

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IRISH INTERNATIONAL)
 IMMIGRANT CENTER, INC.,)
)
 Plaintiff,)
)
 v.)
)
 KENNETH THOMAS CUCCINELLI II,)
 Acting Director, U.S. Citizenship &)
 Immigration Services,)
 LORI PIETROPAOLI,)
 Regional Director, Northeast Region)
 U.S. Citizenship & Immigration Services)
 MICHAEL J. McCLEARY,)
 Director, Boston Field Office,)
 U.S. Citizenship & Immigration Services,)
 U.S. CITIZENSHIP AND IMMIGRATION)
 SERVICES,)
 KEVIN K. McALEENAN,)
 Acting Secretary, Department of Homeland)
 Security,)
 DEPARTMENT OF HOMELAND)
 SECURITY,)
 DONALD J. TRUMP,)
 President of the United States,)
)
 Defendants.)

C.A. No. _____

COMPLAINT

INTRODUCTION

1. This lawsuit challenges the Trump Administration's abrupt termination of a longstanding government program that protects seriously ill people from deportation and death. The Administration's action is unconscionable. It is also illegal.

2. For decades, the United States Customs and Immigration Services ("USCIS") has operated a small but vital humanitarian program that allows immigrant families battling serious illnesses to request immigration relief in the form of "deferred action." The program recognizes that deporting seriously ill individuals and their families is in many cases tantamount to a death sentence. Deferred action does not grant immigration status to beneficiaries; it confers other benefits, including an opportunity to apply for work authorization, the tolling of any accrual of "unlawful presence" that could bar future entry into the United States, and a measure of protection against removal proceedings by U.S. Immigration and Customs Enforcement ("ICE"). Those protected by this program are in dire straits. They include the mother of a U.S. citizen baby that has spent eight of the last ten months in the hospital; a ten-year-old girl with eye cancer; and a partially-immobilized 18-year-old boy with burns over 70% of his body.

3. In August 2019, the Trump Administration abruptly prohibited USCIS field offices from granting deferred action in cases of serious medical need, and has now put the lives of scores of medically fragile individuals at immense and immediate risk. In doing so, the Administration provided no opportunity for notice-and-comment, or any other procedural protection that is required under the Administrative Procedures Act ("APA"). Nor did the Administration provide any rationale for its abrupt termination of the program, as required by law.

4. But the reasons for the Administration’s actions are all too clear: they are part of an overarching anti-immigrant agenda that is driven by racial and ethnic animus, and in this case additional animus against persons with disabilities. Throughout his campaign and presidency, Defendant Trump has derided and stoked animus against immigrants of color. Defendant Kenneth Cuccinelli, Acting Director of USCIS has similarly described undocumented immigrants as invaders and recently claimed, just days before USCIS began sending denial letters to people seeking deferred action, that the Statue of Liberty’s famous exhortation to “give me your tired, your poor” refers to “people coming from Europe”

5. Plaintiff Irish International Immigrant Center, Inc. (the “IIC”) is a nonprofit organization based in Boston, Massachusetts that serves clients in Massachusetts who seek deferred action based on a serious medical need. At present, the IIC represents individuals and families in 19 such cases, including children seeking treatment for illnesses such as cancer, cerebral palsy, and muscular dystrophy—and the parents who care for them. Nearly all of the IIC’s deferred action clients are people of color from countries in the Caribbean, Central and South America, and Africa.

6. The elimination of USCIS’s deferred action program has harmed the IIC and endangered its clients. Deferred action benefits non-citizens with serious illness, their families, and the families of U.S. citizen children with serious illness. Without deferred action, the IIC’s clients face the prospect of returning to countries where their life-preserving care cannot be continued, or being placed in removal proceedings. Many of the IIC’s clients have been forced to contemplate the possibility of leaving behind minor children in the United States so that they can continue receiving essential care. USCIS’s decision has also wreaked havoc for the IIC. The organization has not only dropped almost all other work in an effort to help save the lives of its

clients and their family members, but it will now be tasked with the years-long commitment of representing these clients in complex immigration proceedings that will necessarily come at the expense of the IIC's other work, all while losing funding tied to work that it can no longer take on.

7. Because eliminating the authority of USCIS field offices to grant deferred action to individuals with dire medical needs is arbitrary, capricious, and based on impermissible animus, it violates the APA and the Equal Protection guarantees of the U.S. Constitution. The IIC therefore asks this Court to declare the termination of USCIS's deferred-action program unlawful and enjoin its enforcement.

JURISDICTION AND VENUE

8. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

9. This Court has authority to issue declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, 5 U.S.C. §§ 702-06, and the Court's inherent equitable powers.

10. Venue is proper in the District of Massachusetts under 28 U.S.C. § 1391(e)(1).

PARTIES

11. Plaintiff Irish International Immigrant Center, Inc. is a nonprofit organization based in Boston, Massachusetts. Founded by Irish immigrants in 1989, the IIC provides services for 3,500 immigrants and refugees from more than 120 countries every year. The IIC empowers newcomers with legal and other services so they can reach stability, contribute to their communities, and flourish. As part of this work, the IIC helps immigrant families with life-

threatening illnesses apply for and secure deferred action status from USCIS. *See generally* Exhibit 1, Declaration of Anthony Marino.

12. Defendant Kenneth Thomas Cuccinelli II is sued in his official capacity as Acting Director of USCIS, a federal agency that is part of the Department of Homeland Security (“DHS”). As Acting Director, Mr. Cuccinelli is responsible for overseeing USCIS’s work, including its adjudication and policies regarding applications for deferred action and other immigration benefits.

13. Defendant Lori Pietropaolo is sued in her official capacity as Regional Director of USCIS’s Northeast District, which includes the Boston field office. In that capacity, Ms. Pietropaolo oversees the work of local USCIS Field Offices and, on information and belief, makes decisions regarding deferred action in cases involving serious illness.

14. Defendant Michael J. McCleary is sued in his official capacity as Director of the USCIS Boston field office. In that capacity, Mr. McCleary oversees the work of the Boston field office and, on information and belief, helps to make decisions regarding deferred action.

15. U.S. Citizenship and Immigration Services is an agency within the Department of Homeland Security that administers immigration benefits, including adjudicating requests for deferred action based on serious illness.

16. Defendant Kevin McAleenan is sued in his official capacity as Acting Secretary of the Department of Homeland Security. As DHS Acting Secretary, Mr. McAleenan is responsible for the administration and enforcement of the immigration laws of the United States.

17. The Department of Homeland Security is a cabinet department of the United States federal government with responsibility for, among other things, administering and enforcing the nation’s immigration laws.

18. Donald J. Trump is sued in his official capacity as the President of the United States. He is ultimately responsible for the policies of all federal agencies, including DHS.

BACKGROUND

I. USCIS Has Long Provided Deferred Action for Families Dependent on Critical Medical Treatment in the United States.

19. For decades, the U.S. Immigration and Naturalization Service (“INS”), followed by USCIS, has used deferred action to provide relief to individuals whose cases raise compelling humanitarian concerns and to individuals whose removal is not in the best interests of the U.S. government.¹ Government regulations characterize deferred action as “an act of administrative convenience to the government which gives some cases lower priority.” 8 C.F.R. § 274a.12(c)(14).

20. INS and USCIS have for decades granted deferred action to noncitizens who are receiving treatment in the United States for serious medical conditions, and their immediate family members. For example, deferred action has been available to non-citizens who are themselves receiving medical treatment in the United States, and their immediate family members. USCIS also recognizes that someone may seek deferred action on their behalf or “for his/her entire family unit.”² For example, the noncitizen parents or guardians of a U.S. citizen

¹ Citizenship & Immigration Servs. Ombudsman, Dep’t of Homeland Sec., *Deferred Action: Recommendations to Improve Transparency and Consistency in the USCIS Process* 1-2 (July 11, 2011), <https://www.dhs.gov/xlibrary/assets/cisomb-combined-dar.pdf> (citing INS Commissioner Doris Meissner, *Exercising Prosecutorial Discretion*, HQOPP 50/4 (Nov. 17, 2000) (“Meissner Mem.”)).

² U.S. Citizenship & Immigration Servs., *Standard Operating Procedures for Handling Deferred Action Requests at USCIS Field Offices* 3 n.1 (Mar. 7, 2012) (“*USCIS Standard Operating Procedures*”).

child with a serious medical illness might seek deferred action so that child can receive treatment in the United States.

21. Recipients of deferred action can remain temporarily in the United States, receiving a measure of protection from being placed in removal proceedings during the period of the deferred action—usually two years. Additionally, they are eligible to apply for work authorization, under 8 C.F.R. § 274a.12(c)(14), and they do not accrue unlawful presence under 8 U.S.C. § 1182(a)(9)(B)(i), which could otherwise foreclose future immigration benefits. Recipients of deferred action are also eligible to receive certain benefits, including Social Security, retirement, and disability benefits, and, in certain states, benefits such as driver’s licenses or unemployment insurance.³ Deferred action thus provides stability and comfort to those benefiting from the program while they or a loved one undergoes serious and sometimes life-saving medical treatment.

22. Upon creation of the DHS in 2003, the power to grant deferred action was formally delegated to USCIS, as well as ICE and U.S. Customs and Border Protection (“CBP”).⁴

23. On information and belief, deferred action requests made by individuals and families receiving treatment for serious illness are governed by USCIS’s 2012 “Standard

³ See, e.g., 8 U.S.C. §§ 1611(b)(2)-(3), 1621(d).

⁴ Homeland Security Act of 2002, Pub. L. No. 107-296, § 442(c), 116 Stat. 2135, 2194 (2002); Dep’t of Homeland Sec. Secretary Tom Ridge, *Delegation to the Bureau of Citizenship and Immigration Services* (June 5, 2003) (delegating authority to grant voluntary departure under section 240B of the INA, 8 U.S.C. §1229c, and deferred action); see also U.S. Dep’t of Justice, *Immigration & Naturalization Service Fact Sheet: Prosecutorial Discretion Guidelines* (Nov. 28, 2000).

Operating Procedures for Handling Deferred Action Requests at USCIS Field Offices,” which apply to “all requests for deferred action . . . handled at USCIS Field Offices.”⁵

24. Applications to USCIS for deferred action based on medical need follow uniform procedures and involve individualized determinations. Applications are filed at local USCIS field offices. Each application is reviewed by a Field Office Director and/or District Director before a USCIS Regional Director makes a final determination on behalf of the field office.

