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November 22, 2021

Via Federal eRulemaking Portal (www.regulations.gov)

Andria Strano
Acting Chief, Office of Policy and Strategy, Division of Humanitarian Affairs
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, Maryland 20746

Re: DHS Docket No. USCIS-2021-0006, Preserving and Fortifying Deferred Action for Childhood Arrivals

Dear Ms. Strano:

On behalf of the Regents of the University of California (“UC” or “the University”), thank you for the opportunity to comment on the U.S. Department of Homeland Security’s (“DHS”) notice of proposed rulemaking, “Preserving and Fortifying Deferred Action for Childhood Arrivals.”¹ UC emphatically supports DHS’s efforts to issue regulations codifying the Deferred Action for Childhood Arrivals program (“DACA”). The DACA program has been extraordinarily successful, benefitting hundreds of thousands of DACA participants, along with their families, schools, employers, and American society more generally. For UC in particular, the thousands of DACA participants who have enrolled at UC as students, worked at UC as employees, and represented UC as graduates have brought irreplaceable perspectives and talents to the University.

UC submits this comment to affirm its strong support of DACA and the proposed rulemaking, and to offer factual information that should be considered in assessing the benefits of the program. UC also offers proposals for improving the proposed rule by altering the date- and age-based eligibility criteria, and by adjusting the proposed application fees, in order to better preserve and fortify DACA going forward.

Section I briefly describes the mission of the University of California and its interest in DACA. Section II describes the contributions of DACA-participant students and employees to UC, and how DACA makes those contributions possible. Section III describes UC’s concerns with some of the criteria for DACA eligibility included in the proposed rule, as well as the proposed fees for DACA applications, and suggests alternatives.

¹ This comment was prepared with the pro bono assistance of Covington & Burling LLP.

I. The Mission of the University of California and Its Interests in DACA.

Since DACA was introduced in 2012, UC has relied on the program to educate and employ thousands of DACA participants. These individuals are an indispensable part of the UC community and help UC achieve its mission of serving society as a center of higher learning, providing long-term societal benefits through transmitting advanced knowledge, discovering new knowledge, and functioning as an active working repository of organized knowledge, through undergraduate education, graduate and professional education, research, and other kinds of public service. UC has made significant financial investment in undocumented students, awarding them approximately \$416 million in financial aid between 2013 and 2020.

UC benefits the nation through world-class educational opportunities, groundbreaking research, top-rated health care, a firm commitment to public service, and agricultural expertise. The UC system consists of 10 campuses, six academic health centers, three national laboratories, and a state-wide agriculture and natural resources division. It is home to more than 285,000 students, 227,000 faculty, staff, and other academics, and more than two million living alumni. DACA participants can be found across these campuses and populations, making profound contributions to the UC community.

To protect DACA generally and UC's DACA participants specifically, UC filed a lawsuit challenging the Trump Administration's 2017 attempt to rescind the program.² That lawsuit resulted in the first nationwide preliminary injunction against the rescission, which was ultimately upheld by the Supreme Court in *DHS v. Regents of the University of California*, 140 S. Ct. 1891 (2020). In the trial court, UC submitted a massive, uncontroverted evidentiary record demonstrating the many benefits of DACA to the University and society at large. The record included testimony from individual DACA participants, as well as institutions and employers, as well as expert testimony and studies about the value of DACA. That evidentiary record is referenced herein and attached hereto in full as [Exhibit A](#) and should be carefully considered in connection with the rulemaking.

II. The Proposed Rule Would Ensure That DACA-Participant Students and Employees Can Continue to Contribute to the UC Community.

By providing for removal forbearance and work authorization, the proposed rule would ensure that UC may continue to retain DACA-participant students and employees as part of the UC community.

A. DACA-Participant Students Make Invaluable Contributions to UC, and Rely on Forbearance from Removal and Work Authorization to Do So.

Annually, nearly 3,460 DACA participants are enrolled at a UC campus; currently UC enrolls approximately 3,300 DACA participants as undergraduate students, and approximately 160 DACA participants as graduate students.³ According to one administrator, the DACA program has encouraged DACA-participant students to be more open about their life experiences than would be possible absent the security

² *Regents of the University of California v. DHS*, No. 17-5211 (N.D. Cal.).

³ UC data indicate that at least 4,700 undergraduate and 200 graduate UC students are undocumented; the total numbers are likely somewhat higher, because these figures do not include undocumented students who are not eligible for in-state tuition at UC. Recent survey data indicate that 70 percent of these undergraduate students, and 80 percent of these graduate students, participate in DACA.

provided by the program.⁴ DACA participants bring unique perspectives and backgrounds to the UC educational environment as students, helping build a more culturally sensitive educational environment. DACA participants also have driven specific improvements in UC's curriculum,⁵ and have made critical academic contributions to the University.⁶

A few individuals who bravely provided declarations during the litigation against the rescission are representative of the irreplaceable contributions of DACA participants to the UC community:

- Joel Sati, a Ph.D. candidate in Jurisprudence and Social Policy at UC Berkeley.⁷ According to the Associate Dean of this program, Joel's personal experiences give him a unique ability to contribute to the academic discourse on legal philosophy. Joel is able to blend high-level philosophical models with a real-world understanding of citizenship and immigration issues, infusing his scholarship with a sense of reality and practicality.⁸ As early as his first year of graduate school, Joel was already making important contributions to the field of jurisprudence.
- Evelyn Valdez-Ward was a doctoral student in the Ecology and Evolutionary Biology Department at UC Irvine.⁹ Her research focused on the impact of climate change on the interactions between plants and their associated soil microbes. Her department's Chair believes that Evelyn's research has immediate societal implications for California and the world.¹⁰ Evelyn also served as Graduate Representative after being elected by her peers. In this position, she met with faculty and advocated for her fellow students. Evelyn was considered effective and fearless in this role, and was a natural leader and organizer among her peers.
- Dellara Gorjian is a 2020 graduate of UCLA law school.¹¹ In high school, before DACA, Dellara did not apply herself academically because she was not sure if college was an option. After receiving DACA protection in 2012, she developed a newfound drive to succeed academically, and was able to work as a bank teller and a legal assistant to provide for herself throughout college and law school.
- Mitchell Santos Toledo is an attorney who graduated from UC Berkeley, where he majored in Legal Studies, and from Harvard Law School.¹² He wrote his undergraduate thesis at Berkeley about how DACA contributes to the legal consciousness of its participants. In his research, he spoke with DACA participants and observed how DACA empowered individuals to interact with legal institutions in a comfortable, assertive manner. He was selected as the commencement speaker for his undergraduate class of Legal Studies majors, and spoke openly about his status as a DACA participant.

⁴ See Ex. A at Ex. 74 (Declaration of Dr. Thomas Parham).

⁵ See Ex. A at Ex. 10 (Declaration of Dr. Clarence Braddock III).

⁶ See Ex. A at Ex. 40 (Declaration of Robin Holmes-Sullivan).

⁷ Ex. A at Ex. 88 (Declaration of Joel Sati).

⁸ Ex. A at Ex. 64 (Declaration of Calvin Morrill).

⁹ Ex. A at Ex. 99 (Declaration of Evelyn Valdez-Ward).

¹⁰ Ex. A at Ex. 98 (Declaration of Kathleen Treseder).

¹¹ Ex. A at Ex. 33 (Declaration of Dellara Gorjian).

¹² Ex. A at Ex. 87 (Declaration of Mitchell Santos Toledo).

UC believes that a diverse student body, including students like Joel, Evelyn, Dellara, and Mitchell creates a fuller educational experience for all students. When the University's students and faculty learn to interact effectively with individuals from different backgrounds and with different perspectives, those individuals are better prepared to participate in an increasingly diverse workforce and society.

DACA-participant students also have unique potential to contribute beyond the UC community to society at large. These students will enter professions, conduct research, start businesses, and serve their communities. As discussed in Section II.B below, many will eventually work in healthcare, where they will address pressing societal needs. Even now, DACA students in UC's medical schools are more likely to practice in underserved geographic areas and underserved specialties than their non-DACA peers, and may be more effective in improving healthcare outcomes in medically underserved communities.¹³

These students' contributions to the UC community and more broadly depend on the continuation of DACA. Not only does DACA protect them from removal from the United States, it also—just as importantly—ensures that these students are able to work before, during, and after their time at UC.

Without work authorization, individuals who may wish to apply to a UC school may be discouraged from considering higher education at all, and current students may be forced to drop out. As a result, UC would be deprived of these individuals' valuable contributions. Many DACA students rely on work authorization to work as teaching assistants or residential advisors, or in work-study positions. DACA students do not qualify for federal student aid programs and without the additional income from working—whether used to support tuition, other educational expenses, or living expenses—many DACA-participant students would not be able to pursue an education in the UC system.

