

Congress of the United States
Washington, DC 20515

November 14, 2022

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra:

We write to urge the U.S. Department of Health and Human Services (HHS) to grant access to benefits under the Patient Protection and Affordable Care Act (ACA) and Children's Health Insurance Program Reauthorization Act of 2009 for Deferred Action for Childhood Arrivals (DACA) recipients. As a result of current regulation and guidance, DACA recipients cannot:

- a) Obtain comprehensive health insurance under Medicaid or CHIP in states that have opted to cover lawfully present children and pregnant people.
- b) Purchase health insurance in the ACA's health insurance marketplace, even at full cost using their own funds; and
- c) Receive federal premium tax credits to make private health insurance affordable in the marketplace (even though DACA recipients still file and pay federal taxes).

The Department of Homeland Security (DHS) issued a final regulation on August 24, 2022 to codify the DACA policy. In the preamble to the new final rule, DHS states that, with respect to the programs under its jurisdiction, "DACA recipients are provided deferred action and should continue to be deemed 'lawfully present' like all other deferred action recipients—as they have been since the start of DACA."¹ Yet, DHS also notes that, "any future revision of this determination for Medicaid, CHIP, or with respect to the ACA Exchange and private market programs would need to be made by HHS."² As such, it is solely in HHS's hands now to provide this needed health care access for DACA recipients. Doing so not only would be consistent with DHS's interpretation, it would also advance President Biden's policy priorities, such as Executive Orders 13985 on racial equity and 14070 on strengthening access to health care.

Specifically, we request that HHS eliminate 45 C.F.R. § 152.2(8), which excludes DACA recipients from the definition of "lawfully present" and, consequently from benefits under the ACA, even though DACA recipients are treated as lawfully present for other federal programs.³ HHS should then issue a State Health Officials letter clarifying DACA recipients' eligibility for Medicaid and CHIP. It is crucial that the administration keep its commitment to expanding

¹ <https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals>

² <https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals>

³ The language in question reads as follows: "An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present" 45 C.F.R. § 152.2(8) (2012).

coverage for undocumented immigrants, including DACA recipients, and rescinding this harmful regulation will help deliver on that promise.⁴

Making ACA coverage and financial assistance available to DACA recipients would advance the goals of the ACA and benefit the American people. Under DACA, immigrant youth with long-term residency in the United States who satisfy a strict set of criminal background and educational criteria are eligible for employment authorization and protection from deportation.⁵ Rescission of 45 C.F.R. § 152.2(8) would grant access to the ACA for the approximately 650,000 current DACA recipients and could ultimately benefit over a million individuals as the DACA program resumes.⁶ The regulation excludes a significant pool of young, healthy adults—the *exact* type of participants that Congress sought to encourage to secure and purchase health insurance under the ACA. These barriers to health coverage force many individuals and families to go without the health care they need, including essential preventive services and life-saving treatments. They also exacerbate existing health inequities that all immigrant communities face and especially immigrants of color. Moreover, the current regulation leads to worse health outcomes for DACA recipients and their families by foreclosing access to health care, including unsubsidized purchases on ACA health insurance marketplace.

We strongly encourage HHS to honor our country's promise of full integration and support of DACA recipients, including access to affordable health care through the ACA by rescinding this regulation. We anticipate your response within 30 days, and we thank you for your attention and prompt response.

Sincerely,



Joaquin Castro
Member of Congress




Cory A. Booker
United States Senator

⁴ Selena Simmons-Duffin, What Biden's Election Means For U.S. Health Care And Public Health, NPR, Nov. 9, 2020, <https://www.npr.org/sections/health-shots/2020/11/09/932071991/what-bidens-election-means-for-u-s-health-care-and-public-health>.

⁵ Janet Napolitano, Dep't of Homeland Security, Memorandum Letter on Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf>.

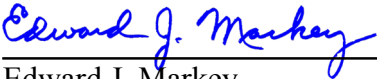
⁶ *Immigration and Citizenship Data*, U.S. Cit. & Immigr. Servs., <http://bit.ly/38SKZbh> (last visited Nov. 23, 2020); *Deferred Action for Childhood Arrivals (DACA) Data Tools*, Migr. Policy Inst., <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (last visited Nov. 23, 2020).



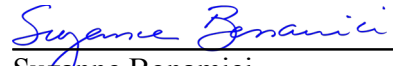
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Sheila Jackson Lee
Member of Congress



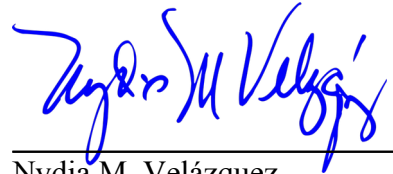
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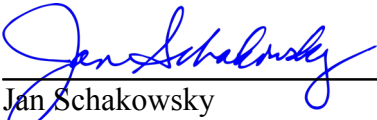
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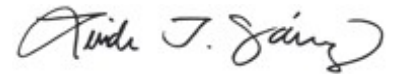
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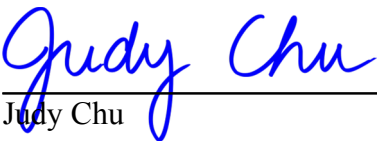
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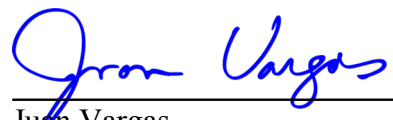
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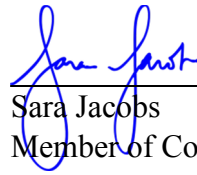
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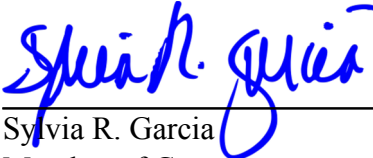
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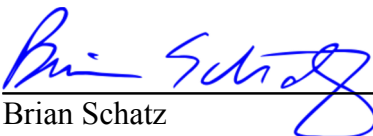
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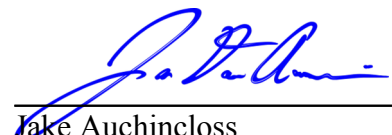
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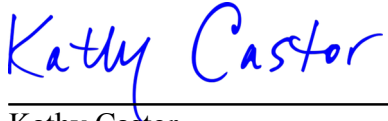
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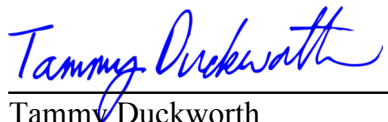
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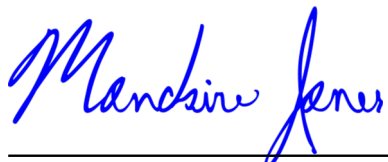
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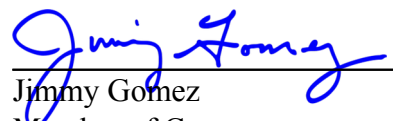
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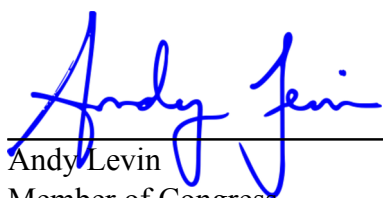
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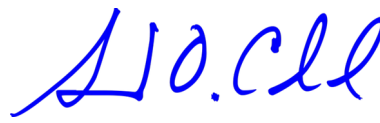
Andy Levin
Member of Congress



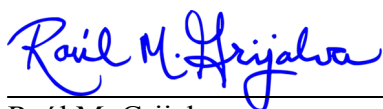
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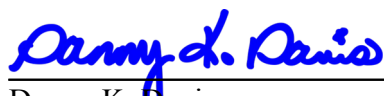
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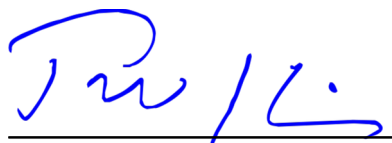
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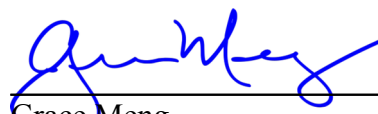
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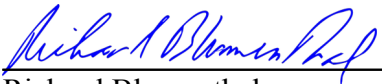
Ami Bera, M.D.
Member of Congress



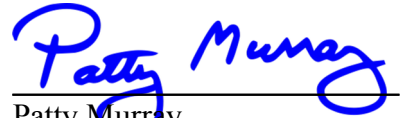
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Alex Padilla
United States Senator



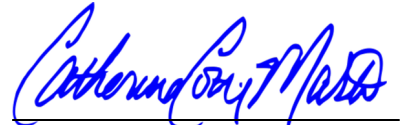
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United States Senator



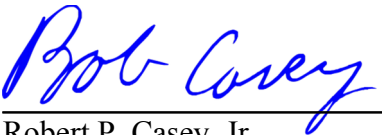
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