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

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9 Arizona Dream Act Coalition; Jesus Castro-  
10 Martinez; Christian Jacobo; Alejandro Lopez;  
11 Ariel Martinez; Natalia Perez-Gallagos; Carla  
Chavarria; and Jose Ricardo Hinojos,

12 **Plaintiffs,**

13 v.

14 Janice K. Brewer, Governor of the State of  
15 Arizona, in her official capacity; John S.  
16 Halikowski, Director of the Arizona Department  
17 of Transportation, in his official capacity; and  
18 Stacey K. Stanton, Assistant Director of the Motor  
Vehicle Division of the Arizona Department of  
Transportation, in her official capacity,

19  
20 **Defendants.**

No. CV12-02546 PHX DGC

**ORDER AND PERMANENT  
INJUNCTION**

21 This case concerns the constitutionality of the State of Arizona’s denial of driver’s  
22 licenses to persons commonly known as “DREAMers.”<sup>1</sup> On June 15, 2012, the Secretary  
23 of the Department of Homeland Security (“DHS”) announced the Deferred Action for  
24 Childhood Arrivals (“DACA”) program, which provides deferred action for a period of

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26 <sup>1</sup> Plaintiffs generally refer to themselves as “DREAMers” based on proposed  
27 federal legislation known as the Development, Relief, and Education for Alien Minors  
28 Act (the “DREAM Act”). Doc. 1, ¶ 2. The DREAM Act would grant legal status to  
certain undocumented young adults. Congress has considered the DREAM Act several  
times, but no version has been enacted. *See, e.g.*, DREAM Act of 2011, S. 952, H.R.  
1842, 112th Cong. (2011); DREAM Act of 2010, H.R. 6497, S. 3962, S. 3963, 111th  
Cong. (2010); DREAM Act of 2007, S. 774, 110th Cong. (2007).

1 two years to certain eligible DREAMers (referred to here as “DACA recipients”).  
2 Deferred action constitutes a discretionary decision by law enforcement authorities to  
3 defer legal action that would remove an individual from the country. The DACA  
4 program provides that DACA recipients may work during the period of deferred action  
5 and may obtain employment authorization documents, generally known as “EADs,” from  
6 the United States Citizenship and Immigration Services (“USCIS”).

7 Under Arizona law, the Arizona Department of Transportation (“ADOT”) “shall  
8 not issue to or renew a driver license . . . for a person who does not submit proof  
9 satisfactory to the department that the applicant’s presence in the United States is  
10 authorized under federal law.” A.R.S. § 28-3153(D). Before the announcement of the  
11 DACA program, the Motor Vehicle Division (“MVD”) of ADOT accepted all federally-  
12 issued EADs as sufficient evidence that a person’s presence in the United States was  
13 authorized under federal law, and therefore granted driver’s licenses to these individuals.  
14 After announcement of the DACA program, MVD revised its policy to provide that  
15 EADs issued to DACA recipients did not constitute sufficient evidence of authorized  
16 presence, even though the MVD continued to accept all other EADs, including those  
17 issued to persons who had received other forms of deferred action. MVD later revised its  
18 policy so that two other categories of deferred action recipients – those with (a)(11) and  
19 (c)(14) deferrals – could not use EADs to obtain driver’s licenses.

20 Plaintiffs are the Arizona Dream Act Coalition (the “Coalition”), which is an  
21 immigrant youth-led community organization, and six individual DACA recipients. They  
22 allege that Defendants’ driver’s license policy violates the Equal Protection Clause of the  
23 United States Constitution.<sup>2</sup> Plaintiffs sought a preliminary injunction barring  
24 Defendants from enforcing their policy. Doc. 29. The Court found that Defendants were  
25 likely to succeed on the merits of their equal protection claim, but that they had not  
26 shown a likelihood of irreparable harm sufficient to justify preliminary injunctive relief.

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28 <sup>2</sup> Plaintiffs also claim that Defendant’s policy is preempted by federal law. *See*  
Doc. 1. The Court granted Defendants’ motion to dismiss this claim. Doc. 114.

1 Doc. 114. The Ninth Circuit reversed, *Arizona Dream Act Coalition v. Brewer*, 757 F.3d  
2 1053 (9th Cir. 2014) (“ADAC”), and the Court entered a preliminary injunction on  
3 remand. Doc. 295.

4 The parties have filed and briefed motions for summary judgment. Docs. 247,  
5 251, 259-2, 261, 267-1, 273, 278-1. At the Court’s request, the parties also filed  
6 memoranda addressing the effect of ADAC on the merits of this case. Docs. 287, 289.  
7 The Court heard oral argument on January 7, 2015. For the reasons that follow, the Court  
8 will grant summary judgment to Plaintiffs and enter a permanent injunction.

## 9 BACKGROUND

### 10 I. Deferred Action and DACA.

11 The federal government has broad and plenary powers over the subject of  
12 immigration and the status of aliens. *Arizona v. United States*, 132 S. Ct. 2492, 2498  
13 (2012); *see also* U.S. Const. art. I, § 8, cl. 4. Through the Immigration and Nationality  
14 Act (“INA”), 8 U.S.C. § 1101, *et seq.*, Congress has created a complex and detailed  
15 federal immigration scheme governing the conditions under which foreign nationals may  
16 be admitted to and remain in the United States, *see, e.g., id.* §§ 1181, 1182, 1184, and  
17 providing for the removal and deportation of aliens not lawfully admitted to this country,  
18 *see, e.g., id.* §§ 1225, 1227-29, 1231. *See generally* *United States v. Arizona*, 703 F.  
19 Supp. 2d 980, 987-88 (D. Ariz. 2010) (describing the federal immigration scheme). The  
20 INA charges the Secretary of Homeland Security with the administration and  
21 enforcement of all laws relating to immigration and naturalization. 8 U.S.C.  
22 § 1103(a)(1). Under this delegation of authority, the Secretary may exercise a form of  
23 prosecutorial discretion and decide not to pursue the removal of a person unlawfully in  
24 the United States. This exercise of prosecutorial discretion is commonly referred to as  
25 deferred action. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-  
26 84 & n.8 (1999) (recognizing the practice of “deferred action” where the Executive  
27 exercises discretion and declines to institute proceedings for deportation).

28 On June 15, 2012, the DHS Secretary issued a memorandum announcing that

1 certain young persons not lawfully present in the United States will be eligible to obtain  
2 deferred action if they meet specified criteria under the newly instituted DACA program.  
3 Doc. 259-5 at 131-33. Eligible persons must show that they (1) came to the United States  
4 under the age of 16; (2) continuously resided in the United States for at least five years  
5 preceding the date of the memorandum and were present in the United States on the date  
6 of the memorandum; (3) currently attend school, have graduated from high school or  
7 obtained a general education development certificate, or have been honorably discharged  
8 from the Coast Guard or Armed Forces of the United States; (4) have not been convicted  
9 of a felony offense, a significant misdemeanor, multiple misdemeanor offenses, or  
10 otherwise pose a threat to national security or public safety; and (5) are not older than 30.  
11 *See id.* at 131-33, 208-13. Eligible persons could receive deferred action for two years,  
12 subject to renewal, and could obtain an EAD for the period of the deferred action. *Id.* at  
13 132-33. The DHS memorandum makes clear that it “confers no substantive right,  
14 immigration status or pathway to citizenship[,]” and that “[o]nly the Congress, acting  
15 through its legislative authority, can confer these rights.” *Id.* at 133.

## 16 **II. Defendants’ Driver’s License Policy.**

17 As noted above, A.R.S. § 28-3153(D) states that non-citizens may obtain Arizona  
18 driver’s licenses by presenting proof that their presence in the United States is authorized  
19 under federal law. MVD policies identify the documentation deemed sufficient to show  
20 federal authorization. *See* Doc. 259-6 at 13. Before DACA, MVD accepted EADs as  
21 satisfactory evidence. Doc. 259-3, ¶ 31; Doc. 267-2, ¶ 31. Between 2005 and 2012,  
22 MVD issued tens of thousands of driver’s licenses to persons who submitted EADs to  
23 prove their lawful presence in the United States. Doc. 259-6 at 8-11.

24 The announcement of the DACA program prompted ADOT Director John S.  
25 Halikowski to review the program’s potential impact on ADOT’s administration of the  
26 State’s driver’s license laws. Doc. 248-1 at 48. After Director Halikowski initiated the  
27 ADOT policy review, but before the review had been concluded, Governor Brewer issued  
28 Executive Order 2012-06 on August 15, 2012 (the “Executive Order”). Doc. 259-5 at

1 231-32. The Executive Order concluded that “issuance of Deferred Action or Deferred  
2 Action USCIS employment authorization documents to unlawfully present aliens does  
3 not confer upon them any lawful or authorized status and does not entitle them to any  
4 additional public benefit.” *Id.* The Executive Order directed state agencies to “conduct a  
5 full statutory, rule-making and policy analysis and . . . initiate operational, policy, rule  
6 and statutory changes necessary to prevent Deferred Action recipients from obtaining  
7 eligibility, beyond those available to any person regardless of lawful status, for any  
8 taxpayer-funded public benefits and state identification, including a driver’s license[.]”  
9 *Id.* On September 17, 2012, ADOT formally revised its policy to conform to the  
10 Governor’s order. *Id.* at 254-57.

### 11 **III. 2013 Revision.**

12 After the 2012 revision and during the pendency of this lawsuit, Director  
13 Halikowski continued to review ADOT’s driver’s license policy. *See* Doc. 248, ¶¶ 28-33.  
14 He was concerned about possible inconsistencies in ADOT’s treatment of EAD holders.  
15 *See* Doc. 248-1 at 65-67. To resolve these inconsistencies, ADOT developed three  
16 criteria for determining which EADs would be deemed sufficient proof that the EAD  
17 holder had authorized presence under federal law. *Id.* Under these criteria, an EAD is  
18 sufficient proof of authorized presence if the EAD demonstrates: “(1) that the applicant  
19 has formal immigration status, (2) that the applicant is on a path to obtaining a formal  
20 immigration status, or (3) that the relief sought or obtained is expressly provided for in  
21 the INA.” Doc. 248, ¶ 31 (citing Doc. 248-1 at 67). Applying these criteria, ADOT  
22 revised its policy on September 16, 2013. Doc. 172-1 at 3-6. The newly revised policy  
23 continued to deny driver’s licenses to DACA recipients, who have EADs with a category  
24 code of (c)(33). *Id.* at 6. The revised policy also refused to accept EADs with a category  
25 code of (c)(14), which are issued to recipients of other forms of deferred action, and  
26 (a)(11), which are issued to recipients of deferred enforced departure. *Id.*; *see also* 8 CFR  
27 § 274a.12 (listing category codes of EAD holders). The revised policy continued to  
28 accept EADs with other category codes as sufficient proof of authorized presence under

