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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 13, 2021

The Honorable John Cornyn
U.S. Senator
517 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Thom Tillis
U.S. Senator
113 Dirksen Senate Building
Washington, D.C. 20510

Dear Senator Cornyn and Senator Tillis:

I received your July 6, 2021 letter requesting a Senate Judiciary Committee business meeting to consider legislation, which apparently has not yet been introduced, to “offer permanent legal status to only currently enrolled and active participants in the Deferred Action for Childhood Arrivals (DACA) program.” I appreciate your interest in finding a legislative solution for a subset of Dreamers protected by DACA, though I am disappointed that you would deny relief to hundreds of thousands of Dreamers who were blocked from enrolling in the program by the previous Administration’s illegal actions.

As you know, the Judiciary Committee is currently evenly divided and as Chair I have only scheduled bipartisan legislation for Committee votes, including bills sponsored by each of you. The only bills currently pending in the Senate to protect Dreamers are the Dream Act (S. 264) and the House-passed American Dream and Promise Act (H.R. 6), both of which are bipartisan. If you would like the Committee to consider a bipartisan bill to protect “currently enrolled and active” DACA recipients only, I would be happy to consider such legislation once it has been introduced.

Your letter claims that DACA violates the law. In fact, DACA is a lawful exercise of prosecutorial discretion by the Department of Homeland Security. The Supreme Court has held that “an agency’s decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency’s absolute discretion.” Last June, the Supreme Court rejected then-President Trump’s effort to repeal DACA. In an opinion by Chief Justice John Roberts, the Court held that the Trump Administration’s decision to rescind DACA in 2017 was “arbitrary and capricious.”

Moreover, seeking to compel the deportation of hundreds of thousands of DACA recipients who are helping our nation’s economy recover from the effects of the COVID-19 pandemic makes little sense. More than 200,000 DACA recipients are “essential critical infrastructure workers,” as defined by the Department of Homeland Security, including 41,700 DACA recipients in the health care industry. DACA recipients and their households pay an estimated \$5.7 billion in federal taxes and \$3.1 billion in state and local taxes each year.

While your legislative proposal would protect these “currently enrolled and active” DACA recipients, it would exclude hundreds of thousands of Dreamers who are eligible for DACA but were blocked from enrolling in the program by the previous Administration. According to data from United States Citizenship and Immigration Services (USCIS), there were 616,030 active DACA recipients as of March 31, 2021. However, the Migration Policy Institute estimates that more than 1.3 million young people were immediately eligible for DACA in 2020. As a result of the Trump Administration’s cruel termination of DACA in 2017, hundreds of thousands of DACA-eligible young people have been unable to apply to the program for years. In fact, almost 50,000 individuals applied for an initial grant of DACA during the first quarter of 2021 after the program was reopened to new applicants. It is also important to note that DACA eligibility is restricted to Dreamers who arrived in the U.S. prior to June 16, 2007 – more than 14 years ago.

In contrast to your proposed legislation, the bipartisan House-passed American Dream and Promise Act and the Senate version of the Dream Act would provide a pathway to citizenship to all Dreamers who are eligible for the DACA, as well as Dreamers who are excluded from DACA. Additionally, the American Dream and Promise Act would provide a path to citizenship for Temporary Protected Status recipients with deep roots in our country, including more than 130,000 essential critical infrastructure workers, as well as the children of immigrant workers who are stuck in the green-card backlog.

You claim that “there is no clear and politically viable path forward” for the American Dream and Promise Act, legislation that would increase our national GDP by a cumulative total of \$799 billion over 10 years and create 285,400 new jobs. In fact, this bill passed the House on a strong bipartisan vote and is strongly supported by the American people. The only reason the Dream Act has not yet become the law of the land is that a minority of Senators have repeatedly filibustered the bill. In fact, it was repeated rejections of the Dream Act by a minority of Senators that moved then-President Obama to establish DACA in 2012, even as he again urged Congress to pass legislation providing a path to citizenship to Dreamers.

I was also disappointed that your letter failed to mention ongoing bipartisan immigration negotiations that I have been leading for the last several months. Each of you have been invited to every meeting of our bipartisan group, but your letter seems to indicate a lack of interest in continuing our negotiations.

I believe the Senate has a responsibility to act on long-overdue immigration reform legislation. I stand ready to work with you and any other Senator in good faith on a path forward.

Sincerely,



Senator Richard J. Durbin

Chair

Senate Committee on the Judiciary