

DISSERTATION

WE WANT THEM, BUT WE DON'T WANT THEM: THE CASE OF
UNDOCUMENTED COLLEGE STUDENTS IN COLORADO
AN INTERPRETATION OF POLICY NARRATIVES

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ABSTRACT

WE WANT THEM, BUT WE DON'T WANT THEM: THE CASE OF UNDOCUMENTED COLLEGE STUDENTS IN COLORADO AN INTERPRETATION OF POLICY NARRATIVES

This dissertation describes a research project that examined and interpreted the text of Colorado House Bill 1023 (2006) and the narratives embedded in this policy text. The research context was framed by current debates at the national and state levels on the issue of postsecondary education benefits for undocumented students. Analysis of the data led to the illumination of the rationalization for denying in-state tuition benefits to undocumented graduates from public high-schools in Colorado. This rationalization was found to be based on selected ideological beliefs that were then identified and interpreted.

The study employed a qualitative research design. The method of inquiry was grounded in a constructivist-interpretive methodology. The methods of analysis and interpretation were thematic analysis, hermeneutic interpretation, and narrative policy analysis. The data consisted of Colorado policy texts concerning immigration and membership issues, related federal legislation, and state statutes from Texas and California. The data were first analyzed using thematic networks analysis and then hermeneutic interpretation. Narrative policy analysis was subsequently employed to synthesize the themes that emerged in the thematic analysis and hermeneutic

interpretation. A dominant policy narrative and counter policy narrative were generated, and from these a metanarrative evolved.

The thematic analysis yielded an internal or legalistic interpretation of the verification regulations of lawful presence requirement set forth in Colorado HB 06S-1023. The hermeneutic interpretation revealed that this Colorado policy was framed according to the principle of self-sufficiency for immigrant admission and notions of restrictive membership for resident aliens. The interpretive analysis also showed that the interaction of negative constructions of undocumented immigrants with structures of social dominance led to a narrative of exclusion and objectification of these resident aliens. The narrative policy analysis related Colorado HB 06S-1023 to a dominant policy narrative that reinforced the legal grounds for the delegitimization and social exclusion of undocumented immigrants. A metanarrative derived from the comparison of these narratives and was interpreted as the contrast between *we want them, but we don't want them* to explain how official government texts of the state of Colorado rationalized the issue of undocumented immigrants' rights and the state's responsibilities in this regard.

The interpretation of the data contributed perspectives that advance the understanding of the social issue regarding the restriction on public benefits for undocumented immigrants currently residing in American communities. Specifically, this interpretation provided insights on the case of undocumented students in Colorado who, as a result of current state legislation, are denied access to in-state tuition benefits. The study also contributed another approach to meaning-creation processes and understanding the meaning of a policy text. Recommendations for further research on this topic and related themes were identified.

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DEDICATION

I dedicate this dissertation to my parents, Fidel and Amalia, for fostering in me the value of education for social justice, and to my children, Nicolás and Luciana, for embracing this understanding.

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CHAPTER ONE: INTRODUCTION

Overview

The main goal of this research project was to examine and interpret the text of a Colorado law concerning the social status and legal rights of undocumented immigrants in the state. The study specifically considered the case of undocumented college students who have resided in Colorado and who have graduated from public high-schools. In this study, the terms *undocumented* or *unauthorized* students refer to those students who are foreign nationals and who entered the United States as children either without inspection or with fraudulent documents, or with legal, non-immigrant visas that eventually expired. The significance is that, under any of these circumstances, these students reside in the United States without documented verification of lawful presence.

The steps that I completed in this investigation are reported in five parts organized as chapters. Chapter One presents an introduction to the research topic, describes the research context and rationale for the study, and defines my perspective as a researcher and the study's conceptual framework. The research methods are introduced and the research questions are identified. The chapter concludes with a discussion of the significance and limitations of the study.

Chapter Two is a review of the literature that provides a socio-historical and legal background to the topic of this study. Accordingly, this chapter explains culturally-shared beliefs underlying the American educational system and, specifically, access to higher education and core principles of criteria determining admission to higher education. In addition, the review examines the place of political culture and conceptualizations of community membership in policymaking processes, and

summarizes relevant points in current federal and state law regarding the rights of undocumented college students.

Chapter Three explains the methodology employed in this research project. The chapter describes the theoretical framework and interpretive grounding for a qualitative research design and explains the methods that I used for data collection and analysis. The chapter closes with a discussion of the strategies that I employed to ensure trustworthiness and transparency in the generation and explanation of the interpretations.

Chapter Four describes the procedures that I used to analyze and interpret the data. The chapter describes the preparation steps, and the descriptive and interpretive stages of data analysis. The thematic analysis of the core and primary texts constituted the descriptive stage of the analysis. The interpretive stage of analysis involved the hermeneutic interpretation of the core text with respect to additional documents. Narrative policy analysis was then used to synthesize the themes that evolved in the descriptive and interpretive stages of data analysis. This chapter also explains how matters of trustworthiness and ethical considerations were accomplished throughout the analytical and interpretive processes.

Chapter Five synthesizes and interprets critical insights gained from the study. A metanarrative generated from the juxtaposition of narratives is explained in relation to the data, research questions, and views from the literature. The chapter then addresses the significance of the study and provides recommendations for further study.

Opening Vignette

In the fall of 2007, I met with the English as a Second Language (ESL) Coordinator of a public school district in Northern Colorado. The purpose of the meeting

was to outline a project that would attract English language learners in senior high-school classes to the local community college where I work. The proposed project would create learning communities involving ESL courses and community college general education courses. The intended goal of the project was to provide these students with a sheltered college experience and hopefully motivate them to pursue a college education. Student success in transitioning from high-school to college was a goal of my community college and the high-school. It was also a state educational priority aimed at addressing the workforce development needs and improving the graduation rate of high-school students from state colleges (Blue Ribbon Panel, 2003; Colorado Community College System Enrollment Summit, 2006; Gehring, 2002). Additionally, the project was of special interest to my community college because of its potential to increase the racial and ethnic diversity of our student population (Front Range Community College Self-Study, 2008).

Although the school district ESL Coordinator was initially interested in the project, she soon dismissed it as unattainable. Her concern was that Colorado House Bill 06S-1023¹, a recently passed state law, would prevent some of the targeted students from pursuing a college education because of their undocumented immigrant status. When I asked her to explain this matter, she stated that the new law would require proof of students' legal presence in the country in order to be eligible for in-state tuition and fees at public colleges and universities. Given that some of these students had entered the country with their parents without authorization, they would be unable to prove their legal presence in the country and would thus be unqualified to apply for public postsecondary education subsidies. The high cost of non-subsidized college education

¹ Legislative nomenclatures in this study define the type of bill or resolution –House or Senate-, the year it was passed or introduced, and the number it was assigned. The insertion of an “S” following the year indicates that the bill was passed or introduced in the summer session of the Legislature.

would be an impediment for most of these students because they could not afford to pay non-resident tuition rates.

The incomprehensibility of the situation overwhelmed me and provoked serious concerns and reservations. I found myself asking questions that I could not answer. Why was access to college being differentiated among Colorado high-school graduates based on their immigration status? How could these immigrant high-school graduates fulfill productive lives in our society in view of the impediments to further education and, eventually, to employment? Questions like these prompted me to research the issue and provided the impetus for the study that I describe in this dissertation.

Research Context

The right of undocumented students to state subsidized higher education is the focus of an intense public and political debate in the United States at the national and state level. This social issue is encompassed in the dialogue regarding the need for comprehensive immigration reform (U.S. Congress Hearing - Serial 110-28, 2007; U.S. Congress Hearing – Serial 110-36, 2007), which has evolved from a combination of factors. The economic downturn of the 1990s led Congress to reassess the issue of immigration and, subsequently, penalize immigrants for unauthorized immigration (Connolly, 2005). A decade later, the events of September 11 spurred anti-immigrant sentiment, which spilled over to undocumented immigrants (Aldana, 2007a; Badger, Yale-Loher, Vernon, & Schoonmaker, 2005; Burke, 2007; Connolly, 2005; Morinaka, 2007). Meanwhile, the increase in unauthorized immigration (Urban Institute, 2004) created political pressures for immigration reform, a high profile political issue that became a central topic in the 2008 presidential debates (Huang, 2007; Klein, 2007).

The Urban Institute (2003a, 2003b) estimated that approximately 65,000 undocumented students graduate from U.S. high-schools each year and that, for the majority of them, this is a terminal educational credential. Because many states bar these students from postsecondary education benefits due to their undocumented immigration status, they face legal and financial obstacles in pursuing a college education, a hardship aggravated by the fact that most of them fall within low-income levels (Aldana, 2007a, Bell Policy Center, 2005; Connolly, 2005; Huber & Malagon, 2007; Pew Hispanic Center, 2006; Sharron, 2007). While the denial of this public benefit to undocumented students is strictly a state decision, current federal legislation outlines the criteria for restricting public benefits to certain immigrants (Boggioni, 2009; Connolly, 2005; Olivas, 2007; Salsbury, 2003). Even if undocumented students are able to complete a postsecondary education, the prospect of employment in their field of knowledge after graduation is slim to nil as a result of their legal ineligibility to work (Aldana, 2007a; Bell Policy Center, 2005; Connolly, 2005; Horwedel & Asquith, 2006; U.S. Congress Hearing – Serial 110-36, 2007). The situation in which these students find themselves has been described, and rightly so, as *a state of limbo* (U.S. Congress Hearing – Serial 110-36, 2007), *a catch-22* (Bell Policy Center, 2005), and *a revolving door* (Steward, 1991).

The core issue of the debate on whether states should subsidize postsecondary education for undocumented students is the disagreement among policymakers on whether subsidized education beyond K-12 public education is a right or a privilege. While access to subsidized elementary and secondary education, regardless of students' legal status, is guaranteed by the U.S. Supreme Court, access to subsidized public postsecondary education for undocumented students remains an unsettled matter and is

often regarded as a privilege and conditioned on the students' legal status. The discrepancy of views is intensified by the fact that the principles of justice and equal protection invoked in a 1982 Supreme Court decision to support the right of undocumented students to public elementary and secondary education do not hold in current federal legislation concerning the eligibility of college-age undocumented students for subsidized public postsecondary education. These polarized discussions are further fueled by deliberations that balance the importance of cultivating an educated and globally competitive workforce against the social and economic cost incurred by state governments as a result of unauthorized immigration (Annand, 2008; Burke, 2007; Connolly, 2005; Huang, 2007; Salinas, 2006; U.S. Congress Hearing - Serial 110-28, 2007). In discussing the benefits to society from subsidizing public postsecondary education for undocumented students, Romero (2002) indicated that "an untapped source of potential future labor would be those undocumented postsecondary school students who are precluded from pursuing a college education because of their immigration status or limited finances" (p. 416).

The widespread disagreement and confusion on these matters is reflected, in part, by the flow of legislation in the federal and state governments. At the federal level, proposals favoring the subsidization of public postsecondary education for undocumented students were first introduced in 2001 in the Development, Relief, and Education for Alien Minors (DREAM) Act and the Student Adjustment Act (SAA), but continue to be debated in Congress. At the state level, legislation has both required and prohibited the subsidization of public postsecondary education for undocumented students (Boggioni, 2009; Connolly, 2005; Olivas, 2007).

Like several other states in the nation, Colorado has felt the impact of the immigration wave arriving over the last decade. According to the Bell Policy Center (2005), a non-profit research and advocacy organization in Colorado, the growth in Colorado's immigrant population during the 1990s placed it among the top ten states with respect to the rate of increase. The demographic changes impacted the state social services systems, and this created alarm for Colorado policymakers and community stakeholders. The concern brought Colorado into the national debate addressing the responsibility of the federal and state governments to attend to the needs of the newcomers in educational, health, and other social services (U.S. Congress Hearing - Serial 110-28, 2007). The policy debate regarding the subsidization of postsecondary education to the children of undocumented immigrants residing in the state culminated in a special session of the Colorado General Assembly in 2006 with the enactment of Colorado House Bill (HB) 06S-1023 on July 13th, 2006. This bill provided that state agencies and local governments must verify the lawful presence in the United States of any person eighteen years old or older who applied for non-emergency public benefits. As such, the bill set forth limitations for undocumented students on admission to public postsecondary institutions and on eligibility for accessing federal and state financial aid. At the time, HB 06S-1023 was characterized as the most restrictive immigration legislation in the country concerning the treatment of undocumented immigrants (Rocky Mountain News, 2006b).

Colorado HB 06S-1023 can be considered a policy artifact that carries several meanings. For example, it can be interpreted as a policy statement of the state government about the ineffectiveness of federal immigration policy. Conversely, it can

be read as a political statement by policymakers regarding their constituencies' interests or concerns. As a cultural text, it provides insights concerning the distribution of rights among the residents in the state as well as underlying perceptions towards members of non-dominant, ethnic and racial groups in the society. Likewise, an interpretation of this text can help identify structures of social membership and reveal values or priorities interacting in the context of this policy artifact.

Given my belief in the value of a college education and my concern regarding the legal and social ramifications of immigration policy, I became interested in interpreting some of the narratives embedded in this policy text. The bill was enacted at a time when Colorado political leaders had committed to address inequities in access to higher education. The low college graduation rates in the state were apparent and related to the looming labor shortage for local businesses and industries (Colorado Community College System Enrollment Summit, 2006; Gehring, 2002).

In 2003, a report by the Governor's Blue Ribbon Panel on Higher Education for the 21st Century recommended that the state increase college participation by resident students. This recommendation was based on the Panel's observation that the state was facing a phenomenon known as the *Colorado Paradox* (Harbour, Davies, & Lewis, 2006; Protopsaltis, 2006). Simply stated, the paradox was that while Colorado ranked among the top ten states in the nation as measured by the percentage of adults holding a college degree, it was in the bottom quartile nationwide for high-school freshmen enrolling in college within four years (Blue Ribbon Panel, 2003). The Panel found that the disparity was due in large measure to the state's success in attracting out-of-state adults with college degrees while failing to encourage college participation by state high-school

graduates, especially, low-income and other non-traditional students. On a similar note, a 2004 report by the National Center for Public Policy and Higher Education indicated that, in 2000, the average participation rate of low-income students in Colorado postsecondary education was 17.1 percent, placing the state forty-first nationwide in providing access to college for underprivileged student populations.

In an effort to reverse the low college participation rate by high-school graduates, the state legislature established the College Opportunity Fund (COF) in 2005. COF replaced traditional legislative appropriations to institutions to support undergraduate education with a new student voucher system. This new funding mechanism was intended to help improve the efficiency and effectiveness of public undergraduate higher education by harnessing market forces to reward institutions that successfully competed for undergraduate enrollments. The anticipated market-based forces of a voucher system were viewed as a possible restraint upon public institutions in increasing tuition and fees. This would also help attract underprivileged students to Colorado's public colleges and universities (Harbour et al, 2006; McCarthy, 2004; Protopsaltis, 2006).

Against this backdrop of state legislation to promote greater educational equity and efficiency in public higher education, the enactment of Colorado HB 06S-1023 introduced an element of discord. In differentiating the rights of legal and undocumented residents, a critical distinction concerning postsecondary educational opportunity was made. That is, access to subsidized public higher education was denied for undocumented residents. With this move, Colorado joined a handful of states, including Alaska, Arizona, and Virginia, which also denied postsecondary education benefits to in-state undocumented students, and steered away from the approach to grant such benefits

taken by a majority of states at the time, including, California, Illinois, Kansas, New Mexico, Nebraska, New York, North Carolina, Oklahoma, Texas, Utah, and Washington (Janosik & Johnson, 2007; Rincón, 2005; Robinson, 2006).

As a result of the provisions in HB 06S-1023, a growing number of graduates from Colorado high-schools began to see an effective revocation of their opportunity to enroll in a public Colorado college or university solely because of their immigration status (Bell Policy Center, 2005). In order to comply with HB 06S-1023, Colorado institutions of public higher education were required to deny in-state tuition and financial aid benefits to in-state applicants who could not verify legal presence in the county. This meant that in-state, undocumented students who were admitted to a Colorado public college or university would have to pay out-of-state tuition and would be ineligible to receive any publicly subsidized financial aid.

Nevertheless, the meaning of the provisions in HB 06S-1023 and their effect on undocumented students remains uncertain on some grounds. On a first reading of the law, the denial of subsidized public postsecondary education seems related to the provisions in federal legislation 8 U.S.C. §1611, §1621, and §1623, which outline the restriction on public benefits for undocumented immigrants (Department of Law, 2006). Upon closer examination, however, a main obstacle to college education for undocumented students in Colorado seems to be financial rather than legal, as these students could indeed seek a postsecondary education, if they could afford out-of-state college tuition rates (Bell Policy Center, 2005; Pew Hispanic Center, 2005). In fact, the restrictions imposed by HB 06S-1023 dissipate when undocumented students sign up for

courses in non-credit adult education programs because these self-supported programs do not exclude participating students based on their immigration and residency status.

The passage of HB 06S-1023 presented Colorado's postsecondary public educators a dilemma, namely, to abide by a law restricting admission to some state high-school graduates while retaining the mission statement of promoting access to public postsecondary education. Within the first year of this law's existence, educators and advocacy groups in the state sought to ameliorate the impact of its restrictive provisions. In this regard, Attorney General John Suthers, responding to a request from the Executive Director of the Colorado Department of Higher Education, issued a legal opinion advocating the extension of public college education benefits to children born in the United States to undocumented parents (Department of Law, 2007a). Essentially, Suthers' opinion said that children of undocumented immigrants who are U.S. citizens were eligible for in-state tuition benefits, if they fulfilled state residency requirements. This opinion, which has not yet been successfully challenged, helped jump-start further discussion in the 2008 and 2009 legislative sessions regarding in-state student classification. However, foreign-born, undocumented students who have graduated from Colorado high-schools continue to be restricted by the provisions in HB 06S-1023. For these students, one option is to pursue postsecondary education in New Mexico (Bell Policy Center, 2007; Rocky Mountain News, 2007) and, thus, join a group of Colorado residents who now constitute another dimension of the *Colorado Paradox*; those residents of Colorado who earn a college degree outside the state.

Given this context, this study aimed to identify and interpret the narratives embedded in HB 06S-1023, and to understand how the rights of undocumented

immigrants and the privileges of Colorado residents were conceptualized in this policy text.

Rationale for the Study

The debate regarding the right of undocumented students to access state subsidized postsecondary education benefits has become a volatile political issue throughout the American nation. The issue has surfaced in Congressional discussions for comprehensive immigration reforms (U.S. Congress Hearing - Serial 110-28, 2007; U.S. Congress Hearing - Serial 110-36, 2007). At the state level, the debate has yielded conflicting policy decisions ranging from denying this subsidy, as in Colorado HB 06S-1023, or granting it, as in Texas HB 01-1403, depending on the weight of a number of factors, such as length of residency and the condition of being foreign-born or a national (Huang, 2007; Olivas, 2008; Rodriguez, 2008). Accordingly, debate on this issue is rapidly expanding in public and political circles. Research literature on this issue, however, remains limited (Morinaka, 2007; Rincón, 2005).

Notwithstanding this limitation, several debates are now underway in academic studies, opinion articles, and various commentaries and reports offering additional interpretations of these policy issues. Some of these publications described the development of federal and state immigration policies and analyzed legal considerations relevant to the supporting or opposing sides of the debate (Badger et al., 2005; Bell Policy Center, 2005; Espenshade, Baraka, & Huber, 1997; Janosik & Johnson, 2007; Olivas, 1986, 2004, 2007, 2008; Perry, 2006a; Rincón, 2005; Robinson, 2006). For example, Kobach (2006) contended that state legislation initiatives to extend postsecondary education subsidies to undocumented students violated federal legislation.

Olivas (2008), however, examined current federal legislation and residency requirements for postsecondary education and rejected Kobach's claim. From a legalistic perspective, the literature has focused on the diversity of legal authorities addressing the issue, the analysis of relevant court cases, and the description of inclusive models currently considered in state legislative decisions. To illustrate, the in-state tuition policies created in Texas and California extending subsidization to undocumented students have been adapted by other states, and challenged in a few recent court cases².

On a different front, the literature includes research examining the effect of cultural, social, political, and economic considerations in policy decisions such as those described above extending postsecondary education benefits to undocumented students (Chock, 1995; Espenshade, 1995; Mármora, 2002; Perry, 2006a, 2006b). Studies that investigated immigration lawmaking processes distinguished underlying themes, including the role of language and conflicting interpretive frameworks in policymaking discussions about undocumented immigrants (Chock, 1995; Johnson, 1996; Newton, 2005; Schneider & Ingram, 1993). Some scholars critiqued unfavorable public perceptions about the social, economic, and cultural impact of unauthorized immigration within society, and the effect of these views on immigration policymaking (Annand, 2008; Burke, 2007; Espenshade, 1995; Wadsworth, 2010). A few studies focused on the apparent lack of consistency and coherence between American core cultural beliefs and legislation restricting social benefits for undocumented immigrants (Perry, 2006a, 2006b; Stumpf, 2006).

² *Equal Access Education v. Merten*, 325 F. Supp. 2d 655 (E D Va. 2004); *Day v. Sebelius*, 376 F.Supp. 2d at 1025 (D.Kan. 2005); *Martinez v. Regents of the U. of Cal.*, No. CV05-2064 (Cal. Super. Ct. Jan. 31, 2006).

The rationale for the present study stemmed from an interest in examining the narratives inscribed in the text of Colorado HB 06S-1023, a bill with provisions that exclude undocumented resident students from the system of public higher education subsidization. Two recent studies explored the situation of college-aged immigrant students, but approached the topic from legalistic and historical perspectives. Morinaka (2007) analyzed the implications of post-September 11 changes in immigration law for international students and scholars in higher education. Rincón (2005) traced the legislative initiatives that led to Texas HB 01-1403, a bill that pioneered state legislation extending postsecondary education benefits to undocumented college students. Morinaka reported that changes in immigration law and policies after September 11 created deficiencies that impacted demographics in academia. For her part, Rincón concluded that Texas policies to allow undocumented students to pay in-state tuition and receive financial aid were responsive to changing demographics as well as the mission statement of postsecondary institutions committed to increasing access. Studies in the literature also examined the interaction of policymakers' perceptions and policy discourse (Chock, 1995; Newton, 2005; Perry, 2006a).

My study focused on the interpretation of the text of Colorado HB 06S-1023 as a text with cultural and educational significance. In this study, the legal or historical significance of the text was not a primary concern.

Purpose of the Study

The purpose of this study was to examine the text of Colorado HB 06S-1023 in order to illuminate the rationalization for the law and then to identify and interpret the

ideological³ beliefs concerning the social status and legal rights of undocumented immigrants. I found that these ideological beliefs serve as the architecture for a metanarrative that characterizes undocumented immigrants as inherently unequal residents. Perry (2006b) identified basic cultural beliefs concerning membership that may have influenced policymakers in drafting Texas HB 01-1403. But we do not know what ideas and considerations are embedded in the text of Colorado HB 06S-1023, an exclusionary and restrictive policy addressing the same social issue. This study then aimed to interpret the meaning of the text of Colorado HB 06S-1023, and understand how the social issue of undocumented immigration evolved and was rationalized in this legislation.

The justification for this study rests on some collateral concerns, which are outlined below.

1. The social impact of educational barriers for undocumented college students.

One concern is that the requirements set forth in Colorado HB 06S-1023 have impeded enrollment in public higher education for a growing segment of the state's population. Although there are no reported data on the number of undocumented students who have been excluded from enrollment in Colorado public higher education because of HB 06S-1023, I assume, for purposes of this research, that publicly governed and funded institutions are complying with the law, which is listed as a new requirement in the Colorado Department of Higher Education website (<http://highered.colorado.gov>). As a result, some undocumented students are currently denied in-state tuition rates. In this sense, the implementation of this policy raises questions about the long-term impact of

³ "Ideological" in this context is related to a poststructural view of ideology as a set of beliefs and ideas that help support a dominant social order (Brooker, 1999).

the measure on social and economic sectors of the state's society. A 2005 Current Population Survey estimated that the unauthorized migrant population in Colorado was between 225,000 and 275,000 (Pew Hispanic Center, 2006), a figure showing consistent growth from earlier reports.

Academically and nationally, undocumented students range along an educational continuum from the most successful students with prestigious leadership accomplishments to underachieving students on the drop-out track (Badger et al., 2005; Bell Policy Center, 2005; Connolly, 2005; U.S. Congress Hearing – Serial 110-36., 2007). In fact, high-school drop-out rates among undocumented students are thought to be related, in part, to the lack of a college educational opportunity (Boggioni, 2009; Connolly, 2005; Huang, 2007; Ruge & Iza, 2005; Salsbury, 2003; U.S. Congress Hearing – Serial 110-36, 2007).

Also relevant to the Colorado scenario is the fact that a high percentage of this student population is of Mexican origin and that many are among the underserved Hispanic student population, which is a population specifically discussed in reports on the *Colorado Paradox* (Blue Ribbon Panel, 2003; Pew Hispanic Center, 2005). Therefore, the provisions of HB 06S-1023 should be analyzed to understand how they might shed light on the inequities in the state's postsecondary educational system and, at the same time, interfere with the state's commitment to developing its workforce.

2. Ongoing policy indeterminacy on the issue. A second consideration is the inherently contentious nature of the issue regarding the subsidization of public postsecondary education for undocumented students. The differing perspectives on this issue at the federal level, as expressed in the Illegal Immigration Reform and Immigrant

Responsibility Act (IIRIRA) of 1996 and in the proposed provisions of the DREAM Act and the SAA of 2001, mirror the disparity of interpretations occurring at the state level (Connolly, 2005).

At the state level, Colorado HB 06S-1023 overrode earlier attempts to establish an inclusive policy, including HB 05-1124, a bill introduced in the 2005 session of the Colorado General Assembly that would have granted higher education benefits to state high-school graduates regardless of their immigration status (Bell Policy Center, 2005). Subsequent legislation in Colorado has continued to address the issue of in-state student classification for tuition purposes. In 2008, Colorado lawmakers introduced and passed Senate Bill (SB) 79 and HB 08-1191, which attached in-state student classification to the students' citizen or legal resident status, irrespective of their parents' legal status (Bell Policy Center, 2008). The effect of these bills is to determine eligibility for in-state tuition and financial aid benefits based on the applicants' proof of citizenship or legal resident status and compliance with Colorado residency requirements. Still, proposals to extend in-state tuition benefits to foreign-born, undocumented students graduating from state high-schools linger on. The most recent legislative effort was the introduction in 2009 of SB 170, which again sparked arduous debate on the right of these students to subsidized postsecondary education in Colorado public institutions. Accordingly, there seems to be no closure on the issue of postsecondary educational benefits for undocumented students.

3. *Divergent perceptions about undocumented immigrants.* A third matter of concern relates to the presence of conflicting views about the effect of undocumented immigrants on American communities. Several studies and reports have indicated that

the imagined perils of unauthorized immigration are ill-founded. These studies concluded that rather than being a fiscal burden, undocumented immigrants appear to contribute to their communities in ways that the mainstream society ignores (Burke, 2007; Espenshade, 1995; Perry, 2006a; U.S. Congress Hearing – Serial 110-36, 2007). Fears regarding undocumented immigrants seem intertwined with nativist, xenophobic, or racist arguments (Connolly, 2005; Johnson, 1996; Mármora, 2002; West, 2010), and as Chock (1995) noticed, are often unconsciously held views that taint policymakers’ judgment. Therefore, there is a need to sift through the narratives that underlie Colorado HB 06S-1023 to understand the rationalization for denying in-state benefits and the corresponding prospect of subsidized postsecondary education to undocumented students, knowing that many of these students qualify as low-income and as a minority in the state’s demographic composition (Bell Policy Center, 2005).

4. Considerations regarding the rights of and duties towards immigrant residents.

The provisions of Colorado HB 06S-1023 stimulated philosophical reflection concerning the appropriateness of limiting certain social rights to selected resident members of the community (Bell Policy Center, 2006; Burke, 2007). The differentiation between documented and undocumented students sometimes becomes indistinguishable when basic principles of membership are considered (Benhabib, 2004; Bosniak, 2006; Perry, 2006b; Walzer, 1983). Moreover, Colorado policymakers’ decision could be understood as an expression or manifestation of Giorgio Agamben’s notions of “state of exception” (2005, p. 2) and “the camp” (2000, p.123). Accordingly, the policy to bind undocumented students to legal and social norms established for all residents in the state, such as state income tax, but to deny them some rights, such as state support towards

higher education, may be construed as a mechanism for isolating and intimidating these individuals in the community. Given that funding for Colorado public higher education is substantially supported by state-tax revenues and that some state community colleges also receive a proportion of local-tax funding, the provisions of duty and privilege for undocumented college students included in HB 06S-1023 should be analyzed in relation to culturally shared beliefs of equity and justice.

5. Policy implications for the provision of principles of democratic education.

Lastly, the enactment of Colorado HB 06S-1023 challenged higher education administrators and educators in different ways. A conflict between policy ethics and law affected administrators primarily, as they were summoned to comply with aspects of the bill within their institutions and, especially, with policies of open access (Badger et al., 2005; Janosik & Johnson, 2007). For educators, the concern was the disruption of equitable provision of educational opportunities. The provisions in Colorado HB 06S-1023 leave undocumented students who want to pursue higher education with limited options. If these students remain in the state, they can pay out-of-state tuition in any of the postsecondary institutions or complete only non-credit courses in adult education programs. Alternatively, they can attend an institution in some other state, such as New Mexico, where state laws do not discriminate against applicants based on immigration status and interstate agreements guarantee in-state tuition rates (Bell Policy Center, 2007; Rocky Mountain News, 2007).

By differentiating higher-education benefits for documented and undocumented high-school graduates, the former students can earn degrees and certificates while the latter are limited to develop lower skills or knowledge for which a college education is

not required. The restrictions in HB 06S-1023 may have arguably established conditions to disenfranchise undocumented students seeking a publicly subsidized college education. Thus, an analysis of HB 06S-1023 may examine whether its provisions interfere with democratic principles for public postsecondary education and foster discrimination among state residents.

These considerations provide a background to the analysis and interpretation of the narratives of Colorado HB 06S-1023, a policy artifact built in the context of the political culture of the state. Fowler (2004) defined political culture as “a collective way of thinking about politics that includes beliefs about the political process, its proper goals, and appropriate behavior for politicians” (p. 95). Fowler placed Colorado within the *moralistic* political culture group, which is characterized by an interest in developing and advancing ideas and programs for the common good. The enactment of this bill suggests that there was, at least, some bipartisan agreement on its provisions, as can be inferred from House Speaker Andrew Romanoff’s assertion that the passage of HB 06S-1023 “shows that Republicans and Democrats can work together and pass strong legislation” (Rocky Mountain News, 2006a).

The goal of this study was exploratory. Its main purpose was to illuminate the rationalization for the law and then to identify and interpret the ideological beliefs concerning the social status and legal rights of undocumented immigrants. This work then led me to identify and interpret the narratives that are inscribed in the text of Colorado HB 06S-1023. It also enabled me to identify a dominant narrative or a metanarrative concerning the issue of undocumented immigration in this state.

Research Questions

This study was designed to understand the meaning of Colorado HB 06S-1023. I inductively identified and critically examined the narratives embedded in this text, and interpreted them in relation to other legislation, at the state and national level, regarding the issue of postsecondary education benefits for undocumented students. Given the precedents established by a number of states to subsidize college education for in-state, undocumented students, I was interested in exploring how HB 06S-1023 conceptualized the rights and privileges of undocumented immigrants in Colorado. The overarching research question was *“what does the text of Colorado HB 06S-1023 mean, explicitly and implicitly, regarding the rights to higher education benefits for state high-school graduates who are undocumented immigrants and the state’s duty to serve these graduates through state subsidized higher education?”*

Although the primary research question concerned a specific bill, I analyzed and interpreted additional relevant texts to identify the ideas underlying those documents or decisions. The following sets of secondary questions guided my analysis of the data:

1. What considerations constitute the framework for the policy and how do they interact with principles of duty and privilege in the narrative of the bill?

What assumptions on naturalization are prevalent in texts addressing this social issue? How are differences among “citizens,” “residents,” and “community members” established? When is “illegal” the same as “undocumented”? When is it different? What principles drive the difference? What is “resident” status? What is “immigrant” status? Which term overrides the other?

2. How do the language in these texts and the rationalization of this social problem relate to core democratic principles of education? How do they relate to the pursuit or maintenance of power?

3. What principles in Colorado immigration policy are similar to other states' interpretation of the problem? Which ones are different?

Conceptual Framework and Proposed Methodology

The study employed a qualitative research method to critically analyze and inductively interpret the text of Colorado HB 06S-1023. It is possible that the research questions could be explored by other qualitative research designs, such as a case study, a narrative inquiry, or a grounded theory study. A case study research design might focus on an in-depth investigation of the bounded system of participating policymakers. Similarly, a narrative inquiry might consider the experiences of each participant in the process of crafting the bill. A grounded-theory study might use the same documents selected for this study to infer a theory about the principles that guide states that grant postsecondary education benefits or those that deny them. On the quantitative side, perhaps the question could be addressed by using content analysis to examine the use and function of the language in the documents. None of these designs, however, could accommodate and fulfill the interpretive purpose of this study nor were they optimal for me as a culturally critical researcher.

According to Crotty (1998), the choice of method and methodology for a research project entails theoretical, epistemological, and ontological perspectives on the researcher's part. Taken together, these elements are justified by a conceptual or interpretive framework, which guides the research activity (Denzin & Lincoln, 2000). This study adopted a constructivist-interpretive methodology. The specific methods of inquiry were thematic analysis, hermeneutic interpretation, and narrative policy analysis. Thematic analysis is a process of coding and analyzing in qualitative research that allows for the identification of emerging themes and patterns of order in the data (Shank, 2002). Hermeneutic interpretation refers to the process of arriving at the meaning of a text as a cultural artifact through a methodical analysis of the document that entails an iterative interpretive act between the interpreter and the text's frames of reference (Crotty, 1998; Prasad, 2005; Yanow, 2006b). Narrative policy analysis is a methodological approach procedure to analyzing controversial policy narratives (Roe, 1994; van Eeten, 2007). These methods were used consecutively, as displayed here:

Methods of Inquiry	A. Thematic Analysis
	B. Hermeneutic Analysis
	C. Narrative Policy Analysis

The selection of the methodology and methods for the study fit my position regarding the centrality of meaning-making as a human endeavor and of culture as an interpretive community. Yanow and Schwartz-Shea (2006) asserted that traditional qualitative methods are constructivist-interpretive in that they apply constructivist or

constructionist assumptions regarding the character of social reality (ontology), and interpretive approaches for understanding it (epistemology). It follows that the interpretive framework selected for the analysis of the policy of interest results from the purpose of the study as well as my beliefs about reality and how I make sense of it, which, in turn, relate to my personal experiences and my identity within a particular interpretive community.

For the thematic analysis, selected texts were read intently and were subjected to initial open coding (Straus & Corbin, 1990) and thematic network analysis (Attride-Stirling, 2001). Coding processes serve to organize and conceptualize data, but have the potential to fragment the data, which could distort their form and meaning (Coffey & Atkinson, 1996). Thematic networks analyses supplement coding procedures by recording, integrating, and displaying the emergence of themes and categories. This study combined the initial thematic analysis of the data with a hermeneutic interpretation of the core and secondary policy texts, as an additional analytic strategy. Narrative policy analysis was subsequently used to synthesize the emerging interpretations in the thematic and hermeneutic processes. It was hoped that the identification of the themes and concepts generated in these analytical and interpretive processes would provide an understanding of how the rights of undocumented college students and the duty of the state towards them were conceptualized in the text of Colorado HB 06S-1023.

Researcher's Perspective

My experience as a first-generation, college graduate and my position on the ethical right to postsecondary education, along with my professional background and my former immigrant status, shape my perceptions of the topic of study and influence the

interpretive process in the analysis. Although personal motivation and familial encouragement were necessary forces, the thrust behind my academic and professional development was the open access policy of the educational system in which I was initiated. I am a full supporter of state subsidized access to public higher education as a common good (irrespective of immigration status), and this is one assumption, bias, and core value that I bring to the study.

My training in teaching languages and cultures certainly accounts for my interest in this study as well. In this professional capacity, I have become cognizant of the variables and factors that interact in the process of learning another language, and I am well aware of the challenges immigrant students face in the process of acculturating to the norms of the target society. Thus, the knowledge that I have developed in the field of language teaching and learning constitutes another assumption on my part. The literature of second language acquisition has suggested the benefits of dual language development (Soltero, 2004; Thomas & Collier, 2002). Moreover, the ability to work and communicate well with others and the capacity to develop cross-cultural understanding are among the desired traits for college graduates (Smith, 2004). Given that many undocumented students have completed most of their schooling in the United States and have thus assimilated the content of American K-12 curricula (Bell Policy Center, 2005; Salinas, 2006; U.S. Congress Hearing – Serial 110-36, 2007), to prevent or impair these students from completing a postsecondary education would truncate their potential and progress in our society and weaken the development of human capital.

I also bring to the study my lived experience as an immigrant. I define myself as a nationalized immigrant in the United States, and as a bilingual and bicultural resident of

Colorado. As an immigrant, I had a variety of visa statuses and abided by their specific conditions. I first entered the United States as a temporary, non-immigrant Fulbright scholar from Argentina with a J visa. Except for the legality of my temporary presence in the country, this visa extended no other provisions, and required that I exit the country at a specific time and remain away for two years before attempting a re-entry. In a second entry as an international graduate student with an F visa, I became a Colorado non-permanent, non-immigrant resident. In this category, I contributed my share to the state through the payment of state taxes and also benefited from certain services, such as public education for my children. I held an H work-visa for three years before I became an immigrant with legal, permanent residency, a status that carried obligations as well as benefits specified for legal U.S. immigrants or non-citizens. While the legal, permanent residency status fell short of conferring a sense of full membership and eligibility for the rights and securities awarded to citizens, I embraced the pseudo-sense of inclusiveness that was offered and took advantage of the opportunity that opened for my family. After eighteen years as a legal, permanent resident in Colorado, I became a U.S. citizen. My rights as a citizen noticeably increased and improved, but my overall commitment and investment in the community remained in place as they had been for years before I became a U.S. citizen.

Although I was spared the educational obstacles that undocumented students presently face in Colorado, I share with them the experience of being an immigrant and a resident at the same time. Anti-immigration forums spreading in political, social, and academic circles in Colorado address overpopulation and environmental concerns as well as issues of national security and social adversities (Lamm, 2007; Wilson, 2007). I

question the purported correlation between these global concerns and the presence of immigrants in our communities. I am also skeptical of the factors propelling the anti-immigration movement. Struggles for cultural hegemony and hostility towards cultural diversity along with a zealous sentiment of power and intimidation are well-known covert *leit motifs* in the anti-immigration rhetoric (Aldana, 2007b; Curran, 1998; Johnson, 1996; Mármora, 2002; Weissbrodt & Danielson, 2005). Most undocumented families in Colorado are of Mexican origin, and they lie with the indispensable powerless at the bottom of the state economic pyramid (Burke, 2007; Huber & Malagon, 2007; Romero, 2002). In reading and hearing about anti-immigration propositions in Colorado, I am often reminded of a colleague's comment in reference to undocumented immigrants: "*we want them, but we don't want them.*"

As a researcher, I situate myself within the postpositivist community of practice, also referred to as narrative scholarly tradition (Prasad, 2005). I subscribe to the constructed nature of social reality, the multiplicity of meaning and perceptions, and the role of language and the cultural context in our interpretations. I believe that my interest in the relationship of language and culture and my experience in assimilating this understanding at a personal level have played a formative role in my worldview. The way I understand and explain the social world suggests that I operate within the constructivist, interpretive, and hermeneutic paradigm, and that I am "oriented to the production of reconstructed understandings of the social world" (Denzin & Lincoln, 2000, p. 158).

Terminology

Alienage refers to the condition of non-citizens residing in the nation, which signifies a condition of not belonging to the nation and of complying with the nation's laws while residing in its territory (Weissbrodt & Danielson, 2005).

Alienage law refers to legislation concerning mostly the rights of non-citizen residents (Weissbrodt & Danielson, 2005). “[A]lienage as a legal category also lies in the world of social relationships among territorially present persons” (Bosniak, 2006, p.38).

Citizenship status, naturalization refers to processes of the nation-state model that establish the relationship of the state's duty and the civic and legal rights of its people (Benhabib, 2004; Brooker, 1999).

Community membership will be used to describe individuals' sense of belonging to a group of people in a community and the expected commitment to “dividing, exchanging, and sharing social goods” (Walzer, 1983, p. 31).

DREAM (Development, Relief, and Education for Alien Minors) Act is pending legislation in the U.S. Senate which compares to the Student Adjustment Act (SAA) introduced in the U.S. House of Representatives in 2001. The DREAM Act was also introduced in 2001 and proposes provisions for adjustment of legal status for qualified undocumented high-school students who want to pursue a college education or serve in the armed forces (Sharron, 2007).

Illegal immigration or unlawful presence refers to immigrants who are present in the United States without being admitted or paroled, or who are present after their non-citizen's non-immigrant status expired. (Immigration and Nationality Act of 1990, 212 (a)(9)(B)(ii)).

Illegal, unauthorized, undocumented, or unlawful alien or immigrant refers to members of a class of non-citizens whose presence in the country does not bear the official knowledge or permission of the federal government (Weissbrodt & Danielson, 2005). Although these terms will be present in the data, this study will adopt the terms *undocumented* or *unauthorized* immigrant for discussion whenever it is possible and avoid the connotation of unlawfulness as *breaking the law* or *criminality* implied in the other terms.

Immigration legislation refers to policies by which “the country not only determines who will gain access to the limited resources and opportunities in the U.S., but also what will be the national and cultural identity of the U.S.” (Weissbrodt & Danielson, 2005, p. 49). As such, immigration law regulates “the admission, removal, and naturalization of non-citizens” (Weissbrodt & Danielson, 2005, p.53).

IIRIRA (Illegal Immigration Reform and Immigrant Responsibility Act) refers to the 1996 Immigration law (Pub. L. No 104-208, 110 Stat. 3009) aimed at strengthening efforts to combat illegal immigration. The IIRIRA and PRWORA reforms to the Immigration and Naturalization Act (INA) introduced the restriction on welfare and public benefits for immigrants. These provisions are currently codified in Title 8 of the federal code governing issues of aliens and nationality, under Sections 1611, 1621, and 1623 (Janosik & Johnson, 2007; Olivas, 2004, 2008).

Nationalism, nation-state, national self-determination refers to the ideals of the modern sovereign nation, which trace their roots to the French and American revolutions. The ideology defines a nation-state as characterized by territorial sovereignty, collective self-determination, and democratic self-constitution (Benhabib, 2004; Brooker, 1999).

Non-citizen resident refers to an individual residing in the country that is foreign-born and has not become a citizen by naturalization.

Non-resident students are students who do not fit the criteria for residency or domicile established in the state where they intend to pursue higher education.

Plyler v. Doe (1982) is a seminal Supreme Court decision establishing the right to public K-12 education for undocumented students.

Political integration, political membership refers to institutional practices and rules that bring individuals together to form a political community and that integrate immigrants and newcomers into the polity (Benhabib, 2002).

PRWORA (Personal Responsibility and Work Opportunity Reconciliation Act) refers to the 1996 welfare reform bill that introduced changes in immigrant eligibility for social services in the INA (Espenshade, et al., 1997).

Public benefit, defined in 8 U.S.C. §1611, refers to federal, state or local benefits withheld from unqualified non-citizens. (Weissbrodt & Danielson, 2005)

Public good is a good that is non-rival and non-divisible. A public good entails non-exclusion from benefits and non-rivalry in consumption of benefits. The consumption of the good by one individual does not reduce the amount of the good for other individuals in the group and no one can be effectively excluded from using that good. (Paulsen, 2001)

Residency or domicile refers to the act of establishing and maintaining residence in a given place. The Department of Revenue of the state of Colorado states that requirements for establishing residency are whichever of the following occurs first: (1) to

own or operate a business in Colorado, (2) to be gainfully employed in Colorado, or (3) to reside in Colorado for 90 consecutive days. (www.colorado.gov/revenue)

Resident students are students who fulfill the criteria for residency or domicile established in the state where they intend to pursue higher education.

Underserved, underrepresented student population is applied to low-income and minority students identified in Colorado with low representation in college graduation rates.

Undocumented or unauthorized student refers to a student who is a foreign national and who entered the United States without inspection or with fraudulent documents. It also applies to students who overstayed in the country after their legal non-immigrant visas expired.

Significance of the Study

In line with Hans-Georg Gadamer's philosophy of interpretation, the significance of this study is to "clarify the conditions in which understanding takes place" (Schwandt, 2000, p. 196). The study serves an illuminative purpose regarding the relationship between language and communities of practice. Rather than subscribing to an emancipatory agenda, this study sought to unfold the levels of beliefs and ideologies that are embedded in the provisions of a policy regarding eligibility for public postsecondary education benefits for undocumented students. By examining the manner in which policy texts reveal rationalizations and interpretive frameworks, the reader will gain a better understanding of how these constructed texts represent or misrepresent core cultural values of the communities of practice. This research study can help advance knowledge of meaning-creation processes in the area of policymaking for a wide audience of

stakeholders, including educators, students, policymakers, and interested members of the general public.

Limitations

The texts selected for the analysis and interpretive processes are not representative of what policymakers may have expressed about the issue of undocumented students in a private setting. The interpretation conducted in this study did not apply to other texts created within the state, as policymakers are likely to change their views regarding the nature of the issue being discussed. The analysis of the data in the study was influenced by the method as well as my own perceptions of the issue and my experience as an educator and an immigrant.

Conclusion

The right of undocumented students to state subsidized higher education is a social issue of interest in political and educational circles at the national and state level. The complexity of the issue is attached to the convergence of contradictory interpretations of federal legislation on eligibility for public services and inconsistent approaches taken by the states to manage this phenomenon which, in turn, carry implications for postsecondary administrators and educators. In the summer of 2006, Colorado policymakers enacted HB 06S-1023 and set a record in the country in delineating the most restrictive provisions to deny public postsecondary education benefits to state high-school graduates who are undocumented immigrants. The bill, which was passed amidst growing concerns in the state to remedy the low college participation rate of underrepresented populations, affects a growing number of students

who also qualify as low-income and minority populations in the state's demographic composition (Bell Policy Center, 2005; Pew Hispanic Center, 2006).

This exploratory study aimed to illuminate the rationalization for Colorado HB 06S-1023 and understand how the rights of undocumented immigrants to public benefits were conceptualized in this legislative decision. This work led me to identify and interpret the narratives that are inscribed in the text of Colorado HB 06S-1023. It also enabled me to identify a dominant narrative or a metanarrative concerning the social status and legal rights of undocumented immigrants in this state. Studies that have explored the situation of college-aged immigrant students focused primarily on legal and historical perspectives. The present study adds to the field of knowledge on this issue by exploring and interpreting the ideologies and conceptualizations that emerged concerning undocumented students' rights or privileges within the text of the legislative decision itself.

Chapter One has provided the foundation for this research study, including the introduction to the research topic and context, the rationale and significance of the study, and the questions guiding the research process. A review of the major legal and historical developments regarding the social issue of undocumented immigration and the right to subsidized benefits for undocumented students is presented in Chapter Two. The review of literature will also include an examination of core principles underlying the American educational system, criteria and factors prevailing in admission policies, and conceptualizations of membership and deservedness infusing policymaking processes.

CHAPTER TWO: LITERATURE REVIEW

Overview

The purpose of this literature review is to analyze and synthesize the literature regarding the right of immigrant students to education in the United States. In particular, this review is intended to present an understanding of the development of legislation regulating access and eligibility to postsecondary education benefits for undocumented students who reside in this country and have completed their high-school education in their states of residency. In addition to chronicling major legal developments regarding the rights of undocumented students to education, this chapter will consider the elements of social constructions of target populations that inform policymaking processes.

The topics in the first section of the review will examine the origin and meaning of principles underscoring access to education, and practices and criteria implemented by states to determine admission to higher education. The legal segment of the review will explain the challenges for states in legislating on this issue and some initiatives that states have applied to admit undocumented students to institutions of higher education. This section will also review academic publications advancing various interpretations concerning conflicting perceptions on undocumented immigration, and the complexities of the debate at the state level about current federal immigration legislation regulating public benefits. The review of literature will conclude with the examination of culturally-laden assumptions about immigration and community membership permeating policymaking behavior.

The discussion in this chapter will provide impetus for the analysis of Colorado House Bill 06S-1023, a bill that established limitations for undocumented students on

admission to public postsecondary institutions and on eligibility for accessing federal and state financial aid. The review of literature will also lend support to the selection of an interpretive mode of analysis for the study, which aims at understanding the narratives that emerge from the text of this Colorado bill. Below is a concept map of the thematic organization of the chapter.

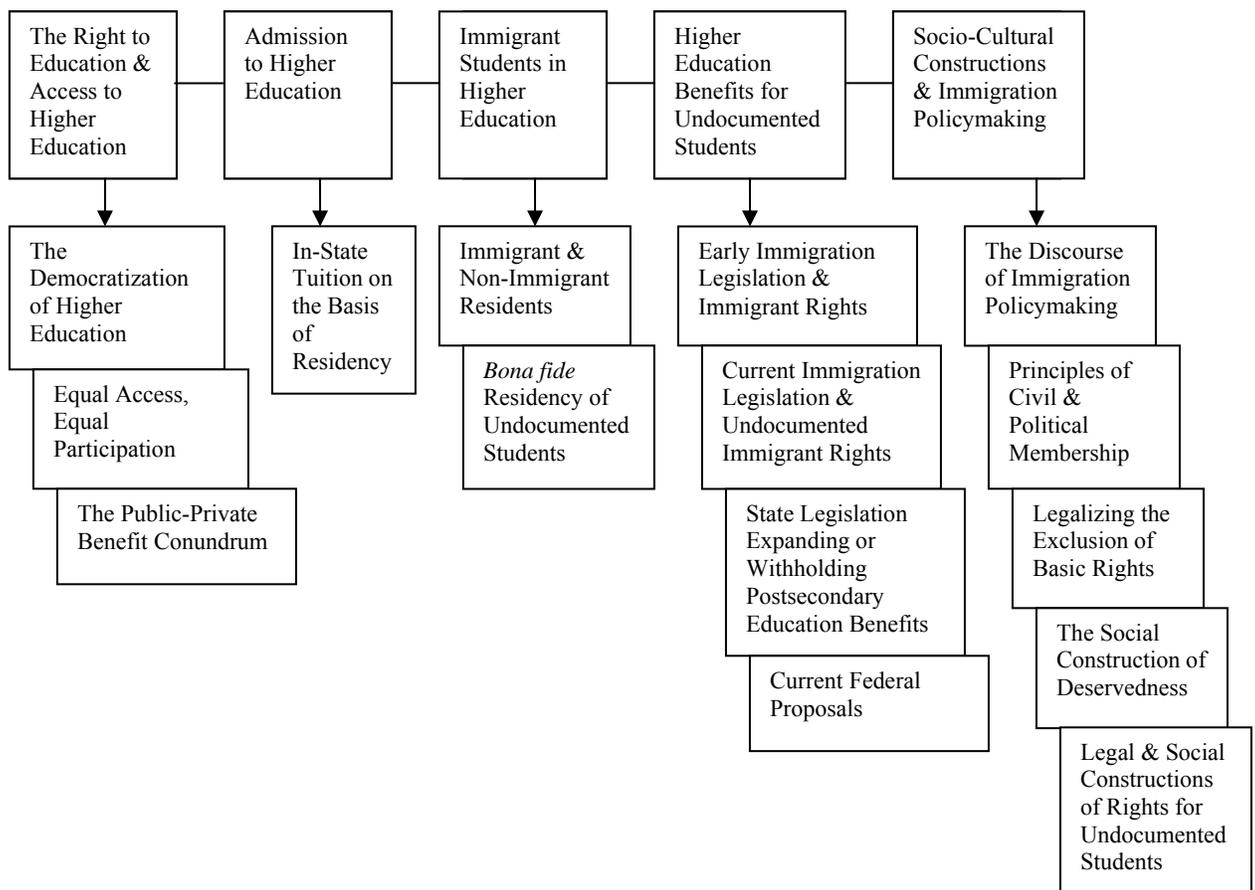


Figure 1. Literature Concept Map.

The Right to Education and Access to Higher Education

A historical approach to identifying core principles of the American educational system would bind these values to the arguments for universal education embraced at the beginning of the nineteenth century. The spirit for social reform stimulated by the expansion of the western frontier and the transition of the country into an industrialized nation reinforced the value of an educated citizenry for social and economic advancement as well as the development of a national identity, the protection of republican institutions, and the improvement of the society (Guttek, 1972). The American system of public education was founded on shared ideas and values of a utilitarian purpose and democratic equalitarianism for education. Guttek (1972) observed that the notion of equality of educational opportunity was supported in the *common school* concept for elementary education as well as in the *educational ladder* concept for secondary education. In referring to the development of education in the United States, Johansen, Collins, and Johnson (1975) asserted that an explicit commitment to universality, equality, liberation, and excellence corresponded to commonly held ideas and aspirations in American culture and society.

The development of higher education in the United States has been marked by the commitment to pragmatism already evidenced in the lower tiers of the educational system as well as by a cultural predisposition to adaptability. Guttek (1972) emphasized the ability of post-colonial institutions of higher education to respond to the needs of a newly sovereign society and the inadequacy of European concepts of an elite college constituency to fit the American ideals of a collegiate education for the common people. In examining the history of higher education, Geiger (2005) concluded that the character

of American higher education has resulted from the dynamics in the interaction of recurring elements and processes of change.

The Democratization of Higher Education

A conventional landmark in the democratization of higher education is the passage of the Morrill Land-Grant Acts in the years following the Civil War, but Geiger (2005) affirmed that the transformation of the character of higher education had been underway long before this legislation. Nevertheless, the Morrill Acts of 1862 and 1890 are deemed instrumental in consolidating the utilitarian purpose of education with the inclusion of agricultural, mechanical, and other technical areas in state institutions of higher education as well as the commitment to democratic education with the extension of college participation to the working classes (Berdahl, Altbach, & Gumport, 2005; Gladieux, King, & Corrigan, 2005; Gutek, 1972). For Gutek (1972), “the land-grant college extended economic opportunity and reflected the democratic, egalitarian, and populist trends in the nation” (p. 374). Berdahl et al. (2005) recognized the evolution of the notion of university public service as a land-grant college contribution. Geiger (2005), however, assessed the growth of popular demand and diversification of higher education during this period to be still at a level of infancy.

The transition from elite to mass higher education became apparent in the enrollment and admission patterns that emerged in the period between the two world wars (Geiger, 2005). An increase in student participation and diversity paradoxically triggered a hierarchical differentiation among institutions with a corresponding educational stratification. It followed that, though equal opportunity and access to higher education was conferred to virtually all high-school graduates, a reproduction of

inequality was developing. Geiger (2005) noticed that a seemingly meritorious system distinguished admission to universities from participation in open-door junior colleges. The distinction made between the credentials granted by junior colleges and universities has been related to an ongoing conflict between the democratic equality and social mobility goals of education (Labaree, 1997; Zusman, 2005).

Equal Access, Equal Participation

The philosophy of open access and open-door admissions policy to postsecondary education was crystallized during the social and economic downturn of the postwar years. A concerted public and political effort was made at the time to institutionalize democratic college participation and eliminate barriers that formerly limited access to higher education (Harbour & Lewis, 2004). Accordingly, the passage of the Servicemen's Readjustment Act of 1944 (GI Bill) extended college participation to returning war veterans by providing federal aid-to-education grants (Geiger, 2005; Gladieux et al., 2005). Soon afterwards, the 1947 report of President Truman's Commission on Higher Education recommended the provision of free public education through grade fourteen and guaranteed mass higher education (Palmer, 1996). The expansion of democratic principles of equal educational access, opportunity, and choice to higher education prompted community colleges to adjust their former vocational program mission to now serve as a port of entry into academic education for an incoming influx of low-income, minority students, and immigrants (Dowd, 2003; Harbour & Lewis, 2004; Johansen et al., 1975).

The civil rights movement in the 1960s reaffirmed the value of education as a vehicle for equalizing social, political, and economic advancement. Title VI of the Civil

Rights Act of 1964 called for no exclusion of any person on the grounds of race, color, or nationality to participate in, or “be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance” (Civil Rights Act of 1964). The provisions of Title VI of the Civil Rights Act guaranteed eligibility to subsidized postsecondary education benefits for underserved student populations. Pursuant to these provisions, institutions of higher education implemented admissions protocols in line with federal regulations of affirmative action programs, and initiated programs to recruit and financially assist minority students and other disadvantaged groups (Kaplin & Lee, 2006).

At the peak of the civil rights movement and in conjunction with President Johnson’s War on Poverty, the federal government intensified its commitment to equalizing college opportunities for lower-income students. Title IV of the Higher Education Act of 1965 established new federal government subsidies to help finance college education for needy students, including eligible non-citizen residents, refugees, and asylees (Rincón, 2005). Gladieux et al. (2005) affirmed that the provisions in Title IV laid the groundwork for subsequent federal aid programs towards college, such as the Pell Grants and State Student Incentive Grants. In spite of these efforts, the notion of equal student participation in higher education continues to be redefined. In describing the phases of federal student-aid policy under the 1965 Higher Education Act and its amendments, Hearn (2001) remarked that a shift from principles of equality-equity of education to efficiency-quality of education has affected student participation in higher education.

The Public - Private Benefit Conundrum

In Geiger's (2005) opinion, "the expansive nature of American higher education has meant that student origins have tended to be broad and diverse" (p.59). Still, the representation of diverse student populations and distribution of equitable educational opportunities are unresolved issues in the American higher education system. Altbach (2005) estimated that the commitment to open access has been relatively fulfilled by virtue of a differentiated higher education system and the provision of government-sponsored financial programs. In spite of the progress made on expanding equal postsecondary educational opportunity, college participation remains unequal for some racial and ethnic minorities (Altbach, 2005; Clayton-Pedersen & Clayton-Pedersen, 2008). This enrollment pattern is found at community colleges as well. Grubb, Badway, and Bell (2003) reported that these open-door institutions fail to adequately meet the goal of inclusiveness central to the nineteenth century American tradition of democratic public education. The authors, however, recommended adding another level of educational differentiation in the system by developing non-credit programs for lower income minorities, immigrants, and other underserved student populations.

Changed perceptions of the general public and policymakers increasingly support the view of higher education as a private good rather than as a public benefit (Berdahl et al., 2005; Zusman, 2005). The shift of public perceptions regarding who should benefit from higher education is also reflected in the move towards federal and state-sponsored loans as well as the preference for merit-based rather than need-based grants (Burke, 2005; Gladieux et al., 2005; Hearn, 2001; McGuinness Jr., 2005; Olivas, 2004; Slaughter & Rhoades, 2005). Zusman (2005) affirmed that, as a result of a counter reaction to

equity and merit views of affirmative action, access barriers continue to rise for underserved populations.

Current participation trends in the American higher education system are summarized by Gladieux et al.'s (2005) observation that enrollment growth is not spread evenly across society by income and race. Complementing this assessment of equity deficiencies in higher education is the challenge to institutions to effectively respond to an anticipated increase of student diversity, due to the increasing enrollment demand of first-generation, low-income college applicants in states with high percentages of immigrants (Zusman, 2005).

Admission to Higher Education

The Tenth Amendment of the United States Constitution states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people” (The Constitution of the United States, p. 23). Since education was not declared an explicit responsibility of the national government, states are authorized under the Constitution to administer the educational systems within their borders. The function of state governments concerning American higher education has traditionally entailed overseeing the operation of public institutions and regulating private institutions as well as subsidizing public institutions and their students (McGuinness Jr., 2005). Regarding higher education, the federal government has focused on expanding students’ participation by enforcing civil rights legislation pertinent to colleges and universities and by complementing state-sponsored educational aid for underserved student populations (Gladieux et al., 2005; McGuinness Jr., 2005).

McGuinness Jr., (2005) claimed that historical, cultural, political, and economic developments in each state along with their political subcultures influence the operation of their higher education systems. Accordingly, enrollment practices and criteria for admitting students to higher education institutions vary from state to state. In general, states legislatures make appropriations for higher education based on their collection of revenues through taxation (Toutkoushian, 2001) and grant institutions some autonomy for deriving revenue from other sources, such as tuition (McGuinness Jr., 2005). However, because the largest share of tax revenues is typically collected from state residents, institutions usually do not pass along the benefits of state subsidization to non-resident students. Thus, admissions criteria to higher education include the classification of student applicants into resident and non-resident categories (Salsbury, 2003).

In-State Tuition on the Basis of Residency

The practice of aligning state residency policies to tuition differentials for higher education is well-established (Mumper, 2001; Olivas, 1986, 1995, 2004; Salsbury, 2003). Salsbury (2003) asserted that the rationale underlying the distinction between in-state and out-of-state tuition differentials stems from considerations of the reciprocity between state residents' taxation for state services, including public higher education, and the states' investment in their residents. Similarly, Olivas (1995) reasoned that the policy for setting higher non-resident tuition rates was rooted in a public and legalistic consensus to relieve resident taxpayers of the cost of educating non-resident college students. Institutions of higher education administer in-state or out-of-state tuition policies based on state classifications of residency, which can vary substantially from state to state (Olivas, 2004).

States differ in their definition of residency. Olivas (2004) asserted that “residency laws, implementing regulations, and state and institutional practices are often illogical, inconsistent, and confusing” (p. 437). The discrepancy in criteria for the regulation of residency among states is attributed to the application of different durational requirements for establishing residency, the allowance of a wide array of exemptions and exceptions to those requirements, and the confusion over the application of residency and domicile terminology (Olivas, 1986, 1995, 2004; Salsbury, 2003). Olivas (1986) classified the practice of states on this matter into five types depending on whether state residency was formally determined by legislative, regulatory, or institutional powers, or whether the decision was specifically or implicitly made by an agency. Colorado, for example, was placed with a majority of states in the group that legislates postsecondary education residency policies. The requirements for establishing residency in Colorado, as stated in the website of the Division of Motor Vehicles of the Department of Revenue (www.colorado.gov/revenue), include any of the following: (a) to own or operate a business in Colorado, (b) to be gainfully employed in Colorado, or (c) to reside in Colorado for ninety consecutive days.

Lack of clarity and inconsistency of state policies on residency administration also relate to the arbitrary application of *residency* or *domicile* conditions. Olivas (1986, 1995; 2004) indicated that these terms are often used interchangeably, even though each term carries a different legal meaning. The author explained that *residency* is generally measured by evidence of the duration of presence required of a newcomer to classify as resident of the state, which can vary from immediate arrival to twelve months. On the other hand, when proof of *domicile* is required for residency purposes, a condition of

intentionality is added on as newcomers must also provide a declaration of their intention to “make their residence in the state permanent” (Olivas, 2004, p. 439). The author further noted that rationales for requiring evidence of domicile often coalesce with plain durational requirements.

The complexity and ambiguity surrounding the residency or domiciliary requirements implemented by states sometimes render it difficult for institutions to define student status. Tuition differentials may also result from applying a broad range of exemptions, exceptions, and waivers to the requirements for establishing state residency due to the special circumstances of some students, such as military status and other migrant or mobile students (Olivas, 2004). In addition, some institutions may be granted discretionary power to provide preferential admissions, scholarships, and other benefits to staff personnel, community members, and graduate students (Engle, 2008; Olivas, 1995, 2004). Moreover, in some states, where institutions of higher education have been conferred autonomy to establish residency requirements, the administration of residency status for students may vary from institution to institution or be determined at a campus level (Olivas, 2004; Salsbury, 2003).

Immigrant Students in Higher Education

The rights of immigrant students to enroll in American higher education institutions are initially determined by federal immigration and alienage legislation. These federal laws are grounded in legal principles regarding legality of presence in the United States and affinity to the country’s interests. Weissbrodt and Danielson (2005) indicated that immigration legislation distinguishes among prospective immigrants and non-immigrants, temporary non-immigrants, permanent residents, and undocumented

residents, and that alienage legislation concerns mostly the rights of non-citizen residents. Scholars have also commented on the irregular enforcement of the rights conceded to non-citizen residents as well as the discriminatory and prejudiced justification underlying federal and state policies for the application of these rights (Curran, 1998; Tostado, 1998; Weissbrodt & Danielson, 2005).

Weissbrodt and Danielson (2005) concluded that immigrant status and the level of education that is sought define the right to education for non-citizen students in the United States. Accordingly, access to elementary and secondary education is currently granted to virtually all non-citizen students residing in the country, and to students commuting from Mexico or Canada with an F or M visa authorization (Weissbrodt & Danielson, 2005). Admission of immigrant students to higher education, however, is based on categories of immigrant-resident students and international-nonimmigrant students (Morinaka, 2007; Spring Day, 1998; Weissbrodt & Danielson, 2005).

The relevance of immigration law to higher education policies has been analyzed in terms of constitutional, statutory, regulatory, and case law (Huang, 2007; Morinaka, 2007; Olivas, 2004; Spring Day, 1998). In general, the responsibilities of institutions of higher education regarding international students concern monitoring visa application requirements, academic progress, and related activities, such as employment on campus (Spring Day, 1998). The changes in application procedures and visa restrictions affecting international students after September 11, including the compliance of institutions with security tracking systems, have been commented by several scholars (Frank, 2006; Huang, 2007; Morinaka, 2007; Olivas, 2004).

The admission of international students can pose a challenge for colleges and institutions when residency requirements are an issue. Citing the non-immigrant V classification for spouses of permanent residents, Olivas (2004) suggested that the intent of domicile is not a straightforward distinction when attempting to apply non-immigrant classification. The admission of foreign-born students residing in the country challenges institutions further because aligning federal immigrant status and legality of presence in the country with state residency criteria can be difficult. In essence, institutions must simultaneously enforce or monitor federal, state, and institutional policies (Frank, 2006; Olivas, 1986, 1995, 2004; Salsbury, 2003; Spring Day, 1998).

Immigrant and Non-Immigrant Residents

Immigrant students with permanent resident status are treated as U.S. citizens regarding institutional criteria for admission, tuition determination, and eligibility for financial aid (Spring Day, 1998; Weissbrodt & Danielson, 2005), and are thus subject to state residency classifications and exceptions (Salsbury, 2003). Olivas (1995) observed that while states allow wide latitude regarding evidence of state residency, such as producing tax returns, voter registration documents, driver's licenses, and proof of housing, institutions usually base their decisions on patterns of evidence. Olivas posited that "to overcome the burden of proof, students will not only be required to show that they are residents or domiciliaries of the state, but that they are not domiciliaries or residents of any other state" (p. 1037).

In examining the law, theory, and administration of residency requirements in postsecondary education, Olivas (1995) contended that deficiencies in the system and "complex technicalities often work against aliens, who do not always have the requisite

paperwork or documents for establishing their residence” (p.1028). In this sense, the inherent complexity and ambiguity of classifications of alienage may blur the difference between a *non-immigrant* or international student and an *undocumented immigrant* student (Frank, 2006; Olivas, 2004). Frank (2006) distinguished these two non-citizen classifications in terms of the contrast between immigrant-nonimmigrant status and legal-illegal presence in the country. Accordingly, non-immigrant students are international students who are visa-holders, legally admitted to the country for specific purposes and for a determined period of time. On the other hand, undocumented immigrant students are not legally admitted in the country, but are more invested in the country by virtue of duration of presence and intention to remain in it (Boggioni, 2009; Frank, 2006; Olivas, 1995, 2004; Salsbury, 2003).

A conflict between alienage legislation and institutional admissions policies based on state residency requirements was addressed by the U.S. Supreme Court in the 1982 *Toll v. Moreno* case. The case concerned the denial of in-state tuition to a G-4 non-immigrant student by the University of Maryland, on the basis of alien status and state tax exemption classification. Applying the principle of preemption, the Court found that the university policy violated the Supremacy Clause in Article VI of the U.S. Constitution, which grants the federal government preeminent power in matters of immigration policy (Olivas, 1986, Spring Day, 1998; Weissbrodt & Danielson, 2005). Accordingly, the institutional policy of charging this G-4 visa student non-resident tuition interfered with federal policy to grant international organization employees with G-4 non-immigrant visas the right of acquiring domicile in the United States without having to maintain their domicile in their countries of origin.

The reasoning in *Toll v. Moreno* set forth guidelines to regulate tuition rates for student applicants holding non-immigrant visas with similar provisions, such as the temporary worker H visa and the intracompany transferees L visa (Weissbrodt & Danielson, 2005). Olivas (1986) noticed that this decision “may have resolved the narrow issue of domiciled G-4 aliens in states that grant tax exemptions” (p. 33), but it also raised questions on how states and institutions would proceed regarding determinations of domicile for other immigrant students, such as undocumented students (Aldana, 2007b; Olivas, 1995).

***Bona fide* Residency of Undocumented Students**

The connection between immigration policies and educational regulations for undocumented immigrant students is driven by political, social, and economic considerations (Aldana, 2007b; Burke, 2007; Connolly, 2005; Curran, 1998; Engle, 2008; Huang, 2007; Olivas, 1995; Rincón, 2005). Current immigration law excludes undocumented immigrants from most federal rights and benefits granted to lawful, permanent non-citizens, including judicial protection of the due process and equal protection guarantees of the Fifth and Fourteenth Amendments (Salsbury, 2003; Weissbrodt & Danielson, 2005). In turn, state laws treat undocumented immigrants based on their police power to enforce residency or domicile regulations (Olivas, 1995, 2004; Salsbury, 2003).

Undocumented immigrants’ right to public benefits is regulated by federal law, if such benefits are deemed federal, and by state law, if eligibility to the benefit is determined on state residency or domicile requirements. In spite of the reduced constitutional protection conferred to undocumented residents by state laws (Tostado,

1998; Weissbrodt & Danielson, 2005), a 1982 Supreme Court decision secured the right of undocumented children to state subsidized elementary and secondary education, regardless of state residency requirements (Boggioni, 2009; Connolly, 2005; Olivas, 1986, 1995, 2004; Ruge & Iza, 2005; Salinas, 2006).

The 1982 *Plyler v. Doe* case established precedent by extending access to public education for undocumented students, and set forth the notion of *bona fide* residency for undocumented immigrant students. The case concerned a Texas statute that withheld state funds from school districts enrolling undocumented children and mandated the collection of annual tuition fees from these students' families in order to be admitted in the public school system.

The Court overturned the Texas statute and based its decision on the guarantees of the Fourteenth Amendment's Equal Protection Clause, which had been unaccounted for in previous cases involving undocumented immigrants (Olivas, 1986). The state of Texas argued that the statute was aimed at reducing the influx of undocumented immigration into the state, saving state funds, and improving the overall quality of education. The Court dismissed this line of reasoning by noting that the power to regulate immigration belonged to the federal government, the monetary savings to the school district were vague and minimal at best, and the exclusion of undocumented students was not shown to result in better education (Connolly, 2005; Olivas, 1986, 1995, 2004; Ruge & Iza, 2005; Salinas, 2006).

The Court found that the statute violated the Equal Protection Clause by creating a subclass of residents based on a speculative state interest to save state funds and improve the quality of education (Salsbury, 2003; Sharron, 2007). In this regard, the

Court reaffirmed precedent holding that immigrants are considered *persons* regardless of their legal immigration status and are thus guaranteed due process of law by the Fourteenth Amendment to the U.S. Constitution (Connolly, 2005; Salinas, 2006).

More importantly for this research, the majority in *Plyler v. Doe* considered that fundamental conceptions of justice conflicted with the treatment of these children as a result of their unintended, unauthorized entry into the country. Accordingly, the Court viewed these children's immigration status as a consequence of their parents' decision to immigrate into the country (Olivas, 1986; Tostado, 1998). The Court also related these families' investment in their communities to notions of social membership and the states' interest in supporting *bona fide* residents (Olivas, 1995). That is, these families satisfied the conditions for *bona fide* residency by having established residency in the state long before demanding access to public schools for their children (Salsbury, 2003). The Court's line of reasoning stressed the importance of education to a person's ability to function productively in society and the corresponding detriment to the individual and the community from denying these educational benefits (Connolly, 2005; Olivas, 1995; Ruge & Iza, 2005; Salinas, 2006). The majority held that education provided the tools for the development of literacy and cultural values, and that depriving undocumented children of the opportunity to be educated would hinder their potential for personal development and economic advancement, with collateral negative effects on the society (Connolly, 2005; Olivas, 1986, 1995; Salinas, 2006).

A shortcoming of the *Plyler v. Doe* ruling, however, was the Court's decision to not consider whether individual access to public education might be a fundamental or quasi-fundamental right. Not surprisingly, therefore, the Court did not reach the issue of

whether there was a right to postsecondary education for undocumented students (Aldana, 2007b; Boggioni, 2009; Huang, 2007; Olivas, 1986, 1995, 2004; Salinas, 2006; Salsbury, 2003). Instead, the Court's rationale focused on the lack of authority of the state of Texas to deny students' equal protection under the law. The Court distinguished the roles of the federal government and the state government in matters of legislative treatment of immigrants (Olivas, 1986; Salsbury, 2003), but was unclear on "how much authority states possess in the regulation of undocumented students in the area of education" (Salinas, 2006, p.856).

In spite of its limitations, the *Plyler v. Doe* decision has motivated discussions in current public, political, and academic circles regarding the right of undocumented students to postsecondary education benefits. Several scholars and analysts considered this 1982 Supreme Court decision pivotal to establishing the rationale for expanding financial benefits to undocumented college students (Badger & Yale-Loehr, 2002; Badger et al., 2005; Connolly, 2005; Olivas, 1986; Perry, 2006a). For Boggioni (2009), the rationale in this Court ruling provided a principle-based argument for extending the right to postsecondary education to undocumented students.

Olivas (1986, 1995, 2004) has examined the complex policies and practices that affect admission to higher education for undocumented immigrant applicants, particularly, those students who immigrated to this country as children and have been raised and educated in this society. Focusing on the development of residency practices by colleges before and after comprehensive immigration legislation along with post-September 11 national security concerns, the author concluded that residency policies institutionalize a treatment of "dissimilarity and injustice" (Olivas, 2004, p. 437) towards

undocumented students. In addition, the author stressed that the Supreme Court decisions in *Plyler* and *Toll* raise questions regarding the suitability of the rationales and parameters currently employed to determine the cycle of residency of undocumented students.

Higher Education Benefits for Undocumented Students

Although access to postsecondary education is considered a right under international law (Huang, 2007), the right of undocumented students in the United States to state subsidized postsecondary education is an unresolved legal issue. The Center for Immigration Studies (2007) calculated that there are over 10.7 million undocumented immigrants in the United States, of whom an estimated 1.7 million are school-age, that is, five to eighteen years old. As a result of the 1982 *Plyler v. Doe* ruling, undocumented students' public K-12 education is guaranteed regardless of immigration status, but the same protection for their college education remains undetermined (Badger et al., 2005; Ruge & Iza, 2005; Salsbury, 2003; Sharron, 2007). The Urban Institute (2003a, 2003b) estimated that each year about 65,000 undocumented students residing in the United States graduate from high-school, not counting some 15,000 more undocumented students who drop out before graduation. As these graduates approach college, "their lives in the shadows will likely meet the sharp light of the college application process" (Olivas, 2004 p. 437) and their unidentified resident condition. In spite of these obstacles, between 7,000 and 13,000 undocumented students are believed to enroll in public colleges and universities every year (Urban Institute, 2003a, 2003b).

The undocumented immigrant status of a college applicant acts as a deterrent to participating in postsecondary education in several ways. According to Ruge and Iza

(2005), non-documented immigration status prevents a student from applying to a university or enrolling in college courses, qualifying as resident and accessing in-state tuition at public colleges, and accessing government-sponsored financial aid guaranteed to citizens or permanent residents. In a similar vein, Salinas (2006) observed that undocumented high-school graduates are denied postsecondary education subsidies that are guaranteed to their documented peers. For undocumented students, the prospect of either legalizing their immigration status or affording unsubsidized postsecondary education seems unlikely, due to restrictions for legalization in immigration law and the fact that most of these students come from low-income households (Bell Policy Center, 2005; Huang, 2007; Romero, 2002; Ruge & Iza, 2005; Urban Institute, 2003b).

Whether undocumented students have access to subsidized higher education benefits depends on the state of residency and the way that state regulates postsecondary education and interprets federal immigration legislation (Olivas, 1986, 1995, 2004; Salsbury, 2003). In this regard, Sharron (2007) drew a distinction between the right of undocumented students to attend a public university or college, which is not prohibited under case law, federal law, or state law, and the right of these students to in-state tuition and financial aid, which federal and state legislation address and attempt to regulate. Ultimately, the dilemma over the allocation or denial of state subsidized postsecondary education to undocumented students is seeded with historical trends and cultural traits embedded in immigration law as well as the extent of the immigration experience within the state (Currant, 1998; Salinas, 2006; Salsbury, 2003; Schuck, 2007). As Curran (1998) observed, the problem regarding undocumented immigration “is a rapidly growing and

swiftly evolving social phenomenon -- and the law hangs several years behind the trend” (p. 142).

Early Immigration Legislation and Immigrant Rights

Immigration legislation is one function of the federal government and it pertains to setting standards for immigrants’ admission, removal, naturalization, and residence in the United States (Connolly, 2005; Curran, 1998; Olivas, 1986, 1995; Romero, 2002; Salsbury, 2003; Tostado, 1998; Weissbrodt & Danielson, 2005). The power of the federal government to regulate immigration is derived from the constitutional power of Congress to regulate naturalization of citizenship. In 1889, a Supreme Court decision articulated the exclusive and plenary scope of this power as inherent to national sovereignty (Curran, 1998; Weissbrodt & Danielson, 2005). Accordingly, the federal government is granted preemptive power over the states to regulate immigration. This means that the states cannot override the provisions in federal immigration law by enacting state and local policies targeting immigrants (Curran, 1998; McKanders, 2007; Olivas, 1986, 2008; Salsbury, 2003).

Given that state governments are restricted in this manner, the courts often defer to the federal government when considering issues concerning state attempts to regulate aliens (Tostado, 1998). In this regard, Weissbrodt and Danielson (2005) observed that court decisions have increasingly applied the lowest standard of judicial scrutiny to federal Congressional policy that discriminates against specific groups of immigrants. On the other hand, the courts have invalidated state actions concerning immigrants when these policies were considered preempted by federal powers. Regarding the application of constitutional rights for immigrants, Curran (1998) noticed that federal legislation

generally relied on the guarantees of the Fifth Amendment⁴, but state regulation based them on the Fourteenth Amendment⁵.

According to Connolly (2005), the problem of undocumented immigration is a relatively recent development within United States' immigration legislation, but the tone of this debate echoes the nativism embedded in the history of immigration policy in this country (Curran, 1998; Olivas, 2007; Schrag, 2010; Tostado, 1998). Immigration policy has typically adjusted to the needs of the country (Weissbrodt & Danielson, 2005). The expansion of the western frontier and the development towards industrialization called for an open-door immigration policy with few naturalization requirements in order to attract a foreign-born population. Scholars indicated that, as the need for immigrants diminished, immigration policy turned to restrictive regulations, thus setting forth a regulatory and discriminatory trend in immigration policy (Connolly, 2005; Rincón, 2005; Weissbrodt & Danielson, 2005). Schuck (1984) observed that individualistic values derived from Lockean liberal thought were reflected in the open-border immigration policy of the early decades of nineteenth century. In contrast, restricted nationalism emerged in the 1880s from exclusionary impulses to close the border to new immigrant groups.

The rise of anti-immigrant sentiment and its contribution to anti-immigration legislation developed in the nineteenth century in tandem with a growing mistrust of foreigners on political, economic, social, and cultural grounds (Connolly, 2005; Curran,

⁴ The Fifth Amendment states that “[n]o person shall be ...deprived of life, liberty, or property, without due process of law...”

⁵ Section 1 of the Fourteenth Amendment states that “[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

1998; Schrag, 2010; Weissbrodt & Danielson, 2005). Tostado (1998) asserted that nativist sentiment in immigration policy has historically been triggered by the perceived unfavorable impact on society of a specific immigrant group. Scholars distinguished discriminatory immigration policies in response to perceptions concerning (a) the political and economic power of the Irish during the early and mid-1800s, (b) the threat to the country's racial and ethnic composition by the Chinese towards the end of the nineteenth century, and (c) the perceived detrimental impact to the economy and the labor force by Mexican immigrants in the twentieth century (Rincón, 2005; Shapiro, 1997; Tostado, 1998). Rincón (2005) concluded that nativism has had a strong influence on the culture of the United States and on its institutions, including education.

The civil rights movement prompted a critical view of the trend of inequities in the immigration law system. The Immigration and Nationality Act (INA) amendments of 1965 largely reduced the racial and ethnic discrimination of former policies, opened the system to a wider diversity of immigrants, and shifted away from notions of restrictionism to greater tolerance of immigrants (Connolly, 2005; Curran, 1998). Curran (1998) referred to the period that followed this change in tone in immigration policy as “the ‘golden age’ of alien constitutional rights,” (emphasis in original, p. 101) as important Supreme Court opinions, such as *Plyler v. Doe*, validated the Equal Protection rights of undocumented immigrants. By 1986, claims of an increase of undocumented residents in south-western states and of the fiscal burden in accommodating these residents led Congress to pass the Immigration Reform and Control Act (IRCA), which normalized the status of long-term undocumented residents at the same time it set severe

penalties for incoming unauthorized immigrants (Connolly, 2005; Curran, 1998; Espenshade, 1995; Olivas, 2004).

Espenshade (1995) surveyed research on undocumented immigration to the United States with the purpose of clarifying areas of controversy, identifying gaps in the field for future research, and offering recommendations for policymakers. The author organized his analysis in the context of the passage of the 1986 IRCA, but the study identified factors that motivated the 1996 call for immigration reform. In Espenshade's opinion, controversy regarding undocumented migrant flows into the United States resulted from relying on inadequate data generated from indicators that were only indirectly relevant to the problem, such as records of border apprehensions. When other factors were considered, including estimates of legal and illegal entry, emigration, and death, the net gross of undocumented immigrants approximated one third of the population growth attributed to immigration. The author concluded that the undocumented migrant phenomenon was concomitant on domestic labor market conditions, and warned that restrictionist public policies on immigration should not undermine the benefit of keeping the United States as an open society.

Scholars and political theorists noticed that, prior to the 1996 immigration reform, discussed below, no federal statute or court case prevented a state institution of higher education from admitting undocumented applicants (Frank, 2006; Olivas, 2004). According to Olivas (1995, 2004), admission to higher education based on residency status was granted variably on a state by state basis. The author also observed that eligibility for in-state tuition and financial aid benefits was difficult, whether students were citizens or immigrants, due to inconsistencies in the way domicile or residency

status was determined. In determining the admission of undocumented students to higher education institutions, states generally relied on the Supreme Court holdings in *Plyler v. Doe* in 1982 and in *Martinez v. Bynum* in 1983, which addressed admission issues for undocumented students in the K-12 public education setting (Frank, 2006). States were also guided by the Court's 1976 decision in *De Canas v. Bica*, which had established a three-prong test to determine whether a state statute related to immigration was preempted by immigration federal law (Frank, 2006; Salsbury, 2003). Still, the conflict between institutional policies allowing in-state tuition benefits to undocumented students and state policies determining residency status arose in some California court cases⁶, which produced divergent interpretations regarding the intent of residence of undocumented immigrants in the country (Olivas, 1995, 2004).

Current Immigration Legislation and Undocumented Immigrant Rights

Current federal immigration legislation restricting the rights of undocumented immigrants was enacted as part of the 1996 Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Connolly (2005) attributed the passage of these 1996 immigration statutes mainly to the fiscal crises of state governments in the 1990s, especially in states that were experiencing a major influx of immigrants. The author noticed that, as the public grew increasingly wary of the impact of immigration on American society and economy, political pressure developed, which, in turn, prompted states to “initiate legislation aimed at restricting benefits for both legal and unauthorized immigrants” (p. 202).

⁶ *Leticia “A” v. Board of Regents of the University of California* (1985); *Bradford v. Board of Regents of the University of California* (1990).

Scholars also linked the enactment of IIRIRA and PRWORA to Proposition 187, a 1994 state ballot initiative in California that purported to eliminate many rights for undocumented immigrants, including the right to education guaranteed under *Plyler v. Doe* (Aldana, 2007b; Connolly, 2005; Curran, 1998; Johnson, 1996; Olivas, 2004, 2008; Rodriguez, 2008; Schrag, 2010). The momentum of Proposition 187 stirred ongoing concerns regarding the ineffectiveness of the federal government on immigration regulation, and challenged the traditional separation of federal and state powers on immigration matters (Aldana, 2007b; Curran, 2006; Tostado, 1998). Although most of the provisions in Proposition 187 were eventually found by courts to be preempted by IIRIRA, PRWORA, and established case law (Olivas, 1995), the passage of this initiative revealed a new commitment by state voters to attempt to regulate government services for undocumented immigrants (Connolly, 2005).

IIRIRA and PRWORA restrict undocumented persons in their ability to access federal benefits in welfare and benefits in the areas of health and education (Boggioni, 2009; Olivas, 2004; Weissbrodt & Danielson, 2005). Under PRWORA, undocumented students are unqualified non-citizens and thus not eligible for public benefits, except for a few exempt government services, such as emergency medical assistance and disaster relief (Connolly, 2005; Huang, 2007; Olivas 1995; Weissbrodt & Danielson, 2005). IIRIRA sets limitations regarding the right to subsidized postsecondary education for undocumented students. The provisions in IIRIRA and PRWORA established federal guidelines regarding the eligibility of undocumented students to access state subsidized postsecondary education, but the application of such provisions at the state level has proven challenging. Not only have states inconsistently interpreted and applied these

federal provisions (Boggioni, 2009; Connolly, 2005; Huang, 2007; Olivas, 1986, 1995, 2004, 2008; Salinas, 2006), but the debate on whether to grant or deny subsidized in-state tuition to undocumented students has tightened the tension between the plenary power of the federal government to regulate immigration and the police power of state governments to control residency (Salsbury, 2003; Tostado, 1998).

The literature identified competing views concerning the principle of federal exclusivity in the context of immigration legislation targeting undocumented immigrants. Scholars and analysts who support the preemption framework of the federal government warned that granting states the power to regulate immigration policy might lead to the enactment of “blatantly restrictionist statutes” (Olivas, 2007, p. 33) adversely affecting undocumented immigrants (Lazos Vargas, 2007; McKanders, 2007; Olivas, 2008). On the other hand, advocates for the increase of state power on immigration underlined the integrative and innovative character of local and state initiatives over existing restrictive federal statutes (Engle, 2008; Parlow, 2007; Rodriguez, 2008; Schuck, 2007). Still other commentators argued that federal as well as state alienage legislation should satisfy the equal protection guarantees of the Fourteenth Amendment to avoid the mistreatment of immigrants (Delaney, 2007; Tostado, 1998).

Scholars distinguished the implication of IIRIRA and PRWORA provisions for undocumented students’ eligibility to in-state tuition and financial aid from the still uncontested right of these students to attend public postsecondary institutions (Boggioni, 2009; Romero, 2002; Ruge & Iza, 2005; Sharron, 2007). IIRIRA is specific about in-state tuition benefits while PRWORA addresses the area of monetary benefits (Connolly, 2005; Olivas, 2004, 2008). Olivas (2004) asserted that the IIRIRA and PRWORA

legislation prompted several states to disqualify undocumented students from receiving in-state residence tuition classification. However, as the severity of the obstacles imposed on these long-term residents was measured against the detrimental impact of housing an uneducated class of residents, some states with the largest number of immigrants took the initiative in facilitating undocumented students' access to postsecondary education, as explained below (Olivas, 2008; Rodriguez, 2008; Schuck, 2007).

State Legislation Extending or Withholding Postsecondary Education Benefits

The issue of whether undocumented students have a right to postsecondary education benefits must be considered in view of the federal power over immigration as well as state power to administer public education (Salsbury, 2003). Romero (2002) affirmed that federal immigration legislation implemented under the preemptive premise analysis often influences state policies affecting immigrants. This scenario reflects the current state of affairs on the issue of undocumented students' rights to subsidized postsecondary education. Technically, admission of undocumented immigrant students to a college or university is permitted under federal law (Badger et al., 2005; Ruge & Iza, 2005; Sharron, 2007), but, as I explain below, PRWORA and IIRIRA provisions curtailing unauthorized immigration have influenced state residency regulations. As a result, states grapple with the double-edged task of managing the provision of federal and state public benefits.

Regarding the source of legal uncertainty on the right of states to confer public higher education subsidies to undocumented students, the literature directs us to the unclear language in Section 505 of IIRIRA, and in Sections 401 and 411 of PRWORA

(Boggioni, 2009; Connolly, 2005; Curran, 1998; Huang, 2007; Janosik & Johnson, 2007; Olivas, 2004; Perry, 2006a; Robinson, 2006; Ruge & Iza, 2005; Salsbury, 2003; Sharron, 2007). The IIRIRA and PRWORA provisions restricting welfare and public benefits for immigrants are currently codified in Title 8 of the United States Federal Code governing issues of aliens and nationality, under Sections 1611, 1621, and 1623 (Janosik & Johnson, 2007; Olivas, 2004, 2008). Accordingly, 8 U.S.C. Sections 1611 and 1621 (PRWORA, §401 and §411) define postsecondary education benefits as a category within federal and state public monetary benefits respectively, while 8 U.S.C. Section 1623 (IIRIRA, §505) appears to discourage states from providing in-state tuition benefits to undocumented students solely on the basis of residency grounds (Boggioni, 2009; Curran, 1998; Olivas, 2004; Rodriguez, 2008; Ruge & Iza, 2005; Salsbury, 2003).

Different interpretations of a restrictive clause in IIRIRA limiting states' ability to grant higher education benefits to undocumented students on the basis of residency has led states to enact or propose differing legislation on the matter (Aldana, 2007b; Olivas, 2004; Perry, 2006a; Salsbury, 2003). Specifically, the concession clause "unless a citizen or national of the United States is eligible for such a benefit (in no less amount, duration, and scope)" (8 U.S.C. § 1623) has been interpreted by states both to include and exclude undocumented students for in-state tuition benefits. States that have enacted legislation extending in-state tuition benefits to undocumented students interpret this clause to mean that a state can grant postsecondary education subsidies to undocumented students on criteria that would not signify a disadvantage to citizen or legal resident students (Romero, 2002; Ruge & Iza, 2005; Sharron, 2007). Conversely, states denying postsecondary education subsidies to undocumented students link tuition benefits to

residency requirements only. Accordingly, these states justify the restriction on grounds that granting this benefit to undocumented students would constitute preferential treatment of these students over citizen or authorized non-citizen students from out of state, who would be ineligible for the same benefit (Connolly, 2005; Ruge & Iza, 2005).

Citing immigration legislation data from the 2007 National Conference of States Legislatures, Olivas (2008) listed state statutes enacted during a six-year-period allowing or disallowing resident tuition status to undocumented students. The author identified nine states with pro-resident tuition statutes, including Texas HB 1403 (2001), California AB 540 (2001); Utah HB 144 (2002), New York SB 7784 (2002), Washington HB 1079 (2003), Illinois HB 60 (2003), Kansas KSA 76 (2004), Nebraska LB 239 (2006), and New Mexico NMSA 1978 (2005). Among states⁷ with statutes disqualifying undocumented college students for resident tuition is Colorado, whose HB 1023 (2006) also excludes these students from state financial aid benefits. Other statutes in this group sought to repeal existing pro-benefit bills or preclude college attendance for undocumented students. California was featured in both groups as this state grants resident-tuition benefits to undocumented high-school graduates from the state, but bars their eligibility for state financial aid.

Salinas (2006) suggested that proposed state legislation to regulate postsecondary education for undocumented students is indicative of a shift from the guidelines in current federal legislation. In Sharron's (2007) opinion, PRWORA provisions do not preclude states from awarding undocumented students eligibility to state-sponsored public benefits, as long as a state law "affirmatively grants such eligibility" (p.611).

⁷ Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Oklahoma, Oregon, Rhode Island, Virginia, Wisconsin, and Wyoming

Similarly, Olivas (2004) affirmed that after IIRIRA, states retain “the abilities to enact residency statutes for the undocumented” (p.453). From this perspective, states retain the power in admitting or rejecting undocumented students to higher education and in granting or denying them postsecondary education benefits.

Scholars also related state initiatives to regulate immigration to the states’ experience with the phenomenon of immigration and the presence of undocumented residents. Many of these states had a greater solidarity with immigrants’ obstacles and became concerned about the social and economic impact of an uneducated young population (Connolly, 2005; Curran, 1998; Huang, 2007; Olivas, 2007, 2008; Salinas, 2006; Salsbury, 2003; Schuck, 2007; Tostado, 1998). Robinson (2006) affirmed that the legislative intent of pro-benefit legislation was to provide undocumented students with more affordable and accessible higher education opportunities.

The literature identified Texas HB 01-1403 and California AB 01-504 as two models that guide states’ intent on granting subsidized public postsecondary education to undocumented students (Badger et al., 2005; Boggioni, 2009; Harvard Law Review, 2002; Olivas, 2004; Robinson, 2006; Romero, 2002; Salinas, 2006; Salsbury, 2003). Salsbury (2003) observed that state initiatives extending in-state tuition benefits to undocumented students “employ clever statutory wording to attempt to circumvent” (p. 460) the provision of residency in 8 U.S.C., Section 1623 (IIRIRA § 505). The Texas and California laws effectively bypassed the matter by using criteria other than just residency for tuition purposes (Badger et al., 2005; Robinson, 2006; Romero, 2002; Salsbury, 2003).

Under the Texas model, eligibility for in-state tuition is concomitant upon enrollment in and graduation from a state high-school or equivalent, residence in the state for at least three years by the time of graduation, and a formal affidavit of intent to become a permanent resident as soon as possible (Badger et al., 2005; Fung, 2007; Olivas, 2004; Robinson, 2006; Salinas, 2006; Salsbury, 2003). Under the California model, students who attended high-school for three years and graduated from it are exempt from non-resident tuition (Fung, 2007; Harvard Law Review, 2002; Ruge & Iza, 2005; Salinas, 2006). In other words, although IIRIRA was read by some states as restricting undocumented students from accessing subsidized public higher education, states, such as Texas and California, avoided this interpretation and also a clear confrontation with this federal legislation by determining students' eligibility for in-state tuition based on considerations other than residency. As Boggioni (2009) indicated, the two models included statutory requirements for receiving in-state tuition that most undocumented students would likely satisfy. Illinois, Kansas, New Mexico, and Washington followed the Texas model whereas New York, Oklahoma, and Utah adopted the California model (Boggioni, 2009; Robinson, 2006).

The constitutionality of state laws extending resident tuition to undocumented students has been questioned and challenged by public and political constituencies (Connolly, 2005; Fung, 2007; Kobach, 2006; Olivas, 2004, 2007, 2008; Salinas, 2006; Sharron, 2007). A distinction regarding the rights to public benefits by citizens, authorized residents, and undocumented immigrants is made in reference to the Equal Protection Clause to support the restriction. Basically, critics assert that the extension of postsecondary education subsidies to undocumented students violates the Equal

Protection Clause, as these benefits may not be available to citizens or legal residents from other states (Connolly, 2005; Fung, 2007; Kobach, 2006). On the other hand, defenders claim that undocumented students are subject to stricter conditions to qualify for in-state tuition rates than are required of national and authorized residents (Connolly, 2005; Olivas, 2004, 2008; Salinas, 2006; Salsbury, 2003).

The issue of whether state laws violate federal law is debated back and forth. Critics contend that the provisions in the initiatives granting in-state tuition to undocumented students are preempted by the provisions in IIRIRA and PRWORA, which attempt to deny certain government benefits to undocumented immigrants (Fung, 2007; Kobach, 2006). Opponents to policies extending postsecondary education benefits to undocumented students refer to the language in Section 1623 (a)⁸ to highlight the limitation of eligibility to higher education benefits for undocumented students. In this respect, supporters invoke Section 1621(d) of 8 U.S.C. (IIRIRA, § 505)⁹ to make the case that federal law recognized states' power to grant state or local benefits to undocumented immigrants.

The disagreement on the interpretation of IIRIRA has also reached the courts. In a few recent cases, lower courts have upheld the state practice, whether it granted or denied postsecondary education benefits to undocumented students (Janosik & Johnson, 2007; Olivas, 2007; Robinson, 2006; Sharron, 2007). For example, in 2004, the U.S.

⁸ Section 1623 (a) on limitation on eligibility for preferential treatment of undocumented immigrants on basis of residence for higher education benefits, states that "In general [n]otwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State... for any postsecondary education benefit..." (8U.S.C. § 1623 (a)).

⁹ Section 1621(d) on State authority to provide for eligibility of undocumented immigrants for State and local public benefits, states that: "A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility" (8U.S.C. § 1621(d)).

