

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

	<u>Category</u>	<u>Comment and Response</u>
Form I-821D	1	Form. General Comment Comment: The commenter (Number 1) indicated that the government should not allow children to come to the United States from all over the world because it is costing the American tax payers. The commenters also indicated that these children should be deported. Response: No change recommended based on this comment. Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion.
	2	Form. General Comment Comment: The commenter (Number 2) wishes to enter the United States and asked for information about how to obtain a visa for residence. This commenter also indicated that his comments are not related to the Form I-821D. Response: No change is required based on this comment.
	3	Form. General Comment Comment: The commenter (Number 4) commended USCIS for adopting many changes made to the form and form instructions in response to the 60-day comment period. Response: No change is required based on this comment.
	4	Form. Part 2. Residence and Travel Information (<i>For Initial and Renewal Requests</i>), Questions 1 and 8, Part 2. Comment: The commenter (Number 3) stated that Question 1, Part 2, Residence and Travel Information (<i>For Initial and Renewal Requests</i>), “I have been continuously residing in the U.S. since at least June 15, 2007, until the present time” and Question 8 within the same section “Have you left the US without advance parole on or after August 15, 2012?” are confusing and appear to ask for the same information. Response: No change will be made based on this comment. A departure made between June 15, 2007 and August 15, 2012 will not be disqualifying if the departure was “brief, casual, and innocent.” Travel occurring after August 15, 2012, is disqualifying.

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5	Form. Part 1. Information About You (<i>For Initial and Renewal Requests</i>), Questions 1 and 2.	<p>Comment: The commenter (Number 4) recommended that questions 1 and 2 of Part 1 of the form be modified to reflect the following:</p> <p>“1. <u>Initial Request</u> – Consideration of Deferred Action for Childhood Arrivals — Initial Request OR 2. <u>Renewal Request</u> – Consideration of Deferred Action for Childhood Arrivals — Renewal Request”.</p> <p>This commenter stated that this recommendation makes it easier for requestors to determine which checkbox they should select and also promotes consistency with other portions of Form I-821D and Instructions where “Initial Request” and “Renewal Request” precede “Consideration of Deferred Action for Childhood Arrivals.”</p> <p>Response: USCIS will adopt this recommendation and modify the language in the pertinent section.</p>
6	Form. Preliminary instruction.	<p>Comment: The commenter (Number 6) recommended that the preliminary instruction on page 1 of Form I-821D should be amended as follows:</p> <p>START HERE. Type or print in black ink. Read Form I-821D Instructions for information on how to complete this form. <i>Renewal requests may be submitted up to 150 days prior to the expiration of your current period of deferred action. USCIS encourages renewal requestors to file as early in the 150-day period as possible—ideally, at least 120 days prior to the DACA expiration date.</i></p> <p>Response: No change is required based on this comment. USCIS has provided pertinent information on this issue in the instructions to this form.</p>

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7	Form. Information About you.	<p>Comment: The commenter (Numbers 5, 6, 7, 8, 9, 11, 12, 14, and 20) indicated that renewal requestors who received DACA from ICE may not understand how to respond to the opening question on the form, Page 1, Part 1. Information About You, which asks whether the individual is submitting an initial or a renewal request for DACA. This commenter recommended that USCIS modify the language in the section to read as follows (new language in bold italics):</p> <p>Part 1. Information About You</p> <p>[...] I am requesting:</p> <p style="padding-left: 40px;">1. Consideration of Deferred Action for Childhood Arrivals – Initial Request</p> <p style="text-align: center;">OR</p> <p style="padding-left: 40px;">2. Consideration of Deferred Action for Childhood Arrivals – Renewal Request (check this box regardless of whether USCIS or ICE initially deferred action in your case).</p> <p><i>AND</i></p> <p>For this renewal request, my most recent period of Deferred Action for Childhood Arrivals expires on (mm/dd/yyyy)</p> <p>Response: No change will be made based on this comment. USCIS has provided pertinent information on this issue in the instructions to this form.</p>
8	Form. Part 1. Information About You (For Initial and Renewal Requests). Removal Information	<p>Comment: The commenter (Number 19) indicated that the Removal Information section does not specify how a DACA renewal requestor who was under 15 years old, and in removal proceedings at the time when he or she initially requested DACA, and is still under 15 years old, but no longer in removal proceedings since his or her case was administratively closed, should complete this section.</p> <p>Response: No changes recommended to the form based on this comment. USCIS will provide clarification on this issue through filing tips on the USCIS Web page.</p>

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9	Form. Part 1. Information About You. Processing Information.	<p>Comment: The commenter (Numbers 5, 13, 14, 16, and 20) recommended that USCIS indicate clearly why processing information is being solicited. The instructions currently indicate that the requested biographic information may reduce the time a requestor spends at the ASC 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. 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.</p> <p>Response: No change will be made based on this comment. The questions comply with the Office of Management and Budget's requirements for the collection of race and ethnicity as provided in its memorandum found at: http://www.whitehouse.gov/omb/fedreg_1997standards/ USCIS will provide additional clarification on this issue on the USCIS Web page.</p>
10	Form. Part 2. Residence and Travel Information.	<p>Comment: The commenter (Number 19) indicated that it is not clear whether both initial and renewal requestors should answer the question "Have you left the United States without advance parole on or after August 15, 2012?" in Part 2.8 on the new I-821D Should both the initial and renewal requestors answer this question.</p> <p>Response: No change recommended to the form based on this comment. It is sufficiently clear that both initial and renewal requestors should answer this question.</p>

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	<p>11 Form. Part 4. Criminal, National Security, and Public Safety Information (For Initial and Renewal Requests)</p>	<p>Comment: The commenter (Numbers 5, 7, 8, 11, 14, and 20) recommended that USCIS modify the instructions to Part 4 of the form to read as follows (new language in <i>bold italics</i>):</p> <p style="text-align: center;">Part 4. Criminal, National Security, and Public Safety Information (For Initial and Renewal Requests)</p> <p><i>For Initial Requests: Answer the following questions.</i> If any of the following questions apply to you, use Part 8. Additional Information to describe the circumstances and include a full explanation.</p> <p><i>For Renewal Requests: Answer the following questions as they apply to the period since you submitted your last Form I-821D that was approved up to the present time. If any of the following questions apply to you, use Part 8. Additional Information to describe the circumstances and include a full explanation.</i></p> <p>Response: No change will be made based on this comment. USCIS has provided this information in the DACA FAQs and will provide clarification on this issue through filing tips on the USCIS Web page.</p>

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	<p>12 Form. Part 4. Criminal, National Security, and Public Safety (For Initial and Renewal Requests) Information, questions 6 and 7.</p>	<p>Comment: The commenter (Numbers 5, 8, 9, 11, 12, 14, and 2) recommended that USCIS eliminate Requests for Information Not Relevant to DACA</p> <p>This commenter suggested that USCIS remove questions 6 and 7 of Part 4 from the proposed Form I-821D. Question 6 asks requestors to indicate whether they have ever “[...] recruited, enlisted, conscripted, or used any person to serve in or help an armed force or group while such a person was under age 15.” Question 7 asks if the requestor has ever “[...] used any person under age 15 to take part in hostilities, or to help or provide services to people in combat.” These questions are too broad, confusing and irrelevant to DACA eligibility, or, in the alternative, provide additional specificity and guidance on this question, especially for Question 6.</p> <p>Response: No change will be made based on this comment. USCIS believes that human rights abuses, such as the recruitment or use of child soldiers, are relevant to its exercise of discretion in determining whether a requestor merits deferred action. In addition, the preamble to Part 5 instructs the requestor to describe the circumstances and include a full explanation if the question is applicable to that requestor. Such description and explanation should enable USCIS to determine whether the requestor has violated the Child Soldier Accountability Act and to otherwise exercise its discretion. Any ambiguities in the requestor’s explanation can be addressed through a Request For Evidence.</p>

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13	Form. Functionality Issues.	<p>Comment: The commenter (Number 19) identified several items where the filing instructions say to type or print N/A if the answer is not applicable or the answer is “none”, only the following fields will allow the applicant to enter the “/” character.</p> <ul style="list-style-type: none"> - Street Name and Number - Email Address - Part 1.5.g Location of Proceedings - Part 1.10.a City/Town/Village of Birth - Part 3.6 Education Information - Part 8 Additional Information (Addendum) <p>Please provide more clarification on what an applicant should enter if the I-821D form will not let them enter N/A in the appropriate field.</p> <p>Some examples of this are:</p> <ul style="list-style-type: none"> - In care of field says "(if applicable)" - but does not accept \' - Middle name field does not say "(if applicable)" - and does not accept \' <p>Response: The functionality will be corrected prior to final publication of the form.</p>
14	Form. Functionality Issues.	<p>Comment: The commenter (Number 19) indicated that the content in the help text pop up is either wrong or does not match. For example, if you place the cursor on Part 1.1 "initial Request" the help text reads "I am applying for Replacement of a Lost, stolen, or mutilated card, or my Employment Authorization Document contains incorrect information."</p> <p>Response: The functionality will be corrected prior to final publication of the form.</p>
15	Form. Functionality Issues.	<p>Comment: The commenter (Number 19) indicated that in Part 6 under the "Interpreter" section, the form still allows requestors to enter information about the interpreter even if they select item "I can read and understand English" in Part 5.1.a.</p> <p>Response: The functionality will be corrected prior to final publication of the form.</p>
<u>Category</u>		<u>Comment and Response</u>

