levels of education and resulting low-paying jobs, are unable to bear the full tax burden of paying for their children’s public education.\textsuperscript{31} Therefore, the cost of educating undocumented students, which

\textsuperscript{23} See Eurydice, National Description on Integrating Immigrant Children into Schools in Europe 3 (Sept. 2004), http://www.eurydice.org/Documents/Mig/en/frameset_immigrant.html (select “Italy-EN” from the drop-down menu).

\textsuperscript{24} Alfred, supra note 5, at 617-18. See Christensen, supra note 20, at 465 (discussing the thriving “black market” in Italy where illegal immigrants often seek employment) [hereinafter IRCA].


\textsuperscript{26} See generally Passel, supra note 21. See also Gregg Van De Mark, Note, Too Much of A Good Thing: Immigration, Plyler v. Doe, and American Hubris, 35 WASHBURN L.J. 469, 480 (1996) (noting that IRCA can best be characterized as a failure).

\textsuperscript{27} Passel, supra note 11.

\textsuperscript{28} Passel, supra note 21, at 27.


\textsuperscript{30} Plyler, 457 U.S. at 230 (stating that a denial of that right “must be justified by a showing that it furthers some substantial state interest”).

\textsuperscript{31} Fed’n for Am. Immigration Reform, The Estimated Cost of Illegal Immigration, http://
increases each year as the undocumented population grows, accrues to U.S. citizen taxpayers.\textsuperscript{32}

Unfortunately, the high cost of educating these undocumented students leads to a dead end. Once undocumented students graduate high school, current federal law, combined with the lower income-earning power of their parents, effectively denies them access to college, closing the door to many opportunities for success.\textsuperscript{33} Preventing undocumented students from gaining advanced educations hurts the United States "both economically and socially, particularly because many of these undocumented students do not plan to return to their countries of origin and will likely remain in the United States throughout their lives."\textsuperscript{34}

The obstacles to post-secondary education inherent in current federal law hurt the United States economically by creating "a sub-class of citizens who otherwise are fully capable of becoming successful individuals—i.e. skilled professionals—and thus, significant taxpayers."\textsuperscript{35} Instead of gaining advanced educations and contributing richly to the U.S. economy, undocumented children are caught in a cycle of perpetual poverty, often contributing to social problems rather than tax revenues.\textsuperscript{36}

Legislation that has been introduced twice in the Senate,\textsuperscript{37} the Development, Relief, and Education Act for Alien Minors (DREAM Act) and the Student Adjustment Act, would give undocumented students the right to receive in-state tuition and conditional legal status.\textsuperscript{38} Upon the completion of their educations, undocumented students would be entitled to permanent legal

\textsuperscript{32} Id.

\textsuperscript{33} Alfred, \textit{supra} note 5, at 617. Fed'n for Am. Immigration Reform, \textit{supra} note 31.

\textsuperscript{34} Alfred, \textit{supra} note 5, at 618.

\textsuperscript{35} Id.

\textsuperscript{36} Id. \textit{See} Butler, \textit{supra} note 17, at 1492-93 (describing the societal and economic costs of denying an education to undocumented children).

\textsuperscript{37} Coalition of Student Advocates, \textit{supra} note 11

Senator Orrin Hatch (R-UT) and Richard Durbin (D-IL) reintroduced the Development, Relief, and Education for Alien Minors Act (DREAM Act), S. 1545, on July 31, 2003. In the House, Representatives Chris Cannon (R-3d UT), Lucille Roybal-Allard (D-34th CA), and Howard Berman (D-28th CA) reintroduced the Student Adjustment Act, H.R. 1684, on April 9, 2003, which mirrors the DREAM Act in many ways.

residence status and, thus, would be eligible for legal employment.\textsuperscript{39} As a result of the legislation, undocumented students would have access to an affordable education and to legal status, which would enable them to gain better-paying jobs.\textsuperscript{40}

These benefits would allow students to contribute higher tax revenues to the U.S. economy instead of merely providing the financial burden of their early education. Additionally, without effective enforcement mechanisms, undocumented immigrants are likely to continue to grow in numbers.\textsuperscript{41} Educated undocumented immigrants will be better able to contribute economically to the expense of educating the next wave of undocumented students, rather than perpetuating a cycle of poverty whereby they contribute little to the U.S. economy.\textsuperscript{42}

As mentioned above, the problems associated with undocumented immigration are not unique to the United States. Over the past few years, many Western European countries have faced "record levels of migration pressure, as immigrants and refugees from North Africa, Eastern Europe and other impoverished regions of the world have arrived in ever-increasing numbers seeking stability and economic opportunity."\textsuperscript{43} Despite current restrictive immigration measures,\textsuperscript{44} Italy has been particularly affected by undocumented immigration and currently has one of the highest undocumented populations in Europe.\textsuperscript{45} The high level of undocumented immigrants in Italy arises from a number of factors, including the long coastlines of the country, which present a challenge for border-control authorities, and the country's

\textsuperscript{39} Id. § 5.

\textsuperscript{40} See Alfred, supra note 5, at 618 (noting that the absence of this type of legislation hinders access to affordable education and to better-paying jobs).

\textsuperscript{41} See, e.g., ALIENIKOFF ET AL., supra note 29, at 551 (providing a 2002 Immigration and Naturalization Service Statistical Yearbook Table, which illustrates that only a small number of undocumented immigrants are deported each year). Based on the table, the number of deportations would amount to approximately 100,000. Id. Whereas the undocumented population has been estimated at 7.5 to 9.5 million. Passel, supra note 11.

\textsuperscript{42} Alfred, supra note 5, at 618.

\textsuperscript{43} Christensen, supra note 20, at 461.

\textsuperscript{44} Michele Totah, Comment, Fortress Italy: Racial Politics and the New Immigration Amendment in Italy, 26 FORDHAM INT'L L.J. 1438, 1441 (2003) (discussing the Bossi-Fini Act, enacted on July 11, 2002, and noting that it creates extremely restrictive immigration controls).

\textsuperscript{45} Christensen, supra note 20, at 462 (estimating the undocumented population in Italy during the 1990s to be between 600,000 and 1.2 million in comparison to countries like France, where the number of undocumented immigrants was estimated between 200,000 and 400,000).
proximity to nations where there are higher levels of emigration. The problem of undocumented immigration in Italy is relatively new because, traditionally, Italy, itself, was an emigrant nation.