1 federal law. *See* Doc. 172-1 at 6. Defendants argue that, as revised, the 2013 policy does  
2 not violate the Equal Protection Clause. Doc. 247. The Ninth Circuit considered the  
3 revised policy and found, at the preliminary injunction stage, a likelihood that the policy  
4 violates the Equal Protection Clause. *ADAC*, 757 F.3d at 1063-67.

#### 5 **IV. Present Position of Case.**

6 Plaintiffs and Defendants have filed motions for summary judgment. Docs. 247,  
7 251. Defendants' motion rests entirely on their argument that DACA recipients are not  
8 similarly situated to other EAD holders who may obtain driver's licenses under Arizona's  
9 revised policy. Plaintiffs' motion argues that DACA recipients are similarly situated to  
10 other EAD holders who may obtain driver's licenses. Plaintiffs also argue that although a  
11 heightened scrutiny should apply to Arizona's denial of driver's licenses to DACA  
12 recipients, Defendants' driver's license policy fails under any standard of review.  
13 Plaintiffs seek summary judgment in their favor and a permanent injunction.

14 The parties filed and briefed these motions before the Ninth Circuit had ruled on  
15 Plaintiffs' motion for a preliminary injunction. Although the Ninth Circuit's *DACA*  
16 decision does not control the outcome of the motions for summary judgment where new  
17 facts or evidence are presented, it does control questions of law:

18 [T]he district court should abide by 'the general rule' that our decisions at  
19 the preliminary injunction phase do not constitute the law of the case. Any  
20 of our conclusions on pure issues of law, however, are binding. The district  
21 court must apply this law to the facts anew with consideration of the  
evidence presented in the merits phase.

22 *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of*  
23 *Agr.*, 499 F.3d 1108, 1114 (9th Cir. 2007) (citations omitted); *see also S. Oregon Barter*  
24 *Fair v. Jackson Cnty., Oregon*, 372 F.3d 1128, 1136 (9th Cir. 2004).

### 25 **MOTIONS FOR SUMMARY JUDGMENT**

#### 26 **I. Plaintiffs Are Similarly Situated.**

27 To prevail on their equal protection claim, Plaintiffs "must make a showing that a  
28 class that is similarly situated has been treated disparately." *Christian Gospel Church,*

1 *Inc. v. City and Cnty. of S.F.*, 896 F.2d 1221, 1225-26 (9th Cir. 1990). “The first step in  
2 equal protection analysis is to identify the state’s classification of groups.” *Country*  
3 *Classic Dairies, Inc. v. State of Mont., Dep’t of Commerce Milk Control Bureau*,  
4 847 F.2d 593, 596 (9th Cir. 1988). “The groups must be comprised of similarly situated  
5 persons so that the factor motivating the alleged discrimination can be identified.”  
6 *Thornton v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2012). The question is not  
7 whether DACA recipients are identical in every respect to other noncitizens who are  
8 eligible for a driver’s license, but whether they are the same in respects relevant to the  
9 driver’s license policy. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (“The Equal  
10 Protection Clause does not forbid classifications. It simply keeps governmental  
11 decisionmakers from treating differently persons who are in all relevant respects alike.”).<sup>3</sup>

12 Defendants’ policy initially prevented only DACA recipients from receiving  
13 driver’s licenses. All other holders of EADs, including other deferred action recipients,  
14 could use their EADs to obtain licenses. Defendants subsequently amended their policy  
15 to bar two additional classes of EAD holders from receiving driver’s licenses – persons in  
16 the (c)(14) category who had also received deferred action, albeit for reasons other than  
17 the DACA program, and persons in the (a)(11) category who had received deferred  
18 enforced departures. *See* Doc. 172-1 at 6; *see also* 8 CFR § 274a.12.

19 Defendants argue that DACA recipients are not similarly situated to the remaining  
20 EAD holders who are entitled to obtain driver’s licenses because those persons either  
21 have lawful status in the United States, are on a path to lawful status, or have EADs that

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23 <sup>3</sup> Plaintiffs argue that the Equal Protection Clause does not require the Court to  
24 find that DACA recipients are similarly situated to other EAD holders who are eligible to  
25 receive driver’s licenses. Doc. 261 at 20. It is true that identification of a “similarly  
26 situated class” is not always a requirement in Equal Protection cases. For example, in  
27 cases challenging statutes on the basis of their discriminatory purpose the Supreme Court  
28 has not discussed the “similarly situated” requirement. *See, e.g., Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256 (1979); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977); *see also* Giovanna Shay, *Similarly Situated*, 18 Geo. Mason L. Rev. 581, 598 (2011) (noting that the ‘similarly situated’ requirement “has never been viewed by the U.S. Supreme Court as a threshold hurdle to obtaining equal protection review on the merits”). The Court need not decide whether these cases control Plaintiffs’ challenge, however, because the Court finds that DACA recipients are similarly situated to other EAD holders who are eligible to receive driver’s licenses.

