No. B264487

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION SEVEN

Earl De Vries,

Plaintiff and Appellant,

vs.

Regents of the University of California,

Defendant and Respondent.

Appeal from the Superior Court of California, County of Los Angeles
The Hon. Gail Feuer; The Hon. Elizabeth Allen White
Superior Court Case No. BC555614

APPELLANT'S REPLY BRIEF ON APPEAL

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INTRODUCTION

This case is about a decision of Congress that conflicts with the current policy preferences of the Regents of the University of California ("Regents"). In 1996, Congress passed the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," which was signed into law by President Bill Clinton. With this law, Congress broadly made all unlawfully present aliens ineligible for "any State or local public benefit." 8 U.S.C. § 1621(a).

Congress also included one exception to this ban, which is now the subject of this litigation. Specifically, Congress decided to prohibit unelected state bureaucrats from awarding benefits without direct instructions to do so from the state's elected representatives. To accomplish this, Congress wrote that States could provide benefits to unlawfully present aliens "only through the enactment of a State law" which "affirmatively provides" benefits to unlawfully present aliens. 8 U.S.C. § 1621(d).

The California State Legislature satisfied the requirements of 8 U.S.C. § 1621 (hereinafter, "Section 1621" or "1621") by passing laws providing in-state tuition, loan, and grant benefits to unlawfully present aliens attending California State University ("CSU") and California Community Colleges ("CCC"). However, the legislature lacks the power to pass such laws with respect to students attending the University of California ("UC"). Under

the California Constitution, the Regents have been granted near total control of UC policy, and the California State Legislature is legally prohibited from interfering. Cal. Const. art. IX, § 9(a).

The California State Legislature was therefore faced with a dilemma. The legislature would be acting beyond its powers under the California Constitution if it passed a statute which gave benefits directly to UC students in satisfaction of 1621. As an alternative, the legislature could comply with the California Constitution and pass a statute which stops short of affirmatively providing benefits but merely encourages the Regents to consider extending the benefits themselves, even though that statute would not satisfy 1621's high bar. The legislature chose the latter path.

The Regents then decided to do precisely what Congress prohibited in the Personal Responsibility and Work Opportunity Reconciliation Act. Through a series of adopted policies, the unelected Regents extended in-state tuition, loans, and financial aid benefits to unlawfully present aliens. Appellant Earl De Vries then filed this suit requesting injunctive relief to stop the Regents' illegal actions.

In their Respondents' Brief ("Resp. Br."), the Regents claim that Congress never really intended to require states to take affirmative legislative action to extend benefits to illegal aliens, and if Congress did so intend, then 1621 would intrude on California's sovereignty. Resp. Br. at 12-13. This argument is contradicted by the words of the statute, the

canons of statutory construction, the legislative history, and the relevant principles of federalism.

The Regents also claim that their policies "help students," and in any case the gist of their policies was already found to be consistent with Section 1621 by the California Supreme Court in *Martinez v. Regents of the Univ. of California*, 50 Cal. 4th 1277 (2010). Resp. Br. at 9; Resp. Br. at 9-11. With respect to the first point, Congress has already decided that actions like the Regents' in this case are prohibited. Congress did not want entities like the Regents to decide on extending benefits to unlawfully present aliens – Congress specified that state legislatures must do this. And *Martinez* only held that the California State Assembly could provide benefits to unlawfully present aliens attending CSU and CCC schools, not to UC students.

ARGUMENT

1. The Regents Misread Section 1621 of the Federal Immigration Code

This case turns on the meaning of 8 U.S.C. § 1621(d). The Regents misinterpret Section 1621 throughout their brief, despite citing it approximately 100 times and referring to it at least once in every section and subsection of their argument. Specifically: A) the Regents are wrong that 1621 allows Regents' policies alone to provide benefits to unlawfully present aliens; B) the Regents are wrong that 1621 allows the Regents to

act by invitation of the California State Assembly to provide the benefits; and C) the Regents are wrong that 1621 violates principles of federalism.

A. Section 1621 Excludes the Regents' Policies by Limiting State Authorization for Benefits to "Only the Enactment of a State Law"

When Congress wrote "only through the enactment of a state law" can unlawfully present aliens receive benefits, that is precisely what it meant. This means the exercise of state legislative power. Not only is this apparent from the words, but also when one considers the context of 1621, the subsection of the immigration code in which it appears, the remainder of Title 8 of the U.S. Code, and the text and legislative history of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Appellant's Opening Brief ("AOB") at 7-14. The Regents argue this is not what Congress really meant, but rather it meant any exercise of state lawmaking power, be it legislative, executive, judicial, or by independent board. Resp. Br. at 37-42. Those arguments are unavailing. Congress' unique word choices and other evidence of Congressional intent behind 1621 prove that the statute is limited to representative or democratic state legislative acts only.

First, the Regents truncate Appellant's main argument by characterizing it as a "question-begging assertion that only a legislature can make a 'State law.'" Resp. Br. at 37. Far from an "assertion," Appellant demonstrated at length that every principle of statutory construction proves that when

Congress wrote "only through the enactment of a state law" they meant to exclude acts outside of a state's legislative powers. AOB at 7-14.

The words "state law" in Section 1621 mean a legislative enactment. This conclusion is required by the U.S. Supreme Court's decision in *Department of Homeland Security v. MacLean*, 135 S.Ct. 913 (2015) ("*MacLean*"). The Regents fail to distinguish *MacLean* from the present case. As the Regents correctly observe, *MacLean* requires a "clear showing" that Congress intended to exclude state policies or regulations when it uses the phrase "state law." Resp. Br. at 38. However, the Regents try to divorce this test from the case at bar by obfuscating the fact that Appellant has already made this showing. Congress used the phrase "only through the enactment of a state law" in Section 1621 of Title 8, and yet both Sections 1624 and 1625 of the same title use the phrase "a state or political subdivision of a state is authorized…". 8 U.S.C. §§ 1624 and 1625. All three sections are contained in the same subsection of the federal immigration code addressing immigrant welfare and public benefits. As Appellant explained, this close statutory proximity satisfies *MacLean's* required clear showing that Congress intended to limit 1621 to statewide representative legislative acts. AOB at 10-11. The Regents inaccurately counter-argue that this word difference shows only that Congress intended to exclude "municipalit[ies] or local utility district[s]" from providing benefits under 1621. Resp. Br. at 39-40. But a comparison of Sections

1621, 1624, and 1625 shows that this is untrue. If the only difference in Congress' intent between the three statutes was to allow or proscribe municipal or county action, the difference in the language would be far less dramatic. For instance, if Congress had written "a state or political subdivision of a state is authorized" in 1625, and "a state is authorized" in 1621, then the Regents would likely be correct that their policies fall under Section 1621. However, the stark difference in Congress' actual Section 1621 language choice illustrates a broader exclusion than merely local ordinances.[1]

Furthermore, the Regents fail to consider the entire phrase "only through the enactment of a state law" in Section 1621. As Appellant explained, each of these words must be considered meaningful, and not just the words "state law." AOB at 7-8. The word "only" shows Congress meant to exclude all but one kind of law. Neither 1624 nor 1625 uses the word "only," and when Congress "uses particular language in one section of a statute but omits it in another," courts must presume the omission of words was intentional. *MacLean*, 135 S.Ct. at 919. Similarly, Congress

[1] Even taken at face value, the Regents' argument that "political subdivisions" means counties or municipalities is unexplained. Resp. Br. at 39. If Congress meant "counties or municipalities," it would have written "counties or municipalities." But "subdivisions" may include both local subdivisions and subdivisions of state branches – such as committees of the state assembly, regulatory agencies under the administrative branch, or independent agencies or boards like the UC Regents or the U.S. Securities and Exchange Commission.

used the word "enactment" in 1621 but not in 1624 or 1625. According to the Oxford English Dictionary, the word "enactment" means "[t]he process of passing legislation."[2] This is a distinct word choice which demonstrates Congress meant legislative lawmaking, not the adoption of state board policies. And since Congress spelled out both parts of this equation and said that benefits can be given "*only* through the *enactment* of a state law," the Regents' argument that Congress meant to be broad and inclusive of various types of state laws quickly evaporates.

In addition, it bears special consideration that Section 1621 is the only place in the *entire 54 titles of the United States Code* where Congress used the exact phrase "only through the enactment of a state law." This makes it an extraordinarily unique language choice. The Regents' argument that this highly-unusual choice just means any state law, regulation, or policy asks the Court to ignore the words in the federal statute. Resp. Br. at 37. As Appellant has explained, Section 1621 prohibits all non-legislative branches of state government from extending benefits to unlawfully present aliens. AOB at 13-14. The law was meant to exclude executive orders of governors, actions of state agencies or state boards, or any other purported extension of benefits except for that of a statewide representative body.

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[2] Oxford English Dictionaries, Entry for "Enactment" (visited March 21, 2016), available at http://www.oxforddictionaries.com/us/definition/american_english/enactment.

The UC Board of Regents' policies have been deliberately excluded from Section 1621 by Congress.

Next, the Regents cite the federal Clean Air Act in support of their claims, but this law only serves to further illustrate Appellant's arguments about the significance of statutory language. Resp. Br. at 40. Under the Clean Air Act, a state may designate polluted areas when "approved by the Governor of the State, after consultation with the appropriate committees of the legislature." 42 U.S.C. § 7474(a)(2)(A). In writing this statute, Congress intended to exclude state agencies or state boards from making federal environmental designations, and instead decided that only state governors could make such decisions. This demonstrates that Congress knows how to specify actions by different branches of governments or greater or lesser state entities when it wishes to do so. If Congress wished to authorize governors, state agencies, or state boards to "affirmatively provide" benefits to unlawfully present aliens, Congress could have specified "state agencies and boards," just as it specified Governors and legislative committees in Section 7474. Instead, Congress decided to make unlawfully present alien benefits possible "only through the enactment of a State law," a specific word choice which excludes the policies of independent state boards. 8 U.S.C. § 1621(d).

Separately, the Regents make an alternative argument. They claim that since Regents policies are "state law" for many routine purposes, they

should be considered one of the "only" "enactments of state law" designated by Congress in 1621, based not on the words of Section 1621 but on the unique legal status of the Regents. Resp. Br. at 34-37. First, as the Regents themselves acknowledge, this question is an academic one if Appellant's explanation of the meaning of Section 1621 is correct. Resp. Br. at 45, fn. 5. Here, the Regents appear to acknowledge that if Appellant is right about Congress' word choices in Section 1621, the lower court decision cannot stand because it would put the California Constitution into conflict with federal law. *Id.*; *see also* Cal. Const. art. IX, § 9(a).

However, even if the Regents were correct that Section 1621 could be read to include Regents policies, the Regents cannot point to a single judicial decision which supports the notion that Regents policies are "state law" or "state statutes" for all or even *most* purposes, state or federal. No such conclusion is possible. The Regents' policies may indeed be "state laws" for certain limited purposes. For instance, under California law, Regents policies are considered as "state statutes" for purposes of applying the doctrine of exhaustion of administrative remedies. *Campbell v. Regents of the Univ. of California*, 35 Cal.4th 311, at 321 (2005) ("The Regents may create a policy for handling whistleblower claims under their power… Such a policy is *treated as* a statute *in order to determine* whether the exhaustion doctrine applies.") (italics added). In addition, Regents policies have at least once (in 1934) been deemed the equivalent of a state statute

for purposes of a federal jurisdictional statute, but that holding was clearly limited to the federal statute in question. *Hamilton v. Regents of the University of California*, 293 U.S. 245, 258 (1934) ("The meaning of "statute of any state" is not limited to acts of state legislatures… It follows that the [Regents'] order making military instruction compulsory is a statute of the State within the meaning of § 237 (a).").

But the only question at issue in this lawsuit is whether Regents policies are "enactments of state law" for purposes of 8 U.S.C. § 1621. The narrow cases cited by the Regents involve procedural questions of exhaustion and jurisdiction, and can hardly lead this court to a conclusion that Regents policies are "state laws" for purposes of national immigration policy. Indeed, the Regents give no credible reason why their existence as an independent state board caused Congress to do anything other than explicitly reject the possibility that appointed state bureaucrats could extend public benefits to unlawfully present aliens under Section 1621.

B. The Combination of the Regents' and Legislature's Insufficient Acts Does Not Add Up to One Sufficient Act Under 1621

The three California statutes the Regents cite – AB 540, AB 131, and SB 1210 – don't affirmatively provide benefits to UC students, but merely invite the Regents to consider doing so, as Appellant has explained. AOB at 16-18. As an initial matter, the Regents appear to have mostly abandoned the argument they made to the lower court that the California

State Legislature has affirmatively authorized benefits to UC students with the three statutes. Appellant's Appendix ("AA-") 53 to 56. Instead, the Regents argue that, perhaps, Section 1621 can be interpreted to only require the state legislature to express its approval for a Regents decision to provide the benefits. To make this argument, the Regents incorrectly focus on the words "provide for" in 1621 to argue that the intransitive verb requires the legislature to do less. Resp. Br. at 45-46. This argument fails. The dispute in this case is over the meaning of the word "affirmatively" in Section 1621, not over the phrase "provides for." The use of the transitive or intransitive verb here does not affect the "affirmative" requirement of Section 1621. In other words: whether the California statutes might be "providing for" benefits to UC students if not "providing" them is of no moment – the statutes do neither one of those two things "affirmatively." In light of the language of AB 540, AB 131, and SB 1210, any argument that these California statutes even partially satisfy Section 1621 would have to first read the word "affirmatively" out of the federal statute. AOB at 7; AOB at 15-19.

The mere agreement of a state legislature and a state board (like the Regents) does not satisfy Section 1621; rather, only the unambiguous exercise of legislative power does. The Regents are wrong that such a "concurrence" of two insufficient acts under Section 1621 adds up to one sufficient act which satisfies the spirit of 1621 if not the letter. Resp. Br. at

46-49. The Regents argue that Appellant "does not explain why" Congress would have chosen to forbid unlawfully present alien UC students from receiving public benefits when CSU and CCC students can receive them. Resp. Br. at 46. This is incorrect. Appellant has explained why, but the Regents are unwilling to acknowledge the plain meaning of a federal law that does not suit their current preferences. Section 1621 is a "standup and be counted" law which requires that a decision to grant benefits to unlawfully present aliens be made at the most politically accountable level – the popularly elected legislative branch of a state. AOB at 3, 12. In California, the constitution puts the UC beyond the control of the legislature. If Congress had intended for entities like the UC Regents to make decisions about extending benefits to unlawfully present aliens, it could have (and would have) done so. It did not, and the fact that unlawfully present aliens attending UC cannot be made eligible to receive benefits is the logical consequence of a plain reading of the federal law and California's constitution. It is what federal law requires.

To the extent the Regents question why Congress would have intended for CSU and CCC students to receive benefits while UC students cannot, the answer is that Congress had no need to consider the question. When Congress passes a law of broad, nationwide applicability, it does not necessarily pause to ask about each and every possible application. The Regents' question presupposes that Congress intends each and every unique

result of every application of its policy choices, rather than simply intending to establish a single policy for the entire nation. Policy choices necessarily require line-drawing, and here Congress intended to create (and did create) a single, bright line rule to be applied uniformly across the nation to ensure that unlawfully present aliens' eligibility for benefits is determined through the states' legislative processes. There is no further "why" to it.

