

1 Victor Viramontes (pro hac vice)
2 Martha L. Gómez (pro hac vice)
3 **MEXICAN AMERICAN LEGAL**
4 **DEFENSE & EDUCATIONAL FUND**
5 634 S. Spring Street, 11th Floor
6 Los Angeles, CA 90014
7 Telephone: (213) 629-2512
8 Email: vviramontes@maldef.org
9 mgomez@maldef.org

7 Daniel R. Ortega, Jr., SBN 005015
8 **ORTEGA LAW FIRM, P.C.**
9 361 East Coronado Road
10 Phoenix, Arizona 85004-1525
11 Telephone: (602) 386-4455
12 Email: danny@ortegalaw.com

11 *Attorneys for Defendant-Intervenors/Counter-*
12 *Plaintiffs*

13 **IN THE SUPERIOR COURT OF ARIZONA**

14 **IN AND FOR THE COUNTY OF MARICOPA**

15 STATE OF ARIZONA ex re. Attorney
16 General Thomas C. Horne,
17 *Plaintiff,*

17 vs.

18 MARICOPA COUNTY COMMUNITY
19 COLLEGE DISTRICT BOARD;
20 *Defendant,*

20 ABEL BADILLO, BIBIANA VAZQUEZ,
21 and BIBIANA CANALES
22 *Defendant-Intervenors.*

José de Jesús Rivera, SBN. 004604
Nathan J. Fidel, SBN. 025136
HARALSON, MILLER, PITT, FELDMAN &
MCANALLY, P.L.C.
2800 N. Central Ave., Suite 840
Phoenix, AZ 85004
Telephone: (602) 266-5557
Email: jrivera@hmpmlaw.com
nfidel@hmpmlaw.com
Minute Entries: jlarsen@hmpmlaw.com

CASE NO. 2013-009093

**DEFENDANT-INTERVENORS’
STATEMENT OF CONTROVERTED
FACTS IN SUPPORT OF REPOSE
OPPOSING PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Hon. Arthur Anderson)

1 ABEL BADILLO, BIBIANA VAZQUEZ, a
 2 single individual, and BIBIANA
 3 CANALES,
 4 *Counter-Plaintiffs,*
 5 vs.
 6 STATE OF ARIZONA ex rel. Attorney
 7 General Thomas C. Horne,
 8 *Counter-Defendant.*

9 Student-Intervenors submit their Statement of Controverted Facts in support of their
 10 Opposition to Plaintiff’s Motion for Summary Judgment.

<p>11</p> <p>12 1. The Student Intervenors have been granted 13 deferred action status pursuant to the Deferred 14 Action for Childhood Arrivals policy. 15 (Complaint at ¶¶ 5-6.) 16</p>	<p>1. Undisputed</p>
<p>17 1 a. The Student Intervenors are not permanent 18 residents of the United States. (Arizona’s 19 Complaint, Exhibit C-2.) 20 21 22 23 24 25 26</p>	<p>1a. Disputed because as a matter of law, Intervenors have lawful presence and are residents of Arizona. <i>Arizona Dream Act Coal. (“ADAC”) v. Brewer</i>, 757 F.3d 1053, 1059 (9th Cir. 2014) (“DHS considers DACA recipients [to be lawfully] present in the United States because their deferred action is a period of stay authorized by the Attorney General.”) (citing 8 U.S.C. § 1182(a)(9)(B)(ii); 8 C.F.R.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