25. Applications must be signed by the applicants and are expected to include an explanation as to the basis for deferred action, including medical and other supporting documentation. USCIS recognizes that those requesting deferred action may provide extensive and sensitive “supporting documentation,” including but not limited to proof of identity and nationality, biographic information, “medical information, evidence of community and familial ties and equities, conditions in the requestor’s country of origin, etc.”⁶ In the Boston field office, USCIS provided a checklist to potential filers explaining the requirements for deferred action applications, including a detailed letter from the treating physician. *See* Exhibit 2, Declaration of Mahsa Khanbabai, ¶ 5 at Exhibit A.

26. Applicants for deferred action are fingerprinted, and USCIS must complete a list of required background checks on those individuals before approving a request.⁷

27. Applicants for deferred action may not have lawful immigration status.

⁵ *USCIS Standard Operating Procedures* at 3.

⁶ *Id.* at 3. Similarly, USCIS’s notice template for granting deferred action requires recipients “to notify USCIS if [they] change [their] address” using a form that requires the recipients to disclose not only their names and addresses, but also their dates of birth, nations of origin, and alien registration numbers. *Id.* at 9 (citing Form AR-11).

⁷ *Id.* at 4-6.

28. Under its Standard Operating Procedures, USCIS also rejects applications for deferred action based on serious medical illness if the noncitizens are in removal proceedings or have final orders of removal.⁸

29. USCIS field office decisions to grant deferred action in cases involving serious illness are distinct from decisions against issuing a Notice to Appear for removal proceedings.⁹ Thus, when USCIS denies deferred action to individuals who are not already in removal proceedings, its “non-grant” template directs USCIS’s field offices to state that “[d]enial of a request for deferred action does *not* necessarily mean that USCIS intends affirmatively to pursue your removal.”¹⁰ But when individuals are already in removal proceedings, USCIS’s template directs its field offices to tell the individuals to “direct your request for deferred action to [ICE].”¹¹

II. The Irish International Immigrant Center Represents Numerous Individuals Who Qualify for Deferred Action Due to Serious Medical Needs.

30. USCIS has long recognized that a request for deferred action, including deferred action due to serious medical needs, may be made by “an attorney or representative.”¹²

31. The IIIC is a nonprofit that advocates for the rights of immigrants and provides legal and other services for noncitizens.

32. The IIIC employs a staff of six attorneys and two program associates who provide immigration legal services. The legal services provided by the IIIC include legal clinics serving

⁸ *Id.* at 3-4, 12-13.

⁹ *See* Meissner Mem..

¹⁰ *USCIS Standard Operating Procedures* at 11 (emphasis added).

¹¹ *Id.* at 13.

¹² *Id.* at 3 n.1.

more than 2,000 individuals every year, forms assistance to more than 400 individuals per year in cases in which the IIC does not enter an appearance, and direct representation of approximately 400 individuals at any given time who are filing applications for benefits before USCIS.

33. Many of the IIC's legal services are provided for a fee that is approximately 10% of that ordinarily charged by private attorneys for the same work. For example, the IIC currently charges \$85 for an adjustment of status application for an asylee or refugee, and \$350 for representation in a complex citizenship application. Many of the IIC's clients cannot pay these fees and, as a result, pay no fees at all. The IIC technically assigns a \$500 fee for deferred action cases, but it generally does not collect any fees at all. In one instance, a client contributed \$100. In all others, the IIC waived its fees and collected nothing from the clients.

34. The IIC's legal services work aims to make legal advice and representation available to as many people as possible. These services thus focus on providing free or low-cost representation to people who have affirmative avenues for seeking legal status, and making information and advice available to many others through thousands of free consultations provided at the IIC's legal clinics every year. Although the IIC does sometimes represent clients who are detained and/or in removal proceedings, the IIC's experience with these cases demonstrates that such matters can significantly monopolize the time of the attorneys involved and thus greatly diminish those attorneys' ability to take on other clients or provide legal consultations through the IIC's clinics. Due to the large time commitments involved in these cases, the IIC has not customarily taken on clients who are in removal proceedings.

35. Among its other cases, the IIC represents individuals and families applying for deferred action from USCIS as a result of a serious medical need. These deferred action cases

have come to the IIC in a variety of ways, including through its walk-in clinics, partnerships with area hospitals, and other referrals.

36. More recently, in order to expand the IIC's ability to meet the needs of hospital patients for deferred action and other legal services, the IIC has developed more formalized partnerships with two local hospitals that provide specific financial support for this work. These partnerships allow the IIC to deliver legal services to critically ill patients, including consultations and representation for deferred action and other avenues of relief when available.

37. This year the IIC and its partners fundraised for its collaboration with area hospitals together, highlighting for prospective donors the critically ill patients that had been and could be helped by the IIC to obtain deferred action. These partnerships are in their early stages, but new funding through these two medical partnerships in 2019 have accounted for the cost of approximately one half of an attorney's salary.

38. The 2019 funding allowed the IIC to provide full representation to ten new clients who are patients at one of the two partner hospitals, including three who were seeking deferred action based on a serious medical need.

39. All told, the IIC currently represents 19 individuals and families who have or are in the process of applying for or seeking to renew deferred action based on a serious medical need.

40. These families comprise 33 individuals, most of them people of color.

41. Of these 19 deferred action cases, six involve Haitian families or individuals and four involve families from the Dominican Republic. Five cases involve families or individuals from Central and South American countries; three cases involve African families or individuals. The remaining client is a European national.

42. The IIC has filed a new applications for deferred action as recently as August 16, 2019, when it filed an application on behalf of a client with terminal breast cancer.

43. The IIC's 19 deferred action cases mostly involve families of children with serious medical illnesses for which treatment is unavailable in the countries in which they or their parents were born.

44. Among these clients are:

- The mother of a six-month-old U.S. citizen who suffered a neonatal stroke.
- The mother of a ten-month-old U.S. citizen who has been hospitalized eight of those ten months with multiple complex diagnoses, including ambiguous genitalia, corneal clouding, and autoimmune interopathy.
- A six-year-old with multiple diagnoses who is undergoing testing, is confined to a wheelchair, and uses a feeding tube, and his mother.
- The parents of a six-year-old U.S. citizen with more than 20 complex diagnoses arising from premature birth, including developmental delays, chronic lung disease, pulmonary hypertension, and encephalopathy (damage or disease to the brain).
- A seven-year-old with a severe form of epilepsy involving multiple seizures a day and a risk of sudden death, and his mother and sibling.
- A ten-year-old blinded by eye cancer, and her mother.
- A 12-year-old with cerebral palsy who is confined to a wheelchair, suffers seizures, and is scheduled for major surgery later this month, and his parents.
- A 13-year-old with Duchenne's Muscular Dystrophy, and his mother.
- A 16-year-old with cystic fibrosis and his parents.
- An 18-year-old with burns over 70% of his body and immobilized arms and hands, who has been undergoing reconstructive surgery in order to clear scar tissue obstructing his mouth and ears, and his mother.
- A 24-year-old suffering complications from a bone marrow transplant performed to treat his leukemia, and his parents and minor sibling.

- An adult with incurable breast cancer.

45. Before August 19, 2019, the IIC represented nine of these individuals and families in applications for deferred action for which the IIC had not yet received a response. These nine cases comprised two applications to renew deferred action and seven new applications.

46. The IIC was also preparing to file applications for three new families or individuals.

47. The IIC also represents seven individuals or families who have received deferred action that is set to expire in 2020. For example, in March 2020, deferred action will expire for the family of the seven-year-old boy whose epilepsy is so severe that it results in multiple seizures a day and a risk of sudden death.

III. USCIS Abruptly Terminated Deferred Action in Non-Military Cases.

48. On August 7, 2019, USCIS abruptly and without notice stopped its consideration of deferred action for non-military requestors.

49. USCIS did not publicly announce its change in policy.

50. Nor, on information and belief, did it provide a reason for the change.

51. Around August 15, 2019, USCIS' Boston field office began sending denial letters to deferred action applicants.

52. The IIC, on behalf of its clients, received the first of these letters on August 19, 2019, from the USCIS Boston Field Office Director. Denial of applications for six additional clients followed, all of which were dated between August 15 and 22, 2019. True and correct copies of three of these letters with identifying information redacted are attached to Exhibit 1, the Declaration of Anthony Marino, as Exhibits A-C.

53. These letters—using language identical to letters sent around the country— informed noncitizens that deferred action had been denied because USCIS field offices “no longer consider deferred action requests” in non-military cases.

54. The letters further notified families that, because their presence in the United States at the time they applied for deferred action was unlawful—a requirement for applying—they are now “not authorized to remain the United States.”

55. The letters did not mention any alternative means of applying for deferred action.

56. To the contrary, they threatened: “If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefit.”

57. USCIS ended its deferred action program so abruptly that, in one case, it withdrew a request for additional evidence that it had sent to one of the IIIC’s clients only three weeks earlier—telling the family to “disregard this request as USCIS will no longer process your deferred action request.”¹³ In another case, where a family represented by the IIIC was scheduled for an interview that was to take place five days after the denial notice was sent out, USCIS informed them that “this interview is cancelled since USCIS will not process your deferred action request.”¹⁴

¹³ Ex. 1, Decl. of Anthony Marino, Ex. B.

¹⁴ *Id.*, Ex. C.

58. On August 26, 2019, USCIS told members of the press that “medical deferred action requests are now submitted to ICE for consideration,”¹⁵ as opposed to USCIS, as had been previously done.

59. Upon information and belief, ICE was not informed that USCIS would stop processing non-military deferred action requests, and on further information and belief, has no plans to take over the program. An ICE official stated, “ICE is not going to implement any sort of a program or procedure or policy to take over that function.”¹⁶

60. On information and belief, ICE does not process applications for deferred action for individuals who do not have final orders of removal. And every individual who was previously eligible to obtain deferred action from USCIS based on medical need was not in removal proceedings and did not have an order of removal.

61. On September 2, 2019, after sustained public pressure, USCIS issued a press release stating that it was reopening “non-military deferred action cases that were pending on August 7.” The release further made clear that the program has been otherwise terminated.

¹⁵ Shannon Dooling, *After Receiving Denial Letters, Immigrants Fear End of Medical Deferral Program*, WBUR (Aug. 26, 2019), <http://www.wbur.org/news/2019/08/26/medical-deferment-immigration-program-ended>.

