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ARTICLES

NONCITIZEN STUDENTS AND IMMIGRATION POLICY POST-9/11

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I. INTRODUCTION

My task is to describe the post-9/11 world for noncitizens students and scholars in light of recent federal legislation, specifically focusing on three laws: the USA-PATRIOT Act of 2001, the Border Commuter Student Act of 2002, and the proposed Capital Student Adjustment Act, currently pending in Congress. In all three, Congress is seen trying to walk the fine line between providing fair access to postsecondary education to noncitizens students and guarding against the possibility that such institutions are being used as a springboard for terrorist activity.

II. THE USA-PATRIOT ACT OF 2001

The USA-PATRIOT Act of 2001¹ has been reviewed in the literature primarily for its expansion of the Attorney General's powers to detain and investigate alleged terrorists, both citizens and noncitizens.² It has received much less attention from legal scholars for its effect on U.S. colleges and

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1. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, Act of 2001 (USA-PATRIOT Act), Pub. L. No. 107-56, 115 Stat. 272 (2001).

2. See, e.g., Susan Akram & Kevin Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Muslims and Arabs*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Sameer Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling After September 11*, 34 CONN. L. REV. 1185 (2002); David Cole, *Enemy Aliens*, 54 STAN. L. REV. 953 (2002); Victor C. Romero, *Proxies for Loyalty in Constitutional Immigration Law: Citizenship and Race After September 11*, DEPAUL L. REV. (forthcoming 2003); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

universities. Apparently concerned that six of the nineteen 9/11 terrorists were believed to have studied at flight schools in the U.S., Congress included within the Patriot Act several provisions designed to facilitate government access to information on possible terrorist activity on campus. Although provisions involving government monitoring of on-campus use of information technology and laboratories for possible biological and environmental hazards³ affect both citizens and noncitizens, my focus is on two provisions that are most likely to impact international students: Section 507, which allows the government access to student records in certain situations,⁴ and Section 416, which requires schools to more closely monitor certain foreign students.

A. *Section 507: Disclosure of Student Information*

Section 507 amends the Family Educational Rights and Capital Privacy Act of 1974 (FERPA),⁵ a law that generally withholds federal funding from educational institutions which disclose a student's education record without either the student's or parent's⁶ consent. FERPA does, however, allow disclosure under certain circumstances, for example, in the case of health or medical emergency.⁷ Section 507 of the Patriot Act provides another exception to FERPA by allowing the Attorney General or his designee access to student records pursuant to an *ex parte* court order in connection with terrorism investigations.⁸ In addition, educational institutions complying with such orders need not record this disclosure, nor may they be held liable for records produced in good faith compliance with such orders.⁹

Although this provision could potentially affect both foreign and U.S. students, the FBI, both before and after enactment of the Patriot Act, has sought information on international students only. In the weeks following the 9/11 attacks, the FBI asked colleges and universities for information on their foreign students, with about 200 of those institutions choosing to comply.¹⁰

Some in Congress believe that Section 507 was specifically written to require the FBI to first seek a court order before approaching universities

3. See Nichole Rivard, *USA Patriot Act: How to be Response Ready*, UNIV. BUS., May 2002, at 43, 45.

4. Similar to Section 507 is 508, which allows the government access to student information from the National Center for Education Statistics, pursuant again to an *ex parte* court order. While this might implicate foreign nationals, it has yet to come into play.

5. 20 U.S.C. § 1232(g) (2003).

6. If the student is under 18. See generally Letter from LeRoy Rooker, Director, Family Compliance Office, U.S. Dep't of Education, *Recent Amendments to FERPA Relating to Anti-Terrorism Activities*, Apr. 12, 2002, at 1 [hereinafter Rooker Letter].

7. 34 C.F.R. §§ 99.31(a)(10), 99.36 (FERPA regulations relating to health and safety emergencies).

8. USA-PATRIOT Act of 2001, § 507 (amending 20 U.S.C. § 1232(g)).

9. *Id.*

10. Dan Eggen, *FBI Seeks Data on Foreign Students*, WASH. POST, Dec. 25, 2002, at A1.

with such a request.¹¹ Apparently, the FBI did not get that message. Section 507 notwithstanding, the Washington Post reported in December that the FBI has issued a new request for personal information on all foreign students and faculty at colleges and universities nationwide.¹² The request asked for the “names, addresses, telephone numbers, citizenship information, places of birth, dates of birth and any foreign contact information” for all teachers and students who are non-U.S. citizens.¹³ The FBI plans to compare any information collected with the Justice Department’s Foreign Terrorist Tracking Task Force database.

Needless to say, the legality of the FBI’s request has been questioned. In a letter to Attorney General John Ashcroft, Senators Ted Kennedy and Patrick Leahy questioned whether the request complied with the Patriot Act, since it was not pursuant to a court order in connection with a terrorism investigation.¹⁴ In response to the request, the Association of American College Registrars and Admissions Officers advised its 10,000 members that they might be legally liable if they disclosed information not pursuant to a valid court order or subpoena.¹⁵ The FBI’s position is that the agency may request the information, but that colleges need not comply with the request.¹⁶

The international reaction to this most recent FBI request is mixed. Malaysia’s largest student organization decried the request as another example of the American government’s post-9/11 anti-terrorism paranoia; the president of the organization suggested that the U.S. contact the Malaysian embassy directly should it find evidence of an individual wrongdoing rather than issuing a blanket request.¹⁷ In contrast, Malaysia’s Education Bureau chief Dr. Adham Baba found the creation of an FBI database useful so that the home authorities would be able to track their students abroad.¹⁸ In addition, Dr. Baba was surprised at the students’ objection to such a request given that they were required to reveal such information to the U.S. State Department when applying for their visas in the first instance.¹⁹ This seemingly cavalier attitude toward potential privacy breaches is shared by some international students hailing from nations where such information is generally known by law enforcement agencies.²⁰ Other students, however, have expressed genuine fear that any follow-up questioning by U.S. authorities based on the information gathered might lead to their permanent

11. *Id.* (citing positions taken by Senators Leahy and Kennedy).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. IRNA On-Line, *Malaysia’s Biggest Student Association Slams U.S. “Phobia”* (Dec. 27, 2002), at <http://www.irna.com/en/head/021227125633.ehe.shtml>.

18. *Id.*

19. *Id.*

20. Scott Carlson & Andrea L. Foster, *Colleges Fear Anti-Terrorism Law Could Turn Them into Big Brother*, CHRON. HIGHER EDUC., Mar. 1, 2002, at A31, A32.

detention, conjuring up stories of not-so-benign “visits” by police in their home countries.²¹

While nothing in Section 507 of the Patriot Act prevents the FBI from asking for a voluntary disclosure of student record information, FERPA also likely creates liability for unconsented disclosures. Notwithstanding foreign students’ differing opinions on the privacy right issues involved, colleges and universities should be concerned about losing federal funding should they violate FERPA by disclosing student information without first obtaining student consent or requiring a court order. While some institutions might understandably be sympathetic to the FBI’s concerns about maintaining accurate databases on foreign students in light of the ongoing war against terrorism, they should also realize that improper disclosures might lead to losses in federal funding.

B. *Section 416: Monitoring of Foreign Students through SEVIS*

Unlike their disclosures to the FBI, colleges and universities obtain the consent of all F-1, J-1, and M-1 student visa holders to disclose certain immigration-related information when these students apply for their visas.²² For example, the I-20 form signed by F-1 students contains the following consent notice: “I authorize the named school to release any information from my records which is needed by the INS pursuant to 8 C.F.R. § 214.3(g) to determine my nonimmigrant status.”²³ Moreover, under Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA),²⁴ the Attorney General, in consultation with the State and Education Departments, is authorized to collect information from colleges and universities on all foreign students.²⁵ Failure to comply forfeits a school’s ability to further enroll international students.²⁶

Section 416 of the Patriot Act was enacted to fill in the gaps left open by previous legislation by: (1) requiring that IIRAIRA’s monitoring system be fully funded and operational by this past January 1, 2003; (2) collecting specific information on the date and port of entry of all foreign students and scholars; and (3) expanding the types of schools subject to this monitoring system to include air flight schools, language training schools, and other

21. *Id.* (“[Some international students] are terrified,” [Omar Afzal, advisor to the Cornell Muslim student group] says. “They come from a culture where if a policeman shows up at the door, you are being targeted to be sent to prison for a long time.”).

22. Rooker Letter, *supra* note 6.

23. *Id.*

24. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) § 641, 8 U.S.C.S. § 1372 (2003).

25. STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 352 (3d ed. 2002) (discussing IIRAIRA § 641).

26. *Id.*

vocational institutions.²⁷

On December 11, 2002, the INS²⁸ issued its final rule implementing SEVIS, the Student and Exchange Visitor Information System designed to put Section 416 into action.²⁹ The primary innovation behind SEVIS is that it is an internet-based system which allows U.S. educational institutions and exchange program sponsors the opportunity to share information about international students, exchange visitors, and their dependents.³⁰ The final rule requires that schools keep records for the following visa holder categories and their dependents: F-1 (students), M-1 (vocational students), and J-1 (exchange students and faculty).³¹ In the fact sheet accompanying the issuance of its final SEVIS rule, the INS touted the following as improved measures to maintain updated information on foreign students and scholars: 1) schools will be required to report a student's failure to enroll; 2) SEVIS will allow for electronic transmission and exchange of information; and 3) SEVIS will facilitate the creation of a more accurate database through the expedient release of requirement changes, better dissemination of student information updates, closer monitoring of schools, and the like.³² While the initial deadline for compliance was January 30, 2003, the INS recently extended that deadline to February 15, 2003.³³

In contrast with the FBI's access to student information, few are bothered by the INS' access to similar information, to the extent that such information has already been voluntarily disclosed by the international student upon applying for the relevant visa. A larger concern is how this information might

27. INS, *Fact Sheet: Student and Exchange Visitor Information System (SEVIS) - Final Rule Implementing SEVIS*, (Dec. 11, 2002), at http://www.immigration.gov/graphics/publicaffairs/factsheets/02.12FINALRU_FS.htm; LEGOMSKY, *supra* note 25, at 352-53.

28. As of March 1, 2003, the Immigration and Naturalization Service, or INS, no longer exists. Its enforcement and visa processing functions have been divided among three bureaus within the new Department of Homeland Security – the Bureau of Customs and Border Protection, the Bureau of Investigation and Customs Enforcement, and the Bureau of Citizenship and Immigration Services. See U.S. Dept. of Homeland Security, *Immigration & Borders*, at http://www.dhs.gov/dhspublic/theme_home4.jsp; U.S. Dept. of Homeland Security, *Border Reorganization Fact Sheet*, (Jan. 30, 2003), at <http://www.immigration.gov/graphics/publicaffairs/factsheets/btsreorg.pdf>. It is most likely that the immigration enforcement functions I refer to here will be within the purview of the Bureau of Investigation and Customs Enforcement, although the administration of SEVIS will probably be the task of the Bureau of Citizenship and Immigration Services. To simplify matters and because many of the reported abuses are alleged against the INS, I will use the designation "INS" in this piece.

29. INS, *Fact Sheet*, *supra* note 27.

30. Ellen H. Badger, *SEVIS: The U.S. Immigration and Naturalization Service's New Tracking System for International Students and Exchange Visitors*, ILW.COM, (Sept. 5, 2002), at <http://www.ilw.com/lawyers/immigdaily/digest/2002,0905.shtm>.

31. For instance, schools must keep the following information for F-1 and M-1 students: name, date and place of birth, country of citizenship, current address where the student and his or her dependents reside; the student's current academic status; date of commencement of studies; degree program and field of study; whether the student has been certified for practical training, and the beginning and end dates of certification; termination date and reason, if known; the documents referred to in paragraph (k) of this section; the number of credits completed each semester; and a photocopy of the student's I-20 ID Copy. 8 C.F.R. § 214.3(g)(1) (2003).

32. INS, *Fact Sheet*, *supra* note 27.

33. INS, *SEVIS Grace Period*, (Jan. 29, 2003), at <http://www.immigration.gov/graphics/services/tempbenefits/sevisextension.pdf>.

be used. While no one quibbles with the idea that the INS should be able to strictly enforce the terms of a foreign student's stay, a recent news story alleging INS abuse suggests that some vigilance and oversight might be appropriate. In December 27, 2002, the Associated Press reported that, although finally released on bond, at least six Middle Eastern students were detained for up to 48 hours because they were not taking enough college credits, which was a violation of their student visas.³⁴ According to a University of Colorado official, one of their students was jailed because he was one hour shy of a full course load after the college had permitted him to drop a course.³⁵ None of the students were charged with any other offense.³⁶ The INS found out about these students' course loads when the students registered pursuant to the December 16 deadline imposed upon all males 16 or older holding nonimmigrant visas from Iraq, Iran, Syria, Libya, and Sudan.³⁷ In response, Colorado State University decided to hold classes run by an immigration lawyer to apprise international students of the law.³⁸

While the foregoing might more appropriately be a criticism of the special registration laws than of SEVIS, and while it would be unfair to fault the entire immigration service for the acts of a few agents, these recent arrests should cause some concern over how the government plans to use the wealth of information it will now have available via the SEVIS network.

