

INCREASING ACCESS TO HIGHER EDUCATION FOR ASYLUM SEEKERS

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TABLE OF CONTENTS

INTRODUCTION		950
I. APPLYING THE COURT’S REASONING IN <i>PLYLER V. DOE</i>		953
A. <i>Plyler v. Doe</i>		953
B. <i>Is Education a Fundamental Right?</i>		954
C. <i>Extending the Plyler v. Doe Analysis</i>		955
II. THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT’S LIMITATION ON QUALIFYING FOR IN-STATE TUITION RATES		960
A. <i>Are Asylum Seekers Rightfully Present Under the IIRIRA?</i>		960
B. <i>Getting Around the IIRIRA: In-State Provisions</i>		962
III. THE CHALLENGE OF MEETING AB 540 REQUIREMENTS AND QUALIFYING FOR THE CALIFORNIA DREAM ACT		963
IV. SOLUTIONS		965
A. <i>Judicial Level: Allow Asylum Seekers to Enroll in Higher Education Institutions and Access In-State Tuition Rates</i>		965
B. <i>Federal Level: Allow Asylum Seekers Access to In-State Tuition and Federal Student Aid</i>		965

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C.	<i>State Level: Allow Asylum Seekers to Access State Aid</i>	966
D.	<i>Educational Institutions</i>	968
E.	<i>Alternative Private Models</i>	968
1.	Columbia University Scholarship for Displaced Students: A Model for Supportive Universities	968
2.	Refugee Students Scholarship Program: A Model for Student Leaders & Supportive Community Members . . .	969
3.	WUSC and the Oxford Students Refugee Campaign: A Model for a Supportive Student Body	970
V.	CONCLUSION	971

INTRODUCTION

Salam¹ fled Aleppo, Syria in 2015, at the age of 16, as the regime-led offensive on rebel-held Eastern Aleppo escalated and took the lives of her family members. Salam noted:

We left because my parents wanted me to be able to walk to school without worrying about me not coming back. We left because my parents wanted to live to see me graduate college. We left because it all became too real when my uncle got shot in his own home in front of my cousins.²

Shortly after Salam and her family arrived in California, they applied for asylum. Asylum is protection granted to foreign nationals already in the United States or at the border who meet the legal definition of a “refugee”—someone who is “unable or unwilling to avail himself or herself of the protection of [their country of origin] because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”³ Salam began eleventh grade at a public high school, and like most displaced students, she faced the challenges of learning English in her high school’s ESL program, discrimination from her neighbors and a few of her high school classmates, and difficulties balancing her studies with her several minimum wage jobs after acquiring a work permit.

Despite having to flee her home and leave behind her family members, Salam was lucky in many ways. She was passionate about human rights advocacy. She dreamed of going to law school, and she now had the chance to pursue her dreams safely. During the Syrian civil war, the regime targeted

1. Pseudonym to protect the student’s identity.

2. From Salam’s application to the Refugee Students Scholarship Program (June 7, 2019) (on file with author) [hereinafter Salam’s Application].

3. Immigration and Nationality Act § 101(a)(42), 8 U.S.C. § 1101(a) (2021).

universities, which prevented many college-aged students from pursuing higher education.⁴

But her dream of attending law school was not within reach, even though she was in the United States. Her family applied for asylum in 2015, and Salam found her application was one amidst the backlog of hundreds of thousands of pending asylum cases. The U.S. Citizenship and Immigration Services (“USCIS”), recognizing this huge backlog of cases and concerned that applicants with frivolous claims would seek to take advantage of their pending cases as a way to obtain employment authorization, decided to switch to a “last in, first out” approach in 2018. Under this approach, the USCIS started to review newer filings and work back towards older filings.⁵ Because of this policy and the challenges of obtaining records from a war-torn Muslim country like Syria, Salam and her family’s case has still not been heard, though it has been more than five years since Salam and her family filed for asylum. The Immigration and Nationality Act (“INA”), in contrast, contemplates that the USCIS should decide on the asylum application within 180 days after the date the application is filed.⁶

While in the limbo of her pending asylum, Salam decided to work towards applying to college. After finishing high school, she applied for and was admitted to several public universities in Southern California. She opted for public universities as they were significantly cheaper than private universities, but despite her family’s assistance, she could not afford the cost of even public universities. Being an asylum seeker meant that she could not meet the eligible noncitizen requirement to apply for the Free Application for Federal Student Aid (“FAFSA”). She also could not meet the requirements to qualify for state aid, an option that California has for its undocumented students. Without the benefit of the lower in-state or resident tuition rate and financial aid, she would be required to pay around \$45,000 per year for public university,⁷ thus making higher education completely inaccessible.

Salam’s story is not unique. Many asylum seekers are still waiting for their applications to be processed. As of September 2019, there were 339,836 affirmative asylum applications pending with the USCIS.⁸ Many of these applicants who fled violence and persecution in their home countries are students whose studies were disrupted by conflict and who are hoping to complete their higher education. Syria is not the only country where educational institutions have been sites of attack during the ongoing conflicts. More than

4. Hwaida Saad & Rick Gladstone, *Dozens Killed as Explosives Hit Syrian University*, N.Y. TIMES (Jan. 15, 2013), <https://www.nytimes.com/2013/01/16/world/middleeast/syria-violence.html>.

5. USCIS, USCIS TO TAKE ACTION TO ADDRESS ASYLUM BACKLOG, (Jan. 31, 2018), <https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog>.

6. Immigration and Nationality Act § 208(d)(5), 8 U.S.C. § 1158 (2021).

7. *Expenses, Tuition, and Fees*, U.C. IRVINE GEN. CATALOGUE, <http://catalogue.uci.edu/information/forprospectivestudents/expensetuitionandfees/> (last visited Dec. 13, 2020).

8. AM. IMMIGR. COUNCIL, ASYLUM IN THE UNITED STATES, <https://www.americanimmigrationcouncil.org/research/asylum-united-states> (last visited Dec. 13, 2020).

11,000 separate attacks on education facilities took place worldwide between 2015 and 2019.⁹ Among the most recent attacks was the attack by Islamic State militants on Kabul University, Afghanistan's largest school, where 22 people were killed and dozens were wounded.¹⁰

Because college-aged asylum seekers are often unable to pursue higher education in their home countries, it is important for them to be able to find opportunities to complete their higher education where they are seeking asylum, even if their cases are still pending. But currently, as Salam realized—much to the chagrin of her high school counselors who had never even heard of her immigration status—it is difficult for asylum seekers to access in-state tuition rates and federal and state aid. In five states, they are prohibited from qualifying for in-state tuition rates at public universities entirely.¹¹ For asylum seeker students, accessing financial aid is the biggest barrier to overcome when applying to universities.¹²

This Note discusses how higher education can be made more accessible to asylum seekers. Part I begins with analyzing the Supreme Court case *Plyler v. Doe* and presents two means of extending the *Plyler* Court judicial analysis to apply to asylum seekers who are seeking access to in-state tuition rates. Part II introduces a federal statute designed to limit undocumented students' access to in-state tuition rates on the basis of residence, discusses its impact on asylum seekers seeking to access in-state tuition, and explains how some states have found creative ways to offer in-state tuition rates to undocumented students without violating the federal statute. Part III discusses the challenges asylum seekers face in meeting the requirements to access state aid opportunities otherwise available to undocumented students. This Section focuses particularly on California, as California's statute facilitating undocumented students' access to in-state tuition rates is the only one of its kind that has been heard by a court on the merits.¹³ Moreover, California had formerly proposed a bill to allow asylum seekers to access state aid.¹⁴ Finally, Part IV offers solutions that can be implemented at the judicial, federal, state, and university levels to make it easier for asylum seekers to access in-state tuition

9. *Widespread Attacks on Education Worldwide More than 11,000 Attacks in Past 5 Years – GCPEA Report – Education Under Attack 2020*, EDUC. CANNOT WAIT, <https://www.educationcannotwait.org/widespread-attacks-on-education-worldwide-more-than-11000-attacks-in-past-5-years-gcpea-report-education-under-attack-2020> (last visited Dec. 13, 2020).

10. Rahim Faiez & Kathy Gannon, *IS attack on Afghan university leaves 22 dead, 22 wounded*, ASSOC. PRESS (Nov. 2, 2020), <https://apnews.com/article/kabul-university-attack-19-dead-ff95756da86734144d6d61e8aa718057>.

11. *Undocumented Student Tuition Overview*, NAT'L CONF. OF ST. LEGIS., <https://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx> (last visited Dec. 13, 2020).

12. David Tobenkin, *Financial Aid Challenges for Political Asylee and Refugee Students*, NAFSA, <https://www.nafsa.org/professional-resources/publications/web-extra-financial-aid-challenges-political-asylee-and-refugee-students> (last visited Dec. 18, 2020).

13. Diana Moreno, *Examining the Implications of Martinez v. The Regents of the University of California*, 33 CHILD. L. RTS. J. 92, 109 (2013).

14. S.B. 296, Reg. Sess. (Cal. 2019), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=2019202005B296.

rates and qualify for financial aid and scholarships so that they have the opportunity to obtain the funds necessary to pursue higher education.

I. APPLYING THE COURT'S REASONING IN *PLYLER V. DOE*

A. *Plyler v. Doe*

In the 1982 case of *Plyler v. Doe*, the Supreme Court addressed whether a 1975 revision of Texas education laws, which denied undocumented school-aged children from Mexico public education, was constitutional. The Court found that the Fourteenth Amendment's Equal Protection Clause was not limited to protect citizens but applied to anyone within a state's boundaries.¹⁵ Thus, the children of undocumented immigrants, who were being treated differently than the children of citizens in the Tyler Independent School District in Texas, could claim their right to equal protection of the laws.

In deciding whether the revision violated the Equal Protection Clause, the Court applied a heightened rational basis test.¹⁶ According to the *Plyler* Court, public education is not a fundamental right, which would call for strict scrutiny, nor are undocumented aliens, whose presence in the country is a violation of federal law, a suspect class.¹⁷ But the Court still found that education is the most important function of state and local governments and recognized the significant costs to the nation when students are denied a basic education.¹⁸ As such, the Court reasoned that discriminating against undocumented students could hardly be considered rational unless it furthers some substantial goal of the state.¹⁹

The Court found that the Texas legislative revision to deny undocumented immigrant children public education did not serve a substantial goal of the state. Texas argued that its revision was constitutional as it allegedly served three substantial state goals: 1) it would prevent an influx of illegal immigrants, 2) it would preserve the overall quality of Texas public school education, and 3) it appropriately singled out students who would not put their education to productive use within the state.²⁰ The Court rejected all of these rationales. The Court found that evidence indicated that undocumented immigrants entered the country primarily for employment, not for free public education.²¹ The record also did not show that devoting some state funds to the education of undocumented immigrants would have an impact on the quality of education overall.²² Finally, the Court stated that Texas had no assurance that any child educated in its public school system, whether

15. *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

16. Raphael Holoszyc-Pimentel, *Reconciling Rational-Basis Review: When Does Rational Basis Bite?*, N.Y.U. L. REV. 2070, 2112 (2015).

17. *Plyler*, 457 U.S. at 223.

18. *Id.* at 223–24.

19. *Id.* at 224.

20. *Id.* at 228–30.

21. *Id.* at 228.

22. *Id.* at 229.

undocumented or not, would remain within its borders to contribute to the state, and thus it made little sense to single out undocumented immigrant children, who may not be able to remain in this country indefinitely, for that reason.²³

B. *Is Education a Fundamental Right?*

While the holding in *Plyler* was limited to ensuring that public education until the high school level remained accessible to all students, citizens or undocumented, the Court's analysis could be extended to also calling for equal access to higher education for all students, regardless of their immigration status. One way to offer such an argument is to argue that education is, in fact, a fundamental right, overturning the portion of the *Plyler* opinion in which the Court states "nor is education a fundamental right," but still acknowledging the Court's assertion that education is the most important function of state and local governments.²⁴ If education is deemed a fundamental right, the strict scrutiny standard would be applied to laws and policies that prevent certain classes of people, such as undocumented students and asylum seekers, from accessing education due to restrictions on in-state tuition rates or financial aid. In other words, since strict scrutiny is such a high burden to meet, the government and public university administrations would likely fail to establish that their actions to exclude asylum seekers from in-state tuition rates or financial aid serve a compelling government purpose.

To determine whether education is a fundamental right, a court must look at a nation's history, legal traditions, and practices. Fundamental rights are those "deeply rooted in this Nation's history and tradition and implicit in the concept of such ordered liberty that neither liberty nor justice would exist if they were sacrificed."²⁵ While neither the Constitution nor case law discuss education as a fundamental right, proponents of the fundamentality of education argue that either education has developed into a fundamental right given the increasingly important role of education, or that education was originally understood to be a fundamental right by the framers and early in the nation's history. Those who believe that education has developed into a fundamental right discuss that education was compulsory in every state by the early twentieth century and point to the growing federal role in education after World War II, through decisions like *Brown v. Board of Education* and legislation like the G.I. bill and President Lyndon Johnson's Elementary and Secondary School Act.²⁶ Those who believe the right to education is deeply rooted in the

23. *Id.* at 230.

24. *Id.* at 223–24.

25. *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997).

26. The G.I. bill, first introduced in 1944, provides benefits to veterans including tuition payments to attend college. According to proponents of the view that education has become a fundamental right gradually, the G.I. bill made more Americans come to view college attendance as a norm. President Johnson's

nation's history point to statements of the Constitution's framers calling for education, the fact that the Continental Congress set aside the center lot in every town for the construction of schools,²⁷ compulsory school attendance laws, and the federal government's financial support to states for education.²⁸

However, even if the Court ultimately recognizes that education is a fundamental right, it is unlikely that it will extend that classification to higher education. In April 2020, the Sixth Circuit Court of Appeals in *Gary B. v. Whitmer* recognized that the Constitution provides a fundamental right to a basic minimum education because a basic education provides access to literacy, and literacy is required to participate in our democracy.²⁹ By June 2020, this controversial decision was vacated.³⁰ Given that the now-vacated *Whitmer* case only found a fundamental right to a basic minimum education required for literacy, equivalent to a third-grade level,³¹ it is unlikely that courts will ever consider postsecondary education a fundamental right. Moreover, if higher education is considered fundamental, international students may also argue that they are being denied equal access. For these reasons, it will be difficult for asylum seekers to argue that they have a fundamental right to higher education, which is curtailed by policies that disqualify them for in-state tuition rates or financial aid.

C. *Extending the Plyler v. Doe Analysis*

While the Court in *Plyler* did not find education to be a fundamental right, it recognized the significance of education such that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."³² The Court also recognized that education introduces the students to cultural values, helps them adjust to their environment, and enables them to perform basic public responsibilities.³³ *Plyler* was decided in 1982 when 57% of the total population of college-aged students in

Elementary and Secondary School Act of 1965 provided federal grants to school districts with students from low-income backgrounds and was the start of the federal government's growing commitment to make education available for all. *Brown v. Board of Education* brought federal judges and public officials into the education sphere, as they worked to enforce school desegregation. 349 U.S. 294 (1954). To proponents of this view, these examples—among others—illustrate that education has developed into a fundamental right. Barry Friedman & Sara Slow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 92, 127, 136–39 (2013).

27. Valerie Strauss, *Federal court delivers holy grail of education advocacy: A fundamental right to basic education. Don't count on Supreme Court to uphold it*, WASH. POST (Apr. 29, 2020), <https://www.washingtonpost.com/education/2020/04/29/federal-court-delivers-holy-grail-education-advocacy-fundamental-right-basic-education-dont-count-supreme-court-uphold-it>.

28. Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1075, 1081 (2019).

29. Gary B. v. Whitmer, 957 F.3d 616, 652 (6th Cir. 2020).

30. Colter Paulson, *Sixth Circuit Vacates Right-to-Literacy Ruling*, NAT'L L. REV. (June 11, 2020), <https://www.natlawreview.com/article/sixth-circuit-vacates-right-to-literacy-ruling>.

31. J. Cooper, *Detroit literacy case ends with no legal precedent for the right to an education* (June 15, 2020), <https://www.wsws.org/en/articles/2020/06/15/detr-j15-1.html>.

32. *Plyler*, 457 U.S. at 223.

33. *Id.*

the United States attended college, as opposed to nearly 94% by 2011.³⁴ Moreover, in 2019, a full-time worker's median annual salary with a high school diploma was approximately \$38,792, as opposed to \$64,896 with a bachelor's degree.³⁵ The statistics alone indicate that more students are attending college after completing their secondary education. Increased college attendance rates may be due to a desire for greater salary prospects, the fact that fewer jobs are available for students out of high school as these jobs are increasingly outsourced to countries where labor is cheaper, or the belief that pursuing a postsecondary degree increases job security as machines and artificial intelligence have replaced many positions.³⁶ College is also culturally seen as the most enriching, eye-opening, and fulfilling years of life and an opportunity to engage with new people, new philosophies, and new experiences.³⁷ In any case, more young people worldwide are seeking to attend college, and despite its increasing costs, see it as part of their complete educational and quality of life experience.

Today, the benefits of education noted by the Court cannot be attained without a postsecondary education. Without a college education, it is unlikely that a student can attain the same success contemplated by the Court in *Plyler*, given the current high unemployment levels for high school graduates entering the labor market.³⁸ College also translates to greater performance of public responsibilities. College students are more likely to vote, demonstrate, volunteer, take leadership positions, contribute more to taxes and philanthropic causes, and are less reliant on government services.³⁹ College can also introduce students to different cultural values. While public schools are segregated along racial and socioeconomic lines, postsecondary institutions seek to prepare students to participate in an increasingly complex and pluralistic society by admitting a diverse range of students.⁴⁰

34. *School enrollment, tertiary (% gross) – United States*, THE WORLD BANK (Sept. 2020), <https://data.worldbank.org/indicator/SE.TER.ENRR?end=2018&locations=US&start=1982>.

35. Tim Stobierski, *Average Salary by Education Level: The Value of a College Degree*, N.E. UNIV. (June 2, 2020), <https://www.northeastern.edu/bachelors-completion/news/average-salary-by-education-level>.

36. Zoltan Istvan, *Now that Humans Are Living Longer, College Should be Mandatory*, VICE (Nov. 21, 2014), <https://www.vice.com/en/article/z4mqp8/in-an-age-of-longer-lifespans-should-college-education-be-compulsory>.

37. *Id.*

38. “Of the young high school graduates who are not enrolled in further schooling, nearly one-in-10 is unemployed.” *Class of 2019 high school graduates are entering a solid labor market, but remain worse off than similar graduates in 2000*, ECON. POL’Y. INST. (June 6, 2019), <https://www.epi.org/press/class-of-2019-high-school-graduates-are-entering-a-solid-labor-market-but-remain-worse-off-than-similar-graduates-in-2000>.

39. Jake New, *Civic Learning*, INSIDE HIGHER ED. (May 10, 2016), <https://www.insidehighered.com/news/2016/05/10/colleges-placing-increasing-importance-programs-promoting-civic-engagement>; Ass’n. of Pub. & Land-Grant Univ., *How do college graduates benefit society at large?*, <https://www.aplu.org/projects-and-initiatives/college-costs-tuition-and-financial-aid/publicvalues/societal-benefits.html> (last visited Mar. 13, 2021).

40. *Reg. Pol’y. 4400: Policy on University of California Diversity Statement*, REGENTS OF THE UNIV. OF CAL. (Sept. 16, 2010), <https://regents.universityofcalifornia.edu/governance/policies/4400.html> [hereinafter *Diversity Statement*].

As discussed, the *Plyler* Court struck down three arguments presented by the State of Texas in its defense of its education laws that denied undocumented children access to its public schools. Policies today denying asylum seekers from qualifying for in-state residency status and accessing financial aid can be seen as akin to the 1975 discriminatory Texas education laws. Just as the Court noted that no evidence indicated denying public education to undocumented aliens would halt undocumented immigration to Texas, there is no evidence that denying financial aid and in-state residency status to asylum seekers will prevent asylum seekers from moving to a particular state.

In *Plyler*, the Court found that undocumented immigrants primarily came for the opportunity to work.⁴¹ Perhaps the reasons asylum seekers come to the United States are even more remote than the opportunity to come for work; work and education, to some extent, go hand-in-hand as individuals may seek more education for better job prospects. By definition, asylum seekers with non-frivolous claims seek to escape war and persecution in their home countries.⁴² It is when they are forced to flee their homes and no longer have the opportunity to attend college in their home countries that they seek refuge and higher education opportunities elsewhere. In 2019, more than two-thirds of people fleeing their homes came from Syria, Venezuela, Afghanistan, South Sudan, and Myanmar—all countries riddled with war and conflict.⁴³ In the aftermath of the Trump Administration's Muslim ban,⁴⁴ the top countries of origin for affirmative asylum applications in the United States in the same year were Venezuela, China, Guatemala, El Salvador, and Honduras, also countries facing conflict and serious human rights violations.⁴⁵ Among the world's top ten refugee host countries, only Germany has universities that qualify in the top 100 universities in the world, suggesting that forcibly displaced people are not fleeing to countries with better higher education prospects.⁴⁶ Moreover, only three percent of displaced people who were forced to leave their homes due to war, armed conflict, or persecution had the opportunity to earn a university degree, compared to a global average

41. *Plyler*, 457 U.S. at 228.

42. See Immigration and Nationality Act § 101(a)(42), 8 U.S.C. § 1101(a) (2021).

43. *The World's Refugees in Numbers*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts> (last visited Mar. 13, 2021).

44. The "Muslim Ban" refers to a series of executive actions enacted by President Trump beginning in January 2017 to prohibit travel and refugee resettlement from predominantly Muslim countries. Despite several legal challenges, the Supreme Court ultimately upheld the third version of the ban in 2018. On January 20, 2021, President Biden revoked the Muslim Ban. *Muslim Travel Ban*, Immigration History, <https://immigrationhistory.org/item/muslim-travel-ban/> (last visited Mar. 13, 2021).

45. Jeanne Batalova, Brittany Blizzard, and Jessica Boltr, *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL'Y INST. (Feb. 11, 2021), <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Refugees%20and%20Asylum%20Seekers>.

46. *The World's Top 100 Universities*, TOP UNIVERSITIES (Mar. 3, 2021), <https://www.topuniversities.com/student-info/choosing-university/worlds-top-100-universities>.

of 37 percent.⁴⁷ As such, there seems to be a stronger correlation between the violence, conflict, and human rights violations in an asylum seeker's country of origin and their reason to flee than their desire to flee to attend a university in the United States. Moreover, while there are no available statistics for the number of asylum seekers per state, there were an estimated 275,000 undocumented immigrants in Arizona in 2020, even though Arizona specifically prohibits in-state tuition rates for undocumented students.⁴⁸ Thus, it does not seem that people choose to reside in states that will afford them the greatest higher education access.

Additionally, there is no evidence that denying asylum seekers access to in-state tuition rates and financial aid will increase the quality of public higher education in the state, just as there was no evidence that denying undocumented children public education would increase the quality of Texas' public education. Rather, there is evidence that the quality of education will increase if asylum seekers can attend colleges alongside their citizen peers. Researchers, universities, and even the Supreme Court recognize that diversity enhances the ability of higher education institutions to accomplish their academic mission.⁴⁹ Allowing asylum seekers of different backgrounds to access higher education institutions enhances the educational experience of all students. Even if the quality of higher education is merely measured by the amount of funding and resources allocated to each student, as the *Plyler* Court suggests, the quality of higher education still declines if asylum seekers are not given access to in-state tuition rates. Public universities will not gain funds if they can charge nonresident rates to asylum seekers, as it is likely that asylum seekers who cannot access in-state tuition rates will not attend universities at all.⁵⁰ Moreover, given that public state universities rely on state funding, it is worthwhile for states to invest in the higher education of its students, as educated students, in turn, contribute to state funding by paying higher taxes and are less reliant on the state's welfare system.⁵¹

Salam's case provides a more concrete example of how a state can benefit from charging resident rates to asylum seekers. Salam's tuition was initially \$43,481 per year, but just before the fall tuition was due, her Statement of Legal Residence application based on AB 540 requirements⁵² for her university campus was approved, and her annual cost fell to \$13,727. Because she

47. *Help Displaced and Refugee Students Pursue Higher Education*, INT'L INST. OF EDUC., <https://www.iie.org/give-peer> (last visited Mar. 13, 2021).

48. *Immigrants in Arizona*, AMERICAN IMMIGR. COUNCIL (Aug. 6, 2020), <https://www.americanimmigrationcouncil.org/research/immigrants-in-arizona>.

49. *Diversity Statement*, *supra* note 40.

50. Vicky J. Salinas, *You Can Be Whatever You Want to Be When You Grow Up, Unless Your Parents Brought You to This Country Illegally: The Struggle to Grant In-State Tuition to Undocumented Immigrant Students*, 43 HOUS. L. REV. 847, 873 (2006).

51. *How do college graduates benefit society at large*, Ass'n of Pub. & Land-Grant Univ., <https://www.aplu.org/projects-and-initiatives/college-costs-tuition-and-financial-aid/publicuvalues/publicuvalues-resources/q4/GradsSociety.pdf> (last visited Mar. 13, 2021).

52. *See infra* pp. 966–67.

was awarded a \$10,000 scholarship, she was financially able to attend college. Without the scholarship, she could not have attended, and without the in-state tuition rate, her scholarship amount would not be sufficient. Because Salam was ultimately able to begin her college studies, her institution received \$13,727 annually for her attendance, as opposed to \$0 had it charged her the out-of-state tuition rate, which she could not afford and therefore could not enroll.

Lastly, just as the *Plyler* Court found that Texas inappropriately singled out undocumented students by claiming that it ought to only invest in students who would put their productive use within the state,⁵³ it is also inappropriate for a state to deny asylum seekers in-state tuition and financial aid for this reason. A state has no assurance that any of its students—citizen or not—will remain in the state. However, if an asylum seeker is ultimately granted asylum, it is likely that they will seek to remain in the state. Unlike refugees who do not get to choose where they are settled, asylum seekers generally are physically present in the state of their choice.⁵⁴ Moreover, within a year of filing their asylum application, they are eligible to apply for work authorization.⁵⁵ Given that asylum seekers have already restarted their lives in a new state where they are familiarizing themselves with work opportunities and, if they choose, navigating the higher education process, it seems likely that they would seek to remain in and continue to contribute to the state if they are granted asylum and will not seek to uproot their lives again.

However, even if they are not granted asylum, a university education would provide asylum seekers with the skills and tools they need to contribute to the post-conflict development of their countries. It is certainly in the state's interest and in the interest of the state's public university to take credit for their graduates who ultimately become leaders of other nations and later invite these leaders as speakers and visiting professors. It is also in the interest—and perhaps even a moral imperative—of the entire country to make higher education more accessible for students who have had to flee situations of war and violence given the celebrated American values of democracy and human rights, as well as the history of U.S. interventions in many of these asylum seekers' countries of origin.⁵⁶ Investing in the rebuilding of these

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

54. With the exception of asylum seekers who are at ports. AM. IMMIGR. COUNCIL, *supra* note 8.

55. *Asylum*, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/humanitarian/refugees-and- asylum/asylum> (last updated Jan. 26, 2021).

56. Countries with the highest displacement figures in 2019 include Afghanistan and Syria. *See The World's Refugees in Numbers*, *supra* note 43. As part of its "War on Terror," the United States invaded Afghanistan in 2001 to target al-Qaeda and the Taliban. *See, e.g., Timeline: US military presence in Afghanistan*, AL-JAZEERA (Sept. 8, 2019), <https://www.aljazeera.com/news/2019/9/8/timeline-us-military-presence-in-afghanistan> (establishing that the conflict had claimed the lives of over 50,000 Afghan civilians by 2019). The United States has also launched repeated air raids in Syria. *See Timeline: US intervention in Syria's war since 2011*, AL-JAZEERA (Oct. 7, 2019), <https://www.aljazeera.com/news/2019/10/7/timeline-us-intervention-in-syrias-war-since-2011>. Whether those attacks were justifiable or successful is outside the scope of this paper, but the role of such attacks on forced migration should be considered.

countries is also in the spirit of the international investments that the United States has historically made, such as the Marshall Plan.⁵⁷ It is also a significantly cheaper investment to provide in-state tuition rates and financial aid to asylum seekers who may return to their countries of origin with newly acquired skills, training, and American values than for the country to invest in billions of dollars of economic recovery plans.

II. THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT'S LIMITATION ON QUALIFYING FOR IN-STATE TUITION RATES

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), which added penalties for undocumented immigrants who had violated U.S. law or who remained in the United States for statutorily defined periods of time.⁵⁸ Among IIRIRA’s provisions was § 1623, limiting undocumented students’ access to in-state tuition rates and thus their access to higher education. Section 1623 states:

[A]n alien who is not *lawfully present* in the United States shall not be eligible on the basis of residence within a State (or political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen is such a resident.⁵⁹

Section 1623 has been interpreted as applying to in-state tuition.⁶⁰ Thus, if a state allows undocumented students to qualify for in-state tuition rates based on residence within a state, the state must also allow all U.S. citizens to qualify for in-state tuition rates regardless of their residence. States likely would not want to forego the opportunity to charge their out-of-state applicants higher tuition rates. As such, Arizona, Georgia, and Indiana specifically prohibit in-state tuition rates for undocumented students, and Alabama and South Carolina prohibit undocumented students from enrolling at any public postsecondary institution altogether.⁶¹

A. *Are Asylum Seekers Rightfully Present Under the IIRIRA?*

Per its domestic and international legal obligations, the United States could consider asylum seekers as “lawfully present” in the United States, and thus the IIRIRA Provisions would not apply. U.S. immigration law provides asylum seekers the right to remain in the United States while their claim for

57. See *Marshall Plan*, HISTORY (June 5, 2020), <https://www.history.com/topics/world-war-ii/marshall-plan-1>.

58. *Illegal Immigration Reform and Immigration Responsibility Act Overview*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/illegal_immigration_reform_and_immigration_responsibility_act.

