

July 28, 2021

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

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

Acting Director Tracy Renaud
U.S. Citizenship and Immigration Services
111 Massachusetts Avenue NW
Washington, D.C. 20001

RECEIVED

By ESEC at 2:29 pm, Sep 01, 2021

RE: Automatic Extension of DACA Employment Authorization Documents

The Deferred Action for Childhood Arrivals (DACA) Program was established by President Obama in 2012 to provide young, undocumented immigrants with work authority and protection from deportation.

Due to the Trump administration's extensive defunding of immigration services, the United States Citizenship and Immigration Services (USCIS) has not had the capacity to process DACA renewals in a timely manner. Although DACA recipients have applied well in advance of their expiration dates, many DACA recipients' work permits expired before their renewal was granted. This has impacted DACA recipients like [REDACTED] [in California](#) and [many others across the country](#). As a result, these individuals have lost jobs, health insurance, and critical resources that support their families.

While the Department of Homeland Security (DHS) works to increase staffing at USCIS, DACA recipients must be granted an automatic extension of their work authorization until their renewal applications are reviewed and processed. This will prevent these individuals from losing their deferred action, ability to work, and subsequently their livelihoods and health insurance. Automatic extension of work authorization for DACA renewal applicants is consistent with [the memorandum](#) issued by the White House on January 20, 2021, authorizing the Secretary of Homeland Security, in consultation with the Attorney General, to "take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA." The recent decision in [Texas v. United States](#) does *not* prohibit DHS from taking this action.

USCIS currently extends work authorizations automatically for recipients in other categories and should extend this benefit to DACA recipients. On November 18, 2016, DHS published its [final rule](#), *Retention of EB-1, EB-2 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers*. The rule automatically extends the employment authorization for 180 days from the expiration date for existing EADs. The categories that are eligible for the automatic 180-extension are below. **Note that DACA is excluded.**

- (a)(3) Refugee;

- (a)(5) Asylee;
- (a)(7) N-8 or N-9;
- (a)(8) Citizen of Micronesia, Marshall Islands, or Palau;
- (a)(10) Withholding of Deportation or Removal Granted;
- (a)(12) Temporary Protected Status (TPS) Granted;
- (c)(8) Asylum Application Pending;
- (c)(9) Pending Adjustment of Status under section 245 of the Immigration and Nationality Act;
- (c)(10) Suspension of Deportation Applicants (filed before April 1, 1997), Cancellation of Removal Applicants, and Special Rule Cancellation of Removal Applicants under NACARA;
- (c)(16) Creation of record (Adjustment based on continuous residence since January 1, 1972);
- (c)(19) Pending initial application for TPS where USCIS determines applicant is prima facie eligible for TPS and can receive an EAD as a “temporary treatment benefit”;
- (c)(20) Section 210 Legalization (pending Form I-700);
- (c)(22) Section 245A Legalization (pending Form I-687);
- (c)(24) LIFE Legalization; and
- (c)(31) VAWA Self-Petitioners.

We urge DHS to extend this rule to include the DACA Program to ensure DACA recipients will be protected, instead of their renewals being processed in a manner that leaves our community members vulnerable to loss of employment and potential deportation.

Sincerely,

ACLU People Power Fairfax
Advocating Opportunity
Ahri Center
Alabama Coalition for Immigrant Justice

Alianza Nacional de Campesinas
Alma West LLC
America's Voice
American Federation of Teachers
American Friends Service Committee
Arkansas United
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice | AAJC
Bend the Arc: Jewish Action
Boston Area Rape Crisis Center
California Immigrant Policy Center
Casa Ruby
Catholic Charities Community Services, Immigrant and Refugee Services, NY
Catholic Legal Immigration Network, Inc.
Center for American Progress
Center for Law and Social Policy (CLASP)
Center for Safety & Change
Central American Resource Center of Northern CA - CARECEN SF
Centro de los Derechos del Migrante
Children's Law Center of Massachusetts
Christian Reformed Church Office of Social Justice
Church World Service
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition for Immigrant Freedom
Colorado Immigrant Rights Coalition
Comunidades Unidas
Congregation Action Network
Connecticut Shoreline Indivisible
Ct Institute for Refugees and Immigrants
Deportation Defense Clinic at Hofstra Law School
Disciples Refugee & Immigration Ministries
Edu-Futuro
Emerald Isle Immigration Center
Empowering Pacific Islander Communities (EPIC)
Erie County Bar Association Volunteer Lawyers Project
Faith in Action
Faith In Florida
Faith in Indiana
Faith in Public Life
Families Belong Together
Franciscan Action Network
Freedom Network USA
Global Cleveland
Haitian Bridge Alliance

HANA Center
Harvard Immigration and Refugee Clinical Program
Immigrant Legal Advocacy Project
Immigrant Welcome Center
Immigrants Rising
Immigration Hub
Immigration Legal Assistance Program, Ascentria Care Alliance
Immigration Support Services Network
Inspired Events
International Refugee Assistance Project (IRAP)
International Rescue Committee
Jose Samano Catalan
Just Neighbors
Justice Action Center
Leadership Conference of Women Religious
League of United Latin American Citizens (LULAC)
Legal Aid Justice Center
Maine Business Immigration Coalition
Mainers for Accountable Leadership
Make the Road Nevada
Make The Road NY
Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)
Michigan United
Minkwon Center
National Korean American Service & Education Consortium (NAKASEC)
National Asian Pacific American Women's Forum
National Council of Asian Pacific Americans
National Domestic Workers Alliance
National Education Association
National Employment Law Project
National Immigration Project of the National Lawyers Guild (NIPNLG)
National Partnership for New Americans (NPNA)
Nebraska Appleseed
Neighbors Link
New Immigrant Community Empowerment (NICE)
New York County Defender Services
New York Immigration Coalition
New York Law School Asylum Clinic
New York State Youth Leadership Council
Northeastern University Justice Clinic
OCA - Asian Pacific American Advocates
OneAmerica
Presidents' Alliance
Safe Passage Project

