



Friends Committee on
National Legislation

A Quaker Lobby in the Public Interest

November 29, 2021

SUBMITTED VIA WWW.REGULATIONS.GOV

Samantha Deshommès
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, D.C. 20529

**Re: U.S. Citizenship and Immigration Services Notice of Proposed Rulemaking (NPRM)
Deferred Action for Childhood Arrivals; CIS NO. 2691-21; DHS Docket No. USCIS-2021-0006;
RIN 1615-AC64**

Dear Chief Deshommès,

The Friends Committee on National Legislation (FCNL) is a non-partisan, Quaker lobbying firm established in 1943 to voice peace and justice-oriented policies. On behalf of FCNL and its network of the Religious Society of Friends' (Quakers) members and people of conscience, I respectfully submit this comment in response to the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services' (USCIS) Proposed Rule, "Deferred Action for Childhood Arrivals." This proposed rule would codify the Deferred Action for Childhood Arrivals (DACA) program. FCNL welcomes advanced protections for the DACA population; however, the proposal fails to remedy the vulnerabilities suffered by childhood arrivals.

FCNL's recommendations for this proposed rule stems from our faith-oriented policy document, *The World We Seek*, which calls on FCNL to advance a humane, just, and welcoming immigration system – regardless of an individual's place of birth, religion, or race. FCNL believes that immigration policies must afford people equal and genuine opportunities to thrive in the place they call home and contribute to their communities and this nation. We all have the Light of God within us and hold the inherent right to pursue our dreams and shine our Light in the world. The public, the government, the private sector, and all our institutions are responsible for exacting this vision. **FCNL urges USCIS to revise the proposed rule with permanent and expanded protections in mind as DACA-eligible immigrants deserve security and the full privileges and benefits of citizenship.**

I. Childhood Arrivals Need Lawful Residence and Permanent Legislative Solutions

The Department of Homeland Security's (DHS) power to exercise prosecutorial discretion over immigration grants the department the legal authority to administer and regulate deferred action for undocumented youth.¹ The DACA program has shielded more than 800,000 young people from deportation while granting work authorization, permitting a temporary reprieve that has led to significant economic, educational, and community benefits for DACA recipients, their network, the entire nation.² FCNL appreciates DHS's rule proposal to deprioritize the removal of hundreds of thousands of immigrant youth, anchor DACA protections for young people, and prevent the accrual of "unlawful presence" while receiving deferred action.

FCNL holds that it is our faithful obligation to care for the most vulnerable amongst us. DACA recipients, who arrived as children of no volition of their own, have remained susceptible to cruelty and unpredictability while experiencing deferred action. The Trump administration tried numerous times to end DACA. The courts have failed to protect the rights of DACA recipients. And Congress's inaction has left our young people tormented by the possibility of being separated from the only home and communities they know. As long as DACA recipients are not classified as lawful permanent residents in the United States, they will remain unjustly vulnerable to protections contingent on the judgment of courts and the executive branch. While DACA pauses the accrual of unlawful presence for DACA recipients when receiving deferred action, there should be an exemption for DACA recipients when deferred action is inactive. More pressingly, DACA-eligible immigrants and all undocumented youth have a right to remain at home in the U.S. — not only through deferred action but as Americans.

II. The Eligibility Standards Must Reflect the Population of Childhood Arrivals

DHS's proposed rule retains the eligibility criteria from DACA's inception in 2012, barring hundreds of thousands of childhood arrivals from its protection. FCNL implores DHS to modify the eligibility age cap, the age of entry, the continuous residence date, and criminal exclusions. Barring individuals who were over 30 years old as of June 15, 2012, is antithetical to the purpose of DACA and indefensibly penalizes childhood arrivals who have been in the U.S. for decades without any recourse. The age of entry requirement should also be raised to 18 to encompass minors arbitrarily excluded from DACA eligibility. Additionally, minors ineligible for DACA should receive a stay of removal to protect our vulnerable youth from traumatizing and unjust removal.

DACA has existed for nearly a decade and warrants a new, reasonable continuous residence date. It is unconscionable to require individuals to prove residence in the U.S. since 2007 as well as physical presence in the U.S. on June 15, 2012. DHS should shorten the fifteen-year continuous residence requirement for DACA eligibility and establish a continuous residence threshold closer to the promulgation date for this rule.

FCNL strongly believes that to strengthen the fairness and accessibility of DACA, DHS should eliminate criminal categories that automatically bar eligibility and reject broadening the definition of conviction. DHS should not consider expunged and sealed convictions when determining DACA status. Our criminal legal system methodically grants these restorative disposals, which a redemptive

¹ See 6 U.S.C. §202(5)

² See DHS 86 Fed. Reg. 53736, <https://www.regulations.gov/document/USCIS-2021-0006-0001>

immigration system should honor. A restrictive criminal bar discredits rehabilitation for individuals who had contact with the criminal legal system. Additionally, the current criminal exclusion undervalues a federalist system in which a misdemeanor offense in one jurisdiction can be considered a felony in another jurisdiction and sentencing vary by locality. DHS should establish a reasonable statute of limitations on considering criminal convictions. Additionally, the regulation should not rely on a criminal legal system that disproportionately harms Black and Brown communities that are overpoliced, racially discriminated against, and aggressively surveilled.

III. Couple Deferred Action and Work Authorization Protections Under DACA

FCNL opposes government policies that exacerbate economic injustice and the indignity of those struggling just to get by. DHS cannot fortify DACA with a regulation that separates deferred action from employment authorization. This proposed change weakens the purpose of DACA by subjecting childhood arrivals to a protection that undermines their inherent worth, agency, and ability to support equitably themselves and their families. There's a risk that many applicants will misunderstand or fail to recognize that they must specifically apply for employment authorization. Additionally, this bifurcated filing option is a likely recipe for processing delays, potential denials of employment authorization documents, and employment disruption as individuals seek renewals. DHS should continue its commitments to mitigate the exploitation of immigrant workers and prioritize a DACA framework that automatically grants work permit benefits alongside deportation protection.³

IV. Strengthen DACA with Protections Under Similar Deferred Actions

DHS should bestow the basic protections given to other deferred action populations to DACA recipients to harmonize administrative processes and establish fairness in humanitarian protections. Advance parole options should be automatically included in the DACA framework, and DACA recipients should have international travel rights for any reason akin to Temporary Protected Status.

In these precarious times of detention, mass deportations, denied entry for asylum seekers, and disregard for immigrant lives during a global pandemic, FCNL remains a relentless supporter and advocate for our immigrant communities. DHS must also do its part to protect immigrants, especially childhood arrivals, who face unknown futures despite being wholly immersed in their communities. We are called to inscribe inclusive immigration policies that reflect America's true values and ensure the stability of vulnerable undocumented communities.

Sincerely,

Anika Forrest
Legislative Manager, Immigration and Refugee Program
Friends Committee on National Legislation

³ See DHS Memo: "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual,"

https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf