

**I-821D Public Comments
Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
Form I-821D	1 General Comment	<p>Comment: A commenter asked about the emergency nature of the comment request for Deferred Action for Childhood Arrivals, Form I-821D given that there is no justification within the registrar announcement as required by applicable regulations.</p> <p>Response: USCIS obtained OMB approval to publish an emergency information collection request. The Federal Register notice indicated that USCIS required emergency processing in accordance with 5 CFR 1320.13.</p> <p>The applicable regulations at 5 CFR 1320.13 do not require the Federal Register notice to explain the nature of the emergency.</p>
	2 General Comment	<p>Comment: A commenter recommended USCIS review the DACA requestor’s criminal history to ensure public safety.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. A requestor’s criminal record may impact this discretionary decision or the assessment of whether a requestor poses a threat to public safety.</p>
	3 General Comment	<p>Comment: A commenter recommended that USCIS review the DACA requestor’s information for accuracy.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. A finding of fraud will impact this discretionary decision.</p>
	4 General Comment	<p>Comment: A commenter recommended that USCIS scrutinize the evidence submitted to demonstrate continuous residence.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. The instructions to Form I-821D provide examples of documents that may show that the requestor continuously resided in the United States during the 5-year period immediately before June 15, 2012, and up to the time of the request for consideration of deferred action under DACA is made.</p>

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5	General Comment	<p>Comment: A commenter recommended that USCIS scrutinize the DACA requestor’s absences from the United States.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. The instructions to Form I-821D provide guidance on absences from the United States.</p>
6	General Comment	<p>Comment: Two commenters recommended that USCIS charge a filing fee for Form I-821D.</p> <p>Response: No change is made in response to this comment. DACA is a discretionary form of administrative relief in which the agency will grant deferred action using current statutory and regulatory authority. USCIS fees must be established by regulation, but no regulation change is planned or necessary for USCIS to implement DACA, Therefore no filing fee for Form I-821D is imposed, although DACA requestors must submit both filing and biometrics services fee with the accompanying Form I-765.</p>
7	General Comment	<p>Comment: A commenter recommended that USCIS allow electronic submission of applications because this would simplify the process for the requestor.</p> <p>Response: USCIS will explore the possibility of electronic submissions of Form I-821D in the future.</p>
8	General Comment	<p>Comment: A commenter wants USCIS to establish a reasonable time-frame to adjudicate Form I-821D.</p> <p>Response: USCIS will establish a processing time for Form I-821D in accordance with agency standards.</p>
9	Part 1, Items 2.c, 3.b, 3.c, 16.b, 17, and 21.a-e. Part 2, Items 2.c-5.c. Part 4, Item 1.b. Part 5, Item 4.b. Part 7, Item 1.a-c	<p>Comment: A commenter recommended that the form field be enabled so that the text can be entered.</p> <p>Response: USCIS has enabled this field so that the text can be entered.</p>

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1 0	Part 1, 3.a. Are you now or have you ever been in removal proceedings? Yes No	Comment: Two commenters recommended that USCIS add an option of “unknown” because many requestors may not know if they have been placed in removal proceedings. I.e., Yes No Unknown Response: No change recommended based on this comment. This information is needed to determine if a child under the age of 15 may file Form I-821D.
1 1	Part 1, 3.a. Are you now or have you ever been in removal proceedings? Yes No	Comment: Two commenters recommended that this question be moved to part 2, after departure questions. Response: No change recommended based on this comment
1 2	Part 1, 3.a. Are you now or have you ever been in removal proceedings?	Comment: Two commenters recommended that USCIS include other forms of immigration court proceedings; e.g., exclusion; deportation. Response: USCIS has agreed to revise this section.
1 3	Part 1, 3.a. Are you now or have you ever been in removal proceedings?	Comment: A commenter indicated that requestors are not certain how to answer Part 1, Question 3 if they have a known or suspected, removal order that was issued by DHS, not by an immigration judge in formal removal proceedings. For example, a DACA requestor might have an expedited removal order issued at the border or –if a Visa Waiver Program entrant – she might have an administrative removal order issued within the United States. The commenter suggests that USCIS add the following option: 3.d. Do you have a removal order issued in any other context (for example, at the border or within the United States by an immigration agent? Yes No Unknown Response: USCIS has agreed to revise this section.
1 4	Part 1, 9. Country of Residence	Comment: A commenter recommended that USCIS include the word “Current” in Part 1, Question 9, because requestors are concerned about writing “United States” since they are not lawful permanent residents of the United States. Response: USCIS has agreed to make appropriate changes to ensure requestors understand the question.

