

Understanding *Plyler*'s Legacy: Voices from Border Schools

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I. INTRODUCTION

The twenty-fifth anniversary of the Supreme Court's decision in *Plyler v. Doe*¹ passed with little fanfare. The case, in which the Court held that the state could not deny undocumented immigrant children a free primary and secondary public education on the basis of their legal status, is widely regarded as the high water mark in the Court's immigrants' rights jurisprudence.² The judge who heard the case at the district court level, Judge William Wayne Justice, considers it his greatest triumph, given the countless children who have received an education as a direct result of the holding.³ Surely Justice Brennan would smile—or at least breathe a sigh of relief—to know that the case is still good law twenty-five years after he wrote the narrow 5-4 majority opinion.

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1. 457 U.S. 202 (1982).

2. See, e.g., Michael Olivas, Paper Presented at Conference, "The Education of All of Our Children: The 25th Anniversary of *Plyler v. Doe*," Chief Justice Earl Warren Institute for Race, Ethnicity and Diversity, Boalt Hall (May 2007), *Holding the Line: The Implementation of Plyler v. Doe at 25* (draft on file with author and available at www.law.uh.edu/ihelg) ("if I were pressed, I would identify 1982's *Plyler v. Doe* as the true high water mark of immigrant rights in the U.S."); Kevin Johnson, *Civil Rights and Immigration: Challenges for the Latino Community in the Twentieth Century*, 8 LA RAZA L.J. 42, 44 (1995) ("many regard [*Plyler*] as the highwater mark for the Latino community in the Supreme Court."); Linda Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1120 (1994) (*Plyler* "tends to be viewed as the ultimate aliens' rights decision."); Peter Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 54 (1984) (*Plyler* "may ultimately come to have the same epochal significance for that group that *Brown v. Board of Education*, 347 U.S. 483 (1954), has had for black Americans.").

3. Lucy Hood, *Educating Immigrant Students*, 4 CARNEGIE REP. 2 (Spring 2007) (interview with Judge Justice), available at <http://www.carnegie.org/reporter/14/immigrant/index.html>.

Justice Brennan situated the Court's holding in *Plyler* in the context of the "shadow population of illegal migrants—numbering in the millions—within our borders."⁴ The Court noted that this population

raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents. The existence of such an underclass presents most difficult problems for a Nation that prides itself on adherence to principles of equality under the law.⁵

The Court found these problems to be particularly acute in the realm of public education. The Texas statute at issue authorized local school districts to deny enrollment to undocumented students. The Court held that this exclusion posed an affront to one of the goals of the Equal Protection Clause of the Fourteenth Amendment: "the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit."⁶ The Court emphasized that the cost of such isolation would not be limited to the undocumented students excluded from education, but would impact society at large. As a result of education's fundamental role in society, those excluded from educational opportunities would be unable to be socialized, incorporated into the community, or succeed in life in any way.⁷ Such a foundational opportunity, the Court held, "must be made available to all on equal terms."⁸ In light of the costs "to the Nation and to the innocent children who are [the statute's] victims," the Court applied heightened scrutiny to the statute and found that there was not a sufficiently substantial state interest to justify the statute's status-based denial of education.⁹

4. *Plyler*, 457 U.S. at 218.

5. *Id.* at 218-19.

6. *Id.* at 222.

7. *Id.* at 223.

8. *Id.* (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)).

9. In determining the appropriate level of deference to afford the Texas statute under review, the Court acknowledged that legal status is not a suspect class, nor is education a fundamental right, both of which would trigger heightened scrutiny under the Court's established Equal Protection analysis. Nevertheless, in light of the significant costs involved, the Court did not apply the traditional deferential rational basis review warranted under these circumstances. Although the Court did not label its alternative form of review, some scholarly commentators have called it "rational basis with teeth." See Daniel Faber and Suzanna Sherry, *The Pariah Principle*, 13 CONST. COMMENT. 257, 260 (1996) (citing David O. Stewart, *Supreme Court Report: A Growing Equal Protection Clause?*, 71 A.B.A. J. 108, 112 (1985)).

Despite the landmark nature of the Court's holding in *Plyler*, the lack of fanfare to mark its twenty fifth anniversary is unsurprising. Undocumented immigrants, the "shadow population" at the heart of Brennan's reasoning, remain a flash point in society. The case has come under repeated attack through the years, most notably in 1994 when California passed Proposition 187, which attempted to bar undocumented immigrants from a variety of public services, including public education, and in 1996, when Congress considered federal legislation to reverse *Plyler*, known as the Gallegly Amendment.¹⁰ Neither of these efforts was ultimately successful,¹¹ but efforts to overturn the decision continue to this day.¹² The periodic groundswells of opposition to the case and the ongoing vulnerability of the population it protects make its twenty-fifth anniversary a delicate and even contentious societal moment rather than an event marked by celebration.

The ongoing turmoil and debate over the rights properly afforded the undocumented in U.S. society makes it difficult to accurately and objectively assess *Plyler's* legacy. Is *Plyler* a success story – an example of the powerful ability of the Court and the Constitution to protect the unpopular and powerless? Or is it, rather, a warning tale – an illustration of the limited ability of the Supreme Court to effect societal change on polarizing public issues? Furthermore, in a decision with such a fragile hold on public approval that a full-fledged celebration of its accomplishments feels inappropriate, what would the social impact of its reversal be?

In this paper, we offer the results of empirical research on *Plyler's* real world effects in a sample of classrooms and communities to shed some light on these questions. We believe that any effort to grapple with

10. Sponsored by California's Congressman Elton Gallegly, the Gallegly Amendment was proposed to Congress as part of the Illegal Immigration Reform and Immigrant Responsibility Act. See H.R. 4134, 104th Cong. § 1 (1996). For further discussion of the Gallegly Amendment, see James G. Gimple and James R. Edwards, Jr., THE CONGRESSIONAL POLITICS OF IMMIGRATION REFORM 272-73 (1999); Halle I. Butler, *Educated in the Classroom or on the Streets: The Fate of Illegal Immigrant Children in the United States*, 58 OHIO ST. L.J. 1473, 1485 (1997).

11. Proposition 187 was immediately enjoined and the provision excluding undocumented students from public education was later ruled preempted by federal law and in conflict with *Plyler v. Doe* in *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 771, 785 (S.D. Cal. 1995). The Gallegly Amendment was eventually withdrawn, after a veto threat from President Clinton.

12. To take just one recent example, a bill introduced this year in the Rhode Island State Assembly would prohibit the children of illegal immigrants from attending public schools in Rhode Island, in willful defiance of *Plyler*. See Elizabeth Gudrais, *At Assembly, Immigration Ambitions Cool*, PROVIDENCE J. BULL., May 21, 2007, at A1.

Plyler's complex legacy and future viability must be informed by information about its actual impact on undocumented students, public schools, and communities. To date, there is little such information available. In the years since the decision, the few studies of *Plyler*'s effects that have been undertaken tend to focus on the economic impact of the case on state and school districts' budgets.¹³ These economic trade-offs tell only part of the story. No studies have focused on the views and experiences of school personnel, who are arguably the most intimately familiar with the case's effects at the student, classroom, and community level.

Accordingly, we surveyed and interviewed school personnel in six public schools in Arizona in order to understand the following questions: To what extent is the case accomplishing the goals set out in the decision itself? In particular, how thoroughly has it removed distinctions based on legal status from the public school setting? At what cost? What is at stake in the future of the decision, which was upheld by a narrow 5-4 majority of the Court?

This paper proceeds as follows: In Part I, we provide further context for our research design and offer some explanatory comments about the utility of the data collected. In Part II, we offer background on the school districts involved and describe the methodology used. In Part III, we summarize the results of the surveys conducted and focus groups held, and provide excerpts of responses received from teachers, principals, guidance counselors, and other school personnel. In Part IV, we analyze the data, drawing from the recurring themes we heard from school personnel three sets of conclusions about *Plyler*'s legacy and future viability.

We briefly preview our conclusions here. First, in terms of the present day implementation of *Plyler*, despite the case's lasting power, we found its goal of removing distinctions based on legal status from public school classrooms incomplete. Undocumented students remain vulnerable to subtle but pervasive discrimination in school, particularly on the basis of their language abilities. We link their vulnerability in this realm to a gap in the Court's analysis of the discrimination at issue in *Plyler*. We suggest that this gap has been seriously exacerbated in recent years by test-

13. See *infra* notes 20 – 24 and accompanying discussion.

ing and accountability standards for English language learners in the federal No Child Left Behind Act of 2001¹⁴ and Arizona state law.

Second, we suggest that *Plyler's* equalizing goal is limited at a more fundamental level by the precarious status of undocumented students once they move outside the temporal and geographic bounds of primary and secondary education. Our findings demonstrate how undocumented students' vulnerability outside school bounds seeps into schools as well. We tie this limitation to deep-seated constraints on the Court's constitutional protection for the undocumented. We discuss how policy reforms at the state and federal level, particularly an increase in the availability of bilingual education and passage of the proposed Development, Relief, and Education for Alien Minors Act (the DREAM Act), which would provide a pathway to citizenship for undocumented high school graduates, would go a long way towards counteracting the limited doctrinal bounds of constitutional protection for the undocumented.

Our final set of conclusions involve the affirmative benefits of *Plyler* and the likely consequences that would follow from its reversal. We offer an alternative account of these costs and benefits that goes beyond the oversimplified terms that typify debates over the case's future. Specifically, our data capture significant benefits to teachers, lawfully present students, and immigrant communities that are often left out of discussions of the case's impact. Of particular note, the majority of school personnel who participated in our study strongly support *Plyler*. In fact, over three quarters of the school personnel surveyed who had an opinion (76%) supported the legal regime established in *Plyler*. This is particularly noteworthy given that all the schools surveyed are in immigrant communities heavily populated by recent immigrants, and therefore see the effects of the law on a daily basis. They raised important and often unacknowledged concerns about the impact a reversal of the case would have on their professional morale and the quality of education in their schools. We believe their insights add an important dimension to discussions about the future of *Plyler*.

14. Pub. L. No. 107-10, 115 Stat. 1425 (codified as amended in scattered sections of 20 U.S.C. (2002)).

II. CONTEXT AND OVERVIEW OF STUDY

A. Research Design: Why School Personnel?

We focused our research on surveys and interviews with public school personnel for several reasons. On a practical level, large scale efforts to gauge the effects of the decision are complicated by the lack of data available on undocumented students. Unlike efforts to take stock of the impact of *Brown v. Board of Education of Topeka*,¹⁵ which can begin by looking at data on the racial composition of public schools, there are no such data available for alienage classifications.¹⁶ Most school districts interpret *Plyler* to prohibit collecting data on the legal status of their student body.¹⁷ Furthermore, undocumented families are often loathe to participate in research studies that could attract attention to their unlawful presence. Thus, focusing our data collection on qualitative insights of school personnel allowed us a window into the effects of the decision that are otherwise quite difficult to study.

In addition, our approach was designed to unsettle some conventional wisdoms about *Plyler* that often dominate the public discourse about the case. One conventional view is that *Plyler's* accomplishment is narrow and relatively easy to define: it consists of the countless students without legal status who have received an education as a direct result of its holding.¹⁸ In this account, *Plyler's* beneficiaries are the undocumented

15. 347 U.S. 483 (1954).

16. Because the census does not ask explicitly about legal status, data on the undocumented population most frequently rely on the "residual method," which arrives at an estimate by subtracting data of the legally present population (reported by the Department of Homeland Security) from the total numbers of foreign born (reported in the census). See Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics*, Pew Hispanic Center (2005), <http://pewhispanic.org/files/reports/46.pdf>. There are reasons to question the accuracy of these estimates. See Douglas S. Massey and Chiara Capoferro, *Measuring Undocumented Migration*, 38 INT'L MIGRATION REV. 1075-1102 (Fall 2004). In any event, such estimates can only sketch *Plyler's* impact in broad strokes.

17. See Jaclyn Brickman, *Educating Undocumented Children in the United States: Codification of Plyler v. Doe through Federal Legislation*, 20 GEO. IMMIGR. L.J. 385, 388 (2006) (discussing state education department memoranda that clarify that school districts may not require students or parents to disclose or document their immigration status). *But see* Olivas, *supra* note 2 (discussing school documentation requirements that have caused problems for undocumented immigrant families).

18. See, e.g., Johnson, *supra* note 2, at 44 (arguing that *Plyler* has had little transformative power on society beyond its concrete benefits, "that thousands of undocumented children were given access to a public school education."); María Pabón López, *Reflections on Educating*

students who can now proceed through school without distinctions drawn between themselves and their lawfully present classmates. Their resulting tax contributions, and the fact that they are in school instead of out on the streets, are sometimes mentioned as additional positive effects of the decision.¹⁹ Benefits beyond those tightly linked to the undocumented high school graduates, however, are rarely discussed.

The conventional wisdom about the societal cost of *Plyler's* accomplishment is also relatively simple: it casts the issue in terms of budgetary trade-offs. Efforts to assess the cost of the decision arise most commonly by way of opponents' arguments to revisit the decision. These arguments typically reduce the issue to a seemingly simple cost-benefit equation, estimating the costs of educating undocumented students and weighing these costs against much-needed improvements to public schools that could be made with these funds instead.²⁰

Such economically-based arguments were central to the campaign for Proposition 187.²¹ Much of the rhetoric surrounding the proposition focused on the mounting costs imposed by undocumented students, as exemplified by then-Governor Pete Wilson's comment, "We cannot educate every child from here to Tierra del Fuego."²² Proponents of the

Latino and Latina Undocumented Children: Beyond Plyler v. Doe, 35 SETON HALL L. REV. 1373, 1377 (2005) (arguing that given the challenges undocumented students face in the present day, *Plyler* has only been useful to them "individually for personal growth, but is of no consequence for the betterment of the overall condition of Latinos in the United States . . .").

19. See, e.g., Hood, *supra* note 3, at 3.

20. See, e.g., Jack Martin, *Breaking the Piggy Bank: How Illegal Immigration is Sending Schools into the Red*, Federation for American Immigration Reform (June 2005), http://www.fairus.org/site/PageServer?pagename=research_researchf6ad (providing state by state figures of the costs of educating undocumented students and the children of undocumented immigrants); Thomas M. Davis, Chairman, House Republican Committee on Government Reform (Sept. 6, 2006) (testifying that a hearing in San Diego reported "critical strains" on its education system due to undocumented immigrants and noting that "the cost per pupil ranges anywhere from \$8,000 to \$13,000 per student.").

Such studies are not only referenced by opponents of *Plyler*. They are often part of broader efforts to assess the economic impact of undocumented immigrants on state budgets. See, e.g., *State Schools Chief Horne Calls on Congress to Pass Legislation to Reimburse Arizona for Cost of Educating Illegal Immigrants*, U.S. STATE NEWS, December 14, 2005 (quoting Horne's statement that recent research indicates that "Arizona's taxpayers spend about \$6,000 per student," which results in an annual cost of school operations for children of undocumented workers of \$750 million per year).

21. *Supra* note 10.

22. Daniel M. Weintraub & Bill Stall, *Wilson Would Expel Illegal Immigrants from Schools*, L.A. TIMES A1 (Sept. 16, 1994) at A1, *quoted in* Kevin R. Johnson, *Public Benefits and Immigration: the Intersection of Immigration Status, Ethnicity, Gender, and Class*, 42 UCLA L. REV. 1509, 1565 (1995).

Gallegly Amendment put forth similar economically-based arguments.²³ This way of conceptualizing the cost of *Plyler* is so prevalent that it has shaped much of the empirical research on the case, resulting in numerous studies that assess the impact of the decision in terms of the “costs per undocumented student.”²⁴

We sought to complicate these accounts by undertaking empirical research of a different sort. By surveying and interviewing school personnel about *Plyler*'s effects in their schools, we sought to paint a more complex picture of *Plyler*'s multi-layered accomplishments, including benefits of the decision beyond the undocumented high school graduates themselves. At the same time, the perspectives of school personnel offer an alternative accounting of the potential impact of a reversal of *Plyler* than the simple measurement of dollars and cents per pupil.

We were also attracted to this approach because it is rooted in the concerns driving the Court's analysis in *Plyler* itself. The Court grounded its Equal Protection analysis in education's “fundamental role in maintaining the fabric of our society.”²⁵ Depriving a disfavored group of children access to education would “foreclose the means by which that group might raise the level of esteem in which it is held by the majority.”²⁶ Noting the “inestimable toll” this deprivation would take on the individual students, as well as the resulting costs it would have on the Nation, the Court found it “most difficult to reconcile the cost or principle of status-based denial of basic education with the framework of equality embodied in the Equal Protection Clause.”²⁷

In light of the Court's analysis, determining the extent to which the case has achieved its goals requires looking beyond the simple fact that undocumented students now have access to public education. It requires considering whether that access has allowed for the robust equalizing effects

23. The text of the proposed amendment included a statement of policy that providing a free public education to undocumented aliens “creates a significant burden on States' economies and depletes States' limited educational resources.” H.R. 4134, 104th Cong. § 1 (1996). For further discussion of the rhetoric about costs that accompanied the campaign for the Gallegly Amendment, see Butler, *supra* n.10 at 1498.

24. See, e.g., Rich Jones & Robin Baker, *Issue Brief: Costs of federally mandated services to undocumented immigrants in Colorado*, Bell Policy Center (June 30, 2006), <http://www.the-bell.org/PUBS/IssBrf/2006/06ImmigCosts.pdf>; *Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs*, U.S. Gen. Accounting Office, Report to the Chairman, Committee on the Judiciary, House of Representatives (June 2004), available at <http://www.gao.gov/new.items/d04733.pdf>.

25. *Plyler*, 457 U.S. at 221.

26. *Id.* at 222.

27. *Id.*

among public school students – and resulting benefits to society at large – that the Court envisioned. By asking school personnel a series of questions about the current implementation of the case and the imagined impact of its reversal, we sought to collect data that would allow us to compare the Court's aspirations for its holding with the actual ways in which *Plyler* qualitatively shapes classrooms, schoolyards, and communities.

B. Study's Goals

Before proceeding to our methodology and results, we offer a few final introductory and explanatory comments about the utility of the data. We recognize that the school districts we studied have characteristics that make their experience with *Plyler* unique and distinguishable from that of schools in other parts of the country. In particular, we chose to focus on six schools in a metropolitan area near the U.S./Mexico border in Arizona. The proximity to the border, combined with a highly polarized statewide political climate about immigration, makes legal status a particularly immediate and emotional reality for these districts' personnel. Furthermore, we found that even within the schools we studied, school personnel provided a wide range of experiences and perspectives.

Notwithstanding the complexity of the data, we believe our findings support useful general conclusions. First, there is value in awareness of this very complexity, both within individual schools and between geographic regions of the country, to inform any attempt to appraise *Plyler's* legacy and its future viability. By presenting the individual narratives we heard voiced, we hope to provide a deeper understanding of the present day implications of *Plyler* and the complex repercussions a reversal of the law would have in at least one corner of the country.

In addition, more broadly, the schools in this study are demographically similar to public schools in immigrant communities throughout the country, and we have identified several recurring themes in school personnel's responses that may tap into common experiences. As we discuss in Part IV, we believe these themes have implications for doctrinal analyses of the Court's reasoning in *Plyler*, policy reforms to improve its implementation, and public awareness about the case's importance. The data bring an empirical dimension to analyses of the doctrinal basis for *Plyler*, as many of the strengths and weaknesses of the case's impact in the schools we studied can be traced to the Court's Equal Protection analysis twenty five years ago. We also draw from our findings an

implicit critique of current educational policies regarding English language learners (ELLs) in the classroom and immigration policies relating to undocumented high school graduates. Although it is beyond the scope of this paper to provide elaborate policy proposals, we offer our findings to link the effectiveness of *Plyler's* implementation with current reform efforts in education and immigration policy. Finally, we offer our data to add richness to the public conception of *Plyler's* significance and to encourage multiple dimensions of the case's import to be considered in debates over its future.

III. BACKGROUND AND METHODOLOGY

Research on undocumented immigrant students presents particular challenges for researchers. Professor Michael Olivas describes the difficulties of studying this population:

[S]tudying undocumented students presents unusual ethical and social science limitations. Even the most obvious questions – such as how many undocumented aliens there are in the United States – are mixed social science and political questions. . . . Not only are there technical difficulties in measurement, documentation, and survey research, but there are serious theoretical and cultural deficiencies in capturing both the migrants' views and the receiving community's attitudes about the sojourners in their midst.²⁸

We tried to design our research questions and methodology to take into account the challenges and inherent limitations of empirical research on undocumented students. One of the reasons we chose to focus on gathering data from school personnel, rather than undocumented students or their families, was to minimize the ethical concerns related to confidentiality of information about students' legal status. This focus posed a different challenge, however, because we did not want to collect information based on mere speculation about students' legal status. To address this, we developed questions that clearly separated personal opinions from actual experiences with students, and repeatedly asked participants to define the basis for their views.

28. Michael A. Olivas, *Storytelling Out of School: Undocumented College Residency, Race, and Reaction*, 22 HASTINGS CONST. L.Q. 1019, 1063-64 (1995).

Inevitably, there are gray areas, in which school personnel discussed their perceptions of undocumented students without explaining the basis for their knowledge. We believe these perceptions are significant as well. The very fact that many school personnel voiced strong views and attitudes about undocumented students, yet at the same time admitted that they could not accurately differentiate which students in their classroom are undocumented, suggests the possibility of assumptions about recent immigrant students and English Language Learners (ELLs) worthy of attention.

We conducted our research in two school districts in a metropolitan area of Arizona. Within each district, we focused on one elementary school, one middle school, and one high school. All six schools serve low-income Hispanic immigrant communities, as indicated by the demographics summarized in the table below.²⁹

Table 1. School Demographics³⁰

School	Economically Disadvantaged ³¹	English Language Learners ³²	Hispanic	Total Enrollment (as of 2005)
High School 1 (HS1)	59%	16%	89%	1,964
High School 2 (HS2)	71%	21%	93%	2,182
Middle School 1 (MS1)	78%	38%	96%	543
Middle School 2 (MS2)	87%	26%	91%	1,035
Elementary School 1 (ES1)	80%	50%	97%	590
Elementary School 2 (ES2)	92%	57%	92%	752

29. These demographics suggest that the schools we studied share common characteristics with schools throughout the country that serve large populations of recent immigrants. A recent study by the Pew Hispanic Center reported that "Hispanic enrollment is heavily concentrated in a relatively small set of schools," and that, as a result, the recent influx of Hispanic immigrant students has most heavily impacted enrollment in schools that already had large numbers of Hispanic students. Rick Fry, *The Changing Landscape of American Public Education: New Students, New Schools*, Pew Hispanic Center 23 (October 2006), available at <http://pewhispanic.org/reports/report.php?ReportID=72>.

30. These statistics are drawn from the district report cards issued by the Arizona Department of Education, available at <http://www.ade.state.az.us/>. They are based on reported scores on the Arizona Instrument to Measure Standards (AIMS) writing test in each school in 2005-2006. Therefore, they are not precise measurements of each school's student body, but rather indicative samples of one grade level's reported test scores at each school: tenth grade for high schools, sixth grade for middle schools, and third grade for the elementary schools.

31. Students who are eligible for free or reduced lunch are considered economically disadvantaged. See *Arizona's School Accountability Standards Technical Manual 2* (2004), available at <http://www.ade.state.az.us/>.

32. The classifications "English Language Learner" (ELL) and "Limited English Proficiency" (LEP) are used interchangeably in Arizona's Department of Education reports. This paper uses the term ELL.

In each school, we introduced the study at a faculty meeting attended by principals, teachers, guidance counselors, and other school personnel. After briefly describing the holding of *Plyler v. Doe*, we presented the study in neutral terms as an effort to gather data from within public schools to mark the twenty-fifth anniversary of the Supreme Court's decision. All attendees at the meeting were invited to take a 20 minute online survey that would present them with a series of questions about their views of the costs and benefits of providing public education to undocumented immigrant students. Everyone received a flier with the website from which they could access the survey; hard copies of the survey were also available. We also mentioned that we would be holding focus groups for those interested in discussing their survey responses in more detail.³³

We received 158 survey responses out of 485 school personnel. This is a 33% response rate overall; the schools' individual response rates, which varied widely, are summarized in Table 2.³⁴ The survey had optional questions for respondents to provide demographic information. The occupation and race/ethnicity of the survey respondents who provided this information are summarized in Tables 3 and 4.

We conducted five focus groups with a total of fifteen participants. The participants consisted of three principals, one assistant principal, nine teachers, one counselor, and one prevention specialist. The focus groups lasted from sixty to ninety minutes and were generally held at the schools. Two of the principals, however, met in the private room of a restaurant. We used a template of open-ended questions to guide discussion during the focus group sessions.³⁵ We let the conversation run its course, however, and did not necessarily cover all the template's questions in every focus group, nor pursue the questions in the order in which they are listed. Table 5 summarizes the participants in each focus group.

33. The survey is attached as Appendix B.

34. As Table 2 makes clear, we had particularly low participation in the middle schools, which was likely due at least in part to the fact that they joined the survey later and had less time to complete it.

35. The focus group protocol is attached as Appendix C.

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Table 2. School Participation

School	Survey Response Rate	Number of Focus Group Participants
HS1	38%	4 (2 teachers, 1 principal, 1 assistant principal)
MS1	22%	3 (1 teacher, 1 counselor, 1 principal)
ES1	38%	2 (1 teacher, 1 prevention specialist)
HS2	25%	1 (1 principal)
MS2	14%	0
ES2	43%	5 (all teachers)

Table 3. Survey Respondents' Occupations

Occupation	Percentage	Number of Respondents
Principal	2.6%	4
Teacher	71.4%	110
Guidance Counselor	2.6%	4
Parent Liaison	1.3%	2
Prevention Specialist	3.2%	5
Other ³⁶	20.1%	31
Total respondents	(4 skipped this question)	154

Table 4. Survey Respondents' Ethnicities

Race/Ethnicity	Percentage	Number of Respondents
African American	0.7%	1
Asian/Pacific Islander	2.6%	4
Caucasian	48.0%	73
Hispanic/Latino(a)	41.4%	63
Bi/Multiracial	2.6%	4
Native American/Alaska Native	2.0%	3
Other	4.6%	7
Total respondents	(6 skipped this question)	152

Table 5. Focus Group Participants

Focus Group #1	Focus Group #2	Focus Group #3	Focus Group #4	Focus Group #5
1. Teacher MS1	1. Principal HS2	1. Teacher ES2	1. Teacher ES1	1. Principal HS1
2. Counselor MS1	2. Principal MS1	2. Teacher ES2	2. Prevention Specialist ES1	2. Assistant Principal HS1
3. Teacher HS1		3. Teacher ES2	3. Teacher HS1	
		4. Teacher ES2		
		5. Teacher ES2		

36. The thirty-one respondents that selected "other" wrote-in a variety of positions including two social workers, two school nurses, two advisors, four program coordinators, two teachers' aides, three administrative workers, and two campus/community liaisons.

We collected data in three ways: selected-response survey questions, open-ended survey questions, and transcriptions of focus group discussions. Thus, our results come in three forms: quantitative measures of survey respondents' selected responses; excerpts from survey respondents' written comments (presented in table form); and excerpts from transcriptions of focus group responses (presented in block quotes).

IV. RESULTS: WHAT WE HEARD

In the survey and the focus groups, we raised two sets of questions: the first concerned *Plyler* in the present and the second addressed the future of *Plyler*. In the first line of questioning, we focused on how, if at all, the issue of legal status currently arises for school personnel. Responses to these questions provide a window into how the consequences of *Plyler* play out in schools in immigrant communities twenty-five years after the decision was made. We discuss these responses in Section A.

Second, we asked participants to imagine how their school would be affected by a reversal of *Plyler*. Through this line of questions, we sought to develop a more textured account than the traditional cost-benefit analysis of the impact the exclusion of undocumented students would have on schools. We found that school personnel discussed diverse consequences of a change in the law, noting impacts not only on the excluded undocumented students but also on the remaining U.S. citizen students, the parents and community, and the teachers themselves. These views are discussed in Section B.

A. *Plyler* Today

We discuss the responses to questions about *Plyler*'s current day effects in the following three sections. First, we summarize responses about the extent to which legal status is an explicit topic in public schools. Second, we describe school personnel's views about the impacts, both positive and negative, that undocumented students have on their schools. Finally, we offer school personnel's insights into how undocumented students themselves confront the issue of legal status in the school setting.

