

Congress of the United States
Washington, DC 20515

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March 24, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
3801 Nebraska Ave NW
Washington, D.C. 20016

Director Ur Mendoza Jaddou
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Secretary Mayorkas and Director Jaddou:

As members representing Deferred Action of Childhood Arrivals (DACA) beneficiaries across our country, we write to you today to request the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) consider narrowly defining the criminal bars for DACA applicants, ensure DHS's understanding of criminal infractions mirror the criminal justice system, and provide data on the number of applications denied due to criminal charges. We believe these provisions are important to limit the disproportionate effects traffic stops have had on immigrant communities and ensure that DHS does not re-adjudicate decisions made by local and state authorities.

Currently, USCIS considers an applicant's entire offense history using a totality of the circumstances approach.¹ Data from the Stanford Open Policing Project indicates that local law enforcement is more likely to stop motorists of color compared to their Caucasian counterparts, at routine traffic stops.² The inclusion of minor traffic offenses in the totality of circumstances compounds these racial disparities that are perpetrated by local law enforcement. DACA applicants face variance in adjudication of states' penalties for minor traffic offenses, which can impact their immigration eligibility based on location, including whether a state issues a felony for multiple infractions of driving without a license.³ We strongly believe driving without a

¹ "Frequently Asked Questions," USCIS, accessed Jan. 21, 2022, <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> ("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.")

² "Findings," The Stanford Open Policing Project, accessed Oct. 22, 2021, <https://openpolicing.stanford.edu/findings/>; Pierson, E., Simoiu, C., Overgoor, J. et al., "A large-scale analysis of racial disparities in police stops across the United States," *Nat Hum Behav* 4, 736–745 (July 2020), <https://doi.org/10.1038/s41562-020-0858-1>; Frank R. Baumgartner et. al., "Suspect Citizens What 20 Million Traffic Stops Tells us About Policing and Race," (Nov. 2017), accessed Oct. 22, 2021, <https://fbaum.unc.edu/books/SuspectCitizens/SuspectCitizens-Overview.pdf> (finding that Blacks are 63 percent more likely to be stopped than whites by population, but drive 16 percent less); see also "New data shows Virginia police are more likely to stop and search Black drivers," *Virginia Mercury*, May 19, 2021 accessed Oct. 22, 2021, <https://www.virginiamercury.com/2021/05/19/new-data-shows-virginia-police-are-more-likely-to-stop-and-search-black-drivers/>."

³ For example, in Florida, Georgia, Illinois, Indiana, Kentucky, and Missouri, individuals may receive felonies for driving without a license. "Driving Without a License: Penalties by State," *CarInsurance.com*, accessed Oct. 22, 2021, <https://www.carinsurance.com/Articles/driving-without-license-penalties-by-state.aspx>.

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license should always be considered minor traffic offenses for DACA applicants in order to ensure adjudication does not change based on state residency.⁴ Finally, including minor traffic offenses within a totality of circumstances analysis for DACA compounds the impact such traffic stops have on communities of color.

We also urge DHS to consider altering its interpretation of conviction to be fully aligned with the criminal justice system, and not consider expunged conviction when adjudicating DACA applications. In many states, state and local authorities have taken steps to reform the criminal justice system by providing avenues to expunge records if such cases merit expungement.⁵ This is an effort to ensure individuals with non-serious offenses are able to reintegrate back into society and attain gainful employment and housing.

In these situations, state and local authorities have already examined the facts of the case and concluded that the conviction merited expungement. Furthermore, almost all states have expungement mechanisms that do not allow for the expungement of felonies, which means that most expunged convictions are generally minor offenses.⁶ Instead of deferring to state courts who have erased these convictions, DHS is needlessly using valuable agency time to re-adjudicate expunged convictions.

Additionally, we strongly encourage DHS to disregard all misdemeanors from their totality of circumstances approach to DACA application for convictions that occurred five or more years prior to the application date. DACA applicants should be afforded similar due process under immigration applications. While the criminal justice system incorporates a statute of limitations for prosecution of various offenses, DHS does not evaluate the length of time since a conviction has occurred when adjudicating applications. We believe this approach is in line with the administration's current enforcement priorities, which lists how long the conviction occurred as one of the factors in deciding whether to exercise prosecutorial discretion.⁷

At its best, the criminal justice system is about second chances, the ability to rehabilitate oneself, and represents our commitment as a nation to reintegrate those who have received their due punishment back into society. DACA-eligible youth have developed deep ties to family and community in the United States, and they deserve a chance to reenter society and contribute like anyone else. As you work to address our concerns outlined above, we welcome the opportunity

⁴ "Driving Without a License: Penalties by State," Carinsurance.com, Aug. 1, 2021, <https://www.carinsurance.com/Articles/driving-without-license-penalties-by-state.aspx>.

