



# MALDEF

Mexican American Legal Defense and Educational Fund

## Frequently Asked Questions Regarding the September 2008 California Appellate Court Ruling on AB 540 – Martinez v. U.C. Regents

### **Q.: What is AB 540?**

A.: AB 540 is a California law that allows students, including undocumented students, who have attended a high school in California for at least three years and graduated or attained the equivalent of a high school diploma, to pay in-state tuition to attend California public colleges or universities. Prior to 2002, when this law became effective, undocumented immigrant students were required to pay out-of-state tuition to attend public colleges and universities in California, which is much more expensive than in-state tuition.

### **Q.: I heard that AB 540 has been challenged in a lawsuit. What is the case about?**

A.: In 2005, the Immigration Reform Law Institute (IRLI), the legal arm of the Federation for American Immigration Reform, a national anti-immigrant group, filed a lawsuit in California state court challenging the validity of AB 540. The lawsuit was filed on behalf of U.S. citizens, many with no or minimal ties to California, who wanted to pay in-state tuition because California law permitted undocumented immigrants who went to California schools to pay it. The challengers claim that undocumented students unjustly receive a tuition discount that they are not eligible to receive. They sued the University of California, the California Community College system and the Cal State University system.

### **Q.: What was the initial outcome of the legal challenge to AB 540?**

A.: The trial court dismissed the case. So, the IRLI appealed the trial court's decision to the California Appeals Court. On September 15, 2008, a California appellate court reversed the trial court's dismissal of the challenge to AB 540. In its ruling, the appellate court indicated that AB 540 conflicts with federal law and sent the case back to the trial court for further proceedings. The University of California has announced that it plans to challenge this latest ruling, which likely means that the California Supreme Court will be asked to review the appellate court decision before the case can return to the trial court. The California Supreme Court may or may not decide to review it. MALDEF supports Supreme Court review of the decision.

### **Q.: What effect does the recent court decision have on AB 540?**

A.: AB 540 remains in full force and effect while the case works its way through the legal process. It is still the law and provides an opportunity for undocumented immigrant students to achieve a higher education. Students should not be discouraged and should continue to pursue their educational goals.

### **Q.: I am an undocumented high school student and plan to go to college. Can I still qualify for AB 540?**

A.: Yes. AB 540 is still in effect. You must meet the eligibility requirements of attending a California high school for at least three years and graduating from high school or receiving the equivalent of the high school diploma to qualify under AB 540. See [www.maldef.org](http://www.maldef.org) for all of the eligibility requirements. We encourage you to pursue a college education and take advantage of this opportunity that makes college more accessible to you.

**Q.: If my counselors and administrators at my school are telling me that AB 540 is no longer valid, what can I do?**

A.: AB 540 is still the law. Do not be discouraged. You can share the information on this flyer with them to inform them of the status of the law. You can ask your principal, your school board or your district superintendent to make sure that all school officials know the status of AB 540.

**Q.: What is MALDEF's role in the lawsuit?**

A.: MALDEF sought to intervene in the lawsuit on behalf of student organizations IDEAS (Improving Dreams, Equality, Access and Success) at UCLA and UC Davis, as well as individual undocumented and U.S. citizen students who receive the AB 540 waiver. The court did not allow MALDEF to enter the lawsuit. However, MALDEF and other attorneys filed a friend-of-the-court brief in support of AB 540 students with the Court of Appeals. MALDEF argued that AB 540 is consistent with federal law and is good policy for California. MALDEF is working closely with the attorneys representing the universities and colleges to vigorously defend AB 540. MALDEF plans to file friend-of-the-court briefs if the case proceeds to the California Supreme Court.

**Q.: How long will it take to get a final decision in the case?**

A.: The legal process takes a long time. We cannot predict how long it will take. It could very likely take years. Time is on our side. As long as the case is unresolved, AB 540 remains in effect.

**Q.: What happens if we lose the case?**

A.: Undocumented students would still be able to attend public colleges and universities in California, but would have to pay out-of-state tuition, which is much more expensive than in-state tuition.

**Q.: Is there anything the state legislature can do right now to strengthen AB 540?**

A.: No. Because there is no final resolution of the legal challenge, it is premature to discuss ways for the legislature to change it. The legislature was right and does not need to revise AB 540.

**Q.: Is there anything Congress can do to ensure that AB 540 remains the law?**

A.: While AB 540 was written to comply with federal law, Congress must pass comprehensive immigration reform. Congress must also pass the DREAM Act, which will allow undocumented students paths to achieve legal status.

**Q.: I want to help support AB 540 students. What can I do to help?**

A.: You can let students know that AB 540 is still in effect and that they should take advantage of this important law that increases their educational opportunities. You can encourage your public schools, colleges and universities to vigorously support AB540. We need to influence public opinion and change negative perceptions about AB 540. Leaders in education can write articles for publication in newspapers and journals to educate the public about the public benefits of AB 540.

**Q.: Where can I obtain more information on AB 540 and the lawsuit?**

A.: Please visit our website at [www.maldef.org](http://www.maldef.org).