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	<u>Category</u>	<u>Comment and Response</u>
Instructions	1 Instructions. When Should I Use Form I-821D?	<p>Comment: The commenter (Number 4) recommended the automatic extension of deferred action and employment authorization for individuals requesting renewal of deferred action under the DACA process until a final determination is made on the request. This commenter suggested adding language in the When Should I Use Form I-821D section to reflect the following:</p> <p>“Upon receipt and acceptance of your Renewal Request for DACA, USCIS will issue a receipt notice that will automatically extend your current period of deferred action and employment authorization for a period after your expiration date to prevent lapses in deferred action or employment authorization during adjudication of your request.”</p> <p>This commenter also suggested that USCIS incorporate additional language to better explain this contemplated extension.</p> <p>Response: No change is recommended based on this comment. If an individual files a renewal request at least 120 days before his or her deferred action and EAD expire and USCIS is unexpectedly delayed in processing your renewal request, USCIS may provide deferred action and employment authorization for a short period of time until your renewal is adjudicated. This information has been made available on the USCIS Web site.</p>
	2 General Instructions. Advance Parole and Travel Warning.	<p>Comment: The commenter (Numbers 4 and 13) recommended that USCIS reinsert language to reflect that leaving the United States, even with an Advance Parole Document, may impact the ability to return to the United States. This commenter suggested that USCIS use following language, bolded, underlined or in some way emphasized:</p> <p>“ . . . Deferred action will terminate automatically if you travel outside the United States without obtaining an Advance Parole Document from USCIS. In addition, leaving the United States, even with an Advance Parole Document, may prevent you from returning to the United States.”</p> <p>Response: USCIS will adopt this recommendation and reinsert the following language in the pertinent section: Deferred Action will terminate automatically if you travel outside the United States without an Advance Parole Document from USCIS. In addition, leaving the United States, even with an Advance Parole Document, may impact your ability to return to the United States.</p>

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	3 General Instructions. How to Fill Out Form I-821D. 2. Further information on filling out Form I-821D.	<p>Comment: The commenter (Number 4) recommended that USCIS add language in the Further Information on filling out Form I-821D section to reflect that requestor may make additional copies of Part 8. Additional Information as needed. This commenter suggested that USCIS use the following language:</p> <p>B. If you need extra space to complete any item within this request, use Part 8. Additional Information and make additional copies of this sheet as needed. Type or print your name and Alien Registration Number (A-Number) (<i>if any</i>) at the top of each sheet; indicate the Page Number, Part Number, and Item Number to which your answer refers; and sign and date each sheet.”</p> <p>Response: USCIS will adopt this recommendation and modify the language in the pertinent section.</p>
	4 Instructions. Evidence for Initial Requests Only.	<p>Comment: The commenter (Number 4) recommended that USCIS inform requestors that they may submit evidence from online educational programs to satisfy the DACA educational guideline. This requestor suggested that USCIS use the following language:</p> <p>“USCIS recognizes that schools, educational programs, online educational programs, school districts, and state education agencies”</p> <p>Response: No change will be made based on this comment. USCIS will provide clarification in the DACA FAQs.</p>

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	5 Instructions. What is the Filing Fee?	<p>Comment: The commenter (Number 4) recommended that USCIS clarify that both initial and renewal requests must include the filing and biometric services fee for Form I-765. This commenter suggested the following language: Make the following changes:</p> <p><i>“There is no filing fee for Form I-821D. However, you must submit both filing and biometric services fees with Form I-765. Read Form I-765 filing instructions for complete information at www.uscis.gov/i-765.”</i></p> <p>Both Initial and Renewal Requests must submit the filing and biometric services fees for Form I-765.”</p> <p>Response: USCIS will adopt this recommendation and modify the language in the pertinent section.</p>
	6 Instructions. Processing Information.	<p>Comment: The commenter (Number 4) recommended that USCIS reject instead of deny an incomplete DACA request and also add language to reflect this change and additional language to clarify the difference between rejection and denial. This commenter suggested that USCIS use the following language:</p> <p>“Initial Processing. Once your request has been received by USCIS, USCIS will check the request for completeness. If you do not completely fill out the form, USCIS may reject your request. Upon initial receipt, USCIS will either reject or accept your request. Rejection occurs when a request is missing key information (<i>e.g. a signature or form</i>). When USCIS rejects a request, it will return your entire application packet, including the fee, so you may remedy the issue. Please note that rejections, which occur at the initial receipt of your request, are different than denials, which occur after USCIS adjudicates your request.”</p> <p>Response: USCIS will adopt this recommendation in part. USCIS will check each DACA request for completeness and, if not completely filled out, may deny or reject it.</p>

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	7 Instructions. When Should I Use Form I-821D?	<p>Comment: The commenter (Numbers 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 20) recommended that USCIS reject instead of deny an incomplete DACA request and also add USCIS should encourage renewal requestors to file as early within the 150 day renewal window as possible, ideally 120 days before their DACA expiration date. Commenters recommended adding language, shown in bold italics below, to the statement on page 1 of the Form I-821D instructions.</p> <p>When Should I Use Form I-821D? [...]</p> <p>CAUTION: If you file this request more than 150 days prior to the expiration of your current period of deferred action, USCIS may reject your submission and return it to you with instructions to resubmit your request closer to the expiration date. <i>USCIS encourages renewal requestors to file as early in the 150-day period as possible—ideally, at least 120 days prior to the DACA expiration date.</i></p> <p>Response: USCIS will adopt this recommendation and will add pertinent language to this section.</p>
	8 Instructions. When Should I Use Form I-821D?	<p>Comment: The commenter (Number 19) asked that USCIS clarify whether renewal requestors can file 120 or 150 days before the expiration of their deferred action.</p> <p>Response: USCIS will add language indicating that renewal requestors may file 150 days before the expiration of their deferred action under the DACA process.</p>

