EXHIBIT A

CO 241.11-P

TO : Commissioner

DATE: 15 JUL 1976

FROM : Sam Bernsen
General Counsel

SUBJECT: Legal Opinion Regarding Service Exercise of Prosecutorial Discretion

You have asked for my opinion regarding the authority of the Service to exercise prosecutorial discretion in administrative proceedings arising under the Immigration and Nationality Act. You have also asked for my opinion regarding the appropriate time and manner for the exercise of such discretion.

Prosecutorial discretion refers to the power of a law enforcement official to decide whether or not to commence or proceed with action against a possible law violator. See generally, K. Davis, Administrative Law Treatise, 1970 Supp., §4.08, at 188. This power is not restricted to those termed prosecutors, but is also exercised by others with law enforcement functions such as police and officials of various administrative agencies. 1/ The power extends to both civil and criminal cases. 38 Op. Att'y Gen. 98, 102 (1934)

The reasons for the exercise of prosecutorial discretion are both practical and humanitarian. There simply are not enough resources to enforce all of the rules and regulations presently on the books. As a practical matter, therefore, law enforcement officials have to make policy choices as to the most effective and desirable way in which to deploy their limited resources. Thus, for example, police and prosecutors may choose to concentrate on apprehension and prosecution of perpetrators of violent crimes, while choosing not to proceed against those committing so-called "victimless crimes," such as certain consensual sex acts and possession of small amounts of marihuana. In addition, there are times when defects in the quality, quantity, or method of gathering evidence will make it difficult to prove the matter before a court.

Aside from purely practical considerations, it is also obvious that in enacting a statute the legislature cannot possibly contemplate all of the possible circumstances in which the statute may be applied. In some situations, application of the literal letter of the law would simply be unconscionable and would serve no useful purpose. For instance, a prosecutor may well decide not to proceed against a terminally ill individual, even in the presence of overwhelming evidence of guilt.

1/ See e.g., Vaca v. Sipes, 386 U.S. 171, 182 (1967) (General Counsel of NLRB has unreviewable discretion to refuse to institute unfair labor practice complaint).

General Authority of Executive Branch

The ultimate source for the exercise of prosecutorial discretion in the Federal Government is the power of the President. Under Article II, Section 1 of the Constitution, the executive power is vested in the President. Article II, Section 3, states that the President "shall take care that the laws be faithfully executed."

Most discussions of the exercise of prosecutorial discretion on the federal level center on the Attorney General, since he is the chief legal officer of the Federal Government. Nevertheless, prosecutorial discretion is also exercised by a wide variety of other government officials with law-enforcement responsibilities. 2/

The Attorney General has the authority "to determine when the United States shall sue, to decide for what it shall sue, and to be responsible that such suits shall be brought in appropriate cases." U.S. v. San Jacinto Tin Co., 125 U.S. 273, 279 (1888). The power of the Attorney General to exercise his prosecutorial discretion does not end with the entry of judgment, but also embraces execution of the judgment. U.S. v. Morris, 23 U.S. (10 Wheat.) 246 (1825); 38 Op. Att'y Gen. 98, 102 (1934).

In a 1934 opinion, Attorney General Cummings pointed to three sources for the Attorney General's exercise of prosecutorial discretion: (1) inherent authority, (2) court decisions, and (3) various statutory enactments. 38 Op. Att'y Gen. 98 (1934). 3/

The inherent authority can be traced to the common law, where a prosecuting attorney had authority to terminate a suit at any time. See Confiscation Cases, 74 U.S. (7 Wall.) 454 (1868). As Attorney General Taney stated in 2 Op. Att'y Gen. 482, 486 (1831):

> An attorney conducting a suit for a party has, in the absence of that party, a right to discontinue it whenever, in his judgment, the interest of his client requires it to be done. If he abuses this power, he is liable to the client whom he injures.... An attorney of the United States, except in so far as his power may be restrained by particular acts of Congress, has the same authority and control over the suits which he is conducting.

2/ Id.

3/ See also 2 Op. Att'y Gen. 482, 486 (1831); 22 Op. Att'y Gen. 491, 494 (1899); 23 Op. Att'y Gen. 507, 508-09 (1901). See generally Schwartz, Federal Criminal Jurisdiction and Prosecutors Discretion, 13 Law & Contemp. Prob. 64 (1948).

Numerous Supreme Court decisions have confirmed the power of the Attorney General to exercise his discretion in the institution, control, and settlement of suits in behalf of the United States. See e.g., Confiscation Cases, supra; U.S. v. San Jacinto Tin Co., supra; U.S. v. Throckmorton, 98 U.S. 61, 70 (1878); In re Neagle, 135 U.S. 1, 67 (1890); New York v. New Jersey, 256 U.S. 296, 308 (1921); Kern River Co. v. U.S., 257 U.S. 147, 155 (1921); Ponzi v. Fessendon, 258 U.S. 254, 262 (1922); Petite v. U.S., 361 U.S. 529 (1960). 4/

There is also a long line of lower court cases recognizing this authority. See e.g., U.S. v. Alessio, 528 F.2d 1079 (9 Cir. 1976); U.S. v. Cawley, 481 F.2d 702 (5 Cir. 1973); Inmates of Attica Correctional Facility v. Rockefeller, 477 F.2d 375, 379 (2 Cir. 1973); U.S. v. Kysar, 459 F.2d 422, 424 (10 Cir. 1972); Spillman v. U.S., 413 F.2d 527, 530 (9 Cir. 1969); Newman v. U.S., 382 F.2d 479 (D.C. Cir. 1967); U.S. v. Cox, 342 F.2d 167 (5 Cir. 1965), cert. denied, Cox v. Hauberg, 381 U.S. 935 (1965); Goldberg v. Hoffman, 225 F.2d 463 (7 Cir. 1955); District of Columbia v. Buckley, 128 F.2d 17, 20-21 (D.C. Cir. 1942); Pugach v. Klein, 193 F. Supp. 630, 635 (S.D.N.Y. 1961); U.S. v. Woody, 2 F.2d 263 (D. Mont. 1924).

A final source for the Attorney General's authority to exercise prosecutorial discretion can be found in the various statutes creating his office and conferring upon him the power to supervise and conduct the litigation and other legal affairs of the United States. 28 U.S.C. §§515-519, 547; Judiciary Act of 1789, Ch. 20, §35, 1 Stat. 92; Act of June 22, 1870, Ch. 150, 16 Stat. 162.

Most of the aforementioned federal cases dealing with prosecutorial discretion state that the power of the executive authorities is plenary and may not be reviewed by the judiciary. Nevertheless, dicta in several court decisions has indicated that selective prosecution based upon certain suspect classifications may violate the Constitution. 5/ Courts have also indicated that they will not tolerate an arbitrary exercise of prosecutorial discretion by an ad-

4/ See also Oyler v. Boles, 368 U.S. 448 (1962) (selective prosecution by state authorities not a violation of constitutional rights where not based upon unjustifiable standard); Linda R.S. v. Richard D., 410 U.S. 614 (1973) (private party has no standing to compel prosecution by state authorities).

5/ Oyler v. Boles, supra at note 4 (selection not based on unjustifiable standard such as race, religion, or other arbitrary classification); Nader v. Saxbe, 497 F.2d 676, 679 n. 19 (D.C. Cir. 1974) (exercise of prosecutorial discretion, like any other exercise of executive discretion, subject to statutory and constitutional limits enforceable through judicial review); U.S. v. Sacco, 428 F.2d 264, 271 (9 Cir. 1970), cert. denied, 400 U.S. 903 (1970) (selective prosecution not a constitutional violation where no allegation that it was based on constitutionally suspect classification).

ministrative agency. 6/

Prosecutorial Discretion in Immigration Cases

It has been pointed out that prosecutorial discretion may be exercised in administrative, as well as criminal contexts. 7/ One of the earliest manifestations of prosecutorial discretion in an immigration-related field is Department of Justice Circular Letter Number 107, dated September 20, 1909, dealing with the institution of proceedings to cancel naturalization. That letter states:

> In the opinion of the department, as a general rule, good cause is not shown for the institution of proceedings to cancel certificates of naturalization alleged to have been fraudulently or illegally procured unless some substantial results are to be achieved thereby in the way of betterment of the citizenship of the country.

This policy still governs denaturalization cases. See Interp. 340.1(f).

The Attorney General has exercised prosecutorial discretion in the immigration area in the cases of aliens deportable under §241(a)(4) of the Immigration and Nationality Act who are eligible to receive state court expungements at a future date. In a letter to the Commissioner of Immigration, dated January 17, 1961, Attorney General Rogers stated that the Service should "withhold or terminate proceedings under section 241(a)(4) of the Immigration and Nationality Act in the cases of youthful offenders who are eligible for an honorable discharge from the control of the California Youth Authority."

6/ Moog Industries, Inc. v. F.T.C., 355 U.S. 411 (1958) and F.T.C. v. Universal Rundle Corp., 387 U.S. 244, 251 (1967) (FTC does not have unbridled power to institute proceedings that will arbitrarily destroy one of many law violators in an industry); Lennon v. INS, 527 F.2d 187, 195 (2 Cir. 1975) (dictum) (courts will not condone selective prosecution based upon secret political grounds); Lennon v. United States, 387 F. Supp. 651, 564 (S.D.N.Y. 1975) (Government cannot institute deportation proceedings solely as penalty for exercise of constitutional rights). See also U.S. v. Berrios, 501 F.2d 1207, 1209 (2 Cir. 1974). See generally K. Davis, Administrative Law Treatise §28.16, at 982 (1958); Note, Reviewability of Prosecutorial Discretion: Failure to Prosecute, 75 Colum. L. Rev. 130 (1975).

7/ See e.g., Vaca v. Sipes, supra note 1. See also Bachowski v. Brennan, 502 F.2d 79, 87 (3 Cir. 1974), reversed on other grounds, Dunlop v. Bachowski, 421 U.S. 560 (1975), where the court stated that prosecutorial discretion could be exercised in administrative contexts, "which, like criminal prosecutions, involve the vindication of societal or governmental interest, rather than the protection of individual rights."

Numerous administrative decisions have affirmed the power of Service officers to exercise prosecutorial discretion. For instance, in Matter of Vizcarra-Delgadillo, 13 I&N Dec. 51, 53 (BIA 1968), the Board of Immigration Appeals upheld the authority of the District Director to move that proceedings be terminated as improvidently begun. The Board commented on the nature of the District Director's authority:

> Those charged with responsibility for enforcing the criminal laws have prosecutive discretion in determining whether to initiate criminal prosecution in a given case. A similar discretion not to proceed in a given case must be accorded to those responsible for immigration law enforcement. And where, following the formal start of deportation proceedings, additional facts or policy considerations arise which lead those responsible to conclude that this is not the sort of case in which such proceedings should have been started in the first place, 8 CFR 242.7 wisely provides the mechanics for termination on the ground that the proceeding was "improvidently begun." (Footnotes omitted)

Another case, Matter of Andrade, I.D. 2276 (BIA 1964), dealt with a minor who had been convicted of a marihuana violation which was expunged under a state law comparable to the Federal Youth Corrections Act. An order of deportation was initially entered. Thereafter, however, in connection with a petition for certiorari filed in the United States Supreme Court, the Solicitor General urged the Service to reconsider its policy with respect to such expungements and to administratively set aside the order of deportation. In response to this suggestion, the Service moved for termination of the deportation proceedings. The Board granted the Service's motion stating that, "the Service's determination not to initiate or press deportation proceedings in a given case or class of cases is a matter of prosecutorial judgment which we do not review."

Many other administrative decisions recognize and affirm the Service's power to exercise prosecutorial discretion. See e.g., Matter of Geronimo, 13 I&N Dec. 680 (BIA 1971); Matter of Wong, 13 I&N Dec. 701 (BIA 1971); Matter of Gallares, I.D. 2177 (BIA 1972); Matter of Marced, I.D. 2273 (BIA 1974), aff'd per curiam Marced v. INS, 514 F.2d 1070 (5 Cir. 1975); Matter of Lennon, I.D. 2304 (BIA 1974), rev'd on other grounds, Lennon v. INS, 527 F.2d 187 (2 Cir. 1975). See also Matter of Anaya, I.D. 2243 (BIA 1973), aff'd per curiam, Anaya v. INS, 500 F.2d 574 (5 Cir. 1974); Matter of Felix, I.D. 2149 (BIA 1972). See also Roberts, The Exercise of Administrative Discretion Under the Immigration Laws, 13 San Diego L. Rev. 144, 149-52 (1975).

The Service's power to exercise prosecutorial discretion is inherent in the nature of its enforcement function and does not depend upon any specific provision of the Immigration and Nationality Act. The Service has nevertheless promulgated regulations and operations instructions dealing with the exercise of prosecutorial discretion.

8 CFR 242.7(a) sets forth the authority of the District Director to cancel or move for cancellation of deportation proceedings if "he is satisfied that the respondent is actually a national of the United States, or is not deportable under the immigration laws, or is deceased, or is not in the United States, or that the proceeding was improvidently begun." (underscoring supplied).

It is obvious that the "improvidently begun" ground is in addition to the "not deportable" ground and includes individuals who are deportable, but whose departure the Service, for policy or humanitarian reasons, does not choose to enforce. Operations Instruction 103.1(c)(1)(ii) lists various factors to be considered in determining whether to place an alien in the "deferred action" (formerly "nonpriority") category, meaning that deportation proceedings will not be instituted or continued against the alien. 8/

In addition to the discretion not to institute deportation proceedings, prosecutorial discretion may be exercised in connection with various other discretionary remedies, such as voluntary departure, 9/ and stays of deportation. 10/

Courts have acknowledged that a determination whether or not to enforce a deportable alien's departure in a particular case is normally within the sound discretion of the Service officer having responsibility over the case. See e.g., Balanos v. Kiley, 509 F.2d 1023 (2 Cir. 1975); Vassiliou v. INS, 461 F.2d 1193 (10 Cir. 1972); Spata v. INS, 442 F.2d 1013 (2 Cir. 1971), cert. denied, 404 U.S. 857 (1971); Armstrong v. INS, 445 F.2d 1395 (9 Cir. 1971); Bowes v. District Director, 443 F.2d 30 (9 Cir. 1971); Manantan v. INS, 425 F.2d 693 (7 Cir. 1970); Discaya v. INS, 339 F. Supp. 1034 (N.D. Ill. 1972). See also Pignatello v. Attorney General, 350 F.2d 719, 725 (2 Cir. 1965). However, in Lennon v. U.S., 387 F. Supp. 561 (S.D.N.Y. 1975), the court indicated that a claim of selective deportation presents a proper issue for judicial review, and in Lennon v. INS, 527 F.2d 187, 195 (2 Cir. 1975), the court indicated in dictum that selective deportation based on political motives will not be tolerated. See also Lennon v. Richardson, 378 F. Supp. 39 (S.D.N.Y. 1974).

In Vergel v. INS, ____ F.2d _____, Civ. No. 75-1526 (8 Cir. June 2, 1976), the court sustained an order of deportation, but noted that there was a substantial

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8/ See also Wildes, The Nonpriority Program of the Immigration and Naturalization Service - A Measure of the Attorney General's Concern for Aliens, (two parts) 53 Interpreter Releases 25, 33 (1976).

9/ 8 CFR 244.1, 244.2. See Matter of Anaya, I.D. 2243 (BIA 1973), aff'd per curiam, 500 F.2d 574 (5 Cir. 1974); Matter of Felix, I.D. 2149 (BIA 1972)

10/ 8 CFR 243.4.

basis for allowing the alien to remain in the United States in the "deferred action category" under O.I. 103.1(a)(J)(ii). The court stated that it would be "appropriate for the District Director to make further inquiry to that end," and stayed its mandate for 90 days in order to allow the District Director to consider the alien's claim.

In several other cases, courts have upheld deportation orders while suggesting that the Service might appropriately exercise prosecutorial discretion to stay execution of the orders. See e.g., U.S. v. McAlister, 395 F.2d 852 (3 Cir. 1968); 11/ Lieggi v. INS, Civ. No. 75-1393 (7 Cir. January 27, 1976), reversing 389 F. Supp. 12 (N.D. Ill. 1975); 12/ Dunn v. INS, Civ. No. 72-2186 (9 Cir. February 20, 1974), cert. denied 419 U.S. 919 (1974). 13/

Proper Time for Exercise

Normally the appropriate time for the exercise of prosecutorial discretion is prior to the institution of proceedings. The primary reason for this is the humanitarian factor; it makes little sense to put an alien through the ordeal and expense of a deportation proceeding when his actual removal will not be sought.

In addition, there are practical considerations. Deportation proceedings tie up Government manpower and resources that could be used in performing other important functions. Given the present illegal alien problem such a use of scarce resources on aliens whom the Service does not ultimately intend to deport is indefensible. Moreover, once a final administrative order of deportation is issued, the Service cannot prevent the alien from seeking judicial review. When a case with extremely appealing factors goes to court, it may place the Service in an unfavorable light, both before the court and in the forum of public opinion.

There are some situations, however, where prosecutorial discretion is properly exercised after the institution or completion of deportation proceedings. The sympathetic or humanitarian factors may not arise or become apparent until after the case has been started. In other cases involving aliens who may have committed serious offenses but are allowed to remain on the representation that

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11/ "Therefore, we think it would be appropriate for the Department to make further inquiry to the end that, if justified, appellant's deportation at least be stayed during his good behavior."

12/ "We agree...that this is a hardship case. Therefore the Government should afford petitioner any administrative remedy that may still be available...."

13/ "While this is a case in which the administrative discretion of the INS might have been exercised with greater compassion the scope of our review in this area is extremely narrow."

they are the sole support of United States citizen families, it may be desirable to have a final order of deportation outstanding for immediate execution in the event of any further misconduct.

Conclusion

The power of various officers of the Executive Branch to exercise prosecutorial discretion is inherent and does not depend on express statutory authorization. Officers of the Service have been recognized as possessing such power, and provision for its exercise has been made in both the regulations and the operations instructions.

Although there is authority for the plenary nature of prosecutorial discretion, the trend, especially in administrative contexts, is towards judicial review of prosecutorial discretion to ascertain that it is not being exercised in a way that would be constitutionally suspect or grossly unfair. Consequently, the Service's attempts to set forth some standards for the exercise of prosecutorial discretion are particularly appropriate.

Finally, prosecutorial discretion may be exercised before, during, or after the completion of deportation proceedings. Normally, however, such discretion is best exercised prior to the institution of proceedings.

CC: W/F - Opinions of the General Counsel, 1976

CC: CO 240-P

PWS:anb

EXHIBIT B

• Dwight D. Eisenhower

Statement by the President Concerning the Entry Into the United States of Adopted Foreign-Born Orphans.

October 26, 1956

I HAVE BEEN particularly concerned over the hardship that ensues to American citizens who have adopted foreign-born orphans and who have then found that they cannot bring their adopted children into the United States because quotas under the Walter-McCarran Act and the Refugee Relief Act are exhausted. Many of these foster parents are members of our armed forces who have completed tours of duty overseas and are forced to leave their adopted children behind.

I requested the Secretary of State and the Attorney General to determine whether it is possible to alleviate this problem-within the framework of existing law. The Secretary of State and the Attorney General have just reported to me that this can be done. Provision for bringing these orphans to our country, pending action by Congress to amend the law, will be put into effect immediately.

Citation: Dwight D. Eisenhower: "Statement by the President Concerning the Entry Into the United States of Adopted Foreign-Born Orphans.", October 26, 1956. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=10677.

EXHIBIT C

The American Presidency Project
John T. Woolley & Gerhard Peters • Santa Barbara, California

return to original document

• Dwight D. Eisenhower

White House Statement Concerning the Admission of Additional Hungarian Refugees.

December 1, 1956

THE PRESIDENT ANNOUNCED today that the United States will offer asylum to 21,500 refugees from Hungary. Of these, about 6500 will receive Refugee Relief Act visas under the emergency program initiated three weeks ago. The remaining 15,000 will be admitted to the United States under the provisions of Section 212 (d) (5) of the Immigration and Nationality Act. When these numbers have been exhausted, the situation will be re-examined.

The President emphasized that the flight of refugees into Austria had created an emergency problem which the United States should share with the other countries of the free world. Because of this emergency, those refugees who seek asylum in the United States will be brought here with the utmost practicable speed.

The President pointed out that the immigration visas available for Hungarian escapees under the Refugee Relief Act are practically exhausted and that the emergency compels the only other action which is available, namely, action under the provisions of the Immigration and Nationality Act which authorizes admission on parole.

Persons admitted into the United States on parole have no permanent status in the United States, but the President will request the Congress in January for emergency legislation which will, through the use of unused numbers under the Refugee Relief Act, or otherwise, permit qualified escapees who accept asylum in the United States to obtain permanent residence.

The President also stated that it was his intention to request the Congress to include in such legislation provisions which would allow at least some of the escapees who have proceeded to other countries for asylum to have the opportunity to apply for permanent resettlement in the United States, having in mind particularly the fact that many of those refugees undoubtedly have relatives here.

The President pointed out that other nations have already made increasingly generous offers of asylum and have waived the ordinary restrictions imposed upon immigration.

The President said that he had directed the Secretary of Defense to work out arrangements for the transportation of these refugees to the United States in accordance with agreements to be made with the Austrian Government and the Intergovernmental Committee for European Migration.

In making his announcement, the President said that providing asylum to these Hungarian refugees would give practical effect to the American people's intense desire to help the victims of Soviet oppression. It will also materially assist the Government of Austria, which has responded so generously to the refugees' needs, to carry out its policy of political asylum.

Citation: Dwight D. Eisenhower: "White House Statement Concerning the Admission of Additional Hungarian Refugees.", December 1, 1956. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=10712.

EXHIBIT D

• John F. Kennedy

Letter to Secretary Ribicoff Requesting Him To Undertake Direction of Cuban Refugee Activities.

January 27, 1961

Dear Mr. Secretary:

I want you to undertake responsibility, effective February 1, for directing the Cuban refugee activities now being conducted by the Executive branch of the Federal government, and to make an on-the-scene investigation of the problem within the next week as my personal representative.

I want you to make concrete my concern and sympathy for those who have been forced from their homes in Cuba, and to assure them that we shall seek to expedite their voluntary return as soon as conditions there facilitate that. I believe that the present program can best be strengthened by directly bringing to bear your personal leadership and the vast welfare, health, and other skills of your Department. I am anxious that you make use of private services available for the refugees to the greatest extent possible.

Both here at home and abroad, I want to re-emphasize most strongly the tradition of the United States as a humanitarian sanctuary, and the many times it has extended its hand and material help to those who are "exiles for conscience's sake." In the presently troubled world, we cannot be a peacemaker if we are not also the protector of those individuals as well as nations who cast with us their personal liberty and hopes for the future.

Immediate action should be taken to assure no interruption in present services for the refugees. I also want your consideration of the use of surplus U.S. foods if needed for them, and possible utilization of the many qualified physicians and other professionally or technically qualified refugees.

In undertaking the task given here, you should coordinate activities in this field with the Secretaries of State, Defense, Labor, and Agriculture, and with the heads of other relevant agencies. Under previous arrangements, funds have already been made available to meet such immediate expenditure as will be requested by you of the Department of State, Department of Defense, or other appropriate agency whose participation in this program of emergency assistance to Cuban refugees you may find essential.
Sincerely,

JOHN F. KENNEDY

Citation: John F. Kennedy: "Letter to Secretary Ribicoff Requesting Him To Undertake Direction of Cuban Refugee Activities.", January 27, 1961. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. http://www.presidency.ucsb.edu/ws/?pid=8544.

EXHIBIT E

U.S. Citizenship and Immigration Services

Refugee Timeline

Immigration and Naturalization Service Refugee Law and Policy Timeline, 1891-2003

USCIS began overseeing refugee admissions to the U.S. when it began operations on March 1, 2003. Before then, the Immigration and Naturalization Service (INS) administered refugee admissions. This timeline traces the major events and policies that affected refugee admissions under the INS and its predecessor agencies, from 1891 to 2003.

Note: In 1980, the U.S. formally adopted the United Nation's definition of the term "refugee" for legislative purposes. However, Congress, the INS, and the American public have long used and continue to use the term "refugee" to refer to a migrant who arrived in the U.S. after fleeing persecution or violence in his or her home country or after being displaced by natural disaster. This timeline uses that more general meaning of the word "refugee."

1891: The Bureau of Immigration Established

1910-1920: The Mexican Revolution

1917: The Immigration Act of 1917

1921-1924: The Quota Acts

1939-1945: World War II

1945: The United Nations Established

1945: Presidential Directive on Displaced Persons

1948: Displaced Persons Act of 1948

1950-1951: The United Nations High Commissioner for Refugees and the 1951 Convention Relating to the Status of Refugees

1952: Immigration and Nationality Act (INA)

1953: Refugee Relief Act of 1953

1956-1957: Hungarian Escapee Program

1952: Azorean Refugee Act of 1958

1959-1960: Fair Share Refugee Act of July 14, 1960

1959-1962: Cuban Refugees

1962: Hong Kong Parole Program

Initiated in May 1962, the Hong Kong Parole Program used the Attorney General's parole authority to authorize approximately 15,000 Chinese refugees who had fled from communist China to Hong Kong to enter the U.S. The program ran until 1966 and approximately 15,000 Chinese refugees were admitted into the United States.

The 1965 Amendments to the INA included provisions that allowed these refugees to adjust to lawful permanent resident status.

Illustration: Wong Yick Yuen family, last group of Hong Kong parolees in fiscal year 1963. USCIS History Office and Library. Wong Yick Yuen family, last group of Hong Kong parolees in fiscal year 1963.

*USCIS History Office and Library.

- 1962: Migration and Refugee Assistance Act of 1962
- 1965: The 1965 Amendments to the Immigration and Nationality Act (INA)
- 1965: Cuban Airlift
- 1966: Cuban Adjustment Act of 1966
- 1967: The 1967 United Nations High Commissioner for Refugees Refugee Protocol
- 1972: INS Administrative Asylum Policies
- 1975: Indochinese Immigration and Refugee Act of 1975
- 1977: INS Office of Refugee and Parole
- 1980: Refugee Act of 1980
- 1980: Mariel Boatlift
- 1990: The Lautenberg Amendment
- 1997: Nicaraguan Adjustment and Central American Relief Act (NACARA)
- 1998: Haitian Refugee Immigrant Fairness Act
- 2002-2003: Department of Homeland Security Established, USCIS, CBP, and ICE Created

Last Reviewed/Updated: 06/27/2017

EXHIBIT F

Appendix I

LEGALIZATION AND FAMILY FAIRNESS -- AN ANALYSIS

I. GENERAL PURPOSE OF THE UNITED STATES IMMIGRATION LAWS AND THE IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA)

On November 6, 1986, President Reagan signed the Immigration Reform and Control Act of 1986 (IRCA) into law. This legislation, the most comprehensive reform of our Immigration laws since 1952, makes great strides to control illegal immigration while preserving our heritage of legal immigration.

While the theme of this legislation is focused on gaining control of our borders and eliminating the illegal alien problem through firm yet fair enforcement, it also reflects the nation's concerns for aliens who have been long-time illegal residents of the United States.

This is accomplished through a generous legalization program that is based on the same concepts of fairness that underlie the lawful immigration system. Both paths offer an orderly transition to permanent residence for those who have established their eligibility and provide an opportunity for family members to immigrate under a process that does not reward people who have circumvented the law by entering illegally.

Immigration by close relatives of permanent residents and citizens of the United States forms the core of a lawful system centered on the reunification of families; the overwhelming majority of some six hundred thousand people who immigrate each year are such immediate family members. By legalizing their status, aliens who have been in this country since 1982 gain access to our family-oriented immigration policy, and ensure that their spouses and children may enter lawfully.

II. CONCEPT OF LEGALIZATION UNDER IRCA

IRCA is an enforcement law; its primary purpose is to stop illegal immigration. The legalization program is one part of a package that includes employer sanctions, enhanced border enforcement, the Systematic Alien Verification for Entitlements (SAVE) program, and a provision for removal of criminal aliens.

Legalization was the balance--a one-time program to legalize certain aliens, even though they were illegal, and allow them to become part of the American mainstream. This delicate balance was achieved through a statute that was carefully constructed to make passage of the bill possible. Even as crafted, legalization was still so controversial that the margin in favor of the provision in the House of Representatives was only seven votes.

The Congress accomplished the legalization balance by limiting the program to aliens with substantial equities in the United States. It did not intend to place all illegal aliens within a legal status. January 1, 1982, was set as the eligibility date for legalization, thus setting forth clear boundaries for establishing ties to this country. Those illegal aliens who arrived in the United States after January 1, 1982, remain illegal and are subject to deportation.

This Congressional intent as it applies to each alien is evidence in the plain meaning of the statute. This intent is further magnified by the legislative history of the bill, including the House Report, the State Report, the Conference Report, and the Congressional floor debates (1986). There is nothing in these documents that would indicate Congress wanted to provide immigration benefits to others who didn't meet the basic criteria, including families of legalized aliens. To the contrary, the Senate Judiciary Committee stated in its report that:

> It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning right by virtue of the legalization. They will be required to "wait in line" in the same manner as immediate family members of other new resident aliens. S. Rep. No. 99-131, 99th Cong., 1 Sess. 343 (1985).

With the legislative history so clear, the authority of the Attorney General to grant resident status must extend only to aliens who qualify on the merits of their own case, and not through a broad, extralegal derivative basis.

III. HOW LEGALIZATION HAS WORKED

In the six months allowed to prepare for implementation of the program, the INS engaged in an unprecedented action which opened the full regulatory process to the public. Comments were solicited at the earliest stage, and the thousands of responses were carefully considered in developing the final product. Meanwhile, INS undertook an implementation effort never matched in the agency's history. By May 5, 1987, one hundred and seven (107) new offices were opened with 2,000 people hired to staff these offices; a major automated data system was developed and installed; the public information campaign was begun; and training was provided to all that were to work in the legalization program.

As of October 16, 1987, roughly 5 1/2 months after opening, we have accepted over 865,000 applications. Over 85% of these applications were filed directly with the INS, indicating that there is no "fear factor" -- the alien population that has come forward exhibits trust in the Immigration Service. With this participation rate already doubling the results of all other legalization programs throughout the world in modern-day history, expectations are that 2 million illegal aliens will be processed by May 4, 1988.

IV. HOW LEGALIZATION SUPPORTS THE DUAL THEMES OF LEGAL IMMIGRATION AND FAMILY UNIFICATION

Through the legalization program made possible by IRCA, several million people will be able to shift from an illegal to a legal status. They will be able to come "out of the shadows", become full active participants in our society, and eventually become United States citizens. Many of these millions are in family units which have filed as a unit and have been found eligible for legalization. Many parents of United States citizen children have qualified on the merits of their own cases under IRCA.

The INS is exercising the Attorney General's discretion by allowing minor children to remain in the United States even though they do not qualify on their own, but whose parents (or single parent in the case of divorce or death of spouse) have qualified under the provisions of IRCA. The same discretion is to be exercised as well in other cases which have specific humanitarian considerations.

Many family members who would have otherwise been judged ineligible for legalization may now qualify due to recent policy decisions. Applicants who resided illegally in the United States prior to January 1, 1982, but who subsequently departed and then used legal nonimmigrant documents to re-enter the United States to resume their illegal residence, are now considered eligible for legalization benefits with the filing of a waiver to overcome the fraud at entry.

Upon being approved for permanent resident status, the legalized alien will be eligible to bring in immediate relatives under the current provisions of the Immigration and Nationality Act. Therefore, families of legalized aliens will be unified in the same manner as other immigrant families who have been waiting outside of the United States. (See the following chart for comparisons).

Legal Immigration

1. Married couple with wife in U.S. and husband in foreign country
2. Lawful resident wife files petition for husband
3. Petition approved; husband gains right to immigrate under preference system
4. Husband must wait for visa; cannot wait in U.S.
5. If husband comes to U.S. illegally, he is subject to deportation if routinely encountered
6. Husband must return to home country to obtain visa when it is available

Legalization

1. Married couple apply for legalization
2. Wife approved; husband denied
3. No effort to deport husband based on legalization application
4. Later INS contact (i.e., at place of work) could result in deportation proceedings against husband
5. Wife gains permanent resident status; files petition for husband
6. See steps 3 - 6 under Legal Immigration

V. FAMILY FAIRNESS

Congress, as well as the INS, recognized that there is a basic issue of fairness involved in the enactment of IRCA. Fairness dictates that illegal alien family members of persons eligible for legalization not be treated more favorably than the family members of legal permanent residents who may have to wait years to come to the United States due to the backlog of a demand for visas. To grant a derivative legalization benefit to unqualified aliens who are merely related to a qualified applicant would be unfair when put in this context. Such a break from fairness and tradition would also act as a magnet for others to enter the United States in an illegal manner, marry a qualified legalization

applicant, and attempt to gain benefits. This would create a second legalization program contrary to the intent of Congress and upset the delicate balance of IRCA.

Legalization is a unique act. Basic equity between those legal immigrants who patiently wait in foreign countries for legal visas and those who entered illegally, but have contributed to America and are being forgiven, should be maintained. However, unqualified family members will be in no worse a position than they were prior to the enactment of IRCA. In fact, as noted above, it is to the benefit of the unqualified to have their eligible relative apply for legalization in that it may qualify them in the future for permanent residence.

VI. UNFOUNDED BELIEF THAT UNLESS LEGALIZATION LAW BE EXPANDED, FAMILIES WILL BE BROKEN UP

As previously noted, legalization allows many families to stay in this country legally. Without legalization, individuals who are in the United States illegally have no right to any benefits of the immigration law and may not petition for relatives.

To the extent that there is a family separation, the separation was usually accomplished by the alien who left his or her family behind in the home country to seek an illegal life in the United States. If the family is separated because of legalization and decides not to wait for a legal means to bring the family unit together again in the United States, the option is always available for the family unit to return to the home country.

VII. INS PROCEDURES TO HANDLE FAMILY FAIRNESS ISSUES

Under the law no information from the legalization application will be used against any applicant or their family. Once family members are recorded on the application, there cannot be subsequent modifications. Thus it is in the ineligible alien's best interest to be recorded as a family member now.

The confidentiality factor of the application, which Congress included in the legislation, prevents INS from taking any action as a result of information provided in the application. The only way family members of a legalization applicant would come under deportation proceedings is if they are apprehended during a routine INS operation at a workplace.

INS district directors may exercise the Attorney General's authority to indefinitely defer deportation of anyone for specific humanitarian reasons. They will continue to examine any case that involves an immediate relative of a successful legalization applicant. The district directors are instructed to review all evidence submitted, make a recommended finding, and make available all such cases for review and concurrence. This unusual step is being taken to ensure the consistency of decisions throughout the Service.

Guidelines for INS officials regarding the basis for issuing voluntary departure are as follows:

1. Voluntary departure shall generally not be granted to the ineligible spouses of legalized aliens whose only claim to such discretionary relief is by virtue of the marriage itself. Likewise, such relief is not available to the ineligible parents of either legalized applicants or United States citizen children.

2. Instead, certain compelling or humanitarian factors must exist in addition to the family relationship and hardships caused by separation.

3. In general, indefinite voluntary departure shall be granted to unmarried children under the age of eighteen (18) years who can establish that they were in an unlawful status prior to November 6, 1986. Such children should be residing with their parents and the granting of voluntary departure should be conditioned on the fact that both parents (or, in the case of a single parent household, the parent the child lives with) have achieved lawful temporary resident status.

IX. CONCLUSION

The United States is now nearly half way through the largest program in world history to allow many illegal aliens to become legal. Legalization is a balance to enforcement efforts to deter and control illegal immigration through border enforcement, job market and entitlement enforcement to deny jobs and entitlements to illegal aliens and stronger efforts against criminal aliens. By May 1988, the United States will legalize an estimated 2 million people, five times those legalized by all other countries in the world.

Many of these 2 million being legalized are families. Additional exercise of the Attorney General's discretion by INS assures that minor children living with their parents will be covered. Spouse not directly eligible for legalization will be reviewed on a case-by-case basis and can be granted permission to remain if special humanitarian factors are present. Other ineligible spouses of legalized aliens are placed in the exact same position as spouses of legal immigrants -- they can become legal residents through the petition process.

Therefore, legalization itself is the most significant effort of the Congress and the Administration to pursue the goal of U.S. immigration laws -- family unification. Out of fairness to our legal system, to legal immigrants waiting patiently in line, and to adhere to Congressional intent, there is no basis to "blanket in" all ineligible spouses. They, like all American immigrants, must follow the laws and fundamental principles of fairness.

It is extremely important, however, that persons who believe they are eligible for legalization apply because of the unique protection the law offers through the confidentiality provision. They should appear at an INS Legalization Office or pursue their case through a church or other organization (Qualified Designated Entity) whether or not other family members qualify, in order to ensure that their family situation is resolved through the lawful immigration process.

Alan C. Nelson
Commissioner
U.S. Immigration & Naturalization Service

October 21, 1987

EXHIBIT G

Memorandum

C-1588-P

Subject	Date
Family Fairness: Guidelines For Voluntary Departure under 8 CFR 242.5 for the Ineligible Spouses and Children of Legalized Aliens	FEB 2 1990

To

Regional Commissioners
Eastern
Northern
Southern
Western

From

Office of the Commissioner

On November 13, 1987, the Service implemented guidelines on granting voluntary departure to the ineligible spouses and children of legalized aliens, the so-called "family fairness" policy.

The Service is likely to face the issue of family fairness for several more years, because of the length of time needed for newly legalized aliens to acquire lawful permanent resident status and then to wait for a visa preference number to become available for family members. Accordingly, the Service is clarifying its family fairness policy, to assure uniformity in the granting of voluntary departure and work authorization for the ineligible spouses and children of legalized aliens.

Effective February 14, 1990, the following policy is to be implemented by all district directors in determining the eligibility for voluntary departure of ineligible spouses and children of legalized aliens.

1. Voluntary departure will be granted to the spouse and to unmarried children under 18 years of age, living with the legalized alien, who can establish that they have been residing in the United States since on or before November 6, 1986, if

   - the alien is admissible as an immigrant, except for documentary requirements;

   - the alien has not been convicted of a felony or three misdemeanors committed in the United States;

   - the alien has not assisted in the persecution of any person or persons on account of race, religion,

Appendix I, continued

nationality, membership in a particular social group or political opinion.

2. Voluntary departure will be granted for a one-year period to aliens who meet these requirements. Cases will be reviewed on an annual basis thereafter by district directors to determine whether extensions of voluntary departure should be issued.

- A grant of voluntary departure based on family fairness will be terminated if the legalized family member loses his or her status.

- A grant of voluntary departure based on family fairness will be terminated if the alien fails to maintain the requirements outlined in Paragraph 1.

- A grant of voluntary departure issued pursuant to this policy shall not be terminated for the sole reasons that the legalized family member has become a lawful permanent resident.

3. Documentary evidence must be submitted to establish

- the family relationship, through marriage certificates for spouses and birth or baptismal certificates for children and

- residence with the legalized alien, through a sworn affidavit, under penalty of perjury, by the legalized alien.

4. Work authorization will be granted to aliens who qualify for voluntary departure under Paragraph One and as provided in Paragraph Two.

5. In the case of a child born after November 6, 1986, no deportation proceedings shall be instituted as long as a parent maintains his or her status as a legalized alien.

The Legalization and Special Agricultural Worker Programs will eventually bring permanent lawful immigration status to nearly 3 million aliens. It is critical that the Service continue to respond to the needs of these aliens and their immediate family members in a consistent and humanitarian manner.

GENE MCNARY
Commissioner

EXHIBIT H

PewResearchCenter

NUMBERS, FACTS AND TRENDS SHAPING THE WORLD

FOR RELEASE Wednesday, Sept. 3, 2014

As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled

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About This Report

This report provides preliminary estimates of the size and duration of U.S. residence of the 2013 unauthorized immigrant population for the nation. It also includes 2012 and earlier estimates of the unauthorized immigrant population, its duration of U.S. residence, and number who live with U.S. citizen children. The estimates use the "residual method," a widely accepted and well-developed technique based on official government data. The data come mainly from the American Community Survey and March Supplement to the Current Population Survey, conducted by the U.S. Census Bureau. For more detail, see the Methodology appendix.

This report is a collaborative effort based on the input and analysis of the following people on the staff of the Pew Research Center. Editorial guidance was provided by Mark Hugo Lopez, director of Hispanic research. This report was written by Jeffrey S. Passel, senior demographer; D'Vera Cohn, senior writer; Jens Manuel Krogstad, writer/editor; and Ana Gonzalez-Barrera, research associate. Gonzalez-Barrera also created the charts; number-checking was done by Anna Brown, research assistant. Eileen Patten, research analyst, assisted with formatting and production. Molly Rohal was the copy editor. Find related reports online at pewresearch.org/hispanic.

A Note on Terminology

"Foreign born" refers to an individual who is not a U.S. citizen at birth or who, in other words, is born outside the U.S., Puerto Rico or other U.S. territories and whose parents are not U.S. citizens. The terms "foreign born" and "immigrant" are used interchangeably. "U.S. born" refers to an individual who is a U.S. citizen at birth, including people born in the United States, Puerto Rico or other U.S. territories, as well as those born elsewhere to parents who are U.S. citizens. When referring to children of unauthorized immigrants, the terms "U.S. born" and "U.S. citizen" are used interchangeably; a small number of these children may be naturalized citizens.

The "legal immigrant" population is defined as people granted legal permanent residence; those granted asylum; people admitted as refugees; and people admitted under a set of specific authorized temporary statuses for longer-term residence and work. This group includes "naturalized citizens," legal immigrants who have become U.S. citizens through naturalization; "legal permanent resident aliens" who have been granted permission to stay indefinitely in the U.S. as permanent residents, asylees or refugees; and "legal temporary migrants" who are allowed to live and, in some cases, work in the U.S. for specific periods of time (usually longer than one year).

"Unauthorized immigrants" are all foreign-born non-citizens residing in the country who are not "legal immigrants." These definitions reflect standard and customary usage by the U.S. Department of Homeland Security and academic researchers. The vast majority of unauthorized immigrants entered the country without valid documents or arrived with valid visas but stayed past their visa expiration date or otherwise violated the terms of their admission. Some who entered as unauthorized immigrants or violated terms of admission have obtained work authorization by applying for adjustment to legal permanent status, obtaining Temporary Protected Status (TPS) or receiving Deferred Action for Childhood Arrivals (DACA) status. Data are very limited, but this "quasi-legal" group could account for as much as 10% of the unauthorized population. Many could also revert to unauthorized status.

About Pew Research Center

Pew Research Center is a nonpartisan fact tank that informs the public about the issues, attitudes and trends shaping America and the world. It does not take policy positions. It conducts public opinion polling, demographic research, media content analysis and other empirical social science research. The center studies U.S. politics and policy views; media and journalism; internet and technology; religion and public life; Hispanic trends; global attitudes; and U.S. social and demographic trends. All of the center's reports are available at www.pewresearch.org. Pew Research Center is a subsidiary of The Pew Charitable Trusts.

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As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled

BY *Jeffrey S. Passel, D'Vera Cohn, Jens Manuel Krogstad* **AND** *Ana Gonzalez-Barrera*

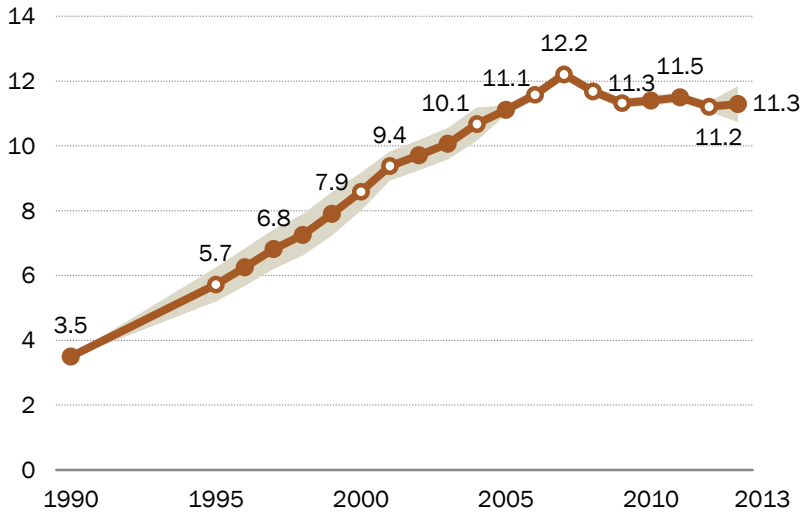
The number of unauthorized immigrants living in the United States has stabilized since the end of the Great Recession and shows no sign of rising, according to new Pew Research Center estimates. The marked slowdown in new arrivals means that those who remain are more likely to be long-term residents, and to live with their U.S.-born children.

There were 11.3 million unauthorized immigrants living in the U.S. in March 2013, according to a preliminary Pew Research Center estimate, about the same as the 11.2 million in 2012 and unchanged since 2009. The population had risen briskly for decades before plunging during the Great Recession of 2007 to 2009.

FIGURE 1

Growth in Unauthorized Immigration Has Leveled Off

In millions



Note: Shading surrounding line indicates low and high points of the estimated 90% confidence interval. White data markers indicate that the change from the previous estimate shown is statistically significant (for example, for 1995 change is significant from 1990). Data labels are for 1990, odd years from 1995-2011, 2012, 2013.

Source: Table A1, derived from Pew Research Center estimates based on residual methodology, applied to March Supplements of the Current Population Survey for 1995-2004 and 2013, and the American Community Survey for 2005-2012. Estimates for 1990 from Warren and Warren (2013). See Methodology.

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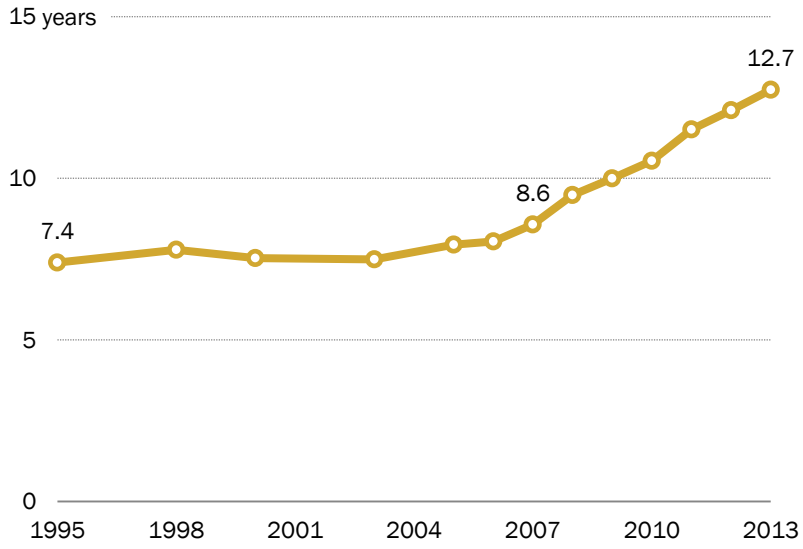
As growth of this group has stalled, there has been a recent sharp rise in the median length of time that unauthorized immigrants have lived in the U.S. In 2013, according to a preliminary estimate, unauthorized immigrant adults had been in the U.S. for a median time of nearly 13 years—meaning that half had been in the country at least that long. A decade earlier, in 2003, the median for adults was less than eight years.

The new estimates are based mainly on data from the U.S. Census Bureau's American Community Survey and Current Population Survey, using the widely accepted "residual methodology" employed by the center for many years.[1] The estimates of the total population, as well as regarding the share of unauthorized immigrants with U.S. citizen children and length of residence in the U.S., update previously published estimates.[2]

FIGURE 2

As Unauthorized Immigrant Population Growth Has Slowed, Median Length of Residence Has Grown

Adult median duration of residence in U.S.



Note: 2013 figure is preliminary. Data labels are for 1995, 2007 and 2013.

Source: Table A1, derived from Pew Research Center estimates based on residual methodology, applied to March Supplements of the Current Population Survey for 1995-2003 and 2013, and the American Community Survey for 2005-2012. See Methodology.

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There is renewed interest in unauthorized immigrants who are long-time residents of the United States and have U.S.-born children because they are among those to whom President Obama reportedly is considering offering a temporary reprieve from deportation (Los Angeles Times, 2014). Obama reiterated in late August that he would prefer that Congress pass major legislation to overhaul the immigration system, but because Congress has not done so, he may take executive action on his own (White House, 2014).

Among the nation's 10.4 million unauthorized adults, a shrinking share have been in the country for less than five years—15% in 2012, compared with 38% in 2000. A rising share have lived in the U.S. for a decade or more—62% in 2012, compared with 35% in 2000. About a fifth (21%) had been in the U.S. for two decades or more as of 2012.

[1] For details about the methodology, see Methodology Appendix C.

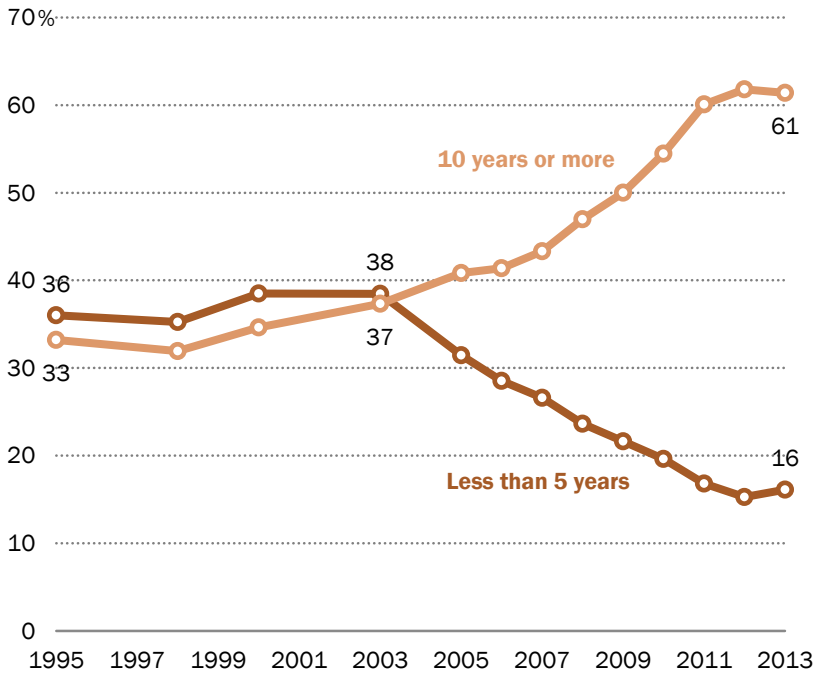
[2] For previous estimates, see Passel, Cohn and Gonzalez-Barrera, 2013, and Taylor, Lopez, Passel and Motel, 2011.

As the unauthorized population has tilted more toward long-term residents, these immigrants are more likely to have children who are U.S. citizens because they were born in the U.S. Among unauthorized immigrants, the Pew Research Center estimates that in 2012, 4 million, or 38% of adults, lived with their U.S.-born children, either minors or adults. In 2000, 2.1 million, or 30% of unauthorized adults, did.[3] About three-quarters of unauthorized parents residing with their U.S.-born children in 2012—3 million—had lived in the U.S. for 10 years or more.

FIGURE 3

Share of Long-Term Unauthorized Immigrants Surpasses Share of Short-Term Immigrants

% of unauthorized adult immigrants, by duration of U.S. residence



Note: 2013 estimates are preliminary. Data labels are for 1995, 2003 and 2013.

Source: Table A1, derived from Pew Research Center estimates based on residual methodology, applied to March Supplements of the Current Population Survey for 1995-2003 and 2013, and the American Community Survey for 2005-2012.

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Total Population and Trend

The new Pew Research Center estimate of 11.2 million unauthorized immigrants in the U.S. for 2012 replaces a previously published preliminary estimate of 11.7 million as of March 2012 (Passel, Cohn and Gonzalez-Barrera, 2013). The two estimates are not statistically different. The new estimate is considered more accurate because it is based on the American Community Survey, a larger dataset than the Current Population Survey that was the basis for the earlier preliminary estimate.[4]

[3] The total with U.S.-born minor or adult children may well be higher, because this estimate does not count those not living with their sons or daughters.

[4] For 2012, the public-use sample from the American Community Survey is a 1% sample of the U.S. population, or more than 3.1 million cases. The 2013 March Current Population Survey used for these estimates has a sample with 203,000 cases.

The nation's estimated unauthorized immigrant population had risen steadily since at least 1990, when it numbered 3.5 million. By 2007, it had more than tripled, to 12.2 million.

As the U.S. economy faltered and border enforcement tightened, however, arrivals plummeted, and some unauthorized immigrants, especially Mexicans, have returned home (Passel, Cohn and Gonzalez-Barrera, 2012 & 2013). By 2009, the population fell to 11.3 million, and has changed little since.

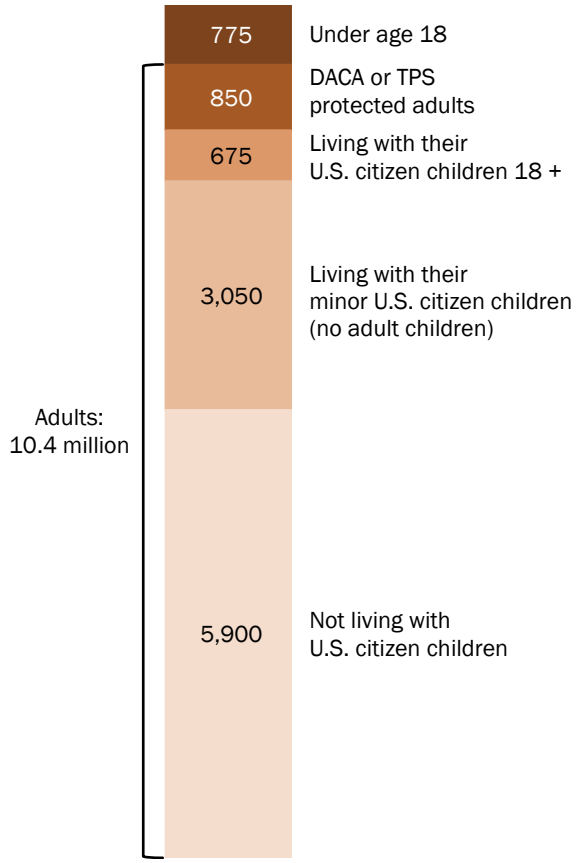
Parents of U.S.-Born Children

In 2012, there were 4 million unauthorized immigrant adults living with their U.S.-born children. Among those, 3.7 million do not have protection from deportation under Obama's Deferred Action for Childhood Arrivals (DACA) program or under the Temporary Protected Status (TPS) program. As the accompanying chart shows, an estimated 675,000 unauthorized immigrants without deportation protection have U.S.-born children ages 18 or older; some of those parents also have younger children.[5] The remainder, about 3 million, has only minor U.S.-born children.

FIGURE 4

Unauthorized Immigrants, by Selected Categories, 2012

In thousands



Notes: Among those under 18, an estimated 120,000 are protected by Deferred Action for Childhood Arrivals (DACA) and 5,000 have Temporary Protected Status. Among DACA or TPS protected adults, an estimated 475,000 have DACA status and 400,000 have TPS. These numbers are rounded, so may not add to total.

Source: Table A2, derived from Pew Research Center estimates based on residual methodology, applied to 2012 American Community Survey.

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As of 2012, all unauthorized immigrant parents of U.S.-born children had lived in the U.S. for a median 15 years, longer than the median 12 years for the entire unauthorized population. In 2000, the median was 11 years for these parents.

[5] An estimated 275,000 only have U.S.-born children ages 18 and older.

There were 775,000 unauthorized children younger than age 18 in 2012. In 2005, at its peak, this group numbered more than 1.6 million. By contrast, the number of U.S.-born children younger than 18 has risen. In 2012, there were 4.5 million U.S.-born children younger than 18 living with at least one unauthorized parent. In 2000, there were less than half as many, less than 2.2 million.[6]

The number of unauthorized immigrant children has declined in recent years, for two reasons. Some unauthorized immigrant children have turned 18 and become adults with unauthorized status. In addition, the recent slowdown in unauthorized immigration overall has resulted in fewer new unauthorized children arriving.

Adults Without Deportation Relief

The overall 2012 figure for unauthorized immigrants includes about a million people who already have temporary relief from deportation through two separate administrative programs. About 575,000 unauthorized immigrants ages 16 to 30 who were brought to the country by their parents are shielded under Obama's Deferred Action for Childhood Arrivals (DACA) program (U.S. Department of Homeland Security, 2014). About 400,000 adults and 5,000 children, mainly Central Americans, have "Temporary Protected Status" based on conditions in their home countries that would make it difficult for them to return.

Among the 9.6 million unauthorized adults who do not have formal protection from deportation, 16% have lived in the U.S. for less than five years, 60% for at least 10 years, and 20% for 20 years or more, according to Pew Research Center's estimates. The figures are similar to those for all unauthorized adults.

Unauthorized Relatives of Protected Immigrants

Some have suggested that Obama might expand the scope of the deferred action program that began in 2012, which gave a temporary reprieve and work permits to some unauthorized young adults who were brought to the U.S. by their parents before age 16. Among the possible beneficiaries would be parents or children of those who have received relief from deportation (Washington Post, 2014).

According to Pew Research Center estimates, about 450,000 unauthorized immigrants in the U.S. live with their unauthorized immigrant children who are protected from deportation under the deferred action program or who have Temporary Protected Status. Of these adults, more than half—about 230,000—also live with at least one of their U.S.-born children.

[6] These numbers do not reflect the recent surge in unaccompanied minors, which began in 2013.

A relatively small group of unauthorized immigrants, both children and adults, lives with parents who are protected from deportation under the deferred action program or who have Temporary Protected Status. According to the center's estimates, this group numbers about 50,000.

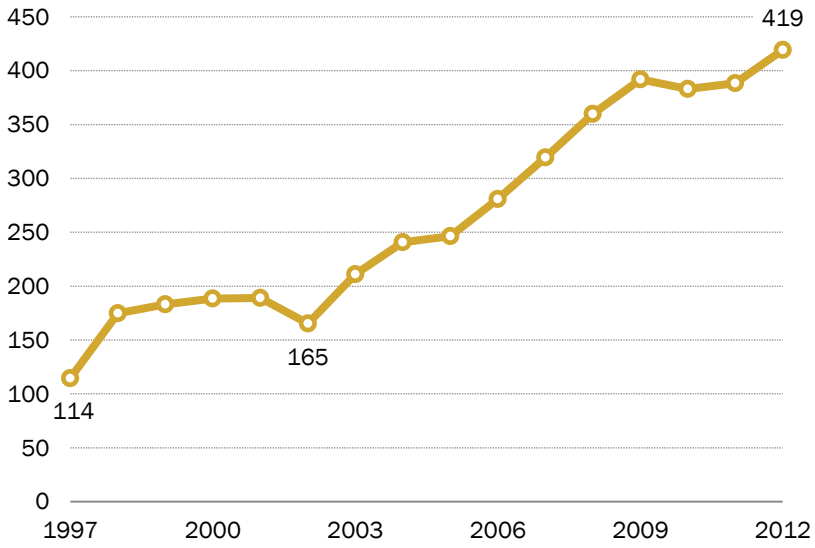
Policy and Public Opinion

Obama signaled in March that he would consider changes in immigration policy via executive action, under renewed criticism by immigrant advocates for a record number of deportations during his administration (New York Times, 2014). From 2009 to 2012, a record 400,000 immigrants were deported per year, an annual average higher than under the administration of his predecessor, George W. Bush (Gonzalez-Barrera, 2014).

FIGURE 5

Total Removals by U.S. Department of Homeland Security, 1997-2012

In thousands



Note: Years are fiscal years. Data labels are for 1997, 2002 and 2012.

Source: U.S. Department of Homeland Security, Yearbook of Immigration Statistics: 2012

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The president had said in June that he would pursue changes in immigration policy on his own by the end of summer after Congress failed to pass major legislation, but in late August he signaled that deadline might slip (White House, 2014).

The debate over immigration policy has been complicated by the recent arrival of thousands of unaccompanied children. During the first 11 months of the 2014 fiscal year (Oct. 1, 2013-Aug. 31, 2014), the number of unaccompanied children caught at the U.S.-Mexico border rose 88% compared with the same period in fiscal 2013 (U.S. Customs and Border Patrol, 2014).

The Pew Research Center has not tested public opinion on the idea of broadened temporary relief from deportation for some categories of unauthorized immigrants. In a survey earlier this year, Americans were evenly divided over whether the growing number of deportations was a good thing or a bad thing, with 45% saying each (Pew Research Center, 2014a).