Service Employees International Union (SEIU)
Services, Immigrant Rights & Education Network (SIREN)
Sisters of St. Francis of Philadelphia
Sisters of Mercy of the Americas Justice Team
Sisters of St. Francis of Philadelphia
Social Eco Education-LA (SEE-LA)
SOMOSgi
South Asian Public Health Association (SAPHA)
Southern Poverty Law Center
Teach For America
Tennessee Immigrant and Refugee Rights Coalition (TIRRC)
The Door
The Human Trafficking Legal Center
The Legal Aid Society (New York)
The Resurrection Project
The UndocuBlack Network
UFW Foundation
UndocuBlack Network
Unidos MN
UnidosUS
Unitarian Universalist Refugee & Immigrant Services & Education
Unitarian Universalists for Social Justice
United We Dream Network
UnLocal
Vera Institute of Justice
Virginia Coalition for Immigrant Rights
Virginia Coalition of Latino Organizations
Voces De La Frontera
Volunteer Lawyers Project of CNY, Inc.
Wind of the Spirit Immigrant Resource Center
Woori Center
Woori Juntos



U.S. Citizenship
and Immigration
Services

October 12, 2021

Ms. Nicole Melaku
Executive Director
National Partnership for New Americans
1805 S. Ashland Avenue
Chicago, IL 60608

Dear Ms. Melaku:

Thank you for your July 28, 2021 letter to the Department of Homeland Security (DHS) and U.S. Citizenship & Immigration Services (USCIS) regarding automatic extension of Deferred Action for Childhood Arrivals (DACA) employment authorization documents (EADs). Secretary Mayorkas asked that I respond on his behalf. I apologize for the delay in responding.

Consistent with President Biden's January 20, 2021, Presidential Memorandum, DHS is actively engaged in various efforts to preserve and strengthen DACA.¹ On September 28, 2021, DHS published a Notice of Proposed Rulemaking ("NPRM") that would preserve and fortify the DACA policy.² The proposed rule addresses the DACA policy as announced in the 2012 Napolitano Memorandum and based on longstanding USCIS practice. The NPRM allows for a 60-day public comment period that closes on November 29, 2021. DHS welcomes comments on the proposed rule, which may be submitted through [Regulations.gov](https://www.regulations.gov) under docket number DHS-021-0006. Following the completion of the public comment period, DHS will review and carefully consider all properly submitted comments before issuing a final rule.

In the meantime, DHS is complying with a July 16, 2021 order issued by the U.S. District Court for the Southern District of Texas, which held that the 2012 DACA memorandum is contrary to both the Administrative Procedure Act and the Immigration and Nationality Act and vacated the 2012 memorandum in its entirety.³ I was deeply disappointed by the Court's ruling and concerned about its impact on families across the country. The Court, however, temporarily stayed its order regarding individuals who obtained DACA on or before July 16, 2021. Under the Court's order, such individuals may continue to receive deferred action under the DACA policy, and DHS may continue to adjudicate DACA renewal requests and accompanying

¹ See Presidential Memorandum, *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)*, Jan. 20, 2021, available online at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.

² See NPRM, *Deferred Action for Childhood Arrivals*, Sept. 28, 2021, available online at <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>.

³ The Court also remanded the 2012 DACA memorandum to DHS for further consideration and issued a permanent injunction prohibiting the government's continued administration of DACA and the reimplementing of DACA without compliance with the APA.

employment authorization applications from individuals previously granted deferred action under that policy while DOJ appeals the Court's decision.

Consistent with the ruling, DHS will continue processing DACA renewal requests and related employment authorization applications. DHS is committed to minimizing processing times for DACA renewal requests, with a goal of adjudicating requests within 120 days. As of August 31, the median processing time for DACA renewals, including those issued Requests for Evidence or those filed later than the recommended timeframe, is 1.8 months, and DACA-related EAD applications are generally adjudicated concurrently with DACA renewal requests.

USCIS has taken several steps to ensure timely adjudication of DACA renewal requests. These steps include allowing for reuse of biometrics where available and working to safely maximize biometrics appointment capacity at Application Support Centers (ASCs) for those who must visit an ASC for biometrics collection. As noted in the form instructions and DACA FAQs, USCIS strongly encourages requestors to file their renewal requests within the 120-150-day filing period to minimize the possibility their current period of DACA will expire before they receive a decision on their renewal request. For these reasons, we do not believe an automatic extension for EADs is necessary at this time.

Thank you again for your letter and interest in this important issue. I appreciate all that you and your partners are doing to educate the community about DACA policies and procedures and to preserve and fortify DACA. Please share this response with the cosigners listed in your organization's letter. Should you require any additional assistance, please have your staff contact the USCIS Public Engagement Division at public.engagement@uscis.dhs.gov.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director