1. "Don't Ask, Don't Tell"

In all six schools, school personnel reported that their students' legal status is rarely if ever explicitly addressed in the school setting. Less than one-quarter of the survey respondents (24%) believed that they had a basis upon which to estimate the percentage of their students who are undocumented. During a focus group, one teacher who has taught for thirty-one years, twenty-six of them in High School 1, described his view about asking students about their legal status:

I've never asked a student about their legal status in all the years that I've taught. It's don't ask, don't tell. I'd have no reason to want to know a student's legal status, to ask them that . . . I wouldn't differentiate instruction to them simply because of their legal status, so unless a student confides in me that they're illegal, I have no way of knowing.³⁷

A group of elementary school teachers responded similarly when asked whether they have ever asked a student about his or her legal status:

Teacher #1: It's none of my business.

Teacher #2: Yeah, I don't ask. Some of them mention stuff that makes you think but I never ask.

Teacher #3: We talk about where you're born and things like that and that's about as far as it goes. . . . As soon as I hear "paper" [in reference to documentation of legal status] I just close my ears off.³⁸

At the same time, it was clear that despite the lack of explicit discussion, school personnel were aware of the issue of legal status in their schools. Nearly all the survey respondents believed that there were undocumented students in their schools, and 73% believed that their presence had an impact – whether positive or negative – on their school.

37. Teacher, High School 1.

38. Teachers 1-3 were all from Elementary School 2.

2. Perceptions of Undocumented Students: an Inspiration or a Liability?

Although most respondents did not believe they could identify which individual students were undocumented, the majority had strong views about the strengths and weaknesses of undocumented students, and their distinctive characteristics as a portion of the student body. Responses to a survey question that asked whether undocumented students enhance or detract from the quality of education in schools were divided almost exactly in thirds, with just over one-third of respondents (35%) selecting “enhance,” roughly another third (34%) selecting “detract,” and just under one-third (31%) selecting “other.”³⁹ The written comments that accompanied these responses included descriptions of undocumented students’ contributions to their schools that ran the gamut, from praising the students’ distinctive work ethic, to raising concerns about their language skills and test scores, to insisting that no generalizations were possible.

We find these responses enlightening on two levels. First, the significant portion of school personnel who believed undocumented students enhance their schools specified affirmative benefits to the entire school community of permitting undocumented students to attend public schools that are rarely, if ever, mentioned in the typical accounts of *Plyler*’s accomplishments. The comments summarized in section (a) below describe the rich culture and life experiences that undocumented students bring to the schools they attend. Second, the school personnel who believed that undocumented students detract from the quality of education in their school repeatedly based their views on the students’ language abilities and alleged detrimental impact on test scores. The fact that these were their recurring concerns provides an important window into how school personnel’s perceptions of their students’ contributions to the school are shaped by pressure to meet state and federal language curriculum requirements and performance standards. We summarize these comments in section (b).

a. Distinctive contributions of undocumented students

On the survey, one of the open-ended questions asked respondents to address the ways in which permitting undocumented students to attend

39. Of the respondents selecting “other,” nearly all wrote in comments that they do not believe that undocumented students can be categorized as either enhancing or detracting from the quality of education.

public schools has enhanced or detracted from the quality of education in their schools. Thirty-five percent of all survey respondents believed that undocumented students enhance the educational quality of their schools. These respondents most commonly explained their choice by describing the distinctive cultural contributions or work ethic of undocumented students.⁴⁰ The following table provides a few examples of these comments. Further examples of illustrative comments are provided in Appendix A.

Teacher, ES1	“They try very hard to do their best because they know how lucky they are.”
Principal, HS2	“The obvious and su[b]tle cultural difference[s] bring richness to our school.”
Teacher, ES1	“They are usually my hardest workers.”
Teacher, HS2	They “provide an awareness of the r[i]ghts and responsibilities that those who are native born take for granted.”
Prevention specialist, HS2	“Undocumented students have enhanced our school by strengthening pride in the culture most of our students share.”

Several of our focus group participants echoed these sentiments.⁴¹ The following comments by an elementary school teacher and high school principal, respectively, are illustrative:

[A] lot of the kids that are new immigrants and therefore have a higher chance of being undocumented, they're the ones who really want an education. They're the ones who work really hard. They're a lot of times the best students in your class because their parents

40. Thirty-two of the forty teachers who believed that undocumented students enhance the quality of education in their schools provided written comments. Of these, fourteen commented on undocumented students' cultural contributions and thirteen commented on their distinctive work ethic. In addition, eight commented on their language as an affirmative benefit to the school.

41. Five of the fifteen focus group participants specifically discussed unique and positive characteristics of undocumented students. Of the other ten, nine did not discuss it one way or the other, while one discussed negative characteristics of such students (their alleged impact on test scores).

know the value of education. Some of the parents who have been here, you know maybe their great-grandparents came or their grandparents came, they're kind of jaded and they're not as sure that they can have the American dream, whereas the new immigrants usually—gross generalization—usually come in with a much more positive attitude . . . so you get students who are usually at the top of your class, trying their best.⁴²

[T]he culture they bring and sense of family they bring . . . that in itself adds greatly to the atmosphere on this campus. They're also amazingly respectful students . . . [M]ost of the recent immigrants come here, many of them valuing the chance to get an education, and therefore they're quite respectful of their teachers.⁴³

The diverse ways in which undocumented students affirmatively enhance the quality of education in their schools is seldom discussed in public debates over the case's importance. We discuss the significance of these comments further in Part IV.

b. The intertwined nature of legal status, language, and test scores

In contrast to the foregoing views, nearly the same percentage of survey respondents (34%) believed that undocumented students detract from their schools. The two most common themes in the written comments that accompanied these responses were undocumented students' language abilities and impact on test scores.⁴⁴

The issue of language arose repeatedly in our study, not solely in addressing this question, but in response to numerous survey questions and focus group prompts. School personnel's views on the relationship between legal status and language reflected ambivalence. On the one hand, school personnel repeatedly raised language as one of their prime concerns when discussing the impact of undocumented students on their

42. Teacher, Elementary School 1.

43. Principal, High School 1.

44. Of the thirty-nine respondents who believed that undocumented students detract from the quality of education in their schools, twenty-nine wrote explanatory comments. Of these, thirteen commented on undocumented students' language abilities and twelve commented on their impact on test scores. The nine responses that did not mention either language or test scores are more difficult to characterize. Five addressed resources, three addressed concerns about behavior/ability, one addressed prospects for future employment.

schools. Yet at the same time, many acknowledged that there is no tight correlation between language and legal status.

This ambivalence comes through in the widely distributed responses to a survey question that asked whether English language learning needs would be significantly altered if undocumented children were prohibited from attending public school: 55% of all survey respondents thought that they would be significantly altered; 25% thought they would not be altered; 20% were not sure or had no opinion.

In our focus groups, six of the fifteen participants commented on the fact that language learning abilities were not necessarily correlated with legal status.⁴⁵ The following two excerpts are illustrative:

I've had kids that have surprised me. I don't ask and I haven't been observant enough to really . . . notice which ones . . . are undocumented, but you know some of them surprise me. Some of my . . . lower level English speakers . . . they'll come up and they'll mention that . . . mom at some point got citizenship or they're working on it right now So I've noticed the correlation is harder to find.⁴⁶

[T]here are a lot of kids we don't even know, who don't fit that characterization of, of being a student without documents. And they blend in really well, and some of them have high test scores and some of them are very sound academically. We just don't know who they are.⁴⁷

Yet despite the fact that many school personnel recognized that language learning abilities were not tightly correlated with legal status, language was selected most consistently as the way in which undocumented students detract from the quality of education in their schools.

Even more striking, although there was not a single reference in our survey instrument to standardized tests, survey respondents repeatedly made references to Arizona's state-mandated test, known as "AIMS," and the corresponding federal regulations under the No Child Left

45. Of the remaining participants, eight did not take a position one way or the other, and one, the principal of High School 1, believed there was a strong correlation between legal status and language abilities. She explained her view that the correlation is particularly strong at the high school level because ELL students in upper grade levels tend to be recent immigrants themselves, whereas at the primary school level the students may be U.S. born children of recent immigrants.

46. Teacher, Elementary School 2.

47. Assistant Principal, High School 1.

Behind Act (NCLB).⁴⁸ The following table provides a few examples of responses to an open-ended survey question about how undocumented students enhance or detract from the quality of education in their schools. Further illustrative comments are in Appendix A.

Teacher, HS2	“The school is given poor mark[s] due [to] the undocumented student achievements.”
Teacher, ES2	“. . . it is extrem[e]ly difficult for schools with high numbers of ELL students to meet or exceed on AIMS or to show adequate progress.”
Teacher, HS1	“when it comes to state testing, these kids struggle and bring down our overall results.”
Teacher, HS2	“A[IM]s testing, if they do not understand English and fail the testing, the school and teachers are blames.”
Teacher, ES2	“As much as I appreciate all of our students, with the emphasis on test scores these students have a negative impact on the image of our schools.”

In our focus groups, we asked whether the participants have sensed resentment towards undocumented students due to their legal status, language needs and/or test scores. The pressure on teachers comes through in their answers.

[Y]ou get frustrated when you’re always assigned a class load, for example, I have 180 students on my rosters that I have to deal with. And they range from students with learning disabilities, about a third of my students are English language learners with language problems, undocumented students, students who are abused, all sorts, all the way up to the gifted students. They’re all crammed together in the same classroom and they want you to differentiate instruction for all the different learning styles to . . . be everything to everyone and it’s just –people feel like they’re dancing on the head of a pin trying to make everybody happy and you can’t serve

48. “AIMS” stands for Arizona’s Instrument to Measure Standards. Arizona uses the AIMS test to assess schools’ performance under the NCLB. For a thorough description of the structure of the NCLB, and the interplay between its requirements and state-mandated standards, see James Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932, 939-44 (2004).

all of the master[s] at the same time. There's just not enough time in the day.⁴⁹

I don't think the general public truly understands what's going on and so they look at your school and you know "oh my gosh, how could they only score 27?" And we're like "woo-hoo we got 27" [all the other teachers laugh] . . . "we're up from 25 . . ." You know, we're proud of what we've done but the general public doesn't understand that and I think they've been misled for the most part.⁵⁰

The survey responses make clear that our questions about undocumented students tapped into some school personnel's frustration about their students' language learning needs and performance on standardized tests. Yet this frustration bears a complicated relationship to the regime established by *Plyler*. A close look at these participants' responses to other parts of the survey indicates that their view did not necessarily correlate with opposition to the law established in *Plyler*. In fact, 41% of the respondents who believed undocumented students detract from their schools said they would not support a reversal of *Plyler* (14%) or were not sure/had no opinion (27%). Furthermore, less than one-third of these respondents (32%) believed that they had a basis for identifying which of the students with whom they work are undocumented. Thus, it is unclear what basis they had for believing undocumented students were the cause of their school's struggling test scores or significant language learning needs. Yet *Plyler*'s protection of the privacy of students' legal status has not shielded undocumented students from being vulnerable targets for school personnel's frustration about the performance challenges faced by public schools in immigrant communities. We discuss the implications of this finding further in Part IV.

3. Plyler and students' lives: Playing La Migra in the school-yard

While our questions focused largely on the experiences of school personnel with *Plyler*, in the course of responding to our questions, many participants reflected on how the issue of legal status pervasively shapes their students' lives, despite *Plyler*'s removal of the issue as an explicit

49. Teacher, High School 1.

50. Teacher, Elementary School 2.

matter in the school setting. We close this section with a summary and excerpts of teachers' comments in this regard. Given the difficulty of having undocumented students themselves share these experiences with researchers, this is one means of documenting their reality while protecting their anonymity.

During both of our focus groups with elementary school teachers, the teachers described seeing the children play "la migra" on the school playground – a version of cops and robbers, with border patrol replacing the cops. Other focus group responses described additional ways in which the issue of legal status shapes undocumented students' lives:

[Describing one of her students, who was working on a project where they were supposed to interview their parents about their family history]: [W]hen he came back, first he had told me he was born in Mexicali . . . and so then he comes back the next day and he says, "No, no my mom said to tell you I was born in Tucson." . . . [T]hen, the next day he comes back and he's like, [whispers] "Miss, Miss, *no es cierto* [it's not true]. I was born in Mexicali but my mom doesn't want you to know."⁵¹

I know they have discussions about . . . the plans that they have. If they were to come home and some parents aren't there or something, who they go to, where they go . . .⁵²

[A]nything, anything involving an immigration issue they're very aware of it. . . . [T]hey hate Border Patrol, they've voiced that. They hate the fact that they have to have papers, that they have to have documents to be able to go from one place to another . . . I think it's something very real to them . . . it's just a part of . . . what they live every day. But I also think they understand the seriousness of it, too.⁵³

[T]he kids [are] very unsure of if they're going home to parents, if their parents are going to be there or not. I think that definitely affects . . . their learning and security and everything else.⁵⁴

At the high school level, the high school principals and assistant principal in our focus groups all pointed to the college application process as an event that forces many high-achieving undocumented students sud-

51. Teacher, Elementary School 2.

52. Teacher, Elementary School 2.

53. Teacher, Elementary School 2.

54. Teacher, Elementary School 2.

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- Social worker, HS2 "I have known cases of students who came to the US during elementary age and they excel but cannot attend college or university when they are very capable. This is unfortunate."
- Teacher, HS2 "Several of my most positive and productive students in my American Government class can't vote due to their status."

denly to confront their limited life prospects. Although none of the survey questions directly addressed this issue, several survey respondents expressed frustration at the needless loss of potential for these high school students.

