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15 SUPERIOR COURT OF ARIZONA

16 MARICOPA COUNTY

17 STATE OF ARIZONA
18 ex rel. Attorney General
19 Thomas C. Horne,

20 Plaintiffs,

21 v.

22 MARICOPA COUNTY COMMUNITY
23 COLLEGE DISTRICT BOARD,

24 Defendants

Case No. CV2013-009093

ARIZONA'S MOTION FOR
JUDGMENT ON THE
PLEADINGS

Assigned to the Honorable Arthur
Anderson

25 Plaintiff the State of Arizona *ex rel.* Attorney General Thomas C. Horne
26 (Arizona) moves for judgment on the pleadings against defendant Maricopa County
27 Community College District (MCCCD), pursuant to Ariz. R. Civ. P. 12(c). MCCCD
28 has admitted that it grants in-state tuition to DACA-eligible aliens, in violation of
Arizona law. Because MCCCD admits that it has violated the law, this Court should
enter judgment in favor of Arizona.

Facts

This action concerns MCCCD's decision to ignore clear Arizona law that prohibits it from classifying those "without lawful immigration status as in-state student[s]." A.R.S. § 15-1803(B). Despite this clear prohibition, MCCCD has admitted

1 that it has granted in-state tuition to some students who are not here lawfully, but who
2 have been granted deferred prosecution under the United States Department of
3 Homeland Security’s Deferred Action for Childhood Arrivals policy (the DACA
4 Policy). *See* MCCCDC’s Answer, ¶¶ 13, 14 (MCCCDC “admits that it has granted in-state
5 tuition to certain DACA-eligible students”). This action is in direct contravention of
6 clear Arizona law.

7 While the facts are simple and not subject to dispute, the law is a little more
8 complicated. Resolution of this issue requires reference to relevant federal law, which
9 prohibits states from granting benefits such as in-state tuition to those not lawfully here;
10 state law, which prohibits those not lawfully here from being classified as residents for
11 the purposes of in-state tuition at public postsecondary institutions; and the DACA
12 Policy, which defers prosecution of certain young people not here legally and allows
13 such aliens to remain in the United States without changing their immigration status.
14 However, proper consideration of this information conclusively establishes that
15 MCCCDC cannot classify DACA-eligible aliens, who are—by definition—not here
16 lawfully, as residents for purposes of in-state tuition.

17 **Argument**

18 **I. Federal Law Prohibits Many Aliens from Receiving Benefits Such as In-state** 19 **Tuition.**

20 The relevant federal law is the Personal Responsibility and Work Opportunity
21 Reconciliation Act (“PRWORA”), Pub. L. No. 104-193, which limits a state’s ability to
22 grant many benefits to many aliens. It provides that aliens who do not meet the
23 qualifications listed in 8 U.S.C. § 1621(a)(1)-(3)¹ are “not eligible for any state or local
24 public benefit.” 8 U.S.C. § 1621(a). It specifically covers benefits such as in-state
25 tuition, as it defines “state or local public benefits” to include “any . . . postsecondary

26 ¹ These provisions include: qualified aliens (as defined in 8 U.S.C. § 1641, which
27 describes the categories of qualified aliens); non-immigrants under the Immigration and
28 Nationality Act, 8 U.S.C. § 1101 et seq.; and aliens paroled into the United States under
8 U.S.C. § 1182(d)(5) for less than one year. 8 U.S.C. § 1621(a).

1 education . . . benefit for which payments or assistance are provided to an individual,
2 household, or family eligibility unit by an agency of a state or local government or by
3 appropriated funds of a state or local government.” 8 U.S.C. § 1621(c)(1)(B).

4 PRWORA allows a state to grant state or local public benefits, such as postsecondary in-
5 state tuition rates, to aliens who are not otherwise qualified for such benefits pursuant to
6 8 U.S.C. § 1621(a) only if the state passes a law after August 22, 1996, that
7 affirmatively does so. 8 U.S.C. § 1621(d). Arizona has not passed any such law; in
8 fact, its voters took the opposite tack.

