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COMMUNICATION TO THE UNITED NATIONS

Addressing the U.S. State of Georgia's Violations of
International Law in its Denial of Undocumented Students'
Access to Public Institutions of Higher Education





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**RE: Communication Addressing the U.S. State of Georgia's Violations of
International Law in its Denial of Undocumented Students' Access to Public
Institutions of Higher Education**

Dear Special Rapporteurs Boly Barry, González Morales, and Achiume:

We, the Transnational Legal Clinic of the University of Pennsylvania Law School, submit this communication on behalf of Project South and Freedom University, two non-governmental organizations working to mitigate the impact of Georgia's discriminatory practices towards its undocumented residents in higher education and repeal the laws and policies that allow such discrimination to exist. Project South is a social justice organization that fosters key

social movements in the Southern United States, including immigrants' rights advocacy.¹ Freedom University is an organization that seeks to advance the human right to education by providing tuition-free college-level courses to undocumented youth impacted by Georgia's discrimination in higher education, and by teaching undocumented youth international human rights principles and advocacy methods.² The Transnational Legal Clinic of the University of Pennsylvania Law School is a pro bono immigration and human rights clinic³ that has collaborated with both Project South and Freedom University in the preparation of this communication.

In this communication, we address the United States' failure to ensure equal access to higher education and the rights associated therewith for undocumented residents in Georgia who do not have lawful immigration status. Specifically, the U.S. state of Georgia has enacted laws and policies that rescind or otherwise limit access to the state's public institutions of higher education for all Georgia residents without lawful immigration status through a total bar on their admission to its selective public universities and a discriminatory requirement that undocumented residents pay out-of-state tuition at its non-selective campuses. These policies violate Georgia residents' right to education and right to be free from discrimination on the basis of national origin or immigration status, as set forth in Articles 2 and 26 of the International Covenant on Civil and Political Rights⁴ and Articles 1 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination,⁵ along with other well-established norms of international law. Georgia's discriminatory policies effectively block equal access to higher education resulting in modern day segregation based on immigration status. A strong argument can be also made that Georgia's laws and policies represent a form of race-based discrimination. Of the 351,000 undocumented individuals that are currently estimated to be residing in Georgia, at least 80% are of Latin American origin.⁶ Furthermore, it is worth noting that "[t]he same public universities in Georgia that banned black students in the 1960s ban undocumented students today."⁷ In light of these ongoing violations of human rights, we respectfully request that each of the rapporteurs visit the state of Georgia and speak with human rights organizations, civil rights veterans, and the undocumented youth impacted by Georgia's impermissible

¹ *About Us*, PROJECT SOUTH, <https://projectsouth.org/about/> (last visited Dec. 6, 2018) [<https://perma.cc/VE6D-NRGT>].

² *Mission*, FREEDOM UNIVERSITY, <https://freedom-university.org/mission> (last visited Dec. 6, 2018) [<https://perma.cc/7BCH-D2B8>].

³ *Transnational Legal Clinic*, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL, <https://www.law.upenn.edu/clinic/transnational/> (last visited Dec. 6, 2018) [<https://perma.cc/K85H-UDL6>].

⁴ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (last visited Dec. 6, 2018) [<https://perma.cc/BXB3-E9FJ>] [hereinafter ICCPR].

⁵ Off. of the United Nations High Commissioner for Human Rights, *International Convention on the Elimination of all Forms of Racial Discrimination* (Dec. 21, 1965), available at https://treaties.un.org/doc/Treaties/1969/03/19690312%2008-49%20AM/Ch_IV_2p.pdf (last visited Dec. 6, 2018) [<https://perma.cc/B8EG-ACXL>] [hereinafter CERD].

⁶ *Profile of the Unauthorized Population: Georgia*, MIGRATION POL'Y INST., <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/GA> (last visited Dec. 9, 2018) [<https://perma.cc/95GT-FTE2>] [hereinafter MPI Georgia Profile].

⁷ Laura Emiko Soltis & Azadeh Shahshahani, *When Undocumented Youth Are Banned from College, the Entire Nation Fails*, HUFFINGTON POST (Aug. 22, 2018), https://www.huffingtonpost.com/entry/opinion-undocumented-immigrants-daca-college_us_5b7d408ae4b0cd327df84eda [<https://perma.cc/899G-D3KL>].

discriminatory laws and policies, with the ultimate aim of issuing a collective statement that condemns the state's practices.

I. BACKGROUND AND CONTEXT

A. THE CURRENT STATUS OF IMMIGRANTS IN GEORGIA AND THE UNITED STATES

With the recent election of a President whose platform relied on negative stereotypes of immigrants,⁸ the United States has played host to an increasingly hostile and divisive national debate regarding the rights of U.S. residents without lawful status. Recently, this debate has come to a head with President Donald Trump's virulent verbal attacks and use of tear gas on Central American asylum-seekers at the U.S.-Mexican border.⁹ These dramatic events disguise even more sinister actions by the administration to limit the rights and opportunities of immigrants within the United States, while also ramping up efforts to detain and deport immigrants already within the United States, many of whom are torn apart from their families and communities by inhumane means.¹⁰ Such actions typify the dehumanization and criminalization of migrants that President Trump and his administration have propagated.¹¹ In Georgia specifically, a state that voted for Donald Trump in the 2016 U.S. presidential election,¹² roughly 82% of Republican voters (President Trump's primary base of support) stated in a recent poll that "illegal immigration" is an "important" or "very important" factor in their political decision-making.¹³ Brian Kemp, who was recently elected Georgia's governor,¹⁴ once "bragged that he had a pickup truck big enough to 'round up criminal illegals and take them home myself.'"¹⁵ The increased immigration enforcement programs under the Trump administration

⁸ Amber Phillips, *'They Carve You Up with a Knife': Trump Is Even More Hyperbolic about Immigration Now than in 2016*, WASH. POST: THE FIX (Oct. 23, 2018), https://www.washingtonpost.com/politics/2018/10/23/trump-is-even-more-hyperbolic-about-immigration-now-than/?utm_term=.09911cb0f407 [<https://perma.cc/LHZ3-MHCH>].

