

**WHY EXPANDING MEDICAID  
TO DACA RECIPIENTS WILL EXACERBATE  
THE BORDER CRISIS**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON HEALTH CARE  
AND FINANCIAL SERVICES  
OF THE  
COMMITTEE ON OVERSIGHT  
AND ACCOUNTABILITY  
HOUSE OF REPRESENTATIVES  
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*Documents are available at: docs.house.gov.*



**WHY EXPANDING MEDICAID  
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EXACERBATE THE BORDER CRISIS**

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**Tuesday, July 18, 2023**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY  
SUBCOMMITTEE ON HEALTH CARE AND FINANCIAL SERVICES  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 2:11 p.m., in room 2154, Rayburn House Office Building, Hon. Lisa McClain [Chairwoman of the Subcommittee] presiding.

Present: Representatives McClain, Foxx, Grothman, Luna, Langworthy, Burlison, Porter, Ocasio-Cortez, Casar, Lee, and Crockett.

Mrs. MCCLAIN. The Subcommittee on Health Care and Financial Services will come to order. Welcome, everyone.

Without objection, the Chair may declare a recess at any time.

I recognize myself for the purpose of making an opening statement.

Today, we are, again, conducting oversight of yet another disastrous policy by the Biden Administration that will only exacerbate the crisis along the Southern border. The Centers for Medicare & Medicaid Services have proposed a rule to extend Medicaid, CHIP, and Obamacare eligibility, Deferred Action for Childhood Arrivals, or DACA, recipients in direct contradiction to congressional intent.

Once again, the Biden Administration officials are seeking to rewrite laws through agency rulemaking because they know their policies are not supported by the American people, and they would not be able to pass in the House nor the Senate. Instead, they are proposing a rule with dubious legal basis to provide taxpayer-funded Federal health benefits to individuals who have entered this country illegally.

Even President Obama understood this much when his Administration determined in 2012 that DACA recipients should not be eligible for Medicaid. A Federal judge has already deemed the entire DACA Program, which was unilaterally created through nothing more than an emergency memorandum, unlawful. DHS is currently prohibited from accepting further applications by a court order. Despite this, the Administration proceeds with a plan to spend hundreds of millions more of taxpayer dollars on healthcare benefits for DACA recipients.

CMS' own estimates show that the expansion will increase state expenditures for Medicaid and CHIP by \$40 million, and Federal expenditures would expand by another \$60 million per year, and that does not include the proposed Obamacare expansion, which is projected to cost another \$15 million per year. And you know who the Biden Administration expects to pay for it? The American taxpayers.

Further, the Biden Administration's proposal will incentivize further illegal immigration. The Biden Administration has chosen, unfortunately, to prioritize illegal immigrants over the American people. I simply do not understand it. These funds could be used to provide better healthcare to the American people, and that is why we must stop this Administration from rewarding illegal immigrants at the expense of American citizens. We must ensure that Americans are being put first.

By definition, DACA recipients are still and always were unlawfully present in the United States. The Biden Administration cannot simply alter that fact. In extending Federal benefits to illegal immigrants, President Biden is signaling to the rest of the world that not only will the U.S. not enforce laws preventing illegal immigration, but illegal immigrants will be rewarded with Federal benefits. We should not reward individuals unlawfully present in the United States with benefits that were created for American citizens and those who are lawfully present in the country.

The Biden Administration is responsible for one of the worst crises in the recent memory along our Southwest border. By extending Federal benefits to illegal immigrants, the Biden Administration is once again pouring gasoline on an out-of-control fire that will only incentivize more illegal immigration, but such reckless tone, tone-deaf policies have become the status quo for this Administration.

With that, I want to thank Dr. Montz for being here today. We look forward to your testimony.

Now I yield to the Ranking Member, Ms. Porter for her opening statement. Ms. Porter?

Ms. PORTER. Thank you, Chairwoman McClain. We have done some really good hearings together this year. We have come together on a bipartisan basis to uncover the root causes behind the infant formula shortage, we have pointed out how bank regulators need oversight, and we have dug into the role of Chinese money laundering organizations in making the drug cartels rich. What do all of these things have in common? We have tackled real problems: deaths from fentanyl, scared parents unable to feed their babies, risks to our financial system. We have shown we are willing on a bipartisan basis to hold powerful people to account. We identified places where we need guardrails to make our government, our economy, and our country work better. And though we did not agree on everything, we came together on the big picture to achieve progress. I am afraid that none of those things are true for today's hearing.

Today, we are here to discuss the proposed rule from the Biden and Harris Administration that would expand health coverage to everyone lawfully present in the United States. Medicaid and the Affordable Care Act plans are already available to people who are

lawfully present in the U.S., but under current Federal rules, Dreamers are left out of the definition of “lawfully present.” President Biden’s proposed rule changes that. Why would the President do that? Because, well, DACA recipients are, in fact, lawfully present in the United States. How? Because Congress passed the DACA law. There is not a whole lot else to unpack.

So, what are Republicans trying to do with this hearing? It is not oversight because the ability to go to the doctor is not an abuse of power or an evasion of the law. The title of this hearing gives a clue: “Why Expanding Medicaid to DACA Recipients Will Exacerbate the Border Crisis.” Let us look at the premise here. First, some facts. Many DACA recipients already have health coverage through their employers, just like other working-age Americans. Dreamers work hard, pay taxes, and they get employer-provided care. So, how many Dreamers would even get Medicaid under this new rule? About 13,000, about the size of one small town. And then the other Dreamers would be able to buy, using their own wages, healthcare on the exchange, just like anyone else who lives and works here in the United States, and do so in compliance with the law. Somehow letting people who legally live in the United States buy healthcare is going to create a border crisis?

It would be funny to watch this bad argument fall apart if it were not such a waste of time. This Subcommittee has had great hearings under Chairwoman McClain’s leadership, hearings that held powerful people accountable, identified missing guardrails, and improved the lives of the people we serve. This hearing does not meet those standards because what powerful people are we holding to account here?

The people who would get healthcare under this rule are not rich or well connected. These folks are not using their powerful positions to abuse the system. They are just regular workers trying to get insurance so they can stay healthy. OK then. So, what missing guardrails are we identifying? None. This hearing is not about putting up guardrails, it is about ripping away a safety net. It is telling people who have followed the rules of the DACA Program that they cannot access healthcare. OK, then. So, how does this hearing make life better for our constituents? All I can say is when you are making it harder for people to be healthy, you are going to have a tough sell that you are in it for the people. And honestly, I think that is why this hearing is framed to be about the border.

Most Americans want healthy communities. Most Americans want Dreamers to have a future in our country. But too many Republican lawmakers do not want either of these things, and they know they are not going to convince the people by arguing against popular policies, like accessible healthcare. So instead, they are bringing in buzzwords like “border crisis” to try to save the day. Republicans need to be able to defend the real reasons that they continue to oppose healthcare expansion if this is the hearing that they want to have. Otherwise, I hope we will go back to having serious oversight hearings. I have seen that the Republicans can do it, and the American people deserve no less. I yield back.

Mrs. MCCLAIN. Thank you, Ms. Porter.

Pursuant to Rule 9(g), the witness will please stand and raise her right hand.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. MONTZ. Aye.

Mrs. MCCLAIN. Let the record show the witness has answered in the affirmative.

We appreciate you being here today and look forward to your testimony. Let me remind the witness that we have read her written statement, and it will appear in full in the hearing record. Please limit your oral statements to 5 minutes.

As a reminder, please press the button on the microphone in front of you so that it is on, and the Members can hear you. When you begin to speak, the light in front of you will turn green. After 4 minutes the light will turn yellow. When the red light comes on, your 5 minutes has expired, and we would ask that you would please wrap up.

I recognize Ms. Montz to begin her opening statement.

