



Dr. Michael V. Drake
President
University of California

October 2022

Re: Request Regarding Employment Opportunities for Undocumented Students

Dear President Drake,

We, the undersigned organizations and individuals, write to request that you implement the strategy set forth in this letter to permit the hiring of undocumented students for positions of employment within the University of California—even if they lack explicit authorization to be employed under federal law. As we explain below, no federal law prohibits the University of California from hiring undocumented students.

With the future of DACA now in jeopardy, thousands of students in California are already unable to access it, and Congress having failed—for twenty years—to pass the federal Dream Act, UC has a moral and legal obligation to act *now* on behalf of our undocumented graduate and undergraduate students. Critically, hundreds of thousands of undocumented students across the nation already cannot access DACA, because they entered the U.S. after the policy's cutoff date—which requires people to have entered the United States prior to June 15, 2007, because they sought to apply after July 2021—when a court order barred the federal government from accepting new applications, or for other reasons related to ongoing litigation over the program. As a result of these developments, many students already pursuing graduate and undergraduate studies, and the vast majority of undocumented high school graduates this year, cannot access DACA.

At the University of California, students who cannot access DACA are being systematically denied opportunities afforded to their classmates, including employment opportunities that would enhance the research, education, and public service mission of the university. This unfair treatment of our undocumented students must end, and the University has legal authority to end it.

Our students' needs demand immediate attention. For example, at UCLA, two current student leaders of Improving Dreams Equity Access and Success (IDEAS)—one graduate student and one undergraduate student—are seeking jobs (for which they are eminently qualified) to edit and publish a pathbreaking book written by and about undocumented students that grew out of a UCLA class. Both of them are undocumented, and neither has DACA.

Karely Amaya Rios (UCLA '22, B.A. in Political Science and Chicana/o Studies) is a rising public policy graduate student at UCLA who has been living undocumented in the United States for almost 20 years. Although she excelled in her academics, led and advocated for her

peers in organizing to protect undocumented students, and helped secure \$1 million in funding for undocumented student fellowships at UCLA, she has never been eligible for DACA. As a result, Karely has never been adequately compensated for her labor in organizing and has been denied a number of academic and professional opportunities because they require employment authorization. Most recently, Karely has been offered a position as a Graduate Research Assistant working at the Labor Center, but the Center cannot hire her. For that reason, she cannot afford to pay tuition this fall.

Jeffry Umaña Muñoz (UCLA '24, B.A. in Chicano and Central American Studies, and Labor Studies) and his family immigrated to the U.S. when he was just two years old. Though he applied for DACA, recent attacks on the program have left Jeffry in limbo, with his application frozen at USCIS. At UCLA, Jeffry has been a leader advocating for students' access and retention needs to campus administration across student government and various campus organizations. He continues to work with IDEAS to support and empower undocumented students. Because he does not have DACA, Jeffry has been unable to access various professional and academic opportunities, from employment to fellowships to scholarships. Currently, Jeffry serves the UCLA Labor Center, where despite the opportunity, they cannot hire and provide him with compensation to support his educational and living expenses.

Karely and Jeffry are, of course, only two of the many students who face obstacles to educational advancement due to their lack of employment authorization. Currently, there are approximately 44,326 undocumented college students in California who are not eligible for DACA, and 27,000 undocumented students graduating from high school each year. None of them can access jobs that form a key part of the educational experience, such as graduate student instructor positions.

It does not have to be this way. The federal prohibition on hiring undocumented people (codified in the 1986 Immigration Reform and Control Act, or IRCA) does not say that it binds state government entities. In fact, it does not mention states at all.

As the [attached memorandum](#) explains, courts have long recognized that states have broad power to determine the appropriate qualifications for state positions, including qualifications related to immigration status. As a result, the U.S. Supreme Court established, *before* IRCA's enactment, that if Congress wants to change the balance between federal and state power by regulating in an area under traditional state control, it must do so with unmistakably clear language. Given that IRCA never even mentions states, the operative language in IRCA comes nowhere close to meeting the Supreme Court's clear statement requirement for federal laws regulating state government conduct. Moreover, in stark contrast to IRCA, other statutes which do bind state governments mention them explicitly, such as the Fair Labor Standards Act, Family and Medical Leave Act, and the Age Discrimination in Employment Act.

Thus, Congress did not curtail states' historic power to determine the employment qualifications of state employees when it passed IRCA. As a result, state entities are not bound by IRCA's prohibition on hiring undocumented people. State government entities can lawfully hire undocumented students irrespective of federal employment authorization status.

As the Supreme Court recognized long ago, the University of California system is considered part of the State of California under California law. For that reason, the University of California is permitted to hire undocumented people without federal employment authorization, including students.

This legal argument is sound. It has already been endorsed by leading immigration and constitutional law scholars, including the two Deans of the University of California's law schools with substantial expertise in this field of law, as the letter accompanying the [attached legal memorandum](#) shows.

With more and more students entering undergraduate and graduate programs without DACA, and with the future of DACA itself in question, now is the time to ensure these employment opportunities are available to *all* UC students, without discrimination. The University of California has the chance to continue building its legacy as an institution committed to protecting the rights of undocumented students, alumni, and community members.

By exercising its authority, consistent with federal law, to open employment opportunities within the University to all qualified graduate and undergraduate students, the University of California could take a critical step to make clear that *all* UC students can access the educational opportunities the university has to offer, including employment opportunities within educational programs and elsewhere at the university.

For all these reasons, we respectfully request that the University administration allow the UCLA Labor Center to hire Karely and Jeffry, and that it permit all undocumented graduate and undergraduate students to seek employment with the University.

Sincerely,

Karely Amaya Rios

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