In writing Section 1621, Congress created a default standard that no unlawfully present aliens should receive public benefits in the first place. 8 U.S.C. § 1621(a). The Regents essentially argue that the narrow exception carved out in 1621(d) should be applied so loosely that it swallows the rule set forth in 1621(a). If state legislatures could merely signal their indifference to state or local bureaucrats awarding benefits to unlawfully present aliens, then elected officials would be able to evade political accountability for providing the benefits. As Appellant has shown, this was never Congress' intent. AOB at 12; AA-418 to 419. Congress explained in the Conference Report concerning 1621 that "[o]nly the affirmative enactment of a law by a State legislature and signed by the Governor … will meet the requirements of this section." H.R. Rep. No. 104-725, 2d Sess., p. 383 (1996). The UC Board of Regents are not an elected body, and they cannot be voted out of office by the people of California for their decisions. AOB at 12-13; AA-37. Accordingly, it would violate the letter

and spirit of Section 1621 to allow the California State Legislature to pass off to unelected bureaucrats even a portion of its accountability for unlawfully present alien benefits.[3]

C. Congress Has the Right to Limit California's Actions With Section 1621

Next, the Regents make a misplaced federalism claim, arguing that Section 1621 unjustly interferes with the State of California's right to award benefits to unlawfully present aliens however they see fit. Resp. Br. at 42-45. This argument gets the law on federalism and federal immigration policy backwards. It is California which has no right to defy

[3] The Regents also make a fallback argument that, even if the Court enjoins most of the benefits to UC students for violating Section 1621, the "state-administered grants" should remain in place because the Regents are not directly providing them. Rather, the California Student Aid Commission (the "Commission") is providing those benefits to UC students. Resp. Br. at 33-34, fns. 3 and 4. This argument is flawed. First, the California State Legislature has no lawful powers to reduce or eliminate UC student tuition, whether via grant, loan, or in-state tuition rate. Cal. Const. art. IX, § 9(a). The involvement of the California Student Aid Commission as a conduit for tuition breaks has no impact on this prohibition. If the Regents are now claiming that the California State Legislature has instructed the Commission by statute to usurp powers constitutionally reserved to the Regents, that statute would violate the California Constitution. More importantly for purposes of Appellant's requested injunction, the Regents' actions related to state-administered grants still violate Section 1621 as long as the Regents are expending any taxpayer resources in the form of UC state employee time to assist in loan distribution. *See Blair v. Pitchess*, 5 Cal. 3d 258, 268 (1971) ("[T]he mere expending [of] the time of [state employees] in performing illegal and unauthorized acts constitute[s] an unlawful use of funds which could be enjoined under section 526a."). Accordingly, all Regents activities in furtherance of the November 2014 revisions to policy 3202 are illegal, as are Regents actions supporting policy 3106.1.C. AA-354, AA-363.

the federal government's prohibition on giving taxpayer-supported benefits to unlawfully present aliens. *See Arizona v. United States*, 132 S.Ct. 2492, 2498 (2012) ("The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens."); *See also De Canas v. Rica*, 424 U.S. 351, 358 (1976) ("The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States … [and] the regulation of their conduct before naturalization… Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states.") (internal quotes omitted). Immigration law is a federal issue, not a state issue.

Wrong about federalism and immigration law, the Regents cite several cases which merely stand for the general principle that states retain some rights against the federal union. Resp. Br. at 42-45. Not only do these cases fail to support the argument that the Regents may ignore Section 1621 on federalism grounds, some of them support Appellant's arguments even more strongly. For instance, the Regents mistakenly cite *Ariz. State Legislature v. Ariz. Independent Redistricting Comm.*, 135 S.Ct. 2652 (2015) for the proposition that states may organize their government and allocate power however they wish without consequence. Resp. Br. at 43-44. The Regents have misread this case in several ways.