⁹ While numerous human rights organizations have rushed to the border to provide legal aid and other services to the migrant arrivals, President Trump—instead of dispatching asylum officers and immigration judges to process their claims—rushed to send in active-duty troops and the National Guard. In one of the current administration's most egregious actions, U.S. Border Patrol agents fired canisters of tear gas at prospective migrants who made a dash for the border in late November. For more information about this matter, see generally Dara Lind, *The Migrant Caravan, Explained*, VOX (Oct. 25, 2018, 8:53 AM), <https://www.vox.com/2018/10/24/18010340/caravan-trump-border-honduras-mexico> [<https://perma.cc/UD2B-HEED>].

¹⁰ See, e.g., Exec. Order No. 13,768, 82 F.R. 8799, available at <https://www.gpo.gov/fdsys/pkg/FR-2017-01-30/pdf/2017-02102.pdf> (last visited Dec. 6, 2018) [<https://perma.cc/5KDE-6J8J>]; Ben Leonard, *Under Trump Arrests of Undocumented Immigrants with No Criminal Record Have Tripled*, NBC NEWS (Aug. 13, 2018, 7:51 AM) <https://www.nbcnews.com/politics/immigration/under-trump-arrests-undocumented-immigrants-no-criminal-record-have-tripled-n899406> [<https://perma.cc/V3NQ-GMB3>]; Jeremy Redmon, *Trump Administration Ramping Up Immigration Enforcement*, ATLANTA J.-CONST. (Feb. 21, 2017), <https://www.ajc.com/news/national-govt--politics/trump-administration-ramping-immigration-enforcement/0h6Mzu6Y5bZ9aAlqKeW3aK/> [<https://perma.cc/RYS5D-FM38>].

¹¹ Phillips, *supra* note 8.

¹² *Georgia Presidential Race Results: Donald J. Trump Wins*, N.Y. TIMES (Aug. 1, 2017 11:23 AM), <https://www.nytimes.com/elections/2016/results/georgia-president-clinton-trump> [<https://perma.cc/BS87-GMAK>].

¹³ Richard Fausset & Alan Blinder, *There Are Two Georgias. One Just Made History.*, N.Y. TIMES (May 23, 2018), <https://www.nytimes.com/2018/05/23/us/georgia-governor-stacey-abrams.html> [<https://perma.cc/ETC9-5TNK>].

¹⁴ *Georgia*, CNN: LIVE ELECTION RESULTS (Nov. 20, 2018, 2:01 PM), <https://www.cnn.com/election/2018/results/georgia/governor> [<https://perma.cc/5JKZ-HUZD>].

¹⁵ Fausset & Blinder, *supra* note 13.

have taken root in Georgia and continue to grow, generating immense fear for undocumented residents.¹⁶

The scenes at the border and on the ground reflect the mounting tensions surrounding immigration in the United States and in Georgia, encouraged by the federal and state administrations' words and actions that paint immigrants as bringing crime into communities, stealing the jobs of the native-born, and purposely seeking to become public charges.¹⁷ Often caught up in this debate are the hundreds of thousands of young people who came to the United States as children with their families and who do not have lawful status.¹⁸ Many have grown up unaware of their immigration status, or unaware of how their lack of status would impact them in their later years. As opposed to the popular and inflammatory term "illegal alien," many of these young people fought for the use of the term "undocumented" to refer to their immigration status, one in which they lack legal status or lawful presence.¹⁹ Some of these undocumented youth were fortunate enough to qualify for the Deferred Action for Childhood Arrivals ("DACA") program while it still accepted first-time applicants before October 6, 2017.²⁰ DACA status allows undocumented youth who meet the program's criteria to obtain a work permit, driver's license, and temporary relief from deportation.²¹ As of August 2018, it is estimated that there are 699,350 DACA recipients throughout the country, with at least 22,180 residing in Georgia alone.²² Recent data suggests that there are a total of 77,000 individuals without lawful status under the age of 24 in the state of Georgia,²³ of which around 47,000 have already obtained DACA status or would otherwise be immediately eligible for it (were the program still accepting first-time applicants).²⁴ Despite the fact that most U.S. Americans support the DACA program

¹⁶ Jeremy Redmon, *ICE Expanding Immigration Enforcement Program in Georgia*, ATLANTA J.-CONST. (Mar. 21, 2018), <https://www.ajc.com/news/state--regional-govt--politics/ice-expanding-immigration-enforcement-program-georgia/HZ5nM5JErtgboxhIWMLIL/> [<https://perma.cc/63Y3-7UFH>].

¹⁷ Maria Santana, *5 Immigration Myths Debunked*, CNN MONEY (Nov. 20, 2014, 7:12 PM), <https://money.cnn.com/2014/11/20/news/economy/immigration-myths/index.html> [<https://perma.cc/U9W2-LVSB>].

¹⁸ Mouhannad Atfeh, Julia Duperrault & Shari Wesja, *A Dream Deferred: The Devastating Consequences of Restricting Undocumented Student Access to Higher Education in Georgia*, PROJECT SOUTH & FREEDOM UNIV. 6 (Aug. 21, 2018), <https://projectsouth.org/wp-content/uploads/2018/08/A-Dream-Deferred.pdf> [<https://perma.cc/K28E-V6XG>] [hereinafter *A Dream Deferred Report*].

¹⁹ Gene Demby, *In Immigration Debate, 'Undocumented' vs. 'Illegal' Is More than Just Semantics*, NPR: IT'S ALL POLITICS (Jan. 30, 2013, 5:30 PM), <https://www.npr.org/sections/itsallpolitics/2013/01/30/170677880/in-immigration-debate-undocumented-vs-illegal-is-more-than-just-semantics> [<https://perma.cc/7S9Z-EMNA>].

²⁰ *How to Apply for DACA*, NAT'L IMMIGR. L. CTR. (Aug. 31, 2018), <https://www.nilc.org/issues/daca/faqdeferredactionyouth/> (last visited Dec. 6, 2018) [<https://perma.cc/FE2X-PENV>]. Requirements to be eligible for DACA include arrival to the U.S. before one's sixteenth birthday; a present age of at least fifteen; continuous presence in the U.S. since June 15, 2007; and current school enrollment or a high school diploma (or equivalent). *Id.*

²¹ *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP IMMIGR. SERVICES, <https://www.uscis.gov/archive/consideration-deferred-action-childhood-arrivals-daca> (last visited Dec. 6, 2018) [<https://perma.cc/3R93-F6HX>].

²² U.S. CITIZENSHIP IMMIGR. SERVICES, APPROXIMATE ACTIVE DACA RECIPIENTS: COUNTRY OF BIRTH (2018), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Data_August_31_2018.pdf [<https://perma.cc/P9QE-ZMR2>].