¹⁶ Shannon Dooling, *Feds Can't Agree on Which Agency — If Any — Handles Medical Deportation Deferrals*, WBUR (Aug. 28, 2019), <http://www.wbur.org/news/2019/08/28/ice-uscis-immigrants-medical-deferred-action>.

IV. USCIS's Decision to Terminate Deferred Action Has Endangered the IIC's Clients and Directly Harmed the IIC.

62. The termination of deferred action has caused immeasurable agony, distress, heartbreak, confusion, and fear for the IIC's clients.

63. The IIC's clients who had not received letters notifying them of the termination soon learned about the decision from their counsel at the IIC, and from media reports.

64. For many of the IIC's clients, the termination of deferred action is life threatening, because they may no longer be able to receive care in the United States.

65. For many of the IIC's clients, who are the family members of U.S. citizen children, USCIS's decision raises untenable choices about whether to leave children alone in the United States to receive life-preserving care, or instead take them abroad to countries where their medical conditions might quickly kill them.

66. Many of the IIC's current or future clients would face substantial hindrances if they were to attempt to bring litigation to vindicate their own interests with respect to deferred action. For example, the IIC's clients include children who cannot file suit on their own behalf, adults who are absorbed in important health care decisions and in the day-to-day needs of their children's treatment, and families who are terrified of public attention and of any real or perceived dispute with the federal government, from whom they, by definition, wish to secure relief. The IIC's clients also include adults who are unable to communicate and/or are terminally ill.

67. Meanwhile, the termination of deferred action has also had direct and substantial impacts for the IIC itself.

68. Since learning of it, the IIC's limited staff has been almost entirely absorbed in counseling, supporting, and advocating for affected families, at the expense of all other work.

69. IIC staff attorneys have spent dozens of hours providing legal advice to affected individuals and families, helping them to attempt to absorb and understand the news and discussing options and possible future scenarios with them. They have had to discuss the impact of USCIS's decision with their clients' health care providers in order to explain the possible ramifications of the new policy in each case. And each time that new developments have arisen—including USCIS's contention that ICE would take over deferred action and USCIS' September 2, 2019 announcement that it would reopen certain cases—IIC attorneys have had to explain these shifts to their clients, medical providers, and others.

70. The IIC also determined that it was necessary to launch a public campaign. It organized a press conference, worked closely with clients who chose to make their stories public, and communicated with public officials, lawyers, community groups, religious leaders, and reporters.

71. By the week of August 26, 2019, the termination of deferred action was national news; the IIC's Executive Director and Legal Director have been interviewed multiple times and quoted in dozens of media outlets.

72. As a consequence of their time spent providing legal counsel to and advocating for and alongside its deferred action clients, IIC attorneys have postponed non-urgent work on other cases, cancelled appointments, suspended the scheduling of cases in which the IIC provides assistance with immigration forms, and stopped opening new full-representation cases.

73. In addition to impairing the IIC's ability to serve its mission of making low-cost legal services available to more people, the IIC's inability to open new cases will immediately lead to hundreds of dollars of lost fee revenue associated with the full representation and form-assistance cases for which the IIC charges a modest fee.

74. USCIS's decision to terminate non-military deferred action will continue to harm the IIC in the long term.

75. First, without deferred action for people with serious medical conditions, the IIC's continued representation of its deferred action clients and people who would be such clients—but for the termination of the program—will require substantial time commitments for years to come. This will come at a heavy cost to the IIC's ability to take on other cases, harming both its mission and ability to collect fees.

76. Many, if not all, of the IIC's deferred action clients with serious medical conditions will be unable or unwilling to leave the life-preserving care that they or their children receive in the United States, and will face the risk of being placed in removal proceedings either immediately or after their deferred action status concludes. New prospective clients with serious medical illness will similarly face such risks. On information and belief, the IIC's current and future clients will be able to seek deferred action status from ICE only if they go through removal proceedings and are ordered removed.

77. Representing its deferred action clients in removal proceedings is a years-long commitment for the IIC due to the significant expenditures of attorney time that each removal case will require. Although the IIC will continue to represent its deferred action clients in removal proceedings if possible, that representation will come at a significant cost to the organization's ability to take larger numbers of other cases, with consequences both for its mission, the community it serves, and for its generation of fees.

78. Second, the termination of non-military deferred action is likely to lead to a loss of funding for the IIC, including but not limited funding it receives from hospitals.

79. The IIC has developed partnerships with hospitals, and receives funding that is a direct result of its ability to represent clients facing serious illness in seeking deferred action before USCIS. If the IIC is no longer able to take on these cases because deferred action for people with serious medical conditions is unavailable, it is likely to lose some or all of the funding that it receives from hospitals.

V. USCIS’s Decision Was Motivated By Animus Based on Race and National Origin, and Disability.

80. On information and belief, the defendants’ decision to terminate USCIS’s non-military deferred action program was a consequence of impermissible animus based on race, national origin, and disability.

81. Many of the Trump Administration’s immigration policies—from the decisions to render one million noncitizens unlawfully present,¹⁷ to the calls for the elimination of “chain migration,”¹⁸ to the policies obstructing citizenship for lawful permanent residents in the

¹⁷ Adam Adelman, *Trump Ends DACA Program, No New Applications Accepted*, NBC News (Sept. 5, 2017), <https://www.nbcnews.com/politics/immigration/trump-dreamers-daca-immigration-announcement-n798686> (noting that termination of DACA affected as many as 800,000 “Dreamers”); Nick Miroff & David Nakamura, *200,000 Salvadorans May Be Forced to Leave the U.S. as Trump Ends Immigration Protection*, Wash. Post (Jan. 8, 2018), https://www.washingtonpost.com/world/national-security/trump-administration-to-end-provisional-residency-for-200000-salvadorans/2018/01/08/badfde90-f481-11e7-beb6-c8d48830c54d_story.html.

¹⁸ Julie Bykowicz & Rebecca Ballhaus, *Trump Revives Attack on Diversity Visa, “Chain Migration” in Speech*, Wall St. J. (Feb. 23, 2018), <https://www.wsj.com/articles/trump-revives-attack-on-diversity-visa-chain-migration-in-speech-1519410081>; Nick Miroff, *Family Ties Drive U.S. Immigration. Why Trump Wants to Break the “Chains,”* Wash. Post. (Jan. 2, 2018), https://www.washingtonpost.com/world/national-security/how-chain-migration-became-a-target-in-trumps-immigration-agenda/2018/01/02/dd30e034-efdb-11e7-90ed-77167c6861f2_story.html (“Attorney General Jeff Sessions, Homeland Security Secretary Kirstjen Nielsen and other Trump Cabinet members have also hammered at ‘chain migration’ in recent weeks, calling it a threat to American workers and national security.”).

military¹⁹—can hardly be understood as means of protecting national security or controlling illegal immigration. Instead, on information and belief, the Trump administration’s immigration policies reflect a consistent desire to drive out immigrants of color and prevent non-white people from living in America or becoming American citizens.²⁰

82. President Trump’s statements provide ample evidence of this animus. He has asked why the United States could not have more immigrants from Norway, a predominantly white country.²¹ While campaigning, he labeled Mexican immigrants as criminals and rapists²²; as President, he has expressed a desire to reduce immigration from “shithole” countries such as Haiti, El Salvador, and African nations.²³ President Trump declined to criticize white nationalist demonstrators,²⁴ told four American Congresswomen of color to “go back” to the countries they

¹⁹ Jim Garamone, *DoD Announces Policies Affecting Foreign Nationals Entering Military*, U.S. Dep’t of Def. (Oct. 13, 2017), <https://www.defense.gov/News/Article/Article/1342430/dod-announces-policies-affecting-foreign-nationals-entering-military/>.

²⁰ See generally Jayashri Srikantiah & Shirin Sinnar, *White Nationalism as Immigration Policy*, Stan. L. Rev. (Mar. 2019), <https://www.stanfordlawreview.org/online/white-nationalism-as-immigration-policy/>.

²¹ Henrik Pryser Libell & Catherine Porter, *From Norway to Haiti, Trump’s Comments Stir Fresh Outrage*, N.Y. Times (Jan. 11, 2018), <http://www.nytimes.com/2018/01/11/world/trump-countries-haiti-africa.html>.

²² Katie Reilly, *Here Are All the Times Donald Trump Insulted Mexico*, Time (Aug. 31, 2016), <http://www.time.com/4473972/donald-trump-mexico-meeting-insult/>.

²³ Josh Dawsey, *Trump Derides Protections for Immigrants from “Shithole” Countries*, Wash. Post. (Jan. 12, 2018), http://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html; Julie Hirschfeld Davis *et al.*, *Trump Alarms Lawmakers with Disparaging Words for Haiti and Africa*, N.Y. Times (Jan. 11, 2018), <http://www.nytimes.com/2018/01/11/us/politics/trump-shithole-countries.html>.

²⁴ Glenn Thrush & Maggie Haberman, *Trump Is Criticized for Not Calling Out White Supremacists*, N.Y. Times (Aug. 12, 2017), <http://www.nytimes.com/2017/08/12/us/trump-charlottesville-protest-nationalist-riot.html>.

came from,²⁵ and pardoned an Arizona sheriff convicted of contempt of a judicial order requiring that he cease racially profiling Latinos, calling the sheriff an “American patriot.”²⁶

83. President Trump has also specifically directed animus based on medical disability against non-white foreign nationals. He has falsely said that Haitians “all have AIDS.”²⁷ He has falsely claimed that immigrants crossing the southern border into the U.S. bring “large scale crime and *disease*.”²⁸

84. Consistent with these various and overlapping forms of animus, in June 2019 Mr. Cuccinelli was named as USCIS’s Acting Director.

85. Mr. Cuccinelli’s actions and statements concerning immigration provide further evidence of animus. He was a founding member of a group of state legislators that, in 2007,

²⁵ Mike DeBonis, *et al.*, *A Divided House Votes for Resolution Condemning Trump’s Racist Remarks*, Wash. Post (July 17, 2019), http://www.washingtonpost.com/politics/trump-lashes-out-again-at-minority-lawmakers-as-house-prepares-to-condemn-his-racist-tweets/2019/07/16/bca3afa4-a7b3-11e9-a3a6-ab670962db05_story.html.

