

Jennifer Chang Newell\*  
Araceli Martínez-Olguín\*  
Michael Tan\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
39 Drumm Street  
San Francisco, CA 94111  
T: (415) 343-0770  
*jnewell@aclu.org*  
Linton Joaquin\*  
Karen C. Tumlin\*  
Shiu-Ming Cheer\*  
NATIONAL IMMIGRATION LAW  
CENTER  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010  
T: (213) 639-3900  
*joaquin@nilc.org*

*Attorneys for Plaintiffs*  
*Additional Counsel On Subsequent Pages*

Victor Viramontes\*  
Jorge M. Castillo\*  
MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND  
634 S. Spring Street, 11<sup>th</sup> Floor  
Los Angeles, CA 90014  
T: (213) 629-2512  
*vviramontes@maldef.org*

Daniel J. Pochoda (Bar No. 021979)  
Kelly J. Flood (Bar No. 019772)  
James Duff Lyall (Bar No. 330045)\*\*  
ACLU FOUNDATION OF ARIZONA  
3707 North 7th Street, Suite 235  
Phoenix, AZ 85014  
T: (602) 650-1854  
*dpochoda@achuaz.org*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

ARIZONA DREAM ACT  
COALITION; JESUS CASTRO-  
MARTINEZ; CHRISTIAN JACOBO;  
ALEJANDRA LOPEZ; ARIEL  
MARTINEZ; NATALIA PEREZ-  
GALLEGOS; CARLA CHAVARRIA;  
and JOSE RICARDO HINOJOS

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. 02:12-cv-02546-DGC-PHX

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

*Additional Co-Counsel*

Cecillia D. Wang\*  
R. Orion Danjuma\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
39 Drumm Street  
San Francisco, CA 94111  
T: (415) 343-0770  
*cwang@aclu.org*  
*amartinez-olguin@aclu.org*  
*mtan@aclu.org*  
*odanjuma@aclu.org*

Nora A. Preciado\*  
Nicholás Espíritu\*  
NATIONAL IMMIGRATION LAW  
CENTER  
3435 Wilshire Boulevard, Suite 2850  
Los Angeles, CA 90010  
T: (213) 639-3900  
*tumlin@nilc.org*  
*cheer@nilc.org*  
*preciado@nilc.org*  
*espiritu@nilc.org*

Tanya Broder  
NATIONAL IMMIGRATION LAW  
CENTER  
405 14th Street, Suite 401  
Oakland, CA 94612  
T: (510) 663-8282  
*broder@nilc.org*

Lee Gelernt\*  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT  
125 Broad St., 18<sup>th</sup> Floor  
New York, NY 10004  
T: (212) 549-2660  
*lgelernt@aclu.org*

\* *Pro hac vice*

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

*Attorneys for Plaintiffs*

## INTRODUCTION

1. This lawsuit challenges Arizona Executive Order 2012-06<sup>1</sup> 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 ("ADAC") 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."<sup>2</sup> 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."<sup>3</sup>

4. On June 15, 2012, the Secretary of the United States Department of Homeland Security ("DHS") announced the new DACA program of administrative immigration relief for young immigrants who came to the United States as children and are present in

---

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

<sup>2</sup> 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>.

<sup>3</sup> *Id.*

1 the country without a formal immigration status. The DACA program was established to  
2 allow these young immigrants to remain in the United States without fear of deportation  
3 for a specified, renewable period, and thus continue to contribute to American society.

4 5. Under DACA, certain DREAMers are eligible to obtain “deferred action” from  
5 the federal government upon meeting specific criteria such as the attainment of a high  
6 school diploma and passing a rigorous background check including the absence of a  
7 criminal record. Deferred action is a mechanism used by the federal government to  
8 prevent the removal of a noncitizen who would otherwise be subject to deportation, and  
9 to allow the noncitizen to remain in the United States for a specified period of time.  
10 Persons granted deferred action under DACA may stay in the United States for a  
11 renewable period of two years, are shielded from removal proceedings during that time,  
12 and may be granted federal employment authorization and a Social Security Number.

13 6. The Individual Plaintiffs and numerous ADAC members are young immigrants  
14 residing in Arizona who have been granted deferred action pursuant to the DACA  
15 program, and have employment authorization and a Social Security Number. It is  
16 estimated that there are 1.76 million DACA-eligible youth in the United States and  
17 approximately 80,000 residing in Arizona.

18 7. The Individual Plaintiffs and ADAC members with DACA, like all DACA  
19 grantees in Arizona, are being denied the opportunity to obtain a driver’s license pursuant  
20 to Defendants’ unlawful policies and practices. On August 15, 2012 – the first day DHS  
21 began accepting DACA applications – Defendant and Arizona Governor Janice K.  
22 Brewer issued Executive Order 2012-06, which states: “the Deferred Action program  
23 does not and cannot confer lawful or authorized status or presence upon the unlawful  
24 alien applicants.” The Order directs state agencies to take necessary steps to “prevent  
25 Deferred Action recipients from obtaining eligibility . . . for any . . . state identification,  
26 including a driver’s license.”  
27  
28



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

6        9. Prior to Defendant Brewer’s Executive Order 2012-06, the Motor Vehicle  
7 Division (“MVD”) of the Arizona Department of Transportation (“ADOT”) issued  
8 driver’s licenses to all noncitizens granted deferred action who were otherwise qualified.  
9 The MVD routinely accepted federal employment authorization documents, including  
10 those presented by noncitizens with deferred action, as evidence of authorized presence  
11 in the United States, and it routinely issued driver’s licenses to persons presenting such  
12 documents who were otherwise qualified for a license, including noncitizens with  
13 deferred action.

14        10. The MVD implemented Executive Order 2012-06 on September 17, 2012, by  
15 revising its policies to bar the acceptance of the employment authorization documents of  
16 DACA recipients as evidence of authorized presence in the United States to establish  
17 eligibility for driver’s licenses. *See* MVD Policy 16.1.4(S).<sup>6</sup> The MVD continues to  
18 accept employment authorization documents from all other noncitizens, including  
19 noncitizens who are recipients of deferred action other than DACA recipients.  
20

---

21        <sup>4</sup> Arizona Channel 12 News Video, Why Did Brewer Issue “Dreamer” Order? (Aug.  
22 15, 2012) (video documenting remarks by Defendant Brewer), *available at*  
23 <http://www.azcentral.com/video/#/Why+did+Brewer+issue+%27dreamer%27+order%3F/1787777903001>.