²³ MPI Georgia Profile, *supra* note 6.

²⁴ Wesley Tharpe, *Young Immigrants Vital to Georgia's Workforce, Healthy Economy*, GEORGIA BUDGET & POL'Y INST. (Feb. 1, 2017), <https://gbpi.org/2017/young-immigrants-vital-georgias-workforce-healthy-economy/> [<https://perma.cc/UDJ7-XLX8>].

and an ultimate pathway towards citizenship for childhood arrivals,²⁵ the current administration has fervently challenged its existence.²⁶ All of these children—both with and without DACA—have been raised alongside their native-born peers, attending U.S. schools, building ties in their local communities, cultivating identities that pertain to their histories as residents of the United States, and working to fulfill their dreams.²⁷ Unfortunately, Georgia has acted to end those dreams by effectively denying them the right to obtain a higher education.

B. THE HISTORY AND DEVELOPMENT OF GEORGIA’S STANCE TOWARDS IMMIGRATION

Despite its current discriminatory stance towards resident students without lawful status, the state of Georgia has not always been hostile toward immigrant arrivals. In fact, when the state of Georgia has needed an influx of cheap and exploitable laborers in the past—those without voting rights or political power to demand fair wages and working conditions—it has welcomed undocumented workers. In the early 1990s, Georgia was desperate for construction workers and other laborers in its preparations for the 1996 Summer Olympics in its capital, Atlanta.²⁸ Out of this desperation to produce a memorable centennial celebration of the Olympics, the U.S. Immigration and Naturalization Service contacted Teodoro Maus, a Mexican diplomat in Georgia, and suggested to him that he disseminate the fact that there would not be immigration enforcement in the Atlanta-area while the Games were organized and held.²⁹ As a result, thousands of migrant laborers from Mexico and Central America made the journey to Atlanta, where many of them ended up settling down permanently and encouraging their families to join them.³⁰ After the Olympics came to a close, these individuals found employment in Georgia’s agricultural and agro-industrial sectors.³¹

However, as many studies show, periods of immigration influx are often followed by a pushback in public attitudes towards recent arrivals, increasing the likelihood that governments will advocate for the passage of discriminatory laws and policies.³² In 2005, the Georgia legislature enacted the Georgia Security and Immigration Compliance Act,³³ which deputized local officials to enforce federal immigration laws, including requiring that in any felony or DUI arrests, charging officers make “a reasonable effort” to “determine the nationality of the person

²⁵ *National Tracking Poll #170817*, MORNING CONSULT & POLITICO (Sep. 2017), <https://www.politico.com/f/?id=0000015e-5366-df04-a5df-d76730df0002> (last visited Dec. 6, 2018) [<https://perma.cc/YXX5-FLCY>].

²⁶ Alan Gomez, *What is President Trump’s Policy on DREAMers? It Keeps Changing*, USA TODAY (Apr. 2, 2018, 9:55 AM), <https://www.usatoday.com/story/news/politics/2018/02/07/what-president-trumps-policy-dreamers-keeps-changing/312783002/> [<https://perma.cc/T6Q6-5UWP>].

²⁷ A Dream Deferred Report, *supra* note 18, at 6.

²⁸ David Wickert, *How the Olympics Helped Lure Latinos to Atlanta*, ATLANTA J.-CONST.: POLITICALLY GEORGIA (July 15, 2016 10:00 AM), <https://politics.myajc.com/news/local-govt--politics/how-the-olympics-helped-lure-latinos-atlanta/REVqYgdV8LjAypmA3zdSeO/> [<https://perma.cc/DY3E-SMTJ>].

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Vickie D. Ybarra, Lisa M. Sanchez & Gabriel R. Sanchez, *Anti-Immigrant Anxieties in State Policy: The Great Recession and Punitive Immigration Policy in the American States, 2005-2012*, 16(3) ST. POL. & POL’Y QUAR. 313, 316 (2015).

³³ S.B. 529, 148th Gen. Assemb., Reg. Sess. (Ga. 2006), available at <http://www.legis.ga.gov/Legislation/20052006/64549.pdf> (last visited Dec. 6, 2018) [<https://perma.cc/X26H-B4MY>].

so confined,” so as to determine whether or not he or she was “lawfully admitted” or has “lawful status.”³⁴ The law then further mandated detention and referral to the Department of Homeland Security for all persons deemed to be without proper status or to have entered unlawfully.³⁵ The Georgia Board of Regents—the Georgia governmental body with full state power to manage public higher education and determine the regulations that govern its administration³⁶—followed suit and changed state education policies so as to begin excluding immigrants without proper documentation from receiving in-state tuition benefits afforded to other residents.³⁷ The Georgia legislature echoed this denial of in-state tuition for all resident students without lawful status with the 2008 passage of SB 492.³⁸ To contextualize the costs that this confers upon resident students without proper status, current tuition rates for in-state residents at Kennesaw State University are \$4,341 per year (assuming twelve credit hours of instruction), while tuition rates for out-of-state residents—as Georgia residents without lawful status (and with or without DACA status) are now categorized—are \$15,323.³⁹ The latter figure is *more than three times greater* than the former.

Soon after, Georgia’s discrimination against its undocumented student residents seeking higher education reached its apex. After a highly publicized 2010 incident in which it was revealed that an undocumented Kennesaw State University student had not had her documents verified and was paying in-state tuition,⁴⁰ the Georgia Board of Regents came together in a 14-2 vote to pass Policy 4.1.6, completely barring *all* undocumented students (those both with and without DACA status) from admission to the state’s competitive public colleges and universities, even those otherwise qualified who merit admission but for their immigration status.⁴¹ Fifteen Georgia state senators even went as far as to suggest that all students without lawful status be expelled from the state’s public institutions of higher education with immediate effect.⁴² Ultimately, the Georgia Board of Regents Policy 4.1.6, as it stands, states:

A person who is not lawfully present in the United States shall not be eligible for admission to any University System institution which, for the two most recent academic

³⁴ *Id.* at 6.

³⁵ *Id.* The Department of Homeland Security is the federal executive body tasked with enforcing immigration laws, which it does through Immigration and Customs Enforcement (ICE). *Immigration and Customs Enforcement*, DEPARTMENT OF HOMELAND SECURITY, <https://www.dhs.gov/topic/immigration-and-customs-enforcement> (last visited Dec. 6, 2018) [<https://perma.cc/GVW5-TCVR>].