Additionally, work authorization enables DACA students to work in their fields of study after graduation. These employment opportunities permit DACA participants to pay off student loan debt they have accumulated in school, and to apply their educations to their chosen fields.¹⁴

DACA also provides students with access to other important benefits that extend beyond the opportunity to legally work: a social security number, driver's license, bank account, the ability to establish residency for tuition purposes and the ability to take advantage of financial aid as well as physical and psychological safety to pursue their educational and professional endeavors. These benefits are critical to students' ability and willingness to attend UC. UC data shows that with the implementation of DACA in 2012, the first-year persistence rate (i.e., the percentage of students continuing on to their second year) increased significantly for DACA-participant students, who could count on receiving financial aid. Similarly, without a driver's license, students may no longer be able to commute to a UC campus or to work.

¹³ Ex. A at Ex. 53 (Declaration of Dr. Catherine Lucey); Ex. A at Ex. 93 (Declaration of Dr. John D. Stobo).

¹⁴ [Ex. B](#) (Persisting Inequalities and Paths Forward: A Report on the State of Undocumented Students in California's Public Universities, December 2020, p. 9).

For these reasons, UC strongly supports the aspects of the proposed rule that maintain removal forbearance and work authorization.

B. UC Likewise Counts on DACA to Retain Critical Employees

DACA also ensures that UC can employ DACA participants in a wide variety of important positions across the UC campuses and healthcare centers. Currently, UC employs at least 466 non-student DACA participants as nurses, medical technicians, professors, food service workers, groundskeepers, and security guards, among other positions.¹⁵ UC also employs approximately 78 student DACA participants as teaching assistants, tutors, and researchers. Further, approximately 1,200 DACA-participant students have campus-funded work-study positions on campus.

One key group of DACA employees at UC are those who work for University of California Health serving patients. DACA participants are UC doctors, nurses, residents, interns, and medical students (who also treat patients). The COVID-19 pandemic has critically strained the capacity of University of California Health, resulting in a substantial shortage of healthcare workers. For instance, UC currently has 389 unfilled nursing positions across the five University of California Health medical centers and student health centers at the ten UC academic campuses. UC likewise has 90 open positions in patient support services, 39 open positions for physicians, 58 open positions in medical imaging, 16 open positions in counseling and psychology, 23 open positions in rehabilitation and physical therapy, and 19 open positions in surgical services.¹⁶

DACA-participant healthcare workers can help fill these critical positions. Without DACA's provision for removal forbearance and work authorization, UC could not continue employing its current DACA-participant healthcare workers, or hire additional DACA participants, and its staffing shortages would worsen at a moment of extreme need.

Other California healthcare systems providing critical care during the COVID-19 pandemic also employ DACA participants who graduated from UC. Currently, California is home to approximately 8,600 DACA-participant healthcare workers,¹⁷ roughly half of whom (like California healthcare workers generally) received their training at UC. These DACA-participant healthcare workers are essential to staffing California's overburdened healthcare system; for example, UC estimates that the COVID-19 pandemic has resulted in a shortage of over 40,000 nurses across California—a shortage that will persist until 2026.¹⁸ Without DACA, healthcare institutions across the California healthcare system could not maintain their capacity for patient care during this public health crisis.

¹⁵ In addition to year-round, full-time employees, this figure includes contingent workers, contract workers, limited workers, and partial-year career workers full-time, year-round employees who are DACA participants.

¹⁶ Data reflects staffing need as of November 3, 2021.

¹⁷ Nicole Prchal Svajlenka, A Demographic Profile of DACA Recipients on the Frontlines of the Coronavirus Response, The Center for American Progress, April 6, 2020, available at <https://www.americanprogress.org/issues/immigration/news/2020/04/06/482708/demographic-profile-daca-recipients-frontlines-coronavirus-response/>

¹⁸ <https://www.universityofcalifornia.edu/news/california-faces-short-term-nursing-shortage-covid-19-retirements>

III. The Proposed Rule Should Go Further to Maintain and Fortify DACA.

Notwithstanding its strong support for DACA and the proposed rule, UC believes that the proposed rule can be improved to better protect DACA participants and to better realize the benefits of the program. In particular, UC believes the date- and age- based eligibility criteria should be modified to reach otherwise-eligible individuals who were brought to the United States as children and who have built their lives in this country, but who are not eligible under the current program and proposed rule. Likewise, UC is concerned that the mandatory application fees for DACA and work authorization impose too significant a burden upon DACA participants, and should be lowered and/or subject to need-based waivers.

A. DHS Should Expand the DACA Eligibility Criteria to Encompass Qualified, Deserving Individuals Too Young to Obtain DACA Protection Under Current Eligibility Criteria.

The proposed rule includes a number of date- and age-based eligibility criteria for DACA, including “[t]hat the requestor must have: . . . (1) come to the United States under the age of 16; (2) continuously resided in the United States from June 15, 2007, to the time of filing of the request; (3) been physically present in the United States on both June 15, 2012, and at the time of filing of the DACA request; . . . and (7) been born on or after June 16, 1981, and be at least 15 years of age at the time of filing, unless the requestor is in removal proceedings, has a final order of removal, or a voluntary departure order.” These eligibility criteria are the same as when the DACA program was originally enacted in 2012. UC understands that the principles behind these criteria were to define a population of immigrants who (a) entered the United States as youth; and (b) had remained in the United States continually since, such that the United States was home. UC understands DHS’s decision to place some limits on who may obtain DACA; however, the requirements in the proposed rule exclude many otherwise-eligible individuals who were brought to the United States as children and built their lives here, based only on the essentially arbitrary criteria of the date they entered the United States and the date the original DACA memorandum was issued. Accordingly, UC proposes the following adjustments to the proposed eligibility criteria, as a means of reaching the full population of individuals who can be protected consistent with the original goals of DACA:

- Requirement (1), the requirement of entry into the United States before the age of 16, should be retained in its current form. This will preserve the character of DACA as a program for individuals brought to the United States as children.
- Requirement (2), the requirement of continuous residence since June 15, 2007, should be modified to require continuous residence for at least the five years directly preceding the date of request for consideration of deferred action with USCIS. This would expand DACA to a population of immigrants who, but for their date of entry, would meet the criteria for DACA.
- Requirement (3), the requirement of physical presence on June 15, 2012, should be eliminated, but the requirement of physical presence at the time of filing of the DACA request should be retained. This will ensure that DACA remains available only to individuals currently in the United States.

- Requirement (7) should be eliminated. This will ensure that DACA is available to individuals who entered the United States as children, and who, but for their date of entry, would meet the criteria for DACA.

As described in more detail below, UC believes that this framework will better promote the objectives of DACA and protect individuals who were brought to the United States as children and have continuously resided in the United States for at least five years, without transforming the basic scope and nature of the program, which has always been to offer protection to individuals who were brought to the United States as children and who have gone on to build their lives here.

For instance, the proposed rule's requirement of continuous residence in the United States since June 15, 2007 excludes many individuals brought to the United States as very young children who are now, or soon will be, old enough to graduate high school and attend a UC school. After 2025, virtually all college-age, undocumented individuals in California will have been born after 2007, and will not satisfy this requirement. Indeed, even now, an individual brought to the United States after June 15, 2007 when she was four is old enough to attend college—but may not practicably be able to because she is not eligible for DACA. This result is particularly harsh because it is dictated by an arbitrary date; if the same individual was brought the United States before June 15, 2007, she would be eligible to receive DACA and work authorization, and attend college without fear of deportation, and with the ability to work to support her education. In some instances, siblings in the same family would be treated differently solely because of the differences in the timing of their arrival.

The proposed rule's requirement of physical presence in the United States on June 15, 2012, would create similar exclusions from DACA for otherwise-eligible current and future UC students who were brought to the United States as children, and have lived here virtually their entire lives, but who were not present in the United States on that particular date. The June 15, 2012 date does not carry substantive significance or define a category of immigrants more or less deserving of deferred action; it was merely the date when a memorandum was issued.

Accordingly, UC proposes that these proposed requirements be replaced with requirements that any DACA applicant have continuously resided in the United States for at least the five years directly preceding their application, and be physically present in the United States at the time of their application. UC's proposed requirements mirror the physical presence and five-year residence requirements in the original DACA memo, without being anchored to arbitrary dates that do not accomplish a policy goal.

Finally, the requirement that any DACA applicant have been under age of 31 as of June 15, 2012 likewise excludes deserving current and future UC students who were brought to the United States as children, and have lived here virtually their entire lives, but who were born on June 15, 1981 or before. This category of individual includes numerous California residents who could make valuable contributions to UC as employees if they were able to obtain DACA and work authorization, and may include UC graduates who attended a UC campus in the past, but who now face a risk of deportation and a lack of professional opportunities because they cannot qualify for DACA due to their age.

Thus, in lieu of this requirement, UC is proposing that DACA be made available to any individual brought to the United States before the age of 16—and who meets the other applicable criteria— regardless of his or her age as of June 15, 2012.

