

SUPREME COURT OF ARIZONA

STATE OF ARIZONA ex rel.
Attorney General Mark Brnovich,

Plaintiff/Counter-Defendant/Appellant,

v.

MARICOPA COUNTY COMMUNITY
COLLEGE DISTRICT BOARD,

Defendant/Appellee,

ABEL BADILLO and BIBIANA VAZQUEZ,

Intervenor-Defendants/
Counter-Plaintiffs/Appellees.

Arizona Supreme Court
No. CV-17-0215-PR

Court of Appeals
Division One
No. 1 CA-CV 15-0498

Maricopa County
Superior Court
No. CV2013-009093

PETITION FOR REVIEW

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INTRODUCTION

The Court of Appeals incorrectly held that federal law prohibits the Maricopa County Community College District (“MCCCD”) from offering resident tuition to deferred action recipients under the Deferred Action for Childhood Arrivals (“DACA”) program who otherwise meet residency requirements. As analyzed in MCCCD’s Petition for Review, which Student-Intervenors join, the Court of Appeals came to this conclusion after fundamentally misreading two federal statutes, 8 U.S.C. §§ 1621 and 1623. The Court of Appeals’ erroneous decision is not only a fundamental misreading of federal law, but one that has wide-ranging and damaging implications with respect to the access to the higher education of Student-Intervenors and other DACA recipients. If the Court of Appeals’ decision stands, Student-Intervenors and thousands of others like them will see their tuition rates increase, potentially lengthening the time it takes a DACA recipient to complete his or her education due to high costs, and making higher education prohibitively unaffordable for large swaths of Arizona’s tax base. The Supreme Court should grant MCCCD and Student Intervenor’s Petitions for Review because: (1) the Court of Appeals incorrectly applied federal and state law and (2) this misreading of federal

and state law will affect the educational and life prospects of the Student-Intervenors and other DACA recipients in Arizona, to the detriment of the State.

ISSUES PRESENTED FOR REVIEW

- I. Whether DACA recipients who are lawfully present in this country while they are participating in the DACA program are eligible for resident tuition.
- II. Whether the Governor may expand the Attorney General's power by directing the Attorney General to file a lawsuit without any statutory authority to do so.

BACKGROUND

MCCCD makes resident tuition available to a DACA recipient who presents an employment authorization document and meets Arizona residency requirements. (APP127.)¹ On June 25, 2013, the Arizona Attorney General ("AAG") sued MCCCD in the Superior Court of Maricopa County. (APP084-090.) Claiming that MCCCD's actions violate A.R.S. §§ 15-1803(B) and 15-1825(A), the AAG sought declaratory relief and an injunction precluding MCCCD from continuing to give resident tuition to DACA recipients. (APP089.)

¹ "APP___" refers to the page number in Appellee MCCCD's Appendix filed in the Court of Appeals. The Appendix includes the index of record citations that correlate to the materials included in the Appendix.

The Student-Intervenors successfully intervened and asserted constitutional defenses in addition to MCCC'D's statutory defenses. (IR-40.)² After briefing and oral argument on summary judgment motions filed by all parties, the Superior Court concluded that, under the relevant federal and state law, DACA recipients are "lawfully present" and therefore eligible for resident tuition. (APP080.) The AAG timely appealed, and the Court of Appeals ruled in favor of Arizona on June 19, 2017. Court of Appeals Opinion ("Op.") at ¶46. MCCC'D and Student-Intervenors now seek review of the Court of Appeals' decision.

REASONS TO GRANT THIS PETITION

Student-Intervenors urge this court to accept review because, for the reasons stated in MCCC'D's Petition for Review, the Court of Appeals has misinterpreted the controlling law. We devote the remainder of this Petition to spelling out in further detail the avoidable consequences to DACA recipients if the erroneous interpretation by the Court of Appeals should stand as law.

² "IR-" followed by the record number corresponds to the electronic index of record, reflected in APP062-072.

I. Out-of-State Tuition Makes Higher Education Prohibitively Expensive for Student-Intervenors and Other DACA Recipients.

Should the Court of Appeals' decision stand, DACA recipients who attend Arizona community colleges and universities will be required to pay out-of-state tuition rates even though they otherwise meet Arizona residency requirements. The inflated cost will prevent many students from going to college, significantly increase the time it takes for students to graduate, and effectively limit what degrees they may pursue. It will accordingly create significant hurdles, some insurmountable, to pursuing intended careers.

First, paying elevated tuition rates excludes many students from attending college. As summarized by MCCCCD in its Petition for Review, Reasons to Grant This Petition, the Arizona Constitution provides that the public school system be "open to all the children of the state," Ariz. Const. art. 20, ¶ 7, and stresses that higher education be "as nearly free as possible," Ariz. Const. art. 11, ¶ 6. For decades, courts within and outside the State have also recognized that a college education is "as important as primary and secondary education." *Aaron v. Clark*, 342 F. Supp. 898, 901 (N.D. Ga. 1972); see also *Roosevelt Elem. Sch. Dist. No. 66 v. Bishop*, 179 Ariz.

233, 239 (1994) (State’s founders “believed that an educated citizenry was extraordinarily important to the new state.”).

