

Criminalizing Education for Marginalized Students

By The Asian American Education Project

Despite shifts in attitudes about bilingualism, anti-immigrant sentiments continue to prioritize English over other languages. Throughout U.S. history, different groups have been targeted by anti-immigrant sentiments with various laws and restrictions placed on who can enter and reside in the country legally. These anti-immigrant sentiments affect all parts of these immigrants' lives, and accordingly, attitudes about immigration are connected to issues of bilingual education and educational access.

Tertiary Source:

Language is a political issue as it can be used as a marker of identity and belonging in the United States. Accordingly, policies and attitudes related to language, such as those around teaching English in schools, are impacted by other issues related to belonging in the United States, such as immigration.

Throughout its history, the United States has used education as a tool for various purposes. In regard to immigrants, one of the main purposes of education is to teach English. The teaching of English is part of a broader goal for **assimilation** or Americanization.

Being able to speak English **proficiently** opens up access to many opportunities needed for social success and upward social mobility. However, moments of heightened **xenophobia**, most often caused by economic downturns and national crises, question who belongs in the United States and who doesn't. Unfortunately, discrimination spurred by xenophobia directly impacts immigrants and communities of color who are often positioned as foreigners or outsiders. This can lead to the needs and attainment of students, especially English Language Learners and immigrant students, to be overlooked, ignored, and/or dismissed.

One way xenophobia can affect students is in relation to **undocumented immigrants**. Undocumented immigration has existed in this country since 1875, when the United States passed the Page Act, the first federal law restricting **migration** on the basis of ethnicity or country of origin. The Page Act (1875) led to other anti-immigration laws (i.e., Chinese Exclusion Act of 1882) focused mainly on banning Chinese and Asian immigrants who were perceived to be too foreign to assimilate and considered as threats to white labor. The Page Act (1875) specifically banned the immigration of Chinese women which effectively prevented the Chinese in the United States from creating families and discouraged them from settling.

Glossary:

Assimilation: the process through which groups of differing heritages acquire the language and culture of the dominant group

Proficiently: with skill and competence

Social Mobility: a change in a person's social status

Xenophobia: fear and hatred of foreigners or of anything that is foreign

Undocumented Immigrants: people who entered the U.S. without proper permission from the government or those who entered with a legal visa that is no longer valid

Before the Page Act (1875), immigration into the United States was open to everyone, and so “legal” or “undocumented” immigration didn’t exist because people could enter the country freely.

Since the Page Act, undocumented immigrants of all backgrounds have entered the United States. One example is Jeu Gong Lum, the father of Berda and Martha Lum. Because of the Chinese Exclusion Act of 1882, Lum entered the United States through Canada. He settled in Mississippi and started a family. Later, he launched a lawsuit against school segregation on behalf of his daughters, known as **Lum v. Rice** (1927).

Many people today may assume undocumented immigrants are of Mexican or Latinx ancestry. However, data suggests that at least one out of every six undocumented immigrants is of Asian ancestry. Asian undocumented immigrants make up over 16% of that population with most originating from India, China, the Philippines, South Korea, and Vietnam. Most live in California, New York, Texas, and New Jersey.

The first large group of undocumented immigrants were known as “paper sons and daughters.” These immigrants were Chinese workers who were denied entry due to the Chinese Exclusion Act of 1882. They bought papers that falsely identified them as being related to other Chinese people already living in the United States. They spent their lives pretending to be someone else in order to work around racist immigration policies.

The **criminalization** of migration through restrictions on who and how many people could enter the United States divides the country’s population into those who supposedly belong here - because of how or when they arrived - and those who supposedly don’t belong here. This attitude carries into all areas of life in the United States, from job opportunities to housing to education. By making it a crime for some people (i.e., undocumented immigrants) to exist and live in the United States, their rights and privileges can quickly come under question, like their right to an education.

For example, in 1975, Texas revised its education laws to allow the state to withhold state funds from school districts that educated undocumented children. When the Tyler School District began requiring undocumented students to pay tuition, a group of students challenged the policy through a lawsuit, *Plyler v. Doe* (1982). The Supreme Court ruled that states couldn’t deny students a free public education based on their immigration status as any resources saved by denying them an education were outweighed by the harm society would face by this denial.

