

California Dreamin': DACA's Decline and Undocumented College Student Enrollment in the Golden State

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ABSTRACT—With Congressional efforts to pass comprehensive immigration reform mired in gridlock, over the past dozen years the federal effort to provide relief to undocumented young adults has been through Deferred Action for Childhood Arrivals (DACA) program. DACA may go before the U.S. Supreme Court for the second time in 2025. There is surprisingly little concrete and comprehensive recent data on undocumented and “DACA-mented” college student enrollment patterns.

This is the first article to report hard data on contemporary enrollment trends for undocumented college students, an era marked by increasing constrictions of DACA. Our first main finding is that between 2016-17 (just prior to the partial DACA rescission) to 2022-23, newly enrolled low-income undocumented students declined *by half* at University of California (UC) and California State University (CSU) campuses. Our second main finding is that for UC and CSU low-income undocumented students overall (new and continuing students) there was a 30% decline between 2018-19 and 2022-23 (the second finding reflects a delayed impact as earlier large cohorts took time to graduate).

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Our third finding is that there were not notable declines over the same period in our “control” groups—other low- and lower-middle income students at UC and CSU with similar academic profiles—which supports our inference about the causal role of DACA’s decline on decreasing undocumented student enrollments.

Section IV pivots to several ongoing areas of promising reforms and mitigation strategies that can be pursued by public universities with an interest in supporting undocumented student success. These are strategies to consider regardless of how DACA fares in the Supreme Court. We analyze relevant case law regarding the “Opportunity for All” campaign in the UC, which is based on the claim that public universities may lawfully employ undocumented students. We also summarize innovative public-private partnerships for scholarships and other support for undocumented students and immigrant rights.

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“I keep moving forward even though I cannot see what future is in front of me. I will keep working to find a way to illuminate the path.”

-- Maria Ortega Rodriguez, undocumented college freshman without DACA¹

I. INTRODUCTION

In the landmark 1982 ruling in *Plyler v. Doe*, the Supreme Court held that a Texas statute authorizing K-12 public schools to deny enrollment to

¹ Maria Ortega Rodriguez, *I'm An Undocumented College Student. No Matter How Hard I Work, There's 1 Reality I Can't Escape*, Huff Post, May 31, 2023, https://www.huffpost.com/entry/undocumented-college-student-citizenship-work_n_647652f2e4b02325c5dd76e9.

undocumented children violates the Equal Protection Clause of the Fourteenth Amendment.² Although stopping just shy of holding education to be a right, the Court declared that “education has a fundamental role in maintaining the fabric of our society.”³ Years spent in U.S. elementary schools, junior highs and high schools interweave the strands of undocumented students’ identities into the fabric of our (and their) American society. Some like Rosaura learn along the way that American society will not be experienced as a seamless fabric, but as a patchwork of inclusionary and exclusionary encounters, such as learning that one cannot participate in the federally funded academic preparation program at their middle school.⁴ Many U.S. undocumented students who aspire to go to college first learn of their immigration status when they were applying for college and financial aid,⁵ as high school graduation marks the abrupt transition from the K-12 educational world protected by *Plyler* to the liminal world of higher education that is the focus of this article, with its broad possibilities and also “transitions to illegality”⁶ that vary greatly according to the state where one resides and whether one has DACA relief.

Challenges to DACA have been percolating in the lower courts for several years. As the Supreme Court may rule on the legal merits of DACA as soon as next year, what are the educational outcomes of thousands of undocumented students who enrolled in U.S. colleges and universities in recent years, some with DACA and some without DACA? In fact, we will show that this is a surprisingly difficult question to answer.

Officials at U.S. public universities and higher education boards making administrative choices about collecting data on undocumented students must navigate between competing hazards. Most public university systems have

² 457 U.S. 202, 202 (1982).

³ *Id.* at 202.

⁴ ROBERTO. G. GONZALES, LIVES IN LIMBO: UNDOCUMENTED AND COMING OF AGE IN AMERICA 97-98 (2015).

⁵ *Id.* at 99 tbl. 2; Carmen Monico & David Duncan, *Childhood narratives and the lived experiences of Hispanic and Latinx college students with uncertain immigration statuses in North Carolina*, 15 (supp) INT’L J. QUALITATIVE STUDIES ON HEALTH & WELL-BEING 1, 6 (2020).

⁶ GONZALES, LIVES IN LIMBO *supra* note __, at 11 (“For undocumented youth, the transition to adulthood is accompanied by a *transition to illegality*. Difficult transitions stem from conflicting and contradictory laws that provide undocumented children access to K-12 schools but deny them the means to participate in the polity once they become adults.”) (italics in original); Rachel Moran, *Dreamers Interrupted: The Case of the Rescission of the Program of Deferred Action for Childhood Arrivals*, 53 U.C. DAVIS L. REV. 1905, 1917 (2020) (“*Plyler’s* protections permit these youth to become de facto Americans through their early educational experiences, but graduation brings home the harsh reality of their de jure denial of citizenship.”).

chosen (or defaulted to) procedures and policies that absorb some known degree of harm in order to avoid the risk of catastrophic harm. More specifically, most university systems with sizeable numbers of undocumented students knowingly forego the potential educational benefits of being able to integrate undocumented status with their financial aid and registration record systems because there are offsetting ethical concerns. By not collecting data, universities protect undocumented students' identities in the face of the sensitive nature of immigration status and negative contingencies such as future hostile subpoenas or other coercive data disclosure obligations.⁷

As we show in Section III, the three states known to have the largest numbers of undocumented college students in the U.S.—California, Texas and Florida—do not directly provide contemporary enrollment counts or estimates about undocumented college students.⁸

The experiences of these three states with the largest relevant populations underscore that data nationwide about undocumented college students that could otherwise inform judicial and policymaker judgments is not available. Given this patchwork of partial and fuzzy estimates of undocumented students for some but not all states and with incongruous methodologies and various years reported, it necessarily follows that there are not national figures for undocumented college student enrollments from the typical sources used more generally (e.g., federal IPEDS data).⁹ In lieu of hard data at the national level, the best national estimates

⁷ See e.g., UC Regents, Discussion Item A5: Undocumented Student Support and Student Experience, at 2 n.3 (Jan. 20, 2021), <https://regents.universityofcalifornia.edu/regmeet/jan21/a5.pdf> (“As a special population within the University community, undocumented students are not coded or tracked with this factor in any student information system due to the sensitive and vulnerable nature of immigration status. However, through point of service contacts such as visits to the undocumented student services offices, combined with the number of completed California Dream Act Applications, campuses have been able to estimate the number of undocumented students in order to plan services”); Adam Echelman, *Fewer undocumented students have DACA. California’s colleges want to help, even if the options are limited*, CAL MATTERS, Nov. 30, 2023, <https://calmatters.org/education/higher-education/2023/11/undocumented-students/> (“UC, Cal State and the community college system do not officially track the number of undocumented students and instead use various proxies to estimate it. They don’t track the number of DACA recipients either.”); cf. MANUELA EKOWO & IRIS PALMER, PREDICTIVE ANALYTICS IN HIGHER EDUCATION: FIVE GUIDING PRACTICES FOR ETHICAL USE 8 (March 2017), <https://www.newamerica.org/education-policy/reports/predictive-analytics-in-higher-education/> (“Be vigilant that data are well protected so that the information does not get into the hands of those who intend to misuse it. It is especially important to protect the data privacy of vulnerable student groups, such as ... undocumented students...”).

⁸ However, estimates are sometimes possible based on e.g., absence of Social Security Numbers.

⁹ Stella M., Flores & Leticia Oseguera. *The community college and undocumented immigrant students across state contexts: Localism and public policy*, 111 TEACHERS COLLEGE RECORD 63,

we have come from a series of reports utilizing a population-based estimation methodology anchored to the American Community Survey, but as we show in Section III there are limitations to these national estimates.

II. THE RISE AND DECLINE OF DACA

After a decade of unsuccessful efforts by Congress and the U.S. Senate to pass versions of a DREAM Act or other comprehensive immigration reform, the Obama administration took executive action in 2012 through Deferred Action for Childhood Arrivals (DACA).¹⁰ That policy formalized a longstanding practice of prosecutorial discretion.¹¹ DACA meant eligible undocumented immigrants would be spared the government's removal/immigration enforcement efforts for two years with renewals possible. Under the Obama and Biden administrations, DHS has interpreted DACA as conferring a temporary form of lawful presence, even though that is distinct from lawful status.¹²

69 (2009) (“As IPEDS data do not provide detailed citizenship data or non-resident status by race and ethnicity, we rely on non-resident aliens as a measure of foreign-born nonresident status among the institutional data.”); Johanna K. P. Dennis, *Just beyond Reach: A Study on Access to in-State Tuition and Enrollment after Deferred Action for Childhood Arrivals: Part III: Individually Reported Hispanic Non-Citizen Student Persistence*, 20 J. L. SOC'Y 103, 110, 116 (2020) (using Hispanic non-citizen status as a proxy for undocumented status).

¹⁰ MICHAEL A. OLIVAS, *PERCHANCE TO DREAM: A LEGAL AND POLITICAL HISTORY OF THE DREAM ACT AND DACA* (2020); JENNIFER M. CHACÓN, SUSAN BIBLER COUTIN & STEPHEN LEE, *LEGAL PHANTOMS: EXECUTIVE ACTION AND THE HAUNTING FAILURES OF IMMIGRATION LAW* (2024).

¹¹ Shoba Sivaprasad Wadhia, *The History of Prosecutorial Discretion in Immigration Law*, 64 AM. U. L. REV. 1285 (2014). An important factor behind the need for DACA was in response to the resistance of field-level immigration enforcement personnel to carrying out President Obama's enforcement priorities and prosecutorial discretion guidelines. HIROSHI MOTOMURA, *IMMIGRATION OUTSIDE THE LAW* 204–05 (2014).

¹² See U.S. CITIZENSHIP & IMMGR. SERVS., *Frequently Asked Questions, Consideration of Deferred Action for Childhood Arrivals (DACA)*, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> (last updated Nov. 13, 2023) (“An individual who has received deferred action is authorized by DHS to be in the United States for the duration of the deferred action period. Deferred action recipients are also considered to be **lawfully present** as described in 8 C.F.R. sec. 1.3(a)(4)(vi) for purposes of eligibility for certain public benefits (such as certain Social Security benefits) during the period of deferred action. However, deferred action does not confer **lawful immigration status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence they may have....Under 8 CFR 274a.12(c)(33), an individual who has been granted deferred action under 8 CFR 236.21 through 236.23, Deferred Action for Childhood Arrivals, may receive employment authorization for the period of deferred action, provided they can demonstrate “an economic necessity for employment”) (bold in original).

Moreover, in several states DACA interacted with state laws and administrative practices and thereby opened up additional important benefits such as access to driver's licenses, eligibility for in-state tuition and financial aid, and more favorable conditions for professional licenses and credentials (e.g., lawyers, doctors, school teachers, etc.).¹³ In Virginia, for example, soon after DACA the state attorney general advised that DACA (and only DACA) students could be eligible for waivers to pay in-state tuition at colleges and universities in the commonwealth.¹⁴

Under the Trump administration, in 2017 the Secretary of the Department of Homeland Security (DHS) attempted to rescind DACA, which began a slow strangulation of the program (i.e., no new DACA requests were being accepted). In a 5-4 ruling in *Department of Homeland Security v. Regents of the University of California*¹⁵, the U.S. Supreme Court in 2020 held that the Trump administration DHS' rescission of DACA was arbitrary and capricious in violation of the Administrative Procedure Act (APA) and vacated the rescission of DACA. The Court found the Trump administration failed to consider the reliance interests of DACA recipients and others that had accumulated since the program began in 2012.¹⁶ The Court majority did not reach the legality of DACA.¹⁷

The Trump administration defied the U.S. Supreme Court ruling.¹⁸ Binding federal court rulings should have returned treatment of DACA applications to the *status quo ante* before the September 2017 unlawful rescission

¹³ OLIVAS, PERCHANCE TO DREAM, *id.* at __.

¹⁴ See Gabriel R. Serna, Joshua M. Cohen & David H. K. Nguyen, *State and Institutional Policies on In-State Resident Tuition and Financial Aid for Undocumented Students: Examining Constraints and Opportunities*, 25 (18) EDUC. POL'Y ANALYSIS ARCHIVES 1, 6-7 (2017). This was later eclipsed by a H.B. 1547 in 2020, which set forth criteria for access to in-state tuition rates and by S.B. 1347 signed in 2021 that made qualifying undocumented students eligible for state financial aid the following year, <https://www.higheredimmigrationportal.org/state/virginia/>.

¹⁵ Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020).

¹⁶ *Id.* at 1913-15.

¹⁷ However, in Justice Thomas' dissenting opinion (joined by Justices Alito and Gorsuch) he declared the view that DACA was unlawful because "DHS created DACA during the Obama administration without any statutory authorization and without going through the requisite rulemaking process."¹⁷ Justice Kavanaugh, in a separate dissent, referenced legislative gridlock, noting that the uncertainty faced by DACA recipients is "a result of Congress's inability thus far to agree on legislation." *Id.* at 1935.

¹⁸ See e.g., Jennifer Lee Koh, *Executive Defiance and the Deportation State*, 130 YALE L. J. 948 (2021); Mark Joseph Stern, *Trump Is Now Openly Defying the Supreme Court*, SLATE, July 28, 2020, <https://perma.cc/D4L8-YYLL>.

of DACA.¹⁹ However, Acting DHS Secretary Wolf issued a new memorandum directing the agency “to take all appropriate actions to reject all pending and future initial requests for DACA, to reject all pending and future applications for advance parole absent exceptional circumstances, and to shorten DACA renewals consistent with the parameters established in this memorandum.”²⁰

Upon taking office in January 2021 President Biden issued a directive to preserve and fortify DACA, with DHS announcing that it would move forward with a notice of proposed rulemaking process to fashion new DACA regulations.²¹ The Biden DHS issued proposed regulations in September 2021 that in key respects maintained the status quo with DACA.²²

While the Biden administration’s rulemaking process for DACA was underway, district court judge Hanen ruled that DACA violates the Administrative Procedure Act. He issued a nationwide injunction blocking DHS from processing any new DACA applications while permitting the continued processing of current DACA renewals.²³

¹⁹ See e.g., *Casa De Maryland v. U.S. Dep't of Homeland Sec.*, No. 8:17 -cv-02942-PWG at 3 (D. Md. July 17, 2020), <https://storage.courtlistener.com/recap/gov.uscourts.mdd.403497/gov.uscourts.mdd.403497.97.0.pdf>.

²⁰ Acting DHS Secretary Chad Wolf, Reconsideration of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” at 1-2 (July 28, 2020), https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf. This action was all the more controversial because Wolf’s appointment as Acting DHS Secretary itself was found by several federal courts to not lawfully comply with the Homeland Security Act. See *Casa de Maryland, Inc. v. Wolf*, 2020 WL 5500165, at *23 (D. Md. Sept. 11, 2020) (“By extension, because Wolf filled the role of Acting Secretary without authority, he promulgated the challenged rules also ‘in excess of ... authority,’ and not ‘in accordance with the law.’”); *Batalla Vidal v. Wolf*, 501 F. Supp. 3d 117, 123 (E.D.N.Y. 2020) (holding that the acting DHS Secretary was not lawfully appointed); *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520 (N.D. Cal. 2020) (same). The GAO reached the same conclusion as the courts above. See General Accountability Office-General Counsel, Department of Homeland Security—Legality of Service of Acting Secretary of Homeland Security and Service of Senior Official Performing the Duties of Deputy Secretary of Homeland Security (Aug. 2020), <https://www.gao.gov/assets/710/708830.pdf>.

²¹ See *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)*, 2021 DAILY COMP. PRES. DOC. 64 (Jan. 20, 2021), <https://perma.cc/7RT9-7K5M>; *Statement by Homeland Security Secretary Mayorkas on DACA*, U.S. DEP’T OF HOMELAND SEC. (Mar. 26, 2021) <https://perma.cc/Q8FD-P8Q4>.

²² *Preserving and Fortifying Deferred Action for Childhood Arrivals*, 86 Fed. Ref. 53,736 (Sept. 28, 2021) (later codified at 8 C.F.R. pts. 106, 236, 274a).

²³ *Texas v. United States*, 549 F. Supp. 3d 572, 624 (S.D. Tex., 2021).

Texas v. United States was assigned to a conservative Fifth Circuit panel, and the Fifth Circuit affirmed the district court's decision, but directed Judge Hanen to now review and consider the final regulations codifying DACA that were promulgated while the litigation appeal was pending.²⁴ The Fifth Circuit also reaffirmed continuation of a partial stay covering existing DACA recipients.²⁵ Judge Hanen found that the final DACA regulations did nothing to improve infirmities that he and the Fifth Circuit identified in the original 2012 DHS Secretary Napolitano memorandum:

[T]he easy response to the assignment given to this Court on remand is: there are no material differences between the Final Rule and the 2012 DACA Memorandum, and while the record underlying the Final Rule certainly supports the argument that DACA has been beneficial for the DACA recipients and that the DACA recipients are, with certain exceptions, beneficial to the country, DHS did nothing to change or resolve the substantive problems found by this Court or the Fifth Circuit.²⁶

In his latest ruling Judge Hanen focused on advance parole and the planned indefinite nature of DACA as two problem areas with the final DACA regulations.²⁷ The *Texas v. United States* case is now back on appeal before the Fifth Circuit; oral argument has not yet occurred at the time of this writing. An appeal of the Fifth Circuit's forthcoming decision is expected, which if review is granted, would be heard in the Supreme Court's 2024 Term or the following Term.

