Key Immigration Issues in the Higher Educational Setting

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PALOMAR COLLEGE
Learning for Success

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OVERVIEW

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Understanding the Diversity of the Immigrant Population

Federal immigration status may vary substantially from person to person based on personal circumstances. The range of immigration status categories includes but is not limited to:

- **Lawful Permanent Resident** — "Any person not a citizen of the United States who is living in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant. Also known as 'Permanent Resident Alien,' 'Resident Alien Permit holder,' and 'Green Card holder.'" *Source: USCIS.*
- **Undocumented** — A foreign national residing in the United States without legal immigration status.
- **Refugee** — "Generally, any person outside his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution based on the person's race, religion, nationality, membership in a particular social group, or political opinion." *Source: USCIS.*
- **Asylee** — "A foreign national in the United States or at a port of entry who is unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on religion, nationality, membership in a particular social group or political opinion." *Source: USCIS.*

In-State Tuition and Financial Assistance for Undocumented College Students

Twenty states have laws granting in-state tuition rates for undocumented students:

- ✓ California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, Washington, Hawaii, Michigan, Oklahoma, Rhode Island

Five states offer financial assistance to undocumented students:

- ✓ California, New Mexico, Minnesota, Texas, Washington

Six states bar in-state tuition benefits to undocumented students:

- ✓ Alabama, Arizona, Georgia, Indiana, Missouri, South Carolina

Source: National Conference of State Legislatures (2015)

California Law and Financial Aid

The California Dream Act

- The California Dream Act allows undocumented and non-resident documented students who meet the eligibility requirements of AB 540 to apply for and receive private scholarships funded through public universities, state-administered financial aid, university grants, community college fee waivers, and Cal Grants.

- The California Student Aid Commission ("CSAC") processes the application and any aid received can only be used at eligible California public or private institutions.

California Law and Financial Aid

- **AB 540** — Creates an exemption from the payment of non-resident tuition for certain non-resident students who have attended high school in California and received a high school diploma or its equivalent.

  AB 540 students are those who:

  - Have attended a California high school for a minimum of three years; or
  - Attained credits in California from a California high school equivalent of at least three or more years of full-time high school coursework and a total of three or more years of attendance in California elementary, middle, and/or secondary schools
  - Graduated or will graduate from a California high school or attainment of the equivalent thereof (e.g. General Education Development ("GED"), High School Equivalency Test ("HiSET"), or Test Assessing Secondary Completion ("TASC")
  - Will register or enroll in an accredited and qualifying California college or university, if applicable, complete an affidavit stating that the student has or will file an application to legalize immigration status as soon as eligible; and
  - Does not hold a valid non-immigrant visa (F, J, H, L, A, B, C, D, E, etc.)**

****If you have Temporary Protected Status or hold a 'U' Visa, you may be eligible under the California Dream Act.**

Federal Financial Aid for Eligible Non-Citizens

Federal financial aid is available for eligible non-citizens under specific circumstances. Generally, you are an eligible non-citizen if you are in one of the following categories:

a) U.S. Permanent Resident, with a Permanent Resident Card (formerly known as an Alien Registration Receipt Card or "Green Card")

b) Conditional Permanent Resident (I-551C)

c) Other eligible non-citizen with an Arrival-Departure Record (I-94) from the Department of Homeland Security showing any one of the following designations: "Refugee," "Asylum Granted," "Indefinite Parole," "Humanitarian Parole," or "Cuban-Haitian Entrant"

d) A citizen of the Republic of Palau (PW), the Republic of the Marshall Islands (MH), or the Federated States of Micronesia (FM)

NOTE: Undocumented students, including DACA recipients, are not eligible for federal financial aid, but they may still be eligible for state or college aid under AB 540, in addition to private scholarships under the California Dream Act.

California Law and Other Matters Pertaining To Student Enrollment

- **SB 150** — Community college districts are required to exempt non-resident special part-time students from the requirement to pay non-resident tuition for community college credit courses. These students also have apportionment eligibility.*
- **Agricultural Employment and In-State Tuition Exemption** — Pursuant to Title 5 CCR §54048, a student claiming residence shall provide evidence that the student's parent with whom the student is living, or the student himself, earns a livelihood primarily by performing agricultural labor for hire in California and other states and has performed such labor in California for at least two months in each of the preceding two years and lives within the district.

