

SUPPORTING STATEMENT
Consideration of Deferred Action for Childhood Arrivals
Form I-821D
OMB Control No. 1615-NEW

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Section 103 of the Immigration and Nationality Act, 8 U.S.C 1103 (a) (1), gives the Secretary of Homeland Security (the Secretary) general authority to enforce and administer the immigration laws. Pursuant to that authority, the Secretary on June 15, 2012 issued a memorandum (the Secretary's Memorandum) that outlines guidelines that should be used when considering whether to defer either the initiation of removal proceedings or the execution of removal orders. This is a case-by-case exercise of prosecutorial discretion relating to individuals who were brought to the United States as children and meet certain threshold guidelines. As with other exercises of prosecutorial discretion, the goal is to ensure that immigration enforcement resources are appropriately focused on individuals who meet the Department's enforcement priorities, rather than on the lowest priority cases. USCIS is collecting the information in this form in accordance with the Secretary's direction, issued under the authority provided by INA § 103(a)(3), 8 U.S.C. 1103(a)(3) to prescribe forms and instructions necessary to carry out the authority provided in 8 U.S.C. 103(a)(1).

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

This collection applies to certain individuals who were brought to the United States as young children and meet the following guidelines:

1. Were under the age of 31 as of June 15, 2012;
2. Came to the United States before reaching their 16th birthday;
3. Have continuously resided in the United States since June 15, 2007, up to the present time;
4. Were present in the United States on June 15, 2012, and at the time of making their request for consideration of deferred action with USCIS;

5. Entered without inspection before June 15, 2012, or their lawful immigration status expired as of June 15, 2012;

6. are currently in school, has graduated or obtained a certificate of completion from high school, have obtained a general education development certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and

7. Have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, and do not otherwise pose a threat to national security or public safety.

These individuals will be considered for relief from removal from the United States or from being placed into removal proceedings as part of the deferred action for childhood arrivals process (DACA). Those who submit requests with USCIS and demonstrate that they meet the threshold guidelines may have removal action in their case deferred for a period of two years, subject to renewal (if not terminated), based on an individualized, case by case assessment of the individual's equities. Only those individuals who can demonstrate, through verifiable documentation, that they meet the threshold guidelines will be considered for deferred action for childhood arrivals, except in exceptional circumstances.

USCIS will use the data collected on newly created Form I-821D to determine whether the individual requestor is eligible to be considered for deferred action for childhood arrivals. Requestors using the form I-821D will also complete Form I-765, Application for Employment Authorization, which is being simultaneously submitted for emergency approval as a revision and which was previously approved as OMB Control Number 1615-0040.

3. **Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

This form cannot be e-filed at this time. USCIS will make this form accessible to the public via the USCIS website. Respondents may download, complete and save Form I-821D electronically, but it must be filed in paper form. USCIS is in the process of working toward electronic submission capabilities for all of its programs but it has no estimate for when that capability may exist.

4. **Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

USCIS has investigated its internal processes, files and data as well as those of other Federal agencies that may service the same population. USCIS was not able to find any other means by which the information necessary for this process could be obtained except for the use of the form submitted for approval in this emergency request. USCIS will continue to examine ways in which information may be obtained from other sources and any identified duplications can be minimized or removed.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

This collection of information will not affect small businesses or other small entities. It solely is directed at certain individuals who were brought to the United States as children.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information is not collected, USCIS will not be able to fulfill its core mission of ensuring the integrity of the immigration system. USCIS will be considering whether to exercise prosecutorial discretion with respect to low priority cases involving individuals who do not meet the Department's enforcement priorities so that resources can be focused on cases that are enforcement priorities. Accordingly, USCIS must determine whether the requestor is eligible to have his or her case deferred. Non-governmental groups estimate that 800,000 to 1.4 million individuals may meet the guidelines for consideration of deferred action for childhood arrivals. This volume far exceeds the number of requests received in the past for deferred action: in fiscal year 2011, USCIS received 6,057 requests for deferred action, and in fiscal year 2012 (through May), USCIS has received approximately 2,593 requests for deferred action. The implementation of deferred action for childhood arrivals under the June 15, 2012 memorandum requires a new form, Consideration of Deferred Action for Childhood Arrivals (Form I-821D), and a revision to the existing Application for Employment Authorization (Form I-765). USCIS is requesting emergency processing of the information collection request contained in the revised forms.