Figure 1 displays annual DACA intakes that were approved by the Department of Homeland Security (DHS) between 2012 and 2023, separated into new approvals and approved renewals. These data cover all DACA recipients

²⁴ 50 F. 4th 498, 512 (5th Cir. 2022) (“[W]e affirm the district court's judgment with regard to the procedural and substantive provisions of the DACA memorandum. Assuming without deciding that we presently have jurisdiction to review the Final Rule, we decline to do so at this juncture. We do not have the administrative record before us. We cannot determine whether there are material differences in that record and the record before the district court regarding the 2012 DACA Memorandum.... A district court is in the best position to review the administrative record in the rulemaking proceeding and determine whether our holdings as to the 2012 DACA Memorandum fully resolve issues concerning the Final Rule.”).

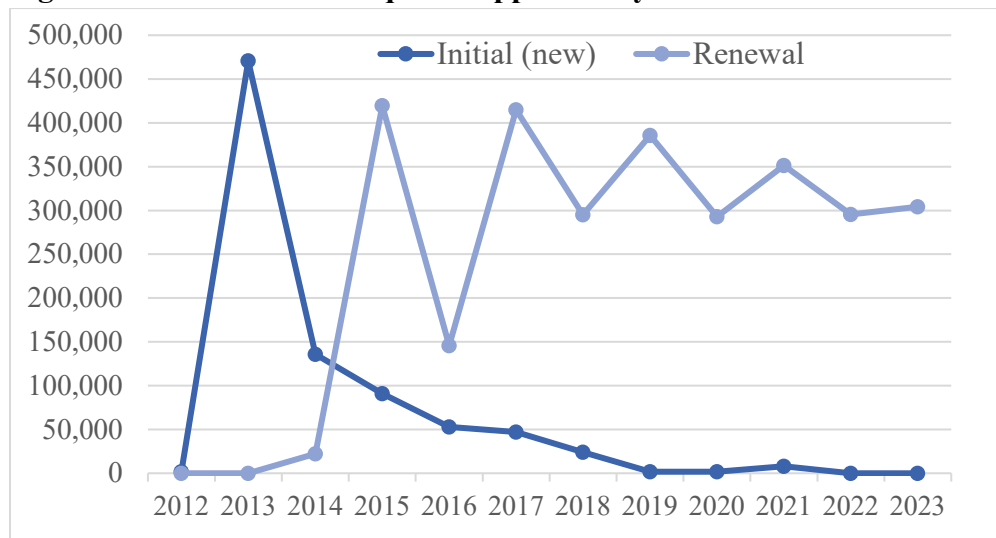
²⁵ *Id.* at 531-32.

²⁶ __ F. Supp. 3d ___, 2023 WL 5951196 (S.D. Tex. Sept. 13, 2023). The district court additionally referenced at footnote 44: “the Final Rule is flawed for the same substantive reasons as the 2012 DACA Memorandum. *See Texas II*, 549 F.Supp.3d at 603-21; *Texas II*, 50 F.4th at 525-28.”

²⁷ __ F. Supp. 3d ___, 2023 WL 5951196.

rather than the subset who are college students (which DHS and other federal agencies do not report separately). Starting in Fall 2017 during the Trump administration, approval of new DACA applications basically ended. After a minor uptick in the first half of 2021 when almost eight thousand were approved under the Biden administration before the *Texas v. United States* district court’s national injunction in July 2021 prohibited further processing of new DACA intakes, in 2022 and 2023 combined there were only *three* new DACA applications approved by DHS.

Figure 1: DACA Intake Requests Approved by DHS in FY 2012 to 2023²⁸



Consequently, the population still being approved to have “DACA-mented” status are those who are renewing their previously approved DACA applications, a group of Millennials and older Generation Z individuals who have now largely aged out of high participation rates in undergraduate education. Today an 18 year-old high school graduate who is undocumented and aspires to go to college will almost invariably not be able to participate in DACA.²⁹ In fact, potential

²⁸ Department of Homeland Security, U.S. Citizenship and Immigration Services, DACA Performance Data (Dec. 2023), https://www.uscis.gov/sites/default/files/document/reports/daca_performance_data_fy12_fy23_q4.csv. Based on DHS/USCIS’s fiscal year, these data correspond to the period of August 15, 2012 through September 30, 2023. The “sawtooth” pattern for renewals in Figure 1 is an artifact of renewals being on a two-year cycle for the most part.

²⁹ Phillip Connor, *The Post-DACA Generation is Here, Nearly all this year’s 120,000 undocumented new high school graduates are ineligible for the policy*, FWD.US News, <https://www.fwd.us/news/undocumented-high-school-graduates/>; Nina Rabin, *Second-Wave DREAMers*, 42 YALE L. & POL’Y REV 107, 134 (2023) (“Diego, Juan, and Laura, whose profiles opened this section, were the last high school students our clinic [at the UCLA Law School] has assisted with DACA. As of June 2022, there were no new applicants in the under-fifteen age

college students today face multiple overlapping barriers: 1) nearly all 18 year-old undocumented high school graduates by 2024 did not arrive in the U.S. by DACA's 2007 cut-off; and 2) even those in their twenties who would have become DACA eligible but only after the date of the attempted rescission of DACA in September 2017, they were eligible in theory only because the processing of new applications was halted except for the brief small-level reopening in 2021 referenced above.

III. MEASURABLE ENROLLMENT DECLINES SINCE DACA'S DEMISE

Here we provide “hard numbers” on actual enrollment trends for the two public university systems in California. For reasons detailed in the Appendix, our data are a good measure of enrollment trends for undocumented students, yet come from the California Student Aid Commission (CSAC) and cannot be linked back with enrollment records of individual students on each university campuses that could place those undocumented individuals at risk of removal from the United States.³⁰

As a “level set” to aid readers in understanding the meaning and context of our findings further below, Table 1 categorizes all 50 states plus D.C. and Puerto Rico as of 2024 in a continuum from most restrictive to most supportive/accessible policies for in-state tuition and state financial aid eligibility. These categories and ratings are from the Higher Ed Immigration Portal by the Presidents Alliance based on measurable definitions. This is a very dynamic space because of changes to state laws³¹, so while Table 1 is a snapshot as of April 2024, the states that shifted categories compared to April 2021 are shaded in

group because they would not have been born in 2007.”); UC Immigrant Legal Services Center, Annual Progress Report 9 (Sept. 2022), https://ucimm.law.ucdavis.edu/sites/g/files/dgvnsk12741/files/inline-files/UCIMM-2022-Annual-Report-FINAL_0.pdf (“In the last two fiscal years, we have seen an expected increase in the number of undocumented clients without DACA and a decline in the number of DACA clients. This is because, with few exceptions, every incoming class of first-year UC students since Fall 2020 has been ineligible for DACA and accompanying work authorization.”);

³⁰ CDE and CSAC Joint Statement, Protection of Student Information for CADAA Applicants (2022), <https://www.csac.ca.gov/post/joint-message-cde-and-csac-protection-student-information-cadaa-applicants> (“The California Department of Education (CDE) and CSAC want to assure CA Dream Act applicants and their families that it is safe to apply for the CADAA. Information provided on the CADAA application is used solely to determine eligibility for state financial aid. Information provided on the CADAAA is not shared with the federal government and it is not used for immigration enforcement. CSAC will work to the fullest extent of the law to protect all students that share their information through the CADAA.”).

³¹ William C. Kidder, *Dreaming with dreamers when DACA is at risk: An innovative and legally defensible student-community partnership model to bolster financial support for undocumented college students*, 36 GEORGETOWN IMMIGRATION L.J. 571, 585 (2022).

grey. The degree of variation in Table 1 calls to mind the line in *Grutter v. Bollinger* that “States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear”³² but here with the proviso that congressional inaction on immigration reform such as a DREAM Act over the past two decades is the “but for” cause for why the best solution is far from clear.

Table 1: State Tuition & Financial Aid Policies for Undocumented College Students in 2024³³

<i>Prohibitive Enrollment</i>	<i>Restrictive</i>	<i>No State Policy</i>	<i>Limited to DACA</i>	<i>Limited</i>	<i>Accessible</i>	<i>Comprehensive Access</i>
AL, GA, SC	IN, MO, NH, NC, TN, WI	AL, LA, MT, ND, PR, SD, VT, WV, WY	AR, ID, ME, MS, OH	DE, IA, MI, PA	AZ, FL, KS, KY, NE, OK	CA, CO, CT, DC, HA, IL, MD, MA, MN, NV, NJ, NM, NY, OR, RI, TX, UT, VA, WA

The importance of our present findings are underscored by the absence of official and contemporary counts for public university systems in California, Texas and Florida, home to the largest populations of interest. In California the most commonly cited estimates for undocumented students are from six years ago

³² 539 U.S. 306, 342 (quoting *United States v. Lopez*, 514 U. S. 549, 581 (1995) (Kennedy, J., concurring)).

³³ Adapted from <https://www.higheredimmigrationportal.org/states/> (April 2024) and <https://web.archive.org/web/20210422104104/www.higheredimmigrationportal.org/states/> (archived April 2021). The definitions are as follows:

“Comprehensive Access: Policies provide statewide access to in-state tuition and some state financial aid or scholarships for the state's resident DACA recipients and undocumented students.

Accessible: Policies provide statewide access to in-state tuition for the state's undocumented students, including DACA recipients.

Limited: Policies provide the state’s undocumented students, including DACA recipients, with access to in-state or reduced tuition in at least some public institutions.

Limited to DACA: Policies provide the state’s DACA recipients with access to in-state tuition in at least some public institutions.

No State Policy: No known policies on access to in-state tuition or state financial aid for the state's DACA recipients and undocumented students.

Restrictive: Policies actively bar access to in-state tuition or state financial aid for the state's undocumented students, including DACA recipients.

Prohibitive Enrollment: Policies actively bar enrollment in all or certain public institutions for the state’s undocumented students, but may still allow DACA recipients to enroll.”

or more, when it was estimated there were about 4,000 undocumented students enrolled at the University of California (UC) and 10,000 to 12,000 enrolled at the California State University (CSU).³⁴ These estimates were cited in the run-up to the DACA litigation culminating in the Supreme Court’s 2020 ruling, in which UC relied on data counts for those filing California Dream Act financial aid applications (a data source not integrated with the University’s internal enrollment records) to arrive at a figure of 4,200 undocumented students at UC and then applied “additional criteria to approximate the subset of 1,700 students who [then] appear[ed] to have DACA work authorization.”³⁵ Due to the absence of updated reporting elsewhere, these same figures get repeated in the press.³⁶ Similarly, the CSU Chancellor’s office estimated in 2019 that there were 9,500 undocumented students in the CSU and has not reported updated estimates in the five years since.³⁷

Likewise, in Texas (estimated to have the second largest population of undocumented college students), comprehensive enrollment statistics on public university students who are eligible for the in-state tuition waiver (and who sign a related affidavit, a group this is mostly but not entirely undocumented) were last estimated in 2017.³⁸ Financial aid data for undocumented college students in

³⁴ The Campaign for College Opportunity, Higher Education Affordability for Undocumented Students in California 2 n.5 (2018),

https://collegecampaign.org/wp-content/uploads/imported-files/CCO_Undoc.pdf;

³⁵ Declaration of UC financial aid director Shawn Brick in Regents of the University of California v. U.S. Department of Homeland Security, Case No. 17-CV-05211-WHA in support of the University’s motions for preliminary injunction and summary judgment, October 23, 2017 (declaration on file with the authors). Illustrative of reporting on these figures in the press and University community, see Gretchen Kell, *As Supreme Court ruling on DACA looms, Berkeley is students' steadfast ally*, UC Berkeley News, June 16, 2020,

<https://news.berkeley.edu/2020/06/16/supreme-court-ruling-on-daca-looms-berkeley-is-students-steadfast-ally>.

³⁶ Mikhail Zinshteyn, *UC rejects proposal to allow campuses to hire undocumented students*, Cal Matters, Jan. 25 2024, <https://calmatters.org/education/higher-education/2024/01/undocumented-students-2/>

³⁷ CSU Chancellor’s Office--Public Affairs, “California State University to Roll Out Delivery of Immigration Legal Services for Students and Employees,” Aug. 28 2019, <https://www.jfssd.org/wp-content/uploads/2019/08/2019-08-28-California-State-University-to-Roll-Out-Delivery-of-Immigration-Legal-Services-for-Students-and-Employees.pdf>.

³⁸ Texas Higher Education Coordinating Board, Overview: Eligibility for In-State Tuition and State Financial Aid Programs 3 (Dec. 2018), <https://reportcenter.highered.texas.gov/reports/data/overview-eligibility-for-in-state-tuition-and-state-financial-programs/>.

Texas are not tracked by their higher education board.³⁹ In Florida (estimated to have the third largest population of undocumented college students), undocumented students are ineligible for state financial aid but are eligible for in-state tuition rates under certain conditions.⁴⁰ The Florida Board of Governors overseeing its public universities report system and campus headcount data on “non-resident”⁴¹ tuition waiver students, and the same goes for the State’s Division of Florida Colleges⁴² that oversees its community colleges, but the “non-resident” category is mostly but not entirely made up of undocumented students (this category also includes a slice of citizen students who temporarily lost their Florida residency). The scholarly research on undocumented students has not focused on Florida in part because of the more difficult financial aid environment and absence of better data.⁴³

As further context for our findings about California universities, the best national estimates are in a series of reports by the American Immigration Council and the Presidents’ Alliance on Higher Education and Immigration. The latest report in this series estimated that there are approximately 408,000 undocumented college students in the U.S. in 2021, with the most (one-fifth of the national total) in California (83,000), followed by Texas (59,000), Florida (40,000), New York

³⁹ Texas Higher Education Coordinating Board, Meeting Agenda for January 2020, <https://reportcenter.highered.texas.gov/meeting/board-agendas/board-agenda-january-2020/> (minutes at page 47: “The agency does not maintain documentation of the amount of state funding received by undocumented students. Affidavit students are not all undocumented students.”); José Iván Rodríguez-Sánchez, Undocumented Immigrants in Texas: A Cost-Benefit Assessment 14 (2020), <https://www.bakerinstitute.org/research/undocumented-immigrants-texas-cost-benefit-assessment> (“However, the number of undocumented students attending higher education in Texas is unknown...”).

⁴⁰ Florida Stat. § 1009.26 (12)(a). This law was passed in 2014 (<https://www.flsenate.gov/Session/Bill/2014/0851>), and is under recurring threat of being rescinded. See Higher Ed Immigration Portal, Florida Update (April 2023), https://www.higheredimmigrationportal.org/effective_practice/floridas-in-state-tuition-waiver-for-dreamers/.

⁴¹ <https://www.flbog.edu/resources/data-analytics/dashboards/fee-waiver-summary/>. Note that Florida has mandatory fee waivers for a wide range of populations (veterans, foster youth, dual-enrolled in high school, children of state employees, etc.) and in 2022-23 “non-resident” waivers represented only 5.3% of the total for all these programs at Florida public universities.

⁴² Florida Department of Education--Division of Florida Colleges, FCS Resident and Nonresident Enrollment Report 2022-2023, <https://www.fldoe.org/schools/higher-ed/fl-college-system/about-us/policy-data.stml>.

⁴³ Given Florida’s 2014 law and how it coincided with DACA’s peak years, the absence of empirically orientated research articles on Florida undocumented students is a little surprising. This likely relates to the concern about data privacy ethics for this vulnerable population under political attack and scapegoating, mentioned at the outset of this section.

(30,000), Illinois (20,000) and New Jersey (19,000).⁴⁴ However, even the best population-based estimation methodologies real have limits. For example, the data in the Presidents’ Alliance estimates are not granular enough to specify the proportion of students likely enrolled in community colleges versus four-year public institutions; and for the 23 percent of undocumented students estimated to be at private institutions, it is not known what proportion attend for-profit career/trade colleges versus non-profit (including religiously affiliated) institutions many of which provide a high quality undergraduate education and have solid alumni networks.⁴⁵

California is in the “comprehensive access” group in Table 1, and even within that category is toward the high end of access based on the extent of financial aid available to both citizen and undocumented students. Our data for this article come from CSAC, which administers the Cal Grant and Dream Act financial aid awards in California in partnership with university and college campuses. The table below provides an overview of average financial aid awards for a low-income student who is a California resident. Cal Grants are one of three “legs of the stool” of need-based financial aid, along with federal Pell Grants and UC Grants (University funds earmarked for return to aid) such that a low-income student’s tuition and fees can be covered by a Cal Grant (\$13,000) and the total cost of attendance of \$38,000 can be covered by the combination of a Cal Grant, Pell, Grant and UC Grant plus a modest part-time employment or loans to cover the remaining \$8,000. The basic structure of CSU financial aid is similar, but with Cal Grants and CSU institutional aid amounts being lower to sync with CSU’s lower tuition and costs of attendance.⁴⁶

⁴⁴ AM. IMMIGRATION COUNCIL & PRESIDENTS’ ALL. ON HIGHER EDUC. & IMMIGR, UNDOCUMENTED STUDENTS IN HIGHER EDUCATION: HOW MANY STUDENTS ARE IN U.S. COLLEGES AND UNIVERSITIES, AND WHO ARE THEY? Fig. 1, 3 (updated Aug. 2023), https://www.americanimmigrationcouncil.org/sites/default/files/research/undocumented_students_in_higher_education_2023.pdf.

⁴⁵ *Id.* at 7 (“Private schools include both non-profit and for-profit institutions.”).

⁴⁶ California State University Chancellor’s Office, 2021-2022 Financial Aid Program Report (April 2023), <https://www.calstate.edu/impact-of-the-csu/government/Advocacy-and-State-Relations/legislative-reports/Institutional-Financial-Aid-Programs-Report-2023.pdf>

Table 2: Typical UC Financial Aid Packages in 2022-23 covering average total cost of attendance (in-state student with on-campus housing) of \$38,000⁴⁷

		<i>If undocumented & AB 540 eligible?</i>
CA resident citizen student w/ family income of \$30,000	Work \$8,000 (to stay debt free) or loan	Depends on DACA, Dream Loans*
	UC Grant \$10,000	✓ UC Grant Aid
	Pell Grant \$7,000	- Not eligible
	Cal Grant \$13,000 (tuition/fees)	✓ Dream Act = Cal Grant

In the right column of the UC table above (and likewise in the CSU) undocumented students are not eligible for federal Pell Grants, which underscores the importance of access to Dream Act awards (the equivalent to other Cal Grant awards) and UC Grants by virtue of a series of California laws (AB 130, 131 et seq.). If an undocumented student has DACA it opens up authorized work opportunities on campus and off-campus that are not available to undocumented students without DACA (and both groups are restricted from federally subsidized Work-Study jobs on campus).⁴⁸ There are also some funds for Dream Loans under California law (which contrasts with undocumented students' ineligibility for federal Stafford Loans), but the take-up rate on Dream Loans is modest given the loan aversion choices by undocumented students and their families in the current liminal environment.⁴⁹ Undocumented students are more likely to adopt other cost-saving strategies out of financial necessity that place additional stressors on their educational learning (e.g., food insecurity, living at home with a lengthy commute to campus).⁵⁰

The 2022 study by Gurantz and Obadan using CSAC Dream Act data is the closest in the scholarly literature to the data we use for this article (their data are more fine-grained but focus on older 2013-14 and 2014-15 cohorts of students).⁵¹ We also obtained campus-level data that heretofore have not been

⁴⁷ UC Office of the President, Institutional Financial Aid Report to the Legislature 13 fig. 3 (Jan. 2024), https://www.ucop.edu/operating-budget/_files/legreports/2023-24/uc_institutional_financial_aid_prgrms_lgrpt.pdf

⁴⁸ Kidder, *Dreaming with Dreamers*, supra note __, 585-86.

⁴⁹ CSAC Work Group Report,

⁵⁰ UCLA Institute for Research on Labor and Employment (Laura E. Enriquez et al.), How Can Universities Foster Educational Equity for Undocumented College Students: Lessons from the University of California 6 (2019), <https://irle.ucla.edu/wp-content/uploads/2019/01/Enriquez-Educational-Equity-Final.pdf>

⁵¹ Oded Gurantz & Ann Obadan, *Documenting Their Decisions: How Undocumented Students Enroll and Persist in College*, 51 EDUC. RESEARCHER 524 (2022).

publicly reported from the CSAC on California Dream Act⁵² awards. Dream Act awards do not robustly capture all undocumented students, but they are a good measure of low-income undocumented students who typically have lived in California for much/most of their lives and attended California high schools (the numerically predominant group of undocumented students of greatest interest to most policymakers) inclusive of transfers from the California Community Colleges. Again, our data cannot be linked back to individual identifiable enrolled students on campuses based on immigration status.

Another pocket of high-quality data exist on undocumented students in the two-year and four-year colleges in the City University of New York (CUNY) system⁵³ but may not be generalizable in terms of student demographics, state law characteristics, college profiles and local labor markets.⁵⁴ Moreover, research on these CUNY undocumented students has tended to focus on years leading up to the initial introduction of DACA over a decade ago.⁵⁵ The same is true in California focusing on the early days of DACA and California's Dream Act financial aid.⁵⁶

We report Dream Act recipient data on all nine UC campuses with undergraduates and at fifteen of the CSU campuses where 89.6% of the CSU system's Dream Act students enrolled in 2022-23 (the other eight CSU campuses represent only 10.4% combined). As detailed in the Appendix, we erred on the side of not separately reporting Dream Act data for these campuses with smaller numbers of undocumented students. We also report UC and CSU systemwide totals.

We adopt a social science "difference-in-difference" analytic strategy⁵⁷ that compares enrollment changes for undocumented Dream Act students with the

⁵² For some time, Dream Act awards have been tracked and reported for the UC and CSU systems (<https://www.csac.ca.gov/post/cal-grant-paid-awards>), but not for individual campuses.

⁵³ CUNY includes ten colleges granting A.A. degrees and fourteen granting B.A./B.S. degrees, <https://www.cuny.edu/about/colleges/>

⁵⁴ Amy Hsin & Francesc Ortega, *The effects of deferred action for childhood arrivals on the educational outcomes of undocumented students*, 55 DEMOGRAPHY 1487, 1504 (2018).

⁵⁵ A. Nicole Kreisberg & Amy Hsin, *The higher educational trajectories of undocumented youth in New York City*, 47 J. ETHNIC & MIGRATION STUDIES 3822, 3828 (2021) ("We focus on five cohorts of Latino immigrant students who first enrolled in CUNY from 2002 to 2012").

⁵⁶ Frederick Ngo & Samantha Astudillo. *California DREAM: The impact of financial aid for undocumented community college students*, 48 Educ. Researcher 5 (2019) (using a difference-in-difference framework for students "likely to be undocumented" at one large urban community college district in California, focusing on cohorts entering in 2005-14).

⁵⁷ See e.g., Grant H. Blume & Mark C. Long, *Changes in levels of affirmative action in college admissions in response to statewide bans and judicial rulings*, 36 EDUC. EVAL. & POL'Y ANALYSIS 228, 238 (2014) ("Difference-in-difference estimates 'difference out' what Murnane

corresponding pattern for a closely matched group of non-undocumented students. For this we use CSAC data on the low-income Cal Grant awardees at UC and CSU, respectively. (See Appendix). These control groups of students going to UC and CSU are also coming from California high schools and have similar GPAs and age distributions etc. The control group comparisons help address alternative hypotheses and confounders impacting low-income students more generally (e.g., impact of a budget downturn or COVID-related shift in available financial aid). At the same time, we caution that we do not have the granular data to perform a robust causal model that eliminates confounders in a more systematic way.

Most notably, the Cal Grant comparison groups are not a strategy for assessing the possible confounder of change over time in the population of undocumented high school graduates in California that is the rootstock for those undocumented students going on to enroll at UC and CSU (though ways of assessing that possibility are discussed further below in the Appendix). We also cannot empirically deny the possibility of unique indirect effects of COVID impacting undocumented students' likelihood of enrolling at California universities in the past couple years (e.g., disproportionate impact of job losses among undocumented student's family members in 2020 and 2021; greater high school learning losses in 2020 and 2021 for those without reliable internet access or computers at home).

A. University of California campuses

Our main focus further below is on the overall undocumented student population at UC (and CSU), but we begin by looking at the smaller numbers of new Dream Act awardees each year at UC because it provides interpretative context for the data discussion that follows.⁵⁸ *Figure 2 documents an alarming linear downward trend in UC's newly enrolled low-income undocumented students. In 2016-17 there were 1,181 new Dream Act awardees at UC, compared to 579 in 2022-23, a decline of 51.0%. By comparison, new Cal Grant awardees to (non-undocumented) low-income students at UC were relatively*

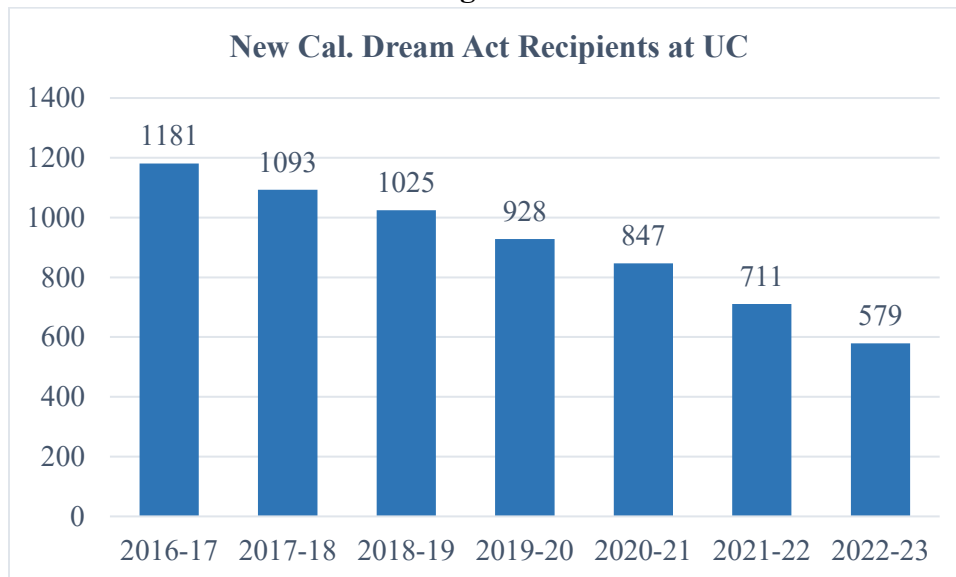
and Willett (2010) call a 'secular trend' (p. 154). Secular trends are those which occur outside the scope of the policy of interest but may affect the dependent variable."); Liliana M. Garces & David Mickey-Pabello, *Racial diversity in the medical profession: The impact of affirmative action bans on underrepresented student of color matriculation in medical schools*, 86 J. HIGHER EDUC. 264, 272-73 (2015).

⁵⁸ For these new awardees in Figure 2 for UC and Figure 5 for CSU, we have that data at the university system level but not the campus level.

stable over this period, declining only 3.3% between 2016-17 and 2022-23.⁵⁹ The 51% drop in UC’s new Dream Act awards compared to UC’s other new Cal Grant awards is statistically significant.⁶⁰ Preliminary data confirms that this downward trend in new Dream Act awards at UC continues in 2023-24.⁶¹

Recall from Section II that 2016-17 represented the last year that meaningfully large numbers of new DACA applications were approved by DHS, with the Trump administration halting new DACA approvals in Fall 2017. Also keep in mind in that Figure 2 includes both incoming freshmen and transfers with Dream Act awards, though freshmen outnumbered transfers four-to-one.

Figure 2



The data above in Figure 2 sets the stage for understanding two overall trends for Dream Act awardees at UC (Figures 3-4 and Table 1). The first trend might seem paradoxical or counter-intuitive, especially if presented absent the

⁵⁹ For the data discussed here and reflected in Figure 4, we do not have new UC Cal Dream Act award data for the 2015-16 year (<https://www.csac.ca.gov/post/cal-grant-paid-awards>). Nonetheless, we are highly confident that 2016-17 is the appropriate “high water mark” for discussion in the paragraph above because the CSAC data we do have indicate that those *offered* new UC Dream Act awards (a group about one-tenth larger than those who ultimately accept the awards) was 15% larger in 2016-17 than in 2015-16.

⁶⁰ Comparing UC Dream Act awardees to the other UC Cal Grant awardees yields a two-tailed *p-value* significant at < 0.01 when comparing 2016-17 with 2022-23.

⁶¹ Compared data on those *offered* Dream Act awards in Appendix Table 1 with

Cal. Student Aid Comm’n, CAL GRANT PROGRAM New Offered Awardees and Eligible Non-Offered Awardees Average Income, GPA, Family Size, and Age by Segment Award Year 2023-24 3 (2024), https://www.csac.ca.gov/sites/main/files/file-attachments/cal_grant_program_averages_2023-24.pdf?1707431193.

context about a linear decline in new undocumented students at UC. This first trend was also underappreciated at the time for reasons likely connected to the absence of data reporting mentioned earlier. We find that low-income undocumented student enrollments at UC actually climbed by nearly one thousand between 2015-16 (late Obama era) and the peak period of 2018-19 even in the face of the “existential threat” posed by the Trump administration’s anti-immigrant policies and efforts to rescind DACA.⁶² UC’s Cal Dream Act awardees increased 35.4% between 2015-16 and 2018-19, far outpacing the 4.8% increase in other Cal Grant (FAFSA) awardees at UC during the same period.

The explanation underlying this paradox is that UC undocumented Dream Act freshmen (a much larger group than transfers) who entered UC in the peak years for DACA purposes of 2014-16 in the late Obama years then progressed through the University as juniors and seniors during the Trump administration years. In 2017 UC estimated that 40% or more of its enrolled undocumented students had work authorization from DACA.⁶³ Many of those students had or could get DACA renewals and were not in that way impacted by the Trump administration’s efforts to rescind DACA beginning in mid-2017. Thus, even though new Dream Act students at UC were very much in decline by 2017-18, for a time those enrollment losses were being offset by the large cohorts of continuing Dream Act students making progress toward graduation amidst the tumult in our national politics over immigration in 2017-19.

Underpinning the trend of overall Dream Act increases up to 2018-19 (driven by upward trend of *new* Dream Act student enrollment several years earlier) was a constellation of powerful community support and activism within California universities for and with undocumented students during the Trump era (discussed more below in Section IV). Thus, the holistic explanation has to do with the increased awareness and routinization of the Dream Act application process, growth and maturity in tandem of UC undocumented student support centers and the UC Immigrant Legal Services Center⁶⁴ (centrally run from the UC

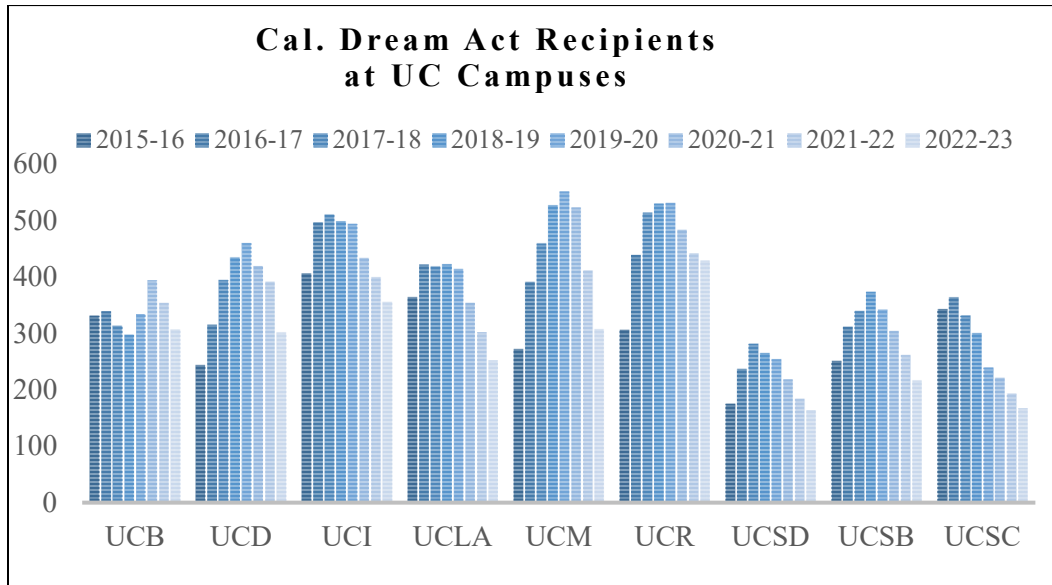
⁶² See Nicole Freeling, *Undocumented Programs Offer Students a Lifeline in an Uncertain Era*, U. OF CAL.: NEWS (Sept. 20, 2017), <https://perma.cc/DK8L-ZK6Y>; see also Amanda Frost, *Alienating Citizens*, 114 NW. U. L. REV. 241, 244 (2019) (“[T]he Trump Administration’s approach to immigration generally... has embraced a policy known as ‘attrition through enforcement,’ under which immigration policies are designed to encourage immigrants to self-deport and discourage would-be immigrants from coming to the United States.”).

⁶³ Brick declaration in *UC Regents v. DHS*, *supra* note __.

⁶⁴ See also UC Immigrant Legal Services Center, Annual Progress Report 2 (Sept. 2017), https://ucimm.sf.ucdavis.edu/sites/g/files/dgvnsk12741/files/media/documents/2017_UCImm_Annual_Report.pdf (“The UC Immigrant Legal Services Center (UC Center, or UCIMM) was founded in January 2015 by UC President, Janet Napolitano, and exists to provide quality immigration legal services to undocumented UC students and undocumented family members of

Davis School of Law but with immigration attorneys available on site at other UC campuses; UC Berkeley separately provided similar services).

Figure 3



The second trend at UC evident in Figures 3-4 and Table 1, which is our primary focus for policymakers given the current state of affairs, is the troublesome decline in UC Dream Act awardees since 2018-19. *The data in Table 3 shows that compared to 2018-19, UC Dream Act awardees at UC dropped by 31.4% by 2022-23 (and by 30.9% comparing 2019-20 with 2022-23). There are declines of 40% or more at UCLA, UC Merced, UC Santa Barbara and UC Santa Cruz (Figure 4).* Essentially, this is turning back the clock a full decade in terms of opportunities for low-income undocumented students at the University of California notwithstanding all of the earlier efforts in state law and university programs to support undocumented students.

UC students, as well as students and family members who are United States citizens and lawful permanent residents. Based at UC Davis School of Law, the UC Center currently provides free immigration legal services at all UC campuses, other than UC Berkeley: UC Davis, UC Irvine, UCLA, UC Merced, UC Riverside, UC San Diego, UC Santa Cruz, UC San Francisco, and UC Santa Barbara. The Center began with an Executive Director, two law fellows, and a paralegal. By Fall 2015, the UC Center doubled its staff. This staffing allowed us to quickly offer immigration legal services to all the target campuses for the full 2015-2016 academic year. In the 2016-2017 Academic Year with additional support from the UC Office of the President, the UC Center continued to grow and it now has eight (8) full time attorneys.”). *See also Moving Forward After DACA: Student Stories and Town Hall*, 15 HASTINGS RACE & POVERTY L. J. 120, 127 (2018) (summary shared at town hall by UCIMM’s then executive director María Blanco). Note that UC Berkeley provided undocumented students with immigration legal services separately through its Law School’s East Bay Community Law Center, as discussed further below.

