UNIVERSITY OF CALIFORNIA

OFFICE OF THE GENERAL COUNSEL

Legal Advisory

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SUMMARY

California Court of Appeal confirms undocumented UC students are eligible for financial benefits as set forth in California state law and UC policies.

If you have any questions regarding the *De Vries* decision, please contact:

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APPEALS COURT UPHOLDS UNIVERSITY'S TUITION AND FINANCIAL AID PROGRAMS FOR UNDOCUMENTED STUDENTS

The California Court of Appeal recently rejected a challenge under federal immigration law to the eligibility of certain undocumented immigrants studying at the University of California for waivers of nonresident supplemental tuition and for education grants and student loans.

The lawsuit, *De Vries v. Regents of the University of California* (decision available here), challenged the eligibility of undocumented UC students for four programs:

- Waivers of nonresident supplemental tuition to students who are not classified as California residents but who study at and graduate from a California high school and meet certain other criteria, as set forth in a 2001 California law (AB 540) and related Regental policies.
- Grants for AB 540-eligible students ("AB 540 students") paid with University funds (UC Grants), consistent with a 2011 California law (AB 131, part of what is known as the California DREAM Act) and related Regental policies.
- Grants for AB 540 students from the California Student Aid Commission (Cal Grants), also consistent with AB 131 and related Regental policies.
- A student loan program administered with California and University funds for AB 540 students who are not otherwise eligible for federal student loans, under a 2014 California law (SB 1210) and related Regental policies.

The plaintiff, a California taxpayer represented by the Judicial Watch organization, alleged that the provision of nonresident tuition exemptions and financial aid to undocumented University students violates a federal law, 8 U.S.C. section 1621, that allows public benefits to undocumented immigrants "only through enactment of a State law which affirmatively provides for such eligibility." The California Supreme Court previously ruled in *Martinez v. Regents* (2010) 50 Cal.4th 1277 that AB 540 does not violate section 1621. (See our prior legal advisory regarding *Martinez* here.) However, the *De Vries* case presented an argument that the California Court of Appeal said had not been raised in *Martinez*: Specifically, whether Section 1621's requirement of an "enactment of a State law which affirmatively provides for such eligibility" for benefits for UC students can be satisfied, given that the California Constitution generally places the University under the Regents' authority and outside the California Legislature's control.

The Court of Appeal rejected this "Catch 22" argument, concluding that the California Legislature's actions did indeed satisfy Section 1621. Noting that Section 1621 speaks only of conferring "eligibility," the Court found that the Legislature had conferred eligibility in AB 540, AB 131, and SB 1210, even though the Regents retained ultimate control as to whether the University would confer particular benefits on particular students.

The decision in *De Vries* is noteworthy in two respects. First, it represents a favorable appellate resolution of a broad-based challenge to the entire package of tuition and financial aid available to AB 540 students at UC. Although the challenger may seek further review in the California Supreme Court and the U.S. Supreme Court, review in those courts is a matter of discretion and sparingly granted. Second, together with *Martinez*, *De Vries* establishes a template under which similar programs can be properly authorized in the future under federal and state law, through actions of both the Legislature and the Regents.