



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

November 29, 2021

Department of Homeland Security, United States Citizenship and Immigration Services
Via electronic submission

Re: Deferred Action for Childhood Arrivals
DHS Docket No. USCIS-2021-0006; CIS No. 2691-21; RIN 1615-AC64

Introduction

The City of New York (“the City”) welcomes the opportunity to submit this comment in response to the Department of Homeland Security’s (“DHS”) Notice of Public Rulemaking regarding the Deferred Action for Childhood Arrivals (“DACA”) policy. The New York City Mayor’s Office of Immigrant Affairs (“MOIA”), Department of Social Services (“DSS”), NYC Health + Hospitals (“H+H”), and Department of Health and Mental Hygiene (“DOHMH”) contributed to this comment.

As government agencies responsible for ensuring every New Yorkers’ ability to participate in our city’s social, economic, and civic life to the fullest extent, we can state without hesitation that DACA has been a transformative policy. The policy has not only provided baseline security for the recipients themselves to thrive but also, by extension, their families and communities. New York City’s DACA recipients are teachers,¹ doctors,² lawyers,³ civil servants,⁴ and small business owners.⁵ The myriad ways in which they have enriched our city cannot be overstated. They have played a vital role in our city’s response to the COVID-19 pandemic, working as frontline workers who helped keep our city safe.

Immigration status is a known social determinant of health, impacting both physical and mental health outcomes, and DACA has further expanded access to health care and social services. DACA enables New Yorkers to lead healthy, productive lives by accessing benefits and

¹ Liz Robbins, *For Teachers Working Through DACA, a Bittersweet Start to the School Year*, N.Y. TIMES, Sept. 7, 2017, <https://www.nytimes.com/2017/09/07/nyregion/daca-teachers.html>.

² Juan Vasquez, *Opinion: I am a DACA beneficiary. I can’t work as an ER doctor anymore.*, WASH. POST, Aug. 11, 2021, <https://www.washingtonpost.com/opinions/2021/08/11/how-covid-19-wrecked-my-daca-status-stopping-me-working-an-er-doctor/>.

³ Lena Hansen, *Cesar’s Law: “I want to fight for immigration reform”*, TIME, <https://time.com/collection/american-voices-2017/4663869/cesar-vargas-american-voices/>.

⁴ Raul Contreras, *Residents dare to Dream*, QUEENS CHRON., Oct. 5, 2017, https://www.qchron.com/editions/queenswide/residents-dare-to-dream/article_96a0b2f8-3bee-5a80-afe3-6d3604850029.html.

⁵ Nina Roberts, *Undocumented Entrepreneurs: How They Started Businesses Without Papers*, DOCUMENTED N.Y., Oct. 9, 2018, <https://documentedny.com/2018/10/09/undocumented-entrepreneurs-how-they-started-businesses-without-papers/>.

services including New York state-funded Medicaid and Child Health Plus (CHP). Access to high-quality health insurance facilitates access to health care services, including primary and preventive care services, and care for chronic conditions. Throughout the COVID-19 pandemic, Medicaid and CHIP coverage have helped protect DACA recipients from high health care costs and have facilitated access to lifesaving services, including COVID-19 testing and treatment.

The City wholly supports DHS’s aim to “preserve and fortify” this policy. However, while this Proposed Rule may serve to “preserve” the policy, it does not sufficiently “fortify” DACA. The City urges DHS to strengthen the Proposed Rule and DACA by 1) ensuring that deferred action and work authorization remain connected, and 2) updating the eligibility criteria for the policy such that more of its intended beneficiaries can access the policy. Finally, the City firmly believes that DACA recipients and DACA eligible individuals “are no different than the tens of millions of people who live and work alongside them.”⁶ While DACA has been transformative, it still remains a temporary protection. To properly recognize these long-standing members of our communities as the “Americans” they are in all but name, Congress must take action to provide a permanent, legislative solution.