III. THE BORDER COMMUTER STUDENT ACT OF 2002

One group of students that are not subject to the December 11 SEVIS final rule are part-time border commuter students.³⁹ Unlike F-1 students who live across either Mexican or Canadian borders and are pursuing their studies full-time at U.S. colleges and universities, part-time border students are not eligible for student visas.⁴⁰ Approximately 2,300 such part-timers attended three Texas schools along the Mexican border – El Paso Community College, New Mexico State University, and the University of Texas at El Paso (UTEP) – at the time enforcement was discussed, affecting not just the students but

34. Associated Press, *Foreign Students Jailed in Colorado for Cutting College Course Hours*, SFGATE.COM ON-LINE, (Dec. 27, 2002), at <http://www.sfgate.com/cgi-bin/article.cgi?f=/news/archive/2002/12/27/national0351EST0457.DTL>.

35. *Id.*

36. *Id.*

37. *Id.* See also INS, *Special Registration*, at <http://www.immigration.gov/graphics/shared/lawenfor/specialreg/index.htm>.

38. Associated Press, *University Plans Workshop After INS Arrests*, CNN.COM, (Dec. 29, 2002), available at <http://www.cnn.com/2002/EDUCATION/12/29/ins.student.arrests.ap>.

39. 8 C.F.R. § 214.2(f)(18) modifies the requirements of 8 C.F.R. § 214.1 for Mexican and Canadian commuters who are enrolled in a full course of study on a part-time basis.

40. *Part-Time Commuter Students Will No Longer Be Admitted to Schools in U.S.*, INS SAYS, 79 No. 23 INTERPRETER RELEASES 872; Doug Payne, *New Federal Policy Bars Canadians and Mexicans From Part-Time Studies in the United States*, CHRON. HIGHER EDUC., May 29, 2002, at <http://chronicle.com/daily/2002/05/2002052901n.htm>.

certain university departments as well.⁴¹ UTEP spokeswoman Christian Clarke-Casarez estimated that their Mechanical and Electrical Engineering Department would suffer greatly, as it attracts many working professionals from nearby Juarez, Mexico.⁴²

In response, Congress passed and President Bush signed the Border Commuter Student act of 2002⁴³ which created new F-3 and M-3 categories of student visa holders, permitting them to take college courses part-time without having to enroll in a full degree program. Specifically, only Canadian or Mexican nationals who reside in their home country and commute to a U.S. school for full- or part-time course work are eligible.⁴⁴

Unlike the privacy and enforcement concerns over the Patriot Act's provisions, the Border Commuter Student Act is a practical, workable, and narrow exception to the existing student visa categories that strikes a fair balance between welcoming foreign students and maintaining national security. It would be fair to wager that any forthcoming regulations implementing the use of these new part-time student visas will be similarly practical, recognizing the much smaller scale such oversight would entail.

IV. THE PROPOSED STUDENT ADJUSTMENT ACT OF 2001

Aside from full-time and part-time international students, one other group deserves attention post-9/11, and that is undocumented students. Specifically, the extent to which undocumented immigrants should qualify for financial assistance to attend post-secondary school – either in the form of federal aid or in-state tuition – has been discussed in legal and academic circles over the past year.⁴⁵

While the Supreme Court's twenty-year-old decision in *Plyler v. Doe*⁴⁶ mandates states to provide free preliminary and secondary education to undocumented children, there exists no equivalent constitutional requirement that undocumented high school graduates be offered a subsidized college education. Indeed, IIRAIRA Section 505 prevents states from granting in-state tuition benefits to resident undocumented students unless it provides the same to out-of-state U.S. citizens.⁴⁷

41. Mike Mrkvicka, *Hutchinson Backs Part-Time Foreign Students*, EL PASO TIMES.COM, (July 2, 2002), at <http://www.borderlandnews.com/stories/borderland/20020702-t26039.shtml>.

42. *Id.*

43. Pub. L. No. 107-274, 116 Stat. 1923 (2002).

44. *Id.*

45. See, e.g., Victor C. Romero, *Postsecondary School Education Benefits for Undocumented Immigrants: Promises and Pitfalls*, 27 N.C. J. INT'L L. & COM. REG. 393 (2002); Michael A. Olivas, *Storytelling Out of School: Undocumented College Residency, Race, and Reaction*, 22 HASTINGS CONST. L.Q. 1019 (1995).

46. 457 U.S. 202 (1982).

47. “[Any noncitizen] 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 unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.” IIRAIRA, 8 U.S.C.S. § 1623.

Over the past year, many stories have surfaced about high school valedictorians who have been effectively precluded from attending college because they were ineligible for state residency and hence, in-state tuition benefits.⁴⁸ Indeed, in one infamous case, Congressman Tom Tancredo called for an INS investigation of one Jesus Apodaca, an honor student who could not afford to attend the University of Colorado because his undocumented status rendered him ineligible for residency.⁴⁹

Immigrant education rights activists have proceeded on both the federal and state fronts. At the federal level, bills in both houses stalled in the 107th Congress.⁵⁰ Moreover, the Bush Administration has failed to take a position on this issue.⁵¹ One bill in particular, the proposed Student Adjustment Act (SAA) of 2001, is worth examining in more detail.⁵² First proposed in the

48. See, e.g., Catherine Hausman & Victoria Goldman, *Great Expectations*, NEW YORK TIMES MAGAZINE, April 8, 2001, at 26 (describing the travails of various undocumented students across the nation).

49. See, e.g., Michael Riley, *Campbell Bill Backs Apodaca*, DENVER POST, Sept. 27, 2002, at A1, available at <http://www.denverpost.com/Stories/0,1413,36%257E26289%257E886580,00.html#> ("Apodaca's case has gained national attention since Tancredo pressed for his deportation after reading about the Aurora Central High graduate in The Denver Post. Apodaca was profiled in August as an example of the effect of laws blocking illegal immigrants from getting in-state tuition.").

50. See *DREAM Act News*, LEGISLATIVE UPDATE (Mexican American Legal Def. & Educ. Fund), Dec. 2002, at 2 (reporting on the stalled legislation). As the immigration loose-leaf reporter, Interpreter Releases, has observed, there were several proposed bills regarding postsecondary education benefits for undocumented students introduced in 2001:

The "Children's Adjustment, Relief, and Education (CARE) Act" (S. 1265) is one of the most recent efforts in a growing movement to assist undocumented alien children who are often unable to continue their education at the university level because of their ineligibility for financial aid and in-state tuition rates. The bill, which was introduced on July 27 by Sen. Durbin and six additional cosponsors, would repeal § 505 of the [IRAIRA], which provides that no state may provide a postsecondary education benefit (including in-state tuition) to an alien not lawfully present in the U.S. on the basis of the alien's residence in the state unless the state would also provide the same benefit to a citizen or national residing in another state.

The measure would also amend INA § 240A(b) to require the Attorney General to cancel the removal of and adjust to lawful permanent resident status certain alien children who: (a) are under 21 years of age; (b) have been physically present for a minimum of five years prior to the date of application; (c) have been persons of good moral character during the five-year period preceding the application for admission; and (d) are students either enrolled in a secondary school, or enrolled in or actively pursuing admission to a U.S. institution of higher education.

Sen. Orrin Hatch (R-Utah) introduced similar legislation on August 1. The "Development, Relief, and Education for Alien Minors (DREAM) Act" (S. 1291) would also repeal § 505 of the IIRAIRA and provide for cancellation of removal and adjustment of status for certain eligible alien minors. The DREAM Act, however, would make the resulting permanent resident status conditional, subject to satisfactory evidence of graduation from an institution of higher education and the filing of a petition with the INS. In addition, the Hatch bill would also require eligible aliens to apply for relief under the bill within two years of the legislation's enactment date.

Comparable legislation has been introduced in the House by Reps. Chris Cannon (R-Utah) (H.R. 1918), Luis Gutierrez (D-Ill.) (H.R. 1582), and Sheila Jackson Lee (D-Texas) (H.R. 1563). *Flurry of Legislative Activity Precedes August Recess*, 78 INTERPRETER RELEASES 1346-47 (Aug. 20, 2001).

