

**Congress of the United States**  
**Washington, DC 20515**

August 30, 2019

Kevin McAleenan  
Acting Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, D.C. 20528

Ken Cuccinelli  
Acting Director  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
20 Massachusetts Ave., NW, MS 2090  
Washington, D.C. 20529

Matthew T. Albence  
Acting Director  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
500 12<sup>th</sup> Street, SW  
Washington, D.C 20536

Dear Acting Secretary McAleenan, Acting Director Cuccinelli, and Acting Director Albence,

We write to express our grave concerns with U.S. Citizenship and Immigration Services' (USCIS) recent decisions to end consideration of non-military deferred action requests and, supposedly, to transfer processing authority to U.S. Immigration and Customs Enforcement (ICE). This decision will needlessly endanger vulnerable children and families nationwide seeking medical deferments for individuals receiving life-saving treatment for serious illnesses. We urge you to immediately reverse this shift in policy, resume consideration of these urgent requests, provide the justification for the policy change, and provide clarification on the agency's plans for implementation.

Medical deferred action is a subset of deferred action—"an act of administrative convenience to the government which gives some cases lower priority."<sup>1</sup> Medical deferred action has been a form of prosecutorial discretion exercised to permit immigrants with major medical illness, and their families, to remain in the United States, work legally, and be safe from deportation while receiving treatment. Individuals requesting deferred action from USCIS are among the most vulnerable. Children and families submit such requests due to severe medical conditions like cancer, epilepsy, cerebral palsy, muscular dystrophy, and cystic fibrosis. In many cases, these treatments are life-saving.

This month, applicants from across the country seeking medical deferred action have received letters from USCIS summarily denying their requests. The notices state that USCIS "field offices no longer consider deferred action requests,"<sup>2</sup> and that applicants "are not authorized to

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<sup>1</sup> 8 C.F.R. § 274a.12(c)(14).

<sup>2</sup> USCIS, Decision Letters (Aug. 2019),

[https://d279m997dpfwgl.cloudfront.net/wp/2019/08/Redacted\\_MedDA\\_denials.pdf](https://d279m997dpfwgl.cloudfront.net/wp/2019/08/Redacted_MedDA_denials.pdf).

remain in the United States.”<sup>3</sup> The notices further explain that if applicants do not leave the United 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.”

These summary denials have understandably caused anguish and fear for families whose children and other loved ones are in the United States receiving treatment for potentially fatal diseases, and who might not be able to receive life-saving treatment elsewhere.<sup>4</sup> According to agency estimates, USCIS receives approximately 1,000 deferred action requests annually.<sup>5</sup> This decision will have lasting and serious implications for affected families and in many cases will result in individuals being forced to return to countries where the absence of necessary medical care threatens their survival.

USCIS’s letters have also spawned confusion. Because the letters indicate that USCIS is no longer considering *any* non-military deferred action requests, they suggest a dramatic curtailment of deferred action even beyond the medical-need context. In addition, the letters make no mention of other recourse available to the applicants. Although USCIS reportedly claimed that ICE will now be considering deferred action requests, the letters do not refer applicants to ICE, and there have been no formal notices of how to petition ICE for deferred action.<sup>6</sup> In response to inquiries from Senator Markey’s staff, ICE stated that it does not and will not consider a deferred action request until the individual in question has been through removal proceedings and has an order of removal. ICE officials further stated the agency does not intend to change its deferred action policy, even following USCIS’s decision. ICE officials have made similar statements publicly. Officials rejected claims that the agency will be handling these requests and have stated that “ICE is not going to implement any sort of a program or procedure or policy to take over that function.”<sup>7</sup>

Regardless of whether ICE will take on this responsibility, however, it is unacceptable for USCIS to abandon its longstanding responsibility for deferred action requests. Requiring that prospective applicants request this humanitarian relief by applying to an immigration enforcement agency that detains and deports hundreds of thousands of immigrants annually, will deter many vulnerable children and families from coming forward and seeking life-saving protection.

Importantly, USCIS’s failure to provide advance public notice of this policy shift reflects USCIS’s growing disregard for transparency and accountability. In recent years, USCIS has

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<sup>3</sup> Ibid.

<sup>4</sup> Michael Levenson, ‘I Feel Like I’m Signing My Son’s Death Warrant.’ Children at Boston Hospitals Face Deportation, *The Boston Globe* (Aug. 29, 2019), <https://www.bostonglobe.com/metro/2019/08/26/immigrant-families-with-severely-ill-children-face-deportation-advocates-say/EMXZQURTzE0U25L6xQIYBN/story.html>.

<sup>5</sup> Sarah Betancourt, Trump Gives Immigrant Families Getting Medical Care 33 Days to Leave, *Commonwealth Magazine* (Aug. 29, 2019), <https://commonwealthmagazine.org/immigration/trump-administration-ending-protected-medical-status-for-immigrants/>.

