

VIRGINIA:

ARLINGTON COUNTY CIRCUIT COURT

LUBE VILLARROEL ORELLANA,)
)
 BLANCA CORREA,)
)
 MIRIAM GARCIA ALEMAN,)
)
 GIANCARLA ROJAS MENDOZA,)
)
 GERMAN IVAN SOTO NAVEZ,)
)
 RAMIRO VAZQUEZ MORALES,)
)
 and)
)
 STEFANY VIRUEZ GUZMAN,)
)
Plaintiffs,)
)
 v.)
)
 STATE COUNCIL OF HIGHER EDUCATION)
 FOR VIRGINIA)
)
Serve: Gilbert T. Bland, Chair)
 101 N. 14th St., 10th Fl.)
 James Monroe Bldg.)
 Richmond, VA 23219)
)
Also Serve: Peter A. Blake, Executive Director)
 (Same address.))
)
Defendant.)

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 PAUL FERGUSON, CLERK
 ARLINGTON CIRCUIT COURT

COMPLAINT FOR DECLARATORY RELIEF

1. Plaintiffs Lube Villaroel Orellana, Blanca Correa, Miriam Garcia Aleman, Giancarla Rojas Mendoza, German Ivan Soto Navez, Ramiro Vazquez Morales and Stefany Viruez Guzman, students at Virginia public colleges and universities, are beneficiaries of the federal government’s Deferred Action for Childhood Arrivals (“DACA”) program. Despite the

fact that all of the Plaintiffs have resided in Virginia for many years and have graduated from Virginia high schools, they have been classified as non-residents for purposes of paying in-state college tuition as a direct result of guidelines adopted by the defendant State Council of Higher Education for Virginia (“SCHEV”). SCHEV has determined, and has advised all of its member colleges and universities in Virginia, that DACA beneficiaries are categorically ineligible to qualify as Virginia domiciliaries for the purpose of paying in-state tuition. Plaintiffs, by counsel, pursuant to *Code of Va.* § 8.01-184, hereby petition this honorable court for a declaratory ruling that DACA beneficiaries are not categorically ineligible for in-state tuition status in Virginia. In support of this request, plaintiffs respectfully represent as follows:

Parties

1. Plaintiff Lube Villarroel Orellana is an 18-year-old resident of Fairfax County, Virginia. Her parents brought her from her native Bolivia to live in Virginia when she was five years old. She graduated from Annandale High School in Fairfax County in June 2013. On November 20, 2012, the U.S. Citizenship and Immigration Services (“USCIS”) approved Ms. Villarroel Orellana’s application for Deferred Action for Childhood Arrivals (“DACA”). Ms. Villarroel Orellana is now studying at Northern Virginia Community College, paying out-of-state tuition rates due to SCHEV’s erroneous determination that as a DACA beneficiary she is ineligible to seek classification as a Virginia domiciliary.

2. Plaintiff Blanca Correa is a 22-year-old resident of Harrisonburg, Virginia. Her parents brought her from her native Mexico to live in Virginia when she was ten years old. She graduated from Spotswood High School in Rockingham County in June 2009. On March 29, 2013, USCIS approved Ms. Correa’s DACA application. Ms. Correa is now studying at Blue

Ridge Community College, paying out-of-state tuition rates due to SCHEV's erroneous determination that as a DACA beneficiary she is ineligible to seek classification as a Virginia domiciliary.

3. Plaintiff Miriam Garcia Aleman is a 19-year-old resident of Afton, Virginia. Her parents brought her from her native Mexico to live in Virginia when she was four years old. She graduated from Monticello High School in Albemarle County in June 2013. On December 13, 2012, USCIS approved Ms. Garcia Aleman's DACA application. Ms. Garcia Aleman is now studying at Piedmont Virginia Community College, paying out-of-state tuition rates due to SCHEV's erroneous determination that as a DACA beneficiary she is ineligible to seek classification as a Virginia domiciliary.

