

# Sanctuary Campus

## Frequently Asked Questions

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*The Immigration Response Initiative prepared these responses to frequently asked questions for the Cosecha Movement and in support of students organizing on college and university campuses across the country.*

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The **Immigration Response Initiative** is a student-led organization at Harvard Law School working on several projects that seek to prevent the erosion of immigrants' rights. The organization began from a wave of student interest in immigrants' rights following the 2016 presidential election.

The **Cosecha Movement** is a nonviolent movement working to win permanent protection, dignity, and respect for the 11 million undocumented people living in the United States. #SanctuaryCampus is Cosecha's campaign to establish college campuses as places of resistance and protection for the migrant community. Along with the movement for sanctuary campuses, Cosecha's #CosechaFe campaign focuses on organizing religious leaders and people of faith to publicly support immigrants and their #MigrantBoycott campaign will underscore how much the United States economy depends on immigrants. More info is available at <http://www.lahuelga.com/campaigns/>.

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**IMPORTANT:** This document should not be construed or relied upon as legal advice in any manner. Its purpose is to provide a guide to understanding some of the legal issues associated with sanctuary campuses. Therefore, this document should not be relied upon as a substitute for individualized legal research.

## Background

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These responses to frequently asked questions (FAQs) aim to equip student organizers and their faculty and administrator allies with the tools to successfully engage in dialogue with campus administrations and communities to develop the strongest policies for protecting those who study, work, and live on a college or university campus. We hope to make colleges and universities examples of beacon communities openly resisting anti-immigrant discourse and federal policy.

The election of Donald Trump this past November followed a campaign that included the public vilification of immigrants and the promotion of anti-immigrant policies including expansive deportations, an end to the Deferred Action for Childhood Arrivals (DACA) program, and a registry for Muslims. After the election, students across the country organized and mobilized allies to demand public responses from their colleges and universities, including a public rejection of anti-immigrant rhetoric and the adoption of concrete policies to ensure protection of the campus immigrant community. Momentum toward sanctuary campus demands has been built on previous campus organizing efforts for the DREAM Act, DACA, and broader immigration protections, including instate tuition for undocumented and DACAmented students, campus living wage, and other campus and community campaigns.

Within days of the election, student-led movements grew on over one hundred college and university campuses across the country with demands that schools publicly disavow President Trump's rhetoric and enact policies that protect students, their families, and campus workers. Anticipating that the federal government may demand or incentivize information sharing which would lead to surveillance, arrest, detention, and deportations, students have urged their colleges and universities to limit collaboration with ICE around campus access, campus law enforcement activity, and information sharing for students and workers. These demands fall on a spectrum from policies that limit voluntary or discretionary cooperation to policies that refuse even cooperation currently required for the receipt of federal funding.

Students have also urged that their colleges and universities act to affirmatively protect immigrant students through nondiscrimination policies, tuition assistance including equal access to in-state tuition, financial aid, and scholarships, and commitments to filling the gaps in discriminatory financial aid programs. Some schools have also set up programs to assist students and their families with immigration screenings and applications, safety planning, counseling, and other affirmative protective measures.

By the end of 2016, at least 30 colleges and universities had issued public statements, many adopting policies responding to these and other student demands. While not all chose to use the language of "sanctuary," in each case, campus administrators spoke out publicly to counter growing anti-immigrant public rhetoric and adopted measures to protect members of its community. Policies from University of California, University of Pennsylvania, and University of Denver are included here in the appendix as well as a list with links to a range of policies available at the time of publication. Many more campuses continue to consider their positions in dialogue with members of their campus community. Many cities, churches, businesses, and other community organizations are also joining the call to adopt sanctuary policies and resist any threats toward their immigrant community members.

In consideration of recent events and the aggressive position that the Trump administration has taken on immigration, these FAQs are designed to aid students and their allies who are calling on colleges and universities to act immediately when principles of diversity, equity, inclusion are publicly challenged. History

also shows that states and the federal government sometimes pass unconstitutional laws that require challenges in court. Especially in the immigration context, we have seen many examples of immigration enforcement actions that violate constitutional norms and the agency's own requirements.

Of course, the FAQs cannot exhaustively answer all potential questions or provide full assurances. Although the recent issuance of executive orders provides a look into the type of actions that the current administration will take, the future landscape is quickly evolving. History shows that immigration enforcement actions also vary by region and the ability of campuses to protect their communities will be impacted by other factors including the positions taken by the cities and states where they are located, as well as the faith, labor, and community groups that align with them. Therefore, these FAQs should serve as a starting point and not a substitute for more thorough research. They reflect the current legal regime, which can change quickly.

The responses to these FAQs, consistent with the public positions of diverse colleges and universities across the country show that students, faculty, and administrators stand on strong moral and legal ground in taking some basic actions:

- Both public and private colleges and universities have a menu of positions they can take that are fully consistent with their existing federal obligations. There are important constitutional limitations on adding constraints related to cooperation with federal immigration enforcement on many types of federal funding.
- Consistent with constitutional protections, schools may limit access of immigration enforcement officials who do not have a warrant to private property owned and controlled by the University. Courts have generally found common rooms with restricted access and dorm rooms to be private areas. Students and allied faculty and administrators can work together to map the university, clarify the full scope of private areas, and ensure privacy is protected to the full extent of the law.
- Consistent with law enforcement agencies across the country, schools may adopt policies to limit collaboration and certain kinds of information sharing with immigration enforcement agencies.
- There are laws that protect the release and sharing of student information.
- Colleges and universities enacting strong sanctuary policies are following the legacy of those schools that protected students and spoke out against some of the darkest moments in U.S. history, including Japanese internment and the enforcement of the Fugitive Slave Act.
- Defense and protection of those who live and work on campuses will require ongoing collective dialogue with students, workers, and the administration, review and revision of school policies and practices, training and monitoring on their implementation, and public resistance to direct and indirect pressure.

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## Does My College or University Risk Federal Financial Aid Funding by Adopting Sanctuary Policies?

A key question many colleges and universities have is whether adopting sanctuary policies will impact federal and state funding.

While determining comprehensive federal funding sources for universities is extremely difficult as it can vary widely from institution to institution and differ among public and private institutions, *most federal funding is earmarked for student financial aid*. According to a recent Pew Research Center study, the federal government invested about \$75 billion in higher education in 2013. A majority of those funds were allocated via federal Pell Grants (\$31.3 billion) and federal research grants (\$24.6 billion).<sup>1</sup>

The first part of this section provides an overview of how the Department of Education administers federal financial aid funding through Title IV of the Higher Education Act. Funds allocated through Title IV account for the largest bucket of federal funding. The second part reviews the constitutional limitations within which the federal government must operate when placing conditions on the administration of federal funding.

While not a comprehensive review of all the issues concerning federal funding, this section focuses generally on how federal funds are administered and the limitations the federal government must operate within when placing *new* conditions on the receipt of those funds. For now, the overwhelming majority—if not all—of the sanctuary policies adopted by colleges and universities post-election appear to be fully consistent with *existing* federal obligations. Therefore, no federal funding would be at risk, unless the Trump administration attempted to add new obligations, in which case the administration would need to comply with the constitutional requirements discussed in detail below.

### Financial Aid to Students: Administration of Federal Funding Through Title IV

Federal student aid is administered under Title IV of the Higher Education Act. The forms of aid include the Federal Family Education Loan program, Direct Loan program, Federal Perkins Loan program, Federal Pell Grants, Academic Competitiveness Grants (ACG), National SMART Grants, Federal Supplemental Education Opportunity Grants, and Federal Work-Study programs.<sup>2</sup> The Department of Education imposes a myriad of requirements on institutions that receive Title IV funds. The authority to regulate comes from Title IV of the Higher Education Act, but the Department of Education enforces other statutory provisions as well. Most requirements are generally administrative in nature, such as reporting or fiduciary requirements designed to prevent misuse or inefficient administration of federal funds. All of these requirements are imposed through a “Program Participation Agreement” (PPA) between the educational institutions and the Department of Education.

By signing the PPA, educational institutions agree to take on affirmative obligations related to Title IV funding. Some substantive requirements included in the PPA include requirements not to discriminate on the basis of race, sex, physical disabilities, and age (Title VI of the Civil Rights Act; Title IX of the Education Amendments; Section 504 of the Rehabilitation Act; and The Age Discrimination Act) and privacy requirements

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<sup>1</sup> *Federal and State Funding of Higher Education*, The Pew Charitable Trusts (Jun. 11, 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/06/federal-and-state-funding-of-higher-education>.

<sup>2</sup> *What are Title IV Programs?*, U.S. DEP’T OF EDUC., [http://federalstudentaid.ed.gov/site/front2back/programs/programs/fb\\_03\\_01\\_0030.htm](http://federalstudentaid.ed.gov/site/front2back/programs/programs/fb_03_01_0030.htm).

imposed by the Family Rights and Privacy Act of 1974 (FERPA). The PPA is subject to revision by the Department of Education.

One potentially relevant substantive PPA requisite is the crime reporting requirements imposed by the Jeanne Clery Disclosure of Campus Security Police and Campus Statistics Act (Clery Act).<sup>3</sup> The Clery Act, most recently amended by the Violence Against Women Reauthorization Act of 2013, “requires institutions to compile statistics for certain crimes that are reported to campus security authorities or local police agencies, including incidents of sexual assault, domestic violence, dating violence, and stalking.”<sup>4</sup> This requirement made headlines a few years ago when the Department of Education fined Penn State University 2.4 million dollars for violating the data-collecting and disclosure requirements of the Clery Act.<sup>5</sup> However, this requirement cannot force universities to report the immigration statuses of their students. Simply staying in the U.S. while undocumented is not a crime. Thus, it is unlikely that the federal government will be able to impose immigration reporting requirements without congressional action.

Title IX of the Education Amendments to the Higher Education Act and Title VI of the Civil Rights Act are federal statutes that limit the receipt of federal financial assistance appropriations to universities with internal policies that ban discrimination based on race, color, national origin, and sex. Title IX, which deals with sex discrimination, became a focal point during the controversy surrounding North Carolina’s House Bill 2, which eliminated local protections for transgender people and restricted which bathrooms transgender people can use. For some time, the Obama administration considered revoking billions of dollars in federal aid to North Carolina for schools, highways, and housing in response to its violation of Title IX. Many experts thought that President Obama had the authority to revoke those funds.

Title VI and Title IX reflect concerns that federal funds should not be used in ways that violate the anti-discrimination protections in the U.S Constitution.<sup>6</sup> Although statutory restrictions on funding are generally constitutional, as discussed below, there are some limits on the scope and content of potential restrictions.

### Constitutional Limits on Federal Funding Requirements

It is unlikely that the new presidential administration and Congress will be able to successfully add immigration enforcement-related requirements to all federal financial aid funds distributed to educational institutions. Although the federal government possesses broad powers to condition federal funding, those powers must not violate the U.S. Constitution.

The federal government, through its constitutional power to spend, gives money to various institutions and individuals and frequently attaches conditions to those appropriations. The federal government can also add new conditions to existing programs. If funding conditions are not met or violated, then the recipient institution may lose its funding. Even departments within Universities that do not utilize any federal funds have to abide by the conditions of federal funds. For example, a university sports team failing to abide by anti-discriminatory conditions could lead to the university losing all federal funding even if the team itself did not directly receive federal funding.

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<sup>3</sup> The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (2013).

<sup>4</sup> *Help-Glossary*, U.S. DEP’T OF EDUC., <https://ifap.ed.gov/ifap/helpGlossary.jsp?value=C>.

<sup>5</sup> Jake New, *Historic Fine for Penn State*, INSIDE HIGHER ED, Nov. 4, 2016, <https://www.insidehighered.com/news/2016/11/04/education-departments-historic-sanction-against-penn-state-clery-violations>.

