



November 22, 2021

**U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140**

Submitted via www.regulations.gov

Re: DHS Docket No. USCIS-2021-0006; Comments on the proposed rulemaking on the Deferred Action for Childhood Arrivals policy

We respectfully submit the comment letter below in response to the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM), *Preserving and Fortifying Deferred Action for Childhood Arrivals*, published on September 28, 2021.

UnidosUS, previously known as the National Council of La Raza, is the nation's largest Hispanic civil rights and advocacy organization. Through its unique combination of expert research, advocacy, programs, and an Affiliate Network of nearly 300 community-based organizations across the United States and Puerto Rico, UnidosUS simultaneously challenges the social, economic, and political barriers to the success and well-being of Latinos at the national and local levels. For more than 50 years, UnidosUS has united communities and different groups seeking common ground through collaboration, and that share a desire to make our country stronger.

As UnidosUS and peer organizations have documented, Deferred Action for Childhood Arrivals (DACA) recipients have provided manifold contributions to the fabric of American society, despite legal threats to the policy which threaten these individuals with removal from the United States. As discussed below, the contributions of these youth have also been acutely felt during the COVID-19 pandemic, as they have helped drive our country's economic and health recovery. DACA recipients, in short, have been important engines of economic and social dynamism and growth for the country, now and over the long-term.

To be clear, in a society that fully embraces the contributions of all immigrants, Congress must provide the undocumented among them with the path to permanent status they deserve. Although the fight to permanent relief is long, DHS and the Biden-Harris administration have the moral obligation to—in the interim—provide continued and strengthened protections for DACA recipients. UnidosUS appreciates the priority that DHS is giving this important issue and takes note that it is designed to comply with Presidential Memorandum 86 FR 7053, which proports to “protect and fortify” the DACA policy.

UnidosUS recommends that DHS do just this by making all reasonable efforts to preserve and strengthen DACA, including though the actions detailed in this comment:

1. DHS Should Avoid Bifurcating Deferred Action and Employment Authorization, as proposed.

While we appreciate that this rule is being proposed at a time when litigation on this subject is pending, we urge DHS to avoid bifurcating deferred action and employment authorization preemptively. First, we incorporate by reference and agree with DHS's historical legal analysis in support of the existing connection between these two components. Second, the proposed separation of deferred action from work authorization may be perceived as a seemingly technical change to the DACA policy; however, such a shift could generate more confusion, inconsistent outcomes, and additional burdens on would be applicants.

For example, in a study that surveyed nearly 500 DACA recipients in southern California, the majority solicited assistance from an individual or community-based organization to complete the application, citing difficulty in compiling necessary documents and information.¹ By creating two applications within the DACA process—including the ability to apply at different junctures in time—future applicants might be confused, forego applying for employment authorization erroneously, or, worse, assume that a grant of deferred action is sufficient to pursue work opportunities, thus putting their underlying deferred action grant at risk. Moreover, the need to submit multiple applications may result in greater attorney and associated fees for applicants, making the process more onerous than the status quo.

UnidosUS recommends that DHS retain its current policy of guaranteed work authorization with deferred action, withstanding any challenge that provision might present in court.

2. The Final Rule Should Document the Role of DACA Recipients During COVID-19.

We applaud DHS for documenting in the NPRM the many contributions made by DACA holders. Many of these findings are supported by our own work with the UnidosUS Affiliate Network and experiences with immigrant communities on the ground, which make clear to us that DACA recipients recognize the opportunities offered to them in the United States are not taking these privileges for granted. With work authorization, and the stability it provides, DACA recipients have, over time, secured higher paying jobs, higher rates of homeownership, and greater access to lines of credit. This is borne out by the data. Consider that DACA recipients have seen their average hourly wages increase 45% after securing DACA status.²

The COVID-19 pandemic has put a fine point on this and has made clear that DACA recipients and other undocumented workers can and do provide significant public benefit to the nation.³ The contributions of DACA recipients to the nation have been particularly necessary as we near the end of this pandemic and inch toward recovery. Across the country, DACA recipients have worked in essential roles during the COVID-19 pandemic, accounting for 202,500 essential workers.⁴ DACA recipients make up for critical shortages in medicine and education: They are serving on the front lines of hospitals as physicians and medical students and teaching our nation's youth as children struggle to learn remotely.⁵ In addition to these sectors, DACA recipients have made significant contributions to help feed America. From farm to folk, these individuals are well represented in food-related occupations and industries, including the 142,100 DACA recipients—more than a quarter of all employed DACA holders—who work in food production and distribution jobs.⁶ If DACA were strengthened and expanded, that would only further promote the nation's prosperity by enabling even more undocumented youth to occupy these important jobs and receive the proper education and training to advance further in these industries.