4. Plaintiff Giancarla Rojas Mendoza is a 19-year-old resident of Fairfax County, Virginia. Her parents first brought her from her native Bolivia to live in Virginia when she was 12 years old. She graduated from Falls Church High School in Fairfax County in June 2012. On April 1, 2013, USCIS approved Ms. Rojas Mendoza's DACA application. Ms. Rojas Mendoza is now studying at Northern Virginia Community College, paying out-of-state tuition rates due to SCHEV's erroneous determination that as a DACA beneficiary she is ineligible to seek classification as a Virginia domiciliary.

5. Plaintiff German Ivan Soto Navez is a 21-year-old resident of Harrisonburg, Virginia. His parents first brought him from his native Guatemala to live in Virginia when he was eight years old. He graduated from Harrisonburg High School in June 2011. On June 11, 2013, USCIS approved Mr. Soto Navez's DACA application. Mr. Soto Navez is now studying at Blue Ridge Community College, paying out-of-state tuition rates due to SCHEV's erroneous

determination that as a DACA beneficiary he is ineligible to seek classification as a Virginia domiciliary.

6. Plaintiff Ramiro Vazquez Morales is a 20-year-old resident of Charlottesville, Virginia. His parents first brought him from his native Mexico to live in Virginia when he was eleven years old. He graduated from Monticello High School in Albemarle County in June 2013. On January 7, 2013, USCIS approved Mr. Vazquez Morales's DACA application. Mr. Vazquez Morales is now studying at Piedmont Virginia Community College, paying out-of-state tuition rates due to SCHEV's erroneous determination that as a DACA beneficiary he is ineligible to seek classification as a Virginia domiciliary.

7. Plaintiff Stefany Viruez Guzman is a 19-year-old resident of Arlington, Virginia. Her parents first brought her from her native Bolivia to live in Virginia when she was five years old. She graduated from Washington-Lee High School in Arlington County in June 2012. On February 15, 2013, USCIS approved Ms. Viruez Guzman's DACA application. Ms. Viruez Guzman is now studying at Northern Virginia Community College, paying out-of-state tuition rates due to SCHEV's erroneous determination that as a DACA beneficiary she is ineligible to seek classification as a Virginia domiciliary.

8. Defendant State Council of Higher Education for Virginia ("SCHEV") is an agency of the Commonwealth of Virginia with its principal place of business in Richmond, Virginia. SCHEV is the Commonwealth's coordinating body for higher education. Pursuant to *Code of Va. § 23-7.4:3(B)*, SCHEV "shall issue and from time to time revise guidelines, including domiciliary status questions to be incorporated by all state institutions of higher education in their admissions applications." As part of this responsibility, SCHEV issues guidelines to all of the public colleges and universities in Virginia, enumerating various classes

of aliens and detailing which such classes are eligible and which are not eligible to apply for consideration as Virginia domiciles for the purpose of paying in-state tuition rates. *See* “Addendum A: Descriptions and Domicile Eligibility Status for Various Categories of Aliens,” attached hereto as Exh. A. SCHEV publishes Exhibit A expecting the Virginia public colleges and universities that it regulates to follow its guidance, and the schools regulated by SCHEV are directed to comply with SCHEV’s guidance in this regard.

Jurisdiction and Venue

9. Jurisdiction lies in this court pursuant to *Code of Va.* § 8.01-184 (power of circuit court to issue declaratory judgments). Venue is proper before this court pursuant to *Code of Va.* § 8.01-261(1)(a)(1), as plaintiff Stefany Viruez Guzman lives in Arlington County.

Statement of the Case

President Obama’s creation of Deferred Action for Childhood Arrivals

10. On June 15, 2012, President Barack Obama announced the creation of a new legal program called Deferred Action for Childhood Arrivals (“DACA”). Administered by the U.S. Citizenship and Immigration Services (“USCIS”), an agency of the U.S. Department of Homeland Security (“DHS”), DACA grants an indefinitely renewable legal permission to remain in the United States to children, like the plaintiffs, who were brought to the United States by their parents at a young age and have proven their integration into society by attending or graduating high school. The USCIS began formally accepting DACA applications on August 15, 2012.

11. In order to qualify for DACA, an applicant must generally meet the following requirements:

- a. Under the age of 31 as of June 15, 2012;
- b. Moved to the United States before his 16th birthday, and has continuously resided in the United States since before June 15, 2007;
- c. Was physically present in the United States, with no lawful immigration status, on June 15, 2012;
- d. Is currently in school, or graduated from a U.S. high school; and
- e. Has not been convicted of any one of a long list of disqualifying crimes, and does not represent a danger to public safety.