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

27        <sup>6</sup> A true and correct copy of Arizona Motor Vehicle Division Policy 16.1.4(S) is  
28 attached as Exhibit 2

1        11.     Arizona's practice of denying driver's licenses to DACA recipients seeks to  
2        negate the federal government's decision to authorize DACA-eligible DREAMers to  
3        remain in the United States, interferes with the goals and function of the DACA program,  
4        and harms and unlawfully discriminates against Individual Plaintiffs and ADAC  
5        members with DACA.

6        12.     As a result of their deferred action status, Individual Plaintiffs and many  
7        ADAC members are authorized by the federal government to be present in the United  
8        States for a renewable period of two years, and are federally authorized to work. Despite  
9        this federal authorization, under Defendants' unlawful practice Individual Plaintiffs and  
10       ADAC members with DACA are deemed "unauthorized" by the State of Arizona. As a  
11       result Individual Plaintiffs and many ADAC members are unable to obtain licenses to  
12       drive in Arizona despite being otherwise eligible for such licenses, making it difficult, if  
13       not impossible, for them to accomplish essential aspects of daily life, such as going to the  
14       grocery store, attending church, bringing their children or younger siblings to medical  
15       appointments or to school, attending school, and maintaining or obtaining productive  
16       employment.

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

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

24       15.     Plaintiffs therefore bring the instant action for permanent injunctive and  
25       declaratory relief from Arizona's unlawful practice.  
26  
27  
28

## JURISDICTION AND VENUE

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

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

## PARTIES

### Plaintiffs

18. The **Arizona DREAM Act Coalition** is an immigrant youth-led organization whose mission is to promote the educational success of immigrant youth, increase civic engagement and community service, and advocate for the passage of the DREAM Act at the national level. Since 2009, ADAC has focused its organizing and advocacy efforts on increasing voter participation in Arizona's Latino community, integrating immigrant youth in Arizona's educational system and economy to the fullest extent possible, and advocating for immigrant rights. ADAC has an active statewide membership of several hundred individuals, including over 30 core volunteers, and works in coalition with seven chapter organizations. Arizona's decision to deny driver's licenses to DACA grantees has adversely impacted both ADAC and its members. Most of ADAC's members are DACA recipients who have been issued Social Security Numbers and are authorized to work in the country, or have applications for DACA and work authorization pending. As a result of Arizona's denial of driver's licenses, many of ADAC's members are unable to drive legally in Arizona, making it difficult or impossible for them to function normally in the community – including getting to and from work and school, taking children to school or to the doctor, and obtaining employment. Additionally, Arizona's decision impedes ADAC's ability to carry out its

mission, as ADAC has been forced to divert its limited resources from its primary advocacy projects in order to assist impacted individuals, such as responding to inquiries and requests for assistance. Because ADAC members are unable to obtain driver's licenses, transporting members and supporters to events, including meetings in other regions of Arizona and out-of-state conferences, is more costly and limits members' participation. ADAC regularly draws new members from these events, but is forced to limit its attendance because of members' inability to drive, which restricts the growth and functioning of the organization. ADAC owns a vehicle, but is largely unable to use it because of Arizona's denial of driver's licenses to DACA grantees.

19. **Jesus Castro-Martinez** is a 27-year-old resident of Phoenix who came to the United States at age 15 from Mexico and has lived in Arizona since that time. On October 3, 2012, he was granted deferred action under the DACA program, and shortly thereafter received an employment authorization document ("EAD") and Social Security Number. Mr. Castro has married a U.S. citizen and has a brother and sister who are lawful permanent residents. He received his associate degree from Scottsdale Community College in 2010 and hopes to return to school to continue his studies and become an interior designer. The lack of a driver's license has significantly restricted Mr. Castro's ability to get to work as well as his eligibility for promotions. In October 2012, Mr. Castro attempted to apply for an Arizona driver's license at the MVD office in Scottsdale. MVD officials informed him that because his EAD was obtained through the DACA program, it could not establish his authorized presence in the United States, and that he was therefore ineligible for a driver's license.

20. **Christian Jacobo** is a 20-year-old resident of Phoenix who came to the United States from Mexico when he was 12 years old and has lived in Arizona since that time. On October 2, 2012, he was granted deferred action under the DACA program, and subsequently received an EAD and Social Security Number. Mr. Jacobo currently lives with his sister and her family. He obtained his General Education Development ("GED") certificate from La Joya Community High School in Avondale, Arizona, and hopes

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. Jacobo 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 21. **Alejandra Lopez**, now 20 years old, has grown up virtually her entire life in  
8 the United States. She is originally from Mexico, but has been in the United States since  
9 she was four years old. Ms. Lopez graduated from high school in Arizona, and considers  
10 Arizona her home. She is married to a U.S. Citizen and has a U.S. citizen child. She is a  
11 primary caregiver for her young child as well as for her two U.S. citizen brothers who are  
12 four and 15 years old, respectively. In October 2012, she was granted deferred action  
13 under the DACA program. On October 9, 2012, she received an EAD, and on October  
14 15, 2012, she received a Social Security Number. On October 13, 2012 Ms. Lopez went  
15 to her local MVD to apply for a driver's license. The MVD staff person looked at her  
16 EAD and told her that she was not eligible for a license. Ms. Lopez understands that  
17 Arizona's policies preclude her from using her EAD to get a license. Ms. Lopez needs an  
18 Arizona driver's license for multiple reasons, such as to get to and from her job, drive her  
19 brothers to and from school and manage various household errands, including getting  
20 groceries or taking her child to the doctor. Because her husband works at night, he is  
21 often unavailable to give Ms. Lopez rides she needs. Not having a driver's license has  
22 made it more difficult for her to find employment. Among other examples, Ms. Lopez  
23 was offered an interview for a customer service job in Tempe but was forced to turn it  
24 down due to the fact that she would be unable to commute to work without a driver's  
25 license. In addition, she needs a driver's license to use as a secure form of identification.

26 22. **Ariel Martinez** is a 19-year-old resident of Youngtown, Arizona. He came to  
27 the United States from Mexico when he was four years old. He has lived in Arizona  
28 since then and is currently a student at Glendale Community College in Glendale,



1 Arizona. He aspires to attend the Conservatory of Recording Arts and Sciences in order  
2 to pursue a career in the recording business. On October 15, 2012, Mr. Martinez was  
3 granted deferred action under the DACA program. Around October 17, 2012, he  
4 received an EAD, and around October 19, 2012, he received a Social Security Number.  
5 Defendants' policy imposes a significant hardship on Mr. Martinez's ability to get to his  
6 college classes and sports activities, which include coaching high school soccer. Mr.  
7 Martinez understands that Arizona's policies preclude him from obtaining a license.

8 23. **Natalia Perez-Gallegos** is 23 years old and resides in Phoenix, Arizona. Ms.  
9 Perez-Gallegos came to the United States from Mexico when she was five years old. In  
10 October 2012, she was granted deferred action under the DACA program and received  
11 her EAD and her Social Security Number. Ms. Perez-Gallegos attended Glendale  
12 Community College and Estrella Mountain Community College, where she completed a  
13 year of nursing pre-requisites, and intends to go back to school to complete her Associate  
14 Degree in registered nursing. After Ms. Perez-Gallegos received her EAD and Social  
15 Security Number she began working as a medical assistant. Ms. Perez-Gallegos is  
16 concerned that she will not be able to get back and forth from school and work without a  
17 driver's license. In October 2012, after receiving DACA status, Ms. Perez-Gallegos  
18 attempted to apply for an Arizona driver's license at the MVD offices in Avondale and  
19 on 51st Street in Phoenix, Arizona. At both locations she was told by MVD officials that,  
20 because her EAD was obtained through the DACA program, she was ineligible for a  
21 driver's license.

22 24. **Carla Chavarria** is 20 years old and resides in Phoenix, Arizona. Several  
23 months ago, she was granted deferred action under the DACA program and has received  
24 an EAD and Social Security Number. At present, she works as a graphic designer. Ms.  
25 Chavarria previously attended community college and is now enrolled in another college  
26 program. Ms. Chavarria understands that Arizona's policies preclude her from obtaining  
27 a driver's license. Without access to a driver's license, she must travel to work by bus.  
28 Her commute typically takes approximately four hours round trip and she must allow

1 additional time to accommodate public transportation delays and unreliability in service.  
2 Ms. Chavarria needs a license to drive to clients who are inaccessible by public  
3 transportation or in remote locations that would require lengthy commutes. She has also  
4 been unable to apply to jobs which require a driver's license. Ms. Chavarria has had  
5 difficulty renting textbooks for college coursework because the student bookstore  
6 requires a driver's license in order to open a rental account, and she has been unable to  
7 establish a rental account on that basis.

8 25. **Jose Ricardo Hinojos** is 23 years old and resides in Douglas, Arizona. In  
9 March 2013 he was granted deferred action under the DACA program and has received  
10 an EAD and Social Security Number. At present, he works in Douglas and is enrolled to  
11 take college courses needed for professional certification. Mr. Hinojos understands that  
12 Arizona's policies preclude him from obtaining a driver's license. He would seek to  
13 obtain a driver's license but for this policy. Without access to a driver's license, he has  
14 difficulty traveling to work and to class, and is reliant on an irregular mix of walking,  
15 receiving rides when available, or riding his bicycle. He is also burdened by his inability  
16 to contribute to his family because of his inability to drive. His ability to pursue his  
17 career aspirations are significantly limited by his inability to obtain a driver's license.

## 18 19 **Defendants**

20  
21 26. At all times relevant to this action, **Defendant Janice K. Brewer** has been the  
22 Governor of the State of Arizona. Defendant Brewer issued the Executive Order being  
23 challenged in this case. Defendant Brewer is sued in her official capacity.

24 27. At all times relevant to this action, **Defendant John S. Halikowski** has been  
25 the Director of ADOT, which is the agency with authority to license drivers and enforce  
26 motor vehicle statutes. Ariz. Rev. Stat. § 28-332(B). As Director, Defendant Halikowski  
27 "is responsible for the administration of the department" and has the authority to adopt  
28 rules he deems necessary to carry out ADOT's responsibilities. Ariz. Rev. Stat. § 28-



1 331; *see also* Ariz. Rev. Stat. § 28-366. Defendant Halikowski is sued in his official  
2 capacity.

3 28. At all times relevant to this action, **Defendant Stacey K. Stanton** has been the  
4 Assistant Director of the MVD, which is a division of the ADOT. *See* Ariz. Rev. Stat. §  
5 28-332(C). MVD is the division of the ADOT charged with responsibility for licensing  
6 drivers. Defendant Stanton is responsible for the administration of all Motor Vehicle  
7 Departments in the state of Arizona. Defendant Stanton issued policies implementing  
8 Executive Order 2012-06 and instructing that employment authorization documents  
9 issued to DACA recipients may not be used to establish eligibility for an Arizona driver's  
10 license. *See* MVD Policy 16.1.4(S) (rev. Sept. 18, 2012). Defendant Stanton is sued in  
11 her official capacity.

## 12 13 **BACKGROUND**

### 14 15 **Deferred Action**

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

25 30. Moreover, recipients of deferred action are eligible to receive employment  
26 authorization under federal law upon a showing of economic necessity. *See* 8 C.F.R. §  
27 274a.12(c)(14).  
28

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

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

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

25        34. The rationale for the DACA program is consistent with the federal  
26 government’s longstanding use of deferred action to permit noncitizens to remain in the  
27 country. In announcing the DACA program, the DHS Secretary explained that “[o]ur  
28 Nation’s immigration laws .... are not designed to be blindly enforced without

1 consideration given to the individual circumstances of each case. Nor are they designed  
2 to remove productive young people to countries where they may not have lived or even  
3 speak the language. Indeed, many of these young people have already contributed to our  
4 country in significant ways.”<sup>7</sup>

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

11 36. The DACA program is intended “to lift the shadow of deportation from these  
12 young people” and “to mend our Nation’s immigration policy to make it more fair, more  
13 efficient, and more just.”<sup>9</sup>

14 37. Under DACA, young immigrants who entered the United States as children  
15 and who meet educational and residency requirements may apply for deferred action.  
16 Noncitizens are eligible for DACA if they: a) were under the age of 31 as of June 15,  
17 2012; b) came to the United States before reaching their 16th birthday; c) have  
18 continuously resided in the United States since June 15, 2007, up to the present time; d)  
19 were physically present in the United States on June 15, 2012, and at the time of making  
20 the request for consideration of deferred action with United States Citizenship and  
21 Immigration Services (“USCIS”); e) entered without inspection before June 15, 2012, or

---

22 <sup>7</sup> Janet Napolitano, Memorandum on Exercising Prosecutorial Discretion with  
23 Respect to Individuals Who Came to the United States as Children 2 (June 15, 2012),  
24 *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).

25 <sup>8</sup> President Barack Obama, Remarks on Immigration Reform, 2012 DAILY COMP.  
26 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)  
27 [201200483/pdf/DCPD-201200483.pdf](http://www.gpo.gov/fdsys/pkg/DCPD-201200483/pdf/DCPD-201200483.pdf).

28 <sup>9</sup> *Id.*

1 had an expired lawful immigration status as of June 15, 2012; f) are currently in school,  
2 have graduated or obtained a certificate of completion from high school, have obtained a  
3 GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed  
4 Forces of the United States; and g) have not been convicted of a felony, significant  
5 misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to  
6 national security or public safety.<sup>10</sup>

7 38. The DACA application process includes extensive criminal background  
8 checks. Under the DACA program, deferred action is available for a period of two years,  
9 subject to renewal, and applicants who are approved may obtain work authorization, and  
10 if such authorization is granted, a Social Security Number.<sup>11</sup>

11 39. The federal government routinely grants work authorization to deferred action  
12 recipients, including DACA recipients. Noncitizens granted work authorization are  
13 issued federal employment authorization documents or EADs, such as I-766 cards.

14 40. Noncitizens granted deferred action pursuant to the DACA program are both  
15 authorized to be present and lawfully present in the United States during the two-year  
16 deferred action period, and during any extensions of the grant. As the federal  
17 government has expressly confirmed, “[a]n individual who has received deferred action is  
18 authorized by the Department of Homeland Security (DHS) to be present in the United  
19 States, and is therefore considered by DHS to be lawfully present during the period  
20 deferred action is in effect.”<sup>12</sup> USCIS has also explained that under the DACA program,  
21 “[i]f action on your case is deferred, you will not accrue unlawful presence during the  
22

---

23 <sup>10</sup> USCIS, Consideration of Deferred Action for Childhood Arrivals Process (Jan.  
24 18, 2013), *available at*  
25 [http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4db)  
26 [vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4db](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4db)  
[c4b04499310VgnVCM100000082ca60aRCRD](http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4db)

27 <sup>11</sup> *See id.*

28 <sup>12</sup> *Id.* at Q1.

1 period of deferred action.”<sup>13</sup> According to USCIS, “an individual whose case is deferred  
2 is not considered to be unlawfully present during the period in which deferred action is in  
3 effect.”<sup>14</sup>

4 41. Furthermore, USCIS has confirmed that “[t]he relief an individual receives  
5 pursuant to the deferred action for childhood arrivals process is identical for immigration  
6 purposes to the relief obtained by any person who receives deferred action as an act of  
7 prosecutorial discretion.”<sup>15</sup>

8 42. As of May 31, 2013, immigrant youth had filed over 500,000 DACA  
9 applications with USCIS, including over 18,000 applications from Arizona residents.  
10 Although large numbers of those applications are still in process, USCIS has granted  
11 deferred action to approximately 365,000 individuals nationwide and 14,000 individuals  
12 in Arizona pursuant to the DACA program.<sup>16</sup>

#### 13 14 **Arizona Driver’s License Practice**

15  
16 43. Both before and after the federal government announced that immigrant youth  
17 who came to the country as children would be eligible for deferred action under the  
18 DACA program, Arizona law provided that an applicant for an instruction permit,  
19 driver’s license, or identification card must submit proof that the applicant’s “presence in  
20 the United States is authorized under federal law.” Ariz. Rev. Stat. §§ 28-3153(D), 28-  
21 3158(C), 28-3165(F).

---

23 <sup>13</sup> *Id.* at Q5.

24 <sup>14</sup> *Id.* at Q1; *see also id.* at Q6.

25 <sup>15</sup> *Id.* at Q7.

26 <sup>16</sup> USCIS, Deferred Action for Childhood Arrivals Process (June 2013) *available at*  
27 <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA-13-6.pdf>.  
28

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

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

18       46. However, on August 15, 2012 – the very same day USCIS began accepting  
19 DACA applications – Defendant Brewer issued Executive Order 2012-06, instructing  
20 state agencies to take necessary steps to “prevent Deferred Action recipients from  
21 obtaining eligibility, . . . for any . . . state identification, including a driver’s license.” *See*  
22 Arizona Executive Order 2012-06. According to its title, the Executive Order purports to  
23 “Re-affirm [the] Intent of Arizona Law In Response to the Federal Government’s  
24 Deferred Action Program.” *Id.*

25       47. The Executive Order states that “Arizona Revised Statutes 28-3153 prohibits  
26 the ADOT from issuing a drivers [sic] license or nonoperating identification license  
27 unless an applicant submits proof satisfactory to ADOT that the applicant’s presence in  
28 the United States is authorized under federal law.” *Id.* The Executive Order further



1 states that “the Deferred Action program does not and cannot confer lawful or authorized  
 2 status or presence upon the unlawful alien applicants” and that “[t]he issuance of  
 3 Deferred Action or Deferred Action USCIS employment authorization documents to  
 4 unlawfully present aliens does not confer upon them any lawful or authorized status.” *Id.*  
 5 The Executive Order thus provides that deferred action recipients are unable to meet the  
 6 “authorized” presence requirement for driver’s licenses and identification.