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	<p>9 Instructions. When Should I Use Form I-821D?</p>	<p>Comment: The commenter (Numbers 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 20) recommended that USCIS amend the instructions to include language specifying that individuals whose DACA expired should request renewal of DACA. This Commenter recommended that USCIS include the following statement on page 1 of the I-821D instructions (new language in <i>bold italics</i>):</p> <p>When Should I Use Form I-821D? [...] CAUTION: If you file this request....closer to the expiration date.</p> <p><i>If you are unable to file your DACA renewal request before your initial DACA grant expires, you are not barred from renewing DACA. If you are applying for a renewal after your initial DACA grant has expired, you should follow the same instructions provided below for other individuals seeking a renewal of DACA.</i></p> <p>Response: USCIS will add language indicating that individuals may request a renewal up to one year after the expiration of their previously approved DACA. USCIS will also provide this information in the DACA FAQs.</p>
	<p>10 Instructions. When Should I Use Form I-821D?</p>	<p>Comment: The commenter (Number 17) recommended that USCIS clarify that an applicant whose current period of DACA has expired should file as a renewal applicant, not as an initial requestor. This commenter recommended that USCIS modify the language within the When Should I Use Form I-821D? section as follows:</p> <p>NOTE: If you have ever been awarded DACA, please follow the instructions provided below for renewal applicants.”</p> <p>Response: USCIS will add language that individuals whose DACA expired may file a renewal request within a one-year period.</p>

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	11 Instructions. When Should I Use Form I-821D?	<p>Comment: The commenter (Numbers 5, 6 8, 9, 11, 12, 14, and 20) recommended that USCIS ensure individuals who received DACA from ICE be subject to the same evidentiary requirements as those who received DACA from USCIS. This commenter also stated that renewal process should not distinguish between those granted DACA by ICE and those granted by USCIS and suggested that USCIS remove the language asking these individuals to respond to all questions of the form and submit documentation to establish how they satisfied the guidelines as if they were filing an initial request for DACA in Part 1, Item Number 2 of the Form I-821D.</p> <p>Response: No changes will be made based on this comment. USCIS is asking individuals who received DACA from ICE to select and complete Item Number 2 in Part 1 of Form I-821D, and respond to all subsequent questions on the form. Additionally, these individuals must submit documentation to establish how they satisfied the guidelines as if they were filing an initial request for DACA. However, USCIS will give deference to ICE’s initial decision to defer action on a case under the DACA process.</p>
	12 Instructions. When Should I Use Form I-821D?	<p>Comment: The commenter (Numbers 8, 9, 11, 12, 14, 17, and 20) recommended that USCIS retain jurisdiction over detained DACA requestors to ensure they have the same opportunity as non-detained requestors to request DACA. This commenter also indicated that USCIS already has protocols on handling benefits claims by detained immigrants and can exercise discretion on behalf of DHS.</p> <p>Response: No change will be made based on this comment. Individuals who are in immigration detention may not request DACA from USCIS. If an individual believes he or she meets the DACA guidelines, he or she may identify himself or herself to his or her deportation officer or Jail Liaison.</p>

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13	Instructions. What is a Childhood Arrival for the Purposes of This Form?	<p>Comment: The commenter (Number 16) recommended that USCIS modify the continuous residence guideline to allow DACA requestors to only demonstrate continuous residence from June 15, 2009 instead of June 15, 2007. This commenter stated that the time period will permit new DACA requestors who arrived in the United States before DACA took effect to request DACA. This commenter also stated that if USCIS preserves the continuous residence period, USCIS should modify the guideline to request continuous presence five years from the filing date. Question 1.b. on page 4, Part 3 can be changed from “I have been continuously residing in the U.S. since at least June 15, 2007, up to the present time” to “I have been continuously residing in the U.S. since 5 years prior to the date of this application.”</p> <p>Response: No change is recommended based on this comment. The continuous residence guideline was established in the Secretary’s June 15, 2012 memo.</p>
14	Instructions. What is a Childhood Arrival for the Purposes of This Form?	<p>Comment: The commenter (Number 17) recommended that USCIS allow individuals who were 31 years of age or older on June 15, 2012 to request DACA.</p> <p>Response: No change is recommended based on this comment. The upper age was established in the Secretary’s June 15, 2012 memo.</p>
15	Instructions. What is a Childhood Arrival for the Purposes of This Form?	<p>Comment: The commenter (Number 18) stated that the “Had no lawful status on June 15, 2012 language” is poorly framed and confusing. This commenter also stated there is no statutory or regulatory definition for what is meant by “lawful status,” and that it should be defined to mean a visa or asylum or other permanent status has been conferred.</p> <p>Response: No changes recommended to the form based on this comment. The instructions clearly define what is meant by “no lawful status” and determinations regarding whether a requestor has satisfied this guideline will be made on a case by case basis.</p>

