

CLASP

Policy solutions that work for low-income people

Submitted via www.regulations.gov

Andria Strano

Acting Chief, Office of Policy and Strategy

Division of Humanitarian Affairs

U.S. Citizenship and Immigration Services

Department of Homeland Security

5900 Capital Gateway Drive

Camp Springs, MD 20746

Re: DHS Docket No. USCIS-2021-0006, Comments in Response to Deferred Action for Childhood Arrivals

The Center for Law and Social Policy (CLASP) is pleased to submit this comment to the U.S. Department of Homeland Security's (DHS) proposed rule, Deferred Action for Childhood Arrivals (DHS Docket No. USCIS-2021-0006), published September 28, 2021. We appreciate the administration's demonstrated commitment to the Deferred Action for Childhood Arrivals (DACA) program through rulemaking, but we have some concerns with changes in the proposed rule and have recommendations for strengthening the program.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low incomes, including immigrant youth, children and families. Our research and advocacy focus on the impacts of immigration policy on access to post-secondary education, public benefits, and employment for children, young adults, and parents. We urge the administration to strengthen and expand the DACA program to ensure the safety and wellbeing of young immigrants who have grown up in the U.S. and are contributing to the country they call home.

As of June 2021, over 590,000 individuals are currently enrolled in the DACA program.¹ Nearly 1 million children under the age of 18 in the United States are undocumented, and many are waiting to qualify for DACA.² A quarter of DACA recipients are parents to more than 250,000 U.S. citizen children.³ Thus, the DACA program has impacted not only DACA recipients themselves, but also their families and communities. In addition to removing the risk of deportation, the DACA program has played an important role in lifting families out of poverty by allowing parents and young adults to work higher paying, more stable jobs. For children with DACA parents, the program has helped support healthy childhood development by increasing kids' access to critical benefits, such as employer-sponsored health insurance, and removing the fear of losing a parent due to immigration enforcement. It also has empowered young immigrants to participate more fully in the civic life of their communities and better pursue

¹ *Count of Active DACA Recipients By Month of Current DACA Expiration As of June 30, 2021*, Department of Homeland Security, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/sites/default/files/document/data/Active%20DACA%20Recipients%20%E2%80%93%20June%2030%20C%202021.pdf>.

² Randy Capps et al., *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute (Dec. 2020), https://www.migrationpolicy.org/sites/default/files/publications/mpi-unauthorized-immigrantsstablenumbers-changingorigins_final.pdf.

³ Nicole Prchal Svajlenka, *What We Know About DACA Recipients in the United States*, Center for American Progress (Sept. 5, 2019), <https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipientsunitedstates/>.

their postsecondary education and career goals.⁴ DACA recipients have served as important members of the American workforce, holding essential jobs as healthcare workers, grocery store clerks, and caregivers on the frontlines of the pandemic.⁵ Yet the program still has unnecessary barriers in place that exclude thousands of immigrant youth from protection and stability. The administration should take this opportunity to update and expand the program to address its shortcomings.

While we support regulatory action to strengthen DACA, we recognize that only Congress can deliver the permanent relief that DACA recipients and Dreamers so urgently need. The threats to DACA in recent years and ongoing legal challenges underscore the need for a pathway to citizenship that young immigrants and allies have long been fighting for, such as the most recent House bipartisan passage of the American Dream and Promise Act (H.R. 6). Thus, we urge the administration to support congressional action on a pathway to citizenship for Dreamers as well as the broader undocumented immigrant community.

We also strongly support access to affordable health care for all individuals, including DACA recipients, and remain concerned about the problematic exception barring children and young people with DACA from accessing health coverage through the Affordable Care Act marketplace as well as Medicaid and the Children's Health Insurance Program. We urge the administration to restore eligibility for DACA recipients to ensure equitable access to health care, especially as we continue to recover from the pandemic.⁶

To strengthen and expand the DACA program, we have the following recommendations in response to the proposed rule:

- 1. Do not separate work authorization from deferred action as it creates an unnecessary risk and burden for recipients.**

The proposed rule decouples deferred action requests under DACA from requests for work authorization. CLASP opposes this proposed change, as it would risk applicants being granted deferred action but being denied work authorization, as well as increase and magnify processing delays. Since the establishment of the DACA program, requests for DACA and Employment Authorization Documents (EADs) have been linked together. Confusion around the separation of the two processes runs the risk of individuals' EADs lagging behind their DACA application, or improperly denied, creating periods of uncertainty for individuals and their employers. Keeping the two together will help prevent confusion and streamline the application process.

The ability of DACA recipients to work is critical as they are often part of mixed-status families with low-incomes, and they are often the backbone of a household's income.⁷ The delay or denial of work authorization can lead to significant economic hardship for recipients as well as their families and children. It also puts power in the hands of unscrupulous employers to take advantage of unauthorized

⁴ Duy Pham and Wendy Cervantes, *Expanding the Dream: Engaging Immigrant Youth and Adults in Postsecondary and Adult Education*, Center for Law and Social Policy (November 2019),

<https://www.clasp.org/sites/default/files/publications/2017/11/2017.11.16%20Expanding%20the%20Dream.pdf>.

⁵ *Estimates Show Immigrant Essential Workers are Crucial to America's COVID-19 Recovery*, FWD.us (Dec. 16, 2020), <https://www.fwd.us/news/immigrant-essential-workers/>.

⁶ Melissa McChesney, *Supporting People with DACA and Boosting Our Economic Recovery by Extending Access to Affordable Health Care*, UnidosUS (August 2021), https://www.unidosus.org/wp-content/uploads/2021/08/unidosus_healthcareaccess.pdf.

⁷ *National and State Estimates of Immigrant Populations Eligible for the Deferred Action for Childhood Arrivals (DACA) Program, December 2020*, Migration Policy Institute (last updated December 2020), https://www.migrationpolicy.org/sites/default/files/datahub/State%20Estimates%20of%20DACA-Eligible%20Population_Dec%202020.xlsx.

labor, as Secretary Mayorkas outlines in his October 12, 2021 memorandum, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*.⁸ Additionally, the ability to obtain better and more flexible employment helps students who may need to work in order to fund their postsecondary education. DACA recipients have been on the frontlines of COVID-19 pandemic, serving in essential roles and keeping our country running. Any barriers to an individual's ability to work lawfully would fail to recognize the importance of the contributions of immigrant workers to their communities.

2. Expand DACA eligibility to capture individuals who have been left out of existing eligibility guidelines.

Eligibility guidelines for DACA have not been updated since 2012, and the narrow requirements of the original program left out thousands of Dreamers. Expanding eligibility for DACA has the potential to give many more children, young adults and their families peace of mind and economic stability. It will also lead to better outcomes for the U.S. citizen children of Dreamers, through improved mental health, greater access to critical benefits, and higher achievement in schools.⁹ We propose the following changes:

- *Eliminate the lower and upper age caps for first-time DACA applicants.* From the beginning of the DACA program, its age restrictions have left thousands of Dreamers ineligible for protections. Currently children under 15 are only able to apply for DACA if they are already in removal proceedings. As a result, many Little Dreamers have had to continue to live with the threat of deportation which research shows leads to poor mental health outcomes.¹⁰ Having access to government identification can also help Little Dreamers access other developmental opportunities such as out-of-state school trips and driver's permits. Additionally, the initial requirement to be under 31 as of June of 15, 2012 has left thousands without the ability to apply—sometimes by a matter of days—despite meeting all of the other requirements. These Dreamers have remained in urgent need of access to relief.
- *Update the physical presence and date/age of entry requirements.* We recommend that DHS update the date of physical presence requirement from June 15, 2012 to the date the proposed rule is enacted or no less than five years after the program's initial requirement. We also recommend allowing applicants to show they have continuously resided in the United States for a shorter, more reasonable period of time prior to submitting their request. Currently, an initial DACA requestor applying for DACA would need to prove that they have been continuously residing in the U.S. since June 15, 2007. Updating and shortening the continuous presence requirement would significantly reduce the burden on both applicants and DHS officers, who currently need to review more than ten years of materials. We also recommend changing the age

⁸ Alejandro N. Mayorkas, *Worksite Enforcement: The Strategy to protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, Department of Homeland Security (October 12, 2021),

https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf.

⁹ Randy Capps et al., *Implications of Immigration Enforcement Activities for the Well-being of Children in Immigrant Families*, Urban Institute (Sept. 2015), <https://www.urban.org/sites/default/files/alfresco/publicationexhibits/2000405/2000405-Implications-of-Immigration-Enforcement-Activities-for-the-Well-Being-ofChildren-in-Immigrant-Families.pdf>; Hamutal Bernstein et al., *Amid Confusion over the Public Charge Rule, Immigrant Families Continued Avoiding Public Benefits in 2019*, Urban Institute (May 2020),

https://www.urban.org/sites/default/files/publication/102221/amid-confusion-over-the-public-chargerule-immigrant-families-continued-avoiding-public-benefits-in-2019_3.pdf; Jacob Kirksey et al., *Deportations near the schoolyard: Examining immigration enforcement and racial/ethnic gaps in educational outcomes*, AERA Open 6, no.1 (2020).

¹⁰ Roberto G. Gonzales, Carola Suárez-Orozco, and Maria Cecilia Dedios-Sanguinetti, *No Place to Belong: Contextualizing Concepts of Mental Health Among Undocumented Immigrant Youth in the United States*, *American Behavioral Scientist* 57, no. 8 (August 2013): 1174–99. <https://doi.org/10.1177/0002764213487349>.

of entry requirement from 16 to 18 to expand eligibility as was done in the most recent version of the House-passed Dream and Promise Act.

- *Establish a hardship waiver for education requirements.* The Migration Policy estimates that in 2020, there were as many as 384,000 individuals who did not meet educational requirements but were otherwise eligible for DACA.¹¹ 34% of Dreamers immediately eligible for DACA live at or below the federal poverty level, triple the national average of 11%.¹² Dreamers are often forced to leave their high school or postsecondary education—temporarily or long-term—in order to serve as income-earners or caregivers in their families, which has only increased during the pandemic. With limited access to federal and state financial aid and sometimes barred from in-state tuition, Dreamers also face significant challenges in affording postsecondary education.¹³ DACA applicants should be offered the chance to demonstrate compelling circumstances in which the education guideline can be waived.
- *Establish a “waiver” for applicants to overcome their triggering of a criminal bar.* Although the DACA guidelines allow applicants to demonstrate that “exceptional circumstances” should overcome their triggering of a criminal bar, it is not clear how it is decided if this standard is met. In addition, the current framework of criminal exclusions unfairly targets portions of the DACA population who are already targets of discriminatory policing practices. We recommend DHS allow applicants to overcome any criminal exclusions by presenting balancing factors such as seriousness of prior violations, evidence of rehabilitation, length of residence, and presence of citizen or lawful permanent resident relatives.

3. Allocate greater resources to improving processing and providing assistance to individuals demonstrating financial hardship.

CLASP recommends that DHS adopt policies that will improve the processing of DACA requests. In our interviews with early childhood providers and educators, we heard multiple stories about DACA recipients and their bosses needing to scramble to make alternative plans in cases where it was unclear that a work permit would be approved in time, creating challenges and stress for DACA recipients, their students, and their employers.¹⁴ To streamline the DACA request process, DHS should make the following changes:

- *Lower the amount of documentation required from applicants to prove continuous residence.* The current amount of documentation required for proof of continuous residence is a difficult standard for many applicants to meet. Reducing the amount of documentation required will benefit both these applicants and DHS officers who must review over 10 years of documentation.

