national IMMIGRATION project
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Re: Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I-821D; Revision of a Currently Approved Collection

OMB Control Number 1615-0124
Docket ID USCIS-2012-0124

Dear USCIS Desk Officer:

The National Immigration Project of the National Lawyers Guild (National Immigration Project) respectfully submits the following comments regarding proposed changes to Form I-821D, Application for Consideration of Deferred Action for Childhood Arrivals (DACA) and its accompanying instructions. We also provide general recommendations on the current DACA application process as a whole. Although we have submitted joint comments with several organizations, these comments seek to address sections of the form that expand the public safety ineligibility bars.

The National Immigration Project is a national non-profit that provides legal and technical support to legal practitioners, immigrant communities, and advocates seeking to advance the rights of noncitizens. For over forty years, we have been promoting justice and equality of treatment in all areas of immigration law, the criminal justice system, and social policies related to immigration. Our success is built upon our 1,500 members nationwide including attorneys, law students, judges, jailhouse lawyers, advocates, community organizations, and other individuals seeking to defend and expand the rights of immigrants in the United States.

The National Immigration Project trains private and nonprofit immigration practitioners, the federal and state criminal defense bars, and judges on specialized issues of immigration law, produces multiple immigration legal treatises published by Thomson West, and provides technical assistance each year to thousands of immigration practitioners, state judges, local governments, and nonprofit legal assistance organizations across the country regarding immigrants'

rights.

The National Immigration Project offers the following recommendations:

I. Extend the Proposed Renewal Filing Period

The proposed instructions indicate that USCIS may reject requestors' submissions if they file for renewal more than 120 days prior to the expiration date of their DACA period. We are concerned that the proposed timeframe is too narrow to accommodate the potentially high volume of requests for DACA renewals. The current posted processing times for Form I-821D is six months[1] or more[2] depending on the USCIS Service Center. Even if requestors are aware of the short window and file their renewal requests in a timely fashion, we fear that their requests will not be adjudicated in time and they will lose their DACA and work authorization.

Legal services providers experienced a high volume of DACA eligible requestors when DACA first became available in 2012, and we expect an even higher volume of requests for renewal in the first few months of the renewal process. As a result, many DACA recipients may have trouble accessing legal support from non-profit or low-cost legal services providers in the narrow timeframe proposed for renewals, especially during the first few months.

Recommendation: USCIS should expand the proposed DACA renewal filing period from no more than 120 days to no more than 150 days prior to the requestor's DACA expiration date. This will allow USCIS to timely process requestors' renewals before their deferred action and employment authorization expire. USCIS also should clarify the DACA renewal filing period on the Form I-821D and its instructions, and should encourage renewal requestors to file as early in the 150-day period as possible—ideally, at least 90 days prior to the DACA expiration date.

II. Automatically Extend Work Authorization

Under the proposed DACA renewal filing period, requestors will have an unrealistically narrow window to prepare and submit their renewal application or risk losing deferred action and work authorization. For example, if a renewal requestor files his request 80 days before the expiration of his DACA— within the proposed 120-day window— he may still lose deferred action and work authorization while he awaits adjudication of the renewal. The current processing time for Employment Authorization Document (EAD) renewals is 90 days[3] after the approval of a concurrently filed DACA request (with a processing time of six months or more). A renewal requestor must file more than 90 days before his DACA expiration date to ensure USCIS has adequate time to process his EAD renewal. The requestor must ideally file in the first 30 days of the 120 day period. This short timeframe will jeopardize the employment of DACA recipients and have ramifications for employers who will have no choice but to terminate or suspend

[1] *See* USCIS Processing Time Information, *available at https://egov.uscis.gov/cris/processTimesDisplayInit.do.*

[2] *See* Practice Alert on Long-Pending Cases at the Nebraska Service Center (Updated 12/30/13), AILA InfoNet Doc. No. 13110747 (posted Dec. 30, 2013).

[3] *See* USCIS Processing Time Information, *available at* https://egov.uscis.gov/cris/processTimesDisplayInit.do.

DACA recipients whose documents expire during the renewal adjudication period. DACA renewal requestors' loss of work authorization also may have a detrimental impact on the U.S. economy, as it is estimated that 61% of DACA recipients obtained a new job since receiving DACA.[4]

This short filing timeframe for renewal is comparable to the Temporary Protected Status (TPS) 60-day re-registration period where DHS has recognized the need for an automatic extension while re-registration is pending. We acknowledge that providing an automatic extension for TPS beneficiaries that all have the same expiration date differs from the varying expiration dates of DACA recipients. However, USCIS must find a solution that minimizes the impact of the renewal process on requestors and their families. Failing to automatically extend work authorization or provide a longer renewal timeframe fundamentally undermines the DACA program's goals of allowing eligible immigrant youth to legally remain and work in the United States.

Recommendation: USCIS should grant automatic extensions of employment authorization for DACA renewal requestors who file within our recommended 150-day period. USCIS also should allow the DACA renewal receipt notice to indicate a temporary extension while the renewal request is pending. In some circumstances, a simple receipt will suffice as an extension of work authorization. The online I-9 instructions to employers provide that receipts may be valid in lieu of another qualifying document to complete the re-verification sections of the Form I-9. Specifically, they instruct employers that: "your employee may present a receipt for the application for the replacement of any List A, List B, or List C document. This receipt is valid for 90 days. When it expires, the employee must show you the replacement document for which the receipt was given."[5] An EAD is considered a List A document.

III. Ensure Against Accrual of Unlawful Presence

DACA recipients should not accrue unlawful presence if their DACA expires during the renewal adjudication process. This would bring the renewal process in accord with existing policy - USCIS has already stated that requestors who turn eighteen while their applications are pending will not accrue unlawful presence.[6]

Recommendation: USCIS should permit the DACA renewal request receipt notice to serve as proof that the individual is in deferred action status to avoid the accrual of unlawful presence while the individual's renewal request remains pending.

IV. Clarify that Filing for Renewal is Permitted after Renewal Deadline

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[4] Preliminary Findings from the National UnDACAmented Research Project, *available at* http://www.immigrationpolicy.org/just-facts/how-daca-impacting-lives-those-who-are-now-dacamented

[5] *See* "Receipts," *available at* http://www.uscis.gov/i-9-central/acceptable-documents/receipts/receipts.

[6] *See* USCIS DACA Frequently Asked Questions, Q.5 under "About Deferred Action for Childhood Arrivals" ("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.").

Given the many challenges DACA recipients will face when renewing their DACA request, including the high costs and short application period, we recommend that USCIS make clear that missing the renewal window is not a bar to renewing DACA.

Recommendation: USCIS should clarify that those who miss their renewal window may still apply as renewal requestors.

V. USCIS should eliminate or modify requests for criminal history information that do not affect DACA eligibility

Many DACA eligible individuals are not applying for DACA because they are concerned about how USCIS will treat their criminal history.[7] In an effort to successfully implement the DACA program, USCIS should consider eliminating the following requests for criminal history evidence, which are overly broad and irrelevant to DACA eligibility.

The proposed instructions include a new request for records: Question 12.A. on page 9 asks for an original official statement by the arresting agency or an order by the relevant court for each arrest, if the requestor was arrested for a felony or misdemeanor in the United States or for a crime in any other country, and no charges were filed. The new request places an unnecessary burden on requestors because arresting agencies and courts may not maintain records of arrests where no charges were ultimately filed or may destroy them after a certain period of time.

Requiring requestors with arrests outside the United States to comply with these new instructions is especially burdensome and unfair. Foreign arresting agencies may not keep files for cases where they did not file charges or may be unwilling to provide such a certification. Furthermore, the records may contain false or misleading information, especially in countries where police misconduct is high. The instructions state that if the requestor is unable to provide such documentation or if it is not available, an explanation including the requestor's efforts to obtain the documentation is necessary. In addition to the time spent trying to obtain these records, requestors must then spend additional time documenting their efforts. All of this needlessly delays a potential requestor from submitting an application.

Soliciting arrest records that do not result in conviction unfairly prejudices the requestor because arrest records create the presumption of guilt, even though arrest records are not proof of criminal conduct.[8] Arrest records can include allegations that were erroneous, false, or misleading. To rely on those allegations distorts the "totality of the circumstances" standard utilized in DACA determinations because of the heightened possibility that innocent people will be denied DACA. For example, a person who was arrested because of mistaken identity or

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[7] AILA, Immigration Advocates Network, American Immigration Council, Summary of DACA Implementation Survey 2.0 Results as of April 2, 2013, *at* http://op.bna.com/dlrcases.nsf/id/lfrs-97xp89/$File/DACA%20Survey.pdf.

[8] US Push on Illegal Bias Against Hiring Those with Criminal Records, New York Times, June 20, 2012. This article shows that employers carry biases in their hiring practices when they review arrest records. "Lies, Damn Lies, and Arrest Statistics," The American Society of Criminology Meetings (1995), *available at* http://www.colorado.edu/cspv/publications/papers/CSPV-015.pdf. This article provides a series of articles on the influence and use of arrest records in the criminal justice system.

because of police misconduct may have an arrest record that could include egregious allegations of criminal conduct. Considerations such as mistaken identity or allegations of misconduct will likely not reach USCIS since a record of dismissal will not cite to reasons for the dismissal of the charges.

Recommendation: USCIS should eliminate the request for records involving arrests that did not lead to the filing of charges to make the application process less burdensome and to avoid prejudicing the DACA adjudication.

Question 12C on page 10 of the instructions state: "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." These records may not constitute convictions under settled immigration precedent and should not be relevant for determining DACA eligibility.[9] Obtaining and disclosing these records may violate state laws. Further, it is burdensome to require requestors to provide evidence of no record. Eliminating this request would make the required evidence for DACA more consistent with the evidence of convictions allowed by our federal immigration laws.

USCIS should not require court-certified records of vacated convictions because vacated judgments are not convictions for immigration purposes if they were vacated for statutory or constitutional defects, pre-conviction errors affecting guilt, and if the criminal court failed to advise a defendant of the immigration consequences of a plea.[10]

If a requestor was not convicted of a crime, or was arrested and charged but the charge was later dismissed, sealed and/or expunged, USCIS should not consider those charges against requestors in the DACA context by subjecting them to scrutiny when the criminal court already determined the requestor's arrest or conviction merited the rehabilitative relief sought. To do otherwise would allow USCIS to "retry" a closed criminal case and consider evidence of facts beyond those that were considered in the criminal proceeding. This would be clearly prejudicial.

Another problem with this question is that the DACA application is pretermitted if these questions are not answered. If USCIS chooses not to eliminate this question, we suggest, in the alternative, that the instructions have the following additional language, which appear in questions 12A and 12B: "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 9. Additional Information." This option would enable those having difficulties obtaining relevant documentation from the court to move forward with their request for DACA.

Lastly, the introductory paragraphs of this section state "If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this

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[9] *See Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006); *Alim v. Gonzales*, 446 F.3d 1239 (11th Cir 2006); *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006); http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartF-Chapter2.html#footnote-15.

[10] *Id*.

evidence is not required." This statement is confusing because the language on the form is broader. The form asks requestors who have been arrested for or charged with a felony or misdemeanor in the United States to submit records for each arrest, unless disclosure is prohibited under state law. While we welcome this change for juvenile matters, this exception is too narrow because states prohibit disclosure in many types of cases, not just those handled in juvenile court. For example, convictions expunged under Connecticut General Statute § 54-142a require an order from the court for disclosure, unless law-enforcement officers are investigating a criminal activity or it is for the purpose of an employment application as an employee of a law-enforcement agency. To ensure consistency with the I-821D form, we recommend these instructions clarify that evidence is not required in any case where state law prohibits the disclosure of records.

Recommendation 1*:* USCIS should remove the request for records where arrests or convictions have been removed, set aside, vacated, or expunged. USCIS should also remove the request for any records where disclosure is prohibited by law.

The I-821D instructions do not specify what criminal records a renewal requestor must submit.

Recommendation 2: To avoid confusion and repeated solicitations for duplicative information and evidence, USCIS should only require requestors to provide criminal history documentation for the period since their last DACA filing.

VI. Eliminate Requests for Information Not Relevant to DACA Eligibility

The proposed Form I-821D adds a new question (Page 5, Part 5, Item 5.e.) asking requestors to indicate whether they have ever "[r]ecruited, conscripted, or used any person under 15 years of age to serve in or to help an armed force or group." The instructions do not provide any background or guidance on how to answer this question. As a result, this question will likely confuse many requestors. Further, this question goes beyond the scope of relevant information required to establish DACA eligibility.

The question appears to reference the Child Soldiers Accountability Act of 2008,[11] which created criminal and immigration prohibitions on the recruitment and use of child soldiers. The language on the form, however, is broader than that found in 18 U.S.C. § 2442, which criminalizes *knowingly* recruiting, enlisting, or conscripting "to serve *while such person is under 15 years of age* in an armed force or group" or using "a person under 15 years of age to *participate actively in hostilities*."[12] The question on the form asks whether the requestor has recruited, conscripted or used any person under 15 years of age to "*help* an armed force or group" without any specific reference to intent, hostilities, or the relevant time period for enlisting the person. The broad language on the form could be interpreted to include activities, such as asking younger friends to join the U.S. military when they turn 18 or recruiting for Junior ROTC in high school. Unaware of the underlying basis of this request, many pro se requestors might respond in the affirmative

[11] The Child Soldiers Accountability Act established a ground of inadmissibility at section 212(a)(3)(G) of the INA and a ground of removability at section 237(a)(4)(F) of the INA.
[12] 18 U.S.C. §2442(a) (emphasis added).

to participating in activities that are completely unrelated to the kind of conduct that the Child Soldiers Accountability Act of 2008 was intended to punish.[13]

Under the Child Soldiers Accountability Act, "[a]ny alien who has engaged in recruitment or use of child soldiers in violation of section 2442 of Title 18" is inadmissible under 8 U.S.C. § 1182(a)(3)(G) and deportable under 8 U.S.C. §1227(a)(4)(F). Since DACA confers no status upon recipients, DACA requestors are not subject to grounds of inadmissibility. If the new question seeks to identify those who have violated the Child Soldiers Accountability Act and prioritize them for deportation as human rights violators,[14] the question should be more specific and the instructions should provide more guidance as to the purpose of the request and the consequences of responding in the affirmative. Otherwise, requestors may incorrectly respond in the affirmative and trigger deportation.

Recommendation: USCIS should delete this question from the proposed Form I-821D because it is overly broad, confusing and irrelevant to DACA eligibility, or, in the alternative, provide more specificity and guidance on this question.

VII. Clarify Removal Proceedings Information

Part 1, Question 5 of the I-821D form asks all requestors to provide information related to "removal proceedings" when it is only relevant for DACA eligibility purposes if the requestor is under 15 years of age. In those cases, requestors must show that they are in removal proceedings, have a final order or a voluntary departure order, and are not in immigration detention. Many requestors, especially DACA workshop participants, may not have any information about their immigration history, as they were likely too young at the time to remember or understand what happened. Making this section applicable only to requestors who are under 15 years of age would lessen the burden for older requestors completing the form.

Recommendation: USCIS should either limit the applicability of this section to requestors under 15 years old or, in the alternative, specify that the "other" option means "I do not remember" or "I do not know." This recommendation would prevent requestors with no recollection of their immigration history from undergoing delays in filing their DACA requests.

VIII. Eliminate Processing Information

The newly added "Processing Information" section requests demographic information, including a requestor's ethnicity, race, height, weight, eye color, and hair color. These questions may deter potential requestors who fear revealing themselves to the government and are worried about how their personal information might be used. Additionally, requests for information regarding race and ethnicity raise the concern that the data could lead to discrimination in the adjudication of requests. This information is not relevant to DACA eligibility.

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[13] Pub. L. 110-340.

[14] NTA Memo 2011, *at* http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf

***Recommendation*:** The proposed "Processing Information" section should be eliminated from the form entirely. In the alternative, instructions to the form should indicate clearly why this information is being solicited. The instructions currently indicate that the requested biographic information may reduce the time a requestor spends at the Application Support Center for biometrics collection. However, it is unclear whether the data will serve exclusively to expedite biometrics appointment and criminal records checks or achieve some other purpose. The Form N-400, Application for Naturalization, for example, requests similar information but explains that the requested information will be used to complete a background check. USCIS should provide more information as to the specific purpose of this data. Additionally, instructions should include a statement indicating that decisions to defer action in an individual's case will not be based on race, ethnicity, or physical description.

IX. Eliminate Question Regarding Pending Immigration-Related Requests

Questions 20.b. and 20.c. on page 2 ask requestors to indicate whether they have "any other immigration-related requests pending." These questions may confuse requestors. It may be difficult for requestors to determine how they should answer these questions if, for example, they are beneficiaries of long-ago approved I-130s. Moreover, it is burdensome to ask requestors to provide information to which they may not have access. Some requestors may be unaware of pending immigration requests filed on their behalf. For example, a relative may have filed a petition on behalf of the requestor and her parent, of which the requestor herself has no knowledge.