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	16 Instructions. Evidence for Initial Requests Only. Item 6.	<p>Comment: The commenter (Numbers 5, 7, 8, 9, 11, 12, 14, and 20) stated that individuals removed during the continuous residence period to should be allowed to request DACA. This commenter recommended that USCIS modify item 6 under <i>Evidence for Initial Requests Only</i> on page 7 of the form instructions to read as follows (new language in <i>bold italics</i>):</p> <p style="text-align: center;">6. Do brief departures interrupt continuous residence?</p> <p>A brief, casual and innocent absence from the United States will not interrupt your continuous residence. If you were absent from the United States for any period of time, your absence will be considered brief, casual, and innocent if it was on or after June 15, 2007, and before Aug. 15, 2012, and:</p> <p>A. The absence was short and reasonably calculated to accomplish the purpose for the absence; <i>and</i></p> <p>B. The absence was not because of an order of exclusion, deportation or removal;</p> <p>C. The absence was not because of an order of voluntary departure, or an administrative grant of voluntary departure before you were placed in exclusion, deportation or removal proceedings; and</p> <p>D. B. The purpose of the absence and/or your actions while outside the United States were not contrary to law.</p> <p style="text-align: center;"><i>You may be considered for deferred action for childhood arrivals if you were absent from the United States before August 15, 2012 because of an order of exclusion, deportation, removal, voluntary departure or an administrative grant of voluntary departure before you were placed in exclusion, deportation or removal proceedings.</i></p> <p>Response: No change is recommended based on this comment. An absence made because of an order of exclusion, deportation , or removal or an order of voluntary departure, or an administrative grant of voluntary departure before and individual was placed in exclusion, deportation or removal proceedings is not a brief, casual, and innocent absence and will interrupt continuous residence.</p>

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	<p>17 Instructions. Evidence for Initial Requests Only. Item 9.</p>	<p>Comment: The commenter (Numbers 5, 8, 9, 11, 12, 14, and 20) recommended that USCIS clearly indicate whether evidence is required for non-profit programs. USCIS should modify item 9, which falls under the heading “Evidence for Initial Requests Only” (suggested language in <i>bold italics</i>):</p> <p style="padding-left: 40px;">9. What documents may demonstrate that you: a) are currently in school in the United States at the time of filing...?</p> <p style="padding-left: 40px;">Evidence of enrollment may include... If you have been accepted for enrollment... If you are enrolled in an educational, literacy, or career training program ... evidence that the program is funded in whole or in part by Federal...</p> <p style="padding-left: 40px;"><i>If you are enrolled in an educational, literacy, or career training program (including vocational training or ESL course) administered by a non-profit entity, evidence that the program has non-profit status includes: A copy of a valid letter from the Internal Revenue Service confirming exemption from taxation under section 501(c)(3) of the Internal Revenue Service Code of 1986, as amended, or equivalent section of prior code or evidence of similar reliability, such as a letter from an agent or employee of your program attesting to the program’s tax-exempt status under section 501(c)(3) of the Internal Revenue Code, a class catalog or a printout from the program’s website describing the same.</i></p> <p style="padding-left: 40px;">If you are enrolled in an educational, literacy, or career training program that is not publicly funded....</p> <p>Response: USCIS will add pertinent language to the DACA FAQs.</p>

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	<p>18 Instructions. Evidence for Initial Requests Only. Item 12.</p>	<p>Comment: The commenter (Numbers 5, 8, 9, 11, 12, 14, 16, and 20) recommended that USCIS clarify in the form instructions that evidence is not required in any case where state law prohibits the disclosure of records. USCIS should strike the following language in the last sentence of question 12 on page 10 of the instructions (removed language in strikethrough):</p> <p style="padding-left: 40px;">If the charges against you were handled in juvenile court, and the records are from a state with laws prohibiting their disclosure, this evidence is not required.</p> <p>Response: No change will be made based on this comment. The underlying facts of arrests or convictions are relevant to USCIS’s exercise of discretion. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident. If the requestor is unable to provide the requested documentation or it is not available, the form instructions permit the requestor to provide an explanation for the inability to provide the documentation. In response to the comments received, the instructions were amended to clarify that an explanation of the requestor’s inability to provide the requested documents in connection with a vacated or expunged conviction may also be provided. The form instructions specify that requestors do not need to submit records that cannot be disclosed under state law.</p>

