

December 21, 2020

President-Elect Joseph R. Biden  
Biden-Harris Transition  
1401 Constitution Avenue N.W.  
Washington, D.C., 20230

Alejandro Mayorkas  
Secretary-Designate  
U.S. Department of Homeland Security  
Biden-Harris Transition  
1401 Constitution Avenue N.W.  
Washington, D.C., 20230

**Re: Recommendations Regarding Policy, Guidance, and FAQ Improvements for Deferred Action for Childhood Arrivals (DACA)**

Dear President Biden and Secretary Mayorkas:

We<sup>1</sup> write to you to request that your administration implement various improvements related to Deferred Action for Childhood Arrivals (DACA) across multiple federal agencies. We commend and thank you for your current commitment to restore DACA, but your administration has the opportunity not only to reverse the harmful effects of the previous administration but also build DACA back stronger than before. These recommendations represent tangible changes that can be made at various agencies impacting eligibility, employment, health care, armed forces services, and more. They are particularly critical in light of the restoration of DACA and the potential of upwards of 1.7 million young immigrants eventually obtaining DACA.<sup>2</sup> Below, we outline actions your administration can take to restore DACA to its fullest potential, including FAQs, official guidance, standard operating procedure manuals, and templates.

**I. ADJUDICATIONS AND APPLICATION PROCESSING**

- A. **Provide automatic, temporary renewal upon receipt of a DACA renewal application for six months.** Automatic renewal will prevent lapse of status for DACA applicants while U.S. Citizenship and Immigration Services (USCIS) adjudicates the request. USCIS has been forced to cut services and staff to remain open during the concurrent pandemic and USCIS budget crisis, increasing the case backlog and wait times tremendously.<sup>3</sup> Applicants also face a variety of COVID-19 barriers, including difficulty in paying filing fees, limited to no access to legal service providers, and the virus itself.

---

<sup>1</sup> The non-partisan, nonprofit [Presidents' Alliance on Higher Education and Immigration](https://www.presidentsalliance.org) brings college and university presidents and chancellors together on the immigration issues that impact higher education, our students, campuses, communities, and nation. We work to advance just immigration policies and practices at the federal, state, and campus level that are consistent with our heritage as a "nation of immigrants" and the academic values of equity and openness. The Alliance is composed of over 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 43 states, D.C., and Puerto Rico.; [TheDream.US](https://www.thedream.us) is the nation's largest college and career success program for immigrant youth, having provided more than 6,500 college scholarships to DREAMers at more than 70 partner colleges in 16 states and Washington, D.C. We believe that all young Americans, regardless of where they were born, should have the opportunity to get a college education and pursue a meaningful career that contributes to our country's social and economic prosperity.

<sup>2</sup> Deferred Action for Childhood Arrivals (DACA) Data Tools: DACA Recipients & Eligible Population, by State, Migration Policy Institute (MPI), accessed Dec. 14, 2020, <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>.

<sup>3</sup> Sarah Pierce & Doris Meissner, "USCIS Budget Implosion Owes to Far More than the Pandemic," MPI, June 2020, <https://www.migrationpolicy.org/news/uscis-severe-budget-shortfall>.

