It didn’t seem like a golden age at the time for me, for my clients, and for the undocumented community, but it surely was. In fact, 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. Today, it is clear that the polity is more concerned with localized conditions than with extending immigrant rights, and in many respects, it likely would be harder for alien children to prevail. As one indicator, National Conference of State Legislatures (NCSL) immigration legislation data have noted that from January through July, 2006, over 500 immigration-related bills were introduced in state legislatures, and that 79 had been enacted, in 33 states. These run the gamut, from enacting two pro-immigrant state programs for college tuition (one of which, in Nebraska, even extends to the undocumented) to a number of blatantly restrictionist statutes, including one in Georgia that covers the waterfront: work authorization, human trafficking, enforcement provisions, regulation of immigration assistance services, penalties and deductions for business expenses and tax withholding, and overall benefit eligibility. The Georgia state statute even exceeds California’s restrictionist 1994 Proposition 187, virtually all of which was struck down in court. These state statutes are mirrored by an increasing array of city, county, and regional laws and regulations also reaching immigration regulation, while a variety of long-existing (or dormant) codes are being dusted off, redeployed, and applied to aliens. Maricopa County, Arizona has attempted to characterize alien entry into the country as a conspiracy to smuggle oneself, giving rise to enhanced criminal penalties. This extraordinary rise in
such legislative interests is undoubtedly due to overburdened locales, well-publicized and
highly polarized federal attention to immigration, a sharp rise in conservative media
regularly flogging the issue, and a decline in President Bush’s popularity, all of which
have led to a leadership vacuum in the field. Concerns about national security and
terrorism in the world also contribute to this phenomenon, turning many discussions
about immigration reform into referenda upon border security and failed interdiction. It
has been over two decades since the last national legalization reform of immigration,
1986’s Immigration Reform and Control Act, signed into law by President Reagan. In
some ways, it is a “perfect storm” of anti-alien factors. It is my thesis that state, county,
and local ordinances aimed at regulating general immigration functions are
unconstitutional as a function of exclusive federal preemptory powers. If purely state,
county, or local interests are governed and if federal preemptory powers are not triggered,
such ordinances may be properly enacted, provided they are not subterfuges for
replacing or substituting federal authority; purely state benefits, as one example, can be
extended or withheld to undocumented college students, as tuition benefits and state
residency determinations are properly designated as state classifications, which reference
but do not determine immigration status. And the federal government has enacted
statutes and promulgated regulations that subcontract or designate state or – sub-federal
immigration enforcement; many examples include assorted Memoranda of Understanding
(MOU’s) that calibrate and regulate a proper role for effectuating federal obligations.
But a number of Supreme Court decisions and common law do not reserve a substantive
role in immigration enforcement absent such delegation and carefully–controlled,
designated purposes.
In this article, I examine one settled area in detail, noting how 1982’s *Plyler v. Doe* has morphed beyond its original K-12 public school tuition moorings. This attestation to an important feature of immigrant life and the U.S. polity demonstrates that even 25 years of immigrant children’s rights have not been fully resolved and have required additional litigation and additional vigilance to secure the Supreme Court’s rulings. I believe this thesis can be advanced by thick descriptions of a case where more of an equilibrium has been reached, the case of undocumented school children, where the record reveals substantial and longstanding accommodation to the 1982 development of *Plyler v. Doe*. However, even this settled case has been contested regularly in school board meetings and classroom buildings, and as this record will show, *Plyler* implementation issues have continued, sometimes necessitating additional litigation.

Thus, the vigilance to secure these rights has stretched more than thirty years, since Texas enacted the state law in 1975 that enabled its public school districts to charge tuition to parents of undocumented school children. Although the underlying legislative history is unclear, and although no public hearings were ever held on the provision, certain border Texas school superintendents had urged the legislation which was enacted without controversy as a small piece of larger, routine education statutes.\textsuperscript{11} In 1982, the Mexican American Legal Defense and Educational Fund (MALDEF) attorneys prevailed in the U.S. Supreme Court, in a 5-4 opinion authored by Justice William Brennan.\textsuperscript{12}

Justice Brennan struck down the Texas statute, finding that the state’s theory to be “nothing more than an assertion that illegal entry, without more, prevents a person from becoming a resident for purposes of enrolling his children in the public schools.”\textsuperscript{13} This holding has since driven restrictionist policy behavior and litigation, particularly in
the auxiliary area of college tuition residency. Almost immediately after Plyler, a
corollary issue was litigated, involving a U.S. citizen child of undocumented Mexican
parents, who had left the child in the care of his adult sister in a Texas town. This time,
the Court determined that his domicile was not in Texas, a precept of traditional family
law, which holds that the domicile of unemancipated children is that of their parents; in
this instance, he was not a legal charge of his sister, hence could not be considered a
“resident” of the Texas school district.14 (This is a legal infirmity that could be remedied
by several means.) Martinez v. Bynum did not limit the earlier Plyler, and no other K-12
residency - related immigration case has been decided by the U.S. Supreme Court since
1983. A postsecondary residency case involving non-immigrant visa holders was decided
in 1982 for the alien college students on preemption grounds (Toll v. Moreno), but Plyler
has remained in force, undisturbed since 1982.15

This is not to say that it has not been attacked, at a variety of levels, in the twenty
five years since it was decided. On the more quotidian level, MALDEF and other lawyers
have had to file several dozen actions since the early 1980’s to enforce Plyler’s clear
holding, including school board actions to require Social Security numbers, school
requests for driver’s licenses to identify parents, additional “registration” of immigrant
children, “safety notification” for immigrant parents, separate schools for immigrant
children, and other policies and practices designed to identify immigration status or
single out undocumented children. This article examines the range of these Plyler
implementation issues, analyzing direct and indirect challenges that have arisen in the
intervening quarter century, both in legislative reactions and in the many school-based
policies that have eroded the blanket enrollment permission accorded the children by the
original case. Some of these policies affect children, Latino children disproportionately, but several of them have continued to single out children on immigration grounds and thus directly undermine their enrollment status. At the end of the day, it is difficult to ignore the petty nature and widespread harassment of the children, who, it must be remembered, have committed no crime of their own, and who are innocent victims of behavior that might have been committed by their parents. This original sin concept may have theological roots, but it is difficult to square with Plyler’s clear holding. Justice Brennan’s majority opinion accurately characterized this situation as one “imposing special disabilities upon groups disfavored by virtue of circumstances beyond their control [and which] suggests the kind of ‘class or caste’ treatment that the Fourteenth Amendment was designed to abolish.”16

In the first part of this article, I examine the direct challenges to Plyler, both those that have been legislative efforts, including those that appeared to have settled the matter in the mid-1990’s in California and more current ones that have arisen, state ballot issues that were enacted to address issues of illegal immigration in 2006.17 Direct challenges to undocumented students have also included “helicopter children,” those whose parents sent them to study in the United States without parental residence; a subset of this complex issue is parents who have legally entered the country but whose behavior has resulted in their being out of status, rendering even citizen children removable; campus chase and policing policies; and non-legislative, school-based initiatives such as the use of Social Security numbers and identification measures. The original case has proven quite resilient, fending off litigation and federal and state legislative efforts to overturn it, and nurturing efforts to extend its reach to college attenders who were allowed to stay in
school by the original case. It has had to be reinforced by vigilant efforts, but it has proven more hardy than it appeared twenty five years ago. This article also examines cases and school district or state actions that indirectly implicate *Plyler*, and analyzes the various means by which restrictionist policies have attempted to extirpate the practice allowed by *Plyler* and to overturn its holding. Indirect measures include a variety of language issues, including bilingual education and English as a Second Language (ESL); building, siting, and attendance zone concerns; undocumented students who become at risk when their achievements bring them into the spotlight or when they win national awards for academic prowess; the mean-spirited assault on programs that provide resources to undocumented children; separate immigrant schools and programs that concentrate the children in a special, circumscribed environment; college preparation issues; and even miscellaneous issues having to do with drivers licenses and school transportation. There is a long list of such topics that disproportionately affect these children, who are marginalized even within the difficult world of public and private schooling in the modern United States.

A. Direct Challenges to Plyler:

I. Legislative

1). Proposition 187

   In November, 1994, by nearly 60%, California’s voters passed a popular state referendum, Proposition 187, which would have denied virtually all state-funded benefits (including public education) to undocumented Californians. Immigration scholars Kevin Johnson and Ruben Garcia have carefully catalogued the many public comments
that constituted the discourse over the passage of the Proposition, and while reasonable people were on both sides of the issue, many unreasonable remarks and racist commentary coarsened the exchange. Professor Johnson perceptively noted, “Proposition 187 is the product of a deeply complex, perhaps unique, set of political forces in the United States. As the solid support for the measure amply demonstrates, its backing did not split along classic liberal-conservative lines. The limited political power of noncitizens made it easier for one powerful politician [Gov. Pete Wilson] to use Proposition 187 and anti-immigrant/anti-immigration sentiment to build a bipartisan coalition, ensuring his re-election and the initiative’s passage...Curiously enough, a much-debated aspect of the passage of Proposition 187—that it is nativistic and racist—in all probability will never be decided.” Professor Garcia has noted, after reviewing these strains in the US immigration history, culminating in Proposition 187, “immigration law and policy continue to be partially motivated by a drive for cultural and racial homogeneity.” The reappearance of state and local ordinances calls Professor Johnson’s “uniqueness” note into question, but he is surely correct when he notes the “deeply complex” nature of the issue, and he was writing years before the issue of terrorism and attack upon the US and its allies raised this dimension as a wellspring of immigration policy.