7 48. In a public statement made the same day the Executive Order was issued,  
 8 Defendant Brewer stated that the Executive Order was intended to clarify that there  
 9 would be “no drivers [sic] licenses for illegal people.”<sup>17</sup> Defendant Brewer stated: “They  
 10 are here illegally and unlawfully in the state of Arizona and it’s already been determined  
 11 that you’re not allowed to have a driver’s license if you are here illegally.”<sup>18</sup>

12 49. To implement the Executive Order’s directive, the Arizona MVD revised its  
 13 policy regarding acceptance of employment authorization documents as proof of  
 14 authorized presence. Under the new policy, employment authorization documents  
 15 presented by DACA recipients will not be accepted as proof of authorized presence for a  
 16 driver’s license or identification card. *See* MVD Policy 16.1.4(S) (rev. Sept. 18, 2012).  
 17 However, for all other recipients of deferred action (i.e., other than DACA beneficiaries),  
 18 employment authorization documents will continue to be accepted as proof of authorized  
 19 status. *See* MVD, Primary and Secondary Forms of Acceptable Documentation (rev.  
 20 Sept. 18, 2012).

---

21  
 22  
 23 <sup>17</sup> Arizona Channel 12 News Video, Why Did Brewer Issue ‘Dreamer’ Order?  
 24 (Aug. 15, 2012), *available at*  
 25 <http://www.azcentral.com/video/#/Why+did+Brewer+issue+%27dreamer%27+order%3F/1787777903001>, (video documenting remarks by Defendant Brewer).

26 <sup>18</sup> Jan Brewer Bars IDs, Benefits for Undocumented Immigrants in Arizona, Fox  
 27 News Latino (Aug. 16, 2012),  
 28 <http://latino.foxnews.com/latino/politics/2012/08/16/brewer-blocks-id-benefits-for-undocumented-immigrants/>.

1        50. Arizona's practice of denying driver's licenses to DACA recipients is an  
2 outlier in the 50 states. The rules in an overwhelming majority of states make all  
3 deferred action recipients with employment authorization and Social Security Numbers  
4 eligible for driver's licenses. Indeed, Plaintiffs are aware of only one other state, apart  
5 from Arizona, that precludes DACA recipients from eligibility for a driver's license.

6  
7 **Defendant's Policy Harms Plaintiffs**

8  
9        51. Defendants' policy of denying driver's licenses to DACA recipients, including  
10 Plaintiffs, pursuant to Executive Order 2012-06 and its implementing policies, is  
11 currently in effect. Defendants are applying Executive Order 2012-06 to deny driver's  
12 licenses to DACA recipients, including Plaintiffs.

13        52. As a result, Defendants, acting under the color of state law, are violating  
14 Plaintiffs' rights under the U.S. Constitution by continuing to enforce Arizona's practice  
15 of denying driver's licenses to DACA recipients, including Plaintiffs.

16        53. Moreover, Defendants' practice of denying driver's licenses to DACA  
17 recipients imposes onerous restrictions on the daily lives of the Individual Plaintiffs and  
18 members of ADAC with DACA.

19        54. The ability to drive is, in most areas of the United States, a necessity of modern  
20 life. Driving is essential to the ability to work, particularly in Arizona. U.S. Census  
21 Bureau statistics indicate that over 87 percent of Arizonans and over 86 percent of  
22 workers nationwide commute to work by car. In contrast, only two percent of all  
23 Arizonan workers and five percent of workers nationwide commute to work by public  
24 transportation. Denying driver's licenses to DACA recipients in Arizona severely  
25 frustrates their ability to obtain employment and achieve economic self-sufficiency.  
26 Indeed, the necessity of driving to a place of employment and/or school is so important  
27 that Arizona provides licenses in a diverse range of circumstances. For example, Arizona  
28 provides a restricted license allowing such use of a motor vehicle to many individuals

1 who are otherwise denied the right to operate a motor vehicle. *See, e.g.*, Ariz. Rev. Stat.  
2 § 28-4145(A) (driving restriction based on lack of insurance verification).

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

5 56. Defendants' actions and practices are causing substantial irreparable harm to  
6 Individual Plaintiffs and to ADAC members with DACA. Because they are not licensed  
7 to drive, they are, inter alia, prevented from being able to drive legally in order to go to  
8 work, school, church, medical appointments; to take their children or younger siblings to  
9 school or medical appointments; to take on employment requiring a driver's license; and  
10 to conduct many basic activities of everyday life. In order to manage these basic  
11 activities of daily life, Individual Plaintiffs and ADAC members with DACA are forced  
12 to rely on rides from others, or risk criminal penalties and fines by driving without a  
13 license. Individual Plaintiffs and ADAC members with DACA are also harmed by  
14 having an unconstitutional policy enforced against them and from the stigma,  
15 discrimination, and emotional harm they face as a result of the policy.

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

22 58. Thus, wrongful denial of a driver's license to Individual Plaintiffs and ADAC  
23 members with DACA causes irreparable harm. Such harm is irreparable because no  
24 available remedy can make a person whole after they have been denied a license for a  
25 period of time.

26 59. If Executive Order 2012-06 and related practices are not enjoined, Plaintiffs  
27 will continue to suffer irreparable injury and continue to be hampered in conducting these  
28 basic activities of everyday life.

60. There is an actual and substantial controversy between Plaintiffs and Defendants.

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

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

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

### **Defendants' Policy is Preempted By Federal Law**

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

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

66. The federal government has sole and exclusive power to regulate immigration. The federal government's exclusive power over immigration matters is inherent in the nation's sovereignty, and derives from the U.S. Constitution's grant to the federal government of the power to "establish an uniform Rule of Naturalization," *id.* art. I, § 8, cl. 4, and to "regulate Commerce with foreign Nations," *id.* art. I, § 8, cl. 3.

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

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

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

22        70. Under the federal immigration system, deferred action recipients, including  
23 DACA grantees, are authorized to remain in the United States for the period of the  
24 deferred action grant. Deferred action recipients, including DACA grantees, who are  
25 granted employment authorization are authorized not only to reside in the United States  
26 but to work here. Deferred action recipients, including DACA grantees, are present in the  
27 United States with legal authorization and are not unlawfully present.  
28

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

4        72. Executive Order 2012-06 and its implementing policies, by denying driver's  
5 licenses and state-issued identification cards, further impermissibly regulate immigration  
6 because, inter alia, they impose immigration-related burdens and penalties on noncitizens  
7 whose presence in the United States is authorized by the federal government, and in a  
8 manner not contemplated by federal law.

9        73. Executive Order 2012-06 and its implementing policies denying DACA  
10 recipients driver's licenses conflicts with, frustrates, and serves as an obstacle to federal  
11 immigration law, goals, and policies of authorizing DACA recipients to live and work in  
12 the United States, to come out of the shadows, and to participate as full members of our  
13 nation's communities.

14  
15 **Defendants' Policy Violates Equal Protection**  
16

17        74. Defendants' decision discriminates against DACA recipients by singling out  
18 and denying driver's licenses to individuals granted deferred action under the DACA  
19 program while granting licenses to all other individuals granted deferred action or other  
20 forms of temporary authorization to remain in the United States. This discrimination  
21 does not rationally further any legitimate state interest. Instead, the singling out of  
22 DACA grantees appears to reflect disagreement with President Obama's DACA policy,  
23 an intent to target these noncitizens on the basis of their alienage or immigration status,  
24 and a rejection of their federally authorized presence.

25        75. Executive Order 2012-06 states that the purpose for denying driver's licenses  
26 to individuals granted deferred action is to prevent "unlawfully present aliens" from  
27 "inappropriately gaining access to taxpayer funded benefits and state identification" and  
28



1 to save money for the state. These alleged state purposes are not a valid justification for  
2 the Executive Order.

3 76. As set forth above, persons granted deferred action are not unlawfully present.  
4 Rather, they have been granted authorization to remain in the United States by federal  
5 immigration officials for a certain time period, and are eligible to apply to work in the  
6 United States.

7 77. The state's claim that denying driver's licenses to individuals granted deferred  
8 action is necessary to save the state money is not rational. Denying driver's licenses to  
9 any group of individuals would save on administrative costs. There is no valid  
10 justification for singling out DACA grantees on cost grounds.

11 78. In fact, Arizona charges application fees for driver's licenses, which at a  
12 minimum serves to defray processing costs. For example, if each of the estimated 80,000  
13 individuals eligible for DACA in Arizona were granted DACA and applied for driver's  
14 licenses, Arizona could accrue \$2 million from the \$25 application fee for driver's  
15 licenses charged to individuals under the age of 40.

16 79. Ensuring that all drivers can obtain validly issued driver's licenses promotes  
17 public safety for numerous reasons. For example, it ensures that drivers in a state are  
18 trained and tested on the state's traffic laws. As a further example, it facilitates access to  
19 insurance that can protect all drivers in case of an accident. In addition, it helps ensure  
20 that police can accurately identify individuals that they stop and that all drivers in  
21 Arizona are accountable for their driving records.

22  
23 **FIRST CLAIM FOR RELIEF**

24 **(Supremacy Clause, Article VI, Clause 2, of the United States Constitution; 42**  
25 **U.S.C. § 1983)**  
26

27 80. Plaintiffs re-allege and incorporate all of the allegations contained in the  
28 previous paragraphs of this complaint as though fully set forth herein.

1       81.     The Supremacy Clause, Article VI, Clause 2, of the U.S. Constitution,  
2 mandates that federal law preempts state law in any area over which Congress expressly  
3 or impliedly has reserved exclusive authority or which is constitutionally reserved to the  
4 federal government, including where state law conflicts or interferes with federal law.

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

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

16       84.     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       85.     Executive Order 2012-06 and its implementing policies are also preempted  
22 because, inter alia, they impose immigration-related burdens and penalties on noncitizens  
23 whose presence in the United States is authorized by the federal government, in violation  
24 of the Supremacy Clause.

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

27       87.     Further, for all of the same reasons described above, Ariz. Rev. Stat. §§ 28-  
28 3153(D), 28-3158(C), and 28-3165(F) are similarly preempted by federal law and

1 unconstitutional to the extent they compel Executive Order 2012-06 and its implementing  
2 policies.

3 88. The foregoing allegations are repeated and incorporated as though fully set  
4 forth herein.

5  
6 **SECOND CLAIM FOR RELIEF**

7  
8 **(Equal Protection Clause, Fourteenth Amendment to the U.S. Constitution; 42**  
9 **U.S.C. § 1983)**  
10

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

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

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

20 92. Arizona’s Executive Order and related policies permit noncitizens who are  
21 similarly situated to DACA recipients to establish eligibility for driver’s licenses yet  
22 discriminate against DACA recipients by barring their eligibility for driver’s licenses.  
23 Defendants cannot establish that Executive Order 2012-06 and related policies and  
24 practices have any valid justification, including even a rational basis.

25 93. Plaintiffs move for relief on this claim directly under the Constitution and as an  
26 action seeking redress of the deprivation of statutory rights under the color of state law,  
27 also under 42 U.S.C. § 1983.  
28

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- A. A preliminary and permanent injunction enjoining Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing the state's illegal policy and practice of denying driver's licenses to Deferred Action for Childhood Arrivals grantees;
- B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Arizona's policy and practice of denying driver's licenses to Deferred Action for Childhood Arrivals grantees is unlawful and invalid;
- C. An order awarding Plaintiffs costs of suit, and reasonable attorneys' fees and expenses pursuant to 42 U.S.C. § 1988 and any other applicable law;
- D. Such other and further relief as the Court deems equitable, just, and proper.