<sup>6</sup> See *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

Many funding conditions are valid. Congress has broad spending authority via the Constitution. The federal government often accomplishes its policy goals by utilizing its spending power—granting federal funds to public and private entities on the condition that the entities use those funds in a certain way and fulfill specific obligations. But, there are important constitutional limitations on the types of obligations that the federal government can impose—specifically on public entities as a condition of receiving funding. These public entities likely include state colleges and universities but not private schools.<sup>7</sup>

First, Congress must clearly and unambiguously state conditions so that an entity receiving the funding can knowingly accept the funds cognizant of the conditions. Second, the conditions on federal grants must be reasonably related to the purpose of the federal expenditure. Finally, the federal government cannot withhold large amounts of federal funding in an attempt to coerce the recipient into enforcing, enacting, or administering federal law. Of course the executive agency responsible for discharging the funds often has some discretion in determining whether the fund recipient is abiding by relevant conditions.

To provide some concrete examples of federal funding in action, consider the following two U.S. Supreme Court cases that demonstrate how limitations on federal funding operates:

- Consider a 2012 case called *National Federation of Independent Business v. Sebelius*.<sup>8</sup> You may recognize the name of this case because it was the case where the Supreme Court invalidated part of “Obamacare.” The federal funding program in that case provided money to states on the condition that they provide medical insurance to all adults with incomes up to 133% of the poverty level. Previously, the federal government provided money to the states on the condition that they provide medical insurance only to adults with children and certain vulnerable individuals, with the understanding that the federal government had the right to alter the conditions. The Supreme Court stated that the new conditions were invalid because when the states originally received the federal funds, they could not have anticipated that the federal government would expand the program so broadly. When the states originally received the federal funds, the federal government did not unambiguously tell the states that they would eventually be required to provide medical insurance to so many individuals. The Supreme Court also held that the condition was too coercive because if a state decided not to fulfill its obligation, it could stand to lose billions of dollars. The Court noted that this offer left the States with no real option but to accept the money and thus, the funding program was too coercive.
- Next, consider a 1987 case called *South Dakota v. Dole*.<sup>9</sup> In that case, the federal government threatened to take away 5% of South Dakota’s highway funds if it refused to set the minimum statewide drinking age to 21. In other words, the federal government offered the state of South Dakota federal funds to build highways on the condition that the state set the drinking age to 21. The Court held that the federal government was within its power to require such a condition because setting the drinking age at 21 was related to the purpose of the highway funds: to ensure safe highway travel. By setting the drinking age at 21, South Dakota could ensure that people under 21 from other states could not travel to South Dakota simply to purchase and drink alcohol and then drive home drunk. Thus, the Court found that the condition was reasonably related to the purpose of the federal expenditure and the amount of funding at stake did not make it unduly coercive.

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<sup>7</sup> A comprehensive review of which institutions would be considered public entities and which would be considered private institutions requires additional fact-based analysis beyond the scope of these FAQs.

<sup>8</sup> 132 L. Ed. 2d 450, 132 S.Ct. 2566, 57 U.S. \_\_\_ (2012).

<sup>9</sup> 483 U.S. 203 (1987).



Constitutional experts who have reviewed the question of whether the federal government has the ability to withhold significant federal funds from sanctuary cities and campuses based on the positions schools have been adopting “out of concern that more aggressive immigration enforcement will jeopardize student safety and interfere with their schools’ educational missions.”<sup>10</sup>

### Does My College or University Risk State Funding by Adopting Sanctuary Policies?

The question of whether a state government could constitutionally revoke or limit access to state funding for universities based on sanctuary policies is complex and requires additional considerations. The question is made complex because its answer depends on interpretation of both federal and individual state law—meaning that the answer may differ based on the specific state policy or action so it’s important to discuss these issues with someone familiar with the state law where the college or university is located.

There may be several potential federal issues with a state statute stripping funds from universities on the condition that they enforce federal immigration laws. This section does not cover all potential constitutional challenges to such a policy, but instead focuses on the issue of equal protection.

In a slightly different, yet relevant context, the Supreme Court held that a state violates the equal protection guarantees of the U.S. Constitution’s Fourteenth Amendment when it prohibits undocumented students from enrolling in public schools. The Supreme Court’s opinion in *Plyler v. Doe*<sup>11</sup> contains some promising language that may be utilized to challenge a state law that restricts funding to public universities that declare themselves sanctuary spaces. At the same time, there is reason to believe that *Plyler* may not apply to institutions of higher education.

In *Plyler*, the Court emphasized the “pivotal role of education in sustaining our political and cultural heritage” and reasoned that the “denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit.”<sup>12</sup>

Other parts of the *Plyler* decision cast doubt on its utility to challenge a discriminatory law in the context of higher education. In holding the state law unconstitutional, the Court emphasized that undocumented children who are denied access to public K–12 education will suffer the lifelong burden and stigma of illiteracy:

[The statute] imposes a lifetime hardship on a discrete class of children not accountable for their disabling status. The stigma of illiteracy will mark them for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.<sup>13</sup>

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<sup>10</sup> See Erwin Chemerinsky, Annie Lai & Seth Davis, *Trump can’t force ‘sanctuary cities’ to enforce his deportation plans*, WASHINGTON POST, Dec. 22, 2016, [https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d\\_story.html?utm\\_term=.39dd97603909](https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.39dd97603909)

<sup>11</sup> 457 U.S. 202 (1982).

<sup>12</sup> *Id.* at 221–22.

<sup>13</sup> *Id.* at 223.

That reasoning may be applied in the higher education context, where a state law or action that withholds funds from sanctuary campuses has a similar crippling burden as a law that denies literacy access to younger students.

Some courts have limited *Plyler*'s holding to the K–12 education context, but other courts have extended constitutional protections to the post-secondary context. For example, the United States District Court for the Southern District of Florida struck down a Florida law classifying undocumented students as out-of-state residents for purposes of determining tuition rates.<sup>14</sup> In that case, the court reviewed regulations that classified U.S. citizen students as out-of-state residents solely because their parents were undocumented. The court held that the law violated the Fourteenth Amendment's equal protection guarantee because the classification had an inadequate relationship to state interests in distributing funds to its own citizens, or to ensuring that in-state tuition benefits were provided only to those who had an intent to remain in the state post-graduation. The sole justification for the classification, which was found to be insufficient, concerned Florida's limited financial means and the quality of public post-secondary education.<sup>15</sup> In a similar case, the California Court of Appeals distinguished *Plyler* and held that the federal Equal Protection Clause does not prohibit states from denying undocumented students the benefit of receiving in-state tuition for attendance at higher education.<sup>16</sup>

### Topics for Campus Dialogue:

- What specific federal funds is your university afraid of losing?
- What conditions did your university agree to when it accepted those funds? When will your university be seeking the funding again?
- Do any of the conditions of the federal funding relate to noncitizen students or law enforcement? More specifically, do they require the university to provide the federal government with information about noncitizen students?
- What is the overall purpose of the federal funding? Does it relate in any way to noncitizen students or the enforcement of immigration laws?
- What percentage of your school's overall budget do the federal funds comprise?

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<sup>14</sup> *Ruiz v. Robinson*, 892 F.Supp.2d 1321 (S.D. Fla. 2012).

<sup>15</sup> *Id.*

<sup>16</sup> *Regents of the Univ. of Cal. v. Bradford*, 225 Cal. App. 3d 197 (1990); see also, e.g., *Hispanic Interest Coal. of Ala. v. Governor of Ala.*, 691 F.3d 1236, 1249–50 (11th Cir. 2012) (upholding an equal protection challenge to an Alabama provision requiring public schools to *acquire* immigration status information on all K-12 students. Citing *Plyler*, the court found that the statute was unconstitutional because “an increased likelihood of deportation or harassment upon enrollment in school significantly deters undocumented children from enrolling in and attending school, in contravention of their rights under *Plyler*). For additional analysis and a broader critique of anti-sanctuary federal reform efforts see Elizabeth McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform*, 20 LEWIS & CLARK L. REV. 165 (2016).

## What Options Do Colleges and Universities Have to Limit Information Sharing Between Educational Institutions and Immigration Enforcement Agencies?

This section provides an overview of the federal laws relating to education records privacy, followed by specific actions that students and allied faculty and administrators can encourage their universities to take to limit information sharing that could be used as a tool for immigration enforcement. The most protective policies we found include those that refuse to disclose student information. In some circumstances, exceptions may be crafted. In addition to developing detailed policies, training, implementation, and monitoring are also important to protecting and defending students.

### The Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student information.<sup>17</sup> FERPA applies to all primary, secondary, and postsecondary schools that receive funding through programs administered by the Department of Education, such as the Federal Pell Grant program.<sup>18</sup> FERPA defines education records broadly as those records that are “directly related to the student” and are “maintained by an educational agency or institution or by a party acting for the agency or institution.”<sup>19</sup> If a student reveals his or her undocumented status during the admissions or financial aid process, for example, those records would fall within the purview of FERPA. With certain exceptions, FERPA generally prohibits schools from disclosing information contained in a student’s education records to a third party without the student’s written consent.<sup>20</sup>

The exceptions enumerated in FERPA, however, allow schools to share personally identifiable information without the student’s consent under specific circumstances. Under FERPA, schools may disclose student information without consent to:

[S]chool officials with legitimate educational interest; other schools to which a student is transferring; specified officials for audit or evaluation purposes; appropriate parties in connection with financial aid to a student; organizations conducting certain studies for or on behalf of the school; accrediting organizations; to comply with a judicial order or lawfully issued subpoena; appropriate officials in case of health and safety emergencies; and state and local authorities, within a juvenile justice system, pursuant to specific State law.<sup>21</sup>

Colleges and universities must, however, provide an annual notice of each student’s rights under FERPA, including how they define the terms “school official” and “legitimate educational interest” for the purposes of information disclosure.<sup>22</sup> FERPA does not require schools to individually inform students of their rights nor does it specify a method for distributing the notice.<sup>23</sup> Instead, schools may choose to publicize the

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<sup>17</sup> 20 U.S.C. § 1232g (2013). For additional information on FERPA, including but not limited to links to regulations, guidance letters, policy briefs, and frequently asked questions, see *Family Educational Rights and Privacy Act (FERPA)*, U.S. DEP’T OF EDUC., <https://ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn>; see also, e.g., McCormick, *supra* note 16.

<sup>18</sup> See 34 C.F.R. § 99.1 (1988).

<sup>19</sup> 34 C.F.R. § 99.3 (1988).

<sup>20</sup> 34 C.F.R. § 99.30 (1988).

<sup>21</sup> U.S. DEP’T OF EDUC., *supra* note 17.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

annual notice in a number of different ways, including, but not limited to, publishing it in the student handbook, the school newspaper, or the school website. Moreover, schools may disclose information designated as directory information without a student's consent, as long as the school gives adequate notice to students as to what information it categorizes as "directory information."<sup>24</sup>

### Sharing Student Information with Immigration Enforcement Agencies

According to FERPA, schools may not release information regarding students' immigration status to ICE or any other federal agency unless compelled to do so by a judicial order or a lawfully issued subpoena. Even if ICE were to serve a school with a subpoena for a student's immigration status, the school should make a reasonable effort to notify the student of the subpoena prior to complying and disclosing any information, unless the information requested meets a narrow exception.<sup>25</sup>

Some school programs require information sharing. For example, the Student and Exchange Visitor Program (SEVP) monitors nonimmigrant students and exchange visitors attending U.S. universities. If accepted for participation in a Department of State-verified exchange visitor program, exchange visitors may be admitted to the United States in nonimmigrant status. At the time of admission or extension of stay, every nonimmigrant visa holder must also agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay, or upon abandonment of his or her authorized nonimmigrant status. Immigration enforcement agencies maintain records of both nonimmigrant admissions and continued participation in these educational programs are maintained through the Student and Exchange Visitor Program System (SEVIS). SEVIS enables the Department of State to assure proper reporting and record keeping by schools and exchange visitor programs.<sup>26</sup> SEVIS also provides a mechanism for students and exchange visitor status violators to be identified for possible immigration enforcement measures.

Currently, SEVIS requires universities to keep records of students on "F-1" and "M-1" visas while the student is attending the school. Those records include:

- Identification of the student, including the name while in attendance (record any legal name change), date and place of birth, country of citizenship, and school's student identification number.
- Current address where the student and his or her dependents physically reside. In the event the student or his or her dependents cannot receive mail at such physical residence, the school must provide a mailing address in SEVIS. If the mailing address and the physical address are not the same, the school must maintain a record of both mailing and physical addresses and provide the physical location of residence of the student and his or her dependents to ICE upon request.
- Academic status, including the effective date or period if suspended, dismissed, placed on probation, or withdrawn.
- Termination date and reason.
- Specific information and documents relating to each F-1 or M-1 student, while the student is attending the school and until the school notifies SEVP that the student is not pursuing a full course of study. The

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<sup>24</sup> Directory information refers generally to information in a student's education records that, if disclosed, would not be considered harmful or an invasion of the student's privacy. See 34 C.F.R. § 99.3 (1988) (noting the type of information that may be disclosed in the directory).

<sup>25</sup> See, e.g., 20 U.S.C. § 1232g(b)(1)(J) (2013) (concerning grand jury subpoenas or other law enforcement purposes in which good cause is shown to prevent the institution from notifying the subject of the request).

<sup>26</sup> *Student and Exchange Visitor Program*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <https://www.ice.gov/sevis>.

school must keep a record of its compliance with the reporting requirements for at least three years after the student is no longer pursuing a full course of studies.

If a student's participation in a Department of State-verified exchange visitor program is terminated and if that student chose to unlawfully remain in the United States, it is likely that the university at which the student is attending would be required to provide information about that student's location as part of updating the student's SEVIS records.

### **Do Public Universities Have Unique Obligations Related to Keeping or Sharing Immigration Status Information under 8 U.S.C. § 1373?**

8 U.S.C. 1373 is a provision of the Immigration and Nationality Act that limits the ability of federal, state, and local government entities or officials from restricting the maintenance and sharing of immigration status information about individuals.<sup>27</sup> There are other similar statutes.<sup>28</sup> Whether this statute would cover a college or university or campus law enforcement requires a specific analysis of the specific facts. No court has ruled on the issue, but a strong argument can be made that the Family Educational Rights and Privacy Act (FERPA) and other federal privacy laws ensure the privacy of educational records notwithstanding § 1373.<sup>29</sup> Furthermore, § 1373 may be unconstitutional, because it attempts to commandeer state government operations.<sup>30</sup> Finally, to the extent that § 1373 does apply to a public university or its officials, 8 U.S.C. 1373 applies only narrowly to "citizenship or immigration status" information.

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<sup>27</sup> 8 U.S.C. § 1373 (a) In general Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities. Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.

<sup>28</sup> For example, 8 U.S.C. § 1644 provides: "Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States."

<sup>29</sup> Elizabeth McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform*, 20 LEWIS & CLARK L. REV. 165, 202 (2016) (arguing that a "fair reading of the text and history of [§§ 1373 and 1644] suggests that the anti-sanctuary provisions were not intended to and do not repeal conflicting privacy protections in federal law"); see also *id.* at 206-14 (addressing FERPA specifically).

<sup>30</sup> See Erwin Chemerinsky, Annie Lai and Seth Davis, *Trump can't force 'sanctuary cities' to enforce his deportation plans*, WASHINGTON POST (Dec. 22, 2016), [https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d\\_story.html?utm\\_term=.39dd97603909](https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.39dd97603909) (arguing that for "Congress [tp] single out states and cities to

Additionally, compliance with FERPA is generally required as a condition of federal educational grants,<sup>31</sup> and no authority exists to suggest that Congress has conditioned educational grant funding on compliance with § 1373.<sup>32</sup> It is true that threats have been made to cut funding for entities pursuing “sanctuary” policies. In 2015, Republicans introduced legislation that would have made compliance with § 1373 a condition of some federal funding,<sup>33</sup> but this legislation failed.<sup>34</sup> In 2016, the Department of Justice’s Office of Justice Programs opined that § 1373 is an “applicable federal law” with which recipients of certain law enforcement grants must comply.<sup>35</sup> Here again, though, there was no effort to connect educational grant funding with § 1373 compliance.

### Topics for Campus Dialogue:

- What types of educational records directly related to students does the university maintain?
- Which of these records might divulge a student’s undocumented status? For example, immigration status plays a critical role in determining what financial aid is available for students.
- Is there a way to minimize when students need to disclose status?
- Where are student records maintained? How long are these records maintained for? Most universities publish a Records Schedule, which details the minimum number of years the university will maintain specific records.
- What is the policy for responding to requests for student information?
- What training is available for staff regarding FERPA? If there is training, do all staff members have to complete it as a part of their job role?
- What procedures does ICE have to follow to enter university property?

### Recommendations Concerning College and University Information-Sharing Policies

We recommend that students and their faculty and administration allies urge their universities to adopt policies and training on information sharing that are as protective as possible. The best way to accomplish this is to request policies that route all information requests through the school’s Office of Legal Counsel or General Counsel. Some schools may currently designate a member of the Registrar’s Office, for example, as the person responsible for fielding information requests. In comparison, the Office of Legal

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share information with the federal government . . . is the type of commandeering that the court repeatedly has found violates the 10th Amendment”).

<sup>32</sup> See *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2605 (2012) (noting that “if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously”) (quoting *Pennhust State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

<sup>33</sup> S.2146, 114th Cong., § 1 (2015) would have withdrawn funding for some law enforcement grants and some community economic development block grants, but made no reference to educational grants.

<https://www.congress.gov/bill/114th-congress/senate-bill/2146/text>.

<sup>34</sup> Sarah Wire, *Senate Democrats block sanctuary cities bill*, L.A. TIMES, Oct. 20, 2015, <http://www.latimes.com/nation/la-pol-ca-sanctuary-cities-vote-20151020-story.html>.

<sup>35</sup> Letter from Peter J. Kadzik, Ass’t Att’y Gen’l, to John A. Culberson, Chairman, Subcommittee on Commerce, Justice, Science and Related Agencies (July 7, 2016), available at [http://culberson.house.gov/uploadedfiles/2016-7-7\\_section\\_1373\\_-\\_doj\\_letter\\_to\\_culberson.pdf](http://culberson.house.gov/uploadedfiles/2016-7-7_section_1373_-_doj_letter_to_culberson.pdf) (finding § 1373 to be an “applicable federal law” for purposes of the Edward Byrne Justice Assistance Grant Program and the State Criminal Alien Assistance Program). The accuracy of this conclusion relating to law enforcement grants is beyond the scope of this issue brief. See Chemerinsky, Lai & Davis, *supra* note **Error! Bookmark not defined.** (arguing that President-elect Trump’s threat to cut funding to sanctuary cities would violate the Constitution).

Counsel will be better equipped to determine whether the school may be mandated to comply with the request, such as by a valid court order or subpoena.

As mentioned in the section above, while schools are required to provide students with an annual notice of their rights, FERPA does not mandate a particular method for publicizing that notice. Students should also urge that their schools make the annual notice, and all other FERPA related policies and procedures, easily accessible. Since undocumented students are in a particularly vulnerable position, schools should make greater efforts to inform those students of their rights under FERPA. Additionally, students should confirm what procedures—if any— their school currently has in place for responding to a subpoena or a court order for educational records. Harvard University’s policy, for example, clearly states that if an administrator receives a subpoena for student information, the administrator must immediately contact the Office of the General Counsel.<sup>36</sup> The administrator may not release any information until the Office of the General Counsel has reviewed the subpoena and confirmed its validity.

Additionally, students and their allies in the faculty and administration should ask whether their school provides training for its staff on FERPA and other school policies regarding the disclosure of student information. They can encourage their schools to follow the example of school districts that took immediate steps to protect their undocumented students in the weeks following the election. First, students can ask their schools to adopt a resolution mandating a plan for policy development and staff education around information sharing requests. The Board of Education for Portland Public Schools (PPS), for example, unanimously approved the following resolution:

Within the next 90 days the Superintendent shall develop a plan for training teachers, administrators and other staff on how to respond to ICE personnel who are requesting information about PPS students and families and/or attempting to enter PPS property. The plan shall also include procedures for notifying families about ICE efforts to gain information about students and families, and how to support students whose family members have been displaced because of ICE. This plan shall be communicated to all PPS families in all supported languages.

If the school does provide training, organizers should check whether the training addresses the specific risks that undocumented students and their families face.

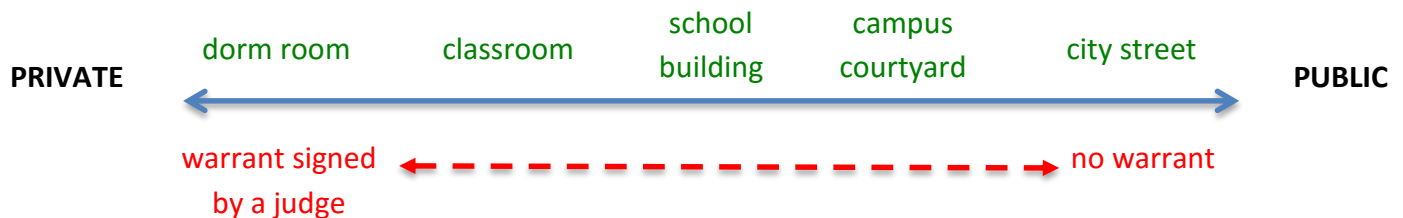
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<sup>36</sup> *Requests for Educational Records: What to Do*, HARVARD OFFICE OF THE GENERAL COUNSEL, <http://ogc.harvard.edu/book/requests-educational-records-what-do>.

## How Can a College or University Limit Immigration Enforcement on Campus?

This section is divided into two main parts: (1) constitutional requirements immigration enforcement must meet to enter a campus for enforcement purposes; and (2) information on campus police and how they interact with immigration enforcement.

The Constitution governs immigration enforcement actions on campuses. Generally, whether a warrant is required before an immigration enforcement agency can enter a location to enforce immigration laws depends on the level of privacy an individual in that location would reasonably expect. The greater the privacy expectation the more likely a warrant is required.<sup>37</sup>



### Constitutional Protections: ICE Warrant Requirements

In most circumstances, an immigration enforcement agency needs a warrant to enforce immigration laws on a university campus.<sup>38</sup> The warrant requirements an immigration enforcement agency must adhere to depend on the privacy expectations of the area they seek to enter. For example, an immigration enforcement agency should not be allowed to enter a dorm room without a warrant signed by a judge. It can, however, enter any space that a member of the public could also enter, like a public city street, without a warrant. However, an immigration enforcement agency may be able to enter even a very private area without a warrant if the person they are seeking to apprehend is likely to escape before the agency could obtain a warrant from a judge.<sup>39</sup> But, when an agency has enough notice to locate somebody on a university campus, they are likely to have enough notice to obtain a warrant without fear that the person will flee.<sup>40</sup>

There are two types of warrants that an immigration enforcement agency may try to use to enter campus space for enforcement purposes. When it uses a document issued by a designated agency official as authority to arrest someone suspected of violating civil immigration laws, that document is an administrative warrant. An immigration enforcement agency's arresting authority is laid out in federal statute (8 U.S.C.

<sup>37</sup> Bryan R. Lemmons, *Public Education and Student Privacy: Application of the Fourth Amendment to Dormitories at Public Colleges and Universities*, 2012 B.Y.U. Educ. & L.J. 31 (2012).

<sup>38</sup> See 8 U.S.C. § 1357(a). ICE may have additional authority to enforce immigration laws without a warrant when doing so near the U.S. border. See 8 U.S.C. § 1357(a)(3).

<sup>39</sup> See *Ill. Migrant Council v. Pilliod*, 531 F. Supp. 1011, 1121–22 (N.D. Ill. 1982).

<sup>40</sup> See, e.g., *Moreno v. Napolitano*, 2016 WL 5720465, at \*3-4 (N.D. Ill. Sept. 30, 2016) (denying government's decertification petition because "Plaintiffs' claim that ICE's detainer program violates [8 U.S.C. § 1357(a)(2)]'s requirement that ICE detain an alien only if ICE has "reason to believe" that the alien "is likely to escape before a warrant can be obtained for his arrest"] raises a number of central and determinative factual and legal issues that are common to the class, including: whether it is ICE's practice to obtain (or try to obtain) warrants before issuing detainers; whether it is ICE's practice to make a determination that an alien "is likely to escape" before issuing a detainer; and, if the answers to the previous questions are negative, whether it is a violation of § 1357(a)(2) for ICE to issue detainers to LEAs without first doing so.").



§ 1357) and federal regulations (8 C.F.R. § 287.5). When ICE opens a removal case against someone, they issue a Notice to Appear to request that the person shows up for her removal case. After the Notice to Appear has been issued, an immigration enforcement agency officer can complete an I-200 Warrant of Arrest to arrest the person and take her into custody.<sup>41</sup> Similarly, if there has ever been a Final Order of Removal issued (concluding that the person can be removed from the U.S.), an officer can complete an I-205 warrant.<sup>42</sup> Both I-200 and I-205 warrants are administrative warrants. An administrative warrant only grants immigration officers authority to enter areas where there is no reasonable expectation of privacy.<sup>43</sup>

When agency officers attempt a search or seizure in an area with a reasonable expectation of privacy, Constitutional protections pursuant to the Fourth Amendment kick-in, and the warrant must be issued by a neutral magistrate or judge. These warrants are often called “judicial warrants” or “true warrants.” These are civil search warrants used for immigration enforcement.<sup>44</sup> Although the standard necessary to issue a civil search warrant may be different from that of a criminal search warrant,<sup>45</sup> the more reasonable the expectation of privacy, the higher the standard. For example, when an immigration officer seeks to intrude into somebody’s home, the standard for issuing a warrant may equal the probable cause standard necessary for a criminal warrant.<sup>46</sup>

ICE has considered schools to be sensitive spaces that should not be intruded upon absent an immediate threat to national security or the community since at least 2007 and the Bush administration.<sup>47</sup> Similarly, ICE under President Bush described how “[ICE] [o]fficers are required to obtain consent before they enter private residences or non-public areas of businesses.” This longstanding policy led to the ICE Sensitive Locations Memo from 2011, which laid out the presumption against ICE enforcement actions in spaces including schools.<sup>48</sup>

Schools and universities can define the boundaries of campus broadly, and request that ICE obtain a true warrant and show that warrant to a designated university official before they enter campus. Many schools have such understandings with local police that could provide a template for an ICE memorandum of understanding.

Even if ICE were to abandon the Sensitive Locations Memo, and refuse to create any memorandum of understanding with a school administration, there are some areas immigration agencies still could not enter without a true warrant. Although ICE may only need an administrative warrant to arrest someone in public

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<sup>41</sup> 8 C.F.R. § 236.1(b) (1997).

<sup>42</sup> 8 C.F.R. § 241.2 (2016).

<sup>43</sup> See *United States v. Castellanos*, 518 F.3d 965, 971–72 (8th Cir. 2008); see also Letter from Karyn V. Lang, Director, Immigration & Customs Enforcement, to Rep. Zoe Lofgren, Mar. 14, 2007, available at <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/ICE-Warrants-Practice-Advisory.pdf>.

<sup>44</sup> See *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1218-19 (D.C. Cir. 1981); *Inn Molders’ & Allied Workers’ Local Union No. 164 v. Nelson*, 799 F.2d 547, 553 (9th Cir. 1986); *United States v. M/V Sanctuary*, 540 F.3d 295, 300 (4th Cir. 2008).

<sup>45</sup> See *Blackie’s*, 659 F.2d at 1225 (requiring only that immigration authorities show “sufficient specificity and reliability to prevent the exercise of unbridled discretion by law enforcement officials” before a warrant to search a commercial establishment).

<sup>46</sup> *Illinois Migrant Council v. Pilliod*, 531 F. Supp. 1011, 1021-22 (N.D. Ill. 1982); see also *Castellanos*, 518 F.3d at 971-72.

<sup>47</sup> See Letter from Karyn V. Lang, *supra* note 43.

<sup>48</sup> See IMMIGRATION & CUSTOMS ENFORCEMENT, *Enforcement Actions at or Focused on Sensitive Locations*, Oct. 24, 2011, <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

areas, that falls within campus boundaries, ICE must use a true warrant (signed by a judge) for any private area.

Privacy turns on whether people there have a reasonable expectation of privacy. Courts have repeatedly held that students in dormitories and in some other spaces enjoy the Fourth Amendment protections of a private home.<sup>49</sup> However, the level of privacy protections on other areas of campus will vary greatly based on context. For example, a classroom or a staff room, although clearly not private as many people have access to it, is usually restricted to the public. A school building, however, might be more or less public depending on whether students and staff need an ID card to access it, or whether the general public can move freely through it. Similarly, an outside courtyard might sometimes be locked and sometimes be open. The most protective policy would be to bar immigration enforcement on campus property unless a judicial warrant has been issued.<sup>50</sup>

### ICE's Sensitive Locations Memorandum

In addition to constitutional requirements which do not change by administration, in 2011 immigration and Customs Enforcement issued an administrative memorandum entitled "Enforcement Actions at or Focused on Sensitive Locations" limiting its own enforcement actions at schools, religious ceremonies, and hospitals, and public demonstrations.<sup>51</sup> For the purposes of the memo, schools are defined as "pre-schools, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, and other institutions of learning such as vocational or trade schools."<sup>52</sup>

As a policy matter this memo recognizes that immigration enforcement at these areas conflicts with other critical public policy consideration.

This administrative guidance limits immigration enforcement actions at schools generally, and religious schools particularly.<sup>53</sup> The guidance is not a complete prohibition on enforcement, although it creates important limits including exigent circumstances and high-level approval within the agency. This Memorandum remains in force at the time these FAQs were created; however, as administrative guidance, this could be withdrawn or amended by a new administration and so understanding constitutional protections is also important.

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<sup>49</sup> See, e.g., *Piazzola v. Watkins*, 442 F.2d 284, 289 (5th Cir. 1971); *Com. v. Neilson*, 666 N.E.2d 984 (Mass. 1996) (recognizing that college student had legitimate expectation of privacy in dorm room); *State v. Houvner*, 186 P.3d 370 (Wash. App. 2008) (holding reasonable expectation of privacy in shared hallway of dormitory floor). *But see Grubbs v. State*, 173 S.W.3d 313 (2005) (holding that resident assistant of university was authorized under university policy to enter student's dormitory room without a warrant following complaint concerning odor of marijuana coming from room).

<sup>50</sup> Additional resources available at: Massachusetts Committee for Public Counsel Services, Immigration Impact Unit, *A Practice Advisory on ICE Use of Administrative Warrants and True Warrants in Immigration and Criminal Enforcement* (Feb. 19, 2013), <https://www.publiccounsel.net/iiu/wp-content/uploads/sites/15/2014/07/ICE-Warrants-Practice-Advisory.pdf>. See also American Council on Education, *Immigration Post-Election Q & A: DACA Students, "Sanctuary Campuses," and Institutional or Community Assistance* (Dec. 2, 2016), <http://www.acenet.edu/news-room/Documents/ACE-Issue-Brief-Immigration-DACA-Sanctuary-Campus.pdf> (but written from perspective of administrators, so takes a conservative view).

<sup>51</sup> IMMIGRATION & CUSTOMS ENFORCEMENT, *supra* note 48.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

## Topics for Campus Dialogue:

To ensure that campus community members, police, administrators, and immigration enforcement agents all have a clear understanding of the level of protection in each area of campus, we recommend asking the following questions:

- Does the campus have a written policy on interaction with an immigration enforcement agency?
- Does the campus have a written policy on privacy expectations for law enforcement on different areas of campus?
- Are these written policies openly available?
- Can the school create a map that demonstrates the protections of different areas of campus in order to aid community member understanding?

## Campus Police and Immigration Enforcement

Only an authorized immigration agent can issue, serve or execute an immigration enforcement agency' administrative warrant.<sup>54</sup> Unless deputized as immigration agents under 287(g), campus police therefore cannot enforce administrative warrants. An immigration enforcement agency could also obtain a civil search warrant from a neutral magistrate.<sup>55</sup> Campus police, however, would not have the authority to participate in a search authorized for potential civil immigration law violations.<sup>56</sup>

It is well-established that states and their agents cannot enact, administer or enforce immigration laws.<sup>57</sup> Campus police, like state and local law enforcement, therefore usually only have authority to enforce criminal laws, not civil immigration law.<sup>58</sup> They cannot stop or detain someone based solely on suspicion of an immigration law violation; there must be some accompanying criminal activity.<sup>59</sup> Although local police can become deputized federal agents for purposes of immigration enforcement (8 U.S.C. § 1357(g)) they do not receive this authority unless they undergo training and enter into a memorandum of agreement with an immigration enforcement agency. This program—termed 287(g)—has mostly been used to grant prison officers the ability to detain prisoners after their sentences for collection by ICE.<sup>60</sup> Absent a 287(g) agreement, campus police therefore do not have the authority to independently enforce immigration laws.

It is important to investigate how these requirements change based on the city, county, and state jurisdiction where the college or university is located.<sup>61</sup> For example, in Massachusetts, campus police are

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<sup>54</sup> 8 C.F.R. § 287.5(e) (2016).

<sup>55</sup> *Blackie's*, 659 F.2d at 1218–19.

<sup>56</sup> Immigrant Legal Resource Center, *Immigration Enforcement Authority for Local Law Enforcement Agents*, Dec. 2014, [https://www.ilrc.org/sites/default/files/resources/lea\\_immig\\_faqs\\_20150318.pdf](https://www.ilrc.org/sites/default/files/resources/lea_immig_faqs_20150318.pdf).

<sup>57</sup> See *Arizona v. United States*, 132 S.Ct. 2492, 2505 (2012).

<sup>58</sup> *Id.*; There are, however criminal statutes related to entry (8 U.S. Code § 1325), re-entry (8 U.S. Code § 1326), registry requirements, identity theft (18 U.S. Code §1028A), etc. that some law enforcement officials use to target immigrants. See also Jennifer M. Chacón, *Managing Migration Through Crime*, v.109, Colum. L. Rev. Sidebar 138 (2009); Jennifer M. Chacón, *Producing Liminal Legality*, Vol. 92, Denv. L. Rev. 709 (2015).

<sup>59</sup> See *id.* (“If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.”).

<sup>60</sup> See Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <https://www.ice.gov/factsheets/287g> (listing current memoranda of agreement).

<sup>61</sup> See Leigh J. Jahng, Note, *Under School Colors: Private University Police as State Actors Under § 1983*, 110 Nw. U. L. R. 249 (2015); Jamie P. Hopkins & Kristina Neff, *Jurisdictional Confusion That Rivals Erie: The Jurisdictional Limits of Campus*

State Special Police Officers (SSPOs). SSPOs derive their power from Massachusetts General Laws, Chapter 22C, Section 63. Under this statute, the colonel can appoint an employee of a hospital or educational institution as an SSPO.<sup>62</sup> SSPOs then have “the same power to make arrests as regular police officers for any criminal offense committed in or upon lands or structures owned, used or occupied” by the institution.<sup>63</sup>

Campus police have access to the Federal Bureau of Investigations National Crime Information Center (NCIC), which includes information on immigration violations. When an individual is fingerprinted those fingerprints are run through the NCIC database. If there is a “hit” in the database for an immigration-related offense then campus police have in some circumstances arrested the individual. It is therefore important to negotiate with your administration so that campus officers do not arrest individuals based on an immigration-related NCIC hit.

### *Topics for Campus Dialogue: How do you find out where your campus police get their authority?*

- Check the campus police website because it may explain what type of authority they have.
- Campus police may not have state authority (although 44+ states have statutes granting campus police state authority).
- Look for a state statute giving campus police state police authority (Hopkins & Neff, below, may be a good place to start).
  - Cases involving campus police stopping vehicles may be a good place to start for discussions of their legal authority.
- Check if there are statutes distinguishing state campuses from private campuses (state university systems may have an entirely separate set of regulations governing them).
- If your campus police have some form of state authority, they may have concurrent jurisdiction with local police – look for memoranda of understanding that define their powers on and off campus (e.g. Yale police – technically are New Haven police with jurisdiction over entire city, but have memo of understanding with city that they will only enforce around Yale).

### *What can I ask my school to do on issues related to enforcement and campus safety officers?*

- Refuse to involve campus police with any ICE cooperation program.
- Inform campus police that they should not allow ICE onto private university property without a warrant.
- Limit the voluntary cooperation between campus police and immigration enforcement through an MOU or through the college or university’s contractual language.
- Inform students that they do not have to open dormitory doors to ICE agents unless they slide a warrant under the door.
- Clarify and limit use of NCIC database for civil immigration enforcement purposes.<sup>64</sup>

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*Police*, 75 MONT. L. R. 123 (2014); Jeffrey S. Jacobson, Note, *The Model Campus Police Jurisdiction Act: Toward Broader Jurisdiction for University Police*, 29 COLUM. J. L. & SOC. PROBS. 39 (1995); John J. Sloan, *The Modern Campus Police: An Analysis of their Evolution, Structure, and Function*, 11 AM. J. POLICE 85 (1992).

<sup>62</sup> Mass. Gen. Laws ch. 22C, § 63.

<sup>63</sup> *Id.*

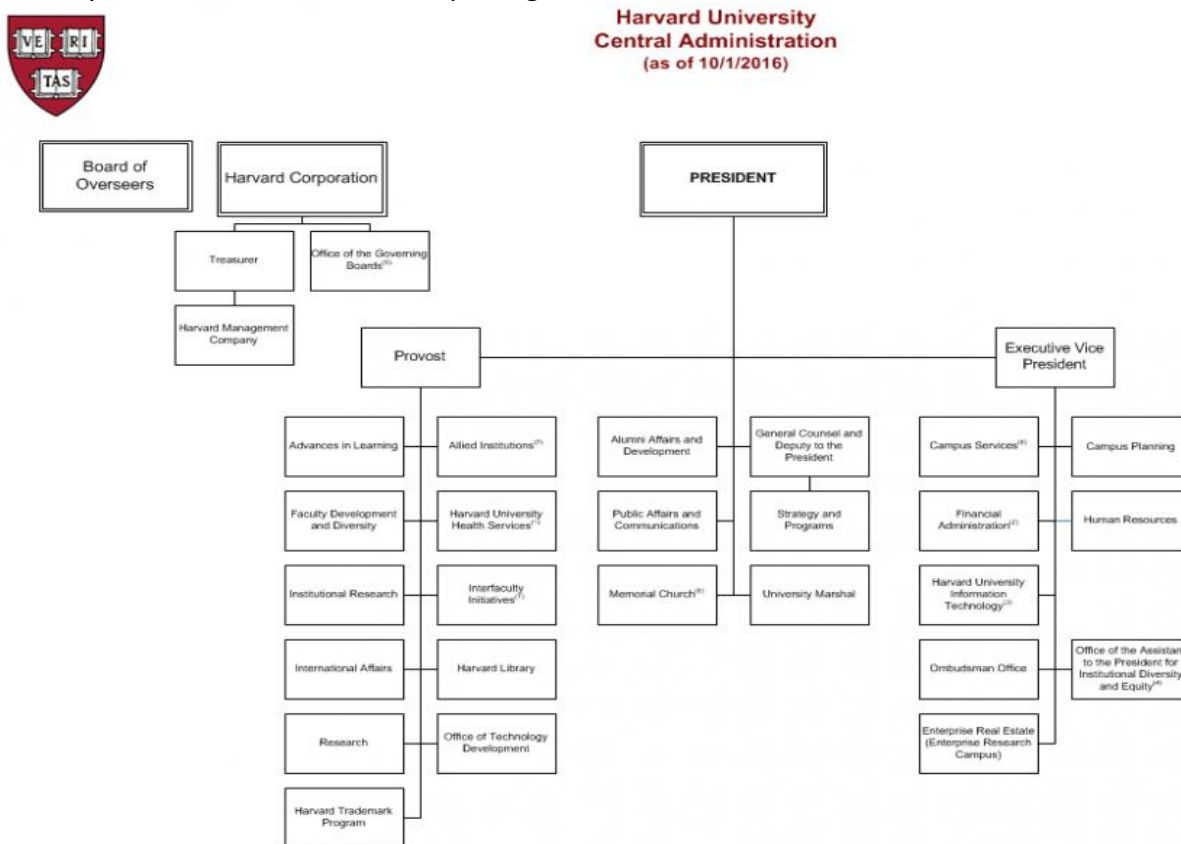
<sup>64</sup> For an example of how local law enforcement clarified and limited its officers use of the NCIC database for immigration purpose, see *NOPD Consent Degree Monitor, New Orleans, Louisiana* 3–4, <http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-6-1-Immigration-Status-approval.pdf/>:

## How Do You Define Your School's Campus Space?

This is a quick guide to figure out which property your university owns so you can tailor your campaign demands to the specific areas and buildings your school owns. Defining your school's campus space involves determining what the school owns. There are three basic strategies for obtaining this information.

### Strategy 1—Asking the Administration

**Step One:** Figure out which administrative office at your school is most likely to have access to a complete list of property holdings. Keep in mind that many schools segregate their property portfolios into different categories (e.g., residential buildings, educational buildings, commercial buildings, etc.) and the office that administers the residential facilities may not have a complete list. Schools are all organized differently, so you will need to do some searching on your school's homepage until you find a department that sounds promising. One shortcut that you can try is an internet search for "org chart" or "organizational chart" AND "[your school]." Here's a sample org chart:



16. [New Orleans Police Department] (NOPD) members shall take no action against an individual in response to an ICE administrative warrant. When the NCIC database indicates an individual may be subject to an immigration related warrant, the Member shall contact the NOPD NCIC unit. If the NOPD NCIC unit determines the warrant is administrative, the NOPD NCIC unit shall advise the Member of that fact, and the NOPD Member shall take no further action on the basis of the administrative warrant

17. If the NOPD NCIC unit cannot determine whether the warrant is administrative or criminal, the NOPD NCIC unit shall contact ICE at the number provided in the NCIC database to verify whether the individual has an outstanding criminal warrant. If there is no outstanding federal, state or local criminal warrant, the officer shall immediately release the individual. If NOPD NCIC is unable to promptly determine the nature of the warrant, the individual shall be released. If the member receives verification of an outstanding criminal warrant, normal arrest procedures shall be followed."

You can also search within your school’s website for “real estate” or “property management” and see whether there is contact information for a specific office or individual. Finally, you can look for a university office to ask whether your university releases an annual financial report. Most university do release such reports, and if you can’t find an org chart or a real estate/property management office, you can contact whichever office releases the annual report to see if there’s any useful information in the report on university property holdings.

**Step 2:** Once you’ve identified the office or administrator to reach out to, then you’ll need to initiate contact. You can first try calling the office if a phone number is listed. Sometimes you can get answers quicker if you can contact someone by phone, but if there is no phone number available you can also send an email. It is important to be completely truthful. If possible, when speaking with the administrator, it may be helpful to frame your question as part of a class project, or an assignment for an organization you’re in. If you are working with specific faculty members, it can also help to mention their names or even copy them on correspondence, but make sure you have their approval to do so. Here’s a sample email:

*Dear Ms./Mr. \_\_\_\_\_ ,*

*I hope this email finds you well. My name is [INSERT NAME], and I am a student at [NAME OF SCHOOL]. As part of a project I am working on this semester for [ORGANIZATION/FACULTY MEMBER], we need to obtain a list--or preferably a map--of all properties [NAME OF SCHOOL] owns (residential, commercial, and educational). So far I've been able to get a list of residential properties, but I don't see commercial and educational holdings listed anywhere.*

*Please let me know the quickest way to get a full list of properties owned by [NAME OF SCHOOL], including any property owned by our holding companies.*

*Thank you in advance,*

*[YOUR NAME]*

You may not get a response immediately, but this is one way to start the process. The administration may ask you to have a professor or supervisor request the information instead. The administration may also note that some of the school’s property holdings are not publicly available. Depending on your school’s response you may need to proceed to strategy two.

### **Strategy 2—Searching Public Records**

**Step 1:** Go to the webpage for your city or state government and find the property database. Some cities will allow you to search for property by the name of the owner. Keep in mind that your school may hold property through various other holding companies or subsidiaries. Therefore, you may need to run some searches using not only the name of your university but also its various affiliates.

You may need to do some initial research to figure out what names your school uses. The easiest way to start generating a list of names your university uses to purchase property is to search a few addresses that you already know are owned by the school. Eventually, you can then use those different names as the search terms in the database to generate a more complete list of property holdings. For example, here are some of the different names under which Harvard University publicly owns property:

Harvard Book Store Inc  
Harvard College President and Fellows  
Harvard Cooperative Society  
Harvard Lampoon Trust  
Harvard Realty Co Inc  
Harvard Trust Co  
Harvard Trust Company TR  
Harvard Yearbook Realty Trust

Harvard College  
Harvard Community Health Plan  
Harvard Hillel  
Harvard Real Estate Inc  
Harvard Student Agencies Inc  
Harvard Trust Co TR  
Harvard University  
Harvard-Yenching Institute

**Step 2:** If your government's webpage doesn't allow you to search for property by the name of the owner, you can email the city, county, or state tax assessor's office and ask for a list of property owned by your university. One thing to keep in mind is that the relationship between schools and local government can be complex. For example, some schools may be exempt from paying local property taxes on their real estate holdings. That may have an effect on the types of public records localities maintain about your school's holdings. Again, if appropriate, it may help to explain why you are looking for this records. Some localities have immigration-related policies that can affect how an educational institution within the locality operates. For that reason, it is important to know what spaces a school owns in order to determine how local policies and school-imposed policies interact. Here is a sample email you can use as a template to a local official:

*Dear Mr./Ms. \_\_\_\_\_ ,*

*My name is [YOUR NAME], and I am a student at [YOUR SCHOOL]. This semester, I am working with a group of classmates and professors [IF APPROPRIATE] to analyze some of the ways in which [NAME OF SCHOOL] property holdings in [CITY/TOWN/STATE] affect the community as a whole, and steps [NAME OF SCHOOL] can take to improve that effect. The first phase of the project is to generate a complete list (or preferably a map) of all of the property [NAME OF SCHOOL] owns in the [NAME OF CITY/TOWN/STATE], including residential, commercial, and educational properties.*

*Please let me know the quickest and most efficient way to attain a full list of property owned by the university. Any help you can offer would be significantly appreciated! Please do not hesitate to reach out if you have any questions.*

*Thank you in advance,*

*[YOUR NAME]*

Once you do your initial outreach there are three generally possible responses you might receive. First, they may be willing to work with you, in which case hooray! Your work is done. Second, they may give you tips or additional information for how to use the property database online. Finally, you may not hear back from them.

