

Legal Sidebar

9th Circuit Decision Enables DACA Beneficiaries—and Other Aliens Granted Deferred Action—to Get Arizona Driver's Licenses

9/9/2014

In its recent decision in [Arizona Dream Act Coalition v. Brewer](#), a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit enjoined the State of Arizona from implementing a policy that resulted in the denial of driver's licenses to aliens who lack legal status in the United States, but have been granted deferred action—one type of relief from removal—by the federal government. The court's finding, that Arizona impermissibly distinguished between categories of aliens who lack legal status, but have been granted relief from removal and employment authorization documents (EADs) by the federal government, when determining whether aliens' "presence is authorized under federal law," arguably has particular salience now. The Obama Administration recently [began accepting applications for renewal](#) from aliens granted a two-year period of deferred action through the Deferred Action for Childhood Arrivals (DACA) initiative announced in 2012. There are also reports that the executive branch is considering granting [deferred action to other categories of aliens](#) later this year.

Arizona Policy

Arizona adopted the challenged policy on August 15, 2012, the same day that the federal government released the forms to apply for deferred action through the DACA initiative. Prior to this initiative, the Arizona Department of Transportation (DOT) had viewed all aliens holding federal EADs as eligible for driver's licenses under an [Arizona statute](#) that permits the issuance of licenses only to persons whose "presence in the United States is authorized under federal law." However, after DACA was announced, DOT changed this policy so as to deny driver's licenses to aliens holding EADs that they obtained as a result of being granted deferred action through DACA. Other aliens who had been granted deferred action and obtained EADs outside DACA remained eligible for licenses. ([Federal regulations](#) provide that aliens granted deferred action may be granted EADs if they establish an "economic necessity for employment.")

District Court Decision

The Arizona Dream Act Coalition [challenged this change in policy](#) on the grounds that it violated the Equal Protection and Supremacy Clauses of the U.S. Constitution. The [Equal Protection Clause](#) of the Fourteenth Amendment bars states from denying the equal protection of the laws to any person within their jurisdiction. Its protections have been found to apply to all persons within the state's jurisdiction, [including aliens who lack legal status](#). The [Supremacy Clause](#), in turn, establishes that federal law, treaties, and the Constitution itself are "the supreme Law of the Land, ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." Because of the Supremacy Clause, states can be precluded from taking actions that would otherwise be within their authority if federal law would be thwarted thereby.

The [district court](#) ruled in favor of the plaintiffs on equal protection grounds, finding that Arizona lacked a legitimate interest in distinguishing between DACA beneficiaries and other aliens who have EADs as a result of having been granted deferred action when issuing driver's licenses. In so doing, the court noted Arizona's concern that issuing licenses to DACA beneficiaries could lead to "improper access" to federal and state public benefits, and that the state would have to cancel their licenses if the DACA initiative were ended, among other things. However it found these concerns to be an inadequate basis for distinguishing between aliens granted deferred action through DACA and other aliens granted deferred action, since the same concerns would apply to both groups (e.g., having a license could permit aliens to obtain benefits to which

they are not entitled).

The district court declined to enjoin the policy, though, since it considered the requested injunction to be a [mandatory one](#), and found that the plaintiffs had not met the heightened requirements for such an injunction. It also rejected the argument that the policy was preempted by federal law, because it saw the policy not as an attempt to determine which aliens may remain in the United States, but rather as concerned with the issuance of driver's licenses, a [traditional field of state regulation](#).

9th Circuit's Decision

Following the district court's decision, Arizona [amended its policy](#) to deny licenses to all aliens holding EADs as a result of being granted deferred action or deferred enforced departure (a related type of relief from removal), apparently in the hope of removing the basis upon which the district court found it to have impermissibly distinguished between similarly situated persons. However, a three-judge panel of the Ninth Circuit rejected this attempt, affirming the lower court's finding that Arizona lacks a legitimate basis for distinguishing between aliens granted deferred action who hold EADs and other aliens who lack legal status, but have also been granted EADs. Arizona argued that the other aliens—who include aliens seeking [adjustment of status](#) or [cancellation of removal](#)—differ from aliens granted deferred action because these forms of relief from removal are expressly authorized by federal statute, and the aliens granted them are “on a path to lawful status.” The court disagreed, noting that aliens seeking adjustment of status and cancellation of removal “possess no formal lawful immigration status, and may never obtain any,” like those granted deferred action or deferred enforced departure. The court also granted the requested injunction because it viewed the injunction as prohibitory, not mandatory.

A majority of the Ninth Circuit declined to find preemption. However, its finding here was expressly based on the record on appeal, and one judge wrote a concurring opinion in which she noted that she would have found Arizona's policy to be preempted because Arizona “regulates immigration by creating a new classification of alien status.” The judge would have reached this conclusion, in part, because aliens granted deferred action do not accrue “unlawful presence” while in this status, unlike aliens who entered the United States without authorization or remained after their period of authorized stay expires. This, she reasoned, means that their “stay must be considered [as] ‘authorized’” by federal officials, while Arizona's policy would treat these aliens' presence as unauthorized.

The Ninth Circuit's decision could have lingering implications, given the ongoing renewal of applications for deferred action through DACA and the possible grant of deferred action (or other relief from removal) to additional categories of aliens who lack legal status. Specifically, the decision suggests that states must exercise caution in distinguishing between categories of aliens who could potentially be seen as similar for at least certain purposes of federal law (e.g., those granted deferred action and those seeking cancellation of removal). The Ninth Circuit's apparent receptiveness to a preemption challenge—as well as an equal protection one—may also indicate a need for states and localities to carefully parse the meaning of various alien-related terms, such as “lawful presence” and “presence ... authorized under federal law,” when enacting legislation that affects aliens.

A separate [CRS report](#) discusses the issuance of driver's licenses to aliens who lack legal status in greater detail.

Posted at 09/09/2014 09:46 AM by [Kate M. Manuel](#) | [Share Sidebar](#)

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