UnidosUS urges DHS to expand its findings in its final rule to include the many contributions of DACA recipients during the COVID-19 pandemic, and in doing so expressly affirm the significant public benefit many of these individuals provide as they serve in essential jobs and roles that have proved necessary as the nation responds to the COVID-19 crisis.

Reports documenting these contributions include:

- Daniela Alulema, DACA Recipients are Essential Workers and Part of the Front-line Response to the COVID-19 Pandemic, as Supreme Court Decision Looms, Center for Migration Studies (3/30/2020) available at <https://cmsny.org/daca-essential-workers-covid>.
- A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response, Center for American Progress (04/06/2020) available at <https://www.americanprogress.org/article/demographic-profile-daca-recipients-frontlines-coronavirus-response>.
- Undocumented Immigrants and the COVID-19 Crisis, New American Economy (4/4/2020) available at <https://research.newamericaneconomy.org/report/undocumented-immigrants-covid-19-crisis>.
- The Latino Community in the Time of Coronavirus: The Case for a Broad and Inclusive Government Response, UnidosUS (July 2020) available at <https://www.unidosus.org/publications/2066-the-latino-community-in-the-time-of-coronavirus-the-case-for-a-broad-and-inclusive-government-response>.

3. DHS's Final Rule Should Make Clear that Relevant Policy, Operational Directives, and Other Guidance Shall Be Incorporated or Updated, As Appropriate, Including Any Such Policies Pertaining to DACA Recipient Eligibility for Pandemic Relief Assistance.

During the life of the DACA policy, USCIS, other DHS components, and even other federal agencies, have issued guidance that bears on the applicability, scope, and implementation of the DACA policy. DHS should take care to ensure that significant policy and implementation directives like these are not in conflict, superseded, or rendered inapplicable because of the promulgation of this rule. This review should consider policy memoranda and guidance issued by other federal agencies, such as, but not limited to, FHA Guidance to Permit DACA Status Recipients to Apply for FHA Insured Mortgages from January 2021 available here: https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_21-04.pdf.

The DACA FAQs are a large source of policy clarification that should be examined carefully. As an organization with many Affiliates authorized to assist DACA recipients with their case filings, it would be helpful, at a minimum, to preserve topics areas in the FAQs pertaining to: DACA Application Processing (e.g., FAQ 50), guidance on acceptable documentary evidence, guidance on travel, fee exemptions, and those FAQs that proscribe information sharing with immigration enforcement authorities. Please note that this is not intended to be an exhaustive list.

Moreover, recent experiences and challenges have surfaced among the UnidosUS Affiliate Network concerning the eligibility of DACA recipients for pandemic recovery programs. Any DHS or other federal agency guidance, existing or forthcoming, concerning the eligibility of DACA recipients for pandemic

relief programs like the Higher Education Emergency Relief Fund or the Emergency Rental Assistance program should be preserved in the final rule.

4. DHS's Final Rule Should Reflect Efforts to Fortify DACA by Modernizing the Original Policy.

Recognizing the stories that we hear on the ground from our Affiliates and their immigrant communities, we believe that DHS should take additional steps to proactively strengthen and expand DACA. In our view modernizing DACA is a necessary imperative to make good on President Biden's Presidential Memorandum 86 FR 7053, which proports to "protect and fortify" DACA. In considering the recommendations below, we also strongly encourage DHS to include regulatory provisions that authorize the DHS Secretary, or appropriate delegee, to promulgate future policy and operational guidance to modernize DACA consistent with the underlying spirit and objectives of the 2012 policy.

A non-exhaustive list of recommendation to fortify DACA include:

- **Modernizing the eligibility date for DACA.** If DACA is to remain an active and effective immigration relief policy for undocumented youth, key dates with in the DACA policy must be updated. UnidosUS proposed moving forward by no less than five years each of the following dates in the original DACA policy: (1) continuous residence date, (2) the physical presence date, and the (3) no lawful status date requirement. As a reminder, DHS proposed to roll forward many of these dates via executive order in 2014.
- **Eliminating the arbitrary age cap.** DHS should eliminate the requirement that an individual have been under the age of 31 as of June 15, 2012. This too was contemplated under a proposed executive order in 2014.
- **Expand duration of work permits.** In addition to avoiding the bifurcation of the deferred action and work authorization described above, DHS should modernize the DACA policy to make the duration of work permits three years as oppose to two, thereby cutting down on uncertainty, administrative burden to USCIS, and costs to applicants. This too was contemplated under a proposed executive order in 2014.
- **Substantially decreasing DACA application fees and ensuring that fee exemptions are more widely available.** The financial burden that DACA application fees represent to applicants has been widely documented. A significant portion of DACA applicants come from low-income and working-class backgrounds, where a biannual \$495 fee is an overwhelming financial commitment. In 2014, a national survey of DACA-eligible youth found that of those who had yet applied, 43% reported that they could not afford the application fees.⁷ Although fee exemptions are available, they are given on extremely strict and specific circumstances, some of which include homelessness, exorbitant medical debt, and a reported income of less than 150% of the federal poverty line.⁸ Certain applicants with limited resources seek out private loans and although these loans enable them to apply for relief, they can develop into unbearable financial burdens in the long-term. No individual eligible for DACA should feel pressured to put off their application submission due to financial barriers.

- **Reducing the backlog on DACA applications and improving operational processes to ensure improved and reasonable adjudication times.** When submitting an application on a matter as important as DACA, applicants should be confident in the ability of USCIS to process their submissions in a fair and timely manner. Various community-based organizations have cited a range of wait times for DACA applications, some citing as much as 11.5 months.⁹ Applicants, particularly those seeking renewal, should not feel that their safety and livelihood are being compromised due to a lag in processing. Stories from media and our Affiliates tell the experiences of individuals being furloughed or fired from their job due to unexpected delays in the processing of their renewal applications.¹⁰ Upon submitting their request, DACA applicants should receive an estimated timeline so they can prepare accordingly.

For a long time, recipients of DACA have been and continue to be integrated into our society. When President Biden took office, his administration made a commitment preserve and fortify protections for this community. This proposed rule presents an opportunity to do just that. For that reason, UnidosUS recommends that the Biden-Harris administration and DHS act and implement the recommendations offered in this comment to create a better future for immigrant youth.

Should you have any questions or need any further information, please contact Carlos Guevara at cguevara@unidosus.org.

Sincerely,



Eric Rodriguez
Senior Vice President
UnidosUS

¹ Patler, Caitlin; Cabrera, Jorge A. "From Undocumented to DACAmented: Impacts of the Deferred Action for Childhood Arrivals (DACA) Program, Three Years Following its Announcement." Institute for Research and Employment at the University of California, Los Angeles. June 2015. <https://escholarship.org/uc/item/3060d4z3> (accessed 18 November 2021).

² Wong, Tom. "2017 National DACA Study". Center for American Progress. 2018. https://cdn.americanprogress.org/content/uploads/2017/11/02125251/2017_DACA_study_economic_report_updated.pdf. (accessed 18 November 2021).

³ UnidosUS. Statement for the record on hearing titled: "The Essential Role of Immigrant Workers in America." Submitted to the U.S. Senate Committee on the Judiciary, Subcommittee on Immigration, Citizenship, and Border Safety. 12 May 2021. <https://www.unidosus.org/publications/2159-the-essential-role-of-immigrant-workers-in-america/> (accessed 18 November 2021).

⁴ Svajlenka, Nicole Prchal. "A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response." Center for American Progress. 6 April 2020. <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-dacarecipients-frontlines-coronavirus-response/> (accessed 18 November 2021).

⁵ Griffith, Stephanie. "They Can Help Fight Coronavirus. Trumps Wants to Deport Them." Washington Monthly. 24 March 2020. <https://washingtonmonthly.com/2020/03/24/they-can-help-fight-coronavirus-trump-wants-to-deport-them/> (accessed 18 November 2021).

NowThis News. "How Ending DACA Could Intensify U.S. Teacher Shortages | NowThis." Youtube. 15 March 2020. <https://www.youtube.com/watch?v=ySrSKfCt4> (accessed 18 November 2021).

⁶ Svajlenka, Nicole Prchal. "A Demographic Profile of DACA Recipients."

⁷ Patler, Caitlin; Cabrera, Jorge A. "From Undocumented to DACAdmented."

⁸ U.S. Citizenship and Immigration Services. "Guidance for an Exemption from the Fee for a Form I-765 filed with a Request for Consideration of Deferred Action for Childhood Arrivals." U.S. Citizenship and Immigration Services <https://www.uscis.gov/forms/filing-fees/guidance-for-an-exemption-from-the-fee-for-a-form-i-765-filed-with-a-request-for-consideration-of> (accessed on 18 November 2021).

⁹ Wong, Tom K; et al. "New DHS Policy Threatens to Undo Gains Made by DACA Recipients." Center for American Progress. <https://www.americanprogress.org/article/new-dhs-policy-threatens-undo-gains-made-daca-recipients/> (accessed on 18 November 2021).

¹⁰ Chavez, Juan Carlos. "Legal status on hold for many 'dreamers' with massive immigration backlog." Tampa Bay Times. 2 August 2021. <https://www.tampabay.com/news/nation-world/2021/08/02/legal-status-on-hold-for-many-dreamers-with-massive-immigration-backlog/> (accessed on 18 November 2021).