12. Although DACA is a new program, DACA is but one form of deferred action, which has a long history in U.S. immigration law. (Indeed, John Lennon was famously granted deferred action in 1975, *see Lennon v. INS*, 527 F.2d 187, 190-91 (2d Cir. 1975)). The executive's power to grant deferred action stems not from any particular statutory authorization, but rather from the executive's inherent power to exercise discretion in its immigration enforcement activities. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999). Nonetheless, the category of deferred action is recognized and referred to in various places in the U.S. Code, including 8 U.S.C. §§ 1151, 1154, and 1227, and 49 U.S.C. § 30301.

13. Likewise, various sections of the Code of Federal Regulations recognize that deferred action beneficiaries are deemed lawfully present for most purposes under federal law. *See, e.g.*, 6 C.F.R. § 37.3 (defining "approved deferred action status" as "lawful status" for the purpose of federal REAL ID drivers' licenses); 8 C.F.R. § 1.3(a)(4)(vi) (defining any "[a]liens currently in deferred action status" as an "alien who is lawfully present in the United States" for the purposes of applying for Social Security benefits); 8 C.F.R. § 274a.12(c)(14) (listing "[a]n alien who has been granted deferred action" as one of the "[c]lasses of aliens authorized to accept employment"); 20 CFR § 416.1618(b)(11) (listing "[a]liens granted deferred action status" as "permanently residing in the United States under color of law" (emphasis added)); 45 C.F.R. § 152.2(4)(vi) (defining "[a]liens currently in deferred action status" as "lawfully present").

14. DACA beneficiaries (i.e. individuals who apply for and are granted DACA) are given legal permission by the U.S. government to remain in the United States for a two-year period, indefinitely renewable. The DACA program contains no end date or sunset clause, nor can a DACA beneficiary age-out of coverage under the program, nor is there any limit on the number of times that a beneficiary might renew her DACA. In other words, as long as a DACA beneficiary keeps renewing her DACA every two years, she has every expectation of being able to legally remain in the United States permanently, with no legal obligation ever to return to her country of origin.

15. DACA beneficiaries are also granted employment authorization by the U.S. government, which gives them the legal permission to work in the United States. They are also eligible to obtain a Social Security number and apply for Social Security benefits. In Virginia, they are eligible for an unrestricted drivers' license. *See Code of Va. § 46.2-328.1(B)(v)*. As of the end of August 2013, USCIS had granted DACA to 7,083 residents of Virginia, and another 1,946 applications remained pending. Based on the nature of the DACA program, specifically the maximum age requirements for initial eligibility, it is likely that many of those individuals, like plaintiffs, either currently study or intend to study at a Virginia public college or university.

DACA beneficiaries' eligibility for in-state tuition status in Virginia

16. By law, Virginia public colleges and universities grant in-state tuition status to Virginia domiciliaries. The relevant statute defines "domiciliary intent" as the "present intent to remain [in Virginia] indefinitely." *Code of Va. § 23-7.4(A)*.

17. Aliens' eligibility for in-state tuition status in Virginia is governed by *Code of Va.*

§ 23-7.4(C), which provides:

Any alien holding an immigration visa or classified as a political refugee shall also establish eligibility for in-state tuition in the same manner as any other student. However, absent congressional intent to the contrary, any person holding a student or other temporary visa shall not have the capacity to intend to remain in Virginia indefinitely and, therefore, shall be ineligible for Virginia domicile and for in-state tuition charges.

18. Under this test, where an alien holds a temporary visa, that alien shall not be eligible to form domiciliary intent unless the "congressional intent" so allows. So, for example, individuals holding certain types of temporary visas such as "B" (tourist) visas or "J" (exchange) visas are required, as a condition of their visa under federal law, to ultimately return to their home countries upon expiration of their visas. Under the test set forth by the Virginia Code, those individuals are recognized as ineligible to qualify as Virginia domiciliaries, as federal law prohibits them from presently intending to remain in Virginia indefinitely.

