

Congress of the United States
Washington, DC 20515

November 29, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20016

Dear Secretary Mayorkas:

As Members of the United States Congress, we write to provide comments to the U.S. Department of Homeland Security's (DHS) notice of proposed rulemaking, RIN 165-AC64, on the Deferred Action for Childhood Arrivals policy (DACA). While we appreciate DHS' efforts to preserve and fortify DACA, which has provided protection to over 825,000 people since 2012, we urge you to expand the threshold criteria to include young people who have grown up with legal status in the United States as dependents of nonimmigrant visa holders.

Like those who have been protected by DACA since 2012, many of these individuals—often referred to as “Documented Dreamers”—were raised in this country, completed their education in the American school system, and graduated with degrees from American institutions of higher education. As STEM graduates, high-performing students, and essential workers, they contribute significantly to our nation. However, due to the decades-long backlogs in the immigrant visa system, many of these individuals will turn 21, and “age out” of eligibility for their temporary visa status and for permanent resident status before they can complete the process. Others, such as the dependents of E-1 and E-2 nonimmigrants, have no path to permanent residence. When these individuals turn 21, if they are unable to change to a temporary status independent of their parent, they must make the untenable choice of remaining here with their families without status or returning to their country of birth alone.

To preserve family unity, we urge you to update the DACA threshold criteria to include individuals who had lawful status on June 15, 2012. One of the threshold criteria in the proposed rule is that DACA applicants must have “had no lawful immigration status on June 15, 2012, as well as at the time of filing of the request for DACA.”¹ We ask that DHS to update these criteria to allow individuals who had lawful status in the United States on June 15, 2012, but subsequently lost such status by the time of their request, to qualify for DACA. This update could be accomplished by changing the above criterium to read: “had no lawful status at the time of filing of the request for DACA.”

This change would be consistent with the original June 15, 2012 memorandum, “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as

¹ Deferred Action for Childhood Arrivals, Notice of Proposed Rulemaking, 86 Fed. Reg. 53736 (September 28, 2021), <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>.

Children,” issued by then-Secretary Napolitano, which only requires the requestor to be “present in the United States” on such date, regardless of their status on that date.² As the memo explains:

“Our Nation’s immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language.”³

There is precedent for providing deferred action to those with lawful status: in 2009, DHS created a deferred action program for widows and widowers of U.S. citizens who had died before their spouses received permanent residence. Like DACA, this program was created through a policy memo,⁴ but unlike DACA, the eventual criteria did not include a requirement that the requestor be without lawful status.⁵

We also encourage you to consider adopting additional changes to DACA eligibility requirements that would enable more Documented Dreamers to utilize the protection this program offers if the unlawful status requirement were revoked. Specifically, we urge you to consider removing the threshold criteria that require requestors to have continuously resided in the United States from June 15, 2007 to the time of filing of the request. We also support adjusting the dates in the threshold criteria to provide relief for individuals who arrived in the United States after 2007. These adjustments would help a greater number of Documented Dreamers access relief and avoid accruing unlawful status.

Over 200,000 children in the United States are currently at risk of aging out of the system.⁶ If DACA were updated as we have suggested, Documented Dreamers who were present in the United States on June 15, 2012 could be given the chance to remain and continue to contribute to our nation after they reach age 21. DACA was designed to protect children and young adults who have grown up in the United States from being forced to return to countries they hardly know. We urge you to fulfill the promise of this policy by extending DACA eligibility to Documented Dreamers.

We appreciate the opportunity to comment on this important matter.

Sincerely,

² Memorandum from Janet Napolitano, Secretary of Homeland Security, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

³ Ibid.

⁴ Memorandum from Donald Neufeeld, Acting Associate Director of USCIS Office of Domestic Operations, *Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children*, <https://www.uscis.gov/sites/default/files/document/memos/surviving-spouses-deferred-action-guidance.pdf>.

⁵ I-360, Petition for Amerasian, Widow(er), or Special Immigrant, U.S. Citizenship and Immigration Services, <https://www.uscis.gov/i-360>.

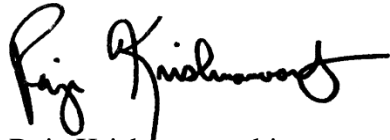
⁶ Documented Dreamers: An Overview, American Immigration Council, August, 2021, https://www.americanimmigrationcouncil.org/sites/default/files/research/documented_dreamers_an_overview.pdf.



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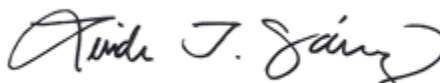
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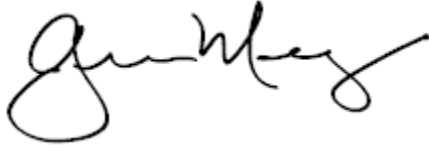
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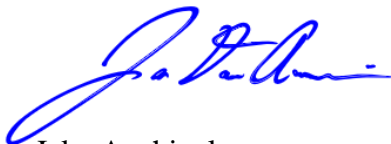
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