These questions are unnecessary because USCIS is, in some instances, better positioned than a requestor to access this information. Question 6 asks for the requestor's Alien Registration Number (A-Number). The A-Number provides USCIS with information about the requestor's past, approved, and pending immigration-related requests. Thus, USCIS does not need the requestor to provide this information.

We are concerned that the solicitation of this information may delay or prevent the timely provision of legal services, particularly in group processing clinics where individuals seldom appear with their complete immigration history.

Additionally, this information is not relevant for determining initial or continuing eligibility for DACA. Only individuals in actual lawful status on June 15, 2012 or at the time of their DACA request are precluded from receiving DACA on account of their immigration status.

Recommendation: USCIS should remove this question from the form. In the alternative, USCIS should include in a parenthetical a list of examples of immigration benefits commonly applied for and obtained by individuals granted DACA, such as a U or T Visa. The examples could appear in a drop down menu similar to the one accompanying item 20.a.

> We encourage USCIS to modify the text of item 20.b. and remove 20.c. as follows ***(new language in bold italics)***:
>
> ***Current Status and Pending Immigration-Related Requests***
> **20.a. For Initial Requests:** Provide your current immigration status.

20.b. For Renewal Requests: Provide any immigration status you have received since you were granted Deferred Action for Childhood Arrivals (e.g., U Visa, T Visa)

X. USCIS Should Retain Jurisdiction over DACA Requests for Applicants in Detention

Existing policies and the recently issued new form and instructions fail to adequately protect potential DACA requestors in detention. Current DHS policy provides confusing guidance for detained immigrants.[15] Detained immigrants do not receive a written determination from ICE or even a notification from ICE that the claim was denied. Moreover, anecdotal evidence indicates that ICE interprets DACA eligibility requirements differently than USCIS. Advocates report that ICE agents tell detained immigrants they are not eligible for DACA under any circumstances. This inconsistency within DHS creates far more tough evidentiary hurdles for detained immigrants, a population that typically lacks access to counsel and resources.

***Recommendation*:** USCIS should retain jurisdiction over detained DACA requestors to ensure they have the same opportunity as non-detained requestors to apply for DACA. The burden on USCIS is likely to be minimal because the number of detained requestors will likely be in the hundreds. Additionally, USCIS already has protocols on handling benefits claims by detained immigrants and can exercise discretion on behalf of DHS.[16]

XI. Provide Additional Guidance in Requests for Evidence, Notices of Intent to Deny, Notices of Denial, and Notices of Intent to Terminate DACA, and Create a Review Process for DACA Denials based on Public Safety or National Security Concerns

The current process fails to provide an opportunity for requestors or their attorneys to rebut findings that a requestor presents a public safety or national security risk before a denial is issued. In most cases, a requestor does not have an opportunity to present evidence demonstrating "exceptional circumstances," or to correct information that led to an erroneous denial or RFE. Requestors receive a "checkbox" form denial or "checkbox" RFE with no explanation about what information led to the disqualification.

Recommendation: To allow requestors to address public safety or national security concerns, USCIS should provide an explanation of what allegations or incidents were the basis of a denial, notice of intent to deny, or notice of intent to terminate DACA.

If USCIS intends to deny DACA based on public safety or national security concerns, the requestor deserves an opportunity to rebut any unfavorable information. In some cases, USCIS's information may be erroneous or out of date. For example, a DACA requestor may have been listed in a gang database without his or her knowledge, and without actually being a gang

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[15] *See* http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/deferred-action-process.htm.

[16] *See* PM-602-0093, Adjudication of Adjustment of Status Applications for Individuals Admitted to the United States under the Visa Waiver Program, http://www.uscis.gov/sites/default/files/files/nativedocuments/2013-1114_AOS_VWP_Entrants_PM_Effective.pdf (last visited February 9, 2013).

member or otherwise involved with a gang.

Recommendation: USCIS should terminate its practice of template denials. Instead, USCIS and notify the requestor of a possible public safety concern, provide the basis for the finding of a public safety bar, and provide an opportunity for the requestor to present evidence sufficient to warrant approval of DACA status.