19. To the contrary, individuals holding other types of temporary visas, such as "H-1B" (specialty work) visas or "R" (religious worker) visas are permitted, as a condition of their visa under federal law, to intend to remain in the United States indefinitely and never return to their country of birth, as long as they continue to renew their temporary visas or apply for a more permanent status. Under the test set forth by the Virginia Code, those individuals are eligible to qualify as Virginia domiciliaries, as federal law permits them to presently intend to remain in Virginia indefinitely.

20. In the exercise of its authority to administer this statute, and pursuant to *Code of Va.* § 23-7.4:3(B), defendant State Council of Higher Education of Virginia ("SCHEV") has published guidelines, which have the force of regulation over subject entities, including but not limited to Northern Virginia Community College, Blue Ridge Community College and Piedmont

Virginia Community College. See “Guidelines for Determining Domicile and Eligibility for In-State Tuition Rates,” *available at* <http://www.schev.edu/students/vadomicileguidelines.asp>.

21. The SCHEV Domicile Guidelines contains Addendum A, entitled “Descriptions and Domicile Eligibility Status for Various Categories of Aliens,” *available at* <http://www.schev.edu/finaid/GuidelinesAddendumA.pdf>, which lists various categories of aliens and identifies whether each is or is not eligible to establish Virginia domicile. See Exh. A attached hereto.

22. Addendum A is silent as to whether DACA, or deferred action in general, is eligible. However, Addendum A clearly states, at p.11, “**NOTE: It is not possible to include every nuance of the immigration process in this Addendum. For the domicile eligibility status of any other Alien classification, visa, or documentation not covered by this Addendum, contact SCHEV or immigration counsel for guidance.**” (Emphasis in original.)

23. SCHEV requires the colleges and universities it regulates to follow its guidance as to whether a particular class of aliens is or is not categorically eligible for consideration for in-state tuition status, even if that guidance is not formally published as an amendment to Addendum A.

24. Although SCHEV has not amended its Addendum A to include DACA or deferred action, SCHEV has not been silent on the issue. Specifically, plaintiffs have learned that SCHEV has sent an e-mail to “Domicile officers” at all Virginia public colleges and universities, stating in relevant part as follows:

Deferred Action: Technically, nothing has changed in the legal status for these individuals. This is not a change in the law so much as it is “prosecutorial discretion;” i.e. the prosecutors have decided not to pursue and deportation has been officially postponed for these students. This will allow qualifying students to work and go to school without fear, but it does not change their lawful status or their domicile.

[. . .]

Until evidence from Congressional action or regulations/guidance demonstrate otherwise, students under Deferred Action remain out-of-state for the foreseeable future.

25. SCHEV sent this e-mail intending for the recipient institutions to follow its guidance as official guidance, and to deny in-state tuition to any student who is a DACA beneficiary. As far as plaintiffs are aware, all of the recipient institutions have followed this guidance, and none currently grant in-state tuition to DACA beneficiaries.

26. Plaintiffs are all DACA beneficiaries attending Virginia public colleges and universities, and paying an out-of-state tuition rate, as a direct and proximate result of SCHEV's e-mail.

27. Plaintiffs contend that SCHEV's legal position is incorrect, and that DACA beneficiaries should properly be considered eligible to form Virginia domicile and qualify for in-state tuition. Plaintiffs so contend because DACA is an indefinitely renewable program which, as a matter of federal law, permits DACA beneficiaries to remain in the United States forever, never returning to their home country. Therefore, DACA beneficiaries are capable of forming domiciliary intent, which satisfies the eligibility test set forth in *Code of Va. § 23-7.4*.

28. Years before the creation of the DACA program, a SCHEV-sponsored training given in 2007 to university and college administrators listed three key factors for determining whether a particular category of aliens may establish Virginia domicile:

- Examine immigrant/non-immigrant documents regarding the purpose and length of the applicant's visit
- Does the individual have to maintain a foreign domicile?
- Terms and conditions of stay?