³⁶ GA. CONST. art. VIII, § IV.

³⁷ Georgia Board of Regents Policy Manual, § 4.3.4 (2010), *available at* <https://www.usg.edu/policymanual/section4/C329/> [<https://perma.cc/W9C5-J3AN>]; A Dream Deferred Report, *supra* note 18, at 8.

³⁸ S.B. 492, 149th Gen. Assemb., Reg. Sess. (Ga. 2008), *available at* <http://www.legis.ga.gov/Legislation/20072008/85984.pdf> (last visited Dec. 6, 2018) [<https://perma.cc/GD5D-UJLW>].

³⁹ *Cost of Attendance*, KENNESAW ST. UNIV., <https://financialaid.kennesaw.edu/student-resources/cost-of-attendance.php> (last visited Dec. 6, 2018) [<https://perma.cc/E2MZ-38J9>].

⁴⁰ Robbie Brown, *Student’s Arrest Tests Immigration Policy*, N.Y. TIMES (May 14, 2010), <https://www.nytimes.com/2010/05/15/us/15student.html> [<https://perma.cc/YHX7-R57S>].

⁴¹ A Dream Deferred Report, *supra* note 18, at 8.

⁴² *Id.*

years, did not admit all academically qualified applicants (except for cases in which applicants were rejected for non-academic reasons).⁴³

Today, through Policy 4.1.6—which was supported by other bodies of the Georgia state administration and is condoned by the federal government through its continued inaction—the Georgia Board of Regents’ *fully bans any student unlawfully present* within the United States from attending its three selective universities: the University of Georgia, the Georgia Institute of Technology, or Georgia College and State University.⁴⁴ The Georgia legislature has even gone as far as to strip all funding to *any* university located within the state that declares itself a ‘sanctuary campus’ for undocumented students.⁴⁵ Scholars have argued that the Georgia Board of Regents and the state legislature enacted these policies—most specifically Georgia Board of Regents Policy 4.1.6—surrounded by a discourse that sought to structurally disadvantage a group seen as undesirable because of their race, class, and immigration status.⁴⁶

C. THE IMPACT OF GEORGIA’S POLICIES ON UNDOCUMENTED STUDENTS

The Georgia Board of Regents and the Georgia state legislature have violated the fundamental human rights of its undocumented resident students by: (1) enacting a total ban on undocumented students from earning admission to Georgia’s selective public institutions of higher education, presently including the University of Georgia, the Georgia Institute of Technology, and Georgia College and State University; and (2) requiring that undocumented students residing in Georgia pay exorbitant out-of-state tuition at its other public colleges and universities, despite the fact that most of them have spent the vast majority of their lives living within the state, attending primary and secondary education in state public schools, and paying state taxes. But for their immigration status, these students would be considered residents like any others. Not only does the state of Georgia plainly violate the human right to education as afforded to all in Article 26 of the Universal Declaration of Human Rights,⁴⁷ but it also contravenes the right to equality and non-discrimination by denying access to education and in-state tuition to otherwise qualified individuals on the sole basis of their national origin and immigration status (or, alternatively, on the basis of their *lack* of citizenship). The latter two rights are protected and guaranteed both by the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Civil and Political Rights (ICCPR), both of which the United States has signed and ratified.⁴⁸

⁴³ Georgia Board of Regents Policy Manual, § 4.1.6 (2010), *available at* <https://www.usg.edu/policymanual/section4/C327/> [<https://perma.cc/MXB9-KUKK>].

⁴⁴ Jeremy Redmon, *Exclusive: 2 Ga. Schools to Consider Immigrants without Legal Status*, ATLANTA J.-CONST., (Nov. 20, 2016), <https://www.ajc.com/news/state--regional-govt--politics/exclusive-schools-consider-immigrants-without-legal-status/v2hHQXDobKo1pXWH4tvQeI/> [<https://perma.cc/3RZX-4RAC>].

⁴⁵ Greg Bluestein, *New Georgia Law Strips State Funding of ‘Sanctuary’ Campuses*, ATLANTA J.-CONST.: POLITICALLY GEORGIA (Apr. 27, 2017), <https://politics.myaajc.com/blog/politics/new-georgia-law-strips-state-funding-sanctuary-campuses/wYE4SVFqSn83PVUI3ITf2I/> [<https://perma.cc/9U3D-4L9T>].

⁴⁶ Ryan Z. Maltese, *They, Too, Sing America: A Critical Analysis of USG Policy 4.1.6 and its Perceived Impacts on DACA Students in the State of Georgia 52-60* (May 12, 2017) (unpublished Ph.D. dissertation, Georgia State University) (on file with ScholarWorks @ Georgia State University), *available at* https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1191&context=eps_diss [<https://perma.cc/R6YH-WZJ4>].

⁴⁷ Universal Declaration of Human Rights, art. 26, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

⁴⁸ ICCPR, *supra* note 4; CERD, *supra* note 5.

Georgia's actions have had an immense impact in the lives of students without lawful status who presently reside in the state. In August 2018, Project South and Freedom University collaborated to publish a report titled "A Dream Deferred," which summarizes the detrimental effects that Georgia's laws and policies have had on young students yearning for a meaningful opportunity to pursue higher education in spite of their lack of proper documentation.⁴⁹ As the report details, the consequences for these students have been primarily educational, economic, and health-related. This report and its findings serve as the primary basis for the present communication.

In terms of educational and economic prospects, Georgia's laws and policies "prevent undocumented students from achieving their full human potential."⁵⁰ Georgia's discriminatory stance causes a detrimental impact on all of its student residents who do not have lawful status even before they reach college-age, given the demotivating effect that it engenders during their high school years.⁵¹ This demotivation stems from the fact that such students are aware of the barriers that they face in carving a reasonable path towards their educational goals. With the knowledge that they are unable to attend their state's most prestigious public universities or will have to pay out-of-state tuition at others, many begin to underperform as early as middle school, with others dropping out later in their high school years.⁵² Undocumented students can sense the futility of their efforts; as one student observes, many students know they cannot go to college so they begin skipping class, saying "'It's not possible, so why am I working? I could be focusing on other things, I could be focusing on getting a job to help my parents.'"⁵³ This type of demotivation among undocumented student populations is well supported by academic literature,⁵⁴ and is often more severe for students without DACA status, as their lack of employment eligibility upon college graduation renders the purpose of a skilled degree virtually meaningless.⁵⁵ The latter statistic is particularly salient when assessing employment prospects for undocumented students more generally. A high level of education is associated with higher annual income and lifetime earnings, and lower poverty and unemployment rates which, by denying students without lawful status access to higher education, the state of Georgia makes nearly impossible to attain.⁵⁶ As one student impacted by Georgia's policies succinctly puts it, "[i]t's put a cap on my potential."⁵⁷

Those students who do manage to attend college face enormous struggles once they arrive on campus. Some are forced to attend colleges out-of-state, where they have been

⁴⁹ A Dream Deferred Report, *supra* note 18.

