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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ARIZONA DREAM ACT COALITION;
JESUS CASTRO-MARTINEZ;
CHRISTIAN JACOBO; ALEJANDRA
LOPEZ; ARIEL MARTINEZ; and
NATALIA PEREZ-GALLEGOS,
Plaintiffs,

v.

JANICE K. BREWER, Governor of the State
of Arizona, in her official capacity; JOHN S.
HALIKOWSKI, Director of the Arizona
Department of Transportation, in his official
capacity; and STACEY K. STANTON,
Assistant Director of the Motor Vehicle
Division of the Arizona Department of
Transportation, in her official capacity,
Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

CLASS ACTION

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14 **Pro hac vice application forthcoming*

15 ***Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*

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INTRODUCTION

1. This class action lawsuit challenges Arizona Executive Order 2012-06¹ and Arizona's practice of denying driver's licenses to immigrant youth whom the federal government has authorized to remain in the United States under the Deferred Action for Childhood Arrivals ("DACA") program. Defendants' practice violates the Supremacy Clause and the Equal Protection Clause of the United States Constitution.

2. This action is brought by the Arizona DREAM Act Coalition and several Individual Plaintiffs, who are young immigrants who were brought to the United States at an early age by their families in hope that they could have a better life in the United States. They have overcome many obstacles and worked diligently in order to succeed in school, to help their families, and to enrich their communities with their individual abilities. These young immigrants are commonly known as "DREAMers" based on proposed federal legislation, the Development, Relief, and Education for Alien Minors ("DREAM") Act.

3. As the President of the United States has recognized, these young immigrants "are Americans in their heart, in their minds, in every single way but one: on paper."² He explained, "it makes no sense" to deport "[t]hese [] young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag."³

¹ A true and correct copy of Arizona Executive Order 2012-06 is attached as Exhibit 1.

² President Barack Obama, Remarks on Immigration Reform, 2012 DAILY COMP. PRES. DOC. 1 (June 15, 2012), *available at* <http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf>.

³ *Id.*

1 4. On June 15, 2012, the Secretary of the United States Department of Homeland
2 Security (“DHS”) announced the new DACA program of administrative immigration relief
3 for young immigrants who came to the United States as children and are present in the
4 country without a formal immigration status. The DACA program was established to
5 allow these young immigrants to remain in the United States without fear of deportation
6 for a specified, renewable period, and thus continue to contribute to American society.
7

8 5. Under DACA, certain DREAMers are eligible to obtain “deferred action” from
9 the federal government upon meeting specific criteria such as the attainment of a high
10 school diploma and passing a rigorous background check including the absence of a
11 criminal record. Deferred action is a mechanism used by the federal government to
12 prevent the removal of a noncitizen who would otherwise be subject to deportation, and to
13 allow the noncitizen to remain in the United States for a specified period of time. Persons
14 granted deferred action under DACA may stay in the United States for a renewable period
15 of two years, are shielded from removal proceedings during that time, and may be granted
16 federal employment authorization and a Social Security Number.
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19 6. The Individual Plaintiffs and the class they propose to represent are young
20 immigrants residing in Arizona who have been granted deferred action, or will be,
21 pursuant to the DACA program, and have (or will have) employment authorization and a
22 Social Security Number. It is estimated that there are 1.76 million DACA-eligible youth
23 in the United States and approximately 80,000 residing in Arizona.
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26 7. All DACA grantees in Arizona are being denied the opportunity to obtain a
27 driver’s license pursuant to Defendants’ unlawful policies and practices. On August 15,
28

1 2012 – the first day DHS began accepting DACA applications – Defendant and Arizona
2 Governor Janice K. Brewer issued Executive Order 2012-06, which states: “the Deferred
3 Action program does not and cannot confer lawful or authorized status or presence upon
4 the unlawful alien applicants.” The Order directs state agencies to take necessary steps to
5 “prevent Deferred Action recipients from obtaining eligibility . . . for any . . . state
6 identification, including a driver’s license.”
7

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9 8. As stated by Defendant Brewer, the Executive Order makes clear that there will
10 be “no drivers [sic] licenses for illegal people,”⁴ and in her opinion, “[t]he Obama amnesty
11 plan doesn’t make them legally here.”⁵ Defendant Brewer’s Executive Order reflects her
12 apparent disagreement with the federal government’s decision to allow young immigrants
13 who qualify under the DACA program to remain in the United States.
14

15 9. Prior to Defendant Brewer’s Executive Order 2012-06, the Motor Vehicle
16 Division (“MVD”) of the Arizona Department of Transportation (“ADOT”) issued
17 driver’s licenses to all noncitizens granted deferred action who were otherwise qualified.
18 The MVD routinely accepted federal employment authorization documents, including
19 those presented by noncitizens with deferred action, as evidence of authorized presence in
20 the United States, and it routinely issued driver’s licenses to persons presenting such
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23 ⁴ Arizona Channel 12 News Video, Why Did Brewer Issue “Dreamer” Order?
24 (Aug. 15, 2012) (video documenting remarks by Defendant Brewer), *available at*
25 <http://www.azcentral.com/video/#/Why+did+Brewer+issue+%27dreamer%27+order%3F/1787777903001>.

26 ⁵ Fox News Latino. Jan Brewer Bars IDs, Benefits for Undocumented Immigrants
27 in Arizona (Aug. 16, 2012), *available at*
<http://latino.foxnews.com/latino/politics/2012/08/16/brewer-blocks-id-benefits-for-undocumented-immigrants/#ixzz2BKUMfgjM>.

28 ⁶ A true and correct copy of Arizona Motor Vehicle Division Policy 16.1.4(S) is
attached as Exhibit 2.