⁵ "50-State Comparison: Expungement, Sealing & Other Record Relief," Restoration of Rights Project, accessed Feb. 25, 2022, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside>.

⁶ "50-State Comparison: Expungement, Sealing & Other Record Relief," Restoration of Rights Project, accessed Oct. 22, 2021, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside>.

⁷ Memorandum from Alejandro N. Mayorkas to Tae D. Johnson on Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), accessed Oct. 27, 2021, <https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf>.

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to review data on DACA denials due to criminal charges and request that such data be made available us no later than July 31, 2022.

We recognize that the agency is currently undergoing a review of DACA and encourage DHS to consider implementing these policies through any vehicle, including the regulation, guidance, or policy manual changes. We look forward to partnering with you to ensure our immigration system is fair and inclusive to all applicants.

Sincerely,



Grace Meng
Member of Congress

/s/

Salud Carbajal
Member of Congress

/s/

Yvette D. Clarke
Member of Congress

/s/

Madeleine Dean
Member of Congress

/s/

Al Green
Member of Congress

/s/

A. Donald McEachin
Member of Congress

/s/

Grace F. Napolitano
Member of Congress



Lucille Roybal-Allard
Member of Congress

/s/

André Carson
Member of Congress

/s/

Judy Chu
Member of Congress

/s/

Jesús G. "Chuy" García
Member of Congress

/s/

Carolyn B. Maloney
Member of Congress

/s/

James P. McGovern
Member of Congress

/s/

Eleanor Holmes Norton
Member of Congress

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/s/

Alexandria Ocasio-Cortez
Member of Congress

/s/

Raul Ruiz, M.D.
Member of Congress

/s/

Darren Soto
Member of Congress

/s/

Ritchie Torres
Member of Congress

/s/

Bonnie Watson Coleman
Member of Congress

/s/

Mark Pocan
Member of Congress

/s/

Linda T. Sánchez
Member of Congress

/s/

Dina Titus
Member of Congress

/s/

Juan Vargas
Member of Congress



U.S. Citizenship
and Immigration
Services

June 29, 2022

The Honorable Grace Meng
U.S. House of Representatives
Washington, DC 20515

Dear Representative Meng:

DHS remains as committed as ever to ensuring Deferred Action for Childhood Arrivals (DACA) recipients are protected from the threat of deportation and can continue to remain a vital part of their communities and contribute to this country that is their home. U.S. Citizenship and Immigration Services (USCIS) is proud to play an important role in implementing DACA.

We acknowledge your concerns regarding the consideration of criminal infractions in the adjudication of DACA requests, and we appreciate your suggestions that DHS consider narrowly defining the criminal bars for DACA requestors, ensure an understanding of criminal infractions that mirrors the criminal justice system, and provide data on the number of requests denied due to criminal charges.

We also acknowledge your suggestion that USCIS not consider expunged convictions when adjudicating DACA requests. Under longstanding USCIS policy, expunged convictions and juvenile convictions do not automatically disqualify an individual from consideration for DACA. Requests for DACA are assessed on a case-by-case basis to determine whether an individual's particular circumstances warrants a favorable exercise of prosecutorial discretion.

Consistent with President Biden's January 20, 2021, Presidential Memorandum, DHS is actively engaged in various efforts to preserve and strengthen DACA.¹ In line with this Memorandum, DHS published a Notice of Proposed Rulemaking on September 28, 2021.² DHS received approximately 16,000 public comments on the proposed rule and is carefully considering and responding to all issues raised by commenters, including those pertaining to consideration of criminal infractions in the adjudication of DACA requests, in drafting a final rule.

¹ See Presidential Memorandum, *Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA)*, January 20, 2021, available online at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>

² See Notice of Proposed Rulemaking, *Deferred Action for Childhood Arrivals*, September 28, 2021, available online at <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>

In response to your request for DACA data on denials due to criminal charges, USCIS does not have readily available data broken down by specific criminal charge, such as by misdemeanor, expungement, by traffic offense, or otherwise. Furthermore, DACA adjudications are discretionary and based on a totality of circumstances, so a criminal offense may not be the sole reason for a denial. Denials could also have involved other disqualifying grounds, such as the requestor failing to meet the continuous residence or educational guideline(s), among others, or a denial based upon abandonment or failure to respond to evidence requests. The only way to provide this data at this time would be to do a labor-intensive manual retrieval and review of thousands of individual DACA denial physical case files to assess which denials were based, in part or in whole, on specific criminal charges. Directing resources in this way would result in increased delays to currently pending DACA requests. Other USCIS data on the active DACA population as of December 31, 2021, can be viewed online at the USCIS website.³

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a horizontal line extending to the right.

Ur M. Jaddou
Director

³ See *Active DACA Recipients – December 2021*, available online at uscis.gov/sites/default/files/document/reports/Active_DACA_Recipients_December_31_2021.pdf.