Earlier this month, the Supreme Court denied Arizona’s petition for a writ of certiorari to review a 9th Circuit decision holding that the state must allow Deferred Action for Childhood Arrivals, or DACA, documents to be sufficient to obtain driver’s licenses and state identification cards.

To obtain a driver’s license or state identification card in Arizona, noncitizens must show that they are authorized to be in the United States. This can be done with a valid work permit.

Under the challenged Arizona requirement, “DACA documents [work permits] are insufficient for the purposes of obtaining an Arizona driver license or identification card.”

The district court ruled in favor of Arizona. Upon appeal to the 9th Circuit, the plaintiffs argued that the state had exceeded its powers by passing legislation that created immigration policy.

The ability to create immigration law and policy is a plenary power left to the federal executive and legislative branches. It is an almost complete power, and courts generally do not interfere with it.

Regulation of driver’s licenses is traditionally a state matter and regulated by the states pursuant to their police powers—the ability of states to regulate and enforce regulations regarding health, safety, morals, and general welfare.

While not all state regulations touching on immigration are preempted, states cannot directly regulate immigration. According to the 9th Circuit panel, Arizona created “a new immigration classification” with its requirement thereby directly regulating immigration.

The panel upheld the district court’s permanent injunction by finding that the Immigration and Nationality Act occupies “the field of Arizona’s classification of noncitizens with regard to whether their presence is authorized by federal law, and as therefore preempting states from engaging in their very own categorization of immigrants for the purpose of denying some of them drivers’ licenses.”

In its petition to the Supreme Court, Arizona argued that the 9th Circuit’s decision interfered with state sovereignty. The state did not directly challenge the legality of DACA.

The Supreme Court’s denial of review in this case is unsurprising given that the Court declined to hear the Trump administration’s request to review a California district court’s decision that temporarily postponed the administration’s decision to end DACA. The Court said the case should first be heard by the 9th Circuit.

While this 9th Circuit injunction was denied review by the Supreme Court and will remain in effect, if the Supreme Court eventually hears an appeal regarding the end of DACA, this issue may become moot.

By: