Executive Order 2012-06

Re-Affirming Intent of Arizona Law In Response to the Federal Government's Deferred Action Program

WHEREAS, United States Citizenship and Immigration Services (USCIS) plans to issue employment authorization documents to certain unlawfully present aliens who are granted Deferred Action under federal immigration laws; and

WHEREAS, the USCIS has confirmed that the Deferred Action program does not and cannot confer lawful or authorized status or presence upon the unlawful alien applicants; and

WHEREAS, unless otherwise made available under applicable law, 8 United States Code § 1621 provides that aliens unlawfully present in the United States are not eligible for any state or local public benefit – as defined in both federal and Arizona law; and

WHEREAS, 8 United States Code § 1622 authorizes states to determine eligibility for any state public benefits for most classes of aliens, including unlawfully present aliens with Deferred Action; and

WHEREAS, the Deferred Action program is purportedly an act of prosecutorial discretion and the program does not provide for any additional public benefit to unlawfully present aliens beyond the delayed enforcement of United States immigration laws and the possible provision of employment authorization; and

WHEREAS, Arizona Revised Statutes § 1-501 and § 1-502 limit access to public benefits to persons demonstrating lawful presence in the United States; and

WHEREAS, Arizona Revised Statutes § 28-3153 prohibits the Arizona Department of Transportation (ADOT) from issuing a drivers license or nonoperating identification license unless an applicant submits proof satisfactory to ADOT that the applicant's presence in the United States is authorized under federal law; and

WHEREAS, the federal executive's policy of Deferred Action and the resulting federal paperwork issued could result in some unlawfully present aliens inappropriately gaining access to public benefits contrary to the intent of Arizona voters and lawmakers who enacted laws expressly restricting access to taxpayer funded benefits and state identification; and

WHEREAS, allowing more than an estimated 80,000 Deferred Action recipients improper access to state or local public benefits, including state issued identification, by presenting a USCIS employment authorization document that does not evidence lawful, authorized status or presence will have significant and lasting impacts on the Arizona budget, its health care system and additional public benefits that Arizona taxpayers fund.

NOW THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona, do hereby order and direct as follows:

1. The issuance of Deferred Action or Deferred Action USCIS employment authorization documents to unlawfully present aliens does not confer upon them any lawful or authorized status and does not entitle them to any additional public benefit.

2. State agencies that provide public benefits, as defined in 8 United States Code § 1621 shall conduct a full statutory, rule-making and policy analysis and, to the extent not prohibited by state or federal law, initiate operational, policy, rule and statutory changes necessary to prevent Deferred Action recipients from obtaining eligibility, beyond those available to any person regardless of lawful status, for any taxpayer-funded public benefits and state identification, including a driver's license, so that the intent of Arizona voters and lawmakers who enacted laws expressly restricting access to taxpayer funded benefits and state identification are enforced.

3. All state agencies that confer taxpayer-funded public benefits and state issued identification shall undergo emergency rule making to address this issue if necessary.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Janice K. Brewer

GOVERNOR

DONE at the Capitol in Phoenix on this 15th day of August in the Year Two Thousand Twelve and of the Independence of the United States of America the Two Hundred and Thirty-Seventh.

ATTEST: Ken Bennett

SECRETARY OF STATE