***Education Code § 76140. This non-resident tuition exemption does not apply to a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code, admitted pursuant to 76001, 76003 or 76004.**

Equal Access to Public Elementary and Secondary Education Regardless of Immigration Status

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

- Landmark U.S. Supreme Court Case: No state may deny access to a public elementary and secondary education to any child based on immigration status under the Equal Protection Clause of the 14th Amendment of the United States Constitution.
- Guidance on School Enrollment Procedures issued by the Office for Civil Rights ("OCR") of the U.S. Department of Education and the Civil Rights Division of the U.S. Department of Justice in 2011 and updated in 2014. See updated guidance here:

  https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf

Federal Anti-Discrimination Laws

- No student, moreover, should be subject to discrimination, harassment, and/or bullying under Title VI of the Civil Rights Act of 1964 and other federal anti-discrimination laws. *See* Guidance on Harassment and Bullying issued by OCR on October 26, 2010 here:

  https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf

Equal Access to Public Elementary and Secondary Education Regardless of Immigration Status

California Law

- Education is a fundamental right under the California Constitution.
- All students between the ages of 6-18 are mandated to attend school pursuant to compulsory attendance laws. California Education Code § 48200.
- All students have a right to be in a public school learning environment free from discrimination, bullying, violence, and intimidation. California Education Code §§ 220 and 234 *et seq*.

Bona Fide Residency Requirements

- A student's citizenship or immigration status is not relevant to satisfy bona fide residency requirements. *See* OCR Guidance on School Enrollment Procedures.
- Reasonable evidence of residency can be established by <u>all students</u> by documentation showing the name and address of parent/guardian within the District. Such documents include, but are not limited to: property tax payment receipts, rental property lease, pay stubs, declaration of residency. California Education Code § 48204.1.

Equal Access to Public Elementary and Secondary Education Regardless of Immigration Status

Establishing Minimum Age

- Districts are permitted to request documentation to show that a student falls within the minimum and maximum age requirements. Ca. Ed. Code § 48002. *See* Cal. Code. Regs., tit. 5, § 432, subd. (b)(1)(B).
- Acceptable documents for establishing age include, but are not limited to: a certified copy of a birth record, a baptism certificate duly attested, a passport, or in certain instances, an affidavit of the parent, or previously verified school records.

Remember, Under the Current Law

- A District or its schools should not inquire into the immigration or citizenship status for establishing bona fide residency.
- An affirmative duty does not exist for District/school personnel to assist U.S. Immigration and Customs Enforcement ("ICE") agents or other law enforcement officials with enforcing immigration laws.
- District/school personnel should not release student records unless there is parental consent, or there is a lawful judicial order or subpoena.

Key Privacy Protections and Related Restrictions

- What are key student privacy protections and related restrictions on sharing information under federal and state law?
  - Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

What is an Education Record?

- Education records are records that are directly related to a student and that are maintained by an educational agency or institution or a party acting for or on behalf of the agency or institution. They include, but are not limited to, grades, transcripts, class lists, student course schedules, health records (at the K-12 level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. *Source: http://familypolicy.ed.gov/faq-page*

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

What must a consent to disclose education records contain?

- FERPA requires that a consent for disclosure of education records be signed and dated, specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. 34 CFR § 99.30. As such, oral consent for disclosure of information from education records would not meet FERPA's consent requirements. *Source: http://familypolicy.ed.gov/faq-page*

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

May schools comply with a subpoena or court order for education records without the consent of the parent or eligible student?

- Yes. FERPA permits disclosure of education records without consent in compliance with a lawfully issued subpoena or judicial order. *See* 34 C.F.R. § 99.31(a)(9)(i) and (ii).
- **However**, a school must generally make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student the opportunity to seek protective action, unless certain exceptions apply.

Source: http://familypolicy.ed.gov/faq-page

FERPA

Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g

Exceptions to the requirement of prior notification apply to:

(1) a federal grand jury subpoena or other subpoena issued for a law enforcement purpose if the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(2) an ex parte order obtained by the United States Attorney General (or designee not lower than Assistant Attorney General) concerning investigations or prosecutions of an act of terrorism or other specified offenses. *See* 34. C.F.R. § 99.31(a)(9)(ii). *Source: http://familypolicy.ed.gov/faq-page*

Status Update on Deferred Action for Childhood Arrivals ("DACA")

What is DACA?

- DACA is neither law nor regulation, but rather the result of executive action taken by the President Barack Obama Administration on June 15, 2012.
- DACA provides deferred removal (deportation) action for qualifying undocumented individuals for a two-year period, subject to renewal. DACA beneficiaries are also eligible to receive work authorization.
- DACA does not provide lawful status or otherwise provide any pathway to citizenship for its beneficiaries.
- Since its announcement on June 15, 2012, an estimated 861,000 undocumented individuals have benefited nationwide from DACA. An estimated 180,000 are DACA-eligible in Los Angeles County.