But in a new Pew Research Center survey, the share prioritizing tougher border security and law enforcement has risen since early in Obama's second term (Pew Research Center, 2014c). The national survey, conducted Aug, 20-24 among 1,501 adults, finds that 41% say that in dealing with unauthorized immigration, national policy should give equal priority to better border security and to creating a path to citizenship for unauthorized immigrants already in the U.S. A third (33%) say the priority should be on better border security and tougher law enforcement; 23% say that a path to citizenship should be the policy priority.

In a 2013 survey, the public was evenly split over whether national immigration policy should prioritize better border security or creating a path to citizenship (25% for each). Nearly half (47%) said both should have equal priority (Pew Research Center, 2013).

Most Americans still support a path to legal status for unauthorized immigrants. By 68% to 30%, the public in July backed offering unauthorized immigrants an opportunity to gain legal status (though not necessarily citizenship) if they meet certain requirements, though support has declined some since February, according to a recent Pew Research Center survey (Pew Research Center, 2014b).

Pew Research Center surveys have found that a strong majority of Hispanics and Asian Americans want to see immigration reform passed and support creating a pathway to citizenship for unauthorized immigrants. However, both Hispanics and Asian Americans believe it is more important for unauthorized immigrants to get relief from the threat of deportation (Lopez, Taylor, Funk and Gonzalez-Barrera, 2013).

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Appendix A: Additional Tables

TABLE A1

Unauthorized Immigrant Population, by Age and Duration of Residence in the U.S., and Their U.S.-Born Children, 1995-2013

Population figures in thousands, unless otherwise noted (see rounding notes below)

	Unauthorized Population			Unauthorized Population Ages 18 and Older			U.S.-Born Children of Unauthorized	
	Total	*Ages 18 and older*	*Younger than 18*	*Median duration in the U.S. (in years)*	*Less than 5 years in the U.S. (%)*	*10 years or more in the U.S. (%)*	*Ages 18 and older*	*Younger than 18*
2013	11,300	(x)	(x)	12.7	16	61	(x)	(x)
2012	11,200	10,400	775	12.1	15	62	675	4,500
2011	11,500	10,700	825	11.5	17	60	675	4,450
2010	11,400	10,400	950	10.5	20	54	575	4,350
2009	11,300	10,300	975	10.0	22	50	450	4,300
2008	11,700	10,600	1,100	9.5	24	47	375	4,150
2007	12,200	10,700	1,550	8.6	27	43	300	4,250
2006	11,600	10,100	1,500	8.0	29	41	220	3,800
2005	11,100	9,500	1,650	8.0	31	41	190	3,550
2003	10,100	8,650	1,400	7.5	38	37	180	2,900
2000	8,600	7,150	1,450	7.5	38	35	85	2,150
1998	7,250	5,950	1,300	7.8	35	32	40	1,750
1995	5,700	4,600	1,100	7.4	36	33	35	1,200

Note: Estimates for 2013 are preliminary. All numbers rounded independently. Percentages and medians computed from unrounded numbers. See methodology for rounding rules. The symbol '(x)' means not available.

Source: Pew Research Center estimates based on residual methods (see Methodology). Estimates for 2005-2012 based on American Community Survey data from Integrated Public Use Microdata Series (IPUMS). Estimates for 1995-2003 and 2013 based on March supplements to the Current Population Survey.

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TABLE A2

Unauthorized Immigrant Population, by Age, Status, Duration of Residence in the U.S. and Presence of Children, and Their U.S.-Born Children, 2012

Population figures in thousands, unless otherwise noted (see rounding notes below)

		DURATION OF RESIDENCE IN THE U.S.					
		Less than 5 years		*10 years or more*		*20 years or more*	
	TOTAL POPULATION	*Population*	%	*Population*	%	*Population*	%
Total unauthorized	**11,200**	**1,850**	**17**	**6,650**	**59**	**2,200**	**20**
Unauthorized Adults	*10,400*	*1,600*	*15*	*6,450*	*62*	*2,200*	*21*
with DACA approval	475	5	1	375	80	90	19
with TPS	400	15	4	375	94	170	43
without DACA or TPS	9,550	1,550	16	5,700	60	1,950	20
Adults, without DACA or TPS	*9,550*	*1,550*	*16*	*5,700*	*60*	*1,950*	*20*
With U.S.-born children	3,700	230	6	2,750	74	1,050	29
1+ child is 18 or older	675	20	3	625	92	500	75
Minor children only	3,050	210	7	2,150	71	550	18
No U.S.-born children	5,900	1,350	23	2,950	50	900	15
Unauthorized Minors	*775*	*(x)*	*(x)*	*(x)*	*(x)*	*(x)*	*(x)*
with DACA approval	120	(x)	(x)	(x)	(x)	(x)	(x)
with TPS	5	(x)	(x)	(x)	(x)	(x)	(x)
without DACA or TPS	650	(x)	(x)	(x)	(x)	(x)	(x)
U.S.-born Children of Unauthorized							
Younger than 18	4,500	(x)	(x)	(x)	(x)	(x)	(x)
18 and older	675	(x)	(x)	(x)	(x)	(x)	(x)

Note: Adults are ages 18 and older. All references to children include only those living with their unauthorized parent(s). “Unauthorized Minors” are younger than 18 and include some who are not living with parent(s). All numbers rounded independently. Percentages computed from unrounded numbers. See methodology for rounding rules. The symbol '(x)' means not available. DACA refers to Deferred Action for Childhood Arrivals. TPS refers to Temporary Protected Status.

Source: Pew Research Center estimates based on residual methods (see Methodology) applied to 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A3

Unauthorized Adults, by Status, Detailed Duration of Residence in the U.S. and Presence of Children, 2012

Population figures in thousands, unless otherwise noted (see rounding notes below)

	TOTAL POPULATION	ADULT POPULATION *(18 and older)*	ADULTS WITHOUT DACA OR TPS		
			Total	With U.S.-born children	Without U.S.-born children
Duration of U.S. Residence					
Total population	*11,200*	*10,400*	*9,550*	*3,700*	*5,900*
Less than 5 years	1,850	1,600	1,550	230	1,350
5-9 years	2,700	2,400	2,300	725	1,600
10-14 years	2,850	2,650	2,400	1,000	1,350
15-19 years	1,600	1,600	1,350	675	700
20 or more years	2,200	2,200	1,950	1,050	900
Total percent	*100*	*100*	*100*	*100*	*100*
Less than 5 years	17	15	16	6	23
5-9 years	24	23	24	19	27
10-14 years	25	25	25	28	23
15-19 years	14	15	14	18	12
20 or more years	20	21	20	29	15

Note: Adults with U.S.-born children only includes those whose children are living with them. "U.S.-born children" include those younger than 18 and those 18 and older. All numbers rounded independently. Percentages computed from unrounded numbers. See methodology for rounding rules. DACA refers to Deferred Action for Childhood Arrivals. TPS refers to Temporary Protected Status.

Source: Pew Research Center estimates based on residual methods (see Methodology) applied to 2012 American Community Survey data from Integrated Public Use Microdata Series (IPUMS)

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TABLE A4

Unauthorized Adults, by Presence of U.S.-Born Children, 1995-2012

Population figures in thousands (see rounding notes below)

	UNAUTHORIZED ADULT POPULATION			
	Total	With only U.S.-born children younger than 18	With U.S.-born children ages 18 or older	Without U.S.-born children
2012	10,400	3,250	700	6,450
2011	10,700	3,300	725	6,650
2010	10,400	3,250	625	6,600
2009	10,300	3,200	500	6,600
2008	10,600	3,200	425	6,950
2007	10,700	3,250	325	7,050
2006	10,100	3,050	250	6,750
2005	9,500	3,050	230	6,200
2003	8,650	2,700	210	5,750
2000	7,150	2,050	100	5,000
1998	5,950	1,850	40	4,100
1995	4,600	1,350	50	3,200

Note: Adults with U.S.-born children only include those whose children are living with them. Parents living with U.S.-born children ages 18 or older may also have U.S.-born children younger than 18 in their household. All numbers rounded independently. See methodology for rounding rules.

Source: Pew Research Center estimates based on residual methods (see Methodology). Estimates for 2005-2012 based on American Community Survey data from Integrated Public Use Microdata Series (IPUMS). Estimates for 1995-2003 based on March supplements to the Current Population Survey.

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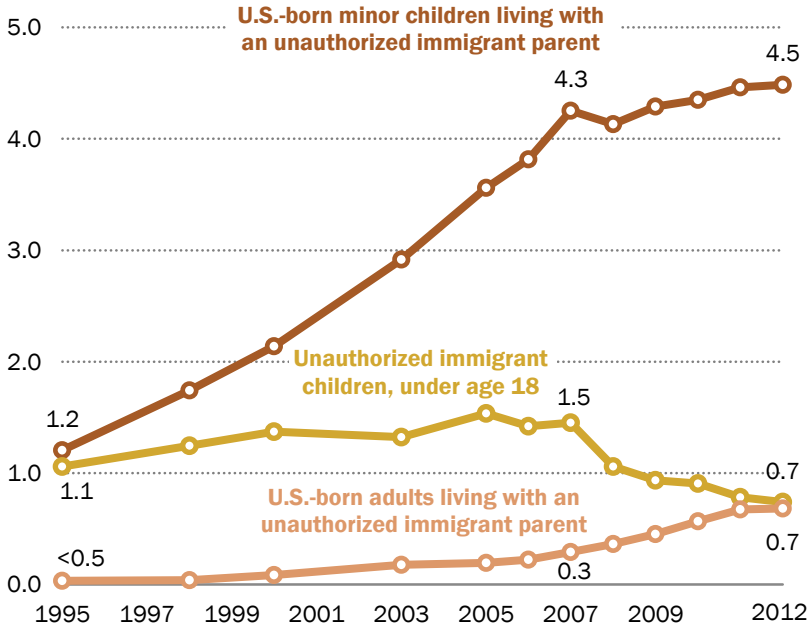
Appendix B: Additional Charts

Figure B1

A Rise in U.S.-born Children of Unauthorized Immigrants, and Decline in Unauthorized Children

In millions



Note: Chart does not include an unknown number of children of unauthorized immigrants who do not live with their parent(s). Data labels are for 1995, 2007 and 2012.

Source: Table A1, derived from Pew Research Center estimates based on residual methodology, applied to March Supplements of the Current Population Survey for 1995-2003, and the American Community Survey for 2005-2012

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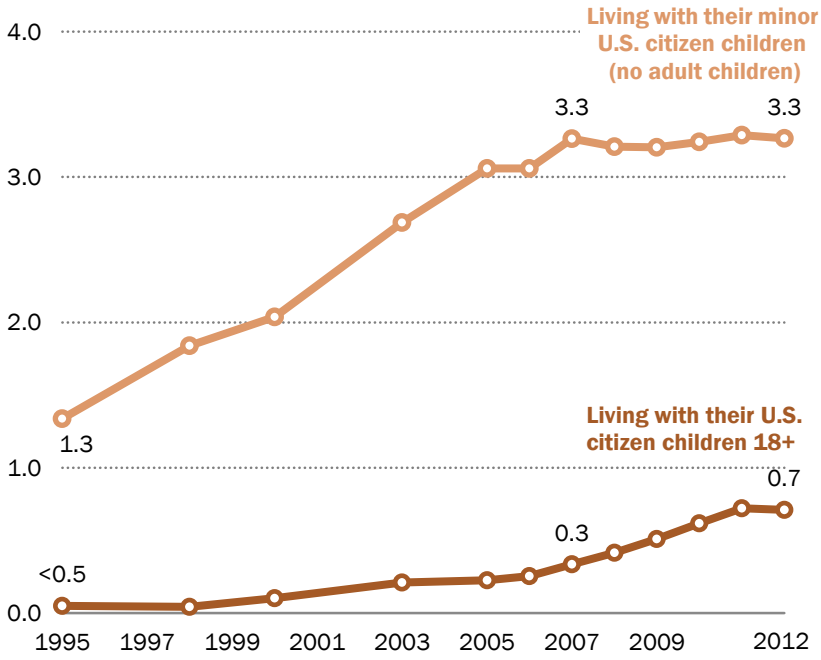
Figure B2

A Growing Number of Unauthorized Immigrants Live with Their U.S. Citizen Children

In millions



Note: Chart does not include unauthorized-immigrant parents who do not live with their children. Data labels are for 1995, 2007 and 2012.

Source: Table A4, derived from Pew Research Center estimates based on residual methodology, applied to March Supplements of the Current Population Survey for 1995-2003, and the American Community Survey for 2005-2012

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Appendix C: Methodology

Overview

The estimates presented in this report for the unauthorized immigrant population are based on a residual estimation methodology that compares a demographic estimate of the number of immigrants residing legally in the country with the total number of immigrants as measured by a survey—either the American Community Survey (ACS) or the March Supplement to the Current Population Survey (CPS); the difference is assumed to be the number of unauthorized immigrants in the survey, a number that is later adjusted for omissions from the survey (see below). The basic estimate is:

Unauthorized Immigrants (U)	=	Survey, Total Foreign Born (F)	-	Estimated Legal Immigrant Population (L)

The legal resident immigrant population is estimated by applying demographic methods to counts of legal admissions covering the period from 1980 to 2012 obtained from the Department of Homeland Security's Office of Immigration Statistics and its predecessor at the Immigration and Naturalization Service, with projections to 2013. The initial estimates are calculated separately for age-gender groups in six states (California, Florida, Illinois, New Jersey, New York and Texas) and the balance of the country; within these areas the estimates are further subdivided into immigrant populations from 35 countries or groups of countries by period of arrival in the United States. Variants of the residual method have been widely used and are generally accepted as the best current estimates (Baker and Rytina, 2014; Hoefer, Rytina and Baker, 2012; Warren and Warren, 2013). See also Passel, Cohn and Gonzalez-Barrera (2013), Passel and Cohn (2008) and Passel (2007) for more details. The overall population estimates presented in this report are the residual totals, adjusted for survey omissions for these six states and the balance of the country, subdivided for Mexican immigrants and other groups of immigrants (balance of Latin America, south and east Asia, rest of world) depending on sample size and state.

Once the residual estimates have been produced, individual foreign-born respondents in the survey are assigned a specific status (one option being unauthorized immigrant) based on the individual's demographic, social, economic, geographic and family characteristics. These status assignments are the basis for the characteristics reported here (including, for example, specific countries of birth, detailed state estimates, duration of residence and presence of children). A final step in the weighting-estimation process involves developing final state-level estimates that take into account trends over time in the estimates. For this report, additional status assignments

involving Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA) were done for the 2012 ACS only. Later reports will focus on more detailed information on the countries and regions of origin of the immigrants, estimates for all states and major metropolitan areas, and various demographic, social and economic characteristics of the unauthorized and legal immigrant populations.

Data Sources and Survey Weights

The American Community Survey is an ongoing survey conducted by the U.S. Census Bureau. The survey collects detailed information on a broad range of topics, including country of birth, year of immigration and citizenship—the information required for the residual estimates. The ACS has a continuous collection design with monthly samples of about 250,000; the nominal annual sample size was about 2.9 million households for 2005-2009 with about 1.9 million included in the final sample. The initial sample was expanded to almost 3.3 million addresses for 2011 and over 3.5 million for 2012; the final sample included more than 2.1 million address in 2011 and almost 2.4 million in 2012. (http://www.census.gov/acs/www/methodology/sample_size_data/index.php).

For this report, public use samples of individual survey records from the ACS are tabulated to provide the data used in the estimation process. The public use file is a representative 1% sample of the entire U.S. (including about 3 million individual records for each year 2005-2012) obtained from the Integrated Public Use Microdata Series or IPUMS (Ruggles et al., 2010). The ACS began full-scale operation in 2005 covering only the household population; since 2006 it has covered the entire U.S. population. ACS data are released by the Census Bureau in September for the previous year.

The other survey data source used for residual estimates comes from March Supplements to the Current Population Survey. The CPS is a monthly survey currently of about 55,000 households conducted jointly by the U.S. Bureau of Labor Statistics and the Census Bureau. Since 2001, the March supplement sample has been expanded to about 80,000 households; before then, the expanded March Supplement sample included about 50,000 households. The CPS universe covers the civilian noninstitutional population. The CPS was redesigned in 1994 and, for the first time, included the information required for the residual estimates (i.e., country of birth, date of immigration and citizenship). Some limitations of the initial March Supplement redesign of the CPS as implemented in 1994 preclude its use in making these estimates, so the first CPS-based estimates are for March 1995. CPS data are released by the Census Bureau in September for the previous March. The most recent March CPS data were for 2013.

Population figures from both the ACS and CPS are based on the Census Bureau's official population estimates for the nation, states and smaller areas through a weighting process that ensures the survey figures agree with pre-specified national population totals by age, sex, race and Hispanic origin. At the sub-national level, the two surveys differ in their target populations. The March CPS data agree with state-level totals by age, sex and race and are based on a process that imposes other conditions on weights for couples (U.S. Census Bureau, 2006). The ACS weights use estimates for much smaller geographic areas that are summed to state totals (http://www.census.gov/acs/www/methodology/methodology_main/ – especially Chapter 11).

The population estimates for the surveys are based on the latest available figures at the time the survey weights are estimated. This process produces the best estimates available at the time of the survey, but it does not guarantee that a time series produced across multiple surveys is consistent or accurate. Significant discontinuities can be introduced when the Census Bureau changes its population estimation methods, as it did several times early in the 2000s and in 2007 and 2008 (Passel and Cohn, 2010), or when the entire estimates series is recalibrated to take into account the results of a new census.

The estimates shown for unauthorized immigrants and the underlying survey data are derived from ACS IPUMS 1% samples for 2005-2012 and March CPS public use files for 1995-2013, which have been reweighted to take into account population estimates consistent with the 1990 Census, the 2000 Census, the 2010 Census and the most recent population estimates. The population estimates used to reweight the March 2011 CPS come from the Census Bureau's Vintage 2011 population estimates (http://www.census.gov/popest/data/index.html); they are consistent with the 2010 Census and the estimates used to weight the March 2012-2013 CPS. The population estimates used to reweight the CPS for March 2001 through March 2010 are the Census Bureau's intercensal population estimates for the 2000s (http://www.census.gov/popest/data/intercensal/index.html); these population estimates use demographic components of population change for 2000-2010 and are consistent with both the 2000 and 2010 censuses. Similarly, the population estimates used to reweight the CPS for March 1995 through March 2000 are the intercensal population estimates for the 1990s, which are consistent with the 1990 and 2000 censuses. The ACS data for 2010-2012 do not require reweighting as they are weighted to recent population estimates based on the 2010 Census. For the 2005-2009 ACS, the reweighting uses the same intercensal population estimates as used for the CPS.[7] The reweighting methodology for both the ACS and CPS follows, to the extent possible, the methods used by the Census Bureau in producing the sample weights that equal the population

[7] For the 2005, the ACS included only the household population; it did not cover the group quarters population. To make the data for the 2005 ACS comparable with 2006 and later, we augmented the ACS by adding records to represent the group quarter population by borrowing records from the 2006 ACS. (See Passel, Cohn and Gonzalez-Barrera 2013.)

totals. See Passel, Cohn and Gonzalez-Barrera 2013 for more details on weighting and adjustments for survey undercoverage.

Because of the much larger sample size in the ACS (3.1 million sample cases in 2012 including more than 350,000 foreign-born cases) than the March CPS (203,000 sample cases in 2013 with about 26,000 foreign-born), the ACS-based estimates should be considered more accurate than the CPS-based estimates. In this publication, we have replaced the previous CPS-based estimate for 2012 with the new ACS-based estimate. The CPS-based estimate for 2013 should be considered preliminary as it will be replaced with an ACS-based estimate when the 2013 ACS data become available.

Status Assignments—Legal and Unauthorized Immigrants

Individual respondents are assigned a status as a legal or unauthorized immigrant based on the individual's demographic, social, economic and geographic characteristics so the resulting number of immigrants in various categories agrees with the totals from the residual estimates. The assignment procedure employs a variety of methods, assumptions and data sources.

First, all immigrants entering the U.S. before 1980 are assumed to be legal immigrants. Then, the data are corrected for known over-reporting of naturalized citizenship on the part of recently arrived immigrants (Passel et al. 1997) and all remaining naturalized citizens from countries other than Mexico and those in Central America are assigned as legal. Persons entering the U.S. as refugees are identified on the basis of country of birth and year of immigration to align with known admissions of refugees and asylees (persons granted asylum). Then, individuals holding certain kinds of temporary visas (including students, diplomats and "high-tech guest workers") are identified in the survey and each is assigned a specific legal temporary migration status using information on country of birth, date of entry, occupation, education and certain family characteristics. Finally, some individuals are assigned as legal immigrants because they are in certain occupations (e.g., police officer, lawyer, military occupation, federal job) that require legal status or because they are receiving public benefits (e.g., welfare or food stamps) that are limited to legal immigrants. As result of these steps, the foreign-born population is divided between individuals with "definitely legal" status (including long-term residents, naturalized citizens, refugees and asylees, legal temporary migrants, and some legal permanent residents) and a group of "potentially unauthorized" migrants.

The number of potentially unauthorized migrants typically exceeds the estimated number of unauthorized migrants (from the residual estimates) by 15-35%. So, to have a result consistent with the residual estimate of legal and unauthorized immigrants, probabilistic methods are

employed to assign legal or unauthorized status to these potentially unauthorized individuals. This last step also involves a check to ensure that the legal statuses of family members are consistent; for example, all family members entering the country at the same time are assumed to have the same legal status. The entire process requires several iterations to produce estimates that agree with the demographically derived population totals. At the end, the final estimates agree with the residual estimates for the six individual states noted earlier and for the balance of the country; for Mexican-born and other legal and unauthorized immigrants in each area; and for children, working-age men and working-age women within each category. Finally, the survey weights for the foreign-born are adjusted upward so the tabulated figures agree with the analytic, demographic estimates of the total number of legal and unauthorized migrants developed in the very first step.

For this report, two additional status groups have been assigned to persons initially assigned as unauthorized immigrants: (1) DACA approval or persons approved under the Deferred Action for Childhood Arrivals criteria; and (2) Temporary Protected Status. Under the DACA standards, an unauthorized immigrant must meet a number of specific criteria (U.S. Citizenship and Immigration Services, 2012 http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-daca):

1. Arrived in the U.S. before age 16 and were under age 31 as of June 15, 2012;
2. Continuously resided in the U.S. Since June 15, 2007;
3. Physically present in the U.S. on June 15, 2012;
4. Enrolled in school, have a high school diploma or a GED or have been honorably discharged from the military or the Coast Guard at the time of application;
5. Not been convicted of a felony, a significant misdemeanor offense. or three or more other misdemeanors, and do not present a threat to national security or public safety.

Using information from the 2012 ACS on year of arrival in the U.S., educational attainment, and veteran status, we determine whether persons assigned as unauthorized immigrants meet criteria (1)-(4). If they do so, they are identified as potential DACA applications. From this pool, we selected enough ACS respondents to represent the 580,000 DACA requests received by DHS as of September 2013 and approximate their characteristics (e.g., age by country of origin, age by gender, age by marital status and state of residence). See the tables at http://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Deferred%20Action%20for%20Childhood%20Arrivals/USCIS-DACA-Characteristics-Data-2014-7-10.pdf.

Temporary Protected Status (TPS) is primarily a function of an individual's country of birth and date of arrival. As of calendar 2013, approximately 420,000 persons had been granted TPS.[8] We selected ACS respondents previously designated as unauthorized immigrants to represent the TPS

[8] Table entitled, "Existing Grants of Temporary Protected Status" supplied by DHS.

population based on country of birth and year of arrival:

El Salvador	270,650	Arrived before 2001
Honduras	83,349	Arrived before 1999
Haiti	58,037	Arrived before 2011
Nicaragua	4,275	Arrived before 1999
Syria	2,475	Arrived before 2013
Sudan	514	Arrived before 2005
Somalia	378	Arrived before 2012

Other Methodological Issues

Rounding of Estimates. All state- and national-level estimates for unauthorized immigrant populations are presented as rounded numbers to avoid the appearance of unwarranted precision in the estimates. Estimates less than 100,000 are rounded to the nearest 5,000; estimates in the range of 100,000-250,000 to the nearest 10,000; estimates smaller than 1 million to the nearest 25,000; estimates of 1-10 million are rounded to the nearest 50,000; and estimates larger than that to the nearest 100,000. Unrounded numbers are used for statistical significance tests, in plotting charts and in computations of differences and percentages.

Duration of Residence. The reference date for the ACS is July 1 of the survey year (e.g., July 1, 2010 for the 2010 ACS). However, data are collected throughout the year and the date when individual information was collected is not available in the public use data. It is not possible to determine the exact duration of residence in the U.S. for each respondent, only the year of arrival in the U.S. In computing the distribution of duration of residence and the median duration of residence, we assumed that, on average, the ACS respondents arriving in a given year spent half of that year in the U.S. and, further, that respondents spent half of the survey year in the U.S. So, for example, in the 2012 ACS, the number of immigrants who had been in the U.S. for less than 10 years was estimated as those who reported arriving in 2003-2012 (which represents persons in the U.S. for less than 9.5 years) plus half of those arriving in 2002. The median duration of residence was computed from tabulations of immigrants by calendar year of arrival. For the CPS, period of immigration is reported in two-year intervals (e.g., immigrants arriving in 1998-1999); for computing distributions and medians, we assumed that the arrivals were evenly distributed across the period.

EXHIBIT I

Memorandum

Subject	Date
Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues	MAY - 6 1997

To

Regional Directors
District Directors
Officers-in-Charge
Service Center Directors

From

Office of Programs

This memorandum outlines changes in the handling of I-360 self-petitions for immigrant status filed by battered spouses and children of U.S. citizens and permanent residents aliens and addresses related issues. It should be read as a supplement to the guidance issued by the Office of Programs on April 16, 1996.

Background

The issue of domestic violence and its potential impact on spouses and children who would normally be entitled to immigration benefits under the I-130 petitioning process was first addressed by Congress in the Violence Against Women Act ("VAWA") which was enacted as part of the Violent Crime Control Act of 1994 ("Crime Bill"). The VAWA contains provisions to limit the ability of an abusive U.S. citizen ("USC") or lawful permanent resident ("LPR") to utilize the spouse' or child's immigration status in order to perpetuate the abuse. The Service published an interim rule on March 26, 1996 (59 FR 13061-13079) establishing the procedures for qualified abused spouses and children to self-petition for immigrant classification using the Form I-360. This rule was accompanied by extensive field instructions in the Office of Programs' memorandum of April 16, 1996.

In the autumn of 1996, Congress enacted various new provisions relating to battered aliens, in both the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA" or "the welfare law") and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA" or "the immigration bill"). None of these new provisions directly affect the legal standards applicable to adjudication of I-360 applications. The new provisions do, however, provide additional benefits and protections for battered aliens, and have created the need for INS to restructure how we handle this category of very sensitive cases. This memorandum outlines those changes, and instructs field offices on the handling of pending cases and new cases received.

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Centralization at the Vermont Service Center

On April 7, 1997, the Service published a notice in the Federal Register at 16607-08 establishing the Vermont Service Center as the direct mail filing location for all Forms I-360 filed by self-petitioning battered spouses and children (Attachment A). This centralization was necessitated by the new welfare provisions which make certain battered aliens -- including self-petitioners and others -- eligible for public benefits. In addition to adjudicating I-360 self-petitions, the Vermont Service Center will serve as a central "clearinghouse" for inquiries from federal, state and local benefit-granting agencies regarding pending or recently-adjudicated cases, as discussed in more detail in the Verification section, below. Finally, as an alien may be eligible for public benefits not only upon the approval of the relevant immigrant status, but also upon having filed a petition which makes a prima facie case for such status, the Vermont Service Center will also begin making prima facie determinations pursuant to an interim rule expected to be published in the Federal Register prior to June 1, 1997.

While these are sensitive cases which require special handling, the move to centralized filing is expected to have only minimal impact on caseloads in the district offices. Since the beginning of the fiscal year, according to G-22 statistics, fewer than 500 cases have been filed Servicewide. Centralization allows the Service to have a small corps of officers well-versed in the complexity and sensitivity of VAWA adjudications, and will also allow for better monitoring of the caseload and any fraud trends.

Although the direct mail notice allows self-petitioners to continue to file locally until May 7, INS field offices and the other service centers are encouraged to forward to the Vermont Service Center those I-360s for which review/adjudication has not been initiated. All I-360 self-petitions received on or after May 7 shall be forwarded to the Vermont Service Center, but the 30 day transition period requires that no office refuse to receive an I-360 submitted before June 6, 1997. Immediate relatives, who were previously able to file concurrent I-360 self-petitions and I-485 adjustment applications, should be advised to retain their I-485s pending the Vermont Service Center's adjudication of the I-360 self-petition. The battered alien I-360s are to be mailed to:

INS Vermont Service Center
Attn: Family Services Product Line (VAWA)
75 Lower Weldon Street
St. Albans, VT 05479-0001

As inquiries from benefit-granting agencies can be expected in many cases, offices are encouraged to expedite handling of all pending cases which they do not forward to the Vermont Service Center. Nothing in this move to centralize direct mail filing changes the ability of the Vermont Service Center to transfer I-360s to district offices when an interview or investigation of suspected fraud is merited.

Deferred Action and Employment Authorization

In the April 16 memorandum, INS offices were encouraged to utilize voluntary departure and deferred action in order to provide approved VAWA self-petitioners with employment authorization pending the availability of a visa number. Since that time, in IIRIRA, Congress has limited grants of voluntary departure to no more than 120 days, and INS regulations no longer allow for work authorization during any period of voluntary departure.

Starting June 1, when the Vermont Service Center approves a VAWA self-petition, it will then also assess, on a case-by-case basis, whether to place the alien in deferred action status pursuant to new deferred action guidelines in the Interim Enforcement Procedures (a forthcoming document which will be available on the 96Act bulletin board, as well as in printed versions). By their nature, VAWA cases generally possess factors that warrant consideration for deferred action. In an unusual case, there may be factors present that would militate against deferred action; cases should therefore receive individual scrutiny. Although the Vermont Service Center is not required to obtain Regional Director approval for deferred action, it will report all grants of deferred action to the Eastern Regional Office for statistical and tracking purposes. In addition, a process for periodic review of the deferred action decisions made by the Vermont Service Center is planned.

If the alien is placed in deferred action, the Vermont Service Center will notify the alien that he or she may submit an I-765, Application for Employment Authorization. After the initial deferred action decision and issuance of a one-year employment authorization document, the Vermont Service Center will hold these files and review the deferred action decision upon each application for extension of work authorization. When the Vermont Service Center is notified by the National Visa Center or by an INS district office that the alien is seeking a visa abroad or has filed an adjustment application, the Vermont Service Center will forward the file to the appropriate office.

In cases where the I-360 was approved prior to April 1, many aliens may have current grants of voluntary departure. Upon expiration of voluntary departure, and for other cases adjudicated before June 1, district offices are strongly encouraged to utilize deferred action to provide work authorization pending the availability of a visa. As described in more detail below, battered aliens are now eligible for certain public benefits, which are often necessary for the victim to be able to leave the abusive situation. To deny such aliens work authorization when they are able to obtain public assistance is counter to the spirit of welfare reform. Moreover, for many individuals, the ability to work is necessary in order to save the funds necessary to pay for the adjustment application and the penalty fee. As it has already been determined that these aliens face extreme hardship if returned to the home country and as removal of battered aliens is not an INS priority, the exercise of discretion to place these cases in deferred action status will almost always be appropriate.

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Non-Disclosure Provisions and Other Limitations in IIRIRA § 384

Section 384 of IIRIRA strictly prohibits the release of any information relating to a VAWA self-petitioner, and also precludes any INS officer from making an adverse determination of admissibility or deportability based solely on information furnished by an abusive relative. Any violation of this section can subject an INS officer to disciplinary action and a fine of up to $5,000. This provision is discussed in more detail in IIRIRA Implementation Memo #96act.036 (Attachment B).

Verification of Status for Benefit-Granting Agencies

Section 501 of IIRIRA amends the welfare law to provide that certain battered aliens are "qualified aliens" for purposes of eligibility for some public benefits. This includes not only those aliens who can self-petition for immigrant status under the VAWA provisions, but also other aliens who have been abused by a member of their household. In cases other than VAWA self-petitioning cases, it is the benefit-granting agency, not the INS, which will assess the claims of abuse. Benefit providers, however, will request that INS verify the alien's status or the fact that a petition is pending on behalf of the alien. Detailed procedures for verification of these and other categories of qualified aliens under welfare law are being provided to benefit-granting agencies by the Department of Justice in a document entitled "Interim Guidance on Verification," which is expected to be published in the Federal Register later this month. An INS field directive designed for immigration status verifiers will be issued in conjunction with publication of the Interim Guidance on Verification.

Although some verification inquiries relating to battered aliens will be handled through the normal status verification channels, many of the inquiries will fall outside the type of inquiries which status verifiers typically handle. For example, because of the dynamics of abusive relationships, the abuse victim will not always have access to approval notices or other documentation relating to their cases. Moreover, because aliens can be eligible for public benefits upon filing a petition which makes a prima facie case for status, benefit providers will sometimes be seeking information on pending cases, including a determination as to whether the petition makes a prima facie case for eligibility for the status sought.

The Vermont Service Center will serve as the "clearinghouse" for these unusual types of inquiries, which will be submitted by fax using an inquiry format patterned on the sample at Attachment C. It is anticipated that the Vermont Service Center will be able to handle the vast majority of inquiries, which should pertain to cases pending there or in one of the other service centers. For those inquiries which pertain to cases pending in district offices or sub-offices, the Vermont Service Center will forward the inquiries by fax to the attention of a designated Service

Center liaison officer in each district or sub-office. Each district and sub-office should complete the liaison designation form at Attachment D and fax to Lisa Batey at 202/514-9262 prior to May 20 (the list of designees will be shared with INS regional offices and all four Service Centers). The designated liaison should ensure that a response is provided to the requesting agency, with a copy to the Vermont Service Center, within five working days. Information on pending or completed cases should not be given over the telephone, but rather should be sent via facsimile.

As you will note, the sample inquiry format includes a limited waiver of the non-disclosure provisions of IIRIRA § 384. At present, such a waiver is necessary before INS can provide any information relating to a VAWA self-petitioner, even to another governmental entity for purposes of determining eligibility for public benefits. Because of IIRIRA § 642, no waiver is necessary in other categories of cases, such as where the alien seeking benefits is the beneficiary of a spousal I-130 petition, but has suffered abuse at the hands of another household member. If there is any doubt as to whether a waiver is required, the officer should seek guidance from his or her district counsel. If there are waiver questions which cannot be resolved locally, please contact Lisa Batey of the Headquarters Office of Programs, at 202/514-9089.

Providing Information on Filing of I-360 Self-Petitions

Some battered aliens who are eligible to self-petition have chosen not to do so, instead relying upon the I-130 petition filed by their abuser. This not only allows the abuser to continue to control the spouse's or child's immigration status by withdrawing the petition, but also places a battered spouse at risk should the abuser subsequently obtain a divorce before the spouse is able to adjust status. For these and other reasons, such as easier determinations as to welfare eligibility and employment authorization, an immigration officer who deals with a battered alien should inform that alien about the process for self-petitioning, despite the fact that an I-130 petition is still pending on his or her behalf. The Interim Guidance on Verification similarly urges benefit agency caseworkers to give such aliens the number for the INS Forms Line [1-800-870-3676] and for the National Domestic Violence Hotline [1-800-799-7233] for assistance in preparing self-petitions.

Making Prima Facie Determinations

As noted above, Section 501 of IIRIRA includes in the definition of "qualified alien" for public benefit purposes those aliens who have filed a self-petition, or are the beneficiary of a spousal or parental petition, which sets forth a prima facie case for immigrant status under a variety of provisions. Specifically, those with approved petitions or pending petitions which make a prima facie case for status under any of the following Immigration and Nationality Act ("INA") provisions are included:

- spouse or child of a USC under 204(a)(1)(A)(i)
- spouse, child or unmarried son or daughter of an LPR under 204(a)(1)(B)(i)
- widow(er) of a USC under 204(a)(1)(A)(ii)
- self-petitioning battered spouse or child of a USC or LPR under 204(a)(1)(A)(iii)-(iv) or 204(a)(1)(B)(ii)-(iii)

In all but the latter category, battery or abuse will not be part of the INS adjudication, but rather will be assessed by the benefit-granting agency pursuant to the Interim Guidance on Verification.

In the case of self-petitioning battered spouses and children, the Vermont Service Center will begin making prima facie determinations no later than June 1, 1997, following publication of an interim rule in the Federal Register. If the self-petition and accompanying documentation are adequate, the self-petitioner will receive a decision or a Notice of Prima Facie Determination ("NPFD") within three weeks of filing. The approval notice or NPFD may be presented to benefit granting agencies as evidence of the applicant's status as a "qualified alien". The NPFD will be valid for 150 days, to allow time for the submission of any supplemental evidence and for adjudication of the self-petition.

In those cases which are not handled by the Vermont Service Center, benefit-granting agencies will be expecting decisions or prima facie determinations within a similar three-week time frame. As the non-VAWA cases are simpler adjudications based purely on family relationship, there are no plans to define what would constitute a prima facie case. Instead, when a benefit-granting agency inquires about a pending case, INS offices should expedite the adjudication of the case in order to minimize the time during which the alien is unable to receive public assistance for which he or she may be eligible.

Aliens Seeking Issuance of Notices to Appear

An individual may also be eligible for public benefits if he or she makes a prima facie case for cancellation of removal as a battered spouse or child under INA § 240A(b)(2). INS district offices shall promptly issue a Notice to Appear to any alien who makes a credible request to be placed in proceedings in order to raise a claim for cancellation of removal under section 240A(b)(2). District offices may want to do a search of the CLAIMS system to determine if a self-petition was filed and denied. It is important to note, however, that some individuals who are ineligible for status pursuant to the self-petitioning provisions will be eligible for cancellation (e.g., where the marriage has been terminated). Once proceedings have been initiated, the alien can contact the immigration court to seek a determination that he or she has demonstrated a prima facie case for cancellation of removal.

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Other District Office Issues

While centralizing I-360 adjudications was motivated in part by the goal of having a small corps of officers well-trained in domestic violence issues, district adjudications officers will still interact with self-petitioners during the adjustment process. The nature of domestic violence and the sensitivity needed in dealing with victims are topics to which few INS officers will have had exposure. District offices are strongly encouraged to identify two or more officers (depending upon the size of the district) to handle all adjustments following from I-360 approvals. The designated officers should have the experience, discretion and communications skills to be able to balance sensitivity in dealing with true victims with vigilance against fraud, and would ideally also serve as the designated Service Center liaison officer described at pages 4-5, above.

Recognizing the need for more training on complex and subtle domestic violence issues, Headquarters is looking into opportunities to provide informational materials and perhaps training sessions. In addition, a number of reputable non-profit organizations throughout the country provide training for personnel who work with domestic violence victims, and are willing to share their expertise with INS offices. Last year, for example, training for San Francisco adjudicators was provided by representatives of the Family Violence Prevention Fund. The training was well-received by district personnel, and was given at no cost to the district. Managers interested in obtaining materials or in fostering contacts with local organizations which work with victims of domestic violence should contact either of the persons named below for information about organizations active in their area.

* * * * *

The Office of Field Operations concurs with this memorandum. Addressees are strongly encouraged to distribute copies of this memorandum widely, particularly to adjudications and investigations officers. Questions about this policy or about the interim rule published in the Federal Register may be directed to Lisa Batey, Headquarters Office of Programs, 202/514-9089, or Karen FitzGerald, Headquarters Benefits Division, at 202/305-4904.

Paul W. Virtue
for Acting Executive Associate Commissioner

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Attachment C

[sample only – request to be submitted on letterhead of requesting agency]

Fax Request Form – from Benefit Agency to INS

To: INS Vermont Service Center, fax 802/527-3252
Attn: Battered Alien Review Unit This fax consists of ____ pages.

This request is being submitted by:

Name (printed): _____ Title: _____

Agency name and address: _____

_____

Fax number: _____ Phone number: _____

Agency case tracking number: _____

Item 1: An alien applicant is seeking benefits from the agency identified above, pursuant to recent welfare reform legislation. This applicant falls into one of two categories:

____ a) believes an INS Form I-360, Petition for Amerasian, Widow or Special Immigrant, was filed on the applicant's behalf by [illegible] or by the applicant herself/himself-petitioned as a widow(er) using Form I-360, Petition for Amerasian, Widow or Special Immigrant (complete part A, below);

____ b) has self-petitioned as a battered spouse or child using INS Form I-360, Petition for Amerasian, Widow or Special Immigrant (complete part B, below).

Item 2: The above-referenced agency requests that INS: (please check one)

☐ Verify that the attached documentation is sufficient evidence of the I-797 approval notice, prima facie determination or receipt notice.

☐ Make a prima facie determination and expedite adjudication of the petition and notify the requesting agency of the outcome.

☐ Update the status of the agency's _____ (insert date) request for a prima facie determination or expedited adjudication. (Requesting agency should allow three weeks from the request for a prima facie determination or filing of a petition before making this request.)

☐ Determine whether the applicant has filed a petition or whether a petition has been filed on his or her behalf under (a) or (b), as indicated above. If so, please make a prima facie determination or expedited adjudication of the applicant's petition and notify the requesting agency of the outcome.

Date: _____ Agency Signature: _____

SAMPLE

61 d (TUE) 5.

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PART A: For an Applicant Who Is the Beneficiary of a Petition Filed by Spouse or Parent, or Who Has Self-Petitioned as a Widow(er)

Step 1: Does the alien applicant have a copy of an INS Form I-797 indicating that an I-130 was filed on his/her behalf? [If applicant has self-petitioned as a widow(er), check "No" and proceed to Step 2.]

Yes _____ → Attach a copy of [illegible]-797 to this fo[illegible] need not complete Step 2)

No _____ → If the applicant has [illegible] documentation, [illegible] documentation other than a Form I-797, pro[illegible] to Step 2.

Step 2: If the applicant does not have a Form I-797, p[illegible] fill o[illegible] following information. All blanks, except that noted "if available", must be [illegible]

.Benefit Applicant's full name: [illegible]

Benefit Applicant's date of birth: [illegible]

Benefit Applicant's best guess [illegible] petition w[illegible]d: _____ (mo/yr)

Benefit Applicant's best gues[illegible] with which INS o[illegible] petition file[illegible]

Petitioner's full name: [illegible]

Petitioner is Applica[illegible] spou[illegible] parent, [illegible] self [widow(er)] (check one)

Petitioner is a [illegible] U.S. c[illegible] or [illegible] lawf[illegible] resident ("green card holder")

Petitioner's da[illegible] of [illegible]

Petitioner's Al[illegible] Registration Nu[illegible] if a[illegible]: A_____

Petitioner's present mailing [illegible]

[illegible] street address, [illegible])

SAMPLE

PART B: For an Applicant Who Has Self-Petitioned as a Battered Spouse or Child

Step 1: Attach a copy of the receipt notice or other documentation evidencing that a Form I-360 has been filed with the INS. If that documentation does not include the following information, please complete the blanks:

Applicant/self-petitioner's full name: _____

Applicant/self-petitioner's date of birth: _____

Date I-360 was filed: _____

Location (city) of INS office where filed: _____

Step 2: A waiver signed by the alien appears below.

This waiver authorizes release of information by the Immigration and Naturalization Service ("INS") and/or the Executive Office for Immigration Review ("EOIR") to any federal, state or local public benefit-granting agency seeking to verify my immigration status, the following information required to determine my eligibility for federal, state or local public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Immigration Act: (a) whether an application has been filed by me or on my behalf under section 204(a)(1)(A) or 204(a)(1)(B)(ii) or (iii), section 216(c)(4)(C), section 244(a)(3) as in effect prior to April 1, 1997, or section 240A(b)(2) of the Immigration and Nationality Act, and (b) whether INS or EOIR has made a prima facie determination or final determination of eligibility for relief under any of the above provisions, and, if so, the outcome of those determinations.

(1) My name is (print full name): _____

(2) My date of birth is _____, 19__

(3) I hereby waive any restriction on the release of information relating to me under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (the "Immigration Act") that would prevent the Immigration and Naturalization Service ("INS") and/or the Executive Office for Immigration Review ("EOIR") to provide in writing to any federal, state or local public or private benefit-granting agency seeking to verify my immigration status, the following information required to determine my eligibility for federal, state or local public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Immigration Act: (a) whether an application has been filed by me or on my behalf under section 204(a)(1)(A) or 204(a)(1)(B)(ii) or (iii), section 216(c)(4)(C), section 244(a)(3) as in effect prior to April 1, 1997, or section 240A(b)(2) of the Immigration and Nationality Act, and (b) whether INS or EOIR has made a prima facie determination or final determination of eligibility for relief under any of the above provisions, and, if so, the outcome of those determinations.

I declare, under penalty of perjury, that the foregoing is true and correct, and that I have executed this waiver knowingly and voluntarily.

Executed on (date): _____

_____

Signature of Applicant

(13)

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EXHIBIT J

U.S. Department of Justice
Immigration and Naturalization Service

HQADN 70/6.2

Office of the Executive Associate Commissioner

4257 Street NW
Washington, DC 20536

MAY 8 2002

MEMORANDUM FOR JOHNNY N. WILLIAMS
EXECUTIVE ASSOCIATE COMMISSIONER
OFFICE OF FIELD OPERATIONS

FROM: Stuart Anderson /S/
Executive Associate Commissioner
Office of Policy and Planning

SUBJECT: Deferred Action for Aliens with bona fide Applications for T Nonimmigrant Status

This memorandum outlines changes in Immigration and Naturalization Service (INS) procedures for deferred action determinations on behalf of victims of severe forms of trafficking whose applications for T nonimmigrant status have been determined to be bona fide but are still awaiting final adjudication by the Vermont Service Center (VSC). It should be read as a supplement to guidance by the Office of Programs on December 19, 2000, and September 7, 2001, and to a memorandum dated August 30,2001, that instructed INS offices to utilize deferred action as one means to provide possible victims the opportunity to avail themselves of the provisions of the Victims of Trafficking and Violence Protection Act of 2000, including applying for T or U nonimmigrant status.[1]

Effective the date of this memorandum, the VSC is responsible for assessing deferred action for all applicants whose applications have been determined to be bona fide. The duration of the initial deferred action assessment shall be at the discretion of the Service Center Director but shall not exceed 12 months. The initial assessment may be for less than 12 months if the director determines an application would be adjudicated within that time. Deferred action will not be considered or assessed for a T nonimmigrant status applicant if he or she is currently in

1 This memorandum does not, however, after the guidance outlined in those memoranda regarding the interim procedures to be followed while the regulations implementing the U nonimmigrant status are being promulgated. Aliens who are identified as possibly eligible for U nonimmigrant status should not be removed from the United States until they have had the opportunity to apply for such status. Existing authority and mechanisms such as parole, deferred action, and stays of removal should be used to achieve this objective.

removal proceedings unless the case has been administratively closed by the Immigration Judge or the Board of Immigration Appeals. For purposes of this memorandum, removal proceedings are defined as the period between the filing of the Notice to Appear with the Immigration Judge and the issuance of the final decision.

If a deferred action determination is made, the VSC will notify the alien to submit Form I-765, Application for Employment Authorization. Applications for employment authorization based on an assessment of deferred action at the VSC must be filed with the VSC. After the initial deferred action decision and issuance of a one-year Employment Authorization Document, the VSC will hold those files and review each subsequent request for employment authorization and deferred action upon receipt of each application. Requests for extensions of employment authorization and deferred action will be reviewed and granted in increments of twelve months.

Field Offices (and other Service Centers) may continue to receive inquiries from T applicants regarding determination of deferred action. These may be initial requests or requests for an extension of deferred action. These requests should be mailed to: **USINS- Vermont Service Center, ATTN: Keith Canney, Box 1000, 75 Lower Weldon St., St. Albans, VT 05479-0001.**

If you have any questions regarding this memorandum or other T nonimmigrant status issues, please contact Laura Dawkins, Office of Adjudications at (202) 514-4754.

EXHIBIT K

U.S. Department of Homeland Security
Citizenship and Immigration Services

Office of Associate Director of Operations

425 I Street NW
Washington, DC 20536

OCT 8 2003

MEMORANDUM FOR DIRECTOR, VERMONT SERVICE CENTER

FROM: William R. Yates
Associate Director of Operations

SUBJECT: Centralization of Interim Relief For U Nonimmigrant Status Applicants

Background

On October 28, 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA), Pub. L. 106-386.[1] The VTVPA created the U nonimmigrant status, a new nonimmigrant classification for victims of specific crimes. This nonimmigrant status was created to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other criminal activity of which aliens are victims, while offering protection to victims of such offenses. It provides an immigration mechanism for cooperating victims to remain temporarily in the United States to assist in investigations and/or prosecutions. It is available to victims of certain criminal activity and their families, and is limited to 10,000 principals per year.

Regulations implementing this new nonimmigrant status are currently in the clearance process. In an effort to provide interim relief for this vulnerable population, the Office of Programs issued interim guidance in August 2001, which directed that no one who appeared to be eligible to apply for U nonimmigrant status be removed from the United States until he/she has had the opportunity to avail him/herself of the provisions of the VTVPA. It further instructed field offices to use existing mechanisms (parole, deferred action, and stays of removal) to achieve this objective.

[1] The sections of the VTVPA pertaining to U nonimmigrant status are codified at sections 101(a)(15)(U), 214(o), and 245(l) of the Immigration and Nationality Act (INA).

Since this guidance was issued, it has become apparent that until the regulations implementing the U nonimmigrant status are published, a more unified, centralized approach is needed in the interim relief process. Many field offices have been unsure how to proceed in granting interim relief, which has resulted in inconsistent treatment of potential U nonimmigrant status applicants. It is for these reasons that the U nonimmigrant status interim relief process will be centralized at the Vermont Service Center (VSC) effective immediately.

Centralization of Interim Relief Process

The VSC will serve as the "clearinghouse" for early-filed applications and will have jurisdiction to assess deferred action in early-filed U nonimmigrant status cases. Upon receipt of a request for interim relief, the VSC will consider the facts of each case and determine if deferred action is appropriate. Each decision should be considered individually, based on all the facts present. Upon authorizing deferred action, the center director will advise the alien, by letter, of the action taken and advise him or her of eligibility to request employment authorization. The center director will include a copy of a G-312 in the alien's A file and maintain that file for docket control.

Deferred action shall not be assessed in those cases where the applicant is clearly ineligible for U nonimmigrant status or is an aggravated felon, and those cases should be referred to the Bureau of Immigration and Customs Enforcement (ICE) for possible issuance of a Notice to Appear. If the VSC determines that the case is not suitable for deferred action, the alien should be notified of that decision by letter.

By their nature, U nonimmigrant status cases generally possess factors that warrant consideration for deferred action. In some cases, however, there may be factors present that would militate against deferred action; cases should therefore receive individual scrutiny. The VSC should maintain records of all assessments of deferred action for statistical and tracking purposes. In addition, a process for periodic review of the deferred action decisions made by the VSC is planned. Upon publication of the regulations implementing the U nonimmigrant status, the VSC will send a letter informing early filers to submit an application on the proper form, and monitor the early-filed list to determine whether those assessed deferred action have applied. The VSC will terminate deferred action and refer those who fail to apply within the timeframe established by the regulation to ICE for possible issuance of a Notice to Appear, or for removal.

Eligibility to apply for U nonimmigrant status

Before determining whether to grant a form of interim relief, VSC personnel must first determine whether the alien adequately demonstrates that he/she may possibly be eligible to apply for U nonimmigrant status when regulations are issued. This would be demonstrated by the submission of *prima facie* evidence of each eligibility requirement. In other words, the alien must produce sufficient evidence to render reasonable a conclusion that the alien may be eligible for U nonimmigrant status when regulations are issued implementing that status. This is not a

determination that an alien is or is not eligible to apply, or an adjudication of the claim itself. It is a conclusion reached by examining the documents accompanying the request for interim relief based upon perceived eligibility.

The four basic eligibility requirements that an alien must satisfy in order to be classified as a principal U nonimmigrant are set out in the VTVPA. Therefore, in order to be eligible to apply for interim relief, an alien must present evidence demonstrating that:

1. He/she has suffered substantial physical or mental abuse as a result of having been a victim of certain criminal activity;

2. He/she (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning that criminal activity;

3. He/she (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official; to a Federal, State, or local prosecutor; to a Federal or State judge; to the INS; or to other Federal, State, or local authorities investigating or prosecuting the criminal activity; and

4. The criminal activity described violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States.

The criminal activity referred to above is listed at INA § 101(a)(15)(U)(iii). It is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

When considering whether an alien has presented sufficient evidence demonstrating he/she may be eligible to apply for U nonimmigrant status and thus eligible to request a form of interim relief, VSC personnel must examine each of the U nonimmigrant status eligibility requirements, taking into consideration the guidance below.

Law enforcement certification

The possible U nonimmigrant status applicant does not have to be identified to the VSC through a law enforcement official. However, any request for interim relief from a possible U

nonimmigrant status applicant must be accompanied by some form of certification from a law enforcement official attesting to the fact that the alien has been, is likely to be, or is being helpful in the investigation or prosecution of criminal activity designated in the VTVPA. There currently is no official DHS-created law enforcement certification form. Therefore, the law enforcement official certification may be in the form of a letter, or a form created by a non-governmental organization or an applicant's attorney or representative, and should:

- State that the person was a victim of one or more of the crimes listed in the statute;
- Identify the crime(s); and
- Verify the victim is, has been, or is likely to be helpful to the prosecution or investigation of the criminal activity.

Whatever form the certification takes, it must in all cases be signed by the law enforcement official investigating or prosecuting the criminal activity. The certification submitted must have been signed within six months immediately preceding the submission of the request for interim relief. In addition, the VTVPA does not require the U nonimmigrant status applicant to assist in both the investigation and prosecution of the criminal activity; the assistance offered by the possible U nonimmigrant status applicant may be in either the investigation or the prosecution, or both.

It is important to note that the law enforcement certification does not have to come from a Federal law enforcement official. Section 214(o)(1) of the INA identifies from whom a certification may be accepted. The certification may come from a Federal, State or local law enforcement official, prosecutor, judge or other Federal, State, or local authority investigating the criminal activity. Further development of the range of criminal activity involved and the types of certifying government officials will occur in the rulemaking process. At this point, VSC personnel should keep in mind that circumstances will vary from case to case, and it is better to err on the side of caution than to remove a possible U nonimmigrant status applicant.

Time element

The fact that the criminal activity occurred a number of years prior to the current request or that the case in which the applicant is the victim is closed is not a determinative factor at this stage. The statute contemplates that a person may be eligible for U nonimmigrant status as a result of having been a victim of a crime that occurred at some point in the past. Until there are regulations interpreting this statutory requirement, VSC personnel should not deny interim relief based on the fact that the criminal activity at issue occurred prior to the enactment date of the VTVPA.

Level of harm

The VTVPA does not specifically reserve U nonimmigrant status solely for individuals who have suffered the most harm. As with any form of immigration benefit with a harm component, there are some applicants who present cases with more harm than others. Whether the level of harm meets the statutory requirement of substantial physical or mental abuse will be a question

Bureau of Citizenship and Immigration Services (CIS) officers adjudicating the U nonimmigrant status application will decide in accordance with the regulations once they are promulgated. Therefore, for interim relief purposes, "substantial physical or mental abuse" should be broadly interpreted. Similarly, the fact that the criminal activity involved in the case was classified as a misdemeanor as opposed to a felony should not be a factor in determining eligibility for interim relief.

Eligibility for Interim Relief

Once an individual is determined to have submitted *prima facie* evidence of his/her eligibility for U nonimmigrant status, VSC personnel must then decide whether to exercise discretion and assess deferred action. Absent adverse factors, deferred action will be assessed following established CIS guidelines. Officers should note that if the alien is in removal proceedings or has a final removal order, the VSC does not have jurisdiction to assess deferred action. The applicant shall be notified in writing if his/her submission does not establish a *prima facie* case or if deferred action cannot be assessed due to lack of jurisdiction.

It is important to note that deferred action does not confer any immigration status upon an alien. Since deferred action is not an immigration status, no alien has the right to deferred action. Deferred action does not preclude the CIS from commencing removal proceedings at any time against an alien.

Employment Authorization

Although deferred action is not an immigration status, an alien may be granted work authorization based on deferred action in his or her case pursuant to 8 C.F.R. 274a.12(c)(14). If the alien is placed in deferred action, the VSC will notify the alien that he or she may submit an I-765, Application for Employment Authorization. After the initial deferred action decision and issuance of a one-year employment authorization document, the VSC will hold these files and review the deferred action decision upon each application for extension of work authorization.

Derivative U Nonimmigrant Status Applicants

To avoid extreme hardship, the VTVPA authorizes CIS to provide U nonimmigrant status to the spouses, children, and, in the case of a child under the age of 16, the parents of U nonimmigrants. This would require certification by a government official that an investigation or prosecution would be harmed without the assistance of the spouse, child, or in the case of an alien child, the parent of the alien.

Family members who may be eligible to receive derivative U nonimmigrant status and who are present in the United States should not be removed, and shall be eligible for interim relief. The eligible family member(s) must demonstrate extreme hardship if removed from the United States and must also submit a certification of a government official that an investigation or prosecution would be harmed without the spouse, child, or parent of the principal. This certification must comply with the guidelines outlined in this memo.

Reporting Requirements

Deferred action is a resource utilization tool. Therefore, the VSC should maintain statistics on deferred action cases to ensure that it is being used appropriately. These statistics are to be maintained on a current basis so that data can be readily extracted upon request.

Statistics should be maintained in the following categories:

- number of requests in deferred action category at the beginning of the fiscal year;
- number of requests for which deferred action is assessed;
- number of requests for which deferred action is denied;
- number of requests removed from deferred action category;
- number of deferred action requests pending at the end of the fiscal year.

Periodic Review

The VSC adjudicators assigned to the early-filed U applications should conduct interim reviews to determine whether deferred action cases should be continued or the alien removed from the deferred action category. Reviews must determine if there is any change in the circumstances of the case. Results of the review and a recommendation to continue or terminate deferred action would be reported to the center director via memorandum. The center director should endorse the memorandum with his or her decision and return it for inclusion in the alien's file.

Termination of Deferred Action

During the course of the periodic review, or at any other time if the VSC determines that circumstances of the case no longer warrant deferred action, the VSC should recommend termination. Termination may occur for conduct that occurs after the issuance of interim relief (i.e. conviction of a violent crime), for conduct or a condition not disclosed prior to issuance of interim relief, or based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution. The VSC should notify the alien of the decision to terminate by letter. Such a determination is not appealable. Upon termination of deferred action, any relating employment authorization will be revoked in accordance with the standard revocation procedures set out in 8 CFR § 274a.14(b).

Record Keeping And Confidentiality

It is imperative that documentation be maintained on all U nonimmigrant status applicants. As such, information about the possible applicant, including all pertinent information surrounding the applicant's circumstances, must be maintained in the alien's A-file. If

no A-file exists for the individual, one should be created.

Officers should keep in mind that section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)[3] is applicable to all U nonimmigrant status cases. Section 384 prohibits employees from making an adverse determination of admissibility or deportability of an alien using information provided solely by:

1) a spouse or parent who has battered the alien or subjected the alien to extreme cruelty;
2) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien or subjected the alien to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty;
3) a spouse or parent who has battered the alien's child or subjected the alien's child to extreme cruelty (without the active participation of the alien in the battery or extreme cruelty);
4) a member of the spouse's or parent's family residing in the same household as the alien who has battered the alien's child or subjected the alien's child to extreme cruelty when the spouse or parent consented to or acquiesced in such battery or cruelty and the alien did not actively participate in such battery or cruelty; or
5) **in the case of an alien applying for status under section 101(a)(15)(U) of the INA, the perpetrator of the substantial physical or mental abuse and the criminal activity.**[4]

Section 384 of IIRIRA also prohibits employees from permitting the use by or disclosure to anyone (other than a sworn officer or employee of the Department of Homeland Security (DHS), or bureau or agency thereof, for legitimate DHS, bureau, or agency purposes) of any information that relates to an alien who has applied for U nonimmigrant status.[5] Anyone who willfully uses, publishes, or permits such information to be disclosed in violation of IIRIRA § 384 will face disciplinary action and be subject to a civil money penalty of up to $5,000 for each such violation.[6]

When the VSC creates or encounters an A file of an applicant for interim relief based upon eligibility for U nonimmigrant status, the contents of the A file should be placed behind a colored cover sheet that sets out the disclosure parameters and penalties so that the materials are handled with appropriate care.