District Court for the District of Kansas ruled in *Day v. Sebelius* that Section 731 of Kansas statute 76, which permitted the admission of undocumented immigrants to Kansas postsecondary institutions at resident tuition rates, was not in violation of federal law nor was it invalidated by the Student and Exchange Visitor Information System (SEVIS) federal law (Frank, 2006; Olivas, 2007; Sharron, 2007). Similarly, in 2005, the court in *Martinez v. Regents of the University of California* ruled that a California law did not discriminate against out-of-state college students (Olivas, 2007, 2008; Sharron, 2007).

In a different twist, two undocumented students and a non-profit organization brought suit against Virginia state higher education institutions in the District Court for the Eastern District of Virginia in 2004, alleging that a 2002 state policy denied them admission or enrollment to state higher education institutions in violation of the Supremacy Clause in Article VI of the United States Constitution and that the policy was preempted by the implementation of SEVIS (Frank, 2006; Janosik & Johnson, 2007; Olivas, 2007). In *Equal Access Education v. Merten*, the Court ruled in favor of the universities based on the plaintiffs' lack of standing to sue, and on the premise that states can regulate admission and access to higher education (Janosik & Johnson, 2007). Boggioni (2009) and Ruge and Iza (2005) asserted that the ruling in this case lent support to the proposition that states retain the discretion to grant or deny admission to undocumented students and that Congress has failed to conclusively legislate in this area.

The holdings in these lower courts reveal that the relation between federal legislation and state regulations on postsecondary education benefits for undocumented students continues to be a source of confusion. As Sharron (2007) affirmed, it is simply a

matter of time before the issue of postsecondary education benefits for undocumented students reaches the Supreme Court.

Current Federal Proposals

Two major federal legislative efforts have been proposed in Congress to repeal the ambiguous provisions in current federal legislation regarding the eligibility of undocumented students for postsecondary education benefits. These bills seek to assist undocumented students by granting them conditional permanent resident status as they work toward college (Badger et al., 2005; Rodriguez, 2008; Salinas, 2006). The Student Adjustment Act (SAA), also referred to as the American Dream Act (Annand, 2008), was first introduced in the House of Representatives in 2001 and was reintroduced in 2003, but has not yet been passed by Congress (Badger et al., 2005; Rincón, 2005; Ruge & Iza, 2005; Salinas, 2006). The other proposed legislation, the Development, Relief, and Education for Alien Minors (DREAM) Act, was introduced in the Senate in 2001 and reintroduced subsequently in 2003 and 2005. The bill was placed in the Comprehensive Immigration Reform Acts of 2006 and 2007 and in the 2008 Department of Defense Reauthorization Bill, but it also has not yet been passed by Congress (Annand, 2008; Olivas, 2008; Sharron, 2007). In referring to the development and Congressional history of this bill, Sharron (2007) noticed that “the DREAM Act remains just that – a dream” (p. 626). For Olivas (2008), it will ultimately take a concerted federal and state effort to achieve resolution on this matter.

The SAA proposed to return control of state residency for tuition purposes to the states and to extend eligibility for financial aid benefits to undocumented students. In addition, the bill provided that certain undocumented students could legalize their

immigration status, if they met certain age, character, educational, and residency criteria, as follows: (a) be twenty-one years old at the time of application for permanent residency, (b) demonstrate good moral character, (c) be enrolled at or above the seventh grade or seeking admission to higher education, and (d) have been present in the country for at least five years by the date of enactment (Ruge & Iza, 2005; Salinas, 2006). According to Romero (2002), the SAA addressed two of the main obstacles to undocumented students' admission to higher education, mainly, their immigration status and financial deficiencies, by allowing them "the same opportunities for postsecondary education and post-college work as the law currently provides lawful permanent residents" (p.409).

The delay in enacting the DREAM Act has been linked to a lag in Congressional action over comprehensive immigration reform and a contentious public and political anti-immigration climate (Huang, 2007; Rodriguez, 2008). The passage of this Act would repeal Section 505 of the IIRIRA (8 U.S.C § 1623), with implications for states and undocumented students (Huang, 2007; Olivas, 2008). The bill seeks to authorize states to determine residency for higher education purposes and extend in-state tuition benefits to qualified undocumented students, and to allow undocumented students to adjust their immigration status (Olivas, 2008; Rincón, 2005; Robinson, 2006; Rodriguez, 2008; Salinas, 2006). The criteria for the legalization of immigration status include specific requirements to qualify for temporary legal status and conditions to gain permanent legal status. Accordingly, undocumented students would qualify for temporary resident status, if they (a) entered the United States at an age younger than sixteen years, (b) were raised in the country or resided in it for at least five years to the

date of the enactment of the Act, (c) possess a high-school diploma or GED, and (d) demonstrate good moral character (Huang, 2007; Salinas, 2006). By the end of a six-year period of conditional residency, the students could apply for permanent legal status, if they fulfill any of the following conditions: (a) graduation from a two-year college, (b) completion of at least two years toward a four-year college degree, or (c) service in the military for a minimum of two years (Badger et al., 2005; Huang, 2007).

Like state legislation granting postsecondary education benefits to undocumented students, the DREAM Act faces praise and criticism. Proponents of the DREAM Act favor the legalization of these students' immigration status on the basis that their undocumented condition was a matter of fate brought down on them by their parents' decision. Sponsors of the bill also refer to the benefits to society and the economy of extending educational opportunities to these students (Annand, 2008; Huang, 2007; Romero, 2002). Opponents of the bill base their views on corrective and moral objection, claiming that the provisions in the Act would encourage unauthorized immigration and reward undocumented immigrants over legal immigrants (Fung, 2007; Kobach, 2006). The argument is also made against the "forgive and forget" (Kobach, 2006, p. 475) premise for relieving states that circumvented the language in IIRIRA and may have violated the Supremacy Clause by passing legislation in favor of subsidizing postsecondary education for undocumented students. The positions of proponents and opponents on proposed federal legislation and state laws concerning the rights of undocumented college students might shed light on the role of socio-cultural and political subcultures in framing the debate.

Socio-Cultural Constructions and Immigration Policymaking

Some research has examined the cultural, social, political, and economic underpinnings relevant to immigration policy decisions (e.g., Chock, 1995; Espenshade, 1995; Perry, 2006a, 2006b). Studies that investigated the discourse of immigration lawmaking focused on the role of language and interpretive frameworks in policy narratives (Chock, 1995; Johnson, 1996; Newton, 2005). Scholars have also analyzed social constructions of the non-citizen and the development of unfavorable public opinions and perceptions regarding the economic and social impact of undocumented immigration (Annand, 2008; Burke, 2007; Espenshade, 1995; Schneider & Ingram, 1993). The relationship between restrictive immigration legislation and criminal legislation in the context of non-authorized immigration was addressed in a few other studies (Aldana, 2007a, 2007b; Perry, 2006a, 2006b; Stumpf, 2006).

The Discourse of Immigration Policymaking

In relation to the role of language in shaping our perceptions, Yanow (1995) asserted that Congressional hearings are opportunities to articulate, shape, and change interpretation of policy issues... shaping both general and policy-oriented public discourses” (115). Chock (1995) explored the meanings of *immigration* in Congressional discourse in discussions on immigration reform between 1975 and 1986, as transcribed in hearings and speeches in Congress and in publications of the U.S. Select Commission on Immigration and Refugee Policy. Conducting a cultural analysis of the participants’ language practices, the researcher noticed how groups that advocate for immigration reform employ language conventions to construct meaning in public forums. Specifically, the study showed that, even though legislators had established an objective

framework for public debate, they resorted to interpretive frameworks of meaning that allowed them to circumvent censored nativist, xenophobic, or racist arguments explicitly when addressing the cultural and social problem of immigration.

Chock (1995) attributed the use of competing frameworks for understanding immigration policy reform to participants' socially constructed interpretations of this social reality. Chock focused on the framework of natural history meanings, which enabled legislators to build upon "presuppositions that supported the rationalization of the control and uses of 'nature'" (emphasis in original, p.165). For example, the term *population*, which was used for descriptive purposes to refer to nations, regions, immigrants, and ethnic groups, simultaneously conveyed social Darwinist meanings to the issue, thus dehumanizing the conversation about immigrants. One meaning of *population* related to the need to manage and control biological properties of reproduction, growth, and species differences, among others. Another meaning stressed the significance of assimilation to avoid cultural fracture or disintegration. A third meaning emphasized the undesirable role of competition among groups for scarce resources. On the other hand, speakers who advocated for undocumented immigrants preferred the terms *persons* or *people*, and related to these immigrants' personal stories to portray them as not so different from the audience.

In a similar study, Newton (2005) conducted a text-based discourse analysis of Congressional hearings and testimony during the 1986-1996 immigration debates. Newton identified two conflicting narratives in the debates that led to the enactment of the coercive provisions in IIRIRA and PRWORA. For example, legislators conveyed a positive view of the country's immigration narrative with references to their own

immigrant background. However, when referring to the immigration flow across the U.S.-Mexico border, they viewed immigration as a problem and portrayed the target group not only as a burden to states but also as undeserving of access to public welfare benefits. Newton concluded that the resulting punitive or restrictive immigration measures of 1996 were framed by policymakers' negative social constructions of undocumented Mexican immigrants that portrayed these immigrants as *freeloaders* and *criminals*.

Johnson (1996) examined immigration terminology in reference to the legal, social, and political significance of the classification of persons as *aliens*. Johnson argued that the social and legal construction of the term *alien* has been influenced by the social construction of race, which, in turn, has been institutionalized by society through the law. In this way, society rather than the law has defined immigrants as partial members of the community, and has determined what rights to grant or deny them. Along these lines, Benhabib (2004) argued that “every act of self-legislation is also an act of self-constitution” (p. 45). Concluding that “the term alien masks the privilege of citizenship and helps justify the legal status quo” (p. 268), Johnson (1996) cautioned that the negative connotation of the *illegal alien* classification may subtly influence policymakers into endorsing restrictionist legislation.

Principles of Civil and Political Membership

The social construction of the non-citizen and its effect on immigration policy has been examined with respect to principles of community membership and basic rights as well (Aldana, 2007b; Annand, 2008; Benhabib, 2004; Johnson, 1996; Perry, 2006a, 2006b; Walzer, 1983). Benhabib (2004) defined political membership as the set of

principles and institutional practices, including “rituals of entry, access, belonging, and privilege” (p. 1), that are in place in a nation-state to integrate immigrants into its communities. The author noticed that, as a result of the forces of globalization, traditional practices of exclusive membership controlled by the nation-state model are antiquated and increasingly unsustainable. Benhabib developed the concept of *democratic iterations* as a strategy to navigate the complexities of the new politics of membership and examine the moral and legal relationship between the rights of full membership and territorial residence of citizens and aliens. In this sense, the politics of membership concerns principles of *just membership* as well as *just distribution* for citizen and non-citizen residents (Benhabib, 2004).

Walzer (1983) articulated the theory of *distributive justice* to explain the procedures, agents, and ideologies that define conceptions of rights and privileges of social goods and the way these goods are distributed among the members of a community. The author identified membership in a community as a primary social good and pointed out that non-members are in a vulnerable position because they are unprotected from the communal provision of security and welfare. In this way, certain immigrants who are denied rights and protections can be considered non-members. Walzer asserted that the treatment of immigrants residing and working in a community as non-members reproduced the pattern of a *metic* society of immigrants. The Metics were a disenfranchised class of resident aliens in ancient Athens who were excluded from political and social rights, restrictions that also applied to their descendants in the Athenian polis.

Perry (2006b) used a theoretical framework of substantive membership based on Walzer's concepts of membership to interpret the intent of Texas HB 01-1403, the first state law granting postsecondary education benefits to undocumented students. The author concluded that a combination of basic principles of membership had played a role in the enactment of state policies that granted benefits to undocumented immigrants, namely, socially constructed definitions of residency, social awareness, reciprocation, investment, identification, patriotism, destiny, and law abidingness.

In a subsequent study, Perry (2006a) reviewed the policy context surrounding the rights of undocumented students to postsecondary education, and asserted that areas of contention in the debate qualified the application of basic beliefs of membership in policy decisions. The author contended that a framework of *membership in society* could clarify problem areas for policymakers, and guide them in the creation of coherent and consistent policies for granting tuition benefits to undocumented students. The author further argued for an inclusive policy regarding the eligibility of undocumented students for postsecondary education benefits, the extension of the 1982 Supreme Court reasoning to higher education, and the application of shared beliefs of membership for undocumented residents.

Similarly, Stumpf (2006) employed a framework of membership theory to examine the theoretical underpinnings stimulating the increasing blending between criminal and immigration law, as seen in deportation and criminal punishment in the context of intense legislation targeting undocumented immigrants. The author stated that membership theory, which delineates the rights and privileges assigned to accepted members of the society but denied to outsiders, serves the two areas of law and justifies

the exercise of the power of the sovereign state to alienate and punish offenders. In this way, *crimmigration* laws summon the state to deny a group of immigrants the right to remain in the country. The author further warned of the damaging effect on society of “an ever-expanding population of the excluded and alienated ...with strong ties to family, communities, and business interests in the United States” (p. 378). Annand (2008) also addressed the criminalization of undocumented immigrants, and concluded that the convergence of immigration and criminal law has instigated the view of immigrants as criminals and law breakers.

Expanding on Walzer’s (1983) concepts of membership in society, Bosniak (2006) explained the notion of *divided citizenship* and *hybrid alienage* in reference to the political, legal, and social status of immigrants residing inside the communities. The author distinguished the conceptual and normative divide in the concept of *citizenship* as signifying “democratic belonging or inclusion premised on a conception of a community that is bounded and exclusive” (p.1). Similarly, *alienage* is seen as the ambiguous zone between the hard domain of border-immigration control and the soft domain of the internal political community; the former dominated by exclusion principles and the latter by principles of universal inclusion. Benhabib (2004) referred to this phenomenon as the “paradox of democratic legitimacy” (p.43). Bosniak (2006) argued that the social oppression of the alien occurs when border policies effectively follow the immigrants inside the political community, making them at once subordinated insiders and national strangers.

Legalizing the Exclusion of Basic Rights

The Italian philosopher Giorgio Agamben (1998; 2000, 2005) developed the concept of the *state of exception* and *the camp* to describe an increasing trend of national governments to employ models of power in which the juridical and constitutional grounds of law are legally suspended. In Agamben's view, the condition of *state of exception* produces an empty space "in which a human action with no relation to law stands before a norm with no relation to life" (Agamben, 2005, p.86). It follows that an individual in a *state of exception* is in a condition of ban or abandonment, and beyond the protection of the law (Agamben, 2000; Mills, 2008). The author further contended that the practice of *state of exception* in contemporary politics allows governments to respond to perceived threats from within or outside its borders, leading in some cases to "the physical elimination not only of political adversaries but of entire categories of citizens who for some reason cannot be integrated into the political system" (Agamben, 2005, p.2).

For Agamben, the concept of *the camp* is closely related to the *state of exception* (Mills, 2008). Agamben (1998; 2000) defined *the camp* as a biopolitical space in the sense that "a temporary suspension of the law on the basis of a factual state of danger" (Agamben, 2000, p. 169) becomes the rule. In this environment, individuals are exposed to unmediated political, economic, or social interventions that may threaten their well-being (Agamben, 2000). Although Agamben (1998, 2000, 2005) often explained these concepts by recalling the conditions of Jews in World War II German concentration camps, he extended the notion of exclusion of political and economic power and denial of legal rights to the treatment of refugees in contemporary camps and detainees in

detention centers in international airports, as well as the situation of illegal immigrants in some European cities.

The considerations regarding the development of *crimmigration* law parallel Agamben's (2000, 2005) description of a troubling increase in modern politics where we see the *state of exception* emerge as an aspect of sovereign power. Accordingly, an unchecked excess of sovereign power in the treatment of targeted populations has led to an increasingly dehumanization of *the Other* or, in this case, the immigrant. Along these lines, Aldana (2007a, 2007b) referred to the institutionalization, during the last three decades, of anti-alienage doctrines based on nationalistic or bounded citizenship notions and the perpetuity of these residents' foreignness. The author posited that the regulation of immigrants within the border strips non-citizens of basic rights, placing them at times "into conditions that closely resemble slavery" (Aldana, 2007b, p. 266), while the social construction of *foreignness* subordinates them. Shapiro (1997) concluded that contemporary immigration discussions are centered on "cultural rather than race or biological grounds" (p. 19), and that, in view of the perceived threat of a projected increase of the immigrant population, national discourses continue to construct the immigrant-other as a danger.

The Social Construction of Deservedness

Schneider and Ingram (1993) defined the social construction of target populations as cultural, normative and evaluative perceptions of individuals or groups of persons, which place them under positive or negative lens, that is, under considerations of deservedness and privilege or punishment and penalty. The theory of social constructions of deservedness complements understandings of social dominance theories,

namely, concepts of minimal group differences and social positionality of dominance and subordination (Sniderman, Tetlock, & Carmines, 1993). Accordingly, citizens or nationals, who belong in the in-group, are predisposed to discriminate against members of the out-group or target populations. In turn, society creates and justifies norms that concede to dominating groups certain privileges and rights that are restricted for members of disenfranchised or subordinated groups (Johnson, 1996; Walzer, 1983).

The concept of social constructions is relevant in the study of policymaking, legislative activity, and conceptions of citizenship, as “core beliefs of policy networks often are grounded as much in ideology as in science, and sometimes are impervious to unsettling influences like new scientific evidence” (Ingram & Schneider, 2005, p.7). According to Schneider and Ingram (1993), negative messages of a target population make it “likely that these groups will often receive burdens even when it is illogical from the perspective of policy effectiveness” (p. 338). In this sense, policymakers are not only influenced by their own constructions of target populations, but are under strong pressures from their constituencies “to provide beneficial policy to powerful, positively constructed target populations and to devise punitive, punishment-oriented policy for negatively constructed groups” (p.334). Marmor (2002) concluded that immigration policy is built on (a) social constructions or perceptions about immigrants, (b) the arguments that governments use to sustain the adoption of specific policies, and (c) what governments understand by immigration policy.

Social constructions of target populations are thus thought to play a central role in shaping the policy agenda as well as in the design and intent of the policy tool. Schneider and Ingram’s (1993) theory provides a framework to interpret and understand the

contentions of proponents and opponents to granting postsecondary education benefits to undocumented immigrant students. In referring to immigration debates, Schneider and Ingram explained that policymakers tend to draw finer distinctions to determine levels of deservedness within the immigrant population, as shown in the distribution of rights among undocumented immigrants, refugees, migrant workers, and other lawful non-citizens. In the same vein, Ingram and Schneider (2005) affirmed that “contested social constructions are inherently unstable and ripe for policy change that subdivides populations into more deserving and less deserving categories” (p. 10). Citing Newton’s (2005) study on Mexican-American immigrants, Ingram and Schneider noticed how these immigrants can be simultaneously constructed as hard-working residents of the southwestern part of the country and as unentitled to public benefits.

Legal and Social Constructions of Rights for Undocumented Students

Ruge and Iza (2005) affirmed that “[m]any of the arguments against higher education for undocumented students are a mix of legal interpretation with social policy” (p. 274). In Curran’s (1998) opinion, “the trend to curtail the benefits of aliens is a direct result of the backlash against the undocumented and a response to fiscal crises, which, as in prior times, have been blamed by the nativist element on immigrant aliens in general and the undocumented in particular” (p.125). In this respect, Annand (2008) warned of the possible social stratification function of higher education when some youth are denied access to it. Likewise, Tostado (1998) affirmed that state regulation of immigrant rights raises considerations of policy, law, and justice.

Some scholars referred to the weak empirical evidence for the apprehensive public perceptions of adverse social and economic effects of undocumented immigration,

such as increased fiscal burden, social perils, and cultural dissonance (Boggioni, 2009; Burke, 2007; Espenshade, 1995; Johnson, 1996; Wadsworth, 2010). Annand's (2008) analysis of punitive public perceptions in the context of the DREAM Act challenged arguments commonly held against undocumented students' right to access postsecondary education benefits. The author examined the issue in relation to three approaches within criminal punishment theory, namely, deterrence, retribution, and rehabilitation. In terms of deterrence, the author found that deterring undocumented students from accessing postsecondary education benefits would not lead to a change of the wrongful conduct at issue, that is, their undocumented immigrant status. With respect to retribution, the intention of punishing these students was unjustified as they "are not personally, morally guilty" (p. 707). Likewise, rehabilitation or the notion that an individual can be reintegrated into society after committing an offense becomes inoperative by denying these students the chances to further their education.

Arguments supporting undocumented students' access to subsidized public postsecondary education rely on principles of equal justice as held in the *Plyler v. Doe* decision (Olivas, 2004, 2007, 2008; Perry, 2006a, 2006b) as well as in the Supreme Court's view that "the right to education existed between an ordinary and a fundamental right" (Annand, 2008, p. 691). Some scholars addressed the interaction of legal and social constructions in the subordination of undocumented immigrants (Aldana, 2007a; Johnson, 1996; Lazos Vargas, 2007; Stumpf, 2006), recognizing that undocumented students' access to postsecondary education benefits is regulated through legal means while cultural norms vilify their immigration status.

Conclusion

This chapter has reviewed the legal and academic literature that provides insights on topics related to this research project. The first section of the chapter traced the development of principles of democratization of education and explored the advancement of equity of educational opportunities in higher education. The discussion underlined the moderate progress made in institutionalizing equal access and equal participation in higher education, as a number of underserved students continue to struggle to pass the threshold of these institutions.

The publications considered in the second section of the chapter examined the regulation of admission to higher education institutions and distinguished the separate functions of the state government and federal government on matters of higher education. This review of literature revealed a range of variability among states regarding requirements for establishing residency status and institutional policies for determining in-state tuition.

The topic of admission to higher education was further examined in relation to immigrant college applicants in the third section of the chapter. In addition to distinguishing various classifications of non-citizen students, this section reviewed some court decisions with implications for admitting immigrant college students to higher education. From this review, it was apparent that states retain the power in establishing standards for admitting or rejecting undocumented students to higher education and for granting or denying them postsecondary education benefits.

The legal segment of the literature review analyzed the main developments in immigration law as it relates to undocumented immigrants and, specifically,

undocumented college students. The literature in this section provided the description of major state initiatives and federal proposals aimed to alleviate the obstacles that undocumented students face when they apply for a college education. This discussion illuminated the source of the debate at the national and state level on the issue of postsecondary education benefits for undocumented students.

The last section of the chapter reviewed literature related to conceptions of social membership and the role of cultural and social constructions of target populations on lawmaking processes. This review included studies that focused on the analysis of the language and discourse in legislative debates on immigration reform as well as research that examined the connection between restrictive immigration policy and negative social constructions of the targeted immigrant population.

The review of the literature in this chapter identified critical points that are relevant to the purpose of this study. First, many undocumented students are among underserved college students, as first-generation, low-income, minority college students (Bell Policy Center, 2005; Huang, 2007; Romero, 2002; Zusman, 2005). Second, the eligibility of undocumented students to subsidized public postsecondary education concerns state residency regulations as well as alienage policy (Boggioni, 2009; Olivas, 1986, 1995; Salsbury, 2003), such as the provisions in Colorado HB 06S-1023. Third, the decision to grant or deny in-state tuition to undocumented students is currently regulated on a state-by-state basis and is affected by the state's exposure to and perceptions of immigrant populations (Olivas, 1986, 1995, 2004). Fourth, current restrictive policies against undocumented immigrants are associated with negative perceptions about unauthorized immigration coming through the U.S.-Mexico border and considerations of

non-membership for non-immigrant residents (Annand, 2008; Chock, 1995; Frank, 2006; Newton, 2005; Schneider & Ingram, 1993). Last, the restriction of public postsecondary education subsidies for undocumented students carries implications for the social and economic mobility of certain ethnic groups residing in American communities (Bosniak, 2006; Ingram & Schneider, 2005; McMathon, 2009; Walzer, 1983; Zusman, 2005).

The case of undocumented college students is related to the interpretation of legal provisions in immigration law, education law, state law, campus practices, the equal protection provision of the Fourteenth Amendment of the U.S. Constitution, and Title VI of the Civil Rights Act of 1964. Research on immigration legislation has provided valuable understanding regarding the legal foundations of policy texts (Olivas, 1986, 1995, 2004; Salsbury, 2003). Some descriptive studies also helped to illuminate the role of policymakers' perceptions and interpretive frameworks in policymaking processes (Chock, 1995; Newton, 2005; Perry, 2006a, 2006b). While the legal and interpretive research on immigration policy have contributed significant insights on the factors that engendered restrictive policy provisions, their focus has been on elements external to the meaning of the texts. However, it is possible to explore the meaning of a policy artifact by interpreting the narratives that emerge from the text itself. Thus, rather than focusing on the intent or assumptions of the policymakers who participated in the enactment of Colorado HB 06S-1023, this exploratory study aims to identify and interpret the narratives that unfold in this policy document by focusing on a reflective process of argument and counter-argument between the researcher and the text itself.

The content of this chapter provided a background and a point of departure for the interpretation of the text of Colorado HB 06S-1023. Chapter Three outlines the interpretive mode of analysis selected for this research project.

CHAPTER THREE: METHODOLOGY

Overview

This chapter describes the research methodology selected for my research. As I stated in Chapter One, the purpose of this study was to critically and inductively analyze the text of Colorado HB 06S-1023 to illuminate the rationalization for the law. After establishing this rationalization, I was able to identify and interpret the ideological beliefs concerning the status and rights of undocumented immigrants. This work led me to identify and interpret the narratives that are embedded in the text of Colorado HB 06S-1023. It also enabled me to identify a dominant narrative or metanarrative concerning the issue of undocumented immigration in the state. This research project was conducted in the context of current national and state debate on the issue of postsecondary education rights for undocumented students. The literature review in Chapter Two indicated that this debate is being framed around legalistic considerations of federal and state legislation together with provisions of equal protection and civil rights, and that policymakers' decisions may also be influenced by socio-cultural constructions about immigration and undocumented immigrants.

In the sections that follow, I explain the rationale for selecting a qualitative research design and an interpretive methodology. I also describe the theoretical grounding of the research approach and the methods employed for data collection, analysis, and interpretation. I then address considerations and strategies that I used for establishing trustworthiness for my interpretation of the core policy text.

Research Design

This study employed a qualitative research method to critically analyze and inductively interpret the meaning of Colorado HB 06S-1023. The study is grounded in a basic interpretive mode of understanding meaning and a constructivist mode of meaning generation. Three methods of analysis and interpretation were used, namely, thematic analysis, hermeneutic interpretation, and narrative policy analysis.

The interpretive mode of understanding selected for this study is informed by Gadamer's (1960) philosophy of historical hermeneutics, socio-constructivist notions of social realities (Crotty, 1998; Yanow, 2006b), and interpretive approaches of narrative policy analysis (Fischer, Miller, & Sidney, 2007; van Eeten, 2007; Wagenaar, 2007; Yanow, 2006b). The combination of these interpretive methodologies fits the purpose of this study, that is, to interpret the narratives inscribed in Colorado HB 06S-1023. It also aligns with my approach to inquiry as a constructive and interpretive endeavor. The methods of accessing, collecting, generating, and analyzing the data were guided by these methodologies.

Theoretical Framework

The interpretation of the selected legal texts and of the meaning of the provisions in Colorado HB 06S-1023 was framed within the socio-cultural theories about the immigrant (Aldana, 2007b; Schneider & Ingram, 1993; Shapiro, 1997) explained in Chapter Two. Schneider and Ingram (1993) noted that social constructions of target populations are measurable and can be empirically analyzed by studying legislative texts, statutes, and speeches. Along these lines, Yanow (2000) observed that interpretive policy analysis reveals the expressive dimension of policymaking, and that policy artifacts carry

“expressions of identity on the part of the polity that legislated them ... in terms of what it values, believes, or feels” (p.88). It follows that HB 06S-1023, as a policy artifact, could carry the narratives of the legislative polity that generated it.

In addition, the interpretive analysis in this study was informed by understandings of substantive membership (Aldana, 2007b; Benhabib, 2004; Perry, 2006a, 2006b; Walzer, 1983) along with Bosniak’s (2006) notions of *divided citizenship* and *hybrid alienage*. Other conceptualizations that guided the interpretive processes in this study were Agamben’s (2000, 2005) concepts of *state of exception* and *the camp*, and principles of justice and equal protection inscribed in the Fourteenth Amendment. These concepts were described in Chapter Two.

Rationale for an Interpretive Qualitative Research Study

According to Denzin and Lincoln (2000), qualitative research has moved along successive phases of epistemological theorizing and has adapted to the perspectives in each. However, qualitative inquiry has consistently championed the use of interpretive and naturalistic practices of research to understand or make sense of the world (Denzin & Lincoln, 2000). In defining qualitative research, Merriam (2002b) referred to the socially constructed nature of meaning and the multiple interpretations of reality, which the qualitative researcher is interested in understanding. In a similar vein, Holstein and Gubrium (2005) emphasized new directions in interpretive practice, which coincide with a growing interest for exploring not only *how* social reality is constructed but also *what* is constructed. Holstein and Gubrium asserted that emergent interpretive practice is “centered in both how people methodically construct their experiences and their worlds,

and in the configurations of meaning and institutional life that inform and shape their reality-constituting activity” (p. 484).

This study was designed in accordance with Merriam’s (2002b) four observations for interpretive qualitative research, namely, that (a) the researcher seeks to understand how participants make meaning of a particular phenomenon or experience; (b) data collection and interpretation is mediated by the researcher; (c) the analytical process is inductive, and (d) the outcome is descriptive. It was also based on the premise that interpretive practice connotes a dynamic interaction between “discursive practice and discourses-in-practice” (Holstein & Gubrium, 2005, p. 493).

Accordingly, as the researcher completing this study, I was interested in understanding how Colorado HB 06S-1023 characterized the right to postsecondary education benefits for undocumented students residing in this state. The selection of documents as well as the interpretation of the interplay between the narrative of Colorado HB 06S-1023 and the narrative of related legal texts was mediated through my perspectives and my biases. I approached the analysis inductively by methodically coding and holistically reading the selected documents. I then presented and described my interpretation of Colorado HB 06S-1023 with the support of relevant excerpts from the data.

Research Methods

This study employed three methods of data collection, analysis, and interpretation. First, the core text and primary data were analyzed thematically. Next, the core text was analyzed in relation to additional documents using a hermeneutic interpretive process. Lastly, the interpretations that emerged in the thematic analysis and

hermeneutic interpretation of the data were synthesized using procedures of narrative policy analysis. Following is a description of each of the research methods employed in this study along with an explanation of how and when they were used.

Thematic Analysis

Thematic analysis is a categorization strategy in qualitative data analysis (Maxwell & Miller, 2008). Although the analytical procedure in thematic analysis requires coding the data and identifying relations of similarity and difference among the text segments (Maxwell & Miller, 2008), it also “seek[s] to unearth the themes salient in a text at different levels” (Attride-Stirling, 2001). In this sense, thematic analysis can also be considered a connecting strategy in that it helps examine the relationship or connections between the concepts and categories identified in the coding process. Maxwell and Miller (2008) characterized categorizing and connecting analytic approaches as inherently complementary analytic strategies in qualitative data analysis. In their view, the combination of these analytic approaches allows for identifying elements of the structure of qualitative material and simultaneously relating them to other elements within the context of the texts. Furthermore, the use of these two approaches in the identification of units in qualitative data reduces the danger of decontextualizing the data through categorizing techniques as well as failing “to see alternative ways of framing and interpreting the text” (Maxwell & Miller, 2008, p. 469) by exclusively focusing on connecting strategies. One way of integrating coding and thematic strategies in qualitative data analysis is through holistic reading processes (Attride-Stirling, 2001; Maxwell & Miller, 2008).

The display of thematic analyses of qualitative data varies. The use of matrices is recommended for the comparison of similarities and differences in the data (Maxwell & Miller, 2008; Miles & Huberman, 1994). On the other hand, the display of the relationships among themes is better explained with concept maps or networks (Attride-Stirling, 2001; Maxwell & Miller, 2008). Miles and Huberman (1994) proposed the use of hybrid displays for studies that employed categorizing and connecting strategies of data analysis. In this study, I used Attride-Stirling's (2001) thematic networks model for conducting and displaying the thematic analysis of the core and primary texts. Thematic networks consist of web-like networks or maps that display the themes generated in the structuring and interpretation of the texts at different levels in the analytic process (Attride-Stirling, 2001).

The use of thematic networks for the thematic analysis of the core and primary texts was adopted on grounds of representational clarity as well as considerations of trustworthiness. According to Attride-Stirling (2001), procedures of thematic networks allow for the recording, systematization, and disclosure of the processes of analysis in a methodical and consistent manner. Attride-Stirling developed a six-step procedure to guide researchers conducting thematic analyses of qualitative data. The first step involves devising a coding framework and applying the codes to break up the text into meaningful and manageable text segments. The second step consists of identifying and refining the themes that emerged from the coded text segments. Next, the themes are interpreted and categorized as basic, organizing, and global themes, with each level abstracting the themes at a higher degree of signification. After constructing the thematic networks, the researcher explores and summarizes them. The final step is to explore the

significance of the patterns and concepts that were generated in the exploration of the texts.

The thematic analysis of the core and primary texts constituted the descriptive stage of analysis in this study (Patton, 2002). The use of thematic networks analysis as an analytic tool assured a consistent method of exploration of the texts and also facilitated the interpretation of explicit rationalizations and meanings in the text of Colorado HB 06S-1023.

Hermeneutic Interpretation

Prasad (2005) asserted that interpretive traditions are postpositivist in orientation and share “fundamental intellectual orientations of the interpretive or social constructionist philosophy” (p.9), specifically, the subjective and intersubjective dimensions of meaning-making and reality construction processes. According to the author, interpretive traditions attend to both the inherent human capacity for meaningful social construction and the mediating intervention of cognitive schema and linguistic conventions emerging from our environment, but they differ in their scholarly styles. In this sense, hermeneutics, like other interpretive traditions, acknowledges the multiple and contradictory nature of interpretations, but differs from them in its preference for studying the social world through an application of the concept *text* and the practices found in the methodical analysis of documents.

Gadamer’s (1960) hermeneutics maintains that human meaning is inscribed in artifacts, and can be accessed by interpreting these artifacts. Yanow (2000; 2006b) explained that hermeneutic interpretation can be applied to written or oral texts. In this way, hermeneutic or interpretive policy analysis explores the meanings of policy artifacts

and actions, such as policy documents or legislative acts (Yanow, 2000). Hermeneutic interpretation was especially helpful in this study because it provided a method to access the meanings inscribed in Colorado HB 06S-1023, a policy artifact with cultural and educational significance.

Essential to Gadamerian theory is the belief that, as interpreters, “we do not know what we think about a text until we grapple with a specific application of it” (Eskridge Jr, 1990, p.676). Eskridge Jr. (1990) explored Gadamer’s (1960) thesis of hermeneutic interpretation in the context of statutory interpretation, and identified three central premises, namely, that the interpretive process (a) is ontological in the sense that there is a two-way interaction between interpreters’ participation in and their interpretation of the world; (b) entails a dialogue between the interpreter and the text, and (c) involves a critical approach towards the text and the interpreter’s presuppositions. The relationship between the interpreter and the text has been likened to the interaction between speech-partners, in the sense that “[e]ach party to the conversation must deal with her or his own way of understanding ... as well as with the other’s way of understanding” (Schwandt, 2004, p. 36).

According to Yanow (2006b), Gadamer’s conceptualization of a hermeneutic circle of interpretation incorporates all sense making processes, including the conception of prior experience emphasized in phenomenology and that of prior reading of texts intrinsic to hermeneutics. In this way, Gadamerian hermeneutics combines a “hermeneutic focus on texts as vehicles for conveying meaning with the phenomenological consciousness that researchers [bring to the process] an awareness of the ways in which, writing, itself, is a way of world making” (Yanow, 2006b, p. 16).

Gadamerian hermeneutics requires the examination of the text and its background. Eskridge Jr. (1990) posited that, in interpreting a recently enacted statute, the interpreter's frame or horizon might coincide with that of the text so, the "interpretation will involve analysis of the text, the history behind the statute, policy presumptions and clear statement rules" (p. 647). Yanow (2000; 2006b) referred to the knowledge of the conditions and actors surrounding a policy text as *local* knowledge, noting that it is a form of tacit knowledge. It follows that, as Colorado HB 06S-1023 is a recently enacted statute, I may have a local or tacit knowledge about the enactment of this bill. In this way, the interpretive analysis in this study would include exploring the text's assumptions or reasons for excluding undocumented immigrant students from postsecondary education benefits, the history behind Colorado policymakers' interest for bringing the issue to the policy agenda, and the meaning of the propositions in the bill.

While Gadamerian hermeneutics states that meaning is negotiated rather than constructed, as seen by social constructionists, both philosophies hold that there is never a final or correct interpretation (Schwandt, 2000). Accordingly, the inquiry in this study was based on the premises that (a) texts and interpreters stand in a cultural tradition or historical context, each with their own meanings; (b) knowledge is acquired through interpretation and language is at the core of understanding and explaining; (c) interpreters are aware of the inherited prejudices they bring to the act of interpretation, and engage them in the process of understanding the text and their selves; (d) a text is expressive in the sense that it is "the outcome of multiple sociocultural and political forces reflecting broader institutional relationships and ideologies" (Prasad, 2005, p. 38); and (e) the text and context are interrelated in the interpretive process in that "the meaningfulness of

transmitted texts is determined by the tradition as a whole, just as the tradition as a whole is a unity comprising the meaning of the texts transmitted within it” (Crotty, 1998, p.104). Prasad (2005) noticed that in a hermeneutic interpretation of policy documents, the interaction between the texts and their context prompts the researcher to simultaneously examine the meaning of the texts to understand the context as well as the meaning of the context to understand the texts.

The use of hermeneutic interpretation of the core text in relation to other relevant legislative documents constituted the interpretive phase of analysis (Patton, 2002). The use of this analytic and interpretive method facilitated the interpretation of implicit rationalizations and meanings in the text of Colorado HB 06S-1023 and provided additional ways to understand the data and they mean (Patton, 2002).

Narrative Policy Analysis

Narrative policy analysis was another appropriate analytical strategy for this study. Considered an alternative methodological approach to traditional policy analysis methods, narrative policy analysis is often used “to deal with controversial policy issues marked by conflicting policy narratives” (van Eeten, 2007, p. 251). Yanow (2000) affirmed that in policy studies, policymakers and policy texts “are seen as telling stories” (p. 58), and are thus carriers of meaning. In referring to different methods within narrative policy analysis, van Eeten (2007) argued that a configuration of the terms in the label of the approach determines specific research goals and units of analysis. Accordingly, van Eeten distinguished (a) the narrative analysis of policy, (b) the analysis of policy narratives, (c) the policy analysis of narratives, and (d) the narrative of policy analysis. This study was guided by the second method, which seeks to “reconstruct the

stories that actors tell about policy issues, often showing how the same policy terms or measures are given meaning in different and conflicting ways” (van Eeten, 2007, p.252).

The use of qualitative-interpretive methods in policy research coincides with a shift in the field to validate the role of interpretation, social meaning, and situational context in the examination of policy issues (Fischer, et al., 2007). In conjunction with interpretive practices, policy interpretations seek to understand “not only what a policy means, but also how a policy means” (Yanow, 1995, p. 111). Yanow (2007) affirmed that policy researchers working within an interpretive tradition employ interpretively oriented qualitative methods that are word-based, include extensive accounts of researcher reflexivity of biases and perceptions, and involve “the exploration of multiple meanings and their ambiguities, especially in policy contexts in which contention over the policy issue under study is common” (p. 409).

Yanow (2000) identified three communities of meaning in public policy processes, namely, that of policy designers, policy implementers, and affected constituencies. Yanow contented that each community of meaning operates with its own interpretive frame, which reflects the group’s values and voice. In addition to differences of beliefs and meaning among the interpretive frames of these communities, Yanow mentioned differences in “policy discourses –different language, understandings, and perceptions- and potentially different courses of action” (p.12). According to Yanow, an interpretive approach to policy analysis considers the meaning of policies, the values and beliefs expressed in the policy, and the processes and tools by which these meanings are communicated to and interpreted by other communities. In this sense, the interpretation of a policy becomes an interpretation of interpretations (Jackson, 2006).

A common assumption in interpretive policy research is that context-embedded interpretation and the potential for multiple interpretations of the same text preclude generalizability (van Eeten, 2007; Yanow, 2007). Moreover, given that the analysis of one policy text may not suffice for the study of collective decision-making processes in that particular event, other texts are often considered for the analysis of the policy issue and the reconstruction of a possible metanarrative of those “aggregated policy narratives” (van Eeten, 2007, p. 253). In this context, a metanarrative is a story that develops from the comparison of assumptions in internal and external narratives (Hampton, 2009). Narrative policy analysis can uncover a metanarrative by juxtaposing the views of agreements and disagreements regarding a policy issue.

These considerations carried implications for my role as a researcher, the nature of the policy issue for the study, and the selection of sources of data. The procedures that I adopted for this interpretive research project are described next.

Research Procedures

I answered the research questions through a consistent and methodical interpretive analysis of textual data concerning the provisions outlined in Colorado HB 06S-1023, which affect undocumented college students in the state. The analytical process in this study was informed by Merriam’s (2002b) observation that “data analysis is *simultaneous* with data collection” (italics in original, p. 14). As such, the process for data collection in this study was also in accordance with Yanow and Schwartz-Shea’s (2006) notion of co-generation of data within interpretive research. In this way, data initially accessed might enable the generation of other data that “*might* yield information that might be relevant to the topic under investigation” (italics in original, Yanow & Schwartz-Shea, 2006, p. 117).

Data Selection

The data for this research project were written public documents in the form of legislative bills, statutes, opinions, and resolutions. Merriam (2002b) asserted that documents constitute a strong source of data, as they are readily available for research and are non-intrusive within the research setting. The rationale for data selection in this study followed Yanow and Schwartz-Shea's (2006) view that, in interpretive research, data are *accessed* and *generated* rather than merely *collected*. More specifically, the data for this study were Colorado HB 06S-1023 and other legal documents relevant to the research. I assembled these texts in an electronic database. The database included bills and resolutions that targeted immigrants, and addressed immigration and membership issues. While these pre-selected texts constituted a relevant source of data, the list was tentative, as other texts were added throughout the interpretive process. For example, Colorado Attorney General John Suthers' formal opinion of January 2006 was identified as an important text during the interpretive process and was added to the database.

In order to ensure that the selected documents provided relevant information and helped understand the meaning of Colorado HB 06S-1023, the selection of documents was purposive (Merriam, 2002b). In particular, this study incorporated a typical purposive text selection process with the inclusion of documents that fit the "instance of the phenomenon of interest" (Merriam, 1998, p.62). Initially, the rationale for the selection of relevant documents was to include documents generated in relevant federal, state, and case court settings, and to limit them to specific types of documents, that is, to bills, proposed legislation, and judicial decisions. The inclusion of proposed legislation

was meant to consider perspectives that framed a counter-narrative on the issue of interest (Hampton, 2009).

The documents were accessed through various online research services, including the LexisNexis academic and Congressional databases as well as the websites for state governments and research organizations. Using a number of search terms, such as “illegal immigration,” “undocumented students,” and “public benefit,” I was able to identify relevant federal bills and statutes along with some Congressional reports and court cases. State legislative texts were accessed by reviewing legislative sessions of interest in the legislature websites of three selected states. The legal section of the literature review also provided direction in the search for appropriate documents.

An initial overview of the issue of undocumented students led to the identification of a number of documents in federal, state, and court settings. The selection of federal legislative texts for the analysis included Sections 401 and 411 of PRWORA (8 U.S.C §1611, §1621) and Section 505 of IIRIRA (8 U.S.C. §1623) because these 1996 federal provisions were mentioned in the language of Colorado HB 06S-1023 or were related to its provisions. Sections of the DREAM Act were also selected because they present an alternative view of the issue of interest and constitute a significant legislative proposal on the subject of this research at the national level.

Regarding the legislation from states other than Colorado, I examined texts from the two legislatures that have influenced and guided other states in favoring the subsidization of postsecondary education for undocumented students. Thus, the texts of California AB 01-504 and Texas HB 01-1403 were incorporated into the electronic database and then the analysis in order to understand how the rationalization in those

legislative decisions compared to that in the Colorado policy. I did not examine texts from other states also granting public postsecondary education subsidies to undocumented students because their policies had been modeled on the provisions underlying the California or Texas legislation (Badger et al., 2005; Boggioni, 2009; Harvard Law Review, 2002; Olivas, 2004; Robinson, 2006; Romero, 2002; Salinas, 2006; Salsbury, 2003). Thus, including those texts would have resulted in duplicative information for the research questions in this study.

A number of Colorado legal documents created before and after the enactment of HB 06S-1023 were also identified for analysis and interpretation. I searched for Colorado legislative texts, passed or proposed, during a twelve-year period between August 1996 and August 2009, a timeline that coincided with the enactment of the last comprehensive immigration reform and the most recent state legislative activity preceding this analysis. The search for Colorado texts was guided by their relevance to issues on immigration, public benefits, and underserved student populations. A preliminary examination identified several Colorado bills related to HB 06S-1023, such as HB 05-1124, HB 06S-1009, HB 06S-1014, HB 06S-1017, HB 07-1040, HB 07-1314; HB 08-1191, HB 08-1326 and SB 08-79. The final count on Colorado legislative texts included in the analysis was twenty-eight passed bills and forty-seven proposed bills (Appendix A). I included these texts because of the possibility that an examination of them could shed light on how the rights of undocumented immigrants were constituted in the narrative of Colorado HB 06S-1023 and on how these conceptualizations related to a metanarrative.

During the interpretive process, it became evident that court opinions presented an interpretation of the issues of particular interest to me in this research. However, these texts were generated as a result of a judicial process rather than a legislative process. After reading some of these judicial texts, I observed that the language and rhetoric of those documents differed significantly from the discourse in the legislative documents. Court decisions were not included, therefore, as data source. The judicial texts in a few cases, however, were of tangential value in the interpretive process. For example, the court argument in the decisions in *Plyler v. Doe* (1982), *Toll v. Moreno* (1982), and *Equal Access Education, et al. v. Alan G. Merten et al.* (2004) offered perspectives for interpreting and comparing the rationalization of the issue of subsidized postsecondary education for undocumented students in relation to provisions in the federal and state legislation analyzed. Transcripts of Congressional debates, memos, committee reports, or minutes were not considered for in-depth analysis either. In summary, I found that the legislative texts that I collected and analyzed established a saturated data set for my analysis and interpretation. Other examined texts were eventually found to be either duplicative or irrelevant to the research questions.

Data Management

For the management of the data, I first created electronic archives, which stored digital copies of the texts collected throughout the period of research. Word or PDF documents of the bills, statutes, opinions, and resolutions were developed and filed chronologically within appropriate folders. In accordance with the iterative nature of interpretive analyses, this database was updated during the analytical and interpretive process, as needed.

The texts were electronically filed in folders that were organized thematically and chronologically. Originally, I created four main folders for federal, state, Congressional, and court texts, respectively. I eventually set aside the Congressional and court folders, when it became obvious that Congressional hearings and court decisions steered away from the legislative discourse. The “Federal” folder included two subfolders, a “Passed” folder for selected sections of the IIRIRA and PRWORA Acts of 1996 (8 U.S.C. §1601, §1611, §1612, §1613, §1615, §1621, §1622, §1623, §1624, §1625, and §1641), and a “Proposed” folder with the texts of the 2001, 2003, and 2007 versions of the DREAM Act in the House and Senate.

Similarly, the “State” folder was comprised of three subfolders for selected California, Colorado, and Texas texts, respectively. The “Colorado” folder contained eleven folders. One of these Colorado folders was dedicated to CO HB 06S-1023 texts, including revisions, enrolled versions, and the final bill. The others corresponded to each of the sessions of the Colorado legislature with relevant passed or proposed bills, namely, the legislative sessions of 1997, 1999, 2002, 2004, 2005, 2006, 2007, 2008, and 2009. Within each of these legislative sessions, texts were organized into House Bills and Senate Bills, each with their respective introduced and passed bills or resolutions. These texts were further distinguished by inserting an “I” to the filing name of the legislation that was introduced. For example, HB 1001, ISB 011, and IHCR 1001 were filed into the special session of 2006 as a passed House Bill, an introduced Senate Bill, and an introduced House Concurrent Resolution, respectively. Where necessary, I included engrossed, reengrossed, and revised versions of the bills.

