



# THE FLORIDA STATE UNIVERSITY

COLLEGE of LAW

Public Interest Law Center

*Children's Advocacy Clinic*

*Veterans Legal Clinic*

*Immigration Law Project*

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

November 29, 2021

Andria Strano

Acting Chief, Office of Policy and Strategy

Division of Humanitarian Affairs

U.S. Citizenship and Immigration Services

Department of Homeland Security

5900 Capital Gateway Drive

Camp Springs, MD 20746

**Re: DHS Docket No. USCIS-2021-0006, Public Comment in Support of Proposed Rulemaking to fortify and strengthen Deferred Action for Childhood Arrivals (DACA)**

Dear Acting Chief Strano:

The Florida State University College of Law's Public Interest Law Center ("FSU PILC") submits this public comment in response to the United States Department of Homeland Security's (Department or DHS) proposed rule, Deferred Action for Childhood Arrivals (DACA) (DHS Docket No. USCIS-2021-0006), published September 28, 2021 (the "Proposed Rule"). The mission of FSU PILC is to advocate for underrepresented, indigent, and other vulnerable populations in a variety of legal matters and holistic service needs. FSU PILC's Farmworker & Immigration Rights Clinic ("the Clinic") works exclusively with immigrants and farmworkers across North Florida.

The Clinic is staffed by law students at the Florida State University College of Law who are passionate about advocating for immigration reform that enhances and protects the rights of undocumented people. Students work directly with immigrant and farmworker communities, including undocumented individuals who would be affected by the Proposed Rule.

FSU PILC and the Clinic submit this comment in support of codifying DACA into regulation while urging the Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, the Departments or the agencies), to expand upon the Proposed Rule.

DACA is an important program that protects members of our community. DACA recipients, or Dreamers, have lived, worked, and belonged to communities across the United States for most of their lives. DACA keeps them from being separated from their families and communities by providing protection against deportation. It allows them to work lawfully, providing greater economic independence and protection against labor abuses and trafficking.

In Florida alone, there are 12,161 DACA-eligible students in higher education.<sup>1</sup> Further, there are 27,991 non-DACA eligible students in higher education with an additional 5,000 undocumented students graduating from high school each year.<sup>2</sup> Codifying and expanding DACA protection would have a profound and positive impact on the State of Florida.

### **DACA Protections Should be Codified as a Federal Rule**

We submit this comment in support of codifying DACA as a federal rule on behalf of Will,<sup>3</sup> a PILC client for whom enactment of the Proposed Rule would mean being granted the freedom to pursue his career in computer science and contribute to our community and country. Will is a first-time DACA applicant who originally came to the United States when he was approximately four years old. He attended school in the United States through a master's degree from Florida State University. Will applied for DACA in January of 2021 and completed his biometrics in May of 2021. Now, his application is stuck in limbo because of the July 16, 2021, injunction in *Texas II* which prohibits U.S. Citizenship and Immigration Services (USCIS) from adjudicating initial DACA applications.<sup>4</sup>

Will has spent most of his life in the United States. All that Will wants is the ability to apply for jobs and begin his professional career, using his bachelor's degree in computer science and Master of Science degree in computer science to work as a software engineer or developer. Will has struggled throughout his academic career to reach graduation. In high school, his family did not have the money available for him to have a cell phone or even a computer. So, while his classmates would be enjoying their lunch, Will would go to the library to use the computer and complete his studies. During his senior year of high school, Will was not able to apply to the same colleges and universities as his peers because many required a social security number. Even though he believed he had a good GPA and would have had opportunities at many different universities, he was unable to apply due to being undocumented and not having a social security number. Fortunately, he was able to attend a local community college and obtain his associate degree before transferring to a state university as an "international" student.

Due to his lack of immigration status, Will did not have the traditional forms of financial aid available to him to complete his degrees. Thankfully, by that time, his parents were able to pay for most of his undergraduate and graduate education. He also earned a scholarship to help pay for his graduate degree. If it were not for that scholarship, he likely would not have been able to obtain his master's degree as his tuition costs would have been at the out-of-state tuition level and teaching assistant positions were not available to help him pay for his master's degree since he did not have a social security number. Fortunately for Will, his parents helped him pay for these expenses. Unfortunately for many undocumented students, their parents cannot afford to pay for their college tuition which makes earning any sort of degree very difficult.

---

<sup>1</sup> *Florida*, HIGHER ED IMMIGRATION PORTAL, <https://www.higheredimmigrationportal.org/state/florida/> (last visited Nov. 18, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> Names have been changed to preserve confidentiality.

<sup>4</sup> See *Texas v. United States*, No. 1:18-CV-00068 (S.D. Tex. Filed July 16, 2021).

Additionally, during his undergraduate career, Will struggled to get experience in his field of study because many of the available internships were paid, which required him to have a social security number. Will, knowing that he needed experience in his chosen career field, pursued unpaid internships and shadowed people in his intended career field.

Now having his master's degree, Will still cannot get a job in his career field, although he has the necessary degree, training, and expertise. Because he wants to capitalize on his education, Will even goes to the extent of applying to jobs solely to obtain experience going through the interview process and become better at interviewing. Will has even received job offers but has had to turn them down due to not having a work permit and social security number. Will is not trying to obtain DACA to then stop working and live off government benefits. Rather, he wants to further his life here in the United States and contribute to the workforce.

Will has seen first-hand the differences and struggles between growing up undocumented and growing up as a U.S. citizen as he has siblings that were born in the United States and are U.S. citizens. Will cannot travel outside of the U.S. He cannot build his credit. All of this because he was brought to the United States as a young child instead of being born here – something over which he had no control.

On the other hand, D.D., a PILC alumna and local attorney was fortunate enough to receive DACA and renew her application four times until she was able to adjust her status via a family petition. Her story is similar to Will's but, because of DACA, she was afforded protections and the ability to work.

D.D. was brought to the United States at six months old. She grew up in the Miami, Florida, area and attended high school in Jacksonville, Florida. Her family considered moving back to their home country her senior year of high school, but that summer, the DACA program was announced, and they decided to stay so their children could have a good life. Unlike Will, this individual was able to apply for DACA as soon as it was available, receiving her initial DACA approval in January of 2013.

D.D. overcame some of the same struggles as Will in applying to college, specifically in terms of finances and trying to pay for college. The financial implications of being undocumented were magnetized beyond that of a student who is a U.S. citizen or legal permanent resident. During her freshman year of undergrad, she lived in an off-campus apartment. One day, she came home to an eviction notice. She was fortunate enough to be able to attend a state university at in-state tuition levels by solely proving Florida residency. Once her DACA application was approved, many opportunities became available to her. She was finally able to get her driver's license. But more importantly, she could work. This individual was able to become a Resident Assistant, which meant free room and board and no worries of coming home to an eviction notice again.

D.D. was also able to feel more protected from the constant threat of deportation. With her DACA status, she was able to become more involved in the campus community, had a relatively normal college experience, and was able to advocate for herself and other undocumented students. Her family had not advocated for immigration relief before she received DACA. Although both of her brothers have DACA now, they did not get it until after college. Since D.D. was able to get DACA during college, she became involved in advocacy because of the protections of DACA, even to the point of her attending law school and now working as an immigration attorney.

These two FSU alumni's stories show the impact that DACA can have on a young undocumented individual. One is still waiting, hoping that he is not removed and that his DACA application will be approved so he can begin his professional career. The other received DACA early on and was able to start her professional career and become a permanent resident. The only difference really being one application has been approved and the other has not. Both were brought to the United States by their parents, not having the "intent to violate the law."<sup>5</sup> Both attended college and have obtained a degree beyond a bachelor's degree. It is unfair that one has DACA protections, and one does not.

### **DACA Protections Should be Expanded and Improved**

While the Clinic supports codifying DACA into regulation to ensure those who currently qualify for DACA can submit initial and renewal applications, we believe that the Proposed Rule should go further to expand protections to other undocumented individuals.

#### **8 CFR § 106.2 – Fees**

Proposed rule 8 CFR § 106.2 seeks to make the request for work authorization optional in the DACA application. Instead of DACA applicants paying \$495, the fees would be split where the DACA application, Form I-821D, would cost \$85 and the work authorization application, Form I-765, would cost \$410.