<sup>6</sup> Shannon Dooling, Trump Administration Ends Protection For Migrants’ Medical Care, *NPR* (Aug. 29, 2019), <https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care>.

<sup>7</sup> Shannon Dooling, *Feds Can’t Agree On Which Agency — If Any — Handles Medical Deportation Deferrals*, *WBUR News* (Aug. 29, 2019), <https://www.wbur.org/news/2019/08/28/ice-uscis-immigrants-medical-deferred-action>.

repeatedly implemented far-reaching new measures without adequate notice or clear explanation.<sup>8</sup> This policy change is unfair to families who followed longstanding USCIS procedures for requesting deferred action, only to discover in a denial letter that those policies have changed. Additionally, it is extremely troubling that USCIS applied this policy retroactively, stunning families who requested protection long before the policy took effect.

On its face, this change represents another cruel action by the Trump Administration to attack our most vulnerable immigrant neighbors. We therefore urge you to immediately reverse this inhumane and unnecessary policy and to approve the pending medical deferment requests. In addition, we request answers to the following questions by September 13, 2019:

1. How many non-military deferred action requests (excluding Service Center requests) has USCIS received from Fiscal Year (FY) 2015 to FY 2019? Please provide the data broken down by fiscal year and note the number of these requests that pertain to medical deferred action.
2. What is USCIS's current policy with respect to deferred action, both in the medical-need context and in other contexts? Please provide copies of all current Department of Homeland Security (DHS)—including USCIS and ICE—guidance and policies regarding deferred action.
3. The new USCIS policy reportedly took effect on August 7, 2019.<sup>9</sup> As of that date, how many deferred action requests were pending at USCIS field offices? Please provide the number of requests at each field office and the dates on which they were submitted.
4. Since August 7, 2019, how many applicants for deferred action has USCIS denied under this new policy?
  - a. How many of these applicants requested deferred action on the basis of medical need?
  - b. How many of these applicants requested deferred action on other bases?
5. What was the rationale for the policy change? Please provide any emails, memoranda, guidance, or other documents discussing the rationale for the policy change.
  - a. Who were the most senior officials in the White House and in DHS who approved the change before August 7, 2019?
  - b. Please indicate whether, prior to this policy change's effective date of August 7, 2019, USCIS engaged with external stakeholders to solicit feedback on the anticipated consequences of this policy change.

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<sup>8</sup> See, e.g., American Immigration Lawyers Association, *Deconstructing the Invisible Wall* (Apr. 24, 2018), <https://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

<sup>9</sup> American Immigration Lawyers Association, *USCIS Stops Accepting and Adjudicating Deferred Action Applications for Non-Military Applicants* (Aug. 29, 2019), <https://aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-uscis-stops-accepting>.

6. Why did USCIS decide not to provide advance notice to the public or to Congress before this change was enacted?
7. What formal notice has been provided—to the public or to Congress—that this change has been enacted?
8. ICE was reportedly “blindsided” by this policy change.<sup>10</sup> Did USCIS and ICE collaborate on this policy change before the August 7, 2019 enactment date? If so, for how long did USCIS and ICE work together on formulating this change? If not, why not?
  - a. Please provide any emails, memoranda, guidance, or other documents discussing the rationale and transition process for the policy change.
9. What processes and structures does ICE have in place to facilitate the processing of deferred action requests? Does ICE ever consider requests for deferred action prior to the completion of removal proceedings?
  - a. If not, does ICE intend to change its processes to account for USCIS’s decision to no longer consider non-military deferred action requests?
  - b. How will DHS process deferred action requests for those who have had no contact with the removal system previously, who have standing for a deferred action request, and who may incur a re-entry bar while waiting for immigration court proceedings to be completed? Will the government authorize their presence so these families do not accrue unlawful presence?
10. How (if at all) does USCIS plan to transfer information on denied or currently pending requests to ICE in order to process deferred action requests?
11. What is the formal process in which ICE will consider deferred action requests?
  - a. What is ICE’s process for receiving and considering future deferred action requests?
  - b. How will that information be communicated to individuals applying for deferred action via USCIS field offices?
  - c. An ICE spokesperson has reportedly said, “As with any request for deferred action, ICE reviews each case on its own merits and exercises appropriate discretion after reviewing all the facts involved.”<sup>11</sup> Does this suggest that ICE will use different criteria or standards than USCIS had been using when considering deferred action requests?
  - d. What standards will ICE use to consider deferred action requests?
12. The denial letters sent by USCIS provide less information than has reportedly been provided by USCIS and ICE spokespersons to the news media.

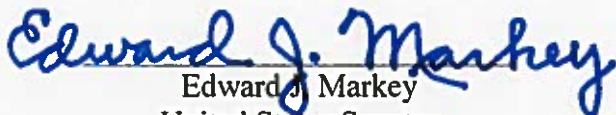
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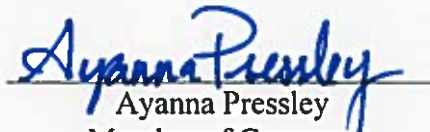
<sup>10</sup> Monique Madan & Ben Conarck, Undocumented Immigrants with Serious Illnesses Had a Lifeline. Now It May Be Gone, *Miami Herald* (Aug. 29, 2019), <https://www.miamiherald.com/news/local/immigration/article234426937.html>.

<sup>11</sup> Shannon Dooling, Trump Administration Ends Protection For Migrants’ Medical Care, *NPR* (Aug. 29, 2019), <https://www.npr.org/2019/08/27/754634022/trump-administration-ends-protection-for-migrants-medical-care>.

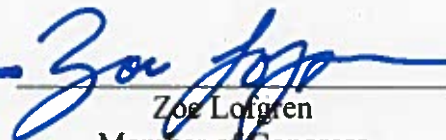
- a. Why wasn't information regarding ICE consideration of deferred action requests stated in the denial letters sent by USCIS?
  - b. Why weren't the outstanding requests referred to ICE automatically for processing, instead of being rejected automatically?
13. Without deferred action, some of these individuals currently in the United States for medical treatment—including children—risk deteriorating health conditions and even death. Was this taken into account when the policy change was enacted? If so, how was it taken into account?
14. Prior to August 7, 2019, did USCIS conduct any studies concerning the anticipated chilling effect of requiring prospective deferred action applicants to seek that relief from ICE rather than USCIS? If so, please provide documentation of these studies and their results. If not, please explain why not.


Sincerely,


  
Edward J. Markey  
United States Senator


  
Ayanna Pressley  
Member of Congress

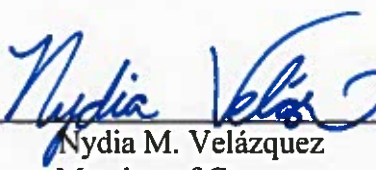
  
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United States Senator


  
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Judy Chu  
Member of Congress

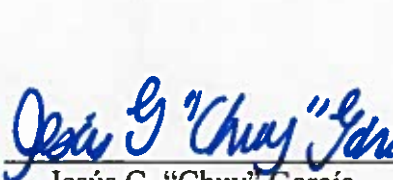
  
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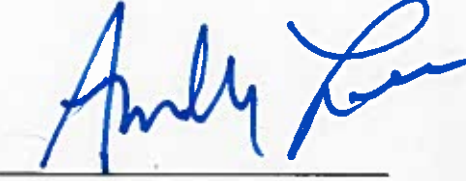
  
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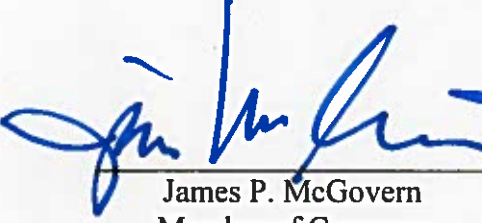
  
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Rashida Tlaib  
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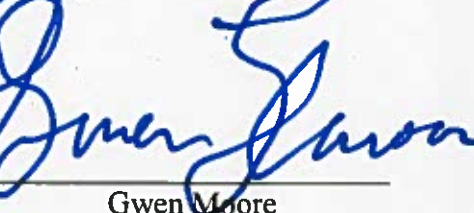
  
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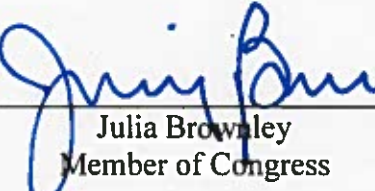
  
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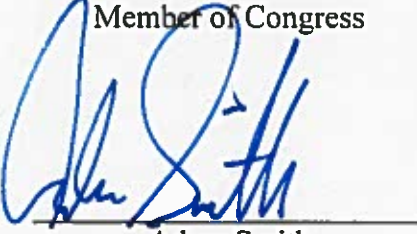
  
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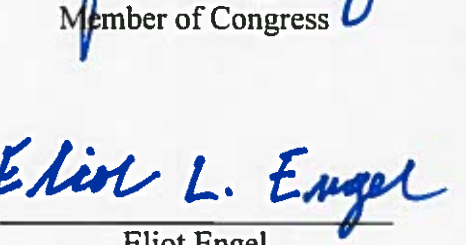
  
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Julia Brownley  
Member of Congress

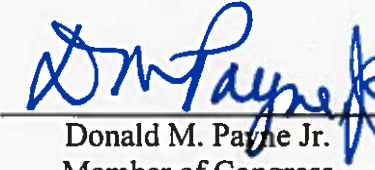
  
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Conor Lamb  
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Mazie K. Hirono  
United States Senator