1 are tied to relief provided under the INA. Doc. 247 at 10-14. Defendants also argue that  
2 DACA recipients are not similarly situated because their authorization to stay – unlike  
3 the authorization of other EAD holders who may obtain a driver’s license – is the result  
4 of prosecutorial discretion. *Id.*

5 The Court does not agree. DACA recipients have been authorized by the federal  
6 government to remain in the United States for two years and have been granted the right  
7 to work through the issuance of EADs. Other noncitizens are in similar positions. For  
8 example, applicants for adjustment of status receive a (c)(9) code and applicants for  
9 suspension of deportation and cancellation of removal receive a (c)(10) code. 8 C.F.R.  
10 §§ 274a.12(c)(9)-(10). These persons have not been granted citizenship or lawful  
11 residence, but they have been permitted to remain and work in the United States while  
12 their applications are considered. These individuals may present their EADs to ADOT  
13 and obtain driver’s licenses, while DACA recipients cannot. It is not a material  
14 difference that DACA recipients receive their authorization from an act of prosecutorial  
15 discretion and other EAD holders receive their authorization through a statutory  
16 provision. The fact remains that they all receive a form of authorization, and documents  
17 entitling them to work, from the federal government.

18 The Ninth Circuit provided this explanation about (c)(9) and (c)(10) recipients,  
19 with which the Court agrees:

20 DACA recipients are similarly situated to other categories of noncitizens  
21 who may use [EADs] to obtain driver’s licenses in Arizona. Even under  
22 Defendants’ revised policy, Arizona issues driver’s licenses to noncitizens  
23 holding [EADs] with category codes (c)(9) and (c)(10). These (c)(9) and  
24 (c)(10) [EADs] are issued to noncitizens who have applied for adjustment  
of status and cancellation of removal, respectively. See 8 C.F.R.  
§ 274a.12(c)(9)-(10). . . .

25 Defendants look to the statutory and regulatory availability of immigration  
26 relief for the (c)(9) and (c)(10) groups as a point of distinction. But  
27 individuals with (c)(10) employment authorization, for example, are not in  
28 the United States pursuant to any statutory provision while their  
applications are pending. With regard to adjustment of status, we have



1 noted that “the submission of an application does not connote that the  
2 alien’s immigration status has changed, as the very real possibility exists  
3 that the INS will deny the alien’s application altogether.” *Vasquez de*  
4 *Alcantar v. Holder*, 645 F.3d 1097, 1103 (9th Cir. 2011) (quoting *United*  
*States v. Elrawy*, 448 F.3d 309, 313 (5th Cir. 2006)).

5 In sum, like DACA recipients, many noncitizens who have applied for  
6 adjustment of status and cancellation of removal possess no formal lawful  
7 immigration status, and may never obtain any. *See Guevara v. Holder*, 649  
8 F.3d 1086, 1095 (9th Cir. 2011). Like DACA recipients, noncitizens who  
9 have applied for adjustment of status and cancellation of removal often  
10 have little hope of obtaining formal immigration status in the foreseeable  
11 future. Indeed, those with (c)(10) documents are already in removal  
12 proceedings, while many DACA recipients are not – suggesting that  
individuals in the (c)(10) category are more, not less, likely to be removed  
in the near future than are DACA recipients. In the relevant respects, then,  
noncitizens with (c)(9) and (c)(10) employment authorization documents  
are similarly situated to DACA recipients.

13 Unlike DACA recipients, however, noncitizens holding (c)(9) and (c)(10)  
14 [EADs] may use those documents when applying for Arizona driver’s  
15 licenses to prove — to the satisfaction of the Arizona Department of  
16 Transportation — that their presence in the United States is authorized  
17 under federal law. As the district court found, these two groups of  
18 noncitizens account for more than sixty-six percent of applicants who  
19 obtained Arizona driver’s licenses using [EADs] during the past seven  
years. Although DACA recipients are similarly situated to noncitizens  
holding (c)(9) and (c)(10) [EADs], they have been treated disparately.

20 *ADAC*, 757 F.3d at 1064.<sup>4</sup>

21 Other categories of noncitizens who receive driver’s licenses under Defendants’  
22 current policy are also similarly situated to DACA recipients. For example, individuals  
23 who receive a discretionary grant of parole are authorized to be present in the United  
24 States and are eligible for EADs (coded (c)(11)) although they lack formal immigration  
25 status, are not necessarily eligible for obtaining such a status, and are not even considered

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27 <sup>4</sup> Defendants argue that the Ninth Circuit’s decision is not binding at this summary  
28 judgment stage. Defendants also argue, however, that Plaintiffs’ “similarly situated”  
claim “fails as a matter of law.” Doc. 273 at 11; *see also* Doc. 269 at 2. Defendants thus  
concede that the “similarly situated” issue in this case is a question of law, on which the  
Ninth Circuit’s decision does control. *Ranchers Cattlemen*, 499 F.3d at 1114.

