

Congress of the United States

Washington, DC 20510

July 13, 2021

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
301 7th Street SW
Washington, D.C. 20528

RECEIVED

By ESEC at 1:55 pm, Jul 13, 2021

Dear Secretary Mayorkas:

As members of the House Judiciary Committee, we write to express our concern with current processing times for applications and petitions for immigration benefits at U.S. Citizenship and Immigration Services (USCIS), and in particular, applications for Deferred Action for Childhood Arrivals (DACA) and ancillary benefits. In his January 20, 2021 Memorandum, Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), President Biden noted the importance of work authorization, which is critical to the ability of DACA recipients to “support themselves and their families, and to contribute to our economy, while they remain.”¹ Despite this, processing times for first-time DACA applications, renewal requests, and employment authorization remain unusually high.

We are concerned that the lingering impacts of the previous administration’s restrictive immigration policies, the COVID-19 pandemic, and USCIS staffing shortages are contributing to this backlog. While we acknowledge and appreciate the work that you are doing to bring processing times back to acceptable levels, it is crucial that employment authorization documents (EADs) for DACA recipients and others—particularly those who are seeking an EAD extension—are adjudicated in a timely manner to avoid disruption in the continuity of employment. Without work authorization, DACA recipients are left in limbo, unable to benefit from the security and stability the program is meant to provide.

We respectfully request responses to the following questions by August 1, 2021:

1. How do current adjudicator staffing levels compare to such levels before the February 2020 hiring freeze?
2. What impact are current budgetary constraints having on the processing times of DACA and related applications?
3. How many first-time DACA applications that were filed after the December 4, 2020, court order reinstating the DACA program are currently pending?
4. Have all one-year grants of deferred action under DACA and one-year employment authorization documents been extended to two-years per the December 7, 2020 USCIS alert?² If not, how many one-year grants remain outstanding?


¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/preserving-and-fortifying-deferred-action-for-childhood-arrivals-daca/>.

² <https://www.uscis.gov/news/alerts/deferred-action-for-childhood-arrivals-response-to-december-4-2020-order-in-batalla-vidal-et-al-v>.


5. How many requests to renew DACA are currently pending beyond the 120-day processing goal?
6. How many applicants with timely filed applications to renew DACA and extend work authorization have experienced lapses in such authorization while waiting for their cases to be adjudicated?
7. What steps is USCIS taking to reach the 120-day processing goal for DACA renewal requests?

We appreciate your commitment to preserving and fortifying DACA, as well as your ongoing efforts to reduce processing delays across all affected product lines. DACA recipients are valued members of our communities. It is important that we do everything we can to adjudicate their requests for deferred action and employment authorization in a timely manner.


Sincerely,




Joe Neguse
Member of Congress




Jerrold Nadler
Member of Congress




Zoe Lofgren
Member of Congress




Karen Bass
Member of Congress



Sylvia R. Garcia
Member of Congress



Veronica Escobar
Member of Congress



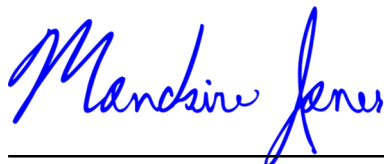
Henry C. "Hank" Johnson, Jr.
Member of Congress



Pramila Jayapal
Member of Congress

/s/

Sheila Jackson Lee
Member of Congress



Mondaire Jones
Member of Congress



Hakeem S. Jeffries
Member of Congress



J. Luis Correa
Member of Congress



Ted Deutch
Member of Congress



Ted W. Lieu
Member of Congress



Madeleine Dean
Member of Congress



Jamie Raskin
Member of Congress



**U.S. Citizenship
and Immigration
Services**

October 18, 2021

The Honorable Joe Neguse
U.S. House of Representatives
Washington, DC 20515

Dear Representative Neguse:

Thank you for your July 13, 2021 letter to the Department of Homeland Security (DHS) regarding processing times for Deferred Action for Childhood Arrivals (DACA) requests. As the newly appointed Director of U.S. Citizenship and Immigration Services (USCIS), I appreciated the opportunity to visit with you and your team last month. Secretary Mayorkas asked that I respond on his behalf. I apologize for the delay in responding.

We appreciate your support regarding our efforts to preserve and fortify DACA consistent with President Biden's January 20, 2021 Presidential Memorandum.¹ DHS remains focused on safeguarding DACA, and we are currently engaging the public in a rulemaking process to preserve and fortify DACA.² We also appreciate your concern regarding processing times, particularly for those DACA recipients who are seeking Employment Authorization Documents (EADs). USCIS is proud to play an important role in implementing DACA. DACA recipients are students, military service members, essential workers, and part of our communities in every way, shape, and form. USCIS is committed to meeting the longstanding goal to process DACA renewal requests within 120 days. USCIS is also working to minimize any processing delays to help facilitate access to benefits and restore confidence in our immigration system.

On July 16, 2021, the U.S. District Court for the Southern District of Texas issued a preliminary injunction prohibiting DHS's continued administration of the DACA policy. *See State of Texas, et al., v. United States of America, et al.*, 1:18-CV-00068, (S.D. Texas July 16, 2021) ("*Texas IP*"). Specifically, the court ordered DHS to stop granting initial DACA requests, although the court also stayed its injunction so as to permit DHS to continue accepting both initial and renewal DACA requests. While the court order does not allow USCIS to approve initial DACA requests, the stay of the injunction allows us to continue to process DACA

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 <https://www.federalregister.gov/documents/2021/09/28/2021-20898/deferred-action-for-childhood-arrivals>.

renewals, advance parole applications, and applications for replacement EADs for DACA recipients who were granted DACA on or before July 16, 2021.³

Although the Department of Justice has appealed the Court's July 16 order, only the passage of legislation will give full protection and a path to citizenship to DACA recipients. In January, President Biden offered a legislative proposal, and in March the House of Representatives passed the "American Dream and Promise Act." I urge you and your colleagues in Congress to enact legislation through the reconciliation process to provide permanent protection that the American people want, and Dreamers have earned.

Enclosed please find responses to the questions presented in your letter.

Thank you again for your letter. 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 long horizontal flourish.

Ur M. Jaddou
Director

Enclosure

³ For additional information, including Frequently Asked Questions, regarding DHS's compliance with the *Texas II* order, please see <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca>.

**The Department of Homeland Security's Response to
Representative Neguse's July 13, 2021 Letter**

1. How do current adjudicator staffing levels compare to such levels before the February 2020 hiring freeze?

In February 2020, U.S. Citizenship and Immigration Services (USCIS) had 3,383 adjudicators (Immigration Services Officers) onboard within the Service Center Operations Directorate (SCOPS), which is responsible for adjudicating Deferred Action for Childhood Arrivals (DACA). The hiring freeze was in place from May 1, 2020, through April 1, 2021. As of June 2021, the number of adjudicators decreased to 3,155 (a net reduction of 228 adjudicators). Since the hiring freeze has been lifted, USCIS is actively working to hire up to 95 percent of authorized adjudicator staffing levels through the end of FY 2021.

2. What impact are current budgetary constraints having on the processing times of DACA and related applications?

In light of current budgetary constraints, USCIS continues to identify and shift resources to process DACA requests and related applications. [USCIS' Historical Data](#) webpage indicates the median¹ processing times for DACA initial requests and DACA renewal requests through September 30, 2021, to be consistent with prior fiscal years.

Median Processing Times (in Months)

Form	Form Description	Classification or Basis for Filing	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021 ²
I-821D	Consideration of Deferred Action for Childhood Arrivals	Initial Request for Deferred Action	6.7	10.4	8.9	5.5	5.9
I-821D	Consideration of Deferred Action for Childhood Arrivals	Request for Renewal of Deferred Action	1.6	1.2	1.1	1.1	1.8

¹ Median processing time represents the 50th percentile. This means that half of requests are processed in less time and half take longer to be processed.

² FY 2021 includes data from October 1, 2020 to September 30, 2021.

3. How many first-time DACA applications that were filed after the December 4, 2020, court order reinstating the DACA program are currently pending?