After organizing the data electronically, I proceeded to develop and file in a binder a hard copy of each document. This was a necessary step to facilitate the analytical and interpretive processes. With the documentation in the binder, I could easily move from one text to another and look at several texts simultaneously. The text of Colorado HB 06S-1023 constituted the core document in this study. The other Colorado texts selected for this study were catalogued in the binder chronologically, according to the legislative session in which the legislation had been introduced or passed. For example, the bills that preceded Colorado HB 06S-1023 were filed in the corresponding legislative session section before the 2006 special session of the Colorado legislature. Likewise, the legislative documents that followed HB 06S-1023 were filed after it. Copies of the federal documents and of the California and Texas bills were assembled in files external to the Colorado texts.

Data Analysis

The procedures that I followed for organizing, exploring, and analyzing the data are described below in three sections, namely, the preliminary steps, the analysis and interpretive stages, and the synthesis phase, respectively. A description of the step-by-step procedures that I completed in each of these analytic stages is provided below and illustrated in the flow chart in Figure 1.

Preliminary steps. Peräkylä (2005) asserted that, when analyzing texts or documents, qualitative researchers should refrain from predefining a protocol for the analysis, and resort to extensive reading “to pin down their key themes, and thereby, to draw a picture of the presuppositions and meanings that constitute the cultural world of which the textual material is a specimen” (p. 870). On the other hand, practitioners of

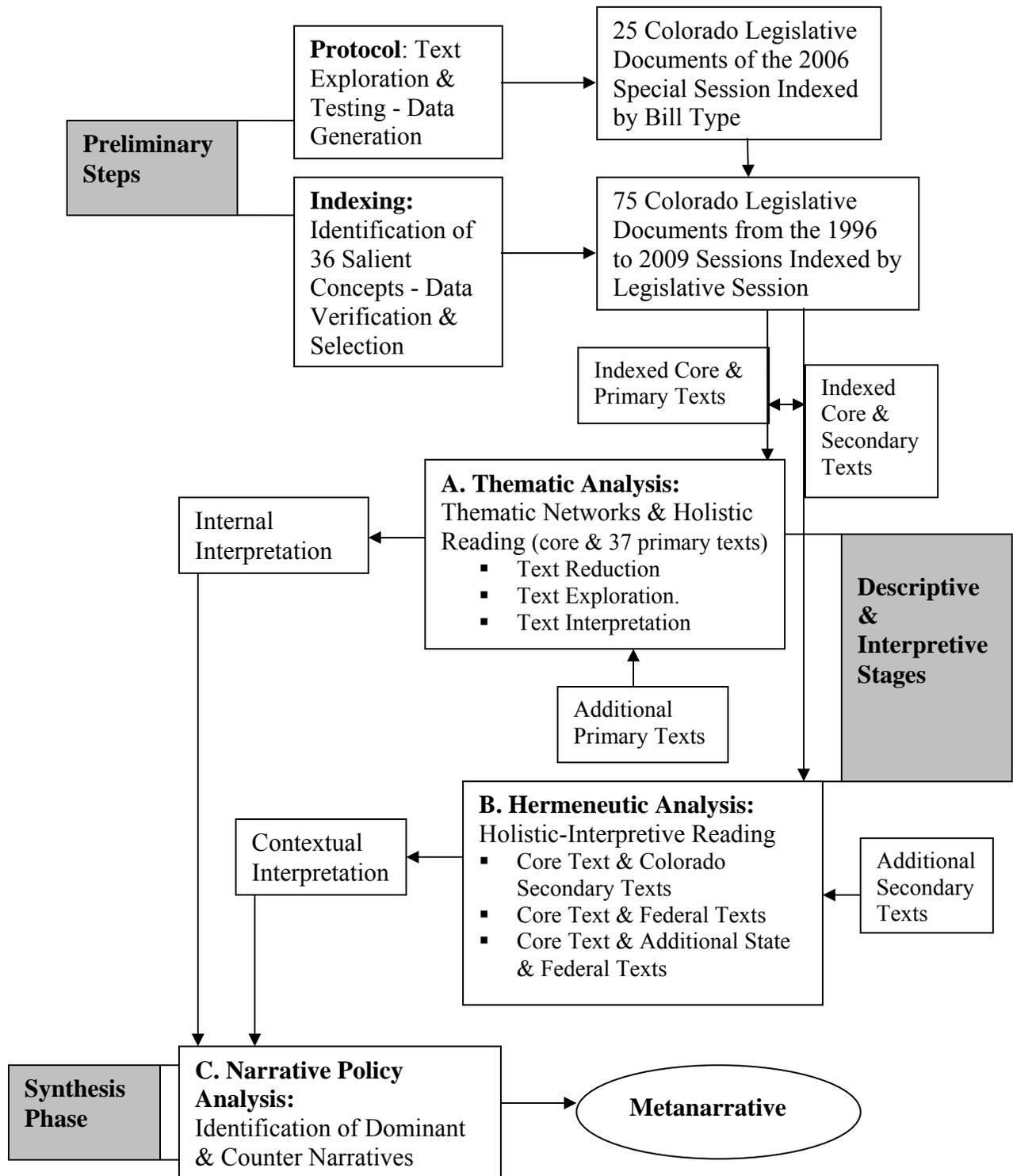


Figure 2. Procedures of Data Collection, Analysis, and Interpretation.

emergent qualitative document analysis recommend the development of a protocol for a systematic data gathering process and reflexive analysis (Altheide, Coyle, DeVriese, & Schneider, 2008). A protocol in this sense entails a close reading of exploratory documents, noting patterns and themes, refining these interpretations, and testing them on other documents for comparison. In line with these recommendations, this study adopted a protocol with a flexible conceptual approach throughout the emerging data process.

A protocol identifying recurring topics, regularities, and categories of the core text was developed and first tested on the other Colorado bills and resolutions of the 2006 special session. This protocol consisted of dissecting the content of the texts and placing it under index codes. I began by reading the texts thoroughly and inspecting aspects of the structure of the text, the purpose of the legislation, and the category of the bill, including passed or introduced bill status and regular or special legislative session. I then derived index codes from the patterns and topics that stood out, and entered them in a spreadsheet for each bill. I proceeded to record under each index code corresponding words, phrases, or segments of the text of the bill. I filed the indexed texts according to the green-and-red traffic-light conventional pattern to distinguish enacted bills from introduced or pending legislation. The indexing method used in the protocol provided a means for exploring the texts selected or being identified as data, and noting tentative categories and relationships in the structure of those texts.

As a preliminary analytical step, all selected Colorado bills from the 1997-2009 legislative sessions were indexed in Excel spreadsheets. While the indexing process provided no interpretation of the texts, it served two verification purposes. First, it allowed me to check for relevancy of the selected documents. Second, it facilitated

tracking the major issues in passed or introduced bills. When necessary, notations were entered to indicate whether a bill was a precursor of another bill or followed up on a specific issue, or whether it addressed a one-time issue or reiterated a concern. For example, CO HB 06-1133, a bill introduced in the regular 2006 legislative session, concerned issues that were later addressed in two enacted bills, CO 06-1403 and CO 06S-1023 respectively. The indexed texts were filed in separate spreadsheets corresponding to the legislative session in which they had been passed or introduced. Twenty-eight passed Colorado bills and forty-seven introduced Colorado bills were indexed in this manner.

Descriptive and interpretive stages of analysis. The analysis of the data selected for this study entailed a descriptive process and an interpretive or hermeneutic process of analysis. I followed Harbour's (2006) method of organizing data for a hermeneutic interpretation and Patton's (2002) recommendations for organizing the interpretive analysis. Harbour created a two-stage level of analysis that required the identification of core documents for an internal interpretation and the inclusion of additional data for the hermeneutic interpretation. Similarly, Patton referred to a descriptive phase of analysis which allows the data to *tell a story*, and an interpretive phase of analysis which seeks to extract *the meaning of the story*. Thus, the analysis of the data in this study was completed at two levels. In the descriptive analytical phase, I let the data tell me a story, that is, what the text of Colorado HB 06S-1023 said *explicitly*. In the hermeneutic analytical phase, I searched for the meaning of this story in order to understand what the text of the policy meant or said *implicitly*.

The indexing procedures in the preliminary step of analysis facilitated the identification of data appropriate for the main analytical and interpretive stages. I tentatively identified thirty-three Colorado bills and assembled them with Colorado HB 06S-1023 for the coding analysis and internal interpretation of the descriptive phase. The remaining indexed Colorado texts and non-indexed state and federal documents were set aside for the hermeneutic interpretation (Appendix D).

The descriptive stage of the data analysis involved the examination of the core and primary texts (Appendix B) through open coding and thematic analysis. For this analytical process, I followed Attride-Stirling's (2001) six steps for thematic network analysis, a technique that would allow me to systematically extract and represent themes at different levels in the document analysis. Accordingly, I first read the texts intently and consistently coded words, phrases, and sentences. I systematically double-checked for correspondence between codes and texts, and, when necessary, reassembled the texts. The final count of primary legislative documents coded was thirty-five, which corresponded to the texts of fifteen passed bills and twenty introduced bills respectively (Appendix B). After coding the texts, I identified basic themes and then grouped them into organizing themes. I next derived global themes and proceeded to construct and describe the thematic networks. Finally, I summarized and interpreted the themes that had emerged in the thematic networks analysis. A holistic reading of the texts complemented the thematic analysis of the data. The descriptive phase of the analysis rendered an internal interpretation of the core and primary texts.

The hermeneutic interpretation involved the interpretation of additional relevant texts (Appendix D) arranged in three layers. For this analytical process, I considered the

remaining Colorado bills, selected federal legislation, and the California and Texas models in three intervals. At each interval, I read the core text in relation to the new texts, and interrogated it in view of my perspectives and in reference to insights offered in the literature. The holistic reading of the documents in this second phase of the analysis established a dialog among the core texts, additional documents, and my preliminary understanding of the issues. This was in line with Gadamerian views that each text bears an interpretation of the account (Packer & Addison, 1989), understanding the phenomena involves a consideration of the whole and its parts (Prasad, 2005), and openness to the text's meaning is a moral and aesthetic condition (Schwandt, 2004). The reading of secondary texts helped identify facets or new interpretive angles framing the rationalization of restricting postsecondary education benefits for undocumented students (Shank, 2002; Yanow & Schwartz-Shea, 2006). The interpretive phase of the analysis generated a contextual interpretation of the core text.

Synthesis of analyses and interpretations. The internal-explicit and contextual-implicit interpretations of the texts were synthesized using policy narrative analysis. A dominant narrative and a counter narrative were identified and supported by the data. The synthesis of these interpretations also allowed checking and verifying the relevancy and accuracy of my explanation of the themes that had emerged in the descriptive and interpretive processes of data analysis.

Explanation of Interpretations

Colorado HB 06S-1023 was subjected to what Shank (2002) named a synthetic analysis, which entails a consideration of facets in the interpretation of the text, the unique aspects of the text in relation to other relevant texts, and my perspectives and

interpretation. The combination of such interpretive meaning-making activities has been referred to as *double hermeneutic* or *interpretations of interpretations* (Jackson, 2006). This means that the writing of the interpretation itself can be considered an interpretation. For Yanow and Schwartz-Shea (2006), “interpretive moments continue in the writing of research findings, too” (p. 17), and are, in turn, extended to the readers.

The text of Colorado HB 06S-1023 was interrogated in relation to its context and additional governmental texts to get a sense of how the issue of public benefits for immigrants was conceptualized in this policy, which impacted undocumented high-school graduates in that state. In addition to attending to the way this policy responded to immigration concerns, I considered the bearing of other related factors. For example, a growing sense of college education as a private good rather than a public good (Berdahl et al., 2005) and the increased influence of market forces in the state public higher education system (Harbour, 2006) may have contributed to validate a rationale for the differential distribution and scope of postsecondary education subsidies. Using a hermeneutic and policy analysis method of inquiry, Harbour (2006) examined the role of Colorado legislative and administrative policies with respect to market-based accountability mechanisms in higher education. The hermeneutic interpretation in that study suggested that the texts operated ideologically regarding the rationale for and validation of forces of marketization in higher education and centralization of state control.

The hermeneutic interpretation of Colorado HB 06S-1023 examined the context of the bill, the dynamics in the narrative, and how meaning was constructed in this text in relation to the themes identified in related documents. I explored how the rights of

college undocumented students were constituted in the text of the bill with regards to notions of substantive membership (Aldana, 2007b; Benhabib, 2004; Perry, 2006a, 2006b; Walzer, 1983) and principles of equal protection and justice of the U.S. Constitution. I also considered the role of social perceptions of immigrants (Schneider & Ingram, 1993) in this narrative as well as the meaning of this policy text in relation to the philosophical concepts of *divided citizenship* and *hybrid alienage* (Bosniak, 2006) and of *state of exception* and *the camp* (Agamben, 2000, 2005).

A narrative policy analysis protocol was used to synthesize the internal and hermeneutic readings of the texts. I treated the narrative of HB 06S-1023 as the overall development of a line of arguments with a particular discursive framework (Hendricks, 2005). I was not interested in the story plot with beginning, middle, and end sections. Rather, I examined the texts and explored the *telling* of a story and its meaning, that is, the *focalization* or perspective through which the narrative was told (van Eeten, 2007). I considered the elements that structured such narrative, including the setting, players, meanings, and communications.

Lastly, I explored the development of a metanarrative (Hampton, 2009; Roe, 1994) regarding the issue of undocumented immigration in Colorado. The enactment of Colorado HB 06S-1023 derived from or reinforced a dominant narrative in the state about immigration and immigrants. In addition, the controversial nature of the issue suggested the existence of a counter-story. As such, a metanarrative on the issue of postsecondary education subsidies for undocumented students in Colorado would likely evolve from the juxtaposition of narratives, themes, and reflections surrounding this social dilemma.

Strategies of Trustworthiness

Interpretive research based on qualitative methods is not responsive to criteria of rigor and objectivity derived from the positivistic paradigm. Packer and Addison (1989) argued that validation methods employed in research in the natural sciences are inadequate for evaluating inquiry in the human sciences. In the authors' view, interpretations are not guided by conjectures, hypothesis, and the ideal of universal certitude; rather, they are "the working out of possibilities that have become apparent in a preliminary, dim understanding of events" (p. 277). For Schwandt (2004), human inquiry of social life can be realized through a controlled research methodology or by means of hermeneutic understanding, depending on whether the focus of inquiry is simply epistemological or whether ontological principles of being interact with the task of understanding. It is, therefore, the participatory involvement of the researcher in the inquiry that compels a different approach to evaluating interpretive research.

Yanow (2006a) asserted that interpretive methods are rigorous and objective when assessed within their own procedural criteria. In Yanow's opinion, interpretive research is held accountable to carefully designed procedures that are implemented systematically. Particularly, in the case of document-based research, the researcher develops and follows methodically a repertoire for reading and analyzing the texts, which leads to rich information and rigorous argumentation (Yanow, 2006a). Analytic rigor, for Yanow (2006b) is "the crafting of a sound argument, in which observations build upon observations, sentences upon sentences, paragraphs and sections upon themselves, until the logic of the whole compels reason to say, Ay, yes, this makes sense as an explanation!" (p. 72). Similarly, objectivity is achieved through a truthful engagement

with the texts in the sense that “the interpretation is faithful not only to the words and acts themselves, on the surface of meaning, but also to the ‘interior’ meanings embedded in words and acts that inform and contextualize them” (emphasis in original, Yanow, 2006a, p.80).

Considerations of trustworthiness and authenticity provide a framework for establishing the rigor and value of qualitative research studies within the constructivist and interpretivist paradigm (Guba & Lincoln, 2005). The concept of trustworthiness in interpretive research refers to the steps that researchers take to systematize the analytical and interpretive procedures and the strategies that they adopt “to ensure that their efforts are self-consciously deliberate, transparent, and ethical” (Schwartz-Shea, 2006).

Merriam (2002a) asserted that considerations of trustworthiness in qualitative research entail the dependability or consistency of emerging findings as well as the transparency of the research process. In this sense, the results in a qualitative study are dependable if they are consistent with the data collected, and if the methods used to collect and analyze data are transparent. Likewise, a study is ethical, if the researcher addresses pre-existing assumptions and records all research activities (Anfara, Brown, & Mangione, 2002; Merriam, 2002a).

One way to assert the rigor and trustworthiness criteria in naturalistic inquiry is to publicly disclose procedures and document the particular stages of the research processes, such as the relationship of data to research questions or the development of themes (Anfara et al., 2002; Attride-Stirling, 2001). Another commonly held recommendation is to control for the researcher’s bias during the interpretive process with the use of

reflexivity, that is, the researcher's "critical self reflection about his or her potential biases and predispositions" (Johnson, 1997, p. 284).

Triangulation is another strategy frequently mentioned in qualitative research to account for the truthfulness and corroboration of findings. Triangulation is defined as the use of multiple sources of data, analytical methods, researchers, or theories to establish the confirmability of findings (Anfara et al., 2002; Lincoln, 1985; Merriam, 2002a), but it does not entail the replication of results. Rather, triangulation is a strategy for checking consistency of results, that is, it allows comparing or verifying findings against other sources and perspectives (Patton, 2002). According to Patton (2002), inconsistencies of perspectives across data may, in fact, result in "deeper insight into the relationship between inquiry approach and the phenomenon under study" (p.556).

In this study, I employed three strategies to ensure consistency, transparency, and dependability (Anfara et al., 2002; Merriam, 2002a). I used an audit trail, the disclosure and monitoring of my position as researcher in memos, and two types of triangulation. An audit trail is a method to keep a detailed record of the research activities through journals, logs, or reflective notes (Merriam, 2002a). I kept a log of the research activities, and recorded notes to monitor my assumptions. My position or reflexivity was used as a strategy to outline my assumptions, experience, and worldview, and thus clarify how I arrived at the interpretation of the text of Colorado HB 06S-1023.

Lastly, I used a combination of methods and data triangulation. The triangulation of analytical methods allowed the comparison of themes and ideas that derived from the thematic analysis, hermeneutic interpretation, and the narrative policy analysis. I expected that the combination of methods would provide better evidence, and as Johnson

(1997) noted, render “the ‘whole’ ... better than its ‘parts’” (emphasis in original, p. 288). In addition, the different information regarding the issue of public benefits, and specifically, postsecondary education benefits for undocumented immigrants from state and federal documents provided triangulation of data for the differing positions on the issue (Hampton, 2009).

The development of the policy interpretation was supported by the data. I methodically catalogued the data, systematically recorded theme-generation processes, and consistently cross-referenced findings in an effort to disclose the steps that guided the interpretive process (Anfara et al., 2002; Attride-Stirling, 2001). Although the presentation of rich and thick descriptions of findings in qualitative research can serve to ensure external validity (Merriam, 2002a), this study relied on the assumption in interpretive policy research that interpretation is context-laden, and acknowledges that the understanding of reality in qualitative inquiry is “really the researcher’s interpretation of participants’ interpretation or understandings of the phenomenon of interest” (Merriam, 2002a, p. 25). Thus, this study sought to offer one valid interpretation, among other possible interpretations, of the narrative of Colorado HB 06S-1023.

Conclusion

This chapter explained the methodology used in this study to interpret the text of Colorado HB 06S-1023. The study used a qualitative research approach and was designed around an interpretive methodology grounded in principles historical hermeneutics, socio-constructivist notions of social realities, and interpretive approaches of narrative policy analysis. The data were first indexed and then analyzed thematically and hermeneutically. The thematic networks analysis completed in the descriptive stage

of the analysis yielded an internal interpretation of the core and primary texts. The hermeneutic analysis of the core text and additional texts in the interpretive stage of the analysis offered a contextual interpretation of Colorado HB 06S-1023. The texts were read holistically to understand how the rights of undocumented college students were constituted in the text of Colorado HB 06S-1023 with respect to socio-cultural constructions of immigration, immigrants, and membership (Aldana, 2007b; Schneider & Ingram, 1993; Perry, 2006a, 2006b; Walzer, 1983). Insights from philosophical principles of equal protection, justice, and basic rights (Benhabib, 2004; Bosniak, 2006; Agamben, 2000, 2005) also guided the interpretive process. The internal and contextual interpretations were subsequently synthesized using narrative policy analysis to understand the interaction between the bill and the context in which it was passed, and inscribe it in a dominant narrative about undocumented immigration. The chapter also explained the strategies that were employed to assess trustworthiness of the interpretation and assure the transparency of the analytical and interpretive procedures.

Chapter Four presents the analysis and interpretation of Colorado HB 06S-1023. The chapter describes the analytical steps as well as the development of the themes that shaped my interpretation of the meaning of this policy artifact.

CHAPTER FOUR: INTERPRETATION

Overview

This chapter reports the analytical and interpretive processes of an exploratory project that aimed to understand the meaning of Colorado HB 06S-1023 by identifying and interpreting the narratives inscribed in this policy artifact. I critically analyzed and interpreted specific texts in reference to an overarching research question: *“What does the text of Colorado HB 06S-1023 mean, explicitly and implicitly, regarding the rights to higher education benefits for state high-school graduates who are undocumented immigrants and the state’s duty to serve these graduates through state subsidized higher education?”* The chapter is organized in four sections, which are outlined below.

The first section describes the preliminary analytical steps and the descriptive stage of the analysis (Patton, 2002), which entailed indexing and thematic analysis procedures, respectively. All Colorado documents were first indexed and, from the indexed data, primary and secondary texts were identified for the thematic and hermeneutic analyses. The core text and the primary texts were selected for the thematic analysis, which was guided by Attride-Stirling’s (2001) recommendations for thematic networks as an analytic technique. Accordingly, the core and primary textual data were analyzed inductively through open-coding and holistic reading processes. A coding framework was devised on the basis of research interests and salient topics within the texts. The data were then reduced into meaningful text segments, phrases, or words, and organized according to the codes. Underlying patterns and themes in the coded texts were subsequently extracted, refined, and grouped at three levels into concept or thematic networks. The thematic networks identified legalistic considerations framing the

restrictions and verification regulations in Colorado HB 06S-1023, and also outlined the development of an increasing function of the state government in immigration control. The thematic analysis provided an internal interpretation of the core document that explained *what* the text of the policy meant as an instrument or practice of normative restriction.

The second section in the chapter reports findings from the interpretive stage of data analysis (Patton, 2002), which involved the hermeneutic analysis of the core text in relation to a wider selection of secondary documents. The purpose of this analysis was to understand *how* Colorado HB 06S-1023 meant its restrictive provisions (Patton, 2002; Yanow, 1995) and what conceptual undercurrents or dynamics shaped them. The core text was placed against specific state and federal legislative documents, and was interrogated in relation to those additional texts. As new interpretations developed, they were revised in reference to the texts and scholarly research on immigration policymaking and social constructions of immigrant populations. The hermeneutic analysis uncovered underlying premises that, at one level, redefined the purpose of public benefits and reaffirmed the principle of self-sufficiency for immigrants. At another level, these principles rationalized the exclusion of undocumented resident aliens and justified the intervention of the state on immigration as a protective mechanism. These notions were found to function ideologically in both designing restrictive alienage legislation by the state government and simultaneously institutionalizing processes that disenfranchised certain immigrant residents from rights of social membership.

The third section includes a synthesis of the interpretations that emerged from the descriptive and interpretive analyses (Patton, 2002). Narrative policy analysis was used

to organize and explain the themes and meanings that were generated in the thematic and hermeneutic analyses of the textual data. This synthesis method allowed for the identification of dominant and counter narratives on the issue of postsecondary education benefits for undocumented students. The analytic procedures described in the first three sections of this chapter were displayed in the flowchart of Figure 1, in Chapter Three.

Chapter Four concludes with a discussion of matters of trustworthiness concerning the immediacy of the interpretive research process as well as ethical considerations regarding my participation in the interpretive processes. This section reviews the steps that I followed to disclose the emergence of themes and monitor my pre-conceptions throughout the analysis and interpretation of the data.

Preliminary Steps

In preparation for the data analysis and during the emergence of data, I conducted a close reading of twenty-five bills and resolutions of the 2006 special session of the Colorado legislature, including the text of HB 06S-1023. The purpose of this first reading was to explore the structure of these documents, identify the legislative issues, and record the type of document. The emphasis of this protocol was exploratory and descriptive in that it allowed me to identify and track elements in the texts and also explore other relevant documents (Altheide et al., 2008). I organized the information in these legislative documents under index codes, such as “legislative decision,” “sponsors,” “issue,” “affected party,” “beneficiary party,” and “responsible party.” The indexed texts were recorded in Excel spreadsheets by bill type and further distinguished as “passed” or “introduced,” in accordance with the traffic-lights, color convention. Thus, the indexed texts of nine bills were identified by highlighting their nomenclature in green, whereas

the indexed texts of sixteen introduced or pending bills and resolutions were correspondingly labeled in red. This protocol served to cross-reference introduced and enacted legislation on a specific issue and to also verify the relevancy of selected and emerging documents to the present study.

Using the index codes of the protocol as a guide, I then proceeded to read and index all Colorado bills from the 1996-2009 legislative sessions that had been pre-selected or identified as relevant to the purpose of this study. I indexed in this manner the remaining fifty Colorado bills that I had identified as data and then recorded all seventy-five indexed texts in Excel spreadsheets according to their legislative session. These texts were filed in two folders, one including twenty-eight passed bills and the other containing forty-seven introduced bills or resolutions (Passed and Introduced Colorado Legislation, Appendix A). As I indexed the texts of these documents, I made notations to track relevant information. For example, the issue regarding the extension of in-state tuition to students regardless of immigration status was first addressed in IHB 04-1132¹⁰, reiterated in IHB05-1124, and reintroduced in ISB 09-170, eventually reaching an impasse.

The indexing procedures highlighted salient issues and key terms in the documents. In turn, an examination of the structure of Colorado HB 06S-1023 revealed four main components in the text, corresponding to (a) eligibility requirements, (b) restriction on public benefits, (c) verification processes, and (d) accountability provisions for agencies. The topics and patterns identified during the indexing process are outlined in Table 1.

¹⁰ For the purpose of clarity, introduced or non-enacted legislative documents are identified with an “I” in front of their nomenclature.

Table 1. *Dominant Topics and Key Terms in Indexed Texts*

1 Restriction/eligibility public benefits	13 Foreign-born national	25 Eligibility/ immigrant status
2 Lawful presence/admission	14 Illegal alien/immigrant	26 Residence requirements
3 Exempted/mandated assistance	15 Undocumented alien	27 High-school graduate
4 SAVE/verification	16 Other (person-child-student)	28 Dual post-secondary education
5 Deterrence/Immigrant	17 Qualified student	29 In-state tuition
6 Deterrence/Agency	18 Lawful resident/Legal immigrant	30 In-state student classification
7 Non-citizen	19 Federal law/regulations	31 ESL for immigrant students
8 Legal Colorado resident	20 Foreign-born legal Colorado resident	32 K-12 immigrant children
9 US citizen	21 Colorado burden	33 Colorado domicile
10 Qualified alien	22 Immigrant contribution	34 Unlawful presence/residence
11 Alien	23 Emergency assistance	35 Citizen/Immigrant rights
12 Immigrant	24 Communicable disease	36 Access higher education

The exploration of the texts in the preliminary steps of the analysis also facilitated the identification of data for the thematic analysis that was completed in the descriptive stage of the analysis (Patton, 2002). I read through the indexed texts and laid aside texts that related to the thirty-six dominant topics and key terms generated in the indexing procedures (Table 1). Based on their match to those issues or terms, I identified the text of Colorado HB 06S-1023 as the core document, and tentatively assembled an additional count of thirty-three Colorado documents as primary texts (Appendix B).

Thematic Analysis: Internal Interpretation

The descriptive stage of the analysis in this study (Patton, 2002) involved the thematic analysis of the textual data identified as core and primary texts. This analysis entailed inductive reasoning, feedback and comparison of emergent themes, and saturation of ideas (Shank, 2002). The technique of thematic networks (Attride-Stirling,

2001) was employed as an analytical strategy. The methodical systematization of this type of analytical procedure is described below.

Thematic Networks

The thematic analysis in this study followed the six-step procedure outlined by Attride-Stirling (2001) for utilizing thematic networks as an analytic tool. Attride-Stirling distributed these steps into three stages or phases of analysis, namely, the reduction or breakdown of the texts, the exploration of the texts, and the interpretation of the thematic networks. I describe the procedures that I followed to create the thematic networks of the primary data in these three analytic phases.

Text reduction phase: Codes, themes, and networks. The first step in thematic analysis is to break down the texts by coding them (Maxwell & Miller, 2008; Shank, 2002). Thematic networks analyses also employ text reduction practices (Attride-Stirling, 2001). I devised a coding framework based on a combination of research objectives and emergent themes within the texts (Shank, 2002). As recommended by Attride-Stirling (2001), I created codes that were explicit, meaningful, and non-redundant. The code terms were redefined through constant comparative analysis in several iterations of coding and reading. Three of these coding iterations were recorded in Excel spreadsheets. Twenty codes were identified by the last iteration (Table 2). The codes were generated from salient issues and recurrent concerns that arose in the texts themselves as well as from considerations that derived from the literature review and framed my research questions.

The coding approach was conceptual and allowed for one coded segment to be recorded under more than one code. For example, “reduce communicable diseases” was

Table 2. *Codes*

1. Public benefit defined	11. Taxpayers' burden
2. Public benefit provision / restriction	12. Federal barriers
3. Legal framework / parameters	13. State responsibility
4. Emergency / non-emergency protection	14. Crimmigration
5. Mandated / non-restricted public assistance	15. Social services / resources depletion
6. Applicant eligibility	16. State control of illegal immigration
7. Non-citizen eligibility	17. Deterrents
8. Barred applicants	18. Public education benefits for immigrants
9. Immigrant comparisons	19. K-12 / Postsecondary education
10. Immigrant contribution / assimilation	20. In-state tuition/ student classification

a segment entered simultaneously under the code “Mandated /non-restricted public assistance” and “State responsibility.” Similarly, “ID fraud-person forging lawful presence” was recorded within the enacted and introduced text sections under the code “Crimmigration.” During the coding process, I removed some of the primary texts because they related to peripheral immigration issues, such as work eligibility requirements. At the same time, additional texts were incorporated as primary texts because they were relevant to the issues addressed in Colorado HB 06S-1023, such as the requirement of a valid driver’s license as proof of lawful presence in the country and formal opinions by Attorney General Suthers on in-state tuition benefits. The final count of data for the descriptive stage of this study included thirty-five legislative documents and three formal opinions. Overall, these texts addressed applicants’ eligibility requirements, verification of immigration status, and the provision of public benefits and mandated assistance, including governmental subsidies for education (Appendices A & B).

The core document and primary texts were dissected, classified, and organized in Excel spreadsheets. Text segments, phrases, or words under the corresponding codes were initially color-coded to distinguish enacted from introduced document source. To illustrate, under the code “In-state tuition / student classification,” the text segments “student who is U.S. citizen,” “senior high-school student moving to Colorado,” and “persons aged 18 or older” were coded in green to indicate that they derived from passed or enacted legislation. In turn, text segments coded in red indicated that they derived from introduced legislation. For example, the text segments “student classification regardless of immigration status” and “subject to criteria for persons with Colorado domicile” were recorded in red under the code “In-state tuition/ student classification.”

After coding the core and primary texts, I proceeded to identify the themes that emerged from the coded segments (Attride-Stirling, 2001). I first double-checked the correspondence of the code to the text segments and then grouped the codes into six clusters, as shown below:

Cluster 1 (On Definitions/Framework)	Codes 1, 2, 3, 4, 5.
Cluster 2 (On Applicants)	Codes 6, 7, 8.
Cluster 3 (On Immigrants)	Codes 9, 10.
Cluster 4 (On State responsibility)	Codes 12, 13, 14.
Cluster 5 (On Immigration/Burden)	Codes 11, 15, 16.
Cluster 6 (On Deterrents/Education)	Codes 17, 18, 19, 20.

I reread the text segments grouped under each code in the context of the code rather than in relation to the text of the bill from which they proceeded. Focusing on the issues recorded under each code, I highlighted the patterns that I noticed. In some cases,

redundancy occurred across some codes because I was considering issues addressed in introduced and enacted legislation.

By reframing the reading of the texts, I could abstract patterns and issues that were common or recurrent. The criterion for identifying the themes was to focus on the ideas and conceptual premises contained in each coded section. In this process, the coded data condensed and coded segments from proposed and passed legislative texts coalesced. I refined the emergent themes to make them specific yet flexible enough to accommodate other text segments that fit conceptually. I identified thirty-four basic themes, which are reported in Table 3. To verify that the basic themes were represented in the texts of the legislative documents examined, I tracked each theme to the core and primary texts in a componential analysis exercise. I checked that each one of the thirty-four basic themes had a text segment attached to it (Appendix C).

The next step in the text reduction phase was to rearrange and regroup the basic themes in order to identify interconnections among them and extract more abstract principles organizing them (Attride-Stirling, 2001). I wrote the basic themes in post-it notes and placed them on an easel-pad sheet. The themes were color-coded to distinguish five broad dimensions among the coded text segments: (a) public benefits restriction and eligibility (red post-it notes), (b) parameters for immigrant populations (yellow post-it notes), (c) illegal immigration cost and burden to society (purple post-it notes), (d) government responsibility and limitations (blue post-it notes), and (e) access to education for immigrant students (pink post-it notes). The use of post-it notes facilitated moving the themes around to assemble cohesive and coherent clusters of basic themes. The themes that emerged from each cluster constituted organizing themes. Eleven organizing

Table 3. *Basic Themes*

1. Certain types of federal, state, and local public benefits are restricted for certain immigrant applicants.
2. Federal law provision of public benefits and assistance under state programs.
3. Federal law distinction between restricted public benefits and mandated public assistance.
4. Assistance for emergency health care and welfare needs is a public benefit.
5. Non-essential, non-emergency assistance with payment provisions is a public benefit.
6. Mandated programs for medical and relief care are unrestricted public benefits.
7. Mandated programs are short-term, non-cash assistance for life-protection and safety purposes.
8. Pre-natal care and treatment care for communicable or epidemic disease are preventive-safety measures.
9. States participation in mandated programs with federal cost reimbursement.
10. Eligibility for public benefits for age 18 or older with valid proof of identity and lawful U.S presence.
11. Ineligibility of aliens unlawfully present or residing in US for restricted public benefits.
12. Ineligibility of non-qualified immigrants for restricted public benefits.
13. Federal law exemption of certain aliens from the residence requirement to receive public benefits.
14. Restriction on public benefits for legal aliens as means-test.
15. State law may extend public assistance to unqualified alien applicants for emergency-welfare needs.
16. Aliens subjected to extreme cruelty or extortion protected regardless of immigration status.
17. Foreign-born, legal residents are lawfully admitted in the country and may become citizens.
18. Foreign-born, legal residents contribute to American society and Colorado communities.
19. Legal, permanent residents protected from wrongful discrimination for public benefits and employment.
20. Colorado taxpayers subsidize health care, public education, foster care, and law enforcement services for “illegal” aliens.
21. Control of “illegal” immigrants as a matter of statewide concern-homeland security.
22. Duty of state government to protect public interests and reduce taxpayers’ cost for services to “illegal” aliens.
23. Penalties to agents/applicants violating immigration law.
24. Verification processes (ID, lawful presence) in compliance with federal regulations.
25. “Illegal” aliens not authorized to reside and work.
26. Tuition and residency per Colorado Tuition Act.
27. Student residency and access to public benefits per federal IIRIRA provisions.
28. Postsecondary education benefits per federal PRWORA provisions.
29. In-state student classification and tuition benefits regardless of immigration status.
30. Concurrent enrolment for resident students to age 21 (Colorado paradox and dropout rate).
31. Public K-12 for children regardless of immigration status.
32. In-state student classification for resident citizens and legal immigrants for tuition purposes.
33. In-state student classification for resident students with three years in the state for tuition purposes.
34. Extended in-state student classification to other students.

themes were derived from the thirty-four basic themes. The correspondence of organizing to basic themes is shown in Table 4.

Table 4. *Basic and Organizing Themes*

Organizing Themes	Basic Themes
1. Legal restriction of federal, state, and local public benefits	1, 2, 3.
2. Non-essential public benefits for eligible applicants	4, 5.
3. Federally-mandated assistance for life-safety unrestricted	6, 7, 8, 9.
4. Eligibility of qualified immigrants for public benefits.	10, 11, 12.
5. Federal – State control for public benefits eligibility requirements	13, 14, 15, 19.
6. Reciprocity between immigrant contributions and political communities protection	16, 17, 18.
7. State policy duties with residents	20, 21, 22, 23.
8. State – Federal collaboration to control illegal immigration	24, 25.
9. Subsidized postsecondary education as a restricted public benefit	26, 27, 28, 29.
10. Postsecondary education access on personhood basis	30, 31.
11. In-state tuition on residency and domicile basis	32, 33, 34.

With the basic and organizing themes in place, I moved on to induce global themes that summarized the ideas in the eleven clusters and synthesized the main points in the texts (Attride-Stirling, 2001). Five global themes emerged.

One global theme referred to the “Statutory restriction and eligibility requirements for public benefits,” and contained two organizing themes that shared considerations regarding the legal restriction and eligibility requirements for accessing federal, state, and local public benefits. Another global theme highlighted the difference between “Restricted benefits and mandated assistance for immigrant applicants.” This theme unified the organizing clusters for public benefits and mandated public assistance, respectively. The third global theme, “Recognition and protection of immigrants with lawful personhood and territorial presence,” comprised the organizing clusters about the requirements for immigrants to access public benefits and immigrants’ contributions to Colorado. The two organizing clusters that focused on the state government’s duties towards legal residents and in dealing with undocumented immigrants in the state

underlined the concept of the fourth global theme, “Verification of immigrant applicants’ eligibility for state public benefits.” Finally, the organizing themes about postsecondary education were summarized as “Differential postsecondary education access for Colorado high-school graduates.”

I created five thematic networks to represent the relationship among the basic, organizing, and global themes that had emerged in the examination of the texts’ overstructures and recurring patterns. These thematic networks are displayed in Figure 3.

Text exploration phase: Description and summary of networks. The exploration phase in a thematic networks analysis entails the description and examination of the thematic networks in order to examine the themes that emerged and the principles that underlie them (Attride-Stirling, 2001). For this analytic step, I turned to the five thematic networks sequentially.

Network 1: Statutory restriction and eligibility requirements for public benefits. This network represents the legal authority of the state government to deny certain immigrants access to certain public benefits. The restriction on public benefits is framed on federal provisions contained in 8 U.S.C. §1611 and §1621 (PRWORA §401; §411), which declare unqualified non-citizens ineligible to apply or receive federal, state, and local public benefits. At the same time, the federal statutes provide that state governments retain the authority to exempt or extend public benefits to unqualified applicants by enacting a state law that “affirmatively provides for such eligibility” (U.S.C. §1621 (d)). Ultimately, the state can choose to restrict or grant public benefits and support such decision statutorily. The following excerpts illustrate this dual capacity

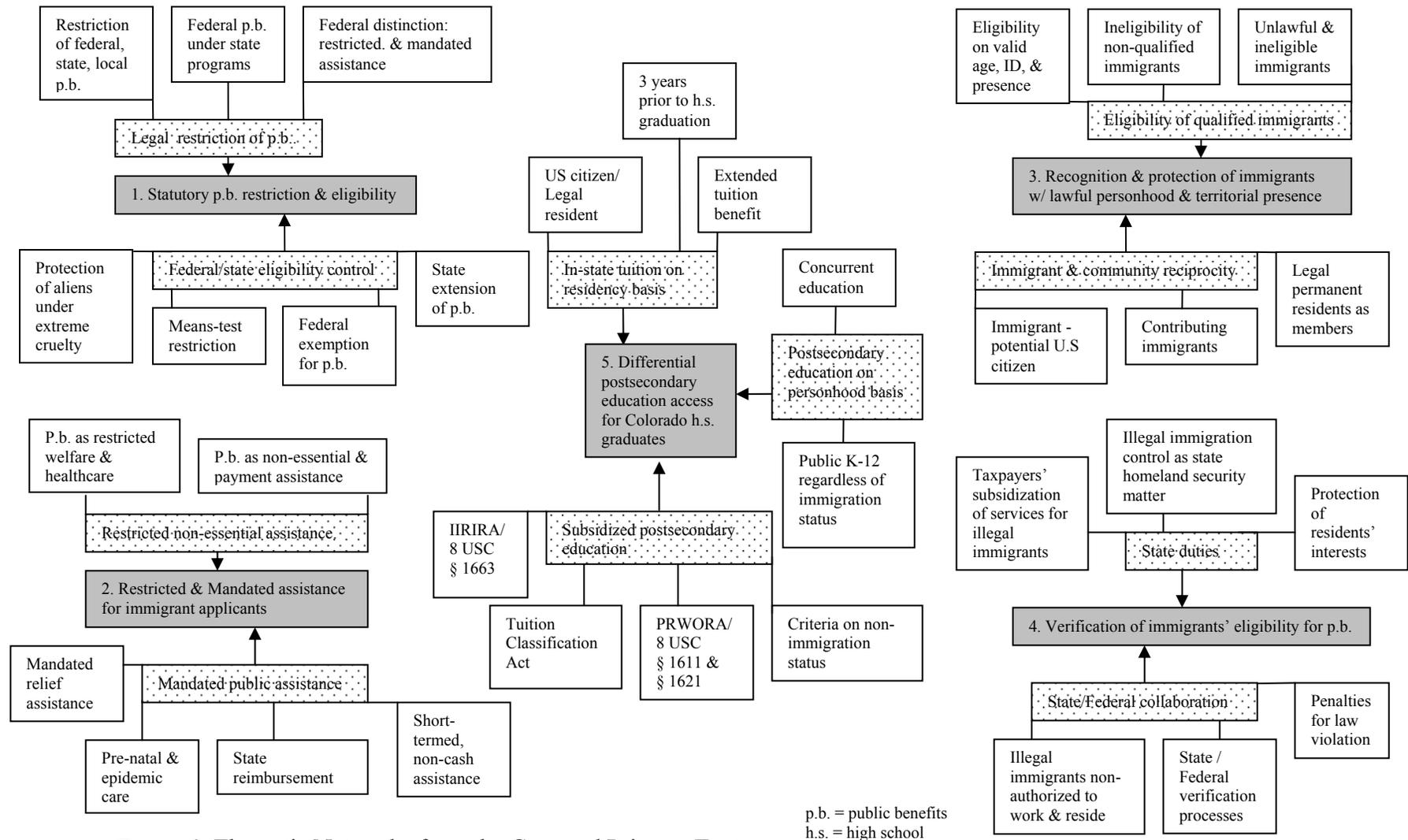


Figure 3. Thematic Networks from the Core and Primary Texts.

of the state government. In the first example, Colorado policymakers legislated for restricting public benefits according to current federal provisions.

The General Assembly hereby finds and declares that passage of the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”, Public Law 104193, requires the states to make certain decisions concerning legal immigrants and their eligibility for certain types of public assistance. (emphasis in original, SB 97-171)

In the next example, legislators opted to extend prenatal care, a restricted or authorized public benefit, to undocumented women, as a measure to prevent costly neonatal complications.

The state department may review options to provide prenatal care statewide for undocumented aliens ... For such purposes, the state department shall seek a federal waiver, including a request for any necessary change in federal regulations or statutes, for implementation of a program that will include federal financial participation in reimbursement for prenatal care for undocumented aliens. (HB 99-1018)

Network 2: Restricted benefits and mandated assistance for immigrant applicants.

This network highlights the distinction between authorized and non-restricted public services regarding scope of assistance, eligibility requirements, and criteria for distribution. The provision of *public benefits* is meant to improve the well-being or relieve non-emergency needs of some members of the community, namely, all citizens and certain legal, permanent non-citizens. The assistance delivered through public benefits may include monetary subsidies for the applicant, such as retirement, welfare, or

postsecondary education benefits. On the other hand, the federal government provides that essential, non-cash, temporary assistance be available to immigrant applicants regardless of their immigration status.

Federally mandated services delivered through state programs are available to undocumented immigrant applicants partly on humanitarian grounds and partly as a preventive measure. In general, non-restricted public assistance is intended to provide immediate relief to victims of disaster occurrences and to protect the general public from transmissible diseases or epidemic outbreaks (HB 06S-1002). In other words, failure to provide these emergency services to undocumented immigrants could harm the community at large.

Colorado HB 06S-1023 distinguishes applicants' requirements for public benefits and mandated public assistance. In reference to the latter, the text below shows that the rights of undocumented applicants are not limited by their immigration status.

Verification of lawful presence in the United States shall not be required:

- (c) For short-term, non-cash, in-kind emergency disaster relief;
- (d) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;
- (e) For programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation...

(HB 06S-1023)

Thus, Colorado determines the provision of public assistance to immigrant residents based on the type of public service sought and the applicant's immigration status. If the

assistance falls within the classification of *restricted* public benefits, the applicant must prove legal immigration status in the country in order to receive such public subsidy. However, undocumented immigrants applying for *mandated* emergency assistance would not be discriminated based on their unauthorized status in the country.

Network 3: Recognition and protection of immigrants with lawful personhood and territorial presence. This network synthesizes themes regarding requirements, expectations, and protections for immigrants residing in Colorado communities. The authorized admission of a foreign-born person into the United States determines the individual's legal immigration status and also permits the immigrant to reside in the country. On the other hand, valid immigration status and lawful territorial presence do not guarantee an immigrant's eligibility to receive federal, state, or local public benefits. This means that granting immigration admission and permission to live and work "does not necessarily entail granting social and political rights" (Ottonelli, 2002, p. 232) to admitted or authorized immigrants.

In general, legal immigration status is indicative of compliance with federal immigration standards, but the eligibility of qualified applicants to public benefits and subsidized assistance is mainly determined by state and local agencies. This distinction derives from the interpretation of the concept of delegated powers inscribed in the Tenth Amendment to the U.S. Constitution. Immigration regulation is a constitutionally implied sovereign or federal function, but the states are delegated the responsibility over internal affairs, including the provision of social services funded jointly by the federal and state governments (Weissbrodt & Danielson, 2005).

The accessibility to public benefits for immigrant applicants in Colorado is informed by the 1996 federal provisions in the PRWORA and IIRIRA, which established restrictions for non-qualified, legal or undocumented immigrants. Colorado Senate Bill 171 of 1997 outlines the eligibility criteria for public benefits according to these federal provisions. The PRWORA reform distinguished between the *authorized* or *lawful* admission of the immigrant into the country and the *qualified* or *eligible* status of the immigrant applicant to receive or apply for public benefits. Accordingly, some admitted aliens are unqualified to receive public benefits for five years upon admission, as a means-tested requirement (8 U.S.C. § 1613 (a)). The five-year restriction on public benefits for legally admitted, non-qualified aliens does not apply to refugees and other persons granted temporary protected status (Weissbrodt & Danielson, 2005). Undocumented immigrants, however, are indefinitely barred from qualifying for public benefits due to their unauthorized entry into the country or unlawful presence in the state (8 U.S.C. § 1641).

Colorado also defines its duty to immigrants based on considerations of their contribution to local communities. In many ways, the appreciation and inclusion of immigrant groups for public benefits is largely attributed to the ability of these residents to assimilate and remain loyal to Colorado's interests. According to Bosniak (2006), one way the government exercises its sovereign authority to maintain its national boundaries is by extending rights and benefits to immigrants who increasingly identify with the national community. In addition to adopting the 1996 federal restrictions on public benefits for immigrant applicants, Senate Bill 07-171 also acknowledged Colorado's appreciation of the contributions of legally admitted immigrant residents to the state's

society. This recognition is shown in the following excerpt from section 3 of the 1997 Senate Bill 171:

The goal of this section is to recognize that foreignborn legal residents of the State of Colorado contribute to our society by working in our communities, supporting local businesses, and paying taxes and should receive certain types of public assistance for certain types of situations. (SB 97-171)

The statements acknowledging the community involvement of legal, permanent immigrants residing in the state serve to underscore the eligibility status of these immigrants to qualify for public assistance that is otherwise restricted to citizens. That is, these immigrant residents are found “eligible in all respects except for citizenship” (Senate Bill 97-171).

Network 4: Verification of immigrant applicants’ eligibility for state public benefits. This network explains how concerns regarding the presence of undocumented immigrants in Colorado prompted the state government to enforce immigration deterrence measures in collaboration with the federal government. The undocumented alien is perceived as taking advantage of the availability of public resources and taxpayers’ contributions. The contention that public services provided to undocumented immigrant applicants affect Colorado taxpayers is stated in the following excerpt from a Senate resolution introduced during the 2006 summer session of the Colorado legislature:

[C]oncerning the restriction of the expenditure of taxpayer money on services benefiting the welfare of individuals to services provided to persons who are lawfully present in the United States, and ...restricting the expenditure of taxpayer money by the state and local governments on services benefiting the

welfare of individuals to those services provided to United States citizens or aliens lawfully present in the United States... (ISCR 06S-001)

By implication, the state has a duty to impose legal barriers on undocumented immigrants in order to protect the interests of citizens and legal, permanent immigrants residing in the state.

By and large, the state government's involvement in verification processes affecting the immigrants residing in the state is seen both to serve state interests and to complement or improve the function of the federal government on immigration control. This dual responsibility of law enforcement and immigration enforcement by the state government is seen in the following excerpt from a House Bill introduced in the 2006 special session of the Colorado legislature.

Whenever a person charged with a felony or with a violation ...is confined for any period in a jail, the sheriff, or the sheriff's designee, shall make a reasonable effort to determine the nationality of the person ...to verify that the person has been lawfully admitted to the United States and, if lawfully admitted, that such lawful status has not expired... If the person is determined not to be lawfully present in the United States, the sheriff, or the sheriff's designee, shall notify the Federal Department of Homeland Security. (IHB 06S-1011)

This means that the state's responsibility for internal affairs, such as controlling criminal actions or behavior within the state, is extended to also include the verification of immigration status of a detainee in the state. This is a responsibility that falls outside the jurisdiction of state governments over internal affairs by the interpretation of the Tenth Amendment to the U.S. Constitution.

Network 5: Differential postsecondary education access for Colorado high-school graduates. This network presents three points of reference regarding access to subsidized postsecondary education for students who are undocumented immigrants in Colorado. One organizing theme pertains to the provisions in current federal and state legislation that treat postsecondary education subsidies as restricted public benefits. This interpretation is based on the view that postsecondary education subsidies, such as in-state tuition fees, are monetary benefits and are, therefore, restricted to eligible resident students. This distinction is established in 8 U.S.C. § 1621 (PRWORA § 411). Under this federal provision, postsecondary education benefit is defined as a state or local public benefit for which the student applicant receives payments or assistance provided by a state agency or by appropriated funds. The federal provision further stipulates that the decision to restrict or grant these public benefits to unqualified applicants is a state's resolution.

The criteria for eligibility for postsecondary education subsidies in Colorado must also be interpreted in reference to the provisions in several state statutes, which separately establish requirements of residency in the state and legal status in the country for applicant students. These provisions include requirements of age and lawful presence in the country (HB 06S-1023), citizenship or legal resident status and graduation from a state high-school (SB 08-079), and three to one year residence in the state (SB 08-079; HB 09-1063).

According to these criteria, undocumented students who are eighteen years old or older, have resided in the state for a year or more, and have graduated from a Colorado high-school can still not claim postsecondary education subsidies because they are unable

to produce proof of authorized or lawful presence in the country. Thus, the requirement of lawful presence in the country is currently a main determinant in establishing a Colorado student's eligibility to postsecondary education benefits. The excerpt below illustrates the statement in several Colorado bills to condition access to restricted public benefits, such as postsecondary education benefits, on the applicant's proof of valid identification of legal presence:

Except as mandated by federal law, the provision of any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, or unemployment benefit or any similar benefit for which payments or assistance are provided to an individual, household, or family edibility ...is restricted to persons holding a valid Colorado driver's license or Colorado identification card. (IHB 06S-1010; IHCR 06S-1001; ISB 06S-012)

A second organizing theme in this network articulates the conditions for acquiring eligibility for in-state student status. In general, the provisions of Colorado law concerning in-state student classification are outlined in the Tuition Classification Act, codified as §23-7-101-107, Colorado Revised Statutes. That is, Colorado links in-state tuition to residency requirements. In order to classify as an in-state student, a student must be domiciled in Colorado for at least one year prior to enrolling in a state institution of higher education. The condition of *domicile* is defined as permanent residency as well as intention to remain in the state (§23-7-102 (2)).

Some revisions to Colorado residency requirements have considered the special circumstances of some students to be classified as an in-state student. Nevertheless, the modifications to residency requirements apply as long as the student applicant is a U.S.

citizen or a legal, permanent immigrant. For example, an emancipated minor must complete a three-year residence in the state before graduating from high-school in order to classify as a Colorado student for tuition purposes (SB 08-079). However, unemancipated minors qualify with a one-year residence, in lieu of their families' motives for moving into the state, as stated in the legislative declaration or purpose of a House Bill enacted in 2009:

Concerning granting in-state student status to a child who moves to Colorado during the child's senior year of high school as the result of the child's legal guardian taking a job in the state. (HB 09-1063)

The extension of residency criteria to undocumented students in Colorado was addressed prior to the enactment of HB 06S-1023 (IHB 04-1132; IHB 04-1177; IHB 05-1124) and reconsidered after it (ISB 09-170), without ever gaining sufficient support for a legislative decision. Under the Colorado's statutory system, undocumented immigrants can establish domicile in the state, based on their physical presence (Department of Law, 2007a). Accordingly, even though undocumented students graduating from a local high-school have, presumptively, established a domicile in Colorado, they are, nevertheless, disqualified for in-state student classification for tuition purposes. This is because their residence or presence in the state is invalidated by their non-authorized immigration status in the country. The following excerpt illustrates how the aggregation of legal presence in the country to requirements of residency in the state invalidates the right of undocumented immigrant students to receive in-state tuition subsidies:

Notwithstanding any provision of law to the contrary, an alien who is unlawfully residing in the United States shall be prohibited from establishing a Colorado

domicile for purposes or receiving classification as an in-state student for tuition purposes. (IHB 06-1133)

This means that, in Colorado, the requirement of legal immigration status takes precedence over residency or domicile requirements for immigrant students who apply for in-state tuition subsidies. That is, although undocumented students fulfill the condition of domicile, as explained in the Colorado Tuition Classification Act, they can still not qualify as in-state students for tuition purposes because of their immigration status.

A third organizing theme in this network focuses on the concept of access to rather than eligibility for subsidized postsecondary education for undocumented students. The availability of concurrent postsecondary and secondary education programs in Colorado effectively allows undocumented students to access subsidized postsecondary education for a maximum of two academic years. This provision of Colorado law is expressed in the excerpt below:

A course successfully completed by a qualified student through concurrent enrollment at an institution of higher education shall count for credit toward the qualified student's high school graduation requirements at his or her local education provider. (HB 09-1319)

Given that K-12 public education for undocumented pupils is guaranteed by the U.S. Supreme Court's decision in *Plyler v. Doe*, immigration status does not prevent high-school junior and senior undocumented students from participating in concurrent enrollment programs. That is, undocumented students could enroll in college courses

offered through concurrent programs between their high-school and an institution of public postsecondary education.

From this perspective, undocumented students do qualify for subsidized postsecondary education courses in Colorado institutions as “[persons] less than twenty-one years of age ...enrolled in the ninth grade or a higher grade level in a local education provider” (HB 09-1319). This means that the provisions stipulated in Colorado for concurrent high-school and postsecondary education programs overlap and, in effect, supersede current requirements for accessing in-state tuition benefits for undocumented college students. Thus, undocumented students residing in Colorado can, in fact, bypass the requirements of age, residency, and immigration status for in-state tuition, when they sign up for college courses offered through concurrent secondary and postsecondary education programs.

Integration phase: Interpretation of thematic networks. The five global themes derived from the thematic networks analysis of the core document and other primary texts uncovered major concepts that explain the development of Colorado HB 06S-1023 as a legislative instrument enforcing restrictions and verification processes on undocumented immigrants in the state. The concepts summarize three main considerations that structure the provisions in HB 06S-1023, namely (a) the application of the 1996 federal provisions to restrict public benefits to citizens and certain legal immigrants, (b) the development of state intervention in immigration control, and (c) the consolidation of public and immigration law as a deterrence mechanism against undocumented immigrants. I explain these concepts below.

1. The application of the 1996 federal provisions regarding the restriction on public benefits. This first major concept encapsulates the legal or statutory basis for restricting public benefits to certain applicants as well as the criteria for determining eligibility distinctions to access such benefits for non-citizen applicants. The 1996 PRWORA and IIRIRA provisions exclude undocumented immigrants from public benefits and differentiate eligibility requirements among legal, qualified, and non-qualified immigrants. As such, the restrictions on public benefits affect already admitted immigrants as well as most newly arriving immigrants (Fragomen Jr., 1997; Newton, 2005). The text of HB 06S-1023 is framed within the parameters established for “restrictions on public benefits as defined in article 8 of the United States Code for persons eighteen years of age or older” (HB 06S-1023). In other words, certain government-funded benefits are restricted to qualified immigrant applicants and denied to non-qualified and undocumented immigrants.

2. The development of the state’s intervention in immigration control. The second major concept suggests that breakdowns in federal immigration policy allows for the corresponding implementation of control processes at the state level. This concept builds from a reconceptualization of immigrant statuses and protections as well as from growing concerns about the presence of undocumented immigrants in the state. The differentiation of immigrant statuses and alien eligibility established in the PRWORA and IIRIRA provisions allows the state to deny public benefits to non-qualified and undocumented immigrants based on their immigration status. In turn, in view of a perceived increase of unauthorized immigration into the state, Colorado develops regulations to control the verification of lawful presence status of immigrant applicants in

collaboration with federal immigration agencies. Bosniak (2006) affirmed that the intervention of a state government in immigration control constitutes a merge of the norms governing the domain of national borders with the norms governing the domain of national life. This major concept acutely reflects Bosniak's point.

The verification processes for immigrant applicants and the enforcement measures for state agencies outlined in the text of Colorado HB 06S-1023 illustrate the second major concept. In the following excerpt, the state government outlines the responsibility to verify and control applicants' immigration status bestowed on local and state agencies.

Each agency or political subdivision of the state shall verify the lawful presence in the United States of each natural person eighteen years of age or older who applies for state or local public benefits or for federal public benefits for the applicant. (HB 06S-1023)

3. The consolidation of public and immigration law as a deterrence mechanism against undocumented immigrants. Overall, Colorado HB 06S-1023 integrates the state's power to grant or deny public benefits to resident applicants with the responsibilities of the federal government to verify immigration status and enforce immigration control. In this way, the bill implements a hybrid policy approach to deterring unauthorized immigration into the state. The deterrent provisions in this policy require restricting government-funded subsidies and enforcing verification procedures to control the presence status of immigrants residing in the state. The consolidation of public and immigration regulations is stated in the legislative declaration of HB 06S-1023, which is excerpted below:

It is the public policy of the state of Colorado that all persons eighteen years of age or older shall provide proof that they are lawfully present in the United States prior receipt of certain public benefits. (HB 06S-1023)

The restrictions established in HB 06S-1023 affect undocumented students by implication. That is, the inclusion of postsecondary education subsidies as a restricted public benefit is implied in the text of the bill in reference to 8 U.S.C. §1621 (PRWORA §411). Colorado interprets that in-state tuition is restricted for undocumented immigrants because it is a state or local public benefit for which the student applicant receives payments or assistance provided by a state agency or by appropriated funds. Given that 8 U.S.C. §1621 specifies that the state has the authority to determine granting or denying public benefits to unqualified applicants, the restrictions in this policy reflect Colorado's application of the federal provisions and its decision to restrict these benefits to undocumented applicants. In this way, HB 06S-1023 both reinforces the legality of the restriction on public benefits and affirms the authority of a state law to deny undocumented students eligibility for postsecondary education benefits.

Accordingly, the exclusion of undocumented students from *in-state tuition benefits*, implicit in the text of Colorado HB 06S-1023, is based on these students' immigration status rather than on the residency requirements established in C.R.S. §23-7-101-107. Conversely, the disqualification of these students for *in-state student classification* is interpreted on residence grounds, in line with 8 U.S.C. § 1623 (IIRIRA §505), a provision not included in the text of Colorado HB 06S-1023. The relevance of the IIRIRA provision to undocumented students in the state was noted by Attorney General Suthers in a formal opinion. Suthers stated that undocumented students were

“not eligible on the basis of residence within a state for any state postsecondary education benefit unless any citizen of the United States would be eligible for such benefit regardless of residency” (Department of Law, 2006). Consequently, the provisions in Colorado HB 06S-1023 remain silent regarding the *de facto* residency status of undocumented students in the state.

Summary of the Thematic Analysis

The descriptive stage of the analysis offers an interpretation of what the text of Colorado HB 06S-1023 means as an instrument of procedural restriction or normative matter. This story of HB 06S-1023 explains how, in the context of growing concerns about the presence of undocumented immigrants in the state, Colorado reinforced federal provisions restricting public benefits by implementing the verification of applicants’ immigration or presence status. In this analysis, it became apparent that the provisions in the bill aimed at securing the right of citizens and certain legal residents to receiving public benefits. Consequently, the ineligibility of undocumented immigrant students for state subsidized postsecondary education was primarily based on their immigration status. The major concepts underlying the internal interpretation of the core and primary texts are summarized Table 5.

This account of HB 06S-1023, however, falls short of explaining how the provisions in this policy text are relevant to the rights of undocumented students as state residents and graduates from state high-schools. The internal interpretation also leaves inconclusive how Colorado defines its duty to serve these immigrant residents through public subsidies. For a more comprehensive understanding of power or political

dynamics that may have interacted in the crafting of this restrictive legislation, I proceeded with a hermeneutic interpretation of the core text.

Table 5. *Major Concepts of the Internal Interpretation of the Core and Primary Texts*

A. Thematic Analysis: Internal Interpretation		
<p>The application of 1996 federal provisions:</p> <ul style="list-style-type: none"> ▪ Statutory restriction and eligibility requirements for public benefits ▪ Restricted benefits and mandated assistance for immigrant applicants 	<p>The development of state’s intervention in immigration control:</p> <ul style="list-style-type: none"> ▪ Verification of immigrant applicants’ eligibility for state public benefits 	<p>The consolidation of public and immigration law as a deterrence mechanism:</p> <ul style="list-style-type: none"> ▪ Recognition and protection of immigrants with lawful personhood and territorial presence ▪ Differentiated postsecondary education access for Colorado high-school graduates

Hermeneutic Analysis: Contextual Interpretation

According to Gadamer (1960), all understanding is interpretive. This notion of understanding entails an epistemological or cognitive process, the application of reflectivity, and a conversation with the text (Grondin, 2002). The hermeneutic interpretation of the core text in this study required that I interrogate it, knowing that an element of my self would play in the dialog and that the meaning that I articulated could “only be tentative... never be absolutely final” (Grondin, 2002, p. 43). I examined the meaning of the core text in light of new texts and insights from the literature review on immigration policymaking processes. Holistic reading complemented the second stage of the analysis to acknowledge and draw on context.

I placed the core text against other governmental texts (Appendix D) and examined them in groups, refining my interpretations at each interval. First I considered Colorado bills that referred to additional aspects of unauthorized immigration and some membership issues. Second, I looked at the 1996 PRWORA and IIRIRA sections that guided Colorado's restriction on public benefits for undocumented applicants. Third, I turned to versions of the proposed DREAM Act along with the texts of Texas HB 01-1403 and California AB 01-540 for their rationale for extending postsecondary education benefits to undocumented students. The hermeneutic interpretation of these texts acknowledged the context of immigration policymaking in Colorado between August 1996 and August 2009, which I summarize below.

Colorado's Immigration Policy Context Post-1996 Federal Provisions

The enactment of Colorado HB 06S-1023 marked the culmination of a year of intense immigration policymaking in the state. Several developments shaped this environment, including state compliance with the 1996 federal provisions, increasing immigration rates in the state, and a political transition in the state government.

In line with the 1996 PRWORA and IIRIRA provisions codified under U.S.C. Title 8, Colorado exercised the discretion to restrict or extend benefits as it saw fit. Accordingly, the state addressed eligibility requirements for immigrants applying for government assistance programs (SB 97-171; HB 06S-1002; HB 09-1353). The extension of some public benefits was purposeful yet sporadic. Colorado extended prenatal care benefits to undocumented women (HB 99-1018) and medical public benefits to non-qualified pregnant women and children under nineteen years old (HB 09-1353).

By 2004, the focus on immigrant classification and eligibility requirements continued to guide legislation restricting immigrants' participation in state programs (SB 04-017), with one exception. In the 2004 legislative session, a Democratic-sponsored initiative (IHB 04-1132) and a Republican follow-up bill (IHB 04-1187) proposed to link in-state tuition benefits to residency or graduation from a state high-school, with no regard to the student's immigration status. The proposed legislation, which would benefit undocumented students in the state, did not progress beyond the House Finance Committee. The terms of these proposals were reintroduced the following year in IHB 05-1124, but they still did not garner enough support to receive the approval of the Democratic majorities in both chambers. Instead, the focus of attention in the policy discourse switched radically from applying *eligibility* criteria to verifying *lawful status* of presence to determine the distribution of public benefits among immigrant applicants (ISB 05-1271). The rhetoric on undocumented immigrants' *unlawful* presence would set the tone for the 2006 legislative regular and special sessions, which concentrated on restrictive legislation and verification procedures targeting these immigrants.

The restrictions on public benefits defined in Colorado HB 06S-1023 were laid in a number of preceding proposals. Straayer (2007) noticed that the legislative activity in the 2006 special session of the Colorado legislature was marked by the interaction of bills and counter bills sponsored by Republican and Democratic legislators in the two chambers. In some ways, these bills were replicas of previous bills, as shown in the bills listed here: IHB 06S-1010, IHB 06S-1011, IHCR 06S-1001, ISB 06S-001, ISB 06S-012, ISB 06S-013, ISCR 06S-001, ISCR 06S-002, and ISCR 06S-003. Moreover, some of the bills called for a public vote for the restriction on public benefits, as in the bills listed

here: IHB 06S-1010, IHCR 06S-1001, ISB 06S-013, ISCR 06S-001, ISCR 06S-002, and ISCR 06S-003. The call for the public vote in these bills may have been triggered by a Colorado Supreme Court's decision that had just revoked a proposed amendment to deny public benefits to undocumented immigrants. According to Straayer, the Governor and the Republican legislators threatened to reverse the Court's decision legislatively in a special session. In the aftermath of HB 06S-1023, several bills and propositions continued to address and revise verification processes and regulatory procedures. The provisions in HB 07-1314, ISB 07-094, and IHB 08-1326, for example, outline further restrictions on public benefits and work eligibility for undocumented immigrants.

The legislative environment on immigration issues in Colorado was certainly influenced by evidence of a growing presence of undocumented immigrants in the state. In 2006, between 225,000 and 275,000 undocumented immigrants were estimated to be living in Colorado, which was a 160% increase since 1990 (Pew Hispanic Center, 2005; Urban Institute, 2004). In some ways, the arrival of more undocumented immigrants accounted for changes in immigration pathways. Colorado had become a state with a rapid growth in undocumented immigrant population. This revealed that the state had become a new immigrant gateway community (Urban Institute, 2004; West, 2010). The concerns regarding the state's demographic changes surfaced in several legislative proposals to strengthen immigration control at the state level, as shown in IHB 06-1134, ISB 06S-009, and ISJM 06S-001.

In the backdrop of the legislative thrust on immigration, Colorado was slowly recovering from an economic downturn that had affected the nation at the turn of the century. In addition, the state was facing a political transition. The year 2006 was an

election year in the state and Republican Governor Bill Owens was not a candidate for reelection because he was term-limited. A special session of the legislature was called in late 2006 to address the issue of unauthorized immigration in the state. This occurred in the context of a divisive climate in the nation (Stumpf, 2006) and the state (Rocky Mountain News, 2006b). Straayer (2007) affirmed that the issue of immigration represented a political opportunity for the Governor as well as the Democratic House of Representatives and Senate. To the outgoing Governor, the topic allowed for a change of subject and a diversion from the array of political and economic concerns that hurt state Republican candidates. To the Democratic legislature, it provided a venue to solidify the control that they had seized in 2004 and to demonstrate to the public and voters that they were not soft on *illegal* immigration. In the end, the enactment of HB 06S-1023 on July 13th, 2006 was announced as a bipartisan response from the Colorado General Assembly to the ineffectiveness of the federal government and a lack of action in a divided Congress (USA Today, 2006). For Straayer, however, politics seem to have trumped policy during this special session.

With the addition of article 76.5 (101-103) to Title 24 of the Colorado Revised Statutes now in place, the Colorado Commission of Higher Education followed through and updated the requirements regarding in-state student classification for in-state tuition purposes, as shown below:

The law [HB 06S-1023] states all public institutions of higher education must verify each student's legal presence within the United States before granting them in-state tuition. (Colorado Department of Higher Education, 2008)

Nevertheless, institutions of higher education remained unclear on how the restrictions in the bill applied to certain students. A year after the enactment of HB 06S-1023, Attorney General Suthers ruled that in-state student classification and tuition benefits applied to citizen high-school graduates regardless of their parents' undocumented immigration status (Department of Law, 2007a). The legislature affirmed Suthers' ruling in the passage of SB 08-079, and subsequently addressed in-state tuition benefits for student applicants with special residency conditions (HB 09-1063). This meant that the restrictions on postsecondary education benefits established in HB 06S-1023 targeted undocumented immigrant students residing in the state.

In 2009, the Colorado legislature witnessed yet another fierce debate on the issue of in-state college tuition for undocumented students. Another Democratic initiative, ISB 09-170, reintroduced criteria previously addressed to extend in-state tuition to undocumented immigrant students (IHB 04-1132; IHB 05-05-1124). The proposed legislation spurred a policy battle over this issue, which ended with the eventual withdrawal of the proposal. Sponsors of this inclusionary legislation, however, continued to relentlessly seek public endorsement for a similar bill in the following legislative session (The Denver Post, 2009).

Interpretation of Additional Colorado Texts

The hermeneutic analysis in this study proceeded with the examination of additional Colorado documents generated in the August 1996 through August 2009 legislative sessions. These texts addressed immigration as well as membership issues in enacted and introduced legislation (Appendix D). In general, the immigration texts focused on restriction and deterrent measures while the other texts addressed policies

concerning the distribution of social goods and conceptions of membership inclusion. Two main arguments emerged from the hermeneutic analysis of these additional texts. One provided an account of the social construction of undocumented immigrants in the state; the other introduced revisionist views of membership rights with implications for undocumented college students. These ideas are discussed below.

The exclusion of undocumented immigrants from social membership in

Colorado. On examining these new Colorado documents on immigration, the role of the state government in deterring unauthorized immigration and repelling undocumented immigrants heightened. In fact, now, an immigrant's undocumented status or unauthorized presence is deemed an offense and is subject to control by state agencies. To a certain extent, the notion of the state government's responsibility to control the lawful presence of immigrants in the state solidifies as conceptions of the *criminal alien* unfold and penetrate the legislative discourse.

1. The unlawfulness of undocumented immigrants. The Colorado texts addressing immigration issues highlight the condition of *unlawfulness* about undocumented immigrants' presence and activities within the state. As shown in Chapter Two, the narrative of the *criminal alien* is well-established in studies of social perceptions of undocumented immigrants and immigration policymaking. In the context of the 1996 federal immigration reform, specifically, Newton (2005) found that the negative constructions of undocumented immigrants permeating Congressional debates led to the restriction on public benefits and the reinforcement of the U.S.-Mexico border. In these debates, not only were *illegal* immigrants consistently featured as "perpetual offenders transgressing immigration laws and defrauding federal and state governments" (Newton,

2005, p. 154), but they were linked to the presence of unlawful activities in the southern border. These negative social constructions of undocumented immigrants further evolved in the Colorado legislative sessions with accounts of these immigrants' criminal activities now occurring *inside* the state's communities.

The additional Colorado immigration policy texts examined¹¹ in this stage of the analysis express negative constructions of undocumented immigrants at two levels. At one level, the image of these immigrants builds on the narrative of the *freeloader* (Newton, 2005). This account of undocumented immigrants exacerbates concerns about the economic cost to state resources and of the burden to the tax revenue from citizen and legal immigrant residents that result from the presence of such immigrant populations. These concerns surface in the following excerpt from an act that directed the state's Attorney General to demand the federal government the enforcement of immigration laws. The contention in the argument of this bill is that undocumented immigrants draw excessively on public services and social assistance supported by resident taxpayers, and that the provision of these services create a dent in state budgetary and social resources.

The State of Colorado spends a disproportionate share of its limited tax revenue on public services and benefits such as health care, law enforcement, criminal defense and incarceration, and education that are provided to illegal aliens... (HB 06S-1022)

At another level, the Colorado texts disclose that the construction of undocumented immigrants expands on the narrative of the *criminal alien* (Annand, 2008; Newton, 2005). Some policy texts portray these immigrants as breaking Colorado laws.

¹¹ ISB 04-210; IHB 06-1101; IHB 06-1131; IHB 06-1134; SB 06-090; SB 06-110; IHB 06S-1004; IHB 06S-1008; HB 06S-1022; ISB 06S-011; SJM06S-001; IHB 07-1007; HB 07-1040; IHB 08-1272; ISB 08-074; IHB 09-1049.

In addition to being linked to unauthorized entry into the country and residence in the state, undocumented immigrants are viewed as a menace to state communities. In fact, undocumented immigrants are increasingly associated with unlawful activities that extend beyond the southern border and into the communities within the state. Thus, the lawless border narrative identified by Newton (2005) in Congressional discourse preceding the 1996 federal reforms becomes an account about the condition of these immigrants' lawlessness *within* Colorado's communities. In the following excerpts from the texts of introduced and enacted legislation, undocumented immigrants are seen as violating federal as well as state law as a result of a recurring pattern of immigration and civic offenses.

In addition to any violation of federal law, it is unlawful for a person who is a citizen of any country other than the United States to enter into or be on any public or private land in this state, if at the time of the commission of the offense, the person is in violation of 8 U.S.C. 1325. (IHB 06S-1008)

[O]ften when a person is removed from this country prior to any disposition of the criminal charges ...If the same person returns to this country and commits additional crimes, there is no record of the charge... (HB 07-1040)

There is a recurring image of undocumented immigrants in the Colorado legislative texts that convey the undesired presence of *unlawful* or *illegal* offenders of federal and state laws. The language in these texts implies that undocumented immigrants are both unlawful and delinquent. For example, the increase of criminal activity attributed to the presence of undocumented immigrants in the state's communities is highlighted as a major burden on the state's budgetary and human

resources. This concern is used to support the state government's argument for demanding the federal government the reimbursement of state funds absorbed by dealing with these immigrants:

The areas in which these costs have dramatically increased include, but are not limited to, identifying illegal immigrants, processing illegal immigrants through the criminal justice system, incarcerating illegal immigrants ... (HB 06S-1014)

The label of *illegal* or *unlawful* attached to the profile of undocumented immigrants derives from their unauthorized immigration status and from anecdotal accounts of the detrimental effect of their presence in the state. In this way, the construction of the *illegal-unlawful* immigrant suggests that there is territorial as well as social disassociation with these immigrant residents.

2. The aggregation of state and immigration offenses by undocumented immigrants. An underlying assumption in these Colorado policy texts is that an immigration offense is also a state offense, and that the state government must implement verification processes to detect or deter unlawfully present immigrants. This view is articulated in the text of a bill proposing to authorize law enforcement agencies to enforce immigration law.

[O]fficers of the Colorado State Patrol shall have the power to identify, process, and, when appropriate, detain a person suspected of an immigration offense when the Colorado State Patrol officer encounters the person during routine law-enforcement activity. (IHB 06-1134)

The interaction between immigration offense and civil offense conjures up a *crimmigration* theme. This hybrid theme describes the grounds that determine the

territorial expulsion and social exclusion of immigrants with unlawful presence status. The convergence of immigration and criminal law is inscribed in the 1996 IIRIRA provisions (Annand, 2008; Stumpf, 2006). The use of criminological terms in these federal provisions in reference to the presence of undocumented immigrants in American communities is associated with the implementation of punitive measures targeting these immigrants as well as the intervention of local and state agencies in matters of immigration (Annand, 2008; Newton, 2005). From this perspective, the involvement of Colorado law enforcement agencies in detecting violations of immigration law can be seen as an extension of the 1996 federal provisions.

In some ways, the crux between federal immigration norms and Colorado regulations pushes undocumented immigrants into a *state of exception* in Agamben's terms (1998, 2005). For example, Colorado law requires that law enforcement personnel report to federal immigration authorities when an arrestee is suspected of unlawful presence in the country.

A peace officer who has probable cause that an arrestee for a criminal offense is not legally present in the United States shall report such arrestee to the United States Immigration and Customs Enforcement office if the arrestee is not held at a detention facility. If the arrestee is held at a detention facility and the county sheriff reasonably believes that the arrestee is not legally present in the United States, the sheriff shall report such arrestee to the federal Immigration and Customs Enforcement office. (SB 06-090)

Thus, in a case of suspicion of immigration status, an immigrant's individual liberties may be suspended (Agamben, 1998, 2005), if immigration regulations cancel public law

procedures. For Walzer (1983), this scenario would create a form of tyranny in that the state government exercises a form of power outside its political sphere. Under current Colorado law, the immigration offense of an undocumented arrestee is aggregated to the state law offense.

3. The creation of vigilance against undocumented immigrants. Colorado's requirement of lawful presence for applicants in order to receive public benefits and work authorization is applied in two manners. The requirement allows the state to exclude some residents from accessing social benefits and it also deters undocumented immigrants from settling in state's communities. Although the responsibility to demonstrate lawful presence status lies with the applicant, the enforcement of the law is assigned to state agencies and political subdivisions. Colorado HB 06S-1023 assigns this responsibility to state agencies in section 103 (9):

It shall be unlawful for an agency or a political subdivision of this state to provide a federal public benefit or a state or local public benefit in violation of this section. (HB 06S-1023)

The verification processes to check for lawful presence or immigration status are assigned to state agencies and members of the communities who come in contact with immigrants. Under these provisions, the state effectively creates and legitimizes a *vigilant* role for public entities and community individuals, who have traditionally not been involved in this type of policing responsibilities. Given these requirements, the provisions of several policies outline penalties for non-compliance. For example, HB 06S-1020 eliminates a state income tax benefit for a business that hires undocumented workers. Alternatively, the inclusion of incentives also functions as an enforcement

strategy. In the following excerpt, the state links employers' qualification for economic incentives to their compliance with the new verification regulations:

Concerning the requirement that an employer verify that it does not employ illegal immigrants in order to qualify for an economic development incentive awarded by the Colorado Economic Development Commission. (HB 06S-1001)

For the immigrant, the verification of unlawful presence in the country can result in civil penalties as well as in deportation. Colorado HB 06S-1023 articulates the penalties that accrue for applicants seeking public benefits, if they violate the requirement to provide valid proof of lawful presence.

A person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit ...shall be guilty of a violation of section 18-8-503, C.R.S. It shall constitute a separate violation ... each time that a person receives a public benefit based upon such a statement or representation. (HB 06S-1023)

From this perspective, undocumented immigrants residing in Colorado are simultaneously bound to federal immigration and state alienage regulations. This means that undocumented immigrants in the state are affected by the norms of two conflicting regulatory systems, a condition that Bosniak (2006) identified as *hybrid alienage*.

The preceding discussion shows that Colorado HB 06S-1023 creates a jurisdictional overlap of federal and state responsibilities on this critical issue. In some ways, this interpretation confirms the legalistic or internal perspectives drawn from the thematic analysis. That is, this Colorado bill was designed as a control mechanism to prevent undocumented immigrant applicants from accessing certain social benefits. From a contextual or hermeneutic perspective, however, the running theme in these

policy texts emphasized the social, as opposed to the territorial, exclusion of undocumented immigrants in Colorado. These policies constrain the right of undocumented immigrants to reside in state communities and also deny them the protection of the state via social rights, such as the eligibility to subsidized services and the authorization to work. The interaction between immigration and alienage exclusionary provisions is established in the legislative declaration of Colorado HB 06S-1023, which states,

[A]ll persons eighteen years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits.
(HB 06S-1023)

Colorado's statutory restriction on public benefits is grounded in a narrative that characterized undocumented immigrants as trespassing into the country, freeloading on public services, and committing criminal activities within the state's communities. This narrative not only reinforces the negative construction of *unlawfulness* about undocumented immigrants, but also justifies the state's enforcement of norms that determine their territorial inadmissibility and their social exclusion from membership.

Alternative views of equal membership and restricted citizenship. Some bills and resolutions introduced in the Colorado legislative sessions between August 1996 and August 2009 reexamined distributive norms of public goods and the meaning of political membership.

1. The reevaluation of equitable distribution of social benefits. The texts of two introduced bills invoke the principle of equal protection of the Fourteenth Amendment to redefine the distribution of certain social goods. Specifically, these policy proposals

support race-neutral approaches regarding applicants' admission to higher-education (ISJR 03-030) and accessibility to employment and educational opportunities in public entities (ISB 04-194). Along these lines, another bill proposes to base students' eligibility for higher-education grants on merit-based criteria (ISB 97-032). Taken together, these texts reinforce the notion that the Equal Protection Clause of the Constitution guarantees the non-discriminatory distribution of certain social goods among presumed members of the society. For example, a Senate bill proposing to create the Colorado Civil Rights Act based the disapproval of any type of preferential treatment in public entities on constitutional grounds.

[T]he differential treatment of persons by reason of their immutable characteristics, such as race, sex, color, ethnicity, or national origin, in the operation of government is antithetical to the principle of equal protection of law... (ISB 04-194)

Overall, the texts of these policies construe alternative views of *equitable distribution* of social goods, a concept that is essentially based on differentiation. In this regard, Walzer (1983) posited that “[a]ll distributions are just or unjust relative to the social meanings of the goods at stake” (p.9). These Colorado texts maintain that the distribution of educational and employment benefits should be made on grounds of the applicants' merit and individual qualifications. Accordingly, the concept of preferential treatment on the basis of race, sex, color, ethnicity, or national origin for educational or employment purposes in a public entity is deemed as intrinsically inequitable and thus prone to perpetuating social divisions.

The argumentation supporting *non-preferential* access to social goods by *qualified* applicants is grounded in the claim that the remedy might be worse than the disease. That is, provisions that establish preferential treatment of certain applicants can exacerbate social injustice. Thus, the counter argument in these texts submits that the implementation of policies such as affirmative action and other quota systems, which are primarily designed to benefit minority applicants, further stratifies the society. The following excerpt from a Senate joint resolution expresses the views against affirmative action policies in higher education. The resolution warns against creating policies implementing measures that deepen social divisions or create social imbalances for other members of the society.

As we work to address the wrong of racial prejudice, it is critical that we not create another wrong, and thus perpetuate our divisions ... University officials have the responsibility and obligation to make efforts to reach out to students from all walks of life, without falling back on unconstitutional quotas...(ISJR 03-030)

The propositions in these texts reject policies that benefit certain segments of the society, specifically, underserved populations. The rationalization for the undesirability of such policies is that a non-differential right to postsecondary education benefits should be based on the merit of the applicants' intellectual "potential and life experiences" (ISJR 03-030) rather than on their ethnic or cultural background. Essentially, the core of the alternative view on equal distribution of social goods is that the need-based provision of public benefits to certain applicants is inherently discriminatory and unjust.

2. *The restriction of jus solis citizenship for the children of undocumented immigrants.* While the Equal Protection Clause mediates arguments concerning equal and preferential access to public benefits, it hinders policy efforts to redefine principles governing citizenship rights. A resolution introduced in the 2006 special session of the Colorado legislature called for an amendment to the Fourteenth Amendment of the U.S. Constitution in order to deny citizenship rights to certain persons. Specifically, this state legislative resolution, ISJM 06S-001, supported IHR 698, a 2006 Republican-sponsored proposal in Congress to end citizenship rights for children born in the United States to undocumented parents. If such a change to the U.S. Constitution was enacted, it would effectively revoke the concept of *jus soli* citizenship, that is, the principle that a person is a citizen, if born within U.S. territory. Such an amendment to the Constitution was foreshadowed in the following descriptor of the Colorado resolution:

A law to deny citizenship at birth to children born in the United States to parents who are illegally present in the county can avoid a constitutional challenge only if it is an amendment to the constitution... (ISJM 06S-001)

The loss of full citizenship status for the native born children of undocumented parents has been addressed intermittently in the context of immigration control. Bosniak (2006) observed that this debate was revived by prominent scholars in the 1980s. The policy, which is currently outlined in the proposed Birthright Citizenship Act pending in the U.S. Congress, has been recently addressed in IHR 1940 and IHR 1868 during the 2007 and 2009 Congressional sessions, respectively. The proposed revision to the U.S. Constitution introduces a radical interpretation of *restrictive membership*, namely, the differentiation between more and less entitled citizens on *jus solis* criteria.

The provisions in the Colorado resolution -to deny citizenship rights to the children of undocumented immigrants- reflect considerations regarding the meaning of *citizenship* as a social good and who benefits from it. The literature on nation-state privileges concedes that the United States, as a political community, has the right to self-determine principles of membership (Benhabib, 2004; Bosniak, 2006; Ottonelli, 2002; Schuck, 1984; Walzer 1983). However, the removal of citizenship rights from a citizen member violates democratic principles of *bounded citizenship* and *bounded solidarity* (Bosniak, 2006). According to Bosniak (2006), bounded citizenship defines the relationship of common nationality among compatriots while bounded solidarity entails a relationship of caring among compatriots. Thus, the Colorado resolution proposes to exclude U.S. citizen children of undocumented immigrants from the enjoyment of rights and the recognition of equal and democratic citizenship as Americans as well as their privilege of personhood and territorial presence. This means that Colorado legislative texts are affirming a restricted view of citizenship and membership rights.

The call in the Colorado resolution to amend the *jus solis* criteria determining U.S. citizenship targets the children of undocumented immigrants residing in the state. It provides,

Over 300,000 babies are born nationwide to illegal alien mothers, and, in Colorado, over 6,000 babies are born to illegal alien mothers, ...Congress should consider and adopt an amendment to the Fourteenth Amendment of the United States Constitution to clarify that the rights of citizenship do not ensure at birth to the benefit of children born in the United States to parents who are illegally present in the United States. (ISJM 06S-001)

As noted above, most of the undocumented immigrants residing in Colorado are of Mexican origin and their families represent a large and growing percentage of low-income families (Bell Policy Center, 2005; Urban Institute, 2003b; 2004). The citizen children of these families are among the estimated four million children born in this country to undocumented immigrants (West, 2010). As U.S. citizens, these children are considered legal residents, so they are unaffected by any of the restrictions on public benefits currently applying to the adults in their families (Urban Institute, 2004; West, 2010). The justification for the proposed revision to the U.S. Constitution is essentially framed around cost-benefits considerations and the possibility that current law might impose a new burden on taxpayers over the long run. This is reflected in the following excerpt from the Colorado resolution.

The United States Supreme Court case *Plyler v. Doe* imposed a federal mandate that requires taxpayers largely to subsidize kindergarten through twelfth-grade education for students whose families reside in the United States illegally without reimbursement by the federal government ...the state of Colorado currently spends an estimated \$500,000 annually educating illegal alien children in the state's elementary and secondary public school system... (emphasis in original, ISJM06S-001)

The propositions in these Colorado texts represent revisionist views on membership concepts, specifically, regarding the meaning of social goods and the way they should be distributed. The emergent notions of non-preferential treatment to access public benefits and the conception of restricted citizenship for certain members have ramifications for undocumented students.

If we assume the perspective of equal treatment, the extension of in-state tuition benefits to undocumented students is construed as preferential treatment, if these students are also exempted from the requirement of lawful presence in the country. In this respect, Attorney General Suthers declared that the IIRIRA provisions “expressly [limit] the eligibility of aliens ‘not lawfully present’ in the United States for preferential treatment on the basis of residence for higher education benefits” (emphasis in original, Department of Law, 2007a, p.3). Thus, in Suthers’ opinion, the federal provisions cancel the *de facto* domicile status that undocumented students hold by state law (Department of Law, 2007a). On the subject of restricted citizenship, the call for denying citizenship to the children born in this country to undocumented immigrants reveals the palpable rejection directed to the presence of these immigrants in the state’s communities.

From an internal perspective, Colorado HB 06S-1023 is about restricting access to public benefits for applicants without lawful presence in the country. The restrictions in this bill encompass a number of health, education, and employment benefits that are intrinsic to the life and rights of the members of a bounded community. However, from a hermeneutic or contextual perspective, HB 06S-1023 legitimizes and reinscribes conditions of inequality for undocumented immigrants residing in the state by restricting the distribution of certain social services. The restriction on public benefits for undocumented immigrants in Colorado reflects considerations of restricted membership and citizenship designation.

Interpretation of Federal Texts

The next cycle of hermeneutic interpretation included the examination of sections of the PRWORA and IIRIRA provisions, which are currently codified under Title 8,

“Aliens and Nationality” of the United States Codified Statutes. I especially considered sections that were relevant to understanding the restriction on postsecondary education benefits for undocumented immigrant applicants, including 8 U.S.C. §1601, §1611, §1613, §1621, §1622, §1623, §1624, §1625, §1641, and §1643 (Appendix D). The examination of these texts illuminated concepts that guide the selection and admission of immigrants into the United States and the rationale for distributing social goods among resident members. These notions were found to frame current exclusionary immigration policies and regulate the restrictive access to certain public services for undocumented immigrant applicants. I explain and illustrate these ideas below.

The principle of self-sufficiency for immigration and membership admissibility.

The texts of 8 U.S.C. §1601, §1613, and §1641 (PRWORA §600, §403, §431) reaffirm the principle of self-sufficiency as a basic component of U.S. immigration law and a determining factor of immigrants’ admissibility into American society. As such, this principle justifies the sovereign nation’s rationale for restricting immigration and reveals the political community’s preference for admitting and integrating new members.

The principle of self-sufficiency is explained in 8 U.S.C. §1601. It states that aliens or admitted immigrants are expected to be self-reliant in terms of meeting basic needs for themselves and their families. It follows that the nation intends to grant entry into the country to autonomous immigrants. That is, immigration admission is granted on the condition that newcomers need not be supported by public resources. This premise bears implications for immigration law as well as alienage policies, namely, for policies regulating the admission of immigrants at the border and their treatment inside the

country (Aldana, 2007b; Bosniak, 2006). The reaffirmation of the principle of self-sufficiency in U.S. immigration law is articulated in section 1 of 8 U.S.C. §1601:

It continues to be the immigration policy of the United States that ...aliens within the Nation's borders not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families... (8 U.S.C. §1601)

The adherence to the principle of self-sufficiency as a statement of immigration policy serves to establish conditions or requirements to test the immigrant's capacity for financial self-support. In this regard, 8 U.S.C. §1613 states that there is a "five-year limited eligibility of qualified aliens for Federal means-tested public benefit." This means that, after the authorized admission into the country, a legal immigrant must refrain from applying for federal public benefits during the first five years of legal residence in the country. Although 8 U.S.C. §1613 is silent with respect to local and state public benefits, it lists the types of federal public assistance that are made available to these newly admitted immigrants unconditionally. Some of these services are for students:

Programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965....and titles III, VII, and VIII of the Public Health Service Act ...Means-tested programs under the Elementary and Secondary Education Act of 1965... (8 U.S.C. §1613)

As stated, the principle of self-sufficiency falls within the parameters that justify a nation or state's power to grant or refuse the entry of outsiders into the national territory and bounded community. That is, this principle authorizes the United States "to monitor

the quality and quantity of admittees” (Benhabib, 2004, p.2). Walzer (1983) affirmed that a country has the right to restrain the flow of immigration and preserve the cultural distinctiveness of its membership community. From this perspective, the authority of a country to enforce boundaries and control the admission of immigrants is deemed unconstrained (Bosniak, 2006; Walzer, 1983). However, immigration policies are boundary-focused and thus determine “not only community belonging but also community exclusivity and closure” (Bosniak, 2006, p. 2).

The statements in 8 U.S.C. §1601, §1613, and §1641 also constitute alienage policies because they stipulate a differentiated distribution of public benefits that affect immigrant applicants residing in the communities. The practice of discriminating access to public benefits for certain applicants is based on the principle of self-sufficiency as well. That is, the terms and conditions embedded in the notion of self-sufficiency permit the nation to enforce measures of immigration control and the states to determine the eligibility of immigrant residents to receive public benefits. In this respect, 8 U.S.C. §1601 asserts that non-self-sufficient aliens abuse the system of public benefits in place and that there is a compelling need to impede the accessibility to public benefits for certain immigrant applicants. More specifically, 8 U.S.C §1601 states,

Despite the principle of self-sufficiency, aliens have been applying for and receiving public benefits from Federal, State, and local governments at increasing rates... It is a compelling government interest to enact new rules for eligibility and sponsorship agreements in order to assure that aliens be self-reliant in accordance with national immigration policy. (8 U.S.C. §1601 (3); (5))

A recurrent assumption in these federal provisions is that the restriction on public benefits for non-citizen applicants would encourage the immigration of self-reliant immigrants and also deter the entry of undocumented immigrants. That is, “the availability of public benefits [would] not constitute an incentive for immigration to the United States” (8 U.S.C. §1601). In fact, the qualification of immigrant applicants to apply and receive federal public benefits is based on standing compliance with immigration regulations. These terms are stated in 8 U.S.C. §1641:

[T]he term “qualified alien” means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is ... an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act. (emphasis in original, 8 U.S.C. §1641)

Evidently, the principle of self-sufficiency is a major concept shaping U.S. immigration and alienage policies. Clearly, this premise fulfills immigration and alienage purposes simultaneously. Within immigration law, the principle of self-sufficiency justifies the nation’s refusal to admit dependent immigrants. Within alienage law, the condition of non-dependency on public resources for admitted immigrants articulates the claim for differentiating access to public services for these applicants and rationalizes the corresponding exclusion of some immigrant residents from accessing certain publicly subsidized services.

While immigration policies restrict membership in the national community, alienage policies are generally viewed as constituted within universalist conceptions of justice and well-being (Aldana, 2007b; Benhabib, 2004; Bosniak, 2006; Perry, 2006b; Walzer, 1983). Unlike immigration policies, alienage policies are inside-centered and

more constrained. That is, alienage provisions concern the rights, responsibilities, and protections of non-citizen residents in the receiving communities and thus facilitate the integration of immigrants in the membership community (Benhabib, 2004; Bosniak, 2006). The texts in 8 U.S.C. §1601, §1613, and §1641 set forth immigration requirements and alienage restrictions simultaneously.

The privilege of lawful presence and the entitlement to public benefits. The 1996 federal provisions in PRWORA and IIRIRA addressed the implementation of measures to monitor the distribution of public benefits among immigrant applicants. The measures entailed a narrower differentiation of immigrants' eligibility for certain public benefits, further classification of immigrant statuses, and a finer distinction of government-funded services. In each case, the revisions reaffirmed the notion of self-sufficiency and the conceptions of restricted membership.

1. The reclassification of immigrant residents. Regarding the eligibility of immigrants for accessing restricted public benefits, the new law distinguishes between qualified and non-qualified immigrants. Accordingly, 8 U.S.C. §1641(b) lists seven alien classes under the umbrella term of *qualified alien*, including an alien lawfully admitted for permanent residence before the enactment of the Act on August 22, 1996. Conversely, immigrants lawfully admitted for permanent residence on or after the enactment date of the Act are required to demonstrate self-sufficiency means during a period of five years. The following excerpt from 8 U.S.C. §1613 articulates the five-year test of self-sufficiency for new immigrants:

[A]n alien who is a qualified alien ...and who enters the United States on or after the date of the enactment of this Act ... is not eligible for any Federal means-

tested public benefit for a period of 5 years beginning on the date of the alien's entry into the United States with a status within the meaning of the term "qualified alien". (emphasis in original, 8 U.S.C. §1613 (a))

The test of self-sufficiency for newly admitted immigrants is a restricted membership policy. The requirement makes these immigrants ineligible to apply for certain public benefits during their first five years of residence in the country. By not immediately extending the benefits and protections enjoyed by citizens and other legal immigrant residents, the means-tested provision effectively delays membership acceptability into the receiving communities for some admitted immigrants.

The distinction made in the federal provisions for qualified and non-qualified aliens generally applies to admitted or authorized immigrants. In turn, eligibility designations for public benefits are determined on the basis of alienage (8 U.S.C. §1643). By implication, undocumented immigrants, who are categorized as *aliens not lawfully present*, are considered ineligible to claim public benefits. In fact, the argumentation supporting this restriction in the federal provisions is the contention that undocumented immigrants "burden the public benefit system" (8 U.S.C. §1601 (4)).

