Congress of the United States

Washington, DC 20515

April 11, 2025

The Honorable Robert Francis Kennedy Jr.
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

RE: CMS Docket Number CMS-2025-0020, CMS-9884-P, RIN: 0938-AV61, Comments in Response to Notice of Proposed Rulemaking: Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability.

Dear Secretary Kennedy:

We write to express our strong opposition to the Department of Health and Human Services'(HHS) Notice of Proposed Rulemaking on "Patient Protection and Affordable Care Act; Marketplace Integrity and Affordability," (90 FR 12941) published in the Federal Register on March 19, 2025. Specifically, we oppose the proposed reversal of Affordable Care Act (ACA) Marketplace eligibility for Deferred Action for Childhood Arrivals (DACA) recipients, a move that would significantly restrict access to affordable health coverage.

The ACA makes all lawfully present immigrants eligible for Marketplace coverage. When the Centers for Medicare and Medicaid Services (CMS) first established the regulatory definition of lawfully present immigrants in 2010, it included all deferred action recipients, consistent with longstanding federal policies for Social Security benefits and driver's licenses under the REAL ID Act.[1] However, in 2012, the agency, without any statutory justification, added an exclusion for DACA recipients.[2] We believe CMS made the wrong decision, arbitrarily excluding hundreds of thousands of immigrant youth from health coverage despite Congress's intent in passing the ACA to widely expand access to health care.

We were glad this error was corrected in May 2024, when HHS finalized a rule granting ACA Marketplace and subsidy eligibility to DACA recipients.[3] Prior to this rule, DACA recipients were nearly five times more likely to be uninsured compared to their U.S. born peers. The March 2025 proposed regulation would reverse course and tear health coverage away from DACA recipients who have only had eligibility for less than a year.

Allowing DACA recipients access to affordable health coverage was a step in the right direction. Because eighty percent of DACA recipients have health care coverage through their employer, they are particularly

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[1] "Pre-Existing Condition Insurance Plan Program," Department of Health and Human Services, Federal Register, July 30, 2010, https://www.federalregister.gov/documents/2010/07/30/2010-18691/pre-existing-condition-insurance-plan-program

[2] "Pre-Existing Condition Insurance Plan Program," Department of Health and Human Services, Federal Register, August 30, 2012, https://www.federalregister.gov/documents/2012/08/30/2012-21519/pre-existing-condition-insurance-plan-program

[3] "HHS Final Rule Clarifying the Eligibility of Deferred Action for Childhood Arrivals (DACA) Recipients and Certain Other Noncitizens," Centers for Medicare & Medicaid Services, May 3, 2024, https://www.cms.gov/newsroom/fact-sheets/hhs-final-rule-clarifying-eligibility-deferred-action-childhood-arrivals-daca-recipients-and-certain

vulnerable to losing their health coverage.[4] The 537,000 current DACA recipients have lived in the United States for most of their lives and did not make any choice to enter the U.S.[5] They have over 300,000 U.S. citizen children who are more likely to thrive if their parents have health coverage.[6] Lack of health care coverage and the inability to afford medical costs leads to significant burdens on families, including the accumulation of medical debt, stress around out-of-pocket expenses, and the delaying or forgoing of treatment due to financial constraints.[7] For uninsured parents, this can mean choosing between securing food for the table or receiving needed treatment and medical care to maintain a healthy life and, therefore, providing and supporting their children and family.

President Trump has repeatedly recognized the value of Dreamers. In December 2024, he made clear that Congress must "do something about the Dreamers, because these are people that have been brought here at a very young age, and many of these are middle-aged people now, they don't even speak the language of their country."[8] Congress must pass the Dream Act to create a pathway to citizenship for DACA recipients. In the meantime, CMS must not enact this proposed rule. Removing ACA eligibility undermines the law's purpose, contravenes President Trump's priorities, and jeopardizes the health and stability of hundreds of thousands of immigrant families.

Sincerely,

Joaquin Castro
Member of Congress

Cory A. Booker
United States Senator

Pramila Jayapal
Member of Congress

Mazie K. Hirono
United States Senator

[4] "DACA Recipients' Access to Health Care: 2024 Report," National Immigration Law Center, May 2024, https://www.nilc.org/wp-content/uploads/2024/05/NILC_DACA-Report_2024_06-27-24.pdf

[5] "Deferred Action for Childhood Arrivals (DACA) Data Tools," MPI, September 2024, https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles

[6] "The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition," CAP, November 2021, https://www.americanprogress.org/article/the-demographic-and-economic-impacts-of-daca-recipients-fall-2021-edition/

[7] Alejandra Muñoz-Rivera, "How do health care costs impact household finances and access to care?" Social Policy Institute, Washington University in St. Louis, September 20, 2022, https://socialpolicyinstitute.wustl.edu/how-healthcare-costs-impact-household-finances-and-access-to-care/.

[8] Allan Smith, *Trump Aims to End Birthright Citizenship, Says American Citizens with Family Here Illegally May be Deported*, NBC NEWS (Dec. 8, 2024) https://www.nbcnews.com/politics/donald-trump/trump-aims-end-birthright-citizenship-says-american-citizens-family-il-rcna183274.