First, *Ariz. State Legislature* concerned a state's authority to alter its own election laws for federal office, not state laws regarding immigration. 135 S.Ct. 2652, at 2658-59. As the Supreme Court observed, the Constitution reserves the power to set rules for electing members of Congress in the first instance to the states. *Id.* at 2659, *citing* the *Elections Clause*, U.S. Const. art. I, § 4, cl. 1. To the contrary, the Constitution gives broad powers over immigration law to the federal government, without similar reservation of power for the states. U.S. Const. art. I, § 8, cl. 4. Accordingly, *Ariz. State Legislature* is inapplicable to the Regents' desire to rewrite federal law governing immigration.

Furthermore, it bears consideration that *Ariz. State Legislature* held that Arizona's voters are the ultimate source of legislative power in the state, and therefore the voters could lawfully decide how Arizona's voting districts may be drawn. 135 S.Ct. 2652, at 2671. Specifically, the Supreme Court upheld the people of Arizona's power to pass legislation at the ballot box by exercising their right to popular initiative and referendum. *Id.* ("In establishing legislative bodies, *the people* can reserve to themselves the power to deal directly with matters which might otherwise be assigned to the legislature.") (internal citation omitted) (italics added). The Regents' actions, to the contrary, have usurped the powers Congress explicitly reserved to the people of California and the state's legislative function under Section 1621. In this regard, *Ariz. State Legislature* ultimately stands

for the proposition that the people are the source of legislative power, not non-representative bodies like the Regents. Consider that the Supreme Court observed that "the power to legislate in the *enactment* of the laws of a State is derived from the people of the State." *Ariz. State Legislature*, 135 S.Ct. 2652, at 2668 (italics added, internal punctuation and citation omitted). That the Supreme Court used the same language of Section 1621 describing the "enactment" of a state law is no coincidence – an enactment is an exercise of legislative power. *Supra* at p. 7, fn. 2. The Regents describe themselves as possessed of "quasi-legislative" powers elsewhere in their brief. Resp. Br. at 35. But that cannot be confused with a state's true legislative powers, which is described in *Ariz. State Legislature* as a power that necessarily flows from the people. 135 S.Ct. 2652, at 2677. The overwhelming majority of the Regents, however, are un-elected and appointed by the Governor. AOB at 12-13; AA-37. Under *Ariz. State Legislature* (and any common sense understanding), the Board of Regents' power is recognizable as authority of the executive branch or independent regulatory commission of a state, not as legislative authority.[4]

[4] *Ariz. State Legislature* might support the argument that an initiative passed by the California voters to affirmatively extend benefits to UC students could satisfy Section 1621, since a ballot initiative is an exercise of legislative power. As with the Regents' fanciful argument that a veto override might not satisfy 1621 either, Appellant is not asking this Court to elevate form over function. Resp. Br. at 42.

Similarly, while the Regents rely on federalist language from *Luther v. Borden*, 48 U.S. 1 (1849), they ignore the facts of that case. Resp. Br. at 42-43. *Luther* concerned a violent rebellion to overthrow the government of Rhode Island, which ultimately presented the question of whether Rhode Island had ceased to be a "republican" government under Article IV of the Constitution. U.S. Const. art. IV, § 4, cl. 1. Here, the Supreme Court developed its "political questions" doctrine, holding that whether the government of Rhode Island was a republican one or not was a matter to be decided by the President and Congress, not the Supreme Court. *Luther*, 48 U.S. at 94, 96, 98. This has nothing to do with the present case, as Appellant has not brought a "republican form of government" challenge.

