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May 17, 2021

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

Re: Docket ID USCIS-2021-0004-0001, Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input

Dear Ms. Deshommès:

We submit this comment letter in response to the request for public input from U.S. Citizenship and Immigration Services (USCIS), *Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input*, 86 FR 20398 (April 19, 2021) (Docket ID USCIS-2021-0004-0001). As an organization of higher education leaders who advocate on behalf of students, alumni, faculty, scholars, and staff at the intersection of higher education and immigration, we have identified barriers to immigration benefits and services affecting two main populations: DACA recipients and international populations in higher education. We have enumerated them below, leading with the solutions to each barrier.

The non-partisan, nonprofit Presidents' Alliance on Higher Education and Immigration 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 more than five million students in 43 states, D.C., and Puerto Rico.

I. INDIVIDUALS WITH DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA)

We commend the current administration for its commitment to restore DACA. However, USCIS has the opportunity not only to reverse the harmful effects of the previous administration but also build DACA back stronger than before. The recommendations below represent tangible changes to impact the eligibility, education, and employment prospects for current DACA recipients and those who are DACA-eligible. These changes are particularly critical in light of DACA's restoration and the upwards of 1.7 million young immigrants who may eventually obtain

DACA.¹ These recommendations seek to reduce barriers and streamline processes while recognizing the challenges faced by undocumented individuals, the overwhelming majority of whom are people of color. In a March 2021 report on the undocumented students in higher education, over 90 percent of the over 181,000 DACA-eligible students in postsecondary education were students of color as of 2019; 69.7 percent were Hispanic, 16.3 percent Asian American or Pacific Islander, 5.3 percent Black, and 1.6 percent other.²

To address barriers to our DACA and DACA-eligible students, we recommend that USCIS:

- A. Automatically extend Employment Authorization Documents (EAD).** The COVID-19 pandemic has caused significant barriers for current EAD holders, especially DACA recipients, seeking to renew. Processing delays at USCIS increase the risk of a work permit expiring before renewal is approved. As of this comment, the processing times for Form I-765 to apply for employment authorization range from three to twelve months.³ USCIS should institute automatic EAD extensions for the same duration as the previous grant for all DACA recipients whose employment authorization documents expire within either one year at the time of the policy change, or, if the national emergency ends, at least 90 days after rescission of the March 13, 2020 presidential proclamation, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, which was renewed by President Biden on February 24, 2021.⁴
- B. Automatically and temporarily renew DACA grants upon receipt of a DACA renewal application.** Similar to the barrier above, 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. Applicants also continue to face a variety of COVID-19 challenges, including difficulty in paying filing fees, limited or no access to legal service providers, and the virus itself. As of this comment, the processing times for Form I-821D to apply or renew DACA were up to 10.5 months for renewal and eight months for an initial request.⁵ In 2020, eleven percent of surveyed DACA recipients received approval for their DACA renewal over 150 days, or five

¹ 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>.

² *Undocumented Students in Higher Education: How Many Students are in U.S. Colleges and Universities, and Who Are They?*, Presidents' Alliance on Higher Education and Immigration & the New American Economy, March 2021, <https://www.higheredimmigrationportal.org/research/undocumented-students-in-higher-education-updated-march-2021/>.

³ U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., Check Case Processing Times, accessed May 5, 2021, <https://egov.uscis.gov/processing-times/> (Select "Form I-765: Application for Employment Authorization" in the form selection box).

⁴ Presidential Proclamation, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, March 13, 2020, *available at* <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>; Presidential Action, Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, February 24, 2021, *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

⁵ U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., Check Case Processing Times, accessed May 5, 2021, <https://egov.uscis.gov/processing-times/> (Select "I-821D -Consideration of Deferred Action for Childhood Arrivals" in the form selection box).

months, after submitting the application.⁶ Automatic renewal for the duration of adjudication will prevent lapse of status for DACA applicants while USCIS adjudicates the request.