	214.14(d)(3); U.S. Immigration and Naturalization Servs., Adjudicator’s Field Manual Ch. 40.9.2(b)(3)(J)).
1 b. The Student Intervenors do not have lawful immigration status. (Id.)	<p>1b. Disputed because as a matter of law, Intervenors have status sufficient to qualify for in-state tuition under 8 U.S.C. § 1623. <i>See ADAC</i>, 757 F.3d at 1059 (DACA recipients are considered lawfully present during period of authorized stay); <i>see also</i> Brief for the United States as Amicus Curiae, p. 16, <i>Arizona Dream Act Coal. (“ADAC”) v. Brewer</i>, 757 F.3d 1053 (9th Cir. 2014), attached as Ex. C to Fidel Decl. (“Congress, through the REAL ID Act, has expressed its judgment that ‘approved deferred action status’ is ‘lawful status[.]’”).</p> <p>Disputed Arizona law uses “lawful immigration status” interchangeably with “lawful presence.” <i>See</i> interchangeable use in A.R.S. §§ 15-1825; 15-1781; 15-232; and 46-801. A.R.S. § 15-1803 provides that a noncitizen’s eligibility for in-state tuition is “[i]n accordance with [IIRAIRA],” <i>see</i> A.R.S. § 15-1803(B), and IIRAIRA’s § 1623 uses the</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

	<p>“lawful presence” standard to determine whether an otherwise qualified noncitizen qualifies for the residency based tuition rate. <i>See</i> 8 U.S.C. § 1623. Further, Arizona concedes “that the phrases ‘an alien who is not lawfully present in the United States’ and ‘a person without lawful immigration status’ have the same meaning.” <i>See</i> Arizona’s Reply In Support of its MJP and Response to MCCCCD’s MSJ at 8:8-13) (citing <i>Martinez</i>, 50 Cal. 4th at 1288).</p>
<p>2. The Student Intervenors allege that the State violated their Equal Protection rights. (Complaint at ¶ 18-21.)</p>	<p>Undisputed</p>
<p>3. The Student Intervenors do not provide any reasons or explanation for how the State’s enforcement action violates their Equal Protection rights in their Complaint. (See Complaint.)</p>	<p>Disputed. Intervenors provide multiple bases for the State’s equal protection violations. <i>See</i> Mot for Summary Judgment at 14-15. Among them, DACA recipients are similarly situated to other deferred action recipients and other EAD recipients. <i>See ADAC</i>, 757 F.3d at 1065 n.4 (finding no federal basis to deny that DACA recipients demonstrate the “federally authorize presence” that similar noncitizens with EADs have); <i>see also, ADAC v. Brewer</i>,</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

	<p>945 F. Supp. 2d 1049, 1061 (“Defendants have identified nothing about the (c)(33) category code to suggest that DACA recipients are somehow less authorized to be present in the United States than are other deferred action recipients.”) (overruled on other grounds by <i>ADAC</i>, 757 F.3d 1053).</p> <p>Defendants also deviate from federal immigration classifications. In their complaint, Arizona requests that the Court “prohibit MCCCCD from allowing DACA-eligible aliens to pay in-state tuition or reduced or subsidized tuition rates,” thus treating DACA recipients and something less than “lawfully present,” which is all that § 1623 requires. <i>See</i> Complaint at ¶ 23.</p> <p>Further, Defendants acts are based on animus against DACA recipients. <i>See ADAC</i>, 757 F.3d at 1059 (citing to evidence of animus).</p>
4. The Student Intervenors disclosed their opinion regarding the appropriate standard of review for an alleged equal protection violation (Disclosure Statement at 8-9), but they do not	Disputed. Intervenors presented the same extensive reasons for liability presented in the Summary Judgment Motion, <i>see</i> Disclosure Statement at 8-9, e.g. “The State has no

<p>1 provide any reasons, explanations, or facts 2 explaining how the State’s enforcement action 3 violates their equal protection rights. 4 5 6 7 8 9 10 11 12 13 14</p>	<p>rational reasons for attempting to deny DACA recipients the in-state tuition that other deferred action recipients receive.” at 9; “Arizona’s statutes [were] more restrictive than the federal law and policy to which they purport to adhere.” at 8; “Arizona’s policy was motivated by an illegitimate intent to defy federal immigration policy and to discriminate against a disfavored group.” at 8 “Arizona’s policy fails the narrow tailoring test as under-inclusive because it targets DACA students, but not other individuals with authorized presence.”</p>
<p>15 4a. The Student Intervenors do not identify the 16 existence of a similarly situated class of 17 students. (See Complaint, Disclosure 18 Statement.) 19 20 21 22 23 24 25 26</p>	<p>Disputed. Intervenors defined two similarly situated classes for comparison in their Disclosure Statement: other deferred action recipients and others with authorized presence. “The State has no rational reasons for attempting to deny DACA recipients the in-state tuition that other deferred action recipients receive.” <i>See</i> Student-Intervenors’ Disclosure Statement at 9. “Arizona’s policy fails the narrow tailoring test as under-inclusive because it targets DACA</p>