1 admitted. *See* 8 U.S.C. § 1182(d)(5)(A). Parolees lack any avenue for obtaining lawful  
2 immigration status, and yet they may obtain an Arizona driver’s license on the basis of  
3 their EADs.<sup>5</sup>

4 Defendants argue that DACA recipients are still in the country illegally because  
5 the Secretary of DHS lacked the authority to grant them deferred status. Doc. 247 at 12-  
6 14. Defendants rely on a district court decision in *Crane v. Napolitano*, No. 3:12-cv-  
7 03247-O, 2013 WL 1744422 (N.D. Tex. Apr. 23, 2013). In *Crane*, immigration  
8 enforcement agents argued that the DACA program forced them to violate 8 U.S.C.  
9 § 1225, which requires immigration officers to initiate removal proceedings when they  
10 determine that “an alien seeking admission is not clearly and beyond a doubt entitled to  
11 be admitted.” *Id.* at \*5. In response to the plaintiffs’ motion for a preliminary injunction,  
12 the district court addressed whether the plaintiffs were likely to succeed on the merits of  
13 their claim that the DACA program conflicts with § 1225 by forbidding immigration  
14 officers from initiating removal proceedings against certain unauthorized aliens. *Id.* at  
15 \*13. Although the district court found that the plaintiffs were likely to succeed on this  
16 claim, it did not grant a preliminary injunction because of concerns over whether it had  
17 subject matter jurisdiction. *Id.* at \*19. After additional briefing, the court dismissed the  
18 case for lack of subject-matter jurisdiction. *See Crane v. Napolitano*, No. 3:12-CV-  
19 03247-O, 2013 WL 8211660 (N.D. Tex. July 31, 2013).

20 *Crane* did not hold the DACA program invalid. It concluded that the plaintiffs  
21 were likely to succeed on the merits of their DACA-related arguments, but then found  
22 that it lacked subject matter jurisdiction to address the issue at all. *Crane* is less than  
23 dictum from a fellow district court – it is a preliminary conclusion from a court that

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25 <sup>5</sup> The relevant statute on the status of parolees provides: “The Attorney General  
26 may, . . . in his discretion parole into the United States temporarily under such conditions  
27 as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or  
28 significant public benefit any alien applying for admission to the United States, but such  
parole of such alien shall not be regarded as an admission of the alien and when the  
purposes of such parole shall . . . have been served the alien shall forthwith return or be  
returned to the custody from which he was paroled and thereafter his case shall continue  
to be dealt with in the same manner as that of any other applicant for admission to the  
United States.” 8 U.S.C. § 1182(d)(5)(A).

1 lacked subject matter jurisdiction to reach even a preliminary conclusion. Furthermore,  
2 *Crane*'s holding was limited to a finding that the DHS lacked the "discretion to refuse to  
3 initiate removal proceedings when the requirements of Section 1225(b)(2)(A) are  
4 satisfied." *Crane*, 2013 WL 1744422, at \*13. Defendants do not address whether the  
5 requirements of that section are satisfied by any Plaintiffs in this case. Finally, although  
6 *Crane* preliminarily concluded that DHS was required to initiate removal proceedings  
7 against DACA recipients, it also expressly noted that DHS could then exercise its  
8 discretion to terminate the proceedings and permit the unauthorized aliens to remain in  
9 the United States. *See id.* at \*24.

10 Other authorities have recognized that noncitizens on deferred action status are  
11 lawfully permitted to remain in the United States. *See, e.g., Ga. Latino Alliance for*  
12 *Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1258-59 (11th Cir. 2012) (a noncitizen  
13 "currently classified under 'deferred action' status . . . remains permissibly in the United  
14 States"); *In re Pena-Diaz*, 20 I.&N. Dec. 841, 846 (B.I.A. 1994) (deferred action status  
15 "affirmatively permit[s] the alien to remain"); 8 C.F.R. § 1.3(a)(4)(vi) (persons "currently  
16 in deferred action status" are "permitted to remain in" and are "lawfully present in the  
17 United States").

18 The Court concludes that DACA recipients are similarly situated in all relevant  
19 respects to noncitizens who are permitted by the State to obtain driver's licenses on the  
20 basis of EADs. DACA recipients are treated differently for purposes of equal protection.

## 21 **II. Level of Scrutiny.**

22 Although it implied that strict scrutiny should apply (757 F.3d at 1065 n.4), the  
23 Ninth Circuit in *ADAC* elected not to address the level of scrutiny applicable to  
24 Defendants' driver's license policy: "we need not decide what standard of scrutiny  
25 applies to Defendants' policy: as the district court concluded, Defendants' policy is likely  
26 to fail even rational basis review." *ADAC*, 757 F.3d at 1065 (citation omitted). The  
27 Ninth Circuit went on to assess whether "Defendants' disparate treatment of DACA  
28 recipients [was] 'rationally related to a legitimate state interest.'" *Id.* (citation omitted).

1 The Ninth Circuit did not state that it was applying a more rigorous form of rational basis  
2 of review, as had this Court in its preliminary injunction decision. *See* Doc. 114 at 24-27.