The population of individuals who may be eligible to receive deferred action under the new USCIS process is very vulnerable to fraud, particularly to schemes by unauthorized practitioners of immigration law or unethical attorneys. To prevent fraud, the process needs to be implemented quickly. USCIS believes that it is in the public's best interest to forgo public notice and comment before implementation of these forms.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **Requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
 - **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
 - **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
 - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
 - **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
 - **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances applicable to this information collection. This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. **If applicable, provide a copy and identify the data and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

USCIS is seeking emergency review and approval of this collection of information under 5 CFR 1320.13. Based on USCIS and legacy INS's past experiences, there is significant concern that unauthorized practitioners of immigration law or unethical attorneys will seek to take advantage of individuals who may be eligible for deferred action under the new process in the period between the announcement and the implementation of the

procedures for accepting requests for deferred action. The longer the period before the process is implemented the greater the risk that this fraud will occur and that it will be on a large scale. In order to prevent against a significant outbreak of fraud, the process needs to be implemented quickly. USCIS believes that it is in the public's best interest to forgo public notice and comment before implementation of these forms. If OMB approves this emergency request, USCIS will seek public comment and publish 60 and 30 day notices in the Federal Register as required under 5 CFR 1320. USCIS will respond fully to all public comments in its subsequent information collection request.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

USCIS does not provide payments or gifts to respondents related to this information collection.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation or agency policy.

There is no assurance of confidentiality. The system of records notices associated with this information collection are: Privacy Act of 1974; U.S. Citizenship and Immigration Services, Immigration and Customs Enforcement, Customs and Border Protection--001 Alien File, Index, and National File Tracking System of Records, published on June 13, 2011, at 76 FR 34233, and; Privacy Act of 1974; United States Citizenship and Immigration Services, Benefits Information System, published at 73 FR 56596 on September 29, 2008. The associated privacy impact assessment is USCIS Benefits Processing of Applicants other than Petitions for Naturalization, Refugee Status, and Asylum (CLAIMS 3), September 5, 2008. USCIS will provide an updated Privacy Impact Assessment with the submission of the revised PRA package to be submitted after the approval of the emergency request if OMB approves such.

Information provided in this request is protected from disclosure to ICE and U.S. Customs and Border Protection (CBP) for the purpose of immigration enforcement proceedings unless the requestor meets the criteria for the issuance of a Notice To Appear or a referral to ICE under the criteria set forth in USCIS's Notice to Appear guidance (www.uscis.gov/NTA). The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of deferred action for childhood arrivals request, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense. The above information sharing clause covers family members and guardians, in addition to the requestor. This policy, which may be modified, superseded, or rescinded at any time without notice, is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to person's from whom the information is requested, and any steps to be taken to obtain their consent.**

Deferred action is an exercise of agency discretion to defer the removal action against certain individuals who are unlawfully present in the United States. One basis for deferred action is the need to devote finite enforcement resources to the highest priority removal cases, including individuals who have been convicted of specific crimes or otherwise pose a danger to national security or public safety. In order to examine individuals' eligibility for consideration of deferred action, it is necessary for USCIS to ask questions and obtain evidence that is considered sensitive. Below are the questions that that USCIS will ask respondents to answer and the consequences of not collecting this information. In addition the requestor must provide records to document their answer.

Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? Do not include minor traffic violations that only resulted in a fine, unless it was alcohol- or drug-related.

This question regards the petitioner's criminal history. USCIS will not defer removal from the United States under DACA of individuals convicted of certain crimes except in exceptional circumstances.

If you answered "Yes" you must also include copies of all arrest records, charging documents, dispositions (outcomes), sentencing records, etc.

USCIS needs the arrest records to determine if the crime rises to a level that will result in USCIS choosing not to defer removal in the case except in exceptional circumstances. Certain misdemeanors will typically not preclude USCIS deferring action of an individual's case.

Have you ever been arrested for, charged with, or convicted of a crime in any country other than the United States? If you answered "Yes" you must also include copies of all arrest records, charging documents, dispositions (outcomes), sentencing records, etc.

This question regards the requestor's criminal history. USCIS will not defer removal of certain criminals from the United States under DACA except in exceptional circumstances.

Have you ever engaged in or do you continue to engage in or plan to engage in terrorist activities?

This question regards the requestor's support for terrorism. USCIS will not defer removal of individuals from the United States under DACA who pose a threat to national security, including those who have supported terrorism.

Are you now or have you ever been a member of a gang?

This question regards whether the individual poses a threat to public safety. USCIS will not consider deferring removal of gang members from the United States under the DACA process except in exceptional circumstances.

Have you ever engaged in, ordered, incited, assisted or otherwise participated in any of the following:

- ***Acts involving torture, genocide, or human trafficking?***
- ***Killing any person?***
- ***Severely injuring any person?***
- ***Any kind of sexual contact or relations with any person who was being forced or threatened?***

A background check may not always reveal derogatory information regarding a person who may have engaged in activities related to the questions above. An individual who has engaged in one of the above may be a national security or public safety threat, and USCIS will deny their request for deferred action.

In addition, requestors are required to provide education and military records. This information is necessary to determine whether the requestor meets the guidelines of the Secretary's June 15, 2012 memorandum. DHS will consider exercising prosecutorial discretion with respect to low priority cases under the DACA process if the individual is currently in school, has graduated or obtained a certificate of completion from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States.

For DACA, USCIS will allow the requestor to submit certain records to document that they came to the United States before their 16th birthday, and were in unlawful status as of June 15, 2012, including hospital records, medical records or official records from a religious entity in the United States. These records are optional evidence, and USCIS will not deny people consideration of deferred action for childhood arrivals based on their medical history or religious affiliation.

- 12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

Type of Respondent	Form Name / Form Number	No. of Projected Respondents	No. of Responses per Respondent	Avg. Burden per Response (in hours)	Total Annual Burden (in hours)	Avg. Hourly Wage Rate	Total Annual Respondent Cost
Individuals or households	Consideration of Deferred Action for Childhood Arrivals/ I-821D	1,041,300	1	2 hours 45 minutes (2.75 hours)	2,863,575	*\$30.44	\$87,167,223
Total		1,041,300			2,863,575		\$87,167,223

**The above Average Hourly Wage Rate is calculated from the [May 2011 Bureau of Labor Statistics](#) average wage for "All Occupations" of \$21.74 times the wage rate benefit multiplier of 1.4 equaling \$30.44.*

NOTES ON BURDEN:

1. Affidavits. This information collection also provides that in lieu of primary evidence of eligibility, a requestor of consideration for deferred action as a childhood arrival can provide an affidavit as secondary evidence to attempt to overcome the lack of documentary evidence with respect to only certain eligibility guidelines. An affidavit may require research and preparation by a third party as well as payment for the third party's effort. At this point in the development of the deferred action initiative, USCIS is developing an estimate of the number of affidavits that may be prepared and submitted and the time required to prepare and submit such affidavits. USCIS will ask for public input in its request for public comment on this subject and will include an estimate of the information collection burden for affidavits in its regular submission to follow this emergency approval.

2. Translations. Respondents might incur burden for translations of documents in foreign languages. USCIS is currently evaluating the estimated burden associated with this activity. USCIS will seek comments on how long this requires and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources.

3. Preparers. Many respondents may hire third parties for form completion so there may be a burden for a preparer to assist in the form completion process. USCIS will request public comment on burden required for preparers on the preparation and submission of this form. USCIS will include the results of the public comments and its own analysis in the next submission following this emergency request.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of**

purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government or (4) as part of customary and usual business or private practices**

This information collection may impose some out-of-pocket costs on respondents in addition to the time burden for the form's preparation.

1. Affidavits. This information collection provides that in lieu of primary evidence of eligibility, a requestor of consideration for deferred action as a childhood arrival can provide an affidavit as secondary evidence to overcome the lack of documentary evidence with respect to only certain eligibility guidelines. An affidavit may require payment for a third party's effort. At this point in the development of the deferred action initiative, USCIS is developing an estimate of the number of affidavits that may be prepared and the costs that may result to respondents. USCIS will ask for public input in its request for public comment on this subject and will include an estimate of costs associated with affidavits in its regular submission to follow this emergency approval.

2. Translations. Respondents might incur expenses for translations of foreign documents or documents prepared or issued in foreign languages. USCIS is currently evaluating the estimated cost associated with this activity. USCIS will seek public comments on and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources on these costs.

3. Preparers. Many DACA respondents may hire third parties to assist in the request process. USCIS will request public comment on the number of DACA respondents who may hire preparers and the costs required to hire paid preparers for the preparation and submission of this form. USCIS will include the results of the public comments and its own analysis in the next submission following this emergency request.

4. Records. Many DACA respondents may incur expenses to obtain, medical, military, education, or religious records. USCIS is currently evaluating the estimated cost associated with obtaining such records. USCIS will seek public comments on and provide estimates in its next submission to OMB based on the results of public comments it receives and information that can be found from other resources on these costs.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

Annualized Cost Analysis:

- a. Printing Cost: \$9,916
- b. Collecting and Processing: \$114,543,000
- c. Total Annual Cost to the Government (funded by USCIS user fee collections):\$114,552,916

Government Cost

The estimated cost to the Government is \$ 114,552,916 (which is funded by USCIS user fee collections). This figure is calculated by multiplying the estimated number of respondents (1,041,300) x (1) number of response x (2.75) hours (USCIS time required to collect and process information) x \$40.00 (suggested average hourly rate for clerical, officer, and supervisory time with benefits). This \$40 cost per form includes overhead cost for printing, stocking, distributing and processing of \$10 per request to be received under this emergency request. Form I-821D is submitted simultaneously with Form I-765 and those forms are processed consecutively as part of an integrated process; there is no fee charged for Form I-821D and the Form I-765 supporting statement provides additional clarification on how the cost of the Form I-821D is funded by USCIS user fees. USCIS will provide a more detailed breakdown of the government costs for this program in its subsequent information collection request which will be submitted to OMB and subject to notice and comment.

- 15. Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.**

There are no program changes or adjustments to Items 13 or 14 of the OMB Form 83-I as this is a new collection.

- 16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

This information collection will not be published for statistical purposes.

- 17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

USCIS will display the expiration date for OMB approval of this information collection.

- 18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.**

USCIS does not request an exception to the certification of this information collection.

B. Collections of Information Employing Statistical Methods.

There is no statistical methodology involved with this collection.