The DACA Program Does Not Function Without Work Authorization

DACA’s success lies not only in the economic benefits that have accrued to recipients and the City as a whole, but also in the way it has stabilized family units, supported communities, and bolstered key industries. The chief reason for this success is the availability of work authorization for DACA recipients. Work authorization through DACA has directly benefited an estimated 30,000 New Yorkers, allowing them to work and support themselves and their families.⁷ The City estimates that in total, there are 53,300 DACA-eligible or potentially eligible New Yorkers. This includes 43,000 NYC residents who are immediately eligible and whose earnings total approximately \$1.3 billion.⁸ Given this impact, New York City is concerned with the suggestion that a “relevant alternative” to the DACA program’s existing structure would be to separate work authorization from the other elements of the DACA program.

We recognize that DHS is not proposing that DACA recipients no longer have access to work authorization at this time. However, by formally separating the two components, DACA without work authorization would be a shell of a policy. In considering this change, DHS itself notes that “a policy of forbearance without work authorization” would cause “a great deal of human suffering.”⁹ Thus, DACA without work authorization cannot be considered a “relevant alternative” to the program as it currently stands.

⁶ Brief of Amici Curiae 109 Cities, Counties, Municipalities, and Local Government Advocacy Organizations in Support of Respondents, *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020), available at https://www.supremecourt.gov/DocketPDF/18/18-587/118211/20191004154826193_Cities%20and%20Counties%20Final%20DACA%20Amicus%20Brief%20%20Appendix.pdf.

⁷ All data are estimates from New York City-analyzed 2014 5-year U.S. Census data, unless otherwise noted.

⁸ Based on 2019 1-year American Community Survey Public Use Microdata Sample as augmented by NYC Opportunity.

⁹ Department of Homeland Security, *Deferred Action for Childhood Arrivals*, 86 Fed. Reg. 53,736, 53,811 (Sept. 28, 2021).

DACA without work authorization diminishes its benefits

Our first concern is that DACA as a program does not function without work authorization. Without the ability to work lawfully, DACA recipients and their families would be faced with an impossible choice that cuts against the very justifications for the DACA program. In addition, if DACA recipients were prohibited at a future date from accessing work authorization, this would be out of step with other classes of individuals who are likewise allowed to stay in the U.S. for extended periods of time without formal status.¹⁰ Longstanding regulations have made employment authorization available to noncitizens without lawful immigration status who nevertheless are provided deferred action or certain other forms of prosecutorial discretion.¹¹

DHS notes that there are at least four qualitative benefits that accrue to beneficiaries of the program: (1) a reduction of fear and anxiety, (2) an increased sense of acceptance and belonging to a community, (3) an increased sense of family security, and (4) an increased sense of hope for the future, including by virtue of mitigating the risk of litigation resulting in termination of the DACA program.¹² But these benefits would be severely diminished, if not eliminated, if in the future, work authorization became unavailable for this population.

While the DACA program provides reduction of fear and anxiety and increase a sense of family security among DACA recipients, if, in the future, DACA recipients were unable to access work authorization, this would create economic pressures that would diminish these benefits. A study of DACA recipients found that while 88.5 percent of those surveyed were currently employed, only 45.3 percent of that 88.5 percent were employed before DACA.¹³ We know, in addition, that about 86 percent (or 37,000) of those currently DACA-eligible New Yorkers live in mixed-status families. For those families, the loss of work authorization represents a loss of income that could exacerbate family insecurity.

In terms of a sense of acceptance and belonging to a community, some New Yorkers have talked about how their ability to work in particular professions have affected their sense of acceptance and belonging.¹⁴ This aligns with what has been seen in DACA recipients nationally, with over 50 percent of recipients surveyed indicating that they have found employment that better matches their education and training.¹⁵ DACA recipients graduating from higher education who have access to work authorization are able to feel like they are in the same community as their classmates, because like their classmates, they can find employment in the field they trained for.

¹⁰ For example, asylum applicants whose application has been pending for one year or more are eligible for work authorization.

¹¹ 8 CFR 274a.12(c)(14) allows noncitizens who are provided deferred action from immigration enforcement the opportunity to apply for such authorization and receive an EAD if they establish an economic necessity for employment.

¹² 86 Fed. Reg. 53,742.

¹³ TOM K. WONG ET AL., 2020 NATIONAL DACA STUDY 2-3 (2020).

