



September 10, 2019

Civil Rights and Civil Liberties Subcommittee  
House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

**RE: CLINIC letter for the record condemning USCIS' termination of affirmative non-military deferred action and lack of transparency in implementing policy change**

Dear Civil Rights and Civil Liberties Subcommittee Chair Raskin and Ranking Member Roy:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits this letter for the record condemning the United States Citizenship and Immigration Services' (USCIS) substantive changes to non-military deferred action as well as the agency's lack of transparency and credible purpose in making these changes, which points towards political motivations.

Established in 1988, CLINIC's work is guided by its Catholic identity and Christian mission to welcome the stranger (Matthew 25:43) and thereby promote the rights and dignity of immigrants. CLINIC achieves its mission by serving and representing the nation's largest network of nonprofit immigration legal services organizations. CLINIC's network primarily serves low-income immigrants and regularly advises and assists individuals in filing family-based immigration applications, naturalization applications, humanitarian forms of immigration relief, and more. This network includes over 370 separately incorporated nonprofits with 501(c) status operating in 49 states and the District of Columbia. CLINIC's network employs an estimated 2,300 staff, including attorneys and Department of Justice approved accredited representatives who, in turn, serve hundreds of thousands of immigrants each year.

**I. USCIS' changes to non-military deferred action demonstrate reckless disregard for the lives of the most vulnerable:**

Non-military deferred action offers temporary protection from deportation for people, including children, facing exigent circumstances, including devastating medical conditions for which treatment is not available in their home countries. Receiving medical care in the United States is often their lifeline and only hope for survival.

On Aug. 7, USCIS determined it would stop accepting affirmative non-military deferred action requests, and such requests would only be considered by ICE when a person had gone through removal proceedings and has an order of removal.<sup>1</sup> Those whose applications were denied due to this decision received letters indicating they had 33 days to leave the country or they might receive a Notice to Appear, beginning removal proceedings.<sup>2</sup>

This policy shift is exceptionally cruel. It puts those with critical or terminal medical conditions through the stress and exhaustion of immigration court proceedings in order to have a chance at a temporary reprieve allowing them to stay in the U.S. to obtain medical care. Additionally, in the Aug. 7 decision, USCIS determined it would not

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<sup>1</sup> Practice Alert: USCIS Stops Accepting and Adjudicating Deferred Action Applications for Non-Military Applicants, AILA (Sept. 3, 2019), [www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-uscis-stops-accepting](http://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-uscis-stops-accepting).

<sup>2</sup> *Id.*

consider cases that were already in the pipeline, a decision it has since walked back in the face of tremendous public outcry.<sup>3</sup>

Non-military deferred action and other humanitarian immigration protections are rooted in foundational U.S. principles that this country is a beacon of hope and a place of refuge and opportunity. The elimination of such protections is a travesty of justice and compassion, cutting away at pieces of U.S. law and policy that enshrine and put those values into practice. Accordingly, USCIS must fully restore and honor the prior policy.

## **II. USCIS' roll out of its policy change was completely opaque, needlessly creating chaos and causing additional stress and pain for those affected:**

In addition to the substantive cruelty of USCIS' decision to end affirmative non-military deferred action, the way in which USCIS rolled out—or rather failed to roll out—its policy change caused tremendous harm.

The USCIS Policy Manual states that the USCIS website, “provides the public with access to current information about USCIS’ work, as well as current news releases, alerts, and other updates.”<sup>4</sup> It also states that the website provides “timely and accurate information” and “the latest news and policy updates.”<sup>5</sup> The Policy Manual also describes that USCIS, “uses social media to make information and services widely available to the general public, to promote transparency and accountability, and to help those seeking information or services from USCIS.”<sup>6</sup> In addition to website and social media updates, USCIS also provides the option to sign up for email updates and data feeds and stakeholder engagement calls,<sup>7</sup> media that have been historically utilized liberally to transmit important information. While there is policy, technology, and staff in place to ensure the public receives key information and updates, the trend under the current administration has been to move further and further away from transparency and a well-informed public.

USCIS made its Aug. 7 decision to terminate affirmative non-military deferred action in the dark. There was no public announcement in any form and no stakeholder engagement to provide the opportunity for dialogue and questions. Attorneys and those affected learned of the policy change through individual mailed letters.<sup>8</sup> Those who may have been planning to apply, family and friends of those directly impacted, and larger communities had no information available to them. USCIS even failed to notify ICE of its decision,<sup>9</sup> which created additional chaos. After learning of USCIS’ decision, an ICE official stated that ICE would not be taking over USCIS’ function or implementing the decision as there was no infrastructure at ICE to do so and no collaboration or transparency from USCIS, among other issues.<sup>10</sup>

The use of individual letters without accompanying publicly-available information has become more and more frequent. In another egregious example from earlier this year, USCIS utilized only individual letters and conducted no public outreach regarding its erroneous rejection of work authorization applications associated with Deferred Enforced Departure, or DED, for Liberia.<sup>11</sup> The error caused mass confusion and anxiety in the impacted community as people grappled with the possibility of being deported to a country they had not lived in in decades and where they have no resources or ties. USCIS elected to send individual notices by mail to those it had identified as impacted.<sup>12</sup> In order to ensure the affected community and legal service providers had proper information, CLINIC called on USCIS to, “1) send communications via email listservs as it has done in the past for such errors; 2) update the Liberia DED USCIS webpage to explain its error and provide detailed instructions; and 3) conduct a responsible and accurate social media campaign.”<sup>13</sup> No such basic public outreach or engagement was done. In

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<sup>3</sup> *Id.*

<sup>4</sup> USCIS Policy Manual, Volume 1, Chapter 2, Web-Based Information, [www.uscis.gov/policy-manual/volume-1-part-a-chapter-2](http://www.uscis.gov/policy-manual/volume-1-part-a-chapter-2) (accessed Sept. 9, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Alerts, USCIS, [www.uscis.gov/news/alerts](http://www.uscis.gov/news/alerts) (accessed Sept. 9, 2019).