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	19 Instructions. Evidence for Initial Requests Only. Item 12.	<p>Comment: The commenter (Numbers 5, 6, 7, 8, 9, 11, 12, 14, and 20) stated that USCIS should not require DACA requestors to submit any arrest records or charging documents because (1) arrest records are inconclusive records of the underlying facts of the criminal conviction and are unreliable; (2) This request allows USCIS to “re-try” the original criminal matter, without any procedural safeguards to ensure that the applicant has a full and fair opportunity to review and rebut false, misleading, or incorrect “facts” in the arrest report; (3) this request discourages eligible individuals from requesting DACA; (4) this directive contravenes several U.S. Supreme Court decisions and is inconsistent with immigration case law. This commenter also stated that USCIS should revise the form to exclude the language about “arrest records and charging documents” from the set of documents that must be submitted with a DACA request. Specifically, the Criminal, National Security, and Public Safety section of the application form should not instruct requestors to submit arrest records or charging documents. Finally, USCIS adjudicators should be instructed not to request or consult police reports or charging documents in deciding a DACA request.</p> <p>Response: No change will be made based on this comment. While arrests or charging documents that do not result in conviction are not automatically disqualifying for DACA purposes, the underlying facts are relevant to USCIS’s exercise of discretion. Such facts are evaluated on a case by case basis. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident.</p>
	20 Instructions. Evidence for Initial Requests Only. Item 12.	<p>Comment: The commenter (Numbers 5, 6, 7, 9, 11, 12, 14, and 20) recommended that USCIS eliminate the request for records involving any arrests that did not lead to the filing of charges to make the application process less burdensome and to avoid prejudicing the DACA adjudication.</p> <p>Response: No change will be made based on this comment. While arrests that do not lead to the filing of charges are not automatically disqualifying for DACA purposes, the underlying facts are relevant to USCIS’s exercise of discretion. Such facts are evaluated on a case by case basis. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident.</p>

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	21 Instructions. Evidence for Initial Requests Only. Item 12.	<p>Comment: The commenter (Number 5, 7, 11, 12, and 14) recommended that USCIS remove the request for records where arrests or convictions have been removed, set aside, vacated, or expunged.</p> <p>Response: No change will be made based on this comment. While arrests that do not result in conviction and convictions that are vacated or expunged are not automatically disqualifying for DACA purposes, the underlying facts are relevant to USCIS’s exercise of discretion. Accordingly, requestors must provide documentation of these incidents, as well as a full explanation describing the circumstances of the incident.</p>
	22 Instructions. Evidence for Initial Requests Only. Item 12.	<p>Comment: The commenter (Number 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, and 20) stated that USCIS should not require DACA requestors to disclose incidents handled in juvenile court or juvenile delinquency records because (1) obtaining juvenile records is burdensome and complicated, and may discourage potentially eligible individuals from applying; (2) this request facilitates unknowing violations of state laws by DACA requestors; (3) the recently issued DACA juvenile records disclosure policy creates an uneven adjudication standard because confidentiality laws differ across states; and (4) juvenile delinquency adjudications are not considered convictions under federal immigration law. This commenter recommended that USCIS amend its current policy and not require juvenile adjudications, and delete the request for the existence of juvenile adjudications on Form I-821D, and the requirement of disclosure of juvenile records regardless of the applicable state laws. This commenter also recommended that Form I-821D be revised to state “Do not include incidents handled in juvenile court.” The disclosure of criminal documents should also read as “You must also include a copy of your dispositions (outcomes) and sentencing records, unless documents are related to an incident handled in juvenile court.” In the event that juvenile arrests and dispositions appear on DHS background checks, USCIS should not consider such incidents in the adjudication of a DACA request for the same reasons.</p> <p>Response: No changes recommended based on this comment. While dispositions of juvenile delinquency are not considered convictions for immigration purposes, the underlying facts are relevant to USCIS’s exercise of it discretion to determine whether a requestor merits deferred action. Such facts are evaluated on a case by case basis.</p>

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

	<u>Category</u>	<u>Comment and Response</u>
	23 Instructions. Evidence for Initial Requests Only. Item 12.	<p>Comment: The commenter (Number 18) recommended that USCIS clearly state that individuals who ever had a violation or offense involving drugs or alcohol or motor vehicles and alcohol/drugs may not receive DACA instead of using the legal term “misdemeanor.”</p> <p>Response: No changes recommended to the form based on this comment. USCIS will provide clarification on this issue through filing tips on the USCIS Web page.</p>
	24 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Number 6) recommended that USCIS indicate on the form that renewal applicants need only provide information and records related to charges or convictions that occurred since they received DACA. USCIS should include the following sentence:</p> <p style="text-align: center;"><i>For Renewal Applicants: With regard to criminal/national security and public safety questions, you need only report on incidents and provide records related to incidents that occurred since your initial DACA application was approved. You do not need to report on or re-submit records that you already reported on or provided to USCIS.</i></p> <p>Response: No changes will be made based on this comment. The Form I-821D instructions are sufficiently clear.</p>

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Summary of Suggestions**

	<u>Category</u>	<u>Comment and Response</u>
	25 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Numbers 8, 11, and 12) stated that USCIS should remove the significant and non-significant misdemeanor bar for renewal requestors, or in the alternative, provide that the significant misdemeanor bar does not apply to a renewal requestor who has not been convicted of a felony or three or more non-significant misdemeanors since receiving DACA. This commenter recommended that USCIS eliminate the following language as indicated below.</p> <p style="text-align: center;">What is a Childhood Arrival for Purposes of this Form?</p> <p>An individual may be considered for a Renewal of DACA if he or she met the guidelines for consideration of Initial DACA (<i>see above</i>) AND he or she:</p> <ol style="list-style-type: none"> 1. Did not depart the United States on or after August 15, 2012 without advance parole; 2. Has continuously resided in the United States since he or she submitted his or her most recent request for DACA that was approved up to the present time; and 3. He or she has not been convicted of a felony, a significant misdemeanor or three or more misdemeanors and does not otherwise pose a threat to national security or public safety. <p>Response: No changes recommended based on this comment. This guideline was established in the Secretary’s June 15, 2012 memo. Significant and non-significant misdemeanor offenses are relevant to USCIS’s exercise of it discretion to determine whether a requestor merits deferred action. Such offenses are evaluated on a case by case basis.</p>