A combination of immigration and alienage considerations interact in determining the distinctions of applicants' eligibility for public benefits, but they are not always clearly coordinated. For example, *immigrant* and *non-immigrant* applicants are differentiated by the type of authorized entry but may be indistinguishable regarding their eligibility for public benefits. Likewise, as a non-qualified alien according to the terms in 8 U.S.C. §1613 (a), a newly admitted immigrant is subject to the restrictions on public benefits that are also established for non-immigrants. This overlap of immigration

statuses and eligibility requirements to access public benefits by non-citizen residents is illustrated in 8 U.S.C. §1621 regarding the restriction on state and local benefits:

Aliens who are not qualified aliens or nonimmigrants [are] ineligible for State and local public benefits... (8 U.S.C. §1621)

Similarly, the concept of *residence* is used in reference to immigration status. The term clearly applies to an immigrant who is lawfully present in the country and is qualified to receive public benefits, but fades away when referring to a non-qualified alien or an alien without authorized admission. The following excerpt from 8 U.S.C. §1622 illustrates the interplay between residence and immigration status to determine the eligibility of an immigrant applicant for state public benefits:

Qualified aliens under this subsection shall be eligible for any State public benefits An alien who... is lawfully admitted to the United States for permanent residence under the Immigration and Nationality... (8 U.S.C. §1622)

Thus, the reference to *residence* in this federal provision is not an indication of an alien's territorial personhood and involvement in the life of the community. It is rather a representation of the applicant's authorized immigration status.

2. *The distinction of government-funded services.* The 1996 federal distinctions concerning aliens' eligibility for welfare and public benefits are complemented by a redefinition of government-funded services. The texts of 8 U.S.C. §1611, §1621, and §1622 (PRWORA §401, §411, §412) define the concept of public benefits and outline general rules determining resident aliens' eligibility to access them. In contrast, 8 U.S.C. §1623 (IIRIRA §505) refers to limitations for granting undocumented applicants eligibility towards a specific type of public benefit, namely, higher education benefits.

The restriction on federal (8 U.S.C. §1611) and state or local (8 U.S.C. §1621) public benefits is grounded in the conceptualization of these public benefits as

[A]ny retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual...by an agency ...or appropriated funds of State or local government. (8 U.S.C. §1611, §1621)

Thus, the meaning of *public benefit* denotes non-essential, government assistance that is subsidized by appropriated funds.

Combined with the notion of self-sufficiency for admitting immigrants, the redefinition of government-funded assistance serves to draw the line of eligibility for certain immigrant applicants. In this way, the ineligibility of non-qualified and undocumented aliens to apply and receive restricted public benefits is justifiable on two grounds. It results from immigration regulations for admitting immigrants who are non-dependent on public resources and it represents the political community's preference to redistribute and restrict public assistance for certain resident applicants.

3. The differential access to public education subsidies for immigrant students.

Regarding the eligibility of resident aliens for public education benefits, the 1996 federal provisions of PRWORA acknowledge the unconstrained provision of a basic public education guaranteed by *Plyler v Doe* (8 U.S.C. 1643 (2)). However, PRWORA and IIRIRA redefine the conditions for granting postsecondary education benefits to undocumented students (8 U.S.C. §1623). The contention in 8 U.S.C. §1623 (a) is that the preferential treatment of undocumented students for higher education subsidies on the

basis of residence should not undermine the privilege of a citizen or national who applies for the same public benefit. An excerpt from §1623 states that

[A]n alien who is not lawfully present in the United States shall not be eligible on the basis of residence within the State (or political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. (8 U.S.C. §1623 (a))

The limitations set forth on postsecondary education benefits are partly based on considerations of restricted membership for aliens. The terms *citizen* and *national* connote citizenship by birth or naturalization, and thus exclude alien residents. As defined in 8 U.S.C. § 1101, an *alien* is “any person not a citizen or national of the United States.” In distinguishing the priority of citizens or nationals on the basis of residence for these education benefits over other applicants, the provisions in 8 U.S.C. §1623 (a) confirm the membership limitation of non-citizen applicants, including legal, permanent residents. In this regard, Perry (2006b) affirmed that 8 U.S.C. §1623 “does not conceptualize undocumented immigrants as being resident members” (p.24).

Overall, the policies in these federal texts restrict the social inclusion of immigrant residents by endorsing the principle of self-sufficiency for immigrant admission and by redefining the purpose of public benefit. From this perspective, access to restricted public benefits, as defined in 8 U.S.C. §1611, §1621, and §1622, becomes an entitlement of citizens and qualified resident aliens. Their entitlement to public benefits is determined on the basis of their privilege as accepted members and co-residents. Moreover, the premises of the principle of self-sufficiency confer newly admitted

immigrants partial or conditional social membership while including undocumented immigrants only for mandated or emergency social assistance. As Bosniak (2006) noted, conditionals or co-residents take priority over the territorially present undocumented aliens. The rationalization in 8 U.S.C. §1623 for limiting postsecondary education benefits for undocumented residents further confirms the social exclusion of undocumented immigrants.

Boundaries of federal and state authority on public benefits legislation. It is critical to note that the 1996 federal provisions of PRWORA and IIRIRA on public benefits infiltrate the regulatory system of the states, but also offer state governments options for regulating those restrictions. Accordingly, states are granted the authority to implement verification processes (8 U.S.C. §1625) as well as the discretion to determine whether to extend or deny restricted public benefits to non-qualified aliens. In the following excerpt from 8 U.S.C. §1621 (d), the federal government acknowledges the jurisdiction of the state government over the provision of public benefits on its own terms:

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible...only through the enactment of a State law after the date of the enactment of this Act ...which affirmatively provides for such eligibility. (8 U.S.C. §1621 (d))

The immigration and alienage regulations adopted in the federal 1996 statutes allow states to determine limitations on non-qualified immigrants for accessing additional

state or local benefits. For example, 8 U.S.C. §1624 outlines the authority of states to restrict aliens' eligibility for payable assistance under state programs:

[A] State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State. (8 U.S.C. §1624)

The authority thereby granted to the state government is subject to certain preemptive conditions. Specifically, states can exercise this authority as long as the limitations imposed on the applicants are not more restrictive than those in comparable federal programs (8 U.S.C. §1624).

To a certain extent, the federal statutes are vague regarding the latitude granted to the states for awarding or denying public benefits. The federal provisions appear to both restrict and expand the authority of the states in implementing restrictive legislation on public benefits. The following passage from 8 U.S.C. §1601 illustrates the ambivalence of the federal government in directing states to adopt the federal guidelines determining the eligibility of immigrant applicants and, at the same time, allowing them to decide whether to adopt the federal verification measures:

[A] State that chooses to follow the Federal classification in determining eligibility of [qualified] aliens for public assistance shall be considered to have chosen the least restrictive means available for achieving a compelling governmental interest in assuring that aliens be self-reliant ... (8 U.S.C. §1601 (7))

From an internal perspective, Colorado HB 06S-1023 reflects the state government's selection of the least restrictive mandate, as described in 8 U.S.C. §1601

(7)). It also expresses the state’s choice for denying rather than extending public benefits to undocumented resident aliens, including undocumented college students. The bill frames the restrictions on federal, state, and local public benefits around the definitions established in the federal statutes:

(2) “Federal public benefits” shall have the same meaning as provided in 8 U.S.C. Sec. 1621.

(3) “State or Local public benefits” shall have the same meaning as provided in 8 U.S.C Sec. 1611. (emphasis in original, HB 06S-1023)

The verification processes and enforcement measures outlined in Colorado HB 06S-1023 are also supported by the provision in a section of the 1996 federal statutes not referenced in the text of the state legislation.

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits ...to provide proof of eligibility. (8 U.S.C. §1625)

From a hermeneutic or contextual perspective, the provisions in HB 06S-1023 endorse the principle of self-sufficiency for immigrant residents in Colorado. The restrictions in this policy apply only to persons who are eighteen years old or older. In line with 8 U.S.C. §1601 (a), immigrants residing in the state must be lawfully admitted in the country and able to support themselves and their families. The restrictions in this bill also acknowledge the notion of entitlement to public benefits for citizens and qualified aliens.

The rules are necessary to ensure that certain individuals lawfully present in the United States receive authorized benefits, including but not limited to homeless state citizens. (HB 06S-1023)

Evidently, the verification for proof of lawful presence outlined in HB 06S-1023 targets applicants who are undocumented aliens. The bill does not refer to non-qualified aliens possibly because these immigrants are not expected to apply for public benefits under the means-tested requirement of 8 U.S.C. §1613. Similarly, the terms of the restriction need not specifically refer to the limitations in 8 U.S.C. §1623 for extending postsecondary education subsidies to undocumented students. The requirement to prove lawful presence in the state supersedes residence requirements, rendering undocumented students ineligible to apply for postsecondary education benefits.

The provisions established in HB 06S-1023 to deny undocumented immigrants access to state resources also create membership differentiation among the resident alien population in the state. In this respect, Ingram and Schneider (2005) asserted that “policy may subdivide an existing group into classes of more deserving or less deserving” (p.13). Similarly, Bosniak (2006) indicated that the group of aliens is socially divided into legal and unlawful categories, and that these identities render non-citizens different life experiences. The verification regulations set forth in the Colorado policy classify residents into qualified and non-qualified applicants.

Interpretation of Federal and State Texts Extending Postsecondary Education Benefits

The hermeneutic or contextual analysis of the core text was completed with the examination of additional federal and state texts. These texts were selected for their relevance to granting postsecondary education benefits to undocumented students. The federal texts included versions of the DREAM Act introduced in the House of Representatives (IHR 01-1918; IHR 03-84; IHR 03-1684; IHR 03-3271; IHR 07-1275)

and in the Senate (IS 01-1291; IS 03-1545; IS 05-2075; IS 07-774; IS 09-729). The state documentation comprised the texts of Texas HB 01-1403 and California AB 01-540, including the analyses of those bills (Appendix D). The examination of these texts generated an ethical perspective and a pragmatic position to supporting the inclusion of undocumented students for in-state tuition benefits.

Undocumented students as long-term U.S. residents. There was active federal legislation proposing the extension of postsecondary education benefits to undocumented students in the years preceding the enactment of Colorado HB 06S-1023. In 2001, IS 1291 initiated a line of federal legislation recommending the amendment to 8 U.S.C. §1623 in order to restore to the states the option to determine residency for in-state tuition benefits. The core recommendations involved the adjustment of immigration status for undocumented college-bound students. In general, the regularization of immigration status for these students is conditioned by a test of good *academic* standing and good *moral* character before and during a conditional period of permanent, resident status.

The texts of the federal proposals portray undocumented students as “long-term residents of the United States ...who entered the United States as children” (IS 02-1291; IHR 03-1684; IS 04-1545; IS 05-2075; IHR 07-1275; IS 07-774; IS 09-729). It is further argued that these students’ presence in their communities is unintentional as they were “transplanted to the United States as children” (IHR 03-84) because “their parents brought them here” (Bill analysis, HB 01-1403).

Many children brought to the United States by parents or other adults arrive in this country without the ability to make independent decisions about where they

wish to live. Once in the United States, many such children also are incapable of independent living. (IHR 03-84 (3))

Clearly, the emphasis in the description of these students is on their young age when they entered the country and the fact that they depended on the adults for survival.

The discourse in the Texas and California state texts hints on the notion of *domicile* to interpret these students' presence in those states. That is, the notion of *residence* for undocumented students is attached to their intention to remain in their communities. For example, in California AB 01-540, it is acknowledged that these students are likely to remain in the state upon graduation from high-school:

There are high school pupils who have attended elementary and secondary schools in this state for most of their lives and who are likely to remain... (AB 01-540(1))

Likewise, the bill analysis of Texas HB 01-1403 highlights the sense of affinity that these students have developed with the United States from being raised in this country as well as their intention to remain in these communities:

CSHB 1403 also would provide an opportunity for young people who have been living in Texas for some time and who plan to live, work, and raise their families in Texas...(Bill analysis, HB 01-1403)

From this perspective, the classification of undocumented immigrant students as in-state students for tuition purposes is grounded in membership considerations. That is, the extension of postsecondary education subsidies to undocumented students is also an extension of some membership rights to them. The rationalization for including them with other in-state students is based on the view that these students also rightly belong in

their American communities. Put starkly, these students compare to citizen and other permanent resident students in their affinity with American society. In fact, they are believed to be more integrated and assimilated into American communities than they are with the social systems of their countries of origin. This idea is expressed in the following excerpt from the Preserving Educational Opportunities for Immigrant Children Act of 2003 in relation to the acquisition of English language, as a sign of commitment to American societal norms:

Because of the early age at which many children arrive in the United States, as they become older, they become fully integrated into American life, learning English and either losing or never acquiring the language of their native country. (IHR 03-84 (4))

In addition to stressing these students' affinity to and investment in American communities, these inclusionary federal and state texts underscore the fact that many undocumented students are a product of the U.S. public school system. In this respect, it is also acknowledged that many of these students are academically prepared for a college education. For example, the federal proposals refer to these students' academic skills and public service:

Many such children attend public elementary and secondary schools in the United States. Often, they excel in academics and contribute to both their communities and the families with whom they live. (IHR 03-84 (5))

Similarly, California AB 01-540 states that many of these students have proven their academic merit:

These pupils have already proven their academic eligibility and merit by being accepted into our state's colleges and universities. (AB 01-540 (2))

The argumentation supporting the extension of in-state tuition benefits to undocumented students is also based on a concern for the emotional hardship imposed on these students by fate. In this respect, considerations of human rights, moral norms, and principles of solidarity are brought to the fore. Given these students' ties with their communities, removing or deporting them would constitute humanitarian injustice. This is revealed in the following excerpt from the federal proposal outlined in the Preserving Educational Opportunities for Immigrant Children Act of 2003:

[S]uch children are in danger of being removed to a country they do not know, an eventuality that would cause enormous disruptions in their lives and in the lives of their loved ones. (IHR 03-84 (6))

In a similar fashion, the argument in the state texts appeals to notions of fairness and equity to support the provision of in-state tuition benefits for the undocumented students residing in those states. For example, an official summary of Texas HB 01-1403 claims that:

CSHB 1403 would provide more equitable treatment for all students who are motivated to pursue a higher education in Texas. (Bill analysis, HB 01-1403)

Along these lines, the extension of in-state tuition benefits to undocumented students in the California bill is premised on the intent to guarantee all state high-school graduates access to public postsecondary education institutions:

A fair tuition for all high school pupils in California ensures access to our state's colleges and universities... This act...allows all persons, including undocumented

immigrant students ...to be exempt from nonresident tuition in California's colleges and universities. (AB 01-540 (3), (4))

Accordingly, my discussion above shows that one argument for the extension of postsecondary education benefits to undocumented students is grounded in inclusionary views of membership as well as in humanitarian considerations. From this perspective, undocumented students are viewed as participatory members of their communities and as qualified applicants for accessing further educational opportunities.

Social gains from including undocumented resident students. Another argument supporting the extension of postsecondary education benefits to undocumented students derives from views that consider earned benefits to the society. In this case, the removal or deportation of undocumented students from the country is deemed a disservice to American society for economic and social reasons. This argument, which is more evident in the discourse of the Texas and California state legislative texts, focuses on the benefits accrued to society more than on the advantages to the students themselves. For example, the California bill stresses the state's gains in productivity and economy by including these students in tuition benefits:

A fair tuition policy for all high school pupils of California ensures access to our state's colleges and universities, and thereby increases the state's collective productivity and economic growth. (AB 01-540 (3))

In the bill analysis of Texas HB 01-1403, the argumentation focuses on the public and private benefits of including undocumented students in the tuition benefits:

The state should recover this valuable economic and intellectual resource that currently is being discarded and help these students gain the tools they need to be

successful, independent, and productive members of society. (Bill analysis, HB 01-1403)

From this perspective, granting postsecondary educational benefits to undocumented students represents a strategic approach in the sense that the investment on these students' college education would accrue monetary as well as non-monetary benefits for American society at large. In fact, the considerations that led to the Texas statute weighed the effect of immediate as well as long-term benefits of the policy. In general, the benefits of educating these students are important as preventive measures:

HB 1403 would help decrease the number of students dropping out of Texas' public schools by providing an incentive for students to advance and pursue their higher education goals. The realization that they will be unable to pursue their academic goals frequently contributes to these students' dropping out of high school (Bill analysis, HB 01-1403)

In addition, Texas acknowledges that the benefit of an educated workforce is greater than the cost of subsidizing these students a college education:

The cost of not helping motivated students to attend college is greater than the cost of helping them...According to the Comptroller; every dollar invested in our state's higher education system pumps more than five dollars into our Texas economy. (Bill analysis, HB 01-1403)

To a certain extent, the argument focusing on the benefits to the state of an inclusionary policy relies on a narrative that stirs negative constructions of undocumented immigrants. Newton (2005) observed a similar discursive approach in the Congressional debates that led to the 1996 comprehensive immigration reforms. The author noticed that

a counter argument “levied in defense of children of immigrants constructed them as potential criminals” (p.163). In a similar vein, the need for a policy that extends postsecondary education benefits to undocumented students becomes somehow a safeguard policy.

The long term implications of high rates of attrition of the state include a growing unskilled, undereducated workforce, accompanied by increased spending on social programs, higher rates of crime, and decreased opportunities for a higher quality of life. (Bill analysis, HB 01-1403)

The implication is that undocumented students pose a threat to the society, if they are not integrated into the society as members and granted membership rights.

Overall, the discourse in these federal and state policy texts is bare of the notions of *illegality* and *unlawfulness* prevalent in restrictive legislation for undocumented immigrants. The texts in the versions of the DREAM act describe these students as “children,” “alien students,” “alien children,” “transplanted children,” “long-term residents,” “long-term resident students,” and “college-bound students.” Similarly, the Texas and California state legislative texts emphasize the student condition of these immigrants as “high school pupils” and “undocumented immigrant students” (AB 01-540) or their residence status as “resident alien” (HB 01-1403).

When referring to these students’ immigration status, the discourse in these particular policy texts generally includes paraphrasing to circumvent rigid, legalistic terms. For example, the text of the DREAM Act introduced in the Senate in 2002 refers to “an alien who is inadmissible or deportable” (ISB 02-1291), “a person other than a non-immigrant alien,” or “an alien without lawful immigration status” (AB 01-540). As

a stylistic device, paraphrasing contextualizes these students' immigrant status and avoids images of unlawfulness or criminality about undocumented immigrants. This discourse strategy is also shown in the Texas legislative text, which states,

An alien who is living in this country under a visa permitting permanent residence or who has applied to or has a petition pending with the Immigration and Naturalization Service to attain lawful status under federal immigration law has the same privilege of qualifying for resident status for tuition and fee purposes... as has a citizen of the United States. (HB 01-1403)

The case supporting the extension of postsecondary education benefits to undocumented students is justified in two ways in these texts. One argument is integrative and inclusive as it argues for the inclusion of these immigrant students for postsecondary education benefits as resident members of their communities. The other argument is more instrumental and strategic because it highlights the social and economic benefits that the policy represents to the states' societies.

In each argument, the eligibility of undocumented students for postsecondary education benefits is still subject to conditions and criteria that somewhat corroborate their partial or incomplete membership status. Clearly, the federal and state texts argue for granting these immigrant residents only one specific type of membership right, namely, postsecondary education benefits. Other restricted public benefits are not covered in the federal proposals or the state statutes. Moreover, the extension of postsecondary education benefits is attached to special conditions that are not required of other state residents.

The conditions for the inclusion of undocumented students in postsecondary education benefits are restricted and complementary. The federal provisions, specifically, offer these students the extension of postsecondary education benefits as a test or opportunity to prove their membership in the political community. Even though undocumented students are viewed as already participating in the lives of their communities, the federal proposals call for initially conditioning the extension of higher education benefits to them.

The adjustment of immigration status for undocumented students is concomitant on further proof of their academic merit, moral predisposition, and service to the community by the end of a five to six-year trial period. In general, the petition to remove the conditional permanent resident status of an applicant requires that the alien demonstrate good moral character and permanent residence in the country during the entire period. The petition must also show that:

The alien has completed at least 1 of the following:

- (i) ... a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.
- (ii) ... has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge. (IHR 07-1275)

In the California and Texas statutes, the enacted provisions define specific criteria that both set these students apart from citizen and other state residents and allow the states to circumvent the limitations set forth in 8 U.S.C. §1623.

This act, as enacted during the 2001-02 Regular Session, does not confer postsecondary education benefits on the basis of residence within the meaning of Section 1623 of Title 8 of the United States Code. (AB 01-540 (5))

In general, undocumented students in California and Texas qualify for in-state tuition benefits, if they record a minimum three-year residence in the state before enrolling in a higher education institution, hold a state high-school diploma, and establish upfront the intention to legalize their immigration status. These criteria are also included in the Colorado bills that propose to extend in-state tuition benefits to undocumented students, including, IHB 04-1132, IHB 04-1187, IHB 05-1124, and ISB 09-170.

The provisions in the federal and state texts extending in-state tuition benefits to undocumented students seem limited in scope and selective in purpose. Whether intended or not, the conditions established in these provisions hold these students to a different level of social membership. Underlying these regulations is the notion of self-sufficiency and the community's desire to admit immigrants who can sustain themselves, that is, live as contributing members of the society not dependent upon public support. In fact, the removal of the conditional status of undocumented students is based on the expectation that the applicant has been non-dependent on public services. This expectation is expressed in the following excerpt from two recent versions of the DREAM Act:

The Secretary of Homeland Security shall terminate the conditional permanent resident status of any alien who obtained such status under this Act, if the Secretary determines that the alien ...has become a public charge... (IHR 07-1275; IS 07-774)

Notwithstanding the special conditions, the rationale in these texts is to include undocumented students for in-state tuition benefits for practical reasons and for communal purposes. Conversely, the provisions in Colorado HB 06S-1023 are to exclude undocumented students from in-state student classification and tuition benefits on immigration grounds. Unlike California and Texas, Colorado disregards considerations of the benefits of human capital to state's resources that result from further educating these students. On the contrary, the verification requirements set forth in Colorado HB 06S-1023 for applicants of public benefits are guided by the rationalization in the 1996 federal provisions that the restriction on public benefits would relieve the state from the economic and social drain caused by undocumented immigrants.

Colorado HB 06S-1023 focuses on the *unlawful presence* of undocumented immigrants rather than on their *continuous residence*, as indicated in the inclusionary policies. At best, these immigrants are seen as non-immigrants or strangers to Colorado communities. The emphasis on the *unauthorized* condition of their immigration status justifies their social *exclusion* in this state.

Summary of the Hermeneutic Analysis

The hermeneutic analysis of the data offers a contextual interpretation of the core text. This analysis shows how certain ideological principles weaved through the regulatory procedures set forth in Colorado HB 06S-1023. In the examination of additional federal and state texts, it became apparent that the principle of self-sufficiency is a prevailing consideration in current and proposed immigration and alienage legislation. Colorado HB 06S-1023 adheres to these notions and rationalizes the restriction on public benefits for undocumented immigrants as a least restrictive measure.

From this perspective, the Colorado policy establishes a membership restriction on these immigrant residents.

The hermeneutic or contextual interpretation explains the meaning of the social exclusion of undocumented immigrants in relation to prevailing negative constructions of these immigrants and structures of social dominance in the state's society. The social exclusion of undocumented immigrants is based on perceptions that portray them as a public charge and a social threat. In this interpretation, the narrative of HB 06S-1023 describes the objectification and marginalization of undocumented resident immigrants. The image of undocumented immigrant students as *community members* and *long-term residents* portrayed in current and proposed inclusionary legislation contrasts sharply with the emphasis on the *unlawful* and *lawless* condition of these immigrants in Colorado's exclusionary policy.

The major concepts underlying the external or contextual interpretation of the core and secondary are summarized in Table 6.

Narrative Policy Analysis: A Synthesis of Interpretations

The thematic and hermeneutic analyses generated themes that express different perspectives on the issue of postsecondary education benefits for undocumented students. These perspectives reveal a juxtaposition of views or narratives on which social benefits should be extended to or restricted for undocumented immigrants. In order to synthesize these views, I turned to narrative policy analysis. Narrative policy analysis is a method that allows the identification of dominant and counter narratives over a policy dilemma

Table 6. *Major Concepts of the Contextual Interpretation of the Core and Secondary Texts*

B. Hermeneutic Analysis: Contextual Interpretation		
<p>The exclusion of undocumented immigrants from social membership in Colorado:</p> <ul style="list-style-type: none"> ▪ The unlawfulness of undocumented immigrants ▪ The aggregation of state and immigration offenses by undocumented immigrants ▪ The creation of vigilance against undocumented immigrants <p>Alternative views of equal membership and restricted citizenship:</p> <ul style="list-style-type: none"> ▪ The reevaluation of equitable distribution of social benefits ▪ The restriction of <i>jus solis</i> citizenship for the children of undocumented immigrants 	<p>The principle of self-sufficiency for immigration and membership admissibility.</p> <p>The privilege of lawful presence and the entitlement to public benefits:</p> <ul style="list-style-type: none"> ▪ The reclassification of immigrant residents ▪ The distinction of government-funded services ▪ The differential access to public education subsidies for immigrant students <p>Boundaries of federal and state authority on public benefits legislation.</p>	<p>Undocumented students as long-term U.S. residents.</p> <p>Social gains from including undocumented resident students.</p>

(Cassiman, 2006; Hampton, 2009; Roe, 1994). In this context, a dominant narrative represents the views that prevail by rationalization and homogeny (Cassiman, 2006). In addition to identifying conflicting policy narratives, narrative policy analysis may help locate or develop a metanarrative that stabilizes the different assumptions on the issue of interest (Hampton, 2009; Roe, 1994).

I reconstructed the dominant and counter narratives on the issue of public benefits for undocumented immigrants from the themes that emerged in the thematic analysis and hermeneutic interpretation of the data. These analytical and interpretive processes had condensed the ideas, values, and positions that are inscribed in the various policy texts examined. For practical reference, these concepts are listed in Table 7.

Table 7. *Major Concepts from the Internal and Contextual Interpretations*

Internal Interpretation	Contextual Interpretation
<p>The application of 1996 federal provisions:</p> <ul style="list-style-type: none"> ▪ Statutory restriction and eligibility requirements for public benefits ▪ Restricted benefits and mandated assistance for immigrant applicants 	<p>The exclusion of undocumented immigrants from social membership in Colorado:</p> <ul style="list-style-type: none"> ▪ The unlawfulness of undocumented immigrants ▪ The aggregation of state and immigration offenses by undocumented immigrants ▪ The creation of vigilance against undocumented immigrants
<p>The development of state's intervention in immigration control:</p> <ul style="list-style-type: none"> ▪ Verification of immigrant applicants' eligibility for state public benefits 	<p>Alternative views of equal membership and restricted citizenship:</p> <ul style="list-style-type: none"> ▪ The reevaluation of equitable distribution of social benefits ▪ The restriction of <i>jus solis</i> citizenship for the children of undocumented immigrants
<p>The consolidation of public and immigration law as a deterrence mechanism:</p> <ul style="list-style-type: none"> ▪ Recognition and protection of immigrants with lawful personhood and territorial presence ▪ Differentiated postsecondary education access for Colorado high-school graduates 	<p>The principle of self-sufficiency for immigration and membership admissibility.</p>
	<p>The privilege of lawful presence and the entitlement to public benefits:</p> <ul style="list-style-type: none"> ▪ The reclassification of immigrant residents ▪ The distinction of government-funded services ▪ The differential access to public education subsidies for immigrant students
	<p>Boundaries of federal and state authority on public benefits legislation.</p>
	<p>Undocumented students as long-term U.S. residents.</p>
	<p>Social gains from including undocumented resident students.</p>

The Dominant Narrative: Of Immigrants and Restricted Rights

The dominant narrative is supported by the themes from the interpretation of restrictive legislation, including bills, resolutions, and formal opinions reinforcing these provisions. Starting from a legalistic approach, this narrative concentrates on the principles that define the admission of immigrants and the distribution of benefits to resident aliens.

American values of autonomy, responsibility, and individuality permeate the 1996 federal immigration and welfare reform and the policies that evolved from them. In fact, the notion of *personal responsibility* is imprinted in the name of the welfare reform Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (Cassiman, 2006). This is also true about the Illegal Immigration Reform and Responsibility Act (IIRIRA), which refers to *immigrant responsibility* requirements. These concepts are articulated in the notion that admitted immigrants must be responsible and sustain themselves without the need for welfare or public assistance.

The overriding threads in the dominant narrative are the notions of self-sufficiency for admitted immigrants and restricted membership for resident aliens. Accordingly, these concepts create social boundaries for non-authorized immigrants and regulate the living conditions of resident aliens. The narrative of the restrictive legislation describes the need to screen the use of public assistance by immigrants, in general, and to prevent the access to public benefits by undocumented immigrants, specifically.

The principle of self-sufficiency rejects the conception of welfare dependency for immigrants. If immigrants are to be admitted on the condition that they self-support

themselves, they are not to become welfare beneficiaries. It follows that undocumented immigrants who solicit welfare or public assistance are deviant applicants by immigration status and by American standards of social membership. In this regard, Cassiman (2006) affirmed that dependency on the welfare system is viewed as a problem in American society and is internalized as deviant or out-of-the-norm behavior.

The distinctions of eligibility affecting resident aliens who apply for government-funded benefits are a means to control the problem of immigrants' dependency on welfare or public assistance. Eligibility designations mandate time-limited restrictions for non-qualified immigrants and impose an indefinite bar on undocumented immigrants. As a result, access to public benefits is only guaranteed to citizens and qualified aliens. Qualifying aliens are extended restricted public benefits in lieu of their long-standing presence in the country and their assimilation into American society. Thus, the rationale for distinguishing eligibility criteria for public benefits involves considerations of nationalism, rights with status, and legal territorial presence.

The criteria determining immigrants' qualification for restricted public subsidies are based on a conception of public benefits as *public privileges*. Unlike mandated emergency assistance, public benefits are considered non-essential, publicly funded subsidies. By redefining public benefits as a *privilege* restricted to citizens and qualified alien applicants, government-funded subsidies can be legitimately denied to certain residents. In this way, citizen and qualified immigrant students are entitled to access state subsidies, such as postsecondary education tuition, which are justifiably denied to undocumented students.

The reconceptualization of public benefits prevalent in the dominant narrative is complemented by a revised interpretation of *equitable* distribution of public benefits. In this regard, equitable access to public benefits entails determining *meritorious* and *non-discriminatory* eligibility. This interpretation is grounded in the view that the Equal Protection Clause of the Fourteenth Amendment condemns social discriminatory measures that affect *qualified* members of the society. From this perspective, access to public benefits by citizens and qualified or permanent immigrant residents constitutes a practice of equitable distribution. Thus, the entitlement of citizens and qualified aliens to public benefits is constitutionally justifiable.

Another strand in the dominant narrative is the verification of lawful presence for immigrant applicants of public benefits. This regulation represents the community's right to define its membership. In this regard, undocumented immigrants are seen as violating the community's right to authorize the entry of non-citizens. It is, therefore, the absence of the community's consent to admit these immigrants into the country and let them reside in their communities that justifies the implementation of the restriction on public benefits and verification measures by the state government.

The argument supporting the state's control of immigrants' lawful presence is strengthened by the pervasiveness of social constructions that portray undocumented immigrants as lawbreakers or deviant members of these communities. The measure, which entails the consolidation of immigration and alienage functions, is presented as a defensive legislative mechanism to protect the interests of the state's society. As Ingram and Schneider (2005) observed, "[t]he rationale for delivering burdens to deviants is that ...punishment is essential to deterring such behavior" (p.18).

The dominant narrative focuses on the legal grounds that determine the delegitimization of undocumented immigrants for residing in the state and accessing non-essential social benefits. The argumentation in the narrative articulates the justification for excluding these immigrant residents from social membership in the state's communities. Undocumented immigrants are affected by the application of considerations derived from the principle of self-sufficiency, notions of restricted membership for aliens, a reconceptualization of public benefits, and the perceived absence of the community's consent for their presence in the state. The strands weaving the dominant narrative are displayed in the diagram below.

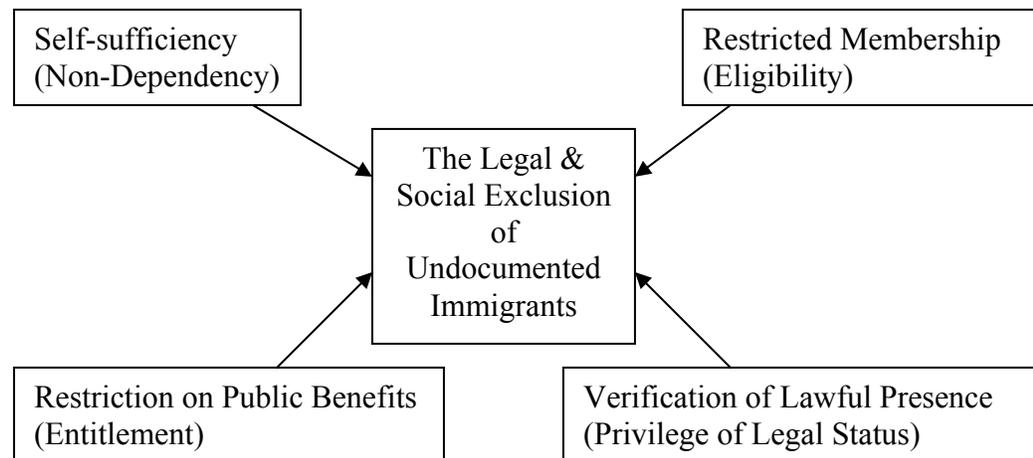


Figure 4. Strands of the Dominant Narrative

The Counter Narrative: Of Residents and Extended Rights

The counter narrative is supported by the themes from the interpretation of inclusionary legislation, including proposed and enacted policies, and opinions

reinforcing these provisions. The focus in this narrative is on the student, specifically, the undocumented college student.

The discourse of these policy texts shifts to the condition of the immigrant as a resident and a participating member of the community. In this sense, notions of personhood rather than legal territorial presence become pertinent. Yet, the principle of self-sufficiency continues to define the community's preference for self-supporting immigrants and the American values of individuality and responsibility. Thus, the counter narrative does not stand in sharp contrast to the dominant narrative, even though it presents an argument for extending the right to postsecondary education benefits to undocumented students.

There are three supporting components in the counter narrative. First, undocumented students are regarded as long-term residents committed to their communities and assimilating into American culture. Second, students lack culpability regarding noncompliance with immigration law because they were brought to the United States as children by their parents. Third, tangible social and economic benefits would result from providing these students with a college education.

The components in the counter narrative are advanced by an assessment of advantages and disadvantages. On the one hand, the justification for extending postsecondary education benefits to undocumented students is partly based on ethical and moral considerations regarding these students' fate and potential. On the other hand, the rationalization for granting these public subsidies to undocumented students stems from considerations balancing the benefits of educating these students and avoiding the disadvantage of an under-educated and unskilled population. Whether for ethical or

strategic reasons, the inclusion of undocumented students for in-state tuition benefits is presented as a just and necessary end.

The counter narrative recasts the issue of undocumented students' access to in-state tuition benefits with considerations of membership and extended rights for immigrant residents. Rather than being ostracized as a result of their immigration status, these students are afforded membership recognition for their long-standing relationship with their American communities. The assimilation of these students into American culture is described in relation to their living in this country since their early childhood years. In fact, these students are often referred to in these policy texts as *children*, in the fashion the *Plyler v Doe* rhetoric levied for K-12 undocumented children. In this way, undocumented college students are viewed as *a protected class* for constitutional protection purposes (Aldana, 2007b).

Although postsecondary education is not converted to a fundamental basic right in this narrative, the extension of this public subsidy to undocumented students appears to be linked to a conceptualization of rights based on these students' experience in community belonging. In short, the extension of the benefit can be interpreted as an extension of solidarity, which is established in terms of the students' community personhood instead of the status of their unauthorized territorial presence.

Contrary to the ideology of restricted membership in the dominant narrative, the counter narrative reflects a reconsideration of the state government's role with undocumented resident aliens. Specifically, the extension of the state's duty to serve undocumented student residents is in line with communitarian values rather than with the

principles of an individualistic ideology (Aldana, 2007b). The views supporting the counter narrative are summarized below.

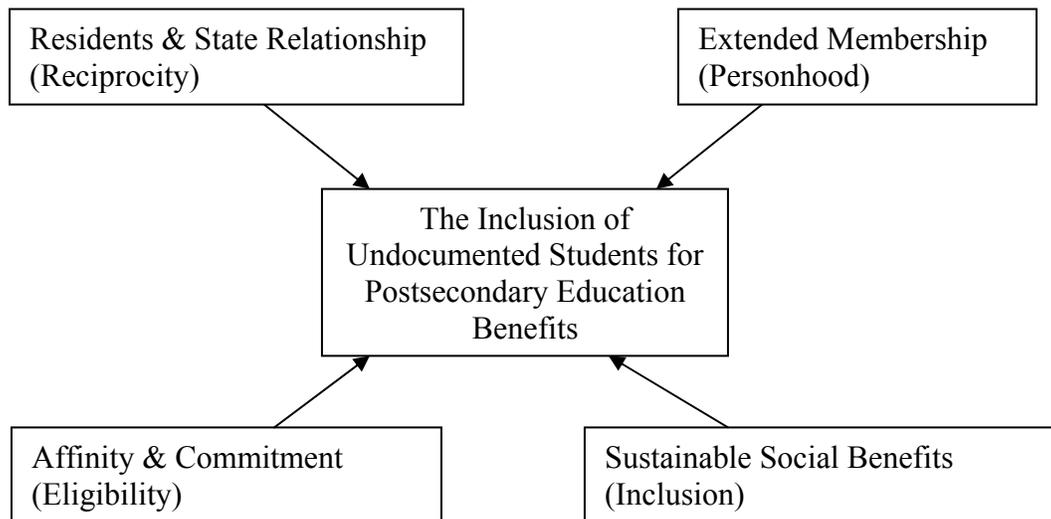


Figure 5. Strands of the Counter Narrative

Summary of the Narrative Policy Analysis

Narrative policy analysis helped identify a dominant narrative and a counter narrative from the themes in the internal and contextual interpretations of the core and related texts (Table 8). The dominant narrative, which is derived from themes and major concepts prevalent in restrictive legislation, is a narrative of *immigrants and restricted rights*. The legal and social exclusion of undocumented immigrants is the core of the argumentation in this narrative. This view is supported by four strands, including, (a) the principle of self-sufficiency as a standard for immigration admission, (b) the distinction of eligibility requirements for immigrant applicants signaling restrictive membership for

alien residents, (c) the restriction of public benefits as the entitlement of certain residents, and (d) the verification of lawful presence underscoring the privilege of authorized immigration status.

The counter narrative is a narrative of *residents and extended rights*. This narrative is derived from the themes and concepts in inclusionary legislation. The argumentation in this narrative develops four views that lend support to granting in-state tuition subsidies to undocumented students. These views describe (a) the relationship of reciprocity between the state and these long-term state residents, (b) the relevance of these students' personhood over legal status of their entry in the country, (c) these students' participation in and service to their communities, and (d) the benefits to society from educating these students.

There have been several attempts in Colorado to reinstate the inclusion of in-state tuition for undocumented students. The initiative has been exhibited in IHB 04-1132, IHB 04-1187, IHB 05-1124 and, more recently, in ISB 09-170. The status of this legislation, as pending or non-sanctioned, is an indication of the state's hesitation or rejection of the notions that mold the counter narrative. With the enactment of HB 06S-1023, Colorado discarded the argumentative strands of the counter narrative, which articulate the rationalization for granting postsecondary education benefits to undocumented students.

In the end, Colorado HB-06S-1023 must be viewed as a restrictive policy. By design, it follows the principles that inform the dominant narrative. The bill calls for the immediate implementation of federal restrictions on public benefits for young adults or older applicants, and implements the verification of lawful presence to validate their

eligibility status. The provisions in this policy target undocumented applicants, who cannot demonstrate authorized presence in the country. Thus, undocumented students in Colorado are viewed as young adults with agency but are also considered non-self-sufficient immigrants. Since they lack the community’s consent to be in the country, they become unqualified and ineligible to receive in-state tuition benefits, a restricted public benefit. The delegitimization and social exclusion of undocumented immigrants in Colorado is based on the line of arguments that explain the dominant narrative.

Table 8. *Synthesis of Narratives*

C. Narrative Policy Analysis: Synthesis of Narratives	
Dominant Narrative: Of Immigrants & Restrictive Rights	Counter Narrative: Of Residents & Extended Rights
<p>The Legal & Social Exclusion of Undocumented Immigrants</p> <ul style="list-style-type: none"> ▪ Self-sufficiency & Non-dependency ▪ Restricted Membership: Eligibility Distinctions ▪ Restricted Public Benefits: Entitlement of Members ▪ Verification of Lawful Presence: The Privilege of Legal Status 	<p>The Inclusion of Undocumented Immigrants for Postsecondary Benefits</p> <ul style="list-style-type: none"> ▪ Residents & State: Reciprocal Obligations ▪ Extended Membership: Personhood Criteria ▪ Affinity & Commitment: Eligibility Qualification ▪ Sustainable Social Benefits: Inclusion of Immigrant Residents

Considerations of Trustworthiness, Authenticity, and Ethical Reflexivity

Trustworthiness and rigor in this study were established in line with evaluative criteria acknowledged by the interpretive epistemic community (Schwartz-Shea, 2006). Accordingly, I employed three strategies, namely, (a) transparency as demonstrated

through open disclosure of analytical and interpretive procedures, (b) researcher's reflexivity, and (c) two methods of triangulation.

I kept an audit trail (Merriam, 2002) to record the steps that I followed to collect, organize, and analyze the data consistently. The information in this log allowed me to openly disclose the research procedures and systematically document each stage of the analysis. For example, coding iterations were recorded in Excel documents and regularly revised during the emergence of themes. Similarly, Attride-Stirling's (2001) thematic networks analysis provided a step-by-step protocol during the descriptive stage of the analysis. The relationship of basic themes to the data was checked in a componential or code mapping exercise (Anfara et al., 2002), as reported in Appendix C. As new themes emerged during the interpretive stage of the study, I checked that my interpretations were substantiated by the data. Finally, my discussion of data analysis provided a complete account of my work and, in describing this work, I attempted to provide what may be regarded as "extreme transparency."

The second strategy included monitoring my preconceptions on the topic as well as my position in all phases of the interpretive processes (Schwartz-Shea, 2006). For this strategy, I kept a research diary where I regularly entered notes of my thinking on these issues and engaged in critical self-reflection about my assumptions or preconceptions on these topics (Johnson, 1997). I frequently read and revised my interpretations of the data to control my stepping outside the context of the texts and to minimize the influence of outside sources, such as the lived experience of some of these students or my personal experience as an immigrant. I built my arguments on my interpretation of words, sentences, paragraphs, and sections in the policy texts. The meaning I drew from the

texts considered the denotation, connotation, and context of the discourse elements in the texts. I regularly reviewed the research questions and the relation of my interpretation to insights from the literature.

The interpretive procedures constituted triangulation of methods (Johnson, 1997). The themes that emerged from the thematic and hermeneutic analyses were synthesized using narrative policy analysis. The thematic and hermeneutic interpretations consisted of an inductive approach to understanding the meaning of the core text, while the narrative policy analysis employed an abductive strategy to understanding (Schank, 2002) this policy text. The combination of these methods yielded an internal interpretation, a contextual interpretation, and the identification of policy narratives, respectively. Each interpretation contributed to corroborate the identification and interpretation of the themes at different levels of abstraction.

The use of alternative data source information provided triangulation of data (Johnson, 1997). The data for this study included a variety of legislative documents on the topic of immigration and benefits for resident aliens. Specifically, alternative data sources consisted of proposed and enacted legislation, statutes and resolutions, and formal opinions and bill analyses. These accounts of data sources provided multiple observations or voices (Hampton, 2009; Johnson, 1997) for the narrative regarding postsecondary education benefits for undocumented students.

Throughout the analytic and interpretive processes, I assumed a holistic or systems perspective to interpretation (Patton, 2002). Thus, I understood that the text of Colorado HB 06S-1023 was a *part* of or a *window* to the *whole* legal and social dynamics underlying the complexity of immigration policy in Colorado.

Conclusion

This chapter has reported the internal and contextual interpretations of Colorado HB 06S-1023 as a policy text with cultural significance. The first section of the chapter presented the preliminary indexing of selected data and the analytical procedures of the descriptive stage of the analysis. Thematic analysis was used for the first stage of the analysis. The core and primary texts were analyzed and interpreted inductively using thematic networks analysis. The steps that I followed to identify, classify and code these texts were described and illustrated with relevant data segments. The thematic analysis yielded an internal or legalistic interpretation of the core text.

The second section of the chapter recorded the steps for a hermeneutic analysis of the core text in relation to secondary texts. This section of the analysis uncovered principles that explained the meaning of the restrictive policies in the core document. These principles were found to function ideologically in determining the legal and social exclusion of undocumented immigrants residing in Colorado. The hermeneutic analysis was holistic and yielded a contextual interpretation of Colorado HB 06S-1023.

In the third section of the chapter, the themes that were generated in the thematic and hermeneutic procedures were synthesized using narrative policy analysis. A dominant and a counter dominant narrative were identified from these themes. Colorado HB 06S-1023 was related to the dominant narrative, which articulates legal grounds and membership views to determine the social exclusion of undocumented immigrants in the state's communities.

The chapter concluded with a discussion of the strategies that were employed to assure trustworthiness and transparency in this study. This section described the

procedures followed to disclose the analytic and interpretive procedures, the methods used to monitor my assumptions and pre-existing understanding on the topics, and the strategies of triangulation selected to corroborate my interpretations.

Chapter Five will relate the findings to the research questions that guided this study. The discussion will consider the development of a metanarrative on the topic of unauthorized immigration in Colorado. The chapter will also address the implications of this interpretation of Colorado HB 06S-1023.

CHAPTER FIVE: IMPLICATIONS

Overview

This chapter synthesizes and interprets critical insights gained from a research study that examined and analyzed the text of a Colorado law affecting undocumented college students in the state. The study was grounded in a constructivist-interpretivist methodology. The primary goal of this research was to examine the narratives inscribed in the text of Colorado HB 06S-1023 in order to understand how this law conceptualized the rights of undocumented immigrants and the duty of the state towards them. The methods of inquiry in the study were thematic analysis, hermeneutic analysis, and narrative policy analysis. The data consisted of governmental documents on immigration and membership policy introduced or enacted in Colorado, related federal legislation, and two relevant statutes from Texas and California, respectively. The examination of these textual data provided information related to one overarching research question and three sets of secondary questions.

The chapter is organized into four sections. The first section presents a discussion of the meanings captured from interpretation of the data in relation to the research questions and insights from the literature. A metanarrative is then derived from the comparison of the interpretations concerning the rights of undocumented immigrant residents. The next section addresses the significance of the study with regard to the interpretive methodology and the contribution of the interpretations to understanding current debate on this social issue. The chapter concludes with recommendations for further research and final reflections.

Interpretation of Interpretations

This section relates the themes and narratives that emerged in the analysis and interpretation of the texts to the research questions. The discussion is guided by Jackson's (2006) assertion that an interpretation of a policy document is itself an interpretation of interpretations. The explanation of my interpretations is complemented with insights from the literature.

What does the text of Colorado HB 06S-1023 mean, explicitly and implicitly, regarding the rights to higher education benefits for state high-school graduates who are undocumented immigrants and the state's duty to serve these graduates through state subsidized higher education?

This constituted the overarching research question. It was addressed in detail in Chapter Four through thematic and interpretive procedures.

What the Policy Text Says

The thematic analysis identified the driving elements of Colorado HB 06S-1023, which supported an internal interpretation of the policy. The major concepts included (a) the application of the 1996 federal provisions on restricting public benefits for immigrant applicants, (b) the development of immigration control by the state, and (c) a *de facto* consolidation of public and immigration law as a deterrence mechanism against unauthorized immigration in the state. The internal interpretation illuminated what the core policy text meant *explicitly*.

From an internal perspective, the narrative of Colorado HB 06S-1023 explained the legal and normative meaning of the policy. This narrative conflated *alienage* and *immigration* arguments. One strand in this narrative validated the distinctions of eligibility to access public benefits for citizen and non-citizen residents, as defined in current federal law and in the provisions of previous Colorado's legislation. The restriction provisions in this bill reaffirmed the legal grounds for distinguishing qualified and non-qualified eligibility status for and among immigrant applicants. In addition, the eligibility distinctions aligned with the differentiation between restricted and mandated government-funded benefits already established in the 1996 federal reforms. Thus, the provisions in this policy also reinforced the legal grounds for discriminating the allocation of public assistance to immigrant applicants. The argumentation in this strand of the narrative showed that Colorado HB 06S-1023 constituted a regulatory instrument or practice that discriminated political status and social rights for immigrant residents. That is, it concerned considerations of alienage law.

Another thematic thread in the legal and normative narrative of Colorado HB 06S-1023 linked the restriction on public benefits to deterring unauthorized immigration into the state. This strand focused on the implementation of verification regulations as a measure of immigration control. The rationale was that the verification of lawful presence to access public benefits created an impediment for undocumented immigrants because they could not prove legal immigration status. This legal barrier to welfare assistance would then eliminate an incentive for certain immigrants to remain in the state, seek entry into the country, or enter the country without authorization. The component in this strand of the narrative showed that Colorado HB 06S-1223 reaffirmed federal

guidelines for restricting public benefits by implementing measures that would allow the state government to control or prevent the flow of undocumented immigrants into the state. This interpretation aligned with findings in the research that examined the development of the 1996 immigration and welfare reforms. Newton (2005) observed that the 1996 immigration provisions represented the “first time federal law addressed the argument that access to public benefits played a role in encouraging legal and illegal immigration” (p. 145).

In another respect, the text of the policy delineated the relationship between political agencies or subdivisions and immigrant residents with respect to these applicants’ entitlement to rights, the obligation that the rights claim generated, and the type of public protection that was involved. This thread emphasized the regulatory aspect of the provisions. Specifically, the discussion considered the requirements of compliance with the law for applicants and agencies as well as the implications or penalties involved for non-compliance with its terms.

Colorado HB 06S-1023 affirmed that immigrant applicants without lawful presence in the country were not entitled to rights reserved for citizens and legal immigrant residents. The ineligibility status of undocumented applicants for restricted public benefits effectively dissolved their claim for the law’s protection, that is, it eliminated the tenet of reciprocal obligation that membership in a community entails (Benhabib, 2004). Thus, the component in this narrative was that the state was under no legal or moral obligation to confer restricted public benefits to unqualified immigrant applicants. On the other hand, the policy created a binding obligation for state institutions and agencies to comply with the verification processes. This finding

contributed to previous research on immigration policy because it added the dimension of mandated accountability for agencies and institutions that are traditionally not involved on immigration responsibilities or policing functions. A community college, for example, would be considered a state agency and thus required to comply with the following provision in this policy:

Each state agency or department that administers a program that provides state or local public benefits shall provide an annual report with respect to its compliance with this section to the State, Veterans, and Military Affairs Committees of the Senate and House of Representatives, or any successor committees. (HB 06S-1023)

The restrictive provisions of Colorado HB 06S-1023 revealed the state's two-tiered system for regulating the lives of immigrants in the communities. The restriction-alienage provisions in this policy were reinforced by the verification-immigration regulations. Under these provisions, non-citizen or foreign-born residents would be integrated into the state's polity and incorporated into the system of public benefits, if and when they satisfied certain conditions of legal presence and immigration status. This finding corroborated previous research acknowledging the increased function of state policies in immigration matters in the wake of the 1996 federal reforms (Benhabib, 2004; Bosniak, 2006; Lazos Vargas, 2007; McKanders, 2007; Olivas, 2007, 2008).

The internal interpretation of the text of Colorado HB 06S-1023 provided a legal rationale for understanding the disqualification of undocumented immigrant students for postsecondary education subsidies. On the one hand, the provisions stripped these students of a legal claim to apply for and receive in-state tuition benefits because this

subsidy was granted restrictively to applicants with lawful presence in the country. On the other hand, the students' unauthorized immigration status in the country trumped their *de facto* residency status in the state, which would, otherwise, allow them to be classified as in-state students. With respect to the state's responsibility to serve undocumented students who graduate from state high-schools, the law eliminated the state's duty of obligation to extend them public postsecondary educational subsidies because the requirement of legal presence cancelled the students' right to public benefits on residency criteria. In short, the restriction component of the provisions served to disqualify undocumented students as eligible applicants while the verification requirements rendered them as non-members in their communities. Taken together, the restriction and verification provisions eliminated the state's duty of protection towards these *unqualified* applicants.

What the Policy Text Means

The hermeneutic analysis of Colorado HB 06S-1023 confirmed the internal interpretation, but also identified ideological principles underlying the provisions in the policy. In essence, these ideas expressed conceptions of rights, privileges, obligations, and the distribution of social goods (Aldana, 2007b; Schuck, 1984; Walzer, 1983), which supported a contextual interpretation of the core policy text. This contextual interpretation uncovered *implicit* meanings in the provisions of the policy. The narrative of Colorado HB 06S-1023 that developed in this interpretation conflated conceptions of *members* and *non-members* within sovereign and membership terms.

One strand in this narrative identified notions of self-sufficiency and restricted membership that were embedded in U.S. immigration law and informed alienage

provisions. These concepts were found to be rooted in an individualistic and nationalistic ideology, which emphasizes values of individual liberties, collective identity, and the sovereign nation's authority for self-determination (Aldana, 2007b; Fowler, 2004; Schuck, 1984). These principles also forged the nation-state model of modern democracies and its practices of citizenship and political membership (Benhabib, 2004; Bosniak, 2006).

The principle of self-sufficiency imprinted in the provisions of federal and state legislation explained the authority of the sovereign nation and the will of the community to restrict public benefits for undocumented immigrants. It can be said that Colorado's restrictions on public benefits to applicants with lawful presence reflected the right of the state to define and protect its territorial and social boundaries. In other words, the restriction and verification provisions in HB 06S-1023 articulated the political and social inadmissibility of undocumented immigrants in the state. Undocumented immigrants were rejected as community members on grounds of the nation-state's privileges and authority to refuse the admission of non-autonomous immigrants into its bounded territory.

The notion of restrictive membership elaborated on the principle of self-sufficiency to describe the community's right to incorporate or exclude non-citizen residents. This strand of the narrative explained the conditions that defined the rights of immigrant residents to political membership and their entitlement to social benefits. Walzer (1983) observed that, in the nation-state model, the distribution of membership and other social goods is enforced by shared historical and cultural "conceptions of what the goods are and what they are for" (p.7). Membership norms are thus deemed a

prerogative of the sovereign nation's right to collective self-preservation (Benhabib, 2004; Bosniak, 2006; Walzer, 1983). Thus, the distribution of membership rights in Colorado's communities entailed a distinction between community insiders and outsiders as well as the interpretation and scope of the legal and civic rights that were extended or excluded.

Underlying the provisions in Colorado HB 06S-1023 was the view that the extension of social membership to *non-citizen others* is distributed qualitatively. Accordingly, immigrants in residence are distinguished as qualified or non-qualified applicants for certain social goods. The incorporation of immigrants into the community and their subsequent qualification for welfare benefits are tantamount to the nation-state's consent for territorial admission as well as the state's extension of membership. Given their unauthorized immigration status, undocumented immigrants were thus viewed as *non-admitted others*, and this rendered them devoid of membership rights and eligibility for restricted public benefits. In this regard, Bosniak (2006) observed that the perception that undocumented immigrants have "flouted the nation's prerogative to define its own membership ... serves to make membership regulation appear both legitimate and necessary" (p.68).

Another strand in the membership narrative described concerns regarding members' relationships with undocumented immigrants residing in state's communities. The component in this strand was constructed from considerations of collective identity that justified the marginalization of undocumented immigrants. As suggested in previous research, considerations of collective identity in immigration policymaking reflect nativist fears of losing national character or disrupting social integration (Aldana, 2007b;

Mármora, 2002; Rincón, 2005; Shapiro, 1997; West, 2010). The threads in this argument weaved through revisionist views that introduced alternative interpretations on access to social rights and the denationalization of certain citizens based on group association. These views had implications for the social subordination of undocumented immigrants. Bosniak (2006) affirmed that the subordination of the alien can be realized in the denial of citizenship, restricted access to public benefits, and “the social stigma or violence on account of their status” (p.133).

The marginalization of undocumented immigrants was instigated by socially constructed views that classified these residents within a negatively referenced out-group. The presence of undocumented immigrants in Colorado was seen as a problem and a threat. References to undocumented immigrants in restrictive policies emphasized their deviation from legal and civic norms. A main concern was that undocumented immigrants were a social and economic menace to society and that the state government had a legal and moral obligation to act and protect its citizen and legal immigrant residents. This interpretation supported previous research concerning the influence of negative perceptions of target populations on immigration policymaking. In this regard, Ingram and Schneider (2005) warned that policies that “embrace negative constructions of groups ...legitimate these constructions and help spread them throughout society” (p.21). The prototype of undocumented immigrants inscribed in restrictive Colorado policies stigmatized them as *unlawful* immigrants, an *unwanted presence* in the state, and *unqualified* applicants.

The provisions in Colorado HB 06S-1023 involved punitive measures against undocumented applicants, which strengthened and legitimized the marginalization of

undocumented immigrants in residence. That is, the bill situated these immigrants' social positionality within the sphere of subordination (Sniderman et al., 1993). Clearly, the restriction on public benefits for undocumented immigrants inflicted social and economic disadvantages on them over other accepted members of the community. The verification requirements of lawful presence realized the social inequities because they effectively prevented undocumented applicants from accessing and benefiting from public benefits. The enforcement of discriminatory and punitive measures as a means to subjugate a minority immigrant population has been addressed in previous research on the development of restrictive immigration policy (Ingram & Schneider, 2005; Mármora, 2002; Schneider & Ingram, 1993; Stumpf, 2006).

The restrictive membership and social subordination strands underlying the text of Colorado HB 06S-1023 illuminated the ideological premises determining the denial of the right to higher education benefits for resident students who are also undocumented immigrants. To begin with, Colorado HB 06S-1023 reinforced the state's privilege to reject non-self-sufficient, adult immigrants. The principle of self-sufficiency underlying these provisions affirmed the state's preference for admitting immigrant residents who are self-supporting. Undocumented high-school graduates are affected by these provisions because they now fall under the category of *adult, non-autonomous, non-authorized* immigrants. As such, they are deprived of legal claims to restricted public protections. Thus, the principle of self-sufficiency justified the state's policy for removing these students from the fabric of its society. In this process, undocumented students became *stateless others*.

In addition, the notions of restricted membership implicit in the law's provisions underscored the ineligibility status of undocumented students for postsecondary education subsidies. Upon graduation from high-school, these students lose their rights claims as residents or members in their communities and become unqualified applicants of public benefits. The prevalence of legal status over civic rights for admitting adult immigrant residents renders undocumented college-aged students as immigrants without the nation-state's consent of entry, the community's approval for residency, or a legal claim to public protections. In this process, undocumented students become *rightless others*.

Finally, the verification provisions in this law represented punitive measures for undocumented college students. With the restriction of public postsecondary education subsidies, undocumented students are at a disadvantage with respect to their legally present peers. In this way, the provisions in this law reinforced these students' social marginalization in the state's society. Moreover, the state government defined its duty to limit public education subsidies for these students on considerations of mandated provisions for basic rights. Except for subsidizing a public K-12 education and concurrent education courses, Colorado relinquished its obligation to serve undocumented high-school graduates through postsecondary education public subsidies. Given that the 1996 federal provisions granted the states the discretion to extend public benefits to undocumented immigrants under a state law, the restrictions in HB 06S-1023 expressed the Colorado government's preference to eliminate the relationship of mutual obligations with these students on grounds of territorial and non-membership claims. In this process, undocumented students entered *the camp* in Agamben's (2005) terms and

were subjected to a *state of exception* (Agamben, 1998, 2005). Although these students' individual liberties continue to be affected by the power of state law, their rights claims have been removed from the law's guarantees of protection.

Ancillary Implications

The following sets of questions provided additional insights on the interpretation of the provisions in the core policy text.

What premises on naturalization are prevalent in texts addressing this social issue? How are differences among “citizens,” “residents,” and “community members” established?

When is “illegal” the same as “undocumented”? When is it different? What principles drive the difference? What is “resident” status? What is “immigrant” status? Which term overrides the other?

What considerations constitute the framework for the policy and how do they interact with principles of duty and privilege in the narrative of the bill?

This was the first set of additional research questions posed. As suggested above, there is a *nationalistic* ideology underlying the policies that evolved from the 1996 federal immigration provisions. According to Newton (2005), IIRIRA defined social membership in terms of birthright citizenship. In this sense, the federal immigration provisions also reinforced *nativist* views of membership (Aldana, 2007b; Boggioni, 2009; Bosniak, 2006; Newton, 2005; Tostado, 1998). In the policy texts examined in this study, the prevailing concept of *citizenship* denoted a juridical status acquired by

territorially defined birthright or nationalization. This meaning of *citizenship* did not express considerations of residency or personhood in the community. Instead, it reflected the character of formal legal status, enjoyment of rights, and collective identity that the citizenship literature associates with nation-state membership (Bosniak, 2006). Benhabib (2004) asserted that “[i]n democratic societies, access to and enjoyment of rights and entitlements are crucial aspects of the meaning of citizenship” (p. 111). The citizen status-rights correlation surfaced in the restrictive policies. The distribution of in-state tuition subsidies based on residency criteria, for example, was recognized as an entitlement and privilege of citizens that was extended to legal, non-citizen members of the community (8 U.S.C. §1623).

The extension of social recognition and acceptance to non-citizen residents is, however, non-indicative of full membership status. For example, legally admitted immigrants into the United States have acquired territorial acceptance by immigration standards, but they are initially unqualified to apply or receive public benefits during a means-test period. Even after completing this requirement, legal immigrants’ rights claims fall under the auspices of partial social membership and public protection. This finding reinforced the assertion in citizenship literature that the distribution of legal and civic rights in modern democracies reflects an ongoing tension in balancing legal-exclusive rights of citizenship with universal-inclusive rights of membership (Benhabib, 2004; Bosniak, 2006).

The reference to *residents* and *community members* in these texts conveyed the community’s acceptance of some immigrants as members with partial membership rights. These terms acknowledged the condition of shared *legal* residency between these

immigrants and accepted members of the community. From this perspective, an immigrant applicant's *permanent residence status* was an indication of that alien's "privileged access to national residence via the immigration process" (Bosniak, 2006, p.136). In some cases, the inclusion of these immigrant residents implicated the potential for their naturalization (SB 97-171). In this way, the classification of immigrants as *legal* or *permanent residents* connoted a sense of their *belonging* in the state's communities by processes of assimilation to the dominant constituency and by their commitment to the majority identity of the political community.

Illegal alien was the terminology employed in most restrictive immigration policies to refer to immigrants with no authorization to reside in the country and with no membership status. On the other hand, these immigrants were identified as *undocumented* aliens in earlier restrictive policies, such as SB 97-171, and in inclusionary legislation to distinguish their immigration status from their residency status. In general, as the reference to *illegal aliens* advanced into the discourse of restrictionist legislation, the preference for referring to *undocumented aliens* or *undocumented immigrants* was confined to the discourse of inclusionary policies (IHB 04-1132; IHB 04-1187; IHB 05-1124; ISB 09-170).

The term *illegal* interacted with the phrases "*unlawful presence*" and "*not lawfully present*" to express the territorial and social inadmissibility of undocumented immigrants and convey the implication of criminality that these terms connoted. Whether identified as *illegal*, *undocumented*, or *unlawfully present*, the immigrant population targeted in these provisions was mainly immigrants arriving undetectably through the U.S.-Mexico border, as implied in this quote from two Colorado bills:

Illegal aliens are transported via the major interstate highways in the state, creating an issue that crosses city, county, and state lines. (IHB 06-1134; ISB06S-009)

This group has also been identified in the literature as migrant workers (Benhabib, 2004; Newton, 2005; Schrag, 2010; West, 2010). In this sense, the semantic content of the terms *illegal-unlawful* attached to these immigrants carried inferences of ethnic, cultural, and socio-economic differences built into them. As shown above and reported in the literature on immigration policy, the 1996 federal provisions were a restrictive response to growing concerns of the negative social and economic impact on American society of unauthorized immigration sifting through the southern border.

Regarding the use of this terminology in Colorado HB 06S-1023, the provisions of restriction and verification were directed to a *person*, an *alien*, or a *legal resident* of the state, who is eighteen years old or older and is *lawfully present* in the United States. Thus, the provisions in this bill were framed around a non-suspect class of adult *persons* or *aliens*. In this respect, Aldana (2007b) and Boggione (2009) observed that the reasoning in *Plyler v. Doe* to regard undocumented immigrants as a non-suspect class and to emphasize the condition of *children* in the discriminated class of that case has paradoxically facilitated the creation of state restricted legislation excluding *adult undocumented immigrants* from equal protection. Clearly, this was the strategy applied in the Colorado policy. The provisions in HB 06S-1023 excluded *persons* without lawful presence -not children or students- from certain *public benefits*. In this sense, the language of this restrictive policy refrained from the use of Darwinist and dehumanizing terms that Chock (1995) noticed in Congressional immigration debates. However, by

referring to the target population through broad, legal terms, the policy also avoided the considerations of residency, personhood, and solidarity that membership entails.

The framework of the provisions in Colorado HB 06S-1023 was based on premises of constitutional law and social membership rooted in a nationalistic ideology. The distribution of public rights in the text involved considerations of the state's legal and moral duty, immigrants' legal and civic status, and distinctions between rights and privileges. The legislature defined the state's legal duty and moral obligation to qualified applicants of public benefits, and identified these applicants as citizens or legal, permanent residents with lawful presence in the country. Thus, the provisions relied on criteria that underscored members' *formal status* over their entitlement for civic rights. The precedence of *formal status* for the enjoyment of privileges and basic rights has been related to the interpretation in constitutional law of the Fourteenth Amendment as stressing nationalism over membership (Bosniak, 2006).

The provisions in Colorado HB 06S-1023 also involved considerations about the right to have rights (Benhabib, 2004). In this law, a distinction was made between immigrants' rights and members' entitlement to access state-funded benefits. The restriction on public benefits meant that the right to public benefits constituted a privilege of accepted members. In this regard, Aldana (2007b) asserted that by converting rights to privileges, restrictive alienage legislation sanctions the exclusion of *privileges* rather than the denial of *fundamental rights*. Thus, the conception of rights in this restrictive policy emphasized the juridico-civic significance of the term over the universalistic meaning that the term entails in democratic claims of justice (Benhabib, 2004).

How do the language in these texts and the rationalization of this social problem relate to core democratic principles of education? How do they relate to the pursuit or maintenance of power?

The provisions in Colorado HB 06S-1023 deny undocumented college-aged immigrant students the right to postsecondary education subsidies. This restriction makes it difficult for these students to complete a college education and attain the social and economic benefits associated with higher education (McMahon, 2009). More specifically, the implications of the provisions in this bill steer away from values of democratic participation that have historically framed the conception higher education in the United States (Fowler, 2004; Geiger, 2005; Gutek, 1972; Harbour & Lewis, 2004; Zusman, 2005).

The students most likely affected by this policy are Hispanic students from low-income immigrant families, who are residing in the state without documentation (Bell Policy Center, 2005). Under Colorado law, these students are eligible until age 21 for subsidized postsecondary education through concurrent education programs as long as they are attending high-school (HB 09-1319). Thus, the cut-off age at 18 in HB 06S-1023 to restrict in-state subsidies overlaps with the availability of subsidized postsecondary education options until age 21 through concurrent programs. After graduation from high-school, however, the options for a college education for undocumented students are limited by the provisions in HB 06S-1023.

The restrictive provisions in HB 06S-1023 reflect the work of revisionist views regarding the meaning of *equal access* to higher education benefits. The availability of

subsidized postsecondary education for undocumented high-school graduates became incompatible with their right to these subsidies on residency requirements. In essence, resident students' eligibility to in-state tuition benefits is now interpreted as a privilege for applicants with legal territorial presence rather than as a right of students with residency status in this state.

Colorado HB 06S-1023 introduced educational inequities for undocumented high-school students in relation to other resident students. The limited options that these students have for completing a postsecondary education creates a disadvantage in their ability to function competitively in today's society (Bell Policy Center, 2005). In fact, the effect of these restrictions on a segment of the state's college-aged population contradicts insights in the literature regarding the long-term, public benefits of keeping higher education accessible in today's interconnected society (Boggioni, 2009; Bosniak, 2006; Marmora, 2002; McMahon, 2009; Schrag, 2010; West, 2010). In referring to higher education expenditures, Zakaria (2008), for example, stated that "in a knowledge-based economy, education functions more like savings –it is forgone today in order to increase human capital and raise future income and spending power" (p. 201). In a similar fashion, Boggioni (2009) argued for investing in the undocumented youth to better equip the country in the global marketplace.

As a result of the provisions in Colorado for undocumented immigrants, the stratification of the immigrant population deepened in the state. By implication, the provisions strengthened the social power of the majority groups of citizens, nationals, and legal residents over the minority group of undocumented immigrant residents. In Walzer's (1983) opinion, "the denial of membership is always the first of a long train of

abuses” (p. 52). Accordingly, the trajectory of disenfranchisement of a group in a society generally starts with the dominance of a social good over other spheres of social life. In this case, Colorado HB 06S-1023 made territorial admission a dominant social good over the right of undocumented high-school graduates to apply for and benefit from in-state tuition benefits. From this perspective, the bill’s treatment of undocumented high-school graduates “violates the fundamental moral commitment of democratic community life” (Bosniak, 2006, p.42). Through the resignification of residents’ claims for accessing subsidized postsecondary education rights, the provisions in this policy reaffirmed the marginalization and subordination of some high-school graduates over others.

What principles in Colorado immigration policy are similar to other states’ interpretation of the problem? Which ones are different?

Chapter Four compared and contrasted Colorado HB 06S-1023 with Texas HB 01-1403 and California AB 01-540. Unlike the Texas and California statutes, Colorado HB 06S-1023 denied undocumented students in-state tuition benefits. The differences in the provisions of these three states were reflected in the focus of argumentation supporting their respective policies.

Texas and California built their inclusive legislation on the belief that undocumented students belong in their American communities. In essence, these two states appealed to considerations of solidarity and personhood (Benhabib, 2004; Bosniak, 2006; Marmora, 2002) to include undocumented students for postsecondary education public benefits. In this respect, Bosniak (2006) posited that the rationale for extending

protections to undocumented immigrants can be justified by the principle of equal citizenship of aliens, which entails “an ethic of rights based on personhood” (p.96). On the other hand, Colorado focused on legal considerations in immigration law to justify the restriction on public benefits for undocumented immigrants. In this way, Colorado appealed to nationalistic and constitutional notions of bounded citizenship and exclusive membership to withdraw undocumented students’ right to postsecondary education subsidies (Benhabib, 2004; Bosniak, 2006).

Although the Texas, California, and Colorado policies differed in implementation purposes, they all shared a concern for the notions of self-sufficiency and restrictive membership that define the admission and integration of immigrants in the United States. The extension as well as the denial of postsecondary benefits to undocumented students in these policies was based on the understanding that immigrants admitted by territory or personhood criteria must be self-sufficient and non-welfare dependent. In some ways, the extension of in-state tuition benefits was seen as a means to benefit society as a whole.

Whether the legislation on postsecondary education subsidies is inclusionary or restrictionist, undocumented students are still conferred partial or restricted membership. That is, the provisions in these states’ statutes confirmed the limitations of membership for these *other* residents of the communities. The extension of in-state tuition was per se an indication that other restrictions to public benefits still held for these students. In fact, the completion of a college education in the states granting the subsidies has not yet resolved the still uncertain legal and social standing of undocumented students in the workforce (Rincón, 2005). This argumentation has served opponents’ views to reject

recent inclusionary proposals in Colorado. In this regard, Colorado State Senator Nancy Spence expressed her opposition to the proposed SB 09-170 by noticing that there is no value in extending in-state tuition subsidies to these students because they are unable to use this knowledge in the workplace (Your Show, March 22, 2009)

Summary of Critical Insights

The principles underlying Colorado HB 06S-1023 functioned ideologically in several ways. At one level, they justified the legal exclusion of undocumented immigrants from membership rights and rationalized the role of the state government in immigration control as the sovereign nation's right to defensive, legal and social protection. Marmora (2002) asserted that the vilification of immigrants can be functional in that it allows policymakers to garner votes by capitalizing on resentment and fear towards these populations. The restrictive provisions in this policy reflected the negative perceptions of undocumented immigrants in the state, the arguments the government used to sustain the adoption of restriction and verification measures, and what the government interpreted by sovereign privileges and immigration policy (Benhabib, 2004; Ingram & Schneider, 2005; Marmora, 2002).

At the same time, the ideologies framing this Colorado policy had implications for understanding autonomy, immigrants' rights, community's identity, and the state government's authority. The restrictions on public benefits for immigrant applicants can be seen as paradoxically affirming and challenging the principle of self-sufficiency. The law imposed social restrictions on undocumented immigrant residents in line with the stated aims of U.S. immigration law to secure the admission of autonomous and independent immigrants into its territory. However, the restrictions imposed on

undocumented residents also limit their ability “to lead lives of human dignity and autonomy” (Benhabib, 2004, p.11). Thus, a consequence of the restrictions in this Colorado policy is the detrimental effect on these students’ potential to be self-sufficient in their communities.

The restrictive provisions in this policy also implied that undocumented immigrant residents do not possess the requisite identity criteria for membership. The decision to deny political membership to undocumented immigrants has been linked to “virulent intolerance based on race, political opinion, and lifestyle” (Bosniak, 2006, citing Aleinnikoff, p. 128). Colorado HB 06S-1023 targeted a community of immigrants in the state that represents a minority population by ethnic as well as cultural criteria. These immigrants are largely low-income, low-skill, working families arriving from Mexico and some Central American countries (Bell Policy Center, 2005; Benhabib, 2004). Prevailing negative perceptions of these undocumented immigrants reflected aspects of social difference between them and members of the accepted groups.

Colorado HB 06S-1023 expressed the state’s interpretation of the balance between legal territorial rights and civic membership rights for immigrant residents. The merit of an applicant’s claim to educational, health, and welfare benefits was validated upon the applicant’s legal status or territorial presence in the country. Thus, the verification regulations implied that the concept of *civic* rights reserved for residents was incompatible with the requirement of *legal* rights for immigrants. Bosniak (2006) stated that the notion of entitlement to rights as a matter of legal standing originated in the Roman legalist model of citizenship and guides constitutional thought regarding immigrants’ access to public benefits. The restrictions in Colorado’s policy followed this

interpretation of rights. The state affirmed that considerations of legal status for undocumented immigrants overshadowed moral considerations of duty and solidarity to protect, for example, students who have lived and participated in their communities most of their lives. Colorado was essentially renegeing on its moral obligation to members that contribute to the social fabric of their communities.

A Metanarrative: We Want Them, but We Don't Want Them

A metanarrative can be defined as an overarching frame holding the conditions of the dominant and counter narratives (Hampton, 2009) or as “a narrative about other narratives” (van Eeten, 2007, p. 256). This definition of a metanarrative entails the comparison and contrast of policy narratives that point to a set of hidden or shared commonalities (Roe, 1994; van Eeten, 2007). Another view of a metanarrative includes the use of literary devices, such as metaphors or analogies (Hampton, 2009). According to Hampton (2009), ambiguity can function as a metanarrative in that its structure unifies the individual views or claims from the divergent narratives or policies. A metanarrative regarding the issue of undocumented immigrants' rights in Colorado emerged from the comparison of narratives generated in the analysis of the data. This metanarrative was supported by common meta-level themes that captured the contrast in the comment “*we want them, but we don't want them,*” which a colleague of mine made in reference to the treatment of undocumented immigrants in our society. The use of contrast as a literary device is effective because it makes the contrasted ideas clearer than each one would be by itself (Holman & Harmon, 1986).

As shown in Chapter Four, the dominant narrative regarding the issue of unauthorized immigration in American communities was about excluding these residents

from political and social membership by denying them the right to public benefits that cover non-essential services. Instead, the counter narrative called for extending public postsecondary education benefits on residency and domicile criteria to all resident students, including undocumented students who have a record of extensive presence and participation in their communities. The enactment of Colorado HB 06S-1023 upheld the views of the dominant narrative and rejected the argumentation of the counter narrative.

On the surface, the provisions in HB 06S-1023 represent a statement of the legal parameters that determine the distribution of public benefits to eligible immigrant applicants in Colorado. Underneath the policy statement, however, are principles and ideologies that justified the rejection of these immigrant residents as rightful members of the state's communities. These interpretations are supported by two meta-level themes that provide an additional way of understanding the undercurrent of intolerance for undocumented immigrants in this state.

One meta-level theme is the *delegitimization* and *objectification* of undocumented immigrants. The language in the policy texts played a critical role in delegitimizing the condition of these immigrant residents. Undocumented immigrants became a legal category or rather an *illegal presence*. In turn, negative public perceptions of the impact of these immigrants on society infiltrated the discourse of restrictive policies to further objectify them as *a social drain or a criminal presence*. Through the use of social constructions of an illegal-unlawful presence and a focus on the legal aspects of immigration admission, the image of the *immigrant-resident* or the *immigrant-student* weakened and faded. In this process, the force of the restrictive provisions concerning this social issue increased and strengthened.

In general, the reference to the presence of undocumented immigrants in the policy texts conveyed a sense of social *instability or disruption* in the state's political system. This is a second recurring theme throughout the dominant and counter narratives. It is manifested in the attempt at implementing measures that aim to control the flow of unauthorized immigration, regularize and monitor work authorization processes, and determine the availability of public subsidies to undocumented immigrant residents.

The two meta-themes illuminate the state's response to perceived changes in its demographics, and possibly other contextual factors. According to Benhabib (2004), migratory movements often act as catalysts to "crucial dislocations and tensions already at work in the receiving societies themselves" (p. 90). The state approached the issue of unauthorized immigration in its communities by drawing from nationalistic and nativist perspectives with the purpose of securing control and stability within its bounded territory (Benhabib, 2004; Fowler, 2004; Schuck, 1984). Thus, the restrictive provisions in the policy aligned with the traditional conception of exclusionary citizenship and territorial closure of the nation-state's system. In essence, the migratory movement of undocumented immigrants into the state's communities was considered a social malaise that could be *eradicated* or *controlled* through measures restricting just membership and just distribution of rights (Benhabib, 2004).

Colorado HB 06S-1023 can be read as stating that *we don't want undocumented immigrants* in the state's communities. The rejection of this immigrant population is articulated through the elimination of incentives, the restriction of membership rights, and the enforcement of immigration control processes. Moreover, the extension of only

essential or emergency assistance to undocumented immigrant residents expresses the community's acknowledgement that these residents may, indeed, remain in the communities without membership rights. In other words, it is implied that *we want them but we don't want to extend them "the right of association and the right to belong to the community"* (emphasis added, Ottonelli, 2002, p. 233).

The treatment of undocumented college students in Colorado can be explained in reference to the statement *we want them, but we don't want them* as well. In this case, *we want them* to receive a basic education, so we provide mandated public K-12 benefit. On the other hand, *we don't want them* to receive public subsidies towards a postsecondary education, so we withdraw this right from them by making it a privilege of citizens and legal, permanent immigrants. At best, *we want them* to complete available postsecondary education through concurrent programs, which would prepare them to work certain jobs in Colorado's communities. As reported by the Pew Hispanic Center (2009), undocumented immigrants are most likely employed in farming, building and grounds keeping, construction, food preparation and serving, and transportation industries.

The contrasted ideas in *we want them but we don't want them* highlight the way the state interpreted the treatment of undocumented immigrants living in the state. The state's approach to this issue reflects a push-and-pull tension in the conceptualization of migration mobility. What is missing in the relationship created between the state and these residents is a sense of ethical and moral duty of solidarity (Benhabib, 2004) or hospitality (Bosniak, 2006; Marmor, 2002; Walzer, 1983). Marmor (2002) posited that, as a dominant ideology of the post-industrialized world, neoliberal Darwinism has

slowly pushed away the social solidarity of receiving communities and favored the instrumentalization or depersonalization of the immigrant.

Contributions of the Research Project

The analysis and interpretation of Colorado HB 06S-1023 in this study offered an interpretation of the meanings inscribed in the text of this restrictive policy and the ideologies or principles that framed them. The interpretive methods grounded in thematic analysis, hermeneutics, and narrative policy analysis allowed for a critical understanding of the core text and its context. As indicated in the purpose statement of the study, the themes and narratives that evolved in the analysis of the data provided one interpretation of this cultural text over other possible interpretations. Despite this limitation, my interpretation of the data contributed perspectives to understanding the complexity of issues that enter current immigration debates. In particular, this interpretation illuminated considerations underlying the state of Colorado's restrictive policy, whose implication for undocumented college students continues to be a matter of intense local debate. This section explains how the interpretive processes in this study may have advanced our understanding of meaning-creation processes in current immigration and alienage policy.

The interaction of perceptions, ideologies, and contextual factors. This study contributed to understanding how cultural, contextual, and political considerations interact in decision-making processes of immigration and alienage policy. The enactment of Colorado HB 06S-1023 occurred in a context of intense public apprehension regarding the changes of immigration rates in the state. It implemented restriction and verification regulations for applicants of public benefits as a response to growing concerns of the

impact of a larger population of undocumented immigrant in the state. On the surface, these views borrowed from anecdotal accounts, formal reports, and legal provisions. On a deeper level, the dynamics that defined this policy were supported by cultural and ideological principles.

As reported in the review of literature in Chapter Two, immigration policymaking interacts with social constructions of immigrants (Aldana, 2007b; Chock, 1995; Ingram & Schneider, 2005; Johnson, 1996; Newton, 2005) in contexts of economic recession (Boggioni, 2009; West, 2010) and political or social changes (Connolly, 2005; Curran, 1998; Marmora, 2002; Schrag, 2010). In addition to the influence of perceptions of the target population, cultural and ideological constructs also infiltrate the argumentation in the policy. These ideological concepts reaffirm the cultural identity of the dominant constituency in both restrictive and inclusive legislation.

This study confirmed that negative perceptions of undocumented immigrants continue to permeate the narrative of restrictive policies. Textual and interpretive analyses of the data identified references to undocumented immigrants that negatively associated them with excessive social and economic costs to the state. Undocumented immigrants were also thought to be taking the jobs of more deserving members and thus affecting them in the job market. In general, the social constructions of undocumented immigrants were directed to low-skilled, Hispanic workers entering the country through the southern border. As these views were activated in the context of a national economic recession and a transition in the political environment of the state, they effectively triggered anti-immigration feelings.

Although scholars and policy critics have warned that statistical references can be inconsistent and unsubstantiated (Burke, 2007; Espenshade, 1995; Espenshade et al., 1997; Wadsworth, 2010), these sources of information still have a crucial function in policymaking processes (Cassiman, 2006; Ingram & Schneider, 2005; Newman, 2005). Thus, the effect of undocumented immigrants in Colorado looks stark (Center for Immigration Studies, 2007) or promising (Bell Policy Center, 2006; Cato Institute, 2009) depending on the interpretation by the reporting agency. The restrictive approach in Colorado alienage policy relied on alarming reports and accounts about the adverse social and economic effects of unauthorized immigration in the state. These reports were, at times, included in the discourse of the policies (IHB 06-1134; ISB06S-009).

Scholars and commentators have reported that American immigration history defies consistency (Boggioni, 2009; Schrag, 2010; West, 2010). The ambivalence that characterizes American immigration legislation is often related to contextual factors (Bosniak, 2006; Mármora, 2002; Schrag, 2010) or demographics in the immigration population (Aldana, 2007b; Boggioni, 2009; Salinas, 2006) as well as the decentralized makeup of the policymaking system (West, 2010). While these factors continue to play a role in immigration legislation, the influence of ideological or philosophical principles appears to be a tacit, yet inherent component to the process.

The meaning of membership for undocumented college students. This study confirmed that the debate regarding access to in-state tuition benefits by undocumented students is rooted in conflicting considerations of membership status for these students. These differences are intrinsic to the state's understanding of membership rights, and

relate to considerations of preferential or equal treatment, legal and ethical obligations, as well as basic and non-essential public assistance.

The analyses of the federal and state texts showed that undocumented students can be viewed either as unlawful immigrants or as participating members in their communities. The legislative approaches to this issue vary depending on whether postsecondary educational benefits for undocumented high-school graduates are seen as preferential treatment or equitable educational opportunity. Legislation restricting the provision of the benefit, as Colorado HB 06S-1023, argues that conceding these students access to in-state tuition on residence basis constitutes preferential treatment for them over more deserving members, namely, citizen or legal residents. Conversely, Texas and California based their inclusionary legislation on an affirmation of democratic principles of equal access and educational opportunities for student residents. In both cases, the argumentation was based, in part, on the state's interpretation of the federal provisions in 8 U.S.C. §1623.

The debate on membership rights for undocumented immigrants also concerns the distinctions between the domains of moral and legal obligations. From the perspective of immigration law, the right of the nation-state to determine who to admit and reject into the country seems unobjectionable. From the perspective of alienage law, the decision of a state to exclude undocumented immigrants from social, economic, and personal benefits appears to “contravene the egalitarian norms to which liberal democratic societies claim to adhere” (Bosniak, 2006, p. 37). The case of undocumented students in Colorado illustrates this tension. The restrictive policies in HB 06S-1023 conflated the meaning of moral-legal obligations and interpreted that legal requirements of territorial

presence preceded considerations of solidarity and personhood about these immigrant students.

The distribution of educational subsidies to undocumented students in Colorado illustrates how the state grants the right to this public benefit based on the meaning of the benefit itself. Colorado interprets that basic public education is mandated and guaranteed per *Plyler v Doe* but considers that subsidized college education is a non-essential benefit and thus a privilege determined by the applicant's legal status. According to West (2010), Americans are less supportive of extending education rights to older undocumented students. For example, about 50 percent of the public support public high-school education for undocumented children, while “[p]opular support drops precipitously when it comes to access to higher education” (West, 2010, p. 104). Public willingness to support emergency health care rather than education for undocumented students suggests that Colorado views higher education as a private good and a privilege of certain members of the society.

The challenge of new developments of human migration in an interconnected society. Colorado HB 06S-1023 symbolizes the convergence of immigration and alienage law. The enactment of this restrictive policy also represents a traditional approach to controlling the development of a social issue that is believed to affect the state's society. The presence of undocumented immigrants in the society is regarded as a problem that is controllable by restriction and verification measures. This is a positivist approach to managing developing social issues and is embedded in a nationalistic and nativist ideology. Benhabib (2004) compared the incongruity of applying traditional, normative approaches to resolving new demographic developments in a globalized

society to “navigating an unknown terrain with the help of old maps, drawn at a different time and in response to different needs” (p.6).

The situation in which undocumented resident aliens find themselves is of concern in the context of a rise in transnational immigration that is propelled by globalization forces. Postpositivists approaches to the development of these social movements acknowledge the relevancy of the concept of global citizenship in a context of growing permeability of national borders (Benhabib, 2004; Bosniak, 2006; Marmora, 2002; Walzer, 1983; West, 2010). The issue regarding membership rights for undocumented immigrants calls for considerations of global justice and the reaffirmation of solidarity and hospitality rights. Undocumented immigrants are caught between the economic imbalances and social disparities in their countries of origin and in the receiving communities (Agamben, 1998, 2000, 2005; Marmora, 2002; Ottonelli, 2002; West, 2010). Once in the new communities, these immigrants find themselves categorized as members of an out-group, and this makes them disenfranchised members (Sidanius & Pratto, 1993). In this way, the exclusion of undocumented immigrants from the political community grants them the status or condition of the *modern metic resident* (Walzer, 1983). That is, these are resident aliens who contribute to the state’s communities; yet, they are excluded from “boundaries of responsibility and boundaries of belonging” (Bosniak, 2006, p.140).

Recommendations and Final Reflections

This research project was designed with the purpose of understanding the meaning of Colorado HB 06S-1023 as a policy artifact. Specifically, the project sought to explore the narratives that explained the denial of postsecondary education benefits to

undocumented high-school graduates in the state. The research endeavor included an extensive review of literature on these topics and the interpretation of related policy texts, all of which contributed a broader understanding of the issues. The literature showed that similar studies focused on the legalistic aspects of the policy texts. This study added an interpretive approach to the exploration of the policy narratives. From this interpretation, three recommendations are advanced. First, there is a need to educate the general public on the social issue of immigration and transnational migration in the context of a global society. Second, it is ethically prudent to reconceptualize the degrading image of undocumented immigrants as residents of these communities who *want* to become members. Finally, there is a need to open the public space for a more holistic, legal and social approach to adapting to the migration developments in an increasingly unbounded or deterritorialized environment.

The literature review provided insights on the myths and misunderstandings that abound regarding undocumented immigrants. The interpretation of the policy narratives in this study corroborated the influence of public perceptions on policymaking processes. Given that policymaking feedbacks from previous policies and interacts with established social constructions (Ingram & Schneider, 2005), there is a need to approach the subject of undocumented immigrants' contributions in our societies more directly and challenge the effect of negative perceptions and political opportunity in our understanding of this social issue. One important medium of communication is the media. As West (2010) noticed, the dissemination of the dominant narrative against undocumented immigrants has been a direct influence of mainstream media coverage. It is necessary that communication channels join in the effort to include rather than isolate these residents

from community life. These immigrants have established strong ties with their communities and are to remain in these communities (Aldana, 2007b; Boggioni, 2009; Bell Policy Center, 2005)

The image of the immigrant and, specifically, of resident aliens has deteriorated following the aftermath of 9/11 and the subsequent economic recession of the new century. The idea of reconceptualizing the image of the immigrant has been suggested in the context of attracting a *brain gain* for the country (West, 2010; Zakaria, 2008). I suggest that we turn to the resident aliens who are already here and provide them with the means to become the *brain gain* that this country is seeking. Undocumented college students are currently deprived of the opportunity to fulfill their potential and fully participate in the society of the country they have adopted.

This study can be replicated in other contexts as well. The passing of Arizona SB 1070 in 2010 lends itself to an interpretation of the principles that framed such controversial policy. My study interpreted inclusionary legislation enacted in two major immigrant-receiving states, Texas and California. Arizona and Florida, which are also immigrant-receiving states, have responded to their immigrant populations with restrictive legislation. Fowler (2004) suggested that each state shows a way of policymaking that reflects particular beliefs as well as political processes. Regarding public views on immigration, West (2010) indicated that population constitution also has an effect on the integration of immigrants. For example, younger people tend to be more supportive of legalization for immigrants; however, the preference declines with older residents. Arizona residents' views of their immigrant population may reflect ideologies underlying their restrictive policies.

The case of Colorado undocumented college students can also be approached using Critical Race Theory and Latino Critical Theory as an interpretive framework (Aldana, 2007a; Lopez, 2010). Lopez (2010) utilized these theories in her ethnographic research on the case of North Carolina undocumented college students. These theories are appropriate to interpret the experiences of the Colorado students as well, since most of them are Hispanic students of Mexican descent (Bell Policy Center, 2005).

Colorado HB 06S-1023 affects the social lives of adult alien residents who, if not identified or deported, will remain in the shadows of their communities, submerged by restricted access to health services, employment rights, and further education. Given the current restrictions imposed on postsecondary education subsidies, undocumented high-school graduates can aspire to do menial jobs that their college educated peers would unlikely claim. As a final reflection, I close this project with an eloquent description by Zakaria (2008) regarding the way immigrants contribute to this country's promise:

America has found a way to keep itself constantly revitalized by streams of people who are looking to make a new life in a new world. These are the people who work long hours picking fruit in searing heat, washing dishes, building houses, working night shifts, and cleaning waste dumps. They come to the United States under terrible conditions, leave family and community, only because they want to work and get ahead in life...these immigrants have gone on to become the backbone of the American working class, and their children or grandchildren have entered the American mainstream. (p.199)

Conclusion

This chapter related the analysis and interpretation reported in Chapter Four to the overarching research question and additional sets of questions. The discussion included insights from the literature. A metanarrative was then derived from the interpretations of the data and related to contrasting considerations that explained the treatment of undocumented immigrants in Colorado.

Next, the chapter addressed the significance of the study regarding the method of inquiry and in reference to current literature on the issue of immigration policymaking and undocumented immigrants. Three aspects were selected and summarized as significant contributions of the study: (a) the interaction of perceptions, ideologies, and contextual factors in immigration and alienage policy, (b) the meaning of membership for undocumented college students, and (c) the challenge of new developments of human migration in an interconnected society.

The chapter concluded with general recommendations, suggestions for further research, and a final reflection. The immediate implications of the study suggest the role of educating the public on these issues with the purpose of reconceptualizing the image of the undocumented immigrant. Regarding further research, the researcher suggested the replication of the study on the recently enacted Arizona SB 10-1070, which, at the time of this writing, is the focus of intense discussion for its restrictive features. The use of an interpretive methodology on that policy text may reveal the principles that underlie it or the ideologies that framed it. Another approach to the present study can be done by using a framework based on Critical Race Theory and Latino Critical Theory as most Colorado undocumented students affected by Colorado HB 06S-1023 are Hispanic, of Mexican

descent. The chapter closed with a quote by Zakaria (2008) regarding the contributions of immigrants to this country.

REFERENCES

- Agamben, G. (1998). *Homo sacer: Sovereign power and bare life*. (D. Heller-Roazen, Trans.) Stanford, CA: Stanford University Press.
- Agamben, G. (2000). *Means without ends: Notes on politics*. (V. Binetti & C. Casarino, Trans.) Minneapolis, MN: University of Minnesota Press.
- Agamben, G. (2005). *State of exception*. (K. Atell, Trans.). Chicago, IL: University of Chicago Press.
- Aldana, R. E. (2007a). The subordination and anti-subordination story of the U.S. experience in the 21st century. *Nevada Law Journal*, 7, 713-735.
- Aldana, R. E. (2007b). On rights, federal citizens, and the "alien." *Washburn Law Journal*, 46, 263-308.
- Altbach, P. G. (2005). Patterns in higher education development. In P. G. Altbach, R. O. Berdahl, & P. J. Gumpert (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 15-37). Baltimore, MD: The Johns Hopkins University Press.
- Altheide, D., Coyle, M., DeVriese, K., & Schneider, C. (2008). Emergent qualitative document analysis. In S. N. Hesse-Biber & P. Leavy (Eds.), *Handbook of emergent methods* (pp. 127-151). New York, NY: The Guilford Press.
- Anfara, V. A., Brown, K. M., & Mangione, T. L. (2002). Qualitative analysis on stage: Making the research process more public. *American Educational Research Association*, 31 (7), 28-38.
- Annand, K. (2008). Still waiting for the DREAM: The injustice of punishing undocumented immigrant students. *Hastings Law Journal*, 59, 683-709.
- Attride-Stirling, J. (2001). Thematic networks: An analytic tool for qualitative research. *Qualitative Research*, 1(3), 385-405.
- Badger, E., & Yale-Loehr, S. (2002). Myths and realities for undocumented students attending U.S. colleges and universities. *The Journal of College Admission*, Winter 2002, 10-15.
- Badger, E., Yale-Loehr, S., Vernon, M., & Schoonmaker, L. (2005). Undocumented students and eligibility for enrollment at U.S. colleges and universities. Retrieved November 17, 2007 from http://www.nafsa.org/_admissions_wrapup_newsletter_9.pdf

- Bell Policy Center. (2005). Undocumented immigrant students and access to higher education: An overview of federal and state policy. Denver, CO: Bell Policy Center.
- Bell Policy Center. (2006). State and local taxes paid in Colorado by undocumented immigrants. Denver, CO: Bell Policy Center.
- Bell Policy Center. (2007). Immigration issues: Immigration and education. Denver, CO: Bell Policy Center.
- Bell Policy Center. (2008). Legislative status report. Denver, CO: Bell Policy Center.
- Benhabib, S. (2004). *The rights of others: Aliens, residents, and citizens*. Cambridge, UK: Cambridge University Press.
- Berdahl, R. O., Altbach, P. G., & Gumport, P. J. (2005). The contexts of American higher education. In P. G. Altbach, R. O. Berdahl, & P. J. Gumport (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 1-11). Baltimore, MD: The Johns Hopkins University Press.
- Blue Ribbon Panel. (2003). *Final report of the Governor's Blue Ribbon Panel on Higher Education for the 21st Century*. Denver: Colorado Commission on Higher Education.
- Boggioni, J. A. (2009). Comment: Unofficial Americans - What to do with undocumented students: An argument against suppressing the mind. *The University of Toledo Law Review* 40, 453-486.
- Bosniak, L. (2006). *The citizen and the alien: Dilemmas of contemporary membership*. Princeton, NJ: Princeton University Press.
- Brooker, P. (1999). *A concise glossary of cultural theory*. New York, NY: Arnold.
- Burke, J. C. (Ed.) (2005). *Achieving accountability in higher education*. San Francisco, CA: Jossey-Bass.
- Burke, M. W. (2007). Reexamining immigration: Is it a local or national issue? 2007 Denver University Law Review Symposium: Immigration: Both sides of the fence. *Denver University Law Review* 84, 1075-1098.
- Cassiman, S. A. (2006). Of witches, welfare queens, and the disaster named poverty: The search for a counter-narrative. *The Journal of Poverty*, 10 (4), 51-66.
- Cato Institute. (2009). Restriction or legalization? Measuring the economic benefits of immigration reform. Washington, DC: Cato Institute.