If you have questions regarding this memorandum or other U nonimmigrant status related issues, please contact Laura Dawkins, Office of Program and Regulation Development, by electronic mail.

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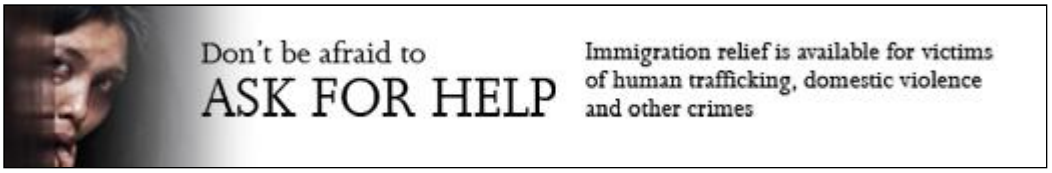
[3] Codified at 8 U.S.C. § 1367.
[4] As amended by VTVPA § 1513(d). For limited exceptions to this prohibition *see* IIRIRA § 384(b).
[5] *See* IIRIRA § 384(a)(2) as amended by VTVPA § 1513 (d).
[6] *Id.*

EXHIBIT L

U.S. Citizenship and Immigration Services

Victims of Human Trafficking & Other Crimes



USCIS helps protect victims of human trafficking and other crimes by providing immigration relief. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery in which traffickers lure individuals with false promises of employment and a better life.

Individuals and their families may also fall victim to many other types of crime in the United States. These crimes include: rape, murder, manslaughter, domestic violence, sexual assault, and many others.

There are two types of immigration relief we provide to victims of human trafficking and other crimes:

T Nonimmigrant Status (T Visa)

T nonimmigrant status provides immigration protection to victims of trafficking. The T Visa allows victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of human trafficking cases.

U Nonimmigrant Status (U Visa)

U nonimmigrant status provides immigration protection to crime victims who have suffered substantial mental or physical abuse as a result of the crime. The U visa allows victims to remain in the United States and assist law enforcement authorities in the investigation or prosecution of the criminal activity.

Information for Law Enforcement Agencies and Judges

Law enforcement agencies and judges play an important role in immigration relief available for victims of human trafficking and other crimes. Immigration relief options encourage victims to report crimes and work with law enforcement and serve as a tool for law enforcement to help eliminate human trafficking and fight crime in local communities. Please see the Information for Law Enforcement Agencies and Judges for more information.

Resources for Victims

USCIS offers resources for victims of human trafficking and other crimes and the organizations that serve them. This information is designed to help answer any questions you or your family might have about obtaining T or U Nonimmigrant status. USCIS has also developed additional materials specifically for law enforcement agencies. Please see Resources for Victims of Human Trafficking & Other Crimes for more information.

Contact Us

USCIS is dedicated to informing law enforcement and community based organizations about the forms of relief offered to victims of human trafficking, domestic violence and other crimes. To receive training on

this topic, please send an email to T_U_VAWATraining@uscis.dhs.gov.

For more information please call the National Human Trafficking Resource Center 888-373-7888.

Learn more about human trafficking through the Department of Homeland Security's Blue Campaign.

This page can be found at www.uscis.gov/humantrafficking

Last Reviewed/Updated: 08/25/2017

EXHIBIT M

Press Office
U.S. Department of Homeland Security

U.S. Citizenship and Immigration Services

Press Release

November 25, 2005

USCIS ANNOUNCES INTERIM RELIEF FOR FOREIGN STUDENTS ADVERSELY IMPACTED BY HURRICANE KATRINA

Washington, D.C. – U.S. Citizenship and Immigration Services (USCIS) announced specific interim relief today for the approximately 5,500 foreign academic students adversely impacted by Hurricane Katrina. The Notice, which was published in the *Federal Register*, will allow Katrina-impacted foreign academic students (F-1 visa holders) to:

- Apply for immediate, short-term employment authorization;
- Work additional hours on-campus, or work off-campus if granted employment authorization; and
- Reduce normal course load requirements if granted employment authorization.

The interim relief will remain in effect until February 1, 2006. Foreign vocational students (M-1 visa holders) and foreign exchange students (J-1 visa holders) are not eligible for this interim relief. DHS will continue to monitor the adverse impact of Hurricane Katrina in the affected areas to determine if modification of the interim relief is warranted and will announce any modifications in the *Federal Register*.

Eligible foreign academic students wishing to work additional hours on-campus must obtain approval from their designated school official. Eligible foreign academic students wishing to work off-campus must file an Application for Employment Authorization (Form I-765) directly with the Texas Service Center at:

U.S. Citizenship and Immigration Services, Texas Service Center,
P.O. Box 853062, Mesquite, TX 75815-3062.

Applicants should mark the front of the envelope on the bottom right-hand side with the phrase, "HURRICANE KATRINA SPECIAL STUDENT RELIEF." Applicants who are unable to pay the Form I-756 filing fee may request a fee waiver. Read our Frequently Asked Questions.

Katrina-impacted foreign academic students not covered by the Notice and their dependents (F-2 visa holders) may request deferred action and apply for employment authorization based on economic necessity. A grant of deferred action in this context means that, during the period that the grant of deferred action remains in effect, DHS will not seek the removal of the foreign academic student or his or her qualified dependents based upon the fact that the failure to maintain status is directly due to Hurricane Katrina. Deferred action requests are decided on a case-by-case basis. USCIS cannot provide any assurance that all such requests will be granted. A grant of deferred action does not provide an individual any legal immigration status in the United States. Therefore, in order to resume their nonimmigrant status, foreign academic students who are granted deferred action must apply for reinstatement following the period of deferred action, which shall expire no later than February 1, 2006.

Eligible foreign academic students and their qualified dependents wishing to request deferred action and apply for employment authorization based on economic necessity must submit a letter, substantiating their need for deferred action, and file an Application for Employment Authorization (Form I-765) directly with the Texas Service Center at the address above. Applicants should mark the front of the envelope on the

bottom right-hand side with the phrase, "HURRICANE KATRINA SPECIAL STUDENT RELIEF." Applicants who are unable to pay the Form I-756 filing fee may request a fee waiver.

For additional information, please refer to the *Federal Register* Notice or visit the USCIS website at http://uscis.gov/.

– USCIS –

EXHIBIT N

EXHIBIT 14

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Domestic Operations (MS-2110)
Washington, DC 20529-2110

U.S. Citizenship and Immigration Services

SEP 4 2009

Memorandum

TO: Field Leadership

FROM: Donald Neufeld
Acting Associate Director, Office of Domestic Operations

SUBJECT: Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children

I. Purpose

This amended memorandum provides guidance to U.S. Citizenship and Immigration Services (USCIS) field offices and service centers regarding the processing of surviving spouses of deceased U.S. citizens and qualifying children of the surviving spouses. It affords a new process by which they may apply for deferred action. This policy guidance will be in effect until further notice and may be revised as needed. This memorandum revises and replaces in its entirety the June 15, 2009 "Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children".

II. Background

Section 205.1(a)(3)(i)(C) of title 8 of the Code of Federal Regulations (8 CFR) requires that the approval of Form I-130, *Petition for Alien Relative*, be automatically revoked upon the death of the petitioner if the beneficiary[1] has not adjusted status in the United States or been inspected and admitted as an immigrant. In such instances, the beneficiary may request a reinstatement of the approval and USCIS, in its discretion, may grant such a request for humanitarian reasons. 8 CFR 205.1(a)(3)(i)(C)(2).

However, no avenue of immigration relief exists for the surviving spouse of a deceased U.S. citizen if the surviving spouse and the U.S. citizen were married less than 2 years at the time of the citizen's death and (1) the immigrant petition filed by the citizen on behalf of the surviving spouse has not been adjudicated by USCIS at the time of the citizen's death, or (2) no petition was filed by the

[1] Depending on context, the term beneficiary in this guidance may include both actual and potential beneficiaries of Forms I-130 filed on their behalf.

citizen before the citizen's death. This issue has caused a split among the circuit courts of appeal and is also the subject of proposed legislation in the U.S. Congress (e.g., bills S. 815 and H.R. 1870).

III. Policy Guidance

This policy guidance covers only (1) surviving spouses of U.S. citizens who died before the second anniversary of the marriage, who have not remarried and were not legally separated or divorced from the citizen spouse at the time of the citizen's death, and who are residing in the United States,[2] and (2) such surviving spouses' qualifying children. For purposes of this policy guidance, "qualifying children" are any children of the surviving spouse of the deceased U.S. citizen who remain unmarried and under 21 years of age and are residing in the United States (age determinations for beneficiaries of Forms I-130 should be made as provided in section 201(f) of the INA).

This guidance applies to the aforementioned applicants without regard to their manner of entry into the United States. Such surviving spouses are covered without restrictions on how long the U.S. citizen spouse has been deceased as long as the surviving spouse has not remarried.[3]

This guidance does not cover surviving spouses or qualifying children of deceased U.S. citizens who are residing outside the United States or surviving spouses and children of a lawful permanent resident or other non-U.S. citizen. This guidance also does not cover surviving spouses or qualifying children of deceased U.S. citizens if the surviving spouse remarried at any time after the U.S. citizen's death (regardless of whether the subsequent marriage has been terminated). This guidance does not cover any beneficiary who was legally separated or divorced from his or her U.S. citizen spouse at the time of the citizen's death, or such beneficiary's children.

Since current section 201(b)(2)(A)(i) of the Immigration and Nationality Act (INA) treats covered widow(er)s of U.S. citizens and their children as immediate relatives based upon a self-petition, they are not covered by this guidance. They may file a Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, in accordance with the instructions on the Form.

In order to address humanitarian concerns arising from cases involving surviving spouses of U.S. citizens, USCIS is instituting the following policy guidance, which is effective immediately and until further notice.

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[2] Section III(A) of this memorandum, however, regarding humanitarian reinstatement, shall apply to surviving spouses outside the United States.

[3] This guidance is applicable to a beneficiary who entered the United States on a K-1 Nonimmigrant Visa and married a U.S. citizen, including cases in which the marriage was to a U.S. citizen other than the U.S. citizen petitioner who filed the I-129F. If the U.S. citizen spouse died before the second anniversary of the marriage, the widow(er) is eligible for deferred action or humanitarian reinstatement as described herein. Nothing in this memorandum, however, is intended to provide or imply eligibility for immigrant classification or adjustment of status of any person granted deferred action or humanitarian reinstatement, including widow(er) of U.S. citizens other than U.S. citizens who filed the Form I-129F who are subject to section 245(d) of the INA.

It is not necessary for the widow(ers) of citizens to seek deferred action under the guidance in this memorandum, in a case governed by First, Sixth or Ninth Circuit law. Courts in those jurisdictions have held that the visa petitioner's death does *not* end a surviving spouse's eligibility for classification as an immediate relative. *Taing v. Napolitano,* 567 F.3d 19 (1st Cir. 2009); *Lockhart v. Napolitano,* 561 F.3d 611 (6th Cir. 2009); *Freeman v. Gonzales,* 444 F.3d 1031 (9th Cir. 2006). Litigation on this issue is currently pending in the Supreme Court. *Robinson v. Napolitano,* No. 09-94 (Cert petition filed July 23, 2009). Until such time as the Supreme Court decides the *Robinson* case on the merits, however, the *Taing, Lockhart* and *Freeman* cases remain the law in their respective circuits.

In the First, Sixth and Ninth Circuits, therefore, an officer should approve a Form I-130, and should also treat a pre-approval death as still valid, if the Form I-130 is approvable, apart from the issue of the petitioner's death. No request for reinstatement of a pre-death approval will be necessary. Should the beneficiary in a First, Sixth or Ninth Circuit case bring to the attention of USCIS a Form I-130 that was denied or revoked on or after August 30, 2001, solely because the petitioner had died officers should consider the *Taing, Lockhart* and *Freeman* decisions as a proper basis for reopening, *on USCIS motion,* the Form I-130, as well as any related Form I-485.[4] It is not necessary for the beneficiary to file a formal motion or pay any filing fee; any written request, such as a letter, will suffice. For purposes of this paragraph, a Form I-130 will be considered a First, Sixth or Ninth Circuit case if:

- the Form I-130 is pending in, or the original decision was made by, a USCIS office in the First, Sixth or Ninth Circuit; or
- either the petitioner or the beneficiary resided in First, Sixth or Ninth Circuit at the time of the petitioner's death. [5]

Whether an alien is actually admissible is not an issue in the adjudication of a Form I-130. *Matter of O-,* 8 I&N Dec. 295 (BIA 1959). In light of the judgment in *Hootkins v. Napolitano,* ___ F.Supp. 2d ___ , 2009 WL 2222839 (C.D.Cal. 2009), an officer will not consider the presence or absence of Form I-864 from a substitute sponsor in deciding whether to approve or deny a Form I-130 in a First, Sixth or Ninth Circuit case. The *Hootkins* court ruled, however, that the Class Plaintiffs had failed to prove their claim that an alien widow(er) whose Form I-130 is approved under Freeman does not need a Form I-864 from a substitute sponsor. 2009 WL 2222839 at *17, n. 23. The widow(er), therefore, must submit a new Form I-864 to obtain approval of the Form I-485, unless the Form I-485 applicant is exempt from this requirement under 8 CFR 213a.2(a)(2)(ii). Thus, the officer will treat the provision in AFM 21.5(a)(4)(B)(2) that requires submission of a new Form I-864 from a

[4] No action is necessary if the Form I-130 was denied or revoked before August 30, 2001. A civil action must generally be brought against the United States within 6 years after the cause of action accrues. 22 U.S.C. 2401(a). August 30, 2001, is selected as the cut-off date for reopening First, Sixth and Ninth Circuit cases since that is 6 years before the filing of *Hootkins v. Napolitano,* ___ F.Supp. 2d ___ (C.D.Cal. 2009), which began as a putative nation-wide class action.

[5] The First Circuit includes Maine, Massachusetts, New Hampshire, Rhode Island, and Puerto Rico; the Sixth Circuit includes Kentucky, Michigan, Ohio, and Tennessee; and the Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Guam. 28 U.S.C. § 41.

substitute sponsor as applying *only* to the adjudication of the Form I-485, and not to the adjudication of the Form I-130.

A widow(er) who is not able to submit a new Form I-864 from a substitute sponsor may seek deferred action, even if the Form I-130 itself is approved. In the case of a widow(er) whose Form I-485 cannot be approved because of the lack of a new Form I-864 from a substitute sponsor, a final decision on the Form I-485 will be held in abeyance during the period in which a grant of deferred action is in effect.

The *Taing, Lockhart* and *Freeman* cases apply only to First, Sixth and Ninth Circuit cases involving Forms I-130 filed for the spouses of citizens. These cases do not apply to a Form I-130 filed by a citizen for a step-child. Even if the citizen's widow(er) may have a Form I-130 and Form I-485 approved, therefore, any children of the widow(er) who are also beneficiaries of Forms I-130 filed by the deceased citizen may seek deferred action under this guidance.

A. Form I-130 Approved Prior to the Death of the U.S. Citizen Spouse (Petitioner)

Upon the death of the U.S. citizen petitioner, the approved Form I-130 is automatically revoked pursuant to 8 CFR 205.1(a)(3)(i)(C). The beneficiary, however, may request reinstatement of the revoked petition pursuant to 8 CFR 205.1(a)(3)(i)(C)(2). USCIS may then exercise discretion and grant the reinstatement after considering the facts and humanitarian considerations of the particular case. If the request for humanitarian reinstatement is approved, the beneficiary may proceed to the adjustment of status or consular processing stage.

This memorandum does not alter the process for reviewing a Form I-130 returned to USCIS by a U.S. Consular Officer overseas when the beneficiary is seeking a humanitarian reinstatement. If USCIS reinstates the Form I-130 returned by the consular officer, the I-130 should be forwarded to the National Visa Center to allow the beneficiary to resume consular processing. Section III(A) of this guidance, relating to humanitarian reinstatement, applies to beneficiaries who are within or outside the United States.

If a beneficiary covered by this guidance requests humanitarian reinstatement, adjudicators should presume that humanitarian reasons support a grant of the request. Absent extraordinary factors or a failure to meet the regulatory requirements of 8 CFR 205.1(a)(3)(i)(C)(2), adjudicators should favorably exercise discretion accordingly. If the request for reinstatement cannot be granted for any reason other than confirmed or suspected fraud or issues of criminality or national security, the beneficiary should be informed that he or she may request deferred action in the manner described in III(E) below.

B. Form I-130 Pending at the Time of Death of the U.S. Citizen Spouse (Petitioner) – Married Less than 2 Years at Time of Death

Once USCIS has received a copy of the U.S. citizen petitioner's death certificate, the pending, stand-alone Form I-130 should be held in abeyance at the pending location. Petitions may be transferred to

the Vermont Service Center to be consolidated with the A-file housing a deferred action request, if such a request is made by the beneficiary (see further guidance below).

Any concurrently filed Form I-485, *Application to Register Permanent Residence or Adjust Status*, and Form I-130, should be held in abeyance at the National Benefits Center until further guidance is issued. The beneficiary will remain eligible to receive the interim benefits of advance parole and employment authorization on the basis of the pending adjustment of status application.

If a Form I-485 was not concurrently filed, the beneficiary should be informed that he or she may request deferred action in the manner described in section III (E) below.

Note: In instances where the beneficiary and deceased U.S. citizen petitioner were married for at least two years at the time of the petitioner's death, the pending Form I-130 should be handled under existing procedures, including conversion of the Form I-130 to a Form I-360 for special immigrant classification as a widow/widower to the extent provided by 8 CFR 204.2(i)(1)(iv).

C. Form I-130 Denied (Prior to the Issuance of this Guidance) due to the Death of the U.S. Citizen Spouse (Petitioner)

A beneficiary who is the surviving spouse of a U.S. citizen petitioner and whose petition was denied by USCIS (1) due to the death of the U.S. citizen petitioner, and (2) prior to the issuance of this guidance, may request deferred action in the manner described in section III(E) below.

D. Form I-130 Not Filed Prior to the Death of the U.S. Citizen Spouse

A beneficiary who was legally married to a now deceased U.S. citizen at the time of the U.S. citizen's death, but for whom no Form I-130 was filed, may request deferred action in the manner described in section III(E) below.

If the beneficiary was not legally married to, or was legally separated from, the deceased U.S. citizen at the time of the U.S. citizen's death, a qualifying relationship does not exist. The beneficiary is therefore not eligible to submit Form I-360 based on the specific policy guidance set forth in section III(E) below.

E. Required Documentation for Requests for Deferred Action

Beneficiaries may request deferred action by submitting the following:

1) A Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*, with the appropriate, non-waiveable filing fee (currently $375), completed in the format explained below; and
2) All of the documents requested in the Form I-360 filing instructions for widow/widowers.

The beneficiary of the Form I-360 must check box "**m. Other, explain:**" in Part 2 of the petition and cite the basis for eligibility as "**Deferred Action -- Surviving spouse of a deceased U.S.**

citizen, married less than 2 years." The Form I-360 must be submitted to the Vermont Service Center for deferred action consideration. Note that while USCIS is utilizing Form I-360 for these deferred action requests, such filings are NOT special immigrant self-petitions under current law. They should be adjudicated as requests for deferred action only. In addition to the Part 2 information described above, the applicant must complete Parts 1, 3, 4, 7, 9, 10 and 11 of the Form I-360.

F. Decision on Requests for Deferred Action

Requests for deferred action based on the specific policy guidance set forth in this memorandum may only be considered for: 1) surviving spouses of U.S. citizens whose U.S. citizen spouse died before the second anniversary of the marriage and who are unmarried and residing in the United States; and 2) their qualifying children who are residing in the United States.

The following persons are ineligible for deferred action: 1) beneficiaries whose immigrant visa petition was denied or revoked for any reason other than or in addition to the death of the petitioning U.S. citizen spouse; 2) widow(er)s who have remarried or were legally separated or divorced from the U.S. citizen spouse at the time of the U.S. citizen's death; and 3) beneficiaries with other serious adverse factors, such as national security concerns, significant immigration fraud, commission of other crimes, or public safety reasons. A grant of deferred action is a discretionary action on the part of USCIS. It is intended that this discretion should be liberally applied to provide a humanitarian benefit to eligible beneficiaries. However, deferred action may be denied for serious adverse factors, whether or not such factors are specifically identified in this guidance.

Requests for deferred action based on the specific policy guidance set forth in this memorandum will not be considered for beneficiaries who: 1) are surviving spouses or qualifying children of non-U.S. citizens; 2) are residing outside the United States; 3) meet the conditional marriage period set forth in INA 201(b)(2)(A)(i); or 4) have remarried subsequent to the U.S. citizen's death (regardless of whether the subsequent marriage has been terminated).

Once a decision on the request for deferred action has been made, the decision must be communicated to the beneficiary via a decision letter. If the request has been granted, the deferred action grant letter must state that the beneficiary is eligible to file Form I-765, *Application for Employment Authorization*. If the request has been denied, the deferred action denial letter must cite the reasons for the denial. A decision on a request for deferred action falls within the discretion of the Secretary. A denial of a request for deferred action is not subject to administrative appeal or judicial review. See INA § 242(a)(2)(B), and (g).

G. Validity Period for Deferred Action

For any deferred action request received on or before May 27, 2011, the validity period of deferred action based on the policy guidance set forth in this memorandum is two (2) years from the date of grant of the Form I-360 request for deferred action.

H. Eligibility for Employment Authorization

The appropriate classification for Form I-765 filed on the basis of a deferred action grant is (C)(14) pursuant to 8 CFR 274a.12(c)(14). Beneficiaries may submit Form I-765, with the appropriate filing fee (currently $340), using this classification at any time after the grant (but prior to the expiration) of deferred action. However, they must demonstrate an economic necessity. The validity period for an employment authorization document (EAD) under the classification (C)(14), based on the specific policy guidance set forth in this memorandum is two (2) years, not to exceed the expiration date of the grant of deferred action.

All requests for employment authorization based on the policy guidance set forth in this memorandum must contain the appropriate required supporting documentation. Applicants must follow currently established filing procedures for the Form I-765 in accordance with the instructions on the form. Fee waiver of the Form I-765 fee is available on a case-by-case basis for substantiated inability to pay as provided in 8 CFR 103.7(c)(1).

A beneficiary whose Form I-485 is being held in abeyance may also file a Form I-765, with the appropriate filing fee. The appropriate classification for employment authorization filed on such a basis is (C)(9) pursuant to 8 CFR 274a.12(c)(9). Evidence of an economic necessity is not required if using this classification. A beneficiary whose application is being held in abeyance may have been issued an employment authorization document valid for one year under category (C)(9). When such an applicant files a Form I-765 for renewal of his or her EAD under the classification (C)(9) based on the specific policy guidance set forth in this memorandum, the validity period will be **two (2) years**. An applicant with a valid EAD under the classification (C)(9) may file for renewal no more than 90 days prior to the expiration date of the valid document. The employment authorization may then be granted for two (2) years based on the specific policy guidance set forth in this memorandum.

I. Effect of Grant of Deferred Action

The grant of deferred action by USCIS does not confer or alter any immigration status. It does not convey or imply any waivers of inadmissibility that may exist, regardless of whether that inadmissibility is known to DHS or other agencies at the time of the request for deferred action. A grant of deferred action also does not eliminate any period of prior unlawful presence. However, periods of time in deferred action do not count as unlawful presence for the purposes of sections 212(a)(9)(B) and (C) of the INA. Any period of time in deferred action qualifies as a period of stay authorized by the Secretary of Homeland Security for those purposes.

As noted earlier in this memorandum, in the case of a widow(er) whose Form I-485 cannot be approved because of the lack of a new Form I-864 from a substitute sponsor, a final decision on the Form I-485 will be held in abeyance during the period in which a grant of deferred action is in effect.

J. Eligibility for Advance Parole

Beneficiaries granted deferred action based on the policy guidance set forth in this memorandum or whose applications for adjustment of status are being held in abeyance may request advance parole. Such request may be made by filing Form I-131, *Application for Travel Document*, in accordance with the Form I-131 instructions and with the appropriate fee. Note, however, that departure from the United States and return, even under a grant of advance parole, may adversely affect eligibility for adjustment of status of aliens with past periods of unlawful presence.

K. Implementation

USCIS offices and centers are to begin implementing the instructions established in this memorandum immediately.

L. Contact Information

Questions regarding this memorandum should be directed to the Office of Domestic Operations through appropriate channels.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

Distribution:

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EXHIBIT O

U.S. Department of Homeland Security
20 Massachusetts Ave., NW
Washington. DC 20529

U.S. Citizenship and Immigration Services

HQDOMO 70/6.1.1-P
70/6.1.3-P
AFM Update AD10-09

Interoffice Memorandum

To: Executive 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

Date: DEC - 2 2009

SUBJECT: Additional Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children (REVISED)

Effect of FY2010 DHS Appropriations Act on eligibility to immigrate after death of visa petitioner

Revisions to Adjudicator's Field Manual (AFM) Chapter(s) 21.2(a)(4) and (h)(1)(C)
(AFM Update AD10-09)

I. Purpose

This memorandum supersedes an earlier memorandum on this subject, dated November 13, 2009, and provides updated guidance to U.S. Citizenship and Immigration Services (USCIS) field offices and service centers regarding the processing of Forms I-130, petitions for alien relative, and I-485, application to register permanent residence or adjust status, filed by surviving spouses of deceased U.S. citizens and the qualifying children of the surviving spouses. This new guidance is based on the enactment of section 568(c) of the Department of Homeland Security Appropriations Act, 2010, Pub. L. No. 111-83, 123 Stat. 4142, 4186 (2009), which provides

relief for these aliens. Section 568(c) entered into force on October 28, 2009, the date of enactment.

Sections 568(d) and (e) of the FY2010 DHS Appropriations Act, which provide relief for aliens who are surviving beneficiaries of certain pending or approved petitions filed by certain qualifying categories of noncitizens, will be addressed in a separate memorandum.

II. Background

A. Prior Policy and Related Litigation

For many years, U.S. immigration policy has been that a Form I-130 could not be approved if the petitioner died while the Form I-130 was pending. *See Matter of Sano,* 19 I&N Dec. 299 (BIA 1985); *Matter of Varela,* 13 I&N Dec. 453 (BIA 1970). As far back as 1938, our immigration regulations have provided for the revocation of the approval of a visa petition upon the petitioner's death. More recently, the regulations, while maintaining that general policy, have provided for discretion, for "humanitarian reasons," to reinstate the approval. 8 C.F.R. § 205.1(a)(3)(i)(C)(2). Also, since 2006, 8 C.F.R. § 204.2(i)(1)(iv) and 205.1(a)(3)(i)(C)(1) have provided that the automatic revocation provision does not apply to a spousal immediate relative visa petition, if the deceased petitioner and the alien widow(er) had been married at least two years when the petitioner died.

Over the past several years, widow(er)s of citizens who had died before the second anniversary of the underlying marriages have challenged this long-standing policy as being inconsistent with the statute. The federal courts of appeals have split on the legal issue. *Compare Robinson v. Napolitano,* 554 F.3d 358 (3d Cir. 2009) (sustaining agency view that petitioner's death while a Form I-130 is pending ends the beneficiary's eligibility); *petition for cert. filed,* No. 09- 94 (U.S. filed July 23, 2009), *with Taing v. Napolitano,* 567 F.3d 19 (1st Cir. 2009) (holding agency policy violative of statute); *Lockhart v. Napolitano,* 561 F.3d 611 (6th Cir. 2009) (same); *and Freeman v. Gonzales,* 444 F.3d 1031 (9th Cir. 2006) (same). The issue has engendered much litigation before the federal district courts in recent months, with most courts ruling against the agency. Among the unfavorable decisions is the class action ruling in *Hootkins v. Napolitano,* ___ F. Supp. 2d ___, 2009 WL 2222839 (C.D. Cal. Apr. 28, 2009), which is on appeal to the Ninth Circuit Court of Appeals. Other cases are pending in district courts throughout the United States.

B. Section 568(c) of FY2010 DHS Appropriations Act

Congress, however, recently acted to resolve the issue. On October 28, 2009, the President signed into law the FY2010 DHS Appropriations Act. Section 568(c) of the new law amends the second sentence in section 201(b)(2)(A)(i) of the INA so that, for a widow(er) of a citizen to qualify as an immediate relative, it is no longer necessary for the couple to have been married at least two years when the citizen died. The second sentence of section 201(b)(2)(A)(i) now reads,

> In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the spouse files a petition under [section 204(a)(1)(A)(ii) of the INA] within 2 years after such date and only until the date the spouse remarries.

When a widow(er) qualifies as an immediate relative under the second sentence in section 201(b)(2)(A)(i) of the INA, his or her children, as defined in sections 101(b)(1) and 201(f) of the INA, also qualify. The amendment made by section 568(c) applies equally to aliens abroad who are seeking immigrant visas and aliens in the United States who are seeking adjustment of status. The amendment applies to any alien whose spouse died before October 28, 2009, and who had a Form I-130 pending on October 28, 2009. If no Form I-130 was pending, then an alien whose U.S. citizen spouse died before October 28, 2009, and before the second anniversary of their marriage, may file a visa petition under section 204(a)(1)(A)(ii) of the INA so long as (a) the alien has not remarried, and (b) the petition is filed no later than October 28, 2011.

Section 568(c) relates only to the impact of the citizen's death on the alien's eligibility for classification as an immediate relative. All other requirements for approval of a visa petition remain in force. In particular, the alien must still establish that he or she was the citizen's legal spouse, and that the marriage was a bona fide marriage and not an arrangement solely to confer immigration benefits on the alien. If the alien was in removal proceedings at the time of the marriage, the "clear and convincing evidence" standard in section 245(e)(3) of the INA will still apply to the adjudication of the visa petition. If the necessary visa petition is approved, the alien may then seek an immigrant visa or adjustment of status. The alien must still establish that he or she is admissible as an immigrant and, in an adjustment case, that he or she meets all other adjustment eligibility requirements and merits a favorable exercise of discretion.

In light of this new legislation, the policy guidance stated in the November 8, 2007, memorandum entitled "Effect of Form I-130 Petitioner's Death on Authority to Approve the Form I-130" (*AFM* Update AD08-04) is obsolete. This memorandum amends the Adjudicator's Field Manual to remove the material added in that earlier memorandum.

III. Policy Guidance and AFM Update

AFM Update

1. Chapter 21.2 of the *AFM* entitled "Factors Common to the Adjudication of All Relative Visa Petitions" is amended by

   a. Removing chapter 21.2(a)(4)
   b. Removing the **Note** at the end of chapter 21.2(h)(1)(C).

A. Widow(er)s with pending cases

Section 568(c)(2)(A) of the FY2010 DHS Appropriations Act makes the amendment to the second sentence in INA section 201(b)(2)(A)(i) applicable to any visa petition or adjustment application "pending on or after the date of enactment." As noted, the date of enactment is October 28, 2009.

1. Reopening of pending Form I-130 cases

For purposes of this amendment, a Form I-130 will be deemed "pending" on October 28 2009, if the deceased citizen had filed a Form I-130 on or before that date but:

- USCIS has not adjudicated the Form I-130;
- USCIS denied the Form I-130, but USCIS granted a motion to reopen or reconsider, so that the Form I-130 is, again, pending;
- USCIS denied the Form I-130, but has not yet ruled on a motion to reopen or reconsider;
- USCIS denied the Form I-130, but the alien's appeal from that decision is pending before the Board of Immigration Appeals (BIA) or the period for appeal of the adverse USCIS decision to the BIA had not yet expired; or
- The USCIS or BIA decision denying the Form I-130 is the subject of pending litigation before a federal court (including cases in which the district court issued a decision before October 28, 2009, but the appeals period established by law had not yet expired).

Under 8 C.F.R. § 204.2(i), a citizen's spousal Form I-130 is automatically converted to a widow(er)'s Form I-360 if, on the date of the citizen's death, the beneficiary qualifies as a widow(er) under the second sentence in section 201(b)(2)(A)(i). Under section 568(c) of the FY2010 DHS Appropriations Act, these aliens now qualify under the second sentence. Thus, any Form I-130 that is "pending" as described in the preceding paragraph will be deemed to be, and adjudicated as, a widow(er)'s Form I-360.

In any Form I-130 case in which a motion to reopen or for reconsideration was filed, but not acted on, USCIS will grant the motion and make a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act.

Any Form I-130 that is the subject of litigation in any federal court on the issue of the effect of the petitioner's death is, as of the date of this memorandum, reopened for a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act. The beneficiary need not file a separate motion. Nor does it matter, for purposes of reopening the Form I-130, whether the beneficiary is currently in the United States or abroad. If the decision denying or terminating action on the Form I-130 was pending in any court on October 28, 2009, the decision is now

reopened. USCIS will therefore make a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act.

Cases challenging the denial of a spousal immediate relative Form I-130 based on the petitioner's death have been filed in district courts throughout the United States. USCIS officers must consult with the appropriate regional or service center counsel to identify those cases that are the subject of litigation that was pending on October 28, 2009. Once a case is identified as subject to reopening under this memorandum, the USCIS officer will notify the alien in writing that the Form I-130 is reopened in light of section 568(c) of the FY2010 DHS Appropriations Act, and will be readjudicated as a Form I-360.

If it is determined that a Form I-130 had been filed but was not "pending" on October 28, 2009, because a USCIS decision denying the Form I-130 had become final before October 28, 2009 (and no administrative appeal or civil action challenging the denial was pending on October 28, 2009), please refer to part III(B) of this memorandum.

2. Reopening of pending Form I-485 cases

Section 568(c)(2)(A) of the FY2010 DHS Appropriations Act also makes the amendment applicable to any Form I-485 that was pending on the date of enactment. A Form I-485 is deemed "pending" on the date of enactment if it was filed before the deceased citizen's death but:

- USCIS has not adjudicated the Form I-485
- USCIS denied the Form I-485, but USCIS granted a motion to reopen or reconsider, so that the Form I-485 is, again, pending
- USCIS denied the Form I-485, but has not yet ruled on a motion to reopen or reconsider;
- The Form I-485 is the subject of litigation before a federal court (including cases in which the district court issued a decision before October 28, 2009, but the appeals period established by law had not yet expired).

With this guidance memo, USCIS also reopens, without the need for a formal motion, any Form I-485 that is the subject of litigation on this issue in any federal court, if USCIS still has jurisdiction to act on the Form I-485. As with the reopening of the related Form I-130, the USCIS officer will notify the applicant in writing that the Form I-485 is reopened in light of section 568(c) of the FY2010 DHS Appropriations Act.

In the case of a widow(er) who entered the United States as a K-1 nonimmigrant, and filed a Form I-485 after marrying the deceased citizen who had filed the Form I-129F, ordinarily there will not be a Form I-130. If the Form I-485 is still "pending" as described in this memo, and USCIS still has jurisdiction to act on it, the Form I-485 will also be reopened for a new decision in light of section 568(c) of the FY2010 DHS Appropriations Act, without the need for a formal

motion. Since no Form I-130 is required for a K-1 nonimmigrant to seek adjustment after marrying the K petitioner within the period specified by statute, the K-1 nonimmigrant will also be deemed the beneficiary of a Form I-360 if the K-1 nonimmigrant now qualifies as a widow(er). The K-1 nonimmigrant still may not adjust on any basis other than the K-1 nonimmigrant's having married the citizen petitioner who filed the Form I-129F.

Some aliens may have been placed into removal proceeding after USCIS denied their Forms I-485. Except for "arriving aliens," this factor would mean that USCIS no longer has jurisdiction to adjudicate the Form I-485. 8 C.F.R. § 245.2(a)(1) and 1245.2(a)(1). USCIS would have jurisdiction to adjudicate the Form I-485 only if the Executive Office for Immigration Review (EOIR) terminated the removal proceeding. Whether to support or oppose terminating a removal proceeding is a matter for U.S. Immigration and Customs Enforcement to decide, not USCIS. If a USCIS office reopens a Form I-130 involving an alien in removal proceedings, the USCIS office must, through the appropriate USCIS counsel, advise the local counsel for U.S. Immigration and Customs Enforcement.

Some aliens whose citizen spouses had died may have left the United States voluntarily, without obtaining a grant of advance parole. Others may have left after obtaining advance parole, but may have remained abroad after expiration of the Form I-512. Under 8 C.F.R. § 245.2(a)(ii)(4)(B), these aliens have abandoned their adjustment applications. Also abandoned is the adjustment application of an alien who left as the result of removal proceedings. 8 C.F.R. § 245.2(a)(4)(ii)(A). In these situations, a Form I-485 will not be deemed "pending" for purposes of section 568(c)(2)(A). However, where section 568(c) applies to the approved Form I-130, and the Form I-130 has been approved as a Form I-360, the alien approved on that I-360 who has left the United States may apply for an immigrant visa abroad.

3. Petition already approved before death

If a widow(er) is the beneficiary of a Form I-130 that was approved before the citizen petitioner's death, it is not necessary for the widow(er) to request humanitarian reinstatement of the approval. Under 8 C.F.R. § 204.2(i)(1)(iv), the approved Form I-130 is automatically converted to an approved Form I-360. Any children of the widow(er) will also be eligible to seek an immigrant visa or adjustment of status based on the converted petition.

There may be some cases in which a spousal immediate relative Form I-130 was approved, but the approval was revoked automatically under 8 C.F.R. 205.1(a)(3)(i)(C) upon the citizen petitioner's death. If the alien is now eligible for classification as the widow(er) of a citizen under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act , the approval will be deemed to have been reinstated, effective October 28, 2009. No separate request for reinstatement is necessary. Under 8 C.F.R. § 204.2(i)(1)(iv), the Form I-130 will be deemed to be an approved Form I-360.

4. Admissibility issues

Whether an alien is actually admissible is not germane in adjudicating a Form I-130. *Matter of O-*, 8 I&N Dec. 295 (BIA 1959). The only issue resolved by enactment of section 568(c) of the FY2010 DHS Appropriations Act is that the death of the citizen spouse, by itself, does not make the widow(er) ineligible for immediate relative classification. Thus, the alien must still be admissible as an immigrant to obtain adjustment of status or an immigrant visa.

For those aliens, however, who had pending Form I-130 cases, and who now can benefit from section 568(c) of the FY2010 DHS Appropriations Act, two inadmissibility grounds warrant special consideration. The first is section 212(a)(9)(B)(i) of the Act, under which an alien is inadmissible if the alien seeks admission within a specified period after the alien leaves the United States, if the alien has accrued a lengthy period of unlawful presence. The second is section 212(a)(9)(A), under which an alien who has been removed (or who left the United States while under a final administrative order of removal) must obtain consent to reapply, if the alien seeks admission within the period set in section 212(a)(9)(A).

It is important to note that the special provisions in this memorandum relating to INA section 212(a)(9)(A) and (B) apply only to an alien who was the beneficiary of a Form I-130 that was filed by a now-deceased spouse petitioner, and that can now be approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act. The purpose of these special provisions is simply to minimize the adverse effect on these aliens of the disputed, and now resolved, issue of the impact of the death of the petitioning spouse on the alien's eligibility.

a. Unlawful presence

By specifying, in section 568(c)(2)(A) of the FY2010 DHS Appropriations Act, that the amendment should apply to pending cases, Congress indicated its desire to resolve these cases fully. For this reason, for purposes of INA section 212(a)(9)(B)(i), if an alien remained in the United States while awaiting the outcome of Form I-130 that can now be approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act, the alien will be deemed *not* to have accrued any unlawful presence. This protection applies even if the alien was not actually in a lawful status while the now-converted Form I-360 was pending.

An alien who had a Form I-130 pending on October 28, 2009, but who is present in the United States without a lawful admission or parole generally cannot obtain adjustment under INA section 245(a). Rather, the alien must generally seek adjustment under INA section 245(i). But this relief is not available to an alien who did not have a petition or labor certification filed before April 30, 2001. Thus, even if the Form I-130 can now be approved as a Form I-360, the alien may need to leave the United States to obtain an immigrant visa. But since, under this guidance memorandum, the alien will be deemed *not* to have accrued any unlawful presence, he or she will not be inadmissible under INA section 212(a)(9)(B)(i).

Again, these special provisions relating to the accrual of unlawful presence apply only to an alien who is the beneficiary of a spousal immediate relative Form I-130 that was pending on October

28, 2009, and that is now approved under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act and 8 C.F.R. § 204.2(i)(1)(iv) as a widow(er)'s Form I-360: the widow(er) and his or her accompanying child(ren). Ordinarily, the pendency of a visa petition, itself, does not prevent accrual of unlawful presence. A pending adjustment application, by contrast, does prevent accrual of unlawful presence. *Adjudicator's Field Manual* chapter 40.9(b)(3)(A). Most aliens who have been in litigation because the death of a spouse led to denial of the Form I-130 are probably already protected from unlawful presence under the ordinary provisions in the AFM. This broader protection against unlawful presence, for this narrow class of cases, is designed to maximize the ability of those aliens whose specific situations gave rise to the new legislation to fully benefit from it.

b. Consent to reapply for admission after removal

These protections against accrual of unlawful presence apply even if the alien was actually removed from the United States under a removal order. Still, because the alien was removed under a valid order, the alien is inadmissible under INA section 212(a)(9)(A)(i) or (ii). USCIS, however, has discretion under section 212(a)(9)(A)(iii) to consent to the alien's re-application for admission. USCIS should generally exercise discretion favorably and grant an application for consent to reapply under section 212(a)(9)(A)(iii), if:

- The Form I-130 that had been filed by the alien's spouse has now been approved as a Form I-360 under section 568(c) of the FY2010 DHS Appropriations Act;
- The alien is otherwise admissible, and
- The alien's case does not present significant adverse factors beyond the removal itself.

A USCIS adjudicator will not deny a Form I-212 filed by an alien whose case was in litigation on October 28, 2009, and whose Form I-130 has been approved as a Form I-360 under section 568(c)(2)(A) of the FY2010 DHS Appropriations Act without consulting USCIS Headquarters through appropriate channels.

5. Remarriage

Any immediate relative Form I-130 that was filed on behalf of the spouse of a U.S. citizen, and that was pending on October 28, 2009, is no longer a spousal immediate relative Form I-130. By operation of 8 C.F.R. § 204.2(i)(1)(iv), what was filed as a spousal immediate relative Form I-130 is now a widow(er)'s Form I-360. The converted Form I-360 may be approved only if the beneficiary, who is now also deemed to be the petitioner, qualifies as the widow(er) of a citizen, as described in INA section 201(b)(2)(A)(i). Eligibility for classification as an immediate relative continues "only until the date the spouse remarries."

6. Ninth Circuit cases

In acting on the guidance in this memorandum, USCIS adjudicators must keep in mind that the *Hootkins* case was certified as a class action. Thus, an individual need not be a *named* Plaintiff in *Hootkins* in order for his or her Form I-130 and Form I-485 to be reopened under this memorandum. If an individual has not already been identified as a member of the *Hootkins* class, that individual may make a written request to have his or her Form I-130 and Form I-485 reopened and readjudicated. The purpose of the written request is simply to *identify* the case as a *Hootkins* case. The individual is not required to pay the filing fee for a motion to reopen. The case will be considered a *Hootkins* class member case if the case was denied on or after August 30, 2001,[1] and:

- either the citizen spouse petitioner or the alien spouse beneficiary lived in the Ninth Circuit when the citizen spouse died; or

- a USCIS office in the Ninth Circuit made the prior decision on the Form I-130 or Form I-485.

B. Widow(er)s without pending cases

The alien widow(er) of a citizen who died before October 28, 2009, but who did not have a Form I-130 pending on that date, may now file a Form I-360, provided that he or she does so no later than October 28, 2011, and has not remarried. FY2010 DHS Appropriations Act § 568(c)(2)(B). Section 568(c)(2)(B) applies if the citizen spouse did not file a Form I-130 on the alien spouse's behalf before dying. But it also applies if there was a Form I-130 filed, but the decision denying the Form I-130 had become administratively final before October 28, 2009, because the decision was not the subject of any type of administrative or judicial review that was pending on October 28, 2009. Note that section 568(c)(2)(B)(i) says the Form I-360 must be filed "not later than the date that is 2 years after the date of the enactment." Thus, a Form I-360 that is filed *on* October 28, 2011, will still be timely. A Form I-360 filed on or after October 29, 2011, will be untimely.

For any case in which a citizen dies on or after October 28, 2009, the alien widow(er) must file the Form I-360 within 2 years of the citizen's death.

C. Children of widow(er)s

The child of a widow(er) whose Form I-360 is approved may, as specified in the second sentence of INA section 201(b)(2)(A)(i) and in INA section 204(a)(1)(A)(ii), be included in the widow(er)'s petition. Whether an individual qualifies as the widow(er)'s "child" is determined according to INA sections 101(b)(1) and 201(f).

[1] Any case denied before August 30, 2001, is time-barred under 28 U.S.C. § 2401(a). But even if a Ninth Circuit case is not considered "pending" because of *Hootkins*, the alien may still be eligible to immigrate as the widow(er) of a citizen, if the alien has not remarried and files the Form I-360 no later than October 28, 2011.

In a case in which the deceased citizen had filed a Form I-130 for his or her spouse, and the Form I-130 can now be adjudicated as a Form I-360 widow(er)'s petition, the child(ren) of the widow(er) will be deemed to be included in the converted Form I-360. Thus, it will not be necessary to act on any separate Form(s) I-130 that the deceased citizen may have filed for the widow(er)'s children. And the child(ren) of the widow(er) will be deemed included in the converted Form I-360 even if the deceased citizen had not filed any Form(s) I-130 for the child(ren).

Note that, in light of INA section 201(f), whether an individual qualifies as the "child" of a widow(er) depends on the individual's age when the visa petition was filed. For those cases that were pending on October 28, 2009, the Form I-360 filing date is deemed to be the date on which the deceased citizen filed the prior Form I-130. If a widow(er) has an unmarried son or daughter who was under 21 when the deceased citizen filed the Form I-130, that individual will still be deemed to be under 21 for purposes of the widow(er)'s now-converted Form I-360.

D. Affidavits of support

Under section 212(a)(4)(C)(i)(I) of the INA, a Form I-864 (Affidavit of Support under Section 213A of the Act) is *not* required in the case of the widow(er) of a citizen and the widow(er)'s accompanying children.[2]

E. Conversion of deferred action applications filed under prior guidance

While remedial legislation was pending in Congress, the Secretary of Homeland Security directed the use of deferred action relief to allow widow(er)s of citizen whose cases may have been affected by the legislation to remain in the United States. In the September 4, 2009 Memorandum, "Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and their Children," USCIS designated the Form I-360 as the form an individual would use to request deferred action under the Secretary's policy.

Now that Congress has enacted the legislation, any Form I-360 that had been filed to obtain deferred action relief, and that has not yet been adjudicated as a deferred action request, will now be considered to be, and adjudicated as, a widow(er)'s visa petition under 8 C.F.R. § 204.2(b). If the Form I-360 has already been approved as a deferred action request, it will be reopened and adjudicated as a visa petition under 8 C.F.R. § 204.2(b). It is not necessary for the alien to file a formal motion, nor to pay a new Form I-360 filing fee. Additionally, any prior grant of deferred action relief need not be rescinded and should remain undisturbed.

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[2] There may be an individual case in which, regardless of the Form I-864 issue, the factors specified in INA section 212(a)(4)(B) and the standard public charge guidance, as published at 64 Fed. Reg. 28689 (1999), will support a finding that a widow(er) is inadmissible as an alien likely to become a public charge. Even in this case, a Form I-864 is not required. Rather, since the statute does not specifically require the Form I-864, the Form I-134 can be used instead. 8 C.F.R. § 213a.5. It is important to note that, on a Form I-134, the sponsor does not have to meet the requirements in INA section 213A(f), and so does *not* need to be someone who could have been a "substitute sponsor" in a case in which a Form I-864 actually is required.

Under the deferred action guidance, an alien could file a Form I-765, application for employment authorization, only if the deferred action request had been granted. Now that a Form I-360 that was filed to request deferred action is deemed to be a widow(er)'s visa petition, the alien can, if otherwise eligible, file a Form I-485 even before the approval of the Form I-360. 8 C.F.R § 245.2(a)(2)(i)(B). Filing the Form I-485 permits the alien to file a Form I-765. 8 C.F.R. § 274a.12(c)(9).

F. Implementation

Section 568(c) of the FY2010 DHS Appropriations Act became effective on October 28, 2009, the date of enactment. USCIS offices and centers, therefore, are to begin implementing the instructions established in this memorandum immediately. USCIS adjudicators should note that Congress clearly intended to benefit the aliens affected by these provisions.

***AFM* Transmittal Memorandum Revisions. The *AFM* Transmittal Memorandum button is revised by adding a new entry, in numerical order, to read:**

AD 10-09 [Date of Signature]	**Chapter 21.2**	This memorandum removes chapter 21.2(a)(4) and the **Note** at the end of chapter 21.2(h)(1)(C) to reflect enactment of section 568(c) of Public Law 111-83.

H. Contact Information

Questions regarding this memorandum should be directed to the Office of Domestic Operations through appropriate channels. For cases adjudicated overseas, questions should be directed to the International Operations Division, Programs Branch.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies or entities, its officers, employees, or agents, or any other person.

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EXHIBIT P

No. 15-674

IN THE

Supreme Court of the United States

UNITED STATES, ET AL.,
Petitioners,

v.

STATE OF TEXAS, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF FORMER FEDERAL IMMIGRATION AND HOMELAND SECURITY OFFICIALS AS AMICI CURIAE IN SUPPORT OF THE UNITED STATES

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INTEREST OF AMICI CURIAE[1]

Amici served in senior positions in the federal agencies charged with enforcement of U.S. immigration laws under both Democratic and Republican administrations.

Paul Virtue served as General Counsel of the United States Immigration and Naturalization Service ("INS" or "the Service") from 1998 to 1999. INS is the predecessor agency to the federal offices within the Department of Homeland Security ("DHS") that now have responsibility for enforcing the nation's immigration laws. He also served as Executive Associate Commissioner from 1997 until 1998 and Deputy General Counsel from 1988 until 1997.

Bo Cooper served as General Counsel of INS from 1999 until 2003.

Roxana Bacon served as Chief Counsel of U.S. Citizenship and Immigration Services ("USCIS") from 2009 to 2011.

Seth Grossman served as Chief of Staff to the General Counsel of DHS from 2010 to 2011, Deputy General Counsel of DHS from 2011 to 2013, and as Counselor to the Secretary at the same agency in 2013.

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[1] Pursuant to Supreme Court Rule 37.3(a), all parties have consented to the filing of this brief. Pursuant to Rule 37.6, amici certify that no counsel for a party authored this brief in whole or in part, and no persons other than amici curiae or their counsel made a monetary contribution to its preparation or submission.

Stephen H. Legomsky served as Chief Counsel of USCIS from 2011 to 2013 and as Senior Counselor to the Secretary of DHS on immigration issues from July to October 2015.

John R. Sandweg served as Acting Director of Immigration and Customs Enforcement ("ICE") from 2013 to 2014, as Acting General Counsel of DHS from 2012 to 2013, as Senior Counselor to the Secretary of DHS from 2010 to 2012, and as Chief of Staff to the General Counsel of the same agency from 2009 to 2010.

As former leaders of the nation's primary immigration enforcement agencies, amici are familiar with the historical underpinnings of the deferred action and work authorization policies at issue in this litigation. Amici's experience demonstrates that prosecutorial discretion plays a vital role in the rational enforcement of federal immigration law, which has historically established laudable policy objectives backed by inadequate enforcement resources. Amici's experience is that the exercise of executive discretion in the immigration context is vital to advancing the national security interests, humanitarian values, and rule of law principles underlying federal immigration law.

SUMMARY OF ARGUMENT

For more than half of a century, the Executive Branch has developed and implemented policies designed to delay—in many cases indefinitely—the enforcement of deportation and other aspects of federal immigration law. Administrations of both Republican and Democratic Presidents have relied on these policies to enforce federal immigration

laws in a manner that is efficient, rational, and humane. While these policies have at times generated political controversy, until recently their legal underpinnings did not. That is because, as a general rule, the ordering of enforcement priorities is a "special province of the Executive." *Heckler v. Chaney*, 470 U.S. 821, 833 (1985).

Throughout this period, the Executive Branch has ordinarily allowed aliens with deferred action to apply for authorization to work while they remain in this country. This policy, which is codified at 8 C.F.R. § 274a.12(c)(14), was the subject of extensive deliberation in the 1970s and 1980s, including several rounds of notice and comment rulemaking by INS. These executive deliberations were recognized and ratified by Congress through a series of enactments during and after the same period.

The decision of the divided court of appeals panel threatens to upend the sensible enforcement policies on which federal immigration officials have relied for decades. The Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") program is the same in its basic attributes as numerous deferred action policies that preceded it. As with DAPA, nearly all prior deferred action policies exercised prosecutorial discretion in order to focus enforcement efforts on the highest priority cases consistent with federal immigration policy, while allowing for work authorization for individuals who will likely remain in the country for at least some duration.

Executive discretion to establish enforcement policies is especially important in the immigration

context because scarce resources are available to implement myriad federal immigration policies and because the selection of enforcement priorities has potentially severe consequences for national security, the employment market, and the preservation of family unity. Prosecutorial discretion is just as important, and just as lawful, when it is used to establish priorities that may affect large numbers of persons as it is when it affects only individual cases. Reversal of the decision below is vital to ensure that immigration enforcement priorities are determined by the Executive Branch officials to whom Congress has committed such discretion, rather than by judicial fiat.

ARGUMENT

I. DEFERRED ACTION POLICIES HAVE BEEN AN ESSENTIAL COMPONENT OF THE EXECUTIVE BRANCH'S ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOR DECADES

For more than half of a century, federal immigration officials have exercised enforcement discretion through policies that permit "deferred action," "extended voluntary departure," "parole," or "deferred enforced departure" for various classes of aliens. Notwithstanding the variation in terminology, these programs are fundamentally alike: each enables certain classes of otherwise removable aliens to remain temporarily in (or, in the case of parole, to enter) the United States and, in most cases, to support themselves while they are present by working lawfully. In amici's experience, the objectives Congress sought to achieve via the federal immigration laws would be thwarted if Executive Branch officials were suddenly deprived of the discretion to use such policies.

A. Deferred Action Policies Have Been A Common Feature of Immigration Enforcement Since the 1950s

In 1956, President Eisenhower "paroled"—i.e., authorized the admission into the United States of—roughly one thousand foreign-born children who were adopted by American citizens overseas but who were precluded from entering the United States because of statutory quotas. The President explained that he had been "particularly concerned over the hardship" that these quotas imposed, especially on members of the U.S. armed forces who were "forced to leave their adopted children behind"

following tours of duty. On the advice of the Attorney General and Secretary of State, the President adopted the parole policy "pending action by Congress to amend the law." *See* President Dwight Eisenhower, *Statement Concerning the Entry into the United States of Adopted Foreign-Born Orphans* (Oct. 26, 1956) *available at* http://www.presidency.ucsb.edu/ ws/?pid=10677.

As the Cold War entered its second decade, the Eisenhower Administration began to use the parole power as an instrument of foreign policy. For example, President Eisenhower ordered the parole of Cubans fleeing that country's oppressive communist regime—a program continued by the Kennedy, Johnson, and Nixon Administrations, and which ultimately permitted over six hundred thousand otherwise ineligible aliens to enter the United States. American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present* (Oct. 2014).

The Ford and Carter Administrations each made grants of "extended voluntary departure," meaning that they "temporarily suspend[ed] enforcement" of deportation for "particular group[s] of aliens." *Hotel & Rest. Employees Union, Local 25 v. Smith*, 846 F.2d 1499, 1510 (D.C. Cir. 1988) (en banc); Andorra Bruno et al., CRS, *Analysis of June 15, 2012 DHS Memorandum, Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children* (2012).

The Reagan and George H.W. Bush Administrations continued and broadened deferred action. In 1986, following passage of the Immigration Reform and Control Act (IRCA), Pub.

L. No. 99-603, 100 Stat. 3359 (1986), the Reagan Administration also launched the "Family Fairness" program. IRCA had established a pathway to lawful status for certain aliens who otherwise were present without authorization in the United States, *see id.* at § 201, 100 Stat. at 3445, but the Act did not state whether INS should continue to deport the relatives of aliens who might qualify for lawful status under the new law—and the legislative history makes clear that the omission was a deliberate legislative decision. *See* S. Rep. 99-132, at 16 (1986) ("It is the intent of the Committee that the families of legalized aliens will obtain no special petitioning rights by virtue of the legalization."); *see also INS Reverses Family Fairness Policy,* 67 No. 6 INTERPRETER RELEASES 153 (Feb. 5, 1990) ("What to do when some but not all members of an alien family qualify for legalization has been a controversial issue since the beginning of the amnesty program."). Confronting that question, INS Commissioner Alan Nelson acknowledged that there was "nothing in [IRCA or the legislative history] that would indicate Congress wanted to provide immigration benefits to others who didn't meet the basic criteria, including the families of legalized aliens." Alan Nelson, *Legalization and Family Fairness: An Analysis* (Oct. 21, 1987), *reprinted as* 64 No. 41 INTERPRETER RELEASES 1191, 1201 ("Nelson Statement"). INS therefore lacked express statutory authority to grant resident status to aliens who did not otherwise qualify for it. *Id.*

The fact that IRCA did not provide express statutory authority to INS to alter the status of non-qualifying aliens, however, did not mean that

the Act required the Service to deport all such persons, or precluded such persons from working. The Reagan Administration recognized a distinction between granting permanent resident status, which the Attorney General could not do without statutory authorization, and merely deferring removal actions against certain unlawfully present aliens, which the law empowered the Attorney General to do. *Id*. As Commissioner Nelson explained:

> INS is exercising the Attorney General's discretion by allowing minor children to remain in the United States even though they do not qualify on their own, but whose parents (or single parent in the case of divorce or death of spouse) have qualified under the provisions of IRCA. The same discretion is to be exercised as well in other cases which have specific humanitarian considerations.

Id.

President George H.W. Bush's Administration expanded the Family Fairness Program in 1990 by instructing that "[v]oluntary departure will be granted to the spouse and to unmarried children under 18 years of age, living with the legalized alien, who can establish" that they meet certain criteria, including residence in the United States for a specified period of time and the lack of a felony conviction. Memorandum from Gene McNary, Comm'r, INS, to Reg'l Comm'rs, *Family Fairness* (Feb. 2, 1990), *reprinted as* 67 No. 6 INTERPRETER RELEASES 153, 165 App. I ("McNary

Memo"); *see also* 60 Fed. Reg. 66,062, 66,063 (Dec. 21, 1995) ("The Service created the Family Fairness policy as a means of precluding the separation of family members by deferring their deportation."). The Service also made clear that aliens who qualified under the Family Fairness Program would be eligible to work. *See* McNary Memo.

Contemporaneous government estimates indicated that as many as 1.5 million aliens were expected to be eligible under the expanded Family Fairness program. *See Immigration Act of 1989: Hearing before the Subcomm. On Immigration, Refugees, and International Law of the H. Comm. On the Judiciary*, 101st Cong. 49 (1990) (Mr. McCollum: "Do you have any idea, any estimates of how many people we are talking about who are the immediate relatives legalized under the IRCA Act? . . . ." Mr. McNary: "Well, we are talking about 1.5 million under IRCA."); *see also id.* at 56 (Mr. Morrison: "Mr. McNary, you used the number 1.5 million IRCA relatives who are undocumented but who are covered by your family fairness policy. Do I have that number right?" Mr. McNary: "Yes."). Publicly available estimates indicate that this figure was approximately forty percent of undocumented aliens in the United States at the time. *See* Jeffrey Passel et al., *As Growth Stalls, Unauthorized Immigrant Population Becomes More Settled*, Pew Research Center (2014) *available at* http://www.pewhispanic.org/files/2014/09/2014-09-03_Unauthorized-Final.pdf (estimating that 3.5

million unauthorized immigrants lived in the United States in 1990).[2]

Shortly after implementing the expansion of Family Fairness, President Bush issued a signing statement accompanying his approval of the Immigration Act of 1990. That Act granted the Attorney General power to grant "temporary protected status" to allow otherwise deportable aliens to remain in the United States "because of their particular nationality or region of foreign state of nationality." Pub. L. No. 101-649 § 302, 104 Stat. 4978, 5030. President Bush objected to language purporting to make this the "exclusive" avenue for providing such relief, stating: "I do not interpret this provision as detracting from any authority of the executive branch to exercise prosecutorial discretion in suitable immigration cases." *See* President George H.W. Bush, *Statement on Signing the Immigration Act of 1990,* 26 WEEKLY COMP. PRES. DOC. 1947 (Nov. 29, 1990).

