

Congress of the United States
Washington, DC 20515

April 23, 2020

Mr. Kenneth T. Cuccinelli
Senior Official Performing the Duties of the Director
U.S. Citizenship and Immigration Services
20 Massachusetts Avenue, N.W.
Washington, DC 20001

Dear Mr. Cuccinelli,

In September 2019, U.S. Citizenship and Immigration Services (USCIS) announced that it had reinstated consideration of non-military deferred action requests, a form of prosecutorial discretion by which USCIS can permit individuals and their families with compelling circumstances to remain in the United States without fear of imminent removal. Many of these requests are made by individuals with major medical illness, and their families, seeking to remain in the United States while receiving treatment. The USCIS decision to reinstate consideration of non-military deferred action requests was a reversal of its abrupt position one month earlier to halt consideration of these requests. We write to express our concern that the agency has not in fact re-committed to the full and fair consideration of non-military deferred action requests, and to seek information about USCIS's current policy.

Non-military deferred action is a subset of “deferred action” — “an act of administrative convenience to the government which gives some immigration cases lower priority.”¹ Through these requests children and families suffering from severe medical conditions such as cancer, epilepsy, cerebral palsy, muscular dystrophy, and cystic fibrosis have sought deferred action based on compelling medical circumstances (commonly referred to as “medical deferred action”).² In many cases, the treatments these individuals have received while in the United States have proven lifesaving.³

But in August 2019, without any public notice, USCIS suddenly ceased adjudicating all non-military deferred action requests, including requests for “medical deferred action.” At the time, USCIS provided no public guidance about its decision to summarily reject applications for non-military deferred action. Rather, applicants from across the country received form letters from USCIS denying their requests. The letters explained that, if applicants did not leave the United

¹ 8 C.F.R. § 274a.12(c)(14).

² See Shannon Dooling, *Trump Administration Ends Protection For Migrants' Medical Care*, NPR (Aug. 27, 2019), <https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care>.

³ See Errol Barnett, *Immigrant children with life-threatening illnesses facing possible deportation*, CBS (Aug. 29, 2019), <https://www.cbsnews.com/news/immigrant-children-getting-life-saving-medical-care-in-us-facing-deportation-2019-08-29/>; Michael Levenson, *'I feel like I'm signing my son's death warrant.'* *Children at Boston hospitals face deportation*, BOSTON GLOBE (Aug. 26, 2019), <https://www.bostonglobe.com/metro/2019/08/26/immigrant-families-with-severely-ill-children-face-deportation-advocates-say/EMXZQURTzE0U25L6xQIYBN/story.html?event=event12>.

States within 33 days, they could be “removed from the United States and found ineligible for a future visa or other U.S. immigration benefit.”⁴

These unexpected summary denials understandably caused anguish and fear for families whose loved ones are receiving treatment for potentially fatal diseases, especially those for whom life-saving treatment outside of the United States is unavailable. In response to widespread public backlash to the cruelty of the USCIS decision — including during a congressional hearing and in correspondence from us and dozens of our colleagues⁵ — the agency announced that it was reversing course. In September 2019, the Department of Homeland Security (DHS) announced that USCIS would resume consideration of non-military deferred action requests on a discretionary, case-by-case basis, and would re-evaluate applications summarily denied in August.⁶

We welcomed the DHS announcement that it had reversed this policy. But it is now unclear that USCIS is actually following through on it.

The *Philadelphia Inquirer* recently reported on a “spate of [medical deferred action] denials” coming out of the USCIS Philadelphia field office.⁷ In one case highlighted in the *Inquirer* report, USCIS denied requests from the parents of a two-year-old boy with cancer. The young boy’s best chance for survival depends on continuing to receive chemotherapy and care at St. Christopher’s Hospital for Children in Philadelphia. Returning to Mexico with his parents — who remain his primary caretakers — may be “[his] death sentence,” according to the child’s mother.⁸

Immigration attorneys from across the country have contacted our offices with similar stories. Although USCIS has approved a handful of applications, it has denied or left pending indefinitely many others — both first-time requests and renewals. Moreover, some applicants who received summary denials last summer have received no notification from USCIS that the agency has reopened their cases.

These reports are deeply concerning. We fear that USCIS has renewed consideration of medical deferred action requests in name only. As the seriousness of the coronavirus disease 2019 (COVID-19) pandemic deepens, medical deferred action is as important as ever. People with

⁴ U.S. CITIZENSHIP & IMMIGR. SERVS., U.S. DEP’T OF HOMELAND SEC., DECISION LETTER (2019), https://d279m997dpfwgl.cloudfront.net/wp/2019/08/Redacted_MedDA_denials.pdf; see also Shannon Dooling, *After Receiving Denial Letters, Immigrants Fear End Of Medical Deferral Program*, WBUR (Aug. 26, 2019), <https://www.wbur.org/news/2019/08/26/medical-deferment-immigration-program-ended>.