One elementary school teacher in our focus group described her frustration upon learning that one of her top former students received a scholarship to college and then was unable to attend because of his undocumented status:

[O]ur whole goal should be to, to build and help responsible students grow up, and here's a very intelligent kid who's worked really hard and he's ready to work harder, he's not going anywhere, he's not going back to Mexico. Everything that we invest in that child is going to be in the United States.⁵⁵

A high school teacher expressed similar sentiments after he discovered several of the students in an after-school advance placement preparation group were undocumented:

So, they're not all language problems and they really do come across the whole range. Some of them do have problems, some of them have learning disabilities, some of them are abused at home, some of them have parents who have drug problems. But there are kids who overcome all these obstacles, are good students and deserve to go to college. It would make a great contribution to the community and the country as a whole, so why turn that down? It's a loss to everyone here when you start throwing people like that out.⁵⁶

These excerpts offer a glimpse into the ways the legal status of children and teenagers shapes their daily lives and life prospects despite the law established in *Plyler*. We discuss the implications of this further in Part IV. For now, having summarized the data gathered on the present

55. Teacher, Elementary School 1.

56. Teacher, High School 1.

day impact of *Plyler* in schools, we turn to the questions we asked school personnel about the future of *Plyler*:

B. The Future of *Plyler*: Imagining the Impact of a Reversal

Many of our questions in the survey and focus groups asked school personnel to imagine the impact of a reversal of *Plyler*. We were interested in whether they would support or oppose various policy changes, and what consequences they would foresee as a result of any such changes.

We found that the sizable majority of teachers opposed any change to the legal regime established in *Plyler*. Of survey respondents who had an opinion, over three quarters (76%) responded that they would not support the passage of a new law that prohibited undocumented students from attending public school.

The prospect of becoming personally involved in the enforcement of immigration laws elicited the strongest emotional responses of all our questions, among both survey respondents and focus group participants. The majority of school personnel expressed strong and often passionate opposition to playing any role in checking on students' legal status. Many also voiced serious concerns about the effects a change would have on the remaining student body and their school's ongoing relationship with the community.

In this section, we discuss each of the three groups school personnel believed would be impacted by a reversal of *Plyler*: teachers, students, and communities.

1. Teachers: "I am a teacher, not a Border Patrol agent"

One section of the survey asked school personnel to imagine a new law that required all students to report their legal status prior to enrollment in public school. A question in this section asked respondents to rate the impact on their professional morale of a requirement that school personnel enforce the reporting requirement by verifying that students accurately reported their legal status.⁵⁷ Of the 138 school personnel who responded to this question, seventy-five percent (104 respondents) said

57. It is worth noting that this hypothetical is not so far-fetched. Proposition 187 required that teachers report suspected undocumented children. See *supra* note 11. More recently, Proposition 200 in Arizona makes certain state employees of public benefits programs mandated reporters of any immigration law violations.

that such a requirement would have a negative or very negative impact on their professional morale, and fifty-five percent (76 respondents) said the impact would be very negative.

Another survey question asked school personnel about the extent to which they would comply with a rule that required them to report on students they believed did not have legal status. Only nineteen percent of respondents said they would report all cases. Over one third (35%) said they would avoid reporting any cases, and 12% more said they would reluctantly report only ambiguous cases.⁵⁸

An open-ended survey question about a hypothetical law that required school personnel to enforce a requirement that students report their legal status prior to enrollment elicited strong comments from many respondents. Repeatedly, school personnel expressed discomfort and even outrage at the imposition of immigration enforcement on educators. A small sampling of excerpts is provided in the following table; many similar comments are provided in Appendix A.

In the focus groups, we heard similarly impassioned responses to the possibility of being required to enforce a requirement that students report their legal status in order to attend public school. Responses included:

Teacher, HS1	"This is extremely unfair and I would want nothing to do with it."
Principal, HS2	"I would not want public schools to become an arm of the Immigration Department."
Teacher, ES2	"I am a teacher, not a Border Patrol Agent. Many times a teacher is the only one a student feels they can trust. We cannot afford to lose that trust."
Teacher, HS2	"If such a law passed, I would openly defy that law, even if it meant losing my job."
Teacher, HS1	"There is NO WAY that I will ever be involved in this activity. If ordered to do so, I would refuse. If I were dismissed for said refusal, I would file a grievance with the NEA. If my grievance were not upheld, I would sell my house and move to a more civilized community."
Language coordinator, HS1	"Educators will resist becoming law enforcers, whether or not they approve of the law."

58. In addition, 21% selected "not sure/no opinion" and 12% selected "other." Of the 18 respondents who selected "other" and wrote with a variety of comments, seven wrote that they would resign, retire, or otherwise stop teaching if such a change were to occur.

I'd probably get myself in trouble. If the law were to pass . . . I would not, I'd go to jail maybe, to be honest with you, because . . . you're talking about kids, you're talking about – how can, how can you really do that to children, you know?⁵⁹

It would be demoralizing for [the front office staff] and people coming in would now see the office as being immigration . . . we're already fighting that impression . . . [I]t would be hard on the staff because the staff's not hired on for this, the staff is . . . very altruistic, you know, "I'm here to educate kids." I think it would be devastating. . . .⁶⁰

Just because the law changed, doesn't mean you changed the hearts and minds of professionals who carry out that law, and I don't know anyone who's enthusiastic about becoming an immigration officer. We didn't get into this profession because we wanted to check . . . for your immigration status. We got into it because we have a passion and we care about our subject matter. And I think a lot of our faculty would resist the law and then sabotage it and undermine it simply because they don't agree with it. . . . Somebody like me, I haven't asked a student about their immigration status in 31 years; I'm not going to do that because some law's changed.⁶¹

I didn't come into this profession to worry about which kids are legal – are they from Mars or are they from Mexico or from Spain or wherever they are from. I came because I have a sincere interest in knowledge and I believe education is the gateway to helping you have a better life. So if I'm having to do police work or immigration work, I don't want to have any part of it. And I think you would lose some good teachers.⁶²

I would not want to be put in a situation where I'm checking credentials in addition to teaching someone how to read. It's difficult enough trying to teach someone how to read and worry about the other aspects of why they're there.⁶³

Some of the teachers raised concerns about the detrimental effects of such a requirement beyond its impact on their own professional identi-

59. Principal, High School 2.

60. Principal, Middle School 1.

61. Teacher, High School 1.

62. Teacher, Middle School 1.

63. Teacher, Middle School 1.

ty. They suggested that such a requirement would create tension within schools, both creating divisiveness between teachers and interfering in the relationship between teachers and students. Examples of these comments follow:

I think it would cause a lot of conflict between, teacher to teacher, especially the teachers who did it and those who were silently protesting . . . taking a stand on it . . .⁶⁴

I think teachers would begin to have very big blinders . . . [R]ight now, I think we're very interested in our kids, "tell me what you did over the weekend," you know, you begin to learn their interests, what they like so you can begin to incorporate that into their learning. I think that we would put those blinders on and be like, "Number 137, sit down". . . I don't want know your name, I don't want to know where you're from because if I know I have to tell and I don't want to tell . . .⁶⁵

2. Students: "Who will they bring with them and where will they go?"

Many survey respondents and focus group participants raised concerns about the impact a reversal of *Plyler* would have on students, including the likely increase in crime, gang activity, and unemployment that would result if undocumented students were forced to drop out of school. One high school teacher emphasized the diverse types of students who would be excluded:

[T]hose immigrant students, they're not going to all be kids that are at the bottom. They're the cross-section of all our students. . . . [Y]ou start losing top students out of advanced placement programs and honors programs . . .⁶⁶

Nearly half of all survey respondents (48%) thought the exclusion of undocumented students would have a negative (27%) or very negative (21%) impact on the remaining students. Similarly, six of our focus

64. Teacher, Elementary School 2.

65. Teacher, Elementary School 2.

66. Teacher, High School 2.

group participants emphasized the detrimental effects of exclusion on students with legal status. A few illustrative comments follow:

I'm concerned about which other kids would also fall along. If we lose some . . . who do they bring with them and where do they go?⁶⁷

A group of kids sees another group of kids, you know, having vacation or not being in school, there's other parents that are not as active, not pushing them and those are the kids that I'm concerned about losing, those kids that don't have strong guidance – they're coming to school because their friends are coming to school, that's my leverage . . . especially at the middle school you know, it's where they can be social . . .⁶⁸

I can tell you right now, our student body president, she has one or two people in her family that are not legal, so you would create a vacuum and I don't know how it could be filled. You'd create a vacuum emotionally, socially, economically. . .⁶⁹

In one of our focus group discussions of how a reversal of the law might impact the remaining students in school, the Assistant Principal of High School One referred back to the school's experience during the immigration marches of spring 2006. He described High School One as "practically empty" during the marches. He continued, "They were all in the streets marching, and there you had no knowledge of anything [about individuals' legal status], people were just hand in hand Whether that would happen if something like this were to occur? Possibly, possibly."

3. Communities: "If they're gone – it's not the same place"

We heard many powerful concerns raised about the impact a change in *Plyler* would have on the communities that the schools served. Of those respondents who had an opinion, seventy-one percent thought a law prohibiting undocumented students from attending public schools would have a negative (36%) or very negative (35%) impact on the relationship between their school and the community.

67. Principal, Middle School 1.

68. Principal, Middle School 1.

69. Teacher, Middle School 1.

One of our focus group participants succinctly summarized what we heard from many respondents: a reversal of *Plyer* would not just change the school; “it would make it a totally different community.”⁷⁰ Another similarly stated, “It doesn’t just affect [the undocumented students]; they interact with everyone else in the school community, so it affects everyone else if they’re gone – it’s not the same place.”⁷¹

More specifically, school personnel identified various likely harms to the community that would result from a law that excluded undocumented students from schools. Two harms that came up repeatedly were an increase in violence and a loss of trust throughout the community. We discuss each of these in turn.

a. A trigger for violence, anger, and crime

One of the open-ended questions on the survey gave participants the chance to share any comments they had on the probable impact of a reversal of *Plyer*. Many responses focused on anger and potential violence that would result in their communities. A few illustrative comments follow, more are provided in Appendix A.

Principal, MS1 “An elitist school that does not allow all students would not be well received in the community.”

Teacher, ES1 “The passage of such a law would turn communities and schools into dangerous situation[s]. This would divide schools and neighborhoods.”

Teacher, HS1 “Because of the demographic at my school, such a law would seriously inflame the remaining students, to the extent that I would be very concerned about potentially violent protests — even rioting. Many of the students who would be “kicked out” as the result of such a law would leave numerous friends—and even relatives—behind at this school, along with a large number of students who would perceive such a law as an affront to their ethnicity (frankly, I would be inclined to see it this way, myself).”

Teacher, ES1 “I believe it would increase violence due to the little hope they’d have for improving their live[s]. Illegal activity would most likely increase because their choice of survival would be limited.”

70. Teacher, Elementary School 1.

71. Teacher, High School 1.

Focus group participants voiced similar concerns:

[H]igh school level kids . . . there'd just be mass pandemonium, you know . . . gang violence and so forth, we have enough problems as it is. [F]or high school aged students, [it] would not be good at all.⁷²

[If] you get rid of these kids that are coming to us that don't have the legal status, they're going to go someplace. To me, they're going to go underground, they're going to start to create their own subculture and then you're going to have a whole slew of criminal issues⁷³

"And they'll [undocumented students] be so angry too; they're barely holding on to their anger right now, you know they just don't like the situation, everything going on. . . ."⁷⁴

b. The loss of schools as "safe zones"

In addressing the likely impact a prohibition of undocumented students would have on the community, school personnel repeatedly described the hard work their schools have put into creating a sense of safety for all immigrant students and their families. The description of schools as "safe zones" in immigrant communities was a recurring theme. We heard about the ways in which schools already contend with the fear of government authorities and desire for low visibility that pervades many immigrant communities. This creates a challenge for schools that seek to encourage parental involvement in families with mixed legal status, which include both undocumented family members and U.S. citizen students. Some voiced concern that the headway they had made in creating a sense of safety would be seriously undermined if the school were required to inquire into the legal status of their students.

Many responses described the ways that schools already battle a climate of fear.

72. Teacher, High School 1

73. Teacher, Middle School 1.

74. Teacher, Elementary School 1.

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- Assistant Social Worker, HS2 " . . . I have seen parents and students who don't cause problems/ disruption since they do not want to put the spot light on them."
- Teacher, ES2 "I've had parents refuse to let their children go on field trips because they feared Immigration would stop the bus."
- Teacher, HS2 "In cases that I know, the documentation status of students, siblings and parents is held really close to the vest so students can go to school in the US."

Of the six schools we studied, the two elementary schools seemed to have had the most success in creating a "safe zone," in which immigrant families felt comfortable interacting with the school without fear. Numerous participants from both elementary schools described the sense of community and trust they have built with their students' families. In contrast, at the middle school and high school levels, we found the issues of parental involvement, trust, and safety more complex. At these higher grade levels, we heard more frustration and concerns about lack of parent involvement due to fears surrounding immigration status.

The difference between the elementary schools and upper level schools on this issue was vividly demonstrated in the focus groups. These comments by a high school teacher and a middle school teacher, respectively, describe the challenges they face in involving the community:

[I]t really is a problem, getting parents to be involved It's difficult to run a school without parent support and be successful and maybe that's part of the reason why [my school's] not graduating students is that lack of involvement. It's not just the parents' fault, it's the school's fault. We have to find ways to make schools welcoming to these people if it's going to function as a school.⁷⁵

[H]ere, in our [neighborhood] schools, where the immigration is so high, they fear the system because the system is not their friend, it's the enemy. . . . [I]f you have a . . . school [in a predominantly white and middle class part of the city], you don't have an immigration issue. I mean, the parents are working, they're professional, parent picks up the phone, calls the principal and says, 'Hey, you've got a teacher there that's not doing any service for us.' Boom. That prin-

75. Teacher, High School 1.

principal's on it. Because they know . . . the consequences of not taking action. Here a teacher can badmouth a kid, come in unprepared and no one's picking up the phone to complain to that principal.⁷⁶

These comments contrast sharply with the responses we received from the elementary school personnel.

[I]t seems to me, from my work with the parents, that they're very open to being not only in the building but in the classrooms.⁷⁷

I still remember once . . . a border patrol officer pulled into the parking lot after school, after school mind you, and he pulled in because he had a flat or something. And [our principal] was out there going "get out, get out" she was like, "move it, move it, get out." She did not want him anywhere near the school because she didn't want . . . any of the kids to go and say, "Hey, I saw *la migra* . . ." She didn't want any of that.⁷⁸

There's a huge trust developed here between the school and the families. They feel safe here, and once you start asking [about legal status], they're not going to feel safe anymore.⁷⁹

When we asked the elementary school teachers why they think they have been able to create this strong sense of safety and trust, many believed that it was due at least in part to the fact that both these elementary schools have "dual language" programs, which offer more opportunities for students to include Spanish in their education.⁸⁰ These programs attract recent immigrant families and make them feel part of the school community.⁸¹ As one teacher described, "Because it says

76. Teacher, Middle School 1.

77. Teacher, Elementary School 2.

78. Teacher, Elementary School 1.

79. Teacher, Elementary School 2.

80. Typically in a dual language program, half of the instructional time is devoted to English, and half to another language, in this case Spanish. Mary Carol Combs, et. al., *Bilingualism for the Children: Implementing a Dual Language Program in an English Only State*, 19 EDUCATIONAL POLICY 701, 706 n.11 (November 2005). These programs were unusual even before the passage of Proposition 203 in Arizona, which repealed bilingual education. Due to the proposition's limitations on permissible bilingual education offerings, schools that offer dual language programs have had to scale back and adjust their programs to comply with the law. *See id.* Several of the teachers with whom we spoke expressed uncertainty about the future of dual language programs in Arizona due to Proposition 203.

81. One elementary school teacher explained that, in addition, these schools attract U.S. citizen families from outside the neighborhood as well, who take advantage of the district's open-enrollment system to place their children in a school where they can receive a bilingual education.

we're respecting, we respect your language, we think it's important, we want to include it in our curriculum." Another teacher contrasted the school with another elementary school in which she had taught that was very different in this regard:

I was in a deseg[regation] school . . . where kids from close to this part of town were bussed over . . . and it was very much . . . "those kids shouldn't be here, they should speak English," you know, "they're dirty, the parents don't volunteer, they don't do their homework," and it was very separate. [T]here was probably a mixture between documented and undocumented students in that group but they were definitely categorized as the ones whose parents didn't care, that didn't come to school . . . all of the negative stereotypes that we've all probably heard were definitely being used in that building at the time. And so, I think it kind of depends on where you're at, and this [school's] culture definitely doesn't support that kind of behavior from the professionals that work here . . .⁸²

In light of the challenges the schools already face in developing trust in their communities, many survey respondents voiced concerns that a requirement to ask about legal status would be detrimental to their relationship with the community as a whole.

Teacher, HS1	It would "further isolate parents from involvement in the schools."
Teacher, ES2	"an action such as this would be detrimental to building community with our immigrant community, documented or undocumented."
Teacher-librarian, ES1	"The negative impact would come from having neighborhoods with some kids attending school, and others not. School would be viewed as an exclusionary institution. We have worked really hard to pull parents into our school, and to trust us. That trust would be broken."
Language program coordinator, HS1	Our community expects our school to be welcoming and generous. Passage of such a law would make parents view the school as unwelcoming, hostile, alien."

82. Teacher, Elementary School 2.

Nearly all of our focus group participants voiced similar themes:⁸³

When you're trying to get parents in the community involved in the school, for us to become police officers and to force immigration, it's already difficult enough and you're going to put up another barrier to make it even harder.⁸⁴

I think it would attack our effectiveness for the kids who did stay because . . . that whole trust issue with the school would be lost. Even if it wasn't our rule, or our law, they would still see us more as the bad side of authority as opposed to the good side of authority and . . . I think it would really attack the effectiveness of every teacher.⁸⁵

A common theme running through these comments is that the need for schools to be "safe zones" is not solely an issue for undocumented students. Respondents made clear that their communities cannot be neatly divided between documented and undocumented families. One elementary school teacher explained,

[M]y impression after 13 years [is] that . . . a lot of the families who . . . do come over the border, have somebody here already. So, they know somebody in this area and they talk to them. And a lot of the families are really well established here. . . [M]ost of the kids who are here, or a large proportion, even if they're not [un]documented, they have parents or grandparents or somebody who wasn't documented . . .⁸⁶

One especially vivid illustration of the complexity of legal status in immigrant communities came across during a focus group with one of the high school principals. He openly shared with us his own experience growing up as an undocumented immigrant student. In the years since, he has regularized his status. He described to us a conversation he had with a faculty member who was making inappropriate comments about the undocumented students in their school:

83. Twelve of fifteen focus group participants specifically commented on the ways the trust their school had built with the community would be broken if *Plyler* were reversed. The other three said nothing to the contrary; they did not make specific comments that addressed this point.

84. Teacher, High School 1.

85. Teacher, Elementary School 1.

86. Teacher, Elementary School 1.

[W]hat I want to do is, get this person to understand that look, they may be here but you never know what's gonna happen down the road. Who's to say . . . this person might be opening your chest to fix your heart, or might be the person working on your last will and testament, . . . they might be the person down the road filling your gas tank . . . or working on your car. We are all over in a sense . . . because I'm part of the 'we' You have to be very careful [of] the comments that you make [to undocumented students] because they might grow up to be your principal

This principal told us that he would quit his job if the law in *Plyler* were reversed. Acknowledging that this was perhaps not saying much, since he is nearing retirement, he assured us that both his U.S. citizen daughters, who are teachers in the area, would surely leave teaching as well. This principal's comments encapsulate the widespread resonance of the issue of legal status in immigrant communities, shared across households and generations. Legally present and undocumented family members' lives are intertwined, making the need for "safe zones" extend to the entire community, not solely specific families of undocumented immigrant students.

V. ANALYSIS

We return to the question that we posed at the beginning of this paper: is *Plyler* a success story or a warning tale? The decision itself emphasized the foundational role education plays in society as the central means by which individuals can reach their full potential as members of their communities and of the nation. To single out an isolated group of students for exclusion from this opportunity would not only harm them as individuals, but impose "significant social costs" on the nation at large.⁸⁷ The Court held such exclusion would pose an affront to the Equal Protection Clause.

The foregoing data are an effort to determine the extent to which *Plyler's* current implementation holds true to the goals and ideals of the decision itself and to illustrate what is at stake in the case's future. We do not offer the perspectives of this small sample of school personnel to address these questions definitively. However, we think the many voic-

⁸⁷. *Plyler*, 457 U.S. at 221.

es we heard offer important insights into *Plyler*'s complex legacy, particularly in light of the conventional wisdoms about the case that tend to oversimplify its accomplishment and its costs. We begin our analysis by considering what the data suggest about *Plyler*'s current implementation; in particular, the extent to which legal status continues to play a role in public schools in the aftermath of the Court's decision. We then turn to the relevance of our findings to the debate over the future of *Plyler*.

A. *Plyler* Today: Its Power and Its Limitations

It was clear that school personnel understood *Plyler* to remove legal status as an issue to be explicitly addressed in school settings. Many teachers told us they had never in their careers asked a student about his or her immigration status. School personnel uniformly considered it an aspect of their students' lives that was off-limits.

The power of *Plyler* was also brought home to us in school personnel's descriptions of the many ways that undocumented students have enriched schools and flourished as a result of their educational opportunities. These accounts vividly give life to *Plyler*'s declaration of education as a societal benefit that transcends status distinctions.

At the same time, the data highlight the limitations of *Plyler*'s reach. We elaborate on two limitations in particular in the following two subsections. We think these limitations have both pragmatic significance, in considering policies to improve *Plyler*'s present day implementation in public schools, and doctrinal significance, in evaluating the extent to which the Supreme Court's analysis in *Plyler* led to the results it envisioned. While it is beyond the scope of this article to propose elaborate policy reforms or undertake extensive doctrinal analysis, we note these applications of our findings in the hope of encouraging further research and discussion.

1. Undocumented students as targets for exclusion

While it has banned legal status as an explicit eligibility criteria in schools, *Plyler* clearly has not prevented its presence as an unspoken issue shaping the attitudes of school personnel in immigrant communities. The portion of school personnel who had negative views about the impact undocumented students have on their schools, while a minority, was still sobering. It was telling that their frustration was most com-

monly directed at undocumented students' language learning needs and impact on test scores.

We suggest that this limitation on *Plyler's* ability to shield undocumented students from discrimination in schools has its seeds in the decision's analysis itself. Obviously, the Court in 1982 could not have foreseen the No Child Left Behind Act (NCLB), passed by Congress in 2001, or Arizona's Proposition 203, which repealed bilingual education in the state, passed by voters in 2002. Yet, in some ways, this limitation on *Plyler's* reach seems inevitable, given the opinion's silence on the matter of language. Perhaps unsurprisingly, the case's history reflects that its origins were enmeshed with school districts' hostility towards Mexican and Mexican-American students' limited English language abilities.⁸⁸ In support of its argument that the tuition payment required of undocumented students was necessary, the State of Texas submitted records about the costs of bilingual education required by these children, which Judge Justice noted in the district court opinion.⁸⁹ Yet Judge Justice went on to note that there were many legally present students in the district who required such language assistance as well.⁹⁰ Then as now, language skills and legal status were conflated and intertwined. Language both fueled hostility towards immigrants, and provided a basis upon which to act on it. Yet the Supreme Court made no mention of language in its discussion of the Texas statute.

Professor Juan Perea has written an extensive account of the ways in which the Supreme Court's Equal Protection analysis has failed Latino school children by refusing to recognize language discrimination as a form of race discrimination.⁹¹ He argues that truly equal and effective education for Latinos requires the recognition of their cultural and linguistic particularity. He highlights state referenda that have repealed

88. For example, one journalist recently interviewed one of the parents involved in the original district court lawsuit in *Plyler*, who described that in enforcing the tuition requirement, officials in Tyler, Texas, targeted children who could not speak English. Katherine Leal Unmuth, *Tyler Case Opened Schools to Illegal Migrants*, DALLAS MORNING NEWS, June 11, 2007 at A1.

89. See *Doe v. Plyler*, 458 F. Supp. 569, 576 (E.D. Tex. 1978); see also Phillip J. Cooper, *Plyler at the Core: Understanding the Proposition 187 Challenge*, 17 CHICANO-LATINO L. REV. 64, 68 (1995).

90. 458 F. Supp. at 576 ("No convincing testimony was presented, however, that singled out undocumented children as particularly problematic. The characteristics of legally admitted, Mexican-born children, as a class, are very similar, if not identical, to those of undocumented Mexican-born children.").

91. Juan Perea, *Buscando América: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420 (2004).

bilingual education, such as Arizona's Proposition 203, as just the most recent iteration in a long history of "'no Spanish' rules and disparaging attitudes toward native Spanish speakers" in U.S. public schools.⁹² Perea argues that these forms of discrimination have gone unchecked by the Supreme Court because of the assimilationist bias in its Equal Protection analysis, which provides "no frame of reference for recognizing the language discrimination that has long afflicted Latinos."⁹³

Perea does not discuss *Plyler*, but our study suggests a corollary to his argument: just as language discrimination is a form of race discrimination, so, too, is it enmeshed with alienage discrimination. Efforts to address alienage discrimination without acknowledging its intertwined nature with language discrimination are destined to be limited. In our research, this limitation took the form of frustration and at times hostility towards undocumented students' limited proficiency in English.

*Lau v. Nichols*⁹⁴ marks the Supreme Court's most explicit effort to address language discrimination and immigrant students. In *Lau*, the Court held that San Francisco public schools violated Title VI of the Civil Rights Act of 1964 by failing to provide programs to assist ELLs in learning English. The Court did not reach the constitutional question of whether the school system had violated the students' rights under the Equal Protection Clause.⁹⁵ Professor Rachel Moran has described how *Lau* has "undergone a kind of ritual dismemberment in the courts" in the thirty years since the decision came down.⁹⁶ While it remains a powerful recognition of the harms of linguistic exclusion in schools, in practical effect it has not established a legal right to be free from language discrimination that immigrant students can enforce.⁹⁷

We leave it to Perea, Moran, and others to provide a more thorough discussion and critique of the anemic conception of language rights that characterizes the Supreme Court's Equal Protection jurisprudence.⁹⁸ Instead, we offer our findings to highlight how this gap in the Court's

92. *Id.* at 1444 (citing Thomas P. Carter, *Mexican Americans in School: A History of Educational Neglect* 97-98 (1970)).

93. See Perea, *supra* note 92, at 1468.

94. 414 U.S. 563 (1974).

95. *Id.* at 566.

96. Rachel Moran, *Undone by Law: The Uncertain Legacy of Lau v. Nichols*, 16 BERKELEY LA RAZA L.J. 1 (2005).

97. *Id.* at 10.

98. For further discussion of how language discrimination has been addressed by the Court, see Perea, *supra* note 92. See also Cristina Rodríguez, *Language and Participation*, 94 CAL. L. REV. 687 (2006); Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 896-900 (2002).

analysis of the discrimination at issue in *Plyler* plays out in the classrooms the Court aimed to reach. We believe any attempt to take stock of the Supreme Court's efforts to move public schools beyond status-based distinctions must grapple with the negativity and frustration expressed by school personnel towards immigrant students as a result of their language learning abilities.

The weakness of language-related anti-discrimination protection the Supreme Court affords immigrant students has significant policy implications. In the absence of court protection, non-English speaking students remain vulnerable to policies regarding language curriculum and testing that stir up discrimination in the school setting. Our research suggests that current federal and state policy developments, shaped by a strong emphasis on accountability standards and a marked shift away from bilingual education, have exacerbated the longstanding history of language discrimination in public schools that Perea describes.⁹⁹ As a result, these policies, which claim to be designed to improve the quality of education for ELLs, are instead furthering their isolation and exclusion.

At the federal level, both the overall structure of NCLB and its provisions specific to language proficiency encourage schools to view ELLs as an obstacle to their success. Accountability is the key mechanism through which NCLB aims to improve the quality of education in the nation's schools. All schools are required to report their students' scores on standardized tests at regular intervals, and include both aggregate scores for all students in the school and disaggregated scores for certain subgroups, one of which is ELLs.¹⁰⁰ The goal behind the disaggregation of subgroups is to make sure that no disadvantaged groups of children, whether they be racial minorities, ELLs, or migrant students, are "left behind."¹⁰¹

Instead, however, the NCLB's focus on test scores encourages school personnel to view certain categories of students as those that "bring scores down." Professor James Ryan has written about the ways in which NCLB's performance standards create perverse incentives, including the exclusion of low-performing students.¹⁰² He explains,

99. See Perea, *supra* note 92, at 1439-1446.

100. 20 U.S.C.A. § 6311(b)(3)(C)(xiii) (2007). The subgroups schools are statutorily required to report are gender, each major racial and ethnic group, English proficiency status, migrant status, students with disabilities, and economically disadvantaged students.

101. 20 U.S.C.A. § 6301 (2007).

102. James Ryan, *The Perverse Incentives of the No Child Left Behind Act*, 79 N.Y.U. L. REV. 932 (2004).

Students who perform poorly on state tests obviously hurt schools looking to make AYP [Adequate Yearly Progress, the measure of a school's performance on test scores under NCLB]. This is why schools, to the extent they can, will work to avoid enrolling those students who are at risk of failing the exams. The same pressure could lead schools to push low-performing students out, either to another school (if one can be found that will accept them) or out of the school system entirely. . . . Given the connection between performance on tests, socioeconomic status, and race, the students most likely to be targeted for exclusion will be poor and/or racial minorities.¹⁰³

Our research suggests that in the context of immigrant communities, the most probable targets for exclusion will be undocumented students, recent immigrant students, and even U.S. born ELLs. The frustration with immigrant students engendered by the test score reporting requirements came through in many of the comments we heard from surveyed teachers, such as one high school teacher's complaint that when students "do not understand English and fail the testing, the school and teachers are blamed." Furthermore, given the fact that the vast majority of school personnel said they did not know the legal status of their students, it is likely that such negative views would extend to recent immigrant students and ELLs in general, including but by no means limited to undocumented students.

NCLB's provisions intended to address the unique challenges faced by students who do not speak the language in which they are tested are ill-equipped to counter the pressure created by the accountability standards. NCLB permits schools to exclude ELLs from the reading/language arts test during their first year in the United States, but not from math tests.¹⁰⁴ However, few ELLs can learn enough English in one year to pass their state's reading test, and even math tests require language abilities that pose significant challenges for ELLs.¹⁰⁵ NCLB also allows states to "provide reasonable accommodations" for ELLs, including tests in their native language, until the students have reached a threshold level of English proficiency, presumed to be in three to five years.¹⁰⁶

103. *Id.* at 969.

104. 34 C.F.R. § 200.6(b)(4) (2007).

105. Wayne Wright, *A Catch-22 for Language Learners*, 64 EDUCATIONAL LEADERSHIP 22, 22-27 (Nov 2006).

106. 20 U.S.C. § 6311(b)(3)(C)(ix)(III)(2006).

However, there is no enforcement or monitoring mechanism in place to provide oversight for whether states decide to develop any modifications for ELLs, and if so, what constitutes a "reasonable accommodation."¹⁰⁷

NCLB's odd mix of rigid accountability standards and vague and ineffectual accommodation measures for ELLs leaves immigrant students subject to intense pressure to perform with little consideration for their ability to do so. The stress this places on immigrant students is compounded in Arizona by Proposition 203, which repealed all bilingual education in the state.¹⁰⁸ Among other provisions, Proposition 203 expressly *prohibits* any testing accommodations for ELL students. They are required to take the same tests as all other students, and their scores must be reported under NCLB.¹⁰⁹

Proposition 203's singular focus on English language acquisition and ban on bilingual education further underscores the message to public school personnel that immigrant students' native language abilities are to be viewed solely as a deficit. Proposition 203 and similar referenda that have passed in recent years in other states are the most recent and forceful expressions of a shift away from bilingual education that has been growing for decades.¹¹⁰ While NCLB does not explicitly condemn bilingual education, it places no check on these state referenda, and reaffirms their negative view of ELLs by linking their "deficit" with potentially punitive implications for schools.¹¹¹

107. At least 14 states have chosen to use modified tests for ELL students. See Erin Archerd, *Spanish- Language Test Accommodations: Recommended or Required by NCLB?*, 9 HARV. LATINO L. REV. 163, 166 (2006).

108. Proposition 203 is one of several state initiatives funded by a wealthy businessman, Ron Unz, that aim to replace bilingual education with required classes in English immersion. Arizona voters passed Proposition 203 in 2002. Similar initiatives passed in California in 1998 and Massachusetts in 2002. For a discussion of these initiatives, see William N. Myhill, *The State of Public Education and the Needs of English Language Learners in the Era of 'No Child Left Behind'*, 8 J. GENDER RACE & JUST. 393, 423-25 (2004); William Ryan, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C.L. REV. 487 (2002).

109. Ariz. Rev. S. §15-755 (codification of Proposition 203).

110. For an overview of this history, see Myhill, *supra* note 109; Barbara J. Brunner, *Bilingual Education Under the No Child Left Behind Act of 2001: ¿Se Quedará Atrás?*, 169 ED. LAW. REP. 505 (2002); Rachel Moran, *Bilingual Education as a Status Conflict*, 75 CAL. L. REV. 321 (1987).

111. While the NCLB does not take an explicit stance against bilingual education, it clearly marks a federal shift away from affirmative support for bilingual programs. Tellingly, Title III of the NCLB, otherwise known as the English Language Acquisition Act, replaced the federal Office of Bilingual Education and Minority Language Affairs with the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited-English-Proficient Students. See Myhill, *supra* note 109, at 426-31; see also Brunner, *supra* note 111, at 510-13.

A recent survey of elementary school teachers of ELLs in Arizona by Professors Wayne Wright and Daniel Choi further supports the conclusion that frustration about undocumented students' language learning abilities is exacerbated by the pressure created by federal and state standards.¹¹² Every teacher surveyed by Wright and Choi believed it is unfair to use the same standards and labels to compare schools with large numbers of ELLs with schools with low numbers of ELLs.¹¹³ Ninety eight percent of the teachers surveyed believed the state should use alternative assessments for ELLs until the students become fluent in English.¹¹⁴ Wright and Choi also report a high teacher-turnover rate at ELL-impacted elementary schools due in large part to frustration with testing and accountability policies.¹¹⁵

This overview of the policy landscape in Arizona demonstrates that the current mix of federal and state policies regarding ELLs creates a recipe for resentment towards immigrant students among school personnel. We tapped into this resentment in our surveys and focus groups, and believe that our findings provide powerful evidence of the need for policy reforms that do not perpetuate language-related exclusion and hierarchies in public school classrooms. Rigid accountability requirements and denial of accommodations to ELLs exacerbate status-based distinctions that run counter to the *Plyler* Court's goal of removing such distinctions from public school classrooms.¹¹⁶

112. Wayne E. Wright and Daniel Choi, *The Impact of Language and High-Stakes Testing Policies on Elementary School English Language Learners in Arizona*, 14 EDUCATION POLICY ANALYSIS ARCHIVES 1, No. 13 (May 2006).

113. *Id.* at 37.

114. *Id.* at 16.

115. *Id.* at 37.

116. We leave it to other papers to debate the merits of various types of testing accommodations and modifications for ELLs. Native language tests, linguistically simplified tests, bilingual word lists or glossaries, and extra time are all accommodations that have been offered in different states. There is significant difference of opinion among experts in the field as to the effectiveness of the various testing accommodations. See Mary Ann Zehr, *Scholars Seek Best Ways to Assess English-Learners*, 25 Education Week 10, No. 18 (January 11, 2006); Jamal Abedi and Patricia Gandara, *Performance of English Language Learners as a Subgroup in Large-Scale Assessment: Interaction of Research and Policy*, 25 EDUCATIONAL MEASUREMENT: ISSUES AND PRACTICES 36 (Winter 2006). There is also difference of opinion as to the desirability of excluding ELLs altogether as a separate category in accountability measures. See, e.g., Alex Duran, *Factors to Consider When Evaluation School Accountability Results*, 34 J.L. & EDUC. 73, 79, 81 (2005).

2. *The harms of forced invisibility*

We found *Plyler* limited in its ability to protect undocumented students from discrimination in the school setting in another, more fundamental way as well. Particularly during this highly contentious time for immigrants, with the increasing intensity of workplace raids, heightened border enforcement, and restrictions on public benefits, the reality is that legal status pervades nearly every aspect of immigrant students' lives once they leave school grounds, whether they themselves are undocumented or not. Inevitably, it bubbles to the surface in schools in a variety of ways.

We suggest that this limitation of *Plyler's* reach is also rooted in the Court's analysis in the decision itself. Professor Linda Bosniak has described the Court's analysis in *Plyler* as "shot through with tensions over the rightful status of undocumented aliens in the United States."¹¹⁷ She describes the Court's contradictory lines of reasoning. On the one hand, portions of the opinion emphasize the "innocent children" involved, who, as opposed to their culpable parents, had no role to play in their unlawful presence in this country. At the same time, other sections of the analysis suggest that all undocumented immigrants, adults and children alike, are entitled to protection given the government's role in encouraging their presence through lax enforcement of immigration and labor laws. Bosniak concludes that as a result of its "contending visions of undocumented aliens – as blameworthy lawbreakers and as hapless victims," *Plyler* has not provided a robust constitutional basis for building on the rights of the undocumented in spheres other than primary and secondary school public education.¹¹⁸

Our findings suggest that these analytical tensions in *Plyler* limit not only its extension but even its own implementation. In this regard, one teacher's reference to *Plyler* as a type of "don't ask don't tell" regime is telling. "Don't ask don't tell" was coined in the context of the military's policy regarding homosexuals' participation in the armed forces. It

117. Linda Bosniak, *THE CITIZEN AND THE ALIEN* 66 (2006).

118. *Id.* at 67. The Supreme Court itself has noted *Plyler's* limited reach. *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 459 (1988) ("We have not extended [*Plyler's*] holding beyond the 'unique circumstances' that provoked its 'unique confluence of theories and rationales'" (internal citations omitted; quoting from *Plyler's* concurrence and dissent, respectively). See also Raquel Aldana, *On Rights, Federal Citizenship, and the "Alien,"* 46 WASHBURN L.J. 263, 295 (2007) (noting that after more than two decades, "the *Plyler* legacy has been confined to its very facts; no case since *Plyler* has conferred upon the undocumented any other type of privilege or right.").

requires that, on the one hand, the military cannot explicitly ask applicants about their sexual orientation. On the other hand, members of the armed forces who overtly express homosexuality or bisexuality will be discharged. Professor Kenji Yoshino has critically analyzed the ways in which, through this law, the state “makes invisibility a prerequisite for gays who wish to enjoy the basic entitlements of a free society.”¹¹⁹

In fact, by its own terms, *Plyler* establishes a “don’t ask” regime only, in which school personnel are not to inquire into a students’ legal status. However, extra-legal social norms seem to have imposed the “don’t tell” corollary, suggesting that undocumented students may face the threat of losing rights and entitlements should they make their legal status explicit. As a result, many undocumented students do not experience school as a place where status distinctions are truly irrelevant. Through the school day, they carry with them awareness that they must keep their legal status “invisible” or risk serious repercussions. While schools themselves would not in fact punish or exclude students if they were to “come out” about their legal status, the students’ fears are not entirely irrational, given the vulnerability of their families to serious repercussions in so many realms outside school.¹²⁰

Just as in the context of sexual orientation, living under this regime has harmful effects on those who must preserve their invisibility. Yoshino discusses the moral harm of being forced to live a “compelled lie.” It inculcates a double sense of shame: both about one’s true unspoken identity and about one’s dishonesty.¹²¹ This came through poignantly in one elementary school teacher’s description, excerpted in the preceding section, of the little boy who told her he was from Mexico, then Tucson, and then shamefully admitted Mexico again.

The harm of the “don’t ask don’t tell” regime is not limited to its impact on undocumented students as individuals. When viewed in the context of the Supreme Court’s Equal Protection analysis in *Plyler*, “don’t ask don’t tell” appears a warped version of the decision that risks

119. Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell,”* 108 YALE L.J. 485, 542 (1998).

120. In fact, “don’t ask don’t tell” has been used to describe immigration status in other settings where it more directly parallels the military in requiring invisibility in exchange for certain societal benefits. See, e.g., Beth Lyon, *Farmworkers in Illinois: Law Reforms and Opportunities for the Legal Academy to Assist Some of the State’s Most Disadvantaged Workers*, 29 S. ILL. U. L.J. 263, 274 (2005) (“what America has is a “don’t ask, don’t tell” policy under which employers can accept false documents and do not have to ask their employees about their immigration status.”).

121. Yoshino, *supra* note 120, at 528-29.

undermining its core principles. As discussed in the introduction, the Supreme Court situated its holding in *Plyler* in the context of the “‘shadow population’ of illegal migrants – numbering in the millions – within our borders.”¹²² To the extent that the social and legal norms that create and maintain a shadow population seep into public schools, they stand in tension with the principles of equality upon which *Plyler* is premised.¹²³ “Don’t ask don’t tell” does harm not only to undocumented students, in forcing them to live a compelled lie, but also to the values that public education upholds in our society. In order for public schools to stand as public institutions truly separate from status distinctions, they must distance themselves as much as possible from pressure on sub-populations of their student body to live invisibly.

In many ways, the public schools we studied were succeeding in this regard. School personnel shared inspiring stories of the ways in which they treated all their students as individuals, each with the same potential for growth, learning, and productive contributions to the school and beyond. At the same time, however, school personnel shared wrenching stories of students and school personnel confronting the limits of *Plyler*’s vision once noncitizen students venture outside the school setting or beyond the secondary school years. Inevitably, these outside pressures hindered the schools’ ability to offer all students an equal sense of possibility and opportunity.

This limitation of *Plyler*’s reach lays bare the fundamental paradox of undocumented immigrants’ rights at the heart of the case. At this deeper level, the parallel to sexual orientation falters. Homosexuality is an aspect of personal identity that exists separate and apart from the state, whereas alienage is itself a state-created category.¹²⁴ As a result, while

122. 457 U.S. at 218.

123. For an argument that the Supreme Court’s Equal Protection analysis in *Plyler* is rooted exclusively in concerns about the creation of a caste-like system rather than in concerns about the individualized harm to undocumented students, see Owen M. Fiss, *The Immigrant as Pariah*, in *A COMMUNITY OF EQUALS: THE CONSTITUTIONAL PROTECTION OF NEW AMERICANS* (Joshua Cohen & Joel Rogers eds., 1999). Under Fiss’s analysis, the Constitutional concern with forced invisibility is structural rather than individual harm (see *id.* at 12: the Equal Protection Clause “prohibits creating socially and economically disadvantaged groups that are forced to live at the margin of society, isolated from the mainstream, always at risk, seen in their own eyes and those of the dominant group as inferior.”).

124. This is not to say that immigration status does not have strong ties to identity. It is of course tightly linked with racial, cultural, and linguistic identity. In addition, some scholars have argued that immigration status itself has important meaning for group and individual identities. See, e.g., Ruben J. Garcia, *Across the Borders: Immigrant Status and Identity in Law and Latcrit Theory*, 55 FLA. L. REV. 511, 525 (2003).

most proponents of gay rights would oppose state-sponsored discrimination on the basis of sexual orientation in any context, there is widespread agreement that the state has a legitimate basis for discriminating on the basis of alienage in certain contexts, most notably, at the border.¹²⁵ Bosniak has discussed at length the tension created by the state's well-established authority to discriminate on the basis of alienage in "defin[ing] membership in the national community," and the extent to which this authority extends to "the status of aliens in the various economic, social, and political domains of life" once they are living in the national community.¹²⁶ In fact, the *Plyler* Court framed its holding in the context of this tension, opening its discussion with the observation that the existence of a class of undocumented workers and their families, encouraged by a combination of lax or incomplete entry restrictions and inviting economic opportunities to live and work in our society, "presents most difficult problems for a Nation that prides itself on adherence to principles of equality under law."¹²⁷

Clearly, there was no way for the Court to resolve this fundamental tension in a single case. As Bosniak acknowledges in her analysis of *Plyler*, the contradictions and tensions in the decision's reasoning were strategically necessary to carry the majority opinion.¹²⁸ It seems likely that the Court's aim was to create public schools as a safe harbor of sorts in the midst of pervasive discrimination against the undocumented, much of which was already of established constitutionality. Viewed in this light, the decision stands as an isolated effort with remarkable effectiveness but inevitable constraints.

In light of the well-established authority of the state to discriminate on the basis of alienage in certain contexts, can schools move beyond the implicit threat of "don't ask don't tell?" On the local level, our data suggest that school policies relating to language curriculum may have an effect on this limitation of *Plyler* as well. As discussed in Part III, we found that the degree to which undocumented students and their families felt a sense of safety and trust on school grounds hinged at least in part

125. See Kevin R. Johnson, *Open Borders?*, 51 UCLA L. Rev. 193, 197-99 (2003) (summarizing the widespread acceptance among political theorists, immigration law scholars, and the public of the right of the government to regulate entry into the country at the border and calling this acceptance into question).

126. Bosniak, *supra* note 118, at 52 ("Briefly stated, the power to define membership in the national community begins at the nation's border, but where exactly does it end?").

127. *Plyler*, 457 U.S. at 219.

128. Bosniak, *supra* note 118, at 67.

on the extent to which the school embraced bilingual education. The two elementary schools we studied showed a notably increased level of trust between the school and community, which many school personnel attributed at least in part to the schools' distinctive dual language programs. Due to Proposition 203, such programs are a rarity in Arizona. To the extent these types of programs can be implemented, they will not only address students' curricular needs but also encourage a welcoming culture in the school that substantially eases the tension between immigrant students' fears off school grounds and their lives as students among equals in the public school classroom.

On a national level, one concrete policy measure that would begin to address this same tension is the Development, Relief, and Education for Alien Minors Act (the DREAM Act), currently pending in Congress.¹²⁹ This proposed statute would permit undocumented high school students who graduate from high school and pursue college education or serve in the military to apply for conditional and eventually permanent resident legal status.¹³⁰ Such a measure would go a long way towards fulfilling *Plyler's* vision of individual possibility for all students in public schools. It would free students of the secrecy and insecurity imposed by the current reality of their precarious status, instead allowing them to be honest about their identities and assert control over their future potential. While the DREAM Act is not a panacea for the fear and vulnerability inherent in undocumented legal status, it would significantly bolster the strength of the "safety zones" for undocumented students that *Plyler* created.

129. The most current versions of the DREAM Act are S.2205 in the Senate and H.R.1275 in the House.

130. Specifically, the DREAM Act would permit high school students who have been in this country for more than five years and establish good moral character to apply for conditional residency status upon graduation from high school. During the next six years, students who graduate from a 2-year college, complete at least 2 years towards a 4-year degree, or serve in the U.S. military for at least 2 years are eligible for permanent resident status. The Act has received broad and growing bipartisan support since it was first introduced in 2001. A concise overview of the DREAM Act's content and status is available on the National Immigration Law Center's website, <http://www.nilc.org/immlawpolicy/DREAM/index.htm>. Most recently, a bipartisan majority of the Senate was six votes shy of the 60 votes needed to permit debate on the DREAM Act to proceed. Julia Preston, *Bill for Immigrant Students Fails Test Vote in Senate*, THE NEW YORK TIMES, October 25, 2007, at A16.

B. The Future of *Plyler*: Understanding the Complex Costs and Benefits

In response to questions about the possibility of a reversal of *Plyler*, school personnel focused on far more than the supposed influx of resources to school districts that political campaigns for a reversal of *Plyler* have portrayed.¹³¹ School personnel articulated a wide range of reactions that demonstrated the complex ways a reversal would impact their schools and communities. The very diversity of views we encountered demonstrates that the reductionist cost benefit analysis that typifies the debate does not do justice to the complexity of schools, the personnel and students within them, and the communities of which they are a part. At the same time, along certain dimensions – particularly regarding the necessary separation between education and immigration enforcement – school personnel responded with the most uniformity of any of the other topics covered in our research questions.

1. The Affirmative Benefits of Inclusion

Much of the Court's reasoning in *Plyler* focused on the importance of providing undocumented students with access to education so that they have the opportunity to reach their full potential as individual members of society. We saw copious evidence of this outcome of the decision in the many descriptions of undocumented students' achievements and honors. Our findings provide substantial evidence of the ways in which public education has enabled undocumented students to be productive and engaged members of their schools and communities.

Perhaps even more striking, our findings document the many ways that the presence of undocumented students affirmatively enhances the quality of education in the schools they attend. This outcome of *Plyler* is seldom if ever raised in debates over its future. Yet school personnel made recurring references to the distinctive contributions of undocumented students: from their appreciation and respect for education, to their work ethic, to their strong sense of culture and rich life experiences. Importantly, the impact of these contributions is not limited to the

131. In fact, ironically, when resources were discussed, most school personnel expressed concern that their school budgets would be cut if *Plyler* were reversed, since some of their funding comes from federal support based on the number of ELLs served.

undocumented student body; it benefits students with legal status and school personnel as well.

2. The Far-Reaching Costs

Over three quarters (76%) of school personnel who had an opinion believed the law established in *Plyler* should not be changed. This is particularly noteworthy given that all the schools surveyed are in immigrant communities heavily populated by recent immigrants, and therefore see the effects of the law on a daily basis. The wide-ranging impacts about which they expressed concern stand in striking contrast to the typical portrayal of the issue, in which costs are simply shifted from undocumented students to other uses.

Furthermore, the majority of teachers reacted strongly and negatively to the prospect of playing any role in immigration enforcement, and many stated they would refuse to comply. These findings suggest that one significant cost of a reversal of *Plyler* would be its demoralizing and potentially devastating impact on the morale and motivation of school personnel. Several voiced concerns that such a change would create divisiveness among school personnel and resignations of faculty as well.

In addition, it was clear that a change in the law would send schools and communities into far-reaching upheaval. The responses described in the preceding section make clear that these communities do not split neatly between documented and undocumented families. Many respondents were concerned that excluding undocumented students would pull many students with legal status out of school as well, either because of peer pressure or a desire to protect undocumented family members. In addition, responses described a devastating impact on the school's relationship with the community, extending far beyond its relationship with undocumented students alone.

VI. CONCLUSION

This study has attempted to show, through empirical research on the actual impact of the Supreme Court's decision in *Plyler v. Doe* in six public schools, the ways in which the case is both a success story and a warning tale. *Plyler* crystallizes the tension between the power of the Supreme Court to protect unpopular and vulnerable sub-populations within U.S. society and its limited ability to do so in the midst of perva-

sive and complex forms of discrimination that are not easily contained in constitutional categories of analysis nor in any single case's ambit. On the one hand, the transformative impact the decision has had on countless individual lives is stunning. Its expression of the foundational importance of education for all members of U.S. society continues to animate public schools powerfully. Its benefits continue to flow beyond the individual undocumented students it protects to lawfully present students, immigrant communities, and public schools in general.

At the same time, undocumented children in public schools remain vulnerable to exclusion and harm. We have highlighted specific limits of *Plyler's* current reach that warrant further research and responsive policy measures to bring the implementation of the decision closer to the ideals of equality upon which the Court's decision turned. Ironically, while these limits are at odds with the Court's vision of equality in *Plyler*, they are also rooted in the Court's very analysis, which was shaped in subtle ways by deep-seated doctrinal constraints on constitutional protection for the undocumented. Two policy measures that we think particularly well-designed to address the limitations we identified are revisions to the testing and accountability measures for ELLs under the No Child Left Behind Act and Arizona law and passage of the DREAM Act.

In addition to taking stock of the case's present day accomplishments, we also undertook this study to present a more complex accounting of what is at stake in *Plyler's* future than usually characterizes the public debate over its costs and benefits. In light of the harsh and politicized climate for immigrants and particularly undocumented families in the United States at present, the costs of *Plyler* can be easily misconstrued by opponents of the decision. As a result, the crucial role *Plyler* plays in public schools in immigrant communities is likely to be insufficiently appreciated by the public at large. It is our hope that the insights we gained from these six schools' experiences with *Plyler* are one means of making visible that the Court's conclusion twenty five years ago remains as true today: "Whatever savings might be achieved by denying these children an education, they are wholly insubstantial in light of the costs involved to these children, the State, and the Nation."¹³²

132. *Plyler*, 457 U.S. at 230.

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Appendix A: Excerpts of Survey Responses

SURVEY QUESTION: Please provide specific examples of how permitting undocumented students to attend your school has enhanced or detracted from the quality of education in your school.

Comments regarding students' enhancing effects:

- | | |
|-------------------------------|--|
| Teacher HS1
HS1 | “The majority are hard workers who try a little harder to take advantage of public education . . .” |
| Technician,
HS1 | “They are inspiration to the other students . . .” |
| Teacher, HS1 | “They are excited about being here and want to take advantage of continuing their education.” |
| Instructional
coach, ES1 | “These students are very motivated to learn and take their education very seriously.” |
| Principal,
HS2 | “The obvious and su[b]tle cultural difference[s] bring richness to our school.” |
| Teacher, ES1 | “They are usually my hardest workers.” |
| Teacher, ES1 | “They try very hard to do their best because they know how lucky they are.” |
| Teacher, HS2 | They “provide an awareness of the r[i]ghts and responsibilities that those who are native born take for granted.” |
| Teacher, HS1 | They are “a group of students who is proud of their race and its language.” |
| School nurse,
ES1 | “The other children and staff are exposed to the many challenges faced by those who are non-documented. This increases compassion and helps them see the perspective of others.” |
| Teacher, HS2 | They are frequently “highly motivated people with a very positive attitude towards school activities.” |
| Prevention
specialist, HS2 | “Undocumented students have enhanced our school by strengthening pride in the culture most of our students share.” |

Comments regarding students' detracting effects:

- Teacher, HS2 "Allowing undocumented aliens requires more work to teach them rudimentary English, this, in turn, has made it difficult for the school to meet it's [sic] Federal requirements on the 'No Child Left Behind' law."
- Teacher, HS2 "In terms of quality i.e. AIMS scores, yes they have detracted."
- Teacher, HS2 "The school is given poor mark[s] due [to] the undocumented student achievements."
- Teacher, ES2 "... it is extrem[e]ly difficult for schools with high numbers of ELL students to meet or exceed on AIMS or to show adequate progress."
- School nurse,
ES2 "Negative effect on AIMS testing."
- Teacher, ES2 "Test scores reflect many of the problems."
- Teacher, HS1 "[L]ower test scores. Not teaching to higher order thinkers due to language barrier."
- Teacher, HS2 They affect "our drop out rate, our failure rate and our AIMS scores."
- Teacher, HS1 "when it comes to state testing, these kids struggle and bring down our overall results."
- Teacher, HS2 "Lower AIMS scores. Not making progress for NCLB."
- Teacher, HS2 "A[IM]s testing, if they do not understand English and fail the testing, the school and teachers are blamed."
- Teacher/
Librarian,
MS2 "These students tend to perform lower on the AIMS test, which they are now required to take. Along with our special education population, these students have tested out the lowest in our building, and are not making AYP [Adequate Yearly Progress, the measure of a school's performance on test scores under NCLB]."
- Teacher, ES2 "As much as I appreciate all of our students, with the emphasis on test scores these students have a negative impact on the image of our schools."

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SURVEY QUESTION: Would you support the passage of a new law that required you to enforce the requirement that all students report their legal status prior to enrollment?

- Teacher, HS1 "This is extremely unfair and I would want nothing to do with it."
- Assistant social worker, HS2 "I find it very difficult to tell a child no when they have no control of certain situations, especially something like this."
- Teacher, ES1 "I'm not sure I would be able to. I'd rather quit my job and get a different type of job that wouldn't put me in that situation."
- Instructional coach, ES1 "If the law passes, I feel I must obey the law, but certainly I would not agree with it. It's like the [proposition] prohibiting bilingual education. We have to obey, but we don't agree with it."
- Teacher, ES1 "Teachers are supposed to teach."
- Teacher, ES2 "Teachers are not the police."
- Teacher, HS2 "If I had to turn my students in I would refuse. If I had to I would quit I would not do this."
- Teacher, ES2 "It is not my job to report a student's legal status."
- Teacher, ES2 "I refuse to deny children that right [to be educated] by tur[n]ing in them or their families."
- Teacher, ES2 "Teachers have enough to do without having to be a 'border patrol' agent as well."
- Principal, HS2 "I would not want public schools to become an arm of the Immigration Department."
- Teacher, ES2 "I am a teacher, not a Border Patrol Agent. Many times a teacher is the only one a student feels they can trust. We cannot afford to lose that trust."
- Program coordinator, HS2 "I am a teacher, not the INS."
- Teacher, HS2 "If such a law passed, I would openly defy that law, even if it meant losing my job."
- Teacher, HS1 "I do not think the schools should be responsible for this. Let the government find another way to get undocumented people."
- Teacher, HS2 "I am [a] Professional educator. I am not an immigration officer."
- School nurse, ES1 "It is none of our business whether someone has immigration documents. I would never support reporting anyone and in fact would actively work to boycott this type of law."

Teacher, HS1 “There is NO WAY that I will ever be involved in this activity. If ordered to do so, I would refuse. If I were dismissed for said refusal, I would file a grievance with the NEA. If my grievance were not upheld, I would sell my house and move to a more civilized community.”

Language coordinator, HS1 “Educators will resist becoming law enforcers, whether or not they approve of the law.”

SURVEY QUESTION: If undocumented students were prohibited from attending public schools, what type of impact would it have on various aspects of your school, including the educational experience of the remaining students, parental involvement, the relationship between your school and the community, resources available, and overall impact?

Teacher, HS1 “Many students, parents, faculty, and staff would have very angry feelings towards a law such as this.”

Prevention specialist, HS2 “[T]his would lead to a decrease in family unity.”

Teacher, HS2 It could result in “alternative means of survival through illegal or harmful activities.”

Principal, MS1 “An elitist school that does not allow all students would not be well received in the community.”

Teacher, ES1 “The passage of such a law would turn communities and schools into dangerous situation[s]. This would divide schools and neighborhoods.”

Teacher, ES1 “there would be a lot more fighting problems right after school . . . there would be a lot more gang problems in our area.”

Teacher, HS1 “Because of the demographic at my school, such a law would seriously inflame the remaining students, to the extent that I would be very concerned about potentially violent protests — even rioting. Many of the students who would be “kicked out” as the result of such a law would leave numerous friends — and even relatives — behind at this school, along with a large number of students who would perceive such a law as an affront to their ethnicity (frankly, I would be inclined to see it this way, myself).”

Teacher, ES1 “I believe it would increase violence due to the little hope they’d have for improving their live[s]. Illegal activity would most likely increase because their choice of survival would be limited.”

Appendix B: Survey

School Personnel Views on the Education of Undocumented Immigrant Students

Remember you can also access the survey on-line at www.ed.arizona.edu/plyler/ (survey site is currently closed)

Please read the information below, and then turn to the next page to begin the survey.

You have been invited to voluntarily participate in a research study on the education of undocumented students in public schools. You can read more about the study on the website above. You have been invited to participate in this study because you are a teacher, principal, guidance counselor, or other school personnel in one of the schools participating in this study.

If you agree to participate, the survey should take approximately 20 minutes to complete, although you are more than welcome to spend more time on it if you wish.

You may choose not to answer some or all of the questions on the survey. All of your responses will be kept strictly confidential. Your participation is purely voluntary and you may withdraw from the study at any time. There are no known risks from your participation and no direct benefit from your participation is expected. There is no cost to you except for your time.

Only the researchers will have access to your name and the information that you provide. In order to maintain your confidentiality, your name will not be revealed in any reports that result from this project; pseudonyms will be used in referring to you and any other names (of students, parents, etc.) referenced in your answers. All your responses will be transmitted through a secure server that only the researchers have the password to access. Hard copies of your responses will be maintained in a locked cabinet in a secure place.

At the end of the survey, you can decide whether you would like to consider participating in a focus group, in which you will have the opportunity to discuss your survey responses in more detail. If you express interest in a focus



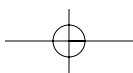
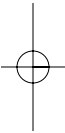
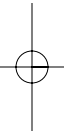
group, the researchers will contact you with further information and you can decide whether you wish to participate in a focus group session.

The researchers are available to answer any questions you have. You can contact Nina Rabin, the Principal Investigator, at rabin@email.arizona.edu or (520) 621-7331. If you have questions concerning your rights as a research subject, you may call the University of Arizona Human Subjects Protection Program office at (520) 626-6721.

By participating in this survey, you are giving the investigator permission to use your information for research purposes.

Thank you.

TO TAKE THE SURVEY, TURN THE PAGE.



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SURVEY: School Personnel Views on the Education of Undocumented Students

Thank you for agreeing to participate in this important survey. It consists of 44 questions and should take approximately 20 minutes to complete. If you need additional room for your responses, please feel free to attach additional pages or write on the back side of the page, clearly marking the question to which you are responding.

I. Demographic Information

Please answer these brief questions before proceeding to the content of the survey. Remember, all survey responses will be kept strictly confidential.

1. Name (optional):**2. School:****3. Occupation**

- Principal
- Teacher
- Guidance Counselor
- Parent Liaison
- Prevention Specialist
- Other (please specify):

4. Ethnicity (optional)

- African American
- Asian/Pacific Islander
- Caucasian
- Hispanic/Latino(a)
- Native American/Alaska Native
- Bi/Multiracial
- Other (please specify):

5. Years of experience working in schools

- 0-1
- 1-5
- 5-10
- more than 10
- Other (please specify):

II. Costs and Benefits of Educating Undocumented Students

When we use the words “undocumented students,” we mean students who do not have legal status to be in the United States. Please note that students who have parents without legal status but who were born in this country are *not* undocumented students; they are U.S. citizens.

Currently, all students, regardless of whether they are undocumented or documented, have a right to attend public schools in the U.S. free of charge. The questions in this section ask for your opinion on the costs and benefits of providing free public education to undocumented students.

6. To the best of your knowledge, are some of the students who attend your school undocumented?

- Yes, I know or believe that some of the students in my school are undocumented.
- No, I know or believe that none of the students in my school are undocumented.
- Not sure/No opinion.

7. If you answered yes to Question 6, do you believe that allowing undocumented students to attend your school has had an effect on the quality of education in your school? (Examples of possible effects include but are not limited to enhanced parental involvement, enriched classroom perspectives, over-crowding of classrooms, and diminished financial resources.)

- Yes, allowing undocumented students to attend public school has had an effect on my school.
- No, allowing undocumented students to attend public school has not had an effect on my school.
- Not sure/No opinion

8. If you answered yes to Question 7, do you believe that, on balance, allowing undocumented students to attend your school has enhanced or detracted from the quality of education in your school?

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- believe allowing undocumented students to attend my school has enhanced the quality of education at my school.
- believe allowing undocumented students to attend my school has detracted from the quality of education at my school.
- Other (please specify):

9. Please provide specific examples of how permitting undocumented students to attend your school has enhanced or detracted from the quality of education in your school.

10. Do you know of undocumented students in your school who have made productive contributions to the school, community, state, and/or country as a result of their public education? (Examples of productive contributions include leadership in school clubs or community groups, awards or prizes for academic or athletic performance, etc.)

- Yes
- No
- Not sure/No opinion.

11. If you answered yes to Question 10, please provide any specific examples you have of productive contributions made by undocumented students as a result of their public education.

[NOTE: You do not need to provide names of the students. If you do use names, we will keep them strictly confidential.]

III. Costs and Benefits of Excluding Undocumented Students from Public Education

For the questions in this section, please imagine that a new law is passed that prohibits all undocumented students from attending public schools.

12. Would you support the passage of a new law that prohibits undocumented students from attending public school?

- Yes
- No
- Not sure/No opinion.

13. If undocumented students were prohibited from attending public schools, what type of impact would it have on the following aspects of your school? (check the box that applies)

	Very positive	Positive impact	No impact	Negative impact	Very negative	Not sure/ No opinion
Educational experience of students in your school	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parental involvement in your school	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Relationship between your school and the community	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resources available to your school (negative = less resources available; positive = more resources available)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Overall impact on your	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

14. Please share any comments you have on your responses to question 13.

15. If you have worked with students who have dropped out of school temporarily or permanently, based on your experience, please provide specific examples of the risks undocumented students would face if they were excluded from public education.

IV. Costs and Benefits of Requiring Documentation of All Students

For the questions in this section, please imagine that a new law is passed that requires all students to report their legal status prior to enrollment in public school. NOTE: The hypothetical law does not prohibit undocumented students from attending school but requires them to report their legal status.

16. If all students were required to report their legal status prior to enrollment in public school, the overall impact on your school would be (circle one)

Very positive — Positive — No impact — Negative — Very Negative — Not sure/No Opinion

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17. If all students were required to report their legal status prior to enrollment in public school, the requirement would likely cause a decline in the enrollment of (check all that apply)

- Undocumented students
- Documented students with undocumented parent(s)
- Documented students with undocumented sibling(s)
- No decline in enrollment would result
- Not sure/No opinion
- Other (please specify):

18. Comments on your answer to Question 17.

19. If you were required to enforce the reporting requirement by verifying that your students accurately reported their legal status, the impact on your professional morale would be

Very positive — Positive — No impact — Negative — Very Negative — Not sure/No Opinion

20. If you were required to report on students you believed did not have legal status, would you

- Report all cases
- Reluctantly report only unambiguous cases
- Avoid reporting any cases
- Not sure/No opinion
- Other (please specify):

21. Would you support the passage of a new law that required all students to report their legal status prior to enrollment?

- Yes
- No
- Not sure/No opinion

22. Would you support the passage of a new law that required you to enforce the requirement that all students accurately report their legal status to school officials?

- Yes
- No
- Not sure/No opinion

23. Comments on your answer to Question 20-22.

24. Does your school provide access to social services other than education to students? (Examples of other social services include health and dental care, mental health services, and substance abuse and crisis counseling).

- Yes
- No
- Not sure/No opinion.

25. If you answered yes to question 24, please describe any additional social services to which your school provides access.

V. Estimating the Legal Status and Migration Patterns of Students in Your School

For the questions in this section, we are interested in any knowledge you have gained about the legal status of your students, whether it be from written records or informally obtained information. Please do not hesitate to leave answers blank rather than make estimates that are based solely on guesswork.

26. Do you have a basis upon which to estimate the proportion of students with whom you work who are undocumented?

- Yes
- No
- Not sure/No opinion

27. If you answered yes to question 26, please describe the basis of your estimate:

28. If you answered yes to question 26, please select the approximate percentage of students in your classroom and/or school that you have reason to believe are undocumented.

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The approximate percentage of students in my classroom who are undocumented is (check the box that applies):

- Less than 1%
- 1-10%
- 10-25%
- 25-50%
- More than 50%

The approximate percentage of students in my school who are undocumented is

- Less than 1%
- 1-10%
- 10-25%
- 25-50%
- More than 50%

29. Comments on your answer to question 28.

30. Do you have a basis upon which to estimate the proportion of students in your classroom or school who have a parent or sibling who is undocumented?

- Yes
- No
- Not sure/No opinion

31. If you answered yes to question 30, please describe the basis of your estimate:

32. If you answered yes to question 30, please write the percentage of students in your classroom and/or school that you have reason to believe have a parent or sibling who is undocumented:

The approximate percentage of students in my classroom who have a parent or sibling who is undocumented is:

- Less than 1%
- 1-10%
- 10-25%
- 25-50%
- More than 50%

The approximate percentage of students in my school who have a parent or sibling who is undocumented is:

- Less than 1%
- 1-10%
- 10-25%
- 25-50%
- More than 50%

33. Comments on your answer to question 32.

34. Do you think English language learning needs in your school would be significantly altered if undocumented children were not permitted to attend public school?

- Yes
- No
- Not sure/No opinion

35. Please describe the basis for your view.

36. In your experience, how frequently do Mexican immigrant students return to Mexico *permanently* after a period of enrollment in your school? NOTE: this does not include temporary trips to Mexico for vacations, family events, etc.

- Very frequently
- Frequently
- Infrequently
- Never

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- Not sure/No opinion
- Other (please specify):

37. Please describe the basis for your view.

38. If your school is growing in size each year, do you think the expansion is predominantly due to the addition of students with or without legal status?

- School growth is predominantly due to additional students with legal status
- School growth is predominantly due to additional undocumented students
- My school is not growing
- Not sure/No opinion

39. Please describe the basis for your view.

40. Do you know of students who reside in Mexico and cross the border regularly to come to school?

- Yes, I know of students who cross the border regularly to come to school.
- No, I do not know of students who cross the border regularly to come to school.
- Not sure/No opinion

41. If you answered yes to question 40, please select the regularity with which the students are crossing the border to come to school:

- Daily
- Weekly
- Monthly
- Not sure/No opinion
- Other (please specify):

42. If you answered yes to question 40, can you estimate the percentage of the students who cross the border regularly who are undocumented?

- Yes
- No
- Not sure/No opinion

43. If yes, please provide your estimate of the percentage of students who cross the border regularly to attend school who are undocumented

The percentage of students who cross the border regularly who are undocumented is:

44. Please describe the basis for your view.

VI. Conclusion

Thank you for your participation! We sincerely appreciate your time and value your thoughts.

Appendix C: Focus Group Protocol

I. Introductory Comments

Before we begin our discussion, we would again like to thank you for your time and for your willingness to help us gain a deeper understanding of the issues affecting schools in the border area. It would be helpful to begin by getting acquainted with everyone. Let's begin with some introductory comments about ourselves. I'm.....

Could you tell us your name, school affiliation, position, and how many years you have been working in schools?

Today we're going to discuss an issue that affects many schools in Tucson and Southern Arizona. Before we get into our discussion, we'd like to make a few requests. First, you may have noticed that we are videotaping the session so that we can refer back to the discussion when we write our analysis. We want to make sure that you are all comfortable with this, and we again want to ensure confidentiality. Your names will never be used.

We would also like to ask that we have just one person speak at a time. We will make sure that everyone has a chance to speak. Please say exactly what you think. Don't worry about what we might think. We're here to exchange opinions and to try to engage in a meaningful conversation about an important issue.

II. Discussion questions

How, if at all, does the issue of legal status arise for you in your school?

Let's talk about the relationship between English language learning in your schools and legal status. Do you think a students' legal status says very much about their language abilities?

Imagine that a law were passed that prohibited undocumented immigrant children from attending public school. How do you think this would affect the U.S. citizen students who remained in school? How would it affect the relationship between your school and the community?

Imagine that a law were passed that required all students to report their legal status prior to enrollment in public school. As school personnel, you were required to report any instances of students who had not accurately reported their legal status. What impact would this have on your professional morale? On your school community?

Do you think legal status has had an impact on parental involvement in your school?

Have you had any specific experiences with undocumented students or families that illustrate the benefits they bring to the community and/or the complications that would arise if they were excluded from the public schools system? [if you don't know which of your students or their families are undocumented, don't try to answer this question]

In your opinion, how aware are the students – documented and undocumented – of the issue of legal status? How, if at all, do issues of citizenship affect them in the school setting?