As in the United States, undocumented immigrants are straining the economic resources of Italy. Each year, the "black market" labor force which thrives in Southern Italy depletes billions of Euros in "much needed potential tax revenue" from the state because black market salaries go unreported. In fact, the black market labor force in Italy "may account for as much as one fifth of the Italian economy." The large number of undocumented immigrants and the corresponding drain on resources, which are not being replenished through taxes, threaten the stability of the Italian economy and government programs. Further, most black market jobs provide minimal wages for undocumented immigrants and force many to live in poverty.

Similar to the United States, Italy grants all children the right to compulsory education regardless of immigration status. Even upon completion of their secondary education (typically at the age of fourteen), however, many undocumented children face limited opportunities for advancement. Although Italy does provide financial support for undocumented immigrants to attend post-secondary education, these students still lack the requisite legal status to find viable employment. Instead, it is likely that most will seek low paying jobs in the black market, perpetuating a cycle of poverty and minimal

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46 Id. at 463; Bolaffi, supra note 21, at 291.
47 Christensen, supra note 20, at 463.
48 Id. at 464; Bolaffi, supra note 21, at 293 (noting that "[a] large number of immigrants [in Italy] found precarious, black-market type jobs in regions of the country which were the least industrialized and had the highest levels of unemployment").
49 Christensen, supra note 20, at 465.
50 Id. at 475.
51 Id. at 464; Bolaffi, supra note 21, at 294 (stating that [r]ecent studies have shown that the presence of "first generation migrants," many of whom are without working papers and who are ready to take any sort of job whatever the salary, has negative economic consequences. Specifically, such as situation tends to have a slow-down effect on the modernization process of traditional types of businesses, encourages the "black-market" economy, and in some cases even encourages businesses to go "under-the-table.").
52 See Christensen, supra 20, at 467.
53 Eurydice, supra note 23, at 3.
54 See Christensen, supra note 20, at 473 (discussing prior laws that significantly restricted the ability of immigrants to work in Italy).
55 See Bolaffi, supra note 21, at 293-94.
tax contributions, a situation that is alarmingly similar to that of the United States.

This Note will argue that, in order to reduce the mounting tax burdens on citizens in the United States and Italy, the DREAM Act should be passed in the United States and similar legislation should be developed in Italy. This argument is made in light of the European Union's increased focus on developing a unified immigration and migration plan for member countries, including Italy. At the present time, Italy has one of the largest undocumented immigration populations in the European Union. It is essential that Italy quickly adopt national educational legislation to deal with the growing problem of undocumented students. With the success of an Italian plan, it is likely that such legislation would be incorporated at an EU level.

Within the United States and Italy, ineffective control mechanisms contribute to persistent undocumented immigration. Allowing undocumented students access to post-secondary levels of education and to legal status will provide students with the resources to find higher paying jobs, thereby reducing the burden on citizen taxpayers who would fund the services used by the inevitable next generation of undocumented immigrants. Part II.A of this Note will highlight recent immigration acts in the United States and their impact on undocumented immigration, as well as examine both the current status of educational rights of undocumented students and the results of those rights, and the cost of educating undocumented students. Part II.B will focus on the history of immigration acts in Italy, on recent acts affecting immigration, such as the Bossi-Fini Act, and will conclude with a description of the Italian education system, including the education and employment of undocumented students. Part III will discuss the DREAM Act, how it could be improved, and how similar legislation could be retrofitted to apply to Italy and eventually to the European Union. Part III also discusses the economic advantage of furthering education for undocumented children for the future of each country. This Note will conclude that DREAM legislation should be drafted to grant conditional residence status to all children who have entered the United States or Italy prior to their sixteenth birthday, and who have lived in either country for at least one year, for the duration of their education. Upon

56 See id.
58 See Christensen, supra note 20, at 462.
graduation, these students should have the option of gaining legal status, which would afford them access to higher-paying jobs, thereby building a larger tax base and generating increased revenues for each country.

II. BACKGROUND

A. Recent United States Undocumented Immigration Policy and Educational Provisions for Undocumented Students

1. Brief History of Immigration Policy Since 1965

For many years, U.S. immigration laws were based on a system of immigrant quotas, where “each country had an immigrant quota in proportion to that nation’s past contribution to the population of the United States.” In 1965, Congress created a new immigration system that ended the quota system and granted every country outside of the Western Hemisphere unlimited visas for relatives of citizens and 20,000 visas for ordinary immigrants. In contrast to the early years of immigration when most immigrants to the United States came from Western Europe, the changes in immigration policy led to an increasing number of immigrants from third world and non-European nations. Today, roughly “eighty percent of annual legal entrants to the United States are from Latin America, the Pacific Islands and Asia.” Overall, legal immigration legislation attempts to prioritize who is allowed to enter the United States, since more individuals wish to enter the country than the United States believes it can admit.

At the same time the United States developed policies to control legal immigration, it became obvious that there was a real need to address the 200,000 to 300,000 undocumented immigrants entering the country every year. Many enter the United States as undocumented immigrants because they are frustrated by the long backlogs in the existing visa system or they are

59 Van De Mark, supra note 26, at 473. See also ALENIKOFF ET AL., supra note 29, at 158.
60 Van De Mark, supra note 26, at 478; ALENIKOFF ET AL., supra note 29, at 162.
61 Van De Mark, supra note 26, at 479.
62 Id.
63 Passel, supra note 21, at 27.
unable to qualify for a visa. In 1986, Congress attempted to deal with the increasing number of undocumented immigrants by passing IRCA.

Designed to discourage future undocumented immigration, IRCA granted amnesty to a limited number of undocumented immigrants and imposed employer sanctions for those hiring undocumented immigrants. For example, undocumented immigrants who had lived in the United States for a number of years and who had accrued significant benefits could apply for legal status. For a time, these measures reduced the undocumented population by allowing millions of undocumented immigrants to gain legal status. In fact, prior to IRCA, the undocumented immigrant population was estimated between three to five million, while the post-IRCA undocumented population dropped to roughly 2.2 million in 1987. While the Act may have been temporarily useful, as a deterrence mechanism, it was a failure. The Act provided only fleeting relief—illustrated by the staggering number of undocumented immigrants in the United States today.