All three of these factors point in favor of DACA beneficiaries being eligible to establish Virginia domicile. First, DACA beneficiaries are not required to have any limited “purpose” while in the United States such as working at a particular job or studying at a particular institution; nor is the length of their stay limited in time (again, DACA is an indefinitely renewable status). Second, DACA beneficiaries are not required or expected to maintain a foreign domicile, nor is it expected that they will ever return to their birth countries. Third, DACA beneficiaries are subject to no restrictions on the terms and conditions of their stay in the United States (for example, they are given unrestricted work authorization that enables them to work in any job they choose, and they may obtain an unrestricted Virginia drivers’ license).

29. Similarly, SCHEV has correctly determined that aliens enrolled with the Temporary Protected Status (“TPS”) program are eligible to establish Virginia domicile. TPS and DACA, while arising out of different legal regimes and granted to different classes of aliens for different reasons, are for the present purposes indistinguishable in that both are indefinitely renewable temporary legal programs that allow the beneficiary to remain in the United States forever, as long as they keep renewing, and never return to their home countries. Likewise, TPS and DACA are similar in that, while both could hypothetically be terminated in the future, they are presently structured as indefinitely renewable, such that an alien TPS or DACA beneficiary can form a reasonable present legal intent to remain indefinitely.

30. SCHEV’s legal opinion fails to take into account the fact that DACA enrollment is indefinitely renewable. In other words, a DACA beneficiary who timely files to renew his eligibility can expect to retain his membership in the DACA program, in two-year intervals, forever. In this regard, DACA is materially indistinguishable from TPS, in that both are of

limited duration (TPS generally lasts 18 months) but are indefinitely renewable such that a member of that class can reasonably expect to lawfully remain in the United States forever.

31. Likewise, SCHEV has correctly determined that aliens granted Withholding of Removal are eligible to establish Virginia domicile. Withholding of Removal, like DACA, is not a form of immigrant or nonimmigrant status or visa; like DACA, Withholding of Removal grants an individual permission to remain in the United States indefinitely, and permission to accept employment in the United States. Just like DACA, an alien's Withholding of Removal status could hypothetically be terminated in the future, but this does not prevent the alien from forming a reasonable present legal intent to remain indefinitely.

32. For purposes of the relevant analysis under the Virginia Code, DACA is more similar than dissimilar to TPS and Withholding of Removal. The fact that these latter programs benefit different classes of aliens, and are given out by the government for different reasons, is not relevant to the analysis under the Virginia Code of whether beneficiaries of these programs are able to form domiciliary intent as a matter of law.

33. Nor is it the case that, simply because the Virginia General Assembly has failed to enact legislation specifically categorizing DACA beneficiaries as eligible for in-state tuition, they are therefore ineligible. Absent enacted statutory language specific to the category of aliens in question, the issue is governed by the general statute and the test set forth therein. Proposed but never-enacted legislation cannot alter the meaning of the statutes that are currently on the books.

34. In sum, SCHEV's determination that DACA beneficiaries, as a class, are ineligible to establish Virginia domicile is contrary to Virginia law. A correct application of the

relevant Virginia statute would find that DACA beneficiaries may form lawful domiciliary intent, and thus should be eligible to apply for in-state tuition status.

Plaintiffs are DACA beneficiaries currently being charged out-of-state tuition rates as a direct and proximate result of SCHEV's erroneous interpretation of the Virginia statute.

35. *Plaintiff Lube Villarroel Orellana.* In June 2013, Ms. Villarroel Orellana graduated from Annandale High School in Fairfax County, whereupon she enrolled in Northern Virginia Community College.

36. When Ms. Villarroel Orellana sought to apply for consideration as a Virginia domiciliary, she was discouraged from doing so by college officials, who told her that as a DACA beneficiary she was ineligible to be considered a Virginia domiciliary. The college officials showed her a printout of the above-mentioned SCHEV e-mail stating in relevant part, "Until evidence from Congressional action or regulations/guidance demonstrate otherwise, students under Deferred Action remain out-of-state for the foreseeable future."

37. Ms. Villarroel Orellana nonetheless petitioned NVCC to consider her as a Virginia domiciliary, and her application for in-state tuition status remains pending. However, NVCC is certain to deny Ms. Orellana's application, as NVCC is complying with the SCHEV guidance and instructions described above.

38. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Ms. Villarroel Orellana has been charged an out-of-state tuition rate of \$322.40 per credit-hour – about 230 percent of the in-state rate of \$143.15 per credit-hour.