Proposition 187 was clearly intended by its sponsors to rescind *Plyler*, restrict access to public benefits, and expel aliens from the State. The preamble in Section One, for example, indicated, “[Californian citizens] have suffered and are suffering economic hardship … personal injury and damage caused by the criminal conduct of illegal aliens in this state. [By enacting this legislation, Californians intend to] establish a system of
required notification by and between such agencies to prevent illegal aliens in the United States from receiving benefits or public services in the State of California.\footnote{21} The Proposition would have required law enforcement officials to ascertain the legal status of every person “suspected of being present in the United States” without proper immigration authorization and to notify federal and state authorities of their suspicions.\footnote{22} It would have extended the same affirmative notification obligation to state social service and healthcare workers if that agency “determines or reasonably suspects” that the client were out of proper status.\footnote{23} While the details of these requirements were not fleshed out at the early stages, the overall scheme, if implemented, clearly would have placed certain obligations upon various state, county, and local public officials and administrators to effectuate apprehension or notification requirements. In a complex but authoritative opinion, the trial judge enjoined implementation and enforcement of sections 4, 5, 6, 7, and 9 of Proposition 187, and then subsequently struck down virtually all of the provisions, citing either preemption for the social service benefits or Plyler for the educational provisions.\footnote{24} During the pendency of these actions, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,\footnote{25} after which the judge held that the provisions of PRWORA preempted any remaining provisions of the California Proposition, as Congress had clearly “occupied the field,” squeezing out any such role for states to act.\footnote{26}

 Had these Proposition provisions been able to stand, they would have even gone further than had the original Texas statute, which had allowed, but not required, school districts to charge tuition, but had not banned students from attending Texas public schools. Proposition 187 would have enacted an absolute ban, and would not have even
allowed school districts to charge tuition for enrolling undocumented children. In addition, it would have required school authorities to report undocumented parents or guardians: “Each school district shall provide information to the State Superintendent of Public Instruction, the Attorney General of California, and [federal immigration authorities] regarding any enrollee or pupil, or parent or guardian, [of children] attending a public elementary or secondary school… determined or reasonably suspected to be in violation of federal immigration laws within forty-five days after becoming aware of an apparent violation.”27 The language even would have arguably required authorities to report undocumented (or apparently-undocumented) parents or guardians of enrolled citizen children. Careful scholars who examined these provisions also raised a number of other problems with them, including the state’s constitutional right-to-education features, national origin and race discrimination, and the obvious preemption issues.28

In 1997, the federal court hearing this dispute put an end to virtually all the remaining provisions of Proposition 187, its implementing regulations, and the interaction between the federal PRWORA and the state statute, when the trial judge concluded: “After the Court's November 20, 1995 Opinion, Congress enacted the PRA [PRWORA], a comprehensive statutory scheme regulating alien eligibility for public benefits. The PRA states that it is the immigration policy of the United States to restrict alien access to substantially all public benefits. Further, the PRA ousts state power to legislate in the area of public benefits for aliens. When President Clinton signed the PRA, he effectively ended any further debate about what the states could do in this field. As the Court pointed out in its prior Opinion, California is powerless to enact its own legislative scheme to regulate immigration. It is likewise powerless to enact its own legislative
scheme to regulate alien access to public benefits. It can do what the PRA permits, and nothing more. Federal power in these areas was always exclusive and the PRA only serves to reinforce the Court's prior conclusion that substantially all of the provisions of Proposition 187 are preempted under *De Canas v. Bica.* There were some mopping up details remaining, and when Wilson’s successor Gray Davis came into office, he finally ended the matter by reaching a settlement with the litigants. Plyler’s supporters breathed a sigh of relief as they realized that they had dodged the bullet. By the end of this protracted process, not only had a federal court comprehensively dealt with the various features of the Proposition and the implementing regulations, but California statutes had been amended to safeguard Plyler: Section 1643 of the California Education Code read, “Nothing in this chapter may be construed as addressing alien eligibility for a basic public education as determined by the Supreme Court of the United States under *Plyler v. Doe.*”

The challenges to Proposition 187 had occurred predominantly in one court, that of Judge Mariana R. Pfaelzer of the Central District of California, with some of the more technical and procedural issues being decided on appeal to the Ninth Circuit, including the consolidation of the many parties at interest and resolving the State’s assertion that the law of abstention had been misapplied and whether the district court had abused its discretion in entering the original preliminary injunction. She was upheld in the preliminary matters, and when Governor Davis conceded the issues and reached a settlement, the substantive matter never returned to the Ninth Circuit, from where an appeal might have gone to the United States Supreme Court. This meant that the original supporters of the Proposition and Governor Wilson never got what it was they really
wanted, an opportunity for the Supreme Court to accept *certiorari* and to overturn *Plyler*. Moreover, any Court taking up the issue would likely have held that 1996’s PRWORA had preempted any such State initiative, whether enacted by a legislature or ballot measure. In addition, the California education statute itself had been amended to give ostensible authority to the original holding of *Plyler*, which would have made it difficult to repeal the central holding of the case through regulation or school board action.

2). Gallegly Amendment and its Effect

The year 1996 had seen the enactment of restrictionist federal legislation (IIRIRA and PRWORA), and the efforts of Representative Elton Gallegly (R-CA) to amend federal law by allowing states to enact the type of legislation that Texas had passed in 1975, which had led to *Plyler*.33 At the end of the process, the “Gallegly Amendment” was not added to the provisions that were signed into law. However, if it had been enacted, would have allowed states “to deny public education benefits to certain aliens not lawfully present in the United States” or to charge these students tuition for public school enrollment, as Texas had done. It drew sufficient negative attention to force its withdrawal from the other legislative proposals, a number of which were enacted.34 But his hard line took on another, more symbolic role in the struggle between President Clinton, who genuinely wanted welfare reform, and the Republican Congress, which wanted to restrict immigrant rights and tighten up what many considered to be permissive loopholes in alien benefit eligibility.

In a fascinating and authoritative book by Professor Philip Schrag on the refugee and asylum provisions of the 1995-96 Congressional debates, he wrote of the Gallegly
proposals: “Agenda control worked for the Republican leadership in a more random way at a later stage of the process. Representative Gallegly was not able to make his public education amendment into law, but he was able to dominate the immigration agenda for moths during the summer of 1996, so that other issues…were unable to break into most news stories. If the House had voted down the Gallegly amendment to begin with, Senator [Arlen] Spector or others might have had the attention or political capital available for other conflicts, and other sections of the final bill might have become more moderate.” While the provisions that did pass were draconian in other respects, removing much of the play in the joints for federal enforcement purposes and restricting immigrant benefits generally, Congress did not move to exclude schoolchildren. Even the two Republican Senators from Texas (Phil Gramm and Kay Bailey Hutchinson) publicly signaled their opposition to repealing *Plyler*. Prior to the final draft of the comprehensive bill, President Clinton indicated he would veto any version that would overturn *Plyler’s* holding.

The Gallegly amendment also did not appeal to the groups most closely identified with the issue, public school officials and teachers. By 1996, after more than a decade of living with *Plyler*, educators had made their peace with its requirements and had come to accept the decision. My own interaction with Houston area school administrators, who had lost the original consolidated case and who had originally opposed the decision, revealed relief that they would not have to play immigration police or attempt to identify which of the 220,000 school children were in proper immigration status and which were not. In addition, twenty five years after the case, the District has special programs for non-English speakers, migrants, and refugee children, as well as a special high school for
undocumented students. It also has its first Mexican American School Superintendent. Thus, the political process worked to remove any impediments to undocumented K-12 enrollments at the state and federal levels, even as severely-tightened immigration restrictions were enacted into law; affirming Plyler’s holding as national policy exacted a high price in terms of immigration reform and for welfare reform.

Professor Dennis Hutchinson wrote soon after the 1982 decision that the case “cut a remarkably messy path through other areas of the [Supreme] Court’s jurisprudence” and he and another scholar indicated that it was “ad hoc and divorced from other related bodies of law created by the Court.” Professor Mark Tushnet, not as critical of the opinion as other critics, still regarded the majority opinion as containing “almost no generative or doctrinal significance because it invoked too many considerations”; however, Professor Peter Schuck noted that the case had “epochal significance” in terms of immigrant rights. Professor Maria Pabon Lopez, perhaps the most cynical of the many observers, has written of Plyler, “Because the nation’s interest in maintaining a cheap and expendable labor force has converged with the expectation of an education for undocumented children, Plyler survives to this day.”

3). Recent Arrivals: Arizona and Georgia

Arizona and Georgia are the two most recent states to have passed comprehensive immigration statutes that undertake to regulate immigration in the state and to restrict benefits. Arizona’s Proposition 100 would deny bail to undocumented immigrants; Proposition 102 would prohibit undocumented plaintiffs from receiving civil damages in Arizona litigation; Proposition 103 would establish English as the official State language;
while Proposition 300 would restrict enrollment and resident tuition to undocumented public college students and persons enrolled in publicly-funded adult education instruction. The four propositions were approved by over 70% of the voters in November, 2006, and are not yet fully implemented by Spring, 2007, due to complexity, previous lawsuits over these issues, and new litigation filed after the referenda were passed. In addition, County authorities in Maricopa County (Phoenix) brought suit in novel applications of state law concerning human smuggling and general smuggling. Although in the first case the defendant was acquitted, the larger enabling issue of the constitutionality of the statute as applied is looming.