The Clinic is in support of this proposed rule change. The proposed change would allow for those individuals only needing the DACA approval and protections without work authorization to have that option and pay a lower fee. It also "allows DACA requestors who so desire to learn first whether they are approved for DACA before they file the Form I-765 and pay the fee for employment authorization."<sup>6</sup> This prevents individuals from spending money they may not have available on an application that may, in the end, not even be reviewed if the individual is not eligible for DACA and, subsequently, not eligible for work authorization.

The Clinic also encourages the Departments to include a way for DACA applicants to request a fee waiver, similar to that available to applicants on a multitude of other forms (*see* I-912, Request for Fee Waiver: Special Instructions, U.S. Citizenship and Immigration Services (Sept. 29, 2021) <https://www.uscis.gov/i-912>). DACA applicants are no different than other individuals filing applications with USCIS. If anything, they are likely to have greater difficulty paying the fees related to the DACA and EAD applications. The individual noted above who was able to adjust status paid close to \$2,500 to apply and renew her DACA application all while in her undergrad program and into a professional program. This is a substantial amount of money this individual had to pay while being

---

<sup>5</sup> Memorandum from Janet Napolitano to David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, Alejandro Mayorkas, Director, U.S. Citizenship and Immigration Services, and John Morton, Director, U.S. Immigration and Customs Enforcement, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (June 15, 2012).

<sup>6</sup> Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53736, 53764 (proposed Sept. 28, 2021) (to be codified at 8 C.F.R. 106.2).

a student. If a fee waiver is not an option for all DACA applicants, then the Clinic urges the Departments to include a fee waiver path for those DACA recipients renewing already approved applications.

### **Threshold Criteria**

Although the Clinic supports the codification of the rule, the Clinic urges the Departments to rethink the threshold criteria requirements and amend these requirements to better fit with the landscape we find ourselves in 2021. These threshold requirements have not changed since 2012, making the specific qualifying dates (June 15, 2007, and June 15, 2012) arbitrary in nature.

The individual children that DACA is supposed to help have changed, but the situations in how they were brought to the United States have not. These children are still being brought to the United States by their parents, thus “lack[ing] the intent to violate the law.”<sup>7</sup> The fact that some of these requirements have not been changed is not helping anyone. At some point, children will still be brought to the United States without having the intent to violate the law, but DACA will be obsolete as there will be no way for the children to meet the date requirements and everyone who is currently eligible will have aged out.

#### **1) Continuously Resided Since June 15, 2007, and Physically Present on June 15, 2012**

The requirements that DACA applicants have continuously resided since June 15, 2007, and been physically present on June 15, 2012, are arbitrary in nature. At the time the Napolitano memorandum was signed in 2012, these dates could at least be explained. For one, the physically present date was the date of the memorandum. Further, the continuous residence date was five years prior to the date of the memorandum. This made sense, in theory, but nine years have now passed. These dates now seem to be very random. The Clinic urges the Departments to change these dates to better reflect the situation of undocumented children today in 2021.

Many children have a hard time proving the continuous residency requirement. 2007 was fourteen years ago. Many United States citizens would have difficulty proving their residency fourteen years ago, and that is even with the privileges citizens have such as access to bank account records, tax records, etc. Further, many organizations shred documents after seven or ten years. It may be impossible for undocumented individuals to retrieve the type of information needed to prove this continuous residency requirement. Moreover, if we think back to 2007, our technology has greatly improved and expanded since then. Even something as simple as proving your residency based on a social media post, that one may think about today, may be impossible. In 2007, social media was not what it is today. This shows that the 2007 date is very arbitrary and puts up unnecessary barriers for undocumented individuals.

As stated, the situations of the children have not changed since 2012, and they are still not intending to violate the law. The fact that there are now more barriers these children face due to random dates to receive DACA does not make sense. A possible solution would be instead of having hard and fast

---

<sup>7</sup> Memorandum, *supra* note 3.

dates, to say that applicants had to continuously reside in the United States for ten years prior to the date of the application and had to be physically present in the United States five years prior to the date of the application as well as at the time of making the request. These periods of time, although still arbitrary, would at least be consistent for each applicant in the amount of time they needed to show that they had been in the United States, not just from a certain date.