59. 8 U.S.C. § 1623(a) (2021) (emphasis added).

60. *Arizona ex. Rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 540 (2018).

61. NAT’L CONF. OF ST. LEGIS., *supra* note 11.

protection is pending.⁶² Furthermore, the United States is legally bound to the 1951 United Nations Convention Relating to the Status of Refugees⁶³ and its 1967 Protocol (Refugee Convention)⁶⁴ to provide protection to those who qualify as refugees. As asylum seekers, whose cases are pending, may ultimately be found by an asylum officer or immigration court to have met the legal definition of a refugee,⁶⁵ they should be covered under the Refugee Convention and should be entitled to its legal protections. Moreover, the Refugee Convention builds on Article 14 of the Universal Declaration of Human Rights, which provides that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”⁶⁶ Thus, it seems that asylum seekers can be deemed lawfully present under domestic and international law.

While “lawfully present” is not defined in § 1623, in *Arizona v. Maricopa County Community College District Board*, the Supreme Court of Arizona determined its meaning from the entire statute’s context.⁶⁷ In looking at the context, the *Maricopa* Court found “lawfully present” aliens to include qualified aliens, nonimmigrants under the INA, and aliens paroled into the United States for less than one year.⁶⁸ “Qualified aliens” include aliens who are lawfully permitted for permanent residence under the INA; an alien who is granted asylum; a refugee who is admitted to the United States; an alien who is paroled into the United States for a period of at least one year; an alien whose deportation is being withheld; an alien who is granted conditional entry; or an alien who is a Cuban and Haitian entrant.⁶⁹ As such, asylum seekers generally do not qualify into any designations of qualified aliens.

Nonimmigrants, who also fall under the “lawfully present” categorization, are foreign nationals admitted to the United States temporarily as defined in § 101(a)(15) of the INA.⁷⁰ Examples of nonimmigrants include foreign government officials, temporary visitors for business and pleasure, academic and vocational students, and temporary workers.⁷¹ Thus, individuals who arrive in the United States on one of these visas are “nonimmigrants” and therefore “lawfully present” if their visas have not expired, even if they ultimately plan to apply for asylum within one year of their arrival. However, even if this small group of asylum seekers can qualify as nonimmigrants and be lawfully present for purposes of the IIRIRA and qualify for in-state tuition rates, these

62. AM. IMMIGR. COUNCIL, *supra* note 8.

63. United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

64. United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267.

65. See Immigration and Nationality Act § 101(a)(42), 8 U.S.C. § 1101(a) (2021).

66. Mary Robinson, *Refugees Magazine Issue 111*, UNHCR (Mar. 1, 1998), <https://www.unhcr.org/en-us/publications/refugeemag/3b80e2a74/refugees-magazine-issue-111-universal-declaration-human-rights-50th-anniversary.html>.

67. State of Arizona v. Maricopa Cty. Cmty. Coll. Dist. Bd., 416 P.3d 803, 803–05 (Ariz. 2018).

68. *Id.*

69. 8 U.S.C.A § 1641 (2021).

70. *Nonimmigrant Classes of Admission*, DEP’T OF HOMELAND SEC. (Dec. 28, 2017), <https://www.dhs.gov/immigration-statistics/nonimmigrant/NonimmigrantCOA>.

71. *Id.*

nonimmigrant visas come with their own restrictions that would prevent asylum seekers from even enrolling in higher education in the first place. For instance, tourist visas do not allow enrollment for credit towards a degree.⁷² Additionally, those who come on international student visas would, under university policies, have to pay out-of-state fees.⁷³ As such, the IIRIRA impacts asylum seekers just as much as undocumented students as asylum seekers are also not considered “lawfully present.”

B. *Getting Around the IIRIRA: In-State Provisions*

Currently, nineteen states have provisions for in-state tuition rates for undocumented students.⁷⁴ In 2001, Texas and California were the first states to allow undocumented students to obtain access to in-state tuition rates.⁷⁵ California passed California Education Code § 68130.5, also known as AB 540.⁷⁶ If the AB 540 criteria were met, the student qualified for in-state tuition rates regardless of citizenship status. Through further legislation, like AB 2000 and SB 68, passed in 2014 and 2017 respectively, the eligibility requirements of AB 540 have expanded.⁷⁷ Now, a nonresident in California can qualify for in-state tuition fees by meeting the following eligibility requirements in both Parts One and Two:⁷⁸

Part One

- Three full-time years of attendance or attainment of equivalent credits earned in a California:
 - High school
 - Adult school
 - Community college
 - Or any combination of the above
- **OR** three years of high school coursework and three years of total attendance in a California

72. U.S. Visas, DEP'T OF STATE, https://travel.state.gov/content/dam/visas/PDF-other/VisaFlyer_B1B2_March_2015.pdf (last visited March 13, 2021).

73. UCI Admissions, UNIV. OF CAL., <https://admissions.uci.edu/apply/international/index.php> (last visited Mar. 13, 2021).

74. Seventeen states—Arkansas, California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah and Washington—extend in-state tuition rates to undocumented students through state legislation. Two states—Oklahoma and Rhode Island—allow in-state tuition rates to undocumented students through Board of Regents decisions. NAT'L CONF. OF ST. LEGIS., *supra* note 11.

75. Heidi Timmerman, *Dare to Dream Act: Generation 1.5 Access to Affordable Postsecondary Education*, 39 W. ST. U. L. REV. 67, 70 (2011).

76. *Id.*

77. *About AB 540/AB 2000/SB 68 and the California Dream Act*, CAL. STATE UNIV., <https://www2.calstate.edu/attend/student-services/resources-for-undocumented-students/Pages/about-ab-540-and-the-california-dream-act.aspx> (last visited Mar. 13, 2021).

78. *Quick Guide to SB 68: Expansion of In-State Tuition Eligibility in California*, IMMIGRANTS RISING (Oct. 2019), https://immigrantsrising.org/wp-content/uploads/Immigrants-Rising_SB-68-Quick-Guide.pdf.

- Elementary school
- Secondary school
- Or any combination of these two

Part Two

- Fulfill one of the following:
 - Graduate from a California high school
 - Obtain a certificate of completion, GED, HiSet, or TASC in California
 - Attain an associate degree from a California community college
 - Fulfill minimum transfer requirements for the University of California or California State University

In 2005, nonresident plaintiffs sued the Regents of the University of California, alleging that AB 540 conflicted with § 1623, as it allowed undocumented students to qualify for in-state tuition while denying that benefit to out-of-state U.S. citizens.⁷⁹ However, the California Supreme Court found that AB 540 was not on the “basis of residence” as the IIRIRA contemplated, but on other criteria.⁸⁰ The Court also recognized that not all undocumented students could satisfy these criteria and that many other U.S. citizens, who, for instance, had attended a California high school for three years and graduated from a California high school, could qualify as California residents.⁸¹ Moreover, the Court noted that if Congress intended to prohibit states entirely from making undocumented students eligible for in-state tuition, it could have expressly stated as such.⁸²

III. THE CHALLENGE OF MEETING AB 540 REQUIREMENTS AND QUALIFYING FOR THE CALIFORNIA DREAM ACT

While meeting AB 540 criteria can be difficult for asylum seekers, these criteria also may present an opportunity. As mentioned, AB 540 includes criteria like attending a California high school or community college for three years. This may be easier criteria for undocumented students to satisfy, as many have been in the United States since childhood.⁸³ Asylum seekers like Salam, however, may arrive when they have nearly completed their high school education; Salam, for instance, had two years of high school

79. *Martinez v. Regents of the Univ. of Cal.*, 241 P.3d 855, 859 (Cal. 2010).

80. *Id.* at 863.

81. *Id.* at 864.

82. *Id.*

83. JEANNE BATALOVA & MICHAEL FIX, *NEW ESTIMATES OF UNAUTHORIZED YOUTH ELIGIBLE FOR LEGAL STATUS UNDER THE DREAM ACT 1* (Migration Pol’y Inst. 2006), https://www.migrationpolicy.org/pubs/Backgrounder1_Dream_Act.pdf. The Pew Hispanic Center estimates that 1.5 million undocumented students currently reside in the United States, and of these students, about 765,000 arrived in the United States before the age of 16. *Id.* at 3.

remaining. Moreover, if asylum seekers arrive on a valid nonimmigrant visa, they have to wait for this visa to expire since those with valid nonimmigrant visas are also ineligible for AB 540.⁸⁴ Thus, to meet the minimum three-year requirement under AB 540 to be eligible for in-state tuition rates when she transferred to a public university in California, Salam enrolled in community college after graduating from high school. This decision made it possible for her to meet the AB 540 criteria and qualify for in-state tuition and made it possible for her to complete her lower-division requirements at a more affordable cost. It also allowed her to become more familiar with college in the United States before transferring to a four-year university. She not only took classes for her intended major but also volunteered, tutored, and started her own campus organization.⁸⁵ Thus, she was ultimately able to meet the requirements for AB 540 to qualify for in-state tuition rates.

In addition to qualifying for in-state tuition rates, meeting the AB 540 criteria also allows undocumented and eligible nonresident students who could not qualify for the FAFSA to be eligible to apply for the California Dream Act. The California Dream Act provides undocumented and eligible nonresident students who meet the AB 540 requirements to receive certain types of state financial aid, including Cal Grants, UC Grants, State University Grants, and Dream Loans.⁸⁶

However, asylum seeker students like Salam cannot apply for the California Dream Act even if they meet the AB 540 criteria, as the California Dream Act considers students with Social Security numbers to be ineligible, and asylum seeker students generally have Social Security numbers. Undocumented students generally do not have Social Security numbers, with the exception of those who benefit from Deferred Action Childhood Arrivals (“DACA”), who have a work authorization and a Social Security number.⁸⁷ The California Dream Act Application recognizes this exception and only allows eligible DACA students with Social Security numbers to complete the application in addition to undocumented students who have no Social Security numbers.⁸⁸ In other words, the California Dream Act Application assumes that all other students with Social Security numbers qualify for the FAFSA.⁸⁹ However, this is simply not the case. Many asylum seekers have Social Security numbers, as they are able to apply for work authorization from the Department of Homeland Security 365 days after the proper filing

84. Completing the California Dream Act Application, CAL. STUDENT AID COMM’N 17 (2018), https://www.csac.ca.gov/sites/main/files/file-attachments/2018-19_california_dream_application_instructions.pdf.

85. See Salam’s Application, *supra* note 2.

86. *California Dream Act FAQ’s for Students and Parents*, CAL. STUDENT AID COMM’N 1 (2019), https://www.csac.ca.gov/sites/main/files/file-attachments/california_dream_act_faq.pdf?1570034690.

87. CAL. STUDENT AID COMM’N, *supra* note 84, at 3.

88. *Id.*

89. *Id.*

of their asylum applications.⁹⁰ Thus, asylum seekers may have no access to financial aid. They are ineligible to apply for the FAFSA as they are not recognized as eligible noncitizens, and they are ineligible to complete the California Dream Act Application as they have Social Security numbers, and they do not fall into the exception created for DACA students.

IV. SOLUTIONS

A. *Judicial Level: Allow Asylum Seekers to Enroll in Higher Education Institutions and Access In-State Tuition Rates*

State courts should find that it is in the best interests of states to allow asylum seekers to access higher education. As mentioned, Arizona, Georgia, and Indiana specifically prohibit in-state tuition for undocumented students, and Alabama and South Carolina prevent undocumented students from enrolling in postsecondary institutions entirely.⁹¹ Applying the Supreme Court's analysis in *Plyler* as discussed in Part II, state courts can find that states are not furthering substantial goals by preventing undocumented students from enrolling in public colleges or accessing in-state tuition rates. Asylum seekers are likely to fall into the umbrella of undocumented students for purposes of accessing in-state tuition because, like undocumented students, they would have to meet requirements based on residency⁹² or other criteria⁹³ to qualify for in-state tuition rates in their state of residence.

Moreover, there is no evidence that allowing access to enrollment in higher education institutions and paying in-state tuition rates would increase the number of asylum seekers coming to the country or that their enrollment would decrease the quality of public higher education in the state.⁹⁴ Instead, there is evidence that allowing these students to access higher education by charging them in-state tuition rates and permitting enrollment would result in greater social and economic benefits, such as increased tax revenues. As such, like in *Plyler*, courts should hold provisions of state codes prohibiting in-state tuition or college enrollment to be violations of the Equal Protection Clause and thus unconstitutional.

B. *Federal Level: Allow Asylum Seekers Access to In-State Tuition and Federal Student Aid*

Congress should repeal § 1623 of the IIRIRA as this law has created confusion among states. Courts have held that § 1623, which prevents providing any benefits to “aliens” on the basis of state residence, refers to the provision

90. *Apply for Your Social Security Number While Applying for Your Work Permit*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssnvisa/ebe.html> (last visited Mar. 13, 2021).

91. NAT'L CONF. OF STATE LEGIS., *supra* note 11, at 3.

92. See Timmerman *supra* note 75, at 71.

93. For instance, AB 540 in California.

94. See *supra* Part 1, Section C.

of in-state tuition specifically.⁹⁵ The Supreme Court of California has already upheld that AB 540, which allows students who meet certain criteria to access in-state tuition rates, does not violate federal law as these criteria are not on the basis of residence.⁹⁶ It is likely that legislation extending in-state tuition rates in other states would also be upheld under the same reasoning.⁹⁷ Repealing this law would allow states to make their own decisions about their residency requirements without concern about federal preemption. This is the easier and preferred course of action and is the one supported by undocumented communities.⁹⁸

Another alternative is to include asylum seekers in the definition of those who are lawfully present so that § 1623 is not a limitation. This approach, however, is less likely to get bipartisan congressional support. Many asylum seekers are apprehended for entering the United States illegally,⁹⁹ even though requesting asylum is a legal right under U.S. law, creating confusion as to the nature of whether asylum seekers are, in fact, lawfully present.

A third federal approach is to group asylum seekers with refugees and asylees rather than undocumented immigrants. The U.S. Department of Education, which manages FAFSA, can expand the category of eligible non-citizens, which already includes refugees and asylees, to also include asylum seekers, or at least those asylum seekers who have properly filed for asylum and have been granted work authorization. These asylum seekers have already done their part in applying for asylum and are already contributing to the U.S. economy and tax revenues. Perhaps they ultimately will be granted asylee status, and thus it seems unfair to prevent them from accessing financial aid simply because of the backlog of pending asylum cases, which is out of their control.

C. *State Level: Allow Asylum Seekers to Access State Aid*

While AB 540 has been expanded several times through additional Assembly and Senate Bills over the past decade, its provisions are still difficult for asylum seekers to meet.¹⁰⁰ As discussed, it may be difficult for asylum seekers to demonstrate three years of full-time attendance at a high

95. *Maricopa Cty. Cmty. Coll. Dist. Bd.*, 416 P.3d at 804.

96. *Id.*

97. See, e.g., Jessica Salsbury, *Evading "Residence": Undocumented Students, Higher Education, and the States*, 53 AM. U. L. REV. 459, 478 (2003) ("[L]aws modeled after California would likely pass judicial scrutiny in the face of a challenge that they violate Section [1623] of the IIRIRA" as these laws do not use the word "resident," but rather provide criteria that students must satisfy to be exempt from out-of-state tuition.).

98. Undocumented communities and their allies have supported the Development, Relief and Education for Alien Minors Act. See, e.g., Timmerman *supra* note 75 ("The heart of the [DREAM] act would have repealed section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.").

99. Natasha Arnpriester, *Trumping Asylum: Criminal Prosecutions for "Illegal" Entry and Reentry Violate the Rights of Asylum Seekers*, 45 HASTINGS CONST. L.Q. 3, 6 (2017).

100. See About AB 540/AB 2000/SB 68 and the California Dream Act, *supra* note 77.

school, community college, or adult school. And, even if asylum seekers are able to qualify for AB 540 for in-state tuition, they still might not be able to access state aid if they have work authorization and Social Security numbers.

Therefore, California, as well as other states, can make the provisions required to obtain in-state tuition rates easier to meet; perhaps even by cutting down the required three years of full-time attendance at a high school, adult school, or community college to two full-time years, as it typically takes two years for a student to transfer from a community college to a public university in California.¹⁰¹ Moreover, California can amend the provision that prevents students with Social Security numbers from applying for the California Dream Act. Either this provision can be removed entirely, or it can be expanded so that, in addition to DACA students, it also includes asylum seeker students who have received Social Security numbers because of their federally granted work authorization.

State provisions facilitating asylum seeker students' access to state financial aid are not a novel idea. In February 2019, California Senator Ben Allen introduced SB 296, Student financial aid: immigrants seeking asylum. This bill expanded eligibility for the California Dream Act by seeking to add the following provision to the eligibility criteria for the Cal Grant award¹⁰²: "a noncitizen who has filed an I-589 Application for Asylum and has a valid employment authorization document and social security number."¹⁰³ Unfortunately, California Governor Gavin Newsom vetoed this bill stating that it would "impose costs on the General Fund that must be weighted in the annual budget process."¹⁰⁴ Even though the long-term benefits of creating higher education access for asylum seekers are clear, perhaps there also would not be significant—if any—short-term costs, which Governor Newsom presumed. Though Governor Newsom was concerned about the bill's impact on funding, a legislative analysis found that it was "unclear how many students would benefit from the proposal and that students who are seeking asylum may already have access to aid."¹⁰⁵ Perhaps even more concerning than the California governor's failure to realize the long-term benefits of creating higher education for asylum seekers was that SB 296 was introduced, heard, amended, and ultimately vetoed without attention from colleges and universities.¹⁰⁶

101. *Preparing to Transfer*, UNIV. OF CAL., <https://admission.universityofcalifornia.edu/admission-requirements/transfer-requirements/preparing-to-transfer> (last visited Mar. 13, 2021).

102. This is the name of the primary financial aid award the California Dream Act offers.

103. S.B. 296, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

104. Letter from Gov. Gavin Newsom to the Members of the California State Senate (Oct. 13, 2019), <https://www.gov.ca.gov/wp-content/uploads/2019/10/SB-296-Veto-Message.pdf>.

105. Adolfo Guzman-Lopez, *California Lawmakers Tried to Cut the Cost of College. Here's What They Did and Didn't Accomplish*, LAIST (Sept. 13, 2019), <https://laist.com/2019/09/13/california-higher-education-bills.php>.

106. There is no indication of California public universities mentioning SB 296 on their websites. I also spoke to representatives at the UC Irvine Dream Center, UC Los Angeles Undocumented Students Program, and the UC Irvine Office of the Registrar, who had also not heard of it.

The passage of this bill, or a bill like it, would allow asylum seekers in California to access state financial aid.

D. *Educational Institutions*

Educational institutions, especially those who pride themselves on the diversity of their student body, ought to be at the forefront of policies that would benefit their prospective students, like SB 296. High schools and colleges should be more familiar with the asylum seeker status as well and should be well-acquainted with changes and proposals to financial aid and immigration policies through regular trainings. During a personal interview, Salam recounted how she received mixed messages from her high school and community college counselors about accessing aid; some told her to apply for the FAFSA, even though as an asylum seeker she was not eligible, and others admitted that they had never heard of her status and were unsure if she would be able to find funding to go to college.¹⁰⁷ In desperation, Salam even wrote to her congresswoman for assistance.¹⁰⁸ It is important for educational institutions to be aware of the asylum seeker status and policies and not leave their students to fend for themselves. Perhaps asylum seeker students could be better supported if campus undocumented student programs and centers are expanded to provide resources for asylum seeker students, or if campuses create separate centers for refugee and asylum seeker students. Assisting asylum seeker students through undocumented student programs and refugee and asylee student resources would allow asylum seeker students to feel empowered without creating a drain on campus resources. Such support could even be manifested through a tab on the undocumented or refugee program's website explaining the registration process for asylum seekers, the steps they can take to qualify for in-state residency, the deadlines to apply for state aid, and a list of internal and external scholarships.

E. *Alternative Private Models*

As federal and state policy changes occur, there are additional options to provide higher education funding for asylum seeker students. While this list is not intended to be exhaustive, it includes some options that can serve as models for institutions and organizations seeking to assist asylum seekers hoping to pursue higher education.

1. *Columbia University Scholarship for Displaced Students: A Model for Supportive Universities*

Columbia University's Scholarship for Displaced Students provides a key example of an effective expansion of educational and financial resources to

107. See Salam's Application, *supra* note 2.

108. *Id.*

benefit refugees and asylum seekers. The scholarship provides full tuition, housing, and living assistance for up to thirty refugees and asylum seekers pursuing undergraduate or graduate degrees across all eighteen Columbia schools.¹⁰⁹ The Columbia Global Centers provide six million dollars of funding per annual cohort.¹¹⁰ Each school selects one to three students to be granted a scholarship.¹¹¹ This is a model for universities to consider, especially private universities with funding to support displaced students, because private universities provide a single tuition rate for all of their students. This scholarship also recognizes that displaced students are not only refugees or those who have been granted asylum status but also include those who are seeking asylum. However, universities do not have to provide this much funding and support for more than two dozen students; even providing full tuition for one student or partial scholarship funds to multiple students can have a large collective impact. Universities can also look at the scholarship website¹¹² for language on why this initiative is pivotal, especially at a time when more than 70 million people are displaced in the world today.

2. *Refugee Students Scholarship Program: A Model for Student Leaders & Supportive Community Members*

The Refugee Students Scholarship Program is another model for universities to follow. This program provides scholarships up to \$5,000 per year for refugee and asylum seeker students admitted to California State University campuses and up to \$10,000 per year for refugee and asylum seeker students admitted to University of California campuses depending on financial need.¹¹³ This program is limited to public universities in California as the goal is to assist students who qualify for in-state tuition rates, which is much more affordable than private school tuition rates, so the scholarships have a greater financial impact.¹¹⁴ The program also prioritizes providing scholarships to asylum seekers who do not have access to other financial aid. University students raised funds from community members for the scholarship and found a non-profit to hold the funds.¹¹⁵ A portion of the funds were

109. *Columbia University Scholarship for Displaced Students*, COLUMBIA GLOBAL CTNS., <https://globalcenters.columbia.edu/CUSDS> (last visited Mar. 9, 2021).

110. Valeria Escobar, *Columbia announces first university-side scholarship for displaced students*, COLUM. SPECTATOR (Dec. 6, 2019), <https://www.columbiaspectator.com/news/2019/12/06/columbia-announces-first-university-wide-scholarship-for-displaced-students/>.

111. *Id.*

112. In its “About the Scholarship” section, the Columbia University Scholarship website discusses the role Columbia University can play in providing financial support to displaced students and shifting the global dialogue surrounding displaced persons. *See Columbia University Scholarship for Displaced Students*, *supra* note 109.

113. 2020-2021 Application, REFUGEE STUDENTS SCHOLARSHIP PROGRAM, <https://www.refugeescholarship.org/2019-20-scholarship-application> (last visited Mar. 13, 2021).

114. I founded this program.

115. Roxanna Kopetman, *UCI Student Creates First of Its Kind Scholarship Program for Refugees*, O.C. REGISTER (Nov. 11, 2017), <https://www.oregister.com/2017/11/28/uci-student-creates-first-of-its-kind-scholarship-program-for-refugees>.

used to create a separate scholarship at one of the University of California campuses to take advantage of its new fund matching program. Furthermore, this is a better option for more polarized campuses concerned about a segment of the student population causing uproar if the university itself allocated funding for refugee and asylum seeker students, as in the Columbia University case.¹¹⁶

3. *WUSC and the Oxford Students Refugee Campaign: A Model for a Supportive Student Body*

WUSC and the Oxford Students Refugee Campaign, while based outside the United States, are also great models to implement on U.S. campuses. WUSC is a Canadian non-profit organization. Among its many programs to support education, economic opportunities, and empowerment for youth is its Student Refugee Program, which combines resettlement with opportunities for higher education.¹¹⁷ While the resettlement process requires a supportive government, its opportunities for a higher education component is something that could be implemented at a U.S. campus. The program has instituted campus-based Local Committees¹¹⁸ led by students, which introduce a referendum to increase each student's tuition fee by one to twenty dollars annually to support the sponsorship of refugees or asylum seekers on each campus.¹¹⁹ All of the funds are transferred from the Student Union to the WUSC Local Committee. Over seventy campuses in Canada have adopted such referendums.¹²⁰

Similarly, the Oxford Students Refugee Campaign, launched in 2015, is a student-financed scholarship within the University of Oxford. Through the efforts of student organizers, more than 12,000 students pledged to contribute

116. Before establishing the Refugee Students Scholarship Program, I was determined to have the University of California join the International Institute of Education's Syria Consortium for Higher Education in Crisis to allocate scholarship funding and potentially seats for students forcibly displaced by conflict. The resolution I prepared calling on the University of California, Irvine to join this consortium was unanimously passed by the Associated Students of the University of California, Irvine. See ASUCI R52-12 (Oct. 8, 2016), UCI Membership in the IIE Syria Consortium for Higher Education in Crisis and Support for Displaced Students, Including Syrians, https://www.asuci.uci.edu/legislative/legislations/print.php?cnum=R52-12&gov_branch=ASUCI. However, this resolution was met with a lot of opposition from campus and community alt-right groups. See Tom Ciccotta, *UCI Student Government Passes Resolution for Admission Preference for Syrian Refugees*, BREITBART (Oct. 21, 2016), <https://www.breitbart.com/tech/2016/10/21/uci-student-government-passes-resolution-for-admission-preference-for-syrian-refugees/>. The UC Regents also expressed their concerns about the politicization of joining such a consortium and the challenge of finding funding to support refugee students to me during the UC Regents Meeting in San Francisco in January 2017. Thus, starting a private scholarship program with crowdfunding support was the best option.

117. *What We Do*, WUSC EUMC, <https://wusc.ca/what-we-do/#what-we-do> (last visited Mar. 9, 2021).

118. *Student Refugee Program*, WUSC EUMC, <https://srp.wusc.ca/> (last visited Mar. 9, 2021).

119. *Students in Canada vote "Yes!" to refugee resettlement*, WUSC EUMC (Aug. 27, 2020), <https://wusc.ca/students-in-canada-vote-yes-to-refugee-resettlement/>.

120. *Id.*

to the scholarship fund at a ratio of one pound per month.¹²¹ Nearly a quarter of a million pounds were pledged.¹²² As such, a student body that acknowledges the importance of supporting refugee and asylum seeker students can consider these crowdfunding mechanisms to raise funds for a scholarship for refugee and asylum seeker students.

V. CONCLUSION

Ensuring that asylum seekers can access higher education is in the best interests of our universities, our individual states, and our nation as a whole. By making higher education more accessible for asylum seekers, we can facilitate a diverse student body to enrich the educational experiences of our university students, enable asylum seekers to contribute to our communities instead of becoming reliant on welfare systems, and, if the asylum seekers are ultimately not granted asylum, to return to their home countries with the education, skills, and tools they need to contribute to their countries' post-conflict development.

Under our current system, it is difficult—if not outright impossible—for asylum seekers to attend higher education institutions. The predominant challenge they face is a lack of financial support. Under federal law, asylum seekers cannot apply for the FAFSA. Only a handful of states have the mechanisms through which undocumented students can establish residency or satisfy other criteria to access the much more affordable in-state tuition rates at public universities, but these requirements can be challenging for asylum seekers to meet. Though in-state tuition rates are significantly cheaper than out-of-state tuition rates, they are still unaffordable. States like California have recognized this and created options like the California Dream Act for their undocumented students so that they can apply for state aid. Yet, asylum seekers cannot satisfy the requirements for the California Dream Act either; instead, they find themselves underqualified for federal aid but overqualified for state aid and thus ineligible for either. Therefore, federal and state policies ought to be amended so that asylum seekers can more easily access in-state tuition rates and be eligible for financial aid. Until those changes are made, students and universities can work to provide scholarships for asylum seekers so that exceptional students like Salam can have the opportunity to pursue higher education.

121. Thaís Roque, Erica Aiazzi, Christopher Smart, Stacy Topuzova & Chloé Touzet, *Financial Support is not Enough! Barriers in Access to Higher Education of Refugee and Displaced Students: Lessons from the Experience of the Oxford Students Refugee Campaign*, in STRATEGIES, POLICIES, AND DIRECTIONS FOR REFUGEE EDUCATION: INNOVATIONS IN HIGHER EDUCATION TEACHING AND LEARNING 13, 219–34 (Emerald Publishing Limited, 2018).

122. *Oxford students pledge £240,000 to refugee scholarships*, BBC (June 18, 2016), <https://www.bbc.com/news/uk-england-oxfordshire-36546652>.