

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA  
LINCOLN DIVISION**

MAYRA SALDANA,

Plaintiff,

v.

RHONDA LAHM.

Defendant.

Civil Action No. **13-3108**

**FIRST AMENDED COMPLAINT  
AND PRAYER FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**FIRST AMENDED COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This lawsuit challenges the Nebraska Department of Motor Vehicle’s policy and practice of denying driver’s licenses to immigrant youth whom the federal government has authorized to remain in the United States of America under the Deferred Action for Childhood Arrivals (“DACA”) program. Defendant’s practice violates the Supremacy Clause and the Equal Protection Clause of the United States Constitution.

2. This action is brought by Plaintiff, Mayra Saldana, who is a young immigrant who was brought to the United States of America at an early age by her family in the hope that she could have a better life in the United States of America. She has overcome many obstacles and worked diligently in order to succeed in school, to help her family, and to enrich her community with her individual abilities.

3. 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 the country without a formal immigration status.

4. Under DACA, certain undocumented youth are eligible to obtain “deferred action” from the federal government upon meeting specific criteria such as the attainment of a high school diploma and passing a rigorous background check including the absence of a criminal record.

5. 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 may be granted federal employment authorization and a Social Security Number.

6. On January 18, 2013, USCIS issued a clarification stating that DACA recipients are lawfully present in the United States of America during the deferred action period.

7. As of March 31st, 2013, USCIS had granted 268,361 youth DACA benefits and 1,405 DACA recipients reside in Nebraska.

8. Plaintiff is one of those young immigrants residing in Nebraska who has been granted deferred action pursuant to the DACA program, and has received an employment authorization document and a Social Security Number.

9. All DACA grantees in Nebraska are being denied the opportunity to obtain a driver’s license pursuant to Defendant’s policies and practices.

10. On August 17, 2012 – two days after DHS began accepting DACA applications – Nebraska Governor Dave Heineman issued a press release, which stated: “President

Obama's deferred action program to issue employment authorization documents to illegal immigrants does not make them legal citizens. The State of Nebraska will continue its practice of not issuing driver's licenses, welfare benefits or other public benefits to illegal immigrants unless specifically authorized by Nebraska statute."

11. The disagreement with the federal government's decision to enact the DACA program is further illustrated by Governor Heineman's language in a reply letter to Plaintiff where he states "we welcome legal immigration. Policies that reward illegal behavior are not fair to those individuals that do follow the rules. The United States Constitution squarely places the responsibility for establishing immigration laws on the federal government."

12. The Nebraska Department of Motor Vehicles ("DMV") treated Governor Heineman's statements as a directive to deny driver's licenses to DACA recipients.

13. Consequently, the DMV enacted and implemented an official policy on September 6, 2012, barring the acceptance of the employment authorization documents from DACA recipients as evidence of authorized presence in the United States to establish eligibility for driver's licenses.

14. Prior to Governor Heineman's statements, the DMV had a policy of issuing driver's licenses to all individuals who were able to prove they were lawfully present in the United States simply by presenting federal employment authorization documents.

15. Even after January 2013, when the DMV amended this policy, the department allows individuals who can prove they are lawfully present to apply for and receive a *temporary* driver's license.

16. DMV's new policy essentially mirrors Nebraska state law, which mandates that the DMV "shall only issue an operator's license or a state identification card that is temporary to any applicant who presents documentation under section 60-484 and subsection (2) of section 60-484.04 that shows his or her lawful presence in the United States is temporary." Neb.Rev.Stat. § 60-484.05.

17. Although USCIS has issued a clarification stating that DACA recipients are to be considered lawfully present in the United States, and despite the DMV's new policy allowing individuals who are lawfully present in the country to apply for temporary driver's licenses, the department has continued its policy of denying permits, licenses or state IDs to DACA beneficiaries

18. As a result Plaintiff is unable to obtain a license to drive in Nebraska despite being otherwise eligible for such a license, making it difficult, if not impossible, for her to accomplish essential aspects of daily life, such as going to the grocery store, attending church, bringing her younger siblings to medical appointments or to school, attending school, and maintaining or obtaining productive employment.

19. Plaintiff therefore brings the instant action for permanent injunctive and declaratory relief.

### **JURISDICTION AND VENUE**

20. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343, as well as 42 U.S.C. § 1983, over Plaintiff's claims under the U.S. Constitution. The Court has authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

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

## **PARTIES**

### **Plaintiff**

22. **Mayra Saldana** is a 24-year-old resident of Lincoln, Nebraska, who came to the United States at age 2 from Mexico and has lived in Nebraska since that time.

23. On December 3rd, 2012, she was granted deferred action under the DACA program, and shortly thereafter received an employment authorization document (“EAD”) and Social Security Number.

24. She is studying Forensic Science-Biochemistry at Peru State College and is currently a sophomore.

25. Ms. Saldana is currently employed but was previously denied a job opportunity since it required some driving. She was told outright that the reason she was not considered was because she did not have a driver’s license.

26. In January of 2013, Ms. Saldana attempted to apply for a Nebraska driver’s license at a DMV office in Lincoln.

27. DMV officials informed her that because her EAD showed (c)(33) and was obtained through the DACA program, that she was therefore ineligible for a driver’s license.

28. The following week Ms. Saldana returned to the same DMV office and was denied a driver's license again.

29. This time she was told that until Governor Heineman changed his stance that a driver's license cannot be issued to her.

30. Ms. Saldana went in for a final attempt to obtain a license on Monday, January 28, 2013. She took the vision test, had her picture taken, all of her information was typed into the system and then she was handed an examination refusal letter that stated that DACA recipients are not qualified for a Nebraska driver's license.

31. On Thursday, May 23, 2013, Plaintiff submitted an appeal letter to Ms. Rhonda Lahm, Director of the Nebraska DMV, following Nebraska DMV policy.

32. On Friday, May 31, 2013, the Director issued an order to the Plaintiff affirming the previous refusal by the DMV to issue a Nebraska driver's license.

33. The order was signed by the Director of the DMV, Rhonda Lahm, and stated that driver's licenses would not be issued to DACA recipients since they cannot establish lawful presence in the United States.

### **Defendant**

34. Since February 1st, 2013, **Defendant Rhonda Lahm** has been the Director of Nebraska Department of Motor Vehicles, which is the agency with authority to license drivers and enforce motor vehicle statutes. Neb. Rev. Stat. § 60-462.02.

35. As Director, Defendant Lahm has the power to "appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license". Neb. Rev. Stat. § 60-4,113(1).

36. Defendant Lahm has the authority to adopt rules she deems necessary to carry out the DMV's responsibilities. Defendant Lahm 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 individual's removal and to authorize her continued presence in the United States.

38. A grant of deferred action indicates that the individual'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.

39. Moreover, 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).

40. Deferred action has been made available to certain victims of human trafficking and sexual exploitation; to certain 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 certain 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. Under DACA, young immigrants who entered the United States as children and who meet educational and residency requirements may apply for deferred action.

42. Individuals 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 USCIS; e) entered without inspection before June 15, 2012, or had an expired lawful immigration status as of June 15, 2012; f) are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a 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>1</sup>

43. The DACA application process includes extensive criminal background checks. Under the DACA program, deferred action is available for a period of two years, subject

---

<sup>1</sup> USCIS, Consideration of Deferred Action for Childhood Arrivals Process (Sept. 14, 2012), *available at* <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextchannel=3a4dbc4b04499310VgnVCM100000082ca60aRCRD&vgnextoid=3a4dbc4b04499310VgnVCM100000082ca60aRCRD>.



to renewal, and applicants who are approved may obtain work authorization, and if such authorization is granted, a Social Security Number.<sup>2</sup>

44. The federal government routinely grants work authorization to deferred action recipients, including DACA recipients.

45. Individuals granted work authorization are issued federal employment authorization documents or EAD's, such as I-766 cards.

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

47. DACA recipients are likewise lawfully present during the deferred action period. 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>3</sup> According to USCIS, “an individual whose case is deferred will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect.”<sup>4</sup>

48. As of March 31, 2013, immigrant youth had filed nearly 489,000 DACA applications with USCIS, including over 2,000 applications from Nebraska residents. At this point about forty-five percent of the applications are still in process and USCIS has granted deferred action to at least 268,361 individuals nationwide pursuant to the DACA program.<sup>5</sup>

---

<sup>2</sup> *See id.*

<sup>3</sup> *Id.* at Q5.

<sup>4</sup> *Id.* at Q1; *see also id.* at Q6.