Status Update on Deferred Action for Childhood Arrivals ("DACA") cont.

- **Rescission of DACA**
  - On September 5, 2017 the Department of Homeland Security (DHS) issued the "Memorandum on Rescission of Deferred Action for Childhood Arrivals".
  - The DHS will provide a limited, six-month window during which it will consider the following:
    - *Initial DACA and applications for work authorization which were filed and pending as of September 5, 2017; and*
    - *DACA renewal requests which are received as of October 5, 2017*
    - *The DHS will not consider new first-time DACA applications after September 5, 2017*
  - **Students with current DACA status continue to be protected until their two-year terms expire.**

Does the Rescission of DACA Affect Access to Public Education for Students at the Elementary and Secondary Level? NO

- DACA does not affect access to public education for children in Kindergarten through high school because all children in America have a constitutional right of equal access to such education, irrespective of immigration status. More specifically, the landmark U.S. Supreme Court Case *Plyler v. Doe*, 457 U.S. 202 (1982), held that no state may deny access to a public elementary and secondary education to any child based on immigration status under the Equal Protection Clause of the 14th Amendment of the United States Constitution. The Supreme Court found that denying children a public education based on immigration status not only violates the U.S. Constitution, but also jeopardizes any future contributions these children may make in helping the nation advance.
- Additionally, guidance on School Enrollment Procedures issued by the Office for Civil Rights (OCR) of the U.S. Department of Education and the Civil Rights Division of the U.S. Department of Justice in 2011 and updated in 2014, provides that all children are entitled to equal access to a basic public elementary and secondary education regardless of their actual or perceived race, color, national origin, citizenship, immigration status, or the status of their parents/guardians.

Can Undocumented Students Continue to Attend Public Colleges in California Now that DACA is Being Phased out? YES

- The DHS confirmed in a September 5 document entitled “Memorandum on Rescission of Deferred Action for Childhood Arrivals” that students with current DACA status continue to be protected until their two-year terms expire.
- Undocumented students enrolled in or wishing to apply to public colleges and universities have some protection under California law. The California Dream Act allows undocumented and non-resident documented students who meet eligibility requirements to apply for private scholarships funded through public universities, state-administered financial aid, university grants, community college fee waivers, and Cal Grants. California community college districts are required to exempt non-resident special part-time students from the requirement to pay non-resident tuition for community college credit courses.
- The California Community Colleges, California State University, and University of California have affirmed their commitment to all students regardless of immigration status, as have numerous school districts and local public agencies.

What is the Public Policy Rationale for DACA?

- DACA is rooted in the U.S. Department of Homeland Security's use of prosecutorial discretion to ensure that limited enforcement resources are focused "on the removal of individuals **who pose a danger to national security or a risk to public**," and not, by way of example, individuals who were brought to this country as children through no fault of their own and are now key contributing members of our community seeking a higher education.

Source: Frequently Asked Questions, United States Citizenship and Immigration Services, https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions

Immigration Enforcement at Sensitive Locations, i.e., School Districts

- Immigration enforcement at "Sensitive Locations" is guided by the *Memorandum on Enforcement Actions at or Focused on Sensitive Locations* issued on October 24, 2011 by U.S. Immigration and Customs Enforcement ("ICE") and *Memorandum on Enforcement Actions at or Near Certain Community Locations* issued on January 18, 2013 by U.S. Customs and Border Protection ("CBP").
- The Sensitive Location Memoranda of ICE and CBP remain in effect and provide that enforcement actions at locations such as schools "should generally be avoided," and "require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action."

Sources: Memorandum on Enforcement Actions at or Focused on Sensitive Locations, dated October 24, 2011, U.S. Immigration and Customs Enforcement, https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf, and Memorandum on Enforcement Actions at or Near Certain Community Locations, January 13, 2013, U.S. Customs and Border Protection, https://www.ice.gov/ero/enforcement/sensitive-loc. *See also* Sensitive Locations FAQ, https://www.cbp.gov/border-security/sensitive-locations-faqs.

What does "Sensitive Location" mean?

Locations covered by these policies would include, but not be limited to:

- Schools, such as known and licensed daycares, preschools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During public demonstrations, such as a march, rally, or parade.

Source: Sensitive Locations FAQs, https://www.ice.gov/ero/enforcement/sensitive-loc

Immigration Enforcement at Sensitive Locations

- Enforcement actions covered include: “(1) arrests; (2) interviews; (3) searches; and (4) for purposes of immigration enforcement only, surveillance.”
- However, ICE may carry out enforcement actions under the Sensitive Locations Memorandum “when one of the following **exigent circumstances** exists:
  - the enforcement action involves a national security or terrorism matter;
  - there is an imminent risk of death, violence, or physical harm to any person or property;
  - the enforcement action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual(s) that present an imminent danger to public safety; or
  - there is an imminent risk of destruction of evidence material to an ongoing criminal case.”

Immigration Enforcement at Sensitive Locations

- It is important to highlight once again that, like DACA itself, the Sensitive Locations Memoranda are not governing law.
- However, the principles set forth in the Sensitive Locations Memoranda have been followed by past Democratic and Republican administrations.
- Recent statements made by the Trump Administration have indicated that the Sensitive Locations Memoranda remain in effect.
- However, note that the Sensitive Locations Memoranda can be rescinded or amended at any time by the Trump Administration.

TRANSPORTING UNDOCUMENTED STUDENTS

- Section 1324 of Title 8 of the United States Code sets forth immigration offenses, including transporting or moving an undocumented immigrant within the United States.
- Under governing law, no violation of Section 1324 will be found where the evidence does not establish that a **direct and substantial relationship exists between the transportation and the furtherance of the undocumented immigrant's presence in the United States.**
- The "mere transportation of a person known to be [an undocumented immigrant] is not sufficient to constitute a violation." The "transportation must be 'in furtherance of such violation of law.'" *United States v. Moreno*, 561 F.2d 1321 (9th Cir. 1977).
- In light of the *Moreno* and *Plyler* decisions and related case law, transporting undocumented students or their parents by District administrators, teachers, and others during the course and scope of their District employment should not be a violation of Section 1324.

District Employees Are Expected to Perform the Duties of Their Positions

- District employees should continue to perform the duties of their positions.
- Districts should develop a clear protocol to address any requests made by an ICE agent or other federal immigration enforcement official.
- For example, requests for access to a campus or student records should be immediately referred to the Office of the District Superintendent who, in consultation with District Counsel, will determine whether the request is lawful, e.g., supported by a valid judicial warrant, court order, or subpoena.

District Defense of Personnel in Civil and Criminal Action

- **Defense of Civil Action:** "[U]pon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity." Ca. Gov. Code § 995

- **Defense of Criminal Action:** A public entity may provide for the defense of a criminal action or proceeding if the action is brought on account of an act/omission within the scope of employment or the public entity determines that such defense would be in the best interest of the agency and the employee acted in good faith and in the apparent interest of the agency. Ca. Gov. Code § 995.8

What Does "Sanctuary Campus" or "Safe Haven" Mean?

- What does "Sanctuary Campus" or "Safe Haven" mean?
  - The term "Sanctuary Campus" or "Safe Haven" has been used increasingly to describe efforts that have been undertaken by elementary, secondary, post-secondary and other educational institutions to support students, particularly those who are undocumented and fear being removed (deported) from this country, or otherwise discriminated against based on religion, e.g., members of the Muslim community.

What Does "Sanctuary Campus" or "Safe Haven" Mean?

- Note that the term "Sanctuary Campus" or "Safe Haven" does not have a single meaning. Some educational institutions have decided to avoid the term when describing their affirmative efforts to support their undocumented students, including DACA beneficiaries, because the term is subject to multiple interpretations. The focal point is the affirmative efforts done on behalf of undocumented students—not the title assigned to a given board resolution or policy.
- Accordingly, to understand what is meant by the term "Sanctuary Campus" or "Safe Haven," one needs to review, for example, a specific board resolution and/or policy adopted by a district board or other educational institution to determine the scope and breadth of actions that said educational institution has decided to undertake to support its undocumented students, including DACA recipients and other students.

JANUARY 25TH PRESIDENTIAL EXECUTIVE ORDER RE SANCTUARY JURISDICTIONS

- On January 25th, President Trump signed an executive order that seeks, in part, to deny federal funding to "Sanctuary Jurisdictions" that **"willfully refuse to comply with 8 U.S.C. § 1373."**
- Section 1373 of Title 8 of the Immigration and Nationality Act prohibits state and local governmental entities from restricting communication with federal immigration enforcement authorities regarding the citizenship or immigration status of individuals.
- The executive order further provides that "appropriate enforcement action" will be taken by the U.S. Attorney General against any entity that violates Section 1373 or has a **"statute, policy, or practice that prevents or hinders the enforcement of federal law**."
- The executive order, moreover, does not define "sanctuary."

