



November 29, 2021

Submitted via www.regulations.gov
DHS Docket No. 2021-0006; RIN 1615-AC64

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comments on Department of Homeland Security, U.S. Citizenship and Immigration Services, Notice of Proposed Rulemaking, Deferred Action for Childhood Arrivals; CIS No. 2691-21, DHS Docket No. 2021-0006, RIN 1615-AC64

Dear Chief Deshommes,

The Center for American Progress (CAP) is an independent nonpartisan policy institute that is dedicated to improving the lives of all Americans through bold, progressive ideas, as well as strong leadership and concerted action. Since the inception of the Deferred Action for Childhood Arrivals (DACA) in 2012, the Center for American Progress has detailed the profound positive impact that the program has had on the lives of recipients, their families and communities, and the national economy. CAP published one of the first program analyses of DACA in late 2013, and since then, CAP alongside the U.S. Immigration Policy Center at the University of California, San Diego; United We Dream; and the National Immigration Law Center have conducted the largest nationwide annual survey of DACA recipients, revealing critical data about the extensive benefits of the program to recipients and their local communities and economies, but also the serious fears of return and potential harms that recipients and their families could face if they were to lose DACA's afforded protections and be deported.¹

CAP strongly supports the intent to fortify and protect the DACA program through this rulemaking² process. This is a necessary and first step, as only congressional action can provide a pathway to citizenship and permanent protections that DACA recipients need and deserve. In doing so, we urge the Department of Homeland Security to not sever the grant

¹ Tom K. Wong, Ignacia Rodriguez Kmec, Juliana Macedo do Nascimento, Sanaa Abrar, Tom Jawetz, Philip E. Wolgin and Claudia Flores, "New DHS Policy Threatens to Undo Gains Made by DACA Recipients" (Washington, Center for American Progress, 2020), available at <https://americanprogress.org/article/new-dhs-policy-threatens-undo-gains-made-daca-recipients/>

² U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, Deferred Action for Childhood Arrivals. 86 Fed. Reg. 53736 (2021) available at <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>

of deferred action from an accompanying application for work authorization as part of the DACA process. As CAP has previously detailed, large shares of DACA recipients report³ that the employment authorization that comes with DACA has allowed them to obtain jobs that better match their talents, to pursue additional education and training opportunities, and access benefits that help them more fully integrate into society and achieve financial independence⁴ for themselves and their families. Ensuring that DACA continues to be the powerhouse program it has been for the past 9 years is paramount.

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The Center for American Progress thanks the Department of Homeland Security and U.S. Citizenship and Immigration Services for their consideration of this comment. Please contact Claudia Flores at cflores@americanprogress.org to provide any additional information you may need.

/s/

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CAP Strongly Supports Effort to Fortify and Preserve DACA Policy

Since 2012, when then Department of Homeland Security (DHS) Secretary Janet Napolitano issued a memorandum⁵ regarding the exercise of prosecutorial discretion for individuals who arrived in the United States as children, the Center for American Progress has extensively researched and published⁶ the DACA policy's positive impact on the lives of eligible young immigrants. DACA afforded eligible individuals temporary protection from deportation and the ability to work lawfully, allowing these young immigrants to

³ Tom K. Wong, Ignacia Rodriguez Kmec, Juliana Macedo do Nascimento, Sanaa Abrar, Tom Jawetz, Philip E. Wolgin and Claudia Flores, "New DHS Policy Threatens to Undo Gains Made by DACA Recipients" (Washington, Center for American Progress, 2020), available at <https://americanprogress.org/article/new-dhs-policy-threatens-undo-gains-made-daca-recipients/>

⁴ Claudia Flores and Nicole Prchal Svajlenka, "Why DACA Matters" (Washington, Center for American Progress, 2021), available at <https://www.americanprogress.org/article/why-daca-matters/>

⁵ Janet Napolitano, U.S. Department of Homeland Security, "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children" (2012) available at <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>

⁶ CAP Immigration Team, "Resources on Deferred Action for Childhood Arrivals" (Washington, Center for American Progress, 2019), available at <https://americanprogress.org/article/daca/>

contribute more fully to their families, communities, and the U.S. society. Under DACA, beneficiaries have seen increased educational attainment, higher social mobility, and access to better paying jobs that matched their talents and training. Prior to DACA, many young immigrants did not have much of a choice other than to enter the informal labor market – often encountering low-wages and poor workplace conditions. Work authorization thus has been instrumental in ensuring that DACA recipients can participate formally in the U.S. labor force and are able to invest in their families and communities. In a 2020 national survey⁷ of DACA recipients, most surveyed recipients reported that after receiving DACA, they were able to achieve financial independence and a sense of stability for themselves and their families:

- 83.7 percent reporting that increased earnings “helped [them] become financially independent.”
- 83.5 percent said that increased earnings have “helped [their] famil[ies] financially.”
- and among respondents who stated that they were enrolled in school, 91.8 percent said that DACA allowed them to pursue “educational opportunities that [they] previously could not.”

While DACA has been a significant, positive force for change in DACA recipients’ lives, the policy has also yielded significant economic and social benefits for communities across the United States. CAP estimates⁸ that DACA recipients and their households pay \$9.4 billion in federal, state, and local taxes annually. They also hold an estimated \$25.3 billion in spending power; own 68,000 homes, making \$760 million in mortgage payments and \$2.5 billion in rental payments each year. While this proposed rule does not expand eligibility nor change the status of current DACA recipients, it fortifies the DACA policy and intends to preserve their ability to stay and work in the United States, at a time when hundreds of thousands of DACA-eligible immigrants face an uncertain future.

- **DHS’ Proposed Rule Would Protect America’s Essential Workforce Amid the Pandemic**

To support the country’s economic recovery from the COVID-19 pandemic, it is, undoubtedly, in our nation’s best interest to support the workforce which sustains the country’s ongoing pandemic response and facilitates a return to normal economic activity. For the past year and a half, 343,000 DACA recipients—more than three-quarters of those in the workforce—have served in jobs deemed by the federal government as “essential” to the proper functioning of the nation and our economy.⁹ They are farmworkers, meatpackers,

⁷ Tom K. Wong, Ignacia Rodriguez Kmec, Juliana Macedo do Nascimento, Sanaa Abrar, Tom Jawetz, Philip E. Wolgin and Claudia Flores, “New DHS Policy Threatens to Undo Gains Made by DACA Recipients” (Washington, Center for American Progress, 2020), available at <https://americanprogress.org/article/new-dhs-policy-threatens-undo-gains-made-daca-recipients/>

⁸ Nicole Prchal Svajlenka and Trinh Truong, “The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition” (Washington, Center for American Progress, 2021), available at <https://americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>

⁹ Ibid.

nurses, doctors, teachers, home health aides, grocery store clerks, and many others who put not just their lives and safety, but their families at risk as well to provide the essential services that Americans rely on every day.

This proposed rule would fortify DACA, a policy directive that has offered a mechanism through which young immigrants with strong and longtime ties to the United States could integrate more fully into American communities and into our workforce. The Center for American Progress finds that 34,000 healthcare workers in the United States are DACA recipients, and an additional 11,000 individuals are working in healthcare settings in custodial, food service, and administration positions. And when it comes to the nation's food supply, an estimated 100,000 DACA recipients are working to get crops from our fields into food on our tables. With ongoing legal threats to DACA and the looming uncertainty facing Dreamers across the country, potentially losing these additional workers would compound an already impending nationwide staff shortage. In healthcare settings alone, previous data¹⁰ from the Association of American Medical Colleges (AAMC) predicted that the United States could see an estimated shortage of between 37,800 and 124,000 physicians by 2034. Meanwhile, the American Nurses Association (ANA) has explicitly advocated¹¹ for the inclusion of DACA recipients into the workforce, something that “would also help increase diversity in the workforce and ease nursing shortages.” By fortifying and preserving DACA, this rule would ensure that its beneficiaries are able to access the program, and that the broader society continues to benefit from the vital contributions made by DACA recipients, particularly those on the frontlines of the nation's pandemic response.

We Support the Proposed Rule Overall, but Express Concern Over Proposed Changes to Work Authorization as Part of the DACA Application Process

- **Work Authorization is a Critical Aspect of DACA's Continued Success and a Lifeline for DACA Recipients**

While DACA offers protection from deportation, it also allows recipients to access renewable work authorization as part of its application process, which enables recipients to enter the formal economy and access jobs and opportunities that better match their talents and training. Today, DACA recipients are employed in a wide range of occupations across the country. CAP estimates¹² that at least 20,000 DACA recipients work in education, and more than three-quarters of DACA recipients in the workforce – an estimated 343,000 – work in occupations that have been at the forefront of the nation's pandemic response,

¹⁰ Association of American Medical Colleges, “AAMC Report Reinforces Mounting Physician Shortage”, Press Release, June 11, 2021, available at <https://www.aamc.org/news-insights/press-releases/aamc-report-reinforces-mounting-physician-shortage>

¹¹ American Nurses Association, “American Nurses Association Takes Action on Critical Public Health Issues”, News Release, June 22, 2019, available at <https://www.nursingworld.org/news/news-releases/2019-news-releases/american-nurses-association-takes-action-on-critical-public-health-issues/>

¹² Nicole Prchal Svajlenka and Trinh Truong, “The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition” (Washington, Center for American Progress, 2021), available at <https://americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/>

ranging from health care, education, and food services. The proposed rule, in its most current regulatory language, would make applying for an employment authorization document optional, something that would potentially decouple work authorization from deferred action, threatening some DACA recipients' ability to work. Combined with the existing limitations that DACA recipients already face when accessing federal and other benefits, this severance could increase the vulnerability and needs of individual recipients and their families. Nationwide, CAP estimates that 300,000 U.S. born children have a parent protected under DACA and 1.3 million individuals live in a household with a DACA recipient. For these individuals and their families, a work permit grants them the ability to legally sustain their economic livelihoods and is a source of stability. It also allows them to contribute to our economy more fully. Adding additional burdens to obtaining a work permit would be a significant loss for recipients and our overall economic growth and recovery.

- **Creating new, potential bars to formal employment threatens to undo DACA's economic and social benefits**

Bifurcating deferred action and employment authorization, as proposed, will blunt DACA's effectiveness for recipients and the communities that benefit from their economic contributions. The continual legal threats to DACA have already created much confusion¹³ around eligible individuals, resulting in a stark difference between those eligible vs those who have been able to participate in the program. The recently proposed changes to the DACA application could potentially create additional administrative burdens for young applicants, and those beneficiaries of the program who may unknowingly opt out – e.g., due to financial necessity, confusion around application process, by not paying the additional fee required for a work authorization application – or erroneously assume that a grant of deferred action is equivalent to the ability to work lawfully. These application changes, while seemingly technical, could also add unnecessary burdens to the agency tasked with adjudicating applications, something that could only exacerbate existing processing delays¹⁴ and backlogs facing DACA recipients. They can also result in additional legal fees and needs when submitting a DACA application, which can further compound the stress and uncertainty that beneficiaries and their families are already experiencing because of the ongoing threats to the program and the state of limbo that results from a lack of a legal status.

- **Limitations on Work Authorizations Will Burden Those Most Vulnerable**

The negative ramifications of work limitations can be particularly acute for populations that are disproportionately harmed by the impacts of longstanding systemic inequalities,

¹³ Joseph Tanfani, "Must Reads: Confusion, Calculation and Fear Keeping DACA Recipients from Renewing their Status While They Can", *Los Angeles Times*, May 11, 2018, available at <https://www.latimes.com/politics/la-na-pol-daca-renewals-20180510-story.html>

¹⁴ Claire Hansen, "Backlogs, Long Waits Throw DACA Recipients' Status, Jobs and Futures into Jeopardy", *U.S. News & World Report*, July 19, 2021, available at <https://www.usnews.com/news/national-news/articles/2021-07-19/backlogs-long-waits-throw-daca-recipients-status-jobs-and-futures-into-jeopardy>

including racial minorities, people with disabilities¹⁵, and other marginalized communities that often face economic and health insecurity. For instance, research shows that LGBTQ people, especially those who are Black, transgender, and women, are more likely to live in poverty¹⁶, be food insecure, and experience higher unemployment and homelessness than non-LGBTQ people. The Williams Institute at UCLA School of Law estimates¹⁷ that there are 81,000 LGBT Dreamers in the United States, including 39,000 who have received protection under the Deferred Action for Childhood Arrivals (DACA) program. LGBTQ DACA recipients, like all DACA recipients, have made enormous gains under the program. According to CAP's research, DACA has allowed recipients who identify as LGBTQ to live free from the daily fear of deportation and improve their economic security and educational attainment.¹⁸ By making the employment authorization form optional for applicants, this proposed rule creates an alternative future in which employment authorization could be distinct from deferred action. This proposed decoupling endangers the economic wellbeing of DACA recipients and the communities that have come to rely on them, particularly for DACA recipients who experience limited economic opportunities not only because of their immigration status, but also because of their race, disability, gender identity, or sexuality. As such, CAP strongly encourages DHS to strengthen the proposed rule by ensuring that both deferred action and work authorization remain connected in this policy. Doing so, would promote the equal social and economic status of all DACA recipients, by expanding their ability to access employment opportunities that enable quality of life.

Conclusion

In summary, the Center for American Progress strongly supports efforts to strengthen and fortify the Deferred Action for Childhood Arrivals (DACA) and as noted above, asks the Department of Homeland Security and U.S. Citizenship and Immigration Services to maintain employment authorization benefits as part of the DACA application process. This would protect the strong economic and social gains that result from DACA for recipients and the country more widely, while ensuring its beneficiaries are able to access the program without additional, unnecessary administrative burdens.

¹⁵ Azza Altiraifi, "Advancing Economic Security for People With Disabilities" (Washington, Center for American Progress, 2019), available at <https://www.americanprogress.org/article/advancing-economic-security-people-disabilities/>

¹⁶ Movement Advancement Project and Center for American Progress, "Paying an Unfair Price: The Financial Penalty for LGBT People of Color in America" (2015), available at <https://www.lgbtmap.org/unfair-price-lgbt-people-of-color>

¹⁷ Kerith J. Conron, Winston Luhur and Taylor N.T. Brown, "LGBT Dreamers and Deferred Action for Childhood Arrivals (DACA)" (Los Angeles: The Williams Institute, UCLA, 2020), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/DACA-and-LGBT-Dreamers-Jun-2020.pdf>

¹⁸ Sharita Gruberg, "What Ending DACA Means for LGBTQ Dreamers" (Washington, Center for American Progress, 2017), available at <https://americanprogress.org/article/ending-daca-means-lgbtq-dreamers/>