3 The Ninth Circuit examined each of the justifications proffered by Defendants in  
4 support of their policy, considered whether the justifications were supported by evidence  
5 or consistent with Defendants' other actions, and found "no legitimate state interest that  
6 is rationally related to Defendants' decision to treat DACA recipients disparately from  
7 noncitizens holding (c)(9) and (c)(10) [EADs]." 757 F.3d at 1065-67. This form of  
8 rational basis review appears to be more rigorous than the traditional approach, under  
9 which "a classification . . . is accorded a strong presumption of validity. . . . [A]  
10 classification 'must be upheld against equal protection challenge if there is *any*  
11 *reasonably conceivable state of facts that could provide a rational basis for the*  
12 *classification.*'" *Heller v. Doe*, 509 U.S. 312, 319-20 (1993) (emphasis added; citations  
13 omitted). Because the rigorousness of equal protection review is a question of law, the  
14 Court feels bound to apply the form of rational basis scrutiny applied in *ADAC*. *See*  
15 *Ranchers Cattlemen*, 499 F.3d at 1114.<sup>6</sup>

### 16 **III. Application.**

17 Defendants rely on four rational bases for their policy: (1) DACA recipients may  
18 not have authorized presence under federal law, and ADOT therefore could face liability  
19 for issuing up to 80,000 driver's licenses to unauthorized aliens or for not cancelling  
20 those licenses quickly enough if the DACA program is subsequently determined to be  
21 unlawful; (2) issuing driver's licenses to DACA recipients could allow those individuals

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22  
23 <sup>6</sup> In ruling on the preliminary injunction, this Court applied a more rigorous form  
24 of rational basis review after concluding that the reason for Defendants' policy was  
25 Governor Brewer's political disagreement with the Obama Administration's DACA  
26 program. *See* Doc. 114 at 24-28. Defendants have now presented evidence that the State  
27 may have adopted the new policy for a different reason – ADOT's conclusion that DACA  
28 recipients do not have authorized presence under federal law. *See* Docs. 270-3 at 50;  
270-4 at 59, 93. Although this evidence might create a question of fact as to why  
Defendants adopted their policy, that reason appears to be irrelevant under the Ninth  
Circuit's rational basis scrutiny. *ADAC* did not base the rigorousness of its review on  
Defendants' reason for adopting the policy. 757 F.3d at 1065. Defendants' evidence on  
this issue, therefore, does not preclude summary judgment. *See* Fed. R. Civ. P. 56(a)  
(summary judgment is warranted if "there is no genuine dispute as to any *material* fact  
and the movant is entitled to judgment as a matter of law") (emphasis added).

1 to access federal and state benefits to which they are not entitled; (3) ADOT could be  
2 burdened by having to process a large number of driver's licenses for DACA recipients  
3 and then cancel those licenses if DACA were revoked; and (4) if DACA were revoked or  
4 if DHS commenced removal proceedings against any DACA recipient, as it could at any  
5 time, then the DACA recipient would be subject to immediate deportation or removal and  
6 that individual could escape financial responsibility for property damage or personal  
7 injury caused in automobile accidents. Doc. 269 at 17-20. The Ninth Circuit considered  
8 each of these justifications and found that none of them satisfies rational basis review.  
9 757 F.3d at 1066-67.<sup>7</sup>

10 As their first justification, Defendants argue that they had uncertainty about  
11 whether DACA recipients have an authorized presence in the United States under federal  
12 law and were concerned that they might face liability if they issued licenses to  
13 unauthorized persons. Doc. 269 at 18. In their depositions, however, ADOT Director  
14 Halikowski and Assistant Director Stanton could identify no instances where ADOT  
15 faced liability for issuing licenses to individuals who lacked authorized presence.  
16 Docs. 259-3, ¶¶ 152-53; 270, ¶¶ 152-53. Halikowski provided only one example of  
17 potential state liability – when ADOT had improperly issued a driver's license to a person  
18 convicted of driving under the influence of alcohol (Doc. 270, ¶ 152; Doc. 270-4 at 62) –  
19 an instance quite unrelated to the prospect of issuing a license to a person presenting a  
20 federally-issued EAD as proof of lawful presence under federal law. Stanton could  
21 provide no examples. Doc. 259-6 at 298. Thus, the evidence does not support  
22 Defendants' first justification. *See ADAC*, 757 F.3d at 1066.

23 Second, Defendants express concern that issuing driver's licenses to DACA  
24 recipients could lead to improper access to federal and state benefits. But as the Ninth

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26 <sup>7</sup> Defendants present no new evidence in support of these justifications, arguing  
27 instead that a “government actor need not have specific evidence to validate a reasonable  
28 concern for the purposes of rational basis analysis.” Doc. 270, ¶ 176; *see also id.*, ¶¶ 152,  
160-161, 171, 177-78. As noted above, however, the *ADAC* did not apply this deferential  
level of review. Because Defendants have presented no new evidence on these  
justifications, the decision in *ADAC* controls. *See Ranchers Cattlemen*, 499 F.3d at 1114.

1 Circuit recognized, “Defendant Halikowski . . . and Defendant Stanton . . . testified that  
2 they had *no* basis whatsoever for believing that a driver’s license alone could be used to  
3 establish eligibility for such benefits. It follows that Defendants have no *rational* basis  
4 for any such belief.” *Id.* at 1066 (emphasis in original); *see also* Doc. 259-6 at 262, 302.  
5 Furthermore, although Defendants no longer issue driver’s licenses to (a)(11) and (c)(14)  
6 EAD holders, they have made no attempt to revoke licenses previously issued to these  
7 types of EAD holders. Doc. 259-6 at 283, 316.

