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13 *Defendants/Counter-Plaintiffs*

14 **IN THE SUPERIOR COURT OF ARIZONA**

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

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

18 *Plaintiff,*

19 vs.

20 MARICOPA COUNTY COMMUNITY
21 COLLEGE DISTRICT BOARD;

22 *Defendant,*

23 ABEL BADILLO and BIBIANA
24 VAZQUEZ,

25 *Intervenor-Defendants.*

José de Jesús Rivera, SBN. 004604

Nathan J. Fidel, SBN. 025136

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CASE NO. 2013-009093

STATEMENT OF FACTS IN SUPPORT
OF DEFENDANT-INTERVENORS'
MOTION FOR SUMMARY JUDGMENT

(Oral Argument Requested)

(Assigned to the Hon. Arthur Anderson)



1 ABEL BADILLO, a single individual;
2 BIBIANA VAZQUEZ, a single
3 individual; and, BIBIANA CANALES, a
4 single individual,

Counter-Plaintiffs,

5 vs.

6 STATE OF ARIZONA ex rel. Attorney
7 General Thomas C. Horne,

Counter-Defendant.

Federal and State Immigration Laws

9
10 1. A.R.S. § 15-1803(B) was enacted in accordance with the federal Illegal
11 Immigration Reform and Immigrant Responsibility Act of 1996, which requires only “lawful
12 presence” in the United States to qualify for in-state tuition. *See* A.R.S. § 15-1803(B); 8
13 U.S.C. § 1623.

14 2. The terms “legal resident,” and “lawful immigration status” as used in A.R.S. §
15 15-1803(B) are not defined by state or federal law. *See* A.R.S. Title 15.

16 3. The terms “lawful immigration status,” “legal resident,” “lawfully present” and
17 “otherwise lawfully present” are used interchangeably and without meaningful difference in
18 applicable state law. *E.g.*, A.R.S. § 15-1825(A) and (B); Ariz. Att’y Gen. Op. I11-007
19 (entitled “Community Colleges: Student Not Lawfully Present in the U.S.”) (attached to
20 Fidel Decl. as Exhibit B).

Deferred Action for Childhood Arrivals Program

22 4. DACA recipients are lawfully present in the United States during the period of
23 deferred action, and DHS has consistently stated so:

24 Q1. What is deferred action?

25 A1. Deferred action is a discretionary determination to defer removal
26 action of an individual as an act of prosecutorial discretion. For purposes
of future inadmissibility based upon unlawful presence, **an individual**

1 whose case has been deferred is not considered to be unlawfully
2 present during the period in which deferred action is in effect. An
3 individual who has received deferred action is authorized by the
4 Department of Homeland Security (DHS) to be present in the United
5 States, and is therefore considered by DHS to be lawfully present
6 during the period deferred action is in effect. However, deferred
7 action does not confer lawful status upon an individual, nor does it
8 excuse any previous or subsequent periods of unlawful presence.

9 USCIS, Frequently Asked Questions (last updated Jan. 18, 2013) at Qs. 1, 5, 6 (attached to
10 Fidel Decl. as Exhibit D); *see also* Memorandum from Janet Napolitano, Secretary of
11 Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who*
12 *Came to the United States as Children* (June 15, 2012) (attached to Fidel Decl. as Exhibit C).

13 5. DACA recipients are entitled to receive Employment Authorization
14 Documents. DHS's Frequently Asked Questions explains:

15 **Q3: If my removal is deferred pursuant to the consideration of
16 deferred action for childhood arrivals process, am I eligible for
17 employment authorization?**

18 A3: Yes. Pursuant to existing regulations, if your case is deferred, you
19 may obtain employment authorization from USCIS provided you can
20 demonstrate an economic necessity for employment.

21 USCIS, Frequently Asked Questions (last updated Jan. 18, 2013) at Q 3.

22 **DACA Students' Eligibility for Resident Tuition**

23 6. Employment Authorization Documents (EADs) are sufficient documentation
24 under state law to establish lawful presence and entitlement to public benefits. A.R.S. § 1-
25 502(A)(7).

26 7. Because DACA students have EADs, a DACA participant who presents an
 EAD to establish lawful presence is eligible for resident tuition. "Residency and Citizenship

1 Information - Statement by MCCCCD Regarding DACA.” (attached to Fidel Decl. as Exhibit
2 A).

3
4 8.

5 DATED this 16th day of May, 2014.

6 MEXICAN AMERICAN LEGAL DEFENSE
7 AND EDUCATIONAL FUND

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10 &

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12 Daniel R. Ortega, Jr.

13 &

14 HARALSON, MILLER, PITT,

15 FELDMAN & MCANALLY, PLC

16 By: /s/ Nathan J. Fidel

17 José de Jesús Rivera

18 Nathan J. Fidel

19 THE FOREGOING has been e-filed and a COPY
20 e-delivered this 16th day of May, 2014, to

21 The Honorable Arthur Anderson
22 Maricopa County Superior Court
23 East Court Building
24 101 W. Jefferson
25 Phoenix, AZ 85003

26 COPY served via Turbo Court
this 16th day of April, 2014, to:

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