¹⁴ See, e.g., Hina Naveed, *Thank you, Supreme Court: A Dreamer deemed essential in the fight against coronavirus can stay, but the fight isn't over*, N.Y. Daily News, <https://www.nydailynews.com/opinion/ny-oped-essential-coronavirus-daca-20200618-4hhecza47zcebkk67h4fij2bhhu-story.html> (“These are our friends and neighbors we are risking our lives to protect. Is it too much to ask for the country to protect us in return?”).

¹⁵ WONG at 3.

As for a sense of hope for the future, this benefit would be severely limited by the lack of work authorization because of the long-standing reliance of DACA recipients and their families on the provision of work authorization. DACA recipients have pursued higher levels of education,¹⁶ brought property,¹⁷ and planned their lives around the availability of work authorization. In the City, nearly 46 percent of this population have either graduated or are attending college, and over 5,000 are either homeowners or contribute to mortgages in the City. DACA has allowed for more economic mobility, which can also lead to better health outcomes for individuals and communities. Cutting off work authorization after years of providing that authorization automatically would cause enormous harm to this population and destroy the hard-won future that this population has built toward.

Removing work authorization will harm the City's economy

If forbearance from deportation was to be separated from work authorization, this would have negative effects on the City's economy. DACA without work authorization will mean an increase in poverty (including in mixed-status families), a loss of desperately needed essential workers, and a significant loss to the city's revenues.

The City estimates that 50 percent (or 21,200) DACA-eligible New Yorkers live in families with at least one U.S. citizen. And over 100,000 New Yorkers of all statuses live in families with a DACA-eligible New Yorker. For those families, work authorization serves as an important tool to fight poverty. According to a national survey of DACA recipients, 63.2 percent of those surveyed received a higher paying job after they received DACA.¹⁸ Also, given that we know undocumented immigrants have significantly higher rates of poverty than other immigrants in the City,¹⁹ losing work authorization is likely to negatively affect the economic wellbeing of these families.

DACA-eligible New Yorkers are essential workers: they play crucial roles in our public schools, health care settings, and in City government. The City estimates that about 61 percent of currently DACA-eligible New Yorkers fall within this category.²⁰ Top occupations include construction, food services, and cashiers.²¹

Finally, the revenues that accrue to the City from DACA recipients would be reduced if DACA recipients lose work authorization. DACA-eligible New Yorkers contribute over \$3

¹⁶ *Id.* at 5 (finding that 60.7 percent of all DACA recipients surveyed who were 25 and older “[p]ursued educational opportunities” they otherwise could not have).

¹⁷ *Id.* at 2 (finding that 25.2 percent of all DACA recipients surveyed who were 25 and older bought a home after their DACA application was approved).

¹⁸ *Id.*

¹⁹ NEW YORK CITY MAYOR'S OFFICE OF IMMIGRANT AFFAIRS, STATE OF OUR IMMIGRANT CITY 34-25 (2020), available at <https://www1.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2020.pdf>.

²⁰ Based on 2019 1-year American Community Survey Public Use Microdata Sample as augmented by NYC Opportunity.

²¹ *Id.*

billion to the City's GDP.²² This is based on higher earnings that are likely due to work authorization.

Work authorization helps New Yorkers reach their full potential

If initial applications open again, DACA would allow immigrant youth currently studying to be the next generation of health care workers, educators, and more to work in those roles. DACA has helped immigrant youth achieve their full potential, affording them educational and employment opportunities that were not previously accessible. However, without the benefit of work authorization, immigrant New Yorkers who would qualify for DACA under the proposed rule would be frozen in place, economically and educationally. As stated above, the DACA program has led some applicants to invest in education and seek certification in licensed professions. Moreover, New York State has taken steps to allow DACA-recipients with work authorization to apply for and receive licenses for these positions.²³

This is a boon to New York City. New York State labor projections indicate that many essential professions will see increases in employment over the next few years. For example, for the City, the New York State Department of Labor expects an increase of over 55 percent in healthcare support occupations from 2018 to 2028.²⁴ However, these are occupations that demand work authorization and without it, DACA recipients will not be able to help fill the need that will arise. This will be a waste of the energy and money that these DACA recipients have invested into their education.