8 Third, Defendants assert that because the DACA program might be canceled,  
9 ADOT might be burdened by having to process a large number of driver’s licenses for  
10 DACA recipients and then cancel those licenses. But the depositions of Halikowski and  
11 Stanton show a general lack of knowledge regarding any revocation process. *See*  
12 Doc. 254-2 at 266, 300-01. Also, as the Ninth Circuit recognized, “it is *less* likely that  
13 Arizona will need to revoke DACA recipients’ driver’s licenses, compared to driver’s  
14 licenses issued to noncitizens holding (c)(9) and (c)(10) [EADs]. While Defendants’  
15 concern for DACA’s longevity is purely speculative, applications for adjustment of status  
16 or cancellation of removal are routinely denied.” *ADAC*, 757 F.3d at 1066-67 (emphasis  
17 in original).

18 Fourth, Defendants argue that DACA recipients may have their status revoked at  
19 any time and may be removed quickly from the country, leaving those they have injured  
20 in accidents with no financial recourse. The Ninth Circuit responded:

21 Here too, however, Defendants’ professed concern applies with equal force  
22 to noncitizens holding (c)(9) and (c)(10) [EADs]. Noncitizens who have  
23 applied for adjustment of status or cancellation of removal may find their  
24 applications denied at any time, and thereafter may be quickly removed  
25 from the United States, leaving those they may have injured in automobile  
accidents with no financial recourse. Nevertheless, Defendants’ policy  
allows noncitizens holding (c)(9) and (c)(10) [EADs] to obtain driver’s  
licenses, while prohibiting DACA recipients from doing the same.

26 *ADAC*, 757 F.3d at 1067. If Defendants were genuinely concerned about persons being  
27 removed from the country and leaving those injured in accidents without financial  
28 recourse, they would not allow (c)(9) and (c)(10) EAD holders to obtain driver’s licenses.

1           Although not directly argued, Defendants have suggested two additional rational  
2 bases for their policy. Defendants argue that their concern about “consistent application  
3 of ADOT policy” provides a rational basis. *See* Docs. 269 at 19-20; 270, ¶ 151. They  
4 point to ADOT’s three criteria for determining whether an EAD is sufficient proof of  
5 authorized presence – criteria that supposedly treat equally those who have formal  
6 immigration status, are on a path to obtaining formal immigration status, or who receive  
7 relief expressly provided for in the INA. Doc. 248, ¶ 31. But the same policy grants  
8 driver’s licenses to (c)(9) and (c)(10) applicants even though they do not appear to satisfy  
9 these requirements. As the Ninth Circuit noted in *ADAC*, “we are unconvinced that  
10 Defendants have defined a ‘path to lawful status’ in any meaningful way. After all,  
11 noncitizens’ applications for adjustment of status or cancellation of removal [(c)(9) and  
12 (c)(10) holders] are often denied, so the supposed ‘path’ may lead to a dead end.” 757  
13 F.3d at 1065.

14           Defendants also argue that their driver’s license policy is “rationally related to  
15 ADOT’s statutory obligation in administering A.R.S. § 28-3153(D).” Doc. 269 at 17.  
16 But as noted above, Defendants’ granting of driver’s licenses to (c)(9) and (c)(10)  
17 applicants who present EADs does not appear to be more consistent with § 28-3153(D) –  
18 which requires that the applicant’s presence be authorized by federal law – than granting  
19 of licenses to similarly situated DACA recipients who presents EADs.

20           In summary, the Court concludes that Defendants’ distinction between DACA  
21 recipients and other EAD holders does not satisfy rational basis review. While  
22 Defendants have articulated concerns that may be legitimate state interests, they have not  
23 shown that the exclusion of DACA recipients is rationally related to those interests. The  
24 Court is not saying that the Constitution requires the State of Arizona to grant driver’s  
25 licenses to all noncitizens. But if the State chooses to confer licenses on some individuals  
26 who have been temporarily authorized to stay by the federal government, it may not deny  
27 them to similarly situated individuals without a rational basis for the distinction.

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1 evidence that their inability to obtain a driver’s license has caused a “loss of opportunity  
2 to pursue [their] chosen profession.” *Id.* One Plaintiff is a self-employed graphic  
3 designer. Doc. 259-6 at 333. Because she is unable to obtain a driver’s license, she relies  
4 on public transportation. Doc. 259-7 at 421. Using public transportation instead of a car  
5 causes her to spend roughly the same amount of time working on her clients’ projects as  
6 she does travelling to meet those clients. Doc. 259-6 at 334. Plaintiff’s inability to drive  
7 has forced her to decline work from clients. *Id.* at 342-45; Doc. 259-7 at 423. Another  
8 Plaintiff is interested in becoming an Emergency Medical Technician. Doc. 259-7 at 34.  
9 He has been unable to pursue this career because the local fire department requires a  
10 driver’s license for employment. *Id.* at 35. A third Plaintiff turned down a job  
11 opportunity partly because she was unable to drive with a driver’s license. *Id.* at 155-56.  
12 Other Plaintiffs have been unable to pursue new jobs or develop business opportunities  
13 because of their inability to drive. *See, e.g.*, Doc. 259-3, ¶¶ 264-77.

