

1 Victor Viramontes(pro hac vice)  
2 Martha L. Gómez(pro hac vice)  
3 **MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL  
FUND**

4 634 S. Spring Street, 11<sup>th</sup> Floor  
5 Los Angeles, CA 90014  
6 Telephone: (213) 629-2512  
7 Facsimile: (213) 629-0266  
8 Email: vviramontes@maldef.org  
mgomez@maldef.org

9 José de Jesús Rivera, SBN. 004604  
10 Nathan J. Fidel, SBN. 025136  
11 **HARALSON, MILLER, PITT,  
FELDMAN & MCANALLY, P.L.C.**  
12 2800 N. Central Ave., Suite 840  
13 Phoenix, AZ 85004  
14 Telephone: (602) 266-5557  
15 Facsimile: (602) 266-2223  
Email: jrivera@hmpmlaw.com  
nfidel@hmpmlaw.com  
Minute Entries: jlarsen@hmpmlaw.com

Daniel R. Ortega, Jr., SBN 005015  
**ORTEGA LAW FIRM, P.C.**  
361 East Coronado Road  
Phoenix, Arizona 85004-1525  
Telephone: (602) 386-4455  
Facsimile: (602) 340-1896  
Email: danny@ortegalaw.com

16 *Attorneys for Defendant*  
17 *Intervenors/Counter-Plaintiffs*

18 **IN THE SUPERIOR COURT OF ARIZONA**

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

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

21 *Plaintiff,*

22 vs.

23 MARICOPA COUNTY COMMUNITY  
COLLEGE DISTRICT BOARD;

24 *Defendant,*

25 ABEL BADILLO and BIBIANA  
VAZQUEZ,

26 *Intervenor-Defendants.*

CASE NO. 2013-009093

**[AMENDED] COUNTER-CLAIM FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(Assigned to the Hon. Arthur Anderson)

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

*Counter-Plaintiffs,*

4  
5 vs.

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

7 *Counter-Defendant.*

---

8  
9 Counter-Plaintiffs ABEL BADILLO, BIBIANA VAZQUEZ, and BIBIANA  
10 CANALES (“Counter-Plaintiffs”) allege as follows:

11 1. This lawsuit challenges the State of Arizona’s (“Counter-Defendant” or  
12 “Arizona”) illegal efforts to reverse its own policy of allowing federal employment  
13 authorization documents (“EADs”) to establish eligibility for in-state tuition rates. Arizona is  
14 taking illegal actions to reverse its policy of allowing federal deferred action-recipients to  
15 qualify for in-state tuition rates. Arizona’s policy reversal, enforced through court action  
16 against the Maricopa County Community College District Board (“MCCCD”), is illegal under  
17 both state and federal law. Counter-Plaintiffs, deferred action-recipients, are students who  
18 presented EADs to qualify for in-state tuition rates at MCCCD schools.

19 2. This action seeks declaratory and injunctive relief for ABEL BADILLO, BIBIANA  
20 VAZQUEZ, and BIBIANA CANALES because Counter-Defendant’s acts violate state and  
21 federal law.

22 **PARTIES, JURISDICTION AND VENUE**

23 3. This Court has jurisdiction over this case under 42 U.S.C. § 1983, 42 U.S.C. §  
24 1988, the Arizona Constitution, Article 6, § 14, A.R.S. § 12-123, and A.R.S. §12-1831.

25 4. Maricopa County is the proper venue for this action under A.R.S. § 12-401 (15)  
26 and (17).



1 law.

2 12. Counter-Plaintiff VAZQUEZ is an individual who is attending a Maricopa County  
3 community college. She is a deferred action and EAD-recipient under the DACA program.  
4 Counter-Plaintiff VAZQUEZ has a property right in her in-state tuition rates granted under  
5 state law.

