



Statement of the American Immigration Lawyers Association

Submitted to the House Oversight Subcommittee on Civil Rights and Civil Liberties

Hearing on “The Administration's Decision to Deport Critically Ill Children and Their Families”

October 30, 2019

Greg Chen

Director of Government Relations
gchen@aila.org; 202-507-7615

Jason Boyd

Policy Counsel
jboyd@aila.org; 202-507-7659

The American Immigration Lawyers Association (AILA), the national bar association of more than 15,000 immigration attorneys and law professors, submits the following statement for the record. On August 7, 2019, USCIS ceased to accept or adjudicate non-military deferred action requests received at field offices.¹ Deferred action temporarily prevents the removal of noncitizens who face compelling, and often life-threatening, circumstances. In many cases, applicants for deferred action are children with severe medical conditions like cancer, cystic fibrosis, and epilepsy. USCIS's August 7 policy shift placed many such children and other vulnerable individuals at risk of deportation and even death. Only after public outcry and sustained Congressional oversight did DHS reverse this shift, reinstating USCIS's acceptance and adjudication of these requests.²

USCIS's initial elimination of deferred action adjudications exemplifies the agency's abandonment of its statutory mission. Congress intended USCIS to function as a service-oriented benefits agency, one that fairly and efficiently facilitates our legal immigration system.³ When properly administered, that system is an engine of American prosperity. It helps power our economy, preserve the unity and strength of our families and communities, and protect the persecuted. Yet under the current administration, rather than facilitate legal immigration, USCIS has implemented a host of policies that slow and restrict it.⁴ These policies damage our national interests, prolonging the separation of families, weakening the competitiveness of U.S. businesses, and exacerbating the dangers facing protection seekers.

USCIS's clandestine implementation of its August 7, 2019 policy change flouted basic principles of transparency and accountability.

USCIS implemented its August 7, 2019 policy change without any public notice,⁵ blindsiding sick children whose lives hang in the balance and other vulnerable individuals who face the prospect of long-term separation from loved ones. USCIS had no meaningful plan for the populations impacted. It simply ended its adjudications—even applying the rule retroactively—leaving children and families without any viable alternative for requesting protection from deportation.

During a September 11, 2019 Congressional hearing on the August 7 policy change, USCIS refused to state why it implemented that change, who was responsible for the change, and even what the agency's deferred action policy was at that time.⁶

Had USCIS not reversed course, its August 7 policy change would have resulted in the deportation of many children to countries in which they would lack access to essential medical treatment—treatment that makes the difference between life and death. Other vulnerable individuals would have faced long-term or permanent separation from their families and other caregivers.⁷

Even after the reversal of its August 7, 2019 policy change, USCIS has refused to meaningfully explain its various shifts in deferred action policy to affected individuals, Congress, or the public.

Despite USCIS's reinstatement of deferred action adjudications, many long-pending deferred action applicants have not received decisions from the agency. Such delays can result in the expiration of essential work authorization, leaving vulnerable families without a means of self-support. Moreover, the ongoing uncertainty surrounding these requests has produced profound anxiety and fear among applicants whose survival depends on the agency's adjudications.

Though Congress has repeatedly requested information from USCIS concerning its August 7 change in policy and current deferred action adjudications, the agency has consistently resisted disclosure.⁸ Among other information and documentation, USCIS has failed to make publicly available:

- Current guidance, including Standard Operating Procedures, governing deferred action adjudications;
- Data on deferred action adjudication outcomes since August 7, 2019;
- The rationale behind, and the officials responsible for, the August 7 shift in policy;
- Why USCIS failed to provide public notice of the August 7 shift in policy and applied that change retroactively;
- The memo sent to DHS Secretary McAleenan in which USCIS reportedly recommended that DHS strip USCIS of its authority to grant deferred action;⁹ and
- Other correspondence between the various agencies and the White House regarding deferred action policy.

USCIS's initial elimination of deferred action adjudications exemplifies how the agency is systematically restricting legal immigration contrary to congressional mandate.

