

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ONE MICHIGAN, a Michigan incorporated  
nonprofit association; LEEN NOUR EL-  
ZAYAT; JAVIER CONTRERAS, a minor, by Hon.  
his next friend JOSÉ CONTRERAS; and  
RESILDA KARAFILI, Case No:

Plaintiffs,

v.

RUTH JOHNSON, in her official capacity  
as Michigan Secretary of State,

Defendant.

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**COMPLAINT FOR  
DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

**INTRODUCTION**

1. This lawsuit challenges the decision of the Michigan Secretary of State, Ruth Johnson, announced on October 8, 2012, to deny driver’s licenses and personal identification cards to immigrant youth whom the federal government has authorized to live and work in the United States under the Deferred Action for Childhood Arrivals (“DACA”) program. Defendant Johnson consistently has maintained that she will issue driver’s licenses and identification cards to all noncitizens who are authorized under federal law to be present in the United States. However, she refuses to grant licenses and identification cards to DACA recipients, contending that although DACA recipients are authorized to live and work in the United States, DACA recipients are not authorized to be present in the United States.

2. Defendant has stated that if DACA recipients are authorized under federal law to be present in the United States, she will issue them Michigan driver's licenses and personal identification cards ("ID cards").

3. Plaintiffs now ask this Court to declare that under federal law DACA recipients are indeed authorized to be present in the United States. Plaintiffs further ask this Court to find that Defendant's policy of denying them driver's licenses and ID cards violates the Supremacy Clause and the Equal Protection Clause of the United States Constitution.

4. This action is brought by One Michigan, an organization of immigrant youth, and several individual Plaintiffs, who are young immigrants brought to the United States at an early age by their families in the hope that they could have a better life. They have overcome many obstacles and worked diligently in order to succeed in school, to help their families, and to enrich their communities.

5. 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>1</sup> He explained, "it makes no sense" to deport "[t]hese . . . young people who study in our schools, . . . play in our neighborhoods, [a]re friends with our kids, [and] pledge allegiance to our flag."<sup>2</sup>

6. On June 15, 2012, the Secretary of the United States Department of Homeland Security ("DHS") announced a new program of administrative immigration relief for young immigrants who came to the United States as children. The DACA program was established to allow these young immigrants to remain in the United States without fear of deportation for a specified, renewable period, and thus continue to contribute to American society.

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

<sup>2</sup> *Id.*

7. Under DACA, certain immigrant youth are eligible to obtain “deferred action” from the federal government. Deferred action is a mechanism used by the federal government in a wide variety of contexts to prevent the removal of noncitizens who would otherwise be subject to deportation, and to allow those noncitizens to remain in the United States for a specified period of time.

8. By establishing DACA, the federal government created a program under which youth who meet specific criteria, such as earning a high school diploma and passing a rigorous criminal background check, can be granted deferred action. Persons granted deferred action under DACA may stay in the United States for a renewable period of two years, are shielded from removal proceedings during that time, and are generally eligible for federal employment authorization and a Social Security Number.

9. As a result of the federal government’s DACA program, the individual Plaintiffs, members of One Michigan, and many other Michigan immigrant youth have been granted deferred action, and have received federal employment authorization and a Social Security Number. It is estimated that there are approximately 15,000 DACA-eligible youth residing in Michigan.<sup>3</sup>

10. Under Michigan law, an otherwise qualified noncitizen residing in Michigan is eligible for a driver’s license or ID card if she or he is authorized under federal law to be present in the United States. M.C.L. §§ 257.307(1)(b); 257.307 (15); 28.291(5), 28.291(9).

11. As a result of being granted deferred action, individual Plaintiffs are legally present in the United States because the federal government has authorized their presence and given Plaintiffs permission to work for a renewable period of two years. Despite this explicit federal

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<sup>3</sup> American Immigration Council, Immigration Policy Center, *Who and Where the DREAMers Are, Revised Estimates* (Oct. 16, 2012), available at <http://www.immigrationpolicy.org/just-facts/who-and-where-dreamers-are-revised-estimates>.

authorization, Defendant now contends that the individual Plaintiffs, and all other DACA recipients, are not authorized under federal law to be present in the United States.

12. Prior to the federal announcement of the DACA program, the Michigan Secretary of State routinely issued driver's licenses and ID cards to all noncitizens granted deferred action who are otherwise qualified. In particular, the Secretary routinely accepted federally-issued employment authorization documents ("EADs") presented by noncitizens with deferred action as proof that the applicant is authorized under federal law to be present in the United States.

13. However, after the federal government announced the DACA program, Defendant revised its policy and practice to deny driver's license and ID cards to individuals granted deferred action if, and only if, that deferred action was issued pursuant to DACA. Defendant also revised its policy and practice to bar the acceptance of federally-issued employment authorization documents as proof of legal presence if, and only if, those documents were issued pursuant to DACA. Defendant continues to accept federally-issued EADs as proof of legal presence from all other noncitizens.

14. Defendant communicated these changes to branch office staff in an October 8, 2012, memorandum (hereinafter "DACA Exception Memo"), which instructed her staff not to issue driver's licenses or ID cards to DACA recipients.<sup>4</sup>

15. Defendant has made it very clear that the denial of driver's licenses and ID cards to DACA recipients is mandatory and not subject to any exercise of discretion on the part of her staff. The office of the Michigan Secretary of State has stated repeatedly that the policy barring issuance of driver's licenses and ID cards is based on the Secretary's view that DACA recipients are not authorized under federal law to be present in the United States.

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<sup>4</sup> A copy of the October 8, 2012 DACA Exception Memo is attached as Exhibit 1.

16. Thus, Defendant's position is that although the federal government has authorized DACA recipients to *work* in the United States, it has not authorized them to *be present* in the United States. This position not only violates common sense; it also violates federal law.

17. In fact, under federal law, DACA recipients—like all other recipients of deferred action—are authorized by the federal government to be present in the United States. Indeed, the individual Plaintiffs, as DACA recipients, are not only authorized under federal law to be present, but also have been issued Social Security Numbers by the federal government and have been authorized for employment by the federal government.

18. As a result of Defendant's policy and practice, DACA grantees in Michigan, including individual Plaintiffs and members of One Michigan, are unable to obtain licenses to drive in Michigan even though other noncitizens with deferred action and employment authorization are able to obtain licenses. This makes it difficult, and in some cases, impossible, for DACA grantees in Michigan to take advantage of the employment authorization they have received from the federal government pursuant to the DACA program. It also makes it difficult for them to accomplish essential aspects of daily life, such as going to the grocery store, attending religious worship services, and attending school. Moreover, proper identification documents—whether in the form of a driver's license or personal identification card—are required for many purposes, whether to open a bank account, get on an airplane, or enter a federal building.

19. Defendant's policy and practice of denying licenses and ID cards to DACA recipients is based on an erroneous interpretation of federal law, namely the view that individuals granted deferred action under DACA are not legally present in the United States.

20. Defendant's policy and practice of denying licenses and ID cards violates the Supremacy Clause of the United States Constitution because it is preempted by federal immigration law and the federal government's exclusive authority to regulate immigration.

21. Defendant's policy and practice also violates the Fourteenth Amendment's Equal Protection Clause because it denies driver's licenses and ID cards to DACA recipients without any valid justification, including even a rational basis, while continuing to provide such documents to all other individuals granted deferred action and to all other individuals with federally-issued EADs.

22. Plaintiffs ask that this Court grant them declaratory relief and preliminary and permanent injunctive relief.

### **JURISDICTION AND VENUE**

23. Plaintiffs bring this action under the Constitution and laws of the United States, under 42 U.S.C. § 1983, and under Michigan state law.

24. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs' federal constitutional claims.

25. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 over Plaintiffs' state-law claim because that claim necessarily raises a disputed and substantial question of federal law, and because a decision on that question of federal law will resolve this case. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005).

26. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Fed. R. Civ. P. 57 and 65, and by the legal and equitable powers of this Court.

27. Venue is proper in this district under 28 U.S.C. § 1391(b).

## PARTIES

### Plaintiffs

28. **One Michigan** is a youth-led immigrant organization whose mission is to provide resources to immigrant communities, particularly undocumented youth, through organizing, education and empowerment. One Michigan focuses its organizing and advocacy efforts on integrating immigrant youth into Michigan's educational system and economy to the fullest extent possible. One Michigan trains immigrant community organizers, educates immigrant youth about their rights, and promotes passage of the Development, Relief, and Education for Alien Minors ("DREAM") Act, which would provide a pathway to citizenship for qualifying immigrant youth raised in the United States.

29. Since the establishment of DACA, One Michigan has focused on educating immigrant youth about the program. Most of One Michigan's members are undocumented youth or DACA recipients who have grown up in the United States.

30. Defendant's decision to deny driver's licenses and ID cards to DACA grantees has adversely impacted both One Michigan and its members. Most of One Michigan's members either have applications for DACA, work authorization, and a Social Security Number pending or have already been approved for DACA and been granted work authorization and a Social Security Number. As a result of Defendant's denial of driver's licenses, many of One Michigan's members are unable to drive legally in Michigan, making it difficult or impossible for them to function normally in the community—including getting to and from work and school.

31. As a result of Defendant's decision, several members of One Michigan are considering leaving the state. This will decrease One Michigan's ability to engage in its outreach and education activities.

32. Defendant's decision impedes One Michigan's ability to carry out its mission, as One Michigan has been forced to divert its limited resources from its primary advocacy projects in order to assist affected individuals, such as responding to inquiries and requests for assistance regarding driver's license issues. In addition, the inability of DACA recipients to drive limits the ability of many One Michigan members to participate in One Michigan activities, as well as the organization's ability to recruit potential new members to come to events, thereby restricting the growth and functioning of the organization.

33. **Leen Nour El-Zayat** is a 20-year-old resident of Dearborn, Michigan, who has lived in the United States since age eight. She was born in Belgium but lived in Lebanon until she was seven, when her family moved to the Democratic Republic of Congo ("DRC") where her father had a work visa. When war was about to break out in the DRC, Ms. El-Zayat and her family came to the United States. On November 2, 2012, she was granted deferred action under the DACA program, and shortly thereafter received an EAD and a Social Security Number. Ms. El-Zayat graduated from Fordson High School in 2010. She is currently a third-year pre-medical student at Wayne State University, and plans to attend medical school upon graduation. Since receiving employment authorization, Ms. El-Zayat has been looking for work in a doctor's office or hospital so that she can learn the skills required for her future medical career. Ms. El-Zayat fears that she will be unable to accept any offered employment and will be unable to continue her education if she cannot obtain the driver's license she needs to get to work and school. Due to



Defendant's decision to deny driver's licenses to DACA recipients, Ms. El-Zayat is precluded from obtaining a license.

34. **Javier Contreras** is a 17-year-old resident of Ann Arbor, Michigan who came to the United States from Mexico when he was four years old. Mr. Contreras is a senior honor roll student at Skyline High School. He was elected homecoming king this year. On October 26, 2012, he was granted deferred action under the DACA program, and shortly thereafter received an EAD and a Social Security Number. Mr. Contreras plans to pursue a career in mechanical engineering and/or computer science, and hopes to first study and then work in Michigan. Mr. Contreras' college choices are limited by the fact that he cannot obtain a driver's license, and not all colleges have ready access to public transportation. Moreover, Mr. Contreras plans to work his way through college, as his family cannot afford tuition. His ability to do so is severely compromised by his inability to obtain a driver's license. Due to Defendant's decision to deny driver's licenses to DACA recipients, Mr. Contreras is precluded from obtaining a license. Mr. Contreras, a minor, brings this suit through his next friend, José Contreras.

35. **Resilda Karafili** is a 22-year old resident of Saline, Michigan who has lived in the United States since she was ten years old. Ms. Karafili was born in Albania but came to live with her aunt and uncle in Michigan in 2000. Three years later, Ms. Karafili's mother joined her in Michigan. Ms. Karafili is currently a senior at the University of Michigan, pursuing a triple major in political science, psychology and sociology. She would like to go to law school in the near future. On October 24, 2012, she was granted deferred action under the DACA program, and shortly thereafter received her EAD and Social Security Number. Ms. Karafili fears that when she graduates in May and looks for a job to support herself and save for law school, she will be unable to accept any offered employment if she cannot obtain the driver's license

she needs to get to work. Due to Defendant's decision to deny driver's licenses to DACA recipients, Ms. Karafili is precluded from obtaining a license.

## **Defendant**

36. At all times relevant to this action, **Defendant Ruth Johnson** has been the Secretary of State of Michigan. As Secretary of State, Defendant directs the agency with the authority to issue driver's licenses and personal identification cards. M.C.L. §§ 28.291; 257.301 *et seq.* As Secretary of State, Defendant implemented the policy and practice of denying driver's licenses and personal identification cards to DACA recipients in Michigan. Defendant is sued in her official capacity.

