Key Legal Decisions on Immigrant-Related Legislation with Implications for Kansas Policy

Arizona v. United States, 132 S. Ct. 2492 (2012)

The United States Supreme Court struck down three of the four Arizona SB 1070 provisions on preemption grounds, ruling that only the federal government can enact immigration policy. The Supreme Court said it was too early to tell if the fourth provision ("show me your papers") is unconstitutional as well. In upholding the most hotly disputed part of Arizona SB 1070, which requires police to determine the immigration status of someone arrested or detained when there is "reasonable suspicion" they are not in the United States legally, the Court said it depends on how the Arizona courts interpret the language in the law and how state law enforcement actually implements it. While *Arizona v. United States* was decided on preemption grounds, other legal challenges to SB 1070 and the five copycat laws continue on other constitutional grounds, including claims that the policy and practice violate the Equal Protection Clause.

Kansas In-State Tuition Law – K.S.A.§76-729

Fully Complies with Federal Law

Federal law does not prohibit states from providing in-state tuition to undocumented immigrants. Such a prohibition would have been simple to write, but Congress declined to do so.Rather, 8 U.S.C. § 1623, section 505 of the Illegal Immigrant Reform and Immigrant Reconciliation Act of 1996 (IIRIRA) prohibits states from providing any higher education benefit based on residence to undocumented immigrants unless they provide the same benefit to U.S. citizens in the same circumstances, regardless of their residence. Kansaslaw complies with this provision.

In-State Tuition Law Challenged in the Courts

California: In*Martinez, et al. v. Regents of the University of California et al.*, out-of-state students challenged California laws providing in-state tuition rates to certain California students, including undocumented immigrant students. Section 68130.5 of the California Education Code closely resembles K.S.A. §76-729. The Plaintiffs argued that two federal statutes, 8 U.S. C. §1621 and §1623, preempted states from allowing in-state tuition rates for undocumented students. The California Supreme Court rejected that argument in a unanimous decision, holding that the California law did not improperly make in-state tuition available to undocumented students based on "residence," as defined under federal law; and that the California state legislature had expressly indicated its intent to confer in-state tuition as a "benefit" to undocumented students as authorized by federal law.

Kansas: In *Day v. Sebelius*, several out-of-state citizen students attending Kansas universities, represented by the anti-immigrant organization the Federation for American Immigration Reform (FAIR), challenged the Kansas law allowing in-state tuition for Kansas high school graduates, including undocumented students, arguing that the Kansas law violated federal law. The 10th Circuit dismissed the case for lack of standing to challenge the constitutionality of the Kansaslaw and lack of a private right of action to enforce preemption under federal law. Essentially, these out-of-state citizen students did not prove that they were injured by the passage of Kansas' in-state tuition law, nor that they would benefit from its repeal, a foundation for demonstrating standing. The United States Supreme Court denied a petition for certiorari.

Deferred Action for Childhood Arrivals (DACA)

For as long as Congress has placed limits on who may enter or remain in the United States, authorities have possessed discretion to prioritize the removal of some immigrants over others. While critics have labeled the initiative an unconstitutional end-run around Congress, this critique ignores not only the historic use of prosecutorial discretion to manage resources, but the recent Supreme Court decision, *Arizona v. United States*,whichrecognizes the executive branch's authority to grant deferred action. Moreover, since the Reagan administration, federal regulations have authorized the issuance of work permits to immigrants who are granted deferred action. Thus, far from thwarting the will of Congress, the initiative is consistent with federal law.

What is deferred action?

When an immigrant is granted "deferred action," it means the Department of Homeland Security (DHS) has deemed the individual a low priority for immigration enforcement and has chosen to exercise its discretion and not deport the individual. Deferred action is not amnesty or immunity. It does not provide a path to a green card or citizenship. It does not extend to any family members of the person granted deferred action.

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Raymond Rico
Attorney
Garcia Immigration Law Firm
2 S. 14th St. Kansas City, KS
913-281-5000

Who is eligible?

Individuals may request deferred action if they:

- Came to the United States before their 16th birthday;
- Were between the ages of 15 and 30 and had no valid immigration status on June 15, 2012;
- Have continuously resided in the United States between June 15, 2007 and the present;
- Are currently in school, graduated from high school, obtained a GED, or were honorably discharged from the Armed Forces;
- Have not been convicted of a felony, a "significant" misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Raymond Rico
Attorney

Garcia Immigration Law Firm
2 S. 14th St. Kansas City, KS

913-281-5000