**Step 3:** If you are not having any luck with the local government's property database and you aren't able to receive help from local officials, then the last option is to use LexisNexis Advance's "Public Records" search function. Not all universities have a subscription to LexisNexis Advance, and even those that do may not have the Public Records search enabled. If your college or university does have a subscription, and you are able to run a public records search, use that database to compile a list of names your school uses and a list of properties, just like in Step 1.

### Strategy 3—Freedom of Information Act Request

The last strategy for tracking down full property ownership records for your school is to submit a public records request to the state government. The federal Freedom of Information Act (FOIA) is limited to federal public records, but states have a state-level freedom of information law that can be used to request public records, including property ownership records. I have included a sample Massachusetts freedom of information request below, but you will want to do some additional research on the specific laws your state has in place. Also, keep in mind that if you do not receive all of the records you request the first time, you can file a follow-up request.

#### Sample State FOIA Request

[YOUR NAME AND ADDRESS]

[NAME AND ADDRESS OF STATE PUBLIC RECORDS KEEPER]

Re: Public Records Request

Dear [NAME OF OFFICIAL],

This is a request under the [STATE FOIA LAW]. I am requesting that I be provided a copy of the following records:

All property records listing [NAME OF SCHOOL AND ALL ITS AFFILIATES] as the owner, holder of title, or holder of deed.

If processing and copying fees for this request are expected to exceed \$10.00, please respond with a detailed fee estimate before processing the request. I am also requesting a waiver of fees on the grounds that the information requested herein is not being sought for commercial purposes, and its release is in the public interest. Specifically, the release of the records described above will contribute significantly to the public's understanding of [YOUR SCHOOL]'s impact on the community.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Sincerely,

[YOUR NAME AND CONTACT INFORMATION]

#### Additional Useful Tips

You can also find specific property purchases by doing a Google News or a LexisNexis Academic search of “property” AND “[your school].” Most major purchases or acquisitions your school has made are likely to have been covered in the news, so you may be able to find old articles talking about specific purchases and keep a running list of the specific properties. This is not a guaranteed strategy, and not all purchases will have been covered, but it's still a useful tool. If your university or college refuses to cooperate with you at all, you can research one major purchase as part of your campaign strategy. Obtaining at least some information about your school's holdings can have a variety of strategic effects on defining campus space and also opening up a negotiation process with your institution.



If none of these strategies are successful, you should try to meet with your school's research librarian. There is a good chance that he or she can help you try to find the information you're looking for.

## What are Other Examples in U.S. History Where Colleges and Universities Have Courageously Modeled Communities of Resistance and Protection?

This section This section offers four notable and historical cases in which university students, faculty, and administrators rose up to resist unjust federal policies and protect their students during the (1) Fugitive Slave Act era, (2) internment of Japanese-American students, (3) Vietnam War, and from (4) enforcement of the Solomon Amendment.

As universities now decide to move forward, they should know that they carry forward an important tradition of colleges and universities as sites of courageous resistance and protection.

### John Price Rescue: Oberlin Faculty and Students Defy the Fugitive Slave Act

In 1858, two slave-catchers traveled to Oberlin, Ohio to capture a runaway slave from Kentucky named John Price.<sup>65</sup> After presenting legally sufficient arrest papers and accompanied by law enforcement officers, the slave catchers arrested and detained Mr. Price.<sup>66</sup> When word reached Oberlin College that Mr. Price had been captured, a large group—including students and a professor—went searching for the slave catchers and Mr. Price.<sup>67</sup> They found them in Wellington, Ohio.<sup>68</sup> Without violence, the students freed Mr. Price, traveled with him back to Oberlin, and hid him in the home of James Harris Fairchild—future president of Oberlin College.<sup>69</sup> Shortly after that, the students took Mr. Price to Canada where he was freed and could live without fear from the Fugitive Slave Act.<sup>70</sup>

A federal grand jury initially indicted thirty-seven of the people who freed Price for violating the Fugitive Slave Act.<sup>71</sup> Prosecutors took two cases to trial and won guilty verdicts in federal court. At the same time, Ohio state authorities made multiple arrests of members of the slave catching party including the federal marshal and his deputies.<sup>72</sup> Ohio and the federal government negotiated the ultimate release of the 35 remaining students and others in federal custody and those arrested by Ohio authorities.<sup>73</sup>

The two people convicted for disobeying the Fugitive Slave Act were a white student Simeon Bushnell and a free African American student, Charles Henry Langston.<sup>74</sup> During his trial, the courtroom was crowded with sympathizers.<sup>75</sup> After being convicted by a jury, Mr. Langston gave a rousing speech:

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<sup>65</sup> WILBUR H. SIEBERT, *THE UNDERGROUND RAILROAD: FROM SLAVERY TO FREEDOM* (1898).

<sup>66</sup> *Id.*

<sup>67</sup> *The Oberlin-Wellington Rescue*, OBERLIN COLLEGE ARCHIVES, [http://www.oberlin.edu/archive/wellington\\_rescue/rescue.html](http://www.oberlin.edu/archive/wellington_rescue/rescue.html).

<sup>68</sup> *Oberlin-Wellington Rescue Case*, OHIO HISTORY CENTRAL, [http://www.ohiohistorycentral.org/w/Oberlin-Wellington\\_Rescue\\_Case?rec=522](http://www.ohiohistorycentral.org/w/Oberlin-Wellington_Rescue_Case?rec=522).

<sup>69</sup> *See id.*

<sup>70</sup> *See id.*

<sup>71</sup> *See id.*

<sup>72</sup> *See id.*

<sup>73</sup> *See id.*

<sup>74</sup> *Langston, Charles Henry (1817-1892)*, BLACKPAST.ORG, <http://www.blackpast.org/aah/langston-charles-henry-1817-1892>.

<sup>75</sup> *See supra*, note 68.

I stand here to say that I will do all I can, for any man thus seized and help, though the inevitable penalty of six months imprisonment and one thousand dollars fine for each offense hangs over me. We have a common humanity. You would so; your manhood would require it; and no matter what the laws might [b]e, you would honor yourself for doing it; your friends would honor you for doing it; your children to all generations would honor you for doing it; and every good and honest man would say, you had done right!<sup>76</sup>

Given the stirring speech — paired with political mobilization in his favor — Langston was sentenced to jail for only 20 days.<sup>77</sup> When the Ohio Supreme Court upheld the constitutionality of Langston’s conviction under the Fugitive Slave Act in a three to two ruling, over 10,000 people participated in a rally to oppose the Fugitive Slave Act, the convictions, and the appellate court’s decisions.<sup>78</sup>

### Universities arrange protected transfers for Japanese students facing internment: National Japanese American Student Relocation Council

At the time of the December 7, 1941 Japanese attack on Pearl Harbor, Alice Imamoto Takemoto was a California high school student.<sup>79</sup> She was one of many high school students of Japanese ancestry living on the West Coast with dreams of attending college in the United States—not to mention the approximately 2,500 students of Japanese ancestry, the vast majority American-born, who were already attending higher educational institutions in the western region.<sup>80</sup> But Takemoto and her family were among those re-located and interned after President Roosevelt signed Order 9066, authorizing the Secretary of War to designate certain areas military zones and eventually allowing the U.S. government to relocate more than 120,000 people of Japanese ancestry—some two-thirds of whom were American citizens— from the West Coast and southern Arizona to assembly centers and then longer-term camps inland.<sup>81</sup> Describing the scene just before being sent to live in a Southern California racetrack stable “assembly center,” Takemoto recounts, “[w]e didn’t go to the movies often — only very, very rarely. When we did, the newsreels always had all of this propaganda about Japanese people. They put such fear into people that we were the enemy. The hostility was all around.”<sup>82</sup>

In response to this forced relocation, a coalition of sympathetic parties on the West Coast began arranging for the transfer of Japanese college students to receptive universities east of the new military areas. The leaders of the nascent movement — which later resulted in the formation of the Department of State-backed National Japanese-American Student Relocation Council — were university administrators dedicated to the principles of education and tolerance, most notably University of California President Robert Gordon Sproul, Occidental College President Remsen Bird, University of Washington President Lee Paul Sieg, and Oberlin College President Ernest H. Wilkins.<sup>83</sup>

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<sup>76</sup> *Charles Langston's Speech at the Cuyahoga County Courthouse*, [http://www.oberlin.edu/external/EOG/Oberlin-Wellington\\_Rescue/c.\\_langston\\_speech.htm](http://www.oberlin.edu/external/EOG/Oberlin-Wellington_Rescue/c._langston_speech.htm).

<sup>77</sup> See *supra*, note 65. Other universities were involved in similar acts during the 19th Century. See, e.g., *The College and Abolitionism*, CASE WESTERN RESERVE UNIVERSITY, <http://www.case.edu/artsci/isus/abolitionism.htm>.

<sup>78</sup> See *supra*, note 3.

<sup>79</sup> “Oberlin Vouches For Them...,” OBERLIN ALUMNI MAG., <http://oberlin.edu/alummag/fall2013/internmentstudents.html>.

<sup>80</sup> John H. Provinse, *Relocation of Japanese-American College Students: Acceptance of a Challenge*, 1 HIGHER EDUC. 1 (Apr. 16, 1945), <http://www.lib.washington.edu/exhibits/harmony/UW-new/Admin/provinse.html>.

<sup>81</sup> See *supra*, note 79.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

Presidents Sieg and Wilkins, in particular, kept a close correspondence. Indeed, both administrators demonstrated a commitment to ensuring the continued education of Japanese and Japanese-American students even before the U.S. government-approved National Japanese American Student Relocation Council was formed in late May 1942. As early as March 1942, Sieg sent out numerous exploratory letters to colleges and universities hoping to find a home for his soon-to-be-evacuated native and American born Japanese University of Washington students.<sup>84</sup> In total, sixteen colleges responded to Sieg's inquiries, notifying the University of Washington President that they would accept American-born Japanese students who were forced to evacuate.<sup>85</sup>

One of those letters made it to the desk of President Wilkins, who himself had been trying to recruit such students, enlisting the help of an Oberlin sophomore at the time, Harry Yamaguchi, to recommend American students of Japanese ancestry to the college.<sup>86</sup> In 1942 alone, Oberlin accepted 17 American-born Japanese students. When one of them, Kenji Okuda, a former University of Washington student who had been recommended by Sieg and personally vouched for by Wilkins,<sup>87</sup> was elected student body president within a month of his arrival, it made national news.<sup>88</sup>

In total, close to 40 American-born Japanese students made their way to Oberlin during the wartime years, among them Alice Imamoto Takemoto. "I was in a relocation camp in Arkansas," she recalls. "People were starting to leave the camp to go to college. Word got around that Oberlin College had a student body president who was a Nisei [person born in America of Japanese-immigrant parents]. I just figured that was a friendly place."<sup>89</sup>

### Students and Their Schools Protect Soldiers Resisting the Vietnam War Draft

During the Vietnam War, many campuses provided sanctuary to persons resisting being drafted for or fighting in the Vietnam War. In some cases, students offered sanctuary beyond the public position of their schools.