⁵⁰ *Id.* at 37.

⁵¹ *Id.* at 19-21.

⁵² *Id.* at 19.

⁵³ *Id.* at 21.

⁵⁴ See generally Robert Bozick & Trey Miller, *In-State College Tuition Policies for Undocumented Immigrants: Implications for High School Enrollment among Non-Citizen Mexican Youth*, 33 POPUL. RES. POL'Y REV. 13, 26 (2014); Stella M. Flores, *State Dream Acts: The Effect of In-State Resident Tuition Policies and Undocumented Latino Studies*, 33 REV. HIGHER EDUC. 239, 260 (2010); Shiva Koohi, *College Prospects and Risky Behavior Among Mexican Immigrant Youth: The Effects of In-State Tuition Policies on Schooling and Childbearing*, 58 ECON. EDUC. REV. 162, 166 (2017).

⁵⁵ A Dream Deferred Report, *supra* note 18, at 26.

⁵⁶ *Id.* at 47, 53.

⁵⁷ *Id.* at 17.

fortunate enough to receive scholarships. However, this separates the students from their support networks and often has psychological impacts.⁵⁸ Those who remain in Georgia and attend non-selective colleges by paying out-of-state tuition rates often suffer academically due to the stress of having to work extensive hours in order to afford their education. One student recognizes that “having to work a full-time job while being a student... I cannot do that, and my grades are going to suffer while I am paying thousands of dollars. That’s not going to work out for me.”⁵⁹ Others are forced to delay their education for years, while some ultimately drop out.⁶⁰

The pressures that stem from Georgia’s discriminatory laws and policies have unique and lasting effects on the mental, physical, and psychological health of the state’s undocumented student residents. Beginning in their high school years, undocumented students in Georgia note high levels of anxiety and depression as a result of the numerous obstacles that lie ahead of them on their path to an education.⁶¹ Many lose their ambition and feel it is pointless for them to continue their studies if it will take them nowhere at the end. Some have gone as far as to consider suicide.⁶² One student tried to take his own life when he was just a high school student, solely because of Georgia’s discriminatory acts: “I knew that no matter how hard I worked there was always the chance that I wasn’t going to be able to go to college... I tried to take my own life because I was just absolutely miserable and I didn’t want to reconcile with the fact that all of my efforts in high school wouldn’t be rewarded in any way.”⁶³ In a more general sense, Georgia’s laws and policies echo the anti-immigrant sentiments that are voiced daily in the United States, heightening students’ feelings of stigmatization and isolation.⁶⁴ One student compares it to “a modern form of slavery,” wherein undocumented students are “viewed as criminals” and “dehumanized,” “shackled” to a system they cannot break out of.⁶⁵

Education is often a remedy for other health woes as well: research shows that less educated people tend to live shorter and less healthy lives.⁶⁶ While this may not have yet played out in the lives of young students, “[u]ndocumented students deprived of access to higher education in part because of the Georgia law and policy can expect to live shorter lives than people with... some college or a college degree.”⁶⁷ In the meantime, some individuals with few opportunities ahead of them have nothing else to turn to, forcing them to participate in riskier activities during their younger years that can have detrimental effects on future well-being.⁶⁸

D. THE ILLEGALITY OF GEORGIA’S LAWS AND BOARD OF REGENTS’ POLICIES UNDER U.S. STATUTORY LAW AND THE CONSTITUTION AND THE INEFFECTIVENESS OF DOMESTIC REMEDIES

⁵⁸ *Id.* at 35-36, 43-44.

⁵⁹ *Id.* at 26.

⁶⁰ *Id.* at 31-32.

⁶¹ *Id.* at 39-40.

⁶² *Id.* at 39-40.

⁶³ *Id.* at 38.

⁶⁴ *Id.* at 40-42.

⁶⁵ *Id.* at 41.

⁶⁶ Dana Goldman & James P. Smith, *The Increasing Value of Education in Health*, 72 SOC. SCI. & MED. 1728, 1730 (2011).

⁶⁷ A Dream Deferred, 56

⁶⁸ A Dream Deferred, 61-62

Despite the fact that Georgia’s denial of access to higher education represents unconstitutional departures from key provisions of U.S. law, the federal government has failed to take action, making the United States government complicit in the human rights violations that Georgia’s laws and policies beget. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution states that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁶⁹ The United States judiciary has interpreted this to be a federal principle against state discrimination of its residents based on numerous characteristics, including national origin.⁷⁰ Any state law that discriminates on the basis of national origin is subject to strict scrutiny.⁷¹ Georgia’s law barring DACA recipients and other undocumented students from attending its selective public institutions of higher education is violative of the Fourteenth Amendment for its arbitrary denial of admission based on national origin (or lack of national origin—U.S. citizenship). Further arguments could be made that Georgia’s laws violate the Supremacy Clause of the United States Constitution as well insofar as they seemingly ignore the federal government’s conferral of lawful presence to those students found eligible for DACA status.⁷² Specifically, by misclassifying DACA recipients as not lawfully present⁷³ residents in the United States and Georgia, the state of Georgia illegally intrudes on the federal right to structure immigration law and denies DACA students the equal protection of the law by excluding them from certain colleges and refusing to afford them in-state tuition.⁷⁴

Numerous immigrants’ rights organizations have sought recourse from the discriminatory impact of Georgia’s laws in the U.S. judiciary. However, such efforts have been to no avail. Recent federal litigation brought by immigrant rights advocates in the Northern District of Georgia on behalf of DACA students excluded from the state’s colleges and universities was dismissed despite arguing the same constitutional principles detailed above; the court failed to recognize the students’ basic human and constitutional rights by stating that DACA status affords no special privileges and thus the advocates’ analysis of national origin discrimination was fatally flawed.⁷⁵ In May 2018, the Supreme Court of Georgia declined to review a Georgia Court of Appeals decision that denied the right to in-state tuition for DACA recipients.⁷⁶ As

⁶⁹ U.S. CONST. amend. XIV, § 1.

⁷⁰ For a recent case interpreting national origin discrimination, *see* *Exodus Refugee Immigration, Inc. v. Pence*, 165 F. Supp. 3d 718 (S.D. Ind. 2016).

⁷¹ *Id.* at 733-34.

⁷² “[T]hey intrude on the federal government’s exclusive power over immigration regulation and are preempted by federal immigration law.” Complaint at 4, *Estrada v. Becker*, No. 1:16-CV-3310-TWT, 2017 U.S. Dist. LEXIS 73284 (N.D. Ga. May 15, 2017), available at http://maldef.org/assets/pdf/2016_09-02_GA_Admissions_Complaint.pdf [<https://perma.cc/BRL2-YFWD>].

⁷³ Lawful status and lawful presence are two separate legal concepts that are often conflated. *See generally* Beth Werlin, *Digesting the Argument in U.S. v. Texas: What Is Lawful Presence and Why Does It Not Mean What It Sounds Like?*, Am. Immigr. Council: Immigr. Impact, <http://immigrationimpact.com/2016/04/19/united-states-v-texas-lawful-presence/> (last visited Dec. 6, 2018) [<https://perma.cc/D7EP-P4H3>].

⁷⁴ Complaint, *supra* note 72, at 18.

⁷⁵ *Estrada v. Becker*, No. 1:16-CV-3310-TWT, 2017 U.S. Dist. LEXIS 73284, at *15-*19 (N.D. Ga. May 15, 2017).

⁷⁶ Jeremy Redmon, *Ga. High Court Won’t Hear Case For In-State Tuition For DACA Students*, ATLANTA J.-CONST.: POLITICALLY GEORGIA (May 7, 2018, 10:57 AM), <https://politics.myajc.com/news/state--regional-govt--politics/high-court-won-hear-case-for-state-tuition-for-daca-students/haRA9hLOm6N0J1BV19A.jpJ/> [<https://perma.cc/7ZNE-KHCD>].

such, the Court of Appeals decision stands.⁷⁷ The failure of U.S. courts to remedy Georgia's human rights violations, and the futility of seeking support from the federal government in light of the current political environment, has led advocates to seek international intervention. U.S. claims of constraints on its ability to force state action in light of its federal system of government⁷⁸ do not absolve it of its obligations under international law.

II. THE STATE OF GEORGIA'S DENIAL OF ACCESS TO HIGHER EDUCATION ON THE BASIS OF IMMIGRATION STATUS VIOLATES THE FUNDAMENTAL RIGHT TO EDUCATION AND THE RIGHT TO EQUALITY AND NON-DISCRIMINATION.

International agreements and organizations universally emphasize the necessity of making higher education equally accessible on the basis of merit.⁷⁹ The state of Georgia's policies that restrict access to higher education based on immigration status directly contravene this goal while violating both the fundamental human right to education and the right to be free from discrimination.

A. PROHIBITING UNDOCUMENTED STUDENTS FROM ATTENDING PUBLIC UNIVERSITIES IN GEORGIA CONSTITUTES PARADIGMATIC DISCRIMINATION VIOLATIVE OF THE ICCPR AND CERD.

In banning resident students without lawful status from attending its most prestigious public universities, the state of Georgia eliminates equal access to higher education based on merit and promotes discrimination on the basis of national origin and immigration status, as well as race. Underlying the right to equal access to education is the right to be free of discrimination, both in impact and intent, and the affirmative right to equality. These rights are protected and guaranteed by the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the International Covenant on Civil and Political Rights (ICCPR), both of which the United States has ratified, in 1994⁸⁰ and 1992,⁸¹ respectively. The European Court of Human Rights, in *Ponomaryovi v. Bulgaria*, in applying the principle of equality and non-discrimination to government action restricting access to higher education to non-nationals, held that the right to

⁷⁷ Jeremy Redmon, *Georgia Appeals Court Denies In-State Tuition for DACA Recipients*, ATLANTA J.-CONST.: POLITICALLY GEORGIA (Oct. 25, 2017, 2:52 PM), [https://politics.myajc.com/news/state--regional-govt--politics/georgia-appeals-court-denies-state-tuition-for-daca-recipients/g4gcw7EqdUJxyO7PvQcNtl/\[https://perma.cc/79WJ-2NAR\]](https://politics.myajc.com/news/state--regional-govt--politics/georgia-appeals-court-denies-state-tuition-for-daca-recipients/g4gcw7EqdUJxyO7PvQcNtl/[https://perma.cc/79WJ-2NAR]).

⁷⁸ See *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Initial Report of the United States of America*, U.N. GAOR Hum. Rts. Comm., 53d Sess., 1405th mtg. at 4, U.N. Doc. CCPR/C/SR.1405 (1995) (stating that insofar as guaranteeing the protections of the ICCPR at the state level, the U.S. "federal government could not dictate the basic form or internal workings of state government, . . . [at best,] it could establish and enforce uniform standards for the respect of civil and political rights, which could include direct invalidation of any offending laws at the state level.").

⁷⁹ Universal Declaration of Human Rights, art. 26, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); UNESCO, *Convention Against Discrimination in Education, Art. 1(1)* (Dec. 14, 1960), available at www.unesco.org/education/pdf/DISCR1_E.PDF (last visited Dec. 9, 2018) [<https://perma.cc/QY52-YCMS>]; Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, U.N. GAOR, 34th Sess. Supp. No. 46, at 193, U.N. Doc. A/34/46, at 193 (Sep. 3, 1981) [hereinafter CEDAW].

⁸⁰ *International Convention on the Elimination of All Forms of Racial Discrimination*, UNITED NATIONS TREATY COLLECTION: STATUS OF TREATIES.