- B. Provide an optional “backdating” of deferred action grants for applicants whose DACA expires and who later apply for initial or renewal of DACA.** Optional backdating would prevent applicants from accruing unlawful presence should their grant expire due to USCIS adjudication delays or other barriers to renewal. The backdating should be optional, as some applicants may prefer not to cut their two year grant “short” by backdating the start time or have already accrued unlawful presence prior to DACA.
- C. Reallocate funds from the U.S. Department of Homeland Security (DHS) to provide application financial assistance to DACA recipients who need it and fund the use of the existing fee waivers for DACA applicants.** Unlike many other USCIS application forms, DACA recipients cannot apply for the usual I-912 fee waiver to assist with the cost of applying.<sup>4</sup> DACA recipients must meet narrower criteria than the usual fee waiver and receive the exemption *before* they submit their application, adding time to an already delayed process. Almost half of DACA recipients surveyed had to receive financial help from family or other sources to afford application fees, and 36 percent of applicants reported delaying their application in order to raise funds.<sup>5</sup> Funds should be reprogrammed and transferred from border operations and U.S. Immigration and Customs Enforcement (ICE) to DACA recipients who need financial assistance.
- D. Utilize existing biometrics in processing renewal applications rather than requiring DACA recipients to resubmit for each renewal.** There is no clear rationale for requiring applicants to travel to Application Support Centers (ASCs) to resubmit biometrics (which cannot physically change between applications) with every renewal. USCIS has successfully used existing biometrics for certain forms during ASC closures for COVID-19, again demonstrating that resubmission is not necessary.<sup>6</sup>
- E. Issue sequential instead of overlapping grant periods of DACA for renewal requests.** With sequential grants, DACA recipients receive full two-year periods of deferred action rather than one grant “eating” into the next as they overlap, creating grants of one year and 8-11 months, for example. The Obama administration piloted a program (which the Trump administration ended) making this change, which should be resumed and expanded.
- F. Establish an administrative “statute of limitations” for consideration of convictions in the DACA application process that occurred five or more years before the application date.** The criminal justice system at its best is about second chances, the ability to rehabilitate oneself, and our commitment as a nation to reintegrate those who have received their due punishment back into society. DACA-eligible youth have developed deep ties to family and community in the United States, and they deserve the chance to reenter society and contribute like anyone else.
- G. Include DACA recipients in post-conviction relief, including expunged and sealed convictions.** In the criminal justice system, an expunged conviction is removed

---

<sup>4</sup> U.S. Cit. & Immigr. Servs., U.S. Dep’t of Homeland Sec., I-821D, Consideration of Deferred Action for Childhood Arrivals, last updated Dec. 9, 2020, <https://www.uscis.gov/i-821d>; U.S. Cit. & Immigr. Servs., U.S. Dep’t of Homeland Sec., I-912, Request for Fee Waiver, last updated Oct. 1, 2020, <https://www.uscis.gov/i-912> (“You may not file Form I-912 if you are requesting consideration of Deferred Action for Childhood Arrivals (DACA). There are no fee waivers for DACA.”).

<sup>5</sup> Tom K. Wong and Carolina Valdivia, *In Their Own Words: A Nationwide Survey of Undocumented Millennials*, United We Dream 4 (May 20, 2014), available at [https://docs.wixstatic.com/ugd/bfd9f2\\_4ac79f01ab9f4247b580aeb3afd3da95.pdf](https://docs.wixstatic.com/ugd/bfd9f2_4ac79f01ab9f4247b580aeb3afd3da95.pdf).

<sup>6</sup> USCIS Announces It Will Reuse Previously Submitted Biometrics to Process Form I-765 Extension Requests, American Immigration Lawyers Association, AILA Doc. No. 20033034, March 30, 2020, <https://www.aila.org/infonet/uscis-announces-it-will-reuse-previously-submitted>.

from the system entirely. However, a person can still be found inadmissible due to an expunged conviction in the immigration system.<sup>7</sup> The definition of “conviction” for immigration purposes in the DACA adjudication context should not include an adjudication or judgment of guilt that has been dismissed, expunged, deferred, annulled, invalidated, withheld, sealed, vacated, or pardoned, an order of probation without entry of judgment, or any similar rehabilitative disposition.

## II. PAROLE

- A. **Broaden the grounds for advance parole to include any reason for travel,** similar to Temporary Protected Status (TPS). Currently, DACA recipients must request advance parole only on employment, educational, or humanitarian grounds, despite there being no such statutory or regulatory restriction of advance parole for others.<sup>8</sup>
- B. **Utilize humanitarian parole to allow deported immigrant youth to return to the United States on a case-by-case basis.** Thousands of immigrant youth have been swiftly deported with little due process and should be given the opportunity to return to the United States to fairly argue their case. Under the guise of the pandemic, the Trump administration has deported hundreds of youth with little transparency.<sup>9</sup>
- C. **Establish a new parole-in-place program that allows DACA recipients and other undocumented immigrants with U.S. citizen sponsors to apply for parole and adjust their status to lawful permanent resident (LPR).** Many DACA recipients may adjust status but do not have an admission or parole that would allow them a path to permanent legal status or citizenship.