The first sanctuary reported was at the Harvard Divinity School in the fall of 1968.<sup>90</sup> Paul Olimpieri, a 21 year-old Marine who won two Purple Hearts in Vietnam, was taken in by Harvard Divinity School students.<sup>91</sup> Mr. Olimpieri was joined by his wife and 15-month-old daughter.<sup>92</sup> He was also linked by chains with six other persons to show solidarity and to offer "prayer and witness."<sup>93</sup> A few days later, Mr. Olimpieri

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<sup>84</sup> *Taking a Leadership Role: President Sieg*, UNIVERSITY OF WASHINGTON, <http://www.lib.washington.edu/exhibits/harmony/UW-new/Admin/sieg.html>.

<sup>85</sup> *Letter from Robert O'Brien to President Wilkins dated April 11, 1942*, UNIVERSITY OF WASHINGTON, <http://www.lib.washington.edu/exhibits/harmony/UW-new/Admin/ap.html>.

<sup>86</sup> *See supra*, note 79.

<sup>87</sup> *Letter from President Wilkins to L.P. Sieg dated March 19, 1942*, UNIVERSITY OF WASHINGTON, <http://www.lib.washington.edu/exhibits/harmony/UW-new/Admin/yama.html>.

<sup>88</sup> *See supra*, note 79.

<sup>89</sup> *See supra*, note 65.

<sup>90</sup> IGNATIUS BAU, *THIS GROUND IS HOLY* (1985).

<sup>91</sup> F. B. Taylor Jr., *Marine Seeks Sanctuary at Harvard Divinity*, BOSTON GLOBE, Sept. 23, 1968.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

was escorted away from the Harvard Divinity School and he held a press conference saying that his actions were a “mistake.”<sup>94</sup>

Similar sanctuary efforts were pursued at other educational institutions. For example, at the Massachusetts Institute of Technology, Private Jack Michael O’Connell — who escaped Fort Bragg, North Carolina — was provided sanctuary for twelve days.<sup>95</sup> Two Marines took sanctuary at the University of Hawaii.<sup>96</sup> John D. Rollins took sanctuary at Brandeis University. He was kept there for seven days before being arrested.<sup>97</sup> Columbia University also provided sanctuary for Private Jorge Caputo. He stayed at Columbia for five days before going underground.<sup>98</sup> At the City College of New York, a chapter of Students for a Democratic Society prevented police from entering the student union to arrest Private William Steven Brakefield. Three days later, with the consent of the administration, the police showed up again with 250 officers and arrested Mr. Brakefield and all of the students. The students were charged with trespass, and Mr. Brakefield was sent back to Fort Devens for military discipline.<sup>99</sup>

### Schools resisting enforcement of the Solomon Amendment in defense of LGBT students.

The third Solomon Amendment, 10 U.S.C § 983, was designed to allow the Secretary of State to withhold federal funds from any institution of higher education that prevented ROTC access and military recruiting on campus.<sup>100</sup> In 2002, under the authority of the Solomon Amendment, the Department of Defense (DOD) threatened to cut off hundreds of millions of dollars in federal funding to private and public universities if they did not change long-established nondiscrimination policies of giving access, but not active assistance, to the military because of the military’s “don’t ask, don’t tell” policy which resulted in hiring discrimination based on sexual orientation.

A number of colleges and universities actively resisted in multiple ways. Law faculty at the University of Pennsylvania Law School and Yale Law School, and the Federation for Academic and Institutional Rights (“FAIR”), an association of law schools and law faculty, filed federal litigation challenging the legality of the DOD’s interpretation of the Solomon Amendment.<sup>101</sup>

The District Court initially found in favor of the Yale Law Faculty on First Amendment grounds and (1) held that the DOD’s threat to suspend federal funding was an unconstitutional application of the Solomon Amendment in violation of the faculty members’ constitutional rights, and (2) permanently enjoined the DOD from making any further financial threats against Yale.<sup>102</sup>

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<sup>94</sup> William Fripp, *Sanctuary Marine Says He’s All Wrong*, BOSTON GLOBE, Sept. 25, 1968.

<sup>95</sup> *See supra*, note 90.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *See* 10 U.S. Code § 983.

<sup>101</sup> *Burbank v. Rumsfeld*, No. 03-5497, 2004 U.S. Dist. LEXIS 17509, at \*1-\*2 (E.D. Pa. Aug. 19, 2004) (filed in Pennsylvania); *Burt v. Rumsfeld*, 354 F. Supp. 2d 156 (D. Conn. 2005), *rev’d sub nom. Burt v. Gates*, 502 F.3d 183 (2d Cir. 2007); *Student Members of SAME v. Rumsfeld*, 321 F. Supp. 2d 388 (D. Conn. 2004) (dismissed as moot in light of *Burt*) (filed in Connecticut); and *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 47 (2006) (originally filed in New Jersey).

<sup>102</sup> *U.S. Supreme Court to Hear Case on Solomon Amendment*, YALE LAW SCHOOL, Dec. 6, 2005, <https://www.law.yale.edu/yls-today/news/us-supreme-court-hear-case-solomon-amendment>.

The Supreme Court later upheld the Department of Defense's position in *Rumsfeld v. Forum for Academic and Institutional Rights*, 547 U.S. 47 (2006) rejecting the freedom of speech argument and finding that Congress had the constitutional authority, to threaten to cut off federal funding if schools denied access to military recruiters pursuant to Congress's power to "raise and support armies."

## Additional Resources:

American Council on Education, Immigration Post-Election Q & A: DACA Students, “Sanctuary Campuses,” and Institutional or Community Assistance (2016), *available at* <http://www.acenet.edu/news-room/Documents/ACE-Issue-Brief-Immigration-DACA-Sanctuary-Campus.pdf>

National Immigration Project of the National Lawyers Guild (<https://www.nationalimmigrationproject.org/>)

Letter from Christopher N. Lasch (joined by other law professors) to Bob Goodlatte, Chairman, Committee on the Judiciary and Zoe Lofgren, Ranking Member, Subcommittee on Immigration and Border Security at 3 (Sept. 26, 2016), *available at* <http://docs.house.gov/meetings/JU/JU01/20160927/105392/HHRG-114-JU01-20160927-SD003.pdf>.

Elizabeth McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform*, 20 LEWIS & CLARK L. REV. 165 (2016)

Rose Cuison Villazor, “Sanctuary Cities” and Local Citizenship, 37 FORDHAM URBAN L.J. 572 (2009)

Bryan R. Lemons, *Public Education and Student Privacy: Application of the Fourth Amendment to Dormitories at Public Colleges and Universities*, 2012 B.Y.U. EDUC. & L.J. 31 (2012)

## Appendix A: Cosecha's #SanctuaryCampus Platform

Campus administrators affirmatively stand with immigrants who study, live, and work at college or university by adopting a public, written policy communicating the following protections:

The college / university refuses all voluntary information sharing with ICE/ CBP across all aspects of the college/university to the fullest extent possible under the law;

The college / university refuses ICE physical access to all land owned or controlled by the college / university;

The college / university prohibits campus security from inquiring about or recording as to an individual's immigration status or enforcing immigration laws or participating with ICE/ CBP in actions.;

The college / university does not use e-verify;

The college / university prohibits housing discrimination based on immigration status;

The college/ university will support undocumented and DACA students' equal access to in-state tuition, financial aid, and scholarships. And will support the ability of qualified immigrant students to enroll and sustain their attendance, including by doing everything within our power to use institutional funds and scholarships to fill any gap created by discriminatory laws that exclude immigrant students from paying the in-state rate or accessing ordinary financial aid and scholarships on equal footing with other students.

The college/ university will publicly support the continuation of the DACA program

This policy shall be enforced by all college or university staff and all contractors and subcontractors and their employees working on property owned or controlled by the college or university.

The college or university commits to ongoing dialogue with the students about additions to the college or university policy and support for community efforts that protect immigrants who study, live, and work at the college/university and their families and the community.



## Appendix B: Sample Statement, University of California

### University of California Statement of Principles in Support of Undocumented Members of the UC Community<sup>103</sup>

#### STUDENT SUPPORT & SUCCESS

The University of California welcomes and supports students without regard to their immigration status. UC will continue to admit students in a manner consistent with our nondiscrimination policy and without regard to a student's race, color, national origin, religion, citizenship or other protected characteristic. In other words, undocumented applicants with or without DACA status will be considered for admission on the same basis as any U.S. citizen or other applicant.

The University is committed to creating an environment in which all admitted students can successfully matriculate and graduate.

Federal law protects student privacy rights, and the California Constitution and statutes provide broad privacy protection to all members of the UC community. University policy provides additional privacy protections. When the University receives requests for information that implicate individual privacy rights, the University will continue its practice of working closely with the Office of General Counsel to protect the privacy of members of the UC community. We will not release immigration status or related information in confidential student records, without permission from a student, to federal agencies or other parties without a judicial warrant, a subpoena, a court order or as otherwise required by law.

#### UC CAMPUSES AND OTHER UC LOCATIONS

Primary jurisdiction over enforcement of federal immigration laws rests with the federal government and not with UCPD or any other state or local law enforcement agency. UCPD is devoted to providing professional policing services that strive to ensure a safe and secure environment in which members of the University's diverse community can pursue the University's research, education and public service missions. Community trust and cooperation are essential to effective law enforcement on campus or other UC locations. The limited resources of UC police departments should not be diverted from this mission to enforcement of federal immigration laws. Accordingly:

a. No UC campus police department will join those state and local law enforcement agencies that have entered into an agreement with Immigration and Customs Enforcement (ICE), or undertake other joint efforts with federal, state or local law enforcement agencies, to investigate, detain or arrest individuals for violation of federal immigration law.

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<sup>103</sup> Statement available at: <https://www.universityofcalifornia.edu/sites/default/files/Statement-of-Principles-in-Support-of-Undocumented-Members-of-UC.pdf>

b. It is in the best interest of all members of the UC community to encourage cooperation with the investigation of criminal activity. To encourage such cooperation, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by UC police officers will not automatically lead to an immigration inquiry and/or a risk of removal. Consequently:

1. Campus police officers will not contact, detain, question or arrest an individual solely on the basis of suspected undocumented immigration status or to discover the immigration status of an individual, except as required by law.

2. Campus police should avoid actions that create a disincentive to report crime, or to offer testimony as a witness to a crime, such as requesting information about immigration status from crime victims and witnesses.

c. The California Attorney General has concluded that civil immigration detainers are voluntary requests to local law enforcement and compliance is not mandatory. Local law enforcement agencies may be liable for improperly detaining an individual who is otherwise eligible for release based on a civil immigration detainer. Consequently:

1. Campus police officers will not detain an individual in response to an immigration hold request from ICE, or any other law enforcement agency enforcing federal immigration law, unless doing so is required by law or unless an individual has been convicted of a serious or violent felony.

2. In order to confirm compliance with legal requirements and these principles, campus police chiefs should review any other request for information from ICE, or any other law enforcement agency enforcing federal immigration law, before response.

d. If campus police receive a request to assist a victim of or witness to a crime with a U visa or T visa application, the request should be immediately forwarded to the campus police chief who should take prompt action to facilitate the request, if appropriate.

A federal effort to create a registry based on any protected characteristics, such as religion, national origin, race or sexual orientation, would be antithetical to the United States Constitution, the California Constitution, federal and state laws, and principles of nondiscrimination that guide our University.

#### UC MEDICAL FACILITIES

The University's medical centers treat all patients who require our services without regard to race, color, religion, national origin, citizenship or other protected characteristics. In keeping with the mission of the University of California, we recognize and understand that our ability to fulfill our public health responsibilities depends on the ability of patients to trust their providers. Our UC medical centers remain committed to these responsibilities and will vigorously enforce University nondiscrimination and privacy policies and standards of professional conduct. These principles will be implemented through policies and procedures that will apply to all UC campuses and medical facilities.

