



Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

Submitted via www.regulations.gov

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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, Public Comment in Response to Deferred Action for Childhood Arrivals

Dear Acting Chief Strano:

The Seattle Office of Immigrant and Refugee Affairs (OIRA) is submitting this comment letter in response to the U.S. Department of Homeland Security's (Department) proposed rule, Deferred Action for Childhood Arrivals (DACA), DHS Docket No. USCIS-2021-0006, published September 28, 2021 ("the proposed rule"). OIRA supports the proposed rule and offers recommendations to further strengthen and fortify the DACA program.

Seattle is a Welcoming City with a commitment to protect the rights and promote the health and well-being of immigrants and refugees, who are integral members of our families and communities. The City of Seattle ("City") has made great efforts to protect our immigrant and refugee workers and families. Such efforts include executive orders¹, resolutions², and ordinances³ to ensure immigrants feel welcome, supported, and safe as residents and as workers. In 2012, the City created the Office of Immigrant and Refugee Affairs to improve the lives of Seattle's immigrant and refugee families, including those with or eligible for DACA status. Seattle is home to approximately 1,500 DACA recipients and an additional 2,200 Seattle residents live with a family member who has DACA status.

¹ Executive Order 2016-08, "Executive Order reaffirming Seattle as a welcoming city." See: http://murray.seattle.gov/wp-content/uploads/2016/11/Executive-Order-2016-08_Welcoming-City.pdf

² Resolution Number: 31193, "Resolution affirming support for comprehensive immigration reform." See <http://clerk.seattle.gov/~scripts/nph-brs.exe?s1=&s3=&s2=&s4=Ordinance+121063&Sect4=AND&l=200&Sect2=THESON&Sect3=PLURON&Sect5=RESNY&Sect6=HITOFF&d=RESF&p=1&u=%2F~public%2Fresny.htm&r=7&f=G>

³ Ordinance Number 121063, "An ordinance concerning inquiries by Seattle City officers and employees into immigration status, and activities designed to ascertain such status; and amending Seattle Municipal Code Chapter 4.18 in connection therewith." See <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?d=CBOR&s1=114436.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbor2.htm&r=1&f=G>

Approximately 7,340 DACA recipients reside in the larger Seattle-Tacoma Metropolitan area and 16,360 in Washington State.⁴

DACA recipients, like other immigrants, provide incredible contributions to our country. Many DACA recipients have disproportionately provided essential services during the COVID-19 pandemic⁵, with nearly 203,000 of them working in occupations in healthcare, education, and food service.⁶ DACA recipients pay taxes and actively contribute to the U.S. economy. The non-partisan Center for American Progress has calculated that DACA recipients in Washington state have paid over \$57.5 million in local and federal taxes.

The City of Seattle is invested in supporting DACA recipients and DACA-eligible residents. Most recently in 2020, the Seattle Office of Immigrant and Refugee Affairs sponsored a program to provide free legal consultations, DACA renewal services, and DACA fee scholarships. As a result, our legal non-profit partners provided 98 legal consultations and 67 DACA renewals to Seattle residents, workers, and students. Also, in partnership with the King County Bar Association and the American Immigration Lawyers Association, the City sponsored five DACA legal clinics for more than 200 clients. The City also provided 171 DACA fee scholarships, paying the \$495 fee for these applicants.

I. The City of Seattle supports the rulemaking process aimed to “preserve and fortify” DACA.

As a Welcoming City that respects and upholds the American value of welcoming immigrants, OIRA strongly supports President Biden’s commitment to “preserving and fortifying DACA.”⁷ We are glad to see that the proposed federal regulation would codify DACA and provide more clarity to individuals eligible for or with DACA status.

OIRA welcomes that the proposed rule would codify the following clarifications:

- DACA recipients are lawfully present in the United States under the Social Security regulations.
- DACA recipients do not accrue unlawful presence.
- DACA recipients are eligible to petition for Advance Parole for urgent humanitarian or significant public benefit reasons.
- DACA recipients returning with advance parole can satisfy the “inspected and admitted or paroled” requirement for adjustment of status purposes under INA § 245(a).
- Information about DACA recipients and their family members included in DACA requests will not be shared affirmatively with Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or law enforcement agencies for immigration enforcement-related purposes, unless an exception applies, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

⁴ [What We Know About DACA Recipients, by Metropolitan Area - Center for American Progress](#)

⁵ [Spotlight on the DACA-Eligible Population – New American Economy](#)

⁶ [A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response - Center for American Progress](#)

⁷ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>

II. While OIRA supports the proposed rule, we do not believe it goes far enough to actually strengthen DACA.

Under the proposed rule, the program would carry the original eligibility criteria that have not been updated since 2012, including the stipulation that individuals must have arrived in the U.S. before their 16th birthday; been born on or after June 16, 1981; have continuously resided in the U.S. since June 15, 2007; are currently in school or have graduated or honorably served in the military; have not been convicted of a felony; and do not pose a threat to national security or public safety. Preserving these eligibility requirements does not remove arbitrary barriers to DACA.

