



Center for Immigration Law and Policy

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Dear Chairperson Fong,

As scholars who have researched the legal analysis underlying this bill extensively, we write to provide our assessment of the risks raised in the University of California's (UC) Letter of Concern of April 3, 2024.

The letter raises three main concerns, all of which pertain to what might happen should a hypothetical federal administration hostile to undocumented students come to power.

First, UC expresses concern that students could be put at risk, presumably either because a hostile administration could seek out information about them from the universities and target them for deportation, or because it could classify their work as unauthorized and deny them immigration benefits on that basis.

Those concerns are misguided. The risk created by information-sharing is equally present for DACA, California Driver's Licenses, and various other programs that require undocumented people to identify themselves. In each case, they must weigh the benefits of those programs with the vulnerabilities created by accessing them. Undocumented university students are not children; they have the right to weigh those risks for themselves. In addition, existing law creates substantial privacy protections that would make it difficult for a hostile federal government to seek student information in this manner.

The concern about immigration benefits is misguided for similar reasons. Students should be allowed to consider the risks and rewards and act accordingly. In addition, we believe the risks associated with unauthorized work would be minimal for most undocumented students, as they are already barred from adjusting their status under federal immigration law because of lengthy unlawful presence. Participating in the employment opportunities this legislation creates would rarely pose any additional risks for most students seeking to adjust status.

Second, UC expresses concerns regarding risks to human resources employees—presumably the risk of prosecution for knowingly hiring undocumented people in violation of the Immigration Reform and Control Act (IRCA). We have analyzed this issue extensively, and strongly believe the risk here is also minimal. Most importantly, UC seems to ignore that these officials would be *following state law* by hiring students because state law would require it. It is highly unlikely that a federal prosecutor would bring charges against someone for following a state law without first trying to win a civil suit declaring that law goes beyond the state's authority to enact. We are not aware of any instances in which federal prosecutors have taken such action. Relatedly, any federal prosecutor considering whether to bring such charges would have to first conclude that the federal law prohibiting such hiring was clear enough to satisfy due process guarantees that every employee would have, including the prohibition against laws that



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are void for vagueness. *See Valenzuela Gallardo v. Lynch*, 818 F.3d 808, 819 (9th Cir. 2016). This would be virtually impossible to do after the California legislature had concluded the opposite.

Third, UC cites a risk to its federal funding, but fails to mention that the federal government attempted to cut off California's funding for taking other pro-immigrant measures during the Trump Administration. The courts rejected that attempt. *See United States v. California*, 921 F.3d 865 (9th Cir.), *cert. denied*, 141 S. Ct. 124 (2020). The argument here would be even stronger than in that case, because none of the Federal funding for States provided in IRCA, nor any other Federal funding, conditions those funds on compliance with the prohibition on hiring undocumented people. *See also Cty. of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 532 (N.D. Cal. 2017) (an Executive Order "retroactively condition[ing] all 'federal grants' on compliance with [8 U.S.C.] Section 1373" was "not an unambiguous condition that the states and local jurisdictions voluntarily and knowingly accepted at the time Congress appropriated these funds").

In our view, the only significant risk associated with this law's passage would be that the federal government could sue to enjoin the law itself. This would not result in anyone having to face criminal prosecution or even pay fines. We respectfully believe that risk would be warranted in order to provide equal educational employment opportunities to all of California's university students.

We hope this assessment aids your consideration of AB 2586. Please feel free to contact us with any further questions.

Sincerely,

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