For DACA recipients attending MCCCDC, resident tuition per credit hour is currently \$86, while out-of-state tuition per credit hour would be \$327.³ For a full-time minimum 12 unit load,⁴ an in-state MCCCDC student pays \$1,032, while an out-of-state student must pay \$3,924. The decision in this case will affect Arizona university students as well as community college students. At the University of Arizona, for example, yearly resident tuition is \$12,200, while yearly non-resident tuition is \$35,700.⁵

A near-tripling of university tuition rates and quadrupling of community college tuition rates is not abstract to the approximately 240 DACA students in Arizona public universities and 2,000 students in

³ Maricopa Community College District Tuition and Fees Schedule Adopted FY2017-18, at 1, *available at* <https://business.maricopa.edu/sites/default/files/Adopted%20FY17-18%20T%26F.pdf>.

⁴ 2.3.1 Academic Load, Maricopa Community Colleges Administrative Regulations, *available at* <https://chancellor.maricopa.edu/public-stewardship/governance/administrative-regulations/2-students/2.3-scholastic-standards/2.3.1-academic-load>.

⁵ 2017-2018 Estimate Cost of Attendance, The University of Arizona, <http://financialaid.arizona.edu/undergraduate/2017-2018-estimated-cost-attendance>.

Maricopa County Community Colleges.⁶ Such a dramatic increase in the cost of college means that many will not be able attend college at all.

Second, for DACA recipients who can attend some college, their educational and professional goals could be derailed. For example, because of the high cost of a four-year college, DACA recipients may be limited to achieving technical degrees instead of bachelor's degrees. Inaccessibility of a four-year education is of great consequence to any individual preparing for today's economy. Courts throughout the country have recognized that "the needs of the labor force have changed dramatically and the importance of post-secondary education has increased significantly." *Ruiz v. Robinson*, 892 F. Supp. 2d 1321, 1329 (S.D. Fla. 2012). The ability to obtain a bachelor's degree has a marked impact on unemployment rates and median weekly earnings. *Id.* Stunting access to these degrees thus will have a lasting impact on employment opportunities and earning potential of DACA recipients.

⁶ Anne Ryman and Daniel Gonzalez, *Arizona Appeals Court Overturns Tuition for "Dreamers"*, AZ Central, June 20, 2017, <http://www.azcentral.com/story/news/politics/arizona-education/2017/06/20/arizona-court-overturns-state-tuition-dreamers/412845001/>.

Educational goals could further be derailed by elongated timelines necessary to complete a degree. “Unquestionably, a college degree has become a prerequisite for a variety of jobs and professions and people . . . often depend on that degree for economic survival.” *Aaron*, 342 F. Supp. at 901. “Setbacks early in their careers are likely to haunt Plaintiffs for the rest of their lives. Thus, a delay, even if only a few months . . . represents . . . productive time irretrievably lost to these young Plaintiffs.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (citations and internal quotation marks removed).

II. Arizona Benefits from Student-Intervenors and DACA Recipients’ Access to Education.

At the core of this case is affordability of, and therefore access to, higher education and the resulting impact on the State. Courts have identified higher education as a critical interest central to both individual advancement and civil society. *See, e.g., Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 157 (5th Cir. 1961); *Barnes v. Zaccari*, 669 F.3d 1295, 1305 (11th Cir. 2012) (higher education is protected by the due process clause). Higher education provides individuals an essential basis “to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.” *Dixon*, 294 F.2d at 157.

“[T]he importance of post-secondary education,” therefore, “cannot be overlooked.” *Ruiz*, 892 F. Supp. 2d at 1328-29. Indeed, the Supreme Court of the United States has emphasized that maintaining public universities open to qualified individuals supports the diverse participation in civic life that is “essential if the dream of one Nation, indivisible, is to be realized.” *Grutter v. Bollinger*, 539 U.S. 306, 331-32 (2003). Education, according to the the Supreme Court, “provides the basic tools by which individuals might lead economically productive lives to the benefit of us all.” *Plyler v. Doe*, 457 U.S. 202, 221 (1981).

Here, resident tuition provides Student-Intervenors and other DACA recipients with access to higher education, which in turn allows them to contribute to the economy and provide for their families—as the federal government intended the DACA program to do. Remarks by the President on Immigration, June 15, 2012, *available at* <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration> (noting that permitting economic participation by DACA eligible youth is the “right thing to do for our economy”). DACA recipients are lawfully present individuals who are eligible to work and “obligated to pay their full share of taxes.” *Nyquist v.*

Maucelet, 97 S. Ct. 2120, 2126-27 (1977). The State of Arizona would be well served by an interpretation of the pertinent statutes that facilitates DACA recipients' pursuit of higher education and the advancement of their careers.

REQUEST FOR ATTORNEYS' FEES

Pursuant to ARCAP 21 and A.R.S. § 12-348, Student-Intervenors requests its fees and costs incurred on appeal.

CONCLUSION

For the foregoing reasons, in addition to those outlined in MCCCCD's Petition for Review, the Supreme Court should grant review of the Court of Appeals' Decision.

RESPECTFULLY SUBMITTED this 21st day of August, 2017.

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