JANUARY 25TH PRESIDENTIAL EXECUTIVE ORDER RE SANCTUARY JURISDICTIONS

- At minimum, the executive order signals that a governmental entity would be deemed a "Sanctuary Jurisdiction" by the Trump Administration if:
  - it fails to comply with Section 1373; or
  - has a **"statute, policy, or practice that prevents or hinders the enforcement of federal law**," which is certainly a broad definition that could be subject to multiple interpretations.
- Under the executive order, the U.S. Secretary of the Department of Homeland Security has the discretion "to the extent permitted by law" to designate a governmental entity as a "Sanctuary Jurisdiction." It is unclear what precise criteria will be used to make this designation.

JANUARY 25TH EXECUTIVE ORDER RE SANCTUARY JURISDICTIONS AND COURT DECISION

- President Trump has described "Sanctuary Jurisdictions" as "Sanctuary Cities" that refuse to honor federal detainer requests or immigration holds made of local law enforcement by federal immigration enforcement authorities, such as agents of the U.S. Immigration and Customs Enforcement ("ICE"), before an undocumented immigrant is released from custody.

April 25th Court Order – Prohibits Enforcement of Section 9(a) of Executive Order Denying Federal Funds to Sanctuary Jurisdictions

- The United States District Court for the Northern District of California granted the motion brought by the City and County of San Francisco and Santa Clara County for a nationwide preliminary injunction enjoining enforcement of Section 9(a) of Executive Order 13768, 82 Fed. Reg. 8799 (Jan.25, 2017).

Sanctuary Jurisdictions and Federal Funding

- The Court granted the Counties' request for a nationwide preliminary injunction enjoining enforcement of Section 9(a), a portion of the Executive Order denying federal funding to "Sanctuary Jurisdictions", on the grounds that:
  - it violated the separation of powers doctrine depriving the cities and counties of their Tenth and Fifth Amendment rights, and
  - the Executive Order has caused budget uncertainty by threatening to deprive the Counties of hundreds of millions of dollars in federal grants that support core services in their jurisdictions.

Key Points of the Court Decision

- The Constitution vests spending powers in the Congress, not the President, so the Executive Order cannot constitutionally place new conditions on federal funds.
- The Tenth Amendment requires that conditions on federal funds be unambiguous and timely made, and bear some relationship to the funds at issue.
- Federal funding that bears no meaningful relationship to immigration enforcement cannot be threatened merely because a jurisdiction chooses an immigration enforcement strategy of which the President disapproves.

Can Immigration Enforcement be Tied to Federal Funding for Sanctuary Jurisdictions?

- The enforcement of immigration law is reserved to the federal government. Districts do not have an affirmative obligation to enforce our nation's immigration laws.
  - The "Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program" or scheme under the Tenth Amendment, i.e. federal immigration enforcement. *See, e.g., Arizona v. United States*, 132 S. Ct. 2492, 2502 (2012).
- Congress' power under the Spending Clause "does not include surprising [recipients of federal funding] with post acceptance or 'retroactive' conditions." *National Federation of Independent Business, et al. v. Sebelius*, 132 S.Ct. 2566, 2606 (2012).
- Conditions placed on federal grants should be related to the federal interest in a particular national program. *See South Dakota v. Dole*, 483 U.S. 203. Providing educational services is unrelated to enforcing immigration laws.

May 22, 2017 Memorandum on Implementation of Executive Order 13768

- In response to the April 25th, 2017 preliminary injunction enjoining enforcement of Section 9(a) of Executive Order 13768, Attorney General Jeff Sessions issued a memorandum on May 22, 2017 stating that Section 9(a) of the Executive Order will be applied solely to federal grants administered by the Department of Justice or the Department of Homeland Security and not to other sources of federal funding.

July 25, 2017: Department of Justice Issues New Conditions for Byrne Memorial Justice Assistance Grant Program

- The new conditions on the Edward Byrne Memorial Justice Assistance Grant Program require grant recipients to:
  - Certify compliance with Section 1373 which prohibits restrictions on communications between state and local governments and agencies and officials at the Department of Homeland Security ("DHS");
  - Permit personnel from the DHS to access any detention facility to meet with and question any suspected aliens there; and
  - Provide the DHS with 48 hours' notice before releasing an individual where the DHS has requested notice in order to take that individual into custody for immigration reasons.