Recent Administrations have continued to employ deferred action. For instance, President Clinton's Administration authorized deferred action

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[2] Although fewer people ultimately applied for Family Fairness than the Administration was predicting—in part because the subsequently-enacted Immigration Act of 1990 offered preferable remedies—the point is that the administration "saw no legal barrier to going forward . . . [n]or was there an outcry from either Congress or the general public." Written Testimony of Stephen Legomsky before the H. Comm. on the Judiciary 24-25 (Feb. 25, 2015), http://judiciary.house.gov/_cache/files/fc3022e2-6e8d-403f-a19c-25bb77ddfb09/legomsky-testimony.pdf ("Legomsky Testimony").

for aliens who might prove eligible for permanent relief through the Violence Against Women Act. *See* Memorandum from Paul Virtue, INS to Reg'l Dirs., *Supplemental Guidance on Battered Alien Self-Petitioning Process and Related Issues* at 3 (May 6, 1997) ("Virtue Memo") (noting that "[b]y their nature, VAWA cases generally possess factors that warrant consideration for deferred action"). President George W. Bush likewise provided deferred action for foreign students affected by Hurricane Katrina who were unable to fulfill their F-1 visa's full-time student requirement, and simultaneously suspended employer verification requirements for those students, as well. USCIS, *Interim Relief for Certain Foreign Academic Students Adversely Affected by Hurricane Katrina, Frequently Asked Questions* (Nov. 25, 2005), *available at* http://www.uscis.gov/sites/default/ files/ files/pressrelease/F1Student_11_25_05_FAQ.pdf.

These examples are by no means exhaustive. Amici have identified nearly forty examples of such policies, each of which is listed in the Appendix to this brief. The consistency and frequency with which the Executive has employed deferred action policies underscore the central role the practice has played in promoting sensible enforcement of the federal immigration laws.

B. Deferred Action Programs Promote Sensible Immigration Policy Objectives

Over the past several decades, Administrations of both political parties have repeatedly defended deferred action policies by invoking straightforward and consistent legal and policy arguments. As officials charged with enforcing U.S. immigration

laws have explained, deferred action policies are necessary to make the most efficient use of limited enforcement resources, to achieve consistent enforcement of federal immigration law, and to promote humanitarian and family values.

1. Deferred Action Is Necessary To Make The Most Efficient Use Of Limited Enforcement Resources

Like the numerous exercises of prosecutorial discretion in the immigration context that preceded it, DAPA responds to the reality that Congress has not allocated to DHS and DOJ sufficient resources to remove every person who is not authorized to be in the United States. *Compare* Memorandum from Jeh Johnson, Sec'y of Homeland Security, to Leon Rodriguez, Dir., USCIS, *Exercising Prosecutorial Discretion*, at 2 (Nov. 20, 2014), *available at* http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf ("DAPA Memo") ("Due to limited resources, DHS and its Components cannot respond to all immigration violations or remove all persons illegally in the United States.") *with* Memorandum from Sam Bernsen, General Counsel, INS, to Comm'r, *Legal Opinion Regarding Service Exercise of Prosecutorial Discretion*, at 1 (Jul. 15, 1976) ("Bernsen Memo") ("There simply are not enough resources to enforce all of the rules and regulations presently on the books. As a practical matter, therefore, law enforcement officials have to make policy choices as to the most effective and desirable way in which to deploy their limited resources."), *and* Memorandum from Bo Cooper, General Counsel, INS, to Comm'r, *INS Exercise of Prosecutorial Discretion*, at 2 (Jul. 11, 2000) ("Cooper Memo") ("[L]imitations in

available enforcement resources . . . make it impossible for a law enforcement agency to prosecute all offenses that come to its attention.").

Resource constraints require senior immigration officials to decide how funding and personnel can be allocated and deployed in the manner most likely to advance the multiple objectives of our federal immigration laws. As described *supra*, the Executive Branch for decades has been required to prioritize enforcement objectives, in a manner similar to DAPA, and it has consistently and successfully defended the legality of such actions. In 1984, the Reagan Administration's attorneys, arguing before this Court, set forth a compelling defense, equally applicable here, of the Executive's exercise of prosecutorial discretion:

> In deciding whether to undertake enforcement action, an agency must do far more than merely determine whether there is a sound factual and legal basis for proceeding. The agency must decide which enforcement strategy will best carry out its statutory mandate and must decide how to allocate its scarce resources. It must compare the importance and cost of various potential cases, as well as the likelihood of success in each of those endeavors. . . . After considering these and other factors, an agency may rationally decide to pursue highly visible cases. Or it may decide to undertake action in a much larger number of cases. Evaluating the relevant factors and developing a

> sound enforcement strategy are quintessentially the functions of a regulatory agency. They are not appropriate for judicial review.

Brief for United States as Petitioner, *Heckler v. Chaney*, No. 83-1878, 1984 WL 565477, at *17-18 (U.S. Aug. 16, 1984).

Like its predecessor deferred action policies, DAPA reflects the Executive's determination that enforcement of the immigration laws will be most effective if the government's limited resources are used to prosecute and remove individuals who pose the greatest threats to public safety and national security instead of those who do not pose such threats, who belong to families residing peacefully and productively in the United States for many years, and who have already developed strong ties to this country and to their communities.

DAPA employs the same type of enforcement strategy that Congress has authorized the Executive to make for decades. As early as 1909, a DOJ circular advised officers not to proceed in immigration cases unless "some substantial results are to be achieved thereby in the way of betterment of the citizenship of the country." *See* U.S. Dep't of Justice, Circular Letter No. 107 (Sep. 20, 1909) (quoted in Bernsen Memo at 4). DAPA reflects a similar judgment that deferred action is necessary in order to best advance the ends of the immigration laws, national security, and public safety, in light of the limited resources available. *Compare* Memorandum from Janet Napolitano, Sec'y of Homeland Security, to David V. Aguilar, *Exercising Prosecutorial Discretion*, at 1 (Jun. 15,

2012) ("[A]dditional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.") *with* Memorandum from Doris Meissner, Comm'r, INS, to Reg'l Dirs., *Exercising Prosecutorial Discretion,* at 4 (Nov. 17, 2000), *reprinted as* 77 No. 46 INTERPRETER RELEASES 1661, App. I ("Meissner Memo") ("Like all law enforcement agencies, the INS has finite resources, and it is not possible to investigate and prosecute all immigration violations. The INS historically has responded to this limitation by setting priorities in order to achieve a variety of goals. These goals include protecting public safety, promoting the integrity of the legal immigration system, and deterring violations of the immigration law. . . . An agency's focus on maximizing its impact under appropriate principles, rather than devoting resources to cases that will do less to advance these overall interests, is a crucial element in effective law enforcement management.").

The need for prosecutorial discretion has grown more acute as increasingly sophisticated threats to the homeland have emerged and the number of potential targets for enforcement actions has surged. In the years after the September 11, 2001, terrorist attacks, the Principal Legal Advisor of ICE under President George W. Bush urged that "we must prioritize our cases to allow us to place greatest emphasis on our national security and criminal alien dockets." Memorandum from William Howard, Principal Legal Advisor, ICE, to All OPLA Chief Counsel, *Prosecutorial Discretion*,

at 8 (Oct. 24, 2005) ("Howard Memo"). He elaborated:

> It is clearly DHS policy that national security violators, human rights abusers, spies, traffickers in both narcotics and people, sexual predators and other criminals are removal priorities. It is wise to remember that cases that do not fall within these categories sometimes require that we balance the cost of an action versus the value of the result. Our reasoned determination in making prosecutorial discretion decisions can be a significant benefit to the efficiency and fairness of the removal process.

Id.

DHS, of course, could have refrained from removing these individuals without granting deferred action. But deferred action policies advance homeland security and public safety objectives because they draw individuals from out of the shadows and into the open. These individuals provide their names, addresses, and histories, and the government performs background checks to assure public safety. Communities are safer when undocumented immigrants who are either victims of crimes or witnesses to crimes feel secure enough to report the crimes to the police rather than avoid contact for fear of being deported. *See* Legomsky Testimony at 29. DAPA, which reflects this Administration's decision "to prioritize threats to national security, public safety, and border

security," is consistent with this approach. *See* DAPA Memo at 3.

2. Deferred Action Policies Are Necessary To Achieve Consistent Enforcement of Federal Immigration Law

The U.S. immigration system depends on the dedicated efforts of tens of thousands of federal employees—from border patrol agents and career prosecutors to the Attorney General and the Secretary of Homeland Security. These employees are frequently called upon to make important decisions that shape the implementation and enforcement of the law, the security of the nation, the safety of the public, and the future of families. *See* Cooper Memo at 3 ("[INS] exercises prosecutorial discretion thousands of times every day.").

Policy statements setting forth the Administration's enforcement priorities are necessary to coordinate these efforts in service of a common objective, namely, "to establish a reasonable, fair, orderly, and secure system of immigration into this country and not to discriminate in any way against particular nations or people." President Ronald Reagan, *Statement on Signing the Immigration Reform and Control Act of 1986*, 22 WEEKLY COMP. PRES. DOCS. 1533 (Nov. 6, 1986). Amici's experience is that policy statements like DAPA are necessary to avoid an immigration system in which similarly situated aliens are treated differently based solely on happenstance. They also provide public transparency on important policy decisions.

Policy statements that guide enforcement discretion have played an important role in promoting consistency in the treatment of individuals in the immigration system. When the Family Fairness Program was created, the INS Commissioner explained that a policy statement was necessary "to assure uniformity in the granting of voluntary departure and work authorization for the ineligible spouses and children of legalized aliens." McNary Memo at 164. Senior officials in subsequent Administrations have similarly noted the importance of deferred action policy statements as an effective tool to promote uniformity and consistency in the enforcement of the law. *See, e.g.*, Meissner Memo at 2 ("A statement of principles concerning discretion . . . contribute[s] to more effective management of the Government's limited prosecutorial resources by promoting greater consistency among the prosecutorial activities of different offices[.]"); Howard Memo at 3 ("[I]t is important that we all apply sound principles of prosecutorial discretion uniformly throughout our offices and in all of our cases, to ensure that the cases we litigate on behalf of the United States, whether at the administrative level or in the federal courts, are truly worth litigating."); Cooper Memo at 8 ("[A]ppropriate policy guidance, reinforced by training, is necessary in order for a law enforcement agency to carry out an enforcement function properly. Such guidance serves a variety of policy goals, including promoting public confidence in the fairness and consistency of the agency's enforcement action[.]").

3. Deferred Action Policies Promote Humanitarian Values

Sound enforcement of the immigration laws requires attention to the humanitarian policy objective of promoting family unity. As INS Commissioner McNary explained: "It is vital that we enforce the law against illegal entry. However, we can enforce the law humanely. To split families encourages further violations of the law as they reunite." McNary Memo.

Immigration officials at all levels have been called upon for decades to exercise prosecutorial discretion in a manner that is faithful to the rule of law without sacrificing the preservation of, and respect for, family units to the greatest extent practicable. *See, e.g.*, Memorandum from Julie Myers, Assistant Sec'y of Homeland Security, to Field Office Dirs., *Prosecutorial and Custody Discretion* (Nov. 7, 2007) ("Myers Memo") (discussing treatment of nursing mothers and stating that "[f]ield agents and officers are not only authorized by law to exercise discretion within the authority of the agency, but are expected to do so in a judicious manner at all stages of the enforcement process"); *see also* Nelson Statement at 1200. The Family Fairness Program, discussed *supra*, is one salient example of how federal immigration officials have attempted to avoid unnecessary harm to family unity.

DAPA's aim of preserving family unity in cases that do not threaten public safety is consistent with the policy objectives that have guided federal immigration enforcement efforts for decades. *E.g.*, DAPA Memo at 3 (explaining that aliens who

"commit serious crimes or otherwise become enforcement priorities" are ineligible). Amici's experience demonstrates that the best approach to achieving rational and effective enforcement of our immigration laws is to prioritize threats to public safety and national security, while simultaneously demonstrating compassion for families whose members pose no substantial risks and who have developed ties to the communities in which they live.

II. ALLOWING ALIENS WITH DEFERRED ACTION TO APPLY FOR WORK AUTHORIZATION IS AN IMPORTANT COMPONENT OF IMMIGRATION ENFORCEMENT THAT IS CONSISTENT WITH FEDERAL IMMIGRATION LAW

Federal law provides that an "alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority," may apply for work authorization by showing "economic necessity for employment." 8 C.F.R. § 274a.12(c)(14). This thirty-five-year-old regulation codifies a policy that has been in place for even longer, and it reflects extensive legislative, administrative, and public deliberations that warrant judicial deference. The policy was reexamined and reaffirmed following extensive public comment and congressional action in 1986 to outlaw the employment of "unauthorized" aliens; and Congress has subsequently ratified the practice.

A. The Executive's Longstanding Policy of Allowing Aliens with Deferred Action To Apply for Work Authorization Is the Product of Extensive Administrative, Legislative, and Public Deliberations

The decision to allow aliens with deferred action policies to apply for work authorization was neither accidental nor anomalous. To the contrary, the availability of work authorization for such aliens was a deliberate choice that was first made in the 1970s, repeatedly affirmed over the following decades by administrations of both parties, and ratified by Congresses that were well aware of the policy.

1. INS Has Allowed Aliens With Deferred Action to Apply for Work Authorization Since at Least the 1970s

In 1975, INS's General Counsel explained that the Service authorized certain aliens to work in cases "when we do not intend or are unable to enforce the alien's departure," even though such work authorization "doesn't make his illegal stay here any less illegal." Sam Bernsen, *Leave to Labor*, 52 No. 35 INTERPRETER RELEASES 291, 294-95 (Sep. 2, 1975). Such authorizations were not given "automatically," but rather, "[t]he alien has to come to the Service and make a request." *Id.* at 295.[3]

[3] The same is true today for aliens with deferred action. *See* 8 C.F.R. §274a.12(c)(14) (requiring that aliens with deferred action establish "economic necessity" in order to receive employment authorization); *see also* 56 Fed. Reg. 41,767, 41,781 (Aug. 23, 1991) (rejecting a proposal to eliminate the

By the late 1970s, INS work authorizations were common, and served a host of important functions for both aliens and employers. Although in the 1970s there was not yet any blanket legal prohibition on the employment of undocumented aliens, permitting certain classes of undocumented aliens to obtain work authorization, including those with deferred action, served several objectives.

First, in 1972 Congress made work authorization a prerequisite for certain aliens to obtain a Social Security number. *See* Social Security Amendments of 1972, Pub. L. No. 92-603 § 137, 86 Stat. 1329, 1364 (codified as amended at 42 U.S.C. § 405(c)(2)(B)(i)(I)); 44 Fed. Reg. 10,369, 10,371 (Feb. 20, 1979) (adding 20 C.F.R. § 422.107(e)); *see also* Bernsen, *Leave to Labor*, at 294. Employers then, as now, were much less likely to hire aliens "off the books," and to avoid full remittance of Social Security payments and other taxes attributable to such aliens, if the aliens had Social Security numbers that allowed them to work "above board."[4]

Second, agricultural workers had a special reason to seek work authorization: as of 1974, federally registered farm labor contractors were

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economic necessity requirement for aliens with deferred action).

[4] INS had even launched a "voluntary" pressure campaign to discourage employers from hiring aliens who lacked such authorization. *See* Sam Bernsen, *Updating the Immigration Law*, 9 IN DEFENSE OF THE ALIEN 203, 204-06 (1986); *Illegal Aliens: Hearings Before Subcomm. No. 1 of the H. Comm on the Judiciary,* 92nd Cong. 1020 (1971 & 1972).

prohibited from facilitating the hiring of any alien "not lawfully admitted for permanent residence, or who has not been authorized by the Attorney General to accept employment."[5] Farm Labor Contractor Registration Amendments Act, Pub. L. No. 93-518 § 11, 88 Stat. 1652, 1655 (1974).[6]

Finally, as of 1976, aliens who "continue[d] in or accept[ed] unauthorized employment" were barred from obtaining an adjustment of status. Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571 § 6, 90 Stat. 2703, 2706 (codified as amended at 8 U.S.C. § 1255(c)); *see also* 44 Fed. Reg. 43,480 (Jul. 25, 1979) (describing this provision[7] as legislative recognition of the Attorney General's preexisting authority to grant work authorization).

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[5] Prior to 1974, the statute prohibited these farm labor contractors from facilitating the hiring of any alien who was "violating the provisions of the immigration and nationality laws of the United States." Farm Labor Contractor Registration Act, Pub. L. No. 88-582 § 5(b), 78 Stat. 920, 922 (1964).

[6] IRCA subsequently repealed this language, which became mostly redundant in light of IRCA's broader employer sanctions provisions. IRCA, § 101(b)(1)(C), 100 Stat. at 3372; *see also* Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, §§ 106 & 523, 96 Stat. 2583, 2589-90, 2600 (1983).

[7] INS actually cited to Public Law 9***5***-571, but the context makes it clear that the reference is to 9***4***-571. *See* 44 Fed. Reg. at 43,480.

2. In the Early 1980s, INS Codified its Work Authorization Policy for Categories of Aliens Not Authorized To Be in the United States, Including Those with Deferred Action

In 1979, INS "for the first time codif[ied] existing employment authorization procedures," publishing a proposed rule in the Federal Register. 44 Fed. Reg. at 43,480. The proposal provided that "[a]n alien who, as an exercise of the Service's prosecutorial discretion, has been allowed to remain in the United States for an indefinite or extended period of time will . . . be eligible to apply" for work authorization. *Id.*; *see also id.* (proposing 8 C.F.R. § 109.1(b)) ("An alien who is not maintaining a lawful nonimmigrant status may apply for employment authorization if he . . . has been granted permission to remain in the United States for an indefinite or extended period of time by the Immigration and Naturalization Service.").

The next year, after giving "[c]areful consideration" to public comments, INS published a "significantly modified" proposal. 45 Fed. Reg. 19,563 (Mar. 26, 1980). This revised version made no mention of the Service's "prosecutorial discretion," or of INS's longstanding practice of making work authorization available to aliens whose removal had been deferred. The Federal Register contains no explanation for this omission.

Comments on the revised proposal expressed "concern" that it "did not adequately cover all categories [of] nonimmigrants who are permitted to work while in the United States." 46 Fed. Reg. 25,079, 25,080 (May 5, 1981); *see also* Deborah

Levy, *The Alien Rights Law Project*, 27 HOWARD L.J. 1265, 1277 (1984). The final rule, published a few months after President Reagan took office, restored work authorization eligibility for the category of aliens that had been omitted in the 1980 revised proposal, namely, "[a]ny alien in whose case the district director recommends consideration of deferred action, an act of administrative convenience to the government which gives some cases lower priority." 46 Fed. Reg. at 25,081.[8]

3. Congress Affirmed INS's Work Authorization Rule When it Enacted the Immigration Reform and Control Act of 1986

In 1986, the Federation for American Immigration Reform ("FAIR") filed a petition for rulemaking, seeking to rescind the 1981 rule that allowed aliens subject to deferred action to apply for work authorization. 51 Fed. Reg. 39,385 (Oct. 28, 1986). FAIR asserted that INS had "acted beyond its statutory authority and contrary to the purpose of the Immigration and Nationality Act" by allowing "illegal or temporarily present aliens to apply for and receive work authorization." *Id.* at 39,386; *see also id.* at 39,387 ("The granting of work authorization to deportable aliens and nonimmigrants not authorized by statute to work allows such aliens to compete directly with

[8] The current regulations contain language that is virtually identical to that added in 1981. *See* 8 C.F.R. § 274a.12(c)(14) ("An alien who has been granted deferred action, an act of administrative convenience to the government which gives some cases lower priority.").

American workers for jobs. This is in direct conflict with the purpose for which the [Immigration and Nationality Act] was enacted."). INS published FAIR's petition in the Federal Register and solicited public comments. *Id.*

Before the Service acted on FAIR's petition, Congress intervened and ratified INS's interpretation of its legal authorities. The 1986 Immigration Reform and Control Act ("IRCA") prohibited employers from employing aliens not "lawfully admitted for permanent residence" or "authorized to be . . . employed by [the Immigration and Nationality Act] *or by the Attorney General*." IRCA, § 101(a)(1), 100 Stat. at 3368 (codified at 8 U.S.C. § 1324a(h)(3)) (emphasis added). This language reaffirmed the Attorney General's authority to grant work authorizations as well as the manner in which INS had been exercising that authority—a practice that Congress declined to limit in any way. *See* 52 Fed. Reg. 46,092, 46,093 (Dec. 4, 1987) ("[T]he only logical way to interpret this phrase is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, and approving of the manner in which he has exercised that authority in this matter, defined 'unauthorized alien' in such fashion as to exclude aliens who have been authorized employment by the Attorney General through the regulatory process, in addition to those who are authorized employment by statute").

Congress had notice of the 1981 regulations when it passed IRCA. In addition to the publicly-noticed FAIR petition mentioned above, the Service's claim of work authorization authority was highlighted directly to Congress and included in the

Act's legislative history. *See* Letter from Robert McConnell, DOJ, to Romano Mazzoli (Apr. 4, 1983), *included in Immigration Reform and Control Act of 1983*, *Hearings before the Subcomm. On Immigration, Refugees and Int'l Law of the H. Comm. on the Judiciary*, 98th Cong. 1450 (1983) ("INS currently has authority to define classes of aliens who may be employed in the U.S."); Letter from Alan Nelson, Comm'r, INS, to Romano Mazzoli (May 14, 1984), *included in INS Oversight and Budget Authorization for Fiscal Year 1985: Hearings Before the Subcomm. On Immigration, Refugees, and Int'l Law of the H. Comm. on the Judiciary*, 98th Cong. 357 (1984) (explaining that INS regulations "set forth eligibility and criteria for employment authorization"). Moreover, INS's work authorization regulations had also already been the subject of litigation when Congress deliberated upon and enacted IRCA. *E.g.*, *Diaz v. INS*, 648 F. Supp. 638 (E.D. Cal. 1986); *Canas-Garcia v. McKinnon*, 1984 U.S. Dist. LEXIS 14946, 83-cv-2077 (D. Mass. Jul. 13, 1984); *Gilana v. Smith*, 1981 U.S. Dist. LEXIS 16824, 81-cv-3829 (N.D. Ill. Dec. 24, 1981).

IRCA marked the culmination of years of legislative deliberations about the Attorney General's power to issue work authorizations for aliens. In 1971, the Nixon Administration introduced legislation prohibiting the employment of "aliens who are illegally in the United States or are in an immigration status in which such employment is not authorized." H.R. 2328 § 26 (1971). But at a hearing before "Subcommittee Number 1" of the House Judiciary Committee, an organization representing "American Business"

warned that "[t]he phrasiology 'in violation of law or in an immigration status in which such employment is not authorized' is not sufficiently flexible to allow the Immigration and Naturalization Service to continue present treatment of aliens who work in certain categories." *Illegal Aliens: Hearings Before Subcomm. No. 1 of the H. Comm on the Judiciary,* 92nd Cong. 1243-45 (1971 & 1972) (statement of the American Council of Int'l Personnel, Inc.). When the INS General Counsel was later asked by the same Subcommittee about INS's "administrative permissiveness in allowing certain aliens to undertake employment," he insisted that the language in the Administration's proposed bill was intended to cover all cases where INS had authorized employment. *Id.* at 1344.

The Subcommittee decided to remove any possible ambiguity left by the Administration's "phrasiology." It reported a new version of the bill that prohibited employment of "any alien in the United States who has not been lawfully admitted to the United States for permanent residence, *unless the employment of such alien is authorized by the Attorney General*." H.R. 16188 (1972) (emphasis added) (as reported in H.R. Rep. 92-1366, at 12 (1972)); *see also* H.R. Rep. 92-1366, at 1 (1972) ("The purpose of this bill is to make it unlawful to knowingly hire aliens who have not been lawfully admitted for permanent residence or are not authorized by the Attorney General to work while in the United States."). Subsequently proposed employer sanctions bills, up to and including the law that was ultimately enacted as IRCA in 1986, all recognized the Attorney General's

power to grant work authorizations. *See* IRCA, § 101(a)(1) (codified at 8 U.S.C. § 1324a(h)(3)); *see also* H.R. 982 § 2 (1973) (reported in H.R. Rep. 93-108, at 2 (1973)); H.R. 8713 § 2 (1975) (reported in H.R. Rep. 94-506, at 26 (1975)); S. 2252 § 5 (1978) (quoted in *Alien Adjustment and Employment Act of 1977: Hearings Before the S. Comm. on the Judiciary*, 95th Cong. 3 (1978)).[9]

Armed with full knowledge of INS's assertion of work authorization authority, as well as ample opportunities to rescind or invalidate the same, Congress ratified the Service's policy. Indeed, in a separate provision in IRCA, Congress demonstrated a clear understanding that the Attorney General had authorized work for aliens whose removal had been deferred—and that such authorization would make an alien eligible for lawful employment under IRCA.

Congress had earlier considered an amendment to a draft of IRCA that would have made it unlawful for an employer to discriminate against *any* alien who had been authorized to work. *See* 130

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[9] One further change in the proposed language before IRCA is worth mentioning. In 1976, testimony noted that the new wording used in the 1972 bill ignored the fact that the INA was itself a source of work authorization. *S. 3074: Hearings Before the Subcomm. On Immigration and Naturalization of the S. Comm. on the Judiciary,* 94th Cong. 103 (1976) (statement of Stanley Mailman, Ass'n of Immigration and Nationality Lawyers). Thus, in 1982, the House Committee reported a bill penalizing the employment of aliens not authorized either "by this Act or by the Attorney General." H.R. 6514 (1982) (reported in H.R. Rep. 97-890, at 41 (1982)). That is the substance of the provision Congress eventually included in IRCA.

CONG. REC. 15,935 (Jun. 12, 1984). Congress, however, ultimately enacted a narrower version of the amendment, which provided protection against discrimination to only lawful permanent residents, temporary residents, refugees, and asylees. *See* IRCA § 102 (codified as amended at 8 U.S.C. § 1324b(a)). A comparison between IRCA's non-discrimination provision, which covers a subset of aliens who are authorized to work, and the employer sanctions provision, which extends more broadly, highlights the relevant distinction:

Employer Sanctions, § 101(a)(1)	**Nondiscrimination, § 102**
"lawfully admitted for permanent residence, ***or . .. authorized to be . . . employed by [the INA] or by the Attorney General***."	"lawfully admitted for permanent residence, ***is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208***"

Advocacy groups had complained that the narrowed version of the non-discrimination provision excluded from coverage "certain non-immigrant aliens, paroled aliens, aliens with extended voluntary departure status, and other classes of persons authorized to work but not

included in the specific categories delineated by the anti-discrimination provision." *See Immigration Control and Legalization Amendments: Hearing Before the Subcomm. On Immigration, Refugees and Int'l Law of the H. Comm. on the Judiciary*, 99th Cong. 127 (1985) (statement of Richard Fajardo, MALDEF). But Congress retained the narrower version and deliberately excluded from the anti-discrimination protection that subset of aliens who, although not lawful permanent or temporary residents, refugees, or asylees, were nonetheless authorized to work by the Attorney General, including those aliens with deferred action. *Cf.* Letter from Seema Nanda, DOJ, to David Burton (Sep. 10, 2012) *available at* http://www.justice.gov/sites/default/files/crt/legacy/2012/09/27/161.PDF (explaining that aliens who qualify for the DACA program are not protected from citizenship status discrimination under IRCA).

4. INS Reaffirmed its Work Authorization Rule Immediately Following IRCA's Passage, After Extensive Notice and Comment

Shortly after Congress enacted IRCA, INS began to solicit input on regulations to implement the law. *See Implementation of the Immigration Reform and Control Act of 1986, Hearing Before the Subcomm. on Immigration, Refugees, and Int'l Law of the H. Comm. On the Judiciary*, 99th Cong. 36-37, 60-61 (1986). The Service took an "unprecedented step to permit and encourage as much public input as possible," circulating an "internal draft [of] preliminary regulations prior to their formal publication in the federal register." 52

Fed. Reg. 2115 (Jan. 20, 1987). The draft regulations maintained work authorization eligibility for aliens with deferred action and also added a new group: "An alien who is a member of a nationality group granted extended voluntary departure." *See* INS, Preliminary Working Draft of Regulations (Jan. 20, 1987), *reprinted at* 32 IMMIGRATION AND NATIONALITY ACTS LEGISLATIVE AND RELATED DOCUMENTS, No. 127 (Supp. 1997).

While the Service's draft regulations were being circulated, INS officials made "[m]any public appearances . . . to inform and solicit comments from interested parties." 52 Fed. Reg. 8762 (Mar. 19, 1987). After reviewing and evaluating "numerous comments" from a "wide cross-section of society," INS published its proposed rules, which retained eligibility for work authorization in the deferred action and extended voluntary departure contexts. *Id.* Subsequently, after again considering comments on its proposed rules from "a very broad spectrum of American society [that] included private citizens; agricultural, business, industrial and labor organizations; Congressional sources and governmental entities at the federal, state, and local levels; educational institutions; voluntary agencies; interest groups and organizations; and law firms," INS promulgated final rules, which once again provided for work authorization for aliens with deferred action and extended voluntary departure. 52 Fed. Reg. at 16,216, 16,220, 16,227.[10]

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[10] USCIS later substituted "deferred enforced departure" for "extended voluntary departure." *See* 75 Fed. Reg. 58,962, 58,990 (Sep. 24, 2010) (amending 8 C.F.R. § 274a.12(a)(11)); *see also* 75 Fed. Reg. 33,446, 33,457 (Jun. 11, 2010)

As INS was promulgating its final rules on IRCA, FAIR's petition to rescind the 1981 regulations remained pending. Shortly after Congress enacted IRCA, INS extended the comment period on the FAIR petition, noting that IRCA's recognition of the Attorney General's power to grant work authorization "appears to have a direct bearing on the issues to be resolved." 51 Fed. Reg. 45,338, 45,338 (Dec. 18, 1986). FAIR itself submitted a supplemental memorandum in which it argued that IRCA's enactment supported the petition to rescind the rule. *See* FAIR, *Supplemental Statement Regarding the Permissible Scope of the Attorney General's Authority to Grant Work Authorization* (Jan. 29, 1987), FAIR Records, 1867-2006, George Washington Univ. Gelman Library, Collection No. MS2195, Box 95, Folder 2.

INS thereafter denied FAIR's petition, having considered comments from a "wide spectrum of interested parties, ranging from local to national to international governmental entities, and from private individuals to business and educational institutions to public interest groups." 52 Fed. Reg. 46,092 (Dec. 4, 1987). INS pointed both to the Attorney General's general authority to enforce the immigration laws and establish regulations, as well as IRCA's more specific recognition of the Attorney General's power to grant work authorizations. *Id.* at 46,093 (discussing Immigration and Nationality Act, Pub. L. No. 82-414, § 103(a), 66 Stat. 163, 173-

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(explaining that the reference to extended voluntary departure had become "obsolete" and proposing new regulation covering deferred enforced departure).

74 (1952); IRCA § 101(a)(1) (codified at 8 U.S.C. § 1324a(h)(3)). With respect to the latter, INS explained:

> [T]he only logical way to interpret this phrase is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, and approving of the manner in which he has exercised that authority in this matter, defined "unauthorized alien" in such fashion as to exclude aliens who have been authorized employment by the Attorney General through the regulatory process, in addition to those who are authorized employment by statute.

52 Fed. Reg. at 46,093.[11]

[11] The INS also noted that "most of the classes" permitted to apply for work authorization "are very small to begin with," and that "the total number of aliens authorized to accept employment is quite small and the impact on the labor market is minimal." 52 Fed. Reg. at 46,093. INS did not in any way suggest, however, that the number of eligible aliens was relevant to the question of its legal authority, nor did INS indicate that there would be grounds for rescinding the longstanding practice if and when the number of aliens eligible for deferred action were to increase, as it had in the past.

5. Since 1987, INS Has Consistently Permitted Aliens With Deferred Action to Apply For Work Authorization, And Congress Has Left This Policy Undisturbed

In the years following IRCA's passage, INS continued to grant work authorization to aliens not authorized to be in the United States, including aliens covered by many of the policies discussed above. *E.g.*, McNary Memo ("Work authorization will be granted to aliens who qualify for voluntary departure" under the expanded Family Fairness program); 61 Fed. Reg. 13,061 (Mar. 26, 1996) (inviting VAWA self-petitioners to apply for work authorization after obtaining direct action status, notwithstanding the fact that the original VAWA statute did "not direct the Service to provide employment authorization based solely on the filing or approval of a self-petition"); USCIS, Press Release, *USCIS Announces Interim Relief for Foreign Students Adversely Impacted by Hurricane Katrina* (Nov. 25, 2005) ("Katrina-impacted foreign academic students not covered by the Notice and their dependents (F-2 visa holders) may request deferred action and apply for employment authorization based on economic necessity."). In addition to aliens with deferred action, current regulations allow for work authorization for aliens with deferred enforced departure, applicants for adjustment of status, and even certain aliens already subject to removal proceedings. 8 C.F.R. §§ 274a.12(a)(11), (c)(9), (c)(10).

FAIR complained to Congress about this practice. *See Immigration Reform and Control Act of 1986 Oversight: Hearings Before the Subcomm.*

On Immigration, Refugees, And International Law of the H. Comm. on the Judiciary, 101st Cong. 597 (1989) (statement of Daniel Stein, FAIR) (criticizing the regulations providing for work authorization for aliens "given deferred action, applicants for political asylum, aliens granted extended voluntary departure, parolees, applicants for adjustment of status, asylees, and a whole host of classifications attributed to administrative and processing delay"). Yet Congress declined to rescind or even question the agency's authority.

To be sure, Congress has periodically limited the classes of aliens eligible for work authorization, but it has *never* altered the longstanding policy that aliens subject to deferred action may apply for work authorization, despite the legislature's knowledge of that longstanding and transparent policy. *E.g.*, Pub. L. No. 103-322 § 130005(b), 108 Stat. 1796, 2028 (1994) (codified as amended at 8 U.S.C. § 1158(d)(2)) (asylum applicants); Pub. L. No. 104-208, § 303(a), 110 Stat. 3009, 3009-585 (1996) (codified as amended at 8 U.S.C. § 1226(a)(3)) (detained aliens). Congress even enacted a provision in 1996 in which it recognized the agency's practice of authorizing some aliens *already subject to removal orders* to work. *Id.* § 305(a)(3), 110 Stat. at 3009-600 (codified as amended at 8 U.S.C. § 1231(a)(7)). Actions such as these—and Congress's failure to limit the agency's well-known asserted authorities and practices—belie Respondents' argument (Br. in Opp. at 32-33) that Congress has limited the Secretary's power to confer work authorization so as to encompass only

those classes of aliens that the INA itself specifies as eligible for such authorization.[12]

B. Authorizing Certain Aliens With Deferred Action To Work Is Consistent With Established Immigration Policy Objectives

The longstanding regulations governing work authorization reflect sensible policy concerns, which became even more acute in 1986 when Congress prohibited employers from hiring aliens without work authorization. Absent work authorization, aliens, particularly those of modest means, would likely have no lawful way to support themselves or their families, and might therefore become a burden on those closest to them. Permitting aliens without means to remain in this country while

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[12] Another example is also telling. In 1996, Congress for the first time established time-limits for grants of "voluntary departure"—another category of aliens not authorized to be in the United States who have long been eligible for work authorization under the regulations. *See* Pub. L. No. 104-208 § 304(a)(3), 110 Stat. 3009, 3009–596 (1996) (codified as amended at 8 U.S.C. § 1229c(a)(2)(A)). Since, under INS's regulations, aliens with voluntary departure could be granted work authorization for the period of the voluntary departure, this legislation effectively restricted the duration of work authorizations for those aliens. *See* 52 Fed. Reg. 16,216, 16,227 (May 1, 1987) (adding 8 C.F.R. § 274a.12(c)(12)). Because Congress did nothing to restrict the availability of work authorization in connection with deferred action, INS explained that deferred action might be available where voluntary departure no longer was, and that, if deferred action were granted, "employment authorization may be granted under the provisions of §274a.12(c)(14)." 62 Fed. Reg. 10,312, 10,325 (Mar. 6, 1997).

denying them permission to work would also cause economic distortions. Aliens in this position might turn to illegal work for lower wages in exploitative conditions, causing downstream effects on the labor market, including adverse effects on American workers. *See* Executive Office of the President, Council of Economic Advisers, *The Economic Effects of Administrative Action on Immigration* at 10 (2014).

Aliens with deferred action may obtain work authorization only if they can show "economic necessity" as defined by federal poverty guidelines. *See* 8 C.F.R. §§ 274a.12(c)(14), (e). This condition ensures that those aliens who remain in the country but who lack the means necessary to support themselves are able to earn a living through legitimate, above-board employment. The rule is consistent with the policy objective of ensuring that aliens who are not subject to deportation will live in the "sunlight" instead of "the shadows." *See* Reagan, *IRCA Signing Statement*; *see also* DAPA Memo at 3.

The economic necessity condition has been a part of the work authorization rule from the very beginning. INS's first proposed rules in 1979 would have granted authorization only "if the alien establishes to the satisfaction of the district director that he is financially unable to maintain himself during that period." 44 Fed. Reg. at 43,480. Though commenters expressed "opposition" to this requirement, arguing that it would "unduly burden the alien and Service," INS retained it, limiting authorization to that subset of aliens with deferred action who could establish "to the satisfaction of the district director that he/she is financially unable to

maintain himself/herself and family without employment." 46 Fed. Reg. at 25,080-081. INS chose to "alleviate" the complained-of "burden" by clarifying the standard, adopting the "Community Service Administration Income Poverty Guidelines" as "the basic criteria to establish economic necessity for employment authorization requests where the alien's need to work is a factor" (including aliens with deferred action). 46 Fed. Reg. at 25,080.[13]

Following IRCA, INS re-promulgated its rule and included both the "economic necessity" requirement and the reference to the poverty guidelines. 52 Fed. Reg. at 16,228. This language remains on the books today. 8 C.F.R. §§ 274a.12(c)(14) & (e).

Allowing aliens whose removal has been deferred to work upon a showing of economic necessity is a sensible tool employed for decades by both Republican and Democratic administrations to advance the humanitarian and economic objectives underlying the federal immigration laws. These policies were adopted carefully and thoughtfully over the course of decades, and they have been identified, studied, and ratified by Congress, including after the 1986 enactment of IRCA. At a minimum, the regulations reflect the Executive Branch's longstanding interpretation of the legal authorities granted to INS and DHS by federal

[13] INS later updated its regulation to acknowledge legislation requiring the Secretary of HHS to update these guidelines periodically. *See* 46 Fed. Reg. 55,920, 55,921 (Nov. 13, 1981) (citing Pub. L. No. 97-35 § 673, 95 Stat. 357, 512 (1981)).

immigration laws. As such, they are worthy of this Court's deference. *See Barnhart v. Walton*, 535 U.S. 212, 220 (2002).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX[14]

Year	Type of Action	Class of Aliens	No. Affected	Comments
1956	Parole	Orphans adopted by U.S. citizens abroad	923	Legislation was pending
1956 -72	Extended Voluntary Departure (EVD)	Third preference visa petitioners	Unknown	*See U.S. ex rel. Parco v. Morris,* 426 F. Supp. 976, 979-80 (E.D. Pa. 1977)
1956 -58	Parole	Hungarians	31,915	
1959 -72	Parole	Cubans	621,403	
1962 -65	Parole	Chinese	15,100	
1975 -79	Parole	Vietnamese, Cambodians, and Laotians	Nearly 360,000	
1976	EVD	Lebanese	Unknown	
1977	Suspended Deportation	"*Silva* letterholders"	250,000	
1977	EVD	Ethiopians	At least 15,000	Extended in 1982

[14] Sources: CRS Report, *supra*; Karl R. Thompson, Principal Deputy Assistant Att'y General, OLC, Memorandum Op., for the Sec'y of Homeland Security and the Counsel to the President, *The Department of Homeland Security's Authority to Prioritize Removal of Certain Aliens Unlawfully Present in the United States and to Defer Removal of Others* (Nov. 19, 2014); Am. Immigration Counsel, *Executive Grants of Temporary Immigration Relief, 1956-Present* (Oct. 2014).

1977 -80	Parole	Soviet Union nationals	Over 50,000	Issued after statutory cap on conditional entries was met
1978	EVD	Ugandans	Unknown	
1978	EVD	Nurses	Unknown	43 Fed. Reg. 2776
1979	EVD	Nicaraguans	3,600	
1979	EVD	Iranians	Unknown	
1980	EVD	Afghans	Unknown	
1981 - 1987	EVD	Polish	7,000	Extended in 1984 and 1987
1987	AG directed INS to refrain from deportation	Nicaraguans	150,000-200,000	Legislation was pending
1987	Indefinite Voluntary Departure	*Certain* children and spouses of aliens eligible for legalization under IRCA ("Family Fairness")	Over 100,000 families	Nelson Statement; *see also* discussion above
1989 - 1990	Deferred Action & Deferred Enforced Departure (DED)	Chinese	80,000	
1990	Voluntary departure	*All* spouses and children of aliens eligible for legalization under IRCA ("Family Fairness")	1.5 million	McNary Memo; *see also* discussion above
1991	DED	Persian Gulf	2,227	

1992	DED	Salvadorians	190,000	Issued after expiration of legislative grant of temporary protected status.
1997	DED	Haitians	40,000	Legislation was pending
1997	Deferred action	VAWA beneficiaries	Unknown	Virtue Memo
1998	Temporary deportation suspension	Salvadorians, Guatemalans, Hondurans, and Nicaraguans	150,000	Hurricane Mitch
1999	DED	Liberians	10,000	Issued after expiration of legislative grant of temporary protected status
2001 -02	Parole, deferred action, and stays of removal	"T" and "U" visa applicants	Unknown	
2005	Deferred Action	Students affected by Hurricane Katrina	Unknown	Legislation was pending
2007	DED	Liberians	10,000	Issued after expiration of legislative grant of temporary protected status
2007	Executive discretion	Nursing mothers	Unknown	Myers Memo
2009	DED	Liberians	Unknown	

2009	Extended deferred action	Foreign born spouses and children under the age of 21 of United States citizens who had died	Unknown	Memo from Donald Neufeld, USCIS, to Field Leadership, *Guidance Regarding Surviving Spouses of Deceased U.S. Citizens and Their Children* (Sep. 4, 2009)
2010	Parole	Haitian orphans in the process of being adopted	Unknown	Haitian earthquake
2011	Deferred action	Victims of human trafficking and sexual exploitation	Unknown	
2011	DED	Liberians	3,600	
2012	Deferred action	Foreign born individuals who entered the United States before their 16th birthday and were under the age of 31 as of June 2012	Up to 1.8 million	Legislation was pending

EXHIBIT Q

Administration of Barack Obama, 2012

Remarks on Immigration Reform and an Exchange With Reporters
June 15, 2012

The President. Good afternoon, everybody. This morning Secretary Napolitano announced new actions my administration will take to mend our Nation's immigration policy to make it more fair, more efficient, and more just, specifically for certain young people sometimes called "Dreamers."

Now, these are young people who study in our schools, they play in our neighborhoods, they're friends with our kids, they pledge allegiance to our flag. They are Americans in their heart, in their minds, in every single way but one: on paper. They were brought to this country by their parents—sometimes even as infants—and often have no idea that they're undocumented until they apply for a job or a driver's license or a college scholarship.

Put yourself in their shoes. Imagine you've done everything right your entire life—studied hard, worked hard, maybe even graduated at the top of your class—only to suddenly face the threat of deportation to a country that you know nothing about, with a language that you may not even speak.

That's what gave rise to the "DREAM Act." It says that if your parents brought you here as a child, you've been here for 5 years, and you're willing to go to college or serve in our military, you can one day earn your citizenship. And I have said time and time and time again to Congress that—send me the "DREAM Act," put it on my desk, and I will sign it right away.

Now, both parties wrote this legislation. And a year and a half ago, Democrats passed the "DREAM Act" in the House, but Republicans walked away from it. It got 55 votes in the Senate, but Republicans blocked it. The bill hasn't really changed. The need hasn't changed. It's still the right thing to do. The only thing that has changed, apparently, was the politics.

Now, as I said in my speech on the economy yesterday, it makes no sense to expel talented young people, who, for all intents and purposes, are Americans—they've been raised as Americans, understand themselves to be part of this country—to expel these young people who want to staff our labs or start new businesses or defend our country simply because of the actions of their parents or because of the inaction of politicians.

In the absence of any immigration action from Congress to fix our broken immigration system, what we've tried to do is focus our immigration enforcement resources in the right places. So we prioritized border security, putting more boots on the southern border than at any time in our history. Today, there are fewer illegal crossings than at any time in the past 40 years. We focused and used discretion about whom to prosecute, focusing on criminals who endanger our communities rather than students who are earning their education. And today, deportation of criminals is up 80 percent. We've improved on that discretion carefully and thoughtfully. Well, today we're improving it again.

Effective immediately, the Department of Homeland Security is taking steps to lift the shadow of deportation from these young people. Over the next few months, eligible individuals who do not present a risk to national security or public safety will be able to request temporary relief from deportation proceedings and apply for work authorization.

Now, let's be clear: This is not amnesty; this is not immunity. This is not a path to citizenship. It's not a permanent fix. This is a temporary stopgap measure that lets us focus our

resources wisely while giving a degree of relief and hope to talented, driven, patriotic young people. It is——

Q. [*Inaudible*]

The President. ——the right thing to do.

Q. ——foreigners over American workers.

The President. Excuse me, sir. It's not time for questions, sir.

Q. No, you have to take questions.

The President. Not while I'm speaking.

Precisely because this is temporary, Congress needs to act. There is still time for Congress to pass the "DREAM Act" this year, because these kids deserve to plan their lives in more than 2-year increments. And we still need to pass comprehensive immigration reform that addresses our 21st-century economic and security needs, reform that gives our farmers and ranchers certainty about the workers that they'll have; reform that gives our science and technology sectors certainty that the young people who come here to earn their Ph.D.s won't be forced to leave and start new businesses in other countries; reform that continues to improve our border security and lives up to our heritage as a nation of laws and a nation of immigrants.

Just 6 years ago, the unlikely trio of John McCain, Ted Kennedy, and President Bush came together to champion this kind of reform. And I was proud to join 23 Republicans in voting for it. So there's no reason that we can't come together and get this done.

And as long as I'm President, I will not give up on this issue, not only because it's the right thing to do for our economy—and CEOs agree with me—not just because it's the right thing to do for our security, but because it's the right thing to do, period. And I believe that eventually enough Republicans in Congress will come around to that view as well.

I believe that it's the right thing to do because I've been with groups of young people who work so hard and speak with so much heart about what's best in America, even though I knew some of them must have lived under the fear of deportation. I know some have come forward, at great risks to themselves and their futures, in hopes it would spur the rest of us to live up to our own most cherished values. And I've seen the stories of Americans in schools and churches and communities across the country who stood up for them and rallied behind them, and pushed us to give them a better path and freedom from fear, because we are a better nation than one that expels innocent young kids.

And the answer to your question, sir—and the next time I'd prefer you let me finish my statements before you ask that question—is this is the right thing to do for the American people——

Q. [*Inaudible*]

The President. I didn't ask for an argument. I'm answering your question.

Q. I'd like to——

The President. It is the right thing to do——

Q. [*Inaudible*]

The President. ——for the American people. And here's why——

Q. ——high unemployment——

The President. Here's the reason: because these young people are going to make extraordinary contributions and are already making contributions to our society.

I've got a young person who is serving in our military, protecting us and our freedom. The notion that in some ways we would treat them as expendable makes no sense. If there's a young person here who has grown up here and wants to contribute to this society, wants to maybe start a business that will create jobs for other folks who are looking for work, that's the right thing to do. Giving certainty to our farmers and our ranchers, making sure that in addition to border security, we're creating a comprehensive framework for legal immigration, these are all the right things to do.

We have always drawn strength from being a nation of immigrants, as well as a nation of laws, and that's going to continue. And my hope is that Congress recognizes that and gets behind this effort.

All right. Thank you very much.

Q. What about American workers who are unemployed while you import foreigners?

NOTE: The President spoke at 2:09 p.m. in the Rose Garden at the White House. In his remarks, he referred to former President George W. Bush.

Categories: Addresses and Remarks : Immigration reform; Interviews With the News Media : Exchanges with reporters :: White House.

Locations: Washington, DC.

Names: Bush, George W.; McCain, John S.; Napolitano, Janet A.

Subjects: Congress : Bipartisanship; Defense and national security : Border security; Economy, national : Economic concerns; Economy, national : Strengthening efforts; Homeland Security, Department of : Secretary; Immigration and naturalization : Deportation rates; Immigration and naturalization : Reform; Mexico : Border with U.S., infrastructure and security.

DCPD Number: DCPD201200483.

EXHIBIT R

U.S. Citizenship and Immigration Services

Archived Content

This page contains information that is no longer current but remains on our site for reference purposes.

Frequently Asked Questions

DHS DACA FAQs

DACA is Ending

- **We are no longer accepting initial or renewal requests for Deferred Action for Childhood Arrivals. We will consider DACA requests received from residents of the U.S. Virgin Islands and Puerto Rico on a case-by-case basis.**
- **If you are a current DACA recipient and your still-valid Employment Authorization Document (EAD) has been lost, stolen or destroyed, you may request a replacement EAD by filing a new Form I-765 at any time, if the EAD is still valid.**
- **We will no longer approve advance parole requests associated with DACA.**
- **Read the 2017 DACA announcement.**

DACA ProcessWhat is Deferred Action for Childhood Arrivals?General Information for All Requestors

- Background Checks
- After USCIS Makes a Decision

Initial Requests for DACA
Renewal of DACA
Travel
Criminal Convictions
Miscellaneous

I. General Information for All Requestors

A. What is Deferred Action for Childhood Arrivals?

As the Department of Homeland Security (DHS) continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, DHS will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines. Individuals who demonstrate that they meet the guidelines below may request consideration of deferred action for childhood arrivals (DACA) for a period of two years, subject to renewal for a period of two years, and may be eligible for employment authorization.

You may request consideration of DACA if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012, meaning that:
    - You never had a lawful immigration status on or before June 15, 2012, or
    - Any lawful immigration status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Individuals can call U.S. Citizenship and Immigration Services (USCIS) at 1-800-375-5283 with questions or to request more information on DACA. Those with pending requests can also use a number of online self-help tools which include the ability to check case status and processing times, change your address, and send an inquiry about a case pending longer than posted processing times or non-delivery of a card or document.

Q1: What is deferred action?
A1: Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon **unlawful presence**, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." DHS can terminate or renew deferred action at any time, at the agency's discretion.

Q2: What is DACA?
A2: On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of two years, subject to renewal, and would then be eligible for work authorization.

Individuals who can demonstrate through verifiable documentation that they meet these guidelines will be considered for deferred action. Determinations will be made on a case-by-case basis under the DACA guidelines.

Q3: Is there any difference between "deferred action" and DACA under this process?
A3: DACA is one form of deferred action. The relief an individual receives under DACA is identical for immigration purposes to the relief obtained by any person who receives deferred action as an act of prosecutorial discretion.

Q4: If my removal is deferred under the consideration of DACA, am I eligible for employment authorization?
A4: Yes. Under existing regulations, if your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.

Q5: If my case is deferred, am I in lawful status for the period of deferral?
A5: No. Although action on your case has been deferred and you do not accrue unlawful presence (for admissibility purposes) during the period of deferred action, deferred action does not confer any lawful status.

The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. However, although deferred action does not confer a lawful immigration status, your period of stay is authorized by the Department of Homeland Security while your deferred action is in effect and, for admissibility purposes, you are considered to be lawfully present in the United States during that time. **Individuals granted deferred action are not precluded by federal law from establishing domicile in the U.S.**

Apart from the immigration laws, "lawful presence," "lawful status" and similar terms are used in various other federal and state laws. For information on how those laws affect individuals who receive a favorable exercise of prosecutorial discretion under DACA, please contact the appropriate federal, state or local authorities.

Q6: Can I renew my period of deferred action and employment authorization under DACA?
A6: Yes. You may request consideration for a renewal of your DACA. Your request for a renewal will be considered on a case-by-case basis. If USCIS renews its exercise of discretion under DACA for your case, you will receive deferred action for another two years, and if you demonstrate an economic necessity for employment, you may receive employment authorization throughout that period.

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B. DACA Process

Q7: How do I request consideration of DACA?
A7: To request consideration of DACA (either as an initial request or to request a renewal), you must submit Form I-821D, Consideration of Deferred Action for Childhood Arrivals to USCIS. Please visit uscis.gov/i-821d before you begin the process to make sure you are using the most current version of the form available. This form must be completed, properly signed and accompanied by a Form I-765, Application for Employment Authorization, and a Form I-765WS, Worksheet (PDF, 235 KB), establishing your economic need for employment. If you fail to submit a completed Form I-765 (along with the accompanying filing fees for that form, please see the Form I-821D page for more information), USCIS will not consider your request for deferred action. Please read the form instructions to ensure that you answer the appropriate questions (determined by whether you are submitting an initial or renewal request) and that you submit all the required documentation to support your initial request.

You must file your request for consideration of DACA at the USCIS Lockbox. You can find the mailing address and instructions at www.uscis.gov/i-821d. As of June 5, 2014, requestors must use the new version of the form. After your Form I-821D, Form I-765, and Form I-765 Worksheet have been received, USCIS will review them for completeness, including submission of the required fee, initial evidence and supporting documents (for initial filings).

If it is determined that the request is complete, USCIS will send you a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) for biometric services, if an appointment is required. Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing of your request for consideration of deferred action, or may result in a denial of your request. You may also choose to receive an email and/or text

message notifying you that your form has been accepted by completing a Form G-1145, E-Notification of Application/Petition Acceptance.

Each request for consideration of DACA will be reviewed on an individual, case-by-case basis. USCIS may request more information or evidence from you, or request that you appear at a USCIS office. USCIS will notify you of its determination in writing.

Note: All individuals who believe they meet the guidelines, including those in removal proceedings, with a final removal order, or with a voluntary departure order (and not in immigration detention), may affirmatively request consideration of DACA from USCIS through this process. Individuals who are currently in immigration detention and believe they meet the guidelines may not request consideration of deferred action from USCIS but may identify themselves to their deportation officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information visit ICE's website at www.ice.gov/daca.

Q8: Can I obtain a fee waiver or fee exemption for this process?
A8: There are no fee waivers available for employment authorization applications connected to DACA. There are very limited fee exemptions available. Requests for fee exemptions must be filed and favorably adjudicated before an individual files his/her request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must submit a letter and supporting documentation to USCIS demonstrating that you meet one of the following conditions:

- You are under 18 years of age, have an income that is less than 150 percent of the U.S. poverty level, and are in foster care or otherwise lacking any parental or other familial support; or
- You are under 18 years of age and homeless; or
- You cannot care for yourself because you suffer from a serious, chronic disability and your income is less than 150 percent of the U.S. poverty level; or,
- You have, at the time of the request, accumulated **$10,000** or more in debt in the past 12 months as a result of unreimbursed medical expenses for yourself or an immediate family member, and your income is less than 150 percent of the U.S. poverty level.

You can find additional information on our Fee Exemption Guidance Web page. Your request must be submitted and decided before you submit a request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must provide documentary evidence to demonstrate that you meet any of the above conditions at the time that you make the request. For evidence, USCIS will:

- Accept affidavits from community-based or religious organizations to establish a requestor's homelessness or lack of parental or other familial financial support.
- Accept copies of tax returns, bank statement, pay stubs, or other reliable evidence of income level. Evidence can also include an affidavit from the applicant or a responsible third party attesting that the applicant does not file tax returns, has no bank accounts, and/or has no income to prove income level.
- Accept copies of medical records, insurance records, bank statements, or other reliable evidence of unreimbursed medical expenses of at least $**10,000**.
- Address factual questions through Requests for Evidence (RFEs).

Q9: If individuals meet the guidelines for consideration of DACA and are encountered by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will they be placed into removal proceedings?
A9: DACA is intended, in part, to allow CBP and ICE to focus on priority cases. Under the direction of the Secretary of Homeland Security, if an individual meets the guidelines for DACA, CBP or ICE should exercise their discretion on a case-by-case basis to prevent qualifying individuals from being apprehended, placed into removal proceedings, or removed. If individuals believe that, in light of this policy, they should not

have been apprehended or placed into removal proceedings, contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

Q10: Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?
A10: This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention).

Q11: If I am not in removal proceedings but believe I meet the guidelines for consideration of DACA, should I seek to place myself into removal proceedings through encounters with CBP or ICE?
A11: No. If you are not in removal proceedings but believe that you meet the guidelines, you should submit your DACA request to USCIS under the process outlined below.

Q12: Can I request consideration of DACA from USCIS if I am in immigration detention under the custody of ICE?
A12: No. If you are currently in immigration detention, you may not request consideration of DACA from USCIS. If you think you may meet the guidelines of this process, you should identify yourself to your deportation officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information, visit ICE's website at www.ice.gov/daca.

Q13: If I am about to be removed by ICE and believe that I meet the guidelines for consideration of DACA, what steps should I take to seek review of my case before removal?
A13: If you believe you can demonstrate that you meet the guidelines and are about to be removed, you should immediately contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

Q14: What should I do if I meet the guidelines of this process and have been issued an ICE detainer following an arrest by a state or local law enforcement officer?
A14: If you meet the guidelines and have been served a detainer, you should immediately contact the Law Enforcement Support Center's hotline at 1-855-448-6903 (staffed 24 hours a day, 7 days a week).

Q15: If I accepted an offer of administrative closure under the case-by-case review process or my case was terminated as part of the case-by-case review process, can I be considered for deferred action under this process?
A15: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you have accepted an offer of administrative closure or termination under the case-by-case review process.

Q16: If I declined an offer of administrative closure under the case-by-case review process, can I be considered for deferred action under this process?
A16: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you declined an offer of administrative closure under the case-by-case review process.

Q17: If my case was reviewed as part of the case-by-case review process but I was not offered administrative closure, can I be considered for deferred action under this process?
A17: Yes. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you were not offered administrative closure following review of your case as part of the case-by-case review process.

Q18: Can I request consideration of DACA under this process if I am currently in a nonimmigrant status (e.g. F-1, E-2, H-4) or have Temporary Protected Status (TPS)?
A18: No. You can only request consideration of DACA under this process if you currently have no immigration status and were not in any lawful status on June 15, 2012.

Q19: Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?
A19: Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance (www.uscis.gov/NTA). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

Q20: If my case is referred to ICE for immigration enforcement purposes or if I receive an NTA, will information related to my family members and guardians also be referred to ICE for immigration enforcement purposes?
A20: If your case is referred to ICE for purposes of immigration enforcement or you receive an NTA, information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians. However, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Q21: Will USCIS verify documents or statements that I provide in support of a request for DACA?

A21: USCIS has the authority to verify documents, facts, and statements that are provided in support of requests for DACA. USCIS may contact education institutions, other government agencies, employers, or other entities in order to verify information.

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C. Background Checks

Q22: Will USCIS conduct a background check when reviewing my request for consideration of DACA?
A22: Yes. You must undergo biographic and biometric background checks before USCIS will consider your DACA request.

Q23: What do background checks involve?
A23: Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other federal government agencies.

Q24: What steps will USCIS and ICE take if I engage in fraud through the new process?
A24: If you knowingly make a misrepresentation, or knowingly fail to disclose facts, in an effort to obtain DACA or work authorization through this process, you will be treated as an immigration enforcement priority to the fullest extent permitted by law, and be subject to criminal prosecution and/or removal from the United States.

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D. After USCIS Makes a Decision

Q25: Can I appeal USCIS' determination?
A25: No. You cannot file a motion to reopen or reconsider, and cannot appeal the decision if USCIS denies your request for consideration of DACA.

You may request a review of your I-821D denial by contacting USCIS' National Customer Service Center at 1-800-375-5283 to have a service request created if you believe that you actually did meet all of the DACA guidelines and you believe that your request was denied because USCIS:

- Denied the request based on abandonment, when you actually responded to a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) within the prescribed time;
- Mailed the RFE or NOID to the wrong address although you had changed your address online at www.uscis.gov **or** with a customer service representative on the phone and submitted a Form AR-11, Change of Address, before USCIS issued the RFE or NOID.
  - To ensure the address is updated on a pending case as quickly as possible, we recommend that customers submit a change of address request at www.uscis.gov/addresschange. Please note that only an online change of address or a Form AR-11 submission will satisfy the legal requirements for notifying the agency of an address change. Therefore, if you called a customer service representative to change your address, please be sure you have also submitted your address change online or with a Form AR-11.
- Denied the request on the grounds that you did not come to the United States prior to your 16th birthday, but the evidence submitted at the time of filing shows that you did arrive before reaching that age.
- Denied the request on the grounds that you were under age 15 at the time of filing but not in removal proceedings, while the evidence submitted at the time of filing show that you indeed were in removal proceedings when the request was filed;
- Denied the request on the grounds that you were 31 or older as of June 15, 2012, but the evidence submitted at the time of filing shows that you were under the age of 31 as of June 15, 2012;
- Denied the request on the grounds that you had lawful status on June 15, 2012, but the evidence submitted at the time of filing shows that you indeed were in an unlawful immigration status on that date;
- Denied the request on the grounds that you were not physically present in the United States on June 15, 2012, and up through the date of filing, but the evidence submitted at the time of filing shows that you were, in fact, present;
- Denied the request due to your failure to appear at a USCIS Application Support Center (ASC) to have your biometrics collected, when you in fact either did appear at a USCIS ASC to have this done or requested prior to the scheduled date of your biometrics appointment to have the appointment rescheduled; or
- Denied the request because you did not pay the filing fees for Form I-765, Application for Employment Authorization, when you actually did pay these fees

If you believe your request was denied due to any of these administrative errors, you may contact our National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TDD for the hearing impaired). Customer service officers are available Monday – Friday from 8 a.m. – 6 p.m. in each U.S. time zone.

Q26: If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?
A26: If you have submitted a request for consideration of DACA and USCIS decides not to defer action in your case, USCIS will apply its policy guidance governing the referral of cases to ICE and the issuance of Notices to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for purposes of removal proceedings except where DHS determines there are exceptional circumstances. For more detailed information on the applicable NTA policy, visit www.uscis.gov/NTA. If after a review of the totality of circumstances USCIS

determines to defer action in your case, USCIS will likewise exercise its discretion and will not issue you an NTA.

Q27: Can my deferred action under the DACA process be terminated before it expires?

A27: Yes.

DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion.

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II. Initial Requests for DACA

Q28: What guidelines must I meet to be considered for deferred action for childhood arrivals (DACA)?
A28: Under the Secretary of Homeland Security's June 15, 2012 memorandum, in order to be considered for DACA, you must submit evidence, including supporting documents, showing that you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA. U.S. Citizenship and Immigration Services (USCIS) retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

Q29: How old must I be in order to be considered for deferred action under this process?
A29:

- If you have never been in removal proceedings, or your proceedings have been terminated before your request for consideration of DACA, you must be at least 15 years of age or older at the time of filing and meet the other guidelines.
- If you are in removal proceedings, have a final removal order, or have a voluntary departure order, and are not in immigration detention, you can request consideration of DACA even if you are under the age of 15 at the time of filing and meet the other guidelines.
- In all instances, you must have been under the age of 31 as of June 15, 2012, to be considered for DACA.

Q30: I first came to the United States before I turned 16 years old and have been continuously residing in the United States since at least June 15, 2007. Before I turned 16 years old, however, I left the United States for some period of time before returning and beginning my current period of continuous residence. May I be considered for deferred action under this process?
A30: Yes, but only if you established residence in the United States during the period before you turned 16 years old, as evidenced, for example, by records showing you attended school or worked in the United

States during that time, or that you lived in the United States for multiple years during that time. In addition to establishing that you initially resided in the United States before you turned 16 years old, you must also have maintained continuous residence in the United States from June 15, 2007, until the present time to be considered for deferred action under this process.

Q31: To prove my continuous residence in the United States since June 15, 2007, must I provide evidence documenting my presence for every day, or every month, of that period?
A31: To meet the continuous residence guideline, you must submit documentation that shows you have been living in the United States from June 15, 2007, up until the time of your request. You should provide documentation to account for as much of the period as reasonably possible, but there is no requirement that every day or month of that period be specifically accounted for through direct evidence.

It is helpful to USCIS if you can submit evidence of your residence during at least each year of the period. USCIS will review the documentation in its totality to determine whether it is more likely than not that you were continuously residing in the United States for the period since June 15, 2007. Gaps in the documentation as to certain periods may raise doubts as to your continued residence if, for example, the gaps are lengthy or the record otherwise indicates that you may have been outside the United States for a period of time that was not brief, casual or innocent.

If gaps in your documentation raise questions, USCIS may issue a Request for Evidence to allow you to submit additional documentation that supports your claimed continuous residence.

Affidavits may be submitted to explain a gap in the documentation demonstrating that you meet the five-year continuous residence requirement. If you submit affidavits related to the continuous residence requirement, you must submit two or more affidavits, sworn to or affirmed by people other than yourself who have direct personal knowledge of the events and circumstances during the period as to which there is a gap in the documentation. Affidavits may only be used to explain gaps in your continuous residence; they cannot be used as evidence that you meet the entire five-year continuous residence requirement.

Q32: Does "currently in school" refer to the date on which the request for consideration of deferred action is filed?
A32: To be considered "currently in school" under the guidelines, you must be enrolled in school on the date you submit a request for consideration of deferred action under this process.

Q33: Who is considered to be "currently in school" under the guidelines?
A33: To be considered "currently in school" under the guidelines, you must be enrolled in:

- a public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or homeschool program that meets state requirements;
- an education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; or
- an education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other state-authorized exam (e.g., HiSet or TASC) in the United States.

Such education, literacy, career training programs (including vocational training), or education programs assisting students in obtaining a regular high school diploma or its recognized equivalent under state law, or in passing a GED exam or other state-authorized exam in the United States, include, but are not limited to, programs funded, in whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations. Programs funded by other sources may qualify if they are programs of demonstrated effectiveness.

In assessing whether such programs not funded in whole or in part by federal, state, county or municipal grants or administered by non-profit organizations are of demonstrated effectiveness, USCIS will consider

the duration of the program's existence; the program's track record in assisting students in obtaining a regular high school diploma or its recognized equivalent, in passing a GED or other state-authorized exam (e.g., HiSet or TASC), or in placing students in postsecondary education, job training, or employment; and other indicators of the program's overall quality. For individuals seeking to demonstrate that they are "currently in school" through enrollment in such a program, the burden is on the requestor to show the program's demonstrated effectiveness.

Q34: How do I establish that I am currently in school?

A34: Documentation sufficient for you to demonstrate that you are currently in school may include, but is not limited to:

- evidence that you are enrolled in a public, private, or charter elementary school, junior high or middle school, high school or secondary school; alternative program, or homeschool program that meets state requirements; or
- evidence that you are enrolled in an education, literacy, or career training program (including vocational training) that:
  - has a purpose of improving literacy, mathematics, or English, or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; and
  - is funded, in whole or in part, by federal, state, county or municipal grants or is administered by non-profit organizations, or if funded by other sources, is a program of demonstrated effectiveness; or
- evidence that you are enrolled in an education program assisting students in obtaining a high school equivalency diploma or certificate recognized under state law (such as by passing a GED exam or other such state-authorized exam [for example, HiSet or TASC]), and that the program is funded in whole or in part by federal, state, county or municipal grants or is administered by non-profit organizations or if funded by other sources, is of demonstrated effectiveness.

Such evidence of enrollment may include: acceptance letters, school registration cards, letters from a school or program, transcripts, report cards, or progress reports which may show the name of the school or program, date of enrollment, and current educational or grade level, if relevant.

Q35: What documentation may be sufficient to demonstrate that I have graduated from high school?

A35: Documentation sufficient for you to demonstrate that you have graduated from high school may include, but is not limited to, a high school diploma from a public or private high school or secondary school, a certificate of completion, a certificate of attendance, or an alternate award from a public or private high school or secondary school, or a recognized equivalent of a high school diploma under state law, or a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC) in the United States.

Q36: What documentation may be sufficient to demonstrate that I have obtained a GED certificate or certificate from passing another such state authorized exam (e.g., HiSet or TASC)?

A36: Documentation may include, but is not limited to, evidence that you have passed a GED exam, or other state-authorized exam (e.g., HiSet or TASC), and, as a result, have received the recognized equivalent of a regular high school diploma under state law.

Q37: If I am enrolled in a literacy or career training program, can I meet the guidelines?

A37: Yes, in certain circumstances. You may meet the guidelines if you are enrolled in an education, literacy, or career training program that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement. Such programs include, but are not limited to, programs funded, in

whole or in part, by federal, state, county or municipal grants or administered by non-profit organizations, or if funded by other sources, are programs of demonstrated effectiveness.

Q38: If I am enrolled in an English as a Second Language (ESL) program, can I meet the guidelines?
A38: Yes, in certain circumstances. Enrollment in an ESL program may be used to meet the guidelines if the ESL program is funded in whole or in part by federal, state, county or municipal grants, or administered by non-profit organizations, or if funded by other sources is a program of demonstrated effectiveness. You must submit direct documentary evidence that the program is funded in whole or part by federal, state, county or municipal grants, administered by a non-profit organization, or of demonstrated effectiveness.

Q39: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met the education guidelines?
A39: No. Evidence not listed in Chart #1 will not be accepted to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a GED or passed another state-authorized exam (e.g., HiSet or TASC). You must submit any of the documentary evidence listed in Chart #1 to show that you meet the education guidelines.

Q40: Will USCIS consider evidence other than that listed in Chart #1 to show that I have met certain initial guidelines?
A40: Evidence other than those documents listed in Chart #1 may be used to establish the following guidelines and factual showings if available documentary evidence is insufficient or lacking and shows that:

- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You satisfy the continuous residence requirement, as long as you present direct evidence of your continued residence in the United States for a portion of the required period and the circumstantial evidence is used only to fill in gaps in the length of continuous residence demonstrated by the direct evidence; and
- Any travel outside the United States during the period of required continuous presence was brief, casual, and innocent.

However, USCIS will not accept evidence other than the documents listed in Chart #1 as proof of any of the following guidelines to demonstrate that you:

- Were under the age of 31 on June 15, 2012; and
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

For example, even if you do not have documentary proof of your presence in the United States on June 15, 2012, you may still be able to satisfy the guideline. You may do so by submitting credible documentary evidence that you were present in the United States shortly before and shortly after June 15, 2012, which, under the facts presented, may give rise to an inference of your presence on June 15, 2012 as well. However, evidence other than that listed in Chart #1 will not be accepted to establish that you have graduated high school. You must submit the designated documentary evidence to satisfy that you meet this guideline.

Chart #1 provides examples of documentation you may submit to demonstrate you meet the initial guidelines for consideration of deferred action under this process. Please see the instructions of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, for additional details of acceptable documentation.

Chart #1 Examples of Documents to Submit to Demonstrate You Meet the Guidelines

Proof of identity	• Passport or national identity document from your country of origin • Birth certificate with photo identification • School or military ID with photo • Any U.S. government immigration or other document bearing your name and photo
Proof you came to U.S. before your 16th birthday	• Passport with admission stamp • Form I-94/I-95/I-94W • School records from the U.S. schools you have attended • Any Immigration and Naturalization Service or DHS document stating your date of entry (Form I-862, Notice to Appear) • Travel records • Hospital or medical records • Rent receipts or utility bills • Employment records (pay stubs, W-2 Forms, etc.) • Official records from a religious entity confirming participation in a religious ceremony • Copies of money order receipts for money sent in or out of the country • Birth certificates of children born in the U.S. • Dated bank transactions • Automobile license receipts or registration • Deeds, mortgages, rental agreement contracts • Tax receipts, insurance policies
Proof of immigration status	• Form I-94/I-95/I-94W with authorized stay expiration date • Final order of exclusion, deportation, or removal issued as of June 15, 2012 • A charging document placing you into removal proceedings
Proof of presence in U.S. on June 15, 2012	• Rent receipts or utility bills • Employment records (pay stubs, W-2 Forms, etc.) • School records (letters, report cards, etc.) • Military records (Form DD-214 or NGB Form 22) • Official records from a religious entity confirming participation in a religious ceremony • Copies of money order receipts for money sent in or out of the country • Passport entries • Birth certificates of children born in the U.S.

Chart #1 Examples of Documents to Submit to Demonstrate You Meet the Guidelines

Proof you continuously resided in U.S. since June 15, 2007	• Dated bank transactions • Automobile license receipts or registration • Deeds, mortgages, rental agreement contracts • Tax receipts, insurance policies
Proof of your education status at the time of requesting consideration of DACA	• School records (transcripts, report cards, etc.) from the school that you are currently attending in the United States showing the name(s) of the school(s) and periods of school attendance and the current educational or grade level • U.S. high school diploma, certificate of completion, or other alternate award • High school equivalency diploma or certificate recognized under state law • Evidence that you passed a state-authorized exam, including the GED or other state-authorized exam (for example, HiSet or TASC) in the United States
Proof you are an honorably discharged veteran of the U.S. Armed Forces or the U.S. Coast Guard	• Form DD-214, Certificate of Release or Discharge from Active Duty • NGB Form 22, National Guard Report of Separation and Record of Service • Military personnel records • Military health records

Q41: May I file affidavits as proof that I meet the initial guidelines for consideration of DACA?
A41: Affidavits generally will not be sufficient on their own to demonstrate that you meet the guidelines for USCIS to consider you for DACA. However, affidavits may be used to support meeting the following guidelines only if the documentary evidence available to you is insufficient or lacking:

- Demonstrating that you meet the five year continuous residence requirement; and
- Establishing that departures during the required period of continuous residence were brief, casual and innocent.

If you submit affidavits related to the above criteria, you must submit two or more affidavits, sworn to or affirmed by people other than yourself, who have direct personal knowledge of the events and circumstances. Should USCIS determine that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it will issue a Request for Evidence, indicating that further evidence must be submitted to demonstrate that you meet these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- You are currently in school, have graduated or obtained a certificate of completion or other alternate award from high school, have obtained a high school equivalency diploma or certificate (such as by passing the GED exam or other state-authorized exam [for example, HiSet or TASC]), or are an honorably discharged veteran from the Coast Guard or Armed Forces of the United States;
- You were physically present in the United States on June 15, 2012;

- You came to the United States before reaching your 16th birthday;
- You were under the age of 31 on June 15, 2012; and
- Your criminal history, if applicable.

If the only evidence you submit to demonstrate you meet any of the above guidelines is an affidavit, USCIS will issue a Request for Evidence, indicating that you have not demonstrated that you meet these guidelines and that you must do so in order to demonstrate that you meet that guideline.

Q42: Will I be considered to be in unlawful status if I had an application for asylum or cancellation of removal pending before either USCIS or the Executive Office for Immigration Review (EOIR) on June 15, 2012?
A42: Yes. If you had an application for asylum or cancellation of removal, or similar relief, pending before either USCIS or EOIR as of June 15, 2012, but had no lawful status, you may request consideration of DACA.

Q43: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012, but violated my immigration status (e.g., by engaging in unauthorized employment, failing to report to my employer, or failing to pursue a full course of study) before June 15, 2012. May I be considered for deferred action under this process?
A43: No, unless the Executive Office for Immigration Review terminated your status by issuing a final order of removal against you before June 15, 2012.

Q44: I was admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of my dependent nonimmigrant status as of June 15, 2012. May I be considered for deferred action under this process?

A44: Yes. For purposes of satisfying the "had no lawful status on June 15, 2012," guideline alone, if you were admitted for "duration of status" or for a period of time that extended past June 14, 2012 but "aged out" of your dependent nonimmigrant status, on or before June 15, 2012, (meaning you turned 21 years old on or before June 15, 2012), you may be considered for deferred action under this process.

Q45: I was admitted for "duration of status" but my status in SEVIS is listed as terminated on or before June 15, 2012. May I be considered for deferred action under this process?

A45: Yes. For the purposes of satisfying the ""had no lawful status on June 15, 2012," guideline alone, if your status as of June 15, 2012, is listed as "terminated" in SEVIS, you may be considered for deferred action under this process.

Q46: I am a Canadian citizen who was inspected by CBP but was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?

A46: In general, a Canadian citizen who was admitted as a visitor for business or pleasure and not issued an I-94, Arrival/Departure Record, (also known as a "non-controlled" Canadian nonimmigrant) is lawfully admitted for a period of six months. For that reason, unless there is evidence, including verifiable evidence provided by the individual, that he or she was specifically advised that his or her admission would be for a different length of time, the Department of Homeland Security (DHS) will consider for DACA purposes only, that the alien was lawfully admitted for a period of six months. Therefore, if DHS is able to verify from its records that your last non-controlled entry occurred on or before Dec. 14, 2011, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012 and you may be considered for deferred action under this process.

Q47: I used my Border Crossing Card (BCC) to obtain admission to the United States and was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?

A47: Because the limitations on entry for a BCC holder vary based on location of admission and travel, DHS will assume that the BCC holder who was not provided an I-94 was admitted for the longest period

legally possible—30 days—unless the individual can demonstrate, through verifiable evidence, that he or she was specifically advised that his or her admission would be for a different length of time. Accordingly, if DHS is able to verify from its records that your last admission was using a BCC, you were not issued an I-94 at the time of admission, and it occurred on or before May 14, 2012, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012, and you may be considered for deferred action under this process.

Q48: Do I accrue unlawful presence if I have a pending initial request for consideration of DACA?
A48: You will continue to accrue unlawful presence while the request for consideration of DACA is pending unless you are under 18 years of age at the time of the request. If you are under 18 years of age at the time you submit your request, you will not accrue unlawful presence while the request is pending, even if you turn 18 while your request is pending with USCIS. If action on your case is deferred, you will not accrue unlawful presence during the period of deferred action. However, having action deferred on your case will not excuse previously accrued unlawful presence.

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III. Renewal of DACA

Q49: When should I file my renewal request with U.S. Citizenship and Immigration Services (USCIS)?

A49: USCIS strongly encourages you to submit your Deferred Action for Childhood Arrivals (DACA) renewal request between 150 days and 120 days before the expiration date located on your current Form I-797 DACA approval notice and Employment Authorization Document (EAD). Filing during this window will minimize the possibility that your current period of DACA will expire before you receive a decision on your renewal request.

USCIS' current goal is to process DACA renewal requests within 120 days. You may submit an inquiry about the status of your renewal request after it has been pending more than 105 days. To submit an inquiry online, please visit egov.uscis.gov/e-request.

- **Please Note:** Factors that may affect the timely processing of your DACA renewal request include, but are not limited to:
  - Failure to appear at an Application Support Center (ASC) for a scheduled biometrics appointment to obtain fingerprints and photographs. No-shows or rescheduling appointments will require additional processing time.
  - Issues of national security, criminality or public safety discovered during the background check process that require further vetting.
  - Issues of travel abroad that need additional evidence/clarification.
  - Name/date of birth discrepancies that may require additional evidence/clarification.
  - The renewal submission was incomplete or contained evidence that suggests a requestor may not satisfy the DACA renewal guidelines and USCIS must send a request for additional evidence or explanation

Q50: Can I file a renewal request outside the recommended filing period of 150 days to 120 days before my current DACA expires?

A50: USCIS strongly encourages you to file your renewal request within the recommended 150-120 day filing period to minimize the possibility that your current period of DACA will expire before you receive a decision on your renewal request. Requests received earlier than 150 days in advance will be accepted; however, this could result in an overlap between your current DACA and your renewal. This means your renewal period may extend for less than a full two years from the date that your current DACA period expires..

If you file after the recommended filing period (meaning less than 120 days before your current period of DACA expires), there is an increased possibility that your current period of DACA and employment authorization will expire before you receive a decision on your renewal request. If you file after your most recent DACA period expired, but within one year of its expiration, you may submit a request to renew your DACA. If you are filing beyond one year after your most recent period of DACA expired, you may still request DACA by submitting a new initial request.

Q51: How will USCIS evaluate my request for renewal of DACA:
A51: You may be considered for renewal of DACA if you met the guidelines for consideration of Initial DACA (see above) AND you:

- Did not depart the United States on or after Aug. 15, 2012, without advance parole;
- Have continuously resided in the United States since you submitted your most recent request for DACA that was approved up to the present time; and
- Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA renewal. USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

Q52 Do I accrue unlawful presence if I am seeking renewal and my previous period of DACA expires before I receive a renewal of deferred action under DACA? Similarly, what would happen to my work authorization?

A52: Yes, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will accrue unlawful presence for any time between the periods of deferred action unless you are under 18 years of age at the time you submit your renewal request.

Similarly, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will not be authorized to work in the United States regardless of your age at time of filing until and unless you receive a new employment authorization document from USCIS.

Q53. Do I need to provide additional documents when I request renewal of deferred action under DACA?

A53. No, unless you have *new* documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request. USCIS, however, reserves the authority to request at its discretion additional documents, information or statements relating to a DACA renewal request determination.

CAUTION: If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

Q54. If I am no longer in school, can I still request to renew my DACA?
A54. Yes. Neither Form I-821D nor the instructions ask renewal requestors for information about continued school enrollment or graduation. The instructions for renewal requests specify that you may be considered for DACA renewal if you met the guidelines for consideration of initial DACA, including the educational guidelines and:

1. Did not depart the United States on or after August 15, 2012, without advance parole;
2. Have continuously resided in the United States, up to the present time, since you submitted your most recent request for DACA that was approved; and

3. Have not been convicted of a felony, a significant misdemeanor or three or more misdemeanors, and are not a threat to national security or public safety.

Q55. If I initially received DACA and was under the age of 31 on June 15, 2012, but have since become 31 or older, can I still request a DACA renewal?
A55. Yes. You may request consideration for a renewal of DACA as long as you were under the age of 31 as of June 15, 2012.

IV. Travel

Q56: May I travel outside of the United States before I submit an initial Deferred Action for Childhood Arrivals (DACA) request or while my initial DACA request remains pending with the Department of Homeland Security (DHS)?
A56: Any unauthorized travel outside of the United States on or after Aug. 15, 2012, will interrupt your continuous residence and you will not be considered for deferred action under this process. Any travel outside of the United States that occurred on or after June 15, 2007, but before Aug. 15, 2012, will be assessed by U.S. Citizenship and Immigration Services (USCIS) to determine whether the travel qualifies as brief, casual and innocent. (See Chart #2.)

CAUTION: You should be aware that if you have been ordered deported or removed, and you then leave the United States, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.

Q57: If my case is deferred under DACA, will I be able to travel outside of the United States?
A57: Not automatically. If USCIS has decided to defer action in your case and you want to travel outside the United States, you must apply for advance parole by filing a Form I-131, Application for Travel Document and paying the applicable fee ($575). USCIS will determine whether your purpose for international travel is justifiable based on the circumstances you describe in your request. Generally, USCIS will only grant advance parole if your travel abroad will be in furtherance of:

- humanitarian purposes, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- educational purposes, such as semester-abroad programs and academic research, or;
- employment purposes such as overseas assignments, interviews, conferences or, training, or meetings with clients overseas.

Travel for vacation is not a valid basis for advance parole.

You may not apply for advance parole unless and until USCIS defers action in your case under the consideration of DACA. You cannot apply for advance parole at the same time as you submit your request for consideration of DACA. All advance parole requests will be considered on a case-by-case basis.

If USCIS has deferred action in your case under the DACA process after you have been ordered deported or removed, you may still request advance parole if you meet the guidelines for advance parole described above.

CAUTION: However, for those individuals who have been ordered deported or removed, before you actually leave the United States, you should seek to reopen your case before the Executive Office for Immigration Review (EOIR) and obtain administrative closure or termination of your removal proceeding. Even after you have asked EOIR to reopen your case, you should not leave the United States until after EOIR has granted your request. If you depart after being ordered deported or removed, and your removal proceeding has not been reopened and administratively closed or terminated, your departure may result in your being considered deported or removed, with potentially serious future immigration consequences. If you have any questions about this process, you may contact U.S. Immigration and

Customs Enforcement (ICE) through the local ICE Office of the Chief Counsel with jurisdiction over your case.

CAUTION: If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

Q58: Do brief departures from the United States interrupt the continuous residence requirement?
A58: A brief, casual and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States, your absence will be considered brief, casual and innocent if it was on or after June 15, 2007, and before Aug. 15, 2012, and:

1. The absence was short and reasonably calculated to accomplish the purpose for the absence;
2. The absence was not because of an order of exclusion, deportation or removal;
3. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation or removal proceedings; and
4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

Once USCIS has approved your request for DACA, you may file Form I-131, Application for Travel Document, to request advance parole to travel outside of the United States.

CAUTION: If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

Travel Guidelines (Chart #2)

Travel Dates	Type of Travel	Does It Affect Continuous Residence
On or after June 15, 2007, but before Aug. 15, 2012	Brief, casual and innocent	No
	For an extended time	Yes
	Because of an order of exclusion, deportation, voluntary departure, or removal	
	To participate in criminal activity	

Travel Dates	Type of Travel	Does It Affect Continuous Residence
On or after Aug. 15, 2012, and before you have requested deferred action	Any	Yes. You cannot apply for advance parole unless and until DHS has determined whether to defer action in your case and you cannot travel until you receive advance parole.
On or after Aug. 15, 2012, and after you have requested deferred action	Any	In addition, if you have previously been ordered deported and removed and you depart the United States without taking additional steps to address your removal proceedings, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.
On or after Aug. 15, 2012 and after receiving DACA	Any	It depends. If you travel after receiving advance parole, the travel will not interrupt your continuous residence. However, if you travel *without* receiving advance parole, the travel *will* interrupt your continuous residence.

Q59: May I file a request for advance parole concurrently with my DACA package?

A59: Concurrent filing of advance parole is not an option at this time. DHS is, however, reviewing its policy on concurrent filing of advance parole with a DACA request. In addition, DHS is also reviewing eligibility criteria for advance parole. If any changes to this policy are made, USCIS will update this FAQ and inform the public accordingly.

Return to top.

V. Criminal Convictions

Q60: If I have a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors, can I receive an exercise of prosecutorial discretion under this new process?
A60: No. If you have been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act,

omission, or scheme of misconduct, you will not be considered for Deferred Action for Childhood Arrivals (DACA) except where the Department of Homeland Security (DHS) determines there are exceptional circumstances.

Q61: What offenses qualify as a felony?
A61: A felony is a federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year.

Q62: What offenses constitute a significant misdemeanor?
A62: For the purposes of this process, a significant misdemeanor is a misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Regardless of the sentence imposed, is an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; or,
2. If not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.

The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by U.S. Immigration and Customs Enforcement (ICE). Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion. DHS retains the discretion to determine that an individual does not warrant deferred action on the basis of a single criminal offense for which the individual was sentenced to time in custody of 90 days or less.

Q63: What offenses constitute a non-significant misdemeanor?
A63: For purposes of this process, a non-significant misdemeanor is any misdemeanor as defined by federal law (specifically, one for which the maximum term of imprisonment authorized is one year or less but greater than five days) and that meets the following criteria:

1. Is not an offense of domestic violence; sexual abuse or exploitation; burglary; unlawful possession or use of a firearm; drug distribution or trafficking; or, driving under the influence; and
2. Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense based on a state or local law enforcement agency honoring a detainer issued by ICE.

Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion.

Q64: If I have a minor traffic offense, such as driving without a license, will it be considered a non-significant misdemeanor that counts towards the "three or more non-significant misdemeanors" making me unable to receive consideration for an exercise of prosecutorial discretion under this new process?
A64: A minor traffic offense will not be considered a misdemeanor for purposes of this process. However, your entire offense history can be considered along with other facts to determine whether, under the totality of the circumstances, you warrant an exercise of prosecutorial discretion.

EXHIBIT S

General information F5

How do I request consideration of deferred action for childhood arrivals?

U.S. Citizenship and Immigration Services

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of 2 years, subject to renewal, and would then be eligible for work authorization.

Only individuals who can prove through verifiable documentation that they meet these guidelines will be considered for deferred action. Determinations will be made on a case-by-case basis under the guidelines set forth in the Secretary of Homeland Security's memorandum.

How do I know if I may request consideration of deferred action for childhood arrivals?

You may request consideration of deferred action for childhood arrivals if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Entered without inspection before June 15, 2012, or your lawful immigration status expired as of June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

How do I request consideration of deferred action for childhood arrivals?

You must submit **Form I-821D**, Consideration of Deferred Action for Childhood Arrivals. This form must be completed, properly signed and accompanied by a **Form I-765**, Application for Employment Authorization, and a **Form I-765WS**, Form I-765 Worksheet. Failure to submit a completed Form I-765 (along with the accompanying filing fees for that form), will preclude consideration for deferred action. While there is no filing fee for Form I-821D, you must submit the $380 filing fee for Form I-765, which includes the Form I-765WS, and a biometric services fee of $85 required for the Application for Employment Authorization for a total of $465. Please read the form instructions to ensure that you submit all the required documentation to support your request. Please see our Web site at **www.uscis.gov/I-821D** and **www.uscis.gov/I-765** for complete filing instructions and **www.uscis.gov/childhoodarrivals** for additional information on the deferred action for childhood arrivals process and frequently asked questions.

Please Note: Once you receive a receipt confirming that your request is properly filed, you will be sent an appointment notice to visit an Application Support Center (ASC) for biometric services (photograph and fingerprints). Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing of your request for consideration of deferred action, or may result in a denial of your request.

Where do I file my request for consideration of deferred action for childhood arrivals?

Requests of consideration of deferred action for childhood arrivals will be filed by mail to the USCIS Lockbox. Please visit the USCIS Web site at **www.uscis.gov/I-821D** or contact the USCIS National Customer Service Center at **1-800-375-5283** for the most current information and instructions on where to file your request.

What evidence should I submit with my request for consideration of deferred action for childhood arrivals?

Evidence, including supporting documents, that you file with your request for deferred action should show that you meet the guidelines outlined in the section above entitled "How do I know if I may request consideration of deferred action for childhood arrivals?". This includes evidence that you:

1. Were born after June 15, 1981;

2. Arrived in the United States before the age of 16;

3. Have continuously resided in the United States since June 15, 2007, up to the present time;

4. Were present in the United States on June 15, 2012;

5. Entered without inspection before June 15, 2012 or your lawful immigration status expired as of June 15, 2012;

6. Are currently in school, graduated or received a certificate of completion from high school, obtained a general educational development certificate (GED), or that you are an honorably discharged veteran of the Coast Guard or U.S. Armed Forces; and

7. Are at least 15 years of age at the time of filing, if you have never been in removal proceedings or if your case was terminated before your request.

For information about specific documents that may satisfy these guidelines, please read the instructions to Form I-821D at **www.uscis.gov/I-821D** and the frequently asked questions at **www.uscis.gov/childhoodarrivals**.

Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?

This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention). If you are not in immigration detention and want to affirmatively request consideration of deferred action for childhood arrivals, you must submit your request to USCIS. You do not need to be 15 years of age or older at the time of filing if you are in removal proceedings, have a final removal order, or have a voluntary departure order. All cases will be considered on an individual basis.

Submit a copy of the removal order or any document issued by the immigration judge or the final decision from the Board of Immigration Appeals (BIA), if available. If you have not been in removal proceedings, this does not apply to you.

Do brief departures interrupt the requirement of having continuous residence in the United States since June 15, 2007?

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent if it was before August 15, 2012, and:

1. The absence was short and reasonably calculated to accomplish the purpose for the absence;

2. The absence was not because of an order of exclusion, deportation, or removal;

3. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and

4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

For information about specific documents that may show your absence was brief, casual, and innocent, please read the instructions to Form I-821D at **www.uscis.gov/I-821D** and the frequently asked questions at **www.uscis.gov/childhoodarrivals**.

Will USCIS conduct a background check when reviewing my request for consideration of deferred action for childhood arrivals?

Yes. You must undergo biographic and biometric background checks before USCIS will exercise prosecutorial discretion under the consideration of deferred action for childhood arrivals process. If you have been convicted of any felony, a significant misdemeanor offense, three or more misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or otherwise pose a threat to national security or public safety, you will not be considered for deferred action for childhood arrivals except in exceptional circumstances.

What happens after I submit my request for consideration of deferred action for childhood arrivals?

After your Form I-821D, Form I-765, and Form I-765WS have been received, USCIS will review them for completeness, including submission of the required fees, initial evidence and supporting documents. If it is determined that the request is complete, USCIS will send you a receipt notice. USCIS will then send you a notice scheduling you to visit an Application Support Center for biometric services. You may choose to receive an email and/or text message notifying you that your form has been accepted by completing a **Form G-1145**, E-Notification of Application/Petition Acceptance. Please see **www.uscis.gov/G-1145** for E-notification instructions.

Each request for consideration of deferred action for childhood arrivals will be reviewed on an individual, case-by-case basis. You will be notified of USCIS's determination in writing. USCIS may request more information or evidence, or may request that you appear at a USCIS office. There is no appeal or motion to reopen/reconsider the denial of a request for consideration of deferred action of childhood arrivals.

Can I extend the period for which removal action will be deferred in my case?

Yes. Unless terminated, individuals whose case is deferred pursuant to the consideration of deferred action for childhood arrivals process will not be placed into removal proceedings or removed from the United States for a period of 2 years. You may request consideration for an extension of that period of deferred action. You must also request an extension of your employment authorization at that time. Your request for an extension will be considered on a case-by-case basis.

If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?

If your request for consideration of deferred action for childhood arrivals is denied, USCIS will apply its policy guidance governing the referral of cases to U.S. Immigration and Customs Enforcement (ICE) and the issuance of Notices to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for removal proceedings except in exceptional circumstances. For more detailed information on the applicable NTA policy visit **www.uscis.gov/NTA**.

Does this process result in lawful status for persons who receive deferred action for childhood arrivals?

No. Deferring action is only a discretionary determination to defer removal action as an act of prosecutorial discretion and does not provide you with a lawful status.

What protections from disclosure are in place to protect information I share in my request for consideration of deferred action for childhood arrivals from being used for immigration enforcement purposes?

Information provided in this request is protected from disclosure to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice to Appear or a referral to U.S. Immigration and Customs Enforcement under the criteria set forth in USCIS's Notice to Appear guidance at **www.uscis.gov/NTA**. Individuals whose cases are deferred pursuant to the consideration of deferred action for childhood arrivals process will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing clause covers family members and guardians, in addition to the requestor.

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Key Information

Key USCIS forms referenced in this guide	Form #
Consideration of Deferred Action for Childhood Arrivals	I-821D
Application for Employment Authorization	I-765
I-765 Worksheet	I-765WS
E-Notification of Application/Petition Acceptance	G-1145

Key USCIS web sites referenced in this guide	Web site link
Information about Deferred Action for Childhood Arrivals process and frequently asked questions	www.uscis.gov/childhoodarrivals
Consideration of Deferred Action for Childhood Arrivals Form	www.uscis.gov/I-821D
Application for Employment Authorization	www.uscis.gov/I-765
E-Notification of Application/ Petition Acceptance Form	www.uscis.gov/G-1145
USCIS Notice to Appear Policy	www.uscis.gov/NTA

Other U.S. Government Services-Click or Call	
General Information	www.usa.gov
New Immigrants	www.welcometoUSA.gov
U.S. Immigration & Customs Enforcement	www.ice.gov

For more copies of this guide, or information about other customer guides, please visit **www.uscis.gov/howdoi**.

You can also visit **www.uscis.gov** to download forms, e-file some applications, check the status of an application, and more. It's a great place to start!

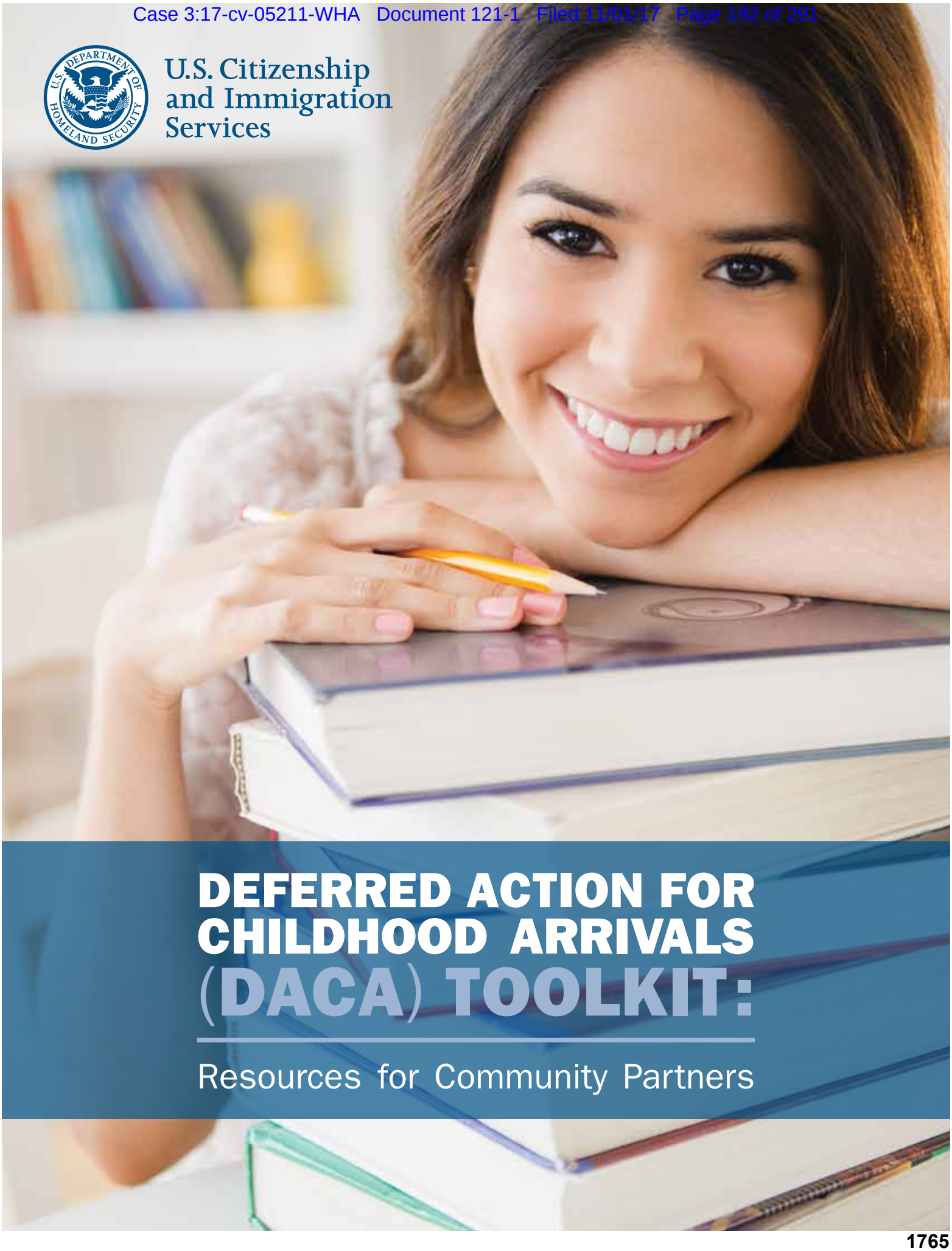
If you don't have Internet access at home or work, try your local library.

If you cannot find what you need, please call **Customer Service at: 1-800-375-5283**
Hearing Impaired TDD Customer Service: 1-800-767-1833

Disclaimer: *This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our Web site. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency accredited by the Board of Immigration Appeals.*

EXHIBIT T

U.S. Citizenship and Immigration Services



DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) TOOLKIT:

Resources for Community Partners

In addition to the resources in this toolkit, USCIS has created a power point presentation on DACA to be used in stakeholder outreach events. To request a copy of the presentation, please contact the USCIS Public Engagement Division at **Public.Engagement@uscis.dhs.gov**.

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PROGRAM OVERVIEW

Background

- USCIS began accepting requests under the Deferred Action for Childhood Arrivals (DACA) program on August 15, 2012. The DACA process was created by the Secretary of Homeland Security to offer relief from removal (in 2-year increments) for undocumented immigrants who came to the United States as children and who met several key criteria. DACA is an exercise of prosecutorial discretion and does not provide lawful status.
- The first USCIS-approved DACA grants were issued in September 2012. The initial 2-year duration will begin to expire for certain individuals in September 2014. Those individuals will be able to request consideration for renewal of DACA for a 2-year period.
- Some individuals were granted DACA by U.S. Immigration and Customs Enforcement (ICE) between June 15, 2012, and August 15, 2012. In February 2014, USCIS provided guidance to these individuals on the process they should follow to request DACA renewals.
- USCIS has updated Form I-821D [dated 6/4/14] to allow individuals to request a 2-year renewal of DACA. Previous versions of the form will not be accepted after June 5, 2014. There will be no grace period for individuals to submit a previous version of Form I-821D to request a renewal of their deferred action.
- Individuals who have not yet requested consideration for DACA must also use the new Form I-821D.
- In addition to the new Form I-821D, all individuals must also submit a Form I-795, Application for Employment Authorization (along with the accompanying fees for that form), and a Form I-765WS, Worksheet, when requesting either initial DACA or renewal of DACA.
- Individuals who allow their initial 2-year period of DACA to expire and do not seek renewal will no longer be considered to be lawfully present for inadmissibility purposes and will no longer be authorized to work legally in the United States. To ensure that their deferred action does not lapse, USCIS recommends that current DACA recipients submit Forms I-821D, I-765, and I-765 Worksheet approximately 120 days (4 months) before their 2-year period of deferred action expires. However, USCIS may reject DACA requests received earlier than 150 days (5 months) before an individual's 2-year period of deferred action expires.
- For more information on requesting DACA, please visit our Web site at **www.uscis.gov/childhoodarrivals** or call our National Customer Service Center at (800) 375-5283.

Renewal DACA Requests

- An individual may be considered for renewal of DACA if he or she met the guidelines for initial DACA and he or she:
  - Did not depart the United States on or after June 15, 2007, without advance parole;
  - Has continuously resided in the United States since he or she submitted his or her most recent DACA request that was approved up until the present time; and
  - Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.
- Requests for renewal should be submitted to USCIS no less than 120 days, and no more than 150 days prior to the expiration of the current period of deferred action.

Initial DACA Requests

- USCIS will also continue to accept initial requests for DACA. An individual may be considered for initial DACA if he or she:
  - – Was under the age of 31 as of June 15, 2012;
  - – Came to the United States before reaching his or her 16th birthday;
  - – Has continuously resided in the United States since June 15, 2007, up to the present time;
  - – Was physically present in the United States on June 15, 2012, and at the time of making his or her request for consideration of deferred action with USCIS;
  - – Had no lawful status on June 15, 2012.
  - **NOTE:**

    No lawful status on June 15, 2012, means that:
    - ◆ You never had a lawful immigration status on or before June 15, 2012; or
    - ◆ Any lawful immigration status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012.
  - – Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a General Education Development (GED) certificate, or is an honorably discharged veteran of the Coast Guard or U.S. Armed Forces; and
  - – Has not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and does not otherwise pose a threat to national security or public safety;

- Individuals who were younger than 15 when DACA was first announced and are not in removal proceedings or have a final order may request DACA from USCIS any time after they have reached their 15th birthday. Individuals who are in removal proceedings or who have a final order may request DACA from USCIS even if they are younger than 15 at the time of filing.

Consideration of DACA

- USCIS has updated Form I-821D [dated 6/4/14] to allow individuals to request renewal of DACA for an additional 2-year period. Previous versions of the form will not be accepted after June 5, 2014.
- There will be no grace period for individuals to submit a previous version of Form I-821D to request a renewal of their deferred action.
- There is no fee for Form I-821D. The fee for Form I-765 and the required biometrics is $465.

Avoiding Immigration Scams

- Please be aware of immigration scams. Unauthorized practitioners of immigration law may try to take advantage of individuals by charging them money to obtain or submit forms related to DACA or communicate with USCIS on their behalf. Visit **www.uscis.gov/avoidscams** or **www.uscis.gov/eviteestafas** for tips on how to find authorized legal assistance and how to recognize and avoid immigration services scams.
- Protect yourself from immigration scams. Official U.S. Government Web sites should be your main source of information on DACA and immigration services. Go to **www.uscis.gov** to learn more.
- If you need legal immigration advice, be sure to use an authorized professional. This means an attorney in good standing or a Board of Immigration Appeals (BIA) accredited representative. Check the BIA Web site for a list of attorneys who provide immigration services for low to no cost and for a list of disciplined attorneys. You can also check the American Bar Association or your State bar association for legal services in your State.
- If you are a victim of an immigration scam, report it to the Federal Trade Commission at **www.ftc.gov/complaint** or **www.ftc.gov/queja** or by calling (877) FTC-HELP ((877) 372-4357).

General information F5

How do I request consideration of deferred action for childhood arrivals (DACA)?

U.S. Citizenship and Immigration Services

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of 2 years, subject to renewal. Those granted deferred action are also eligible for work authorization.

Only individuals who can prove through verifiable documentation that they meet these guidelines will be considered for deferred action. Determinations will be made on a case-by-case basis under the guidelines in the Secretary's memorandum.

How do I know if I may request consideration of deferred action for childhood arrivals?

You may request consideration if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request with USCIS;
5. Had no lawful status on June 15, 2012, which means that:
   - –You never had a lawful immigration status on or before June 15, 2012; or
   - –Any lawful status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012.
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Education Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or U.S. Armed Forces; and
7. Have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

How do I request consideration of deferred action for childhood arrivals?

You must submit **Form I-821D**, Consideration of Deferred Action for Childhood Arrivals. This form must be completed, properly signed, and accompanied by a **Form I-765**, Application for Employment Authorization, and a **Form I-765WS**, Form I-765 Worksheet. Failure to submit a completed Form I-765, accompanied by the correct fees, will disqualify you from consideration for deferred action. While there is no filing fee for Form I-821D, you must submit the $380 filing fee and $85 biometric services fee for Form I-765, for a total fee of $465. Please read the form instructions to ensure that you submit all the required documentation to support your request. See **www.uscis.gov/I-821D** and **www.uscis.gov/I-765** for complete filing instructions. See **www.uscis.gov/childhoodarrivals** for additional information on the deferred action for childhood arrivals process.

Please Note: Once you receive a receipt confirming that your request is properly filed, you will be sent an appointment notice to visit an Application Support Center for biometric services (photograph and fingerprints). Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing or result in a denial of your request.

Where do I file my request for consideration of deferred action for childhood arrivals?

Requests for consideration of deferred action for childhood arrivals will be filed by mail to the USCIS Lockbox. Please visit **www.uscis.gov/I-821D** or contact the USCIS National Customer Service Center at **(800) 375-5283** for the most current information and instructions on where to mail your request.

What evidence should I submit with my initial request for consideration of deferred action for childhood arrivals?

For initial requests, the evidence should show that you meet the guidelines outlined above in "How do I know if I may request consideration of deferred action for childhood arrivals?" This includes evidence that you:

1. Were born after June 15, 1981;
2. Arrived in the United States before the age of 16;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were present in the United States on June 15, 2012;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or received a certificate of completion from high school, obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or U.S. Armed Forces; and
7. Are at least 15 years of age at the time of filing if you have never been in removal proceedings or if your case was terminated before you submit your request for consideration of deferred action for childhood arrivals.

For information about specific documents that may satisfy these guidelines, please read the instructions to Form I-821D at **www.uscis.gov/I-821D** and the frequently asked questions at **www.uscis.gov/childhoodarrivals**.

Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?

Yes. This process is open to any individuals who can demonstrate that they meet the guidelines, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention). If you are not in immigration detention and want to affirmatively request consideration of deferred action, you must submit your request to USCIS. You do not need to be 15 years of age or older at the time of filing if you are in removal proceedings, have a final removal order, or have a voluntary departure order. All cases will be considered on an individual basis.

Submit a copy of the removal order or any document issued by the immigration judge or the final decision from the Board of Immigration Appeals, if available. This requirement applies only to people who have been in removal proceedings.

Do brief departures affect my ability to satisfy the continuous residence in the United States since June 15, 2007, guideline?

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. Any absence will be considered brief, casual, and innocent if it occurred before August 15, 2012, and was:

1. Short and reasonably calculated to accomplish the purpose for the absence;
2. Not because of an order of exclusion, deportation, or removal;
3. Not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and
4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

Any unauthorized travel outside of the United States on or after August 15, 2012, will interrupt your period of continuous residence and you will not be considered for deferred action under this process.

For information about specific documents that may show your absence was brief, casual, and innocent, please read the instructions at **www.uscis.gov/I-821D** and the frequently asked questions at **www.uscis.gov/childhoodarrivals**.

Will USCIS conduct a background check when reviewing my request for consideration of deferred action for childhood arrivals?

Yes. You must undergo background checks before USCIS will exercise prosecutorial discretion. You will not be considered for deferred action for childhood arrivals, unless there are exceptional circumstances, if you have been convicted of:

- Any felony;
- A significant misdemeanor offense;
- Three or more misdemeanor offenses (not occurring on the same date and not arising out of the same act, omission or scheme of misconduct); or
- You otherwise pose a threat to national security or public safety.

What happens after I submit my request for consideration of deferred action for childhood arrivals?

After receiving your Form I-821D, Form I-765, and Form I-765WS, USCIS will review them for completeness, including the required fees, initial evidence, and signatures. If the request is complete, USCIS will send you a receipt notice. USCIS will then send you a notice scheduling you to visit an Application Support Center for fingerprinting and photographing. You may choose to receive an email and/or text message notifying you that your form has been accepted by completing a **Form G-1145**, E-Notification of Application/Petition Acceptance. Please see **www.uscis.gov/G-1145** for instructions.

Each request for consideration of deferred action for childhood arrivals will be reviewed on an individual, case-by-case basis. You will be notified of USCIS' determination in writing. USCIS may request more information or evidence, or may request that you appear at a USCIS office. There is no appeal or motion to reopen/reconsider the denial of a request for consideration of deferred action for childhood arrivals.

Can I renew the period for which removal action will be deferred in my case?

Yes. You may request consideration of renewal of your deferred action for childhood arrivals. Your request for a renewal will be considered on a case-by-case basis. If USCIS renews its exercise of discretion under deferred action for childhood arrivals for your case, you will receive deferred action for another 2 years, and if you demonstrate an economic necessity for employment you may receive employment authorization throughout that period.

How do I know if I may request a renewal of my deferred action for childhood arrivals?

You may request consideration of renewal of deferred action for childhood arrivals if you met the guidelines for initial deferred action for childhood arrivals (see above) and you:

1. Did not depart the United States on or after August 15, 2012, without advance parole;
2. Have continuously resided in the United States since you submitted your most recent deferred action for childhood arrivals request that was approved up to the present time;

3. Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.

Requests for renewal should be submitted to USCIS around 120 days (but no more than 150 days) before the expiration of the current period of deferred action. To request renewal of your deferred action for childhood arrivals, submit Form I-821D, Form I-765, and Form I-765WS along with the $380 filing fee for the Form I-765 and a $85 biometric services fee, for a total of $465.

You do not need to provide any additional documents at the time you request renewal of deferred action for childhood arrivals unless you have **new** documents related to removal proceedings or criminal history that you did not submit to USCIS in a previously approved deferred action for childhood arrivals request.

If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?

If your request for consideration of deferred action for childhood arrivals is denied, USCIS will apply its policy guidance governing the referral of cases to U.S. Immigration and Customs Enforcement (ICE) and the issuance of Notices to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for removal proceedings except in exceptional circumstances. For more detailed information, visit **www.uscis.gov/nta**.

Does this process result in lawful status for people who receive deferred action for childhood arrivals?

No. Deferred action under this process is only a discretionary determination to defer removal action. It is an act of prosecutorial discretion and does not provide you with a lawful status.

What protections are in place to protect the information I share in my request from being used for immigration enforcement purposes?

The information you provide in your request is protected from disclosure to U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless you meet the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria explained in USCIS' Notice to Appear guidance at **www.uscis.gov/nta**. Individuals whose cases are deferred under the consideration of deferred action for childhood arrivals process will not be referred to ICE.

The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal. These other purposes could include: for assistance in the consideration of deferred action for childhood arrivals, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. This information-sharing clause covers family members and guardians, in addition to the person requesting deferred action.

This policy may be modified, superseded, or rescinded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Key Information

Key USCIS forms referenced in this guide	Form #
Consideration of Deferred Action for Childhood Arrivals	I-821D
Application for Employment Authorization	I-765
I-765 Worksheet	I-765WS
E-Notification of Application/Petition Acceptance	G-1145

Key USCIS Web sites referenced in this guide	Web site link
Information about Deferred Action for Childhood Arrivals process and frequently asked questions	www.uscis.gov/childhoodarrivals
Consideration of Deferred Action for Childhood Arrivals Form	www.uscis.gov/I-821D
Application for Employment Authorization	www.uscis.gov/I-765
E-Notification of Application/Petition Acceptance Form	www.uscis.gov/G-1145
USCIS Notice to Appear Policy	www.uscis.gov/NTA

Other U.S. Government Services-Click or Call	
General Information	www.usa.gov
New Immigrants	www.welcometoUSA.gov
U.S. Immigration & Customs Enforcement	www.ice.gov

For more copies of this guide, or information about other customer guides, please visit **www.uscis.gov/howdoi**.

You can also visit **www.uscis.gov** to download forms, e-file some applications, check the status of an application, and more. It's a great place to start!

If you don't have Internet access at home or work, try your local library.

If you cannot find what you need, please call

Customer Service at: (800) 375-5283
TDD for hearing-impaired: (800) 767-1833.

Disclaimer: *This guide provides basic information to help you become generally familiar with our rules and procedures. For more information, or the law and regulations, please visit our Web site. Immigration law can be complex, and it is impossible to describe every aspect of every process. You may wish to be represented by a licensed attorney or by a nonprofit agency recognized by the Board of Immigration Appeals.*

Deferred Action for Childhood Arrivals (DACA) Tip Sheet

At a Glance: Initial vs. Renewal DACA Process

	Initial DACA	Renewal DACA
Guidelines	You may request consideration of initial DACA if you: • Were under the age of 31 as of June 15, 2012; • Came to the United States before reaching your 16th birthday; • Have continuously resided in the United States since June 15, 2007, up to the present time; • Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS; • Had no lawful immigration status on June 15, 2012; • Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate (or other State-authorized exam in the United States), or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and • Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.	You may request consideration of renewal DACA if you met the guidelines for initial DACA and you: • Did not depart the United States on or after August Aw15, 2012, without advance parole; • Have continuously resided in the United States since you submitted your most recent request for DACA that was approved up to the present time; and • Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.
How to Request	• Complete and sign: ❑ Form I-821D, Consideration of Deferred Action for Childhood Arrivals; ❑ Form I-765, Application for Employment Authorization; and ❑ Form I-765W, Worksheet. • Submit all three forms, the $465 filing and biometrics fee and any required documentation to USCIS following the instructions on the forms.	• Complete and sign: ❑ Form I-821D, Consideration of Deferred Action for Childhood Arrivals; ❑ Form I-765, Application for Employment Authorization; and ❑ Form I-765W, Worksheet. ❑ Submit all three forms and the $465 filing and biometrics fee and any required documentation to USCIS following the instructions on the forms. ❑ Do not provide any additional documents at the time you request renewal of DACA unless you have new documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request.
When to File	You can file a request for initial DACA at any time.	USCIS encourages you to submit your request for renewal approximately 120 days (or four months) prior to the expiration of your current period of deferred action. However, if you file your renewal request more than 150 days (or 5 months) prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date.

U.S. Citizenship and Immigration Services

M-555B (June 2014) N
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WHAT IS DEFERRED ACTION FOR CHILDHOOD ARRIVALS?

Over the past several years, this Administration has undertaken an unprecedented effort to transform the immigration enforcement system into one that focuses on national security, public safety, border security, and the integrity of the immigration system. As the Department of Homeland Security (DHS) continues to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety, DHS will exercise prosecutorial discretion as appropriate to ensure that enforcement resources are not expended on low priority cases, such as individuals who came to the United States as children and meet other key guidelines. Individuals who demonstrate that they meet the guidelines below may request consideration of deferred action for childhood arrivals (DACA) for a period of 2 years, subject to renewal for a period of 2 years, and may be eligible for employment authorization.

You may request consideration of DACA if you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012, meaning that:
   - You never had a lawful immigration status on or before June 15, 2012, or
   - Any lawful immigration status or parole that you obtained prior to June 15, 2012, had expired as of June 15, 2012.
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, a significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

Individuals can call U.S. Citizenship and Immigration Services (USCIS) at 1-800-375-5283 with questions or to request more information on DACA. Those with pending requests can also use a number of **online self-help tools** which include the ability to check case status and processing times, change your address, and send an inquiry about a case pending longer than posted processing times or non-delivery of a card or document.

What is Deferred Action?

Deferred action is a discretionary determination to defer a removal action of an individual as an act of prosecutorial discretion. For purposes of future inadmissibility based upon **unlawful presence**, an individual whose case has been deferred is not considered to be unlawfully present during the period in which deferred action is in effect. An individual who has received deferred action is authorized by DHS to be present in the United States, and is therefore considered by DHS to be lawfully present during the period deferred action is in effect. However, deferred action does not confer **lawful status** upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence.

Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." DHS can terminate or renew deferred action at any time, at the agency's discretion.

What is DACA?

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several key guidelines may request consideration of deferred action for a period of 2 years, subject to renewal, and would then be eligible for work authorization.

Individuals who can demonstrate through verifiable documentation that they meet these guidelines will be considered for deferred action. Determinations will be made on a case-by-case basis under the DACA guidelines.

Is there any difference between "deferred action" and DACA under this process?

DACA is one form of deferred action. The relief an individual receives under DACA is identical for immigration purposes to the relief obtained by any person who receives deferred action as an act of prosecutorial discretion.

If my removal is deferred under the consideration of DACA, am I eligible for employment authorization?

YES. Under existing regulations, if your case is deferred, you may obtain employment authorization from USCIS provided you can demonstrate an economic necessity for employment.

If my case is deferred, am I in lawful status for the period of deferral?

NO. Although action on your case has been deferred and you do not accrue unlawful presence (for admissibility purposes) during the period of deferred action, deferred action does not confer any lawful status.

The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. However, although deferred action does not confer a lawful immigration status, your period of stay is authorized by the Department of Homeland Security while your deferred action is in effect and, for admissibility purposes, you are considered to be lawfully present in the United States during that time. **Individuals granted deferred action are not precluded by Federal law from establishing domicile in the United States.**

Apart from the immigration laws, "lawful presence," "lawful status," and similar terms are used in various other Federal and State laws. For information on how those laws affect individuals who receive a favorable exercise of prosecutorial discretion under DACA, please contact the appropriate Federal, State, or local authorities.

Can I renew my period of deferred action and employment authorization under DACA?

YES. You may request consideration for a renewal of your DACA. Your request for a renewal will be considered on a case-by-case basis. If USCIS renews its exercise of discretion under DACA for your case, you will receive deferred action for another 2 years, and if you demonstrate an economic necessity for employment, you may receive employment authorization throughout that period.

DACA PROCESS

How do I request consideration of DACA?

To request consideration of DACA (either as an initial request or to request a renewal), you must submit **Form I-821D, Consideration of Deferred Action for Childhood Arrivals,** to USCIS. Please visit **www.uscis.gov/i-821d** before you begin the process to make sure you are using the most current version of the form available. This form must be completed, properly signed, and accompanied by a **Form I-765, Application for Employment Authorization**, and a **Form I-765WS, Worksheet**, establishing your economic need for employment. If you fail to submit a completed Form I-765 (along with the accompanying filing fees for that form, totaling $465), USCIS will not consider your request for deferred action. Please read the form instructions to ensure that you answer the appropriate questions (determined by whether you are submitting an initial or renewal request) and that you submit all the required documentation to support your initial request.

You must file your request for consideration of DACA at the USCIS Lockbox. You can find the mailing address and instructions at **www.uscis.gov/i-821d**. As of June 5, 2014, requestors must use the new version of the

form. After your Form I-821D, Form I-765, and Form I-765 Worksheet have been received, USCIS will review them for completeness, including submission of the required fee, initial evidence and supporting documents (for initial filings).

If it is determined that the request is complete, USCIS will send you a receipt notice. USCIS will then send you an appointment notice to visit an Application Support Center (ASC) for biometric services, if an appointment is required. Please make sure you read and follow the directions in the notice. Failure to attend your biometrics appointment may delay processing of your request for consideration of deferred action, or may result in a denial of your request. You may also choose to receive an email and/or text message notifying you that your form has been accepted by completing a **Form G-1145, E-Notification of Application/Petition Acceptance**.

Each request for consideration of DACA will be reviewed on an individual, case-by-case basis. USCIS may request more information or evidence from you, or request that you appear at a USCIS office. USCIS will notify you of its determination in writing.

Note: All individuals who believe they meet the guidelines, including those in removal proceedings, with a final removal order, or with a voluntary departure order (and not in immigration detention), may affirmatively request consideration of DACA from USCIS through this process. Individuals who are currently in immigration detention and believe they meet the guidelines may not request consideration of deferred action from USCIS but may identify themselves to their deportation officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information visit ICE's Web site at **www.ice.gov/daca**.

Can I obtain a fee waiver or fee exemption for this process?

There are no fee waivers available for employment authorization applications connected to DACA. There are very limited fee exemptions available. Requests for fee exemptions must be filed and favorably adjudicated before an individual files his or her request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must submit a letter and supporting documentation to USCIS demonstrating that you meet one of the following conditions:

- You are under 18 years of age, have an income that is less than 150 percent of the U.S. poverty level, and are in foster care or otherwise lacking any parental or other familial support; or
- You are under 18 years of age and homeless; or
- You cannot care for yourself because you suffer from a serious, chronic disability and your income is less than 150 percent of the U.S. poverty level; or
- You have, at the time of the request, accumulated **$10,000** or more in debt in the past 12 months as a result of unreimbursed medical expenses for yourself or an immediate family member, and your income is less than 150 percent of the U.S. poverty level.

You can find additional information on our **Fee Exemption Guidance** Web page. Your request must be submitted and decided before you submit a request for consideration of DACA without a fee. In order to be considered for a fee exemption, you must provide documentary evidence to demonstrate that you meet any of the above conditions at the time that you make the request. For evidence, USCIS will:

- Accept affidavits from community-based or religious organizations to establish a requestor's homelessness or lack of parental or other familial financial support;
- Accept copies of tax returns, bank Statements, pay stubs, or other reliable evidence of income level. Evidence can also include an affidavit from the applicant or a responsible third party attesting that the applicant does not file tax returns, has no bank accounts, and/or has no income to prove income level;
- Accept copies of medical records, insurance records, bank Statements, or other reliable evidence of unreimbursed medical expenses of at least **$10,000**;
- Address factual questions through Requests for Evidence (RFEs).

If individuals meet the guidelines for consideration of DACA and are encountered by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE), will they be placed into removal proceedings?

DACA is intended, in part, to allow CBP and ICE to focus on priority cases. Under the direction of the Secretary of Homeland Security, if an individual meets the guidelines for DACA, CBP or ICE should exercise their discretion on a case-by-case basis to prevent qualifying individuals from being apprehended, placed into removal proceedings, or removed. If individuals believe that, in light of this policy, they should not have been apprehended or placed into removal proceedings, contact the Law Enforcement Support Center's hotline at (855) 448-6903 (staffed 24 hours a day, 7 days a week).

Does this process apply to me if I am currently in removal proceedings, have a final removal order, or have a voluntary departure order?

This process is open to any individual who can demonstrate he or she meets the guidelines for consideration, including those who have never been in removal proceedings as well as those in removal proceedings, with a final order, or with a voluntary departure order (as long as they are not in immigration detention).

If I am not in removal proceedings but believe I meet the guidelines for consideration of DACA, should I seek to place myself into removal proceedings through encounters with CBP or ICE?

NO. If you are not in removal proceedings but believe that you meet the guidelines, you should submit your DACA request to USCIS under the process outlined below.

Can I request consideration of DACA from USCIS if I am in immigration detention under the custody of ICE?

NO. If you are currently in immigration detention, you may not request consideration of DACA from USCIS. If you think you may meet the guidelines of this process, you should identify yourself to your deportation officer or Jail Liaison. You may also contact the ICE Field Office Director. For more information, visit ICE's Web site at **www.ice.gov/daca**.

If I am about to be removed by ICE and believe that I meet the guidelines for consideration of DACA, what steps should I take to seek review of my case before removal?

If you believe you can demonstrate that you meet the guidelines and are about to be removed, you should immediately contact the Law Enforcement Support Center's hotline at (855) 448-6903 (staffed 24 hours a day, 7 days a week).

What should I do if I meet the guidelines of this process and have been issued an ICE detainer following an arrest by a State or local law enforcement officer?

If you meet the guidelines and have been served a detainer, you should immediately contact the Law Enforcement Support Center's hotline at (855) 448-6903 (staffed 24 hours a day, 7 days a week).

If I accepted an offer of administrative closure under the case-by-case review process or my case was terminated as part of the case-by-case review process, can I be considered for deferred action under this process?

YES. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you have accepted an offer of administrative closure or termination under the case-by-case review process.

If I declined an offer of administrative closure under the case-by-case review process, can I be considered for deferred action under this process?

YES. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA even if you declined an offer of administrative closure under the case-by-case review process.

If my case was reviewed as part of the case-by-case review process but I was not offered administrative closure, can I be considered for deferred action under this process?

YES. If you can demonstrate that you meet the guidelines, you will be able to request consideration of DACA

even if you were not offered administrative closure following review of your case as part of the case-by-case review process.

Can I request consideration of DACA under this process if I am currently in a nonimmigrant status (e.g., F-1, E-2, H-4) or have Temporary Protected Status (TPS)?

NO. You can only request consideration of DACA under this process if you currently have no immigration status and were not in any lawful status on June 15, 2012.

Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?

Information provided in this request is protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice to Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance (**www.uscis.gov/NTA**). Individuals whose cases are deferred pursuant to DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing policy covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law by any party in any administrative, civil, or criminal matter.

If my case is referred to ICE for immigration enforcement purposes or if I receive an NTA, will information related to my family members and guardians also be referred to ICE for immigration enforcement purposes?

If your case is referred to ICE for purposes of immigration enforcement or you receive an NTA, information related to your family members or guardians that is contained in your request will not be referred to ICE for purposes of immigration enforcement against family members or guardians. However, that information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Will USCIS verify documents or Statements that I provide in support of a request for DACA?

USCIS has the authority to verify documents, facts, and Statements that are provided in support of requests for DACA. USCIS may contact education institutions, other government agencies, employers, or other entities in order to verify information.

BACKGROUND CHECKS

Will USCIS conduct a background check when reviewing my request for consideration of DACA?

YES. You must undergo biographic and biometric background checks before USCIS will consider your DACA request.

What do background checks involve?

Background checks involve checking biographic and biometric information provided by the individuals against a variety of databases maintained by DHS and other Federal Government agencies.

What steps will USCIS and ICE take if I engage in fraud through the new process?

If you knowingly make a misrepresentation or knowingly fail to disclose facts, in an effort to obtain DACA or work authorization through this process, you will

be treated as an immigration enforcement priority to the fullest extent permitted by law and be subject to criminal prosecution and/or removal from the United States.

AFTER USCIS MAKES A DECISION

Can I appeal USCIS' determination?

NO. You cannot file a motion to reopen or reconsider, and cannot appeal the decision if USCIS denies your request for consideration of DACA.

You may request a review of your I-821D denial by contacting USCIS' Call Centers at (800) 375-5283 to have a Service Request created if you believe that you actually did meet all of the DACA guidelines and you believe that your request was denied due to one of the following errors:

- Denied the request based on abandonment, when you actually responded to an RFE or NOID within the prescribed time;
- Mailed the RFE or NOID to the wrong address although you had submitted a Form AR-11, Change of Address, or changed your address online at www.uscis.gov before USCIS issued the RFE or NOID;
- Denied the request on the grounds that you did not come to the United States prior to your 16th birthday, but the evidence submitted **at the time of filing** shows that you did arrive before reaching that age;
- Denied the request on the grounds that you were under age 15 **at the time of filing** but not in removal proceedings, while the evidence submitted **at the time of filing** show that you indeed were in removal proceedings when the request was filed;
- Denied the request on the grounds that you were 31 or older as of June 15, 2012, but the evidence submitted **at the time of filing** shows that you were **not yet** 31 years old as of that date;
- Denied the request on the grounds that you had lawful status on June 15, 2012, but the evidence submitted **at the time of filing** shows that you indeed were in an unlawful immigration status on that date;
- Denied the request on the grounds that you were not physically present in the United States on June 15, 2012, and up through the date of filing, but the evidence submitted **at the time of filing** shows that you were, in fact, present;
- Denied the request due to your failure to appear at a USCIS ASC to have your biometrics collected, when you in fact either did appear at a USCIS ASC to have this done or requested prior to the scheduled date of your biometrics appointment to have the appointment rescheduled; or
- Denied the request because you did not pay the filing fees for Form I-765, Application for Employment Authorization, when you actually did pay these fees.

If you believe your request was denied due to any of these administrative errors, you may contact our National Customer Service Center at (800) 375-5283 or (800) 767-1833 (TDD for the hearing impaired). Customer service officers are available Monday – Friday, 8 a.m. – 6 p.m, in each U.S. time zone.

If USCIS does not exercise deferred action in my case, will I be placed in removal proceedings?

If you have submitted a request for consideration of DACA and USCIS decides not to defer action in your case, USCIS will apply its policy guidance governing the referral of cases to ICE and the issuance of a Notice to Appear (NTA). If your case does not involve a criminal offense, fraud, or a threat to national security or public safety, your case will not be referred to ICE for purposes of removal proceedings except where DHS determines there are exceptional circumstances. For more detailed information on the applicable NTA policy, visit **www.uscis.gov/NTA**. If after a review of the totality of circumstances USCIS determines to defer action in your case, USCIS will likewise exercise its discretion and will not issue you an NTA.

Can my deferred action under the DACA process be terminated before it expires?

YES. DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS's discretion.

INITIAL REQUESTS FOR DACA

What guidelines must I meet to be considered for deferred action for childhood arrivals (DACA)?

Under the Secretary of Homeland Security's June 15, 2012 memorandum, in order to be considered for DACA, you must submit evidence, including supporting documents, showing that you:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching your 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;
5. Had no lawful status on June 15, 2012;
6. Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a General Educational Development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA. U.S. Citizenship and Immigration Services (USCIS) retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

How old must I be in order to be considered for deferred action under this process?

- If you have never been in removal proceedings, or your proceedings have been terminated before your request for consideration of DACA, you must be at least 15 years of age or older at the time of filing and meet the other guidelines.
- If you are in removal proceedings, have a final removal order, or have a voluntary departure order, and are not in immigration detention, you can request consideration of DACA even if you are under the age of 15 at the time of filing and meet the other guidelines.
- In all instances, you cannot be the age of 31 or older as of June 15, 2012, to be considered for DACA.

I first came to the United States before I turned 16 years old and have been continuously residing in the United States since at least June 15, 2007. Before I turned 16 years old, however, I left the United States for some period of time before returning and beginning my current period of continuous residence. May I be considered for deferred action under this process?

YES, but only if you established residence in the United States during the period before you turned 16 years old, as evidenced, for example, by records showing you attended school or worked in the United States during that time, or that you lived in the United States for multiple years during that time. In addition to establishing that you initially resided in the United States before you turned 16 years old, you must also have maintained continuous residence in the United States from June 15, 2007, until the present time to be considered for deferred action under this process.

To prove my continuous residence in the United States since June 15, 2007, must I provide evidence documenting my presence for every day, or every month, of that period?

To meet the continuous residence guideline, you must submit documentation that shows you have been living

in the United States from June 15, 2007, up until the time of your request. You should provide documentation to account for as much of the period as reasonably possible, but there is no requirement that every day or month of that period be specifically accounted for through direct evidence.

It is helpful to USCIS if you can submit evidence of your residence during at least each year of the period. USCIS will review the documentation in its totality to determine whether it is more likely than not that you were continuously residing in the United States for the period since June 15, 2007. Gaps in the documentation as to certain periods may raise doubts as to your continued residence if, for example, the gaps are lengthy or the record otherwise indicates that you may have been outside the United States for a period of time that was not brief, casual, or innocent.

If gaps in your documentation raise questions, USCIS may issue a Request for Evidence to allow you to submit additional documentation that supports your claimed continuous residence.

Affidavits may be submitted to explain a gap in the documentation demonstrating that you meet the five-year continuous residence requirement. If you submit affidavits related to the continuous residence requirement, you must submit two or more affidavits, sworn to or affirmed by people other than yourself who have direct personal knowledge of the events and circumstances during the period as to which there is a gap in the documentation. Affidavits may only be used to explain gaps in your continuous residence; they cannot be used as evidence that you meet the entire 5-year continuous residence requirement.

Does "currently in school" refer to the date on which the request for consideration of deferred action is filed?

To be considered "currently in school" under the guidelines, you must be enrolled in school on the date you submit a request for consideration of deferred action under this process.

Who is considered to be "currently in school" under the guidelines?

To be considered "currently in school" under the guidelines, you must be enrolled in:

- A public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or home-school program meeting State requirements;
- An education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; or
- An education program assisting students either in obtaining a regular high school diploma or its recognized equivalent under State law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other State-authorized exam (e.g., HiSet or TASC) in the United States.

These education, literacy, career training programs (including vocational training), or education programs assisting students in obtaining a regular high school diploma or its recognized equivalent under State law, or in passing a GED exam or other State-authorized exam in the United States include but are not limited to programs funded, in whole or in part, by Federal, State, county or municipal grants or administered by nonprofit organizations. Programs funded by other sources may qualify if they are administered by providers of demonstrated effectiveness, such as institutions of higher education, including community colleges and certain community-based organizations.

In assessing whether such programs not funded in whole or in part by Federal, State, county, or municipal grants or administered by nonprofit organizations are of demonstrated effectiveness, USCIS will consider the duration of the program's existence; the program's track record in assisting students in obtaining a regular high school diploma or its recognized equivalent, in passing a GED or other State-authorized exam (e.g., HiSet or

TASC), or in placing students in postsecondary education, job training, or employment; and other indicators of the program's overall quality. For individuals seeking to demonstrate that they are "currently in school" through enrollment in such a program, the burden is on the requestor to show the program's demonstrated effectiveness.

How do I establish that I am currently in school?

Documentation sufficient for you to demonstrate that you are currently in school may include but is not limited to:

- Evidence that you are enrolled in a public, private, or charter elementary school, junior high or middle school, high school or secondary school; alternative program, or homeschool program meeting State requirements; or
- Evidence that you are enrolled in an education, literacy, or career training program (including vocational training) that:
  - Has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement; and
  - The program is funded in whole or in part by Federal or State grants or is of demonstrated effectiveness; or evidence that you are enrolled in an education program assisting students in obtaining a high school equivalency diploma or certificate recognized under State law (such as by passing a GED exam or other such State-authorized exam (for example, HiSet or TASC), and that the program is funded in whole or in part by Federal, State, county or municipal grants or are administered by nonprofit organizations or, if funded by other sources is of demonstrated effectiveness.

Such evidence of enrollment may include: acceptance letters, school registration cards, letters from a school or program, transcripts, report cards, or progress reports which may show the name of the school or program, date of enrollment, and current educational or grade level, if relevant.

What documentation may be sufficient to demonstrate that I have graduated from high school?

Documentation sufficient for you to demonstrate that you have graduated from high school may include but is not limited to: a high school diploma from a public or private high school or secondary school, certificate of completion, certificate of attendance, or alternate award from a public or private high school or secondary school, or a recognized equivalent of a high school diploma under State law, or a GED certificate or certificate from passing another such State-authorized exam (e.g., HiSet or TASC) in the United States.

What documentation may be sufficient to demonstrate that I have obtained a GED certificate or certificate from passing another such State-authorized exam (e.g., HiSet or TASC)?

Documentation may include but is not limited to, evidence that you have passed a GED exam or other State-authorized exam (e.g., HiSet or TASC), and, as a result, have received the recognized equivalent of a regular high school diploma under State law.

If I am enrolled in a literacy or career training program, can I meet the guidelines?

YES, in certain circumstances. You may meet the guidelines if you are enrolled in an education, literacy, or career training program that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in postsecondary education, job training, or employment and where you are working toward such placement. Such programs include but are not limited to programs funded, in whole or in part by Federal, State, county or municipal grants, or are administered by nonprofit organizations, or, if funded by other sources, programs of demonstrated effectiveness.

If I am enrolled in an English as a Second Language (ESL) program, can I meet the guidelines?

YES, in certain circumstances. Enrollment in an ESL program may be used to meet the guidelines if the ESL program is funded in whole or in part by Federal, State, county or municipal grants, or administered by

nonprofit organizations, or, if funded by other sources, is a program of demonstrated effectiveness. You must submit direct documentary evidence that the program is funded in whole or part by Federal, State, county, or municipal grants, administered by a nonprofit organization, or of demonstrated effectiveness.

Will USCIS consider evidence other than that listed in Chart #1 to show that I have met the education guidelines?

NO. Evidence not listed in Chart #1 on the following page will not be accepted to establish that you are currently in school, have graduated or obtained a certificate of completion from high school, or have obtained a GED or passed another State-authorized exam (e.g., HiSet or TASC). You must submit any of the documentary evidence listed in Chart #1 to show that you meet the education guidelines.

Will USCIS consider evidence other than that listed in Chart #1 to show that I have met certain initial guidelines?

Evidence other than those documents listed in Chart #1 may be used to establish the following guidelines and factual showings if available documentary evidence is insufficient or lacking and shows that:

- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You satisfy the continuous residence requirement, as long as you present direct evidence of your continued residence in the United States for a portion of the required period and the circumstantial evidence is used only to fill in gaps in the length of continuous residence demonstrated by the direct evidence; and
- Any travel outside the United States during the period of required continuous presence was brief, casual, and innocent.

However, USCIS will not accept evidence other than the documents listed in Chart #1 as proof of any of the following guidelines to demonstrate that you:

- Were under the age of 31 on June 15, 2012; and
- Are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a GED certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

For example, even if you do not have documentary proof of your presence in the United States on June 15, 2012, you may still be able to satisfy the guidelines. You may do so by submitting credible documentary evidence that you were present in the United States shortly before and shortly after June 15, 2012, which, under the facts presented, may give rise to an inference of your presence on June 15, 2012 as well. However, evidence other than that listed in Chart #1 will not be accepted to establish that you have graduated high school. You must submit the designated documentary evidence to satisfy that you meet this guideline.

CHART #1: on the next page, provides examples of documentation you may submit to demonstrate you meet the initial guidelines for consideration of deferred action under this process. Please see the instructions of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, for additional details of acceptable documentation.

CHART #1: EXAMPLES OF DOCUMENTS TO SUBMIT TO DEMONSTRATE YOU MEET THE GUIDELINES

Proof of identity	• Passport or national identity document from your country of origin • Birth certificate with photo identification • School or military ID with photo • Any U.S. Government immigration or other document bearing your name and photo
Proof you came to U.S. before your 16th birthday	• Passport with admission stamp • Form I-94/I-95/I-94W • School records from the U.S. schools you have attended • Any Immigration and Naturalization Service or DHS document stating your date of entry (Form I-862, Notice to Appear) • Travel records • Hospital or medical records • Rent receipts or utility bills • Employment records (pay stubs, W-2 Forms, etc.) • Official records from a religious entity confirming participation in a religious ceremony • Copies of money order receipts for money sent in or out of the country • Birth certificates of children born in the U.S. • Dated bank transactions • Automobile license receipts or registration • Deeds, mortgages, rental agreement contracts • Tax receipts, insurance policies
Proof of immigration status	• Form I-94/I-95/I-94W with authorized stay expiration date • Final order of exclusion, deportation, or removal issued as of June 15, 2012 • A charging document placing you into removal proceedings
Proof of presence in U.S. on June 15, 2012	• Rent receipts or utility bills • Employment records (pay stubs, W-2 Forms, etc.) • School records (letters, report cards, etc.) • Military records (Form DD-214 or NGB Form 22)
Proof you continuously resided in U.S. since June 15, 2007	• Official records from a religious entity confirming participation in a religious ceremony • Copies of money order receipts for money sent in or out of the country • Passport entries • Birth certificates of children born in the United States • Dated bank transactions • Automobile license receipts or registration • Deeds, mortgages, rental agreement contracts • Tax receipts, insurance policies
Proof of your education status at the time of requesting consideration of DACA	• School records (transcripts, report cards, etc.) from the school that you are currently attending in the United States showing the name(s) of the school(s) and periods of school attendance and the current of requesting consideration of DACA educational or grade level • U.S. high school diploma, certificate of completion, or other alternate award • High school equivalency diploma or certificate recognized under State law • Evidence that you passed a State-authorized exam, including the GED or other State-authorized exam (for example, HiSet or TASC) in the United States
Proof you are an honorably discharged veteran of the U.S. Armed Forces or the U.S. Coast Guard	• Form DD-214, Certificate of Release or Discharge from Active Duty • NGB Form 22, National Guard Report of Separation and Record of Service • Military personnel records • Military health records

May I file affidavits as proof that I meet the initial guidelines for consideration of DACA?

Affidavits generally will not be sufficient on their own to demonstrate that you meet the guidelines for USCIS to consider you for DACA. However, affidavits may be used to support meeting the following guidelines only if the documentary evidence available to you is insufficient or lacking:

- Demonstrating that you meet the 5-year continuous residence requirement; and
- Establishing that departures during the required period of continuous residence were brief, casual, and innocent.

If you submit affidavits related to the above criteria, you must submit two or more affidavits, sworn to or affirmed by people other than yourself, who have direct personal knowledge of the events and circumstances. Should USCIS determine that the affidavits are insufficient to overcome the unavailability or the lack of documentary evidence with respect to either of these guidelines, it will issue a Request for Evidence indicating that further evidence must be submitted to demonstrate that you meet these guidelines.

USCIS will not accept affidavits as proof of satisfying the following guidelines:

- You are currently in school, have graduated or obtained a certificate of completion or other alternate award from high school, have obtained a high school equivalency diploma or certificate (such as by passing the GED exam or other State-authorized exam [for example, HiSet or TASC]), or are an honorably discharged veteran from the Coast Guard or Armed Forces of the United States;
- You were physically present in the United States on June 15, 2012;
- You came to the United States before reaching your 16th birthday;
- You were under the age of 31 on June 15, 2012; and
- Your criminal history, if applicable.

If the only evidence you submit to demonstrate you meet any of the above guidelines is an affidavit, USCIS will issue a Request for Evidence indicating that you have not demonstrated that you meet these guidelines and that you must do so in order to demonstrate that you meet that guideline.

Will I be considered to be in unlawful status if I had an application for asylum or cancellation of removal pending before either USCIS or the Executive Office for Immigration Review (EOIR) on June 15, 2012?

YES. If you had an application for asylum or cancellation of removal, or similar relief, pending before either USCIS or EOIR as of June 15, 2012, but had no lawful status, you may request consideration of DACA.

I was admitted for "duration of status" or for a period of time that extended past June 14, 2012, but violated my immigration status (e.g., by engaging in unauthorized employment, failing to report to my employer, or failing to pursue a full course of study) before June 15, 2012. May I be considered for deferred action under this process?

NO, unless the Executive Office for Immigration Review terminated your status by issuing a final order of removal against you before June 15, 2012.

I was admitted for "duration of status" or for a period of time that extended past June 14, 2012, but "aged out" of my dependent nonimmigrant status as of June 15, 2012. May I be considered for deferred action under this process?

YES. For purposes of satisfying the "had no lawful status on June 15, 2012," guideline alone, if you were admitted for "duration of status" or for a period of time that extended past June 14, 2012, but "aged out" of your dependent nonimmigrant status on or before June 15, 2012 (meaning you turned 21 years old on or before June 15, 2012), you may be considered for deferred action under this process.

I was admitted for "duration of status" but my status in SEVIS is listed as terminated on or before June 15, 2012. May I be considered for deferred action under this process?

YES. For the purposes of satisfying the "had no lawful status on June 15, 2012," guideline alone, if your status as of June 15, 2012, is listed as "terminated" in SEVIS, you may be considered for deferred action under this process.

I am a Canadian citizen who was inspected by CBP but was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?

In general, a Canadian citizen who was admitted as a visitor for business or pleasure and not issued an I-94, Arrival/Departure Record, (also known as a "non-controlled" Canadian nonimmigrant) is lawfully admitted for a period of 6 months. For that reason, unless there is evidence, including verifiable evidence provided by the individual, that he or she was specifically advised that his or her admission would be for a different length of time, the Department of Homeland Security (DHS) will consider, for DACA purposes only, that the alien was lawfully admitted for a period of 6 months. Therefore, if DHS is able to verify from its records that your last non-controlled entry occurred on or before Dec. 14, 2011, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012, and you may be considered for deferred action under this process.

I used my Border Crossing Card (BCC) to obtain admission to the United States and was not issued an I-94 at the time of admission. May I be considered for deferred action under this process?

Because the limitations on entry for a BCC holder vary based on location of admission and travel, DHS will assume that the BCC holder who was not provided an I-94 was admitted for the longest period legally possible—30 days—unless the individual can demonstrate, through verifiable evidence, that he or she was specifically advised that his or her admission would be for a different length of time. Accordingly, if DHS is able to verify from its records that your last admission was using a BCC, you were not issued an I-94 at the time of admission, and it occurred on or before May 14, 2012, DHS will consider your nonimmigrant visitor status to have expired as of June 15, 2012, and you may be considered for deferred action under this process.

Do I accrue unlawful presence if I have a pending initial request for consideration of DACA?

You will continue to accrue unlawful presence while the request for consideration of DACA is pending unless you are under 18 years of age at the time of the request. If you are under 18 years of age at the time you submit your request, you will not accrue unlawful presence while the request is pending, even if you turn 18 while your request is pending with USCIS. If action on your case is deferred, you will not accrue unlawful presence during the period of deferred action. However, having action deferred on your case will not excuse previously accrued unlawful presence.

RENEWAL OF DACA

When should I file my renewal request with U.S. Citizenship and Immigration Services (USCIS)?

USCIS encourages you to submit your request for renewal approximately 120 days (or 4 months) before your current period of deferred action under the Deferred Action for Childhood Arrivals (DACA) process expires. If you have filed approximately 120 days before your deferred action and Employment Authorization Document (EAD) expire and USCIS is unexpectedly delayed in processing your renewal request, USCIS may provide deferred action and employment authorization for a short period of time until your renewal is adjudicated. However, if you file your renewal request more than 150 days prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date.

How will USCIS evaluate my request for renewal of DACA?

You may be considered for renewal of DACA if you met the guidelines for consideration of Initial DACA (see above) AND you:

1. Did not depart the United States on or after Aug. 15, 2012, without advance parole;
2. Have continuously resided in the United States since you submitted your most recent request for DACA that was approved up to the present time; and
3. Have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety.

These guidelines must be met for consideration of DACA renewal. USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case even if the guidelines are met.

Do I accrue unlawful presence if I am seeking renewal and my previous period of DACA expires before I receive a renewal of deferred action under DACA? Similarly, what would happen to my work authorization?

YES, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will accrue unlawful presence for any time between the periods of deferred action unless you are under 18 years of age at the time you submit your renewal request.

Similarly, if your previous period of DACA expires before you receive a renewal of deferred action under DACA, you will not be authorized to work in the United States regardless of your age at time of filing until and unless you receive a new employment authorization document from USCIS.

However, if you have filed your renewal request with USCIS approximately 120 days before your deferred action and EAD expire and USCIS is unexpectedly delayed in processing your renewal request, USCIS may provide deferred action and employment authorization for a short period of time.

Do I need to provide additional documents when I request renewal of deferred action under DACA?

NO, unless you have new documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request. USCIS, however, reserves the authority to request at its discretion additional documents, information, or Statements relating to a DACA renewal request determination.

CAUTION: If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a Federal felony punishable by a fine, or imprisonment up to 5 years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

TRAVEL

May I travel outside of the United States before I submit an initial Deferred Action for Childhood Arrivals (DACA) request or while my initial DACA request remains pending with the Department of Homeland Security (DHS)?

Any unauthorized travel outside of the United States on or after Aug. 15, 2012, will interrupt your continuous residence and you will not be considered for deferred action under this process. Any travel outside of the United States that occurred on or after June 15, 2007, but before Aug. 15, 2012, will be assessed by U.S. Citizenship and Immigration Services (USCIS) to determine whether the travel qualifies as brief, casual, and innocent. (**See Chart #2 on the following page.**)

CAUTION: You should be aware that if you have been ordered deported or removed, and you then leave the United States, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.

If my case is deferred under DACA, will I be able to travel outside of the United States?

Not automatically. If USCIS has decided to defer action in your case and you want to travel outside the United States, you must apply for advance parole by filing a **Form I-131, Application for Travel Document** and paying the applicable fee ($360). USCIS will determine whether your purpose for international travel is justifiable based on the circumstances you describe in your request. Generally, USCIS will only grant advance parole

Travel Dates	Type of Travel	Does It Affect Continuous Residence
On or after June 15, 2007, but before Aug. 15, 2012	Brief, casual, and innocent For an extended time Because of an order of exclusion, deportation, voluntary departure, or removal To participate in criminal activity	No Yes
On or after Aug. 15, 2012, and after you have requested deferred action	Any	In addition, if you have previously been ordered deported and removed and you depart the United States without taking additional steps to address your removal proceedings, your departure will likely result in your being considered deported or removed, with potentially serious future immigration consequences.

if your travel abroad will be in furtherance of:

- Humanitarian purposes, including travel to obtain medical treatment, attending funeral services for a family member, or visiting an ailing relative;
- Educational purposes, such as semester-abroad programs and academic research; or
- Employment purposes such as overseas assignments, interviews, conferences, training, or meetings with clients overseas.

Travel for vacation is not a valid basis for advance parole.

You may not apply for advance parole unless and until USCIS defers action in your case under the consideration of DACA. You cannot apply for advance parole at the same time as you submit your request for consideration of DACA. All advance parole requests will be considered on a case-by-case basis.

If USCIS has deferred action in your case under the DACA process after you have been ordered deported or removed, you may still request advance parole if you meet the guidelines for advance parole described above.

CAUTION: However, for those individuals who have been ordered deported or removed, before you actually leave the United States, you should seek to reopen your case before the Executive Office for Immigration Review (EOIR) and obtain administrative closure or termination of your removal proceeding. Even after you have asked EOIR to reopen your case, you should not leave the United States until after EOIR has granted your request. If you depart after being ordered deported or removed, and your removal proceeding has not been reopened and administratively closed or terminated, your departure may result in your being considered deported or removed, with potentially serious future immigration consequences. If you have any questions about this process, you may contact U.S. Immigration and Customs Enforcement (ICE) through the local ICE Office of the Chief Counsel with jurisdiction over your case.

CAUTION: If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

Do brief departures from the United States interrupt the continuous residence requirement?

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States, your absence will be considered brief, casual, and innocent if it was on or after June 15, 2007, and before Aug. 15, 2012, and:

1. The absence was short and reasonably calculated to accomplish the purpose for the absence;
2. The absence was not because of an order of exclusion, deportation, or removal;
3. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and
4. The purpose of the absence and/or your actions while outside the United States were not contrary to law.

Once USCIS has approved your request for DACA, you may file **Form I-131**, Application for Travel Document, to request advance parole to travel outside of the United States.

CAUTION: If you travel outside the United States on or after Aug. 15, 2012, without first receiving advance parole, your departure automatically terminates your deferred action under DACA.

May I file a request for advance parole concurrently with my DACA package?

Concurrent filing of advance parole is not an option at this time. DHS is, however, reviewing its policy on concurrent filing of advance parole with a DACA request. In addition, DHS is also reviewing eligibility criteria for advance parole. If any changes to this policy are made, USCIS will update this FAQ and inform the public accordingly.

CRIMINAL CONVICTIONS

If I have a conviction for a felony offense, a significant misdemeanor offense, or multiple misdemeanors, can I receive an exercise of prosecutorial discretion under this new process?

NO. If you have been convicted of a felony offense, a significant misdemeanor offense, or three or more other misdemeanor offenses not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, you will not be considered for Deferred Action for Childhood Arrivals (DACA) except where the Department of Homeland Security (DHS) determines there are exceptional circumstances.

What offenses qualify as a felony?

A felony is a Federal, State, or local criminal offense punishable by imprisonment for a term exceeding 1 year.

What offenses constitute a significant misdemeanor?

For the purposes of this process, a significant misdemeanor is a misdemeanor as defined by Federal law (specifically, one for which the maximum term of imprisonment authorized is 1 year or less but greater than 5 days) and that meets the following criteria:

1. Regardless of the sentence imposed, is an offense of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence; or
2. If not an offense listed above, is one for which the individual was sentenced to time in custody of more than 90 days. The sentence must involve time to be served in custody, and therefore does not include a suspended sentence.

The time in custody does not include any time served beyond the sentence for the criminal offense based on a State or local law enforcement agency honoring a detainer issued by U.S. Immigration and Customs Enforcement (ICE). Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking

into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion. DHS retains the discretion to determine that an individual does not warrant deferred action on the basis of a single criminal offense for which the individual was sentenced to time in custody of 90 days or less.

What offenses constitute a non-significant misdemeanor?

For purposes of this process, a non-significant misdemeanor is any misdemeanor as defined by Federal law (specifically, one for which the maximum term of imprisonment authorized is 1 year or less but greater than 5 days) and that meets the following criteria:

1. Is not an offense of domestic violence, sexual abuse or exploitation, burglary, unlawful possession or use of a firearm, drug distribution or trafficking, or driving under the influence; and
2. Is one for which the individual was sentenced to time in custody of 90 days or less. The time in custody does not include any time served beyond the sentence for the criminal offense based on a State or local law enforcement agency honoring a detainer issued by ICE.

Notwithstanding the above, the decision whether to defer action in a particular case is an individualized, discretionary one that is made taking into account the totality of the circumstances. Therefore, the absence of the criminal history outlined above, or its presence, is not necessarily determinative, but is a factor to be considered in the unreviewable exercise of discretion.

If I have a minor traffic offense, such as driving without a license, will it be considered a non-significant misdemeanor that counts towards the "three or more non-significant misdemeanors" making me unable to receive consideration for an exercise of prosecutorial discretion under this new process?

A minor traffic offense will not be considered a misdemeanor for purposes of this process. However, your entire offense history can be considered along with other facts to determine whether, under the totality of the circumstances, you warrant an exercise of prosecutorial discretion.

It is important to emphasize that driving under the influence is a significant misdemeanor regardless of the sentence imposed.

What qualifies as a national security or public safety threat?

If the background check or other information uncovered during the review of your request for deferred action indicates that your presence in the United States threatens public safety or national security, you will not be able to receive consideration for an exercise of prosecutorial discretion except where DHS determines there are exceptional circumstances. Indicators that you pose such a threat include, but are not limited to: gang membership, participation in criminal activities, or participation in activities that threaten the United States.

Will offenses criminalized as felonies or misdemeanors by State immigration laws be considered felonies or misdemeanors for purpose of this process?

NO. Immigration-related offenses characterized as felonies or misdemeanors by State immigration laws will not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action under this process.

Will DHS consider my expunged or juvenile conviction as an offense making me unable to receive an exercise of prosecutorial discretion?

Expunged convictions and juvenile convictions will not automatically disqualify you. Your request will be assessed on a case-by-case basis to determine whether, under the particular circumstances, a favorable exercise of prosecutorial discretion is warranted. If you were a juvenile, but tried and convicted as an adult, you will be treated as an adult for purposes of the DACA process.

Does this Administration remain committed to comprehensive immigration reform?

YES. The Administration has consistently pressed for passage of comprehensive immigration reform, including the DREAM Act, because the President believes these steps are critical to building a 21st century immigration system that meets our Nation's economic and security needs.

Is passage of the DREAM Act still necessary in light of the new process?

YES. The Secretary of Homeland Security's June 15, 2012, memorandum allowing certain people to request consideration for deferred action is one in a series of steps that DHS has taken to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety. Deferred Action for Childhood Arrivals (DACA) is an exercise of prosecutorial discretion and does not provide lawful status or a pathway to citizenship. As the President has Stated, individuals who would qualify for the DREAM Act deserve certainty about their status. Only the Congress, acting through its legislative authority, can confer the certainty that comes with a pathway to permanent lawful status.

Does deferred action provide me with a path to permanent resident status or citizenship?

NO. Deferred action is a form of prosecutorial discretion that does not confer lawful permanent resident status or a path to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.

Can I be considered for deferred action even if I do not meet the guidelines to be considered for DACA?

This process is only for individuals who meet the specific guidelines for DACA. Other individuals may, on a case-by-case basis, request deferred action from U.S. Citizenship and Immigration Services (USCIS) or U.S. Immigration and Customs Enforcement (ICE) in certain circumstances, consistent with longstanding practice.

How will ICE and USCIS handle cases involving individuals who do not satisfy the guidelines of this process but believe they may warrant an exercise of prosecutorial discretion under the June 2011 Prosecutorial Discretion Memoranda?

If USCIS determines that you do not satisfy the guidelines or otherwise determines you do not warrant an exercise of prosecutorial discretion, then it will decline to defer action in your case. If you are currently in removal proceedings, have a final order, or have a voluntary departure order, you may then request ICE consider whether to exercise prosecutorial discretion.

How should I fill out question 9 on Form I-765, Application for Employment Authorization?

When you are filing a Form I-765 as part of a DACA request, question 9 is asking you to list those Social Security numbers that were officially issued to you by the Social Security Administration.

Will there be supervisory review of decisions by USCIS under this process?

YES. USCIS has implemented a successful supervisory review process to ensure a consistent process for considering requests for DACA.

Will USCIS personnel responsible for reviewing requests for DACA receive special training?

YES. USCIS personnel responsible for considering requests for consideration of DACA have received special training.

Must attorneys and accredited representatives who provide pro bono services to deferred action requestors at group assistance events file a Form G-28 with USCIS?

Under 8 C.F.R. §§ 292.3 and 1003.102, practitioners are required to file a Notice of Entry of Appearance as Attorney or Accredited Representative when they engage in practice in immigration matters before DHS, either in person or through the preparation or filing of any brief, application, petition, or other document. Under these rules, a practitioner who consistently violates the requirement to file a Form G-28 may be subject to

disciplinary sanctions; however on Feb. 28, 2011, USCIS issued a Statement indicating that it does not intend to initiate disciplinary proceedings against practitioners (attorneys and accredited representatives) based solely on the failure to submit a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) in relation to pro bono services provided at group assistance events. DHS is in the process of issuing a final rule at which time this matter will be reevaluated.

When must an individual sign a Form I-821D as a preparer?

Anytime someone other than the requestor prepares or helps fill out the Form I-821D, that individual must complete Part 5 of the form.

If I provide my employee with information regarding his or her employment to support a request for consideration of DACA, will that information be used for immigration enforcement purposes against me and/or my company?

You may, as you determine appropriate, provide individuals requesting DACA with documentation which verifies their employment. This information will not be shared with ICE for civil immigration enforcement purposes under section 274A of the Immigration and Nationality Act (relating to unlawful employment) unless there is evidence of egregious violations of criminal statutes or widespread abuses.

Can I request consideration for deferred action under this process if I live in the Commonwealth of the Northern Mariana Islands (CNMI)?

YES, in certain circumstances. The CNMI is part of the United States for immigration purposes and is not excluded from this process. However, because of the specific guidelines for consideration of DACA, individuals who have been residents of the CNMI are in most cases unlikely to qualify for the program. You must, among other things, have come to the United States before your 16th birthday and have resided continuously in the United States since June 15, 2007.

Under the Consolidated Natural Resources Act of 2008, the CNMI became part of the United States for purposes of immigration law only on Nov. 28, 2009. Therefore entry into, or residence in, the CNMI before that date is not entry into, or residence in, the United States for purposes of the DACA process.

USCIS has used parole authority in a variety of situations in the CNMI to address particular humanitarian needs on a case-by-case basis since Nov. 28, 2009. If you live in the CNMI and believe that you meet the guidelines for consideration of deferred action under this process, except that your entry and/or residence to the CNMI took place entirely or in part before Nov. 28, 2009, USCIS is willing to consider your situation on a case-by-case basis for a grant of parole. If this situation applies to you, you should make an appointment through INFOPASS with the USCIS ASC in Saipan to discuss your case with an immigration officer.

Someone told me if I pay them a fee, they can expedite my DACA request. Is this true?

NO. There is no expedited processing for deferred action. Dishonest practitioners may promise to provide you with faster services if you pay them a fee. These people are trying to scam you and take your money. Visit our **Avoid Scams** page to learn how you can protect yourself from immigration scams.

Make sure you seek information about requests for consideration of DACA from official government sources such as USCIS or the DHS. If you are seeking legal advice, visit our Find **Legal Services** page to learn how to choose a licensed attorney or accredited representative.

Am I required to register with the Selective Service?

Most male persons residing in the United States, who are ages 18 through 25, are required to register with Selective Service. Please see link for more information. [**Selective Service, www.sss.gov**].

Consideration of Deferred Action for Childhood Arrivals

Deferred action for childhood arrivals (DACA) allows certain individuals, who meet specific guidelines, to request consideration of deferred action from USCIS. Individuals who receive deferred action will not be placed into removal proceedings or removed from the United States for a specified period of time unless terminated. If you receive deferred action, you may be eligible for employment authorization. You may request deferred action for childhood arrivals if you meet the following guidelines:

Can I be considered?

Review Guidelines

You came to the United States before reaching your 16th birthday

You have continuously resided in the United States since June 15, 2007, up to the present time

You were under the age of 31 as of June 15, 2012

You never had a lawful immigration status on or before June 15, 2012, or any lawful immigration status or parole that you obtained had expired as of June 15, 2012

You are currently in school, have graduated or obtained your certificate of completion from high school, have obtained your General Educational Development certification, or you are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States

You have not been convicted of a felony, significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety

You were physically present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS

How do I file?

Collect documents as evidence you meet the guidelines

Complete USCIS Form I-821D, I-765 and I-765 Worksheet

Mail USCIS forms and fees (total $465)

Visit your local USCIS Application Support Center for a scheduled biometric services appointment

Check the status of your request online

Renew your DACA

Find your DACA expiration date

On your Form I-797, Notice of Action

OR

Form I-766 - The date your Employment Authorization Document (EAD) expires

SUBMIT renewal request

4 months or 120 days before your current period of DACA expires.

Ensure you meet the following

You met the initial DACA requirements

You did not depart the United States on or after August 15, 2012, without advance parole

You have continuously resided in the United States since you submitted your most recent DACA request that was approved

You have not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and do not otherwise pose a threat to national security or public safety

Complete and mail forms to USCIS

1 Form I-821D, Consideration of Deferred Action for Childhood Arrivals

2 Form I-765, Application for Employment Authorization

3 Form I-765W, Worksheet

REMEMBER: Read instructions carefully • Sign the forms • Pay $465 fee

U.S. Citizenship and Immigration Services

If you have questions about your request, please call USCIS Customer Service at 1-800-375-5283 or 1-800-767-1833 (TDD).
www.uscis.gov/childhoodarrivals

U.S. Citizenship and Immigration Services

Learn how to protect yourself from immigration scams at
www.uscis.gov/avoidscams

THE WRONG HELP CAN HURT

BEWARE OF IMMIGRATION SCAMS

DOWNLOAD
free forms and instructions

LEARN
about filing fees

VERIFY
only BIA-accredited representatives or eligible attorneys provide you legal services

REPORT
scams to the Federal Trade Commission (FTC) or your state attorney general
www.ftc.gov/complaint
1-877-FTC-HELP

About Us

USCIS is your **official** source of information about immigration benefits and services. Contact us for more information on USCIS and its programs.

Contact Us

www.uscis.gov
1-800-375-5283

DACA RESOURCES

DEPARTMENT OF HOMELAND SECURITY

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

DACA resource page

www.uscis.gov/childhoodarrivals
www.uscis.gov/acciondiferida

These English and Spanish Web pages contain important DACA information.

Avoid Immigration Scams resource center

www.uscis.gov/avoidscams
www.uscis.gov/eviteestafas

These English and Spanish Web pages contain information related to immigration scams, including resources for applicants, community groups, and legal service providers.

"How Do I" guides

www.uscis.gov/howdoi

This online repository for all USCIS "How Do I" guides includes "How Do I Request Consideration of Deferred Action for Childhood Arrivals (DACA)?"

Public Engagement Division Outreach page

www.uscis.gov/outreach

This page lists upcoming national engagements, including multilingual engagements, and local outreach events.

Multilingual resource center

www.uscis.gov/multilingual

This online resource has links to documents in 22 languages, including multilingual DACA resources.

Online customer service tools

www.uscis.gov/tools

USCIS offers customers a variety of online customer service tools, including the ability to change address, check processing times and case status information, and submit inquiries.

Systematic Alien Verification for Entitlements (SAVE)

www.uscis.gov/save

The SAVE program is an intergovernmental information service initiative which verifies the immigration status of benefit applicants.

E-Verify

www.uscis.gov/e-verify

E-Verify is an electronic system that enables employers to verify employment eligibility. The E-Verify program has a variety of resources for employees on worker rights.

OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES (CRCL)

Overview of CRCL resources

www.dhs.gov/topic/civil-rights-and-civil-liberties

The mission of CRCL is to advance and safeguard the civil rights and civil liberties of individuals and communities with respect to the Department's immigration-related policies and activities.

OFFICE OF THE CIS OMBUDSMAN

Overview of Office of the CIS Ombudsman resources

www.dhs.gov/topic/cis-ombudsman

The Office of the CIS Ombudsman provides individual immigration case assistance and makes recommendations to improve the administration of immigration benefits.

DEPARTMENT OF EDUCATION

DEPARTMENT OF EDUCATION

Free Application for Federal Student Aid (FAFSA)

www.studentaid.ed.gov/fafsa

This Web page provides an overview of the FAFSA requirements and process.

Resources for DACA and immigrant students

www2.ed.gov/about/overview/focus/immigration-resources.html

This resource page includes Q&As on Federal student aid and education records for DACA students and a financial aid guide.

Migrant Education Program

www2.ed.gov/programs/mep/index.html

The Migrant Education Program supports the development and funding of education and support services for migratory children.

DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)

List of Board of Immigration Appeals (BIA) recognized organizations and accredited representatives

www.justice.gov/eoir/ra/raroster.htm

BIA accredited representatives working for BIA-recognized organizations are non-attorneys who are authorized to provide immigration legal services.

List of low cost and free immigration legal service providers

www.justice.gov/eoir/probono/states.htm

EOIR provides a list of free and low-cost immigration attorneys by State as a resource for applicants and petitioners.

ACCESS TO JUSTICE

Overview of Access to Justice resources

www.justice.gov/atj

Access to Justice works with Federal agencies, State, and local governments and State Access to Justice commissions to increase access to counsel and legal assistance and to improve the justice delivery systems that serve people who are unable to afford lawyers.

DACA resource guide

www.justice.gov/atj/daca-resourceguide-atj-feb-27-3013.pdf

This resource guide provides information on the DACA process and links to DACA-related resources.

OFFICE OF SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES

DACA flyer

www.justice.gov/crt/about/osc/pdf/publications/DACA_English2.pdf

The Office of Special Counsel enforces the anti-discrimination provisions of the Immigration and Nationality Act. This flyer provides DACA recipients with information about their right to work in the United States

DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

We Can Help website

www.dol.gov/wecanhelp

This Web site provides useful information for workers to understand their rights in the workplace and how to file a complaint, regardless of their immigration status.

YouthRules! Web site

www.youthrules.dol.gov

This Web site provides critical information on the jobs and hours a minor is allowed to work.

EXHIBIT U

U.S. Citizenship and Immigration Services

Archived Content

This page contains information that is no longer current but remains on our site for reference purposes.

Don't Let Your Work Permit Expire; Follow These DACA Renewal Tips

Some people wait too long to request DACA renewal or do not correctly submit all the required forms and fees. As a result, their Employment Authorization Documents may expire before USCIS can finish processing their requests for DACA renewal.

You can lessen the chance that this may happen if you:

- **File on time.** Submit your renewal request between 150 days and 120 days before the expiration date listed on your current Form I-797 DACA approval notice and Employment Authorization Document.
- **Correctly submit all required forms and fees.** USCIS will reject your renewal request unless you properly submit:
  - Form I-821D, Consideration of Deferred Action for Childhood Arrivals;
  - Form I-765, Application for Employment Authorization;
  - Form I-765 Worksheet; and
  - Required fees of $465
- **Avoid processing delays.** Be sure to submit:
  - Any new documents and information related to removal proceedings or criminal history that you have not already submitted to USCIS in a previously approved DACA request,
  - Proof of advance parole if you have traveled outside the United States since you filed your last DACA request that was approved; and
  - Proof of any legal name change.
- **Respond to Requests for Evidence.** USCIS may deny your renewal request if you do not respond to a Request for Evidence in a timely manner.

For complete instructions, go to the Consideration of Deferred Action for Childhood Arrivals (DACA) page.

Since March 27, 2015, USCIS has been mailing renewal reminder notices to DACA recipients 180 days before the expiration date of their current period of deferred action. Previously, these reminder notices were mailed 100 days in advance. The earlier notices are intended to ensure that DACA recipients are reminded before the start of the recommended renewal period and have sufficient time to prepare their renewal requests.

USCIS' current goal is to process DACA renewal requests within 120 days. You may submit an inquiry about the status of your renewal request after it has been pending more than 105 days. To submit an

inquiry online, please visit egov.uscis.gov/e-request, or call the National Customer Service Center at 1-800-375-5283 (TDD for the hearing impaired: 1-800-767-1833)

Last Reviewed/Updated: 06/05/2015

EXHIBIT V

Consideration of Deferred Action for Childhood Arrivals

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-821D
OMB No. 1615-0124
Expires 01/31/2019

For USCIS Use Only	A- Case ID: ☐ Requestor interviewed on _____	Receipt	Action Block
Returned: ___/___/___ Resubmitted: ___/___/___	Relocated: Received: ___/___/___ Sent: ___/___/___	Remarks	
To Be Completed by an Attorney or Accredited Representative, if any.	☐ Select this box if Form G-28 is attached to represent the requestor.	Attorney State Bar Number *(if any)*:	

► **START HERE - Type or print in black ink. Read Form I-821D Instructions for information on how to complete this form.**

Part 1. Information About You *(For Initial and Renewal Requests)*

I am not in immigration detention ***and*** I have included Form I-765, Application for Employment Authorization, and Form I-765WS, Form I-765 Worksheet; and

I am requesting:

1. ☐ **Initial Request** - Consideration of Deferred Action for Childhood Arrivals

OR

2. ☐ **Renewal Request** - Consideration of Deferred Action for Childhood Arrivals

AND

For this Renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on

(mm/dd/yyyy) ►

Full Legal Name

3.a. Family Name *(Last Name)*

3.b. Given Name *(First Name)*

3.c. Middle Name

U.S. Mailing Address (Enter the same address on Form I-765)

4.a. In Care Of Name *(if applicable)*

4.b. Street Number and Name

4.c. Apt. ☐ Ste. ☐ Flr. ☐

4.d. City or Town

4.e. State **4.f.** ZIP Code

Removal Proceedings Information

5. Are you **NOW** or have you **EVER** been in removal proceedings, or do you have a removal order issued in any other context *(for example, at the border or within the United States by an immigration agent)*?

☐ Yes ☐ No

NOTE: The term "removal proceedings" includes exclusion or deportation proceedings initiated before April 1, 1997; an Immigration and Nationality Act (INA) section 240 removal proceeding; expedited removal; reinstatement of a final order of exclusion, deportation, or removal; an INA section 217 removal after admission under the Visa Waiver Program; or removal as a criminal alien under INA section 238.

If you answered "Yes" to **Item Number 5.**, you must select a box below indicating your current status or outcome of your removal proceedings.

Status or outcome:

5.a. ☐ Currently in Proceedings *(Active)*

5.b. ☐ Currently in Proceedings *(Administratively Closed)*

5.c. ☐ Terminated

5.d. ☐ Subject to a Final Order

5.e. ☐ Other. Explain in **Part 8. Additional Information**.

5.f. Most Recent Date of Proceedings

(mm/dd/yyyy) ►

5.g. Location of Proceedings

Part 1. Information About You *(For Initial and Renewal Requests) (continued)*

Other Information

6. Alien Registration Number (A-Number) *(if any)*
▶ **A-**

7. U.S. Social Security Number *(if any)*
▶

8. Date of Birth *(mm/dd/yyyy)* ▶

9. Gender ☐ Male ☐ Female

10.a. City/Town/Village of Birth

10.b. Country of Birth

11. Current Country of Residence

12. Country of Citizenship or Nationality

13. Marital Status
☐ Married ☐ Widowed ☐ Single ☐ Divorced

Other Names Used (If Applicable)

If you need additional space, use **Part 8. Additional Information**.

14.a. Family Name *(Last Name)*

14.b. Given Name *(First Name)*

14.c. Middle Name

Processing Information

15. Ethnicity *(Select **only one** box)*
☐ Hispanic or Latino
☐ Not Hispanic or Latino

16. Race *(Select **all applicable** boxes)*
☐ White
☐ Asian
☐ Black or African American
☐ American Indian or Alaska Native
☐ Native Hawaiian or Other Pacific Islander

17. Height Feet ☐ Inches ☐

18. Weight Pounds ☐☐☐

19. Eye Color *(Select **only one** box)*
☐ Black ☐ Blue ☐ Brown
☐ Gray ☐ Green ☐ Hazel
☐ Maroon ☐ Pink ☐ Unknown/Other

20. Hair Color *(Select **only one** box)*
☐ Bald (No hair) ☐ Black ☐ Blond
☐ Brown ☐ Gray ☐ Red
☐ Sandy ☐ White ☐ Unknown/ Other

Part 2. Residence and Travel Information *(For Initial and Renewal Requests)*

1. I have been continuously residing in the U.S. since at least June 15, 2007, up to the present time. ☐ Yes ☐ No

NOTE: If you departed the United States for some period of time before your 16th birthday and returned to the United States on or after your 16th birthday to begin your current period of continuous residence, and if this is an initial request, submit evidence that you established residence in the United States prior to 16 years of age as set forth in the instructions to this form.

For Initial Requests: List your current address and, to the best of your knowledge, the addresses where you resided since the date of your initial entry into the United States to present.

For Renewal Requests: List only the addresses where you resided since you submitted your last Form I-821D that was approved.

If you require additional space, use **Part 8. Additional Information.**

Part 2. Residence and Travel Information *(For Initial and Renewal Requests) (continued)*

Present Address

2.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ To ▶ Present

2.b. Street Number and Name

2.c. Apt. ☐ Ste. ☐ Flr. ☐

2.d. City or Town

2.e. State **2.f.** ZIP Code

Address 1

3.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ To ▶

3.b. Street Number and Name

3.c. Apt. ☐ Ste. ☐ Flr. ☐

3.d. City or Town

3.e. State **3.f.** ZIP Code

Address 2

4.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ To ▶

4.b. Street Number and Name

4.c. Apt. ☐ Ste. ☐ Flr. ☐

4.d. City or Town

4.e. State **4.f.** ZIP Code

Address 3

5.a. Dates at this residence *(mm/dd/yyyy)*
From ▶ To ▶

5.b. Street Number and Name

5.c. Apt. ☐ Ste. ☐ Flr. ☐

5.d. City or Town

5.e. State **5.f.** ZIP Code

Travel Information

For Initial Requests: List all of your absences from the United States since June 15, 2007.

For Renewal Requests: List only your absences from the United States since you submitted your last Form I-821D that was approved.

If you require additional space, use **Part 8. Additional Information.**

Departure 1

6.a. Departure Date *(mm/dd/yyyy)* ▶

6.b. Return Date *(mm/dd/yyyy)* ▶

6.c. Reason for Departure

Departure 2

7.a. Departure Date *(mm/dd/yyyy)* ▶

7.b. Return Date *(mm/dd/yyyy)* ▶

7.c. Reason for Departure

8. Have you left the United States without advance parole on or after August 15, 2012? ☐ Yes ☐ No

9.a. What country issued your last passport?

9.b. Passport Number

9.c. Passport Expiration Date *(mm/dd/yyyy)* ▶

10. Border Crossing Card Number (*if any*)

Part 3. For Initial Requests Only

1. I initially arrived and established residence in the U.S. prior to 16 years of age. ☐ Yes ☐ No

2. Date of ***Initial*** Entry into the United States *(on or about)* *(mm/dd/yyyy)* ▶

3. Place of ***Initial*** Entry into the United States

Part 3. For Initial Requests Only *(continued)*

4. Immigration Status on June 15, 2012 *(e.g., No Lawful Status, Status Expired, Parole Expired)*

5.a. Were you **EVER** issued an Arrival-Departure Record (Form I-94, I-94W, or I-95)? ☐ Yes ☐ No

5.b. If you answered "Yes" to **Item Number 5.a.**, provide your Form I-94, I-94W, or I-95 number *(if available)*. ▶

5.c. If you answered "Yes" to **Item Number 5.a.**, provide the date your authorized stay expired, as shown on Form I-94, I-94W, or I-95 *(if available)*. *(mm/dd/yyyy)* ▶

Education Information

6. Indicate how you meet the education guideline (*e.g., Graduated from high school, Received a general educational development (GED) certificate or equivalent state-authorized exam, Currently in school*)

7. Name, City, and State of School Currently Attending or Where Education Received

8. Date of Graduation (*e.g., Receipt of a Certificate of Completion, GED certificate, other equivalent state-authorized exam*) or, if currently in school, date of last attendance. *(mm/dd/yyyy)* ▶

Military Service Information

9. Were you a member of the U.S. Armed Forces or U.S. Coast Guard? ☐ Yes ☐ No

If you answered "Yes" to **Item Number 9.**, you must provide responses to **Item Numbers 9.a. - 9.d.**

9.a. Military Branch

9.b. Service Start Date *(mm/dd/yyyy)* ▶

9.c. Discharge Date *(mm/dd/yyyy)* ▶

9.d. Type of Discharge

Part 4. Criminal, National Security, and Public Safety Information *(For Initial and Renewal Requests)*

If any of the following questions apply to you, use **Part 8. Additional Information** to describe the circumstances and include a full explanation.

1. Have you **EVER** been arrested for, charged with, or convicted of a felony or misdemeanor, *including incidents handled in juvenile court*, in the United States? *Do not include minor traffic violations unless they were alcohol- or drug-related.* ☐ Yes ☐ No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest, unless disclosure is prohibited under state law.

2. Have you **EVER** been arrested for, charged with, or convicted of a crime in any country other than the United States? ☐ Yes ☐ No

If you answered "Yes," you must include a certified court disposition, arrest record, charging document, sentencing record, etc., for each arrest.

3. Have you **EVER** engaged in, do you continue to engage in, or plan to engage in terrorist activities? ☐ Yes ☐ No

4. Are you **NOW** or have you **EVER** been a member of a gang? ☐ Yes ☐ No

5. Have you **EVER** engaged in, ordered, incited, assisted, or otherwise participated in any of the following:

5.a. Acts involving torture, genocide, or human trafficking? ☐ Yes ☐ No

5.b. Killing any person? ☐ Yes ☐ No

5.c. Severely injuring any person? ☐ Yes ☐ No

5.d. Any kind of sexual contact or relations with any person who was being forced or threatened? ☐ Yes ☐ No

6. Have you EVER recruited, enlisted, conscripted, or used any person to serve in or help an armed force or group while such person was under age 15? ☐ Yes ☐ No

7. Have you EVER used any person under age 15 to take part in hostilities, or to help or provide services to people in combat? ☐ Yes ☐ No

Part 5. Statement, Certification, Signature, and Contact Information of the Requestor *(For Initial and Renewal Requests)*

NOTE: Select the box for either **Item Number 1.a.** or **1.b.**

1.a. ☐ I can read and understand English, and have read and understand each and every question and instruction on this form, as well as my answer to each question.

1.b. ☐ The interpreter named in **Part 6.** has read to me each and every question and instruction on this form, as well as my answer to each question, in _____, a language in which I am fluent. I understand each and every question and instruction on this form as translated to me by my interpreter, and have provided true and correct responses in the language indicated above.

Requestor's Certification

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct and that copies of documents submitted are exact photocopies of unaltered original documents. I understand that I may be required to submit original documents to U.S. Citizenship and Immigration Services (USCIS) at a later date. I also understand that knowingly and willfully providing materially false information on this form is a federal felony punishable by a fine, imprisonment up to 5 years, or both, under 18 U.S.C. section 1001. Furthermore, I authorize the release of any information from my records that USCIS may need to reach a determination on my deferred action request.

2.a. Requestor's Signature

➡ _____

2.b. Date of Signature *(mm/dd/yyyy)* ▶ _____

Requestor's Contact Information

3. Requestor's Daytime Telephone Number

_____

4. Requestor's Mobile Telephone Number

_____

5. Requestor's Email Address

_____

Part 6. Contact Information, Certification, and Signature of the Interpreter *(For Initial and Renewal Requests)*

Interpreter's Full Name

Provide the following information concerning the interpreter:

1.a. Interpreter's Family Name *(Last Name)*

_____

1.b. Interpreter's Given Name *(First Name)*

_____

2. Interpreter's Business or Organization Name *(if any)*

_____

Interpreter's Mailing Address

3.a. Street Number and Name _____

3.b. Apt. ☐ Ste. ☐ Flr. ☐ _____

3.c. City or Town _____

3.d. State _____ **3.e.** ZIP Code _____

3.f. Province _____

3.g. Postal Code _____

3.h. Country

_____

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

_____

5. Interpreter's Email Address

_____

Part 6. Contact Information, Certification, and Signature of the Interpreter *(For Initial and Renewal Requests) (continued)*

Interpreter's Certification

I certify that:

I am fluent in English and [ ] which is the same language provided in **Part 5.**, **Item Number 1.b**.;

I have read to this requestor each and every question and instruction on this form, as well as the answer to each question, in the language provided in **Part 5.**, **Item Number 1.b.**; and

The requestor has informed me that he or she understands each and every instruction and question on the form, as well as the answer to each question.