The data at the far right side of Figure 4 shows other Cal Grant awardees at UC (FAFSA filers) as a “control group” to help lessen confounding patterns and shore up our focus on the recent worsening of DACA inaccessibility as causing (or being a lead cause of) the decline. As detailed in the Appendix, students at UC who receive Dream Act awards have virtually identical high school grade profiles as those other low-income students receiving Cal Grant awards, making the latter a reasonably matched “natural experiment” control group. At UC there was a 1.3% increase in other Cal Grant awardees between 2018-19 and 2022-23 (74,714 versus 75,665) and a 1.0% drop between 2019-20 and 202-23 (76,428 versus 75,665). Thus, the pattern of decline at UC since 2018-19 is unique among undocumented low-income students. These drops in UC Dream Act awards compared to UC other Cal Grant awards are also statistically significant.⁶⁵ Looking at all undergraduate enrollment, at UC between Fall 2019 and Fall 2023 overall undergraduate enrollment increased by three percent.⁶⁶

Table 3: California Dream Act Recipients at UC Campuses

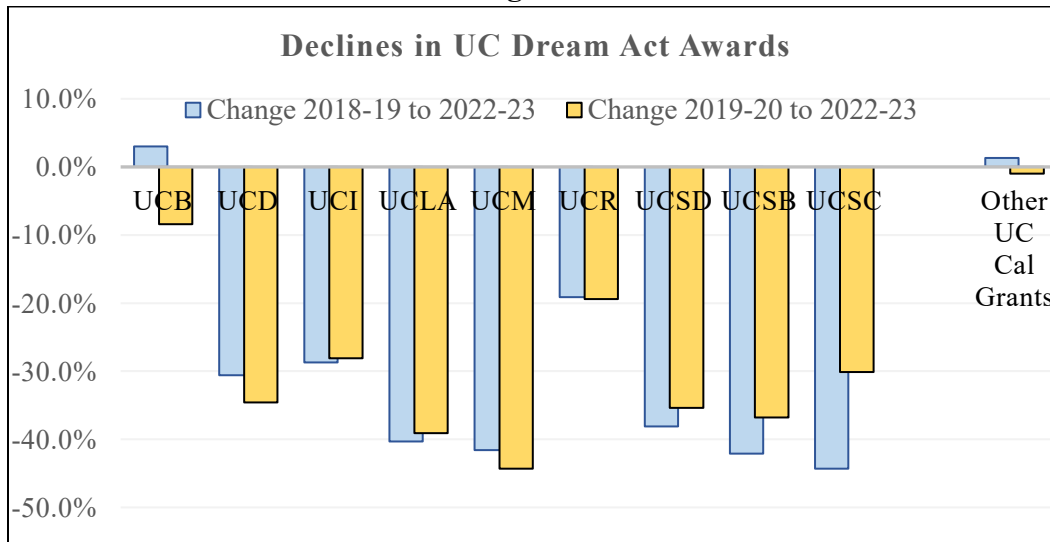
	2015- 16	2016- 17	2017- 18	2018- 19	2019- 20	2020- 21	2021- 22	2022- 23
UC Berkeley	331	339	313	297	334	394	354	306
UC Davis	244	315	394	434	460	419	391	301
UC Irvine	406	497	510	498	494	433	399	355
UC Los Angeles	364	422	418	422	414	354	302	252
UC Merced	272	391	459	526	551	523	411	307
UC Riverside	306	439	513	529	531	483	441	428
UC San Diego	175	237	281	265	254	218	185	164
UC Santa Barbara	251	312	339	373	342	304	262	216
UC Santa Cruz	343	364	331	300	239	221	194	167
UC Totals	2692	3316	3558	3644	3619	3349	2939	2499

⁶⁵ Comparing UC Dream Act awardees to the other UC Cal Grant awardees yields a two-tailed *p-value* significant at < 0.01 when comparing 2018-19 with 2022-23 and when comparing 2019-20 with 2022-23. Because Dream Act award eligibility is capped at four years for both freshmen and for transfers inclusive of their prior community college years, comparing cohorts four years apart (2018-19 with 2022-23) involve virtually zero overlap, and thus does not violate assumptions of independent samples for purposes of statistical testing. Comparing 2019-20 with 2022-23 starts to strain that assumption because of freshmen who progressed to seniors.

⁶⁶ Campaign for College Opportunity, *Illuminating Innovations: Advancing Enrollment at California State University* 4-8 (Feb. 2024),

https://web.archive.org/web/20240222105651/https://collegecampaign.org/wp-content/uploads/2024/02/2023_CSU_EnrollmentReport_single-pages_r9_i18.pdf.

Figure 4



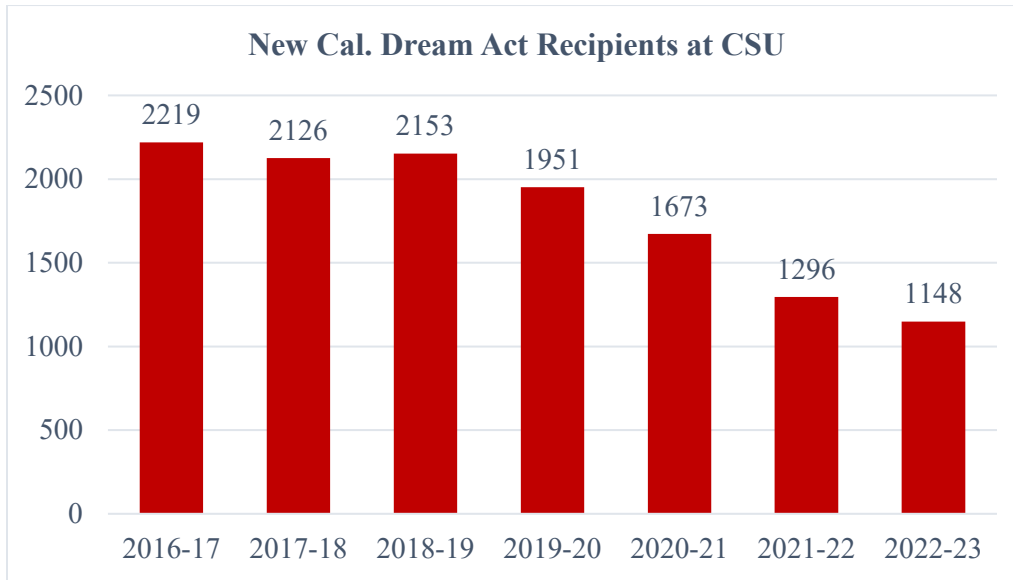
B. California State University campuses

The same large-scale patterns for low-income undocumented students evident within the UC system are also found within the CSU system. *Figure 5 documents an alarming downward trend in CSU’s newly enrolled low-income undocumented students. In 2016-17 there were 2,219 new Dream Act awardees at CSU, compared to 1,148 in 2022-23, a decline of 48.3%. By comparison, new Cal Grant awardees to CSU low-income students were flat (+0.6%) between 2016-17 and 2022-23. The drop in CSU’s new Dream Act awards compared to CSU’s other new Cal Grant awards are again statistically significant.⁶⁷ Preliminary data confirms that this downward trend in new CSU Dream Act awards continues in 2023-24.⁶⁸ As noted earlier, 2016-17 corresponds with the last year that meaningfully large numbers of new DACA applications were approved by DHS.*

⁶⁷ Comparing CSU Dream Act awardees to the other CSU Cal Grant awardees yields a two-tailed *p-value* significant at < 0.01 when comparing 2016-17 with 2022-23.

⁶⁸ Comparing data in Appendix Table 1 with Cal. Student Aid Comm’n, CAL GRANT PROGRAM New Offered Awardees and Eligible Non-Offered Awardees Average Income, GPA, Family Size, and Age by Segment Award Year 2022-23 4 (2023), https://www.csac.ca.gov/sites/main/files/file-attachments/cal_grant_program_averages_2023-24.pdf?1707431193.

Figure 5



As with UC, the CSU data above in Figure 5 sets the stage for understanding two overall trends for Dream Act awardees at CSU (Figure 6 and Table 4). The first trend is that low-income undocumented student enrollments at CSU climbed by about thousand (a gain of 41.2%) between 2015-16 (late Obama era) and the peak period of 2018-19. Again, this reflects how relatively large cohorts of low-income undocumented freshmen entered CSU during the peak DACA years of 2014-16, then later as continuing junior and seniors those students were (for a few years) offsetting the declines in new undocumented enrollment evident in Figure 5. These overall gains at CSU outpaced the 6.0% increase in other Cal Grant (FAFSA) awardees at CSU during the same period.

The second trend at CSU is that after the peak in 2019-20, the CSU system experienced a decline of 30% (almost two thousand undocumented students) by 2022-23. This pattern is highly consistent among all fifteen CSU campuses shown in Table 4. Looking again at the same “control group” analysis as before, at CSU there was a 0.0% change in other Cal Grant awardees between 2018-19 and 2022-23 (133,128 versus 133,257) and a 5.0% drop between 2019-20 and 2022-23 (140,325 versus 133,257). Given such large samples, these drops in CSU’s Dream Act awards compared to CSU’s other Cal Grant awards are statistically significant.⁶⁹ Placing things in perspective, the 30% drop in low income-undocumented students at CSU since 2019-20 is six times larger than the drop for other Cal Grant awardees at CSU, a pattern that is consistent with our

⁶⁹ Comparing CSU Dream Act awardees to the other CSU Cal Grant awardees yields a two-tailed *p-value* significant at < 0.01 when comparing 2018-19 with 2022-23 and when comparing 2019-20 with 2022-23.

hypothesis that the shrinkage in DACA participation among today’s incoming college students likely explains more of the overall pattern in enrollment declines for undocumented students. The recent 5.0% decline in Cal Grant awardees at CSU mirrors a 6.5% drop in total undergraduate enrollment at CSU between Fall 2019 and Fall 2023 (several Bay Area campuses encountered the greatest declines).⁷⁰

Figure 6

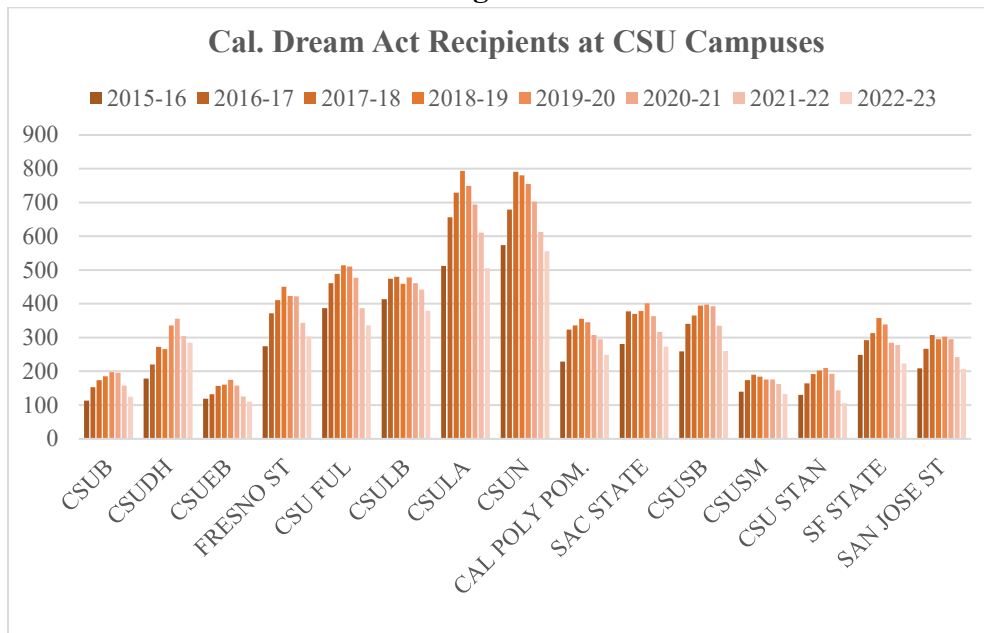


Table 4: California Dream Act Recipients at CSU Campuses

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
CSU Bakersfield	*113	153	174	185	198	196	*158	*125
CSU Dom. Hills	179	220	272	*266	336	356	305	285
CSU East Bay	119	132	157	161	175	158	126	110
Fresno State	274	372	411	451	423	422	344	303
CSU Fullerton	387	461	489	514	510	477	387	336
CSU Long Beach	414	474	480	459	478	461	442	380
CSU Los Angeles	512	656	729	794	749	694	611	506
CSU Northridge	574	679	791	780	755	703	613	556
Cal Poly Pomona	229	324	336	356	345	308	295	249
Sacramento State	281	378	370	379	401	363	317	273
CSU San Bernardino	259	341	365	395	398	393	335	260

⁷⁰ Campaign for College Opportunity, *Illuminating Innovations: Advancing Enrollment at California State University 4-8* (Feb. 2024),

https://web.archive.org/web/20240222105651/https://collegecampaign.org/wp-content/uploads/2024/02/2023_CSU_EnrollmentReport_single-pages_r9_i18.pdf.

CSU San Marcos	140	174	*190	184	176	176	163	133
CSU Stanislaus	130	164	192	202	210	193	144	106
San Francisco State	249	292	313	358	339	285	278	223
San Jose State	209	267	308	295	303	295	242	207
CSU Totals (23)	4573	5716	6217	6457	6501	6159	5309	4524

Our findings of a 48% drop in new CSU Dream Act awardees since 2016-17 and an overall 30% drop in CSU Dream Act awardees since 2019-20 comes amidst new threats to support programs for CSU undocumented students due to shortfalls in California’s budget. In 2018-19 hard-fought political efforts that were years in the making resulted in securing State funding for CSU’s Immigration Legal Services Project that provides free immigration legal services to students at CSU campuses and their family members.⁷¹ But this year the Governor’s budget proposal would slash funding for this vital program by 75% (from \$7.0M to \$1.8M annually) of the State’s budget funding.⁷² At a campus like Fresno State, which has already seen a drop of 28% in Cal Dream Act awardees since 2019-20 according to our Table 4 data, such budget cuts threaten to dramatically reduce the quality and timeliness of legal services run through Fresno State’s Dream Success Center, thereby exacerbating access barriers for undocumented students at a time of heightened vulnerability. In a final agreement between the Governor and the Legislature this funding for CSU was restored⁷³, but this issue is likely to reoccur in the near future if the State budget does not improve.

C. An encouraging sign in discouraging data?

The data we reviewed earlier (Figure 4 and Table 3) show that the decline in Dream Act awards at UC Berkeley was significantly (statistically and practically) smaller than at any other UC or CSU campus in our sample.⁷⁴ Our

⁷¹ Immigrant Legal Defense, Summary of the California State University Immigration Legal Services Project (2024), <https://www.ild.org/csu-immigration-legal-services-project> ; California State University, Legal Support Services, <https://www.calstate.edu/attend/student-services/resources-for-undocumented-students/pages/legal-support-services.aspx>.

⁷² Rebecca Plevin, *This Cal State immigration clinic provides free legal advice. It might come to a ‘full stop’*, L.A. TIMES, March 15, 2024, <https://www.latimes.com/california/story/2024-03-15/immigration-clinic-cal-state>; Cal. Leg. Analyst’s Office, The 2024-25 Budget--Department of Social Services Immigration and Equity Programs, <https://lao.ca.gov/Publications/Report/4885>.

⁷³ Rebecca Plevin, *Newsom’s budget plan saves vital programs for immigrants, but kids and hungry seniors may suffer*, L.A. TIMES, June 26, 2024.

⁷⁴ Comparing UCB to the other eight UC campuses combined yields a two-tailed *p-value* significant at < 0.01 when comparing 2018-19 with 2022-23 and when comparing 2019-20 with

data set does not allow us to establish the cause(s) of this difference, but we note that there is a substantial body of qualitative analysis indicating that UC Berkeley is widely recognized for being an early innovator in developing a robust set of institutional commitments and practices to support the success of its undocumented students. In partnership with private philanthropy (discussed below in Section IV.C), the qualitative data suggests UC Berkeley is among the national leaders in developing scholarship support for undocumented students in tandem with an Undocumented Student Program (USP) that coordinates comprehensive services and support.⁷⁵ Through the UC Berkeley School of Law, via its human rights clinic and later via its community-based clinic, the East Bay Community Law Center, UC Berkeley was one of the first to secure full-time on-campus immigration attorney services for undocumented students.⁷⁶ In figure 7 we highlight some key elements of UC Berkeley's holistic model to support undocumented students through the USP.⁷⁷

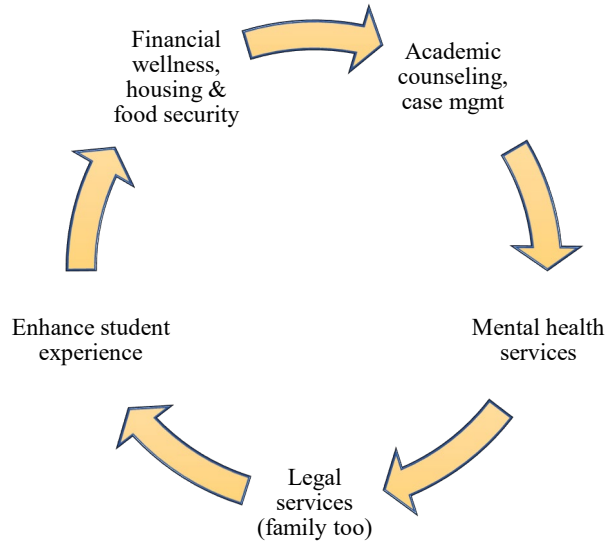
2022-23. UC Berkeley did have one year of higher numbers in 2020-21 that was phase-delayed compared to all other UC (and CSU) campuses.

⁷⁵ See Ruben Elias Canedo Sanchez & Meng L. So, *UC Berkeley's undocumented student program: Holistic strategies for undocumented student equitable success across higher education*, 85 HARV. EDUC. REV. 464 (2015); CHANCELLOR'S TASK FORCE ON UNDOCUMENTED MEMBERS OF THE ON-CAMPUS COMMUNITY, RECOMMENDATIONS TO CHANCELLOR BIRGENEAU (May 2011), <https://diversity.berkeley.edu/sites/default/files/undocumented-students-task-force-2011-recommendations.pdf>; Alberto Ledesma, *A Personal History of Undocumented Student Support at U.C. Berkeley* (2013), <https://comunidadatcal.wordpress.com/2013/09/18/a-personal-history-of-undocumented-student-support-at-u-c-berkeley/>.

