

Congress of the United States

Washington, DC 20515

June 12, 2026

The Honorable Todd Blanche
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Acting Attorney General Blanche:

We write to object to the Board of Immigration Appeals precedential decision in *Matter of Santiago-Santiago*, in which the Board undermined protections provided by a grant of Deferred Action for Childhood Arrivals (DACA).¹ We are troubled to see the Board, and by extension, the Department of Justice, attempt to circumvent legal protections for DACA recipients, which have been codified in regulation by the Department of Homeland Security (DHS), and affirmed in a recent decision by the United States Court of Appeals for the Fifth Circuit. We urge you to take steps within your authority as Attorney General to ensure the Board's rulings regarding DACA are interpreted in a manner consistent with current law.

DACA is well established as “a form of enforcement discretion not to pursue . . . removal.”² As the Board noted in its decision, a DACA recipient “cannot be removed from the United States while she has DACA protection.”³

DHS established DACA in 2012 by memorandum and codified it in regulation in 2022. To be eligible for protections pursuant to DACA, non-U.S. citizens must meet strict requirements, including establishing that they arrived in the United States as children, meeting strict educational or vocational requirements, and undergoing stringent background checks.⁴ If approved, DACA recipients receive a two-year period of forbearance from removal and work authorization; recipients must renew their DACA grant (and undergo new background checks) every two years.⁵ By regulation, immigration judges may, in the exercise of discretion, terminate removal proceedings for individuals who have received grants of deferred action.⁶

¹ *Matter of SANTIAGO-SANTIAGO*, 29 I&N Dec. 589 (BIA 2026).

² *Texas v. United States*, 126 F.4th 392, fn. 3 (5th Cir. 2025); *Deferred Action for Childhood Arrivals*, 87 Fed. Reg. 53,152, 53,298 (Aug. 30, 2022).

³ 29 I&N Dec. 589, 591 n. 3.

⁴ Memorandum from Janet Napolitano, Sec’y, DHS, to David Aguilar, Acting Comm’r, U.S. Customs and Border Prot., et al. (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individualswho-came-to-us-as-children.pdf> and See *Deferred Action for Childhood Arrivals*, 87 Fed. Reg. 53,152, 53,298 (Aug. 30, 2022).

⁵ 87 Fed. Reg. at 53,152 and 53,298.

⁶ 8 C.F.R. 1003.18(d)(1)(ii)(C).

In response to a challenge by Republican states, processing of initial DACA applications has been enjoined since 2021. In 2021, the United States District Court for the Southern District of Texas vacated the DACA memorandum, concluding that the DACA program was unlawful. However, the Court stayed its order as it applied to individuals who had already received DACA grants at the time of the decision, allowing them to maintain and renew DACA every two years under the conditions of the 2012 memorandum.⁷ After DACA was codified in regulation, the District Court struck down the regulation but maintained the stay. Last year, the Fifth Circuit affirmed the lower court’s decision that portions of DACA violate the law, but, significantly, narrowed the scope of the remedy to Texas, allowing DACA to continue in full effect in the other 49 states. The Fifth Circuit also maintained the nationwide stay for current DACA recipients, acknowledging the “immense reliance interests” of current DACA recipients and the potential for significant disruption to others reliant on the program.⁸

Most important, in its decision, the Fifth Circuit stated that it would “not disturb DACA’s policy of forbearance.”⁹ DACA’s policy of forbearance, as explained in the DACA regulation, “is a form of enforcement discretion *not to pursue the removal* of certain aliens[.]”¹⁰ (emphasis added).

By concluding in *Matter of Santiago-Santiago* that an immigration judge may not terminate removal proceedings based solely on the fact that the respondent has been granted DACA, the Board acts in a manner that is inconsistent with the Fifth Circuit’s decision and the Department of Justice regulation permitting termination based on deferred action. The decision fails altogether to consider the DHS regulation’s stringent requirements for maintaining and renewing DACA and the Fifth Circuit holding preserving DACA’s forbearance from removal. Thus, the Board’s decision paves the way for DACA recipients to be detained and placed in removal proceedings without regard for their societal contributions, clean records, or public support, and even though they cannot be removed while their DACA remains valid.

To better address these concerns and reconcile the BIA decision with the Department’s claims of “restoring integrity to the immigration adjudication system” and reflecting “straightforward interpretations of clear statutory language,”¹¹ we request detailed responses to the following questions by Friday, June 26:

⁷ *Texas v. United States*, 549 F. Supp. 3d 572, 624 (S.D. Tex. 2021), *aff’d in part, vacated in part, remanded*, 50 F.4th 498 (5th Cir. 2022), *and supplemented*, 691 F. Supp. 3d 763 (S.D. Tex. 2023), *and supplemented*, No. 1:18-CV-00068, 2023 WL 5950808 (S.D. Tex. Sept. 13, 2023).

⁸ *Id.* at 422.

⁹ *Texas v. United States*, 126 F.4th 392, 402 (5th Cir. 2025)

¹⁰ 87 Fed. Reg. at 53,298.

¹¹ Ximena Bustillo and Rahul Mukherjee, *An immigration court few have heard of is quietly shaping policy behind the scenes*, NPR News (Mar. 20, 2026), <https://www.npr.org/2026/03/20/nx-s1-5707535/trump-immigration-detention-appeals-board-deportation>.

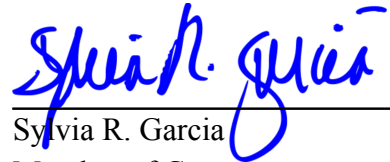
1. How does *Matter of Santiago-Santiago* comport with the Fifth Circuit’s binding precedent in *Texas v. United States* preserving DACA’s policy of forbearance, the DHS regulation codifying DACA’s policy of forbearance, and the DOJ regulation allowing for termination of removal proceedings based on a grant of deferred action?
2. How many DACA recipients have pending removal cases?
3. How many DACA recipients in removal proceedings are appearing before the immigration courts on the detained docket?
4. How many DACA recipients on the detained docket have indicated they have pending renewal applications?
5. How are the immigration courts addressing cases for detained individuals upon notification that their DACA has been renewed?
6. How many motions to recalendar or motions to reopen before the immigration courts has DHS filed in cases involving DACA recipients?

We look forward to your prompt response.

Sincerely,



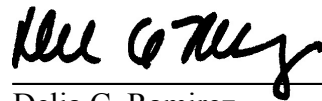
Richard J. Durbin
United States Senator



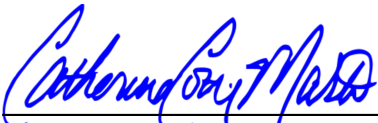
Sylvia R. Garcia
Member of Congress



Alex Padilla
United States Senator



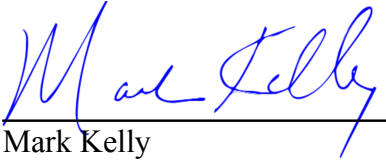
Delia C. Ramirez
Member of Congress



Catherine Cortez Masto
United States Senator



Eleanor Holmes Norton
Member of Congress



Mark Kelly
United States Senator



Rashida Tlaib
Member of Congress



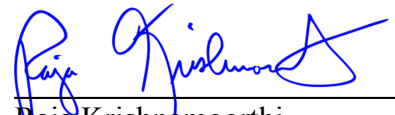
Christopher A. Coons
United States Senator