Migration:

movement of people from one region to another

Lum v. Rice (1927):

court case that upheld school segregation for Chinese students

Criminalization:

to make something illegal and allow people to be punished over that action; criminalizing things is a way to control people or discourage a specific behavior or action

Plyler v. Doe (1982) secured rights for students to attend public schools regardless of their immigration status, but applies only to K-12 schooling. In 2001, then-high school senior and pianist, Tereza Lee (born 1983), confided in the artistic director of her high school that she was undocumented. Lee is a Brazilian-born South Korean who immigrated with her family at the age of two. She was a talented pianist but didn't have a social security number to list on her music college applications. Her teacher contacted U.S. Senator Dick Durbin (born 1944) for help. Senator Durbin and Senator Orrin Hatch (1934-2022) co-sponsored and introduced the DREAM Act to create pathways for citizenship for undocumented immigrants who entered the United States as a minor. However, the 9/11 attacks in 2001 prevented the Senate vote on the DREAM Act from taking place. Instead, the government focused on stricter immigration policies and criminalizing immigration to address concerns about national security. The DREAM Act has been re-introduced many times since then; as of 2023, it has yet to be passed.

In 2012, President Barack Obama signed an **executive order** for Deferred Action for Childhood Arrivals (DACA). DACA is an immigration policy that provides applicants a renewable two years of deferred, or delayed, action from deportation and eligibility for a work permit. DACA gives undocumented young people in the United States some of the security that the DREAM Act had attempted to create. This new sense of security led to significant increases in high school attendance and in graduation rates among undocumented students. At the college level, DACA provided undocumented youth access to in-state tuition in many states, work permits for legal work with higher wages, added job security after graduation, and helped ease student stress.

In recent years, **caste discrimination** has been identified as another issue that impacts equal access to education. Caste is a religious social structure used to organize society in South Asia, but has been replicated in the United States and other places that South Asians have migrated to. Caste discrimination includes treating certain castes, or classes of society, as inherently inferior and undeserving of access to certain privileges such as education, political office, jobs, and more. In the United States, caste discrimination occurs in the workplace, in education, and in social settings like South Asian American cultural and religious spaces. People of oppressed caste backgrounds often hide their caste identity out of fear that they'll face discrimination. This is not just a perceived fear, but a reality for South Asian Americans. In June 2020, a lawsuit was filed against Cisco Systems, a software company, because it failed to address caste discrimination against an employee from the **Dalit** caste by two supervisors from more privileged castes. Some colleges and universities – including California State University, Colorado College, and Colby College –

DREAM Act: the Development, Relief, and Education for Alien Minors Act; grants temporary conditional residency to an undocumented immigrant who entered the U.S. as minors

Executive Order: declaration by the U.S. president or a state governor which has the force of law

Caste discrimination: social structure that is based on heredity; shapes every aspect of life with upper castes having great privilege while lower castes are shunned, stigmatized, and discriminated against

Dalit: the lowest class with the unique stigma of being

have already added caste to the existing set of categories that are protected against discrimination. Yet, there are hundreds of schools and colleges that have yet to add this protection for caste-oppressed South Asians. A federal recognition of caste as a protected category would bring this protection into many other sectors, including public schools.

The use of English as a common language in the United States is meant to help bring diverse groups together and ensure all people have access to various employment, educational, and social opportunities. Still, many other factors, like the criminalization of immigration and caste discrimination, hinder equal access to education and hinder the full opportunity that living in the United States and English fluency are supposed to create.

U.S. public attitudes towards immigrants have shifted over time - from exclusion to greater awareness and acceptance. Attitudes about education and English-language learning have shifted as well - from English-only policies to bilingual or multilingual education. More specifically, attitudes toward bilingual or multilingual education have been connected to concerns about economic growth, threats to labor and profit margins, public opinions about immigration, etc. All of this impacts access to education for marginalized communities including undocumented immigrants. Attitudes about education are also tightly connected to political and societal forces, and vice versa. This is mainly because schools are seen as the main vehicles for teaching all that is necessary for being an American. In addition, schools are viewed as a privilege for Americans. It is important to consider how education is being used as a tool and whether its usage sets students up for future success or failure.

"untouchable" and thus segregated

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