THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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BY EMAIL

Hon. Harmeet K. Dhillon, Esq.
Assistant Attorney General
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: Complaint Regarding Discriminatory California Public Higher Education DACA/"Undocumented" Programs

Dear Assistant Attorney General Dhillon:

The Equal Protection Project of the Legal Insurrection Foundation is a non-profit entity that seeks to ensure equal protection under the law by opposing unlawful discrimination. We write to request that the Department of Justice open a formal investigation into the University of California, California State University, and California Community College systems, and one hundred and thirty-eight (138) participating California public colleges and universities. These institutions operate, sponsor, and promote DACA/"Undocumented" programs that unlawfully discriminate against American-born students in violation of Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment to the United States Constitution.

The programs are documented in Exhibits 1-3 to this Complaint and confer benefits on DACA/"Undocumented" students, and deny those benefits equally to American-born students, ranging from exclusive access to campus facilities and resources to dedicated funding, staff, counseling, advocacy, and other forms of support. These 138 institutions and programs are

organized in the attached Exhibits into three categories: (1) Ten (10) University of California system schools (Exhibit 1); (2) Twenty-one (21) California State University system schools (Exhibit 2); and (3) One hundred and seven (107) California Community College system schools (the systems and schools, collectively, are referred to herein as the "California Colleges").[1]

A. The California Colleges Are Violating Federal Law

The programs subject to this Complaint operating at the California Colleges are available only to Deferred Action for Childhood Arrivals (DACA) recipients[2] and "undocumented" non-citizens (sometimes referred to as "Dreamers"), or provide preference to such students.[3] Because DACA only applies to persons born outside the United States subject to certain other conditions, restricting programs and benefits to DACA recipients excludes American-born students. Similarly, "undocumented" status only applies to students born outside the United States and excludes American-born students. The DACA/"Undocumented" programs operating at the California Colleges thus systemically discriminate against American-born students on the basis of national origin.[4]

The DACA/"Undocumented" programs operating at the California Colleges violate federal law in two ways.

First, Title VI of the Civil Rights Act of 1964 prohibits intentional discrimination on the basis of national origin in any "program or activity" that receives federal financial assistance.[5] 42

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[1] We take no position on and do not in this Complaint challenge whether DACA/"Undocumented" students can participate in the programs. We only challenge the discrimination against American-born students.

[2] *See* https://www.uscis.gov/DACA [https://archive.is/PfwjL] (accessed November 24, 2025).

[3] While most programs are designated for DACA/"Undocumented" students, certain programs provide that DACA/"Undocumented" are automatically eligible while American-born students have to show an additional factor to qualify, such as being from a mixed status family or an "ally." This differing standard also constitutes discrimination against American-born students.

[4] Taking appropriate action to stop the enforcement of State and local laws, regulations, policies, and practices favoring aliens over any groups of American citizens is a high priority for U.S. agencies. *See* Exec. Order No. 14287, 90 FR 18761, The Department of Justice has recently relied on a similar exclusionary theory to challenge the "California Dream Act," the applications for which are largely sponsored by the California Colleges at issue in this complaint. *See* https://www.justice.gov/opa/pr/justice-department-files-complaint-challenging-california-laws-providing-state-tuition [https://archive.is/wip/CBi9O] (accessed November 24, 2025).

[5] *See, e.g.*, University of California System: https://www.usaspending.gov/recipient/dfae65bd-32fe-bce0-389c-2867fa9fa04e-C/latest [https://archive.ph/wip/EjBDb]; California State University System https://www.usaspending.gov/recipient/76263796-623d-f001-5ebd-1b652838a09d-C/latest [https://archive.is/wip/fyGXN]; California Community Colleges https://www.usaspending.gov/recipient/2829068d-77bb-35d6-b429-f408aca6ae59-R/latest [https://archive.is/wip/uTS3Q] (accessed November 24, 2025).

U.S.C. § 2000d. These programs employed by the California Colleges qualify as a program or activity falling under Title VI. The three institutional systems comprising the California Colleges also receive federal funding administered by the Department of Justice, further underscoring the need for action by your office.[6]

Second, discriminating against American-born students based upon their national origin also violates the Equal Protection Clause of the Fourteenth Amendment, unless it satisfies strict constitutional scrutiny. The DACA/"Undocumented" programs at the California Colleges cannot meet this heavy burden.

1. Title VI

Because the California Colleges receive and administer federal funds and are public institutions, they are subject to Title VI. As noted, Title VI prohibits intentional discrimination on the basis of national origin in any "program or activity" that receives federal financial assistance. 42 U.S.C. § 2000d. The term "program or activity" encompasses "all of the operations … of a college, university, or other postsecondary institution, or a public system of higher education." 42 U.S.C. § 2000d-4a(2)(A). The programs identified here clearly fall under Title VI.