6 13. Counter-Plaintiff CANALES is an individual who is attending a Maricopa County  
7 community college. She is a deferred action and EAD-recipient under the DACA program.  
8 Counter-Plaintiff CANALES has a property right in her in-state tuition rates granted under state  
9 law.

10 14. Counter-Defendant's action denies Counter-Plaintiffs in-state tuition rates based on  
11 their alienage and indicators of their alienage, including but not limited to their status as  
12 deferred action, EAD and DACA recipients.

13 15. Arizona's policy denies in-state tuition rates to deferred action-recipients.

14 16. Arizona's policy denies in-state tuition rates to EAD-recipients.

15 17. Arizona's policy denies in-state tuition rates to DACA-recipients.

16 18. Counter-Defendant has not provided adequate procedure for intentionally  
17 depriving Counter-Plaintiffs of their right to in-state tuition rates.

18 19. Arizona's in-state tuition laws, including but not limited to A.R.S. § 1-502, require  
19 Arizona to grant in-state tuition rates to individuals presenting an EAD.

20 **FIRST CLAIM FOR RELIEF**

21 **(Equal Protection Clause, Fourteenth Amendment**  
22 **of the U.S. Constitution; 42 U.S.C. §1983)**

23 20. Counter-Plaintiffs incorporate all preceding paragraphs as though fully set forth  
24 here.

25 21. The Fourteenth Amendment of the U.S. Constitution provides that "[n]o State shall  
26 . . . deny to any person within its jurisdiction the equal protection of the laws."



1 rates violates Counter-Plaintiff's Due Process Clause of the Fourteenth Amendment.

2 **FOURTH CLAIM FOR RELIEF**

3 **(Injunctive relief under A.R.S. § 12-1801)**

4 32. Counter-Plaintiffs incorporate all preceding paragraphs as though fully set forth  
5 here.

6 33. Counter-Defendant's policy of depriving Counter-Plaintiffs from in-state tuition  
7 rates violates A.R.S. § 1-502.

8 34. Counter-Defendant's policy of depriving Counter-Plaintiffs from in-state tuition  
9 rates violates Counter-Plaintiff's Equal Protection Clause of the Fourteenth Amendment.

10 35. Counter-Defendant's policy of depriving Counter-Plaintiffs from in-state tuition  
11 rates violates Counter-Plaintiff's Due Process Clause of the Fourteenth Amendment.

12 **RELIEF REQUEST**

13 Counter-Plaintiffs request the following relief:

- 14 A. A declaration that Counter-Defendant cannot deny deferred action, EAD and  
15 DACA-recipients in-state tuition rates under applicable laws and that Arizona's  
16 policy is unlawful and invalid;
- 17 B. Permanently enjoin the State of Arizona from enforcing its illegal policy of  
18 restricting deferred action, EAD and DACA-recipients from receiving in-state  
19 tuition rates;
- 20 C. An order awarding Counter-Plaintiffs costs of suit, and reasonable attorneys'  
21 fees and expenses pursuant to A.R.S. § 35-213(C), 42 U.S.C. § 1988, and any  
22 other applicable law;
- 23 D. Such other and further relief as the Court deems equitable, just, and proper.

24  
25 //

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

DATED this 15<sup>th</sup> day of April, 2014.

MEXICAN AMERICAN LEGAL DEFENSE  
AND EDUCATIONAL FUND

Victor Viramontes  
Martha L. Gómez

&

ORTEGA LAW FIRM

Daniel R. Ortega, Jr.

&

HARALSON, MILLER, PITT,  
FELDMAN & MCANALLY, PLC

By: /s/ Nathan J. Fidel  
José de Jesús Rivera  
Nathan J. Fidel

*Attorneys for the Defendant Intervenors/  
Counter-Plaintiffs*

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

THE FOREGOING has been e-filed and a COPY e-delivered this 15<sup>th</sup> day of April, 2014, to

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

COPY served via Turbo Court this 15<sup>th</sup> day of April, 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., 21<sup>st</sup> 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