⁷⁶ Prerna Lal & Mindy Phillips, *Discover Our Model: The Critical Need for School-Based Immigration Legal Services*, 106 CALIF. L. REV. 577 (2018).

⁷⁷ See e.g., Jeremy Peña, *Undocumented students: History and implications for higher education administrators*, 20 J. HISPANIC HIGHER EDUC. 33 (2021); H. Kenny Nienhusser, Germán A. Cadenas, Raquel Sosa & Oswaldo Moreno, *UndocuCare: Strategies for mental health services that affirm undocumented college students' psychological needs*, 203 New Directions for Higher Education 93 (2023); Kyle G. Southern, *Institutionalizing support services for undocumented students at four-year colleges and universities*, 53 J. STUDENT AFFAIRS RESEARCH & PRACTICE 305 (2016).

Figure 7: UC Berkeley’s Holistic Model to Support Undocumented Students⁷⁸



While policymakers (and university leaders) should not be naïve about the ease with which all elements of the robust UC Berkeley USP model scale-up at other campuses with more systemic resource constraints (and without a law school) and different campus cultures⁷⁹, the value of holistic and intentional support services rooted in authentic and durable community partnerships is worth emphasizing.

IV. PROMISING PATHWAYS AND POLICY REFORMS TO BRIDGE TO THE FUTURE

Part IV turns to policy recommendations in a post-DACA environment. We analyze the “Opportunity for All” IRCA employment issue this is currently under evaluation by University leaders and California lawmakers. We then outline in a more abbreviated way a few other innovative pathways worthy of consideration now and after a final ruling on DACA by the Fifth Circuit and/or the Supreme Court.

A. Opportunity for All: Does IRCA apply to state universities like UC?

⁷⁸ Figure 7 is adapted from UC Berkeley, Five-Year Strategic Plan for Cal’s Undocumented Student Program 4-5 (2016), <https://perma.cc/9FYE-LJ56>.

⁷⁹ Cf. Sanchez & So, *supra* note __, at 468-69.

In partnership with the “Opportunity for All” campaign by UC undocumented student organizers⁸⁰, in fall 2022 faculty and immigrant rights attorneys with the UCLA School of Law’s Center for Immigration Law and Policy issued a legal memorandum signed by dozens of leading U.S. immigration and constitutional law scholars arguing that the federal Immigration Reform and Control Act of 1986 (“IRCA”)—which makes it “unlawful for a person or other entity to hire, or to recruit or refer for a fee, for employment in the United States” unauthorized individuals⁸¹—does not apply to state entities like the University of California.⁸² The 2022 legal memorandum is buttressed by a forthcoming article by Arulanantham and Hairapetian analyzing these legal arguments in greater detail.⁸³

For purposes of the question of federal legislation (IRCA or otherwise) and sovereign immunity, the University of California is unquestionably an arm of the state.⁸⁴ The text of IRCA does not define “entity” and perhaps even more telling, the 1996 Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”) that amended IRCA added specific language that an “entity” “includes an entity in any branch of the Federal Government”⁸⁵ but IIRIRA was again silent on applicability to the States. The immigration and constitutional law scholars providing the legal analysis that was the foundation for the “Opportunity for All” campaign argue that the question of a state university system’s sovereign immunity from IRCA is an unexplored legal question that has been “hidden in plain sight” for many years.⁸⁶

⁸⁰ <https://undocstudentnetwork.org/home/opportunity-for-all/> .

⁸¹ 8 U.S.C. 1324a(a)(1).

⁸² Ahilan Arulanantham, Hiroshi Motomura, Astghik Hairapetian (UCLA Center for Immigration Law and Policy), Memo Analyzing Whether IRCA Applies to States (Oct. 2022), https://law.ucla.edu/sites/default/files/PDFs/Center_for_Immigration_Law_and_Policy/Opportunity_for_All_Campaign_Law_Scholar_Sign-On_Letter.pdf.

⁸³ Ahilan T. Arulanantham & Astghik Hairapetian, *State Employment Authorization*, 39 GEO. IMMIG. L.J. __ (forthcoming 2024-25).

⁸⁴ *Regents of the University of California v. Doe*, 519 U.S. 425, 431 (1997) (“The Eleventh Amendment protects the State from the risk of adverse judgments even though the State may be indemnified by a third party.”); *BV Eng’g v. Univ. of Cal.*, 858 F.2d 1394, 1395 (9th Cir. 1988) (“The University of California and the Board of Regents are considered to be instrumentalities of the state.”); *Mitchell v. L.A. Cmty. Coll. Dist.*, 861 F.2d 198, 201-02 (9th Cir. 1988); *United States ex rel. Ali v. Daniel, Mann, Johnson & Mendenhall*, 355 F.3d 1140, 1147 (9th Cir. 2004).

⁸⁵ 8 U.S.C. 1324a(a)(7). *See also Illegal Immigration Reform and Immigration Responsibility Act*, Pub. L. 104-208, 110 Stat. 3009-668, sec. 412 (Sept. 30, 1996).

⁸⁶ UCLA Law School News Release, Oct. 19, 2022, <https://law.ucla.edu/news/undocumented-uc-student-organizers-professors-ucla-cilp-labor-center-launch-groundbreaking-campaign-equal->

Most recently, the “Opportunity for All” campaign led to proposed legislation introduced by California Assemblymember Alvarez, Assembly Bill 2586⁸⁷, that would codify the same principles in state law about not excluding undocumented students from being hired at California’s public universities and community colleges.

There are two related doctrinal questions here. First, does the IRCA statute reveal a clear indication of Congress’ intent to overcome the States’ (and thus public universities’) Eleventh Amendment immunity from IRCA lawsuits? Second, does the IRCA law even apply to state governments when they act as employers (unlike private sector employers)? We pose the two questions in this order (others might reverse the sequence) because strong statutory and case law evidence of Congress choosing to override the States’ sovereign immunity would also be solid evidence that IRCA applies to state governmental entities acting as employers. Conversely (and as we show below), the absence of case law confirming that IRCA waived sovereign immunity represents important (but not sufficient) disconfirmation evidence about the underlying question of the applicability of IRCA to state governmental employers.

Relevant in both abrogation contexts and more broadly regarding the regulation of state governments (discussed further below), the U.S. Supreme Court has repeatedly declared, “The standard for finding a congressional abrogation is stringent. Congress, this Court has often held, must make its intent to abrogate sovereign immunity ‘unmistakably clear in the language of the statute.’”⁸⁸ This clear statement standard is satisfied “in only two situations. The first is when a statute says in so many words that it is stripping immunity from a sovereign entity ... The second is when a statute creates a cause of action and authorizes suit against a government on that claim.”⁸⁹ The immigration and

[access-job-opportunities](https://leginfo.ca.gov/access-job-opportunities); Arulanantham & Hairapetian, *supra* note __, (manuscript at 6-7).⁸⁷ California Legislative Information, A.B. 2586 (see Assembly Floor analysis of May 20, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB2586.

⁸⁷ California Legislative Information, A.B. 2586 (see Assembly Floor analysis of May 20, 2024), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB2586.

⁸⁸ Financial Oversight and Management Bd. for P. R. v. Centro De Periodismo Investigativo, Inc., 143 S. Ct. 1176, 1183 (2023) (quoting *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 73 (2000)).

⁸⁹ *Id.* at 1184. In George Fishman’s critique of the “Opportunity for All” legal scholars, he writes that citation to the ADEA amendments coverage of the States under the clear statement rule “is inapposite because the pre-amendment ADEA specifically excluded States.” George Fishman, *California Dreamin’: Can State Universities Legally Hire Non-Work Authorized Aliens*, 48 J.C. & U. L. 95, 133 (2023). Fishman’s criticism is a *non sequitur*, which the Court’s ruling in the Puerto Rico case highlighting the example of ADEA abrogation underscores. If the Congress validly expresses a clear intent to waive sovereign immunity of the States in an amendment to the ADEA (or other legislation), then the *status quo ante* from the pre-amendment version of the ADEA no

constitutional law scholars supporting “Opportunity for All”⁹⁰ argue that IRCA fails the clear statement rule, unlike several other statutes that satisfy the clear statement rule about the intent to abrogate the States’ sovereign immunity by defining entities or persons in such a way as to bind the States, including the 1972 amendments to Title VII of the Civil Rights Act of 1964,⁹¹ the 1966 amendments to the Fair Labor Standards Act (“FLSA”)⁹² and the Rehabilitation Act.⁹³

This clear statement rule requires Congress to invoke that abrogation of sovereign immunity must be “unmistakably clear in the language of the statute.”⁹⁴ Passage of IRCA in 1986 was the year after the Supreme Court’s clear statement rule that was part of the holding of *Atascadero State Hospital*.⁹⁵

We highlight IRCA-related Eleventh Amendment sovereign immunity legal cases not mentioned in the Opportunity for All legal scholars’ memorandum

longer matters. Fishman makes the same unpersuasive criticism of the Family Medical Leave Act, *id.* at 135, which the Supreme Court likewise cites in the Financial Oversight and Management Board for Puerto Rico case (quoted above).

⁹⁰ Arulanantham & Hairapetian, *supra* note ___, (manuscript at 20-28).

⁹¹ Civil Rights Act of 1964, Pub. L. No. 88-352, § 701(a), 78 Stat. 241, 253 (1964), as amended by Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261 § 2(1), (5), 86 Stat. 103 (1972) (Congress amended the definition of “person” to include “governments, governmental agencies, [and] political subdivisions,” and also amended the definition of “employee” to include “employees subject to the civil service laws of a State government, governmental agency or political subdivision.”). See also *Fitzpatrick v. Bitzer*, 427 U.S. 445, 448-49 (1976) (finding Title VII abrogated State sovereign immunity because the 1972 amendment “brought] the States within [Title VII’s] purview.”); *Sosa v. Hiraoka*, 920 F.2d 1451, 1466 n.4 (9th Cir. 1990) (“Congress’s evident purpose in authorizing Title VII suits against states, state subdivisions, and state officials.”).

⁹² *Fair Labor Standards Amendments of 1966*, Pub. L. 89-601, sec. 102(b), 80 Stat. 831 (Sept. 23, 1966); see also *Emps. of Dep’t of Pub. Health & Welfare, Missouri v. Dep’t of Pub. Health & Welfare, Missouri*, 411 U.S. 279, 283 (1973).

⁹³ 29 U.S.C. 794 (“Program or activity” includes “a department, agency, special purpose district, or other instrumentality of a State or of a local government,” *id.* 794(b)(1)(A), and “a college, university, or other postsecondary institution, or a public system of higher education,” *id.* 794(b)(2)(A)). See also *Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791, 793 (9th Cir. 2004) (a State “waives Eleventh Amendment immunity by accepting federal funds” under section 504 of the Rehabilitation Act and may be sued).

⁹⁴ *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U. S. 382, 388 (2023) (quoting *FAA v. Cooper*, 566 U. S. 284, 291 (2012)); see also *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. ___ (2024).

⁹⁵ *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985). Recently, a unanimous Supreme Court characterized that case this way: “*Atascadero* stands only for the now-familiar proposition that Congress must, at a minimum, mention the government when it wishes to scrap sovereign immunity and permit claims for damages.” *Dep’t of Agric. Rural Dev. Rural Hous. Serv.*, 601 U.S. at ___, slip opinion at 13.

nor in Fishman’s critique. This small body of cases addresses the question of whether public universities and other state agencies have Eleventh Amendment sovereign immunity from private lawsuits brought under IRCA’s protection against employers discriminating based on national origin and/or citizenship status.

An important case in this regard is *Hensel v. Office of Chief Administrative Hearing Officer*, in which the Tenth Circuit held that IRCA had not waived the States’ Eleventh Amendment immunity, resulting in the dismissal of Hensel’s claims against the University of Oklahoma.⁹⁶ The Tenth Circuit’s ruling closely tracks the aforementioned immigration and constitutional law scholars’ arguments, citing *Atascadero State Hospital*.⁹⁷

More recently in 2023 (after the immigration and constitutional law scholars’ memorandum) the federal district court in *Hossain v. Job Service North Dakota* reached a similar conclusion in rejecting plaintiff’s claim that a state agency/department he previously worked for had waived its Eleventh Amendment immunity vis-a-vis IRCA (citing *Hensel*):

Hossain asserts that JSND has generally waived its sovereign immunity because it has accepted federal funds. However, given the explicitness Congress has employed with respect to other statutes, Hossain has not shown that Congress unequivocally intended to abrogate the Eleventh Amendment in IRCA. IRCA is devoid of any textual support by definition or reference for the proposition that a “person” or “entity” includes the State. Absent explicit language, the court cannot find that IRCA was intended to subject the state to suit in federal court.⁹⁸

The district court’s ruling in *Hossain* was recently affirmed without comment by the Eighth Circuit.⁹⁹ While the Ninth Circuit did not reach the exact state agency IRCA question referenced above in *Hensel* and *Hossain*, it did apply parallel

38 F.3d 505, 508-09 (10th Cir. 1994). The panel also reached the predicate question that the University was an arm of the state for purposes of IRCA. *Id.* at 508.

⁹⁷ “In order for the state to be subject to suit, Congress must have made “its intention unmistakably clear in the language of the statute.” See *Dellmuth v. Muth*, 491 U.S. 223, 228, 109 S.Ct. 2397, 2400, 105 L.Ed.2d 181 (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242). “[E]vidence of congressional intent must be both unequivocal and textual.... Legislative history generally will be irrelevant to a judicial inquiry into whether Congress intended to abrogate the Eleventh Amendment.” *Id.* 491 U.S. at 230....Given the explicitness Congress has employed with respect to other statutes, Petitioner has not shown that Congress intended to abrogate the Eleventh Amendment in the IRCA.”

⁹⁸ *Hossain v. Job Service North Dakota* 2023 WL 2894349 *8 (D. N.D., 2023) (citing *Hensel*, 38 F.3d at 508 and *Fitzpatrick*, 427 U.S. at 449 n. 2).

⁹⁹ *Hossain v. Job Service North Dakota* 2023 WL 8232205 (8th Cir. 2023).

reasoning in *General Dynamics Corp. v. United States*¹⁰⁰ in rejecting the party’s implied waiver argument about IRCA and federal sovereign immunity.¹⁰¹

In addition to the above cases, neither the “Opportunity for All” immigration and constitutional law scholars’ memo nor the critique by Mr. Fishman delve into administrative law rulings that reach questions of IRCA and Eleventh Amendment-based state sovereign immunity. As we show below in Table 5, the strong preponderance of these administrative law rulings provide support for the “Opportunity for All” advocates in the same way as the *Hensel* and *Hossain* cases discussed above—by finding that public universities and other branches of state government have Eleventh Amendment immunity from private lawsuits brought under §1324b of IRCA.

**Table 5: ALJ Rulings on IRCA §1324b
finding State Entities have Immunity¹⁰²**

¹⁰⁰ *General Dynamics Corp. v. U.S.*, 49 F. 3d 1384 (9th Cir. 1995). In the underlying administrative law case (before the amended definition in IRIRA), the federal Office of Special Counsel brought a case of unfair labor practices and the ALJ found in favor of the defendant employer but the ALJ denied the employer’s request for attorney fees as the prevailing party.

¹⁰¹ 49 F. 3d at 1386 (“General Dynamics asks us to imply a waiver, arguing that because § 1324b(h) allows attorney’s fees to be awarded in ‘any complaint’ where the losing party’s position is unreasonable, the provision necessarily encompasses complaints filed by the United States. A showing of ambiguity, however, is insufficient to support a claim that Congress waived sovereign immunity.... The Supreme Court consistently has held that liability attaches to the United States only if Congress’s intent to waive the government’s immunity is ‘unequivocally expressed.’”).

¹⁰² Our identification of these cases stems from multiple search methods, but a starting point is the DOJ’s Office of the Chief Administrative Hearing Officer (OCAHO) archive of decisions, <https://www.justice.gov/coir/office-of-the-chief-administrative-hearing-officer-decisions> including the Cumulative Topical Index of Published and Indexed Decisions Volumes 1-18 (last updated Feb. 2024), https://www.justice.gov/d9/2024-02/topical_index_02_14_2024.pdf.

State Universities ¹⁰³	Other State Entities ¹⁰⁴
<i>Reffell v. Prairie View A&M University</i> , 9 OCAHO 1057 (2000)	<i>Hossain v. Job Service North Dakota</i> , 14 OCAHO 1352 (2020), related district court opinion discussed above
<i>Elhaj–Chehade v. University of Texas, Southwestern Medical Center at Dallas</i> 8 OCAHO 1022 (1999), <i>aff’d Elhaj–Chehade v. Chief Admin. Hearing Officer</i> , 235 F.3d 1339 (5 th Cir. 2000) (table case)	<i>Ugochi v. North Dakota Department of Human Services</i> , 12 OCAHO 1304 (2017)
<i>McNier v. San Francisco State University</i> , 8 OCAHO 1030 (1999)	<i>Omoyosi v. Lebanon Corr. Inst.</i> , 9 OCAHO 1119 (2005)
<i>Kupferberg v. University of Oklahoma Health Sciences Center</i> , 4 OCAHO 709 (1994), 1994 WL 761187	<i>Wong-Opasi v. Tennessee Governor Don Sundquist</i> , 8 OCAHO 1054 (2000)
	<i>United States v. New Mexico State Fair</i> , 6 OCAHO 898 (1996), 1996 WL 776504

Unlike the ALJ cases in the table above, cities and community colleges are public entities are sometimes not deemed to be an arm of the State, and thus other ALJ rulings find those entities do not have sovereign immunity from IRCA lawsuits.¹⁰⁵ In the Ninth Circuit community colleges are often regarded as “dependent instrumentalities”¹⁰⁶ of the state for Eleventh Amendment immunity purposes, but there may be more variation on that question nationwide. For these reasons, there is more nuance to the question of community colleges,—which may be relevant to

¹⁰³ <https://www.justice.gov/sites/default/files/eoir/legacy/2005/12/08/1057.pdf>; <https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/28/1022.pdf>; <https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/28/1030.pdf>; <https://www.justice.gov/sites/default/files/eoir/legacy/1998/09/02/709.pdf>. Similarly, a federal higher education institution was found by an ALJ to have sovereign immunity from an IRCA lawsuit in *Shen v. Defense Language Institute*, 9 OCAHO no. 1117 (2006), <https://www.justice.gov/sites/default/files/eoir/legacy/2006/11/09/1117.pdf>.