Legal Challenge to Byrne (JAG) Program

On August 11, 2017 the City and County of San Francisco filed a lawsuit against United States Attorney General Jeff Sessions and the Department of Justice arguing that:

- Complying with the new requirements would require San Francisco to lose $1.4 million in law enforcement funding or expend scarce law enforcement resources to perform federal immigration duties that will not be reimbursed by the federal government;
- Responding to civil immigration detainer requests in the absence of probable cause violates the Fourth Amendment of the Constitution and could expose San Francisco to civil liability; and
- San Francisco's local laws prohibit San Francisco's law enforcement officials from detaining an individual unless there is a criminal warrant, rather than an administrative warrant based on alleged violations of immigration laws;
- The State of California and the City of Los Angeles have joined the lawsuit, *City and County of San Francisco vs. Sessions et. al., U.S. District Court, for the Northern District of California, Case No. 17-CV-4642.* The case has been reassigned to Judge William H. Orrick, who is the judge that issued the preliminary injunction regarding Section 9(a) of Executive Order 1373.

September 15, 2017 Court Order (Chicago) – Prohibits the addition of new grant conditions to public safety grants

- The United States District Court for the Northern District of Illinois granted the motion brought by the City of Chicago for a nationwide preliminary injunction prohibiting the Justice Department from adding new grant conditions requiring cities to allow immigration agents access to local jails and insisting that local authorities give advance notice when suspected illegal immigrants are about to be released from custody.

Federal Lawsuits Filed

- **January 31, 2017**—*City and County of San Francisco v. Donald Trump, et al.,* (Complaint for Declaratory and Injunctive Relief)(U.S. District Court, Northern District of California)
- **February 3, 2017**—*County of Santa Clara v. Donald Trump, et al.,* (Complaint for Declaratory and Injunctive Relief)(U.S. District Court, Northern District of California)
- **March 22, 2017**—A total of 34 cities and counties filed an amicus brief in support of the County of Santa Clara's Motion for Injunctive Relief, including the County of Los Angeles, Berkeley, Oakland, Santa Ana, and City of Los Angeles
- **March 23, 2017**—A total of 18 school districts, 13 charter schools, and 3 community colleges, including San Diego Community College District, Palomar College, and Southwestern College, filed a motion for leave to file an amicus brief
- **August 11, 2017**—*City and County of San Francisco v. Sessions et. al.* (Complaint for Declaratory and Injunctive Relief) (U.S. District Court, Northern District of California)
- **August 14, 2017**—*State of California v. Sessions* (Complaint for Declaratory Relief and Injunctive Relief) (U.S. District Court, Northern District of California)
- **August 22, 2017**—City of Los Angeles' Motion to Intervene in the case of *City and County of San Francisco v. Sessions* (Complaint for Declaratory Relief and Injunctive Relief

Sanctuary Jurisdictions and Federal Funding for Education

- Based on the application of the Tenth Amendment and related case law, a district is not likely to jeopardize its receipt of federal funding if it were to adopt a board resolution and/or related policies in support of its undocumented students.
- Again, undocumented students cannot be denied a public elementary and secondary education under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. *See Plyler v. Doe*, 457 U.S. 202 (1982).
- Accordingly, **providing an education to undocumented immigrants cannot legally be the basis of any denial of federal funding**. The same holds true with respect to any action taken by Districts to reaffirm their commitment to, for example, adhering to federal anti-discrimination or privacy laws. A district cannot be denied federal funding for following these laws.

Homeland Security Implementation Memorandum

- On February 21, 2017, U.S. Department of Homeland Security Secretary John Kelly issued an Implementation Memorandum on Enforcement of the Immigration Laws to Serve the National Interest.
- According to that Memorandum, regardless of the basis of removability, Department of Homeland Security personnel should prioritize removable aliens who fall within seven categories.