Seattle OIRA supports the following recommendations that would make DACA more accessible:

a) Update eligibility requirements.

DACA's eligibility requirements haven't changed since the program was created in 2012. OIRA believes that the DACA program should be updated so that it continues to serve its original purpose. We believe that DACA cannot be "preserved or fortified" if the door is closed to all future participants who otherwise meet its requirements. Therefore, we would like to see this proposed rule offer the following updates:

- Move up continuous residency date from June 15, 2007
- Move up physical presence date from June 15, 2012
- Remove age cap for DACA eligible applicants

It is hard to believe that under the proposed rule, the DACA program will not be available to a 16-year-old immigrant who came to this country at the age of four. This example illustrates the need to update the eligibility requirements to account for the nine years since the original DACA program was announced.

b) Remove the prior unlawful immigration status requirement.

The proposed rule requires unlawful immigration status on June 15, 2012, and at the time of request when applying for DACA. This excludes dependents of long-term non-immigrant visa holders (sometimes called "documented Dreamers") who age out of the system when they turn 21 and are forced to either "self-deport" or become undocumented. Under the current wording of the proposed rule, any person who aged out after June 15, 2012, would not qualify for DACA status, despite being undocumented at the time of application. The Migration Policy Institute estimates that 190,000 minors and young adults currently have no path to legal status once they turn 21.⁸ Removing the requirement of unlawful status on June 15, 2012, would provide a solution to those thousands of young people.

c) Expand advance parole for all grounds.

Currently, DACA recipients must request advance parole only on employment, educational, or humanitarian grounds, despite there being no such statutory or regulatory restriction of advance parole for other grounds. These approved reasons for travel are unnecessarily limiting, which means thousands of DACA recipients are not able travel to visit family or travel to seek potential education or employment opportunities. The process of requesting approval

⁸ <https://www.nbcnews.com/news/asian-america/young-indian-americans-aged-out-parents-visas-appeal-path-citizenship-n1272817>

for advance parole is also notoriously slow and arbitrary while having a great impact on an applicant's life. In addition to meeting the DACA recipient's underlying reasons for travel, entry with advance parole may make some individuals eligible for adjustment of status under INA § 245(a). For example, someone who entered the United States without inspection but subsequently left and returned under advance parole may now be considered to have been "inspected and admitted or paroled." If that parolee has an immigrant visa immediately available, is not inadmissible, and is not subject to any of the bars to adjustment, he or she may qualify to adjust status under section 245(a). This typically benefits "immediate relatives" (the spouses or children of U.S. citizens or the parents of adult U.S. citizens). Expanding advance parole would offer a straight pass to permanent legal status for otherwise eligible applicants.

d) *Improve the application and processing of DACA applications:*

i) Provide automatic, temporary renewal upon receipt of a DACA renewal application for six months.

Automatic renewal will prevent lapse of status for DACA applicants while U.S. Citizenship and Immigration Services (USCIS) adjudicates the request. USCIS has been forced to cut services and staff to remain open during the concurrent pandemic and USCIS budget crisis, increasing the case backlog and wait times tremendously. In addition to processing delays, applicants also face a variety of COVID-19 barriers, including difficulty in paying filing fees, limited to no access to legal service providers, and significant obstacles from themselves or a family member contracting the virus itself. Automatic renewal would mitigate these unexpected negative circumstances.

ii) Provide an optional "backdating" of deferred action grants for applicants whose DACA expires and who later apply for initial or renewal of DACA.

Optional backdating would prevent applicants from accruing unlawful presence should their grant expire due to USCIS adjudication delays or other barriers to renewal. The backdating should be optional, as some applicants may prefer not to cut their two-year grant "short" by backdating the start time or have already accrued unlawful presence prior to DACA.

iii) Issue sequential instead of overlapping grant periods of DACA for renewal requests.

With sequential grants, DACA recipients receive full two-year periods of deferred action rather than one grant "eating" into the next as they overlap, creating grants of one year and 8-11 months, for example. The Obama administration piloted a program, (which the Trump administration ended) making this change, which should be resumed and expanded.

iv) Provide access to fee waiver for DACA applications.

Unlike many other USCIS application forms, DACA recipients cannot apply for the usual I-912 fee waiver to assist with the cost of applying. DACA recipients must meet narrower criteria than the usual fee waiver and receive the exemption before they submit their application, adding more barriers to an already restrictive process.

III. Conclusion

The City of Seattle welcomes the attempt to strengthen and codify DACA as outlined above and urges USCIS to go further with this effort. The DACA program provides basic protections for the hundreds of thousands of young adults who have protected and served this nation throughout the COVID-19 pandemic and beyond. We must ensure that DACA remains a viable option for those who entered the country as children. Moreover, we urgently need a legislative solution for individuals eligible for DACA. **The Biden-Harris Administration and Congress must take action to provide *permanent* protections for the DACA community and other immigrants now.**

Sincerely,



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