14 The Court finds that the denial of driver’s licenses has caused Plaintiffs irreparable  
15 harm. Although Defendants dispute the extent and details of Plaintiffs’ harm (Doc. 269  
16 at 25-31), they have not shown that there is a genuine issue as to whether the individual  
17 Plaintiffs have lost employment opportunities. The Court finds that monetary damages  
18 cannot fully compensate Plaintiffs for their harm and that legal remedies are inadequate.  
19 *See Chalk v. U.S. Dist. Court Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988)  
20 (finding that an alternate job that did not use plaintiff’s “skills, training or experience  
21 [was a] non-monetary deprivation” and a “substantial injury”).

22 **B. Harm to Coalition Members.**

23 The Arizona Dream Act Coalition has brought suit both on its own behalf and on  
24 behalf of its members. Doc. 173, ¶ 18. The Coalition claims that Defendants’ policy has  
25 irreparably harmed its members by depriving them of employment opportunities. Doc.  
26 259-2 at 37-38. The Court agrees. One Coalition member currently works in a  
27 temporary position. Doc. 259-7 at 3. She has been unable to acquire a permanent  
28 position at her place of work because such a position requires a driver’s license. *Id.*

1 Another member works as a nutritionist, although she has been trained as a diet  
2 technician. *Id.* at 199-202, 225-26. She was not able to pursue a job opportunity as a diet  
3 technician because her employer required that she have a driver’s license. *Id.* at 236-37.  
4 As with the individual plaintiffs, the Coalition has shown that Defendants’ policy has  
5 caused its members to lose opportunities to pursue their chosen professions. The Court  
6 finds this to be an irreparable harm that is not compensable by legal remedies. *ADAC*,  
7 757 F.3d at 1068.<sup>8</sup>

### 8 **III. Balance of Hardships and the Public Interest.**

9 In deciding whether to grant a permanent injunction, “courts must balance the  
10 competing claims of injury and must consider the effect on each party of the granting or  
11 withholding of the requested relief. . . [and] should pay particular regard for the public  
12 consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at  
13 24 (quotation marks and citations omitted); *see Amoco Prod. Co. v. Vill. of Gambell*,  
14 *Alaska*, 480 U.S. 531, 546 n.12 (1987) (finding that the standards for a permanent  
15 injunction are “essentially the same” as for a preliminary injunction). Addressing these  
16 factors, the Ninth Circuit held:

17 [B]y establishing a likelihood that Defendants’ policy violates the U.S.  
18 Constitution, Plaintiffs have also established that both the public interest  
19 and the balance of the equities favor a preliminary injunction. It is clear  
20 that it would not be equitable or in the public’s interest to allow the state to  
21 violate the requirements of federal law, especially when there are no  
22 adequate remedies available. On the contrary, the public interest and the  
balance of the equities favor prevent[ing] the violation of a party’s  
constitutional rights.

23 *ADAC*, 757 F.3d at 1069 (quotation marks and citations omitted).

24 The Court agrees. The government “cannot suffer harm from an injunction that  
25 merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.

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27 <sup>8</sup> Because of this conclusion, the Court finds it unnecessary to address whether the  
28 Coalition as an organization has suffered irreparable harm to its organizational mission.  
*See* Doc. 259-2 at 38 (citing *Valle del Sol v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.  
2013)).

1 2013). And the public has little interest in Defendants’ continuing a policy that violates  
2 the Equal Protection Clause.

3 **IV. Scope of Injunction.**

4 The parties disagree on whether the Court should enter an injunction that applies  
5 to all DACA recipients, as opposed to applying merely to the named plaintiffs in this  
6 action. Docs. 288, 290. The Ninth Circuit has held that an injunction should be limited  
7 to the named plaintiffs unless the court has certified a class. *Zepeda v. I.N.S.*, 753 F.2d  
8 719, 727-28 & n.1 (9th Cir. 1983). The Ninth Circuit has also held, however, that an  
9 injunction is not overbroad because it extends benefits to persons other than those before  
10 the Court “if such breadth is necessary to give prevailing parties the relief to which they  
11 are entitled.” *Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1501-02 (9th  
12 Cir. 1996) (quoting *Bresgal v. Brock*, 843 F.2d 1163, 1170-71 (9th Cir. 1987)). Because  
13 the Coalition seeks relief on behalf of its members, the Court concludes that the  
14 permanent injunction should apply to all DACA recipients. Requiring state officials at  
15 driver’s license windows to distinguish between DACA recipients who are members of  
16 the Coalition and those who are not is impractical, and granting an injunction only with  
17 respect to the named plaintiffs would not grant the Coalition the relief it seeks on behalf  
18 of its members.

19 **IT IS ORDERED:**

- 20 1. Plaintiffs’ motion for summary judgment and a permanent injunction  
21 (Doc. 251) is **granted**.
- 22 2. Defendants’ motion for summary judgment (Doc. 247) is **denied**.
- 23 3. Defendants and their officials, agents, and employees, and all persons  
24 acting in concert or participating with them, are permanently enjoined from  
25 enforcing any policy or practice by which the Arizona Department of  
26 Transportation refuses to accept Employment Authorization Documents,  
27 issued under DACA, as proof that the document holders are authorized  
28 under federal law to be present in the United States for purposes of

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obtaining a driver's license or state identification card.

4. The Clerk is directed to terminate this action.

Dated this 22nd day of January, 2015.



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David G. Campbell  
United States District Judge