It does not matter whether a recipient of federal funding discriminates to advance a purportedly benign "intention" or "motivation." *Bostock v. Clayton Cnty*., 590 U.S. 644, 661 (2020) ("Intentionally burning down a neighbor's house is arson, even if the perpetrator's ultimate intention … is only to improve the view."). Nor does it matter that a recipient discriminates "with the idea that doing so might favor the interests of [a protected] class as a whole." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll*., 600 U.S. 181, 289 (2023) (Gorsuch, J., concurring). Discrimination on the basis of citizenship is unlawful whenever it has the purpose or effect of discriminating on the basis of national origin. *Espinoza v. Farah Mfg. Co., Inc*., 414 U.S. 86, 92 (1973) (citizenship status cannot be used as a pretext or proxy to disguise what is in fact national-origin discrimination). [7]

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[6] *See, e.g.*, University of California System: https://www.usaspending.gov/award/ASST_NON_2017WAAX0028_015 [https://archive.is/wip/SzJfw]; California State University System https://www.usaspending.gov/award/ASST_NON_15JOVW23GG04451HBCU_015 [https://archive.is/axQ9i]; California Community Colleges https://www.usaspending.gov/award/ASST_NON_15JOVW24GG02448HBCU_015 [https://archive.ph/wip/Qzl5z] (accessed November 24, 2025).

[7] The U.S. Department of Education Office for Civil Rights also takes the position that DACA/"Undocumented" university programs constitute national origin discrimination. *See* https://www.ed.gov/about/news/press-release/us-department-of-education-opens-investigations-five-universities-alleged-exclusionary-scholarships-benefitting-illegal-alien-students.

As documented in the Exhibits, some programs are expressly limited to DACA/"Undocumented" students, while all the identified programs also "signal" such exclusion or preference for such students through program titling and promotion. No American-born student would be likely to seek assistance through or apply to a program titled and promoted as being for DACA/"Undocumented" students.

As the Second Circuit recognized in *Ragin v. New York Times Co.*, 923 F.2d 995, 999–1000 (2d Cir. 1991), even subtle messaging can convey discriminatory preferences: "Ordinary readers may reasonably infer a racial message from advertisements that are more subtle than the hypothetical swastika or burning cross, and we read the word 'preference' to describe any ad that would discourage an ordinary reader of a particular race from answering it." This signaling is actionable because the law looks to how an ordinary reader or applicant would perceive the program. *See United States v. Hunter*, 459 F.2d 205, 215–16 (4th Cir. 1972) (advertisements judged by effect on the ordinary reader, regardless of intent).

When the California Colleges promote the identified programs as being for DACA/"Undocumented" students, an ordinary student reasonably would assume that American-born students need not apply. That deterrent effect is itself unlawful discrimination.

2. Equal Protection Clause

As public institutions, the California Colleges are also subject to the Fourteenth Amendment's Equal Protection Clause. In *Students for Fair Admissions*, the Supreme Court made clear that "[d]istinctions between citizens solely because of their ancestry …are by their very nature odious to a free people." 600 U.S. at 289. Consequently, discrimination based on national origin, like discrimination based on race, is subject to strict constitutional scrutiny.

Under strict scrutiny, suspect classifications "are constitutional only if they are narrowly tailored measures that further compelling governmental interests." *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). Classifications based on immutable characteristics, like national origin, which are often used as a proxy for racial classifications, "are so seldom relevant to the achievement of any legitimate state interest" that policies grounded in them "are deemed to reflect prejudice and antipathy." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Further, a program is not narrowly tailored if it is overbroad or underinclusive in its use of classifications. *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 506 (1989).

The DACA/"Undocumented" programs operating at the California Colleges cannot meet these strict standards and are presumptively unconstitutional. The California Colleges cannot demonstrate that excluding or discriminating against American-born students serves any compelling, let alone legitimate, governmental interest. Neither are the DACA/"Undocumented" programs operating at the California Colleges narrowly tailored, because they operate across the board without considering individual student need.

B. Request For Investigation And Enforcement

Based on the foregoing, we respectfully request that the Department of Justice immediately open a formal investigation into the systematic discrimination against American-born students at the University of California, California State University, and California Community College systems, including the one hundred and thirty-eight (138) public colleges and detailed in the Exhibits to the Complaint. Depending on the outcome of this investigation, the Department of Justice should initiate legal action to secure appropriate remedial relief. Such relief is necessary both to remedy the unlawful exclusion of American-born students from these programs and to ensure that all ongoing and future programs comply with federal civil rights and constitutional protections.

Respectfully submitted,

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