Dated: September 17, 2013

Respectfully submitted,

/s/Jennifer Chang Newell  
AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION  
IMMIGRANTS' RIGHTS PROJECT

/s/Karen C. Tumlin  
NATIONAL IMMIGRATION LAW  
CENTER

/s/Victor Viramontes  
MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL  
FUND

/s/Daniel J. Pochoda  
ACLU FOUNDATION OF  
ARIZONA

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 17, 2013, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF Registrants:

Douglas C. Northup  
Timothy Berg  
Sean T. Hood  
Fennemore Craig, P.C.  
dnorthup@fclaw.com  
tberg@fclaw.com  
shood@fclaw.com

*Attorneys for Defendants Governor  
Janice K. Brewer,  
John S. Halikowski and Stacey K.  
Stanton*

Joseph Sciarrotta, Jr.  
Office of Governor Janice K. Brewer  
jsciarrotta@az.gov

*Co-Counsel for Defendant Governor Janice K. Brewer*

/s/Gloria A. Torres

**EXHIBIT 1**



**Executive Order 2012-06**

**Re-Affirming Intent of Arizona Law In Response to the Federal Government's Deferred Action Program**

**WHEREAS**, United States Citizenship and Immigration Services (USCIS) plans to issue employment authorization documents to certain unlawfully present aliens who are granted Deferred Action under federal immigration laws; and

**WHEREAS**, the USCIS has confirmed that the Deferred Action program does not and cannot confer lawful or authorized status or presence upon the unlawful alien applicants; and

**WHEREAS**, unless otherwise made available under applicable law, 8 United States Code § 1621 provides that aliens unlawfully present in the United States are not eligible for any state or local public benefit – as defined in both federal and Arizona law; and

**WHEREAS**, 8 United States Code § 1622 authorizes states to determine eligibility for any state public benefits for most classes of aliens, including unlawfully present aliens with Deferred Action; and

**WHEREAS**, the Deferred Action program is purportedly an act of prosecutorial discretion and the program does not provide for any additional public benefit to unlawfully present aliens beyond the delayed enforcement of United States immigration laws and the possible provision of employment authorization; and

**WHEREAS**, Arizona Revised Statutes § 1-501 and § 1-502 limit access to public benefits to persons demonstrating lawful presence in the United States; and

**WHEREAS**, Arizona Revised Statutes § 28-3153 prohibits the Arizona Department of Transportation (ADOT) from issuing a drivers license or nonoperating identification license unless an applicant submits proof satisfactory to ADOT that the applicant's presence in the United States is authorized under federal law; and

**WHEREAS**, the federal executive's policy of Deferred Action and the resulting federal paperwork issued could result in some unlawfully present aliens inappropriately gaining access to public benefits contrary to the intent of Arizona voters and lawmakers who enacted laws expressly restricting access to taxpayer funded benefits and state identification; and

**WHEREAS**, allowing more than an estimated 80,000 Deferred Action recipients improper access to state or local public benefits, including state issued identification, by presenting a USCIS employment authorization document that does not evidence lawful, authorized status or presence will have significant and lasting impacts on the Arizona budget, its health care system and additional public benefits that Arizona taxpayers fund.

**NOW THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona, do hereby order and direct as follows:**

1. The issuance of Deferred Action or Deferred Action USCIS employment authorization documents to unlawfully present aliens does not confer upon them any lawful or authorized status and does not entitle them to any additional public benefit.
2. State agencies that provide public benefits, as defined in 8 United States Code § 1621 shall conduct a full statutory, rule-making and policy analysis and, to the extent not prohibited by state or federal law, initiate operational, policy, rule and statutory changes necessary to prevent Deferred Action recipients from obtaining eligibility, beyond those available to any person regardless of lawful status, for any taxpayer-funded public benefits and state identification, including a driver's license, so that the intent of Arizona voters and lawmakers who enacted laws expressly restricting access to taxpayer funded benefits and state identification are enforced.

Executive Order 2012-06

Page 2 of 2

3. All state agencies that confer taxpayer-funded public benefits and state issued identification shall undergo emergency rule making to address this issue if necessary.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

*Janice K. Brewer*  
GOVERNOR

**DONE** at the Capitol in Phoenix on this 15<sup>th</sup> day of August in the Year Two Thousand Twelve and of the Independence of the United States of America the Two Hundred and Thirty-Seventh.

ATTEST:

*Ksh Blumett*

SECRETARY OF STATE

**EXHIBIT 2**



**Motor  
Vehicle  
Division**

Mail Drop 530M  
PO Box 2100  
Phoenix AZ 85001

**POLICY  
16.1.4**

## **ESTABLISHING AUTHORIZED PRESENCE**

### **Summary of Changes**

Policy Sections A, B, O and S were revised.

### **Purpose**

To provide guidelines for the Customer Service Representative (CSR) to use when establishing authorized presence and, when applicable, issuing a Type F (limited) license.

### **Policy**

- A. Arizona Revised Statutes (A.R.S.) § 28-3153(D) provides that the Motor Vehicle Division (MVD) shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to MVD that the applicant's presence in the United States is authorized under federal law. MVD is required to determine that each applicant meets the requirements of the law.
  - B. MVD reserves the right to review, consider and request additional information and documentation in making determinations regarding authorized presence.
  - C. The CSR shall ensure that the customer meets authorized presence requirements (when applicable) and that the documentation presented is genuine and in proper form.
  - D. The customer must present proof of authorized presence when applying for:
    - An original Arizona license
    - The renewal of a limited Arizona license
    - The renewal of an extended Arizona license when there is no database record showing the customer's previous establishment of authorized presence
    - The reinstatement of any license
- Exception: An individual who wishes to reinstate his or her driving privilege only (person is not applying for an Arizona license, either original or renewal) is not required to provide proof of authorized presence and would pay reinstatement fees only.
- E. A database record of an extended Arizona driver license, commercial driver license, identification license, or instruction permit is acceptable proof of authorized presence.
  - F. Authorized presence requirements *do not apply* to the following transactions:
    - Requests for a duplicate or update of any license, regardless of the license issue date
    - Renewal of an extended license, under the circumstances provided in Section D, above
    - Title and/or registration transactions

- G. To prove authorized presence, the customer must present at least one primary form of identification, see Policy 16.1.2 Acceptable Documentation. All documents must be in

## ESTABLISHING AUTHORIZED PRESENCE

Page 2 of 4

English and either an original or copy certified by the issuing agency. Depending on the primary form of identification presented, additional documentation may be required.