In April, 2006, S.B. 529, the Georgia Security and Immigration Compliance Act was signed into law, to take effect in July, 2007. Like the several Arizona propositions, it covered the waterfront of Georgia’s various statutes, amending a number of them by adding reporting requirements, program eligibility guidelines, and detailed provisions for official transactions concerning aliens. It also added a new Registration of Immigration Assistance Act, which heavily regulates the legal services that may be provided to persons. While it does not address the issue of public schooling for undocumented k-12 students or their parents and guardians, it does incorporate reference to the Immigration and Nationality Act, 8 U.S.C. Sections 1621 and 1623, concerning undocumented college students. It directs the state’s higher education authority to enact regulations for this topic, although it does so by incorporating provisions that, if drafted carefully, would not preclude them from receiving in-state tuition; it requires the state to “comply with all [applicable] federal law” in this area. Hearings are scheduled in Spring, 2007 by the Georgia Board of Regents, to receive public comment.
The passage of these comprehensive and restrictive state statutory schemes to regulate immigration shows how the grounds have shifted since 1994’s Proposition 187, which singled out undocumented school children, even exceeding Plyler’s 1975 scheme. In the last dozen years, there has been a conscious effort by immigrant restrictionists not to touch the third rail of school children, at least not directly. After Proposition 187’s failure and the doomed efforts of Representative Gallegly to enact Plyler at the federal level, the blowback has caused those who wish to expel these children to do so by making it harder for their parents to remain in the United States. While there are regular and ongoing efforts to educate Congress about the detrimental effects of Plyler and birthright citizenship, restrictionists have taken a different tack by making the issue one of equity and fairness, and couching their rhetoric as school finance reform and school overcrowding issues. In addition, they have ratcheted up the postsecondary Plyler pressure, as was evident in both these state efforts. While Arizona has a substantial number of potential undocumented students and a longtime policy that permitted them to establish resident status for purposes of paying lower tuition, it is inconceivable that Georgia has such a problem, or would over time.

It is clear that squeezing out undocumented adults has become a more viable and more widely-employed stratagem, both by the local and state ordinances that restrict benefits generally and higher education residency status in particular, and by general efforts to enact omnibus nuisance measures. Even the traditional Americanizing efforts such as adult education programs and ESL classes are now being targeted in Arizona. Workplace raids and the other widespread harassment measures have become the centerpiece of efforts to locate and remove undocumented adults, who will have to take
their children, even their citizen children, with them when they are removed.59 This has been a successful change of direction, as even the dissenters in Plyler indicated that they thought that removing innocent children was bad policy. Chief Justice Burger, as one example, wrote in his dissent, “Denying a free education to illegal alien children is not a choice I would make if I were a legislator. Apart from compassionate concerns, the long-range costs of excluding any children from the public schools may well outweigh the costs of educating them.”60 Moreover, while the children may have been innocent, restrictionists can claim, their parents surely have dirty hands. Although even this claim is problematic, it is a better soundbite, even as infants are being characterized as “anchor babies,” conveying putative citizenship benefits to their illegal and lawbreaking alien parents who make illegal entries and foul our nest.61 The New York Times Stylesheet requires its reporters to use “illegal alien” and “illegals” in news coverage and headlines, and bans “undocumented” or “unauthorized” as preferred adjectives; because the Stylesheet is the widely-employed arbiter for many other newspapers, these pejorative terms are regularly used, and constitute the discourse even in the educated and literate population.62 This Lou-Dobbs/Fox channel effect has had its intended purpose on public discourse about immigration, even if the taproot case has not been overturned or legislated away.

In reviewing the direct threats to Plyler and the enrollment of undocumented children, it is reassuring that the overall issue has become enshrined in law, practice, and politics. As was the case in the original litigation, where the combination of the facts, excellent lawyering, and some luck blew the way of the children,63 so it was with state threats such as the LULAC litigation, the timing of which found the more agreeable
Governor Davis rather than the progenitor of the Proposition Pete Wilson, who never would have settled and would have likely appealed as far as the case would have allowed him. The case drew an exceptional federal judge who carefully reasoned her way through the exceedingly complex litigation: Judge Pfaelzer was appointed to the U. S. District Court for the Central District of California by President Jimmy Carter in 1978, and she assumed senior status later in the year she ruled on *LULAC*.64 All her rulings that were appealed were upheld by the Ninth Circuit, but it need not have gone this way. On the federal stage, the Gallegly Amendment could have fallen on fertile ground, rather than facing a Congress that did not want to scapegoat children and a Democrat president who singled out that particular provision as the one he would not support and would veto if it made its way to his desk. As noted, immigrant rights advocates correctly felt that a great deal was lost in the exchange leading to IIRIRA and PRWORA, but there have been no serious legislative threats to undocumented schoolchildren at the Congressional level since 1996, or at the state level since *LULAC* was settled in 1997. California incorporated *Plyler*-language into its Education Code, while the Texas governor in 2007 indicated he would not support efforts to roll back the undocumented college student provisions he had signed into law earlier.65 To be sure, more states have singled out postsecondary *Plyler* issues, some adding and some restricting residency, but the DREAM Act may have traction in Congress, and, if enacted, would resolve this issue as a part of comprehensive immigration reform.66 Doing so would also allow immigrant advocates to concentrate upon other issues rather than having to fight college issues state legislature by state legislature--even having to protect statutes that were enacted that have had to be defended even after enactment.67 Of course, it would also mean not having to go to
federal court or state court to defend state statutes, as was necessary in Kansas and California, or to sue states, as in Virginia.\(^{68}\)

II. Schools:

The legislative and litigation issues have included direct attacks upon the enrollment of undocumented school children and college students, but in terms of sheer advocacy, much of the shoring up and preservation of that right has taken place in terms of \textit{Plyler}'s school implementation, unequal treatment of the children or their parents, and a large array of collateral and supporting issues at the school board, school, and classroom levels. Three of the more evident manifestations of problems with local administration of \textit{Plyler} have been the treatment of students whose parents do not have legitimate Social Security Numbers, school chase and access policies, and students whose presence implicates extraordinary immigration status.

1) SSN/ITIN Issues

To most adults and a large number of children in the United States, holding a Social Security Number (SSN) is simply no big deal; I was issued a SSN card when I was 4 or 5 years old, when my parents established a bank account for me, after I received a savings bond from my grandparents as a birthday gift. It is a card issued to persons who work or who have work authorization, and to persons who claim dependents upon their income tax returns.\(^{69}\) Although undocumented persons who do not have proper papers or authorization to work are not eligible for a SSN, federal law requires everyone receiving income in the United States to file a tax return.\(^{70}\) An important feature is that anyone who
is not a US citizen is considered a “resident alien” under the US tax code, and all resident aliens—included those without immigration status—have the same tax obligations as do U.S. citizens. As a result, three paths are available to the undocumented worker in this circumstance. She can get a Taxpayer Identification Number (TIN), secure a SSN not her own, or engage in the underground economy and go bareback without any number or documents. Further, while the undocumented are not able to secure valid SSN, the TIN will not suffice for employment identification or authorization purposes. Thus, virtually all undocumented workers, while required to pay taxes and have withholding drawn from paychecks, engage in subterfuge and expose themselves to various fraud and tax-related problems. One thorough and useful analysis of this complex issue summarizes it as “the separate, unequal, and ‘underrepresented’ federal income tax treatment of undocumented aliens” and “A Mismatch Made in Hell”. The details of tax law, an area as complex as immigration and nationality law itself, are beyond the scope of this Article, but it is essential for observers to recognize that identifying numbers, paperwork details, and documentation are literally the linchpin, the quintessence of being “undocumented.”

Any use of a SSN or TIN by school officials will cause undocumented parents to avoid the transaction, where possible, and children often suffer as a result, such as when schools innocently, casually, and routinely employ these numbers for their own uses, as simple registration or identification of schoolchildren. Persons who are subjects of identification fraud or ones who lose a credit card or change banks come to realize the pervasiveness of private identification numbers and credit information; this is the closest civilian parallel to the experience of being undocumented. The quotidian use of SSN far exceeds their legitimate, narrow purpose of tax and Social Security identification and
authentication, as when bank, credit card, membership, registration, and a myriad of consumer transactions require the use of a SSN. Schools and colleges have routinely, and improperly (mis)used SSN for academic records, grade posting, and other inappropriate uses that violate federal or state laws ensuring privacy.\textsuperscript{76} To be sure, such excesses are inconvenient and can implicate substantial credit risk and theft, but with undocumented parents and their children, the requirement that SSN be used for school transactions puts the enrolled children at unnecessary risk and can force their parents to avoid school transactions or limit their children’s participation in educational programs and activities.

Because this phenomenon has become so widespread, some states and school authorities have begun to exercise more care and caution in their requirements for identification and documentation in parent-school transactions. As one example, in 2003, Virginia amended its Education Code § 22.1-260, which had required that parents provide schools with a SSN for each student at the time of first enrollment; it was amended to permit school officials to use another individual identifying number or to waive the requirement if parents were unwilling to disclose SSN for their children.\textsuperscript{77} Other states and school authorities have drafted policies for this issue, printed materials and pamphlets to inform parents and to train school officials, and maintained websites to provide information about these requirements.\textsuperscript{78} Some jurisdictions also use similar federal or state law provisions for homeless children, who will often lack such formal identifiers, including home addresses and permanent phone numbers, and for whom special accommodations must be made.\textsuperscript{79} It is also evident that maintaining contact with parents becomes much more difficult and time-consuming for regular parent-teacher transactions and school-community relations, which also means that
support services and corollary informational interaction is diminished. And sometimes schools do not meet their obligations, or do not properly take into account these features, even in programs designed and funded to address the special needs of such schoolchildren.

Even when schools want to do the right thing, the lack of proper documentation can cause problems, such as authenticating parents or relatives who are authorized to pick up children after school, proof of vaccinations and public health records, and proper contact with parents in the event of emergencies. The unavailability of drivers licenses for the undocumented, uneven availability of “consular matricular” cards or foreign documents, and fear of the use of banking services or credit unavailability all combine to make these issues difficult, even when school officials are disposed to take the necessary precautions or to have the requisite cultural sensitivity. When they are not so disposed, it renders these transactions even more problematic. Until Congress acts to provide comprehensive immigration reform, with realistic and efficacious provisions concerning identification, Social Security participation, and drivers licenses, such issues will leach into the treatment of undocumented schoolchildren. In addition, issues of privacy, identity theft, data availability, and the proper balance between consumers and commercialized credit information will continue to affect the undocumented even more than they will the rest of U.S. society.

In addition, the unavailability of proper documentation can extend to many other school-related attestations, such as proof of residence in the district. As is noted in Section 3, this is a complex matter, including constitutional concerns about domicile and custody. But is it also often a literal matter of documentation, as in the example of Joel R
v. Mannheim Middle School Dist., a 1997 Illinois state court case, where school authorities would not recognize the custody assertions in a matter of an undocumented child. The school would not acknowledge the notarized document executed by Joel's parents before a judge in Mexico, who had granted a relative residing in the school district custody over Joel, on the grounds that “the Mexican document was not sufficient to enroll Joel because it did not establish, through an American court, that [the relative] was Joel's legal guardian.” The courts required the school district to admit the child and to accept the authenticated documents. Immigration authorities are conversant with the various forms of authentication and must deal with foreign documents as a matter of course, whereas campus officials may not have the expertise or experience in doing so, but failure to observe principles of comity and international law regularly implicates educational decisionmaking, nowhere more commonly than in dealing with international children or the undocumented.

2). Campus Chase and Policing Policies

Maintaining safety on campus and making sure that no unauthorized persons enter school grounds is a common worry of educational officials and law enforcement authorities, and as a general rule, immigration authorities do not extend their dominion to schools, while school security personnel do not generally act as immigration enforcement officials, carrying out immigration raids or searches. However, there are occasions where the twain does meet, as in Murillo v. Musegades, a 1992 case in El Paso, where INS authorities kept a too-watchful eye upon the public high school on the U.S. side of the
Mexican/United States border. In granting a request for a temporary restraining order against the INS, the federal judge noted,

“The El Paso Border Patrol has a regular, consistent, and prominent presence on the Bowie High School campus, whether their presence be by parking in the parking lots, speeding along the service roads, jumping across the curbs, or driving across concrete sidewalks and grassy areas. The El Paso Border Patrol's presence is further made known by their driving over the football practice field and baseball diamond, entering the football locker rooms, surveilling with binoculars from the football stadium, and using binoculars to watch flag girls practicing on campus. Bowie High School provides an oasis of safety and freedom for the students and staff who reside within the School District. The continued harassment of Bowie High School students and staff by the El Paso Border Patrol is both an invasion of their civil rights and the oasis. . . The El Paso Border Patrol does not comply with the policy issued by [the District Director of the INS Service El Paso District], which states ‘that all law enforcement activities at all levels and types of schools is [sic] prohibited unless prior approval has been granted as provided . . . .’ Although the policy warns ‘failure to comply with this policy will lead to appropriate disciplinary action,’ Defendants produced no evidence of disciplinary actions for policy violators.”85

Reviewing all the details in this complex case, including the school coach and students having been detained at gunpoint, the judge held: “INS in this case discriminated against Plaintiffs in violation of their Fifth Amendment rights to equal protection. The INS has repeatedly and illegally stopped, questioned, detained, frisked, arrested, and
searched Plaintiffs and numerous other students from the Bowie High School District. El Paso Border Patrol Agents have subjected Plaintiffs and others to indecent comments, obscene gestures, and humiliation in the presence of their co-workers, friends, family, and relevant community. The proffered evidence strongly supports this Court in its conclusion that the illegal and abusive conduct of the El Paso Border Patrol was directed against Plaintiffs, staff, and residents in the Bowie High School District solely because of their mere immutable appearances as Hispanics.” In addition, there had been a recent El Paso case concerning acceptable INS procedure, which the INS ignored in its Bowie police pursuit policies. Following this case, all the parties entered into a stipulated agreement where the INS agreed that it would not violate the “oasis” nature of the school and its students, irrespective of their immigration status.

In the Bowie High School instance, it was school authorities and both undocumented and citizen students who were affected by improper immigration authority behavior. In 2004, it was the school and police who initiated the inappropriate behavior, 300 miles north in Albuquerque, New Mexico. Albuquerque Public Schools found three students outside the chain link fence at Del Norte High School, adjacent to school property, and suspecting them of being out of status, turned them over to the Border Patrol. In federal court, the students filed *Gonzalez v. Albuquerque Public Schools*, contending that Albuquerque Public School administrators, officers of the Albuquerque Police Department and a Border Patrol Agent violated the students’ constitutional rights, including the right to a public education, when the boys were seized, interrogated, searched, and ultimately turned over to the Border Patrol. The children were sent back
to Mexico, although they were allowed to return to New Mexico to testify in the legal proceedings.  

In Summer, 2006, all the claims against the school district defendants were dropped as a result of a settlement, which it provided that the school district would implement new procedures and directives and conduct additional training of its personnel regarding the right of immigrant students to attend school, provide a district liaison for immigrant parents, and launch a public information campaign for immigrant parents to assure them that the district would not deny immigrant students an education. In addition, the school district defendants paid damages and attorneys fees. As of Spring, 2007, the City of Albuquerque and the Albuquerque Police Department had not settled, and the action against them was pending for the damages and fees.

In both the El Paso and Albuquerque cases, there had not been clear immigration enforcement guidelines in place, even though there had been a recent case in El Paso, of which the INS authorities swore that were unaware. For schools districts located in states along the U.S.-Mexico border, it is conceivable and foreseeable that there would be undocumented immigration, and school districts would do well to have model plans in place, both to regulate immigration enforcement and school and to guide local police authorities. For example, there was evidence that the City’s police officers would call in immigration authorities whenever there was a need for translation services, or when persons apprehended could not converse in what was considered acceptable English. At the time the children in Albuquerque were apprehended, they were students at the school, and their presence on the school grounds broke no civil law; there was no reason to have apprehended them and turned them over to anyone other than their parents or school
authorities, other than their inchoate undocumented status, which police authorities are not in a position to determine. Simply having stereotypical “Mexican” features in a state as Mexican-dominant as New Mexico or even in rural Idaho cannot be an articulable reason for police authorities to apprehend students in or near a school, “solely because of their mere immutable appearances as Hispanics.”

3). Helicopter Children: B-2, E-2

In 2006, several new Plyler threats arose at the school level, both of which ultimately resolved themselves, but revealed the complexities generally associated with non-citizen enrollments. In March, 2006, the School board in Elmwood Park, Illinois refused to let an undocumented student enroll, on the grounds that she and her family had entered on B-2 tourist visas, long expired. The State Board of Education threatened to remove funds, and the local board blinked, revising its attendance policies. Even though persons can become undocumented either by surreptitious entry or by violating the terms of legal entry, no earlier decisions had turned on the means by which the original unauthorized status or entry had been effected; cases turned on undocumented status, not upon exactly how the alien had entered the country or the particular state. As in so many of the immigration-related cases, the Elmwood Park case turned on complex technical immigration categories. It is necessary for schools to recognize that these categories can be fluid and confusing, and that many non-citizen families are mixed, including some members who might be citizens or have permission to be in the country, while others might have entered surreptitiously or entered with proper permission, only to run afoul of visa requirements, intentionally or unintentionally. At the time of Plyler,
immigration legal expertise might not have been widespread, but in recent times, such expertise is much more widely available and accessible. There is simply no reason why school districts must, through action or inaction, make mistakes concerning the immigration status of school children or parents.

In the *Joel R.* case, cited above for purposes of discussions on the technical issue of documentation, that the documents that must be submitted for ascertaining various concededly-relevant issues, the state appeals court held, for purposes of determining residency:

“Applying the law to the facts of the instant case, we find the circuit court did not err. First, it is uncontroverted that Joel lives indefinitely on a full-time basis with [his relative]. Second, it is also clear that [she] exercises complete control over Joel and is fully responsible for his care to the exclusion of Joel's parents who reside in another country. Third, [she] is Joel's legal guardian. Fourth, there was ample evidence of other non-educational factors being a part of the reason Joel moved to Melrose Park: the abject poverty and lack of social and economic opportunities he faced in Mexico; the desire to learn more about the country of his birth; and the need to eventually aid his parents financially. All of these factors support the circuit court's legal conclusion that Joel was a bona fide resident of District 83 and that his move to the district was not solely for educational purposes. Thus, we find no error in the circuit court's decision. In closing, we note that defendants argued before the circuit court and this court that a deferential policy of experto credite should be adopted with regard to residency determinations made by school districts. To this end, defendants attempt, without
citation to any relevant authority, to analogize school disciplinary cases, where
courts have correctly afforded deference to a school's decision, to residency
determinations. We find this argument to be wholly without merit and completely
unsupported by the case law. . .”98

Since losing this case, Illinois has been required to train its educators about such
residency requirement determinations, and it has posted these requirements on line and
made them publicly available.99

In 1996, Congress acted to eliminate the ability of parents to “helicopter” their
children into school districts by simply sending them to live with other families, such as
informal or even formal sponsors or non-custodial relatives.100 These students are
ineligible for F-1 nonimmigrant status on their own and may not attend a public school
for more than a year, and must pay the actual cost of instruction for any such period of
attendance.101 The provision does not affect private schools, although it could affect
charter schools and other private schools that are established and funded by public
appropriations. Although this provision was enacted to keep more advantaged foreign
families from sending their children abroad at the U.S. school’s expense, this provision
has been interpreted by some public school districts as affecting undocumented student
attendance.102 Other corollary rulings concerning resident and domicile have also affected
this issue, as in Elmwood Park, and the overall complexity has occasionally caught
undocumented students in the snare.

In 2006, in Austin, Texas, hundreds of miles away from the Mexican border, there
was mixed evidence that ICE authorities were targeting schools and coming onto school
grounds to apprehend children whose parents were arrested on the suspicion of being in
the country without authorization. School officials felt that they had to notify parents that such ICE actions would take place, so they sent out notices, warning, “Tell the students they are safe. That they have rights to not answer questions and to request to speak to attorney [sic] if they are picked up…. Some parents have come and withdrawn their children (students) today. We can’t stop a lawful investigation, but we can certainly inquire as to their credentials and to the existence of a lawful investigation. We must also abide by any court orders, such as warrants, they present.” Of course, given such a notice, undocumented parents might withdraw their children out of a simple, undifferentiated fear of apprehension concerning their families. Such a situation places school districts in a similar conundrum: do they inform parents about any such pending acts by immigration authorities, knowing how they might reasonably react, or do they not inform parents, on the chance that immigration authorities will only come onto a campus in the event a parent has been apprehended and ICE needs to notify and secure the children as well?

To observers who are familiar with the El Paso, Elmwood Park, and Albuquerque incidents, as well as other such occasions, it is not an idle or unreasonable fear on the part of undocumented adults, whose worst dreams not only include their own arrest or apprehension, but fears of being separated from their children. And schools have an obligation to communicate with parents, particularly parents who would be at risk, so this information is being disseminated out of a sense of duty and professional responsibility, the way that a school would notify parents of a new vaccination requirement or school functions or other such routine announcements. If school officials act badly and raise false spectres or cry wolf in order to not have to deal with these children, which certainly
can happen, that is one thing, and unforgivable. As taxpaying parents with legal
obligations to place their children in schools, even undocumented parents deserve respect
and consideration, the same as would any more advantaged parent. But it is clear that
school-community relations have to be treated and conducted differently when the
parents are undocumented and likely non-English-speaking, poor, and poorly educated.

In Florida, a similar example of a non-immigrant student surfaced, and while it
was correctly decided, it revealed the difficulty in determining the residency and domicile
of persons who are not citizens or permanent residents. In this instance, it was a high
school student who was the son of a treaty trader (a person with permission to engage in
commerce under the terms of a treaty to which the U.S. is party), an E-2 non
immigrant.105

The issue of undocumented students has not been limited to K-12 public school
students, as a number of cases before and since Plyler have dealt with the corollary issue
of undocumented college students, and the extent to which college resident tuition and
admissions benefits are to be extended to the postsecondary, post-compulsory schooling
level. Since 2001, when Texas Governor Bush’s successor signed legislation granting
postsecondary residency for undocumented students into law, more than a dozen states
have acted, ten allowing residency, and several denying it.106 Two federal cases have
been filed, in Kansas and Virginia, both upholding the state practice, Kansas allowing residency and Virginia denying such status.  The Kansas case is pending in the Tenth Circuit, in a case brought by a restrictionist group; the same case has been filed in California, where the plaintiffs lost in state court. In 2007, Congress has under consideration a federal version of the state statutes, the DREAM Act, which if enacted would also accord limited legalization benefits.

II. Indirect Challenges: The Implementation of Plyler v. Doe

The evidence marshaled thus far has examined only the direct challenges to Plyler’s continued vitality, and has indicated that the holding is alive and well. But the last direct challenge at the state level was in 1996-97’s LULAC holding in the challenge to California’s Proposition 187, and the last serious federal challenge was the ill-fated 1996 Gallegly Amendment, which was traded away by its supporters in exchange for restricting alien benefits and tightening up refugee and immigration provisions generally. Viewed in this sense, there has not been a direct assault upon Plyler since these attempts failed over a decade ago. Even some conservative Republican senators were not willing to enlist in this effort—despite the issue being contained in the national Party’s presidential platform—and states appear to have resigned themselves to the policies derived from the case and found ways to accommodate the children. As additional evidence of acceptance, almost all the major receiver states and even other states have extended the reach of the case to the benefit of undocumented college students, permitted by the same 1996 legislation to which Rep. Gallegly was trying to attach his restrictions.
But the real contests have shifted to the more quotidian, everyday, school level, and from this vantage point, every day is a calf scramble. In a variety of areas, it is the daily implementation of *Plyler* by school boards and school districts that poses the more potent threat, not only because this is the level at which individual children and families experience the policies, but because the national immigrants’ rights groups and advocates form networks that guard against state and federal predations, and cannot always monitor or frame the issues at local flashpoints. When undocumented parents in Austin, Texas pull their citizen children out of their school due to perceptions that school raids will be forthcoming, it is clear that *Plyler* as implemented requires constant monitoring and attention.  

In this section, I consider a number of these local issues, including a sampler to show the many that have arisen: general issues of language instruction, building and zoning policies, publicity that arises when students do exceptionally well and draw attention to themselves, involvement in extracurricular programs, housing and local ordinances, separate schools and racial isolation, and miscellaneous practices that will disproportionately affect undocumented school children and their parents.

1). Language/bilingual education/English as a Second Language (ESL) issues. A number of states have availed themselves of federal funds to provide English language instruction to immigrant and linguistic minority children. As one example, in *Burgos v. Illinois Department of Children and Family Services*, the Legal Assistance Foundation (LAF) filed suit against the Illinois Department of Children and Family Services (IDCFS) in 1975, well before *Plyler*. As a result of the suit, the parties entered into a settlement
agreement to ensure that Spanish-speaking families are provided full and adequate services by IDCFS. The decree ordered IDCFS and its vendors to provide child welfare services in Spanish to Latino clients whose primary language is Spanish, required children with Spanish-speaking parents to be placed with Spanish-speaking foster parents, and required individual or general written communications to Spanish speaking clients to be in Spanish. In 1996, MALDEF assumed legal representation for plaintiffs because LAF could no longer handle class actions. A court-appointed Monitor issued a report in 1997 and later became the Implementation Consultant. In 2006, MALDEF met with members of the community to address recent reports that IDCFS may not be in compliance with the consent decree. On July 13, 2006, MALDEF met with the Cook County Public Guardian regarding potential Burgos violations. On July 27, 2006, legislative public hearings were held on the Burgos Consent Decree, and discussions continue to determine whether or not a federal monitor should be re-appointed.¹¹⁵

It is not unusual for such systemic bilingual education litigation to stretch out over many years, such as the 1974 Aspira Consent Decree between the New York City Board of Education and Aspira of New York, which established bilingual instruction as a legally enforceable federal entitlement for New York City’s non-English-speaking Puerto Rican and Latino students.¹¹⁶ The Decree is still in place although the governance landscape has changed considerably in the thirty-plus years, such as the Mayor’s office taking over direct supervision of the New York City schools.¹¹⁷

Some of these complex cases include other program features as well, such as teacher transfer, magnet programs, and racial assignments, as in the case of American
Civil Rights Foundation v. Los Angeles Unified School District, a 2006 case that is wending its way through the system. In Consortium for Adequate School Funding in Georgia, Inc. v. State of Georgia, language courses and funding issues are at the heart of this case involving English for Speakers of Other Languages (ESOL) students. There are literally dozens of such cases in various stages of litigation in school districts across the country.

2). Extracurricular Activities: Prizes, School Trips, Summer Programs

Sometimes undocumented students surface when they have had extraordinary academic success. Recent cases include four students from Hayden High School in Phoenix, who went to the Niagara Falls area for a class trip, after they won a prestigious national robotics competition. They were arrested as they crossed into Canada and returned with their class, and because Arizona no longer accords in-state tuition to undocumented college students, they have not been eligible to attend college in the state as residents. Another undocumented robotics student, this one from Senegal, was able to remain in the United States, due to enormous legal and political pressure exerted on his behalf. In 2006, an undocumented Dominican student who had graduated with honors from Princeton surfaced, when he won a scholarship to Oxford University.

In Farmers Branch, Texas, legislators attempted to zero out city funding for a “Summer Funshine” childcare program, designed to keep young children from affiliating with gangs, because they suspected that some undocumented children were participating. The program, which serves 350 students each summer, has 110 places targeted for low income children whose families pay less for the program in conjunction
with eligibility for federal free and reduced lunches. Farmers Branch, a suburb of Dallas, was the first local jurisdiction in Texas to have passed comprehensive immigration reform provisions at the local level, which immediately were enjoined by the court.