### **A Message to the Penn Community Concerning Our DACA and Undocumented Community Members**

We write in response to the several inquiries and petitions that we have received regarding the University's support for our Deferred Action for Childhood Arrivals (DACA) and undocumented students. We are grateful that so many members of the Penn community have spoken out and communicated their support for our undocumented students.

Let us be unequivocally clear: We are and remain resolute in our commitment to Penn's undocumented students, and will do all that we can to ensure their continued safety and success here at Penn.

As President Gutmann, who has long advocated for immigration reform, wrote in her recent letter to faculty colleagues, undocumented students "have grown up in our communities; they attended our schools; and they have both the strong desire and the impressive capacity to make vital contributions to our nation's future economic strength and global competitiveness." At Penn, we are a richer campus for our inclusion and diversity, and our community benefits greatly from the presence of its undergraduate, graduate, and professional undocumented students.

We welcome this opportunity to reinforce our support for the undocumented student community, including the following:

**The University of Pennsylvania will not allow Immigration and Customs Enforcement (ICE)/Customs and Border Protection (CBP)/U.S. Citizenship and Immigration Services (USCIS) on our campus unless required by warrant. Further, the University will not share any information about any undocumented student with these agencies unless presented with valid legal process.** We also endorse the City of Philadelphia's Fourth Amendment practice that blocks City and campus police from complying with ICE detainer requests for nonviolent offenses. Penn is and has always been a "sanctuary" – a safe place for our students to live and to learn. We assure you that we will continue in all of our efforts to protect and support our community including our undocumented students.

**The University of Pennsylvania commits to ensuring current undocumented and DACA recipients will continue to receive financial aid, fellowship stipends, as well as any related support that is currently being provided, or that will be needed, for these students to complete their studies at Penn.** We will continue to provide need-based Penn grant aid to undocumented students who apply as international students. As always, Student Financial Services (SFS) stands ready to assist any student who is experiencing a family financial crisis or a change of circumstance. Undocumented students with Deferred Action for Childhood Arrivals (DACA) status will continue to be eligible for work-study positions. SFS will continue to assist those without DACA to find other forms of aid to replace work-study. The Student Intervention Services (SIS) team will also continue to support undocumented students in emergent circumstances.

**The University of Pennsylvania already has a number of permanent staff who serve as advisors to support the specific needs of undocumented and DACA students at the undergraduate and graduate levels.** These advisors are familiar with the specific challenges of undocumented and DACA students; provide additional wellness support and student referrals to resources with a deeper understanding of

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<sup>104</sup> Statement available at: <https://news.upenn.edu/message-penn-community-concerning-our-daca-and-undocumented-community-members>

their unique needs; act as liaisons between offices on the University's campus such as SFS or the Registrar; and keep up to date with national policies regarding immigration that affect students such as DACA and Deferred Action for Parents of Americans (DAPA). These advisors are located in Penn Global, the Greenfield Intercultural Center, La Casa Latina and other offices.

**The University of Pennsylvania will continue to advocate passionately for comprehensive immigration reform.** As Penn's President and as a past chair of the Association of American Universities, Amy Gutmann has repeatedly communicated to our nation's leaders her support for undocumented students, the Development, Relief, and Education for Alien Minors (DREAM) Act, and the continuation and expansion of DACA. The University will continue to forcefully speak out in support of these critical issues.

We recognize that many in our community remain anxious about the future. United, we will do everything in our power to ensure the continued security and success of our undocumented students. It is times such as these when we must hold even closer our cherished Penn values of inclusion, diversity, equity and mutual respect.

### Denver University's principles of protection and support

The University of Denver stands strong in its commitment to protect and support all members of our community. Diversity and inclusion are core values of this institution, and we continue to expand our efforts to address the needs of students, faculty and staff in a variety of ways.

Our nation has benefited in significant ways from a system of higher education that is open to people of all backgrounds, that offers freedom to ask all questions and discuss all ideas, and that is dedicated to the belief that the public good prospers where these values are supported for all.

There is much confusion—and understandable, serious concern—about the rights and protections of undocumented students and Muslim students on campuses across the nation, including our own. Specifically, questions about our national policies and what changes in those policies might mean for higher education institutions, have prompted many of you to ask for clarification about how the University has and will continue to support and protect our students.

To address those concerns and clarify our policies, I want to make clear the following principles and practices:

- DU does not and will not voluntarily share student information with immigration enforcement officials. We fully comply with all Family Educational Rights and Privacy Act (FERPA) regulations.
- DU will not voluntarily grant access to University property to immigration officials for enforcement, investigative or similar purposes. Any request by Immigration and Customs Enforcement (ICE), U.S. Customs and Border Patrol (CBP) or U.S. Citizenship and Immigration Services (USCIS) for information or access should be forwarded immediately to the Office of the General Counsel and the Office of Campus Safety. If the University becomes aware of such efforts, we will notify and coordinate within our community in a timely manner as appropriate. We currently provide workplace law training for all managers, and we will expand this training to include these procedures.
- DU Campus Safety never has and will not assist ICE, CBP, USCIS or Denver Police Department in efforts to identify and deport undocumented community members.
- DU Campus Safety never has and will not ask or otherwise ascertain the immigration status or religious affiliation of our students.
- DU will continue to admit students consistent with its nondiscrimination policy.
- DU does not make housing decisions based on immigration status.
- DU will continue with immigration attorneys and other community resources to provide support for undocumented community members.
- DU will not cooperate voluntarily with any federal effort to create a registry of individuals based on protected characteristics such as religion, national origin, race or sexual orientations, unless legal consequences would force us to reconsider.

- DU will continue to advocate for the continuation of the policies of the Deferred Action for Childhood Arrivals (DACA), a position I have joined many other presidents and chancellors in supporting.
- DU will continue to support ICE’s treatment of college and university campuses as “sensitive locations,” where enforcement actions are prohibited.
- DU will look for ways to expand our support for all students, including undocumented and Muslim students.
- The University of Denver will do everything within its power to respond to the evolving needs of our students, including those who are undocumented or are Muslim.

If you are confused and anxious about the current national situation, or if you are concerned about safety on our campus, please reach out to our many professional staff and faculty who are here to support you. (See the list of resources below.)

As chancellor, I will continue to join leaders in higher education to make sure our national and state policies support diversity, scholarship aid and research funding in higher education. DU can only be the exceptional academic community that we aspire to be if we are an intentional community composed of individuals from a diversity of backgrounds, perspectives and experiences. Such an intentional academic community must cultivate an environment in which individuals are free from intimidation and fear and in which they are supported to explore their passions, ideas and development as leaders.

Some have asked that we declare DU a “sanctuary campus.” Universities are defining the term “sanctuary campus” in many different ways, and we have found no clear or common definition for the term. What is clear, and most important, are the protections and supports DU and other universities provide their students. As a humanist and a theologian, I recognize the term “sanctuary” carries a particular spiritual and material practice that belong to religious institutions, and I want to respect those religious traditions that do offer sanctuary. So while our protection and supports exceed those of some of the higher education institutions who use this term, we will not use it. What I hope we unite in is the support and protection of our community members to teach, learn, research and thrive.

## Appendix E: Sample Statement, Harvard University

Dear Members of the Harvard Community,

In my message of November 15, I urged the Harvard community to affirm fundamental values of inclusion and belonging, and to model the respect for people and ideas that rest at the heart of any academic community. Our responsibility to each other requires us to demonstrate that we are enriched by difference and respectful disagreement, and to support any individuals in our community who feel vulnerable or unsafe.

In the days since I sent this message, there has been growing concern about the effect more aggressive enforcement of federal immigration laws could have on many students, scholars and staff at Harvard, especially on students who are undocumented.

I write today to reaffirm our clear and unequivocal support for these individuals, who are part of the fabric of University life, and to share information about related University resources and evolving plans intended to ensure we continue to foster an environment where all at Harvard can thrive.

Some have asked about the role of the institution in enforcing federal immigration laws. Last week, Chief Francis D. Riley of the Harvard University Police Department (HUPD) issued a message restating the HUPD's practice of not inquiring about the immigration status of faculty, students, or staff and noting that the department is not involved in enforcing federal immigration laws. This is consistent with the policies of the cities of Boston and Cambridge. Furthermore, the University does not and will not voluntarily share information on the immigration status of undocumented members of our community. And, as a matter of longstanding policy, law enforcement officials seeking to enter campus are expected to check in first with the HUPD and, in cases involving the enforcement of the immigration laws, will be required to obtain a warrant

In addition to these commitments we will also be supplementing existing legal resources available to the community. The University will provide additional support to expand the work of the Harvard Immigration and Refugee Clinical Program, based at Harvard Law School. In addition to being a confidential place where members of the community can turn for legal advice, the clinic is planning a series of information sessions in the weeks to come. Along with expertise on our own faculty, the University will also invite immigration experts to campus who can inform members of our community about the potential implications of various policy options that the new administration might pursue. As circumstances unfold and as members of our community articulate new or different concerns, we will respond with appropriate actions and resources.

We will also continue Harvard's advocacy for government policies that advance the interests of undocumented students. I recently joined over 200 college and university presidents in voicing support for the Deferred Action for Childhood Arrivals (DACA) initiative, which allows undocumented immigrants who arrived in the United States before turning 16 to enroll in college. These students have made – and continue to make – outstanding contributions to our community. I will make the case for them, and the benefits they receive as a result of DACA, with government leaders in Washington, DC in the weeks and months ahead. I will continue my active support for the DREAM Act, federal legislation that would provide a permanent solution for undocumented students. Harvard was an early and strong advocate of both the DREAM Act and DACA and we will continue to make every effort to advance their goals. We will also sustain our existing financial aid policies without reference to immigration status.

Finally, while Harvard College and the graduate and professional schools have made a variety of important resources available, we will also create a single, University-wide point of connection for students and administrators seeking information or guidance around undocumented students and other immigration concerns. This work will be led by my chief of staff, Lars Madsen, and I have asked him to serve as a point person to coordinate these efforts across the University.

While the immigration policies of the new administration remain undefined, we recognize and share the deep anxiety that campaign rhetoric and proposals have created for many members of the Harvard community. Their cause – the opportunity they have earned through hard work to pursue their research, teaching and education at Harvard – is our cause. We stand with them as one community in support of each other, in support of the values we share, and in support of a commitment to inclusion and belonging that must be at the core of our institution.

Sincerely,  
Drew Faust



## Appendix F: List of Colleges and Universities who have Issued Statements in 2016

Arizona State University	<a href="#">Link</a>
Brown University	<a href="#">Link</a>
California State University	<a href="#">Link</a>
Columbia University	<a href="#">Link</a>
Connecticut College	<a href="#">Link</a>
Cornell University	<a href="#">Link</a>
Drake University	<a href="#">Link</a>
Emerson College	<a href="#">Link</a>
George Washington University	<a href="#">Link</a>
Georgetown University	<a href="#">Link</a>
Harvard University	<a href="#">Link</a>
MIT	<a href="#">Link</a>
Oberlin College	<a href="#">Link</a>
Oregon State University	<a href="#">Link</a>
Pitzer College	<a href="#">Link</a>
Portland State University	<a href="#">Link</a>
Princeton University	<a href="#">Link</a>
Reed College	<a href="#">Link</a>
Rutgers University	<a href="#">Link</a>
Santa Fe Community College	<a href="#">Link</a>
The New School	<a href="#">Link</a>
Tufts University	<a href="#">Link</a>
University of Buffalo	<a href="#">Link</a>
University of California	<a href="#">Link</a>
University of Connecticut	<a href="#">Link</a>
University of Illinois	<a href="#">Link</a>
University of Minnesota	<a href="#">Link</a>
University of Oregon	<a href="#">Link</a>
University of Pennsylvania	<a href="#">Link</a>
Wesleyan University	<a href="#">Link</a>