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1 5	Part 1, 12. Other Names Used (<i>including maiden name</i>) . If you require additional space, use Part 7., Additional Information.	<p>Comment: Two commenters recommended that this section be moved to immediately follow question 1, and further requested clarification of what the applicant should do if she has a surname that includes her mother’s last name.</p> <p>Response: No change recommended based on this comment.</p>
1 6	Part 1, 13-17. U.S. Entry Information	<p>Comment: Two commenters recommended that questions regarding entry (13-17) be moved to part 2, before arrival / residence questions.</p> <p>Response: No change recommended based on this comment.</p>
1 7	Part 1, 13-15. U.S. Entry Information	<p>Comment: A commenter indicated that requestors who entered the United States at a young age are sometimes not able to answer Questions 13, 15 and 15 based on personal knowledge. Many attorneys hesitate to classify a requestor’s initial entry as “EWI” without an opportunity to have a more in-depth conversation (which is often not possible in the context of group processing) about the circumstances of the entry. The hesitation stems in part from concern that a misclassification of the entry will prejudice a requestor’s ability for adjustment of status. We recommend that requestors be permitted to answer “Unknown” if their age at the time of entry and other circumstances justify the answer.</p> <p>Response: USCIS has agreed to modify the question.</p>
1 8	Part 1, 13-17. U.S. Entry Information	<p>Comment: A commenter recommended that USCIS include “Procedurally Valid Entry” in the drop-down menu because many requestors may have been inspected and admitted under <i>Matter of Quilantan</i>, 25 I&N Dec. 285 (BIA 2010).</p> <p>Response: USCIS has agreed to modify the question.</p>
1 9	Part 1, 15, Status at Entry (B2, F1, J1, No lawful status)	<p>Comment: A commenter recommended that if Part 1, Question 15 is really designed to get at “Status at Entry” rather than “Manner of Entry,” then “EWI – Entry Without Inspection” and “Without Inspection” should be removed from the drop-down menu because the inclusion of these options prejudice their future adjustment prospects through no fault of their own. This is because many organizations instruct <i>Quilantan</i> entrants to choose “EWI” as their “Status at Entry.”</p> <p>Response: USCIS has agreed to modify the question.</p>

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2 0	Part 1, Education Information. 18. Current Education Status (e.g., In School, General Educational Development, High School Graduate)	<p>Comment: A commenter indicated that the title “Current Education Status” is confusing, particularly for requestors who have their high school diploma and are currently “in school” at colleges. The commenter recommended that “Current Education Status” be replaced with “Education Status” and that the examples be changed from “e.g., In school, General Educational Development, High School Graduate” to “For example, High School Graduate or Recipient of GED or Currently in School.”</p> <p>Response: USCIS has agreed to adopt the recommended changes.</p>
2 1	Part 1, Education Information. 18. Current Education Status (e.g., In School, General Educational Development, High School Graduate). 19. Name, City, and State of School Currently Attending or Where Education Received 20. Date of Last Attendance, Graduation, Receipt of General Educational Development Certificate, and/or Completion Certificate	<p>Comment: A commenter recommended adding an option “currently in school” or to clarify that the question can be left blank if you are currently in school.”</p> <p>Response: USCIS has agreed to revise this section.</p>
2 2	Part 1, Education Information. 20. Date of Last Attendance, Graduation, Receipt of General Educational Development Certificate, and/or Completion Certificate.	<p>Comment: A commenter recommended that USCIS change “Date of Last Attendance, Graduation, Receipt of General Educational Development Certificate and/or Completion Certificate” to “Date of High School Graduation or Receipt of GED Certificate (and/or Completion Certificate) or, if Currently in School, Date of Last Attendance.”</p> <p>Response: USCIS has agreed to adopt the recommended changes.</p>
2 3	Part 2. Arrival/Residence Information 1.a. I arrived in the United States on or before June 15, 2007. Yes No 1.b. I have been continuously residing in the United States since at least June 15, 2007. Yes No NOTE: If you answer “No” to Item Number 1.a. or 1.b., use Part 7., Additional Information, to include a full explanation.	<p>Comment: A commenter recommended USCIS clarify the term continuous residence for requestors.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. The instructions to Form I-821D provide guidance on the types of documents that can show continuous residence and how absences from the United States affect continuous residence.</p>

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2 4	Part 2. Arrival/Residence Information. List your current address and, to the best of your knowledge, the addresses where you resided since your initial entry into the United States	<p>Comment: Three commenters indicated that this is burdensome and that except for residences during the last five years, the information requested does not assist in establishing any of the DACA requirements.</p> <p>Response: No changes to the form are necessary based on this comment.</p>
2 5	Part 2, 2.a, 3.a.,4.a., 5.a., 6.a., and 7.a.	<p>Comment: A commenter indicated that requestors may not know the exact dates they lived at a particular address and suggested that certain date fields be modified so that the text, such as “approximately” or the month, can be entered in addition to numerals to reflect dates.</p> <p>Response: USCIS has agreed to revise this section.</p>
2 6	Part 3, Question 1, Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? <i>Do not include minor traffic violations that resulted in a fine, unless it was alcohol- or drugs-related.</i>	<p>Comment: A commenter requested clarity regarding the definition of "conviction" being employed in Form I-821D adjudications.</p> <p>Response: No changes to the form are necessary based on this comment. USCIS will evaluate this information and the evidence submitted in light of the legal definition of “conviction” and will also evaluate whether the requestor poses a public safety risk.</p>

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2 7	<p>Part 3, Question 1, Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? <i>Do not include minor traffic violations that resulted in a fine, unless it was alcohol- or drugs-related.</i></p> <p>If you answered “Yes” you must also include copies of all arrests records, charging documents, dispositions (outcomes), sentencing records, etc.</p>	<p>Comment: A commenter indicated that that the requestor must answer the question “yes” if he or she has been arrested or charged or convicted of a felony (as defined under federal law –even if the incident resulted in a conviction that was later expunged, and even if the incident was handled in juvenile court.</p> <p>Response: USCIS has agreed to modify this question.</p> <p>Comment: Two commenters indicated that Form I-821D should explicitly indicate that incidents handled in juvenile court are to be disclosed at part 3. Commenter Number 5 is concerned that although the Frequently Asked Questions make this clear, some practitioners are advising that “juvenile records don’t count” and telling DACA requestors to leave out their juvenile arrests, charges and dispositions. This commenter recommended that Part 3, Question 1 be further edited to read that the requested material should be submitted “unless otherwise confidential under state juvenile law.”</p> <p>Response: USCIS has agreed to modify this question.</p> <p>Comment: A commenter indicated that Form I-821D should explicitly indicate that expunged convictions are to be disclosed at Part 3, Question 1, as this will prevent confusion.</p> <p>Response: No change required based on this comment. Expunged convictions are dispositions.</p>
2 8	<p>Part 3, Question 1, Have you ever been arrested for, charged with, or convicted of a felony or misdemeanor in the United States? <i>Do not include minor traffic violations that resulted in a fine, unless it was alcohol- or drugs-related.</i></p> <p>If you answered “Yes” you must also include copies of all arrests records, charging documents, dispositions (outcomes), sentencing records, etc.</p>	<p>Comment: Three commenters recommended that Form I-821D require disclosure of any arrest or conviction for a misdemeanor as defined by federal law.</p> <p>Response: USCIS has agreed to adopt the recommended changes on the Form I-821D.</p>

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2 9	Part 4, Signature of Requestor 2.a. Signature of Requestor 2.b. Date of Signature	<p>Comment: A commenter is concerned that high numbers of requests are rejected for lack of signature. The commenter recommends that USCIS make the “Requestor’s Certification” section more prominent, possibly relocating it to the very bottom of a page.</p> <p>Response: No change recommended based on this comment. USCIS has a relatively low rejection rate.</p>
3 0	Part 5. Signature of Person Preparing This Request, If Other Than the Requestor	<p>Comment: A commenter recommended that USCIS should revise the note to read that “[i]f you are an attorney or representative, you may be required to submit a completed Form G-28.” This change revision would bring the form into line with the September 14, 2012 Frequently Asked Questions, which clarifies that in some instances, attorneys and accredited representatives who provide pro bono services to DACA requestors at group assistance events may not need to file a Form G-28 with USCIS.</p> <p>Response: USCIS deleted the note section in its entirety.</p>
3 1	Part 7. Additional Information. If you require more space to provide any additional information within this request, please use the space below. If you require more space than what is provided to complete this request, you may use a separate sheet(s) of paper. You must include your full name on each sheet of paper along with the page number, Part Number, and Item Number related to your explanation.	<p>Comment: A commenter indicated that the numbering of this section is confusing to many and requestors needing additional room for addresses/residences don’t know how to identify which question on the request they are supplementing.</p> <p>Response: No change is recommended based on this comment. Part 7 provides boxes to identify the page number(s), part number(s) and item number(s) that requestors may need to further explain or elaborate.</p>
1	General Instructions	<p>Comment: A commenter recommended that USCIS clarify whether a minor should sign Form I-821D, whether his/her legal guardian or parent has to sign it, or both.</p> <p>Response: No change required based on this comment. Each request must be properly signed. If the requestor is under 14 years of age, his or her parent or guardian may sign the request on his or her behalf.</p>
2	General Instructions	<p>Comment: A commenter recommended that Form I-821D and/or instructions should clarify that once the applicant has submitted a DACA request and waiting to be adjudicated, that he/she is protected from deportation.</p> <p>Response: No change is recommended based on this comment. A pending DACA request, standing alone, does not protect an individual against removal.</p>