3). Housing, Zoning:

_Plyler_ is essentially about residency requirements, and who gets to go to school in what attendance zone. In the year after _Plyler_, the U.S. Supreme Court decided a companion case, _Martinez v. Bynum_, and held that parents or guardians of undocumented children (or for that matter, their children) were required to reside in a school district attendance zone. This was not a significant narrowing of _Plyler_, where the Tyler and Houston and other parents had actually lived in the school districts that their children attended, albeit in unauthorized status. The student in _Martinez_ was a citizen child whose undocumented parents had left the country and left him the care of his adult sister, which was not his legal guardian. The Court in _Martinez_ sustained the state’s determination that the child did not reside in the district and thus did not qualify for free public schooling there, ruling that _Plyler_ did not bar application of an appropriately-defined bona fide residence test. In footnote 22, the _Plyler_ case had indicated that the undocumented may establish domicile in the country, a much larger issue than that presented in _Martinez_, where the child’s parents had not established the requisite residence in the school district. This holding also loops back to _Joel R. v. Mannheim Middle School Dist._, the 1997 Illinois state court case mentioned earlier, where school
authors would not recognize the custody assertions in a matter of an undocumented child.\textsuperscript{130}

4). Separate Immigrant Schools and Miscellaneous Issues

The Houston Independent School District, where one of the strands of \textit{Plyler} arose, has begun a high school that concentrates upon immigrant students, in order to provide them with the additional counseling and services they need to navigate school.\textsuperscript{131} In 2000, the Urban Institute published a comprehensive review of the issue, \textit{Overlooked & Underserved, Immigrant Students in U.S. Secondary Schools}, which investigated several such sites, and reached very critical conclusions about the lack of coordination among schools, the poor achievement of these students, and the structural problems that schools districts face in educating such large numbers of immigrant children who have not progressed and who are non-English speakers.\textsuperscript{132} Other reports have found similar massive problems; other school districts have also tried unusual means to reach and educate these children.\textsuperscript{133}

Working in this field for many years has exposed me to a number of unusual problems, ones that I believe are \textit{sui generis} with the undocumented. Recruiting agricultural migrant students many years ago in Ohio, where I was first exposed to the issue, I recall migrant fathers holding me personally accountable after I had recruited their daughters to college, for their safety and security,\textsuperscript{134} I have had to bail out migrants whose cars attracted the attention of police and the immigration services, my first acquaintance with “driving while Mexican.” I have marveled at children who knew exactly how to calculate gas money and mileage distances, even when they would fail traditional math classes. Once, I saw two cars that obviously just had a crash, and were
steaming wrecks, with no one sticking around; clearly, the owners would have rather
abandoned their precious property than expose themselves to police authorities. In Santa
Fe, New Mexico, an undocumented woman was unable to get a school parking permit
due to the state’s policy on drivers licenses, so she could not use her car to get to
school. Many of the various stories recounted above show the reliance and tenacity of
these students.

Conclusion

In the first part of this article, I examined the direct challenges to *Plyler*, both those
that have been legislative efforts, including those that appeared to have settled the matter
in the mid-1990’s in California and more current ones that have arisen, state ballot issues
that were enacted to address issues of illegal immigration in 2006. Direct challenges to
undocumented students have also included “helicopter children,” those whose parents
sent them to study in the United States without parental residence; a subset of this
complex issue is parents who have legally entered the country but whose behavior has
resulted in their being out of status, rendering even citizen children removable; campus
chase and policing policies; and non-legislative, school-based initiatives such as the use
of Social Security numbers and identification measures. While the original case has
proven quite resilient, fending off litigation and federal and state legislative efforts to
overturn it, and nurturing efforts to extend its reach to college attenders who were
allowed to stay in school by the original case, it has had to be reinforced by vigilant
efforts, but it has proven more hardy than it appeared twenty five years ago.
This article also reviewed cases and school district or state actions that have indirectly implicated *Plyler*, and analyzed the various means by which restrictionist policies have attempted to extirpate the practice allowed by *Plyler* and to overturn its holding. Indirect measures include a variety of language issues, including bilingual education and English as a Second Language (ESL); building, siting, and attendance zone concerns; undocumented students who become at risk when their achievements bring them into the spotlight or when they win national awards for academic prowess; the mean-spirited assault on programs that provide resources to undocumented children; separate immigrant schools and programs that concentrate the children in a special, circumscribed environment; college preparation issues; and even miscellaneous issues having to do with drivers licenses and school transportation. There is a long list of such topics that disproportionately affect these children, who are marginalized even within the difficult world of public and private schooling in the modern United States.\(^\text{136}\)

In all likelihood, comprehensive immigration reform will occur, and should alleviate some of these problems, particularly providing a form of legalization and extending some benefits. But the children and their parents will keep coming, drawn by the possibilities of work and improving their lives. Such immigration reform is beyond the scope of this article, but until it occurs, these issues will continue to fester and will drive the practices even deeper, and even more hidden in plain sight.
LULAC v. Wilson

LULAC v. Wilson

LULAC v. Wilson,
Id.,

Interview with Senior HISD official, February 26, 2007. In order to gain authoritative access to this senior administrator, I agreed not to reveal the person’s name. (Interviewer notes on file with author.)

Mark Tushnet,

Peter Schuck,

Maria Pahon Lopez,

Discussions with Georgia Board Counsel, March 2, 2007. I submitted testimony in my personal capacity, April 4, 2007 (On file with Author.)

As one example, see the FAIR website, www.FAIRUS.org, which casts the issue as one of equity and school finance. FAIR, Breaching the Piggy Bank: How Illegal Immigration is Sending Schools Into the Red (2005).

And as happened in Utah, where there were unsuccessful recent efforts to repeal the undocumented college student tuition provision.
Arizona had for many years allowed undocumented college students to establish residency, following a settlement reached with MALDEF in 19__. See Michael A. Olivas Plyer, Olivas

As in Utah.

For this discussion, I rely upon the excellent work by Professor , whose careful work in this complicated subject made it much more understandable to non-tax readers.

That this is so is best evidenced by the research literature on the subject. See, as just one example, K.B. Melear, the Contractual Relationship Between Student and Institution: Discipline, Academic, and Consumer Contexts, 30 J. COLL. & UNIV. L. 175 (2003).

Joel R. v. Manheim Middle School Dist.,
See, for example, the useful manual on these issues: Dan H. Berger and Scott M. Borene, Eds. IMMIGRATION OPTIONS FOR ACADEMICS AND RESEARCHERS, DC: AILA, 2005.

Murillo v. Musegades,

Discussions with El Paso attorney Albert Armendary, Jr., Counsel for Students and Bowie administration (March 20, 2007 (on file with author.))

The students scattered, but the one still in school in 2007 was paroled into the U.S. to allow him to complete his studies. Discussion with MALDEF attorneys, March 22, 2007 (Notes on file with author.)

Discussions with MALDEF attorneys, March 22, 2007; discussion with Albuquerque, NM mayor Martin Chavez, December 2, 2006. (Notes on file with author.)

Discussions with MALEF attorneys, March 22, 2007. (Notes on file with author.)

Murrillo,

Joel R.

Discussion with MALDEF attorneys, March 12, 2007. (Notes on file with author.)

This was the argument advanced by Elmwood Park School officials, who essentially argued that being in lapsed B-2 (visitor) status was a “helicopter parent” situation. In fact, “helicoptering” is placing a Minor child in F-1 status as if she were an enrolled student on her own, rather than dependent upon her parents’ legal or illegal status and domicile.
Burgos

Discussions with MALDEF attorneys, March 12, 2007. (Notes on file with author.)

Luis O. Reyes,

American Civil Rights Foundation v. Los Angeles Unified School District,

Consortium for Adequate School Funding in Georgia, Inc. v. State of Georgia,

Joel R. v. Mannheim Miller School Dist.,

Urban Institute, Overlooked and Under Served, Immigrant Students in U.S. Secondary Schools.
Holding the Line—Endnotes


3. NEB. REV. ST. §85-502 (1943) (The Nebraska Legislature revised the statute in 2006 over the governor’s veto, which now allows unauthorized immigrant students to qualify for in-state tuition upon proof of Nebraska residency of at least 180 days.), available at http://www.unicam.state.ne.us/pdf/FINAL_LB239_1.pdf (last visited March 25, 2007).


(2006) (general conspiracy statute). Lindsey Collom, 54 Jailed under 'Coyote' Statute, ARIZ. REPUB., March 3, 2006, at 1B; Michael Kiefer, Maricopa Court Upholds Migrant Smuggling Law; Those Caught Can Be Charged in Conspiracy, ARIZ. REPUB., June 10, 2006, at 1B; Joseph Lelyveld, The Border Dividing Arizona, N.Y. TIMES MAG., Oct 15, 2006, at 40; Matthew Benson, [Sheriff] Arpaio To Use State Funds to Fight Smuggling, ARIZ. REPUB., March 15, 2007, at B5. In the first complete trial on this issue, the Superior Court judge overturned the first jury conviction of an immigrant charged as a conspirator under the state's smuggling law; a number of these trials are still in the pipeline. Jahna Berry, Smuggling Verdict Tossed; Judge Cites Lack of Evidence, ARIZ. REPUB., December 6, 2006, at A1 (Maricopa County Superior Court judge overturned first jury conviction of immigrant charged as conspirator under the state's smuggling law).


13. *Id.* at 227, fn. 22.