## **BACKGROUND**

### **Deferred Action**

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

38. Recipients of deferred action are eligible to receive employment authorization under federal law upon a showing of economic necessity. *See* 8 C.F.R. § 274a.12(c)(14).

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

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

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

41. Immigrant youth brought to the country as children are thus only the most recent beneficiaries of deferred action under federal immigration law.

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

circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways.”<sup>5</sup>

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

44. The DACA program is intended “to lift the shadow of deportation from these young people” and “to mend our Nation’s immigration policy to make it more fair, more efficient, and more just.”<sup>8</sup>

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

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<sup>5</sup> Janet Napolitano, Memorandum on Exercising Prosecutorial Discretion with 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-individuals-who-came-to-us-as-children.pdf>.

<sup>6</sup> President Barack Obama, *Remarks on Immigration Reform*, *supra* note 1.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

in school, have graduated or obtained a certificate of completion from high school, have obtained a general educational development (“GED”) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and g) have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.<sup>9</sup>

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

47. The federal government routinely grants employment authorization to deferred action recipients, including DACA recipients. Noncitizens granted work authorization are issued federal EADs, such as I-766 cards.

48. As of December 13, 2012, immigrant youth had filed over 350,000 DACA applications with USCIS. Although the majority of those applications are still in process, USCIS has granted deferred action to at least 102,965 individuals nationwide pursuant to the DACA program.<sup>11</sup>

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<sup>9</sup> USCIS, *Consideration of Deferred Action for Childhood Arrivals Process—Frequently Asked Questions* (Sept. 14, 2012), available at <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextcannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD>.

<sup>10</sup> See *id.*

<sup>11</sup> USCIS, *Deferred Action for Childhood Arrivals Process* (Aug. 15 – Dec. 13, 2012) available at <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA%20MonthlyDEC%20Report%20PDF.pdf>.

### **Michigan Practice With Respect to Driver's Licenses and Personal Identification Cards.**

49. Michigan law provides that if an applicant for a driver's license or personal identification card "is not a citizen of the United States, the applicant shall provide, and the department shall verify, documents demonstrating his or her legal presence in the United States." M.C.L. § 257.307(1)(b) (driver's licenses); M.C.L. § 28.291(5) (personal identification cards).

50. Michigan law further provides that the Secretary of State may enter into agreements with the United States government to verify whether an applicant for a driver's license or personal identification card who is not a citizen of the United States "is authorized under federal law to be present in the United States." M.C.L. § 257.307(15) (driver's licenses); M.C.L. § 28.291(9) (personal identification cards). Thus, for driver's license purposes, Michigan law equates a noncitizen's "legal presence in the United States" (M.C.L. § 257.307(1)(b)) with "authoriz[ation] under federal law to be present in the United States" (M.C.L. § 257.307(15)).

51. Accordingly, in order for an otherwise qualified noncitizen residing in Michigan to be eligible for a driver's license or personal identification card, he or she must be authorized under federal law to be present in this country.

52. Consistent with the statutory requirement that noncitizens be legally present "under federal law," the policy and practice of the Michigan Secretary of State is that questions about whether an individual is authorized to be present in the United States under federal law must be decided by the federal government based on federal immigration law. The Secretary of State has maintained this position both prior to and after the federal government announced the DACA program.

53. The policy and practice of Defendant *prior* to the announcement of the DACA program was that a federal EAD was sufficient to prove that an applicant's presence was legal

and authorized under federal law. Specifically, the Secretary of State's SOS-428 Form, which lists the documents required to obtain a driver's license or ID card, provided that federally-issued EADs were acceptable proof of legal presence in the United States.<sup>12</sup>

54. Because deferred action recipients are eligible for employment authorization under federal law, *see* 8 C.F.R. § 274a.12(c)(14), in the past Defendant routinely issued driver's licenses and ID cards to deferred action recipients, as well as other noncitizens, who submitted federally-issued employment authorization documents as proof of legal or authorized presence. Thus, under Defendant's previous policy, DACA recipients would have been able to meet the requirement that they are "authorized under federal law to be present in the United States" by submitting their EADs.

55. After the federal government announced the DACA program, staff in the Secretary of State's office reviewed the eligibility of DACA recipients for Michigan driver's licenses and ID cards. The Secretary of State's staff determined that the federal authorization documents being provided to DACA recipients were documents that the Secretary of State accepts as proof of legal presence in the United States. Specifically, the Secretary of State's staff noted that the Secretary accepted as proof of legal presence the I-766 Employment Authorization Card and the I-797 Notice of Action.<sup>13</sup> The federal government issues both of these documents to qualified DACA recipients, as well as many other categories of legally present immigrants.