²⁶ Julie Hirschfeld Davis & Maggie Haberman, *Trump Pardons Joe Arpaio, Who Became Face of Crackdown on Illegal Immigration*, N.Y. Times (Aug. 25, 2017), <http://www.nytimes.com/2017/08/25/us/politics/joe-arpaio-trump-pardon-sheriff-arizona.html>.

²⁷ Michael D. Shear & Julie Hirschfeld Davis, *Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda*, N.Y. Times (Dec. 23, 2017), <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

²⁸ Donald J. Trump (@realdonaldtrump), Twitter (Dec. 11, 2018, 7:12 AM), <https://twitter.com/realDonaldTrump/status/1072464107784323072?s=20> (emphasis added); *see also* Donald J. Trump (@realdonaldtrump), Twitter (July 6, 2015, 9:25 PM), <https://twitter.com/realDonaldTrump/status/618229195181826049?s=20> (“In addition to the criminals among the illegal aliens what about all the infectious diseases they brought to US”); Donald J. Trump (@realdonaldtrump), Twitter (Aug. 5, 2014, 8:55 AM) <https://twitter.com/realDonaldTrump/status/496640747379388416?s=20> (“Our government now imports illegal immigrants and deadly diseases.”); Donald J. Trump (@realdonaldtrump), Twitter (Aug. 4, 2014, 7:51 PM), <https://twitter.com/realDonaldTrump/status/496443427647942658?s=20> (“The bigger problem with Ebola is all of the people coming into the U.S. from West Africa who may be infected with the disease. STOP FLIGHTS!”).

described undocumented people as “foreign invaders” responsible for, among other things, “serious infectious diseases.”²⁹ Since then, Mr. Cuccinelli has repeatedly accused immigrants of invading the United States.³⁰

86. In August 2019, in his capacity as USCIS’s Acting Director, Mr. Cuccinelli made public statements defending a new “public charge” rule published by DHS on August 14, 2019. The new rule expands the factors that USCIS will consider when deeming someone ineligible for admission or adjustment of status based on a perceived likelihood that they will become a “public charge.”

87. In his public statements, Mr. Cuccinelli defended the new public charge rule along lines of race and national origin. Specifically, while acknowledging that America had in prior generations welcomed people lacking financial means, Mr. Cuccinelli argued that those were “people coming from Europe, where they had class-based societies” and that today’s immigrants must be able to take care of themselves.³¹

88. Days after making these statements, USCIS mailed letters informing the IIC’s clients, and countless others, that their requests for deferred action were denied because USCIS had eliminated its deferred action program.

²⁹ Andrew Kaczynski, *Trump Official Has Talked About Undocumented Immigrants as “Invaders” Since at Least 2007*, CNN (Aug. 17, 2019), <https://www.cnn.com/2019/08/17/politics/kfile-ken-cuccinelli-immigration-invasion-rhetoric/index.html>.

³⁰ *Id.*

³¹ Colby Itkowitz and Felicia Sonmez, *‘Who Can Stand on Their Own Two Feet’: Ken Cuccinelli Edits Famous Statue of Liberty Poem*, Wash. Post (Aug. 13, 2019), at https://beta.washingtonpost.com/politics/who-can-stand-on-their-own-two-feet-ken-cuccinelli-edits-famous-statue-of-liberty-poem/2019/08/13/4cddd62-bdcc-11e9-a5c6-1e74f7ec4a93_story.html.

COUNT 1 – ADMINISTRATIVE PROCEDURE ACT
(Agency Action that is Arbitrary, Capricious, Not in Accordance with the Law, Without
Observance of Procedure Required By Law, and Discriminatory)

89. The foregoing allegations are re-alleged and incorporated herein.

90. USCIS, which is overseen by Defendants, is a federal agency whose final actions are subject to judicial review under the Administrative Procedure Act. 5 U.S.C. § 551(1).

91. Under the Administrative Procedures Act, a reviewing court shall “hold unlawful and set aside agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A).

92. The APA also requires that agency action that is substantive in nature follow notice-and-comment procedures. 5 U.S.C. §§ 553, 706(2)(D).

93. Defendants’ termination of USCIS’s non-military deferred action authority eliminates authority that has been acknowledged for decades, without a reasoned basis, and is arbitrary and capricious in violation of the APA.

94. Although USCIS’s deferred action authority was developed through decades of practice, not through regulation, it has been acknowledged and ratified by regulation and statute. The defendants’ termination of USCIS’s authority to grant deferred action in non-military cases binds USCIS field offices to categorically deny all requests for deferred action based on serious medical need. It is thus a substantive rule requiring notice-and-comment.

95. The defendants’ termination of USCIS’s deferred action program is also based on impermissible animus, which is contrary to law.

96. The termination of USCIS’s authority to grant deferred action in non-military cases thus violates the APA.

**COUNT 2 – THE EQUAL PROTECTION GUARANTEE OF THE FIFTH
AMENDMENT TO THE U.S. CONSTITUTION
(Animus based on race, national origin, and disability)**

97. The foregoing allegations are re-alleged and incorporated herein.

98. Plaintiff has a right under the Fifth Amendment to the U.S. Constitution to equal protection of the laws.

99. On information and belief, the defendants' termination of deferred action was impermissibly motivated by racial animus and animus based on national origin, in violation of the Equal Protection Clause. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-266 (1977).

100. On information and belief, the defendants' termination of deferred action was impermissibly motivated by animus against persons with disabilities, and cannot survive even rational basis review. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).

REQUEST FOR RELIEF

Wherefore, the Irish International Immigrant Center respectfully requests that this Court:

1. Vacate and set aside the defendants' termination of USCIS field offices' authority to grant deferred action in non-military cases, as well as any action taken by the defendants to effect that termination;

2. Declare that all actions taken by the defendants to terminate USCIS field offices' authority to grant deferred action in non-military cases are void and without legal force or effect;

3. Declare that all actions taken by the defendants to terminate USCIS field offices' authority to grant deferred action in non-military cases are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedure required by law, in violation of 5 U.S.C. §§ 702-706;

4. Declare that all actions taken by the defendants to terminate USCIS field offices' authority to grant deferred action in non-military cases are in violation of the Constitution;

5. Preliminarily and permanently enjoin the defendants, their agents, servants, employees, attorneys, and all persons in active concert or participation with any of them, from implementing or enforcing the termination of USCIS's non-military deferred action program, and from taking any other action to terminate that program that is not in compliance with applicable law; and

6. Grant any further relief this Court deems just and proper.

Dated: September 4, 2019

Respectfully submitted,

IRISH INTERNATIONAL IMMIGRANT CENTER,

By its attorneys,

/s/ Robert D. Carroll

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Irish International Immigrant Center, Inc.

(b) County of Residence of First Listed Plaintiff Suffolk County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) See attachment

DEFENDANTS

U.S. Department of Homeland Security, Kevin McAleenan, U.S. Citizenship & Immigration Services, Kenneth Cuccinelli, Lori Pietropaoli, Michael McCleary, Donald J. Trump

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fifth Amendment to the U.S. Constitution; 5 U.S.C. § 553; 5 U.S.C. § 706

Brief description of cause:

USCIS's termination of deferred action in non-military cases violates Equal Protection and the APA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/04/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Robert D. Carroll

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Irish International Immigrant Center, Inc. v. Cuccinelli et al

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
- III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

None

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Robert D. Carroll

ADDRESS Goodwin Procter LLP 100 Northern Avenue, Boston, MA 02210

TELEPHONE NO. (617) 570-1000

Exhibit 1

DECLARATION OF ANTHONY MARINO

Introduction

1. I am an attorney in good standing and licensed to practice in Massachusetts. I have been practicing immigration law for 9 years.
2. I have worked as an attorney at the Irish International Immigrant Center (IIIC) for the last 5 years, and have been the Director of Legal Services for the past 3 years. The IIIC currently represents 33 individuals who have previously been granted or were in the process of applying for deferred action as a result of their own or an immediate family member's need to receive life-saving medical treatment in the United States. These cases are informally known as "medical deferred action" cases.
3. The IIIC's medical deferred action clients include children who cannot file suit on behalf, adults who are absorbed in important health care decisions and in the day-to-day needs of their children's treatment, families who are terrified of public attention and of any real or perceived dispute with the federal government, and adults who are unable to communicate and/or terminally ill.
4. The federal government's decision to end its deferred action program endangers the lives and well-being of these clients. As detailed below, it also harms the IIIC.

The Irish International Immigrant Center

5. The IIIC, previously called the Irish Immigration Center, was founded in 1989 to help connect immigrants with legal services.
6. Today, the IIIC provides services to noncitizens from more than 120 countries.
7. Although legal services continue to be the largest area of our work, the IIIC also 1) provides educational services including English as a Second Language, citizenship, and career classes; 2) provides wellness services including substance use counseling, health screenings, suicide prevention, and other mental health services; and 3) does outreach to the Irish community and other immigrant communities in Boston.
8. As the legal director, I manage a staff of six staff attorneys and two program associates in providing immigration legal services. These services consist of

about 400 direct representation cases at any given time, assistance with immigration forms in more than 400 cases a year, and weekly immigration clinics providing more than 2,000 free consultations every year.

9. Like the clients of the IIC as a whole, the clients that we provide legal services to come from all around the world. Nearly all of our clients are people of color and live below 200% of the poverty line.
10. Many of the IIC's legal services are provided for a fee that is approximately 10% of that ordinarily charged by private attorneys for the same work. For example, we charge \$85 for an adjustment of status application for an asylee or refugee, and \$350 for representation in a complex citizenship application. Many of our clients cannot pay these fees and as a result pay no fee at all.
11. While our office technically assigns a \$500 fee to medical deferred action cases, in none of our current cases was that fee collected. In one case, a client was able to contribute \$100. In the rest, and consistent with our fee policy which provides waivers in cases of disability and severe economic hardship, the fee was waived entirely.
12. The IIC's service area includes Massachusetts. The IIC occasionally provides representation to individuals outside of Massachusetts, for example, when an existing client relocates, but our primary focus is in the state.
13. The IIC's legal services work aims to make legal advice and representation available to a large number of people. These services thus focus on providing free or low-cost representation to people who have affirmative avenues for seeking lawful status, and making information and advice available to many others through thousands of free consultations provided at our legal clinics every year.
14. Although the IIC does sometimes represent clients who are detained and/or in removal proceedings, our experience with these cases has been that they can significantly monopolize the time of the attorneys involved and thus greatly diminish those attorneys' ability to take on other clients or provide legal consultations through our clinics. Due to the large time commitments involved in these cases, our office typically does not agree to take on clients who are in removal proceedings.