6.a. Interpreter's Signature

6.b. Date of Signature *(mm/dd/yyyy)* ▶

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other than the Requestor *(For Initial and Renewal Requests)*

Preparer's Full Name

Provide the following information concerning the preparer:

1.a. Preparer's Family Name *(Last Name)*

1.b. Preparer's Given Name *(First Name)*

2. Preparer's Business or Organization Name

Preparer's Mailing Address

3.a. Street Number and Name

3.b. Apt. ☐ Ste. ☐ Flr. ☐

3.c. City or Town

3.d. State **3.e.** ZIP Code

3.f. Province

3.g. Postal Code

3.h. Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Fax Number

6. Preparer's Email Address

Preparer's Declaration

I declare that I prepared this Form I-821D at the requestor's behest, and it is based on all the information of which I have knowledge.

7.a. Preparer's Signature

7.b. Date of Signature *(mm/dd/yyyy)* ▶

NOTE: If you need extra space to complete any item within this request, see the next page for **Part 8. Additional Information.**

Part 8. Additional Information *(For Initial and Renewal Requests)*

If you need extra space to complete any item within this request, use the space below. You may also make copies of this page to complete and file with this request. Include your name and A-Number (*if any*) at the top of each sheet of paper; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

Full Legal Name

1.a. Family Name *(Last Name)*

1.b. Given Name *(First Name)*

1.c. Middle Name

2. A-Number *(if any)*

▶ **A-**

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

Instructions for Consideration of Deferred Action for Childhood Arrivals

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-821D
OMB No. 1615-0124
Expires 01/31/2019

What is the Purpose of this Form?

An individual may file Form I-821D, Consideration of Deferred Action for Childhood Arrivals, to request that U.S. Citizenship and Immigration Services (USCIS) exercise prosecutorial discretion in his or her favor under the Deferred Action for Childhood Arrivals (DACA) process, including consideration for Renewal of deferred action. USCIS considers deferring action (including Renewal of deferred action) on a case-by-case basis, based on the guidelines in the **What is a Childhood Arrival for Purposes of This Form** section of these instructions. Deferred action is a discretionary determination to defer removal of an individual as an act of prosecutorial discretion. Individuals who receive deferred action will not be placed into removal proceedings or removed from the United States for a specified period of time, unless the Department of Homeland Security (DHS) chooses to terminate the deferral. See the Secretary of Homeland Security's memorandum issued on June 15, 2012 (Secretary's memorandum), upon which the DACA process is based, at **www.uscis.gov/childhoodarrivals**.

When Should I Use Form I-821D?

Use this form to request consideration of Initial DACA or Renewal of DACA. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. All individuals filing Form I-821D, whether for an Initial or a Renewal of deferred action, must also file Form I-765, Application for Employment Authorization, and Form I-765 Worksheet, Form I-765WS. See the **Evidence for Initial Requests Only** and **Evidence for Renewal Requests Only** sections of these instructions for more information.

CAUTION: If you file this request more than 150 days prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date. **USCIS encourages renewal requestors to file as early in the 150-day period as possible - ideally, at least 120 days prior to the DACA expiration date.**

NOTE: If you have received DACA and you are filing within one year after your last period of deferred action expired, please follow the instructions provided below for renewal requestors.

NOTE: If U.S. Immigration and Customs Enforcement (ICE) initially deferred action in your case and you are seeking a Renewal, you must file Form I-821D and select and complete **Item Number 2.** in **Part 1.** of Form I-821D. You must also respond to ALL subsequent questions on the form. You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action.

If you are currently in immigration detention, you may not request consideration of DACA or Renewal of DACA from USCIS. If you think you meet the guidelines of this process, you should identify yourself to your deportation officer.

What is a Childhood Arrival for Purposes of This Form?

An individual may be considered for Initial DACA if he or she:

1. Was under 31 years of age as of June 15, 2012;
2. Came to the United States before reaching his or her 16th birthday;
3. Has continuously resided in the United States since June 15, 2007, up to the present time;

4. Was present in the United States on June 15, 2012 and at the time of making his or her request for consideration of deferred action with USCIS;

5. Had no lawful status on June 15, 2012;

   NOTE: No lawful status on June 15, 2012 means that:

   A. You never had a lawful immigration status on or before June 15, 2012; or

   B. Any lawful immigration status or parole that you obtained prior to June 15, 2012 had expired as of June 15, 2012.

6. Is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general educational development (GED) certificate, or is an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard; and

7. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

An individual may be considered for **Renewal** of DACA if he or she met the guidelines for consideration of Initial DACA (see above) AND he or she:

1. Did not depart the United States on or after August 15, 2012 without advance parole;

2. Has continuously resided in the United States since he or she submitted his or her most recent request for DACA that was approved up to the present time; and

3. Has not been convicted of a felony, a significant misdemeanor, or three or more misdemeanors, and does not otherwise pose a threat to national security or public safety.

Who May File Form I-821D?

1. **Childhood Arrivals Who Have Never Been in Removal Proceedings.** If you have never been in removal proceedings, submit this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary's memorandum to be considered for deferred action.

2. **Childhood Arrivals Whose Removal Proceedings Were Terminated.** If you were in removal proceedings which have been terminated by the immigration judge prior to this request, you may use this form to request that USCIS consider deferring action in your case. You must be 15 years of age or older at the time of filing and meet the guidelines described in the Secretary's memorandum to be considered for deferred action.

3. **Childhood Arrivals In Removal Proceedings, With a Final Removal Order, or With Voluntary Departure.** If you are in removal proceedings, have a final order of removal, exclusion, or deportation issued in any other context, have a voluntary departure order, or if your proceedings have been administratively closed, you may use this form to request that USCIS consider deferring action in your case, even if you are under 15 years of age at the time of filing. For the purpose of this form, "removal proceedings" includes exclusion or deportation proceedings initiated before April 1, 1997, an Immigration and Nationality Act (INA) section 240 removal proceeding, expedited removal, reinstatement of a final order of exclusion, deportation, or removal, an INA section 217 removal after admission under the Visa Waiver Program, removal as a criminal alien under INA section 238, or any other kind of removal proceeding under U.S. immigration law in any other context (e.g., at the border or within the United States by an immigration agent).

4. **Childhood Arrivals Whose Case Was Deferred and Who Are Seeking Renewal of DACA.** If USCIS or ICE deferred action in your case under DACA, you may use this form to request consideration of Renewal of DACA from USCIS.

General Instructions

USCIS provides forms free of charge through the USCIS website. In order to view, print, or fill out our forms, you should use the latest version of Adobe Reader, which can be downloaded for free at **http://get.adobe.com/reader/**.

Each request must be properly signed and accompanied by Form I-765 with fees and Form I-765WS. If you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment. A photocopy of a signed request or typewritten name in place of a signature is not acceptable. This request is not considered properly filed until accepted by USCIS.

Evidence. You must submit all required evidence and supporting documentation with your request at the time of filing. See the **Evidence for Initial Requests Only** and **Evidence for Renewal Requests Only** sections of these instructions for more details.

You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

NOTE: If you are submitting a **Renewal Request** for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

Biometric Services Appointment. Individuals requesting DACA must provide fingerprints, photographs, and signatures (biometrics). You may receive a notice scheduling you to appear at an Application Support Center (ASC) for biometrics collection. Failure to comply with the notice may result in the denial of your deferred action request. USCIS may, in its discretion, waive the collection of certain biometrics.

Copies. You may submit a legible photocopy of any document, unless you are specifically required to file an original document with this request. Original documents submitted when not required may remain a part of the record, and USCIS will not automatically return them to you.

Translations. Any document you submit to USCIS that contains a foreign language must have a full English translation. The translator must certify that the English translation is complete and accurate, and that he or she is competent to translate from the foreign language into English.

An example of a certification would read, "I [typed name], certify that I am fluent (conversant) in the English and [insert other language] languages, and that the above/attached document is an accurate translation of the document attached entitled [name of document]." The certification should also include the date, the translator's signature and typed name, and the translator's address.

Advance Parole. If you wish to file a request for Advance Parole, please follow the instructions for filing Form I-131, Application for Travel Document. You can get the most current information on how to apply for advance parole by visiting the USCIS website at **www.uscis.gov/i-131** or calling the National Customer Service Line at **1-800-375-5283** or **1-800-767-1833** (TTY for the hearing impaired). Customer service officers are available Monday - Friday from 8 a.m. - 6 p.m. in each U.S. time zone.

Travel Warning. On or after August 15, 2012, if you travel outside of the United States before USCIS has determined whether to defer action in your case, you will not be considered for deferred action. Even after USCIS has deferred action in your case under DACA, you should not travel outside the United States unless you have been issued an Advance Parole Document by USCIS. Deferred action will terminate automatically if you travel outside the United States without obtaining an Advance Parole Document from USCIS. In addition, leaving the United States, even with an Advance Parole Document, may impact your ability to return to the United States.

How To Fill Out Form I-821D

1. This form consists of eight parts. Requestors for Initial DACA and those requestors seeking Renewal of DACA should fill out most parts. However, only requestors for Initial DACA should complete **Part 3.** See below for greater detail.

Part 1. Information About You. All requestors must complete this part.

Part 2. Residence and Travel Information. All requestors must complete this part. Please be aware that Initial requestors must provide more extensive information than Renewal requestors.

Part 3. For Initial Requests Only. Renewal requestors should skip this part.

Part 4. Criminal, National Security, and Public Safety Information. All requestors must complete this part.

Part 5. Statement, Certification, Signature, and Contact Information of the Requestor. All requestors must complete this part.

Part 6. Contact Information, Certification, and Signature of the Interpreter. Any requestor using an interpreter must complete this part.

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other than the Requestor. If you had someone else prepare your request, he or she must complete this part.

Part 8. Additional Information. Any requestor may complete this part if additional space is needed.

2. Further Information on filling out Form I-821D:

A. Type or print legibly in black ink.

B. If you need extra space to complete any item within this request, use **Part 8. Additional Information** and make additional copies of this sheet as needed. Type or print your name and Alien Registration Number (A-Number) (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

C. Answer all questions fully and accurately. If an item is not applicable or the answer is "none," type or print "N/ A," unless otherwise directed.

D. All dates must be entered as mm/dd/yyyy. You may provide approximate dates if you do not know the exact date. Do not leave a date response blank.

E. Processing Information. You must provide the biometrics information requested in **Part 1.**, **Item Numbers 15. - 20.** Providing this information as part of your request may reduce the time you spend at your USCIS ASC appointment.

F. Part 5. Statement, Certification, Signature, and Contact Information of the Requestor. Select the box that indicates whether someone interpreted this form for you. If applicable, the attorney, accredited representative, or other individual who helped prepare this form for you must complete **Part 7.** and sign and date the form. Every request must contain the requestor's original signature. A photocopy of a signed request or a typewritten name in place of a signature is **not** acceptable. Sign and date the form and provide your daytime telephone number, mobile telephone number, and email address. If you are under 14 years of age, your parent or legal guardian may sign the request on your behalf. A designated representative may sign if the requestor is unable to sign due to a physical or developmental disability or mental impairment.

G. Part 6. Contact Information, Certification, and Signature of the Interpreter. If you used an interpreter to read the instructions and complete the questions on this form, the interpreter must fill out **Part 6.** The interpreter must provide his or her full name, the name of his or her business or organization, an address, a daytime telephone number, and an email address. He or she must also sign and date the form.

H. Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, If Other Than the Requestor. If the person who completed this request, is someone other than the person named in **Part 1.**, he or she must complete this section of the request, provide his or her name, the address of his or her business or organization (if any), and his or her contact information. If the person completing this request is an attorney or accredited representative, he or she must submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, along with this request. Further, the attorney or accredited representative, and anyone who assisted in preparing your request, must sign and date the request. This section of the request **MUST** contain the original signature of the attorney or accredited representative, and anyone who assisted in preparing your request. A typewritten name in place of a signature is not acceptable.

Evidence for Initial Requests Only

NOTE: If you are submitting an **Initial Request** for consideration of DACA to USCIS, you will need to submit documents showing how you believe you have satisfied each DACA guideline.

1. What documents should you submit with your Form I-821D?

A. You do not need to submit original documents unless USCIS requests them.

B. Evidence and supporting documents that you file with your Form I-821D should show that you are at least 15 years of age at the time of filing, if required (see the **Who May File Form I-821D** section of these instructions for more information), and that you meet all of the following:

(1) Were born after June 15, 1981 (i.e., You were not age 31 or older on June 15, 2012);

(2) Arrived in the United States before 16 years of age;

(3) Have continuously resided in the United States since June 15, 2007, up to the present time;

(4) Were present in the United States on June 15, 2012, and at the time of making your request for consideration of deferred action with USCIS;

(5) Had no lawful status on June 15, 2012; and

(6) Are currently in school, graduated or received a certificate of completion from high school, obtained a GED certificate or other equivalent state-authorized exam in the United States, or that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard.

2. What documents do you need to provide to prove identity?

Submit copies of any of the following:

A. Passport;

B. Birth certificate accompanied by photo identification;

C. Any national identity document from your country of origin bearing your photo and/or fingerprint;

D. Any U.S. government immigration or other document bearing your name and photograph (e.g., EADs, visas, driver's licenses, non-driver cards);

E. Any school-issued form of identification with photo;

F. Military identification document with photo;

G. State-issued photo ID showing date of birth; or

H. Any other document with photo that you believe is relevant.

NOTE: Expired documents are acceptable.

3. What documents may show that you came to the United States before your 16th birthday?

Submit copies of any of the following documents:

A. Passport with an admission stamp indicating when you entered the United States;

B. Form I-94, I-94W, or I-95 Arrival-Departure Record;

C. Any Immigration and Naturalization Service (INS) or DHS document stating your date of entry (e.g., Form I-862, Notice to Appear);

D. Travel records, such as transportation tickets showing your dates of travel to the United States;

E. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

F. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

G. Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding); or

H. Any other document that you believe is relevant.

4. If you left the United States for some period of time before your 16th birthday and returned on or after your 16th birthday to begin your current period of continuous residence, what documents may show that you established residence before your 16th birthday?

Submit copies of any of the following documents:

A. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);

C. Documents evidencing that you were physically present in the United States for multiple years prior to your 16th birthday; or

D. Any other relevant document.

5. What documents may show that you continuously resided in the United States since June 15, 2007, up to the present date?

Submit copies of any relevant documents such as:

A. Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service. You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);

NOTE: In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

C. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

D. Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);

E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

F. Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding);

G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or

H. Any other relevant document.

6. Do brief departures interrupt continuous residence?

A brief, casual, and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent, if it was on or after June 15, 2007, and before August 15, 2012, and:

A. The absence was short and reasonably calculated to accomplish the purpose for the absence;

B. The absence was not because of an order of exclusion, deportation, or removal;

C. The absence was not because of an order of voluntary departure or an administrative grant of voluntary departure before you were placed in exclusion, deportation, or removal proceedings; and

D. The purpose of the absence and/or your actions while outside of the United States were not contrary to law.

In Part 3. Arrival/Residence Information, list all your absences from the United States since June 15, 2007. Include information about all your departure and return dates, and the reason for your departures. Documents you can submit that may show your absence was brief, casual, and innocent include, but are not limited to:

A. Plane or other transportation tickets or itinerary showing the travel dates;

B. Passport entries;

C. Hotel receipts showing the dates you were abroad;

D. Evidence of the purpose of the travel (e.g., you attended a wedding or funeral);

E. Copy of Advance Parole Document issued by USCIS; and

F. Any other evidence that could support a brief, casual, and innocent absence.

7. What documents may demonstrate that you were present in the United States on June 15, 2012?

Submit copies of any relevant documents such as:

A. Rent receipts, utility bills (e.g., gas, electric, phone), or receipts or letters from companies showing the dates during which you received service You may submit this documentation even if it only has the name of your parents or legal guardians, as long as you also submit other evidence (e.g., third party documentation) that connects you to your residence at that address;

B. Employment records (e.g., pay stubs, W-2 Forms, certification of the filing of Federal income tax returns, state verification of the filing of state income tax returns, letters from employers, or, if you are self employed, letters from banks and other firms with whom you have done business);

NOTE: In all of these documents, your name and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters must include: your address at the time of employment, exact periods of employment, periods of layoff, and duties with the employer. Letters must also be signed by the employer and include the employer's contact information.

C. School records (e.g., transcripts, report cards) from the schools that you have attended in the United States, showing the names of the schools and periods of school attendance;

D. Military records (e.g., Form DD-214, Certificate of Release or Discharge from Active Duty; NGB Form 22, National Guard Report of Separation and Record of Service; military personnel records; or military health records);

E. Hospital or medical records concerning treatment or hospitalization, showing the names of the medical facilities or physicians and the dates of the treatment or hospitalization;

F. Official records from a religious entity in the United States confirming your participation in a religious ceremony, rite, or passage (e.g., baptism, first communion, wedding);

G. Money order receipts for money sent in or out of the country; passport entries; birth certificates of children born in the United States; dated records of bank transactions; correspondence between you and another person or organization; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, rental agreements, contracts to which you have been a party; tax receipts; insurance policies; receipts; postmarked letters; or

H. Any other relevant document.

8. What documents may show you had no lawful status on June 15, 2012? (Submit documents if you were admitted or paroled, or otherwise obtained a lawful immigration status, on or before June 15, 2012, or you were or are in removal proceedings.)

Submit copies of any of the following documents:

A. Form I-94, I-94W, or I-95 Arrival/Departure Record showing the date your authorized stay expired;

B. If you have a final order of exclusion, deportation, or removal issued as of June 15, 2012, submit a copy of that order and related charging documents, if available;

C. An INS or DHS charging document placing you into removal proceedings, if available; or

D. Any other document that you believe is relevant to show that on June 15, 2012, you had no lawful status.

9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing; b) have graduated or received a certificate of completion or a certificate of attendance from a U.S. high school, a U.S. public or private college or university, including community college; or c) have obtained a GED certificate or other equivalent state-authorized exam in the United States? (If applicable)

USCIS recognizes that schools, educational programs, school districts, and state education agencies around the country issue educational records in a variety of formats. USCIS does not require educational records to be presented in any particular format.

A. To be considered "currently in school," you are to demonstrate that you are currently enrolled in one of the following:

(1) A U.S. public, private, or charter elementary school, junior high or middle school, high school, secondary school, alternative program, or home school program meeting state requirements;

(2) An education, literacy, or career training program (including vocational training) that has a purpose of improving literacy, mathematics, or English or is designed to lead to placement in post-secondary education, job training, or employment, and where you are working toward such placement, and that the program:

(a) Is administered by a non-profit entity; or

(b) Is funded in whole or in part by Federal, state, local, or municipal funds; or

(c) Is of demonstrated effectiveness;

(3) An education program in the U.S. assisting students in obtaining a regular high school diploma or its recognized equivalent under state law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a GED exam or other equivalent state-authorized exam, and that the program:

(a) Is administered by a non-profit entity; or

(b) Is funded in whole or in part by Federal, state, local, or municipal funds; or

(c) Is of demonstrated effectiveness;

(4) A U.S. public or private college or university including community college.

Evidence of enrollment may include, but is not limited to: school registration cards, acceptance or other letters demonstrating enrollment or attendance, current transcripts, report cards, progress reports, or other documents issued by a school district, state education agency, school, or program. These documents should show your name; the name of the school district, or state educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your current educational or grade level.

If you have been accepted for enrollment and your classes have not yet begun, you may submit an acceptance letter with evidence that you have registered for classes or any other relevant evidence showing you have committed to starting classes on a certain date, including, for example, a copy of your tuition bill, your class schedule, or your Individualized Educational Program.

If you are enrolled in an educational, literacy, or career training program (including vocational training or an ESL course), evidence that the program is funded in whole or in part by Federal, state, local, or municipal funds includes a letter or other documentation from an authorized representative of the program that includes information such as: your name and date of enrollment, the duration of the program and expected completion date, the program's source of public funding, and the program's authorized representative's contact information.

If you are enrolled in an education, literacy, or career training program that is not publicly funded, evidence that the program is of demonstrated effectiveness may include information from an authorized school representative relating to: the duration of the program's existence; the program's track record in placing students in employment, job training, or post-secondary education; receipt of awards or special achievement or recognition that indicate the program's overall quality; and/or any other information indicating the program's overall quality.

B. Evidence to show that you meet the educational guideline because you have "graduated from school" or "obtained a GED certificate" or other equivalent state-authorized exam in the United States includes, but is not limited to:

(1) A high school diploma from a U.S. public or private high school or secondary school;

(2) A recognized equivalent of a U.S. high school diploma under state law, including a GED certificate or other equivalent state-authorized exam, a certificate of completion, or a certificate of attendance;

(3) A transcript that identifies the date of graduation or program completion;

(4) An enrollment history that shows the date of graduation or program completion;

(5) A degree from a public or private college or university or a community college; or

(6) An alternate award from a U.S. public or private high school or secondary school.

These documents should show your name; the name of the U.S. school district, educational agency, school, or program issuing the record; the dates or time periods of enrollment you are seeking to establish; and your date of graduation or completion.

10. What documents may demonstrate that you are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard? (If applicable)

Submit copies of the following documents:

A. Form DD-214, Certificate of Release or Discharge from Active Duty;

B. NGB Form 22, National Guard Report of Separation and Record of Service;

C. Military personnel records;

D. Military health records; or

E. Any other relevant document.

11. What additional documents should you submit if you are currently or have been in removal proceedings?

Submit a copy of the removal order, any document issued by the immigration judge, or the final decision of the Board of Immigration Appeals (BIA), if available. If you have not been in removal proceedings, this question does not apply to you.

12. What evidence should I submit to demonstrate my criminal history?

If you have been arrested for or charged with any felony (i.e., a Federal, state, or local criminal offense punishable by imprisonment for a term exceeding one year) or misdemeanor (i.e., a Federal, state, or local criminal offense for which the maximum term of imprisonment authorized is one year or less but greater than five days) in the United States, or a crime in any country other than the United States, you must submit evidence demonstrating the results of the arrest or charges brought against you. If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence is not required.

A. If you have ever been arrested for any felony or misdemeanor in the United States, or a crime in any country other than the United States, and no charges were filed, submit an original official statement by the arresting agency or applicable court order confirming that no charges were filed for each arrest. If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information.**

B. If you have ever been charged with or convicted of a felony or misdemeanor in the United States, or a crime in any country other than the United States, submit an original or court-certified copy of the complete arrest record and disposition for each incident (e.g., dismissal order, conviction and sentencing record, acquittal order). If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information.**

C. If you have ever had any arrest or conviction vacated, set aside, sealed, expunged, or otherwise removed from your record, submit:

(1) An original or court-certified copy of the court order vacating, setting aside, sealing, expunging, or otherwise removing the arrest or conviction; or

(2) An original statement from the court that no record exists of your arrest or conviction.

If you are unable to provide such documentation or if it is not available, you must provide an explanation, including a description of your efforts to obtain such evidence, in **Part 8. Additional Information.**

NOTE: You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol - or drug-related.

Evidence for Renewal Requests Only

NOTE: If you are submitting a **Renewal Request** for consideration of DACA to USCIS, you do not need to re-submit documents you already submitted with your previous DACA requests.

If you are seeking a **Renewal** of DACA, respond to all questions, except where the section or question indicates "For Initial Requests Only."

If you are currently in exclusion, deportation, or removal proceedings, see **Item Number 11.** (above) for additional guidance.

If you have any criminal history, see **Item Number 12.** (above) for additional guidance.

With your Renewal request, you only need to submit any new documents pertaining to removal proceedings or criminal history that you have not already submitted to USCIS. If USCIS needs more documentation from you, USCIS will send a Request for Evidence to you explaining the needed information. However, you should submit new documents if any of the following situations apply to you:

1. You are currently in exclusion, deportation, or removal proceedings (please note, you do not need to submit these documents if your case was administratively closed); or
2. You have been charged with, or convicted of, a felony or misdemeanor (please note, you do not need to submit these documents if you already submitted them with a previous DACA request).

NOTE: You should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.

If ICE initially deferred action in your case and you are seeking a Renewal, you must select and complete **Item Number 2.** in **Part 1.** of Form I-821D. You must also respond to **ALL** subsequent questions on the form. You must also submit documentation to establish how you satisfy the guidelines as if you were filing an Initial request for consideration of deferred action.

NOTE: You do not need to submit documentation concerning minor traffic violations such as driving without a license unless they were alcohol-or drug- related.

Additional Information Relevant to ALL Requests for DACA

1. What other factors will USCIS consider when making a determination on deferred action?

USCIS will also conduct a background check. USCIS may consider deferring action in your case even if you have been arrested or detained by any law enforcement officer and charges were filed, or if charges were filed against you without an arrest. USCIS will evaluate the totality of the circumstances in reaching a decision on deferred action.

In accordance with the Secretary's memorandum, if USCIS determines that you have been convicted of a felony, a significant misdemeanor, or three or more misdemeanors not occurring on the same date and not arising out of the same act, omission, or scheme of misconduct, or that you otherwise pose a threat to national security or public safety, USCIS is unlikely to defer action in your case. See the Frequently Asked Questions at **www.uscis.gov/childhoodarrivals**.

Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exercise of prosecutorial discretion is not warranted in your case.

2. What else should you submit with Form I-821D?

USCIS will not consider deferring action in your case unless your Form I-821D is accompanied by Form I-765, with fees, and Form I-765WS. If you do not include Form I-765 with all applicable fees with your Form I-821D, your entire submission will be rejected.

Optional E-Notification of Request Acceptance. You may submit Form G-1145, Notification of Application/ Petition Acceptance, an optional form, which will notify you electronically when USCIS accepts your request for DACA.

What is the Filing Fee?

There is no filing fee for Form I-821D. However, you must submit both filing and biometric services fees with Form I-765. Read Form I-765 filing instructions for complete information at **www.uscis.gov/I-765**.

Where to File?

Please see our USCIS website at **www.uscis.gov/I-821D** or call the USCIS National Customer Service Center at **1-800-375-5283** for the most current information about where to file this form. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

Address Changes

You must inform USCIS if you change your address. For information on filing a change of address, go to the USCIS website at **www.uscis.gov/addresschange** or contact the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

NOTE: Do not submit a change of address request to USCIS Lockbox facilities because these facilities do not process change of address requests.

Processing Information

Initial Processing. Once your request has been received by USCIS, USCIS will check the request for completeness. If you do not completely fill out the form, USCIS may deny or reject your request.

Requests for More Information, Including Biometrics or Interview. We may request more information or evidence,or we may request that you appear at a USCIS office for an interview. We may also request that you provide the originals of any copies you submit. We will return these originals when they are no longer needed.

If the same documents are required for both Form I-821D and Form I-765 that are filed together, the documents only have to be submitted once.

At the time of any interview or other appearance at a USCIS office, USCIS may require that you provide biometric information (e.g., photograph, fingerprints, signature) to verify your identity and update your background information.

Decision. USCIS will review your request to determine whether the exercise of prosecutorial discretion is appropriate in your case. Each case will be considered on an individual, case-by-case basis. Even if you satisfy the threshold criteria for consideration of DACA, USCIS may determine, in its unreviewable discretion, that deferred action is not warranted in your case. You will be notified of the decision in writing. There is no motion to reopen/reconsider the decision and there is no right to appeal.

USCIS Forms and Information

To ensure you are using the latest version of this form, visit the USCIS website at **www.uscis.gov** where you can obtain the latest USCIS forms and immigration-related information. If you do not have Internet access, you may order USCIS forms by calling our toll-free number at **1-800-870-3676**. You may also obtain forms and information by calling the USCIS National Customer Service Center at **1-800-375-5283**. For TTY (deaf or hard of hearing) call: **1-800-767-1833**.

As an alternative to waiting in line for assistance at your local USCIS office, you can now schedule an appointment through our Internet-based system, **InfoPass**. To access the system, visit our website at **infopass.uscis.gov**. Use the **InfoPass** appointment scheduler and follow the screen prompts to set up your appointment. **InfoPass** generates an electronic appointment notice that appears on the screen.

Penalties

If you knowingly and willfully provide materially false information on Form I-821D, you will be committing a Federal felony punishable by a fine, or imprisonment up to five years, or both, under 18 U.S.C. Section 1001. In addition, individuals may be placed into removal proceedings, face severe penalties provided by law, and be subject to criminal prosecution.

USCIS Privacy Act Statement

AUTHORITIES: The information requested on this form, and the associated evidence, is collected under the Immigration and Nationality Act, section 101, et seq.

PURPOSE: The primary purpose for providing the requested information on this form is to determine if you should be considered for deferred action as a childhood arrival. The information you provide will be used in making a decision whether to defer removal action in your case as an exercise of prosecutorial discretion.

DISCLOSURE: The information you provide is voluntary. However, failure to provide the requested information, and any requested evidence, may delay a final decision in your case or result in denial of your request.

ROUTINE USES: The information you provide on this form may be shared with other Federal, state, local, and foreign government agencies and authorized organizations following approved routine uses described in the associated published system of records notices [DHS/USCIS-007 - Benefits Information System and DHS/USCIS-001 - Alien File, Index, and National File Tracking System of Records which can be found at **www.dhs.gov/privacy**].

Other Disclosure Information

Information provided in this request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS' Notice to Appear guidance (**www.uscis.gov/NTA**). The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request itself, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. **The above information sharing clause covers family members and guardians, in addition to the requestor.**

This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 3 hours per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Ave NW, Washington, DC 20529-2140; OMB No. 1615-0124. **Do not mail your completed Form I-821D to this address.**

Reminder

For Initial and Renewal Request

Did you submit Form I-765 along with the filing and biometric services fees ($495) required for the application or employment authorization, and did you also submit a completed Form I-765WS?

Did you answer every relevant **Item Number**?

Did you provide an original, handwritten signature and date your request?

Did you submit the necessary documents? For Initial requests, did you submit documents to meet each guideline? For Renewal requests, see the section titled Evidence for Renewal Requests Only.

If you were issued a final order of exclusion, deportation, or removal, did you include a copy of that final order (if available and if you had not already submitted it to USCIS)?

If your exclusion, deportation, or removal proceedings were terminated by an immigration judge, did you include a copy of the immigration judge's termination order (if available and if you had not already submitted it to USCIS)?

If you have ever been arrested for, charged with, or convicted of any felony or misdemeanor in the United States or any crime in any country other than the United States, did you submit an original, official, or court-certified document that shows your complete arrest record and final disposition for each incident (if available and if you had not already submitted it to USCIS)?

For Initial Requests Only

Did you submit evidence to show that you came to the United States while under 16 years of age?

Did you submit evidence to prove your identity, date of initial entry, and continuous residence from June 15, 2007 (or earlier) up to the present time?

Did you submit evidence that you are currently in school, have a GED certificate, have graduated or received a certificate of completion from high school, or are an honorably discharged veteran of the U.S. Armed Forces or U.S. Coast Guard?

Did you provide evidence showing that you had no lawful status as of June 15, 2012?

EXHIBIT W

Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

December 30, 2016

The Honorable Judy Chu
U.S. House of Representatives
Washington, DC 20515

Dear Representative Chu:

On behalf of the Administration, I write in response to the letter you and 110 other members of Congress sent the President on December 5. In your letter, you ask us "to do everything within [our] power to safeguard the personal identifying information of DACA enrollees." We share your concerns.

Today there are 750,000 young people enrolled in DACA who, when they applied for enrollment, relied on the U.S. government's representations about the use of their personal identifying information. Since DACA was announced in 2012, DHS has consistently made clear that information provided by applicants will be collected and considered for the primary purpose of adjudicating their DACA requests and would be safeguarded from other immigration-related purposes. More specifically, the U.S. government represented to applicants that the personal information they provided will not later be used for immigration enforcement purposes except where it is independently determined that a case involves a national security or public safety threat, criminal activity, fraud, or limited other circumstances where issuance of a notice to appear is required by law.

We believe these representations made by the U.S. government, upon which DACA applicants most assuredly relied, must continue to be honored.

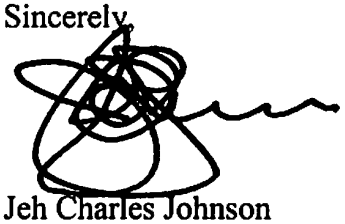
For decades, even dating back before DACA, it has been the long-standing and consistent practice of DHS (and its predecessor INS) to use information submitted by people seeking deferred action or other benefits for the limited purpose of adjudicating their requests, and not for immigration enforcement purposes except in the kinds of specified circumstances described above. This was true, for example, under the deferred action policies extended to victims of human trafficking, to foreign students affected by Hurricane Katrina, to battered immigrants under the Violence Against Women Act, and to widows and widowers of American citizens. Accordingly, people who requested to be considered under DACA, like those who requested deferred action in the past, have relied on our consistent practice concerning the information they provide about themselves and others.

The U.S. government's practice of adhering to the assurances it makes to applicants for deferred action is also consistent with the way USCIS (and the INS before it) has long protected information submitted by those seeking other benefits or relief. This includes but is not limited to individuals requesting temporary protected status, deferred enforced departure, or extended voluntary departure. In these circumstances, as with deferred action requests, USCIS and INS have abided by a longstanding and consistent practice of using information to adjudicate specific applications, but not for immigration enforcement purposes absent the limited circumstances described above.

Since DACA began, thousands of Dreamers have been able to enroll in colleges and universities, complete their education, start businesses that help improve our economy, and give back to our communities as teachers, medical professionals, engineers, and entrepreneurs—all on the books. We continue to benefit as a country from the contributions of those young people who have come forward and want nothing more than to contribute to our country and our shared future.

The co-signers of your letter will receive separate, identical responses. Should you wish to discuss this further, please do not hesitate to contact me.

Sincerely,



Jeh Charles Johnson

EXHIBIT X

CNN LIVE EVENT/SPECIAL

Town Hall Meeting with House Speaker Paul Ryan. Aired 9=10p ET

Aired January 12, 2017 - 21:00 ET

THIS IS A RUSH TRANSCRIPT. THIS COPY MAY NOT BE IN ITS FINAL FORM AND MAY BE UPDATED.

JAKE TAPPER, CNN HOST: Good evening. We are live at the George Washington University in the nation's capital for a CNN Town Hall event with the Speaker of the House of Representatives Paul Ryan, Republican of Wisconsin.

I'm Jake Tapper. I want to welcome our viewers in the United States and around the world. We're being seen right now on CNN, CNN en Espanol, and CNN International. Also, welcome to those listening on the Westwood One Radio Network and on CNN channel 116 on Sirius XM. And, as if that weren't enough, hello to our servicemen and servicewomen who are watching right now on the American Forces Network. Thank you for your service, by the way, and thanks for joining us.

It is eight days until Donald Trump takes the oath of office to become the next president of the United States. The republicans control congress and, soon, the White House. But, Speaker Ryan has not always seen eye-to-eye with the President-Elect. He has been emphasizing his "Better Way" agenda for the path ahead. It covers key issues that directly impact the lives of all Americans: jobs, the economy, national security, tax reform and, of course, repealing President Obama's healthcare law.

Now, we have invited folks from all over the country to pose their questions to Speaker Ryan. We have reviewed questions to make sure that we cover a variety of important issues and a variety of perspectives. But, there was not one subject that was off limits.

Please join me now in welcoming the Speaker of the House, Paul Ryan.

(APPLAUSE)

REP. PAUL RYAN, R-WI, SPEAKER OF THE HOUSE: Hi everybody. How are you doing?

TAPPER: Thank you, sir. Good to see you.

RYAN: Appreciate it. Thank you.

TAPPER: Have a seat.

Thanks so much for being here. So, the number one issue right now on Capitol Hill is the repeal of Obamacare. The Senate passed the first measure to begin the process. The House is going to do that tomorrow. We have lots of questions on Obamacare and lot of other issues. I want to start with one philosophical question about healthcare. During the campaign, Donald Trump was asked about healthcare on "60

Minutes". He said "This is an un-republican thing for me to say, but everybody has to be covered." Now, when he was asked "Who is going to pay for it?", he said "The government's going to pay for it." Do you share that philosophy at all, that the government should guarantee healthcare -- health insurance for every American?

RYAN: Well, I don't see it as the government having to pay for it. I think we all have to contribute and be a part of it. I clearly think there's a role for the government in healthcare, no doubt about it. Let me say this: I believe that we can and should have a system in this country where everybody can have access to affordable healthcare, including people with pre-existing conditions, no matter how much money they make.

That's not what this law is doing. This law is failing on that front and I think there is much, much better system that could be put in its place. I don't know how long you want me to get into this, because I'm sure there's some questions; but, Obamacare came in with all this fanfare and all this promise. Remember, "If you like your plan you can keep it"? That was proven the lie of the year at the time. Remember, it was going to lower premiums $2500? They have skyrocketed since then. Remember, you were going to have all these choices? Five states, you only have one choice. Thirty-one percent of all the counties in America? One choice. That's not a choice, that's a monopoly.

And the problem is, the premiums are going so high, the deductibles are getting even higher -- the law is collapsing. And, so, we've got to rescue people from the collapsing of this law and fix this problem. And, so, that's what I'd love to engage in. And I know you've got questions, so I don't want to --

TAPPER: Yeah. No, (inaudible) --

RYAN: -- but, I think -- I think there's a lot we can do to --

TAPPER: You just --

RYAN: -- to improve this problem.

TAPPER: You just mentioned pre-existing conditions. Let me introduce you -- and please get up, because I know you want to engage. Jeff Jeans (ph) is from Sedona, Arizona. He was a life-long republican, and then something happened. Jeff?

RYAN: Come back.

(LAUGHTER)

QUESTION: I was a republican and I worked for the Reagan and Bush campaigns. Just like you, I was opposed to the Affordable Care Act. When it was passed, I told my wife we would close our business before I complied with this law. Then, at 49, I was given six weeks to live with a very curable type of cancer. We offered three times the cost of my treatments, which was rejected. They required an insurance card. Thanks to the Affordable Care Act, I'm standing here today alive.

Being both a small business person and someone with pre-existing conditions, I rely on the Affordable Care Act to be able to purchase my own insurance. Why would you repeal the Affordable Care Act without a replacement?

RYAN: Oh, we -- we wouldn't do that. We want to replace with something better. First of all, I'm glad you're standing here. I mean, really -- seriously.

(APPLAUSE)

QUESTION: Can -- can I --

RYAN: No, really.

QUESTION: Can I say one thing? I hate to interrupt you.

RYAN: Yeah, yeah, yeah.

QUESTION: Can I say one thing? I want to thank President Obama from the bottom of my heart, because I would be dead if it weren't for him.

(APPLAUSE)

RYAN: You mention you come from Arizona?

QUESTION: Sedona.

RYAN: Sedona; sure. Our old city manager, (inaudible) James was the city manager down in Sedona now.

QUESTION: My family is originally from Janesville.

RYAN: Really?

QUESTION: Yes.

RYAN: What's your last name again?

QUESTIONS: Jeans, like blue jeans. Craft (ph) was my grandfather's.

RYAN: Oh, okay, yeah.

QUESTION: He's buried there, actually.

RYAN: So, okay, we digress here.

(LAUGHTER)

So, Arizona -- this year, the premium increases for people on Obamacare, 116 percent; Oklahoma, 69 percent; Tennessee, 63 percent; Minnesota, 59 percent. The problem is, these increases were double- digit last year. They are really high this year. This thing is collapsing. So, do we want to make sure that a person with -- like yourself, with a pre-existing condition gets affordable care? Of course. Of course.

There is a better way to fix that problem without giving everybody else all these massive premium increases. Deductibles are so high it doesn't even feel like you've got insurance anymore. So we -- obviously, I would encourage you to go to our website and take a look at our plan, but let me just give you a few ideas:

We believe that state high-risk pools are a smart way of guaranteeing coverage for people with pre-existing conditions. We had a really good one in Wisconsin. Utah had a great one. I was talking with a Congresswoman from -- from Washington today who was telling me how good their state high-risk pool is. What I mean when I say this is, about eight percent of all the people under 65 have that kind of pre- existing condition. My mother-in-law -- cancer -- she had melanoma in her 20s, breast cancer in her 50s, ovarian cancer in her 60s. People just have these things. And we don't want people to go poor or go bankrupt because this thing happens to them.

So we, obviously, want to have a system where they can get affordable coverage without going bankrupt because they get sick. But, we can do that without destroying the rest of the healthcare system for everybody else. That's the point I'm trying to make. What we should have done was fix what was broken in healthcare without breaking what was working in healthcare, and that's what, unfortunately, Obamacare did.

So, by financing state high-risk pools to guarantee people get affordable coverage when they have a pre-existing condition, like yourself, what you're doing is, you're dramatically lowering the price of insurance for everybody else. So, if we say let's just, as taxpayers -- and I agree with this -- finance the coverage for those eight percent of Americans under 65 in a condition like yours -- they don't have to be covered or paid for by their small business or their insurer who is buying the rates for the rest of the people in their insured pool, and you'd dramatically lower the price for the other 92 percent of Americans.

Let's just directly fix that so that everybody else can get more competitive rates and they don't have to pay for insurance to try to cover for those kinds of really expensive people. The problem with Obamacare -- the actuary is called a death spiral. It's a really kind of ugly, gruesome term, but a death spiral is a mathematical term. They say when the insurance gets so expensive, healthy people won't buy it because they -- it's just a trade-off. The penalty to not buy is a lot cheaper than buying the insurance, so healthy people won't buy it; therefore, they won't go and participate in the insurance pool to cover the losses that sicker people, who have to have insurance, buy it.

That's what's happening to Obamacare now. So, you have unhealthy people more buying it, healthy people not buying it, and that is why the rates are going up so much. That's why all the insurers are pulling out. The biggest health insurance company in the country last year, United, pulled out of Obamacare. Aetna pulled out of Obamacare. Humana pulled out of Obamacare. As I mentioned, five states now are down to one insurer. Over a thousand counties in America are down to one insurer and they're all getting double-digit premium increases because they have a monopoly.

So, clearly, that's not working. And we see the worst is yet to come. The insurers are telling us they are going to pull out of whole states now. So we've got to step in in

front of this problem, because, as republicans, we could just say -- I think the President-Elect said this yesterday -- "We could just sit back and watch it all happen and say 'Oh, look at what the democrats did.'" That would be irresponsible for us to do that.

So, we have to step in and rescue people from the collapse of this law. There are good objectives that were -- that they sought to achieve in this law. We agree with that. We think young people should be able to stay on their parents' plan until they are 26. We think there needs to be a solution, which we have, for people with pre-existing conditions. But we want more choices, lower prices, more competition, no monopolies. That's what we want to replace it with, and that's what we're working on right now.

TAPPER: So -- I'm sorry to interrupt. So, there are other questions about Obamacare and I want to let you get to them, but -- but, just to put a point on this, one of the things that Jeff was asking about is, you've begun the process of repealing Obamacare. Is the process of replacing it going to coincide with it?

RYAN: Yes.

TAPPER: Yes, it's going to coincide?

RYAN: Yes. Yes. So, without getting into all of the legislative mumbo jumbo, we want to do this at the same time and in some cases in the same bill.

TAPPER: OK.

RYAN: So, we want to advance repealing this law with its replacement at the same time along the lines of what - what I just described because I said, people just aren't buying insurance. Or if you get it, your deductible is so high, you're out-of-pockets are - they're so unaffordable, people aren't going to doctors.

So, we've got to fix that problem and the point I keep making in America, we spend more money than anybody else on healthcare. Surely, we can have a system that works for all of us.

TAPPER: Thank you, Jeff and I know you speak for a lot of people, so thanks for being here tonight.

SPEAKER: (inaudible) In Gainesville, maybe not in January. It's pretty cold.

TAPPER: Now, I want to introduce to you to Dawn Jones. She's an administrative officer with the U.S Navy, she's from Huntingtown, Maryland.

JONES: Thank you. As much as I'm for affordable child care -- or healthcare, I don't think Obamacare is hitting the mark. For example, college age children who are healthy are required to obtain child -- or healthcare, excuse me -

RYAN: Right.

JONES: But, they don't have the money to pay for it. So, what can Congress do to help them get affordable healthcare or opt out of it for those who cannot afford it?

RYAN: Yea, so, what's happening more and more these days because Obamacare's become so expensive, are the younger, healthier people just aren't buying it and they're just going without insurance.

Because, the -- the part of the law that's also counterproductive in this way is, you -- you can wait until you get sick, then get the insurance without a penalty and that's why they had this whole convoluted government run system that's basically collapsing. What we believe is the right way to go, which is what our plan is, are refundable tax credits for people to be able to buy affordable coverage.

And so, by giving a person a refundable tax credit, a young person, maybe a person in college who maybe didn't stay on their parents' plan or somebody just getting started in work that doesn't have much of a tax liability. When I say refundable, that means you get the tax credit regardless of whether you have an income tax liability or not. Regardless of how much money you make.

Today, the big tax subsidy in law is you get to -- it's excluded from your income. So, what we're saying is the person in the highest tax bracket, the highest income earners get the biggest tax break for healthcare. But, that's not who are struggling to pay for healthcare.

We want to make sure that -- we want to instead have tax credits so that everybody can have a shot at buying. Take their tax credit and go buy a healthcare plan of their choosing and that's the other thing. We don't want to make people buy something that they don't want to buy. We don't want to force them to buy all these different benefits.

We want people to be able to get the coverage they want, the choices that they want, the options that they want and more importantly, we want competition. We don't want one insurer in one state. We want a lot of insurers competing against each other for our business as consumers. And this is the real big problem with Obamacare.

They basically decided that they'd have the government run it and now it's just a monopoly that is crashing. So, what we want to do, is make sure that anybody, a young person, old person, and in between gets a tax credit to go buy a plan of their choosing among a lot of choices that are competing against each other for their business.

More competition means better quality and lower prices. We also think health savings accounts are a real key critical piece of this. Let people save tax free for healthcare or let employers or parents, or whoever, put money in a person's health savings account to help them with their out-of-pocket costs or their premiums.

TAPPER: So, do you have a date for when you are going to repeal it or replace or, it's just going to happen this year?

RYAN: It's -- it's, yea, I don't have a date. But, that's something we're working on right now and it's going to take us a little bit of time but, we're working on this as fast as possible.

Again, because we see this law collapsing even faster this year, because we see more insurance companies pulling out, people with little or no choices and another round of double digit premium increases, we really feel we need to step in and provide better choices and better options as fast as possible. So, we're going to move on this as quickly as we can.

TAPPER: First 100 days?

RYAN: Yea, oh yea, it's something - definitely is a plan within the first 100 days to get moving on this legislation.

TAPPER: I want to introduce you to -- to Sherry Rigs from Fort Pierce, Florida. Who didn't vote on election day because she was recovering from a heart attack. And, we're glad you're here, too.

RIGS: Thank you.

TAPPER: One point that I just want to make is that obviously, and this fits in with what you were saying about refundable tax credits, but also, what you're about to be asked which is, the White House says there are 8 million Americans who now have health insurance because of the Medicaid expansion.

Medicaid was expanded in Obamacare and in states that accepted that money. So, are there a lot of people who are lower income who wonder what's going to happen to them? Whether they are on Medicaid or not. Please?

RYAN: Where are you from again?

RIGS: Good evening, Fort Pierce, Florida.

MALE: Florida.

RIGS: Well, you want to give tax credits instead of insuring people? Now, what if a person is --

RYAN: Can I get you right there for a minute? It's tax credits to buy insurance.

RIGS: OK. Well, what if a person makes so little that they don't have to pay taxes? Will they still have access to the Federal --

RYAN: Yeah, that's what I'm trying to say here in this last question. So, a tax credit, the way we described it when we say refundable, that means you get it no matter whether you pay taxes or not. So, it's like a voucher basically, to go buy health insurance. And, for -- for Medicaid some states do a pretty good job for Medicaid and some states don't do as well. The problem that we're seeing in Medicaid is more and more doctors

just won't take Medicaid. Because, they -- they lose money on Medicaid. It's - it's so over regulated and so bureaucratic that physicians just won't take Medicaid patients.

And, so our concern is, that people on Medicaid can't get a doctor and if you can't get a doctor, what good is your coverage? So, we really think there are a lot of good Medicaid reforms at the state level. There's some states that have done some pretty impressive things.

Indianan is one state, Wisconsin, we've done some pretty good reforms to make sure that people of low income get good coverage, but, also get access to care. Actually, get doctors that will take that care.

We want to see more of those state based solutions, so that we can make sure that coverage actually works. You're right on the numbers. About 10 million people got it or Medicaid. There are about another, I think, 11.5 million that got healthcare on Obamacare.

Obamacare at this time was supposed to have 23 million people. So, it's 11 million instead of 23 million. It's far missed its mark, but the problem is more and more people just are -- are getting a plan that they can't use because their deductible is so high or we have a Medicaid problem. So, we want to reform Medicaid as well, to make sure that states can innovate it, so, that it works for their citizens and so they can actually -- actually get care.

TAPPER: Thank you so much.

RIGS: Thank you, thank you.

TAPPER: I want to -- well part of your plan for repealing Obamacare is also to defund Planned Parenthood. I - I want to bring in Shannon Vow (sic), who is a physical therapy graduate student here at G.W. (sic) and wants to ask you about --

RYAN: Where are you from Shannon?

VOW: It's complicated. I moved here for graduate school, but, I'm from Northern California.

RYAN: OK.

VOW: So, among a lot of other things that we have heard in the news, Planned Parenthood also provides cervical cancer screenings, annual examinations as well as other critical healthcare services.

And, I will continue and I have used these services for the next four years. And, I can tell you personally that Planned Parenthood provided help when I couldn't go to anybody else. So, my question for you, Speaker Ryan, is, if Planned Parenthood is defunded, then, where will millions of women, low income groups and (inaudible) --

RYAN: It's -- it's a good question. First of all, I want to make sure you get the care you need. We want to make sure that all women get the kind of care that they need. Like preventative screenings and services like you're talking about. We believe that this can be better be done by putting that money in federal community health centers.

Federal community health centers, I have a lot of experience with them myself. They're -- they're all throughout Wisconsin. They're - they're virtually in every community. By putting these dollars in the federal community health centers, which provide the same kinds of services for every Planned Parenthood, there is -- there are 20 federal community health centers. They're vastly bigger in network, there are so many more of them, and they provide these kinds of services without all of the controversy surrounding this issue.

TAPPER: Can I just ask you, you -- you believe in providing more choice for people when it comes to health insurance, except for Planned Parenthood?

RYAN: Well, there is a long-standing principle that we've all believed in. And, by the way this is for pro-choice, pro-life people that we don't want to commit taxpayer funding for abortion. And, Planned Parenthood is the largest abortion provider.

So, we don't want to effectively commit taxpayer money to an organization providing abortions. But, we want to make sure that people get their coverage. That's why there's no conflict by making sure that these dollars go to federal community health centers, which provide these services and have a vast larger network than these Planned Parenthood clinics, which - which are surrounded by a lot of controversy.

And, we don't want to commit people's taxpayer dollars to effectively funding something that they believe is morally unconscionable. Not everybody believes that and I understand that. But, that's a long- standing principle that we've had in this country that we want to maintain.

TAPPER: Of course, taxpayers don't fund abortions, right now, right? Because of the hyde amendment.

RYAN: Because of the hyde amendment, right. But, they get a lot of money and -- and you know, money is fungible and it effectively floats these organizations which then use other money. You know, money is fungible.

TAPPER: A lot of --

RYAN: You don't have this controversy by funding health centers.

TAPPER: A lot of people on social media wanted me -- want me to ask you about Medicare and your plans for Medicare. Donald Trump during the campaign said about you, you want to knock Medicare way down.

(LAUGHTER)

That Mr. Trump said -

RYAN: I wouldn't call it the most articulate description of my plan. TAPPER: No, no, I'm going to let you respond.

(LAUGHTER)

He said, I'm not going to cut it and I'm not going to raise ages and I'm not going to do all the things that they, meaning you, want to do.

(LAUGHTER)

And, you say that Medicare needs to be changed --

RYAN: It does --

TAPPER: Or -- or, it won't survive. What are you going to say to President-Elect Trump to change his mind?

RYAN: We've - we've had a couple of conversations about it. Look, we don't all agree on everything. It's - I think people kind of know that. Here is the issue with Medicare; more than half of the money going to Medicare right now is the money we borrow. Medicare goes bankrupt in the next decade. Medicare along with Social Security, the two most important programs the Federal Government has in my opinion. I mean, when - when - after my dad died, my grandma moved in with my mom and myself, living on Medicare and Social Security, battling all (simmers). I watched that program do amazing things for my own family.

So we know that we want to make sure that this program is successful. But if we want this program to succeed, we have so save it from the insolvency, the bankruptcy that's coming. And so the kinds of reforms that we have been pushing and talking about are reforms designed to save the program and give people more choices and they don't affect anyone in or near retirement. And here is the thing, if we can improve Medicare for the next generation, for the (tapper Ryan) generation on down, we don't have to change the benefits for anybody in or near retirement and we can continue to afford the cash flow, that promise has been made to them but there is no way on the current path we are on, Medicare will be for our generation when we retire.

So we better get prepared to fix this problem while it's so containable and solvable without affecting the benefits or the choices of plans of people currently on Medicare like my mom and that's something that we have to just own up to in this country. It's - it's the biggest part of the debt crisis in the future, and it is something that we have to deal with. And the point is, I think these reforms are better. I like the idea of saying to a future senior, if you like the traditional Medicare plan, you can keep that but if you want to choose from a list of competing health plans that are comprehensive competing for your benefit, that are guaranteed benefits like federal employees have, you should be able to choose that, too.

TAPPER: If you like your plan, you can keep your plan?

RYAN: Yes, and well - and that's what premium support is.

TAPPER: Alright, got you. RYAN: Well, that active choice in competition, it's been proven to - you know, you're going to hear this (theme), it's proven to drive down cos because it makes those insurers compete against each other for our business.

TAPPER: We're going to take a very quick break. Coming up next, Russia's hacking of the U.S. election, what will congress do about it; that and much more ahead. With Speaker Paul Ryan, we are Live from the George Washington University. Stay with us.

(COMMERCIAL BREAK)

TAPPER: We are back live from the George Washington University, home of the colonials along with Speaker of the House, Paul Ryan. Now members of Congress earlier today were briefed by top intelligence officials about the hacking activities by Russia into the election. There are a lot of concerns among the American people about the Russians. I want to turn to Ray Daffner, he is an independent voter from Virginia. Ray?

RAY DAFFNER, VIRGINIA RESIDENT: Mr. Speaker, my grandfather came from Russia to The United States and his family had a prosperous business and they left not because they wanted to but because they were forced to by anti-Jewish (pilgrims) that threatened not just our livelihood but their life. Putin's Russia continues to treat their citizens in an undemocratic way and worse, they imprison and they assassinate their critics, they assault their neighbours like Ukraine, they support our enemies, anc they undermine our allies; and of course, most recently, they've interfered in our election through hacking and possibly have attempted to blackmail our highest officials.

So my question Mr. Speaker is what will you and what will Congress do to help ensure the safety of our democracy and specifically, what will Congress do to penalize Putin and his government for their actions?

RYAN: So I agree with your basic assessment of Russia. I think Russia is a global menace led by a man who is menacing. Vladimir Putin does not share our interests, he frustrates our interests, he violates his neighbours, he does all those things you say on free speech, he is not democratic; I really think a lot of the things that he is doing is to try and delegitimize the other democracies so that his illegitimate democracy doesn't look as illegitimate by comparison.

So I think that there is a lot that he is doing and it's not just here, he is doing this around the world. He is doing this in Europe, he is doing this in capitals around the world. So I do see - I call the Russia hawk, I said they call us these days, I guess. So I do share that concern. I think we have to step up our game on Russia. I think we have to step up our game with respect to confronting Russia when they act like this, when they frustrate our interests. I think clearly and I do - I do believe that they tried to affect our elections by medalling in our elections. If you're going to medal in elections, you are trying to affect it, there is no place for that.

Having said that, I think it had no bearing on the election. I think Donald Trump won it fair and square, clearly and convincingly but the fact that a foreign government tried to medal in another government's elections is wrong. And so I do think sanctions are called for. I think - frankly, the current President put sanctions that I think we're a little late, should have done it earlier. So I do think we had a bad Russia policy in the last administration. I think the reset was too much of an appeasement policy, and I think we're now reaping the bad benefits from that. So I think we need a stronger Russia engagement policy for sure across the board.

TAPPER: So Ray just alluded to it but obviously, as you know, because you were briefed on it, intelligence officials have alerted the President-elect that there are claims by Russians, claims that they have materials that could be compromising and that there are communications between his campaign and the Russian Government; claims (inaudible). But let me just ask -here is the question; Donald Trump says this is a political witch hunt and the intelligence agencies are politicizing intelligence.

You are the Speaker of the House, you've been (privy) to some of the most classified briefings. Do you agree - are the intelligence chiefs trying to change -

RYAN: I do not think Donald Trump - what has been elevated is private opposition research done by a political opponent on completely unsubstantiated rumours and that has now been elevated and that I think is wrong. I don't even want to confirm any more legitimacy about this stuff by even talking about it and I think that people have conflicted this to think that it's somehow legitimate, that this is a product of the intelligence committee, it's not. And I do think by including these things and merging them, it has given that misimpression.

TAPPER: So you think -

RYAN: I don't think taking opposition research from a political opponent on total hearsay unsubstantiated rumours and combing it with intelligence information was the right thing to do.

TAPPER: So you take issue with the intelligence chiefs including this, this two-page synopsis that attacked on the end of their -

RYAN: Yes, I won't get into - I'm not going to comment on what documents we get and don't get.

TAPPER: But you take issue with what they did?

RYAN: I take issue with this even being talked about because it's not even worthy of media. I'm blessed CNN didn't publish it but some people did. And I don't think it's completely unsubstantiated. Let me put it this way, the Russians are up to no good, we all know that. And I don't think we should give any more credence to this and we've got to make sure going forward that we do everything we can on cyber, on all of the other things to make sure that they can't do this again; and we've got to help allies, too. We're going to make sure that we help our Europeans with their elections, block this kind of interference from coming, that's what I think we should be focused on. TAPPER: So just to put a button on this, you agree to a degree at least with Donald Trump assessing that this is the politicization of intelligence?

RYAN: I think it has been politicized. I don't - I can't tell you who is for politicizing but it has been politicized and I think that's wrong. I think as Donald himself gets to know the Intelligence Committee, as I know them very well, and when you're second in line, you get the same briefings. I think he is going to learn that there are a lot of good men and women in the Intelligence Committee that risk their lives for this country to keep us safe and I think he'll learn to appreciate the service and the value that they have. But I completely understand why he is frustrated that what eight/nine days before his inauguration, this junk gets thrown out there.

TAPPER: So what you were talking about Donald Trump winning, one of the reasons he won, especially in places like the great state of Pennsylvania and Michigan and Wisconsin - the great state of Wisconsin, I suppose.

RYAN: Go packers, (all right).

TAPPER: Is that - what's his position on trade? It really motivated a lot of voters. It's a position you don't share. I want to introduce you to Bill Jones, he is a tool and (dye) maker, he runs a medium- sized manufacturing company in Cabot, Pennsylvania. Please.

BILL JONES: Mr. Speaker, I have concern about our trade deals, our unfair trade. We have lost in the past decade, probably hundreds of jobs, our community has lost thousands of jobs; these are good jobs in our community with healthcare and retirement benefits. I actually started supporting Mr. Trump more when he started talking about fixing these trade deals. Our support grew because without trade deals - without fixing them, our country will not have the good paying jobs we need.

Now, my question to you, Mr. Speaker is, how will you as leader of the House help with this new administration fix these trade deals?

RYAN: It's a great question actually, and we've talked about this a lot. The President-elect and his economic team and myself about how do we work together to do just what you said because look, whenever I go to my kids' track meets, it's Monterrey Stadium in Janesville, Wisconsin; and you look down the end zone and you see a shut GM plant. The core of my hometown - and the employer was General Motors and it's now a 4 million square foot (mothball). So we have experienced the same kinds of things you're talking about where we have lost really good family supporting manufacturing jobs. I think there are a number of things we can and should and will do.