1 documents who were otherwise qualified for a license, including noncitizens with deferred
2 action.

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4 10. The MVD implemented Executive Order 2012-06 on September 18, 2012 by
5 revising its policies to bar the acceptance of the employment authorization documents of
6 DACA recipients as evidence of authorized presence in the United States to establish
7 eligibility for driver's licenses. *See* MVD Policy 16.1.4(S).⁶ The MVD continues to
8 accept employment authorization documents from all other noncitizens, including
9 noncitizens who are recipients of deferred action other than DACA recipients.
10

11 11. Arizona's practice of denying driver's licenses to DACA recipients seeks to
12 negate the federal government's decision to authorize DACA-eligible DREAMers to
13 remain in the United States, interferes with the goals and function of the DACA program,
14 and harms and unlawfully discriminates against Individual Plaintiffs and all other similarly
15 situated individuals residing in Arizona.
16

17 12. As a result of their deferred action status, Individual Plaintiffs are (or will be)
18 authorized by the federal government to be present in the United States for a renewable
19 period of two years, and are (or will be) federally authorized to work. Despite this federal
20 authorization, under Defendants' unlawful practice Individual Plaintiffs and others like
21 them who are granted DACA are deemed "unauthorized" by the State of Arizona. As a
22 result Individual Plaintiffs are unable to obtain licenses to drive in Arizona despite being
23 otherwise eligible for such licenses, making it difficult, if not impossible, for them to
24 accomplish essential aspects of daily life, such as going to the grocery store, attending
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28 ⁶ A true and correct copy of Arizona Motor Vehicle Division Policy 16.1.4(S) is attached
as Exhibit 2.

1 church, bringing their children or younger siblings to medical appointments or to school,
2 attending school, and maintaining or obtaining productive employment.

3 13. Defendants' practice of denying licenses to DACA grantees violates the
4
5 Supremacy Clause of the United States Constitution because it is preempted by federal
6 immigration law and the federal government's exclusive authority to regulate immigration.

7 14. Defendants' practice also violates the Fourteenth Amendment Equal Protection
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9 Clause because it denies driver's licenses to DACA recipients without any valid
10 justification, including even a rational basis.

11 15. Plaintiffs therefore bring the instant action for permanent injunctive and
12
13 declaratory relief from Arizona's unlawful practice.

14 JURISDICTION AND VENUE

15 16. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343
16
17 over Plaintiffs' claims under the U.S. Constitution. The Court has authority to grant
18 declaratory relief under 28 U.S.C. §§ 2201 and 2202.

19 17. Venue is proper in this district under 28 U.S.C. § 1391(b). All Defendants are
20
21 sued in their official capacity and their official places of business are all located within this
22 District. All of the events giving rise to this Complaint occurred within this District.

23 PARTIES

24 Plaintiffs

25 18. The **Arizona DREAM Act Coalition ("ADAC")** is an immigrant youth-led
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27 organization whose mission is to promote the educational success of immigrant youth,
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increase civic engagement and community service, and advocate for the passage of the

1 DREAM Act at the national level. Since 2009, ADAC has focused its organizing and
2 advocacy efforts on increasing voter participation in Arizona's Latino community,
3 integrating immigrant youth in Arizona's educational system and economy to the fullest
4 extent possible, and advocating for immigrant rights. ADAC has an active statewide
5 membership of several hundred individuals, including over 30 core volunteers, and works
6 in coalition with seven chapter organizations. Arizona's decision to deny driver's
7 licenses to DACA grantees has adversely impacted both ADAC and its members. Most
8 of ADAC's members are DACA recipients who have been issued Social Security
9 Numbers and are authorized to work in the country, or have applications for DACA and
10 work authorization pending. As a result of Arizona's denial of driver's licenses, many of
11 ADAC's members are unable to drive legally in Arizona, making it difficult or impossible
12 for them to function normally in the community – including getting to and from work and
13 school, taking children to school or to the doctor, and obtaining employment.
14 Additionally, Arizona's decision impedes ADAC's ability to carry out its mission, as
15 ADAC has been forced to divert its limited resources from its primary advocacy projects
16 in order to assist impacted individuals, such as responding to inquiries and requests for
17 assistance. Because ADAC members are unable to obtain driver's licenses, transporting
18 members and supporters to events, including meetings in other regions of Arizona and
19 out-of-state conferences, is more costly and limits members' participation. ADAC
20 regularly draws new members from these events, but is forced to limit its attendance
21 because of members' inability to drive, which restricts the growth and functioning of the
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1 organization. ADAC recently acquired a vehicle, but is largely unable to use it because
2 of Arizona's denial of driver's licenses to DACA grantees.

3
4 19. **Jesus Castro-Martinez** is a 26-year-old resident of Phoenix who came to the
5 United States at age 15 from Mexico and has lived in Arizona since that time. On October
6 3, 2012, he was granted deferred action under the DACA program, and shortly thereafter
7 received an employment authorization document ("EAD") and Social Security Number.
8 Mr. Castro has a fiancée who is a U.S. citizen, and a brother and sister who are lawful
9 permanent residents. He received his associate degree from Scottsdale Community
10 College in 2010 and hopes to return to school to continue his studies and become an
11 interior designer. Mr. Castro currently works at a spa in North Scottsdale. Because his
12 work may require driving, he may be prevented from taking a promotion or even lose his
13 job because he is ineligible for a driver's license. In October 2012, Mr. Castro attempted
14 to apply for an Arizona driver's license at the MVD office in Scottsdale. MVD officials
15 informed him that because his EAD was obtained through the DACA program, it could
16 not establish his authorized presence in the United States, and that he was therefore
17 ineligible for a driver's license.
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21 20. **Christian Jacobo** is a 19-year-old resident of Phoenix who came to the United
22 States from Mexico when he was 12 years old and has lived in Arizona since that time.
23 On October 2, 2012, he was granted deferred action under the DACA program, and
24 subsequently received an EAD and Social Security Number. Mr. Jacobo currently lives
25 with his sister and her family. He obtained his General Education Development ("GED")
26 certificate from La Joya Community High School in Avondale, Arizona, and hopes
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1 eventually to earn his bachelor's degree and become a physical therapist or chiropractor.
2 Mr. Jacobo needs a driver's license in order to earn a living, among other reasons. In
3 October 2012, Mr. Castro attempted to apply for an Arizona driver's license at an MVD
4 office in Phoenix. MVD officials informed him that because his EAD was obtained
5 through the DACA program, it could not establish his authorized presence in the United
6 States, and that he was therefore ineligible for a driver's license.
7

