THE NEED TO IMPROVE HIGHER EDUCATION ACCESS THROUGH TUITION EQUITY AND EQUITABLE STATE AID

July 10, 2023

"Education is the most powerful weapon which you can use to change the world."- Nelson Mandela

The Massachusetts Law Reform Institute (MLRI) respectfully submits this joint letter on behalf of the statewide Immigration Coalition (IMCO), which consists of the 14 regional legal aid programs in the Commonwealth of Massachusetts and 140 other immigration service providers representing thousands of low-income immigrants in the state and the region. A list of the organizational coalition members signing on to these comments is attached as an Appendix. We submit this joint letter to urge the Massachusetts Legislature to extend in-state tuition and access to state financial aid to students in the Commonwealth regardless of immigration status. We particularly seek your leadership in the Massachusetts House to support the inclusion of the Section 12 provisions in the **Senate-approved budget** and for Conference Committee members to take action[1].

Expanding higher education opportunities for all Massachusetts residents is aligned with our coalition's shared interest in providing access to legal services, ensuring an immigration system that is fair and just, and helping immigrant youth achieve their dreams. Notably, tuition equity promotes equality within a statewide system that unfairly charges undocumented students in particular much higher tuition rates than their peers despite performing equally well – or better – within the same Massachusetts public schools.

Furthermore, studies have found that the cost of implementing tuition equity laws or policies have been negligible because in-state tuition is not the same as free tuition[2]. Therefore, the money paid by the increased enrollment of students often increases revenues[3] because it

[1] Three pending Massachusetts bills, H.1281, S.817, and S.836, would, if enacted, also remove legal barriers to the provision of equal educational opportunities to low-income youth who attended and graduated from Commonwealth high schools and meet secondary criteria. The Senate bills would also extend eligibility for state financial aid.
[2] See, Basic Facts About In-State Tuition for Undocumented Students (National Immigration Law Center, November, 2022), https://www.nilc.org/issues/education/basic-facts-instate/.
[3] A 2023 report from the Massachusetts Taxpayers Foundation estimates "that expanding access to in-state tuition rates to undocumented students could generate $2.6 to $3.5 million in new revenue for community colleges, state universities, and the University of Massachusetts in the policy's first year of implementation." See, MTF Conference Preview: In-State Tuition & Financial Aid Eligibility, Massachusetts Taxpayers Foundation (June 22, 2023), https://www.higheredimmigrationportal.org/wp-content/uploads/2023/06/230620-In-State-Tuition-Conference-Preview.final_.pdf.

represents income that the institutions would not otherwise receive[4]. In other words, including tuition equity language in the budget would create virtually no additional costs to the Commonwealth and would allow undocumented students who are eagerly awaiting to pursue their higher education to enroll in college sooner rather than later at a time when the Massachusetts workforce is facing critical shortages in high-demand fields.

As IMCO advocates and service providers, we represent and serve individuals and families who live below the federal poverty level, and we advance laws, policies, and practices which secure economic security and reduce the number of persons living in poverty. Crucially, tuition equity would advance this goal, and bolster the Commonwealth's economic strength as a result. As Census data and scholarly research amply show, a college education is associated with higher levels of employment, higher income levels, and higher rates of home ownership.[5] In addition to poverty reduction, a college education provides other significant societal benefits, such as improving overall economic growth and stability and the critical means for immigrants to attain stable forms of legal status, such as permanent residence after acquiring a college degree.[6]

Therefore, increasing access to higher education and extending state financial aid to undocumented students has direct and positive impacts. Tuition equity has proven to reduce dropout rates, increase college attendance, boost academic achievement, and raise student incomes and tax contributions.[7] Students who can afford to study in MA are also more likely to

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[4] Students who qualify for tuition equity are not likely to attend college otherwise because out-of-state tuition rates are beyond their financial reach. Undocumented youth are not eligible for federal financial aid, such as Pell Grants or student loans. While they may borrow from private lenders, the interest rates range from 8% to 35%, and undocumented families face higher barriers to getting loans approved. See, Sarah Wood*, How Undocumented Students Can Get College Financial Aid*, US News & World Report (March 2023), https://www.usnews.com/education/best-colleges/paying-for-college/articles/how-undocumented-students-can-get-college-financial-aid; *Personal Loans for Non-Citizens, Non-Residents, & Undocumented Immigrants,*(May 2023), https://www.stilt.com/blog/2018/01/non-us-resident-loan/#:~:text=At%20a%20Glance%3A%20Non%2DU.S.,and%20documentation%20may%20be%20needed; *See also,* Laura Goren, "*In-State Tuition is a Common Sense, Low Cost Investment for Virginia*" (The Commonwealth Institute, Jan. 2019) Update: In-State Tuition Is a Common Sense, Low-Cost Investment for Virginia – The Commonwealth Institute – The Commonwealth Institute.