Under the Homeland Security Act of 2002, Congress established USCIS as a service-oriented immigration benefits agency¹⁰ that would fairly and efficiently administer our legal immigration system. But USCIS is subverting Congressional intent by acting as the chief builder of the Trump Administration's "invisible wall"—a wall made not of brick or mortar, but of far-reaching policies that restrict legal immigration to and in the United States.¹¹ Those policies include:

- A draconian public charge "wealth test"—currently enjoined by multiple courts—that has already exerted a widespread chilling effect on the use of vital public benefits and that, if

implemented, could substantially limit the ability of low and middle-income noncitizens to obtain green cards;¹²

- USCIS guidance that makes it more difficult for the children of certain U.S. service members abroad to become American citizens, a change that demoralized our armed services and undermined combat readiness;¹³ and
- The closure of a host of international USCIS offices,¹⁴ undermining the quality of immigration services provided to U.S. military personnel, U.S. citizen parents seeking to adopt international children, families awaiting reunification, refugees requesting protection, and numerous other affected populations.

USCIS has also implemented measures that have unnecessarily impeded case adjudications and propelled crisis-level case processing delays harming millions of individuals, families, and American businesses throughout the nation. The agency's average case processing time surged by 46 percent from FY 2016 to FY 2018.¹⁵ Inefficient policies and practices compounding these delays include:¹⁶

- Sweeping and unnecessary in-person interview requirements implemented in October 2017 for all individuals seeking green cards through their employers and for certain relatives seeking family reunification with asylees and refugees;
- An October 2017 policy that requires USCIS officers to effectively re-adjudicate previously approved petitions for temporary status when processing requests to extend that status, even when the facts of the cases remain unchanged; and
- Spikes in unnecessary "Requests for Evidence," often seeking irrelevant or previously provided information, that freeze case processing.

Under the Trump administration, USCIS has transformed into a third immigration enforcement agency.

USCIS has increasingly shifted its focus toward immigration enforcement, contravening Congress's intent that it function as a service-oriented immigration benefits agency.¹⁷ This shift has sowed fear and panic among immigrant communities throughout the nation while limiting the agency resources available to timely adjudicate cases.

For example, in 2018 USCIS announced a policy vastly expanding the circumstances in which it may issue "Notices to Appear" that initiate deportation proceedings for certain denied applicants and petitioners.¹⁸ Moreover, in its FY 2020 budget request USCIS sought to transfer over \$200 million in applicant and petitioner fees out of USCIS into ICE to support the hiring of hundreds of ICE enforcement officers—calling into question USCIS's resource utilization and commitment to efficient adjudications.¹⁹ According to recent reporting, USCIS is considering issuing a regulation that would effectuate a similar transfer of fees to ICE.²⁰ USCIS has also acknowledged that in FY 2019 it assigned over 200 "employee volunteers" to perform duties for CBP and ICE.²¹

Acting Director Cuccinelli has gone so far as to assert that USCIS is "not a benefits agency,"²² despite USCIS's acknowledgment on its website that Congress charged the agency with "focusing exclusively on the administration of benefit applications."²³ Additionally, Acting Director Cuccinelli, who has no legal authority over ICE and CBP operations, regularly addresses the media

regarding ICE and CBP enforcement initiatives,²⁴ further blurring the line between USCIS and DHS's enforcement components.

AILA urges USCIS to take immediate steps to ensure all deferred action requests are adjudicated in a fair and efficient manner. Moreover, without delay, the agency should publicly disclose all information requested by the House Oversight and Reform Committee relating to USCIS's deferred action policies and adjudications.

¹ See AILA, "Featured Issue: USCIS's Elimination of Non-Military Deferred Action at Local USCIS Offices;" <https://www.aila.org/advo-media/issues/all/featured-issue-usciss-elimination-of-non-military>.

² See *id.*

³ See AILA, AILA Policy Brief: "Seven Ways USCIS Is Defying the Will of Congress" (Feb. 25, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress>.

⁴ See, e.g., AILA, "Deconstructing the Invisible Wall" (Apr. 24, 2018); <https://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

⁵ See AILA, "Featured Issue: USCIS's Elimination of Non-Military Deferred Action at Local USCIS Offices;" <https://www.aila.org/advo-media/issues/all/featured-issue-usciss-elimination-of-non-military>.