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	<u>Category</u>	<u>Comment and Response</u>
	26 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Number 8, 11, and 12) stated that USCIS should not distinguish between significant and non-significant misdemeanors for renewal requestors and recommended that USCIS revise this section of the instructions as follows:</p> <p style="text-align: center;">What is a Childhood Arrival for Purposes of this Form?</p> <p>An individual may be considered for a Renewal of DACA if he or she met the guidelines for consideration of Initial DACA (<i>see above</i>) AND he or she:</p> <ol style="list-style-type: none"> 1. Did not depart the United States on or after August 15, 2012 without advance parole; 2. Has continuously resided in the United States since he or she submitted his or her most recent request for DACA that was approved up to the present time; and 3. He or she has not been convicted of a felony, a significant misdemeanor or three or more misdemeanors <i>since your initial grant of DACA</i> and does not otherwise pose a threat to national security or public safety. <p>Response: No change will be made based on this comment. This guideline was established in the Secretary's June 15, 2012 memo. Significant and non-significant misdemeanor offenses are relevant to USCIS's exercise of its discretion to determine whether a requestor merits deferred action. Such offenses are evaluated on a case by case basis.</p>
	27 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Numbers 11, 12, 15, and 2) recommended that USCIS clarify on the form instructions that a DACA renewal requestor has not interrupted his or her continuous residence if he or she traveled abroad and returned to the United States consistent with his or her advance parole authorization and engaged in no criminal or other activity implicating public safety or national security while abroad.</p> <p>Response: No change will be made based on this comment. USCIS has provided information on the DACA FAQs.</p>

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	<u>Category</u>	<u>Comment and Response</u>
	28 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Number 13) indicated that that USCIS should not solicit information about completion of an education requirement through the renewal process because the Secretary’s memo and the DACA FAQs only require that the requestor be currently in school in order to satisfy the DACA educational guideline. The revised form includes a generic reference that states “[y]ou should keep all documents that support how you meet the DACA guidelines so you can provide them if they are requested by USCIS.” However, the agency fails to indicate whether it plans to RFE that information as a matter of course.</p> <p>Response: No change will be made based on this comment. USCIS may request documentation that supports how individuals met the DACA guidelines if needed.</p>
	29 Instructions. Evidence for Renewal Requests Only.	<p>Comment: The commenter (Number 13) recommended that USCIS modify the language in the instructions for renewals requests to mirror the language of initial requests to indicate that minor traffic related offenses need not be included.</p> <p>Response: USCIS will adopt this recommendation and will add pertinent language to this section.</p>
	30 Other Disclosure Information	<p>Comment: The commenter (Number 10) recommended that USCIS adopt an unambiguous confidentiality provision to protect DACA requestors and encourage broader participation in the DACA program. This commenter also indicated that the language on page 12 of the instructions regarding privacy is unclear and that it may be difficult for a layperson to understand when information provided in the request can be shared with other entities, such as ICE.</p> <p>Response: No change will be made based on this comment. We believe that this confidentiality provision maintains the correct balance between maintaining the integrity of the program and providing assurance to DACA requestors.</p>

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	<u>Category</u>	<u>Comment and Response</u>
	31 Form & Instructions - language	<p>Comment: The commenter (Number 16) recommended that USCIS publish the Form I-821D and its instructions in the most commonly-used foreign languages to make DACA more accessible to requestors who have limited English proficiency.</p> <p>Response: The DACA “How Do I?” guide is currently available in Spanish, Chinese, Korean, Tagalog, and Vietnamese and the FAQs are available in Portuguese, Tagalog, and Korean. USCIS plans to translate these materials into additional languages and translate the Form I-821D instructions and any new DACA renewal educational materials into several languages.</p>

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

	<u>Category</u>	<u>Comment and Response</u>
Policy/Guidance	<p>1 DACA Automatic Extension</p>	<p>Comment: The commenter (Numbers 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 20) recommended that USCIS automatically extend deferred action to any individual who files a renewal request before the expiration of his or her initial DACA. This commenter suggested that USCIS implement an automatic extension policy in any of the following manners:</p> <ol style="list-style-type: none"> 1. By adding a note on the I-821D receipt notice specifying six month extension from date of EAD expiration and issuing interim EADs to any individuals whose requests are pending at the conclusion of the automatic extension period; or 2. By issuing a notice in the Federal Register extending the validity of DACA-based EADs for six months beyond the stated expiration date to any individual who presents: (i) Form I-766 bearing the (c)(33) designation on the face of the card under “Category;” (ii) a receipt notice bearing a receipt date that antedates the expiration date of the EAD; and (iii) this Federal Register notice; or 3. By issuing interim EADs to DACA recipients who request DACA before their expiration date. <p>Response: No change is recommended based on this comment. There will be no automatic extension of deferred action under the DACA process; however, USCIS may consider, on a case-by-case basis, providing deferred action and employment authorization for a short period to certain requestors. USCIS anticipates making a decision on a request for renewal of deferred action and adjudicating the employment authorization application well before the current period of DACA and employment authorization expires if an individual files his or her renewal package approximately 120 days before the expiration of their current period of DACA. If an individual files at least 120 days before his or her deferred action and EAD expire and USCIS is unexpectedly delayed in processing his or her renewal request, USCIS may provide deferred action and employment authorization for a short period of time until his or her renewal is adjudicated.</p>

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<u>Category</u>		<u>Comment and Response</u>
2	DACA Automatic Extension	<p>Comment: The commenter (Number 13) recommended that USCIS automatically extend deferred action to any individual who files a renewal request before the expiration of his or her initial DACA. This commenter suggested that USCIS implement an automatic extension policy by using the Conditional Permanent Residence Petition to Remove Conditions as a model to provide automatic extensions of DACA status upon receipt of properly filed renewal requests. See 8 CFR § 216.4 (“Upon receipt of a properly filed form I-751, the alien’s conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.”)</p> <p>Response: No change is recommended based on this comment. Deferred action does not confer lawful status upon an individual. There will be no automatic extension of deferred action under the DACA process; however, USCIS may consider, on a case-by-case basis, providing deferred action and employment authorization for a short period to certain requestors. USCIS anticipates making a decision on a request for renewal of deferred action and adjudicating the employment authorization application well before the current period of DACA and employment authorization expires if an individual files his or her renewal package approximately 120 days before the expiration of their current period of DACA. If an individual files at least 120 days before his or her deferred action and EAD expire and USCIS is unexpectedly delayed in processing his or her renewal request, USCIS may provide deferred action and employment authorization for a short period of time until his or her renewal is adjudicated.</p>

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<u>Category</u>		<u>Comment and Response</u>
3	Unlawful Presence	<p>Comment: The commenter (Number 17) recommended that if USCIS does not grant automatic extensions of DACA and work authorization to renewal requestors, then USCIS should state explicitly that unlawful presence will be tolled after a requestor properly files a renewal request.</p> <p>Response: No change is recommended based on this comment. Consistent with the general exercise of deferred action, deferred action does not confer lawful status upon an individual, nor does it excuse any previous or subsequent periods of unlawful presence. There will be no automatic extension of deferred action under the DACA process; however, USCIS may consider, on a case-by-case basis, providing deferred action and employment authorization for a short period to certain requestors. USCIS anticipates making a decision on a request for renewal of deferred action and adjudicating the employment authorization application well before the current period of DACA and employment authorization expires if an individual files his or her renewal package approximately 120 days before the expiration of their current period of DACA. If an individual files at least 120 days before his or her deferred action and EAD expire and USCIS is unexpectedly delayed in processing his or her renewal request, USCIS may provide deferred action and employment authorization for a short period of time until his or her renewal is adjudicated.</p>

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<u>Category</u>		<u>Comment and Response</u>
4	Fee	<p>Comment: The commenter (5 and 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, and 20) recommended that USCIS only charge renewal applicants the \$85 biometric services fee, and waive the fee for a work authorization document. This would bring the DACA program in line with other renewal contexts, where USCIS permits individuals to pay a lower fee to renew their existing status. Additionally, USCIS should expand the fee waiver, for both initial and renewal requestors, to cover any individual who falls below 150% of the FPL. Alternatively, the agency should expand the categories of individuals who are eligible for a fee exemption to include: youth from families with more than one DACA-eligible individual; youth who work as farmworkers or live in farmworker households; youth in immigration detention; DACA-eligible parents of minor children, if their household income is below 150% of the federal poverty level; DACA requestors who are currently enrolled in school; and DACA requestors with disabled family members. USCIS should also permit DACA requestors to apply for the fee waiver or fee exemption at the same time that they file their initial or renewal DACA requests.</p> <p>Response: USCIS carefully considered the circumstances for allowing DACA fee exemptions and decided to limit exemptions to the humanitarian situations it provided. USCIS will review the allowed circumstances on an ongoing basis in the future and add additional exemptions if it feels they are warranted, but none are planned at this time.</p>
5	Form Versions	<p>Comment: The commenter (Comment 5 and 7, 8, 9, 11, 12, 14, and 20) recommended that USCIS accept the current form from initial requestors for a period of one year after the date of the release of the new dual-use form to ensure a smooth transition between the current and new versions of Form I-821D.</p> <p>Response: No change will be made based on this comment. USCIS will only accept the revised version of the form for initial and renewal filings when published.</p>
6	Form Version	<p>Comment: The commenter (Comment 5 and 7, 8, 9, 11, 12, 14, and 20) I Recommendation: USCIS should accept the current form from initial requestors for a period of four months after the date of the release of the new dual-use form to ensure a smooth transition between the current and new versions of Form I-821D.</p> <p>Response: No change will be made based on this comment. USCIS will only accept the revised version of the form for initial and renewal filings when published.</p>

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