[5]See, Michael T. Nietzel, *New Evidence Documents That A College Degree Pays Off—By A Lot,* Forbes (January 15, 2020), https://www.forbes.com/sites/michaeltnietzel/2020/01/15/new-evidence-documents-that-a-college-degree-pays-off-by-a-lot/?sh=7503c7c13a98; Jia Wang and Jordan Conwell, *Higher education and health at midlife: Evaluating the role of college quality,* National Institute of Health (September 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9508472/; Jessica Dickler, *College is still worth it, research finds — although students are growing skeptical,* CNBC Personal Finance (March 1, 2023), https://www.cnbc.com/2023/03/01/is-college-worth-it-what-the-research-shows.html.; Marisol Cuellar Mejia, Cesar Alesi Perez, Vicki Hsieh, and Hans Johnson, *Is College Worth It?,* Public Policy Institute of California, https://www.ppic.org/publication/is-college-worth-it/.

[6] Federal immigration laws enacted by Congress offer employment-based pathways to permanent and long-term status, especially for those with nursing, physical therapy, special education, math and science, engineering, accounting, and other degrees. *See* https://www.uscis.gov/working-united-states/working-us; and http://www.migrationpolicy.org/article/college-educated-immigrants-united-states.

[7] In fact, DACA-eligible residents in Massachusetts have already made substantial economic contributions, having contributed $41.5 million in state and local taxes and $68.6 million in federal taxes.

stay and contribute to the local economy. Importantly, implementation costs have been shown to be negligible and would bring in new revenue for colleges and universities while helping to offset recent declines in college enrollment in the Commonwealth. [8]

Since tuition equity legislation was first proposed in Massachusetts in 2003, several states have enacted similar laws. States have also extended scholarship and/or financial aid opportunities to beneficiaries of tuition equity legislation, in furtherance of the fairness and strong economic objectives behind the policy of expanding college affordability to a broader pool of high school graduates. To date, 23 states plus the District of Columbia provide either tuition equity or a combination of tuition equity and scholarships and/or financial aid to their high school graduates, irrespective of immigration status[9], either via state law or policy.[10]

Like the bills passed in these other states, the Section 12 tuition equity provision would create *alternative criteria* for establishing in-state tuition eligibility, in addition to that of state residence. For example, a student who has attended a Commonwealth high school for at least three years, graduated or obtained their equivalency here, ***and*** signed an affidavit regarding their intent to apply for citizenship or legal permanent residence when eligible, would qualify for the in-state rate on that basis regardless of immigration status, rather than on the basis of residence within Massachusetts.[11] This language, therefore, removes any legal impediments to eligibility otherwise created by federal law, including by 8 U.S.C. §§1623 and 1621.

Without this alternative criteria, the first of these federal statutes, 8 U.S.C. §1623, could create an obstacle to conferring in-state tuition eligibility. That is because a state that relies on "residence" as the criteria for determining eligibility for higher education benefits, as Massachusetts now does pursuant to Ch. 138, §85 of the Acts of 1991, could not allow unlawfully present non-citizens to qualify as residents and comply with §1623 unless it also makes out-of-state U.S. citizens eligible on the same basis – a costly endeavor. To avoid this consequence, a state may, alternatively, confer eligibility on another basis – as the language incorporated into the budget proposes to do.[12]

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[8] *See* Bob Oakes, *Why Is College Enrollment Declining? A Look At The State And U.S.*, WBUR (June 2019), https://www.wbur.org/edify/2019/06/05/college-enrollment-decline-michael-horn; *It's time: Why Massachusetts should extend in-state tuition and state financial aid to all local high school graduates*, MIRA Coalition (2019), http://miracoalition.org/images/Documents/MIRA-highered-equity-facts2019.pdf .

[9] A qualification is made for noncitizen visitors to the U.S., such as those with foreign student visas and tourists.

[10] *See* Steph Solios, *Massachusetts lawmakers consider in-state tuition for undocumented students*, Axios (May 2023), https://www.axios.com/local/boston/2023/05/22/massachusetts-in-state-tuition-undocumented-students.

[11] We also support amending the Section 12 text as recommended by the Presidents' Alliance on Higher Education and Immigration to ensure that all undocumented students in Massachusetts can benefit from this transformational policy. The amended language should include: **1)** applicability of in-state tuition eligibility at all public institutions, without any exemptions (as supported by the University of Massachusetts system); **2)** extension of state financial aid on the same basis as it applies to other eligible Massachusetts students (and so applicable at both public and state-approved, private, independent colleges and universities); and **3)** the removal of requiring a social security or ITIN number as one of the eligibility criteria.