## III. HIGHER EDUCATION

- A. **Direct the U.S. Department of Education (Ed) to restore CARES Act emergency grants and other COVID 19-related grants to DACA recipients, undocumented students, and international students in higher education.** Undocumented and international students have helped their colleges receive as much as \$132.6 million from the CARES Act bill, but these students have received no aid. That Congress allocated the money to cover these students and that Ed continues to undermine that allocation by excluding them is nonsensical and the forthcoming administration must rescind the regulation implementing this prohibition.<sup>10</sup> These recommendations would provide institutions the flexibility to give the funding to the students with the most need regardless of immigration status.
- B. **Direct Ed to promulgate guidance that classifies DACA and undocumented students as domestic students for the purposes of admissions and enrollment.** Many higher ed institutions erroneously classify DACA recipients and undocumented students as “international students” for the purposes of residency, instead of domestic students. This classification leads to significantly higher tuition rates, less financial aid opportunities, and makes higher education less attainable for many immigrant students.

---

<sup>7</sup> Emily Kendall, Do Expunged or Sealed Records Show Up For Immigration Purposes?, AllLaw, 2020, <https://www.alllaw.com/articles/nolo/us-immigration/expunged-sealed-criminal-records-show.html>.

<sup>8</sup> U.S. Cit. & Immigr. Servs., U.S. Dep’t of Homeland Sec., I-131, Application for Travel Document, last updated Dec. 9, 2020, <https://www.uscis.gov/i-131>.

<sup>9</sup> Caitlin Dickerson, “10 Years Old, Tearful and Confused After a Sudden Deportation,” N.Y. Times, May 20, 2020, <https://www.nytimes.com/2020/05/20/us/coronavirus-migrant-children-unaccompanied-minors.html>.

<sup>10</sup> Viviann Anguiano, “Undocumented Students Generated Up to \$132 Million in Relief to Colleges—But They Won’t Receive a Dime From the Stimulus,” Center for American Progress, May 5, 2020, <https://www.americanprogress.org/issues/education-postsecondary/news/2020/05/05/484505/undocumented-students-generated-132-million-relief-colleges-wont-receive-dime-stimulus/>.

We recommend that Ed promulgate guidance that directs institutions of higher education to classify these students as “domestic” for the purposes of enrollment and admissions.

- C. **Direct Ed to extend Pell Grants to DACA holders using the experimental site option.** Previously, Ed has used “experimental sites” to pilot expansions of Pell Grant eligibility to those who are otherwise income-eligible, like those who already have a bachelor’s degree or want to attend a short-term program.<sup>11</sup> Ed should consider using this option to open Pell Grants to DACA recipients. Such an expansion would be in line with the goals of the Pell Grant (expanding higher education to those who cannot afford it), the DACA program (education as part of the DACA eligibility requirements as well as the overall promotion of the social integration of certain undocumented youth).<sup>12</sup>

#### IV. EMPLOYMENT

- A. **Modify Executive Order 11935 to expand civil service jobs to all work authorized immigrants, including DACA recipients.** Currently, certain agencies and departments are prohibited from hiring individuals with deferred action.<sup>13</sup> Your administration can rescind or modify the order and instruct administrative agencies like the Office of Personnel and Management (OPM) to promulgate regulations to the effect.
- B. **Submit a budget request to rescind all appropriations restrictions on the hiring of noncitizens within the federal government, aside from where prohibited by existing statute.** Currently, the Consolidated Appropriations Act of 2014 and subsequent appropriations legislation prohibit the use of funds to employ noncitizens, even those with work permits.<sup>14</sup> Your administration should include language in the next budget request to authorize the use of funds for any work authorized immigrant, aside where prohibited by other existing statutes.
- C. **Open U.S. Department of Defense (DOD) general enlistment to DACA recipients.** There are DACA holders that want to put their expertise and U.S. education to use in the military that are currently unable to do so. The Military Accessions Vital to National Interest (MAVNI) program was a pilot program that allowed certain non-citizens temporarily legally present in the United States with needed skills to join the military and later apply for citizenship.<sup>15</sup> The MAVNI program was narrow in scope only to those with certain skills, but your administration should open DOD enlistment and naturalization programs to *all* otherwise qualified noncitizens who would like to enlist.

---

<sup>11</sup> U.S. Dept. of Labor, Pell Grant Experiments with the Department of Education, accessed Dec. 14, 2020, [https://ies.ed.gov/ncee/projects/evaluation/pathways\\_pell.asp](https://ies.ed.gov/ncee/projects/evaluation/pathways_pell.asp).

<sup>12</sup> Memorandum from Janet Napolitano, Secretary, U.S. Department of Homeland Security, to David V. Aguilar Acting Commissioner, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, John Morton, Director, U.S. Immigration and Customs Enforcement on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), available at <https://www.dhs.gov/sites/default/files/publications/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

<sup>13</sup> U.S. Office of Personnel and Management, Frequently Asked Questions: Employment, accessed Dec. 14, 2020, <https://www.opm.gov/FAQs/QA.aspx?fid=de14aff4-4f77-4e17-afaa-fa109430fc7b&pid=acfb91ff-c4aa-4b34-b159-7d40c6b45c15&result=1>.

<sup>14</sup> Consolidated Appropriations Act, 2014, H.R. 3547, 113th Cong., available at <https://www.congress.gov/bill/113th-congress/house-bill/3547>.

<sup>15</sup> U.S. Dep’t of Homeland Sec., What is MAVNI? Information for Designated School Officials, accessed Dec. 21, 2020, <https://studyinthestates.dhs.gov/schools/additional-resources/what-is-mavni-information-for-designated-school-officials>.

## V. HEALTHCARE

- A. **Direct the U.S. Department of Health and Human Services (HHS) to issue a regulation restoring access to the Affordable Care Act (ACA) for DACA recipients, particularly in light of COVID-19.** Access to COVID-19 testing and treatment for DACA recipients and their U.S. citizen children is absolutely critical during this pandemic, particularly for the 202,500 DACA recipients employed as healthcare practitioners and supporting occupations on the front lines of COVID-19.<sup>16</sup>

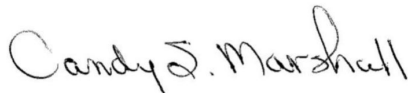
## VI. CONCLUSION

We again thank you for your commitment to restoring DACA thus far. We strongly encourage you to continue to honor our country's promise of full integration and support of DACA recipients through the above improvements to the program overall. Thank you for your consideration of these recommendations. If you have any questions, please contact Jose Magaña-Salgado at (480) 678-0040 or at [jose@presidentsalliance.org](mailto:jose@presidentsalliance.org).

Sincerely,



Miriam Feldblum  
Executive Director  
Presidents' Alliance on Higher Education and Immigration



Candy Marshall  
President  
TheDream.US

**Cc:**  
U.S. Department of Health and Human Services  
U.S. Department of Labor  
U.S. Department of Defense  
U.S. Department of Education

---

<sup>16</sup> Nicole Prchal Svajlenka, "A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response," Center for American Progress (CAP), April 6, 2020, <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response/>; Nicole Prchal Svajlenka, "What We Know About DACA Recipients in the United States," CAP, Sept. 5, 2019, <https://www.americanprogress.org/issues/immigration/news/2019/09/05/474177/know-daca-recipients-united-states/>.