The IIC's Representation of Individuals With Deferred Action

15. Since well before my time at the IIC, the organization has represented clients who apply for and receive deferred action from USCIS because they or a family member that they care for has a serious medical need.
16. We currently represent approximately 19 different families or individuals who have medical deferred action, were in the process of renewing it, or were in the process of applying for it for the first time.
17. These clients have come to us in a variety of ways, including through our walk-in clinics, partnerships with area hospitals, and other referrals.
18. The process for applying for medical deferred action has been the same for as long as I am aware. Over the years, I have communicated with USCIS employees about medical deferred action, and have gained an understanding of the manner in which the agency has adjudicated these cases.
19. Medical deferred action applications were filed with the local office of USCIS. These applications consist of a cover memorandum and supporting documentation including affidavits from clients and from physicians who can explain the clients' medical needs and their understanding of the availability of treatment in the client's home country. There is no filing fee for a medical deferred action case.
20. Note that because of recent changes to USCIS's service model—which now favors the use of a centralized 800 number over inquiries to the local office—it is now almost impossible to simply walk in to a USCIS office to file an application for a client. Yet it continued to be the case that deferred action applications could be filed by walking into a local USCIS office. The front desk would take these applications and provide a receipt stamp.
21. My office last filed an application for medical deferred action in this manner on Friday, August 16, 2019 on behalf of a client with terminal breast cancer. The IIC has not received a response to that application.
22. It has always been my understanding that USCIS would only accept medical deferred action applications for noncitizens who were out of lawful immigration status. Thus, if a client had a valid visa but it became apparent that they would not be able to return to their country at the expiration of their stay because of their need for life-saving medical treatment, the individual could not file for deferred action until the day after his status expired. This has been my understanding based on the personal experiences

of attorneys in our office who in the past had attempted to file applications for individuals before the expiration of their period of authorized stay.

23. In my experience, the local USCIS office in Boston always had an officer assigned to deal with deferred action cases for individuals with serious medical needs. If more information was needed, that officer would send a form Request for Evidence or schedule an interview. Applicants for deferred action also had to appear for fingerprints.
24. My understanding is that when the designated local USCIS adjudication officer believed a grant of deferred action was appropriate, the recommendation would be communicated to the Field Office Director, and sent to the District Director and then the Regional Director of USCIS for confirmation, before being returned to the local field office for final approval.
25. When USCIS granted deferred action, the client would receive a form letter communicating that deferred action had been granted for a period of time, typically two years.
26. After those two years, we have had clients successfully complete treatment and become stable enough to return to their home country to continue care. We have sadly had clients pass away while in deferred action, though in those cases it is clear that the program extended a person's life. We also have cases in which we have assisted families in reapplying for deferred action to continue treatment beyond the initial grant period.
27. Deferred action is critical to our clients because it allows them to remain in the United States without being unlawfully present, *see* 8 U.S.C. § 1182(a)(9)(B), permits them to apply for work authorization, 8 C.F.R. § 274a.12(c)(14), provides them some measure of protection from being placed in removal proceedings, and renders them eligible for healthcare through MassHealth.
28. I have never heard of our local Immigration and Customs Enforcement (ICE) offices adjudicating requests for deferred action for medical reasons. The IIC has represented individuals with final orders of removal who have applied to ICE for stays of removal. But I have no reason to believe that ICE would adjudicate a deferred action request presented by individuals who are receiving medical treatment in the United States and—like our medical deferred action clients—do not have final orders of removal and are not in immigration removal proceedings.

The IIIC's Partnerships With Area Hospitals

29. IIIC's work representing critically ill patients in receiving deferred action has led to strong partnerships with local hospitals and provider networks.
30. Since I started at the IIIC, the organization received many referrals from area hospitals, including in cases involving individuals that required life-saving care in the United States and whose only legal option was to apply for deferred action from USCIS.
31. More recently, in order to expand the IIIC's ability to meet the needs of hospital patients for medical deferred action and other legal services, the IIIC has developed more formalized partnerships with two local hospitals that provide specific financial support for this work. These partnerships allow us to deliver legal services to critically ill patients, including consultations and representation for deferred action and other avenues of relief when available.
32. This year the IIIC and our partners fundraised for this collaboration together, highlighting for prospective donors the critically ill patients that had been and could be helped by the IIIC to obtain deferred action.
33. These partnerships are in their early stages, but new funding through these two medical partnerships in 2019 have accounted for the cost of approximately one half of an attorney's time. This new funding allows an attorney to more narrowly focus on the particular needs of our partner providers' patients.
34. The 2019 funding has allowed us to provide full representation to ten new clients who are patients at one of the two partner hospitals, including three who were seeking medical deferred action. However, medical deferred action has been central to our partnerships, even before they were formalized, and nearly all of the families we represent in medical deferred action receive care at one the two partner hospitals.

The IIIC's Medical Deferred Action Clients

35. The IIIC currently represents 19 different families—comprising 33 individuals—at different stages of the deferred action process.
36. Our deferred action clients come from all over the world. Six cases involve Haitian families or individuals; four involve Dominicans. Five cases involve families from Central and South American countries. Three involve African families or individuals. The remaining client is an adult European national.

37. Most of our clients are children with life-threatening illnesses, the parents who care for them, and sometimes the family's other minor children. These clients' families typically come from countries where effective treatment for their conditions is all but impossible.
38. In most cases, detention or removal would be a death sentence.
39. These clients include:
 - The mother of a six-month-old U.S. citizen who suffered a neonatal stroke.
 - The mother of a ten-month-old U.S. citizen who has been hospitalized eight of those ten months with multiple complex diagnoses, including ambiguous genitalia, corneal clouding, and autoimmune interopathy.
 - A six-year-old with multiple diagnoses who is undergoing testing, is confined to a wheelchair, and uses a feeding tube, and his mother.
 - The parents of a six-year-old U.S. citizen with more than 20 complex diagnoses arising from premature birth, including developmental delays, chronic lung disease, pulmonary hypertension, and encephalopathy (brain damage/disease).
 - A seven-year-old with a severe form of epilepsy involving multiple seizures a day and a risk of sudden death, and his mother and sibling.
 - A ten-year-old blinded by eye cancer, and her mother.
 - A 12-year-old with cerebral palsy who is confined to a wheelchair, suffers seizures, and is scheduled for major surgery later this month, and his parents.
 - A 13-year-old with Duchenne's Muscular Dystrophy, and his mother.
 - A 16-year-old with cystic fibrosis and his parents.
 - An 18-year-old with burns over 70% of his body and immobilized arms and hands, who has been undergoing reconstructive surgery in order to clear scar tissue obstructing his mouth and ears, and his mother.
 - A 24-year-old suffering complications from a bone marrow transplant performed to treat his leukemia, and his parents and minor sibling.

- An adult with incurable breast cancer.
40. Seven of the families or individuals we represent currently have deferred action that will expire in 2020. For example, in March, the family of the seven-year-old boy with severe epilepsy will lose their deferred action.
 41. In addition, the IIC had applied to renew deferred action in two cases based on continuing medical needs. In seven cases, we had filed initial applications, and three cases, we were preparing to file initial applications for deferred action.

The Termination of Deferred Action

42. On August 19, 2019, the IIC received a denial letter from the USCIS Boston Field Office Director with regard to one of the IIC's clients. Denials of applications for 6 more families soon followed. A redacted example of one of these denial letters is attached as Exhibit A.
43. These letters were entitled, "DECISION."
44. They were dated between August 15 and 22, 2019.
45. Using identical language, these letters informed my clients that: "U.S. Citizenship and Immigration Service (USCIS) field offices no longer consider deferred action requests, except those made according to the U.S. Department of Homeland Security (DHS) policies for certain military members, enlistees, and their families. As such, your request for deferred action has been denied." Ex. A.
46. They further stated, "The evidence of record shows that, when you submitted your request, you were present in the United States contrary to law. You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefit." Ex. A.
47. One family had just 3 weeks earlier received a letter asking for additional evidence regarding the child's medical condition. The denial letter thus informed them that they could "disregard this request as USCIS will no longer process your deferred action request." A redacted copy of that letter is attached as Exhibit B.

48. Yet another family had been scheduled for an interview that was to take place five days after the denial letter was sent. The denial letter thus informed them that “this interview is cancelled since USCIS will not process your deferred action request.” A redacted copy of that letter is attached as Exhibit C.

The Impact of Deferred Action’s Termination

49. The termination of medical deferred action has thrown our clients’ lives into chaos.
50. The seven families we represent whose applications were denied were stunned and devastated.
51. As other families with pending applications or active deferred action also learned the news, they, too, were heartbroken, terrified, and confused.
52. These families are being forced to reckon with the possibility of pulling their children away from live-saving care or leaving children as young as six months alone in the United States to receive treatment. For the families who were given 33 days to depart, the pressure of that impending deadline was unspeakable.
53. Although the horrifying impact of these policies is, of course, most deeply experienced by our clients, the news has also been felt deeply across the IIIC.
54. Each member of the IIIC’s staff is keenly aware of the consequences that flow from the decision to terminate deferred action, and the young children whose lives hang in the balance.
55. Because of that, since receiving the news of the termination of deferred action on August 19, 2019, the entire staff of the IIIC has been immersed in helping our medical deferred action clients.
56. I and other staff have devoted dozens of hours to speaking by phone or in person with each of our deferred action clients the meaning of this change in policy, the letters that they have received or may receive, and the specific details of their cases. We have been there to keep our clients updated and answer new questions that arise every time the issue is covered in the news media, and to explain different, cruel hypotheticals involving the care of their children. For example, when USCIS stated to the media that ICE would handle deferred action, IIIC staff spent hours discussing this development with the clients in each case.

57. In many cases, we have also been contacted by our clients' health care providers, who also want to understand in painstaking detail the changes and how they will impact our clients.
58. In addition to our legal services staff, the Executive Director has diverted nearly all of his time to managing the crisis. In the absence of any communication directly from USCIS other than the denial notices, our Executive Director has been engaged in non-stop outreach efforts to community partners and with the media in an effort to stay abreast of the latest developments and gather reliable information so that we can properly inform and advise clients.
59. At the urging of some of our clients, we launched an advocacy campaign—including holding a press conference on August 26, 2019, supporting certain clients who wanted to share their story publicly, contacting leaders in various fields, and fielding national media inquiries and requests.
60. Since launching this campaign, the IIIC has been overwhelmed with inquiries from concerned citizens, non-profit organizations, attorneys, religious leaders, and public officials. Because of the secretive nature of the government's actions and the confusion caused by its press statements, many have reached out to us for the latest developments.
61. Since the termination of medical deferred action, the staff attorneys and I have stopped almost all other work, cancelling appointments, halting the scheduling of new meetings, and doing only the minimum necessary work on non-deferred action cases.
62. The IIIC has also stopped taking in new cases due to this additional workload. The overwhelming nature of the work and the impact it is having on our staff is apparent, and I have instructed IIIC attorneys not to take new cases for the foreseeable future.
63. The developments over the last two weeks have also made me largely unavailable to the staff, have taken over our regular meetings, and have required the scheduling of special meetings. Individual meetings with staff and team staff meetings are the times we use to address complications in cases and resolve questions so that cases can move forward. I have had to cancel multiple one-on-one staff meetings, and our team meetings have been entirely consumed by the changes in deferred action. This means that existing cases have slowed, which necessarily slows our ability to take new cases.

64. The termination of medical deferred action has thus significantly cut down on our ability to provide legal services to existing and new non-deferred action clients.
65. In addition to drawing us away from legal services work that is central to our mission, our inability to take on new matters also causes a loss of fees. To date in 2019, the IIIC has received approximately \$12,000 in fees from full representation cases—a comparably small but not insignificant part of our budget. Thus, for every one-week period in which the IIIC does not open new cases, it loses approximately \$350 in revenue. The hold on new cases will have to continue for at least two more weeks just to allow our staff to catch up on the two weeks of work they have not been able to do. If the government continues its pattern of conflicting communications through the press, the hold is likely to be longer.
66. We have also developed a significant backlog of work in review of cases handled on a pro-se assistance basis. These are cases in which volunteer attorneys help applicants to complete basic forms but do not enter an appearance. So far in 2019, these cases have generated roughly an additional \$15,000 in fees for our program, or a rate of about \$425 per week. These cases all require a final review by a staff attorney before they can be filed. Because of the diversion of so many attorney resources, we have amassed a significant backlog of pro-se assistance cases to be reviewed. This means that to clear the backlog, we also have suspended the scheduling of new pro-se appointments for at least two weeks, likely longer, and again depending on how the government's continued actions increase the burden on our staff.
67. Beyond these impacts on our legal services, I have had to cancel two significant prior commitments that I had made. One involved a vicarious trauma institute for which I served on the planning committee, and which was intended to provide training for service providers working with vulnerable populations. Another involved a training with a community partner for which we receive specific funding. If I am unable to reschedule the training, the grant funding could be reduced.
68. The intensity of our work with our medical deferred action shows no signs of abating. When USCIS announced on September 2, 2019 that it would reopen cases filed before August 7, 2019—a substantial relief for several IIIC clients who had been told to depart in 33 days—IIIC staff again dedicated hours to helping clients, medical providers, and others understand this development. Unfortunately, while USCIS's decision gives these families some hope, it is

far from clear that USCIS will handle their applications in the manner it would have prior to its decision to terminate deferred action.

69. Other clients continue to confront the reality of USCIS's termination decision. One IIC client applied for deferred action on August 16, 2019—just after the USCIS cut-off—and appears likely to receive a denial letter. Seven individuals or families that we represent have deferred action that will expire between February and November 2020 if USCIS does not terminate their deferred action sooner.
70. These clients, and the three others for whom we were preparing to file deferred action applications, all have pressing needs for legal and other services that the IIC will attempt to meet. For example, the IIC will need to continue to explore whether there is any possibility that ICE will accept deferred action applications for these clients, as USCIS publicly suggested, whether they must first go through removal proceedings and receive orders of removal in order to be considered for such deferred action, and whether it is advisable for them attempt to present applications to ICE. All of these are complex discussions that are made all the more difficult by the absence of information about USCIS and ICE policies and the shifting positions of the agencies. These discussions and explorations will take time away from the IIC's ability to serve other clients.
71. If the IIC's deferred action clients are placed in removal proceedings, the IIC will represent as many as we possibly can who need our representation. Although we feel a moral commitment to these clients, I know that taking on their representation in removal proceedings will greatly diminish the IIC's ability to continue to provide legal representation in other affirmative cases, including fee-generating cases.
72. Further, the funding we receive from hospitals is largely a consequence of our ability to represent critically ill patients in obtaining deferred action. If we are unable to help patients who need life-preserving treatment get deferred action due to the unavailability of the program, this funding is likely to be cut or eliminated.
73. As a supervisor of eight IIC staff, I recognize that the consequences of the termination of deferred action for our staff go beyond our caseload and finances. Providing support and legal counsel to clients facing the loss of medical deferred action over a sustained period of time is emotionally extremely draining for our staff. Our meetings with our clients over the past two weeks have been long and intensely emotional. Our staff have worked

longer hours than usual. They are dealing daily with the injustice and urgency of seriously ill children threatened with losing life-saving care, and talking to parents facing heart-wrenching decisions. Although the real hardship is that faced by our clients, the effects of vicarious traumatization on our staff are nonetheless real. In the long run, they will contribute to burnout and turnover, which has costs for the organization and make it harder for it to meet its mission.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 4, 2019.

s/ Anthony Marino
Anthony Marino

Exhibit A

August 22, 2019

U.S. Department of Homeland
Security
U.S. Citizenship and Immigration
Services
Boston Field Office
15 New Sudbury St.
Boston, MA 02203



U.S. Citizenship
and Immigration
Services

DECISION

Dear

Thank you for your request for deferred action. U.S. Citizenship and Immigration Service (USCIS) field offices no longer consider deferred action requests, except those made according to the U.S. Department of Homeland Security (DHS) policies for certain military members, enlistees, and their families. As such, your request for deferred action has been denied.

The evidence of record shows that, when you submitted your request, you were present in the United States contrary to law. You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefit. See sections 237(a) and 212(a)(9) of the INA.

To review information regarding your period of authorized stay, check travel compliance, or find information on how to validate your departure from the United States with Customs and Border Protection (CBP), please see (<https://i94.cbp.dhs.gov/I94/#/home>).

If you require additional assistance, forms or filing instructions, we invite you to visit our website at www.uscis.gov or contact the USCIS Contact Center at 1-800-375-5283.

Sincerely,

Michael J. McCleary

Michael J. McCleary
Field Office Director
VB

cc: Megan Elizabeth Parker-Johnson, Attorney

Exhibit B

August 15, 2019

U.S. Department of Homeland
Security
U.S. Citizenship and Immigration
Services
Boston Field Office
15 New Sudbury St.
Boston, MA 02203



U.S. Citizenship
and Immigration
Services

DECISION

Dear

Thank you for your request for deferred action. U.S. Citizenship and Immigration Service (USCIS) field offices no longer consider deferred action requests, except those made according to the U.S. Department of Homeland Security (DHS) policies for certain military members, enlistees, and their families. As such, your request for deferred action has been denied.

The record indicates that on July 25, 2019, USCIS issued you a request for evidence notice. The requested information was instructed to be submitted by August 28, 2019. However, you may disregard this request as USCIS will no longer process your deferred action request.

The evidence of record shows that, when you submitted your request, you were present in the United States contrary to law. You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefit. See sections 237(a) and 212(a)(9) of the INA.

To review information regarding your period of authorized stay, check travel compliance, or find information on how to validate your departure from the United States with Customs and Border Protection (CBP), please see (<https://i94.cbp.dhs.gov/I94/#/home>).

If you require additional assistance, forms or filing instructions, we invite you to visit our website at www.uscis.gov or contact the USCIS Contact Center at 1-800-375-5283.

Sincerely,

A handwritten signature in black ink that reads "Michael J. McCleary" followed by a stylized flourish.

Michael J. McCleary
Field Office Director

Cc: Megan Elizabeth Parker-Johnson, Attorney

Exhibit C

August 16, 2019

U.S. Department of Homeland
Security
U.S. Citizenship and Immigration
Services
Boston Field Office
15 New Sudbury St.
Boston, MA 02203



U.S. Citizenship
and Immigration
Services

DECISION

Dear

Thank you for your request for deferred action. U.S. Citizenship and Immigration Service (USCIS) field offices no longer consider deferred action requests, except those made according to the U.S. Department of Homeland Security (DHS) policies for certain military members, enlistees, and their families. As such, your request for deferred action has been denied.

The record indicates that USCIS scheduled you for an interview on August 21, 2019. However, this interview is cancelled since USCIS will not process your deferred action request.

The evidence of record shows that, when you submitted your request, you were present in the United States contrary to law. You are not authorized to remain in the United States. If you fail to depart the United States within 33 days of the date of this letter, USCIS may issue you a Notice to Appear and commence removal proceedings against you with the immigration court. This may result in your being removed from the United States and found ineligible for a future visa or other U.S. immigration benefit. See sections 237(a) and 212(a)(9) of the INA.

To review information regarding your period of authorized stay, check travel compliance, or find information on how to validate your departure from the United States with Customs and Border Protection (CBP), please see (<https://i94.cbp.dhs.gov/I94/#/home>).

If you require additional assistance, forms or filing instructions, we invite you to visit our website at www.uscis.gov or contact the USCIS Contact Center at 1-800-375-5283.