Homeland Security Priority Categories

1. Have been convicted of any criminal offense;
2. Have been charged with any criminal offense that has not been resolved;
3. Have committed acts which constitute a chargeable criminal offense;
4. Have engaged in fraud or willful misrepresentation in connection with any official matter before a governmental agency;
5. Have abused any program related to receipt of public benefits;
6. Are subject to a final order of removal but have not complied with their legal obligation to depart the United States; or
7. In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

"Abused any Program Related to Receipt of Benefits"

- Unclear what "abused" means in Implementation Memorandum.
- "Abuse" should not mean "use" because other federal laws define eligibility for services (e.g., emergency medical services, vaccinations, Head Start) and receipt of these benefits do not disqualify an individual from legal status.
- These programs that do not disqualify, include, among others, Head Start, nutrition programs, foster care, educational assistance, crisis counselling, use of health clinics and prenatal care.
- Never, never, never advise anyone to make a false claim to citizenship or to provide false information. www.uscis.gov/news/ fact-sheets/public-charge-fact-sheet

Pending federal Legislation to Replace DACA

- **The Bridge Act** – Introduced on December 9, 2016, this bill would allow individuals who are eligible for or have already received work authorization and temporary relief from deportation through DACA to continue living in the U.S. with permission from the federal government.
- **The American Hope Act** – This bill was introduced on July 28, 2017 and would give young undocumented immigrants who were brought to the U.S. as children protection from deportation and an opportunity to obtain legal status if they meet certain requirements.
- **The Recognizing America's Children Act** – Introduced on March 9, 2017, this bill would give Congress three years to work out a more permanent solution on immigration, preserving DACA in the interim.
- **The Dream Act** – This bill was reintroduced on July 20, 2017; it would provide a direct path to citizenship for people who are undocumented, have DACA or temporary protected status, and graduate from U.S. high schools and then attend college, enter the workforce, or enlist in the military.

Example of Federal Actions Taken: National Letter for Support

- More than 600 presidents of private and public colleges and universities across the nation signed a statement in support of DACA/undocumented students, including the California State University Chancellor, the President of the University of California, and the President of Stanford University.
  - November, 21, 2016, Statement in Support of the Deferred Action for Childhood Arrivals (DACA) Program and our Undocumented Immigrant Students.
    https://www.pomona.edu/news/2016/11/21-college-university-presidents-call-us-uphold-and-continue-daca
  - August 28, 2017, Association of Community College Trustees and numerous other higher education associations issue a letter to President Trump in Support of DACA/undocumented students.
    http://associationofcommunitycollegetrustees.cmail20.com/t/j-l-olrdjit-hkbdtijr-r/

Pending California Immigration Bills

- **Sanctuary State Bill** also referred to as the **California Values Act—**
- On Saturday September 16, 2017 the California legislature approved the California Values Act which would require the Attorney General to publish model policies limiting assistance with immigration enforcement by October 1, 2018. These model polices are to be used by public schools, public libraries, health facilities operated by the state, and courthouses.
- The bill would require public schools (including security departments of California State University, the California Community Colleges, charter schools, county offices of education, and school districts), health facilities operated by the state and courthouses, among other local agencies, to implement the model policy, or an equivalent policy.
- Subject to exceptions generally pertaining to serious and violent felonies, the bill prohibits state and local law enforcement agencies, including school police and security departments, from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.

Pending California Immigration Bills

- **Senate Bill 45** – Senate Leader Kevin De Leon, D-Los Angeles, would limit cooperation between local and state police and federal immigration authorities and restrict the use of state resources to carry out immigration enforcement.
- **Assembly Bill 222** – Assemblyman Raul Bocanegra, D-San Fernando, would ask voters to amend Prop. 187, passed in 1984, which imposed harsh penalties on the making, distribution, and use of false documents to conceal immigration status.
- **Assembly Bill 291** – Assemblyman David Chiu, D-San Francisco, would provide workplace protections for undocumented workers.
- **Assembly Bill 699** – Assemblyman Patrick O'Donnell, D-Long Beach, would require schools to protect undocumented schoolchildren by requiring a judicial warrant for immigration officers, among other measures.

Pending California Immigration Bills Cont.

- **Senate Bill 6 – Due Process for All Act,** Senator Ben Hueso
- "[W]ould require the [California Department of Social Services] to either contract with qualified nonprofit legal services organizations, or contract with a nonprofit agency to administer funding to nonprofit legal services organization subcontractors, to provide legal services to individuals in removal proceedings who are not otherwise entitled to legal representation under an existing local, state, or federal program."
- "[W]ould establish the California Universal Representation Trust Fund to accept donations from private foundations and other philanthropic entities for the purpose of expanding the number of individuals that may be provided legal services pursuant to these provisions."
- **Senate Bill 31 – the California Religious Freedom Act,** Senator Ricardo Lara

  Prohibits a state or local agency or public employee from:

  - "Provid[ing] or disclos[ing] to federal government authorities personal information regarding the religious beliefs, practices, or affiliation of any individual for the purpose of compiling a list, registry, or database of individuals based on religious affiliation, national origin, or ethnicity."
  - "Us[ing] agency money, facilities, property, equipment, or personnel to assist in creation, implementation, or enforcement of any government program compiling a list, registry, or database of personal information about individuals based on religious belief, practice, or affiliation, or national origin or ethnicity, for law enforcement or immigration purposes."

Examples of State Actions Taken: Issuance of Principles/Statements

- **Issuance of Principles/Statements**: Principles in Support of Undocumented Students, including DACA Recipients, and/or Against Registry Have Been Issued by:
  - **The California Community Colleges Chancellor's Office**; http://californiacommunitycolleges.cccco.edu/Portals/0/DocDownloads/PressReleases/DEC2016/PR-Principles-12-5-16-FINAL.pdf
  - **The University of California ("UC") system, and** https://www.universityofcalifornia.edu/sites/default/files/Statement-of-Principles-in-Support-of-Undocumented-Members-of-UC.pdf; and
  - **The California State University ("CSU") system**.

    http://www.csusm.edu/president/documents/2016/COmemo111716.pdf

Examples of Additional State Actions Taken

- On November 29, 2016, the Chancellor's Office of California Community Colleges and the UC and CSU systems issued a joint letter to then President-Elect Trump in support of DACA
  http://californiacommunitycolleges.cccco.edu/Portals/0/DocDownloads/PressReleases/NOV2016/UC-CSU-CCC-DACA- Letter-FINAL-11-29-16.pdf
- The Community College League of California Reaffirmed its Commitment to Educational Opportunity for All Post-Election
  http://www.ccleague.org/files/public/GovtRel/PostElection_Board%20Statement.pdf
- California Governor Jerry Brown has vowed to defend California.
- California Attorney General Xavier Becerra has similarly vowed to defend California.
- The California State Legislature recently hired former U.S. Attorney General Eric Holder to "to advise on potential legal challenges with the Trump Administration."

Examples of Local Actions Taken:

- Districts, post-secondary education institutions, charter schools, municipalities, and other entities are demonstrating their support for undocumented immigrants, including DACA recipients, in different ways, including the adoption of board resolutions and/or policies.
- January 2017 Los Angeles County Office of Education Resolution (Promote Safe and Healthy Learning Environments for all Students with Los Angeles County)
  - http://www.lacoe.edu/Portals/0/LACOE/Resolution%20No%20%2018%20-%20Safe%20Schools.pdf
- List of “Safe Haven” Districts—CalSchoolNews.org
  - http://www.calschoolnews.org/safe-haven-districts

What are other school districts and campuses doing?

Examples

- Reaffirming to faculty, staff, students and families in your community, your school or college district's values of diversity and inclusion and make clear that unlawful discrimination against students will not be tolerated.
- Distributing resources to students, educating them about their right to a safe and inclusive educational environment.
- Establishing protocols if ICE were to request access to campus or student information, i.e., immediately refer to the Superintendent who will consult with counsel.
- Reminding faculty, staff, and campus security that student information is private and not to be shared except in specific legally defined circumstances and pursuant to established protocols involving consultation with legal counsel.

What are other school districts and campuses doing?

Examples

- Establishing a space where district personnel and students can receive updated educational/informational resources about issues affecting undocumented students.
- Developing partnerships with community stakeholders and low-cost/ pro bono legal service providers.
- Cautioning students and their families about the potential dangers of using immigration consultants and notaries—who are not attorneys—to handle their immigration-related matters.

Question & Answer Session

Thank You

For questions or comments, please contact:

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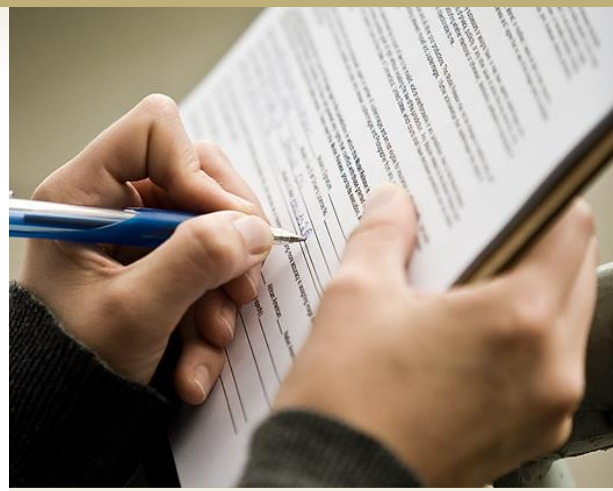

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