XII. State Violations Should Not Count as Misdemeanors for DACA Purposes

State violations, even if the possible sentence exceeds five days, should not count as misdemeanors. The humanitarian nature of the TPS program is similar to the nature of the DACA program, which seeks to provide unauthorized immigrants who meet certain requirements to temporarily stay and work in the United States. UCSIS should extend the reasoning found in the USCIS memo regarding New York violations to other jurisdictions and to DACA. See http://www.uscis.gov/USCIS/Laws/Memoranda/2010/Jan/tps-ny-traffic-infractions-violations-memo.pdf.

Recommendation: USCIS should amend its current practice to argue that state violations should not count as misdemeanors for DACA purposes.

XIII. USCIS Should Specify that Failure to Properly Register for NSEERS Will Not Affect DACA Eligibility

Prospective DACA applicants who failed to timely register for the highly criticized and largely defunct National Security Entry Exit Registration System (NSEERS) program fear removal from the United States.[17] One of the top countries of origin listed in the most recent USCIS data[18] for DACA applicants is Pakistan, a country designated as one of 25 countries from where nationals were required to comply with NSEERS registration. According to the November 2011 NTA memo[19], USCIS can refer NSEERS violations to ICE. This memo will likely deter prospective DACA applicants who failed to register or improperly registered from applying. Although another April 2012 USCIS memo[20] provides that applicants should not face adverse consequences for wilful failures to register for NSEERS, we recommend that USCIS specify that failure to comply with NSEERS registration should not bar DACA nor result in being placed in removal proceedings.

Recommendation: USCIS should amend the FAQs and add that failure to properly register for NSEERS shall not result in a DACA denial.

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[17] http://www.dreamactivist.org/sb1070-muslims-nseers-lands-dream-act-youth-bars-deportation-looming/

[18]http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca-13-9-11.pdf

[19] http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf

[20] https://law.psu.edu/_file/NSEERSMemoPublic.pdf

XIV. USCIS should amend its policies regarding immigration-related offenses

Immigration-related offenses characterized as felonies or misdemeanors by state immigration laws, including any state or local offense relating or incident to immigration status, should not be treated as disqualifying felonies or misdemeanors for the purpose of considering a request for consideration of deferred action pursuant to this process.

Many noncitizens have been convicted for identity-theft related crimes because they used documents that did not belong to them for purposes of obtaining employment or keeping employment, even when the earnings from this employment are used to pay for school and related expenses or support a family member. State identity theft statutes have been written to encompass a broad range of conduct, ranging from "trafficking in multiple documents," to mere possession or use of a fictitious document.[21] Many states have classified the offenses of identity theft or criminal impersonation as a felony, even if the person was simply using documents to work.[22]

For example, in Arizona, large sections of the identity theft statutes involve employment-related fraud. Maricopa County Attorney Bill Montgomery has used these provisions to prosecute workers for identity theft or criminal impersonation, both of which carry felony sentences.[23] As a result, many DACA eligible individuals face the felony ineligibility bar. A young mother in Arizona was convicted of a class 6 felony in Arizona for "solicitation" of identity theft after a workplace raid conducted by Maricopa Sheriff Joe Arpaio.[24]

The agency should distinguish between individual users and large-scale producers of fraudulent and/or stolen identity documents.[25]

Recommendation: Convictions involving use or possession of a document to work should be treated as offenses incidental to immigration status.

Thank you for your time and consideration of these comments to the proposed revisions to Form I-821D, its instructions and the current DACA process. Please do not hesitate to contact Rosa Saavedra-Vanacore at rosasv@nipnlg.org or Paromita Shah at paromita@nipnlg.org with any questions.

Sincerely,

Rosa Saavedra-Vanacore

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[21] See AL §13A-9-18 (criminal impersonation); A.R.S. §§ 13-2006, 13-2008 (criminal impersonation and identity theft); N.C.G.S. §14-113.20 (identity theft); TX PC §32.51 (fraudulent use or possession of identifying information).
[22] See identity theft chart from the National Conference of State Legislatures, available at: http://www.ncsl.org/issues-research/banking/identity-theft-state-statutes.aspx.
[23] http://azcapitoltimes.com/news/2013/02/18/maricopa-county-attorney-bill-montgomery-im-not-targeting-immigrants/
[24] http://newamericamedia.org/2013/03/arizona-prosecutions-bar-undocumented-from-legalization.php
[25] See AL §31-13-14(b);ARS §13-2009.

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