Kathy Castor
Member of Congress

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Member of Congress

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Jerrold Nadler
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Bonnie Watson Coleman
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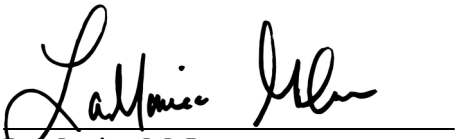
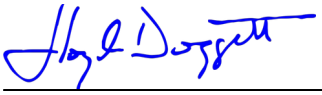
Andy Kim
United States Senator

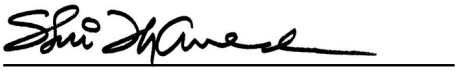
Martin Heinrich
United States Senator



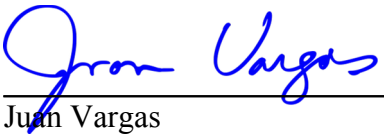
LaMonica McIver
Member of Congress



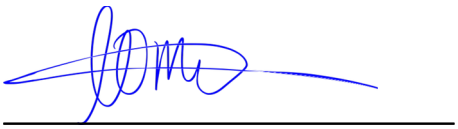
Lloyd Doggett
Member of Congress



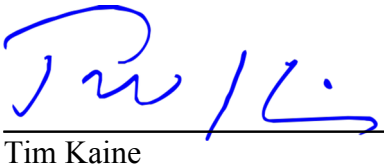
Shri Thanedar
Member of Congress



Juan Vargas
Member of Congress

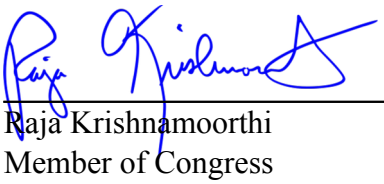


Ilhan Omar
Member of Congress



Tim Kaine
United States Senator

Maxine Waters
Member of Congress



Raja Krishnamoorthi
Member of Congress

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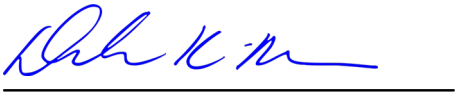
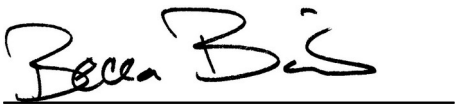
Member of Congress

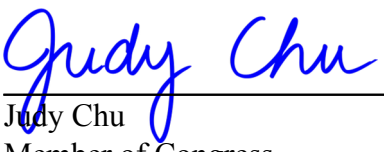


Deborah K. Ross
Member of Congress

Debbie Wasserman Schultz
Member of Congress



Becca Balint
Member of Congress



Judy Chu
Member of Congress

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Member of Congress

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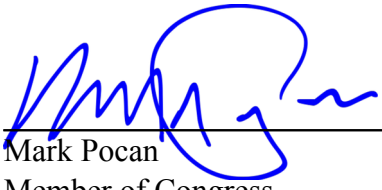
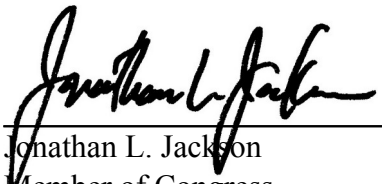
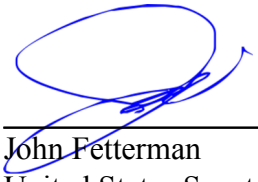
Member of Congress



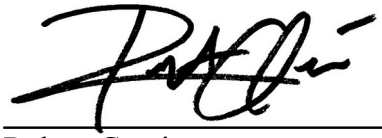
Mark Pocan
Member of Congress



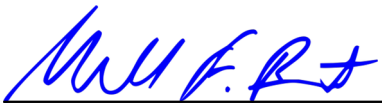
Jonathan L. Jackson
Member of Congress



John Fetterman
United States Senator

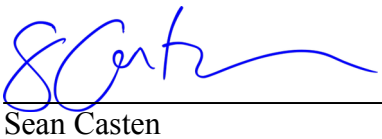


Robert Garcia
Member of Congress



Michael F. Bennet
United States Senator

Mike Quigley
Member of Congress



Sean Casten
Member of Congress

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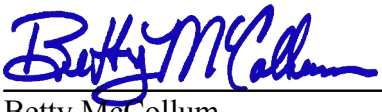
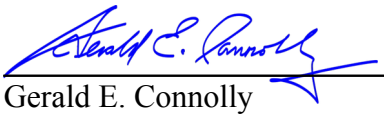


Betty McCollum
Member of Congress



Gerald E. Connolly
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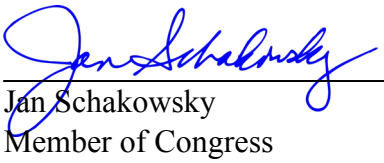
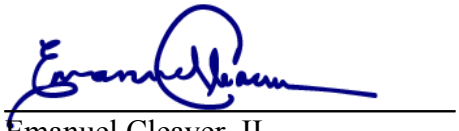
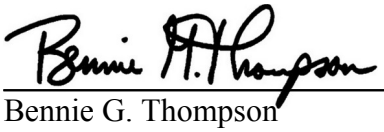
Member of Congress