- H. A foreign passport (must be accompanied by a valid I-94 or an admissions stamp), Canadian driver license or Canadian birth certificate may be accepted as proof of the customer's authorized presence in the U.S. However, any other document issued by a foreign government (or agency) shall not be accepted for the purpose of proving authorized presence.
  - I. A limited (Type F) license is issued to a customer who is applying for an identification license or Class D, G, or M driver license (or instruction permit) and whose period of authorized presence is for a limited period of time; as determined by the primary form of identification and any supporting documentation that is presented at the time of application, see the Authorized Presence Document/License Expiration Date Chart and/or Customer Characteristics-USCIS Class Matrix.
  - J. Prior to the issuance of a Type F license, the customer must meet all applicable eligibility and identity requirements, see the appropriate Driver and Identification License Issuance Screening policies.
  - K. Pursuant to A.R.S. § 28-3002, a customer requesting an original (or renewing a) license must pay the applicable license fee, see Policy 16.1.6 Driver and Identification License Fees.
  - L. Prior to the issuance of the Type F license, Customer Service supervisors or their designees shall verify and approve the customer's documentation. This includes documentation for Type F customers that present a verifiable Social Security Number/Card with their foreign documents. The CSR shall photocopy all approved source documents presented for the purpose of establishing name, date of birth, and authorized presence. The photocopied source documents, once processed (reviewed, verified, and accepted), are filmed to serve as evidence of the public filing of the licensing transaction, see Policy 5.1.3 Film Imaging Preparation
    - 1. This does not apply to Type F duplicates/updates that do not require proof of authorized presence.
    - 2. The Technical Support Unit cannot verify or approve authorized presence documentation, or issue a Type F license.
    - 3. Authorized Third Party Providers are not authorized to issue Type F licenses.
  - M. The Type F license expiration date shall coincide with the customer's assigned authorized presence expiration date (as shown on the primary form of identification or supporting documentation (e.g., I-20, I-797, DS-2019, etc.), unless an indefinite status or duration of status (D/S) has been granted.
- Note: To determine the license expiration date when the authorized presence documentation does not display a specific expiration date or simply states D/S, see the Authorized Presence Document/License Expiration Date Chart and/or Customer Characteristics-USCIS Class Matrix.
- N. Prior to the Customer Service supervisor or their designees issuing the Type F license (delivering to camera), the CSR shall enter the applicable Customer Characteristic onto the Customer Record. Once added to the Customer Record the characteristic remains valid until expired. Customer Service supervisors and their designees are authorized to delete a



## ESTABLISHING AUTHORIZED PRESENCE

Page 3 of 4

characteristic that was entered in error. When a characteristic cannot be deleted, the supervisor or designee will “expire” the characteristic and enter an explanation in the Customer Characteristic transaction comment section.

- O. Except as provided in Section S, upon application for a Type F license, a customer who presents a USCIS Employment Authorization Card (I-688B or I-766) must also provide his or her Social Security Number (SSN), see Policy 2.1.8 Social Security Online Verification (SSOLV). The Customer Characteristics-USCIS Class Matrix provides information on additional Type F customers required to provide a SSN.
- P. A Type F licensee, who is requesting that the name on his or her license be changed, must first change his or her name with the Social Security Administration, as applicable, before applying for the new license, see Policy 16.1.3 Establishing Name and Date of Birth.
- Q. Pursuant to A.R.S. § 28-3153, the CSR may issue a temporary Type F license (Class D, G, or M) pending verification of the customer’s lawful presence in the U.S. To be eligible, the customer must submit a valid Notice of Action, form I-797, or other acceptable immigration or citizenship document and a fee of \$10. The temporary license:
  - Is a hard copy license
  - Is valid for a maximum duration of 1 year at a time

Exception: With the approval of the Director’s designee, alternative methods of status verification, including consultation with USCIS, may be used to issue a temporary Type F license.

- R. USCIS may assign a classification or status that prohibits the issuance of an Arizona license, see the Customer Characteristics-USCIS Class Matrix for information in regards to the various USCIS classification statuses and the Division’s established expiration dates. A customer whose authorized presence document indicates any one of the following USCIS classification statuses is not eligible for any class or type Arizona license:
  - C-1 Alien in transit directly through U.S.
  - C-1D Combined Transit and Crewman VISA
  - C-2 Alien in transit to UN headquarters
  - C-3 Foreign government official, members of immediate family, attendant, servant, or personal employee in transit
  - D-1 Crewmember departing on same vessel of arrival
  - D-2 Crewmember departing by means other than vessel of arrival
- S. A customer presenting a USCIS Employment Authorization Document (I-688A, I-688B, I-766) resulting from a Deferred Action Childhood Arrival is not acceptable.
- T. The Division will not issue a license or permit (extended, limited, or temporary) when the customer presents documentation (may include a license) that does not appear to be legitimate or acceptable. CSRs, Customer Service supervisors, or designees shall follow the instructions provided in Policy 18.2.6 Suspected Fraudulent Identity and/or Documentation when they suspect that the customer may not be the person identified by the documentation or the documentation does not appear to be legitimate.



ESTABLISHING AUTHORIZED PRESENCE

Page 4 of 4

- U. The U.S. Department of State Diplomatic Motor Vehicles Division has the sole authority to issue driver licenses, vehicle registrations, and titles for foreign missions and foreign mission members. States may not issue, and foreign mission or mission members may not legally apply for or receive a state driver license, motor vehicle title, registration and license plate in violation of limitations and conditions imposed by the Department of State, (this does not include Honorary Consuls). Visit the Department of State's Diplomatic Motor Vehicles Division website at [www.state.gov/ofm/dmv/](http://www.state.gov/ofm/dmv/).

17 September 2012  
Date

  
STACEY K. STANTON  
Division Director

Authority: USC 8, A.R.S. §§ 28-3002, 28-3153, 28-3157, 28-3158, 28-3164, 28-3165, R17-4-409 and Executive Order 2012-06

Procedure/Steps: Screening, Customer Characteristics, Customer Characteristics (MDCHAR)