Together, these proposals would expand the number of individuals eligible for DACA, while still limiting DACA to individuals brought to the United States at a young age, and who have resided here continuously for five years (the residency duration required by the original DACA memorandum).

B. Given the Economic Circumstance of Many DACA Participants, DHS Should Reduce the Proposed Application Fees for DACA and Work Authorization.

The proposed rule would assess \$85 in fees to submit a Form I-821D Consideration of Deferred Action for Childhood Arrivals application, and \$410 in fees to submit a form I-765 Application for Employment Authorization. The proposed rule does not provide for any opportunity for an individual to seek a waiver of these fees.

These fees impose a serious burden on DACA-participant members of the UC community.

For example, UC expects undergraduate students receiving financial aid to contribute \$5000 of their own earnings toward their tuition every year. For an undocumented undergraduate student, DACA and work authorization—and the mandatory fees associated with applying for each—are necessary preconditions to legal employment and the ability to make the required \$5000 contributions. Likewise, for many of these students, employment earnings are a crucial way of covering housing and living expenses.

Thus, each year in which an undocumented UC undergraduate has to pay DACA and work authorization application fees, their effective cost of tuition rises nearly 10 percent, as they must pay \$495 in fees to be able to earn the \$5000 to contribute to their own tuition.

The \$495 in fees likewise represents a substantial cost for UC's DACA-participant employees, who cannot maintain their employment without DACA and work authorization.

UC students have sometimes been able to rely on funds from the state of California and third-party contributors to cover the cost of DACA application fees, but these funding sources are no longer reliably available. Accordingly, the burden of paying these fees currently falls to the participants themselves.

UC recognizes that DHS incurs costs processing DACA and work authorization applications, and proposes these fees to defray those costs. At the same time, however, DACA has substantially benefited the American economy, and is estimated to result in approximately \$6 billion in federal tax revenue annually, and \$21.5 billion in GDP.¹⁹ These statistics, which were not contested in the DACA litigation, confirm that DACA's revenue benefits to the federal government far exceed any corresponding costs before any fees are paid.

In light of the serious economic burdens that the proposed application fees will impose on DACA participants, and the enormous economic benefits of DACA to the U.S. government and economy, DHS should consider reducing or eliminating the fees associated with applying for DACA and work authorization. In the alternative, UC urges the agency to adopt a robust need-based waiver program to further reduce or eliminate

¹⁹ See Ex. A at Ex. 11 (Declaration of Ike Brannon Ph.D and Logan Albright).

such fees for deserving populations, such as DACA-participant students relying on DACA and work authorization. Additionally, UC urges the agency to consider lengthening to the pertinent renewal period from two years to five years, so that the burden of paying application fees would be felt less often; in addition, a longer renewal period would mitigate the corresponding administrative burden on DHS to process renewals.²⁰

* * *

UC thanks DHS for the opportunity to comment on the proposed rule. UC remains strongly committed to educating, graduating, and employing individuals from a broad array of backgrounds. DACA-participant individuals are an essential part of the UC community, and their unique contributions and perspectives help UC achieve its mission.

For these reasons, and the reasons given at greater length above, UC strongly supports DHS's efforts to maintain and strengthen DACA through the proposed rule. At the same time, UC believes the proposed rule can be improved in the ways described.

UC is available to comment further on the proposed rule at DHS's request. If you have any questions or concerns about this comment letter, please contact Chris Harrington, Associate Vice President in UC's Office of Federal Governmental Relations, at Chris.Harrington@ucdc.edu or 202-974-6300. Thank you for your consideration.

Sincerely,



Michael V. Drake, MD
President
University of California System



Chancellor Carol T. Christ
University of California, Berkeley



Chancellor Gary S. May
University of California, Davis



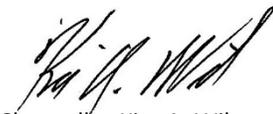
Chancellor Howard Gillman
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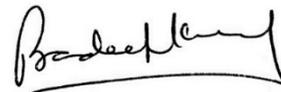
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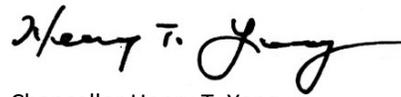


Chancellor Pradeep Khosla
University of California, San Diego

²⁰ If necessary, DHS could recapture DACA participants' biometric data between renewals to determine whether there are any security concerns.



Chancellor Sam Hawgood
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Chancellor Henry T. Yang
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cc: Senior Vice President Brent Colburn, External Relations and Communications
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