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9 21. **Alejandra Lopez**, now 19 years old, has grown up virtually her entire life in the
10 United States. She is originally from Mexico, but has been in the United States since she
11 was four years old. Ms. Lopez graduated from high school in Arizona, and considers
12 Arizona her home. She is married to a U.S. Citizen and has a U.S. citizen child. She is a
13 primary caregiver for her young child as well as for her two U.S. citizen brothers who are
14 four and 15 years old, respectively. In October 2012, she was granted deferred action
15 under the DACA program. On October 9, 2012, she received an EAD, and on October 15,
16 2012, she received a Social Security Number. On October 13, 2012 Ms. Lopez went to
17 her local MVD to apply for a driver's license. The MVD staff person looked at her EAD
18 and told her that she was not eligible for a license. Ms. Lopez understands that Executive
19 Order 2012-06 precludes her from using her EAD to get a license. As a mother and
20 caregiver, Ms. Lopez needs an Arizona driver's license for multiple reasons, such as to
21 drive her brothers to and from school and manage various household errands, including
22 getting groceries or taking her child to the doctor. Because her husband works at night, he
23 is often unavailable to give Ms. Lopez rides she needs. Not having a driver's license has
24 also impeded her ability to find employment. Ms. Lopez was offered an interview for a
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1 customer service job in Tempe but was forced to turn it down due to the fact that she
2 would be unable to commute to work without a driver's license. In addition, she needs a
3 driver's license to use as a secure form of identification.
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5 22. **Ariel Martinez** is an 18-year-old resident of Youngtown, Arizona. He came to
6 the United States from Mexico when he was four years old. He has lived in Arizona since
7 then and is currently a student at Glendale Community College in Glendale, Arizona. He
8 aspires to attend the Conservatory of Recording Arts and Sciences in order to pursue a
9 career in the recording business. On October 15, 2012, Mr. Martinez was granted deferred
10 action under the DACA program. Around October 17, 2012, he received an EAD, and
11 around October 19, 2012, he received a Social Security Number. Defendants' policy
12 imposes a significant hardship on Mr. Martinez's ability to get to his college classes and
13 sports activities, which include coaching high school soccer. Mr. Martinez understands
14 that Executive Order 2012-06 precludes him from obtaining a license.
15
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17 23. **Natalia Perez-Gallegos** is 18 years old, and resides in Phoenix, Arizona. Ms.
18 Perez-Gallegos came to the United States from Mexico when she was five years old. In
19 October 2012, she was granted deferred action under the DACA program and received her
20 EAD and her Social Security Number. Ms. Perez-Gallegos attended Glendale Community
21 College and Estrella Mountain Community College, where she completed a year of
22 nursing pre-requisites, and intends to go back to school to complete her Associate Degree
23 in registered nursing. After Ms. Perez-Gallegos received her EAD and Social Security
24 Number she began working as a medical assistant, and she is planning to go back to school
25 in January 2013. Ms. Perez-Gallegos is concerned that she will not be able to get back and
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1 forth from school and work without a driver's license. In October 2012, after receiving
2 DACA status, Ms. Perez-Gallegos attempted to apply for an Arizona driver's license at the
3 MVD offices in Avondale and on 51st Street in Phoenix, Arizona. At both locations she
4 was told by MVD officials that, because her EAD was obtained through the DACA
5 program, she was ineligible for a driver's license.
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10 **Defendants**

11 24. At all times relevant to this action, **Defendant Janice K. Brewer** has been the
12 Governor of the State of Arizona. Defendant Brewer issued the Executive Order being
13 challenged in this case. Defendant Brewer is sued in her official capacity.
14

15 25. At all times relevant to this action, **Defendant John S. Halikowski** has been the
16 Director of ADOT, which is the agency with authority to license drivers and enforce motor
17 vehicle statutes. Ariz. Rev. Stat. § 28-332(B). As Director, Defendant Halikowski "is
18 responsible for the administration of the department" and has the authority to adopt rules
19 he deems necessary to carry out ADOT's responsibilities. Ariz. Rev. Stat. § 28-331; *see*
20 *also* Ariz. Rev. Stat. § 28-366. Defendant Halikowski is sued in his official capacity.
21

22 26. At all times relevant to this action, **Defendant Stacey K. Stanton** has been the
23 Assistant Director of the MVD, which is a division of the ADOT. *See* Ariz. Rev. Stat. §
24 28-332(C). MVD is the division of the ADOT charged with responsibility for licensing
25 drivers. Defendant Stanton is responsible for the administration of all Motor Vehicle
26 Departments in the state of Arizona. Defendant Stanton issued policies implementing
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1 Executive Order 2012-06 and instructing that employment authorization documents issued
2 to DACA recipients may not be used to establish eligibility for an Arizona driver's license.
3 See MVD Policy 16.1.4(S) (rev. Sept. 18, 2012). Defendant Stanton is sued in her official
4 capacity.
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8 9 10 **BACKGROUND**

11 **Deferred Action**

12 27. Deferred action is a longstanding form of prosecutorial discretion in which the
13 federal government decides, based on humanitarian or other reasons, to refrain from
14 seeking an individual noncitizen's removal and to authorize her continued presence in the
15 United States. A grant of deferred action indicates that the noncitizen's presence in the
16 United States is known to the federal government, and that the federal government has
17 made a discretionary determination, based on a review of the individual's case, not to
18 remove her but rather to allow her to remain in the United States during a specified period.
19
20

21 28. Moreover, recipients of deferred action are eligible to receive employment
22 authorization under federal law upon a showing of economic necessity. See 8 C.F.R. §
23 274a.12(c)(14).
24

25 29. The Secretary of Homeland Security's authority to grant deferred action to
26 otherwise removable noncitizens derives from her statutory authority over "administration
27 and enforcement" of the Immigration and Nationality Act ("INA"), including the power to
28

1 “perform such . . . acts as [s]he deems necessary for carrying out [her] authority.” 8
2 U.S.C. §§ 1103(a)(1), 1103(a)(3). That discretion granted by Congress includes the
3 discretion to “decide whether it makes sense to pursue removal at all.” *Arizona v. United*
4 *States*, 132 S. Ct. 2492, 2499 (2012). Deferred action is simply one example of the federal
5 government’s exercise of the discretionary authority granted by Congress in immigration
6 matters. Indeed, Congress repeatedly has recognized in the INA and other legislation that
7 the Executive Branch has discretion to grant deferred action under the immigration laws.
8
9

10 30. For decades, the federal government has used deferred action to authorize
11 numerous groups of immigrants to live and work in the United States for a temporary
12 period. Deferred action has been made available to certain victims of human trafficking
13 and sexual exploitation; to certain relatives of victims of terrorism; to surviving family
14 members of a legal permanent resident member of the armed forces; to spouses and
15 children of U.S. citizens or lawful permanent residents who are survivors of domestic
16 violence; to certain surviving spouses of U.S. citizens; to foreign students affected by
17 Hurricane Katrina; and to applicants for certain types of visas. In addition, federal
18 immigration authorities may grant deferred action on an individual basis, including, for
19 example, to a person whose continued presence is desired by law enforcement for an
20 ongoing investigation.
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22

23 31. Immigrant youth brought to the country as children are thus only the most recent
24 beneficiaries of deferred action.
25

26 32. The rationale for the DACA program is consistent with the federal
27 government’s longstanding use of deferred action to permit noncitizens to remain in the
28

1 country. In announcing the DACA program, the DHS Secretary explained that “[o]ur
2 Nation’s immigration laws are not designed to be blindly enforced without
3 consideration given to the individual circumstances of each case. Nor are they designed to
4 remove productive young people to countries where they may not have lived or even speak
5 the language. Indeed, many of these young people have already contributed to our country
6 in significant ways.”⁷

8
9 33. Similarly, the President stated that the federal government decided to make
10 deferred action available to DREAMers because “it makes no sense . . . to expel these
11 young people who want to staff our labs or start new businesses or defend our country.”⁸
12 He explained, these individuals are “talented young people, who, for all intents and
13 purposes, are Americans – they’ve been raised as Americans, understand themselves to be
14 part of this country.”

15
16 34. The DACA program is intended “to lift the shadow of deportation from these
17 young people” and “to mend our Nation’s immigration policy to make it more fair, more
18 efficient, and more just.”⁹

19
20 35. Under DACA, young immigrants who entered the United States as children and
21 who meet educational and residency requirements may apply for deferred action.
22 Noncitizens are eligible for DACA if they: a) were under the age of 31 as of June 15,
23

24
25 ⁷ Janet Napolitano, Memorandum on Exercising Prosecutorial Discretion with
26 Respect to Individuals Who Came to the United States as Children 2 (June 15, 2012),
available at [http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-](http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf)
[individuals-who-came-to-us-as-children.pdf](http://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf).

27 ⁸ President Barack Obama, Remarks on Immigration Reform, 2012 DAILY COMP.
PRES. DOC. 1 (June 15, 2012), *available at* [http://www.gpo.gov/fdsys/pkg/DCPD-](http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf)
28 [201200483/pdf/DCPD-201200483.pdf](http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf).

⁹ *Id.*

1 2012; b) came to the United States before reaching their 16th birthday; c) have
2 continuously resided in the United States since June 15, 2007, up to the present time; d)
3 were physically present in the United States on June 15, 2012, and at the time of making
4 the request for consideration of deferred action with United States Citizenship and
5 Immigration Services (“USCIS”); e) entered without inspection before June 15, 2012, or
6 had an expired lawful immigration status as of June 15, 2012; f) are currently in school,
7 have graduated or obtained a certificate of completion from high school, have obtained a
8 GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed
9 Forces of the United States; and g) have not been convicted of a felony, significant
10 misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to
11 national security or public safety.¹⁰

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14
15 36. The DACA application process includes extensive criminal background checks.
16 Under the DACA program, deferred action is available for a period of two years, subject to
17 renewal, and applicants who are approved may obtain work authorization, and if such
18 authorization is granted, a Social Security Number.¹¹

19
20 37. The federal government routinely grants work authorization to deferred action
21 recipients, including DACA recipients. Noncitizens granted work authorization are issued
22 federal employment authorization documents or EADs, such as I-766 cards.
23
24

25 ¹⁰ USCIS, Consideration of Deferred Action for Childhood Arrivals Process (Sept. 14,
26 2012), *available at*
27 [http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextch
28 ¹¹ *See id.*](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD)