¹⁰⁴ <https://www.justice.gov/eoir/page/file/1269296/dl?inline;> https://www.justice.gov/sites/default/files/pages/attachments/2017/08/07/1304_0.pdf; <https://www.justice.gov/sites/default/files/eoir/legacy/2006/11/09/1119.pdf>; <https://www.justice.gov/sites/default/files/eoir/legacy/2014/04/28/1054.pdf>; <https://www.justice.gov/sites/default/files/eoir/legacy/1998/08/07/898.pdf>.

¹⁰⁵ *D’Amico v. Erie Community College*, 7 OCAHO 948 (1997); *Smiley v. City of Philadelphia Dep’t of Licenses and Inspections*, 7 OCAHO 925 (1997); *Iwuchukwu v. City of Grand Prairie*, 6 OCAHO 915 (1997).

¹⁰⁶ *Cerrato v. San Francisco Community College Dist.*, 26 F.3d 968, 972 (9th Cir. 1994); *Lauser v. City College of San Francisco*, 2008 WL 2357246 (N.D. Cal., 2008). *But see Stannard v. State Center Community College Dist.*, --- F.Supp.3d ---, 2024 WL 2132523 at * 7-8 (E.D. Cal. 20204) (college withdrew immunity defense and case proceeded against individual officials under *Ex Parte Young*).

the pending A.B. 2586 proposed “Opportunity for All” legislation in California.¹⁰⁷

The aforementioned cases regarding IRCA and the absence of abrogation of sovereign immunity are relevant disconfirmation evidence grappling with the text and statutory intent of IRCA but are not dispositive evidence regarding the underlying question of IRCA’s application to state governmental entities as employers.¹⁰⁸ Regarding this second question we reiterate that the text of the IRCA statute does not specify that it applies to state governments even though that should be obligatory under the Supreme Court’s longstanding “clear statement” rule, that there is not (and should not be) what might be called an “anti-immigration *ex ante* policy preference exception” to the clear statement rule, and we refer readers to the forthcoming article by Arulanantham and Hairapetian for a detailed analysis of these legal arguments.¹⁰⁹

The fact that the 1987 IRCA regulations define “entity” as including “governmental body”¹¹⁰ (without specifying state governments) is not persuasive because a federal agency’s interpretive gloss in the regulation (not derived from the statutory text and contra the “clear statement” rule) simply begs the question about whether the DHS agency’s reliance on such an interpretation amounts to exceeding its statutory authority (including because of the 1996 IIRIRA’s amended definition that “entity” for IRCA purposes included the federal government but once again was silent about state governments¹¹¹). Consistent with the arguments about IRCA by the Opportunity for All immigration and constitutional law scholars, the 1986 House Report for IRCA does not contain clear indications that IRCA was intended to apply to state governments as employers.¹¹² Finally, after the Court’s recent repudiation of the *Chevron*

¹⁰⁷ *Dhillon v. Regents of the University of California* 3 OCAHO 497 (1993) is the only published IRCA ALJ case we could find involving the University of California as a party (this was over thirty years ago, before sovereign immunity was more of a settled issue in light of *Hensel* and the Table 4 cases above) it appears the sovereign immunity defense was not raised or briefed by the University, which prevailed on other grounds.

¹⁰⁸ For example, in the FLSA context noted earlier, decades ago the Court declared “By holding that Congress did not lift the sovereign immunity of the States under the FLSA, we do not make the extension of coverage to state employees meaningless.....Section 16 (c) gives the Secretary of Labor authority to bring suit.” *Emps. of Dep’t of Pub. Health & Welfare, Missouri v. Dep’t of Pub. Health & Welfare, Missouri*, 411 U.S. 279, 285-86 (1973) (citations omitted). Unlike IRCA, the FLSA clearly applied to state hospitals. For further discussion, see Arulanantham & Hairapetian, *supra* note ___, (manuscript at 22).

¹⁰⁹ Arulanantham & Hairapetian, *supra* note ___, (manuscript at *passim*).

¹¹⁰ 8 C.F.R. 274a.1(b).

¹¹¹ Arulanantham & Hairapetian, *supra* note ___, (manuscript at 40-42).

¹¹² H.R. Rep. No. 99-682(I and II). See also *Jenkins v. I.N.S.*, 108 F.3d 195, 200 (9th Cir. 1997) (in dicta suggesting another provision of the IRCA regulations reflected agency overreach where not

doctrine (troublesome in a host of other administrative law areas where an agency's scientific expertise matters more than here) courts are not permitted to defer to an agency's interpretation simply because a statute is ambiguous.¹¹³

B. Private-ish activism: voluntary fee to unlock private matching funds

The idea in this section carries less legal risk compared to the sovereign immunity argument in Section IV.A, but also has not yet tried at public universities in California or elsewhere. The core idea here—which is detailed in a separate article by one of us¹¹⁴—is a campus-level scholarship fundraising model that (a) starts with undocumented students and allies organizing support for a *voluntary student fee* to support undocumented students; and (b) attempts to build private philanthropy and community matching support so that the cumulative dollars raised ends up being much larger. This voluntary fee-matching fund concept is informed by several design principles, especially organizing around undocumented college students' strengths and resilience in social justice organizing/leadership and human capital.¹¹⁵

The main legal strategy attraction of this proposal is that because the fee is *voluntary* at the individual student level, opponents should fail to satisfy federal court standing requirements even if one is clear-eyed that the conservative judicial movement over the years has “moved the goalpost” in other areas related to standing.¹¹⁶ Here, students—and groups or associations of students and their parents—who choose *not* to pay a voluntary fee would not have a “concrete and

justified by the text of the statute and reinforced by the absence of confirming information in the IRCA House Report); Arulanantham & Hairapetian, *supra* note __, (manuscript at 13 n.36; 17-18).

¹¹³ Loper Bright Enterprises v. Raimondo, 603 U. S. __ (2024), slip opinion https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.

¹¹⁴ Kidder, *Dreaming with dreamers*, *supra* note __, at 595-604.

¹¹⁵ See, e.g., Gloria Itzel Montiel, *Navigating the Ivy League: Funds of Knowledge and Social Capital of Undocumented Ivy League Students*, 28 HARV. J. HISP. POL'Y 64, 73 (2016); Ali Borjian, *Academically Successful Latino Undocumented Students in College: Resilience and Civic Engagement*, 40 HISP. J. BEHAV. SCIS. 22 (2018); Nicholas Hudson, *Undocumented Latino Student Activists' Funds of Knowledge: Transforming Social Movements* (Aug. 31, 2017) (Ed.D. dissertation, George Washington University).

¹¹⁶ See e.g., Mark A. Lemley, *The Imperial Supreme Court*, 136 HARV. L. REV. 97, 108 (2023) (The U.S. Supreme Court “has repeatedly violated its own rules for standing and mootness, dismissing actual controversies between parties with a concrete interest for lack of standing in *TransUnion* and *Whole Woman's Health v. Jackson* while overlooking problems of standing and even mootness when the Court has decided it wants to rule on a particular issue, as it did in *West Virginia v. EPA*.”).

particularized” injury-in-fact.¹¹⁷ In *Day v. Bond* the Tenth Circuit found that out-of-state students did not have federal standing to challenge in-state tuition for undocumented students under a tuition cross-subsidy theory of harm/injury,¹¹⁸ and the logic of *Day v. Bond* would apply *a fortiori* here because a voluntary fee policy (which many public universities have¹¹⁹) like UC’s PACAOS 90 expressly directs that the “actual costs” (i.e., overhead costs of collecting the fee via the University billing system) are to be “borne by the Registered Campus Organization”¹²⁰ so there is not a cross-subsidy of University funds. Along somewhat similar lines, in *Marderosian Trust*, the estate of a donor’s private scholarship fund administered through the University of Illinois’s foundation sought to exclude undocumented students¹²¹ with a very attenuated claim of standing in an effort to enjoin the Illinois in-state tuition law for Dreamers, and the district court dismissed for lack of standing.¹²²

Conversely, if other students were to tactically chose to pay a voluntary fee they really opposed in an attempt to preserve federal court standing, the cases

¹¹⁷ *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338–39 (2016) (holding that a plaintiff invoking federal jurisdiction bears the burden of establishing standing that includes the injury-in-fact requirement, which requires a plaintiff to show they suffered “an invasion of a legally protected interest” that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”).

¹¹⁸ *Day v. Bond*, 500 F.3d 1127, 1131–34 (10th Cir. 2007) (in a challenge by out-of-state students and parents to a Kansas law allowing undocumented students to be eligible for in-state tuition, University of Kansas officials prevailed on summary judgment on grounds about lack of injury in fact; the court rejected plaintiffs’ theories of injury about “the burden of subsidizing illegal alien beneficiaries” and about “competition for scarce tuition resources” for lack of a concrete injury and granting summary judgment to the university on other parts of plaintiff’s claims for other reasons). Recently in *Young Conservatives of Texas Found. v. Smatresk*, 73 F.4th 304 (5th Cir. 2023) the Fifth Circuit ruled that a group of out-of-state students paying higher tuition did have standing to bring a legal theory of injury related to the University of North Texas charging in-state tuition to certain undocumented students under a 2001 Texas law. However, the Fifth Circuit panel (overruling the district court) found in favor of the University on the merits and positively cited *Day v. Bond* for other reasons. 73 F.4th at 313.

¹¹⁹ For examples of voluntary fee policies in other states, see Kidder, *supra* note ___, at 599-601.

¹²⁰ Univ. Cal., *Policies Applying to Campus Activities, Organizations and Students Section 90*, (July 28, 2004) (see section 90.13), <https://perma.cc/2BPM-7C3X>. See also Univ. Cal. Office of the President, *Guidelines for Implementing a Voluntary Student Fee Pledge System*, UNIV. CAL. (Dec. 28, 1992), <https://perma.cc/NTR9-AZWW>.

¹²¹ *Ardash Marderosian Trust v. Quinn*, No. 12 C 6869, 2013 WL 5405705 (N.D. Ill. Sept. 25, 2013). *Marderosian Trust* was a re-filed version of an earlier lawsuit *Marderosian v. Topinka*, No. 1:12-cv-2262 (N.D. Ill. June 19, 2012).

¹²² *Marderosian Trust*, 2013 WL 5405705, at *2–4.

from the Supreme Court,¹²³ within the Ninth Circuit¹²⁴ and elsewhere¹²⁵ indicate that such students would lack standing for having created a self-inflicted injury (i.e., one not “fairly traceable” to the conduct of the University or student organization raising funds).¹²⁶ The core requirements of federal standing—*injury in fact*, causation by defendant and redressability—were reinforced in the Supreme Court’s latest ruling related to mifepristone (the pregnancy termination drug), *FDA v. Alliance for Hippocratic Medicine*.¹²⁷

Turning to state law in California, there are more permissive standing requirements than in federal court¹²⁸, but it is also true that there are more favorable substantive law rulings in California and other state courts that have reached relevant questions related to PRWORA and IIRIRA.¹²⁹

¹²³ *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013) (“[R]espondents cannot manufacture standing merely by inflicting harm on themselves[.]”); *Pennsylvania v. New Jersey*, 426 U.S. 660, 664 (1976) (per curiam) (“The injuries to the plaintiffs’ fises were self-inflicted No state can be heard to complain about damage inflicted by its own hand.”).

¹²⁴ *Mendia v. Garcia*, 768 F.3d 1009, 1013 n.1 (9th Cir. 2014) (immigration detainee lacked standing to seek damages for a portion of his pre-trial detention because “the loss of liberty he experienced after being granted release on his own recognizance is ... a self-inflicted injury”); *Woulfe v. Universal City Studios LLC*, 2023 WL 6151727 at *4-5 (C.D. Cal. Aug. 2023).

¹²⁵ See e.g., *Nat’l Family Plan. and Reprod. Health Ass’n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006) (“We have consistently held that self-inflicted harm doesn’t satisfy the basic requirements for standing.”); *Zimmerman v. City of Austin*, 881 F.3d 378, 389 (5th Cir. 2018) (“standing cannot be conferred by a self-inflicted injury.”).

¹²⁶ 13A Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 3531.5 (3d ed. 2008 & Supp. 2022) (“Standing is defeated only if it is concluded that the injury is so completely due to the plaintiff’s own fault as to break the causal chain.”); *Red v. General Mills, Inc.*, 2015 WL 9484398 at * 4-5 (C.D. Cal. 2015) (consumer claimed injury from eating mashed potatoes with hydrogenated oil that was properly labeled on the box, court ruled they lack standing for reasons of self-inflicted injury).

¹²⁷ 602 U.S. 367, 378-79 (2024).

¹²⁸ Anne Abramowitz, *A Remedy for Every Right: What Federal Courts Can Learn from California’s Taxpayer Standing*, 98 CAL. L. REV. 1595 (2010); see also Laura Bakst, *Constitutionally Unconstitutional? When State Legislatures Pass Laws Contrary to Supreme Court Precedent*, 53 U.C. DAVIS L. REV. ONLINE 63, 88 (2019).

¹²⁹ See Kidder, *Dreaming with Dreamers*, *supra* note __, at 608-12 (discussing *County of Alameda v. Agustin*, No. A115092, 2007 WL 2759474 (Cal. Ct. App. Sept. 24, 2007); *Garcia v. Dicterow*, No. G039824, 2008 WL 5050358 (Cal. Ct. App. Nov. 26, 2008); *Caballero v. Martinez*, 897 A.2d 1026, 1031 n.1 (N.J. 2006); *City Plan Dev., Inc. v. Off. of Lab. Comm’r*, 117 P.3d 182, 190 (Nev. 2005); *Rajeh v. Steel City Corp.*, 813 N.E.2d 697, 707 (Ohio Ct. App. 2004); *Dowling v. Slotnik*, 712 A.2d 396, 412 n.17 (Conn. 1998)).

C. Partnering with Progressive Philanthropy Matters

Given the gridlock at the federal legislative level with respect to immigration reform and the legal difficulties of DACA in the current legal environment, one important area to look at (as part of an ensemble of strategies) to improve prospects for undocumented college students is progressive philanthropy acting as “institutional entrepreneurs” that advance change via community investments and partnerships.¹³⁰ As Cass Sunstein observed many years ago, learning from “norm entrepreneurs” and the processes by which norms can change (sometimes rapidly) is an important ingredient in the successful change of law and policy.¹³¹ The role of progressive philanthropy in partnering with community and undocumented student/ally activists and with university administrators to advance the larger social movement for undocumented student rights in higher education is an under-analyzed area of scholarship; Kyle Southern’s doctoral dissertation, discussed below, is a notable exception.¹³²

Southern found manifestations of institutional entrepreneurship in two case studies, including a single former foundation program officer who had disproportionate influence in founding a multi-state network of community colleges dedicated to growing the movement to support undocumented students,¹³³ and a different partnership modality a leading flagship public research university [clearly UC Berkeley, though anonymized] that “‘didn’t have any’ internal dollars for this work when it began; the institution’s chief executive officer elevated student experiences in a way that compelled an initial grant investment to make Undocumented Student Services possible” in tandem with “a

¹³⁰ Rand Quinn, Megan Tompkins-Stange & Debra Meyerson, *Beyond grantmaking: Philanthropic foundations as agents of change and institutional entrepreneurs*, 43 *NONPROFIT & VOLUNTARY SECTOR Q.* 950 (2014). More generally, see also Cassie L. Barnhardt, *Philanthropic foundations’ social agendas and the field of higher education*, in MICHAEL B. PAULSEN, (ED.), *HIGHER EDUCATION: HANDBOOK OF THEORY AND RESEARCH* 181 (2017).

¹³¹ Cass R. Sunstein, *Social Norms and Social Roles*, 96 *COLUM. L. REV.* 903, 909 (1996).

¹³² Kyle Southern, “Private Foundations and the Undocumented Student Movement in Higher Education” (2019), Ph.D. dissertation, University of Michigan, https://deepblue.lib.umich.edu/bitstream/handle/2027.42/151622/kgsouth_1.pdf?sequence=1. This study has extensive discussion of an anonymized “Western Public Research University” with rolling creeks and many Nobel laureates and a model undocumented student center that is obviously the same UC campus that we discuss above in Section III.C.

¹³³ *Id.* at 70 (“I conducted an extensive interview with a former foundation program officer credited by all parties with conceiving of [the network]. Now an independent consultant working on immigrant integration issues, this former program officer served as perhaps the critical institutional entrepreneur planting seeds that ultimately bore fruit as a field of immigrant and undocumented student support”); see also *id.* at 39, 70.

set of on-campus institutional entrepreneurs who brought their personal identities and professional values to bear to establish an undocumented student resource center.... Without a willing national foundation partner, they ‘hustled’ their way toward building a comprehensive model that larger foundations eventually sought out as a potential grant recipient.”¹³⁴ More recently the \$40 Million California Campus Catalyst Fund¹³⁵ carried forward this work of expanding undocumented student services centers,¹³⁶ as do non-profits like FWD.US.¹³⁷ Such efforts tend to focus investment where there is “skin in the game” in matched institutional commitment and where there are ground conditions of student and community activism and networks sharing best practices.¹³⁸

Some in progressive philanthropy distinguish between foundations investing in “retail” (direct scholarship assistance) versus activities at the “wholesale” (community service grants to groups close to the point of activity),¹³⁹ but this dichotomy is somewhat of an oversimplification. For example, TheDream.US is the largest private scholarship program for undocumented college students and presently awards substantial scholarships covering tuition and fees to several thousand (freshman-to-senior) students at American universities and colleges.¹⁴⁰ TheDREAM.US affiliates with scores of partner colleges where selected undocumented scholarship recipients may enroll, and partner colleges go through a benchmarking and strategic assessment process with the fund in order to assess strengths and weaknesses in order to build up their profile of support services and characteristics for undocumented students.¹⁴¹

¹³⁴ *Id.* at 142.