C. Provide an optional “backdating” of deferred action grants for applicants whose DACA expires and who later apply for initial or renewal of DACA.

Related to the barrier of the processing delays, 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 may have already accrued unlawful presence prior to DACA.

D. Reallocate DHS funds 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.⁷ 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.⁸ Another survey asked DACA students whether they had experienced food insecurity in the previous year, with 43 percent responding in the affirmative (compared to 13 percent of young adults generally), reflecting the deeper socio-economic obstacles that DACA recipients face.⁹

E. Issue sequential instead of overlapping grant periods of DACA for renewal requests. Without sequential grants, DACA recipients may not receive a full two-year period of deferred action, as one grant “eats” 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 grant periods sequential, which should be resumed and expanded.

⁶ Lora Adams, Jose Magaña-Salgado, and Hyein Lee, *Discouraging and Denying Renewals: An Assessment on the Impact of the July 2020 DHS Memorandum on DACA*, TheDream.US and the Presidents’ Alliance on Higher Education and Immigration 5 (September 29, 2020), available at <https://www.presidentsalliance.org/new-report-new-administration-policy-will-reduce-number-of-daca-recipients-through-higher-cost-delays-and-denials/>.

⁷ 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.”).

⁸ 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_4ac79fo1ab9f4247b580aeb3afd3da95.pdf.

⁹ Jose Magaña-Salgado, Tania Wilcox, and Hyein Lee, *In Their Own Words: Higher Education, DACA, and TPS*, TheDream.US 12 (October 2018), available at <https://www.thedream.us/wp-content/uploads/2018/10/TheDream.US-In-Their-Own-Words-Report-Oct-2018-1-2.pdf>.

II. INTERNATIONAL STUDENTS, SCHOLARS, AND ALUMNI

Data released in November 2020 show that we are continuing to lose our edge in the global competition for international talent. The latest State Department and Institute of International Education (IIE) Open Doors report shows that we have just seen new international student enrollment decline for the fourth straight year, which means our pipeline of talent is at risk.¹⁰ This matters not just because international students make our classrooms more global and diverse, but also because they represent an important component of our research agenda, economic well being, and foreign policy.

International students create jobs and can help us build back better in states across the country.¹¹ For every eight international students we welcome, three U.S. jobs are created or supported.¹² According to NAFSA's latest data, they contributed \$38.7 billion and nearly 416,000 jobs to the U.S. economy.¹³ But at last count, we had lost more than 42,000 jobs and \$1.8 billion as students chose to study in other countries in the last academic year.¹⁴

International students, scholars, and alumni are key to our science and innovation agenda. Our graduate science programs in particular are dependent on the presence of international students and scholars. We need the exchange of people and ideas to ensure we have the science needed to fight the next pandemic or global threat. International students and scholars also help us build relationships with other countries, and U.S. national security and foreign policy leaders have often called them our best foreign policy asset.¹⁵

The following priorities regarding international students are needed to reaffirm long standing policies that have been threatened by the Trump administration, reverse harmful policy decisions, and restore necessary systems and processes to rebuild the welcoming higher education system we have worked so hard to maintain:

- A. Return a focus on service to USCIS's mission, policies, and practices.** By focusing on providing timely, efficient, and transparent services, USCIS can play an important role in restoring the perception of the United States as a welcoming destination for international students, scholars, and researchers. USCIS should reestablish long standing effective policies that were terminated by the prior administration (e.g., the recent deference to prior decisions in extension of status filings¹⁶).

¹⁰ Enrollment Trends, Open Doors, Institute of International Education, accessed May 5, 2021, <https://opendoorsdata.org/data/international-students/enrollment-trends/>.

¹¹ See International and Immigrant Student Enrollment Trends, Economic Contributions, and Workforce Participation by State, Higher Education Immigration Portal, accessed May 11, 2021, <https://www.higheredimmigrationportal.org/states/>.

¹² NAFSA International Student Economic Value Tool, NAFSA Association of International Educators, accessed May 5, 2021, <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Why We Need International Students, Council on Foreign Relations, August 12, 2020, available at <https://www.cfr.org/podcasts/why-we-need-international-students>; See also Arielle Mitropoulos, Loss of International Students Could Damage US Economy, Experts Say, ABC News, July 14, 2020, available at <https://abcnews.go.com/Business/loss-international-students-damage-us-economy-experts/story?id=71754388>.

¹⁶ Policy Alert, Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity, U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., April 27, 2021, <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf>.

B. Facilitate and expand the use of the Optional Practical Training (OPT) program, including:

- a. Instituting grace periods for international students with employment offers.** OPT students often find themselves racing against the clock to secure a qualifying on-the-job training experience related to the degree completed at a U.S. university or college before their permission to be in the United States expires. This makes securing practical experience in the United States needlessly difficult and discourages potential international students from pursuing a degree in the United States. To ensure that students are able to complete their full educational experience in the United States, including post-completion practical training, we recommend that DHS allow international students on OPT or a STEM OPT an extension period of up to 60 additional days to obtain employment.
- b. Issue clarifying guidance on the ability to engage in entrepreneurship and job creation (e.g. self-employment) on STEM OPT extensions.** As long as there is a valid training plan and salary, USCIS should issue clarifying guidance so that college and university advisors can recommend STEM OPT for their international students who are engaged in entrepreneurship. For example, some entrepreneurs receive adequate funding through university-based accelerator or incubator programs to provide the legally required mentorship training to qualify for STEM OPT. As such, international student advisors should be allowed to recommend STEM OPT extensions for this population of entrepreneurs.
- c. Additional flexibility for COVID-19 barriers to OPT.** In addition to the above suggestions, we recommend the following changes to address the adjudication delays and COVID-19-related barriers to a successful OPT program: (a) suspend site visits as long as there is a need to reduce the risk of COVID-19 spread and as it aligns with the recognized increase in teleworking; (b) extend filing deadlines and automatically extend work authorization without biometric requirements; (c) extend grace periods to ensure that travel back home may be completed when it is possible and safe; (d) suspend enforcement against OPT participants who may encounter longer processing times or lose their jobs due to the economic downturn by extending the authorized period of unemployment beyond 90 days; (d) accept scanned signatures on Form I-20, Certificate of Eligibility for Nonimmigrant Student Status; and (e) do not require an updated passport for extension or change of status, particularly because updated passports for some nationals can only be obtained in certain consulates, and travel is still discouraged or altogether prohibited in some states.
- d. Expand the list of academic fields eligible for additional OPT work authorization.** The current list of eligible STEM fields is too narrowly defined, and does not match the reality of existing and emergent academic fields that help our nation respond to both local and global challenges.

C. Expand premium processing expedited service. The premium processing expedited service should include change of status and work card applications, and/or allow such applications to be processed through Premium Processing with the Principal

Visa Holder's petition (e.g., H-4 and work card with H-1B).¹⁷ Adding to the current categories of premium processing would take advantage of authorization provided by Congress in late 2020, and will add much needed revenue for USCIS to engage in backlog reduction (since USCIS is a filing fee supported agency).¹⁸ USCIS used to process dependent applications as a courtesy, but that option was eliminated in 2019 because of required biometrics appointments for dependents.

D. Clarify appropriate use of Curricular Practical Training (CPT). The original goal of employment restrictions for international students was to ensure that the primary purpose was education and not non-educational related employment. Current guidance on Curricular Practical Training (CPT) does not support the diversity of academic and service learning programs on campuses today.¹⁹ We recommend clarifying that any internship or work experience that is (a) required by any course for credit; (b) required by any academic program as an integral part of established curriculum; or (c) a prerequisite to completing any degree requirements, should be approvable as CPT, including between academic terms or off campus. Language regarding a “cooperative agreement” should be eliminated or changed to remove the interpretation that all CPT must be under a written agreement between the employer and the institution. We also recommend clarifying that unpaid volunteer experiences do not require employment authorization and do not count towards CPT.

E. Issue a Regulation Rescinding Unlawful Presence Policy Regulation. USCIS has indicated that it may issue regulations rescinding longstanding policy guidance that would drastically alter the accrual of unlawful presence for F-1 and J-1 nonimmigrants and their dependents by retroactively tying accrual to the date of alleged prohibited conduct instead of when they were adjudicated as “out of status.” USCIS should rescind or refrain from publishing the regulation that establishes a detrimental unlawful presence framework and issue a regulation codifying the May 6, 2009 guidance, “Consolidation of Guidance Concerning Unlawful Presence For Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act.”²⁰

F. Withdraw or revise the H-1B wage rule. We urge DHS to be mindful of the potential unintended impact of H-1B regulations that would disadvantage early career professionals, particularly international students. We commend the administration's decision to postpone the implementation of the H-1B lottery rule, *Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions*,

¹⁷ Coalition Letter Urging USCIS to Implement Emergency Stopgap USCIS Stabilization Act, American Immigration Council, March 9, 2021, <https://www.americanimmigrationcouncil.org/research/coalition-letter-urging-uscis-implement-emergency-stopgap-uscis-stabilization-act>.

¹⁸ Stuart Anderson, Congress Greatly Expands Premium Processing For Immigration Benefits, Forbes (October 1, 2020), available at <https://www.forbes.com/sites/stuartanderson/2020/10/01/congress-greatly-expands-premium-processing-for-immigration-benefits/?sh=3a9339b53db5>.

¹⁹ Foreign Academic Students: Foreign Students in F-1 Nonimmigrant Status Participating in Curricular Practical Training (CPT), U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., last reviewed/updated May 21, 2020, <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-section-1-employee-information-and-attestation/foreign-academic-students>.

²⁰ Memorandum to Field Leadership, from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate, Pearl Chang, Acting Chief, Office of Policy and Strategy, U.S. Cit. & Immigr. Servs., U.S. Dep't of Homeland Sec., May 6, 2009, available at https://www.uscis.gov/sites/default/files/document/memos/revision_redesign_AFM.PDF.

and encourage the agency to indefinitely postpone its implementation or engage in rulemaking to rescind the proposed rule.²¹

Additionally, there are a number of issues within DHS that impact international students, scholars and alumni, which while not in USCIS's direct purview, are critically important to ensuring our colleges and universities can successfully compete for diverse, talented students from around the world. We urge USCIS to work within DHS and with the State Department to ensure policies, processes, priorities and messaging help us to attract and retain international students and scholars. Specifically, we encourage you to:

- A. Work with ICE to withdraw the regulation eliminating duration of status.** We strongly urge DHS to withdraw the Trump administration's proposed rule to limit authorized periods of admission and stay for international students and exchange visitors: *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media.*²² As the more than 30,000 comments opposing the proposed rule illustrated, this rule adds no demonstrable value to the security or integrity of the Student and Exchange Visitor Program (SEVP) and will cause significant damage to our ability to recruit talented students and scholars, making them ineligible for future USCIS benefits.
- B. Support Secretary Mayorkas in reconstituting the Homeland Security Academic Advisory Council (HSAAC) and prioritizing engagement with the academic community on international student and scholar issues.** During the Obama administration, the HSAAC added significant value to DHS, providing higher education a venue to share best practices, recommendations regarding national security and higher education institutions, and other policy change suggestions at the intersection of higher education and immigration. Unfortunately, the work of the council related to higher education has been put aside during the past four years. Whether the HSAAC is formally reconstituted or not, we recommend that DHS resume regular meetings and engagement with higher education stakeholders, including those representing diverse constituencies, to consider recommendations and best practices on issues such as: support for DACA recipients, TPS holders, refugee students, and other immigrant students, national security, and international recruitment and retention.
- C. Establish regular interagency collaboration with the State Department regarding visa processing delays and respectfully urge the State Department to ensure timely issuance of F, J and M visas for the fall 2021 academic term.** Visa delays and backlogs continue to be stubbornly high, leading international students and scholars to abandon their education in the United States and turn to other countries

²¹ 86 Fed. Reg. 1676 (Jan. 8, 2021), available at <https://www.federalregister.gov/documents/2021/01/08/2021-00183/modification-of-registration-requirement-for-petitioners-seeking-to-file-cap-subject-h-1b-petitions>.

²² 85 Fed. Reg. 60526 (Sept. 25, 2020), available at <https://www.federalregister.gov/documents/2020/09/25/2020-20845/establishing-a-fixed-time-period-of-admission-and-an-extension-of-stay-procedure-for-nonimmigrant>.

for their education.²³ We strongly urge USCIS to form an interagency collaboration with the State Department to develop best practices to reduce the adjudication backlogs and ongoing delays.

As our higher education institutions prepare to welcome students back to campus, we also encourage USCIS to work with the State Department to issue prompt and clear policies to facilitate the timely issuance of student and exchange visitor visas. This of course also requires regular communication with higher education stakeholders and affected communities. This must be done swiftly if we are to attract and retain international students and scholars this fall rather than lose them to other nations.

D. Clarify and expand dual intent. To be eligible for F-1 visas, international students must show that they intend to return to their home country after they complete their studies in the United States. Some temporary work visas allow “dual intent” to both maintain ties to a home country and work toward permanent residency in the United States, which of course applies to many of those who come to the United States to study. Indeed, the promise of success and career pathways in the United States is critical to attracting and retaining global talent. Though we acknowledge that this is largely an issue with the State Department, USCIS has a role to play to alleviate the barrier of dual intent. DHS should, as the Obama administration prioritized, utilize its authority to “clarify the circumstances under which U.S. employers may directly sponsor [F-1] students for [lawful permanent resident] status” without going through the interim step of an H-1B “dual intent” visa.²⁴

E. Grant Special Student Relief (SSR) to all international students facing severe economic hardship due to COVID-19. Though USCIS policy is not the main contributing factor of financial hardship due to COVID-19, DHS does have the ability to help alleviate this barrier through Special Student Relief. As has been done in the past during emergent circumstances, we urge DHS to issue a Federal Register Notice immediately granting SSR, which would address the reality that: (a) international and exchange students are facing severe economic hardship; (b) OPT work authorization processing has been severely delayed; (c) some schools and exchange programs may have to cancel classes or move fully online; and (d) students may need to temporarily drop below a full course of study or engage in employment beyond the normal 20-hour limit on both on- and off-campus employment. Recent SSR for Syria and Venezuela are certainly welcome, but we encourage DHS to grant the relief more broadly.

III. Conclusion

USCIS has a great opportunity to alleviate long-standing and potential barriers to benefits and services for immigrants in the United States, and we thank you for being proactive and requesting input. We appreciate this and all future good-faith engagements from the department, and we are glad for the opportunity to share our expertise and technical knowledge of the barriers facing international and immigrant students and scholars today.

²³ Jason Redmond, Their Papers Mired in Pandemic Backlog, Visa Seekers Go to Court, Bloomberg Law, March 29, 2021, available at

<https://news.bloomberglaw.com/class-action/their-papers-mired-in-pandemic-backlog-visa-seekers-go-to-court>.

²⁴ Cecilia Muñoz and Jeffrey Zientz, The President’s Actions to Promote High-Skill Immigration, The White House, Jan. 28, 2016,

<https://obamawhitehouse.archives.gov/blog/2016/01/28/presidents-actions-promote-high-skill-immigration>.

If you have any questions on these barriers or other issues regarding higher education and immigration, please feel free to contact Miriam Feldblum (miriam@presidentsalliance.org) or Jose Magaña-Salgado (jose@presidentsalliance.org).

Thank you,

A handwritten signature in black ink that reads "Miriam Feldblum". The signature is fluid and cursive, with a long horizontal stroke at the end.

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