21. For these characterizations, I worked from a pamphlet distributed by the proponents of Proposition 187, but I refer to the more easily-accessible version available in the Johnson article. I have carefully checked to be certain his notes accurately cited the
pamphlet and ballot materials; in every instance, he was scrupulous. Johnson, supra note 18 at 1561 n. 241.

22. Id., at 1561 n.243 (emphasis omitted).

23. Id., at 1562 n.247 (emphasis omitted).


26. 997 F. Supp. 1244 , 1259 (C.D. Cal. 1997) ("California is powerless to enact its own legislative scheme to regulate immigration. It is likewise powerless to enact its own legislative scheme to regulate alien access to public benefits. It can do what the PRA permits, and nothing more. Federal power in these areas was always exclusive and the PRA only serves to reinforce the Court's prior conclusion that substantially all of the provisions of Proposition 187 are preempted under De Canas v. Bica" [citations omitted]).

27. Johnson, supra note 18 at 1563 n.260 (emphasis omitted).

28. See generally, Innis, supra note 18; Johnson, supra note 18; Garcia, supra note 18.


Do not cite without the author’s permission. 49


35. Id., at 245.

36. Id., at 311 n.33.

37. Id., at 185.

38. Interview with Senior HISD official, February 26, 2007. In order to gain authoritative access to this senior administrator, I agreed not to reveal the person’s name. (Interviewer notes on file with author.)


43. Mark Tushnet, Justice Lewis F. Powell and the Jurisprudence of Centrism, 93 MICH. L. REV. 1854, 1873 (1995). On the other hand, Professor Tushnet then wrote, "On another level, the opinion had profound doctrinal significance because no one could interpret it to hold that the Supreme Court will strike down statutes that are unconstitutional when a majority of the Court thinks those statutes are unwise social policy." Id. In a fascinating study of Justice Brennan’s notes, taken by the Justice in conference over many years on the U.S. Supreme Court, Jim Newton has published a number of them online. In “Part IV, The Colleagues,” he relates a story of a heated exchange between Thurgood Marshall and William Rehnquist during conferences on the Plyler case. See Jim Newton, Brennan Dishes on His Colleagues, Slate, January 11, 2007, available at (last visited January 12, 2007).

45. Pabon Lopez, supra note 33, at 1405.


49. See text accompanying note 6, supra.

50. GA. CODE ANN. §9 Section 9. Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter at the end thereof, to be designated Chapter 36, to read as follows: [CHAPTER 36 : 50-36-1.
   (a) Except as provided in subsection (c) of this Code section or where exempted by federal law, on or after July 1, 2007, every agency or a political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state. . . .
   (c) Verification of lawful presence under this Code section shall not be required: . . .
   (7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.]

51. Section 6: Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by adding a new chapter immediately following Chapter 20 to read as follows: CHAPTER 20A
   43-20A-1.
   This chapter shall be known and may be cited as the 'Registration of Immigration Assistance Act.'
   43-20A-2.
The purpose and intent of this chapter is to establish and enforce standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys.

52. Supra at note 50.

53. Id.


55. As one example, see the FAIR website, www.FAIRUS.org, which casts the issue as one of equity and school finance: Breaching the Piggy Bank: How Illegal Immigration is Sending Schools Into the Red (2005).


65. Clay Robinson, *Budget Hits Include Judges’ Pay Hike*, HOU. CHRON., June 18, 2001, at A1 (describing 2001 session tuition, revenue bill details of original tuition legislation). In January, 2007, Governor Perry (reelected for his second full term) indicated that he would not support any bills that overturned this legislation, including the revised version, S.B. 158. Matthew Tresaugue and R.G. Radcliffe, *Illegal Immigrants May See Tuition Hike, Legislation Would End Texas' Pioneering Law Granting In-state Rate, Financial Aid*, HOU. CHRON., Jan. 11, 2007, B1; Clay Robison and R.G. Ratcliffe, *Perry to Stick By Law Giving Tuition Breaks to Illegal Immigrants, He Also Predicts Legislation Against Repeat Predators of Children Will Be Strengthened*, HOU. CHRON., Jan. 12, 2007, B4. The State of Texas recently released a major report concerning the costs and benefits of the undocumented to the Texas economy: *Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*, Texas Office of Controller of Public Accounts, (December 2006), available at http://www.cpa.state.tx.us/specialrpt/undocumented/undocumented.pdf (last visited January 15, 2007) ("This is the first time any state has done a comprehensive financial analysis of the impact of undocumented immigrants on a state's budget and economy, looking at gross state product, revenues generated, taxes paid and the cost of state services. The absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal 2005 would have been a loss to our gross state product of $17.7 billion. Undocumented immigrants produced $1.58 billion in state revenues, which exceeded the $1.16 billion in state services they received. However, local governments bore the burden of $1.44 billion in uncompensated health care costs and local law enforcement costs not paid for by the state.").


68. *Day v. Sibelius*, 376 F.Supp.2d 1022 (Kan. 2005) (declining standing to plaintiffs, which continues residency requirement allowing undocumented to establish residency). Because the trial judge removed the Governor as a defendant, the case at the 10th Circuit is styled as *Day v. Bond*, (05-3309). The California state court case is *Martinez et al. v Regents of the Univ. of Cal.*, CV-05-2064, (Cal. Super. Ct, Yolo Cty) [Order on Demurrers, Motion to Strike, and Motions by Proposed Intervenors] (Oct. 6, 2006) (dismissing challenge to state residency statute). This action was the state equivalent of the *Day v Sibelius* federal case in Kansas, which was argued at the 10th Circuit in September, 2006.

In another recent California state residency and immigration-related case, the California State University system agreed to drop its practice of treating citizen and permanent resident applicants with undocumented parents as if they (the students) were undocumented and ineligible for in-state resident tuition. The San Francisco County Superior Court case was settled and agreed to by the court in April, 2007. *Student Advocates v. Trustees, California State University System*, settlement notice published at http://www.sftc.org/Scripts/Magic94/mgrqisp94.dll [CPF-06-506755].


71. *Id.*

72. *Id.*, at 20-21.

73. *Id.*, at 19 (title of article).

74. *Id.*, at 22 (section title of article)

76. That this is so is best evidenced by the extensive research literature on the subject. See, as just one example, K.B. Melear, *the Contractual Relationship Between Student and Institution: Discipline, Academic, and Consumer Contexts*, 30 J. COLL. & UNIV. L. 175 (2003).

77. See, e.g., [http://www.pen.k12.va.us/VDOE/suptsmemos/2004/inf170.html](http://www.pen.k12.va.us/VDOE/suptsmemos/2004/inf170.html) (memo concerning 2003 Virginia General Assembly amendment of § 22.1-260 of the Code of Virginia, which requires that parents provide school divisions with a social security number for each student at the time of enrollment in school, amended to permit another identifying number or waiver of the requirement if a parent is unwilling to present a social security number for the child). (last visited March 25, 2007)


81. See, e.g., Edward Hegstrom and Elena Vega, *One Nation, Two Worlds; Creating an American Life; Some Know the Minute They Arrive That the U.S. Is Their New Home, Others Come for a Visit and Reluctantly Settle: In Either Case, the Undocumented Immigrants Working to Establish Themselves Here Face Plenty of Challenges, Including Learning English and Finding Steady Work*, HOU. CHRON., Dec. 6, 2005, at A1 (reviewing barriers to undocumented workers, including identification and tax identification).


83. 686 N.E.2d 650 , 653 (1997) . There can also be fundamental issues of the extent to which jurisdictions will or will not perform marriage ceremonies where one or the other partner has documented status, causing very serious hardships for the parties. Wade Malcolm, Marriage License Standards Differ in Area Counties, [Scranton] Times-Tribune, April 6, 2007

84. See, for example, the useful manual on these issues: Dan H. Berger and Scott M. Borene, Eds. IMMIGRATION OPTIONS FOR ACADEMICS AND RESEARCHERS (2005) (book describing complex immigration provisions for students and academic employees).


86. Id., at 501 (“The INS in this case discriminated against Plaintiffs in violation of their Fifth Amendment rights to equal protection. The INS has repeatedly and illegally stopped, questioned, detained, frisked, arrested, and searched Plaintiffs and numerous other students from the Bowie High School District. El Paso Border Patrol Agents have subjected Plaintiffs and others to indecent comments, obscene gestures, and humiliation in the presence of their co-workers, friends, family, and relevant community. The proffered evidence strongly supports this Court in its conclusion that the illegal and abusive conduct of the El Paso Border Patrol was directed against Plaintiffs, staff, and residents in the Bowie High School District solely because of their mere immutable appearances as Hispanics”).


90. The students scattered, but the one still in school in 2007 was paroled into the U.S. to allow him to complete his studies. Discussions with MALDEF attorneys, March 16, 2007 (Notes on file with author.)


92. While MALDEF settled with the school district, there were still additional defendants, including the City and the Albuquerque Police Department, who had not settled as of Spring, 2007. (Discussions with Albuquerque Mayor Martin Chavez, December 8, 2006; discussion with plaintiffs’ lawyers, March 16, 2007, on file with author.)


96. She was the dependent of a tourist (B-2), who overstayed. Rosalind Rossi, *Schools Slammed for Barring Child*, CHI. SUN-TIMES, Feb 24, 2006, at A8. See also Sam Dillon, *In Schools Across U.S., the Melting Pot Overflows*, N.Y. TIMES, Aug. 27, 2006, at YT-1; Nina Bernstein, *On Lucille Avenue, the Immigration Debate*, N.Y. TIMES, June 26, 2006, at A1; Jennifer Radcliffe, *1982 Ruling a Catalyst in Immigration Debate*, HOU. CHRON., May 21, 2006, at B1. As with most of the issues in this field, there are competing values here. To my way of thinking, how someone becomes undocumented plays a large role in arguing the equities of their situation. In this calculus, a child brought surreptitiously or illegally by adults does not have dirty hands; an adult who falls out of status is a different matter, with fewer equitable arguments. Courts and critics do not always acknowledge this distinction, or do so, but argue that it makes no difference. See, e.g., Dan Stein, *Why Illegal Immigrants Should Not Receive In-State Tuition Subsidies*, UNIV. BUS. 64 (Apr. 2002) (arguing that according resident status or allowing undocumented students to enroll only encourages lawbreaking). But see, Michael A Olivas, *A Rebuttal to FAIR*, UNIV. BUS. 72 (June 2002) (making dirty-hands distinctions).


101. INA Sec. 214 (1)(1)(A), 8 U.S.C. Sec. 1184(1), as enacted by IIRIRA Sec. 625(a)(1).

102. This was the argument advanced by Elmwood Park School officials, who essentially argued that being in lapsed B-2 (visitor) status was a “helicopter parent” situation. Colleen Mastony and Diane Redo, Barred Teen Pleased as Lawsuit is Dropped: Elmwood Park District Reluctantly Ends Fight, CHI. TRIB., Feb 28, 2006, at Metro-1. In fact, “helicoptering” is placing a minor child in F-1 status as if she were an enrolled student on her own, rather than dependent upon her parents’ legal or illegal status and domicile.


105. In 2006, an E-2 (the dependent of a non-immigrant treaty investor) was precluded from securing an F-1 visa to attend college in the U.S. See Kelly Griffith, E-2 Kids Hoping For a Dream, ORLANDO SENTINEL, Sept 10, 2006, at J-1. Although the article does not say so, the likely culprit was the requirement that such applicants for student visas not have an “intending immigrant” intent, that is, they must not appear to be wanting to remain in the US after their studies are completed, else the consular official will, with virtually-unreviewable discretion, refuse admission into the country. See Dan Walfish, Note, Student Visas and the Illogic of the Intent Requirement, 17 GEO. IMMIGR. L. J. 473 (2003).

106. “More than 5,400 students benefited from the tuition law last spring [Fall, 2006], up from 393 in 2001, according to the Texas Higher Education Coordinating Board.”
Matthew Tresaugue and R.G. Radcliffe, Illegals Immigrants May See Tuition Hike, Legislation Would End Texas' Pioneering Law Granting In-state Rate, Financial Aid, HOU. CHRON., January 11, 2007, at B1; Clay Robison and R.G. Ratcliffe, Perry to Stick By Law Giving Tuition Breaks to Illegal Immigrants, He Also Predicts Legislation Against Repeat Predators of Children Will Be Strengthened, HOU. CHRON., Jan. 12, 2007, at B-4. My own regular discussions with the CB staff have suggested that nearly 10,000 different students have employed this provision since it was enacted. See also, Olivas, DREAM Act, supra note 8. The most current available state data are compiled at www.nilc.org, which usefully tracks DREAM Act issues. See generally, Sara Hebel, States Take Diverging Approaches on Tuition Rates for Illegal Immigrants, CHRON. HIGHER EDUC. Nov. 30, 2001, at A22.


108. On appeal to the 10th Circuit, it became Day v Bond, and the arguments were heard the week of September 25, 2006. As of May, 2007, no decision had been announced. The state action in California was Martinez, et. al. v. Regents of the Univ. of Cal., CV-05-2064, (Cal Super Ct, Yolo Cty) [Order on Demurrers, Motion to Strike, and Motions by Proposed Intervenors] (Oct 6, 2006) (dismissing challenge to state residency statute). This action, dismissed on October 6, 2006, was the state equivalent of the Day v Sibelius federal case in Kansas, which was argued at the 10th Circuit in September, 2006.


110. Schrag, supra note 34 at 141-143 (summarizing Gallegly amendment dynamics).

111. Id., at 311, note 31 (citing opposition by senior Republicans and Catholic bishops).

112. Olivas, DREAM Act, supra note 1. it is clear to any observer that the politics of immigration issues vary across jurisdictions. See, for example, Stephen Yale-Loehr and Ted Chiappari, Immigration: Cities and States Rush in Where Congress Fears to Tread, 12 Bender’s Imm. Bull. 341 (March 15, 2007). And there is ample evidence that many states and cities have leaned against immigration enforcement. See, for example, Anthony Faiola, Looking the Other Way on Immigrants; Some Cities Buck Federal Policies, Wash. Post, April 10, 2007, at A1.

113. See text accompanying notes 103-104, supra.

114. Supra note 98.
115. *Id.* Discussions with MALDEF attorney, March 17, 2007 (notes on file with Author).


117. On the subject of mayoral controls over public schooling in their cities, see From the Editors: *Mayoral Takeovers in Education, A Recipe for Progress or Peril?* 76 HARV. EDUC. REV. 141 (Summer, 2006).


120. I have found the most comprehensive sources of such information are the individual websites of the many groups that undertake such litigation, on both sides. Several of these have quite detailed information and post briefs, pleadings, and other legal materials in the cases. A sampler of these includes: NAACP Legal Defense Fund ([www.naacpldf.org](http://www.naacpldf.org)); Southern Poverty Law Center ([http://www.splcenter.org/legal/docket/docket.jsp?sortID=4&agendaID=6](http://www.splcenter.org/legal/docket/docket.jsp?sortID=4&agendaID=6)); Pacific Legal Foundation ([www.pacificlegal.org](http://www.pacificlegal.org)); MALDEF ([www.maldef.org](http://www.maldef.org)); Center for Individual Rights ([http://www.cir-usa.org/case_results.php?type=1](http://www.cir-usa.org/case_results.php?type=1)); PRLDEF ([www.prldef.org](http://www.prldef.org)); ACLU ([http://www.aclu.org/rightsofthepoor/edu/index.html](http://www.aclu.org/rightsofthepoor/edu/index.html)); National Access Network ([http://www.schoolfunding.info/](http://www.schoolfunding.info/)). (All of these were last visited on March 27, 2007)

121. For two such examples of undocumented high schoolers, both prompted by robotics competitions, see Peter Carlson, *Stinky the Robot, Four Kids And a Brief Whiff of Success*, WASH. POST, March 29, 2005, at C1 (undocumented Mexican students); *Doors Finally Open for 4 Phoenix Migrant Youths a Year After Beating MIT in Robotics Competition*, ARIZ. REP., April 23, 2005, at 1A; Daniel Gonzalez, ‘Wilson Four’ Deportation Case Settled; Panel Says Students Wrongly Targeted, ARIZ. REPUB., Dec.
12. 2006, at A10 (Board of Immigration Appeals agrees children may remain in US after being wrongly targeted).


124. Stephanie Sandoval, *Funding Intact for Youth Group*, DALL. MORN. NEWS, September 21, 2006, at 1B.

125. Id.

126. The first local ordinance in recent Texas history arose in Farmers Branch, in November, 2006. Ralph Blumenthal, *Texas Lawmakers Put New Focus on Illegal Immigration*, N.Y. TIMES, Nov. 16, 2006, at A22. By January, 2007, there were three federal suits and a state suit in this case, and a TRO was issued. Thomas Korosec, *Leasing Rule Sent to Voters for OK; Councilman Says Farmers Branch May Set Precedent on Illegal Residents*, HOU. CHRON., Jan. 23, 2007, at B1; Gretel C. Kovach, *Dallas Suburb Amends Its Ban on Renting to Illegal Immigrants*, N.Y. TIMES, Jan. 25, 2007, at A22 (City Council voted to revise policy; revised policy “allows landlords to rent to families with a head of household or a spouse who has legal residency or citizenship, and… minors from mandatory document checks”).


128. “Roberto Morales was born in 1969 in McAllen, Texas, and is thus a United States citizen by birth. His parents are Mexican citizens who reside in Reynosa, Mexico. He left Reynosa in 1977 and returned to McAllen to live with his sister, petitioner Oralia Martinez, for the primary purpose of attending school in the McAllen Independent School District. Although Martinez is now his custodian, she is not -- and does not desire to become -- his guardian.” 461 U.S. 321, 322-23 (1983). This issue has not resolved itself, but border communities have accommodated themselves to this phenomenon. For example, El Paso officials have reserves a lane on one of the bridges from Ciudad Juarez...


136. Urban Institute, *supra* note 132 (noting hardships faced by undocumented students); Wendy Erisman and Shannon Looney, Opening the Door to the American Dream (2007) (study of permanent residents in college); N.C. Aizenman, Pleading to Stay a Family; Raids on Illegal Immigrants Have Their U.S.-Born Children Fearing Separation -- and Some Are Lobbying Capitol Hill, Wash. Post, April 2, 2007, at A1 (regarding mixed-status families). In one case, in Dallas, Texas, a principal was convicted of charges of deliberately segregating Black and Latino children, so as to try and entice Anglo parents
into sending their children to the school; the ruse involved racial assignments into separate, manipulating class photos and brochures to “bleach” the enrollment visuals, and other unusual tactics. The principal was required to pay damages in her personal capacity. Kent Fischer, Judge Denies Objections in DISD Suit; He Says Preston Hollow Principal Still Must Pay $20,200 in Damages, Dallas Morn. News, April 12, 2007, at 6B.