¹³⁵ Cathy Cha & Katharine Gin, *Reflections on the California Campus Catalyst Fund*, (Oct. 2022), <https://www.haasjr.org/perspectives/reflections-on-the-california-campus-catalyst-fund>.

¹³⁶ See e.g., Jesus Cisneros, Diana Valdivia, Alonso R. Reyna Rivarola, and Felecia Russell, “*I’m here to fight along with you*”: *Undocumented student resource centers creating possibilities*, 15 J. DIVERSITY IN HIGHER EDUC. 607 (2022).

¹³⁷ <https://www.fwd.us/highered/>.

¹³⁸ Cha, *supra* note __ (“The funders’ plans to step down funding after three years were communicated clearly to campuses, as was the requirement that campuses put some “skin in the game” through dedicated funding of their own, in-kind support, and other commitments.”). These themes came up in a background interview one of us conducted with the President and immigration portfolio director of the Walter and Evelyn Haas Jr. Fund and are also consistent with findings in Southern, *supra* note __, at 77, 158-59.

¹³⁹ Southern, *supra* note 120, 134.

¹⁴⁰ THEDREAM.US, <https://perma.cc/22JA-G8M5>.

¹⁴¹ One of us (Mr. Kidder) was involved in this process as the relationship manager/liaison with TheDream.US at Sonoma State University several years ago. Many of the features of this process mirror best practice guides that classify institutions into a few broad categories based on measures

A half-dozen of the CSU and UC campuses in Northern California included in our data set had scholarship partnerships with TheDream.US in the late-2010s, until 2020 when TheDream.US made the difficult decision to sunset new scholarships with California and Washington universities and to redeploy those funds to states where undocumented students face even larger challenges and lack of financial aid.¹⁴² We did not have the granular data on the number and duration of TheDream.US scholarships to test if this decline in private scholarships was a contributing factor (less salient than the fall of DACA) for our results in Section III, but the magnitude of UC and CSU new Dream Act awards declining by half since 2016-17 poses the policy question of whether as a matter of comparative return on investment (i.e., “moving the needle” on number of students reaching graduation per dollar expended) if it would be sound fund stewardship to have some kind of successor/different scholarship partnership program for some public universities in California (even if smaller on a per student basis than what is being offered in “red states” without financial aid).

In a financial support environment without DACA and also projecting ahead to there being several years without comprehensive immigration reform or a federal Dream Act, where progressive philanthropy dollars could provide important seed funding for innovation in the area of scaling up campus centers that effectively train and position undocumented students for entrepreneurial success and networking *after* graduation (e.g., as independent contractors, LLCs).¹⁴³

of institutionalized support across multiple dimensions. *See e.g.*, Nancy Jodaitis, Jose I. Arreola, Ruben E. Canedo & Kyle Southern, *Undocu-college Guide: California* (2016), https://immigrantsrising.org/wp-content/uploads/Immigrants-Rising_CA-UndocuCollege-Guide-and-Equity-Tool_Full-Report.pdf.

¹⁴² Sadhana Singh, *Important News from TheDream.US in California*, THE DREAM.US (Sept. 14, 2020), <https://perma.cc/86J9-FZHC> (“Going forward, we will no longer award NEW scholarships to California DREAMers. California now has generous state aid, institutional aid, scholarships and loans that are available to DREAMers. This is not true in a number of other states – where DREAMers have little to no access to financial aid to help pay for college. We have decided that we need to shift our focus in helping DREAMers in these states.”).

¹⁴³ UCLA Institute for Research on Labor and Employment (Laura E. Enriquez et al.), *How Can Universities Foster Educational Equity for Undocumented College Students: Lessons from the University of California* 9 (2019), <https://irle.ucla.edu/wp-content/uploads/2019/01/Enriquez-Educational-Equity-Final.pdf> (“undocumented students face uncertainty about their future ability to be legally employed. Eighty-four percent of survey participants agreed that thinking about life after graduation gives them anxiety. Those who did not have DACA worried about not having employment eligibility, and those who had DACA worried about losing their eligibility.”); c.f., Immigrant Rising, Spark Hub for Immigrant Entrepreneurs, <https://spark.immigrantsrising.org/>; German A. Cadenas, Elizabeth A. Cantú, Raquel Sosa, Sabrina Carroll, Nathalie Lynn, Beatriz

V. CONCLUSION

For nearly a quarter-century as efforts to pass versions of a federal Dream Act ultimately failed to become law,¹⁴⁴ experimentation at the state level took on greater significance in response to gridlock at the federal level.¹⁴⁵ For example, the first state to figure out how to pass a law that overcame the legal restrictions of the 1996 immigration laws (IIRIRA and PRWORA) and provided in-state college tuition rates for long-time residents who are undocumented was Texas in 2001 (in an era of greater legislative bipartisanship).¹⁴⁶ Over the years, other states followed suit and today about half of the states have some kind of out-of-state tuition waiver law for which some undocumented students are eligible.¹⁴⁷

California is as an upper-bound test case with the strongest, longest and arguably most robust set of state laws and university-level aid policies to support undocumented college students including in the realm of financial aid. Even so, given the gradual demise of DACA for recent cohorts of young Gen Z undocumented students hoping for access to quality higher education opportunities, the data in this article are the first to show that new California Dream Act awards dropped by half at UC and CSU campuses between 2016-17 and 2022-23. We make reasonable efforts to use “difference in difference” methods to support the inference that the demise of DACA is most likely the main cause, but with the caveat we do not have the granular data to definitively establish the causal role of DACA’s decline in worsening enrollment outcomes for undocumented students at California public universities.

If DACA is nullified by the U.S. Supreme Court, that will only reinforce the need to once again seek experimentation and solutions at the state and university/college level until federal legislative reform in this area can finally

Suro & Alissa Ruth, *An educational program affirming immigrant entrepreneurship, critical consciousness, and cultural strengths*, 71 *CAREER DEVELOPMENT Quarterly* 284 (2023).

¹⁴⁴ OLIVAS, *PERCHANCE TO DREAM*, *supra* note __, at 48-51.

¹⁴⁵ See e.g., Jennifer M. Chacón, *The 1996 Immigration Laws Come of Age*, 9 *DREXEL L. REV.* 297, 318 (2017) (the 1996 immigration laws, including PRWORA and IIRIRA, “ultimately created a paradigm where states and localities are exercising great power in shaping the lived experience of their residents as a result of their immigration status. This has happened at the very same time that immigration enforcement has ramped up and national borders have hardened.”).

¹⁴⁶ This history behind H.B. 1403, including the role of the late Michael Olivas advising Texas lawmakers, is captured in Kevin J., Dougherty, H. Kenny Nienhusser & Blanca E. Vega, *Undocumented immigrants and state higher education policy: The politics of in-state tuition eligibility in Texas and Arizona*, 34 *REV. HIGHER EDUC.* 123, 138-42 (2010); see also OLIVAS, *PERCHANCE TO DREAM*, *supra* note __,

¹⁴⁷ See Table 1 *infra*, see also <https://www.higheredimmigrationportal.org/states/> (April 2024).

become a reality. After all, the Supreme Court observed not too long ago that “public universities, like the States themselves, can serve as ‘laboratories for experimentation.’”¹⁴⁸ In Section IV we outline several innovative pathways for further reform in support of undocumented students including ideas that may make some university trustees and administrative leaders uncomfortable and areas where progressive philanthropy could make some seed funding investments that can be leveraged for larger impact. For both state level reforms and for federal advocacy efforts with Congress and with DACA, the groundswell of undocumented student activism has always been a central part of the story¹⁴⁹, and this vital work by young people fighting for the inclusion of their dreams and aspirations as part of the fabric of American society will no doubt continue in the years ahead regardless of the legal fate of DACA.

APPENDIX: ADDITIONAL INFORMATION ON OUR DATA SET AND METHODS

A. Empirical methods and choices

As noted earlier, we employ a social science “difference-in-difference” analytic strategy¹⁵⁰ that compares enrollment changes for undocumented Dream Act students with the corresponding pattern for a reasonably matched group of non-undocumented students, which are the low-income Cal Grant awardees at UC and CSU, respectively, over an eight year span. Appendix Tables 1 and 2 provide an overall profile of the subset of Dream Act recipients in 2022-23 who were new (rather than continuing) awardees.¹⁵¹ These profile data are for those *offered*

¹⁴⁸ Fisher v. Univ. of Texas, 136 S. Ct. 2198, 2214 (2016) (plurality opinion).

¹⁴⁹ Kevin R. Johnson, *Bringing Racial Justice to Immigration Law*, 116 NW. U. L. REV. ONLINE 1, 13 (2021-2022) (“[U]ndocumented immigrants and other immigrant activists today are at the center of political activity. It is difficult to pinpoint the precise time, but immigrant activism increased as versions of the DREAM Act, which would create a path to legalization for undocumented youth, were introduced in Congress over the last twenty years.”).

¹⁵⁰ Furquim et al. do an effective job of discussing various considerations with difference-in-difference methods using the example of higher education enrollment impacts of Hurricane Katrina. Fernando Furquim, Daniel Corral, and Nicholas Hillman, *A primer for interpreting and designing difference-in-differences studies in higher education research*, 35 HIGHER EDUCATION: HANDBOOK OF THEORY AND RESEARCH 1, passim (2019).

¹⁵¹ Cal. Student Aid Comm’n, CAL GRANT PROGRAM New Offered Awardees and Eligible Non-Offered Awardees Average Income, GPA, Family Size, and Age by Segment Award Year 2022-23 3-4 (2023), https://www.csac.ca.gov/sites/main/files/file-attachments/cal_grant_program_averages_2022-23.pdf?1674837311. There are a trivial number

Dream Act and Cal Grant awards (about 11% of this group at UC choose not to accept the award¹⁵²).

Appendix Tables 1-2 show that undocumented students to UC have 3.66 high school grade-point averages (GPAs), which are equivalent to the 3.67 GPAs for other UC freshmen receiving Cal Grants. Those at CSU have 3.24 high school GPAs, similar to the 3.30 GPAs for other CSU freshmen receiving Cal Grants.¹⁵³ The average ages are very similar. Dream Act students come from somewhat larger families and have lower family incomes in Appendix Tables 1-2, though if more of their parents' work is in the informal economy¹⁵⁴ compared to Cal Grant recipients, then the magnitude of the family income gap might be somewhat overstated. At the upper end of the distributions (e.g., 80th and 90th percentiles) there will be a larger gap in family income reflective of the lower-middle income status of many Cal Grant award recipients as compared to Dream Act undocumented award recipients.

Comparison data like Appendix Tables 1-2 but for earlier years are substantially equivalent, confirming that these Dream Act and Cal Grant students that are reasonably well matched academically.¹⁵⁵ It is theoretically possible that there are "selection on unobservable" differences between Dream Act and Cal Grant students with equivalent academic credentials, but we are not able (and there is scant data in the national literature) to robustly test such possibilities. However, our data indirectly address that concern by including students at a fairly broad distribution of institutions ranging from large hyper-selective research universities like UC Berkeley and UCLA to smaller and modestly selective regionally focused teaching universities like CSU Stanislaus and CSU San Marcos.

of students receiving Dream Act awards under the separate "CCC entitlement" category that are not included in Appendix Tables 1-2 above.

¹⁵² Cal. Student Aid Comm'n, *Renewing the Dream*, supra ___, at 20 ("[S]tudents applying for CADAA for the first time are successfully applying for aid and receiving financial aid offers, but not receiving aid. A significant portion are either not enrolling in college after applying for aid or not able to complete the final additional steps to ensure their aid is disbursed."). This group is relatively smaller at UC and larger at the CCCs and has grown since 2016-17. *Id.* at 20 fig. 4.

¹⁵³ *Id.* at 2-3.

¹⁵⁴ See e.g., Jennifer J. Lee, *Legalizing Undocumented Work*, 42 CARDOZO L. REV. 1893 (2020).

¹⁵⁵ See e.g., Cal. Student Aid Comm'n, *CAL GRANT PROGRAM New Offered Awardees and Eligible Non-Offered Awardees Average Income, GPA, Family Size, and Age by Segment Award Year 2019-20 3-4* (2020), https://www.csac.ca.gov/sites/main/files/file-attachments/cal_grant_program_averages_2019-20.pdf?1578529549.

Appendix Table 1: UC Profile Comparisons of Newly Offered Dream Act Awardees and Cal Grant (FAFSA Filer) Awardees in 2022-23

	From High School		Transfers	
	Dream Act	Cal Grant	Dream Act	Cal Grant
Avg. Income	\$32,438	\$46,823	\$28,580	\$43,373
Avg. GPA	3.66	3.67	3.34	3.47
Avg. Family Size	4.4	4.0	3.5	3.1
Avg. Age	18	18	23	22
Totals	602	28,314	144	3,736

Appendix Table 2: CSU Profile Comparisons of Newly Offered Dream Act Awardees and Cal Grant (FAFSA Filer) Awardees in 2022-23

	From High School		Transfers	
	Dream Act	Cal Grant	Dream Act	Cal Grant
Avg. Income	\$28,381	\$42,461	\$28,618	\$39,561
Avg. GPA	3.24	3.30	3.14	3.21
Avg. Family Size	4.5	4.0	3.2	2.9
Avg. Age	18	18	23	23
Totals	1,092	45,991	502	11,992

In other circumstances where difference-in-difference methods are employed with undocumented students what is being studied are before-and-after a decisive point in time (e.g., an increase in tuition or the date a new in-state tuition law takes effect¹⁵⁶), but here we have the challenge that we seek to assess impacts from the gradual strangulation of college students with DACA over a span of several years (see Figure 1). We address this to some extent by looking at both overall Dream Act counts as well as new Dream Act awardees. Relatedly, difference-in-difference strategies can be limited when adopting a one-versus-one period/group framework, so empirical scholars instead encourage testing multiple bandwidths to evaluate whether results are sensitive to the width of the analytic window.¹⁵⁷ We were able to address that concern in a limited way by measuring UC and CSU campus declines from two starting points (2018-19 and 2019-20).

Given our focus on DACA as an explanatory factor, we note there is convergent evidence nationally using a different enrollment estimation methodology. The Presidents' Alliance on Higher Education and Immigration

¹⁵⁶ Dylan Conger & Lesley J. Turner, *The Impact of Tuition Increases on Undocumented College Students' Attainment* (2015), NBER Working Paper No. 21135; Stella M. Flores, *State dream acts: The effect of in-state resident tuition policies and undocumented Latino students*, 33 REV. HIGHER EDUC. 239, 253-56 (2010).

¹⁵⁷ See e.g., Michael Lechner, *The estimation of causal effects by difference-in-difference methods*, 4 FOUNDATIONS & TRENDS IN ECONOMETRICS 165, 185 (2010).

estimated that there are approximately 408,000 undocumented college students in the U.S. in 2021,¹⁵⁸ which represents a drop compared to 427,000 undocumented college students in 2019 and 450,000 in 2018.¹⁵⁹ (Revised 2023 national estimates are forthcoming, but not available at the time of this writing).

Unlike our data set on low-income undocumented students, some other difference-in-difference studies must use proxy measures for college students who are undocumented.¹⁶⁰ Still other surveys of California undocumented college students must rely on networking outreach strategies to connect with participants and thus pose the challenges of unrepresentative sampling that is inherent in scholarly research with precarious undocumented students.¹⁶¹

The extent to which our data set shows there are many more undocumented Dream Act students enrolling from California high schools (i.e., freshmen) compared to transfers from California Community Colleges (4:1 ratio at UC and 2.2:1 ratio at CSU in Appendix Tables 1-2) may surprise or otherwise

¹⁵⁸ AM. IMMIGRATION COUNCIL & PRESIDENTS' ALL. ON HIGHER EDUC. & IMMIGR., UNDOCUMENTED STUDENTS IN HIGHER EDUCATION: HOW MANY STUDENTS ARE IN U.S. COLLEGES AND UNIVERSITIES, AND WHO ARE THEY? Fig. 1, 3 (updated Aug. 2023),

https://www.americanimmigrationcouncil.org/sites/default/files/research/undocumented_students_in_higher_education_2023.pdf

¹⁵⁹ *Id.* at fig. 2; *see also* the April 2020 version of this same Presidents' Alliance report, available at <https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/07/Undocumented-Students-in-Higher-Education-April-2020.pdf>. The Presidents' Alliance report estimated that 34.4% of undocumented college students were DACA-eligible in 2021 (an upper-bound estimate that shouldn't be confused with those who *actually have* DACA), down from 42.6% in 2019 and 47.6% in 2018.

¹⁶⁰ Michel Grosz & Annie Hines, *In-state tuition policies and the college decisions of undocumented students: Evidence from Colorado*, 17 EDUC. FINANCE & POL'Y 232, 238 (2022) ("We cannot observe undocumented students directly, so we consider a treatment group of students who are likely to be affected by the policy based on race/ethnicity and tuition classification flags.").