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	3 General Instructions	<p>Comment: A commenter recommended that USCIS clarify whether an individual, who has been deferred as a childhood arrival but denied a work permit after filing Form I-765, will be reimbursed for the Form I-765 fee.</p> <p>Response: No change is recommended based on this comment. Filing fees are paid to offset the cost of adjudication.</p>
	4 General Instructions	<p>Comment: A commenter recommended the instructions indicate that a requestor should enter her legal name here (typically the name on the birth certificate, unless there has been a marriage or other name-changing event).</p> <p>Response: USCIS has agreed to adopt this recommendation.</p>
Instructions	5 Page 1. Who May File Form I-821D? 1. Childhood Arrivals Who Have Never Been in Removal Proceedings 2. Childhood Arrivals Whose Removal Proceedings Were Terminated 3. Childhood Arrivals in Removal Proceedings, With a Final Order, or With Voluntary Departure.	<p>Comment: Two commenters recommended that USCIS include other forms of immigration court proceedings; e.g., exclusion; deportation.</p> <p>Response: USCIS has agreed to revise this section.</p>
	6 General Instructions. Initial Evidence. 3. What Documents Do You Need to Provide to Prove Identity?	<p>Comment: Three commenters recommended that state-issued photo ID showing date of birth be included in the list of examples.</p> <p>Response: USCIS has agreed to adopt the recommended change.</p>
	7 General Instructions. Initial Evidence. 6. What Documents May Demonstrate That You Were Present in the United States on June 15, 2012?	<p>Comment: Three commenters recommended that physical presence on June 15, 2012, be reasonably presumed where the requestor shows that he/she was present, within a reasonable period, before and after that date. Additionally, the requested recommended that USCIS accept of an affidavit to prove physical presence on June 15, 2012.</p> <p>Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis.</p>

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8	General Instructions. Initial Evidence. 7. What Documents May Demonstrate that You Are Either: a) in School in the United States at the Time of Filing; b) Have Graduated or Received a Certificate of Completion from a U.S. High School; or c) Have obtained a General Education Development Certificate in the United States? <i>(If applicable)</i>	Comment: Two commenters recommended that USCIS should accept official documents produced by school districts to prove that an individual has attended and or graduated from high school and has met the continuous residence requirement for the same time period. Response: USCIS has agreed to revise this section.
9	General Instructions. Initial Evidence. 9. What Documents May Show That You Continuously Resided in the United States during the 5-Year Period Immediately Before June 15, 2012, and Up to the Present Date?	Comment: Two commenters recommended that USCIS should clarify that one document per time-period will suffice to establish the requestor's presence/residence. Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis.
10	General Instructions. Initial Evidence. 11. What Other Factors Will USCIS Consider When Making a Determination on Deferred Action?	Comment: Two commenters recommended that USCIS should clarify those outstanding warrants for charges which, if ending in a conviction, would not render the applicant ineligible for DACA, will not bar them from eligibility. Response: No change recommended based on this comment. DACA is a discretionary form of relief in which the agency will consider the totality of the circumstances, on a case by case basis. Such a warrant might, in some limited cases, impact this discretionary decision or the assessment of whether a requestor poses a threat to public safety.
11	General Instructions. Initial Evidence. 11. What Other Factors Will USCIS Consider When Making a Determination on Deferred Action?	Comment: A commenter requested clarity regarding the definition of "conviction" being employed in Form I-821D adjudications. Response: No changes to the form are necessary based on this comment. USCIS will evaluate this information and the evidence submitted in light of the legal definition of "conviction" and will also evaluate whether the requestor poses a public safety risk.

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	1 General Instructions. Initial Evidence. 2 11. What Other Factors Will USCIS Consider When Making a Determination on Deferred Action?	<p>Comment: Two commenters indicated that requestors have no concrete way to ascertain whether they may be deemed ineligible because they pose a threat to national security or public safety.</p> <p>Response: No change recommended based on this comment. The agency will consider all relevant information in determining whether a requestor poses a threat to national security or public safety.</p>
	1 General Instructions. Initial Evidence. 3 11. What Other Factors Will USCIS Consider When Making a Determination on Deferred Action?	<p>Comment: A commenter indicated that USCIS should review state and Federal laws when determining whether certain offenses are considered misdemeanors or felonies.</p> <p>Response: No change recommended based on this comment. For consistency, the agency will use the federal definition of felony and misdemeanor.</p>