1 38. Noncitizens granted deferred action pursuant to the DACA program are thus
2 authorized to be present in the United States during the two-year deferred action period,
3 and during any extensions of the grant.
4

5 39. DACA recipients are likewise lawfully present during the deferred action
6 period. USCIS has explained that under the DACA program, “[i]f your case is deferred,
7 you will not accrue unlawful presence during the period of deferred action.”¹² According
8 to USCIS, “an individual whose case is deferred will not be considered to be accruing
9 unlawful presence in the United States during the period deferred action is in effect.”¹³
10

11 40. As of November 15, 2012, immigrant youth had filed nearly 300,000 DACA
12 applications with USCIS, including over 11,000 applications from Arizona residents.
13 Although the vast majority of those applications are still in process, USCIS has granted
14 deferred action to at least 53,273 individuals nationwide pursuant to the DACA program.¹⁴
15

16 **Arizona Driver’s License Practice** 17

18 41. Both before and after the federal government announced that immigrant youth
19 who came to the country as children would be eligible for deferred action under the DACA
20 program, Arizona law provided that an applicant for an instruction permit, driver’s license,
21 or identification card must submit proof that the applicant’s “presence in the United States
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25 ¹² *Id.* at Q5.

26 ¹³ *Id.* at Q1; *see also id.* at Q6.

27 ¹⁴ USCIS, Deferred Action for Childhood Arrivals Process (Aug. 15 – Nov. 15,
28 2012) *available at*
[http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20For
ms%20Data/Static_files/2012-1116%20DACA%20Monthly%20Report.pdf](http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20For%20ms%20Data/Static_files/2012-1116%20DACA%20Monthly%20Report.pdf)

1 is authorized under federal law.” Ariz. Rev. Stat. §§ 28-3153(D), 28-3158(C), 28-
2 3165(F).

3
4 42. Specifically, Ariz. Rev. Stat. § 28-3153(D) provides that “[n]otwithstanding any
5 other law, the department shall not issue to or renew a driver license or nonoperating
6 identification license for a person *who does not submit proof satisfactory to the*
7 *department that the applicant’s presence in the United States is authorized under federal*
8 *law.” Id. § 28-3153(D) (emphasis added).* The statute further provides that the ADOT
9 shall establish procedures for “[v]erification that the applicant’s presence in the United
10 States is authorized under federal law.” *Id. § 28-3153(D)(1).*

12 43. The policy of the MVD *prior* to the announcement of the DACA program was
13 that an employment authorization document was sufficient to prove that an applicant’s
14 presence was “authorized under federal law.” *See* MVD, Primary and Secondary Forms of
15 Acceptable Documentation (rev. Nov. 30, 2010). Because deferred action recipients are
16 eligible for employment authorization under federal law, *see* 8 C.F.R. § 274a.12(c)(14),
17 Defendants routinely issued driver’s licenses to deferred action recipients, as well as other
18 noncitizens submitting EADs as proof of “authorized” presence. Thus, under Defendants’
19 previous policy, DACA recipients would have been able to meet the “authorized” presence
20 requirement by submitting their employment authorization documents.
21
22

23 44. However, on August 15, 2012 – the very same day USCIS began accepting
24 DACA applications – Defendant Brewer issued Executive Order 2012-06, instructing state
25 agencies to take necessary steps to “prevent Deferred Action recipients from obtaining
26 eligibility, . . . for any . . . state identification, including a driver’s license.” *See* Arizona
27
28

1 Executive Order 2012-06. According to its title, the Executive Order purports to “Re-
2 affirm [the] Intent of Arizona Law In Response to the Federal Government’s Deferred
3 Action Program.” *Id.*

4
5 45. The Executive Order states that “Arizona Revised Statutes 28-3153 prohibits the
6 ADOT from issuing a drivers [sic] license or nonoperating identification license unless an
7 applicant submits proof satisfactory to ADOT that the applicant’s presence in the United
8 States is authorized under federal law.” *Id.* The Executive Order further states that “the
9 Deferred Action program does not and cannot confer lawful or authorized status or
10 presence upon the unlawful alien applicants” and that “[t]he issuance of Deferred Action
11 or Deferred Action USCIS employment authorization documents to unlawfully present
12 aliens does not confer upon them any lawful or authorized status.” *Id.* The Executive
13 Order thus provides that deferred action recipients are unable to meet the “authorized”
14 presence requirement for driver’s licenses and identification.
15
16

17 46. In a public statement made the same day the Executive Order was issued,
18 Defendant Brewer stated that the Executive Order was intended to clarify that there would
19 be “no drivers [sic] licenses for illegal people.”¹⁵ Defendant Brewer stated: “They are here
20 illegally and unlawfully in the state of Arizona and it’s already been determined that
21 you’re not allowed to have a driver’s license if you are here illegally.”¹⁶
22
23

24
25 ¹⁵ Arizona Channel 12 News Video, Why Did Brewer Issue ‘Dreamer’ Order?
26 (Aug. 15, 2012), *available at*
<http://www.azcentral.com/video/#/Why+did+Brewer+issue+%27dreamer%27+order%3F/1787777903001>, (video documenting remarks by Defendant Brewer).

27 ¹⁶ Jan Brewer Bars IDs, Benefits for Undocumented Immigrants in Arizona, Fox
28 News Latino (Aug. 16, 2012),
<http://latino.foxnews.com/latino/politics/2012/08/16/brewer-blocks-id-benefits-for->

1 47. To implement the Executive Order's directive, the Arizona MVD revised its
2 policy regarding acceptance of employment authorization documents as proof of
3 authorized presence. Under the new policy, employment authorization documents
4 presented by DACA recipients will not be accepted as proof of authorized presence for a
5 driver's license or identification card. *See* MVD Policy 16.1.4(S) (rev. Sept. 18, 2012).
6 However, for all other recipients of deferred action (i.e., other than DACA beneficiaries),
7 employment authorization documents will continue to be accepted as proof of authorized
8 status. *See* MVD, Primary and Secondary Forms of Acceptable Documentation (rev. Sept.
9 18, 2012).