¹⁶¹ Erin R. Hamilton, Caitlin Patler & Robin Savinar. *Transition into liminal legality: DACA's mixed impacts on education and employment among young adult immigrants in California*, 68 SOC. PROBLEMS 675 (2021) (cautioning that other surveys "may over-estimate DACA's impact by sampling among more privileged – largely activist, college-going – youth" (*id.* at 676), but while their DACA Study captured a large share of non-college individuals it was also the case that 97% of those surveys were Latinx and 100% of those interviewed were Latinx (*id.* at 681 tbl. 1). Another recent and important survey of California undocumented students at UC and CSU was based on a response sample that was 94% Latinx (i.e., under-sampling AAPIs). *See* UC Collaborative to Promote Immigrant and Student Equity (UC PromISE) and the Undocumented Student Equity Project, *Persisting Inequalities and Paths Forward: A Report on the State of Undocumented Students in California's Public Universities 4-5* (Dec. 2020), https://bpb-us-e2.wpmucdn.com/sites.uci.edu/dist/4/3807/files/2020/12/State_Of_Undocumented_Students_2020_report.pdf

be of interest to policymakers. These data patterns reflect the ambitions and choice patterns of undocumented students.¹⁶²

B. Additional Information on our Data Set of California Dream Act Awardees

We characterize our figures overall on California Dream Act awardees as “lower-middle” estimates for the number of enrolled undocumented students at UC and CSU. These numbers have sufficient reliability and internal consistency over time as to be a trustworthy measure of the real trends in the undocumented student population at California public universities, though patterns may be different in other states given differences in state laws and local conditions.

In California the AB 540 in-state tuition bill can lead to the intuition that studying “AB 540 students” would be empirically preferable. We disagree because it is too often overlooked that California’s AB 540 nonresident tuition waiver law (by legislative design) includes both undocumented students as well as a significant plurality of “California-ish” documented/citizen students who lost their California residency.¹⁶³ Thus, AB 540 per se is an unsatisfactory proxy for undocumented student status unless it is linked with e.g., filing a Dream Act application.

Our Dream Act award data set from CSAC do not include the following types of undocumented students:

- Undergraduates who previously had a Dream Act award but no longer have one because they exhausted their four years of eligibility (e.g., fifth-year seniors). This also applies to undocumented transfer students age 28 and older. This group of previously eligible students likely accounts for a large share of the gap (discussed below) between Dream Act applicants and awardees.

¹⁶² This finding is in conversation with Ngo and Estudillo’s study of undocumented students in one California Community College district, where they noted: “It is also likely that the highest achieving undocumented students chose instead to enroll in 4-year colleges given the possibility of receiving state merit aid. We were unable to examine this with our community college data.” Ngo & Astudillo. *supra* note __ at 15 n. 8.

¹⁶³ “California-ish” documented students is our term for students who met the AB 540 requirement of years in a California high school or community college, but who lost their California residency for such reasons as e.g., moving out-of-state in their senior year of high school because of parental divorce or a family job-related move, or students from California who then went out-of-state for undergraduate studies and now are seeking an in-state tuition waiver their first year coming back to California. California’s AB 540 law is intended to include these documented student populations as a central feature of its legal permissibility vis-à-vis the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), 8 U.S.C. § 1623(a). *Martinez v. Regents of the Univ. of Cal.*, 50 Cal. 4th 1277, 1284 (2010).

- Very small numbers of undocumented students who are from middle-income families and thus did not apply for a Dream Act award or applied and were not eligible..
- Small-middle but growing numbers of graduate and professional school students.

As a practical example integrating some of the points above, recall UC's aforementioned estimate in the run-up to the DACA case that there were approximately 4,200 undocumented students at UC in 2016-17.¹⁶⁴ With that context, here is why we report a lower figure of 3,316 undocumented students in 2016-17 when both we and UC were relying on similar strategies tethered to data from the California Student Aid Commission:

- The 4,200 figure refers to the number of UC students who filed Cal Dream Act applications;
- Of that number about 3,641 were offered Dream Act awards because they met eligibility criteria (of those 500+ who were not eligible most are low-income undocumented students who missed age/year and other eligibility cut-offs);
- Of that number 3,316 UC students were actually paid Dream Act awards (the drop-offs at each stage are similar in other years).

From correspondence with the UC system's financial aid director, of those who submitted Dream Act applications, he believes that approximately 95% either get a Dream Act or a UC Grant award, and thus are low-income students. Moreover, among Dream Act/CADAA filers at UC there are very few who are not undocumented students (e.g., those who filed this application by mistake).

Because the Student Aid Commission's data are reported with breakdowns by sub-type of Dream Act (Cal Grant A, Cal Grant B), in our campus data request we asked that small samples (below 10) be masked in order to facilitate access to the data and to protect the privacy interests of undocumented students (i.e., to prevent imputed identification of individual undocumented students). This data limitation did not impact reporting precision for any of the nine University of California (UC) system campuses with undergraduates. Note the caveat that we do not have data on UCSF, the tenth UC campus focused on health science graduate education that has a very small population of undocumented students.

This data masking of samples below 10 did impact reporting precision for a small number of CSU campuses and was handled as described herein. The CSU campuses had small numbers of Dream Act students under Cal Grant A and large numbers under Cal Grant B (the reverse of UC). Thus, if in a given year a smaller CSU campus had 135 Cal Grant B undocumented students and its number

¹⁶⁴ Brick Declaration, *supra* note __.

of Cal Grant A students was masked because it was less than ten but not zero, we made the simplifying assumption that the number was 5 so that the total Dream Act awardees for that campus in that year would be estimated as 140 (135 + 5). These small imprecisions in our estimates for some CSU campuses would have been more prevalent if we listed data for all 23 CSU campuses. Instead, for data privacy and other reasons we made a prudential choice to report separate data only for the fifteen California State University (CSU) campuses with the largest number (89.6% of CSU's total) of undocumented students attended by applying a threshold of reporting campuses if there were at least 150 undocumented students during the peak years in our data set. We did not separately report on eight CSU campuses with smaller numbers of undocumented students (representing 10.4% of CSU's total).

C. A closer look at alternative hypotheses

This article attempts a “first pass” analysis of very recent data on trends with low-income undocumented students at California universities and the possible relationship with the slow demise of DACA. We do not utilize the type of granular individual student records researchers prefer when studying undocumented student enrollments many years in the past.¹⁶⁵ Our “difference in difference” control groups of other UC and CSU Cal Grant students are important in likely disconfirming some kinds of rival hypotheses, but are not sufficient for other kinds of alternative hypotheses for which trends for citizen/resident high school or college students are not relevant.

One competing (or partly competing) hypothesis we take seriously is that the recent decline in UC and CSU Dream Act students could be partly a reflection of declines in college-ready undocumented students graduating from high schools in California. This question weaves together two strands—one parallels our DACA-decline hypothesis but is beyond our direct measurement, and one is a genuine alternative hypothesis.

Regarding the former, multiple studies show that the introduction of DACA over a decade ago had a net positive effect on inducing undocumented youth to achieve higher high school graduation rates,¹⁶⁶ so the gradual

¹⁶⁵ See e.g., Gurantz & Obadan, *supra* note __; Hsin & Ortega, *supra* note __; Ngo & Estudillo, *supra* note __.

¹⁶⁶ Elira Kuka, Na'ama Shenhav & Kevin Shih, *Do human capital decisions respond to the returns to education? Evidence from DACA*, 12 AM. ECON. J: ECON. POL'Y 293, 320 (2020) (“Using a difference-in-difference design, we show that DACA altered the education decisions of undocumented youth. The policy increased school attendance by 2.2 [percentage points] and high school graduation rates by 6 [percentage points], an effect that was more pronounced among Hispanic men.”); Briana Ballis, *Dreamers and beyond: Examining the broader educational effects of DACA*, 59 J. Human Resources __ (forthcoming 2024) (analyzing Los Angeles Unified School

constriction of DACA in more recent years poses the converse question about weakening undocumented students' high school graduation rates. Likewise, immigration enforcement actions and arrests by ICE, which accelerated during the Trump era, correlate with greater absenteeism and lower academic achievement by K-12 undocumented students¹⁶⁷ (which can dampen the number of high school graduates years later).

The second strand of this question is whether a possible decline in undocumented high school graduates reflects decreased immigration patterns from earlier years¹⁶⁸, which is a genuine alternative hypothesis. This question is more difficult to assess directly than one might suppose for a combination of reasons: 1) The Presidents Alliance's (and similar) estimates of undocumented high school graduates only go back a few years, and the American Community Survey micro-data sample from 2021 (showing much lower totals in California than in 2019) used for these estimates are better at the national level and tend to become more "choppy" when using thin slices of cohort data at the state level¹⁶⁹;

District data, finding "I find that among likely undocumented youth DACA increased 12th grade enrollment by 6 percent, high school graduation by 12 percent..."; Erin R. Hamilton, Caitlin Patler & Paola D. Langer, *The Life-Course Timing of Legalization: Evidence from the DACA Program*, 7 *SOCIUS* 1, 4-5 (2021).

¹⁶⁷ PATRICIA GÁNDARA & JONGYEON EE, EDS., *SCHOOLS UNDER SIEGE: THE IMPACT OF IMMIGRATION ENFORCEMENT ON EDUCATIONAL EQUITY* 31-54 (2022); Benjamin Meadows, *Undocumented and Under Threat of Deportation: Immigrant Students in the Classroom*, 58 *J. HUMAN RESOURCES* 1974 (2023); NICOLE CHÁVEZ, SUMA SETTY, HANNAH LIU, & WENDY CERVANTES STILL AT RISK: THE URGENT NEED TO ADDRESS IMMIGRATION ENFORCEMENT'S HARMS TO CHILDREN (2023), Center for Law and Social Policy report, <https://files.eric.ed.gov/fulltext/ED629499.pdf>.

¹⁶⁸ See e.g., Gurantz and Obadan, *supra* note __, at 533 n. 7 ("Although it is challenging to construct precise statistics on undocumented immigrants....California's undocumented population shrank by more than 20% from 2010-2019, with even larger drops among school-age children (Capps et al., 2020, Warren, 2021)."). Warren's latest study indicates a slight uptick in the undocumented population in the U.S. and in California in 2022. Robert Warren, *After a Decade of Decline, the US Undocumented Population Increased by 650,000 in 2022*, *J. MIGRATION & HUMAN SECURITY* tbl. 3 (forthcoming 2024).

¹⁶⁹ For example, the Presidents Alliance reports noted earlier estimated for California 27,000 undocumented high school graduates in 2019 but only 14,000 in 2021, while conversely Florida was estimated to have 5,000 in 2019 and 13,000 in 2021, which is a lot of bounce in the data estimates. 2021 was the full year of COVID school and labor market closures, which also could have uniquely impacted undocumented students and their families; the 2021 ACS sample may also have been impacted by the 2020 Census concern about undercounting undocumented residents. Another estimate of 2019 is in Jie Zong & Jeanne Batalova, *How Many Unauthorized Immigrants Graduate from U.S. High Schools Annually?* (2019), MPI Factsheet, <https://www.migrationpolicy.org/sites/default/files/publications/UnauthorizedImmigrant-HS-Graduates-FactSheet-Final.pdf>. A newer set of MPI estimates for the Presidents Alliance is forthcoming but was not yet available at the time of this writing.

2) the Presidents' Alliance relied on MPI estimates from the American Community Survey for 2019 but switched to FWD.US estimates (using a similar methodology) for 2021; 3) California's Department of Education and other official sources do not longitudinally track undocumented high school graduates per se;¹⁷⁰ 3) undocumented high school graduates in California are of course heterogenous with respect to when they came to the U.S. (age of two, seven, eleven, etc.) so that broader estimates on the total population of undocumented people living in the U.S. and California are only indirectly informative for this question of interest.

We can triangulate data around this question and thereby provide some sense of its plausibility and parameters. One test is by widening our focus beyond UC and CSU to also look at new Dream Act Awards for students in the California Community Colleges (CCCs). Appendix Figure 1 displays new Dream Act awardees at the CCCs alongside our earlier findings on UC and CSU. Unlike the 51% and 48% declines at UC and CSU, there was only a 5.3% decline for the larger group of CCC Dream Act awards between 2016-17 and 2022-23 (with a larger one-year dip in 2020-21, likely due to the educational and economic hardships of COVID). Such Dream Act awards are open to students going directly to the CCCs out of high school (and recent high school graduates).¹⁷¹ Thus, the CCC data in Appendix Figure 1 do not suggest major declines in undocumented high school graduates in California.

On the other hand, the total number of new California Dream Act applications (driven by the larger numbers at the CCCs) were relatively stable in 2015-16 to 2019-20 but then declined in more recent years (again, this may be partly related to COVID but it continued in 2023-24).¹⁷² Concurrently, the percentage of CCC Dream Act offerees who accept these awards has increased substantially (from 61.5% in 2016-17 to 88.8% in 2022-23),¹⁷³ which helps to explain the smaller net decline in those receiving CCC Dream Act awards.

¹⁷⁰ In lieu of official government estimates, see Presidents Alliance and MPI estimates in the immediately preceding footnote.

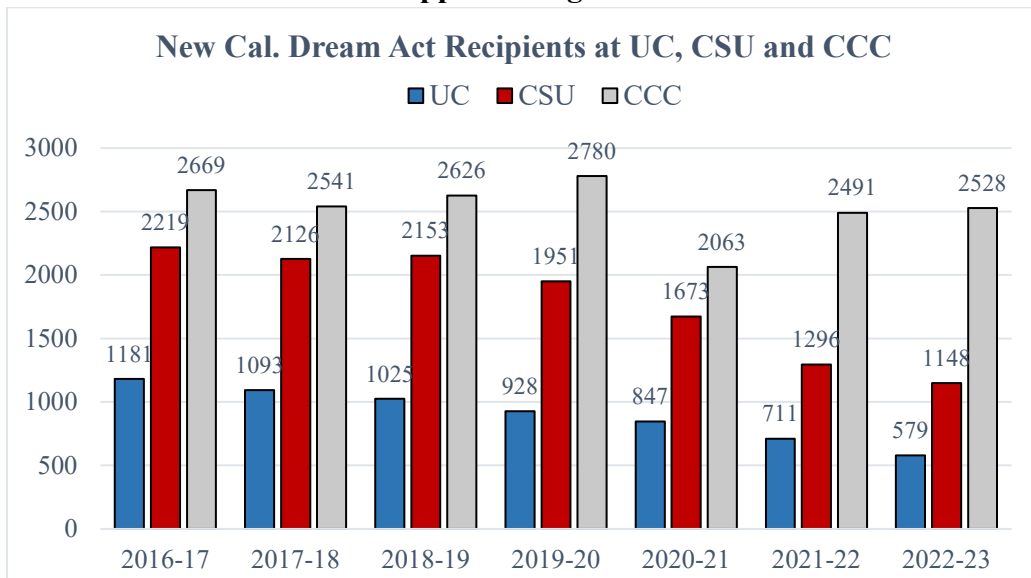
¹⁷¹ CSAC, California Dream Act FAQ's for Students and Parents, https://www.csac.ca.gov/sites/main/files/file-attachments/california_dream_act_faq.pdf?1694549553.

¹⁷² Cal. Student Aid Comm'n, Renewing the Dream: Improving Financial Aid and College Affordability for California's Undocumented Students 20 fig. 4 (March 2023), https://www.csac.ca.gov/sites/main/files/file-attachments/renewing_the_dream_full_report.pdf?1677607402.

¹⁷³ *Id.* (comparing the 2022-23 and 2016-17 versions of this report). Yield rate behavior reflects prior patterns of applications plus students' decisions once a financial aid award is made.

Relatedly, it is possible in theory that a higher share of undocumented students in recent years are choosing the CCCs over UC and CSU based on affordability perceptions and ability to lower expenses by staying at home.¹⁷⁴ However, there are large differences in the average high school grades of the CCC Dream Act students (2.97 GPAs) compared to the Dream Act students at UC (3.67 GPAs) and CSU (3.24 GPAs) and the convergence in those average profiles compared to 2016-17 is modest¹⁷⁵, which do not fit with that “cascade to community colleges” hypothesis although we do not have granular data) to test this idea further.¹⁷⁶

Appendix Figure 1



A second data source that is longitudinally tracked by the California Department of Education is English Learners¹⁷⁷ by grade, here focusing on 12th graders because high school graduates are not reported (English Learners includes both documented and undocumented students, but the CCC and English Learner

¹⁷⁴ In 2016-17 56% of new Dream Act students attended a UC or CSU (freshmen + transfers), while 44% attended a CCC. However, by 2022-23 only 40% were at UC and CSU, while 60% of new Dream Act students were in the CCCs.

¹⁷⁵ The 2022-23 figures above compare to the following averages in 2016-17 for Dream Act offerees: CCCs (2.76 GPAs), UC (3.57 GPAs) and CSU (3.13 GPAs), thus all three segments saw increased GPAs by 2022-23.

¹⁷⁶ Cal. Student Aid Comm’n, CAL GRANT PROGRAM New Offered Awardees and Eligible Non-Offered Awardees Average Income, GPA, Family Size, and Age by Segment Award Year 2022-23 2-4 (2023), https://www.csac.ca.gov/sites/main/files/file-attachments/cal_grant_program_averages_2022-23.pdf?1674837311.

¹⁷⁷ California Department of Education, Glossary of Terms, <https://dq.cde.ca.gov/dataquest/longtermel/Glossary.aspx> (defining an English Learner).

data can be thought of as two bookends, one underinclusive and one overinclusive). Here too the English Learner data for 12th graders in California do not suggest there was likely a major downward trend in California undocumented high school students, as the 12th grade English Learner totals were stable in 2015-16 through 2019-20, dipped for one year in 2020-21 (again, likely COVID-related) and then reached new highs in 2021-22 and 2022-23.

Appendix Table 3: 12th Grade English Language Learners in California¹⁷⁸

2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
49,995	48,053	49,862	50,239	49,012	47,260	51,440	53,928

All told, the evidence reviewed above about alternative hypotheses are mixed. There is some suggestion of decline in California undocumented high school graduates (particularly the Presidents Alliance’s micro-data estimate for 2021, which may be subject to wider error bands for COVID and other reasons) but not good evidence of dramatic declines, and some of that decline is presumably DACA decline-related. More and better data are needed on this question, which will take more time to accumulate.

¹⁷⁸ California Department of Education, English Learners by Language and Grade (2024), from <https://dq.cde.ca.gov/dataquest/>. English Learner totals for California 12th graders are here, starting one year prior than the earlier college charts discussed in this article. About 82% of these students have Spanish as their first language.