Sincerely,

Michael J. McCleary

Michael J. McCleary
Field Office Director

cc: Mary Louise Freeman-Lynde, Attorney

Exhibit 2

DECLARATION OF MAHSA KHANBABAI FOR THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION, NEW ENGLAND CHAPTER

1. I am an attorney in good standing and licensed to practice in Massachusetts. I have been practicing immigration law for 20 years and am the founder of Khanbabai Immigration Law.
2. This declaration is based on my own experiences and information received from Department of Homeland Security officials as well as constituent members of AILA's New England Chapter with regard to the unilateral and unannounced termination of most of the USCIS deferred action program in August 2019.
3. I am currently the Chapter Chair for the New England Chapter of the American Immigration Lawyers Association (AILA). Before becoming the Chapter Chair in 2019, I served on the Executive Board for four years, including serving as Vice Chair from 2018-2019, a role that involved addressing "problem cases" of chapter members and issues that members were having with the local CIS field offices. My role was to liaise with the field offices and attempt to resolve the issue at hand. I also attended interagency meetings during these years wherein various filing procedures for local DHS field offices were discussed, including deferred action.
4. AILA is a national bar association of attorneys who practice and teach immigration law. The New England Chapter is comprised of more than 750 attorneys who practice in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
5. Over the past 4 years, my leadership in AILA has required me to communicate with Department of Homeland Security officials and with large numbers of immigration attorneys in New England about best practices for immigration processes, problem cases, and changes in agency practice. For example, I would collect and disseminate various forms that the DHS field offices wished for attorneys to use as they prepared to file cases, such as deferred action. Attached to this declaration is a copy of one such deferred action checklist that was provided by the Boston field office to an AILA attorney in July 2019.
6. I currently represent 4 clients who have applied for or obtained deferred action from the United States Citizenship and Immigration Services (USCIS) as a result of compelling medical needs that required their or their family member's continued presence in the United States.
7. Standard procedures have existed since well before I began practicing immigration law for presenting applications for non-military deferred action to USCIS. These cases typically involve extreme medical hardship, especially to more vulnerable immigrants such as the very young, the elderly, or those who otherwise have more

intensive needs or a harder time travelling during or in between care. Applications for deferred action were always submitted to the local offices of USCIS.

8. Applications for deferred action could only be filed when a client was not in lawful status. Thus, if a client was present in the U.S. on a valid visa, USCIS would not accept deferred action applications until the client had overstayed their authorized stay and was then vulnerable to being placed in removal proceedings, even if their doctor were of the opinion that extreme medical needs required the client to remain in the United States for an extended period of time. Deferred action applications could be filed immediately upon the expiration of lawful status, and would be granted if justified based on the humanitarian or medical need.
9. After deferred action applications were filed, the local USCIS office might request further information such as sending a request for evidence or calling in a client for an interview. USCIS thoroughly vetted these applications to ensure that the applicant met the established grounds and had a legitimate claim to hardship and medical necessity.
10. Through interactions with USCIS, I have developed an understanding that when the local office was ready to recommend approval of deferred action, after conferring with the district director and field office director, the case had to be sent to a regional director. In some cases, I followed up with the local field office on behalf of a client to ensure a clear understanding of the situation and to answer any pertinent questions.
11. A client whose request for deferred action was approved would receive a form approval letter which typically granted deferred action for two years. If approved for deferred action, a client became immediately eligible to apply for work authorization. Clients who are granted deferred action also do not accrue "unlawful presence," which can be important to avoiding bars to later admission to the United States.
12. Since I began practicing immigration law, deferred action has been widely recognized by AILA members and USCIS officials as a rare but available form of relief in cases presenting extreme medical need. This was confirmed by internal USCIS memos regarding deferred action, Congressional recognition of deferred action in amendments to the Immigration and Nationality Act (INA), decisions by U.S. courts regarding DHS' prosecutorial discretion, and my own interactions with USCIS officers and directors when discussing individual cases.
13. I first learned about what I later understood to be the nearly complete termination of the deferred action program through colleagues who had received several form letters from USCIS stating simply that USCIS was no longer processing deferred action for non-military members' families and that the application was therefore denied. The letter stated the applicant had to leave the United States in 33 days or risk being placed into deportation proceedings. These colleagues emailed me as the chapter

chair with examples of these letters. Shortly after, I received my first denial letter pertaining to a client who had applied earlier in the summer. The letter I received was dated August 19, 2019 and was received on August 22, 2019.

14. The elimination of deferred action came as a complete surprise. USCIS will typically announce policy changes like this either through an official release or through direct communications with AILA leadership and liaisons (with the expectation that this information will then be disseminated to the AILA membership). But that did not happen in this case.
15. The types of changes that USCIS will announce beforehand include new versions of forms that will be released soon, changes or updates to websites and online filing systems, and reallocations of caseloads between service centers to adjust processing times. USCIS has announced these anyways presumably because having well-informed attorneys benefits both the clients and USCIS.
16. The AILA New England chapter clients impacted by the termination of deferred action include:
 - a. A is a 6-year-old who weighed 27 pounds when he and his mother came to the United States on the B2 visa for him to seek life-saving medical care at Shriners' Hospital in Boston, MA in 2015 at their invitation. A had already been told that the medical professionals in the Dominican Republic could not treat his cerebral palsy, could not solve the mystery of his repeated and violent seizures, and could not find a way to adequately feed him the nutrients needed to survive. In short, he and his mother sought visas to travel to the United States to save his life.

Shortly after receiving acute treatment at Shriners' Hospital, he was referred to Boston Children's Hospital to see specialists in neurology, gastroenterology, audiology, otolaryngology, orthopedics, ophthalmology, nutrition, and occupational therapy. He can only receive his minimal nutrition through a feeding tube that has been implanted, he is resigned to a wheelchair to move, and he sees his primary care physician or specialists several times each week in order to monitor his progress.

A had already demonstrated to the Department of Homeland Security in 2016 that his case merited a grant of Deferred Action, and this most recent application was a renewal of his status, typically a formality and routinely approved. He demonstrated that the same circumstances that existed in 2016 persist to this day, namely that he continues to receive life-saving care from medical professionals at Boston Children's Hospital, and that A would suffer immeasurably if he were forced to return to the Dominican Republic at this

point. Removing a young child like A at this time would amount to a death sentence for him.

- b. B, a Swiss citizen who came to the U.S. to seek short-term residential care for his severe schizophrenia. B's parents had sought treatment for him numerous times in Europe, but none of the treatments that he received were able to create long-term recovery. B came to the U.S. to a residential program at a highly regarded treatment center in New England that combines medical treatment with behavioral therapy to both treat the underlying condition and to prepare the patient to rejoin society and function independently. After an initial period of treatment, B's doctors and caseworkers determined that he needed treatment for longer than his stay through the visa waiver program would have allowed.

After consulting with the Boston CIS Field Office, my office filed a request for deferred action on the grounds that B's departure would severely disrupt his progress, potentially setting him back to his pre-treatment condition or worse. The request further explained that B is largely confined to his treatment center, that he is under constant supervision, that he is fully financed by his parents, and that he will continue to be a nonimmigrant during his stay because he does not have the ability to establish a domicile or seek employment.

The denial of his deferred action leaves him in a perilous position. His main doctor attested in a letter to the significant damage that his departure could potentially inflict. Disruption of B's treatment will likely break the positive habits he has been forming, leading to relapses of harmful and destructive behavior. Departure from the U.S. may separate him from the medicine he has been prescribed, leading to a lapse in his medication which may have severe consequences. The stress from the process of travelling may leave him unwilling to restart the treatment in the U.S. at a future date after securing an appropriate visa, eliminating one of his last remaining options for improvement. Living in Europe will remove him from his doctors in the U.S. who know the most about his condition, having treated him for several months already. Simply, B's forced departure would jeopardize what progress he has made and potentially restrict his ability to seek and receive effective treatment in the future, condemning him to his current state for the rest of his life.

- c. S is a Spanish citizen who is a long-term patient at Boston Children's Hospital. S was born with a complex congenital heart disease requiring extensive surgical intervention. Her symptoms include being born without some central pulmonary arteries, pulmonary atresia (narrowing of the arteries), and Tetralogy of Fallot (a collection of four related heart structure abnormalities).

S was initially treated by doctors in Barcelona until she was four years old, at which point the doctors concluded there was nothing they could do about her condition and that she would likely die by the time she was a teenager. S's parents reached out to doctors from Boston Children's Hospital and were invited to receive treatment in the U.S. Not only was this a chance to save S's life, but her case presented a unique and valuable opportunity for the doctors at Boston Children's to research and treat a rare cardiac condition.

After entering the U.S. through the visa waiver program in 2010, S started with a series of catheter procedures to enlarge her narrow arteries. The family traveled back and forth between the U.S. and Spain as needed until S underwent major reconstructive surgery in July 2018 which involved placing synthetic connectors of her pulmonary arteries and insertion of a pulmonary valve. Although this surgery has led to substantial progress, she still suffers from persistent narrowing of the pulmonary arteries and will require additional cardiac catheter intervention going forwards. While she awaits these procedures, she is carefully monitored while taking anti-coagulants and antibiotics to treat ongoing complications from the surgery. Overall, S has received five surgical treatments on her heart, two of which took place in the U.S., 16 catheterizations, and a vocal cord surgery that took place in the U.S.

For the most recent procedure in July, the family again entered the U.S. through the visa waiver program which authorizes three months of stay. However, the complications from the extensive surgery and the need for close medical monitoring prevented them from leaving at the end of three months. Accordingly, S's family applied for an extension, but the statutes governing the visa waiver program explicitly forbid extension for people using the program, instead requiring them to return to their home country and apply for a visa there. After that extension request was denied, S's family applied for deferred action in April 2019. The application included a letter from S's lead doctor explaining her condition and treatment needs and evidence from the family that S medical cost were being completely covered by the family (so as not to burden the U.S. public).

The denial of S's deferred action request has put her in what is quite literally a life-or-death situation. If removed from the U.S., S will likely be barred from reentry based on the unlawful presence she has accrued, requiring her to obtain a time-intensive waiver from USCIS to reenter. She will lose access to some of the most advanced medical facilities in the world and a team of doctors who are experts on her condition and what her care requires. Any one of the complications she suffers from could prove fatal if she is not under continuous observation. Quite simply, if S is deported there is a significant chance that she will die before she is able to secure reentry.

- d. M and his mother entered the US from Brazil in October 2016 and were admitted for six months pursuant to a B1/B2 visa, which expired in April 2017. On November 8, 2017, M became suddenly very ill and began vomiting. His mother took him to the hospital and was initially told it was the flu. He then became so sick, he started not being able to breath, and after his mother took M back to the hospital, immediate surgery was required.

M has been diagnosed with Midgut Volvulus, a condition in which the intestine has become twisted as a result of malrotation of the intestine. M now has Short Bowel Syndrome which is a malabsorption disorder caused by a lack of functional small intestine due to the surgical removal of a large portion of the small intestine. In M's case, 25 centimeters of his bowel has been removed, and he now only has a small intestine of 12 centimeters in length. Because of his inability to digest food, to survive, he must take his food through a special tube. This food comes in a daily bag that is absolutely necessary for him to survive and still develop, and grow at this very young age; all of his nutrition, hydration and medication is transferred through a central line that is attached to his heart via one of its veins. Since the initial emergency surgery, M has been hospitalized for recovery and placement of the central line. Without deferred action status, M would be in an emergency situation and have to stay at the hospital. With deferred action, his parents can aid in the 12-hour transfer of medication through his central line in conjunction with the care and monitoring of the hospital's intestinal care team. With the nutrition that M is receiving, he will continue to grow well and normally for his age and thus he can expect to continue to live and mature.