In addition, Section 1621 does not alter "the usual constitutional balance" of power between the states and the federal government. Resp. Br. at 43 (citation omitted). If California wishes to establish the Regents as a constitutional entity independent of control of the state's elected representative body, California is free to do so, and no federal law prevents this decision – not even Section 1621. What California may not do, however, is refuse to accept any resulting inconveniences or repercussions from its choice of this unusual state governance structure which insulates the Regents from legislative or popular control. The Regents are essentially arguing that constitutional federalism gives states the right to structure their governments however they wish *without consequences* from prevailing

federal law. No state has this right in our federal system. In this regard, 1621 is just an ordinary exercise of Congressional authority over national immigration policy which overrides conflicting state law. *See* U.S. Const., art. VI, cl. 2. California is free to designate the Regents as a constitutionally independent branch of state government, and the U.S. Congress, with its broad powers over national immigration and responsibility to police the country's borders, is free to require states to meet certain requirements before extending financial benefits to non-U.S. citizens. If California's citizens prefer to ensure that unlawfully present aliens receive the benefit of reduced UC tuition more strongly than they prefer to keep the Regents politically insulated from democratic decision-making, they can modify the UC governance structure. Indeed, such a modification would only need to add half a sentence, inserting "and to extend state benefits to unlawfully present aliens under 8 U.S.C. § 1621" to the legislature's limited existing authority over the UC.[5] If this simple change were made to California law, the Regents would not need to ask this Court to rewrite a federal statute for the Regents' convenience. And passing a constitutional amendment is not an undue burden on the State of

[5] Cal. Const. art. IX, § 9(a) (the UC Regents are "subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.").

California. Californians have revised their constitution a total of four-hundred and eighty times since the late 1800s – an average of over 3 times every single year.[6]

Finally, even if the Regents were correct and Section 1621 somehow altered the constitutional balance of power between the United States and California, Appellant would still prevail on his claim. Resp. Br. at 43. This is because it is "unmistakably clear" by the text of Section 1621 that Congress intended to prohibit the Regents' actions. *Gregory v. Ashcroft*, 501 U.S. 452, 461 (2015) (internal citations omitted). Any alleged ambiguity is resolved in Appellant's favor by the relevant cannons of statutory construction and by the legislative history. AOB at 6-14.

2. The Regents Misread *Martinez*

Not content to misread Section 1621, the Regents continue to falsely claim that *Martinez v. Regents of the Univ. of California*, 50 Cal. 4th 1277 (2010) addressed the questions presented in this case. Resp. Br. at 29-33. This is a poor argument. Indeed, the Regents advanced this argument about *Martinez* to the trial court, but the lower court ultimately chose to rule on other grounds and did not even cite *Martinez* in its written opinion. AA-566 to 568. In *Martinez*, the California Supreme Court considered the

[6] *See* Georgetown Law Library, California Research In-Depth (visited March 1, 2016) ("California's current constitution was ratified on May 7, 1879 and has been amended over 480 times."), available at http://guides.ll.georgetown.edu/california-in-depth/constitution.

legality of AB 540 (but not AB 131 or SB 1210, nor of any of the Regents' subsequent actions). The *Martinez* court held that AB 540 lawfully extended benefits to CSU and CCC students pursuant to 8 U.S.C. § 1621(d). 50 Cal. 4th 1277, at 1296. That is the full extent of what *Martinez* held with respect to 1621, and the present lawsuit does not challenge that holding.

The California Supreme Court plainly stated that AB 540 applied only to CSU and CCC students, not UC students. AOB at 15; *Martinez*, 50 Cal.4th at 1287 ("by its terms [AB 540] applies only to the California State University and California Community Colleges, and not to the University of California). The California Supreme Court also pointedly observed that the Regents had adopted a policy which mirrored AB 540 without answering the question of whether the execution of that policy would be illegal. *Martinez*, 50 Cal.4th at 1287, fn. 1. The California Supreme Court did not answer that question because no party had asked it. AA-18. Indeed, in 2010 the question would have been premature because the Regents had not commenced their illegal actions subject to this lawsuit. AA-16 to 17.

The Regents cannot accept that they failed to obtain a ruling on Appellant's question in 2010. They question why the California Supreme Court would have "inadvertently" forgotten to address the legality of the Regents' actions when it ruled on benefits for CSU and CCC students in

Martinez. Resp. Br. at 31. This miscasts the legal questions the *Martinez* Court considered. The fact *Martinez* did not address the Regents' actions was hardly "inadvertent." Simply put, the legality of the Regents' actions was not before the California Supreme Court previously because neither plaintiffs nor defendants in *Martinez* argued the question in either direction. AA-18. The California Supreme Court had no reason to answer a question that none of the parties in the case had asked.

Next, the Regents mistakenly argue that *Martinez* actually held that the Regents are permitted to extend benefits themselves under AB 540. Resp. Br. 30-31. This is wrong. In *Martinez*, the California Supreme Court never considered whether the Regents' actions to provide benefits would be illegal. Rather, the *Martinez* Court only considered whether Section 68130.5 of AB 540 was lawful. Since *Martinez* found that AB 540 only affirmatively provided benefits to CSU and CCC students, the statute was upheld. *Martinez*, 50 Cal. 4th 1277, 1287 (AB 540's benefits "applies only to the California State University and California Community Colleges…").

And lastly, the Regents make the wildly inaccurate claim that since *Martinez* found CSU and CCC students could receive benefits under AB 540, a finding that UC students may receive them too is just a matter of "apply[ing] *Martinez's* holding to indistinguishable facts." Resp. Br. at 32. The facts between the two cases differ greatly. First, as Appellant already demonstrated, the California State Legislature directly extended benefits to

CSU and CCC students in the text of AB 540 (and AB 131 and SB 1210), but did not extend benefits to UC students in those statues. AOB at 15-18. The words of those statutes are critical facts to determining who has been made eligible for benefits, as well as the statutes' legality under Section 1621. Furthermore, the reason why AB 540, AB 131, and SB 120 treat UC students so differently from CSU and CCC students is that the Regents have independent constitutional control over UC while CSU and CCC are subject to control by the legislature. According, there can be no application of *Martinez'* holding to the present case. The California State Legislature extending unlawfully present alien benefits to CSU and CCC students is fundamentally different from the Regent extending benefits directly to UC students. The legislature's actions were in accordance with federal law; the Regents' actions violate federal law.

CONCLUSION

Federal immigration laws only work if officials follow them, and if the courts uphold them as intended. For this reason, and for all the reasons provided herein, Appellant Earl De Vries respectfully requests this Court reverse the decision of the trial court. Appellant further requests this Court remand with instructions to issue an injunction against the Regents prohibiting them from spending any taxpayer resources to provide benefits to unlawfully present aliens attending UC schools, consistent with Appellant's prayer for relief. AA-21 to 22.

Dated: March 22, 2016

Respectfully submitted,

*s/ Chris Fedeli **

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* Signed pursuant to Cal. Rules of Court 8.77(b) and 8.204(b)(9).

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 5,806 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: March 22, 2016

s/Chris Fedeli
Chris Fedeli

PROOF OF SERVICE

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 425 Third Street, SW, Suite 800, Washington, DC 20024. On March 22, 2016, I served the foregoing documents:

APPELLANT'S REPLY BRIEF ON APPEAL

on the respondent in this action and on the lower court by placing true and correct copies thereof in sealed envelopes addressed as follows:

Benjamin J. Horwich
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The Hon. Gail Feuer, c/o Clerk of Court
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I enclosed said documents in an envelope for U.S. postal service delivery, postage paid, and placed said package for collection and delivery consistent with our firm's practice for shipping U.S. postal packages, of which I am readily familiar.

I declare under penalty of perjury of the laws of the State of California that I am employed along with a member of the bar of this Court at whose direction the service was made, that the foregoing is true and correct, and that this declaration was executed on March 22, 2016 in Washington, DC.

s / Chris Fedeli
Chris Fedeli *

* Pursuant to Cal. Rules of Court 8.77(a), a copy of the original signed, printed form of this document will be kept on file.