

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

RIGOBERTO RIVERA HERNANDEZ,
ET AL.,

Plaintiffs,

v.

C. DEAN ALFORD, ET AL.,

Defendants.

CIVIL ACTION FILE NO:

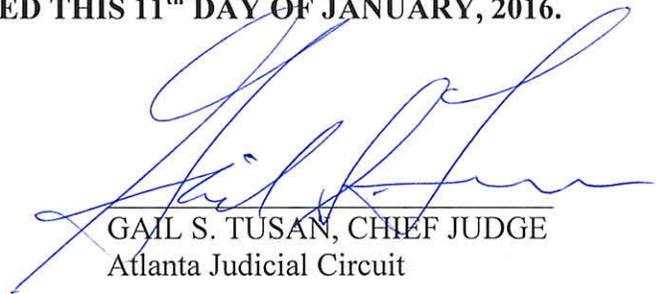
2016-CV-274418

ORDER DENYING APPLICATION FOR SUPERSEDEAS

This matter comes before the Court on Defendants' Consolidated Application for Supersedeas. Defendants filed such application on January 6, 2017 and Plaintiffs filed a Response and Opposition on the same day. As both sides have correctly stated, because this case is a mandamus action and thus follows the procedure for injunctive relief actions pursuant to O.C.G.A. §9-6-28(b), a Notice of Appeal does not act as an automatic stay of enforcement of this Court's Final Order. Therefore, to be relieved from complying with the judgment during the pendency of their appeal Defendants would need supersedeas to be granted. Under Georgia law "The Superior Courts of Georgia are vested by the Constitution...with power to issue writs of mandamus. The legislature has not attempted to abridge this authority by providing a method for superseding a mandamus judgment without an order of the judge which imposes terms and conditions that will preserve the rights of the parties concerned." Bankers Life & Cas. Co. v. Cravey, 209 Ga. 274, 274 (1952) (cits. omitted). Defendants make the conclusory statement that "a supersedeas order is necessary to prevent irreparable harm to Defendants and the State of

Georgia during pendency of the appeal,” yet they provide no further explanation of what that irreparable harm would be or any Georgia case law that would suggest a stay of enforcement is warranted in this action. (Defs.’ Appl. 2.) Meanwhile Plaintiffs contend in their Response that if this Application for Supersedeas is granted, they would be severely harmed along with many other similarly situated students in that they “will be forced to delay their educations, take fewer classes, delay graduation, and suffer extraordinary financial hardship immediately.” (Pls.’ Resp. 5.)¹ The potential harm to Plaintiffs in these circumstances is great and Defendants have failed to show how supersedeas would preserve the rights of the parties concerned as opposed to endangering them. Therefore Defendants’ Application for Supersedeas is **DENIED**.

SO ORDERED, ADJUDGED AND DECREED THIS 11th DAY OF JANUARY, 2016.



GAIL S. TUSAN, CHIEF JUDGE
Atlanta Judicial Circuit

¹ This Court’s December 30, 2016 ruling, which requires Defendants to accept Plaintiffs’ lawful status as DACA recipients, came shortly before the deadline for tuition payments to the various institutions where Plaintiffs are enrolled.