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Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
5900 Capital Gateway Drive  
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**DHS Docket No. USCIS-2026-0067, Clarification of Discretionary  
Employment Authorization for Certain Aliens, RIN 1615-AC98**

To whom it may concern:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund), in response to the request for comment on Clarification of Discretionary Employment Authorization for Certain Aliens from the U.S. Citizenship and Immigration Services (USCIS) under the Department of Homeland Security (DHS) that was published in the Federal Register on June 5, 2026. 91 Fed. Reg. 34,352 (June 5, 2026) (DHS Docket No. USCIS-2026-0067). Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of voting rights, education, immigrants' rights, employment, and freedom from open bias.

On June 5, 2026, USCIS published a notice of proposed rulemaking (NPRM) with request for comment in the Federal Register that, if implemented, would severely limit eligibility for discretionary employment authorization for certain noncitizens in the United States and would impose increased burdens on even more noncitizens seeking employment authorization.<sup>1</sup> The eligibility limits and clarifications that the NPRM proposes affect noncitizens with humanitarian parole and noncitizens with deferred action.<sup>2</sup> Additionally, the NPRM eliminates discretionary employment authorization eligibility for noncitizens with a final order of removal and a temporary order of supervision (OSUP) with only one exception.<sup>3</sup> The NPRM furthermore proposes to eliminate work authorization eligibility automatically upon certain triggering events and to require that noncitizens establish both economic necessity for work and merit for a favorable exercise of discretion.<sup>4</sup>

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<sup>1</sup> Clarification of Discretionary Employment Authorization for Certain Aliens, 91 Fed. Reg. 34,352 (June 5, 2026).

<sup>2</sup> *Id.* at 34,353.

<sup>3</sup> *Id.* at 34,353.

<sup>4</sup> *Id.* at 34,353.

Additionally, the NPRM requires that noncitizens seeking discretionary employment authorization, either for the first time or for a renewal, work with an employer using E-Verify.<sup>5</sup> The NPRM proposes certain biometrics and identification requirements as well as criminal activity provisions for all noncitizens seeking employment authorization, including DACA recipients.<sup>6</sup> Finally, the NPRM proposes that noncitizens with deferral of removal under the Convention Against Torture (CAT) no longer be granted employment authorization automatically, but as a matter of discretion.<sup>7</sup>

Due to MALDEF's significant organizational interests in DACA and DACA recipients, this comment primarily centers DACA-related concerns but should not be construed as in any way condoning the substance of the rest of the NPRM. Indeed, this NPRM will harm Latino communities and Latino DACA holders in particular by making obtaining employment authorization more difficult, and it does so in violation of the Administrative Procedure Act (APA). For the following reasons, MALDEF strongly opposes the NPRM and urges USCIS to withdraw the NPRM in its entirety.

## I. Background

Current regulations require that Deferred Action for Childhood Arrivals (DACA) requestors not be “convicted...of a felony, a misdemeanor...or three or more other misdemeanors”—excluding “expunged convictions, juvenile delinquency adjudications” and state immigration-law convictions—and that they not “otherwise pose a threat to national security or public safety.”<sup>8</sup> Additionally, DACA requestors must also submit required biometrics with their requests.<sup>9</sup> Current regulations also authorize USCIS to terminate a grant of DACA “at any time in its discretion.”<sup>10</sup> Upon termination of a grant of DACA, the DACA grantee's employment authorization automatically terminates.<sup>11</sup>

Meanwhile, recent data indicates that USCIS is facing a six-month backlog in processing DACA requests.<sup>12</sup> Additionally, DHS has also recently published another NPRM that would expand the modalities of biometrics that DHS collects and would require that any immigration-benefit applicant, as well as any of the applicant's dependents or sponsors, also submit biometrics, even if the associated individual is a U.S. citizen, national, or lawful permanent resident.<sup>13</sup> All of these factors present burdens and obstacles to DACA holders, a population for whom MALDEF has long advocated in all branches of government.

## II. Discussion

The Administrative Procedure Act (APA) instructs reviewing courts to “hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or

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<sup>5</sup> *Id.* at 34,353.

<sup>6</sup> *Id.* at 34,353.

<sup>7</sup> *Id.* at 34,353–54.

<sup>8</sup> 8 C.F.R. § 236.22(b)(6) (2022).

<sup>9</sup> *Id.* § 236.23(a)(1) (2022).

<sup>10</sup> *Id.* § 236.23(d)(1).

<sup>11</sup> *Id.* § 236.23(d)(3).

<sup>12</sup> *USCIS Immigration Filing Trends*, AM. IMM. COUNCIL, <https://www.americanimmigrationcouncil.org/uscis-immigration-filing-trends/> (last visited July 27, 2026).

<sup>13</sup> Collection and Use of Biometrics by U.S. Citizenship and Immigration Services, 90 Fed. Reg. 49,062 (Nov. 3, 2025).

otherwise not in accordance with law.”<sup>14</sup> Under the APA, agencies must engage in “reasoned decisionmaking” when promulgating rules.<sup>15</sup>

Additionally, the criminal behavior provisions in the NPRM will almost certainly disproportionately harm Latino individuals: research has long documented that Latinos are arrested more often than white individuals for comparable conduct.<sup>16</sup> This NPRM fails to take this existing inequity into consideration and thus will exacerbate the problem, representing yet another way in which USCIS has failed to engage in reasoned decisionmaking as the APA requires.<sup>17</sup>

USCIS claims that eliminating or otherwise limiting employment authorization for certain categories of noncitizens will strengthen protections for U.S. citizen workers, but research shows that the opposite is in fact the case: increasing employment authorization strengthens the economy and creates jobs.<sup>18</sup> USCIS itself estimates that the NPRM will cost from \$9.1 billion to \$27.9 billion over the next decade and fails to justify this cost adequately.<sup>19</sup> Furthermore, research indicates that employment authorization improves families’ economic situations, including by reducing poverty.<sup>20</sup> Eliminating or otherwise limiting access to employment authorization as this NPRM proposes thus leaves families vulnerable to housing insecurity, loss of healthcare, exploitation, and more, and USCIS provides no justification to do so. In so doing, USCIS fails to engage in the reasoned decisionmaking that administrative rulemaking requires.<sup>21</sup>

Still other provisions of the NPRM are overly vague, contradictory, or redundant. For example, current regulations allow individuals to request DACA even if they are in removal proceedings, and “[a] voluntary departure order or a final order of exclusion, deportation, or removal is not a bar to requesting” DACA.<sup>22</sup> This NPRM, however, would automatically terminate employment authorization “[w]hen [a noncitizen] has an administratively final order of removal under any of the removal statutes.”<sup>23</sup> Furthermore, even though DACA requestors must already submit biometrics, the NPRM imposes duplicative biometrics requirements upon all noncitizens seeking employment authorization, including DACA requestors.<sup>24</sup> USCIS should explain how it intends to reconcile conflicting provisions and to justify redundant provisions or, even better, rescind the NPRM.

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<sup>14</sup> 5 U.S.C. § 706 (1966).

<sup>15</sup> *Bhd. of Locomotive Eng’rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020)) (internal quotations omitted).

<sup>16</sup> See, e.g., Shawn Bushway et al., *Understanding Race Disparities in Criminal Court Outcomes*, 11 THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 86 (Oct. 2025), <https://www.rsfjournal.org/content/11/3/86> (finding that Latino individuals are more likely than white individuals to be arrested or incarcerated).

<sup>17</sup> See *Bhd. of Locomotive Eng’rs & Trainmen*, 972 F.3d at 115.

<sup>18</sup> 91 Fed. Reg. at 34,354. See, e.g., Brookings Inst., *Tracking Work Permit Applications Among Eligible Immigrants* (Apr. 14, 2026), <https://www.brookings.edu/articles/tracking-work-permit-applications-among-eligible-immigrants/>.

<sup>19</sup> 91 Fed. Reg. at 34,357.

<sup>20</sup> See, e.g., Catalina Amuedo-Dorantes & Francisca Antman, *Can Authorization Reduce Poverty Among Undocumented Immigrants? Evidence From the Deferred Action for Childhood Arrivals Program* (2016), <https://spot.colorado.edu/~antmanf/Amuedo-Dorantes&AntmanDACApoverty.pdf> (“We find that DACA reduced the likelihood of life in poverty of households headed by eligible individuals by 38 percent, hinting at the gains from even temporary authorization programs.”).

<sup>21</sup> See *Bhd. of Locomotive Eng’rs & Trainmen*, 972 F.3d at 115.

<sup>22</sup> 8 C.F.R. § 236.23(a)(2).

<sup>23</sup> 91 Fed. Reg. at 34,357.

<sup>24</sup> 8 C.F.R. § 236.23(a)(1); 91 Fed. Reg. at 34,385.

As stated above, current regulations already provide criminal and national security–related bars to DACA.<sup>25</sup> DHS’s NPRM seeks to expand the criminal grounds for which USCIS may deny a DACA requestor’s application for employment authorization: barring “significant countervailing public interests,” USCIS under this NPRM would not exercise its discretion favorably if a noncitizen “has been arrested for, charged with (without disposition), indicted for, or convicted of any criminal act;...admits to committing a violent or dangerous crime,” even absent a formal arrest or charge; or has evidence of belonging to “a gang or terrorist organization.”<sup>26</sup> Not only does this change represent a massive and unwarranted expansion of discretion on criminal grounds, but this change also proposes an impermissibly vague gang- and terror-related provision.<sup>27</sup> USCIS outright rejects “applying any bright line rules[,]” instead asserting that “[p]ertinent evidence will change over time” and that “DHS will apply a multi-factor approach that takes into consideration all evidence and relevant factors[.]”<sup>28</sup> Some examples of evidence USCIS lists include “tattoos, clothing, and evidence including pictures or statements which indicate the [noncitizen] has adopted a group identity used to intimidate or create fear[.]”<sup>29</sup> Furthermore, USCIS explicitly declines to offer a standard of proof for membership in a gang or terrorist organization, instead claiming that it will issue relevant departmental guidance in the future.<sup>30</sup> Such a vague, broad, changeable, and unreviewable provision cannot satisfy the APA’s prohibition on arbitrary and capricious agency actions, and USCIS should rescind the NPRM as soon as possible.<sup>31</sup>

### III. Conclusion

The NPRM imposes unjustifiable burdens, some of which are contradictory or even redundant, on DACA requestors. For the foregoing reasons, MALDEF respectfully requests that USCIS rescind the NPRM in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or [efindley@maldef.org](mailto:efindley@maldef.org).

Thank you.

Sincerely,

  
Ellen E. Findley  
Legislative Staff Attorney

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<sup>25</sup> 8 C.F.R. § 236.22(b)(6).

<sup>26</sup> 91 Fed. Reg. at 34,356.

<sup>27</sup> *Id.* at 34,356.

<sup>28</sup> *Id.* at 34,384.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 34,385.

<sup>31</sup> See U.S.C. § 706; 91 Fed. Reg. at 34,447.