9 **II. State Law Prohibits Aliens from Receiving In-state Tuition.**

10 The relevant state law is A.R.S. § 15-1803(B), which states that “a person who
11 was not a citizen or legal resident of the United States or who is without lawful
12 immigration status is not entitled to classification as an in-state student pursuant to
13 section 15-1802 or entitled to classification as a county resident pursuant to section 15-
14 1802.01.” Subsection 1803(B) was part of Proposition 300, which was referred to the
15 voters in 2006. Proposition 300 also included what became § 15-1825(A). That
16 provision states that “[a] person who is not a citizen of the United States, who is without
17 lawful immigration status and who is enrolled as a student at any university under the
18 jurisdiction of the Arizona Board of Regents or at any community college under the
19 jurisdiction of a community college district in this state is not entitled to tuition waivers,
20 fee waivers, grants, scholarship assistance, financial aid, tuition assistance or any other
21 type of financial assistance that is subsidized or paid in whole or in part with state
22 monies.” A.R.S. § 15-1825(A).

23 Clearly, state law explicitly prohibits a student who does not have lawful
24 immigration status from qualifying as an in-state student for tuition purposes.

25 **III. DACA-Eligibility Does Not Change an Alien’s Immigration Status.**

26 In June of 2012, the United States Department of Homeland Security (USDHS)
27 announced that it would exercise its prosecutorial discretion to allow certain young
28 aliens brought to this country as children who meet specified criteria to remain in the

1 United States for up to two years and to obtain a work permit. *See* Exhibit B to
2 Arizona’s Complaint. This policy has become known as the DACA Policy; those who
3 qualify for this exercise of prosecutorial discretion are known as “DACA-eligible.”
4 Those eligible for DACA-status may also apply for an “employment authorization
5 document.” *Id.*

6 USDHS’s determination that it will defer prosecution of certain aliens under
7 specified circumstances pursuant to its DACA Proclamation does not change any alien’s
8 immigration status. USDHS recognizes this limitation in the Proclamation itself, which
9 states that it “confers no substantive right, immigration status or pathway to citizenship.”
10 (The DACA Policy is attached to Plaintiff’s Complaint as Ex. B.) Instructions for
11 applying for DACA status further confirm this fact. They specifically state that
12 “Deferred action is a discretionary determination to defer removal action of an
13 individual as an act of prosecutorial discretion. ***Deferred action does not provide lawful***
14 ***status.***” *See* United States Citizenship and Immigrations Services Form I-821D,
15 attached as Exhibit C-2 to Arizona’s Complaint (emphasis in original).²

16 **IV. MCCCCD’s Decision to Grant In-state Tuition to DACA-eligible Aliens**
17 **Violates the Law.**

18 As noted above, MCCCCD has admitted that it has granted in-state tuition to
19 DACA-eligible aliens on the basis of employment authorization documents issued to
20 such aliens. *See* MCCCCD’s Answer, ¶¶ 13, 14; *see also* MCCCCD’s Motion for
21 Judgment on the Pleadings, at 2. MCCCCD’s actions violate clear Arizona law. As
22 noted above, DACA-eligible aliens are not here lawfully. Eligibility for DACA does

23 ² As the United States Supreme Court explained, deferred action represents the
24 executive’s discretionary determination to decline to institute a proceeding, to terminate
25 a proceeding or not to execute a deportation order, for humanitarian reasons or the
26 executive’s own convenience. *Reno v. American-Arab Anti-Discrimination Comm.*, 525
27 U.S. 471, 484 (1999)(“Approval of deferred action status means that, for the
28 humanitarian reasons described below, no action will thereafter be taken to proceed
against an apparently deportable alien, even on grounds normally regarded as
aggravated.”), quoting 6 C. Gordon, S. Mailman, & S. Yale-Loehr, *Immigration Law
and Procedure* § 72.03 [2][h] (1998).

1 not change an alien's status; it merely represents USDHS's decision not to remove that
2 alien. Similarly, receipt of an employment authorization document incident to DACA
3 status does not change an alien's immigration status. Regardless of whether a DACA-
4 eligible alien possesses an employment authorization document, Arizona law prohibits a
5 community college, such as MCCCDC, from classifying such aliens as in-state residents
6 for purposes of paying tuition. A.R.S. § 15-1803.

7 **Conclusion**

8 Arizona respectfully requests that this Court grant Arizona's motion for judgment
9 on the pleadings and enter judgment in favor of Arizona.

10 DATED this 26th day of February, 2014.

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