Further, we are getting to a point where there are likely undocumented individuals that are in eighth or ninth grade that were born after the June 15, 2007, date. It seems illogical to allow for someone to apply for DACA who was born in early 2007 and brought to the United States before June 15, 2007, but not allow someone who was born on June 16, 2007, and brought to the United States shortly thereafter. These individuals would likely be in the same grade in school. One would be eligible for DACA solely because of being born a few months before the other. If these dates were changed to instead have a certain number of years required for continuous residency and physical presence instead of an arbitrary date, this would help provide protections to those children who, again, did not intend to violate the law and for whom the United States has become home.

## **2) No Lawful Immigration Status on June 15, 2012, and at the Time of Filing**

The requirement that DACA applicants have had no lawful immigration status on June 15, 2012, and at the time of filing the DACA application should be removed. This lack of status requirement limits those individuals who may need or would otherwise qualify for DACA if it were not for having some sort of status on June 15, 2012. This date, again, is very arbitrary in nature and does not take into consideration changes in circumstances that could have happened in the nine years since 2012.

The possibility of someone being in the United States in 2012 on some sort of a temporary visa, such as a student visa or even a tourist visa, but that visa having since expired is a real possibility and likely valid for numerous individuals. These individuals should not be punished for having been here lawfully for some time but now have no opportunity to apply for protections and possible work authorization under DACA.

Again, something along the lines of a period of time instead of a hard-and-fast date would be more appropriate and provide protections on a less arbitrary basis.

## **3) Age Limitation**

The Departments should remove the requirement that DACA applicants must have been born on or after June 16, 1981. (Pg. 53769 of proposed rule). This date and the previous requirement of being under the age of 31 at the time of the Napolitano Memorandum are, again, arbitrary.

The Clinic recognizes the likelihood of numerous individuals who are excluded from applying for DACA solely because they were born before this date. These individuals may have also been brought to the United States by their parents at a very young age and do not know any life other than that here in the U.S. There is no reason why these individuals should be excluded from applying when they also lacked the “intent to violate the law.”

### **Expand Advance Parole or Make More Accessible**

Currently, and under the Proposed Rule, the Departments can authorize advance parole only “for urgent humanitarian reasons or significant public benefit.”<sup>8</sup> The Clinic urges the Departments to consider changing and expanding this language to allow for other reasons outside of a family emergency, business-related travel, or education-related travel, or at least to make less arbitrary the adjudication of applications for advance parole on these grounds.

D.D. applied for advance parole while having DACA status. She was applying for educational reasons as she was in undergrad and had signed up to do a global peace exchange project in Rwanda. She applied for advance parole around December with the intention of leaving in May. Throughout the spring semester, this individual was a “social science scholar” which meant the University sponsored her with \$5,000 to do something “awesome” the following summer. During that semester, she took a course where they talked about the upcoming project. By May, she had not heard anything from USCIS and called every day to try to get an update. D.D. had invested a semester of schooling and prepared for this project. It wasn’t until late in the summer that she finally received a rejection notice from USCIS, even though the travel was for an educational purpose. She had even gotten a letter from a university representative and that did not seem to help.

Later, another advance parole application was filed on D.D.’s behalf, and it was later approved. The only difference with this application was a letter from an employer. At this point, it was too late, and she missed out on an exciting and rare international, educational project solely because her advance parole application was denied the first time.

The Clinic urges the Departments to expand advance parole for situations outside “urgent humanitarian reasons or significant public benefit” to include all education- and business- related travel that is valid. There was no reason why D.D.’s application for advance parole should have been denied. The Clinic also urges the Department to implement a system to prevent the arbitrary adjudication of advance parole applications.

The Clinic further urges the Departments to speed up the decision timeline for advance parole. There is no reason why D.D. should have waited over six months for a decision that ended up being a denial. If she would have received the denial sooner, it could have been possible for her to submit an amended application and possibly receive another response in time to have been approved to travel to Rwanda to complete her project.

### **Speed Up Application and Renewal Processing Speed**

The Clinic acknowledges the Departments process over 500,000 DACA applications, either initial or renewal applications, each year.<sup>9</sup> With this, the Clinic acknowledges a need for the application processing speeds to increase. An increase in initial application processing speeds would help provide protections to those individuals applying for DACA for the first time. It would have also helped those

---

<sup>8</sup> Deferred Action for Childhood Arrivals, *supra* note 4, at 53762.