39. Ms. Villarroel Orellana is currently studying part-time, as she cannot afford to study full-time at out-of-state tuition rates. Were she able to pay in-state tuition, Ms. Villarroel Orellana would study full-time.

40. Ms. Villarroel Orellana is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va.* § 23-7.4 and the relevant SCHEV regulations.

41. *Plaintiff Blanca Correa.* In June 2009, Ms. Correa graduated from Spotswood High School in Rockingham County, whereupon she enrolled in Blue Ridge Community College.

42. After receiving DACA, Ms. Correa sought to apply for consideration as a Virginia domiciliary. When Ms. Correa went to the admissions office at the college, a college official told her that as a DACA beneficiary she was ineligible to be considered a Virginia domiciliary. On information and belief, college officials told this to Ms. Correa because they were following SCHEV's guidance and instructions.

43. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Ms. Correa has been charged an out-of-state tuition rate of \$347.40 per credit-hour – about 230 percent of the in-state rate of \$152.80 per credit-hour.

44. Ms. Correa is currently studying part-time, as she cannot afford to study full-time at out-of-state tuition rates. Were she able to pay in-state tuition, Ms. Correa would study full-time.

45. Ms. Correa is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va.* § 23-7.4 and the relevant SCHEV regulations.

46. *Plaintiff Miriam Garcia Aleman.* In June 2013, Ms. Garcia Aleman graduated from Monticello High School in Albemarle County, whereupon she enrolled in Piedmont Virginia Community College.

47. When Ms. Garcia Aleman sought to apply for consideration as a Virginia domiciliary, she was discouraged from doing so by an official at the college's admissions office,

who told her that as a DACA beneficiary she was ineligible to be considered a Virginia domiciliary. On information and belief, college officials told this to Ms. Garcia Aleman because they were following SCHEV's guidance and instructions.

48. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Ms. Garcia Aleman has been charged an out-of-state tuition rate of \$328.25 per credit-hour – about 245 percent of the in-state rate of \$133.65 per credit-hour.

49. Ms. Garcia Aleman is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va.* § 23-7.4 and the relevant SCHEV regulations.

50. *Plaintiff Giancarla Rojas Mendoza.* In June 2012, Ms. Rojas Mendoza graduated from Falls Church High School in Fairfax County, whereupon she enrolled in Northern Virginia Community College.

51. When Ms. Rojas Mendoza sought to apply for consideration as a Virginia domiciliary, she was discouraged from doing so by college officials, who told her that as a DACA beneficiary she was ineligible to be considered a Virginia domiciliary. The college officials gave her a printout of the above-mentioned SCHEV e-mail stating in relevant part, “Until evidence from Congressional action or regulations/guidance demonstrate otherwise, students under Deferred Action remain out-of-state for the foreseeable future.”

52. Ms. Rojas Mendoza nonetheless petitioned NVCC to consider her as a Virginia domiciliary, and her application for in-state tuition status remains pending. However, NVCC is certain to deny Ms. Rojas Mendoza's application, as NVCC is complying with the SCHEV guidance and instructions described above.

53. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Ms. Rojas Mendoza has been charged an out-of-state tuition rate of \$322.40 per credit-hour – about 230 percent of the in-state rate of \$143.15 per credit-hour.

54. Ms. Rojas Mendoza is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va.* § 23-7.4 and the relevant SCHEV regulations.

55. *Plaintiff German Ivan Soto Navez.* In June 2011, Mr. Soto Navez graduated from Harrisonburg High School, whereupon he enrolled in Blue Ridge Community College.

56. After receiving DACA, Mr. Soto Navez sought to apply for consideration as a Virginia domiciliary. When Mr. Soto Navez went to the admissions office at the college, a college official told him that as a DACA beneficiary he was ineligible to be considered a Virginia domiciliary. On information and belief, the college official told this to Mr. Soto Navez because she was following SCHEV's guidance and instructions.

57. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Mr. Soto Navez has been charged an out-of-state tuition rate of \$347.40 per credit-hour – about 230 percent of the in-state rate of \$152.80 per credit-hour.