56. However, Defendant subsequently carved out an exception to deny driver's licenses and ID cards to DACA recipients even though they have the same federally-issued documents as other deferred action recipients to whom the Secretary of State continued to issue driver's

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<sup>12</sup> A copy of the SOS-428 Form from June 2012, which states that a valid, unexpired Employment Authorization Card is proof of legal presence, is attached as Exhibit 2.

<sup>13</sup> Attached as Exhibit 3 is a copy of August 23, 2012 emails between Secretary of State employees Ardiana Cera and Fred Woodhams, which state that "we currently do accept these documents as proof of legal residence."

licenses and ID cards. On October 8, 2012, Defendant, through her senior staff, issued the DACA Exception Memo instructing employees to deny driver's licenses and ID cards to individuals granted deferred action under DACA.

57. Defendant subsequently amended the SOS-428 Form to create an exception, distinguishing DACA recipients from other residents who can demonstrate legal presence by presenting federally-issued EADs. The SOS-428 Form now states that a federally-issued EAD is accepted as proof of legal presence, unless the federal government issued the document under DACA.<sup>14</sup> In other words, under Defendant's new policy, EADs presented by DACA recipients will not be accepted as proof of legal presence for a driver's license or identification card. However, for all other immigrants, including all other recipients of deferred action, EADs will continue to be accepted as proof of legal presence.

58. Defendant has consistently affirmed in public statements that the question of whether a noncitizen is legally present is a question of federal law, and that individuals who are legally present as a matter of federal law are eligible for a Michigan driver's license or ID card. For example, Defendant, through her spokesperson, has stated that "[w]e rely on the federal government to tell us who is legally here in the United States and who is not,"<sup>15</sup> that "[w]e rely on the feds to determine whether someone is here legally or not,"<sup>16</sup> and that "[w]e rely on the federal government to tell us who is here legally; we don't determine that."<sup>17</sup>

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<sup>14</sup> A copy of the SOS-428 Form from October 2012, which states that a valid, unexpired Employment Authorization Card is proof of legal presence except if issued to a DACA recipient, is attached as Exhibit 4. The current SOS-428 Form is also posted publicly on the SOS website ([http://www.michigan.gov/documents/DE40\\_032001\\_20459\\_7.pdf](http://www.michigan.gov/documents/DE40_032001_20459_7.pdf)).

<sup>15</sup> Jonathan Oosting, *Michigan Immigrants Rally at Capitol, Seeking Driver's Licenses for Those Allowed to Work*, MLIVE (Nov. 20, 2012), available at [http://www.mlive.com/news/index.ssf/2012/11/michigan\\_immigrants\\_rally\\_at\\_s.html](http://www.mlive.com/news/index.ssf/2012/11/michigan_immigrants_rally_at_s.html) (quoting Ruth Johnson's spokeswoman, Gisgie Gendreau).

<sup>16</sup> Niraj Warikoo, *Immigrants Cleared to Work in Michigan, But Not to Drive*, DETROIT FREE PRESS (Nov. 20, 2012), available at <http://www.freep.com/article/20121120/NEWS05/311200089/Immigrants-cleared-to-work-in->



59. Defendant’s decision to deny driver’s licenses and personal identification cards to DACA recipients is ostensibly based on a statement contained on the website of the USCIS indicating that “deferred action does not confer any lawful status.”<sup>18</sup> This interpretation of the USCIS webpage is erroneous and is based on a lack of understanding of federal law. The USCIS webpage refers to “lawful status” as a term of art under federal immigration law indicating specific formal status categories, such as non-immigrant visas. The USCIS language does not mean that immigrants with deferred action are unlawfully present. Indeed, the USCIS website itself states that “[t]here is a significant difference between ‘unlawful presence’ and ‘unlawful status,’”<sup>19</sup> and explains that DACA recipients are *not* “unlawfully present.”<sup>20</sup> Moreover, USCIS has explained that under the DACA program, “[i]f your case is deferred, you will not accrue unlawful presence during the period of deferred action.”<sup>21</sup>

60. Federal immigration law treats legal presence and formal “immigration status” as distinct issues. An “immigration status” refers to a specific set of federal immigration classifications for persons admitted as “non-immigrants,” such as recipients of business and tourist visas; those admitted as “immigrants,” such as permanent residents; and other limited classifications established by federal law, like temporary protected status. Individuals who lack a specified “lawful status” may still be explicitly authorized to live and work in this country under federal law, and therefore be legally present in the United States.