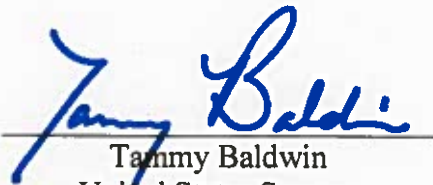
Kirsten Gillibrand  
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Tammy Baldwin  
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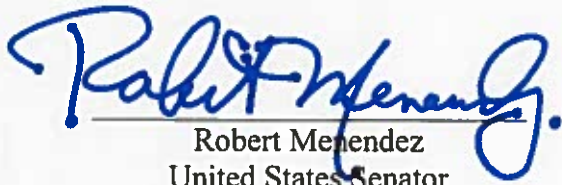
Cory A. Booker  
United States Senator



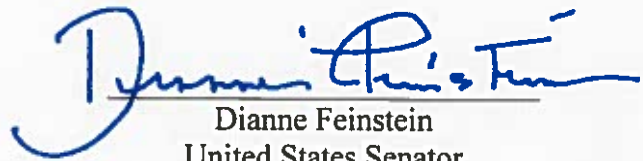
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Al Lawson  
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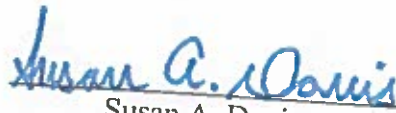



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Susan A. Davis  
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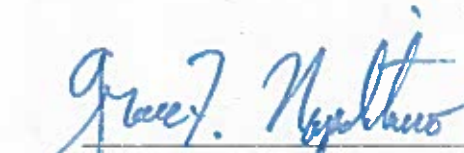
  
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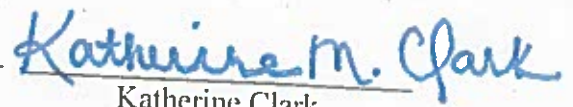
  
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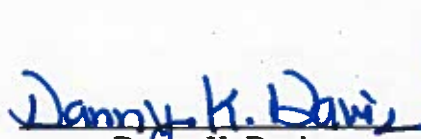
  
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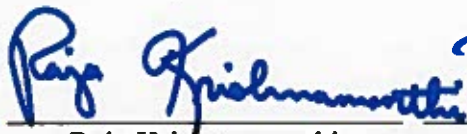
  
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Katherine Clark  
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Raja Krishnamoorthi  
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Paul D. Tonko  
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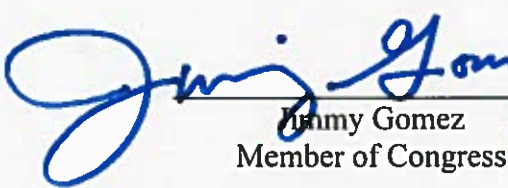
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Karen Bass  
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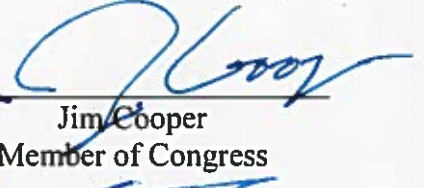
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Jimmy Gomez  
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Daniel T. Kildee  
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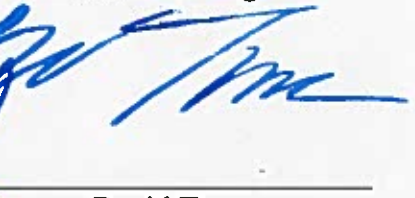
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Jim Himes  
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Deb Haaland  
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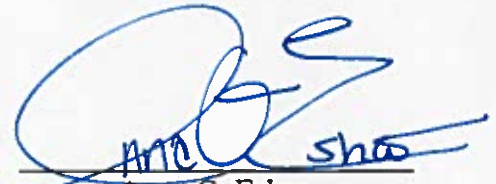
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Member of Congress



Mark Pocan  
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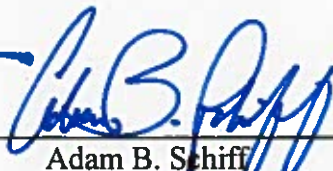
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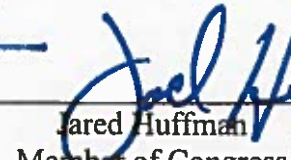
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Jared Huffman  
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Scott H. Peters  
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Marcia L. Fudge  
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Alma S. Adams, Ph.D.  
Member of Congress

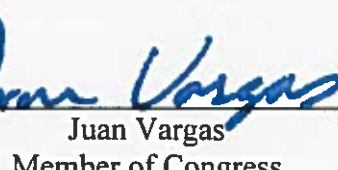
  
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