Number one, we do need good trade deals but here is the point; getting good trade deals means go out and get other country to play by our rules. You add up all the countries that we have trade agreements with, we have a surplus - a trade surplus with them. You add up all the countries we don't have trade agreements with, we have a massive trade deficit with. And so the secret to success is go out and get agreements. That's why I think of all the people who (ceded) the Presidency, who are negotiators. Donald Trump is that. And I believe that he has the tools and the skills to go out and get good agreements, to get other countries to play by our rules so we have a level playing field, that's point number one.

Point number two, and I know you're walking toward me and I don't mean to (jawbone) too much but our tax reform we think is really critical. We hit our businesses so much more than our foreign competitors hit theirs. The industrial world average tax rate on businesses like tool and dye makers, 23%; if you're a (inaudible) corporation, pass- through, top tax rate 44.6% or if you're a corporation, 35%. We are taxing our businesses at such higher tax rates than the other countries tax theirs. So number one, we're going to get those tax rates down but number two, with all these other countries; almost all our competitors do is they have a tax system where they border adjust their taxes. They - when they make something to sell overseas into America, they take the tax off of it and then it comes into America and it's tax-free.

If we make something, we tax it and send it to those countries and as it goes into their country, they tax it. So let's -- you got an example?

BILL JONES: If i may?

RYAN: Yes, sure.

BILL JONES: When you talk about that, that's just -- to me just baffles me that we cannot fix that.

RYAN: That's what our Tax Reform Bill does.

BILL JONES: We need to level the playing field between us and our largest trading partner China without doing damage but obviously they need us and we do need them.

RYAN: I agree with that.

BILL JONES: But without levelling this playing field we cannot compete -

RYAN: I actually - that's right.

BILL JONES: We just cannot.

RYAN: Let's take Harley Davidson, something we're really proud off in Milwaukee and Wisconsin. We make a hog in Milwaukee, we send it to China, it's taxed in Milwaukee, in America; and then China taxes it as it goes into the country. If - you know, they make a hog in China, it's taxed once and not twice, like ours. If Toyota or Honda sends a motorcycle from Tokyo into China, they take the tax off of it, it goes and it's taxed once. So we're doing it to ourselves. I know that's a little confusing, the point I'm trying to say is let's level the playing field and do the same thing they do to us that we do to them and by doing that, by saying we take our tax off our exports and place it on our imports, we are levelling the playing field and at the end of the day we're making China pay for our tax reform.

So I think that is one of the smartest things we can do to level the playing field and put American manufacturers, American producers, American products on a level playing field with the rest of the world to help us create more manufacturing jobs.

TAPPER: Thank you so much, Bill. I want to turn to another issue where Mr. Trump got a lot of support, that is an issue where you're not necessarily on the same page, shall we say; and that is Mr. Trump's position on illegal immigration and reducing legal immigration, as well. There are a lot of sceptics among his supporters of you and other Republican establishment types. Marry Ann Mendoza?

RYAN: They didn't used to call me Republican establishment types until about a year ago.

TAPPER: You're the Speaker of the House; you're the Speaker of the House, you did it to yourself.

RYAN: OK, I've been there a year.

TAPPER: You did it to yourself, man. All right, Marry Ann Mendoza is a realtor from Mesa, Arizona and she has a very serious question about this.

MARY ANN MENDOZA: Good evening, Speaker Ryan. My son, Brandon Mendoza was a Sergeant with the Mesa, Arizona Police Department. He was killed on May 12, 2014 by a three-time legal limit drunk, high on meth, repeat illegal criminal who smashed head-on in a violent head-on collision on my son - to my son on his way home from work. We now have Mayors who are creating sanctuary cities and using taxpayer money to protect these illegals. What do Americans have who are permanently affected by illegal crime? We've got politicians protecting them, we have court systems that are allowing them to stay in the country, and I'd really like to ask those Mayors, which child of yours would you choose to lose in order for illegals to stay here because that's the price I've had to pay? And I want to know how you're going to stand by our new President Trump elect, ending sanctuary cities, securing our borders, building a wall, properly vetting refugees who are coming in to stop the assault on our country, our citizens and our economy? Are you going to stand up for America, Speaker Ryan?

RYAN: First, let me say I'm so sorry for your loss.

MARY ANN MENDOZA: Thank you.

RYAN: You just made me think of a Sheriff Deputy (inaudible) we lost the same way, a multiple illegal immigrant drunk driving, head-on collision, going down the interstate. It's just awful. Donald and I agree completely on that. There is no daylight between us on that. So what I mean that sanctuary cities are a violation of the Rule

of Law and they are not to be tolerated, we agree with that a 100 percent. That means if you want Federal assistance, you're not going to get it, you got to enforce the law. And what the President-elect has asked us to do is focus on two things in Congress, with respect to this issue immediately and that's what we're doing. We're getting Congress working on that right now and that is to secure the border, and to enforce our laws with respect to criminal - violent criminals who are illegal aliens. We 100 percent agree with that because we are a nation of laws that need to support our laws. For instance, we're now working on legislation to make sure that the resources are deployed to the border, so that they can get what they need to secure the border. We passed this law - I voted for this - 2006, I think, about ten years ago, to secure our border and it never got done because of this past administration.

We now have a President who is serious about securing the border. He's telling us it's one of the top six things I want to get done this year in Congress. So we said, absolutely. So, what I'm telling you is we support that, agree with that. And now, not only that, we're working on how to execute that in this new Congress.

TAPPER: Thank you, Mary Ann.

RYAN: I'm sorry about your loss.

ANN: I just want to say one other thing. Do you know how many lives have been lost by repeat, deported criminals who are coming over our unsecured border? If we don't have a wall and we deport these criminals, they will keep coming back, killing more of us.

RYAN: That is why the two things that he has asked us to focus on is deporting violent criminals, who are repeat offenders, and securing the border. We agree and that's what we're working on.

TAPPER: Thank you, Mary Ann. And our thoughts and prayers are with you and your family. I want to bring in now Angelica Villalobos. She lives in Oklahoma City. She was brought to the United States illegally from Mexico when she was 11 years old, so clearly through no fault of her own.

ANGELICA VILLALOBOS: Thank you, Speaker Ryan. My name is Angelica Villalobos. I'm undocumented. I've been - like he mentioned, I've been living in the State of Oklahoma. I'm here with one of my daughters, Destiny. I've been in the United States for 21 years. I am protected from deportation because of the DACA program. To be protected, I applied, went through a background check, and I paid almost nearly $1,000 in fees. It's clear that if DACA gets repealed, my daughter will lose her mother And - I'm sorry. She will lose her mother and I want you to know that DACA has helped me. What do you - do you think that I should be deported and many families in my situation should?

RYAN: No. No, Angelica. First of all, I can see that you love your daughter and you are a nice person who has a great future ahead of you and I hope your future is here. I'll even repeat the sentiment that our incoming president says. That's the problem he wants to focus on. This is not the focus.

And so, what we have to do is find a way to make sure that you can get right with the law and we've got to do this in a good way, so that the rug doesn't get pulled out from under you and your family gets separated. That's the way we feel and that is exactly what our new incoming president has stated he wants to do.

Look, I got married in Oklahoma City. It's a great community. It's where - my wife is from that area. And I'm sure you're a great contributor to that community and we don't want to see you get separated from your family. So, we have to figure out how to fix this. But to do that, people need to have confidence that our laws are being followed and that we actually know who is coming and going, that we actually have a secure border.

So, I think what's really important for this issue writ large to get fixed - and Jake mentioned that I have a background in this - we've got to make sure that these laws are being enforced, that we are controlling our border, so violent criminals, repeat offenders don't come in and do these kinds of horrific things. We've got a drug problem, we've got a lot of problems and we want to be able to secure our border. When people get confidence in this country that our border is secured, that our laws are being enforced, then I really believe the country - all people in the country will be in a much better position to fix these thornier, bigger problems. But if you're worried about, you know, some deportation force coming, knocking on your door this year, don't worry about that.

TAPPER: So, let me ask you a question. For those who don't know, DACA is Deferred Action for Childhood Arrival. It's an executive action that President Obama took, granting legal status for individuals like Angelica. If President-Elect Trump wants to undo DACA, you would tell him don't do it?

RYAN: Well, I think we have to come up with a solution for the DACA kids and that's something we, in Congress, and the Trump transition team are working on, is what's a good, humane solution.

There is a constitutional issue here, which is President Obama tried to unilaterally write laws without going through Congress. And as you know, one of the separation of

powers, Presidents don't write laws. Congress writes laws. The elected legislative branch of government are the ones who write the laws. And so, this current president, President Obama, on this and many other occasions tried to go around Congress to unilaterally write laws, which is not the power of the president. So, there is an - that is unconstitutional.

And so, the point is, you just organize your life around this. You just told us how important this is to you and your family. So, what we have to do is figure out how to have a humane solution to this very legitimate, sincere problem and respect the rule of law. And that is what we're ...

TAPPER: The government has information about her now. What happens to that information? Will you introduce legislation to block it from being used to deport her?

RYAN: Everybody thinks that there's some deportation force that's being assembled. That's not happening.

TAPPER: President-Elect Trump actually used the term deportation force. RYAN: That's not happening.

TAPPER: But that's why people think it.

RYAN: I know, I know. And I'm here to tell you, in Congress, it's not happening. And what's happening is - where did she go?

TAPPER: Mary Ann?

RYAN: Mary. What's happening is that's what he's asked us to focus on, that's where we're focusing on. Secure the border and the people who are violent criminals, repea offenders who keep coming back in, we've got to focus on that. That's what we're focusing on.

TAPPER: We have to pay a couple of bills. Take his seat. Coming up ahead, draining the swamp. Is Congress in step with the incoming president. We'll have more with House Speaker, Paul Ryan. Live from the George Washington University. Stay with us.

(COMMERCIAL BREAK)

TAPPER: We are back live. Our guest this evening, Speaker of the House, Mr. Paul Ryan. I want to bring in Gail Wilson. She grew up in Texas. She works in international development. She is a Republican.

GAIL WILSON: Since you've been elected to Congress, you've picked up a (inaudible) as an expert on the budget. As the Trump administration and their agenda, increasing the funding with infrastructure, building a wall along our southern border and increasing the capacity of our military, all while simultaneously cutting taxes. Do you believe that the agenda is fiscally solvent?

RYAN: Yes. The tax reform we plan to be what we call revenue neutral, meaning to pay for itself. So, for taxes, it's close loopholes and special interest carve- outs, which broadens the tax base, meaning more money so we can lower the tax rates so we're more competitive. The gentleman who is a tool and die maker, that one provision I was telling him raising a trillion dollars in revenue to help us lower our tax rates. So, for instance, the tax reform we see is revenue neutral. On the other mention - - things you mentioned do cost money. We have to pay for those things and that's what our spring budget is going to do. So, for instance, there's a big infrastructure problem in this country. Whether it's canals, whether it's roads or bridges or rail or airports, that's a real problem; and we're going to have to come up with ways to pay for that. So, nothing's free. And so, we have to, in our budget, come up with other spending offsets to pay for those kinds of things, and that's why we want to prioritize spending to do that.

TAPPER: Thank you so much.

Gail Wilson: (Inaudible) Because, you know, it's harder here in D.C. And like - - I mean, it's hard. I mean, sometimes we make decisions, you don't think about the youth.

TAPPER: CNN is reporting tonight that the Trump - -

RYAN: That's why we need growth and jobs.

Gail Wilson: Yes.

RYAN: That's why we need economic growth.

TAPPER: CNN is reporting tonight that Trump transition officials want your tax reform proposal that the Congress is now working on to include a measure, championed by Ivanka Trump, that would include a child care tax credit and six weeks of maternity leave. You have voted against paid parental leave in the past. Will you support the Ivanka effort getting into the tax reform bill?

RYAN: That's definitely something that's on the table. The Ways and Means Committee, which writes our tax laws, are going to be looking at that. I don't want to get ahead of myself, because it's too soon to say what is in or not in the tax bill.

TAPPER: So, Speaker Ryan, I want to bring in Greg Gross. The context here is one of the first things that happened last week when you convened with the House Republican Caucus is they, against your wishes, wanted to gut, undermine, weaken the Office of Congressional Ethics. That alarmed a lot of people, including president-elect Trump, who said it shouldn't be a priority, who want to drain the swamp. Sir?

Greg Gross: Thank you. One of the things that this election has demonstrated to Democrats and Republicans is that a lot of Americans don't trust the representatives in Washington.

RYAN: Yes, you think?

Greg Gross: It explains a lot. And Donald Trump pledged, among other things during the campaign, to, in his words, drain the swamp of Washington corruption. And then he, just before the election, offered a series of ethics reform proposals, three directed at Congress. One was a five- year ban on lobbying by members of Congress and their staffs, after they leave the government.

RYAN: In the administration.

Greg Gross: Well, for Congress, he said. He also called for eliminating the loopholes in the definition of what is a lobbyist under the law, under the federal, or the Lobbyist Disclosure Act, as you know. Third thing was congressional term limits, impose a constitutional amendment to impose term limits. As you know, that's been here for 20 years as a proposal.

RYAN: Right.

Greg Gross: So, I worked in the U.S. Senate as a chief of staff for many years for several senators, so I know how difficult these problems can be, especially the broader issue of trust. Do you support these three specific proposals? That's the five- year ban on former members of Congress and their staffs lobbying after they leave government. That's for Congress, not - - he did it in the executive branch, for Congress. Second thing is expanding the definition of a lobbyist under the federal law. The third is a constitutional amendment on term limits. And then, what else would you do beyond that to restore trust?

RYAN: So, let me first get to the point that he made, which is this is kind of an obscure agency that can make - - anonymous people can make allegations with a person with no due process and you have no right to confront your accuser. So, there were a lot of people in Congress who were concerned that unsubstantiated allegations were being leveled against them. They didn't know who they were, and they didn't have an opportunity to confront that accuser. So, there's a legitimate problem with that. I, as you said, do not think this was the time to be dealing with that. We have more important issues that the people of this country care about, and that's not one of them. To your point, I'll go backwards- forwards. So, I agree with term limits. I've always supported term limits. I think term limits is a smart thing to do. It should be uniform across - - we shouldn't just have term limits for Wisconsin and only Illinois. And the only way to do that is a constitutional amendment. I've long supported a constitutional amendment for term limits. I think it freshens the system. We impose term limits within Congress on our critical positions, like our chairmanships. So, we rotate people through so they can't be in the same job in Congress, because we term limit our people. So, I've always liked the term limit proposal. On the lobbyist thing, some reforms are a little more complicated than they seem. Do I think a person shouldn't leave right away and go into lobbying? Yes, I agree with that. They should not do that. But, what if you want to become an advocate for the Cancer Society? What if you want to, after you've retired, help your local hospital system and be on their board to support them and then go get legislation? There are a lot of other unseen circumstances that can play into this, and you've got to be careful about that. When people leave Congress, what's wrong with them going out and advocating for causes that they believe in? So, the question is, are they going go, leave, and get rich, and go shill for a company? That, I think, is something that is an issue that needs to be dealt with. We do ban it. The question is, should we lengthen the ban? That's the question. But I don't think we should tell men and women we want a citizen legislature, take time out of your private life and come and serve, and then go back into private life and you can't get engaged in civics. I think that's dangerous. I don't think that's a good idea.

TAPPER: Sorry to jump in, he's got one more point. You can tell him at the the commercial. Let's take another quick break. When we come back, how will Donald

Trump's tweeting habits affect U.S. policy? Stay with us.

(Commercials)

Welcome back to CNN Live, tonight at George Washington University. With one week until the inauguration of Donald Trump, House Speaker Paul Ryan is our guest. I see you've got your Packers pin on now.

RYAN: You bet I do. I had it on the last segment, too. TAPPER: But, I do want to turn to one serious question. Obviously, the nation is in the throes of an opioid epidemic. I want to introduce you to Craig Moss. He came from upstate New York to join us tonight. He says he's attended more than 40 Trump rallies during the campaign. Craig?

Craig Moss: Hello. I lost my son, Rob J. R. Moss, three years ago to a heroin overdose. And heroin comes into the towns and just ruins the communities and families. And my question to you, sir, is do you and the members of Congress intend to support Donald Trump's stance on protecting our borders by supporting his recommendations so we can slow down that heroin that's coming into this country? And secondly, are there any laws currently being put together that would provide and mandate - - and I stress mandate - - step- down procedures for folks that are being prescribed ox con tin and that type of drug?

TAPPER: By step down, just to - - you mean helping wean people who are on these opioids, wean them off?

Craig Moss: Exactly, yes. That's exactly - - yes, sir.

RYAN: Well, you know, unfortunately, I have heard too many stories like yours just in the last couple of years, and I'm really sorry about the loss of your son. I'm thinking of two buddies of mine in Janesville, Wisconsin, who lost their sons, just like you did. This affects everybody and it is an epidemic raging through our country. So, yes, on your border question, it's what we were talking about before. It's one of the reasons I said why we're building the border wall and the fence. This is one of the reasons, because we're getting so many drugs coming in from the southern border in particular, which is making it so much more high in supply and low in price. So, that is one of the big reasons why we need to secure our borders. So, yes, we do support our president- elect in doing that, and that's something we're working on right now. We just passed legislation last month on opioid reform on a whole host of issues. We just - - literally, it went into law about a month ago, and it doesn't mandate step-downs, but it pushes a lot of reforms, like you just said, which is fixing the way prescriptions are written in America; digitizing these, so that you can make sure that a person can't go shopping around for prescriptions; and making sure that physicians who prescribe these know what they're prescribing and to guard against the kinds of problems, because typically what happens is you get hurt, you know, you get in a car accident, you get a painkiller, and then that progressively takes you farther down the road to where you're addicted to opioids, and then comes heroin. That is the classic progression that we've seen, and that is what our landmark legislation - - one of the things I'm most proud of this last year, Republicans and Democrats came together, seeing that this was a raging epidemic, to pass the most sweeping legislation in this area that we've ever passed. And we put - - then a few weeks ago, at the end of - - I mean, before Christmas, I passed legislation funding it, putting a lot of money out to the states to fund this new policy. So much so that our governor in Wisconsin, Scott Walker, is just now convening a special session of our state legislature to deal with all the new federal funds coming into the state to fight opioid abuse and to fight - - it's law enforcement, it's medical professionals, and it's counseling and it's prevention. So, we have to have a full- front war against this opioid epidemic, and that is exactly what we passed and funded just a couple of weeks ago. So, this is happening everywhere in this country. And thank you for going around and talking about it. Thank you for making people aware.

TAPPER: God bless you, Craig. A lot of people in your shoes, and we're really sorry. All right. A lot of emotional actions, a lot of tough stories.

RYAN: It's a tough time in our country.

TAPPER: It is a tough time in the country. On a slightly lighter note, I want to bring in Christine Ford. She's a grad student in the school of public health here at GW. Please.

Christine Ford: So, I'm 23, so as a millennial - -

RYAN: And where are you from?

Christine Ford: I'm from Frederick, Maryland. It's, like, 45 minutes away. So, as a millennial, many people in my generation have Twitter, at least follow social media. Donald Trump has made a habit of calling out those who disagree with him, even you.

RYAN: I know. He did it to me all the time during the campaign.

Christine Ford: Even you, exactly, on his own Twitter account. So, I wanted to know how you feel his tweeting habits will affect both foreign and domestic policy in the United States.

RYAN: I'm going to go out on a limb here, and I'm going to say: This is going to be a very unconventional president.

Christine Ford: You think?

RYAN: All right, so...

What do you mean by that?

RYAN: So, he is going - - I think he's going to keep doing this, and I think he's going to be probably a little more restrained in his tweets, probably. But, it's all relative.

Christine Ford: Really, you do?

RYAN: I mean, just look. But I do believe it's been extremely effective for getting elected President, I've got to tell you. I mean, he was able to touch and tap into people's hearts and minds unlike - - look. I ran for Vice President in 2012. I was part of a national campaign. And I am just a marvel - - amazed at how well he connected with so many people. And I think he did that because of this. And so, I think he believes - - no, I don't think he believes, I think he has a very special, personal relationship with individuals. So, he connects directly with them in this country. And that's what I think is very interesting in this age we are in, where you don't, as a public official, have to go through the media to communicate to people; you can just do it directly. And he has mastered that. I mean, so much so that he is now about to be sworn in as President of the United States. So, I don't think he's going to stop doing that. I think he's going to continue to work on mastering that. How it affects domestic policy and foreign policy, I don't know. We're going to find out because we're in uncharted territory. But he has mastered not just public opinion, but communicating directly with people and getting around the filters; and that is something that I think he feels very strongly about the fact that he's given voice to a lot of people who felt they've not guilty been heard, that have been voiceless.

TAPPER: Let me ask you a question about social media, which is: Your tenure as Speaker of the House has been in this age of wild social media. What written about you on social media has been the most amusing to you, and what has been the most irksome?

RYAN: I don't really pay attention to it. You get really thick skin doing this kind of a job, so things don't really bother me too much. Because if it's irksome, you just kind of laugh it off. You know, I actually do know what a dab is, okay? Just for the record. It's this. I do. So, the most amusing thing was, what, a week ago, when we swore people in, this congressman's son, we were doing the post, he was doing it - - he wasn't doing a dab, by the way, he looked like he was sneezing. He was going like this. He was holding a Bible and going like this. So, that's not dabbing, in my opinion. Cam Newton dabs, all right?

TAPPER: So you took issue with his technique.

RYAN: His technique, and I thought he was sneezing. Because it looked like he was sneezing. It looked a little strange to me at the time. So, I think that kind of went viral and I got made fun of for that.

TAPPER: But you loved it.

RYAN: But I thought it was funny, yes.

TAPPER: He's been a great sport. Let's give a big hand to Speaker Ryan.

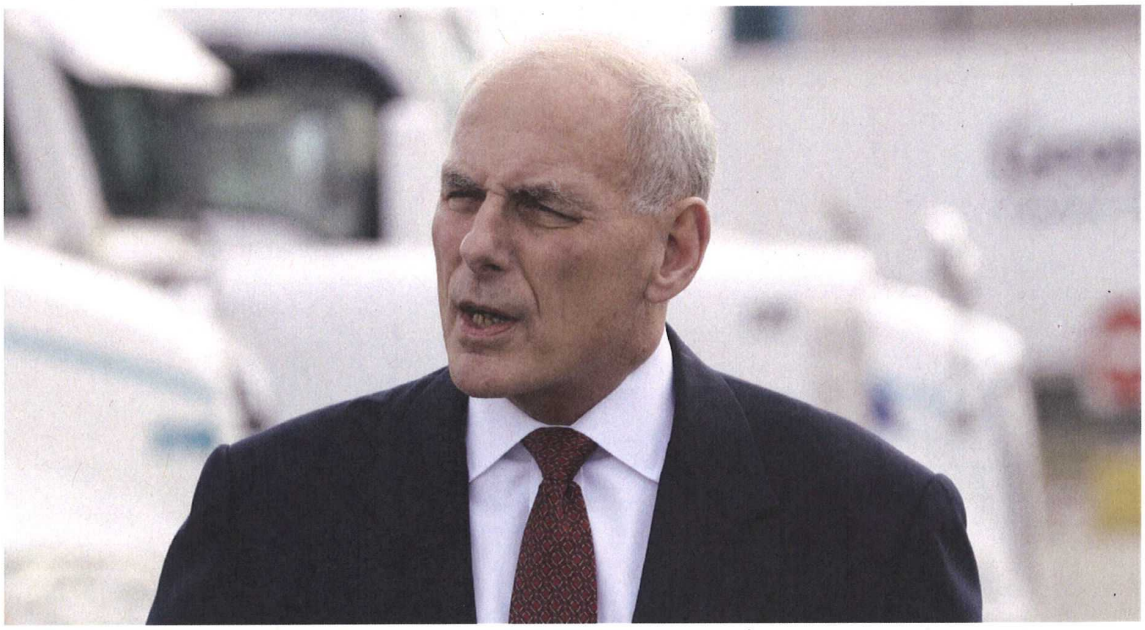
RYAN: Thank you.

TAPPER: And everyone else who made this town hall possible, thank you so much. A special thanks to our partners at George Washington University, and our audience who was asking the questions and sharing their stories, and also, of course, those watching around the world. Don't forget, CNN will have extensive live coverage of the historic inauguration of president- elect Donald Trump one week from tomorrow. Don Lemon picks up now. Good luck to your Packers, all right?

RYAN: I'm a Packers fan. And I know you're a Texas fan, but, hey, go Packers! Thank you.

EXHIBIT Y

POLITICO



Homeland Security Secretary John Kelly sought to mollify senators who have for weeks been outraged by the Trump administration's hard-edged immigration policies. | AP Photo

Wary Democrats look to Kelly for answers on immigration

Senate Democrats wanted reassurances from Homeland Security Secretary John Kelly.

By **TED HESSON** and **SEUNG MIN KIM** | 03/29/2017 09:13 PM EDT

Senate Democrats met with Homeland Security Secretary John Kelly on Wednesday to seek reassurances that there would be boundaries to President Donald Trump's plan to intensify immigration enforcement.

In some cases, Kelly delivered. The former Marine general told senators that border agents would not separate mothers and children at the border, unless a mother was sick or injured. He also said his department would not target enrollees in the Deferred Action for

Childhood Arrivals Program, which grants deportation relief to undocumented immigrants brought to the U.S. at a young age.

But an undercurrent of frustration ran through the meeting, according to interviews with roughly half the more than 20 senators in attendance.

Privately, Kelly sought to mollify senators who have for weeks been outraged by the Trump administration's hard-edged immigration policies. During the meeting at the Capitol, which lasted nearly two hours, the DHS secretary told Democrats that the administration was still mainly targeting for deportation those who had committed crimes, and that they didn't even have the manpower to deport all undocumented immigrants in the country, according to one senator.

Several Democrats weren't convinced, including Sen. Bob Menendez of New Jersey. "Basically, even though the secretary portrays that we're only going after the bad apples, and criminals and this and that, the reality is — I pointed out to him — that his new memo on priorities makes everybody technically eligible for deportation," Menendez said in an interview after the meeting. "He didn't deny that."

CONGRESS
Senate steps up as House Russia probe flails
By **AUSTIN WRIGHT** and **MARTIN MATISHAK**

Several other senators echoed that sentiment.

"Frustration would be a good word," said Sen. Patty Murray (D-Wash.). "He stated that he was not separating children from their parents, but that's not been our experience." On the topic of keeping families together, Sen. Kamala Harris (D-Calif.) said, "He didn't guarantee it."

Speaking with reporters after the meeting, Kelly generally affirmed his positions on families at the border and DACA enrollees. He also called on members of Congress to change laws if they don't agree with them. "They may not like what I have to say, in terms of how we're doing business, but they deserve as elected representatives of the people to hear what I have to say," he said. "Honest men and women should be able to disagree on a lot of things and we do."

Of the DACA program, Kelly said both the government and individuals have an obligation to honor the terms of the policy. "The DACA status is a commitment, not only by the government towards the DACA person, or the so-called Dreamer, but by that person to obey

the law," Kelly said. "I don't care what you read, or what people say, we have not, in my time picked up someone who was covered by DACA. We have not done that."

Since Trump took office, though, several current or former DACA recipients have been arrested by federal immigration authorities, including a 24-year-old man in the Seattle area who was released on bail by an immigration judge Wednesday. Federal immigration officers contend he admitted to membership in a gang once they encountered him.

The news from Kelly seemed to placate some Democrats, if not win them over entirely. Sen. Dick Durbin (D-Ill.) said he "breathed a little sigh of relief" at Kelly's DACA stance, which he said "was the policy of the Obama administration, too." Durbin said the program "is still very much alive" — and credited Kelly for it.

"Many people would have doubted that that ever would be the case, and I think he is one of the major reasons for it," Durbin said.

At the meeting, Kelly spoke of the importance of addressing the factors that drive migrants north from Central American countries, such as Honduras, Guatemala and El Salvador. He said the administration plans to organize a conference in Miami before the summer with presidents and business leaders from those countries to discuss ways to improve social and economic conditions in the region.

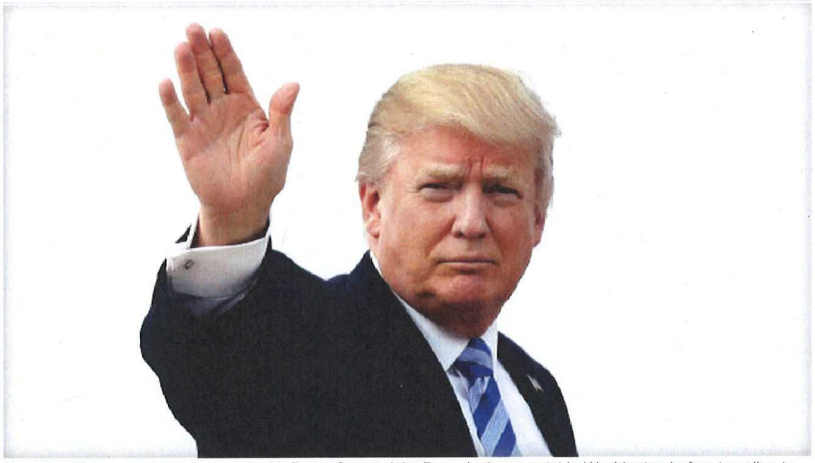
Kelly said Mexico wants to co-host the event and that Canada and Colombia would attend as observers. "We're trying to improve the state of life in the Central American republics so those people don't have to come up here," he said.

Elana Schor contributed to this report.

EXHIBIT Z

AP / *April 24, 2017, 11:27 AM*

Transcript of AP interview with Trump



President Trump waves as he boards Air Force One at Joint Base Andrews outside Washington before traveling to Palm Beach, Florida, for the Good Friday holiday and Easter weekend April 13, 2017. / **REUTERS/YURI GRIPAS**

A transcript of an Oval Office interview Friday with President Donald Trump by AP White House Correspondent Julie Pace. Where the audio recording of the interview is unclear, ellipses or a notation that the recording was unintelligible are used.

AP: I do want to talk to you about the 100 days.

TRUMP: Good.

AP: I want to ask a few questions on some topics that are happening toward the end of the interview.

TRUMP: Did you see Aya (Hijazi, an Egyptian-American charity worker who had been detained in the country for nearly three years) ...

AP: Can you tell me a little bit about how that came about?

TRUMP: No, just — you know, I asked the government to let her out. ...

TRUMP: You know Obama worked on it for three years, got zippo, zero.

AP: How did you hear about this story?

TRUMP: Many people, human rights people, are talking about it. It's an incredible thing, especially when you meet her. You realize — I mean, she was in a rough place.


Duterte may be too "tied up" to accept Trump's invite


CBS News in the White House


What does Trump see best moment of his firs days?

TRUMP: Yeah, it's funny: One of the best chemistries I had was with (German Chancellor Angela) Merkel.

(Crosstalk) AP: Really?

TRUMP: Chancellor Merkel.

TRUMP: And I guess somebody shouted out, "Shake her hand, shake her hand," you know. But I never heard it. But I had already shaken her hand four times. You know, because we were together for a long time.

AP: Did you expect you would have good chemistry with her?

TRUMP: No. Because, um, I'm at odds on, you know, the NATO payments and I'm at odds on immigration. We had unbelievable chemistry. And people have given me credit for having great chemistry with all of the leaders, including el-Sissi. ...

TRUMP: So it was a great thing to see that happen.

AP: Do you feel like you have changed the office of the presidency, how the presidency can be used to effect change?

TRUMP: I think the 100 days is, you know, it's an artificial barrier. It's not very meaningful. I think I've established amazing relationships that will be used the four or eight years, whatever period of time I'm here. I think for that I would be getting very high marks because I've established great relationships with countries, as President el-Sissi has shown and others have shown. Well, if you look at the president of China, people said they've never seen anything like what's going on right now. I really liked him a lot. I think he liked me. We have a great chemistry together. ...

TRUMP: I've developed great relationships with all of these leaders. Nobody's written that. In fact, they said, "Oh, well, he's not treating them nicely," because on NATO, I want them to pay up. But I still get along with them great, and they will pay up. In fact, with the Italian prime minister yesterday, you saw, we were joking, "Come on, you have to pay up, you have to pay up." He'll pay.

AP: Did he say that? In your meeting? Your private meeting?

TRUMP: He's going to end up paying. But you know, nobody ever asked the question. Nobody asked. Nobody ever asked him to pay up. So it's a different kind of a presidency.

AP: Do you feel like that's one thing that you've changed, that you maybe are actually asking the direct questions about some of these things?

TRUMP: Yeah. Let me give me an example. A little before I took office there was a terrible article about the F-35 fighter jet. It was hundreds of billions of dollars over budget. It was seven years behind schedule. It was a disaster. So I called in Lockheed and I said, "I'm sorry, we're going to have to bid this out to another company, namely Boeing," or whoever else. But Boeing. And I called in Boeing and I started getting competing offers back and forth. ...

CBS News Special Report

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because of me. I mean, because that's what I do.

TRUMP: Now if you multiply that times 3,000 planes, you know this is on 90 planes. In fact, when the Prime Minister (Shinzo) Abe of Japan came in because they bought a certain number of those ... The first thing he said to me, because it was right at the time I did it, he said, "Could I thank you?" I said, "What?" He said, "You saved us $100 million." Because they got a $100 million savings on the 10 or 12 planes that they (bought). Nobody wrote that story. Now you know that's a saving of billions and billions of dollars, many billions of dollars over the course of — it's between 2,500 and 3,000 planes will be the final order. But this was only 90 of those 2,500 planes.

AP: And you expect those savings to carry out across that full order?

TRUMP: More. I'm gonna get more than that. This was a thing that was out of control and now it's great. And the woman that runs Lockheed, Marillyn (Hewson), she was great. But all of a sudden it was a different kind of a thing. You know?

AP: Do you feel like you've been able to apply that kind of a relationship to your dealings with Congress as well?

TRUMP: I have great relationships with Congress. I think we're doing very well and I think we have a great foundation for future things. We're going to be applying, I shouldn't tell you this, but we're going to be announcing, probably on Wednesday, tax reform. And it's — we've worked on it long and hard. And you've got to understand, I've only been here now 93 days, 92 days. President Obama took 17 months to do Obamacare. I've been here 92 days but I've only been working on the health care, you know I had to get like a little bit of grounding right? Health care started after 30 day(s), so I've been working on health care for 60 days. ...You know, we're very close. And it's a great plan, you know, we have to get it approved.

AP: Is it this deal that's between the Tuesday Group and the Freedom Caucus, is that the deal you're looking at?

TRUMP: So the Republican Party has various groups, all great people. They're great people. But some are moderate, some are very conservative. The Democrats don't seem to have that nearly as much. You know the Democrats have, they don't have that. The Republicans do have that. And I think it's fine. But you know there's a pretty vast area in there. And I have a great relationship with all of them. Now, we have government not closing. I think we'll be in great shape on that. It's going very well. Obviously, that takes precedent.

AP: That takes precedent over health care? For next week?

TRUMP: Yeah, sure. Next week. Because the hundred days is just an artificial barrier. The press keeps talking about the hundred days. But we've done a lot. You have a list of things. I don't have to read it.

AP: You did put out though, as a candidate, you put out a 100-day plan. Do you feel like you should be held accountable to that plan?

TRUMP: But things change. There has to be flexibility. Let me give you an example. President Xi, we have a, like, a really great relationship. For me to call him a currency manipulator and then say, "By the way, I'd like you to solve the North Korean problem," doesn't work. So you have to have a certain flexibility, Number One. Number Two, from the time I took office till now, you know, it's a very exact thing. It's not like generalities. Do you want a Coke or anything?

AP: I'm OK, thank you. No. ...

TRUMP: But President Xi, from the time I took office, he has not, they have not been currency manipulators. Because there's a certain respect because he knew I would do something or whatever. But more importantly than him not being a currency manipulator the bigger picture, bigger than even currency manipulation, if he's helping us with North Korea, with nuclear and all of the things that go along with it, who would call, what am I going to do, say, "By the way, would you help us with North Korea? And also, you're a currency manipulator." It doesn't work that way.

AP: Right.

TRUMP: And the media, some of them get it, in all fairness. But you know some of them either don't get it, in which case they're very stupid people, or they just don't want to say it. You know because of a couple of them said, "He didn't call them a currency manipulator." Well, for two reasons. Number One, he's not, since my time. You know, very specific formula. You would think it's like generalities, it's not. They have — they've actually — their currency's gone up. So it's a very, very specific formula. And I said, "How badly have they been," ... they said, "Since you got to office they have not manipulated their currency." That's Number One, but much more important, they are working with us on North Korea. Now maybe that'll work out or maybe it won't. Can you imagine? ...

AP: So in terms of the 100-day plan that you did put out during the campaign, do you feel, though, that people should hold you accountable to this in terms of judging success?

TRUMP: No, because much of the foundation's been laid. Things came up. I'll give you an example. I didn't put Supreme Court judge on the 100 (day) plan, and I got a Supreme Court judge.

AP: I think it's on there.

TRUMP: I don't know. ...

AP: "Begin the process of selecting." You actually exceeded on this one. This says, "Begin the process of selecting a replacement."

TRUMP: That's the biggest thing I've done.

AP: Do you consider that your biggest success?

TRUMP: Well, I — first of all I think he's a great man. I think he will be a great, great justice of the Supreme Court. I have always heard that the selection and the affirmation of a Supreme Court judge is the biggest thing a president can do. Don't forget, he could be there for 40 years. ... He's a young man. I've always heard that that's the biggest thing. Now, I would say that defense is the biggest thing. You know, to be honest, there are a number of things. But I've always heard that the highest calling is the nomination of a Supreme Court justice. I've done one in my

as we make more planes. If I can save that on a small number of planes — Gen. (Jim) Mattis (the defense secretary) said, "I've never seen anything like this," because he had to sign the ultimate (unintelligible) ... He had to sign the ultimate, you know. He said, "I've never seen anything like this before, as long as I've been in the military." You know, that kind of cutting.

AP: Right.

TRUMP: Now, if I can do that (unintelligible) ... As an example, the aircraft carriers, billions of dollars, the Gerald Ford, billions and billions over budget. That won't happen.

AP: Is that something you're going to take on?

TRUMP: (unintelligible) But as we order the other ones, because they want to order 12, the other ones are going to come in much less expensive. ...

AP: Can I ask you, over your first 100 days — you're not quite there yet — how do you feel like the office has changed you?

TRUMP: Well the one thing I would say — and I say this to people — I never realized how big it was. Everything's so (unintelligible) like, you know the orders are so massive. I was talking to —

AP: You mean the responsibility of it, or do you mean —

TRUMP: Number One, there's great responsibility. When it came time to, as an example, send out the 59 missiles, the Tomahawks in Syria. I'm saying to myself, "You know, this is more than just like, 79 (sic) missiles. This is death that's involved," because people could have been killed. This is risk that's involved, because if the missile goes off and goes in a city or goes in a civilian area — you know, the boats were hundreds of miles away — and if this missile goes off and lands in the middle of a town or a hamlet .... every decision is much harder than you'd normally make. (unintelligible) ... This is involving death and life and so many things. ... So it's far more responsibility. (unintelligible) ....The financial cost of everything is so massive, every agency. This is thousands of times bigger, the United States, than the biggest company in the world. The second-largest company in the world is the Defense Department. The third-largest company in the world is Social Security. The fourth-largest — you know, you go down the list.

AP: Right.

TRUMP. It's massive. And every agency is, like, bigger than any company. So you know, I really just see the bigness of it all, but also the responsibility. And the human responsibility. You know, the human life that's involved in some of the decisions.

AP: You've talked a little bit about the way that you've brought some business skills into the office. Is there anything from your business background that just doesn't translate into the presidency, that just simply is not applicable to this job?

TRUMP: Well in business, you don't necessarily need heart, whereas here, almost everything affects people. So if you're talking about health care — you have health

TRUMP: In fact, in business you're actually better off without it.

AP: What's making that switch been like for you?

TRUMP: You have to love people. And if you love people, such a big responsibility. (unintelligible) You can take any single thing, including even taxes. I mean we're going to be doing major tax reform. Here's part of your story, it's going to be a big (unintelligible). Everybody's saying, "Oh, he's delaying." I'm not delaying anything. I'll tell you the other thing is (unintelligible). I used to get great press. I get the worst press. I get such dishonest reporting with the media. That's another thing that really has — I've never had anything like it before. It happened during the primaries, and I said, you know, when I won, I said, "Well the one thing good is now I'll get good press." And it got worse. (unintelligible) So that was one thing that a little bit of a surprise to me. I thought the press would become better, and it actually, in my opinion, got more nasty.

AP: But in terms of tax reform, how are you going to roll that out next week?

TRUMP: Well I'm going to roll (out) probably on Wednesday, around Wednesday of next week, we're putting out a massive tax reform — business and for people — we want to do both. We've been working on it (unintelligible). Secretary Mnuchin is a very talented person, very smart. Very successful (unintelligible). ... We're going to be putting that out on Wednesday or shortly thereafter. Let me leave a little room just in case (unintelligible). ... And that's a big story, because a lot of people think I'm going to put it out much later.

AP: Do you have any details on that in terms of rates?

TRUMP: Only in terms that it will be a massive tax cut. It will be bigger, I believe, than any tax cut ever. Maybe the biggest tax cut we've ever had. ...

AP: Obviously, that's going to come in a week where you're going to be running up against the deadline for keeping the government open. If you get a bill on your desk that does not include funding for the wall, will you sign it?

TRUMP: I don't know yet. People want the border wall. My base definitely wants the border wall, my base really wants it — you've been to many of the rallies. OK, the thing they want more than anything is the wall. My base, which is a big base; I think my base is 45 percent. You know, it's funny. The Democrats, they have a big advantage in the electoral college. Big, big, big advantage. I've always said the popular vote would be a lot easier than the electoral college. The electoral college — but it's a whole different campaign (unintelligible). The electoral college is very difficult for a Republican to win, and I will tell you, the people want to see it. They want to see the wall, they want to see security. Now, it just came out that they're 73 percent down. ... That's a tremendous achievement. ... Look at this, in 100 days, that down to the lowest in 17 years and it's going lower. Now, people aren't coming because they know they're not going to get through, and there isn't crime. You know the migration up to the border is horrible for women, you know that? (Unintelligible.) Now, much of that's stopped because they can't get through.

AP: It sounds like maybe you're beginning to send a message that if you do get a spending bill that doesn't have border funding in there, you would sign it.

less. That's not a lot of money relative to what we're talking about. If we stop 1 percent of the drugs from coming in — and we'll stop all of it. But if we stop 1 percent of the drugs because we have the wall — they're coming around in certain areas, but if you have a wall, they can't do it because it's a real wall. That's a tremendously good investment, 1 percent. The drugs pouring through on the southern border are unbelievable. We're becoming a drug culture, there's so much. And most of it's coming from the southern border. The wall will stop the drugs.

AP: But, just trying to nail you down on it one more time, will you sign a spending bill if it doesn't have —

TRUMP: I don't want to comment. I just don't know yet. I mean, I have to see what's going on. I really do. But the wall's a very important thing to — not only my base, but to the people. And even if it wasn't, I mean I'll do things that aren't necessarily popular. ... The wall is very important to stopping drugs.

AP: If you don't have a funding stream, your message to your base is what?

TRUMP: My base understands the wall is going to get built, whether I have it funded here or if I get it funded shortly thereafter, that wall's getting built, OK? One hundred percent. One hundred percent it's getting built. And it's also getting built for much less money — I hope you get this — than these people are estimating. The opponents are talking $25 billion for the wall. It's not going to cost anywhere near that.

AP: You think $10 billion or less.

TRUMP: I think $10 billion or less. And if I do a super-duper, higher, better, better security, everything else, maybe it goes a little bit more. But it's not going to be anywhere near (those) kind of numbers. And they're using those numbers; they're using the high numbers to make it sound impalatable (sic). And the fact it's going to cost much less money, just like the airplane I told you about, which I hope you can write about.

(Off-the-record discussion.)

TRUMP: They had a quote from me that NATO's obsolete. But they didn't say why it was obsolete. I was on Wolf Blitzer, very fair interview, the first time I was ever asked about NATO, because I wasn't in government. People don't go around asking about NATO if I'm building a building in Manhattan, right? So they asked me, Wolf ... asked me about NATO, and I said two things. NATO's obsolete — not knowing much about NATO, now I know a lot about NATO — NATO is obsolete, and I said, "And the reason it's obsolete is because of the fact they don't focus on terrorism." You know, back when they did NATO there was no such thing as terrorism.

AP: What specifically has NATO changed?

TRUMP: (Cites Wall Street Journal article) ... I did an interview with Wolf Blitzer, and I said NATO was obsolete — I said two things — obsolete, and the country's aren't paying. I was right about both. I took such heat for about three days on both, because nobody ever criticized NATO. I took heat like you wouldn't believe. And then some expert on NATO said, "You know, Trump is right." But I said it was

AP: This morning you tweeted that after the possible terrorist attack in Paris, that it will have a big effect on the upcoming French election. What did you mean by that?

TRUMP: Well, I think it will have a big effect on who people are going to vote for in the election.

AP: Do you think it's going to help Marine Le Pen?

TRUMP: I think so.

AP: Do you believe that she should be the president?

TRUMP: No, I have no comment on that, but I think that it'll probably help her because she is the strongest on borders and she is the strongest on what's been going on in France.

AP: Do you worry at all that by saying that, that a terrorist attack would have an impact on a democratic election, that it would actually embolden terrorists to try to —.

TRUMP: No. Look, everybody is making predictions who is going to win. I am no different than you, you could say the same thing. ...

AP: I just wonder if you are encouraging, you are the president of the United States, so to say that you worry that it encourages terrorists ...

TRUMP: No, I am no different than — no, I think it discourages terrorists, I think it discourages. I think what we've done on the border discourages it. I think that my stance on having people come in to this country that we have no idea who they are and in certain cases you will have radical Islamic terrorism. I'm not going to have it in this country. I'm not going to let what happened to France and other places happen here. And it's already largely, you know — we have tens — we have hundreds of thousands of people that have been allowed into our country that should not be here. They shouldn't be here. We have people allowed into our country with no documentation whatsoever. They have no documentation and they were allowed under the previous administrations, they were allowed into our country. It's a big mistake.

AP: Just so that I am clear. You are not endorsing her for the office, but you are —

TRUMP: I am not endorsing her and I didn't mention her name.

AP: Right, I just wanted to make sure I have that clear.

TRUMP: I believe whoever is the toughest on radical Islamic terrorism and whoever is the toughest at the borders will do well at the election. I am not saying that person is going to win, she is not even favored to win, you know. Right now, she is in second place.

AP: I have a question on the markets, actually. One thing that I think has been different about this White House is that you do point to the markets as a sign of progress. Do you worry, though — I mean, the markets go up and down.

TRUMP: You live by the sword, you die by the sword, to a certain extent. But we

AP: What about NAFTA? What's the plan on NAFTA?

TRUMP: What would you like to know?

AP: I would like to know what your plan is in terms of renegotiating.

TRUMP: I am very upset with NAFTA. I think NAFTA has been a catastrophic trade deal for the United States, trading agreement for the United States. It hurts us with Canada, and it hurts us with Mexico. Most people don't even think of NAFTA in terms of Canada. You saw what happened yesterday in my statements, because if you look at the dairy farmers in Wisconsin and upstate New York, they are getting killed by NAFTA.

AP: Is your plan still, though, to renegotiate the whole deal?

TRUMP: I am going to either renegotiate it or I am going to terminate it.

AP: Termination is still on the table.

TRUMP: Absolutely. If they don't treat fairly, I am terminating NAFTA.

AP: What's a timeline for that decision?

TRUMP: It's a six-month termination clause, I have the right to do it, it's a six-month clause.

AP: If I could fit a couple of more topics. Jeff Sessions, your attorney general, is taking a tougher line suddenly on Julian Assange, saying that arresting him is a priority. You were supportive of what WikiLeaks was doing during the campaign with the release of the Clinton emails. Do you think that arresting Assange is a priority for the United States?

TRUMP: When Wikileaks came out ... never heard of Wikileaks, never heard of it. When Wikileaks came out, all I was just saying is, "Well, look at all this information here, this is pretty good stuff." You know, they tried to hack the Republican, the RNC, but we had good defenses. They didn't have defenses, which is pretty bad management. But we had good defenses, they tried to hack both of them. They weren't able to get through to Republicans. No, I found it very interesting when I read this stuff and I said, "Wow." It was just a figure of speech. I said, "Well, look at this. It's good reading."

AP: But that didn't mean that you supported what Assange is doing?

TRUMP: No, I don't support or unsupport. It was just information. They shouldn't have allowed it to get out. If they had the proper defensive devices on their internet, you know, equipment, they wouldn't even allow the FBI. How about this — they get hacked, and the FBI goes to see them, and they won't let the FBI see their server. But do you understand, nobody ever writes it. Why wouldn't (former Hillary Clinton campaign chairman John) Podesta and Hillary Clinton allow the FBI to see the server? They brought in another company that I hear is Ukrainian-based.

AP: CrowdStrike?

TRUMP: That's what I heard. I heard it's owned by a very rich Ukrainian, that's

TRUMP: I am not involved in that decision, but if Jeff Sessions wants to do it, it's OK with me. I didn't know about that decision, but if they want to do it, it's OK with me.

AP: On Iran, which is another thing you talked a lot on the campaign —

TRUMP: And the other thing that we should go after is the leakers. ...

AP: On Iran, you also talked about it quite a bit on the campaign trail. And you said in the press conference yesterday that you think that Iran is violating the spirit of the agreement. When you say that, do you mean in terms of the actual nuclear accord, or do you mean what they are doing in the region?

TRUMP: In terms of what they are doing all over the Middle East and beyond.

AP: So you believe that they are complying with the agreement?

TRUMP: No, I don't say that. I say that I believe they have broken the spirit of the agreement. There is a spirit to agreements, and they have broken it.

AP: In terms of what they are doing elsewhere in the Middle East?

TRUMP: In terms of what they are doing of all over.

AP: When you talk to European leaders, when you talk to Merkel, for example, or Teresa May, what do they say about the nuclear deal? Do they want you to stay in that deal?

TRUMP: I don't talk to them about it.

AP: You don't talk to them about the Iran deal?

TRUMP: I mention it, but it's very personal when I talk to them, you know, it's confidential. No, they have their own opinions. I don't say that they are different than my opinions, but I'd rather have you ask them that question.

AP: At this point, do you believe that you will stay in the nuclear deal?

TRUMP: It's possible that we won't.

AP: Dreamers, you've talked about them, you've talked about heart earlier. This is one area where you have talked —

TRUMP: No, we aren't looking to do anything right now. Look, the dreamers ... this is an interesting case, they left and they came back and he's got some problems, it's a little different than the dreamer case, right? But we are putting MS-13 in jail and getting them the hell out of our country. They've taken over towns and cities and we are being really brutal with MS-13, and that's what we should be. They are a bad group, and somebody said they are as bad as al-Qaida, which is a hell of a reference. So we are moving criminals out of our country and we are getting them out in record numbers and those are the people we are after. We are not after the dreamers, we are after the criminals.

AP: And that's going to be the policy of your administration to allow the dreamers to stay?

the sake of having fun. They are being thrown in jails and they are being ... all over the country and nobody's ever done it like us, so we are being unbelievably thorough with that. We are out in Long Island cleaning out the MS-13 scum, they are all scum, that's probably the worst gang anywhere on Earth. ...

AP: A lot of the dreamers have been hoping to hear something from you. I don't want to give them the wrong message with this.

TRUMP: Here is what they can hear: The dreamers should rest easy. OK? I'll give you that. The dreamers should rest easy. ...

(An aide talks about the president's address to Congress.)

TRUMP: A lot of the people have said that, some people said it was the single best speech ever made in that chamber.

AP: You seem like you enjoyed it.

TRUMP: I did. I did. I believed in it and I enjoyed it. It was a great feeling to introduce the wife of a great young soldier who died getting us very valuable information. Have you seen the tremendous success? ... That's another thing that nobody talks about. Have you seen the tremendous success we've had in the Middle East with the ISIS (an abbreviation for the Islamic State group)? When (current Iraqi Prime Minister Haider al) Abadi left from Iraq, he said Trump has more success in eight weeks than Obama had in eight years. ... We have had tremendous success, but we don't talk about it. We don't talk about it.

AP: Do you mean you don't talk about it personally because you don't want to talk about it?

TRUMP: I don't talk about it. No. And the generals don't talk about it.

AP: You had put a request into the Pentagon to put forward an ISIS plan within 30 days. I know they have sent that over. Have you accepted a plan? Are you moving forward on a strategy?

TRUMP: We have a very strong plan, but we cannot talk about it, Julie.

AP: So you have decided on a plan?

TRUMP: Remember how many times have you been to the speech where I talked about Mosul.

AP: Right.

TRUMP. Right. Mosul. Four months we are going in, three months. We are still fighting Mosul. You know why? Because they were prepared. If we would have gone in and just done it, it would have been over three months ago.

AP: Can you say generally what the strategy is? Should people —

TRUMP: Generally is we have got to get rid of ISIS. We have no choice. And other terrorist organizations.

AP: Does that involve more troops on the ground, it sounds like?

TRUMP: Not many.

AP: So a small increase?

TRUMP: It could be an increase, then an increase. But not many more. I want to do the job, but not many more. ... This is an important story. I've done a lot. I've done more than any other president in the first 100 days and I think the first 100 days is an artificial barrier. And I'm scheduled ... the foundations have been set to do some great things. With foreign countries. Look at, look at President Xi. I mean ...

AP: What do you think it was about your chemistry?

TRUMP: We had good chemistry. Now I don't know that I think that's going to produce results but you've got a good chance.

AP: Uh-huh.

TRUMP: Look, he turned down many coal ships. These massive coal ships are coming where they get a lot of their income. They're coming into China and they're being turned away. That's never happened before. The fuel, the oil, so many different things. You saw the editorial they had in their paper saying they cannot be allowed to have nuclear, you know, et cetera. People have said they've never seen this ever before in China. We have the same relationship with others. There's a great foundation that's built. Great foundation. And I think it's going to produce tremendous results for our country.

AP: One more 100 days question.

TRUMP: That's fine.

AP: ... is do you think you have the right team in place for your next 100 days?

TRUMP: Yes. I think my team has been, well, I have different teams. I think my military team has been treated with great respect. As they should be. I think my other team hasn't been treated with the respect that they should get. We have some very talented people, and very diverse people.

AP: Do you mean your White House team when you say that?

TRUMP: Yeah, my White House team. I think Reince (Priebus) has been doing an excellent job. I think that, you know, this is a very tough environment not caused necessarily by me. Although the election has, you know, look, the Democrats had a tremendous opportunity because the electoral college, as I said, is so skewed to them. You start off by losing in New York and California, no matter who it is. If, if Abe Lincoln came back to life, he would lose New York and he would lose California. It's just the registration, there's nothing you can do. So you're losing the two biggest states, that's where you start. OK. The Electoral College is so skewed in favor of a Democrat that it's very, very hard. Look at Obama's number in the Electoral College. His numbers on the win were ... but the Electoral College numbers were massive. You lose New York, you lose Illinois. Illinois is impossible to win. And you look at, so now you lose New York, Illinois, no matter what you do, and California. Right. And you say, man. Now you have to win Florida, you

dollars more money than I spent. Hundreds of millions ... Yeah. Or more, actually because we were $375 she was at $2.2 billion. But whatever. She spent massive amounts of money more and she lost. Solidly lost, because you know it wasn't 270, it was 306. So there's anger. But there was massive anger before I got there, so it's not easy for a White House staff to realize that you are going into a situation where you are going to be at no, where are going to get no votes. I mean, here's a judge who is No. 1 at Columbia, No. 1 at Harvard and an Oxford scholar. And he got three votes.

AP: Three Democratic votes, but yeah.

TRUMP: Three Democratic votes. OK. He's an Oxford scholar at the highest level. The No. 1, you know, one of the great academics, one of the great writers. No bad decisions with all ... nothing. He's like a ...

AP: Do you think that you can break through that? I mean this —

TRUMP: Yeah, I do.

AP: Is one of the biggest challenges for a president.

TRUMP: I think (I) can to an extent. But there's a, there's a basic hard-line core that you can't break though, OK, that you can't break through. There's a hard-line group you can't break through, you can't. It's sad. You can't. Look, I met with Congressman Cummings and I really liked him, a lot. Elijah Cummings (of Maryland). I really liked him a lot. And during the conversation because we have a very strong mutual feeling on drug prices. He came to see me, at my invitation, because I saw him talking about, he came to see me about drug prices because drug prices are ridiculous. And I am going to get them way, way, way down and he liked that. He said you will be the greatest president. He said you will be, in front of five, six people, he said you will be the greatest president in the history of this country.

AP: He disputed that slightly.

TRUMP: That's what he said. I mean, what can I tell you?

AP: Yeah.

TRUMP: There's six people sitting here. What did he, what, what do you mean by slightly?

AP: He said, he said that he felt like you could be a great president if and then —

TRUMP: Well he said, you'll be the greatest president in the history of, but you know what, I'll take that also, but that you could be. But he said, will be the greatest president but I would also accept the other. In other words, if you do your job, but I accept that. Then I watched him interviewed and it was like he never even was here. It's incredible. I watched him interviewed a week later and it's like he was never in my office. And you can even say that.

AP: And that's one of the difficulties I think presidents have had is that you can have these personal relationships with people from the other party, but then it's hard to actually change how people vote or change how people —

TRUMP: No I have, it's interesting. I have, seem to get very high ratings. I

TRUMP: It had 9.2 million people. It's the highest they've ever had. On any, on air, (CBS "Face the Nation" host John) Dickerson had 5.2 million people. It's the highest for "Face the Nation" or as I call it, "Deface the Nation." It's the highest for "Deface the Nation" since the World Trade Center. Since the World Trade Center came down. It's a tremendous advantage.

I have learned one thing, because I get treated very unfairly, that's what I call it, the fake media. And the fake media is not all of the media. You know they tried to say that the fake media was all the, no. The fake media is some of you. I could tell you who it is, 100 percent. Sometimes you're fake, but — but the fake media is some of the media. It bears no relationship to the truth. It's not that Fox treats me well, it's that Fox is the most accurate.

AP: Do you believe that? That Fox —

TRUMP: I do. I get treated so badly. Yesterday, about the thing, you know when I said it's a terrorism ... it may be. I said it may be a terrorist attack and MSNBC, I heard, went crazy, "He called it a terrorist attack." They thought it was a bank robbery. By the way, I'm 10-0 for that. I've called every one of them. Every time they said I called it way too early and then it turns out I'm ... Whatever. Whatever. In the meantime, I'm here and they're not.

AP: Do you feel that one of the things with cable is there's such real-time reaction with everything you say?

TRUMP: Yeah.

AP: Can you separate that sometimes from that actual decision?

TRUMP: The one thing —

AP: That you have to do —

TRUMP: OK. The one thing I've learned to do that I never thought I had the ability to do. I don't watch CNN anymore.

AP: You just said you did.

TRUMP: No. No, I, if I'm passing it, what did I just say (inaudible)?

AP: You just said —

TRUMP: Where? Where?

AP: Two minutes ago.

TRUMP: No, they treat me so badly. No, I just said that. No, I, what'd I say, I stopped watching them. But I don't watch CNN anymore. I don't watch MSNBC. I don't watch it. Now I heard yesterday that MSNBC, you know, they tell me what's going on.

AP: Right.

TRUMP: In fact, they also did. I never thought I had the ability to not watch. Like, people think I watch (MSNBC's) "Morning Joe." I don't watch "Morning Joe." I never thought I had the ability to, and who used to treat me great by the way, when I played the game, I never thought I had the ability to not watch what is

TRUMP: No.

AP: That you've made that change?

TRUMP: I don't know why it is, but I've developed that ability, and it's happened over the last, over the last year.

AP: That's interesting.

TRUMP: And I don't watch things that I know are going to be unpleasant. CNN has covered me unfairly and incorrectly and I don't watch them anymore. A lot of people don't watch them anymore, they're now in third place. But I've created something where people are watching ... but I don't watch CNN anymore. I don't watch MSNBC anymore. I don't watch things, and I never thought I had that ability. I always thought I'd watch.

AP: Sure.

TRUMP: I just don't. And that's taken place over the last year. And you know what that is, that's a great, it's a great thing because you leave, you leave for work in the morning you know, you're, you don't watch this total negativity. I never thought I'd be able to do that and for me, it's so easy to do now. Just don't watch.

AP: That's interesting.

TRUMP: Maybe it's because I'm here. I don't know.