DHS Should Strengthen the DACA Policy by Updating the Eligibility Criteria

As outlined above, DACA and the access to work authorization, have been benefited not only individual recipients but also their communities. The policy has empowered tens of thousands of New Yorkers to participate more fully in our social, economic, and civic life—allowing them to realize dreams of pursuing higher education, investing in a career in a chosen field, building a family, and much more.

As DHS states in the Proposed Rule, the core foundation of the DACA policy is the Department's determination that it is not "the best use" of the its limited resources "to remove productive young people to countries where they may not have lived since early childhood and whose languages they may not even speak."²⁵ If DHS's ultimate aim is to "preserve and fortify" DACA, then, it cannot achieve its goal without updating the eligibility criteria. The Proposed Rule is a framework under which DHS will exercise its prosecutorial discretion "with respect to certain young people who came to the United States years earlier as children . . . who [are] already generally low enforcement priorities for removal."²⁶ Yet, by simply codifying the

²² Based on 2019 1-year American Community Survey Public Use Microdata Sample as augmented by NYC Opportunity and NYC nominal GCP from NYC OMB, April 2021. U.S Personal Income, U.S. Nominal GDP from BEA (St. Louis Fed, FRED).

²³ N.Y. Comp. Codes R. & Regs. tit. 8, § 59.4.

²⁴ New York State Department of Labor, Long-Term Occupational Employment Projections: 2018-2028, *available at* <https://www.labor.ny.gov/stats/lspoj.shtm>.

²⁵ 86 Fed. Reg. 53,739.

²⁶ *Id.* at 53,737.

DACA eligibility requirements from 2012, DHS is closing the door on individuals that the Department itself would see as prime candidates for deferred action.

For example, the DACA program requires that an individual have continuously resided in the U.S. since June 15, 2007 and have been physically present in the U.S. on June 15, 2012. These requirements have led to increased number of undocumented high school graduates who are ineligible for DACA and unable to pursue educational and occupational goals that were available to similarly situated individuals just a few years older. An undocumented high school senior (17 years old) who arrived in the U.S. at the age of 8 or 9 would not satisfy either of these requirements. Even a child who arrived at just 4 years old would not meet the first requirement. Estimates show that of the more than 450,000 undocumented students in higher education nationwide, less than half are DACA-eligible.²⁷ This trend is even worse in New York State, where only 30 percent of the 33,000 undocumented students in higher education are DACA-eligible.²⁸ In New York State, around 4,000 undocumented students graduate every year from our high schools.²⁹ The City school system invests in our students, regardless of immigration status, and it would undoubtedly be to the City's benefit if our students, regardless of immigration status, were able to access the stability and opportunities that come from a program like DACA. The DACA program, without an update to the eligibility criteria, will continue to beget this counterintuitive outcome of leaving new generations of students without avenues to success.

Another eligibility requirement that has had counterproductive outcomes is that an individual must have been in unlawful immigration status on June 15, 2012. This requirement excludes approximately 200,000 so-called "Documented Dreamers," who are the dependents of long-term nonimmigrant visa holders, aging out of the system when they turn 21 years old.³⁰ Due to the inefficiencies of our immigration system, including numerical limits on immigrant visas ("green cards") based on countries of origin, some individuals with pending green card applications must wait decades.³¹ In the meantime, their children, who may have spent the majority of their lives in the U.S., lose their eligibility as dependent applicants when they turn 21 years old, at which point they face the daunting choice of returning to a country they do not know or becoming undocumented.³²

²⁷ NEW AMERICAN ECONOMY AND PRESIDENTS' ALLIANCE ON HIGHER EDUCATION AND IMMIGRATION, UNDOCUMENTED STUDENTS IN HIGHER EDUCATION: HOW MANY STUDENTS ARE IN U.S. COLLEGES AND UNIVERSITIES, AND WHO ARE THEY? 1 (2020), available at <https://www.presidentsalliance.org/wp-content/uploads/2020/07/Undocumented-Students-in-Higher-Education-April-2020.pdf>.

²⁸ *Id.*

²⁹ MIGRATION POLICY INSTITUTE, HOW MANY UNAUTHORIZED IMMIGRANTS GRADUATE FROM U.S. HIGH SCHOOLS ANNUALLY? 4 (2019), available at <https://www.migrationpolicy.org/sites/default/files/publications/UnauthorizedImmigrant-HS-Graduates-FactSheet-Final.pdf>.

³⁰ AMERICAN IMMIGRATION COUNCIL, DOCUMENTED DREAMERS: AN OVERVIEW (2021), available at <https://www.americanimmigrationcouncil.org/research/documented-dreamers-overview?emci=93df8cfa-4c12-ec11-981f-501ac57ba3ed&emdi=9c6ad861-5312-ec11-981f-501ac57ba3ed&ceid=9741124>

³¹ *Id.*

³² Hafsa Fathima, *They Came To The U.S. As Children, But At 21, Their Legal Status Runs Out*, N.P.R., Aug. 4, 2021, <https://www.npr.org/2021/08/01/1023393351/documented-dreamers-live-their-whole-lives-in-the-u-s-then-face-deportation-at-2>.

Lastly, the age-related requirements of DACA—arrival in the U.S. under the age of 16 and being born on or after June 16, 1981—impose undue barriers. Even when the DACA policy was first announced, amid the jubilation was the tragic realization that the requirement that an applicant be 31 years old or younger disqualified many “Dreamers” who were just a few years or even a few months too old.³³ Further, in every other context, a “child,” is defined as under 18 years of age. Yet, if an individual arrived in the U.S. prior to June 15, 2007, as DACA would require, as a 17 year old, although she would have spent the majority of her life in the U.S. and arrived as a minor, she would be ineligible for DACA. These incongruous outcomes are precisely why legislative proposals aimed at providing permanent protections to the “Dreamer” population all contain updated criteria.³⁴

Without common sense revisions to DACA’s residence and age eligibility requirements, the policy cannot be “preserved” or “fortified” because it would result in an increasing number of cases year after year that are contrary to the policy’s foundational purpose.

Conclusion

We are grateful for the opportunity to provide DHS with input on this Proposed Rule. We support the Department’s, and this Administration’s,³⁵ commitment to DACA, and appreciate the opportunity to offer our feedback on how to better preserve and fortify this vital policy. The City has long believed that we are “stronger and safer because of the DACA program” and that our future prosperity “is tied to the full participation” of our Dreamers.³⁶ As evidenced in the qualitative and quantitative information cited herein, the City has enjoyed immeasurable benefits from the DACA program and is proud to advocate on behalf of our DACA recipients and would-be DACA-eligible residents for an even stronger program. We urge DHS to fortify DACA by retaining the connection between deferred action and work authorization and making common sense revisions to the program’s eligibility criteria.

³³ Maya Rhodan and Emma Talkoff, *We are Americans, Revisited: The Dreamers, Five Years Later*, TIME, <https://time.com/daca-dream-act-jose-antonio-vargas-time-cover-revisited/>.

³⁴ For example, the American Dream and Promise Act of 2021 (H.R. 6), which passed the House of Representatives with bipartisan support on March 18, 2021, would simply require that an individual have been continuously physically present in the U.S. on or before January 1, 2021, and were 18 years old or younger on the initial date of entry into the U.S., in addition to educational, employment, and background check-related requirements that are similar to those of DACA. See American Dream and Promise Act of 2021, H.R. 6, 117th Cong. (2021), available at <https://www.congress.gov/bill/117th-congress/house-bill/6/text>.

³⁵ Memorandum on Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), Daily Comp. Pres. Docs., 2021 DCPD No. 00064 (Jan. 20, 2021), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.

³⁶ Brief of Amici Curiae 109 Cities, Counties, Municipalities, and Local Government Advocacy Organizations in Support of Respondents, Dep’t of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020), available at https://www.supremecourt.gov/DocketPDF/18/18-587/118211/20191004154826193_Cities%20and%20Counties%20Final%20DACA%20Amicus%20Brief%20%20Appendix.pdf.