58. Mr. Soto Navez has had to take time off from his studies to work in order to pay out-of-state tuition rates. Were he able to pay in-state tuition, Mr. Soto Navez would be able to study full-time.

59. Mr. Soto Navez is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va.* § 23-7.4 and the relevant SCHEV regulations.

60. *Plaintiff Ramiro Vazquez Morales.* In June 2013, Mr. Vazquez Morales graduated from Monticello High School in Albemarle County, whereupon he enrolled in Piedmont Virginia Community College.

61. When Mr. Vazquez Morales sought to apply for consideration as a Virginia domiciliary, a college official told him that as a DACA beneficiary he was ineligible to be considered a Virginia domiciliary. On information and belief, the college official told this to Mr. Vazquez Morales because she was following SCHEV's guidance and instructions.

62. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Mr. Vazquez Morales has been charged an out-of-state tuition rate of \$328.25 per credit-hour – about 245 percent of the in-state rate of \$133.65 per credit-hour.

63. Mr. Vazquez Morales is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va. § 23-7.4* and the relevant SCHEV regulations.

64. *Plaintiff Stefany Viruez Guzman.* In June 2012, Ms. Viruez Guzman graduated from Washington-Lee High School in Arlington County, whereupon she enrolled in Northern Virginia Community College.

65. When Ms. Viruez Guzman sought to apply for consideration as a Virginia domiciliary, a college official told her that as a DACA beneficiary she was ineligible to be considered a Virginia domiciliary. On information and belief, the college official told this to Ms. Viruez Guzman because she was following SCHEV's guidance and instructions.

66. As a direct and proximate result of SCHEV's guidance and instructions described above, therefore, Ms. Viruez Guzman has been charged an out-of-state tuition rate of \$322.40 per credit-hour – about 230 percent of the in-state rate of \$143.15 per credit-hour. As a result, she is studying as a part-time student; were she allowed to pay in-state tuition rates, she would be able to study as a full-time student, and would obtain her degree much sooner.

67. Ms. Viruez Guzman is otherwise eligible to qualify as a Virginia domiciliary within the meaning of *Code of Va. § 23-7.4* and the relevant SCHEV regulations.

Cause of Action: Declaratory Judgment Act

68. It is the position of each of the above-named plaintiffs that, for the reasons stated above, as DACA beneficiaries, they have the right to seek classification as Virginia domiciliaries within the meaning of *Code of Va.* § 23-7.4.

69. Conversely, as stated above, it is the position of defendant SCHEV that each of the above-named plaintiffs, as DACA beneficiaries, do not have the right to seek classification as Virginia domiciliaries within the meaning of *Code of Va.* § 23-7.4.

70. SCHEV's determination that plaintiffs, as DACA beneficiaries, do not have the right to seek classification as Virginia domiciliaries within the meaning of *Code of Va.* § 23-7.4, has caused injury to plaintiffs, to wit: they are currently paying out-of-state tuition rates of more than 200% of the in-state tuition rates, as described above.

71. For the reasons set forth above, and those to be proven at the trial of this matter, plaintiffs request that pursuant to *Code of Va.* § 8.01-184, this court declare the rights of the parties, enter such orders as are consistent with the Prayer for Relief set forth below, and award such other relief as this court deems just and proper under the circumstances.

Prayer for Relief

72. WHEREFORE, plaintiffs respectfully request that this court issue the following relief:

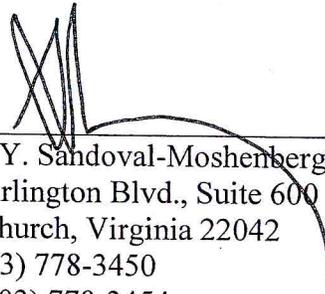
- a. Reverse and/or annul the determination of defendant SCHEV that DACA beneficiaries are ineligible to form Virginia domicile;

b. Issue a declaration confirming that plaintiffs, as DACA beneficiaries, have the legal capacity to intend to remain in Virginia indefinitely, and are therefore not categorically ineligible to qualify as Virginia domiciliaries; and

c. Grant all other relief that this court deems just and proper under the circumstances.

Respectfully submitted,

LEGAL AID JUSTICE CENTER

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