<sup>9</sup> *Id.* at 53788.

applications that were submitted before the federal court injunction be processed and possibly approved, instead of having the applications just sitting out there in limbo while the lawsuit continues.

An increase in DACA application processing speeds can further help reduce the number of recipients whose status lapses due to renewal applications taking too long to process. The Clinic is aware of a situation where a DACA recipient had filed her renewal application, but it was taking a long time to receive a response. She was working and her job told her that if she lost her job due to her DACA renewal application not being approved, that she would have to start all over from an entry level position, losing any growth she had made in the business.

The fact that the application processing speeds are left up to the discretion of the immigration officer that processes the application is too subjective for such a serious process. D.D. spoke to us about first-hand experience she had with the arbitrary nature of these processing speeds. On one of her DACA renewal applications, she had plenty of time to file her renewal, so she decided to file early and received everything back within three weeks. This subjective or arbitrary review process needs to be corrected to allow for everyone's application to be processed in the same amount of time, thus allowing everyone to know the exact amount of time needed to process their application.

### **Automatic Extension for Pending DACA and EAD Applications**

Additionally, the Clinic notes that an automatic extension period would help ease the burden on DACA applicants and help to avoid similar situations as the one noted above regarding lapses in DACA status due to longer processing times. The Departments should consider an automatic extension period similar to the automatic extension period of 180 days for work authorization applications granted to other people such as Temporary Protected Status (TPS) holders and asylum seekers.

DACA recipients should also be eligible and automatically receive a 180-day extension if they file their renewal applications before they are set to expire and are otherwise eligible for renewal.

### **Include Domicile Language**

The Clinic encourages the Departments to further codify language that is found on USCIS's FAQ page regarding DACA recipients establishing domicile. The wording states "[i]ndividuals granted deferred action are not precluded by federal law from establishing domicile in the U.S."<sup>10</sup> Codifying this language would help those DACA recipients attending a college or university to be eligible for in-state tuition if the state at issue allows for applicants regardless of immigration status or a social security number.

The financial burden of attending an institution of higher education is often a deterrent for students in general of pursuing further education as they may not be able to afford a college degree.

---

<sup>10</sup> *Frequently Asked Questions*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, (Aug. 31, 2021) <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions>.



Undocumented students or those without a lawful immigration status face further hurdles as they are not eligible for any state or federal financial aid such as grants or loans. At least with codifying the domicile language in the Proposed Rule, DACA recipients would have a better chance of obtaining a college degree, which is often why their parents have come to the United States in the first place—to pursue a better life for their family.

### **Biometrics**

Finally, the Clinic believes a new system for processing biometrics is needed and should be addressed in the Proposed Rule. The way it currently stands, there are a limited number of USCIS Application Support Centers. For example, the Clinic is located in Tallahassee, Florida. The closest USCIS Application Support Center to Tallahassee is located in Jacksonville, Florida, which is over 2.5 hours away. This means that an individual would travel at least five hours roundtrip for what ends up being a five-minute appointment to get fingerprinted.

There are multiple other options to get fingerprinted that would not require a trip outside of Tallahassee, such as going to a local UPS store or police station. This would prevent the applicant from having to take a day off work or school solely for a five-minute appointment. Further, if the individual is renewing their application, an option for using fingerprints already on file should be available to the applicant. Again, this would cut down on the time and cost for the applicant.

### **Conclusion**

The Proposed Rule codifying DACA is a step in the right direction for immigrant rights. We believe, though, that there should be changes and additions to the Proposed Rule which would not limit those individuals brought to the United States by their parents at a young age where they had no intention of violating immigration laws.

Our Clinic thanks you for the opportunity to submit a public comment on the Proposed Rule. If you have any questions, please feel free to contact me.

Sincerely,

/s/ Ashley Hamill

Ashley Hamill, Clinical Professor  
Director, Farmworker & Immigration Rights Clinic  
Florida State University College of Law  
Public Interest Law Center  
425 W. Jefferson St.  
Tallahassee, FL 32306  
(850) 644-2722 (office)  
(850) 841-9925 (cell)  
ahamill@law.fsu.edu