<sup>8</sup> Practice Alert: USCIS Stops Accepting and Adjudicating Deferred Action Applications for Non-Military Applicants, AILA (Sept. 3, 2019), [www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-uscis-stops-accepting](http://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-alert-uscis-stops-accepting).

<sup>9</sup> Shannon Dooling, *Feds Can't Agree On Which Agency—If Any—Handles Medical Deportation Deferrals*, WBUR News (Aug. 28, 2019), [www.wbur.org/news/2019/08/28/ice-uscis-immigrants-medical-deferred-action](http://www.wbur.org/news/2019/08/28/ice-uscis-immigrants-medical-deferred-action).

<sup>10</sup> *Id.*

<sup>11</sup> USCIS erroneously rejected work authorization applications with the stated reason that Liberia was not “currently eligible” for DED, although it had just been extended for 12 months. Practice Alert: USCIS Rejects some Liberian EAD Applications in Error, CLINIC (May 16, 2019), <https://cliniclegal.org/resources/practice-alert-uscis-rejects-some-liberian-ead-applications-error>.

<sup>12</sup> *Id.*

<sup>13</sup> CLINIC recommendations to USCIS regarding erroneously rejected work authorization applications filed by DED holders, CLINIC (May 16, 2019), <https://cliniclegal.org/resources/clinic-recommendations-uscis-regarding-erroneously-rejected-work-authorization>.

addition to this example, CLINIC has been critical of the USCIS' reliance on individual letters and lack of public engagement in other instances, as individual letters by mail are prone to delay, error, resource intensive, and inefficient.<sup>14</sup>

The consequences of an opaque process and hiding information from impacted populations and the general public is a chaotic system that causes needless suffering to people in vulnerable situations. Notably, it also creates an environment where notarios and those engaged in the unauthorized practice of immigration law can thrive. Ironically, while USCIS' public outreach infrastructure is heavily utilized to state that the agency's priority is combatting fraud—instead of its Congressional mandate to process immigration applications and provide customer service—USCIS' actions actually perpetrate fraud and abuse.

### **III. USCIS' stated purpose for the policy change is not credible:**

Following a massive public outcry, USCIS slightly backtracked on its policy decision, agreeing to adjudicate cases that were pending as of Aug. 7.<sup>15</sup> Notably, it utilized both its website and social media to make this announcement, suggesting that the failure to use these mediums to make the original announcement of the policy change was a deliberate choice.

In the web announcement partially backtracking its decision, USCIS stated its purpose for terminating affirmative non-military deferred action as follows: "As USCIS' deferred action caseload is reduced, the career employees who decide such cases will be more available to address other types of legal immigration applications on a more efficient basis."<sup>16</sup>

This stated reason is not credible. With approximately 1,000 cases per year,<sup>17</sup> reviewing non-military deferred action requests does not require significant resources. Furthermore, the policy change to make non-military deferred action available only after removal proceedings is more resource intensive to the government overall, requiring all the resources it takes to put an individual through a removal proceeding instead of reviewing a request for deferred action affirmatively. The extreme cruelty and failure to offer justifiable reasoning behind this policy change points to a political agenda, focused on ripping immigrants from our society, beginning with the most vulnerable among us.

### **IV. Conclusion:**

CLINIC condemns USCIS' termination of non-military deferred action as well as the lack of transparency and public information around this decision. CLINIC applauds the Oversight Committee for swiftly calling a hearing on this matter and urges the Committee to hold USCIS accountable for its egregious and unjustifiable actions and to defend justice for immigrants.

Sincerely,



Jill Marie Bussey  
Director of Advocacy  
Catholic Legal Immigration Network, Inc.

<sup>14</sup> See e.g., CLINIC letter to USCIS Director regarding processing delays, CLINIC (Oct. 26, 2018), <https://cliniclegal.org/resources/clinic-letter-uscis-director-regarding-processing-delays>.

<sup>15</sup> USCIS Re-Opens Previously Pending Deferral Requests, USCIS (Sept. 2, 2019), <https://www.uscis.gov/news/alerts/uscis-re-opens-previously-pending-deferral-requests> (accessed Sept. 9, 2019).

<sup>16</sup> *Id.*

<sup>17</sup> News outlets have reported that USCIS has stated it only received approximately 1,000 cases per year. Camilo Montoya-Galvez, *Trump administration to process some deferred deportation requests from sick immigrants*, CBS News (Sept. 2, 2019), [www.cbsnews.com/news/medical-deferred-action-trump-administration-will-process-some-deferred-deportation-requests-from-sick-immigrants/](http://www.cbsnews.com/news/medical-deferred-action-trump-administration-will-process-some-deferred-deportation-requests-from-sick-immigrants/).