Yassamin Ansari
Member of Congress



Christopher S. Murphy
United States Senator



Raja Krishnamoorthi
Member of Congress



Chris Van Hollen
United States Senator



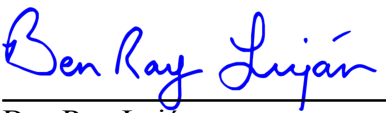
Lateefah Simon
Member of Congress



Jacky Rosen
United States Senator



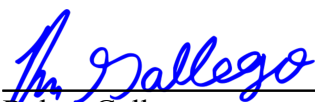
Chris Deluzio
Member of Congress



Ben Ray Lujan
United States Senator



Joaquin Castro
Member of Congress



Ruben Gallego
United States Senator



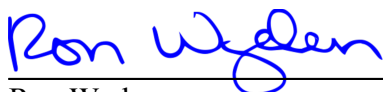
Greg Casar
Member of Congress



Tammy Duckworth
United States Senator



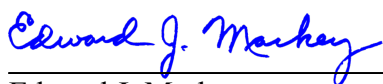
Veronica Escobar
Member of Congress



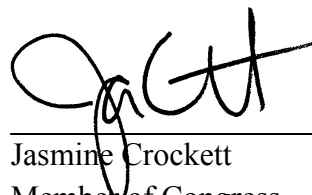
Ron Wyden
United States Senator



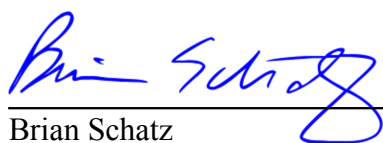
Andrea Salinas
Member of Congress



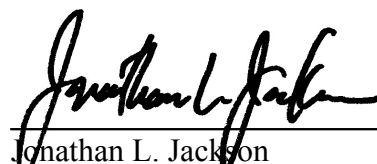
Edward J. Markey
United States Senator



Jasmine Crockett
Member of Congress



Brian Schatz
United States Senator



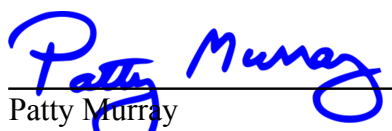
Jonathan L. Jackson
Member of Congress





John Fetterman
United States Senator





Jesús G. "Chuy" García
Member of Congress



Patty Murray
United States Senator



Diana DeGette
Member of Congress

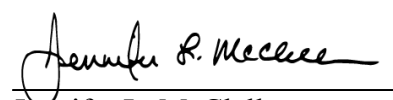

John Hickenlooper
United States Senator



Summer L. Lee
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Tina Smith
United States Senator


Chrissy Houlahan
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Angela D. Alsobrooks
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Jennifer L. McClellan
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Jeanne Shaheen
United States Senator


Linda T. Sánchez
Member of Congress


Martin Heinrich
United States Senator

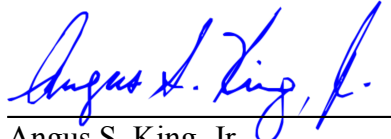

Seth Moulton
Member of Congress



Mazie K. Hirono
United States Senator



Nanette Diaz Barragan
Member of Congress



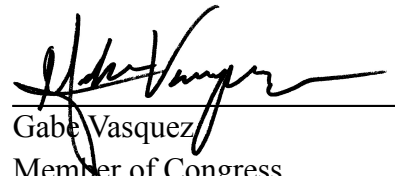
Angus S. King, Jr.
United States Senator



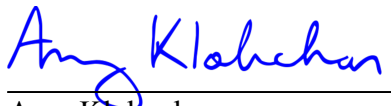
Mark DeSaulnier
Member of Congress



Adam B. Schiff
United States Senator



Gabe Vasquez
Member of Congress



Amy Klobuchar
United States Senator



Pramila Jayapal
Member of Congress



Michael F. Bennet
United States Senator



Dina Titus
Member of Congress



Richard Blumenthal
United States Senator



Sarah McBride
Member of Congress



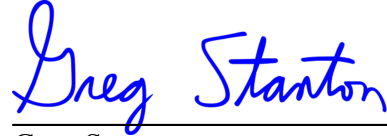
Cory A. Booker
United States Senator



James P. McGovern
Member of Congress



Kirsten Gillibrand
United States Senator



Greg Stanton
Member of Congress