**STATEMENT OF ELLEN MONTZ  
DEPUTY ADMINISTRATOR AND DIRECTOR  
CENTER FOR CONSUMER INFORMATION  
AND INSURANCE OVERSIGHT  
CENTERS FOR MEDICARE & MEDICAID SERVICES**

Ms. MONTZ. Good afternoon. Chairs Comer and McClain, Ranking Members Raskin and Porter, and Members of the Subcommittee, thank you for the opportunity to provide an update on the Centers for Medicare & Medicaid Services' work to expand access to healthcare by reducing barriers for Deferred Action for Childhood Arrival Recipients.

Over the last decade, DACA has provided peace of mind and work authorization to more than 800,000 Dreamers. In April 2023, the President announced his intention to expand health coverage for DACA recipients, and directed the Department of Health and Human Services to examine options that would allow DACA recipients to gain eligibility for coverage through health insurance marketplaces, the basic health program, and some Medicaid and Children's Health Insurance Programs. Accordingly, on April 24 of 2023, CMS released a proposed rule which, if finalized, would remove the current exclusion that treats DACA recipients differently from other individuals with deferred action. The proposed change to no longer exclude DACA recipients from CMS' definitions of lawfully present would align with the Department of Homeland Security's definition of "lawful presence" and DHS' explanation of this definition in their August 2022 final rule.

Deferred action recipients, including DACA recipients, have historically been considered lawfully present for purposes of Social Security benefits, pre-dating the DHS DACA final rule. Under CMS' proposed rule, DACA recipients would need to meet all other program eligibility requirements to qualify for coverage under CMS healthcare programs. As with all other enrollees, eligibility information, including an individual's U.S. citizenship or immigration status, would be verified electronically.

The Affordable Care Act generally requires that in order to enroll in a qualified health plan through an exchange, an individual must



either be a citizen or national of the United States or be lawfully present in the United States. The Children’s Health Insurance Reauthorization Act of 2009 provided an option for states to cover additional non-citizen populations, including coverage of lawfully residing children and pregnant individuals in Medicaid and CHIP, commonly referred to as the CHIPRA 214 option.

Although HHS interpreted “lawfully present” to exclude DACA recipients in 2012, we now know how important ensuring access to health insurance coverage is to the well-being and productivity of DACA recipients. For example, a 2021 survey of DACA recipients found that although DACA may facilitate access to health insurance through employer-based plans, more than one-third of DACA recipients responded reported that they were not covered by health insurance. These findings suggest that without additional health coverage options, many DACA recipients could be left without access to affordable healthcare coverage. Individuals without health insurance are less likely to receive preventive or routine health screenings and may delay necessary medical care or receive uncompensated care in emergency rooms. The COVID–19 public health emergency further highlighted the need for individuals to have access to high-quality, affordable healthcare coverage.

According to a demographic estimate by the Centers for Migration Studies, over 200,000 DACA recipients served as essential health workers during the COVID–19 public health emergency, including healthcare and in social assistance occupations. During the height of the pandemic, essential workers were disproportionately likely to contract COVID–19. These factors emphasize how increasing access to affordable health insurance would improve the health and well-being of many DACA recipients who are currently uninsured. If the rule is finalized as proposed, it could lead to 129,000 previously uninsured DACA recipients receiving healthcare coverage. Including DACA recipients in the definition of “lawfully present” would align with the goals of ACA and CHIPRA, specifically to reduce the number of people who are uninsured in the United States and make affordable health insurance available to more people. Thank you for the opportunity to testify on this important issue.

Mrs. MCCLAIN. Thank you. The Chair now recognizes Mr. Grothman for 5 minutes, from Wisconsin.

Mr. GROTHMAN. All right. I guess President Biden did run on giving healthcare to people coming across the border. One of the arguments against DACA is the idea that once you grant it once, you are always going to continue granting it, and so far that is true. Do you feel that free healthcare for people who at least came here illegally will result in more illegal immigration, or do you have any study on that or consider whether that is going to be a factor?

Ms. MONTZ. This rule relates to our proposal to include DACA recipients and eligibility—

Mr. GROTHMAN. Right. I know. And by giving DACA recipients free healthcare, people who came across the border, albeit maybe with their parents, although not always, illegally, will this encourage people in the future to come across the border or bring their children across the border?

Ms. MONTZ. DACA recipients are a defined population of individuals who came to the United States as children and have been residing here since 2007.

Mr. GROTHMAN. Right, right, right. And I think the feeling in the past is when you give, say, even amnesty, it causes people abroad to think you are going to get amnesty again. When I have been at the Southern border, already the Border Patrol tells me that people are coming here for American healthcare because they know that America, being so generous, sure, will give you dialysis whenever if they come here. Do you think this sends a message, because I assume if it is OK for people to declare DACA if they came here in 2007, in the next few years, somebody will say, you know, you are DACA if you came here in 2017. In that regard, don't you feel that this promotes illegal immigration?

Ms. MONTZ. I can only speak to what is current law, and this proposed rule proposes to extend health coverage to DACA recipients and not other individuals.

Mr. GROTHMAN. Yes. What do you think is the annual cost of this program?

Ms. MONTZ. Our proposed rule has estimates included in the regulatory impact analysis. We estimate that about 129,000 individuals will gain coverage if this rule is finalized. That is about 13,000 individuals in the 35 states that have chosen the optional coverage in Medicaid and CHIP, and just over 110,000 in marketplace coverage. As for costs, there are roughly 35 states that have chosen the option to cover pregnant individuals and children lawfully present, pregnant individuals and children, we estimate that to be about \$100 million per year, and for marketplace coverage, we estimate that to be about \$300 million per year.

Mr. GROTHMAN. OK. One of the concerns I have with Medicaid across the board is it does affect the way people behave in order to get the benefit, OK? It both discourages work and discourages marriage. Does that bother you at all that we are adding another benefit to people who are not going to get it if they either arrange for their own healthcare through work, or, like I said, all these income transfer programs discourage marriage. Have you thought about that or done any analysis to see how this will affect people's behavior?

Ms. MONTZ. As I have said, CMS is committed to providing quality affordable healthcare coverage—

Mr. GROTHMAN. So, you do not care. That is not a concern to you?

Ms. MONTZ. What we have seen in the Medicaid Program and other programs as well is that health insurance allows people to be better productive in the work force.

Mr. GROTHMAN. Right. You must know. Maybe you do not know, maybe you do not talk to people. That already in America, people who want to get on Medicaid, adjust their income so they get the benefit, correct? Are you aware of that?

Ms. MONTZ. What I am aware of is that most working-age individuals who are enrolled in Medicaid are employed, and those who are not employed—

Mr. GROTHMAN. They may be employed, but they adjust their income to make sure that they are eligible for this benefit.

Ms. MONTZ. I am not aware of that.

Mr. GROTHMAN. Correct?

Ms. MONTZ. I am not aware of that.

Mr. GROTHMAN. OK. Would you agree to limit the program to a certain cost, or is it going to be the sky is the limit, however many people take advantage of the program?

Ms. MONTZ. In our proposed rule, we have proposed to extend eligibility through the definition of—

Mr. GROTHMAN. So, in other words, it is just changing the eligibility standards that could cost the government an unlimited amount of money and that you are not limiting the amount the taxpayer is going to have to pay?

Ms. MONTZ. As I said, we have estimated the cost of proposed changes under the rule.

Mr. GROTHMAN. OK. Thank you.

Mrs. MCCLAIN. Thank you, Mr. Grothman. The Chair now recognizes the gentlewoman from New York. I can never say your name. I apologize.

Ms. OCASIO-CORTEZ. Ocasio-Cortez.

Mrs. MCCLAIN. Ocasio-Cortez. Thank you—

Ms. OCASIO-CORTEZ. Thank you. Thank you very much. That is all right. Thank you so much, Dr. Montz, for joining us here today. I would be remiss, just for us to put into context what this hearing is about, we are having a hearing about why we should not proceed with healthcare coverage and Medicaid coverage to DACA recipients, people who are lawfully here in the United States. And we are having this hearing on the heels of Governor Abbott in Texas issuing an order to Texas troopers to push children and infants into the Rio Grande River. And now we are having a hearing today about why we should push people who were brought here as children off of healthcare coverage.

I cannot proceed without saying that denying healthcare to anyone, I believe, is morally repugnant, but moreover, I also want to highlight a little bit of the relationship here that the United States has with DACA recipients. Dr. Montz, are you aware of how much in Federal, or state, or local taxes that DACA recipients pay?

Ms. MONTZ. I am not.

Ms. OCASIO-CORTEZ. DACA recipients pay about \$6.2 billion in Federal taxes alone. They pay another \$3.3 billion in state and local taxes each year. And given that, I think it also further highlights the relationship that the United States has with DACA recipients, which is that we take, and we take, and we take. We take taxes. We take their employment. We have hundreds of thousands of—yes, 345,000 DACA recipients served as essential workers in 2021 during the COVID pandemic alone.

They serve in our healthcare systems, they serve our elderly, they are nursing home workers, and we are having a hearing today as to why people who are American—they are American—do not deserve healthcare. They are here lawfully. They pay more taxes than Facebook does. They pay more taxes than many of our Federal corporations do. DACA recipients pay for Members of Congress' healthcare more than Facebook does, and we are sitting here having a hearing and saying we are going to return that favor by stripping them of their ability to engage in Medicaid when they are

the ones that are changing our grandparents' sheets in a nursing home. I cannot believe this.

The idea that this would somehow act as an incentive when any DACA eligibility ended in 2007, over a dozen years ago, is laughable. As is, I believe, the premise that the American healthcare system is somehow some boon for working-class people and the best in the world. What in the American exceptionalism is going on here? I do not know a group of people that oftentimes are more patriotic to this country than DACA recipients. They give, and they give, and they give to a country that does not love them back in their actions. Yet 74 percent of Americans, Republican and Democrat, believe in a path to citizenship for DACA recipients, for children who were brought here and made this place their home.

These DACA recipients are emblematic of the American Dream, they are America's proof of concept, and to strip and undermine that is to undermine ourselves in this institution. If there is any individual that believes in stripping Medicaid from DACA recipients, I would like to know if they are willing to give the \$6.6 billion that DACA recipients pay in Federal taxes back to them. Are we willing to refund the \$3.3 billion in state and local taxes that they pay back to them so that they can afford their own healthcare? This should not even be a question right now, and with that, I yield back.

Mrs. McCLAIN. Thank you. The Chair now recognizes Mr. Burlison from Missouri.

Mr. BURLISON. Thank you, Madam Chair. Thanks for this hearing. Dr. Montz, is the U.S. Government in debt?

Ms. MONTZ. I believe we are.

Mr. BURLISON. Do you happen to know, off the top of your head, how much debt that we currently have?

Ms. MONTZ. I do not.

Mr. BURLISON. It is \$32.5 trillion. Do you know how much that is per citizen?

Ms. MONTZ. I do not.

Mr. BURLISON. It is nearly a \$100,000 per citizen. Per taxpayer, it is over \$250,000. If the bill came due today, every taxpaying citizen in the United States would have to fork up \$250,000 because this place blows money, and, you know, have you ever heard of the economist, Milton Friedman?

Ms. MONTZ. Yes.

Mr. BURLISON. OK. Milton Friedman is famous for quoting, and his quote about this issue was that he said, "It is just obvious, should be self-evident to anybody, that you cannot have free immigration and a welfare state." And why would he say that?

Ms. MONTZ. I am not sure.

Mr. BURLISON. Because it is basically a run on the institution. You have individuals who we are now opening up to be charitable to. You know, at the end of the day, when the government taxes someone and then takes that money and gives it to someone, is that charity? Pays for their services, their healthcare.

Ms. MONTZ. I believe we have taxes—

Mr. BURLISON. Yes, we are being benevolent, right? Benevolent. The question at hand is not that benevolence cannot exist in America. The government has a monopoly power on force. When they tax

you, they are forcing you to spend money on the things that government wants to spend money on. They are forcing you to be charitable, to be benevolent with your dollars. I am just beside myself that we would think that this could occur without continuing to bankrupt a Nation that is on the tipping point, on the verge.

So, one of my questions has to do with the fact that when DACA was created under Obama, that he explicitly excluded DACA recipients from Medicaid, CHIP, and ACA benefits. Why did he do that?

Ms. MONTZ. I believe the rule referenced some DHS memorandum and policymaking.

Mr. BURLISON. Well, I do not know that was an answer. You said that they issued a memorandum.

Ms. MONTZ. Sorry. The 2012 rule that used HHS' authority to define lawful presence as it relates to the Affordable Care Act, and CHIPRA 2009 referenced rulemaking done by the Department of Homeland Security in its rationale for excluding DACA recipients from the HHS' definition of lawful presence. As we have put forward in the proposed rule that we recently put out here that we are discussing today, we put forth the Biden Administration's rationale for changing that, for changing that policy interpretation under our authority.

Mr. BURLISON. OK. A question: is DHS currently allowed to add new applicants to DACA?

Ms. MONTZ. I would defer to DHS for that answer.

Mr. BURLISON. So, the way I understand it, the answer is no because a Federal judge held that DACA is unlawful. And so, the question then becomes if it is unlawful, what justification do you have to add individuals on a program that has been deemed by the courts to be unlawful?

Ms. MONTZ. The proposed rule that we put forward reflects current law in which DACA recipients—

Mr. BURLISON. And who directed you on the proposed rule? Did Congress direct you? Do you have direction from Congress?

Ms. MONTZ. It is a proposed rule pursuant to HHS' authority under the Affordable Care Act and CHIPRA 2009.

Mr. BURLISON. Did the White House instruct you?

Ms. MONTZ. Through any general kind of proposed rulemaking process, HHS, the White House, OMB and other affected Federal agencies are involved in the—

Mr. BURLISON. Thank you. At the end of the day, healthcare costs a lot of money. This Nation is nearly broke, and there is not enough to pay for everybody. I yield back.

Mrs. MCCLAIN. Thank you. The Chair now recognizes the gentleman from Texas, Mr. Casar.

Mr. CASAR. Thank you. Just to be really clear about what it is we are debating today, the Biden Administration has chosen to stop discriminating against DACA recipients so they can buy health insurance on the exchanges like everybody else. They pay their taxes, billions in taxes, and thankfully, the Biden Administration has said we are going to stop discriminating against DACA recipients just like we are going to treat them like other legally present people. And Republicans are arguing that we need to undo this really commonsense change from the Biden Administration.

And I have been sitting here this whole hearing, and I still cannot understand from the Republican Majority why they think that DACA recipients, who are paying billions of dollars in taxes to pay for healthcare programs, should not have health insurance and should instead go to the emergency room. So, I will take this moment just to hear from anybody in the Majority to hear why, if they are paying billions in taxes, we should keep discriminating against them.

Or why, if a mom is pregnant, we all chip in, we all participate because we know we want her to be able to take care of her kids. That is why moms who are low income can get access to Medicaid for the folks that are prolife in this group. Why is it that we want moms, who are legally present in this country, to not have access to health insurance? That is the question. It is the only question, if there are any takers.

We have been in bipartisan hearings where we have engaged productively. This is confounding. I want to hear why a mom who is legally present, who has paid her taxes, that we make sure we take care of moms in this country, but then we say, no, DACA recipients, we are going to take your labor, we are going to take your talents, we are going to take your sweat, we are going to take your blood, we are going to accept your brilliance, your talents, your inventions, but, no, if you get pregnant, we are not here, you do not need health insurance. Chairwoman? Anyone?

It is shameful. It is absolutely shameful. Providing people healthcare is not a reward. It is not charity. It is what we do because people go out and work and participate in society, and when my seniors need access to Medicare, I do not say this is a reward or this is charity. I say thank you. This is what we owe to one another, and we should do the same thing no matter who you are or where you are born in this country. It is not a reward. We should just be doing the right thing.

What DACA recipients have been asking for is not charity. It is for us to stop punishing them. They grew up in this country, they immigrated here as children, and they have just said stop punishing us. Let us live like everybody else, and the DACA recipients who are hearing this and their family members should know that you have earned it. You should not have to come and ask us for access to health insurance or to be treated like everybody else. It is something you earn every single day by taking care of your family members, by participating in this country, by taking care of school kids, or at nursing homes, or building amazing things in this country. You already have earned it, and it is just us who have kept you from having it.

But thankfully, the Biden Administration wants to stop this one little bit of discrimination and we have a whole hearing about it, and nobody is willing to say why they want to take health insurance away from a pregnant mom, or why they do not want to let somebody buy health insurance, why they want to send them to the emergency room where it is going to cost us more money and where people will die. We want to stop punishing people. We need to get to a place where we recognize we actually grow our economy, grow our tax base by including more and more people.

Come to Texas, come to a construction site, and tell me what building gets built without immigrant workers. Tell me what inventions get invented without immigrant workers. Just come. But instead, what we see from Governor Abbott is punishing people and, frankly, killing people because he is putting drowning devices in the Rio Grande. A trooper just blew the whistle and said that they are putting out orders that will kill people. We got to stop punishing people, and we should just actually answer the hard question, which is why should politicians keep on running to build their own power by punishing folks and threatening their lives.

So, I want to thank the Biden Administration for doing the right thing on this, and I will still be here waiting to hear just the baseline answer for why we want to take pregnant moms off of healthcare.

Mrs. MCCLAIN. Thank you. And I would like to respond to that is—

Mr. Casar. Please.

Mrs. MCCLAIN [continuing]. We are happy to have that conversation regarding immigration. And I think Congress is the appropriate body of the government to have that conversation. What I think people are irritated with, and I can speak for myself, what I am irritated with is we have three co-equal branches of government to do that. We need to have the appropriate conversations in the appropriate bodies of government agencies, not by with the swipe of a pen with either the agency or the executive branch. So again, sir, I am happy to have those conversations, and that is what—

Mr. CASAR. So, Chairwoman, would you—go ahead.

Mrs. MCCLAIN. If the gentleman will let me finish in response to your question. That is why we need to have the conversations. But what I am tired of is the agencies playing the end-all be-all and with a swipe of a pen reinterpreting definitions or just changing the rules, changing the definitions altogether. I mean, we talk about DACA recipients being children. The average age is 29. So, sir, again, I think you bring up a very, very valid point. This is the body to have those conversations. We have got to stop letting the agencies run with these. We have to follow the law. We are a land and a Nation of laws. So, with that, I yield.

Mr. CASAR. So, Chairwoman, would you co-sponsor a bill with me to say pregnant moms legally present in the country should have access to Medicaid? You know, pregnant moms should not have gone without health insurance.

Mrs. MCCLAIN. And again, sir, I think what we need to get back to is legally present. I am here—

Mr. CASAR. And they are legally present.

Mrs. MCCLAIN. If you could let me respond again, sir.

Mr. CASAR. Go ahead.

Mrs. MCCLAIN. Just finish my response—those are the types of conversations that we need to have. But what I think people are sick of is—let us not redefine the definitions, and maybe we need to spend some time on the definitions. So, again, happy to have that conversation, but with that, I yield to Mr. Langworthy from New York. Thank you.

Mr. CASAR. If we overturn this rule, we are taking pregnant moms off Medicaid.

Mr. LANGWORTHY. Thank you very much, Madam Chair, and I would like to thank Dr. Montz for joining us today to discuss the proposed CMS rule. This rule has far-reaching implications, particularly in our home state of New York where Medicaid is funded through property taxes and many other taxes. New York state firmly holds its place near the very top of the list that has the highest property values, and property taxes are a tremendous burden throughout my district and throughout the entire state.

The consequences of this entire rule are clear. To increase Federal spending and inevitable higher costs will burden hardworking American taxpayers, especially those in New York's 23d congressional District. And while we could engage in debates about costs and figures, it is essential to take a closer look at the actual development of these rules and others like this, just as my colleagues have just discussed. Far too often, we witness unelected officials within this Administration, especially in this particular Biden Administration, pushing their own agenda without giving consideration to due process or the impact on the American taxpayer. It is crucial that we hold the government accountable and ensure that policies are thoroughly examined, transparent and genuinely beneficial to all of our constituents.

So, Dr. Montz, why did CMS decide to develop this rule, and what was the rationale to extend benefits to DACA recipients when the Obama Administration did not do this in 2012?

Ms. MONTZ. Thank you for that question. The CMS is committed to expanding quality, affordable health insurance coverage throughout all of our programs consistent with the law. To that end, we proposed this rule which would align with the current definition. The Department of Homeland Security's longstanding definition of "lawful presence" would align HHS' definition of "lawfully present" with that of the Department of Homeland Security, ensuring that DACA recipients are treated the same as any other recipients of deferred action under the law.

The reason why we pursued this proposed change in addition to those two things I mentioned is, you know, with time and experience, under the DACA Program, we have learned that while the majority of DACA recipients receive health insurance coverage through their employer, still a third of DACA recipients remain uninsured. And we know that uninsurance can lead to certainly detrimental impacts to both individuals, but also our economy.

Mr. LANGWORTHY. So just to be clear, no congressional authority has been granted to CMS to make this rule change, and the Biden Administration has not issued an executive order dictating this rule change?

Ms. MONTZ. Under this proposed rule, HHS is pursuing this proposed rule under our authorities, under the Affordable Care Act and CHIPRA 2009 to define "lawfully present" and "lawfully residing."

Mr. LANGWORTHY. So, in developing this rule, did CMS seek feedback from Customs and Border Protection or U.S. Immigration and Customs Enforcement?



Ms. MONTZ. Just like any development of a proposed rule, that rule is looked at by our HHS, OMB, the White House, and any other affected agencies.

Mr. LANGWORTHY. Yes or no, did you talk to those two specific agencies?

Ms. MONTZ. The Department of Homeland Security did review the role of going through clearance.

Mr. LANGWORTHY. OK. And what was your feedback?

Ms. MONTZ. I would need to get back to you on the specifics.

Mr. LANGWORTHY. OK. With my remaining time, I want to shift and speak about the impacts of this rule and what it would have on the healthcare systems, especially rural hospitals that are already overwhelmed. In the Southwest, we have seen immense stress and overflowed healthcare facilities. Did CMS consider the impacts that this rule would have on these sorts of healthcare facilities?

Ms. MONTZ. In the proposed rule's regulatory impact analysis, we do note that one benefit of this proposed rule would be lower uncompensated care costs borne by the healthcare system that are ultimately borne by local, state, and Federal Government.

Mr. LANGWORTHY. And all the taxpayers. Dr. Montz, New York state pays some of the highest taxes in the country for Medicaid. We spend more than California and Texas combined on the program. How would you justify to my constituents in Western New York, which consists of some of the poorest counties in New York State, that their taxes could go up to pay for illegal immigrants' health insurance when they are struggling to pay for their own?

Ms. MONTZ. What this proposed rule does is propose to modify HHS' definition of "lawful presence" to align with that longstanding definition for the Department of Homeland Security. Under the Affordable Care Act, individuals who are lawfully present are eligible for benefits.

Mr. LANGWORTHY. I yield back, Madam Chair.

Mrs. MCCLAIN. Thank you. The Chair now recognizes Ranking Member Porter.

Ms. PORTER. Many Republican lawmakers seem to believe that President Trump had some great system going at the border when we had kids being separated from their parents, and families being housed in inhumane conditions, and Border Patrol agents put in danger trying to help migrants who are being smuggled by cartels, and that somehow President Biden changed all that awesomeness and started a border crisis. We hear this from them all the time.

Dr. Montz, let us just assume for a moment that there is, and I do not agree with this, a Biden border crisis. That is, like, the Republican's reference in this hearing title. When could that possibly have started? When could the beginning of Biden border crisis possible have started? When was President Biden elected, ma'am?

Ms. MONTZ. I was going say in 2021.

Ms. PORTER. January 20, 2021. Would immigration that happened, let us say, 14 years before that date count as part of the Biden border crisis?

Ms. MONTZ. I do not believe so.

Ms. PORTER. Dr. Montz, tell us, do you know what date Dreamers had to be physically present here in the United States to qualify for DACA?

Ms. MONTZ. 2007.

Ms. PORTER. June 15, 2007. If Dreamers had to be present in the United States 14 years before President Biden was inaugurated in order to become DACA recipients, can you tell me how their immigration in the years before 2007 changed and created a crisis on or after January 20, 2021?

Ms. MONTZ. I cannot.

Ms. PORTER. So, Republicans really cannot blame the DACA Program for any of their grievances, legitimate or, in my opinion, illegitimate, at the border. The DACA Program has nothing to do with what is happening today at our border. So then, what Republicans seem to be saying is that if we provide DACA recipients with healthcare, somehow more people eligible for DACA might cross the border, that might be some bad incentive. So, Dr. Montz, can anyone get DACA status who is not in the United States and has not been living here since 2007? Like, if someone crosses today, can they get DACA status?

Ms. MONTZ. I do not believe so.

Ms. PORTER. What if they crossed, like, 3 years ago? Can they get DACA status?

Ms. MONTZ. I do not believe so.

Ms. PORTER. Five years ago?

Ms. MONTZ. I do not believe so.

Ms. PORTER. Ten years ago?

Ms. MONTZ. Now you are forcing me to do math. I do not believe so.

Ms. PORTER. So, is President Biden expanding who can receive DACA status as part of his rulemaking?

Ms. MONTZ. Our rule strictly pertains to eligibility for CMS health insurance programs.

Ms. PORTER. Eligibility for DACA recipients who have all been here since at least 2007, following the rules, applying for renewals, going to school, and working. So, I do not get it, Dr. Montz. Can you think of any connection between how giving DACA recipients, like children and pregnant women, healthcare incentivizes new immigrants to cross the border if they would not even be eligible for this expanded healthcare that we are talking about?

Ms. MONTZ. I cannot.

Ms. PORTER. So, DACA did not cause a border crisis because stuff that happened before 2007 does not create a border crisis today. And two, giving DACA recipients the healthcare that they need to continue to work, and to earn, and to pay taxes, and to start businesses, and to flourish is not going to increase border crossings. This hearing is called "Why Expanding Medicaid to DACA Recipients Will Exacerbate the Border Crisis." I am sorry, there is no real connection between healthcare for DACA recipients who have been here since before 2007 and anything that is happening at our border, just no connection at all.

I want to close by pointing out, in response to one of my colleagues on the other side's comment about what border agents had told him, the Minority has done numerous hours of questioning of

U.S. Border Patrol chief agents. And during all of those numerous hours of questioning, which are transcribed interviews that anybody can read, not one U.S. Border Patrol chief agent mentioned access to healthcare as a reason for migration to the Southwest border or a concern for border security. I yield back.

Mrs. MCCLAIN. Thank you, Ranking Member Porter. The Chair now recognizes Dr. Foff.

Ms. FOXX. Thank you, Madam Chair. You know, I think it is a stretch to say that there is no connection at all between people receiving free healthcare in this country who are here illegally, people here illegally, getting free healthcare and there not being people thinking, oh, maybe I could get that free healthcare, too.

Dr. Montz, thank you for being here today. The number of people illegally crossing the border has dramatically increased in recent years, nearly 3 million crossings in 2022, a full million more than occurred in 2021, which was itself a record year for crossings. Do you think that this unilateral expansion of Medicaid by CMS could lead to an additional increase in illegal immigration?

Ms. MONTZ. It is the Department of Homeland Security's long-standing policy that individuals that are subject to deferred action are considered lawfully present in this country. What our proposed rule does is propose to modify the definition of "lawfully present" as it relates to our CMS healthcare programs to ensure that DACA recipients, who are individuals who came to the United States as children and have resided here—

Ms. FOXX. OK. Just answer my question. So, it is the Department of Homeland Security's considered opinion that they can change the definition of who is legal and who is illegal in this country. Is that what you are saying?

Ms. MONTZ. I could not speak for the Department of Homeland Security. What I can say is that under this proposed rule, HHS is using its authority under the Affordable Care Act and CHIPRA 2009 to propose—

Ms. FOXX. Just like the Administration thought it had the authority to pay off student loans under a law passed in 2011. So, would it be fair to call the prospect of receiving free healthcare and other benefits an incentive for people to illegally cross into the United States?

Ms. MONTZ. Under our proposed rule that focuses on DACA recipients, individuals would have had to have resided in the United States since 2007.

Ms. FOXX. OK. So, DACA was ruled unlawful by the Fifth Circuit Court in October 2022. In that case, the state of Texas argued DACA was not only unlawful, but that the program cost the state hundreds of million dollars in healthcare and welfare costs. Can you tell me how much we can expect this unilateral expansion of Medicaid to cost both the states themselves and the Federal Government?

Ms. MONTZ. Our proposed rule includes a regulatory impact analysis, and we estimate for the roughly 35 states that have taken up the option to cover lawfully present pregnant women and children in the Medicaid and CHIP Program, that that would cost about \$100 million total a year.

Ms. FOXX. OK. Well, that is what I understand too, that it would be about \$100 million, but, again, that it is a program that we believe is illegal. Just last week, this Committee passed the Unfunded Mandates Accountability and Transparency Act, UMATA, a bill I introduced, which aims to prevent exactly this scenario where the Federal Government passes significant costs onto the states, \$40 million, we believe, in this case. What kind of input did CMS seek from states before advancing this rulemaking that will cause state budgets an extra \$40 million in 2024?

Ms. MONTZ. Thank you for that question. I would note that this is a proposed rule and the comment period just closed, and we are looking at comments that we have received on the rule. I would also note what I indicated before, which is under CHIPRA 2009, it is a state option to cover lawfully residing pregnant individuals as well as children, that continue—nothing in the rule changes. It is a state option.

Ms. FOXX. I have a quick follow-up. In 2012, CMS made a specific decision not to extend healthcare benefits, like Medicaid, CHIPS, and the ACA, to DACA recipients. What does the Agency believe has changed, besides DACA being declared unlawful, to evidence that such a dramatic expansion of eligibility? What has changed?

Ms. MONTZ. Our proposed rule references several reasons why we are proposing this change. First is that CMS is committed to expanding access under the law. Second is that the Biden Administration has indicated commitment to the DACA Program and DACA recipients. And the Department of Homeland Security recently published a final rule that reaffirmed that DACA recipients, like other recipients of deferred action, are considered lawfully present. One of the reasons why we are pursuing this rule is to better align with DHS' definition of "lawfully present." And finally, we have through time and experience come to understand that while the majority of DACA recipients receive health insurance coverage through their employers, still a third remain uninsured. And we want to ensure that DACA recipients are able to keep themselves healthy and productive in the work force.

Ms. FOXX. Thank you. Madam Chair, I yield back.

Mrs. MCCLAIN. Thank you. The Chair now recognizes the gentleman from Pennsylvania, Ms. Lee.

Ms. LEE. Thank you, Madam Chair. Folks, this hearing, like so many before it, is nothing more than par-for-course fear mongering by my Republican colleagues. To be very clear, we are not talking about millions of people at the border, a racist myth disproven annually at this point. We are talking about closing a gap in healthcare coverage for about 129,000 people, people with a legal status in this country.

Healthcare is a human right, and it should be available to everyone who resides in this country, no matter who they are. As those of us who care for our fellow man continue to push toward a Medicare for All system, a stop on the fight is fixing a technical wrong, which was not extending the Affordable Care Act to DACA recipients back in 2012. This should be an easy fix. Healthcare coverage ensures that people are accessing services before they are critically sick. It encourages the use of preventative resources, like cancer

screenings and routine vaccinations, something that people who grew up with insurance often take for granted.

Dr. Montz, what are the collective public health benefits of expanding healthcare coverage to more people?

Ms. MONTZ. Thank you for that question. What studies have indicated and certainly experience shows is that when an individual is insured, that individual is better able to keep themselves healthy, for example, go to the doctor to receive preventive services. Keeping yourself healthy also means that you can be more productive at your job and the work force for the economy. Studies have shown that individuals who are insured have 70 percent lower rates of absenteeism in the work force. Additionally, from a, you know, global economy perspective for the United States, being insured means that you are not incurring uncompensated care costs to the healthcare system, which, I have said before, are ultimately incurred by local, state, and Federal Government.

Ms. LEE. Thank you. Our Republican colleagues pretend that DACA recipients are not already here, paying taxes, picking up kids from school and accessing our public health system. This fix not only helps people who have legal status in our country, but all Americans. We are one of the only Western nations that does not have universal healthcare. I do not think our system is as appealing as Republicans are making it out to be. Further, many DACA recipients receive health insurance through work and rely on their benefits, just like nearly everyone on this dais today. Others live in states like California or New York, states that have successfully allowed DACA recipients to enroll in Medicaid and other state-funded plans for years.

What we are talking about today is a proposed rule to extend Affordable Care Act benefits to an estimated 129,000 uninsured DACA recipients. And make no mistake, these individuals are still getting sick and going to taxpayer-funded clinics and emergency rooms, but just like everyone else in this country, they deserve more than just emergency care. They deserve affordable prescription drugs and access to comprehensive healthcare and preventative treatments.

Dr. Montz, knowing that many DACA recipients already rely on our healthcare system, why would it be beneficial to expand their access to affordable insurance?

Ms. MONTZ. Thank you for that question. As I said, there are multiple benefits to being insured versus uninsured, including healthier, more productive life, your, you know, limited risk, receiving high medical bills that you are not able to pay for that then are incurred by the health insurance system.

Ms. LEE. Let me ask. When we are talking about the expansion of Medicaid, who would it apply to and about how many people would that include?

Ms. MONTZ. Our proposed rule estimates that in the roughly 35 states that have elected this option under CHIPRA 214 to cover pregnant individuals and children who are lawfully residing, that that would extend coverage to about 13,000 individuals.

Ms. LEE. Thirteen thousand individuals. Would those states be required to expand healthcare coverage for Medicaid?

Ms. MONTZ. The CHIPRA 214 coverage option is an option for states. They are allowed to cover or not cover lawfully residing.

Ms. LEE. Thank you. Just to conclude, the Affordable Care Act takes important steps to ensure that people are not denied basic healthcare because of their gender, disability status, zip code, or income, but we still need Medicare for All, and we will keep fighting for it. But cutting healthcare is par for the course for the so-called pro-life party. This is just another attempt to gut and block access to programs that help keep vulnerable moms and babies alive as our maternal mortality crisis and rates keep arising. To oppose such a small but important change shows a blatant disregard for human life because no one should be without healthcare. I yield back.

Mrs. McCLAIN. Thank you. The Chair now recognizes the gentlelady from Florida, Mrs. Luna.

Mrs. LUNA. The Centers for Medicare and Medical Services has proposed a new rule that would reinterpret the term “lawfully present” to expand taxpayer-funded Federal health benefits, specifically Medicaid, Affordable Care Act healthcare coverages, and the Children’s Health Insurance Program, to DACA recipients. Expanding benefits in this way would not deter illegal immigration. In fact, it encourages more individuals to take the dangerous trek across our borders illegally. And to put the cost of illegal immigration into perspective, illegal immigration has a net cost of approximately \$151 billion per year. This cost is not incurred by illegal aliens that are coming to United States but instead paid for by hardworking Americans, while those breaking the law have zero financial accountability.

This is not the only costs the American taxpayer have taken on. In fact, the U.S. Government spends more than \$23 billion annually on Federal medical expenditures and which services are used by illegal aliens to participate. One service costs taxpayers over \$5 billion in medical assistance for those born of illegal aliens. Even more concerning are the incentives that those exploiting birth tourism and international commercial surrogacies receive, which will only worsen our immigration crisis that we are facing in our country and defraud the American people. Dr. Montz, are you aware of what birth tourism is?

Ms. MONTZ. I am sorry. Could you repeat the question?

Mrs. LUNA. Are you aware of what birth tourism is?

Ms. MONTZ. No.

Mrs. LUNA. OK. So, birth tourism is when a pregnant woman will come to the United States, basically about to give birth, have their child here, they might not be a citizen, and then ultimately end up leaving the country. Meanwhile, the child will receive citizenship status, but it is a huge problem in this country, mainly because what we are finding is other countries that are more nefarious, like Russia and China, are exploiting the system. Are you aware that some nations that are participating in these illegal activities and exploiting birth tourism and international commercial surrogacy practices are from Russia and China?

Ms. MONTZ. I am not aware of that.

Mrs. LUNA. Are you aware that these two countries have long histories of anti-American espionage activities?

Ms. MONTZ. I would not have any knowledge of that.

Mrs. LUNA. You do not know that Russia does not like us? That is a question.

Ms. MONTZ. I know that Russia is currently at war with Ukraine.

Mrs. LUNA. So, you do not like Russia, correct?

Ms. MONTZ. I do not have any particular opinions that pertain to this hearing.

Mrs. LUNA. OK. Are you aware that China does not like the United States and has engaged in espionage activities against United States?

Ms. MONTZ. I do not have any personal professional knowledge of that.

Mrs. LUNA. OK. Well, I suggest you read Breitbart. Do you believe that allowing these practices puts the national security of the United States at risk?

Ms. MONTZ. I do not believe so.

Mrs. LUNA. You do not believe that allowing a country that engages in espionage against the United States, exploiting birth tourism could potentially open us up for risk?

Ms. MONTZ. I do not have the professional knowledge to opine on that issue.

Mrs. LUNA. Do you believe that individuals from these countries and illegal aliens in general should be allowed to exploit the medical system that you help oversee?

Ms. MONTZ. Again, I am here to talk about the HHS' proposed rule to extend benefits to DACA recipients to ensure that their treatment is in line with other deferred action recipients.

Mrs. LUNA. So, you cannot answer the question. Do you have an opinion on any of that?

Ms. MONTZ. Again, I am here to talk about the proposed rule that CMS has put forward. I am happy to take your questions.

Mrs. LUNA. OK. What would be your solution then for that proposed rule?

Ms. MONTZ. Under the proposed rule, this pertains to DACA recipients. As you know, DACA recipients are a defined population of individuals that came to the United States as children and have been lawfully residing here since 2007.

Mrs. LUNA. When Obama created the program in the Rose Garden?

Ms. MONTZ. I am not familiar with that.

Mrs. LUNA. OK. Can you just briefly tell me about how Nancy Pelosi treated DACA recipients when given the option to make them legal?

Ms. MONTZ. What I can talk about is the proposed rule. What we have proposed to do is further align HHS' definition of lawfully present with that of the Department of Homeland Security's longstanding definition—

Mrs. LUNA. And what is that definition?

Ms. MONTZ. That definition includes all individuals who are subject to deferred action.

Mrs. LUNA. OK. In my opinion, ma'am, you are obviously in charge of a very important program, but this program was created with the intent of making it political, and let us be clear. Whenever they show pictures of DACA recipients, they typically tend to show

Hispanic children when, in actuality, it is more than just the Hispanic demographic. So, I guess the question for you would be, you are in charge of a program that is costing American taxpayers millions and billions of dollars, and yet you are sitting here refusing to answer questions about whether or not that is fair or there is certain terminology being used for these programs.

I guess my suggestion to you is that our rules that we have in place are in place for a reason, and, ultimately, what ends up happening is when you have these programs that are exploited, it does harm people long term. Chairwoman, I yield my time. Thank you.

Mrs. McCLAIN. Thank you. The Chair now recognizes the gentlelady from Texas, Ms. Crockett.

Ms. CROCKETT. It never ceases to amaze me what will come out of some of my colleagues' mouths. So, it was suggested that you should read Breitbart, and I could not let it go. And so just for the general public, because I do not want anybody to believe this is a good idea, I just got on Google, which if you have a cellphone, we can all do that. Breitbart News Network is an American far-right syndicated news opinion and commentary website founded in mid-2007 by American conservative commentator, Andrew Breitbart. Breitbart News' content has been described as misogynistic, xenophobic, and racist by academics and journalists. So, I do not know that that is where I want anybody to take their cues from, especially when they are trying to run this country. That part, and then let me clear up another little part real quick. DACA is political is what I heard just now. Just to be clear, you have testified that DACA recipients are considered to be lawfully present, correct?

Ms. MONTZ. That is correct. I have said that under the Department of Homeland Security's longstanding definition, DACA recipients are considered lawfully present—

Ms. CROCKETT. Right. They are not considered illegals. They are considered to be lawfully present, but "lawfully present" does not mean that you have the right to vote, correct?

Ms. MONTZ. I would defer to—

Ms. CROCKETT. Well, I will give it to you. Only U.S. citizens can vote, and so, therefore, this idea that it is political or as if the Biden Administration is about to rack up some votes, is just another falsehood. In fact, all we continue to get is half-baked ideas, or half lies, or half-truths, whichever way you want to look at it. Let us talk about the half-baked ideas first, though. My colleague, Ms. Lee, brought up the fact that we are talking about expanding access to pregnant women and children, correct?

Ms. MONTZ. In the Medicaid Program, yes.

Ms. CROCKETT. OK. And this is only in states that have extended Medicaid, correct?

Ms. MONTZ. This is under the proposal. This would impact the roughly 35 states who have chosen the option to cover lawfully residing pregnant individuals as well as children.

Ms. CROCKETT. OK. So, we are talking about pregnant women, and have you heard of the Dobbs decision?

Ms. MONTZ. I have.

Ms. CROCKETT. OK. All right. So, we have a party that says, seemingly, what would Jesus do. Seemingly, that is how they gov-



ern themselves, and so they have decided that all women should just bear all the children and not have any rights to decide what they are going to do. And so even under this set of circumstances, they think that it is great that all women should just be pregnant, but they do not want them to have any access to healthcare. That sounds like a half-baked idea to me to say that forget life when it comes to, say, the life of the mother, because that is a real thing, because if you have healthcare, and I do not know how deeply you have delved into this, but we have been talking, and when I say “we,” I mean the Democrats, have been talking about the fact that we have a terrible maternal mortality rate in this country. And when you start talking about people of color or people of lower social economic means, that rate goes up even more astronomically. And, so the idea that people are already dying—

Let me be clear. Are there people that tend to be at a higher risk when they do not have access to healthcare when they are pregnant?

Ms. MONTZ. Yes, it is. It is our belief that being insured leads to better health outcomes.

Ms. CROCKETT. Thank you. Let us also just talk about these half-truths. Really they are just full lies. I was trying to be nice. The reality is that they are trying to make this into the immigration boogeyman that they always talk about. Yet, we have yet to have a bill on the Floor that has been proposed in the form of a policy around immigration. Instead, what they want to do is continue to treat immigrants as if they are the big, bad boogeyman.

And so we are sitting here and we are talking about a program, and you have remained composed, so let me compliment you for that because my colleagues on the other side of the aisle continue to ask you about the border. What in this rule change has anything to do with the border? Just give me one thing that it has to do with the border, one.

[No response.]

Ms. CROCKETT. OK. Exactly. It does not, right? It does not, but for some reason they believe if they say it, that is true. I would love to live in a world where whatever I say somehow is true, but the reality is that if they want immigration reform, they are in control of the House, and they can put a bill on the Floor, but they do not want to do that because they want to continue to say that immigrants are the big bad boogeyman.

Thank you for your service. This has nothing to do with immigration. It has everything to do with being good citizens, and good lawmakers, and good public servants who actually just give a darn about people. Thank you.

Mrs. MCCLAIN. Thank you. I now recognize myself. I think what it has to do, to answer your question, is incentives. I think people are logical and people do things that they believe is in their best interest, and we incentivize people and we incentivize their behaviors, so that is what it has to do with immigration. When we incentivize certain behavior, people respond in a logical fashion.

But with that said, Dr. Montz, in 2012 the Obama Administration created the Deferred Action for Childhood Arrival Program via agency memorandum without any authorization from Congress. But notably, the Obama Administration was careful to clarify that

DACA recipients would not be eligible for participation in Federal healthcare benefits, such as Medicaid, CHIP, and Obamacare. And again, what I want to point out is we have three co-equal branches of government, and we have to stop changing the definitions, and we have to follow the rules of law. And if we do not like the laws, then we have the ability and the authority to change those laws.

Now, CMS has suddenly reversed course and has concluded that DACA recipients should receive Medicaid, CHIP, and Obamacare eligibility, OK? Dr. Montz, did CMS base its decision to reinterpret the Agency's definition of "lawful presence" on a 2021 survey which found that 34 percent of DACA recipients reported not to be covered by health insurance?

Ms. MONTZ. As I have mentioned to a few of your colleagues, as we stated in the proposed rule, we have had several reasons for making this proposed change to treat DACA recipients the same as other recipients of deferred action.

Mrs. MCCLAIN. So, is that a "yes" or "no?"

Ms. MONTZ. Yes, one of the reasons—

Mrs. MCCLAIN. OK. Under the law, are DACA recipients U.S. citizens or lawful permanent residents?

Ms. MONTZ. Under longstanding DHS policy, DACA recipients, just like other recipients of deferred action, are considered lawfully present.

Mrs. MCCLAIN. They are lawful. So, are they U.S. citizens?

Ms. MONTZ. They are not U.S. citizens.

Mrs. MCCLAIN. OK.

Ms. MONTZ. They are lawfully present.

Mrs. MCCLAIN. Yet under the law, do we owe a legal duty to provide healthcare to DACA recipients over American citizens?

Ms. MONTZ. Under the Affordable Care Act, eligibility for the exchanges, as well as premium tax credits and cost sharing reductions, is extended to U.S. citizens, U.S. nationals, and those that are lawfully present.

Mrs. MCCLAIN. So, the answer is yes?

Ms. MONTZ. Yes. The Affordable Care Act covers those that are lawfully present.

Mrs. MCCLAIN. OK. But do we have a legal duty to provide their healthcare over the American citizens?

Ms. MONTZ. What this rule does is extend eligibility. It does not restrict eligibility for any other categories.

Mrs. MCCLAIN. OK. So, I am a firm believer in following the law. Some laws I do not like. Some laws I do not agree with. Unfortunately, we all took an oath to uphold the law. Dr. Montz, are you aware that in 2022 the Fifth U.S. Circuit Court of Appeals affirmed that DACA was unlawful?

Ms. MONTZ. I am aware that there is an injunction for any new DACA recipients.

Mrs. MCCLAIN. OK. Let me try this a different way. Can you tell me how many illegal border crossings the U.S. Border Patrol recorded in Fiscal Year 2021?

Ms. MONTZ. I would defer that answer to—

Mrs. MCCLAIN. Let me help you. It is 6.5 million illegal border crossings. So, what does that have to do, it has to do with incentives, right, and with all of those incentives comes money, and that

money comes at the cost. I have two issues. Who is going to pay, and if we do not like the law, it is up to this body in Congress to change the law. We have got to stop allowing these agencies to re-define and reinterpret the definition. Can you tell me did CMS at all consider how external Federal benefits to DACA recipients would spur future waves of illegal immigration? Did that come into your status at all or your decision at all?

Ms. MONTZ. We endeavor to do our proposed rulemaking under current law, and, as you know, DACA recipients—

Mrs. MCCLAIN. I am sorry. I am running out of time. Yes or no, did that play into your decision at all?

Ms. MONTZ. DACA recipients have been here since 2007, and so we did not believe that there is any impact.

Mrs. MCCLAIN. OK. So, no. So, can you please identify the section of U.S. Code that provides CMS with the authority to set U.S. immigration policy?

Ms. MONTZ. HHS does not set immigration policy. However, we have the authority to set the definition of “lawful presence” as it relates to HHS’ programs under the Affordable Care Act.

Mrs. MCCLAIN. OK. So, there is no code that provides CMS with the authority to set the immigration policy? Just, I want to hear that.

Ms. MONTZ. HHS does not set immigration policy.

Mrs. MCCLAIN. All right. So in my opinion, you altered the law in direct contradiction to the decision of the Federal court judge which stated that DACA was unlawful, and you did not consult with the agencies who oversee our immigration system or whether this would exacerbate President Biden’s border crisis. Instead, you chose to rewrite the law based on a single study that said 34 percent of DACA recipients who are here in violation of law had difficulty getting healthcare. And I am out of time, so I want to be respectful to my other colleagues.

So with that, I yield to Ms. Lee for her closing statement. Thank you so much.

Ms. LEE. Thank you, Madam Chair. All Americans deserve healthcare, and DACA recipients deserve to have a secure and healthy future in our country. Today we are here because too many Republican lawmakers on this Committee reject this vision and continue to fear monger, lying to the American people to buy into their twisted thinking. Again, Republicans are holding a hearing to deny 129,000 people healthcare. Sad.

Republicans like to paint a picture of America in crisis, millions of people lined up at the border all coming to destroy your way of life. They tell you that if you do not support their policies, the crisis will only get worse. But today, we have not heard any compelling argument that there is any kind of connection between DACA recipients being provided with healthcare and our failing immigration system. DACA recipients cannot just become DACA recipients to get healthcare.

So, let me explain the law. DACA recipients would have had to, one, have come to the United States back in 2007; and two, have been younger than 16 in order to qualify today for healthcare under the Biden Administration’s proposed rule. Unless migrants who come or who want to come to the United States for healthcare

are going to go back in time to meet those qualifications, this rule is not going to incentivize any new ones to come to our country for healthcare. The coverage under this rule does not apply to them.

Today, I am disappointed to say that not only has this hearing been disingenuous with the American people, it has wasted an opportunity to go after real waste, fraud, and abuse. It has wasted an opportunity to make our government, our economy, and our country work better. Next time the Subcommittee meets, let us do better.

In closing, Madam Chairwoman, I have statements with me today from pediatricians, budget and policy experts, and immigration rights advocates all stating that President Biden's proposed rule makes our healthcare statements stronger and affirms that allowing more people to have health insurance is beneficial to our collective well-being.

I ask unanimous consent to enter these three statements into the record: one from the National Immigration Law Center; another from the Center on Budget and Policy Priorities; and another jointly from the American Academy of Pediatrics, Center for Law and Social Policy, First Focus on Children, Georgetown Center for Children and Families, Kids in Need of Defense, the Children's Partnership and the Young Center for Immigrant Children's Rights.

Mrs. MCCLAIN. Without objection.

Ms. LEE. Thank you. I yield back.

Mrs. MCCLAIN. Thank you, Ms. Lee. The reason why we are having this hearing is because it is law, right? We are a land and a Nation of laws. Today's hearing demonstrated that the Biden Administration is prioritizing illegal immigrants over the American people. This Administration has chosen to reward those who enter the country illegally, with release from custody in many cases, and now with access to public benefits at the cost of taxpayers and Americans who need it.

We learned that CMS' proposed rule to expand access to Medicaid, CHIP, and Obamacare to DACA recipients will cost American taxpayers millions per year. Last I checked, this body is supposed to be the steward of American taxpayer dollars. That is our job, and that is what we are doing. CMS' own estimates show that Medicaid and CHIP state expenditures would increase by \$40 million, and Federal expenditures would increase by \$40 million in just the first year. Total expenditures would then balloon up to \$130 million per year, and that does not even include the proposed Obamacare expansion which will cost another \$15 million to \$20 million annually.

Now, I just say that because people have a tendency when they spend other people's money, the taxpayers' money, not to respect it as much as it is their money. That is our job. As messy as it may be, that is our job to be stewards of the American taxpayers' money. I am curious on how we are going to pay for this. Last I checked, we have a major deficit in this country, and I have yet to hear any explanation of how we are paying with this.

So, forget about the changing of the rules. Forget about the reinterpretation. Now we have the cost. It is our responsibility to ask those tough questions, and I will remind everybody that DACA

stands for “Deferred Action for Childhood Arrivals.” That means that DACA recipients are still and always have been unlawfully present in the United States. We may not like that, people may not agree with that, but that is the law. And it is up to this chamber to change it, not reinterpret the definition with the stroke of a pen. They would not have even been eligible for Deferred Action otherwise.

Lawless Democrats have deferred the prosecution of these immigration cases, despite Federal judges holding DACA is unlawful and DHS being prohibited from accepting further applicants, and, again, we may not like that, but it is the law. Only in Biden’s America can bureaucrats defy Congress and the courts to change the laws and extend benefits to individuals who are unlawfully present in the United States. There is already a crisis at the Southwest border caused by the Biden Administration’s failed policy. This proposed rule would only further signal to the world that illegal immigration is rewarded by the current Administration. We put a welcome mat at the door. That is why you see the immigration numbers skyrocketing.

The Biden Administration sees no difference between an American citizen and a non-citizen unlawfully present in this country. That, for me, is simply unacceptable. We should not reward individuals unlawfully present in the United States with benefits reserved for American citizens and those who lawfully present in this country. Even President Obama’s HHS knew that expanding public health benefits to DACA recipients was unlawful and a bad idea, but in Biden’s America, it seems that wrong is right and up is down, and 2 plus 2 equals 5, and all we have to do is change the definition and say it is so.

Illegal aliens are entitled to the same taxpayer-funded health benefits as American citizens? That does not comprehend with me. I will continue to fight to fix Biden’s border crisis and to fight against the Administration’s policies that reward those who violate the law because I believe in the rule of law. And make law-abiding citizens pay for it, it does not make sense.

In closing, I want to thank our witness once again for your important testimony.

And without objection, the Members will have 5 legislative days to submit materials and to submit additional written questions for the witnesses, which will be forwarded to the witnesses for their response.

Mrs. MCCLAIN. If there is no further business, without objection, the Subcommittee stands adjourned.