

December 5, 2011

Board of Trustees  
Pomona College  
550 N College Avenue  
Claremont, CA 91711

Dear Pomona College Board of Trustees:

Last Thursday, I sent a letter to the Pomona College Board of Trustees that focused on the College's work status verification of many employees. The letter was published in *The Student Life*, and I have since received many responses—almost uniformly supportive. But there have also been some important critiques of the letter. I want to first express my admiration for those who have taken the time to engage in a thoughtful dialogue on the issue, especially Ashvin Gandhi ('13) who made a number of valuable points that deserve attention. Those who approach such difficult questions in a constructive, honest, and sincere way serve Pomona well. But I do want to respond to the explicit criticisms leveled against my position, as well as to the implicit ones that underlie the Administration's decision to go forward with its misguided approach.

I do not dispute that the law requires the College to act once it learns of problems in employees' I-9 forms. But that does not end the matter for a number of reasons. First, the emphasis here should be on the fact that there was no legal reason for the College to audit each employee's I-9 form to begin with. According to the Board, the initiating complaint was lodged against the College's hiring policies and procedures and was not directed at any individual employee's status. One need only look to Scripps's president's recent decision to halt a similar inquiry to understand that President Oxtoby had a choice as to which approach to take. Moreover, once the College undertook its audit and learned that it could not locate 84 employees' I-9 forms, the law did not impose a specific time frame to allow employees to resolve the work verification issue. The College arbitrarily established a December 1 deadline.

Perhaps more importantly, the College seems to trumpet that 67 of the original 84 employees who received notices were able to correct the issue. In reality, however, that fact should have given the College serious pause, because it suggests that the problem was one of poor document retention, not a failure by the employees' to have originally provided correct documentation. After all, the College undertook a review of its hiring practices and confirmed that those procedures complied with the law. Thus, the presumption should have been that every employee of the College had already provided the necessary paperwork. Even if the fact that eighty percent of the original "targets" verified their work status was not enough for the College to halt the process entirely, it was certainly cause to suspend the December 1 deadline until the College could determine if the I-9 problem was a result of its own failures.

The second criticism is that my letter suggests that the College did not need to comply with the law because it was not likely to be subjected to ICE enforcement. This would be a valid critique, but for one thing. My letter was responding to the Board's letter to the Pomona College Community. It is the Board that framed the discussion in terms of criminal and civil risks to the College. I, therefore, took the opportunity to explain why the Board's risk analysis was inaccurate and incomplete. At no point did the Board suggest that its decisions were driven by a concern for the rule of law, ethics, or legal morality. Obviously, many of us could lay claim to the moral high ground here, but I suspect the two sides would still end up on different mountaintops. The point, though, is that to fault my letter for focusing on the risks to the College—and, therefore, on the likelihood of enforcement—is actually a critique of the Board's motives in this matter.

Additionally, why fealty to only one law? The events of the past week actually help prove that the College's actions risked violating two or more other laws—further calling into question the College's legal assessment of the situation. For example, the attorney for at least one fired worker told the employee that the College was requesting work status verification beyond what was required under the law. As I mentioned in my initial letter to the Board, this opens up the College to civil fines and penalties.<sup>1</sup> Further, it has been reported that the College conducted a verification check of all employees approximately nine years ago (during the last major push for a union). Yet, many of the employees fired by Pomona on December 1 had worked at the College for more than nine years. Requiring these employees to again verify their work status—and, interestingly, having most or all of them be workers in the dining hall—could also be read as violating the law's mandate that an employer not demand “more or different documents than are required... or refus[e] to honor documents tendered that on their face reasonably appear to be genuine.”<sup>2</sup> After all, the College confirmed that it complied with the law at the hiring stage. Therefore, these employees must have tendered the required documents at that time, but the College was requiring “more” and was “refusing to honor” those documents.

We also now know that the 17 people that the College fired came almost entirely from the very workforce currently seeking to unionize. We know that the College conducted a similar verification the last time a major unionization effort was underway. And we also just learned that the National Labor Relations Board announced that it would be investigating two unfair labor practices complaints against the College. It is extremely likely that the College will face an additional complaint related to the firing of these workers and that the NLRB will fully investigate. To think that all the College must do to defeat such a complaint is simply to offer rationales for its actions that are unrelated to the unionization effort represents a terrible misreading of the law.

One last note on this point: the almost cruel irony here is that by firing the 17 workers, the College has not magically fallen into compliance with the relevant immigration laws. The law actually requires an employer to retain a former employee's

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<sup>1</sup> 8 U.S.C. 1324(b).

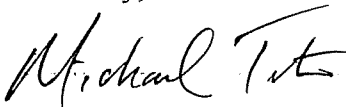
<sup>2</sup> *Id.*

I-9 for one year after the date of termination.<sup>3</sup> For the next 365 days, then, the College is still operating in noncompliance with the law. All the more reason for the College to have allowed the affected workers more than just a few weeks time to provide their relevant documentation.

Thus, if the College and the Board continue to insist that they acted because of the legal risks, the point from my original email remains true: the risk assessment was incomplete.

This leads to one final point: 17 members of Pomona College Community were fired on December 1—some after over two decades of service (perhaps the fact that they hadn't had to prove their legal status in 20 years explains why it might take more than a few weeks to track down the relevant documents). Many of us consider this outcome unnecessary, easily avoidable, and unjust. For the students, faculty, and staff on campus who sought to prevent this outcome, December 1 marked a sad and disappointing conclusion – but to just one part of the struggle. Those who stood, sat, and camped on behalf of those workers should keep in mind that there is still an opportunity to push for changes in how the Board and College address these types of questions. And I hope that those who agreed with the College's actions will at least question whether the Board has been as open, forthright, and genuine as it should be in such important matters. After all, as trustees of the College, the Board is obligated to act in the best interests of the Pomona College Community. How can we know if they are fulfilling that obligation without a better understanding of what led them to act in the manner that they did? We have been encouraged by the Board's supporters to view the matter from the Board's perspective. But it is difficult to do that absent a willingness on the Board's part to be transparent, honest, and generous in explaining its position. Moreover, the Board, too, has a responsibility to represent the interests of the Pomona College Community as a whole. To me, that means attempting to see the issue from other perspectives, as well, and engaging in a dialogue before taking controversial actions.

Sincerely,



Michael Teter '99

Visiting Assistant Professor of Politics, '09-'11

Associate Professor of Law, University of Utah, College of Law

Michael.Teter@aya.yale.edu

cc: President David Oxtoby  
Pomona College Faculty, Students, Staff  
Editors, *The Student Life*

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<sup>3</sup> 8 U.S.C. § 1274a.2(b)(2)(A).