As of July 29, 2021, there were approximately 84,000 pending DACA initial requests that were filed after the December 4, 2020 court order in *Batalla Vidal, et al., v. Wolf, et al.*, 16-CV-4756(NGG)(VMS) and 17-CV-5228(NGG)(VMS)(EDNY, Dec. 4, 2020) reinstated the DACA policy. However, under the preliminary injunction issued in *State of Texas, et al., v. United States of America, et al.*, 1:18-CV-00068, (S.D. Texas July 16, 2021), DHS is enjoined from granting any initial DACA requests after July 16, 2021.

4. Have all one-year grants of deferred action under DACA and one-year employment authorization documents been extended to two-years per the December 7, 2020 USCIS alert? If not, how many one-year grants remain outstanding?

All one-year grants of deferred action under DACA and one-year employment authorization documents (EADs) issued pursuant to Acting Secretary of Homeland Security Chad Wolf's July 28, 2020 Memorandum, "Reconsideration of the June 15, 2020 Memorandum 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,'" have been extended to two years. USCIS issued an extension notice to all affected DACA recipients, approximately 69,000, to inform them that their one-year validity period for DACA and employment authorization was extended to two years and that USCIS would issue a new EAD no later than 30 days before the expiration of their one-year EAD.

USCIS is currently in the process of issuing EADs in compliance with the December 4, 2020 court order in *Batalla Vidal* issued by the U.S. District Court for the Eastern District of New York. As of October 7, 2021, USCIS has issued over 56,000 new EADs pursuant to the court order and will continue to issue such EADs on a rolling basis. USCIS notes class counsel in *Batalla Vidal* recently alerted USCIS of an individual who had not received the replacement EAD as expected and discovered a coding error that resulted in EAD cards with certain expiration dates not being produced. USCIS worked quickly to produce and mail the missing replacement EADs before the expiration dates of the one-year EADs.

While awaiting the issuance of the updated EAD and until the expiration date on the front of the current EAD, DACA recipients may present their extension notice along with their current EAD to their employer as a List A document evidencing identity and employment authorization for Form I-9, Employment Eligibility Verification. When applying for Federal, state, or local government benefits, DACA recipients may present their EAD in combination with the extension notice as evidence of their two-year deferred action and employment authorization.

5. How many requests to renew DACA are currently pending beyond the 120-day processing goal?

USCIS is committed to maintaining its longstanding processing goal of 120 days for DACA renewals. DACA renewals are currently within the normal processing time goal. USCIS' Historical Data webpage shows the median processing time for DACA renewals through September 30, 2021 is 1.8 months (approximately 54 days).

As stated in the [DACA Frequently Asked Questions](#) webpage, factors that may affect the timely processing of a 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.

As of October 7, 2021, there were approximately 4,300 DACA renewal requests pending over 120 days. Of this population, roughly 4,200 were pending due to factors as described above, which include ASC appointment issues, criminality or other derogatory information, outstanding Requests for Evidence, name mismatches, date of birth mismatches, gender mismatches, and/or country of birth mismatches, or holds on otherwise approvable DACA renewals due to the existence of a prior DACA grant with more than 150 days of validity remaining.

6. How many applicants with timely filed applications to renew DACA and extend work authorization have experienced lapses in such authorization while waiting for their cases to be adjudicated?

From October 1, 2020 through October 7, 2021, 3,300 DACA requestors timely filed their renewal request but had their DACA expire before the adjudication of the renewal request. Timely filed DACA renewal requests are those filed 120 to 150 days before the previous DACA expiration. Of the 3,300 requestors, over 2,300 had their DACA expire while their renewal request was pending due to factors described in Response 5.

7. What steps is USCIS taking to reach the 120-day processing goal for DACA renewal requests?

USCIS has allowed for the reuse of biometrics from a previous collection, where available, for a DACA requestor. Between January 1 and May 31, 2021, USCIS received approximately 156,000 DACA renewal requests. Of this population, nearly 140,000 had biometrics that could be reused. For those that must visit an ASC for biometric collection, we are working to safely maximize appointment capacity within COVID-19 limitations, including scheduling appointments during extended hours at certain ASCs. Additionally, USCIS has shifted a significant number of adjudicative resources from the initial DACA workload to assist with the processing of DACA renewals to reduce the number of pending renewal requests that are outside USCIS's 120-day processing goal and to reduce case processing time.