In 1990, Congress attempted further immigration reform by enacting the Immigration Act of 1990. The 1990 Act “increased the number of available legal immigrant visas to 700,000 from to prior limit of 490,000, for fiscal years 1992-93 and 1993-94, and to 675,000 thereafter.” While temporarily allowing additional individuals to enter the United States, these measures failed to create a lasting solution to the undocumented immigration problem. The act failed to diminish the undocumented population within the United States or to reduce the number of those arriving.

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64 See ALEINIKOFF ET AL., supra note 29, at 287 (describing the backlogs that exist for the family visa preference system).
66 Passel, supra note 21, at 33.
67 Id. at 33-35 (noting that, under IRCA, immigrants who were in the United States for more than five years at the time the legislation was passed would be eligible for temporary legal resident status, which could be replaced by permanent residence status after the satisfaction of later qualifications).
68 Id. (finding that more that 2.7 million formerly undocumented immigrants acquired legal status because of IRCA).
69 Id.
70 Van De Mark, supra note 26, at 480.
71 See Passel, supra note 11, at 1 (estimating the undocumented population between 7.5 to 9.5 million).
73 Van De Mark, supra note 26, at 480.
74 See id.
75 See id.
In a direct attempt to deal with undocumented immigration, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996\(^76\) (IIRIRA), with the intent of making undocumented immigration less attractive. IIRIRA states:

An alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.\(^77\)

Later provisions of the U.S. code reinforced this section "by declaring that individuals who are not 'qualified' aliens are ineligible for any state or local postsecondary education benefit."\(^78\) These measures made it extremely difficult for states to grant in-state college tuition to undocumented immigrant students.\(^79\) While the congressional measures were designed to make it less attractive to immigrate illegally, they have failed to deter the increasing undocumented population from seeking a better life in the United States.\(^80\)

Recent debate about immigration reform has centered on potential grants of amnesty or temporary worker permits.\(^81\) In the past, amnesty provisions have temporarily reduced the undocumented population, but have failed to provide a long term solution to the problem.\(^82\) Temporary work permits may briefly help reduce the flow of undocumented workers, but are unlikely to offer a permanent solution to the undocumented immigration flow into the United States.\(^83\) Instead, it is more likely that individuals will use this program to enter the United States legally and then potentially overstay their work permits, thus creating further undocumented immigration.\(^84\)

\(^{78}\) Salsbury, supra note 10, at 461.
\(^{79}\) Id.
\(^{80}\) See, e.g., Passel, supra note 11, at 1-2.
\(^{82}\) Passel, supra note 21, at 33-35.
\(^{83}\) Id.
\(^{84}\) ALENIKOFF ET AL., supra note 29, at 553 (noting that part of the undocumented population is comprised of documented individuals who overstay their visas in violation of the immigration laws). It is possible that temporary worker permits could lead to a similar phenomenon.
Ultimately, no measure of undocumented immigration control that Congress has passed or is currently considering appears to be a successful control mechanism. Part of the problem with undocumented immigration stems from Congress' failure to bolster their resolutions with forceful actions, either at the border or within the United States. Undocumented immigrants that enter the United States are extremely unlikely to be deported, and efforts to protect the U.S. border, while increasing, are insufficient to prevent undocumented individuals from entering the country. In addition, many immigrants enter the United States legally on nonimmigrant visas and then, by overstaying their visas, continue to live in the United States illegally. With no drastic reform measures in sight, the undocumented immigrant population is likely to continue to grow.

2. Current Educational Rights of Undocumented Students in the United States

The increasing number of undocumented immigrants in the United States has generated a number of policy questions, including whether undocumented children have the right to free public education. The Supreme Court's decision in Plyler v. Doe required public elementary and secondary schools in the United States to provide all children with a free education, regardless of immigration status. In Plyler, the Court recognized that despite the criminalization of illegal entry into the United States, increasing numbers of undocumented immigrants entered and resided in the country unlawfully. The majority of the Court recognized that adults and children who enter the United States illegally must be prepared to face the legal consequences of their actions, including possible deportation.

While deportation is a constant threat for undocumented immigrants, many of these individuals will never be detected or will reside in the United States

85 Passel, supra note 21, at 27.
86 See ALENIKOFF ET AL., supra note 29, at 580-51.
87 See id. at 553.
89 Id. at 230.
90 Id. at 218.
91 Id. at 220.
for many years before detection. As a result, the Court held that, while undocumented children are present in the United States, they should not forfeit their education because of their parents' decision to immigrate illegally. Denying education to these children, who "can 'affect neither their parents' conduct nor their own status,'" would "impose[ ] a lifetime hardship on a discrete class of children not accountable for their disabling status." Instead, the Court decided that educating children, regardless of their immigration status, is essential for creating individuals who can function in society and contribute to the development of the United States. The effects of this decision "on school-age children are enormous, as immigration has been a major contributor to the national increase in public school enrollment since Plyler." 

_Plyler_ mandated equal access to education throughout the elementary and secondary grade levels. However, Court-mandated equal access to education ends when undocumented students graduate high school. In _Plyler_, the Court held that, while "'education is perhaps the most important function of state and local governments,'" there is no fundamental right to education. Instead, the Court justified its decision on equal protection grounds, holding that if free public education is provided for some students, it must be provided for all students. Therefore, under _Plyler_, undocumented students must have access to free public elementary and secondary education, but not higher education, which is neither free nor open to all students.

Upon graduating high school, thousands of undocumented students lack opportunities for advancement through higher education due to current federal law and limited financial resources. The restrictions on higher educational opportunities were created in 1996 when Congress used the limitations of _Plyler_ to enact IIARIRA and Personal Responsibility and Work Opportunity

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93 _Plyler_, 457 U.S. at 220.
94 _Id._ (quoting Trimble v. Gordon, 430 U.S. 762, 770 (1977)).
95 _Id._ at 223.
96 _See id._
97 Salsbury, _supra_ note 10, at 467.
98 _Plyler_, 457 U.S. at 230.
100 _Id._ at 223.
101 _See id._ at 230.
102 _See id._
Reconciliation Act\textsuperscript{104} (PRWORA).\textsuperscript{105} These acts essentially eliminate the opportunity for undocumented students to receive in-state tuition, even if they have lived in the state for a number of years.\textsuperscript{106} Further, if an undocumented student is admitted to a university or college, they are denied access to federal financial aid or loans.\textsuperscript{107} As a result of these acts, the staggering cost of attending college forces many talented undocumented students to end their studies after high school and, often, to take low-paying jobs.\textsuperscript{108} Students that would typically attend college successfully, among them valedictorians, honors students, class presidents, and student leaders, are unable to attend because their status makes it impossible to pay for college.\textsuperscript{109} Often coming from families with low education and income levels, undocumented students are denied the opportunity to gain the tools for successful careers that would advance them beyond their parents' low incomes and paltry tax contributions.\textsuperscript{110}

For many citizen students, college provides the education and resources to gain later employment and financial independence.\textsuperscript{111} The few undocumented students who are able to attend college, however, face limited prospects for employment because of their immigration status.\textsuperscript{112} Ultimately, under current federal law, undocumented students face little opportunity to attend college and few prospects of employment even if they are able to attend.


\textsuperscript{105} Victor C. Romero, Postsecondary School Education Benefits for Undocumented Immigrants: Promises and Pitfalls, 27 N.C.J. INT'L & COM. REG. 393, 398 (2002); Alfred, supra note 5, at 615.

\textsuperscript{106} See Romero, supra note 105, at 398 (quoting IIRAIRA, 8 U.S.C. § 1623 (2005)).


\textsuperscript{108} Alfred, supra note 5, at 615.

\textsuperscript{109} Nat'l Immigration Law Ctr., supra note 103.

\textsuperscript{110} See Salsbury, supra note 10, at 466.


\textsuperscript{112} Nat'l Immigration Law Ctr., supra note 103.
3. *State Provisions Affecting Education of Undocumented Students*

Several states have attempted to bypass the provisions of IIRAIRA to help undocumented students achieve advanced educations.113 While states cannot grant legal status to undocumented students, states such as Texas and California have enacted provisions granting them in-state tuition.114 In order to circumvent IIRAIRA's provisions, which focus on residency as a requirement for in-state tuition, these state provisions use other conditions for determining tuition qualifications.115 Of course, despite trying to avoid conflicting with the exact language of the Act, states face the danger of federal preemption when they pass legislation in the area of immigration.116

The federal power to regulate immigration is derived from the Constitution, which gives Congress the power "[t]o establish an (sic) uniform Rule of Naturalization."117 The Supreme Court has held that this grant gives Congress the right to pass lawful standards "for admission, naturalization, and residence in the United States" and that the states may not interfere with these standards.118 Because of Congress' broad power to regulate immigration, it is likely that federal legislation will preempt the efforts of states to deal with their unique immigration concerns. Therefore, although certain state measures lessen the burden placed on undocumented students, these measures are in constant danger of preemption.

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113 Salsbury, *supra* note 10, at 473.
114 *Id.*
115 *Id.* at 474. For example, in Texas, the law considers a student who meets the following criteria a Texas resident for tuition purposes: (1) graduation or the equivalent from a Texas high school; (2) residence in the state for at least three years as of the date of high school graduation or receipt of the equivalent of a high school diploma; (3) registration no earlier than the fall of 2001 as a student in a post secondary institution; and (4) the signing of an affidavit stating the intent to file an application to become a permanent resident at the earliest possible opportunity.

116 *Id.* at 481-82.
117 U.S. CONST. art. I, § 8, cl. 4.
118 Salsbury, *supra* note 10, at 481-82.
4. Cost of Public Education for Undocumented Students

The *Plyler* decision sanctioned the worthy goal of providing public education to all children residing in the United States, regardless of immigration status. However, this goal came with an enormous cost to U.S. taxpayers. A 2004 study by the Center for Immigration Studies found that, in the federal budget, undocumented students cost U.S. taxpayers $1.4 billion per year. Estimates by the Federation for American Immigration Reform suggest that the total cost of undocumented students' education to taxpayers is $7.4 billion annually. While some undocumented families do pay taxes, they still cost U.S. taxpayers roughly “$6,950 per illegal household” annually, inclusive of education costs.

The deficit created by undocumented immigrants arises from the fact that many are inadequately educated to sustain a median income and the attendant tax burden. Ultimately, undocumented families are able to contribute to the cost of the public services they use, including education, but are unable to pay the full cost of using those services. Instead, U.S. taxpayers must make up the resulting difference in order to provide access to education for undocumented students.

B. Brief History of Immigration Policy in Italy, Expansion of Undocumented Immigration, Overview of the Education System, and Cost of Educating the Undocumented

1. Brief History of Italian Immigration Laws—Early Years

For many years, Italy faced problems of emigration, not immigration. The Italian government did not approve its first immigration law, Law

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120 Id.
122 Ctr. for Immigration Studies, *supra* note 119.
123 Id.
124 Id.
125 See id.
Prior to this, Italian immigration law was based on "a Fascist law on public security enacted in 1931" and on a collection of administrative regulations. In 1931, "Mussolini issued Royal Decree Number 773, entitled 'Approval of the Single Text of the Laws of Public Security.'" This decree had a section entitled "On Foreigners," which "remained Italy's primary legislation regarding the residence, employment and deportation of aliens in Italy" until it was repealed in late 1989. The conditions of this immigration policy were minimal, requiring only that foreigners "declare their presence [in the country] to local police within three days of . . . entrance into Italy." The local police would then "issue a 'permesso di soggiorno,' or stay permit," which allowed the foreigner to stay in Italy. Once admitted into Italy, a foreigner had to notify the police if she changed her residence within the country and had to "provide identification and evidence of compliance with the self-reporting provision" upon request. Employers hiring foreigners had to report the hiring or firing to government officials, but had no other duties. In addition, the law provided for the deportation of foreigners who engaged in criminal actions, failed to voluntarily report to the police, or became a public charge. Overall, the provisions created minimal requirements on visiting foreigners in Italy and imposed no limits on the number of individuals arriving in the country.

The limited provisions were "not intended as a manifestation of Italy's immigration policy," rather, "in a period in which Mussolini was attempting to deter emigration of Italians, there was hardly a need for a policy towards immigrants." Mainly, the early laws dealing with foreigners in Italy were developed to allow local police to keep track of the small number of foreign

128 Christensen, supra note 20, at 467.
129 Id.
130 Id.
131 Id. at 467-68.
132 Id. at 468.
133 Id.
134 Id.
135 Id.
136 Id.
137 Id. See ABSALOM, supra note 126, at 126-41, for a brief summary of developments in Italian history during this time period.
individuals in Italy at the time. Nevertheless, these provisions were the only legislative immigration laws enacted in Italy until the mid-1980s.

To compensate for the lack of legislative provisions, the Italian government created a series of administrative regulations that governed the rights of immigrants within the country. While these measures were intended to regulate "the entry and stay of foreigners in Italy, they often had the opposite effect, as they indirectly promoted the growth of the illegal alien population." The expansion of the undocumented population was driven by the complex and often contradictory regulations which severely limited the amount of time an individual could spend in the country. Ultimately, these regulations made it virtually impossible for immigrants to continue to reside in Italy legally, which contributed directly to a growing undocumented population. The confluence of complex regulations, easy access to tourist visas, and the "porous Italian boarders" caused a rise in undocumented immigration by the 1980s.

2. Italian Immigration Policy Since the Mid-1980s and the Growing Problem of Undocumented Immigration

Despite the complexity of Italian immigration regulations, by the 1980s, the amount of legal immigration had increased more than 100% from the prior decade. Concomitantly, the undocumented population expanded into the hundreds of thousands, reaching the millions by the mid-1980s. With pressure mounting for legislative reform of the immigration laws and calls to combat the growing undocumented immigration problem, the Italian government started a long process of revising the Fascist immigration measures and the complex administrative regulations.
Similar to the situation in the United States, reform measures designed to staunch the flow of undocumented immigration into Italy have failed to accomplish lasting results. The ultimate impact of recent immigration measures, like the Bossi-Fini Act of 2002, is unclear. Based on the consistent pattern of failed measures for ending undocumented immigration and the lack of enforcement of the new provisions, it seems likely that the Bossi-Fini Act will prove unsuccessful in ending undocumented immigration. As a result, Italy, like the United States, must ultimately find effective ways of dealing with the heavy burden undocumented immigration places on their resources.


The first immigration law that was passed in 1986, Law 943/86, failed to establish effective controls for dealing with undocumented immigration. Due to a "lack of financing, poor coordination between Italian and regional authorities and scant publicity," the law failed to achieve significant results. The failure of Law 943/86 regulate entry into Italy led to a dramatic rise in the immigrant population, both legal and undocumented. As growth continued unchecked by law, "immigration emerged as a critical national issue" and the expanding hostility of Italian citizens to undocumented immigrants generated a serious governmental interest in reform. In response, the Italian legislature passed Law 39/90 (Martelli Law).

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noting that undocumented immigration will be especially problematic).

147 Totah, supra note 44, at 1475.
148 Id. at 1488.
149 See Christensen, supra note 20, at 479-80.
150 Id. at 480 (noting that the law's amnesty provisions legalized 105,000 individuals, "only a small fraction of the overall [undocumented] population").
151 Totah, supra note 44, at 1467-68 (noting that, for example, the annual increase of immigrants in Italy by the 1990s was roughly 80,000 per year).
152 Christensen, supra note 20, at 481 (noting that legal immigration increased rapidly after 1986, "growing 27.1% between 1986 and 1987 and 12.8% the following year" and that the illegal immigration population was estimated at over a million). See Bolaffi, supra note 21, at 291.
154 See Christensen, supra note 20, at 482. This law is referred to as the "Martelli Law" because the primary sponsor of the legislation was then Italian Vice-Prime Minister, Claudio Martelli. See id.
The Martelli Law represented Italy’s first comprehensive immigration legislation, subsuming the old regulations governing entry of immigrants into the country that survived under Law 943/86. These unsuccessful regulations were replaced with a statute that provided “for the entry and residence of immigrants.” Building on principles grounded in Law 943/86, the Martelli Law expanded amnesty for undocumented immigrants presently in Italy. Further, the Martelli Law went beyond the scope of Law 943/86 by “enhancing control procedures” regulating admission into Italy and by “sending back all those without valid documents.” Additional control mechanisms included imposing sanctions on employers who hired undocumented workers and the enactment of stricter deportation laws.

Despite the hopeful reforms and controls contained in the Martelli Law, the legislation, like Law 943/86 before it, ultimately failed to slow the increasing number of undocumented immigrants arriving in Italy. Internally, the long standing weaknesses in Italian immigration policy and the failure of Law 943/86 had caused a black market of undocumented workers to flourish. While the Martelli Law contained provisions that would have helped limit the growth of this market, such as employer sanctions and deportation measures, these provisions were rarely enforced.

In addition to the internal problems Italy faced in restricting undocumented immigration, external conditions contributed to the problem. The European countries surrounding Italy formulated and enforced increasingly strict immigration codes. In contrast to the countries surrounding it, Italy had comparatively weaker immigration policies that were rarely enforced. The relative lack of enforcement of Italy’s policies, combined with the thriving black market for undocumented workers, continued to attract undocumented immigrants despite the new regulations.

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155 Id. at 483.
156 Id.
158 See id. at 490-91 (noting that “nearly 250,000 formerly undocumented [immigrants] obtained legal status under the Martelli Law’s amnesty program”).
159 Totah, supra note 44, at 1469.
160 See Christensen, supra note 20, at 491-92.
161 See id. at 491.
162 Id. at 491-92 (noting that there was a significant increase in deportation orders under the Martelli Act, but that less than 15% of the expulsion decrees resulted in deportation).
163 Id. at 461.
164 See id. at 462-63.
165 Id.
b. Modern Immigration Policy: Bossi-Fini Act

After a series of unsuccessful attempts at lessening the influx of undocumented workers, a new reform bill, the Bossi-Fini Act,\(^\text{166}\) was approved by the Italian legislature on July 22, 2002.\(^\text{167}\) The Bossi-Fini Act has changed a number of old provisions relating to immigrant “employment, residency, asylum and family reunification.”\(^\text{168}\) For example, the new law provides that immigrants must have secured a job prior to arriving in Italy and prior to receiving a residency permit.\(^\text{169}\) Unlike prior legislation, the Bossi-Fini Act also requires the immediate enforcement of all deportation orders, rather than providing a brief waiting period.\(^\text{170}\) With swifter enforcement provisions in place, the legislature hoped to lessen the ability of undocumented immigrants to disappear during the lag period prior to actual deportation.\(^\text{171}\)