The family works with a team of specialists in advanced intestinal rehabilitation that monitors M's progress closely to ensure he is receiving the proper levels of nutrients and medication. In addition, the team ensures that M is not at risk for infection that would result in repaid deterioration and death. The treatment M is receiving is not available in his home country of Brazil. The family applied for deferred action so that M's parents may continue his treatments and have the monitoring and review by the team that has worked with him since his transfer to the specialized intestinal unit. In addition, if there is any sign of infection, e.g. a temperature that reaches 99 degrees, he must be rushed to the hospital to stave off any potential bacteria/infection. Without this specialized care, M is at a great risk of death.

- e. C is a 17-year-old US Citizen whose parents have applied for deferred action. C suffers from ileocecal Crohn's disease complicated by perianal and upper gastrointestinal involvement. This means that she has inflammation through

her upper small intestine, lower small intestine, large and intestine and inflammation right around the skin of her anus. She requires regular intravenous infusions of infliximab. These infusions are given every eight weeks, although the frequency can range from every six to twelve weeks depending on how she's doing. She currently receives these vital transfusions through MassGeneral Hospital for Children. Her pediatric gastroenterologist worries that her parents' removal to Brazil (which would necessitate C's move as well) would result in an extremely harmful lapse in this vital treatment. He has explained that individuals who lose access to infliximab can develop antibodies against the medication which render it ineffective. C would likely see re-activation of her worst Crohn's Disease symptoms, and re-starting infliximab would place her in danger of anaphylactic reactions. Long-term consequences of uncontrolled Crohn's disease include bone density loss and the potential need to have abdominal surgery due to scarring of the intestines.

- f. K is a five-year old U.S. citizen whose mother has sought deferred action. K was diagnosed with cystic fibrosis at birth. Cystic fibrosis is a genetic lung disease that requires life-long treatment. K has to take suppressive antibiotics, have daily or twice-daily treatments to help with airway clearance, use a medical vest each day and have manual percussion to help physically dislodge the mucus that builds up in his lungs. His doctors have specified that an inability to maintain this regiment of treatments will lead to an early death and that it is absolutely critical for K to receive the best care for his cystic fibrosis in order to keep his lungs as healthy as possible.

K's mother was previously granted deferred action and filed on July 9, 2019 to renew it. K's mother's removal to her native Brazil (which would necessitate K's move as well) would result in K having a shorter and significantly more painful life. K's doctors have confirmed that cystic-fibrosis-specific physicians are not available in Brazil, nor are the vital services of a cystic fibrosis-trained nutritionist.

The close monitoring K requires to screen for pathogenic bacteria typical of cystic fibrosis will not be available to him in Brazil. Looking forward, his doctors here are concerned because K will require a Cystic Fibrosis Transmembrane Conductive Regulator, another device that is not available in Brazil. In short, the move to Brazil would be a death sentence for K.

17. Since the termination of deferred action, these clients have received letters containing the same language and notifying them that "U.S. Citizenship and Immigration Service (USCIS) field offices no longer consider deferred action requests, except those made according to the U.S. Department of Homeland Security (DHS)

policies for certain military members, enlistees, and their families. As such, your request for deferred action has been denied.”

18. The letters further inform them that because they were present in the United States “contrary to law” when they filed their requests for deferred action—a requirement for applying for deferred action—they are “not authorized to remain in the United States.” The letters give individuals 33 days from the date of the letter to depart the United States, or USCIS may issue a Notice to Appear and commence removal proceedings against them.
19. The clients who received these letters were devastated. In addition to the ongoing burdens that their conditions impose on their physical and mental health and their finances, these clients now have to live in a state of uncertainty about their future. These clients must now face the daily fear that at any moment they may be placed in proceedings and ultimately removed from the U.S., an act that will have life-altering consequences for them.
20. The families of these individuals as well are burdened by the fear and helplessness that comes with knowing that despite everything they’ve done for their children, it may amount to nothing in the end and their children may continue to suffer. This increased hardship will be due solely to the sudden and arbitrary shift in deferred action policy from USCIS.
21. In the face of numerous requests from lawyers and the media, USCIS has attempted to downplay the impact of this change by pointing out that ICE will still process deferred action requests. However, ICE only processes these requests after a person has already wound their way through the immigration courts and has been ordered removed by a judge. This is a separate process known as a Stay of Removal.
22. ICE has since clarified that USCIS’ policy change was exclusive to USCIS and does not affect ICE. This means that individuals who have been denied deferred action by USCIS cannot apply for deferred action with ICE. Instead, if they are ordered removed by an immigration judge, they can apply for a Stay of Removal. By that point, they have already used the extremely limited resources of the overwhelmed immigration court system, and at which point the stakes are significantly higher.
23. It is highly doubtful that this policy change will yield significant benefits to USCIS, and that these benefits will outweigh the costs to the affected noncitizens, to the U.S. immigration system, and to the U.S. itself.
24. When weighing the costs and benefits, it is important to point out that first and foremost, this is a callous, gratuitously cruel, and morally reprehensible change that goes against the core objectives of the U.S. immigration system. Humanitarian considerations are part of the fundamental framework of the system that Congress

enacted. This includes the refugee program which allows those fleeing oppression and persecution to seek safety, the VAWA program which shields survivors of domestic violence from their abusers, numerous rules and statuses aimed at minimizing the separation of parents and children (like the Child Status Protection Act), and rules that allow for benefits requests to be expedited in light of urgent humanitarian needs.

25. Further, immigration law is full of waivers and discretionary exercises that allow the government to forgive transgressions of immigration law when the non-citizen can prove extraordinary circumstances and undue hardship to themselves and/or U.S. citizens. It has long been the intent of Congress that as a matter of policy the immigration system should be one based on both structure and morals, a system with the flexibility to offer compassion and humanitarian relief rather than a rigidly heartless and uncaring one where the rules and procedures supersede actual human interest.
26. Deferred action was a program that helped enact Congress' vision by offering reprieve to noncitizens who overstayed visas due to severe circumstances like medical need, and the almost complete termination by USCIS directly contravenes what Congress intended the system to be. The individuals who will be affected by these changes are some of the most vulnerable people in our country for whom staying in the U.S. is often a matter of life or death.
27. Further, deferred action was a practical policy designed to increase the overall efficiency of immigration enforcement. The INA explicitly grants discretion for determining immigration enforcement priorities to the relevant departments and agencies due to a simple truth underlying all U.S. law enforcement: there are limited resources to prosecute people breaking the law.
28. By eliminating deferred action, USCIS is effectively pushing its workload in this regard onto ICE and the immigration courts, both of which are already severely overburdened. And if ICE grants a Stay of Removal to those who previously received a grant of deferred action from USCIS, the immigration system will have wasted years putting them through removal proceedings, and the clients will suffer years of anguish, for the same result.
29. Finally, due to the use of deferred action by many noncitizens requiring treatment for rare or otherwise complicated medical disorders, deferred action has become a program which directly benefits the United States. For example, the experience and knowledge gained by B's psychologists and caseworkers will broaden our medical communities' understanding of schizophrenia and create better care for Americans who may need such treatment. The treatment of S's heart defects—which doctors in Spain thought was untreatable—will undoubtedly establish new procedures and

standards which will empower the American cardiology community to better treat Americans with the same conditions. These are situations of mutual benefit, where noncitizens receive lifesaving care and American medical institutions gain valuable experience and insight to keep the U.S. at the cutting edge of medical care.

30. In light of the above, it is clear that the nearly complete termination of deferred action will impose severe costs to noncitizens, Americans, and the U.S. immigration system. It is doubtful that any benefit realized by this change will surpass these costs. USCIS has stated that it is making this change in order to refocus resources, but it also states that it only receives roughly 1,000 deferred action request per year, making it one of the least frequently requested benefits in the immigration system. The resources that will be freed up by the program's reduction will therefore be marginal at best.
31. Due to USCIS deferred action's role in the overall scheme of immigration enforcement, any costs avoided by USCIS will simply be pushed onto other agencies like ICE and the immigration courts, meaning it is unlikely that there will be gains in the efficiency, expeditiousness, or accuracy of the overall system. This, combined with the flagrant disregard for Congressional intent, makes it difficult to avoid the conclusion that the results of this policy change will directly contravene USCIS' own stated motivation of reallocating resources for the purpose of "faithfully administering our nation's lawful immigration system."
32. USCIS' termination of deferred action for most noncitizens is policy that will have a devastating effect on numerous noncitizens who have received significant humanitarian benefits and often lifesaving medical care. The policy change will clog other parts of the immigration system and affects such a small program that significant USCIS benefit is difficult to envision. Truly, this is a change that is unnecessary, ineffective, ill-advised, and just plain cruel.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

September 4, 2019.



Mahsa Khanbabai, Esq.

Chapter Chair

American Immigration Lawyers Association, New England

Exhibit A

Deferred action requests must include the following required documents for each requestor:

- A signed and dated formal written request explaining reason.
- Completed and signed Form G-325A.
- Copy of birth certificate (with certified English translation if applicable).
- I-94 Arrival/Departure Record of the last entry to the U.S.
- Copy of the passport used to last enter the U.S.
- Copy of visa and admission stamp showing last entry to the U.S. (as applicable).
- An original and most recent dated letter signed by the doctor(s) treating the individual with the medical condition. The letter must include:
 - The type of the medical condition/illness.
 - A detailed explanation of past and present medical condition/illness.
 - A detailed summary of any past and present medical complications.
 - The current and future plan of treatment, and how often the individual receives it.
 - Any other relevant medical documentation.
- Evidence showing how the medical costs for the treatment are funded, whether through health insurance, government subsidy, personal financing or other means.
- Evidence showing that treatment is unavailable in your home country.
- Two passport-style photographs.

Mail to:

JFK FEDERAL BUILDING
U. S. CITIZENSHIP & IMMIGRATION SERVICES
15 NEW SUDBURY ST.
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GOVERNMENT CENTER
BOSTON, MASSACHUSETTS 02203