⁸¹ *International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION: STATUS OF TREATIES.

equal access to higher education precludes nations from establishing discriminatory policies based on national origin or immigration status.⁸²

The protection against discrimination based on immigration status stems from the right to equality under the law and prohibitions on discrimination on the basis of national origin. According to Article 26 of the ICCPR, “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law... The law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as... national... origin.”⁸³ This right is reinforced in Article 2, wherein each party to the Covenant “undertakes to respect and to ensure to *all individuals within its territory* and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, ... national or social origin, ... birth or other status.”⁸⁴ As a party to the CERD, the United States is obligated to “undertake to prohibit and to eliminate racial discrimination in all its forms and guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin... [t]o education and training.”⁸⁵ While Article 1, Section 2 states that CERD “shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party... between citizens and non-citizens,”⁸⁶ the Committee on the Elimination of Racial Discrimination determined that the clause should be read in the context of international human rights norms, which do not condone invidious discrimination against undocumented immigrants.⁸⁷ The Committee acknowledged that some rights may be reserved to citizens, such as the right to vote in elections and to run for government office, but distinguished human rights—which, within the scope of UDHR provisions, would include the right to education—as rights “to be enjoyed by all persons.”⁸⁸ The Committee further noted that CERD should not be read to nullify any of the rights in the UDHR which expressly states that education should be made equally accessible based on merit alone.⁸⁹

Georgia Board of Regents Policies 4.1.6 and 4.3.4 restrict Georgia’s undocumented immigrant youth from accessing the same educational opportunities afforded to their classmates and peers. Georgia is one of three states in the United States that blocks public universities from offering in-state tuition rates to undocumented students.⁹⁰ Out-of-state tuition is charged to students who are not residents of Georgia and can cost triple the amount of the in-state tuition

⁸² *Ponomaryovi v. Bulgaria*, No. 5335/05, para. 9, 32, 63 (Eur. Ct. H.R. 2011). The court in *Ponomaryovi v. Bulgaria*, which ruled that Bulgaria had violated human rights law by charging university fees to only Russian nationals without proper Bulgarian residency, also alluded to the increasing acceptance of a general right to higher education for all. *See id.* at 57 (“[W]ith more and more countries now moving towards what has been described as a ‘knowledge-based’ society, secondary education plays an ever-increasing role in successful personal development and in the social and professional integration of the individuals concerned.”).

⁸³ ICCPR, *supra* note 4, at art. 26.

⁸⁴ *Id.* at art. 2(1) (emphasis added).

⁸⁵ CERD, *supra* note 5, at art. 5(e)(v).

⁸⁶ *Id.* at art. 1(2).

⁸⁷ Off. of the U.N. High Commissioner for Human Rights, *General Recommendation No. 30: Discrimination Against Non Citizens*, COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (Oct. 1, 2004) [hereinafter CERD Comment 30].

⁸⁸ *Id.*

⁸⁹ *Id.* *See also* UDHR, *supra* note 47, at art. 26.

⁹⁰ Suzanne Hultin, *Undocumented Student Tuition: Overview*, NAT’L CONF. ST. LEGISLATURES (Oct. 29, 2015), <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx#> [<https://perma.cc/WX6L-TE23>].

rate.⁹¹ Furthermore, the Board of Regents of the University System of Georgia enacted a separate policy which bans students without lawful status from attending competitive public universities in the state (currently, there are three of them: University of Georgia, the Georgia Institute of Technology, and Georgia College and State University).⁹² As such, undocumented students with exemplary academic records in Georgia's K-12 school system are nevertheless indiscriminately barred from enrolling in the state's top institutions of higher education, including the University of Georgia, Georgia Institute of Technology, and Georgia College.⁹³

The Board of Regents' ban plainly discriminates among Georgia youth based on immigration status in direct contravention of CERD. Comment 30 on CERD states that "differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim."⁹⁴ There is, at best, a tenuous connection between the state of Georgia's ban and their expressed goal of mitigating congestion in Georgia's top public universities, which is supposedly caused by undocumented students, to make space for students with authorized status.⁹⁵ Tens of thousands of students stand to be negatively impacted by these policies once they reach college age, and in the eight years since they were enacted, the courses of countless young lives have been severely altered. Not only is the Georgia Board of Regents denying undocumented students a fundamental right, but the policies also have grave educational, psychological, and economic repercussions that are noted in Part I.C of the present communication.

B. BY FAILING TO ENSURE GEORGIA'S POLICIES DO NOT IMPERMISSIBLY RESTRICT UNDOCUMENTED STUDENTS' ACCESS TO HIGHER EDUCATION, THE UNITED STATES CONTRAVENES ACCEPTED PRINCIPLES OF INTERNATIONAL LAW, AND ITS OBLIGATIONS AS A SIGNATORY TO THE ICESCR, CRC, AND CEDAW.

The right to education and the right to non-discrimination and equality in accessing said right is a recognized principle of international law, and is reiterated in the ICESCR, the CRC, and CEDAW, three treaties to which the United States is a signatory, though not a party, and have been recognized by some scholars as integral to an International Bill of Rights that rises to

⁹¹ Ashlyn Webb, *Why Is This Longtime Georgia Resident Paying Triple UGA's In-State Tuition?*, FLAGPOLE (Sept. 19, 2018), <https://flagpole.com/news/news-features/2018/09/19/why-is-this-longtime-georgia-resident-paying-triple-uga-s-in-state-tuition> [<https://perma.cc/UWH7-5XMU>].

⁹² Georgia Board of Regents Policy Manual, § 4.1.6 (2010), available at <https://www.usg.edu/policymanual/section4/C327/> [<https://perma.cc/MXB9-KUKK>].

⁹³ Redmon, *supra* note 43.

⁹⁴ CERD Comment 30, *supra* note 87.