The final impact of the Bossi-Fini Act is unclear due to its recent enactment. However, it is clear that “[d]espite the improvements and an increase in attention paid to the issues of immigration, Italian immigration legislation, including the Bossi-Fini, has generally been characterized by numerous governmental and ministerial decrees providing incoherent and incomplete de facto regulations without providing measures to enforce the decrees.”\(^\text{172}\) The failure of past measures, such as Law 943/86 and the Martelli Law, illustrate the lack of Italian success in controlling the growing undocumented population because of loosely enforced provisions.\(^\text{173}\)


\(^\text{167}\) Totah, supra note 44, at 1475. This Act was named after its two major supporters, Umberto Bossi, former leader of the controversial Northern League political party, which expresses strong anti-undocumented immigrant sentiments, and Gianfranco Fini, leader of the National Alliance party and Deputy Prime Minster at the time of the Act. \textit{Id.} at 1475-76. The Act reformed earlier provisions of a 1998 immigration measure, the Turco-Napolitano Act, which granted fairly liberal rights to immigrants, both legal and undocumented, who were present in Italy. \textit{See id.} at 473-75.

\(^\text{168}\) \textit{Id.} at 1488.

\(^\text{169}\) \textit{Id.} at 1489.

\(^\text{170}\) \textit{Id.} at 1494. Under the Turco-Napolitano Act, undocumented immigrants could only be deported after a magistrate adjudicated his case. After the ruling, the immigrant was granted fifteen days to appeal the decision, however, many undocumented immigrants used this time period to disappear and remain in Italy secretly. \textit{Id.}

\(^\text{171}\) \textit{See id.} at 1494-95.

\(^\text{172}\) \textit{Id.} at 1475.

\(^\text{173}\) \textit{See id.}
Bossi-Fini could represent a break in the pattern. However, it is likely that a combination of factors will continue the cycle of undocumented immigration in Italy, albeit not in pre-2002 numbers. The strength of the black market in Italy provides the promise of economic opportunity. Complemented by the typically slack enforcement of immigration restrictions, such promise will likely continue to lure undocumented individuals to Italy despite the new provisions.

3. Italian Education Overview and Cost of Educating the Undocumented

In Italy, children begin compulsory education at age six and must complete eight years of compulsory schooling. Similar to the United States, compulsory schooling in Italy is free and open to all students, regardless of their immigration status. Unlike the United States, where this right was mandated by the Supreme Court on equal protection grounds, Italian law specifically requires all children to be afforded a compulsory education. Italian compulsory schooling includes five years at primary school, and three years at scuola secondaria di primo grado, or secondary school of the first degree, which is similar to an American middle school. Upon the completion of compulsory education, typically at age fourteen, a student has several options for continuing her upper secondary education, but is not required to do so. Schooling or training beyond the compulsory education level is not free and students must bear the cost of tuition, fees, and

174 Christensen, supra note 20, at 498.
175 See id.
177 Eurydice, supra note 23, at 3. The ability of undocumented students to receive a compulsory education was established by law in 1995 through legislation that overturned the 1991 Ministerial Circular No. 400, which had denied compulsory education for immigrant students unless their parents held valid residency status. Id.
179 Eurydice, supra note 176, § 2.5.
180 Id.
181 Id. § 5.18.1.
When entering upper secondary education, a student can choose several paths depending on whether she wishes to enter a university, learn a vocational skill, or gain brief training in a professional career. Students wishing to attend a university choose to enter either a liceo classico or a liceo scientifico, both of which are five years in duration. Further, students that do not wish to attend a university, but who are interested in the arts, can attend programs specializing in both performing and visual arts.

In addition to the aforementioned schools, students can choose to continue their educations by attending vocational training institutes or brief professional programs. Vocational training institutes have courses that are typically three to four years in duration. For less intensive vocational training, students can also choose to enter a program that lasts six to twelve months and is managed by one of the various regional governments in Italy. Upon completion of either the liceo classico or the liceo scientifico, a student may enter one of many universities within Italy, which typically offer a variety of specialties.

Unlike the United States, which excludes undocumented students from federal financial aid and refuses these students in-state tuition, the Italian university system offers more financial support to undocumented students. Undocumented students in Italy have equal access to scholarships and reduced-
tuition grants as native students do. Funding for these scholarships comes from a national supplementary fund that was created in 1997 and is distributed regionally to the various universities.

4. Undocumented Immigrants: Working on the Black Market and Draining Resources

The rapid growth of the immigrant population within Italy is reflected by the number of immigrant students enrolled in public compulsory schools. In the 1992 to 1993 school year, roughly 30,000 immigrants attended compulsory school. Only ten years later, that number had increased to 232,766. As in the United States, Italian schools are funded by public tax monies. The exact cost of educating the undocumented population in Italy is unclear, however, providing services to undocumented families causes a significant drain on state resources.

In an effort to conserve resources, the Italian government set limits on the influx of legal immigrants admitted to the country each year. However, “the existence of great numbers of illegal immigrants in excess of the limits that the Italian government sets for legal immigration means there is a corresponding drain on scarce resources greatly exceeding those levels that policy-makers have determined are acceptable.” Immigration creates and maintains a continued drain on Italy’s limited financial resources that threatens the existence of “Italy’s historically generous pension and social welfare programs,” which include funding for schools.

In addition to straining financial resources, undocumented immigrants in Italy often fail to contribute to the tax revenue, which funds the services they

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193 Eurydice, supra note 176, § 6.8.2 (stating that “Law no. 390 of 1991 provides the same services and supports both to Italian as well as to foreign, stateless and political refugee students. These regulations have been reconfirmed by Law no. 40 of 1998.”).

194 Id.

195 See Eurydice, supra note 23, at 3.

196 Id.

197 Id.


199 See Christensen, supra note 20, at 464.

200 See id.

201 Id.

202 Id.
Italy is plagued with a thriving black market for undocumented workers. The black market consists of a huge number of undocumented immigrants, along with some Italian citizens, who work for employers, but who do not report this relationship to authorities. For example, studies from 1983 to 1984 suggested that "between 3.5 and 3.6 million people were employed illegally in manufacturing firms alone." The black market problem has grown so large that estimates suggest it may represent as much as one fifth of the Italian economy.

Undocumented immigrants in Italy do not pay income taxes on their salaries generated by black market jobs. As a result, the black market is "syphoning away the much needed potential tax revenue of the billions of lira paid in salary that goes unreported each year." The lack of tax revenues from up to one fifth of the economy, compounded by the corresponding drain on resources and services created by undocumented immigration, has led to a desperate need for additional funding and immigration reform.

5. Employment Prospects for Undocumented Individuals

Although Italy provides more financial aid to undocumented students seeking higher education than the United States does, their education system also leads to a dead end. The prospects for undocumented individuals searching for legal employment upon graduation are extremely limited. Similar to the problems that undocumented students face in the United States, students that graduate from a university still lack legal authorization to work: a circumstance that makes hiring them nearly impossible for employers.

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203 Id. at 465.
204 Id.
205 Id. at 475.
206 Id. In addition to manufacturing positions, construction jobs, agricultural positions, maritime employment and street vending provide a great deal of illegal employment opportunities for undocumented aliens. Id.
207 Id.
208 Id. at 465. The current Italian currency is the Euro.
209 See id. at 465, 475 (discussing the impact of illegal immigration and the black market on Italian economic and social resources).
210 See Eurydice, supra note 176, § 6.8.2 (discussing financial support for students seeking higher education in Italy).
211 Christensen supra note 20, at 467.
212 Id. See Alfred, supra note 5, at 617-18 (discussing the difficulties that undocumented students face in the United States).
Without the prospects of legal employment, these individuals are likely to enter black market jobs, like their parents, in order to support themselves.\(^{213}\) These individuals are unlikely to leave Italy because the black market offers economic opportunities and the growing immigrant community provides a welcoming environment.\(^{214}\) As a result, the Italian government loses a desperately needed source of tax revenue as the population grows and resources continues to be depleted.\(^{215}\)

III. ANALYSIS: THE DREAM ACT, POTENTIAL IMPROVEMENTS TO THE LEGISLATION AND FORMATTING A PLAN FOR ITALY

A. Introduction to the DREAM Act and Application in the United States and Italy

The twice proposed DREAM Act,\(^{216}\) provides a potential form of relief for undocumented students within the United States. The Act would amend the educational provisions of IIRIRA to allow undocumented students to apply for in-state tuition rates or federal financial aid by granting these students conditional residence status while in school.\(^{217}\) Upon graduation, students could apply to replace their conditional residence status with permanent residence status, making it possible to find legal employment, thus increasing tax revenue.\(^{218}\) By paying higher taxes, these students could contribute to the education and needs of the next generation of undocumented immigrants in the United States. The United States should pass the DREAM Act. In order for the Act to be successful in the long-term, however, lawmakers should expand the proposed legislation to include additional undocumented immigrant children and to grant greater financial aid.

Further, Italy should introduce a similar type of legislation to combat the increasing drain on resources and the effects of the black market.\(^{219}\) Within Italy, undocumented students are already given equal access to universities and to financial aid.\(^{220}\) Yet, upon graduation, these students face limited

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\(^{213}\) Christensen, \textit{supra} note 20, at 467.

\(^{214}\) \textit{Id.} at 475.

\(^{215}\) \textit{See id.} at 465.


\(^{217}\) \textit{Id.}

\(^{218}\) \textit{See} Nat’l Immigration Law Ctr., \textit{supra} note 103.

\(^{219}\) \textit{See Christensen, supra} note 20, at 464.

\(^{220}\) \textit{See} Eurydice, \textit{supra} note 176, § 6.8.2.
opportunities for employment because of their undocumented status. Similar to the proposed DREAM legislation, Italy should grant conditional residence status to undocumented students upon entering a university or an advanced vocational school. Once these individuals complete their studies, Italy should allow them to apply for permanent residence status, enabling them to seek legal employment and contribute to the tax base. The consistent failures of the immigration controls in Italy suggest the next wave of immigrants is inevitable. Creating a larger tax base will help lessen the strain on Italy’s financial resources and will provide education and support to the next wave of immigrants.

The success of these measures within Italy could create an argument for their incorporation at the EU level. While Italy faces one of the highest populations of undocumented immigrants, other member countries face similar problems on a smaller scale. Success in Italy could forge the way for implementation of similar measures throughout the European Union.

B. Current Provisions of the DREAM Act, Improvements and Application in the United States and Italy

To qualify for consideration under the DREAM Act (as proposed), an undocumented student must have been in the United States for five years prior to the passing of the legislation. The student must also have been under the age of sixteen when she entered the United States. An undocumented student who has maintained “good moral character” while living in the United States would be eligible to petition for lawful conditional residence status upon completing high school or upon being accepted to an institute of higher education.

When the Secretary of Homeland Security accepts a petition, conditional residence status is granted for six years, eliminating the undocumented status

221 Christensen, supra note 20, at 467.
222 See Totah, supra note 44, at 1475.
223 See Bolaffi, supra note 21, at 291 (noting that Italy should not have immigration policies that are inconsistent with other European nations); Europa, supra note 57 (discussing the desire of the EU member countries to create a common immigration policy).
224 Christensen, supra note 20, at 461-62.
226 Id. § 5(a)(1).
of a student while they are applying to and attending college. With conditional residence status, students would be eligible for in-state tuition, rather than the significantly higher out-of-state tuition rates.

During the conditional time period, the student must maintain her good moral character, must not abandon her U.S. residence, and must complete at least two years of a bachelor's or higher degree program and/or serve in the military for two years.\textsuperscript{229} If at any time the undocumented student fails to meet the requirements of the conditional residence status, her legal status can be revoked.\textsuperscript{230} Otherwise, at the end of the six year conditional residence period, a student who has met these requirements is allowed to apply for lawful permanent residence status.\textsuperscript{231}

Students who are eligible to change their conditional residence status to permanent residence status gain access to a limited number of federal education loans and can later apply to graduate and professional schools.\textsuperscript{232} With legal status, formerly undocumented students will have greater access to employers and job opportunities, as well as to a wider job market.\textsuperscript{233} Students who gain better-paying jobs will, necessarily, contribute more to the economy.\textsuperscript{234}

\section*{C. Potential Changes to the DREAM Act and Application in the United States}

While the proposed DREAM Act certainly provides an admirable start to addressing the plight of undocumented students in the United States, its scope must be expanded to be successful in the long term. Current provisions have been unsuccessful in decreasing the flow of undocumented immigrants into the United States and, without drastic reform measures, this trend is likely to persist.\textsuperscript{235} As a result, limiting the legislation to children of immigrants who have been in the country five years prior to the passage of the legislation will not be sufficient if the DREAM Act is to be successful.\textsuperscript{236}

