

Appeals Court says to give 'dreamers' licenses

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PHOENIX — Calling the state policy motivated by animosity, the 9th U.S. Circuit Court of Appeals this morning ordered that "dreamers" who the federal government allow to work in this country also be issued Arizona driver's licenses, at least for the time being.

In a unanimous decision, the court rejected arguments by Gov. Jan Brewer that she was entitled to issue an executive order two years ago denying licenses to those in the federal government's Deferred Action for Childhood Arrivals program. The court ordered U.S. District Court Judge David Campbell, who had initially denied an injunction on behalf of the dreamers, to direct the state Department of Transportation to provide licenses to those who are in that program.

Today's ruling does not mean the dreamers will get to keep their licenses. That still needs to be determined after a full-blown trial.

But Judge Harry Pregerson, writing for the three-judge panel, said the evidence presented shows they are likely to ultimately succeed. And Linton Joaquin, attorney for the National Immigration Law Center, said he believes Monday's ruling could be just the impetus to convince Campbell to side with challengers to Brewer's policy.

"It totally helps," Joaquin said. "It basically sets the legal framework for the district court to follow resolving the case."

There was no immediate response from the governor.

Hanging in the balance is the enforceability of that 2012 executive order affecting those in the DACA program.

It lets those who meet certain qualifications remain in the U.S. and be issued documents allowing them to work. That includes having come to this country before age 16 and be younger than 31 on June 15, 2012.

They also had to have been continuously living in the U.S. for the prior five years, be enrolled in school or have graduated from high school, obtained an equivalency degree, or been honorably discharged from the military.

The most recent figures from U.S. Citizenship and Immigration Services show that nearly 23,000 Arizonans have applied and nearly 20,000 already have been accepted into the program. That permission is good for two years, but can be renewed any number of times.

But the state Department of Transportation, on that executive order from Brewer, said they do not need to provide licenses to anyone in the program.

Brewer takes the position that a 1996 Arizona law allows licenses to be issued only to those "authorized" to be in this country and that the decision by the president and the Department of Homeland Security not to deport them does not make their presence "authorized," even if they are given work papers.

Pregerson said there are several problems with that.

First, he said Arizona does not apply that policy evenly. The judge said the state still issues licenses to those who have been granted deferred action under other federal programs.

"In both cases, the federal government has allowed noncitizens to remain in the United States, has pledged not to remove them during the designated period, and has authorized them to work in this country," the judge wrote. He said that makes Brewer's policy to single out these individuals a violation of the Equal Rights clause of the U.S. Constitution.

Beyond that, Pregerson said that Congress has given the president "broad discretion" to determine when those who are not citizens can work in this country. And, using that discretion, he said the executive branch has determined that anyone in deferred action programs, including DACA, are generally authorized to work.

"In fact, DACA recipients are *required* to apply for employment authorization, in keeping with the Executive's intention that DACA recipients remain 'productive' members of society," the judge said.

Pregerson also said that the policy can cause "irreparable harm" to those affected given that their inability to legally drive also makes it more difficult, if not impossible, for them to hold jobs -- a specific right they get being in the DACA program.

The judge said the record does suggest one reason for what Arizona is doing.

"Defendants' policy appears intended to express animus toward DACA recipients themselves, in part because of the federal government's policy toward them," he wrote. "Such animus, however, is not a legitimate state interest."

Brewer has made no secret she does not like the policy -- or, in fact, the way the Obama administration has handled any aspect of immigration.

But Pregerson said it was not up to the governor to make those decisions. Nor was the court willing to second-guess the policy implemented by the Department of Homeland Security.

He quoted from a memo issued by Janet Napolitano, then the chief of that agency, who said she determined that immigration laws were not designed "to remove productive young people to countries where they may not have lived or even speak the language," particularly when "many of these young people have already contributed to our country in significant ways."

Pregerson also knocked down various reasons that Brewer had given, through her lawyers, about why she denied licenses to dreamers. One was her contention that getting a license might allow DACA recipients to get state or federal benefits to which they are not entitled.

But the judge pointed out that both ADOT chief John Halikowski and Stacey Stanton, who heads the Motor Vehicle Division "testified that they had *no* basis whatsoever for believing that a driver's license alone could be used to establish eligibility for such benefits."

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