51. See *DREAM Act News*, *supra* note 50, at 2.

52. Introduced on May 21, 2001, the proposed act was referred immediately to the House Committee on the Judiciary and the House Committee on Education and the Workforce. 2001 Bill

House of Representatives in May 2001, the SAA addresses the two primary bars to undocumented immigrants' enrollment in public colleges and universities – undocumented status and poverty – in three specific ways. First, the SAA repeals IIRAIRA 505, returning to the states that unfettered power to determine residency requirements for in-state tuition benefits at public schools.⁵³ Second, it permits undocumented students to adjust their immigration status to lawful permanent residents, provided they comply with certain age, character, educational, and residency requirements.⁵⁴ And third, it allows adjusting immigrants the opportunity to apply for federal financial aid.⁵⁵ In brief, “the SAA allows undocumented immigrants the same opportunities for post-secondary education and post-college work as the law currently provides lawful permanent residents.”⁵⁶

Notwithstanding the stalled progress on the congressional front, tireless advocates like Professor Michael Olivas have pushed for states to enact legislation qualifying undocumented students for state residency status, thereby rendering them eligible for tuition subsidies.⁵⁷ Over the past few years, Texas, California, New York, and Utah have all passed legislation complying with IIRAIRA Section 505 while allowing undocumented students to benefit from in-state tuition rates, the last three during the post-9/11 era.⁵⁸ Others, including North Carolina, Washington, Minnesota, and Wisconsin, have also examined the issue recently.⁵⁹

In the wake of this positive trend among states, immigrants' rights advocates simultaneously suffered a setback in Virginia. While there is no law that prohibits public colleges and universities from admitting undocumented persons, Virginia's Assistant Attorney General issued a memorandum last fall stating that, as a matter of policy, Virginia's public institutions should not admit them, especially when doing so would displace competing U.S. citizens or lawful permanent residents.⁶⁰ Moreover, Virginia's law precludes undocumented persons from possessing the requisite “domiciliary intent” to qualify for in-state tuition.⁶¹

Overall, it is fair to say that progress on Capital Hill has been slow, but building, while the states continue to be a positive venue for change,

Tracking H.R. 1918; 107 Bill Tracking H.R. 1918 (LEXIS, Congressional Bills and Bill Tracking Library).

53. Romero, *supra* note 45, at 408.

54. *Id.* at 408-09.

55. *Id.* at 409.

56. *Id.*

57. See, e.g., Michael A. Olivas, *A Rebuttal to FAIR*, UNIV. BUS., June 2002, at 72 (arguing that states can provide undocumented students residency status notwithstanding IIRAIRA Section 505); Romero, *supra* note 45.

58. See *DREAM Act News*, *supra* note 50, at 2.

59. *Id.*; see also Romero, *supra* note 45, at 404-07 (describing different state approaches to the issue).

60. See Memorandum from Alison P. Landry, Assistant A.G. of Virginia, *Immigration Law Compliance Update 5* (Sept. 5, 2002), available at <http://www.schev.edu/AdminFaculty/ImmigrationMemo9-5-02APL.pdf>.

61. *Id.*

Virginia's views notwithstanding. Advocates are pushing for passage of the federal SAA because it would provide uniform relief for all undocumented students, regardless of their state of residency, and allow for adjustment of their undocumented status so that they can work lawfully upon completion of their studies, something state legislation cannot accomplish. Should the issue of amnesty for undocumented immigrants become viable once more, the SAA might be a first, conservative step in the right direction that should be attractive to federal legislators reluctant to support a broader bill. Unlike the blanket amnesty of 1986, the SAA is a limited, "earned" amnesty, providing much needed relief to undocumented persons who, by dint of their hard work and future promise, should become full members of our polity. Viewed this way, the SAA is a narrow exception to the general law against undocumented immigration, much like the recent Boarder Commuter Student Act of 2002 exempts part-time students from their strictures of the Patriot Act.

V. CONCLUSION

In sum, I take the positive trend toward postsecondary education benefits for undocumented students and the recent passage of the Boarder Commuter Student Act as healthy signs that we are beginning to understand the danger in the equation "foreign student equals international terrorist." Yet, I remain wary of the abuse of executive power that might follow the acquisition of information about international students and scholars endorsed by the Patriot Act, especially in light of the recent news reports from Colorado and Washington, D.C. hinting at the same. Hopefully, once the executive branch is able to effectively establish and test its monitoring and registration requirements, it will be better able to guard against further overreaching. In the meantime, I hope that others – such as the educational institutions, advocacy groups, federal legislators, and state governments who work with noncitizen students – continue to explore creative ways to balance the need for national security against this nation's role as a world leader in university education.