12 48. Arizona's practice of denying driver's licenses to DACA recipients is an outlier
13 in the 50 states. The rules in an overwhelming majority of states make all deferred action
14 recipients with employment authorization and Social Security Numbers eligible for
15 driver's licenses. Indeed, Plaintiffs are aware of only two other states, apart from Arizona,
16 that have announced an intent to preclude DACA recipients from eligibility for a driver's
17 license.
18

20 **Defendant's Policy Harms Plaintiffs**

21 49. Defendants' policy of denying driver's licenses to DACA recipients, including
22 Plaintiffs, pursuant to Executive Order 2012-06 and its implementing policies, is currently
23 in effect. Defendants are applying Executive Order 2012-06 to deny driver's licenses to
24 DACA recipients, including Plaintiffs.
25

26
27
28 undocumented-immigrants/.

1 50. As a result, Defendants, acting under the color of state law, are violating
2 Plaintiffs' rights under the U.S. Constitution by continuing to enforce Arizona's practice
3 of denying driver's licenses to DACA recipients, including Plaintiffs.
4

5 51. Moreover, Defendants' practice of denying driver's licenses to DACA
6 recipients imposes onerous restrictions on the daily lives of the Individual Plaintiffs and
7 members of Plaintiff ADAC.
8

9 52. The ability to drive is, in most areas of the United States, a necessity of modern
10 life. Driving is essential to the ability to work, particularly in Arizona. U.S. Census
11 Bureau statistics indicate that over 87 percent of Arizonans and over 86 percent of workers
12 nationwide commute to work by car. In contrast, only two percent of all Arizonan workers
13 and five percent of workers nationwide commute to work by public transportation.
14 Denying driver's licenses to DACA recipients in Arizona severely frustrates their ability to
15 obtain employment and achieve economic self-sufficiency. Indeed, the necessity of
16 driving to a place of employment and/or school is so important that Arizona provides
17 licenses in a diverse range of circumstances. For example, Arizona provides a restricted
18 license allowing such use of a motor vehicle to many individuals who are otherwise denied
19 the right to operate a motor vehicle. *See, e.g.,* Ariz. Rev. Stat. § 28-4145(A) (driving
20 restriction based on lack of insurance verification).
21
22

23 53. Arizona also allows those convicted of driving under the influence to do so if
24 their vehicle has an ignition interlock device. *Id.* § 28-1402.
25

26 54. Defendants' actions and practices are causing substantial irreparable harm to
27 Individual Plaintiffs and to ADAC's members. Because they are not licensed to drive,
28

1 they are, inter alia, prevented from being able to drive legally in order to go to work,
2 school, church, medical appointments; to take their children or younger siblings to school
3 or medical appointments; to take on employment requiring a driver's license; and to
4 conduct many basic activities of everyday life. In order to manage these basic activities of
5 daily life, Individual Plaintiffs and ADAC's members are forced to rely on rides from
6 others, or risk criminal penalties and fines by driving without a license. Individual
7 Plaintiffs and ADAC's members are also harmed by having an unconstitutional policy
8 enforced against them.
9
10

11 55. In addition, Defendants' unlawful practice harms ADAC's ability to carry out
12 its mission and forces it to divert resources to efforts from its primary advocacy projects in
13 order to assist members who are adversely affected by the inability to obtain a driver's
14 license. Defendants' practice also harms both ADAC as an organization and its individual
15 members by limiting the ability of ADAC's members to travel to events related to
16 ADAC's mission and making such travel more costly.
17
18

19 56. Thus, wrongful denial of a driver's license to Individual Plaintiffs and ADAC's
20 members causes irreparable harm. Such harm is irreparable because no reasonable remedy
21 can make a person whole after they have been denied a license for a period of time.
22

23 57. If Executive Order 2012-06 and related practices are not enjoined, Plaintiffs will
24 continue to suffer irreparable injury and continue to be hampered in conducting these basic
25 activities of everyday life.

26 58. There is an actual and substantial controversy between Plaintiffs and
27 Defendants.
28

1 59. Plaintiffs have no plain, speedy, and adequate remedy at law against Executive
2 Order 2012-06 and related practices other than the relief requested in this Complaint.

3 60. By enforcing Executive Order 2012-06 to deny driver's licenses to Plaintiffs,
4 Defendants are denying Plaintiffs rights secured to them under the U.S. Constitution and
5 laws.

6 61. Plaintiffs are entitled to a declaration that Executive Order 2012-06 and its
7 implementing policies are unconstitutional as applied to deny driver's licenses to DACA
8 recipients, and to a preliminary and permanent injunction enjoining Defendants from so
9 denying such licenses.
10 denying such licenses.

11
12
13 **Defendants' Policy is Preempted By Federal Law**

14 62. Article VI, clause 2, of the United States Constitution, known as the Supremacy
15 Clause, provides: "This Constitution, and the Laws of the United States which shall be
16 made in Pursuance thereof; and all Treaties made, or which shall be made, under the
17 Authority of the United States, shall be the supreme Law of the Land; and the Judges in
18 every State shall be bound thereby, any Thing in the Constitution or Laws of any State to
19 the Contrary notwithstanding."
20 the Contrary notwithstanding."

21 63. Pursuant to the Supremacy Clause, federal law preempts state regulation of any
22 area over which Congress has expressly or impliedly exercised exclusive authority or
23 which is constitutionally reserved to the federal government.
24 which is constitutionally reserved to the federal government.

25 64. The federal government has sole and exclusive power to regulate immigration.
26 The federal government's exclusive power over immigration matters is inherent in the
27 nation's sovereignty, and derives from the U.S. Constitution's grant to the federal
28 nation's sovereignty, and derives from the U.S. Constitution's grant to the federal

1 government of the power to “establish an uniform Rule of Naturalization,” *id.* art. I, § 8,
2 cl. 4, and to “regulate Commerce with foreign Nations,” *id.* art. I, § 8, cl. 3.

3
4 65. As part of its immigration power, the federal government has exclusive
5 authority to enact and to enforce regulations concerning which noncitizens to admit,
6 exclude, remove, or allow to remain in the United States. The federal government also has
7 exclusive authority over the terms and conditions of a noncitizen’s stay in the United
8 States. Further, the federal government has exclusive authority to classify noncitizens,
9 which includes determining the categories of noncitizens who are granted federal
10 authorization to remain in the United States. In contrast, state governments have none of
11 these powers.
12

13
14 66. Pursuant to its powers, the federal government has established a comprehensive
15 system of laws, regulations, procedures, and administrative agencies that determine,
16 subject to judicial review, whether and under what conditions a noncitizen may enter and
17 live in the United States, when a noncitizen may be subject to removal, and when a
18 noncitizen may be eligible for relief from removal, either temporarily or permanently.
19

20 67. In the INA, 8 U.S.C. §1101, *et seq.*, Congress has delegated to the federal
21 Executive broad discretion over the manner of the execution of the immigration laws,
22 including the manner of their enforcement. That discretion includes the discretion to
23 decide not to pursue the removal of a noncitizen who may be removable and to authorize
24 such persons to remain in the United States. One way in which the Executive exercises its
25 discretionary authority is by granting noncitizens “deferred action,” which allows them to
26 remain in the United States for a period of time.
27
28

1 68. Under the federal immigration system, deferred action recipients, including
2 DACA grantees, are authorized to remain in the United States for the period of the
3 deferred action grant. Deferred action recipients, including DACA grantees, who are
4 granted employment authorization are authorized not only to reside in the United States
5 but to work here. Deferred action recipients, including DACA grantees, are present in the
6 United States with legal authorization and are not unlawfully present.
7

8 69. Executive Order 2012-06 and its implementing policies impermissibly regulate
9 immigration by, inter alia, creating a new, state-based classification of noncitizens that
10 treats DACA recipients as though they were unauthorized and unlawfully present.
11

12 70. Executive Order 2012-06 and its implementing policies, by denying driver's
13 licenses and state-issued identification cards, further impermissibly regulate immigration
14 because, inter alia, they impose immigration-related burdens and penalties on noncitizens
15 whose presence in the United States is authorized by the federal government, and in a
16 manner not contemplated by federal law.
17

18 71. Executive Order 2012-06 and its implementing policies denying DACA
19 recipients driver's licenses conflicts with, frustrates, and serves as an obstacle to federal
20 immigration law, goals, and policies of authorizing DACA recipients to live and work in
21 the United States, to come out of the shadows, and to participate as full members of our
22 nation's communities.
23

24 **Defendants' Policy Violates Equal Protection**

25 72. The Defendants' decision to single out and deny driver's licenses to individuals
26 granted deferred action under the DACA program while granting licenses to all other
27
28

1 individuals granted deferred action or other forms of temporary authorization to remain in
2 the United States does not rationally further any state goal. Instead, the singling out of
3 DACA grantees appears to reflect disagreement with President Obama's DACA policy, an
4 intent to target these noncitizens on the basis of their alienage or immigration status, and a
5 rejection of their federally authorized presence.
6

7 73. Executive Order 2012-06 states that the purpose for denying driver's licenses to
8 individuals granted deferred action is to prevent "unlawfully present aliens" from
9 "inappropriately gaining access to taxpayer funded benefits and state identification" and to
10 save money for the state. These alleged state purposes are not a valid justification for the
11 Executive Order.
12

13 74. As set forth above, persons granted deferred action are not unlawfully present.
14 Rather, they have been granted authorization to remain in the United States by federal
15 immigration officials for a certain time period, and are eligible to apply to work in the
16 United States.
17

18 75. The state's claim that denying driver's licenses to individuals granted deferred
19 action is necessary to save the state money is not rational. Denying driver's licenses to
20 any group of individuals would save on administrative costs. There is no valid
21 justification for singling out DACA grantees on cost grounds.
22

23 76. In fact, Arizona charges application fees for driver's licenses which at a
24 minimum serves to defray processing costs. For example, if each of the estimated of
25 80,000 individuals eligible for DACA in Arizona were granted DACA and applied for
26
27
28

1 driver's licenses, Arizona could accrue \$2 million from the \$25 application fee for driver's
2 licenses charged to individuals under the age of 40.