	students, but not other individuals with authorized presence.” <i>Id.</i> at 8.
<p>4b. The Student Intervenors do not provide the names of witnesses or disclose any witness’s anticipated testimony that could support their equal protection claim. (See Disclosure Statement.)</p>	<p>Disputed. Intervenors identified Governor Brewer, Russell Pierce, Custodians of Records as relevant witnesses. Disclosure at 11. Intervenors also disclosed “MCCCD employees” and “State of Arizona employees” as other individuals likely to have discoverable information. <i>Id.</i></p>
<p>5. The Student Intervenors allege that they have a Due Process claim against the State. (Complaint ¶¶ 22-25.)</p>	<p>Undisputed. Intervenors have agreed to withdraw this affirmative claim.</p>
<p>6. The Student Intervenors do not mention the due process claim in their disclosure statement. (See Disclosure Statement.)</p>	<p>Undisputed. Intervenors have agreed to withdraw this affirmative claim.</p>
<p>7. The Student Intervenors allege that they “have a property right to in-state tuition rates provided under A.R.S. § 1-502 and the Maricopa County Community College District is allowing them to pay in-state tuition rates.” (Complaint at ¶ 23.)</p>	<p>Undisputed. Intervenors have agreed to withdraw this affirmative claim.</p>

1		
2		
3	7a. The Student Intervenors have not offered	Disputed. Intervenors offered facts in their intervention papers. But this is no longer relevant because Intervenors have agreed to withdraw this affirmative claim.
4	any facts to explain what their property right	
5	is. (See Complaint, Disclosure Statement.)	
6		
7	7b. The Student Intervenors do not explain	Disputed. Intervenors offered facts in their intervention papers. But this is no longer relevant because Intervenors have agreed to withdraw this affirmative claim.
8	why they have not had any notice or	
9	opportunity for a hearing to protect their	
10	alleged property right. (Id.)	
11		
12	7c. The Student Intervenors have not disclosed	Disputed. Intervenors identified multiple witnesses including themselves. But this is no longer relevant because Intervenors have agreed to withdraw this affirmative claim.
13	any witnesses who may have some knowledge	
14	of any facts to substantiate their due process	
15	claim. (See Disclosure Statement.)	
16		
17		

18

19 DATED this 25th day of September, 2014.

20 MEXICAN AMERICAN LEGAL DEFENSE
21 AND EDUCATIONAL FUND

22 Victor Viramontes
23 Martha L. Gómez

24 &

25 ORTEGA LAW FIRM
26 Daniel R. Ortega, Jr.

&

HARALSON, MILLER, PITT,
FELDMAN & MCANALLY, PLC
José de Jesús Rivera
Nathan J. Fidel

By: /s/ Martha L. Gomez

THE FOREGOING has been e-filed and a COPY
e-delivered this 17th day of October, 2014

The Honorable Arthur Anderson
Maricopa County Superior Court
East Court Building
101 W. Jefferson
Phoenix, AZ 85003

COPY served via Turbo Court
this 17th day of October, 2014 to:

Kevin D. Ray
Leslie Kyman Cooper
Jinju Park
Assistant Attorneys General
1275 W. Washington St.
Phoenix, AZ 85007
EducationHealth@azag.gov
Leslie.cooper@azag.gov
Jinju.park@azag.gov

Mary O'Grady
Lynne Adams
Grace E. Rebling
OSBORN MALEDON, P.A.
2929 N. Central Ave., 21st Floor
Phoenix, AZ 85012
mogrady@omlaw.com
ladams@omlaw.com
grebling@omlaw.com

*Attorneys for the State of Arizona ex rel.
Attorney General Thomas C. Horne*

Attorneys for M.C.C.C.D.

/s/ Jennie Larsen

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26