[12] A second federal statute, 8 U.S.C. §1621, also potentially limits the provision of in-state tuition to persons who are not lawfully present unless a state affirmatively enacts a law conferring eligibility upon them. Because a Massachusetts in-state tuition law would meet the affirmative enactment option, enactment of the Section 12 provisions addresses any §1621 impediment.

As a coalition deeply committed to the rights of low-income immigrants, IMCO members support the proposition that students, regardless of their immigration status, deserve access to an affordable higher education. As described above, tuition equity legislation serves sound policy objectives by opening higher education opportunities to more youth in the Commonwealth, thereby facilitating upward mobility. This would promote local and state economic growth by generating additional revenue for the state's colleges, community colleges, and universities.[13] Increased revenue is extremely important at a time when enrollment is declining, and colleges are closing.

Furthermore, thanks to tuition equity legislation, resources would be conserved at the college level that are currently being diverted to sorting through the vast array of immigration statuses and documents that exist, because the new criteria would be much simpler to administer – and thereby protect the state from potential discrimination complaints if colleges erroneously denied in-state tuition to eligible immigrants. Additionally, legislation passed now through the budget would immediately serve incoming college students matriculating this fall[14]

Most importantly, in the aftermath of a public health crisis, we must promote a more just recovery for the communities most disproportionately impacted by the coronavirus pandemic. Because Covid-19 exacerbated pre-existing inequities, the pandemic profoundly affected people of color, including immigrants[15]. Notably, the burdens placed on immigrant students during this pandemic made it harder for them to complete their degree programs. This hurt society due to reduced earnings, underemployment, greater public assistance demand, potential student loan debt defaults, and lack of civic engagement. By increasing college affordability, we can therefore reform the social structures that contributed to the unequal pandemic experience.

Ultimately, investing in Massachusetts high school students through the passage of tuition equity is also an investment in the Commonwealth's future. Well-crafted language in the budget avoids conflict with federal law and secures a solid legal footing for successful enactment. Vital economic public policy objectives overwhelmingly favor enactment. These provisions would benefit immigrants who are not lawfully present and some who are, given current state financial aid policies that disqualify them.[16] Finally, enacting a tuition equity bill at this critical juncture in our nation's history, when immigrants increasingly experience intolerance and isolation, would

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[13] *See* Massachusetts Taxpayers Foundation, *Revenues from Undocumented Immigrants Paying In-State Rates,* (July 18, 2011), http://www.masstaxpayers.org/sites/masstaxpayers.org/files/In-state%20tuition.pdf.

[14] College financial aid disbursement typically occurs between 10 days before and 30 days after classes start. The incoming deadline means it is critical to pass this legislation before school begins. See, *How College Financial Aid Disbursements Work,* U.S. News and World Report (August 2020), https://www.usnews.com/education/best-colleges/paying-for-college/articles/college-financial-aid-disbursement-when-and-how-to-expect-it.

[15] See, *COVID on Campus: Assessing the Impact of the Pandemic on Undocumented College Students*, Sage Journals (July 2021), https://journals.sagepub.com/doi/10.1177/23328584211033576

[16] For example, persecution victims who are granted a refugee-like status called "Withholding of Removal" under 8 U.S.C. §1231(b)(3) because they have proved to an immigration court judge that their life or freedom would be threatened in the home country are ineligible for state-funded financial aid programs such as MASSGrants, per Massachusetts Board of Higher Education guidelines. *See* https://www.mass.edu/osfa/programs/massgrant.asp.

evince firm leadership on the part of the Commonwealth to promote the values of diversity and inclusion that enrich and benefit our society.

Respectfully submitted,

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Mass. Law Reform Institute

On behalf of the MLRI Immigration Coalition

Asian American Resource Workshop (AARW): Dorchester, MA
Boston University Law Immigrants' Rights and Human Trafficking Program: Boston, MA
Catholic Charities Boston: Boston, MA
Central West Justice Center (CWJC): Worcester, MA
Children's Law Center of Massachusetts (CLCM): Lynn, MA
Dove, Inc (Domestic Violence Ended): Quincy, MA
Harvard Immigration and Clinical Program (HIRCP): Cambridge, MA
Harvard Representation Initiative: Cambridge, MA
International Institute of New England (IINE): Lowell, MA
Justice Center Of Southeast Massachusetts Llc: Brockton, MA
Massachusetts Advocates for Children (MAC): Boston, MA
Massachusetts Law Reform Institute (MLRI): Boston, MA
MetroWest Legal Services: Framingham, MA
New England Justice for Our Neighbors (NEJFON): Belmont, MA
Northeastern University School of Law Immigrant Justice Clinic (IJC): Boston, MA
Pathway for Immigrant Workers: Cambridge, MA