- Center for Immigration Studies. (2007). *Immigrants in the United States: A profile of America's foreign-born population*. Washington, DC: Center for Immigration Studies.
- Chock, P. P. (1995). Ambiguity in policy discourse: Congressional talk about immigration. *Policy Sciences*, 28, 165-184.
- Civil Rights Act of 1964. PL 88-352. H.R. 7152, (July 2, 1964).
- Clayton-Pedersen, A., & Clayton-Pedersen, S. (2008). "Making excellence inclusive" in education and beyond. *Pepperdine University of Law School Review*, 35, 611-647.
- Coffey, A., & Atkinson, P. (1996). *Making sense of qualitative data*. Thousand Oaks, CA: Sage.
- Colorado Commission on Higher Education. (2004). *The college opportunity fund: background and history*. Denver: Colorado Author.
- Colorado Community College System Enrollment Summit. (2006). *Addressing the Colorado paradox: Student access and success in the Colorado Community College System*. Denver: Colorado Author.
- Colorado Department of Higher Education. (2008). Archived new requirements for FY 2008 and Prior. Retrieved from <http://highered.Colorado.gov>
- Connolly, K. A. (2005). Comment: In search of the American dream: An examination of undocumented students, in-state tuition, and the Dream Act. *The Catholic Law Review*, 55, 193-225.
- Crotty, M. (1998). *The foundations of social research: Meaning and perspective in the research process*. London, UK: Sage.
- Curran, M. R. (1998). Flickering lamp beside the golden door: Immigration, the constitution, and undocumented aliens in the 1990's. *Case Western Reserve Journal of International Law*, 30, 58-142.
- Day v. Sebelius, 376 F. Supp. 2d at 1025 (D.Kan.2005).
- Delaney, E. F. (2007). In the shadow of article I: Applying a dormant commerce clause to state laws regulating aliens. *New York University Law Review*, 82, 1821.
- Denzin, N. K., & Lincoln, Y. S. (Eds.) (2000). *Handbook of qualitative research*. London, UK: Sage.
- Department of Law. (2006). *State of Colorado, Department of Law formal opinion of Attorney General No 06-01*. Denver: State of Colorado

- Department of Law. (2007a). *State of Colorado, Department of Law formal opinion of Attorney General No 07-03*. Denver: State of Colorado.
- Department of Law. (2007b). *State of Colorado, Department of Law formal opinion of Attorney General No 07-07*. Denver: State of Colorado.
- Department of Revenue. Division of Motor Vehicles. New Residents. Denver: State of Colorado. Retrieved from www.colorado.gov/revenue
- Dowd, A. C. (2003). From access to outcome equity: Revitalizing the democratic mission of the community college. In K. M. Shaw & J. A. Jacobs (Eds). *Community colleges: New environments, new directions* (pp. 92-116). *The Annals of the American Academy Political and Social Science*.
- Engle, K. (2008). The political economy of the state and local immigration regulation: Comments on Olivas and Hollifield, Hunt and Tichenor. *SMU Law Review*, 61, 159-170.
- Equal Access Education v. Merten, 325 F Supp 2d 655, (E D Va. 2004).
- Eskridge Jr., W. N. (1990). Gadamer/statutory interpretation. *Columbia Law Review*, 90, 609-681.
- Espenshade, T. J. (1995). Unauthorized immigration to the United States. *Annual Review of Sociology*, 21, 195-216.
- Espenshade, T. J., Baraka, J. L., & Huber, G. A. (1997). Implications of the 1996 Welfare and Immigration Reform Acts for US immigration. *Population and Development Review*, 23 (4), 769-801.
- Fischer, F., Miller, G. J., & Sidney, M. S. (Eds.) (2007). *Handbook of public policy analysis: Theory, politics, and methods*. Boca Raton, FL: CRC Press.
- Fowler, F. C. (2004). *Policy studies for educational leaders. An introduction*. Upper Saddle River, NJ: Pearson Merrill Prentice Hall.
- Fragomen Jr., A. T. (1997). The illegal immigration reform and immigrant responsibility act of 1996: An overview. *International Migration Review*, 31 (2), 438-460.
- Frank, W. (2006). 9/11 changed [not quite] everything: The post 9/11 ability of states to admit illegal immigrant to state universities. *Southwestern Journal of Law and Trade in the Americas*, 13, 135-159.
- Front Range Community College Self-Study. (2008). Denver, CO: Front Range Community College.

- Fung, J. (2007). Pushing the envelope on higher education: How states have coped with federal legislation limiting postsecondary education benefits to undocumented students. *Whittier Journal of Child and Family Advocacy*, 6, 415-435.
- Gadamer, H. G. (1960). *Truth and method*. New York, NY: Seabury Press.
- Gehring, J. (2002). Higher education vouchers. *Education Week*, 22 (1), 1-22.
- Geiger, R. L. (2005). The ten generations of American higher education. In P. G. Altbach, R. O. Berdahl, & P. J. Gumpert (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 38-70). Baltimore, MD: The Johns Hopkins University Press.
- Gladieux, L. E., King, J. E., & Corrigan, M. E. (2005). The federal government and higher education. In P.G. Altbach, R. O. Berdahl, & P. J. Gumpert (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 163-197). Baltimore, MD: The Johns Hopkins University Press.
- Grondin, J. (2002). Gadamer's basic understanding of understanding. In R. J. Dostal (Ed.), *The Cambridge companion to Gadamer* (pp. 36-51). Cambridge, UK: Cambridge University Press.
- Grubb, W. N., Badway, N., & Bell, D. (2003). Community colleges and the equity agenda: The potential of noncredit education. In K. M. Shaw & J. A. Jacobs (Eds.), *Community colleges: New environments, new directions* (pp. 218-240). *The Annals of the American Academy of Political and Social Science*.
- Guba, E. G., & Lincoln, Y. S. (2005). Paradigmatic controversies, contradictions, and emerging confluences. In N. K. Denzin, & Y. S. Lincoln (Eds.), *The Sage handbook of qualitative research*, 3rd ed. (pp. 191-215). Thousand Oaks, CA: Sage.
- Gutek, G. L. (1972). *A history of the western educational experience*. New York, NY: Random House.
- Hampton, G. (2009). Narrative policy analysis and the integration of public involvement in decision making. *Policy Science*, (42), 227-242.
- Harbour, C. P. (2006). The incremental marketization and centralization of state control of public higher education: A hermeneutic interpretation of legislative and administrative texts. *International Journal of Qualitative Methods* 5 (3), 2-14.
- Harbour, C. P., & Lewis, C. W. (2004). Grutter v. Bollinger and the community college. *Academic Exchange*, 169-177.

- Harbour, C. P., Davies, T. G., & Lewis, C. W. (2006). Colorado's voucher legislation and the consequences for community colleges. *Community College Review*, 33(3-4), 1-18.
- Harvard Law Review. (2002). Recent legislation. Immigration law. Education. California extends instate tuition benefits to undocumented aliens. Act relating to public postsecondary education, ch. 814, 2001 Cal. Adv. Legis. Serv. 5122 (Deering) (Codified at Cal. Educ. Code § 68130.5 (Deering Supp. 2002)). *Harvard Law Review*, 115 (5), 1548-1554.
- Hearn, J. C. (2001). The paradox of growth in federal aid for college students, 1965-1990. In M. B. Paulsen & J. C. Smart (Eds.), *The finance of higher education: Theory, research, policy & practice* (pp. 267-320). New York, NY: Agathon Press.
- Hendricks, C. M. (2005). Participatory storylines and their influence on deliberative forums. *Policy Sciences*, 38 (1), 1-20.
- Horwedel, D. M., & Asquith, C. (2006). For illegal college students, an uncertain future. *Diverse: Issues in Higher Education*, 23 (6), 22-26.
- Holman, C. H., & Harmon, W. (1986). *A handbook to literature*. New York, NY: Macmillan Publishing Company.
- Holstein, J. A., & Gubrium, J. F. (2005). Interpretive practice and social action. In N. K. Denzin & Y. S. Lincoln (Eds.), *The Sage handbook of qualitative research*, 3rd ed. (pp. 483-505). Thousand Oaks, CA: Sage.
- Huang, K. Y. (2007). Reimagining and redefining the dream: A proposal for improving access to higher education for undocumented students. *Seattle Journal for Social Justice, Fall-Winter* 6, 431-465.
- Huber, L. P., & Malagon, M. C. (2007). Immigration: Silenced struggles: The experiences of Latino and Latina undocumented college students in California. *Nevada Law Journal*, 7, 841-861.
- Immigration and Nationality Act of 1990, P.L. 101-649, 104 Stat. 4978, Nov. 29, 1990.
- Ingram, H. M., & Schneider, A. L. (2005). Introduction: Public policy and the social construction of deservedness. In A. L. Schneider & H. M. Ingram (Eds.), *Deserving and entitled: Social constructions and public policy* (pp. 1-28). Albany, NY: State University of New York Press.
- Jackson, P. T. (2006). Making sense of making sense: Configurational analysis and the double hermeneutics. In D. Yanow & P. Schwartz-Shea (Eds.), *Interpretation and method: Empirical research methods and the interpretive turn* (pp. 264-280). Armonk, NY: M.E. Sharpe.

- Janosik, S. M., & Johnson, A. T. (2007). Undocumented students and access to public higher education: Legislative acrimony, confusion, and stagnation. *Virginia Issues & Answers*, 14 (1), 24-31.
- Johansen, J. H., Collins, H. W., & Johnson, J. A. (1975). *American education: The task and the teacher*. Dubuque, IO: WM.C. Brown Company Publishers.
- Johnson, K. R. (1996). Aliens and the U.S. immigration laws: The social and legal constructions of non-persons. *The University of Miami Inter-American Law Review*, 28, 263-292.
- Johnson, R. B. (1997). Examining the validity structure of qualitative research. *Education*, 118 (2), 282-292.
- Kaplin, W. A., & Lee, B. A. (2006). *The law of higher education* (4th ed.). San Francisco, CA :Jossey-Bass.
- Klein, J. (2007, December 10). Immigration: the hottest button. *Time*, 170, (24), 33.
- Kobach, K. W. (2006). Immigration nullification: In-state tuition and lawmakers who disregard the law. 2006-2007 New York Journal of Legislation and Public Policy Symposium: Immigration reform: Balancing enforcement and integration. *New York University Journal of Legislation and Public Policy*, 10, 473-523.
- Labaree, D. F. (1997). *How to succeed in school without really learning: The credentials race in American education*. New Haven, CT: Yale University Press.
- Lamm, R. D. (2007). Immigration: The ultimate environmental issue. 2007 Denver University Law Review Symposium: Immigration: Both sides of the fence. *Denver University Law Review*, 84, 1003-1015.
- Lazos Vargas, S. R. (2007). LatCrit XI working and living in the global playground: Frontstage and backstage: Emerging Latina/o nation and anti-immigrant backlash. *Nevada Law Journal*, 7, 685-712.
- Lincoln, Y. S. (1985). Establishing trustworthiness. In Y. S. Lincoln, *Naturalistic inquiry*, (pp. 289-331). Beverly Hills, CA: Sage Publications.
- Lopez, J. K. (2010). *Undocumented students and the policies of wasted potential*. El Paso, TX: LFB Scholarly Publishing LLC.
- Mármora, L. (2002). *Las políticas de migraciones internacionales*. Buenos Aires, Argentina: Paidós.
- Martinez v. Bynum, 461 U.S. 321 (1983).
- Martinez v. Regents of the U. of Cal., No. CV 05-2064 (Cal. Super. Ct. Jan. 31, 2006).

- Maxwell, J. A., & Miller, B. A. (2008). Categorizing and connecting strategies in qualitative data analysis. In S. N. Hesse-Biber & P. Leavy (Eds.), *Handbook of emergent methods* (pp. 461-477) New York, NY: The Guilford Press.
- McCarthy, B. A. (2004). Colorado passes higher education voucher program. *Academe*, 90 (5), 9-10.
- McGuinness Jr., A.C. (2005). The states and higher education. In P. G. Altbach, R. O. Berdahl, & P. J. Gumpert (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 198-225). Baltimore, MD: The Johns Hopkins University Press.
- McKanders, M. K. (2007). Welcome to Hazleton! “illegal” immigrants beware: Local immigration ordinances and what the federal government must do about it. *Loyola University Chicago Law Journal*, 39, 1-48.
- McMathon, W. (2009). *Higher learning, greater good*. Baltimore, MC: The Johns Hopkins University Press.
- Merriam, S. B. (1998). *Qualitative research and case study applications in education*. San Francisco, CA: Jossey-Bass.
- Merriam, S. B. (2002a). Assessing and evaluating qualitative research. In S. B. Merriam (Ed.), *Qualitative research in practice* (pp. 18-33). San Francisco, CA: Jossey-Bass.
- Merriam, S. B. (2002b). Introduction to qualitative research. In S. B. Merriam (Ed.), *Qualitative research in practice* (pp. 3-17). San Francisco, CA: Jossey-Bass.
- Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis*. 2nd ed. Thousand Oaks, CA: Sage.
- Mills, C. (2008). *The philosophy of Agamben*. Montreal & Kingston, Canada: McGill-Queen’s University Press.
- Morinaka, B. S. (2007). Higher education U.S. immigration: Legal and policy implications post 9/11. Unpublished Doctoral Dissertation. University of Nebraska.
- Mumper, M. (2001). State efforts to keep public colleges affordable in the face of fiscal stress. In M. B. Paulsen & J. C. Smart (Eds.), *The finance of higher education: Theory, research, policy & practice* (pp. 321-354). New York, NY: Agathon Press.
- National Center for Public Policy and Higher Education. (2004). *The educational pipeline policy alert*. Retrieved November 1, 2007 from <http://www.highereducation.org/reports/pipeline/CO/CO-b.pdf>

- Newton, L. (2005). "It is not a question of being anti-immigration": Categories of deservedness in immigration policymaking. In A. L. Schneider & H. M. Ingram (Eds.), *Deserving and entitled: Social constructions and public policy* (pp. 139-167). Albany, NY: State University of New York Press.
- Olivas, M. A. (1986). Plyler v. Doe, Toll v. Moreno, and postsecondary admissions: Undocumented adults "enduring disability." *Journal of Law and Education*, 15 (1), 19-55.
- Olivas, M. A. (1995). Storytelling out of school: Undocumented college residency, race, and reaction. *Hastings Constitutional Law Quarterly*, 22, 4, 1019-1027.
- Olivas, M. A. (2004). IIRIRA, the Dream Act, and undocumented college student residency. *The Journal of College and University Law*, 30 (2), 435-464.
- Olivas, M. A. (2007). Immigration-related state and local ordinances: Preemption, prejudice, and the proper role of enforcement. *The University of Chicago Legal Forum*, 27-56.
- Olivas, M. A. (2008). Lawmakers gone wild? College residency and the response to professor Kobach. *SMU Law Review*, 61, 99-132.
- Ottonelli, V. (2002). Immigration: What does global justice require? In N. Dower, & J. Williams (Eds.), *Global citizenship: A critical introduction* (pp.231-243). New York, NY: Routledge.
- Packer, M. J., & Addison, R. B. (1989). Evaluating an interpretive account. In M. J. Packer & R. B. Addison (Eds.), *Entering the circle: Hermeneutic investigation in psychology* (pp. 275-292). Albany, NY: State University of New York Press.
- Palmer, J. C. (1996). Community college in an era of consolidation. In D. S. Honeyman, J. L. Wattenbarger, & K. C. Westbrook (Eds.), *A struggle to survive. Funding higher education in the next century* (pp. 187-228). Thousand Oaks, CA: Corwin Press, Inc.
- Parlow, M. (2007). A localist's case for decentralizing immigration policy. 2007 Denver University Law Review Symposium: Immigration: Both sides of the fence. *Denver University Law Review* 84, 1061-1073.
- Patton, M. Q. (2002). *Qualitative research & evaluation methods*. (3rd ed.). Thousand Oaks, CA: Sage.
- Paulsen, M. B. (2001). The economics of the public sector: The nature and role of public policy in the finance of higher education. In M. B. Paulsen & J. C. Smart (Eds.), *The finance of higher education: Theory, research, policy & practice* (pp. 95-1324). New York: Agathon Press.

- Peräkylä, A. (2005). Analyzing talk and text. In N. K. Denzin, & Y. S. Lincoln (Eds.), *The Sage handbook of qualitative research*, 3rd ed. (pp.869-886). Thousand Oaks, CA: Sage.
- Perry, A. M. (2006a). Substantive members should receive financial aid. *Journal of Hispanic Higher Education* 5 (4), 195-216.
- Perry, A. M. (2006b). Toward a theoretical framework for membership: The case of undocumented immigrants and financial aid for postsecondary education. *The Review of Higher Education* 30 (1), 21-40.
- Pew Hispanic Center. (2005). Unauthorized migrants: Numbers and characteristics. Washington, DC: Pew Hispanic Center.
- Pew Hispanic Center. (2006). 2006 Demographic fact sheet. Washington, DC: Pew Hispanic Center.
- Pew Hispanic Center. (2009). A portrait of unauthorized immigrants in the United States. Washington, DC: Pew Hispanic Center.
- Plyler v. Doe. 457 U.S. 202 (1982).
- Prasad, P. (2005). *Crafting qualitative research: Working in the postpositivist traditions*. Armonk, NY: M.E. Sharpe.
- Protopsaltis, S. (2006). The Colorado voucher system: Implications for higher education, *College and University*, 81 (2), 45-48.
- Rincón, A. (2005). Paying for their status: Undocumented immigrant students and college access. Unpublished Doctoral Dissertation. The University of Texas at Austin.
- Robinson, J. (2006). In-state tuition for undocumented students in Utah. *Policy Perspectives*, 2 (3). University of Utah: The Center for Public Policy & Administration. Retrieved February 25, 2008 from http://www.imakenews.com/cppa/e_article000537980.cfm?x=b11,0,w
- Rocky Mountain News. (2006a). New era for Colorado: Owen puts pen to tough immigration bills aimed at identifying legal citizens. Report by Myung Oak Kim. August 1. Retrieved February 25, 2008 from http://www.rockymountainnews.com/drmn/government/article/0,2777,DRMN_23906_4885028,00.html
- Rocky Mountain News. (2006b). New immigration law has price for agencies. Report by April M. Washington. September 19. Retrieved February 25, 2008 from http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5004636,00.html

- Rocky Mountain News. (2007). N.M. college doors open for undocumented. Report by Associated Press. July 16. Retrieved February 25, 2008 from http://www.rockymountainnews.com/drmn/local/article/0,1299,DRMN_15_5631167,00.html
- Rodriguez, C. M. (2008). The significance of the local in immigration regulation. *Michigan Law Review*, 106, 567-642.
- Roe, E. (1994). *Narrative policy analysis: Theory and practice*. Durham, NC: Duke University Press.
- Romero, V. C. (2002). Postsecondary school education benefits for undocumented immigrants: promises and pitfalls. *North Carolina Journal of International Law and Commercial Regulation*, 27, 393-418.
- Ruge, T. R., & Iza, A. D. (2005). Higher education for undocumented students: The case for open admission and in-state tuition rates for students without lawful immigration status. *Indiana International and Comparative Law Review*, 15, 257-278.
- Salinas, V. J. (2006). Comment: 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. *Houston Law Review*, 43, 847-877.
- Salsbury, J. (2003). Comments. Evading “residence”: Undocumented students, higher education, and the states. *American University Law Review*, 53, 459-490.
- Schneider, A., & Ingram, H. (1993). Social constructions of target populations: Implications for politics and policy. *American Political Science Review*, 87, 334-347.
- Schrag, P. (2010). *Not fit for our society: Immigration and nativism in America*. Bekerly, CA: University of California Press.
- Schuck, P. H. (1984). The transformation of immigration law. *Columbia Law Review*, 84, 1-90.
- Schuck, P. H. (2007). Immigration law and policy: Taking immigration federalism seriously. *The University of Chicago Legal Forum*, 57-92.
- Schwandt, T. A. (2000). Three epistemological stances for qualitative inquiry: Interpretivism, hermeneutics, and social constructionism. In N. K. Denzin & Y. S. Lincoln (Eds.), *Handbook of qualitative research* (pp. 189-214). London, UK: Sage.

- Schwandt, T. A. (2004). Hermeneutics: A poetics of inquiry versus a methodology for research. In H. Piper & I. Stronach (Eds.), *Educational research: Difference & diversity* (pp. 31-44). Burlington, VT: Ashgate Publishing Company.
- Schwartz-Shea, P. (2006). Judging quality. Evaluative criteria and epistemic communities. In D. Yanow & P. Schwartz-Shea (Eds.), *Interpretation and method: Empirical research methods and the interpretive turn* (pp. 89-113). Armonk, NY: M.E.Sharpe.
- Shank, G. D. (2002). *Qualitative research: A personal skills approach*. Upper Saddle, NJ: Merrill Prentice Hall.
- Shapiro, M. J. (1997). Winning the west, unwelcoming the immigrant: Alternative stories of "America." In S. F. Schram & P. T. Neisser (Eds.), *Tales of the state: Narrative in contemporary U.S. politics and public policy* (pp. 17-26). Lanham, MD: Rowman & Littlefield Publishers, Inc.
- Sharron, J. (2007). Passing the Dream Act: Opportunities for undocumented Americans. *Santa Clara Law Review*, 47, 599-543.
- Sidanius, J., & Pratto, F. (1993). The inevitability of oppression and the dynamics of social dominance. In P. M. Sniderman, P. E. Tetlock, & E. G. Carnines (Eds.), *Prejudice, politics and the American dilemma* (pp. 173-211). Stanford, CA: Stanford University Press.
- Slaughter, S., & Rhoades, G. (2005). Markets in higher education. In P. G. Altbach, R. O. Berdahl, & P. J. Gumpert (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 486-516). Baltimore, MD: The Johns Hopkins University Press.
- Smith, P. (2004). *The quiet crisis*. Bolton, MA: Anker Publishing Company, Inc.
- Sniderman, P. M., Tetlock, P. & Carmines, E. G. (Eds.) (1993). *Prejudice, politics, and the American dilemma*. Stanford, CA: Stanford University Press.
- Soltero, S. W. (2004). *Dual language: Teaching and learning in two languages*. Boston, MA: Pearson.
- Spring Day, K. (1998). The application of U.S. immigration laws to higher education. Unpublished Doctoral Dissertation. University of Central Florida.
- Steward, D. W. (1991). Immigration and higher education: The crisis and the opportunities. *Education Record*, 72 (4), 20-26.
- Straayer, John. (2007). Making policy in the dark: Colorado's 2006 special session on immigration. Unpublished manuscript. Retrieved September 10, 2010 from http://www.allacademic.com/meta/p176608_index.html

- Strauss, A., & Corbin, J. (1990). *Basics of qualitative research*. Newbury Park, CA: Sage.
- Stumpf, J. (2006). The crimmigration crisis: immigrants, crime, and sovereign power. *American Law Review*, 56, 367-419.
- The Constitution of the United States. (2002). Malta, ID: National Center for Constitutional Studies.
- The Denver Post (2009). Democrats to push in-state college tuition bill for undocumented students. Report by L. Bartels. Retrieved October 13, 2009 from http://www.denverpost.com/ci_13564576
- Thomas, W., & Collier, V. (2002). *A national study of school effectiveness for language minority students' long-term academic achievement final report: Project 1.1*. Center for Research on Education, Diversity and Excellence. Retrieved November 17, 2007 from http://www.crede.ucsc.edu/research/llaa/1.1._final.html
- Toll v. Moreno, 458 U.S. 1, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982).
- Tostado, M. A. (1998). Alienation: Congressional authorization of state discrimination against immigrants. *Loyola of Los Angeles Law Review*, 31, 1033-1067.
- Toutkoushian, R. K. (2001). The role of finances in student choice: A review of theory and research. In M. B. Paulsen & J. C. Smart (Eds.), *The finance of higher education: Theory, research, policy & practice* (pp. 11-38). New York, NY: Agathon Press
- Urban Institute. (2003a). Further demographic information relating to the Dream Act (October 21, 2003). The Urban Institute, Immigration Studies Program. January 28-29. Retrieved September 10, 2007 from www.urban.org
- Urban Institute. (2003b). U.S. immigration: Trends and implications for schools. The Urban Institute, Immigration Studies Program. January 28-29. Retrieved September 10, 2007 from www.urban.org
- Urban Institute. (2004). Immigration trends: A quick look at numbers. *Journal of Poverty Law and Policy*. September-October, 249-252.
- USA Today. (2006). Colorado passes bill to bar illegal immigrants from state benefits. Report by C. Jones. Retrieved February 25, 2008 from http://www.usatoday.com/news/nation/2006-07-11-colo-immigration_x.htm
- U.S. Congress. Hearing – Serial 110-28. (2007). *Comprehensive immigration reform: Impact of immigration on states and localities*. Washington, DC: U.S. Printing Office.

- U.S. Congress. Hearing – Serial 110-36. (2007). *Comprehensive immigration reform: The future of undocumented immigrant students*. Washington, DC: U.S. Printing Office.
- U.S. Congress. Senate. Development, relief, and education for alien minors act. (2003) 108th Congress, S 1545.
- van Eeten, M. M. J. (2007). Narrative policy analysis. In F. Fischer, G. J. Miller, & M. S. Sidney (Eds.), *Handbook of public policy analysis: Theory, politics, and methods* (pp. 251-269). Boca Raton, FL: CRC Press.
- Wadsworth, T. (2010). Is immigration responsible for the crime drop? An assessment of the influence of immigration in changes in violent crime between 1990 and 2000. *Social Science Quarterly*, 91 (2), 531-553.
- Wagenaar, H. (2007). Interpretation and intension in policy analysis. In F. Fischer, G. J. Miller, & M. S. Sidney (Eds.), *Handbook of public policy analysis: Theory, politics, and methods* (pp. 429-442). Boca Raton, FL: CRC Press.
- Walzer, M. (1983). *Spheres of justice*. New York, NY: Basic Books, Inc.
- Weissbrodt, D., & Danielson, L. (2005). *Immigration law and procedure*. St. Paul, MN: West Group.
- West, D. (2010). *Brain gain. Rethinking U.S. immigration policy*. Washington, D.C: Brookings Institution Press.
- Wilson, M. C. (2007). The economic causes and consequences of Mexican immigration to the United States. 2007 Denver University Law Review Symposium: Immigration: Both sides of the fence. *84 Denv. U.L. Rev.*, 1099-1120.
- Yanow, D. (1995). Practices of policy interpretation. *Policy Sciences* (28), 111-126.
- Yanow, D. (2000). *Conducting interpretive policy analysis. Qualitative Research Methods Series, 47*. Thousand Oaks, CA: Sage.
- Yanow, D. (2006a). Neither rigorous nor objective?: Interrogating criteria for knowledge claims in interpretive science. In D. Yanow & P. Schwartz-Shea (Eds.), *Interpretation and method: Empirical research methods and the interpretive turn* (pp. 67-88). Armonk, NY: M.E.Sharpe.
- Yanow, D. (2006b). Thinking interpretively: Philosophical presuppositions and the human sciences. In D. Yanow & P. Schwartz-Shea (Eds.), *Interpretation and method: Empirical research methods and the interpretive turn* (pp. 5-26). Armonk, NY: M.E.Sharpe.

- Yanow, D. (2007). Qualitative-interpretive methods in policy research. In F. Fischer, G. J. Miller, & M. S. Sidney (Eds.), *Handbook of public policy analysis: Theory, politics, and methods* (pp. 405-416). Boca Raton, FL: CRC Press.
- Yanow, D., & Schwartz-Shea, P. (Eds.) (2006). *Interpretation and method: Empirical research methods and the interpretive turn*. Armonk, NY: M.E.Sharpe.
- Your Show (2009). In-state tuition debate. In 9News, March 22, 2009. Retrieved March 15, 2009 from <http://www.9news.com/video/default.aspx?aid=74052#/In%2Dstate+tuiton+debate/491721>
- Zakaria, F. (2008). *The post-american world*. New York, NY: W.W. Norton & Company.
- Zusman, A. (2005). Challenges facing higher education. In P. G. Altbach, R. O. Berdahl, & P. J. Gumport (Eds.), *American higher education in the twenty-first century: Social, political, and economic challenges*, 2nd ed. (pp. 115-160). Baltimore, MD: The Johns Hopkins University Press.

APPENDIX A

Pre-Selected Colorado Documents

I. Passed Legislation

Passed bills are defined as those signed into law by the governor. Passed resolutions are those passed in the House and Senate chambers.

Year	Name & Number	Language
1997	Senate Bill 171	On assistance programs for immigrants.
1999	House Bill 1018	On prenatal care for undocumented aliens.
2002	House Joint Resolution 1071	On recognition of Colorado's Hispanic population.
2004	House Bill 1006	On the classification of a dependent of a member of the armed forces for purposes of determining in-state tuition.
	House Joint Resolution 1022	On making English the official language of the United States.
	Senate Bill 017	On alien eligibility requirements under Colorado Works Program.
2005	House Bill 1086	On reinstating Medicaid for legal immigrants.
	Senate Bill 158	On in-state tuition for military personnel.
2006	House Bill 1343	On ensuring that an illegal alien does not perform work on a public contract for services.
	Senate Bill 090	On local government cooperation with federal officials regarding the immigration status of persons in the state.
	Senate Bill 110	On the creation of fraudulent documents for the purpose of unlawfully establishing legal status.
2006 Summer	House Bill 1001	On requiring an employer to verify that it does not employ illegal immigrants in order to qualify for an economic development incentive.
	House Bill 1002	On the provision of health services for all persons in the case of communicable diseases.
	House Bill 1009	On a requirement that governmental entities issue authorizations only to persons who are lawfully present in the United States.
	House Bill 1014	On the recovery of federal reimbursement for costs to Colorado associated with illegal immigration.
	House Bill 1017	On documentation by an employer that demonstrates compliance with federal employment verification requirements.
	House Bill 1020	On the elimination of a state income tax benefit for a business that pays an unauthorized alien to perform labor services.
	House Bill 1022	On directing the State Attorney General to initiate a lawsuit to demand that immigration laws be enforced at the federal level.
	House Bill 1023	On the immediate implementation of restrictions on public benefits for persons eighteen years of age or older.
	Senate Bill 004	On prohibiting the extortion of immigrants.

2007	House Bill 1040	On legal process for persons who are not legally present in the country.
	House Bill 1313	On the evidence required before a person may be issued certain identity documents.
	House Bill 1314	On rules promulgated by the Department of Revenue applicable to persons who apply for public benefits.
	Senate Bill 148	On expanding simultaneous enrollment in secondary and postsecondary institutions.
2008	Senate Bill 079	On assigning in-state student classification to a student who is a United States citizen who has attended high school in Colorado for a specified period of time prior to the date the student received a secondary school certificate.
2009	House Bill 1063	On in-state student status to a child who moves to Colorado during the senior year of high school as a result of the child's legal guardian taking a job in the state.
	House Bill 1319	On concurrent enrollment of public high school students in courses offered by institutions of higher education.
	House Bill 1353	On legal immigrants' eligibility for public medical benefits.

II. Introduced Legislation

Introduced bills are defined as those bills voted down on the floor or proposals that remained pending. Introduced resolutions are those proposed in the House and Senate chambers.

Year	Name & Number	Language
1997	Senate Bill 032	On a meritbased grant program for qualified in-state students.
2003	House Bill 1135	On the education of children whose dominant language is not English.
	Senate Joint Resolution 030	On supporting President Bush's position on the University of Michigan's affirmative admissions policy.
2004	House Bill 1132	On in-state tuition for a student who has attended school in Colorado for a specified period of time as of the date the student receives a secondary school certificate.
	House Bill 1187	On an alien's ability to establish Colorado domicile for in-state tuition purposes.
	Senate Bill 194	On the requirement that a public entity treat people equally in the operation of certain public functions.
	Senate Bill 210	On the performance of the functions of immigration officers by state personnel.
2005	House Bill 1124	On in-state tuition regardless of immigration status.
	House Bill 1271	On the provision of services to persons legally present in the United States.
2006	House Bill 1062	On collecting citizenship data for public school students enrolled in K-12.
	House Bill 1082	On actions against the employer of an unauthorized alien for the tortious conduct of the unauthorized alien employee.
	House Bill 1101	On illegal aliens.
	House Bill 1131	On prohibiting posting bail for a defendant known to be illegally present in the United States.
	House Bill 1133	On the elimination of government practices that are permissive toward illegal immigration.
	House Bill 1134	On the enforcement of immigration laws by law enforcement agencies in Colorado.
2006 Summer	House Bill 1004	On the identification of documents used to verify a person's employment eligibility.
	House Bill 1005	On a prohibition against the coercion of immigrants.
	House Bill 1007	On the requirement that an employer participate in the federal verification pilot program for the purpose of determining the work eligibility of employees.
	House Bill 1008	On criminalizing trespassing in the state while in violation of federal immigration law.
	House Bill 1010	On the restriction of certain public benefits to persons with valid state-issued identification.

	House Bill 1011	On measures to discourage illegal immigration.
	Senate Bill 001	On restrictions on public benefits for persons eighteen years of age or older.
	Senate Bill 009	On the enforcement of immigration laws by law enforcement agencies in Colorado.
	Senate Bill 011	On the prohibition against bail bonding agents for defendants who may be illegally present in the United States.
	Senate Bill 012	On the restriction of public benefits to persons who are lawfully present in the United States.
	Senate Bill 013	On the restriction of non-emergency government services to persons who are lawfully present in the United States.
	House Concurrent Resolution 1001	On submitting to registered electors of Colorado the amendment to article V of the constitution of Colorado concerning the restriction of public benefits to persons who are lawfully present in the United States, except for communicable disease prevention, treatment, and immunization or as mandated by federal law.
	Senate Concurrent Resolution 001	On submitting to registered electors of Colorado the amendment to article V of the constitution of Colorado concerning the restriction of the expenditure of taxpayer money on services benefiting the welfare of individuals to services provided to persons who are lawfully present in the United States.
	Senate Concurrent Resolution 002	On submitting to registered electors of Colorado the amendment to article V of the constitution of Colorado concerning the restriction of non-emergency government services to persons who are lawfully present in the United States.
	Senate Concurrent Resolution 003	On submitting to registered electors of Colorado the amendment to article V of the constitution of Colorado concerning the restriction of the provision of administrative services to persons who are lawfully present in the United States.
	Senate Joint Memorial 001	On memorializing Congress to adopt legislation to deny citizenship at birth to children born in the United States to parents who are not legally present in the United States.
2007	House Bill 1007	On the crime of trespassing in the state while in violation of federal immigration law.
	House Bill 1256	On in-state tuition for persons who move to Colorado as the result of an economic development incentive.
	Senate Bill 029	On employer participation in the federal verification pilot program for the purpose of determining the work eligibility of employees.
	Senate Bill 073	On English language competency for high-school graduation.
	Senate Bill 094	On the prohibition of the use of forged documentation to gain a benefit by a person illegally in the United States.
2008	House Bill 1191	On granting in-state tuition status to a student who

		moves to Colorado during the senior year of high-school.
	House Bill 1272	On measures to improve enforcement of immigration laws in Colorado.
	House Bill 1326	On the verification of lawful presence in the United States of applicants for public benefits.
	Senate Bill 021	On the creation of an English language competency pilot program.
	Senate Bill 074	On the crime of trespassing in the state while in violation of federal immigration law.
	Senate Bill 083	On the verification of the work eligibility status of new employees through the federal electronic verification program.
	Senate Bill 087	On the expansion of the Colorado State patrol immigration enforcement unit.
2009	House Bill 1049	On prohibiting accepting a plea of guilty from an illegal alien that will result in avoiding removal from this country.
	Senate Bill 023	On the verification of the work eligibility status of new employees through the federal electronic verification program.
	Senate Bill 170	On nondiscrimination in determining the amount paid for higher education.
	Senate Bill 266	On the eligibility of non-citizens for the old age pension.

III. Colorado Attorney General's Formal Opinions

Date	Number	Language
January 23, 2006	06-01	On the authority of Colorado Commission on Higher Education to grant in-state tuition status to undocumented alien.
August 14, 2007	07-03	On whether the US citizen children of undocumented parents are eligible for in-state tuition.
November 30, 2007	07-07	On whether Colorado public high-school students in Postsecondary Enrollment Options are subject to verification of lawful presence under HB 06S-1023.

APPENDIX B

Core and Primary Texts

I. Bills and Resolutions

Nomenclature	Passed	Introduced
SB 97-171	Senate Bill 171	
HB 99-1018	House Bill 1018	
HB 04-1006	House Bill 1006	
SB 04-017	Senate Bill 017	
IHB 04-1132		House Bill 1132
IHB 04-1187		House Bill 1187
HB 05-1086	House Bill 1086	
IHB 05-1124		House Bill 1124
IHB 05-1271		House Bill 1271
SB 05-158	Senate Bill 158	
IHB 06-1133		House Bill 1133
HB 06S-1002	House Bill 1002	
HB 06S-1023	House Bill 1023	
IHB 06S-1010		House Bill 1010
IHB 06S-1011		House Bill 1011
ISB 06S-001		Senate Bill 001
ISB 06S-012		Senate Bill 012
ISB 06S-013		Senate Bill 013
IHCR 06S-1001		House Concurrent Resolution 1001
ISCR 06S-001		Senate Concurrent Resolution 001
ISCR 06S-002		Senate Concurrent Resolution 002
ISCR 06S-003		Senate Concurrent Resolution 003
HB 07-1313	House Bill 1313	
HB 07-1314	House Bill 1314	
IHB 07-1256		House Bill 1256
ISB 07-094		Senate Bill 094
SB 07-148	Senate Bill 148	
IHB 08-1191		House Bill 1191
IHB 08-1326		House Bill 1326
SB 08-079	Senate Bill 079	
HB 09-1063	House Bill 1063	
HB 09-1319	House Bill 1319	
HB 09-1353	House Bill 1353	
ISB 09-170		Senate Bill 170
ISB 09-266		Senate Bill 266

II. Formal Opinions

Date	Number	Language
January 23, 2006	06-01	On the authority of Colorado Commission on Higher Education to grant in-state tuition status to undocumented alien.
August 14, 2007	07-03	On whether the US citizen children of undocumented parents are eligible for in-state tuition.
November 30, 2007	07-07	On whether Colorado public high-school students in Postsecondary Enrollment Options are subject to verification of lawful presence under HB 06S-1023.

APPENDIX C

Code Mapping

I. Themes in Passed Legislation and Formal Opinions

BASIC THEMES	S B 1 7 1	H B 1 0 1	H B 1 0 6	S B 0 1 7	H B 1 0 6	S B 1 5 8	H B 1 0 2	H B 1 0 3	H B 1 3 3	H B 1 3 4	S B 1 4 8	S B 0 7 9	H B 1 0 6	H B 1 3 9	H B 1 3 3	F O 0 6 1	F O 0 7 0	F O 0 7 3	
1. Restriction of federal, state, and local public benefits.	•	•	•		•		•	•								•	•	•	•
2. Federal/state provision of public assistance.	•	•	•		•	•	•	•	•			•	•	•	•	•	•	•	•
3. Distinction between public benefits and mandated assistance.	•				•			•								•		•	•
4. Emergency health care and welfare.	•				•			•											
5. Non-essential, non-emergency assistance with payment provisions.	•		•		•			•								•	•	•	•
6. Mandated medical and relief care.	•				•		•	•											
7. Mandated short-term, non-cash assistance.	•				•		•	•											
8. Pre-natal care and treatment care for communicable or epidemic disease.		•					•	•								•			
9. States participation with federal cost reimbursement.	•	•														•			
10. Eligibility for public benefits.	•		•		•			•			•	•	•				•	•	•
11. Ineligibility of unlawfully present aliens.	•							•									•	•	•
12. Ineligibility of non-citizen sponsors.	•				•														
13. Exemption of certain aliens.	•	•						•								•			
14. Restriction for certain legal aliens.	•			•	•											•			
15. State extension of public assistance.		•										•	•			•			
16. Exemption of alien subjected to extreme cruelty.				•															
17. Foreign-born, legal residents as future citizens.	•							•											
18. Foreign-born, legal residents' contributions.	•																		
19. Legal, permanent residents' protection.	•			•				•											
20. Colorado taxpayers burden for "illegal" aliens.										•									
21. "Illegal" immigrants as a statewide-homeland																			

concern.																			
22. State government duty of taxpayers against "illegal" aliens.		•								•									
23. Penalties to agents/applicants violating immigration law.									•										
24. Verification processes in compliance with federal regulations.				•					•	•	•							•	
25. Ineligibility of "illegal" aliens to reside and work.																			
26. Tuition and residency in Colorado.							•					•	•				•	•	•
27. IIRIRA provisions on in-state tuition.																	•	•	•
28. PRWORA provisions on postsecondary education benefits.																	•	•	•
29. In-state benefits regardless of immigration status.			•									•							
30. Concurrent enrolment.											•				•				•
31. Public K-12 regardless of immigration status.											•								•
32. In-state student classification for legal/citizens.			•			•						•					•	•	•
33. In-state student classification for students with three years in the state.												•							
34. Extended in-state student classification to other students.			•			•						•	•						

II. Themes in Introduced Legislation

BASIC THEMES	H	H	H	H	H	H	H	S	S	S	H	S	S	S	H	S	H	H	S	S
	B	B	B	B	B	B	B	B	B	B	C	C	C	C	B	B	B	B	B	B
	1	1	1	1	1	1	1	0	0	0	R	R	R	R	1	0	1	1	1	2
	3	8	2	7	3	1	1	1	2	3	0	0	0	0	2	9	1	3	7	6
	2	7	4	1	3	0	1				0	1	2	3	6	4	1	6	0	6
1. Restriction of federal, state, and local public benefits.				•	•	•	•	•	•	•	•	•	•	•		•		•		•
2. Federal/state provision of public assistance.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•		•	•		•
3. Distinction between public benefits and mandated assistance.				•		•	•	•	•	•	•	•	•		•		•			•
4. Emergency health care and welfare.				•			•													
5. Non-essential, non-emergency assistance with payment provisions.	•	•	•	•	•	•	•	•	•	•		•	•	•	•		•	•	•	•
6. Mandated medical and relief care.				•			•	•	•	•		•	•	•						
7. Mandated short-term, non-cash assistance.				•		•	•													
8. Pre-natal care and treatment care for communicable or epidemic disease.							•		•											
9. States participation with federal cost reimbursement.																				
10. Eligibility for public benefits.	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
11. Ineligibility of unlawfully present aliens.				•	•		•	•	•	•	•	•	•	•		•		•		
12. Ineligibility of non-citizen sponsors.																				
13. Exemption of certain aliens.																				
14. Restriction for certain legal aliens.																				•
15. State extension of public assistance.	•	•	•														•		•	•
16. Exemption of alien subjected to extreme cruelty.																				
17. Foreign-born, legal residents as future citizens.																				
18. Foreign-born, legal residents?																				

contributions.																				
19. Legal, permanent residents' protection.				•				•	•	•		•	•	•			•	•		•
20. Colorado taxpayers burden for "illegal" aliens.												•								
21. "Illegal" immigrants as a statewide-homeland concern.					•		•													
22. State government duty of taxpayers against "illegal" aliens.					•		•					•								
23. Penalties to agents/applicants violating immigration law.					•		•										•			
24. Verification processes in compliance with federal regulations.					•	•	•	•									•		•	
25. Ineligibility of "illegal" aliens to reside and work.					•		•													
26. Tuition and residency in Colorado.	•	•	•		•											•		•		•
27. IIRIRA provisions on in-state tuition.																				
28. PRWORA provisions on postsecondary education benefits.																				
29. In-state benefits regardless of immigration status.	•	•	•													•			•	
30. Concurrent enrolment.																				
31. Public K-12 regardless of immigration status.					•															
32. In-state student classification for legal/citizens.					•											•		•		
33. In-state student classification for students with three years in the state.	•	•	•																•	
34. Extended in-state student classification to other students.	•	•	•													•		•		•

APPENDIX D

Additional Documents

I. Colorado Documents

Year	Name & Number	Status
1997	Senate Bill 032	Introduced
2002	House Joint Resolution 1071	Passed
2003	House Bill 1135	Introduced
	Senate Joint Resolution 030	Introduced
2004	House Joint Resolution 1022	Passed
	Senate Bill 194	Introduced
	Senate Bill 210	Introduced
2006	House Bill 1062	Introduced
	House Bill 1082	Introduced
	House Bill 1101	Introduced
	House Bill 1131	Introduced
	House Bill 1134	Introduced
	House Bill 1343	Passed
	Senate Bill 090	Passed
	Senate Bill 110	Passed
2006 Summer	House Bill 1001	Passed
	House Bill 1004	Introduced
	House Bill 1005	Introduced
	House Bill 1007	Introduced
	House Bill 1008	Introduced
	House Bill 1009	Passed
	House Bill 1014	Passed
	House Bill 1017	Passed
	House Bill 1020	Passed
	House Bill 1022	Passed
	Senate Bill 004	Passed
	Senate Bill 011	Introduced
	Senate Joint Memorial 001	Introduced
2007	House Bill 1007	Introduced
	House Bill 1040	Passed
	Senate Bill 029	Introduced
	Senate Bill 073	Introduced
2008	House Bill 1272	Introduced
	Senate Bill 021	Introduced
	Senate Bill 074	Introduced
	Senate Bill 083	Introduced
	Senate Bill 087	Introduced
2009	House Bill 1049	Introduced
	House Bill 1243	Passed
	Senate Bill 023	Introduced

II. Federal Documents

Year	Name & Number	Status	Language
1996	8 USC § 1601 (PRWORA § 600)	Passed	On statements.
	8 USC § 1611 (PRWORA § 401)	Passed	On federal public benefits.
	8 USC § 1613 (PRWORA § 403)	Passed	On five-year limited eligibility.
	8 USC § 1621 (PRWORA § 411)	Passed	On state & local public benefits.
	8 USC § 1622 (PRWORA § 412)	Passed	On State authority to limit eligibility of qualified aliens for state public benefits.
	8 USC § 1623 (IIRIRA § 505)	Passed	On limitations on preferential treatment of aliens for higher education benefits.
	8 USC § 1624 (IIRIRA § 553)	Passed	On State authority to limit assistance to aliens & distinguish among classes of aliens.
	8 USC § 1625 (PRWORA § 413)	Passed	On authorization for verification of eligibility for state & local public benefits.
	8 USC § 1641 (PRWORA § 431)	Passed	On definitions.
	8 USC § 1643 (PRWORA § 433)	Passed	On Statutory construction.
2001	Student Adjustment Act HR 1918	Introduced 107 th Congress	On amending IIRIRA to allow states to determine residency for higher education tuition purposes. On adjusting undocumented college students' status.
	DREAM Act S 1291	Introduced 107 th Congress	Idem.
2002	Student Adjustment Act HR 1918	Introduced 107 th Congress	Idem.
	DREAM Act S 1291	Introduced 107 th Congress	Idem.
2003	Preserving Educational Opportunities for Immigrant Children Act HR 84	Introduced 108 th Congress	Idem.
	Student Adjustment Act HR 1684	Introduced 108 th Congress	Idem.
	DREAM Act S 1545	Introduced 108 th Congress	Idem.
	Earned Legislation & Family Unification Act HR 3271	Introduced 108 th Congress	On providing permanent resident status for certain long-term resident workers & college-bound students.
2004	DREAM Act S 1545	Introduced 108 th Congress	On amending IIRIRA to allow states to determine residency for higher education tuition purposes. On adjusting undocumented college students' status.
2005	DREAM Act S 2075	Introduced 109 th Congress	Idem.
2007	DREAM Act HR 1275	Introduced 110 th Congress	Idem.
	DREAM Act S 774	Introduced 110 th Congress	Idem.
2009	DREAM Act S 729	Introduced 111 th Congress	Idem.

III. Other States' In-state Tuition Policies

State	Date	Name & Number	Language
Texas	June 16, 2001	House Bill 1403	Non-citizen students with three consecutive years of attendance in a state high-school classify for in-state tuition, including financial aid.
California	October 12, 2001	Assembly Bill 540	Non-citizen students with three non-consecutive years of attendance in a state high-school classify for in-state tuition only.