⁹⁵ See Maltese, *supra* note 45, at 60-61 (stating that there were only 500 undocumented students in the entire University of Georgia system at the time Board of Regents Policies 4.1.6 and 4.3.4 were enacted). Any further attempts at justifying Georgia's policies along this line of reasoning are undermined by the fact that a 2015 policy enacted by the Georgia Board of Regents allows students in out-of-state counties bordering Georgia to pay in-state tuition at the state's public universities. Georgia Board of Regents Policy Manual, § 7.3.4.1 (2015), available at <https://www.usg.edu/policymanual/section7/C453/> [<https://perma.cc/7NLP-YW7G>]. This implies that the Georgia government's interest in excluding undocumented residents from in-state tuition is pretextual, and instead exists as a purposeful means for disadvantaging certain groups of students.

the level of customary international law.⁹⁶ Though ultimately the United States is not legally bound to the above treaties due to the failure of ratification, as a signatory to the treaties it must not act in ways that “defeat the[ir] object and purpose.”⁹⁷ The state of Georgia’s denial of access to higher education for students otherwise qualified solely because of their immigration status contravenes the spirit of these treaties by denying students access to higher education based on immigration status. The United States is obligated to ensure that such actions are not permitted.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes both the right to education and principles of non-discrimination. Article 13(2) states that “[higher] education shall be made equally accessibly to all on the basis of capacity [...]”⁹⁸ The Georgia Board of Regents’ bar on students without lawful status from gaining admission to its competitive public institutions of higher education, despite otherwise deserving admission as meritorious candidates, patently violates this right. Article 11 puts forth “the right of everyone to an adequate standard of living for himself and his family... including the continuous improvement of living conditions.”⁹⁹ Article 12 goes on to “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹⁰⁰ The Georgia Board of Regents’ and Georgia legislature’s admissions ban and out-of-state tuition requirements amount to the effective exclusion of residents without lawful status in the United States from higher education, which has the further discriminatory impact of obstructing their acquisition of gainful employment and securement of general well-being.

According to the Committee on Economic, Social and Cultural Rights (CESCR), the principle of accessibility requires that educational institutions be “accessible to all, especially the most vulnerable groups, without discrimination [...]”¹⁰¹ The CESCR has also specified that “the principle of non-discrimination extends to all persons of school age... irrespective of their legal status.”¹⁰² Non-discrimination is also emphasized in Article 2, Section 2, whereby states “undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color... national or social origin... birth or other status.”¹⁰³ The discriminatory policies promulgated by the state of Georgia defeat the object and purpose of this treaty by running afoul of the non-discrimination principle and obstructing undocumented students’ access to higher education. There is no legitimate basis for this differential treatment when such students are otherwise fully-fledged Georgia residents who have dedicated themselves to their studies and earned their right to a higher education, just as their legal resident or citizen counterparts similarly situated have. Their denials of admission and in-

⁹⁶ See, e.g., Melissa Robbins, *Powerful States, Customary Law and the Erosion of Human Rights Through Regional Enforcement*, 35 CAL. W. INT’L L.J. 275, 280-82 (2005).

⁹⁷ Vienna Convention on the Law of Treaties, art. 18(a), (Jan. 27, 1980), 1155 U.N.T.S. 331, 33; *The Boston Principles on the Economic, Social and Cultural Rights of Noncitizens*, PROGRAM ON HUMAN RIGHTS AND THE GLOBAL ECONOMY, (May 1, 2011), <http://www.northeastern.edu/law/pdfs/academics/phrge-principles-short.pdf> [<https://perma.cc/J2GW-AKCX>].

⁹⁸ *Id.*

⁹⁹ International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), 21st Sess., Supp. No. 16, U.N. Doc. A/6316, at 49 (Jan. 3, 1976) [hereinafter ICESCR].

¹⁰⁰ *Id.*

¹⁰¹ *Implementation of the International Covenant on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education*, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).

¹⁰² *Id.*

¹⁰³ ICESCR, *supra* note 99, at art. 2(2).

state tuition are solely based on their national origin and immigration status (or lack thereof), thus blatantly violating international principles that the United States has ratified.

The Board of Regents' ban also violates the spirit and intention of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). Signed by the United States in 1980, the Convention "provides the basis for realizing equality between women and men."¹⁰⁴ Though the state of Georgia's ban does not facially target women, it stands to have a disproportionately negative effect on the ability of undocumented women to live and work in Georgia. In 2008, 94% of undocumented male immigrants held jobs as compared to 58% of working-age undocumented women.¹⁰⁵ Due, in part, to lower employment rates and the financial burden of raising children, Latina women experience poverty at higher rates than their male counterparts.¹⁰⁶ The primary objective of the CEDAW is to enshrine certain rights that will give women the tools to succeed on the same playing field as men.¹⁰⁷ The CEDAW underscores the importance of equal opportunity in employment and education—the main avenues by which women typically become financially independent.¹⁰⁸ By cutting off access to higher education, the state of Georgia is further limiting the occupational opportunities for undocumented women and widening the disparity between men and women in the American workforce.¹⁰⁹ Higher education is crucial in creating more opportunities for undocumented women to earn a living in the United States.¹¹⁰ The state of Georgia's policies foreclose opportunities that are necessary for undocumented immigrant women to support themselves (and, often, their families) and gain financial independence.

Lastly, the Georgia policies contravene the spirit of the Convention on the Rights of the Child (CRC). Article 2, Section 1 in particular mandates that "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color... national, ethnic, or social origin... birth or other status."¹¹¹ In addition, Article 28(1)(c) of the CRC states that parties to the convention "recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity they shall, in particular, make higher education accessible to all on the basis of capacity[...]."¹¹² The ban defies the object and purpose of the treaty by violating the Article 2 non-discrimination mandate and denying undocumented youth equal access to higher education on the basis of capacity. Instead of considering factors related to students' academic performance

¹⁰⁴ CEDAW, *supra* note 78.

¹⁰⁵ Jeffrey S. Passel & D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, THE PEW HISPANIC CTR. (Apr. 14, 2009), <http://www.pewresearch.org/wp-content/uploads/sites/5/reports/107.pdf> [<https://perma.cc/PZ5L-CWJ6>].

¹⁰⁶ *Id.*

¹⁰⁷ CEDAW, *supra* note 79, art. I.

¹⁰⁸ *CEDAW Supports Education for Women and Girls*, NAT'L WOMEN'S L. CTR. (Oct. 26, 2010), <http://www.nwlc.org/resource/cedaw-supports-education-women-and-girls> [<https://perma.cc/3DDU-WZHA>].

¹⁰⁹ *Id.*

¹¹⁰ *Fact Sheet: A College Degree: Surest Pathway to Expanded Opportunity, Success for American Students*, U.S. DEPARTMENT OF EDUCATION (Sept. 16, 2016), available at <https://www.ed.gov/news/press-releases/fact-sheet-college-degree-surest-pathway-expanded-opportunity-success-american-students> [<https://perma.cc/ED9K-WPFW>].

¹¹¹ Convention on the Rights of the Child, G.A. Res. 25, U.N. GAOR, 44th Sess., Supp. No. 49, at 166, U.N. Doc. A/44/49 (1989) art. 2(1) [hereinafter CRC].

¹¹² *Id.*