As was noted by the Supreme Court in \textit{Plyler}, children are not responsible for their parents' decisions to enter the United States illegally and should not

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\textsuperscript{229} \textit{Id.} § 5(2)(d).
\textsuperscript{230} \textit{Id.} § 5.
\textsuperscript{231} \textit{Id.}
\textsuperscript{232} See \textit{Alfred}, supra note 5, at 616.
\textsuperscript{233} See \textit{id.}
\textsuperscript{234} \textit{Id.} at 643.
\textsuperscript{235} See \textit{Van De Mark}, supra note 26, at 480.
\textsuperscript{236} S.1545, 108th Cong. § 4.
\end{flushright}
be punished for their parents' actions. The DREAM Act should be expanded to include all children of undocumented aliens who have been in the country for a year at the time of applying for conditional residence status, while preserving the requirement that the child be under the age of sixteen when they entered the United States. Further, these students should have access to federal aid with the understanding that, upon graduation, they will be legal U.S. residents with a duty to contribute to the tax revenue, from which similar aid money will later be drawn.

Building on the principles of Plyler, undocumented students should not be punished by being denied a higher education because they lack financial resources or entered the country after the passage of the DREAM Act. This type of "punishment" only hurts the United States, in the end, because it is unlikely these children will be deported and instead will remain in the U.S. working low-paying jobs. Since these individuals are likely to remain in the United States, it is in the national interest to support their efforts to gain higher education. The unattractive alternative will be the perpetuation of a group of low-income-earning individuals who contribute minimally to U.S. tax revenues, but who live in the country indefinitely.

Prior U.S. legislation has been unsuccessful in deterring undocumented immigrants from entering the country. Currently, there are no major reform measures that are guaranteed to slow the consistent growth of this population or to strongly enforce deportation laws. It could be argued that expanding the DREAM Act to include more students would encourage undocumented immigration. However, it seems unlikely that such expansion would have any greater pull than the current potential for jobs and the weak enforcement of immigration laws.

D. Formulating DREAM Legislation for Italy

Similar to the United States, Italy faces a growing strain on its financial resources as the country struggles to fund social services for undocumented

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240 See ALENIKOFF ET AL., supra note 29, at 550.
241 See Christensen, supra note 20, at 491 (describing Italian "push" and "pull" factors for undocumented immigration, which can apply in the U.S. context as well).
242 See Alfred, supra note 5, at 639-40.
immigrants. With no drastic reform measures pending, the undocumented population will likely continue to grow in Italy. Under Italian law, educational resources must be provided equally, even to undocumented students. Undocumented students are, thus, allowed access to the same financial aid benefits as native students. However, upon graduation, undocumented students face extreme hardships in finding employment because of their immigration status. As a result, many are likely to enter the black market economy and will continue to deprive Italy of much-needed financial resources.

DREAM legislation, therefore, must be implemented in Italy and should have the potential for enactment throughout the European Union. Italy already provides students with the resources necessary to attain higher education degrees; however, they must provide these resources in conjunction with legal status in order to build their economic resources and receive a return on their educational investment. Conditional residency should be extended to undocumented students who have been in Italy for a year and who were under age sixteen at the time they entered the country. Conditional residency should be provided for students attending either advanced Arts institutes, vocational institutes, or universities. Upon completing their educational requirements, undocumented students should be allowed to apply for permanent residence status. Conferral of this status would allow formerly undocumented students to gain legal employment, rather than seek out black market jobs, thereby providing the Italian government with much needed tax revenue.

Furthermore, as the European Union increasingly attempts to create more unified immigration and migration laws, this policy could be adopted by all member states. Italy is not the only country facing undocumented immigration problems. However, the level of undocumented immigration in Italy is higher than most other European nations. The success of DREAM measures

243 Christensen, supra note 20, at 464.
244 See Totah, supra note 44, at 1475.
245 Eurydice, supra note 23, at 3.
246 Eurydice, supra note 176, § 6.8.2.
247 See Christensen, supra note 20, at 467, 475.
249 Europa, supra note 57.
250 Christensen, supra note 20, at 461-62.
251 Id. at 462.
in Italy could eventually serve as a legislative model for the other E.U. countries.

IV. CONCLUSION

Immigration laws in both the United States and Italy have failed to control a rapidly increasing undocumented immigrant population.\textsuperscript{252} The influx of undocumented immigrants has led to an increasing strain on the financial resources of each country and threatens to continue to deplete taxpayer funds.\textsuperscript{253} In the United States, undocumented students have the right to complete high school educations,\textsuperscript{254} but lack financial support and access to in-state tuition so that they may achieve a higher education.\textsuperscript{255} In contrast, Italian students have access to financial educational benefits.\textsuperscript{256}

In both countries, however, undocumented students face a dead-end when it comes to finding well-paying, legitimate jobs. Rather, often following in the paths of their parents, undocumented students are forced to take low-paying or illegal employment. The attendant salaries generate little, if any, tax revenue for each country, despite the need for such contributions to continue supplying citizens, as well as immigrants, with social services.

With a lack of successful deterrence mechanisms, the patterns of undocumented immigration are likely to continue in both the United States and Italy. In the United States, undocumented students should be allowed to pay in-state tuition rates and have access to financial aid. In both the United States and Italy, undocumented students must be given the opportunity to establish conditional resident status as they work toward their educational goals, and to achieve permanent residence status upon graduation. While DREAM legislation will not solve all the problems of undocumented immigration, it is a start to lessening the financial burdens on the citizens of each country. If enforcement mechanisms become stronger, the need for DREAM legislation may fade correspondingly. For now, DREAM legislation provides a way to generate much needed tax revenues for countries dealing with inevitable waves of undocumented immigrants.

\textsuperscript{252} Passel, supra note 11. Christensen, supra note 20, at 462.
\textsuperscript{253} Fed'n for Am. Immigration Reform, supra note 31; Christensen, supra note 20, at 464.
\textsuperscript{254} Plyler, 457 U.S. at 230.
\textsuperscript{255} Alfred, supra note 5, at 616.
\textsuperscript{256} Eurydice, supra note 176, § 6.8.2.