61. Defendant has consistently affirmed that if DACA recipients are legally present under federal law, then DACA recipients are eligible for driver’s licenses and ID cards in Michigan.

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Michigan-but-not-to-drive (quoting Ruth Johnson’s spokeswoman, Gisgic Gendreau).

<sup>17</sup> Serena Maria Daniels, *Michigan’s Immigrant Youths Put in Limbo*, DETROIT NEWS (Dec. 2, 2012), available at <http://www.detroitnews.com/article/20121203/METRO/212030340>.

<sup>18</sup> See *supra* note 9 at Q6.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at Q5.

<sup>21</sup> *Id.* at Q5. See also *id.* at Q1, Q6.

However, Defendant misinterprets federal law by concluding that individuals granted DACA are not legally present in the United States, while all other immigrants who receive deferred action and all other immigrants who receive federal employment authorization are legally present. In fact, federal immigration law treats all recipients of deferred action the same in terms of their legal authorization to be in the United States. Federal immigration law also treats all recipients of federal employment authorization as legally present.

62. Nearly every state in the nation, including Michigan, requires a showing by driver's license applicants that they are authorized to be present in the United States under federal law. The overwhelming majority of states deem deferred action recipients with employment authorization and Social Security Numbers eligible for driver's licenses and personal identification cards, without an exception for DACA grantees. Aside from Michigan, only Arizona and Nebraska have announced an intention to deny driver's licenses to DACA grantees.

## **GENERAL ALLEGATIONS**

### **Defendant's Policy Harms Plaintiffs.**

63. Defendant's policy and practice of denying driver's licenses to DACA recipients imposes onerous restrictions on the daily lives of individual Plaintiffs and members of Plaintiff One Michigan.

64. The ability to drive is, in most areas of the United States, a necessity of modern life. Driving is essential to the ability to work, particularly in Michigan, where access to public transportation is very limited. U.S. Census Bureau statistics indicate that more than 91 percent

of Michiganders drive to work.<sup>22</sup> Denying driver's licenses to DACA recipients in Michigan severely frustrates their ability to obtain employment and achieve economic self-sufficiency.

65. The necessity of driving to a place of employment and/or school is so important that Michigan provides licenses in a diverse range of circumstances. For example, Michigan provides a restricted license allowing use of a motor vehicle for employment purposes to many individuals who are otherwise denied the right to operate a motor vehicle because their licenses have been suspended or revoked. *See, e.g.*, M.C.L. § 257.304(4).

66. Defendant's policy and practice cause substantial and irreparable harm to individual Plaintiffs and to One Michigan's members. Because they are not licensed to drive, they are, *inter alia*, prevented from being able to drive legally in order to go to work, school, religious worship services, medical appointments; to take on employment requiring a driver's license; and to conduct many basic activities of daily life. In order to manage these basic activities, individual Plaintiffs and One Michigan's members are often forced to rely on rides from others. Individual Plaintiffs and One Michigan's members are also harmed by having an unconstitutional policy enforced against them.

67. In addition, Defendant's unlawful policy and practice harms One Michigan's ability to carry out its mission and forces it to divert resources to efforts from its primary advocacy projects in order to assist members who are adversely affected by the inability to obtain a driver's license. Defendant's practice also harms both One Michigan as an organization and its

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<sup>22</sup> U.S. Census Bureau, *2011 American Community Survey 1-Year Estimates*, available at <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> (then at Quick Start Enter: Means of Transportation to Work Michigan, and on page 3 Click: B08301 MEANS OF TRANSPORTATION TO WORK) ([http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_1YR\\_B08301&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B08301&prodType=table)).

individual members by limiting the ability of One Michigan's members and potential members to travel to events related to One Michigan's mission and by making such travel more costly.

**Injunctive and Declaratory Relief Is Required to Remedy the Harm Suffered by Plaintiffs.**

68. The wrongful denial of driver's licenses and ID cards to individual Plaintiffs and One Michigan's members causes irreparable harm. Such harm is irreparable because no reasonable remedy can make a person whole after he or she has been denied a license or ID card for a period of time.

69. Plaintiffs have no plain, speedy, and adequate remedy at law against Defendant's decision to deny driver's license and ID cards to DACA recipients.

70. Unless this Court grants injunctive and declaratory relief, Plaintiffs will continue to suffer irreparable injury and continue to be hampered in conducting these basic activities of everyday life.

**COUNT ONE:**

**Declaratory Judgment – DACA Recipients are  
Legally Authorized under Federal Law to be Present in the United States  
(Violation of State Law Raising Disputed and Substantial Federal Question)**

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

72. An individual who is "authorized under federal law to be present in the United States" and who has "documents demonstrating his or her legal presence in the United States" is eligible for a Michigan driver's license or a personal identification card. M.C.L. §§ 257.307(15); 28.291(9); 257.307(1)(b); 28.291(5).

73. By refusing to grant driver's licenses to DACA recipients, Defendant is in violation of state law.

74. The violation of Plaintiffs' rights under the Michigan driver's license statutes turns on an embedded question of federal law: namely, whether DACA recipients are "authorized under federal law to be present in the United States" (*i.e.*, "legally present in the United States"). That question implicates significant federal interests, is disputed and is substantial.

75. Indeed, Defendant herself has maintained that federal law determines whether an individual is authorized under federal law to be present in the United States. Defendant has further maintained that if DACA recipients are authorized under federal law to be present in the United States, she will issue driver's licenses and ID cards to them.

76. Under the federal immigration system, deferred action recipients, including DACA grantees, are authorized to remain in the United States for the period of the deferred action grant. Deferred action recipients, including DACA grantees, who obtain employment authorization are authorized not only to reside in the United States but are also authorized to work in the United States during the period of their deferred action.

77. Noncitizens granted deferred action pursuant to the DACA program are thus authorized under federal law to be present in the United States during the two-year deferred action period, and during any extensions of the grant.

78. Plaintiffs ask this Court to declare that they are authorized under federal law to be present in the United States. Plaintiffs seek only a declaratory judgment on this embedded question of federal law that is necessary for the proper application of the state law. Plaintiffs do not seek injunctive relief with respect to this claim.

## COUNT TWO:

### **Defendant's Policy is Preempted (Supremacy Clause, Article VI, Clause 2, of the United States Constitution)**

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

80. The Supremacy Clause of the United States Constitution 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.” United States Constitution, Article VI, clause 2.

81. 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. Any state law that conflicts or interferes with federal law is also preempted.

82. 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.

83. As part of its immigration power, the federal government has exclusive authority to enact and to enforce regulations concerning which noncitizens to admit, exclude, remove, or allow to remain in the United States. The federal government also has exclusive authority over the terms and conditions of a noncitizen’s stay in the United States. Further, the federal

government has exclusive authority to classify noncitizens, which includes determining the categories of noncitizens that are granted federal authorization to be present in the United States. In contrast, state governments have none of these powers.

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

85. Under that system, Congress delegated to the federal Executive broad discretion over the manner of the execution of the immigration laws, including the manner of their enforcement. That discretion includes the discretion to decide not to pursue the removal of a noncitizen who may be removable and to authorize such persons to be present in the United States, including by granting deferred action.

86. The State of Michigan has elected to condition the eligibility of a noncitizen for a driver's license or ID card on whether the noncitizen is authorized to be in the United States under federal law. Having decided to determine eligibility for driver's licenses based on federal immigration law, Michigan may not create its own classifications regarding which immigrants are authorized to be present in the United States. Therefore, Defendant's policy of denying driver's licenses and personal identification cards to DACA recipients is preempted by federal law.

87. Defendant's policy of distinguishing between DACA recipients and other recipients of deferred action impermissibly regulates immigration by, *inter alia*, creating a new, state-based classification of noncitizens that treats DACA recipients as though they were unauthorized to be

in the United States and unlawfully present here. However, DACA recipients, like other recipients of deferred action, are legally present and authorized to be in the United States during the deferred action period.

88. Through the DACA Exception Memo, Defendant has created her own state classification of noncitizens whose presence in the United States is “authorized” or “legal,” and erroneously classified DACA recipients as lacking federal authorization to be present in the United States. Defendant’s creation of its own immigration classification impermissibly intrudes on the federal government’s exclusive authority to regulate immigration, and therefore violates the Supremacy Clause.

89. Defendant’s policy is further preempted because it conflicts with, frustrates, and serves as an obstacle to federal immigration law, goals, and policies. For example, Defendant’s classification of DACA recipients as unauthorized and not legally present conflicts with their treatment under federal immigration law and frustrates Congress’s intent that the federal government alone have discretion to determine whether to authorize a noncitizen to remain in the United States. Defendant’s misclassification of DACA recipients directly and fundamentally conflicts with federal law, in violation of the Supremacy Clause.

90. In sum, because Defendant’s policy is preempted by federal law, it violates the Supremacy Clause and is unconstitutional.

### **COUNT THREE:**

#### **Defendant’s Policy Violates Equal Protection (Fourteenth Amendment to the United States Constitution)**

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



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

93. Defendant’s policy of denying driver’s licenses and ID cards to DACA recipients constitutes impermissible discrimination 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 United States Constitution.

94. Defendant’s decision to single out and deny driver’s licenses and ID cards to individuals granted deferred action under the DACA program, while granting licenses and ID cards to all other individuals granted deferred action or other forms of temporary authorization to remain in the United States, and to all other individuals granted federal employment authorization, does not further any legitimate state goal. Because Defendant’s differential treatment of DACA recipients has no valid justification, not even a rational basis, it violates the Equal Protection Clause of the Fourteenth Amendment.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

- A. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Deferred Action for Childhood Arrivals grantees are authorized under federal law to be present in the United States.
- B. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendant’s policy and practice of denying driver’s licenses and personal identification cards to Deferred Action for Childhood Arrivals grantees is unlawful and invalid because it is preempted under the Supremacy Clause of the United States Constitution.

- C. A declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that Defendant's policy and practice of denying driver's licenses and personal identification cards to Deferred Action for Childhood Arrivals grantees is unlawful and invalid because it violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.
- D. A preliminary and permanent injunction under Counts Two and Three enjoining Defendant, her officials, agents, employees, assigns, and all persons acting in concert or participating with her from implementing or enforcing the illegal policy and practice of denying Michigan driver's licenses and personal identification cards to Deferred Action for Childhood Arrivals grantees who are otherwise qualified.
- E. 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.
- F. Such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

Miriam J. Aukerman (P63165)  
American Civil Liberties Union  
Fund of Michigan  
1514 Wealthy SE, Suite 242  
Grand Rapids, MI 49506  
T: (616) 301-0930  
[maukerman@aclumich.org](mailto:maukerman@aclumich.org)

Michael J. Steinberg (P43085)  
Sarah Mehta (P76024)  
Kary L. Moss (P49759)  
American Civil Liberties Union  
Fund of Michigan  
2966 Woodward Avenue  
Detroit, MI 48201  
T: (313) 578-6814  
[msteinberg@aclumich.org](mailto:msteinberg@aclumich.org)  
[smehta@aclumich.org](mailto:smehta@aclumich.org)

Tanya Broder\*  
National Immigration Law Center  
405 14<sup>th</sup> Street, Suite 1400  
Oakland, CA 94612  
T: (510) 663-8282  
[Broder@nilc.org](mailto:Broder@nilc.org)

Jennifer Chang Newell\*  
Cecilia D. Wang\*  
Michael Tan\*  
R. Orion Danjuma\*†  
American Civil Liberties Union Foundation  
Immigrants' Rights Project  
39 Drumm Street  
San Francisco, CA 94111  
T: (415) 343-0770  
[jnewell@aclu.org](mailto:jnewell@aclu.org)  
[cwang@aclu.org](mailto:cwang@aclu.org)  
[mtan@aclu.org](mailto:mtan@aclu.org)  
[odanjuma@.org](mailto:odanjuma@.org)

Jason Raofield\*  
Richard Anthony Lopez\*  
Erica Lai\*  
José Arvelo\*  
Tracy Ebanks\*  
Covington & Burling LLP  
1201 Pennsylvania Ave., N.W.  
Washington D.C. 20004  
T: (202) 662-6000  
[jraofield@cov.com](mailto:jraofield@cov.com)  
[rlopez@cov.com](mailto:rlopez@cov.com)  
[elai@cov.com](mailto:elai@cov.com)  
[jarvelo@cov.com](mailto:jarvelo@cov.com)  
[tebanks@cov.com](mailto:tebanks@cov.com)

*Attorneys for Plaintiffs*

\*Admission pending.

†Admitted in New York.

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