

United States Senate
WASHINGTON, DC 20510

July 6, 2021

Dear Chair Durbin:

We are writing to ask that you schedule an Executive Business Meeting of the Senate Judiciary Committee to consider legislation to offer permanent legal status to only currently enrolled and active participants in the Deferred Action for Childhood Arrivals (DACA) program.

The Judiciary Committee recently held a hearing to discuss the *American Dream and Promise Act of 2021*, which would provide a pathway to citizenship for an estimated 4.4 million illegal immigrants. As you knew when scheduling the hearing, there is no clear and politically viable path forward for such legislation in Congress. However, given the DACA program's shaky legal foundations, the most urgent need is to advance a solution for our currently enrolled DACA recipients.

At the hearing your witness, Dr. Manuel Bernal Mejia, indicated that he would support a bill that provides permanent legal status only to active DACA recipients. He stated, "Personally, I would support such legislation if it meant a permanent solution for me and all the other DACA recipients currently, because it's been many years and, frankly, we're all tired of waiting and having our life up in the air. I think we're ready for a permanent solution."

Dr. Mejia is right: we need to act now to provide permanent protection to DACA recipients. The question of whether to permanently enjoin the DACA program is currently pending before the U.S. District Court for the Southern District of Texas, and Judge Andrew Hanen could be expected to rule at any time. In 2018, Judge Hanen found that DACA likely violates the substantive provisions of the Administrative Procedure Act, in part because it "would grant lawful presence and work authorization to a million people or more for whom Congress has made no provision and has refused to make such a provision time and time again." *Texas v. United States*, 328 F. Supp. 3d 662, 723 (S.D. Tex. 2018).

We agree that the DACA program contravenes the Immigration and Nationality Act and believe it was likely unconstitutional when issued by President Obama. Even so, we are concerned that people like Dr. Mejia—who rely on the program and came out of the shadows to participate in our economy—will lose their employment authorization when the program is ultimately struck down. The decision whether to extend permanent legal status to DACA recipients properly falls within the Article I prerogatives of Congress.

Therefore, we ask that you schedule a markup of a bill that only addresses the population with the most urgent need: active DACA recipients. In addition, Senators should be free to offer reasonable amendments to this bill through an open amendment process, and receive an up-or-

down vote on those amendments. We expect that such amendments would likely include proposals related to border security, interior enforcement, and employment verification programs. Such a process will allow us to develop a package that can garner the support necessary to pass on the Senate floor.

Thank you for your consideration, and we look forward to your prompt response. We hope you will view this letter for what it is: an open offer to find a permanent solution for DACA enrolled recipients.

Sincerely,

Handwritten signature of John Cornyn in black ink.

John Cornyn
U.S. Senator

Handwritten signature of Thom Tillis in blue ink.

Thom Tillis
U.S. Senator