⁵ Letter from Senator Edward J. Markey, Senator Elizabeth Warren, Representative Ayanna Pressley, et al., to Kevin McAleenan, Ken Cuccinelli, and Matthew T. Albence (Aug. 30, 2019), <https://www.markey.senate.gov/news/press-releases/lawmakers-lead-bicameral-investigation-into-the-elimination-of-medical-deferred-action>.

⁶ See Rachel Frazin, *Federal agency to resume processing some deferred-action requests for migrants*, THE HILL (Sept. 19, 2019), <https://thehill.com/latino/462233-federal-agency-reverses-decision-to-end-deferred-deportations-program-for-migrants>.

⁷ Jeff Gammage, *A 2-year-old boy is getting cancer treatment in Philly. His parents may be deported to Mexico*, PHILA. INQUIRER (Feb. 27, 2020), <https://www.inquirer.com/news/deferred-action-uscis-cancer-migrant-immigration-mexico-20200227.html>.

⁸ *Id.*

chronic or underlying health conditions are at greater risk from COVID-19.⁹ The United States cannot in good conscience force seriously sick or vulnerable individuals to travel, which also increases their risks.¹⁰ And the pandemic has undoubtedly exacerbated the inability of patients' home countries to provide medical care.

USCIS has rightly, temporarily closed its local field offices to in-person services in order to prevent spreading COVID-19. However, while in-person services are reduced, it is also important to ensure that USCIS stakeholders have accessible means of making emergency requests with the local offices. Further, we believe USCIS must proactively maximize its use of deferred action during this global pandemic. Accordingly, we request that USCIS provide applicants with accessible means to apply for deferred action by email, and issue confirmation of receipt within 3 business days. This will enable individuals to obtain critical services in these incredibly tumultuous times.

Compounding our concerns, DHS recently responded to a request we made more than six months ago, and in it, indicated that USCIS is "unable to provide [the] formal data" we requested as "tracking and data are not in place for non-military deferred action requests."¹¹ We find this revelation extremely troubling. USCIS has stated that it receives approximately 1,000 deferred action cases annually, and as previously noted, summarily closed all non-military cases last August.¹² These statements and actions seem to contradict the assertion that USCIS has no mechanism to track these cases. Further, given the life-and-death nature of many medical deferred action requests and the array of stakeholders demanding greater transparency regarding this discretionary determination, we would expect USCIS to have begun collecting this data. We therefore ask that you reevaluate the assertion that DHS is unable to provide data on non-military deferred action requests, and if necessary, immediately rectify this oversight. We also ask that you respond to the following questions by May 1, 2020:

1. What procedures are in place for the submission and adjudication of non-military deferred action requests for the duration of the coronavirus pandemic?
2. How many non-military deferred action requests (excluding Service Center requests) has USCIS received from Fiscal Year 2015 to date, and how many has USCIS approved? Please break down the requests by fiscal year, and field office, and identify the number of these requests that pertain to medical need.
3. What is USCIS's current policy with respect to deferred action, within both the medical need and other contexts? Please provide us with any directives, instructions, policies, memos, or

⁹ Roni Caryn Rabin, *Coronavirus Threatens Americans With Underlying Conditions*, N.Y. TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/12/health/coronavirus-midlife-conditions.html>.

¹⁰ *Id.*

¹¹ Letter from DHS Acting Assistant Secretary for Legislative Affairs Aaron Calkins to Senator Edward J. Markey, et al. (Mar. 24, 2020).

¹² See Rachel Frazin, *Federal agency to resume processing some deferred-action requests for migrants*, THE HILL (Sept. 19, 2019), <https://thehill.com/latino/462233-federal-agency-reverses-decision-to-end-deferred-deportations-program-for-migrants>.

guidance, written or communicated by any other means, relating to the current policy on deferred action.

4. Since purportedly reinstating consideration of non-military deferred action requests on September 19, 2019, how many such requests has USCIS received, approved, and denied?
 - a. How many applicants requested deferred action based on medical need? How many applicants requested deferred action on other bases? Please provide this information disaggregated by adjudication outcome.
 - b. How many were initial requests for deferred action? How many were renewal applications? Please provide this information disaggregated by adjudication outcome.
 - c. Has USCIS issued guidance related to the relief period? Who determines the period of relief?
 - d. Regarding *approved* deferred action requests, please provide disaggregated data indicating the period of relief.
 - e. Regarding *pending* deferred action requests, please provide the dates on which USCIS first received them and by which USCIS anticipates ruling on them.

5. Have all applicants whose applications USCIS summarily denied under its prior policy received notice that USCIS will reopen their cases? If not, why not? How many applicants are awaiting this notification?

Thank you in advance for your attention to these requests.

Sincerely,



Edward J. Markey
United States Senator



Elizabeth Warren
United States Senator



Ayanna Pressley
Member of Congress



Cory A. Booker
United States Senator