<sup>5</sup> USCIS, Deferred Action for Childhood Arrivals Process (Aug. 15 – Mar. 31, 2013) *available at*

## Nebraska Driver's License Practice

49. Both before and after the federal government announced that immigrant youth who came to the country as children would be eligible for deferred action under the DACA program, the Nebraska DMV only required that applicants for instruction permits, driver's license, or identification cards submit the applicant's U.S. based proof of identification, which includes "[a] valid, unexpired Employment Authorization Card (I-766)." Nebraska DMV's Driver's Manual 1C-1(1)(8).

50. Because deferred action recipients are eligible for employment authorization under federal law, *see* 8 C.F.R. § 274a.12(c)(14), the Nebraska DMV routinely issued driver's licenses to deferred action recipients, as well as other individuals submitting EAD's as a U.S. based proof of identification.

51. The Nebraska DMV, however, revised its policy regarding acceptance of EAD's as proof of authorized presence only for DACA recipients.

52. Under the new policy, EAD's presented by DACA recipients are not to be accepted as proof of lawful presence for a driver's license or identification card.

53. However, for all other recipients of deferred action (i.e., other than DACA beneficiaries), EAD's continue to be accepted as proof of lawful presence. *See* Nebraska DMV's Driver's Manual 1C-1(1)(8).

54. Nebraska's practice of denying driver's licenses to DACA recipients is an outlier in the 50 states. The rules in an overwhelming majority of states make all deferred action

---

<http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/2013->

recipients with employment authorization and Social Security Numbers eligible for driver's licenses. Indeed, Plaintiffs are aware of only one other state, Arizona, that is currently denying driver's licenses to DACA recipients.

### **Defendant's Policy Harms Plaintiff**

55. Defendant's policy of denying driver's licenses to DACA recipients, including Plaintiff, is currently in effect.

56. Defendant has interpreted Governor Heineman's public statements as a directive to the DMV to deny driver's licenses to DACA recipients.

57. As a result, Defendant, acting under the color of state law, is violating Plaintiff's rights under the U.S. Constitution by continuing to enforce the DMV's practice of denying driver's licenses to DACA recipients, including Plaintiff.

58. Defendant's practice of denying driver's licenses to DACA recipients imposes onerous restrictions on the daily lives of the Plaintiff because she is not able to legally drive.

59. Plaintiff is also harmed by having an unconstitutional policy enforced against her.

60. Thus, wrongful denial of a driver's license to Plaintiff causes irreparable harm. Such harm is irreparable because no reasonable remedy can make a person whole after they have been denied a license for a period of time.

61. If DMV policy is not enjoined, Plaintiff will continue to suffer irreparable injury and continue to be hampered in conducting these basic activities of everyday life.

62. There is an actual and substantial controversy between Plaintiff and Defendant.

63. Plaintiff has no plain, speedy, and adequate remedy at law against the DMV's policy and related practices other than the relief requested in this Complaint.

64. By enforcing the new policy to deny a driver's license to Plaintiff, Defendant is denying Plaintiff rights secured to her under the U.S. Constitution and laws.

65. Plaintiff is entitled to a declaration that the DMV policy is unconstitutional on its face and as applied, and to a preliminary and permanent injunction enjoining Defendant from enforcing such policy.

### **Defendant's Policy is Preempted By Federal Law**

66. 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."

67. 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.

68. 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.

69. As part of its immigration power, the federal government has exclusive authority to enact and to enforce regulations concerning which individuals 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 individual's stay in the United States. Further, the federal government has exclusive authority to classify individuals, which includes determining the categories of individuals who are granted federal authorization to remain in the United States. In contrast, state governments have none of these powers.

70. 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 individual may enter and live in the United States, when a individual may be subject to removal, and when a individual may be eligible for relief from removal, either temporarily or permanently.

71. In the INA, 8 U.S.C. §1101, *et seq.*, Congress has 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 an individual who may be removable and to authorize such persons to remain in the United States. One way in which the Executive exercises its discretionary authority is by granting individuals "deferred action," which allows them to remain in the United States for a period of time.

72. 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 are granted employment authorization are authorized not only to reside in the United States but to work here. Deferred action recipients, including DACA grantees, are present in the United States with legal authorization and are lawfully present.

73. DMV policy impermissibly regulates immigration by, inter alia, creating a new, state-based classification of individuals that treats DACA recipients as though they were unlawfully present.

74. DMV policy, by denying driver's licenses and state-issued identification cards, further impermissibly regulates immigration because, inter alia, it imposes immigration-related burdens and penalties on individuals whose presence in the United States is authorized by the federal government, and in a manner not contemplated by federal law.

75. DMV policy that denies DACA recipients driver's licenses conflicts with, frustrates, and serves as an obstacle to federal immigration law, goals, and policies of authorizing DACA recipients to live and work in the United States, to come out of the shadows, and to participate as full members of our nation's communities.

### **Defendant's Policy Violates Equal Protection**

76. The Defendant's decision to single out and deny driver's licenses to individuals granted deferred action under the DACA program while granting licenses to all other individuals who are deemed to be lawfully present in the United States does not rationally further any state goal.

77. On information and belief, the singling out of DACA grantees appears to be a disagreement with President Obama's DACA policy.

78. Governor Heineman’s press release/directive states that “President Obama’s deferred action program to issue employment authorization documents to illegal immigrants does not make them legal citizens. The State of Nebraska will continue its practice of not issuing driver’s licenses, welfare benefits or other public benefits to illegal immigrants unless specifically authorized by Nebraska statute.”

79. These alleged state purposes are not a valid justification for the DMV policy in regards to DACA recipients.

80. As set forth above, persons granted deferred action are lawfully present. They have been granted authorization to remain in the United States by federal immigration officials for a certain time period, and are eligible to apply to work in the United States.

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

81. Plaintiff re-alleges and incorporates all of the allegations contained in the previous paragraphs of this complaint as though fully set forth herein.

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

83. In classifying DACA recipients as ineligible for driver’s licenses and not having lawful status to be present in the United States, DMV policy is preempted by federal law for multiple reasons.

84. DMV policy is preempted because it is an impermissible state regulation of immigration. Nebraska has created its own state classification of individuals who are unable to establish “lawful status” in the United States and erroneously classifies DACA recipients as lacking federal authorization to remain in the United States. Nebraska’s creation of its own immigration classification system impermissibly intrudes on the federal government’s exclusive authority to regulate immigration, and therefore violates the Supremacy Clause.

85. The policy is further preempted because it conflicts with, frustrates, and serves as an obstacle to federal immigration law, goals, and policies. Nebraska’s misclassification of DACA recipients as not having lawful status to be present in the United States directly and fundamentally conflicts with federal law, in violation of the Supremacy Clause.

86. DMV policy is also preempted because, inter alia, it imposes immigration-related burdens and penalties on individuals whose presence in the United States is authorized by the federal government, in violation of the Supremacy Clause.

87. Because DMV policy is preempted by federal law, it violates the Supremacy Clause.

**SECOND CLAIM FOR RELIEF**  
**(Equal Protection Clause, Fourteenth Amendment to the U.S. Constitution; 42**  
**U.S.C. § 1983)**

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

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



90. Because DMV policy bars individuals granted deferred action under the DACA program from receiving state driver's licenses, it violates the Equal Protection Clause of the Fourteenth Amendment.

91. DMV policy constitutes impermissible discrimination by state officers and officials against certain individuals on the basis of alienage and deprives them of equal protection of the laws within the meaning of the Fourteenth Amendment to the U.S. Constitution.

92. Defendant cannot establish that DMV policy has any valid justification, including even a rational basis.

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

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

- A. A preliminary and permanent injunction enjoining Defendant, her officials, agents, employees, assigns, and all persons acting in concert or participating with her from implementing or enforcing the DMV's 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 Nebraska's policy and practice of denying driver's licenses to Deferred Action for Childhood Arrivals grantees is unlawful and invalid;

- C. An order awarding Plaintiff 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 this 3rd day of July, 2013

Respectfully submitted,

/s/ Aaron Siebert-Llera

Aaron Siebert-Llera\*  
Alonzo Rivas\*  
MEXICAN AMERICAN LEGAL  
DEFENSE AND EDUCATIONAL FUND  
11 E. Adams St., Suit 700  
Chicago, IL 60603  
T: (312) 427-0701  
*asiebert-llera@maldef.org*  
*arivas@maldef.org*

*Attorneys for Plaintiffs*  
*\*Admitted in District of Nebraska*