¹¹ *National and State Estimates of Immigrant Populations Eligible for the Deferred Action for Childhood Arrivals (DACA) Program, December 2020*, Migration Policy Institute (last updated December 2020), https://www.migrationpolicy.org/sites/default/files/datahub/State%20Estimates%20of%20DACA-Eligible%20Population_Dec%202020.xlsx.

¹² Jeanne Batalova, Sarah Hooker and Randy Capps, *DACA at the Two-Year Mark: A National and State Profile of Youth Eligible and Applying for Deferred Action*, Migration Policy Institute (August 2014), <https://www.migrationpolicy.org/research/daca-two-year-mark-national-and-state-profile-youth-eligible-and-applying-deferred-action>; Emily A. Shrider et al., *Income and Poverty in the United States: 2020*, United States Census Bureau (September 14, 2021), <https://www.census.gov/library/publications/2021/demo/p60-273.html>.

¹³ Duy Pham and Wendy Cervantes, *Expanding the Dream: Engaging Immigrant Youth and Adults in Postsecondary and Adult Education*, Center for Law and Social Policy (November 2019), <https://www.clasp.org/sites/default/files/publications/2017/11/2017.11.16%20Expanding%20the%20Dream.pdf>.

¹⁴ Hannah Matthews, Rebecca Ullrich, and Wendy Cervantes, *Immigration Policy’s Harmful Impacts on Early Care and Education*, Center for Law and Social Policy (March 1, 2018), https://www.clasp.org/sites/default/files/publications/2018/03/2018_harmfulimpactsece.pdf.

- *Treat DACA requests for grants that have lapsed for over a year as renewals instead of first-time requests.* This will, again, reduce the amount of documentation applicants need to submit and DHS officers will need to review. It will also decrease the likelihood for applicants to be in need of an attorney.
- *Adopt a policy of automatic renewals when USCIS experiences processing delays.* Automatic renewals will prevent DACA recipients from being subject to deportation or other disruptions, such as job loss, for issues out of their control. DACA recipients often serve as primary income earners, and lapses in their DACA status can have serious detrimental effects on the wellbeing of their families.
- *Ensure that individuals are given adequate notice and time to respond before their DACA status is terminated for any reason.* Since DACA termination can occur at the issuance of Notice to Appear (NTA), DACA recipients are often left without the opportunity for a hearing or response, leading to the possibility for wrongful termination. A standard of due process should be followed, and DACA recipients should be afforded the chance to respond to any impending termination of their status.
- *Establish lower fees and generous fee waivers.* Finally, DACA fees represent a significant barrier to immigrants with low incomes. For a large portion of the DACA-eligible population, the \$495 application fee is financially infeasible. A 2014 national survey of DACA eligible youth found that of those who have yet to apply, 43% reported that they could not afford the application fee.¹⁵ The cost of the application should not be a deciding factor for Dreamers to access DACA protections. DHS should lower the fee and dedicate additional resources to ensure that all demonstrated need is met and additional fee waivers are available.

Conclusion

Thank you for the opportunity to submit a comment on this proposed rule. The DACA program's success represents what is possible when we extend opportunity to our country's young people, including immigrants. We support every effort to fortify, expand, and improve the program, as well as securing a path to citizenship for Dreamers and the broader undocumented immigrant community.

Our comment includes citations to supporting research and documents for the benefit of USCIS in reviewing our recommendations. We direct USCIS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed rule for purposes of the Administrative Procedures Act. Please do not hesitate to contact Wendy Cervantes, Director of Immigration and Immigrant Families, at wcervantes@clasp.org to provide further information.

¹⁵ Roberto G. Gonzales, Ph.D. and Angie M. Bautista-Chavez, *Two Years and Counting: Assessing the Growing Power of DACA*, American Immigration Council (June 16, 2014), <https://www.americanimmigrationcouncil.org/research/two-years-and-counting-assessing-growing-power-daca>.