



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I25-006 (R25-011)
By	Re: Proposition 308 (2022)'s consistency with federal law
KRIS MAYES ATTORNEY GENERAL	
August 11, 2025	

To: The Honorable Flavio Bravo
State Senator
1700 W. Washington Street
Phoenix, Arizona 85007

Question Presented

The voters adopted Proposition 308 as a legislative referral. *See* S.C.R. 1044, 55th Leg., 1st Reg. Sess. (2021). Proposition 308 allows students to receive in-state tuition at any Arizona university or community college if they meet attendance and graduation requirements, whether or not they have lawful immigration status. *See* A.R.S. § 15-1803(B), (C). Is Proposition 308 consistent with federal law codified at 8 U.S.C. §§ 1621 and 1623?

Summary Answer

Yes. Proposition 308 is consistent with §§ 1621 and 1623.

Section 1621 prohibits certain noncitizens not lawfully present in the United States from being eligible for “any State or local public benefit” unless a state law enacted after August 22, 1996, “affirmatively provides for such eligibility.” 8 U.S.C. § 1621(a), (d). Assuming that the

prohibition in § 1621 applies, Proposition 308 is specifically exempted as a permissible law “affirmatively provid[ing]” benefit eligibility to noncitizens not lawfully present. 8 U.S.C. § 1621(d).

Proposition 308 is also consistent with 8 U.S.C. § 1623, which prohibits a noncitizen not lawfully present in the United States from being “eligible on the basis of residence within a State ... for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit” in equal amount “without regard to whether the citizen or national is such a resident.” That statute restricts eligibility for some benefits offered on the basis of state residence to a noncitizen who is not lawfully present unless certain conditions are met. It creates no restrictions if eligibility is conditioned not on state residence, but instead on other criteria. Because Proposition 308 confers no eligibility for a postsecondary education benefit on the basis of residence—and instead uses other criteria—it is consistent with § 1623.

Background

The voters adopted Proposition 308 at the November 8, 2022, general election. The proposition allowed Arizona students to be eligible for in-state tuition if they attended a high school or home school equivalent for two years in Arizona and graduated from it.

Proposition 308 amended A.R.S. § 1-502(I) to exclude “postsecondary education” benefits from the list of state or local public benefits requiring documentation “demonstrating lawful presence in the United States.” *See* S.C.R. 1044 § 1. And it amended § 15-1803 to allow students who meet certain high school attendance and graduation requirements to be eligible for “in-state tuition at any university under the jurisdiction of the Arizona Board of Regents or at any community college,” irrespective of whether they have lawful immigration status. *See* S.C.R. 1044 § 2. Eligibility for in-state tuition under § 15-1803 is conditioned not on residence, but on a student

having attended an Arizona high school or a homeschool equivalent “while physically present in this state for at least two years” and having graduated from high school or a homeschool equivalent or obtained a high school equivalency diploma “in this state.” *See id.*

Analysis

I. Proposition 308 is consistent with 8 U.S.C. § 1621.¹

Section 1621 broadly prevents certain noncitizens from accessing some state or local public benefits. *See* 8 U.S.C. § 1621. States can deviate from that bar by enacting a law that “affirmatively provides for such eligibility” when a person not lawfully present “would otherwise be ineligible.” *See id.* § 1621(d). Proposition 308 qualifies as a law affirmatively providing for benefit eligibility.

Section 1621 provides that “*except as provided in subsections (b) and (d)*, an alien who is not—(1) a qualified alien (as defined in [8 U.S.C. 1641]), (2) a nonimmigrant under the Immigration and Nationality Act, or (3) an alien who is paroled into the United States under section 212(d)(5) of such Act for less than one year, is not eligible for any State or local public benefit.” 8 U.S.C. § 1621(a) (emphasis added). In other words, subsection (d) is an exception to the broader prohibition in § 1621 on certain noncitizens not lawfully present accessing some state and local public benefits (as that law defines them).

The exception specifically contemplates that states may pass laws like Proposition 308. “A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d).

¹ This Opinion assumes for the sake of argument that Congress had the authority to enact 8 U.S.C. §§ 1621 and 1623, even though those statutes regulate states’ provision of public benefits.

Proposition 308 affirmatively provides eligibility to individuals not lawfully present whom federal law might have otherwise barred. In a section titled “Alien in-state student status; nonresident tuition exemption,” it provides that “[p]ersons without lawful immigration status are eligible for in-state tuition pursuant to subsection B of this section.” A.R.S. § 15-1803(C). And it exempts “postsecondary education” from the list of “state or local public benefits” that require documentation “demonstrating lawful presence in the United States.” *Id.* § 1-502(I). That is enough to qualify for § 1621(d)’s exemption. *See, e.g., Kaider v. Hamos*, 975 N.E.2d 667, 674 ¶ 17 (Ill. App. Ct. 2012) (“[S]ection 1621(d) is satisfied by any state law that conveys a positive expression of legislative intent to opt out of section 1621(a) by extending state or local benefits to unlawful aliens.”).

II. Proposition 308 is consistent with 8 U.S.C. § 1623.

Section 1623 restricts the way that postsecondary education benefits can be offered to an individual not lawfully present in the United States. An individual who is not lawfully present cannot be eligible for such a benefit because she is a state resident unless a United States citizen or national is eligible for the same benefit irrespective of whether she is a state resident. Because Proposition 308 offers no benefit based on residence, § 1623(a) does not apply.

Section 1623(a) provides that “an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.” In other words, the statute “specifically refer[s] to *residence*—not some form of surrogate for residence—as the prohibited basis for granting unlawful aliens a

postsecondary education benefit.” *Martinez v. Regents of Univ. of Cal.*, 241 P.3d 855, 864 (Cal. 2010).

Arizona’s main statute on in-state tuition is A.R.S. § 15-1802, which requires a person to have been domiciled in Arizona for at least one year to be eligible for in-state tuition. *See* A.R.S. § 15-1802(B). Section 15-1802 also provides certain exceptions to that one-year domicile rule, e.g., for dependents whose parents are domiciled in Arizona, members of the armed forces and their dependents who are stationed in Arizona, and members of Indian tribes whose reservation land lies within both Arizona and another state. *See id.* § 15-1802(B)-(K).

Section 15-1803 provides an additional avenue for in-state tuition. Eligibility under § 15-1803 is based on attendance at and graduation from an Arizona high school, irrespective of the student’s past or present residence. Specifically, § 15-1803 provides that “a student, other than a nonimmigrant alien ... is eligible for in-state tuition” if she attended “any public or private high school option or homeschool equivalent ... while physically present in this state for at least two years” and graduated “while physically present in this state or obtained a high school equivalency diploma in this state.” *Id.* § 15-1803(B).

Thus, residence is not what triggers eligibility under § 15-1803. Although many people who meet the eligibility requirements will also be residents, not all will be. And whether someone is or is not a resident is simply not relevant to the eligibility inquiry under § 15-1803. Some Arizona residents will not be eligible for in-state tuition pursuant to § 15-1803, and some students who are eligible for in-state tuition under § 15-1803 will not be Arizona residents.

In the first category, a student can be an Arizona resident without having attended high school in Arizona for the two years required by § 15-1803(B), and without having graduated from an Arizona high school.

In the second category, a student can qualify for in-state tuition under § 15-1803 without being a current resident of Arizona. For example, a student could meet the statute's attendance and graduation requirements, move to another state, and then plan to return to Arizona for college. That student would not be a current Arizona resident, but would be eligible for in-state tuition under § 15-1803.

Moreover, a student might have never been an Arizona resident while attending and graduating from an Arizona high school. Title 15 provides for several circumstances in which nonresident students may attend Arizona public schools, e.g., if they pay a reasonable tuition or are members of an Indian tribe whose land is located both in Arizona and another state. *See* A.R.S. § 15-823(A), (G). A student who crosses into Arizona every day to attend school from a different state would not be an Arizona resident but could qualify for in-state tuition if she met § 15-1803's attendance and graduation requirements. *See id.* Likewise, a student who attended and graduated from an Arizona boarding school could qualify for in-state tuition under § 15-1803, but would not be an Arizona resident if her parents lived in another state. *See id.* § 15-1802(C) ("The domicile of an unemancipated person is that of the person's parent.").

These examples help illustrate what is clear from the text of § 15-1803—the statute does not establish in-state tuition eligibility “on the basis of residence.” 8 U.S.C. § 1623(a). For similar reasons, the California Supreme Court upheld a similar state statute. *See Martinez*, 241 P.3d at 866. It held that § 1623 “specifically referred to *residence*” but California’s attendance and graduation requirements for in-state tuition status were “based on *other* criteria.” *Id.* at 863-64. That reasoning is just as true in Arizona, and § 15-1803 is consistent with 8 U.S.C. § 1623.

Conclusion

Proposition 308 is consistent with federal law.

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