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Legislative Update: Michigan Joins Majority of States Allowing Driver's Licenses for Immigrants who are Lawfully Present Under DACA

By Erin Wenger

The topic of immigration reform has become a widely discussed and hotly debated issue in the United States during the 21st Century. In his 2013 State of the Union address, President Obama discussed the need for comprehensive immigration reform that addresses illegal immigration, as well as accessible pathways to citizenship. President Obama referred to bipartisan efforts currently underway to create and pass immigration reform bills, the results of which have yet to be seen. However, some signs of progress are visible as the United States Senate formally initiated hearings on immigration reform on February 13, 2013.

The present level of immigration in the United States is at the highest number in the country's history. Of the current immigrant population, there are nearly 1.8 million individuals who are unauthorized immigrants that could be eligible, or become eligible, for a deferred action initiative. In June 2012, the Obama Administration, through the Secretary of Homeland Security, announced that immigrants meeting certain criteria could apply for deferred action on removal proceedings under the Deferred Action for Childhood Arrivals policy ("DACA"). Under DACA, any removal proceedings would be delayed for the immigrant for two years, and extensions beyond that period could be considered.

Among the qualifications for DACA, a person must: (1) be under the age of thirty-one as of June 15, 2012; (2) have arrived in the United States prior to his or her sixteenth birthday; and (3) be enrolled in school, have graduated from high school, have obtained a general education development ("GED") certificate, or be honorably discharged from the military. If an individual qualifies for DACA, he or she will not be granted legal status, but he or she will also not be considered to be *unlawfully* present in the United States during the Deferred Action period. The individual may attend school or possibly

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gain employment during the Deferred Action stage. However, DACA does not remove all obstacles that may be involved in pursuing those activities, such as state-imposed restrictions on gaining a driver's license to simply travel to and from school or place of employment.

Many states have laws that require an applicant for a driver's license to not only be a resident of that state, but to also provide proof of citizenship, lawful status, or a Social Security number. These types of requirements can prevent an illegal immigrant from getting a driver's license if he or she cannot provide adequate documentation. Individuals who qualify for DACA, however, are able to apply for a Social Security number, and, therefore, would presumably be able to apply for a driver's license. Additionally, the federal government has officially announced that qualified individuals under DACA are *not* unlawfully present in the United States. Most states have thus recognized that this lawful presence and ability to get a Social Security number would allow these individuals to qualify for driver's licenses, even if a state statute prohibits granting licenses to unlawful immigrants.

Unfortunately, not all states have interpreted DACA and their own statutes regarding driver's licenses to coincide in this manner. Because DACA is a discretionary determination made with regard to enforcing removal proceedings, and not a federal law granting lawful status to immigrants, individual states can still pass their own laws restricting benefits to those that have lawful status and, in doing so, can choose to not recognize lawful presence as qualifying under their standards.

Prior to February 1, 2013, only three states continued to prevent DACA recipients from being eligible to obtain driver's licenses—Michigan, Arizona, and Nebraska. However, on February 1, 2013, Michigan took the necessary steps toward leaving this minority group by announcing an official policy change. The Michigan Secretary of State's Office declared that it would change its policy pursuant to the federal government's determination that DACA conferred legal status on recipients for the specified time period allowed under DACA. Therefore, as of February 19, 2013, noncitizens living in Michigan who qualify for Deferred Action are eligible to apply for Michigan driver's licenses for the pendency of

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their deferred status under DACA. Making this official announcement not only clearly establishes Michigan's policy for the public, but also brings the state in line with the federal government's position with regard to the legal status of immigrants that qualify for DACA.

In order to prevent confusion or misinterpretation of legal authority, it would be advisable for states to make their policies clear with regard to allowing DACA recipients to qualify for state driver's licenses, as Michigan has now done. This can also be accomplished through enacting new legislation or an updated vehicle code provision, as in the case of Illinois. The Illinois Vehicle Code's current provisions concerning the issuance of driver's licenses went into effect on January 1, 2013. The Illinois statute governing driver's license applications requires a residence address and a Social Security number, but it does not contain a provision regarding immigration status of an applicant. Similarly, Iowa's statute on driver's license applications does not explicitly state that lawful citizenship status is required, but it does require a Social Security number unless the applicant is a foreign national temporarily present in Iowa, and it requires certification of residency within Iowa. Therefore, those who qualify under DACA and subsequently obtain a Social Security number would be able to apply for a driver's license in Illinois and Iowa.

These states' statutes are in stark contrast to Arizona's licensing requirements. Arizona's statute explicitly states that a driver's license shall not be issued to an applicant who cannot prove that his presence in the United States is authorized under federal law. Although Arizona's current statute was enacted in 2008, it remains one of only two lingering states that refuse to recognize individuals who are granted deferred action under DACA as having a lawful presence in the United States, despite the federal government's support for such recognition.

Like Arizona, Nebraska also does not allow DACA recipients to obtain driver's licenses. Nebraska's statute requires that applicants "present valid documentary evidence that he or she has lawful status in the United States," and lists nine possible documents that could fulfill that requirement. Additionally, the statute provides that other

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documentation of lawful status can be produced to fulfill the criterion, if approved by the Director of Motor Vehicles. When considering Nebraska's statutory language, it would appear that if the Director acknowledged DACA as providing a lawful status to qualified recipients, they would be eligible for driver's licenses in that state. However, Nebraska has yet to take such action.

Only time will tell if the remaining two states adjust to follow the lead of the other forty-eight and allow DACA recipients to obtain driver's licenses. The American Civil Liberties Union ("ACLU") has a pending lawsuit in Arizona challenging this very issue, and across the United States there continues to be a push for immigration reform that includes a pathway to citizenship for individuals meeting criteria similar to that which is contained in DACA. Given that President Obama touched upon immigration issues in his 2013 State of the Union address, which was given shortly after beginning his second term as President of the United States, the next four years could be very dynamic in immigration policy.

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