

***Arizona ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd.***

**Citation:** Arizona ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd., 416 P.3d 803 (Ariz. 2018).

**Date Filed:** May 1, 2018

**Opinion's Author:** Chief Justice Bales

**Joined By:** Vice Chief Justice Brutinel, Justices Pelander, Timmer, Bolick, and Gould, and Judge Espinosa. (Justice John R. Lopez IV recused himself.)

*Practitioners: For quick reference, please see the "Issue" and "Holding" sections.*

**Facts:** In 2012, the United States Department of Homeland Security ("DHS") initiated its Deferred Action for Childhood Arrivals ("DACA") program which deferred the deportation of certain unauthorized aliens who entered the country as children. DACA recipients must apply to the DHS for employment authorization documents ("EADs"). In 2012, the Maricopa County Community College District ("MCCCD") began accepting those EADs as evidence of residency for the purpose of establishing in-state residency and charging those students in-state tuition. In 2013, the Arizona Attorney General ("AAG") brought suit seeking a determination that MCCCD's policy violates Arizona law and an injunction prohibiting MCCCD from allowing DACA recipients to obtain the in-state tuition rates.

**Procedural History:** The case is currently before the Arizona Supreme Court. The trial court held that, under the relevant federal and state law, DACA recipients are "lawfully present" and therefore eligible for in-state tuition benefits.<sup>1</sup> The court did not reach the constitutional claims.<sup>2</sup>

As an initial matter, the Arizona Court of Appeals found that the AAG had standing to bring the underlying declaratory and injunctive actions.<sup>3</sup> The court of appeals reversed the trial court and held that, when considered together, federal and state law prohibit MCCCD from granting in-state tuition benefits to DACA recipients.<sup>4</sup> The court said that the existing federal statutes known colloquially as the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA") and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") restrict Arizona's authority to extend in-state tuition benefits to DACA recipients because they are not "lawfully present" "qualified aliens," and Arizona's existing statutes codifying Prop 300 affirmatively deny in-state tuition benefits to DACA recipients.

The Arizona Supreme Court granted review solely on the issue of whether DACA recipients are eligible for in-state tuition benefits.

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<sup>1</sup> State ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd., 395 P.3d 714, 718 (Ariz. Ct. App. 2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 718-19.

<sup>4</sup> *Id.* at 729.

**Issue:** In order to be eligible for in-state tuition benefits within a state, an alien must be lawfully present within the United States. Are DACA recipients lawfully present such that they are eligible to receive in-state tuition benefits?

**Holding:** No, DACA recipients are not lawfully present for the purpose of in-state tuition benefit eligibility.

**Disposition:** The trial court's finding that DACA recipients are eligible for in-state tuition benefits is reversed.

**Rule:** Only those aliens designated as benefits-eligible under 8 U.S.C. § 1621(a) [IIRIRA] are "lawfully present" for the purposes of eligibility determination for postsecondary education benefits, including in-state tuition benefits. Section 1621(a) limits eligible aliens to: (1) qualified aliens as defined in § 1641; (2) nonimmigrants under the Immigration and Nationality Act; and aliens paroled into the United States under section 1182(d)(5) for less than one year.

**Reasoning:**

The text of IIRIRA provides that an alien who is "not lawfully present" in the US will only be eligible for certain types of benefits, including in-state tuition benefits, if a citizen or national of the United States would be eligible for that benefit "without regard to whether the citizen or national is such a resident."<sup>5</sup> Although the phrase "lawfully present" is not defined in that section of the statute, its meaning can be gleaned from the statute's context: Section 1621 provides that only certain categories of aliens are eligible for state and local public benefits, and the court gives a term the same meaning if it appears in several places in the same statute.<sup>6</sup> Those categories are: (1) qualified aliens as defined in section 1641; (2) nonimmigrants under the Immigration and Nationality Act; and aliens paroled into the United States under section 1182(d)(5) for less than one year.<sup>7</sup> The court concluded that, because DACA recipients are not benefits-eligible under section 1621(a), they are not "lawfully present" for purposes of section 1623(a).<sup>8</sup> Finally, because Arizona has not made in-state tuition available to all U.S. citizens and nationals without regard to residence, the exception to IIRIRA does not apply.<sup>9</sup>

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<sup>5</sup> Arizona ex rel. Brnovich v. Maricopa Cty. Cmty. Coll. Dist. Bd., 416 P.3d 803, 805 (Ariz. 2018) (quoting 8 U.S.C. § 1623(a) (effective Sept. 30, 1996)).

<sup>6</sup> *Id.* at 805-06.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 806.

<sup>9</sup> *Id.* at 806-807.