3
4 77. Ensuring that all drivers can obtain validly issued driver's licenses promotes
5 public safety for numerous reasons. For example, it ensures that drivers in a state are
6 trained and tested on the state's traffic laws. As a further example, it facilitates access to
7 insurance that can protect all drivers in case of an accident. In addition, it helps ensure
8 that police can accurately identify individuals that they stop and that all drivers in Arizona
9 are accountable for their driving records.
10

11 12 **CLASS ACTION ALLEGATIONS**

13
14 78. The Individual Plaintiffs bring this action on behalf of themselves and all others
15 similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The
16 class, as proposed by Plaintiffs, consists of all persons residing in Arizona who are, or will
17 be granted deferred action, employment authorization, and a Social Security Number as a
18 result of the DACA program and who are, or will be, ineligible for an Arizona driver's
19 license as a result of Executive Order 2012-06 and related practices.
20

21 79. The requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2) are
22 met here, in that the class is so numerous that joinder of all class members is
23 impracticable. Indeed, an estimated 80,000 DACA-eligible youth live in Arizona alone.
24

25 80. There are questions of law and fact common to all class members including:
26 whether Executive Order 2012-06, as implemented, violates the Supremacy Clause and the
27 Equal Protection Clause of the U.S. Constitution.
28

1 81. The claims of the Individual Plaintiffs are typical of the proposed class. The
2 Individual Plaintiffs are all ineligible for an Arizona driver's license as a result of
3 Executive Order 2012-06 and implementing policies, which bar DACA recipients from
4 establishing authorized presence in the United States based on their employment
5 authorization documents.
6

7 82. All of the Individual Plaintiffs will fairly and adequately represent the interests
8 of all members of the proposed class, and seek relief on behalf of the class as a whole, and
9 have no interests antagonistic to other members of the class. The Individual Plaintiffs are
10 also represented by *pro bono* counsel, including the ACLU Foundation Immigrants'
11 Rights Project, the Mexican American Legal Defense and Educational Fund, the National
12 Immigration Law Center, the ACLU of Arizona, and Polsinelli Shughart PC, who
13 collectively have extensive experience in class action litigation, including litigation
14 regarding the rights of immigrants and constitutional law.
15

16 83. Finally, Defendants have acted and will act on grounds generally applicable to
17 the class in enforcing Executive Order 2012-06, thereby making final injunctive relief
18 appropriate with respect to the class as a whole.
19
20

21
22 **FIRST CLAIM FOR RELIEF**
23 **(Supremacy Clause, Article VI, Clause 2, of the United States Constitution; 42 U.S.C.**
24 **§ 1983)**

25 84. Plaintiffs re-allege and incorporate all of the allegations contained in the
26 previous paragraphs of this complaint as though fully set forth herein.

27 85. The Supremacy Clause, Article VI, Clause 2, of the U.S. Constitution, mandates
28 that federal law preempts state law in any area over which Congress expressly or impliedly

1 has reserved exclusive authority or which is constitutionally reserved to the federal
2 government, including where state law conflicts or interferes with federal law.

3
4 86. In classifying DACA recipients as ineligible for driver's licenses and
5 unauthorized to be present in the United States, Executive Order 2012-06 and its
6 implementing policies are preempted by federal law for multiple reasons.

7 87. Executive Order 2012-06 and its implementing policies are preempted because
8 they are an impermissible state regulation of immigration. Through Executive Order
9 2012-06 and its implementing policies, Arizona has created its own state classification of
10 noncitizens whose presence in the United States is "authorized," and erroneously classified
11 DACA recipients as lacking federal authorization to remain in the United States.
12 Arizona's creation of its own immigration classification impermissibly intrudes on the
13 federal government's exclusive authority to regulate immigration, and therefore violates
14 the Supremacy Clause.

15
16 88. Executive Order 2012-06 and its implementing policies are further preempted
17 because they conflict with, frustrate, and serve as an obstacle to federal immigration law,
18 goals, and policies. Arizona's misclassification of DACA recipients as not being
19 "authorized" to be present in the United States directly and fundamentally conflicts with
20 federal law, in violation of the Supremacy Clause.

21
22 89. Executive Order 2012-06 and its implementing policies are also preempted
23 because, inter alia, they impose immigration-related burdens and penalties on noncitizens
24 whose presence in the United States is authorized by the federal government, in violation
25 of the Supremacy Clause.
26
27
28

90. Because Executive Order 2012-06 and its implementing policies are preempted by federal law, they violate the Supremacy Clause.

91. Further, for all of the same reasons described above, Ariz. Rev. Stat. §§ 28-3153(D), 28-3158(C), and 28-3165(F) are similarly preempted by federal law and unconstitutional to the extent they compel Executive Order 2012-06 and its implementing policies.

92. The foregoing allegations are repeated and incorporated as though fully set forth herein.

SECOND CLAIM FOR RELIEF

(Equal Protection Clause, Fourteenth Amendment to the U.S. Constitution; 42 U.S.C. § 1983)

93. The Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

94. Because Arizona's Executive Order 2012-06 and related policies and practices bar individuals granted deferred action under the DACA program from receiving state driver's licenses, they violate the Equal Protection Clause of the Fourteenth Amendment.

95. Executive Order 2012-06 constitutes impermissible discrimination by state officers and officials against certain noncitizens on the basis of alienage and deprives them of equal protection of the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

96. Defendants cannot establish that Executive Order 2012-06 and related policies and practices have any valid justification, including even a rational basis.

1 97. Plaintiffs move for relief on this claim directly under the Constitution and as an
2 action seeking redress of the deprivation of statutory rights under the color of state law,
3 also under 42 U.S.C. § 1983.
4

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs pray for the following relief:
8

- 9 A. A preliminary and permanent injunction enjoining Defendants, their officials,
10 agents, employees, assigns, and all persons acting in concert or participating with
11 them from implementing or enforcing the state's illegal policy and practice of
12 denying driver's licenses to Deferred Action for Childhood Arrivals grantees;
13
14 B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Arizona's policy and
15 practice of denying driver's licenses to Deferred Action for Childhood Arrivals
16 grantees is unlawful and invalid;
17
18 C. An order awarding Plaintiffs costs of suit, and reasonable attorneys' fees and
19 expenses pursuant to 42 U.S.C. § 1988 and any other applicable law;

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21 //

22 //
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1 D. Such other and further relief as the Court deems equitable, just, and proper.

2
3 Dated this 29th day of November, 2012

By /s/ Andrew S. Jacob

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