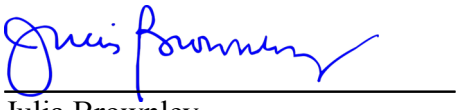
Jan Schakowsky
Member of Congress



Emanuel Cleaver, II
Member of Congress



Bennie G. Thompson
Member of Congress



Julia Brownley
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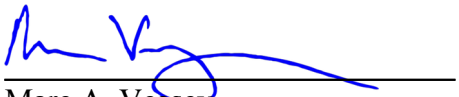
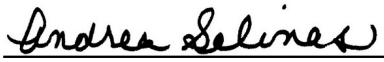
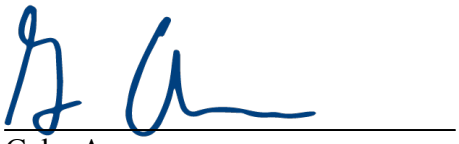
Raul Ruiz, M.D.
Member of Congress



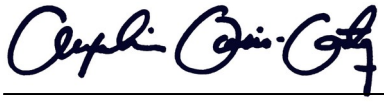
Marc A. Veasey
Member of Congress



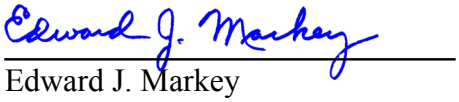
Andrea Salinas
Member of Congress



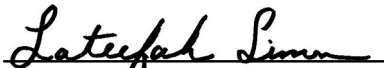
Gabe Amo
Member of Congress



Alexandria Ocasio-Cortez
Member of Congress

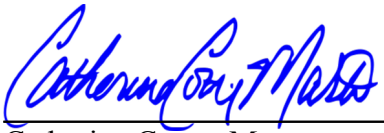


Edward J. Markey
United States Senator



Lateefah Simon
Member of Congress

James P. McGovern
Member of Congress



Catherine Cortez Masto
United States Senator

Robert J. Menendez
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Brian Schatz
United States Senator

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Julie Johnson
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MARK TAKANO
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Alex Padilla
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Amy Klobuchar
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Ron Wyden
United States Senator

Angie Craig
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Sarah McBride
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Seth Moulton
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Jimmy Gomez
Member of Congress

Jimmy Panetta
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Melanie Stansbury
Member of Congress

Bernard Sanders
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Darren Soto
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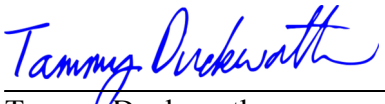
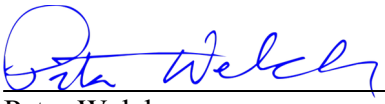
Wesley Bell
Member of Congress



Tammy Duckworth
United States Senator



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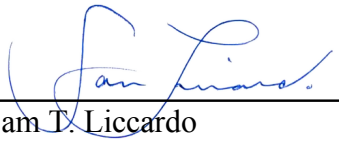
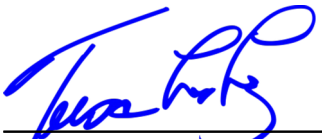
United States Senator

Mikie Sherrill
Member of Congress

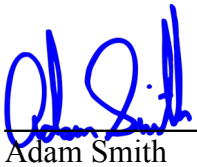
Richard J. Durbin
United States Senator



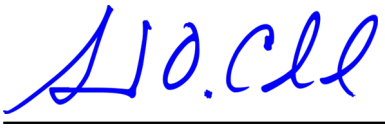
Sam T. Liccardo
Member of Congress



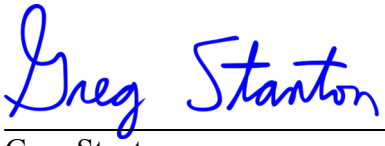
Teresa Leger Fernández
Member of Congress



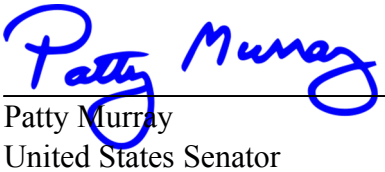
Adam Smith
Member of Congress



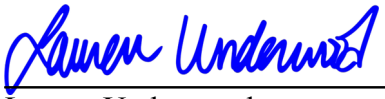
Salud Carbajal
Member of Congress



Greg Stanton
Member of Congress

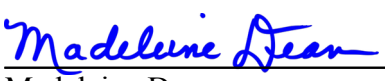


Patty Murray
United States Senator

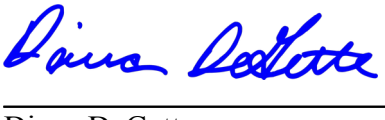


Lauren Underwood
Member of Congress

Greg Casar
Member of Congress



Madeleine Dean
Member of Congress



Diana DeGette
Member of Congress

Luz M. Rivas
Member of Congress

Greg Landsman
Member of Congress

Tina Smith
United States Senator

Zoe Lofgren
Member of Congress

Mark Kelly
United States Senator