⁶ See Priscilla Alvarez, "Immigration agency dodges questions on controversial policy change" *CNN* (Sep. 11, 2019); <https://www.cnn.com/2019/09/11/politics/uscis-deferred-action-hearing/index.html>.

⁷ See Scott Bixby, "Senator: Trump Policy Is 'Death Sentence' For Sick Kids" *Daily Beast* (Aug. 29, 2019); <https://www.thedailybeast.com/senator-trump-policy-is-death-sentence-for-sick-kids>.

⁸ See House Committee on Oversight and Reform, "Cuccinelli and Albence Agree to Testify Next Week on Inhumane Policy of Deporting Critically Ill Children" (Oct. 17, 2019); <https://oversight.house.gov/news/press-releases/cuccinelli-and-albence-agree-to-testify-next-week-on-inhumane-policy-of>.

⁹ Ted Hesson, "Trump official urges end to medical exemption for deportations" *Politico* (Sep. 13, 2019); <https://www.politico.com/story/2019/09/13/uscis-memo-deportations-undocumented-immigrants-1494616>.

¹⁰ See AILA, "AILA Policy Brief: Seven Ways USCIS Is Defying the Will of Congress" (Feb. 25, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress>.

¹¹ See, e.g., AILA, "Deconstructing the Invisible Wall" (Apr. 24, 2018); <https://www.aila.org/infonet/aila-report-deconstructing-the-invisible-wall>.

¹² See AILA, "Featured Issue: Public Charge Changes at USCIS, DOJ, and DOS;" <https://www.aila.org/advo-media/issues/all/public-charge-changes-at-uscis-doj-and-dos>.

¹³ Joel Rose, "What Do New Citizenship Rules For Kids Of U.S. Military, Workers Abroad Mean?" *NPR* (Aug. 29); <https://www.npr.org/2019/08/29/755506286/what-do-new-citizenship-rules-for-kids-of-u-s-military-workers-abroad-mean>.

¹⁴ USCIS, "USCIS Office Closings" (Oct. 29, 2019); <https://www.uscis.gov/about-us/uscis-office-closings>

¹⁵ AILA, AILA Policy Brief: "USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration" (Jan. 30, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/aila-policy-brief-uscis-processing-delays>.

¹⁶ See *id.*

¹⁷ AILA, AILA Policy Brief: "Seven Ways USCIS Is Defying the Will of Congress" (Feb. 25, 2019); <https://www.aila.org/advo-media/aila-policy-briefs/seven-ways-uscis-is-defying-the-will-of-congress>.

¹⁸ See *id.*

¹⁹ See USCIS, "USCIS Budget Overview: FY 2020 Congressional Justification;" https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Citizenship-Immigration-Services_0.pdf; ICE, "ICE Budget Overview: FY 2020 Congressional Justification;" https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Immigration-Customs-Enforcement_0.pdf.

²⁰ Hamed Aleaziz, "Immigration Officials Are Pushing A Proposal To Add A New Fee For DACA Recipients And Charge For Asylum Applications" *Buzzfeed* (Oct. 11, 2019); <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-fees-asylum-daca-ice-dhs>.

²¹ USCIS, "Cuccinelli Announces USCIS' FY 2019 Accomplishments and Efforts to Implement President Trump's Goals" (Oct. 16, 2019); <https://www.uscis.gov/news/news-releases/cuccinelli-announces-uscis-fy-2019-accomplishments-and-efforts-implement-president-trumps-goals>.

²² Philip Wegmann, “Cuccinelli, the Immigration Hawk After Trump's Own Heart” *RealClear Politics*, (Jul. 21, 2019);

https://www.realclearpolitics.com/articles/2019/07/21/cuccinelli_the_immigration_hawk_after_trumps_own_heart_140831.html.

²³ USCIS, “Our History” (Feb. 11, 2016); <https://www.uscis.gov/history-and-genealogy/our-history/our-history>.

²⁴ *See, e.g.*, Betsy Klein, Pamela Brown, and Joe Johns, “Top immigration official says ICE raids 'absolutely' going to happen” *CNN* (Jul. 11, 2019); <https://www.cnn.com/2019/07/10/politics/ken-cuccinelli-ice-raids/index.html>.